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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1838-15T3

MAXIM WALDBAUM,

Plaintiff-Appellant,

v.

CHRISTINE WALDBAUM,

Defendant-Respondent.

Argued telephonically November 1, 2017 –
Decided December 26, 2017

Before Judges Carroll, Leone, and Mawla.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Essex County,
Docket No. FM-07-2066-01.

Maxim H. Waldbaum, appellant, argued the cause
pro se.

Michelle A. Benedek-Barone argued the cause
for respondent (Laufer, Dalena, Cadicina,
Jensen & Boyd, attorneys; William M. Laufer,
of counsel; Michelle A. Benedek-Barone, on the
brief).

PER CURIAM

Plaintiff appeals from an October 22, 2015 order, entered following a post-judgment plenary hearing, and a December 11, 2015 order denying a motion after the hearing. We affirm the October 22, 2015 order in part, reverse other parts, and remand for further proceedings. We affirm the December 11, 2015 order.

The following facts are taken from the record. Plaintiff Maxim Waldbaum and defendant Christine Waldbaum were married December 10, 1983. At the time, defendant had earned a master's degree in nursing and was employed as a psychiatric nurse. Plaintiff was and continues to be employed as a patent attorney in New York City.

The parties purchased a home in Maplewood in 1986. In 1989, they adopted an infant son and defendant reduced her work hours to care for the child. In 1993, the parties wished to adopt another child, but the biological mother reneged, and the child was returned. As a result, defendant became depressed, resigned from her job, and never regained employment. Defendant was later diagnosed with bipolar disorder. At the time of the plenary hearing, her diagnosis and condition remained the same.

The parties eventually adopted a second son born in 1996. This child suffered from numerous health issues, including schizoaffective disorder, hallucinations, ADHD, and autism.

Plaintiff filed a complaint for divorce in March 2001. The parties entered into a comprehensive property settlement agreement (PSA) and were divorced on June 26, 2002.

Pursuant to the PSA, the parties continued to jointly own the marital residence and were both responsible for its mortgage. The home was to be sold when their youngest child turned twenty-one and the equity would be split between the parties.

Pursuant to the PSA, the parties agreed to refinance the home to increase the mortgage to \$300,000. From the \$120,000 received through the refinance plaintiff received \$75,000 to pay off the parties' outstanding credit card debt. He also received an additional \$8000. Defendant received \$35,000 to pay her counsel and expert fees, and would receive a credit for the mortgage pay down when the house was sold. Defendant was responsible for the monthly mortgage payment. The parties agreed plaintiff would deduct \$1500 per month from his alimony and apply it to the mortgage. Plaintiff was responsible for paying the property taxes and repairs over \$750 for the residence.

The PSA provided plaintiff would pay defendant \$11,500 per month permanent alimony, and \$4000 per month in child support. The PSA stipulated these figures were based on plaintiff's yearly income of \$660,000, and no income for defendant. In addition, the

PSA obligated plaintiff to pay for the children's medical, dental, and prescription insurance, private schools, and college expenses.

Plaintiff married a fellow patent attorney, Yunling Ren, shortly after the divorce in October 2002. The same month, plaintiff and Ren adopted a daughter from China. Ren resided in China with their daughter.

In July 2002, eleven days after the divorce, Ren purchased a cooperative apartment on West 13th Street in New York City for \$831,200, taking a \$650,000 mortgage. Plaintiff certified he provided \$50,000 for the purchase of the property.

In August 2003, Ren purchased a vacation home in Crarysville, New York for \$400,000. Plaintiff certified that Ren made the purchase "solely with her own money."

In 2003, plaintiff approached defendant about refinancing the marital residence and she agreed. At the time, defendant had been diagnosed with stage two breast cancer. She began a course of chemotherapy from January 2004 to May 2004, and then radiation from May 2004 to August 2004, which left her "confused, distracted, fatigue[d], depress[ed] and anxi[ous]." Nonetheless, the refinance occurred in June 2004. Plaintiff took \$120,000 in equity as a mortgage cash out from the house; defendant received \$10,000.

In 2006, plaintiff approached defendant again about refinancing and she agreed. Plaintiff received approximately

\$145,000 to \$165,000 from the refinance; defendant received no money. Thereafter, no equity remained in the residence.

Commencing in 2009, plaintiff unilaterally reduced his alimony and child support payments without either a court order or defendant's agreement. Plaintiff ceased paying the mortgage in 2011, causing the bank to threaten foreclosure. Plaintiff also did not pay numerous home repair bills, submitted by defendant, as required by the PSA.

Defendant filed a motion to enforce plaintiff's obligations, and plaintiff filed a cross-motion to modify his support and mortgage obligations. On August 24, 2011, the motion judge entered an order temporarily reducing plaintiff's support obligation to \$8800 per month, scheduled a plenary hearing, and ordered mediation. Plaintiff did not comply with the order to pay the reduced support, resulting in another enforcement motion by defendant.

On September 29, 2011, a second motion judge entered an order requiring plaintiff to pay arrears and \$5000 to defendant for the counsel fees incurred to enforce plaintiff's obligation. The judge further reduced plaintiff's support obligation to \$5000 per month. The judge determined plaintiff had acted in bad faith by failing to comply with the August 24, 2011 order.

Plaintiff stopped meeting his financial obligations altogether. Further motion practice resulted in the motion judge entering an order on January 23, 2012, reducing plaintiff's monthly support obligation to \$3354.07. Notably, although plaintiff's support obligation was modified, none of the post-judgment orders relieved him of the obligation to pay the mortgage.

A third judge conducted case management conferences and attempted settlement conferences to resolve the matter without necessity of a plenary hearing. The matter did not resolve. On August 30, 2013, the judge ordered plaintiff to pay defendant an additional \$20,000 in counsel fees for the plenary hearing. Plaintiff did not comply.

A case management conference occurred on April 30, 2015, before the fourth judge who would ultimately try the matter. The judge set a trial date of June 2, 2015, and ordered plaintiff to pay the \$25,000 in counsel fees owed to defendant before the commencement of the hearing or the court would "impose appropriate sanctions."

Plaintiff appeared on the first day of trial not having complied with the order to pay counsel fees. Notwithstanding, the trial judge permitted him to participate in the hearing, but entered an order requiring plaintiff appear the next day with the

funds "or suffer the sanctions of incarceration or dismissal of his pleadings with prejudice."

Plaintiff appeared for the second day of trial without the \$25,000. The trial judge held him in contempt pursuant to Rule 1:10-3 and dismissed his pleadings, barring him from participating in the trial, and leaving defendant as the only witness.

Trial occurred over three days in June 2015. The trial judge issued a letter opinion and signed a judgment on October 22, 2015, which plaintiff now appeals.

The judge found defendant's testimony credible and without "material inconsistencies." The judge "observed [defendant's] demeanor when she testified, and she did not hesitate in answering questions, nor did her body language suggest she was lying to the court."

Defendant's testimony recounted the reasons for the initial re-financing of the former marital residence to pay off credit card debt and her expectation that after the divorce she would meet her needs with the support from plaintiff. Defendant asserted plaintiff had not suffered a change in circumstance warranting a modification of his support obligation or the successive re-financing of the former marital residence.

The trial judge also credited defendant's testimony regarding her medical condition and her claim plaintiff took advantage of

her to refinance the property in 2004. The judge stated: "The court believes [defendant's] complaints and symptoms are credible based upon her testimony and medical documentation. While the defendant was in the midst of her serious mental and physical health issues, the plaintiff decided to take advantage of her by way of the 2004 refinance."

Defendant testified plaintiff had purposely dissipated the value of the residence and purposely impoverished himself through excessive spending after the divorce. She testified discovery revealed plaintiff earned \$966,000 in 2006, yet he sought a third re-finance of the former marital residence claiming he had no funds.

Defendant also testified plaintiff deliberately stopped paying the mortgage and paying support to intentionally create a foreclosure. She explained plaintiff's actions were intentional because he was simultaneously spending \$4500 per month for his daughter's private education in China, and filed a case information statement (CIS) certifying to the payment of rent to Ren.

Defendant introduced plaintiff's CISSs in evidence, including the one filed at the time of the divorce in 2001, and three filed during the post-judgment litigation in 2010, 2013, and 2015. Plaintiff's CISSs demonstrated, for the most part, that he met his expenses without a deficit. Plaintiff's 2001 CIS projected

expenses for him alone of \$13,795 per month. His 2010 CIS showed the same budget and a surplus after all expenses were paid of \$9205 per month. His 2013 CIS had a surplus of \$8200 per month. Plaintiff's 2015 CIS revealed net income of \$23,330 and expenses totaling \$26,000.

Defendant's testimony revealed opposite circumstances after the divorce. Her 2011 CIS demonstrated she had no earned income, a \$13,000 per month budget, leaving a \$5000 per month deficiency net of alimony receipts. Defendant's 2014 CIS revealed a total monthly income of \$6230, derived from Social Security Disability for the parties' son, Social Security, alimony and a small nurse's pension. Defendant's budget was \$13,473, leaving a \$7000 per month deficiency. Defendant's 2015 CIS disclosed a total monthly income of \$5152 and a deficit of \$8625 per month. The CIS also revealed a net worth of -\$137,000, and she testified she had re-accumulated credit card debts, which were in collection.

Income-wise, defendant adduced in evidence plaintiff's tax returns for 2005 to 2015. The trial judge found that in 2012, when plaintiff's obligation was reduced to \$3354 per month, plaintiff's tax returns revealed income totaling \$296,905. The trial judge found plaintiff's income was \$290,912 in 2013, and \$285,000 in 2014. Based on documents from plaintiff's employer adduced in evidence, the trial judge found plaintiff made elective

contributions to a 401k plan and profit sharing. The judge concluded "[w]hen you consider that [plaintiff] has various other [perquisites] from his employment and receives \$40,000 per year in social security income, it is not a stretch to state that a conservative estimate of his current income is \$320,000 per year."

Defendant also testified she had incurred over \$200,000 in counsel fees due to plaintiff's excessive litigiousness and desire to drive up her fees. Defendant testified she was unable to pay her counsel fees whereas plaintiff had incurred no fees because he was self-represented.

The trial judge's decision addressed the issue of alimony first. The judge declined to utilize the current alimony statute enacted in September 2014. Instead the judge stated: "[t]he court is using the old alimony statute as that was the statute which was in existence at the time the initial applications were filed before [the motion judge]."

The judge analyzed each statutory factor for alimony under N.J.S.A. 2A:34-23. Specifically, he noted the seventeen-year duration of the marriage. Also, he noted plaintiff was seventy-three years old and defendant was sixty years old at the time of the plenary hearing. Regarding the parties' health, the judge noted that although plaintiff had "some medical problems," he was "an enthusiastic, energetic litigator" and the judge "saw no

physical or mental disabilities which would prevent [him] from continuing to be an effective litigator." Defendant, however, had "a long history of mental illness" and presently suffered from "psycho-motor retardation," which left her "incapable of doing even routine tasks" and was "on numerous medications."

The judge found defendant had no earning capacity other than her pension and Social Security due to her age, medical and psychological condition, and twenty-year absence from the work force. Further, the judge found she had no opportunity for income from selling the marital home, as plaintiff had destroyed her equity in it by repeatedly refinancing. The judge concluded plaintiff had always been the primary breadwinner of the family, and had the capacity to earn \$400,000 a year.

The judge found the parties enjoyed a "high-class [marital] lifestyle" due to plaintiff's successful career. He noted plaintiff's 2001 CIS showed marital expenses of \$20,000 a month.

Regarding defendant's needs, the trial judge found her post-judgment CISs had been "relatively consistent," but the judge cautioned defendant needed to reduce her expenses and stop supporting the parties' eldest emancipated son. The judge noted plaintiff's 2015 CIS showed "a curious and sudden increase" in his expenses to \$26,000 a month, which included rent to his wife, and \$1200 for food. The judge found the CIS "not credible" and "an

attempt to overplay his current expenses to support his allegation that he does not have an ability to pay alimony and child support."

With regard to plaintiff's ability to pay alimony, the judge found it had been reduced, but

it is not as reduced as he claims in his trial brief and legal arguments. He is an accomplished patent attorney and earns substantial income at his present place of employment. From 2005 to 2010 he earned almost \$5 million, and his current wife . . . also earns a substantial income. . . . Although he does have expenses with regard to his new family, there is no reason why he should send \$4,000 a month to [his daughter] for her private education, and pay \$3,500 a month for his New York City apartment, and then claim poverty.

The judge then concluded that although plaintiff had shown changed circumstances,

the reductions will not approach the amount temporarily granted by [the motion judge] in 2012. When [the motion judge] made his ruling in January [] 2012, he stated that the reduction was only temporary, and he based it upon a finding of no income to the defendant. Discovery has shown that the plaintiff has earned substantial sums of money since 2012, and that [the motion judge's] temporary reduction was extremely beneficial to the plaintiff, and detrimental to the defendant.

. . . .

However, the changed circumstances are not so substantial that it will cause this Court to upset alimony and child support formulas in the [PSA]. Whereas defendant wants this Court to determine the alimony

amount on the basis of one third of plaintiff's gross income, this Court sees no reason to deviate from the standard set in the [PSA] of [twenty-one percent] of the plaintiff's gross income. The Court believes that the analysis of the alimony factors set forth above, to the facts set forth in this Opinion as found by the Court still justifies the formula of [twenty-one percent] of the plaintiff's gross income.

[Emphasis added.]

The judge then calculated alimony arrears for 2010-2015, by applying twenty-one percent to plaintiff's gross income each year. This yielded a finding by the judge of no modification of alimony for 2009; a total alimony obligation of \$115,566.67 for 2010; \$63,000 for 2011; \$108,550 for 2012; \$60,000 for 2013; \$63,000 for 2014; and \$47,250 for 2015. Based on the actual alimony payments made by plaintiff the judge calculated the total arrears to be \$240,766.47.¹

The trial judge also addressed defendant's request for counsel fees. He found plaintiff was litigious and motivated by a "scorched earth litigation policy." The judge found plaintiff caused defendant to incur counsel fees by failing to comply with discovery deadlines and court orders. The judge concluded

¹ The judge applied a similar formula to the calculation of child support by mathematically discerning that child support in the PSA was set at seven percent of plaintiff's income. The judge neither utilized the child support guidelines nor applied the statutory factors under N.J.S.A. 2A:34-23 to reach the child support figures.

plaintiff's litigiousness cost him nothing because he was self-represented whereas defendant had to pay counsel.

The trial judge analyzed the factors of Rule 5:3-5(c), and relying on his income calculations and his findings regarding plaintiff's post-divorce lifestyle, concluded plaintiff had a greater ability to pay counsel fees. The judge also concluded plaintiff litigated in bad faith by failing to comply with the court orders issued by all three motion judges for the payment of counsel fees. The trial judge stated: "[P]laintiff will comply with orders if they are to his benefit. Thus he wants the court to enforce . . . [the] temporary order with respect to support payments, but he does not want the court to enforce any prior orders which required him to pay \$25,000 in counsel fees"

The trial judge found that most of defendant's fees were incurred to gain plaintiff's compliance with the PSA. The judge found plaintiff's threat to retire to avoid paying support was an example of his bad faith. The judge also found plaintiff was only partially successful in achieving modification of his support obligation. The judge also noted defendant was not entirely successful either, as she failed to convince the court to award one-third of plaintiff's gross income as support. The judge found some expenses on defendant's CIS inaccurate and overstated. Thus, she bore some responsibility for her fees as well.

As a result, the trial judge awarded defendant \$150,000 in counsel fees, which included the \$25,000 previously ordered. The judge ordered the counsel fee award added to plaintiff's arrears with probation. The judge ordered liens imposed on the New York properties in Ren's name, and required plaintiff to provide discovery regarding the properties for purposes of executing the judgment.

After trial concluded, but before the trial judge issued his decision, plaintiff filed motions, which the judge adjudicated in his opinion. Plaintiff sought to retire and terminate his support obligations, and argued he had met the requirements of N.J.S.A. 2A:34-23(j)(2).

Applying instead N.J.S.A. 2A:34-23(j)(1), the trial judge rejected plaintiff's request to terminate support. The judge found plaintiff had not met the factors for retirement. Specifically, the judge found defendant's health to be worse than plaintiff's, and that she was reliant on the receipt of alimony.

The trial judge found plaintiff's motive for retiring was in bad faith. The judge stated: "The court observed plaintiff's demeanor in these proceedings, and it is clear that he's extremely angry and will do anything in his power to leave defendant and their children destitute[.]" The judge also noted alimony could not be terminated because it was the parties' reasonable

expectation when they entered into the PSA that defendant would receive permanent alimony, regardless of the additional financial responsibilities plaintiff undertook with Ren and their daughter.

The trial judge found plaintiff had the ability to continue paying support, which was demonstrated by the expenses he paid for Ren and their daughter, and the lavish lifestyle they enjoyed together. Thus, the judge denied the motion.

The second post-trial motion involved a reconsideration motion by plaintiff to vacate the entry of default and the judgment entered after the plenary hearing. The trial judge denied the motion because plaintiff failed to advance new information that the judge did not have at the time of trial. Moreover, the judge noted: "The default occurred due to plaintiff's willful conduct and contempt of numerous court orders. Thus, plaintiff has not cured the reason for the default entered against him. As such this court will not vacate the default in this matter."

Plaintiff filed a separate motion that was adjudicated in the December 11, 2015 order, seeking emergent modification of his support obligation on the basis of changed circumstances. This motion was denied by the trial judge as well.

On appeal, plaintiff argues he was denied the constitutional right to due process when the trial judge struck his pleadings, barred him from testifying or adducing evidence, and barred him

from the courtroom. Plaintiff argues the trial judge erred by permitting defendant to testify because she was "mentally incompetent."

Regarding the alimony determination, plaintiff argues the trial judge utilized the wrong statute in making the determination and failed to apply the statutory provisions in addressing his claim to terminate alimony on the basis of retirement. Plaintiff argues the trial judge erred by ordering liens against real estate plaintiff neither owns nor controls and ordering discovery to execute the judgment. Plaintiff asserts the trial judge erred in ordering a warrant for his arrest and setting a \$50,000 release amount to satisfy his arrears.

Plaintiff argues the trial judge's determination he acted in bad faith as a basis to award counsel fees was erroneous. Plaintiff also argues the trial judge erred by refusing to grant plaintiff's motion to recuse the judge. Plaintiff challenges the trial judge's post-hearing decision denying his motion to modify support on the basis of changed circumstances.

I.

We begin with our standard of review. The Supreme Court has stated:

[F]indings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence. Cesare v.

Cesare, 154 N.J. 394, 411-12 (1998). We defer to the credibility determinations made by the trial court because the trial judge "hears the case, sees and observes the witnesses, and hears them testify," affording it "a better perspective than a reviewing court in evaluating the veracity of a witness." Id. at 412 (citing Pascale v. Pascale, 113 N.J. 20, 33 (1988)).

If the trial court's conclusions are supported by the evidence, we are inclined to accept them. Ibid. We do "not disturb the 'factual findings and legal conclusions of the trial judge unless . . . 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.'" Ibid. (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974)). "Only when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark'" should we interfere to "ensure that there is not a denial of justice." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Family Servs. v. G.L., 191 N.J. 596, 605 (2007)).

[Gnall v. Gnall, 222 N.J. 414, 428 (2015).]

"Appellate courts accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare, 154 N.J. 412). However, "[t]his court does not accord the same deference to a trial judge's legal determinations." Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017) (citing Reese v. Weis, 430 N.J. Super. 552, 568 (App.

Div. 2013)). "Rather, all legal issues are reviewed de novo."
Ibid. (citing Reese, 430 N.J. at 568).

II.

Plaintiff argues he was denied due process under the Fourteenth Amendment of the United States Constitution when after his pleadings were stricken he was not given an opportunity to call or cross-examine witnesses. Plaintiff also claims the trial judge erred in excluding him from the courtroom. We disagree with both arguments.

On September 29, 2011, the second motion judge found plaintiff in violation of litigant's rights for failing to comply with the August 24, 2011 order. The September 29, 2011 order required plaintiff to pay \$5000 toward defendant's counsel fees. The motion judge expressly found plaintiff was "proceeding in bad faith" by disregarding prior orders and defendant was unable to pay her counsel fees for the enforcement motion.

Notwithstanding the clear language in both the August and September 2011 orders, plaintiff argues the motion judge later "ordered that no attorney's fees be paid" and that the \$5000 "was never owed." Plaintiff bases this argument on the motion judge's January 23, 2012 order, which stated, "[t]he issue of counsel fees shall be reserved pending further Order of the Court." However, the order also stated, "[a]ny and all prior orders of the Court

shall remain in full force and effect, except as modified herein."

Plaintiff's argument misinterprets the January 23, 2012 order. The order did not undo plaintiff's obligation to satisfy the prior counsel fee award. Rather, it is obvious from the record the motion judge intended the counsel fees incurred resulting in the entry of the January 23, 2012 order were reserved pending further order. The record is devoid of any intent by the motion judge to revisit the \$5000 counsel fee award.

Furthermore, plaintiff asserted the same argument before a third motion judge on August 30, 2013, and the judge informed plaintiff, "[y]ou're misreading [the order]." That motion judge reiterated the reserved counsel fees meant the fees concerning the January 23, 2012 order only. The judge then signed an order dated August 30, 2013, again compelling plaintiff to pay defendant's counsel the outstanding money by September 10, 2013.

The August 30, 2013 order also required plaintiff to pay an additional \$20,000 to defendant "for her counsel's retainer for trial." As the plenary hearing approached, the trial judge signed a case management order dated April 30, 2015, which ordered plaintiff to pay both previously ordered counsel fees prior to the plenary hearing, or the court would impose "appropriate sanctions."

On the first day of trial, the judge entered an order that

required plaintiff to present a check for \$25,000 the next day, or face incarceration, or have his pleadings stricken. When plaintiff failed to produce a check the next day, the judge entered default against him and dismissed his pleadings. The judge found plaintiff had the ability to pay the fees, but had acted in bad faith and "chose[] to put the money elsewhere." Also, although plaintiff claims the trial judge excluded him from the courtroom, the record reveals he was permitted to remain, but not participate at trial.

The United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. "Article I, paragraph 1 of the New Jersey Constitution does not enumerate the right to due process, but protects against injustice and, to that extent, protects 'values like those encompassed by the principle[] of due process.'" Doe v. Poritz, 142 N.J. 1, 99 (1995) (quoting Greenberg v. Kimmelman, 99 N.J. 552, 568 (1985)).

Therefore, "[a]t a minimum, due process requires that a party in a judicial hearing receive 'notice defining the issues and an adequate opportunity to prepare and respond.'" J.D. v. M.D.F., 207 N.J. 458, 478 (2011). Due process includes the right to present witnesses and cross-examine those presented by the opposition. Peterson v. Peterson, 374 N.J. Super. 116, 125 (App.

Div. 2005); Cardell, Inc. v. Piscatelli, 277 N.J. Super. 149, 155 (App. Div. 1994).

Rule 4:37-2(a) provides if a plaintiff fails "to comply with . . . any order of court, the court in its discretion may on defendant's motion dismiss an action or any claim against the defendant." When plaintiff refused to obey the court orders and pay defendant counsel fees, the court did not dismiss plaintiff's claim for a permanent reduction in his support payments, but instead adjudicated his claim considering the evidence he had adduced while imposing the lesser sanction of forbidding plaintiff from introducing further evidence or further examining defendant. The court then granted plaintiff's motion for a reduction, albeit not as great a reduction as plaintiff sought.

In adopting this lesser sanction, the court's action was analogous to the sanctions imposed for default under Rule 4:43-2, where the court considers the claim in a proof hearing, but can exclude or limit the defaulting party's participation. A trial judge has discretion as to whether and to what extent the defaulting party may participate in the proceedings. Pressler & Verniero, Current N.J. Court Rules, cmt. 2.2.3 on R. 4:43-2 (2017).

Furthermore, trial judges have ultimate control over the proceedings in the courtroom and "shall exercise reasonable control over the mode and order of interrogating witnesses and

presenting evidence." N.J.R.E. 611(a). Trial judges have wide discretion over control of the courtroom itself. N.J. Div. of Youth & Family Servs. v. J.Y., 352 N.J. Super. 245, 264 (App. Div. 2002). Additionally, "[t]here is no doubt at all of the right of a trial judge, as an exercise of discretion, to impose sanctions for violation of the rules or failure to obey the orders of the court[.]" Kohn's Bakery, Inc. v. Terracciano, 147 N.J. Super. 582, 584-85 (App. Div. 1977).

Generally, Rule 1:10-3 is "a civil proceeding to coerce the defendant into compliance with the court's order." Pasqua v. Council, 186 N.J. 127, 140 (2006) (quoting Essex Cty. Welfare Bd. v. Perkins, 133 N.J. Super. 189, 195 (App. Div. 1975)). We review a trial judge's enforcement of litigant's rights under an abuse of discretion standard. Barr v. Barr, 418 N.J. Super. 18, 46 (App. Div. 2011).

Plaintiff's claim he was deprived of due process lacks merit. Plaintiff was provided notice of his obligation to pay the court ordered counsel fees through no less than four written orders entered by three different judges. Plaintiff was also provided written and oral notice he would be subject to sanctions if he refused to comply with the court's orders to pay counsel fees.

Furthermore, we reject the argument plaintiff did not have to pay the court ordered counsel fees because they were a reserved

issue pending conclusion of the trial. The third motion judge explained to plaintiff that his obligation to pay the \$25,000 counsel fees was separate from the fees reserved for trial.

Plaintiff received notice of his obligation to pay counsel fees and clear instruction how to meet his obligation in order to avoid a sanction. The record demonstrated he had the ability to pay the court ordered counsel fees. The trial judge did not abuse his discretion or violate due process by barring plaintiff from participating in the hearing.

III.

Plaintiff argues the trial judge erred in "allowing a heavily medicated mentally ill defendant to testify on plaintiff's financial documents about which she had no qualification [and] no understanding or knowledge," which led the court to make an erroneous determination. We disagree.

As we noted above, plaintiff was permitted to participate in the first full day of trial. As the movant, he was permitted to call the first witness. Plaintiff, a seasoned litigator, called defendant as his first witness. He questioned her for an entire day, neither inquiring about any medications she was taking nor about her mental health. Moreover, plaintiff hoped to convince the trial judge defendant did not require alimony because she could work. In his opening statement, plaintiff argued, "We have

the problem of defendant saying she's mentally incapacitated. What she will present to your honor in whatever she says is self-serving. There are no documented records that confirm [sic] she cannot work."

"A party who consents to, acquiesces in, or encourages an error cannot use that error as the basis for an objection on appeal." Spedick v. Murphy, 266 N.J. Super. 573, 593 (App. Div. 1993). Pursuant to N.J.R.E. 601,

[e]very person is competent to be a witness unless (a) the judge finds that the proposed witness is incapable of expression concerning the matter so as to be understood by the judge . . . or (b) the proposed witness is incapable of understanding the duty of a witness to tell the truth, or (c) except as otherwise provided by these rules or by law.

Whether a witness is competent to testify is a matter within the trial judge's discretion. State v. G.C., 188 N.J. 118, 132 (2006).

We reject plaintiff's argument defendant was an incompetent witness. Plaintiff cannot call defendant as his witness, question her for a full day, and then assert she was incapable of providing testimony. Likewise, he cannot argue she is capable of work and then argue on appeal she was unable to even provide testimony.

Aside from plaintiff's faulty logic, the record does not support his argument. Defendant's testimony did not hide the fact that while undergoing chemotherapy and radiation in 2004, she was

often confused and was "mentally ill at the time." She acknowledged her bi-polar diagnosis and that she was often depressed and anxious. However, there was no indication that these conditions rendered defendant incompetent to testify.

Indeed, defendant offered two full days of testimony. The trial judge made detailed findings regarding her credibility:

The court found [defendant] to be a likable witness, who testified credibl[y] in this matter. Although she runs on at length with her answers, and did not directly answer some questions, she is a likable individual, which is consistent with her personality trait to be a "pleaser." She was affable, feisty, and sassy, but showed that she does have some emotional instabilities. Nevertheless, she is a real person, not a phony, and her testimony had a ring of truth. . . . She did not hesitate when answering questions, and was not caught in material inconsistencies. I observed her demeanor when she testified, and she did not hesitate in answering questions, nor did her body language suggest she was lying to the court. For these reasons, the court found her to be a credible witness.

Our review of the record supports these findings. Plaintiff does not point to objective evidence in the record to the contrary. For these reasons, we reject plaintiff's argument the trial judge erred in accepting defendant's testimony.

Plaintiff also argues the trial judge should not have accepted defendant's testimony because she lacked the requisite knowledge to testify, especially as to facts pertaining to plaintiff.

Plaintiff argues defendant should not have been permitted to testify as to his finances, tax returns, retirement plan, or his CISOs. He claims defendant's testimony about his lifestyle and her claim he had hidden assets in foreign countries was speculation. We disagree.

N.J.R.E. 602 states "a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of that witness."

The record demonstrates the trial judge relied on defendant's testimony regarding matters relating to herself and her financial circumstances. The trial judge's findings regarding plaintiff were derived from objective evidence he had filed with the court or furnished in discovery and then made available to the court in five trial binders, namely, his CISOs with their attachments, tax returns, and other financial data. These documents did not require defendant's testimony in order to be authenticated. See N.J.R.E. 903 (stating "[t]he testimony of a subscribing witness is not necessary to authenticate a writing unless required by the law of the jurisdiction whose law governs the validity of the writing").

Moreover, defendant had personal knowledge of the items plaintiff had purchased for the parties' children to explain to

the trial judge the plaintiff's extravagant lifestyle. Defendant's testimony was limited to topics within her personal knowledge and review of evidence plaintiff had provided. For these reasons, we decline to invalidate the result based on plaintiff's challenges to defendant's competency or knowledge to testify.

IV.

Regarding the alimony determination, plaintiff argues the judge erred because he applied the version of the alimony statute as it existed prior to its amendment on September 14, 2014. Plaintiff argues this resulted in the court determining alimony based upon a "fictitious [twenty-one percent] figure." Plaintiff also asserts the trial judge incorrectly applied the factors of N.J.S.A. 2A:34-23(j)(2) in addressing his request to terminate alimony on the grounds of retirement. Plaintiff argues the trial judge improperly denied his post-hearing motion to terminate alimony based on changed circumstances.

In a review of an alimony award, we defer to the trial judge's findings. Overbay v. Overbay, 376 N.J. Super. 99, 106 (App. Div. 2005). We will not overturn an alimony award unless we find

the trial court clearly abused its discretion or failed to consider all of the controlling legal principles, or we must otherwise be satisfied that the findings were mistaken or that the determination could not reasonably

have been reached on sufficient credible evidence present in the record after considering all of the proofs as a whole.

[Gonzalez-Posse v. Ricciardulli, 410 N.J. Super. 340, 354 (App. Div. 2009).]

However, "[f]ailure to consider all of the controlling legal principles requires a remand." Ibid. (alteration in original) (quoting Boardman v. Boardman, 314 N.J. Super. 340, 345 (App. Div. 1998)). "An alimony award that lacks consideration of the factors set forth in N.J.S.A. 2A:34-23(b) is inadequate[.]" Crews v. Crews, 164 N.J. 11, 26 (2000).

Courts may award alimony "as the circumstances of the parties and the nature of the case shall render fit, reasonable and just[.]" N.J.S.A. 2A:34-23. Specifically, "[c]ourts have the equitable power to establish alimony and support orders in connection with a pending matrimonial action, or after a judgment of divorce or maintenance, and to revise such orders as circumstances may require." Crews, 164 N.J. at 24.

"Although '[c]ourts must consider the duration of the marriage' when fixing alimony, 'the length of the marriage and the proper amount or duration of alimony do not correlate in any mathematical formula.'" Gnall v. Gnall, 432 N.J. Super. 129, 152 (App. Div. 2013) (alteration in original) (quoting Lynn v. Lynn, 91 N.J. 510, 517-18 (1982)), rev'd on other grounds, 222 N.J. 414

(2015). Rather, the standard of living during the marriage serves as the "touchstone" for alimony. Crews, 164 N.J. at 16. Whenever possible, the alimony award should be set at an amount that will "enable each party to live a lifestyle 'reasonably comparable' to the marital standard of living." Id. at 26 (citing N.J.S.A. 2A:34-23(b)(4)).

A.

We first address plaintiff's claim the trial judge should have applied the alimony statute in effect at the time the judge made his decision. As we noted above, the judge utilized the statute as it existed when plaintiff made his motion to modify support and then applied the current version of the statute to address plaintiff's post-hearing motion to terminate alimony on the basis of retirement.

The trial judge's failure to utilize the current statute was error. In the post-judgment context, we stated that the current statute does not apply where "the post-judgment order became final before the statutory amendment's effective date[.]" Spangenberg v. Kolakowski, 442 N.J. Super. 529, 539 (App. Div. 2015). Here, because the trial judge's alimony determination came well after the September 10, 2014 effective date, the current version of the statute should have been applied.

The amendments to the statute altered the core factors trial

judges should consider in fashioning an alimony award. The determination here did not comport with the statutory requirement the trial judge "shall consider . . . [all of the] factors" in N.J.S.A. 2A:34-23(b).

The final alimony determination set alimony payable at twenty-one percent of plaintiff's gross income based on a "formula" in the PSA, yet no such formula exists in the PSA. Moreover, by setting alimony using a formula the alimony became untethered from the marital lifestyle and defendant's needs. This is evident by the substantial fluctuations of the alimony amounts calculated by the trial judge for the years 2009 to 2015, which yielded a monthly alimony of: \$11,500, \$9631, \$5250, \$9046, \$5000, \$5250, and \$3938, respectively. These sums bear no reasonable correlation to the evidence adduced regarding the marital lifestyle or needs.

Had the Legislature intended alimony be calculated through use of a formula there would be no need for the requirement to address the statutory factors. Indeed, the Legislature declined to adopt a formulaic approach to the calculation of alimony. See Assemb. 845, 216th Leg., 2014 Sess. (N.J. 2014) (declining to enact legislation computing the duration of alimony based upon a set percentage lesser than the duration of the marriage). Therefore, it was incumbent on the trial judge to make the necessary statutory findings regarding the alimony amount without

resort to a formula. For these reasons, we reverse and remand the computation of alimony for the trial court to make findings under N.J.S.A. 2A:34-23(b) in its current form on the record below.

B.

Plaintiff argues the trial judge erred in denying his request to terminate alimony based upon his desire to retire. We agree, but for different reasons.

After the conclusion of the plenary hearing, plaintiff filed a motion to terminate all alimony and child support upon his "prospective [sic] and actual retirement." Plaintiff argued the trial judge should apply N.J.S.A. 2A:34-23(j)(1). He stated he would be turning seventy-three years of age in three months, and that he was entitled to the statutory rebuttable presumption that alimony would terminate at the age sixty-seven. Plaintiff outlined the general decline in his practice and his poor health condition as the reasons for the motion.

Incorporating the evidence from trial and referring to plaintiff's claims in the motion, the judge analyzed the claim under N.J.S.A. 2A:34-23(j)(2). The judge found defendant was in worse health than plaintiff and plaintiff had not provided any medical proof to support his claim that he was incapable of working. The judge observed that during the plenary hearing, plaintiff showed "no signs of weakness" and found plaintiff was

"healthy enough to prepare five trial binders, [a] trial brief, an opening statement, effectively examine his witness, the defendant, and at the same time remaining [sic] employed [with his law firm]."

The trial judge determined plaintiff's motive for retiring was "entirely in bad faith," and driven by his desire to avoid his financial responsibilities under the PSA. The judge concluded the motion was "an attempt to intimidate defendant and force her to incur even more counsel fees that she could not afford to pay." During the plenary hearing, the judge observed plaintiff to be "extremely angry" and concluded that he "will do anything in his power to leave defendant and their children destitute[.]"

The trial judge concluded that under the PSA, the "reasonable expectations" of the parties were that defendant would receive permanent alimony and plaintiff had the ability to maintain support payments, as he spent \$8000 a month on Ren and his daughter, and continued to spend "on vacations, clothes, [and] expensive restaurants." For these reasons, the judge denied plaintiff's retirement application.

We reject plaintiff's argument that N.J.S.A. 2A:34-23(j)(1) applies. As we recently stated:

Unlike other amended provisions of N.J.S.A. 2A:34-23, subsection (j) distinguishes alimony orders executed prior to the

amendment's effective date and those executed afterwards. See N.J.S.A. 2A:34-23(j)(1), (3). Therefore, this unambiguous legislative directive governs a court's examination of alimony modification requests arising when an obligor retires, depending on the original date alimony is awarded.

