SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2277-21

LUPE GONZALEZ,

Plaintiff-Appellant,

v.

WILLIAM ANASTASIO,

Defendant-Respondent.

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Submitted November 15, 2022 – Decided April 10, 2023

Before Judges Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FM-20-0963-15.

Hegge & Confusione, LLC, attorneys for appellant (Michael Confusione, of counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff appeals from a final March 15, 2022 order denying plaintiff's post-judgment motion determining various issues between the parties, and

following interim orders dated January 10, 2022, and November 5, 2021. After careful review of the record before us and in light of applicable legal principles, we affirm.

We glean the following facts from the record before us. On May 17, 1994, the parties, Lupe Gonzalez and William Anastasio, were married. There are two children born of the marriage, William and Kirsten. On January 28, 2015, a Final Judgment of Divorce (FJOD) was entered, incorporating a negotiated Marital Settlement Agreement (MSA). The children were seventeen years old and twenty years old at the time the FJOD was entered. Despite the parties owning various commercial properties, and agreeing to divide substantial marital debt, the MSA is only four pages long and contains only estimated values for the commercial properties at issue.

Material to the within appeal, the parties agreed to sell commercial property located at 101 Roseland Avenue, Caldwell, New Jersey (Roseland Property) in the MSA, which was encumbered by a mortgage in an unstated amount, with the net proceeds paying the marital debt identified within the document. The estimated property value for Roseland was set forth as $550,000 in the MSA and the marital debt to be paid from the proceeds of the sale was $139,150, with the remainder of the net proceeds, if any after payoff of the

mortgage, going to plaintiff. This marital debt included the children's student loans with The Pennington School, University of Pennsylvania, DeSales University, and a private loan from "N.L." In addition, defendant was to solely assume $58,000 in debt for his student loans and plaintiff was to solely assume $58,000 in debt for two vehicles.

Pursuant to the FJOD, the parties were to share joint custody of the children and agreed "[p]laintiff and [d]efendant shall share the cost of supporting the minor children and in completing the education of the children through Ph.D. level studies and in assisting them as needed until they reach the age of [twenty-six] years old or beyond."

In the MSA, the parties agreed plaintiff would receive, as equitable distribution, the following real property, all of which were unencumbered by any mortgages: 4732 W. Hopewell Road, Center Valley, Pennsylvania (est. value $899,000), 4850 W. Hopewell Road, Center Valley, Pennsylvania (est. value $200,000), and Eagle Rock Avenue, Roseland, New Jersey (Eagle Rock Property) (a vacant lot estimated at $75,000). The parties also agreed the following real properties would become the sole property of defendant: Hawley, Pennsylvania (Hawley Property) (est. value $400,000 encumbered by a $299,000 mortgage) and Chatham, New Jersey (Chatham Property) (est. value

$600,000). In all, plaintiff received approximately $1.17 million in equitable distribution and defendant received $700,000.

Curiously, although defendant received the Hawley Property in fee simple as equitable distribution and plaintiff received two properties in close proximity of each other in Pennsylvania, the MSA, paragraph 2c, states in relevant part:

> It is agreed between the parties that upon Notice of wife to the [h]usband, the husband will transfer approximately 10 acres of vacant land on the property in Hawley, [Pennsylvania] to the wife for her to build a home (at her sole expense) so as to have one home for each of their [c]hildren so they may live adjacent to each other as time goes on. It is further agreed that should the wife feel that the [h]usband is not acting in a way that would guarantee a home for the other child that the wife may, upon notice demand that the husband place the properties in a trust for the benefit of one or both of their children with the [h]usband remaining the trustee until his passing.

Plaintiff filed an order to show cause in September 2019 seeking: (1) a copy of the trust document; (2) transfer of the Eagle Rock Property to her; (3) transfer of ten acres of the Hawley Property to her; (4) return of certain personal property to her; and (5) attorneys' fees. The court ruled the matter was not emergent and converted it to a regular motion. Defendant filed a cross-motion.[1] The parties, again represented by counsel, appeared on the return date of the

[1] The cross motion has not been provided as part of the record on appeal.

motions, and entered into a consent order on November 1, 2019. Both represented to the court they had resolved all the issues in the two motions except the issue regarding the Hawley Property. The four-page, hand-written consent order, signed by the parties and their respective counsel, set forth "a roadmap" of discovery obligations to determine what the parties owed in marital debt and where the proceeds from the Roseland Property had been used.

Following oral argument, the trial court resolved the one remaining issue regarding the meaning of paragraph 2c of the MSA, finding the language meant "[t]he 10 acres in Hawley, Pennsylvania shall be placed in a trust to pass to [p]laintiff upon the death of [d]efendant for the purpose of building a home for the children." This notation was handwritten by the court on the front page of the order, otherwise entered into by consent. In ruling, the court reasoned "a settlement agreement is like any other document. If the [c]ourt feels it can interpret it based on the plain language, it interprets it."

The remainder of the consent order detailed the marital debt issues. The parties agreed to produce an accounting regarding $111,000 in net proceeds from the sale of the Roseland Property to determine why the marital debt set forth in the MSA had not been paid from the proceeds of the sale.

Plaintiff filed a motion for reconsideration of the consent order[2] claiming the trial court failed to address various issues she raised in the motion, despite the representations made by the parties' respective counsel that all issues had been resolved but the Hawley Property issue. On January 3, 2020, the trial court entered an order denying plaintiff's motion for reconsideration of the November 1, 2019 consent order and the court's interpretation of paragraph 2c of the MSA. The order also granted defendant's request for attorney's fees. Plaintiff did not appeal that order.

Plaintiff filed a motion seeking reconsideration of the trial court's January 3, 2020 order on February 6, 2020. On August 14, 2020, the parties appeared with counsel before a different Family Part judge. The motion addressed the proceeds of the sale of the Roseland Property, which party received those proceeds, and whether the proceeds were used to pay the marital debt.

Plaintiff also sought reconsideration of the trial court's November 1, 2019 order with respect to the Hawley Property decision. She contended the trial court at the hearing improperly amended the MSA by adding the handwritten language on the first page of the consent order, arguing she did not consent to

[2] Plaintiff's motion for reconsideration of the November 1, 2019 consent order was not included in the record submitted on appeal.

this language. She claimed, in accordance with the MSA, "he was to transfer [ten] acres to a trust for me and he had previously put all [twenty-eight] acres with [the Hawley Property] in a Revocable Trust." She also claimed, for the first time and without basis in fact or law, that paragraph 2c of the MSA required defendant to place all of the property he received in equitable distribution, the Hawley Property and the Chatham Property, in trust for the children upon defendant's death.

The court correctly found the prior order was a final order regarding the Hawley Property and the prior judge had already denied reconsideration. The trial court noted plaintiff's only recourse was to appeal, not continue requesting reconsideration of the same issue. However, the trial court ordered the trust document be amended to reflect the language of the prior order. The trial court also ordered unrelated discovery and a hearing on the sale of the Roseland Property, including an accounting as to the net proceeds.

On January 22, 2021, at a subsequent hearing to determine compliance with the August 14, 2020 order, the issue concerning the Hawley Property trust was raised yet again, prompting the trial court to reiterate,

> If anybody is disappointed with that[,] [the] fourth or fifth or sixth motion for reconsideration is denied. I've already denied it[.] Judge Walsh denied it. If you wish to appeal it that is the proper format. . . . [plaintiff's]

> still . . . asking again for reconsideration and how Judge Walsh was wrong.
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> This has been decided three times and it will stop. If you're dissatisfied an appeal is appropriate, not a fifth or sixth request to reconsider Judge Walsh's decision. It will not be done.

At that hearing, the trial court properly found there remained material issues in dispute regarding the financial accounting and payment of the marital debt. A discovery schedule was set, and a limited plenary hearing was ordered as to who received the net proceeds of the Roseland Property and the payment of marital debt listed in the MSA.

A plenary hearing took place on March 12, 2021, and plaintiff was again ordered to provide documentation relating to the payoff of the mortgage on the Roseland Property. Plaintiff was also ordered to provide proof of any payments she may have made towards the mortgage.

On November 5, 2021, the trial court issued an order and a written opinion. The trial court also addressed defendant's cross-motions for reimbursement of various education-related expenses. The trial court again denied plaintiff's assertion the prior trial judge mistakenly interpreted paragraph 2c of the MSA regarding the Hawley Property, reasoning the motion was out of time and plaintiff failed to show "the court's findings were based 'upon a

palpably incorrect or irrational basis' or that the court 'failed to consider, or appreciate the significance of probative, competent evidence,' or that there is any 'new or additional information' that the court failed to consider."

Further, the trial court found there remained insufficient funds to pay the remainder of the marital debt following the sale of the Roseland Property because plaintiff's mortgage attached to the property and the parties' failed to abide by the MSA to assure the satisfaction of the debt. The trial court also found plaintiff's argument she "did not see any of the money" following the sale of the Roseland Property was "belied by the record" because plaintiff created numerous LLCs post-divorce and the evidence demonstrated the proceeds of the Roseland Property sale were wired to an LLC owned solely by plaintiff. Finally, in denying defendant's cross-motions for reimbursement for the children's education expenses, the trial court reasoned defendant could not, at the time of the order, seek reimbursement because his request was not brought in a timely manner and both parties failed to use the proceeds from the Roseland Property sale to pay the identified marital debt as required by the MSA, rendering his reimbursement request unreasonable.

The court, however, did allow the parties to submit documentation within thirty days regarding college contribution pursuant to the FJOD and ordered the

parties to appear for a subsequent hearing to address the remaining issues of college contribution post-divorce and the transfer of the Eagle Rock Property.

Plaintiff filed this appeal of the March 15, 2022 order: 1) requesting we order defendant's Hawley Property and Chatham Property be transferred to the two children; 2) directing transfer of ten acres of the Hawley Property directly to plaintiff; 3) awarding $75,000 to plaintiff as "value" for the Roseland vacant lot property; and 4) "directing payment to plaintiff of an equivalent value for the 4850 W. Hopewell Road, Center Valley, Pennsylvania . . . property contained in the MSA," which she claims was lost in a tax sale. Plaintiff also seeks an order requiring defendant provide an accounting of all "marital monies" that came into his possession post-divorce and vacating the award to defendant for college contribution in the amount of $20,916.

We afford substantial deference to the Family Part's findings of fact because of its expertise in family matters. Cesare v. Cesare, 154 N.J. 394, 411 (1998); Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016). Therefore, we "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). A trial court's findings of fact will not be disturbed unless they are "so manifestly unsupported by or

inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Clark v. Clark, 429 N.J. Super. 61, 70 (App. Div. 2012) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1979)).

A motion for reconsideration is evaluated under an abuse of discretion standard because "[r]econsideration is a matter within the sound discretion of the [c]ourt, to be exercised in the interest of justice." Cummings v. Bahr, 295 N.J. Super 374, 384, 389 (App. Div. 1996) (first alteration in original) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)); Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (quoting D'Atria, 242 N.J. Super. at 401).

First, any claim made by plaintiff regarding the Hawley Property is time-barred. Pursuant to Rule 4:49-2, "a motion for . . . reconsideration seeking to alter or amend a judgment or final order shall be served not later than [twenty] days after service of the judgment or order upon all parties by the party obtaining it." A motion for reconsideration should only be granted "under very narrow circumstances." Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002). Reconsideration of a final order is appropriate where the trial court's decision was "based upon a palpably incorrect or irrational basis."

Palombi, 414 N.J. Super. at 288 (quoting D'Atria, 242 N.J. Super. at 401). In addition, reconsideration is also appropriate when "it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Ibid. (quoting D'Atria, 242 N.J. Super. at 401). "It is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion . . . ." Ibid. Thus, the serial filing of reconsideration motions by a litigant merely dissatisfied with the trial court's decision is impermissible; "motion practice must come to an end at some point, and if repetitive bites at the apple are allowed, the core will swiftly sour." Cummings, 295 N.J. Super. at 384 (quoting D'Atria, 242 N.J. Super. at 401).

Plaintiff was well aware she had been denied reconsideration on January 3, 2020, yet did not appeal that final order. An appeal from a final judgment must be taken within forty-five days of entry. R. 2:4-1(a); Lombardi v. Masso, 207 N.J. 517, 540 (2011). Plaintiff's effort to re-characterize the trial court's final order and denial of reconsideration as "confusion" and "interlocutory" eight months later does not withstand scrutiny. The trial court correctly found it would not reconsider any arguments made to the prior Family Part judge and directed plaintiff to file an appeal, which she did not do. Instead, plaintiff continued to make arguments to the trial court, during the unrelated plenary

hearing, and raises these arguments again to us now, as if the November 1, 2019 Order was not a final order as to the Hawley Property issue.

The trial court noted plaintiff's second motion for reconsideration was untimely pursuant to Rule 4:49-1. We agree and conclude her appeal of this issue is time-barred as well. See R. 2:4-1(a).

With respect to plaintiff's request for $75,000 to compensate her for the Eagle Rock Property, the trial court found defendant had transferred the deed to plaintiff following entry of the MSA, and any claim for actual value was irrelevant as the values in the MSA were estimated. Each party acquiring a parcel of real estate pursuant to an MSA assumes any risk of increase or decrease in the value of the property after the property is transferred. Plaintiff seeks reformation of the MSA from this court, which is inappropriate as that argument was not made below. See R. 2:10-2. Plaintiff also claims the 4850 W. Hopewell Valley property was lost in a tax sale, but the trial court determined that contention was properly before it because it was not raised by plaintiff until the morning of the plenary hearing.

The court noted paragraph three of the MSA provided marital debt would be paid from the net proceeds of the sale of the Roseland Property. The debts totaled $139,150. Plaintiff alleged "she never saw any of the money from the

sale" of the Roseland Property. However, the trial court found plaintiff was the sole member of Will Creek LLC, and on February 4, 2015, plaintiff sold the property to Will Creek LLC for $1.

On November 6, 2015, the Roseland Property was sold to Sarg Ventures for $430,000. Vanguard Funding had a $232,250.90 mortgage on the property. Net proceeds of the sale were $85,465.37. The net proceeds were added to a $43,000 deposit to bring the total proceeds to $128,465.37, which was $10,684.64 less than the amount required to pay off the marital debts proscribed in the MSA. The trial court noted plaintiff unlawfully encumbered the Roseland Property with a mortgage because the MSA forbade her to "mortgage the property beyond what was necessary to pay the debt she agreed in [P]aragraph 2a of the MSA." The court also found a review of the record revealed the parties did not abide by the MSA because they used the proceeds of the sale for alternative purposes.

In all, the trial court found plaintiff's argument that she did not obtain any money from the sale of Roseland Property was "belied by the record" and did not find plaintiff credible. We discern no error or abuse of discretion with respect to these findings.

With respect to defendant's cross-motions for reimbursement, the trial court found defendant's claims were not brought in a timely fashion, and he had no reasonable explanation for the delay. It also found the record revealed both parties deliberately decided to use the proceeds of the sale of the Roseland Property for other purposes, rather than abiding by the provisions of their MSA.

Nonetheless, the trial court noted the MSA required both parties share in the cost of supporting the children in completing their education through doctorate-level studies and assisting them until they reached the age of twenty-six or beyond as needed. The trial court concluded plaintiff violated the FJOD and MSA by not contributing to the children's college expenses incurred post-divorce. It determined defendant could not claim reimbursement related to the proceeds derived from the sale of the Roseland Property, denying education reimbursement as to those monies. However, the court did allow defendant to submit documentation regarding other payments made by him for the children's education not previously identified in the MSA.

On January 7, 2022, the parties appeared for oral argument on the issues of the transfer of the Eagle Rock Property and defendant's reimbursement for college contribution. On January 10, 2022, the trial court issued an order denying plaintiff's request to transfer the Eagle Rock Property to her and ruled

"all issues, but for college contribution, have been resolved and will not be relitigated nor addressed." Regarding the Eagle Rock property, the trial court reasoned plaintiff received the deed to the property from defendant and provided no credible evidence the deed was worthless or that there were issues with the deed clouding title. The trial court found any such issues with the deed should have been resolved by plaintiff prior to the court hearing. The court did not decide issues related to college contribution because of plaintiff's contentious behavior at the hearing.

On February 18, 2022, the parties again appeared for oral argument on the issue of college contribution towards the party's one child, Kirsten, and the trial court entered an order on March 15, 2022. Pursuant to the FJOD, plaintiff was ordered to pay $17,208.53 in college contribution. The trial court reasoned, except for $7,172 that was credited to plaintiff by the prior trial court judge in the 2019 consent order, she had not paid any college contribution since the divorce. Finding the college contribution issue not contested, the trial court found defendant paid $56,176 towards Kirsten's Fordham University tuition and plaintiff had the financial means to contribute to those expenses but failed to do so. The FJOD was clear the parties agreed to split education expenses.

Plaintiff argues the trial court erred in not awarding her $75,000 for the value of the Eagle Rock Property and $200,000 for the value of 4850 W. Hopewell Road. Plaintiff, however, was not guaranteed to receive these estimated values pursuant to the MSA. Where an MSA is unambiguous, it will be interpreted according to its terms "unless doing so would lead to an absurd result." Quinn v. Quinn, 225 N.J. 34, 45 (2016). The MSA at no point mandates plaintiff or defendant receive the proceeds of any sale of the properties equitably distributed pursuant to paragraph two. Rather, the only amounts associated with the properties are estimated values. The fact the properties' values would fluctuate following the divorce is a risk both parties assumed.

Plaintiff's arguments the MSA should be reformed due to unconscionability, fraud, overreaching, or mutual mistake are not properly before us on appeal, R. 2:10-2, and the record does not show evidence of unconscionable conduct, fraud, or overreaching or that the parties were mistaken as to the MSA's contents.

Next, plaintiff argues the trial court erred in denying her request defendant provide a full accounting of marital monies defendant received following the divorce because plaintiff "did not see any of that money." The record belies plaintiff's argument. Pursuant to the consent order, the trial court, on August

14, 2020 ordered defendant to provide an accounting following the sale of the Roseland Property. The evidence shows plaintiff was the sole member of Willow Creek, LLC, who plaintiff sold the Roseland Property to on February 4, 2015. The court found plaintiff not credible, and we discern no error in that finding.

Finally, plaintiff's argument the trial court erred in ordering her to pay $17,208.53 in college contribution fails. A parent's responsibility may include paying for college and graduate studies even after the child is emancipated. Newburgh v. Arrigo, 88 N.J. 529, 544 (1982); see N.J.S.A. 2A:34-23(a). In deciding the amount of a parent's college contribution, "a trial court should balance the statutory criteria of N.J.S.A. 2A:34-13(a) and the Newburgh factors, as well as any other relevant circumstances, to reach a fair and just decision whether and, if so, in what amount, a parent or parents must contribute to a child's educational expenses." Gac v. Gac, 186 N.J. 535, 543 (2006); see also Gotlib v. Gotlib, 399 N.J. Super. 295, 310-11 (App Div. 2008) (requiring the trial court to consider the Newburgh factors despite the judgment of divorce providing for college contribution because it was silent as to how the expenses would be divided).

In the FJOD, the parties expressly agreed they "shall share the cost of supporting the minor children and in completing the education of the children through Ph.D. level studies." Because the trial court applied the Newburgh factors and found plaintiff failed to make any college contribution payments towards Kirsten's Fordham tuition following the divorce, we see no reason to disturb the trial court's award to defendant for reimbursement of college contribution. Plaintiff does not claim she should not have paid college expenses incurred post-divorce, nor does she dispute the validity of the FJOD provision requiring such payment. Instead, she merely lists a number of ancillary expenses she incurred for William's care and states defendant never paid college tuition for William. Such an argument ignores the FJOD and her obligations regarding Kirsten.

In sum, any claim made by plaintiff regarding the Hawley Property is not properly before us and is time-barred. Further, plaintiff's remaining arguments lack support in the record, and the trial court's determinations regarding those issues are supported by substantial, credible evidence in the record. We therefore affirm all orders properly before us.

Affirmed.