SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2996-21

JAMES NEVE,

Plaintiff-Respondent,

v.

SHARON LIVINGSTONE,

Defendant-Appellant.

Argued May 3, 2023 – Decided July 13, 2023

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Morris County, Docket No. FM-14-1364-06.

Sharon Livingstone, appellant, argued the cause pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant Sharon Livingstone appeals from an April 19, 2022 order denying, in part, her post-judgment motion to enforce the terms of the Property

Settlement Agreement (PSA) she executed with her former spouse, plaintiff James Neve. We affirm, in part, vacate in part, and remand for further proceedings.

I.

Plaintiff and defendant married in September 1997. Two children were born of the marriage, Kyle and Christian, now ages twenty-four and twenty-two, respectively. On October 17, 2007, the parties divorced, entered into a PSA, and incorporated the agreement into their final judgment of divorce. The PSA addressed and resolved, among other issues, the parties' child support obligations and the equitable distribution of property, including plaintiff's employee stock options and retirement funds.

Regarding child support, the PSA obligated plaintiff to pay defendant $1,500 a month, $750 allocated to each child until emancipation. Paragraph 5.1(b) defined emancipation as the "completion of four continuous academic years of college education, but in no event beyond the date on which the child reaches [twenty-three]." In addition to child support, plaintiff agreed to pay defendant annually: $1,200 on December 1, "for gifts for the children at Christmas"; $1,200 on August 1, "for school supplies and clothing"; and $500 on the first day of each child's month of birth "for birthday gifts."

Paragraph 11.1 of the PSA obligated plaintiff to "retain all employment related plans, including but not limited to his 401[(k)], employee stock option plan and employee stock purchase plans free and clear of any interest of [defendant]." That paragraph entitled defendant to fifty percent of all such "unexercised stock options and restricted stock granted during the marriage for awards earned during the marriage." It further provided defendant "shall receive [fifty percent] of the 401[(k)] as of the date of complaint . . . in the amount of $90,150." Paragraphs 9.1 and 9.2 similarly entitled defendant to fifty percent of all stocks, stock options, and restricted stocks in plaintiff's name "acquired during the marriage."

Those paragraphs, however, also provided: "[a]ny gains, increase issuance of shares, right to buy additional shares, compensation or differed compensation based on [defendant]'s shares would also be due to her at anytime now and in the future." Finally, the PSA further contained an integration clause which stated the document "contain[ed] the entire understanding of the parties," and further described that there were "no representations, warranties, covenants or undertakings other than those expressly set forth herein."

In 2008, defendant requested a distribution in accordance with Paragraph 11.1. At that time, she contended the $90,150 was "calculated based on the date

of [the] complaint" and was not subject to adjustment. Plaintiff seemingly disagreed and explained the "money has been parked in [an] account since the divorce date [and] [a]ssuming the value of that money has changed since that date, whether up or down, it needs to be calculated prior to moving it." He similarly stated, a "calculation need[ed] to be done . . . to determine the gain or loss" since the divorce.

In 2010, the parties reconciled and resided together with their children in a townhouse in Montville owned by plaintiff. While living together, plaintiff did not pay his child support obligations as required by the PSA, but the record reflects he continued to support defendant and the children. Five years later, in 2015, the parties separated permanently. Following their separation, the parties entered into a lease in which they agreed defendant and the children would continue to live in the Montville townhouse rent-free in lieu of plaintiff paying his child support obligations as required under the PSA.

As best we can discern from the record, plaintiff commenced eviction proceedings against defendant, seeking to remove her and the children from the townhouse in 2017. It appears defendant filed a cross-motion in April 2018, in which she contested the eviction, and in the alternative, argued if plaintiff was successful "in having [her and the children] evicted, . . . child support need[ed]

to be recalculated retroactive to . . . 2015," reasoning plaintiff experienced a "substantial change" in his income and also because "child support ha[d] not been reviewed in the [ten plus] years since [their] divorce was finalized."[1] Defendant also certified she was entitled to her share of plaintiff's 401(k) and his stock options pursuant to the PSA.

On August 28, 2019, a Family Part judge ordered defendant to vacate the townhouse by November 30, 2019, and also ordered plaintiff to pay defendant $3,200 per month in child support "[u]pon her relocation from the [t]ownhouse," pending a plenary hearing. The order further provided:

> $73,105 [was] due to [d]efendant representing the total balance of the retirement funds due to her pursuant to the . . . [PSA] and subsequent distribution to her of $17,000, . . . subject to credits that may be due as a result within the pending litigation . . . the total amount of $73,105 shall be held by [p]laintiff in his IRA until further [c]ourt [o]rder.

In September 2021, defendant filed a motion in aid of litigant's rights, sought enforcement of the PSA, and requested a plenary hearing to determine an appropriate child support award because plaintiff unilaterally reduced his child support payment by fifty percent. In October 2021, the court directed the

[1] Defendant has not provided all relevant pleadings related to these proceedings, contrary to Rule 2:6-1(a)(1)(A) and (I).

parties to mediation. After mediation was unsuccessful, the court scheduled a plenary hearing following a period of discovery.

At the plenary hearing both parties provided testimonial and documentary evidence. In addition, Steven Mola, defendant's current tenant, and Gary Thomson, her former boyfriend, testified on defendant's behalf. The parties also stipulated David Felix, defendant's friend, loaned her $11,000 over the past few years.

Defendant testified that commencing in September 2020, plaintiff unilaterally reduced his child support payments by fifty percent, sending her $1,600 per month despite the court's August 28, 2019 order. She described her current financial situation as "extremely hard and . . . stressful," in part because she was unable to maintain full-time employment due to her clinical diagnosis of obsessive-compulsive disorder. She stated her income of $1,130 per month in disability benefits, $680 per month in Social Security, $200 a week babysitting, and $900 a month in rent from Mola was simply insufficient to support her and Christian.

Defendant also testified even though Christian was in college, he stays with her every weekend, and to ensure he has enough food, she visits the local food pantry weekly. Defendant stated she also provides Christian with snacks,

care packages, and cleaning supplies every time he returns to college, and regularly sends him money. Further, defendant testified that contrary to the terms of the PSA, plaintiff has not provided any additional payments for gifts or school supplies since their 2015 separation.

Defendant also explained she had not received her portion of plaintiff's 401(k) and now argued she was entitled to any gains that accrued since 2007, the date of the parties' divorce. According to defendant, she understood the PSA to include any gains from the 401(k) in addition to the $90,150 amount based on plaintiff's prior communications with her. She also relied on a 2016 incident when plaintiff gave her a $17,000 loan to purchase a new car rather than finalize the distribution as required by the PSA so she "didn't have to touch [the $90,150], because [plaintiff stated] it was making good gains." Finally, defendant testified she did not receive her share of the ADP stocks in the amount of $111,000, the value when the stocks vested in 2011, nor has she received any interest that money may have accrued since then.

On cross-examination, defendant stated her monthly expenses amounted to approximately $6,435 but could not identify the specific amount used for Christian in that estimation. Defendant acknowledged plaintiff currently

provides Christian with a monthly stipend of $400 in cash, $500 on his credit card, and pays for his gas, car, and insurance.

Mola testified he loaned defendant money on a monthly basis to assist her to "get by," though he conceded he provided no direct financial assistance to Christian. Thomas testified that over the course of his and defendant's relationship he loaned her approximately $5,000 for Christian's driving lessons as well as gifts for birthdays and holidays.

Plaintiff disputed much of defendant's testimony and specifically stated he always ensured his children were financially supported, no matter their age and confirmed he was "willing . . . to continue to pay [his] fair share" of what is required to support Christian. In this regard, he agreed to pay a third of defendant's monthly expenses as his child support obligation.

Regarding the disputed 401(k) funds, plaintiff stated the PSA purposefully provided for the fixed amount of $90,150, not inclusive of gains, which accordingly became $73,150, following his loan to defendant. With respect to his contrary position expressed in 2008, he stated "it's actually interesting that we[] both [took] opposite positions tha[n] we're taking today." When questioned as to why he took no action since 2007 to transfer the 401(k) funds to defendant, plaintiff asserted defendant failed to set up an IRA as required. As to defendant's

share of the ADP stock options, plaintiff stated the options vested in 2011, and defendant's shares had a cash value in the amount of $111,000 and conceded he would pay defendant that amount.

Plaintiff admitted he reduced his child support payment in half but explained he did so based upon Kyle's emancipation in May 2021. When asked about his obligation to contribute to school supplies and presents for birthdays and holidays, plaintiff testified he stopped supplying those payments based on the August 28, 2019 order, claiming the $3,200 he was required to pay as child support was "inclusive of all itemized amounts that were in the original PSA." He further stated he did not pay child support from 2015 until the August 28, 2019 order, as both parties agreed that "all child support was replaced in lieu of living in the townhome up until 2019." While plaintiff acknowledged the disparity in income between him and defendant, he stated he was not "personally responsible for defendant's current financial woes."

After considering the parties' submissions as well as the documentary and testimonial evidence, the court granted defendant's motion, in part, and ordered plaintiff to pay defendant: (1) $111,000 for defendant's share of the parties' vested stock options; (2) $2,145 per month in child support effective from Kyle's emancipation, as well as all accrued arrears; and (3) $73,150 for her percentage

of the 401(k) exclusive of any gains. The court also denied defendant's application for counsel's fees.

In a written opinion, the court first concluded defendant was entitled to $111,000 representing her share of the parties' ADP stock options because "the parties agreed" to this amount. Regarding plaintiff's child support obligations, the court first calculated the parties' percentage share of their net income up to $187,000, and determined plaintiff's required child support payment was $305 per week, or $1,220 per month. In light of plaintiff's high income, specifically his annual income in 2020 of $4,625,397, the court determined supplemental contributions outside the Guidelines were required pursuant to Rule 5:6A, and in accordance with the ten factors enumerated in N.J.S.A. 2A:34-23(a).[2]

[2] The ten factors include: (1) needs of the child; (2) standard of living and economic circumstances of each parent; (3) all sources of income and assets of each parent; (4) earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost of each parent to obtain training or experience for appropriate employment; (5) need and capacity of the child for education, including higher education; (6) age and health of the child and each parent; (7) income, assets and earning ability of the child; (8) responsibility of the parents for the court-ordered support of others; (9) reasonable debts and liabilities of each child and parent; (10) any other factors the court may deem relevant. See N.J.S.A. 2A:34-23(a).

After evaluating these factors, the court found both parents supported Christian, but his primary financial assistance came from plaintiff. Relying on their comparative incomes and defendant's debt and "financial distress," the court also determined there was a "stark disparity in the standard of living and economic circumstances of the parties." Similarly, the court concluded plaintiff possessed "significantly more assets" than defendant as well as a higher earning potential, compared with defendant's inability to maintain fulltime employment due to her medical condition.

The court therefore concluded Christian's "current financial needs," plaintiff's "ability to pay and earn," and defendant's inability to do so "warrant[ed] a considerable discretionary support obligation upon" plaintiff. The court ordered plaintiff to pay one-third of defendant's monthly expenses, which it calculated to be $2,145, effective from the date of Kyle's emancipation, explaining that amount was "fair and equitable." In addition, the court ordered plaintiff to "pay any accrued arrears" within thirty days.

With respect to the 401(k) funds, the court determined defendant was not "entitled to any gains, losses, or interest" based on the language in the PSA. According to the court, "[u]nder a plain reading of paragraph 11.1, . . . the parties agreed to a fixed amount to represent" defendant's entitlement, "which excludes

any subsequent gains or interest." The court also relied on the language in Paragraphs 9.1 and 9.2, which expressly entitled defendant to gains, and therefore concluded "the parties consciously availed themselves of the language in paragraph 11.1" without including specific language with respect to gains or losses. The court also determined defendant's portion of the 401(k) was reduced by the August 28, 2019 court order due to plaintiff's $17,000 loan to defendant and ordered plaintiff to pay defendant the $73,150 balance within thirty days.

