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APPENDIX A

SUPREME COURT OF NEW JERSEY
C-523 September Term 2023
088532

FILED, Clerk of the Supreme Court,
03 Jun 2024, 088532

S.M.,

Plaintiff-Petitioner,

v.

R.R.C.,

Defendant-Respondent.

ORDER

A petition for certification of the judgment in A-001020-21 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 29th day of May, 2024.

/s/
CLERK OF THE SUPREME COURT

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1020-21

RECORD IMPOUNDED

NOT FOR PUBLICATION
WITHOUT THE APPROVAL OF
THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court ." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

S.M.,

Plaintiff-Appellant,

v.

R.R.C.,

Defendant-Respondent.

Argued March 8, 2023 – Decided June 22, 2023

Before Judges Mayer and Enright.

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

18-0639-15.

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

Sarah O'Connor argued the cause for respondent (O'Connor Family Law, LLC, attorneys; Sarah O'Connor, on the brief).

PER CURIAM

In this post-judgment matrimonial matter, plaintiff S.M. challenges orders entered on June 28, November 19, and December 20, 2021 in favor of her former husband, defendant R.R.C.[1] We affirm each order, substantially for the reasons expressed by the judges in their respective comprehensive written opinions.

I.

We incorporate the detailed factual findings and legal conclusions set forth in the judges' June 28, November 19, and December 20 opinions, noting the opinions are interrelated. Therefore, we need only summarize the facts.

The parties were divorced in October 2015 and have three children: M.C. (Mary), R.C. (Riley), and R.C. (Ryan), ages 19, 18, and 16, respectively. The parties' October 5, 2015 marital settlement agreement

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[1] We use initials for the parties and pseudonyms for their children to protect their privacy. R. 1:38-3(d)(3).

(MSA) was incorporated into their judgment of divorce and provided the parties would share joint legal custody of the children. Plaintiff was designated as Ryan's parent of primary residence (PPR) and defendant was designated as the PPR for Mary and Riley. Further, the MSA fixed defendant's child support obligation at $55 per week. Other financial issues, including alimony and equitable distribution of the parties' land in India, were also addressed in the MSA.

On June 21, 2018, Ryan left plaintiff's home to live with defendant. Approximately one month later, the trial court directed defendant to return Ryan to plaintiff's custody, but the child refused. Ryan has continuously lived with defendant for the past five years.

On September 24, 2018, in response to the parties' ongoing motion practice over custody, child support and counsel fees, the trial court entered an order, directing the parties to appear for a plenary hearing to address these issues. After the plenary hearing was initially postponed, the trial court entered an order in January 2019, denying plaintiff's motion to return Ryan to her custody and defendant's motion for plaintiff to pay him child support. Pursuant to the order, both applications were denied "without prejudice pending the plenary hearing." The order also enforced prior orders directing plaintiff to sign a joint Power of Attorney (POA) to facilitate the sale of the parties' land in India.

The plenary hearing proceeded in July 2019,

during which the judge considered a report submitted by Ryan's guardian ad litem. On July 24, 2019, the judge entered an order, continuing plaintiff as Ryan's PPR but mandating that Ryan "continue to temporarily reside with defendant." The judge also directed the parties to participate in a reunification therapy program entitled "Building Family Resilience" (BFR). However, the July 24 order did not address defendant's pending requests to terminate his child support obligation and compel plaintiff to pay him child support.

On September 12, 2019, the judge entered an order continuing defendant's temporary custody of Ryan, subject to plaintiff remaining Ryan's designated PPR, but the issues regarding the parties' respective child support obligations remained unaddressed. In November 2019 and January 2020, the judge issued additional orders, but denied defendant's outstanding child support application without prejudice, pending completion of the BFR program.

Although the parties continued to engage in motion practice, it was not until June 28, 2021, approximately one year after the parties concluded their participation in the BFR program, that the court granted defendant's request to terminate his child support payments to plaintiff. A different judge extinguished defendant's obligation to pay child support as of June 21, 2018, the date when Ryan started to live with his father.

The judge also denied plaintiff's request that Ryan be returned to her custody. The judge Marino

found Ryan "established a life in [d]efendant's home and appear[ed] to be thriving in his personal and school life," and "want[ed] to continue to live with [d]efendant in his home." She added, "[t]he parties . . . established a status[]quo for [Ryan] to reside with [d]efendant" and plaintiff failed to demonstrate a "basis to modify the existing custody arrangement."

Additionally, the court granted defendant's request for plaintiff to pay him child support and reimburse him for any child support payments he made after June 21, 2018. However, the judge refrained from fixing an amount or an effective date for plaintiff's child support obligation, pending the parties' exchange of updated Case Information Statements (CISs) and other financial information due within ten days of the June 28 order.

The judge also denied plaintiff's request for physical custody of the parties' daughters "as compensation" for parenting time defendant purportedly withheld from plaintiff in the preceding five years. The judge found such a request was "not appropriate" "as a form of make-up parenting time." Moreover, she concluded plaintiff had "not met the burden required to warrant a modification of the current custody arrangement."

Further, the judge ordered plaintiff to: reimburse defendant $634.57 for her share of Riley's medical expenses; execute a POA within one week to facilitate the sale of the parties' land in India, or face daily sanctions for noncompliance; turn over Ryan's and Riley's Social Security cards, as well as Ryan's

passport and Person of Indian Origin (PIO) card within one week, or face daily sanctions for noncompliance; and pay defendant counsel fees in the sum of $3,121.25. Additionally, the judge found plaintiff in violation of the MSA and a February 2018 order, due to her prior failure to cooperate with the sale of the parties' land in India.

In awarding defendant counsel fees, the judge found "[p]laintiff . . . previously requested identical relief from the [c]ourt on several occasions" and "[d]efendant . . . incurred attorney fees litigating a matter that was previously denied by the [c]ourt without a sufficient change in circumstances to warrant [p]laintiff requesting identical relief." The judge also concluded "[p]laintiff's repeated motions on the same subject matter [were] frivolous and in bad faith."

The parties filed another round of motions in the Fall of 2021 regarding various issues, including custody, child support, and counsel fees. Following argument on the parties' cross-applications on November 19, 2021, the court entered an order, modifying the termination date of defendant's child support obligation to April 29, 2021, the filing date of the motion leading to the entry of the June 28, 2021 order. Additionally, the judge directed plaintiff to reimburse defendant for any child support payments he made after April 29, 2021. The court also: enforced the June 28 order compelling plaintiff to file an updated CIS; gave defendant permission to vaccinate the children for COVID-19; granted defendant an additional counsel fee of $2,812.50; sanctioned plaintiff

for her failure to timely execute the POA as ordered; enforced the June 28 order requiring plaintiff to turn over the children's legal documents, including Ryan's and Riley's Social Security cards; granted defendant's request for monetary sanctions in the event plaintiff continued to violate prior court orders; and held plaintiff in violation of defendant's rights for failing to comply with the MSA and prior court orders. In awarding defendant counsel fees, the judge concluded:

> Plaintiff should have known that no reasonable argument could be advanced in fact or law in support of the relief she sought. . . . Plaintiff has a duty to engage in minimal legal research and factual investigations prior to filing an application but she did not do so here. As a result, defendant incurred unnecessary legal fees. Plaintiff was found to be in violation of two prior court orders and the MSA.

On December 3, 2021, the court executed a conforming Uniform Summary Support Order (USSO), directing plaintiff to pay child support at the rate of $341 per week from April 29, 2021 through August 19, 2021 and $367 per week thereafter. Plaintiff has not challenged this order on appeal.

