SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0988-16T3

LAURIE NUSSBAUM,

Plaintiff-Respondent,

v.

ALAN NUSSBAUM,

Defendant-Appellant.

Submitted March 1, 2018 – Decided May 23, 2018

Before Judges Rothstadt and Gooden Brown.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-1702-05.

George G. Gussis, attorney for appellant.

Mandelbaum Salsburg, PC, attorneys for respondent (Elisabete M. Rocha, on the brief).

PER CURIAM

In this post-judgment dissolution action, defendant Alan Nussbaum appeals from the portions of the Family Part's October 14, 2016 order that denied his motion, without prejudice, to vacate an earlier order regarding the payment of a debt and to compel

plaintiff, Lori Nussbaum, to reimburse defendant for a portion of their children's college expenses. The motion judge denied the application because he found defendant did not satisfy the requirements of Rule 4:50-1, and defendant failed to raise his claim in earlier motions when the court addressed the issue of college expenses.

On appeal, defendant contends that the motion judge ignored a 2005 pendente lite order finding the debt to be jointly owed by the parties, and erred by requiring him to reimburse plaintiff for the full amount of the debt, which could have been compromised at a lesser amount if paid earlier. He also argued that the judge improperly denied his motion for college cost reimbursement and considered an uncertified certification from plaintiff in deciding the motion. We find no merit to these contentions and affirm.

The facts set forth in the motion record are summarized as follows. The parties married in 1989. Two children were born to the parties, a son in 1990 and a daughter in 1992. The marriage ended on July 25, 2007 when the court entered a final judgment of divorce (FJOD) that incorporated the parties' marital settlement agreement (MSA). The agreement required the parties to pay for their children's college expenses "in proportion to the parties' then income." As to their debts, the MSA stated that upon the sale of the former marital premises, they would "pay any and all

credit card bills as of the date of the . . . [c]omplaint for [d]ivorce" and they would each "be responsible for any and all credit card debt they incur[red] in their own name and shall hold each other harmless from any debt they have created in each other's name since the filing of the [c]omplaint for [d]ivorce."

Earlier, on May 17, 2005, the court entered a pendente lite order denying plaintiff's request that defendant pay a debt owed to the Bank of New York (BNY), which totaled $6992.65 "because [it was] a marital debt."

After the entry of the FJOD, the parties engaged in extensive motion practice that resulted in numerous orders, including orders that addressed both the BNY debt and their children's college expenses. In response to a motion filed by plaintiff that defendant opposed through counsel, the court issued a December 19, 2014 order that established a seventy-nine percent to twenty-one percent allocation of the costs associated with a college summer program that their daughter attended before she was emancipated, and directed defendant to reimburse plaintiff for the expense in accordance with earlier orders. Although defendant opposed the motion that led to the order, he never filed a cross-motion seeking reimbursement for any college expenses he paid through 2014.

In 2015, plaintiff filed motions addressing the BNY debt that had been reduced to a judgment only against plaintiff and in favor

of BNY's successor, First American Accepco. Each of her motions were served on defendant's counsel who had opposed plaintiff's earlier motion about the college summer program expense.

In response to plaintiff's first motion about the debt, on May 8, 2015, the court considered plaintiff's written submissions and denied plaintiff's unopposed motion for defendant to pay the outstanding BNY debt. The court found that plaintiff's proofs were insufficient to establish defendant's liability.

Plaintiff filed a motion for reconsideration that the court also denied without prejudice on July 10, 2015. The court's order noted that defendant had not filed any written opposition, but that he was represented by counsel and that the court considered oral argument before deciding the motion.[1] The order continued by stating that plaintiff's motion was untimely, but granted her permission to file another motion based on the new documents she supplied with her reconsideration motion. In the same order, the court observed that it had "learned that [d]efendant lives in New York and works in Connecticut." Based on that information, the court imposed a monetary sanction against defendant for his failure to reimburse plaintiff for the college expense it previously ordered him to pay. No appeal was ever filed from that order.

[1] We have not been provided with transcripts from any oral argument relating to any motion that we discussed in this appeal.

Plaintiff followed the court's instruction and on July 27, 2015, filed another motion regarding the BNY debt, on notice to defendant's attorney who appeared at the last motion. In the court's September 1, 2015 order granting plaintiff's motion, the court directed that defendant pay to plaintiff $12,543.74, the amount of the BNY judgment entered against plaintiff. The order stated that copies of the court's order as prepared by the court were "faxed and mailed to the parties or their . . . counsel[.]" Defendant never appealed from the order.

Three days later, the court entered another order in response to plaintiff's unopposed motion dealing again with the amount still not paid by defendant for their daughter's college summer program expense. In that order, the court noted defendant was represented by counsel. It then totaled the amount owed, which included defendant's accumulated sanctions per its earlier order, and directed it be collected by the probation department as child support at the rate of $1000 per month.

Plaintiff then filed an action in the Law Division's Special Civil Part seeking to have the amount owed by defendant to plaintiff for the BNY debt, as ordered by the Family Part, reduced to a judgment in her favor. When defendant defaulted by not filing an answer, the Special Civil Part conducted a proof hearing at which plaintiff and defendant's counsel appeared. On October 22,

2015, the Special Civil Part entered a judgment in plaintiff's favor as she requested. Defendant did not appeal from that judgment.

On May 10, 2016, plaintiff filed a motion relative to the arrears owed to her for alimony and child support. Defendant opposed the motion, without counsel. Neither party raised any issues as to the court's earlier orders dealing with the BNY debt or the college expense. The court entered an order on June 10, 2016 addressing the relief sought by plaintiff. The order also stated that all "previous [o]rders not altered by this [o]rder remain in effect[.]"

Defendant filed a motion on August 23, 2016 asking the court to vacate the court's September 1, 2015 order as to the BNY debt, and to require plaintiff to pay half the debt and cooperate in the negotiation of a lower payoff amount, giving credit to defendant for an amount he claimed to have already paid. Defendant also sought an order compelling plaintiff to pay to him twenty-one percent of "the parties now emancipated children's college expenses including tuition and living expenses in the amount of $61,889.47." In support of his motion, defendant filed a certification that stated he was not served with copies of plaintiff's motions. He stated that between April and August 2015, his employment required that he temporarily relocate his

residence to a hotel in Milford, Connecticut. According to defendant, he did not receive copies of plaintiff's motions filed in 2015 that resulted in the court's May, July and September 2015 orders. He acknowledged that plaintiff served him through his "prior attorney," who "could not get in touch with" him, causing the motions to be unopposed. As to the Special Civil action, defendant stated that he was "not properly noticed" and only found about that court's order "earlier this year[.]"

As to the BNY debt, defendant certified that in the court's May 2005 order, it previously determined the BNY debt was a marital debt. Defendant addressed the history of the BNY debt, noting that in 2005 the creditor was willing to accept less than the amount owed, and that he paid his share of that amount, but plaintiff did not pay hers. Defendant concluded by arguing that the debt was a joint debt and he should not have been burdened with paying the full amount.

Turning to the tuition reimbursement and relying on the court's December 9, 2014 order, defendant detailed the alleged costs for the children's college, calculated his estimate of the children's shelter costs that his child support supported, added it to the college bills and demanded that plaintiff be held responsible for twenty-nine percent of the total or $66,011.12.

In her response to defendant's motion, plaintiff noted that defendant had to have been aware of the motion and the judgment in the Special Civil Part because she spent the day in court with defendant's attorney when the judgment against defendant was entered. Moreover, she noted that while the children were in college, she was a homemaker and did not work so there was no income to attribute to her for purposes of calculating college expenses, as she did when the December 2014 order was entered. Also, according to plaintiff, the children's college expenses had been paid from jointly funded college accounts and defendant's belated claims that he paid expenses from his income was untrue as the money came from that fund.

On October 14, 2016, the court entered its order, denying without prejudice, defendant's motion. The court's order set forth its reasons for its decision. It identified the provisions under Rule 4:50-1 that would support an application to vacate and then explained why defendant failed to satisfy the Rule. Quoting the Rule and the Supreme Court's opinion in Housing Authority of Morristown v. Little, 135 N.J. 274 (1994), it stated that despite defendant's contention that he did not receive notice of the motions that led to the September 1, 2015 order, he "fail[ed] to show 'mistake, inadvertence, surprise, or excusable neglect' [and] that the relief requested will result in "extreme" and "unexpected"

hardship." The order also stated that the court would not require plaintiff to pay half the BNY debt because she satisfied the court and the Special Civil Part through evidence that the debt belonged to defendant. Moreover, "[d]efendant fail[ed] to provide any proof of [any] payments [he made] toward the [d]ebt."

Addressing defendant's demand for reimbursement for college and living expenses, the court stated that it had determined the parties' responsibility for college expenses in December 2014 was based on their income at that time and that defendant's claims now addressed expenses incurred earlier, while their son and daughter, who graduated in 2012 and May 2014 respectively, were still in college. The order stated the appropriate time to have raised any issues about college expenses was in response to plaintiff's motions that resulted in orders in December 2014, July and September 2015. Moreover, the court found "[p]laintiff would be prejudiced by an order to reimburse [d]efendant for approximately $67,000 after such delay." This appeal followed.

"Our review of the Family Part's determination in dissolution matters is limited. We accord deference to decisions of the Family Part based on its expertise in matrimonial matters." Lombardi v. Lombardi, 447 N.J. Super. 26, 32-33 (App. Div. 2016) (citing Cesare v. Cesare, 154 N.J. 394, 412 (1998)). For that reason, "[w]e will not disturb its decisions if they are supported by substantial

credible evidence and are consistent with applicable law." Id. at 33 (citing Cesare, 154 N.J. at 412). "However, we owe no special deference to the court's legal conclusions." Ibid. (citing D.W. v. R.W., 212 N.J. 232, 245-46 (2012)).

Applying our deferential standard, we conclude that defendant's arguments on appeal "are without sufficient merit to warrant discussion in a written opinion[.]" R. 2:11-3(e)(1)(E). We affirm substantially for the reasons expressed in the Family Part's order. We add only the following comments.

Defendant's assertions about not being served with plaintiff's motions are belied by the record. We agree with the trial court's conclusion that defendant was properly served through counsel who appeared for argument on defendant's behalf, even though defendant was temporarily relocated to a hotel out of state. Service on defendant's attorney was consistent with our court rules. See R. 1:5-2; see also Van Horn v. Van Horn, 415 N.J. Super. 398, 413 (App. Div. 2010). Moreover, there is nothing in the record to refute the court's orders' reference to defendant being represented by counsel, other than defendant's bald assertions, unsupported by his former attorney's affidavit or certification. Significantly, defendant does not dispute that he opposed plaintiff's motion for reimbursement for the college summer expense that the court ordered. Yet, he never raised any

issue about the tens of thousands of dollars he sought to be reimbursed from plaintiff for college expenses during four years of proceedings, while their children were still in college.

Even if defendant had a viable claim for reimbursement as he argued in 2016, the trial court properly denied his motion because although he attempted to establish the amount of the children's college expenses, he made no effort to address the parties' incomes during the period the expenses were incurred, as contemplated by the MSA.

Affirmed.