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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0715-21

JUSTINE APONTE,

Plaintiff-Respondent,

v.

ROBERT APONTE,

Defendant-Appellant.

Submitted March 28, 2023 – Decided June 23, 2023

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex County,
Docket No. FM-12-1108-20.

Robert Aponte, appellant pro se.

Brenda M. Helt, attorney for respondent.

PER CURIAM

Defendant Robert Aponte, the former husband, appeals from a final judgment of divorce (JOD) entered after a trial in the family court. Defendant

challenges various decisions concerning alimony, parenting time, equitable distribution, and attorneys' fees. Having reviewed the record and governing law, we affirm the JOD in all respects with one exception. We remand on the limited issue of determining defendant's parenting time.

I.

The relevant facts were developed at a two-day trial. Both parties testified and were represented by counsel. The parties stipulated to the exhibits admitted into evidence.

The parties were married in June 2010. They have one child: a son, born in January 2012. Plaintiff filed for divorce in November 2019. Thereafter, the parties tried to reconcile, but those efforts were not successful. Accordingly, the trial judge determined that November 18, 2019, was the appropriate date to use as the end of the parties' marriage.

In making the findings and rulings supporting the JOD, the court analyzed the governing statutes concerning alimony and child support. The court also made credibility findings. In that regard, the court found both parties generally credible but found that plaintiff was more credible and reliable concerning the financial circumstances of the parties, while defendant did not have as good a comprehension of the parties' financial positions.

Plaintiff is employed as an office manager. Based on the evidence presented at trial, the court found that her annual income was just over \$62,000. Defendant is a union carpenter and his income between 2018 and 2020 ranged from \$152,000 to \$126,000. Using defendant's actual earnings for the first half of 2021, the court projected defendant's 2021 annual income to be just over \$127,000.

Accordingly, in calculating alimony and child support, the court used \$127,000 as defendant's income and \$62,000 as plaintiff's income. The court then found that plaintiff was entitled to alimony for six years and four months and awarded her \$16,000 per year to be paid monthly at \$1,333.33.

Before trial, the parties had agreed to a custody and parenting-time arrangement, which was embodied in a consent order. Under that arrangement, the parties agreed to share joint legal custody, plaintiff was designated the parent of primary residential custody, and defendant was the parent of alternate residential custody. Defendant had parenting time with their son every Saturday morning through Sunday evening and on two weekdays, with the parties agreeing to the days and times. The court essentially continued that arrangement, ruling that plaintiff would remain the parent of primary residential custody and defendant would be the parent of alternate residential custody. In

its written decision, the court rejected plaintiff's arguments to alter the pendente lite arrangement and alternate weekends. However, in the schedule attached to the JOD, the trial court stated that defendant would have parenting time every other weekend from 5:00 p.m. on Friday to 8:00 p.m. on Saturday. The schedule also provided that defendant would have parenting time during the week on every Tuesday from 3:00 p.m. to 6:00 p.m. and every Wednesday from 3:00 p.m. to 8:00 p.m. Using the Child Support Guidelines, the court calculated that defendant was to pay plaintiff \$235 in child support every week.

The trial court then made findings and rulings on equitable distribution. Relevant to this appeal, the court made determinations concerning a timeshare, and credit card debt. The court found that the current value of the timeshare was \$12,846. Relying on defendant's testimony that he did not want to purchase the timeshare from plaintiff, the court awarded the timeshare to plaintiff and directed that she pay defendant twenty percent of the value, which was \$2,569.20. The court found that the parties had a credit card debt of \$35,125.27 and directed each party to pay fifty percent, which was \$17,562.63. Concerning counsel fees, the court analyzed the factors under Rules 4:42-9 and 5:3-5(c) and directed defendant to pay \$6,168 in attorneys' fees to plaintiff within thirty days.

The court's rulings were embodied in the JOD entered on October 18, 2021. The following day, defendant moved to stay the provisions concerning alimony, child support, and attorneys' fees pending an appeal. On November 18, 2021, the court entered an order denying defendant's request for a stay.

In that order, the court also sua sponte modified defendant's child support because at trial defendant had testified he paid child support for a child of another relationship, but he had not provided the amount of that support. In the submissions filed post-judgment, defendant provided a paystub that showed he was paying child support for another child. Accordingly, the court re-ran the child support guidelines, and the court then ordered defendant to pay \$186 per week in child support effective September 1, 2021, until May 31, 2022. Effective June 1, 2022, defendant's child support obligation was increased to \$195 per week because his other child support obligation would end with the emancipation of that other child.

Defendant now appeals from the JOD. We denied his request for a stay pending this appeal.

II.

On appeal, defendant challenges various provisions of the JOD. He focuses his arguments on alimony, parenting time, child support, and attorneys'

fees. He also raises issues concerning the trial court's rulings on the timeshare and credit card debt.

The scope of appellate review is limited and we "afford substantial deference to the Family Part's findings of fact because of that court's special expertise in family matters." W.M. v. D.G., 467 N.J. Super. 216, 229 (App. Div. 2021) (citing Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). The family court's findings are binding on appeal when "supported by adequate, substantial, credible evidence." Gormley v. Gormley, 462 N.J. Super. 433, 442 (App. Div. 2019) (quoting Cesare, 154 N.J. at 411-12). "Reversal is warranted only if the findings were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Amzler v. Amzler, 463 N.J. Super. 187, 197 (App. Div. 2020) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

A. Alimony.

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). In determining alimony, the family court must consider fourteen factors set forth in N.J.S.A. 2A:34-23(b). Ibid. The court must then "make 'specific

findings on the evidence' regarding the statutory factors relevant to the particular alimony award." Id. at 430 (quoting N.J.S.A. 2A:34-23(c)).

"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). "Trial courts may award such alimony 'as the circumstances of the parties and the nature of the case shall render fit, reasonable and just.'" Overbay v. Overbay, 376 N.J. Super. 99, 106 (App. Div. 2005) (quoting N.J.S.A. 2A:34-23). "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).

We give deference to the family court's alimony determination. We will uphold an alimony award unless the court failed to apply the correct legal standard or abused its 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). A trial court abuses its discretion "when a decision is made without a rational explanation, inexplicably depart[s] from established policies, or rests 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)).

Defendant challenges both the amount and length of the alimony awarded. He argues that his annual income was \$106,000 and the trial court incorrectly found that it was \$127,000. He contends that the trial court improperly added a vacation fund to his base salary. Defendant also argues that because the parties were married for only a little over nine years, the court erred in awarding alimony for six years and four months.

We discern no reversible error in the trial court's determination concerning alimony. The court considered the evidence presented by the parties regarding their income. The court then made express findings of facts based on that evidence. The determination of defendant's income as \$127,000 annually is supported by substantial credible evidence in the record.

In determining the amount and length of the alimony award, the court addressed all fourteen factors set forth in N.J.S.A. 2A:34-23(b). The court then made specific findings based on the evidence. In short, we discern no reversible error in the court's alimony award.

B. Parenting Time and Child Support.

Defendant argues that his parenting time was reduced without an appropriate explanation and was inconsistent with the trial court's written statement of reasons. He points out that under the pretrial consent order, the

parties had been sharing parenting time every weekend. Plaintiff had requested a change but, in the court's written statement of reasons, the court rejected plaintiff's request. Nevertheless, in the JOD the court attached a schedule giving defendant parenting time every other weekend.

Defendant also contends that he had been enjoying parenting time on Tuesdays and Wednesdays and the parties had agreed to a pickup time around 4:00 p.m. and a drop off time at approximately 8:00 p.m., which accommodated his work schedule and the school schedule of their son. In the schedule attached to the JOD, the trial court changed those hours giving defendant parenting time from 3:00 p.m. to 6:00 p.m. on Tuesday and 3:00 p.m. to 8:00 p.m. on Wednesday.

We remand for a clearer determination of defendant's parenting time. The trial court's decision, as embodied in the schedule attached to the JOD, is inconsistent with the court's statement of reasons concerning weekend parenting time. The court also did not explain why it was changing the hours for defendant's weekday parenting time. In remanding, we note that these issues would be appropriate for mediation because if the parties' focus is on the best interest of their son, a parenting time schedule that accommodates the parties' and the son's schedules should be worked out. If the parties are unable to resolve

this issue, then the court will have to make an appropriate ruling on an appropriate record. In directing this remand, we point out that it is a limited remand on the parenting time issue.

Defendant also challenges the child support ruling, contending that he is not being credited for the correct number of overnights. The record does not support that position, and we see no basis for reversing the modified child support obligations embodied in the November 18, 2021 order.

C. Attorneys' Fees.

Defendant also argues that the trial court erred in granting plaintiff \$6,168 in attorneys' fees. "We will disturb a trial court's determination on counsel fees only on the 'rarest occasion,' and then only because of clear abuse of discretion." Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

N.J.S.A. 2A:34-23 authorizes family courts to award attorneys' fees in matrimonial actions after a judge "consider[s] the factors set forth in the court rules on counsel fees, the financial circumstances of the parties, and the good faith or bad faith of either party." Chestone v. Chestone, 322 N.J. Super. 250, 255-56 (App. Div. 1999) (quoting N.J.S.A. 2A:34-23). Rule 4:42-9(a)(1) provides that, "[i]n a family action, a fee allowance both pendente lite and on

final determination may be made pursuant to [Rule] 5:3-5(c)." Rule 5:3-5(c) states that a court should consider nine factors, including "the reasonableness and good faith of the positions advanced by the parties."

In awarding plaintiff attorneys' fees, the court addressed the factors enumerated in Rule 5:3-5(c). The court focused on the disparity in the parties' income, pointing out that defendant's income was "double" plaintiff's income. The court, therefore, found it was appropriate to award plaintiff a reasonable amount of attorneys' fees. After reviewing plaintiff's counsel's certification of services, the court found the plaintiff's counsel's hourly rate was reasonable but reduced the amount of time requested. Consequently, the court ordered defendant to pay \$6,168 in attorneys' fees to plaintiff within thirty days. We discern no abuse of discretion in that attorneys' fees award and affirm the award.

D. The Timeshare and Credit Card Debt.

Finally, defendant contends that the trial court erred in making rulings concerning the timeshare and credit card debt. We reject both arguments because defendant is simply disputing the factual findings made by the trial

court, but those fact findings are supported by substantial credible evidence. See Gormley, 462 N.J. Super. at 442.¹

III.

In summary, we affirm the JOD in all respects except for the parenting time ruling. We remand that one issue.

Affirmed and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION

¹ Defendant also contends that plaintiff has failed to pay him for his share of the marital home. That issue is not appropriately before us on this appeal. Instead, defendant's remedy for that claim is to file a motion in the family court.