SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2700-21

KATHERINE M. RUPERT,

Plaintiff-Respondent,

v.

GARY F. RUPERT,

Defendant-Appellant.

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Argued April 19, 2023 – Decided June 14, 2023

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Somerset County, Docket No. FM-18-0261-15.

Angelo Sarno argued the cause for appellant (Snyder Sarno D'Aniello Maceri & Da Costa, LLC, attorneys; Angelo Sarno, of counsel and on the briefs; Julie Katz and Michael J. Weil, on the briefs).

Bonnie M. Weir argued the cause for respondent (The Weir Law Firm, LLC, attorneys; Bonnie M. Weir, of counsel and on the brief).

PER CURIAM

Defendant Gary Rupert appeals from the April 29, 2022 order denying his motion to retroactively modify his alimony obligations and extinguish any support arrears he owed to his former wife, plaintiff Katherine Rupert. We affirm, substantially for the reasons set forth in Judge Haekyoung Suh's comprehensive and thoughtful written opinion.

I.

The facts are fully detailed in Judge Suh's written opinion, so we need only summarize them. The parties are divorced and have three children, all of whom are emancipated. In June 2014, the parties entered into a Marital Settlement Agreement (MSA) which was incorporated into their November 2014 judgment of divorce (JOD).[1]

The MSA provided defendant was to pay plaintiff permanent alimony in the sum of $10,000 per month and child support in the sum of $1,100 per month for each unemancipated child. Additionally, defendant agreed to pay ten percent "of any salary increase or bonus over his current income of $710,000 as additional alimony." The MSA further provided, "[t]his Agreement shall not be amended, modified, discharged or terminated except by a writing executed and

[1] In August 2017, the parties agreed to modify the MSA with an addendum. The provisions contained in the addendum are not relevant to this appeal.

acknowledged by the party sought to be bound" and "[a]ny waiver by either party of any provision of this Agreement . . . shall not be deemed a continuing waiver and shall not prevent such party from thereafter insisting upon strict performance or enforcement of such provision."

On April 1, 2020, defendant was involuntarily terminated from his job and had difficulty finding new employment. According to defendant, "it was [his] understanding that the parties . . . reached an agreement in July 2020 that he could temporarily reduce his alimony payment to plaintiff from $10,000 per month to $5,000 per month[,] commencing with the August 2020 payment," based on his job loss. Defendant acknowledges "[t]he agreement was verbal and never reduced to a writing." Plaintiff denies entering into any such agreement. Also, neither party disputes defendant did not file a motion to modify his support obligations.

Nevertheless, in August 2020 defendant reduced his support payments to $5,000 per month, inclusive of child support. On December 27, 2020, plaintiff sent defendant an email, listing the support payments he made in 2020 and informing him that he owed her $41,500 in alimony and child support arrears.

From January through March 2021, defendant further reduced his support payments to $2,500 per month. He was diagnosed with an aggressive form of

prostate cancer in March 2021 and stopped all alimony and child support payments the following month.

By August 2021, defendant was able to secure employment earning a base salary of $225,000. He also became eligible for, but was not guaranteed to receive, a bonus in his new position.

Despite his ongoing medical treatment, defendant was informed in December 2021 that his cancer had spread. He was told he had approximately two years to live.

On March 4, 2022, plaintiff filed a motion to enforce her rights under the JOD. She asked the trial court to compel defendant to pay alimony and child support consistent with the amounts set forth in the JOD, and for the judge to fix his support arrears for the period between August 2020 and February 2022, which she claimed totaled over $200,000.

Defendant cross-moved to reduce his alimony payments from $10,000 to $5,000 per month, retroactive to August 2020. Alternatively, he requested that any reduction be retroactive to the filing date of his cross-motion. He also sought to retroactively terminate his child support obligations, contending each child was emancipated. Further, he asked the court to extinguish any support arrears that plaintiff claimed had accrued.

During argument on the parties' cross-applications on April 29, 2022, defendant's attorney contended there was a disputed fact as to whether the parties reached an agreement to reduce defendant's support payments as of August 2020. Therefore, defendant's counsel asked the court to schedule a plenary hearing to address this issue. Judge Suh asked him if there was "any document, email or otherwise, that basically confirm[ed] that [plaintiff] walked away from $218,000" in support arrears for the period at issue. Defendant's attorney replied, "Judge, . . . if there were, trust me, it would be Exhibit 1."

Following argument, Judge Suh issued an order, denying defendant's motion to modify his monthly alimony obligation from $10,000 to $5,000, effective August 2020. However, she granted defendant's request to reduce his alimony payments to $5,000 per month, as of the filing date of his cross-motion, and terminated his child support payments based on the children's emancipation.

In an accompanying thirty-page opinion, Judge Suh explained that "[d]efendant failed to establish [a] substantial and permanent change of circumstances warranting a modification of his alimony obligation retroactive to August 2020" because "he was earning approximately $780,000 per year (inclusive of bonus)" when the parties divorced, but his tax returns showed he grossed "roughly $879,692" in 2020. Judge Suh added that even if

approximately $11,000 of defendant's 2020 pension income was "exempt from an alimony determination," considering his pension was equitably distributed under the JOD, defendant still "failed to show a substantial and changed circumstance occurred in August of 2020."

Further, the judge stated she did "not find . . . the parties reached a binding agreement to reduce defendant's alimony obligation." In fact, she found "[d]efendant provide[d] no definitive proof that the parties entered into an agreement" after plaintiff refuted its existence. On the other hand, Judge Suh concluded defendant's "significant reduction in income, confirmed prostate cancer, and undisputed longevity" established a permanent and substantial change in circumstances warranting modification of his alimony obligation to $5,000 per month as of April 14, 2022, the date he filed his cross-motion.

