SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3163-15T2

RICHARD D. ZOCHOWSKI,
as 50% shareholder
in Zachmar, Inc.,

Plaintiff-Respondent,

v.

T. ROBERT ZOCHOWSKI,
as 50% shareholder in
Zachmar, Inc. and Zachmar,
Inc., a New Jersey Corporation,

Defendants-Appellants.

Submitted August 30, 2017 – Decided September 7, 2017

Before Judges Rothstadt and Vernoia.

On appeal from the Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. C-349-03.

T. Robert Zochowski, appellant pro se.

McKenna, DuPont, Higgins & Stone, attorneys for respondent (Edward G. Washburne, on the brief).

PER CURIAM

In an unpublished decision, we previously remanded to the Chancery Division this "dispute between two brothers regarding the

sale of real estate owned by their closely held corporation" for a hearing as to "the distribution of [a] forfeited deposit and plaintiff's purported misuse of corporate funds to pay legal fees." Zochowski v. Zochowski, No. A-5841-13 (App. Div. Nov. 2, 2015) (slip op. at 1, 6). On remand, the Chancery judge conducted a plenary hearing at which plaintiff Richard Zochowski and defendant T. Robert Zochowski testified and offered numerous documents that were admitted into evidence.

Defendant appeals from the Chancery judge's February 22, 2016 order that rejected his claim about the distribution of the forfeited funds; required plaintiff to reimburse defendant for a portion of the legal fees he paid using corporate funds; and denied defendant any other relief based on the judge's finding that plaintiff did not intentionally violate court orders that required him to keep defendant updated as to the sale of the company's real estate. On appeal, defendant argues that the judge abused her discretion by finding that the parties' stock transfer agreement was "unclear and ambiguous"; erred by finding plaintiff owed only one half of $12,176 in legal fees paid from corporate funds, instead of one-half of $16,441; incorrectly failed to award legal fees; and mistakenly failed to recognize that plaintiff "breached his fiduciary duty and obli[g]ation to [the corporation] and [defendant]." We disagree and affirm.

We need not set forth at length again the history of this family dispute that dates back to 2003 as we have previously provided those details in our three earlier unpublished decisions. See id. at 2-7; Zochowski v. Zochowski, No. A-4375-06 (App. Div. Mar. 27, 2008) (slip op at 3-7); Zochowski v. Zochowski, No. A-5930-05 (App. Div. Aug. 1, 2007) (slip op. at 1-3). Instead, we begin by summarizing the Chancery judge's decision.

After considering the testimony and evidence adduced at the remand hearing, the judge placed her comprehensive findings of fact and conclusions of law on the record before entering the order under appeal. Turning first to defendant's claim that the forfeited deposit was not distributed in accordance with the parties' agreement, the judge found that although the parties' parents agreed to a transfer of their shares in the family corporation to their two sons, through an October 1986 amendment to the family's September 1985 stock purchase agreement, the parents reserved the right to share equally with their sons in any proceeds from the sale of corporate assets during the parents' lives, even though they no longer owned any stock. The 1985 agreement provided that upon the death of either parent, the proceeds would be distributed equally among the surviving spouse and the brothers. The 1986 amendment, prepared by defendant,

provided that if either parent died, the surviving parent would receive the decedent's share.

The parties' father died in 2001. In 2006, the corporation entered into a contract for the sale of certain real estate. The purchaser paid a $75,000 deposit and then cancelled the contract, forfeiting the deposit. Plaintiff retained for the corporation twenty percent of the deposit for its reserves and distributed the balance in accordance with the 1986 amendment to the stock purchase agreement, fifty percent to his mother and twenty-five percent to his brother and to himself.

Defendant argued to the Chancery judge that the deposit was not a sale as contemplated by the amendment to the stock purchase agreement.[1] The judge concluded that it was, finding that the agreement was ambiguous because it did not define a deposit towards the sale of corporate asset as being the same as proceeds or "net monies" from an actual sale. The judge concluded that the parties' intended that "[w]hile the term sold is used and technically there was never a sale, the forfeited deposit was part of a proposed sale" and was properly distributed by plaintiff in accordance with the amendment.

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[1] On appeal, defendant acknowledges that had the sale been completed, the plaintiff's distribution of the proceeds would have been proper and consistent with parties' agreement, as was done when they sold off a different property owned by the company.

Next, the judge addressed defendant's claim that plaintiff had violated earlier court orders by using corporate funds to pay legal fees associated with the brothers' litigation. The judge identified the August 29, 2008 order that prohibited plaintiff from paying those fees going forward and preserved defendant's claim regarding any fees already paid. The judge described her detailed review of the legal bills paid by plaintiff after entry of the earlier order, found that they totaled $12,716, and concluded that defendant was entitled to one half that amount because the payments were made in contravention of the earlier order. As to legal bills paid before the entry of the 2008 order, the judge found that the earlier bills "clear[ly] . . . relate[d] to the sale of the [company's] property" and not to the parties' dispute or litigation, and therefore defendant was not entitled to any reimbursement.

The judge then considered defendant's claim that plaintiff failed to keep him notified about the sale of company assets. The judge disagreed after detailing the various methods by which defendant was given regular access to all required available information over the years. The judge concluded there was no violation of the orders and that no sanctions were warranted.

Finally, the judge rejected defendant's claim for counsel fees associated with the present proceedings. She denied the

application after recognizing her authority to award fees under Rule 1:10-3, but finding "there was no willful failure to comply" with any order.

The scope of our review of a judgment entered in a non-jury case is limited. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). "[W]e do 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[.]" Ibid. (second alteration in original) (quoting In re Trust Created By Agreement Dated Dec. 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008)). "[I]n reviewing the factual findings and conclusions of a trial judge, we are obliged to accord deference to the trial court's credibility determination[s] and the judge's 'feel of the case' based upon his or her opportunity to see and hear the witnesses." N.J. Div. of Youth & Family Servs. v. R.L., 388 N.J. Super. 81, 88 (App. Div. 2006) (quoting Cesare v. Cesare, 154 N.J. 394, 411-13 (1998)), certif. denied, 190 N.J. 257 (2007). "Findings by the trial judge are considered binding on appeal when supported by adequate, substantial and credible evidence," and "should not be disturbed unless . . . they are so wholly insupportable as to result in a denial of justice." Rova Farms Resort, Inc. v. Inv'rs Ins. Co.

of Am., 65 N.J. 474, 483-84 (1974) (alteration in original) (citations omitted). However, we owe no special deference to the judge's legal conclusions. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). "When deciding a purely legal issue, review is de novo." Kaye v. Rosefielde, 223 N.J. 218, 229 (2015) (quoting Fair Share Hous. Ctr., Inc. v. N.J. State League of Municipalities, 207 N.J. 489, 493 n.1 (2011)).

We review a trial judge's decision to award or withhold Rule 1:10-3 counsel fees for an abuse of discretion. Under the Rule, a party may seek enforcement of an unstayed order, and "[t]he court in its discretion may make an allowance for counsel fees to be paid by any party to the action to a party accorded relief under this rule." R. 1:10-3. The decision to award fees under the Rule is not automatic. It "only applies to parties who willfully fail to comply" with a court's order. Hynes v. Clarke, 297 N.J. Super. 44, 57 (App. Div. 1997). The award is a discretionary decision. Chalom v. Benesh, 234 N.J. Super. 248, 262 (Law Div. 1989). Among the factors a trial court may consider are: "the reasons for, and necessity of, making the application; the conduct of the parties; the result achieved; the reasonableness of the fee; and the danger to the integrity of R[ule] 4:42-9 if fees are awarded." Ibid.

Guided by these standards, we find defendant's contentions to lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). The Chancery judge's lengthy, detailed decision, which resulted in the order challenged here, is supported by sufficient credible evidence, is legally correct, and demonstrates a proper exercise of the judge's discretion. We therefore affirm substantially for the reasons expressed by the Chancery judge in her thorough oral decision.

Affirmed.