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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1050-14T1

CHRISTOPHER ALAN GALLAGHER,

Plaintiff-Respondent,

v.

MARYBETH GALLAGHER, n/k/a
MARYBETH LACHENAUER,

Defendant-Appellant.

Submitted November 1, 2016 - Decided February 21, 2017

Before Judges Fisher, Leone and Vernoia
(Judge Leone concurring).

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FM-20-927-99.

Law Offices of Stueben & Scordo, attorneys for respondent (Anthony Scordo, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant Marybeth Lachenauer appeals a July 25, 2014 Family Part order declaring the parties' daughter Alexa emancipated and terminating plaintiff Christopher Alan Gallagher's child support

obligation, and an October 1, 2014 order denying defendant's motion for reconsideration.[1] We affirm.

Plaintiff and defendant were married in 1991, and their daughter Alexa was born later that year. They also have a son. A final judgment of divorce terminating the parties' marriage was entered on August 23, 1999. The judgment incorporated by reference an April 20, 1999 property settlement agreement (PSA) between the parties.

Under the PSA, defendant's home was the children's primary residence and plaintiff was obligated to pay child support. The PSA expressly provided for the emancipation of the parties' children, stating in pertinent part:

> [t]he children shall be deemed, for the purposes of this Agreement, to have become emancipated, as contemplated herein, upon the happening of any of the following events:
>
> (a) Graduation from high school, provided the child or children have reached the age of eighteen (18) years, or if the child or children attend college, completion of four (4) consecutive academic years of college education . . . .

Alexa graduated from high school in 2010 and enrolled in a county college in Fall 2010 at the age of nineteen. She attended

[1] Plaintiff did not participate in this appeal.

the county college for four years, earned an associate's degree, and graduated in Spring 2014.

In June 2014, plaintiff moved for an order declaring that Alexa was emancipated and terminating his child support obligation. Plaintiff argued Alexa was emancipated under the PSA because she was over eighteen and completed four consecutive academic years of college education.

Defendant opposed plaintiff's motion and submitted a certification detailing Alexa's attendance at the community college and stating Alexa "has enrolled at Montclair State University for Fall 2014."[2] Defendant argued the PSA did not control the determination of Alexa's emancipation status and the court should hold a plenary hearing to determine if Alexa was emancipated under the common law standard.

After hearing argument on plaintiff's motion, the judge reserved decision and advised the parties he would issue an order. The judge subsequently granted plaintiff's motion and entered a July 25, 2014 order containing the court's factual findings and declaring Alexa emancipated pursuant to the terms of the PSA. The

[2] The certification also referenced Alexa's relationship with plaintiff, the parties' judgment of divorce, and defendant's contention plaintiff was obligated under the PSA to pay a portion of Alexa's dental care costs. We do not address the statements because they are unrelated to Alexa's emancipation.

judge found the "parties acknowledged . . . [Alexa] completed a customary two (2) year [a]ssociate['s] [d]egree" at the county college "over a four (4) year period from Fall, 2010 through May, 2014" and the PSA's standard for emancipation was "controlling." The court also determined Alexa could not "be considered to be pursuing an undergraduate degree with 'adequate diligence,'" because "it would take her at least another two (2) years to secure [a] [b]achelor's [d]egree."

Defendant moved for reconsideration, arguing the court erred by finding the PSA's standard for emancipation was controlling, failing to determine Alexa's emancipation under the common law standard, and denying defendant's request for a plenary hearing. In support, defendant submitted a certification detailing for the first time Alexa's financial, employment, and residential circumstances.

The judge rejected defendant's arguments and again determined he was "constricted by virtue of the contract that the parties entered into, which is clear on its face, and which is . . . controlling." The judge denied the motion for reconsideration and entered an October 1, 2014 order stating he found no mistake of law or fact in his July 25, 2014 order, and there was no good reason under Rule 4:49-2 to consider new evidence presented by

defendant. Defendant appeals the July 25, 2014 and October 1, 2014 orders.

We generally defer to the Family Part's fact-finding because of the court's expertise in family matters and ability to make credibility determinations. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012). We defer to a judge's findings of fact unless they are demonstrated to lack support in the record or are inconsistent with the substantial, credible evidence. Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 483-84 (1974). But, where "no hearing takes place, no evidence is admitted, and no findings of fact are made," we owe no deference to the trial court's conclusions. N.J. Div. of Youth & Family Services v. G.M., 198 N.J. 382, 396 (2009). In addition, we owe no special deference to a trial court's "interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Defendant challenges the court's determination Alexa was emancipated and the concomitant termination of plaintiff's child support obligation. There is a rebuttable presumption against emancipation for individuals under the age of eighteen. Newburgh v. Arrigo, 88 N.J. 529, 543 (1982); Dolce v. Dolce, 383 N.J. Super. 11, 17 (App. Div. 2006). Attaining the age of eighteen "establishes prima facie, but not conclusive, proof of emancipation," Newburgh,

supra, 88 N.J. at 543, but emancipation "does not occur . . . automatically, by operation of law, simply by reason of the dependent child reaching the age of" eighteen. Dolce, supra, 383 N.J. Super. at 17.

"Whether a child is emancipated at age [eighteen], with the correlative termination of the right to parental support," requires a fact-sensitive inquiry, Newburgh, supra, 88 N.J. at 543, to determine if "the child has moved 'beyond the sphere of influence and responsibility exercised by a parent and obtains an independent status of his or her own.'" Dolce, supra, 383 N.J. Super. at 17-18 (quoting Filippone v. Lee, 304 N.J. Super. 301, 308 (App. Div. 1997)). Thus, "[a] court's emancipation 'determination involves a critical evaluation of the prevailing circumstances including the child's need, interests, and independent resources, the family's reasonable expectations, and the parties' financial ability, among other things.'" Llewelyn v. Shewchuk, 440 N.J. Super. 207, 216 (App. Div. 2015) (quoting Dolce, supra, 383 N.J. Super. at 18).

The court must also consider whether there is an agreement between "the parties to voluntarily extend the parental duty of support beyond the presumptive age of emancipation." Dolce, supra, 383 N.J. Super. at 18. Where a parent "undertake[s] to support a child beyond the presumptive legal limits of parental

responsibility . . . the parental obligation is not measured by legal duties otherwise imposed, but rather founded upon contractual and equitable principles." Ibid. (citations omitted).

The PSA extended plaintiff's child support obligation for Alexa beyond the presumptive age of her emancipation. The parties do not dispute the PSA was entered into "by consensual agreement, voluntarily and knowingly," was "fair and equitable," and was therefore binding. Ibid. Plaintiff, however, did not seek or obtain from the court relief from any obligations imposed by the PSA. He requested instead only that the court determine Alexa was emancipated in accordance with the terms of the agreement.

We are satisfied there was substantial credible evidence supporting the court's determination that Alexa attended four consecutive years of academic college education. Accordingly, the court correctly concluded plaintiff established the agreed upon conditions for the emancipation of Alexa under the PSA. Defendant does not argue otherwise. The court erred, however, in its determination that satisfaction of the PSA's conditions for emancipation was binding and dispositive on the issue of Alexa's emancipation.

"The purpose of child support is to benefit children, not to protect or support either parent. Our courts have repeatedly recognized that the right to child support belongs to the child,

not the custodial parent," J.S. v. L.S., 389 N.J. Super. 200, 205 (App. Div. 2006), certif. denied, 192 N.J. 295 (2007), and "may not be waived by a custodial parent," Gotlib v. Gotlib, 399 N.J. Super. 295, 305 (App. Div. 2008) (quoting L.V. v. R.S., 347 N.J. Super. 33, 41 (App. Div. 2002)). As such, "the parental duty to support a child may not be waived or terminated by a property settlement agreement." Patetta v. Patetta, 358 N.J. Super. 90, 95 (App. Div. 2003); see also J.B. v. W.B., 215 N.J. 305, 329 (2013) ("reemphasiz[ing]" that the right to child support belongs to the child); Martinetti v. Hickman, 261 N.J. Super. 508 (App. Div. 1993) (finding right to child support was not barred by a property settlement agreement providing for the termination of support when the child turned eighteen).

The PSA was not dispositive of plaintiff's child support obligation because the right to child support belonged to Alexa and not defendant. J.S., supra, 389 N.J. Super. at 205. Contrary to the court's finding, the PSA could not deprive Alexa of a right to support to which she may otherwise have been entitled. Patetta, supra, 358 N.J. Super. at 95-96. The court therefore erred by finding the PSA controlled the determination of Alexa's emancipation and that Alexa was emancipated solely based on the satisfaction of the conditions for emancipation in the PSA. Ibid.

We respectfully disagree with our concurring colleague's suggestion that our determination the PSA was not dispositive of Alexa's possible entitlement to child support is a departure from well-established precedent, runs counter to the policy of enforcing fairly negotiated PSAs, and will result in unsettling and far-reaching consequences. Our holding does not invalidate the parties' agreement on the issue of emancipation. We hold only that the court's determination the PSA was dispositive of Alexa's emancipation was in error because, to the extent child support may have been warranted beyond the emancipation date in the PSA, her parents did not have the legal authority to contract away her entitlement. In disposing of the issues, we simply apply the well-established principle that parents may not contract away a child's right to child support. Gotlib, 399 N.J. Super. at 305; J.S., 389 N.J. Super. at 205; Patetta, supra, 358 N.J. Super. at 95.

The concurring opinion suggests there is "[a] narrow exception to the general rule of enforcing settlement agreements," and that PSAs therefore should be enforced absent a showing of "unconscionability, fraud, or overreaching in the negotiations of the settlement." Post at __ (slip op. at 3) (quoting Quinn v. Quinn, 225 N.J. 34, 47 (2016)). That principle logically applies when the parties reach an agreement on issues over which they have

lawful authority[3] but is wholly inapplicable where, as here, the parties have no legal authority to reach an agreement that would extinguish Alexa's right, if any, to benefit from child support.

No unsettling or far-reaching consequences predicted in the concurring opinion will result. We know this because it has long been the law that parents cannot contract away their children's right to child support and none of the dire consequences about

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[3] The concurring opinion's reliance on J.B. is misplaced. In J.B. the parties did not contract away the child's right to support and the Court did not address a situation where, as here, application of the parties' contract might result in a denial of child support to which the child might otherwise be entitled. The PSA in J.B. defined the child's emancipation as occurring well beyond the presumptive age of eighteen and the parent sought to avoid paying child support prior to the date of emancipation agreed to in the PSA. Presented with those circumstances, the Court stated that where the parents "agreed to undertakings advantageous to a child beyond that minimally required, the public policy favoring stability of arrangements . . . usually counsels against modification." 215 N.J. at 327 (emphasis added). Thus, the Court did not apply the rule that "'absen[t] . . . unconscionability, fraud, or overreaching in negotiations of the settlement,' a trial court has 'no legal or equitable basis . . . to reform the parties'" PSA, id. 326, to an agreement that contracted away a child's possible entitlement to child support. In contrast, the Court applied the principle to require that a parent honor an agreement providing for more support than the child would have otherwise been entitled. In other words, if parents agree to provide their children with more than what is required under the law, they must honor their agreement absent a showing of unconscionability, fraud, or overreaching. Here, however, the PSA is not dispositive because defendant may have demonstrated that Alexa was entitled to continued support and the parties had no authority to contract way her entitlement, if any, to child support following the agreed upon emancipation date in the PSA.

which the concurrence forewarns have come to pass. Moreover, application of the concurring opinion's rationale is actually where the dire and unsettling consequences lie. If the rationale was accepted, parents who are not subject to fraud, unconscionability or overreaching during their settlement negotiations could simply enter into enforceable agreements that contract away their children's right to child support. There is nothing in the precedents supporting that result and we reject it because it would eviscerate every child's clearly established right to parental support.

Because the PSA did not control the determination of Alexa's emancipation, the court was required to consider plaintiff's motion for Alexa's emancipation independent of the PSA's standard. In his motion, plaintiff showed Alexa was twenty-three, five years beyond the age of majority, N.J.S.A. 9:17B-3, and established "prima facie, but not conclusive, proof of emancipation." Newburgh, supra, 88 N.J. at 543; Llewelyn, supra, 440 N.J. Super. at 216. The burden then shifted to defendant to rebut the presumption of emancipation by presenting evidence "that a dependent relationship with the parents continues because of the needs of the child." Llewelyn, supra, 440 N.J. Super. at 216.

Defendant's certification in opposition to plaintiff's motion presented a singular fact concerning Alexa's emancipation status

following the completion of four years at the county college. Defendant asserted only that following her graduation from the county college, Alexa was enrolled in Montclair State University for the Fall of 2014.[4] Other than Alexa's future enrollment in college, defendant offered no evidence supporting her claim that Alexa, at age twenty-three and after four years of county college, was not emancipated.

Alexa's future enrollment in college alone was not enough to sustain defendant's burden of rebutting Alexa's presumptive emancipation. Compare Patetta, 358 N.J. Super. at 95-96 (finding an eighteen year old child who "was living at home and dependent on his parents for his basic needs and proper support while attending college on a full-time basis" was not emancipated). Defendant's opposition to plaintiff's emancipation motion did not include evidence Alexa was dependent on her parents or had not "moved beyond the sphere of influence and responsibility exercised by a parent and obtain[ed] an independent status of . . . her own," Llewelyn, supra, 440 N.J. Super. at 216 (quoting Fillipone, supra, 304 N.J. Super. at 308), following her four-year attendance at county college. Defendant failed to present sufficient evidence

[4] Defendant's certification did not include any information regarding Alexa's attendance at Montclair State University beyond the fact that Alexa was enrolled.

upon which the motion court could logically conclude Alexa was not emancipated, or which created a fact issue concerning her emancipation that required a plenary hearing. See Segal v. Lynch, 211 N.J. 230, 264-65 (2012) (finding no need for a plenary hearing on a motion where the submissions did not create a material factual issue); cf. K.A.F. v. D.L.M., 437 N.J. Super. 123, 137-38 (App. Div. 2014) (holding a plenary hearing is required where conflicting factual averments create a genuine and substantial factual dispute). We are therefore satisfied defendant failed to sustain her burden, a plenary hearing was not required, and the court's order declaring Alexa emancipated was proper.

Defendant also argues the court erred by denying her motion for reconsideration of the court's order granting plaintiff's emancipation motion. Based on our review of the record, we are convinced the court correctly denied the reconsideration motion because it was based on information and putative evidence defendant failed to present in opposition to the emancipation motion.

A motion for "[r]econsideration cannot be used to expand the record and reargue a motion." Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008). It "is designed to seek review of an order based upon evidence before the court on the initial motion, not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion

record." Ibid. (citation omitted); Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (finding that a motion for reconsideration "is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion"). A court may "in the interest of justice" consider new evidence on a motion for reconsideration only when the evidence was not available prior to the decision by the court on the order that is the subject of the reconsideration motion. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); see also Palombi, supra, 414 N.J. Super. at 289 (finding that facts known to party prior to entry of an original order did not provide an appropriate basis for reconsideration); Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002) (finding party not entitled to reconsideration where evidence was available but not submitted to the court on the motion for the original order). Defendant failed to make such a showing here.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION

LEONE, J.A.D., concurring.

I join in much of my colleagues' thoughtful opinion. I agree there was substantial credible evidence supporting the trial court's determination that plaintiff established the agreed-upon conditions for the emancipation of Alexa under the parties' property settlement agreement (PSA). I also agree that defendant's responsive certification proffered no evidence showing that Alexa should not be emancipated, and that defendant's certification on reconsideration was not appropriate because it contained no "information that could not have been submitted in opposition to [plaintiff's] . . . motion." J.P. v. Smith, 444 N.J. Super. 507, 529 (App. Div.), certif. denied, 226 N.J. 212 (2016). These conclusions justify upholding the trial court's ruling on plaintiff's motion, and show its denial of reconsideration was not "a clear abuse of discretion." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015) (citing Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). We must hew to our standard of review.

I write separately because I respectfully disagree with the majority opinion's ruling that a PSA providing that a child is emancipated after "completion of four (4) consecutive academic years of college education" cannot be enforced. I believe that

ruling goes beyond the precedents of our Supreme Court and this court, is contrary to the Supreme Court's policy encouraging settlement agreements, and discourages reasonable settlement agreements involving child support.

As our Supreme Court recently reaffirmed, "[s]ettlement of disputes, including matrimonial disputes, is encouraged and highly valued in our system." Quinn v. Quinn, 225 N.J. 34, 44 (2016). "New Jersey has long espoused a policy favoring the use of consensual agreements to resolve marital controversies." J.B. v. W.B., 215 N.J. 305, 326 (2013) (quoting Konzelman v. Konzelman, 158 N.J. 185, 193 (1999)).

The Supreme Court has repeatedly stressed the "'strong public policy favoring stability of arrangements' in matrimonial matters." Quinn, supra, 225 N.J. at 44 (quoting Konzelman, supra, 158 N.J. at 193 (quoting Smith v. Smith, 72 N.J. 350, 360 (1977))). "[I]t is 'shortsighted and unwise for courts to reject out of hand consensual solutions to vexatious personal matrimonial problems that have been advanced by the parties themselves.' Therefore, 'fair and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed.'" Ibid. (citations omitted).

"As contracts, PSAs should be enforced according to the original intent of the parties." J.B., supra, 215 N.J. at 326.

"Moreover, a court should not rewrite a contract or grant a better deal than that for which the parties expressly bargained." Quinn, supra, 225 N.J. at 45. "Thus, when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result." Ibid.

"A narrow exception to the general rule of enforcing settlement agreements as the parties intended is the need to reform a settlement agreement due to 'unconscionability, fraud, or overreaching in the negotiations of the settlement[.]'" Id. at 47 (quoting Miller v. Miller, 160 N.J. 408, 419 (1999)). "'[A]bsen[t] . . . unconscionability, fraud, or overreaching in negotiations of the settlement,' a trial court has 'no legal or equitable basis . . . to reform the parties' property settlement agreement.'" J.B., supra, 215 N.J. at 326 (quoting Miller, supra, 160 N.J. at 419).

In addition, to ensure fairness and equity in the dissolution of marriages, "courts historically have maintained '[t]he equitable authority' to modify child support agreements privately reached between parties" when justified by changed circumstances. Ibid. (quoting Conforti v. Guliadis, 128 N.J. 318, 323 (1992)). "On the other hand, care must be taken not to upset the reasonable expectations of the parties." Id. at 327. Therefore, if the

parties agreed to "a comprehensive negotiated PSA," then "any application to modify a support obligation must satisfy the threshold requirement of changed circumstances if the PSA fully addressed the issue." Id. at 313, 327; see Lepis v. Lepis, 83 N.J. 139, 146-48, 157 (1980) (holding that "[t]he party seeking modification has the burden of showing such 'changed circumstances' as would warrant relief").

Here, there was no claim of unconscionability, fraud, or overreaching in the negotiation of the agreement. Nor was there any claim of changed circumstances. The trial court followed Supreme Court precedent and enforced the parties' clear agreement, which fully addressed the issue of emancipation.

It is undisputed, and my colleagues acknowledge, that the parties entered into the agreement voluntarily and knowingly and that it is fair and equitable. Nonetheless, the majority opinion rules as a matter of law that the agreement is not binding or dispositive. Indeed, the opinion rules the trial court should have considered the issue of emancipation "independent of the PSA's standard." Ante, at __ (slip op. at 11). The opinion states that an agreement on child support "could not deprive Alexa of a right to support to which she may otherwise have been entitled" in the absence of an agreement. Ante, at __ (slip op. at 8).

That proposition has unsettling consequences. Under that holding, any agreement that adult children shall be emancipated cannot be enforced, even if the parties agree to emancipation of such offspring after four years of college, after one or more graduate degrees, after the offspring reaches the age of twenty-three or more, or after the offspring's marriage or entry into the armed services.[1] Similarly, any agreement setting the amount of child support could not be enforced. Indeed, any agreement on any aspect of child support could not be enforced on the chance that the agreement might deprive offspring of an element of support to which they might otherwise have been entitled in the absence of an agreement.

[1] The Legislature recently passed an act concerning child support, effective February 1, 2017. The Act provides, "[u]nless otherwise provided in a court order, the obligation to pay child support shall terminate by operation of law without order by the court on the date that a child marries, dies, or enters the military service" or when the "child reaches 19 years of age unless" a parent presents "sufficient proof" of specified circumstances. N.J.S.A. 2A:17-56.67(a)-(c). In any event, the Act mandates that "the obligation to pay child support shall terminate by operation of law when a child reaches 23 years of age." N.J.S.A. 2A:17-56.67(e). When a child reaches that age, a parent must show "exceptional circumstances" such as "a mental or physical disability" to justify converting child support into "another form of financial maintenance." N.J.S.A. 2A:17-56.67(e)(2). While inapplicable here, the Act addresses a concern similar to the PSA's restriction that child support not continue after twenty-three-year-old Alexa's four consecutive years of college.

