SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2791-19

SASHA BLOUNT,

Plaintiff-Respondent/
Cross-Appellant,

v.

KEVIN M. ADKINS,

Defendant-Appellant/
Cross-Respondent.

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Submitted February 7, 2022 – Decided June 7, 2022

Before Judges Sabatino and Rothstadt.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, Docket No. FD-09-1305-16.

Lamouria Boyd, attorney for appellant/cross-respondent.

Sasha Blount, respondent/cross-appellant pro se.

PER CURIAM

In this non-dissolution matter, defendant Kevin M. Adkins appeals from the Family Part's July 31, 2019 order that denied his application to reduce child support, while granting plaintiff Sasha Blount's cross-motion to increase child support, compel defendant to contribute toward the parties' child's private school tuition, and awarding plaintiff's attorney's fees. He also appeals from the January 31, 2020 order that denied his motion for reconsideration.

On appeal, defendant argues that the trial court (1) abused its discretion by considering plaintiff's cross-motion and granting an upward modification, (2) improperly imputed income to him, (3) failed to make specific findings of underemployment or unemployment, (4) failed to make specific findings as to the statutory factors under N.J.S.A. 2A:34-23(a) that governs child support and improperly exceeded the New Jersey Child Support Guidelines (Guidelines)[1] income limits by increasing the child support and directing that he contribute seventy-one percent of the child's private school tuition, (5) failed to impute rental income to plaintiff, (6) failed to make specific findings as required by Rule 1:7-4 when awarding plaintiff attorney's fees, and (7) improperly denied his motion for reconsideration.

[1] The Guidelines are set forth in an appendix to Rule 5:6A of our court rules. See, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A, ¶ 2, www.gannlaw.com (2022).

In response to defendant's appeal, plaintiff filed a cross-appeal from portions of the same July 31, 2019 order. On appeal, plaintiff argues that the trial court abused its discretion when it failed to (1) find defendant in contempt, (2) order defendant to contribute to the child's pre-March 2019 private school tuition, (3) properly take into account the parties' November 2011 mediation agreement as it related to the parties' contribution towards the child's extracurricular activities, (4) consider all of the evidence that demonstrated defendant's various sources of income, (5) properly consider defendant's actions in prolonging the discovery process in denying her request for 100% of her attorney's fees, and (6) consider the "irreparable harm" caused by the denial of her motion for reconsideration.

We have considered the parties' arguments in light of the motion record and the applicable principles of law. We vacate the child support award, including the extent to which defendant must contribute to the child's private school tuition but did not have to contribute towards the child's extracurricular activities, because we conclude the trial court provided insufficient reasons for (1) limiting the child support to the Guidelines' amount, (2) compelling a contribution toward the child's private school tuition based on either the parties' November 14, 2011 mediation agreement or the N.J.S.A. 2A:34-23 factors, and (3) not requiring defendant to contribute to the child's pre-March 2019 private

tuition or the child's extracurricular activities. The trial court also did not attach a Guidelines worksheet to its order, and mistakenly exercised its discretion by not considering the calculation of plaintiff's rental income into the child support award. However, we affirm the court's determination as to the amount of defendant's income, and its award of attorney's fees to plaintiff.

I.

We discern the following facts and procedural history from the record on appeal. Before the birth of their daughter in 2010, the parties had a dating relationship and were cohabitants. They separated a few days after their child was born.

In 2010, the Family Part entered two consent orders, one that fixed defendant's child support obligation in the amount of $150 per week, and another that memorialized the parties' agreement to share joint legal custody and follow a parenting time schedule.

During the following year, issues arose between the parties that were resolved by mediation and additional consent orders. Their mediation led to a November 14, 2011 agreement on child support (November 2011 mediation agreement) that was incorporated into a consent order. The November 2011 mediation agreement stated, in relevant part, as follows:

> 1) Child Support: The parties agreed to child support in the amount of $181 per week ($784 per month)

> inclusive of work-related childcare. The parties Line 6 responsibility for extraordinary expenses, not included in the Guidelines Worksheet calculation was 50% to [p]laintiff and 50% to [d]efendant. The child support amount was based upon the imputation to [defendant] of income equal to [plaintiff's], i.e., $83,640 per year, childcare costs of $210 per week, health insurance of $45 per week and 152 overnights. [Plaintiff's] filing status was head of household. [Defendant's] filing status was single.
>
> [(Emphasis added).]

Additional issues were settled by another agreement that was incorporated into a December 20, 2011 consent order, in which each of the parties agreed to withdraw their respective applications for attorney's fees, as well as plaintiff's agreement to withdraw her application to relocate out-of-state with the child.

Several years later, plaintiff filed a motion to increase child support and compel defendant to contribute towards the child's private school tuition and extracurricular activities.[2] On January 29, 2019, the trial court denied the motion without prejudice, because under the Guidelines, based on defendant's represented annual income of $49,044, his actual child support obligation should have been $143 per week. However, because defendant did not file a cross-motion, the child support was not reduced but instead was increased from $181

[2] It appears from the record that plaintiff did not refer to or base her application on the November 2011 mediation agreement.

to $203 per week to reflect cost of living adjustments to the previously unmodified support.

Thereafter, defendant filed a motion to reduce his obligation. In response, plaintiff filed a cross-motion, seeking an increase, enforcement of the November 2011 mediation agreement, and permission to relocate with the child to New York. At an April 18, 2019 hearing, the parties entered into an agreement that was incorporated into another consent order, which allowed the relocation of the child to New York, with New Jersey retaining jurisdiction over matters relating to child support, custody, and visitation. As to those remaining issues, the court scheduled a plenary hearing, and provided time for the parties to conduct discovery as to the support issues.

After the parties conducted limited discovery, the plenary hearing was held. The parties were the only witnesses. Just prior to and immediately after the hearing commenced, plaintiff issued subpoenas to several financial institutions in New Jersey and New York to obtain defendant's financial information, which defendant moved to quash. The court heard arguments and thereafter granted defendant's motion because the discovery period ended, the plenary hearing was already underway, and the time to request an adjournment of the plenary hearing passed.

At the hearing, defendant testified that he was seeking a downward modification because he was earning less as a result of the financial crisis than he did in the past when he was a real estate investor. According to defendant, he did not have any additional income and four of his properties were foreclosed and owed over $2 million. Referring to his testimony at a deposition, defendant stated that the $170,000 rental income he mentioned was based on properties that he "will be losing" soon. At the time of the hearing, he owned two properties from which he received rental income, but one was set for a Sheriff's sale in August 2020 and the second was in pre-foreclosure stages and probably would be sold in a short sale. A third property was transferred to defendant's mother, but he testified that the property was foreclosed after the transfer. He also testified that he did not agree to pay for private schooling or extracurricular activities. He stated that he found out about the child attending private school after she was enrolled, and that aside from buying the child's uniform, he did not contribute towards her education.

On cross-examination, defendant acknowledged several discrepancies between his testimony and his response to plaintiff's interrogatories, which he certified as accurate under oath. For example, in his interrogatory responses he indicated that he owned only one property instead of three; that he did not have any bank accounts but acknowledged on cross that he banked at three different

banks; that he did not have any investments but on cross admitted that he owned several stocks; that he did not own any businesses but regularly paid for services and received advertising fees for businesses he did not own. In addition, under cross-examination, he testified that he was not sure about his 2018 income but estimated that his income was between $40,000 to $50,000. However, when confronted with his deposition testimony, he conceded that he estimated his income to be approximately $171,000.

Plaintiff testified that her income was approximately $57,000 in 2018 as a real estate broker, and she earned $270,000 in 2016, $170,000 of which was as a bonus, and for vacation days and severance pay as a result of her employer closing its business. She also stated that she receives approximately $36,000 per year in rental income. Plaintiff testified that the "work-related daycare" she indicated as an expense was in accordance with the November 2011 mediation agreement and covered the child continuing to attend private school into the future. But, plaintiff conceded that the agreement did not clearly define or indicate that private schooling was a shared expense. Outside of the agreement, however, plaintiff testified that defendant agreed to pay for private schooling, provided her a check to pay for some of the classes, and paid for school uniforms and after school programs. In addition, she stated that defendant never objected to their daughter attending private school.

On July 31, 2019, the trial court issued its oral decision on the parties' applications. After the court made findings of fact regarding the parties' incomes, it modified the child support amount from $203 to $306 per week, retroactive to the date of plaintiff's cross-motion. It also directed defendant to contribute seventy-one percent of the child's private school tuition from March 22, 2019 and "going forward." Finally, the court denied plaintiff's request for contributions towards the child's extracurricular expenses.

In making its determination, the trial court found plaintiff credible and defendant incredible. According to the court, defendant was "completely evasive when asked about his current income" and when he was cross-examined in relation to "bank accounts . . . showing large amounts of cash moving in and out." In addition, the court noted that defendant "testified that he did not file a 2018 tax return [because he] filed for an extension[but] would not or could not estimate . . . his income for 2018." It also noted that this testimony contradicted deposition testimony in which defendant stated under oath that "his income was $140,000 in rentals and $31,000 . . . on his W-2." Therefore, the court found that defendant's annual income was $171,000, which is "$3,288 a week in terms of [the Guidelines]," because his "testimony at the hearing was so evasive and so contradictory [from] the deposition testimony that he had $140,000 in rental income and $31,000 in W-2 income in 2018."

In contrast, the court found plaintiff "was a far more credible witness." The court accepted her testimony about "her employment history[,] which resulted in a significant decrease in her income after she lost her position with [her previous employer]." It also accepted her testimony that "she grossed $57,000" in 2018 and "had earned $33,000 up to the time of her testimony," which it found "consistent with the $57,000 even though it [was] far less than the $2[70],000" she earned in 2016. Thereafter, the court calculated plaintiff's weekly income as $1,100.

In determining that defendant should contribute to the private school tuition, the court credited plaintiff's "testimony with respect to [the child's] tuition that she advised [defendant] where [the child] was going to be [enrolled] and [defendant] at least implicitly agreed to that." In sum, it found that the decision to enroll the child into a private school was not unilateral and rejected defendant's testimony to the contrary after finding that defendant "was not presented with this [decision] as a fait accompli."

Finally, the court denied plaintiff's request for contributions for extracurricular activities because "those are the type of expenses that the child support order itself covers." The court entered an order the same day memorializing its decision.

The order entered by the court reflected the amount of support and required the payment of the private school tuition contribution. However, although the order stated a Guidelines "worksheet [was] attached," that worksheet is not part of the record.

A few days later, pursuant to the court's direction, plaintiff filed a motion for her attorney's fees and expenses, and later, defendant filed a motion for reconsideration, or alternatively, requesting a stay pending appeal. In response to that motion, plaintiff filed a cross-motion to enforce the July 31, 2019 order and for reconsideration of the portion of the order that denied her request for fifty percent contribution towards the child's extracurricular activities retroactively and to increase defendant's support obligation based on his income being $229,000. The trial court held oral argument on all three motions. On January 31, 2020, the court denied the parties' motions for reconsideration and defendant's motion for a stay pending appeal, but granted plaintiff's motion for attorney's fees, limiting them to $12,500 of the approximate $25,000 sought in her application. The order also placed defendant on warrant status if he missed two payments.

In making its determinations, the court found that it did not "see anything that [it] overlooked either in law or fact that would require or support a modification of [the] order in [either party's] favor." In particular, with regard

to defendant's motion for reconsideration, the court "found at the time of the hearing, [defendant] was largely uncooperative and evasive in answering questions and providing information." As such, his income was based on what he testified to at his deposition. As to plaintiff's motion for reconsideration regarding defendant's contribution towards extracurricular activities, the court noted that paragraph eight of the Guidelines "includes among the expenses that are taken into account in a [G]uidelines calculation[:] fees, memberships and admissions to sports, recreational or social events, lessons, instructions, recreational exercise or sports equipment. So[,] the extracurriculars are included in that already." In determining the amount attorney's fees awarded to plaintiff, the trial court made specific findings after considering all factors enumerated under Rule 5:3-5. These cross-appeals followed.

II.

We begin our review by acknowledging it is limited. We accord deference to Family Part judges due to their "special jurisdiction and expertise in family [law] matters." Cesare v. Cesare, 154 N.J. 394, 413 (1998). Therefore, their findings are binding on appeal so long as their determinations are "supported by adequate, substantial, credible evidence." Id. at 411-12. Evidence derived from testimony is given great deference since the trial court is better suited to evaluate the credibility of the witnesses. Id. at 412. Only when the trial court's findings

are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice" is reversal warranted. Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

"When reviewing decisions granting or denying applications to modify child support, we examine whether, given the facts, the trial judge abused his or her discretion." J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012)). "The trial court's 'award will not be disturbed unless it is manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice.'" Id. at 326 (quoting Jacoby, 427 N.J. Super. at 116). However, a court's "legal conclusions, and the application of those conclusions to the facts, are subject to our plenary review." Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015) (quoting Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)). "[A]ll legal issues are reviewed de novo." Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017).

III.

We first address defendant's argument that the trial court erred when it considered over his objections, plaintiff's March 21, 2019 cross-motion seeking

an increase in child support. He contends that a similar application was heard and denied in January 2019 and "[c]ollateral estoppel or 'issue preclusion,' bars" plaintiff from "relitigating any issue" that was previously determined. Although he concedes that plaintiff was allowed to refile her motion, he argues that her cross-application "did not rely upon the enforcement of provisions" of the November 2011 mediation agreement but was a new application that sought the relocation of the child, increase in support, reimbursement and contributions towards the child's private school.

We conclude that defendant's contention in this regard is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Suffice it to say, defendant's argument is unsupported by the record as plaintiff's cross-motion specifically sought among other things "enforcement of the current support order of 11/14/2011," which was based on the November 2011 mediation agreement. Moreover, the January 19, 2019 denial of her application was without prejudice, and ultimately the trial court found plaintiff established changed circumstances that warranted modification of the child support to be paid by defendant. See Lepis v. Lepis, 83 N.J. 139, 157-58 (1980).

IV.

Next, we address defendant's challenges to the trial court's findings in support of its recalculation of child support. He argues that the trial court failed

to make specific findings for (1) imputing income to him, (2) exceeding the Guidelines $187,200 statutory maximum, and (3) not calculating plaintiff's rental income into the child support award. Specifically, he argues that the increase was not based on his "actual income" and that "[t]here was no finding of voluntary underemployment or unemployment as to either party." He also asserts that imputation of income based on his deposition testimony was improper because it "was not part of the record below." He also contends that the trial court should have imputed income to plaintiff to reflect the $207,000 she earned in 2016 and given more weight to its own finding that plaintiff "has no significant housing expenses."

Defendant further argues that "the presentation of bank accounts, many of which are not personal accounts and were five to fifteen years old at the time of trial, did not provide the trial court with sufficient current evidence upon which it can impute income." In addition, he contends that plaintiff "ignores the plain language of the [November] 2011 [mediation agreement] which states that the parties stipulated as to their respective incomes." Last, he asserts that plaintiff's request to have the appellate court "imput[e] income to [him] based upon adding together his actual earnings ($31,200), imputing in 2021 an amount of former rental income that [he] estimated that he earned in 2018 ($140,000) and stated

that [it] was no longer available," and alleged balances from bank accounts is improper.

Our consideration of these contentions is guided by established principles regarding child support. It is beyond cavil that children are entitled to be supported by their parents consistent with their lifestyle. New Jersey courts have long recognized that "[t]he duty of parents to provide for the maintenance of their children is a principle of natural law." Burns v. Edwards, 367 N.J. Super. 29, 39 (App. Div. 2004) (quoting Greenspan v. Slate, 12 N.J. 426, 430 (1953)). Thus, children "have the right to support from their parents," Connell v. Connell, 313 N.J. Super. 426, 430 (App. Div. 1998), and parents are "obliged to contribute to the basic support needs of an unemancipated child to the extent of the parent's financial ability," Burns, 367 N.J. Super. at 39 (quoting Martinetti v. Hickman, 261 N.J. Super. 508, 513 (App. Div. 1993)). Each parent must share the cost and shoulder the responsibility of contributing to the children's basic needs. Pascale v. Pascale, 140 N.J. 583, 591 (1995). The foundation of these support principles is "the best interest of the child." Caplan v. Caplan, 182 N.J. 250, 272 (2005).

Basic needs does not mean bare minimum. "Children are entitled to not only bare necessities, but a supporting parent has the obligation to share with his [or her] children the benefit of his [or her] financial achievement." Isaacson

v. Isaacson, 348 N.J. Super. 560, 580 (App. Div. 2002). It is well established that "where the parties have the financial wherewithal to provide for their children, the children are entitled to the benefit of financial advantages available to them." Id. at 579. The right to support should "accord with the current standard of living of both parents, which may" include "non-essential items that are reasonable and in the child's best interest." Id. at 582 (emphasis omitted).

Child support awards and modifications are entrusted to the sound discretion of the Family Part judge, which we review for abuse of discretion. J.B., 215 N.J. at 325-26. We will not set aside a child support award unless it is unreasonable, unsupported by substantial evidence, or "the result of whim or caprice." Ibid. (quoting Foust v. Glaser, 340 N.J. Super. 312, 315-16 (App. Div. 2001)). A determination of whether there is a changed circumstance "turn[s] on the discretionary determinations of Family Part judges, based upon their experience as applied to all the relevant circumstances presented, which we do not disturb absent an abuse of discretion." Larbig v. Larbig, 384 N.J. Super. 17, 23 (App. Div. 2006).

A child support obligation may be modified when there is a change in circumstances. Lepis, 83 N.J. at 157-58. A substantial increase or decrease of either parents' income is a change in circumstance. See Isaacson, 348 N.J. Super. at 579.

When considering an application to modify child support, the trial court must apply the Guidelines. R. 5:6A. See also Gormley v. Gormley, 462 N.J. Super. 433, 450 (App. Div. 2019) (quoting the rule and stating it "requires a trial judge to employ the Guidelines when establishing child support unless 'good cause is shown'"). The Guidelines aim to ensure fairness in child support awards. Caplan, 182 N.J. at 264-65. Except for high-income households—those with combined gross incomes over $187,200—the Guidelines are generally used in cases where child support is being established or modified. There is a rebuttable presumption that a child support award calculated in accordance with the Guidelines is correct "unless a party proves to the court that circumstances exist that make a [G]uidelines-based award inappropriate in a specific case." Pressler & Verniero, Appendix IX-A to R. 5:6A, para. 2.

However, "[i]f the combined net income of the parents is more than $187,200 per year, the court shall apply the [G]uidelines up to $187,200 and supplement the [G]uidelines-based award with a discretionary amount based on the remaining family income (i.e., income in excess of $187,200) and the factors specified in N.J.S.A. 2A:34-23." Pressler & Verniero, Appendix IX-A to R. 5:6A, para. 20(b). "The key to both the Guidelines and the statutory factors is flexibility and the best interest of children." Pascale, 140 N.J. at 594.

In this regard, trial courts are afforded a great deal of discretion, Caplan, 182 N.J. at 266, but the discretion must be guided by consideration of the factors specified in N.J.S.A. 2A:34-23(a). The statutory factors are as follows:

> (1) Needs of the child; (2) Standard of living and economic circumstances of each parent; (3) All sources of income and assets of each parent; (4) Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost of each parent to obtain training or experience for appropriate employment; (5) Need and capacity of the child for education, including higher education; (6) Age and health of the child and each parent; (7) Income, assets and earning ability of the child; (8) Responsibility of the parents for the court-ordered support of others; (9) Reasonable debts and liabilities of each child and parent; and (10) Any other factors the court may deem relevant.

When confronted with high-income parents whose ability to pay is not an issue, "the dominant guideline for consideration is the reasonable needs of the children, which must be addressed in the context of the standard of living of the parties. The needs of the children must be the centerpiece of any relevant analysis." Isaacson, 348 N.J. Super. at 581.

When calculating support, the trial court must determine each parent's obligation to pay with reference to their income, actual or, where appropriate, imputed. In order to calculate the appropriate level of support, the court must have an accurate assessment of each party's income. Caplan, 182 N.J. at 265.

The Family Part may impute income where a parent has voluntarily become underemployed or unemployed. Id. at 268.

In exercising its discretion, the court must make specific findings and not just bare conclusory statements. See Ordukaya v. Brown, 357 N.J. Super. 231, 240 (App. Div. 2003); R. 1:7-4(a) (A judge has a duty to make findings of fact and conclusions of law "on every motion decided by written order that is appealable as of right."). See also Winterberg v. Lupo, 300 N.J. Super. 125, 132 (App. Div. 1997) ("Even if the judge had good reasons for exercising his discretion in deviating from the Guidelines, we have no indication of what those reasons were. This is an unacceptable practice."). Failure to perform this duty "'constitutes a disservice to the litigants, the attorneys and the appellate court.'" Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (quoting Kenwood Assocs. v. Bd. of Adjustment of Englewood, 141 N.J. Super. 1, 4 (App. Div. 1976)). We ordinarily remand to the trial court to make findings of fact if the trial court failed to do so. Gormley, 462 N.J. Super. at 449-50.

The court also must attach to its order a Guidelines worksheet with all of the calculations and a statement explaining its considerations and reasoning. R. 5:6A ("A completed child support guidelines worksheet in the form prescribed in Appendix IX of these Rules shall be filed with any order or judgment that includes child support that is submitted for the approval of the court.").

However, the worksheet "is not a substitute for a statement of reasons for the decision, particularly when the amount of income earned by one of the parties is in dispute." Fodero v. Fodero, 355 N.J. Super. 168, 170 (App. Div. 2002).

Here, after assessing the credibility of the parties and the evidence presented, the trial court properly calculated defendant's annual income of $171,000 after adding $31,000 in W2 earnings and $140,000 in rental income. Contrary to defendant's arguments, his annual income was not based on an imputation of income. Caplan, 182 N.J. at 268 (noting that "[i]n determining whether to impute income, the guidelines instruct that the trial court must first determine whether the parent has just cause to be voluntarily unemployed"). Rather, it was based on his own deposition testimony read into the trial record, which the court found to be "correct" after finding defendant evasive and uncooperative during the plenary hearing. Contrary to defendant's argument before us, there was no reason for the court to make specific findings of defendant's underemployment or unemployment.

Notably, however, the court made no findings of fact and conclusions of law supporting its analysis of the statutory factors under N.J.S.A. 2A:34-23(a) to be considered for an above the Guidelines award. Ordukaya, 357 N.J. Super. at 240. Here, based on the court's findings, the parties combined incomes exceeded $187,200. Yet, there was no explanation as to why the award was

limited to the Guidelines' maximum or why the statutory factors were not considered. The court also did not include a Guidelines worksheet or explain why it did not include plaintiff's rental income into its child support calculations as required by the Guidelines, see Appendix IX-B to R. 5:6A (sources of income includes "rents (minus ordinary and necessary expenses . . .)").

Therefore, we are constrained to remand for a detailed decision that explains the trial court's Guidelines-based determinations, why it did not consider the statutory factors, or if it did, what its findings were under those factors for an above Guidelines award, and for it provide a copy of the worksheet it employs. The trial court should thereafter recalculate the child support award and either include plaintiff's rental income, or explain why it is not doing so, and attach the Guidelines worksheet setting forth all the calculations with explanations.[3]

[3] Implicit in our remand is our rejection of plaintiff's request that we impute income to defendant and revaluate support ourselves. We have no reasons in this case to exercise original jurisdiction for that purpose. Tomaino v. Burman, 364 N.J. Super. 224, 234-35 (App. Div. 2003) ("Our original factfinding authority must be exercised only 'with great frugality and in none but a clear case free of doubt.'" (quoting In re Application of Boardwalk Regency Corp., 180 N.J. Super. 324, 334 (App. Div. 1981), modified on other grounds, 90 N.J. 361 (1982))).

V.

We turn our attention to defendant's argument that the trial court "failed to articulate the factors set forth in the statute in its determination to . . . require [him] to pay [seventy-one percent] of the [child's] tuition costs." In particular, he asserts that there was no finding that tuition expenses were reasonable or how the November 2011 mediation agreement applied, and "its relevance to the current needs of the child." He claims he never agreed to pay for the expense as it was a unilateral decision made by plaintiff to enroll their child in the school she attends in New York. He asserts that plaintiff failed to explain to the trial court and on appeal, how the "express language" of the November 2011 mediation agreement, which directed him to pay for "work-related childcare could be interpreted as an agreement to pay 'private tuition, afterschool activities, summer camp, swimming lessons, extracurricular activities, and extraordinary expenses.'" He notes that the only agreed-to extracurricular activity at the time was swimming and that there was no agreement or discussion of other future expenses. According to defendant, the court merely based its decision on a finding that there was an "implicit agreement" between the parties regarding the child's education. Also, he claims that the parties are not high-income earners who can afford the school's tuition, and that the court should have balanced the child's best interest with his preference as the child's joint

legal custodian. Last, defendant contends that the quality of the child's education should be disregarded because they were not part of the record below, and the "trial court made no oral or written factual findings regarding the quality of the school, the child's education and whether attendance at the school was in the child's best interest."

Plaintiff argues in her cross-appeal that the trial court "correctly" awarded an increase in defendant's contribution toward the child's private school tuition. But she also argues that the court erred by not ordering retroactive reimbursement of the child's private school tuition, afterschool activities, extracurricular activities, and summer camp, which was contemplated in the "extraordinary expenses" portion of the November 2011 mediation agreement. She asserts that the "extraordinary expenses" in their agreement was included to allocate responsibility for those expenses which could not be specifically defined but were contemplated to include "future private school expenses, extraordinary expenses, afterschool [activities], swimming, camps, etc." Plaintiff also asserts that the child has always attended private school, including at the time the November 2011 mediation agreement was signed. She notes that defendant has financial means to meet the financial obligations in the November 2011 mediation agreement and that he should pay fifty percent of the child's

extraordinary expenses incurred from 2015 to March 21, 2019, and to pay seventy-one percent of those expenses from March 22, 2019 going forward.

Generally, "[a] settlement agreement, reached in mediation, which is incorporated into an executed, signed written agreement is enforceable." Minkowitz v. Israeli, 433 N.J. Super. 111, 139-40 (App. Div. 2013) (citing Willingboro Mall, Ltd. v. 240/242 Franklin Ave., LLC, 215 N.J. 242, 250-51, 263 (2013)). See also Quinn v. Quinn, 225 N.J. 34, 44 (2016) ("[F]air and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed." (quoting Konzelman v. Konzelman, 158 N.J. 185, 193-94 (1999))).

Nevertheless, "[w]hile courts are predisposed to uphold . . . settlement agreements, this enforceability is subject to judicial supervisory control." Patetta v. Patetta, 358 N.J. Super. 90, 95 (App. Div. 2003) (internal citations omitted). Courts have the ability to modify mediation agreements when changed circumstances occur due to "the nature of some post-judgment issues." Quinn, 225 N.J. at 46; Conforti v. Guliadis, 128 N.J. 318, 323 (1992) (noting that settlement agreements are unlike other contracts in that they "must serve the strong public and statutory purpose of ensuring fairness and equity").

The party seeking to modify a mediation agreement bears the burden of showing changed circumstances. See Lepis, 83 N.J. at 146-48. "Changed

circumstances are not confined to events unknown or unanticipated at the time of the agreement," but courts must take care "not to upset the reasonable expectations of the parties." J.B., 215 N.J. at 327. In the realm of child support, where parties have contractually "agreed to undertakings advantageous to a child beyond that minimally required," the public policy is in favor of enforcing such agreements "usually counsels against modification." Ibid.; see also Lissner v. Marburger, 394 N.J. Super. 393, 403 (Ch. Div. 2007) (noting that "if a party agrees to support a child beyond that otherwise required, a court must favor the agreement, in the interests of the child").

Under the Guidelines, private school tuition is an extraordinary expense to be added onto the Guidelines' support amount. See Roberts v. Roberts, 388 N.J. Super. 442, 449 (Ch. Div. 2006) (citing Appendix IX-A to R. 5:6A, para. 9(d) and stating "[t]he addition of these expenses to the basic obligation must be approved by the court"). Absent an enforceable agreement apportioning educational expenses, "a trial court should balance the statutory criteria of N.J.S.A. 2A:34-23(a) . . . factors, as well as any other relevant circumstances, to reach a fair and just decision whether and, if so, in what amount, a parent or parents must contribute to a child's educational expenses." Gac v. Gac, 186 N.J. 535, 543 (2006).

In Hoefers v. Jones, 288 N.J. Super. 590 (Ch. Div. 1994), aff 'd o.b., 288 N.J. Super. 478 (App. Div. 1996), we affirmed a Family Part judge's identification of the factors to be considered when determining, in the absence of an agreement, whether a parent should be compelled to pay for private school tuition. The judge identified the factors as the following: (1) the ability of the secondary caretaker to pay; (2) the past attendance of one or both parents at that or a similar private school; (3) whether the child was attending private school pre- or post-divorce; (4) the prior agreement of the secondary caretaker to pay for private school; (5) the religious background of the parties and the child; (6) whether the special educational, psychological, or special needs of child are met by the private school; (7) whether it is in the child's best interest to attend, or to continue to attend, private school; (8) whether a court order or an agreement of the parties grants the right of school choice upon the primary caretaker; (9) whether the action of the primary caretaker to enroll the child was reasonable under the circumstances; (10) whether private school tuition is permitted or authorized under the law; (11) the child's ability to respond and prosper from such an educational experience; (12) the secondary caretaker's involvement in the child's education; (13) the degree of the primary caretaker's involvement in the child's education; and (14) whether the primary caretaker's views and desires

are consistent with past practices regarding private school education. Id. at 611-12.

Here, the trial court specifically found that the plaintiff did not make a unilateral decision when she enrolled the parties' child in private school and that defendant implicitly agreed to contribute towards the costs. That determination was supported by the evidence, especially the court's credibility determinations. We have no reason to disturb that result. We affirm the court's conclusion that the parties agreed to the enrollment of their child in private school.

However, the court's oral decision is unclear as to why the November 2011 mediation agreement's "extraordinary expenses" clause did not limit defendant's contribution to fifty percent. Further, the court did not determine or make a specific finding about plaintiff's application requesting reimbursement of pre-March 2019 private school tuition or why extracurricular expense were not considered additional "extraordinary expenses" under the parties' agreement or as appropriate above Guidelines payments in light of the parties' combined incomes.

Under these circumstances, we must remand for more complete findings of facts and conclusions of law on the issues of the November 2011 mediation agreement's application to the amount defendant must contribute toward tuition, plaintiff's motion for defendant to contribute, retroactively and in the future,

towards the child's educational expense, and for contributions toward extracurricular expenses. We direct that the court determine if the expenses were covered by the "extraordinary expenses" clause in the parties' November 2011 mediation agreement, and provide its reasons, or if they were not encompassed by it, to provide an analysis as to each parent's obligation to pay the costs associated with the private school and extracurricular activities after considering the applicable factors under N.J.S.A. 2A:34-23, in light of their incomes being above the Guidelines' maximum. If the court determines the November 2011 mediation agreement was controlling, it must also explain the reason for allocating seventy-one percent of the tuition to defendant rather than following the agreement's provision for fifty percent.

To be clear, by our remands in this matter, we do not imply one way or the other whether the outcome of the further proceedings should yield different results. We direct only that the trial court provide a more robust discussion of its reasons under Rule 1:7-4 so that the parties have a better understanding of the court's actions and any further appellate review is not impeded. Moreover, the court has the discretion to permit additional or updated discovery and to conduct plenary hearings on any issues to aid it in completing the remand.

VI.

Next, we address defendant's argument that the trial court abused its discretion when it awarded plaintiff's attorney's fees, "which were the result of her relentless but fruitless pursuit of a non-existent gold mine." In addition, he purports that the plaintiff's "counsel falsely represented that the [twenty-five] subpoenas that [were] propounded were the result of [his] failure to cooperate with discovery demands" since the "subpoena were issued within days following the May hearing." He contends that the court failed to make "any findings of fact as required by Rule 1:7-4," and concludes that "[i]n the absence of specific findings, justifying counsel fee award, the award must be overturned."

Plaintiff argues in her cross-appeal that the legal fees were incurred due to defendant's noncompliance with discovery requests, and thus, the court erred when it did not award her 100% of her attorney's fees.[4] In this regard, she contends that the court should have awarded all of her attorney's fees and expenses because she "proved her case that [defendant] was not credible, made a mockery of the court system by not providing full accurate financial disclosures, continuously [lied] under oath during the trial and deposition

[4] As far as we can determine from the record, plaintiff incurred counsel fees totaling $23,940 and costs of $1,836.55, and as of February 2020, she paid $15,826.

testimony . . ., intentionally violated the court's orders and the November 2011 [mediation agreement and] consent order[, and] admitted to operating shell companies . . . to hide his assets."

Rule 4:42-9 permits an award of fees in a family action based on a weighing of the following factors set forth in Rule 5:3-5(c):

> (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.

The award of attorney's fees and costs in family actions rests in the sound discretion of the trial court. Williams v. Williams, 59 N.J. 229, 233 (1971). Fees will not be disturbed in the absence of a showing of abuse. Berkowitz v. Berkowitz, 55 N.J. 564, 570 (1970). "We will disturb a trial court's determination on counsel fees only on the 'rarest occasion,' and then only because of clear abuse of discretion," Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)), or a clear error in judgment. Where case law, statutes, and rules are followed and the trial court makes appropriate findings of fact, the fee award is entitled

to deference. Yueh v. Yueh, 329 N.J. Super. 447, 466 (App. Div. 2000). See also J.E.V. v. K.V., 426 N.J. Super. 475, 493-94 (App. Div. 2012).

One consideration in making an award of fees is whether a party acted in bad faith throughout the litigation. Borzillo v. Borzillo, 259 N.J. Super. 286, 291-94 (Ch. Div. 1992); Williams, 59 N.J. at 233. Attorney's fees may be awarded when a party has unnecessarily prolonged the litigation. Marx v. Marx, 265 N.J. Super. 418, 429 (Ch. Div. 1993).

Notably here, defendant does not contend that the trial court failed to consider or erroneously applied the Rule 5:3-5(c) factors. Rather, he questions the validity of the time spent on discovery and the court's purported failure to follow Rule 1:7-4. Defendant's arguments are meritless because the trial court appropriately considered and analyzed each of the factors in Rule 5:3-5(c) in its oral decision. In particular, the court found:

> [1 defendant] is in a substantially better financial situation than [plaintiff] although she is hardly impecunious and . . . has no considerable housing expense which is a factor to be taken into account. [2] Both parties have the ability to pay fees although [defendant's income] is considerably greater than [plaintiff's]. [3 Defendant's resistance] to providing information, his testimony at the hearing verges on bad faith. The matter became far more complicated and time consuming than it should have been because of his position. [4 Defendant's counsel's] certification is that [defendant] either has paid or owes her about $11,000, [plaintiff's counsel's] certification is that his total fees to [plaintiff] have been about $18,000 of which $5,000

> is unpaid. [5] [T]here have not been any. [6] There's no information here about that. [7] [A]lthough [plaintiff] did not prevail on a number of discrete items for the most part and with respect to the significant issues involved, she was the prevailing party. [8] [T]hat's not the case here, or any other factor bearing on the fairness of an award. [9] Each party has some ability to pay counsel fees. [Defendant] has a greater ability to do that, [plaintiff] has no significant housing expenses which is a significant consideration. Under all of those circumstances I find that a counsel fee of $12,500 is fair and appropriate.

Plaintiff's challenge to court's denial of 100% of her attorney's fees is for the same reason equally unpersuasive. We affirm the trial court's award of attorney's fees as we conclude neither party established that the trial court abused its discretion.

VII.

We next address each party's appeal from the denial of their reconsideration motions. In light of the remands we have already directed, we determine, at least in part, that reconsideration should have been granted as to the subjects of the remands. As to the remaining contentions, we disagree.

On appeal, defendant repeats much of the same arguments already discussed. He also argues that trial court incorrectly found him "to be evasive," because "the record reflects that [he] did not evade the cross-examination of [plaintiff's] counsel." According to defendant, "the court heard but ignored [plaintiff's] testimony that she received $36,000 in rental income." In contrast,

he contends that he "testified that he was no longer receiving $140,000 in rental income and [that] his properties were facing foreclosure." Further, defendant accuses the trial court of bias and argues that he relented to plaintiff's "cries . . . of receiving inadequate child support." Citing the Canon 3 of the New Jersey Code of Judicial Conduct, he argues that the court was "obligated to adhere to the law, not succumb [to] the criticism or tantrums of litigants and their advocates." He contends that the "record reflects that the court's findings . . . violated [defendant's] rights and assisted [plaintiff] by ignoring his legal rights as a joint legal custodian[.]"

Last, defendant asserts that "[p]laintiff commenced a second action . . . in bad faith, knowing that [he] did not have the assets that she alleged him to have." He notes that "the court ignored the fact that [plaintiff's] proof of [his] wealth consisted of bank statements ranging primarily from 2006 to 2014" and that the current bank statements "did not reflect the income that [plaintiff] proffered was attributable to [him]." Defendant observes that despite the finding of his "lack of credibility," there were "no other significant findings of fact to support" the court's decision, except its finding that defendant "'knew' of the tuition costs."

Plaintiff argues in her cross-appeal her reconsideration motion should have been granted because it would have enforced the November 2011 mediation agreement, avoided years of litigation, and allowed her to move out

of her mother's home. In addition, she argues that the denial resulted in "irreparable harm" because of the continuing "extensive legal battle" between the parties.

"[R]econsideration is a matter within the sound discretion of the [c]ourt, to be exercised in the interest of justice." 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)). Reconsideration should only be used "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." Ibid. (quoting D'Atria, 242 N.J. Super. at 401-02).

A party should not seek reconsideration based only on dissatisfaction with the court's decision, and "[t]he standards for reconsideration are substantially harder to meet than are those for a reversal of a judgment on appeal." Regent Care Ctr., Inc. v. Hackensack City, 20 N.J. Tax 181, 184-85 (2001), aff'd, 362 N.J. Super. 403 (App. Div. 2003). The party seeking reconsideration must show that the court "acted in an arbitrary, capricious, or unreasonable manner." D'Atria, 242 N.J. Super. at 401.

Here, the parties' arguments—except those relating to the trial court's lack of specific findings of fact and legal conclusions in certain portions of its order, as discussed above—are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). Contrary to defendant's assertion, the record does not contain any evidence that the court was biased in plaintiff's favor. Likewise, plaintiff's argument of "irreparable harm" is unpersuasive because it is not a factor in a motion for reconsideration. The orders denying reconsideration are therefore affirmed in part and reversed in part for the reasons already noted.

VIII.

In her cross-appeal, plaintiff argues that the trial court erred by not allowing additional discovery of defendant's financials, both business and personal, which prohibited all assets to be properly imputed into defendant's income. She complains that defendant did not comply with discovery requests in a timely manner, delayed the discovery process by postponing his deposition, and provided incomplete financial information days before their June 28, 2019 hearing. She also accuses defendant's counsel of "sign[ing] off" on defendant's transfer of an income-producing asset to his mother for one dollar to avoid reporting the asset. Further, she argues that additional discovery was necessary

because her counsel discovered that defendant regularly "transfer[ed] large sums of cash to and from" personal and business accounts.

A Family Part court has the discretion to order full discovery "regarding the financial circumstances of the [supporting parent]" after a moving party in an application or modification has met her burden that a change in circumstances has occurred warranting relief. Isaacson, 348 N.J. Super. at 579 (citing Lepis, 83 N.J. at 157.) Rule 5:54(a) also provides the trial court with the discretion to "expand discovery" in summary actions. R. 5:54(a).

Plaintiff's argument that the trial court abused his discretion when it did not allow additional discovery is unpersuasive because a careful review of the record reveals the court provided the parties ample discovery. Thereafter, the court granted defendant's motion to quash subpoenas sent out by plaintiff after the plenary hearings began and the discovery deadline had clearly passed. Indeed, the trial court clearly articulated adequate findings on the record, pursuant Rule 1:7-4(a), supporting its denial of plaintiff's request for additional discovery. Therefore, we affirm the July 18, 2019 Family Part's order, which barred additional discovery.

IX.

Plaintiff also argues in her cross-appeal that the court should have found defendant to be in contempt of court under Rule 1:10 for his "lack of

compliance," intentional defiance of the November 2011 mediation agreement, "history of . . . arrears, hiding assets and moving substantial amounts of cash between various accounts," for "not providing a sufficient credible reason for not complying with the November 2011 [mediation agreement]," and failure to provide the Case Information Statement as directed by the trial court.

At the outset, we observe that to the extent plaintiff's contention implies she sought and was denied relief from the trial court based on defendant's failure to pay child support, we note that the trial court considered her application on January 31, 2020 and included in its order a requirement that if defendant missed two payments, a warrant might be issued for his arrest. Under the circumstances, the court's remedy is appropriate and consistent with our rules. Rule 5:3-7 ("On finding that a party has violated [a] child support order the court may [direct the] issuance of a warrant to be executed upon the further violation of the judgment or order[.]") Therefore, we affirm the January 31, 2020 Family Part's order, which directed the possibility issuance of a warrant upon in the event defendant missed two payments.

X.

To the extent we have not specifically addressed any of the parties' remaining arguments, we conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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

CLERK OF THE APPELLATE DIVISION