

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1308-15T4

ROBERT T. GOLDMAN,

Plaintiff-Respondent,

v.

GAIL H. MAUTNER,

Defendant-Appellant.

Argued November 2, 2017 — Decided December 26, 2017

Before Judges Simonelli, Haas and Rothstadt.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Essex County,
Docket No. FM-07-1478-03.

Eric S. Solotoff argued the cause for
appellant (Fox Rothschild, LLP, attorneys;
Eric S. Solotoff, of counsel and on the
briefs; Robert A. Epstein, on the briefs).

Stephen P. Haller argued the cause for
respondent (Einhorn, Harris, Ascher,
Barbarito & Frost, PC, attorneys; Stephen P.
Haller and Jennie L. Osborne, of counsel on
the brief).

PER CURIAM

This appeal, filed by defendant Gail Mautner, represents the latest in a series of disputes submitted for our review in this almost fifteen-year-old,¹ contentious marital dissolution matter between defendant and plaintiff Robert Goldman. In our last consideration of the matter, we remanded to the trial judge "the issue of counsel fees, costs and expert fees." Goldman v. Mautner, No. A-3617-12 (App. Div. Apr. 13, 2015) (slip op. at 26-27). On remand, the trial judge conducted a hearing and entered an order on October 13, 2015, requiring each party to pay for their own expert fees, allocating the fees of the court appointed mediator, a forensic accountant, and directing plaintiff to pay a portion of defendant's counsel fees.

Plaintiff filed a motion for reconsideration of the October 13 order. On May 26, 2016, the trial judge granted plaintiff's motion. In her order, the judge reallocated the parties' responsibility for the mediator's fees, making defendant responsible for one-half, and directing defendant to pay a portion of plaintiff's counsel fees. The judge set forth her findings of fact and conclusions of law in an oral decision placed on the record on May 25, 2016, which she supplemented on May 26, 2016.

¹ They commenced their divorce proceedings in January 2003.

In her decision, the judge carefully considered each of the nine factors required under Rule 5:3-5(c).² In addition, she followed our instructions on remand by delineating the amount of fees attributable to each party for each phase of the litigation and explained why she equally apportioned the mediator's fees. After she calculated the net amount for each party, the judge ordered them to split the cost of the mediator, cover their own experts' fees, and directed defendant to pay plaintiff \$36,979.08 towards plaintiff's legal fees.

On appeal, defendant raises eight points of error. Those points can be summarized as the trial judge failed to follow our instructions on remand, failed to make the necessary findings as to the parties' relative financial positions, improperly found

² The following factors for consideration are set forth under Rule 5:3-5(c):

- (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 an award.

defendant acted unreasonably during the course of the litigation and relied on that conduct in determining the fee award. In a final point, defendant requests that we exercise original jurisdiction in the matter or remand to a different trial judge. We disagree and affirm.

The award of fees and costs in matrimonial matters is left to the discretion of the trial court; reversal is only appropriate when the trial court has abused its discretion, exceeded its authority, or made a determination that is not supported by the record. See Mani v. Mani, 183 N.J. 70, 94-95 (2005) (citing Williams v. Williams, 59 N.J. 229, 233 (1971)). It "is warranted only when a mistake must have been made because the trial court's factual findings are 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[.]'" Reese v. Weis, 430 N.J. Super. 552, 567 (App. Div. 2013)(alteration in original) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974)).


"New Jersey does not subscribe to a system that 'loser pays.' Statutory provisions, [N.J.S.A.] 2A:34-23, court rules, R. 5:3-5(c), R. 4:42-9(a), and interpretative case law, see, e.g., [Mani, 183 N.J. at 94-95], clearly outline necessary considerations when imposing a counsel fee award." Ricci v. Ricci, 448 N.J. Super.

546, 580 (App. Div. 2017). In exercising its discretion, the trial court must abide by N.J.S.A. 2A:34-23, requiring consideration of "the factors set forth in the court rule on counsel fees, the financial circumstances of the parties, and the good or bad faith of either party." Mani, 183 N.J. at 93-94 (quoting N.J.S.A. 2A:34-23). If the court performs its obligation under the statute, and we conclude there is "satisfactory evidentiary support for the trial court's findings, '[our] task is complete and [we will] not disturb the result, even though [we] . . . might have reached a different conclusion were [we] the trial tribunal.'" Reese, 430 N.J. Super. at 568 (quoting Beck v. Beck, 86 N.J. 480, 496 (1981)).

Applying these guiding principles, we conclude that defendant's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons stated by the trial judge in her comprehensive oral decision.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION