

**NOT FOR PUBLICATION WITHOUT THE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

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1076-21**

M.J.¹,

Plaintiff-Respondent,

v.

R.S.,

Defendant-Appellant.

Argued October 26, 2022 – Decided November 23, 2022

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-0456-20.

R.S., appellant, argued the cause pro se.

Respondent has not filed a brief.

PER CURIAM

¹ Initials are utilized to protect the parties.

In this post-judgment matter, defendant R.S. appeals from the court's November 5, 2021 order denying his motion to terminate alimony, refund alimony arrears, and refund alimony paid to plaintiff while plaintiff was institutionalized. We affirm.

We discern the following facts from the record. On May 15, 2014, the parties were divorced in Ocean County by way of a final judgment of divorce (JOD). The JOD incorporated an equitable distribution agreement providing that defendant would pay alimony until plaintiff retired. Approximately two years later, on January 3, 2016, the Bergen County family court reduced defendant's alimony obligation to \$877.00 bi-weekly.

On October 4, 2019, the judge denied defendant's request to terminate, suspend, or modify alimony payments. After defendant appealed, we reversed in part, and remanded for further proceedings. We disagreed with the judge's finding that plaintiff's institutionalization was not a factor worthy of consideration in defendant's change of circumstance motion. See Lepis v. Lepis, 83 N.J. 139, 146 (1980) (holding that an alimony agreement may be modified upon a showing of changed circumstances). We found that "defendant did demonstrate a significant change of circumstances as to plaintiff's needs,"

necessitating a plenary hearing and discovery "focused on the issue of plaintiff's ongoing financial status."

Unfortunately, no plenary analysis ever occurred because the parties entered into a consent order that provided as follows:

1. Defendant's alimony payment in the amount of \$877 biweekly is suspended effective immediately.
2. Defendant's alimony obligation shall remain suspended until such time as the Plaintiff is released from Ancora Psychiatric Hospital.
3. Plaintiff, or someone on Plaintiff's behalf, shall notify Defendant of the discharge date in the event Plaintiff is discharged from the hospital.
4. Defendant's alimony payments shall resume upon Plaintiff's filing of a Motion with Certification to the Court stating that she is discharged with Notice to Defendant of the date and time of the Hearing for said Motion with opportunity to appear.
5. If Plaintiff is subsequently re-admitted to a hospital, Plaintiff, or someone on Plaintiff's behalf shall notify Defendant immediately, and Defendant's alimony obligation shall be suspended from the date of the re-admission until such time as Plaintiff is discharged and applies for resumption of payments with the Notices and Motion procedure set forth in paragraphs three and four.
6. All other provisions of the parties' Marital Settlement Agreement shall remain unchanged.

Defendant was not notified of plaintiff's release from Ancora Psychiatric Hospital. Approximately ten months later, on September 20, 2021, defendant filed a notice of motion requesting the following:

1. Termination of alimony payments to Plaintiff (M. [J.]).
2. Alimony arrears refunded: \$4,539.73.
3. Refund of alimony to Plaintiff paid via ExpertPay.com while Plaintiff was in the hospital, retired or incarcerated (8/10/2018 – 11/02/2021) \$51,743.00.
4. Requesting that the Courts do not submit any personal information to the Plaintiff due to a Permanent Restraining Order.

The certification in support of the motion, signed by defendant on August 20, 2021, alleged that plaintiff was retired and, pursuant to the equitable distribution agreement, not entitled to alimony. Defendant also stated that plaintiff was in the hospital from June 2018 until April 2021 and, therefore, defendant was entitled to a refund for alimony payments during that period.²

² There is no evidence in the record to corroborate when plaintiff was institutionalized or when plaintiff was released.

The Family Part judge held a hearing on November 5, 2021, to address both defendant's motion and "a cross-motion of sorts" filed by the plaintiff.³ Both parties appeared and testified. At the conclusion of the hearing, the judge ordered as follows:

1. Defendant's Notice of Motion to terminate alimony payments to Plaintiff is DENIED.
2. Defendant's Notice of Motion to refund alimony arrears in the amount of \$4,539.00 is DENIED.
3. Defendant's Notice of Motion to refund alimony paid to Plaintiff via Expertpay.com while Plaintiff was in the hospital, retired or incarcerated from August 10, 2018 to November 20, 2021 is DENIED.
4. Plaintiff's Notice of Cross Motion to get alimony back to \$877.00 biweekly as direct deposit, \$100,000 life insurance, QDRO in effect from NJ Transit which is 50% of pension upon Defendant's retirement with permission to contact NJ Transit, and entire settlement amount from Alma Scott-Buczah from NJ Transit, and arrears of \$70,700 is DENIED.
5. Plaintiff's Notice of Cross Motion to clear and expunge all previous arrest, probation records and restraining orders, allow no more, and send Defendant and Theresa Seelogy to jail for two years is DENIED.
6. Plaintiff's Notice of Cross Motion to forbid any further hospitalizations and for mental health reasons

³ Plaintiff's "cross-motion" or "application" was not provided for review but was thoroughly addressed by the judge in his oral opinion.

and remove and strike from my records all previous DX is DENIED.

7. Plaintiff's Notice of Cross Motion to compel Defendant to ["buy me a \$500,000 house in Bergen County and pay my taxes for the rest of my life and not allow him to sue me again["] is DENIED.

8. Plaintiff's Notice of Cross Motion to compel Defendant to give back all of Plaintiff's belongings undamaged, and to ["pay for united van lines and insurance and my bonds["] is DENIED.

9. AND IT IS FURTHER ORDERED THAT future motions filed by the Plaintiff under the FM Docket number shall be submitted to the Bergen County Domestic Violence Unit for service on the Defendant at his protected address.

On appeal, defendant raises the following arguments: ⁴

POINT 1

REFUND OF ALIMONY PAYMENTS MADE FROM AUGUST 2018 TO NOVEMBER 2020.

POINT 2

PLAINTIFF IS RETIRED.

POINT 3

ALIMONY IN ARREARS -\$4,539.73[.]

POINT 4

⁴ Plaintiff has not appealed the denial of her cross-motion.

DEFENDANT IS TO BE NOTIFIED OF PLAINTIFF'S
ADMITTANCE TO A HOSPITAL, DISCHARGE
FROM THE HOSPITAL.

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We typically accord deference to the Family Part judges due to their "special jurisdiction and expertise in family matters." Id. at 413. The judge's findings are binding so long as they are "supported by adequate, substantial, credible evidence." Id. at 412. (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). Thus, we will not "disturb the 'factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Id. (quoting Rova Farms, 65 N.J. at 484). We review de novo "the trial judge's legal conclusions, and the application of those conclusions to the facts." Elrom v. Elrom, 439 N.J. Super. 424, 433 (App. Div. 2015) (quoting Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

Based on our review of the record, we determine that the judge's conclusions are amply supported by the record and see no basis to disturb them. First, the judge correctly rejected defendant's argument that he is owed a refund of alimony payments made from August 2018 to November 2020 totaling

\$51,743.00. Defendant relied upon the November 2, 2020 consent order in arguing that alimony paid while plaintiff was hospitalized should have been suspended and should, therefore, be reimbursed. However, as the judge found, the November 2, 2020 order, which was effective immediately, "was [prospective]. . . it doesn't give the defendant the right for [alimony paid] previously while [plaintiff] was hospitalized."

Second, as did the judge, we reject defendant's argument that his alimony payments should be suspended because plaintiff is retired. As the judge found, "[t]he New Jersey Statute indicates that retirement . . . is specifically linked to Social Security." According to New Jersey's alimony maintenance statute, N.J.S.A 2A:34-23, the "[f]ull retirement age," for purposes of evaluating for an adjustment of alimony, "shall mean the age at which a person is eligible to receive full retirement for full retirement benefits under section 216 of the federal Social Security Act (42 U.S.C. § 416)."⁵ Accordingly, the judge

⁵ Retirement age, "with respect to an individual who attains early retirement age after December 31, 2021 [is] 67 years of age."

"The term 'early retirement age' means age 62 in the case of an old-age, wife's, or husband's insurance benefit, and age 60 in the case of a widow's or widower's insurance benefit." 42 U.S.C. § 416

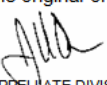
properly found that the plaintiff was born in 1963 and is not of the retirement age.

Finally, we affirm the judge's decision to deny defendant's claim of an overpayment of \$4,539.73 in arrearages, although for slightly different reasons. Reese, 430 N.J. Super. at 568 (noting that "the trial judge's legal conclusions, and the application of those conclusions to the facts, are subject to [] plenary review."). In that regard, defendant, as the party seeking to avoid the obligation to pay alimony in accordance with the consent order, bears the burden of showing the changed circumstances arising when plaintiff is institutionalized and when she is discharged. The parties cannot unilaterally re-allocate the burdens of proof required to show changed circumstances, and we conclude the consent order cannot, and does not, have that effect. The order is merely a procedural trigger to restart payments and does not relieve defendant of his burden to pay alimony during any period in which plaintiff is not hospitalized. In that regard, defendant's application is devoid of any evidence that plaintiff was re-institutionalized at any time since her discharge in or around November 2020. Plaintiff was in court on the day of the motion and her cross-motion

reflects a private address in the City of Orange.⁶ Accordingly, although plaintiff has yet to assert her rights to the money, defendant has failed to make a showing that he is entitled to a refund.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

⁶ The judge noted that the plaintiff does not appear to understand her rights under the November 2, 2020 order. Plaintiff's understanding does not disturb the logic that defendant may owe, and will continue to owe, plaintiff monies exceeding \$4,539.73.