SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0807-16T1

RICHARD H. WOLFF, JR.,

Plaintiff—Appellant,

v.

DIANA M. WOLFF,

Defendant-Respondent.

Submitted November 15, 2017 — Decided March 28, 2018

Before Judges Nugent and Currier.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FM-02-0634-08.

Sunshine, Atkins, Minassian, Tafuri, D'Amato & Beane, PA, attorneys for appellant (Marvin H. Sunshine and Raquel M. Freitas, on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff, Richard H. Wolff, Jr., appeals from certain provisions of a Family Part order that granted his motion to have the court declare his youngest child emancipated. He challenges

the order's provisions that denied his applications to terminate his child support obligation as of the emancipation date and to compel defendant to pay the share of the child's college expenses she agreed to pay when she signed the parties' property settlement agreement (PSA).

In rendering its decision, the trial court misapprehended plaintiff's argument concerning termination of child support and, in part, based its decision concerning defendant's contractual obligation to contribute toward college expenses on facts unsupported by the record. For these reasons, we vacate the order's second and third paragraphs. We also vacate the order's fourth paragraph denying plaintiff counsel fees, an issue that will require resolution after further proceedings. We remand the matter to the trial court to address and resolve all issues other than emancipation, which has been decided and is final.

The parties married in June 1984 and divorced in November 2007. The Final Judgment of Divorce (FJOD) incorporated a PSA that obligated plaintiff to pay child support for the parties' two children. In addition, both parties agreed to contribute toward the children's college educations. When the parties signed the PSA, their youngest child was a high school senior. According to the PSA, the parties believed the child would receive a full or partial college scholarship. They thus agreed to the following:

> [The child] will apply for all scholarships, loans, grants and/or financial aid, that may be available to her. Application for same will be with the assistance and aid of the Husband and the Wife. To the extent that the source of financial aid/assistance is insufficient to cover all . . . reasonable college costs then . . . the balance will be paid by the parties in proportion to their income, taking into account the net of alimony paid by the Husband and including the alimony received by the Wife.

Nine years later, on June 14, 2016, the child having become an adult, plaintiff filed the motion at issue. According to his supporting certification, the child attended the first two years of college at the University of Rhode Island and the second two years at the University of Arizona.

Plaintiff averred — and supported with documentary evidence — the expenses for the child's first two years were funded in part by three NJCLASS loans offered through the New Jersey Higher Education Assistance Authority in the amounts of $28,000, $25,626, and $5460. The expenses for the second two years were funded in part by two loans in the amounts of $33,304 and $4987. Plaintiff explained defendant prepared the loan applications for the first two loans but asked plaintiff to sign them "as she was advised that she would not be accepted as a co-signer." Plaintiff also explained that with the interest applied to the principal balances, the loans totaled $220,285.60. In addition to the loans, plaintiff

assisted the child with rental payments during the child's senior year at college.

The child did not complete her undergraduate education. Several years after leaving the University of Arizona, the child began to pursue anew an Associate's Degree. Plaintiff was able to defer, for the most part, repayment of the loans. When he filed his motion in 2016, he sought contribution from defendant not only for repayment of the child's loans, but also $2,050 in other expenses he incurred on behalf of the child's education, as well as $5334.71 in expenses he had incurred for college expenses for the older child.

Plaintiff submitted a case information statement (CIS) with his motion and pointed out that he was paying defendant $2200 in alimony. He sought an order granting the following relief: emancipating the child and terminating his child support obligation "effective the date of filing of the plaintiff's application"; compelling defendant to repay child support paid after the effective date of the child's emancipation; "establishing the parties' respective responsibilities" to pay for the child's college expenses; directing defendant to provide a CIS and other financial information; directing defendant to reimburse plaintiff her share of past college expenses paid by plaintiff and

contribute her share of any future college expenses; and awarding him counsel fees and costs.

Defendant did not oppose the motion and the court did not entertain oral argument. On August 5, 2016, the court issued an order and written reasons granting the motion in part and denying it in part. According to the order, the court granted "[p]laintiff's request to emancipate the parties' child" effective June 14, 2016; denied "[p]laintiff's request for reimbursement of overpaid child support"; denied "[p]laintiff's request that [d]efendant share in the payment of [the child's] loans going forward"; and denied "[p]laintiff's request for counsel fees and costs." The order contained no provision concerning plaintiff's request to compel defendant to comply with the PSA and pay her agreed-upon share of the child's past college expenses, but the court denied the request in the written statement of reasons that accompanied the order.

In the written statement of reasons accompanying the order, the court noted, "[p]laintiff requested reimbursement for his overpaid child support that accumulated since 2012." The court denied this relief because plaintiff had waited nearly four years to file his motion for emancipation. The court misapprehended plaintiff's request for relief. Plaintiff did not seek reimbursement for child support he had paid since 2012; rather,

he sought termination of his child support obligation only as of the date of the child's emancipation, June 14, 2016, which was also the date he filed the motion.

Paragraph three of the court's order states, "[p]laintiff's request that [d]efendant share in the payment of [the child's] loans going forward is hereby DENIED." In contrast, the written statement of reasons provides, "[f]or the foregoing reasons, the [c]ourt denies the [plaintiff's] request to compel [defendant] to contribute to the [child's] loans or college costs that have already been incurred. However, moving forward, the parties are ordered to comply with the terms of their [PSA]." As previously noted, the order does not address defendant's obligation to contribute toward repayment of the outstanding loans.

According to the court's written statement of reasons, it denied plaintiff's request for contribution toward the child's student loans for two reasons. When "[p]laintiff cosigned the loan, he never attempted to contact [d]efendant to request that [defendant] also cosign on a loan . . . . Moreover, [p]laintiff failed to bring a motion at that time to compel the defendant to contribute toward [the child's] college costs."

We vacate paragraphs two through four of the order for three reasons. First, the court misapprehended the date plaintiff sought

termination of his child support obligation, and thus did not address the actual application.

Second, the court relied on facts either unsupported or contradicted by the record in denying plaintiff's motion to compel defendant to comply with the PSA concerning the child's outstanding loans. The court determined plaintiff never contacted defendant to request she cosign the loans. This overlooks plaintiff's certification that defendant actually prepared two of the applications but told plaintiff she had been informed she would not be accepted as a co-signer. The oversight requires reversal. See Gotlib v. Gotlib, 399 N.J. Super. 295, 308-09 (App. Div. 2008).

Third, the order denying plaintiff's application to have defendant contribute toward future college expenses is contradictory to the written statement of reasons, which granted the relief. Yet, in its statement of reasons, the court did not explain the basis for its decision to compel a parent to contribute toward the college expenses of an emancipated child.

On remand, the court must determine whether to grant or deny plaintiff's request that his child support be terminated as of the date he filed the motion for his child's emancipation. The statutory bar against retroactively reducing child support payments contains an exception for "the period during which there is a pending application for modification, but only from the date

the notice of motion was mailed either directly or through the appropriate agent." N.J.S.A. 2A:17-56.23a; accord, Mahoney v. Pennell, 285 N.J. Super. 638, 639 (App. Div. 1995) (holding the statutory bar does not apply to retroactive termination of the support obligation based on the emancipation of a child where the date of emancipation occurs after the statute's effective date). In making its determination, the court may consider such factors as whether retroactive termination will result only in extinguishing arrearages or require plaintiff to repay child support previously paid and, if the latter, the parties' financial conditions, as well as any other equitable factors.

As to defendant's contractual obligation to contribute to the child's college expenses, on remand the court should bear in mind that as a general proposition "[s]ettlement of disputes, including matrimonial disputes, is encouraged and highly valued in our system." Quinn v. Quinn, 225 N.J. 34, 44 (2016) (quoting Konzelman v. Konzelman, 158 N.J. 185, 193 (1999)). "Therefore, 'fair and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed.'" Ibid. (quoting Konzelman, 158 N.J. at 193-94).

True, as the trial court correctly noted, a parent's failure to request of the other parent contribution toward college expenses before the expenses are incurred, and before the parent seeking

contribution moves to terminate his or her child support obligation, are significant factors. Gac v. Gac, 186 N.J. 535, 546-47 (2006). But they are not dispositive. Significantly, in Gac, the judgment of divorce "was silent concerning the obligations of the parties toward the college expenses of the children." Gac v. Gac, 351 N.J. Super. 54, 56 (App. Div. 2002), rev'd, 186 N.J. at 548. In contrast, in the case before us, the parties resolved the issue of contribution for college expenses when their child was a senior in high school, well in advance of when the expenses were incurred. See Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 589 (App. Div. 2016) ("Absent compelling reasons to depart from the clear, unambiguous, and mutually understood terms of the PSA, a court is generally bound to enforce the terms of a PSA." (citations omitted)).

What's more, the record demonstrates that but for defendant's disqualification as a co-signor of the loans, she would have assumed responsibility for repaying them when the applications for the loans were made. And the deferral of the repayments appears to have resulted in most of the repayment installments not being due as of the time plaintiff filed the motion.

We are not suggesting how this issue should ultimately be decided. We offer these observations solely for the guidance of the parties and the court on remand.

Last, on remand, the court should clarify its decision concerning defendant's obligation to provide support by contributing to the college expenses of the now emancipated child.

Paragraphs two, three, and four of the August 5, 2016 order are vacated and this matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

Vacated in part and remanded in part.