

## **APPENDIX**

**APPENDIX**

**TABLE OF CONTENTS**

Appendix A	Order in the Supreme Court of New Jersey (March 19, 2019) . . . . .	App. 1
Appendix B	Opinion in the Superior Court of New Jersey Appellate Division (November 9, 2018) . . . . .	App. 2
Appendix C	Order on Post Judgment Motion in the Superior Court of New Jersey Chancery Division/Family Part (April 6, 2017) . . . . .	App. 11

App. 1

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**APPENDIX A**

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**SUPREME COURT OF NEW JERSEY  
C-736 September Term 2018  
082223**

**[Filed March 21, 2019]**

C.S.,	)
	)
Plaintiff-Petitioner,	)
	)
v.	)
	)
L.S.,	)
	)
Defendant-Respondent.	)
	)

**ORDER**

A petition for certification of the judgment in A-003904-16 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 19th day of March, 2019.

s/\_\_\_\_\_  
CLERK OF THE SUPREME COURT

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**APPENDIX B**

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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**

**DOCKET NO. A-3904-16T4**

**[Filed November 9, 2018]**

C.S.,	)
	)
Plaintiff-Appellant/	)
Cross-Respondent,	)
	)
v.	)
	)
L.S.,	)
	)
Defendant-Respondent/	)
Cross-Appellant.	)
	)

Submitted July 23, 2018 – Decided November 9, 2018

Before Judges Whipple and Suter.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Burlington County,  
Docket No. FM-03-0385-14.

Hegge & Confusione, LLC, attorneys for appellant/  
cross-respondent (Michael J. Confusione, of counsel  
and on the brief).

App. 3

Mullen Law, LLC, attorneys for respondent/cross-appellant (Mitchell L. Mullen and Giovanna Lombardo, of counsel and on the brief).

PER CURIAM

Plaintiff, C.S., appeals portions of the April 6, 2017 Family Part Order that denied her requests to modify alimony and attorney's fees. She also argues the court erred by not conducting a hearing to determine a parenting schedule to ameliorate violations of the parties' marital settlement agreement (MSA). Defendant, L.S., cross-appeals the attorney fee portion of the April 6, 2017 order that denied his request for attorney's fees. We affirm the April 6, 2017 order.

Plaintiff and defendant were married in 1992 and have two children: L.S. now is nineteen and J.S. is seventeen. Defendant, a physician, accepted employment in Georgia that commenced in September 2013, and the family moved there. Shortly after, plaintiff returned to New Jersey. She filed for divorce on October 1, 2013. The children remained with defendant in Georgia.

Their final judgment of divorce, entered on April 28, 2016, incorporated the parties' MSA.<sup>1</sup> Relevant here, section III-A of the MSA provided they were to share joint legal custody of the children, who were to continue to reside in Georgia. They expressly agreed in section

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<sup>1</sup> Plaintiff, plaintiff's guardian and defendant signed the MSA. The guardianship order was not provided in the appendix nor do we know the reason for its entry, except for reference in the March 2017 transcript to a mental health issue.

III-B not “to enter into a formal parenting time schedule at this time[,]” but agreed to establish a schedule that “is mutually agreeable.” They agreed to implement an “open door policy,” meaning that they could request to see the children on forty-eight hours notice to the other parent. The MSA expressed they were “confident that they will be able to work out a schedule” for holidays and summers.

Section III-C of the MSA provided that “[t]o the extent possible, and after conferring with one another, all major decisions concerning the health, safety, religion, education and welfare of the children shall be jointly made.” The parties agreed in section III-F to “exert every reasonable effort to maintain free access and unhampered contact between the children and the other party and to foster a feeling of affection between the children and the other party.” That section further provided “[n]either party shall do anything which may estrange the children from the other party or injure their opinion as to their mother or father . . . .”

Under section IV-B of the MSA, defendant agreed to pay plaintiff \$10,000 per month in open durational alimony. Section III-N provided that plaintiff “agreed to accept a lower spousal support award in exchange for [defendant] agreeing to pay for 100% of the children’s child support/expenses and college costs.” As such, the parties agreed “no child support would be paid from one party to the other.” Once the children were emancipated, the alimony amount would automatically increase to \$12,000 per month.

Defendant agreed in section III-M to “be solely responsible for any and all of the costs and fees

associated with the children's activity expenses." They also agreed in section III-S, with respect to college costs and expenses incurred by the children, that these would be defendant's "sole responsibility." If this provision of the MSA were challenged or altered, it provided that plaintiff had the "right" to re-open other areas of the MSA. The parties agreed, however, "that the college selection process is one which requires the participation and cooperation of both parties."

In December 2016, plaintiff filed a motion in the Family Part to enforce litigant's rights and for other relief, claiming defendant had violated various portions of the MSA. She contended that defendant violated section III, paragraphs M, N, and S of the MSA by not paying costs and fees for the children's activities, clothes, or travel opportunities and by not permitting them to look at or consider colleges outside of the State of Georgia. She asserted defendant violated section III-C by failing to confer with her on major decisions related to their children's health, education, and well-being. She alleged defendant permitted their daughter to take the Gardasil vaccine, tint her eyebrows and receive eyelash extensions, and to enroll for a pre-SAT exam, all without consultation with plaintiff. Additionally, she claimed defendant declined to pay for their son to go to Cuba for Spring Break with his school and that he would not let her take part in their children's college selection process. Plaintiff also alleged defendant violated the Children's Bill of Rights<sup>2</sup>

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<sup>2</sup> "The Children's Bill of Rights' is an order, widely used in divorce matters by the Family Part in the southern vicinages. The order lists twelve principles applicable to custody disputes, including

App. 6

by discussing their litigation with the children and by failing to facilitate a relationship between her and the children. Plaintiff requested a finding that defendant violated section III, paragraphs C, M, N, and S of the MSA, sanctions of \$1000 for each future violation of paragraph C and the Children's Bill of Rights, an increase in alimony because defendant failed to pay all of the children's expenses, and an award of attorney's fees.

In February 2017, defendant filed a cross-motion requesting sole custody of the children, restraining plaintiff from harassing him and the children, ordering plaintiff to undergo a mental health evaluation, ordering plaintiff to provide proof she had life insurance as required in the MSA and ordering plaintiff to pay his attorney's fees. He argued that he and plaintiff could no longer co-parent the children because of her demands, harassment, and paranoia.

Following oral argument, the Family Part judge entered the April 6, 2017 order. We recount only so much of the order that relates to the issues the parties have appealed.

The trial court found defendant violated section III-C of the MSA that required him to confer with plaintiff on major decisions about the children's health, safety, religion, education, and welfare. Defendant admitted

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that the children would not be asked to 'chose sides' between the parties, not be told about the court proceedings, not be told 'bad things' about the other parent and 'not to be made to feel guilty for loving both parents.'" Div. of Youth & Family Servs. v. J.D., 417 N.J. Super. 1, 11 n.4 (App. Div. 2010).



App. 7

that he allowed their daughter to be vaccinated with Gardasil and to tint her eyebrows without first consulting plaintiff. The court ordered defendant to comply with the MSA and sanctions of \$250 for any future violations of paragraph C.

The court also found defendant violated section III, paragraphs M, N, and S, of the MSA, which required defendant to be solely responsible for all costs and fees associated with the children's activities, clothing, expenses, and college costs. This was based on plaintiff's contention that at times she purchased new clothes for the children, defendant asked her to contribute to a school trip to Cuba that their son decided not to take, and defendant wanted the children to consider only in-state colleges to save on college costs and expenses. The court ordered, consistent with the MSA, that plaintiff was to be involved with the children's college selection process, and that the process was not limited to colleges in Georgia.

The court also granted plaintiff's request for an order that defendant violated the Children's Bill of Rights "for repeatedly discussing this litigation with the children and failing to facilitate a relationship between the [p]laintiff and the children." Both parties were ordered to comply with the Children's Bill of Rights.

The court denied plaintiff's request to increase defendant's alimony obligation. It denied both parties' request for attorney's fees, giving consideration to Rule 4:42, Rule 5:3-5 and Williams v. Williams, 59 N.J. 229, 233 (1971). It also denied defendant's request for sole custody of the children, because he had not shown a

“prima facie substantial change in circumstances.” The court considered defendant’s arguments about the inability to co-parent and plaintiff’s harassing contacts, concluding this did not “warrant a change in custody at this time.”

On appeal, plaintiff argues the Family Part judge erred by not ordering a remedy to ameliorate violations of the MSA. She alleges the court should have ordered an evidentiary hearing and then evaluated the best interests of the children under factors set forth in N.J.S.A. 9:2-4(c). She also contends the court should have modified defendant’s alimony obligation and ordered him to pay her attorney’s fees for her motion.

Defendant cross-appeals only the part of the April 6, 2017 order that denied his request for attorney’s fees. However, defendant’s brief in support of his cross-appeal did not address that issue. Based on that omission, we conclude defendant has waived this issue. Gormley v. Wood-El, 218 N.J. 72, 95 n.8 (2014); Drinker Biddle v. N.J. Dep’t of Law & Pub. Safety, Div. of Law, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (noting that claims not addressed in a party’s merits brief are deemed abandoned). See Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2019).

We accord “great deference to discretionary decisions of Family Part judges,” Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (citations omitted), in recognition of the “family courts’ special jurisdiction and expertise in family matters.” N.J. Div. of Youth & Family Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). However, “[a] trial court’s interpretation of the

law and the legal consequences that flow from established facts are not entitled to any special deference.” Hitesman v. Bridgeway, Inc., 218 N.J. 8, 26 (2014) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Plaintiff contends that because it found the MSA was violated, it should have ordered an evidentiary hearing to establish a parenting time schedule or some “ameliorative action to help restore and renew the mother -child bond.” However, plaintiff did not request a hearing or an order for a parenting time schedule. The only relief she requested was monetary sanctions. We “will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available ‘unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.’” Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)). Plaintiff had the opportunity to request other forms of relief, but having failed to do so, we decline to address this argument.

We agree that the record did not show a change of circumstances warranting a modification of alimony. We review applications for modification of alimony for abuse of discretion. See Rolnick v. Rolnick, 262 N.J. Super. 343, 360 (App. Div. 1993). Alimony should only be modified based upon changed circumstances and each application for modification or termination “rests upon its own particular footing.” Spangenberg v. Kolakowski, 442 N.J. Super. 529, 536 (App. Div. 2015) (citing Martindell v. Martindell, 21 N.J. 341, 355

(1956)); see also Larbig v. Larbig, 384 N.J. Super. 17, 21 (App. Div. 2006). Although the court found sections III-M and N were violated, the record did not support more than an occasional request for contribution from plaintiff. This did not support a change in alimony.

Plaintiff contends the court erred by denying her request for an award of attorney's fees because it failed to consider the factors under Rule 5:3-5. We review a trial court's determination regarding attorney's fees for abuse of discretion and such determinations are generally not disturbed absent a clear error in judgment. Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008); Mason v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005); Tannen v. Tannen, 416 N.J. Super. 248, 285 (App. Div. 2010) (citing Chestone v. Chestone, 322 N.J. Super. 250, 258 (App. Div. 1999) (superseded by statute)). We find no misapplication of the court's discretion here, where the court's reference to the factors indicates their consideration.

Affirmed.

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

s/\_\_\_\_\_  
CLERK OF THE APPELLATE DIVISION

App. 11

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**APPENDIX C**

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**PREPARED BY THE COURT**

**SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION/FAMILY PART  
BURLINGTON COUNTY**

**DOCKET NO. FM-03-385-14  
NJKIDS ACCOUNT No. CS91282096A**

**CIVIL ACTION**

**[Filed April 6, 2017]**

_____	)
C.S.,	)
Plaintiff,	)
	)
v.	)
	)
L.S.,	)
Defendant.	)
_____	)

**ORDER ON POST JUDGMENT MOTION**

**RETURNABLE: MARCH 10, 2011  
ORDER ENTERED: APRIL 6, 2017**

**THIS MATTER** having been opened to the Court upon motion of Plaintiff, C.S., Shari Veisblatt, Esquire, appearing for an Order to: (1) find Defendant in violation of litigant's rights for his repeated failure to comply with paragraph III C of the Marital Settlement

Agreement which required that he confer with Plaintiff in connection to their children's health, safety, religion, education, and welfare; (2) sanction Defendant \$1,000.00 for every time he fails to confer with Plaintiff with regard to the children's health, education, religion and well-being; (3) find Defendant in violation of litigant's rights for failing to comply with paragraph III M and II N of the Marital Settlement Agreement which requires him to be solely responsible for any and all of the costs and fees associated with the children's activities, clothing, and the like; (4) find Defendant in violation of litigant's rights for his failure to comply with paragraph III S of the Marital Settlement which requires him to be solely responsible for the children's college expenses and allows both parties to participate in the college selection process; (5) find as a result of Defendant's failure to comply with Paragraph III M, III N and III S of the Marital Settlement Agreement, Plaintiff shall be permitted to re-open the Marital Settlement Agreement and receive an increase in alimony; (6) find Defendant in violation of the Children's Bill of Rights for repeatedly discussing this litigation with the children and failing to facilitate a relationship between the Plaintiff and children; (7) sanction Defendant \$1,000.00 for every time he violates the Children's Bill of Rights; (8) direct Defendant to immediately schedule Jacob and Lauren for individual therapy sessions; (9) find Defendant in violation of litigant's rights for his failure to maintain appropriate amount of life insurance to secure his alimony obligation; (10) direct Defendant to provide Plaintiff with proof of his life insurance policies within (14) days of the entry of any Order in this matter; (11) in the alternative, if Defendant fails to comply

with paragraph (10), finding that Defendant shall be sanctioned at the rate of \$25 per day, for each and every day that he fails to provide Plaintiff with proof of his life insurance policies; (12) find paragraph III D of the Marital Settlement Agreement shall be amended to include the parties shall provide each other with immediate notice of children's intent to travel with the accompaniment of friends or other family members, and that the parties shall confirm with one another with regard to the children's proposed dates of travel, flight information, and accommodations before allowing the children permission to schedule his/her vacation; (13) find that the Children's Bill of Rights shall be implemented and enforced in this matter; (14) sanction Defendant \$1,000.00 for every time he fails to adhere to the Children's Bill of Rights; (15) grant Plaintiff any and all counsel fees and costs that she incurred for this Notice of Motion; and (16) grant such further relief as the Court deems equitable and just.

Defendant, L.S., Mitchell Mullen, Esquire appearing for an Order to: (1) deny all Counts of the Plaintiff's Notice of Motion; (2) revise the Custody provision of the parties Marital Settlement Agreement to grant the Defendant sole custody of the unemancipated children; (3) require the Plaintiff to submit a full mental health evaluation to the Court and counsel; (4) restrain the Plaintiff from harassing the Defendant and minor children; (5) allow the children to determine their contact with the Plaintiff pending mental health evaluation results; (6) require the Plaintiff to provide proof of life insurance coverage naming the children as irrevocable beneficiaries, naming Pamela Peslis as Trustee; (7) for counsel fees

and costs; (8) for other relief the Court deems equitable and just.

**Background**

The parties were married on April 5, 1992. There were two children born of the marriage, to wit: Lauren (DOB: [REDACTED]/99) and Jacob (DOB: [REDACTED]/01). On April 28, 2016 the parties were divorced by way of a Final Judgment of Divorce and incorporated a Marital Settlement Agreement therein.

The Court has considered the submissions of the parties and for good cause shown,

It is on the 6<sup>th</sup> day of April 2017, **ORDERED**

1. Plaintiff's request for Order to find Defendant in violation of litigant's rights for his repeated failure to comply with paragraph III C of the Marital Settlement Agreement which required that he confer with Plaintiff in connection to their children's health, safety, religion, education and welfare is **GRANTED** pursuant to Paragraph III C of the Marital Settlement Agreement which states,

To the extent possible, and after conferring with one another, all major decisions concerning the health, safety, religion, education and welfare of the children shall jointly be made. All minor decisions shall be made by the parent with



whom the children are residing at the time the decision is made. Neither party, except in the case of a medical emergency, shall make any major decision for the children or commitment obligating the other financially for the children without prior consultation in agreement by the other party or by court order. The parties further agree that neither party shall unreasonably withhold his/her consent regarding decisions affecting the children.

Defendant admits to having his children vaccinated without input from Plaintiff and allowed the parties daughter to alter her eyebrows without input from the Plaintiff. Defendant is hereby **ORDERED** to comply with the terms of the parties' MSA.

2. Plaintiff's request for an Order to sanction Defendant \$1,000.00 for every time he fails to confer with Plaintiff with regard to the children's health, education, religion and well-being as **GRANTED in part and DENIED in part**. Defendant shall be sanctioned \$250.00 for every time he fails to confer with Plaintiff regarding the children's health, education, religion and well-being.

3. Plaintiff's request for Order to find Defendant in violation of litigant's rights for failing to comply with paragraph III M and II N of the Marital Settlement Agreement which requires him to be solely responsible for any and all of the costs and fees associated with the children's activities, clothing, and the like is **GRANTED** pursuant to paragraph III M of the Marital Settlement Agreement which states,

Both parties shall be entitled to participate in the children's activities and/or lessons. The parties agree that Husband shall be solely responsible for any and all of the costs and fees associated with the children's activity expenses. Therefore, the parties agree that Wife shall not enroll the children in any activities without the consent of a Husband or by court order. In the event that Wife enrolls the child in an activity not agreed to by the Husband, then the financial responsibility shall fall upon the Wife. Husband's consent in this regard shall not be unreasonably withheld.

App. 17

Additionally, pursuant to paragraph III N of the Marital Settlement Agreement which states,

At this time, based upon the parties current financial situations and the current parenting time schedule, the parties have agreed that no child support shall be paid from one party to the other. As a global resolution of this matter, wife agreed to accept a lower spousal support award in exchange for Husband agreeing to pay for 100% of the children's child support/expenses and college costs. The parties further agree that based upon their current circumstances that they each will be able to support the children without receiving support from the other. If the parties child(ren) reside with Wife, then the parties shall address child support at that time. In addition, the parties acknowledge that once the children are deemed emancipated Husband's obligation to provide spousal support to Wife shall automatically increase from

\$10,000 per month to \$12,000 per month. This will be further discussed in the alimony section of this Agreement.

For purposes of this Agreement, the parties agree that the children shall be deemed emancipated upon his/her graduation from college. However, the parties agree that if the children attend a graduate program and Husband pays for the same, then the children will not be deemed emancipated until they complete his/her graduate program. If the children attend a graduate school program and Husband does not pay for the same, they shall be deemed emancipated upon graduation from college.

4. Plaintiff's request for an Order to find Defendant in violation of litigant's rights for his failure to comply with paragraph III S of the Marital Settlement which requires him to be solely responsible for the children's college expenses and allows both parties to participate in the college selection process is **GRANTED** pursuant to paragraph III S of the Marital Settlement Agreement which states,

Both parties agree that any and all college costs and expenses incurred on behalf of the parties' children shall be the sole responsibility of Husband. The provision that Husband is to exclusively pay for 100% of the children's college costs was an integral part of the parties' global settlement where Wife relinquished certain rights for Husband's agreement to pay for 100% of the children's college costs. Therefore, the parties acknowledge that if this provision of the agreement is ever challenged and/or altered by virtue of application to the Court, that Wife has the right to re-open other areas of the parties' Agreement, which include but are not limited to an individual health insurance contribution, support provisions and payment for the children's travel expenses, both parties agree that the college selection process is one which requires the participation and cooperation of both parties.

Plaintiff shall be involved in the children's college selection process and said process is

not limited to the state of Georgia as the parties never agreed upon such limitation.

5. Plaintiff's request for an Order to find as a result of Defendant's failure to comply with Paragraph III M, III N and III S of the Marital Settlement Agreement, Plaintiff shall be permitted to re-open the Marital Settlement Agreement and receive an increase in alimony is **DENIED without prejudice.**
6. Plaintiff's request for an Order to find Defendant in violation of the Children's Bill of Rights for repeatedly discussing this litigation with the children and failing to facilitate a relationship between the Plaintiff and children is **GRANTED.** Both parties are hereby ordered to comply with the Children's Bill of Rights attached hereto and made a part hereof.
7. Plaintiff's request for an Order to sanction Defendant \$1,000.00 for every time he violates the Children's Bill of Rights **GRANTED in part and DENIED in part** pursuant to paragraph 2 of this Order.
8. Plaintiff's request for an Order to direct Defendant to immediately schedule Jacob and Lauren for individual therapy sessions is **GRANTED in part and DENIED in part.** The issue of whether the parties' children shall attend therapy together or individual

therapy shall be in accordance with the recommendation of their current therapist.

9. Plaintiff's request for an Order to find Defendant in violation of litigant's rights for his failure to maintain appropriate amount of life insurance to secure his alimony obligation is **GRANTED** pursuant to the parties' Marital Settlement Agreement paragraph VIII A which states,

Husband shall maintain life insurance on his life in the amount of \$2,000,000 to secure his alimony obligation to Wife. Wife shall be named as sole beneficiary of the \$2,000,000. In addition, Husband shall maintain life insurance in the amount of \$500,000 for each child, naming the children as irrevocable beneficiaries of the policy within sixty (60) days of the date of the Judgment of Divorce, for a total life insurance requirement of \$3,000,000. Husband may name the trustee of the policy for the benefit of the children. The husband may decrease his life insurance obligation to secure his alimony obligation by \$100,000 each year. However, the parties agree that after

fifteen (15) years, Husband must always maintain a policy in the amount of \$500,000 to secure his alimony obligation until such time as his obligation to do so ceases. The Husband may decrease his life insurance obligation to financially provide for his children by \$50,000 each year, per child.

Defendant is to provide the sufficient documentation to Plaintiff regarding the life insurance to secure his alimony obligation within fourteen (14) days from the date of this Order.

10. Plaintiff's request for an Order to direct Defendant to provide Plaintiff with proof of his life insurance policies within fourteen (14) days of the entry of any Order in this matter is **GRANTED in part and DENIED in part** pursuant to paragraph 9 of this Order.
11. Plaintiff's request for an Order to in the alternative, if Defendant fails to comply with paragraph (10), finding that Defendant shall be sanctioned at the rate of \$25 per day, for each and every day that he fails to provide Plaintiff proof of his life insurance policies is **GRANTED**.
12. Plaintiff's request for an Order to find Paragraph III D of the Marital



Settlement Agreement shall be amended to include that the parties shall provide each other with immediate notice of children's intent to travel with the accompaniment of friends or other family members, and that the parties shall confer with one another with regard to the children's proposed dates of travel, flight information, and accommodations before allowing the children permission to schedule his her vacation is **DENIED**. The parties' Marital Settlement Agreement paragraph III D states,

Each parent shall provide the other parent with at least sixty (6)) days' Notice of his/her intent to travel along with dates of travel. Additional information concerning the vacation, including but not limited to flight information (or other mode of travel if the parents and children are not traveling by airplane) and accommodations shall be provided with thirty (3)) days' notice. The parent who is not exercising vacation parenting time shall be entitled to communicate with the children via telephone and/or video chatting during the other parent's vacation parenting

time. The parties agree that the children will be permitted to travel abroad with either party upon notice to the other parent. The parties agree that the children shall have input as to the destination, length and other arrangements of the intended travel.

Property Settlement Agreement should not be modified absent a showing of exceptional circumstances or where it would be unfair or inequitable to enforce the agreement. See, Schwartzman v. Schwartzman, 248 N.J. 73 (App. Div. 1991); Capuzzo v. Capuzzo, 225 N.J. Super. 317 (App. Div. 1990).

A settlement agreement between parties to a lawsuit is a contract. Pascarella v. Bruck, 190 N.J. Super. 118, 124, (App. Div.), certif. denied, 94 N.J. 600, 468 A.2d 233 (1983). 'Settlement of litigation ranks high in our public policy.' Jannarone v. W.T. Co., 65 N.J. Super. 472 (App. Div.), certif. denied, 35 N.J. 61 (1961). Consequently, our courts have refused to vacate final settlement absent compelling circumstances. In general, settlement agreements will be honored 'absent a demonstration of fraud or other compelling circumstances.' Pascarella, *supra*, 190 N.J. Super. at 25, (quoting

Honeywell v. Bubbs, 130 N.J.Super. 130 (App.Div.1974))). Before vacating a settlement agreement, our courts require 'clear and convincing proof' that the agreement should be vacated. DeCaro v. DeCaro, 13 N.J. 36, (1953). [Nolan by Nolan v. Lee Ho, 120 N.J. 465, 472 (N.J., 1990)].

Both parties were represented by counsel at the time the PSA was entered. Plaintiff has not presented clear and convincing evidence to demonstrate the agreement was procured by fraud or she somehow did not receive the full benefit of the bargain because of fraud by defect. Therefore, the request to modify the parties' Marital Settlement Agreement is **DENIED**.

13. Plaintiff's request for an Order to find that the Children's Bill of Rights shall be implemented and enforced in this matter is **GRANTED** pursuant to paragraph 6 of this Order.
14. Plaintiff's request for an Order to sanction Defendant \$1,000.00 for every time he fails to adhere to the Children's Bill of Rights is **GRANTED in part and DENIED in part** pursuant to paragraph 2 and 7 of this Order.
15. Plaintiff's request for an Order to grant Plaintiff any and all counsel fees and

costs that she incurred for this Notice of Motion is **DENIED without prejudice**. In its decision, the Court may consider whether to award counsel's fees and should consider, in addition to the information required to be submitted pursuant to R.4:42-9: (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders to compel discovery; and (9) any other factor bearing on the fairness of the award. R. 5:3-5. Additionally, the Court must consider: (1) of the applicants need; (2) the other party's ability to pay; and (3) the good or bad faith of both parties. Williams v. Williams, 59 N.J. 229, 233 (1971). After a review of these factors, the Court will not award any counsel fees at this time.

16. Plaintiff's request for an Order to grant such further relief as the Court deems equitable and justice is **DENIED**.

17. Defendant's request for Order to deny all Courts of the Plaintiff's Notice of Motion is **DENIED**.
18. Defendant's request for an Order to revise the Custody provision of the parties Marital Settlement Agreement to grant the Defendant sole custody of the unemancipated children is **DENIED**. In order to change custody/visitation arrangements there has to be a showing of a substantial change of circumstances affecting the welfare of the child such that it is appropriate to review custody/visitation at this time. See Mastropole v. Mastropole, 181 N.J. Super. 130 (App. Div. 1981). The Defendant has not met the burden of showing a prima facie substantial change in circumstances. Defendant certifies that the parties cannot co-parent and additionally, Plaintiff continues to harass the children's schools, medical providers and Defendant's employment. However, the Court does not consider this a substantial change in circumstances that would warrant a change in custody at this time.
19. Defendant's request for Order to require the Plaintiff to submit a full mental health evaluation to the Court and counsel is **DENIED without prejudice**.
20. Defendant's request for an Order to restrain the Plaintiff from harassing the

Defendant and minor children is **GRANTED** pursuant to paragraph 6 and 13 of this Order.

21. Defendant's request for an Order to allow the children to determine their contact with the Plaintiff pending mental health evaluation results is **DENIED**.
22. Defendant's request for an Order to require the Plaintiff to provide proof of life insurance coverage naming the children as irrevocable beneficiaries, naming Pamela Peslis as Trustee is **GRANTED**. The parties' Marital Settlement Agreement paragraph VII B states,

Wife shall maintain life insurance on her life in the amount of \$250,000 for each child, naming the children as irrevocable beneficiaries, with Pamela Peslis to be Trustee. The amount of life insurance shall be reduced by 50% upon the emancipation of one child and shall be eliminated in full upon emancipation of both children. The Wife may decrease her life insurance obligation to financially provide for her children by \$50,000 each year, per child.

Plaintiff certifies that she will provide the Defendant with proof of her life insurance coverage naming the children as irrevocable beneficiaries and Pamela Peslis as Trustee. Plaintiff is **ORDERED** to provide this proof within fourteen (14) days from the date of this Order.

23. Defendant's request for an Order to for counsel fees and costs is **DENIED without prejudice** pursuant to paragraph 15 of this Order.
24. Defendant's request for an Order for other relief the Court deems equitable and just is **DENIED**.

/s/Richard J. Nocella  
**RICHARD J. NOCELLA, J.S.C.**