INDEX TO APPENDICES

SUPREME COURT OF NEW JERSEY
C-579 September Term 2019

083733

M.A.,

Plaintiff-Respondent,

v.

ORDER

A.I.,

Defendant-Petitioner.

FILED
FEB 14 2020
s/
CLERK

A petition for certification of the judgment in A-004755-17 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 11th day of February, 2020.

s/
CLERK OF THE SUPREME COURT

APPENDIX A

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4755-17T3

M.A.,[1]

Plaintiff-Respondent,

v.

A.I.,

Defendant-Appellant.

Argued October 17, 2019 - Decided October 31, 2019

Before Judges Whipple and Mawla.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FM-20-0973-09.

A.I., appellant, argued the cause pro se.

M.A., respondent, argued the cause pro se.

PER CURIAM

Defendant appeals from a June 1, 2018 denial of his motion for reconsideration of an April 20, 2018 denial of a motion for relief from judgment and motion for recusal of the trial judge.

The parties were involved in an extensive and extended matrimonial litigation dating back to 2009, which resulted in over 120 orders to date. The litigation was bifurcated into two separate trials – one to determine the custody and parenting time

---

[1] We use initials in this opinion to be consistent with our prior appellate decision in order to protect the children's privacy notwithstanding they are now adults.

issues, M.A. v. A.I., No. A-4021-11 (App. Div. Dec. 15, 2014), and one to determine the financial issues, M.A. v. A.I., No. A-2800-13 (App. Div. April 4, 2017). The history of this case is fully recounted in our prior decisions and need not be fully repeated here.

In sum, plaintiff and defendant married in Romania in 1989 and had two children, both of whom are now adults. On January 7, 2009, plaintiff filed a complaint for divorce based on irreconcilable differences. As a result of the extensive number of motions filed, the trial court bifurcated the matter, separating the custody and parenting claims from the financial claims. The custody and parenting claims resulted in numerous orders and a twenty-three day trial to determine if defendant alienated the children from their mother.

The trial included expert witnesses, resulting in high expert and counsel fees for both litigants. The trial judge issued an order mandating, among other issues, therapy for the family and that defendant contribute to the cost. Defendant appealed the trial court's decision. We reversed and remanded the matter due to the trial court's impermissible reliance on parental alienation syndrome, because the reliability and acceptance of the science undergirding the theory was not established at trial.

We issued that decision on December 15, 2014. In the interim, the bifurcated financial matters continued in litigation. On November 14, 2013, following an eight-day trial, the court entered a final judgment of divorce. In addition to ordering equitable distribution of the marital assets, the trial court found plaintiff's legal fees approximated $797,278, of which $520,000 were associated with the custody portion

of the litigation, and defendant's legal fees totaled $117,712 to two different attorneys. Because a significant portion of the legal fees were incurred from enforcing various custody orders against defendant and compelling his compliance with other court orders, the court found defendant acted in bad faith and caused the protracted litigation in the custody phase. As a result, the court held defendant responsible for $370,000 of plaintiff's legal fees, plus interest, for the custody phase of the divorce litigation, as well as for all of the expert fees.

After the court entered the final judgment for divorce in November 2013, defendant moved for reconsideration, objecting to fourteen of the twenty-one decisions rendered. On February 4, 2014, the court denied the motion for reconsideration. Two days later, the court signed an amended judgment of divorce clarifying the amount credited to each party, and the total amount defendant owed plaintiff was $308,340, whereas plaintiff owed defendant $43,596. Even after applying the amounts held in escrow for defendant's obligations, $264,804 was still due.

Defendant appealed from the final judgment of divorce and the denial of the motion for reconsideration. We affirmed the trial's court decision on April 4, 2017, after we determined the judge's findings were well supported by the record. With respect to the legal fees and defendant's contentions of improper bifurcation of the matters, we found no abuse of discretion.

Defendant appealed the matter to the New Jersey Supreme Court, and his petition was denied. M.A. v. A.I., 233 N.J. 108 (2017). He then appealed to the United States Supreme Court, and was denied certiorari. A.I. v. M.A., ___ U.S. ___, 138 S.

Ct. 980 (2018). Following these denials, he returned to the Family Part and moved for recusal of the judge as well as for relief from the financial judgment. While he did not file a proper motion for recusal and instead sent a letter to the assignment judge, the trial judge nevertheless chose to address the matter. Defendant contended the judge should recuse himself both because he served in the Civil Division with a presiding judge whose wife was involved in the underlying matrimonial litigation, and because defendant believed the judge would hold him in contempt for his submission of inappropriate certifications. The trial judge rejected the argument as specious and baseless, and so do we.

Pursuant to Rule 4:50-1, defendant argued he was entitled to relief from the judgment of divorce because the financial determinations made therein were made without knowledge of our decision reversing and remanding the custody matter. Defendant asserted that because the original custody determination was reversed, the apportionment of fees from the custody trial was inappropriate, and plaintiff was therefore no longer entitled to the award of any fees based on that trial. The trial judge denied the motion for relief from judgment, stating one of the "basic concept[s] of the rule of law . . . is that litigants are entitled to finality. . . . [M]atters decided by a [c]ourt are not subject to an . . . infinite number of challenges to the decisions of the [c]ourt." He held the denial of defendant's petition to the United States Supreme Court should have concluded defendant's challenges to the four-year old order, and found "none of the reasons outlined in [Rule] 4:50-1 support[] amending the judgment order." Ultimately, the trial judge rejected the motion because there was no basis for

defendant's application, and defendant was "not entitled to re-litigate the same matters over and over again."