The proposition's unsettling consequences are far-reaching. Parties will be reluctant to agree on child support issues if their agreement will not be enforced. Parties may be unwilling to agree on other monetary issues, such as the amount of spousal support, if they cannot settle the amount and duration of child support, which is often a major financial component of divorce. If parties are unable to reach agreement, the issues will have to be settled by litigation in our already-overburdened family courts, resulting in congestion and delay. Even if the parties choose to take the chance and enter into an agreement regarding child support, that agreement — no matter how reasonable — can be overturned at any time without a showing of changed circumstances. This invites more litigation, more burden on our family courts, and more contentiousness between parents.

The proposition's consequences undermine the policies behind our Supreme Court's emphatic endorsement of settlement agreements in marital and other family cases. "[A]dvancing that public policy [of fostering the settlement of disputed claims] is imperative in the family courts where matrimonial proceedings have increasingly overwhelmed the docket[.]" Gere v. Louis, 209 N.J. 486, 500 (2012) (quoting Puder v. Buechel, 183 N.J. 428, 438 (2005)). Moreover, "[t]he very consensual and voluntary character of these agreements

render them optimum solutions" for determining issues and avoiding discord. Konzelman, supra, 158 N.J. at 194.

The majority opinion bases its proposition on the principle "that the right to child support belongs to the child, not the custodial parent" and "may not be waived by a custodial parent." Ante, at __ (slip op. at 7-8).[2] Our Supreme Court has voiced that principle: "The right to child support belongs to the child and 'cannot be waived by the custodial parent.'" Pascale v. Pascale, 140 N.J. 583, 591 (1995) (quoting Martinetti v. Hickman, 261 N.J. Super. 508, 512 (App. Div. 1993)); accord Kibble v. Weeks Dredging & Constr. Co., 161 N.J. 178, 191 (1999); see J.B., supra, 215 N.J. at 324. However, the majority opinion's proposition extends this principle far beyond our Supreme Court's rulings.

Our Supreme Court has never held parties cannot reach enforceable agreements regarding emancipation, the amount of child support, or the myriad of other terms governing child support. In Pascale, supra, the terms of child support were decided not by agreement but in a contested trial. 140 N.J. at 588-90. In J.B., supra, the Court quoted Pascale's statement to show that "[t]he parent who receives the support is obliged to expend the funds to

[2] First quoting J.S. v. L.S., 389 N.J. Super. 200, 205 (App. Div. 2006), certif. denied, 192 N.J. 295 (2007); and then quoting Gotlib v. Gotlib, 399 N.J. Super. 295, 305 (App. Div. 2008).

support the child," and that "therefore, child support paid directly to a parent is considered an asset of the child in the nature of unearned income and will disqualify the child for government benefits." 215 N.J. at 324, 329.

In Kibble, supra, the issue was "whether a worker who settles his or her workers' compensation claim . . . simultaneously can waive the future right of his or her spouse to assert a statutory claim for dependency benefits in the event of the worker's death." 161 N.J. at 182. Faced with this total waiver of dependents' benefits, the Court drew an analogy to child support. The Court stated "[t]hat the right to child support belongs to the child and not to the custodial parent is a fundamental principle of family law" and that thus "the right to child support 'cannot be waived by the custodial parent.'" Id. at 191 (quoting Pascale, supra, 140 N.J. at 591).

The Court in Kibble noted that "courts consistently have held that an agreement between parents purporting to waive child support does not affect the child's right to those benefits," citing Kopak v. Polzer, 4 N.J. 327, 332-33 (1950), which held a mother's agreement to release the father entirely from child support obligations for a two-year-old child did not discharge the father's statutory obligation to support the child. Kibble, supra, 161

N.J. at 191-92.[3] The Court in Kibble reasoned that "[t]he refusal by our courts to enforce releases of child-support obligations executed by a child's parents is consistent with the principle that an injured worker should not be permitted to waive future dependency benefits without the informed consent of that worker's dependents." Id. at 192.[4]

Here, unlike Kibble or Kopak, the parents did not engage in a total waiver or release of the right of children to support. Rather, the parents agreed in the PSA that plaintiff would pay child support not only until the children turned eighteen but until they completed four consecutive academic years of college. Plaintiff has paid child support under that agreement for at least fifteen years. Nothing in our Supreme Court's cases suggests

[3] The Kibble Court also cited our opinion in Martinetti, and the trial court opinions in Ryan v. Ryan, 246 N.J. Super. 376, 383 (Ch. Div. 1990) (finding non-binding "a verbal agreement . . . between the parties whereby plaintiff's support obligations [were totally] terminated in exchange for his having no visitation or contact with the [young] child") and ESB, Inc. v. Fischer, 185 N.J. Super. 373, 378 (Ch. Div. 1982) (finding a fraudulent conveyance between spouses lacked consideration because the wife's total waiver of the husband's future support obligation to their children was unenforceable).

[4] The Court ultimately held that an injured worker could enter into an agreement that "constitute[d] a waiver of the dependency claims of the employee's spouse and children" if "the spouse, other adult dependents, and any minor dependents (whose interests ordinarily will be represented by the employee's spouse) join in the waiver of future dependency claims." Kibble, supra, 161 N.J. at 194.

parents cannot enter into a binding agreement to provide child support under such terms. For parents to agree that emancipation will occur after four years of college does not "contract away their children's right to child support." Ante, at __ (slip op. at 10, ll).

We have often cited the same principle repeated in Pascale and Kibble. However, only two of our cases have extended it to reject an agreement between parents regarding emancipation. In Martinetti, supra, the custodial parent totally waived child support for a young child. 261 N.J. Super. at 510. When the child was about sixteen, the custodial parent sought support and the parties entered into a consent order requiring defendant to pay child support for two years "until the child reached the age of eighteen." Ibid. Noting "the right to child support cannot be waived by the custodial parent," we held the consent order discontinuing the belatedly-resumed child support after two years was not binding on the child, who had recently entered college. Id. at 512; see Kibble, supra, 161 N.J. at 192.

In Patetta v. Patetta, 358 N.J. Super. 90 (App. Div. 2003), the parties' PSA agreed that the child shall be deemed emancipated upon "attaining the age of eighteen (18) years." Id. at 92. We extended "the rationale of Martinetti" even though Patetta "involve[d] a property settlement agreement as opposed to a consent

order," finding it to be "a distinction without a difference." Id. at 95. Holding that "the parental duty to support a child may not be waived or terminated by a property settlement agreement," we denied emancipation of the child in his second year of college. Id. at 95-96.

Martinetti and Patetta are distinguishable from this case. Martinetti involved a total waiver of child support briefly interrupted by a consent order. Here, by contrast, the parties entered into a comprehensive PSA which fully addressed the issue and provided child support for over fifteen years. Contrary to Patetta, the existence of such a comprehensive agreement does make a difference under our Supreme Court's precedent. See J.B., supra, 215 N.J. at 313, 327.

Moreover, the consent order in Martinetti, and the PSA in Patetta, only provided for child support until the age of eighteen, the minimum age at which the presumption of emancipation arises. See Newburgh v. Arrigo, 88 N.J. 529, 543 (1982). Here, by contrast, the parties' agreement went beyond that minimum, providing the child would not be emancipated until after four consecutive academic years of college. Extending Martinetti and Patetta to invalidate that agreement is contrary to our Supreme Court's admonition that when child support agreements go "beyond that minimally required, the public policy favoring stability of

arrangements usually counsels against modification." J.B., supra, 215 N.J. at 327.

Further, Martinetti and Patetta involved children just beginning a full-time college education. See Patetta, supra, 358 N.J. Super. at 95. Here, by contrast, Alexa already completed the agreed-on four years of college, and attained a degree, under an agreement providing child support until that point. The majority opinion goes beyond Martinetti and Patetta by invalidating that agreement. I respectfully disagree with that extension, and with the proposition on which it is based.

In any event, I agree with my colleagues that defendant raised no arguments which would justify denying emancipation. Accordingly, I concur.

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

CLERK OF THE APPELLATE DIVISION