LAURA DILAURA, Plaintiff/Appellant, vs. EDWARD DILAURA, SR., Defendant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-001869-23 Trial Court Docket No.: PAS-FM-16-1348-97 CIVIL ACTION On Appeal From: Superior Court of New Jersey, Chancery Division, Family Part Sat Below: Hon. Latoyia K. Jenkins, J.S.C.

BRIEF OF PLAINTIFF/APPELLANT

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PRELIMINARY STATEMENT

Plaintiff/Appellant, Laura Ober (formerly DiLaura) ("Plaintiff") appeals from the lower court's Order of January 23, 2024 that denied nearly all of the Plaintiff's Motion to Enforce Litigants' rights (P-1), including almost all of the $470,561.82 that Plaintiff seeks from her ex-husband Defendant/Respondent, Mr. Edward DiLaura, Sr., ("Defendant"), reflecting his share of their two children's unpaid medical expenses and educational expenses that Plaintiff was forced to pay due to Defendant's defaults. Plaintiff also seeks counsel fees and costs, in addition to a directive that Defendant obtain life insurance or provide some type of valid financial assurance that any debt Defendant owes Plaintiff will still be paid, even in the event of Defendant's death or disability. The purpose of this Motion, originally filed seven (7) years ago, was simply to compel Defendant to pay his fair share of the parties' two (2) children's medical expenses, tuition and educational costs, which Defendant has routinely shirked, much to the financial ruin of Plaintiff. The trial court abused its discretion when it found that Plaintiff was only owed $186.70 for medical expenses, not owed anything for educational expenses, and then ordered Plaintiff to pay $2,372.50 for Defendant's counsel fees.

At the outset, it must be emphasized that Defendant lacks all credibility where he committed perjury on his CIS by omitting his one-half interest in his father's home that was deeded to him 2 months prior to his execution of that CIS, and where

his matrimonial attorney, Ed Azar, Esq., also prepared the deed transferring the one-half interest in Defendant's father's house to Defendant, thus suborning perjury, and where Mr. Azar invoked the Fifth Amendment during the pre-trial deposition when the Undersigned attempted to explore this issue, entitling Plaintiff to an adverse inference, which was requested but not given.

Moreover, with all due respect to the lower court, this is not the first time the trial court has summarily ignored Plaintiff, who has been forced to provide nearly all of her children's financial support, requiring her to liquidate assets, including stocks and retirements plan assets. On April 23, 2020, this Court acknowledged the trial court's failure to even hold a plenary hearing with respect to Plaintiff's claims, and reversed the trial court's March 14, 2019 Order and remanded for a plenary hearing as to the foregoing issues. Of significant importance to this second appeal is the trial court's abuse of discretion when ignoring Plaintiff's testimony and evidence of her hardship due to Defendant's failure to meet his financial obligations or have meaningful relationships with his children after he remarried, to include evidence that Defendant fraudulently hid assets, such an interest in his father's home, from his CIS (with the help of his attorney). Instead, the trial court abused its discretion by taking Defendant at his word that he "couldn't afford it" and did not agree to pay for his children's higher education, despite requesting 1098-T forms reporting

Emily's tuition. To add insult to injury, the lower court ordered Plaintiff to pay Defendant's counsel fees.

Respectfully, for the reasons set forth below, the trial court abused its discretion. Specifically, the lower court erred when it found that Defendant did not agree to pay for the children's college education and was not required to reimburse Plaintiff for amounts she paid on his behalf towards the children's loans. The lower court further erred when it found that Plaintiff's claims for medical expenses prior to 2014 were barred by the doctrine of laches. The lower court further erred by ordering Plaintiff to pay Defendant's counsel fees after failing to consider all of the factors required to make that determination.

PROCEDURAL HISTORY & STATEMENT OF FACTS[1]

On or about, May 1, 2018, Plaintiff re-filed her application to enforce litigants' rights below (P-5), following a failed mediation that the lower court ordered on July 14, 2017 (P-25 to P-30). The mediation failed when Defendant abruptly left without advising Plaintiff of his intention to unilaterally conclude the mediation (P-17 to P-24).

[1] These two (2) sections have been combined for the sake of brevity and clarity since procedural history and the statement of facts, including Defendant's wholesale default to pay his fair share of the children's expenses, are inextricably intertwined.

T1 = Transcript of June 7, 2023
T2 – Transcript of July 14, 2023

Paragraph 25 of the Final Judgment of Divorce ("FJD"), entered on December 3, 1998, requires Defendant's contribution toward higher education costs and reimbursement of the children's uninsured medical expenses (P-50 to P-56). Despite Plaintiff's continued objections, Defendant has failed to pay his fair (or any) share of the children's education expenses or reimburse Plaintiff for the children's uninsured medical expenses as per the terms of the FJD (P-50 to P-56).

Plaintiff originally sought approximately $648,594.00 (P-454) from Defendant reflecting Defendant's share of their two children's unpaid medical expenses and educational expenses that Plaintiff was forced to pay due to Defendant's defaults, as well as a claim for retroactive child support modification, counsel fees and costs, and a directive from the lower court that Defendant obtain life insurance or provide some other type of valid financial assurance that any debt Defendant owes to Plaintiff will still be paid even in the event of Defendant's death or disability. Plaintiff's Exhibit 10 contains the basis for Plaintiff's calculations arriving at the foregoing figure (P-456). Plaintiff waived her claim for retroactive child support modifications, so the figure is reduced to $470,561.82 plus counsel fees and costs.

On March 14, 2019, the lower court denied every prong of Plaintiff's Motion to Enforce Litigants' rights, among other things, without even holding a plenary hearing. On April 23, 2020, the Appellate Division overruled the trial court and

remanded for a plenary hearing as to enforcement issues regarding college contributions and unreimbursed medical expenses, and the issue of child support modification based upon cost-of-living increase, provision of life insurance and attorney's fees. On June 7th and July 14, 2023, the lower court conducted a plenary hearing regarding the remanded issues, and Plaintiff withdrew the requested relief regarding the modification in child support based upon cost-of-living increase.

The lower court heard testimony from both Plaintiff and Defendant. Both children attended the June 7, 2023 proceeding, but neither testified. During the plenary hearing, the lower court heard testimony that Defendant remarried, had two more children, and moved an hour away from Plaintiff's home. 1T76:1-25, 1T205:16-206:18. Eventually, Defendant stopped visiting Eddie and Emily entirely, cutting off even birthday and Christmas cards. 1T69:23-70:8. Defendant ended his weekend visits, complaining about the commute from his new home. Id. Defendant refused to take the children to their sports and scouting activities on the weekends. 1T79:21-25. Defendant promised to start seeing the children for dinners on Thursdays, and did so once, but then unilaterally cancelled the next and all subsequent dinners. 1T80:1-82:35. Defendant's new wife did not want him to go inside Plaintiff's home, and Defendant rejected Plaintiff's offer to have the children come outside and meet with Defendant if Defendant was not allowed inside

Plaintiff's home. 1T83:1-25. Eventually, the children informed Plaintiff that they no longer wished to visit Defendant's home. 1T77:1-3.

Plaintiff and Defendant agreed early in their marriage that they would assist their children, Eddie and Emily, in paying for higher education. 1T18:18-25. When Defendant expressed to Plaintiff that he could not afford it, she stated that neither could she, and came up with a plan to take out student loans, defer repayment while the children were in school, and working toward saving sufficient funds to ensure repayment upon the loans coming due. 1T18:18-25. Plaintiff and Defendant agreed that they would send their children for six years of higher education so they would have a more competitive edge in the job market. 1T18:18-25; 44:10-46:24; 206:22-25. Plaintiff and Defendant agreed to split the student loan repayments three ways so that each party would pay one-third and each child would pay one-third toward their respective educations. 1T19:1-19; 52:1-19. This agreement was feasible under the parties' salaries. Id.

Defendant's assent to Plaintiff's loan repayment plan that each party would pay one-third of their children's student loans is evidenced from the fact that he filled out the relevant portions of the financial aid forms that required his attention. 1T58:15-25; Plaintiff's Exhibit 12 (containing a handwritten note from Defendant to Plaintiff requesting the forms Defendant would need to fill out his tax returns) (P-668). Defendant's assent is also clear from the parties' agreement to have

Defendant's father (the children's paternal grandfather) co-sign Eddie's first two loans while Plaintiff's father (the children's maternal grandfather) co-sign Emily's first two loans. 1T49:4-21; 50:11-14; 136:1-3; 209:20-210:12. Defendant's assent is also evidenced by his routine communications with Plaintiff asking for Emily's 1098-T forms so he could claim a tax credit for being responsible for Emily's tuition while she was still in school.[2] 1T59:1-25; 60:8-68:25; see also Plaintiff's Exhibit 12 (P-668). Plaintiff encouraged Defendant's full participation in the process of selecting schools for both children, discussing the children's education interests, and learning about the financial aid process. 1T47:1-48:9; 53:18-25; 55:14-22. Defendant refused to go to any of the financial aid seminars and conceded that he did no research about scholarships, grants, or financial aid. 1T55:14-56:6. Defendant advised Plaintiff that he did not know anything about higher education since he had never gone to college and asked Plaintiff to reach a decision on Eddie's choice of school, Seton Hall. 1T47:1-48:13. When Plaintiff affirmatively chose for Seton Hall, Defendant agreed with it, acknowledging, "I guess we're sending Eddie to Seton Hall." 1T48:12-13.

By the time it was Emily's turn to select a college, her relationship with Defendant had deteriorated and was so poor, that Defendant did not go on any

[2] A 1098-T form is used by institutions of higher education to report amounts billed or refunds made for tuition and related expenses. https://www.irs.gov/pub/irs-utl/OC-EdcucationcreditsUnderstandingyourForm1098T-FINAL.pdf (last checked April 27, 2024). It is used if a parent wants to claim an education credit on the parent's tax return. Id.

college visits or play any part at all in the selection. 1T53:1-4. Despite failing to have any relationship with his daughter, Defendant still requested the 1098-T form so that he could claim the education credit for being responsible for Emily's tuition on his tax return. 1T59:1-25; 60:8-68:25; see also Plaintiff's Exhibit 12 (P-668).

As for the medical expenses, Defendant claimed that he was "current" with Plaintiff "until she decided to pile up a stack of crap this high." 1T213:17-18. Defendant did not obtain the EOBs, which were only available to him as the policy holder, because he believed "they were handling it." 1T211:7-213:23.

Defendant executed a Family Part Case Information Statement (CIS) two months after a one-half interest in his father's house was deeded to him and via a deed prepared by his matrimonial attorney, and omitted the interest in the house from the CIS. 1T204:7-23; see also Plaintiff's Exhibit 14 (P-785). This resulted in a bizarre exchange during Defendant's January 5, 2023 deposition, at which time Defendant's attorney raised the 5th Amendment on this issue. 2T12:2-14:21.

LEGAL ARGUMENT

POINT I:

THE LOWER COURT ABUSED ITS DISCRETION BY FINDING THAT DEFENDANT IS NOT RESPONSIBLE FOR ANY OF HIS CHILDREN'S COLLEGE EDUCATION COSTS (P-452)

Putting aside for a moment that Defendant lacks all credibility where he committed perjury on his CIS by omitting his one-half interest in his father's home

that was deeded to him 2 months prior to his execution of that CIS, and where his matrimonial attorney, Ed Azar, Esq., also prepared the deed transferring the one-half interest in Defendant's father's house to Defendant, thus suborning perjury, and where Mr. Azar invoked the Fifth Amendment during the pre-trial deposition when the Undersigned attempted to explore this issue, entitling Plaintiff to an adverse inference, which was requested but not given, the lower court respectfully committed abuses of discretion in otherwise drawing its conclusions upon evaluating the Newburgh factors, which evaluation largely favored Plaintiff. 1T204:7-23; 2T12:2-14:21 see also Plaintiff's Exhibit 14 (P-785). Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J. Super. 527, 533 (*holding* it is "a logical, traditional, and valuable tool in the process of fair adjudication"), *certif. denied*, 50 N.J. 404 (1967).

The following well-known principles inform the Appellate Division's review. Substantial deference is given to the Family Part's findings of fact because of its expertise in family matters. Cesare v. Cesare, 154 N.J. 394, 411 (1998); Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016). The Appellate Division "should uphold the factual findings undergirding the trial court's decision if they are supported by adequate, substantial and credible evidence on the record." MacKinnon v. MacKinnon, 191 N.J. 240, 253-54 (2007) (quoting N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007)). A trial court's findings of fact will not be disturbed unless they are "so manifestly unsupported by or inconsistent with the

competent, relevant and reasonably credible evidence as to offend the interests of justice." Clark v. Clark, 429 N.J. Super. 61, 70 (App. Div. 2012) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1979)). "Only when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark'" should we interfere to 'ensure that that there is not a denial of justice.'" N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007)).

It is well established that a parent's responsibility may include paying for college and graduate studies even after the child is emancipated. Newburgh v. Arrigo, 88 N.J. 529, 544 (1982); see N.J.S.A. 2A:34-23(a). In deciding the amount of a parent's college contribution, "a trial court should balance the statutory criteria of N.J.S.A. 2A:34-23(a) and the Newburgh factors, as well as any other relevant circumstances, to reach a fair and just decision whether and, if so, in what amount, a parent or parents must contribute to a child's educational expenses." Gac v. Gac, 186 N.J. 535, 543 (2006); see also Gotlib v. Gotlib, 399 N.J. Super. 295, 310-11 (App. Div. 2008) (requiring the trial court to consider the Newburgh factors despite the judgement of divorce providing for college contribution because it was silent as to how the expenses would be divided).

The allocation of college expenses is a fact-sensitive task. Newburgh, 88 N.J. at 545. At the plenary hearing, the lower court heard a great deal of testimony and

evidence about the parties' discussions to pay for six years of higher education for each child. 1T:18:18-25; 44:10-46:24; 206:22-25; see also Plaintiff's Exhibit 10 (P-456); Plaintiff's Exhibit 12 (P-668). Plaintiff proferred a great deal of evidence in the form of testimony and communications evidencing Defendant's assent to Plaintiff's loan repayment plan that each party would pay one-third of their children's student loans: (1) Defendant filled out the relevant portions of the financial aid forms that required his attention. (2) Defendant's father (the children's paternal grandfather) co-signed Eddie's first two loans while Plaintiff's father (the children's maternal grandfather) co-signed Emily's first two loans;(3) Defendant routinely communicated with Plaintiff to ask for Emily's 1098-T forms so he could claim a tax credit as the parent responsible for Emily's tuition, and said 1098-T forms notified Defendant how much Emily's school received in tuition; (4) Defendant participated in college visits for Eddie and agreed with Eddie's choice of school; (5) Defendant conceded that while he refused to go to any of the financial aid seminars recommended by Plaintiff, and did no research about scholarships, grants, or financial aid, he was consulted. 1T18:18-25; 19:1-19; 44:10-46:24; 47:1-48:9; 49:4-21; 50:11-14; 52:1-19; 53:1-25; 55:14-22; 58:15-25; 136:1-3; 206:22-25; 209:20-210:12; see also Plaintiff's Exhibit 10 (P-456); Plaintiff's Exhibit 12 (P-668).

While the lower court seemed to weigh many of the Newburgh factors in the favor of Plaintiff's children deserving support from both of their parents in pursuit

of higher education, the lower court abused its discretion by finding that Defendant is not responsible for any of the expenses. The lower court also abused its discretion by blaming the deterioration of Defendant's relationships with his children, particularly Emily, on his inability to pay for college, as opposed to years of neglect and emotional abuse by Defendant after his remarriage. New Jersey law should not reward a parent who engages in such behavior, when the lack of a relationship with the child is a result of the parent's own doing:

> [A] child's rejection of a parent's attempt to establish a mutually affectionate relationship [does not] invariably eradicate[] the parent's obligation to contribute to the child's education. . . . a judge could reasonably find from the evidence that defendant's abusive conduct . . . so traumatized the children as to render nugatory any real possibility of a rapprochement. In that event, it would not be reasonable to penalize [the child] for the defendant's misconduct. Nor would it be reasonable to reward defendant by removing his financial obligation to contribute to his daughter's college costs. There are indeed circumstances where a child's conduct may make the enforcement of the right to contribution inequitable, but here it is claimed that it was the defendant himself who was the architect of his own misfortune.

Gac, 186 N.J. at 544 (citation omitted). Despite the deterioration of his relationship with Emily, Defendant requested her 1098-T forms reporting the tuition that was financed by the loans (P-668). As such, the lower court's denial of any recovery by Plaintiff of Defendant's share of the children's education loans is "so manifestly

unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Clark, 429 N.J. Super. at 70.

As such, this Court should reverse the trial court's January 11, 2024 Order in its entirety and remand to the lower court to reassess the credible testimony and evidence presented by Plaintiff under the Newburgh factors.

POINT II:

THE LOWER COURT ABUSED ITS DISCRETION BY APPLYING THE DOCTRINE OF LACHES TO THE UNREIMBURSED MEDICAL EXPENSES (P-452)

Again, putting aside for a moment that Defendant lacks all credibility where he committed perjury on his CIS by omitting his one-half interest in his father's home that was deeded to him 2 months prior to his execution of that CIS, and where his matrimonial attorney, Ed Azar, Esq., also prepared the deed transferring the one-half interest in Defendant's father's house to Defendant, thus suborning perjury, and where Mr. Azar invoked the Fifth Amendment during the pre-trial deposition when the Undersigned attempted to explore this issue, entitling Plaintiff to an adverse inference, which was requested but not given, the lower court respectfully committed serious abuses of discretion in otherwise analyzing the amounts owed and misguidedly applying the doctrine of laches. 1T204:7-23; 2T12:2-14:21 see also Plaintiff's Exhibit 14 (P-785). Duratron, 95 N.J. Super. at 533 (*holding* it is "a

logical, traditional, and valuable tool in the process of fair adjudication"), *certif. denied*, 50 N.J. 404.

"Laches is an equitable doctrine which penalizes knowing inaction by a party with a legal right from enforcing that right after passage of such a period of time that prejudice has resulted to the other parent[] so that it would be inequitable to enforce the right." L.V. v. R.S., 347 N.J. Super. 33, 39 (App. Div. 2002)(citation omitted). "The key ingredients are knowledge and delay by one party and change of position by the other." Id. (citation omitted). The Appellate Division has long refused to entertain alleged laches of a parent as a basis to limit a child's independent right to adequate support. See generally id. Indeed, "the application of laches to matters of parent-child relationships have been carefully circumscribed." Id. at 41. It is well-established that parents cannot waive child support because the duty to support runs to the supported child**.** Martinetti v. Hickman, 261 N.J. Super. 508, 512 (App. Div. 1993). "[E]ach parent has a responsibility to share the costs of providing for the child while she remains unemancipated. Id. at 512; see also Lynn v. Lynn, 165 N.J. Super. 328, 342-43 (App. Div. 1979), certif. denied 81 N.J. 52 (1979); Ionno v. Ionno, 148 N.J. Super. 259, 261 (App. Div. 1977).

Respectfully, the lower court abused its discretion when denying Plaintiff's request for reimbursement of medical expenses prior to 2014. The lower court failed to explain why it arbitrarily picked 2014 as the cut-off. While the lower court found

that the Plaintiff and Defendant's testimonies were equally credible, the lower court only gave weight to Defendant's testimony that he was unable to pay the children's uncovered medical expenses due to financial difficulty without giving any weight to Plaintiff's testimony that the resultant financial hardship from Defendant's failures prevented Plaintiff from hiring an attorney to enforce her rights. The Appellate Division has considered that similar delays in obtaining counsel would not be a bar to recovery. See Mayer v. Mayer, DOCKET No. A-5939010T2, at *13 (App. Div. Jan. 25, 2013)(six-year delay in obtaining counsel to assist with an audit of overpayment of child support was not a bar to recovery, with matter remanded for plenary hearing) (P-840).

POINT III:

THE LOWER COURT ABUSED ITS DISCRETION BY ORDERING PLAINTIFF TO PAY DEFENDANT'S COUNSEL FEES (P-452).

Respectfully, the lower court abused its discretion when it denied Plaintiff's application for counsel fees and granted Defendant's application for same, ordering Plaintiff to pay $2,372.50 in counsel fees in addition to denying Plaintiff hundreds of thousands of dollars that she alone has spent on her children.

Counsel fee determinations "rest[] within the sound discretion of the trial judge" Gotlib, 399 N.J. Super. at 314-15 (quoting Loro v. Colliano, 354 N.J. Super. 212, 227 (App. Div. 2002)). "We will disturb a trial court's determination on counsel fees only on the 'rarest occasion,' only then only because of clear abuse of

discretion." Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

Generally, "the party requesting the fee award must be in financial need and the party paying the fees must have the financial ability to pay, and if those two factors have been established, the party requesting the fees must have acted in good faith in the litigation." J.E.V. v. K.V., 426 N.J. Super. 475, 493 (App. Div. 2012) (citing Guglielmo v. Guglielmo, 253 N.J. Super. 531, 545 (App. Div. 1992)). When both parties have a "sufficient ability to satisfy [their] attorney's fee obligation, and neither . . . proceeded in bad faith," the court may justifiably deny the award of counsel fees. Reese v. Weis, 430 N.J. Super. 552, 586 (App. Div. 2013). Rule 4:42-9(a)(1) authorizes the award of counsel fees in a family action on a final determination pursuant to Rule 5:3-5(c). In determining the amount of the fee, the court should consider these factors:

(1) the financial circumstances of the parties;

(2) the ability of the parties to pay their own fees or to contribute to the fees of the other party;

(3) the reasonableness and good faith of the positions advanced by the parties;

(4) the extent of the fees incurred by both parties;

(5) any fees previously awarded;

(6) the amount of fees previously paid to counsel by each party;

(7) the results obtained;

(8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and

(9) any other factor bearing on the fairness of an award.

R. 5:3-5(c).

A trial court's failure to consider the appropriate factors, make the required findings, and state its conclusions of law, constitutes a clear abuse of discretion. See Saffos v. Avaya, Inc., 419 N.J. Super. 244, 271 (App. Div. 2011). Ordinarily, the purpose of a counsel fee award in a matrimonial action is to equalize the relative financial resources of the parties. J.E.V., 426 N.J. Super. at 493 (citing Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992)). "Simple omnibus references to the rules without sufficient findings to justify a counsel fee award makes meaningful review of such an award impossible . . . ." Loro, 354 N.J. Super. at 228. If the court performs its obligation under the statute and rules, and "there is satisfactory evidentiary support for the trial court's findings, 'its task is complete and [a reviewing court] should not disturb the result, even though it . . . might have reached a different conclusion were it the tribunal.'" Reese, 430 N.J. Super. at 568 (quoting Beck v. Beck, 86 N.J. 480, 496 (1981)). Conversely, a remand is appropriate if the trial court fails to adequately explain an award or denial of counsel fees. See

Giarusso v. Giarusso, 455 N.J. Super. 42, 54 (App. Div. 2018) (citing Loro, 354 N.J. Super. at 227-28).

Respectfully, the lower court abused its discretion when it awarded counsel fees without considering all relevant factors. The lower court only referenced factors one (financial circumstance of the parties, three (the reasonableness and good faith of the positions of the parties at trial), and seven (results obtained). The lower court failed to explain its conclusions with respect to factors one, three, or seven – for example, why Plaintiff's arguments lacked reasonableness or good faith. See Gotlib, 399 N.J. Super. at 315. The Plaintiff prevailed on her medical reimbursement claims after 2014, and the lower court found that Plaintiff did not waive her right to seek reimbursement of medical expenses. The lower court failed to explain why Defendant's arguments were reasonable or in good faith when Defendant fraudulently hid his interests in his father's home from his CIS and accepted the benefits of being responsible for Emily's tuition by requesting and filing the 1098-T forms. The lower court also failed to make any finding that Defendant did not have sufficient ability to pay his legal fees – factor two, or any of the other factors. As such, the lower court failed make the requisite detailed findings under Rules 5:3-5(c), 4:42-9, and RPC 1.5(a). See Fiore v. Fiore, No. A-2539-21, at *26-27 (App. Div. Apr. 16, 2024) (remanding award of counsel fees when lower court only stated that some of the factors were reviewed and failed to make detailed findings)(P-846).

Therefore, we respectfully request that this Court should reverse the lower court's order of counsel fees and remand for the lower court to consider the requisite factors and conduct the appropriate analysis.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's January 11th Order in its entirety and remand the matter back to the lower court.

Respectfully submitted,

/s/ Eric J. Warner
Eric J. Warner, Esq.

Dated: April 29, 2024

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LAURA DILAURA,	:	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
PLAINTIFF – APPELLANT ,	:	
VS.,	:	DOCKET NO. **A – 1869 – 23 T4**
EDWARD DILAURA, SR.	:	CIVIL ACTION
DEFENDANT – RESPONDENT.	:	
	:	ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: FAMILY PART PASSAIC COUNTY

SAT BELOW: **HON. LATOYIA K. JENKINS, J.S.C.**

RESPONDENT'S BRIEF

* * *

Damiano Marcello Fracasso, Esq.
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COMBINED PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

Unless otherwise noted, the Procedural History and Counterstatement of Material Facts is adopted from the unpublished opinion in parties' prior Appellate Division proceeding (A – 3656 – 18T) (2020 WL 1950773) **(Da1 – Da4)**.

Plaintiff and Appellant Laura DiLaura (now Laura Ober) ("Plaintiff") and Defendant and Respondent Edward DiLaura, Sr. ("Defendant") were married in 1987 and divorced in 1998. They have two children: Edward DiLaura, Jr. ("Edward, Jr."), born in 1991; and Emily DiLaura ("Emily"), born in 1994.

The parties' 1998 Judgment Of Divorce **(Pa389)** provided for joint legal custody of the children and granted plaintiff residential custody. In relevant part, the JOD required defendant pay $180 per week in child support, and the parties equally share payment of the children's unreimbursed medical expenses. The JOD also provided the parties "shall consult with each other" concerning where the children will go to college,

[1] The procedural history and statement of facts were intentionally combined as they are inextricably intertwined.

"the cost of ... same and whether or not the parties can afford said education," and, "[i]n the event the parties agree to a specific ... college[,] ... it is agreed [they] shall pay for the same based on their respective incomes at the time of enrollment."

Edward, Jr. attended college. He entered college (Seton Hall University) in 2010 **(1T:107, L2)** and graduated in May 2014, at age twenty-two. Emily also attended college (Hofstra University). She entered college in 2012 and **(1T:107, L15)** and graduated in May of 2016.

In March 2017, plaintiff filed the first post-judgment application following entry of the JOD *nineteen* (19) years earlier. She moved for relief in aid of litigant's rights to: compel defendant to pay past due and future child support; modify the child support amount; require that defendant pay his share of the children's past, present, and prospective education costs and expenses; compel defendant to pay for past and future unreimbursed medical expenses; direct that defendant maintain a life insurance policy for the benefit of the children; and require defendant's payment of plaintiff's attorney's fees. Defendant cross-moved for an order retroactively emancipating Edward, Jr. and Emily on the dates of their respective college

graduations; terminating his child support obligation; and requiring that plaintiff pay his attorney's fees.

The trial court heard argument on the motions and entered July 14, 2017 orders denying without prejudice defendant's cross-motion for emancipation of the children, termination of child support, and attorney's fees. The court granted plaintiff's motion compelling defendant to pay $8622.64 in child support arrears based on the JOD's $180 weekly support rate, and directing defendant pay $182.91 per week toward the arrears. The court did not address the merits of plaintiff's requests for an increase in child support, defendant's payment for the children's education and medical expenses under the JOD, or plaintiff's request for an attorney fee award. Instead, the court directed that the parties attempt to work out their remaining claims—those the court denied without prejudice—in mediation. Neither party sought leave to appeal from the July 14, 2017 orders, and neither party appealed from those orders. The mediation was unsuccessful.

On May 1, 2018, plaintiff filed a second motion for relief in aid of litigant's rights. She again sought to enforce the JOD's terms and reprised some of the requests the court denied in 2017 without prejudice. Plaintiff

moved for an order compelling defendant to: pay "outstanding past child support" and "increased child support"; pay his "fair share" of the children's past and future "higher education tuition and expenses" and medical expenses; maintain life insurance or provide a security interest on property as security for payment of defendant's obligations; and pay plaintiff's attorney's fees for the mediation and court proceedings. Defendant filed a cross-motion for an order: denying the relief sought by plaintiff; sanctioning plaintiff for filing a frivolous motion; retroactively emancipating the children on the dates of their respective college graduations; declaring plaintiff and the children responsible for the claimed education and medical expenses; and awarding defendant attorney's fees.

The trial court rendered its decision on the motions in a March 14, 2019 order. The order was unaccompanied by a written or oral decision and includes only scant conclusory findings supporting the court's disposition of the parties' various requests. In pertinent part, the order grants a portion of defendant's cross-motion. The court determined the children graduated from college and were emancipated, but it rejected defendant's claim their emancipations were effective on the dates of their college graduations.

Instead, the court retroactively emancipated the children to May 24, 2018, the date defendant filed his cross-motion for emancipation.

The trial court denied plaintiff's motion for an award of back child support, finding defendant had paid $7,918.40 of the amount the court found due in its July 14, 2017 orders, and directing defendant pay any remaining child support arrears through the May 24, 2018 emancipation date. The court denied plaintiff's request for a hearing as to whether defendant's child support should be retroactively modified, and it denied plaintiff's request that defendant pay for the children's medical expenses because plaintiff "fail[ed] to provide sufficient proof of payment of such expenses." The court further denied plaintiff's request that defendant pay the children's education expenses, finding plaintiff did not comply with the JOD's requirement that the parties confer concerning those expenses before they were incurred.

Plaintiff appealed from the trial court's March 14, 2019 order. Plaintiff did not appeal from the June 14, 2017 orders, and this Court ruled on April 23, 2020 that she was therefore bound by them and accepted the trial court's orders as a final and unchallenged determination that: (i.)

defendant's child support obligation under the JOD was $8,622.64 through June 14, 2017 and (ii.) Defendant fully complied with the June 14, 2017 orders.

This Court also ruled on April 23, 2020 that the trial court ***did not*** err by failing to enforce defendant's child support obligation under the JOD and therefore affirmed the court's March 14, 2019 order denying plaintiff's motion to enforce the JOD's requirement defendant pay $180 per week in child support even going so far as to opine that the Defendant acted in "exacting compliance with the JOD's express terms."

This Court also ruled on April 23, 2020 that the court's failure to make the required findings of fact and conclusions of law in accordance with Rule 1:7-4 required vacation of the court's March 14, 2019 order ***purely on procedural grounds*** deciding the remaining issues plaintiff raises on appeal. Those issues were limited to the trial court's denial of plaintiff's motion for relief in aid of litigant's rights under the JOD to compel defendant to contribute to the children's higher educational expenses and unreimbursed medical expenses; and pay increased child support based on any claimed cost of living increase under Rule 5:6B. This

Court specifically directed that "on remand the court shall reconsider, decide, and make findings in accordance with Rule 1:7-4 concerning those issues" and to "conduct such additional proceedings to address the issues as it deems appropriate." This Court "offered no opinion on the merits, if any, of plaintiff's claims or defendant's opposition."

On June 7, 2023, the trial court began the remand hearing **(1T)**[2] and concluded it on July 14, 2023 **(2T)**.[3] Although the Plaintiff's Appendix in this proceeding is 856 pages long, she only *three* (3) exhibits were entered into evidence P – 10 (loan documents), P – 11 (medical bills and receipts excluding calculation logic) and P – 12 (including both letters dated 2/28/2012 and 3/27/2012) **(Da9)**. Defendant moved *four* (4) exhibits into evidence to wit D – 12 (Plaintiff's CIS dated 06/05/1998), D – 13 (Plaintiff's CIS dated 2/7/2017), D – 24 (Deed for Bloomingdale, NJ Property) and D – 28 (Defendant's letter to Plaintiff dated 1/1/2018) **(Da13)**. None of those exhibits are contained in the Plaintiff's Appendix.

[2] T1 = Transcript of June 7, 2023.
[3] T2 = Transcript of July 14, 2013.

In fact, neither is the trial court's statement of reasons which forms the basis of this appeal **(Da5 – Da24)**.

On January 11, 2024, the trial court issued a well written and sound statement of reasons **(Da5 – Da24)** and issued a final written order on January 23, 2024 **(Pa452)**. Plaintiff appealed again, this time on March 5, 2024. As recently as the Plaintiff's May 13, 2024 Amended Appellate Division Case Information Statement, the Plaintiff never made inquiry of the trial court judge as to whether or not her honor intended to file a statement or opinion pursuant to R. 2:5 – 1(d) **(Pa836)**.

During the trial, Plaintiff claimed that the parties supposedly discussed "as a family long, long time ago" [sic] that the costs of college for both of the children would be entirely debt financed and then split *three* (3) ways with the Defendant paying one third **(1T:18, L24 – 1T:19, L3)**. She claimed that this agreement occurred when they were "married" and before the children were even born perhaps some time around 1990 **(1T:44, L11 – 1T:45, L18)**. The Plaintiff did not dispute that the only "agreement" about the children's higher education was contained in Numbered Paragraph 25 of the parties' December 3, 1998 Final Judgment of Divorce

("¶25 of the JOD") **(Pa394)** which was prepared with the assistance of legal counsel provides in its entirety as follows:

> Plaintiff and defendant shall consult with each other in regards to [sic] the high school and college education of their children at the time of their anticipated enrollment. Said discussions shall include where the children will go to school, the cost of the same and whether or not the parties can afford said education. In the event that the parties agree to a specific school for high school and / or college for the [children] it is agreed that the parties shall pay for the same based on their respective incomes at the time of enrollment.

(1T:92, L25 – 1T:92, L14).

The Plaintiff did not take any judicial action pertaining to seeking a contribution towards the children's college educations until 3 years ***after*** Edward, Jr. graduated college and 1 year after Emily graduated college. The Plaintiff never moved to modify the bargained for and enforceable terms contained in ¶25 of the JOD. Plaintiff testified that she never asked for a $20,000.00 contribution for Edward, Jr.'s college **(1T:109, L5 – 8)**. There is no evidence in the record below that any legally enforceable agreement was reached between the Plaintiff and the Defendant pertaining to the extent to which, if any, the Defendant would contribute to the

children's higher education costs. Plaintiff testified that there was an "understanding" **(1T:48, L20 – 24)** as opposed to an actual agreement that the Defendant would pay 1/3rd of the children's entirely debt financed college educations and that he would pay whatever bill they gave him after the fact. She admitted "there's nothing in writing" and that this "understanding" she claimed to have had with the Defendant was entirely comprised of "verbal conversations that occurred" **(1T:58 – 12) (1T:58, 14)**.

Plaintiff presented no evidence that Defendant was meaningfully involved in or apprised of either child's college selection (in fact, he was completely excluded from Emily's college selection and financing process (**1T:190, L19 – 25**) **(1T:185, L3 – 24) (1T:190, L19 – 25)**). The record below does not contain any loans co – signed by the Defendant or any written requests that he co – sign any loans. In fact, Plaintiff testified that the Paternal Grandfather co – signed *two* (2) loans for Edward, Jr. and the Material Grandfather co – signed *two* (2) loans for Emily **(1T:74, L21 – 23)**. Defendant testified he never co – signed any loans **(1T:191, L1 – 3)**. Without competent corroborating evidence, the Plaintiff calculated the

Defendant's supposed 1/3rd share of both educations to be $392,103.00 **(1T:20, L18 – 19)** which means their total undergraduate educations with interest were $1,176,309 inclusive of Emily working as an R.A. and then an S.R.A. "which allowed her to have free room which was a great financial plus" **(1T:54, L24 – 1T:24, L1)**. Plaintiff took the position at trial that "the standard [for ¶25 of the JOD purposes] is the income at the time the children were going to school. Not what her income is now **(1T:106, L11 – 13)**. The Plaintiff testified ("to the best of [her] recollection") that the first time she provided the Defendant with her income information after the JOD was entered was "2017" which was a year after the youngest child graduated college and *five* (5) years after she began college **(1T:97, L21 – 24)**. In fact, the Plaintiff answered "I don't know" when asked what her income was in 2012 **(1T:107, L15 – 20)**. Plaintiff testified that in 2010, the parties had a conversation in the driveway of her home whereupon they both agreed that neither one of them could afford $40,000 – $44,000 per year for Edward, Jr.'s Seton Hall education **(1T:127, L8 – 24)** Defendant testified that he also told the Plaintiff that he was "not going to be in any position to help financially because [he was] losing [his] house…getting divorced again [and] basically broke" **(1T:174, L8 – 11)**. Plaintiff testified

that she was so poor between Edward, Jr. entering college in 2010 and the filing of her March 7, 2017 motion seeking for the first time a college contribution from the Defendant **(Pa39)** that she could not afford a $5,000.00 retainer for an attorney to pursue this relief and she carefully and deliberately elected not to initiate any proceedings in the Courts (or even serve a demand letter) related to college contributions for either child as a *pro se* litigant. **(1T:39, L15 – 1T:40, L1)**. Thus, in 2010, the Plaintiff, an employed, intelligent and college educated woman **(1T:94, L23 – 24)** who was and had been receiving tax free child support in the amount of $180.00 per week since December of 1998 was fully aware that there was no meeting of the minds pertaining to college contributions for the children and she elected not to apply to the Court for any relief in that regard purely for financial reasons and an unwillingness to at least try to proceed as a *pro se* litigant using the Office of the Ombudsman and the *pro se* litigant forms as resources.

Plaintiff attempted to make much of the fact that the Defendant, along with his sister, became constructive trustees of their father's home by way of a deed dated February 13, 2017 which the Defendant's father previously owned and lived in until his death **(1T:195, L14 – 1T:197, L17) (1T:18 –**

1T:204, L15) and the Defendant did not identify this as an asset in his April 12, 2017 CIS. This deed was admitted into evidence by the Defendant and does not appear in the Plaintiff's Appendix. The Plaintiff did not explain whether or not it was a mere coincidence that although almost *seven* (7) years had elapsed since Edward, Jr. began college, ***less than one (1) month*** had elapsed between the public recording of the February 13, 2017 deed with the Defendant's name on it and the filing of her motion seeking a college contribution for both children along with a myriad of other stale claims. There was no evidence admitted at trial about the value of the Defendant's father's home or the total amount of liens, if any, which existed against this property. Plaintiff also attempted to make much of the fact that the Defendant asked for a 1098T from the Plaintiff (although they are generated by the loan companies) for Emily only because he claimed Emily as a dependent every year on his tax returns and he needed them to "complete [his] taxes" **(1T:192, L21 – 1T:193, L12) (Pa267)**.

ARGUMENT

I. STANDARD OF REVIEW

Trial judges are afforded wide discretion in deciding many of the issues that arise in civil and criminal cases. Appellate courts review those decisions for an abuse of discretion. "A court abuses its discretion when its 'decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. Chavies, 247 N.J. 245, 257 (2021) (quoting State v. R.Y., 242 N.J. 48, 65 (2020)). "[A] functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue." State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). "When examining a trial court's exercise of discretionary authority, we reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 App. Div. 2007)).

Legal decisions of family part judges are reviewed under the same de novo standard applicable to legal decisions in other cases. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019); Amzler v. Amzler, 463 N.J. Super. 187, 197 (App. Div. 2020); Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013).

Appellate courts defer to the trial court's findings of fact "when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). See Gnall v. Gnall, 222 N.J. 414, 428 (2015). That review is altered slightly, however, in family part cases "[b]ecause of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare v. Cesare, 154 N.J. 394, 413 (1998). Appellate courts "review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998). "Thus, 'findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998). "We invest the family

court with broad discretion because of its specialized knowledge and experience in matters involving parental relationships and the best interests of children." N.J. Div. of Youth & Fam. Servs. v. F.M., 211 N.J. 420, 427 (2012). The appellate court accords "great deference to discretionary decisions of Family Part judges." Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012).

Appellate courts will defer to the trial court's factual findings because the trial court has the "opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." Appellate courts owe deference to the trial court's credibility determinations as well because it has "a better perspective than a reviewing court in evaluating the veracity of a witness." See C.R. v. M.T., 248 N.J. 428, 440 (2021). "Deference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility. In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). A judge's fact-finding is "binding on appeal when supported by adequate, substantial, credible evidence." Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974).

II. PROPERTY SETTLEMENT AGREEMENTS & COLLEGE CONTRIBUTIONS GENERALLY.

Settlement of disputes, including matrimonial disputes, is encouraged and highly valued in our system. Indeed, there is a "strong public policy favoring stability of arrangements' in matrimonial matters." The New Jersey Supreme Court has observed that it is "shortsighted and unwise for courts to reject out of hand consensual solutions to vexatious personal matrimonial problems that have been advanced by the parties themselves." Therefore, "fair and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed." Moreover, a court should not rewrite a contract or grant a better deal than that for which the parties expressly bargained. A settlement agreement is governed by basic contract principles. Among those principles are that courts should discern and implement the intentions of the parties. It is not the function of the court to rewrite or revise an agreement when the intent of the parties is clear. Stated differently, the parties cannot expect a court to present to them a contract better than or different from the agreement they struck between themselves. Thus, when the intent of the parties is plain and the language is clear and unambiguous,

a court must enforce the agreement as written, unless doing so would lead to an absurd result. See Quinn v. Quinn, 225 N.J. 34, 44–45 (2016). A narrow exception to the general rule of enforcing settlement agreements as the parties intended is the need to reform a settlement agreement due to "unconscionability, fraud, or overreaching in the negotiations of the settlement[.]" See Quinn at 47.

A court's obligation to enforce marital settlement agreements applies to provisions regarding the parents' obligation to pay for their children's college expenses. Accordingly, where parties to a divorce have reached an agreement regarding children attending college and how those college expenses should be divided, and no showing has been made that the agreement should be vacated or modified, the Family Part need not apply all twelve factors pertinent to college expenses as identified in Newburgh v. Arrigo, 88 N.J. 529 (1982). Rather, the court should enforce the agreement as written. Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 590–91 (App. Div. 2016).

In situations where a child seeks neither a relationship, nor guidance from a parent, and instead looks to a parent only as a source of funds, that

parent is relieved of the obligation to fund the child's college education. See Moss v. Nedas, 289 N.J. Super. 352, 356 (App. Div. 1996) (noting a parent cannot be viewed as a "wallet" and deprived of involvement in the college decision making process).

A relationship between a non-custodial parent and a child is not required for the custodial parent or the child to ask the non-custodial parent for financial assistance to defray college expenses. Even though a child did not (or does not) have a relationship with his or her father, a custodial parent and recipient of child support can seek additional support for a child's higher education. Also, if a child wanted financial assistance from his or her father, they can make the request before he or she incurred their college expenses. When neither the custodial parent or child made such a request until after defendant sought to terminate child support, and the child had already graduated from college, the failure of both the custodial parent and child to request that non – custodial parent assist in paying a child educational expenses at a time that weighs heavily against ordering him to contribute to educational expenses after the education was completed. The factors set forth in Newburgh contemplate that a parent or child seeking

contribution towards the expenses of higher education will make the request before the educational expenses are incurred. As soon as practical, the parent or child should communicate with the other parent concerning the many issues inherent in selecting a college. ***At a minimum, a parent or child seeking contribution should 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*** [emphasis added]. Gac v. Gac, 186 N.J. 535, 546–47 (2006).

III. THE PAROLE EVIDENCE RULE GENERALLY.

The parol evidence rule prohibits the introduction of oral promises which tend to alter or vary an integrated written instrument. Seidenberg v. Summit Bank, 348 N.J. Super. 243, 256 (App. Div. 2002).

IV. UNCLEAN HANDS GENERALLY.

In simple parlance, the doctrine of unclean hands merely gives expression to the equitable principle that a court should not grant relief to one who is a wrongdoer with respect to the subject matter in suit. See Kingsdorff v. Kingsdorff, 351 N.J. Super. 144, 155 (App. Div. 2002). "Equity will not open its doors to one who seeks its aid for the purpose of

violating a contract, or who seeks to enforce alleged rights arising from a contract which he himself breached." Not only must a suitor come into equity with clean hands but he must keep them clean after his entry and throughout the entire proceedings. Pollino v. Pollino, 39 N.J. Super. 294, 299 (Ch. Div. 1956).

V. THE DOCTRINE OF LACHES GENERALLY.

This Court has long recognized that a family court is a court of equity, where judges employ a "full range" of equitable doctrines to deal with matrimonial controversies. Divorce agreements are necessarily infused with equitable considerations and are construed in light of salient legal and policy concerns. The interpretation, application, and enforceability of divorce agreements are not governed solely by contract law. Contract principles have little place in the law of domestic relations .... Thus, settlement agreements, if found to be fair and just, are specifically enforceable in equity." Steele v. Steele, 467 N.J. Super. 414, 441 (App. Div. 2021). The Plaintiff ***has never argued*** that ¶25 of the JOD is unfair and / or unjust… or the product of fraud or overreaching… or was vague or ambiguous. Plaintiff never moved to modify ¶25 of the JOD. To the

contrary, Plaintiff moved to enforce ¶25 of the JOD as it bargained for and intimately written **(Pa39)**. Crafted almost 26 years ago, ¶25 of the JOD remains inviolate as written.

Laches is an equitable doctrine, operating as an affirmative defense that precludes relief when there is an "unexplainable and inexcusable delay" in exercising a right, which results in prejudice to another party. It is an equitable remedy that the New Jersey Supreme Court has frequently described as " 'an equitable defense that may be interposed in the absence of the statute of limitations. Laches is "invoked to deny a party enforcement of a known right when the party engages in an inexcusable and unexplained delay in exercising that right to the prejudice of the other party." "Laches may only be enforced when the delaying party had sufficient opportunity to assert the right in the proper forum and the prejudiced party acted in good faith believing that the right had been abandoned."

Our courts have long recognized that laches is not governed by fixed time limits, but instead relies on analysis of time constraints that "are characteristically flexible," Unlike the mechanical application of a fixed time prescribed by a statute of limitations, laches operates as do other

equitable doctrines. That is, "[w]hether laches should be applied depends upon the facts of the particular case and is a matter within the sound discretion of the trial court." Fox v. Millman, 210 N.J. 401, 417–19 (2012).

The party urging the application of laches must show that his adversary, without explanation or excuse, delayed in asserting a claim now stale, that the delay was unreasonable under the circumstances, and that it 'visited prejudice upon the party asserting the delay. See Allstate Ins. Co. v. Howard Sav. Inst., 127 N.J. Super. 479, 489 (Ch. Div. 1974).

It has long been recognized that "equity favors the vigilant" *c.f.* Lever v. Thomas, 340 N.J. Super. 198, 203 (App. Div. 2001) and that "Equity will not assist a [wo]man whose condition is attributable to his failure to exercise that diligence which may be fairly expected from a reasonable person." Dillett v. Kemble, 25 N.J. Eq. 66, 67 (Ch. 1874). The New Jersey Supreme Court has held that laches is "an equitable defense that may be interposed in the absence of the statute of limitations and is defined as 'an inexcusable delay in asserting a right.'" See Nw. Covenant Med. Ctr. v. Fishman, 167 N.J. 123, 140 (2001). Where a legal and an equitable remedy exist for the same cause of action, equity will generally follow the

limitations statute. See Lavin v. Bd. of Educ. of City of Hackensack, 90 N.J. 145, 153, 520 (1982). The party urging its application must show that his adversary, without explanation or excuse, delayed in asserting a claim now stale, that the delay was unreasonable under the circumstances, and that it 'visited prejudice upon the party asserting the delay. See Ins. Co. v. Howard Sav. Inst., 127 N.J. Super. 479, 489 (Ch. Div. 1974).

In the case at bar, not only did the Plaintiff "sit on her rights," her doing so has created the proper factual and legals basis for the rational explanation which rests on a permissible basis and which does not depart from established policies.

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VI. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION AS IT PERTAINED TO ITS RULING ON THE MERITS OF THE PLAINTIFF'S "COLLEGE CONTRIBUTION" CLAIM.

¶25 of the JOD provides as follows:

> Plaintiff and defendant shall consult with each other in regards to [sic] the high school and college education of their children at the time of their anticipated enrollment. Said discussions shall include where the children will go to school, the cost of the same and whether or not the parties can afford said education. In the event that the parties agree to a specific school for high school and / or college for the [children] it is agreed that the parties shall pay for the same based on their respective incomes at the time of enrollment. **(Pa 269)**.

Consistent with the last sentence of ¶25 of the JOD, Plaintiff took the position at trial that ""the standard [for ¶ 25 of the JOD purposes] is the income at the time the children were going to school. Not what her income is now" **(1T:106, L11 – 13)**. Edward, Jr. entered college in 2010 and Emily entered college in 2012. Therefore, the Defendant's status as a constructive co - trustee on his father's home which he acquired on February, 2017 (barely a month before the Plaintiff came before the trial court for the first time with her stale claims) did not result in any error being committed by the trial court judge – especially reversible error. Therefore, Plaintiff's

arguments in that regard (especially pertaining to credibility findings) are completely without merit. The trial court found both parties to be credible **(Da14)** and absolutely no reversible error was committed in that regard.

The trial court judge made her decision based on the evidence in the record, the testimony of the parties, what ¶25 of the JOD actually says and the law which applies to the foregoing (in the most generous sense to the Plaintiff). Although embroiled in this litigation since March of 2017, Plaintiff never moved to modify, reform, set aside or the like ¶25 of the JOD in whole or in part. Instead, she steadfastly moved to "enforce" it exactly as it is written. Plaintiff now argues before this Court a myriad of generic caselaw which pertains to general concepts pertaining to a parent's obligation, if any, to contribute to a child's higher education. Plaintiff does not focus any attention or argument to what ¶24 of the JOD specifically and legally binds the parties to.

The record below clearly establishes that the Plaintiff never meaningfully consulted with the Defendant as it pertained to either child's private (and very expensive) college educations prior to (or after) enrollment. In fact, Plaintiff bases her whole argument below not on what

¶25 of the JOD actually says… but rather her illusory and *ex post facto* fiat (or "understanding" as she calls it) that the Defendant is and always was obligated to pay 1/3rd of the children's entirely debt financed college educations because that how she personally "understood" it even if ¶25 of the JOD mandates otherwise. Plaintiff's own testimony establishes that there was never any meaningful "consultation" between the parties before or after college enrollment. Moreover, it was undisputed and abundantly clear that neither party could afford to, among other things, debt finance sending *two* (2) children to private universities "at the time of their anticipated enrollment." The trial court made no error… reversible or otherwise… in that regard. It is also undisputed that there was never an "agreement" between Plaintiff and Defendant as to where either child would attend college or how it was going to be paid for. The Plaintiff failed to prove at trial to any degree of certainty what the parties "respective incomes at the time of enrollment" were which was specifically required by ¶25 of the JOD. The Plaintiff did prove at trial that she did not disclose any of her post – JOD income to the Defendant until "2017" which was *one* (1) year ***after*** ***the youngest*** child graduated college and *five* (5) years after she began college **(1T:97, L21 – 24)**. In fact, the Plaintiff answered "I

don't know" when asked what her income was in 2012 **(1T:107, L15 – 20)**. Therefore, the Court's finding that "Plaintiff did not provide proof of her earnings at the time the children began college" does not constitute reversible error. ¶25 of the JOD specifically required the Plaintiff to establish that fact (as well as the Defendant's income) with competent evidence. The Plaintiff was also legally obligated to prove damages with such certainty as the nature of the case may permit, laying a foundation which will enable the trier of the facts to make a fair and reasonable estimate. Damage awards may not be based on mere speculation. See Kelly v. Berlin, 300 N.J. Super. 256, 268 (App. Div. 1997). The Plaintiff failed to prove (after almost 7 years of litigation and preparation for the plenary hearing) what each parties' incomes were "at the time of enrollment" of each child (to determine proportionality). The Plaintiff also failed to prove "whether or not the parties can afford such education" (or, in her case, could) (**Da23)**. The trial court's conclusions in both regards are sound judicial discretion at its finest.

The trial court was especially generous to the Plaintiff by applying the "Newburgh v. Arrigo" standard as opposed to the Gac v. Gac, 186 N.J.

535, 546–47 (2006) and Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 590–91 (App. Div. 2016) standards which were directly on point and far more favorable to the Defendant. Even under the "Newburgh v. Arrigo" standard, the Plaintiff's evidence at trial did not substantiate her stale *ex post facto* claims.

Under Gac and Avelino – Catabran, the Plaintiff's stale claims for college contribution should have been barred from the outset because: (i.) there was already a germane agreement pertaining to college contributions in place; (ii.) her first and only claims were made after both children ***completed*** their college educations;[4] and (iii.) it is was an undisputed fact that neither child had a relationship with the Defendant at the time of college enrollment. The later fact was bar *ab initio* to the relief sought by the Plaintiff. See Moss v. Nedas, 289 N.J. Super. 352, 356 (App. Div.

[4] These educations were: (i.) unilaterally planned and selected without the Defendant's meaningful involvement; (ii.) debt financed without any financial transparency by the Plaintiff until after the children graduated; and (iii.) sought by the Plaintiff for the first time to be paid for by the Defendant *seven* (7) years after the oldest child enrolled in college and *five* (5) years after the youngest child enrolled in college. For the trial court judge to view these facts in any other manner than she ultimately did would have lead to an absurd and completely unjust result and bad precedent.

1996). Thus, the trial court did not error by denying the Plaintiff's claims under the Newburgh v. Arrigo" standard, because if it did not, Plaintiff's claims would have failed under Gac Moss and Avelino – Catabran as a matter of law and fact.