On May 7, 2018, defendant then moved for reconsideration pursuant to Rule 4:49-2, which was also denied. The trial judge declined to hear oral arguments on the matter, citing Kozak v. Kozak,[2] holding a court need not grant oral argument if satisfied the motion is made for the purpose of abusing the judicial system and the other parties. He also denied oral argument because it would be unproductive, given the motion did not properly present substantive issues to the court, citing Palombi v. Palombi, 414 N.J. Super. 274, 285-88 (App. Div. 2010). The trial judge again found defendant's motion to be specious, and that the same arguments were already litigated and rejected by this court, and further held the motion for recusal was baseless for the reasons given in his decision on the initial motion. While the trial judge also found this matter to be frivolous litigation under Rule 1:4-8, he declined to impose sanctions.

This appeal followed. Defendant raises the following issues on appeal.

POINT I. THE REVERSAL OF THE ATTORNEY AND EXPERT FEES WAS DELAYED BECAUSE OF THE FAILURE TO PROPERLY APPLY [RULE] 4.42-9(D) AND AN IMPROPER BIFURCATION.

POINT II. THE REVERSAL OF THE ATTORNEY AND EXPERT FEES IS GUARANTEED UNDER [RULE] 4.50-1(E).

---

[2] 280 N.J. Super. 272 (Ch. Div. 1994).

POINT III. APPARENT CONFLICT OF INTEREST AND BIASED DECISIONS HAVE NEGATIVELY AFFECTED THIS CASE.

We address each argument in turn. At the outset, we note res judicata bars re-litigation of claims or issues already litigated. Velasquez v. Franz, 123 N.J. 498, 505 (1991). "In essence, the doctrine . . . provides that a cause of action between parties that has been finally determined on the merits by a [court] having jurisdiction cannot be re[-]litigated by those parties or their privies in a new proceeding." Ibid. (citing Roberts v. Goldner, 79 N.J. 82, 85 (1979)). "For a judicial decision to be accorded res judicata effect, it must be a valid and final adjudication on the merits of the claim." Id. at 506 (citation omitted).

Defendant had the chance to fully litigate all of the issues now before the court during his custody and financial trial appeals. His chance to litigate and appeal any issues from the trial judges' decisions was during those trials and subsequent appeals of the case in 2014 and 2017. When this matrimonial case was bifurcated into separate trials for custody and financial issues, each of those matters was fully litigated in extensive trials, including a twenty-three day trial regarding the custody and parenting time issues and an eight-day trial regarding the financial issues.

When these trials were appealed, we rendered comprehensive, final, and binding decisions regarding the matters. Our 2014 decision reversed the custody determination on the very specific issue of the trial judge's error in basing custody and parenting time determinations on unreliable science in the expert's testimony. We remanded the matter to the Family Part for establishment of a parenting time schedule for defendant and potential reunification with his children, and the New

Jersey Supreme Court denied the petition to hear the case. Thus, notwithstanding the remand, our decision was final and binding on the parties.

The 2017 decision regarding the financial issues affirmed the decisions of the trial judge in full. The panel addressed and adjudicated all the meritorious arguments defendant raised, including but not limited to the award of fees to the plaintiff. Ultimately, we affirmed the trial judge's decision, holding he did not abuse his discretion by awarding attorney's fees to plaintiff because defendant acted in bad faith, and defendant's petitions to the New Jersey and United States Supreme Court were subsequently denied. As such, our decision regarding the financial issues trial was a final decision on the merits and is therefore binding on the parties. Defendant is now contesting these same findings by merely repackaging his arguments. His argument rests on the logic that because our 2014 custody decision was reversed and remanded, the portion of the fees awarded in the financial trial relating to the 2014 decision should also be reversed. However, defendant's argument does not recognize that fees were awarded due to his bad faith actions throughout the entire matrimonial litigation and nothing in our custody decision undermined such a finding. Moreover, the findings defendant contests were already affirmed and are binding under the doctrine of res judicata as discussed above.

Therefore, defendant is estopped from bringing this claim under the doctrine of res judicata. The same reasoning applies to defendant's argument concerning bifurcation. Defendant already contested the bifurcation in his appeal of the financial trial, and the matter was decided. As discussed above, res judicata bars re-litigation of this issue.

Similarly, defendant's arguments regarding Rule 4:42-9(a)(1) are unpersuasive. Defendant contends, under Rule 4:42-9(d), the fee award was impermissible, as subsection (d) prohibits separate orders for allowances of fees. It states, "[a]n allowance of fees made on the determination of a matter shall be included in the judgment or order stating the determination." R. 4:42-9(d).

However, the rule's annotations provide little to no assistance for defendant's claim that this portion of the rule precludes the award of attorney's fees in this matter. Here, defendant is not contesting the timing of the application made for an award of counsel fees, but rather is contesting the judgment awarding the fees itself. Further, there are no facts in the record indicating the application for counsel fees was made out of time, nor is this the argument defendant is attempting to make with regard to the rule. The rule's intention is to ensure later applications for the award of attorney's fees are not made after a final determination on the case as a whole has been made, which was not the case here.

Moreover, the trial judge properly awarded counsel and expert fees to the plaintiff, making findings of fact, which we affirmed in 2017. We found the trial judge did not abuse his discretion by awarding expert and counsel fees to plaintiff because defendant acted in bad faith during litigation.

Having fully considered the record and the submissions of the parties, pursuant to Rule 2:11-3(e)(1)(E) we do not address defendant's additional arguments because they lack sufficient merit to warrant discussion in a written opinion.

Affirmed.

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

s/
CLERK OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION - FAMILY PART

UNION COUNTY

DOCKET NO. FM-20-973-09

APP. DIV. NO. A-004755-17-T1

MARIA ALEXIANU,

Plaintiff,

v.

ADRIAN IONESCU,

Defendant.

TRANSCRIPT

OF

MOTION

(Court Decision)

Place: Union County Courthouse Elizabeth, NJ

Date: June, 1, 2018

BEFORE:

HONORABLE JAMES HELY, J.S.C.

TRANSCRIPT ORDERED BY:

DR. ADRIAN IONESCU (601 N. Chestnut Street, Westfield, New Jersey 07090)

Audio Recorded By: H. Harris

METRO TRANSCRIPTS, L.L.C.

Valerie Anderson

15 Mountain View Drive, Andover, New Jersey 07102

(973) 659-9494

APPENDIX C

THE COURT: Okay. We need to be on the record. This is the case of Alexianu v. Ionescu, Docket Number FM-20-973-093. This is the Court's decision on pending motion to reconsider my April 20th, 2018, decision which denied defendant Ionescu's motion to recuse myself and denied his motion to amend the parties' judgment of divorce under Rule 4:50-1.

First, I will discuss my not granting oral argument on this motion. Under Rule 5:5-4, the Court should ordinarily grant requests for oral argument in Family Division matters. I have served on the Family Division for approximately five years. I have never denied oral argument in any case where it was requested.

Nevertheless, oral argument need not be granted if the Court is satisfied that the motion is made for the purpose of abusing the judicial system and the other parties. Kozac v. Kczac, 280 N.J. Super. 272, a Chancery Division case of 1994.

Further, when a motion fails to properly present substantive issues to the Court, oral argument is seen as unproductive. Palombi v. Palombi, 414 N.J. Super. 274 at 285 through 288, Appellate Division 2010.

As I will discuss further, the present motion to reconsider my decisions of April 20th are specious. I'm sorry. The motion is specious.

The defendant seeks the Court to reconsider the ruling under Rule 4:49-2. That rule requires that quote, "The motion shall state with ,specificity that the basis on which it is made including a statement of the matters or controlling decisions which counsel believes the Court has overlooked or as to which it has erred." Close quote.

Under the case of Cummings v. Bahr, 295 N.J. Super 374 at 384, Appellate Division 1996, the rule is applicable only when the Court's decision is based upon a

plainly incorrect reasoning or when the Court has failed to consider evidence or there is a good reason for it to reconsider new information.

I have reviewed defendant's motion papers, and I have reviewed the transcript of my decision of April 20th, 2018. There -- I have also reviewed the brief submitted by the plaintiff Dr. Alexianu, and I might comment that Dr. Alexianu is not a lawyer, but her brief in its succinctness and clarity is far superior to many briefs I see submitted by lawyers.

Defendant complains that the attorney fee award entered into by Judge Walsh and appealed to the Appellate Division is unjust. The Appellate Division reached their decision on Judge Walsh's trial court decision on April 4th, 2017. Although defendant Ionescu did not provide me with the Appellate Division decision, he does not contest that the Appellate Division had before it the issue of the attorney fee awards.

I have now reviewed the Appellate Division's opinion of April 4th, 2017. That opinion dealt at length with defendant Ionescu's argument on the attorney fee award specifically at Page 3, Page 4, Page 9, Page 10, and 11. Defendant on the reconsideration motion presents the legal brief he submitted on attorney fees to the Appellate Division wherein he argued that since Judge Walsh's attorney fee decision predated the Appellate Division reversal on one particular issue that was part of the case, Judge Walsh's attorney fee award should be voided. In the April 4th, 2017, Appellate Division opinion, that argument was rejected.

I am not above the Appellate Division. In fact, trial judges are to rigorously follow Appellate Division decisions. My prior decision was not incorrect, and there is

no new information provided in this reconsideration application. This is defendant's attempt to get another bite at the apple that has already been decided by the higher courts.

I further find the recusal motion is baseless. It is based simply on the fact that at one time, I was a judge in the same division, the Civil Division, as Judge Grispin where he was the Presiding Judge. Defendant Ionescu has attached to his reconsideration motion exhibits showing the locations of real estate a Superior Court Judge owns. This is offensive and improper.

Defendant Ionescu has simply lost his way. He cannot in my view see the forest for the trees. He has two almost grown sons who could use a stable, sound-thinking father. This motion does, indeed, abuse the judicial system and the plaintiff Dr. Alexianu.

There is a rule titled frivolous litigation. That rule is New Jersey Court Rule 1:4-8. That rule permits the Court to consider sanctions in a case such as this wherein a party presents papers for improper purpose such as to harass. The present reconsideration motion which essentially repeats defendant's prior motion to amend the judgment even though the Appellate Division has already dealt with defendant's complaint about the attorney fees award, and I can certainly can see that as a frivolous motion and frivolous litigation.

At the present time, I am not invoking Rule 1:4-8(c). However, if that -- if this conduct continues, that may change. Defendant Ionescu does not like the attorney fee awards that were awarded against him. He has had every opportunity to have that

matter considered by the trial courts and the appellate courts. His appeals have failed. The plaintiff is entitled to finality of judgment.

That concludes the decision.

(Proceedings concluded)

CERTIFICATION

I, Valerie Anderson, the assigned transcriber, do hereby certify the foregoing transcript of proceedings in the Union County Superior Court, Chancery Division, on June 1, 2018, on CD No. 6/1/18, Index Nos. from 09:40:31 09:48:32, prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

Valerie Anderson, A.C. #480 METRO TRANSCRIPTS, L.L.C., Date: 7/24/18

MARIA ALEXIANU,	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - FAMILY PART
Plaintiff,	UNION COUNTY
	Docket No. FM-20-0973-09B
ADRIAN IONESCU,	FILED
	CIVIL ACTION JUN 01 2018
Defendant.	ORDER JAMES HELY, J.S.C.

This matter being brought before the court on a Notice of Motion for Reconsideration by the Defendant, Adrian Ionescu, pro se, against Maria Alexianu, the Plaintiff, pro se, the Court having considered the parties' submissions and good cause having been shown;

IT IS HEREBY ORDERED on this 1st day of June, 2018

1. The motion for the Court to recuse itself is DENIED;

2. The motion to reconsider whether the denial of a judgment change is DENIED;

3. The Court finds this motion to be frivolous. No monetary sanctions are being imposed at this time. Further frivolous motions of this type will likely result in severe monetary sanctions under Rule 1:4-8(c);

4. This Order with respect to attorney fees and recusal are final orders. No further motions may be made on these two issues.

IT IS FURTHER ORDERED

The Court will serve a copy of this Order upon all the parties in court.

[X] Opposed [1 Unopposed \s JAMES HELY, J.S.C.

APPENDIX D

MARIA ALEXIANU,	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION - FAMILY PART
Plaintiff,	UNION COUNTY
	Docket No. FM-20-0973-09B
ADRIAN IONESCU,	FILED
	CIVIL ACTION APR 20 2018
Defendant.	ORDER JAMES HELY, J.S.C.

This matter being brought before the Court on a Notice of Motion filed by Defendant Adrian Ionescu, appearing pro se, against Plaintiff Maria Alexianu, appearing pro se, having been properly served, having filed Opposition, the Court having considered the submissions and testimony of the parties, and good cause having been shown, and for reasons set forth on the record;

IT IS HEREBY ORDERED on this 20th day of April, 2018:

1. Defendant Ionescu's recusal application is denied.

2. Defendant Ionescu's Motion to amend the parties' Judgments of Divorce is denied.

3. A copy of this Order has been served on the parties in Court today.

[X] Opposed [1 Unopposed

\s JAMES HELY, J.S.C.

APPENDIX E

Supreme Court of the United States

Office of the Clerk

Washington, DC 20543-0001

Scott S. Harris

Clerk of the Court

(202) 479-3011

February 20, 2018

Mr. Adrian Ionescu

601 N. Chestnut Street

Westfield, NJ 07090

Re: A I. v. M.A.

No.. 17-6521

Dear Mr. Ionescu:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

\s

Scott S. Harris, Clerk

APPENDIX G

SUPREME COURT OF NEW JERSEY
C-991 September Term 2016

079382

M.A.,

Plaintiff-Respondent,

v.

A.I.,

Defendant-Petitioner.

ON PETITION FOR CERTIFICATION

FILED
JUL 20 2017
s/
CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-002800-13 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 18th day of July, 2017.

s/
CLERK OF THE SUPREME COURT

APPENDIX G

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-02800-13

M.A.,[3]

Plaintiff-Respondent,

v.

A.I.,

Defendant-Appellant.

Argued January 26, 2017 - Decided April 4, 2017

Before Judges Hoffman, O'Connor and Whipple.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FM-20-0973-09.

A.I., appellant, argued the cause pro se.

M.A., respondent, argued the cause pro se.

PER CURIAM

Defendant A.I. appeals from a November 14, 2013 final judgment of divorce, a February 4, 2014 denial of his motion for reconsideration, and a February 6, 2014 amended judgment of divorce. We affirm substantially for the reasons expressed in the thorough written opinion of Judge Thomas J. Walsh, but add the following.

---

[3] We use initials in this opinion to be consistent with our prior appellate decision in order to protect the identities of the parties' children.

Plaintiff, M.A., and defendant were married in Romania in 1989. The couple had a son and a daughter. Plaintiff filed a complaint for divorce on January 7, 2009, citing irreconcilable differences. Thereafter, the court bifurcated the custody and parenting time claims from the financial ones. As the present appeal deals solely with the financial portion of the divorce action, we need not address facts pertaining to the custody dispute in this opinion.[4]

Plaintiff is a neurologist who opened her own medical practice. During the marriage, defendant earned a master's degree in computer science and a Ph.D. in mathematics. He is a tenured professor and owns an internet technology consulting business.

The parties had a nineteen-year marriage and prior to the divorce, lived in a four-bedroom, three-bathroom house. After the divorce was filed, plaintiff reduced her hours at her medical practice to spend more time with her children. She eventually lost patients due to her lack of availability. As the litigation continued, plaintiff's once prosperous medical practice declined.

At the time of trial, the house was sold and plaintiff lived in a two-bedroom apartment with her children. Defendant sought alimony, arguing alimony should be calculated based on plaintiff's salary prior to filing for divorce. Defendant did not provide the court with specific information as to his true income and expenses, and the trial judge found him to be less than credible.

---

[4] The custody dispute was discussed in M.A. v. A.I., No. A-4021-11 (App. Div. Dec. 15, 2014).

The court imputed income to plaintiff and defendant, based on Bureau of Labor Statistics Wage Guidelines, and awarded defendant permanent alimony in the amount of $15,000 per year; however, no payments were due until defendant satisfied his obligation to pay a portion of plaintiff's attorney's fees.

The court ordered defendant to pay $188 per week in child support to plaintiff. Unpaid prior child support in the amount of $18,000 was credited against defendant's obligations.

Plaintiff's legal fees approximated $797,278; $520,000 of the fees were for the custody portion of the litigation. A significant portion of those fees were incurred from enforcing various custody orders against defendant and for compelling defendant to comply with other court orders. Defendant owed $117,712 to two different attorneys. The court found defendant acted in bad faith and caused the protracted litigation in the custody phase. As a result, the court held that defendant was responsible for $370,000 of plaintiff's legal fees, plus interest, for the custody phase of the divorce litigation and all of the expert fees.

Addressing equitable distribution, the court considered the factors in N.J.S.A. 2A:34-23.1 to divide the marital assets. Both parties agreed plaintiff's medical practice was subject to distribution. Plaintiff's financial expert valued the medical practice at the time of the filing of the complaint and again four years later. The court accepted his testimony as credible.

The court determined plaintiff would be able to resume a regular work schedule once again as the children would soon be leaving the home. He accepted plaintiff's expert's valuation of the medical practice at the time the complaint was

filed, held defendant's expert was not accredited in valuation practice, and determined defendant's expert could not criticize plaintiff's expert's calculations. The court awarded defendant thirty-percent of the value of the practice as of the date the complaint was filed, as the practice was small, plaintiff performed the services, and she engendered the goodwill associated with the practice.

In September 2010, the marital residence was sold at a loss. Plaintiff contributed approximately $86,000, which she acquired by liquidating her retirement assets. Plaintiff had to pay taxes on the $86,000 because defendant refused to file a joint tax return. Ultimately, plaintiff paid $46,000 in taxes, and defendant was required to pay one-half. Defendant did not pay, so the court awarded plaintiff a tax credit of $23,000 for the sale of the family home. In January 2011, the couple's apartment in Romania was sold; all of the proceeds were used on litigation expenses except for a nominal amount of $350. The court awarded each party one-half of $350.

In May 2012, the couple's vacation home in Romania was sold for $149,200. Defendant resisted the sale. Plaintiff's godparents gifted the land on which the house was located to plaintiff, and sold the house at a discounted price because it was subject to a life estate. The buyer later sold the home to plaintiff's parents. Plaintiff was not involved in her parents' purchase, and her parents did not discuss their decision to purchase it with her.

The court rejected defendant's theory the transaction was a "straw sale." Because most of the money had already been spent on counsel fees, the court split the remaining money from the sale, $6,309.50, equally between the parties.

Plaintiff had liquidated an IRA account in order to sell the marital residence. At the time of trial, her account only contained sixty-eight cents. Plaintiff also had a TIAA-CREF account with a balance of approximately $32,000 as of January 2009, but plaintiff withdrew $3,292 to pay for counsel fees. At trial, plaintiff testified she had a balance of approximately $35,000.

Plaintiff testified defendant also had a TIAA-CREF account with over $300,000. The court ordered the TIAA-CREF pensions be equalized as of the date of the complaint. In addition, defendant was required to liquidate amounts from his pension totaling $2,959.13, which were held in escrow by plaintiff's counsel.

At the time of trial, defendant possessed three cars, while plaintiff had one. Neither party testified as to the value of the cars; therefore, the court adopted the middle value between the disputed amounts for each car and awarded defendant a credit of $8,224.

The court found plaintiff had a credit card debt of $48,506 as of the date of the complaint, whereas defendant had a credit card debt of $16,696. Neither party offered any proof to overcome the presumption the debt was marital debt; thus, the court held plaintiff was entitled to a credit for $15,905.

The court entered a final judgment of divorce on November 14, 2013. Defendant moved for reconsideration, and on February 4, 2014, the court denied the motion. On February 6, 2014, the court signed an amended judgment of divorce clarifying the amount credited to each party and the total amount defendant was required to pay plaintiff. Specifically, the court found defendant owed plaintiff $308,340, whereas plaintiff owed defendant $43,596. After applying various amounts

held in escrow for defendant's obligations to plaintiff, the court found the sum defendant owed plaintiff was $264,804. This appeal followed.

On appeal, defendant argues the court erred when computing permanent alimony. He argues the court should have imputed more income to plaintiff per year and awarded him higher alimony, as well as retroactive alimony of $80,000 per year from 2011 to present and an additional $160,000 in punitive retroactive alimony for plaintiff's allegedly fraudulent actions during 2009 and 2010. We disagree.

A trial court's alimony rulings are discretionary, and we will not overturn such an award unless we find "the court abused its discretion, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." Gordon v. Rozenwald, 380 N.J. Super. 55, 76 (App. Div. 2005) (citing Tash v. Tash, 353 N.J. Super. 94, 99 (App. Div. 2002)). We defer to a trial judge's findings if supported by substantial credible evidence in the record. Cox v. Cox, 335 N.J. Super. 465, 473 (App. Div. 2000) (citing Reid v. Reid, 310 N.J. Super. 12, 22 (App. Div.), certif. denied, 154 N.J. 608 (1998)).

The trial court analyzed the relevant statutory requirements under N.J.S.A. 2A:34-23(b), when it computed defendant's alimony. The court imputed income to the parties recognizing the imputed income to plaintiff was greater than her current earnings but less than her past earnings. The amount imputed to defendant was the mean salary for a postsecondary math professor in the geographic area. The trial judge found defendant's testimony strained credibility as he admitted to making more money than he disclosed on his case information sheet.