Finally, although the court acknowledged defendant's request for counsel fees was "procedurally sufficient," it denied her motion, concluding plaintiff did not act in bad faith, see R. 5:3-5(c)(3). It specifically determined plaintiff did not act "with a malicious motive . . . when unilaterally reducing his child support obligation," plaintiff's "alleged improper disclosure of his assets" did not "rise to the level of bad faith contemplated," Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992), and his "shifting position on gains and interest on the retirement funds" also did not constitute bad faith, particularly because defendant's "position on this issue was also reversed" and "many facts and circumstances related to this case have shifted." This appeal followed.

II.

Before us, defendant contends the court failed to properly: (1) "order the distribution of the 401[(k)] funds as directed in the PSA"; (2) "apply the factors enumerated in R. 5:3-5(c)"; (3) "consider the assessment of child support" from 2017 to 2022; and (4) "address gains of the ADP options which have been withheld from access to [her] since 2011."

Our review of a Family Part order is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Id. at 413. Therefore, a judge's fact-finding is "binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). However, we review the Family Part's interpretation of the law de novo. D.W. v. R.W., 212 N.J. 232, 245-46 (2012). Against this standard of review, we address each of defendant's arguments in turn.

A. Gains from Plaintiff's 401(k)

Defendant argues the court erroneously awarded her only "$90,150 in 401[(k)] value," which represented the fixed amount the parties agreed to in the PSA, without "consider[ing] that fixed amount [was] withheld from [her] for

[fifteen] years." She asserts the court's award was contrary to "the spirit of the [P]SA" and failed to account for the fact that she requested the 401(k) funds in 2008, at which time plaintiff informed her that they had to "determine the gain or loss" on the initial value to calculate the amount owed to her. In light of plaintiff's position in 2008, defendant maintains she "expected that a good faith calculation would include gains." Alternatively, she contends if plaintiff had distributed the funds "in 2017 instead of withholding the money through an extended mediation, the defendant would . . . ha[ve] gains managing the 401[(k)] on her own." We disagree.

"Absent 'compelling reasons to depart from the clear, unambiguous, and mutually understood terms of the PSA,' a court is generally bound to enforce [them]." Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 589 (App. Div. 2016) (quoting Quinn v. Quinn, 225 N.J. 34, 49 (2016)). The parties' agreed-upon PSA is given "'considerable weight with respect to [its] validity and enforceability' in equity, provided [it] [is] fair and just." Dolce v. Dolce, 383 N.J. Super. 11, 20 (App. Div. 2006) (quoting Petersen v. Petersen, 85 N.J. 638, 642 (1981)).

This is, in part, because New Jersey possesses a "'strong public policy favoring stability of arrangements' in matrimonial matters." Quinn, 225 N.J. at

45 (quoting Konzelman v. Konzelman, 158 N.J. 185, 193 (1999)). We therefore restrain from "unnecessarily . . . disturb[ing]" the "fair and definitive arrangements" arrived at by parties regarding their matrimonial disputes. Konzelman, 158 N.J. at 193-94.

Settlement agreements, even in matrimonial matters, are governed by contract principles. J.B. v. W.B., 215 N.J. 305, 326 (2013). However, "[a]t the same time, 'the law grants particular leniency to agreements made in the domestic arena,' thus allowing 'judges greater discretion when interpreting such agreements.'" Pacifico v. Pacifico, 190 N.J. 258, 266 (2007) (quoting Guglielmo v. Guglielmo, 253 N.J. Super. 531, 542 (App. Div. 1992)). This discretion is therefore guided in part by the terms of the agreement but is also influenced by "post-judgment issues." Quinn, 225 N.J. at 46. "Nevertheless, the court must discern and implement 'the common intention of the parties,' and 'enforce [the mutual agreement] as written[.]'" Ibid. (first quoting Tessmar v. Grosner, 23 N.J. 193, 201 (1957); then quoting Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (2016)).

"Thus, when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result." Id. at 45. For example, the court may, under

certain conditions, deviate from strict enforcement of the agreement, such as a drastic change in circumstances if it would render enforcement inequitable, Avelino-Catabran, 445 N.J. Super. at 590, or in the case of "unconscionability, fraud, or overreaching in the negotiations of the settlement," Miller v. Miller, 160 N.J. 408, 419 (1999).

