

ORDER ON MOTION

FILED

APPELLATE DIVISION

ANTHONY C. PIZI,

v.

KELLY BOLAM

NOV 22 2004

Jon Flynn
CLERK

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-645-03 T2
MOTION NO. M-1136-04
BEFORE PART: C
JUDGES: YANNOTTI
BILDER,

MOTION FILED: OCTOBER 29, 2004
ANSWER FILED: NOVEMBER 9, 2004

BY: KELLY BOLAM
BY: ANTHONY C. PIZI

SUBMITTED TO THE COURT: NOVEMBER 17, 2004

ORDER

RECEIVED
APPELLATE DIVISION

NOV 22 2004

SUPERIOR COURT
OF NEW JERSEY

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 18th DAY OF NOVEMBER, 2004, HEREBY ORDERED AS FOLLOWS:

MOTION BY RESPONDENT
FOR COUNSEL FEES AND COSTS

GRANTED DENIED OTHER
(X) () (X)

SUPPLEMENTAL:

Respondent is awarded attorney's fees in the amount of \$7,000 and costs of \$287.80.

FOR THE COURT:

Joseph L. Yannotti

JOSEPH L. YANNOTTI, J.A.D.

MER FM-11-933-98

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

Jon Flynn
CLERK OF THE APPELLATE DIVISION

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-645-03T2

ANTHONY C. PIZI,

Plaintiff-Appellant,

v.

KELLY BOLAM,

Defendant-Respondent.

Argued October 4, 2004 - Decided **OCT 21 2004**

Before Judges Yannotti and Bilder.

On appeal from Superior Court of New Jersey, Chancery
Division, Family Part, Mercer County, FM-11-933-98.

Barbara Ulrichsen argued the cause for appellant (Fox
Rothschild, attorneys; Ms. Ulrichsen and Peter F.
Kelly, on the brief).

Brian G. Paul argued the cause for respondent
(Szaferman, Lakind, Blumstein, Blader, Lehmann &
Goldshore, attorneys; Mr. Paul, on the brief).

PER CURIAM

This is an appeal by a former husband, plaintiff Anthony
Pizi, from the denial of his post-judgment motion for reduction
of his alimony obligations and a recalculation of the child
support obligations due his two minor children, to be effective
January 1, 2003.

Briefly stated, the basis of his applications is a claim that his income has been drastically reduced from that which existed at the time of his divorce and was the foundation upon which the alimony and support obligations contained in the parties' property settlement agreement were constructed. In that agreement, the parties agreed the alimony should "not [be] changed unless there is a substantial change in Husband's financial circumstances such that it is unreasonable for him to pay such amount." Former husband contends his reduced income makes the continuation of the stipulated payments unreasonable.

The nub of the controversy is the calculation of former husband's financial circumstances within the meaning of the parties' property settlement agreement. A brief background is necessary to an understanding of the issue.

When the parties were divorced September 3, 1998, following nineteen years of marriage which produced two children, Lauren, now 17 and Matthew, now about 16, the former husband was employed by Merrill Lynch. His remuneration at that time included deferred compensation in the form of restricted stock which was not to become unrestricted and taxable to him until a future date. He left Merrill Lynch in January 2001 to take an executive position with a software company. At that time, he had rights to deferred compensation, earned and received after the final judgment of divorce, in the form of restricted Merrill

Lynch stock which would not all finally become unrestricted until 2004.

In calculating his income for the years 2002 and 2003, former husband did not include the deferred compensation he received in each of those years in the form of the then unrestricted stock. As the trial judge correctly noted at oral argument on August 15, 2003, if the \$126,857 received in the form of stock in 2002 and the \$132,854 received in the form of stock in 2003 is "fairly considered income, then [there is] no issue." Former husband's application is based on the notion that his income, without reference to the unrestricted stock, is such that the continuation of the stipulated payments is unreasonable, that his income has decreased to a point where the payments are no longer fair.

This then is the issue, is the deferred compensation, earned after the 1998 final judgment of divorce and received in 2002 and 2003 in the form of unrestricted stock, to be treated as income in calculating former husband's alimony and support obligations - - is it an available resource to be considered in determining whether his financial circumstances make it unreasonable for him to continue the agreed upon payments?

In her oral decision of August 15, 2003, the trial judge found that this restricted stock represented post-judgment earnings received in the year the restrictions were released and

should be considered as income in determining whether it would be unreasonable to require the former husband to continue to pay the stipulated alimony. The inclusion of the receipt of \$126,857 in the form of stock in former husband's 2002 income resulted in an income about \$20,000 in excess of the 1997 income of \$445,685 upon which the alimony and child support figures in the parties' property settlement agreement were arrived at. Accordingly, the motion to reduce the alimony and support obligations was denied. At the same time, the trial judge noted that former husband's 2003 income was still unknown and might, even with the inclusion of \$132,854 in the form of stock, result in an amount as much as \$100,000 below the standard set in the property settlement agreement. She added, "And that certainly would be a substantial change in circumstances, but we're not there yet. I think it's premature. And for that reason I'm denying the motion to modify."

On appeal, former husband contends the deferred compensation earned and received post-judgment should not be treated as income for alimony and support purposes, that the trial court's findings in regard to his 2002 income are not supported by the evidence.

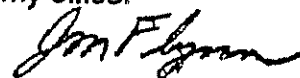
Former husband argues that the stock received post-judgment should be not be treated as income for purposes of determining his ability to fulfill his alimony and support obligations

because to do so would be to treat this variety of receipt differently than that received before the divorce. The conclusion is a non-sequitor. As the trial judge properly noted, the pre-divorce receipts were part of the parties' assets at the time of the divorce and thus subject to equitable distribution, Pascale v. Pascale, 140 N.J. 583, 607-611 (1995), unlike the post-judgment receipts which represent compensation earned by former husband post-judgment and available to him to meet his obligations to his former wife and children. See generally discussion in Heller-Loren v. Apuzzio, 371 N.J. Super. 518, 528-530 (App. Div. 2004).

We are satisfied that the findings and conclusions of the trial judge with respect to former husband's 2002 income is supported by substantial credible evidence in the record and should be affirmed. Rova Farms Resort v. Investors Ins. Co., 65 N.J. 474, 484 (1974). We agree with the trial judge that consideration of the situation with regard to 2003 would have been premature.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION