SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4798-15T4

LISA B. WALDORF,

Plaintiff-Respondent,

v.

JOHN H. WALDORF,

Defendant-Appellant.

Submitted January 22, 2018 – Decided May 14, 2018

Before Judges Messano and Vernoia.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Hunterdon County, Docket No. FM-10-0322-07.

John H. Waldorf, appellant pro se.

Lisa B. Waldorf, respondent pro se.

PER CURIAM

Following trial, the Family Part entered the December 21, 2011 judgment of divorce (JOD) that, among other things, ordered defendant John H. Waldorf to pay plaintiff Lisa B. Waldorf permanent alimony of $2000 per week. The JOD provided that the alimony "shall terminate on one of the following events:

[p]laintiff's death or remarriage, [d]efendant's death, or as otherwise defined by law." Defendant appealed, and while we affirmed the award of permanent alimony, we concluded "the quantum of the alimony award . . . [was] a mistaken exercise of discretion." Waldorf v. Waldorf, No. A-2872-11 (App. Div. June 5, 2014) (slip op. at 14). We remanded "on the limited issue of the amount of alimony for a recalculation of defendant's permanent alimony after considering his reasonable expenses in light of his imputed income." Id. at 23.

In a comprehensive written statement of reasons that accompanied his December 19, 2014 order, a second judge considered the September 2014 amendments (the 2014 amendments) to the alimony statute, particularly N.J.S.A. 2A:34-23(c),[1] thoroughly examined

[1] N.J.S.A. 2A:34-23(c) provides:

> For any marriage or civil union less than 20 years in duration, the total duration of alimony shall not, except in exceptional circumstances, exceed the length of the marriage or civil union. Determination of the length and amount of alimony shall be made by the court pursuant to consideration of all of the statutory factors set forth in subsection b. of this section. In addition to those factors, the court shall also consider the practical impact of the parties' need for separate residences and the attendant increase in living expenses on the ability of both parties to maintain a standard of living

(footnote continued next page)

the parties' financial circumstances, and reduced defendant's alimony obligation to $1107.78 per week as of the entry of the JOD. The judge also found that defendant "offer[ed] no objective proof" of plaintiff's cohabitation with J.M. He denied without prejudice defendant's request to terminate alimony.

In January 2015, defendant filed a new motion to terminate alimony based upon plaintiff's alleged cohabitation with J.M., a man she knew since her high school years. The judge concluded that based upon the parties' certifications, "there does exist a dispute as to the period during which [p]laintiff resided with [J.M.] and . . . her motivations and the parameters of that living arrangement." In his April 8, 2015 order, the judge added "the issue of cohabitation" to other issues for which he had previously ordered a plenary hearing.

(footnote continued)

> reasonably comparable to the standard of living established in the marriage . . . , to which both parties are entitled, with neither party having a greater entitlement thereto.

The statute includes a non-exhaustive list of factors to consider when deciding if "exceptional circumstances" exist, including, "[w]hether a spouse . . . has a chronic illness or unusual health circumstance." N.J.S.A. 2A:34-23(c)(3). The parties were married less than twenty years, and chronic illnesses have totally disabled plaintiff since 2003. Waldorf, slip op. at 2. Defendant has not appealed from the order.

After several adjournments,[2] the plenary hearing limited solely to the issue of cohabitation took place before a third judge on February 29, 2016. The judge took note of the 2014 amendments and advised the parties in writing beforehand that he would apply N.J.S.A. 2A:34-23(n) prospectively "only [to] events after the [statute's] effective date." Defendant offered various documents, including the December 2014 report of a private investigator who surveilled the marital home and J.M.'s residence. Defendant introduced various social media exchanges between plaintiff and J.M. in 2013 and 2014, and between plaintiff's children by a prior marriage and J.M.

Plaintiff admitted that she moved out of the marital home, which was in foreclosure during the divorce trial, in September 2014 and into J.M.'s home for approximately three months. Plaintiff also admitted that J.M. helped her take the parties' son to college in Washington, D.C., in August 2014, and that she and J.M. celebrated Thanksgiving together in 2013.

Plaintiff further acknowledged that she and J.M. filed domestic violence complaints against each other in January 2015, and apparently entered into a "consent agreement" to resolve the dispute. In a prior filing, plaintiff offered the consent

[2] Plaintiff's appellate brief attributes the delay, at least in part, to surgery she required in the interim.

agreement to show her relationship with J.M. "became so strained" that they agreed she would move out of J.M.'s home and "stay away from each other."[3] Plaintiff acknowledged an "off and on" relationship with J.M., which ended for a period of two years after the divorce trial, only to be renewed before she moved in to J.M.'s home.[4]

Plaintiff borrowed money from J.M. prior to the divorce trial, however, she denied ever having a joint bank account with J.M. Plaintiff never resumed living with J.M. after January 2015, nor did she contribute to the household expenses while living there, and she denied receiving any money from J.M. in April 2015, when the parties filed Case Information Statements in anticipation of the plenary hearing.

The judge entered an order on March 3, 2016, denying defendant's motion to terminate alimony based on plaintiff's

[3] Defendant argued the consent agreement was a sham in that although signed by J.M., plaintiff and plaintiff's counsel, it was never filed with the court, as plaintiff claimed. Defendant never asserted that the contents of the agreement were relevant to the cohabitation issue, nor was plaintiff questioned about provisions of the consent agreement that required her to remove her property from J.M.'s home within a certain period of time, or that J.M. agreed to pay $1000 toward the moving expenses.

[4] J.M. testified during the divorce proceedings, and the trial judge recognized he was plaintiff's "boyfriend" but never found the two were cohabitating at the time of the trial.

cohabitation with J.M. In a short written opinion, the judge initially considered N.J.S.A. 2A:34-23(n), which provides:

> Alimony may be suspended or terminated if the payee cohabits with another person. Cohabitation involves a mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union but does not necessarily maintain a single common household.
>
> When assessing whether cohabitation is occurring, the court shall consider the following:
>
> (1) Intertwined finances such as joint bank accounts and other joint holdings or liabilities;
>
> (2) Sharing or joint responsibility for living expenses;
>
> (3) Recognition of the relationship in the couple's social and family circle;
>
> (4) Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;
>
> (5) Sharing household chores;
>
> (6) Whether the recipient of alimony has received an enforceable promise of support from another person within the meaning of [N.J.S.A. 25:1-5(h)]; and
>
> (7) All other relevant evidence.

Citing Justice O'Hern's dissent in Konzelman v. Konzelman, 158 N.J. 185, 205 (1999), the judge concluded the statute's "second

element," i.e., an "intimate personal relationship," means a sexual relationship. He reasoned, "in the absence of a sexual relationship there is no cohabitation under subsection 'n.'"

The judge found plaintiff was a credible witness. He also found plaintiff and J.M. knew each other for decades, she moved in briefly with J.M. "in part, to get out from under the bills generated by her living in the marital home which was under foreclosure" and the "living arrangement . . . ended badly and has not resumed." The judge observed that J.M. filed two domestic violence complaints against plaintiff in January and March 2015.[5] The judge also found plaintiff and J.M. "did not comingle their money," nor did plaintiff receive any support from J.M.

Defendant filed a motion for reconsideration. Citing extensively to J.M.'s testimony during the divorce trial, the exhibits furnished in support of the motion to terminate alimony and the proposed order that resolved plaintiff's and J.M.'s domestic violence dispute, defendant essentially argued the judge overlooked relevant evidence supporting a finding of cohabitation.

The reconsideration motion was decided by a fourth judge. She noted defendant failed to present the transcript from the plenary hearing, and therefore failed to provide sufficient

[5] There was no testimony or evidence about this second domestic violence complaint.

evidence in support of reconsideration. The judge entered an order denying the motion for reconsideration on April 29, 2016. Defendant filed his notice of appeal seeking review of both the March 3, 2016 order (March order) and the April 29, 2016 order (April order).

Before us, defendant argues:

> I.
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> TRIAL JUDGE ABUSED DISCRETION AND VIOLATED N.J.S. 2A:34-23 (ALIMONY REFORM LAW, ENACTED SEPT. 10, 2014) (SEE, SPANGENBERG V. KOLAKOWSKI, 442 N.J. SUPER. 529, 536-37 (APP. DIV. 2015)) BY NOT CONSIDERING NEW LAW AS IT APPLIES TO THIS CASE.
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> II.
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> TRIAL JUDGE ABUSED DISCRETION BY NOT CONSIDERING KONZELMAN V. KONZELMAN, 158 N.J. 185 (1999) "COHABITATION" ISSUE AS A CHANGE OF CIRCUMSTANCES, SINCE COHABITATION IS THE MAIN FACTOR.
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> III.
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> TRIAL JUDGE EGREGIOUSLY ABUSED DISCRETION BY FAILING TO CONSIDER REESE V. WEIS, 430 N.J. SUPER. 552 (APP. DIV. 2013) AS TO PLAINTIFF-RESPONDENT RECEIVING SUBSTANTIAL ECONOMIC BENEFITS IN HER COHABITATION ARRANGEMENT FOR OVER 8 YEARS.
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> IV.
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> TRIAL JUDGE ABUSED DISCRETION FOR FAILING TO CONSIDER THE MATTER A PRIMA FACIE CHANGE OF CIRCUMSTANCES AND SIGNIFICANT CHANGE OF CIRCUMSTANCES PURSUANT TO LEPIS V. LEPIS, 83 N.J. 139 (1980), CREATING UNFAIR BURDEN ON

DEFENDANT HUSBAND CAUSING HIM TO LIVE AT LOWER STANDARD OF LIVING THAN FORMER WIFE IN VIOLATION OF N.J. LAW.

V.

TRIAL JUDGE EGREGIOUSLY ABUSED DISCRETION BY FAILING TO IMPLEMENT GAYET V. GAYET, 92 N.J. 149 (1983) PRECEPTS AS PLAINTIFF AND HER BOYFRIEND WERE TRYING TO CONCEAL THERE WAS NO ECONOMIC DEPENDENCY BY PLAINTIFF WHICH CONSTITUTES/D BAD FAITH BY PLAINTIFF.

VI.

TRIAL JUDGE ABUSED DISCRETION IN FAILING TO INCORPORATE QUINN V. QUINN, 225 N.J. 34 (2016), SHOWING THAT PLAINTIFF CONCEALED HER COHABITATION FOR FEAR OF LOSING ALIMONY; EVEN THOUGH PLAINTIFF IS A LICENSED ATTORNEY WELL VERSED IN THE LAWS OF NEW JERSEY, HAS BEEN CHIEF EDITOR FOR A LEGAL PUBLICATION FOR OVER 15 YEARS AND ACCORDING TO N.J. DEPT. OF LABOR OCCUPATIONAL WAGE SURVEY AND ABA JOURNAL.COM CAN EARN $160,000 ANNUALLY AS AN ASSOCIATE ATTORNEY.

We affirm.

An appellate court owes substantial deference to the Family Part's findings of fact because of that court's special expertise in family matters. Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). Thus, "[a] reviewing court should uphold the factual findings undergirding the trial court's decision if they are supported by adequate, substantial and credible evidence on the record." MacKinnon v. MacKinnon, 191 N.J. 240, 253-54 (2007) (alteration in original) (quoting N.J. Div. of Youth & Family Servs. v. M.M.,

189 N.J. 261, 279 (2007)). "On the other hand, a 'trial judge's legal conclusions, and the application of those conclusions to the facts, are subject to our plenary review.'" Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015) (quoting Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

Even though the judge considered and applied the 2014 cohabitation amendment, N.J.S.A. 2A:34-23(n), we are unsure it applies. In Spangenburg, 442 N.J. Super. at 536-37, there was a marital settlement agreement (MSA) that predated the statutory amendment, and the supported spouse admitted she was cohabitating with another man. We quoted the following language that accompanied the 2014 amendment:

> This act shall take effect immediately and shall not be construed either to modify the duration of alimony ordered or agreed upon or other specifically bargained for contractual provisions that have been incorporated into:
>
> a. a final judgment of divorce or dissolution;
>
> b. a final order that has concluded post-judgment litigation; or
>
> c. any enforceable written agreement between the parties.
>
> [Id. at 538 (quoting L. 2014, c. 42, § 2) (emphasis added).]

We held "[t]his additional statement signals the legislative recognition of the need to uphold prior agreements executed or

final orders filed before adoption of the statutory amendments." Ibid.

Here, there was no MSA. The trial judge authored the alimony provisions of the JOD, which did not address cohabitation at all. However, defendant sought to "modify the duration of alimony ordered . . . that ha[d] been incorporated into . . . a final judgment of divorce" that predated the enactment of the 2014 amendment. L. 2014, c. 42, § 2. We question, therefore, whether the amendment applies.

Nevertheless, the factors now addressed by the statute mirror those outlined by the Court in Konzelman, 158 N.J. at 202 ("Cohabitation involves an intimate relationship in which the couple has undertaken duties and privileges that are commonly associated with marriage. These can include . . . living together, intertwined finances . . . , sharing living expenses and household chores, and recognition of the relationship in the couple's social and family circle."). The judge clearly analyzed those factors based upon the credible evidence adduced at the hearing. Defendant only argues that the judge reached the wrong result.

Defendant's arguments that the judge failed to consider the holding in Reese, and the Court's opinions in Quinn v. Quinn, 225 N.J. 34 (2016), and Gayet v. Gayet, 92 N.J. 149 (1983), are unavailing. In Reese, 430 N.J. Super. at 557-58, we held that

"the inquiry regarding whether an economic benefit arises in the context of cohabitation must consider not only the actual financial assistance resulting from the new relationship, but also should weigh other enhancements to the dependent spouse's standard of living that directly result from cohabitation." However, cohabitation was not in dispute in Reese, id. at 559, while here it was the central unresolved issue ultimately decided against defendant.

In Quinn, 225 N.J. at 39, the Court held that if a marital settlement agreement provided for the termination of alimony upon the dependent spouse's cohabitation, the court should enforce the terms of the agreement and terminate alimony, rather than suspend it during the period of cohabitation. Again, Quinn has no application to this case because the judge here found there was no cohabitation. The same is true of Gayet, 92 N.J. at 154-55, where the Court held "that cohabitation shall constitute . . . changed circumstances" under Lepis v. Lepis, 83 N.J. 139, 157 (1980), warranting discovery and a hearing on modification of alimony.

Lastly, we have said that

> [r]econsideration itself is "a matter within the sound discretion of the Court, to be exercised in the interest of justice[.]" It is not appropriate merely because a litigant

> is dissatisfied with a decision of the court or wishes to reargue a motion, but
>
> > should be utilized only for those cases which fall into that narrow corridor in which either 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or failed to appreciate the significance of probative, competent evidence.
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> [Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).]

"[T]he magnitude of the error cited must be a game-changer for reconsideration to be appropriate." Id. at 289.

We are troubled by the judge's reasons for entering the April order denying reconsideration. As a general proposition, our case law favors having one judge hear all motions associated with the same Family Part matter. See, e.g., Feldman v. Feldman, 378 N.J. Super. 83, 100 (App. Div. 2005); Pressler & Verniero, Current N.J. Court Rules, cmt. 1.4 on R. 5:5-4 (2018). This is particularly true when the motion seeks reconsideration of a prior order. O'Brien v. O'Brien, 259 N.J. Super. 402, 406 (App. Div. 1992).

Here, the judge who conducted the plenary hearing and entered the March order was retired and on recall, and we assume he was unavailable to rule on defendant's motion for reconsideration. However, defendant quite properly assumed the motion would be

heard by the same judge; hence, defendant's failure to order a transcript of the March hearing was understandable. Under the circumstances, the wiser course would have been for the judge to require defendant produce a transcript or otherwise familiarize herself with the evidence from the plenary hearing using Court Smart. Moreover, since the hearing judge had issued a written opinion, the reconsideration judge already had the benefit of his reasoning.

Nevertheless, we see no reason to remand the matter. We have considered the arguments defendant advanced in support of reconsideration, which are reiterated on appeal. For the reasons already expressed, defendant failed to demonstrate any error in the judge's conclusion that plaintiff was not cohabitating with J.M. We limit our judgment to the specific orders before us, and express no opinion whether issues defendant raises in his reply brief present sufficient changed circumstances warranting termination or modification of alimony. See, e.g., Bacon v. New Jersey State Dept. of Educ., 443 N.J. Super. 24, 38 (App. Div. 2015) ("We generally decline to consider arguments raised for the first time in a reply brief.").

Affirmed.