Although the trial court found defendant's conduct negatively affected plaintiff's ability to earn income, the court did not punish defendant for his poor conduct when it computed his alimony. See Mani v. Mani, 183 N.J. 70, 88 (2005) (holding where marital fault has negatively affected the economic status of the parties, fault may be considered in the calculation of alimony). Alimony is neither a reward nor a punishment. Id. at 80. Here, the court imputed a reasonable amount of mean income to both parties while taking into account the parties' geographic location. Because we find the trial court did not abuse its discretion, fail to consider applicable legal principles, or make findings unsupported by the record, we reject defendant's contention.

We reject defendant's various challenges to the distribution of plaintiff's medical practice including: (1) plaintiff intentionally reduced her work hours, against her counsel's advice; (2) the judge erred in rejecting his relying on his discredited expert's opinion; and (3) plaintiff's expert fudged the opinion in his report. Defendant provides no support in law or fact for these arguments. Ultimately, defendant's basis for his arguments stems from his unhappiness with the ruling. "More than a feeling of dissatisfaction is needed to fuel an appeal." Perkins v. Perkins, 159 N.J. Super. 243, 248 (App. Div. 1978).

Defendant also argues the trial court erred by finding he was responsible for the guardian ad litem, therapy, and expert fees, as his behavior during the divorce litigation was not "bad faith." Defendant contends plaintiff's higher income necessitates she pay all of the amounts due. We disagree.

The award of costs and fees in matrimonial cases rests in the trial court's discretion. Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990) (citing R. 4:42-9). We will not alter a trial court's discretionary ruling unless the court abused its discretion, failed to consider applicable legal principles, or made findings unsupported by the record. Gordon, supra, 380 N.J. Super. at 76. The record demonstrates the judge's findings are well supported.

The court found defendant responsible for the custody expert fees because of defendant's campaign of parental alienation. The trial judge relied both upon a prior judge's determination of defendant's bad faith and his own finding defendant provided less than credible testimony during the financial trial, noting defendant "took pains to avoid agreeing to simple points" during his testimony. We accord deference to the trial court's credibility determinations based upon the judge's opportunity to observe and hear the witnesses. Cesare v. Cesare, 154 N.J. 394, 412 (1998). The trial judge's observations coupled with the Family Part's generation of over forty orders throughout the case supports the court's finding defendant acted in bad faith throughout the litigation. The trial court did not abuse its discretion in allocating fees and payments between the parties.

Defendant argues plaintiff should be responsible for her legal fees, as well as a portion of defendant's legal fees from the financial portion of the litigation. Rule 4:42-9 allows the family court to make fee allowances in accordance with Rule 5:3-

5(c). Rule 5:3-5(c) allows the court to award attorney's fees in family matters, regardless of the prevailing party.[5]

Our review of the record confirms the court considered the financial circumstances of the parties when it imputed income to both parties by examining the parties' W-2 tax documents and case information statements. The court also evaluated the parties' ability to make money as time passed and the children matured.

Moreover, the record supports the court's determination defendant, rather than plaintiff, acted in bad faith. The trial court did not abuse its discretion in awarding legal fees to plaintiff. We find defendant's additional arguments relating to legal fees to be without merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Turning to equitable distribution, we review the trial court's distribution of marital assets for an abuse of discretion. A trial court has "broad discretionary authority to equitably distribute marital property." Sauro v. Sauro, 425 N.J. Super. 555, 572 (App. Div.), certif. denied, 213 N.J. 389 (2013). We determine only "whether

---

[5] In accordance with Rule 5:3-5(c), a trial court considers various factors when making a decision to grant counsel fees

> (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties; (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 or to compel discovery; and (9) any other factor bearing on the fairness of an award.

the trial court mistakenly exercised its broad authority to divide the parties' property or whether the result reached was bottomed on a misconception of law or findings of fact that are contrary to the evidence." Genovese v. Genovese, 392 N.J. Super. 215, 223 (App. Div. 2007) (citations omitted).

Defendant contends the home was sold without an appraisal; however, defendant offered no appraisals, expert testimony, or admissible evidence as to the value of the home. As to defendant's argument he was forced to sell the home against his will, we note the trial court has discretion "to order the sale of marital assets and the utilization of the proceeds in a manner as 'the case shall render fit, reasonable, and just.'" Randazzo v. Randazzo, 184 N.J. 101, 113 (2005) (quoting N.J.S.A. 2A:34-23). We see no reason to disturb the trial court's findings.

Defendant argues plaintiff's attorneys engaged in fraud, extortion, and racketeering when they asked the court to seal the record in this case. The trial court found there was a "complete absence of purposely dishonest behavior" on the part of plaintiff and her attorneys. Further, the judge rejected defendant's testimony as less than credible and stated his positions in the financial portion of the trial were not cohesive. We defer to the trial court's factual findings. See Benevenga v. Digregorio, 325 N.J. Super. 27, 32 (App. Div. 1999.

Last, defendant argues the court erred by bifurcating the trial because it allowed plaintiff to use her financially superior position to gain advantage over him. The record on appeal demonstrates the length of the trial was caused by defendant's unwillingness to settle, compromise, and litigate in good faith. Moreover, the court determined defendant acted intentionally to alienate the children from plaintiff,

which in turn caused the lengthy custody battle and the necessity of the various experts and therapists. We therefore find the trial court did not abuse its discretion in bifurcating the litigation.

Affirmed.

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

s/
CLERK OF THE APPELLATE DIVISION

SUPREME COURT OF NEW JERSEY
C-790 September term 2014
075486

M.A.,

Plaintiff-Respondent,

v.

A.I.,

Defendant-Petitioner.

ON PETITION FOR CERTIFICATION

FILED
APR 24 2015
s/
CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-004021-11 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 21st day of April, 2015.

s/
CLERK OF THE SUPREME COURT

APPENDIX I

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-4021-11T1

M.A.[6],

Plaintiff-Respondent,

v.

A.I.,

Defendant-Appellant.

Argued October 28, 2014 - Decided December 15, 2014

Before Judges Yannotti, Hoffman and Whipple.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FM-20-973-09.

A.I., appellant, argued the cause pro se.

Lizanne J. Ceconi argued the cause for respondent (Ceconi & Cheifetz, L.L.C., attorneys; Ms. Ceconi and Sheryl J. Seiden, of counsel and on the brief; Andrea Joy B. Albrecht, on the brief).

PER CURIAM

Defendant, A.I., appeals from orders entered by the Family Part on December 27, 2011, awarding plaintiff sole legal and residential custody of the parties' children

---

[6] To protect the identities of the parties' children as well as their relationship with their parents, we use initials throughout this opinion.

in order for plaintiff and the children to engage in a program of reunification, and on March 16, 2012, denying reconsideration of the prior order. Defendant has not had any authorized contact with the children in over two years. Because we do not consider an extended loss of custody to have been an intended consequence of the Family Part order, we reverse and remand for an expeditious determination regarding defendant's parenting time.

Plaintiff, M.A., and defendant were married in Bucharest, Romania in 1989. Two children were born of the marriage, a son and a daughter. In 2007, the marriage began to deteriorate, and both children sided with their father and began to show signs of overt hostility and anger toward their mother. Plaintiff attributed the children's behavior to defendant's influence over them, but defendant attributed the behavior to plaintiff's own parenting style. After plaintiff filed for divorce, the children's antipathy toward their mother escalated, and the children refused to spend time with her, drive with her or eat meals she prepared. Plaintiff, a neurologist, and defendant, a college professor, agreed to enlist the services of a therapist for the children, but the situation did not improve.

In May 2009, plaintiff filed a motion to compel the parties and children to continue to attend family therapy with the therapist, permit only one party to reside in the marital home with the children and create a parenting schedule and appoint a guardian ad litem ("GAL") for the children. The trial judge ordered the parties and children to continue in therapy and created a rotational parenting plan in the marital residence. Dr. Sharon Ryan Montgomery was plaintiff's custody expert, and Dr. James Wulach was defendant's expert.

defendant's custody expert, as well as the court's own custody expert, Dr. Abraham Worenklein.

Dr. Worenklein said in his evaluation report, "When one considers the different symptoms of parental alienation, one is struck by the fact that the children did demonstrate many of the characteristics cited in the literature"[7] and that the parental alienation in this case was "moderate to severe." The trial judge also considered the testimony and recommendations of a professional from Family Bridges, Dr. Richard Warshak.

On September 21, 2011, the trial court determined that it was in the best interests of the children to have a relationship with both of their parents. Recognizing that the children's relationship with plaintiff needed immediate intervention, the trial court ordered that, if accepted, plaintiff and the children would participate in Family Bridges in October 2011, and that sole legal and physical custody of the children was awarded to plaintiff commencing one day prior to attendance in the program and continuing for ten days after, during which time defendant was to have no contact with the children and the parties would share the costs. However, it was later reported to the court that Family Bridges would not accept the family under the terms of the September 21, 2011 order because it gave plaintiff custody for too brief a time to be effective.

On December 27, 2011, the court issued an order superseding the September 21, 2011 order. On December 29, 2011, the court issued a written opinion granting

---

[7] The report does not identify what literature Dr. Worenklein is referencing.

her own doing. When defendant should have shielded and protected the children from the turmoil of divorce, he forced them to take sides.

In further support of its decision, the trial court referenced evidence of parental alienation syndrome ("PAS") and relied upon eight criteria of PAS in finding that the children had been alienated. Specifically, the trial court stated

In New Jersey, while there are several cases attempting to deal with the problem, there is no definitive analysis as to what actually constitutes parental alienation. This court now holds that in order for a parent to sustain a claim that the other parent has alienated their child, the proponent must prove the presence of eight criteria in the child.[8]

Additionally, while the court indicated that it considered the best interest factors listed in N.J.S.A. 9:2-4(c) for a determination of custody, the court made no specific findings concerning those factors, stating that "[i]n the context of alienation litigation, while these factors are important, they are not dispositive." The court also stated that the eight criteria of PAS are "[m]ore probative, relevant, and significant

---

[8] The trial court, without citing its source, identified the eight criteria as

1) a campaign of denigration of the parent;
2) weak rationalizations for the deprecation;
3) lack of ambivalence;
4) insistence that the rejection is the child's own idea;
5) reflexive support for the alienating parent in the parental conflict;
6) the absence of guilt or remorse over cruelty to the alienated parent;
7) the presence of borrow scenarios; and
8) the spread of rejection to extended family and friends of the alienated parent.

in determining whether there is alienation and what to do about it . . . ." The court chronicled the alienation criteria, made express findings about the conduct of the parties, their children, and their credibility, and accepted the recommendation of Dr. Worenklein that the family should attend Family Bridges as soon as possible. The trial court conducted no further analysis of the best interest factors under N.J.S.A. 9:2-4(c) except for finding that defendant "was on the edge of not being fit" and that a parent who engages in alienating conduct may be unfit.

On January 17, 2012, after plaintiff and the children had returned from Family Bridges, defendant moved for reconsideration of the December 27, 2011 order. At that time, the matter was assigned to a different Family Part judge after the retirement of the trial judge. The Family Part judge denied the application for reconsideration, finding that, based upon the record presented, defendant provided no legal basis for the court to reconsider the trial judge's decision. The court considered the additional argument, raised by defendant; that the trial judge had deferred decision-making for the children to Dr. Pasternak, but rejected it.

On March 15, 2012, plaintiff filed an order to show cause, seeking, among other relief, to hold defendant in violation of litigant's rights for failing to comply with the no-contact provisions in effect and to bar defendant from contacting the children for an additional 120 days. Plaintiff said in her certification that, while her relationship with her children had improved after completion of Family Bridges, the relationship deteriorated after defendant filed his motion for reconsideration.

According to plaintiff, defendant had been in contact with the children surreptitiously, in violation of the court's orders, and had encouraged the children to

run away. On March 16, 2012, based upon that information, the Family Part judge extended defendant's no-contact period for an additional ninety days, finding that defendant had shown complete disregard for the court orders and for the children's best interests.

On April 16, 2012, defendant appealed from the December 27, 2011 and the March 16, 2012 orders. The parties filed various motions in this court, including a motion by defendant for parenting time, which we denied on March 11, 2014. Defendant then filed a motion for leave to appeal our denial of his motion for parenting time in the Supreme Court, and on May 22, 2014, the Court denied leave to appeal. The Court directed that we resolve the appeal in an expedited manner, and remanded the issue to the Family Part to address defendant's parenting time, without divesting our jurisdiction over that issue while on appeal.

After interviewing the children, the Family Part judge issued an order directing defendant and the children to undergo four reunification sessions with Dr. Pasternak to determine whether reunification with defendant could take place without further alienation of plaintiff and would be in the best interests of the children. The court indicated that, depending upon Dr. Pasternak's input and consultation with the GAL, it would, on its own motion, reopen the parenting time issue under the continuing limited remand. On July 10, 2014, Dr. Pasternak withdrew from the case, stating that it was not clinically sound for her to proceed given the parties' positions.

On appeal, defendant argues that the trial court erred in awarding sole custody of the children and barring him from having contact with the children. Defendant

contends that, in making this custody determination, the trial court erroneously adopted the theory of PAS, since it is a novel theory and there was no evidence that it is generally accepted in the relevant scientific community. In addition, defendant argues that he was denied a fair trial due to economic disparity, conflicts, collusion and other trial errors. In response, plaintiff argues that the trial court properly articulated a definition of parental alienation based upon sound scientific data, relying upon articles submitted to the court and admitted into evidence without objection under N.J.R.E. 803(c)(18) as learned treatises.

We decline to address whether the trial judge erred in September 2011 when he awarded plaintiff sole custody of the children and barred defendant from having any contact with the children. As the record reflects, these determinations were made so that the family could secure admission to Family Bridges. It is clear that the court viewed that order as an interim measure, and never contemplated that defendant would be precluded from having any parenting time with the children from 2011 to the present time.

We note, however, that the trial judge erred by basing its custody determination in part upon the eight PAS criteria, which the judge drew from literature and testimony. Under N.J.R.E. 702, if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience or training may testify thereto in the form of an opinion or otherwise. However, in order to be admissible, the testimony must involve subject matter that is beyond the ken of the typical fact-finder, the field involved must be at a state of art

that such an expert's testimony could be sufficiently reliable and the witness must have sufficient expertise to offer the testimony. Dehanes v. Rothman, 158 N.J. 90, 100 (1999).

At the time of trial, PAS was not a recognized syndrome in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), and it is not a recognized syndrome in the new fifth edition. The Supreme Court and this court have not yet determined that PAS is a scientifically reliable or generally accepted theory. The admission of novel scientific material like PAS must meet the test established in Frye, supra, 293 F. at 1014, that is, that the opinions are "generally accepted, within the relevant scientific community." State v. Henderson, 208 N.J. 208, 248 (2011); State v. Chun, 194 N.J. 54, 91, cert. denied, 555 U.S. 825, 129 S. Ct. 158, 172 L. Ed. 2d 41 (2008); State v. Harvey, 151 N.J. 117, 169-70 (1997), cert. denied, 528 U.S. 1085, 120 S. Ct. 811, 145 L. Ed. 2d 683 (2000).

Neither the scientific reliability nor general acceptance of PAS was established in this case, by either the testimony of any expert or the literature. Indeed, the theory is still the subject of considerable controversy within the medical and legal communities and should not have played a part in the court's ruling. We express no opinion on whether evidence of PAS may ever be properly admitted. We note only that, in this case, a proper foundation for its admission was not established.

As we stated previously, it is clear the trial judge never envisioned that the December 2011 order would indefinitely prohibit defendant from having parenting time with the children. We note that, when the judge entered the order in September 2011, he stated that it was in the children's best interest to have a relationship with

both parents. Therefore, the matter must be remanded to the trial court for an expeditious determination establishing the parenting time that defendant should enjoy, consistent with the children's best interests. Defendant should be afforded parenting time without any further delay, in the absence of evidence that it would not be in the children's best interests.

We note that the Family Part judge previously ordered defendant and the children to undergo four reunification sessions with Dr. Pasternak to determine whether reunification with defendant could take place without further alienation of plaintiff and would be in the best interests of the children. As noted, however, Dr. Pasternak withdrew from the matter before these sessions could take place. On remand, the trial court may, in its discretion, appoint another professional to replace Dr. Pasternak, consult with the GAL, and impose such conditions as it deems appropriate to address any concerns it may have regarding parental alienation or pertaining to custody of the children, given the intent of the September 2011 and December 2011 orders and the passage of time. If an evidentiary hearing is required in order to determine parenting time or custody, it should be conducted as soon as possible.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

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

s/
CLERK OF THE APPELLATE DIVISION