SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3115-20

SUSAN WOOLLEY,

Plaintiff-Respondent,

v.

TIMOTHY DEEGAN,

Defendant-Appellant.

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Submitted April 25, 2023 – Decided June 26, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Camden County, Docket No. FM-04-0505-13.

Steven J. Petersen, attorney for appellant.

DeMichele & DeMichele, PC, attorneys for respondent (Richard A. DeMichele, of counsel and on the brief; Sandra Kerbeck, on the brief).

PER CURIAM

In this post-judgment dissolution matter, defendant appeals from two family court orders entered June 11, 2021 and July 19, 2021. Because we conclude the family court erroneously conducted the analysis modifying child support post-judgment and failed to make sufficient findings pursuant to Rule 1:7-4(a), we reverse and remand to the family court for proceedings consistent with this opinion.

The parties were married on November 11, 2000. They have four children born of the marriage. On March 16, 2012, the parties effectuated a matrimonial settlement agreement (MSA) and received a final judgment of divorce (FJOD) on November 20, 2013, which incorporated the MSA.

Pursuant to Article III, Paragraph Three of the MSA, the parties agreed defendant would pay plaintiff $400 per week in child support. Notably, the MSA provided "[t]he child support amount called for in this Agreement is not in accordance with the New Jersey State Child Support Guidelines but rather is an amount of child support that [defendant] agrees to pay [plaintiff] for the care and support of the parties' unemancipated children."

At the time of the FJOD and pursuant to the MSA, plaintiff was the primary wage earner as she was earning $115,000 per year. Defendant's gross income was $48,000. Since then, defendant has become the primary wage

earner, receiving an increase in income over subsequent years five times greater than what he was earning at the time of the MSA's effectuation. The record reflects defendant earned in $95,284, $252,419, $234,006, and $251,540 in 2017, 2018, 2019, and 2020 respectively. In 2020, defendant received a $183,674 bonus, bringing his total earned income for that year to $435,214.[1] Plaintiff's gross income in 2019 was $149,000, and from January 1 to June 27, 2020, she earned $93,664.

On February 28, 2014, the family court entered an order reducing defendant's child support obligation to $218 per week. On July 31, 2014, the family court again modified defendant's child support to $429 per week. On September 30, 2014, that order was modified to reflect $11,000 in support arrears. The Probation Department was ordered to collect $21 per week towards arrears.

Plaintiff filed a post-judgment motion on September 18, 2020. She sought: (1) to modify "[d]efendant's child support obligation payable through probation by wage execution;" (2) to increase his "obligation towards his child support arrears;" (3) to require "[d]efendant to make a lump sum payment of

[1] Defendant asserts the bonus was a one-time aberration resulting from a multi-year project.

$2,500 towards his arrears within ten . . . [days] of the [c]ourt's prospective order;" (4) to compel defendant to pay half of the expenses of one of the children's cars; (5) to order "[d]efendant to contribute 50% of the cost of Jack and Caroline's automobile insurance cost;" (6) to confirm "[d]efendant's agreement to pay 50% of the children's extracurricular expenses and enforcing his obligation to pay 50% of their medical expenses including braces;" (7) to grant "[p]laintiff an award of attorneys' fees and costs[;]" and (8) "for any additional relief which the [c]ourt [deemed] equitable and just."

Defendant filed a cross-motion, requesting the family court deny plaintiff's motion, the Camden County Probation Department provide an accounting of his child support payment history and arrears, plaintiff provide an accounting of expenses relating to their minor son's braces, and any other relief the court deemed equitable.

After a hearing, the court again modified defendant's child support obligation to $1,307 per week. The court also (1) denied plaintiff's motion to have defendant contribute to their eldest son's car expenses; (2) denied plaintiff's motion for defendant to contribute to the children's car insurance; (3) granted plaintiff's motion for defendant "to contribute to unreimbursed medical, dental,

orthodontic and related bills[;]" and (4) denied defendant's motion for a stay of the order.

The court found defendant's increase in income was sufficient to warrant a modification of the child support obligation. The court averaged the parties' gross income for the preceding three years: 2018, 2019, and 2020. Plaintiff's average income was calculated at $170,000 and defendant's earned income averaged $375,000. In calculating the child support amount, the court relied on plaintiff's case information statement (CIS), first dividing "Schedule A Shelter" expenses in half and attributing $2,322 to the children. Next, the court allocated $677 in "Schedule B Transportation" expenses to the children, which was two thirds of the $1,016 total provided. The court then moved to "Schedule C Personal" expenses, allocating $5,145, which was 80% of the $6,432 total. Thus, the expenses to be allocated to the children were $8,144 per month.

In splitting the costs between the parties, the family court attributed 69% to defendant and 31% to plaintiff, thereby reaching a figure of $5,619 monthly for defendant's child support obligation, or $1,307 per week. Finally, the court analogized a hypothetical situation involving "two minimum wage parents[:]"

> For comparison's sake, if you had two minimum wage parents with seven overnights, and the non-custodial parent paid $142 a week, not including adjustments for health insurance or otherwise, but just a seven

> overnight, two minimum wage parents, the non-custodial parent who has zero overnights, is paying $142 a week. That is about [thirty-two] percent of the minimum wage parent's income.

Our review of family court orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We accord the family part deference due to their "special jurisdiction and expertise in family matters" and will not disturb its judgment "when supported by adequate, substantial, credible evidence." Id. at 411-13. Conclusions of law, however, are reviewed de novo. T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017). In addition, we review a family court's decision to modify child support pursuant to an abuse of discretion standard. J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012)).

Defendant argues the court failed to make sufficient findings of fact pursuant to Rule 1:7-4(a).[2] He contends he and plaintiff are "high-income" parents, and the family court was required to consider the factors set forth in N.J.S.A. 2A:34-23(a) in consideration of any discretionary award surpassing the maximum amount permissible under the Child Support Guidelines.[3] We agree.

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[2] Initially, plaintiff filed a cross-appeal but later withdrew it.

[3] Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A, www.gannlaw.com (2023).

Although we find the court was correct in finding changed circumstances existed sufficient to warrant a modification to child support, see J.B., 215 N.J. at 327, it mistakenly utilized an analysis used to calculate pendente lite support by reviewing plaintiff's Schedule A, B, and C expenses in plaintiff's CIS to establish the amount of child support.

"Our courts are authorized to modify alimony and support orders 'as the circumstances of the parties and the nature of the case' require." Halliwell v. Halliwell, 326 N.J. Super. 442, 448 (App. Div. 1999) (quoting N.J.S.A. 2A:34-23). Alimony and support orders are "always subject to review and modification on a showing of 'changed circumstances.'" Lepis v. Lepis, 83 N.J. 139, 146 (1980) (quoting Chalmers v. Chalmers, 65 N.J. 186, 192 (1974)). "The party seeking modification has the burden of showing such 'changed circumstances' as would warrant relief from the support or maintenance provisions involved." Id. at 157 (quoting Martindell v. Martindell, 21 N.J. 341, 353 (1956)).

Moreover, the changed circumstances standard applies even when support has been fixed by an agreement incorporated into the divorce judgment. See J.B., 215 N.J. at 326-27; Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 590 (App. Div. 2016). Thus, the existence of a valid support agreement will not bar a subsequent action for child support or modification of the agreed-upon

amount. Kopak v. Polzer, 4 N.J. 327, 332-333 (1950); see generally Fall & Romanowski, Current N.J. Family Law, Child Custody, Protection & Support (GANN) § 38:1-2. Because there is no bright line rule by which to measure a change in circumstances, "such matters turn on the discretionary determinations of Family Part judges." Larbig v. Larbig, 384 N.J. Super. 17, 23 (App. Div. 2006). The court must consider whether the child's needs or the relative abilities of the obligors to fulfill them have changed. Lepis, 83 N.J. at 152.

There is a rebuttable presumption that any modification of child support is automatically governed by the guidelines unless the parties have otherwise set forth an alternative accounting for future modification in a settlement agreement or judgment of divorce. See Zazzo v. Zazzo, 245 N.J. Super. 124, 129 (App. Div. 1990) (noting guidelines apply to requests for modification); see generally Fall & Romanowski, Current N.J. Family Law, Child Custody, Protection & Support (GANN) § 38:1-5. See also Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A, www.gannlaw.com (2023). Here, the appropriate analysis applicable to parents who have agreed to depart from the guidelines to establish initial child support is an analysis of the factors outlined in N.J.S.A. 2A:34-23. See Child Support Guidelines, Pressler & Verniero, Appendix IX-A to R. 5:6A, ¶ 3 ("If the

[G]uidelines are found to be inapplicable in a particular case, the court should consider the factors set forth in N.J.S.A. 2A:34-23 . . . when establishing the child support award.") (italics omitted). None of these considerations or factors were addressed by the trial court.

Because the parties are high-income earners, the Guidelines are applied up to the first $187,200 worth of combined income, with the remainder to be supplemented on a discretionary basis, derived from the outstanding combined net income and the factors in N.J.S.A. 2A:34-23(a). Child Support Guidelines, Pressler & Verniero, Appendix IX-A to R. 5:6A, ¶ 20(b); Isaacson v. Isaacson, 348 N.J. Super. 560, 581 (App. Div. 2002). "[T]he maximum [G]uidelines award in Appendix IX-F represents the minimum award for families with net incomes of more than $187,200 per year." Child Support Guidelines, Pressler & Verniero, Appendix IX-A to R. 5:6A, ¶ 20(b). The supplemental component of the award "must consider the factors set forth in N.J.S.A. 2A:34-23(a)." Caplan v. Caplan, 182 N.J. 250, 270 (2005).

Pursuant to N.J.S.A. 2A:34-23, the factors the court "shall consider, but not be limited to" are as follows:

> (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; and
> (10) Any other factors the court may deem relevant.
>
> [N.J.S.A. 2A:34-23(a).]

Flexibility and the best interest of the children are the driving force and must be evaluated in the supplemental award pursuant to N.J.S.A. 2A:34-23(a) factors. Strahan v. Strahan, 402 N.J. Super. 298, 307 (App. Div. 2008) (quoting Pascale v. Pascale, 140 N.J. 583, 594 (1995)). For high-income parents, the preeminent consideration is "the reasonable needs of the children." Tannen v. Tannen, 416 N.J. Super. 248, 280 (App. Div. 2010); Isaacson, 348 N.J. Super. at 581. Those needs must be analyzed within the context of the parties' standard of living, age and health of the children, and any assets or income they may possess. Strahan, 402 N.J. Super. at 307; see also Isaacson, 348 N.J. Super. at 580 ("Children are entitled to not only bare necessities, but a supporting parent

has the obligation to share with his children the benefit of his financial achievement.").

We must, however, recognize the right of the parents to raise their children as they see fit while also providing a child support amount that aligns with the lifestyle of the parent. Isaacson, 348 N.J. Super. at 582. Ultimately, once the basic needs of the children are satisfied, other reasonable needs may be taken into account so long as it is in the children's best interest. Ibid.

Here, the family court erred in its calculation of defendant's child support modification. First, because the parties are high-income parents, with a combined net income far exceeding the $187,200 threshold, the court was required to provide an analysis of the factors set forth in N.J.S.A. 2A:34-23(a). Instead, the court recited the Schedule A, B, and C expenses in plaintiff's CIS and ascribed a percentage of those expenses to defendant. Absent from this analysis was an investigation into the reasonable needs of the children, the parties' standard of living, or how the children's increase in ages since the initial award may subject the parties to greater expenses now, such as cellular phones, automobiles, and automobile insurance. See J.B. 215 N.J. at 327. (A change in the needs of the child or expenses may constitute a change in circumstances that will trigger an examination of the support obligation.)

Further, remand is necessary pursuant to Rule 1:7-4 because the court did not provide sufficient findings in its analysis. Pursuant to Rule 1:7-4, "the [family court] must state clearly its factual findings and correlate them with the relevant legal conclusions." Curtis v. Finneran, 83 N.J. 563, 570 (1980). Mere "[n]aked conclusions do not satisfy the purpose of [Rule] 1:7-4." Ibid. When the court fails to make sufficient findings, reversal is required. Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996); Gnall v. Gnall, 222 N.J. 414, 428 (2015).

We agree with defendant the court failed to make sufficient findings of fact in its decision to modify his child support obligation. Rule 1:7-4 mandates our reversal so the court can make findings. "The court merely repeated [wife's] recitation of the children's 'needs' as they appeared on her . . . (CIS) without any determination of what was essential or non-essential or any judgment regarding the accuracy or appropriateness of those needs." Strahan, 402 N.J. Super. at 310. The court's reasoning contained no analysis of the N.J.S.A. 2A:34-23(a) factors or provided any discussion of defendant's overnight parenting time, which the parties disputed in their certifications in support of their positions.

We do not, however, accept defendant's argument the court erred by not conducting a full accounting of his payments with the Department of Probation

to determine the amount he was in arrears. The court was justified in relying on the Department of Probation's records in determining the arrears amount. If defendant disputes the amount owed, he has the right to request a probation audit from the Department at any time.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.