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PRELIMINARY STATEMENT

Despite serving as the primary custodial parent for the parties' two children, the Defendant-Appellant, Tikikil Firdu ("Defendant") has not received regular child support since 2018. As will be set forth in this brief, Defendant has been wrongfully denied child support as a result of the "perfect storm" of systemic problems within the Family Part, the transfer of this case between four trial court judges, a Parenting Coordinator exceeding the scope of his assignment, and the inadequate, cursory review of the matter by the fourth trial court judge. Defendant requests that this Court reverse the trial court's decision and remand this matter so that she may finally receive child support for the benefit of the parties' two children.

Defendant is the primary residential custodian of A.B. (17) and H.B. (15). She is a physician who resides with the children in Princeton, New Jersey. The Plaintiff-Respondent, Aron Betru ("Plaintiff") is employed in the financial services industry and resides in Maryland. The parties have comparable earnings in the range of \$200,000-\$300,000 gross per year. Plaintiff has parenting time with the children on alternate weekends from Friday to Sunday and extended time during holidays and school vacations.

An initial Pennsylvania consent order required Plaintiff to pay Defendant child support of \$1,900 per month. Defendant filed an application to increase

the child support on June 27, 2016, which together with Plaintiff's application to decrease child support was adjudicated on December 2, 2016, with the parties being referred to mediation. The mediation regarding child support was unsuccessful. Cross applications were filed in November and December 2017, seeking a decrease in child support (Plaintiff) and increase in child support (Defendant). The trial court decided these motions in a September 30, 2018 order that scheduled a plenary hearing for early January 2018. The hearing did not occur, and the case was transferred to a different trial court judge.

A plenary hearing occurred on June 4 and 5, 2019. The trial court entered a final order on June 17, 2020, fixing child support retroactive to June 27, 2016. The trial court also entered a separate order on June 17, 2020 pertaining to parenting time issues and appointing a parenting coordinator which was amended on June 19, 2020. Neither party sought the reconsideration of the underlying child support award set forth in the June 17, 2020 Order.

Defendant sought reconsideration of the arrears fixed in this Order and a denial of her request that child support be paid through probation and Plaintiff filed a cross-application for counsel fees. These matters were heard on August 13, 2020. A review of the record confirms that the Court and both parties considered the June 17, 2020 Order to be a final order at this proceeding. In an

order dated August 19, 2020, the issues of arrears and child support during the COVID-19 pandemic were referred to the Parenting Coordinator.

In an act that exceeded the scope of his appointment and was contrary to the well-established law of this State, the Parenting Coordinator, on his own initiative, retroactively recalculated the child support awarded under the June 17, 2020 Order **even though no one had requested this relief of the trial court** and reduced the award by approximately 79% through June 2020.

Plaintiff filed a motion on July 22, 2022, to incorporate the Parenting Coordinator's preliminary recommendations into a new child support order replacing the June 17, 2020 order and initially sought reimbursement for his alleged overpayment of child support in the amount of **\$54,292**. Defendant cross-moved to enforce the June 17, 2020 order. An oral argument was heard before the third trial court judge assigned to this matter on September 8, 2023. However, no decision was issued. The case was then transferred to the fourth trial court judge, who entered an order on May 29, 2024, which granted Plaintiff's application in full, even though this new child support order was clearly in violation of the anti-retroactivity provisions of N.J.S.A. 2A:56.23a and exceeded Plaintiff's demand for reimbursement of the overpayment.

Defendant appeals from the trial court's May 29, 2024 order and urges this Court to correct the blatant errors that pervade the order.

Combined Procedural History and Statement of Facts¹

I. Background

This matter involved four (4) court appearances.²

Plaintiff and Defendant were married on February 27, 2003, in Los Angeles, California. (Dca016). Defendant moved from Washington, D.C. to Philadelphia in December 2004, to attend Drexel College of Medicine. (Dca016). In 2004, Plaintiff moved to New York City to attend an MBA program and graduated in May 2006. (DCa016). The parties' son, A.B., was nearly 16 at the time Defendant filed a cross motion pertaining to child support on October 22, 2022. (Dca017) At the time of A.B.'s birth, Plaintiff worked in Philadelphia for McKinsey, a financial consulting firm. (Dca017). Plaintiff stayed at that job until the end of 2008. (Dca017). He then began working at Technoserve in Connecticut commencing January 2009. (Dca017).

The parties' daughter, H.B. was 13 years of age on October 22, 2022, when Defendant filed a cross motion pertaining to child support. (Dca017). Plaintiff

¹The facts of this case are interwoven with the procedural history; accordingly, in the interest of avoiding repetition the procedural history and statement of facts have been combined.

² The transcripts for these proceedings have been designated as follows:

- 1T-August 13, 2020
- 2T-September 9, 2023
- 3T-May 8, 2024
- 4T-May 22, 2024

moved back to Washington, D.C., to live with his parents, immediately after H.B.'s birth. (Dca017). In October 2009, he filed a complaint for divorce in the Court of Common Pleas for Philadelphia County. (Dca017).

On March 30, 2010, the parties entered into an Agreement for Custody, Partial Custody and Visitation. (Dca042-043). Pursuant to this Agreement, Defendant was designated as having primary residential custody and was permitted to relocate with the children to the State of New Jersey. (Dca042-043). Plaintiff graduated from medical school in June 2010 and was accepted into an OB/GYN residency at St. Peter's Hospital in New Brunswick, New Jersey. (Dca017).

On October 14, 2010, the parties entered into an Agreement for an Order of Support. (DCa044). Pursuant to this Agreement, Plaintiff was obligated to pay child support to Defendant in the amount of \$1,900 per month. (DCa044-046). The child support was based on Defendant's gross earnings of \$50,808 and Plaintiff's gross earnings of \$98,000. (DCa044).

On November 4, 2011, the parties entered into a Property Settlement Agreement ("PSA") that provided for a three-year term of alimony paid by Plaintiff to Defendant in the amount of \$1,000 per month. (DCa047-055). The parties were divorced by Decree and Order entered by the Court of Common Pleas, Philadelphia County on November 11, 2011. (DCa056). The Decree

incorporated the terms of the PSA. (DCa056). The PSA did not address the child support (DCa047-055), which continued to be subject to the Support Agreement dated October 14, 2010. (DCa044-046).

II. The New Jersey Child Support Proceedings

Given Defendant's residence in New Jersey, on November 25, 2025, the parties entered into a stipulation to transfer jurisdiction to the State of New Jersey. (DCa-58-059). By order entered on January 25, 2016, the parties agreed to petition Mercer County to accept jurisdiction. (DCa060). This order was supported by an additional stipulation signed by the parties on November 24, 2015 (Plaintiff) and December 28, 2015 (Defendant). (DCa061-062).

The New Jersey Court accepted jurisdiction and as a result, Plaintiff and Defendant filed cross applications for relief, which were argued before the Hon. Catherine Fitzpatrick, P.J.F.P., on August 5, 2016. (DCa063). Plaintiff's application, among other requests, sought a change in residential custody, and the right to relocate the children to Maryland. (DCa064) and Defendant's application sought an increase in child support retroactive to June 27, 2016. (DCa065). Plaintiff also filed a post-judgment UIFSA complaint in Maryland to

reduce child support on August 15, 2016 (DCa063). Judge Fitzpatrick conferred with counsel on December 1, 2016, following the Maryland filing. (DCa063).³

Judge Fitzpatrick entered an order on December 2, 2016, which denied Plaintiff's application for a change in residential custody of the children and to relocate the children to the state of Maryland (DCa063-067). The parties were referred to private mediation with the Hon. Thomas P. Zampino, J.S.C., (Ret.), relative to parenting time and child support issues. (DCa064).

The parties did not resolve the child support issues in mediation and engaged in further motion practice. Plaintiff sought to decrease his child support and obligation retroactive to June 27, 2016 (DCa069), and Defendant sought an increase in child support retroactive to June 27, 2016⁴ (DCa072).

Judge Fitzpatrick heard argument on January 12, 2018. (DCa068). The court entered an order on September 30, 2018, reserving each party's application regarding child support pending a plenary hearing, establishing a discovery schedule, and fixing plenary hearing dates for January 22, 23, 24, 28, and 29, 2019. (DCa068-074).

³ The disposition of the Maryland complaint is unclear but is not germane to this appeal.

⁴ Defendant had sought an increase in child support retroactive to June 27, 2016 in the application decided on December 2, 2016 (DCa065)

The plenary hearing did not take place on the dates set by the September 30, 2018 order. The case was transferred to Hon. Brian McLaughlin, J.S.C. The Court entered an order on December 4, 2019, continuing the Pennsylvania child support order of \$1,900 per month as a *pendente lite* order. (DCa82-83). A further interim order was entered on February 10, 2020, that directed the Mercer County Probation Department to close the child support case and cease enforcement proceedings against Plaintiff (DCa88-89). The order further provided that Plaintiff was to pay child support in the amount of \$1,900 effective March 1, 2020, through his attorney's trust account, with payments delivered the first day of the month (DCa88-89). The order was designated as a temporary order (DCa88-89).

A plenary hearing occurred on June 4, 2019, and June 5, 2019 during which both parties gave testimony, were subject to cross examination and entered exhibits into evidence resulting in an initial order on May 7, 2020 (DCa093-DCa104) being entered by Judge McLaughlin, 11 months following the conclusion of the hearing.

While a decision was pending on the issues litigated at the plenary hearing, there was a change in the parenting time schedule because of the children attending school remotely during the COVID-19 pandemic. An order providing for an equal time-sharing arrangement while the children were

attending school remotely was entered after cross-applications were brought by the parties (Da259). The Plaintiff sought a suspension of child support for April through July 2020, because of this change in residential custody (Da079 & Da082).

Plaintiff objected to many terms of the May 7, 2020 Order through a letter from her attorney dated May 11, 2020 (Da041-043). The order was amended by Judge McLaughlin on June 17, 2020. (DCa105-109). The June 17, 2020 Amended Support Order provided for the following with respect to Plaintiff's child support obligations:

1. For the period of June 27, 2016, to December 31, 2016, Plaintiff would owe Defendant \$1,066 per month. (DCa105).
2. For the period of January 1, 2017, to December 31, 2017, Plaintiff would owe Defendant \$2,060 per month. (DCa105).
3. For the period of January 1, 2018, thereafter, Plaintiff would owe Defendant \$1,900 per month. (DCa105).

The June 17, 2020 Order fixed Plaintiff's arrears at \$3,412 as of June 17, 2020. (DCa106). Defendant's request to have child support paid through probation was denied. (DCa106). Judge McLaughlin provided child support guidelines, which supported the child support order, to counsel on June 19, 2020. (DCa119-127).

On June 17, 2020, Judge McLaughlin entered a separate order appointing Hon. Bradford Ferencz, J.S.C. (Ret.), as the Parenting Coordinator (“PC”) to address custody and parenting time issues. (Dca110-118). The Order relating to the PC was amended on June 19, 2020, to correct a clerical error and clarify a transportation issue. (Dca128-136).

Plaintiff appealed paragraphs 7 and 10 of the June 19, 2020 Amended Order (Da213) relating to the denial of his request for the assessment of penalties and for an award of counsel fees and costs. Plaintiff stated on the Appellate Civil Case Information Statement that all issues between the parties had been disposed of. (Da218 and Da220). The appeal was resolved by Consent Order of Demand and Dismissal dated 9/17/20. (Da146).

III. Defendant’s Request for Reconsideration of the Calculation of Arrears and the Denial of the Payment of Child Support via Probation

On July 8, 2020, Defendant filed a motion requesting that the Court reconsider its findings in its June 17, 2020 Order regarding Plaintiff’s child support arrears and its denial of payments through probation. (Da001-003). Notably, she did **not** request a reconsideration of the actual amount of child support that was ordered. (Da001-003). Defendant merely contended that the trial court had made an erroneous calculation of the child support arrears, which she calculated to be \$26,298, as opposed to the Court’s calculated amount of

\$3,412. (Dc001). Defendant explained that the Court's calculation was erroneous because it failed to consider that Plaintiff was not regularly paying support since the entry of the December 4, 2019 *pendente lite* order. (Da008).

Plaintiff filed a cross-motion for counsel fees in response to Defendant's reconsideration motion. (Da031-032). Plaintiff's counsel filed a certification of attorney services (Da083-107). In Plaintiff's supporting certification and application, he stated that Defendant's application for reconsideration was out of time based on the June 17, 2020 Order being a final order, delineated, problems with probation, disputed additional arrearages, and sought fees (Dca033-040). Plaintiff specifically stated that he was going to appeal the May 7, 2020 Order if it had not been revised by the June 17, 2020 Order (Da039). Critically, Defendant did not seek reconsideration of the actual amount of child support that was ordered in the June 17, 2020 Order (Da031-032).

Judge McLaughlin heard oral argument on the parties' applications on August 13, 2020. (1T3-1-3-1T43-4). On August 19, 2020, Judge McLaughlin entered an order denying Defendant's application for reconsideration of arrears and payment through probation. (DCa137-138). Judge McLaughlin also expanded the role of the PC to address arrears and child support. The child support portion of the order was not specific but included language that focused the dispute on the change in the custodial arrangement during COVID.

(DCa137-138). The only two pending child support issues before the Court were Defendant's reconsideration motion concerning the arrears and payment of child support through probation (Da001-002), and Plaintiff's application for counsel fees (Da031-032). The COVID child support issue was not before the Court on August 13, 2024, but there was an application pending pertaining to pandemic child support (Da082). Specifically, the August 19, 2020 order entered by Judge McLaughlin provided as follows:

... The Court Sua sponte amends Paragraph 15 of its June 19, 2020 Amended Order to expand the scope of the appointment of the Hon. Bradley J. Ferencz J.S.C. (ret.), Parenting Coordinator, to handle the issue of the calculation of plaintiff's child support obligation and arrearages (taking into account any modifications that may be necessitated by changes to the parties' parenting time during the COVID-19 pandemic).
(Dca137-138).

Notably, the Order was unclear as to the period for which the child support was to be calculated. (DCa137-138). Unless interpreted as pertaining only to COVID child support, the August 19, 2020 order would contradict Judge McLaughlin's statements on the record on August 13, 2020, in which he outlined the issues before him as being Defendant's request for reconsideration of the arrears, and the denial of Defendant's request that support be paid through the probation department. (1T3-17-1T4-1). On August 13, 2020, Judge McLaughlin did **not** state that the recalculation of child support was at issue (nor would such

a statement had been warranted, as neither party sought reconsideration of the underlying child support award). (1T3-17-T42-21).

Plaintiff's counsel contended that Defendant's application for reconsideration was out of time pursuant to R. 4:49-2, which applies to final orders, as it was filed on day 21 following the service of the June 17, 2024 Order. (1T7-25-1T8-25) (Da033). The Court inquired of Plaintiff's counsel whether the June 17, 2020 Order was final when all issues between the parties had not been decided. (1T4-6). Plaintiff's counsel responded that the Court segregated the issues, and that the June 17, 2020 Order was a final order. (1T11-7-13). Judge McLaughlin then explained his choice of segregating the child support issue as follows, "I thought that I could at least advance the ball and finalize the **ultimate decision** in the case." (1T11-14-17). (Emphasis added).

As noted above, Judge McLaughlin entered a second order on June 17, 2020, which addressed parenting time issues, appointment of a PC, and Defendant's contribution to the children's college fund. (DCa110-118). This order denied the imposition of sanctions on Defendant for alleged willful violations of the parenting time order and declined to award Plaintiff counsel fees and costs. (DCa110-118). The order was amended on June 19, 2020, to correct a clerical error and clarify a parenting time-related transportation issue. (DCa128-136). Defendant's counsel argued that the entry of the June 19, 2020

Order made the June 17, 2020 Order final as it resolved the outstanding issues between the parties. (1T17-9-19).

Judge McLaughlin found that if R. 4:49-2 was operative, Defendant's motion for reconsideration of the arrears was timely filed because the child support guidelines worksheet supporting the June 17, 2020 Order were not supplied to counsel until June 19, 2020. (DCa119). According to the Court, June 19, 2020, became the operative date on determining whether the application was filed within the 20-day period. (1T34-3-16).

The Court acknowledged a mistake in its calculation of arrears in the June 17, 2020 Order, stating that Plaintiff owed Defendant arrears of \$26,212, as opposed to \$3,412. (1T4-19-1&5-17). The mistake occurred because the Court did not consider one year in which Plaintiff failed to pay \$22,800 in calculating Plaintiff's obligation. (1T4-19-1T5-17). Despite this fact, the Court denied Defendant's motion for reconsideration, as the information concerning non-payment for one year was not "new" evidence and could have been brought before the Court during the child support proceeding. (IT34-18-25).

During oral argument, Plaintiff's counsel stated that it had been Plaintiff's initial intention to appeal the support obligation fixed in the June 17, 2020 Order, but he subsequently determined not to do so. (1T12-1-17). This was also confirmed in his responding certification. (Da039). Instead, as noted above,

Plaintiff filed an appeal of paragraphs 7 and 10 of the June 19, 2020 Order, which denied Plaintiff's requests for the imposition of sanctions against Defendant and denied his request for an award of counsel fees and costs. (Da213).

During oral argument, Plaintiff's counsel stated that she did not understand the Court's calculation of the arrears. (1T5-25-1T6-12). The Court indicated its concern that Defendant receive the child support to which she was entitled, and Plaintiff receive the credits he deserved. (1T39-13-22). Judge McLaughlin raised the possible involvement of the PC with respect to the arrearage issue, (1T14-6-12). Plaintiff's counsel endorsed this approach and presented a proposal regarding the PC's level of involvement as follows:

...My proposal is that their motion be denied. And that if Your Honor feels that there was some mathematical calculation as (sic), because that's what I'm hearing, then on the Court's own motion, you know, you can certainly pass the information on, provide some insight and direct the parenting coordinator to address that issue and see if there was, in fact, an error based on what is in the June 17th order.

(1T14-4-20).

Judge McLaughlin stated on the record "I find that...the suggestion just floated by Plaintiff's counsel has, has (sic) some of appeal to the court." (1T41-1-5). It was from that backdrop that inquiry was made of Defendant's counsel

as to whether she would agree to the involvement of the PC. (1T41-13-14). Defendant's counsel agreed to this level of involvement. (1T41-15).

At the conclusion of the oral argument, Plaintiff's counsel also requested that the PC address the recent child support issue (hereinafter referred to as "the Pandemic child support") created as a result of the parties using an equal time-sharing arrangement for a period of time during the Pandemic, as opposed to Defendant having primary physical custody. (1T41-17-1T42-2). Plaintiff sought a suspension of child support from April 2020-July 2020 in his April 6, 2020 application. (Da082).

With the consent of Defendant's counsel, the Court agreed to permit the PC to make recommendations pertaining to Pandemic child support. (1T4-6-22). In requesting that the PC become involved in resolving Pandemic child support, Plaintiff's attorney described the PC's assignment relative to the child support issue as follows, "So, I think that if we're going to have Judge Ferencz address what are allegedly some additional arrears, then I think that this⁵ needs to be addressed as well." (1T42-21-24).

The role of the PC as understood by both counsel and the Court was to address whether *additional* arrears were owed and whether there had been appropriate Pandemic child support. There was no mention of the PC

⁵ Referring to the change in the custodial arrangement.

redetermining the amount of child support ordered by the Court, other than the Pandemic child support for the months of April through July of 2020. (1T3-2-1T43-3). The re-calculation of child support was not before the Court as neither party had requested a reconsideration of the child support awarded in the June 17, 2020 Amended Order supported by the guidelines provided to counsel on June 19, 2020 (DCa105-109-Order and DCa119-127-guidelines & Da 001-002, Defendant's motion and Da031-032-Plaintiff's Cross-Motion).

IV. The Parenting Coordinator's Involvement

The initial communications of the Parenting Coordinator with the parties were attached to Plaintiff's certification of July 26, 2022 (Da121-134). In his initial communication to the parties, the PC appeared to understand his role. In an email dated August 30, 2020, the PC stated, "The Court Order as I read it clearly indicates that I am to review past arrearages as well as current child support obligation and that I should be taking into account the impact, if any of the COVID crisis...." (Da161).

Although there was no intervening court order or agreements, on his own initiative, the PC communicated a possible expansion of his role stating in an email dated December 29, 2020 (Da162):

The time has come for me to recalculate, at least since I have been in the case, the child support numbers.

As I previously indicated this recalculation has been directed by the court and is intended to include the support calculations dating back to the original filing.

It is my intention to file a directive dating at least back to September 1, 2020, by January 15, 2021. I have the income tax statements from both parties. What I do not have are any additional child support expenses, like unreimbursed medical expenses, for which either party is seeking a contribution. Medical expenses do not include over-the-counter expenses....(Da162)

Plaintiff, who had not appealed the June 17, 2020 child support order or filed a reconsideration concerning this order, communicated his dissatisfaction with the June 17, 2020 child support order to the PC by email dated January 4, 2021. (Da163-164). Plaintiff **incorrectly** stated to the PC “[w]hat the court asked for your help in calculating the support split from the original filing 2016”. (Da163).

On January 17, 2021, the PC issued a recommendation pertaining to Pandemic child support (DCa139-145). He averaged each party’s gross income as shown on their federal income tax return for the years 2016, 2017 and 2019. (DCa141-144). Defendant’s income in 2018 was not included as it was deemed to be an atypical year for her. (DCa141-143). Plaintiff’s capital gain of \$327,951 in 2019 was not included in the calculation. (DCa142). The PC found an income differential between the parties of \$41,000, with Defendant having the higher income. (DCa141-143). He applied the New Jersey Child Support Guidelines as

if the mother had \$41,000 of income and the father had **no income**. (DCa143-144). Based upon this analysis, the PC recommended that effective February 1, 2021, **Defendant** pay child support to Plaintiff of \$460 per month. (DCa144). commencing February 2021 until changed by agreement, the court or “this coordinator”. (DCa144).

In her cross-application discussed below, Defendant attached additional recommendations of the Parenting Coordinator of August 20, 2021. (DCa146-156), and August 26, 2021 (DCa157-159)⁶. On August 20, 2021, the PC communicated his recalculation of the child support payments owed by Plaintiff to Defendant for two children retroactive to January 2016⁷ as follows (DCa146-156):

- From January 2016 through December 2017, Plaintiff would owe Defendant the sum of \$77 per week or \$333.67 per month (DCa149-151);
- From January 2018 through December 2018, Plaintiff would owe Defendant the sum of \$83 per week or \$359.67 per month (Dca 151-152);
- From January 2019 through December 2019, Plaintiff would owe Defendant the sum of \$126 per week or \$546 per month (Dca153-154);

⁶ Although Plaintiff relied on the August 20, 2021 recommendations of the PC to support his calculation of overpayment of child support, he failed to attach this recommendation to his Notice of Motion filed on July 22, 2022.

⁷ The date that a modification was sought was June 27, 2016, not January 1, 2016.

- From January 2020 through December 2020, Plaintiff would owe Defendant the sum of \$87 per week or \$377 per month (Dca155-156).

The PC's recommendation was clearly not a final directive, as he stated, "We further note that the child support amount will increase from the base calculated amount by a discretionary amount. The calculations thus are approximate and are subject to court review and change." (Dca148). In his August 26, 2021, recommendation he addressed the issue of afterschool activities and afterschool care. He found the applicable percentages of contribution to be 59% by Defendant and 41% by Plaintiff. (Dca157-159). He requested that the parties submit documentation of legitimate bills. (Dca158). Again, the preliminary and nonbinding nature of his recommendation was emphasized when the PC stated, "That number will increase depending on the legitimate additional childcare costs and may change based on the court's review." (Dca159).

Plaintiff's counsel recognized that the recommendations of the PC contained in the August 20, 2021, correspondence were not final. In a letter dated March 22, 2022 (Da165-166) which was his certification of July 26, 2011, Plaintiff's counsel made the following request of the PC:

Additionally, your August 20, 2021, letter to the parties provides your proposed child support calculations. As you are aware, the trial court expanded the scope of your authority under the August 19, 2020 Order to

include this issue. We would ask that you put your final recommendation in writing and provide same to our office.

(Da165)

The PC did not respond to this request. Plaintiff asserted that the PC did not comply with this request as his term had expired. (Da132).

V. The Parties' 2022 Cross-Applications

On July 26, 2022, Plaintiff filed an application with the Court in which he requested the following relief relative to child support issues (Da118-120):

- Enforcing what he referred to as the PC's January 17, 2021 Directive and crediting Plaintiff for an overpayment of child support to Defendant in the amount of \$54,292 as of July 22, 2022. (Da118-119).

- Enforcing the alleged January 17, 2021 Directive in setting Plaintiff's child support obligation to Defendant at \$377 per month and suspending collection of same until the overpayment has been fully exhausted. (Da119).

- Directing Defendant to repay Defendant the overpayment of child support at the rate of \$1,000 per month until satisfied. (Da119).

Plaintiff's motion was supported by his certification of July 26, 2022. (Da121-133) Plaintiff incorrectly claimed that the August 19, 2020 Order

authorized the PC to recalculate the child support commencing in 2016 *ab initio*, by requesting that the support awarded in the June 17, 2020 Order be replaced by the PC's recommendations. (Da128).

In his application, Plaintiff utilized the preliminary unauthorized recommendations of the PC contained in his August 20, 2021, correspondence to fix his child support obligation from January 1, 2016 (not June 27, 2016), through the date of his certification to support a claim that Defendant owed him \$54,292. (Da131).⁸ Plaintiff also sought an award of counsel fees and costs which was supported by his attorney's Certification of Services (Da167-186)

Defendant filed a cross-motion on October 20, 2022 (DCa 001-008), in which she sought the following relief:

- Enforcement of the June 17, 2020 Order entered after the plenary hearing and requirement that Defendant immediately pay arrears of \$3,412 as of June 17, 2020 fixed in that order⁹ (DCa 002);

⁸ Plaintiff incorrectly attached the PC recommendation of January 17, 2021 to his application rather than the recommendations of August 20 and August 26, 2021 to support this request.

⁹ Defendant simply gave up on the disputed arrears which had prompted the reconsideration motion filed in July 2022.

- That the then current Parenting Coordinator ¹⁰, Mark Mayrides, Esq., make recommendations regarding child support for two periods: (1) June 17, 2020–August 31, 2021, the period during which the parties had equal residential custody of the children as a result of the COVID-19 pandemic and (2) September 1, 2021, to the present (DCa002);
- That the parties exchange financial information for 2020 and 2021 and year-to-date income for 2022 (DCa002);
- That the parties exchange updated child-related budget expenses as part of their financial submission to the parenting coordinator (Dca002).
- For counsel fees and costs (DCa002)

In her certification in support of her motion (DCa015-033), Defendant stressed that the order appointing the PC¹¹ provided that the PC “shall not have the authority to change existing Orders of the Court unless the parties’ consent and enter into a Consent Order.” (DCa 021). Plaintiff contended that it was outside the scope of the PC’s authority to make different findings that were already contained in the Court’s Orders. (DCa021). She reiterated that her

¹⁰ After Plaintiff filed an application to continue Ret. Judge Ferencz as the parenting coordinator, the parties consented to Mark Mayrides, Esq., being appointed as the succeeding parenting coordinator. (Dca034-038)

¹¹ The June 19, 2020 Order that amended the June 17, 2020 PC Order.

application heard on August 13, 2020, sought reconsideration of the arrearages fixed in the June 17, 2020 Order and not a reconsideration of the child support awarded in the June 17, 2020 Order. (DCa021). Moreover, she observed that the PC recommendations were incomplete and not intended to be binding. (DCa023).

Defendant further delineated numerous discrepancies between the Court's determination after a plenary hearing and the PC's preliminary recommendations, which included the following:

1. Judge McLaughlin found that there were additional child-related expenses of \$2,400 per month and had allocated Plaintiff's share to be 47% and added this amount to the base child support. The PC did not add Plaintiff's share of such expenses to the base child support. (DCa024).

2. The income figures for both parties used by the PC varied significantly from the income figures used by the Court following plenary hearing. (DCa025).

3. The PC employed an incorrect methodology in determining income for child support guideline purposes. (DCa026-027).

4. The PC calculated child support retroactive to January 1, 2016, while the Court calculated the child support retroactive to June 27, 2016, which

was the date recognized by both parties with respect to retroactivity. (DCa028-029).

5. The Court used a sole parenting worksheet while the PC used a shared parenting worksheet. (DCa028-029).¹²

Defendant set forth the child support she received from Plaintiff for the two children commencing in 2016, and continuing through her October 20, 2022 certification as follows:

- 2016: \$1,900 per month for the entire year;
- 2017: \$1,900 per month for the entire year;
- 2018: \$1,900 per month from January 1 through September 30, 2018 (a total of \$17,100);
- 2019: \$5,700 for the year as agreed “arrears” under the USSO;
- 2020: \$1,900 was paid for July, August, November and December, for a total payment of \$7,600 for the year;
- 2021: \$1,900 was paid by the Plaintiff in January and then no further payments were made by instruction of the PC;
- 2021: Defendant paid Plaintiff’s child support of \$460 per month for February and March, for total payment of \$920;

¹²According to Defendant’s calculation, Plaintiff had the children for 83-87 overnights. (DCa028). The Plaintiff stated that he had 102 overnights. (Da210).

- 2022: neither party paid child support.
(DCa026-027)

Plaintiff filed a Reply Certification dated December 7, 2022 (Da192-204) in which he incorrectly alleged that the June 17, 2020 child support order was amended by the June 19, 2020 Amended Order¹³ to permit the PC to review child support and arrears without making a specific reference to a provision of the order. (Da195¹⁴). His response incorrectly asserted that Defendant had sought a reconsideration of the amount of child support established in the June 17, 2020 Order. (Da195). Using the child support contained in the PC's preliminary recommendations, he created a new chart to support his claim of overpayment of \$42,564 (not the \$54,292 requested in the motion). (Da201-202).¹⁵

Oral argument on the parties' applications was not heard until September 8, 2023, over 1 year from Plaintiff's initial application. The matter was argued before the Hon. Supti Bhattacharya, J.S.C. Defendant's counsel asserted that (1) the entry of an order varying the child support fixed in the June 17, 2020 Order would violate the anti-retroactive modification provision of N.J.S.A. 2A:17-

¹³ This order pertained primarily to custodial issues, appointed the Parenting Coordinator, and did not address child support (Dca110-118)

¹⁴ A review of child support is not mentioned in the June 19,2020 Amended Order (Dca128-136).

¹⁵ There was no explanation as to how this differed from the \$54,292 overpayment sought as of July 22, 2022, when the credit against the overpayment was \$377 per month for 5 months.

56.23a and (2) the terms of the PC's assignment did not permit him to change Court orders. (2T8-12-T10-22). Although Judge Bhattacharya indicated that she had a draft order prepared (2T4-19), she never rendered a decision on the parties' applications.

The matter was transferred to the Hon. John Tomasello, J.S.C., who was a Gloucester County Judge who was on recall and based in Gloucester County, but hearing Mercer County post-judgment motions. Judge Tomasello was provided with a transcript of the September 8, 2023, oral argument. (3T-11-3-6). Judge Tomasello held a case management conference on May 8, 2024, and entered a Case Management Order on that date (Da223). He appointed Hon. Marie Lihotz, J.A.D. (ret.) as the succeeding PC.¹⁶ He directed counsel to provide a two-page summary of their respective positions. (3T10-24-3T11-2).

Defendant's counsel submitted a summary (Da227-229). The summary reiterated that a modification of the June 17, 2020 order constituted a violation of N.J.S.A. 2A:17-56.23a; that a revision of the order exceeded the scope of the PC's assignment pursuant to the August 19, 2020 order (Da228); that the recommendations of the PC were incomplete and not finalized (Da228); that there were significant errors in the PC's calculations (Da228); Defendant sought

¹⁶ The previously agreed upon parenting coordinator, Mark Mayrides, Esq. had requested the right to withdraw.

enforcement of the June 17, 2020 support order and the arrearages fixed therein (Da227);¹⁷ and that she requested counsel fees as a result of Plaintiff's bad faith litigation of the issue. (Da229). It was further requested that Judge Lihotz provide recommendations with respect to the child support for the COVID-19 period and current child support with the parties providing financial information from 2022.¹⁸ (Da228)

Plaintiff's counsel submitted a summary, (Da226) that incorrectly contended that Judge McLaughlin's August 19, 2020 Order expanded the scope of the PC's responsibilities to include a recalculation of the child support awarded under the June 17, 2020 Order. (Da226). Plaintiff requested that his child support obligation be retroactively modified to the following amounts which were encompassed in the Parenting Coordinator's preliminary recommendations:

- July 2016 – September 2018: \$333.67 per month¹⁹; (Da226)

¹⁷ Defendant abandoned her request for a revision of the arrearages initially presented in the motion for reconsideration heard on August 13, 2020. (3T11-24).

¹⁸ The request for information was amended from 2020 to 2022 at the proceeding on May 22, 2024. It subsequently came to the attention of counsel and Judge Lihotz that as parenting coordinator she could not be involved in financial issues pursuant to the directive of the Administrative Office of the Courts, effective September 1, 2023.

¹⁹ The parenting coordinator had started the retroactivity as of January 1, 2016, (DCa149)not July 2016 set forth in Plaintiff's summary.

- October 2018 – December 2018: \$333.60 per month; (Da226)
- January 2019 – December 2019: \$546 per month; (Da226)
- January 2020 – July 2020: \$377 per month; (Da226)
- August 2020 – December 2020: \$0 per month; (Da226)
- January 2021 – August 2021: Defendant to pay Plaintiff \$460 per month; (Da226)
- September 2021 – May 2024: \$377 per month. (Da226).

In his summary, Plaintiff adjusted the amount of the overpayment to \$35,997 as a result of no payments being made over the past three years. (Da226).

After receiving each party's summary statement, Judge Tomasello rendered his decision on the record on May 22, 2024, granting Plaintiff's application virtually *in its entirety* to fix child support pursuant to the preliminary recommendation of the PC. Judge Tomasello determined that the August 19, 2020 Order sua sponte expanded the scope of the PC's responsibilities to address child support and arrears, and that the order was a final order that was not appealed by either party. (4T11-8-24). Further, the Court found that the arithmetic calculations of Judge Ferencz in his capacity as PC

were appropriate²⁰. (4T9-6-9). Judge Tomasello entered an order on May 22, 2024 (Da230) which provides as follows:

The findings of Judge Bradley Ferencz dated January 17, 2021, are adopted, incorporated herein set arrears being due and owing to Defendant in the amount of \$54,292.

Judge Tomasello decided the application on conflicting certifications, namely, Plaintiff's dated July 26, 2022, (Da121-134), Defendant's dated October 20, 2022 (DCa015-DCa033), and Plaintiff's dated December 7, 2022. (Da192-205). He did not address Defendant's argument that the entry of a revised child support order would violate N.J.S.A. 2A:17-56.23a, Defendant's position that a revised order would violate the terms of the June 19, 2020 Order appointing the parenting coordinator, that the recommendations of the PC were preliminary and not finalized, or the critique of the PC's recommendations by Defendant, including the conflicts between the PC's findings and the factual findings of Judge McLaughlin after a two-day plenary hearing. (4T7-19-4T12-22). Judge Tomasello entered an amended Order on May 29, 2024, correcting the May 22, 2024 Order to provide that the arrears (\$54,292) were owed to the Plaintiff. (Da232). Judge Tomasello did not even adjust the overpayment in accordance with Plaintiff's own summary request for relief. There was no finding that

²⁰ The PC's recommendations were elevated to status of an Order by Judge Tomasello and the Plaintiff's motion was considered a motion to enforce litigant's rights. 4T9-14-22.

supported the determination Plaintiff overpaid child support by \$54,292 as the Parenting Coordinator's January 17, 2021, recommendation only fixed Defendant's pandemic child support obligation to Plaintiff in the amount of \$460 per month (DCa144).

Defendant filed a notice of appeal of the May 29, 2024 Order and the August 19, 2020 interlocutory order on July 11, 2024. (Da234). Plaintiff filed a cross-appeal on July 26, 2024. (Da246).

LEGAL ARGUMENT

I. THE AMENDED ORDER OF MAY 29, 2024, IS INVALID AS A MATTER OF LAW BECAUSE IT VIOLATES THE PROHIBITION AGAINST THE RETROACTIVE MODIFICATION OF CHILD SUPPORT PROVIDED IN N.J.S.A. 2A:17-56.23a. (2T8-12-2T 10-22 and Da227-229)

A. The Standard of Review

A trial court's interpretation of the law and the legal consequences that flow from established facts is not entitled to any special deference. State v. Brown, 118 N.J. 595, 604 (1990); Dolson v. Anastasia, 55 N.J. 2, 7 (1969); Pearl Assurance Co, Ltd. vs. Watts, 69 N.J. Super. 198, 205 (App. Div. 1969). *See also In re: T.I.C.C.*, 470 N.J. Super. 596, 607 (App. Div. 2022). As Judge Tomasello's May 29, 2024 order involved the interpretation of law, it is not entitled to any deference.

B. Judge McLaughlin's June 17, 2020 Order was a Final Order.

Judge McLaughlin's Order of June 17, 2020, established child support commencing June 27, 2016, and continuing forward after the date of the order. It constituted a final order, as it was entered after a two-day plenary hearing at which both parties testified, were subject to cross-examination, and entered voluminous documents into evidence. The plenary hearing was scheduled to resolve Plaintiff's application to retroactively reduce child support and Defendant's application to increase child support. The trial court had an opportunity to assess the credibility of each party and examine the voluminous documents entered into the record. There was no indication in the findings supporting the June 17, 2020, child support order that it was interlocutory. (In contrast, when Judge McLaughlin continued the Pennsylvania child support order of \$1,900 per month pending the plenary hearing on December 4, 2019, he specifically identified this order as a *pendente lite* order.) In explaining the reason for segregating the child support and custodial issues which resulted in the entry of separate orders on June 17, 2020, Judge McLaughlin explained his goal of finalizing the child support issue.

Plaintiff's counsel acknowledged that Judge McLaughlin's June 17, 2020 Order was a final order in her responsive pleadings, during her August 13, 2020 oral argument, and in the procedures which she followed in her appeal of

portions of the June 19, 2020 Order pertaining to custodial issues. Plaintiff's counsel opposed Defendant's application to reconsider the arrears that were fixed in the June 17, 2020 Order on the basis that her application was filed out of time pursuant to R. 49-2 which applies to final orders. When appealing portions of the June 19, 2020 Order pertaining to parenting time issues, Plaintiff's counsel proceeded pursuant to R. 2:2-3(a)(1) as if the decisions on the issues resolved in the order of June 17, 2020, and June 19, 2020, were final orders and acknowledged in her Appellant's Civil Case Information Statement that there were no outstanding issues between the parties. She did not submit an application under R. 2:2-4 to file an interlocutory appeal; instead, she proceeded as if there were no outstanding issues between the parties.

C. In Their Applications Heard on August 13, 2020, Neither Plaintiff nor Defendant Sought for the Court to Review the Underlying Child Support Award.

In his introductory statements preceding the August 13, 2020 oral argument on Defendant's motion to reconsider the Court's calculation of arrears and denial of a requirement that child support be paid through probation and Plaintiff's application for counsel fees, Judge McLaughlin delineated the issues before the Court as being the calculation of the arrears, payment of support through probation, and Plaintiff's cross-motion for counsel fees. Throughout the oral argument, there was no statement by the Court or by counsel that the

underlying child support award set forth in the June 17, 2020 Order was being contested. Neither party filed an application to reconsider the amount of child support awarded in the June 17, 2020 Order. Plaintiff and his counsel specifically indicated that he had considered appealing the child support order but had decided against doing so.

D. Judge Tomasello's May 29, 2024 Order Improperly Retroactively Modified Plaintiff's Child Support Obligation

Judge Tomasello's May 29, 2024²¹ order improperly retroactively modified the June 17, 2020 child support order.²² The order reduced the Plaintiff's child support obligation by approximately 79% through June 17, 2020. The May 29, 2024 Order is in direct violation of N.J.S.A. 2A:17-56.23a which provides in part as follows:

... No payment or installment of an order for child support, or those portions of an order which are allocated for child support established prior to or subsequent to the effective date of P.L 1993, c.45 (C.2A:17-56.23a), shall be retroactively modified by the court except with respect to the period during which there is a pending application for modification, but only from the date the notice of motion was mailed either

²¹ Judge Tomasello initially entered an order on May 27, 2024 in which he provided Plaintiff paying arrears to Defendant and corrected this provision in the May 29, 2024 Order.

²² The actual terms of the order only adopted the Parenting Coordinator's directive of January 17, 2021, (Da230 & Da232) which addressed child support owed by Defendant to Plaintiff during pandemic; however, the Court fixed the overpayment based upon Plaintiff's analysis of the Parenting Coordinator's communication of August 20, 2021, and the child support guidelines attached thereto.

directly or through the appropriate agent. The written notice will state that a change of circumstances has occurred and a motion for modification of the order shall be filed within 45 days. In the event a motion is not filed within the 45-day period, modification shall be permitted only from the date the motion is filed with the court.

Since there was no application pending to modify the June 17, 2020 Order, as it affects the period June 27, 2016, through the date of the Order²³, the PC's unauthorized preliminary recommendations modifying this order and Judge Tomasello's adoption of such modifications are clearly prohibited by N.J.S.A. 2A:17-56.23a. The anti-retroactivity statute was brought to the attention of Judge Bhattacharya and also Judge Tomasello, but Judge Tomasello did not address the statute in his decision. Instead, his decision was based upon his determination that the August 19, 2020 Order expanding the role of the PC to address the child support issues was a final order. Judge Tomasello's finding was patently incorrect, as the August 19, 2020 Order directed the PC to "handle the issue of the calculation of plaintiff's child support obligations and arrears (taking into account any modifications that made be necessitated by changes to the parties' parenting time during the Covid 19 pandemic)." There was no final determination of these issues set forth in the order.

²³ Except for the months April-June 2020 regarding Pandemic child support.

Additionally, there is nothing in the August 19, 2020 Order that states that the PC's recommendations were binding and a final decision regarding child support. Even if interpreted as meaning that the entire issue of child support from June 27, 2016, through the date of the order was at issue (which it was not), the August 19, 2020 Order could not be considered a final order as it did not resolve the child support issue but only outlined a dispute resolution methodology.

In Keegan v. Keegan, 326 N.J. Super. 289, 293 (App. Div. 1999) the Appellate Division recognized the purpose of the anti-retroactivity provision of N.J.S.A. 2A:17-56.23a was to “remedy the loopholes of interstate child support enforcement laws in order to benefit children...” The decision in Keegan underscored the importance of protecting the financial security of children. There, the noncustodial parent sought to prevent a retroactive contribution to the children's college expenses on the basis that such contributions would retroactively modify his child support obligation by increasing this obligation. This position was rejected by the Appellate Division, which stressed that the anti-retroactivity provisions applied to decreases, not increases of child support which would be permitted in equitable circumstances. Id. at 294.

Prior to the enactment of the statute, the retroactive modification of child support and vacation of arrears on equitable principles was permitted. *See* Lanza

v. Lanza, 286 N.J. Super. 70, 72 (App. Div. 1998). The legislative history of the statute highlighted a common problem of a supporting parent moving out of state, allowing a significant child support debt to accrue, and then seeking a retroactive modification of the support order when enforcement was sought. In the case currently before this Court, the Plaintiff has conducted himself similarly by seeking a retroactive modification of child support without adhering to the procedural requirements to modify the Order. Instead, he lobbied the PC to retroactively modify a final order to which he objected but did not procedurally challenge.

The policy of this state as recognized in Keegan is that “[d]ebts that accumulate to children must be treated with the highest regard....” Id. at 294. Judge Tomasello’s blanket acceptance of Plaintiff’s position that substantially retroactively reduced Plaintiff’s child support obligation without careful analysis clearly violates such policy.

II. IF THE AUGUST 19, 2020 ORDER IS INTERPRETED TO MEAN THAT JUDGE MCLAUGHLIN DIRECTED THE PARENTING COORDINATOR TO RECALCULATE THE CHILD SUPPORT AWARDED IN HIS JUNE 17, 2020 ORDER, SUCH PROVISION WOULD CONSTITUTE AN IMPERMISSIBLE DELEGATION OF JUDICIAL AUTHORITY TO THE PARENTING COORDINATOR AND WOULD VIOLATE N.J.S.A. 2A:17-56.23A (DCa021), 2T8-12 - 2T 10-22)

The August 19, 2020 Order limited the PC’s involvement with respect to child support to making recommendations concerning **arrears** accumulating

under the June 17, 2020 Order and Pandemic child support. The order did not permit the PC to retroactively recalculate child support dating back to 2016.

When Judge Tomasello construed the August 19, 2020 Order as authorizing the PC to recalculate the amount of child support dating back June 27, 2016, to the date of the order, it ignored the fact that such an expansion of the scope of the PC's appointment would have constituted an improper delegation of the trial court's judicial authority without the consent of the parties. The June 19, 2020 Order appointing the PC specifically prohibited the PC's modification of existing orders without the consent of the parties.

The trial court cannot delegate responsibilities to an alternate dispute resolution tribunal without the consent order of the parties. For example, the use of arbitration to resolve disputes can only occur when the parties have actually agreed to arbitrate. First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 945 (1995). Additionally, "parties are not required 'to arbitrate when they have not agreed to do so'" Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442 (2014) (*quoting* Volt Info. Scis. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468, 478 (1989)). See also In re Arbitration Between Grover & Universal Underwriters Ins. Co., 80 N.J. 221, 228 (1979) ("Only those issues may be arbitrated which the parties have agreed shall be.").

In the case before this Court, the parties never consented to the PC retroactively calculating the child support award due from Plaintiff to Defendant dating back to 2016. The period of time for which consent was given to calculate child support was a several month period in 2020 relating to the Pandemic. Beyond that, the PC was only supposed to determine the amount of child support arrears Plaintiff owed to Defendant. There was no consent given by Defendant to a recalculation of the child support set forth in the June 17, 2020 Order, either on the record during oral argument, or evidenced by any other document.

Furthermore, Defendant never consented to the PC's recommendations being binding upon her. Judge Tomasello treated the PC's recommendations as binding, even where Defendant's own summary statement submitted to the Court indicated that the PC's calculations were incorrect and there were conflicting certifications regarding the accuracy and appropriateness of these recommendations.

Defendant gave her consent to the PC determining arrears and calculating the amount of Pandemic child support. This can be seen by reviewing Plaintiff's counsel's proposal for the involvement of the PC regarding child support.

Plaintiff's counsel stated:

My proposal is that their motion be denied. And that if Your Honor feels that there was some mathematical calculation as (sic), because that's what I am hearing, then on the Court's own motion, you know, you can certainly pass the information

on, provide some insight and direct the parenting coordinator to address that issue and see if there was, in fact, an error based on what is in the June 17th order.

(1T14-14-20).

After Defendant's counsel consented to permitting this level of involvement of the PC, Plaintiff's counsel requested that the PC also consider the Pandemic child support issue. Specifically, Plaintiff's counsel stated:

“So, I think that if we’re going to have Judge Ferencz address what are allegedly some additional arrears, then I think that this²⁴ needs to be addressed as well.”

... (Emphasis added) (1T41-16-24)

This confirms that Defendant never consented to the PC calculating child support retroactively to 2016. Defendant did not provide a blanket authorization for the PC to revisit the child support awarded after the plenary hearing. Without the consent of the parties and waiver of judicial determination, the delegation of the recalculation of child support from June 27, 2016, to the PC would not be permissible. *See Altalese*, 219 N.J. at 442.²⁵

²⁴ Referring to the change in the custodial arrangement.

²⁵ Additionally, since there was no application pending to modify the child support established pursuant to the June 17, 2020 Order, an order by Judge McLaughlin expanding the PC's responsibilities to recalculate the child support contained in this final order would be prohibited by N.J.S.A. 2A:17-56.23a.

III. THE TRIAL COURT ERRED IN INCORPORATING THE RECOMMENDATIONS OF THE PARENTING COORDINATOR INTO THE ORDER OF MAY 29, 2024, AS THE CHILD SUPPORT CALCULATION INCLUDED IN THE RECOMMENDATIONS WAS DESCRIBED AS PRELIMINARY AND WAS NOT CORRECTLY CALCULATED PURSUANT TO THE N.J. CHILD SUPPORT GUIDELINES. (DCa025-027), (Da227-229).

In entering the May 29, 2024 Order, Judge Tomasello did not hear any testimony and issued a decision based on competing certifications. As a result, Judge Tomasello's factual findings are not deserving of deference.

While findings of facts by the Trial Court are entitled to deference if supported by substantial credible evidence in the record, a reduced level of deference is given when the factual determination is made on motion papers without the benefit of a plenary hearing. N.J. Div. of Child Prot. & Permanency v. S.K., 456 N.J. Super. 245, 262 (App. Div. 2018); N.J. Div. of Child Prot. & Permanency v. J.D., 447 N.J. Super. 337, 350 (App. Div. 2016).

Judge Tomasello did not analyze the parties' conflicting certifications. He simply granted Plaintiff's highly flawed application. Judge Tomasello's sole finding of facts were that the August 19, 2020 Order appointing the PC was a final order and that the PC's calculations were accurate and should be afforded the status of an order and enforceable by a Motion to Enforce Litigant's Rights.

Judge Tomasello's cursory analysis failed to consider the myriad errors contained within the PC's analysis. For example, the methodology used by the

PC in formulating his recommendations for Pandemic child support departed significantly from the N.J. Child Support Guidelines. See Rules Governing the Courts of New Jersey Appendix IX-B. Instead of using the parties' total average income²⁶, the PC only used the average differential of income between them, and then inexplicably used Plaintiff

Defendant's income as the average differential and Plaintiff's income as 0. There is no support for such an approach in the Child Support Guidelines.

Next, the PC ignored the parties' actual incomes when making its calculations. Again, the PC had no authority to calculate the actual child support amount dating back to 2016. Even so, the PC's calculations were erroneous. For example, the PC inexplicably ignored Plaintiff's \$327,951 of capital gain earned in 2019. If this were included in the parties' average income as required under the Guidelines (see Appendix IX-B, page 3), Plaintiff's average income would be significantly higher. This capital gain should have been considered, as it positively affected Plaintiff's ability to pay child support.

Next, the PC used a shared parenting worksheet in determining Plaintiff's child support obligations, while the Court used a sole parenting worksheet.

²⁶ Because of the fluctuation in both parties' income, Defendant with respect to 2018, and Plaintiff's with respect to 2019 because of the substantial capital gain he received, a three-year average income would be appropriate. *See* Appendix IX-B, use of child support guidelines, page 4.

Defendant opposed the use of the shared parenting worksheet in her responsive pleadings, indicating that Plaintiff had 83-87 overnight parenting time per year. Plaintiff stated in his certification that he had 102 overnight parenting times per year.

Per Appendix IX-B of the Child Support Guidelines, the sole parenting worksheet “shall” be used in the following circumstances: “shared parenting (PAR Time) below the substantial equivalent of two or more overnights per week (28% of overnights).” By either party’s calculation, Plaintiff was exercising less than “two or more overnights per week.” As such, the sole parenting worksheet should have been used. The Court correctly used this worksheet, but the PC did not. Moreover, there was no explanation by Judge Tomasello why the PC’s use of a shared parenting worksheet was appropriate.

Next, the PC calculated the child support retroactively to January 1, 2016, when unquestionably, Defendant’s request for an increase in child support was filed on June 27, 2016, and this was the operative date for any modification of child support. There was no explanation by Judge Tomasello in support of the PC’s use of January 1, 2016, as the effective date in calculating retroactive child support.

Additionally, Judge McLaughlin found that there was \$2,400 of additional child-related expenses paid by Defendant and incorporated Defendant’s payment

of those expenses into his child support calculation in the June 17, 2020 Order. The PC completely ignored Defendant's payment of these expenses and made no provision for additional expenses in his recommendation. Judge Tomasello adopted the PC's recommendation without accounting for this glaring omission.

Next, Judge Tomasello ignored the PC's own acknowledgement that his recommendation was preliminary in nature and subject to modification and court review. Judge Tomasello provided no actual review of the PC's recommendation. A review of the May 29, 2024 Order shows that Judge Tomasello did no analysis of the applications filed by each party. He simply adopted the preliminary recommendations of the PC without any analysis. Specifically, the Order adopted the recommendations set forth in the January 17, 2021 "directive" of the Parenting Coordinator. This directive required Defendant to pay Pandemic child support to Plaintiff in the amount of \$460 per month and nothing else.

Judge Tomasello's order perpetuated the error contained in Plaintiff's application in which the incorrect date was used for the PC's recommendations that he requested be implemented. As pointed out by Defendant in her responsive certification, the date of these preliminary recommendations was August 20, 2021, not January 17, 2021.

Judge Tomasello used the recommendations made on January 17, 2021, to conclude that Plaintiff overpaid child support by \$54,292. This conclusion is

illogical because this recommendation provided that Plaintiff commence paying child support to Defendant of \$460 per month on February 2021. There was no mention in the January 17, 2021, recommendations with respect to a retroactive reduction of child support. This obvious error demonstrates the lack of care utilized by Judge Tomasello in considering the child support issue before him. There is no credible evidence supporting his order.

Furthermore, because the order involves a flawed application of the Rule 5:6A, if Plaintiff's interpretation of the PC's assignment is adopted, (a position that Defendant strenuously opposes), she is entitled to a de novo review of such recommendations. See State v. Tier, 228 N.J. 555, 561 (2017) where the Supreme Court held that when an interpretation of a Court Rule is an issue, the Appellate Division may review the decision on a de novo basis.

IV. THE MAY 29, 2024 ORDER VIOLATES THE TERMS OF THE JUNE 19, 2020 ORDER APPOINTING THE PARENTING COORDINATOR BECAUSE IT CHANGES AN ORDER OF THE COURT WITHOUT THE CONSENT OF THE PARTIES. (DCa02-022); (Da227-229); 2T8-12-2T10-22)

In addition to being in violation of N.J.S.A. 2A:17-56.23a, the May 29, 2024 Order violated the terms of ¶14 of the June 19, 2020 Order, which delineated the role of the PC. ¶14 of this Order specifically provided that “[t]he Parenting Coordinator shall not have the authority to change existing Orders of the Court unless the parties consent and enter into a Consent Order.”

There is no language in the August 19, 2020 Order that modifies the June 19, 2020 Order setting forth the role of the PC. Defendant brought this to the attention of the trial court in her responding motion pleadings. There is no explanation from Judge Tomasello why this provision of the Order establishing the role of the PC was not applicable to the recommendations that were incorporated into the May 29, 2024 Order.

It is axiomatic that a Court is obligated to abide by Orders entered in a case unless there is an application to vacate or reconsider such orders. No such application was pending regarding paragraph 14 of the June 19, 2020 Order appointing the PC. There was no consent order modifying the June 19, 2020 Order. The very terms of the Order which governed the involvement of the Parenting Coordinator prohibited the major modification contained in the May 29, 2024 Order of Judge Tomasello.

V. IN LIGHT OF JUDGE TOMASELLO'S FLAWED ANALYSIS IN DETERMINING THE CHILD SUPPORT ISSUE BEFORE THE COURT, THE CASE SHOULD BE REMANDED TO A DIFFERENT JUDGE. (Not Possible To Raise Below Until Receipt Of Judge Tomasello's Ruling)

Unquestionably, there were conflicts with respect to material facts in the certifications filed by the parties in support of their respective applications. Plaintiff contended that the PC had the authority to retroactively recalculate child support to June 2016, and that the PC had made final binding

recommendations on this issue. Defendant contended that the PC exceeded the scope of his assignment under the August 19, 2020 Order, that an Order changing a prior Order of the Court was not permitted under the terms of the Order originally appointing the PC. and that final binding recommendations were not made by the PC. Furthermore, Defendant contended that there were errors in the PCs calculations and that his factual findings conflicted with the facts found by Judge McLaughlin after a plenary hearing.

Judge Tomasello simply accepted the position set forth in Plaintiff's certification without analysis. There was no discussion or findings concerning the contentions set forth in Defendant's certification. There was no discussion or findings as to Defendant's position that entry of a retroactive child support order which reduced Plaintiff's obligation by 79% violated N.J.S.A. 2A:17-56.23a.

The Order entered by Judge Tomasello was nonsensical as it adopted the PCs January 17, 2021, recommendations and concluded that such recommendation resulted in Defendant owing Plaintiff an overpayment of child support in the amount of \$54,292, The January 17, 2021 recommendation of the PC was only that Defendant pay Plaintiff pandemic child support in the amount of \$460 per week commencing February 1, 2021. This recommendation clearly does not support an order that Defendant owes Plaintiff for an overpayment of

child support in the amount of \$54,292. There was never a recommendation by the PC that Defendant owed Plaintiff an overpayment of child support in this amount. In fact, in his Reply certification in the application considered by Judge Tomasello, Plaintiff downwardly adjusted the amount of the overpayment to \$43,564. Plaintiff further reduced the amount owed to him by Defendant to \$35,997 in the summary of his position before Judge Tomasello. Notwithstanding, Plaintiff bringing these reductions to Judge Tomasello's attention, he entered an order requiring a payment of \$54,292 to Plaintiff.

Judge Tomasello's consideration of this matter was cursory at best. Given his determination of the case on the litigant's certifications containing conflicts on material facts, he did not utilize appropriate methodology in deciding the matter. His nonsensical order regarding the overpayment further demonstrates the lack of serious judicial attention. The case should be remanded to a different family part Judge. *See* K.A.F. v. D.L.M., 437 N.J. Super. 123, 140-141(App. Div. 2014).

CONCLUSION

For the aforesaid reasons, Defendant requests that the Order of May 29, 2024, be reversed and the matter be remanded to a different Family Part Judge to (i) enforce the June 17, 2020 child support order through the commencement of the period that the parties had shared physical custody of the children during the COVID 19 Pandemic, (ii) to enforce payment of arrears awarded under the June 17, 2020 Order, (iii) to determine the parties respective child support obligations during the COVID 19 period, and (iv) to determine Plaintiff's child support obligation to Defendant upon her again assuming status of the parent of primary residence.

Respectfully submitted,
SeidenFreed LLC
Attorneys for Appellant

By: _____
Barbara Ulrichsen, Esq.

**Superior Court of New Jersey
Appellate Division**

Docket No. A-3507-23

ARON BETRU, : CIVIL ACTION
: :
Plaintiff-Respondent, : ON APPEAL FROM AN ORDER
: OF THE SUPERIOR COURT
: OF NEW JERSEY,
: CHANCERY DIVISION-FAMILY PART,
- against- : MERCER COUNTY
: :
TIKIKIL FIRDU, : :
: :
Defendant-Appellant, : Sat Below:
: :
: HON. Brian McLaughlin, J.S.C.
: HON. John Tomasello, J.S.C.

BRIEF ON BEHALF OF THE PLAINTIFF-RESPONDENT/CROSS-APPELLANT

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¹ Defendant submitted a brief which is required with a motion for reconsideration, but same is omitted as not necessary for this court's consideration of the issues. Same was submitted in response to a brief filed by the plaintiff, which is likewise omitted.

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PRELIMINARY STATEMENT

This case has been in and out of court on one issue or another almost every year since the original divorce was filed. From 2010 to present there have been over 30 court rulings.

The Defendant's primary complaint in this appeal is not really about child support. Her primary complaint is that Judge Ferencz made a bad recommendation and Judge Tomasello's review and ratification of that recommendation was also wrong. As evidenced by her own words, the Defendant is venue shopping and looking for any judge to rule in her favor.

As of today, nearly 16 years since the first court rulings, one of the children is about to start college. Notably, the defendant refused to comply with her obligation to contribute to that child's college account, and only after being sanctioned in one of those 30 rulings did she do so, despite at times making almost double the plaintiff's income. The defendant continued to enroll the children in activities after multiple judges and PCs told her to stop interfering with the plaintiff's parenting time. She wouldn't stop. She can't stop until she gets her own way. The defendant demanded private school for the children despite living in Princeton, NJ, even

though the plaintiff objected and the court required she accept the sole financial responsibility. Ultimately the defendant paid, but then used that as a pretense to claim the plaintiff was not supporting the kids. That is what this appeal is about.

The orders relating to child support were initially entered after a plenary hearing in 2019 and what was almost daily involvement by the attorneys and the court in 2020. In fact, the record submitted by the defendant is so incomplete as to the judicial involvement in 2020, that it begs whether her omission of this information was intentional to mislead this court. In 2019 and 2020 alone, there were dozens of days spent in court or in conference with the court; there were over a dozen orders entered; there was a trial; there was an appeal filed and order of remand issued; there were dozens of communications between counsel and the court, including letters from the judge to counsel; and there were 27 violations of parenting time perpetrated by the defendant. The rulings in this case are overwhelming against the defendant's positions, because she is in a perpetual state of being in violation of court orders.

We are here now because at no point has the court properly issued a sanction against the defendant for her contumacious conduct despite having countless rulings entered against her

positions. She violates court orders and court rules. She takes positions that are unreasonable. She is duplicitous in her statements to the court. She refuses to cooperate with duly agreed upon Parenting Coordinators. When she doesn't like a ruling, she ignores it or files a motion for reconsideration or files an appeal. The reality is that the defendant was the one who asked for the Parenting Coordinator to recalculate child support and participated in that process and now wants this court to undo a decision from five (5) years ago, because the defendant doesn't like the outcome.

The plaintiff asks that the defendant's appeal be denied. The plaintiff also requests that the plaintiff's appeal be granted and that the matter be remanded for the entry of an award of counsel fees and costs to be entered against the defendant on the prior motions.

COUNTER STATEMENT OF FACTS AND PROCEDURAL HISTORY²

The parties were married on February 27, 2003 and had two children, A. B. and H.B. (Pa741) They were divorced in 2011 in Pennsylvania. (Pa741) The defendant and children had moved to New Jersey and the plaintiff was residing in Maryland, such that by the end of 2015, the defendant filed a motion to transfer venue to New Jersey. (Pa741) There was litigation in both jurisdictions relating to custody and child support, that resulted in the entry of two orders and the ultimate transfer of the issues to New Jersey in early 2016. (Pa40)

The plaintiff refiled his request for a change in custody and the defendant sought a modification of child support. (Pa354) The Order entered on December 2, 2016 sent the parties to mediation for parenting time issues and with respect to child support. (Pa741) In November 2017, the plaintiff filed again with the trial court as the mediation was unsuccessful. (Pa354) The September 30, 2018 Order reserved on all outstanding issues and ordered a plenary hearing. (Pa305) Paragraph 1 of the

² I agree with the defendant's counsel that the facts of this case are interwoven with the procedural history; accordingly, in the interest of avoiding repetition the procedural history and statement of facts have been combined.

September 30, 2028 Order provides, "ORDERED that plaintiff's application for an order reviewing child support and reducing plaintiff's child support obligation retroactive to June 27, 2016, pursuant to paragraph 7 of the December 2, 2016 order of this Court, due to changes in the parenting plan, the parties' incomes, and the elimination of defendant also maintaining health insurance for the children is reserved pending a plenary hearing." (Pa306) Likewise the Order provides that "the defendant's application for an order increasing child support is reserved pending a plenary hearing." (Pa309)

By the time the plenary hearing commenced on March 11, 2019, the defendant had violated the parties' custody agreement so many times that there were 27 compensatory parenting time days sought. (Pa716) A primary issue at trial was sanctioning the defendant for her repeated and willful violations of the custody agreement, including the plaintiff's parenting time and her enrolling the children in activities during the plaintiff's parenting time. (Pa487-553)

There was a further issue relating to choice of law, since the parties original support order was entered in Pennsylvania and the defendant sought to have child support calculated pursuant to the New Jersey statutory factors and guidelines. (Pa741) While the decision from the trial court was pending, a series of events occurred at the end of 2019 and early 2020,

which resulted in a series of interim orders, conferences with the court, and a multitude of communications. (Pa1-18 and throughout all pleadings)

Child support enforcement and collection was transferred to New Jersey in 2019. (Pa1-18) Despite the fact that the plaintiff was current on all support payments and the records from PA indicated an overpayment, the NJ Probation incorrectly sought to institute a wage execution, reporting to credit agencies, and other draconian measures. (Pa1-18) On December 4, 2019, Judge McLaughlin worked with counsel to craft an order that counsel and the parties believed would correct these errors. (Pa335-6) It did not and the court and counsel went back and forth for nearly two (2) months via written correspondence to address the issues. (Pa1-18 and throughout the appendix) The result of the situation was that on February 10, 2020, the trial court closed the Probation account and ordered the immediate cessation of enforcement actions against the plaintiff. (Pa341) The trial court further ordered that payments would be made through the Attorney Trust Account of Plaintiff's attorney. (Pa341) The order further noted that it was temporary in nature as the trial court had yet to decide the issues from the plenary hearing held in March 2019. (Pa342)

On May 7, 2020 the court issued what purported to be a final order on child support. (Pa189) Notably, the effective

date of that ruling was June 27, 2016, which was the date set forth in the December 2, 2016 Order preserving all issues pending mediation (and later a plenary hearing). (Pa189) The litigation surrounding this issue did not end at this point and the trial court invited supplemental briefings. (Pa201) This resulted in an Amended Support Order being entered on June 17, 2020. (Pa201) In that order the court modified the child support, again retroactive to June 27, 2016, but fixed different amounts for the years 2016, 2017, and 2018. (Pa201)

While these issues were pending and the court was issuing orders on child support, the parties were also engaged in litigation surrounding parenting time as it related to the COVID-19 Pandemic. Starting in March and continuing through the appointment of the Parenting Coordinate in June 2020, the court micromanaged parenting time. (Pa25-288) It is critical to understand that the trial court allowed counsel to submit multiple correspondences to address these issues, as there were still many unresolved issues pending the decision from the plenary hearing. (Pa25-288) Notably, in the April 6, 2020 Order, the court stated, "The history of this protracted litigation has demonstrated an inability of the parties to cooperative effectively with respect to the logistical details of parenting time." (Pa99)

The defendant is a medical doctor with a specialty in Labor and Obstetrics and works in a hospital. (Pa97) The plaintiff raised valid concerns when the country was forced into a lock down with respect to the welfare of the children. On April 6, 2020, the court held a conference with counsel to address interim parenting time issues. (Pa97) Notably, the court included language in this order addressing the plaintiff's concern that the defendant should avoid labor shifts. (Pa98) Importantly, the court modified the parenting time such that the parties had a true 50/50 schedule. (Pa97-98)

The trial court further ordered the parties to submit the names of potential Parenting Coordinators. (Pa99) On April 28, 2020, counsel for the plaintiff submitted to the court a proposed order to appoint a Parenting Coordinator. (Pa167) A key point is that plaintiff's counsel drafted the order and submitted it to counsel for the defendant who proposed changes. (Pa168) Some, but not all, of the changes were incorporated. (Pa168) On May 5, 2020, counsel for the defendant responded in detail to the proposed order. (Pa184-186) ON May 11, 2020, counsel for the plaintiff responded and provided the trial court with the "Notice to the Bar" dated April 2, 2007, which at that time, was the controlling guidance for the courts regarding parenting coordinators. (Pa206) Most, if not all of the language

in the proposed order was taken directly from the April 2, 2007 Notice to the Bar. (Pa207)

Essentially at the same time that the court was addressing the ongoing problems relating to the Probation account for child support, the entry of the decision relating to child support pending since 2016, and the other issues addressed at the plenary hearing, there was a global pandemic and what this court should see as almost daily communications between the court and counsel for the parties in this case. (Pa1-288) Therefore, when the court entered the June 17, 2020 Order, which appointed a parenting coordinator, it seems like there might be an end to the non-stop litigation. (Pa226)

The June 17, 2020 Order essentially denied all of the relief sought by the defendant at the plenary hearing and granted the plaintiff most of what he requested, except as to monetary sanctions and counsel fees. (Pa226-234) Specifically, the defendant's requests that the plaintiff exercising parenting time in New Jersey were denied and it was order that "defendant shall not organize any extracurricular activities during plaintiff's parenting time." (Pa227) The plaintiff's request that the defendant contributes to the college accounts for the children (which was an enforcement issue) was granted. (Pa226) The plaintiff was granted 27 days of compensatory parenting time, which were due to the defendant refusing to bring him the

children for his parenting time. (Pa228) The parenting coordinately, Judge Ferencz, was appointed in an order that mirrors to the April 2, 2007 Notice to the Bar. (Pa237)

The specific provisions relating to the Parenting Coordinator (PC) are relevant:

14. Role: ... The Parenting Coordinator shall not have the authority to change existing Orders of the Court unless the parties consent and enter into a Consent Order.

15. Scope: (lists topics a-n) O. Such other issues as the parties may jointly request that the Parenting Coordinator resolve for the benefit of the child.

16. Recommendations: The Parenting Coordinator shall make recommendations to the parties (and their respective attorneys) directly. The recommendations made by the Parenting Coordinator shall be binding on the parties until and unless one of the parties applies to the Court and obtains an order directing otherwise. [remainder of paragraph omitted]

27. All recommendations by the Parenting Coordinator shall be in writing with a brief explanation as to the recommendation made. (P237-242)

The ink was not dry on this order when the court was immediately requested again to address an issue between the parties by counsel for the defendant. (Pa254)

In fact, there were a series of communications back and forth over summer parenting time, during which time, the PC sought to have the parties engage him and move forward with that process. (Pa254-278) Ultimately, the plaintiff's position prevailed and the court issued a 'letter decision' and order on July 7, 2020. (Pa280-282) Meanwhile, the plaintiff promptly engaged the PC to start work in this matter. (Pa288) At the same time, the defendant was filing a Motion for Reconsideration. (Pa289)

The defendant's Notice of Motion for Reconsideration and Supporting Certification were filed on July 8, 2020.³ (Pa289-346) While that motion was pending the parties started to work with the PC Judge Ferencz (retired). (Pa348-350) The first directive from the PC was issued relating to the summer parenting time issues. (Pa349) The plaintiff filed a Notice of Cross-Motion and Certification in response to the defendant's motion for reconsideration. (Pa350-391) Again the plaintiff sought counsel fees for having to respond to the defendant's motion. (Pa351)

³ The transcripts for these proceedings have been designated as follows by the defendant, which are adopted by plaintiff:

1T-August 13, 2020
2T-September 9, 2023
3T-May 8, 2024
4T-May 22, 2024

Ultimately, the defendant's motion was denied, but the plaintiff was again not awarded counsel fees. (Pa582)

It is undisputed that there was a lengthy discussion regarding the use of the PC to address the child support issue during oral argument on the motion for reconsideration. It is also undisputed that the trial court *sua sponte* amended the order appointment Judge Ferencz (retired) as the PC to include "the issue of the calculation of plaintiff's child support obligation and arrearages [sic]." (pa582-583) Upon receipt of this order and differing interpretations of its meaning being put forth by the parties directly to Judge Ferencz, he sought clarification directly from the trial court. (Pa452) On August 28, 2020 the PC wrote to Judge McLaughlin seeking clarification and stated as follows,

I am in receipt of the order adding child support to my parenting oversight. I have spoken to both litigant and have been advised that they understand the order differently.

One party believes I should be looking to back child support obligations and the other submits that I should look prospectively only. As the order says, support obligations and arrearages, I am going to review arrearages as well the current obligations. Would your Honor indicate how far back I am to go? (Pa452)

While the record does not contain Judge McLaughlin's response, we do have a communication from the PC Judge Ferencz to the parties dated December 29, 2020, in which he states, "As I previously indicated this recalculation has been directed by the court and is intended to include the support calculations dating back to the original filing." (Pa587) We also know that the defendant specifically sought to have the court increase the amount of the arrears from the amount in the amended June 17, 2020 Order of \$3,412 (Pa201) to \$26,298, the amount requested in her motion for reconsideration. (Pa289) This amount included her calculations dating back to 2016. (Pa295)

It is noted that despite the fact that there was a final order including the defendant's request to have the plaintiff contribute to extracurricular activities, the defendant sought this same relief through the PC, because she was seeking to have support recalculated in her favor. (Pa669) Judge McLaughlin's May 7, 2020 reasoning with respect to his above-guidelines award of child support, provides,

The Court finds that these expenses (approx. \$2,400) are directly related to the children's reasonable needs and that both parents' incomes justify such expenses. Both parents have attested to each child 's capacity for education and extra-curricular activities such as sports, dancing, and music. Given both parents' respective income-earning capacity, the costs associated with tutoring and

extra-curricular camps and lessons are reasonable and should be shared by both parties. (Pa197)

In 2020, the parties filed cross-appeals of the June 17, 2020 (Amended June 19, 2020) Order, specifically paragraphs, 3, 4, 7, and 10.⁴ (Pa568) This was resolved by an order remanding the case to Judge McLaughlin for findings of fact and conclusions of law. (Pa568-9) That decision was not issued until July 14, 2023. (Pa706-711)

Starting in September of 2020, there is a deafening silence relative to this case and the courts until July 26, 2022. From August 2020 to August 2021, the parties worked cooperatively with PC Judge Ferencz. (Pa584-597) Ultimately, PC Judge Ferencz issued a Directive⁵ on child support going forward (Pa589) and a ruling on the period from 2016-2020. (Pa658-668)

⁴ For clarity, the defendant hired new counsel, Ms. Ulrichsen and filed a motion for leave to file a cross-appeal out of time. The provisions that she wanted to appeal were considered at the CASP conference and memorialized in Judge Sapp-Peterson's September 17, 2020 Order of Remand. (Pa568-9)

⁵ The directive is not dated, but it is assumed to be the January 17, 2021 referenced in the Plaintiff's July 26, 2022 Notice of Motion.

The PC noted that both parties actively participated in the process of reviewing child support back to 2016. (Pa591) Both parties submitted statements of expenses, but neither submitted proof of payments. (Pa592) Both parties submitted their income summaries. (Pa591-2) The PC then analyzed the incomes of the parties to determine if there was any non-recurring income and the overall disparity in incomes. (Pa592) The PC also calculated the amount paid by the plaintiff in August 2020 and thereafter. (Pa592) The PC then fixed the amount to be paid from September 2021 and thereafter. (Pa593) The PC found that during that time period, the parties were equally sharing parenting time as a result of the modifications to the schedule resulting from the pandemic. (Pa591-3) However, he also found that the defendant's income was substantially higher and therefore there would be a child support obligation for the defendant to the plaintiff for the period effective February 1, 2021. (Pa594)

By ruling issued on August 20, 2021, the PC also issued a determination regarding child support and arrears for the period from 2016-2020. (Pa658) The PC noted that he had previously sent the parties a summary of their respective incomes for the period from 2016-2010. (Pa659) The PC then went on to explain the methodology employed in his decision, including the fact that he did not increase the base child support by 14.6% since in 2016 neither child was over the age of 12. (Pa659) He further

explained that he was allocating one tax deduction to each of them because this was in the original ruling. (Pa659) The PC noted that both parties were providing medical insurance for the children and therefore, he did not include this in his calculation. (Pa659) The PC provided the parties with his calculated child support guidelines and noted that there may need to be an additional discretionary amount due to the fact that this was an above-guidelines case. (Pa659-668)

On August 26, 2021, the PC again requested that the parties submit documentation so that he could "balance the books" and calculate the correct amount of arrears. (Pa669-670) However, he was clear that effective the first day of school (in 2021) that the plaintiff should pay child support to the defendant in the amount of \$87 per week. (Pa670)

The PC further highlighted that the defendant was still not in compliance with her obligation to contribute to the children's college accounts. (Pa594) He also noted that the defendant had continue to take unilateral actions with respect to the enrollment of the children in private school, something that the plaintiff did not agree with. (Pa594)

Ultimately the plaintiff filed a motion on July 26, 2022, to reappoint a PC, to enforce the PC's January 17, 2021 Directive, to address support arrears, and for counsel fees and costs. (Pa456-457)

Judge Ferencz served as the PC from August 2020–August 2021, where the record does not indicate any violations of the plaintiff’s parenting time. (Pa459-472) However, starting in December 2021 and through the first half of 2022, the defendant started interfering with the plaintiff’s parenting time. (Pa462) As a result, the plaintiff sought the reappointment of a PC, but the defendant refused. (Pa463-464) The plaintiff outlined a series of violations that resulted in the plaintiff missing 4 weekends of parenting time in the first 4 months of 2022. (Pa462)

In his certification filed on July 26, 2022, the plaintiff outlined the child support as determined by the PC Judge Ferencz in his Directive, as follows:

Year	Monthly Amount Due Plaintiff to Defendant	Amount Due Defendant To Plaintiff	Monthly Amount Paid Plaintiff to Defendant	Amount Paid Defendant to Plaintiff
2016	\$333.67	x	\$1900	x
2017	\$333.67	x	\$1900	x
2018	\$333.67	x	\$1900	x
2019	\$546	X	\$1900	0

2020 (Jan- July)	\$377		\$1900	0
September 2020- January 2021		\$4600 credit for this entire period		0
February 2021 and after	\$377	\$377		

(Pa459-472)

The plaintiff calculated that the amount due to him from the defendant was \$54,292. (Pa469)

After the motion was filed, the parties agreed to appoint Mark Mayrides, Esq. as the new PC in the Consent Order dated August 15, 2022. (Pa610-611) The order has some similar language to the original order, for example, in Paragraph 7, the parties agreed that the PC "shall make binding recommendations to the parties all issues relating to custody and parenting time."

(Pa612) The PC's recommendations "shall be binding on the parties unless/until the entry of a subsequent Consent Order or Order of the Court to the contrary." (Pa611) If a party wanted to challenge that determination then a motion would need to be filed within twenty (20) days. (Pa611-612) The order also stated that the PC's "authority shall also extend to the issue of child

support re-calculation and any retroactive modifications and/or credits due to either part as a result thereof.” (Pa611)

Unlike in the original order, the term of the PC was not limited. Rather, the “PC may only be relieved upon his request, mutual consent of the parties, or Order of the Court.” (Pa614) The parties and both of their attorneys affixed their signatures to this Order. (Pa615)

In the defendant’s Notice of Cross-Motion filed on October 20, 2022, the defendant sought various relief with respect to retroactive child support. (Pa616-617) Notably, she had now changed her position from her prior Motion for Reconsideration and sought to enforce the prior Order of June 17, 2020. (Pa616-617) The defendant also sought the retroactive modification and recalculation of child support for the period from June 17, 2020-August 31, 2021 and September 1, 2021 to present. (Pa617) Despite the fact that there was a consent order allowing the PC to do this, the defendant sought an additional order of the court compelling the PC to engage in this calculation. (Pa617) Notably, the defendant did not at any point in her certification indicate that she had filed or sought to file any objection to any of the PC Judge Ferencz’s Directives. (Pa618-635) Rather, she claimed that she would “see where the process took us because maybe the Parenting Coordinator could come to a full

resolution regarding child support I could live with." (emphasis added) (Pa626)

The defendant acknowledges that she received the January 17, 2021 Directive and took no action to object. (Pa626) Rather, the defendant for the first time claimed that the January and August 2021 Directives from the PC were 'incomplete.' (Pa627) The defendant took no action to object to the Directives of the PC for over a year. In her Certification, she sets forth at length her very detailed and specific objections to the calculations of incomes, the failure to include specific expenses, and the misapplication of the child support guidelines. (Pa628-634)

The 2022 Motion filed by Plaintiff and Cross-Motion filed by Defendant were ultimately scheduled for oral argument before Judge Bhattacharya on August 25, 2023. (Pa712) Counsel for the Plaintiff wrote to the court on August 15, 2023, to update the amount of the credit sought. (Pa712-713) Oral argument did not occur until September 8, 2023. (Pa716)

On May 8, 2024, Judge Lihotz⁶ was appointed as the PC in this matter. (Pa714) The case at this point was reassigned to

⁶ At some point, Mr. Mayrides did seek to be relieved. Currently, retired Judge Lihotz has been appointed as the parenting

Judge Tomasello, who ordered the parties to submit "case summaries." (Pa714)

By Amended Order filed on May 29, 2024, the trial court granted the plaintiff's motion, appointed Judge Lihotz (retired) by consent of the parties as the new PC, granted the defendant's request that the PC address child support and arrears, and denied the parties' requests for counsel fees. (Pa719-720)

This appeal followed.

coordinator, but the defendant has refused to formally engage her and participate in that process.

LEGAL ARGUMENT

POINT I: THERE IS NO VIOLATION OF THE ANTI-RETROACTIVITY CHILD SUPPORT STATUTE IN THE MAY 29, 2024 ORDER. (raised by defendant at 2T8-12-2T10-22 & Da227-229)

The May 29, 2024 Order does nothing more than memorialize prior directives by the PC and an agreement by the parties to appoint a new PC. I agree with all of the statutes and case law cited by the defendant in her brief. I agree that it is improper to retroactively modify child support except during the time that there is a pending motion (or if a statutory 45-day letter is sent). The law here is clear and unambiguous and the plaintiff and I decline to try to make any arguments that are inherently inconsistent.

The issue in this case is not the law. The issue is the interpretation of the August 19, 2020 Order and the actions of the parties from 2015 to present.

It is noteworthy that even though the primary focus by the defendant in this appeal is that there was a mistake of law in retroactively recalculating child support, the defendant actually sought a retroactively recalculation of child support in the motion resulting in the May 29, 2024 Order. In the defendant's Notice of Cross-Motion filed on October 20, 2022, the defendant requested, "Permitting Mark Mayrides, Esq. to make

a recommendation on the child support obligation from June 17, 2020 through the present for the two periods June 17, 2020 - August 31, 2021 (equal parenting time for COVID) and September 1, 2021 - present (resumption of normal parenting time) after financial submissions and at least one session with the parties' and counsel." (Pa617)

The defendant's position appears to be that if she likes the outcome of a determination of arrears and child support, then it is ok if it is retroactive. If she doesn't like the outcome, then she will come back to court. The plaintiff asserts that the defendant is barred by the doctrine of laches from now asserting her claims.

"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). "The key ingredients" to the applicability of laches "are knowledge and delay by one party," coupled with a detrimental "change of position by the other [party]." Ibid. The factors to be considered in determining whether to apply laches include "'[t]he length of delay, reasons for delay, and changing conditions of either or both parties during the delay.'" Ibid. (quoting Lavin v. Bd. of Educ. of City of Hackensack, 90 N.J.

145, 152 (1982)). "While laches does not arise from delay alone," inequity "more often than not, will turn on whether a party has been misled to his harm by the delay." Ibid. (quoting Lavin, 90 N.J. at 153). "[U]nlike the periods prescribed by the statute of limitations," the constraints of laches "are not fixed" but are flexible enough to accomplish mutual fairness and equity in a given case. Lavin, 90 N.J. at 151.

As outlined in the Counter-Statement of Facts and Procedural History above, the case was in court almost daily in 2020. The defendant objected to the amount of child support and the amount of the arrears. The plaintiff did not. I want this point to be very clear. The defendant filed a Motion for Reconsideration, because she believed that the arrears calculation dating back to 20216 was wrong. As a result, Judge McLaughlin expanded the scope of the PC. When the defendant filed an appeal in 2020, she did not challenge the child support and arrears rulings because she believed that the PC was going to address same.

Then the parties voluntarily participated in the process with the PC Judge Ferencz. Both parties provided income information. Both parties met with the PC and participated in the process. Both parties received and reviewed his recommendations. At no point in this process did the defendant object to any of this. There is not a single letter from her

attorneys from August 2021 to date in this record stating that she had any objection. There is not a single email in the record that she objected to the process. In fact, she certified in October 2022 that she wanted to wait it out to see how things turned out. We can infer that if she had liked the result then we wouldn't be here. We can also infer that if the child support had been retroactively increased, or the arrears had increased in her favor, then the defendant would not be raising an objection. Moreover, the defendant's counsel even cites to the case of Keegan v. Keegan, 326 N.J.Super. 289, 293 (App.Div.1999) which controls on the issue of retroactive increases in child support.

Rather, the defendant's attorney has set forth a very complex but irrelevant legal argument. Judge Tomasello exercised his discretion to adopt the recommendation of the PC in this matter. That is not a mistake of law, that is a discretionary ruling. The decision of the PC in this case is binding until an order is entered directing otherwise. That was the order of the court in 2020 and that same language has been found in subsequent consent orders appointing PCs in this matter. As set forth above, the PC was given a comprehensive record of the prior orders, history of the litigation, and the parties had multiple opportunities to set forth their respective positions.

The PC was specifically authorized by both the August 19, 2020 Order of Judge McLaughlin and the consent of the parties as evidenced by their actions, to recalculate the child support. That is what he did. Judge Tomasello merely approved the PCs methodology and conclusions.

Therefore, there was no need for Judge Tomasello or Judge McLaughlin to reach this issue. Rather, the parties had been embroiled in virtually non-stop litigation from 2015-2020. One of the primary issues was modification of child support. At all times it was agreed that the support would be recalculated effective to 2016. This appears in multiple orders and was specifically a request by the defendant because she believed (and I submit she still believes) that she is going to get more than the \$1900 per month that she was receiving under the original support order.

Additionally, the problem that the anti-retroactivity statute seeks to correct is not present in this case. The defendant has out-earned the plaintiff for at least the past decade. She has put the children in private school over the objection of the plaintiff and paid for it. She has enrolled the children in a multitude of extracurricular activities and paid for these on her own. Likewise, the plaintiff provides the children culturally enriching activities during his parenting time. The children are well-travelled internationally. They have

the constant financial support of two high earning parents. They want for nothing and the defendant identified nothing in any of her various certifications, in any of the communications in this case, and in this appeal that the children lack.

The defendant was in fact actually receiving child support in the amount of \$1900 per month from the plaintiff through 2020. There were no arrears when the case was transferred from PA to NJ and thereafter, the plaintiff continued to pay support until the PC directed otherwise. The initial amount of arrears as calculated by Judge McLaughlin were less than \$4000, which resulted because he initially slightly increased child support. The plaintiff's credit for payments through the Pennsylvania child support collection agency was because he paid more each month than ordered. Therefore, the concerns raised by Senators Bradley and Long when they introduced the Interstate Child Support Enforcement Act are not present in this case. Keegan, at 293.

The defendant's counsel is absolutely wrong that the plaintiff 'lobbied' the PC. There is nothing in the record that supports this. If anything, the correspondence from PC Judge Ferencz to Judge McLaughlin makes it clear that asked Judge McLaughlin to clarify. The PC then moved forward with the parties based on that clarification and with the tacit consent of the parties.

The defendant's counsel is absolutely wrong that there is nothing that makes the PC's recommendations binding. In fact, the opposite is true, "Recommendations: The Parenting Coordinator shall make recommendation to the parties (and their respective attorneys) directly. The recommendations made by the Parenting Coordinator shall be binding on the parties until and unless one of the parties applies to the Court and obtains an order directing otherwise." (P239) Therefore, when Judge Tomasello adopted the recommendations of Judge Ferencz he was well within his discretion to adopt those recommendations.

The defendant treats the August 19, 2020 Order in a vacuum. She fails to make clear to this court that the order was entered as a result of her request to revisit child support and arrears during that time. She completely omits from her brief the fact that her attorney advocated for a review of the child support and arrears by way of her Motion for Reconsideration. Thus, when she certified in 2022 that she was 'willing to see where this goes' it was specifically because she wanted an increase and she thought she would get it.

This is exactly what the doctrine of laches seeks to prevent. A litigant doesn't get to "play along" for two years with a process and then object when it appears that she has lost on an issue. This type of duplicitous and underhanded tactics are exactly what the courts have seen from this defendant for

over a decade. She was knowledgeable. She delayed. She admitted that she delayed. The plaintiff relied upon her conduct in participating in the PC process. The plaintiff was misled and is now harmed by the defendant's conduct.

Whether the June 17, 2020 order was final or not is irrelevant. The August 19, 2020 superseded that order to the extent that it directed the PC to address child support and arrears. By virtue of the conduct of the parties and the clarification obtained by the PC from the trial court, the PC and the parties proceeded to address the issues. It was only when the plaintiff sought to confirm the recommendations in a court order over a year later that the defendant raised an objection.

It is noteworthy that in 2022 when the parties drafted a Consent Order to appoint a new parenting coordinator they maintained both the PC's ability to address child support and arrears, as well as the provision that the PC's recommendations would be binding until one of the parties obtained a court order stating otherwise. Again, if the defendant gets her way, the results are acceptable. If she does not, she keeps trying again. This appeal is just another example of the defendant's contumacious conduct and abuse of the judicial system.

Finally, it should not be that this court allows the defendant to prevail on her arguments that it was a violation of

the anti-retroactivity statute, when she actually requested a retroactive modification in her October 20, 2022 Cross-motion. While I appreciate that we as attorneys often have to argue different sides of the same coin, we certainly should not be doing it concomitantly in the same case for the same client. Either we are going to have a case where we are adhering to the statutes, court rules, and prior orders, or we are not.

II. NEITHER OF THE PARTIES REQUESTED THAT THE AUGUST 19, 2020 ORDER BE INTERPRETED OR CLARIFIED; THERE WAS NO IMPERMISSIBLE DELEGATION OF JUDICIAL AUTHORITY. (DEFENDANT PARTIALLY RAISED BELOW AT 2T8-12 TO 2T10-22)

To the extent that any comments in this section would be duplicative, I refer to the Counter-Statement of Facts and Procedural History, the arguments above, and the record. The only person who ever sought clarification of the August 29, 2020 Order was Judge Ferencz. (Pa453) The defendant fully participated in the process of dispute resolution with the PC from August 2020 to August 2021. She never raised an objection to that process. She did not file a motion with the trial court seeking clarification. At all times, she was represented by counsel. She also did not file an appeal of that order.

When the PC issued recommendations throughout 2020 and 2021, she did not seek judicial review of any of them. In fact, the defendant's Cross-Motion filed on October 20, 2022 did not

seek to have the trial court review, interpret, modify, clarify, or in any other manner consider any of the PC's recommendations or directives. Rather, the defendant sought to enforce the May 7, 2020 and June 17, 2020 Orders, which she knew had been modified by virtue of the Motion For Reconsideration she filed in July 2020.

So that this point is clear, the defendant filed a Motion for Reconsideration objecting to the arrears. As counsel for the defendant quotes extensively from the hearing on this motion in her brief, we are all aware that there was a lengthy discussion and both attorneys consented to have these issues handled by the PC. The PC then requested and received clarification from the trial court on the scope of his duties. The parties then actively engaged in the process, thus further evidencing their consent in the process. The defendant admits that she willingly participated in the process in her October 2022 Certification. It was only after she didn't like the result that she claimed this was an improper delegation to the PC.

The argument advanced by the defendant's counsel that the parties never consented to a review of the arrears back to 2016, but only during 2020, is false. The calculations that were being challenged in the defendant's Motion for Reconsideration are set forth at Pa295 and were certified to by her counsel. This includes calculations dating back to 2016. The defendant's brief

even acknowledges that Defendant's counsel consented to the trial court delegating the authority to recalculate arrears to the PC.

III. THE TRIAL COURT CORRECTLY ADOPTED THE RECOMMENDATIONS OF THE PC IN THE MAY 29, 2024 ORDER.

To the extent that any comments in this section would be duplicative, I refer to the Counter-Statement of Facts and Procedural History, the arguments above, and the record.

First and foremost, the crux of the defendant's arguments is rooted in the fact that the defendant wants this court to find that this is a NJ Child Support Guidelines child support case. It is not. This is what is commonly referred to as an above-guidelines case, as the parties' income exceeds the weekly combined incomes covered under the guidelines.

The defendant argued throughout the trial court proceedings from 2016 on that this was an above guidelines case and that expenses such as private school tuition should be included in the support award. For her to now argue the opposite again highlights the duplicitous nature of the defendant's positions throughout this matter.

However, I will address each point. First, defendant claims that the PC on used the average differential of income in calculating support. This is false. The guidelines provided by

the PC clearly show a weekly combined taxable income exceeding \$6,000 per week in 2016, (Dca149-50) approximately \$9,000 in 2017, (Dca151-52) exceeding \$8,000 per week in 2018, (Dca153-54) exceeding \$9,000 per week in 2019, (Dca155-56) and exceeding \$10,000 per week in 2020. (Dca157-58) This is clearly the full annual income of the parties. The parties did not have a differential of \$520,000 in income in 2020; they had an approximate combined income in excess of \$10,000 per week. It is unclear why defendant would suggest otherwise to this court when the documents are included in her appendix.

In reality, the PC did exactly what he was supposed to do. He ran the guidelines. He considered such additional information relating to the statutory factors including the public policy of this state that the children should share in the future income of their parents. He deviated from the guidelines accordingly. He made findings. Judge Tomasello merely adopted this well-reasoned approach. That was well within his discretion.

The PC also clearly explained why he used the shared parenting worksheet to calculate child support. In his August 20, 2021 correspondence he states, "Additionally, because the Pennsylvania judgment calls for shared parenting, at least 28% of the overnights, 104 nights, are presumed to be spent with the alternate parent. I am using only the shared parenting worksheet." (Dca147)

Contrary to the arguments of the defendant, the PC also explained why he did not include the additional child-related expenses. He stated,

"I have not included any incremental medical insurance cost incurred by either party on behalf of the children as each covers the children separately. Additionally, while there may be significant extracurricular activities, I have not allocated any additional costs because of the clear ambiguity as to whether there would be coverage. One party maintains that they each should be responsible for whatever activities the individual parent enrolls the children in. This position seems to be consistent with the order appointing me which in paragraph 4 stated that defendant shall not organize any extracurricular activities during plaintiff's parenting time. Where the Court declines to require participation, it would seem that they would also decline to demand payment." (Dca147)

The explanation is clear; the defendant was unhappy with same. It was well within the trial court's discretion to adopt in whole or part this finding by the PC.

It is admitted that is it unclear what the proper standard of review of a PC's recommendation should be. However, the parties had a full and complete opportunity to present their positions and documents to the PC. That information was

thoroughly considered. Thereafter, the plaintiff sought to have the binding recommendation memorialized in a court order. The defendant objected and presented her case, through counsel. It is suggested that absent compelling evidence that there was an error, a trial court should have the discretion to adopt the well-reasoned findings of the PC, who had all of the evidence presented to him. Here the decision of the PC was based in law, carefully considered the facts of the case, both sides had the opportunity to present evidence and participate, both sides had the right to challenge the ruling with the trial court and then appeal (as the defendant is now doing), the decision did not violate public policy, there was no bias, and this was not a situation where the PC exceeded his authority.

What is troublesome about the defendant's arguments here is that she starts with the conclusion that everyone else is wrong as if it were a fact. Rather, it is merely her position.

IV. THE MAY 29, 2024 ORDER DID NOT VIOLATE THE TERMS OF THE JUNE 19, 2020 ORDER OR CHANGE A COURT ORDER WITHOUT THE CONSENT OF THE PARTIES.

To the extent that any comments in this section would be duplicative, I refer to the Counter-Statement of Facts and Procedural History, the arguments above, and the record.

It is unclear exactly what the defendant is arguing here. To the extent that the defendant clarifies this argument in the Reply Brief, plaintiff will respond.

V. JUDGE TOMASSELLO WAS ON RECALL AND IS NOT ASSIGNED TO MERCER COUNTY WHERE THIS CASE IS VENUED.

This court has "the authority to direct that a case be assigned to a new judge upon remand," this court should exercise this power "sparingly." Graziano v. Grant, 326 N.J.Super. 328, 349-50 (App.Div.1999). "That power may be exercised when there is a concern that the trial judge has a potential commitment to his or her prior findings." Id. at 349. See also Strahan v. Strahan, 402 N.J.Super. 298, 318 (App.Div.2008) ("Bias cannot be inferred from adverse rulings against a party." (citing Matthews v. Deane, 196 N.J.Super. 441, 444-47, (Ch.Div.1984))).

Moreover, "an application for disqualification pursuant to [Rule] 1:12-1 should initially be made to the motion judge." Graziano, at 50; see Bonnet v. Stewart, 155 N.J.Super. 326, 330 (App.Div.1978) (determining "the issue [wa]s inappropriately raised on . . . appeal because [the] plaintiff never moved to challenge the judge himself, as would have been the proper practice"). N.T. v. C.T., A-0665-23 (N.J. Super. App. Div. Apr 16, 2025)

Judge Tomasello is on recall for a period of two years from February 2024 to February 2026. There is no way to know if he would still be on recall when or if this matter is remanded. He was also not assigned to Mercer County. There is a judicial shortage in Mercer County and cases are being assigned out to other counties.

The plaintiff has no opinion of Judge Tomasello's actions in this matter other than to state that there is no need to attack him for doing his job, even if you do not agree with the decision. He was new to this case. He lacked the opportunity to form any opinion of either party over time. He handled the matter expeditiously and merely reaffirmed prior rulings. The parties in this case have seen several judges over the years. The judges have handled this matter with grace and extreme tolerance for the defendant's conduct. The defendant also called PC Judge Ferencz "racist and misogynist." (Pa672) The defendant seems to want to attack the judges for not giving her what she wants. She needs to be more introspective as to who is creating the problems.

**VI. PARAGRAPH 2 OF THE AUGUST 19, 2020 ORDER AND PARAGRAPH 4 OF THE MAY 29, 2024 AMENDED ORDER SHOULD BE REVERSED AND REMANDED FOR ENTRY OF AN AWARD OF ATTORNEYS FEES TO THE PLAINTIFF.
(RAISED BELOW AT PA350 & PA456)**

Rule 1:7-4 requires a trial court in a nonjury civil trial to find the facts as well as to state conclusions of law. Naked conclusions do not satisfy the purpose of the rule. Curtis v. Finneran, 83 N.J. 563, 570 (1980). Rather, the trial judge must state clearly the factual findings and correlate them with relevant legal conclusions, so that parties and the appellate courts may be informed of the rationale underlying the conclusion. State v. Singletary, 165 N.J.Super. 421, 424-425 (App.Div.), *certif. den.* 81 N.J. 50 (1979); Esposito v. Esposito, 158 N.J.Super. 285, 291 (App.Div.1978). Without such findings, it is impossible for an appellate court to perform its function of deciding whether the determination below is supported by substantial credible proof on the whole record. Mol v. Mol, 147 N.J.Super. 5, 9 (App.Div.1977); Kenwood Assocs. v. Bd. of Adj. Englewood, 141 N.J.Super. 1, 4 (App.Div.1976). Trial judges should always state their reasons so that counsel and an appellate tribunal may be fully informed. McCann v. Biss, 65 N.J. 301, 304 n. 2 (1974). A mere recitation of factors considered is not sufficient. Grayer, *supra.*, at 516.

A reviewing court's authority to defer is largely dependent upon the judge's compliance with his or her obligation to state findings of fact and conclusions of law as required by Rule 1:7-4. If the trial court does not articulate its factual findings and correlate them with the principles of law then the reviewing

court cannot know whether the ultimate decision is based on the law and facts or is the product of arbitrary action resting on an impermissible basis.

As to both the August 19, 2020 and May 29, 2024 denial of counsel fees to the plaintiff, there are no findings of fact and conclusions of law. For this reason alone, the rulings should be overturned.

However, this court can and should enter an order directing that the plaintiff's counsel fees should be awarded and leaving to the court's discretion the amount based on an analysis of the rules. Williams v. Williams, 59 N.J. 229,233 (1971); Kothari v. Kothari, 255 N.J.Super. 500, 513, (App.Div.1992). It is axiomatic that an award of counsel fees in such cases is within the discretion of the trial court. *Williams* at 233.

A party acting in bad faith must "protect the innocent party from unnecessary costs." Yueh v. Yueh, 329 N.J.Super. 447, 461 (App.Div.2000) When an award of counsel fees is supported by the record, it does not constitute an abuse of discretion nor a clear error in judgment. See Colca v. Anson, 413 N.J.Super. 405, 422 (App.Div.2010).

To summarize where this case has been from 2015 to present:

- The defendant sought an increase of child support that by any review of the record was largely unsuccessful;

- The defendant caused the parties to have a trial so that she could force the plaintiff to exercise parenting time in a state where he did not live so that the children could participate in weekend activities that the plaintiff did not consent to;
- The defendant was ordered, repeatedly, to stop enrolling the children in activities that interfered with the plaintiff's parenting time, nonetheless the defendant continued to do so;
- The defendant has failed to contribute to the children's college funds and been held to have violated that order by the trial court and the PC;
- The defendant violated the parenting time provisions of the court order resulting in the denial of 9 weekends of parenting time prior to the 2019 plenary hearing and was sanctioned by the court by awarding the plaintiff compensatory time and then again violated the agreement and denied the plaintiff 4 weekends in 2022;
- The defendant 'played along' with the PC until she got a decision that she didn't like and then tried to have that overturned by the trial court, this is the best interpretation of her conduct, at worst, she simply

deceived everyone and had no intention of complying with any of the PC's rulings regarding child support and arrears;

- The defendant argues in this appeal that child support should not be retroactive, while appealing an order that results from a motion where she is seeking retroactive modification of child support;
- The bulk of the defendant's requests that necessitated the plenary hearing were denied or withdrawn, while the plaintiff was largely successful with his requests;
- The defendant's requests regarding probation, denying the appointment of a Parenting Coordinator, parenting time during the COVID-19 Pandemic in 2020 and 2021, Motion for Reconsideration in 2020, remand from the appeal filed in 2020, and her entire motion from 2022, were all denied.

Yet with all of the defendant's bad behavior, the multiple orders entered in this case threatening financial sanctions if the defendant again violated an order, and her continued refusal to reach an agreement on any single substantive issue between the parties she has never been sanctioned. I have argued in this case and I argue again now, that if at any point the defendant had been ordered to pay the plaintiff's counsel fees it would

have changed the course of this litigation. Rather, the trial court judges, though well-intentioned, have created an environment where the defendant simply does whatever she wants and gets away with it.

The defendant comes before this court and intentionally omitted relevant documents from the record. She takes positions that are contrary to the plain language of orders entered in this case and her own prior certifications. She asks for relief that contradicts relief she sought from the trial court. The courts are not biased against her. There was no perfect storm of systemic problems within the Family Part. This case is far simpler.

This case is a defendant who would rather file motions and fight over every issue until she gets her way, then be respectful of the plaintiff-father's rights to co-parent the children. This case is a defendant who substantially out-earns the plaintiff when she works a part-time schedule and believes that she is entitled to more money from the plaintiff. This case is a defendant who takes contrary positions based on what she thinks will work on any given day. This case is a defendant who accuses judges and PCs that rule against her as being racists.

The only way to send a message to this defendant is to remand this case for the entry of an award of counsel fees for the plaintiff having to defend against the 2020 Motion for

Reconsideration and for having to file the 2022 Motion to enforce the recommendations of the PC.

The plaintiff has supplied this court with both Certification of Attorney's Services. In all respects, plaintiff complied with the requirements of Rule 4:42-9(b) and (c) and Rule 5:3-5(c) and R.P.C. 1.5(a) with respect to his submissions to the trial court.

CONCLUSION

For all of the reasons set forth above, this Court should uphold the trial Court's decision regarding child support. In addition, this Court should reverse and remand the decision of the trial court relating to the denial of counsel fees and costs to the plaintiff. The court should deny the defendant's appeal in its entirety.

Respectfully submitted,
Counsel for Plaintiff-Respondent/Cross-Appellant



Amy Sara Cores, Esq.

Dated: August 29, 2025

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Preliminary Statement

Plaintiff attempts to divert this Court's attention to the critical issue in this case by presenting the irrelevant history concerning custodial issues between the parties. This smokescreen was obviously intended to portray Defendant in a negative light before this Court. Plaintiff fails to advise this Court that these issues were also considered during the plenary hearing held on June 4-5, 2019, that resulted in a final child support order of June 17, 2020, the recognition of which is the subject matter of this appeal. The Trial Court issued separate orders concerning child support and custodial issues. Plaintiff did not appeal the child support order; but did appeal the failure of the trial court to sanction Defendant or award fees for the alleged breach of the custodial arrangement. This appeal was ultimately resolved between the parties through the appellate settlement process.

Plaintiff seriously misstates the record with respect to the issues that were before the Court that resulted in the August 20, 2020 order. Plaintiff claimed that Defendant sought reconsideration of the child support awarded in the June 17, 2020 order. She did not. She only sought a reconsideration of the arrearages fixed in this order and the denial of the payment of child support through probation. Plaintiff also did not seek reconsideration of the child support awarded in the June 17, 2020 order. He sought an award of counsel fees for

having to defend against Defendant's reconsideration motion. The Plaintiff's inaccurate statement of procedural history is critical in this case because if accepted, it counters the notion that June 17, 2020 order was a final order which by law could not be retroactively modified either Judge McLaughlin or the parenting coordinator (PC). Plaintiff's defense is based on an inaccurate representation of the procedural history of this case and should not be accepted by this Court

Plaintiff claims that Defendant should be barred from opposing the draconian result of the parenting coordinator's recalculation of child support retroactive to June 2016 on the grounds of laches. The award pertains to child support, which is the property of the children, not Defendant, thus cannot be forfeited by inaction or procedural violations on the part of Defendant.

Plaintiff's position that Defendant should not be permitted to oppose the ultra vires and incomplete work of the parenting coordinator because she had requested similar relief going forward confuses the issue. The period for which Defendant sought the assistance of the parenting coordinator on child support issues pertaining to the adjustment in child support required following the custodial change that occurred with Covid and thereafter. This request did not relate to child support effective June 27, 2016 that had been determined after

a two-day plenary hearing during which both parties testified and presented documentary evidence.

Finally, on his cross-appeal seeking counsel fees asserts multiple acts of bad faith on the part of Defendant. Many of these allegations relate to custodial issues which are not relevant to this proceeding, and which were the subject matter of Plaintiff's appeal of the June 19, 2020 Order. Furthermore, Defendant had good and significant reason for seeking relief from an order requiring her to reimburse child support to Plaintiff in an amount in excess of \$54,000.

Counter Statement of Facts and Procedural History

The Order appointing a parenting coordinator arose out of the difficulties that the parties were experiencing with respect to the implementation of the parenting time arrangement; the scope of the parenting coordinator's role was delineated as being related to custody and parenting time. (Dca 130-131). The Parenting Coordinator did not have the authority to change existing Orders of the Court unless the parties consented and entered a Consent Order. (Dca 131). If it is accepted that the PC had the authority to modify the June 17, 2025 Child Support Order which is disputed, paragraph 14 of the PC Order is significant because Defendant did not consent to the modification of this Order. Defendant's then counsel agreed to the involvement of the PC to review the arrearage issue and make recommendations concerning child support you during Covid. (1T41-

13-1T42-16). Significantly Plaintiff's current counsel delineated the role of the PC with respect to child support during the August 13, 2020 motion hearing as being limited to the arrearage issue and Covid child support. (1T 42-21-24).

The work of the PC after his appointment through the June 19, 2020 Order until the August 20, 2020 Order, involved parenting time issues, not child support (Dca130-131). Plaintiff's Counter statement of fact does not specify the issues upon which Defendant sought reconsideration, which were child support arrears and the denial of payment through probation. (Da 001-003).

The August 20, 2020 Order regarding the duties of the PC can only be understood in the context of the oral argument where it was clearly stated that the issues before the Court involved arrears and Defendant's request for payment through probation.(IT 3-17- IT 4-1)). Defendant was not in possession of the communication of the PC to Judge McLaughlin. This communication does not establish that the PC's role was to review child support retroactive to June 27, 2016 which had already been determined at a multi-day plenary hearing because the PC was requesting clarification of this issue. (Pa 452). As noted by Plaintiff, the record does not contain Judge McLaughlin's response. The PC correctly defined the scope of his assignment in his August 30, 2020 email to the parties. (Da161). It is unclear why he expanded his role to include a recalculation of child support that had already been determined at the plenary hearing. Plaintiff

incorrectly advised the PC that he had an obligation to review child support since June 27, 2016 and expressed his dissatisfaction with the amount of child support awarded in the June 17, 2020 Order. (Da 163-164). There were no pending child support issues other than arrears and Covid child support following the August 20, 2020 Order.

Plaintiff's appeal of the Amended June 19, 2020 Order did not pertain to child support issues. (Da221). The Defendant's cross-appeal was not filed. The matter was resolved via the Civil Appeals Settlement Program (CASP). (Da 146).

Defendant was not represented by counsel at the trial level following the August 20, 2020 Order until September 2021, one year after the recommendations of the PC had been issued (Dra11). Ulrichsen Rosen and Feed, LLC represented her only on appellate matters until that time (Dra 1). This being the case, it was not surprising that a clarification of the August 20, 2020 Order was not sought by her attorney or that she participated in supplying information to the PC without questioning whether his retroactive review was in the scope of this assignment.

It is not accurate that Plaintiff paid child support through 2020. The entire issue on the reconsideration motion was driven by the fact that Plaintiff did not comply with the February 10, 2020 Order (Dca 088-089) to pay child support

through his attorneys' trust account and that the arrears of \$26, 298 had accrued. (Da 006-008). During oral argument, Judge McLaughlin initially indicated that he was going to deny the reconsideration motion on procedural grounds rather than on the grounds that the arrears were not due and owing (1T34-18-35). On self-reflection, he indicated that he wanted Defendant to receive the funds to which she was entitled. (1T 39-13-22). Likely anticipating a negative result for her client, Plaintiff's counsel suggested that the PC review the arrearage issue and subsequently added the issue of Covid child support. (1T 14-4-20).

The PC did not represent his recommendations of August 20, 2021 as being final. (Dca 148 and Dca 159) and did not accede to the request of Plaintiff's counsel to finalize the recommendations (Da165).

Defendant did request the involvement of a substitute PC to calculate Covid child support and provide recommendations as to child support to be paid after the resumption of the normal parenting schedule (Dca 002). This request cannot be construed to mean that she also endorsed the authority of the PC to recalculate child support retroactive to June 2016 after such child support had been established at a plenary hearing.

Point I: The June 17, 2020 order for child support was a final order. The May 29, 2025 Order violated N.J.S.A. 2A:17-56.23a

Plaintiff argues that Defendant is duplicitous because she requested the involvement of the PC in pending child support issues. Plaintiff further contends

that N.J.S.A. 2A:17-56.23a does not prohibit the revision of the June 17, 2020 Order. In his argument, it is represented that Defendant had filed a motion to reconsider the amount of child support provided in the June 17, 2020 Order, thus it could not be considered a final order eligible for statutory protection.

Firstly, in her application dated October 20, 2022, Defendant sought to enforce the June 17, 2020 Order and requested a calculation child support due during Covid and after the regular parenting time schedule was reestablished. There should be no mystery as to why Defendant was requesting this relief. She provided the primary home for 2 adolescent children and had not received regular child support since 2018. It is absolutely false that Defendant sought reconsideration of the amount of the child support awarded in the June 17, 2020 order. This relief was not sought by Defendant in her reconsideration motion or by Plaintiff in his cross-motion. It is disconcerting that Plaintiff contends that the request to reconsider the amount of child support was “completely omitted from her belief”. This fact was not included in Defendant’s brief because this request did not exist.

Defendant’s statement in her October 20, 2022 certification that she wanted to see how “things played out,” is understandable in circumstances where she was receiving no child support and was unrepresented. This should not be grounds for and imposition of an obligation on her to reimburse over

\$54,000 to Plaintiff for alleged overpaid child support. Neither Judge McLaughlin nor the PC was authorized to retroactively modify the child support because neither party had made an application to modify the amount set forth in the June 17, 2020 Order.

Plaintiff claims that Defendant is barred from contesting the implementation of the PC's recommendations under the equitable doctrine of Laches. It strains credulity to apply this doctrine in this case. Defendant was entitled to child support as set forth in the June 17, 2020 Order. Her participation in the unauthorized review process did not create a hardship for Plaintiff who benefited greatly by the delay as he stopped paying child support for the 2 adolescent children who resided primarily with Defendant. It is not "inequitable" for the Court to enforce the June 17, 2020 Order which would eliminate the reimbursement of \$54,000 to Plaintiff. In her October 20, 2022 application to the Court, Defendant abandoned her claim to arrears beyond the \$3,412 fixed by the court in the June 17, 2020 Order, although she was clearly entitled to such arrears. How is this inequitable?

Plaintiff has provided no proof as to his detrimental reliance on a \$54,000 reimbursement of child support from Defendant. The delay in this matter most certainly cannot be attributed to Defendant. Although as a pro se litigant, she did not file an application to enforce the June 17, 2020 Order until the Plaintiff

made an application to implement the PCs recommendations; this inaction does not justify vacating this Order. The delay in this matter is attributable to a minor extent to both parties and more clearly to the trial court. There was a delay of almost one year in scheduling the first oral argument on the parties' cross applications. There was a delay of over 8 months because Judge Bhattacharya did not decide the case after oral argument, and it was transferred to Judge Tomasello. The elements of laches set forth in L.V. v. R.S., 347 N.J. Super. 33, 39 (App. Div. 2002) have not been established by Plaintiff.

Furthermore, it must be considered that child support belongs to the children and not the recipient parent. Defendant's delay in enforcing the June 17, 2020 Order does not negate its effect. In Gottlieb v. Gottlieb, 399 N.J. Super 295 (App. Div. 2008), 944 A2d.654, the custodial parent had not complied with the time requirements to submit requests for medical and other reimbursements. This Court held that since child support belongs to the children and not the recipient parent and its nonpayment deprives the children of a benefit, the father should not be relieved of his obligation to pay the reimbursements. Id. at 660 – 661. *See also* L.V. v. R.S., *supra*, 347 N.J. Super. at 39-40. Here, common sense dictates that the lack of ongoing child support clearly deprives the children of a benefit. A requirement that Defendant refund \$54,000 to Plaintiff through extended nonpayment of child support compounds this negative impact. The

implementation of the PCs non-finalized recommendations which would dictate such a result violates the policy set forth in Gottlieb that the best interest of the children trump procedural imperfections on the part of the recipient parent.

Point II: The failure of Defendant, as a pro se litigant, to seek a clarification of the August 19, 2020 Order does not legitimize the PCs recalculation of child support that was set forth in the June 17, 2020 Order which was a final order on the issue of child support from June 27, 2016 through the date of the Order.

The scope of the PC's role was delineated on the record on August 13, 2020. In fact, it was outlined by Plaintiff's current counsel. Defendant was a pro se litigant 45 days after this order was entered. None of the communications from the PC were to the directed to counsel. The August 20, 2020 Order was interlocutory as to issue of calculating arrears and Covid child support. Defendant did not have an automatic right of appeal of this Order. There was no need to recalculate the child support fixed after a multi-day plenary hearing to calculate arrears. Neither party was requesting this. A calculation of arrears would merely involve examining the obligation set forth in the June 27, 2020 order and reviewing Plaintiff's proof of payments.

As explained in Defendant certification of October 20, 2022, the Covid child support was not correctly calculated by the PC. Again, the PC indicated his recommendations were not final and subject to revision. He did not agree to finalize the recommendation at the request of Plaintiff's counsel in March 2022.

Point III: The Trial Court erred in adopting the recommendations of the PC.

It is absolutely incorrect as asserted by Plaintiff that “the Defendant wants this court to find that this is a NJ Child Support Guidelines child support case.” Defendant agrees that it is not a guidelines case. While acknowledging that it was an “above the guidelines case”, the PC utilized the guidelines in establishing Plaintiff’s retroactive child support obligation. (*See* Dca 146-156). Although he used the guidelines format, as observed by Defendant, the income used varies from that utilized by the trial court after plenary hearing. The PC did not appear to request segregated budget for the children from either party which would have been necessary to correctly calculate the enhancement to child support that is required in an “above guidelines case”. The proper methodology in handling this case would be to calculate the child support to the guideline maximum and then add an enhancement based upon the statutory factors set forth in N.J.S.A. 34-23. (See New Jersey Rules of Court Appendix IX-A-20b). The segregated budget was not limited to merely child related activities. It should represent the enhanced lifestyle that the children should enjoy across all living expenses because of the success of their parents as the child’s standard of living is included among the statutory factors.

Contrary to the position taken by Plaintiff, the PC did not analyze the statutory factors. Since it was determined that child support would be calculated

under New Jersey law and Plaintiff did not have the children for 104 overnights per year, it was inappropriate to use the shared parenting worksheet. All of these issues were raised in Defendant's certification of October 20, 2022. No analysis was done by Judge Tomasello as to the merit of Defendant's claims regarding the inappropriate calculation of child support. Judge Tomasello also did not address the argument made by Defendant that the revised order was in violation of N.J. S.A. 2A:17-56.23a. The findings that Plaintiff claims in Point VI are required to determine the counsel issue were missing regarding the critical child support provisions of the May 29, 2024 Order.

Point IV: The May 29, 2024 Order which incorporated the of the PC violated ¶ 14 the June 19, 2020 Order appointing the PC.

The expansion of the role of the PC to consider the issue of arrears and Covid child support was governed by the June 19, 2020 Order appointing the PC. Paragraph 14 of this order provides that the PC cannot change a Court Order without the consent of the parties. The recommendations of the PC changed the terms of the June 17, 2020 Child Support Order. There was no consent by the parties to this change, thus the May 29, 2024 Order is in violation of the Order which governs the authority of the PC.

Point V: Judge Tomasello's handling of the contested motions before him was cursory at best and any remand of this case should be assigned to another judge.

Defendant relies on her original brief regarding this issue.

Point VI: Plaintiff is seeking an award of counsel fees concerning issues that were not before the trial court. Additionally, Defendant did not act in bad faith in her reconsideration application and in her opposition to the May 29, 2024 Order.

In arguing that Plaintiff should be awarded counsel fees, a list of alleged bad conduct on the part of Defendant is provided. There were numerous proceedings between these parties and applications were filed by Plaintiff for fees. In fact, he unsuccessfully appealed the denial of fees in the June 19, 2020 Amended Order pertaining to custodial issues. The only counsel fee issues in this case pertain to Defendant's application for reconsideration of child support arrears and payment through probation which were determined in the August 20, 2020 Order, his Motion to implement the non-finalized recommendations of the PC, and his defense against Defendant's application to enforce the June 17, 2020 child support order. Plaintiff bases his application on Defendant's alleged "bad behavior". It is respectfully submitted that opposition to an application does not equate to bad faith or "bad behavior". Plaintiff provides no legal support of this conclusion.

With respect to the reconsideration motion, the Court found merit to Defendant's request to reconsider the support arrears, resulting in the direction that the parenting coordinator make recommendations on this issue. There is no bad faith demonstrated by Defendant with respect to this application. If anything, the fact that there were arrears of \$26, 212 when Plaintiff clearly had

the resources to comply with his child support obligation. would suggest bad faith on the part of Plaintiff.

Defendant's opposition to Plaintiff's application to incorporate the non-finalized recommendations of the PC into an order and seeking a reimbursement in excess of \$54,000 clearly do not demonstrate bad faith on her part. As expressed in her original brief there were a multitude of errors involved in the Court accepting the entirety of Plaintiff's application. A denial of counsel fees to Plaintiff is appropriate and should be affirmed.

Conclusion

For the reasons stated above, Defendant requests relief as set forth in her original brief.

Respectfully submitted,
SeidenFreed LLC
Attorneys for Defendant/Appellant

By: _____
Barbara Ulrichsen, Esq.

**Superior Court of New Jersey
Appellate Division**

Docket No. A-3507-23

ARON BETRU, : CIVIL ACTION
: :
Plaintiff-Respondent, : ON APPEAL FROM AN ORDER
: OF THE SUPERIOR COURT
: OF NEW JERSEY,
: CHANCERY DIVISION-FAMILY PART,
- against- : MERCER COUNTY
: :
TIKIKIL FIRDU, : :
: :
Defendant-Appellant, : Sat Below:
: :
: HON. Brian McLaughlin, J.S.C.
: HON. John Tomasello, J.S.C.

**REPLY BRIEF
ON BEHALF OF THE PLAINTIFF-RESPONDENT/CROSS-APPELLANT**

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RESPONSE TO PLAINTIFF'S REPLY BRIEF

In her Reply Brief on Page 5, defendant's attorney asserts that "Defendant was not represented by counsel at the trial level following the August 20, 2020 Order until September 2021, one year after the recommendation of the PC had been issued." The defendant's supplemental appendix consists of the two retainer agreements with current counsel. The entirety of her Reply Brief is predicated on the argument that she was unrepresented by counsel and could therefore not have knowingly consented to the recalculation of child support.

The statement quoted above is false.

In the Plaintiff's prior appendix we attached all of the communications that constituted the record with the trial court in 2020. There were also continuing communications between counsel for both parties and counsel and the Parenting Coordinator (PC) after the entry of the August 20, 2020 Order. (PRA1-27) Of note is the fact that the plaintiff continued to make child support arrears payments through counsel. The correspondence to and from Ms. Millner, who was counsel for the defendant from 2016 to the end of 2021 reflects same. (PRA1-27) I invite the court's attention to the correspondence from Ms. Millner dated December 7, 2020, in which she provides all of her client's prior Certifications regarding child support from 2016

to 2020, and she writes, "Dr. Firdu's position regarding the miscalculation of child support is set forth in the Motion for Reconsideration that she filed as well as the reply certification." (PRA12) Then in July and August 2021, there is an additional communication regarding a check that was uncashed from 2021. (PRA18-21) Therefore, during the time that the defendant now asserts in her Rely Brief that she was pro se and had no attorney, her attorney was actively engaged on her behalf.

The defendant's claims: (a) she did not have a lawyer, (b) she was not paid child support from 2019 on, (c) child support was a settled matter, are all disproven by her own admission here. For the defendant to suggest to this court that her consent to a recalculation of child support was not done while being represented by counsel is at best misleading and at worst an intentional lie. Her entire Reply Brief is predicated on the notion that she was "pro se" during the time of Judge Ferencz's involvement in this case. It is simply not true. It is also noted that Jennifer Millner, Esq. is an excellent lawyer who had represented the defendant in this case since it was transferred to New Jersey until Ms. Ulrichsen took over in late 2021. It is also noteworthy that the defendant's own attorney submitted documentation regarding the various positions and documentation for the recalculation of child support from 2016-

2020 and the defendant now takes the position that she engaged in the exercise with the PC without the guidance of counsel. It appears that she has done this to suggest that any consent she gave to the PC should be voided by the fact that she was not represented.

It is also important to plainly rebut the false claims by the defendant with respect to child support. The original support order from Pennsylvania required the plaintiff to pay \$1900 per month. Everyone agreed that as of December 2019, the plaintiff was at least current on his obligation. (Pa420) The issue in the defendant's reconsideration motion focused squarely on the arrears from December 2019 to then July 2020. (Pa420) Please note that the plaintiff took the position that he had overpaid support from 2011 until the Pennsylvania probation account was closed in 2018, which was supported by the audit they completed and confirmed in the Certification of the Defendant's attorney. (Pa420, 436) The plaintiff was actually paying \$1950 per month all of those years.

I want to make it crystal clear that the plaintiff consistently paid child support from the entry of the original order either through probation, direct pay, or through counsel's trust accounts until he was told to stop payments by the PC, because during the COVID pandemic when the parties were equally sharing physical custody.

Under the language of the July 17, 2020 Child Support Order:

Payment due June-December 2016: \$7462

Approximate Payments made: \$13650

Payments due January-December 2017: \$24,720

Approximate Payments made: \$23,400

The overpayments by the plaintiff were approximately \$6000, as he also had a credit from PA of over \$1000. (Pa356) From January 2018 and thereafter, the support was set by Judge McLaughlin to be \$1,900 per month. Moreover, there were also payments garnished by probation in 2019 and turned over to the defendant that were not accounted for. (Pa357) The defendant's own certification to the trial court confirms that she received additional payments from December 2019-July 2020 in the amount of \$9,950 and that the plaintiff was current in payments as of the end of September 2018. (Pa432) There were continuing payments toward arrears made through counsel. (PRA 1-3; 8-11; and 14-21) Plaintiff vehemently disputes that he failed to pay anything for years as complained by the defendant. However, her exaggeration is directly contradicted by the defendant's own certified statements.

There were two positions regarding arrears in August of 2020. The plaintiff believed he was entitled to a credit. His position was clearly set forth in the May 11, 2020

correspondence to the court (Pa364) and in his certifications. Judge McLaughlin considered this as part of the reconsideration motion and this is part of the reason why the plaintiff took the position that a review of the prior calculations was appropriate. If he did not receive a credit, his arrears were certainly closer to the amount calculated by the Judge than the amount calculated by the defendant. The plaintiff did not believe that he had exposure because the matter of child support had not been resolved.

That was the gravamen of the issue between the parties with respect to arrears, when the case was submitted to the PC in 2020. This is all critical to understanding why the plaintiff's counsel consented to have the PC recalculate arrears and did not pursue an appeal.

The defendant believed that she was entitled to substantial arrears. Both parties were unhappy with the child support calculations. The plaintiff believed that it was too high and the defendant believed that it was too low. All of this is why both sides consented to have the PC review the issues, rather than either of them raising the issues on the appeal that had already been filed in July 2020. Moreover, it is reasonable to conclude that after 5 years of litigation where none of the issues were adequately resolved by the trial court that submitting this issue to a person who would have the time to

focus on the issues would benefit the parties. Therefore, the defendant's certified statement that she wanted to "see where it would go" is not only believable, it should also be the grounds to reject her appeal because she can't now claim they were illegitimate just because she does like the result.

For clarity, Judge McLaughlin issued the support order on May 7, 2020. Plaintiff submits a letter on May 11, 2020 containing a list of objections to that order and specifically stating an intent to appeal. The June 17, 2020 Order is issued resolving the remaining issues from the plenary hearing. An amended support order is also issued on June 17, 2020. Plaintiff filed a Notice of Appeal on July 7, 2020. Defendant files a motion for reconsideration on July 8, 2020. However, there were still an additional 25 days for the plaintiff to file an appeal of the June 17, 2020 Order.

Defendant claims in her Reply Brief that the prior appeal was resolved between the parties via the CASP process. This is also incorrect. The parties did enter into a Consent Order at the settlement conference. But they merely agreed to have the matter remanded to Judge McLaughlin for further findings of fact and conclusions of law with regard to paragraphs 3, 4, 7, and 10 of the June 17, 2020 Order. (Pa568-9) Nothing substantive was determined. That order was entered on September 17, 2020 and

Judge McLaughlin, did not make supplemental findings until July 14, 2023. (Pa706)

The argument of the plaintiff with regard to laches is not about child support, it is about consent and fair dealings. The defendant consented to the recalculation through her own actions, the correspondence from her attorneys, and as evidenced by her own words certified to the court when she stated that she wanted to see where things went. She doesn't get to 'play along' for over a year with a process and then effectively say "just kidding" when the plaintiff seeks to enforce a Directive by the PC. She also doesn't get to agree and participate in a process and then 3 years later tell the court that because she doesn't like the result, she wants a do-over.

It is clear that the PC engaged in the recalculation of support because the defendant and plaintiff consented to same. Both parties supplied the PC with documentation from their respective counsel; they both communicated with him on this issue directly; and, neither of them filed a motion to object to the process or issues until long after the process was complete. This appeal must contemplate whether the defendant agreed to the process by her actions. It seems clear that the PC believed she did, her prior counsel Ms. Millner believed she did, and Judge Tomasello believed that she did, both through her statements and certifications. Even Judge Tomasello re-adopted the language

that "The duties of the Parenting Coordinator shall include but not be limited to, payments of Child Support due and arrearages as maybe appropriate." (Pa720)

The plaintiff relied upon the defendant being truthful, fair, and open in her dealings with him vis-à-vis the PC. If the defendant is going to be permitted to participate in the PC process and then change her mind when she doesn't like the result, then what is the purpose of giving a PC the ability to make binding recommendations on the parties, or requiring the parties to participate in the process at all.

This is noteworthy because in Point III of her brief the defendant claims that: "The PC did not appear to request segregated budget for the children from either party, which would have been necessary to correctly calculate the enhancement to child support that is required in an "above guidelines case"." [sic] (DRB page 11) This too is false. The defendant fully participated in the PC process and received the same communications that the plaintiff received. As such, she received and responded to the PC's March 29, 2021 emailed correspondence, which specifically requested this information from the parties for the calculation of support going forward. (PRA22) The information was also already provided by counsel from both parties in the communications referenced by the PC in his email to counsel on October 14, 2020. (PRA6)

Even if the defendant's counsel was unaware of the communication from Judge Ferencz, or all of the communications between defendant's counsel Ms. Milner and plaintiff's counsel, her client was aware of this and has allowed material misrepresentations to be made to this court.

The defendant's arguments that the children were denied support after June 17, 2020 is not supported by the record.

The plaintiff outlines the continued obstreperous conduct by the defendant in his 2022 motion at Pa461-3. It took years to get the defendant to fund the children's college accounts. The defendant again over scheduled the children and aggressively worked to deny parenting time to the plaintiff, a common occurrence that that had already led to the defendant being sanctioned 27 days for previous violations. I invite the court to Judge McLaughlin's clear instruction: "It is further ordered that defendant shall not organize any extracurricular activities during plaintiff's parenting time."

Even in her Reply Brief, the defendant seeks to mislead the court. This is why the plaintiff continues to seek an award of counsel fees against the defendant. If at any point she had been sanctioned for her bad behavior, we would not be here. It is not just her denial of parenting time, it is not just her failure to contribute to college accounts, it is not just her deceptive and intentionally misleading statements to the court (and the PC and

the plaintiff and others), it is not just any one of these things. It is that she does not believe any court has the authority to hold her accountable or will do so. It is a pattern of contumacious behavior by this defendant over more than a decade of litigation that warrants a denial of her appeal and an award of counsel fees to the plaintiff.

CONCLUSION

This Court should reverse and remand the decision of the trial court relating to the denial of counsel fees and costs to the plaintiff. This Court should deny the defendant's appeal in its entirety.

Respectfully submitted,
Counsel for Plaintiff-Respondent/Cross-Appellant



Amy Sara Cores, Esq.

Dated: November 4, 2025