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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0257-21**

TERESA MARTONE,

Plaintiff-Appellant,

v.

JOHN MARTONE,

Defendant-Respondent.

Argued October 25, 2022 – Decided January 17, 2023

Before Judges Geiger and Susswein.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Gloucester County,
Docket No. FM-08-0706-19.

Kathleen Pasquarello Stockton argued the cause for
appellant (Stockton Family Law, LLC, attorneys;
Kathleen Pasquarello Stockton and Jessica A.
Beardsley, on the brief).

John Martone, respondent pro se.

PER CURIAM

In this matrimonial action, plaintiff, Teresa Martone, appeals from portions of the Family Part's May 7, 2021 Final Judgment of Divorce (JOD) and August 31, 2021 order denying her motion for reconsideration. She challenges the trial judge's alimony award to defendant John Martone and the denial of her motion for a Mallamo¹ credit against the pendente lite award. After carefully reviewing the record in light of the governing legal principles and arguments of the parties, we affirm substantially for the reasons set forth in Judge Kevin T. Smith's comprehensive fifty-nine-page written decision.

I.

We discern the following pertinent facts from the record. Plaintiff and defendant were married in October 1990. The parties have two children: D.M. (born December 2001) and K.M.² (born November 2003). At the time of trial, plaintiff was residing in the marital home while defendant, lacking a stable residence, was living in Philadelphia.

Plaintiff is a registered nurse and a nurse practitioner. Defendant had a long work history as a union carpenter. Over the course of his career, he

¹ Mallamo v. Mallamo, 280 N.J. Super. 8 (App. Div. 1995).

² We use initials pursuant to R. 1:38-3(d).

sustained multiple work-related injuries and has undergone numerous surgeries. Defendant testified that injuries sustained in 2016 limit his ability to work.

The parties have been formally separated since August 2015. Prior to the separation, defendant was incarcerated from 2008 to 2013. Upon release, defendant returned to the marital home. In March 2014, however, he was arrested for driving under the influence, which violated his parole. As a result, defendant was sent to a state-run substance abuse treatment program. Thereafter, defendant was not welcomed back to the marital home, and he moved out in August 2015.

In June 2018, plaintiff filed an application seeking child support. Following a hearing, the court entered an order on July 17, 2018, directing defendant to pay plaintiff \$192 per week for child support plus an additional \$38 per week for K.M.'s extracurricular expenses. Defendant was also ordered to pay arrears in the amount of \$20 per week.

Plaintiff filed a complaint for divorce in April 2019, and defendant filed an answer and counterclaim in June 2019. Prior to trial, plaintiff was ordered to pay \$100 per week in pendente lite spousal support, which was applied as a credit against defendant's child support obligation. The trial was convened via Zoom over the course of diverse three days. In his comprehensive and well-

reasoned opinion, Judge Kevin T. Smith considered the fourteen alimony factors enumerated in N.J.S.A. 2A:34-23(b) and made specific findings of fact relating to each factor considering the evidence admitted at trial.

Plaintiff raises the following contentions on appeal:

POINT I

THE COURT FAILED TO RECOGNIZE IT WAS DEFENDANT'S BURDEN TO PROVIDE SUFFICIENT TESTIMONY AND PROOFS TO SUPPORT HIS CLAIM FOR ALIMONY AND NO ALIMONY SHOULD HAVE BEEN AWARDED.

POINT II

THE DEFENDANT DID NOT MEET HIS BURDEN TO SUSTAIN HIS CLAIM FOR ALIMONY AND THE COURT ENGAGED IN COMPLETE CONJECTURE WHEN MAKING ITS DECISION AND NO ALIMONY SHOULD HAVE BEEN AWARDED.

POINT III

THE DEFENDANT FAILED TO PROVIDE SUFFICIENT TESTIMONY, PROOFS, OR UPDATED FINANCIAL INFORMATION AS REQUIRED BY THE RULES OF COURT AND NO ALIMONY SHOULD HAVE BEEN AWARDED.

POINT IV

THE COURT SHOULD HAVE AWARDED PLAINTIFF A MALLAMO CREDIT BY VACATING THE PENDENTE LITE ORDER FOR ALIMONY.

POINT V

THE COURT SHOULD HAVE GRANTED THE PLAINTIFF'S MOTION FOR RECONSIDERATION AS THE DECISION WAS BASED ON AN INCORRECT OR IRRATIONAL BASIS.

II.

We first address plaintiff's contentions the trial judge erred in awarding alimony because (1) he failed to recognize it was defendant's burden to provide sufficient testimony and proofs to support his claim of alimony; and (2) defendant failed to provide sufficient testimony, proofs, or updated financial statements to support the award of alimony.

We begin our analysis by acknowledging that the scope of our review is limited, as we accord deference to Family Part judges due to their "special jurisdiction and expertise in family matters." Cesare v. Cesare, 154 N.J. 394, 413 (1998). Their findings are binding so long as they are "supported by adequate, substantial, credible evidence." Id. at 411–12. "Only when the trial [judge]'s conclusions are so 'clearly mistaken' or 'wide of the mark' should an appellate court intervene and make [our] own findings to ensure that there is not a denial of justice." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007)).

We likewise apply a deferential standard of review to Family Part determinations regarding alimony. We must uphold an alimony award unless the judge failed to apply the correct legal standards or abused his or her discretion by making findings that are not supported by sufficient credible evidence in the record. J.E.V. v. K.V., 426 N.J. Super. 475, 485 (App. Div. 2012) (citing Heinl v. Heinl, 287 N.J. Super. 337, 345 (App. Div. 1996)). A trial judge abuses his or her discretion "when a decision is made without a rational explanation, inexplicably depart[s] from established policies, or rest[s] on an impermissible basis." Kornbleuth v. Westover, 241 N.J. 289, 302 (2020) (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 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). The court may order alimony "as the circumstances of the parties and the nature of the case shall render fit, reasonable and just." N.J.S.A. 2A:34-23. "[A]limony is neither a punishment for the payor nor a reward for the payee." Mani v. Mani, 183 N.J. 70, 80 (2005). "The basic purpose of alimony is the continuation of the standard of living enjoyed by the parties prior to their separation." Innes v. Innes, 117 N.J. 496, 503 (1990).

"[T]he goal of a proper alimony award is to assist the supported spouse in achieving a lifestyle that is reasonably comparable to the one enjoyed while living with the supporting spouse during the marriage." Crews v. Crews, 164 N.J. 11, 16 (2000).

In determining alimony, "[t]he court may impute income based on the [party]'s former income at that person's usual or former occupation or the average earnings for that occupation as reported by the New Jersey Department of Labor." Elrom v. Elrom, 439 N.J. Super. 424, 435 (App. Div. 2015) (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 12, Appendix IX–A on R. 5:6A (2015)). "[I]f potential earnings cannot be determined," the court may "impute income based on the [party]'s most recent wage or benefit record." Ibid. "Imputation may also be justified when examining income reported by self-employed obligors, who control the means and the method of their earnings." Id. at 436. "A trial judge's decision to impute income of a specified amount will not be overturned unless the underlying findings are inconsistent with or unsupported by competent evidence." Storey v. Storey, 373 N.J. Super. 464, 474–75 (App. Div. 2004). "Credibility findings are given substantial weight and deference." Id. at 479.

Alimony awards are "governed by distinct, objective standards defined by the Legislature in N.J.S.A. 2A:34-23(b)." Gnall v. Gnall, 222 N.J. 414, 429 (2015). The court must consider the following statutory factors:

- (1) The actual need and ability of the parties to pay;
- (2) The duration of the marriage or civil union;
- (3) The age, physical and emotional health of the parties;
- (4) The standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other;
- (5) The earning capacities, educational levels, vocational skills, and employability of the parties;
- (6) The length of absence from the job market of the party seeking maintenance;
- (7) The parental responsibilities for the children;
- (8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;
- (9) The history of the financial or non-financial contributions to the marriage or civil union by each party including contributions to the care and education

of the children and interruption of personal careers or educational opportunities;

(10) The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;

(11) The income available to either party through investment of any assets held by that party;

(12) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment;

(13) The nature, amount, and length of pendente lite support paid, if any; and

(14) Any other factors which the court may deem relevant.

In each case where the court is asked to make an award of alimony, the court shall consider and assess evidence with respect to all relevant statutory factors. If the court determines that certain factors are more or less relevant than others, the court shall make specific written findings of fact and conclusions of law on the reasons why the court reached that conclusion. No factor shall be elevated in importance over any other factor unless the court finds otherwise, in which case the court shall make specific written findings of fact and conclusions of law in that regard.

[N.J.S.A. 2A:34-23(b).]

The court must "make specific findings on the evidence" regarding the statutory factors listed above relevant to the particular type of alimony award.

N.J.S.A. 2A:34-23(c). "An alimony award that lacks consideration of the factors set forth in N.J.S.A. 2A:34–23(b) is inadequate" Crews, 164 N.J. at 26.

Plaintiff asserts that defendant bore a burden of proof as the party requesting alimony. In support of that proposition, plaintiff cites to a 1992 Chancery Division opinion that commented, "[i]t is basic that the party seeking alimony, of whatever category, must sustain the necessary burden of proof to justify the court in granting the relief sought." Finelli v. Finelli, 263 N.J. Super. 403, 406 (Ch. Div. 1992). Our review of relevant case law, however, does not reveal any binding authority establishing a burden of proof as it relates to the statutory factors or the award of open durational alimony.³ The statutory framework for determining alimony is comprehensive but makes no mention of a burden of proof. We decline to read such a burden into the statute. The critical statutory requirement is that the trial court make specific written findings of fact. Judge Smith complied with that requirement.

The gravamen of plaintiff's argument on appeal is that there was insufficient evidence to support the alimony award, and that the judge

³ A 2014 amendment to N.J.S.A. 2A:34-23 substituted "open durational alimony" for "permanent alimony." L. 2014, c. 42, § 1. Open durational alimony does not have a fixed duration or time limit and is generally only available to parties married for twenty years or longer. N.J.S.A. 2A:34-23.

impermissibly engaged in conjecture to reach its determination. These arguments are belied by the record, which shows that Judge Smith thoroughly considered and made specific findings on the evidence as to each statutory factor. He did not engage in "complete conjecture" as plaintiff claims. Rather, the court imputed the parties' incomes based on the available evidence presented at trial.

III.

We next address plaintiff's contention regarding Mallamo credits. Plaintiff argues the trial court should have adjusted the pendente lite spousal award retroactively, eliminating all pendente lite alimony payable to the defendant. This argument also lacks merit.

"The State has long recognized the power of the judiciary to prevent irreparable harm and to preserve the status quo through the device of awarding temporary financial support pending a full investigation of the case." Mallamo, 280 N.J. Super. at 11. The Legislature has specifically authorized pendente lite support awards to provide temporary financial support pending the resolution of a matrimonial action. Id. at 12; see also N.J.S.A. 2A:34–23. Pendente lite support orders are subject to modification at the time final judgment is entered.

Ibid. "Any changes in the initial orders rest with the trial judge's discretion."
Slutsky v. Slutsky, 451 N.J. Super 332, 368 (App. Div. 2017).

By order dated February 14, 2020, Judge Smith directed plaintiff to pay defendant \$100 per week in pendente lite spousal support, effective December 18, 2019. In the JOD, the trial court awarded defendant open durational alimony in the amount of \$110 per week. Accordingly, the trial judge modified the Mallamo credits in consideration of the additional amount of spousal support awarded, ordering an adjustment of \$716.38 in defendant's favor. As the trial court did not eliminate the spousal support, there was no basis for eliminating the past pendente lite support. In sum, we are satisfied Judge Smith's findings are supported by substantial credible evidence in the record.

IV.

Finally, we address plaintiff's contention that the trial court should have granted her motion for reconsideration. She argues the alimony award rested on an incorrect basis because her actual income in 2015 was \$62,001 and not \$88,000, as the court had imputed. Additionally, plaintiff argues that the trial court should recalculate defendant's income using the Pennsylvania Compendium of Wages, not that of New Jersey.

"[A] motion for reconsideration 'is not properly brought simply because a litigant is dissatisfied with a judge's decision, nor is it an appropriate vehicle to supplement an inadequate record.'" Guido v. Duane Morris LLP, 202 N.J. 79, 87 (2010) (citation omitted). Rather, a motion for reconsideration "is primarily an opportunity to seek to convince the court that either 1) it 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." Kornbleuth, 241 N.J. at 301 (quoting Guido, 202 N.J. at 87–88). "We will not disturb the trial court's reconsideration decision 'unless it represents a clear abuse of discretion.'" Ibid. (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)).

Plaintiff contends the trial court's "assumption" about her income is inaccurate. In support of her reconsideration motion, she submitted a copy of her social security earnings showing that she grossed \$62,002 in 2015—not \$88,000. As Judge Smith correctly points out, this is not a proper argument on reconsideration. Courts may not consider evidence the party moving for reconsideration could have but failed to present in the first instance. See Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) ("A motion for reconsideration is designed to seek review of an order

based on the evidence before the court on the initial motion, not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion record." (internal citations omitted)).

Judge Smith correctly noted that there is an exception to that general rule if a party's actual earnings "turn out to diverge greatly from the court's estimate," in which event the court may adjust the alimony award accordingly. Mahoney v. Mahoney, 91 N.J. 488, 505 (1982). Judge Smith recognized this exception only applies, however, if the award is "unfair." Ibid. He explained:

No such unfairness is present here. The parties' marriage lasted over twenty years. Plaintiff's income far exceeded [d]efendant's during the latter half of the marriage. And [p]laintiff is more than capable of maintaining her minimal alimony obligation (\$5,700 per year) given her \$115,000+ annual income. The court will thus reaffirm [p]laintiff's support obligation.

We likewise reject plaintiff's argument that defendant's income should have been imputed in accordance with the carpenter union wage in Pennsylvania, not New Jersey. As Judge Smith explained, plaintiff, at trial, did not ask the court to impute defendant's income based on the average salary of a carpenter in Philadelphia and cannot do so for the first time on reconsideration. Moreover, Judge Smith found that the average annual salary for a carpenter in Pennsylvania is \$65,910—just \$410 more than the salary the trial court imputed

applying the New Jersey Wage Compendium. Judge Smith concluded that the minimal difference does not warrant reconsideration. In sum, the trial court's denial of plaintiff's motion for reconsideration rested on a rational basis, and the judge did not abuse his discretion in refusing to recalculate the imputations of income based on evidence not offered at trial.

To the extent we have not addressed them, any remaining arguments raised by plaintiff lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION