SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4658-15T1

MAUREEN FREEDENFELD,

Plaintiff-Respondent,

v.

STUART H. FREEDENFELD,

Defendant-Appellant.

Argued December 13, 2017 – Decided April 16, 2018

Before Judges Alvarez, Nugent, and Currier.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Hunterdon County, Docket No. FM-10-0111-08.

Michelle A. Benedek argued the cause for appellant (Laufer, Dalena, Cadicina, Jensen, and Boyd, LLC, attorneys; Joseph P. Cadicina, of counsel; Michelle A. Benedek, on the briefs).

Michael J. Weil argued the cause for respondent (Nadine Maleski, LLC, attorneys; Nadine Maleski, of counsel; Michael J. Weil, on the brief).

PER CURIAM

Defendant Stuart H. Freedenfeld appeals three orders issued as a result of his attempts to modify his alimony and related financial obligations. We affirm in part, reverse in part, and remand for further proceedings.

Briefly, the parties were married for thirty-nine years when divorced and have two emancipated children. Defendant is a retired physician; for many years, plaintiff was the bookkeeper in defendant's medical practice, which closed June 30, 2016. The parties jointly owned the commercial building where the practice was located. The building was sold in March 2017. Defendant filed case information statements (CIS) in 2007, 2008, and 2016. He certified that the practice made $2,001,799 in gross receipts in 2006; $1,997,703 in 2007; and $1,474,606 in 2014.

Crucial to this appeal is the parties' election to resolve their financial issues through binding arbitration. Twenty-three arbitration sessions were conducted throughout 2009. The parties agreed in writing that the award would include only a limited "[s]tatement of [r]easons[,] [f]indings of [f]act and [c]onclusions of [l]aw," and "that any analysis of income, lifestyle, cash flow and expense payments [would be] omitted from the written award."

The arbitrator recommended that defendant pay plaintiff $90,000 a year in permanent alimony, to be increased to $100,000

a year upon the sale of the building. Defendant was also required to maintain $500,000 in life insurance while he had an ongoing alimony obligation.

The building rental payments, maintenance and repair costs, and management fees became intensely contested issues post-divorce judgment. In May 2011, defendant unilaterally reduced his rental payments from $6905.15 to $5174.08 monthly, citing changed market conditions and the practice's declining revenues as justification. Although the court permitted defendant to continue to make reduced payments, the judge also reallocated the rent receipts. Defendant was ordered to pay plaintiff $15,000 for seven months of past-due rental payments.

On September 17, 2015, defendant filed a cross-motion to modify alimony based on his intent to retire in November 2015, when he would become sixty-seven years of age. The judge denied the application in part because he considered defendant's expressed intent to retire "speculative," despite the relevant language in N.J.S.A. 2A:34-23, which specifically authorized the relief he sought. Additionally, while acknowledging the decline in defendant's gross receipts, because defendant inherited a $4 million asset shortly before the filing of the divorce complaint, the judge denied the motion.

In two separate orders, the judge awarded plaintiff a combined total of $10,500 in attorney's fees. We quote more extensively from the judge's decisions in the relevant section of this opinion. There was a delay between the parties' late summer/early fall 2015 motions and cross-motions and the judge's eventual November 12, 2015 decision, and the May 2016 denial of reconsideration. The delay occurred because the parties unsuccessfully participated in economic mediation and attempted to resolve their dispute amicably.

Defendant raises the following points:

> POINT I
> THE TRIAL COURT ERRED BY FAILING TO APPROPRIATELY APPLY THE RETIREMENT PROVISIONS OF THE AMENDMENT TO N.J.S.A. 2A:34-23
>
> POINT II
> THE TRIAL COURT ERRED IN ITS ANALYSIS OF THE DEFENDANT/APPELLANT[']S REQUEST FOR A MODIFICATION OF SUPPORT BASED UPON A CHANGE OF CIRCUMSTANCES
>
> POINT III
> THE TRIAL COURT DIRECTED THE PRODUCTION/FILING OF A CASE INFORMATION STATEMENT, UTILIZED FOR ARBITRATION PURPOSES ONLY, IN VIOLATION OF THE ARBITRATION AGREEMENT AND PUBLIC POLICY
>
> POINT IV
> THE TRIAL COURT ERRED IN ORDERING STOCKTON FAMILY PRACTICE TO BRING CURRENT THE GROSS RENTAL PAYMENT, IN THE AMOUNT OF $5,174 PER MONTH FROM JULY 2015 TO THE PRESENT BY FAILING TO CONSIDER THE PREVIOUSLY ORDERED NET PAYMENT MADE TO THE PLAINTIFF/RESPONDENT OF $15,000

REPRESENTING HER ACTUAL NET PROCEEDS ON THE RENT FROM JULY 2015 THROUGH JANUARY 2016

POINT V
THE TRIAL COURT ERRED IN FAILING TO APPLY LANDLORD TENANT CASE LAW AND ADDRESS THE LEGITIMATE ISSUE OF THE PRACTICES CLAIM FOR LOSS OF USE AND QUIET ENJOYMENT OF THE LEASED PREMISES DUE TO THE MOLD CONTAMINATION

POINT VI
THE TRIAL COURT ERRED IN ALLOWING THE PLAINTIFF/RESPONDENT TO PAY HERSELF A MANAGEMENT FEE FOR HER COLLECTION OF RENT ON SUITE C

POINT VII
THE TRIAL COURT ERRED IN DENYING THE DEFENDANT/APPELLANT'S REQUEST TO MODIFY THE LIFE INSURANCE PROVISIONS OF THE ARBITRATION AWARD

POINT VIII
THE TRIAL COURT ERRED IN AWARDING COUNSEL FEES TO THE PLAINTIFF/RESPONDENT, IN THE ORDERS DATED NOVEMBER 12, 2015 & MAY 26, 2016 AND DENYING THE DEFENDANT/APPELLANT'S REQUEST FOR COUNSEL FEES

I.

"[M]atrimonial courts possess special expertise in the field of domestic relations." Cesare v. Cesare, 154 N.J. 394, 412 (1998). Because of this expertise in such areas, "appellate courts should accord deference to family court fact[-]finding." Id. at 413. Thus, "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort Inc. v. Inv'rs Ins. Co., 65

N.J. 474, 484 (1974)). Appellate courts review a trial court's legal conclusions de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016) (citation omitted).

II.

Defendant's first point is moot in light of his subsequent retirement, although we agree that under the statute he was entitled to have his application reviewed. Defendant further claims the judge should have rendered a decision based on his court-filed CISs in deciding whether the circumstances had changed sufficiently to warrant discovery and a plenary hearing. Lepis v. Lepis, 83 N.J. 139, 157 (1980). He also contends his failure to produce the 2009 CIS presented to the arbitrator was not so consequential as to justify the judge's flat refusal to entertain his motion for modification.

However, both parties agreed to keep the financial documents confidential. They even agreed that the arbitrator's recommendation would omit any detailed discussion of the financial information submitted during the process. Given these circumstances, the parties' understanding should not be effectively nullified by compelling defendant to produce the CIS supplied to the arbitrator. The confidentiality agreement benefitted plaintiff as well as defendant.

There is a narrow scope of review for an arbitration award. Minkowitz v. Israeli, 433 N.J. Super. 111, 136 (App. Div. 2013). In fact, "there is a strong preference for judicial confirmation of arbitration awards." Id. at 135 (quoting Linden Bd. of Educ. v. Linden Educ. Ass'n, 202 N.J. 268, 276 (2010)). The scope of an arbitrator's authority is based on the terms of the contract between the parties. Cty. Coll. of Morris Staff Ass'n v. Cty. Coll. of Morris, 100 N.J. 383, 391 (1985) (citations omitted). When the parties have an agreement with certain terms and conditions, "the arbitrator may not disregard those terms," and "may not rewrite the contract terms for the parties." Grover v. Universal Underwriters Ins. Co., 80 N.J. 221, 230 (1979).

Admittedly, the CIS submitted to the arbitrator may well be the most accurate and complete baseline document——but the parties' own stipulation limits its usage. Furthermore, there have been several other CISs filed since 2009. If the concern is determining the parties' lifestyle, plaintiff's own CIS from the relevant period should suffice to establish that starting point.

Also, the missing 2009 CIS is not the only means for testing whether defendant's subsequent disclosures are truthful. There are other tools available to plaintiff's counsel with which to do so, including, for example, the issuance of subpoenas to banks,

and economic appraisals of defendant's current lifestyle information.

That Rule 5:5-4(a) requires the filing of CISs in support of a motion for modification is not dispositive. Here, the parties reached a mutually agreed-upon mechanism to sidestep public disclosure. The nondisclosure of the financial information submitted in arbitration is a double-edged sword, no doubt made for reasons that presumably benefitted plaintiff as it did defendant.

There were CISs filed prior to arbitration, and there have been CISs filed in the years following. Given his ample resources, defendant may very well be able to comfortably maintain his current alimony obligation. However, he is entitled to a review of his modification motion, given his retirement at age sixty-seven and the sale of the commercial building. The parties' agreement did not——and could not——absolutely bar future modification. Lepis, 83 N.J. at 146 ("As a result of this judicial authority, alimony and child support orders define only the present obligations of the former spouses. Those duties are always subject to review and modification on a showing of 'changed circumstances.'" (citations omitted)); see also N.J.S.A. 2A:34-23. To deny any review until he disclosed the arbitration CIS would effectively make the alimony award forever exempt from review.

III.

In points four, six, and eight, defendant raises alleged errors that we believe, albeit for different reasons, do not warrant much discussion in a written opinion. R. 2:11-3(e)(1)(E).

Defendant alleges that the court's December 7, 2015 order requiring him to pay plaintiff $15,000 on account of unpaid and past-due rent resulted in a mathematical error when the judge entered a subsequent order regarding rents. In a later May 26, 2016 letter decision, however, the judge notes defendant's earlier $15,000 payment against rent arrears, when requiring him to bring the balance current and to resume timely monthly payments beginning May 1, 2016. Thus, there was no abuse of discretion in the court's order. See Elrom v. Elrom, 439 N.J. Super. 424, 434 (App. Div. 2015) ("While an abuse of discretion . . . defies precise definition, we will not reverse the decision absent a finding the judge's decision rested on an impermissible basis, considered irrelevant or inappropriate factors, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." (citations omitted)).

Defendant claims the trial court erred in permitting plaintiff to pay herself a $216 a month management fee for her collection of rents and other obligations related to the commercial building. The judge found the payments to be "de minimis." It

was the same amount previously paid to another who managed the property, plaintiff performed the same services, and the amount at issue was quite modest. The judge's decision is entitled to deference and is supported by the record.

The court's counsel fee award was not an abuse of discretion. We "disturb a trial court's determination on counsel fees only on the 'rarest occasion,' and then only because of clear abuse of discretion." Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (citing Rendine v. Pantzer, 141 N.J. 292, 317 (1995)). When the first $3000 award was made, the court found defendant in violation of litigant's rights for failure to pay alimony and document his continuation of the life insurance policy. Clearly, plaintiff prevailed on this application, although defendant obtained some relief, and the court considered appropriate precedent in reaching a decision. When the court granted plaintiff $7500 in fees on the reconsideration application, plaintiff had again substantially prevailed on her application. In rendering his decision, the judge again examined all the relevant factors found in Rule 5:3-5(c) and caselaw. That award was not an abuse of discretion either.

Finally, in points five and seven, defendant raises two issues not raised to the trial judge. We do not consider them for that reason, as they do not challenge jurisdiction or address matters

of great public interest. Neider v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (citation omitted).

Affirmed in part, reversed in part, and remanded to the trial court for further proceedings in accordance with this opinion.