SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2935-15T2

FREDERIC J. SA',

Plaintiff-Appellant,

v.

MARIA M. SA',

Defendant-Respondent.

Argued March 21, 2017 – Decided April 6, 2017

Before Judges Ostrer and Vernoia.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-0736-06.

Gail J. Mitchell argued the cause for appellant (Schwartz Barkin & Mitchell, attorneys; Ms. Mitchell, on the brief).

Henry F. Wolff, III, argued the cause for respondent.

PER CURIAM

Plaintiff appeals a February 25, 2016 family court order denying his request for a 14.6% upward adjustment of defendant's child support obligation and reducing defendant's weekly obligation to pay child support arrears. We affirm.

I.

Plaintiff and defendant were married and shared two children, born in 2000 and 2002. At the time of their divorce in 2006, plaintiff was employed as a police officer and defendant was employed as a clerical worker. Plaintiff earned more than defendant.

They agreed to share overnight parenting time on an equal basis. They calculated child support by preparing two child support worksheets; one listed plaintiff as the parent of primary residence and defendant as the parent of alternate residence, and the other worksheet reversed those designations. The worksheet with plaintiff as the parent of alternate residence showed that plaintiff had a weekly child support obligation of $106. The worksheet with defendant as the parent of alternate residence showed defendant had a child support obligation of $10 per week.

The parties agreed to deduct defendant's $10 per week child support obligation from plaintiff's $106 obligation. They also agreed to divide in half plaintiff's net $96 per week child support obligation, with plaintiff agreeing to pay defendant weekly child support of $48.[1] Plaintiff's weekly $48 child support obligation

[1] We express no opinion on the methodology employed by the parties to determine plaintiff's child support obligation.

was set forth in the parties' property settlement agreement which was incorporated by reference into their judgment of divorce.

Plaintiff moved to terminate his child support obligation in January 2013, but the court increased his obligation to $114 per week because his wages had increased and his alimony obligation to defendant had ended. Plaintiff appealed, but the parties resolved the matter and entered into an October 7, 2013 consent order requiring that plaintiff pay $70 in weekly child support.

On December 5, 2014, the parties entered into a consent order granting plaintiff sole legal and residential custody of the children, and allowing defendant parenting time by mutual consent and daily phone contact with the children. The order terminated plaintiff's child support obligation and provided that "[t]o the extent allowed by law, [] defendant shall have no obligation to pay child support to [] plaintiff."

Following entry of the order, a dispute arose concerning defendant's parenting time and daily phone contact with the children. Defendant filed an order to show cause requesting that plaintiff be restrained from interfering with her parenting time, which the court converted into a motion. Plaintiff subsequently filed a cross-motion for child support and other relief. During the proceedings on the parties' motions, the court entered a series

of child support orders, culminating in a December 17, 2015 order[2] directing that defendant pay plaintiff weekly child support of $184 and an additional $50 weekly for arrears.

Defendant filed a motion for reconsideration of the December 17, 2015 order, claiming the court miscalculated her child support obligation by failing to consider plaintiff's full income. Plaintiff cross-moved for an adjustment of defendant's child support obligation under the child support guidelines, which provided for a 14.6% upward adjustment where an "initial" child support award is entered for a child after the child reaches the age of twelve. Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A ¶ 17 (2017).

The court rendered an oral opinion on the motions, and entered an order denying plaintiff's cross-motion for the 14.6% adjustment and granting defendant's motion, reducing her weekly child support obligation to $164 and weekly arrears obligation from $50 to $20. Plaintiff appealed.

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[2] In an April 15, 2015 order, the court denied plaintiff's cross-motion for child support without prejudice. A December 4, 2015 supplemental order directed that defendant pay $203 in weekly child support. A December 8, 2015 order reduced defendant's weekly child support obligation to $156 and added the requirement that defendant pay $50 per week toward her child support arrears. The succeeding December 2015 orders were entered in response to letters from counsel addressing purported errors in the orders entered. The errors are not at issue on appeal.

II.

We review a trial court's child support decisions for an abuse of discretion. Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012). "The trial court has substantial discretion in making a child support award. If consistent with the law, such an award will not be disturbed unless it is manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice." Ibid. (quoting Foust v. Glaser, 340 N.J. Super. 312, 315-16 (App. Div. 2001)). "We are not bound by '[a] trial court's interpretation of the law' and do not defer to legal consequences drawn from established facts." Id. at 116-17 (quoting Manalapan Realty, L.P., v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

In determining a child support award, courts are required to follow New Jersey's Child Support Guidelines. Pascale v. Pascale, 140 N.J. 583, 593 (1995). In pertinent part, the guidelines provide that "if the initial child support order is entered when a child is 12 years of age or older, that order and all subsequent orders shall be adjusted upward by 14.6%." Pressler & Verniero, supra, Appendix IX-A to R. 5:6A at ¶ 17 (emphasis added).

Plaintiff first contends the court erred by denying his request for the 14.6% upward adjustment of defendant's child support obligation under the guidelines. Plaintiff recognizes that

the initial child support order in this matter was entered at the time of the parties' 2006 divorce and prior to the children reaching the age of twelve. He contends, however, he is entitled to the adjustment because the court's December 17, 2015 order was entered when both children were over the age of twelve and awarded him child support for the first time following his assumption of sole legal and residential custody. Plaintiff argues the December 17, 2015 order therefore constituted an "initial" award of child support to him.

We are satisfied the court correctly determined that plaintiff was not entitled to the 14.6% adjustment under the guidelines. The guidelines require the adjustment only where an "initial" child support award is made following a child's twelfth birthday. Ibid. In our interpretation of our court rules, "[w]e apply familiar cannons of statutory construction" and "look first to the plain language of the rules and give the words their ordinary meaning." Robertelli v. New Jersey Office of Atty. Ethics, 224 N.J. 470, 484 (2016). Merriam–Webster's dictionary defines "initial" as "of or relating to the beginning" and is synonymous with "earliest" and "first." Initial, Merriam-Webster, http://www.merriam-webster.com/dictionary/initial (last visited March 28, 2017).

Here, the children were born in 2000 and 2002, and there is no dispute that the first child support award was ordered in the parties' 2006 judgment of divorce, long before either child reached the age of twelve. The December 17, 2015 order granting child support to plaintiff therefore was not an initial award and plaintiff was not entitled to the 14.6% adjustment under the express terms of the guidelines. See Accardi v. Accardi, 369 N.J. Super. 75, 87 (App. Div. 2004) (finding the 14.6% adjustment should be based on "the earliest date from which support was paid" regardless of whether a prior support award was allocated between alimony and child support).

Plaintiff argues the court should have ignored the plain language of the guidelines and instead granted the 14.6% adjustment because a finding that the December 17, 2015 order was an initial award is consistent with the guideline's purpose. Rule 5:6A, however, states that the child support guidelines "shall be applied when an application to establish or modify child support is considered by the court." Where, as here, a party requests that the court modify or disregard the guidelines, the court may do so "only where good cause is shown." R. 5:6A. A party establishes good cause by showing "a) the considerations set forth in Appendix IX-A, or the presence of other relevant factors which may make the guidelines inapplicable or subject to modification, and b) the

fact that injustice would result from the application of the guidelines." Ibid. The determination of good cause is "within the sound discretion of the court." Ibid.

Plaintiff contends the court abused its discretion because the 14.6% adjustment is intended to compensate custodial parents who receive child support for the first time following a child's twelfth birthday. The rationale supporting the adjustment is explained in the guidelines as follows:

> The child support schedules are based on child-rearing expenditures averaged across the entire age range of zero through 17 years (total expenditures divided by 18 years). This averaging means that awards for younger children are slightly overstated due to the higher level of expenditures for older children. If an award is entered while the child is very young and continues through age 18, the net effect is negligible. However, initial awards for children in their teens are underestimated by the averaging and should be adjusted upward to compensate for this effect . . . . the cost of children aged 12 through 17 was 14.6% above the average expenditures. Therefore, if the initial child support order is entered when a child is 12 years of age or older, that order and all subsequent orders shall be adjusted upward by 14.6%.
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> [Pressler & Verniero, supra, Appendix IX-A to R. 5:6A at ¶ 17.]

Plaintiff argues that because defendant never paid child support to him prior to his obtaining sole legal and residential custody of the children in December 2014, he therefore did not

receive overestimated child support payments from defendant while the children were under the age of twelve. Plaintiff contends that the rationale supporting the 14.6% adjustment requires a departure from the guidelines' plain language based on the circumstances presented here, and the court therefore erred by denying his request for the adjustment. We disagree.

As correctly determined by the court, plaintiff's argument is contradicted by the record. The initial child support award in this matter was calculated based on two worksheets. One worksheet, which designated plaintiff as the parent of primary residence, showed defendant was obligated to pay plaintiff $10 per week in child support. Defendant effectively paid that amount to plaintiff following the parties' divorce because $10 was deducted from plaintiff's child support obligation of $106 under the worksheet where he was identified as the parent of primary residence.[3] Thus, following the parties' divorce, plaintiff received child support payments of $10 per week from defendant in the form of a credit against plaintiff's greater child support obligation to defendant. Moreover, as the court correctly determined,

> Plaintiff[']s argument is that if the [c]ourt fails to apply the upward adjustment

[3] Defendant further contributed to the children's support prior to their twelfth birthdays by agreeing in 2006 to accept half of the child support from defendant to which she otherwise would have been entitled.

> to the child support modification [] defendant would be unfairly enriched as she received a slightly overstated child support award for the prior ten years that will not benefit the children. That argument however, fails to consider that [] plaintiff received the same slightly overstated child support award when his child support guideline was calculated with him as the parent of primary residence. Thus, [] plaintiff benefitted from the overstated child support as well.

The court's determination is supported by the evidentiary record. We are also satisfied there was no abuse of discretion in the court's refusal to modify or disregard the guidelines that required a 14.6% upward adjustment only where an initial child support award is made after a child is twelve or older. Plaintiff failed to demonstrate good cause under Rule 5:6A permitting the court to do so. Plaintiff received the benefit of overestimated child support under the guidelines based on the calculations made at the time of the divorce and when the children were under the age of twelve, and was not entitled to the adjustment contemplated under the guidelines.[4]

Plaintiff also contends the court erred by denying the 14.6% upward adjustment because one of the children has special needs

[4] We offer no opinion as to whether the 14.6% adjustment would be appropriate or required where there is a change of custody following a child's twelfth birthday and one party becomes a child support obligee for the first time. Those circumstances are not extant here.

and will require parental support beyond the age of eighteen. We reject the contention because the 14.6% guideline adjustment is based solely on the age of the child at the time of an initial child support award. A child's special needs are not relevant under the guidelines, although they may otherwise support an application for an award of child support outside of the guidelines. See J.B. v. W.B., 215 N.J. 305, 327 ("an increase in the needs of a child . . . may constitute [a] change[] in circumstances that will trigger an examination of the support obligation").

We last address plaintiff's contention that the court erred by reducing defendant's arrears payment from $50 to $20 per week. The modification occurred following the court's review of the parties' tax returns, and the court's decision to reduce defendant's child support obligation, which is not challenged on appeal. Based on the record presented, we discern no abuse of discretion in the court's reduction of plaintiff's child support arrears payment.

Affirmed.