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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-1312-15T1

GEORGETTE MORCOS,

Plaintiff-Respondent,

v.

GEORGE MORCOS,

Defendant-Appellant.

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Submitted May 10, 2017 – Decided May 31, 2017

Before Judges Carroll and Gooden Brown.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FM-02-936-08.

Kenneth C. Marano, attorney for appellant.

Traina & Traina, attorneys for respondent  
(Jack A. Traina, on the brief).

PER CURIAM

In this post-judgment matrimonial matter, defendant George Morcos appeals from the August 17, 2015 Family Part order that, among other things, denied his motion to reduce his alimony obligation to plaintiff Georgette Morcos, authorized the

recalculation of his child support obligation, and enforced his obligations to provide health and life insurance and pay the children's medical and college expenses. Defendant also appeals from the court's November 2, 2015 order denying reconsideration. After carefully reviewing the record and applicable legal principles, we affirm.

We recount the procedural history of this matter in some detail to lend context to the arguments raised by defendant on appeal. The parties were married in November 1990 and have two children. Plaintiff filed a complaint for divorce on October 10, 2007. After a four-day trial, the trial judge issued a judgment of divorce (JOD) and a lengthy written opinion on January 13, 2009. The judge made extensive factual findings in support of his decision to award plaintiff \$2200 per month in child support and \$5000 per month in permanent alimony. The JOD recited that defendant also agreed to: maintain health insurance for the children until their emancipation; pay 100% of the children's college costs and unreimbursed medical expenses; and provide \$500,000 in life insurance for the benefit of plaintiff and the children.

In determining support, the trial judge found plaintiff's testimony credible. In contrast, defendant "was not candid as to his financial condition. [ ] Defendant purposely withheld

financial discovery from [] [p]laintiff, the [c]ourt, and [Stephen] Chait, [CPA]," who performed an estimate of value for defendant's business, GM Financial Services, Inc. (GMF). After analyzing defendant's earnings and expenses, the judge estimated that defendant's gross annual income was approximately \$206,000, and the marital lifestyle was \$14,170.05 per month. The judge noted "[t]he tax returns do not support the marital lifestyle as certified to by [] [d]efendant." With respect to plaintiff, the judge found that, although she held a college degree in computer sciences, her employment opportunities were limited because she had not worked in a computer related field for many years while serving as primary caretaker of the children, and because she had been injured in an automobile accident that hampered her ability to stand for extended periods. The judge concluded plaintiff had the ability to earn between \$16,000 per year based on her current part-time employment and \$22,000 if she secured full-time employment.

On April 9, 2010, the trial judge granted defendant a provisional reduction in alimony and child support. The judge found that defendant had sold GMF to a former client, and entered into an employment agreement with GMF pursuant to which he was to be paid an annual base salary of \$60,000 for a three-year period. The judge further found that "[d]efendant did not act in bad faith

in selling GMF given the substantial arrearage in alimony, child support, and [] equitable distribution owed to [] [p]laintiff at the time of the sale."

Defendant thereafter filed a motion to convert the provisional reduction in support to a permanent reduction. Following a period of discovery, the trial judge conducted a plenary hearing on January 4, 2012. The judge found that "[d]efendant's present income is limited to \$60,000 per year and that [] [d]efendant's income reduction from historical past is non-temporary." The trial judge entered a memorializing order on January 23, 2012, and an amended order on February 2, 2012, reducing defendant's alimony payments to \$2000 per month and his child support payments to \$276 per week.

Following the trial judge's retirement, on June 1, 2015, defendant filed the motion currently on appeal. In pertinent part, defendant sought to eliminate his child support obligation and further reduce his alimony obligation. In his motion papers, defendant maintained that his gross annual income was \$55,000 in 2012 and 2013, and \$45,000 in 2014, and that he had no benefits or retirement plan. He also stated his belief that: (1) both children had now graduated from college; and (2) plaintiff was still employed by the same bank at a salary not less than \$35,000 with full benefits including a retirement plan. Appended to the

motion papers were defendant's 2012, 2013, and 2014 income tax returns, all dated the previous day, May 31, 2015. Defendant subsequently submitted an updated case information statement (CIS) representing his annual salary was \$45,000 - \$48,000, and current pay stubs indicating that during 2015 he had earned \$29,692.35 through June 28, 2015.

Plaintiff opposed the motion, questioning the accuracy of defendant's financial submissions. She also filed a cross-motion to enforce various provisions of the JOD. Specifically, plaintiff sought to compel defendant to: provide health insurance coverage for the younger child; reimburse plaintiff for medical expenses she paid for the children; provide proof of life insurance coverage in the amount of \$500,000; and pay for college expenses incurred or to be incurred for the children. In her response, plaintiff certified that the older child had graduated from college, but the younger child was still in his junior year. Plaintiff further attested that she had been temporarily disabled and unable to work for seven months between 2013 and 2014, and was currently unable to work more than part-time hours due to chronic neck and back pain.

On August 17, 2015, a different Family Part judge issued an order that, in pertinent part: (1) terminated child support for the parties' older child based on his emancipation; (2) directed

plaintiff to submit an updated CIS for the purpose of recalculating defendant's child support obligation for the parties' younger child; (3) denied defendant's request to reduce his alimony obligation; and (4) granted the reliefs requested in plaintiff's cross-motion. In his accompanying statement of reasons, the judge wrote:

[T]he [c]ourt does not find that [] defendant has made a *prima facie* showing of change[d] circumstances warranting a reduction of his alimony obligation since he does not allege in his moving papers that [] plaintiff's financial situation is different from that when the current alimony obligation was modified by the [c]ourt in 2012. The [c]ourt also notes that [d]efendant's child support obligation will now be reduced due to [the older child's] emancipation. Furthermore, defendant's pay stubs provided with his moving papers show that he is earning \$60,000[] per year, which the [c]ourt notes is the amount that was utilized when calculating defendant's [current] alimony obligation.

In granting plaintiff's cross-motion, the judge noted she was entitled to enforce defendant's obligations pursuant to the relevant provisions of the JOD.

Defendant filed a timely motion for reconsideration, which plaintiff opposed. Following oral argument, the judge entered an order on November 2, 2015, denying the motion. In an oral opinion,

the judge concluded defendant's motion "failed to meet the D'Atria<sup>1</sup> standard for reconsideration." The judge further explained:

The [c]ourt also notes that in defendant's own financial submissions which the [c]ourt noted in this argument from June 2015 contained discrepancies. Most notably the \$5000 discrepancy in his pay stubs which if calculated to the end of the year would lead to an approximate salary of \$60,000.

. . . .

The [c]ourt believes that [d]efendant's income is on pace to be approximately \$60,000 this year, which is what the [c]ourt used when it set the alimony obligation back in 2012.

So for that reason the [c]ourt is going to deny [d]efendant's motion for reconsideration with respect to the alimony obligation.

Likewise, the [c]ourt also [ ] agrees with [ ] plaintiff that there is no basis or reason to vacate the obligation to maintain the life insurance at \$500,000.

Again, the [c]ourt finds that the hardship argued by [ ] defendant is frankly self[-]imposed by not getting life insurance earlier. I don't think [ ] plaintiff should be penalized for [ ] defendant's failure to do so.

The judge did, however, grant defendant some measure of relief. The November 2, 2015 order required plaintiff to produce her medical insurance information, and allowed defendant to

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<sup>1</sup> D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

reimburse plaintiff for the younger son's share of the insurance premium if he was covered under plaintiff's insurance plan. The judge also clarified the prior August 17, 2015 order, indicating it was his intention to permit defendant to negotiate a student loan payment plan with the loan providers rather than to make full payment of the outstanding student loan balances within ninety days.

Defendant now appeals the August 17, 2015 and November 2, 2015 orders. He argues that he showed the requisite change in circumstances under Lepis v. Lepis, 83 N.J. 139 (1980), to warrant modification of his various financial obligations. Specifically, he contends that the motion judge erred in relying on his pay stubs rather than his tax returns in calculating his new child support obligation and in concluding that his current income had not changed since the last modification in 2012. In addition, defendant asserts that the judge erred in failing to find that plaintiff was not working up to her income capacity, that his changed circumstances warranted denial of plaintiff's cross-motion to enforce his obligations under the JOD, and in failing to conduct a plenary hearing on the various issues.

Having reviewed the record, we conclude that defendant's arguments are without sufficient merit to warrant extended



discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following comments.

Our analysis is guided by well-settled principles. Alimony and child support "may be revised and altered by the court from time to time as circumstances may require." N.J.S.A. 2A:34-23. To warrant such a modification, a showing of "changed circumstances" is required. Lepis, supra, 83 N.J. at 146; see also Weishaus v. Weishaus, 180 N.J. 131, 140-41 (2004).

Temporary or anticipated circumstances do not warrant modification. Lepis, supra, 83 N.J. at 151. Moreover, "[t]he party seeking modification has the burden of showing such 'changed circumstances' as would warrant relief from the support or maintenance provisions involved." Id. at 157 (citations omitted).

To determine whether there is a prima facie showing of changed circumstances, a judge must consider the terms of the order at issue and compare the facts as they were when that order was entered with the facts as they are at the time of the motion. Faucett v. Vasquez, 411 N.J. Super. 108, 129 (App. Div. 2009), certif. denied, 203 N.J. 435 (2010). Notably, the court does not determine whether there has been a substantial change in circumstances from the initial JOD; rather, the court looks at whether a change has occurred since the most recent modification. Donnelly v. Donnelly, 405 N.J. Super. 117, 127-28 (App. Div. 2009)

(court's focus in determining change of circumstances must "be on the length of time that had elapsed since the last milepost in [the] post-judgment proceedings").

Once a prima facie case has been established and financial disclosures have been evaluated, "the court must decide whether to hold a hearing." Lepis, supra, 83 N.J. at 159. A trial judge has the discretion to decide the motion exclusively on the papers. Faucett, supra, 411 N.J. Super. at 128; Shaw v. Shaw, 138 N.J. Super. 436, 440 (App. Div. 1976). "It is only where the affidavits show that there is a genuine issue as to a material fact, and that the trial judge determines that a plenary hearing would be helpful in deciding such factual issues, that a plenary hearing is required." Shaw, supra, 138 N.J. Super. at 440.

Our scope of review of the trial court's decision is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "Whether an alimony obligation should be modified based upon a claim of changed circumstances rests within a Family Part judge's sound discretion." Larbig v. Larbig, 384 N.J. Super. 17, 21 (App. Div. 2006); see also Storey v. Storey, 373 N.J. Super. 464, 470 (App. Div. 2004). Each individual motion for modification is particularized to the facts of that case, and "the appellate court must give due recognition to the wide discretion which our law rightly affords to the trial judges who deal with these

matters.'" Larbig, supra, 384 N.J. Super. at 21 (quoting Martindell v. Martindell, 21 N.J. 341, 355 (1956)). We ordinarily accord great deference to the discretionary decisions of Family Part judges. Donnelly, supra, 405 N.J. Super. at 127. We will not disturb the trial court's decision on support obligations unless we

conclude that the trial court clearly abused its discretion, failed to consider all of the controlling legal principles, or must otherwise be well satisfied that the findings were mistaken or that the determination could not reasonably have been reached on sufficient credible evidence present in the record after considering the proofs as a whole.


[Heinl v. Heinl, 287 N.J. Super. 337, 345 (App. Div. 1996).]

Here, the motion judge's finding that defendant failed to demonstrate the requisite change in circumstances is supported by substantial credible evidence in the record. Given the history, and the discrepancies in defendant's financial submissions, it was within the judge's discretion to rely upon defendant's most recent pay stubs rather than his tax returns to determine his present earnings. Those pay stubs revealed that defendant was on track to earn approximately \$60,000 in 2015, which was the precise amount the trial judge attributed to him in 2012 and formed the basis for the existing support order. Accordingly, the judge did not abuse his discretion in utilizing that \$60,000 figure when recalculating

defendant's child support obligation, in declining to reduce defendant's alimony obligation, and in enforcing defendant's remaining financial obligations in accordance with the agreed-upon terms of the JOD.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION