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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0228-16T2

MEHRVASH WEAVER,

Plaintiff-Respondent,

v.

RONALD WEAVER,

Defendant-Appellant.

Argued November 28, 2017 – Decided February 27, 2018

Before Judges Sumners and Moynihan.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Morris County,
Docket No. FM-14-0806-00.

Michael L. Wojcik argued the cause for
appellant (Hollander, Strelzik, Pasculli,
Hinkes, Wojcik, Gacquin, Vandenberg & Hontz,
LLC, attorneys; Michael L. Wojcik and Alan
Strelzik, on the brief).

Arlene F. Albino argued the cause for
respondent (Albino & Clark, LLC, attorneys;
Arlene F. Albino, on the brief).

PER CURIAM

In an order of August 3, 2016, the Family Part judge denied defendant Ronald Weaver's motion to modify or terminate his permanent alimony obligation under N.J.S.A. 2A:34-23(j)(3), determining that the statute did not address alimony obligations through court order issued or agreement entered into prior to the statute's enactment. Before us, defendant contends the judge misinterpreted the statute, and requests that we reverse by ordering that his alimony obligation be terminated effective upon the date of his motion, or in the alternative, remand so that discovery can be conducted and followed by a hearing to determine if alimony should be modified or terminated.¹ We agree with defendant's alternate request and remand for further proceedings.

In 2002, the parties' dual judgment of divorce was entered. Two years later, a separation and property settlement agreement was incorporated into the judgment. Under the agreement's terms, defendant was obligated to pay alimony to plaintiff Mehrvash Weaver until "such time as either party dies, [plaintiff] remarries and/or an Order of the Superior Court of New Jersey suspends or terminates

¹ The judge granted plaintiff's cross-motion directing defendant to complete the rollover of her portion of defendant's pension funds, but denied her request for an award of counsel fees and costs in connection with defendant's application. Neither decision was appealed.

alimony consistent with the existing New Jersey case and statutory law respecting the issue of alimony."

In May 2016, defendant, sixty-six years old and in anticipation of his planned retirement four years later, filed a motion under N.J.S.A. 2A:34-23(j)(3) to terminate or reduce his alimony obligation to plaintiff. Almost two years prior on September 10, 2014, our legislature had amended the alimony statute, N.J.S.A. 2A:34-23. A new subsection (j) was added that was effective immediately, which began by stating: "Alimony may be modified or terminated upon the prospective or actual retirement of the obligor." N.J.S.A. 2A:34-23(j). In addition, N.J.S.A. 2A:34-23(j)(3), provides, in pertinent part:

When a retirement application is filed in cases in which there is an existing final alimony order or enforceable written agreement established prior to the effective date of this act, the obligor's reaching full retirement age as defined in this section shall be deemed a good faith retirement age.

The provision goes on to indicate the factors a court must consider to determine whether to grant a request to modify or terminate alimony.²

² In its entirety, N.J.S.A. 2A:34-23(j)(3) states:

(3) When a retirement application is filed in cases in which there is an existing final

alimony order or enforceable written agreement established prior to the effective date of this act, the obligor's reaching full retirement age as defined in this section shall be deemed a good faith retirement age. Upon application by the obligor to modify or terminate alimony, both the obligor's application to the court for modification or termination of alimony and the obligee's response to the application shall be accompanied by current Case Information Statements or other relevant documents as required by the Rules of Court, as well as the Case Information Statements or other documents from the date of entry of the original alimony award and from the date of any subsequent modification. In making its determination, the court shall consider the ability of the obligee to have saved adequately for retirement as well as the following factors in order to determine whether the obligor, by a preponderance of the evidence, has demonstrated that modification or termination of alimony is appropriate:

(a) The age and health of the parties at the time of the application;

(b) The obligor's field of employment and the generally accepted age of retirement for those in that field;

(c) The age when the obligor becomes eligible for retirement at the obligor's place of employment, including mandatory retirement dates or the dates upon which continued employment would no longer increase retirement benefits;

(d) The obligor's motives in retiring, including any pressures to retire applied by the obligor's employer or incentive plans offered by the obligor's employer;

In his statement of reasons accompanying the order denying defendant's motion, the judge found that neither termination nor modification of alimony was available under N.J.S.A. 2A:34-23(j)(3) because the provision failed to mention prospective retirement as in N.J.S.A. 2A:34-23(j)(2).³ In determining the interpretation of a statute, our review is de novo. State v. Frank, 445 N.J. Super. 98, 105 (App. Div. 2016). We agree with defendant that the judge misinterpreted N.J.S.A. 2A:34-23(j)(3)

(e) The reasonable expectations of the parties regarding retirement during the marriage or civil union and at the time of the divorce or dissolution;

(f) The ability of the obligor to maintain support payments following retirement, including whether the obligor will continue to be employed part-time or work reduced hours;

(g) The obligee's level of financial independence and the financial impact of the obligor's retirement upon the obligee; and

(h) Any other relevant factors affecting the parties' respective financial positions.

³ N.J.S.A. 2A:34-23(j)(2) provides, in pertinent part, that the court must determine "whether the obligor has met the burden of demonstrating that the obligor's prospective or actual retirement is reasonable and made in good faith. . . ."

in deciding not to consider his request to terminate or modify his alimony obligations.

When we construe a statute, "our overriding goal is to determine as best we can the intent of the Legislature, and to give effect to that intent." Bermudez v. Kessler Inst. for Rehab., 439 N.J. Super. 45, 50 (App. Div. 2015) (citations omitted). We begin by looking at a statute's plain language. Patel v. N.J. Motor Vehicle Comm'n, 200 N.J. 413, 418 (2009). A statutory provision "should not be read in isolation, but in relation to other constituent parts so that a sensible meaning may be given to the whole of the legislative scheme." Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572 (2012). In considering a statute's language, we are guided by the legislative directive in N.J.S.A. 1:1-1 that "words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language." Where "ambiguity in the statutory language . . . leads to more than one plausible interpretation, we may turn to extrinsic evidence, including legislative history, committee reports, and contemporaneous construction." DiProspero v. Penn, 183 N.J. 477, 492-93 (2005) (citations omitted).

Here, the statutory language is clear; there is no need to use extrinsic evidence to determine its applicability to defendant's motion. We discern no conflict in the statutory language as the judge did. The introductory language of N.J.S.A. 2A:34-23(j), which unambiguously states "[a]limony may be modified or terminated upon prospective or actual retirement of the obligor," clearly applies to the immediately subsequent subsections (1), (2), and (3). Under the judge's narrow interpretation of N.J.S.A. 2A:34-23(j)(3), no relief would be available to an alimony obligor prospectively applying for termination or modification based on retirement whose final order or enforceable agreement existed before the statute's effective date of September 10, 2014. This would bar relief under the amendment expressly created by the Legislature for an obligor, such as defendant, because termination or modification of alimony under N.J.S.A. 2A:34-23(j)(3) applies to an "existing final alimony order or enforceable written agreement established prior to the effective date of this act." The absence of the words "prospective retirement" in N.J.S.A. 2A:34-23(j)(3), does not preclude defendant's motion because these words are stated in the introductory statement.

We remand this matter for consideration of defendant's motion to terminate or modify his alimony obligation under N.J.S.A. 2A:34-

23(j)(3). In doing so, we decline defendant's request that we exercise our discretion to take original jurisdiction, under Rule 2:10-5, and decide the merits of his motion. Thus, the Family Part judge will consider the parties' substantive arguments that were raised but not considered on appeal. The parties will be able to supplement their arguments based upon their respective circumstances that may have changed since the motion was denied almost eighteen months ago without consideration of the merits.

Reversed and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION