SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0091-16T1

VALERIE L. COLELLA,

Plaintiff-Appellant/
Cross-Respondent,

v.

HARRY C. COLELLA, JR.,

Defendant-Respondent/
Cross-Appellant.

Argued January 24, 2018 – Decided March 8, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Burlington County, Docket No. FM-03-0335-02.

Michael P. Sawka argued the cause for appellant/cross respondent.

Thomas J. Hurley argued the cause for respondent/cross appellant.

PER CURIAM

Plaintiff Valerie L. Colella appeals from a July 28, 2016 order, terminating child support, setting college contribution expenses, and reducing defendant Harry C. Colella's life insurance

requirement. For the reasons that follow, we affirm in part and reverse and remand in part.

We derive the following facts from the record. The parties were married on October 8, 1988, and divorced on May 13, 2003. Two daughters were born of the marriage, Courtney, age twenty-five, and Alexis, age nineteen. The May 13, 2003 dual final judgment of divorce (FJOD) incorporated the settlement terms reached by the parties, including custody, parenting time, child support, and life insurance. The parties agreed to joint legal custody of their then minor children with plaintiff designated as the parent of primary residence and defendant designated as the parent of alternate residence. Additionally, defendant agreed to pay plaintiff child support of $187 per week and to maintain $400,000 in life insurance, naming the minor children as beneficiaries, with the life insurance "allocated equally to each of the children."

A March 23, 2012 order held plaintiff responsible for twenty-eight percent of Courtney's college tuition and expenses, defendant responsible for the remaining seventy-two percent, and modified child support to $276 per week for Alexis because Courtney was attending college away from home. Through cost of living adjustments, child support increased to $287 per week as of July 16, 2016.

Notably, Courtney was emancipated in 2012, has since graduated from college, and is now a nurse. Alexis matriculated at West Chester University where she now lives during the academic year. Prior to starting college, Alexis resided with her mother who has been the parent of primary residence for most of her life.

On June 8, 2016, defendant filed a motion seeking, in relevant part, to: (1) eliminate or substantially reduce child support for Alexis based on her matriculation at college and his satisfaction of Jacoby[1] expenses; (2) require plaintiff to pay a portion of college expenses for Alexis; (3) take into consideration defendant's satisfaction of Prosper loans in the amount of $1841 per month for Courtney when calculating child support and college expense payments for Alexis; and (4) award him counsel fees and costs.

In his accompanying certification, defendant outlined Jacoby expenses he pays on behalf of Alexis "without judicial intervention," including college-related costs, auto repair, car insurance, cell phone, and medical expense payments. Defendant also alleged he signed Prosper loans, co-signed by Courtney, in the amount of $33,000, in an effort to consolidate debt he incurred contributing to Courtney's college education.

[1] Jacoby v. Jacoby, 427 N.J. Super. 109 (App. Div. 2012).

On June 29, 2016, plaintiff filed a cross-motion for an order: (1) denying defendant's motion in its entirety; (2) postponing the matter until defendant submitted an updated case information statement (CIS); (3) recalculating child support for Alexis; (4) requiring both parties to contribute to college tuition in accordance with the twelve Newburgh[2] factors; (5) adjusting medical expenses based on an income ratio; and (6) requiring defendant to provide proof of the $400,000 life insurance policy. Plaintiff also questioned the Prosper loans, claiming Courtney indicated no knowledge of the loans.

During oral argument, defendant contended he paid $17,000 annually in Jacoby expenses, including the car insurance, cell phone, computer, and "all of those other expenses," for the parties' daughter. Defendant argued his child support obligation should be reduced and his contribution should be made to Alexis directly rather than to plaintiff.

Plaintiff contended Alexis would be spending over forty percent of the year at home with her. This calculation was based on West Chester University's academic calendar, summer vacation, and overnights on weekends.

[2] Newburgh v. Arrigo, 88 N.J. 529 (1982).

Plaintiff argued the court miscalculated the child support and college expense contribution, contending defendant claimed an annual income of $213,000, yet his 2015 tax returns revealed a gross income of $226,000. Plaintiff further alleged the defendant received a raise and bonus in the first half of 2016, and earned additional income performing in a band. Finally, plaintiff argued her monthly income was overstated by failing to account for deductions. She claimed her monthly expenses exceeded her net income.

The trial court terminated child support for Alexis effective June 10, 2016, due to her residing on campus while attending college without conducting an analysis of the factors set forth in N.J.S.A. 2A:34-23(a). Instead, the court took into account defendant's alleged "satisfaction of the Jacoby expenses as outlined in his [c]ertification."

With regard to college expense contribution, the court considered the twelve Newburgh factors, the cost of West Chester University at $37,554 per year, and the $5500 student loan Alexis obtained. Calculating net tuition expenses at $16,027 per semester, the court reasoned:

> With these factors in mind, and in light of the parties' Case Information Statements', the [c]ourt finds it appropriate to compel the parties to apportion the cost of Alexis' college tuition and expenses on a percentage

> of income basis, after all loans, grants, scholarships and financial aid packages available are applied. The [c]ourt notes that for Courtney, the parties' first child, the [c]ourt previously ordered that, pursuant to the child support guidelines, [p]laintiff was responsible for 28% of Courtney's college tuition and expenses and [d]efendant was responsible for 72% of same for Freshman year and going forward. Accordingly, for Alexis the [c]ourt finds [p]laintiff's 2015 income is approximately $80,000.00 and [d]efendant's 2015 income is approximately $214,000. Based upon these figures and the facts found by the [c]ourt as set forth above, [p]laintiff shall be responsible for 27% of the college costs and tuition for Alexis and Defendant shall be responsible for 73% of the college costs and tuition for Alexis.

On July 28, 2016, the court issued an order: (1) terminating child support for Alexis effective June 10, 2016; (2) requiring plaintiff to contribute twenty-seven percent and defendant seventy-three percent of the college costs and tuition for Alexis; (3) granting defendant's request that his satisfaction of the Prosper loans for Courtney be considered when calculating college contribution for Alexis; (4) granting defendant's request to reduce his life insurance requirement due to Courtney's emancipation; (5) requiring defendant to be responsible for seventy-three percent of Alexis's unreimbursed medical expenses and plaintiff to be responsible for the remaining twenty-seven percent; (6) denying the parties' respective applications for an award of counsel fees; and (7) directing probation to modify its

records to reflect Courtney's emancipation effective June 10, 2016. This appeal followed.

On appeal, plaintiff raises the following arguments: (1) the trial court erred by terminating child support without considering all material facts, including the parties' actual income, number of overnights Alexis spends at plaintiff's residence, and the statutory factors under N.J.S.A. 2A:34-23(a); (2) the trial court erred by reducing defendant's life insurance obligation; and (3) this matter should be assigned to a different judge on remand. Defendant filed a notice of cross-appeal regarding the denial of his application for an award of counsel fees by the trial court and an award of counsel fees on appeal.[3]

We begin by recognizing our review of the Family Part's determinations regarding child support is limited. Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 587 (App. Div. 2016). "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare v. Cesare, 154 N.J. 394, 413 (1998). "We 'do not disturb the factual findings and legal

[3] We conclude defendant abandoned his cross-appeal because he failed to brief any argument relating to an award of counsel fees. See Zavodnick v. Leven, 340 N.J. Super. 94, 103 (App. Div. 2001) (indicating that the failure to present an argument relating to an appeal renders that appeal "abandoned").

conclusions of the [motion] judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Catabran, 445 N.J. Super. at 587 (alteration in original) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974)). While deference is accorded to the trial court as to factfinding, its "legal conclusions, and the application of those conclusions to the facts, are subject to our plenary review." Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013) (citing Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

"When reviewing decisions granting or denying applications to modify child support, we examine whether, given the facts, the trial judge abused his or her discretion." Jacoby, 427 N.J. Super. at 116 (citing Larbig v. Larbig, 384 N.J. Super. 17, 21 (App. Div. 2006); Loro v. Del Colliano, 354 N.J. Super. 212, 220 (App. Div. 2002)); see also J.B. v. W.B., 215 N.J. 305, 325-26 (2013). "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." Jacoby, 427 N.J. Super. at 116 (quoting Foust v. Glaser, 340 N.J. Super. 312, 315-16 (App. Div. 2001)).

The Family Part's "substantial discretion" in determining child support applies equally to compelling a parent to contribute to their child's college costs. Catabran, 445 N.J. Super. at 588 (citing Gotlib v. Gotlib, 399 N.J. Super. 295, 308 (App. Div. 2008)). We must accept the Family Part's determination concerning a parent's obligation to contribute toward college tuition provided the factual findings are supported by substantial credible evidence in the record and the judge has not abused his or her discretion. Ibid. (citing Gac v. Gac, 186 N.J. 535, 547 (2006); Cesare, 154 N.J. at 411-12).

We are asked to review whether child support should be terminated when a child resides on campus while attending college. Plaintiff claims the trial court erred by terminating child support for Alexis solely because she was living on campus while attending college. Plaintiff contends the trial court failed to assess all applicable facts and weigh the factors set forth in N.J.S.A. 2A:34-23(a). Plaintiff further argues the court's failure to consider discrepancies in the parties' financial information amounts to plain error, mandating reversal and remand.

A "child's attendance at college is a change in circumstances warranting review of the child support amount. However, there is no presumption that a child's required financial support lessens because he or she attends college." Jacoby, 427 N.J. Super. at

113. As we recognized in Jacoby, "[t]he payment of college costs differs from the payment of child support for a college student." Id. at 121. Although child support needs lessen in certain respects, such as room and board, which are college costs, other necessary expenses may remain the same or actually increase when a child goes to college. Ibid. These necessary expenses typically include: transportation, furniture, clothing, linens and bedding, telephone, supplies, sundries, toiletries, insurance, entertainment, and spending money. Ibid. The student's ability to contribute to those expenses must also be considered. Id. at 122. We have also recognized "the possible continued need to maintain a residence for a child who returns home from college during school breaks and vacations." Id. at 121 (citing Hudson v. Hudson, 315 N.J. Super. 577, 585 (App. Div. 1998)).

Because child support determinations in this context are fact-sensitive, "courts faced with the question of setting child support for college students living away from home must assess all applicable facts and circumstances, weighing the factors set forth in N.J.S.A. 2A:34-23(a)." Id. at 113.

N.J.S.A. 2A:34-23(a) requires the court to consider:

> (1) Needs of the child;
>
> (2) Standard of living and economic circumstances of each parent;

> (3) All sources of income and assets of each parent;
>
> (4) Earning ability of each parent . . . ;
>
> (5) Need and capacity of the child for education, including higher education;
>
> (6) Age and health of the child and each parent;
>
> (7) Income, assets and earning ability of the child;
>
> (8) Responsibility of the parents for the court-ordered support of others;
>
> (9) Reasonable debts and liabilities of each child and parent; and
>
> (10) Any other factors the court may deem relevant.

In rendering the decision to terminate child support for Alexis, the trial court erred by basing its decision exclusively on the Jacoby expenses allegedly paid by defendant without assessing the expenses incurred by plaintiff and weighing the statutory factors. Accordingly, we reverse the order terminating child support and remand for further proceedings. On remand, the calculation of child support for Alexis must be based on an evaluation of the factors enumerated in N.J.S.A. 2A:34-23(a) in light of the facts and circumstances presented. The evaluation should include consideration of the costs associated with maintaining a residence for Alexis during school breaks and

vacations. See Hudson, 315 N.J. Super. at 585. It should also include consideration of the aforementioned "child support expenses [which] remain even when a child heads to college." Jacoby, 427 N.J. Super. at 121. We defer to the trial judge to determine whether a plenary hearing must be conducted.

Plaintiff also contends the trial court erred in calculating the college expense contribution responsibility of each party. Applying our deferential review standard, we conclude plaintiff's challenges to the trial court's decision lack merit. The trial court appropriately considered the Newburgh factors, including the parties' respective incomes and budgets. The court's analysis and findings are supported by the record. We discern no abuse of discretion and affirm the college contribution ruling.

We next address plaintiff's argument the trial court erred by reducing defendant's life insurance requirement from $400,000 to $200,000. We discern no abuse of discretion. The FJOD requires defendant "to maintain $400,000.00 in life insurance naming the minor children as beneficiary." It further provides: "This life insurance shall be allocated equally to each of the children." Courtney has finished college, is employed as a nurse, and is emancipated. Consequently, there is no need for defendant to maintain life insurance as to Courtney. Accordingly, the trial court properly reduced defendant's life insurance requirement by

one-half since the life insurance is "allocated equally" to each child.

Finally, we address plaintiff's argument that a different judge should be assigned on remand to preserve the appearance of a fair and unprejudiced hearing. Plaintiff contends a fresh judicial examination is warranted because the judge did not question the validity of defendant's financial statements. Plaintiff also expresses concern over the judge's potential commitment to his prior findings. We are unpersuaded by this argument. The judge did not conduct a testimonial plenary hearing, weigh the credibility of witnesses, or make findings about a party's intent. Therefore, we find no basis to direct that on remand the matter be assigned to a different judge. See Brown v. Brown, 348 N.J. Super. 466, 493 (App. Div. 2002).

Affirmed in part, reversed and remanded in part. We do not retain jurisdiction.