

2012 WL 2377825

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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey,
Appellate Division.

Michael DOBLIN, Plaintiff–Respondent,

v.

Linda DOBLIN, Respondent–Appellant.

Argued May 22, 2012.

|

Decided June 26, 2012.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County, Docket
No. FM–02–556–99.

Attorneys and Law Firms

[Robert A. Vort](#) argued the cause for appellant.

[Frank J. LaRocca](#) argued the cause for respondent
(LaRocca Hornik Rosen Greenberg & Blaha, PC,
attorneys; [Andrew G. Hegt](#), [Valerie Bonventre](#) and Mr.
LaRocca, on the brief).

Before Judges [NUGENT](#) and [CARCHMAN](#).

Opinion

PER CURIAM.

*1 Following defendant Linda Doblin's motion that sought to compel plaintiff Michael Doblin to resume alimony payments he had ceased paying approximately two years earlier, the Family Part judge denied the requested relief by order of October 24, 2008 (the October order). No appeal was taken from that order. Thereafter, defendant filed an untimely motion for reconsideration of the October order. The judge denied the motion by order of June 19, 2009 (the June order). Defendant appealed both the October and June orders. We affirm and conclude that defendant's appeal of the merits of the October order was untimely and cannot be revived by an untimely motion for reconsideration.

We deem it appropriate to provide an expansive explanation of the facts, as this appeal marks the fourteenth year of litigation concerning a marriage that lasted for a period of three years before the parties separated.

The parties were married in June 1994. A child was born of the marriage in April 1996, and the parties separated in 1997, with a complaint for divorce being filed in August 1998.

Prior to the marriage, the parties executed a prenuptial agreement that, among its other terms, contained an alimony waiver provision, pursuant to which the parties would forgo alimony if they divorced within six years of their wedding. The agreement also provided that alimony would be available in the event that either party suffered a disability preventing him or her from engaging in fulltime employment.

Following the entry of a judgment of divorce in October 2001, the parties agreed to arbitrate their remaining disputes. The arbitration consumed fourteen days of negotiations, including extensive, conflicting testimony about alleged disabilities suffered by each party.

The arbitrator addressed a number of other issues. Defendant had argued that the prenuptial agreement was invalid under the Uniform Premarital Agreement Act, *N.J.S.A. 37:2–31* to–41. In a decision dated December 31, 2003, the arbitrator determined that the agreement was valid and enforceable in all respects. However, the arbitrator determined that the alimony waiver provision of the prenuptial agreement was unenforceable because plaintiff had not filed for divorce during the appropriate time period. The arbitrator awarded defendant alimony in the amount of \$3,000 per month, to be paid tax-free to defendant and not to be tax-deductible by plaintiff. The arbitrator stated that the alimony was to be “ ‘permanent’ in nature, rather than [of] a specific limited duration period” but nevertheless found that “a review of the ‘permanent’ alimony should be undertaken” three years after his decision, a period he “intended to coincide with the mandatory and statutory review of child support called for under *N.J.S.A. 2A:17–56.9*[a]....” The arbitrator found that “at the time of such three[-]year review of all support payments, the burden of proof w[ould] be on [defendant] to establish her continuing need for alimony from [plaintiff] [,] ... the procedural

variance [of changing the burden of proof] ... deemed to be appropriate and warranted under the exceptional circumstances of this case.” The Family Part judge confirmed the arbitration award. The arbitrator thereafter issued a supplemental arbitration decision wherein he denied both parties' correction or clarification claims. The judge issued an order and judgment confirming the supplemental arbitration decision.

*2 Over the next two years, the judge addressed child custody issues, and in 2005 he modified the alimony award based on plaintiff's changed circumstances. Plaintiff was awarded custody of the child. The judge did not address the issue of alimony in 2007, when other issues were litigated, resulting in, among other things, the award of counsel fees in plaintiff's favor in the amount of \$53,182.

In 2008, defendant unsuccessfully sought a transfer of custody. She filed a motion to enforce litigant's rights due to plaintiff's alleged failure to make alimony and child support payments to her. The judge denied the motion and directed defendant to pay child support arrears through the Bergen County Probation Department. No appeal was taken from that order, but in 2009, defendant filed a motion seeking to enforce litigant's rights and to set aside the previously entered October order, due to misapplication and misconstruction of law and fact pursuant to *Rule* 4:50–1. The judge denied the motion. Defendant appealed both this order and the earlier October order.

On appeal, defendant asserts that she is still entitled to alimony. Plaintiff disputes defendant's entitlement, claiming that: alimony was to be terminated after three years; defendant's appeal is out of time; defendant never met her burden of proof to establish a need for additional alimony; and defendant has engaged in bad faith throughout this extended litigation.

We first address the timeliness of this appeal. An appeal from a final judgment must be filed within forty-five days of the entry of the order. *R.* 2:4–1(a). Moreover, a motion for reconsideration must be filed within twenty days after the issuance of the order from which reconsideration is sought. *R.* 4:49–2. Here, the motion for reconsideration was filed almost six months after the October order, and the notice of appeal was filed almost ten months after the October order.¹

Motions for reconsideration are granted only under very narrow circumstances:

Reconsideration should be utilized only for those cases which fall into that narrow corridor in which either 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court 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).]

See also *R.* 4:49–2; accord *Cummings v. Bahr*, 295 *N.J.Super.* 374, 384 (App.Div.1996). Indeed, “[a] litigant should not seek reconsideration merely because of dissatisfaction with a decision of the [c]ourt.” *D'Atria*, *supra*, 242 *N.J.Super.* at 401. The appropriate means of seeking relief is to file an appeal. See *ibid.* By the same token, a motion for reconsideration may not be used as a substitute for a timely appeal. *Wausau Ins. Co. v. Prudential Prop. & Cas. Ins. Co. of N.J.*, 312 *N.J.Super.* 516, 519 (App.Div.1998). See also *Camacho v. Camacho*, 381 *N.J.Super.* 395, 399–400 (Law Div.2005). The motion judge correctly observed that reconsideration was unwarranted on the issue of alimony because it did not fall within the narrow category of issues that merit reconsideration; he further noted that the appropriate procedure for challenging the October order would have been to file an appeal within forty-five days after the order was issued. *R.* 2:4–1(a). Defendant did not timely file an appeal. Although the running of the time for taking an appeal is tolled by the timely filing of an application for reconsideration, *R.* 2:4–3(b), defendant did not timely file a motion for reconsideration. We conclude that the appeal is untimely and should be dismissed.

*3 Addressing the merits of the alimony claim, we conclude that defendant's argument is without merit. *R.* 2:11–3(e)(1)(E). We make the following additional observations.

In 2008, the Family Part judge concluded that the arbitration award was the law of the case and that, under the terms of the arbitration decision, at the end of 2006, the burden shifted to defendant to prove that she was entitled to continue receiving alimony. The judge observed that plaintiff ceased paying alimony to defendant after December 2006, and further noted that for almost two

years after the payments ceased, defendant neither filed a motion to enforce an alimony obligation, nor made application to continue receiving alimony. The court also found that the February 2007 order was controlling.

In 2009, the issue of defendant's continuing entitlement to alimony came before another Family Part judge, who expressed skepticism about the prior judge's interpretation of the arbitration decision; however, the new judge also disapproved of defendant's strategy for overturning the prior ruling, which was to ask another trial judge to vacate the prior order rather than to appeal the issue.

Our review of the language of the arbitration award confirms that it is ambiguous. It is unclear what the arbitrator meant when he said that the alimony award was permanent but should nonetheless be reviewed in three years' time. By definition, permanent alimony terminates or changes only when there is a finding of changed circumstances. See *Konzelman v. Konzelman*, 158 N.J. 185, 195 (1999). The arbitrator's intent is further obscured by the fact that he did not mandate review and instead merely recommended that the alimony "should" be reviewed at the time that the child support award was statutorily required to be reviewed.² The arbitrator did not explain whether the alimony award would remain in effect if it were not reviewed at the specified time.

The arbitrator's language, placing the burden on defendant for continued alimony, does not clarify what would happen to the alimony award if defendant failed to request that the alimony award be reviewed.

When confronted with an ambiguous provision of an arbitration award, we will consider a remand. However, the arbitration decision was written more than eight years ago. To remand after the extensive history of this litigation is an additional expenditure of judicial resources that is unwarranted.

The parties filed for divorce after only three and one half years of marriage, *Gordon v. Rozenwald*, 380 N.J. Super. 55, 65–66 (App.Div.2005) (discussing the appropriateness of limited-duration alimony in short-term marriages), and had agreed in a prenuptial agreement to waive alimony if the parties divorced during the first six years after they married.³ The three-year time limit in the arbitration award harmonizes the arbitrator's otherwise unusual imposition of "permanent alimony" with more

common and appropriate alimony awards for marriages of such short duration. Furthermore, it would make no sense to first explicitly place the burden on defendant to prove a continuing need for alimony and articulate a three-year deadline and then order payment of arrearages when defendant failed to meet her imposed burden. We conclude that defendant had an affirmative obligation to raise the issue of her continued entitlement to alimony and to establish such need after December 31, 2006, especially after plaintiff stopped making payments at the end of the three-year period.

*4 Defendant did not raise the issue of continuing alimony until 2008, almost two years after the review period, and two years after she had ceased receiving alimony from plaintiff. In 2008, she primarily argued that the 2003 alimony award was permanent; she did not prove extraordinary circumstances, although she conceded to plaintiff's interpretation of the arbitration decision by admitting that at some earlier, unspecified time, "she believed that she had provided certain doctor reports to meet [her] burden of proof" for continued alimony. Given defendant's acknowledgement that the arbitration decision obligated her to prove her continuing need for alimony, and by implication that the decision obligated her to file for continuation of alimony, her failure to raise the issue of alimony in earlier motions constitutes a waiver of the claim. *Randazzo v. Randazzo*, 184 N.J. 101, 108 (2005) ("the panel found no need to address the alimony issue because defendant waived that issue by failing to raise it in his first two appeals").

Even if defendant's argument before the Family Part could be characterized as raising, belatedly, the issue of continued alimony, she failed to meet her burden of continuing need. We also note that the parties were not dormant during the two-year period but were engaged in active motion practice consistent with the course of this litigation. During this period, defendant did not challenge the cessation of alimony.

Since we conclude that the orders under review should be affirmed, we need not address the additional issues raised.

Affirmed.

All Citations

Not Reported in A.3d, 2012 WL 2377825

Footnotes

- 1 We note that even the appeal from the June order is out of time. The judge entered a series of orders in June 2009. The relief sought on appeal is from the June 12, 2009 order. The appeal was filed on July 31, 2009, forty-nine days after entry of the June 12, 2009 order. The June 19, 2009 order addressed visitation, not an issue on this appeal.
- 2 In a 2009 opinion, we clarified the law concerning review of child support awards: “in [Doring v. Doring](#), 285 N.J.Super. 369 (Ch. Div.1995), the court held that child support orders are subject to review by a court every three years regardless of whether there has been a change of circumstances since the time of the prior order.... [T]his ruling was based upon the pre–1998 amendment version of [N.J.S.A. 2A:17–56.9a](#).” [Martin v. Martin](#), 410 N .J.Super. 1, 2 (App.Div.2009).
- 3 Although, as previously noted, the arbitrator found that the waiver of alimony did not apply due to the timing of plaintiff's filing, the intent the parties expressed in their prenuptial agreement is instructive on the subject of the parties' expectations and reasonable reliance during the early years of the union.