SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2192-15T2

LORI B. LICHTER,

Plaintiff-Appellant,

v.

BRAD E. LICHTER,

Defendant-Respondent.

Argued May 4, 2017 – Decided June 23, 2017

Before Judges O'Connor and Whipple.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FM-13-136-93.

John J. Hopkins, III argued the cause for appellant.

Richard J. Kaplow argued the cause for respondent.

PER CURIAM

Plaintiff appeals from an October 26, 2015 order denying her motion for reconsideration of an August 11, 2015 order, which emancipated the parties' daughter. We affirm.

Plaintiff and defendant divorced on October 26, 1993, pursuant to a final judgment of divorce. The parties executed a property settlement and support agreement, which provided that plaintiff and defendant would have joint legal custody, however, plaintiff would have primary residential custody of the couple's son and daughter. Plaintiff was to receive $630 twice per month in child support for the children, who at the time were four and one. Both parties agreed to contribute to college expenses, but the precise amount of each parties' share would "abide the event." In 2007, defendant's child support was modified to $150 per week.

We note at the outset the limited record before us. We do not have notices of motion, nor certifications or affidavits submitted by either party in support of the August 11, 2015 motion for emancipation and other relief. We rely upon and discern the facts as recited in the August 11, 2015 opinion and order of the Family Part, as well as the transcript of the motion for reconsideration.

Following the daughter's college graduation, defendant moved for emancipation and to terminate child support, effective April 30, 2015, recalculate child support for his son, and for counsel fees and costs. At the time of the application, defendant asserted his daughter was twenty-three years old, worked part-time, and supported herself. Plaintiff moved to deny defendant's request

to emancipate, sought an increase in child support for the parties' son, asked for the matter to be referred to probation for recalculation of child support, and for counsel fees and costs. Plaintiff argued her daughter would attend Monmouth University full-time in the fall of 2015, would be involved in an intensive internship program, and would not be able to earn an income during that time. Plaintiff requested defendant pay for some school expenses, including, but not limited to, $32,000 in taxes attributed to the Monmouth tuition benefit and some book expenses.[1] Plaintiff also requested an increase in child support for the parties' son, whose Supplemental Security Income would be reduced to $420.25 per month in June 2015. Defendant responded the parties' agreement did not contemplate contribution to graduate school.

On August 11, 2015, the Family Part judge granted defendant's motion to emancipate the daughter and terminate child support payments as to her. The court reserved decision as to the recalculation of child support in order for plaintiff to complete

[1] Plaintiff is an employee of Monmouth University, and as such, her daughter attended the undergraduate program without tuition charges. The $32,000 tuition was an employment benefit of plaintiff. However, plaintiff asserts her daughter's post-graduate tuition was included in plaintiff's salary, substantially increasing her associated tax withholding, thus diminishing plaintiff's weekly income.

a case information statement (CIS). The Family Part judge found it unclear whether the daughter was "beyond the sphere of parental influence" but because she is over eighteen, there is a rebuttable presumption of emancipation at eighteen which plaintiff had not overcome. Counsel fees were denied.

Plaintiff filed an untimely motion for reconsideration of the August 11, 2015 emancipation order, arguing defendant should be required to contribute to the daughter's graduate school expenses pursuant to their property settlement and support agreement to contribute to college.[2] Oral argument was held on October 16, 2015, and on October 26, the court denied plaintiff's motion, finding plaintiff had not articulated a basis to reconsider the order of emancipation, concluding the terms of the parties' agreement extended only to college costs, and noting plaintiff's motion was untimely. This appeal followed.

Plaintiff's notice of appeal and CIS identify only the October 26, 2015 denial of the motion for reconsideration for our review; however, her brief addresses the August 11, 2015 order granting defendant's motion to emancipate. Rule 2:5-1(f)(3)(A) states, "the notice of appeal . . . shall designate the judgment, decision, action or rule, or part thereof appealed from." "[O]nly the

[2] We have not been provided the notice of motion for reconsideration.

judgments or orders or parts thereof designated in the notice of appeal which are subject to the appeal process and review." Pressler, Current N.J. Court Rules, cmt. 6 on R. 2:5-1(f) (2017). We may consider an order not identified in the notice of appeal where "the basis for the motion judge's ruling on [a first order and a later order are] the same. In such cases, an appeal [from the later order] may be sufficient for an appellate review of the [earlier order], particularly where those issues are raised in the CIS," Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 461 (App. Div.), certif. denied, 174 N.J. 544 (2002), by "clearly indicat[ing]" the earlier order is "one of the primary issues presented by the appeal." Synnex Corp. v. ADT Sec. Servs., Inc., 394 N.J. Super. 577, 588 (App. Div. 2007). Here, plaintiff has not provided a record sufficient to address the August 11, 2015 order; therefore, we only address plaintiff's appeal of the October 26, 2015 motion for reconsideration.

On appeal plaintiff argues the court erred by emancipating the parties' daughter and should have required defendant to contribute to graduate school expenses.

This court's review of a trial court's findings are limited, and "findings by the trial court are binding on appeal when supported by adequate, substantial, [and] credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (citing Rova Farms

Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court fact[-]finding." Id. at 413. Additionally, we will not disturb a trial court's reconsideration decision unless there has been a clear abuse of discretion. Fusco, supra, 349 N.J. Super. at 462.

After a child reaches the age of eighteen, there is a rebuttable presumption of emancipation. Filippone v. Lee, 304 N.J. Super. 301, 308 (App. Div. 1997). A child is emancipated "when the fundamental dependent relationship between parent and child is concluded, the parent relinquishes the right to custody and is relieved of the burden of support, and the child is no longer entitled to support." Ibid. Whether or not a child is emancipated is a fact-sensitive inquiry. Ibid. The question is therefore "whether the child has 'moved beyond the sphere of influence and responsibility exercised by a parent and obtains an independent status of his or her own.'" Ibid. (quoting Bishop v. Bishop, 287 N.J. Super. 593, 598 (Ch. Div. 1995)). The factual inquiry must necessarily include issues such as the "child's need, interests, and independent resources, the family's reasonable expectations, and the parties' financial ability, among other things." Dolce v. Dolce, 383 N.J. Super. 11, 18 (App. Div. 2006).

Initially the Family Part judge found it was "unclear" whether the daughter was attending school since graduating from college in January 2015, whether she was working full or part-time, and whether there had been a lapse in her attendance at school. Plaintiff did not provide evidence the daughter was living with her during this time and did not demonstrate how the daughter was not "beyond the sphere of parental influence." Therefore, the court found plaintiff had not overcome the rebuttable presumption her daughter was emancipated.

On reconsideration, plaintiff attempted to supplement the record by providing a certification by the daughter in support of plaintiff's motion for contribution. This certification was filed in September 2015, after the trial court granted defendant's motion for emancipation. These facts were not previously presented when the court issued its August 11, 2015 order despite the fact plaintiff was aware of the information. The Family Part judge denied plaintiff's motion because plaintiff did not demonstrate the court failed to consider relevant evidence or based its decision on incorrect reasoning.

Motions for reconsideration are only granted in two narrow situations. Fusco, supra, 349 N.J. Super. at 462. The first is when "the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis" and the second is when "it is

obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Plaintiff's motion for reconsideration was denied in part because plaintiff did not establish the court failed to consider evidence or based its decision on incorrect reasoning.[3] Based upon the record before us, however, because the court found it was "not clear" the daughter was beyond the sphere of parental influence, we modify the order denying reconsideration to be without prejudice to the right of plaintiff to move to unemancipate the couple's daughter.

Plaintiff also argues the judge erred in denying reconsideration of the denial of plaintiff's request for contribution of graduate school expenses. The judge denied reconsideration relying on the parties' agreement, which only contemplated contribution to college, not graduate school. Plaintiff argues the judge should have considered Newburgh v. Arrigo, 88 N.J. 529 (1982), which she asserts establishes her right to receive both child support and contribution to graduate school. In Newburgh, our Supreme Court held that, "in appropriate circumstances, the privilege of parenthood carries with it the

[3] The motion for reconsideration was also denied because it was filed out of time and was therefore procedurally deficient.

duty to assure a necessary education for children." Newburgh, supra, 88 N.J. at 543. The Court added "[i]n general, financially capable parents should contribute to the higher education of children who are qualified students. In appropriate circumstances, parental responsibility includes the duty to assure children of a college and even of a postgraduate education such as law school." Id. at 544.

Defendant cites Gac v. Gac, 186 N.J. 535 (2006), which reiterated "[i]n general, a parent's responsibility to pay child support terminates when the child is emancipated." Id. at 542 (citing Newburgh, supra, 88 N.J. at 542-43). However, nothing "prevents a parent from freely undertaking to support a child beyond the presumptive legal limits of parental responsibility." Dolce v. Dolce, 383 N.J. Super. 11, 18 (App. Div. 2006). A parent may be required to contribute to a child's higher education expenses even if the parent is no longer obligated to make monthly child support payments to the other parent. See Jacoby v. Jacoby, 427 N.J. Super. 109, 118-19 (App. Div. 2012). Additionally, an order emancipating a child does not necessarily bar a subsequent order requiring parental contribution to higher education. Wanner v. Litvak, 179 N.J. Super. 607, 612 (App. Div. 1981) (citing Sakovits v. Sakovits, 178 N.J. Super. 623 (Ch. Div. 1981)). Here,

the parties agreed to defer discussion of contribution to college costs but did not expressly agree to graduate school costs[4].

New Jersey favors the use of consensual agreements to resolve marital controversies. J.B. v. W.B., 215 N.J. 305, 326 (2013). Matrimonial settlement agreements are enforceable "to the extent that they are just and equitable." Lepis v. Lepis, 83 N.J. 139, 146 (1980) (quoting Schlemm v. Schlemm, 31 N.J. 557, 581-82 (1960)). As in other contexts involving contracts, a court must enforce a matrimonial agreement as the parties intended, so long as it is not inequitable to do so. See Pacifico v. Pacifico, 190 N.J. 258, 266 (2007). When interpreting matrimonial settlement agreements, the court should look to the terms as written "in the context of the circumstances at the time of drafting and . . . apply a rational meaning in keeping with the 'expressed general purpose.'" Id. at 266 (quoting N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953)). A court should not add terms to an agreement "because one party later suggests that a few changes would have made the agreement fairer." Dworkin v. Dworkin, 217 N.J. Super. 518, 523 (App. Div. 1987). Under that rational, the

[4] We do not know if the parties have ever addressed the deferred discussion of contribution towards college expenses or whether there were expenses defendant should have shared and for which he may still be held accountable. Nothing in the agreement forecloses the recovery of college expenses as contemplated.

Family Part judge relied upon the plain language of the parties' agreement to deny plaintiff's application.

Affirmed as modified.