NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3078-11T4

LORRAINE LEE,

Plaintiff-Appellant,

v.

PATRICK LEE,

Defendant-Respondent.

Submitted December 19, 2012 - Decided July 1, 2013

Before Judges Axelrad and Sapp-Peterson.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FM-13-1629-10B.

Law Office of Edward Fradkin, attorney for appellant (Mr. Fradkin, on the brief).

Patrick J. Lee, respondent pro se.

PER CURIAM

Plaintiff Lorraine Lee[1] ("Lorraine") appeals from a January 11, 2012 order,[2] which, among other things, denied her requests for (1) monetary sanctions and a bench warrant; (2) $1342 in

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[1] Because the parties share the same last name, we refer to them throughout this opinion by their first names. In doing so, we intend no disrespect.

[2] The January 11, 2012 order was as a result of a motion for reconsideration of the court's September 23, 2011 order.

counsel fees from defendant Patrick Lee imposed by the August 11, 2011 order; (3) statements of the children's college accounts, in accordance with the Matrimonial Settlement Agreement (MSA), and reimbursement to those accounts from Patrick; (4) sanctions; (5) consultation only, but not agreement, regarding summer camp and extracurricular activities; (6) reimbursement in the amount of $2143, representing 61% of Patrick's share of summer camp and extracurricular expenses; and (7) payment of 61% of all future dance expenses. Because Patrick failed to demonstrate a prima facie case of changed circumstances justifying any relief, we reverse the order and remand this matter for further proceedings consistent with this opinion.

Lorraine and Patrick were married on June 17, 2000, and have four children. On June 15, 2011, the parties entered into an MSA that was incorporated into a Dual Final Judgment of Divorce (JOD) entered on June 15, 2011. Among the provisions contained in the MSA was Patrick's obligation to maintain health insurance. Because Lorraine claimed he was not fulfilling this obligation, she filed an Order to Show Cause on June 21, 2011, seeking to enforce this provision. In its June 21 order, court granted the relief sought, ordered Patrick to bring all support arrears current, and awarded Lorraine counsel fees and costs.

Subsequently, the court entered an order on August 11, 2011, compelling Patrick to pay $1342 towards Lorraine's counsel fees.

Once Patrick submitted papers to the court confirming he had secured the requisite health insurance, the court vacated its earlier order. Patrick then moved for reconsideration of the order awarding counsel fees. In addition to entertaining Patrick's reconsideration motion, the court also considered Lorraine's cross-motion to enforce numerous provisions of the parties' MSA. The court disposed of the motion by order dated September 23, 2011, without oral argument.

The court found that Patrick had in fact submitted a request to his former employer, AT&T, to have his COBRA payments debited from his bank account. The court then vacated its earlier order directing that Patrick pay counsel fees and costs on behalf of Lorraine, concluding that Patrick "has substantial child and alimony support obligations and is unemployed. Therefore[,] the [c]ourt finds that [Patrick] does not have the financial wherewithal to pay attorney fees."

The court denied Lorraine's motion to enforce the counsel fee award entered on August 11, denied her request to compel Patrick to pay her $2250 in sanctions pursuant to Paragraph 8.1 of the MSA because he had provided proof of life insurance, denied her application for Patrick to reimburse her for $2143

she incurred for the children's summer camp extracurricular activity fees because he "did not consent to these expenses," and denied her additional demand for counsel fees for having to file the various enforcement motions.

Lorraine filed a motion for reconsideration, which Patrick, self-represented, opposed. He also sought counsel fees. The court conducted oral argument. Other than granting Lorraine's request that Patrick add her name to four college accounts maintained for the benefit of the children, clarifying the $200 per child limit on extracurricular activities the court imposed in its September 23 order, granting in part plaintiff's request that Patrick pay plaintiff 61% of the parties' daughters' monthly dance lessons Lorraine previously incurred, and directing that Patrick sign the necessary authorizations in favor of plaintiff in order that the parties' QDRO could be finalized, the court denied all other relief Lorraine sought in her reconsideration motion. The present appeal followed.

On appeal, Lorraine raises the following points for our consideration:

> POINT I
> THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FAILING TO ENFORCE THE TERMS OF THE JUNE 15, 2011 MATRIMONIAL SETTLEMENT AGREEMENT AGAINST THE DEFENDANT WHERE THE DEFENDANT FAILED TO MEET HIS BURDEN TO SHOW THAT A CHANGE OF CIRCUMSTANCES RENDERED THE TERMS OF THE AGREEMENT UNFAIR AND INEQUITABLE.

POINT II

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WITH REGARDS OT ITS CONCLUSIONS ABOUT AGREED UPON PROVISIONS OF THE MSA REGARDING SANCTIONS AND THE IMPOSITION OF COUNSEL FEES TO THE PARTY SEEKING ENFORCEMENT OF THE TERMS OF THE MSA.

POINT III

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY MODIFYING PARAGRAPH 4.3 OF THE MSA.

POINT IV

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY CONCLUDING THAT DEFENDANT DID NOT HAVE THE ABILITY TO PAY COUNSEL FEES WITHOUT ANY CURRENT DOCUMENTATION CONCERNING HIS FINANCIAL CIRCUMSTANCES.

We generally defer to the factfinding of the trial court if supported by the record. See Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). However, we decide legal issues de novo. See Manalapan Realty v. Township Comm. of Manalapan, 140 N.J. 366, 378 (1995).

The central legal issue impacting many of Lorraine's arguments is her challenge to the court's conclusion that the sanctions and counsel fee provisions of the parties' MSA must be modified because of Patrick's unemployed status, a status he held at the time the parties entered their MSA. On this issue, the court has the equitable authority to modify the sanction and counsel fee provisions, but as in any modification of an MSA, the court must be satisfied that changed circumstances have been demonstrated. Lepis v. Lepis, 83 N.J. 139, 149 (1980).

However, "[a]n application to modify an agreement is an exception, not the rule[,]" as judges should contemplate that agreements entered into in good faith "shall be performed in accordance with their terms." Glass v. Glass, 366 N.J. Super. 357, 379 (App. Div.), certif. denied, 180 N.J. 354 (2004); see Avery v. Avery, 209 N.J. Super. 155, 160 (App. Div. 1986) ("there is a strong public policy favoring stability of consensual arrangements for support in matrimonial matters") (citing Lepis, supra, 83 N.J. at 141).

"The agreement between the parties – the contract upon dissolution – is entitled to significant consideration[,]" because agreements, by their very nature, carry with them a certain stability to be respected at the time of enforcement or in the event modification is at issue. Glass, supra, 366 N.J. Super. at 372; see Konzelman v. Konzelman, 158 N.J. 185, 193 (1999) (stating that voluntary agreements "enabl[e] parties to order their personal lives consistently with their post-marital responsibilities" and, therefore, are given "prominence and weight"); Conforti v. Guliadis, 128 N.J. 318, 323 (1992) (recognizing that "[m]arital property settlement agreements 'involve far more than economic factors' and must serve the strong public and statutory purpose of ensuring fairness and equity in the dissolution of marriages"); Petersen v. Petersen,

85 N.J. 638, 645 (1981) (reiterating the desirability of "[v]oluntary accommodations regarding matrimonial differences"); Ozolins v. Ozolins, 308 N.J. Super. 243, 249 (App. Div. 1998) (reversing the termination of alimony and finding that the judge erred when, among other things, "the judge did not factor in the principle that the amount of alimony here was set originally by the parties themselves[,]" as such agreements ordinarily include trade-offs between the parties). Only under circumstances where enforcement of the agreement becomes inequitable should an exception be made to the strict enforcement of an agreement's terms. Glass, supra, 366 N.J. Super. at 379.

Implicit in the court's September 23 order is the court's apparent satisfaction that the lapse in health insurance was not attributable to any wrongdoing on Patrick's part. Consequently, although the court references his unemployed status and his substantial child support and alimony obligations as reasons for vacating the counsel fee award in connection with Lorraine's earlier order to show cause, the decision to vacate the award was not so wide of the mark that it warrants reversal. State v. Goodman, 415 N.J. Super. 210, 224-25 (App. Div. 2010), certif. denied, 205 N.J. 78 (2011).

On the other hand, there were other aspects of the MSA with which Patrick failed to comply, requiring that the court order

his immediate compliance. He had not, among other obligations, provided proof of life insurance, had not signed the authorizations so that Lorraine could discuss his pension and a lawsuit to which he was a party, and had not returned the television screen and camera to Lorraine. Although the court ordered his immediate compliance with the provisions within the MSA pertaining to these issues, it did not impose sanctions for his non-compliance.

Additionally, the court lent its interpretation of the word "consult" as it relates to Lorraine's obligation to communicate with Patrick about extracurricular activities and concluded the word implied more than "merely advising" Patrick on extracurricular activities. In that regard, the court once again referenced Patrick's unemployed status in concluding that the interpretation urged by Lorraine's counsel that "consult" means advise was unreasonable. The court reached this determination despite Lorraine's submission of correspondence from Patrick's counsel during the MSA negotiations indicating that Patrick proposed to make a 50% contribution to "agreed upon extracurricular activities."

Because Patrick was unemployed at the time he entered the MSA, his unemployed status did not constitute changed circumstances. Lepis, supra, 83 N.J. at 149. Therefore, before

exercising its discretion to modify the agreed upon provisions of the MSA, the court should have required, at a minimum, that Patrick submit an updated Case Information Statement and any other necessary financial information. Based upon such submissions, the court would then have been in a position, whether based upon the submissions or, if warranted, after a plenary hearing, to decide whether changed circumstances existed which warranted relieving Patrick of sanctions and counsel fees.

Reversed and remanded for further proceedings permitting Patrick to submit additional financials and a renewed application to vacate counsel fees and sanctions. Based upon the supplementals, the trial judge will determine whether a plenary hearing should be conducted.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.