We are satisfied the court correctly interpreted the PSA and properly determined Paragraph 11.1 clearly reflected the parties' mutual agreement that defendant was "entitled to no more" than the specified amount in the PSA. Indeed, the parties' inclusion of a fixed amount, as well as the phrase "as of the date of the complaint," fully supports the court's decision the parties consciously and specifically agreed that defendant was entitled only to $90,150, exclusive of gains.

Further, as the court correctly noted, paragraph 11.1 of the PSA did not include language found in other paragraphs of the agreement which specifically provided for recovery of gains or interest. We discern no ambiguity in the language of the PSA on this issue, and in light of the document's integration clause, no reason to rely on the parties' extraneous changes in position regarding the gains in retirement funds from 2008 to present. See Conway v. 287 Corp. Ctr. Assocs., 187 N.J. 259, 268 (2006) ("In general, the parol evidence rule

prohibits the introduction of evidence that tends to alter an integrated written document."). Further, we reject defendant's apparent equitable argument that if plaintiff promptly transferred the funds defendant would have invested that money as speculative and unsupported by the record. We also note, defendant's argument fails to acknowledge her role in not having the funds transferred by failing to establish an IRA, a point she does not address in her merits brief.

Finally, defendant has failed to argue, let alone establish, any claim of unconscionability or fraud in the negotiations of the PSA, or a change of circumstances so "drastic," that would render the court's interpretation of the agreement inequitable. Avelino-Catabran, 445 N.J. Super. at 590. We also note, both parties were represented by counsel in the drafting and execution of the PSA.

B. Counsel's Fees

Defendant next argues the court erroneously denied her application for counsel's fees, claiming it improperly balanced the factors enumerated in Rule 5:3-5(c). On this point, she specifically contends the court disproportionately weighed factor three, "the reasonableness and good faith of the positions advanced by the parties," and failed to adequately consider factor eight, "the

degree to which fees were incurred to enforce existing orders." We agree that the court failed to appropriately consider the factors under Rule 5:3-5(c).

It is well settled that an order granting or denying a counsel fee request is reviewed for an abuse of discretion. Harte v. Hand, 433 N.J. Super. 457, 465-66 (App. Div. 2013) (citing J.E.V. v. K.V., 426 N.J. Super. 475, 492 (App. Div. 2012)). "Fees in family actions are normally awarded to permit parties with unequal financial positions to litigate (in good faith) on an equal footing." J.E.V., 426 N.J. Super. at 493 (quoting Kelly, 262 N.J. Super. at 307). But "where a party acts in bad faith[,] the purpose of the counsel fee award is to protect the innocent party from [the] unnecessary costs and to punish the guilty party." Welch v. Welch, 401 N.J. Super. 438, 448 (Ch. Div. 2008) (citing Yueh v. Yueh, 329 N.J. Super. 447, 461 (App. Div. 2000)).

When addressing a counsel fee application, a judge should consider the following factors:

> (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to

> enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.
>
> [R. 5:3-5(c).]

We acknowledge the court was not required to "enumerat[e] every factor" of Rule 5:3-5(c) in its analysis, see Reese v. Weis, 430 N.J. Super. 552, 586 (App. Div. 2013), and also note its finding regarding the lack of bad faith on the part of plaintiff is fully supported by the record. We are nonetheless compelled to vacate the court's order as it relates to defendant's request for counsel's fees because it limited its analysis to factor three, and in doing so failed to address all relevant factors, such as defendant's financial situation. At the plenary hearing, defendant established her significant financial distress based on her, Mola's, and plaintiff's testimony. Further, in the court's own finding regarding child support, it acknowledged "a stark disparity in the . . . economic circumstances of the parties," and relied on the plaintiff's assets, income, and earning potential as juxtaposed to defendant's. On remand, the court should consider defendant's request for counsel's fees anew, and issue supplemental findings of fact and conclusions of law addressing the Rule 5:3-5(c) factors.

C. Child Support & Market Gains on ADP Stock Options

Defendant also argues the court failed to adequately address her entitlement to "back child support." She specifically asserts the court "did not

address the . . . appropriate child support amounts . . . from 2017 through 2022" and requests she be awarded "the difference between the appropriate amount and what was paid by the plaintiff." Additionally, she contends the court failed to consider allowances in the PSA for "Christmas, school supplies and clothing, and birthday gifts in the amount of $2,900 per year, which has not been paid by the plaintiff since the parties ended their relationship in 2015."

As a preliminary matter, we affirm the court's comprehensive and thorough calculation of child support payments which required plaintiff to pay $2,145 and agree that it is a "fair and equitable" amount for plaintiff's obligations as of the date of Kyle's emancipation. We remand, however, for the court to make further factual findings to determine whether an earlier adjustment of plaintiff's child support obligations, in light of defendant's 2018 request, is appropriate, and the extent to which he may owe defendant additional funds for presents and school supplies, as required by the PSA.

"When reviewing decisions granting or denying applications to modify child support, we examine whether, given the facts, the trial judge abused [their] discretion." J.B., 215 N.J. at 325-26 (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012)). "The trial court's 'award will not be disturbed unless it is manifestly unreasonable, arbitrary, or clearly contrary to reason or to other

evidence, or the result of whim or caprice.'" Id. at 326 (quoting Jacoby, 427 N.J. Super. at 116). Consistent with our standard of review concerning modification of child support, it is also well-established "the enforcement, collection [and] modification . . . of unpaid arrearages in . . . child support payments are matters addressed to the sound discretion of the court." In re Rogiers, 396 N.J. Super. 317, 327 (App. Div. 2007) (quoting Mastropole v. Mastropole, 181 N.J. Super. 130, 141 (App. Div. 1981)).

As a general proposition, N.J.S.A. 2A:17-56.23(a) precludes the retroactive modification of child support, subject to exceptions. We note that "[u]nder N.J.S.A. 2A:17-56.23(a), a court may retroactively establish or increase one's child support obligation back to at least the filing date of the application, or forty-five days earlier upon service of advance written notice." Cameron v. Cameron, 440 N.J. Super. 158, 166 (Ch. Div. 2014); see also J.S. v. L.S., 389 N.J. Super. 200, 206 (App. Div. 2006) ("This court has concluded that '[n]othing in the legislative history suggests that the law was enacted to protect 'parents' from retroactive modifications increasing support obligations where equitable.'" (quoting Keegan v. Keegan, 326 N.J. Super. 289, 294 (App. Div. 1999))).

As best we can discern from the record, in April 2018 defendant requested a recalculation of plaintiff's child support obligations based on his initiated eviction proceedings, the "substantial change" in his income, and because child support had not been revisited since their divorce in 2007. It appears that the August 28, 2019 order set child support at $3,200, pending recalculation which was to be resolved at the plenary hearing. Following that hearing, in the court's April 2022 decision, it ordered the monthly payment of $2,145 "effective from the date of Kyle's . . . emancipation." The court failed to address, however, whether it was appropriate to modify child support based on an earlier date. We further note, in issuing its decision, the court failed to make explicit factual findings regarding when plaintiff's reduction in support payments occurred, as defendant testified the modification occurred in September 2020, and plaintiff stated he did so in May 2021. We accordingly remand for further factual findings on these issues. See R. 1:7-4(a); Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008) ("Meaningful appellate review is inhibited unless the [court] sets forth the reasons for [its] opinion." (quoting Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990))).

Our appellate review of defendant's arguments is further inhibited by the court's order which summarily compels plaintiff to pay defendant any "accrued

arrears." Again, the court failed to address if its order included the additional payments in the PSA for "gifts" and "school supplies and clothing." Even assuming the order was inclusive of these payments, it is unclear as to the amount owed to defendant, as there was conflicting testimony from the parties regarding when plaintiff ceased making those payments. For example, defendant claimed plaintiff refused to pay her these annual amounts since their permanent separation in 2015, whereas plaintiff stated he stopped payment based on the August 28, 2019 order.

We similarly require additional findings from the court regarding defendant's right to any alleged "market gains" on the $111,000 granted to her in the PSA and the court's order. Here, the testimonial evidence established that the stocks in question vested during the couple's reconciliation in 2011, and that money remained in a cash account held by plaintiff since that time. On remand, the court shall consider what interest, if any, defendant is entitled to pursuant to the PSA.

To the extent we have not addressed any of defendant's arguments it is because we have concluded they are without sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(1)(E).

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. 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