SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4959-14T3

KENNETH R. MEYER,

Plaintiff-Appellant,

v.

RUTH MARIE MEYER,

Defendant-Respondent.

Submitted February 2, 2017 - Decided April 20, 2017

Before Judges Lihotz, Hoffman and O'Connor.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Morris County, Docket No. FM-14-696-96.

Kenneth R. Meyer, appellant pro se.

Ruth Marie Meyer, respondent pro se.

PER CURIAM

Plaintiff Kenneth R. Meyer appeals from a June 19, 2015 order denying reconsideration of orders entered following a plenary hearing, which required plaintiff to repay defendant Ruth Marie Meyer for expenses she incurred for the support of their children. Plaintiff challenges certain provisions, arguing the child was

emancipated or the expense was defendant's obligation, not his. Following our review of plaintiff's challenges, in light of the record and applicable law, we affirm in part, reverse in part, and remand in part.

The parties were divorced on July 14, 1997, and incorporated into the final judgment of divorce a property settlement agreement (PSA) resolving all collateral issues. Per the final judgment, the parties shared joint legal custody of their two children, who resided with defendant.

On July 22, 2011, plaintiff moved to emancipate the older child following completion of college. Defendant opposed the motion, arguing the child remained financially dependent and unemployed. The Family Part judge granted plaintiff's motion, emancipating the child effective September 1, 2011.

In his supporting certification seeking emancipation of the older child, plaintiff explained he told the child he would voluntarily help pay living expenses during a job search. Plaintiff continued "to send [the child] money for . . . rent, food, and electric expenses through at least August, and beyond that as necessary to keep [the child] afloat during the time [of] adjust[ment] to the shift from student-life to the workforce." Specifically, plaintiff stated:

> My plan [wa]s to continue to support [the older child] as [the child] looks for a job, and my plan is to do that as long as it makes sense, and if [the child] gets an interim job, then we'll talk about what [the child] needs and I'm happy to do that.

As promised, from August 2011 until January 2013, plaintiff sent the older child $1,500 per month, provided additional money during visits, and, as required by the order, maintained the child's health insurance. Because he concluded the older child was not expending full effort to obtain employment, plaintiff decided to cease payments as of January 2013. Plaintiff maintained, "I didn't say I'd pay forever. I said while [the child] looked for a job." Plaintiff totaled his post-emancipation support as exceeding $30,000.

Defendant certified she did not learn of plaintiff's decision to stop support until March 2013, at which time she began providing support. Defendant encouraged the older child to enroll in a three-month computer course of study in February 2014. The older child moved into a friend's residence in New York City while completing the program.

Defendant asserted she paid 100% of the child's expenses in 2013 and 2014, as well as the initial $3000 fee for the course. Once the child obtained employment in August 2014, plaintiff satisfied the additional $11,400 program fee.

The October 26, 2011 order also recalculated plaintiff's support obligation for the younger child, who was then a full-time college student. The judge ordered plaintiff to

> assume 100% responsibility for all of [the younger child's] expenses not covered by [the college] scholarship, including, but not limited to, the cost of . . . :
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> 1. Housing;
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> 2. Food;
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> 3. Clothing and luggage;
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> 4. Summer educational costs not covered by [the] scholarship;
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> 5. Transportation, including airfare, auto-expenses and insurance;
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> 6. Health and insurance and unreimbursed medical and dental expenses;
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> 7. Furnishings and supplies for dorm rooms and summer housing;
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> . . . .
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> 9. Entertainment and spending money; and
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> 10. Personal care products and services such as hair care and toiletries;
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> . . . .
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> Defendant's support obligation . . . consist[s] of expenses incurred for [the younger child]'s care and benefit during those times when . . . visiting [defendant], including food in her home, and [the child's] enjoyment and use of her household (e.g. utilities, cleaning services, laundry, etc.)

> during the times when [the child] is in her home.

In March 2014, plaintiff moved for the younger child's emancipation, following completion of graduate school. Defendant opposed the motion and filed a cross-motion seeking reimbursement of expenses she incurred for both children, which she maintained were plaintiff's financial responsibility. The judge granted plaintiff's motion, and concluded the younger child was emancipated, effective April 3, 2014. He required the parties to review defendant's claimed reimbursements in mediation, which proved unsuccessful.

The trial judge conducted a plenary hearing, during which each party testified, introduced numerous exhibits, and filed trial briefs. The judge rendered a written opinion and order on February 26, 2015. A supplemental opinion clarified certain aspects of the earlier decision and replaced the original opinion as stated in a March 17, 2015 order.[1] The trial judge concluded plaintiff must reimburse defendant $25,307.95 for: (1) designated costs for the older child to attend the post-college program of study and certain living expenses; (2) post-college expenses for

[1] The March 17, 2015 order states, "the attached Opinion after Plenary Hearing supplants and replaces the previously submitted Opinion issued on February 26, 2015." Therefore, our review considers the provisions of this opinion.

the younger child; and (3) uninsured medical and dental expenses for the children.[2]

On May 8, 2015, plaintiff moved for reconsideration and requested the judge stay the prior orders. Defendant opposed plaintiff's motion and filed a cross-motion seeking payment. On June 19, 2015, the trial judge denied plaintiff's motion for reconsideration, except to reduce his share of the cost of the post-college program taken by the older child to $1440. He also granted defendant's cross-motion, in part, by ordering plaintiff pay defendant the amount due within five days.

On July 1, 2015, plaintiff filed a notice of appeal and moved to stay his payment obligations, which we denied on March 4, 2016. Defendant filed a cross-appeal, challenging the order emancipating the younger child, which she subsequently withdrew.

On appeal, various arguments by plaintiff assert the trial judge erroneously ordered him to provide support for the children after the date the court concluded each was emancipated. He also urges reversal because defendant never consulted with him prior to incurring expenses for which she sought reimbursement, and

[2] During the hearing plaintiff agreed to pay the amounts sought for medical and dental costs, but opposed all other requests.

mistakenly ordered him to pay expenses for the younger child, which were allocated as defendant's support obligation.

> We review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's "special jurisdiction and expertise in family matters." Cesare v. Cesare, 154 N.J. 394, 413 (1998). Thus, "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)).
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> A more exacting standard governs our review of the trial court's legal conclusions. "Although a family court's factual findings are entitled to considerable deference, we do not pay special deference to its interpretation of the law . . . . [T]he trial court is in no better position than we are when interpreting a statute or divining the meaning of the law." D.W. v. R.W., 212 N.J. 232, 245 (2012) (citations omitted). Accordingly, we review the trial court's legal conclusions de novo. Id. at 245-46; see also N.J. Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 183 (2010) (citations omitted).
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> [Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016).]

We first examine plaintiff's challenges to payments of pre-emancipation expenses incurred for the younger child.[3] The

[3] We recognize plaintiff fails to list this issue in a separate legal argument, as required by Rule 2:6-2(a)(6). See also Pressler & Verniero, Current N.J. Court Rules, cmt. 2 to R. 2:6-2 (2017) ("An appellate court . . . may refrain from considering cursory arguments raised at the end of a brief that are not properly submitted under proper point headings."). However, because

February 26, 2015 order, at paragraph 5, identified expenses expended by defendant totaling $11,246.15, which plaintiff must reimburse. In his opinion, the trial judge found defendant proved the following expenses as comprising this total: "$1,500 for the extra charge for the fare to Cambridge (D-36)[,] $588.30 for the fare to Argentina (D-40), $2,316.50 for the bed (D-41), and $6,841.35 for payments [d]efendant made to [the youngest child] (D-32, 33, 34, 35, 36, 37, 38, 39, 40, 29)." Our attempts to determine the last sum, $6841.35, have been unsuccessful. However, we found two computation errors.

First, our review of the ten exhibits identified by the trial judge reveals these sums relate to the youngest child, which totals $6192.34: D-32: $1000; D-33: $500; D-34: $500; D-35: $600; D-36: $1500; D-37: $1094.72; D-38: $199.50; D-39: $78.25; D-40: $588.30;[4] D-29: $131.57. Therefore, the total is overstated in the judge's opinion by $649.01.

Second, a clerical error, raised by plaintiff, suggests the judge mistakenly double counted two items. Specifically, the

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plaintiff's challenges appear to represent calculation errors, they should be addressed on remand. R. 4:50-1(a).

[4] D-40 lists transfers and foreign transaction fees. Among these are the sums set forth in D-37 and other items; however, based on the record, we limit D-40 to include only the $588.30 for the Argentina trip.

order separately lists the expenses set forth in D-36 and D-40, then includes the sums again in the miscellaneous expense total we computed as $6192.34. Defendant acknowledges the opinion might suggest sums listed in D-36 and D-40 were included twice, but she insists the judge mistakenly identified the included exhibits.

Following our review, we agree with plaintiff. The opinion separately lists the sums in D-36 and D-40, then also encompasses the same items in the aggregate expense. We find no support for defendant's position the judge meant to include different exhibits. Therefore, we conclude the total amount identified for reimbursement for the younger child's expenses must be reduced by an additional $2088.30.

Therefore, two calculating errors reduce the sum stated in the judge's opinion from $6841.35 to $4104.04. Accordingly, the total due by plaintiff to reimburse expenses is $8508.84, not $11,246.15.

Next, we turn to plaintiff's challenges to his responsibility for these sums. Plaintiff argues the cost of a wire transfer, identified in exhibit D-36 as $1500, should be reduced by $500. The total given to the child by defendant was $4700. During the plenary hearing, plaintiff identified the sum he paid the child as $3200. Upon reconsideration, he asserted he was mistaken and actually paid $3700; he attached a copy of his October 2, 2013

check for cash with notations referencing a deposit on behalf of the younger child. Defendant refutes the identified check as representing sums deposited into the account for the younger child. The judge's opinion does not address the matter, except to mistakenly identify the $1500 as "extra charge for fare to Cambridge." This mistaken identification justifying the expense and the failure to consider plaintiff's evidence of payment submitted on reconsideration requires the trial judge to examine on remand the question of whether defendant previously satisfied $500 of this expense, which would result in a further reduction of $500.

Plaintiff next argues defendant did not consult with him prior to incurring expenses, and he believes she had sole responsibility for payment of costs while the younger child was in her care, as stated in the October 26, 2011 order. During the plenary hearing, plaintiff suggested these sums were gifts from defendant to the younger child and, more importantly, maintained she never informed plaintiff she was paying these expenses, obviating his responsibility for reimbursement.

Generally, discussing the reimbursements, the trial judge relied on Moss v. Nedas, 289 N.J. Super. 352, 359 (App. Div. 1996), and found "[defendant] had an affirmative duty to consult with [p]laintiff before spending any money on the [children.] Plaintiff

cannot be simply considered 'a wallet.'" The judge disallowed many expenses claimed by defendant, but concluded expenses listed in the order must be reimbursed as defendant has "proven these expenses by a preponderance." Plaintiff never denied defendant spent the money; his argument was she spent her money and, if she believed the sum represented a sum he was obligated to pay, she never told him.

Unfortunately, the trial judge failed to address this argument or to include factual findings supporting his conclusion. Plaintiff had an obligation to defendant. This lapse precludes our examination of whether the order represents an abuse of reasoned discretion. See Elrom v. Elrom, 439 N.J. Super. 424, 434 (App. Div. 2015) (noting an abuse of discretion entails a decision resting on an impermissible basis, irrelevant or inappropriate facts, or one based on findings that are inconsistent with or unsupported by competent evidence).

When litigants receive a court's final determination, they should never be left wondering why an obligation was imposed.

> Rule 1:7-4(a) requires a judge, "by an opinion or memorandum decision, either written or oral, find the facts and state [all] conclusions of law . . . on every motion decided by a written order that is appealable as of right . . . ." Fodero v. Fodero, 355 N.J. Super. 168, 170 (App. Div. 2002). We emphasize a judge's failure to perform the fact-finding duty "constitutes a disservice to

> the litigants, the attorneys and the appellate court." Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (quoting Kenwood Assocs. v. Bd. of Adjustment Englewood, 141 N.J. Super. 1, 4 (App. Div. 1976)).
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> [Ricci v. Ricci, __ N.J. Super. __ (App. Div. 2017) (slip op. at 30-31).]

There is one exception to our determination. We reject this argument as it regards the cost for the younger child's bed, costing $2316.50 (D-41), because the October 26, 2011 order requires plaintiff to pay for "furnishings [for] summer housing," which would include furnishing during his summer fellowship. As to the remainder of the sums, we reverse the order as unsupported.

On remand, the trial judge must conduct further proceedings to reassess defendant's claims in light of the finding she failed to inform plaintiff before incurring the expenses. See Gac v. Gac, 186 N.J. 535, 547 (2006) ("[A] parent or child seeking contribution should initiate the application to the court before the expenses are incurred. The failure to do so will weigh heavily against the grant of a future application."). Further, the judge must provide factual findings and legal support imposing each obligation for reimbursement upon plaintiff. R. 1:7-4.

We turn to the sums ordered paid by plaintiff for the older child. When plaintiff moved for emancipation of the older child, he acknowledged although the child's education was completed, the

child had not secured employment. Plaintiff agreed he would assist with the older child's living expenses during an employment search. After sixteen months, plaintiff told the child his financial support would cease. Once defendant learned this, she commenced providing the emancipated child funds. The judge permitted her request for certain expenses to be paid by plaintiff, which included costs for the computer course, fast food, parking, clothing, car repairs, gasoline, towing costs, parking tickets and other fines, train and bus tickets, car washes, eyeglasses, and pharmacy expenses.

Plaintiff argues no order imposed a legal obligation to provide support once a child was declared emancipated, and he gratuitously paid well over what he was required. He suggests any post-emancipation funds spent by defendant were gifts to the children. Defendant disagrees and maintains the emancipation ordered was grounded on plaintiff's promise to satisfy 100% of the children's support needs.

These legal principles guide our review. "One of the fundamental concepts in American society is that parents are expected to support their children until they are emancipated, regardless of whether the children live with one, both, or neither parent." Ricci, supra, slip op. at 24 (quoting Burns v. Edwards, 367 N.J. Super. 29, 39 (App. Div. 2004) (citing Dunbar v. Dunbar,

190 U.S. 340, 351, 23 S. Ct. 757, 761, 47 L. Ed. 1084, 1092 (1903))). "However, the court's authority to impose support obligations is circumscribed: it terminates with a child's emancipation." Id. at 26. "Where there is no longer a duty of support by virtue of a judicial declaration of emancipation, no child support can become due." Ibid. (quoting Mahoney v. Pennell, 285 N.J. Super. 638, 643 (App. Div. 1995)). Quite simply, "a parent's responsibility to pay child support terminates when the child is emancipated." Gac, supra, 186 N.J. at 542 (citing Newburgh v. Arrigio, 88 N.J. 529, 542-43 (1982)).

The trial judge reached the conclusion plaintiff entered an agreement to voluntarily support the older child and cited Dolce v. Dolce, 383 N.J. Super. 11 (App. Div. 2006). We conclude Dolce is not dispositive because its holding was based on the parties' PSA requiring support until the children reached age twenty-three. Id. at 18. We also reject authority cited by the trial judge in his opinion, which enforced parental obligations when children, although past the age of majority, that is, age eighteen, remained unemancipated for purpose of child support. Importantly, circumstances presented in this appeal are significantly different from those cases precisely because an order legally emancipating the older child was entered. By definition emancipation means the

child was no longer legally dependent or entitled to receive support.

Here, we find no factual basis to conclude plaintiff engaged in a contract to provide unlimited support for the older child following the order of emancipation. Without explanation, the trial judge found plaintiff "legally promised to support the [older child] until he got a job." After combing the record, we find no facts that uphold this finding. We also note the trial judge invoked "equity" as a basis to uphold the obligation. However, "equity follows the law." Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp., 100 N.J. 166, 183 (1985).

During the 2011 motion hearing resulting in the older child's emancipation, plaintiff stated, "my plan is to continue to support [the older child] as [the child] looks for a job, and my plan is to do that as long as it makes sense, and if he gets an interim job[], then we'll talk about what he needs and I'm happy to do that." Plaintiff also asserted, "voluntary support does not negate emancipation." Similarly, defendant acknowledged "plaintiff does provide voluntary support[.]" The order of emancipation was unconditional, despite defendant's numerous arguments for why the child remained dependent. The judge specifically rejected her arguments because the child was living independently in Boston,

came home only occasionally, and chose to live away preferring "to stay on a couch rather than live home in New Jersey . . . ."

In her brief, defendant points to no document evincing plaintiff agreed to continue payments. The record citations she references are to her oral arguments and do not represent the judge's findings. In the 2011 motion colloquy, the judge informed defendant she could move to unemancipate the older child if circumstances changed; she chose not to do so. Further, her references to psychological or medical needs as deeming the child unemancipated are unsupported and amount to nothing more than bald assertions.

Following our review, we determine plaintiff continued providing support to the older child because he chose to. There is no basis to transform this voluntary act into a legal contract to reimburse defendant for any sums she decided to spend for the emancipated child's benefit. Because plaintiff had no legal obligation to provide for the older child's support after the September 1, 2011 date of emancipation, we conclude the order mandating plaintiff reimburse $10,309.20 for expenses incurred by defendant for the older child be reversed.

Again, there is one exception, that is the obligation to reimburse defendant $1440, advanced for the computer course of study. On that expense, although we agree defendant should have

informed plaintiff of this post-college specialized training, see Wanner v. Litvak, 179 N.J. Super. 607, 612 (App. Div. 1981) (holding an order emancipating a child may not necessarily prevent an order to pay higher education costs), we are satisfied the record sufficiently contains plaintiff's prior representations to assist both children in post-college study. Therefore, the order's provision of reimbursement of $1440 remains unaltered.

Finally, we consider plaintiff's challenge to pay a total of expenses defendant incurred for the younger child, following the child's college graduation but during graduate school attendance. We rely on our prior discussion ordering review on remand to discern whether plaintiff was obligated for three payments. As noted above, on remand, the judge must review the remaining sums and provide factual findings supporting any legal conclusions in light of plaintiff's arguments the sums were gifts or otherwise were defendant's obligations.

We affirm in part, reverse in part and remand for additional proceedings in part.