Plaintiff presents absolutely no meritorious arguments as to how the trial court judge committed reversible error based on applying the evidence actually produced at trial to what ¶25 of the JOD actually says and requires as opposed to what the Plaintiff wishes it said coupled with the anemic evidence she adduced at trial. Again, these educations were: (i.) unilaterally planned and selected without the Defendant's meaningful involvement; (ii.) debt financed without any financial transparency by the Plaintiff until after the children graduated; (iii.) completely unaffordable to the Plaintiff and the Defendant at the time; and (iv.) sought by the Plaintiff for the first time to be paid for by the Defendant *seven* (7) years after the oldest child enrolled in college and *five* (5) years after the youngest child enrolled in college. For the trial court judge to view these facts in any other manner than she ultimately did would have lead to an absurd and completely unjust result and bad precedent. New Jersey jurisprudence has never adopted the

maxim that "it is better to ask for forgiveness after the fact than for permission at the onset."

VII. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION AS IT PERTAINED TO THE APPLICATION OF THE DOCTRINE OF LACHES TO MEDICAL CLAIMS ACCRUED PRIOR TO 2014.

Based on the evidence and the record below, the trial court correctly concluded that "Plaintiff's proof of medical expenses date back to May of 2001, with the most recent proof dated January, 2018." **(Da16)**. In January, 2018, Edward, Jr. was a 27 years old gown man and Emily was 24 year old grown woman. The trial court's application of the facts to the law of laches was not an abuse of discretion or reversible error --- especially when the trial court permitted medical claims made by the Plaintiff in March of 2017 for treatment of the adult children between 2014 and 2018. The trial court's quantification of damages owed and awarded to the Plaintiff for that permissible period is unassailable. Simply put, under the totality of the circumstances, the trial court (of equity) did not error by barring the Plaintiff's claims for unreimbursed medical expenses which were as stale as 15 years old and as recent as 3 years old. The trial court correctly concluded that the Plaintiff's delay in seeking this relief was "unacceptable

and unreasonable" and that Plaintiff's argument that she was "unable to afford counsel for fifteen years is an incredible claim" as was "Plaintiff also waiting until the children completed their respective education[s] is an unreasonable explanation for the delay in filing for medical expenses." **(Da16 – Da17)**. The trial court also correctly concluded that "Plaintiff's unreasonable delay in filing and insufficient proofs have prejudiced the Defendant…The Court finds that justice is unable to be administered due to such gross and unjustified delay in the Plaintiff's filing." **(D17)**. It was not lost on anyone that for the 15 years leading up to filing her first and only motion for reimbursement in 2017, the Plaintiff was treating the medical reimbursement clause of the JOD as a "rainy day fund" which she planned to cash in on when the time was right for her knowing full well how difficult it would be for the Defendant to defend these stale claims consistent with his Due Process right. For the trial court to have ruled any other way would have set bad precedence and undermined the public's confidence in the Judiciary's legitimate ability to fairly evaluate cases and controversies consistent with standing legal and equitable principals.

VIII. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION AS IT PERTAINED TO THE $2,372.50 AWARD OF COUNSEL FEES.

Fee determinations by trial courts will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Rendine v. Pantzer, 141 N.J. 292, 317 (1995). That deferential standard of review must guide this Court's analysis. Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001). The Plaintiff cites to no legal authority which required the trial court to provide a more detailed statement of reasons beyond what is contained in the 20 page trial court decision. The trial court cited the authority it relied upon in order to make the award (R.P.C. 1.5, R. 4:42 – 9 and R. 5:3 – 5(c)) **(Da24)** and the specific factors it carefully considered and gave particular consideration to. Plaintiff does not dispute that these laws are dispositive of the issue of whether and how attorney's fees can be awarded to the Defendant. Plaintiff does not make any arguments as to how or why the trial court committed a "clear abuse of discretion" when militating (c)(1), (c)(3) and (c)(7) of R. 5:3 – 5 in the Defendant's favor. Therefore, the trial court's award of attorney's fees must not be disturbed and it must be affirmed.

CONCLUSION

In light of the foregoing, the trial court decision must be affirmed in its entirety.

DATED: August 8, 2024

Respectfully submitted,

By: _____
DAMIANO M. FRACASSO,
Attorney for the Defendant – Respondent

LAURA DILAURA, Plaintiff/Appellant, vs. EDWARD DILAURA, SR., Defendant.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION Docket No. A-001869-23 Trial Court Docket No.: PAS-FM-16-1348-97 CIVIL ACTION On Appeal From: Superior Court of New Jersey, Chancery Division, Family Part Sat Below: Hon. Latoyia K. Jenkins, J.S.C.

REPLY BRIEF OF PLAINTIFF/APPELLANT

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PRELIMINARY STATEMENT

Plaintiff/Appellant, Laura Ober (formerly DiLaura) ("Plaintiff") appeals from the lower court's Order of January 23, 2024 that denied nearly all of the Plaintiff's Motion to Enforce Litigants' rights (P-1), including almost all of the $470,561.82 that Plaintiff seeks from her ex-husband Defendant/Respondent, Mr. Edward DiLaura, Sr., ("Defendant"), reflecting his share of their two children's unpaid medical expenses and educational expenses that Plaintiff was forced to pay due to Defendant's defaults. Plaintiff also seeks counsel fees and costs, in addition to a directive that Defendant obtain life insurance or provide some type of valid financial assurance that any debt Defendant owes Plaintiff will still be paid, even in the event of Defendant's death or disability. The purpose of this Motion, originally filed seven (7) years ago, was simply to compel Defendant to pay his fair share of the parties' two (2) children's medical expenses, tuition and educational costs, which Defendant has routinely shirked, much to the financial ruin of Plaintiff. The trial court abused its discretion when it found that Plaintiff was only owed $186.70 for medical expenses, not owed anything for educational expenses, and then ordered Plaintiff to pay $2,372.50 for Defendant's counsel fees.

At the outset, it must be emphasized that Defendant lacks all credibility where he committed perjury on his CIS by omitting his one-half interest in his father's home that was deeded to him 2 months prior to his execution of that CIS, and where

his matrimonial attorney, Ed Azar, Esq., also prepared the deed transferring the one-half interest in Defendant's father's house to Defendant, thus suborning perjury, and where Mr. Azar invoked the Fifth Amendment during the pre-trial deposition when the Undersigned attempted to explore this issue, entitling Plaintiff to an adverse inference, which was requested but not given.

As discussed in the Plaintiff's opening brief, this is not the first time the trial court has summarily ignored Plaintiff and taken Defendant at his word that he "couldn't afford it," despite fraudulently hiding assets and requesting 1098-T forms reporting Emily's tuition to take credit for it on his tax return, evidencing his assent to be responsible for his children's higher education costs, as he and Plaintiff discussed for many years. Of significant importance to this second appeal is the trial court's abuse of discretion when ignoring Plaintiff's testimony and evidence of her hardship, Defendant's refusal to have meaningful relationships with his children after he remarried, which the lower court blamed on the children, and evidence that Defendant fraudulently hid assets, such an interest in his father's home, from his CIS (with the help of his attorney). To add insult to injury, the lower court ordered Plaintiff to pay Defendant's counsel fees. Nothing raised in Defendant's opposition brief justifies this result.

Respectfully, for the reasons set forth below, the trial court abused its discretion and erred when it found that Defendant did not agree to pay for the

children's college education, was not required to reimburse Plaintiff for amounts she paid on his behalf towards the children's loans, barred Plaintiff's claims for medical expenses prior to 2014, and ordered Plaintiff to pay Defendant's counsel fees after failing to consider all of the factors required to make that determination.

PROCEDURAL HISTORY & STATEMENT OF FACTS

Plaintiff hereby incorporates the procedural history and statement of facts as set forth in the Plaintiff's opening brief.

LEGAL ARGUMENT

POINT I:

DEFENDANT SHOULD BE RESPONSIBLE FOR HIS FAIR SHARE OF THE COSTS OF HIS CHILDREN'S COLLEGE EDUCATION (P-452)

Nothing in Defendant's opposition brief excuses Defendant's horrible treatment of Plaintiff and their children since remarrying. Defendant mocks plaintiff for seeking to enforce the JOD that was entered nineteen years before her first post-judgment application (Def.'s Opp. 2), but it should be noted that when the JOD was entered, Emily was only four years old, and it would take many years before court intervention was necessary. In 2017, the court directed the parties to work out their remaining claims in mediation. Defendant dryly notes, "The mediation was unsuccessful." (Def.'s Opp. 3.) That is because Defendant stormed out of the mediation. Defendant also mocks Plaintiff's ability to afford counsel because she was receiving "tax free child support in the amount of $180.00 per week since

December of 1998" to support two children, (Def.'s Opp. 12), although Defendant also admits that he stopped paying child support, (Def.'s Opp. 2-3). Even if Defendant was meeting his obligations, Plaintiff certainly was not living in the lap of luxury on $180 a week to support two children, plus being forced to completely pay for their medical expenses because Defendant repeatedly refused to reimburse her.

Defendant merely states he "can't afford it," yet Defendant committed perjury on his CIS by omitting his one-half interest in his father's home that was deeded to him 2 months prior to his execution of that CIS, and where his matrimonial attorney, Ed Azar, Esq., also prepared the deed transferring the one-half interest in Defendant's father's house to Defendant, thus suborning perjury, and where Mr. Azar invoked the Fifth Amendment during the pre-trial deposition, when the Undersigned attempted to explore this issue, entitling Plaintiff to an adverse inference, which was requested but not given. 1T204:7-23; 2T12:2-14:21; see also Plaintiff's Exhibit 14 (P-785); Duratron Corp. v. Republic Stuyvesant Corp., 95 N.J. Super. 527, 533 (*holding* it is "a logical, traditional, and valuable tool in the process of fair adjudication"), *certif. denied*, 50 N.J. 404 (1967). The lower court abused its discretion by giving weight to the Defendant's testimony about his alleged financial hardship as he lacks all credibility.

It is well established that a parent's responsibility may include paying for college and graduate studies even after the child is emancipated. Newburgh v. Arrigo, 88 N.J. 529, 544 (1982); see N.J.S.A. 2A:34-23(a). The allocation of college expenses is a fact-sensitive task. Newburgh, 88 N.J. at 545. Even when the terms of a JOD are silent or vague, the court should still perform a detailed analysis of the Newburgh factors. See Gotlib v. Gotlib, 399 N.J. Super. 295, 310-11 (App. Div. 2008) (requiring the trial court to consider the Newburgh factors despite the judgement of divorce providing for college contribution because it was silent as to how the expenses would be divided). Defendant conflates many different conversations between the parties over may points in time - prior to the marriage, prior to the children's birth, and after the marriage, when they discussed their goals for their children's higher education and how it would be financed. (See Def.'s Opp. 8.) Plaintiff testified at great length about the many times she and Defendant talked about financing the education, the children's choices of schools, Defendant visiting schools, her consulting with Defendant about financial aid options and encouraging Defendant to conduct his own research, and Defendant repeatedly agreeing with Plaintiff. 1T18:18-25; 19:1-19; 44:10-46:24; 47:1-48:9; 49:4-21; 50:11-14; 52:1-19; 53:1-25; 55:14-56:6; 58:15-25; 136:1-3; 206:22-25; 209:20-210:12; see also Plaintiff's Exhibit 10 (P-456); Plaintiff's Exhibit 12 (P-668). Defendant certainly agreed that his children should go to college and acknowledged that he should be

responsible for his children's tuition, as any father should, as evidenced when he filled out financial aid forms for the children in high school, repeatedly requested Emily's 1098-Ts to get credit for Emily's tuition, participated in college visits for Eddie, and agreed with Eddie's choice of school. 1T:18:18-25; 44:10-46:24; 47:1-48:13; 59:1-25; 60:8-68:25; 206:22-25; see also Plaintiff's Exhibit 10 (P-456); Plaintiff's Exhibit 12 (P-668).

Defendant's treatment of Plaintiff, as evidenced at the hearings and even in his opposition brief, also mirrors the way he treated his children. 1T69:23-70:8; 77:1-3; 79:21-25; 80:1-82:35; 83:1-25. Yet Defendant would have the Court believe that the alienation of his children, particularly Emily, is solely because Defendant will not pay for college, and not because of the years of emotional abuse and neglect that he inflicted upon them after remarrying. New Jersey law should not reward a parent who engages in such behavior, when the lack of a relationship with the child is a result of the parent's own doing. Gac v. Gac, 186 N.J. 535, 544 (2006) ("it would not be reasonable to penalize [the child] for the defendant's [abusive conduct]. Nor would it be reasonable to reward defendant by removing his financial obligation to contribute to his daughter's college costs.") (citation omitted).

Respectfully, the lower court abused its discretion by finding that Defendant is not responsible for any of his children's higher educational costs, especially when the lower court seemed to weigh many of the Newburgh factors in the favor of

Plaintiff's children deserving support from both of their parents in pursuit of higher education. The lower court's denial of any recovery by Plaintiff of Defendant's share of the children's education loans is "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Clark v. Clark, 429 N.J. Super. 61, 70 (App. Div. 2012).

As such, this Court should reverse the trial court's January 11, 2024 Order in its entirety and remand to the lower court to reassess the credible testimony and evidence presented by Plaintiff under the Newburgh factors.

POINT II:

THE DOCTRINE OF LACHES SHOULD NOT BE APPLIED TO THE UNREIMBURSED MEDICAL EXPENSES (P-452)

Defendant's accusation that "the Plaintiff was treating the medical reimbursement clause of the JOD as a 'rainy day fund' which she planned to cash in on when the time was right" (Def.'s Opp. 32) is both callously indifferent to the financial hardship that Defendant subjected Plaintiff to for years due to his refusal to meet to meet his obligations under the JOD, as well as ironic, since it was Defendant who treated Plaintiff as a "rainy day fund" by expecting her to fully pay for her children's medical expenses. See 1T213:17-18 (claiming he was "current" until Plaintiff "pile[d] up a stack of crap this high."). Due to parents like the Defendant, who cause years of financial hardship to parents like the Plaintiff, the Appellate Division has long refused to entertain alleged laches of a parent as a basis

to limit a child's independent right to adequate support. See L.V. v. R.S., 347 N.J. Super. 33, 41 (App. Div. 2002) ("the application of laches to matters of parent-child relationships have been carefully circumscribed."); Martinetti v. Hickman, 261 N.J. Super. 508, 512 (App. Div. 1993) ("[E]ach parent has a responsibility to share the costs of providing for the child while she remains unemancipated.); see also Lynn v. Lynn, 165 N.J. Super. 328, 342-43 (App. Div. 1979), certif. denied 81 N.J. 52 (1979); Ionno v. Ionno, 148 N.J. Super. 259, 261 (App. Div. 1977).

Respectfully, the lower court abused its discretion when denying Plaintiff's request for reimbursement of medical expenses prior to 2014 (an arbitrary cut-off date), even though the lower court found that the Plaintiff and Defendant's testimonies were equally credible. Although Defendant mocks Plaintiff's inability to retain counsel due to the financial ruin he caused, and the lower court apparently gave no weight to this testimony, the Appellate Division has considered that similar delays in obtaining counsel would not be a bar to recovery. See Mayer v. Mayer, DOCKET No. A-5939010T2, at *13 (App. Div. Jan. 25, 2013) (six-year delay in obtaining counsel to assist with an audit of overpayment of child support was not a bar to recovery, with matter remanded for plenary hearing) (P-840). As discussed *supra*, the lower court abused its discretion by giving any weight to Defendant's testimony that he "couldn't afford it" when he committed perjury on his CIS.

POINT III:

ORDERING PLAINTIFF TO PAY DEFENDANT'S COUNSEL FEES IS MANIFESTLY UNJUST (P-452).

Respectfully, the lower court abused its discretion when it denied Plaintiff's application for counsel fees and granted Defendant's application for same, ordering Plaintiff to pay $2,372.50 in counsel fees in addition to denying Plaintiff hundreds of thousands of dollars that she alone has spent on her children. Defendant argues that Plaintiff cites to "no legal authority" which required the trial court to provide a more detailed analysis as to why it ordered Plaintiff to pay Defendant's counsel feels (Def.'s Opp. 33), but Plaintiff did (Pl.'s Brief 16-17) (citing R. 5:3-5(c) and its seven factors). Respectfully, the lower court abused its discretion when it awarded counsel fees without considering all relevant factors. See Saffos v. Avaya, Inc., 419 N.J. Super. 244, 271 (App. Div. 2011); Loro v. Colliano, 354 N.J. Super. 212, 228 (App. Div. 2002) ("Simple omnibus references to the rules without sufficient findings to justify a counsel fee award makes meaningful review of such an award impossible . . . "). The lower court only referenced factors one (financial circumstance of the parties), three (the reasonableness and good faith of the positions of the parties at trial), and seven (results obtained). *See* R. 5:3-5(c). The lower court failed to explain its conclusions with respect to factors one, three, or seven – for example, why Plaintiff's arguments lacked reasonableness or good faith. See Gotlib, 399 N.J. Super. at 315.

The Plaintiff prevailed on her medical reimbursement claims after 2014, and the lower court found that Plaintiff did not waive her right to seek reimbursement of medical expenses. The lower court failed to explain why Defendant's arguments were reasonable or in good faith when Defendant fraudulently hid his interests in his father's home from his CIS and accepted the benefits of being responsible for Emily's tuition by requesting and filing the 1098-T forms. The lower court also failed to make any finding that Defendant did not have sufficient ability to pay his legal fees – factor two, or any of the other factors. As such, the lower court failed make the requisite detailed findings under Rules 5:3-5(c), 4:42-9, and RPC 1.5(a), and therefore, remand is appropriate. See Fiore v. Fiore, No. A-2539-21, at *26-27 (App. Div. Apr. 16, 2024) (remanding award of counsel fees when lower court only stated that some of the factors were reviewed and failed to make detailed findings) (P-846); Giarusso v. Giarusso, 455 N.J. Super. 42, 54 (App. Div. 2018) (citing Loro, 354 N.J. Super. at 227-28).

Therefore, we respectfully request that this Court should reverse the lower court's order of counsel fees and remand for the lower court to consider the requisite factors and conduct the appropriate analysis.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court's January 11th Order in its entirety and remand the matter back to the lower court.

Respectfully submitted,

/s/ Eric J. Warner
Eric J. Warner, Esq.

Dated: August 22, 2024