SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1596-20

WENDY CIRINO,

Plaintiff-Respondent,

v.

THOMAS CIRINO,

Defendant-Appellant.

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Submitted January 19, 2022 – Decided November 1, 2022

Before Judges DeAlmeida and Smith.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Passaic County, Docket No. FM-16-0280-04.

Michael J. Pasquale, attorney for appellant.

Respondent has not filed a brief.

The opinion of the court was delivered by

SMITH, J.A.D.

Defendant Thomas Cirino appeals from the Family Part's order compelling him to pay a seventy-five percent share of his children's college expenses as well as pay child support arrears. He also appeals the Family Part's denial of his cross-motion for emancipation of one of his children and modification of certain terms in his amended property settlement agreement. We discern no error in either order, consequently we affirm.

The parties were married on September 19, 1997. Final Judgment of Divorce was entered on December 16, 2003. There are two children of the marriage, Vanessa, now 22, and Thomas, Jr., (Tommy), now 20. The parties entered into a Property Settlement Agreement (PSA) in 2003 and amended the PSA via consent order on September 27, 2006. The amended PSA contained language impacting the two issues before us, child support and college expenses.

As to defendant's payment of child support, the 2003 PSA established initial child support payments at $168 per week. The September 2006 amended PSA increased the child support payments to $565 per week with a three percent increase added to the base amount of $565 every three years. The amended PSA barred probation review of agreed upon child support terms. Finally, paragraph 9 of the amended PSA states:

> [t]he parties agree that this Consent Order shall be a final support agreement with no further agreements or renegotiations in the future. The terms of this Consent Order can only be revisited in the event either party's financial circumstances are drastically changed . . . [t]hen and only in such event will each party's financial status and child support obligations be revisited.

As to college expenses, the parties agreed in the 2003 PSA to "pay the reasonable costs of a full-time undergraduate college education . . . ." The obligation of the parties to pay was conditioned, in relevant part, on each party being consulted in advance about the child's college selection, each party's financial ability to pay for college, and the child's application for scholarships and aid. The 2006 amendment stated that defendant would be "responsible for seventy-five percent . . . of all tuition and required expenses . . . while [p]laintiff [would be] be responsible for twenty-five percent . . . of these expenses."

In July 2019, plaintiff filed a motion to enforce the September 2006 consent order, seeking an order compelling defendant to pay seventy-five percent of the children's college expenses. Defendant opposed the motion and cross-moved for Vanessa's emancipation and a reduction of his seventy-five percent share of the college expenses. On January 21, 2020, the trial court granted plaintiff's requested relief, ordering that defendant pay $2,580.75,

which represented seventy-five percent of Vanessa's 2019 spring semester college expenses at Passaic County Community College. The court also ordered the parties to attend mediation to address upcoming college expenses for Vanessa's attendance at Rutgers University and Tommy's attendance at Passaic County Community College.

Mediation was unsuccessful, and plaintiff filed another motion, now seeking enforcement of the January 21, 2020 college expense order and a 2011 post-judgment Family Part order directing defendant to pay child support arrears. The trial court found defendant was current in paying his share of the children's college expenses, and it scheduled a plenary hearing on the allocation of ongoing college expenses between the parties and modification of child support.

The trial court conducted the hearing over two days, October 28 and November 18, 2020. The court took testimony from plaintiff, defendant, Tommy, and plaintiff's husband, Alfred Troesch. Vanessa did not testify. The court found plaintiff, Tommy, and Alfred Troesch credible, but it found defendant not credible. Making detailed factual findings, the court concluded that the parties would be bound by the express terms of the amended PSA. Considering the proofs adduced at the hearing, the court found that: Vanessa

was not emancipated; defendant had been consulted regarding the children's college attendance; and defendant had not met his burden to show changed circumstances which would warrant modification of the parties 75/25 split on payment of the children's college expenses. The court declined to consider plaintiff's husband's income in reaching its conclusion. The court ordered defendant pay $32,354.45 as his seventy-five percent share of Vanessa's college costs and $7,554.14 as his seventy-five percent share of Tommy's college costs. The court also ordered defendant to bring his child support arrears current within ninety days.

Defendant's sole argument on appeal is that the court erred by rejecting his application to modify the parties' amended PSA and concluding that its child support and college expense terms were binding.

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We "accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare, 154 N.J. at 413). Generally, "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 411-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484

(1974)). We will not disturb the factual findings and legal conclusions unless convinced they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Ricci v. Ricci, 448 N.J. Super. 546, 564 (App. Div. 2017) (quoting Elrom v. Elrom, 439 N.J. Super. 424, 433 (App. Div. 2015)). Challenges to legal conclusions, as well as a trial court's interpretation of the law, are subject to de novo review. Id. at 565.

Defendant seeks relief from the child support and college expense sharing terms he agreed to in the amended PSA. He essentially argues that the trial court erred by not modifying those terms as a matter of equity. We disagree, primarily for the reasons set forth in the January 8, 2021 order and accompanying written statement of reasons by Judge Lawrence Maron. We add the following comments.

Defendant contends that his "overwhelmingly negative financial picture," combined with plaintiff's non-existent income and the substantial income of plaintiff's current husband warranted a modification of the 2006 consent order, granting him relief from the seventy-five percent share of college costs and the three percent child support escalator. The judge rejected

this argument, finding defendant had not shown a change of circumstances which would warrant such a modification. We agree.

During the hearing, defendant presented numerous arguments concerning his landscaping business' lack of profitability and the alleged decline in value of his real estate assets, but he relied on his own testimony and did not present competent evidence in the form of real estate appraisals or business valuations to the court. Defendant sought to introduce plaintiff's current husband's income in support of his modification application, but he failed to present Case Information Statements from 2003 or 2006 on the issue of changed circumstances as required by R. 5:5-2(a) and R. 5:5-4(a)(1)(4). These omissions left the court with no choice but to conclude defendant failed to make the prima facie showing of changed circumstances. As a result, the trial court could not consider the plaintiff's financial status, or her husband's income. Lepis v. Lepis, 83 N.J. 139, 157 (1980).

We view the record through the lens of the amended PSA as it existed in 2006, an agreement the court found on the record to be consensual and fair. See Konzelman v. Konzelman, 158 N.J. 185, 197 (1999).

We find sufficient evidence in the record for the trial court to conclude that Vanessa was not emancipated, and that defendant's child support

obligation to her continues. We note that Judge Maron expressly rejected defendant's testimony on the emancipation issue, and he found plaintiff's testimony credible.

We also find sufficient credible evidence in the record to support the judge's conclusion that the college consultation term in the amended PSA was satisfied. The judge found both children consulted with their father, either directly or through a family intermediary, regarding prospective college choices. Our standard of review prescribes deference to these factual findings.

We conclude that the court properly exercised its discretion, and we find the judge's order granting plaintiff's motion and denying defendant's cross-motion to be well "supported by adequate, substantial, credible evidence" in the record. Cesare, 154 N.J. at 412 (citation omitted).

Affirmed.