SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1194-14T1

DENISE NETTA (f/k/a DENISE MONEK),

Plaintiff-Appellant/Cross-Respondent,

v.

CHRISTOPHER MONEK,

Defendant-Respondent/Cross-Appellant.

Submitted October 6, 2016 – Decided May 11, 2017

Before Judges Alvarez and Accurso.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-2213-94.

Robbins & Robbins, LLP, attorneys for appellant/cross-respondent (Claudia C. Lucas, of counsel and on the brief).

Shane & White, LLC, attorneys for respondent/cross-appellant (Kenneth A. White, of counsel; Katelyn M. Brack, on the brief).

PER CURIAM

Plaintiff Denise Netta appeals from aspects of a post-judgment order entered by the Family Part on September 15, 2014, denying her motion to compel her ex-husband, defendant Christopher Monek, to contribute to the college costs of their twenty-two-year-old daughter. Defendant cross-appeals from aspects of the same order denying his motion to emancipate the child retroactive to a prior order entered in January 2011 and to terminate or reduce his child support obligation from that date. Both parties complain that the court denied their request for fees. We vacate the order and remand for a plenary hearing.

By way of background, the parties were married in 1991 and divorced in 1994. Their only child together, a daughter, was two years old at the time their marriage broke up. Although plaintiff did not attend college, and defendant attended only an eighteen-month program at DeVry before becoming employed as a police officer, they agreed to either resolve their respective contributions toward her college expenses themselves, or submit the issue to the court for resolution, "at the appropriate time."

Unable to agree on their respective contributions when the time came, the court resolved their dispute. In January 2011, a Family Part judge ordered plaintiff to assume 32%, and defendant to assume 68%, of "all expenses incurred which are reasonably

related to [their daughter's] college education, after grants, scholarships, and loans." The court granted plaintiff's motion to increase child support and denied defendant's cross-motion to emancipate the child. The statement of reasons accompanying that order includes a limitation on defendant's contribution not contained in the order itself. It provides that defendant's 68% share of college expenses "shall apply so long as [the child] is attending either Mercer County Community College (MCCC) or Rutgers University." No explanation for the limitation was provided and its basis is not apparent from the record.

It is not possible to summarize accurately the facts of the parties' most recent dispute as they disagree on almost everything. Defendant claims the parties' daughter dropped out of high school and failed to complete her first semester at Rutgers in fall 2010, which he refers to as "Strike One." "Strike Two" followed with her failure to secure more than nine credits at MCCC in the spring 2011 term, thus "failing to maintain full-time student status." Her failure to earn more than six credits in the fall 2012 term earned her "Strike Three" in his view, which she followed with "Strike Four" by posting only nine credits in spring 2013.

Defendant claims the child "has no special needs, and therefore no excuse for having amassed only 1 1/2 years of

credit toward the college program she is seeking to enter" despite having "been enrolled for eight (8) full-time semesters." He claims she works full-time, and that she and her mother have never kept him apprised of the child's academic progress or school plans. He maintains the parties' daughter, "has proven that she is not capable of consistently meeting the responsibility of maintaining full-time student status."

Finally, defendant claims it is "unconstitutional for the court to compel [him] as a divorced parent to contribute to the college costs and expenses of [his twenty-two] year old child as the court would lack the ability to so compel [him] had [he] remained married." Defendant maintains he supports a ten-year-old child from a second marriage and wishes to retire from the police force in the near future. Thus he claims he and does not "have the financial ability to support [the parties' daughter] thru 3 [plus] more years of college, particularly at an out-of-state private college (with a $60,000 a year price tag)."

Plaintiff counters that the parties' daughter "was a straight 'A' honor student and varsity cheerleader" in high school and graduated with her class, albeit having attended her senior year at night as a result of "anxiety issues as her father well knows." Plaintiff acknowledges that the child withdrew from Rutgers during her first semester in fall 2010,

but maintains she thereafter diligently pursued her studies at MCCC, as a full-time student every semester, achieving a 3.83 average and her associate's degree in 2014. She explains their daughter attended MCCC for three years instead of two because she was pursuing a career in photography, and was taking classes in a prescribed order and creating a portfolio.

Plaintiff maintains defendant was always kept apprised of their daughter's academic plans and progress, as demonstrated by the vast number of emails she attached to her certification. Further, plaintiff contends in February 2014, defendant paid his share of the cost of her applications to Parsons School of Design and the School of Visual Arts (SVA), both located in Manhattan. After the child was accepted at both, and decided to go to SVA, plaintiff claims defendant agreed to pay his share of the costs, and only reneged when he got the bill.

Finally, plaintiff contends that defendant has paid "virtually zero" in college costs for the parties' daughter, and thus his attempt to "give the impression that he has already put her through college for 4 years is disingenuous." She maintains their daughter attends school full-time, is plainly not emancipated and that defendant's desire to retire at forty-five years old should not redound to the detriment of their daughter's education.

The trial judge denied plaintiff's request to find defendant in violation of the prior order, as under that order defendant "is only responsible for 68% of [the child's] college expenses if she is attending either Mercer County Community College or Rutgers University." The judge denied plaintiff's further request that defendant pay his 68% share of the costs of SVA "for the reason stated above," i.e., it is not Rutgers or MCCC. The court further found, "based on the evidence provided," that plaintiff had not shown that defendant "ever agreed to pay any amount towards SVA's tuition and costs." The judge likewise denied plaintiff's request that defendant reimburse her $884, representing his 68% share of the $1300 enrollment fee and dorm room deposit plaintiff paid SVA.

The judge denied defendant's cross-motion to emancipate the parties' daughter or decrease his child support. In an accompanying statement of reasons, the judge noted that the parties' daughter still lives with plaintiff, "intends to continue her higher education and does not work full-time." Finding the child was "not independent nor outside the sphere of influence of her parents," the judge deemed emancipation unwarranted. Noting that defendant earns in excess of $100,000 as a police officer and that his claim the parties' daughter "works full-time is unsubstantiated," the judge found defendant

had failed to demonstrate a change in circumstances warranting a reduction in his child support. The judge denied counsel fees to both parties, finding it "not evident" that either had "acted in bad faith."

The parties appeal, reprising essentially the same arguments they made to the trial court. Having reviewed the record, we think it readily apparent that neither defendant's motion to emancipate the parties' daughter, nor plaintiff's motion to compel defendant to contribute to her expenses at SVA, could be decided in the absence of a plenary hearing. See K.A.F. v. D.L.M., 437 N.J. Super. 123, 137 (App. Div. 2014) (noting a court may not resolve conflicting factual averments on material issues without a plenary hearing).

The parties' views about the academic abilities and diligence of their daughter could not be more diametrically opposed. Plaintiff says that she is an excellent student, diligently pursuing her studies full-time with the goal of pursuing a career in photography while working part-time to defray expenses. Defendant presents the same child as one unable to remain regularly enrolled, who works full-time. Plaintiff maintains that defendant is financially secure and can well contribute to their daughter's education. Defendant claims he has other obligations, wishes to retire and cannot contribute

to the child's education and should not have to. The court accepted on the basis of the conflicting certifications that the child is not independent and is pursuing her degree, but without any reference to the Newburgh factors determined that defendant had no obligation to contribute to the costs of her education. See Newburgh v. Arrigo, 88 N.J. 529, 545 (1982) (setting forth twelve factors courts should consider in evaluating a claim for contribution toward the cost of higher education).

The parties' conflicting certifications make clear that there are material facts in dispute on the critical questions of whether the parties' daughter has moved beyond the sphere of her parents' influence or instead remains a full-time student entitled to some level of support from them in the discharge of their parental duty to assure her an education. See id. at 544 ("In appropriate circumstances, parental responsibility includes the duty to assure children of a college and even of a postgraduate education."). We remand for discovery and a plenary hearing. See Tretola v. Tretola, 389 N.J. Super. 15, 20-21 (App. Div. 2006) (underscoring the need for a plenary hearing to determine parents' obligation for support when their child both worked full-time and attended community college with intent of pursuing four-year degree). In light of our

disposition, we need not reach the parties' remaining arguments, including defendant's constitutional claims.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.