SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3243-22

ANDREW PODEMS,

Plaintiff-Appellant,

v.

MICHELE PIECH,

Defendant-Respondent.

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Submitted May 29, 2024 – Decided June 11, 2024

Before Judges Rose and Perez Friscia.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FM-20-0952-14.

Andrew Podems, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

In this post-judgment matrimonial matter, plaintiff Andrew Podems appeals from a May 10, 2023 Family Part order, which denied reconsideration

of the March 9, 2023 order denying without prejudice his request for modification of child support. Following our review of the limited record and applicable legal standards, we affirm.

I.

As a preliminary matter, although plaintiff apparently challenges multiple prior orders, we only consider arguments pertaining to the orders timely appealed. See R. 2:4-1(a). We note plaintiff references documents not included in his appendix on appeal and it is unclear from the record which documents were submitted for the motion judge's consideration.[1] "We are not 'obliged to attempt review of an issue when the relevant portions of the record are not included.'" State v. D.F.W., 468 N.J. Super. 422, 447 (App. Div. 2021) (quoting Cmty. Hosp. Grp., Inc. v. Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C., 381 N.J. Super. 119, 127 (App. Div. 2005)). Recognizing plaintiff is self-represented,[2] we endeavor to fairly discern his arguments.

[1] "The record on appeal shall consist of all papers on file in the court . . . below." R. 2:5-4(a).

[2] A self-represented litigant is not entitled to greater rights than a litigant represented by counsel. Ridge at Back Brook, LLC v. Klenert, 437 N.J. Super. 90, 99 (App. Div. 2014). Further, a self-represented litigant is held to the same standards for compliance with our Court Rules. See Rubin v. Rubin, 188 N.J. Super. 155, 159 (App. Div. 1982).

II.

We largely derive the facts from our prior opinion in Podems v. Podems, No. A-2281-15 (App. Div. May 14, 2018) (slip op. at 1-18). The parties were divorced in 2011 and share one child. Id. at 2. Plaintiff had visitation with their child and was ordered to pay child support. The parenting time exchange was conducted at a police department. Id. at 10-11.

Plaintiff was a recipient of Social Security Disability Insurance (SSD). In 2016, plaintiff allegedly terminated his SSD benefits voluntarily. He holds a master's degree and has held different jobs. Since the parties' divorce, there have been multiple motion orders addressing child support and custody. See id. at 10.

On March 9, 2023, after plaintiff moved to modify custody and child support, the judge issued an order denying his motion without prejudice "for fail[ing] to follow court rules and deficienc[ies] in plaintiff's pleadings." The order referenced an "attached [s]tatement of [r]easons," which was not provided on appeal. See R. 2:5-4(a); R. 2:6-1(a)(1). Two days later, plaintiff emailed court staff requesting assistance. Apparently quoting from the statement of reasons, plaintiff stated the judge denied child support modification pursuant to "[Rule] 5:5-4," because "[w]hen a motion or cross[-]motion is filed for

modification . . . the movant shall append copies of the movant's current case information statement [(CIS)] and the movant's [CIS] previously executed . . . with the order . . . sought to be modified." Court staff responded, explaining "a current [CIS,] current tax returns[,] [and three] recent paystubs" were not submitted. Plaintiff moved for reconsideration.

On May 10, 2023, the judge issued an order denying the motion "as [m]oot, based on the court[']s January 27, 2023 [o]rder which . . . decided the issues at hand." The judge found "[n]othing additional has been presented that was not previously considered." The January 27 order granted defendant's motion to enforce child support and fixed plaintiff's arrears at $11,560. Plaintiff's cross-motion to retroactively modify child support was denied as the judge found the Social Security Office of Disability Adjudication and Review's (ODAR) decision determined he was not disabled. The judge found plaintiff "ha[d] failed to show a change in circumstances warranting a modification of child support." The order also granted plaintiff's request for "increase[d] . . . parenting time," but denied parenting time changes regarding transportation and holidays.[3]

[3] Plaintiff did not file the transcript of the January 27 hearing. See R. 2:5-4(a).

On appeal, plaintiff contends the judge erred requiring a remand to modify child support because: the ODAR's decision was "valid . . . to support modification [of] child support"; the ODAR's decision sufficiently demonstrated cause "to reduce child support"; child support should have been retroactively awarded; and a new wage imputation should have been calculated to be "fair."

III.

Our scope of review of Family Part orders is limited. See N.J. Div. of Child Prot. & Permanency v. S.K., 456 N.J. Super. 245, 261 (App. Div. 2018). "We accord deference to Family Part judges due to their 'special jurisdiction and expertise in family [law] matters.'" Gormley v. Gormley, 462 N.J. Super. 433, 442 (App. Div. 2019) (alteration in original) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). A judge's "findings are binding on appeal so long as their determinations are 'supported by adequate, substantial, credible evidence.'" Ibid. (quoting Cesare, 154 N.J. at 411-12). However, while "a family court's factual findings are entitled to considerable deference, we do not pay special deference to its interpretation of the law." Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016) (quoting D.W. v. R.W., 212 N.J. 232, 245 (2012)).

We also review orders denying reconsideration for abuse of discretion. Granata v. Broderick, 446 N.J. Super. 449, 468 (App. Div. 2016). A court

abuses its discretion "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

The court on a modification motion must first determine whether the moving party has made a prima facie showing of changed circumstances. R.K. v. F.K., 437 N.J. Super. 58, 62 (App. Div. 2014). The Family Part has authority under N.J.S.A. 2A:34-23 to modify child support orders. Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015). The statute provides child support orders "may be revised and altered by the court from time to time as circumstances may require." N.J.S.A. 2A:34-23. "Our courts have interpreted this statute to require a party who seeks modification to prove 'changed circumstances.'" Spangenberg, 442 N.J. Super. at 536 (quoting Lepis v. Lepis, 83 N.J. 139, 157 (1980)). Importantly, the moving party must demonstrate a change in circumstances from those existing when the prior support award was fixed. See Beck v. Beck, 239 N.J. Super. 183, 190 (App. Div. 1990); see also Donnelly v. Donnelly, 405 N.J. Super. 117, 127-29 (App. Div. 2009). "An opponent" to a motion to modify child support is "not required to provide a [CIS] or disclose financial information until such time as the movant

demonstrates a change in circumstances." Donnelly, 405 N.J. Super. at 131 (citing Lepis, 83 N.J. at 157).

"When reviewing decisions granting or denying applications to modify child support, we examine whether, given the facts, the trial judge abused his or her discretion." 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)). "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). However, "not every factual dispute that arises in the context of matrimonial proceedings triggers the need for a plenary hearing." Harrington v. Harrington, 281 N.J. Super. 39, 47 (App. Div. 1995). "[A] plenary hearing is only required if there is a genuine, material and legitimate factual dispute." Segal v. Lynch, 211 N.J. 230, 264-65 (2012). "Without such a standard, courts would be obligated to hold hearings on every modification application." Lepis, 83 N.J. at 159.

IV.

We address together plaintiff's contentions that modification of child support is warranted because the 2019 ODAR's SSD decision was "valid" and "sufficient" to support a change in circumstances. Specifically, he argues a

remand is warranted to recalculate child support because the ODAR's decision established he is disabled and can only "work in a limited capacity." Contrary to plaintiff's contentions, the ODAR rendered an "[u]nfavorable" decision finding for the period of SSD under appeal, "from September 12, 2016 . . . through June 30, 2017," plaintiff was "not under a disability." A change in circumstances was unsupported because while the decision considered plaintiff's various medical conditions and history of "severe impairments," he was ultimately found "not disabled." Additionally, the 2019 ODAR decision was not sufficiently contemporaneous in time to plaintiff's motion for modification.

Plaintiff next argues the judge erred in denying his motions because he was self-represented, attempted to cure the deficiencies, and, despite ODAR's findings, is partially disabled. These contentions are unsupported by the record. Plaintiff failed to demonstrate a prima facie showing to support a child support modification based on a change in circumstances. In accordance with the Court Rules, the judge correctly determined plaintiff, pursuant to Rule 5:5-4(a)(4), was required to submit a current and prior CIS. We note plaintiff is not foreclosed from refiling for a modification of child support providing his CISs, relevant medical documentation, and financial records in support of his alleged current

disabilities. Based on the record before us, however, we discern no abuse of discretion in the judge's finding that plaintiff failed to present competent evidence to support a modification of child support.

Having concluded the judge correctly denied plaintiff's motions for failing to comply with Rule 5:5-4(a)(4), for the sake of completeness, we briefly address plaintiff's argument regarding "[h]ow far back [a]. . . retroactive" child support modification should be permitted for his alleged disabilities. Specifically, plaintiff avers any child support modification should be awarded retroactively to 2019 because the Social Security Administration had determined he was partially disabled. This contention is unsupported.

Pursuant to N.J.S.A. 2A:17-56.23a, retroactive modification of child support and child support arrearages is generally prohibited "except [for] the period during which there is a pending application for modification, but only from the date the notice of motion was mailed." In Keegan v. Keegan, we concluded "the anti-retroactive support statute's applicability is limited to prevent retroactive modifications decreasing or vacating orders allocated for child support." 326 N.J. Super. 289, 291 (App. Div. 1999). Thus, a granted modification of child support is generally only retroactive to the service of the motion. Indeed, we have determined "[a] change of circumstances, such as loss

of a job, could . . . not be used as a basis to modify retroactively arrearages which already accrued under a child support order." Mahoney v. Pennell, 285 N.J. Super. 638, 643 (App. Div. 1995). Plaintiff's contention that any future entitlement to a child support modification should be retroactive to 2019 is without merit.

To the extent that we have not addressed plaintiff's remaining contentions, it is because they lack sufficient merit to be discussed in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.