SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4767-16T2

EDWIN W. PLATT,

Plaintiff-Appellant,

v.

JANE M. PLATT,

Defendant-Respondent.

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Submitted February 26, 2018 – Decided April 27, 2018

Before Judges O'Connor and Vernoia.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-1060-02.

Richard A. Nocks, attorney for appellant.

Ramatowski, Spilka & Schwartz, attorneys for respondent (Ellen F. Schwartz, on the brief).

PER CURIAM

Plaintiff Edwin W. Platt appeals from a provision in the June 9, 2017 Family Part order denying without prejudice[1] his motion to terminate or, in the alternative, reduce his obligation to pay alimony to defendant Jane M. Platt. Having reviewed the record and the applicable law, we reverse and remand for further proceedings.

I

We summarize the facts relevant to the issues on appeal. The parties were married in 1980. Two children were born of the marriage. The parties separated and plaintiff filed a divorce complaint in 2001. Following a contested trial, on September 13, 2004, the court entered an amended judgment of divorce (judgment).

In its written opinion setting forth its findings of fact and conclusions of law, the court found defendant, a full-time registered nurse, earned $65,000 per year. Although he testified he earned only $65,000 annually, the court determined

[1] The June 9, 2017 order concluded for purposes of finality plaintiff's motion to terminate or reduce alimony. See Grow Co. v. Chokshi, 403 N.J. Super. 443, 457-58 (App. Div. 2008) ("[O]our judicial system recognizes that, with very few exceptions, only an order that finally adjudicates all issues as to all parties is a final order."). We discern the court dismissed plaintiff's motion without prejudice merely to signal plaintiff was not foreclosed from filing another motion in the future in the event circumstances changed.

plaintiff in fact earned more from his automotive repair business than he claimed, and imputed to him an annual income of $100,000. The court ordered plaintiff to pay defendant $250 per week ($13,000 annually) in permanent alimony, the amount it determined defendant required to maintain the marital standard of living. The court also ordered plaintiff to pay defendant $123 per week in child support.[2]

The court determined the standard of living the parties enjoyed during the marriage was a "modest," "comfortable," middle-class lifestyle. The court noted the parties took infrequent vacations, dined at restaurants in the mid-price range, and shopped for clothes at "anchor stores" in local shopping malls. The balance of their income went toward defendant's business, the payment of household expenses, and improvements for the marital home. The court also observed the parties did not spend their income on luxuries or extravagances. As for equitable distribution, the court equally divided the marital assets, but for the husband's automotive repair business, which the parties agreed to divide disproportionately.[3]

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[2] The record is somewhat unclear, but it appears the parties agreed to a shared custody arrangement. However, following the divorce, the children spent the majority of their time in defendant's home.

[3] The parties agreed plaintiff would be distributed seventy and defendant thirty percent of this asset.

Plaintiff filed an appeal, challenging the award of alimony and other provisions in the judgment. See Platt v. Platt, 384 N.J. Super. 418 (App. Div. 2006). But for two relatively minor matters that have no bearing on the issues before us, we affirmed the trial court's rulings.

On September 16, 2016, the court granted plaintiff's motion to emancipate the oldest of the parties' two children. In 2017, plaintiff filed a motion to emancipate the youngest child, as well as terminate or, in the alternative, reduce the amount of alimony he was obligated to pay. On the latter issue, plaintiff contended that, since the divorce, defendant's salary increased from $65,000 to $106,944 per year, and she had unearned income of $4862 per year as well, making her gross annual income $111,806.

The focus of plaintiff's argument was not that he could no longer afford alimony, but that defendant's financial circumstances had changed significantly for the better since the divorce, enabling her to maintain without alimony the standard of living enjoyed during the marriage. Nonetheless, as is required in applications to modify support, see Rule 5:5-2, plaintiff provided information about his financial status, revealing his annual gross income at the time he filed his motion was $113,190.

Plaintiff contended defendant now lives well beyond the marital standard of living. Plaintiff compared the Case Information Statement (CIS) defendant filed in 2003, when the divorce complaint was pending, to the one she filed in 2017. When defendant completed the 2003 CIS, she and the two children had been living separate from plaintiff for approximately two years. Plaintiff noted the monthly budget for her and the two children in 2003 was $5525; the monthly budget for her alone in 2017 was $8540. Plaintiff observed defendant is debt-free, which he attributed to a $300,000 inheritance defendant recently received.

Plaintiff also pointed out defendant now spends $322 per month on domestic help, an expense the parties did not have during the marriage. She currently spends $752 per month for restaurants; in 2003, she and the children spent $100 in total for this expense. Although the parties infrequently took them during the marriage, she now spends $620 per month for vacations. She spends $215 per month for sports and hobbies, as opposed to the $10 she incurred for such expense in 2003. Plaintiff also noted defendant puts $1828 into savings every month.

Defendant's position was as follows. The increase in defendant's salary was due to acquiring a Bachelor of Science in

Nursing after the divorce. Defendant does not dispute she is currently earning $106,944 per year in her position as a nurse and is realizing $4862 annually from unearned income. However, she contended she worked hard and saved her money because, being in her 60's, she did not know for how long she would be able to keep up with the physical demands of being a nurse. She argues she should not be penalized for working hard, saving money, and investing her inheritance in anticipation of retirement. Defendant also pointed out that, since the divorce, the cost of living has increased and impacts upon her ability to maintain the standard of living enjoyed during the marriage.

On June 9, 2017, the court entered an order granting plaintiff's motion to emancipate the parties' youngest child, but rejected his request to terminate or to reduce alimony. The court found there has been no change in defendant's circumstances. According to the court, defendant lived a modest, frugal lifestyle, and the increase in the cost of living offset any enhancement in income she has experienced since the demise of the marriage. Finally, the court denied plaintiff's request for counsel fees.

II

Plaintiff appeals, asserting the following arguments for our consideration:

POINT I — THE LOWER COURT ERRED IN FAILING TO TERMINATE OR SIGNIFICANTLY REDUCE THE PLAINTIFF'S ALIMONY OBLIGATION BY FAILING TO CONSIDER THE DEFENDANT'S SIGNIFICANTLY IMPROVED ECONOMIC CIRCUMSTANCES AND HER VASTLY IMPROVED LIFESTYLE, RENDERING THE PLAINTIFF'S ALIMONY OBLIGATION AS UNNECESSARY.

POINT II — THE LOWER COURT ABUSED ITS DISCRETION IN CATEGORICALLY FAILING TO ANALYZE THE DEFENDANT'S UPDATED CASE INFORMATION STATEMENT THAT THE JUDGE HAD ORDERED TO BE FILED, REFUSING TO PROPERLY COMPARE THE PARTIES' INCOME, FAILING TO PROPERLY ACCORD TO THE DEFENDANT HER INHERITANCE, AND MAKING ASSUMPTIONS ABOUT DEFENDANT'S RISE IN INCOME THAT WAS NOT SUPPORTED BY THE RECORD.

POINT III — THE COURT ERRED IN FAILING TO AWARD COUNSEL FEES TO THE PLAINTIFF, AND THEREFORE, THAT ASPECT OF THE COURT'S RULING MUST ALSO BE REVERSED.

POINT IV — IN THE EVENT THE MATTER IS REMANDED FOR FURTHER CONSIDERATION, THE APPELLATE DIVISION MUST DIRECT THE MATTER BE ASSIGNED TO A DIFFERENT JUDGE BASED ON RULE 1:12-1(g).

Our analysis begins with reviewing the applicable legal principles. N.J.S.A. 2A:34-23 authorizes the modification of support orders, including permanent alimony. However, a party who seeks to modify an alimony award must prove "changed circumstances." See Lepis v. Lepis, 83 N.J. 139, 157 (1980). Changed circumstances may exist not only when there has been a reduction in the supporting spouse's ability to pay alimony, but also when there has been a significant change for the better in

the financial circumstances of the supported spouse. Stamberg v. Stamberg, 302 N.J. Super. 35, 42 (App. Div. 1997). "[A] payor spouse is as much entitled to a reconsideration of alimony where there has been a significant change for the better in the circumstances of a dependent spouse as where there has been a significant change for the worse in the payor's own circumstances." Ibid.

"Whether an alimony obligation should be modified based upon a claim of change of circumstances rests within the Family Part judge's sound discretion." Larbig v. Larbig, 384 N.J. Super. 17, 21 (App. Div. 2006) (citing Innes v. Innes, 117 N.J. 496, 504 (1990)). However, we may be compelled to reverse and remand a decision that fails to address adequately the nature of the "changed circumstances" claim presented and fails to properly apply the controlling legal principles to the analysis of those claims. See, e.g., Stamberg, 302 N.J. Super. at 42.

We have recognized the failure "to address [a supporting spouse's] claims of changed circumstances based on an enhancement in his former wife's income" is error warranting reversal of the denial of relief and a remand for further proceedings. Ibid.; see also Aronson v. Aronson, 245 N.J. Super. 354, 364 (App. Div. 1991) (when support of "an economically dependent spouse is at issue," consideration must

be given to "the ability of that spouse to contribute to . . . her needs"; the dependent spouse's "income . . . is crucial to the issue of that spouse's ability to contribute").

Here, it is not disputed defendant's annual income is now $111,806. Under the particular facts of this case, there is no question the surge in defendant's income from $65,000 to $111,806 per year is significant. Moreover, the $46,806 aggregate increase in defendant's income is far greater than the $13,000 per year plaintiff is obligated to pay defendant to enable her to meet the marital standard of living, assuming her income was only $65,000 per year. In addition, defendant inherited $300,000, and we have held an inheritance may be considered income for the purpose of determining if there has been a change in a party's circumstances. See Aronson, 245 N.J. Super. at 363. Accordingly, we are satisfied plaintiff has shown there has been a change in circumstances warranting consideration as to whether alimony should be terminated.

That said, what is not clear is, after taking into consideration the standard of living defendant enjoyed during the marriage, whether defendant can manage to meet that standard on her income without alimony. Plaintiff marshaled compelling evidence that she can. However, defendant claims the cost of

living has risen and that rise has eroded her ability to meet the marital standard of living.

Therefore, we must remand to the trial court to examine whether the rise in the cost of living since the divorce is significant enough to meaningfully affect defendant's ability to live in accordance with the marital standard of living. That is, there may have been an overall rise in the cost of living, but that may not mean the expenses in defendant's budget have risen or, if they have, such increases affect defendant's ability to maintain the standard of living on her income alone. Therefore, the impact of the cost of living since the divorce is an issue that must be considered on remand.

Defendant points out her frugality enabled her to save money and pay off debts. She maintains she should not be punished because of her parsimoniousness. We note a "spouse's need for savings has long been recognized as a component of alimony, see [Martindell v. Martindell, 21 N.J. 341, 354 (1956)], that allows for the accumulation of 'reasonable savings to protect [the supported spouse] against the day when alimony payments may cease because of or change in circumstances.'" Lombardi v. Lombardi, 447 N.J. Super. 26, 38 (App. Div. 2016) (quoting Davis v. Davis, 184 N.J. Super. 430, 437 (App. Div. 1982)). "[A]n appropriate rate of savings . . . can, and in the

appropriate case should, be considered as a living expense when considering an award of . . . [alimony]." Glass v. Glass, 366 N.J. Super. 357, 378 (App. Div. 2004) (quoting In re Marriage of Weibel, 965 P.2d 126, 129-30 (Colo. App. 1998)).

Here, the fact defendant managed to save money and pay off debts does not necessarily mean she is not in need of alimony. It is a factor to consider but, without more information, is inconclusive. Therefore, defendant's entitlement to and ability to save money is another factor that must be considered by the court on remand. Of course, any other relevant factors recognized by the law that are identified by the parties must be considered, as well.

Because he did show there has been a change in circumstances warranting a review of his obligation to pay alimony, the order denying plaintiff's application to terminate or reduce alimony is reversed and the matter remanded for the court to make the appropriate determinations.

Our disposition makes it unnecessary for us to address the issues plaintiff raises on the question of counsel fees. Finally, plaintiff's argument we direct a different judge to preside over the matter is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Reversed and remanded for further proceedings in conformity with this opinion. We do not retain jurisdiction.