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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0547-22

ROBERT J. ABATE,

Plaintiff-Appellant,

v.

THERESA ABATE,

Defendant-Respondent.

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Submitted October 28, 2024 – Decided January 3, 2025

Before Judges Gummer and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Passaic County, Docket No. FM-16-0883-16.

Robert J. Abate, appellant pro se.

Maria A. Giammona Law, LLC, attorneys for respondent (Maria A. Giammona, on the brief).

PER CURIAM

Plaintiff Robert J. Abate appeals from a January 24, 2022 order granting defendant Theresa Abate's motion to compel plaintiff to pay his sixty-two

percent share of the parties' unemancipated child's college and unreimbursed medical expenses and ordering defendant to pay outstanding child support pursuant to the parties' Property Settlement Agreement ("PSA"). Plaintiff also appeals from the portion of the trial court's order granting defendant's application for attorney's fees. Finally, plaintiff appeals from an August 17, 2022 order denying his motion for reconsideration without a plenary hearing and granting defendant's cross-motion finding plaintiff in violation of litigant's rights and her cross-motion permitting her to seek limited discovery regarding plaintiff's current financial circumstances. The trial court's detailed opinions thoroughly addressed all relevant law and we affirm substantially for the reasons stated at length in the Honorable Barbara Buono Stanton's various written opinions.

I.

The parties were married on August 3, 2001, and had one child, R.A.J. Defendant had two children from a prior marriage whom plaintiff adopted.[1] On October 12, 2011, the parties divorced, and the final judgment of divorce incorporated a PSA. Sections 6.1 to 6.4 of the PSA detailed the parties' specific obligations regarding college expenses and state, in part: "[a]fter all financial

[1] The adopted children are emancipated and are not involved in this appeal.

aid assistance is calculated, then the parties shall share the net amount due as [thirty-eight percent] to [defendant] and [sixty-two percent] to . . . [plaintiff]." Section five of the PSA addresses "medical expenses for the children" and states: "the parties agree that they shall share the cost for their children's unreimbursed medical expenses on a pro rata basis, with [plaintiff] responsible for [sixty-two percent] of said expenses and [defendant] responsible for [thirty-eight percent] of said expenses."

Defendant was the parent of primary residence for R.A.J. In 2019, plaintiff filed a motion seeking to terminate his parental rights and support obligations for R.A.J, which was denied. Plaintiff appealed, and on April 1, 2021, we affirmed the trial court. Abate v. Abate, No. A-1921-19 (App. Div. Apr. 1, 2021). While plaintiff's appeal was pending, R.A.J. was a senior in high school and was applying to colleges.

In November 2020, R.A.J. applied to five colleges and completed the Federal Student Aid Application and scholarship applications. On December 18, 2020, plaintiff contacted R.A.J.'s guidance counselor asking for an update regarding his son's college applications. The guidance counselor informed plaintiff where R.A.J. had applied but stated she "ha[d] not heard much back about his results yet."

R.A.J. was accepted to all schools to which he applied. Plaintiff and R.A.J. communicated by text regarding his college applications. In one text message, plaintiff stated, "[t]hat's up to you," regarding R.A.J.'s ultimate decision. Afterwards, plaintiff texted R.A.J. stating, "you have not included me in any part of the decision process." Plaintiff advised R.A.J. he should start at a community college and transfer junior year "unless [he was able to] find a source of funding." R.A.J. ultimately decided to attend Xavier University.

Tuition at Xavier was $59,240 including room and board, and the University offered R.A.J. a scholarship of $25,500 per year to be used for tuition and housing in addition to a stipend for the cost of books and course materials. R.A.J. planned to work on campus and earn up to $2,800 a year and borrow $5,500 in subsidized and unsubsidized loans. The remaining balance for R.A.J.'s tuition was $22,240 a year.

Defendant filed a motion to compel plaintiff to pay sixty-two percent of R.A.J.'s college expenses. Judge Buono Stanton granted defendant's motion and directed plaintiff to pay $6,894.40 directly to Xavier University within seven days of the order. She also ordered plaintiff to pay defendant $1,077.67 in R.A.J.'s unreimbursed medical expenses within the same timeframe.

II.

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "We review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare, 154 N.J. at 413). "Thus, 'findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence.'" Id. at 283 (quoting Cesare, 154 N.J. at 411-12). Similarly, we review decisions on reconsideration motions for abuse of discretion. S.W. v. G.M., 462 N.J. Super. 522, 530 (App. Div. 2020). We do not, however, owe any deference to the court's "interpretation of the law." Thieme, 227 N.J. at 283 (quoting D.W. v. R.W., 212 N.J. 232, 245 (2012)).

Plaintiff asserts the trial court erred by failing to find he had established a prima facie case of a substantial change in circumstances and thereby ordering him to pay his percentage share of R.A.J.'s college expenses consistent with the terms of the PSA. Plaintiff also contends the judge disregarded the PSA by ordering him to contribute to R.A.J.'s medical bills because they were incurred without his authorization.

Because matrimonial and property settlement agreements are governed by basic contract principles, courts should discern and implement the parties' intentions. J.B. v. W.B., 215 N.J. 305, 326 (2013). "It is not the function of the court to rewrite or revise an agreement when the intent of the parties is clear." Quinn v. Quinn, 225 N.J. 34, 45 (2016) (citing J.B., 215 N.J. at 326). "Accordingly, [PSAs] should be enforced so long as they are consensual, voluntary, conscionable, and not the result of fraud or overreaching." Satz v. Satz, 476 N.J. Super. 536, 551 (App. Div. 2023).

"A 'trial court has the discretion to modify the agreement upon a showing of changed circumstances.'" Quinn, 225 N.J. at 49 (quoting Berkowitz v. Berkowitz, 55 N.J. 564, 569 (1970)). But "[a]bsent 'compelling reasons to depart from the clear, unambiguous, and mutually understood terms of the PSA,'" courts generally enforce a PSA's terms. Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 589 (2016) (quoting Quinn, 225 N.J. at 55) (finding no changed circumstances requiring modification of the parents' college-cost responsibilities pursuant to their PSA). If the PSA specifically addresses disputed matters, courts addressing a post-judgment matrimonial motion "will not 'unnecessarily or lightly disturb[]' the agreement." Ibid. (alteration in original) (quoting Quinn, 225 N.J. at 44).

With respect to college expenses:

> where parties to a divorce have reached an agreement regarding children attending college and how those college expenses should be divided, and no showing has been made that the agreement should be vacated or modified, the Family Part need not apply all twelve factors pertinent to college expenses as identified in Newburgh[v. Arrigo, 88 N.J. 529, 545 (1982)]. Rather, the court should enforce the agreement as written.
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> [Avelino-Catabran, 445 N.J. Super. at 591.]

As ably noted by Judge Buono Stanton, plaintiff had the burden to prove changed circumstances but did not provide the court with any proof of his inability to meet the agreed-upon terms of the PSA. Rule 5:5-4 requires a party moving for modification of an order or judgment based on changed circumstances to "append copies of [their] current case information statement [("CIS")] and [their] [CIS] previously executed or filed in connection with the order, judgment[,] or agreement sought to be modified." The trial court found plaintiff's CIS "woefully incomplete," as he had left the section addressing his monthly expenses "completely blank, other than zeros." Judge Buono Stanton also determined plaintiff had failed to attach the necessary documents to his CIS, noting he included "no tax return, no W-2, no paystubs or 1099 reflecting unemployment compensation."

The judge further found the "little information [p]laintiff did provide in [his] CIS [wa]s unreliable" and contradictory, specifically on page five of the CIS where he stated "he received 'NJ State Unemployment,'" but in paragraph twenty-five of his certification he stated he was "not eligible for unemployment benefits." The judge also addressed plaintiff's certification "that he ha[d] been unemployed for the past six years . . . with the exception of one year of employment" and that he "applied to positions outside [his] area of expertise" in an effort to seek employment. She concluded, even accepting plaintiff's certification as true, she could not engage in an analysis of plaintiff's efforts because he failed to provide any documentation supporting his alleged employment search. Judge Buono Stanton rejected plaintiff's certification that he had "applied to over 100 positions" because he "did not name a single employer in his certification or attach any applications for employment," despite being ordered to conduct a job search following a probation enforcement hearing on May 6, 2021.

For these reasons, Judge Buono Stanton found plaintiff's unemployment was willful, and his circumstances presented an insufficient basis for modification of his support obligations. The judge, quoting Aronson v. Aronson, 245 N.J. Super. 354, 361 (App. Div. 1991), correctly explained "that

a payor looking to be relieved of his family support obligations has the burden of demonstrating that he has made a 'meaningful effort to improve his status.'" The judge noted she "was not provided any proof of [p]laintiff's effort in this regard, [and was] not able to determine whether he made" the required efforts.

The trial court enforced the agreement as written, and because we find no "compelling reasons to depart from the clear, unambiguous, and mutually understood terms of the PSA," we discern no reason to disturb the judge's detailed findings. See Avelino-Catabran, 445 N.J. Super. at 589. Moreover, because the PSA memorialized the parties' intent to help their children pay for college by setting the parties' respective contributions, the judge determined the parties' disagreement regarding college contributions lacked disputed material facts to warrant a plenary hearing.

Moreover, perhaps in an abundance of caution, Judge Buono Stanton also thoroughly analyzed plaintiff's obligation to contribute to R.A.J.'s college expenses pursuant the Newburgh v. Arrigo factors, despite the existence of specific language in the PSA addressing this obligation. Although noting "Newburgh [wa]s not entirely applicable to th[e] situation as the parties' PSA already resolved the question of whether[,] and how much[,] the parties were to contribute to the children's college costs," the judge addressed each Newburgh

factor at length and found they weighed in favor of plaintiff paying for R.A.J.'s college expenses.

Plaintiff 's argument that the trial court erred by ordering him to contribute to R.A.J.'s medical bills incurred without his consent is likewise unavailing. Pursuant to the PSA, plaintiff was required to pay sixty-two percent of R.A.J.'s unreimbursed medical expenses. In her motion for reimbursement defendant provided an accounting of the bills incurred. The trial court rejected plaintiff's assertion that defendant's failure to consult with plaintiff before incurring the bills negated his responsibility to pay, explaining "a court reviewing a motion to enforce litigant's rights may not impute to a child the custodial parent's negligence, purposeful delay[,] or obstinacy so as to vitiate the child's independent right of support from a natural parent." See Gotlib v. Gotlib, 399 N.J. Super. 295, 306 (App. Div. 2008). The judge also cautiously examined each expense, deducted the cost of the "rather expensive" prescription sunglasses from the total amount incurred, and ordered plaintiff to pay sixty-two percent of the remaining balance, totaling $1,077.67. We discern no reason to disturb that decision.

Judge Buono Stanton also addressed defendant's motion to order plaintiff to pay outstanding child-support arrears. Finding plaintiff had not provided any

credible evidence as to his inability to pay, the judge granted defendant's motion and ordered plaintiff to pay $6,000 in arrears within sixty days of the order, and $1,000 per month thereafter until they were satisfied.

Finally, the judge addressed defendant's motion seeking $1,950 in attorney's fees from plaintiff. Referencing the nine factors enumerated in Rule 4:42-9, the judge determined "[d]efendant's position either arises out of obligations of . . . [p]laintiff that were previously court-ordered; or out of the parties' enforceable PSA agreement." Because plaintiff failed to present any evidence of any change of circumstances regarding his ability to pay or be employed, the judge determined the factors weighed in defendant's favor and ordered plaintiff to pay defendant's attorney's fees.

In sum, we find ample, credible support in the record to affirm all Judge Buono Stanton's findings. To the extent we have not addressed one of plaintiff's arguments, we find it does not merit further 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