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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2978-15T1

ROBERT J. ABATE,

Plaintiff-Appellant,

v.

THERESA L. ABATE,

Defendant-Respondent.

Submitted March 14, 2017 – Decided April 19, 2017

Before Judges Leone and Vernoia.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Morris County,
Docket No. FM-14-203-11.

Robert J. Abate, appellant pro se.

Theresa L. Meola-Abate, respondent pro se.

PER CURIAM

Plaintiff Robert J. Abate appeals the family court's February 25, 2016 order denying his motion to stay a January 4, 2016 order addressing motions filed by him and defendant Theresa L. Abate. We affirm.

I.

We take the following facts from the family court's statements of reasons accompanying the orders, and from the record.

Plaintiff and defendant were married in 2001 and a child was born of the marriage in 2002. Plaintiff adopted two of defendant's children from a previous marriage, including Michael, born in 1994. Divorce proceedings began in 2010. In conjunction with the entry of their final judgment of divorce, the parties executed a property settlement agreement (PSA) on October 11, 2011.

On October 16, 2015, plaintiff filed a motion requesting: (1) reduction in child support owed to defendant based on changed circumstances; (2) deferral of his last two alimony payments; (3) relief from his obligation to pay for Michael's college expenses; (4) emancipation of Michael; (5) adjudication of defendant in violation of litigant's rights for her failure to comply with the parenting provisions in the PSA; and (6) an order compelling defendant to provide proof of income and financial information.

Without knowledge that plaintiff filed his motion, defendant filed her own motion requesting relief on October 19, 2015, requesting an order: (1) enforcing the parties' PSA by directing plaintiff to pay Michael's outstanding college tuition of \$6147.23 and the associated late fees; (2) compelling plaintiff to reimburse defendant for additional expenses, including receipts for books

bought for Michael's fall college courses; (3) requiring plaintiff to provide medical insurance cards for himself and Michael; (4) directing plaintiff to provide defendant with his correct contact information; and (5) increasing child support. In response to plaintiff's motion, defendant filed a reply certification on November 2, 2015. On November 6, 2015, plaintiff replied to defendant's response.

The family court denied without prejudice plaintiff's request for a reduction in child support. The court found plaintiff was unable to show a prima facie case of changed circumstances under the standard set forth in Lepis v. Lepis, 83 N.J. 139 (1980). Although plaintiff certified he was unemployed, the court found he alluded to finding a new job in the future, which indicated his unemployment "will likely be temporary." Further, the court found plaintiff failed to "attach a current case information statement (CIS), a CIS from the date the Child Support Order was entered, or the Child Support Guidelines used to calculate the obligation set forth in said Order." Similarly, the court denied without prejudice defendant's request to increase child support because she failed to attach the requisite CIS forms.

As plaintiff did not make a prima facie showing of changed circumstances under the Lepis standard, the family court denied

without prejudice plaintiff's request to compel defendant to provide her complete income information.

The family court denied plaintiff's request to defer his final alimony payments, citing the provision in the PSA in which both parties waived the right to modify their alimony agreement. The court noted that provision already considered the possibility of a change in plaintiff's future income.

The family court denied plaintiff's request for relief from paying the college tuition for Michael's senior year, and granted defendant's request to compel plaintiff to pay the \$6147.23 in tuition and late fees owed. Because plaintiff provided no CIS forms, the court was unpersuaded by plaintiff's claim that financial hardship prevented him from paying the tuition. The court denied without prejudice his remaining requests for relief.

The family court granted defendant's request to compel plaintiff to provide medical insurance cards, and denied as moot defendant's request to compel plaintiff to provide contact information. On January 4, 2016, the court entered an order ruling on the parties' requests.

On February 25, 2016, the family court denied plaintiff's request to stay its January 4 order, and denied the parties' other requests for relief.

Plaintiff now appeals these rulings and also claims gender bias on the part of the family court judge.

II.

"Appellate courts accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)). We reverse only if there is "'a denial of justice' because the family court's 'conclusions are . . . "clearly mistaken" or "wide of the mark."'" Parish v. Parish, 412 N.J. Super. 39, 48 (App. Div. 2010) (quoting N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)). We must hew to our standard of review.

III.

We affirm substantially for the reasons given by the family court in its two statements of reasons. We add the following.

Preliminary, plaintiff failed to show prejudice from the family court's decision to treat defendant's motion as a separate motion rather than as a cross-motion. In fact, the court refused to consider defendant's additional requests for relief made in her reply certification because her motion was not a cross-motion.

The family court properly denied plaintiff's request to modify his child support obligation. "The party seeking modification has the burden of showing such 'changed

circumstances' as would warrant relief from the support or maintenance provisions involved." Lepis, supra, 83 N.J. at 157. Thus, "not any change in circumstance will suffice; rather, the changed circumstances must be such 'as would warrant relief' from the provisions involved." Slawinski v. Nicholas, 448 N.J. Super. 25, 35 (App. Div. 2016) (quoting Lepis, supra, 83 N.J. at 157).

Plaintiff contended his unemployment justified reducing his child support obligation. A "[p]laintiff's request[] for modification of the child support obligation require[s] consideration of whether 'changed circumstances had substantially impaired the [spouse's] ability to support himself or herself.'" Foust v. Glaser, 340 N.J. Super. 312, 216 (App. Div. 2001) (citation omitted). "[A]n increase or decrease in the income of the supporting or supported spouse" is an "[e]vent[] that qualif[ies] as [a] changed circumstance[] to justify an increase or decrease of support." J.B. v. W.B., 215 N.J. 305, 327 (2013).

Nonetheless, "[c]ourts have consistently rejected requests for modification based on circumstances which are only temporary or which are expected but have not yet occurred." Lepis, supra, 83 N.J. at 151. Here, plaintiff filed his motion to reduce child support in October 2015, less than a month after he became unemployed, and while he was still receiving severance pay. The family court properly found he "failed to demonstrate that his

alleged change in circumstances was anything but temporary." Donnelly v. Donnelly, 405 N.J. Super. 117, 128 (App. Div. 2009) (rejecting a movant's claim of reduction in income because only nine months had elapsed); see Bonanno v. Bonanno, 4 N.J. 268, 275 (1950). Measuring "when a changed circumstance has endured long enough to warrant a modification of a support obligation turn[s] on the discretionary determinations of Family Part judges, based upon their experience as applied to all the relevant circumstances presented, which we do not disturb absent an abuse of discretion." Larbig v. Larbig, 384 N.J. Super. 17, 23 (App. Div. 2006) (rejecting a movant's claim of reduction in income because only twenty months had elapsed). We find no abuse of discretion here. J.B., supra, 215 N.J. at 325-26.

Moreover, the family court properly rejected plaintiff's motion because he failed to meet the requirements of Rule 5:5-4(a). Under that rule, "[a]s a necessary and preliminary step to meeting this burden [to show changed circumstances], a movant is required to submit both a current and a prior CIS." Palombi v. Palombi, 414 N.J. Super. 274, 291 (App. Div. 2010). By ignoring these "mandatory requirements," plaintiff "did not provide the court with the comprehensive financial information that would allow the comparison necessary for a modification of financial obligations." Id. at 283, 287. For the same reasons, the family

court could reject plaintiff's claim that his child support obligation should be reduced because defendant's income increased.¹

Moreover, plaintiff failed to show defendant's income increased. Although plaintiff presents information from the internet to suggest a change in defendant's job title in April 2013, it did not show an increase in defendant's salary. Plaintiff requested discovery, but "[a] prima facie showing of changed circumstances must be made before a court will order disorder discovery of an ex-spouse's financial status." Lepis, supra, 83 N.J. at 157 (emphasis added). Accordingly, the court properly denied plaintiff's request to order defendant to provide complete income information.

All those reasons also supported the family court's denial of plaintiff's request to delay his alimony payments. Additionally, in the Limited Duration Alimony provision of their PSA, the parties specifically waived their rights under Lepis and agreed the alimony provision was "irrevocable" and could not be modified even in the occurrence of plaintiff's "dramatic and

¹ The same reasons supported the family court's denial of plaintiff's request to be relieved of his obligation to contribute to Michael's college education.

substantial change of income, of whatever nature, scope or duration."

New Jersey law "favor[s] the use of consensual agreements to resolve marital controversies." Konzelman v. Konzelman, 158 N.J. 185, 193 (1999). Parties can "establish the criteria for payment to the dependent spouse, irrespective of circumstances that in the usual case would give rise to Lepis modifications of their agreement." Morris v. Morris, 263 N.J. Super. 237, 241 (App. Div. 1993). Further, even under Lepis, supra, "[i]f the existing support arrangement has in fact provided for the circumstances alleged as 'changed,' it would not ordinarily be 'equitable and fair' to grant modification." 83 N.J. at 153 (citation omitted); accord J.B., supra, 215 N.J. at 327 ("care must be taken not to upset the reasonable expectations of the parties"). "[F]air and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed." Smith v. Smith, 72 N.J. 350, 358 (1977). "[A] court should not rewrite a contract or grant a better deal than that for which the parties expressly bargained." Quinn v. Quinn, 225 N.J. 34, 45 (2016). Accordingly, the family court was correct not to disturb the PSA's alimony provision.

Plaintiff complains the family court resolved his motions without a hearing. However, "to be entitled to a hearing on

whether a previously-approved support award should be modified, the party moving for the modification 'bears the burden of making a prima facie showing of changed circumstances.'" Crews v. Crews, 164 N.J. 11, 28 (2000) (citations omitted). Again, plaintiff failed to carry that burden.

Finally, we address plaintiff's gender bias claim. Of course, "[a] judge shall be impartial and shall not discriminate because of . . . sex," and shall not "manifest bias or prejudice." Code of Judicial Conduct, Pressler & Verniero, Current N.J. Court Rules, Appendix to Part I, Canon 3, Rule 3.6(A), (C) (2017); see R. 1:12-1(g). However, plaintiff has not shown "a reasonable, fully informed person [would] have doubts about the judge's impartiality." DeNike v. Cupo, 196 N.J. 502, 517 (2008). "[T]he belief that the proceedings were unfair must be objectively reasonable." Panitch v. Panitch, 339 N.J. Super. 63, 67 (App. Div. 2001) (quoting State v. Marshall, 148 N.J. 89, 279, cert. denied, 522 U.S. 850, 118 S. Ct. 140, 139 L. Ed. 2d 88 (1997)). Plaintiff's claim is conclusory and unsupported. Neither the record nor plaintiff's brief provides any evidence of gender bias.

Plaintiff's remaining claims are without sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION