SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1073-16T1

NANCY LANDERS,

Plaintiff-Appellant,

v.

PATRICK J. LANDERS,

Defendant-Respondent.

Submitted January 9, 2018 – Decided April 12, 2018

Before Judges Sumners and Moynihan.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Gloucester County, Docket No. FM-08-5949-91.

Nancy Landers, appellant pro se.

Charles A. Fiore, attorney for respondent.

PER CURIAM

Plaintiff Nancy Landers appeals from a provision of a Family Part order[1] granting defendant, Patrick J. Landers's request to

[1] The order was stamped "FILED" on April 15, 2016. Plaintiff sets forth in her notice of appeal, court transcript request, and civil case information statement – and both parties agree in their

modify alimony, reducing his monthly payments from $1000 per month to $350. Plaintiff argues the motion judge "imposed an artificially high burden of proof" on her; "did not have sufficient information to make [his] decision"; improperly reviewed the statutory factors; and if we remand the case, "a plenary hearing must be held before a different judge." We agree that, under the procedures set by the motion judge, he did not base his decision on complete information, and remand the case to him for further proceedings.

We previously reversed the motion judge's grant of defendant's February 2, 2015 motion to terminate or modify his alimony obligation to plaintiff, and remanded the case for the judge "to conduct proceedings as he deem[ed] necessary and to apply the burden of proof and specific standards defined in N.J.S.A. 2A:34-23(j)(3)." Landers v. Landers, 444 N.J. Super. 315, 325 (2016). The factual background of this case is set forth in our prior opinion and will not be repeated here.

On remand, the motion judge entered a case management order on March 4, 2016, requiring defendant to resubmit "his original

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respective briefs — that is the order in issue here. The text of the order, however, provides that it was issued on the "15th day of March, 2015"; "2015" is crossed out and the handwritten words, "should be 2016," appear below "2015." The relevant oral argument transcript is dated April 15, 2016.

motion and all attachments"; allowing plaintiff to "file a reply and/or cross[-]motion"; setting a deadline for defendant's reply certification; and scheduling the matter for oral argument. At argument, both parties requested an evidentiary hearing,[2] but the judge found it unnecessary, "acknowledg[ing] there [were] some issues of disputed fact," but concluding, "I don't find that those issues of disputed fact . . . rise to a level of a material enough nature for this [c]ourt to have . . . a plenary hearing in this case."

Our standard of review is the same applied in our previous consideration of this case:

> In our review of a Family Part judge's motion order, we defer to factual findings "supported by adequate, substantial, credible evidence" in the record. Gnall v. Gnall, 222 N.J. 414, 428 (2015). Reversal is warranted when we conclude a mistake must have been made because the trial court's factual findings are "manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice. . . ." Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)). However, when reviewing legal conclusions, our obligation is different; "[t]o the extent that the trial court's decision constitutes a legal determination, we

[2] Defendant sought an evidentiary hearing on the issue of attorney's fees only, which is not a subject of this appeal.

> review it de novo." D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013).
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> [Landers, 444 N.J. Super. at 319 (alterations in original).]

We note, contrary to plaintiff's arguments, the judge applied N.J.S.A. 2A:34-23(j)(3), including the proper burden of proof which he oftentimes repeated in his written decision. The judge also considered the evidence plaintiff proffered regarding defendant's part-time employment at a "hot rod shop," and concluded:

> The [c]ourt is less clear regarding whether [d]efendant will continue to be employed part-time or work reduced hours. The [c]ourt is satisfied and finds he will not do so in his prior industry or at his prior employer. There is some evidence that [d]efendant plans to work part time. Plaintiff submitted an exhibit that is a letter typically sent around Christmas to friends and family updating them regarding the family. The letter was sent by [d]efendant and his wife. The letter indicates that [d]efendant "took a part[-]time job at a local hot rod shop that builds and restores classic, street rod, and muscle cars." This is a clear indication that [d]efendant is working at least a part[-]time job. This is not disputed in any certification submitted by [d]efendant. There is nothing in the record to indicate what type of income [d]efendant is enjoying from his part[-]time work. The [c]ourt finds based upon the certification of [p]laintiff that has not been disputed that it is likely that defendant will continue to be employed part-time.

> Based upon all of the above the [c]ourt finds that this factor weighs slightly in favor of continuing some modified amount of alimony.

The letter in question was dated "Christmas 2015."

Those findings buttress some of plaintiff's arguments: "[t]he [t]rial [c]ourt based its decision on [d]efendant's incomplete current case information statement [(CIS)], which is dated 2014"; and defendant did not provide the court with income tax returns.

The judge's March 4, 2016 case management order – entered after our remand – compelled defendant to resubmit the original motion and attachments. In that the judge found defendant likely "will continue to be employed part-time," the judge should have required an updated CIS. That information would bear on the amount defendant was earning from his post-retirement employment, a relevant statutory factor, N.J.S.A. 2A:34-23(j)(3)(f). We also see no reason why the Supreme Court's mandate that tax returns be attached to a CIS, Lepis v. Lepis, 83 N.J. 139, 157-58 (1980), should not survive the enactment of N.J.S.A. 2A:34-23(j), especially since that information relates to a court's review of the statutory factors, including the extent of any modification.

The judge set the amount of the reduction without any current information regarding defendant's earnings. Although we conclude the judge's findings were otherwise supported by the record, we

are compelled to remand this matter for the judge to order defendant to produce an amended CIS, including tax returns, and to consider same in determining the proper outcome here.

We do not mandate that the judge conduct a plenary hearing. A plenary hearing is necessary when the parties' submissions show "a genuine and substantial factual dispute." Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007); see also, Spangenberg v. Kolakowski, 442 N.J. Super. 529, 540-41 (App. Div. 2015). "Importantly, '[t]he credibility of the parties' contentions may wither, or may be fortified, by exposure to cross-examination and through clarifying questions posed by the court[]' in a plenary hearing." Spangenberg, 442 N.J. Super. at 541 (alterations in original) (quoting Barblock v. Barblock, 383 N.J. Super. 114, 122 (App. Div. 2006)). A plenary hearing is unnecessary where it "would adduce no further facts or information," and "[a]ll of the relevant material was supplied to the motion judge." Llewelyn v. Shewchuk, 440 N.J. Super. 207, 217 (App. Div. 2015) (quoting Fineberg v. Fineberg, 309 N.J. Super. 205, 218 (App. Div. 1998)). We leave to the judge's sound discretion, after reviewing the CIS and tax returns, the decision to hold a plenary hearing.

We determine the balance of plaintiff's arguments, including her request that this matter be assigned to a different judge, to

be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.