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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2231-21

REBEKAH SAMUEL,

Plaintiff-Respondent,

v.

THEODORE CALABRESE,

Defendant-Appellant.

Submitted April 18, 2023 – Decided August 14, 2023

Before Judges Rose and Gummer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Essex County, Docket
No. FM-07-2528-16.

Theodore Calabrese, appellant pro se.

Newsome O'Donnell, LLC, attorneys for respondent
(Edward J. O'Donnell and Gregory L. Grossman, on the
brief).

PER CURIAM

In this post-judgment matrimonial appeal, defendant Theodore Calabrese appeals from a February 18, 2022 order denying his motion for alternate supervised parenting time arrangements and for a stay of his child-support obligation. We affirm.

I.

The parties were married in 2007. They have two children: a daughter, who was born in 2009, and a son, who was born in 2012. In 2013, they were divorced by way of a judgment of divorce, incorporating an August 15, 2013 stipulation of settlement, which had been executed by the parties. In the stipulation, the parties agreed plaintiff would have "sole physical and legal decision making and custody" of the children and defendant initially would have supervised visitation with the children at least once a week for four hours. The parties also agreed defendant would pay plaintiff a total of fifty dollars per month in child support until he obtained "gainful income from employment," which was defined as "gainful income from employment in his field or similarly in finance or marketing, and commensurate with his capacity to earn, or greater than that currently earned by [him]." Defendant represented his then current earnings were "zero."

Post-judgment litigation resulted in a February 26, 2018 consent order in which the parties agreed Dr. Elizabeth Stilwell would "continue to conduct therapeutic supervised parenting time" with defendant and the children pursuant to a December 1, 2017 order and that "[a]ny adjustments to the duration, location, and/or protocols of the parenting time w[ould] be recommended by Dr. Stilwell and/or Dr. [Mattias] Hagovsky." Dr. Hagovsky had conducted a best-interests evaluation. As set forth in the consent order, the parties stipulated that if they disagreed with the experts' "recommendations or protocol," they would request a conference call with the judge and if the issue was not resolved during the conference call, they could file a motion with the court.

In 2019, defendant moved for unsupervised contact with the children. The motion judge denied that application in a July 9, 2019 order, noting the agreed-upon procedure set forth in the February 26, 2018 consent order and finding Dr. Stilwell determined defendant's contact with the children must be supervised and no expert had recommended a modification of defendant's parenting time.

In response to another motion by defendant, the judge issued an order on July 31, 2020, denying defendant's request to reduce his child-support obligation because defendant had not demonstrated a substantial change in circumstances

and denying his request for unsupervised parenting time with the children, stating the July 9, 2019 order would remain in effect.

Defendant subsequently applied for the same relief. During argument on June 7, 2021, defendant "capitulate[d] to supervised visitation" but asserted he could not pay Dr. Stilwell's "outstanding bill" and suggested the Division of Child Protection and Permanency (DCPP) provide supervision. He conceded DCPP did not have an open matter regarding the parties or their children. He asserted he was entitled to a stay and modification of his child-support obligation because he did not have a job in his field. In opposition, plaintiff's counsel referenced Dr. Stilwell's opinion about the "continued need for therapeutic supervised visitation services" and defendant's failure to submit any financial disclosures.

After hearing argument, the judge denied defendant's motion and placed her decision on the record:

Well, this is more than a supervised parenting order. This is for therapeutic supervised parenting time. This isn't just where we could hire somebody to watch the children. . . .

It is a shame that the children are not seeing their father, and I believe that most of that is because he has made no effort whatsoever other than to file repeated [m]otions without providing the proper . . . showing that there has been a substantial change in his income,

or any change in his income, other than him saying he's unemployed. There's no Case Information Statement, there's no bank statement, there's no tax return. A couple of job searches over the summer but he filed this application three times. This is the third time – [plaintiff's counsel] represented another time. I only know this would be the third, with the same results.

He has failed to provide any information that shows that he cannot afford to pay for the therapeutic parenting time. This was something that was set into place by Dr. Stilwell, Dr. Hagovsky, because of the need for this therapy to be first and foremost.

The supervision was . . . secondary, the therapeutic was definitely the . . . serious need. There was a serious need for therapeutic parenting time in this case. And, I am considering the children and their well being. And, the fact that you, sir, haven't shown me one piece of evidence that you can't afford to pay this is disturbing. And, over the last three years – two years, July of 2019 to June of 2021, you haven't paid a dollar. Haven't made any good faith effort.

. . . .

You have not shown me that you can't afford to make this payment.

Following the judge's decision, defendant asserted "there's no reason for therapeutic supervision," asked if Dr. Hagovsky could provide the supervision, advised he was a substitute teacher, and again asserted he could not afford to pay Dr. Stilwell. The judge told defendant he could "file an application if Dr.

Hagovsky's willing to . . . do the supervised therapeutic parenting time." She further held:

You did not give me any pay stubs, you didn't give me any tax returns. No Case Information Statement, just a bald application that you can't afford it. Well, you have to show you can't afford it, and you didn't do it.

. . . .

So, therefore, I'm going to deny the application. Also, with regard to the reduction of child support, for the same reason, there is absolutely no proof of a change of circumstance that will warrant a reduction in child support or the suspension of any child support.

The judge denied plaintiff's cross-motion for counsel fees and advised the parties that if defendant made the motion "for a fourth time . . . and we're in the same position," she would "consider the counsel fees from this application."

That day, the judge issued an order, denying defendant's application to stay his child-support obligation, his application to reduce his child-support obligation because he had not demonstrated changed circumstances, and his application for alternate supervised parenting time arrangements because he had "failed to show that he could not afford the therapeutic supervised parenting time with Dr. Stilwell." She denied plaintiff's fee application, stating she might "consider the fees from this application in any similar future application where

[d]efendant is seeking relief without providing proof of a change of circumstance." The judge again held the July 9, 2019 and July 31, 2020 orders remained in effect.

On December 21, 2021, defendant filed another motion to modify his child-support obligation and his visitation arrangements. In support of that motion, he submitted his certification in which he requested that "Dr. Hagovsky be allowed to step in to oversee me seeing my children" and that his child-support obligation be stayed until he "gain[ed] employment in his field of expertise." He attached to his certification a copy of a June 14, 2021 email from Dr. Hagovsky in which the doctor stated, "Got your message and left you one that I am open to helping but need info about how that would involve me" and a June 29, 2021 email in which Dr. Hagovsky stated he had spoken to plaintiff's counsel, who had "indicated . . . his position has not changed in that I am an evaluator, he does not wish to change my status, and therefore does not agree that I should assume any other role." Defendant also submitted a document purporting to show a bank account balance. Plaintiff opposed the motion and cross-moved for a fee award based on fees she incurred in opposing defendant's current and prior motions. In reply, defendant submitted his certification, attaching a Form 1099 purporting to show his 2021 DoorDash earnings.

On February 18, 2022, the judge issued an order with an attached statement of reasons denying defendant's motion and granting plaintiff's cross-motion. Finding defendant's motion procedurally deficient, the judge also denied his motion on substantive grounds. The judge held defendant's "present application raise[d] no new information or arguments that were not addressed by the [c]ourt [during the June 7, 2021 argument] and [wa]s simply a reiteration of his prior arguments." After considering the factors enumerated in Rule 5:3-5(c), the judge granted plaintiff's cross-motion, finding defendant had "acted in bad faith by bringing about a motion that was previously decided by the [c]ourt without offering any proof of changed circumstance or advancing any new arguments."¹

On appeal, defendant argues the judge erred in not allowing Dr. Hagovsky to supervise his visitation with the children, ordering supervised visitation "in the first instance," not staying his child-support obligation due to a purported material change in circumstances, and failing to accurately calculate his child-support obligation. We affirm.

¹ Defendant did not brief, and thereby waived, the portion of the order granting plaintiff's cross-motion for fees. N.J. Dep't of Env't Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div. 2015) (finding "[a]n issue that is not briefed is deemed waived upon appeal").

II.

Our review of a Family Part judge's findings is limited. We "afford substantial deference to the Family Part's findings of fact because of that court's special expertise in family matters." W.M. v. D.G., 467 N.J. Super. 216, 229 (App. Div. 2021). The family court's findings are binding on appeal when "supported by adequate, substantial, credible evidence." Gormley v. Gormley, 462 N.J. Super. 433, 442 (App. Div. 2019) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). "Reversal is warranted only if the findings were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Amzler v. Amzler, 463 N.J. Super. 187, 197 (App. Div. 2020) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). We review questions of law de novo. Ibid.

We review under an abuse-of-discretion standard orders concerning modification of child support or parenting time. J.B. v. W.B., 215 N.J. 305, 325-26 (2013); Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012). An abuse of discretion occurs where the trial court's decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571

(2002) (quoting Achacoso-Sanchez v. Immigr. & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)). Defendant has failed to meet that standard.

A party seeking modification of his or her child-support obligation or parenting time must demonstrate a change in circumstances warranting an adjustment. Bisbing v. Bisbing, 230 N.J. 309, 322 (2017); Spangenberg v. Kolakowski, 442 N.J. Super. 529, 536 (App. Div. 2015). The changed-circumstances standard applies to modification requests seeking to substitute the supervisor present during visitation. See Finamore v. Aronson, 382 N.J. Super. 514, 522 (App. Div. 2006) (finding "[o]rders defining a parent's right with respect to contact with his child are subject to future revision depending on a showing of changed circumstances"). "Any decision must be made in accordance with the best interests of the children." Jacoby, 427 N.J. Super. at 116. Defendant failed to meet that standard.

Defendant sought a modification of his child-support obligation in the form of a stay of the obligation until he obtains employment in his field. His current lack of employment in his field is not a change in circumstance given that defendant was not employed in his field when the parties entered into the 2013 stipulation of settlement. He sought a modification of the arrangements for his therapeutic supervised visitation time based on his purported inability to

pay Dr. Stilwell. But as the motion judge found on June 7, 2021, defendant, who did not submit a case information statement or copies of tax returns with his 2021 or 2022 motion, failed to support adequately his assertion that he was unable to pay Dr. Stilwell.

To the extent we do not address any other argument raised by defendant, it is because he did not present the argument to the motion judge, see *Alloco v. Ocean Beach & Bay Club*, 456 N.J. Super. 124, 145 (App. Div. 2018), or because the argument does not have sufficient merit to warrant further discussion in a written opinion, R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION