

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1770-12T2

PATRICIA A. ROSSI,

Plaintiff-Respondent,

v.

JAMES C. LIVINGSTON,

Defendant-Appellant.

Argued November 18, 2013 – Decided February 20, 2014

Before Judges Yannotti and Ashrafi.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket No. FM-12-1854-09.

Edward S. Snyder argued the cause for
appellant (Snyder & Sarno, L.L.C.,
attorneys; Mr. Snyder, of counsel and on the
brief; Scott D. Danaher, on the brief).

Daniel H. Brown argued the cause for
respondent (Law Offices of Paone, Zaleski &
Brown, attorneys; Mr. Brown, of counsel and
on the brief).

PER CURIAM

In this post-judgment matrimonial matter, defendant-father
appeals from a November 9, 2012 order of the Family Part
enforcing the parties' divorce settlement agreement and

requiring that he pay half his daughter's law school expenses. Father argues that certain prerequisites to trigger his obligation were not satisfied, and that his continuing estrangement from his daughter was a changed circumstance that should have relieved him of the obligation to pay a share of her law school expenses. We reject these arguments and affirm the Family Part's order essentially for the reasons stated in the thoughtful and thorough written opinion of Judge Barry Weisberg.

The relevant facts are essentially undisputed. Father and mother were married for twenty-six years, from 1983 to 2009. They had two children, a son and a daughter. By the time of the divorce, both children were emancipated. The parties' son was in the Marines and their daughter had graduated from Rutgers University several months earlier. However, shortly before her graduation, the daughter had become upset by an incident involving father, and she stopped communicating with him. The estrangement continued to the time of the divorce.

With the assistance of their attorneys, the parties negotiated a detailed Divorce Settlement Agreement and executed it on November 10, 2009. The agreement was incorporated into their divorce judgment of the same date. The agreement required neither party to pay alimony or child support. Both children

were declared to be emancipated. Paragraph 5 of the agreement stated:

5. The parties' son, [V.], is presently enrolled in the United States Marine Corps and is not due to complete his service until May 2010. Based upon [V.]'s present status, the parties acknowledge that he is emancipated at this time. The parties' daughter, [J.], graduated from college in or about May 2009 and it is presently contemplated that she will take a brief hiatus (1-2 years) before enrolling in graduate school or law school. [J.] is presently employed full-time at The parties agree that [J.] is emancipated at this time. If [J.] does attend graduate school or law school, either party may bring an application seeking to find that [J.] is unemancipated based upon the case law at that time.

[Emphasis added.]

The agreement also addressed the expenses of the daughter's anticipated post-graduate education. Paragraph 7 stated:

7. Notwithstanding [J.]'s emancipation, the parties agree that they shall each have an obligation to contribute towards [J.]'s post-college higher education costs defined as tuition, room and board, books and school fees. The WIFE shall pay fifty (50%) percent and the HUSBAND shall pay fifty (50%) percent of all the costs after application of scholarships and grants. [J.] shall provide the HUSBAND with a copy of her class schedule, grades, and financial aid information within five (5) days of her receipt of same. If [J.] fails to maintain a C grade point average, the HUSBAND and WIFE shall have no obligation to make any contribution toward her education.

[Emphasis added.]

Contrary to father's hopes, his relationship with his daughter did not revive after the divorce. J. worked for the next three years until the summer of 2012, saving more than \$15,000 for her post-graduate education. Mother claims that she notified father a year earlier, in 2011, that J. intended to apply to law schools, but there was no communication between father and daughter about her post-graduate plans. By the winter of 2012, J. had been accepted at several law schools and been offered financial aid packages, including scholarships and grants. On May 24, 2012, she learned that she was accepted to Cornell Law School from its wait list. By letter dated May 25, 2012, Cornell also notified her that there were no scholarship funds available at that late date. The cost of attendance at Cornell would be \$74,580 per year for tuition, books, other fees, and living expenses.

On June 4, 2012, J. wrote an email to her father notifying him of her acceptance at several law schools and her decision to attend Cornell. She explained the costs and the absence of scholarship money. Politely, she asked her father to contribute to her law school education in accordance with the parents' settlement agreement.

Father replied on June 9, 2012, also politely. He said he had experienced some financial setbacks that would make it very

difficult for him to contribute half of her law school expenses. He mentioned that he believed mother had an inheritance that was intended to pay for J.'s educational expenses. He expressed dismay at the failure of his efforts to rekindle a relationship with daughter. He congratulated her on her acceptance at Cornell but declined to contribute to the expenses.

Mother's attorney then wrote to father on June 19, 2012, asking that he comply with paragraph 7 of the settlement agreement and agree to pay half of his daughter's law school expenses. Father responded by letter dated July 13, 2012. For the first time, he complained that J. had not consulted him about her choice of law schools. He analyzed the lesser costs of several other law schools that J. might have selected. Ultimately, he offered to pay \$7,500 per year but only on the condition that J. attend Rutgers Law School, live at home with mother, and report to father weekly about her progress in law school.

In September 2012, mother filed a motion (the parties' first post-divorce motion) seeking enforcement of paragraph 7 of the Divorce Settlement Agreement. Father filed a cross-motion requesting that paragraph 7 be vacated or modified. Following oral argument, Judge Weisberg issued an order and written decision granting mother's motion and denying father's cross-

motion. The judge calculated father's total obligation over three years of law school would amount to approximately \$112,500. He allowed father to fulfill that obligation in installments by agreeing to become the primary obligor for one half of the daughter's educational loans, or to reimburse mother periodically his one-half share as she paid other amounts when due.

Father now appeals from the imposition of any responsibility upon him to pay for his daughter's law school education and related living expenses. He makes four arguments. First, he contends he is not obligated to pay because a hiatus of three years occurred before her enrollment at Cornell and paragraph 5 of the parties' agreement limited such a hiatus to no more than two years. Second, he argues that, contrary to paragraph 7, J. failed to notify him of financial aid information within five days of her receipt of that information. He contends J. was required to notify him of the financial aid awards she was offered from other law schools, and which she received during the winter months of 2012. He claims he was deprived of the opportunity to decide jointly with daughter which law school she would attend. Third, he contends that the divorce agreement should be read to contain an implied term that he would not be obligated to pay if his daughter was estranged

from him at the time of her post-graduate education. Fourth, he contends that the Family Part was required to make fact-findings in accordance with the twelve relevant factors listed in Newburgh v. Arrigo, 88 N.J. 529, 545 (1982), before ordering him to pay for J.'s post-graduate education.

Judge Weisberg considered each of these arguments and addressed them in his written decision. We are in agreement with the judge's analysis and conclusions and adopt them for our decision. We add the following to summarize the law and reasoning that supports imposing the financial obligation on father in the circumstances presented.

"New Jersey has long espoused a policy favoring the use of consensual agreements to resolve marital controversies." J.B. v. W.B., 215 N.J. 305, 326 (2013) (quoting Konzelman v. Konzelman, 158 N.J. 185, 193 (1999)). 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); see also Sachau v. Sachau, 206 N.J. 1, 5 (2011) (divorce settlement agreements are contractual in nature and

should be enforced as the parties intended, but "'[t]he law grants particular leniency to agreements made in the domestic arena' thus allowing 'judges greater discretion when interpreting such agreements.'" (quoting Guglielmo v. Guglielmo, 253 N.J. Super. 531, 542 (App. Div. 1992)).

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.'" Pacifico, supra, 190 N.J. at 266 (quoting Northern 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) (citing Smith v. Smith, 72 N.J. 350, 359 (1977)).

Here, father argues that paragraph 5 of the settlement agreement set a condition that J. would enroll in post-graduate study with only a hiatus of one to two years after her graduation from Rutgers. He argues he was relieved of the financial obligation because she did not enroll at Cornell Law School until three years later.

The reference in paragraph 5 to a "hiatus (1-2 years)" is neither as rigid as father contends, nor described in the

agreement as a condition to father's obligation under paragraph 7 to pay his share of post-graduate expenses. As Judge Weisberg concluded, the indefinite time designation is more reasonably interpreted as a general guide regarding the parties' intention to continue supporting the educational aspirations of their adult daughter. The expansion of the hiatus by one extra year is not a material deviation from the terms of paragraph 5.

Moreover, paragraph 5 pertained specifically to emancipation of the daughter and the potential for the parents to be responsible for payment of child support. We read that paragraph in conjunction with the opening phrase of paragraph 7 – "[n]otwithstanding [J.]'s emancipation" – as suggesting that the hiatus language was not a strict limitation on the agreement of each parent to be responsible for half the costs of J.'s post-graduate education.

Father argues that neglecting the specific language of the hiatus limitation leads to an unreasonable result. He argues he would thus be obligated to pay for J.'s post-graduate education even if, for example, she decided to enroll in law school twenty years after her college graduation. Judge Weisberg rejected that argument as contrary to the facts presented. It is an overstatement of the legal effect of the judge's interpretation of the agreement. If J. had requested contribution from father

many years after the divorce judgment, the hiatus language would be much more significant in understanding and applying the parties' expectations at the time of the divorce.

Furthermore, mother stated in her certification in support of her motion that the parties' plans for J.'s post-graduate education were not hastily added at the time of the divorce but were a long-standing agreement of the parties. She stated that the parents' undertaking of that obligation dated from some years before the divorce when J. agreed to attend Rutgers University for her undergraduate degree at a substantial savings to the parents. The agreement at the time of the divorce also took into account mother's relinquishment of other potential financial benefits because she understood that J.'s post-graduate education would be funded by both parents.

Judge Weisberg reasonably interpreted the parties' agreement as obligating father to pay his half share of J.'s law school education provided that her enrollment followed a reasonable hiatus after completion of her undergraduate education. Three years qualifies as such a reasonable hiatus.

Even less persuasive is father's argument that he was relieved of complying with paragraph 7 because J. breached the specific terms of that paragraph when she failed to notify him

within five days of the financial aid awards she had been offered.

With respect to Cornell, J. notified father that she was not offered any scholarship or grant on June 4, 2012, which was ten instead of five days after receiving that information on May 25, 2012. According to mother's certification, J. traveled to Cornell within days of Cornell's communications with her and asked the law school to reconsider the availability of a scholarship for her. When that attempt was unsuccessful, she weighed her options and chose Cornell anyway because of its reputation as a top-level law school and because Cornell was rated significantly higher than her other law school choices with respect to successful employment placement of its graduates. After making her decision, J. promptly notified father.

Although the five extra days before notification did not comply precisely with the terms of paragraph 7, the breach was not material to the essential terms of the agreement. It did not have any significant effect on father's obligation to pay a share of the law school expenses. We note that paragraph 7 specifically relieved the parents of an obligation to pay for J.'s post-graduate education if her grades fell below a C average, but it did not expressly condition the parents'

obligation on the five-day notification requirement. Father could not argue persuasively, for example, that a short delay by J. in providing him a copy of her class schedule or good grades would nullify his obligation to pay a half share of her expenses. Moreover, the short delay that actually occurred did not prejudice father in any manner, since J. had made diligent efforts to obtain a scholarship but none was available. Instead, Cornell offered loans, which Judge Weisberg ultimately addressed in his decision as a means of easing father's immediate financial obligation.

Father also argues that J.'s obligation under paragraph 7 was to notify him of financial aid offers from all law schools to which she had been accepted, not just Cornell. He argues that the information was necessary so that they could jointly select a law school based on financial criteria as well as other factors. However, neither the language of paragraph 7 nor any other provision of the settlement agreement says anything about such a broader notification requirement. In fact, the joining of the five-day reporting requirement with reference to J.'s class schedule and grades suggests that it applies only to the school that J. chose to attend, not to others that she decided not to attend.

The parties' agreement did not include a frequently-used provision of such divorce settlements that father would have a right to participate in the planning of J.'s post-graduate education and her school selection. While an implied term of the agreement might be that J.'s plans and selection still had to be reasonable under the circumstances, the record does not suggest that they were not. Mother provided the court with detailed information about J.'s other law school choices and financial aid offers. The best among them would have required father to pay substantially more than the \$7,500 he temporarily offered to pay, upon J. meeting his conditions, and which his attorney subsequently withdrew as a compromise offer. Mother provided acceptable reasons for J.'s choice to attend Cornell at a higher cost.

Nor is there any merit to father's argument that J. breached the agreement because she did not include his income in her financial aid applications. Simply stated, including father's income would not have improved her chances of getting a scholarship.

In sum, the five-day delay in providing notice that J. had not received a scholarship or grant from Cornell had no effect on father's obligation to contribute to her post-graduate expenses.

Father argues that the divorce agreement should be interpreted to include two implied terms: first, that he would have a good relationship with his daughter, and second, that he would be involved in making the decision of which school she would attend. We reject this argument, as did Judge Weisberg.

Father was estranged from his daughter at the time that he entered into the divorce agreement and agreed to be responsible for half her post-graduate expenses. If a relationship and a voice in the planning and selection of a school were his expectations, such terms could and should have been included in the agreement. They were not. As the judge noted, father argues inconsistently that he is relieved of a major financial obligation because of minor deviations from the specific terms of paragraphs 5 and 7 but at the same time seeks to add major implied terms to the agreement that could easily have been anticipated at the time he signed the agreement.

In addition, while father blames his daughter for the deterioration of their relationship, and mother blames father, the source and causes of the rift are only minimally relevant to the issues before us. Father claims there was a change of circumstances in accordance with Lepis, supra, 83 N.J. at 146, permitting a modification of paragraph 7 because his relationship with J. did not improve in the three years since

the divorce. But his factual contentions do not establish a prima facie case of changed circumstances that would warrant a hearing to consider modification of the settlement agreement. Id. at 157. The relationship was the same three years later as it was immediately after J.'s graduation from Rutgers and at the time of the settlement agreement.

Finally, we agree with Judge Weisberg that a hearing was not required to consider the twelve factors listed in Newburgh, supra, 88 N.J. at 545, for purposes of determining whether father should be required to pay his share of the educational expenses.

In Newburgh, the parents had not reached any agreement with respect to contribution to their son's college or post-graduate education. See id. at 535, 542-46. Likewise, other reported cases that required the Family Part to consider the full range of the Newburgh factors were not applying or interpreting a divorce settlement agreement. See Gac v. Gac, 186 N.J. 535, 537 (2006); Gotlib v. Gotlib, 399 N.J. Super. 295, 300-01, 310 (App. Div. 2008). Only our decision in Moss v. Nedas, 289 N.J. Super. 352, 360 (App. Div. 1996), can potentially be read as implying the need for full independent consideration of the Newburgh factors where a divorce settlement agreement was involved. But in Moss, the agreement did not specify what the father's

obligations would be for the child's college expenses. Id. at 354. Instead, the agreement in Moss used imprecise language, stating that the parents would pay college expenses "in proportion to their ability to contribute." Ibid. Moreover, the mother and the child had concealed important facts about college attendance from the father and even from the Family Part as the dispute was being litigated. Id. at 355-57. Our application of the Newburgh balancing test and the Family Part's "broad equitable powers" was warranted by the factual circumstances in Moss. Id. at 360.

Here, no evidence suggests purposeful concealment from father, and his obligation is specifically fixed by paragraph 7 of the agreement as half the expenses, which are also specifically "defined as tuition, room and board, books and school fees." In this case, the parties' agreement pre-established many of the Newburgh factors relevant to determining whether father should be required to pay his share of the daughter's expenses. In the absence of a showing that the agreement was unfair or inequitable, the court could enforce it without holding a hearing to determine anew the relevant Newburgh factors.

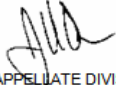
When circumstances presented at the time of divorce settlement have changed in a way that makes current enforcement

inequitable, the court may alter the agreement. Lepis, supra, 83 N.J. at 146-48. Here, the only economic change was an increase in father's salary by about \$27,000 since the time of the divorce, and the only non-economic change alleged was the continuation of the estrangement of father and daughter. The latter was not truly a change of circumstances, or at least one that could not have been anticipated at the time of the divorce.

Where a settlement agreement is used to define the terms of a divorce, the agreement should be "'entitled to considerable weight with respect to [its] validity and enforceability' in equity, provided [it is] fair and just." Dolce v. Dolce, 383 N.J. Super. 11, 20 (App. Div. 2006) (quoting Petersen v. Petersen, 85 N.J. 638, 642 (1981)). We find nothing unfair or unjust in enforcement of paragraph 7 of the parties' divorce settlement agreement as they executed it.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION