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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-2800-13T1

M.A.¹,

Plaintiff-Respondent,

v.

A.I.,

Defendant-Appellant.

Argued January 26, 2017 – Decided April 4, 2017

Before Judges Hoffman, O'Connor and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Union County,
Docket No. FM-20-0973-09.

A.I., appellant, argued the cause pro se.

M.A., respondent, argued the cause pro se.

PER CURIAM

Defendant A.I. appeals from a November 14, 2013 final judgment
of divorce, a February 4, 2014 denial of his motion for

¹ We use initials in this opinion to be consistent with our prior
appellate decision in order to protect the identities of the
parties' children.

reconsideration, and a February 6, 2014 amended judgment of divorce. We affirm substantially for the reasons expressed in the thorough written opinion of Judge Thomas J. Walsh, but add the following.

Plaintiff, M.A., and defendant were married in Romania in 1989. The couple had a son and a daughter. Plaintiff filed a complaint for divorce on January 7, 2009, citing irreconcilable differences. Thereafter, the court bifurcated the custody and parenting time claims from the financial ones. As the present appeal deals solely with the financial portion of the divorce action, we need not address facts pertaining to the custody dispute in this opinion.²

Plaintiff is a neurologist who opened her own medical practice. During the marriage, defendant earned a master's degree in computer science and a Ph.D. in mathematics. He is a tenured professor and owns an internet technology consulting business.

The parties had a nineteen-year marriage and prior to the divorce, lived in a four-bedroom, three-bathroom house. After the divorce was filed, plaintiff reduced her hours at her medical practice to spend more time with her children. She eventually

² The custody dispute was discussed in M.A. v. A.I., No. A-4021-11 (App. Div. Dec. 15, 2014).

lost patients due to her lack of availability. As the litigation continued, plaintiff's once prosperous medical practice declined.

At the time of trial, the house was sold and plaintiff lived in a two-bedroom apartment with her children. Defendant sought alimony, arguing alimony should be calculated based on plaintiff's salary prior to filing for divorce. Defendant did not provide the court with specific information as to his true income and expenses, and the trial judge found him to be less than credible.

The court imputed income to plaintiff and defendant, based on Bureau of Labor Statistics Wage Guidelines, and awarded defendant permanent alimony in the amount of \$15,000 per year; however, no payments were due until defendant satisfied his obligation to pay a portion of plaintiff's attorney's fees.

The court ordered defendant to pay \$188 per week in child support to plaintiff. Unpaid prior child support in the amount of \$18,000 was credited against defendant's obligations.

Plaintiff's legal fees approximated \$797,278; \$520,000 of the fees were for the custody portion of the litigation. A significant portion of those fees were incurred from enforcing various custody orders against defendant and for compelling defendant to comply with other court orders. Defendant owed \$117,712 to two different attorneys. The court found defendant acted in bad faith and caused the protracted litigation in the custody phase. As a result, the

court held that defendant was responsible for \$370,000 of plaintiff's legal fees, plus interest, for the custody phase of the divorce litigation and all of the expert fees.

Addressing equitable distribution, the court considered the factors in N.J.S.A. 2A:34-23.1 to divide the marital assets. Both parties agreed plaintiff's medical practice was subject to distribution. Plaintiff's financial expert valued the medical practice at the time of the filing of the complaint and again four years later. The court accepted his testimony as credible.

The court determined plaintiff would be able to resume a regular work schedule once again as the children would soon be leaving the home. He accepted plaintiff's expert's valuation of the medical practice at the time the complaint was filed, held defendant's expert was not accredited in valuation practice, and determined defendant's expert could not criticize plaintiff's expert's calculations. The court awarded defendant thirty-percent of the value of the practice as of the date the complaint was filed, as the practice was small, plaintiff performed the services, and she engendered the goodwill associated with the practice.

In September 2010, the marital residence was sold at a loss. Plaintiff contributed approximately \$86,000, which she acquired by liquidating her retirement assets. Plaintiff had to pay taxes on the \$86,000 because defendant refused to file a joint tax

return. Ultimately, plaintiff paid \$46,000 in taxes, and defendant was required to pay one-half. Defendant did not pay, so the court awarded plaintiff a tax credit of \$23,000 for the sale of the family home. In January 2011, the couple's apartment in Romania was sold; all of the proceeds were used on litigation expenses except for a nominal amount of \$350. The court awarded each party one-half of \$350.

In May 2012, the couple's vacation home in Romania was sold for \$149,200. Defendant resisted the sale. Plaintiff's godparents gifted the land on which the house was located to plaintiff, and sold the house at a discounted price because it was subject to a life estate. The buyer later sold the home to plaintiff's parents. Plaintiff was not involved in her parents' purchase, and her parents did not discuss their decision to purchase it with her.

The court rejected defendant's theory the transaction was a "straw sale." Because most of the money had already been spent on counsel fees, the court split the remaining money from the sale, \$6309.50, equally between the parties.

Plaintiff had liquidated an IRA account in order to sell the marital residence. At the time of trial, her account only contained sixty-eight cents. Plaintiff also had a TIAA-CREF account with a balance of approximately \$32,000 as of January 2009, but plaintiff withdrew \$3292 to pay for counsel fees. At

trial, plaintiff testified she had a balance of approximately \$35,000.

Plaintiff testified defendant also had a TIAA-CREF account with over \$300,000. The court ordered the TIAA-CREF pensions be equalized as of the date of the complaint. In addition, defendant was required to liquidate amounts from his pension totaling \$2959.13, which were held in escrow by plaintiff's counsel.

At the time of trial, defendant possessed three cars, while plaintiff had one. Neither party testified as to the value of the cars; therefore, the court adopted the middle value between the disputed amounts for each car and awarded defendant a credit of \$8224.

The court found plaintiff had a credit card debt of \$48,506 as of the date of the complaint, whereas defendant had a credit card debt of \$16,696. Neither party offered any proof to overcome the presumption the debt was marital debt; thus, the court held plaintiff was entitled to a credit for \$15,905.

The court entered a final judgment of divorce on November 14, 2013. Defendant moved for reconsideration, and on February 4, 2014, the court denied the motion. On February 6, 2014, the court signed an amended judgment of divorce clarifying the amount credited to each party and the total amount defendant was required to pay plaintiff. Specifically, the court found defendant owed

plaintiff \$308,340, whereas plaintiff owed defendant \$43,596. After applying various amounts held in escrow for defendant's obligations to plaintiff, the court found the sum defendant owed plaintiff was \$264,804. This appeal followed.

On appeal, defendant argues the court erred when computing permanent alimony. He argues the court should have imputed more income to plaintiff per year and awarded him higher alimony, as well as retroactive alimony of \$80,000 per year from 2011 to present and an additional \$160,000 in punitive retroactive alimony for plaintiff's allegedly fraudulent actions during 2009 and 2010. We disagree.

A trial court's alimony rulings are discretionary, and we will not overturn such an award unless we find "the court abused its discretion, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." Gordon v. Rozenwald, 380 N.J. Super. 55, 76 (App. Div. 2005) (citing Tash v. Tash, 353 N.J. Super. 94, 99 (App. Div. 2002)). We defer to a trial judge's findings if supported by substantial credible evidence in the record. Cox v. Cox, 335 N.J. Super. 465, 473 (App. Div. 2000) (citing Reid v. Reid, 310 N.J. Super. 12, 22 (App. Div.), certif. denied, 154 N.J. 608 (1998)).

The trial court analyzed the relevant statutory requirements under N.J.S.A. 2A:34-23(b), when it computed defendant's alimony.

The court imputed income to the parties recognizing the imputed income to plaintiff was greater than her current earnings but less than her past earnings. The amount imputed to defendant was the mean salary for a postsecondary math professor in the geographic area. The trial judge found defendant's testimony strained credibility as he admitted to making more money than he disclosed on his case information sheet.

Although the trial court found defendant's conduct negatively affected plaintiff's ability to earn income, the court did not punish defendant for his poor conduct when it computed his alimony. See Mani v. Mani, 183 N.J. 70, 88 (2005) (holding where marital fault has negatively affected the economic status of the parties, fault may be considered in the calculation of alimony). Alimony is neither a reward nor a punishment. Id. at 80. Here, the court imputed a reasonable amount of mean income to both parties while taking into account the parties' geographic location. Because we find the trial court did not abuse its discretion, fail to consider applicable legal principles, or make findings unsupported by the record, we reject defendant's contention.

We reject defendant's various challenges to the distribution of plaintiff's medical practice including: (1) plaintiff intentionally reduced her work hours, against her counsel's advice; (2) the judge erred in rejecting his relying on his

discredited expert's opinion; and (3) plaintiff's expert fudged the opinion in his report. Defendant provides no support in law or fact for these arguments. Ultimately, defendant's basis for his arguments stems from his unhappiness with the ruling. "More than a feeling of dissatisfaction is needed to fuel an appeal." Perkins v. Perkins, 159 N.J. Super. 243, 248 (App. Div. 1978).

Defendant also argues the trial court erred by finding he was responsible for the guardian ad litem, therapy, and expert fees, as his behavior during the divorce litigation was not "bad faith." Defendant contends plaintiff's higher income necessitates she pay all of the amounts due. We disagree.

The award of costs and fees in matrimonial cases rests in the trial court's discretion. Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990) (citing R. 4:42-9). We will not alter a trial court's discretionary ruling unless the court abused its discretion, failed to consider applicable legal principles, or made findings unsupported by the record. Gordon, supra, 380 N.J. Super. at 76. The record demonstrates the judge's findings are well supported.

The court found defendant responsible for the custody expert fees because of defendant's campaign of parental alienation. The trial judge relied both upon a prior judge's determination of defendant's bad faith and his own finding defendant provided less

than credible testimony during the financial trial, noting defendant "took pains to avoid agreeing to simple points" during his testimony. We accord deference to the trial court's credibility determinations based upon the judge's opportunity to observe and hear the witnesses. Cesare v. Cesare, 154 N.J. 394, 412 (1998). The trial judge's observations coupled with the Family Part's generation of over forty orders throughout the case supports the court's finding defendant acted in bad faith throughout the litigation. The trial court did not abuse its discretion in allocating fees and payments between the parties.

Defendant argues plaintiff should be responsible for her legal fees, as well as a portion of defendant's legal fees from the financial portion of the litigation. Rule 4:42-9 allows the family court to make fee allowances in accordance with Rule 5:3-5(c). Rule 5:3-5(c) allows the court to award attorney's fees in family matters, regardless of the prevailing party.³

³ In accordance with Rule 5:3-5(c), a trial court considers various factors when making a decision to grant counsel fees:

- (1) the financial circumstances of the parties;
- (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party;
- (3) the reasonableness and good faith of the positions advanced by the parties;
- (4) the extent of the fees incurred by both parties;
- (5) any fees previously awarded;
- (6) the amount of fees previously

Our review of the record confirms the court considered the financial circumstances of the parties when it imputed income to both parties by examining the parties' W-2 tax documents and case information statements. The court also evaluated the parties' ability to make money as time passed and the children matured.

Moreover, the record supports the court's determination defendant, rather than plaintiff, acted in bad faith. The trial court did not abuse its discretion in awarding legal fees to plaintiff. We find defendant's additional arguments relating to legal fees to be without merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Turning to equitable distribution, we review the trial court's distribution of marital assets for an abuse of discretion. A trial court has "broad discretionary authority to equitably distribute marital property." Sauro v. Sauro, 425 N.J. Super. 555, 572 (App. Div.), certif. denied, 213 N.J. 389 (2013). We determine only "whether the trial court mistakenly exercised its broad authority to divide the parties' property or whether the result reached was bottomed on a misconception of law or findings

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.

of fact that are contrary to the evidence." Genovese v. Genovese, 392 N.J. Super. 215, 223 (App. Div. 2007) (citations omitted).

Defendant contends the home was sold without an appraisal; however, defendant offered no appraisals, expert testimony, or admissible evidence as to the value of the home. As to defendant's argument he was forced to sell the home against his will, we note the trial court has discretion "to order the sale of marital assets and the utilization of the proceeds in a manner as 'the case shall render fit, reasonable, and just.'" Randazzo v. Randazzo, 184 N.J. 101, 113 (2005) (quoting N.J.S.A. 2A:34-23). We see no reason to disturb the trial court's findings.

Defendant argues plaintiff's attorneys engaged in fraud, extortion, and racketeering when they asked the court to seal the record in this case. The trial court found there was a "complete absence of purposely dishonest behavior" on the part of plaintiff and her attorneys. Further, the judge rejected defendant's testimony as less than credible and stated his positions in the financial portion of the trial were not cohesive. We defer to the trial court's factual findings. See Benevenqa v. Digregorio, 325 N.J. Super. 27, 32 (App. Div. 1999).

Last, defendant argues the court erred by bifurcating the trial because it allowed plaintiff to use her financially superior position to gain advantage over him. The record on appeal

demonstrates the length of the trial was caused by defendant's unwillingness to settle, compromise, and litigate in good faith. Moreover, the court determined defendant acted intentionally to alienate the children from plaintiff, which in turn caused the lengthy custody battle and the necessity of the various experts and therapists. We therefore find the trial court did not abuse its discretion in bifurcating the litigation.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION