NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0724-16T2

SARAH B. BISER,

Plaintiff-Respondent,

v.

RICHARD L. LEVINE,

Defendant-Appellant.

Argued May 8, 2018 – Decided May 29, 2018

Before Judges Reisner, Hoffman and Mitterhoff.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FM-20-0350-98.

Jennifer L. Young argued the cause for appellant (Dughi, Hewit & Domalewski, PC, attorneys; Jennifer L. Young, on the briefs).

Sarah B. Biser, respondent, argued the cause pro se.

PER CURIAM

In this post-judgment matrimonial case, defendant Richard L. Levine appeals from a July 12, 2016 order, requiring him to pay plaintiff Sarah B. Biser $119,712, as defendant's share of the

first three years of their oldest daughter's graduate school expenses, and requiring defendant to pay $39,459.50 toward the cost of the fourth year; a September 27, 2016 order, denying defendant's motion for reconsideration; and a February 7, 2017 judgment in favor of plaintiff for $119,712. With one exception, set forth below, we affirm the orders and judgment on appeal, substantially for the reasons set forth in the trial judge's cogent statements of reasons.

The arbitration award, on which the July 12, 2016 order was based, set forth only certain specific categories of educational expenses that defendant was required to pay. The trial court erred in requiring defendant to pay for items not set forth in the arbitration award. Therefore, the July 12, 2016 order and the February 7, 2017 judgment are modified to disallow those items. We remand to the trial court for the sole purpose of amending the July 12, 2016 order and the February 7, 2017 judgment to delete the specific expenses disallowed in this opinion.

I

This appeal is the latest chapter in the parties' seemingly endless post-judgment matrimonial litigation. The history is set forth in the trial judge's written statements of reasons, and in our opinion deciding a prior appeal. See Biser v. Levine, No. A-

3318-13 (App. Div. Feb. 8, 2016), certif. denied, 227 N.J. 120 (2016). A brief summary will suffice for purposes of this opinion.

The parties engaged in prolonged arbitration of certain financial issues relating to their divorce, including traditional arbitration before a first arbitrator, followed by appellate arbitration before a second arbitrator. The first arbitrator's award required each party to pay fifty percent of "the expenses directly related to college and graduate school" for their three children. Erring on the side of specificity, in light of the parties' seemingly unlimited ability to litigate over any ambiguity, the arbitration order defined "college related expenses" and "graduate school expenses" as "tuition, room and board, books, lab fees and one-round trip to the location of the college each semester."

The arbitration award also specified that defendant's fifty percent would be equal to "the aggregate amount of the respective institution's published website numbers for tuition, room and board, books, lab fees and one-round trip to the location of the institution (if out of town), without any requirement of verification by [plaintiff] or the child involved." (emphasis added). Finally, the award allowed either party to make an application to the Superior Court if either believed the other was

"abusing the procedure or if the reliance on the website numbers create[d] some unanticipated problem . . . ."

The appellate arbitrator affirmed the award with one modification not pertinent here. The trial court set aside the awards, concluding that the arbitrators "exceeded their authority and violated public policy" when they required defendant to pay for an emancipated child's graduate school expenses. On appeal, we reversed that decision, holding that the arbitrators did not exceed their authority, and the awards would not be set aside based on an asserted mistake of law or as contrary to public policy. Biser, slip op. at 13-21. We remanded to the trial court, for the limited purpose of entering an order confirming the arbitration awards and vacating a counsel fee award. Id. at 30.

In the next round of litigation, which gave rise to this appeal, the parties disagreed over how to calculate defendant's share of the daughter's expenses for the first three years of graduate school.[1] Plaintiff claimed that the cost was $119,712. Included in this amount were: tuition, library and technology fees, books and supplies, instruments, room and board, transportation, medical and dental out of pocket expenses, major

[1] By this time, the case had been assigned to another trial judge.

medical insurance,[2] miscellaneous, and estimated loan fees. For the fourth year, the parties disagreed as to those same items, plus expenses for residency applications and travel.[3]

Defendant contended that plaintiff's calculation included amounts not required by the arbitration award, and that the daughter was not actually incurring certain of the allowable costs listed on the school's website, such as room and board. In a brief filed with the trial court on June 23, 2016, defendant contended that the total amount he owed was $97,746. However, despite admitting he owed that amount, defendant, a senior partner in a major law firm, failed to pay, claiming he could not afford it.

The trial court ordered defendant to pay $119,712 within twenty-one days. The court also ordered that defendant pay $39,459.50 for the daughter's final year of medical school. The court reasoned that the arbitration award specifically did not require plaintiff to verify that she had paid her share of the expenses or to verify the daughter's actual expenses. The court

---

[2] While the estimated cost of attendance did not list a specific amount for major medical insurance, on the "Account Summary by Term" page, there is a cost of $2309 per semester for United Healthcare for a total of $4618 per year.

[3] The residency-related expenses were only included in the estimated cost of attendance for the fourth year of medical school.

also rejected defendant's contentions that the website estimates were high, because "the attempt to litigate every line item [was] precisely what the arbitrator sought to avoid by specifically requiring use of the website numbers." Finally, the trial court rejected defendant's argument that he could not pay plaintiff a lump sum, because defendant did not submit any documentation demonstrating his inability to pay.

Defendant filed a motion for reconsideration. In his reply to plaintiff's opposition to the reconsideration motion, defendant submitted a case information statement (CIS). The trial court denied the reconsideration motion, reasoning that "[t]he majority of the evidence provided to the [c]ourt was available when the underlying motion was decided," and the CIS could have been submitted with the original motion. The court also noted that "both the arbitrator and appellate arbitrator predicted the very argument raised now by [d]efendant and, therefore, made it clear that 'verification' of the web site expenses would not be a precedent to payment."

II

On this appeal, defendant raises the following arguments:

> I. THE TRIAL COURT ERRED IN EXPANDING THE PLAIN LANGUAGE OF THE FINAL ARBITRATION AWARD TO GRANT MS. BISER REIMBURSEMENT OF EXPENSES NOT PROVIDED FOR IN THE FINAL ARBITRATION AWARD

II. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING MR. LEVINE'S RIGHT TO INVOKE PARAGRAPH 15 OF THE FINAL ARBITRATION AWARD AND NOT REQUIRE MS. BISER TO PROVIDE PROOF OF DANIELLE'S MEDICAL SCHOOL EXPENSES

III. THE TRIAL COURT ERRED BY REQUIRING A LUMP SUM PAYMENT WITHOUT CONDUCTING A PLENARY HEARING TO DETERMINE MR. LEVINE'S ABILITY TO PAY AND WITHOUT CONSIDERING MR. LEVINE'S CASE INFORMATION STATEMENT

IV. THIS MATTER MUST BE REMANDED TO A DIFFERENT TRIAL JUDGE GIVEN THE TRIAL JUDGE'S PARTIALITY AND PREMATURE FINDINGS OF FACT

In the first point of his brief, defendant contends that the following items — which plaintiff included in her calculation of the educational expenses — are not included in the arbitration award: "medical insurance, loan fees, medical and dental expenses, unspecified 'fees,' and 'miscellaneous fees.'" As plaintiff acknowledges, defendant is also challenging a separate $1250 charge that only applies to the fourth year's expenses. Defendant argues that the trial court erred in including all of those items in the judgment.[4]

We agree with defendant that the trial court erred in awarding plaintiff amounts that were not within the strict and specific terms of the arbitration award. As we recognized in our earlier opinion, and as the trial court acknowledged, the arbitrators

[4] Objections not raised on this appeal are waived.

anticipated the need for specificity, knowing that these parties would litigate over any possible ambiguity. Accordingly, the arbitration award carefully delineated which specific items listed on the school website were included in defendant's payment obligation.

The arbitration order defined that obligation as fifty percent of "the [educational] institution's published website numbers for tuition, room and board, books, lab fees and one-round trip to the location of the [institution] each semester." The medical school's website lists the following expenses, not all of which are included in the arbitration award: tuition, library and technology fees, books and supplies, instruments, room and board, transportation, medical-dental (out of pocket), major medical insurance, residency application/travel, miscellaneous, and estimated loan fees. The medical-dental out of pocket expenses, major medical insurance, residency applications and residency-related travel,[5] miscellaneous, and estimated loan fees are not included in the arbitration award, and hence, defendant is not required to pay those amounts.

---

[5] As previously noted, the $1250 in residency-related expenses are only included in the fourth year expenses, not in the $119,712 that defendant was ordered to pay for the first three years' expenses.

Plaintiff contends that those items should be considered as part of "tuition." We disagree. The arbitration award specified exactly what the parties were required to pay and what their obligations were.[6] That clarity benefits both sides, and both sides must live with it. Plaintiff does not have to provide defendant with verification that she has paid her share of the expenses, nor does she have to prove to defendant that the daughter actually incurred the level of allowed expenses listed on the school website. On the other hand, defendant does not have to pay expenses not specifically listed in the arbitration award, even if those expenses are listed on the website.

Accordingly, the July 12, 2016 order and the February 7, 2017 judgment must be amended to delete the amounts for medical-dental out of pocket expenses, major medical insurance, miscellaneous, and estimated loan fees. For the fourth-year expenses, as reflected in the July 12, 2016 order, residency applications and residency-related travel must also be deleted. We remand for that limited purpose.

After reviewing the record in light of the applicable legal standards, we conclude that defendant's remaining arguments are

[6] Notably, the award also provided that either parent could voluntarily agree to pay for additional expenses.

without sufficient merit to warrant discussion. See R. 2:11-3(e)(1)(E). We add only these brief comments.

Defendant did not file an application with the trial court under paragraph fifteen of the arbitration award. But, even if he had, that paragraph does not entitle him to relitigate issues already decided by the arbitrators and this court. In particular, defendant cannot relitigate his underlying obligation to pay for his emancipated daughter's graduate school tuition, a subject thoroughly addressed in our prior opinion. See Biser, slip op. at 13-21.

The trial court was well within its discretion in requiring defendant to make a lump sum payment, and in declining to consider a CIS submitted for the first time on defendant's reconsideration motion. See Palombi v. Palombi, 414 N.J. Super. 274, 288-89 (App. Div. 2010). There is no basis to disqualify the trial judge.

Affirmed in part, modified and remanded in part. 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