SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1815-16T4

DAUN BAHOOSHIAN,

Plaintiff-Respondent,

v.

WARREN BAHOOSHIAN,

Defendant-Appellant.

Submitted March 6, 2018 – Decided March 27, 2018

Before Judges Fisher and Fasciale.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Warren County, Docket No. FM-21-0168-08.

Tettemer Law Offices, LLC, attorneys for appellant (Stephanie P. Tettemer, on the brief).

The DiFazio Law Office, attorneys for respondent (Salvatore P. DiFazio, on the brief).

PER CURIAM

The parties were married in 1985 and divorced in 2008. Their divorce judgment incorporated a property settlement agreement (PSA), which awarded defendant Warren Bahooshian physical custody

of the parties' only child, who was born in 1992 and graduated from college in 2016. The record as it existed when the order in question was entered revealed the child was then planning a wedding.

The PSA also obligated Warren to pay plaintiff Daun Bahooshian alimony at the rate of $2000 per month; because Warren maintained physical custody of the child, Daun was ordered to pay Warren child support pursuant to the child-support guidelines until the child's emancipation. The parties agreed emancipation would occur: (a) if the child reached the age of eighteen but, if attending college, only upon "graduation after four years of continuous college attendance," or (b) upon the child's marriage. An October 17, 2011 consent order memorialized the parties' understanding that Warren's actual payment to Daun would be $1290.50 per month, an amount ascertained by deducting Daun's monthly $709.50 child-support obligation from Warren's monthly $2000 alimony obligation.

In light of the child's graduation from college and plans to marry, Daun moved for an order declaring the child emancipated — an event that would extinguish her child-support obligation and restore her ostensible right to $2000 per month in alimony. Warren agreed the child was emancipated but claimed the parties had orally agreed that, even upon emancipation, he would only thereafter pay alimony at the rate of $1290.50 per month because he paid for the

child's college education without a contribution from Daun. The existence of such an oral agreement was disputed; moreover, Daun argued the PSA barred enforcement of any amending or modifying agreements unless "in writing, duly subscribed and acknowledged with the same formality" as the PSA.

Without conducting an evidentiary hearing, the motion judge, by order and written decision filed on December 1, 2016, declared the child emancipated and Daun's child-support obligation terminated as of May 17, 2015. But the judge denied Warren's applications to: modify the alimony obligation; compel Daun's payment of forty-three percent of the college costs or offset that amount against his "ongoing alimony obligation"; and require Daun's payment of alleged unreimbursed medical expenses. The judge concluded that the alleged oral agreement was unenforceable in light of the PSA's preclusion of subsequent oral agreements that modify or terminate the parties' obligations.

Warren appeals, arguing:

> I. THE TRIAL COURT ERRED DENYING [WARREN'S] REQUESTS FOR ENFORCEMENT OF THE ORAL AGREEMENT ENTERED INTO BY THE PARTIES.
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> II. [WARREN] PRESENTED A PRIMA FACIE CASE OF CHANGE IN CIRCUMSTANCE TO WARRANT A FULL HEARING ON THE ALIMONY ISSUE.
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> III. THE TRIAL COURT ERRED DENYING [WARREN'S] REQUESTS FOR REIMBURSEMENT OF HIS UNREIMBURSED MEDICAL COSTS.

IV. THE TRIAL COURT ERRED DENYING [WARREN'S] REQUESTS FOR REIMBURSEMENT OF HIS UNREIMBURSED COLLEGE COSTS.

V. THE TRIAL COURT ERRED IN RULING THAT THE DAUGHTER WAS EMANCIPATED AS OF HER COLLEGE GRADUATION.

VI. APPELLATE REVIEW IS WARRANTED AS OF RIGHT (not argued below).

VII. [WARREN] WAS DENIED DUE PROCESS (not argued below).

We find insufficient merit in Warren's argument about emancipation in Point V to warrant further discussion. R. 2:11-3(e)(1)(E). And we agree with Warren's position in Point VI that he had a right to appeal because we find the order under review resolved all issues raised by the parties in their post-judgment motions.

We also agree with Warren's contention that he was entitled to an evidentiary hearing into whether the parties reached an oral agreement about the level of alimony due upon emancipation. To be sure, the PSA barred subsequent unwritten modifications, but Warren claimed he performed his part of this alleged unwritten agreement for a considerable period of time both before and after the child's graduation and, he claims that the trial court, in good conscience, should have enforced that alleged oral agreement or modify the alimony obligation as a result of his actions and

Daun's acquiescence. We agree that these circumstances, if proven, may provide grounds for equitable relief.

"This State has a strong public policy favoring enforcement of agreements," and marital agreements, because they are consensual and voluntary, "are approached with a predisposition in favor of their validity and enforceability." Massar v. Massar, 279 N.J. Super. 89, 93 (App. Div. 1995). But our matrimonial courts always retain the equitable authority to enforce or withhold the enforcing of agreements in order to achieve a fair and equitable result. Petersen v. Petersen, 85 N.J. 638, 642 (1981). Here, Daun seeks enforcement of a PSA provision that precludes unwritten modification agreements; Warren, on the other hand, seeks enforcement of an alleged oral modification agreement. The matter cries out for further development through discovery and an evidentiary hearing, following which the judge should determine whether it is fair and just to enforce the PSA's bar on unwritten modification agreements or, if found to have been formed, to enforce the oral modification agreement. Consequently, we remand for discovery and an evidentiary hearing into the parties' contentions about the existence and enforceability of the alleged oral agreement.

To summarize, we affirm paragraphs one (which declared the child emancipated as of May 17, 2015) and two (which terminated

Daun's child-support obligation as of May 17, 2015) of the December 1, 2016 order. We, however, vacate paragraphs four (which denied Warren's motion to modify alimony), five (which denied reimbursement of Daun's alleged share of college costs or for an offsetting of that alleged amount due against Warren's alimony obligation), and six (which denied Warren's request for reimbursement of the medical expenses incurred while the child attended college),[1] and we remand for an evidentiary hearing into the questions posed about the existence and enforceability of the alleged oral agreement.

Affirmed in part, vacated in part, and remanded. We do not retain jurisdiction.

[1] No one appealed paragraph seven, which denied an award of counsel fees.