

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3757-21**

RONALD JACOB COURI,

Plaintiff-Appellant,

v.

BARBARA G. COURI,

Defendant-Respondent.

Argued May 31, 2023 – Decided July 7, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-1392-18.

Bruce H. Nagel argued the cause for appellant (Nagel
Rice, LLP, attorneys; Bruce H. Nagel and Robert H.
Solomon, of counsel and on the briefs).

David Torchin argued the cause for respondent
(Torchin Martel & Orr, LLC, attorneys; David Torchin
and Karolina Katsnelson, on the briefs).

PER CURIAM

In this post-judgment matrimonial matter, plaintiff husband appeals from a family court order requiring him to pay \$282,185.66 in additional alimony to defendant wife pursuant to the parties' property settlement agreement (PSA) for 2019 and 2020. The family court denied defendant's motion to find plaintiff in violation of litigant's rights because it found the PSA's definition of income could reasonably be interpreted in multiple ways. We conclude, once the family court made the determination the PSA's definition was ambiguous, it was required to hold a plenary hearing to establish the intent of the parties. We reverse and remand for a plenary hearing.

However, for the first time at oral argument on May 31, 2023, we learned of plaintiff's passing in February 2023, after he filed this appeal on August 8, 2022. Plaintiff's attorney failed to file a substitution of attorney impleading plaintiff's estate as the proper party on appeal, a motion for leave to substitute the estate, or otherwise inform us of plaintiff's demise.¹ We have no information before us regarding the estate's intent to pursue these claims further. Therefore, we vacate the order and remand to the family court for a plenary hearing involving the proper parties. On remand, anyone seeking to further adjudicate

¹ "If a party dies and the claim is not thereby extinguished, the court shall on motion order substitution of the proper parties." See R. 4:34-1(b).

the claims must comply with the practice for the substitution of a deceased party. See Campione v. Adamar of N.J., Inc., 155 N.J. 245, 269-70 (1998).

On December 20, 2018, the family court entered a Dual Judgment of Divorce (DJOD) incorporating the parties' PSA. On April 5, 2022, defendant filed a motion in aid of litigant's rights seeking to compel plaintiff to pay additional alimony pursuant to the PSA, and counsel fees and costs. Plaintiff filed opposition and a cross-motion to define the term "income" for the purposes of additional alimony in the PSA, and for counsel fees and costs.

On June 24, 2022, the family court entered an order granting in part and denying in part defendant's motion and denying plaintiff's cross-motion. In denying defendant's motion in aid of litigant's rights to enforce the PSA, the family court reasoned there was insufficient evidence plaintiff willingly failed to comply with the PSA because the agreement "regarding additional income in alimony[] could have reasonably been interpreted in multiple fashions." The family court ordered plaintiff pay defendant \$282,185.66 in additional alimony for 2019 and 2020. The family court denied both parties' motions for counsel fees and costs.

The parties' PSA at Paragraph Six provides:

Commencing December 1, 2018 and continuing therefrom, Husband shall pay open duration alimony

directly to Wife equal to one-third (1/3) of his income, as defined herein, between \$600,000.00 and \$2 million. Should Husband's income be between \$500,000.00 and \$600,000.00, then he shall pay Wife \$200,000.00 per year. Specifically, Husband's alimony obligation shall not decrease below \$200,000.00 per year absent a terminating event or a substantial change in his financial circumstances.

Income in the PSA was "defined as Husband's gross wages/salary from his employment, any distributions, bonuses and/or benefits paid/provided to him or on his behalf, any loans/advances provided to him by his businesses, any 401(k), IRA or other deferred compensation contributions by Husband or his businesses, and/or Social Security."

Prior to the marriage, plaintiff owned interests in several businesses. These businesses were excluded from equitable distribution as pre-marital assets belonging solely to plaintiff. Because defendant did not receive equitable distribution from the businesses, she was awarded the bulk of the marital assets. At the time the motions were filed, the businesses were owned by plaintiff, his brother, and several trusts. As a complicating factor, plaintiff was employed by some of the businesses; thus, although the businesses were excluded from equitable distribution, the salary and benefits plaintiff derived as an employee of the companies were used to calculate alimony.

At issue on appeal is whether dividends paid to plaintiff as an owner, not as an employee, of the businesses were meant to be included in the definition of income for the calculation of alimony. Plaintiff's accountant stated the income definition was supposed to only include "cash [plaintiff] receives from his current earnings." In plaintiff's accountant's view, "income available for alimony should be limited to distributions or loans derived from operating income. Distributions from assets, including premarital assets or assets received in equitable distribution, should not be included[.]"

Defendant's accountant indicated the income definition in the PSA was drafted with the intent of prohibiting plaintiff from manipulating and hiding income. He stated income does not mean actual cash income received or earned by plaintiff and the definition expressly belies any contention it is limited to earned income.

This court defers to the family court's findings of fact "when supported by adequate, substantial, credible evidence" in the record. Cesare v. Cesare, 154 N.J. 394, 411-12 (1998); accord Gnall v. Gnall, 222 N.J. 414, 428 (2015). This court affords special deference in light "of the family courts' special jurisdiction and expertise in family matters." Cesare, 154 N.J. at 413; see Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare, 154 N.J. at 413). Further,

discretionary decisions of the family court are afforded "great deference." Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012). The family court's "legal conclusions, and the application of those conclusions to the facts," are reviewed de novo. Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013).

As is the case with any contract, our review of a settlement agreement is de novo because the interpretation of a contract is a legal question. Quinn v. Quinn, 225 N.J. 34, 45 (2016) ("An agreement that resolves a matrimonial dispute is no less a contract than an agreement to resolve a business dispute."); Kieffer v. Best Buy, 205 N.J. 213, 222-23 (2011); Jennings v. Pinto, 5 N.J. 562, 569-70 (1950). "Accordingly, we pay no special deference to the [family] court's interpretation and look at the contract with fresh eyes." Kieffer, 205 N.J. at 223.

Finally, we defer to the family court in its decision whether or not to grant a plenary hearing. Jacoby v. Jacoby, 427 N.J. Super. 109, 123 (App. Div. 2012). "[I]t is only where the affidavits show that there is a genuine issue as to a material fact, and that the [family] judge determines that a plenary hearing would be helpful in deciding such factual issues, that a plenary hearing is required." Ibid. (quoting Shaw v. Shaw, 138 N.J. Super. 436, 440 (App. Div. 1976)).

We agree with plaintiff the family court's finding the PSA "could have reasonably been interpreted in multiple fashions" required a plenary hearing to determine the parties' intent. Instead, the court interpreted the provision to mean distributions plaintiff received from his businesses "became part of the funds calculated for additional alimony purposes." Once the court found the term "income" in the PSA could have been interpreted multiple ways, it necessarily determined the contract was ambiguous, requiring the court to hold an evidentiary hearing to discern the parties' intent. Further, plaintiff is correct an evidentiary hearing was necessary because the submitted certifications contained "disputed issues of the core facts."

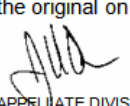
It is well-established that a marriage settlement agreement is governed by contract principles. Quinn, 225 N.J. at 45; J.B. v. W.B., 215 N.J. 305, 326 (2013). When the parties' intention is clear, the court shall not rewrite or revise the agreement. Quinn, 225 N.J. at 45. "[T]he parties cannot expect a court to present to them a contract better than or different from the agreement they struck between themselves." Ibid. The overriding goal is to distill the intention of the parties, "consider what is written in the context of the circumstances at the time of drafting and to apply a rational meaning in keeping with the expressed general purpose." Ibid. (quoting Sachau v. Sachau, 206 N.J. 1, 5-6 (2011)).

"To the extent that there is any ambiguity in the expression of the terms of a settlement agreement, a hearing may be necessary to discern the intent of the parties at the time the agreement was entered and to implement that intent." Ibid. Plenary hearings are necessary to resolve material factual disputes, which we have consistently found exist when the family court relies solely on conflicting certifications. Jacoby, 427 N.J. Super. at 123; see also Palmieri v. Palmieri, 388 N.J. Super. 562, 564 (App. Div. 2006) ("Disputes of material fact should not be resolved on the basis of certifications nor in reliance upon ambiguous terms in a property settlement agreement." (citing Conforti v. Guliadis, 128 N.J. 318, 328-29 (1992))).

Here, we reverse and vacate the order requiring plaintiff to pay additional alimony within the PSA's definition of income. However, plaintiff's demise may prove a plenary hearing is not feasible. Therefore, the family court shall await the substitution of the proper parties and evaluate whether there is sufficient extrinsic evidence, absent plaintiff's testimony, to require a plenary hearing.

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION