SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0915-20

LAUREN GALSKI,

Plaintiff-Respondent,

v.

TODD GALSKI,

Defendant-Appellant.

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Submitted February 8, 2022 – Decided December 2, 2022

Before Judges Fisher and DeAlmeida.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FM-13-0054-18.

Hoagland, Longo, Moran, Dunst & Doukas, LLP, attorneys for appellant (Jessica Natasha Mazur, of counsel and on the brief).

Respondent has not filed a brief.

The opinion of the court was delivered by

DeALMEIDA, J.A.D.

Defendant Todd Galski appeals from an October 22, 2020 dual judgment of divorce (DJOD) entered by the Family Part. He argues the trial court: (1) failed to consider plaintiff Lauren Galski's needs, the marital lifestyle, and his variable income when it set his alimony obligation; (2) erred in applying a credit for pendente lite support he paid; (3) erred when it set his child support obligation; (4) failed to consider funds provided to him by his father when deciding equitable distribution; and (5) failed to provide him with a sufficient credit for funds of his that Lauren liquidated without his consent.[1] We affirm.

I.

The parties were married in 2004 and have two children. In 2017, Lauren filed a complaint for divorce. Todd counterclaimed for divorce. After an eight-day trial, the court issued a thirty-six-page opinion setting forth findings of fact and conclusions of law supporting its decision granting the parties a DJOD, equitably distributing their marital property, and establishing Todd's alimony and child support obligations.[2] The October 22, 2020 DJOD memorializes the court's opinion.

[1] Because the parties share a surname, we refer to them by their first names. No disrespect is intended.

[2] The court's custody and parenting time decisions are not before us.

With respect to alimony, the court found that throughout the marriage Todd earned substantially more than Lauren. His income, which included a base salary, commissions on medical device sales, and bonuses, was $272,214 in 2015, $324,065 in 2016, $278,143 in 2017, and $165,092.70 in 2018. The court found that Todd voluntarily left his job in 2017 for a new position from which he was terminated in 2019. The court imputed $250,000 a year in income to Todd based on an average of his earnings over four years, including 2018, which the court considered to be an aberration.

The court found that Lauren, who had been a tenured teacher, stopped working in 2005, just prior to the birth of the parties' oldest child. She was, with Todd's agreement, occupied as a stay-at-home mother and wife for twelve years. Lauren earned $4,080.62 in 2018 working in various capacities at the local board of education. The court imputed $45,000 of annual income to Lauren, based on average teaching salaries in the community where she was previously employed and accounting for her absence from the field for an extended period.

The court concluded that the parties enjoyed an upper middle-class lifestyle during the marriage. Their marital budget, the court found, was $12,829 a month.

The court ordered Todd to pay limited duration alimony of $1,500 a week, or $78,000 per year, for eight years and awarded him a credit pursuant to Mallamo v. Mallamo, 280 N.J. Super. 8 (App. Div. 1995), for pendente lite support he paid commencing January 26, 2018, the date Lauren moved for that support. However, the court ordered Todd to continue to make payments pursuant to the pendente lite order, at $500 per week, until the marital home was sold or until six months from the date of its opinion, whichever was sooner.

The court also ordered the parties to exchange financial information annually to facilitate applications for modification of Todd's alimony obligation in the event either party earns more than the income imputed to them by the court. The court stated, however, that it would not modify alimony in the event either party earned less than the income imputed to them.

The court granted the parties joint custody of the children with Lauren as the parent of primary residential custody and Todd as the parent of alternate residence. As for child support, the court concluded the child support guidelines do not apply because the combined imputed income of the parties exceeded the guidelines' upper limit. The court, instead, applied the ten factors set forth in N.J.S.A. 2A:34-23 and concluded Todd would pay child support of $350 per week.

With respect to equitable distribution, the court decided that the parties' most significant asset, the marital home, would be sold, as neither party had the financial means to buyout the interest of the other. The court ordered all joint marital debts, including outstanding medical bills and credit card balances, be paid from the proceeds of the sale of the home. In addition, each counsel was to receive $20,000 of the proceeds of the sale. The parties would split the remaining net proceeds.

The court directed Lauren to pay one half of a lease termination fee and replenish her daughter's bank account from her share of the proceeds of the marital home. In addition, the court directed Todd to pay $25,000 out of his share of the proceeds to Lauren's attorney to equalize payments to the attorneys, given that Todd withdrew funds from his IRA to pay his attorney $35,000 and Lauren's attorney $10,000. The court ordered Todd to return $29,943.27 to the IRA, representing money he withdrew from the account but did not spend on joint litigation costs. He was also ordered to return $1,964.67 to that account for minimum payments he made on credit cards determined to be joint debts.

Todd was given sole possession of his Chase bank account and E*Trade accounts. The court did not require Lauren to replenish Todd's TD bank account or to pay for what he claimed were Lauren's excessive ATM charges.

The court found an alleged $100,000 loan to Todd from his father for the purchase of the marital home was Todd's sole responsibility. The court noted that only Todd signed the note for the debt and his father testified that he did not know if he would require Todd to repay the loan. The court concluded there was insufficient evidence that Lauren was aware of the alleged loan. The court made similar findings with respect to other alleged loans to Todd from his father. Lauren was directed to pay loans she took from family and friends while receiving pendente lite support.

II.

We begin with Todd's arguments concerning alimony. Our review of a Family Part's judgment is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "[W]e do not overturn those determinations unless the court abused its discretion, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." Storey v. Storey, 373 N.J. Super. 464, 479 (App. Div. 2004). We must accord substantial deference to the findings of the Family Part due to that court's "special jurisdiction and expertise in family matters . . . ." Cesare, 154 N.J. at 413.

