TABLE OF CONTENTS – APPENDIX

BANDLER MICHAEL *PLAINTIFF* *VS* LYNE DOREE *DEFENDANT*	
☒Obligor ☐Obligee	☐Obligor ☒Obligee
HEARING DATE 12/16/2020	WELFARE / U.I.F.S.A. #

SUPERIOR COURT OF NEW JERSEY
Chancery Division-Family Part
CIVIL ACTION ORDER

COUNTY: ESSEX COUNTY
DOCKET #: FD-07-002412-20
CS#: CS91540733A

With appearance by: ☒PL ☐Atty for PL _____
☐IV-D Atty ☒DEF ☒Atty for DEF MARIA GIAMMONA, ESQ.
☐County Probation Division

This matter having been opened to the court by: ☒ Plaintiff ☐Defendant ☐County Welfare Agency ☐Probation Division ☐Family Division for an **ORDER** for: ☐ **Paternity** ☐ **Support** ☒ **Visitation** ☐ **Custody** ☐ **Enforcement** ☐ **Modification / Increase / Decrease** ☐ **Termination / Continuation** ☐ **Status Review**

1. State with Continuing Exclusive Jurisdiction: **NEW JERSEY**

CHILD'S NAME	**BIRTH DATE**
2A. LYNE ZACHARY	04/10/2014
2B. LYNE GREGORY	04/05/2012
2C.	
2D.	
2E.	
2F.	
2G.	
2H.	

3. ☐ PATERNITY of child(ren) (# above) _____ is hereby established and an ORDER of paternity is hereby entered.
4. ☐ A Certificate of Parentage has been filed for child(ren) # _____ above.
5. ☐ IT IS HEREBY ORDERED THAT: The obligor shall pay support to the New Jersey Family Support Payment Center in the amount of:
[ ] + [ ] + [ ] = [ ] **Child Support** **Spousal Support** **Arrears Payment** **Total** payable [ ] effective [ ] **Frequency** **Date** **NOTE: Child support is subject to a biennial cost-of-living adjustment in accordance with R. 5:6B**
6. ☐ Child Support Guidelines Order ☐ Deviation reason: 6A. ☐ Worksheet attached.
7. ☐ Support order shall be administered and enforced by the Probation Division in the county of Venue, **ESSEX COUNTY**.
8. ☐ ARREARS calculated at establishment hearing are based upon amounts and effective date noted above and total $ _____
9. ☐ ARREARS indicated in the records of the Probation Division, are $ _____ as of **12/16/2020**
10. ☐ **GROSS WEEKLY INCOMES** of the parties, as defined by the Child Support Guidelines, upon which this **ORDER** is based: **OBLIGEE** $ _____ **OBLIGOR** $ _____

11. ☐ **INCOME WITHHOLDING** is hereby ORDERED on current and future income sources, including:

Name of income source: Address of income source:

_____ _____

_____ _____

OBLIGOR SHALL, however, make payments AT ANY TIME that the full amount of support and arrears is not withheld.

12. ☐ **Medical Support** coverage as available at reasonable cost shall be provided for the ☐ **child(ren)** ☐ **spouse**, by **Obligor** ☐ **Obligee** ☐ **Both** ☐

The parties shall pay unreimbursable health care expenses of the child(ren) which exceed $250.00 per child per year as follows:

_____% **Obligor** _____% **Obligee**

Pursuant to R 5:6A the obligee shall be responsible for the first $250.00 per child per year.

If coverage is available, Medical Insurance I.D. card(s) as proof of coverage for the child(ren)/spouse shall be provided immediately upon availability to the Probation Division by the:

☐ **Obligee** ☐ **Obligor**

12A. ☐ Insurance currently provided by a non-party:

_____

12B. ☐ Health insurance benefits are to be paid directly to the health care provider by the insurer.

13. ☐ GENETIC TESTING to assist the court in determining paternity of the child(ren)(# _____) is hereby ORDERED. The county welfare agency or the foreign jurisdiction in the county of residence of the child shall bear the cost of said

testing, without prejudice to final allocation of said costs. If defendant is later adjudicated the father of said child(ren), defendant shall reimburse the welfare agency for the costs of said tests, and pay child support retroactive to _____ 13A. ☐ Issues of reimbursement reserved. 13B. ☐ Issue of retroactive order reserved.
14. ☐ This matter is hereby RELISTED for a hearing on _____ before _____. A copy of this ORDER shall serve as the summons for the hearings. No further notice for appearance shall be given. Failure to appear may result in a default order, bench warrant, or dismissal. Reason for relist:
15. ☐ AN EMPLOYMENT SEARCH MUST BE CONDUCTED BY THE OBLIGOR. Written records of at least # _____ employment contacts per week must be presented to the Probation Division. If employed, proof of income and the full name and address of employer must be provided immediately to the Probation Division.
16. ☐ SERVICE upon which this order is based: **Personal Service Date:** _____ ☐**Certified Mail:** ☐**Signed by:** _____ ☐**Refused** ☐**Returned Unclaimed** ☐ **Diligent Inquiry** ☐**Regular Mail** (not returned) ☐**Other:**
17. ☐ A BENCH WARRANT for the arrest of the obligor is hereby ORDERED. The obligor was properly served with notice for court appearance

on _____, and failed to appear. (Service noted above). An amount of $_____ shall be required for release. ☐ THE OBLIGOR IS HEREBY INCARCERATED in the _____ County Jail until the obligor pays $_____ or until further notice of this court. The obligor was found to be not indigent and had the ability to pay the support order for reasons indicated below.
18. ☐ EFFECTIVE _____ FUTURE MISSED PAYMENT(S) numbering _____ or more may result in the issuance of a warrant, without further notice.
19. ☐ A LUMP SUM PAYMENT OF $_____ must be made by the obligor by _____, or a bench warrant may be issued without further notice.
20. ☐ This complaint / motion is hereby DISMISSED: (reason) _____
21. ☐ Order of Support is hereby TERMINATED effective _____, as _____. Arrears accrued prior to effective date, if any, shall be paid at the rate and frequency noted on page number one of this ORDER.
22. ☐ THIS ORDER IS ENTERED BY DEFAULT. The ☐obligor ☐obligee was properly served to appear for a hearing on _____ and failed to appear. 22A.☐ Affidavit of Non-Military Service is filed.
23. ☒ It is further ORDERED: **MGF Michael Bandler (Plaintiff) and NM and NF Doree and Michael Lyne (Defendants), represented by counsel, appeared via TEAMS**

videoconference due to the Covid-19 crisis. At issue is MGFs application to establish grandparent visitation of minor children Zachary Lyne (DOB 04/10/2014) and Gregory Lyne (DOB 04/05/2012). For reasons stated on the record, the court finds that MGF has failed to articulate harm that is specific to both of the grandchildren as required by law. As a result, MGF's application is denied. The court further denies the request to assign the matter to a complex discovery tract, to permit discovery and to refer the matter to mediation. No further proceedings are necessary. So ordered. Time: 9:51-10:14
EXCEPT AS PROVIDED HEREIN, ALL PRIOR ORDERS OF THE COURT REMAIN IN FULL FORCE AND EFFECT.
I hereby declare that I understand all provisions of this ORDER recommended by a Hearing Officer and I waive my right to an immediate appeal to a Superior Court Judge: **PLAINTIFF ATTORNEY FOR PLAINTIFF** **DEFENDANT ATTORNEY FOR DEFENDANT**
24. ☐ INTAKE CONFERENCE BY AUTHORIZED COURT STAFF: ☐ PROBATION PREPARED CHILD SUPPORT ORDER
25. ☐ The parties request the termination of all Title IV-D services and consent to direct payment of support. They are advised that all monitoring, collection, enforcement and location services

available under Title IV-D of the Social Security Act are no longer in effect. I understand I may reapply for Title IV-D services. _____ _____ obligee obligor
26. ☐Copies provided at hearing to ☐obligee ☐obligor 26A ☒Copies to be mailed to ☒obligee ☒obligor
TAKE NOTICE THAT THE ATTACHED NEW JERSEY UNIFORM SUPPORT NOTICES ARE INCORPORATED INTO THIS ORDER BY REFERENCE AND ARE BINDING ON ALL PARTIES.
So Recommended to the Court by the Hearing Officer: Date H.O. Signature
So Ordered by the Court: **Date 12/24/2020** **Judge PHILIP DEGNAN** J.S.C. **Signature** /s/ Philip Degnan

BANDLER MICHAEL *PLAINTIFF*	*VS*	LYNE DOREE *DEFENDANT*
☒Obligor ☐Obligee		☐Obligor ☒Obligee
HEARING DATE 06/17/2021		WELFARE / U.I.F.S.A. #

SUPERIOR COURT OF NEW JERSEY
Chancery Division-Family Part
CIVIL ACTION ORDER

COUNTY: ESSEX COUNTY
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With appearance by: ☐PL ☐Atty for PL _____
☐IV-D Atty ☐DEF ☐Atty for DEF
☐ County Probation Division
MARIA GIAMMONA, ESQ.

This matter having been opened to the court by: ☒ Plaintiff ☐Defendant ☐County Welfare Agency ☐Probation Division ☐Family Division for an **ORDER** for: ☐ **Paternity** ☐ **Support** ☒ **Visitation** ☐ **Custody** ☐ **Enforcement** ☐ **Modification / Increase / Decrease** ☐ **Termination / Continuation** ☒ **Status Review**

1. State with Continuing Exclusive Jurisdiction: **NEW JERSEY**

CHILD'S NAME	**BIRTH DATE**
2A. LYNE ZACHARY	04/10/2014
2B. LYNE GREGORY	04/05/2012
2C.	
2D.	
2E.	
2F.	

2G.	
2H.	

3. ☐ PATERNITY of child(ren) (# above) _____ is hereby established and an **ORDER** of paternity is hereby entered.

4. ☐ A Certificate of Parentage has been filed for child(ren) # _____ above.

5. ☐ IT IS HEREBY ORDERED THAT: The obligor shall pay support to the New Jersey Family Support Payment Center in the amount of:

[ ] +	[ ] +	[ ] =	[ ]
Child Support	**Spousal Support**	**Arrears Payment**	**Total**

payable [ ] effective [ ]
Frequency **Date**

NOTE: Child support is subject to a biennial cost-of-living adjustment in accordance with R. 5:6B

6. ☐ Child Support Guidelines Order
☐ Deviation reason:

6A. ☐ Worksheet attached.

7. ☐ Support order shall be administered and enforced by the Probation Division in the county of Venue, **ESSEX COUNTY**.

8. ☐ ARREARS calculated at establishment hearing are based upon amounts and effective date noted above and total $ _____

9. ☐ ARREARS indicated in the records of the Probation Division, are $ _____ as of **06/17/2021**

10. ☐ **GROSS WEEKLY INCOMES** of the parties, as defined by the Child Support Guidelines, upon which this **ORDER** is based:
OBLIGEE $ _____ **OBLIGOR** $ _____

11. ☐	**INCOME WITHHOLDING** is hereby ORDERED on current and future income sources, including: Name of income source: Address of income source: _____ _____ _____ _____ OBLIGOR SHALL, however, make payments AT ANY TIME that the full amount of support and arrears is not withheld.
12. ☐	**Medical Support** coverage as available at reasonable cost shall be provided for the ☐ **child(ren)** ☐ **spouse**, by **Obligor** ☐ **Obligee** ☐ **Both** ☐ The parties shall pay unreimbursable health care expenses of the child(ren) which exceed $250.00 per child per year as follows: _____ **% Obligor** _____ **% Obligee** **Pursuant to R 5:6A the obligee shall be responsible for the first $250.00 per child per year.** If coverage is available, Medical Insurance La card(s) as proof of coverage for the child(ren)/ spouse shall be provided immediately upon availability to the Probation Division by the: ☐ **Obligee** ☐ **Obligor**
12A. ☐	Insurance currently provided by a non-party: _____
12B. ☐	Health insurance benefits are to be paid directly to the health care provider by the insurer.

13. ☐	GENETIC TESTING to assist the court in determining paternity of the child(ren)(#_____) is hereby ORDERED. The county welfare agency or the foreign jurisdiction in the county of residence of the child shall bear the cost of said testing, without prejudice to final allocation of said costs. If defendant is later adjudicated the father of said child(ren), defendant shall reimburse the welfare agency for the costs of said tests, and pay child support retroactive to _____
13A. ☐	Issues of reimbursement reserved. 13B. ☐ Issue of retroactive order reserved.
14. ☐	This matter is hereby RELISTED for a hearing on _____ before _____. A copy of this ORDER shall serve as the summons for the hearings. No further notice for appearance shall be given. Failure to appear may result in a default order, bench warrant, or dismissal. Reason for relist:
15. ☐	AN EMPLOYMENT SEARCH MUST BE CONDUCTED BY THE OBLIGOR. Written records of at least #___ employment contacts per week must be presented to the Probation Division. If employed, proof of income and the full name and address of employer must be Provided immediately to the Probation Division.
16. ☐	SERVICE upon which this order is based: ☐ **Diligent Inquiry** **Personal Service** ☐**Certified Mail:** **Date:** _____ ☐**Signed by:** ☐**Refused** ☐**Regular Mail** ☐**Returned** **(not returned)** **Unclaimed** ☐**Other:**

17.	☐	A BENCH WARRANT for the arrest of the obligor is hereby ORDERED. The obligor was properly served with notice for court appearance on _____, and failed to appear. (Service noted above). An amount of $_____ shall be required for release.
	☐	THE OBLIGOR IS HEREBY INCARCERATED in the _____ County Jail until the obligor pays $_____ or until further notice of this court. The obligor was found to be not indigent and had the ability to pay the support order for reasons indicated below.
18.	☐	EFFECTIVE _____ FUTURE MISSED PAYMENT(S) numbering _____ or more may result in the issuance of a warrant, without further notice.
19.	☐	A LUMP SUM PAYMENT OF $_____ must be made by the obligor by _____, or a bench warrant may be issued without further notice.
20.	☐	This complaint / motion is hereby DISMISSED: (reason) _____
21.	☐	Order of Support is hereby TERMINATED effective _____ , as _____. Arrears accrued prior to effective date, if any, shall be paid at the rate and frequency noted on page number one of this ORDER.
22.	☐	THIS ORDER IS ENTERED BY DEFAULT. The ☐obligor ☐obligee was properly served to appear for a hearing on _____ and failed to appear. 22A.☐ Affidavit of Non-Military Service is filed.

23. ☒	It is further ORDERED: **Plaintiff MGF Michael Bandler filed a Motion for Reconsideration of and to Vacate the Court's order denying his request for grandparent visitation over the objection of the parents. Defendants Doree and Michael Lyne filed a cross application for counsel fees. For reasons set forth in the attached statement of reasons dated June 17, 2021, Plaintiff's applications are denied. Defendant's application for counsel fees is dismissed without prejudice. The Court declines to refer the matter to mediation pursuant to R. 5:8-1. So ordered.**
	EXCEPT AS PROVIDED HEREIN, ALL PRIOR ORDERS OF THE COURT REMAIN IN FULL FORCE AND EFFECT.
	I hereby declare that I understand all provisions of this ORDER recommended by a Hearing Officer and I waive my right to an immediate appeal to a Superior Court Judge: **PLAINTIFF** **ATTORNEY FOR PLAINTIFF**
24. ☐	**INTAKE CONFERENCE BY AUTHORIZED COURT STAFF:**
☐	**PROBATION PREPARED CHILD SUPPORT ORDER**
	DEFENDANT **ATTORNEY FOR DEFENDANT**

25. ☐	The parties request the termination of all Title IV-D services and consent to direct payment of support. They are advised that all monitoring, collection, enforcement and location services available under Title IV-D of the Social Security Act are no longer in effect, I understand I may reapply for Title IV-D services. _____ _____ obligee obligor
26. ☐	Copies provided at hearing to ☐obligee ☐**obligor** **26A.** ☒ Copies to be mailed to ☒obligee ☒obligor
	TAKE NOTICE THAT THE ATTACHED NEW JERSEY UNIFORM SUPPORT NOTICES ARE INCORPORATED INTO THIS ORDER BY REFERENCE AND ARE BINDING ON ALL PARTIES.
	So Recommended to the Court by the Hearing Officer: **Date** **H.O.** **Signature**
	So Ordered by the Court: **Date 06/17/2021** **Judge PHILIP DEGNAN J.S.C.** **Signature** Philip Degnan

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Statement of Reasons
FD-07-2412-20
Bandler v. Lyne
June 17, 2021

This matter comes before the Court on a motion for reconsideration and a motion to vacate the Court's

December 16, 2020 opinion denying plaintiff Michael Bandler's request for grandparent visitation. For the reasons that follow, the plaintiff's motion is denied.

I. Background

On or about February 4, 2021, Mr. Bandler filed a motion for reconsideration of the Court's December 16, 2020 opinion denying grandparent visitation. The clerk's office originally rejected the filing as untimely.[1] On April 29, 2021, this Court entered a briefing schedule, permitting Mr. Bandler to supplement his original motion papers. On or about May 27, 2021, as part of their opposition papers, the defendants Doree and Michael Lyne filed a cross application for counsel fees and any other relief deemed to be appropriate. Thereafter, the Court heard oral argument on June 11, 2021. For the reasons stated below, the Court denies Mr. Bandler's Motion to Reconsider or Vacate the prior order. The Court also declines to refer the matter to mediation as it finds no "genuine and substantial issue." R. 5:8-1; see R. 1:40-5. Finally, the Court dismisses without prejudice the request for counsel fees.

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[1] Mr. Bandler also filed a Notice of Appeal on February 3, 2021. Thus, at that point, the trial court no longer had jurisdiction to address the Motion for Reconsideration, whether timely or not. On April 22, 2021, however, the Appellate Division remanded the matter to the trial court for consideration of the motion and ordered that the Court "complete the remand proceedings within 60 days."

II. Motion for Reconsideration

Under the New Jersey Rules of Court:

> Except as otherwise provided by R. 1:13-1 (clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity 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, and shall have annexed thereto a copy of the judgment or order sought to be reconsidered and a copy of the court's corresponding written opinion, if any.
>
> [R. 4:49-2.]

Generally, a motion for reconsideration is directed at correcting a court's error or oversight. Reconsideration is not a vehicle to reargue a motion that has already been decided. The Appellate Division held that:

> Reconsideration should be utilized only for those cases which fall into that narrow corridor in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.

> [Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).]

Furthermore, "the magnitude of the error cited must be a game-changer for reconsideration to be appropriate." Palombi v. Palombi, 414 N.J. Super. 274, 289 (App. Div. 2010). "Said another way, a litigant must initially demonstrate that the [c]ourt acted in an arbitrary, capricious, or unreasonable manner, before the [c]ourt should engage in the actual reconsideration process." Ibid. (quoting D'Atria, 242 N.J. Super. at 401).

By its own terms, Rule 4:49-2 requires the movant to "state with specificity 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. . . ." Relief under the rule focuses on the substantive decision reached by the court in entering judgment. See Casino Reinvestment Dev. Auth. v. Teller, 384 N.J. Super. 408, 413 (App. Div. 2006) (holding a motion to vacate that "requested reconsideration of the matter on its merits" was properly decided under Rule 4:49-2).

The Court must first consider whether or not Mr. Bandler's application was timely filed. A motion for reconsideration must be "served not later than 20 days after the service of the judgment or order upon all parties by the party obtaining it." R. 4:49-2. During oral argument, it became clear that, while Mr. Bandler did receive the Court's decision on the record on December 16, 2020 and did receive a copy of the resulting

December 24, 2020 order directly from the Court, he could not identify the exact date that he received it. Rather he guessed that he received it a few days after the December 24 date. It is uncontroverted that he was not served with a copy of the order by the party who obtained it as the plain language of R. 4:49-2 contemplates. Mr. Bandler contends that, as a result, the 20-day period never began.

While the result here seemingly ignores the practice of the Family Part serving orders on the parties by mail, the Court is not aware of any caselaw that would permit a Family Part court to ignore the plain language of the Rule. So, notwithstanding the fact the Mr. Bandler was aware of the Court's decision as of December 16, 2020 and received a copy of the Court's order in the mail, the Court is constrained to conclude that the motion is timely under a plain reading of the Court Rule.[2]

Notwithstanding that fact, the Court is not persuaded that its prior order was based upon either "a palpably

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[2] The Court placed its decision on the record in open court on December 16, 2020. Mr. Bandler was present at that hearing and, thus, had knowledge of the Court's decision. A USSO which simply memorialized the fact that the Court had placed its opinion on the record was entered into the system on December 24, 2020 and was mailed to the parties by the Court as is the practice in Family Part matters. If the Court Rule's intent is to require service of a motion for reconsideration within 20 day of the party becoming aware of the Court's decision, then Mr. Bandler's motion should have been served no later than January 5, 2021. Given the plain language of the Court Rule and the lack of caselaw on the issue, however, this Court is constrained to find that the motion was timely filed, as Mr. Bandler was never served with a copy of the Court's order by defendants.

incorrect or irrational basis" or a failure to consider or appreciate "probative, competent evidence." Indeed, Mr. Bandler's own moving papers state that "[t]he argument made in the motion for reconsideration is not about the correct consideration of the facts presented or the application of established law." See Plaintiff's Reply Letter Brief, June 1, 2021 at p.2; see also, Plaintiff's Supplemental Brief, May 13, 2021 at p.3 ("There is more work to do. It is not Plaintiff's contention that the Court has not correctly considered the facts presented. It is not Plaintiff's contention that the Court has not applied established law to the facts presented."). Rather, the essence of his argument is that he believes that he raised sufficient concerns regarding "harms [that] are of a psychological nature and go far beyond the common knowledge of mere mortals and courts alike." See id. at 3. Among other things, he again contends throughout his moving papers that this matter should have been designated as a complex matter, that he should have been granted the opportunity to conduct discovery, that the failure to grant discovery violated his due process rights, and asserts that grandparent visitation matters should not automatically be handled in summary fashion.

After careful consideration of all of the filings and the arguments made on June 11, 2021, the Court finds that Mr. Dandier has not identified an error of the magnitude that would require reconsideration. The Court acknowledges that it did not grant Mr. Bandler's request that the matter be placed on a complex track. Nor did the Court grant Mr. Bandler's request for

discovery. Rather, the Court held a hearing to permit Mr. Bandler the opportunity to present evidence on the issue of harm, which took place on December 10, 2020. At that time, Mr. Bandler testified, as did the Lynes. The Court concluded that Mr. Bandler had not met his burden, finding instead that he had an "ordinary" grandparent relationship with the two children at issue and that further discovery was not warranted. See, e.g., Daniels v. Daniels, 381 N.J. Super. 286, 293 (App. Div. 2005).

At that hearing, the Court afforded Mr. Bandler the opportunity to articulate a specific, identifiable harm that would befall his grandsons if he were not granted visitation with them. In its December 16, 2020 opinion, the Court considered whether additional discovery was warranted, relying in part on Daniels v. Daniels, 381 N.J. Super. 286, 293 (App. Div. 2005) for the proposition that discovery is not always needed or appropriate in grandparent visitation cases. Further the Court considered Major v. McGuire, 224 N.J. 1, 35 (2016), which recognized the burdens that would be placed on a family if it were to be compelled to go through a discovery process. Ultimately, the Court considered the same facts and caselaw that Mr. Bandler raises again in his motion for reconsideration and simply found that the relief he requested then – and now again in his motion for reconsideration – was not warranted.

