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DAVID RUIZ, Plaintiff-Appellant v. MARIBEL CINTRON, Defendant-Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001846-24 Civil Action **On Appeal from:** In the Superior Court of New Jersey, Chancery Division, Family Part, Ocean County Docket No.: FM-15-719-11 Sat below: Hon. John Ducey, J.S.C.

PLAINTIFF-APPELLANT'S BRIEF ON APPEAL

Of Counsel and On the brief:

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PRELIMINARY STATEMENT

This appeal arises from a series of post-judgment rulings that retroactively imposed over $20,000 in financial liability on Plaintiff—without a plenary hearing, without factual findings, and without adherence to basic procedural safeguards. The trial court awarded $17,775 in alleged child support arrears dating back to May 2011, required Plaintiff to contribute to a vehicle purchased unilaterally by Defendant over his objection, and imposed $3,000 in counsel fees—each based on conflicting certifications and a mistaken belief that Plaintiff had filed multiple reconsideration motions.

Plaintiff David Ruiz and Defendant Maribel Cintron were divorced in 2011. Their Property Settlement Agreement, drafted through court mediation, required Plaintiff to pay $1,500 per month in child support. For more than thirteen years, Plaintiff made those payments consistently, and Defendant never raised a single claim of underpayment or arrears.

In July 2024, Defendant's own attorney confirmed in writing that Plaintiff was current on all child support obligations, except for a single missed payment in June—resulting in just $1,500 in arrears. Then, in a dramatic reversal four months later, Defendant, for the first time, alleged in a cross-motion that Plaintiff had been underpaying since 2011. She claimed that the actual child support obligation was $1,612.50 per month, not $1,500, based on a recalculation that multiplied the PSA's $375 weekly figure by 4.3 weeks per

month, instead of four weeks. This interpretation ignored the PSA's express requirement that payments be made "by the 29th day of each month" and contradicted the parties' longstanding practice and shared understanding that the obligation was $1,500 monthly.

The $375 weekly notation had originated as a clerical conversion by court staff—dividing the $1,500 monthly figure by 4—not as a legally operative amount. Yet the trial court adopted Defendant's newly asserted arrears calculation in full, without a hearing or inquiry into the contradiction. Even the current probation account confirms that the governing obligation is $1,500 per month and $375 per week—once again reflecting a monthly-to-weekly conversion based on a 4-week divisor, not 4.3. Thus, had Plaintiff made payments through probation all along, no arrears would have accrued. Nevertheless, the trial court fixed arrears based on the very multiplier that probation itself does not apply.

In the same ruling, the court ordered Plaintiff to contribute to the cost of a vehicle that Defendant had purchased unilaterally for their son, despite Plaintiff's sworn certification and contemporaneous text messages documenting his advance objection and refusal to share in the expense. The court imposed this obligation without acknowledging the conflicting evidence, without holding a plenary hearing to resolve the credibility dispute, and without applying the Supreme Court's guidance in Gac v. Gac, 186 N.J. 535, 547 (2006), which holds

that a parent seeking reimbursement for a major discretionary expense must, at a minimum, apply for relief before incurring the cost—and that failure to do so "will weigh heavily against the grant of a future application."

To compound matters, when Plaintiff moved for reconsideration of the December 2024 final order, the trial court incorrectly treated it as a second reconsideration motion—failing to recognize that Plaintiff's October 2024 filing had not sought reconsideration at all, but rather adjudication of issues expressly reserved in an August 2024 interlocutory order. On the mistaken premise that the August 2024 interlocutory order was final, the trial court denied reconsideration under Rule 4:49-2 rather than apply Rule 4:42-2, and awarded Defendant $3,000 in counsel fees, without applying the standards set forth in Rule 5:3-5(c) or issuing findings under Rule 1:7-4.

None of these rulings were supported by testimony or tested evidence. Each rests on unresolved factual disputes and procedural missteps that denied Plaintiff a meaningful opportunity to be heard. Plaintiff respectfully asks this Court to reverse or remand for plenary hearings and proper findings on the arrears claim, the vehicle expense, and the counsel fee award.

STATEMENT OF FACTS

Plaintiff David Ruiz and Defendant Maribel Cintron were married on January 24, 2008, and divorced in 2011. [Pa13]. Two children were born of the marriage: Luke, now 18, and Kyler, now 16. Ibid. The Final Judgment of Divorce incorporated a Property Settlement Agreement ("PSA") dated May 11, 2011, which was prepared through the court's mediation program. Ibid. The PSA reflected the parties' agreement that Plaintiff would pay Defendant $1,500 per month in child support. [Pa85].

When preparing the parties' mediated agreement, however, court staff—using a standard template requiring the support obligation to be expressed in weekly terms—converted the agreed $1,500 monthly amount into "$375 per week" by dividing by four. [Pa85; Pa91; Pa120]. This weekly figure was included solely for formatting purposes. It was never discussed, negotiated, or intended by the parties as a term of their agreement. Rather, both parties understood and agreed that $1,500 per month was the binding, operative amount. This understanding is further confirmed by the PSA's express requirement that payments be made "by the 29th day of each month," thereby evidencing that the support obligation was, and always had been, monthly. [Pa85].

For more than thirteen years—from May 2011 through November 2024—Plaintiff paid $1,500 per month without interruption. [Pa85]. Defendant never objected to the amount, nor did she assert at any point that Plaintiff was

underpaying or that arrears were accruing. Ibid. The parties' consistent conduct reflected their shared understanding that the PSA created a flat $1,500 per month support obligation—not a weekly one. Ibid.

Indeed, as recently as July 2024, Defendant's own attorney confirmed in writing that Plaintiff owed only $1,500 in arrears, representing a single alleged missed payment for June 2024. [Pa81]. That correspondence made no mention of any historical underpayment or claimed arrears beyond that single month. Ibid.

It was not until November 2024—more than thirteen years after the divorce and for the first time in any pleading—that Defendant reversed course and asserted, via cross-motion, that Plaintiff had been underpaying child support since 2011. [Pa42]. She argued, for the first time, that the $375 weekly figure reflected a true weekly obligation, which—when multiplied by 4.3 weeks per month—meant Plaintiff should have been paying $1,612.50 per month, not $1,500. Based on this new interpretation, she claimed $17,775 in arrears dating back to May 2011. [Pa62–63]. Without conducting a plenary hearing, and despite directly conflicting evidence, the trial court accepted Defendant's calculation in full and ordered that $17,775 in arrears be added to the probation account. [Pa10].

Even after that arrears figure was added, the current probation account still lists Plaintiff's obligation as $1,500 per month and $375 per week—

demonstrating that probation uses a four-week divisor, not 4.3. [Pa120]. Had Plaintiff remitted payments through probation all along, no arrears would have accrued. The trial court's use of a 4.3 multiplier—contrary to both the parties' intent and probation's practice—produced a retroactive arrears calculation untethered to the parties' agreement, their course of conduct, or the department that actually administers child support enforcement in New Jersey. [Pa120].

The August 23, 2024 Interlocutory Order

In June 2024, Defendant filed a motion seeking, among other relief, Plaintiff's contribution to Luke's college expenses. [Pa1]. Due to issues with his prior attorney, Plaintiff did not file opposition. [Pa1]. On August 23, 2024, the trial court issued an order directing Plaintiff to file an updated Case Information Statement and submit supporting financial documentation. [Pa1].

Crucially, Paragraph 4 of the order expressly reserved adjudication of Plaintiff's college contribution, stating that the financial information would be used in "a future application under Newburgh v. Arrigo, 88 N.J. 529 (1982)," and noting that "other factors as well need to be addressed." [Pa2]. Paragraph 3 of the same order denied Defendant's request for reimbursement of private school tuition. Ibid.

Despite these clear deferrals, Paragraph 6 of the order inconsistently listed "college education expenses" and "private school expenses" among various categories of reimbursable costs to be paid on a pro rata basis. [Pa3]. This

inclusion contradicted the court's earlier findings and created confusion as to whether Plaintiff's college contribution had already been determined. Ibid. The inconsistency was later corrected in a March 5, 2025 Amended Order, entered pursuant to Rule 2:5-1(d) following the trial court's receipt of Plaintiff's notice of appeal. [Pa22]. That order removed both "college education expenses" and "private school expenses" from Paragraph 6 and confirmed that the issue of college contribution remained unresolved at that time. Ibid.

Plaintiff's October 2, 2024 Motion

Consistent with the trial court's directive that the issue of college contribution would be addressed in a future application, Plaintiff filed a motion on October 2, 2024 seeking resolution of that outstanding issue. [Pa34]. In his certification, Plaintiff explained that Defendant and Luke had unilaterally selected Cairn University without involving him in the decision, that Luke had previously expressed no desire to attend college, and that he had planned to enlist in the military after high school. [Pa37]. Plaintiff further noted that Luke had not applied to any other institutions and had told him directly that he did not wish to attend college, but felt pressured by Defendant to enroll. Ibid.

Plaintiff also opposed being held responsible for the cost of a vehicle purchased for Luke, which Defendant had acquired without Plaintiff's consent. [P38, ¶19-23]. In support of his motion, Plaintiff submitted text messages and a sworn certification documenting that:

- He advised both Defendant and Luke that Luke needed to save money before purchasing a vehicle; [Pa38, ¶19].
- He told Defendant the proposed car was too expensive; [Pa38, ¶21].
- He objected to the purchase before it was made; [Pa38, ¶21-22].
- He later contributed $1,000 voluntarily, without admitting liability, and Defendant accepted the payment. [Pa89-90].

Rather than treat the October 2 filing as a procedurally appropriate application to address issues expressly reserved in the August 23, 2024 order, the trial court misconstrued it as a motion for reconsideration under Rule 4:49-2, and denied it as untimely. [Pa5]. In doing so, the court disregarded the interlocutory nature of the August 23, 2024 order and foreclosed Plaintiff from litigating the college and car contribution issues prior to final judgment. Ibid.

Defendant's November 27, 2024 Cross-Motion and the December 13, 2024 Final Order

On November 27, 2024, Defendant filed a cross-motion in response to Plaintiff's October 2 application. [Pa41]. For the first time in the thirteen years since the parties' divorce, Defendant alleged that Plaintiff had been underpaying child support dating back to May 2011. [Pa42]. Relying on the PSA's $375-per-week notation, Defendant multiplied that figure by 4.3—the average number of weeks in a month—to assert that Plaintiff should have been paying $1,612.50 per month, not $1,500. Based on this calculation, Defendant claimed Plaintiff owed $17,775 in retroactive arrears. [Pa62–63].

This claim was not only inconsistent with the parties' longstanding course of conduct, but it also directly contradicted a July 8, 2024 letter from Defendant's own attorney, which confirmed that Plaintiff was current on all payments except for a single missed month in June 2024—and that only $1,500 in arrears was owed as a result. [Pa81]. Plaintiff vigorously objected, submitting a certification affirming that he had consistently paid $1,500 per month in accordance with the parties' shared understanding and their consistent post-judgment performance under the PSA. [Pa85].

On December 13, 2024, the trial court issued a final order granting Defendant's requested relief in nearly all respects. [Pa5]. It:

- Ordered Plaintiff to pay 85% of Luke's college expenses, based solely on the parties' relative incomes; [Pa9].
- Found that Plaintiff owed $17,775 in child support arrears, despite the conflicting certifications and documentary evidence; [P10].
- Compelled Plaintiff to contribute to the cost of a vehicle purchased unilaterally by Defendant, without addressing the sworn certification and text messages evidencing his prior objection [Pa38; Pa89–90], and without resolving the disputed facts through a hearing or findings.

The court made these determinations without conducting a plenary hearing, taking testimony, or issuing findings under Rule 1:7-4. [Pa5]. Although the order referenced Newburgh, it did not conduct the multi-factor analysis required by law. [Pa9]. The court failed to consider Luke's aptitude, motivation, financial aid eligibility, or his past expression of interest in military service, and based

the college contribution solely on a mathematical division of the parties' income. Ibid.

Plaintiff's Reconsideration Motion and the February 14, 2025 Fee Award

On December 23, 2024, Plaintiff filed a timely motion for reconsideration of the December 13, 2024 final order. [Pa82]. Plaintiff emphasized that this was his first reconsideration motion of a final order, and that his earlier October 2, 2024 motion had not sought reconsideration but rather sought adjudication of open issues the court had expressly reserved in its August 23, 2024 interlocutory order. [2T7-20; 2T10-4].

Nonetheless, on February 14, 2025, the trial court denied reconsideration and imposed a $3,000 counsel fee award against Plaintiff. [Pa13; Pa16]. The court found that Plaintiff was "relitigating" the August 23 order, which it erroneously treated as final, and characterized his December motion as a "second reconsideration motion" made in bad faith. [Pa16-17]. The court did not apply the factors set forth in Rule 5:3-5(c) governing fee awards in family matters, nor did it make the findings of fact and conclusions of law required by Rule 1:7-4. [Pa16].

This procedural mischaracterization deprived Plaintiff of the opportunity to be heard on meritorious legal issues and served as the sole basis for penalizing him with attorney's fees, despite his good-faith effort to correct rulings entered without testimony, factual findings, or proper legal analysis. Ibid.

The March 5, 2025 Amended Orders and Remaining Appellate Issues

Following Plaintiff's Notice of Appeal, and pursuant to R. 2:5-1(d), the trial court amplified its statement of reasons and issued two amended orders on March 5, 2025. [Pa22; Pa26]. These amendments corrected internal inconsistencies in the August 23, 2024 and December 13, 2024 orders. Ibid.

The Amended August 23, 2024 Order removed "college education expenses" and "private school expenses" from Paragraph 6, aligning the order with Paragraphs 3 and 4, which had respectively denied Defendant's request for private school reimbursement and reserved college contribution for future adjudication following a Newburgh analysis. [Pa22].

The Amended December 13, 2024 Order clarified that the court had not previously determined Plaintiff's college contribution obligation prior to that order. However, it left intact the rulings on child support arrears and vehicle expenses—neither of which had been subject to a plenary hearing. [Pa26].

While these amended orders resolved internal drafting inconsistencies, they did not correct the substantive and procedural errors that form the basis of this appeal. Plaintiff continues to challenge:

- The trial court's $17,775 child support arrears determination, which was made without a hearing and in direct contradiction to the parties' longstanding course of conduct and Defendant's own attorney's written admission. [Pa11].

- The rejection of Plaintiff's objection to the vehicle expense, despite sworn and corroborating evidence of his prior objection, and without resolving the disputed material facts through a plenary hearing as required. [Pa6].

- The award of counsel fees against Plaintiff, based on a mischaracterization of his procedural conduct and entered without application of Rule 5:3-5(c) or the required factual findings under Rule 1:7-4. [Pa17].

Accordingly, Plaintiff respectfully seeks reversal or, at minimum, remand of these rulings to ensure that his financial obligations are determined through fair procedure and in accordance with established legal standards.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT FUNDAMENTALLY ERRED IN TREATING PLAINTIFF'S OCTOBER 2, 2024 MOTION AS AN UNTIMELY RECONSIDERATION REQUEST, RATHER THAN A PROPER APPLICATION TO RESOLVE ISSUES RESERVED IN AN INTERLOCUTORY ORDER. (Pa5, 13, 16).

This appeal arises from a procedural misstep that distorted the trial court's subsequent rulings: it erroneously treated Plaintiff's October 2, 2024 motion as an untimely motion for reconsideration under Rule 4:49-2, rather than what it was—a timely application to adjudicate unresolved issues expressly reserved in the court's August 23, 2024 interlocutory order. That mischaracterization led the court to deny Plaintiff a hearing on the merits, label his later reconsideration motion as a prohibited "second" application, and impose $3,000 in counsel fees based on an error of law. The court's failure to apply the well-settled procedural

framework for interlocutory orders undercuts the fairness of its rulings and warrants reversal or remand.

A. The August 23, 2024 Order Was Interlocutory by Its Express Terms and Left Key Financial Issues Undecided.

An order is interlocutory when it does not resolve all claims as to all parties or explicitly leaves issues open for future decision. Grow Co. v. Chokshi, 403 N.J. Super. 443, 457 (App. Div. 2008); Janicky v. Point Bay Fuel, Inc., 396 N.J. Super. 545, 549 (App. Div. 2007). The trial court's August 23, 2024 order fits squarely within that definition.

The order directed Plaintiff to file an updated Case Information Statement and submit supporting financial documents. Critically, Paragraph 4 stated that Plaintiff's potential college contribution would be addressed in "a future application under Newburgh v. Arrigo, 88 N.J. 529 (1982)." The order also denied private school tuition reimbursement (¶ 3) but inconsistently assigned pro rata cost-sharing for both college and private school expenses in Paragraph 6—an inconsistency the court later corrected in its March 5, 2025 Amended Order, clarifying that no final determination had been made on college expenses.

Taken as a whole, the August 23, 2024 order deferred fact-finding, invited future submissions, and made clear that financial issues remained open. Accordingly, it was interlocutory in form, substance, and legal effect. Janicky

v. Point Bay Fuel, Inc., 396 N.J. Super. at 549 ("To be a final judgment, an order generally must 'dispose of all claims against all parties.'")

B. Plaintiff's October 2, 2024 Motion Was Procedurally Proper Under Rule 4:42-2 and Should Not Have Been Rejected as an Out of Time Rule 4:49-2 Reconsideration Motion.

Because the August 23 order was interlocutory, Rule 4:42-2 governed Plaintiff's application—not Rule 4:49-2, which applies only to final orders. Rule 4:42-2 authorizes the trial court to revise its order "at any time before the entry of final judgment in the interest of justice." Plaintiff's October 2, 2024 motion complied with that rule entirely.

This distinction is not merely academic. In Lawson v. Dewar, 468 N.J. Super. 128 (App. Div. 2021), the Appellate Division reversed a trial court for applying Rule 4:49-2 to a motion that sought reconsideration of an interlocutory order. The court held that "applying Rule 4:49-2 to a non-final, interlocutory order is a legal mistake." Id. at 134. Such orders, it emphasized, are always subject to revision in the interest of justice, without the procedural hurdles associated with reconsideration of final judgments.

The same error occurred here. Plaintiff's October 2 motion did not ask the court to reconsider a final ruling. It sought adjudication of unresolved issues the court itself had deferred—including the college contribution question and Plaintiff's disputed responsibility for a vehicle unilaterally purchased by Defendant. These were open matters the court had invited Plaintiff to address.

Nonetheless, the trial court summarily denied the motion as untimely under Rule 4:49-2—a rule that did not apply. That legal error prejudiced Plaintiff by foreclosing consideration of unresolved financial obligations that had never been decided in the first place.

C. The Trial Court's Misapplication of Rule 4:49-2 Tainted Subsequent Rulings and Led to Broader Substantive Injustice.

The trial court's procedural error in October 2024 did not occur in a vacuum. It became the cornerstone for a series of missteps that distorted the court's treatment of Plaintiff's subsequent filings and culminated in the imposition of punitive sanctions without legal or factual basis. When Plaintiff filed a timely and procedurally proper motion for reconsideration on December 23, 2024—directed at the court's final order of December 13—the court summarily rejected it, mistakenly treating it as an impermissible "second" motion. That rejection was rooted entirely in the court's erroneous earlier conclusion that Plaintiff's October 2 filing had constituted a Rule 4:49-2 motion.

This mischaracterization had concrete consequences. It foreclosed reconsideration of the court's final determinations and—more egregiously—became the basis for awarding $3,000 in counsel fees against Plaintiff for supposedly acting in bad faith. But there was no "second" reconsideration motion. Plaintiff had filed only one reconsideration request—of a final order—as permitted by rule. The October motion was not a reconsideration attempt at

all; it was a proper application under Rule 4:42-2 to resolve open matters reserved in an interlocutory order.

These procedural missteps were not harmless. They deprived Plaintiff of his right to be heard, chilled his ability to pursue legitimate legal remedies, and led to a meritless monetary sanction. As New Jersey courts have long held, procedural rules exist to serve justice—not frustrate it. See Rubin v. Rubin, 188 N.J. Super. 155, 159 (App. Div. 1982) (reversing denial of reconsideration motion where procedural formality prevented meaningful opportunity to be heard).

More broadly, the trial court's failure to apply the correct procedural framework set the tone for its overall handling of the matter: summary disposition of disputed issues, disregard for conflicting certifications, and refusal to conduct plenary hearings where material facts were clearly in dispute. That pattern of adjudication culminated in a series of flawed substantive rulings—most notably, the finding that Plaintiff owed $17,775 in child support arrears, despite more than thirteen years of consistent payments, contrary certifications, and Defendant's own prior written admissions that Plaintiff owed just a single $1,500 monthly payment. That ruling, and the evidentiary failings that underlie it, are addressed in Point II.

POINT II

THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF OWED $17,775 IN CHILD SUPPORT ARREARS WITHOUT CONDUCTING A PLENARY HEARING, DESPITE CONFLICTING CERTIFICATIONS, A 13-YEAR HISTORY OF CONSISTENT PAYMENTS, AND CONTRADICTORY WRITTEN STATEMENTS FROM DEFENDANT'S OWN COUNSEL. (Pa10).

After mischaracterizing Plaintiff's October 2, 2024 motion as an untimely reconsideration request and prematurely closing the door on unresolved issues, the trial court compounded its procedural error by resolving a sharply contested factual dispute—whether Plaintiff had underpaid child support for over thirteen years—without conducting a plenary hearing. The resulting $17,775 arrears determination was reached in the face of sworn conflicting certifications, documentary evidence, and a longstanding pattern of performance under the parties' agreement. It was made without testimony, without credibility findings, and without affording Plaintiff a fair opportunity to defend himself. This violated core principles of due process and well-established law requiring plenary hearings where material facts are disputed.

A. The Record Contained Directly Conflicting Certifications, Documentary Evidence, and a 13-Year History of Consistent Payments.

For over thirteen years—from May 2011 through November 2024—Plaintiff paid $1,500 in child support every month, without fail. [Pa85]. Defendant accepted those payments without objection, never once asserting that

Plaintiff was underpaying or that arrears were accruing. This uninterrupted course of performance—spanning more than a decade—reflected the parties' mutual understanding that the PSA created a flat monthly obligation. That understanding was not only undisputed, but explicitly confirmed by Defendant's own attorney as recently as July 8, 2024, who acknowledged in writing that Plaintiff owed just $1,500 in arrears, representing a single missed monthly payment. [Pa81].

Plaintiff submitted that letter to the court along with a sworn certification confirming that he had consistently paid the agreed $1,500 per month since 2011. [Pa85]. He further explained that the confusion stemmed from court staff's formatting of the monthly obligation as "$375 per week" in the PSA—an administrative conversion achieved by dividing $1,500 by 4. [Pa85; Pa91]. The PSA itself, however, required payment "by the 29th day of each month," making clear that the obligation was monthly, not weekly. [Pa85]. The weekly notation was never negotiated, discussed, or treated by either party as binding.

It was not until November 2024—mid-litigation and for the first time in any filing—that Defendant, in a cross-motion, abruptly abandoned the parties' long-settled understanding. [Pa42]. In that cross-motion, she asserted for the first time that the "$375 per week" notation in the PSA reflected an actual weekly support obligation—one that should have been multiplied by 4.3 weeks per month, rather than 4. Based on this retroactive recalculation, Defendant

claimed that Plaintiff should have been paying $1,612.50 per month and now owed $17,775 in arrears dating back to 2011. [Pa62–63].

This was not a minor correction. It was a complete reversal of position—unsupported by testimony, contradicted by documentary evidence, and inconsistent with both the parties' practice and probation's own accounting standards. The arrears claim was not only belated, but also facially implausible: it asked the court to infer a thirteen-year error—one never raised, disputed, or even mentioned until the precise moment it conferred a tactical litigation advantage.

Even more compelling is what the probation account shows. Even after the trial court added $17,775 in arrears, the account continues to reflect a $1,500 monthly obligation and a $375 weekly conversion—confirming that the probation department, like court staff, divides monthly obligations by 4, not 4.3. [Pa120]. Had Plaintiff remitted payment through probation since 2011, no arrears would have accrued. The trial court's reliance on a 4.3 multiplier—contrary to the parties' agreement, the administration of the PSA, and probation's own methodology—produced an inflated arrears figure that is divorced from reality.

Faced with this record—marked by directly conflicting certifications, a written admission from Defendant's own attorney, and over thirteen years of uninterrupted compliance—the trial court had only two lawful courses of action:

(1) summarily reject Defendant's newly asserted theory as legally and factually implausible under Mosior v. Ins. Co. of North America, 193 N.J. Super. 190, 195 (App. Div. 1984) (litigants may not manufacture factual disputes by submitting certifications that contradict their prior representations); or (2) convene a plenary hearing to resolve the material dispute, as required by Tancredi v. Tancredi, 101 N.J. Super. 259, 262 (App. Div. 1968) (reversing for failure to conduct plenary hearing on contested child support arrears). The court did neither.

Instead, the court adopted Defendant's position wholesale—without hearing testimony, addressing inconsistencies, or issuing findings under Rule 1:7-4. That procedural failure—and the court's willingness to accept a contradictory, last-minute claim based solely on paper submissions—demands reversal or, at a minimum, remand for a plenary hearing based on tested evidence.

B. The Trial Court Was Required to Hold a Plenary Hearing Before Making a Factual Finding on Arrears.

It is a bedrock principle of New Jersey family law that trial courts may not resolve genuine disputes of material fact—especially those grounded in conflicting certifications—without conducting a plenary hearing. Where credibility is central and one party seeks to retroactively alter a long-standing financial obligation, the court may not simply accept one party's version of

events on the papers. A plenary hearing is not optional in such circumstances; it is required to safeguard due process and the integrity of judicial findings.

This rule has been consistently and emphatically reinforced by New Jersey courts. In Conforti v. Guliadis, 245 N.J. Super. 561, 565 (App. Div. 1991), aff'd and modified, 128 N.J. 318 (1992), the Appellate Division warned that "a holding which authorizes a trial court to decide contested issues of material fact on the basis of conflicting affidavits, without considering the demeanor of witnesses, is contrary to fundamental principles of our legal system." See also Bruno v. Gale, Wentworth & Dillon Realty, 371 N.J. Super. 69, 76–77 (App. Div. 2004) (reversing for failure to conduct a plenary hearing where material facts were disputed in certifications); Klier v. Sordoni Skanska Constr. Co., 337 N.J. Super. 76, 85–86 (App. Div. 2001) (noting that conflicting certifications require a plenary hearing); Fusco v. Fusco, 186 N.J. Super. 321 (App. Div. 1982); and Hallberg v. Hallberg, 113 N.J. Super. 205, 208 (App. Div. 1971). In Tancredi v. Tancredi, 101 N.J. Super. at 262, the Appellate Division reversed a trial court's arrears determination made solely on the basis of conflicting affidavits, holding that where certifications raise material factual disputes—particularly in support and arrears matters—a plenary hearing is required to permit testimony and cross-examination.

This case falls squarely within the category of matters requiring a plenary hearing. Defendant's newly asserted arrears claim was premised on a

recalculation of the child support obligation from $1,500 per month to $1,612.50—based on her assertion that the PSA's "$375 per week" notation should be multiplied by 4.3 weeks per month rather than 4. That interpretation was not only raised for the first time during post-judgment litigation by way of cross-motion, but was also directly contradicted by:

- Thirteen years of uninterrupted $1,500 monthly payments, made without objection or any assertion of underpayment;
- A July 2024 letter from Defendant's own counsel confirming only one monthly payment of $1,500 (for June 2024) was owed in arrears, [Pa81]; and
- The probation department's own records, which continue to reflect a $1,500/month obligation and $375/weekly amount—reflecting a four-week conversion consistent with how the court staff formatted the PSA in 2011. [Pa120].

At best, Defendant's new claim created a credibility dispute. At worst, it was a strategic effort to manufacture retroactive liability by reinterpreting a clerical notation that had never before been treated as binding. Either way, the trial court was not permitted to resolve such a dispute on conflicting certifications alone. As the Appellate Division reaffirmed in Kleir v. Sordoni Skanska Const. Co., 337 N.J. Super. at 85-86, where the affidavits are in direct conflict and support contradictory versions of the facts, a plenary hearing is

required. The court's failure to convene such a hearing—let alone issue findings under Rule 1:7-4—was reversible error and denied Plaintiff the process he was due.

Accordingly, the $17,775 arrears award—reached without a hearing, findings, or tested evidence—cannot stand. At a minimum, the matter must be remanded for a plenary hearing, where credibility can be assessed, evidence weighed, and any support obligation determined in accordance with due process and controlling legal standards.

POINT III

THE TRIAL COURT ERRED IN ORDERING PLAINTIFF TO RETROACTIVELY CONTRIBUTE TO A VEHICLE PURCHASED UNILATERALLY BY DEFENDANT OVER HIS CONTEMPORANEOUS WRITTEN OBJECTION, WITHOUT HOLDING A PLENARY HEARING. (Pa9).

The trial court's decision to compel Plaintiff to contribute to a vehicle expense that Defendant incurred unilaterally—despite Plaintiff's timely, written objection—was legally and procedurally indefensible. The ruling reflects both a misapplication of controlling equitable principles and a disregard for well-settled requirements governing the resolution of factual disputes in family matters.

A. The Trial Court Erred in Ordering Retroactive Contribution for a Discretionary Expense Unilaterally Incurred Over Plaintiff's Express Objection.

The trial court's ruling compelling Plaintiff to contribute to the cost of a vehicle unilaterally purchased by Defendant—despite his contemporaneous written objection—ignores the equitable principles set forth in Gac v. Gac, 186 N.J. 535 (2006), and represents a misapplication of controlling law. In Gac, the New Jersey Supreme Court rejected a custodial parent's request for retroactive contribution to college expenses where the expense had already been incurred and the non-custodial parent had been excluded from the decision-making process. The Court emphasized that a parent should not be permitted to unilaterally obligate the other to support a decision in which he or she had no input. Id. at 545-46.

Although Gac arose in the context of college expenses, its rationale extends to other major, non-emergency child-related expenditures—such as the purchase of a vehicle—where one parent seeks reimbursement from the other after incurring the cost unilaterally. As the Court explained, a parent seeking contribution should, at a minimum, "initiate the application to the court before the expenses are incurred. The failure to do so will weigh heavily against the grant of a future application" Id. at 546. That principle is grounded in equity and the fundamental requirement of meaningful consultation prior to imposing significant financial obligations on another parent.

Here, Plaintiff's objection to the proposed purchase was not only timely—it was unequivocal. He advised both Defendant and their son in advance that the

proposed vehicle was too expensive, that the purchase should be delayed until their son had saved more money, and that he did not consent to share the cost. [Pa38]. Despite this, Defendant proceeded unilaterally, and only afterward sought reimbursement.

The trial court's decision to award contribution—while disregarding Plaintiff's written objection and without assessing the equities involved—undermines the shared financial responsibility contemplated in post-judgment family law and offends the equitable principles reaffirmed in Gac. As the Gac Court made clear, the proper time to resolve financial disagreements over significant child-related expenses is before the expense is incurred—not through after-the-fact judicial imposition at the request of the parent who disregarded the other's input.

B. The Trial Court Improperly Resolved a Disputed Issue of Material Fact Without a Plenary Hearing, Despite Conflicting Evidence and Gac's Directive That Contribution Must Be Sought in Advance.

The trial court's decision to compel Plaintiff to contribute to a car purchased over his express objection was procedurally flawed in addition to being substantively inequitable. Plaintiff submitted a sworn certification and contemporaneous text messages demonstrating that he opposed the purchase in advance—advising that the vehicle was too expensive, the timing inappropriate, and that their son should wait. [Pa38]. Defendant disregarded that objection and sought reimbursement only after the fact.

This factual conflict—whether Plaintiff consented, objected, or had meaningful input—was material. It implicated both the equities of contribution and the threshold question of whether Defendant met her burden under Gac. The court could not resolve that conflict based on the papers alone.

New Jersey law is clear: when certifications conflict on issues of material fact—particularly involving credibility, consent, or financial obligation—a plenary hearing is required. See Conforti v. Guliadis, 245 N.J. Super. at 565; Whitfield v. Whitfield, 315 N.J. Super. 1, 10 (App. Div. 1998) (reversing trial court for failing to conduct a plenary hearing on disputed claims concerning child-related travel and visitation expenses); Tancredi v. Tancredi, 101 N.J. Super. at 262 (reversing for failure to conduct plenary hearing on disputed support arrears). The trial court's decision to resolve that conflict summarily—without testimony, without cross-examination, and without findings under Rule 1:7-4—was reversible error.

Moreover, this procedural error compounded the court's failure to follow Gac, which requires that applications for contribution be made **before** significant discretionary expenses are incurred. As the Supreme Court warned in Gac, a parent seeking reimbursement "should, at a minimum, initiate the application before the expenses are incurred," and "the failure to do so will weigh heavily against the grant of a future application." Gac, 186 N.J. at 546. Here, Defendant made no such application. Instead, she moved forward

unilaterally—despite Plaintiff's written objection—and sought retroactive contribution only afterward.

This failure to consult, coupled with the attempt to shift costs after the fact, weighs heavily against any award of contribution. The trial court's decision to impose liability without a hearing, in direct contravention of Gac and established procedural rules, requires reversal. At minimum, the matter should be remanded for a plenary hearing to assess the facts, weigh the equities, and determine whether any relief is legally or equitably justified.

POINT IV

THE TRIAL COURT'S AWARD OF $3,000 IN COUNSEL FEES MUST BE REVERSED BECAUSE IT WAS ISSUED WITHOUT ANY FINDINGS UNDER RULE 5:3-5(c), RULE 1:7-4(a), OR RPC 1.5(a), AND RESTED ENTIRELY ON A MISTAKEN PROCEDURAL PREMISE. (Pa16).

An award of counsel fees in matrimonial litigation is not automatic. See Ricci v. Ricci, 448 N.J. Super. 546, 580 (App. Div. 2017)(New Jersey does not follow a "loser pays" model). It is permitted only where justified by equity and supported by express findings of fact and conclusions of law. As the Supreme Court explained in Mani v. Mani, 183 N.J. 70, 94–95 (2005), courts must consider the financial circumstances of the parties, the good or bad faith of each, the nature and reasonableness of the fees sought, and whether fee-shifting is warranted by need or litigation conduct. These factors are codified in Rule 5:3-5(c) and must be addressed alongside the fee reasonableness criteria of RPC

1.5(a). Most critically, Rule 1:7-4(a) mandates that courts "find the facts and state its conclusions of law thereon" before entering an award.

The trial court failed to comply with any of these obligations. Although the February 14, 2025 order recited the applicable standards, the court made no effort to apply them to the record. There was no finding that Defendant had a financial need, no assessment of the fee's reasonableness, and no evidence—let alone analysis—supporting a conclusion that Plaintiff acted in bad faith. Instead, the award was based entirely on the mistaken belief that Plaintiff had filed a second reconsideration motion, when in fact his earlier October 2, 2024 motion had not sought reconsideration at all, but adjudication of issues left open in the trial court's August 23, 2024 interlocutory order.

This fundamental error renders the counsel fee award unsupportable under any applicable standard.

A. The Counsel Fee Award Was Premised on a Mistaken Characterization of Plaintiff's Conduct and Lacked Any Supporting Findings.

As explained in Point I, Plaintiff's October 2, 2024 motion was a procedurally proper application to adjudicate issues expressly reserved in the trial court's August 23, 2024 interlocutory order. It was not a reconsideration motion. Plaintiff's first and only reconsideration application under Rule 4:49-2 was filed on December 23, 2024. Yet, in denying that motion, the court

erroneously concluded that Plaintiff had sought reconsideration twice and found—without evidentiary support—that he was not acting in good faith.

That mistaken conclusion formed the sole basis for the fee award. The order contains no other reasoning. It does not engage with any of the factors enumerated in Rule 5:3-5(c), such as the parties' financial circumstances or the necessity of the fee. Nor does it evaluate the reasonableness of the fee amount under RPC 1.5(a), or even mention the work performed or the basis for the $3,000 figure. The absence of findings under Rule 1:7-4(a) alone is fatal. As the Appellate Division has emphasized, meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion. Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996); See also Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008).

The court's failure to substantiate its conclusions is not a technicality—it is a substantive defect that violates settled law and denied Plaintiff a fair adjudication of the issue.

B. There Was No Legal or Equitable Basis for a Counsel Fee Award.

A fee award may be appropriate in matrimonial cases to enable the parties to litigate on an even playing field or to deter litigation misconduct. Williams v. Williams, 59 N.J. 229, 233 (1971); Fattore v. Fattore, 458 N.J. Super. 75, 90 (App. Div. 2019); Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992). Neither justification was present here. The record contains no finding—nor any

evidence—that Defendant was unable to pay her own legal fees. Nor is there any showing that Plaintiff engaged in vexatious or bad faith conduct. As the Appellate Division reiterated in Slutsky v. Slutsky, 451 N.J. Super. 332, 367 (App. Div. 2017), "[t]hat a party advances a legal position reasonably supported which the court rejects is not the equivalent of 'bad faith.'"

More broadly, the award reflects an outcome-based rationale that New Jersey law rejects. In Ricci v. Ricci, 448 N.J. Super. at 580, the court admonished that "New Jersey does not subscribe to a system that 'loser pays.'" That principle is rooted in the American Rule, reaffirmed in In re Estate of Vayda, 184 N.J. 115, 120 (2005), which prohibits penalizing litigants merely for seeking judicial relief. Plaintiff had a right to pursue reconsideration of a final order entered without testimony or findings. To impose counsel fees in response—based solely on the trial court's mischaracterization of the application being a second reconsideration motion—is contrary to both procedural fairness and established law.

Accordingly, the $3,000 counsel fee award must be vacated. At a minimum, the matter should be remanded for a proper evaluation under Rule 5:3-5(c), RPC 1.5(a), and Rule 1:7-4(a)—based on the facts of record, grounded in law, and articulated with the specificity necessary to permit meaningful appellate review. Heinl v. Heinl, 287 N.J. Super. at 347; See also Strahan v. Strahan, 402 N.J. Super. at 318.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court reverse the trial court's (1) December 13, 2024 Final Order, as amended by the March 5, 2025 Order—specifically Paragraphs 1, 4, 14, 16, 17, and 18—and (2) February 14, 2025 Order Denying Reconsideration—specifically Paragraphs 1, 2, and 6. These orders imposed substantial financial obligations on Plaintiff without plenary hearings, resolved disputed issues of material fact on conflicting certifications alone, and awarded counsel fees absent the findings required by Rule 5:3-5(c), Rule 1:7-4(a), or RPC 1.5(a). Reversal—or, at a minimum, remand—is necessary to restore procedural fairness and ensure that Plaintiff's obligations are determined in accordance with controlling legal principles and tested evidence.

Respectfully submitted,

SZAFERMAN, LAKIND,
BLUMSTEIN & BLADER, P.C.

By: 
Brian G. Paul, Esq.

Dated: 4/25/25

Superior Court of New Jersey

APPELLATE DIVISION
DOCKET NO.: A-001846-24
FM-15-719-11 (Ocean County)

CIVIL ACTION

DAVID RUIZ,	
Plaintiff/Appellant	*ON APPEAL FROM:* **An Order From the Superior Court of New Jersey, Chancery Division**
vs.	
MARIBEL CINTRON,	**Family Part, County of Ocean**
Defendant/Respondent	
	SAT BELOW: **Hon. John G. Ducey, J.S.C.**

BRIEF
FOR
Defendant/Respondent, Maribel Cintron

ATTORNEY FOR: **Defendant/Respondent, Maribel Cintron**

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Preliminary Statement

This appeal is the product of Appellant's refusal to adhere to the plain words of the parties' Property Settlement Agreement. To wit, the Plaintiff, David Ruiz expressly agreed to pay Defendant, Maribel Cintron, the sum of "$375 *per week* in child support". [italics supplied] The Plaintiff seeks to ignore the plain words of the parties' PSA, in favor of unilaterally paying $1500 per month.

The Plaintiff seemingly confuses his agreed-upon obligation elsewhere in the PSA to pay, in lieu of alimony, a short term contribution of $1,500 per *month* to "cover [Defendant's] rent, utilities, gasoline, meals and misc items.". The aforesaid 11spousal support was to be paid at "$1,5000 per month". The Plaintiff seeks to "mix" the terms of the limited spousal support obligation with the different express terms as it relates to his child support obligation. Conversely, the parties expressly agreed that child support would be paid at the rate of $375 per week".

The plain words of the PSA indicate that the parties were aware of monthly obligations versus weekly obligations. To that end, they agreed that the temporary period of spousal support would be paid at the rate of $1,500 per month. Child support, on the other hand, was to be paid at the express rate of $$375 per month. Plaintiff's failure to pay the expressly agreed upon

weekly amount of child support is not disputed. The express terms of the PSA as it relates to Plaintiff's child weekly support obligation cannot be disputed either. As such, the trial court was not required to conduct a plenary hearing as to these facts of record. To require a court to "revisit" expressly agreed upon weekly payments with a plenary hearing would cause a deluge of litigation over indisputable express terms set forth in marital settlement agreements.

The Plaintiff's attempt to rely upon July 2024 letter from counsel is likewise misplaced. That letter was authored to address the Plaintiff's intentional withholding of child support for a limited period of time; and by no means constituted some sort of amendment as to Plaintiff's failure to pay as required in the broader sense. Plaintiff was utilizing self-help measures to withhold child support payments and counsel's letter was authored to address that limited issue as to Plaintiff's improper self-help at that time.

The ruling by the trial was based on the plain terms of the parties' property settlement agreement. None of the issues before the trial court required a plenary hearing based upon the evidence presented to the trial court.

Statement of Facts

Plaintiff, David Ruiz and Defendant, Maribel Cintron were married January 24, 2006. Two children were born of the marriage: a) L.R., d.o.b. 4/25/2006; and K.R., d.o.b 1/28/2009. The parties were divorced in 2011. The Final Judgement of Divorce incorporated a Property Settlement Agreement (hereinafter "PSA") dated May 11, 2011. Despite the misplaced assertion of the Plaintiff, the parties' PSA expressly recites:

> 2) Child Support- Plaintiff agrees to pay $375.00 per week in child support. [Pa68]

It should be noted that the Court mediator did not utilize a "standard template requiring the support to be expressed in weekly terms" as alleged by the Plaintiff for the first time on appeal. Instead, a cursory review of the parties' PSA reveals that it was a hand-written document prepared specifically for these parties. [Pa67]. Quite frankly, the PSA terms were handwritten on a blank court order and adjusted where necessary to create a custom PSA.

No evidence was ever supplied to the trial court any contrived notion that the court staff improperly converted a monthly $1,500 into a $375 per week figure. Rather child support is always expressed as a weekly figure. Instead, the Plaintiff confuses the temporary spousal support figure, recited in paragraph #5 with the entirely different child support figure.

The spousal support figure in paragraph #5 of the parties' PSA indeed reflects Plaintiff's of $1,500 per month. [Pa68] Clearly, the parties expressly agreed that one obligation would be paid monthly while the child support obligation would be paid weekly. These are the plain recitals of the parties' PSA.

The Plaintiff has not disputed that he has failed to pay child support as agreed upon in the parties' PSA. Instead, the Plaintiff has seemingly confused his spousal support obligation payable at the rate of $1,500 per month. As such, the Plaintiff paid only $1,500 per month toward his weekly child support obligation of $375 per week. By doing so, the Plaintiff clearly accrued child support arrears.

In terms of counsel's letter dated July 8, 2024, said letter was drafted to address the Plaintiff's intentional withholding of child support during this particular time period. The hardly serves to create an amendment to the plain terms of the parties' PSA. To the contrary, the Defendant's counsel's letter specifically demands that Plaintiff comply with payment of his child support obligation as set forth in their PSA. [Pa81]

The Trial Court's August 23, 2024 Order

Given the Plaintiff's defiance of his financial obligations as it related to Plaintiff's refusal to reasonably contribute to Timothy Christian School [private high school] and college

expenses, the Defendant filed a motion June 2024. [Pa1] Despite affording the Plaintiff a gracious time period to file an opposition, the Plaintiff never filed any opposition. The Court issued an order dated August 23, 2024 which denied Defendant's request for contribution to the Timothy Christian private high school costs, but directed that Plaintiff bore an obligation to contribute to L.R.'s college education expenses, as well as, the extraordinary expense of L.R.'s car. [Pa2]

The Trial Court's Order Dated December 13, 2024:

After failing to file any opposition to motion that lead to the Court's Order dated August 23, 2024, the Plaintiff did not remotely file a timely and proper motion for reconsideration. Instead, the Plaintiff filed a motion dated October 3, 2024 which sought to change the determinations set forth in the Court's Order dated August 23, 2024. The Plaintiff's application was essentially a request for reconsideration of the issues already adjudicated by virtue of the Order dated August 23, 2024. To wit, the Plaintiff sought to reverse the Court's determinations that he bore an obligation to contribute to L.R.'s college education expenses as well as his automobile expenses. The Plaintiff's certification in support of his motion was transparently focused on his personal costs as opposed to the best interest of his child. [Pa36] It should be noted that Plaintiff out-earns the

Defendant $266,787.00 to $33,035.00. [Pa9]. The Plaintiff essentially took the position that if he unreasonably refused to contribute to reasonable and necessary child expenses, that a court could not order otherwise. The Plaintiff failed to append a single exhibit in support of his motion. [Pa36]

The Defendant filed a cross-motion requesting in part: a) establishing Plaintiff's share of child -related expenses to be 85% based upon the parties' respective incomes, finding the Plaintiff in violation of litigant's rights for intentionally withholding child support payments totaling $5,175 during the period of July 8, 2024 through December 29, 2024, directing the Plaintiff to pay the sum of $17, 775.00 for child support arrears that accrued May 11, 2011 through July 8, 2024, and for an award of counsel fees. [Pa41]

The Plaintiff filed a Reply certification to Defendant's cross-motion. The Plaintiff falsely certified that he had "paid [his] child support obligation every single month to the Defendant of *$375 per week as we had agreed upon in open court*." [Pa80] [italics supplied] Given the Plaintiff's very own certification, he acknowledges that the parties had agreed to a child support obligation of "$375 per week". [Pa80].

The Plaintiff failed to object or contest that his pro-rata share of child related expenses should be set at85%. The Plaintiff's Reply certification failed to raise any legitimate

legal issues that would insulate a non-custodial parent from an obligation to contribute to college expenses or extraordinary child expenses. Significantly, the Plaintiff failed to raise any arguments before the trial court that any of the prior orders were interlocutory. Quite frankly, the term "interlocutory" fails to appear anywhere in the record prior to appeal. The Court issued an ordered dated December 13, 2024 [Pa26]. The Court directed that Plaintiff indeed bore an obligation to contribute to L.R.'s college expenses. Contrary to Plaintiff's assertion, the Court directed a *Newburg* factor analysis. The Court would ultimately receive such a factor analysis in a subsequent application.

The Trial Court's Order Dated February 14, 2025

The Plaintiff filed an unsupported motion for reconsideration. First, the Plaintiff's "notice of motion for reconsideration" was non-conforming to the extent that it wholly failed to identify what issues for which reconsideration was sought. [Pa82]. Instead, the Plaintiff's Notice of Motion merely requested "reconsideration" of an unidentified order; and moreover, failed to identify which specific issues Plaintiff wanted the trial court to reconsider. [Pa82] Instead, the Plaintiff merely requested reconsideration in the most nebulous and general manner. [Pa82]

The Plaintiff's certification in support of the motion appended text messages which failed to support the contentions in his certification. The Court's Court's February 14, 2025 extensively recited why the Plaintiff's motion for reconsideration was denied on multiple grounds. [Pa13] The Court further found the Plaintiff to be in violation of litigant's rights for failing to timely pay Defendant the $5,175 worth of child support that he intentionally withheld over the Summer. The Court also plainly found that Plaintiff had continued to defy payment of his child support base amount plus arrears as previously ordered. [Pa15] The court found that Plaintiff was not acting in good faith, and ordered the Plaintiff to pay counsel fees to Defendant in the amount of $3,000. [Pa17]

Subsequently, this appeal ensued.

Legal Argument:

I. The Trial Court Properly Enforced the Plain Terms of Appellant's Child Support Obligation As Set Forth in the Parties' Property Settlement Agreement.

Plaintiff's child support obligation as set forth in the Parties' Property Settlement Agreement clearly reflects:

> 2) Child Support- Plaintiff agrees to pay $375.00 per *week* in child support...[Pa68]

Plainly, the Plaintiff agreed to pay $375 per *week*. Obviously, there are more than 4 weeks in a month; and thus, in order to calculate the monthly obligation, one needs to multiply the agreed upon weekly figure [ie: $374/week] by 4.3 weeks [number of weeks/month].

The Plaintiff now seeks to change the terms of the parties' PSA whereby he asserts that he should only pay $1,500 per month. [ie: $375 x 4 weeks] If the Plaintiff were to prevail in his position, then the Court would be creating a "better agreement" to the extent that Plaintiff's weekly child support obligation would equate to $348.83 per week [ie: $1,500/month *divided by* 4.3 weeks= $348.83] This is not the plain terms of the child support agreement memorialized in the parties' PSA.

Fair and definitive settlement terms arrived at by mutual consent should not be unnecessarily or lightly disturbed. When the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written. *Quinn*

v Quinn, 225 NJ 34 (2016). *See also Konzelman v, Konzelman*, 158 NJ 185 (1995). The court will not generally make a better agreement than the parties themselves made. *Quinn*, 225 N.J. 45.

In this matter, the weekly child support figure is already most "fair" given that the support is for two [2] children and a great discrepancy in income between the parties [ie: $266,787 vs. $33,035]. The amount of child support can be further characterized as "fair" given that Defendant waived a substantial alimony claim in favor of the agreed upon child support figure and an extremely short term spousal support payment of $1,500 per month. [Pa68]. The $1,500 spousal support agreement should not be confused with the child support obligation. The parties clearly recognized the difference between "monthly" payments and "weekly" payments as the child support is clearly termed "weekly" while the spousal support is clearly termed "monthly". Plaintiff's confusion of the two [2] obligations does not create a basis for departure from the actual agreed upon term in the parties' PSA.

II. The Trial Court Was Not Required to Conduct a Plenary Hearing

A plenary hearing is not required in every matter. A plenary hearing In order to trigger the need for a plenary hearing, "a party must clearly demonstrate the existence of a genuine as to material fact...". *Lepis v. Lepis,* 83 N.J. at 159 (1980).

In the matter at hand, the trial court was not required to

conduct a plenary hearing as the Plaintiff failed to meet its burden to breach the legal threshold requiring a hearing. The trial court's Amplification of Rulings accurately addresses the Plaintiff's failure to meet its burden as it specifically relates to particular issues:

a) Child Support: First, the parties' property settlement agreement plainly reflects an agreement by Plaintiff to pay $375 *per week*. [Pa68] There is not a valid issue of fact as to the plain words of that agreement. Second, the Plaintiff's papers filed at the trial level certainly did not create a genuine issue of fact. More specifically, the Plaintiff's reply certification filed in opposition to Defendant's claim of child support arrears hardly creates a valid issue of material fact that would require a plenary hearing. In paragraph #6 of Plaintiff's reply certification, Appellant inaccurately certifies that " I have paid my child support obligation every single month to Defendant of *$375 per week as we had agreed upon in court*". [Pa80][italics supplied] The trial court received the Plaintiff's certification where he acknowledges that he agreed "in court" to pay "*$375 per week*". Additionally, the trial judge received evidence that the Plaintiff did *not* pay $375 per week as averred by Plaintiff. Moreover, the trial judge properly enforced the plain words of the parties' PSA which reflected an agreement to pay $375 per week. The trial judge noted the Plaintiff's complete failure to

offer any documents to support a contrary conclusion. Furthermore, the trial judge was not persuaded by the Plaintiff's inaccurate certification and a blanket contention that he "should have no arrears due to Defendant and certainly not the ludicrous figure proposed by Defendant". [Pa85]. As such, there was not a genuine issue of material fact to be resolved with regard to Plaintiff's child support obligation.

b) L.R.'s Automobile: Again, the trial court's Amplification of Rulings is instructive. [Pa18] Simply stated, contrary to Plaintiff's allegation, he did *not* offer the trial judge "documented objections" to the purchase of a car for L.R. Pa19] Thus, similar to almost every other child -related expense, the Plaintiff in knee-jerk fashion transparently adopted a position that does not cost him money, even if that position runs afoul of the best interest of the child, and, the law governing a parent's reasonable contribution to extraordinary expenses.

III. The Plaintiff's Attempt to Change the Plain Words of the Child Support Agreement Set Forth in the Parties' PSA Would Constitute A Statutorily Prohibited Retroactive Modification

N.J.S.A. 2A:17-56.23a prohibits the retroactive modification of support payments. Specifically, the statute reads:

> No payment or installment of an order for child support ....shall be retroactively modified by the court except....with respect to the period which there is a pending application for modification, but only from the date the notice of motion was mailed

> either directly or through the appropriate agent. The written notice will state that a change of circumstances has occurred.

As our Appellate Division further explained in *Mahoney v. Pernell*, " *N.J.S.A.* 2A:17-56.23a was enacted to insure that ongoing support obligations that become due were paid...[thus] a change of circumstances, such as loss of a job, could, therefore, *not* be used as a basis to modify retroactively arrearages which had already accrued under a child support order. *Mahoney,* N.J. Super 638, 643 (App. Div. 1995). [italics supplied]. It is the child support obligor who under *N.J.S.A. 2A: 17-56.23a* who bears the burden of filing of a motion for modification of a child support based on alleged change of circumstances. Therefore, it follows that it is the obligor who bears the burden of his/her failure to file the appropriate motion. *Id.*

Despite this strong legislative ban on retroactive modification, the Plaintiff is essentially asking the trial court to ignore the plain words of the parties PSA. Instead, seeks an effective downward "modify" to the extent that he is relieved from an express child support obligation of $375 per week to be supplanted by an obligation of $1,500 per month. Such an effective retroactive "modification " of child support based upon the facts before the Court is statutorily proscribed.

IV: The Court's August 23, 2024 Order, As Well As Subsequent

Orders, Were Properly Granted as Unopposed and Were Final Orders As to Various Adjudicated Issues:

First, as a point of clarification, the trial court did not confuse "private school education" with "college education". "Private school education" as utilized by the trial court referred to costs incurred by the parties' children at the Timothy Christian School, a private high school attended by the parties' children. Contrastingly, the trial court was also called upon to compel the Plaintiff to contribute to L.R.'s college education expenses. This is why the trial court referred to one expense as "private school" and the college expense differently. Any notion that the trial court "confused" the issues is without merit and unsupported by the record. To the contrary, the trial court used different terminology to properly segregate the different categories of expenses.

The Court's August 23, 2024 Order was granted as unopposed by the trial court. The trial court's order was final to the extent that it determined that Plaintiff bore an obligation to contribute to child medical expenses, extra-curricular activities, child extra-ordinary expenses, Cairn University expenses, and L.R. car expenses. [Pa1]. Granted, the Court could not apportion the relative percentages because the Plaintiff had not supplied financial information. However, the issue as to whether Plaintiff bore an obligation was certainly decided by the

Court.

The issue as to the Plaintiff's and Defendant's respective shares, was a self-executing provision, to be determined by the trial court upon receipt of the parties' respective financial information. [Pa1]. The Plaintiff's motion filed in October 2024 did not question the issue of pro rata apportionment, rather the Plaintiff's motion sought to contest whether the Plaintiff bore an obligation at all to contribute to the expense categories already determined by the Court's August Order. In fact, even when the Defendant filed a cross motion seeking to establish the pro-rata contribution percentages, the Plaintiff did not elect to file opposition to the proposed percentages. [Pa5]

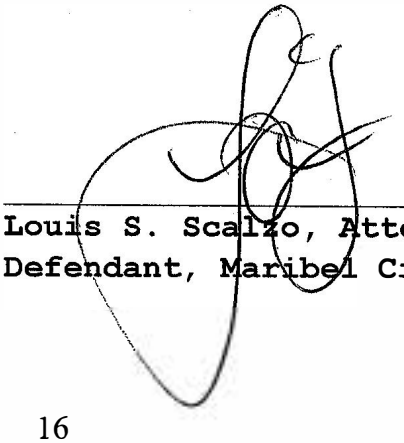
Thereafter, the Plaintiff filed what can best termed as a non-conforming "notice o motion for reconsideration" on December 23, 2024. The Plaintiff's "notice of motion" was fraught with vagueness, failing to identify any specific issue[s] for which Plaintiff sought reconsideration. Even if one attempts to "glean" the Plaintiff's requested relief from the substance of his certification, it is clear that the Plaintiff is not seeking to challenge the pro-rata amount of his percentage contribution, but rather that he did not have an obligation to contribute at all. Again, Plaintiff's subsequent applications are attempts to dispute that he bears an obligation to contribute to contribute to the various categories of child related expenses at all. His

subsequent applications did *not* raise any claim that the trial judge's pro-rata apportionment was erroneous in some fashion. The Plaintiff also attempted to re-address the issue of chid support arrears, but failed to offer the trial any credible evidence to contest that the plain words of the parties' PSA wherein he agreed to pay child support at the rate of "$375 per week" was somehow an error. As such, the Plaintiff's repeated motions before the trial court did not seek to contest the apportionment but rather whether Plaintiff had a obligation to contribute to the various categories in the first instance. In short, the Plaintiff was contesting the determinations in the court previous longstanding final orders.

Conclusion:

For the reasons set forth herein, the trial court did not err based upon the record presented; and Plaintiff's appeal should be denied.

Dated: May 27, 2025



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DAVID RUIZ, Plaintiff-Appellant v. MARIBEL CINTRON, Defendant-Respondent.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-001846-24 Civil Action **On Appeal from:** In the Superior Court of New Jersey, Chancery Division, Family Part, Ocean County Docket No.: FM-15-719-11 Sat below: Hon. John Ducey, J.S.C.

PLAINTIFF-APPELLANT'S REPLY BRIEF ON APPEAL

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PRELIMINARY STATEMENT

Defendant's brief fails to offer any substantive defense of the trial court's refusal to conduct plenary hearings or issue factual findings required by New Jersey law. Instead, it rests on selective extractions from the record, mischaracterizations of the procedural posture, and the erroneous premise that the trial court's legal missteps may be brushed aside as harmless error.

Contrary to Defendant's assertions, this appeal does not seek to "rewrite" the parties' Property Settlement Agreement (PSA). It seeks to enforce the PSA in accordance with the parties' course of conduct, the agreement's plain language, the parties' intent and longstanding principles of fairness and due process. For more than thirteen years, Plaintiff paid $1,500 per month in child support without objection—an interpretation fully consistent with the PSA's instruction that payments be made "by the 29th day of each month." Only after the onset of post-judgment litigation did Defendant, for the first time, advance a novel weekly conversion theory—one that contradicts the parties' shared understanding, more than a decade of uninterrupted $1,500 monthly payments, and her own counsel's written admission acknowledging just $1,500 in arrears for a single missed payment in June of 2024.

Rather than resolve this factual dispute through a plenary hearing—as required by well-settled case law when certifications conflict on material financial factual issues—the trial court adopted Defendant's interpretation

wholesale, disregarding Plaintiff's contrary certification and corroborating documentation. The court then compounded its error by ordering Plaintiff to contribute retroactively toward a vehicle unilaterally purchased by Defendant—despite Plaintiff's contemporaneous objection and without the evidentiary hearing mandated by Gac v. Gac, 186 N.J. 535 (2006), when substantial discretionary child related expenses are sought after the fact. Finally, the court imposed a $3,000 counsel fee award based not on Rule 5:3-5(c)'s factors, but on the mistaken belief that Plaintiff filed multiple reconsideration motions.

Defendant's appellate submission does not cure these foundational defects. It does not meaningfully engage with the trial court's failure to hold hearings where facts were in dispute, its improper characterization of Plaintiff's motion as untimely reconsideration, or its lack of findings under the relevant court rules. Instead, it glosses over these legal failures and urges affirmance based on a skewed view of harmless error doctrine.

Plaintiff respectfully submits that reversal—or, at minimum, remand for plenary hearings and legally sufficient findings—is warranted. The trial court's rulings ignored the conflicting certifications, misapplied governing standards, and failed to provide Plaintiff a fair opportunity to contest newly asserted financial claims.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF OWED $17,775 IN CHILD SUPPORT ARREARS WITHOUT CONDUCTING A PLENARY HEARING, DESPITE CONFLICTING CERTIFICATIONS, A 13-YEAR HISTORY OF CONSISTENT PAYMENTS, AND CONTRADICTORY WRITTEN STATEMENTS FROM DEFENDANT'S OWN COUNSEL. (Pa10).

Defendant seeks to justify the trial court's $17,775 arrears determination by retroactively applying a 4.3-week multiplier to a $375 weekly figure that was inserted into the PSA by court staff for formatting purposes in 2011. This calculation—never mentioned or relied upon by either party for over thirteen years—now serves as the sole basis for a claim that Plaintiff underpaid child support by $112.50 per month since 2011. But that position is fundamentally at odds with the agreement's plain language, which required child support to be paid "by the 29th day of each month" [Pa85]—a provision that reflects a monthly payment structure, not a variable weekly one—and it contradicts the parties' consistent course of conduct over more than a decade.

More critically, it underpins a retroactive financial penalty imposed without a plenary hearing, notwithstanding directly conflicting certifications, documentary evidence, and Defendant's own attorney's written confirmation that only $1,500 in arrears was owed [Pa81]. This belated arithmetic revision—never raised until November 2024—cannot substitute for factfinding, nor

override the due process protections that apply when credibility is disputed and the financial consequences are significant.

The trial court's summary acceptance of Defendant's interpretation—without testimony, cross-examination, or findings of fact—was reversible error. New Jersey law requires a plenary hearing when material facts are disputed in certifications, particularly in support and arrears determinations. Tancredi v. Tancredi, 101 N.J. Super. 259, 262 (App. Div. 1968) (reversing for failure to conduct plenary hearing on contested child support arrears).

A. The PSA Created a Monthly Support Obligation Confirmed by Thirteen Years of Undisputed Compliance and Defendant's Own Counsel.

The PSA expressly states that child support is to be paid "by the 29th day of each month." [Pa85]. While it also includes a "$375 per week" figure, Plaintiff certified—and Defendant did not dispute until 2024—that this was simply a mathematical conversion inserted by court staff for formatting purposes. [Pa85; Pa91]. At no point did either party treat this weekly figure as binding, and the PSA contains no language suggesting that the monthly obligation was intended to be calculated using a 4.3-week multiplier.

From May 2011 through November 2024, Plaintiff paid $1,500 per month in child support without fail. [Pa85]. Defendant accepted every payment without objection, enforcement action, or any assertion of arrears. This uninterrupted course of performance reflected the parties' shared understanding that the PSA

established a flat monthly obligation of $1,500. That understanding was not only confirmed by Plaintiff's sworn certification, but also by Defendant's own counsel, who acknowledged in a July 8, 2024 letter that Plaintiff owed just $1,500 in arrears—equivalent to one missed monthly payment. [Pa81]. The letter stated: *"*My client advises that you currently bear child support arrears in the amount of $1,500.00. To wit, you have failed to make your child support payment that was due on June 28, 2024.*"* [Pa81]. This express admission—made just four months before Defendant's sudden pivot to a retroactive arrears claim—flatly contradicts her new position and further underscores the parties' long-standing mutual understanding that child support was $1,500 per month.

Under New Jersey law, courts are required to interpret contracts according to the parties' mutual intent at the time of execution. Pacifico v. Pacifico, 190 N.J. 258, 266 (2007). This includes construing terms within the context of the parties' contemporaneous circumstances and purpose. See Tessmar v. Grosner, 23 N.J. 193, 201 (1957); Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953); Dontzin v. Myer, 301 N.J. Super. 501, 507 (App. Div. 1997). The consistent monthly payments, combined with the PSA's express "by the 29th day of each month" language, confirm that the general purpose was to establish a monthly obligation—not a floating amount based on a post hoc conversion.

It was not until November 2024, in her cross-motion [Pa42], that Defendant advanced, for the first time in over a decade, a claim that the PSA's

"$375 per week" reference represented an actual weekly obligation that should have been multiplied by 4.3 weeks per month, resulting in a monthly payment of $1,612.50 and a cumulative arrears claim of $17,775 dating back to 2011. [Pa62–63]. This recalculation was wholly inconsistent with thirteen years of conduct and with the administration of the support order by probation.

Indeed, even after the trial court added $17,775 in arrears, the probation account continued to reflect a $1,500/month obligation and a $375/week figure based on a simple 4-week conversion, not 4.3. [Pa120]. Had Plaintiff remitted payments through probation over the years instead of by personal check, no arrears would have accrued under this methodology. The court's reliance on a 4.3-week multiplier—contrary to the PSA's language, the parties' behavior, and probation's own accounting—produced an inflated arrears calculation unsupported by any credible evidence.

This was not a minor disagreement over semantics. It was a complete reversal of position raised mid-litigation, unsupported by testimony, contradicted by documents, and timed precisely to confer a tactical advantage in a post-judgment proceeding.

Faced with this record—marked by directly conflicting certifications, a clear admission from Defendant's own counsel, and more than thirteen years of uninterrupted performance—the trial court had only two lawful options:

(1) Summarily reject Defendant's newly asserted theory as legally and

factually implausible under Mosior v. Ins. Co. of North America, 193 N.J. Super. 190, 195 (App. Div. 1984) (litigants may not manufacture factual disputes by submitting certifications that contradict their prior representations); or

(2) Convene a plenary hearing to resolve the dispute on the merits, as required by Tancredi v. Tancredi, 101 N.J. Super. 259, 262 (App. Div. 1968) (reversing trial court for failure to hold a plenary hearing on arrears).

The court did neither. Instead, it accepted Defendant's new claim at face value, without hearing testimony, addressing inconsistencies, or issuing findings as required under Rule 1:7-4. That procedural failure—and the trial court's willingness to adopt a last-minute, untested theory based solely on paper submissions—constitutes reversible error. At a minimum, remand is required for a plenary hearing based on tested evidence and governing law.

B. The Trial Court Was Required to Hold a Plenary Hearing Before Making a Factual Finding on Arrears.

Where certifications directly conflict on material facts—particularly in family matters involving alleged support arrears—New Jersey courts require a plenary hearing. Tancredi v. Tancredi, 101 N.J. Super. at 262. The rule is grounded in due process: "[a] holding which authorizes a trial court to decide contested issues of material fact on the basis of conflicting affidavits, without considering the demeanor of witnesses, is contrary to fundamental principles of our legal practice." Conforti v. Guliadis, 245 N.J. Super. 561, 565 (App. Div.

1991), aff'd as modified, 128 N.J. 318 (1992). See also Bruno v. Gale, Wentworth & Dillon Realty, 371 N.J. Super. 69, 76–77 (App. Div. 2004); Klier v. Sordoni Skanska Constr. Co., 337 N.J. Super. 76, 85–86 (App. Div. 2001); Fusco v. Fusco, 186 N.J. Super. 321, 327–28 (App. Div. 1982).

Here, Plaintiff submitted a certification [Pa85] documenting more than a decade of $1,500 monthly payments, along with contemporaneous evidence—including a July 8, 2024 letter from Defendant's counsel confirming that only one $1,500 payment was allegedly missed. [Pa81]. In contrast, Defendant's November 27, 2024 cross-motion [Pa42] claimed—for the first time in thirteen years—that Plaintiff had underpaid by $112.50 per month since 2011. [Pa62-3].

This direct factual conflict went to the heart of the arrears determination. Yet the trial court made no credibility findings, did not permit testimony or cross-examination, and offered no rationale under Rule 1:7-4 for favoring Defendant's version. It simply adopted Defendant's new arrears calculation wholesale, relying on a weekly notation while disregarding the PSA's "29th of each month" deadline and thirteen years of undisputed payment history.

That approach violates settled precedent. The Appellate Division has admonished where there are conflicting certifications a plenary hearing should be conducted. Klier, 337 N.J. Super. at 85–86. The trial court's failure to conduct such a hearing deprived Plaintiff of a meaningful opportunity to contest a $17,775 liability based entirely on a belated, untested claim. Accordingly, the

arrears determination must be vacated, and the matter remanded for a plenary hearing where credibility can be assessed and factual disputes resolved in accordance with controlling legal principles.

C. Defendant's Reliance on N.J.S.A. 2A:17-56.23a Is Misplaced—Plaintiff Is Not Seeking the Retroactive Modification of Child Support.

Defendant argues that Plaintiff's challenge to the arrears determination constitutes a prohibited retroactive modification of child support under N.J.S.A. 2A:17-56.23a. This is legally incorrect. Plaintiff is not seeking to retroactively reduce a validly imposed support obligation. He is objecting to a newly asserted, retroactive reinterpretation of the PSA—one that was never agreed upon, never enforced, and never ordered by the court.

No party or court ever treated $1,612.50 as the operative support amount. For over thirteen years, the parties followed a $1,500 monthly understanding—without objection, enforcement, or court action. The PSA required payments "by the 29th day of each month," consistent with a fixed monthly obligation. [Pa85]. And the current probation printout still reflects a $1,500 monthly amount and $375 weekly figure based on a 4-week, not 4.3-week, multiplier. [Pa120].

Plaintiff does not seek to alter past support amounts previously adjudicated or agreed upon. He simply challenges the trial court's erroneous acceptance of Defendant's new theory—that the PSA always required $1,612.50/month and that Plaintiff has been underpaying since 2011. This is not

retroactive modification; it is a dispute over interpretation and enforcement of the agreement as written and performed.

Put simply, one cannot "modify" an obligation that was never established. What Plaintiff challenges is not a court-ordered support figure, but an inflated arrears assessment based on a newly invented interpretation. The statute does not bar that challenge. To the contrary, it permits courts to enforce agreements as written and understood—not to impose obligations retroactively based on a belated, disputed reading.

It is Defendant—not Plaintiff—who seeks a retroactive rewrite. N.J.S.A. 2A:17-56.23a protects against the retroactive reduction of valid, adjudicated child support award—not against correction of an interpretation never asserted, agreed upon, or enforced over thirteen years. Due process requires that disputes over contractual intent—especially where contradicted by a consistent and lengthy course of performance—be resolved through evidentiary hearing, not presumed from the papers. Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 303 (1953)(holding that even where contract language appears unambiguous, courts must consider extrinsic evidence—including the parties' conduct and surrounding circumstances—to determine intent and give the agreement a rational meaning consistent with its general purpose).

POINT II

THE TRIAL COURT ERRED IN ORDERING PLAINTIFF TO RETROACTIVELY CONTRIBUTE TO A VEHICLE PURCHASED UNILATERALLY BY DEFENDANT OVER HIS CONTEMPORANEOUS WRITTEN OBJECTION, WITHOUT HOLDING A PLENARY HEARING. (Pa9).

Defendant offers no legal authority to support the trial court's retroactive order requiring Plaintiff to reimburse her for a vehicle she unilaterally purchased for their son. Instead, she offers a conclusory assertion that Plaintiff failed to provide "documented objections," and claims his opposition reflects a refusal to contribute to reasonable child-related expenses. [Pb12]. That argument misrepresents the record and evades the legal standards that govern disputed post-judgment financial obligations.

The record contains clear and contemporaneous evidence of Plaintiff's objection. In his October 2, 2024 motion, Plaintiff certified that he opposed the purchase of the vehicle, informed both Defendant and the child of his concerns, and offered only a modest $1,000 contribution in lieu of agreement. [Pa38; Pa89-90]. He supported this with attached text messages contemporaneously documenting his position. [Pa85; Pa88-89]. These submissions contradict Defendant's claim and create a material dispute of fact.

Rather than hold a hearing to resolve the issue, the trial court concluded—without testimony or findings under Rule 1:7-4—that there "is no proof that Plaintiff objected to Luke's car". [Pa6]. That finding is not supported by the

record. Additionally, when certifications conflict on material facts, a plenary hearing is required. See Tancredi v. Tancredi, 101 N.J. Super. at 262; Klier v. Sordoni Skanska Constr. Co., 337 N.J. Super. at 85–86.

Moreover, under Gac v. Gac, 186 N.J. 535 (2006), retroactive contribution toward substantial discretionary child-related expenses—such as college or major purchases—is generally barred absent prior notice and an opportunity to be heard. The trial court failed to apply Gac or conduct the necessary inquiry. The PSA does not require shared responsibility for vehicle purchases, and no court order obligated Plaintiff to contribute to this one. Imposing such liability post hoc, over a sworn objection, without a hearing, was legal error.

Defendant does not contest any of these principles and provides no justification for the court's failure to follow them. The ruling should be reversed outright or, at minimum, remanded for a plenary hearing where credibility, financial circumstances, and equity can be assessed on a developed record.

POINT III

THE TRIAL COURT FUNDAMENTALLY ERRED IN TREATING PLAINTIFF'S OCTOBER 2, 2024 MOTION AS AN UNTIMELY RECONSIDERATION REQUEST, RATHER THAN A PROPER APPLICATION TO RESOLVE ISSUES RESERVED IN AN INTERLOCUTORY ORDER. (Pa5, 13, 16).

The trial court's mistaken treatment of Plaintiff's October 2, 2024 motion as a second reconsideration request was both procedurally and legally incorrect—and Respondent offers no valid justification. The August 2024 order

was plainly interlocutory: it expressly reserved decision on unresolved issues, including arrears and vehicle contribution, and invited updated certifications. [Pa5]. Plaintiff complied by filing a timely motion to address those open matters—not to disturb a final ruling.

New Jersey law is clear: interlocutory orders remain subject to revision at any time before final judgment. Lawson v. Dewar, 468 N.J. Super. 128, 134–35 (App. Div. 2020) (trial court erred in denying relief based on Rule 4:49-2 where the challenged order was not final); Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 263 (App. Div. 1987); Grow Co. v. Chokshi, 403 N.J. Super. 443, 457 (App. Div. 2008). Rule 4:49-2 applies only to final judgments or orders—not interlocutory rulings where issues remain pending.

The trial court's mischaracterization of Plaintiff's October 2 filing as reconsideration not only misapplied the rule—it infected the court's subsequent rulings, including its refusal to address Plaintiff's substantive objections and its $3,000 counsel fee award, which rested on the mistaken belief that Plaintiff had filed "multiple reconsideration motions." [Pa13, 16].

Respondent offers no legal support for this error and instead insists only that Plaintiff should have labeled the motion differently. But substance, not title, governs procedural posture. As the Appellate Division held in Lawson, a motion that seeks resolution of an interlocutory issue must be evaluated as such, regardless of how it is framed. The trial court's misunderstanding deprived

Plaintiff a fair opportunity to be heard on still-pending issues. That fundamental flaw warrants reversal or, at minimum, remand for proper adjudication.

POINT IV

THE TRIAL COURT'S AWARD OF $3,000 IN COUNSEL FEES MUST BE REVERSED BECAUSE IT WAS ISSUED WITHOUT ANY FINDINGS UNDER RULE 5:3-5(c), RULE 1:7-4(a), OR RPC 1.5(a), AND RESTED ENTIRELY ON A MISTAKEN PROCEDURAL PREMISE. (Pa16).

Respondent offers no argument in defense of the $3,000 fee award—effectively conceding its invalidity. The trial court made no findings under Rule 5:3-5(c), and no assessment of reasonableness under RPC 1.5(a). It awarded fees solely based on the mistaken belief that Plaintiff filed multiple motions for reconsideration. But the record is clear: Plaintiff filed one reconsideration motion—on December 15, 2024—challenging the December 1 order. [Pa92]. His earlier October 2, 2024 filing was a post-judgment motion—not reconsideration. [Pa19].

New Jersey law requires that counsel fee awards be supported by specific factual findings and a reasoned application of the governing factors under Rule 5:3-5(c), Rule 1:7-4(a), and RPC 1.5(a). See Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996) (reversing fee award lacking reasoned findings); Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008) (trial court must exercise discretion in accordance with Rule 5:3-5(c) and explain basis for award). None were made here. The trial court's fee award rested on the mistaken belief that

Plaintiff had filed multiple reconsideration motions and failed to address any of the required criteria. That omission—standing alone—requires reversal.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court reverse the trial court's (1) December 13, 2024 Final Order, as amended by the March 5, 2025 Order—specifically Paragraphs 1, 4, 14, 16, 17, and 18—and (2) February 14, 2025 Order Denying Reconsideration—specifically Paragraphs 1, 2, and 6. These orders imposed substantial financial obligations on Plaintiff without plenary hearings, resolved disputed issues of material fact on conflicting certifications alone, and awarded counsel fees absent the findings required by Rule 5:3-5(c), Rule 1:7-4(a), or RPC 1.5(a).

Reversal—or, at a minimum, remand—is necessary to restore procedural fairness and ensure that Plaintiff's obligations are determined in accordance with controlling legal principles and tested evidence. Absent such relief, Plaintiff will remain burdened by retroactive financial obligations imposed in disregard of due process, established precedent, and the parties' fair expectations under their PSA.

Respectfully submitted,

SZAFERMAN, LAKIND,
BLUMSTEIN & BLADER, P.C.

Dated: 6/7/25

By: _____
Brian G. Paul, Esq.