We defer to the judge's factual determinations, so long as they are supported by substantial credible evidence in the record. Rova Farms Resort,

Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). This court's "[a]ppellate review does not consist of weighing evidence anew and making independent factual findings; rather, our function is to determine whether there is adequate evidence to support the judgment rendered at trial." Cannuscio v. Claridge Hotel & Casino, 319 N.J. Super. 342, 347 (App. Div. 1999) (citing State v. Johnson, 42 N.J. 146, 161 (1964)). We review de novo the court's legal conclusions. Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995).

In addition, there must be "deference to the trial court's credibility determinations[,]" N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007), "because it 'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" City Council v. Edwards, 455 N.J. Super. 261, 272 (App. Div. 2018) (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)).

"A Family Part judge has broad discretion in setting an alimony award and in allocating assets subject to equitable distribution." Clark v. Clark, 429 N.J. Super. 61, 71 (App. Div. 2012). "Of course, [as to alimony] the exercise of this discretion is not limitless[,]" and is "frame[d]" by the statutory factors set forth in N.J.S.A. 2A:34-23(b). Steneken v. Steneken, 367 N.J. Super. 427, 434 (App. Div. 2004).

A proper alimony award "assist[s] the supported spouse in achieving a lifestyle that is reasonably comparable to the one enjoyed while living with the supporting spouse during the marriage." Tannen v. Tannen, 416 N.J. Super. 248, 260 (App. Div. 2010) (quoting Steneken v. Steneken, 183 N.J. 290, 299 (2005)). "[A] judge awarding alimony must methodically consider all evidence to assure the award is 'fit, reasonable and just' to both parties, N.J.S.A. 2A:34-23, and properly balances each party's needs, the finite marital resources, and the parties' desires to commence their separate futures, N.J.S.A. 2A:34-23[(]c[)]." Gnall v. Gnall, 432 N.J. Super. 129, 149 (App. Div. 2013).

We have carefully reviewed the record in light of Todd's arguments that the trial court failed to consider Lauren's needs or the marital standard of living when determining alimony. We find sufficient support for the trial court's alimony determination and no basis to conclude it misapplied its discretion. The court heard testimony, reviewed the evidence submitted by the parties, and made a finding of the marital standard of living that reflected its determination that each party had submitted unreliable estimates of their expenses.

We are not persuaded by Todd's argument that the trial court erred by suggesting alimony might be modified if, in the future, either party earns more than the income imputed to them. Todd's suggestion that the court, in effect, set

a limitless amount of alimony is not well founded. The court merely recognized that a change in either party's income may warrant modification of Todd's alimony obligation. As a general rule, the court is "authorized to modify alimony and support orders 'as the circumstances of the parties and the nature of the case' require." Halliwell v. Halliwell, 326 N.J. Super. 442, 448 (App. Div. 1999) (quoting N.J.S.A. 2A:34-23). A party seeking a modification of his alimony and child support obligations must demonstrate changed circumstances "as would warrant relief." Lepis v. Lepis, 83 N.J. 139, 157 (1980). The obligor's ability to pay is a central consideration when determining if relief is warranted. Miller v. Miller, 160 N.J. 408, 420 (1999). In the event either party has a significant change in their income or ability to earn income, they may seek modification of alimony consistent with controlling legal principles, regardless of the trial court's suggestion that it would not modify alimony in the event either party earned less than the amount imputed to them.

Todd also argues the trial court erred by rejecting his proposal to have his alimony paid in part from his base salary and in part from his quarterly commissions, with an annual cap of $70,000. He cites no precedent requiring the court to take such an approach and we see no convincing reason to limit the court's discretion in this fashion.

Finally, we have considered Todd's argument that the trial court erred by not, pursuant to Mallamo, adjusting his pendente lite support obligations in light of Lauren's failure to obtain employment, and spending habits, in the period during which she received pendente lite support. We are not persuaded that the trial court erred with respect to calculating the Mallamo credit.

Our review of the record also reveals no basis on which to alter the trial court's child support determination. Todd's arguments concerning child support do not warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Finally, with respect to the trial court's equitable distribution decision, the "court may make such award or awards to the parties, in addition to alimony and maintenance, to effectuate an equitable distribution of the property, both real and personal, which was legally and beneficially acquired by them or either of them during the marriage . . . ." N.J.S.A. 2A:34-23(h). The statute "should be construed, to the extent feasible, to effectuate the public policy underlying the equitable distribution law, which is to recognize that marriage is 'a shared enterprise, a joint undertaking, that in many ways . . . is akin to a partnership.'" Weiss v. Weiss, 226 N.J. Super. 281, 287 (App. Div. 1988) (quoting Smith v. Smith, 72 N.J. 350, 361 (1977)).

"Appellate review pertaining to the division of marital assets is narrow." Valentino v. Valentino, 309 N.J. Super. 334, 339 (App. Div. 1998). We "decide whether the trial [court] mistakenly exercised its broad authority to divide the parties' property and whether the result was 'reached by the trial judge on the evidence, or whether it is clearly unfair or unjustly distorted by a misconception of law or findings of fact that are contrary to the evidence.'" Ibid. (quoting Wadlow v. Wadlow, 200 N.J. Super. 372, 382 (App. Div. 1985)).

There is sufficient support in the record for the trial court's determinations with respect to the alleged $100,000 loan to Todd from his father, the funds in Todd's accounts, and the money withdrawn by him for joint litigation expenses. We detect no basis for disturbing the trial court's equitable distribution of the parties' assets.

Affirmed.