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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3969-21**

**GERARD CROCKENBERG,**

Plaintiff-Appellant,

v.

**YESENIA GONZALEZ, f/k/a  
CROCKENBERG,**

Defendant-Respondent.

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Argued June 7, 2023 – Decided June 20, 2023

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Camden County,  
Docket No. FM-04-0439-08.

Ronald G. Lieberman argued the cause for appellant  
(Rigden Lieberman, LLC, attorneys; Ronald G.  
Lieberman, on the briefs).

Richard B. Rotz argued the cause for respondent  
(Forkin, McShane, Manos & Rotz, PA, attorneys;  
Richard B. Rotz, on the brief).

PER CURIAM

Plaintiff Gerard Crockenberg appeals from an August 1, 2022 order denying his post-judgment motion to modify or terminate his alimony obligation, and granting a cross-motion filed by his former spouse, defendant Yesenia Gonzalez to enforce his obligations under the parties' dual judgment of divorce (JOD). We affirm.

I.

The parties were divorced in 2008. Their 2008 JOD incorporated a Partial Property Settlement Agreement (PPSA) from August 2006, and a final Property Settlement Agreement (PSA) from January 2008. Under the JOD, plaintiff was required to pay defendant permanent alimony of \$2,700 per month, plus \$900 per month in rehabilitative alimony from September 2006 through August 2012. Additionally, plaintiff was obligated to pay child support for the parties' four children at the rate of \$280 per week. The support figures were based on plaintiff grossing \$143,000 annually and defendant having no earned income.

Pursuant to the JOD, the parties agreed defendant had the right to seek an increase in alimony if plaintiff's gross income exceeded \$173,000 per year and plaintiff could request a reduction in his alimony payments if defendant grossed over \$30,000 per year. The JOD also reflected the parties were unable to "agree on the standard of living established in the marriage" but because they "resolved

the alimony issue, each party waive[d] their right to have the [c]ourt determine either the standard of living established in the marriage or whether or not each party c[ould] maintain a reasonably comparable standard of living after the divorce."

In April 2022, plaintiff moved to modify or terminate his alimony obligation. In support of his motion, he certified he "was laid off" from his position as an IT Director at a large law firm in Philadelphia in December 2020, due to the ongoing COVID-19 pandemic, and that prior to the layoff, he "made on average, roughly \$200[,000] per year." Plaintiff also stated he was incarcerated as of November 2021 on first- and second-degree criminal charges, but upon his release, he hoped to "become re-employed." Further, he asserted he was paying his support obligations from savings and had "enough savings to pay . . . voluntary child support and college" expenses but was "unable to continue paying mandatory spousal support." He also certified his "legal expenses and current inability to work . . . [were] making it financially impossible to pay spousal support."<sup>1</sup>

Defendant opposed the motion and cross-moved for enforcement of the

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<sup>1</sup> The record reflects plaintiff stopped paying alimony one month prior to filing his modification motion.

JOD, asking the court to: fix plaintiff's arrears; compel him to make future support payments through probation; direct plaintiff to provide proof of life insurance coverage as required under the JOD; and award her counsel fees.

On August 1, 2022, the trial court conducted argument on the cross-applications. During the hearing, plaintiff's counsel admitted his assertions about the potential outcome of plaintiff's upcoming criminal trial were "speculative" and there was "an issue of ripeness" regarding plaintiff's ability to "find[] new work" if he was acquitted. Plaintiff's counsel also conceded he represented plaintiff in an ejectment action a month prior to the August 1 hearing, and during the hearing on that matter, he explained to another judge that plaintiff should be permitted to sell his home, not only to pay for legal fees related to his criminal matter but to satisfy other "prior substantial legal obligations," including "a family order for spousal support from his ex-wife" and "child support and college contributions."

Following argument, the judge issued an oral opinion, denying without prejudice, plaintiff's request to modify or terminate alimony. The judge also granted defendant's enforcement motion but denied her counsel fee request.

In denying plaintiff's modification motion, the judge found his application was "premature" and he failed to establish a "substantial change in

circumstances" to warrant a reduction in his alimony payments. She also concluded she could not "terminate or even suspend alimony" based "on . . . speculation" regarding the resolution of the criminal matter. She reasoned, plaintiff might "be completely innocent. I'm not going to pre-judge th[at] case . . . . He could . . . walk away after a jury trial."

Next, the judge reduced plaintiff's child support obligation to \$125 per week, because the parties agreed three of their four children were emancipated. She also fixed plaintiff's child support arrears at \$5,677.80, representing his share of the unemancipated child's outstanding college tuition. Additionally, the judge granted defendant's request to have plaintiff make future support payments through probation via wage execution and awarded her a judgment in the sum of \$13,500, representing plaintiff's alimony arrears. Further, the judge allowed defendant's counsel to "place a lien on [plaintiff's] IRA or property" to secure payment of the judgment. She also directed that within thirty days, plaintiff was "to provide proof of life insurance securing his support payments," and if he failed to do so, "a lien [could] be placed against his real estate to secure [his] child support and alimony payments."

## II.

On appeal, plaintiff argues "the interests of justice were offended by the

trial court's failure to find changed circumstances" and the judge erred by failing to find his incarceration allowed for modification. Further, he contends the judge abused her discretion by not holding a plenary hearing and by "entering judgment against [his] assets despite defendant's contractual waivers in the [PSA]." Additionally, for the first time on appeal, he argues the judge "was required to determine the [parties'] marital lifestyle." None of these arguments are convincing.

Our review of a Family Part order is limited. See Cesare v. Cesare, 154 N.J. 394, 411 (1998). "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Id. at 413. Therefore, "[w]e will reverse only if we find the [court] clearly abused [its] discretion." Clark v. Clark, 429 N.J. Super. 61, 72 (App. Div. 2012). However, we review a Family Part judge's interpretation of the law de novo. D.W. v. R.W., 212 N.J. 232, 245-46 (2012) (citation omitted).

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)). Still, a trial court retains

the equitable power to modify support provisions at any time. Lepis v. Lepis, 83 N.J. 139, 145 (1980); see also N.J.S.A. 2A:34-23 (support orders "may be revised and altered by the court from time to time as circumstances may require.").

"Whether [a support] obligation should be modified . . . rests within a Family Part judge's sound discretion." Larbig v. Larbig, 384 N.J. Super. 17, 21 (App. Div. 2006) (citations omitted). Thus, a trial court's decision regarding a support obligation 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 determination could not reasonably have been reached on sufficient credible evidence present in the record after considering the proofs as a whole.

[Heinl v. Heinl, 287 N.J. Super. 337, 345 (App. Div. 1996) (citation omitted).]

Support orders are subject to review and modification upon a showing of "changed circumstances." Lepis, 83 N.J. at 146 (citations omitted). Importantly, 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). Accordingly,

[w]hen a motion . . . is filed for modification or termination of alimony or child support, other than an

application based on retirement . . . , the movant shall append copies of the movant's current case information statement [(CIS)] and the movant's [CIS] previously executed or filed in connection with the order, judgment or agreement sought to be modified.

[R. 5:5-4(a)(4).]

Additionally, "[w]hen 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 interests of the children.'" Ibid. (citations omitted).

"Courts have consistently rejected requests for modification based on circumstances which are only temporary or which are expected but have not yet occurred." Id. at 151 (citations omitted). Therefore, the premature filing of a Lepis motion will justify its denial on the ground that the change has not been shown to be a permanent condition or of lasting duration. Larbig, 384 N.J. Super. at 22-23. There is no "brightline rule by which to measure when a changed circumstance has endured long enough to warrant a modification of a support obligation." Id. at 23. "[S]uch matters turn on the discretionary determinations of Family Part judges, based upon their experience as applied to



all the relevant circumstances." Ibid.

A payor's incarceration may warrant the modification of a support obligation based on changed circumstances. Kuron v. Hamilton, 331 N.J. Super. 561, 570 (App. Div. 2000). But a payor's incarceration is but one factor among others to be weighed by a trial court in determining whether to grant a payor's request for relief from their support obligations. Id. at 571. Other factors a trial court may consider are the length of a payor's incarceration and the extent of their assets, "the payor's ability to meet the mandated support obligations even after the reduction in income, and the ability of the payee to provide for himself or herself." Id. at 571, 575 (citation omitted).

In short, "[c]urrent earnings are not the sole criterion to establish a party's obligation for support." Halliwell v. Halliwell, 326 N.J. Super. 442, 448 (App. Div. 1999) (citation omitted). In fact, a court is free to assess a supporting spouse's unearned income from "[r]eal property, capital assets, investment portfolio[s], and [their] capacity to earn by diligent attention to . . . business . . . in the determination of alimony modification." Miller v. Miller, 160 N.J. 408, 420-21 (1999) (internal quotation marks and citations omitted). Moreover, a payor who has suffered a reduction in income typically must "demonstrate how [they have] attempted to improve the diminishing circumstances." Donnelly,

405 N.J. Super. at 130 n.5.

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). 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).

"[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); see also Lepis, 83 N.J. at 159 (holding the moving party must clearly demonstrate the existence of a genuine issue as to a material fact "before a hearing is necessary" because "without such a standard, courts would be obligated to hold hearings on every modification application."). Thus, the necessity of a plenary hearing must be demonstrated by the movant. Hand, 391 N.J. Super. at 106.

Guided by these principles, we have no reason to disturb the denial of plaintiff's request to modify or terminate his alimony support obligation. In fact, we are persuaded the motion judge correctly determined plaintiff's proofs were insufficient to establish a prima facie case of changed circumstances under Lepis. Thus, plaintiff was not entitled to a plenary hearing.

We reach these conclusions, in part, because contrary to Rule 5:5-4(a),

plaintiff did not submit a prior CIS or provide similar financial information to reflect the financial circumstances that existed at the time of the final hearing. Instead, he submitted only an incomplete CIS from April 2022, thereby depriving the judge of the information she needed to determine if his financial circumstances had substantially changed to his detriment from the time the JOD was entered in 2008 until he filed his motion in 2022. This omission alone, although not addressed by the judge, provided sufficient grounds for the denial of plaintiff's modification motion. See Hayes v. Delamotte, 231 N.J. 373, 387 (2018) ("[I]t is well-settled that appeals are taken from orders and judgments and not from opinions, oral decisions, . . . or reasons given for the ultimate conclusion." (quoting Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001))).

Moreover, plaintiff's 2022 CIS demonstrated he owned a home and two vehicles (although he omitted the value of these assets on his CIS), and he had additional assets worth over \$182,000. Additionally, his current CIS listed no liabilities other than a contingent liability for counsel fees related to his criminal charges, and a mortgage for his home — which he represented he would sell to help satisfy his support obligations. Under these circumstances, we are satisfied plaintiff failed to meet his Lepis burden.

Plaintiff also argues that because defendant waived any interest she might have in assets he received by way of equitable distribution under the JOD, the judge erred in "entering judgment against [his] assets." This argument lacks merit.

An order granting a motion to enforce litigant's rights is reviewed under an abuse of discretion standard. N. Jersey Media Grp., Inc. v. State, Off. of Governor, 451 N.J. Super. 282, 299-300 (App. Div. 2017) (citations omitted). Also, it is well settled a Family Part judge "possesses broad equitable powers to accomplish substantial justice" and may tailor an appropriate remedy for violation of its orders. Finger v. Zenn, 335 N.J. Super. 438, 446 (App. Div. 2000). In that regard, N.J.S.A. 2A:34-23 provides:

[A]fter judgment of divorce . . . the court may make such order as to . . . alimony . . . as the circumstances of the parties . . . shall render fit, reasonable and just . . . . [U]pon default in complying with any such order, the court may award and issue process for the immediate sequestration of the personal estate, and the rents and profits of the real estate of the party so charged, . . . and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied toward such alimony . . . as . . . shall . . . seem reasonable and just; or the performance of the said orders may be enforced by other ways according to the practice of the court.

Thus, the assets plaintiff received by way of equitable distribution are not

"immune from execution to pay a just debt owed [to] his former wife." Slayton v. Slayton, 250 N.J. Super. 47, 50 (App. Div. 1991) (holding "[a]n item which was equitably distributed may . . . be tapped as a fund out of which otherwise calculated alimony may be satisfied."). See also Rule 5:3-7(b), allowing a court to utilize various remedies to enforce a judgment or order after finding a violation of same, including "fixing the amount of arrearages and entering a judgment upon which interest accrues," and "any other appropriate equitable remedy." R. 5:3-7(b)(1) and (8).

Regarding plaintiff's marital lifestyle argument, we need not address same because he failed to raise it before the trial court. See State v. Robinson, 200 N.J. 1, 19 (2009) ("Appellate review is not limitless. The jurisdiction of appellate courts rightly is bounded by the proofs and objections critically explored on the record before the trial court by the parties themselves."); see also Zaman v. Felton, 219 N.J. 199, 226-27 (2014).

To the extent we have not addressed other arguments raised by plaintiff, we find they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION