

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5792-03T3

JODI MILLER,

Plaintiff-Respondent,

v.

CARY MILLER,

Defendant-Appellant.

Submitted December 13, 2006 - Decided January 17, 2007

Before Judges Stern and Lyons.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part,
Middlesex County, Docket No. FM-12-1902-97.

David Perry Davis, attorney for appellant.

No brief filed on behalf of respondent.

PER CURIAM

Defendant, former husband, appeals from a post-judgment order relating to the payment of college expenses for the parties' son Zachary. Defendant insists that his Property Settlement Agreement ("PSA") requires him to pay his proportionate share of Zachary's "tuition only." He argues that there was no claim or showing of changed circumstances or that

the PSA was unjust and inequitable to warrant the order requiring him to pay "college expenses." Defendant seeks entry of an order requiring him to pay only the agreed obligation of undergraduate "tuition" equal to that of "the average cost of tuition at a New Jersey state school" with appropriate reductions for funds Zachary has received from other sources. Defendant also seeks a hearing before a different judge if another remand is necessary.¹

The PSA is not clear and unambiguous on its face. In paragraph IV D 2 it provides:

Zachary - The defendant shall contribute to the net cost of Zachary's undergraduate tuition only an amount proportionate to his percentage share of the parties' combined gross income for each of the years Zachary's (sic) attends college. The net cost of tuition shall be defined as the annual cost of tuition reduced by any grants, loans, scholarships and other assets Zachary may receive (including Bar Mitzvah gifts). The amount of tuition for which the defendant shall be responsible shall be equivalent to the average cost of tuition at a New Jersey state school.

In an order of March 5, 2004, the Family Part judge initially concluded that defendant was obligated to pay \$15,638, representing tuition, fees, and room and board for the 2003-2004 academic year at Rutgers University. On remand pursuant to our

¹ We previously remanded the matter to permit consideration of defendant's motion for reconsideration.

order of July 13, 2004 for consideration of defendant's motion for reconsideration, the judge subsequently concluded:

Defendant's request that the Court reconsider this Court's Order dated April 5, 2004² and require that the parties' contributions towards Zachary's college expenses shall apply only to tuition costs, exclusive of room and board and fees, is hereby DENIED because the Defendant failed to file a timely Motion for Reconsideration pursuant to N.J.R. 4:49-2. The Court notes that the parties' Final Judgment of Divorce at Paragraph D(2) indicates that the parties shall be obligated to contribute towards "tuition." The Court interprets the parties' agreement regarding "tuition" to include room and board consistent with Paragraph E of the parties' Final Judgment of Divorce wherein the Agreement references "tuition" to also include room and board.

We disagree with the judge's conclusion that, because paragraph IV E of the PSA explicitly spells out that "tuition" "includ[es] room and board[,]" the unmodified word "tuition" in paragraph IV D 2 must be read to have the same meaning for purposes of paragraph IV D 2. The prior and separate paragraph IV D 2 concerns college while paragraph IV E addresses summer camp. Moreover, paragraph IV D 2 lacks a similar explanatory parenthetical reference after "tuition," as "including room and board," and the word "tuition" in paragraph IV D 2 is followed by the word "only." We conclude, therefore, that the term

² The March 5, 2004 order was filed on April 5, 2004.

"tuition" does not necessarily have the same meaning in each paragraph. In the absence of a responding brief on the appeal, we decline to hold that an evidentiary hearing is required as to whether the parties intended to apply the definition similarly in both paragraphs. Such hearing would be required if a continued dispute exists on the issue and the question of "reductions" or adjustments based on Zachary's "assets" or other funds.

Reversed and remanded for further proceedings consistent with this opinion. We see no basis for precluding reconsideration by the same judge.