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L. A.,

Plaintiff,

v.

M. A.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY
CHANCERY DIVISION
FAMILY PART

FM- 15-399-10S

CIVIL ACTION
OPINION

Decided: December 3, 2014

Plaintiff, pro se
Elaine M. Diamantides, for defendant

L.R. Jones, J.S.C.

In the cases of Halliwell v Halliwell, 326 N.J. Super 442, 448 (App. Div. 1999), and Kuron v. Hamilton, 331 N.J. Super 561 (App. Div. 2000), the New Jersey appellate courts rendered decisions regarding the impact which a parent's long-term prison sentence may have on his or her existing child support obligation, including the possibility of the obligor receiving a support reduction during long-term incarceration based upon an inability to work and pay. The present case, however, presents factual circumstances and issues which are significantly distinctive from those in both Halliwell and Kuron: Specifically, what happens to a parent's child support obligation when he or she is incarcerated for criminal acts against the very child he or she is obligated to support?

For the reasons set forth in this opinion, the court holds in this case that as the defendant has been convicted and incarcerated for a felony committed against his or her own child, such incarceration does not constitute a change of circumstances or other legal basis under Rule 4:50-1 to reduce or terminate his ongoing child support obligation to that child so long as she remains unemancipated. While collection and enforcement of the child support obligation may be suspended during incarceration under Halliwell and Kuron, the unpaid arrears will in this case continue to accrue and repaid by defendant under a court-ordered repayment schedule to be determined upon his eventual release from prison via parole or completion of sentence.

FACTUAL BACKGROUND

Plaintiff and defendant married in 1994. They had one child, a daughter, born in 1996. When the child was approximately thirteen years old, New Jersey's Division of Youth and Family Services (DYFS)[1] substantiated that defendant had sexually molested the child on multiple occasions. Defendant was arrested and charged with felonious sexual activity against the child, including two counts of violations of N.J.S.A 2C:14-2A(1) for aggravated sexual assault and one count of violation of N.J.S.A 2C:24-4A for endangering the child's welfare.

In 2009, plaintiff filed for divorce on the ground of extreme cruelty, seeking sole custody of the child, along with child support and other relief. Defendant filed a counterclaim for divorce on the no-fault grounds of irreconcilable differences, seeking "reunification" with

[1] On June 29, 2012, the New Jersey Division of Youth and Family Services (DYFS) was renamed the Division of Child Protection and Permanency (D.C.P.P.). See L. 2012, c. 16, 20 (amending N.J.S.A. 9:3A-10(b)).

the child of the marriage pending the resolution of the outstanding criminal charges. In his counterclaim, defendant also sought spousal support from plaintiff and equitable distribution of assets, including a share of plaintiff's work-related pension. During the proceedings, each party was represented by experienced matrimonial counsel.

On April 6, 2010, while criminal charges were still pending against defendant, the parties settled their divorce litigation, and with assistance of their attorneys, entered into a comprehensive written matrimonial settlement. They jointly agreed that plaintiff would have sole legal custody of their daughter, while defendant would have no parenting time with the child pending resolution of the criminal charges. The parties further agreed that defendant would have a child support obligation of $146 per week.[2] Moreover, anticipating that defendant might ultimately be imprisoned a long-term basis for sexual crimes against the child, the parties stipulated as follows:

> . . . Should Husband be convicted and incarcerated resulting in his inability to meet his child support obligation, Husband's Child Support obligation shall continue to accrue as arrears to be payable upon his release.

In other parts of their settlement agreement, the parties waived any alimony claims against each other. Additionally, plaintiff agreed to pay defendant $25,000, less $16,000 in credits, for a total of $9,000 in full settlement of his equitable distribution claim to share in her work-related pension. The parties further agreed to divide up personal property in accordance with an extensive handwritten list, which was attached as a detailed and separate exhibit to the back of the typewritten settlement agreement.

[2] This amount was administratively increased to $153 per week following a periodic cost of living (COLA) adjustment.

Subsequently, defendant was in fact convicted of felonious sex crimes against his daughter, including violations of N.J.S.A 2C:14-2A(1) (aggravated sexual assault upon a minor), and N.J.S.A. 2C:24-4A (endangering the welfare of a child). As a result, he was sentenced to thirteen years of incarceration, with a minimum of eleven years before parole eligibility.

For the past four years, defendant has been incarcerated while accruing weekly child support arrears which continue to accumulate as per the parties' agreement. Defendant has now filed a motion under Rule 4:50-1 to vacate the child support provisions of the 2010 matrimonial settlement agreement, asserting that they were financially inequitable and unconscionable. He claims that it is fundamentally unfair for child support arrears of $153 per week to accrue against him while he is in prison, where he can only earn up to two dollars and thirty cents per day. He argues that, as matter of equity, it is unjust to expect him to carry a child support obligation which he cannot meet . Moreover, defendant urges that under the judgment, when he is ultimately released from prison, he will be facing a decade of accumulated arrears to repay, when he never could have paid this level of money from prison in the first place. Thus, defendant asks the court to vacate the child support provisions of the settlement agreement and reduce his child support obligation to $5.00 per week while he is incarcerated, so as to stop what he contends is the unreasonable and excessive accrual of unpaid arrears.

Plaintiff opposes defendant's application. She urges that no unfairness stems from in maintaining defendant's child support obligation, and that it would be inequitable to reduce or eliminate defendant's child support obligation as a result of his wrongful actions against his own minor daughter. Further, while the child is now eighteen years of age, she is not

yet emancipated, but still lives with, and remains financially dependent upon, plaintiff.[3] Moreover, the child struggles to cope with the psychological effects of defendant's acts against her. She is, however, planning to attend culinary school for vocational training in the near future. While plaintiff acknowledges that defendant is incarcerated and cannot pay the $153 in weekly child support obligation at this time, she asks for the arrears to continue accruing, with defendant to start paying the unpaid support arrears once he is ultimately released from prison in the future.

LEGAL ANALYSIS

The analysis of this matter starts with the general concept that the parties' unemancipated child is entitled to be financially supported by both of her parents. A parent has a duty to support his or her child. See Greenspan v. Slate, 12 N.J. 426, 430 (1953). Following divorce, child support is necessary to ensure that a child's needs are provided by his or her parents who might otherwise neglect their responsibilities of child rearing. Pascale v. Pascale, 140 N.J. 563, 590 (1995). The right to parental support belongs to the child, and generally cannot be effectively waived by the child's parents in legally binding fashion. See Pascale , supra, 140 N.J. at 591; Martinetti v Hickman, 261 N.J. Super 508, 512 (App. Div. 1993). Given this right, a court of equity may compel a parent to pay such support for his or her child as the facts and circumstances of a case render fit and just. Further, the court may take many factors may into consideration in determining what is a proper and reasonable child support order in a specific case. See Gordon v. Gordon, 147 N.J. Super 585 (App. Div. 1977).

[3] Defendant's motion does not seek the child's emancipation at this time.

When there is a substantial change in circumstances, a court in its discretion may modify a support order when fair and equitable to do so. See Lepis. v. Lepis, 83 N.J. 139 (1980). For this reason, when a party with a child support obligation under a pre-existing order is then incarcerated, it is quite common for such party to thereafter file a motion to attempt to suspend or vacate the ongoing obligation during the period of involuntary confinement in order to avoid the accrual of substantial arrears.

In New Jersey, perhaps the two leading appellate court decisions addressing this issue are (1) Halliwell v. Halliwell, 326 N.J. Super 442 (App. Div. 1999), and (2) Kuron v. Hamilton, 331 N.J. Super 561 (App. Div. 2000). In Halliwell, the defendant was convicted of an unspecified crime[4], and was sentenced to serve four to fifteen years in prison. At the time of sentencing, defendant had a pre-existing child support obligation of $75 per week, and the probation department continued to charge this amount to defendant's account following his criminal conviction and imprisonment. In turn, defendant filed a motion in the family court for an order reducing his child support obligation from $75 to $0, while crediting any arrears previously charged to his account during his period of incarceration. In considering the merits of his application, the appellate court implemented a multi-step process for resolving the motion, as follows:

a) Defendant's child support obligation would continue to accrue during incarceration. Id. at 446;

b) During incarceration, defendant's obligation to actually pay weekly support through probation would be suspended. The obligation itself, however, would continue and arrears would accrue. Defendant, would not be deemed in violation of

[4] In Halliwell, while the offense was unspecified, there was no indication, either express or implied, that the child support obligor committed any type of felony or other criminal act against his own minor child.

litigant's rights during his continued incarceration, and additional enforcement proceedings would not be necessary; Id.

c) Upon defendant's parole or release from incarceration, he would be required to appear before the Family Part to file a case information statement, and would be required to pay child support and reduce the accumulated arrearage under a schedule to be determined by the court at that time. Id.

The Halliwell court further noted that New Jersey's anti-retroactivity statute, N.J.S.A. 2A:17-56.23, generally prohibited retroactive modification of child support prior to the motion filing date. Hence, in order to preserve the claim of an incarcerated obligor who filed a motion for a reduction in child support while serving a long-term prison sentence, the court held that the court may defer action on the motion, and instead transfer the matter to the inactive calendar pending the obligor's release from the custodial sentence.[5] Upon the obligor's release from prison , the motion for reduction could then be considered after each party filed an updated case information statement. Utilizing the child support guidelines then in effect, the court could at that future point enter an order either reducing or not reducing child support, retroactive to the date of the obligor's initial motion. The could then determine an ongoing support obligation (if applicable) , and a schedule for repayment of any existing arrears, based upon the obligor's earning capacity at that time. Id. at 457-58.

Regarding the general concept of summarily terminating an incarcerated parent's child support obligation, the court further noted the following:

. . . It goes against fundamental notions of fairness to relieve criminals of the parental duty of child support. If incarcerated individuals are excused from this

[5] While unaddressed by the Halliwell court, it appears logical that as an alternative to transferring the motion to the inactive calendar and carrying the matter forward and unresolved for many years on the docket, the court may deny the motion without prejudice, subject to a motion for reinstatement upon the obligor's future release from prison, with the court having discretion to grant relief retroactive to the original motion's filing date. In this fashion, the court can be procedurally close the file, without permanently impairing the obligor's rights and without violating the terms and spirit of the anti-retroactivity statute.

> duty, their children certainly will be burdened, because it may have to step in for the incarcerated parents. In such a situation, the incarcerated parent receives the sole benefit. New Jersey is not a state that takes child support obligations or criminal conduct lightly. To excuse criminals from the duty of support would contravene sound public policy principles heretofore espoused by this state . . . . Suspending the payment of support and postponing a decision as to future support eliminates the accrual of arrears, yet does not reward the criminal who is fully apprised that upon release their support obligation will be reinstated and, based upon his ability to pay, he will be required to pay an arrearage which will be established commensurate with his income. Id. at 460.

In summary, Halliwell stood for the proposition that a court may suspend an imprisoned obligor's child support obligation, while essentially deferring adjudication of any motion to decrease support on the substantive merits until such time as the obligor was no longer incarcerated.

One year after Halliwell, the appellate court addressed another case involving a child support obligor facing long term incarceration. In Kuron v. Hamilton, 331 N.J. Super 561 (App. Div. 2000), defendant (an attorney) was sentenced to nine years in prison for financially misappropriating $500,000 of client trust funds. Following conviction and pending long-term imprisonment, defendant sought modification of his pre-existing child support obligation of $2750 per month.[6] The trial court denied the application, based upon the theory that the defendant's incarceration was analogous to a voluntary act such as quitting an existing job. Upon appeal, however, the appellate court rejected the concept that incarceration for a crime was akin to a voluntary act, and further disfavored any bright line rule that incarceration necessarily precluded a modification of support on the basis of changed circumstances. Id. at 570, Rather, the court indicated that " . .. we respectfully disagree with the contrary view

[6] In Kuron, the obligor also sought modification of his pre-existing alimony obligation, which like his child support obligation. was $2750 per month.

expressed in Halliwell . . ." that such underlying principle was sound, and held that " . . . a per se test is inconsistent with this State's established standards for evaluating petitions for modification." Id. In remanding the matter to the trial court for further consideration, the appellate court reasoned:

> . . . It is clear, in sum, that the issue of how voluntary conduct should affect a motion for modification is entirely fact-sensitive and must be decided on a case-by-case basis after all appropriate considerations have been evaluated . . . Id at 573. . . . . In discussing the factors to be taken into account, we have not intended to limit either the parties' rights to raise other considerations of equitable merit or the scope of the trial court's discretion to apply any measures which it may deem worthy of inclusion in the evaluative mix. Id. at 573.

The Kuron court concluded that the process of assessing and enforcing financial obligations in family court is not an exercise in intuition. Rather, the procedure calls for evaluation and application of all the equitable considerations which emanate from the parties' relationships, understandings and circumstances at every significant juncture. Id. at 576.

By reconciling and merging the principles of Halliwell and Kuron, one may reach the aggregate legal conclusion that the family court ultimately retains equitable discretion to modify, or not modify, an incarcerated obligor's child support obligation. There is no legal rule automatically mandating a specific outcome one way or the other. Facts, not principles of law, decide cases. McKinley v. Naters, 419 N.J. Super 205, 211 (Ch. Div. 2010). Each case is fact sensitive, and an equitable result depends most significantly upon the actual facts in the case.

Is the reason for defendant's incarceration legally relevant to a fact-based analysis regarding an application to reduce or terminate child support? From the standpoint of pure numbers, one might hypothetically argue that if an obligor is incarcerated, the reason for incarceration is economically and mathematically immaterial, as an inmate without assets cannot logically pay

child support, regardless of what he or she may have done to warrant a prison sentence. Further, prior courts have stated, in different contexts, that child support generally involves a no-fault analysis, and that fault is not an appropriate consideration in determination of the amount of child support one must pay, See Kinsella v Kinsella, 150 N.J. 276, 314 (1997); Calbi v. Calbi, 396 N.J. Super 532, 539 (App. Div. 2007); Ionno v. Ionno, 148 N.J. Super 259, 260-62 (App. Div. 1977). Notably, these cases appear to be reference marital fault, in that one does not pay a higher amount of support as a penalty for being a less than model spouse. These opinions , however, do not in any way address a factual situation where (a) a supporting parent commits felonious acts upon the very child he or she is obligated to support in the first place, and (b) such actions lead to the parent's criminal conviction and incarceration, and (c) the incarcerated parent then seeks a decrease or termination of his or her child support obligation as a result.

The present matter presents such a circumstance, featuring parental conduct that is highly egregious in nature and radically distinguishable from the fact patterns presented in both Halliwell and Kuron. Further, the issue here is not that a custodial parent is seeking more child support against an ex-spouse, as some type of penalty or punishment for prior marital misconduct. Rather, the situation is the reverse: It is the obligor who seeks relief from the court, i.e, a reduction in support as the result of his prior wrongful acts against the child. Moreover, these acts were not only criminal in nature, but so inherently egregious as to shock the conscience of the court and society.

One does not have to be a judge, lawyer, or legal scholar to immediately recognize the fundamental inequity in defendant's position. If defendant obtains a termination of his child support obligation, or reduction down to five dollars per week, he is victimizing the child twice in this process, first on a physical and emotional basis, and now on a financial basis. There is nothing

in Halliwell, Kuron, or any other precedential opinion which requires or supports such a result. Family court is a court of equity, and in a case of outrageous circumstances, may take appropriate steps to protect against a grossly inequitable or unconscionable result.

By way of analogy, fault is also generally considered irrelevant and immaterial on financial issues of equitable distribution, i.e, division of marital assets. See Chalmers v. Chalmers 65 N.J. 186, 192-193 (1974); Painter v. Painter, 65 N.J. 196, 212 (1974). There are times, however, when a party's actions are so fundamentally outrageous and wrongful as to equitably require an exception to the rule. For example, in D'Arc v. D'Arc, 164 N.J. Super 226, 239-40 (Ch. Div. 1978), , aff'd in part, rev'd in part 157 N.J. Super 553 (App Div. 1978), certif. denied 85 NJ 487 (1980), the evidence reflected that the husband was plotting to kill his wife. When such efforts were unsuccessful, he thereafter sought an equitable distribution share of her assets in their divorce action. The court disallowed the husband's claim, emphasizing rather than ignoring the husband's egregious conduct. Said the court:

> . . . (H)ere we are not dealing with the usual type of "fault" where the conduct of one spouse may merely be a reaction to the faults or shortcomings of the other spouse. Here the "fault" is an attempt . . . to commit one of the most heinous crimes known to man – murder. . . . (W)here a spouse has committed an act that is so evil and outrageous that it must shock the conscience of everyone, it is inconceivable that this court should not consider his conduct when distributing the marital assets equitably. Id. at 241.

The court further added that "(t)he obligation of this court is to implement the purpose of law, which is to do justice, and not to mechanically apply established principles of law, even when they compel an absurd result." Id. at 242

Recent case law has recognized that egregious fault may also be an appropriate and relevant factor on the issue of alimony. In 1997, the Supreme Court noted that "in today's practice, marital fault rarely enters into the calculus of an alimony award." Kinsella v. Kinsella, 150 N.J. 276, 314-15,

(1997) . In 2005, however, the Supreme Court held that fault may be relevant on alimony in cases " . . . in which the fault so violates societal norms that continuing the economic bonds between the parties would confound notions of simple justice." Mani v. Mani, 183 N.J. at 72. The term "egregious fault" is the concept that some conduct, by its very nature, is so outrageous as to violate a social contract. Id. at 92. When egregious fault exists with economic consequences, same may be considered in an alimony analysis. Id. at 91.

Egregious fault "is a term of art that requires not simply more, or even more public acts that by their very nature are different in kind. Id at 92. In defining "egregious fault", the Mani court offered, by way of example, an act such as deliberately infecting a spouse with a loathsome disease". Id. at 92. Thereafter, in Calbi v. Calbi, 396 N.J. Super 532, 540-41 (App. Div. 2007), the court cited both Mani and D'Arc for supporting the proposition that egregious fault may be relevant on alimony and other financial issues in family court.

Most recently, the Appellate Division reiterated that outrageous conduct may be sufficient to warrant for a court to deny alimony to a wrongdoing party. See Clark v. Clark, 429 N.J. Super 61 (App. Div. 2012). In Clark, the court held that when egregious wrongdoing occurs, same may be considered by the court, not in calculating the amount of an alimony award, but rather in the initial determination of whether any alimony claim should even be allowed at all. Id. at 74.

In Clark, the facts involved a wife who had been stealing substantial monies from the husband, and who nevertheless was now seeking alimony from him in their divorce proceedings. In holding that wife's conduct was egregious enough to potentially constitute a complete bar to her alimony claim, the court held that such actions "smack of criminality and demonstrate a willful and serious violation of societal norms." Id. at 75. The court further held that "the nature of judicial discretion requires a trial judge to determine whether to act, and if so, to render a decision guided by the spirit,

principles and analogies of the law, and founded upon the reason and conscience of the judge, to a just result in the light of the particular circumstances of the case." Id at 72.[7]

In the present case, defendant's conduct not only clearly qualifies as egregious and outrageous, but violates one of the most fundamental tenets and principles of natural law, i.e, that a parent has an inherent duty to protect his or her minor child. Defendant not only flagrantly breached that duty, but now seeks relief from his pre-existing child support obligation as a result. It is well settled that a party seeking equity must come into court with clean hands, and must keep them clean throughout the proceedings." Clark, supra, 429 N.J. Super at 77. Put another way, he who seeks equity must do equity, and a court may decline relief to a wrongdoer with respect to the subject matter in suit. Id.

Equity mandates in this case that the court considers the specific reason for defendant's incarceration, and the fact that the child was his victim. The court further considers the unacceptability of defendant's circular logic that somehow, he should now be relieved of his ongoing child support obligation to his daughter as a result. The court also considers the negative economic impact such result will likely have in the long run on both the child and the custodial parent. Given these factors, the court concludes that under the facts of this case, defendant's motion for a reduction in child support is itself unequitable and unjust under the circumstances.

There is another legal reason why defendant's motion must fail under the facts of this case. Specifically, the record is abundantly clear that, at the time of divorce and prior to signing the matrimonial settlement agreement, both parties were fully aware that defendant had criminal

[7] See also Reid v Reid, 310 N.J. Super. 12 (1998), wherein wife embezzled funds from her husband's business and dissipated marital assets, to the husband' s economic detriment. The court held that the wife's conduct constituted one of the rare cases of fault justifying denial of alimony. The appellate court upheld the trial court's denial of spousal support, stating that "we agree entirely with the Chancery judge's conclusion that this conduct should not be rewarded in a court of equity by an order entitling her to alimony." Id at 22.

charges pending which would likely lead to long-term incarceration. Further, both parties were represented by experienced matrimonial counsel, and entered into a joint written agreement which expressly contemplated the very situation which defendant now contends is a basis for a support reduction. The settlement agreement provides that in the event of defendant's future incarceration, defendant's child support obligation will still accrue as arrears but will not be paid by defendant to plaintiff until after his release from prison. Since the parties not only anticipated the situation but provided for same in the settlement document, there is no basis for the court to now find that defendant has suffered a change of circumstances requiring financial modification of the support order under Lepis. v. Lepis, 83 N.J. 139 (1980).

Generally, a change of circumstance argument is not the only possible basis for modification of a support order. Under Rule 4:50-1, a court may modify a support order when continued enforcement is inequitable or unconscionable. Defendant urges application of this rule as a basis to vacate and modify the child support provisions of the settlement agreement. He asserts that the agreement was inherently unfair from the beginning, and that at the time of settlement he was very stressed and depressed due to the pending criminal action. He contends that no reasonable and clear-thinking person would have entered into the agreement, which is unjust in compelling the accrual of child support arrears while he is incarcerated.

The court finds under the present record, however, that there is nothing on the face of the parties' settlement agreement that is per se unconscionable or inequitable. To the contrary, from a financial standpoint, the agreement arguably favors defendant , who with plaintiff's consent is not obligated to actually pay any support at all for years until he is released from prison. The terms of the parties' settlement agreement essentially translate into a circumstance where plaintiff is left to financially raise and support the parties' child by herself, without any real-time economic

contribution from defendant. Meanwhile, plaintiff is giving defendant the equivalent of a loan which is not repayable for many years, while she bears the financial burden of supporting the child alone. Under these circumstances, an agreement which only requires defendant to pay the same money in the future that he would have paid in the present, had he not been arrested and convicted and incarcerated for crimes against the child, is in no way objectively unfair or inequitable.

Even in a two parent household, raising a child is costly. A one-parent situation, however, is usually far more financially challenging for both parent and child. Here, as both mother and daughter must live without any current economic support from defendant, there will very likely be significant ongoing monetary pressures and stress, even though they have done absolutely nothing wrong to create this situation, and even though the child has already been victimized in the worst possible way. Yet, defendant's application for a child support modification does not even acknowledge or address these points. In fact, defendant essentially ignores the harsh impact that both his past conduct and his present application, if granted, would likely have both plaintiff and the child. Instead, he focuses exclusively on himself and his perceived hardships. Defendant's philosophy flies directly in the face of the long-established policy that in a child support analysis, the paramount consideration is the best interest of the child. See Lozner v. Lozner, 388 N.J. Super. 471, 484 (App. Div. 2006).

It is generally true that, pursuant to Rule 4:50-1 (e) and (f), a court of equity may vacate an order or judgment when continued enforcement would be inequitable, or for any other reason deemed equitable and just. It is further true that the court may set aside and vacate an unconscionable agreement. An agreement may be considered unconscionable and unenforceable where its terms are manifestly unfair or oppressive and are dictated by a dominant party. Rotwein v. General Accident Group & Cas. Co., 103 N.J. Super 406, 417-18 (Law Div. 1968). Generally, an

agreement is unconscionable where no reasonable person not acting out of compulsion or out of necessity would accept its terms. Howard v Diolosa, 241 N.J. Super 222, 230 (App Div), certif. den 122 N.J. 414 (1990). In this case, defendant fails to meet his burden of proof for a court to disturb the settlement agreement. Here, a reasonable person in defendant's shoes may well have accepted the settlement agreement as fair, especially if such person felt any degree of human remorse, guilt or responsibility whatsoever for what occurred to the child. Further, a reasonable person may have settled under such terms as a method of avoiding causing the child and family even more harm and hardship than what was already caused through defendant's past actions.

A party seeking to vacate an agreement first has the threshold burden to establish a prima facie case in order to obtain a hearing on a motion for relief. Dworkin v. Dworkin, 217 N.J. Super, 518, 525 (App. Div. 1987). The purpose of Rule 4:50-1 is not to provide a litigant who, whether in prison or otherwise, starts re-thinking on a done deal long after the fact and comes to the belated conclusion that he or she gave up "too much" in a voluntary settlement agreement, and now wants a do-over. Rule 4:50-1 is neither designed or intended to provide a litigant who has knowingly resolved issues prior to trial with the power to evade his or her commitments and obtain a whole new hearing by simply filing a post-judgment motion alleging that the prior agreement was "inequitable" and "unconscionable". Rather, a litigant needs to show more in order to vacate the terms of a matrimonial settlement agreement, or even to obtain a plenary hearing on the issue.

Our courts have repeatedly stated that matrimonial settlement agreements should not be unnecessarily or lightly disturbed. See Smith v. Smith, 72 N.J. 350, 358 (1977); Edgerton v. Edgerton, 203 N.J.Super 160, 171 (App. Div. 1985). New Jersey has long espoused a policy favoring the use of consensual agreements to resolve marital controversies. Voluntary agreements that address and reconcile conflicting interests of divorcing parties support a strong public policy

favoring stability of arrangements in matrimonial matters. Konzelman v. Konzelman, 158 N.J. 185, 193 (1999). The prominence and weight accorded such arrangements reflect the importance attached to individual autonomy and freedom, enabling parties to order their personal lives consistently with their post-marital responsibilities. Id. See Petersen v. Petersen, 85 N.J. 638, 645 (1981). Thus, a party seeking to set aside a settlement agreement has the burden of proving extraordinary circumstances sufficient to vitiate the agreement. See Jennings v. Reed, 381 N.J. Super 217, 227 (App. Div. 2005), and to demonstrate that continued enforcement of the judgment would be "unjust, oppressive or inequitable." Quagliato v Bodnetr, 115 N.J. Super 133, 138 (App. Div. 1971). Moreover, the burden of proof to vacate the order is by the heightened standard of clear and convincing evidence. See Smith v. Fireworks by Girone, Inc., 380 N.J. Super 273, 291 (App. Div. 2005), certif. denied, 186 N.J. 243 (2006).

In this case, there is no evidence of mental incompetency or incapacity by plaintiff at the time of entry into the agreement. Similarly, there is no evidence of coercion, duress, undue influence, or other wrongful conduct by plaintiff, or by defendant's prior attorney, or by anyone else connected with this case. When parties have agreed to the terms of a settlement, subsequent second thoughts and buyer's remorse are entitled to no weight against the public policy of settlement. See Dep't of Pub. Advocate v. N.J. Bd. Of Pub. Utils., 206 N.J. Super 523, 530 (App. Div. 1985). Here, there is no appropriate basis here to set aside the settlement agreement under Rule 4:50-1, and insufficient evidence to proceed to a plenary hearing on the matter at this time. See Barrie v. Barrie, supra, 154 N.J. Super 301, 308 (App. Div. 1977) (court may deny plenary hearing to reopen matrimonial

settlement under Rule 4:50-1). See also Shaw v Shaw, 138 N.J. Super 436, 440 (App. Div. 1976) (plenary hearing is not required in every case with competing certifications or affidavits). [8]

For the foregoing reasons, the court denies defendant's motion to vacate the child support provisions of the 2010 settlement agreement, and/or to modify his obligation to five dollars per week. Defendant's arrears will accrue at the present rate of $153 per week. When defendant is ultimately released from prison, either via parole or completion of his sentence, he will be obligated to commence paying the accrued arrears. At that time, the court will determine the specifics of the repayment schedule upon further application of either party.

[8] Ironically, defendant does not seek to vacate the provisions of the same agreement under which, notwithstanding his egregious conduct, he received $9,000 for his "equitable distribution share" of plaintiff's work related retirement plan. Nor does he adequately explain how or why at the time of the settlement, he was of sound enough mind to negotiate and resolve issues of personal property between the parties that were so detailed as to require a detailed and lengthy list as its own separate appendix to the agreement itself.