SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0682-22

BECKY LIN,

Plaintiff-Appellant,

v.

STANLEY LIU,

Defendant-Respondent.

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Argued October 17, 2023 – Decided November 3, 2023

Before Judges Smith and Perez Friscia.

On Appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Morris County, Docket No. FM-14-1094-18.

Kathy Karas-Pasciucco argued the cause for appellant (Feitlin, Youngman, Karas & Gerson, LLC, attorneys; Kathy Karas-Pasciucco and Frederick Evan Gerson, on the briefs).

Laurie L. Newmark argued the cause for respondent (Townsend, Tomaio & Newmark, LLC, attorneys; Laurie L. Newmark and David Joseph Giannini, on the brief).

PER CURIAM

Plaintiff Becky Lin appeals from a Family Part judge's post-judgment orders which reduced defendant's alimony obligation. Plaintiff argues reversal is warranted because the judge erred in reducing defendant's alimony obligation based on his reduced income, which stemmed from voluntary underemployment. Defendant argues the judge correctly modified alimony, as his income had substantially decreased since the parties' divorce. As there are material issues of fact in dispute, we reverse and remand for a plenary hearing.

I.

Plaintiff and defendant were married on June 8, 1992. The parties share one child together, born in September 2002. In June of 2019, the parties divorced and incorporated into their Judgment of Divorce their Marital Settlement Agreement (MSA), which addressed alimony and child support.

At the time of the divorce, the parties worked at Formosa Plastics Corporation, U.S.A. Plaintiff was an accounting assistant and defendant was a computer programmer. Defendant, who was forty-eight years old, had worked at Formosa for approximately five years and had worked there earlier in his career. Under the terms of the parties' MSA, the parties agreed, "for purposes of the calculation of alimony . . . [plaintiff] earn[ed] a total of $54,600 per year

(base plus bonus) and [defendant] earn[ed] a total of $148,000 per year (base plus bonus)." Defendant agreed to pay plaintiff open durational alimony of $22,500 per year, $1,875 per month, beginning June 30, 2019.

In early 2020, approximately nine months after the parties entered the MSA, defendant voluntarily left his employment with Formosa allegedly because the required overtime work became a hardship, and the stress from his job was affecting his health. Defendant obtained new employment at DMW&H as a computer programmer at a reduced annual salary of $95,000 per year, which was over $50,000 less than his $148,000 salary set forth in the MSA. Shortly after changing employment to DMW&H, defendant was laid off because of the COVID-19 pandemic and was unemployed for over four months from April 24 to September 8, 2020.

In May of 2020, less than a year after the parties entered the MSA, defendant moved before a Family Part judge to modify his alimony payments.[1] Defendant requested to suspend or recalculate his alimony obligation based on his new income of $95,000 and layoff. Defendant argued his significant salary reduction was a change in circumstances. He acknowledged voluntarily

[1] The motions also addressed the modification of child support which the parties stipulated has been resolved.

changing jobs without a medical opinion but argued New Jersey law permitted an alimony reduction based on a salary reduction of approximately $50,000. Defendant argued he was forced to obtain new employment because Formosa subjected him to "poor working conditions, which involved being given tasks . . . [he] was unable to complete, constant pressure and stress which affected his emotional life." The judge denied defendant's motion to reduce alimony rejecting defendant's change in circumstances argument, finding that his reduction of income was "purely voluntary because . . . defendant wanted a change of employment" and "no longer wished to work at Formosa."

In September 2020, after the COVID-19 pandemic conditions improved, DMW&H rehired defendant at a marginally increased salary of $96,900, plus bonuses. In February 2022, defendant again moved to modify his alimony payments before a new judge. Defendant argued changed circumstances as: the parties' son started college, which warranted a review under the MSA of alimony and child support; his income had decreased; and plaintiff's income had increased. Defendant again asserted his prior employment with Formosa had caused "significant health issues largely related to . . . stress." Plaintiff opposed the motion and cross-moved to compel defendant to "pay alimony in the amount

of $1,875 per month via wage garnishment," and to bar defendant "from re-filing this motion under the same set of facts."

In March of 2022, the new judge granted in part defendant's motion, finding defendant had made a prima facie showing of changed circumstances. The judge found defendant's new motion "allege[d] facts beyond his initial decision to leave his employment" because defendant was "involuntary[ily] remov[ed] from his employment" due to "a lay-off during the COVID-19 pandemic."

Plaintiff moved for reconsideration, arguing the judge erred as defendant's layoff undisputedly occurred before he filed the first motion to modify alimony, heard earlier by a different judge, and no change in circumstances occurred because defendant's reduced salary stemmed from voluntary underemployment. Defendant cross-moved, again seeking modification of his alimony obligation.

In May of 2022, the judge denied plaintiff's motion for reconsideration, granted in part defendant's cross-motion, and compelled the parties to "attend economic mediation on the issues of alimony, child support, extra-curricular expenses, unreimbursed medical expenses, and life insurance." The judge acknowledged overlooking that defendant was laid off when the prior judge entered the order denying modification and observed defendant was reemployed

prior to filing the second motion to modify. Despite the error, the judge found defendant had "sufficiently demonstrated a prima facie showing of changed circumstances warranting modification of his alimony . . . obligations." The judge found defendant had "changed circumstances" because he "was rehired by his employer after being laid-off at a salary that was lower than imputed in the parties' MSA." Conversely, the judge noted plaintiff's argument as to defendant's undisputed "voluntary" underemployment. Referencing the MSA provision, which explicitly allowed either party to seek a modification of alimony, the judge found two years had passed since defendant's prior motion to modify and, since then, defendant had "maintained his new employment . . . while earning a competitive salary for his type of employment." The judge concluded the prior motion decision was not "on a palpably incorrect basis."

At a case management conference, the judge ordered the parties to submit "[p]osition [s]ummaries" for the calculation of child support and alimony in lieu of a plenary hearing. Plaintiff submitted a letter to the court reserving for appeal the judge's finding of changed circumstances. Plaintiff disputed the finding that defendant's voluntary underemployment, at a greatly reduced salary, was a warranted change of circumstances. The letter stated:

> Please be advised that Becky Lin has provided authority to waive her right to a plenary hearing in reference to

> the remaining issue[s]; amount of alimony and child support to be decided with the information that has been provided as well as all pleadings before the court. This will confirm that Ms. Lin reserves her right to file an [a]ppeal on all issues except for the lack of a plenary hearing in reference to the remaining issues; amount of alimony and child support.
>
> [Emphasis added.]

The parties submitted position summaries with case information statements, tax returns, and other limited financial records. The judge found "[p]laintiff's expenses remain[ed] inflated" and an implemented reduction was warranted but provided limited findings on the parties' expenses. The judge found plaintiff earned $66,856 and defendant earned $96,899 per year. The judge entered an order which reduced defendant's alimony obligation to $1,000 per month, or $12,000 annually, retroactive to the motion filing date. The judge further found a reduction of defendant's alimony to $1,000 a month would bring the parties "within a comparable standard of living."

On appeal, plaintiff argues the judge erred in: finding a change of circumstances; relying on defendant's re-hiring at a reduced salary after the temporary COVID-19 layoff as a change in circumstances when defendant was voluntarily underemployed; and failing to consider the factors set forth in N.J.S.A. 2A:34-23(k).

II.

"We accord deference to Family Part judges due to their 'special jurisdiction and expertise in family [law] matters.'" Gormley v. Gormley, 462 N.J. Super. 433, 442 (App. Div. 2019) (alteration in original) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). Our scope of review of Family Part orders is limited. Cesare, 154 N.J. at 411. A judge's findings "are binding on appeal so long as their determinations are 'supported by adequate, substantial, credible evidence.'" Gormley, 462 N.J. Super. at 442 (quoting Cesare, 154 N.J. at 411-12). Deference is especially important where evidence is testimonial and involves credibility determinations because the observing judge "has a better perspective than a reviewing court in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988). Generally, a Family Part judge's findings regarding the modification of alimony "should not be vacated unless the court clearly abused its discretion, failed to consider all of the controlling legal principles, made mistaken findings, or reached a conclusion that could not reasonably have been reached on sufficient credible evidence present in the record." J.E.V. v. K.V., 426 N.J. Super. 475, 485 (App. Div. 2012). However, while "a family court's factual findings are entitled to considerable deference, we do not pay special deference to its interpretation of the law." Thieme v.

Aucoin-Thieme, 227 N.J. 269, 283 (2016) (quoting D.W. v. R.W., 212 N.J. 232, 254 (2012)).

An appellate court also reviews orders denying reconsideration for abuse of discretion. Granata v. Broderick, 446 N.J. Super. 449, 468 (App. Div. 2016). A judge abuses its discretion "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

"Alimony is an economic right that arises out of the marital relationship and provides the dependent spouse with 'a level of support and standard of living generally commensurate with the quality of economic life that existed during the marriage.'" Quinn v. Quinn, 225 N.J. 34, 48 (2016) (quoting Mani v. Mani, 183 N.J. 70, 80 (2005)). Parties to a divorce "may enter into voluntary agreements governing the amount, terms and duration of alimony" that "are subject to judicial supervision and enforcement." Ibid. Matrimonial 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)).

An alimony order establishes only the present support obligation and is "always subject to review and modification on a showing of 'changed circumstances.'" Crews v. Crews, 164 N.J. 11, 28 (2000) (quoting Lepis v. Lepis, 83 N.J. 139, 146 (1980)). Pursuant to N.J.S.A. 2A:34-23, an alimony order "may be revised and altered by the court from time to time as circumstances may require." See Amzler v. Amzler, 463 N.J. Super. 187, 197 (App. Div. 2020). When a party moves for a reduction in alimony, the judge undertakes a two-step inquiry. Crews, 164 N.J at 28. The judge must first determine whether the moving party has made a prima facie showing of changed circumstances. R.K. v. F.K., 437 N.J. Super. 58, 62 (App. Div. 2014). "Changed circumstances such as child maturation, increases in need, employment, or child emancipation may result in a modification of support." Miller v. Miller, 160 N.J. 408, 420 (1999). Importantly, the moving party must demonstrate a change in circumstances from those existing when the prior support award was fixed. Beck v. Beck, 239 N.J. Super. 183, 190 (App. Div. 1990); see also Donnelly v. Donnelly, 405 N.J. Super. 117, 127-29 (App. Div. 2009).

The second step requires that "the party seeking modification of an alimony award 'must demonstrate that changed circumstances have substantially impaired the [movant's] ability to support himself or herself.'" Crews, 164 N.J. at 28 (quoting Lepis, 83 N.J. at 157). "[T]he ability to support oneself must be understood to mean the ability to maintain a standard of living reasonably comparable to the standard enjoyed during the marriage." Ibid. It is clear that "the marital standard of living is the measure for assessing initial awards of alimony, as well as for reviewing any motion to modify such awards." Id. at 35.

After a party seeking an alimony modification has made a prima facie showing, "a court may order discovery and hold a hearing to determine the supporting spouse's ability to pay." Miller, 160 N.J. at 420. "Although equity demands that spouses be afforded an opportunity to seek modification, the opportunity need not include a hearing when the material facts are not in genuine dispute." Lepis, 83 N.J. at 159. However, when a party has "clearly demonstrate[d] the existence of a genuine issue as to a material fact," a hearing is necessary. Ibid.

III.

We discern no abuse of discretion by the judge in his finding that defendant demonstrated a prima facie showing of a change in circumstances on

the facts presented. The undisputed facts in support of the judge's finding of a prima facie showing were: defendant had a four-month COVID-19-related layoff prior to filing the second motion seeking modification; defendant voluntarily had earned a significantly reduced salary working at DMW&H for over two years; the parties' child had started college, warranting review pursuant to section 2 paragraph (e) of the MSA; and plaintiff received a salary increase. There was sufficient credible evidence in the record to support the judge's finding. See Cardali v. Cardali, 255 N.J. 85, 109 (2023) ("[P]rima facie evidence is defined as 'evidence that, if unrebutted, would sustain a judgment in the proponent's favor.'" (quoting Baures v. Lewis, 167 N.J. 91, 118 (2001), overruled on other grounds by Bisbing v. Bisbing, 230 N.J. 309 (2017))).

Although we agree a prima facie showing was demonstrated, we part ways with the judge's finding that the facts supported a final determination of a change in circumstances warranting an alimony modification. Plaintiff disputed the underlying facts presented a change in circumstances. Plaintiff specifically disputed whether: defendant remained voluntarily underemployed since quitting Formosa; defendant had sufficiently searched for comparable employment at the time of quitting; defendant had a changed financial circumstance with other assets; and the parties' financial positions warranted a

change. Our careful review of the record shows that these material issues remain in dispute. A final determination as to defendant's change in circumstances was premature. A plenary hearing was required to resolve the genuine issues of material fact.

Relevantly, defendant acknowledged voluntarily changing employment for a position that paid approximately $50,000 less than the salary he was earning at the time of divorce. Defendant had agreed to the $148,000 salary to calculate alimony as set in the MSA. While we recognize defendant worked at a reduced salary for over two years, defendant's self-serving certification, scant employment search information, and one-page New Jersey Department of Labor and Workforce Development report, were insufficient to make a final determination that defendant's reduced salary was a change in circumstances. See, e.g., Dorfman v. Dorfman, 315 N.J. Super. 511, 517 (App. Div. 1998) (discussing adequate proffered evidence of job search efforts following involuntary unemployment, including sending out multiple resumes, arranging for various interviews, and turning down lower-paying jobs).

Additionally, the judge in his March 2022 decision noted "defendant did not submit any medical documentation to substantiate" his health claims, but apparently accepted defendant's assertion he had been "'losing weight [and]

having difficulty sleeping and focusing.'" Without medical evidence to support his inability to work the same overtime hours, further inquiry was required, and plaintiff should have been provided the opportunity to address the proffered health reasons. Again, the record establishes there were clear material issues in dispute as to defendant's voluntary underemployment. Defendant's representations were not corroborated, and plaintiff was not provided the opportunity to rebut defendant's assertions.

Because the factual predicates surrounding defendant's change in employment circumstances were materially disputed, the judge was required to consider and "determine the application based upon all of the [statutory] enumerated factors." N.J.S.A. 2A:34-23(k) (emphasis added). The judge did not consider and make findings as to relevant statutory factors such as: (1) "reasons for any loss of income"; (2) "documented efforts to obtain replacement employment or to pursue an alternative occupation"; (3) "good faith effort to find remunerative employment at any level and in any field"; (5) "impact of the parties' health on their ability to obtain employment"; (7) "changes in the respective financial circumstances of the parties that have occurred"; and (9) "[w]hether a temporary remedy should be fashioned." N.J.S.A. 2A:34-23(k).

Additionally, if underemployed is found, "in order to obtain a reduction in alimony based on current earnings, an obligor who has selected a new, less lucrative career must establish that the benefits . . . derive[d] substantially outweigh the disadvantages to the supported spouse." Storey v. Storey, 373 N.J. Super. 464, 468 (App. Div. 2004). "When an alimony obligor changes career, the obligor is not free to disregard the pre-existing duty to provide support." Id. at 469. A review of whether defendant's income reduction is "'reasonable' under the circumstances" is required. Ibid. "If a court is satisfied that a party is not earning at his or her capacity it then can impute income if, as already noted, it finds voluntary underemployment without just cause." Gormley, 462 N.J. Super. at 448.

Defendant's argument that plaintiff waived a plenary hearing and agreed to have all the issues decided on the submissions is unavailing. Material issues of fact existed as to defendant's alleged underemployment, current capacity to be similarly salaried as agreed upon in the MSA, and the parties' financial circumstances, which mandated a plenary hearing. Plaintiff only consented to provide a summary position and waived a plenary hearing, on the issue of the calculations of alimony and child support, after the judge made a final determination of a change of circumstances without a hearing. The judge had

denied plaintiff's motion for reconsideration on the issue of voluntary underemployment and ordered that the parties were to "submit updated financial information for the court to calculate . . . [d]efendant's alimony and child support obligations." Plaintiff's ability to challenge defendant's assertions regarding his reduced salary were thus foreclosed and plaintiff was denied the opportunity of cross-examination.

We note the judge, in reconsidering his interlocutory March 2022 order, analyzed the motion for reconsideration pursuant to Rule 4:49-2, which governs a motion to alter or amend a judgment or final order. As the order being reconsidered was interlocutory, the motion for reconsideration should have been considered pursuant to Rule 4:42-2—reconsideration of interlocutory orders. Lawson v. Dewar, 468 N.J. Super. 128, 134 (App. Div. 2021) (addressing the distinctions between motions for reconsideration under Rule 4:49-2, which "applies only to motions to alter or amend final judgments and final orders" and "doesn't apply when an interlocutory order is challenged" pursuant to Rule 4:42-2).

As it is unclear from the record what discovery was undertaken, the parties are to be permitted to undertake discovery on the material issues in dispute. On remand, all relevant statutory factors are to be addressed. Additionally, a review

and comparison of the parties' current standard of living to the standard of living established at the time of the MSA is required. See Crews, 164 N.J. at 25. We recognize the reasonableness of defendant's employment choice and capacity, under the facts as presented, is not static, and we leave the outcome to the sound discretion of the trial judge.

Given the history of these proceedings, we direct on remand that the matter be considered by a different judge. See Graziano v. Grant, 326 N.J. Super. 328, 349 (App. Div. 1999) (allowing remand "out of an abundance of caution" where "there is a concern that the trial judge has a potential commitment to his or her prior findings").

To the extent that we have not addressed any of the parties' arguments, it is because they lack sufficient merit to be discussed in a written opinion. R. 2:11-3(e)(1)(E).

Reversed and remanded for a plenary hearing consistent with this opinion. We do not retain jurisdiction.