

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3932-16T2

P.T.,

Plaintiff-Respondent,

v.

A.T.,

Defendant-Appellant.

Argued April 10, 2018 – Decided May 16, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Cumberland
County, Docket No. FM-06-0217-09.

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

Rebecca J. Bertram argued the cause for
respondent (Bertram Law Office, LLC,
attorneys; Rebecca J. Bertram, on the brief).

PER CURIAM

In this post-judgment divorce matter, defendant A.T., the father, appeals from two orders entered on March 17, 2017. One order denied his motion to reconsider prior orders denying his request to sanction plaintiff and awarding plaintiff attorney's

fees. The second order temporarily suspended defendant's parenting time and directed him to undergo a psychological evaluation. We affirm the order denying reconsideration and awarding attorney's fees because we discern no abuse of discretion in the entry of that order. We dismiss the appeal from the order temporarily suspending defendant's parenting time as an appeal from an interlocutory order.

I.

The parties were divorced in 2009. They have one child, a daughter born in December 2006.¹ Following their divorce, the parties have filed numerous motions concerning parenting time and parental issues. Plaintiff P.T., the mother, is the parent of primary residential custody. The majority of the post-judgment divorce disputes between the parties have centered on defendant's parenting time.

Since March 2011, the same Family Part judge has addressed the parties' various motions. Between March 2011 and March 2017, that judge has held at least fourteen hearings or oral arguments and has entered eighteen separate orders. The judge has patiently

¹ Defendant also has a son from a relationship with another woman. In his briefs and papers, defendant referenced rulings made by the Pennsylvania court concerning his parenting time with his son. We do not consider those references because they were not part of the record in this matter. R. 2:5-4(a); Cipala v. Lincoln Tech. Inst., 179 N.J. 45, 52 (2004).

and repeatedly encouraged the parties to work out their parenting differences and to focus on the best interests of their daughter. The judge also has noted that the parents have failed to effectively communicate, which has resulted in repeated reliance on the court to work out what normally would be relatively simple parenting differences. In that regard, the Family judge observed

[defendant] is very difficult to deal with because every time a concession is made to him "it is not enough for him" and he argues for more. Likewise, the court senses there is some resistance by [plaintiff] to the court's orders, primarily because the orders require certain actions by her and [plaintiff] is afraid to do anything in excess of the specific words of the court's orders due to the previous observation as to [defendant]. The problem is the court cannot clairvoyantly anticipate each and every nuance and determination that is going to develop from the court's previous orders, and sadly each unanticipated nuance whereby the court does not specifically state exactly what each party has to do results in a motion such as here – both sides alleging the other side is violating the order because to follow the order each side has to agree to behave in a manner not specifically spelled out or otherwise stated in the last court order The parties are urged to cooperate without court involvement with the understanding by [defendant] that some small concession by [plaintiff] means that he can ask for more concessions and that [plaintiff] recognize that to make small concessions does not mean she has to make more and more concessions as historically have been demanded by [defendant] each time a concession is granted.

This appeal involves issues that developed in late 2016 and early 2017. In October 2016, defendant filed an application to "restore" or make up parenting time, sanction plaintiff for interfering with his parenting time, and other relief. With regard to parenting time, defendant alleged that plaintiff was violating prior court orders by scheduling the daughter for dance class during his parenting time, not allowing his daily phone call with the daughter, not informing him of the daughter's doctor visits, and not allowing him make-up parenting time.

The Family Part heard oral arguments on that application on December 9, 2016, and, on the same day, entered an order denying defendant's requests to restore or add additional parenting time and sanction plaintiff. The court also awarded plaintiff \$985 in attorney's fees. The court explained the reasons for its rulings on the record and in its order. With regard to defendant's request for sanctions, the court found that plaintiff had not violated the court's prior orders and had not withheld medical information about the daughter. Thus, the court found no basis to sanction plaintiff. The court again urged the parties to cooperate and communicate about parenting issues.

On January 3, 2017, the Family Part amended the December 9, 2016 order. The court later explained that

the sole change from the December 9, 2016 [o]rder to the January 3, 2017 [o]rder was the addition of a small point of clarification to a single sentence at the end of Paragraph 1. The original sentence read, "DAD can take the child to an event if scheduled during his weekday time." The revised sentence read, "DAD can take the child to an event, if an activity the child is already involved in schedules an event during his weekday time."

In late January 2017, defendant submitted a motion for reconsideration of the January 3, 2017 order.² The Family Part denied the motion in an order entered on March 17, 2017. The order explained that the motion was untimely and lacked merit. Thus, the court did not grant oral argument. The court also "sua sponte" awarded plaintiff \$820 in attorney's fees incurred in opposing the motion for reconsideration.

In February 2017, while defendant's motion for reconsideration was pending, plaintiff filed an application to suspend defendant's parenting time alleging that the daughter reported she had seen defendant watching pornography during his parenting time. On February 21, 2017, the court granted an order to show cause to address that allegation and temporarily suspended defendant's parenting time pending the return date. Thereafter,

² Defendant apparently mailed the motion on January 21, 2017. The motion was initially returned to defendant because of a defect. Defendant then properly filed the motion on February 17, 2017.

on March 17, 2017, the court held a hearing on the application to suspend defendant's parenting time.

At the hearing, the court heard testimony from one witness: an employee of the New Jersey Division of Child Protection and Permanency (Division). The Division received a referral concerning what the child had observed and opened an investigation. The Division worker explained, however, that because defendant lived in Pennsylvania, and because the court had already temporarily suspended his parenting time, the Division had not yet interviewed defendant concerning the allegation. The court, therefore, noted that the record reflected consistent, but uncorroborated statements by the child that she saw defendant watching pornography. Given the lack of evidence corroborating the daughter's statements, the court did not find that defendant had watched pornography while the child was present. Nevertheless, concerned with the best interests of the child, the court continued the "temporary suspension" of defendant's parenting time and directed that defendant undergo a psychological evaluation. The court expressly stated that once it received the psychological report, the court would conduct an additional hearing and "revisit" the suspension of defendant's parenting time.

Accordingly, on March 17, 2017, the court entered an order that continued the suspension of defendant's parenting time "until

such time as [defendant] can complete a satisfactory psychological evaluation that addresses the concerns raised on the record." The court also directed both defendant and plaintiff to cooperate with the psychologist, and to authorize the psychologist to meet with both plaintiff and the daughter if the psychologist felt that such meetings were necessary. Finally, the court allowed defendant to have daily telephone communications with his daughter.

II.

Defendant appeals from both orders entered on March 17, 2017. We will address each order separately.

1. The Order Denying Reconsideration

We review orders concerning reconsideration motions under an abuse of discretion standard. Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). Similarly, we review orders concerning sanctions for violations of custody and parenting time orders for an abuse of discretion. Milne v. Goldenberg, 428 N.J. Super. 184, 198 (App. Div. 2012).

The standard governing enforcement of custody and parenting time orders is clear. Upon "finding that a party has violated an order respecting custody or parenting time," a Family Part judge has discretion to order a remedy authorized by Rule 1:10-3 and any of the remedies set forth in paragraph (a) of Rule 5:3-7. See R. 5:3-7(a); see also Milne, 428 N.J. Super. at 198. Imposition of

sanctions for a violation of a court order requires a showing that non-compliance was inexcusable, which means that the party had the ability to comply, but did not. Milne, 428 N.J. Super at 198-99; Saltzman v. Saltzman, 290 N.J. Super. 117, 125 (App. Div. 1996).

The remedies available for violations of orders are intended to achieve compliance, not to condemn or punish the offending parent. That principle is consistent with the concept that on every motion involving custody or parenting time, the best interests of the child is the primary consideration. V.C. v. M.J.B., 163 N.J. 200, 227-28 (2000); Kinsella v. Kinsella, 150 N.J. 276, 317 (1997). The best interests standard focuses on the "safety, happiness, physical, mental and moral welfare of the child." Fantony v. Fantony, 21 N.J. 525, 536 (1956); see also N.J.S.A. 9:2-4(c) (setting forth a non-exhaustive list of relevant factors to be considered in evaluating the best interests of a child).

Here, the Family Part judge denied defendant's motion for reconsideration on two grounds. First, the court found that the motion was filed out of time. Second, the court found that the motion lacked merit.

Rule 4:49-2 requires a motion for reconsideration to be filed not later than twenty days after service of the order sought to be reconsidered. The judge here noted that defendant was really

seeking reconsideration of the substantive rulings in the December 9, 2016 order. Consequently, the court found that the motion was filed well beyond the twenty-day period. The court also reasoned that even if it considered the motion relative to the January 3, 2017 order, the motion was untimely since defendant's initial motion was defective and was only properly filed on February 21, 2017. We discern no abuse of discretion in the Family Part judge's reasoning.

On the merits, the Family Part judge found that plaintiff had not violated any of the custody or parenting time orders and, thus, no sanction was warranted. That finding is well-supported by the record and we also discern no abuse of discretion.

Defendant argues that plaintiff admitted to violating prior court orders. Defendant made that same contention before the Family judge, but the judge expressly found that plaintiff made no such admissions. Indeed, the judge noted that plaintiff denied any violations. We also find no abuse of discretion in the court's substantive ruling in denying defendant's motion for reconsideration.

Having found that the motion for reconsideration was served out of time and that it lacked merit, the court awarded plaintiff \$820 in attorney's fees. The court evaluated the fee award under the governing rules and found that the fees were reasonable.

Indeed, the court found that defendant "may have filed his motion [for reconsideration] with 'unclean hands'" because he had not paid the prior attorney's fee award before filing the motion for reconsideration. We discern no abuse of discretion in the court's award of attorney's fees. See R. 5:3-5(c).

Finally, defendant objects to the denial of his motion for reconsideration without oral argument. A party is not automatically entitled to oral argument on a motion for reconsideration. Here, the Family judge explained that it declined to hear oral argument because defendant's motion was "entirely without merit" and "[t]here [was] nothing more to argue." We find no error in the court's denial of defendant's motion without oral argument. See Raspantini v. Arocho, 364 N.J. Super. 528, 531-32 (App. Div. 2003) (stating that a party's motion for reconsideration may properly be decided without oral argument if the motion does not meet the applicable test for relief, and the trial court provides its reasons for denying oral argument).

2. The Order Temporarily Suspending Defendant's Parenting Time

Parties have a right to appeal from final orders or judgments. R. 2:2-3. In post-judgment divorce matters, it is sometimes difficult to discern when an order is final for purposes of an appeal. If, however, the order contemplates further proceedings or directs further actions, the order is not a final order with

an automatic right to appeal. See Pressler & Verniero, Current N.J. Court Rules, cmt. 2.2.2 on R. 2:2-3 (2018) ("A trial court order which retains jurisdiction is by definition not final."). In such circumstances, a party must seek leave to appeal such an interlocutory order. R. 2:2-4.

Here, defendant did not seek leave to appeal. Instead, he filed a notice of appeal as if the March 17, 2017 order continuing the temporary suspension of his parenting time was a final order. As discussed, that order contemplated further proceedings in the Family Part after defendant completed a psychological evaluation. Because we have determined that the order was not a final order, but rather an interlocutory order, we dismiss the appeal from the March 17, 2017 order that temporarily suspended defendant's parenting time.³

At oral argument, we were informed that a psychological evaluation has been completed. Accordingly, we direct that the Family Part hold a follow-up hearing concerning the temporary suspension of defendant's parenting time within thirty days of the date of this opinion. We also direct that any future order

³ At oral argument, we were informed that the court added additional reasons for its ruling suspending defendant's parenting time on the record on March 17, 2017. Those reasons were added after counsel and the parties had been directed to leave the courtroom. Neither party, however, provided us with a transcript that included those additional reasons.

concerning defendant's parenting time expressly state if the Family Part considers that order a final determination on the issue addressed in the order.

The order of March 17, 2017 denying defendant's motion for reconsideration and awarding plaintiff attorney's fees is affirmed. The appeal from the March 17, 2017 order that temporarily suspended defendant's parenting time is dismissed. Any stay entered in connection with the March 17, 2017 order is vacated.

Affirmed in part, dismissed in part, and remanded. 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