While Mr. Bandler is certainly entitled to appellate review of the Court's decisions, this Court cannot conclude (nor does Mr. Bandler assert) that its December

16, 2020 decision was based on "a palpably incorrect or irrational basis" or that the Court "did not consider, or failed to appreciate the significance of probative, competent evidence." See Cummings, 295 N.J. Super. at 384. He does not identify a fact or caselaw that was overlooked. Rather, in sum and substance, he seeks to reargue the positions that were already presented to the Court and rejected. As a result, his motion for reconsideration is denied.

III. Motion to Vacate

Rule 4:50-1 provides as follows:

> On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any

> other reason justifying relief from the operation of the judgment or order.
>
> [R. 4:50-1.]

With respect to the time for filing for relief under R. 4:50-1, the Rules of Court provide that "[t]he motion shall be made within a reasonable time, and for reasons (a), (b) and (c) of R. 4:50-1 not more than one year after the judgment, order or proceeding was entered or taken." R. 4:50-2.

Relief under Rule 4:50-1 should be granted sparingly. F.B. v. A.L.G., 176 N.J. 201, 207 (2003); Housing Auth. of Town of Morristown v. Little, 135 N.J. 274, 283-84 (1994).

In Fineberg v. Fineberg, the Appellate Division held that:

> The motion to vacate a judgment under either R. 4:50-1(a) or (f) "should be granted sparingly, and is addressed to the sound discretion of the trial court, whose determination will be left undisturbed unless it results from a clear abuse of discretion. Housing Authority of Town of Morristown v. Little, 135 N.J. 274, 283-84, 639 A.2d 286 (1994)." Pressler, Current N.J. Court Rules, comment 1 on R. 4:50 (1998). An application to vacate a default judgment is "viewed with great liberality, and every reasonable ground for indulgence is tolerated to the end that a just result is reached." Marder v. Realty Construction Co., 84 N.J. Super. 313, 319 (App. Div.), aff'd, 43 N.J. 508 (1964). Nevertheless, a default judgment will

> not be disturbed unless the failure to answer or otherwise appear and defend was excusable under the circumstances. Id. at 318.
>
> [309 N.J. Super. 205, 215-216 (App. Div. 1998).]

Note that parties are "not automatically foreclosed from relief under Rule 4:50-1 because they failed to make a timely motion under Rule 4:49-1." Baumann v. Marinaro, 95 N.J. 380, 393 (1984). In Baumann, the Rule 4:50-1 motion "encompass[ed] errors at the trial and errors occurring after trial[,]" and, therefore, the defendants were not using the rule to circumvent the time limits in Rule 4:491. Id. at 392. As the Court has explained in an opinion issued after Baumann,

> The very purpose of a Rule 4:50 motion is not, as in appellate review, to advance a collateral attack on the correctness of an earlier judgment. Rather, it is to explain why it would no longer be just to enforce that judgment. The issue is not the rightness or wrongness of the original determination at the time it was made but what has since transpired or been learned to render its enforcement inequitable.
>
> [In re Guardianship of J.N.H., 172 N.J. 440, 476 (2002).]

Here, in the alternative, Mr. Bandler suggests that he is also seeking relief under R. 4:50-1(f). See Plaintiff's Supplemental Brief, May 13, 2021 at p.2-3. His papers filed in support of that motion do not include a separate argument under R. 4:50-1(f). Rather he appears to rely on that Rule as a way to avoid the timeliness

issue raised by the Lynes in opposition to his motion, which as stated above is not necessarily inappropriate. Because, however, Mr. Bandler does not articulate a separate argument for relief under R. 4:50-1, the Court relies on its reasons stated above, in finding that relief under R. 4:50-1(f) is not warranted.

IV. Counsel Fees

Upon the filing of the Notice of Appeal, the Appellate Division took supervision and control of the instant proceedings. See R. 2:9-1. On April 22, 2021, the Appellate Division remanded this matter for the limited purpose of allowing the Court to consider Mr. Bandler's motion for reconsideration and ordered that the Court complete the remand proceedings within 60 days. Defendants' motion for counsel fees falls outside the limited scope of the remand and, as such, is dismissed without prejudice. Defendants may refile their application at a future date.

V. Mediation

In its April 22, 2021 order the Appellate Division granted permission to the trial court to refer this matter to mediation "if it deems the visitation issue to be genuine and substantial." For the reasons stated on the record on December 16, 2020, the Court declines to refer this matter to mediation over the parents' objection. The Court acknowledges that, whether the parents consent or not, mediation may be required when the Court concludes that there is a genuine and

substantial issue regarding custody or parenting time. See R. 5:8-1. It is axiomatic, however, that parents have a constitutional right to raise their children as they see fit. See Moriarty v. Bradt, 177 N.J. 84 (2003). In disputes between parents and grandparents, the grandparents are not on equal footing. See id. at 116. Indeed, a Court will only exercise its parens patriae authority to order grandparent visitation when the grandparent can show that specific, identifiable harm would befall the child if visitation were not granted. See Mizrahi v. Cannon, 375 N.J. Super. 221, 234 (App. Div. 2005). Here, because the Court found that Mr. Bandler did not make a prima facie showing of harm, the Court cannot conclude that there is a "genuine and substantial" that would warrant ordering mediation to take place over the parents' objection.

RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1473-20

M.B.,

Plaintiff-Appellant,

v.

D.L.,

Defendant-Respondent.

Argued April 4, 2022 – Decided June 22, 2022

Before Judges Rose and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FD-07-2412-20.

M.B., appellant, argued the cause pro se.

Maria A. Giammona argued the cause for respondent.

PER CURIAM

Plaintiff M.B. (Matt)[1] appeals from a December 24, 2020 order denying his application to compel visitation under the Grandparent Visitation Statute (GVS), N.J.S.A. 9:2-7.1. He also challenges a June 17, 2021 order denying his reconsideration motion and his motion to vacate. We affirm.

I.

Matt is the father of defendant D.L. (Dana). Dana and her husband, M.L. (Mark), reside in Essex Fells with their two children, G.L. (George) and Z.L. (Zeke), now ten and eight years old, respectively. Matt resides in Vermont, approximately 300 miles from Dana's home.

Following George's birth in 2012, Matt periodically visited his grandsons in New Jersey. One of the boys also visited with Matt in Vermont on one occasion. During his visits, Matt engaged in various activities with his grandchildren, including cooking meals, taking them out to dinner, reading to them, and helping George board a boat for the first time.

The parties dispute how often Matt's visits occurred. He alleges he visited the boys on eighteen to twenty-one occasions, but Dana contends Matt had seven visits with the boys and one additional visit with one child. The visits occurred in New Jersey, except for

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[1] We refer to the adult parties and children by initials and fictitious names to protect their privacy.

one time when Matt saw one of the grandchildren in Vermont. The boys did not stay with Matt overnight and he never served as their primary caretaker.

Over time, the relationship between Matt and Mark soured, so Mark stopped accompanying Dana and the boys during visits. Eventually, the relationship between Matt and Dana also deteriorated, but for a brief period, Dana allowed Matt to visit the boys outside her presence.

In December 2019, Dana notified Matt via email that George "wishe[d] to no longer see" Matt because he "ma[d]e [George] feel uncomfortable." Zeke, then five years old, visited with Matt once more, but subsequently told Dana he did not want to see Matt without George. All visits between Matt and the boys stopped in December 2019.

In February 2020, Matt filed a complaint under the GVS to compel visitation with his grandsons. Several weeks later, Dana filed a counterclaim and moved to dismiss the complaint; she also sought an award of counsel fees. Alternatively, she requested permission to file an untimely answer to the complaint. In response, Matt sought permission to file a non-conforming complaint and to have the matter designated as "complex," pursuant to Rule 5:57(c).[2]

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[2] Under this Rule, a non-dissolution case is "presumed to be summary and noncomplex." A Family Part judge has discretion to place a case on the complex track. Ibid. Complex cases are "exceptional cases that cannot be heard in a summary manner." Ibid. A Family Part judge "may assign [a] case to the complex track based

Judge Philip J. Degnan conducted a summary proceeding via video conference on August 12, 2020. The next day, he entered an order denying Dana's motion to dismiss. He also relisted the matter for a virtual summary hearing to address Matt's request for grandparent visitation.[3] The August 13 order does not reflect any ruling on Dana's request for counsel fees nor Matt's application to place the matter on the complex track.[4]

Prior to the hearing, Matt submitted supplemental briefing and renewed his request to have the case designated as complex. He also sought discovery and asked the court to order mediation and an expert evaluation. In support of his request for an evaluation, Matt submitted a letter from Dr. Mathias R. Hagovsky, who offered to conduct an evaluation for the purpose of: "[e]xploring the genesis of the request by [George] to terminate contact"; "[e]xploring the basis for [Zeke] continuing to request contact"; and "[i]nvestigating the relationship history of the parents with the grandfather," among other objectives. Dr. Hagovsky did not speak with Dana or the children before submitting the letter; instead, he reviewed the parties' pleadings as

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only on a specific finding that discovery, expert evaluations, extended trial time or another material complexity requires such an assignment." Ibid.

[3] It appears the August 12 and subsequent hearings were ordered to proceed remotely due to the ongoing COVID-19 pandemic.

[4] We were not provided with a transcript of the August 12 hearing, so we are unaware if the judge addressed these outstanding issues at that hearing.

well as the certifications they filed in March and May 2020.

The virtual hearing proceeded on December 9, 2020. The record reflects both parties and Dana's husband testified at the hearing.[5] One week later, Judge Degnan rendered an oral opinion, denying Matt's requests to: assign the matter to a complex track; compel mediation; permit discovery; and compel grandparent visitation. The judge credited Dana's testimony regarding the nature of Matt's relationship with his grandsons, George's decision to stop visiting with Matt, and the decision Dana made with her husband to discontinue visits after concluding visitation "was not in the children's best interest." In denying Matt's application, Judge Degnan found Matt "failed to articulate harm that is specific to both of the grandchildren as required by law." Further, the judge concluded

> the [parties'] disagreement does not amount to a genuine and substantial factual dispute.
>
> . . . .

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[5] We were not provided with a transcript from the December 9 hearing. See R. 2:6-1(a)(1)(I) (requiring the appellant to include in the appendix on appeal "such other parts of the record . . . as are essential to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied on by the respondent in meeting the issues raised"). Although we are not "obliged to attempt review of an issue when the relevant portions of the record are not included," Community Hospital Group, Inc. v. Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C., 381 N.J. Super. 119, 127 (App. Div. 2005) (citations omitted), in the interest of addressing the issues before us, we have opted to address plaintiffs arguments on the merits.

While in no way diminishing the importance of a grandparent's role in a child's life, even plaintiffs version of the relationship reveals that over the course of their lives, . . . plaintiff developed what can be characterized as an ordinary relationship between grandparent and grandchildren. . . . He was never the caretaker of the children. . . . [I]n fact, plaintiff never had the children overnight.

It's the court's obligation to weigh the substantialness of the factual disputes between the parties against plaintiffs procedural right to engage in discovery and present evidence to resolve those disputes. Here the court finds . . . the lack of factual dispute and plaintiffs inability to make the required showing of harm . . . outweigh the curtailment of the procedural rights that comes with declining to hold a full evidentiary trial.

. . . .

Overall, the court finds . . . plaintiff has failed to articulate a specific harm to a degree that the court should consider ordering grandparent visitation. Ultimately, the evidence . . . supports the finding that this was an ordinary grandparent/grandchild relationship that was based upon periodic visits that were likely meaningful to all involved but it is not a special relationship contemplated in the case law in which grandparent visitation [is] ordered.

. . . .

Additionally, in looking at the harms that are identified by the plaintiff, the court finds that they are not specific or identifiable. Here plaintiff claims .. . three types of harm. First, plaintiff claims that the failure to rule in his favor compounded with the recent loss of the children's paternal grandfather will constitute emotional trauma, but there's no significant evidence that the passing of the other grandfather was a traumatic event for the children or that there would be such connection here.

Second, plaintiff claims that the potential continuance of a relationship with one child but not the other would produce disparate outcomes for the children. This, too, does not appear to be an issue. As of this point the [boys' parents] have decided that neither child should visit with [plaintiff].

Third, plaintiff claims that the children will be harmed if they are permitted to make a life-altering decision such as the termination of the grandparent/grandchild relationship while they are still as young as they are. Again, this is speculative and likely factually incorrect given that the [boys' parents] testified that this was their decision, albeit based on the input from the children. . . .

Ultimately, these alleged harms do not constitute a basis to override the [parents'] constitutional right to autonomously raise their children as they see fit. So, for those reasons the court is . . . denying the application

for grandparent visitation over the parents' objection.

Regarding Matt's request to place the case on a complex litigation track, Judge Degnan further determined Matt had the "burden to demonstrate why the potential evidence in this case is exceptionally difficult or intricate." The judge found Matt failed to meet that burden, the case was not "particularly complicated," and it could be resolved by way of a summary proceeding. Citing Major v. Maguire,[6] the judge concluded "the burdens on the privacy and resources of a family [as they exist in complex grandparent visitation cases] are neither necessary nor appropriate here."

Further, the judge denied Matt's request for mediation, concluding, "[t]he parents have made their position clear . . . and there's been no inclination that will change. Moreover, the lack of specific harm . . . would not warrant [such] relief." Similarly, the judge denied Matt's request for an expert evaluation, finding Dr. Hagovsky's letter did not support an evaluation because it did "not contain an opinion on the issue of harm but rather identifie[d] categories of information that might require further exploration. The factors identified [by Dr. Hagovsky] go largely to . . . the nature of the relationship about which the plaintiff is already well aware." The judge issued a conforming order on December 24, 2020.

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[6] 224 N.J. 1 (2016).

In February 2021, Matt moved for reconsideration of the December 24 order, and moved to vacate the same order under Rule 4:50-1(f).[7] Contemporaneously, he filed a notice of appeal. In April 2021, we granted Matt's request for a remand to allow Judge Degnan to consider Matt's pending motions but did so without passing judgment on the timeliness of Matt's reconsideration motion.

Although Judge Degnan found Matt was in court when his initial motion for grandparent visitation was denied on December 16, 2020, and that Matt "receive[d] a copy of the resulting December 24, 2020 order directly from the court," the judge chose not to deny the reconsideration motion on timeliness grounds. Instead, he considered the merits of Matt's reconsideration and vacatur motions.

Judge Degnan denied both motions on June 17, 2021, finding Matt had "not identified an error of the magnitude that would require reconsideration" and that Matt failed to show the December 24 order flowed from "a palpably incorrect or irrational basis." Likewise, the judge concluded Matt was not entitled to relief under Rule 4:50-1 for the reasons reconsideration was unwarranted. Also, the judge found Matt failed to advance an argument under Rule 4:50-1(f) to support his vacatur motion and it appeared Matt relied on the

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[7] Rule 4:50-1(f) provides a party may be relieved from a final judgment or order for "any reason justifying relief from the operation of the judgment or order."

Rule "as a way to avoid the timeliness issue raised by [his adversary]."

II.

On appeal, Matt argues as follows:

> POINT I – The Process Before the Trial Court was Incorrectly Limited[,] Leading to an Unfair Denial of Grandparent Visitation.

To support this contention, Matt further argues:

> A. Defendant[] filed no answer, leaving Plaintiff's complaint unopposed;
>
> B. The Court's denial of the Motion to Dismiss was a prima facie showing for grand[]parent visitation if proven;
>
> C. The Court's denial of the Motion to Dismiss confirms the adequacy of the alleged harm to [plaintiffs grandsons;]
>
> D. The trial court did not afford Plaintiff due process;
>
> E. There is good reason to characterize this matter as complex.

These arguments are unavailing.

Our limited scope of review of a trial court's findings is well established. See Cesare v. Cesare, 154 N.J. 394, 411 (1998). We accord deference to the family courts due to their "special jurisdiction and expertise" in the area of family law, and we will not disturb the court's factual findings and legal conclusions "unless

[we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Id. at 412-13 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)).

Additionally, a trial court's decision to deny a motion for reconsideration will be upheld on appeal unless the motion court's decision was an abuse of discretion. Granata v. Broderick, 446 N.J. Super. 449, 468 (App. Div. 2016) (citing Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002)). Also, a "trial court's determination under [Rule 4:50-1] warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." U.S. Bank Nat'l Assn v. Guillaume, 209 N.J. 449, 467 (2012). An abuse of discretion "arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. INS, 779 F.2d 1260, 1265 (7th Cir. 1985)). On the other hand, a judge's purely legal decisions are subject to our de novo review. Crespo v. Crespo, 395 N.J. Super. 190, 194 (App. Div. 2007) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). Governed by these principles, we discern no reason to disturb either of the challenged orders. We add the following comments.

The GVS "confers on a child's grandparent . . . standing to file an action for an order compelling visitation[,]" Major, 224 N.J. at 13, and "provides the

framework for grandparent . . . visitation when visitation is proven to be 'in the best interests of the child[,]'" N.J. Div. of Youth & Fam. Servs. v. S.S., 187 N.J. 556, 562 (2006) (quoting N.J.S.A. 9:2-7.1(a)). Although the GVS permits the court to order visitation with a grandparent, we have recognized "by virtue of a fit parent's fundamental due process right to raise his or her children, the parent is entitled to a presumption that he or she acts in the best interests of the child, and that the parent's determination whether to permit visitation is entitled to 'special weight." Major, 224 N.J. at 15 (quoting Troxel v. Granville, 530 U.S. 57, 67-69 (2000)).

A "grandparent seeking . . . visitation [under the GVS] must prove by a preponderance of the evidence that denial of [the visitation] would result in harm to the child." Id. at 7 (citing Moriarty v. Bradt, 177 N.J. 84, 117-18 (2003)). "Substantively, it is a 'heavy burden." Slawinski v. Nicholas, 448 N.J. Super. 25, 34 (App. Div. 2016) (quoting Major, 224 N.J. at 18). Only "[i]f . . . the potential for harm has been shown [can] the presumption in favor of parental decision making . . . be deemed overcome." Id. at 33 (quoting Moriarty, 177 N.J. at 117). Thus, the grandparent must make "a clear and specific allegation of concrete harm to the children." Daniels v. Daniels, 381 N.J. Super. 286, 294 (App. Div. 2005).

The alleged harm must be "significant" enough to "justify[] State intervention in the parent-child relationship." Id. at 293. "Mere general and conclusory allegations of harm . . . are insufficient." Id. at 294. The purpose behind this heightened pleading

requirement is "to avoid imposing an unnecessary and unconstitutional burden on fit parents who are exercising their judgment concerning the raising of their children[.]" Ibid. Otherwise, "any grandparent could impose the economic and emotional burden of litigation on fit parents, and on the children themselves, merely by alleging an ordinary grandparent-child relationship and its unwanted termination." Id. at 293.

In Slawinski, we described the level of harm that a grandparent must demonstrate before a court is required to determine whether visitation is in a child's best interest. We stated:

> [P]roof of harm involves a greater showing than simply the best interests of the child. [Moriarty], 177 N.J. at 116 (stating that a dispute between a "fit custodial parent and the child's grandparent is not a contest between equals[,]" consequently "the best interest standard, which is the tiebreaker between fit parents, is inapplicable"). . . . The harm to the grandchild must be "a particular identifiable harm, specific to the child." Mizrahi v. Cannon, 375 N.J. Super. 221, 234 (App. Div. 2005). It "generally rests on the existence of an unusually close relationship between the grandparent and the child, or on traumatic circumstances such as a parent's death." [Daniels, 381 N.J. Super. at 294]. By contrast, missed opportunities for creating "happy memories" do not suffice. Mizrahi, 375 N.J. Super. at 234. Only after the grandparent vaults the proof-of-harm threshold will the court apply a best-interests analysis to

> resolve disputes over visitation details. Moriarty, 177 N.J. at 117.
>
> [Slawinski, 448 N.J. Super. at 34 (third alteration in original) (emphases added).]

Accordingly, if a grandparent meets the threshold showing of harm, the best interest standard applies and a trial court should consider the statutory factors under N.J.S.A. 9:2-7.1(b) to determine whether permitting visitation would be in the child's best interest.[8] Moriarty, 177 N.J. at 117. But "the trial court should not hesitate to dismiss an action without conducting a full trial if the grandparents cannot sustain their burden to make the required showing of harm." Major, 224

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[8] Those statutory factors include:

> (1) The relationship between the child and the applicant;
>
> (2) The relationship between each of the child's parents or the person with whom the child is residing and the applicant;
>
> (3) The time which has elapsed since the child last had contact with the applicant;
>
> (4) The effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;
>
> (5) If the parents are divorced or separated, the time[-] sharing arrangement which exists between the parents with regard to the child;
>
> (6) The good faith of the applicant in filing the application;
>
> (7) Any history of physical, emotional[,] or sexual abuse or neglect by the applicant; and
>
> (8) Any other factor relevant to the best interests of the child.

N.J. at 25. As we have cautioned, "[t]he process of discovery can impose expense, inconvenience and trauma" and therefore "[a]bsent special circumstances, parents who decide to limit or even preclude grandparent visitation should not be faced with court-ordered psychological examinations and other intrusive measures at the grandparents' behest." Daniels, 381 N.J. Super. at 297.

Guided by these standards, we disagree with Matt's contentions Judge Degnan: (1) mistakenly failed to characterize this matter as complex; (2) deprived Matt of due process; or (3) erred in denying him grandparent visitation. In fact, the record before us demonstrates Judge Degnan afforded Matt ample opportunity to prove the matter was complex in nature and to establish a threshold showing of harm. Here, the judge initially denied Dana's motion to dismiss. Thereafter, he conducted a full testimonial hearing to consider Matt's allegations his grandsons would suffer harm if visits were terminated. But the judge credited Dana's testimony over that of Matt, concluded Matt failed to demonstrate why this case was so exceptional that it could not be heard in a summary manner, and found Matt failed to make the requisite preliminary showing of harm flowing from a termination of grandparent visitation. Under these circumstances, we perceive no reason to second-guess Judge Degnan's ultimate determination this case warranted dismissal.

To the extent we have not addressed any of Matt's remaining arguments, we are satisfied they lack

sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-001473-20T2

M.B.
V.
D.L.

MOTION NO. M-006017-21
BEFORE JUDGE(S): PART E
LISA ROSE
CATHERINE I. ENRIGHT

MOTION FILED: 07/01/2022
BY: MICHAEL BANDLER

ANSWER(S) FILED:

SUBMITTED TO COURT: July 18, 2022

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 18th day of July, 2022, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR RECONSIDERATION DENIED
AND

MOTION TO EXTEND TIME TO FILE A SUPPORTING BRIEF TO 6/22/22 GRANTED

FOR THE COURT:

/s/ Lisa Rose
LISA ROSE, J.A.D.

SUPREME COURT
OF NEW JERSEY
C-361 September Term 2022
087410
[**FILED**, Clerk of the
Supreme Court,
13 Jan 2023]

M.B.,

Plaintiff-Petitioner,

v. ORDER

D.L.,

Defendant-Respondent.

A petition for certification of the judgment in A-001473-20 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 10th day of January, 2023.

/s/ Heather J. Bates
CLERK OF THE
SUPREME COURT