SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3751-16T2

THOMAS F. SAN FILIPPO, SR.,

Plaintiff-Respondent,

v.

HELEN BARTEK,

Defendant-Appellant.

Submitted April 17, 2018 – Decided April 27, 2018

Before Judges Fisher and Fasciale.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Morris County, Docket No. FM-14-1057-07.

Gruber, Colabella, Liuzza & Thompson, attorneys for appellant (Chris H. Colabella, of counsel; Kristen C. Montella, on the brief).

Simon, O'Brien & Knapp, attorneys for respondent (John T. Knapp, of counsel and on the brief; Jaclyn N. Kahn, on the brief).

PER CURIAM

The parties were married in 1984. That marriage, which produced three children – a son born in 1981, and daughters born

in 1986 and 1989 — ended in 2008 when they divorced. The divorce judgment incorporated a property settlement agreement (PSA), in which they agreed, in paragraph 3, "to be equally responsible for the college expenses" of their two daughters and "to share equally the cost of th[os]e children's college education."[1]

Both daughters graduated from college. The youngest child began her college education in Vermont in the fall of 2007. Defendant Helen Bartek took out loans then and continuing until 2010 in an amount alleged to exceed $100,000. According to Helen, she believed plaintiff Thomas F. San Filippo, Sr., had already borne the cost of the older daugther's education and that Helen's incurring of the debt for the youngest was consistent with their agreement to equally split the overall college-education obligation called for in paragraph 3. Helen, however, claimed to have later learned her supposition was incorrect; consequently, she moved in February 2016 for an order compelling payment of Thomas's fifty percent share of the youngest child's education expenses. Thomas opposed the motion, and an evidentiary hearing was ordered.

[1] Their agreement defined "college education" as including "tuition, room and board, books, miscellaneous fees and reasonable costs of transportation." The parties also "acknowledge[d] that each child shall be responsible for making a diligent effort to obtain all applicable loans, scholarships and grants in order to defray their parents' obligation to provide for said education."

Helen appeared without counsel at the October 5, 2016 hearing. At the conclusion of her case-in-chief, Thomas's attorney moved for a directed verdict, claiming the PSA and the doctrine of laches precluded the relief Helen sought. The judge granted Thomas's motion. In his oral decision, the judge referred to: the seminal decision of Newburgh v. Arrigo, 88 N.J. 529 (1982); legal principles that require that courts enforce the terms of property settlement agreements absent proof of an inequity or a change in circumstances; the presence of another PSA provision purporting to negate Thomas's obligation on the loans taken out by Helen for the youngest child's education; Helen's delay; and Helen's failure to include Thomas "in the process" of obtaining the student loans. Consequently, the judge entered an order that day that rejected Helen's claim and granted Thomas's application for counsel fees in an amount to be later quantified. On April 11, 2017, the judge ordered Helen to pay $10,384.28 in counsel fees.

Helen appeals both orders, arguing:

> I. THE TRIAL COURT ERRED IN DENYING [HER] APPLICATION TO HOLD [THOMAS] RESPONSIBLE FOR THE LOANS TAKEN BY [HELEN] FOR THE COLLEGE EXPENSES OF THE PARTIES' [YOUNGEST] DAUGHTER.
>
> II. THE TRIAL COURT'S AWARD OF COUNSEL FEES TO [THOMAS] SHOULD BE REVERSED.

We agree that the judge's involuntary dismissal of Helen's claim cannot stand and, therefore, we reverse and remand for further

proceedings. In addition, we vacate the counsel-fee award but without prejudice to the continuing right of either party to pursue an appropriate fee award upon completion of the remand proceedings.

To explain our determination, we initially note that the judge took the unusual step of granting an involuntary dismissal of a post-judgment matrimonial motion at the conclusion of the movant's proofs at an evidentiary hearing previously determined to be necessary. That ruling requires an examination of the judge's decision in light of the standard contained in Rule 4:37-2(b).[2] That Rule requires a denial of such a motion "if the evidence, together with the legitimate inferences therefrom, could sustain a judgment in [the claimant's] favor." Ibid. We reverse because Helen provided evidence that would excuse her failure to pursue a remedy at an earlier time and that would justify an imposition of relief against Thomas so many years after the accrual of the obligation. How persuasive that evidence might have seemed to the judge was not relevant. See Dolson v. Anastasia, 55 N.J. 2, 5-6 (1969) (recognizing that the judicial function at this stage "is not concerned with the worth, nature or extent (beyond a scintilla)

[2] The judge expressly ordered a directed verdict; the standard applicable to such a determination in this context, however, is no different than that applied to motions for involuntary dismissals. See Frugis v. Bracigliano, 177 N.J. 250, 269-70 (2003). We view his ruling as more akin to an involuntary dismissal.

of the evidence, but only with its existence, viewed most favorably to the party opposing the motion").

First, we note that Helen testified that as late as 2014 Thomas "led [her] to believe that he was taking care of [the older daughter's] tuition and [consequently, she] would be taking care of [the younger daughter's] education." Helen claimed to have assumed this was the case until speaking with her older daughter, who expressed in 2014 her difficulties paying off the loan on her education; Helen expressed surprise at this circumstance because she had assumed the older daughter's college education was being or had been paid by Thomas. Only then did she learn from her older daughter that, although Thomas had cosigned her loan, she was solely bearing the responsibility for its repayment. Helen thereafter wrote to Thomas to ask his help in repaying the youngest child's loan, and his refusal led to these proceedings. To the extent the doctrine of laches[3] might apply in such circumstances — an issues we need not decide — Helen provided an explanation for the delay, and the evidence did not suggest either that her right

[3] The doctrine of laches applies when one party has delayed for an inexplicable and inexcusable period of time in pursuing "a known right" and thereby prejudices the other party. Gladden v. Pub. Emp. Ret. Sys. Tr. Bd., 171 N.J. Super. 363, 370-71 (App. Div. 1979); see also Brunswick Bank & Tr. v. Heln Mgmt., LLC, __ N.J. Super. __, __ (App. Div. 2018) (slip op. at 15 n.12).

was known until shortly before she filed her motion or that Thomas was prejudiced from Helen's failure to sooner seek relief.

We also reject the notion that Newburgh might have application here. This is not a circumstance in which these divorced parents made no provision for their children's college education. Instead, the parties — both represented by counsel at the time — agreed they would equally share that burden. As the judge correctly recognized in other aspects of his oral decision, his obligation was to enforce the PSA absent a finding that its terms were inequitable or that circumstances had changed. Because the parties had addressed how they would deal with their children's college education, Newburgh should not have been applied; indeed, if the judge applied its principles, his brief oral decision does not clearly explain how those principles were incorporated into his ultimate rejection of Helen's claim.

Lastly, we consider the judge's apparent determination that another PSA provision precluded Helen's pursuit of Thomas's alleged share of the burden of the student loans. Paragraph 27, to which the judge referred, contains both parties' stipulations that they had "not incurred any debts or obligations" for which the other might be liable. Paragraph 19, however, touches on the same subject, but includes an exception: "The parties agree that each shall be solely responsible for any debt and obligation in

their name except as provided by this [a]greement" (emphasis added). The judge's opinion doesn't explain why paragraph 27 should be applied so broadly here and permitted to swallow up what the parties had otherwise agreed in both paragraph 19 and, even more importantly, paragraph 3. At the very least, when applying Rule 4:37-2(b), the judge should have assumed paragraph 27 was limited by paragraph 20, and that paragraph 20 was further limited or informed by paragraph 3. Indeed, the fact that Helen undertook to comply with her paragraph 3 obligation by securing one or more loans is a bit of a red herring when seeking Thomas's compliance with paragraph 3. However Helen secured the funds to pay her share of the children's education, Thomas was equally obligated. For every dollar Helen paid for that purpose — no matter how she came up with that dollar — paragraph 3 imposed on Thomas the obligation to also contribute a dollar. The source of those funds, and the PSA paragraphs absolving the parties' for their existing or future debts, seems — at least when applying Rule 4:37-2(b) — irrelevant.

For these reasons, we reverse the October 5, 2016 order and remand for further proceedings in conformity with this opinion. We also vacate the April 11, 2017 order; the imposition of a counsel-fee award against either party should abide the disposition of the merits.

Reversed in part, vacated in part, and remanded for further proceedings. We do not retain jurisdiction.