Plaintiff moved to stay the November 19 order. In response, defendant filed a cross-motion, asking the judge to reconsider the November 19 order and reinstate the original termination date for his child support obligation to June 21, 2018. He also requested

that the court: compel plaintiff to pay him child support as of June 21, 2018; adjudicate her in violation of his rights; sanction her for her violation of court orders, including her failure to timely execute a corrected POA and turn over the children's documents; and award him additional counsel fees.

Following argument on the cross-applications, the court entered an order on December 20, 2021, denying plaintiff's motion to stay the November 19 order. The judge also reinstated the termination date of defendant's child support obligation to June 21, 2018, consistent with the June 28, 2021 order, finding the children "resided exclusively with defendant since 2018." The judge concluded reconsideration of her November 19 order as to the parties' child support obligations was proper because she "did not [previously] consider and fully appreciate the extensive procedural background with respect to defendant's request to terminate his child support obligation and retroactively modify same with respect to plaintiff."

In reconsidering the commencement date of plaintiff's child support obligation — without altering the weekly child support figures set forth in the December 3 USSO — the judge found plaintiff owed defendant child support as of September 1, 2018, rather than April 29, 2021.[2] The judge reasoned that all three children were living with defendant by

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[2] The court amended the December 3 USSO on February 28, 2022 to reflect the updated commencement date for plaintiff's child support obligation. That order is not challenged on appeal.

September 1, 2018 and absent proof to the contrary, September 1, 2018 would have been the earliest filing date of defendant's motion for retroactive child support before the court denied his request without prejudice in its September 24, 2018 order.

Although the court noted, "[g]enerally, N.J.S.A. 2A:17-56.23a[] bars the retroactive modification of child support," she found the bar was not absolute because under the statute, "a court may retroactively modify [a payor's] child support obligation under an existing court order back to the filing date of an 'application for modification,' or forty-five days earlier upon service of advance written notice." Based on these exceptions, the judge concluded defendant "first requested that plaintiff's child support obligation be modified sometime before entry of the September 24, 2018 [o]rder," and "[f]rom that moment forward, plaintiff was on notice that she may be required to pay child support to defendant based on changed circumstances." The judge also observed that defendant continually renewed his request for an order compelling plaintiff pay him child support following the entry of the September 24 order but "[t]he court did not grant defendant's request to establish child support and retroactively modify same until the June 28, 2021 [o]rder." Thus, plaintiff was not "blindsided" by a support obligation that "she never expected."

Turning to the additional relief requested by defendant, the court sanctioned plaintiff $200 for her failure to timely provide defendant with the children's documentation, adjudicated plaintiff in violation of defendant's rights for that failure and granted

defendant's request to have plaintiff execute a revised POA. Finally, the judge denied defendant's request for counsel fees.

II.

On appeal, plaintiff challenges the June 28, November 19, and December 20, 2021 orders, arguing the court erred by: (1) failing to enforce child custody and parenting time provisions under the MSA and instead, allowing Ryan to remain in defendant's physical custody; (2) retroactively terminating defendant's child support payments; (3) retroactively fixing plaintiff's child support obligation; (4) imposing sanctions against her for failing to timely execute a POA to sell the parties' land in India and failing to timely turn over Ryan's and Riley's identification documents; (5) ordering her to sign a POA for the sale of the land in India; (6) directing plaintiff to pay $634.57 in medical reimbursements; (7) awarding defendant counsel fees; (8) failing to address errors and omissions in defendant's CIS; (9) compelling plaintiff to turn over Ryan's passport, PIO and Social Security card to defendant; (10) finding her in violation of certain provisions of the MSA; (11) allowing defendant to have the children vaccinated for COVID-19 against her objection; (12) denying plaintiff's request for a transfer in physical custody of the parties' daughters as "compensation" for parenting time she lost; and (13) failing to order defendant to take Riley for physical therapy to treat Riley's scoliosis.

Preliminarily, we observe that plaintiff's

arguments under points eleven, twelve and thirteen are moot, considering the children were previously vaccinated for COVID-19 and the parties' daughters have reached majority. "An issue is 'moot when our decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" *Redd v. Bowman*, 223 N.J. 87, 104 (2015) (quoting *Deutsche Bank Nat'l Tr. Co. v. Mitchell*, 422 N.J. Super. 214, 221-22 (App. Div. 2011)). We generally do not address contested issues that have become moot, *see De Vesa v. Dorsey*, 134 N.J. 420, 428 (1993), and see no reason to deviate from that standard here.

Regarding plaintiff's remaining arguments, we are satisfied they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add the following comments.

Our review of a Family Part order is limited. *Cesare v. Cesare*, 154 N.J. 394, 411 (1998). "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." *Id.* at 413. Therefore, a judge's fact-finding is "binding on appeal when supported by adequate, substantial, credible evidence." *Id.* at 411- 12 (citing *Rova Farms Resort, Inc. v. Invs. Ins. Co.*, 65 N.J. 474, 484 (1974)). However, we review the Family Part's interpretation of the law de novo. *D.W. v. R.W.*, 212 N.J. 232, 245-46 (2012).

"Discretionary determinations, supported by the record, are examined to discern whether an abuse of reasoned discretion has occurred." *Ricci v. Ricci*, 448

N.J. Super. 546, 564 (App. Div. 2017) (citing *Gac v. Gac,* 186 N.J. 535, 547 (2006)). An abuse of discretion occurs when a trial court's decision "rested on an impermissible basis, considered irrelevant or inappropriate factors, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." *Elrom v. Elrom,* 439 N.J. Super. 424, 434 (App. Div. 2015) (internal quotation marks and citations omitted).

A trial court's decision concerning custody or parenting time is left to the sound discretion of the Family Part judge. *See Randazzo v. Randazzo,* 184 N.J. 101, 113 (2005). Also, when a trial court addresses a custody or parenting time dispute, "it is well settled that the court's primary consideration is the best interests of the children." *Hand v. Hand,* 391 N.J. Super. 102, 105 (App. Div. 2007) (citing *Kinsella v. Kinsella,* 150 N.J. 276, 317 (1997)). Therefore, a parent seeking to modify a custody or parenting time arrangement "bear[s] the threshold burden of showing changed circumstances which would affect the welfare of the children." *Todd v. Sheridan,* 268 N.J. Super. 387, 398 (App. Div. 1993) (citing *Sheehan v. Sheehan,* 51 N.J. Super. 276, 287 (App. Div. 1958)); *see also Lepis v. Lepis,* 83 N.J. 139, 157 (1980).

Changes in a child's preference may warrant modification of a custody and parenting time arrangement. *Fall & Romanowski, N.J. Family Law: Child Custody, Protection & Support* § 24:2-2(d) (2022-2023). Indeed, "as in all custody determinations, the preference of the child[] of 'sufficient age and capacity' must be accorded 'due weight.' This standard gives the

trial court wide discretion regarding the probative value of a child's custody preference." *Beck v. Beck*, 86 N.J. 480, 501 (1981) (quoting N.J.S.A. 9:2-4; *Lavene v. Lavene*, 148 N.J. Super. 267, 271 (App. Div. 1977)). Further, "the desires of older children may be entitled to stronger consideration than that afforded to younger children." *Wilke v. Culp*, 196 N.J. Super. 487, 498 (App. Div. 1984). In that regard, we are mindful Ryan will turn seventeen in a few months and both of his sisters have reached majority.

Turning to the issue of child support, it is well established that "[w]hether [a support] obligation should be modified based upon a claim of changed circumstances rests within a Family Part judge's sound discretion." *Larbig v. Larbig*, 384 N.J. Super. 17, 21 (App. Div. 2006) (citations omitted) . A movant seeking to modify a support obligation bears the burden of proving a modification is warranted. *Lepis*, 83 N.J. at 157. "When the movant is seeking modification of child support, the guiding principle is the 'best interests of the children.'" *Ibid.* (citations omitted).

The right to child support belongs to the child, not the parents. *Martinetti v. Hickman*, 261 N.J. Super. 508, 512 (App. Div. 1993). Further, "a parent is obliged to contribute to the basic support needs of an unemancipated child to the extent of the parent's financial ability." *Id.* at 513. And the child's overall needs must be considered by the trial court when determining the parents' responsibility for child support. N.J.S.A. 2A:34-23(a)(1).

N.J.S.A. 2A:17-56.23a generally prohibits retroactive modification of an existing child support order. But as the court noted, there are exceptions to this bar, and the statute specifically allows for a retroactive modification of a child support obligation for "the period during which there is a pending application for modification." *Ibid.*[3]

Additionally, it is well settled that an order granting or denying a counsel fee request is reviewed for an abuse of discretion. *Harte v. Hand*, 433 N.J. Super. 457, 465-66 (App. Div. 2013) (citing *J.E.V. v. K.V.*, 426 N.J. Super. 475, 492 (App. Div. 2012)); *see also Giarusso v. Giarusso*, 455 N.J. Super. 42, 51 (App. Div. 2018). "Fees in family actions are normally awarded to permit parties with unequal financial positions to litigate (in good faith) on an equal footing." *J.E.V.*, 426 N.J. Super. at 493 (quoting *Kelly v. Kelly*, 262 N.J. Super. 303, 307 (Ch. Div. 1992)). But "where a party acts in bad faith[,] the purpose of the counsel fee award is to protect the innocent party from [the] unnecessary costs and to punish the guilty party." *Welch v. Welch*, 401 N.J. Super. 438, 448 (Ch. Div. 2008) (citing *Yueh v. Yueh*, 329 N.J. Super. 447, 461 (App. Div. 2000)).

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[3] We recognize there are additional circumstances allowing for a retroactive modification of child support, notwithstanding N.J.S.A. 2A:17-56.23a. *See Bowens v. Bowens*, 286 N.J. Super. 70, 73 (App. Div. 1995) (permitting retroactive emancipation and termination of child support); *Mahoney v. Pennell*, 285 N.J. Super. 638, 643 (App. Div. 1995) (holding "[w]here there is no longer a duty of support by virtue of a judicial declaration of emancipation, no child support can become due").

When addressing a counsel fee application, a judge should consider the following factors:

> (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 both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.
>
> [R. 5:3-5(c).]

We also review a trial court's imposition of sanctions under an abuse of discretion standard. See *Innes v. Carrascosa,* 391 N.J. Super. 453, 498 (App. Div. 2007). Economic sanctions must "rationally relate[] to the desideratum of imposing a 'sting' on the offending party within its reasonable economic means." Pressler & Verniero, *Current N.J. Court Rules*, cmt. 4.4.3 on R. 1:10-3 (2023). If a court is satisfied the non-compliant party was capable of following the order and willfully failed to comply, it may impose appropriate sanctions. *Milne v. Goldenberg*, 428 N.J. Super. 184, 198 (App. Div. 2012). "Sanctions under *Rule* 1:10-3 are intended to coerce a

party's compliance." *Ibid.*

Finally, we note a judge's reconsideration of an order "is a matter within the sound discretion of the [c]ourt, to be exercised in the interest of justice." *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990) (citing *Johnson v. Cyklop Strapping Corp.*, 220 N.J. Super. 250, 257 (App. Div. 1987)). Reconsideration is appropriate in two circumstances: (1) when the court's decision is "based upon a palpably incorrect or irrational basis," or (2) when "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, 242 N.J. Super. at 401).

Guided by these standards, we perceive no basis to disturb the June 28, November 19, or December 20, 2021 orders.

Affirmed.

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

/s/

CLERK OF THE
APPELLATE DIVISION