Next, after establishing the dates of each child's emancipation, the judge found defendant's child support arrears totaled $40,700, and his alimony arrears totaled $177,500. She directed all arrears to be paid down at the rate of $1,000 per month, but that child support arrears should be satisfied first. The judge also ordered plaintiff to remit half of any bonuses and the full amount of any tax refunds he received to pay down his arrears unless he "settle[d] his arrears of $218,200 with a single lump-sum payment."

II.

On appeal, defendant argues the judge abused her discretion by: "granting plaintiff's motion for enforcement and denying [his] modification motion"; and failing to order "discovery and a plenary hearing on the issue of whether the parties had a verbal agreement to reduce or suspend [his] alimony obligation" as of August 2020. These arguments are unavailing.

"Appellate courts accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)). "Only when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should we interfere[.]" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008)). "We will reverse only if we find the trial [court] clearly abused [its] discretion." Clark v. Clark, 429 N.J. Super. 61, 72 (App. Div. 2012). However, "all legal issues are reviewed de novo." Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017) (citing Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

It is well established that matrimonial settlement agreements are "'entitled to considerable weight with respect to their validity and enforceability' in equity,

provided they are fair and just," because they are "essentially consensual and voluntary in character." Dolce v. Dolce, 383 N.J. Super. 11, 20 (App. Div. 2006) (quoting Petersen v. Petersen, 85 N.J. 638, 642 (1981)). However, courts retain the equitable power to modify support provisions at any time. Lepis v. Lepis, 83 N.J. 139, 145 (1980).

"Whether [a support] obligation should be modified based upon a claim of changed circumstances rests within a Family Part judge's sound discretion." Larbig v. Larbig, 384 N.J. Super. 17, 21 (App. Div. 2006) (citations omitted). A trial court's decision regarding support obligations should not be disturbed unless we

> conclude that the trial court clearly abused its discretion, failed to consider all of the controlling legal principles, or . . . that the findings were mistaken or that the determination could not reasonably have been reached on sufficient credible evidence present in the record after considering the proofs as a whole.
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> [Heinl v. Heinl, 287 N.J. Super. 337, 345 (App. Div. 1996) (citation omitted).]

The moving party must demonstrate a permanent change in circumstances from those existing when the prior support award was fixed. See Donnelly v. Donnelly, 405 N.J. Super. 117, 127 (App. Div. 2009) (finding a party moving for alimony modification must demonstrate changed circumstances since the

preceding alimony order). "When the movant is seeking modification of an alimony award, that party must demonstrate that changed circumstances have substantially impaired the ability to support himself or herself." Lepis, 83 N.J. at 157. On the other hand, "[w]hen the movant is seeking modification of child support, the guiding principle is the 'best interest of the children.'" Ibid. (citations omitted).

After a party makes a showing of changed circumstances relating to alimony or child support, the trial judge must determine if a plenary hearing is required. Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007). That is because "not every factual dispute that arises in the context of matrimonial proceedings triggers the need for a plenary hearing." Harrington v. Harrington, 281 N.J. Super. 39, 47 (App. Div. 1995) (citing Adler v. Adler, 229 N.J. Super. 496, 500, (App. Div. 1988)). In fact, a trial court need not hold such a hearing when it "discern[s] no factual dispute for which a plenary hearing would be helpful in reaching resolution." Colca v. Anson, 413 N.J. Super. 405, 422 (App. Div. 2010) (citations omitted).

"[A] plenary hearing is only required if there is a genuine, material and legitimate factual dispute." Segal v. Lynch, 211 N.J. 230, 264-65 (2012) (citations omitted). "Without such a standard, courts would be obligated to hold

hearings on every modification application." Lepis, 83 N.J. at 159. "In determining whether a material fact is in dispute, a court should rely on the supporting documents and affidavits of the parties. Conclusory allegations [are], of course, . . . disregarded." Ibid.

The necessity of a plenary hearing must be demonstrated by the movant. Hand, 391 N.J. Super. at 106. Also, we review a trial court's denial of a plenary hearing for an abuse of discretion. See Costa v. Costa, 440 N.J. Super. 1, 4 (App. Div. 2015). Governed by these standards, we see no reason to reverse the April 29, 2022 order.

Although defendant argues he was entitled to a plenary hearing because there was "a material dispute of fact as to the existence . . . of an . . . oral agreement" that allowed him to reduce his support payments to $5,000 per month as of August 2020, the record is devoid of any evidence to support his bare assertion that such an agreement existed. Moreover, plaintiff's email to defendant on December 27, 2020, outlining the support payments he made and what she claimed he still owed for 2020, supports her contention the parties never orally modified the MSA after defendant lost his job in 2020. We also recognize defendant neither disputed plaintiff's accounting, nor responded to her December 27 email in writing, and his attorney candidly admitted during

argument on April 29, 2022, that defendant had no evidence of an oral agreement. Indeed, his attorney stated if defendant had such evidence, it would have been included with his motion papers as "Exhibit 1."

Under these circumstances, and considering the MSA specifically provided, "[t]his Agreement shall not be amended, modified, discharged or terminated except by a writing executed and acknowledged by the party sought to be bound" and "[a]ny waiver by either party of any provision of this Agreement . . . shall not be deemed a continuing waiver and shall not prevent such party from thereafter insisting upon strict performance or enforcement of such provision," we are not persuaded Judge Suh abused her discretion in granting plaintiff's enforcement motion, fixing defendant's arrears, and denying defendant's modification motion without a plenary hearing. Thus, we affirm the April 29, 2022 order for the reasons expressed by the judge in her thorough opinion.

Affirmed.