Subsection (j)(3) applies "[w]hen a retirement application is filed in cases in which there is an existing final alimony order or enforceable written agreement established prior to the effective date of this act. . . ." N.J.S.A. 2A:34-23(j)(3).

[Landers v. Landers, 444 N.J. Super. 315, 323 (App. Div. 2016) (emphasis in original).]

However, the trial judge also erred by applying N.J.S.A. 2A:34-23(j)(2). As we stated in Landers, this section addresses

circumstances when an obligor "seeks to retire prior to attaining the full retirement age as defined in" the statute. N.J.S.A. 2A:34-23(j)(2). "Full retirement age" means "the age at which a person is eligible to receive full retirement for full retirement benefits under section [2]16 of the federal Social Security Act (42 U.S.C.[A.] § 416)." N.J.S.A. 2A:34-23. A person is eligible to receive full retirement benefits when he or she is sixty-six years old, "after December 31, 2004, and before January 1, 2017" 42 U.S.C.A. § 416(I)(1)(C).

[Ibid. at 322.]

The trial judge applied the wrong statutory analysis. Because the PSA was in place prior to 2014, the trial judge should have applied N.J.S.A. 2A:34-23(j)(3). Therefore, we reverse and remand this issue for adjudication under the correct statute.

C.

Plaintiff argues the trial judge erred by refusing to grant a hearing on his motion to reduce alimony based on changed circumstances, filed six days after the order from the plenary hearing was signed. We disagree.

On October 28, 2015, plaintiff filed a motion seeking an emergent hearing because he claimed he had suffered changed circumstances since the plenary hearing ended. Specifically, plaintiff asserted his law firm advised him that as of November 1, 2015, his monthly draw would be reduced from \$20,000 to \$7000. He certified that he did not generate enough income to support the \$20,000 draw, and he did not expect his business prospects to improve and end the drop in pay. He also claimed he tried to "change his employment" once he was notified, but his "legal recruiter" made it "very clear" that there was "no different employment for [plaintiff's] skills in [New York City]." To support his claim, plaintiff submitted a letter dated October 22, 2015, from a partner at his law firm, whose complete text read: "This confirms yesterday's conversation in which you were advised that effective November 1, 2015, your draw will be \$7000 per month."

In an order dated December 11, 2015, the trial judge denied plaintiff's request for a hearing. The judge found the application

did not meet the standards for emergent relief under Crowe v. DeGioia, 90 N.J. 126 (1980), and that plaintiff did not make a prima facie case of changed circumstances.

Alimony awards can be "revised and altered by the court from time to time as circumstances may require." N.J.S.A. 2A:34-23. Alimony defines "only the present obligations of the former spouses" and the "duties are always subject to review and modification on a showing of 'changed circumstances.'" Lepis, 83 N.J. at 146. The party seeking modification has the burden of demonstrating a change in circumstances warranting relief from alimony obligations. Id. at 157; Innes, 117 N.J. at 504.

N.J.S.A. 2A:34-23(k) sets forth the factors for consideration and conditions for modification of alimony for non-self-employed individuals. It states: "The court shall determine the application based upon all of the enumerated factors, however, no application shall be filed until a party . . . has not been able to . . . attain employment at prior income levels . . . for a period of 90 days."

Plaintiff filed his modification motion the day after he was advised that his draw would be reduced and before the reduction occurred. He did not await the requisite ninety days required by the statute before filing his motion. Thus, plaintiff's motion was premature and could properly be dismissed without prejudice.

We modify the order to dismiss the motion without prejudice, and express no opinion on its merits. Thus modified, the December 11, 2015 order is affirmed.

V.

Plaintiff argues the trial judge erred in finding that he engaged in bad faith when he awarded defendant counsel fees for the plenary hearing. We disagree.

N.J.S.A. 2A:34-23 provides: "The court may order one party to pay a retainer on behalf of the other for expert and legal services when the respective financial circumstances of the parties make the award reasonable and just." Rule 5:3-5(c) lists nine factors the court must consider in making an award of counsel fees in a family action. Essentially,

in awarding counsel fees, the court must consider whether the party requesting the fees is in financial need; whether the party against whom the fees are sought has the ability to pay; the good or bad faith of either party in pursuing or defending the action; the nature and extent of the services rendered; and the reasonableness of the fees.

[Mani v. Mani, 183 N.J. 70, 94-95 (2005).]

Even when there is not a financial disparity between the parties, "where a party acts in bad faith the purpose of a counsel fee award is to protect the innocent party from unnecessary costs and to punish the guilty party." Welch v. Welch, 401 N.J. Super. 438,

448 (Ch. Div. 2008) (citing Yueh v. Yueh, 329 N.J. Super. 447, 461 (App. Div. 2000)).

Fees in family actions are normally awarded to permit parties with unequal financial positions to litigate (in good faith) on an equal footing. With the addition of bad faith as a consideration, it is also apparent that fees may be used to prevent a maliciously motivated party from inflicting economic damage on an opposing party by forcing expenditures for counsel fees. This purpose has a dual character since it sanctions a maliciously motivated position and indemnifies the "innocent" party from economic harm.

[J.E.V. v. K.V., 426 N.J. Super. 475, 493 (App. Div. 2012) (citation omitted) (quoting Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992)).]

An award "of counsel fees is discretionary, and will not be reversed except upon a showing of an abuse of discretion." Barr, 418 N.J. Super. at 46. The award here was not an abuse of discretion.

The trial judge addressed all of the factors of Rule 5:3-5(c). Regarding the issue of bad faith, the judge found that plaintiff had been "litigious" and that his "'scorched earth' litigation policy and failure to comply with the discovery deadlines and prior Court Orders . . . resulted in extensive attorney fee cost to the defendant." The trial judge concluded plaintiff was "very smart and calculating in this matter" and did

not have legal expenses. However, defendant needed to employ counsel incurring approximately \$250,000. The judge reviewed defendant's attorney bills and found the services to be "reasonable and necessary," and noted that defendant's counsel did not bill her on many occasions, which further demonstrated the reasonableness of the billing.

The judge specifically found plaintiff had engaged in bad faith "on numerous occasions." He had been noncompliant with "almost every order" issued by four different judges. He still had not paid the \$25,000 counsel fees previously ordered, and many of defendant's fees were incurred in an attempt to gain plaintiff's compliance with his obligations under the PSA.

In the end, the judge ordered plaintiff to be responsible for \$150,000 of defendant's legal fees, which included the previously assessed \$25,000. Having reviewed the record, we see no reason to disagree with the trial judge's findings, including that plaintiff litigated this matter in bad faith. The trial judge's award does not fully compensate plaintiff for the substantial counsel fees she incurred in this matter. The award of a portion of her fees was not an abuse of discretion. For these reasons, the counsel fee award is affirmed.

VI.

Plaintiff argues the trial judge erred in placing liens on

the real estate in Ren's name and ordering plaintiff to borrow against the properties in which he has no ownership interest or control. Plaintiff claims the judge erred in requiring discovery regarding the properties for purposes of executing the counsel fee judgment.

N.J.S.A. 2A:34-23 authorizes the court to impose a trust, sequester a party's personal estate including real estate, as well as impose other security devices to assure compliance with its orders.

Generally, courts are authorized to impose a constructive trust "wherever specific restitution in equity is appropriate on the facts." Dan B. Dobbs, Remedies § 4.3 at 246 (1973). Such a trust is designed to "prevent unjust enrichment and force a restitution to the plaintiff of something that in equity and good conscience [does] not belong to the defendant." Id. at 241.

. . . .

"If the property has been sold the trust attaches to its proceeds in the hands of the defendant, or to other property purchased by defendant into which the original property or its proceeds can be traced." George Gleason Bogert & George Taylor Bogert, The Law of Trusts and Trustees § 471, at 4-5 (2d ed. 1978) (footnotes omitted).

[Flanigan v. Munson, 175 N.J. 597, 608 (2003).]

The trial judge possessed broad discretion to enforce the judgment. Rule 4:59-1(f) permits a judgment creditor to engage

in discovery in aid of the judgment or execution of it, and provides "[t]he court may make any appropriate order in aid of execution." See also R. 5:5-1(d) (permitting discovery broadly in Family Part matters as of right with leave of court).

Thus, there is no doubt the trial judge had the authority to impose liens as a form of constructive trust if plaintiff had an ownership interest in a property. However, the judge's decision lacks findings regarding plaintiff's ownership interest in the properties upon which the liens were imposed to enable us to address whether it was appropriate to do so. For these reasons, we affirm the judge's granting of discovery for purposes of determining the extent of plaintiff's ownership in the properties to execute the judgment. We reverse the trial judge's imposition of liens on the real estate in Ren's name pending the outcome of the judgment related discovery.

VII.

Plaintiff argues the trial judge exhibited substantial prejudice against him and erred in denying his recusal motion. We disagree.

Rule 1:12-2 states: "Any party, on motion made to the judge before trial or argument and stating the reasons therefor, may seek that judge's disqualification." The motion must be made to the judge whose disqualification is sought. State v. McCabe, 201

N.J. 34, 45 (2010). We have determined:

A trial judge not only has the right but, moreover, has the obligation to recuse himself on his own motion if he is satisfied that there is good cause for believing that his not doing so "might preclude a fair and unbiased hearing and judgment, or . . . might reasonably lead counsel or the parties to believe so."

[State v. Utsch, 184 N.J. Super. 575, 581 (App. Div. 1982) (quoting R. 1:12-1(f)²).]

However, a judge is not required to recuse on a mere suggestion that he or she is disqualified to sit. Clawans v. Schakat, 49 N.J. Super. 415, 420 (App. Div. 1958). Indeed, it is improper for the judge to recuse himself unless the alleged ground for recusal "is known by him to exist or is shown by proof to be true in fact." Ibid. Recusal rests in the sound discretion of the trial judge, because the trial judge is in as good a position as anyone to evaluate a claim that an action has the appearance of impropriety. Jadlowski v. Owens-Corning Fiberglas Corp., 283 N.J. Super. 199, 221 (App. Div. 1995).

Plaintiff sought the trial judge's recusal on the first day of trial, claiming the judge had pre-judged the case by stating plaintiff had made himself poor. The judge denied the motion, and stated:

I don't think that I have prejudged this case at all. Whether you could have paid \$25,000

² Now Rule 1:12-1(g).

between the time of the orders and to the time the orders were originally entered in today that doesn't prejudge what I'm going to do with regard to anything pertaining to an application with respect to lowering alimony or lowering child support or any of the issues in this case.

Our review of the record confirms plaintiff exhibited difficult behavior in court and engaged in combative exchanges with the trial judge. The decision leading plaintiff to seek the trial judge's recusal emanated from the judge's enforcement of two orders requiring plaintiff to pay counsel fees. Plaintiff was in contempt of those orders and offered a defense the trial judge had already considered and rejected. The trial judge's enforcement of the counsel fee orders was based on the evidence in the record, not a bias against plaintiff. "Bias cannot be inferred from adverse rulings against a party." Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008). For these reasons, we reject plaintiff's argument and affirm the trial judge's decision denying recusal.

VIII.

Finally, plaintiff argues the trial judge erred in ordering an arrest warrant be issued for non-payment of child support. Plaintiff also challenges the \$50,000 release amount set by the judge.

In an order dated December 11, 2015, entered as a result of

post-judgment motions filed by the parties, the judge ordered the warrant and set the release amount, stating plaintiff had made "the same or similar arguments as to his inability to pay" and had "substantial assets to cover his obligations" as stated in the court's September 2015 opinion and October 2015 order.

On appeal, plaintiff argues that the orders have no legal or factual support as no ability-to-pay hearing was held. We disagree.

First, plaintiff has not appealed the child support award. Therefore, the trial judge's calculations of child support and spousal support arrears remain unchallenged. The trial judge set arrears at \$79,896.18. Therefore, it was reasonable for the judge to set a \$50,000 release figure.

Secondly, the trial judge made clear findings regarding plaintiff's ability to pay in the written opinion resulting from the plenary hearing. Therefore, to require the court to hold another ability-to-pay hearing only a few months after the issue had been adjudicated would be a redundant exercise. For these reasons, we affirm the trial judge's order issuing the warrant and setting the release amount.

Affirmed in part. Reversed and remanded in part. We do not retain jurisdiction.

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

