SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003578-23T1

CHRISTOPHER TUCKER,
PLAINTIFF-APPELLANT
v.
DANIELLE WEISS,
DEFENDANT-RESPONDENT

CIVIL ACTION

ON APPEAL FROM

SUPERIOR COURT, FAMILY PART
GLOUCESTER COUNTY

Hon. Tosca Blandford-Bynoe, J.S.C.

BRIEF
FOR
DEFENDANT-RESPONDENT DANIELLE WEISS

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PRELIMINARY STATEMENT

Respondent/Defendant Danielle Weiss ("Defendant" or "Ms. Weiss") seeks to affirm the trial court's June 3, 2024 Order setting a child support obligation and arrears obligation payable by Appellant/Plaintiff ("Plaintiff" or "Mr. Tucker") to Defendant, determining credits and arrears owed, and reducing funds owed to Defendant by Plaintiff to a judgment. Additionally, Defendant seeks to affirm the April 9, 2024 decision setting forth Thanksgiving parenting time and retroactive date for child support. Plaintiff posits the trial court's April 9, 2024 Order and June 3, 2024 Order should be reversed based on judicial impartiality, procedural fairness, and the equitable application of family law practices. In this matter, the trial court carefully considered the issues before it and gave both parties significant opportunities to be heard on the issues and provide evidentiary support of their respective positions. Plaintiff's perception of the April 9, 2024 Order and the June 3, 2024 Order as adverse rulings is not evidence of judicial bias, and Plaintiff failed to raise a claim of judicial bias before the trial court. Plaintiff bemoans the procedural history of this matter resulted in unfairness, but fails to demonstrate how the procedural history impacted his custodial rights, parenting time, or the child support awarded in the June 3, 2024 Order. Finally, the June 3, 2024 Order, particularly with respect to child support, aligns with Appendix IX-B to Rule 5:6A and relies on the proofs presented to the trial court.

PROCEDURAL HISTORY

On August 23, 2023,[1] the parties entered a Consent Order withdrawing cross-applications pending before the trial court and agreeing to attend mediation "to attempt to reach a global resolution regarding child-related issues and economic issues." (Pa004).

On November 6, 2023,[2] the parties signed a Consent Order addressing custody and parenting time and reserving several issues for mediation. (Pa011). The Consent Order was signed by the parties but was never signed by the Court.

On November 14, 2023, Defendant filed an emergent application to suspend Plaintiff's parenting time. (Da001) Defendant's application was denied as nonemergent and scheduled as a regular motion. (Da027).[3] The parties were directed to follow prior Orders.

On November 28, 2023, Plaintiff filed a cross-application to enforce the November 6, 2023 Consent Order which had not been signed by the Court. (Da029)

On December 8, 2023, the trial court entered an Order denying Plaintiff's request to enforce the November 6, 2023 Consent Order and scheduling a plenary hearing, among other things. (Pa013).

[1] Plaintiff refers to this Order as the August 25, 2023 Order, but it is dated August 23, 2023.
[2] Date both parties signed as set forth in Dropbox Sign Audit trail.
[3] Although included in Plaintiff's Table of Appendix at Pa046 and Pa121, it is not attached.

On January 5, 2024, Plaintiff filed a Motion for Reconsideration of the December 6, 2023 Order as well as other relief. (Pa016).

On January 19, 2024 (Order entered on April 9, 2024), the trial court heard Plaintiff's Motion for Reconsideration wherein it found, in relevant part, the Consent Order from November 6, 2023 was an enforceable agreement of the parties and the parties would submit their individual positions as to all outstanding issues so that the Court could determine them. (Pa135).

On April 9, 2024, the trial court entered an Order, in relevant part, as follows: 1) Reserving child support; 2) Directing the effective date of child support shall be September 1, 2023; 3) Continuing interim child support pursuant to the August 23, 2023 Consent Order; 4) Denying the parties' respective requests for counsel fees; 5) Directing the Court shall utilize $75,000 gross for Defendant's income for child support purposes. (Pa231).

On June 3, 2024[4] (hearing conducted May 21, 2024), the trial court entered an Order, in relevant part, as follows: 1) directing child support in the amount of $106 effective the entry of the Order; 2) adding $4,182 to Plaintiff's arrears for child support owed since September 1, 2023; 3) directing Plaintiff to pay $44 per week towards arrears; 4) reducing $2,897.01 owed to Defendant by Plaintiff on an outstanding loan to a judgment. (Pa274).

[4] Plaintiff refers to this Order as the June 6, 2024 Order, but it is dated June 3, 2024.

STATEMENT OF FACTS

Plaintiff and Defendant were in a dating relationship commencing in 2019 but never married. (Da013). One child was born of their relationship, A.T. (Da013). Plaintiff also has two (2) children from prior relationships. (Da015). The parties' relationship ended in or around January 2023, approximately six (6) months after the birth of A.T. (Da013).

On April 17, 2023, Plaintiff filed an emergent application which was denied as nonemergent and scheduled as a regular motion. (Pb04).

On May 11, 2023, Defendant filed a cross-motion seeking an order to establish joint legal custody with Defendant designated as parent of primary residence, establish of a parenting time schedule for Plaintiff, establish child support payable by Plaintiff to Defendant, and for other relief. (Da036).

On May 18, 2023, the court entered an Order directing the parties to attend custody and parenting time mediation. (Pa001). In the interim, Plaintiff would have the child every Wednesday from 7:30 a.m. until 6:00 p.m. and every other weekend from Saturday at 12:00 p.m. until 7:00 p.m., and Sunday from 8:30 a.m. until 6:00 p.m. Defendant's filing date for child support (May 11, 2023) was preserved.

The parties attended court-provided custody and parenting time mediation on July 12, 2023. (Da014).

On August 23, 2023, the parties entered a Consent Order withdrawing their pending applications and agreeing to attend mediation "to attempt to reach a global resolution regarding child-related issues and economic issues." (Pa004). The Consent Order provided Plaintiff's parenting time would continue pursuant to the May 18, 2023 Order. Also, Plaintiff was to provide $1,500 per month to Defendant effective September 23, 2023, representing a monthly $700.00 payment towards Plaintiff's loan which he requested that Defendant take out in her name due to his credit issues and $800.00 per month in child support effective September 1, 2023 on a *without prejudice* basis and reserving Plaintiff's claims for credits for child support payments.

On October 19, 2023, the parties attended a private mediation session. (Da015).

On November 6, 2023, the parties signed a Consent Order addressing custody and parenting time and reserving several issues for mediation, including holiday parenting time. (Pa007) The parties agreed to an equal parenting time schedule which would commence on December 11, 2023. The Consent Order was signed by the parties but was never signed by the Court.

On November 9, 2023, the parties attended a second private mediation session. (Da015).

On the weekend of November 11, 2023, Defendant received information regarding allegations of abuse by Plaintiff against a child from a prior relationship. (Pa090). As a result, on November 14, 2023, Defendant filed an emergent application to suspend Plaintiff's parenting time. (Pa090). Defendant's application was denied as nonemergent and scheduled as a regular motion. (Da027). The parties were directed to follow the May 18, 2023 Order and August 23, 2023 Order, and not the unsigned November 6, 2023 Consent Order.

On November 28, 2023, Defendant filed an emergent application based on Plaintiff failing to return the parties' child following Thanksgiving holiday parenting time which was denied. (Da088).[5]

On same date, November 28, 2023, Plaintiff filed a cross-application to enforce the November 6, 2023 Consent Order and for other relief. (Da029).

On December 6, 2023, the trial court entered an Order denying Plaintiff's request to enforce the November 6, 2023 Consent Order, among other things. (Pa013).

On January 5, 2024, Plaintiff filed a Motion for Reconsideration of the December 6, 2023 Order, including establishing guidelines based child support and/or modifying the informal child support obligation and crediting Plaintiff for

[5] Although included in Plaintiff's Table of Appendix at Pa047 and Pa122, it is not attached.

direct payments made to Defendant against any child support obligation per the August 23, 2023 Consent Order. (Pa016).

On January 15, 2024, Defendant filed a response to Plaintiff's Order to Show Cause. (Pa104).

On January 19, 2024, the trial court heard Plaintiff's Motion for Reconsideration wherein it found: 1) Consent Order from November 6, 2023 was an enforceable agreement of the parties as to custody/parenting time; 2) a risk/safety plenary hearing would be scheduled; 3) Child support would be retroactive to May 11, 2023, the date of Defendant's motion filing; and 4) the parties would submit their individual positions as to all remaining issues which had not yet been addressed so that the Court could determine them. (Pa135).[6]

Also on April 2, 2024, the parties submitted detailed letters to the trial setting forth their respective positions on the outstanding issues. (Pa138 and Pa157).

Additionally, on April 2, 2024, Defendant sent a letter to the trial court advising she was waiving her right to a risk and safety hearing *without prejudice* due to her inability to address risk and safety concerns before the trial court in light of the age of witnesses. (Da090).

[6] A Proposed Form of Order was circulated between counsel and not executed by the Court until April 9, 2024. Since an additional Order was entered on April 9, 2024 resulting from that hearing date, the Order from the January 19, 2024 decision shall be referred to as the "January 19, 2024 Order".

Specifically, with respect to Defendant's positions, Plaintiff operates his own plumbing business. (Pa157). It was Plaintiff's position his gross annual income should be $78,527 per year for child support purposes. (Pa141). Plaintiff's 2023 W-2 from the military Reserves demonstrated an income of $6,068.40 and Plaintiff's 2022 Schedule C demonstrated a business income of $71,245. (Pa076). However, Plaintiff's 2022 Schedule C provided gross receipts or sales of $228,752. (Pa076). Plaintiff reduced the gross receipts of $228,752 to get to the $71,245 income number by claiming certain business expenses. Although many business expenses may be deductible for tax purposes, they may also be includable for purposes of determining gross income for child support purposes as clearly delineated in the law. (Pa164). While claiming on he had these certain business expenses on his Schedule C, Plaintiff failed to provide proof of these alleged business expenses. (Pa138). Plaintiff also provided his 2022 and 2023 Profit & Loss Statement. (Pa192). Moreover, the court would not be able to rely on Plaintiff's 2022 Profit & Loss Statement setting forth his alleged expenses because it did not match what Plaintiff reported and filed on his 2022 Schedule C. (Pa165). Thus, Defendant objected to utilizing Plaintiff's 2023 Profit & Loss Statement absent his actual filed 2023 Schedule C which he failed to provide, and relied on Plaintiff's 2022 Schedule C. (Pa165).

Defendant had been working as a counselor for approximately ten (10) years. (Pa166-Pa168). However, Defendant obtained her licensure as a licensed

professional counselor in March 2022 as she was required to meet certain requirements in order to obtain such license. (Pa166-Pa168). Plaintiff posited that Defendant should be imputed with forty (40) client/clinical hours per week. (Pa166-Pa168).

However, N.J.S.A. 45:8B-40, known as the Professional Counselor Licensing Act (hereinafter "PCL Act") provides the requirements for a person to become a licensed professional counselor and defines "full time employment" for this field. (Pa166-Pa168). It requires an individual to have, among other things, at least three (3) years of supervised full time counseling experience. N.J.S.A. 45:8b-40(d). N.J.A.C. 13:34-10.2 defines what constitutes full time and part for purposes of the professional counsel experience holding that "one calendar year" means "a maximum of 1,500 hours of supervised counseling experience over a period of 52 weeks, which is considered full-time or no less than 750 hours of supervised counseling experience in each of two 52-week periods for a total of 1,500 hours of supervised counseling experience, which is considered part-time". See N.J.A.C. 13:34-10.2(5). Defendant is considered full time as she works 34 clinical hours per week. (Pa195). This was further confirmed by her employer. (Pa195).

Defendant earned $75,351 gross in 2023, which was the highest income she earned in her lifetime as demonstrated on her Social Security Statement. (Pa200 and Pa204).

There was also dispute with respect to credits due to Plaintiff. Plaintiff posited child support and credits should be retroactive to January 1, 2023 when the parties separated and Plaintiff began providing Defendant with informal child support and contributions towards a loan Defendant obtained in her name on Plaintiff's behalf. (Pa141-Pa143). Plaintiff further asserted he paid $2,000 per month between January 2023 and June 2023, or $12,000 total. (Pa141-Pa143). As addressed above, the January 19, 2024 Order directed child support would be retroactive to May 11, 2023, the date of Defendant's motion filing. (Pa135). Defendant refuted this and asserted Defendant paid half one month, skipped a month, and paid $2,100 another month, totaling $9,100. (Pa166). The parties differed on whether these payments were for child support or the loan. (Pa138 and Pa157).

The parties agreed different guidelines may be utilized based on the actual overnights exercised by the Defendant. (Pa138 and Pa157).

On April 9, 2024, after reviewing the parties' respective April 2, 2024 submissions, the trial court entered an Order, in relevant part, as follows: 1) reserving child support; 2) directing the effective date of child support shall be September 1, 2023, the date of the parties' Consent Order establishing interim child support; 3) continuing interim child support of $800 per month pursuant to the August 23, 2023 Consent Order; 4) denying the parties' respective requests for counsel fees; and 5)

directing the Court shall utilize $75,000 gross for Defendant's income for child support purposes, among other things. (Pa242).

During the April 9, 2024 hearing, the trial court explained additional financial review would be needed to determine Plaintiff's income in light of Plaintiff's gross receipts ($228,752) and gross income after business expenses ($71,245), and thus reserved on this issue. (5T26-9 – 26-6). Again, although certain business expenses may be deducted for purposes of income for tax returns, they are includable as gross income for child support. In part, the trial judge stated as follows:

> I'm going to move in accordance with the Appendix.
>
> I understand that there's certain business expenses that are legitimate business expenses that are necessary for the operation of the business. I won't say legitimate. They're all legitimate business expenses. But, there's certain expenses that are necessary for the operation of the business that -- that even child support allows as a deduction. But, there are a host of them that they do that child support does not allow. So, and when I do come back I will provide a detail in terms of what was added back in and what wasn't and why. Okay?

(5T26-9 – 26-6).

With respect to counsel fees, the trial court put forth on the record as follows:

> So, with respect to counsel fees, the parties will be responsible for their own counsel fees in this matter. I have reviewed Mr. Tucker's, you know, request. And I will -- the only thing that I'm going to say is I did not -- I did not find Ms. Weiss to have acted in bad faith in her actions. I believe that she believed that she was justified and that she had legitimate risk concerns. So, I'm not going to order counsel fees in this matter. So, the request for counsel fees is denied. The parties will be responsible for their own counsel fees.

(5T6-17 – 7-2).

With respect to retroactivity of child support credits, the trial court put forth on the record as follows: "So, you -- there was an agreement, in August of 2023, for a child support amount of $800 per month effective September [1, 2023] going forward. Any credits that are calculated will be calculated from that amount going forward. I'm not going to go back to January [2023] through August of 2023." (5T10-11 – 16). As set forth above, neither party filed an application with the trial court until April 17, 2023 (Plaintiff's initial emergent application), and Defendant first requested child support on May 11, 2023, and both applications were subsequently withdrawn.

The trial court utilized Defendant's highest recorded earning from full time, licensed work in 2023. (5T24-7 – 9).

The trial court entered an Order memorializing the April 9, 2024 conference as follows:

> . . . Effective date for any change of child support will be 9-1-23 as per order dated 8-23-23. The current child support obligation is $800 per week per order dated 8-23-23. Both requests for counsel fees is denied for reasons placed on the record today. Each parent to have 3 nonconsecutive weeks vacation each year with at least 30 days notice to the other party with a full itinerary. Court Holiday schedule made part of order. Except for Thanksgiving as per prior consent order dad will have Thanksgiving every year. For purposes for this order, The Thanksgiving Holiday is one day, the actual day. Parties may agree to go outside of the Court Holiday schedule. Request for play therapy for the child is denied. Dad's request for makeup parenting time is granted in part and denied in part. Dad is to have an additional vacation week

> between June 2024 and June 2025 to allow for makeup parenting time. The Court will use $75,000 annual income for mom for the child support guidelines. Per testimony provided today dad does not receive VA disability benefits. Mom is to amend her 2023 tax returns to not claim the child to allow dad to claim the child as per prior order dad has odd years. Mom is to file the amended tax documents within 30 days. Once the court calculates the child support a Zoom conference to put it on the record. Both parties to provide each other with who will be caring for the child (more than 3 or 4 hours a day) when they are not with him. Both are to list each other as an emergency contact. Mom withdraws her request for a plenary hearing.

(Pa242).

On April 18, 2024, the trial judge sent a letter to counsel delineating Plaintiff's business expenses to which the trial court "questions the exclusion of" and "is requesting further explanation and supporting documentation[.]" (Pa245).

On April 22, 2024, Plaintiff submitted a letter requesting additional time to provide proofs, while also commenting a forensic account was necessary to determine Plaintiff's income which was not requested. (Pa247).

Also on April 22, 2024, Defendant submitted a response to Plaintiff's April 22, 2024 letter refuting the need for a forensic accountant. (Da091).

On April 30, 2024, Plaintiff submitted a letter providing additional information and claiming they were proof for Plaintiff's business expenses, and asserting other proofs were unattainable. (Da092). However, the limited documents provided did not support the majority of Plaintiff's business expenses, nor did they demonstrate the expenses were tied directly to the business. Although easily

attainable, Plaintiff failed to provide even bank account or credit card statements which would have demonstrated his business expenses.

On May 6, 2024, Defendant submitted a response to Defendant's April 30, 2024 letter. (Pa248). Therein, Defendant argued if Plaintiff had the alleged business expenses, he would be able to assemble the most basic proofs including, but not limited to, invoices, policies, canceled checks, credit cards statements, etc. if, again, such alleged business expenses were real. Defendant posited Plaintiff cannot and did not obtain these proofs because his own personal expenses were being run through his business.

On May 20, 2024, the trial judge sent a letter to counsel, in anticipation of entering its decision the following day, detailing the business expenses which would be included in Plaintiff's gross income and attached three separate child support guidelines worksheets calculating Plaintiff's child support obligation based on his overnights over three separate periods since the September 1, 2023 effective date. (Pa267).

The parties appeared for a hearing on May 21, 2024 for the trial court to enter its final decision on the record. With respect to the parties' incomes and child support, the trial court ruled as followed: "That for the purposes of child support Mr. Tucker's income is to determined to be $162,473. Ms. Weiss' income is determined to be $75,000." (6T-6-4 - 6). The trial court set forth on the record three separate

calculations consistent with the guidelines provided on May 20, 2024. (6T-6-4 – 702). Counsel for the parties identified minor issues with the guidelines, including Plaintiff's Reserves income, an erroneous other dependent deduction credit in Defendant's column, and an inaccurate number for Defendant's share of the child's health insurance premium. (6T-8-7 – 26-24). On the record, the trial judge and counsel simultaneously ran child support guidelines and calculated support based on the framework set forth by the trial judge. (6T-8-7 – 26-24). The trial judge summarized the figures as follows: "So [$]2,009 plus [$]3,682 plus [$]1,696. So when I add those numbers up, [$]2,000 – [$]2,009, [$]3,682, [$]1,696, I get [$]7,397." (6T26-22 – 24). The trial judge thereafter subtracted $3,200 representing child support payments made since September 1, 2023, the date interim child support commenced pursuant to the August 23, 2023 Consent Order, for a total arrears amount of $4,182. (6T27-3 – 7).

With respect to the outstanding loan payments which were acknowledged in the August 23, 2023 Consent Order, the trial court relied on Defendant's submission with respect to contributions towards the loan and finding the August 23, 2023 Consent Order controlled. (6T7-3 – 9). The trial court commented as follows:

> With respect to the loan that is encapsulated in this time frame [August 23, 2023 Consent Order to date of decision], the outstanding loan amount I've totaled is $2,897.01.

> That amount, unless Mr. Tucker is prepared to clear that balance, will be reduced to a judgment and Ms. Weiss will be able to take whatever action she deems appropriate with respect to that amount.

(6T7-3 – 9)

On June 3, 2024, following the May 21, 2024 hearing, the trial court entered an Order memorializing the decision, in relevant part, as follows:

> . . . Child support entered today. Add $4,182 to dad's arrears for child support he owes since 9-1-23 (calculations placed on the record today). The remaining balance on the loan, $2,897.01 is to be reduced to Judgement. Child support in the amount of $106 per week is effective today. Dad to pay $44 per week towards arrears. Request to stay the child support and the loan balance is denied. . . .

(Pa274).

As set forth above, at no point during the litigation did Plaintiff move to disqualify the trail court judge due to prejudice.

Thereafter, Plaintiff filed his Notice of Appeal.

LEGAL ARGUMENT

A. STANDARD OF REVIEW.

Appellate Courts apply a deferential standard in reviewing factual findings by a judge. Balducci v. Cige, 240 N.J. 574, 595 (2020); State v. McNeil-Thomas, 238 N.J. 256, 271 (2019). When reviewing a trial court's findings, the Appellate Court is "obliged to accord deference to its credibility determinations and 'feel of the case' based upon its opportunity to see and hear the witnesses." In the Matter of Adoption of a Child by J.D.S. II and C.S., 353 N.J. Super. 378, 394 (App. Div. 2002). However, Appellate Courts can also apply the deferential standard of review to a trial court's fact-finding based on video or documentary evidence. State v. McNeil-Thomas, 238 N.J. 256 at 271. The Supreme Court of New Jersey has noted that "because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare v. Cesare, 154 N.J. 394, 413 (1998). Appellate Courts should "not disturb the factual findings and legal conclusions of the trial judge unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova v. Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

B. THE PLAINTIFF FAILED TO RAISE AN ISSUE OF JUDICIAL BIAS BEFORE THE TRIAL COURT.

Judges must act in a way that "promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Code of Jud. Conduct, r. 2.1; see also In re Reddin, 221 N.J. 221, 227 (2015). "[J]udges must avoid acting in a biased way or in a manner that may be perceived as partial." DeNike v. Cupo, 196 N.J. 502, 514 (2008). To determine if an appearance of impropriety exists, a reviewing Court asks "[w]ould a reasonable, fully informed person have doubts about the judge's impartiality?" Id. at 517; see also Code of Jud. Conduct, cmt. 3 to r. 2.1. Judges must recuse themselves from "proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned," Code of Jud. Conduct, r. 3.17(B), or if "there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so. . . ." R. 1:12-1(g).

"Any party, on motion made to the judge before trial or argument and stating the reasons therefor, may seek that judge's disqualification." R. 1:12-2. "The mere appearance of bias may require disqualification." State v. Marshall, 148 N.J. 89, 279 (1997). However, "**bias is not established by the fact that a litigant is disappointed in a court's ruling on an issue**." Id. at 186 (emphasis added). "**[T]he**

belief that the proceedings were unfair must be objectively reasonable." Id. at 279 (emphasis added).

The Appellate Division is constrained to review orders issued by the Superior Court trial divisions. See R. 2:2-3(a)(1). See also Zamboni v. Stamler, 199 N.J. Super. 378, 383 (App. Div. 1985) (holding an appellate court's jurisdiction not properly invoked to render an advisory opinion or to decide cases in the abstract, without a developed factual basis). Again, bias cannot be inferred from adverse rulings against a party. Matthews v. Deane, 196 N.J. Super. 441, 444-47 (Ch. Div. 1984).

In his appeal, Plaintiff raises the issue of judicial bias, a matter not raised before the trial court. Accordingly, the Appellate Division's jurisdiction has not properly been invoked, and all arguments of prejudice made by Plaintiff should be disregarded as improper.

Notwithstanding the above, no reasonable, fully informed person would have doubts about the trial judge's impartiality in this matter. The trial court reversed itself on Plaintiff's Motion for Reconsideration as reflected in the January 19, 2024 Order. (Pa135). Plaintiff is exercising an equal parenting time schedule with the child. (Pa135). In addressing child support, the trial judge utilized Defendant's highest earnings, reflected in 2023, while utilizing Plaintiff's 2022 earnings. (5T24-7 - 9). The trial judge provided Plaintiff with numerous opportunities to submit additional

financial information to the trial judge. (Pa242 and Pa245). Although bank account and credit card statements, as well as invoices, receipts, and other proofs of plans or payments, would be easily accessible to Plaintiff, and despite numerous opportunities being provided to Plaintiff by the trial court, he failed to provide even the most basic proofs to verify his business expenses. (Pa247 and Da162). None of the commentary by the trial judge signified by Plaintiff demonstrates prejudice. (Pb13-14, Pb18-20).

Furthermore, as fact finder, the trial court is privy to tone and body language. By way of example, during the May 18, 2023 hearing, although represented by counsel, Plaintiff interrupted the trial judge repeatedly. (6T38-24 – 39-6). The trial judge stated in closing remarks:

> Mr. Tucker, I will say to you just, and this is a body language thing and it's a tone of voice thing, please give a lot of thought to the mind set you bring to mediation. If it's in any way confrontational, just getting a vibe from Ms. Weiss, you're not going to have success. Please turn it down a notch. Okay? Just have a calm conversation.

(6T38-24 – 39-6). The trial judge's comments must likewise be viewed with the understanding the trial judge was responding to other indicia not displayed in the transcripts, including communications between the parties submitted with their motion papers.

Separately, "[t]he trial court has broad discretion in the conduct of the trial, including the scope of counsel's summation." Litton Indus., Inc. v. IMO Indus., Inc.,

200 N.J. 372, 392 (2009). "The abuse of discretion standard applies to the trial court's rulings during counsel's summation." Id. at 392-93 (2009). When no objection was made to the comments, the appellate court applies the plain error standard. R. 2:10-2; State v. Santamaria, 236 N.J. 390, 405 (2019); Fertile v. St. Michael's Med. Ctr., 169 N.J. 481, 493 (2001). Note that "a clear and firm jury charge may cure any prejudice created by counsel's improper remarks during opening or closing argument." City of Connell, Cty. of Union v. Benedict Motel Corp., 370 N.J. Super. 372, 398 (App. Div. 2004).

Plaintiff submits there was judicial bias resulting from Defendant's counsel's remarks on the record during various hearings and conferences. (Pb13-23). Firstly, Plaintiff was represented by counsel with the ability to object to and clarify any of Defendant's counsel's remarks on the record. Unlike the above-cited cases, the trial judge was the finder of fact and astutely capable of discerning argument from fact. Furthermore, Plaintiff fails to pinpoint how any remarks made by Defendant's counsel directly impacted the trial court's decisions. (Pb13-23). As noted above, Plaintiff enjoys equal parenting time with the child and prevailed on a Motion for Reconsideration. (Pa135). The trial court provided Plaintiff numerous opportunities to substantiate his proposed income figure. (Pa242 and Pa245). Plaintiff failed to provide even the most basic proof to verify his business expenses. (Pa247 and

Da162). There is no indication of judicial bias resulting from Defendant's counsel's remarks.

C. THE TRIAL COURT DID NOT ERR BY FAILING TO ENFORCE THE NOVEMBER 6, 2024 CONSENT ORDER, AS THIS CONSENT ORDER WAS ENFORCED.

Plaintiff argues the June 3, 2024 Order must be dismissed because the November 6, 2023 Consent Order is a binding contact and under New Jersey caselaw must be enforced. (Pb23). However, the trial court agreed with Plaintiff and found the November 6, 2023 Order is a binding agreement as set forth in the January 19, 2024 Order. (Pa135). Plaintiff fails to otherwise pinpoint a provision in the June 3, 2024 Order which was not enforced. (Pb23-29).

D. THE TRIAL COURT DID NOT ERR BY FAILING TO ENFORCE THE JANUARY 19, 2024 ORAL RULING.

Plaintiff argues the June 3, 2024 Order must be dismissed because the trial court did not enforce the January 19, 2024 oral ruling. (Pb23-29). The trial court did memorialize the January 19, 2024 oral ruling. (Pa135). The trial court did modify its decision with respect the retroactivity of child support which will be addressed below.

E. THE TRIAL COURT DID NOT ERR BY FAILING TO ENFORCE ITS APRIL 9, 2024 ORDER BECAUSE THE APRIL 9, 2024 ORDER IS AN INTERLOCUTORY ORDER AND IT WAS WITHIN THE TRIAL COURT'S DISCRETION TO MODIFY THE APRIL 9, 2024 ORDER.

The Supreme Court has recognized that "the trial court has the inherent power to be exercised in its sound discretion, to review, revise, reconsider and modify its interlocutory orders at any time prior to the entry of final judgment." Lombardi v. Masso, 207 N.J. 517, 534 (2011) (emphasis added) (quoting Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987)); see also R. 4:42-2.

In the instant case, although the trial court preliminarily made child support retroactive to May 11, 2023 (date child support was requested by Defendant) in its January 19, 2024 Order, there were numerous issues reserved including issues pertaining to child support and credits. Accordingly, the January 19, 2024 Order is in interlocutory order. The final order addressing all child support-related issues is the June 3, 2024 Order, and the effective date was based on the commencement of child support set forth in the August 23 , 2023 Consent Order. (Pa274). It was well within the trial court's discretion to revise its interlocutory order with respect to the effective date of child support.

F. THE TRIAL COURT DID NOT ERR IN RENDERING ITS DECISION PLAINTIFF WILL HAVE THANKSGIVING EVERY YEAR AND DIRECTING THANKSGIVING WOULD BE CONSIDERED THE ACTUAL HOLIDAY ONLY.

"Communications made during the course of a mediation are generally privileged and therefore inadmissible in another proceeding. A signed written settlement agreement is one exception to the privilege. Another exception is an

express waiver of the mediation-communication privilege by the parties." Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 245 (2013).

Rule 2:5-4(a) provides that "[t]he record on appeal shall consist of all papers on file in the court or courts or agencies below, with all entries as to matters made on the records of such courts and agencies, the stenographic transcript or statement of the proceedings therein, and all papers filed with or entries made on the records of the appellate court." "It is, of course, clear that in their review the appellate courts will not ordinarily consider evidentiary material which is not in the record below by way of adduced proof, judicially noticeable facts, stipulation, admission or a recorded proffer of excluded evidence." Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 2:5-4(a) (2022).

Although this is not necessarily clear from Plaintiff's brief, it appears Plaintiff is arguing the trial court erred in its determination with respect to Thanksgiving in the April 9, 2024 Order and is basing his position on confidential communications which occurred in mediation and statements made by Defendant's counsel on the record. (Pb24-26). Firstly, there was no express waiver of the mediation-communication privilege, and mere references to mediation during argument is not an express waiver. Secondly, this issue was not raised before the trial court. Although Plaintiff did request a hearing pursuant to Harrington v. Harrington, 281 N.J. Super. 39 (App. Div. 1995), this was with respect to the enforceability of the

November 6, 2023 Consent Order, which expressly reserved Thanksgiving. (Pa045). Plaintiff further relies on commentary on the record by Defendant's counsel confirming Plaintiff had, in the past, exercised Thanksgiving for a full week. (Pb25, 4T43-19 - 20). This commentary on a single, past holiday is not an agreement and was clearly known to the Court at the time the April 9, 2024 Order was entered. Regardless, Defendant's second emergent application filed on November 28, 2023 was filed due to Plaintiff withholding the child during his Thanksgiving time which is the only reason he allegedly had a "full week" as Plaintiff alleges. (Da088). In other words, Plaintiff engaged in bad faith behavior and violating an Order which led to such time not the result of any "agreement".

G. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN CALCULATING CHILD SUPPORT.

"The scope of appellate review of a trial court's fact-finding function is limited." Cesare v. Cesare, 154 N.J. 394, 411 (1998). "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Id. at 413. Moreover, the trial court has substantial discretion when determining child support awards. Gotlib v. Gotlib, 399 N.J. Super. 295, 308 (App. Div. 2008). The award will not be disturbed "unless it is manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice." Id. at 309 (quoting Foust v. Glaser, 340 N.J. Super. 312, 315-16 (App. Div. 2001)) (internal quotation marks omitted). "However, no

special deference is accorded a trial judge's interpretation of the law." Connell v. Diehl, 397 N.J. Super. 477, 491 (App. Div.), certif. denied, 195 N.J. 518 (2008). If the court ignores applicable legal standards, the appellate court will reverse and remand. Gotlib, supra, 399 N.J. Super. at 309.

The harmful error rule is used when a specified error was brought to the trial judge's attention. State v. G.E.P., 243 N.J. 362, 389 (2020); State v. Mohammed, 226 N.J. 71, 86 (2016). The question for the Appellate Division is "whether in all the circumstances there [is] a reasonable doubt as to whether the error denied a fair trial and a fair decision on the merits." State v. G.E.P., 243 N.J. 362, 389 (2020) (alteration in original), (quoting State v. Mohammed, 226 N.J. 71, 86-87, (2016)). "In such cases, the reviewing court asks whether the error is 'clearly capable of producing an unjust result.'" State v. Mohammed, 226 N.J. 71, 87 (2016) (quoting R. 2:10-2). Thus, even though an alleged error was brought to the trial judge's attention, it will not be ground for reversal if it was "harmless error." Willner v. Vertical Reality, Inc., 235 N.J. 65, 79 (2018); State v. J.R., 227 N.J. 393, 417 (2017); State v. Macon, 57 N.J. 325, 338 (1971).

For purposes of the New Jersey Child Support Guidelines, the gross incomes of parties must be utilized. Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-B to R. 5:6A (2023). Under the guidelines, gross income refers to all "earned and unearned income". Pressler & Verniero, Current

N.J. Court Rules, Appendix IX-B to R. 5:6A (2023). Appendix IX-B not only defines sources of income, but also has a section specifically referring to self-employed individuals as follows:

> Income from self-employment or operation of a business.
>
> a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Personal income from the operation of a business includes all income sources listed above and potential cash flow resulting from loans taken from the business.
>
> b. **Income and expenses from self-employment or the operation of a business should be carefully reviewed to determine gross income that is available to the parent to pay a child support obligation. In most cases, this amount will differ from the determination of business income for tax purposes**.
>
> c. Specifically excluded from ordinary and necessary expenses, for the purposes of these guidelines, are expenses allowed by the IRS for:
>
> 1) the accelerated component of depreciation expenses;
> 2) first-year bonus depreciation;
> 3) depreciation on appreciating real estate;
> 4) investment tax credits;
> 5) home offices;
> 6) entertainment;
> 7) travel in excess of the government rate;
> 8) non-automobile travel that exceeds standard rates;
> 9) automobile expenses;
> 10) voluntary contributions to pension plans in excess of 7% of gross income; and
> 11) any other business expenses that the court finds to be inappropriate for determining gross income for child support purposes.

Pressler & Verniero, Current N.J. Court Rules, Appendix IX-B to R. 5:6A at 4 (2023)(Emphasis added).

Furthermore, there are some perquisites of employment that are considered "in kind" income which also be must included as gross income for purposes of the child support calculation as follows:

> In-Kind Income - The fair-market value of goods, services, or benefits received in lieu of wages and in the course of employment shall be included as gross income if they reduce personal living expenses of the recipient regardless of whether they are derived from an employer, self-employment, or the operation of a business. Examples of in-kind goods, services and benefits include vehicles, automobile insurance, free housing, meals, benefits selected under a cafeteria plan, memberships, or vacations. Expense reimbursements are not considered income.

Pressler & Verniero, Current N.J. Court Rules, Appendix IX-B to R. 5:6A at 5 (2023).

Plaintiff posits the trial court committed harmful error by improperly including legitimate business expenses as income when calculating Plaintiff's income for child support purposes. (Pb30). There clearly is no error, let alone a harmful error. Defendant's April 2, 2024 position letter to the trial court detailed deductions on Plaintiff's 2022 tax return which she believed should be included towards Plaintiff's income. (Pa157). More specifically, Plaintiff's gross receipts were $228,752, but his reported gross income after business expenses was $71,245. (Pa076). Even if Plaintiff can deduct these expenses on his tax returns, this is

contemplated by the Appendix and Plaintiff still must show those expenses do not fall under the includable expenses set forth in the Appendix IX-B.

On same date, Plaintiff provided a position letter detailing his position on the parties' incomes, which was merely that his gross reported income ($71,245) should be utilized. (Pa138). The trial court provided a letter on April 18, 2024 requesting further explanation and supporting documentation from Plaintiff with respect to his business expenses. (Pa245). On April 22, 2024, Plaintiff submitted a letter requesting additional time and asserting a forensic account would be necessary to categorize these expenses. No further documentation was provided. Also on April 22, 2024, Defendant submitted a letter explaining a forensic account was not necessary, only proof expenses were actually incurred which should not be difficult if he had actually incurred them. (Pa247). On April 30, 2024, Plaintiff by way of letter provided additional documentation and explanations, but the documentation provided was limited and could not be tied to business. (Da092). Although Plaintiff could easily obtain invoices, bank accounts and credit card statements, none were provided. On May 20, 2024, the trial court submitted a letter setting forth the amount which will also be included in Plaintiff's gross income to which Plaintiff did not provide adequate explanation or proofs to refute. (Pa267).

Consistent with the Appendix, and within the substantial discretion provided to the trial court in determining child support awards, the trial court carefully

reviewed expenses from Plaintiff's self-employment to determine which expenses fell under includable business expenses to determine gross income that is available to Plaintiff to pay a child support obligation. (Pa245 and Pa267). Consistent with the Appendix commentary, this amount differed from the determination of business income for tax purposes. The trial court correctly excluded from ordinary and necessary expenses, for the purposes of the guidelines, expenses allowed by the IRS but gross income for child support purposes based on the lack of proofs provided by Plaintiff. (Pa245, Pa267 and Pa274). Plaintiff had multiple opportunities to provide additional proofs following the entry of the January 19, 2024 Order and did not do so (Pa242 and Pa245). As no evidence was provided to exclude the disputed expenses, the trial court's decision was clearly not contrary to reason or to other evidence.

Finally, Plaintiff posits the trial court held Plaintiff to a higher evidentiary standard. (Pa39-40). This argument does not hold merit. Plaintiff is self-employed whereby Defendant is a W-2 employee. (Pa204). The nature of the parties' respective incomes dictates the proofs necessary to ascertain their incomes for child support purposes, less so than the trial court.

H. THE TRIAL COURT'S HANDLING OF PROCEDURAL MATTERS DID NOT VIOLATE PLAINTIFF'S DUE PROCESS NOR EXACERBATE PREJUDICE AGAINST PLAINTIFF.

Plaintiff posits he did not have adequate notice, citing to Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). (Pb40-43). Defendant requested child support on May 11, 2023, a year before the June 3, 2024 Order was entered. (Da036). Plaintiff actively participated in this litigation, including numerous applications and letters since the May 11, 2023 application was made. All issues addressed by the trial court were issues reserved in the parties' August 25, 2023 Consent Order and the parties' November 6, 2023 Consent Order. (Pa004 and Pa007). Plaintiff's argument he did not have notice holds no merit.

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING PLAINTIFF'S REQUEST FOR COUNSEL FEES AND COSTS.

The Court has the authority to award counsel fees in family action pursuant to R. 4:42-9(a)(1), N.J.S.A. 2A:34-23 and R. 5:3-5. The award of counsel fees and costs rests in the discretion of the Court. Salch v. Salch, 240 N.J. Super. 441, 441 (App. Div. 1990).

An application for counsel fees must be supported by an affidavit of services. R. 4:42-9(b). The affidavit of services must state that the fee is reasonable and support that assertion by providing the information ser forth in R.P.C. 1.5(a):

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and,
(8) whether the fee is fixed or contingent.

In determining the amount of any fee award, the Court should consider, in addition to the information required to be submitted pursuant to R.4:42-9, the factors enumerated in R. 5:3-5:

(1) the financial circumstances of the parties;
(2) the ability of the parties to pay their own fees or to contribute to the fees of the other party;
(3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial;
(4) the extent of the fees incurred by both parties;
(5) any fees previously awarded;
(6) the amount of fees previously paid to counsel by each party;
(7) the results obtained;
(8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and,
(9) any other factor bearing on the fairness of the award.

Additionally, the New Jersey Supreme Court has held that in awarding counsel fees, the court must consider the applicant's financial need; the adverse party's ability to pay; and, the good or bad faith of both parties, the nature and extent of the services rendered, and the reasonableness of the fees. Mani v. Mani, 183 N.J. 70, 94-95 (2005) (citing, Williams v. Williams, 59 N.J. 229, 233 (1971)).

In the context of counsel fee awards, bad faith has been construed to signify that a party acted with a malicious motive, so as to be unfair, and to use the court system improperly to force a concession not otherwise available. Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992).

In the instant case, Plaintiff posits the trial court abused its discretion by not awarding Plaintiff counsel fees and costs payable by Defendant. (Pb43-46). Plaintiff further posits Defendant acted in bad faith. (Pb43-46) Plaintiff specifically remarks that Defendant acted in bad faith by "reneg[ing]" on the December 8, 2023 Consent Order. (Pb43-46).

Plaintiff's request for counsel fees and costs was denied as the trial court specifically "did not find Ms. Weiss to have acted in bad faith in her actions. [The trial court] believe[d] that [Ms. Weiss] believed that she was justified and that she had legitimate risk concerns." (5T6-17 – 7-2). Accordingly, the trial court made and set forth its finding on the record.

CONCLUSION

Defendant seeks to affirm the trial court's April 9, 2024 Order addressing holiday time, and the June 3, 2024 Order setting a child support obligation and arrears obligation payable by Plaintiff to Defendant, reducing funds owed in connection with a loan by Defendant to Plaintiff to a judgment, and directing parenting time exchange times. The trial court carefully considered these issues and gave both parties significant opportunities to be heard on these issues and provide evidentiary support of their respective positions. Defendant's perception the April 9, 2024 Order and the June 3, 2024 Order as adverse rulings is not evidence of judicial bias.

For the reasons set forth herein, Defendant respectfully asks this Court to affirm the trial court's June 3, 2024 Order setting a child support obligation and arrears obligation payable by Plaintiff to Defendant, determining credits and arrears owed, and reducing funds owed to Defendant by Plaintiff to a judgment. Defendant further respectfully asks this Court to affirm the trial court's April 9, 2024 decision setting forth Thanksgiving parenting time and retroactive date for child support.

Respectfully Submitted,
OBERMAYER REBMANN MAXWELL
& HIPPEL, LLP

BY: Rebecca A. Berger /s/
REBECCA A. BERGER, ESQUIRE

Dated: January 10, 2025

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION
DOCKET NO. A-003578-23T01

CHRISTOPHER TUCKER
Plaintiff/Appellant

v.

DANIELLE WEISS
Defendant/Respondent.

CIVIL ACTION

ON APPEAL FROM SUPERIOR COURT, CHANCERY DIVISION-FAMILY GLOUCESTER COUNTY

Hon T. BLANDFORD-BYNOE, J.S.C

Sat below

BRIEF AND APPENDIX FOR APPELLANT CHRISTOPHER TUCKER

REDACTED

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PRELIMINARY STATEMENT

This appeal arises from procedural irregularities, judicial inconsistencies, bias, and inequitable rulings by the trial court, which have significantly harmed Plaintiff's rights and financial stability. The court repeatedly shifted its stance, creating insurmountable obstacles that rendered compliance impossible. Its rulings consistently favored Defendant while ignoring Plaintiff's motions without meaningful consideration. Despite Plaintiff's efforts to comply with shifting court orders, participate in mediation, and maintain a relationship with his child, the trial court demonstrated clear bias. This included allowing Defendant's persistent false allegations and disparaging remarks to go unchecked while denying Plaintiff the opportunity to respond adequately.

Central to this appeal is the trial court's mishandling of several key matters, including the August 24, 2023, and November 6, 2023, Consent Orders, the denial of its January 19, 2024, oral ruling, its mishandling of child support calculations, and its issuance of a judgment on a matter not properly before the court. The trial court abused its authority on December 6, 2023, by invalidating the November 6 Consent Order in favor of Defendant, prompting Plaintiff to file a Motion for Reconsideration on January 5, 2024. During the January 19, 2024, reconsideration hearing, the court acknowledged Defendant's lack of credibility and proved it was the first time it had meaningfully reviewed Plaintiff's submissions. However, this acknowledgment came too late to mitigate the cumulative harm caused by Defendant's misconduct and the court's

enabling actions. At the January 19, 2024, hearing, the court orally granted Plaintiff's motion, releasing him from remaining financial obligations under the August 24, 2023, Consent Order, providing him credits for past payments, and directing him to memorialize all issues addressed during the hearing. Plaintiff complied, submitting the required order on March 27, 2024, after delays caused by waiting for Defendant's review. On April 9, 2024, the court signed this order, affirming its January 19 ruling. However, on the same day, the court inexplicably reversed its position and denied the very same order it had just signed, further abusing its authority. The trial court further erred in its treatment of child support. Despite Plaintiff providing complete financial disclosures, the court relied on Defendant's counsel's misleading statements about the defendant's past earnings and hours she worked despite the significant raise she received in 2022. Defendant's failure to be forthcoming about the hours she works and her admission of fraudulent claims against Plaintiff's business during mediation significantly distorted the financial picture. On June 6, 2024, the court erased the credits previously granted to Plaintiff by the January 19, 2024 oral order and April 9, 2024 written order and instead assigned arrears and inflated child support obligations. The court compounded its overreach by issuing a judgment against Plaintiff on a matter not properly before it, all while denying Plaintiff a meaningful opportunity to contest the calculations or judgment. These actions imposed an undue burden on Plaintiff and negatively affected his other children, contradicting the very principles the system was

created to protect. The trial court's bias is further evidenced by its inconsistent application of mediation privacy rules. Defendant waived her mediation privacy rights by disclosing communications from mediation in her January submissions but later sought to reassert those rights to block Plaintiff from addressing agreements not yet reduced to writing during oral argument at the April 9, 2024, hearing. The court permitted this procedural manipulation. Similarly, during the April 9, 2024, hearing, the court denied Plaintiff's request for his negotiated Thanksgiving vacation time with his child, despite Defendant's counsel confirming on record during the January 19, 2024, hearing that the vacation schedule was Sunday to Sunday. These repeated denials of Plaintiff's rights underscore the court's favoritism toward Defendant and disregard for equitable treatment.

The issues in this case raise serious concerns about judicial impartiality, procedural fairness, and the equitable application of family law principles. Plaintiff respectfully requests that this Court reverse the trial court's June 3, 2024, judgment, dismiss its child support order, restore all credits due to Plaintiff, and reassign the case to a neutral and impartial jurisdiction for further proceedings

PROCEDURAL HISTORY

Defendant filed a Temporary Restraining Order against defendant on March 13, 2023. The matter was heard and dismissed on DV trial on March 30, 2023(1T 4:10-15).[1]

[1] 1T = Transcript from May 18, 2023, hearing

On April 17, 2023, Plaintiff filed Order to Show Cause (OSC) to establish parenting time(4T 5:9-11).[2] OSC was denied without hearing and converted to Motion on April 17, 2023. Defendant filed a late Cross Application on May 11, 2023 (1T 6:22-25). The trial judge heard argument for Applications on May 18, 2023. After oral argument, the judge ordered court-sponsored mediation and set an interim parenting schedule by way of order filed May 18, 2023 (Pa001).[3] Parties attend court-sponsored mediation via zoom with an unsuccessful outcome on July 12, 2023 (4T 12:3-4). Parties come to an agreement to attend private mediation and withdrawal of all pending applications via Consent Order filed August 24, 2023 (Pa004).[4] The parties attended the first mediation session on October 19, 2023, and execute a Consent Order to memorialize the first of three mediation sessions on November 6, 2023 (Pa007). The parties started following the terms of the consent order effective October 20, 2023 (Pa018).

The consent order was not submitted to the court due to two more pending mediation sessions. The parties attended second of three private mediation sessions on November 9, 2023 (Pa020). Defendant filed OSC (Order to Show Cause) seeking suspension of Plaintiffs parenting time on November 14, 2023 (4T 6:9-11), Defendant filed Application to Modify Parenting Time on November 14, 2023 (4T 6:19-22). Plaintiff submits response by letter to Defendants OSC on November 14, 2023(4T 6:11-

[2] 4T = Transcript from January 19, 2024, hearing
[3] Citation to "Pa" refer to the Plaintiff/Appellant's Appendix
[4] There was a procedural error with court dating it August 23, 2023 but it was executed by the parties and submitted to court on August 24, 2024

12). Defendant's OSC is denied without hearing and converted to Regular Application on November 14, 2023(4T 6:12-15). Defendant sent email notifying court she is withdrawing her consent and reverted back to following the May 18, 2023 order on November 14, 2023 (PA106). Plaintiff sent letter to court requesting conference seeking order clarity on November 15, 2023 (4T 6:23-25). Defendant sent email notification she is withdrawing from Mediation and again states she is reverting back to following the May 18, 2023 order on November 15, 2023 (Pa021). Conference between Court and Counsel on November 17, 2023 (2T).[5] Plaintiff Filed Cross Application for Modification of Parenting Time on November 28, 2023 (4T 8:9-20). Defendant filed OSC seeking suspension of Plaintiffs parenting time on November 28, 2023 (4T 8:21-25). Plaintiff submits response by letter to Defendants OSC on November 28, 2023 (4T 9:4-5). Defendant's OSC is denied without hearing and converted to Regular Application on November 28, 2023 (Pa022). Defendant files Certificate of Support of Order to Show Cause on December 4. 2023 (PA22). The court heard the November 28 OSC hearing without proper notice (3T 3:24-25). The court heard arguments for Applications on December 06, 2023. After oral argument, the court granted Defendant's November 28, 2024 OSC request for custody evaluation, discovery, and to invalidate the November 6, 2023 Consent Order and set a new interim custody order with control date of January 19, 2024 by way of order filed December 8, 2023 (Pa013). Plaintiff filed Motion for

[5] 2T = Transcript of November 17, 2023

Reconsideration of the December 8, 2023 order on January 5, 2024 (Pa016). Defendant files response to Plaintiff's Motion for reconsideration on January 15, 2024 (Pa104).

Plaintiff files reply to Defendants response on January 18, 2024 (Pa124). The court granted Plaintiff's Motion for Reconsideration and heard arguments by both parties on January 19, 2024, via Zoom (4T). Court directed Plaintiff's counsel to submit order memorializing all requests decided at the hearing by way of January 22, 2024, order (Pa135). The trial judge heard arguments for final custody matters and started child support proceedings on April 9, 2024. After oral argument, the court ordered support date to be set for September 1, 2023, and finalized custody (5T 10:1-13, 5T). The court signed the memorialized order from January 19, 2024, on April 9, 2024(Pa231). The Court ordered Defendant to amend 2023 tax returns and set income at $75,000 and Plaintiff would be set at a later date via Zoom once support was calculated by way of order on April 09, 2024 (Pa243, 5T 24). The court set Zoom for May 21, 2024 (5T 35:1-4). The court assigned Plaintiff's inflated child support amount, incorrectly set arrears, denied its January 19, 2024 oral order, and assigned a judgment on an issue not properly before the court by way of order filed on June 03, 2024 (Pa274, 5T Pages 14-15, 5T 15:19-21, 6T 7:3-9). Plaintiff filed Notice of Appeal on July 17, 2024 (Pa279).

STATEMENT OF FACTS

Plaintiff, Mr. Tucker ("Plaintiff"), and Defendant, Ms. Weiss ("Defendant"), were in a dating relationship from late 2019 to January 2023 and lived together from early 2022 until

January 2023. In an effort to maintain amicable relations, Plaintiff moved out in January 2023 at Defendant's request. The parties share one child, REDACTED) ("child"). Plaintiff also has two children from a prior marriage: REDACTED) ("daughter") and REDACTED)("son").

The litigation began when Defendant obtained a Temporary Restraining Order (TRO) on March 13, 2023 after her fourth attempt, which included temporary custody of the child and prohibited Plaintiff from exercising parenting time (1T 22:10-25). Defendant sought the TRO after Plaintiff took the child to Target during his parenting time. Following a domestic violence trial on March 30, 2023, the court denied TRO (1T 4:10-15). On April 17, 2023, Plaintiff filed an Order to Show Cause (OSC) seeking to establish parenting time, citing Defendant's restrictive control over his access to the child (1T 4:1-4). Judge Shoemaker denied Plaintiff's OSC and set a regular hearing for May 18, 2023. On May 11, 2023, Defendant filed a late cross-application seeking custody, parenting time, and child support (1T 26:5-9). Judge Shoemaker referred the matter to mediation and issued an interim parenting time order for Plaintiff (PA001).

The parties attended court sponsored mediation on July 12, 2023, with it being unproductive. On August 24, 2023, the parties entered a Consent Order to participate in private mediation, effectively withdrawing all prior applications (Pa004). Following this Consent Order, Defendant did not file a new application for child support. Both parties

adhered to the interim parenting time schedule established by Judge Shoemaker while continuing mediation efforts (3T 5:1-19).[6] The parties executed another Consent Order on November 6, 2023 (Pa007).

On November 14, 2023, Defendant filed an OSC requesting suspension of Plaintiff's parenting time (3T 6:14-16). The next day, Defendant's counsel emailed Plaintiff's counsel stating that she was reverting to May 18, 2023, order and withdrawing from mediation (Pa106). Plaintiff's counsel requested a court conference, which occurred on November 17, 2023 (Pa021, 2T, 3T 7:11-25, 3T 8:2-8). Despite the court's guidance, Defendant refused to comply with the Consent Order, prompting Plaintiff to file a certification on November 28, 2023, requesting the court enforce its terms (2T 13:9-18, Pa128). That same afternoon, shortly after Plaintiff submitted his cross-application, Defendant filed a second OSC seeking suspension of Plaintiff's parenting time and requesting a custody evaluation (Pa022, 3T 3:23-25, 3T 4:1-6). Plaintiff filed a letter in lieu of a brief as a response on November 28, 2023. The same day Judge Kramer, P.J.F.P., denied Defendant's second OSC on the papers, and an order of denial was entered on November 28, 2023 (Pa022).

On December 4, 2023, defendant filed a Certificate of Defendant in Support of Order to Show Cause. On December 6, 2023, a hearing was held to address Defendant's first OSC, Plaintiff's cross-application, and Defendant's reply. Although Defendant's second OSC was not scheduled for that date, the court addressed it during the proceedings (Pa022, 3T 3:23-

[6] 3T = Transcript from December 6, 2023, hearing

25, 3T 4:1-6). The court changed its stance on its November 17, 2023, conference and warned Plaintiff for following its guidance during the December 6, 2023 hearing (2T 13:9-18, 3T 47:2-4). The December 8, 2023, order from the hearing granted Defendant's application for a plenary hearing, approved the request for a custody evaluation, failed to enforce the consent order, and issued a new interim custody order with a control date of January 19, 2024 (Pa022, Pa023, 3T 50:13-23).

On January 5, 2024, Plaintiff filed a Motion for Reconsideration of the December 8, 2023, order (Pa016). Defendant filed a cross-motion on January 15, 2024 (Pa104). Plaintiff replied on January 18, 2024 (Pa124). During oral arguments on January 19, 2024, the court granted Plaintiff's motion for reconsideration along with several other key requests, specifically 14 and 15 of his proposed order and directed Plaintiff's counsel to submit an order memorializing the decisions made (PA102, 4T 64:24-25).

On April 9, 2024, the court heard arguments regarding custody and initiated child support proceedings. During oral arguments, the court established September 1, 2023, as the support start date, contradicting its January 19, 2024, ruling, which had granted Plaintiff's child support request retroactive to May 11, 2023, and removing the support portion of the August consent order by establishing guideline-based support (4T 25:6-10). Despite denying these rulings during oral arguments, the court signed an order on April 9, 2024, also affirming them (Pa231). Additionally, the court finalized custody arrangements, directed Defendant to amend her 2023 tax returns, and set her income at $75,000 with minimal documentation (5T

27:23-25).[7]

Meanwhile, Plaintiff's 2022 income, rather than his lower 2023 income, was used to calculate child support because he filed an extension. Plaintiff's income for 2022 was higher due to his plumbing business operating normally before Defendant's fraudulent claims against his business nearly shut it down in 2023. In contrast, Defendant's 2022 income was paid at a much lower hourly rate until she obtained her full professional licensure in March 2022 and received her subsequent raise to $60/hour (PA168).

The court readily accepted Defendant's inadequate financial documentation and Defendant counsel's efforts to keep focused on her past income before her significant raise. She also tried to reduce the hours Defendant worked by submitting an employer letter, who is a close friend to Defendant, and "New Jersey law" citation stating the max hours Defendant could work was 28 hours (PA166). Defendant's counsel directly contradicts the "law" by making the statement about Defendant regularly booking 34 hours (Pa167). Plaintiff, a REDACTED and self-employed plumber, provided comprehensive financial documentation, including tax returns, W-2s, and various other records. However, Plaintiff's legitimate business expenses were disregarded in the court's calculations and its prior statement of splitting everything down the middle went to the wayside in favor of maxing out all income lines for Plaintiff while accepting Defense counsel's technique of keeping everything focused on the Defendants income pre-license past (4T 66: 11-15).

[7] 5T = Transcript from April 9, 2025, hearing

On April 18, 2024, and May 20, 2024, the court sent emails containing its decisions regarding Plaintiff's finances (Pa245, Pa264). At 7:57 p.m. on May 20, 2024, the court emailed predetermined child support calculations ahead of the hearing scheduled for the next morning (Pa264). These calculations improperly included business-related expenses such as software, vehicles, and equipment, significantly inflating Plaintiff's income. Despite Plaintiff providing evidence to demonstrate the legitimacy of these expenses as business-related, the court erroneously included them in his income. This consistent pattern of last-minute communication deprived Plaintiff of a meaningful opportunity to prepare or present his case effectively.

During the May 21, 2024, hearing, much of the proceedings centered on the court and its staff attempting to correct their own errors (6T Pages 6–20). The court imposed inflated child support calculations on Plaintiff, placed him in arrears contrary to its previous ruling on January 19, 2024, and issued a judgment on a matter that was not properly before the court. Additionally, the court denied Plaintiff's request to stay the child support order and judgment (6T 30:10–16).

The court erroneously calculated Plaintiff's income as $162,473, resulting in $4,182 in arrears and an order requiring Plaintiff to pay $106 per week in child support, plus $44 per week toward arrears. These rulings are inequitable, relying on flawed financial assessments, matters not properly before the court, and the court's clear bias against Plaintiff. Furthermore, the court's refusal to acknowledge its prior rulings and its reliance

on Defendant's incomplete disclosures, while ignoring Plaintiff's legitimate expenses, created significant prejudice against Plaintiff.

LEGAL ARGUMENT
STANDARD OF REVIEW

Our review of a Family Part judge's factual findings is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "Because of the family courts' special jurisdiction and expertise in family matters, [we] should accord deference to family court fact finding." Id. at 413. Thus, we will not "engage in an independent assessment of the evidence as if [we] were the court of first instance." N.J. Div. of Youth & Fam. Servs. v. Z.P.R., 351 N.J. Super. 427, 433 (App. Div. 2002) (alteration in original) (quoting *State v. Locurto,* 157 N.J. 463, 471 (1999)), and will "not disturb the 'factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice. Cesare, 154 N.J. at 412 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

With regard to questions of law, a trial judge's findings "are not entitled to that same degree of deference if they are based upon a misunderstanding of the applicable legal principles." Z.P.R., 351 N.J. Super. at 434 (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

"Deference is appropriately accorded to fact finding; however, the trial judge's legal conclusions, and the application of those conclusions to the facts, are subject to our plenary

review." Ibid. (quoting Reese v. Weis, 430 *N.J. Super*. 552, 568 (App. Div. 2013)). "[Legal conclusions are always reviewed de novo." Id. at 433-34 (citing Manalapan, 140 N.J. at 378)

I. The Combined Effect of Disparaging Remarks by Opposing Counsel and Judicial Bias Harm Plaintiff and Violated Plaintiff's Right to a Fair Hearing

Judicial bias is a fundamental denial of due process, as recognized in State v. Loyal, 164 N.J. 418 (2000). The court's comments during May 18, 2023, hearing reflect a predisposition against Plaintiff, often endorsing Defendant's claims without scrutiny and making dismissive remarks about Plaintiff's position.

Plaintiff is entitled to a fair trial. Although, a party is entitled to a fair trial but not a perfect one.'" *State v. R.B.*, 183 N.J. 308, 333-34 (2005) (quoting *Lutwak v. U.S.*, 344 U.S. 604, 619 (1953)).

The appellate courts have the discretion to address issues of significant public importance that implicate the integrity of the judicial process. Judicial bias, actual or perceived, undermines public confidence in the judiciary. The Code of Judicial Conduct and relevant case law, as cited, affirm the judiciary's obligation to maintain both the reality and appearance of impartiality. If bias is evident from the record or the cumulative effect of the judge's actions raises reasonable doubts, appellate review is warranted to ensure justice and fairness. Any argument that judicial bias was not raised at trial does not preclude appellate review where an appearance of impropriety exists. In State v. Marshall, 148 N.J. 89, 279 (1997), the New Jersey Supreme Court held that appellate courts may consider issues of

judicial bias even if they were not preserved below, recognizing the judiciary's foundational role in ensuring fairness. The argument aligns with the principle that "[n]o litigant should be required to submit to a proceeding before a judge who is not impartial or whose impartiality might reasonably be questioned" (*DeNike v. Cupo,* 196 N.J. at 517). The Plaintiff has demonstrated, through the record, circumstances that would lead a reasonable, fully informed person to question the trial court's impartiality. Examples include the court's allowance of multiple disparaging remarks in violation of RPC 3.2 and 8.4(d), inconsistent rulings, commentary perceived as dismissive, and procedural decisions that may suggest favoritism. The trial court's reversal of its prior rulings does not negate this concern but rather highlights its initial errors, which may themselves contribute to an appearance of impropriety.

The trial court's handling of financial disclosures and parenting time schedules demonstrates a pattern that could reasonably be perceived as prejudicial. While the trial judge provided the Plaintiff with limited opportunities to submit additional financial evidence, the dismissal of these submissions without meaningful consideration reinforces the Plaintiff's stance. The trial judge's reliance on selective financial data, such as using the Defendant's lowest earnings and the Plaintiff's highest prior year earnings, further suggests a lack of even-handedness.

The May 18, 2023, transcript reflects a consistent pattern of judicial comments suggesting bias favoring the Defendant, raising serious concerns about procedural fairness

and impartiality and violating Rule 2.1. The court made remarks that could lead any reasonable person to question the legitimacy of the process and appeared to validate the Defendant's narrative while trivializing the Plaintiff's concerns. For instance, the Judge stated, "It's my perception at the moment that maybe Mr. Tucker needs to adjust more than Ms. Weiss does" (1T 27:7-8), effectively endorsing the Defendant's position without being able to give due consideration of the Plaintiff's arguments.

The court further dismissed Plaintiff's concerns of him not having a chance to reply due to Defendants late filing as inconsequential, commenting in violation of Rule 2.1, 3.6(C) & 3.7, "Now, one thing that would have been preferable certainly...your client may have been, to your way of thinking, prejudiced by the late cross application...Generally speaking, I think good" (1T 26:5-13). This statement minimized the impact of procedural irregularities, undermined the purpose of the entire legal system, and favored the Defendant's late filings. Additionally, the Judge expressed gratitude toward the Defendant, stating, "[t]hank you, Ms. Weiss, for your flexibility in -- in -- in cooperating in that way. It will go a long way towards not having to appear here in the future," despite lacking any corroborative evidence or being able to consider the opposing argument (1T 17:9-11).

Moreover, the court accused Plaintiff of "moving the ball," while ironically doing so themselves at every hearing throughout the case: "But given what Ms. Weiss was faced with and that -- and Mr. Tucker moving the ball..." (1T 27:24-25). These remarks collectively demonstrate a pattern of undermining Plaintiff's position while validating the Defendant's

narrative, ultimately eroding confidence in the court's neutrality and fairness in violations of Rule 2.1, 3.6(C) & 3.7.

The Defendant's counsel consistently made disparaging remarks throughout the case, frequently targeting not only the Plaintiff but also, at times, Plaintiff's attorney and even the court itself. In Krohn v. New Jersey Full Insurance Underwriters Association, 316 N.J. Super. 477 (App. Div. 1998) the appellate court reversed and remanded for a new trial due to the defense counsel's extensive disparaging remarks about the plaintiffs and their attorney during opening and closing statements. The court held that such conduct was prejudicial and compromised the integrity of the trial process. Unlike *Krohn* where it was limited to opening and closing arguments, Plaintiff was subjected to constant remarks throughout the entirety of the case. The following excerpts from the transcripts of December 6, 2023, and January 19, 2024, hearings contain only a small sample of the false and disparaging remarks by Defendant's counsel against Plaintiff in violation of Rule 3:6(B), RPC 3.2, 4.4(a) and 8.4(d). These statements collectively portray Plaintiff in a negative light, lacking substantial evidence, and demonstrate bad faith attempts to undermine his credibility and parental standing:

December 6, 2023 Hearing:

3T 17:7-17: "—in his custody was grabbing his throat and making a choking sound. Which I don't know where that would have come from. My client didn't know where it came from because he's never exhibited that behavior in front of her." Analysis: This statement implies Plaintiff may have caused harm to his

child. It disparages his parenting abilities without evidence and paints a picture of potential abuse.

3T 19:6-11: "In addition to Mr. Tucker's continuing attempts to manipulate and I won't say—well, harass my client and lack of communication during parenting exchanges where he is clearly using this child as a pawn or, as he indicated in one of the recordings, as a weapon." Analysis: Accusing Plaintiff of using his child as a "pawn" or "weapon" is highly inflammatory. Such accusations without corroborating evidence disparage his intentions and character.

3T 19:13-24 "Quite frankly, this is not the first time he's done it. He did it with his other children." Analysis: Referring to alleged behavior with other children (without evidence, knowledge of, or relevance to his other kids) is prejudicial and disparages Plaintiffs character unnecessarily.

3T 20:4-7: "This is not the first time that Mr. Tucker has taken to this sort of action to get what he wants or to control or manipulate somebody else." Analysis: This statement is speculative and attempts to establish a pattern of manipulative behavior, unfairly portraying Plaintiff as controlling and knowingly submitting a motion from his ex-wife, that was not signed by a court.

3T 22:6-10 "My client did not agree for Mr. Tucker...to just abscond with the child." Analysis: The term "abscond" implies criminality or illicit behavior, unfairly characterizing Mr. Tucker's actions.

3T 22:20-25: "Contacted the police...he would not tell them his location but said he was fine." Analysis: Falsely suggesting that Plaintiff was evasive or uncooperative with law enforcement further disparages him, implying he has something to hide.

3T 23:12-18: "We're asking for a risk assessment of Mr. Tucker given his past behavior." Analysis: This statement asserts Plaintiff is a potential risk to his

child without substantive evidence, further damaging his reputation and speaking on issues Defendant and counsel knew nothing about.

3T 35:20-25: "The question why would Mr. Tucker approach my client and ask about choking...is a means of deflection...a means of manipulation." Analysis: This paints Plaintiff's actions as inherently deceptive, questioning his integrity without basis while Defendant's counsel is doing exactly what he is accusing Plaintiff of.

3T 36:2-3: "...Trying to find out what she's doing sexually with partners." Analysis: This baseless and inflammatory accusation suggests improper behavior by Plaintiff, tarnishing his character unnecessarily.

3T 37:4-11:"I don't even think Mr. Tucker knows what he's doing to his son during these interactions." Analysis: This statement undermines Plaintiff's competence as a parent, implying he is unintentionally harming his child.

3T 37:5-8: " I respect Ms. Gitter a lot. I really do. But, I don't know when she became a medical expert..." Analysis: Contrary to their own defense, Defendant's counsel attempted to discredit Plaintiff's counsel while simultaneously assuming the role of the medical expert for counsel's argument (3T 37: 18-24).

3T 40:8-25: "...It shows a pattern of behavior where he is using the children...to get to the other party." Analysis: This statement continues the narrative of manipulation, undermining Plaintiff's parental role.

3T 45:10-12: "My client is fearful that Mr. Tucker is not going to return him." Analysis: This statement unjustly suggests Plaintiff is a threat to the custodial arrangement.

January 19, 2024 Hearing:

4T 34:6-11: "...He didn't respond clearly or advised where he was with Axel to the police department." Analysis: This fabrication continues to depict Plaintiff

as evasive and uncooperative without proof, further disparaging his character. Plaintiff constantly and continually fully cooperated with Law Enforcement.

4T 35:4-9: "My client is not going to continue to be berated and harassed at mediation..." Analysis: This casts Plaintiff as aggressive and unprofessional, undermining his credibility and inability to address due to mediation privacy despite this statement being a continual waiver of privacy.

4T 37:12-22: "...Mr. Tucker absconded with the child for a week." Analysis: Repeating this term reinforces a narrative of wrongdoing, prejudicing the court against Plaintiff despite Defense counsel being told by Plaintiff's counsel on several occasions Plaintiff was going to follow the consent order per court guidance of November 17, 2023, hearing as well as on the record on January 19, 2024, hearing (4T 35: 23-25, 4T 36: 6-11)

4T 51: 2-3: "In addition to the physical—physical violence (indiscernible)."

Analysis: Repeating this term reinforces a narrative of wrongdoing, prejudicing the court against Plaintiff

The statements made by Defendant's counsel frequently rely on speculation and unverified claims. Accusations of abuse, manipulation, and absconding lack evidentiary support and serve only to tarnish Plaintiff's reputation. Terms like "absconding" and allegations of withholding information from law enforcement create an unwarranted narrative of illicit conduct that is both damaging and unjustified. Such conduct violates Rule 3:6(B) and RPC, 3.2, 4.4(a), and 8.4(d).

Defendant's counsel further compounded the issue by raising allegations of prior behavior involving other children—matters that were already tried and dismissed in another court. In State v. Carlucci, 217 N.J. 129 (2014), the Supreme Court quoted Rule 404(b),

which provides that "prior bad act" evidence is generally inadmissible unless proffered for "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident when such matters are relevant to a material issue in dispute." Here, the evidence should never have been introduced, as it does not meet any of these exceptions. Introducing an original complaint without including the dismissed outcome is misleading and prejudicial. Allowing the introduction of these unrelated personal matters during the proceedings violates N.j. R. Evid. 403 & 404, as it unfairly biases the court by focusing on irrelevant and inadmissible issues (3T 32:9–25).

The transcripts from the May 18, 2023, December 6, 2023, and April 9, 2024 hearings show several disparaging statements from the judge against Plaintiff, which reflect an apparent bias and lack of impartiality in the proceedings and violate Rule 3:6(C). Here are some excerpts from the transcripts:

May 18, 2023 Hearing:

1T 27:7-8: Judge: "it's my perception at the moment that maybe Mr. Tucker needs to adjust more than Ms. Weiss does." This statement suggests that the judge is leaning toward blaming Plaintiff for the situation, implying that he is more at fault or in need of adjustment than the other party while Plaintiff was also precluded from submitting his own evidence.

1T 27:24-25: Judge: "But given what Ms. Weiss was faced with and that – and Mr. Tucker moving the ball as these communications are..." Here, the judge's language seems to downplay Plaintiffs actions while emphasizing Ms. Weiss's position. This could suggest a perception of Plaintiff's actions as less significant or responsible for the situation.

1T 28:1-5: Judge: "I don't blame her for feeling the way that she apparently did. And I'm -- I'm -- I'm taking some inferences from texts, which is not always the smartest thing to do because tone is often intended or not intended in texts where

we take it." The judge appears to justify Ms. Weiss's frustration without considering the full context, while acknowledging the possible misinterpretation of text messages. This could indicate a dismissal of Plaintiffs actions or intentions in the matter.

1T 28:5-8: Judge: "But I – I can understand her frustration. We -- she thinks there's an agreement but then it changes and then he shows up and it changes. So that has to change." The judge seems to empathize with the Defendant's position and frustration, suggesting that Plaintiff's actions (such as showing up and causing a change) were the source of the conflict, thus implicitly blaming him. Which also contradicts the court's consistent actions in the handling of this case.

1T 38:24-25, 1T 39:1-6: *Judge: "Mr. -- Mr. Tucker, I will say to you just, and this is a body language thing and it's a tone of voice thing, please give a lot of thought to the mind set you bring to mediation.* The judge again is in constant violation of Rule 3:6(c) with his remarks.

December 6, 2023 Hearing:

3T 47:2-4 Judge: Sir, guidance is guidance. It was not a court order. Okay? That's all I'm going to say about that. Again, the judge only made stern remarks towards Plaintiff while letting Defendant's contempt's go without even a remark indicating the bias the court had towards Plaintiff and the continual favoritism it displayed towards Defendant (Pa031, Pa065, 3T 43:18-25, 3T 73:9-19).

3T 72:17-21 Judge: Okay, and I want to be real clear about this. This does not, sir, give you the authority or does not open the door to you going in and picking the child up from daycare and so fourth just because. Again, the court made remarks only against Plaintiff continually showing its favoritism towards Defendant. This made things nearly impossible for Plaintiff because Defendant was able to operate at will knowing the only person who would be held liable for any situation defendant caused was Plaintiff.

April 9, 2024 Hearing:

5T 8:10-15: Judge: "And I'm going to -- the basis of this decision is that there was no violation of a court order at the time that this consent agreement blew up. So, there was no violation that would cause the Court, at this time, to come through and -- and respond in a punitive fashion." This statement could be interpreted as an attempt to absolve Defendant of responsibility while dismissing any claims against Defendant, even though Plaintiff's position was valid, and Defendant

acknowledged withholding the child from Plaintiff during his court-ordered time. *(3T 25: 24-25, 3T 73:9-13)*

5T 9:20-25: Judge: "As I have read this -- this case, you know, there's both parties seem to be arguing for a calculation dating back, in one case, to January; in another case, dating back to May. I think both parties forget the fact that they both withdrew their applications, in this case, in August." The judge's statement here minimizes Plaintiff's position by suggesting that both parties are at fault and focusing on procedural details rather than the merits of his claims and ignoring its own prior rulings in the matter.

This small sample, among dozens of similar remarks, constitutes plain error, as extensive disparaging comments by counsel can unfairly prejudice the court or jury. See Szczecina v. PV Holding Corp., 414 N.J. Super. 173, 997 A.2d 1079 (App. Div. 2010). In Plaintiff's case, it was evident that these remarks influenced the court. Defense counsel's comments during May 18, 2023, hearing exemplify a pattern of prejudicial commentary, portraying Plaintiff as erratic, controlling, and unfit without evidentiary basis. Statements such as, "Mr. Tucker was forcing the issue and then eventually abruptly goes and takes the child and leaves without telling my client where he's going" (1T 14:7-11) and "That is also concerning behavior. It's controlling behavior, Judge, because if it doesn't happen under his circumstances, under his terms, then -- then it's not going to happen" (1T 19:7-10), painted Plaintiff as unstable and problematic. However, these statements omitted Defendant's belief that she had the right to know the child's whereabouts at all times and that Plaintiff needed her permission to take the child anywhere (1T 7:7-8). These remarks further failed to mention the critical fact that the incident occurred during Plaintiff's parenting time (1T 7:19-23).

This pattern extended to other hearings. For instance, on May 18, 2023, defense counsel stated, "Mr. Tucker continued -- just repeatedly was I won't use the word harassing cause I don't want to make it rise to the level of domestic violence," again portraying Plaintiff negatively without factual support (1T 17:13-15). Similarly, during the November 17, 2023, hearing, defense counsel told the court, "I didn't want to characterize as (indiscernible), but they were physical," subtly suggesting misconduct and undermining Plaintiff's credibility despite a lack of corroborating evidence (2T 8:1-7).

Defendant's counsel also employed procedural tactics designed to undermine Plaintiff, including filing excessive motions, making false statements, and continually changing and adapting arguments to match the court's shifting positions, in violation of RPC 3.2, 4.4(a) and 8.4(d). In Terranova v. Gen. Elec. Pension Tr., 457 N.J. Super. 404, 200 A.3d 412 (App. Div. 2019), the Appellate Division emphasized that judicial estoppel is an equitable doctrine designed to prevent litigants from asserting positions contrary to those previously maintained. Here, Defendant's shifting narrative through the case painted Plaintiff as unstable and improper, influencing the court's perception while making it nearly impossible for Plaintiff to defend against continually evolving allegations (Pa126, Pa128, Pa129). These cumulative actions eroded the fairness of the proceedings and significantly prejudiced Plaintiff's case.

The court's procedural irregularities compounded the issue. For example, during the December 6, 2023, hearing, the court improperly heard Defendant's second Order to Show

Cause (OSC) despite it not being scheduled for that date (Pa023, 3T 3:24-25). This deprived Plaintiff of the opportunity to adequately prepare arguments or present evidence, contributing to a narrative that unfairly portrayed him negatively without an opportunity to refute the allegations. This irregularity granted Defendant an unfair advantage and led directly to an inequitable December 8, 2023, order mandating a plenary hearing, custodial evaluation, and discovery, despite Child Protection and Permanency finding the claims to be unfounded (3T 38:24-25, 3T 39:1-16). These actions resulted in significant financial harm to Plaintiff, with legal fees exceeding $30,000 for January 5, 2024, reconsideration motion, and subsequent filings.

While the court repeatedly suggested that the parties resolve their issues, this approach was inherently one-sided. Defendant was incentivized to maintain her position, knowing the court's bias would shield her from consequences while disproportionately burdening Plaintiff. This bias was further demonstrated during April 9, 2024, hearing, when the court found Defendant's actions justified (5T 6:21-24). In Ali v. Rutgers, 166 N.J. 280, 765 A.2d 714 (2000), the New Jersey Supreme Court emphasized that judicial estoppel is intended to protect the integrity of the judicial process by preventing litigants from "playing fast and loose" with the courts. However, in this case, the court's actions mirrored the same conduct it condoned—multiple filings, refusal to follow orders, and inconsistent positions—arriving at the conclusion that these practices were justified (Pa023, Pa024, Pa025, Pa026, Pa128, Pa130). Another example relates to attorney's fees. During the December 6, 2023, hearing,

Defendant expressed her preparedness to pay for all fees associated with a plenary hearing (3T 23:12-21). However, after Plaintiff filed his Motion for Reconsideration on January 5, 2024, and included a request for attorney's fees, Defendant abruptly claimed she could no longer afford fees. This shift in position is evident in Defendant's Response to Plaintiff's Motion for Reconsideration filed on January 15, 2024 (Pa106).

This case highlights the critical importance of due process and adherence to court rules. Courts must hear only properly scheduled motions in compliance with Rule 1:6-2, limit disparaging remarks to ensure a fair trial consistent with RPC 3.2, 4.4(a), 8.4(d), and Rule 3:6(B), and maintain impartiality throughout proceedings in accordance with Rule 2.1. Deviation from these principles undermines fairness, tilts the balance in favor of one party, and erodes confidence in the judicial process.

The court's allowance of disparaging remarks and procedural irregularities violated Plaintiff's right to a fair trial conducted justly and with procedural regularity by an impartial judge. Plaintiff respectfully requests that the court refer Defendant's counsel to the disciplinary board for professional misconduct, reverse the court's June 3, 2024, order in relation to support and judgement, and reassign the case to a neutral jurisdiction to ensure impartiality and restore fairness to the proceedings.

II The Trial Court Erred by Failing to Enforce the entirety of November 6 2023 Consent Order, Selective Enforcement of All Mediation Agreements, the January 19, 2024 oral ruling, and it's April 9, 2024 Order Resulting in a Denial of Due Process

A dismissal of the June 3, 2024, Order is warranted because the executed Consent Order

is a binding contract under New Jersey caselaw and must be entered and enforced by the Court in its entirety, whether written or oral. Defendant has not denied signing the Consent Order from November 2023 but has merely expressed an unwillingness to comply with its agreed-upon terms. The parties entered into an enforceable written contract consistent with legal requirements. Plaintiff's counsel extended a written offer through the Consent Order, which Defendant, through her counsel, accepted by affixing her signature. This demonstrated a clear meeting of the minds and an intention to be bound by its terms. The enforceability of this contract is further reinforced by the parties' performance consistent with the Consent Order's provisions.

Under the principles articulated in Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992), the agreement constitutes a binding contract. Additionally, as described in Harrington v. Harrington, 281 N.J. Super. 39, 46 (App. Div. 1995), minor details such as exchange times and locations can be addressed later and do not prevent enforcement of an otherwise complete settlement. New Jersey courts emphasize the strong public policy favoring the settlement of litigation (Harrington v. Harrington, 281 N.J. Super. 39, 46 (App. Div. 1995)). Settlement agreements, whether oral or written, are binding contracts that courts are compelled to enforce (Nolan v. Lee Ho, 120 N.J. 465, 472 (1990); Pascarella v. Bruck, 190 N.J. Super. 118, 124 (App. Div. 1983)). A contract arises when the parties agree to essential terms and intend to be bound, as evidenced by offer and acceptance (Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992); Morton v. 4 Orchard Land Trust, 180 N.J. 118,

129-30 (2004)).

The standard for enforcing a settlement mirrors that for summary judgment: a hearing is required only when disputed factual issues cannot be resolved based on competent evidence viewed in favor of the non-movant Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 474-75 (App. Div. 1997). Here, it is undisputed that the terms of the executed Consent Order were implemented, reduced to writing, circulated between attorneys, and signed by both parties. Defendant has not disputed executing the Consent Order but refused to abide by its terms (Pa128). Defendant acknowledged additional unwritten agreements but sought to selectively reassert mediation privacy rights to shield her from unfavorable terms, leaving no justification for the court's failure to uphold the remaining terms.

New Jersey precedent supports enforcing agreements reached through mediation Willingboro Mall, Ltd. v. 240/242 Franklin Ave., L.L.C., 215 N.J. 242, 250 (2013). and courts must honor "fair and definitive arrangements arrived at by mutual consent" (Smith v. Smith, 72 N.J. 350, 358 (1977)). Under N.J.S.A. 2A:23C-4, mediation communications are generally privileged and not admissible in court except under specific circumstances. This privilege can be waived only when all parties expressly agree (N.J.S.A. 2A:23C-5). In this case, it was Defendant who "opened the door" in both a written filing and during oral argument (Pa105, 4T 29:16–21, 4T 34:22–25, 4T 35:4–9). Defendant's counsel explicitly stated on the record that Plaintiff's yearly Thanksgiving negotiated parenting time was "Sunday to Sunday" (4T 43:19–20). At no time did Plaintiff seek to assert his mediation

confidentiality rights but instead also waived them in his filing to ensure the holiday agreement, exchange location, and equal income calculations for child support were preserved on the record (Pa126).

As the court found in *Willingboro Mall, Ltd.*, Defendant, who "completely opened the door; it cannot now find shelter in N.J.S.A. 2A:23C–5(b) and N.J.R.E. 519," by attempting to block unwritten agreements that contradicted her newfound positions on Thanksgiving parenting time, child support income calculations, and credits due in her letter and subsequent oral argument (Pa159, 5T 14:4–9). This selective assertion of mediation privacy is procedurally improper, as it allows Defendant to enforce favorable provisions while avoiding accountability for unfavorable terms. Nevertheless, the Court's April 9, 2024, Order found that Plaintiff's Thanksgiving parenting time was unwarranted and sought to increase child support calculations (5T 5:9-13, 5T 7:10–18).

The inconsistent application of judicial authority violated Plaintiff's due process rights as established in Mathews v. Eldridge, 424 U.S. 319 (1976), which requires consistent and fair procedures in matters affecting fundamental rights. The Court should enforce all aspects of the Consent Orders—both written and oral—because Defendant cannot selectively apply terms in her favor while shielding unfavorable provisions under claims of mediation privacy. Judicial consistency is essential to ensure Plaintiff's rights are upheld and to avoid further harm.

New Jersey courts have enforced less definitive agreements, including oral and

unsigned written agreements. In this case, both parties were represented by counsel, signed the Consent Order, and performed actions consistent with its terms. Before vacating a settlement agreement, courts require clear and convincing evidence to justify setting it aside (Nolan v. Lee Ho, 120 N.J. 465, 472 (1990); Pascarella v. Bruck, 190 N.J. Super. 118, 125 (App. Div. 1983)). Defendant has failed to meet this burden, and her attempt to reassert mediation privacy to unfairly harm Plaintiff is wholly unjustified. When additional mediated agreements are enforced, the child support guidelines indicate Plaintiff's obligation is $31.00 per week for child, based on:

> Plaintiff's 2023 gross REDACTED income of $117 per week; 2. Plaintiff's 2022 business income of $1,370 per week; 3. Defendant's 2023 actual income of $1,380 per week; 4. Plaintiff's prior child support obligation of $393 per week; 5. Plaintiff's credit of $23 per week for child's share of medical, dental, and vision insurance premiums; 6. Wunsch-Deffler adjustments; and 7. Alternating the dependency exemption/tax credit for child annually.

Despite the clear written terms of the November 6, 2023, Consent Order, and the oral agreements not yet reduced to writing from the November 9, 2023, mediation session, the court has been selective in its enforcement. On January 19, 2024, the court orally granted sections 14 and 15 of Plaintiff's proposed order submitted with his Motion for Reconsideration (Pa103, 4T pages 19-25). These sections addressed modifying the informal child support obligation in the August 24, 2023, Consent Order and crediting Plaintiff for direct payments (4T 25:6–10). The court clarified that credits would be retroactive to Defendant's original filing in May 2023 (4T 65:21–25, 4T 66:1–3). Plaintiff began following the new child support agreement made in mediation. However, during the April 9, 2024,

hearing and order, the court again reversed its decision and denied ever making these rulings (5T 14:25–25, 5T 15:1–8).

The order from the January 19, 2024, hearing was drafted by Plaintiff, circulated to Defendant on February 12, 2024, and submitted to the court on March 27, 2024. Defendant had ample time to review it. Nevertheless, the court signed the order on April 9, 2024—the same day it denied its validity (Pa231, 5T 14:24-25, 5T 15:1-21). This inconsistency significantly harmed Plaintiff, as the court subsequently issued a judgment against him for an issue not properly before the court, despite it stating it was not part of the case, effectively punishing him for complying with its January 19, 2024, oral ruling and the memorialized April 9, 2024, order and in violation of Rule 1:6-2(a), 1:6-2(d) and 1:6-3 (6T 25:7–11) (5T 9:5-14).

The court's inconsistent enforcement of its orders, particularly its reversals and denials, undermines Plaintiff's ability to rely on them and frustrates the goal of a fair and timely resolution. Judgement against Plaintiff should be reversed, receive full credit for payments made, his credit for support restored, child support set to the agreed upon amount in mediation, and have his Thanksgiving time restored in accordance with the mediation and Consent Orders, the January 19, 2024, oral order, the memorialized April 9, 2024, order, and relevant case law.

III **There is Harmful error as the judge misapplied the law and abused her discretion when calculating child support by improperly including legitimate business expenses as income, thereby inflating Mr. Tucker's**

income calculation in violation of standard accounting principles and IRS guidelines

A dismissal of the June 3, 2024, Order is warranted because the trial court committed harmful error by miscalculating Plaintiff's income for child support purposes. Harmful error is tested by the standard set forth in Rule 2:10-2, which asks whether the error is "clearly capable of producing an unjust result." R. 2:10-2.

The trial court improperly included legitimate business expenses as income, inflating Plaintiff's income calculation in violation of standard accounting principles, the Child Support Guidelines, and IRS rules. Child support is meant to meet the children's needs and ensure proportional contribution from each parent, regardless of any fractured parental relationships (Pascale v. Pascale, 140 N.J. 583, 591-592 (1995); Ross v. McNasby, 259 N.J. Super. 410, 414 (App. Div. 1992)).

The trial court committed harmful error by improperly including legitimate business expenses as income when calculating Plaintiff's income for child support purposes. This miscalculation inflated his income in violation of standard accounting principles and Child Support and IRS guidelines. The child support guidelines explicitly direct that gross income should be determined based on only monies available to pay the children's expenses. Appendix IX-B states:

> "Income and expenses from self-employment or the operation of a business should be carefully reviewed to determine gross income that is available to the parent to pay a child support obligation.

> In most cases, this amount will differ from the determination of business income for tax purposes." (*Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-B to R. 5:6A, at 2, www.gannlaw.com (2023).*)

This provision recognizes that business income reported for tax purposes often includes deductions for legitimate business expenses that do not constitute disposable income. By failing to exclude such expenses from Plaintiffs gross income, the trial court contravened the guidelines and misrepresented the funds available to him for child support obligations. Child support is intended to benefit children, not to support or penalize either parent, create an undue burden, or bolster a state budget. As the court explained in J.S. v. L.S., 389 N.J. Super. 200, 205 (App. Div. 2006), trial judges have "substantial discretion" in determining child support but must adhere to the guidelines as a rebuttable presumption. Additionally, Appendix IX-A to Rule 5:6A serves as an interpretive tool to provide economic context and ensure child support awards are fair and adequate (*Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A, ¶ 1*)

The guidelines assume that parents contribute to child-rearing expenses in proportion to their relative incomes, based on their combined net income (*Caplan v. Caplan*, 182 N.J. 250, 264 (2005)). By miscalculating Plaintiff's income, the trial court disrupted this proportionality and rendered a flawed decision. The trial judge also erred by failing to thoroughly examine what Plaintiff could reasonably afford and by denying Plaintiff the right to be heard (Pa264, 6T). Instead, the court relied on Defendant's counsel's filings and arguments, including double-dip calculations that added both "self-employment" and "in-

kind" categories as income (Pa164, Pa165, 5T 26:1–9). The court's one-sided scrutiny and inclusion of items as income simply because they exist led to an unjust calculation that inflated Plaintiff's financial responsibility and included money not even available to him as income. Such oversight undermines the equitable determination of child support obligations and violates the guidelines' intent to provide fair outcomes.

Gross receipts are irrelevant for determining available income for child support purposes under Appendix IX-B. The guidelines specify that the court must consider net income after deducting legitimate business expenses, as this reflects actual disposable income. The trial court's reliance on gross receipts or the improper inclusion of expenses without clear justification contradicts established child support guidelines (*Gotlib v. Gotlib*, 399 N.J. Super. 295, 308 (App. Div. 2008)). Appendix IX-B explicitly allows deductions for ordinary and necessary business expenses, aligning with the principle that only disposable income should be used to calculate child support obligations.

Plaintiff's reported expenses align with the definition of legitimate business expenses. On a condensed timeline, Plaintiff submitted explanations and supporting documentation on April 22, 2024, and April 30, 2024 (Pa245). The court did not establish that these expenses were improperly categorized or invalid for determining net income.

Furthermore, Appendix IX-B's "Collecting and Verifying Income Information" (b)(3) states:

> "If no income documentation is available, income may be determined through testimony or imputed as set forth in Appendix IX-A, para. 10," and even provides that

> "[t]he accurate determination of income may be dependent on a combination of these documents and testimony."

Plaintiff, despite providing his complete tax documentation prior to the October 2023 mediation sessions and submitting it to the court with his January 5, 2024, Motion for Reconsideration, was requested to submit additional documentation at the last minute and under a condensed timeline (Pa016, Pa067, Pa245). Plaintiff had to request additional time to research, ensure accuracy, and demonstrate a good faith effort to comply (Pa247). Plaintiff can only assume the court became aware of 45 CFR 303.101 Expedited Processes, which states:

> The State must have and use procedures required under this paragraph in the amounts specified in this paragraph in the cases reviewed for the expedited processes criterion. (1) In IV-D cases needing support orders established, regardless of whether paternity has been established, action to establish support orders must be completed from the date of service of process to the time of disposition within the following timeframes pursuant to Sec. 303.101(b)(2)(i) of this chapter: (i) 75 percent in 6 months; and (ii) 90 percent in 12 months.

The court exceeded the federally mandated timeframes outlined under 45 CFR 303.101(2)(i). The May 11, 2023, filing not resolved, within the required period. The court attempted modification to the August 23, 2023, but ultimately still failed to align with statutory deadlines, undermining the expedited process requirements and violating due process protections. The court's failure to adhere to jurisdictional requirements, statutory timelines, and expedited process standards constitutes a procedural and substantive error. Furthermore, the court violated 45 CFR 303.101(c)(2)&(3), which mandates:

(2) The due process rights of the parties involved must be protected; (3) The parties

must be provided a copy of the voluntary acknowledgment of paternity, paternity determination, and/or support order

These violations alone demand appellate review and corrective action, including dismissal, to ensure compliance with federal law, proper notice, and the equitable treatment of all parties. Pursuant to 28 U.S.C. § 1738B(c)(2), states are required to provide reasonable notice and an opportunity to be heard to all contestants—a right that Plaintiff was never afforded. In this case, Defendant filed a request on May 11, 2023, which the court initially acknowledged but abruptly changed to August 23, 2023. One can assume this shift in timeline was to align with statutory requirements and, despite Plaintiff's repeated requests for compliance, appears to have been an attempt to remain within the statutory timeline and justify the arrears assignment. Nevertheless, under 28 U.S.C. § 1738B, the court failed to meet mandated procedural deadlines, disregarding both federal and state obligations for timely action on child support and custody matters.

In stark contrast, Defendant failed to provide her complete tax documentation until April 2, 2024—just seven days before the proceedings—via a letter from Defendant's counsel. The court then determined Defendant's income within seconds, relying solely on testimony (Pa158, Pa204, 5T 24:7-9). This disparity in treatment, combined with the court's limited timeframe, unfairly prejudiced Plaintiff's ability to substantiate his claims, resulting in an inequitable determination and lends to the consistent punishment trend toward Plaintiff.

The error in this case meets the standard for harmful error under Rule 2:10-2, which asks whether the error is "clearly capable of producing an unjust result." The inclusion of

legitimate business expenses as income, coupled with the trial court's failure to adhere to prior orders, skewed Plaintiff's financial assessment and created an unjust support obligation and judgment, directly impacting his ability to meet the award.

Each parent must contribute equitably to their children's basic needs, irrespective of interpersonal conflicts or custody issues. In Pascale v. Pascale, 140 N.J. 583, 591 (1995), the New Jersey Supreme Court affirmed that "child support awards are independent of custody or visitation disputes." The obligation exists solely to meet the child's needs, not to penalize one parent (*Pascale*, 140 N.J. at 592, citing *Ross v. McNasby*, 259 N.J. Super. 410, 414 (App. Div. 1992)). By improperly inflating Plaintiff's income and failing to adhere to its prior rulings, the trial court unfairly penalized Plaintiff and imposed a burden he cannot realistically fulfill. This excessive obligation is contrary to the principles established in *Pascale* and the Child Support Guidelines.

Plaintiff respectfully opposes the Court's inclusion of certain categories of income and expenses in its income calculations. The Court failed to consider the specific nature of Plaintiff's home service plumbing business, which operates in an industry with one of the highest expenses and lowest profit margins. Unlike professions such as mental health, graphic design, or law, which often involve minimal overhead and limited travel, home service businesses incur abnormally high costs, including vehicles, fuel, parking, equipment, and dispatching software, all of which are mandatory for operations.

The child support guidelines, while comprehensive, do not account for every unique

business model and rely on common-sense practices to ensure fairness. The Court improperly applied the guidelines by failing to deduct legitimate business expenses and instead erroneously adding these amounts to Plaintiff's income simply because they existed. The detailed breakdown of these expenses is as follows:

1. Car/Truck Expenses: $42,767; The Court wrongly included the entirety of Plaintiff's vehicle-related expenses as income without proper justification. These expenses are directly tied to Plaintiff's business operations. The provided payment history for two Nissan vans indicates a total of $13,230 in payments made in 2022. Vans are outfitted in way that no logical person could make an argument they are for personal use.
2. Office Expense: $4,033; the Court included $4,033 for office expenses without properly accounting for the nature of these costs as legitimate business expenses. The Profit and Loss statement, while contested by counsel who makes it clear in her letter that she has very limited knowledge about how business taxes work, reflects operational expenses, and these are not personal in nature. Fully excludable as a legitimate business expense supported by the Profit and Loss statement.
3. Travel Expense: $4,586; Travel expenses are directly related to Plaintiff's' work obligations and were improperly included as income. No evidence contradicts these claims, but the nature of Plaintiff's home service business versus someone operating a stationary business is vastly different and must be adjusted accordingly.
4. Meals Expense: $2,171; The Court's decision to include all meals as income does not consider that only 50% of meal expenses are typically deductible as business expenses under IRS guidelines.
5. Utilities: $2,865; the Court included $2,865 for utilities as income without distinguishing personal versus business usage. Utilities necessary for maintaining a business office is necessary and should be excluded.
6. Dues/Subscriptions: $2,536; the Court improperly included $2,536 in professional dues and subscriptions necessary for Plaintiff's business. These are not personal expenses but are required for professional operations.
7. Stationary/Shipping: $1,856; The Court's inclusion of $1,856 in stationary and shipping expenses fails to acknowledge these costs are operational expenses critical to Plaintiff's business where items such as permits, contracts, and plans are routinely needed to operate and can vastly vary from year-to-year.
8. Insurance: $5,700; Mr. Tucker provided documentation for his insurance costs. The Court proposed including $2,850, which fails to consider the nature of his business-related insurance, and he operates in one of the most expensive insurance categories.

> 9.Vehicles/Machinery/Equipment: $22,754; the Court erroneously included $22,754 in income despite documented payments of $13,230. Additionally, the remaining $9,524 was documented with things such as rental equipment and related to legitimate business operations.
> Employee Benefits: $978; Employee benefits are operational expenses necessary to maintain staff and business functionality. The Court included $978 as income, which is inappropriate.
> 10. Software: $14,655; The inclusion of $14,655 in software expenses as income is inappropriate. Plaintiff's asserts that no competent argument could be made that it could be used for any other use.
> 11. On May 21, 2024, the court misapplied the New Jersey Child Support Guidelines by again going against its own prior rulings and including inappropriate business expenses, such as: Other Business Property: $6,139.00 Software (dispatching software, pricing software, business accounting software etc.): $14,655.00 and Vehicles, Machinery, and Equipment: $9,524.00

These items are legitimate business expenses under tax law and not available for disposable income without reducing operations and should not be included in calculating gross income for child support purposes. Additionally, the court failed to consider the much higher costs of running a home-service-based plumbing business and simply added income because it could. This resulted in an inflated income calculation of $162,473 for Plaintiff, over double his actual earnings of $78,527, leading to excessive child support obligations and puts an undue burden on him.

Contrary to Plaintiff's efforts to provide a complete and transparent financial picture, Defendant concealed the true hours she worked and relied on past years despite the significant pay raise. Defendant's counsel further misrepresented the financial situation with contradictory and misleading statements. On page 10 of her April 2, 2024, letter, counsel stated, "New Jersey law specifically states that full-time for a licensed professional

counselor is a maximum (i.e., the highest number of hours possible) of 28 hours per week" (Pa166, 5T 21:1-4). This statement was clearly made to minimize Defendant's income. However, on page 11 of the same letter, counsel contradicted herself, stating, "Ms. Weiss works as a fee-for-service employee for Artemis wherein she schedules 34 clinical hours per week (way above the maximum full-time hours per N.J.A.C. 13:34-10.2) and explains it is seven (7) hours more than the full-time classification in their office" (Pa167).

This inconsistency raises the question: Is Defendant violating professional regulations by working excessive hours, or is her counsel attempting to misrepresent her income to detract from the true financial picture? Either scenario undermines the credibility of Defendant's financial disclosures. Meanwhile, Plaintiff's finances were subjected to excessive scrutiny and with legitimate business expense deductions disregarded. The Court's selective enforcement of financial disclosure requirements unfairly targeted Plaintiff while permitting Defendant to avoid full transparency and violated his right to equal protection. This disparity prejudiced Plaintiff and contributed to an inequitable financial outcome that failed to account for the true income and obligations of both parties.

Contrary to its January 19, 2024, order, the Court set the child support retroactivity date to September 1, 2023. This decision imposed arrears and a judgment on Plaintiff for an issue not properly before the court in violation of Rule 1:6-2. It was also an issue the court stated it would not be hearing but later changed positions. (5T 9:5-14). Plaintiff's motions to stay the child support provisions and the judgment were denied on May 21, 2024, without

thorough examination of the financial evidence or acknowledgment of the inequities in the income calculation (6T 30:10-16). The judgment was utilized simply to get the court out of a situation the court itself created in violation of Rule 1:6-2 (5T 9:5-14, 5T 15:14-21).

This placed an undue financial burden on Plaintiff, exacerbating the already flawed financial determinations. The Court has misapplied the guidelines by including legitimate business expenses as income without sufficient justification. Properly deducting substantiated expenses would significantly reduce the includable income and align with established guidelines and practices and IRS standards. The court instead utilized two separate and unjust standards for determining income between the parties. Plaintiff respectfully requests the Court reevaluate its determinations, reverse the lower court's decisions and remand to another jurisdiction where he can receive a fair and unbiased review considering this analysis.

IV The Trial Court Improperly Relied on Unsubstantiated Claims to Prejudice the Plaintiff and Fostered Inequity in Child Support Determinations

The trial courts determination in this case, particularly regarding child support, reflect significant procedural and substantive flaws that warrant correction on appeal. New Jersey law mandates that both parents share the cost and responsibility of supporting their children, regardless of their relationship with the children (Pascale v. Pascale, 140 N.J. 583, 591 (1995)). The equitable determination of child support requires complete financial information of both parents (Zazzo v. Zazzo, 245 N.J. Super. 124, 129 (App. Div. 1990),

certif. denied, 126 N.J. 321 (1991)). As emphasized in *Gulya v. Gulya*, this requirement is not mere "window dressing" but is essential to providing the court with "the full financial picture of the parties" (251 N.J. Super. 250, 253 (App. Div. 1991)).

Despite this clear directive, the trial court failed to look at the Defendant's complete financial picture and did not give it the same scrutiny it did towards Plaintiff. By contrast, Plaintiff was subjected to excessive scrutiny, with legitimate business expenses disregarded and exhaustive financial documentation required, creating a glaring inequity (Pa247).

The trial court also improperly accepted Defendant's reduced gross weekly income based on testimony that focused mainly on past significantly lower earnings from Defense Counsel, violating its obligation to clearly state factual findings and correlate them with relevant legal conclusions (Curtis v. Finneran, 83 N.J. 563, 570 (1980)). The court failed to determine the children's individual needs or assess the income, assets, and earning abilities of both parties as required under Jacoby v. Jacoby, 427 N.J. Super. 109, 122 (App. Div. 2012).

Additionally, Defendant understated her ability and failed to account for additional earnings, thereby manipulating the process to inflate the perceived income disparity. This manipulation enabled Defendant to secure an unfair advantage, amplified by the court's failure to demand the same level of financial scrutiny applied to Plaintiff. Such discrepancies undermine the equitable principles outlined in *Zazzo* and *Gulya* and violate N.J.S.A. 2A:34-23, which requires a full and accurate financial assessment. The court initially gave the

impression that its approach would be fair (5T 5:9-13). However, during the same hearing, it set Defendant's income at $75,000 (5T 24:7-9), shifting its sole focus to Plaintiff and disregarding procedural fairness. This approach eliminated any possibility of settlement or cost reduction, as Defendant was assured of receiving everything she sought, leaving Plaintiff as the only party to bear the harm.

The troubling procedural imbalances in this case are further exacerbated by the financial incentives tied to child support enforcement. Under the Social Security Act of 1986, 42 U.S.C. § 655 and federal incentives under DCL 23-14, states receive a large portion of their funding based on the establishment and enforcement of child support orders. Specifically, Under 42 U.S.C. § 658a, the federal government provides incentive payments to states for effective child support enforcement programs. Notably, subsection (b) outlines the incentive payment formula, which is based on a percentage of the state's assignment and collections, adjusted by a performance-based incentive factor. Subsection (d) Collections on child support arrearages. This explains why the plaintiff went from a large credit balance leaving January 19, 2024, hearing to a large deficit at the May 21, 2024, hearing as the state would automatically lose out on 20% of its incentive payment for establishing and collecting arrears. It's also a plausible explanation on why Plaintiff was automatically assigned as an obligor without a hearing or the court having sufficient financial documentation to even make that determination.

By requiring Plaintiff to submit exhaustive financial documentation while allowing Defendant to provide minimal evidence, the court artificially inflated the income disparity, potentially to secure higher federal reimbursements. This financial conflict undermines fairness and transparency and violates the impartiality required of courts (Rogers v. Tennessee Valley Authority, 345 U.S. 537 (1953)).

The trial court's bias against Plaintiff is evident in both its procedural rulings and substantive findings. By relying on prior dismissed allegations, holding Plaintiff to a higher evidentiary standard, and prioritizing procedural outcomes that favor Defendant, the court violated the principles of equity and due process. This case highlights the necessity of judicial impartiality and adherence to established legal standards to ensure fair and transparent outcomes.

V. The Trial Court's Handling of Procedural Matters Violated Due Process and Exacerbated Prejudice Against Plaintiff especially when the Trial Court Erred In Granting a Judgment Where there Was No Motion Before The Court in Violation Of Plaintiff's Right To Due Process And Causing Irreparable Harm.

The trial court's handling of procedural matters in this case not only violated Plaintiff's due process rights but also demonstrated a pattern of inequitable decision-making that caused irreparable harm. Specifically, the court erred by granting a judgment without a proper motion before the court and assigned arrears despite its granting of Plaintiff's request on January 19, 2024 (4T 25:6-10). Rule 1:6-2(a) requires that an "application to the court for an order be made by motion, stating the time, place, grounds, and nature of the relief sought."

This is also in violation of Rule 1:6-2(d); "no motion shall be listed for oral argument unless a party requests oral argument in the moving papers or in timely-filed answering or reply papers, or unless the court directs." These rules safeguard due process by ensuring all parties have notice and an opportunity to be heard.

After Defendant withdrew her cross-application on May 11, 2023, as part of the August 23, 2023 Consent Order, no subsequent motion for child support nor was a motion for any loan ever filed by Defendant (3T 5:1-19). Despite this, the trial court unilaterally initiated a judgment, disregarding Rule 1:6-2(a) and (d). This deprived Plaintiff of the opportunity to contest the order or present evidence and in fact, denied his request to stay (6T 30:7-16).

The trial court proceeded with judgment matters sua sponte without providing Plaintiff the procedural protections guaranteed under Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), which requires meaningful notice and an opportunity to be heard.

The November 06, 2023, Consent Order signed by both parties and the court, the trial court granting of Plaintiffs Reconsideration request in the January 19, 2024, hearing explicitly resolved pending issues, it's also important to note, the August Consent order was entered without prejudice, a term the court selectively used throughout the course of the trial displaying the court knew the words purpose (3T 70:7-14, 3T 72 13:15, 4T 24:13-25). In Mason v. Nabisco Brands, Inc., 233 N.J. Super. 263, 558 A.2d 851 (1989), the court rendered judgment on its own merits, diverging from the precedent set in *Melhame* . In *Melhame*, the court held that a dismissal "without prejudice" signifies that the claim has not been

adjudicated on its merits, allowing a subsequent complaint alleging the same cause of action to proceed without being barred solely due to the prior dismissal. Melhame v. Borough of Demarest, 174 N.J. Super. 28, 30-31 (App. Div. 1980).

The November Consent Order and January 19, 2024, oral order provided a comprehensive framework for custody, parenting time, child support and credit, and joint decision-making, which the parties were adhering to. By granting a judgment without a motion or new application, the court undermined the binding Consent Order, its prior order and rules of court. This created procedural inconsistency and diminished the enforceability of the agreement, prejudicing Plaintiff. Defendant's refusal to abide by the Consent Order while repeatedly filing applications and certifications further strained the process, and while enjoying the benefits of the excessive support she was receiving. This also violates Rule 1:7-4(a) required findings;

> The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right.

The court's willingness to entertain Defendant's non-compliant behavior exacerbated prejudice against Plaintiff and in fact justified it (5T 6:21-24).

On December 6, 2023, while resolved, shows a very important trend where the court heard and granted Defendant's request for a plenary hearing and custodial evaluation, despite the application not being properly noticed or scheduled (Pa023, 3T 3:24-25). This leniency towards Defendant's procedural missteps starkly contrasts with the court's treatment of

Plaintiff's filings, further prejudicing Plaintiff. Although the court granted Plaintiff's motion for reconsideration on January 19, 2024, the subsequent hearing on April 9, 2024 failed to reflect the equitable principles outlined during reconsideration, perpetuating procedural inconsistencies (4T 66:10-15). This decision resulted in financial harm to Plaintiff, who consistently having to keep up with a "moving ball."

The court's actions, including entertaining Defendant's numerous filings without proper procedural adherence, undermined Plaintiff's parenting rights as established in the Consent Order. By allowing Defendant to file excessive certifications and oral applications without consequence against Rule 1:4-8 9(a), the court emboldened Defendant to circumvent procedural safeguards, increasing the financial and emotional toll on Plaintiff.

VI. The Court Abused Its Discretion in Denying Plaintiff's Counsel Fees Request despite Evidence of Defendant's Bad Faith.

The trial court abused its discretion by denying Plaintiff's counsel fees request, despite substantial evidence that Defendant acted in bad faith. This error contravenes established legal principles, including the doctrine of unclean hands and relevant precedent.

The doctrine of unclean hands, firmly rooted in equity, bars relief to a party engaged in wrongdoing concerning the subject matter of the suit. As stated in *A.* Hollander & Son, Inc. v. Imperial Fur Blending Corp., 2 N.J. 235, 246 (1949), a litigant must "come into court with clean hands and ... keep them clean throughout the proceedings." Similarly, Borough of Princeton v. Bd. of Chosen Freeholders of Mercer, *169 N.J.* 135, 158 (2001), affirms that courts should not reward wrongdoers.

Here, Defendant's actions exemplify bad faith and unclean hands. After executing a Consent Order resolving custody and parenting time issues, Defendant reneged, initiating unnecessary litigation that undermined the order. The December 8, 2023, Order granting Defendant's request for a plenary hearing and custody evaluation rewarded this misconduct, imposing significant financial burdens on Plaintiff.

Defendant's bad faith is clear. The November 6, 2023, Consent Order, reached after private mediation, represented a comprehensive resolution. Despite this, Defendant unilaterally withdrew from mediation, filed motions to suspend Plaintiff's parenting time, constantly shifting and backtracking prior filing and statements, and refused to honor the executed Consent Order (Pa128). Her actions constantly resulted in unnecessary litigation, Defendant's behavior, including reneging on the Consent Order to reopen resolved custody issues, constitutes bad faith motion practice. Such tactics go against Rule 1: 4-8 9(a) and align with the misconduct described in Yueh v. Yueh, 329 N.J. Super. 447, 461 (App. Div. 2000), where bad faith justified a fee shift. As held in Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992), the purpose of fee awards in such circumstances is to "protect the innocent party from unnecessary costs and to punish the guilty party." The trial court's December 8, 2023, Order inflicted continued severe financial harm. Plaintiff legal fees increased sharply from the $7,824 before Defendant reneged on the consent order and mediation to over $33,648.70, as a direct result of Defendant's bad faith conduct.[8]

[8] Plaintiff had a different attorney for TRO and May 18, 2024, hearing and the costs do not reflect those amounts

Bad faith motion practice, including disregard of court orders (Pa031, Pa065, 3T 43:18-25, 3T 73:9-19), misuse of motions, misrepresentation, or unnecessarily prolonging litigation, justifies fee awards (*Yueh*, 329 N.J. Super. at 461; *Kozak v. Kozak*, 280 N.J. Super. 272, 279-80 (Ch. Div. 1994); *Borzillo v. Borzillo*, 259 N.J. Super. 286, 294 (Ch. Div. 1992); *Marx v. Marx*, 265 N.J. Super. 418, 429 (Ch. Div. 1993)).

Additionally, Under Rule 4:42-9(a)(1), no fee for legal services shall be allowed in the taxed costs of otherwise, except. . . in a family action, a fee allowance both pendente lite and on final determination may be made pursuant to R. 5:3-5(c). Rule 5:3-5(c) states:

> The Court in its discretion may make an allowance, both pendente lite and on final determination, to be paid by any party to the action, including, if deemed to be just, any party successful in the action, on any claim for divorce, nullity, support, alimony, custody, parenting time, equitable distribution, separation maintenance. . .

A *pendente lite* allowance may include a fee based on an evaluation of prospective services likely to be performed and the respective financial circumstances of the parties. With respect to the amount of the fee award, the Rule continues: In determining the amount of the fee award, the Court should consider, in addition to the information required to be submitted pursuant to R. 4:42-9, the following factors: (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of the fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and

(9) any other factor bearing on the fairness of an award (3T 23:12-21). RPC 1.5(a) states: A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; (8) whether the fee is fixed or contingent. Under RPC 1.5(a) the fee requested herein is reasonable, particularly as the issues presented a unique issue related to support and required research relative to same. It is respectfully submitted that, in the case at bar, an award of counsel fees is appropriate and just given the criteria discussed in the Court Rules as well as the statutory basis. It is further requested that said fees be entered as a support obligation of the Defendant, thereby being non-dischargeable in bankruptcy pursuant to DiGiacomo v. DiGiacomo, 256 N.J. super. 404 (1992). Although the trial court has discretion in awarding fees (*R. 5:3-5(c);* Addesa v. Addesa, 392 N.J. Super. 58, 78 (App. Div. 2007)), such discretion is not unfettered.

CONCLUSION

WHEREFORE, based on the facts as applied to this case and the foregoing legal

arguments, Plaintiff respectfully requests that this Court dismiss the May 21, 2024 and June 3, 2024, child support calculations and judgment of the lower court, enforce the written and oral mediation agreements, and the January 19, 2024, order, including providing full credit for past payments. Plaintiff further requests that this Court reverse the lower court's unjust denial of legal fees, making them immediately due and payable entered as a support obligation of the Defendant, thereby being non-dischargeable in bankruptcy. Plaintiff also seeks reinstatement of his Thanksgiving parenting time from Sunday to Sunday, reassignment of this matter to another jurisdiction to ensure unbiased and equal treatment, any instructions as the Court deems just and appropriate, and an award for the costs of filing this appeal.

Respectfully submitted, this 27 day of January 2025.

CHRISTOPHER TUCKER
(Appellant PRO SE)