SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3465-15T2

MYRA P. DIDONATO,

Plaintiff-Respondent,

v.

GEORGE V. DIDONATO,

Defendant-Appellant.

Submitted October 11, 2017 - Decided November 6, 2017

Before Judges Hoffman and Mayer.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Mercer County, Docket No. FM-11-0713-05.

George V. DiDonato, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant George V. DiDonato appeals from a March 18, 2016 order[1] of the family court denying his motion seeking various relief. We affirm.

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[1] Defendant purports to appeal from orders dated August 24, 2015, October 16, 2015, and January 13, 2016. We note that defendant

Plaintiff Myra P. DiDonato and defendant were married in April 1991. The parties were divorced and a dual judgment of divorce (DJOD) was entered on August 14, 2008. Since the entry of the DJOD, defendant has filed thirty-five motions. Defendant's motions pursued the same claims and requested the same relief.

On September 15, 2015, defendant filed an order to show cause requesting plaintiff's payment of the college tuition balance for their youngest daughter. Defendant's application also sought plaintiff's income tax returns and custody of their youngest daughter.

Defendant's show cause application was converted to a motion and heard on December 21, 2015. Unbeknownst to the motion judge, defendant had appealed a prior order of another family court judge. The judge dismissed defendant's motion without prejudice due to the pending appeal. Defendant withdrew his appeal, which was dismissed on January 22, 2016.

One week after dismissal of his appeal, defendant filed a motion on short notice requesting the relief sought in his September 2015 application.

On March 18, 2016, the judge ruled on defendant's application. In addition to her review of the motion papers, the judge reread

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failed to file notices of appeal within forty-five days as to those orders. See R. 2:4-1(a).

the extensive case file, including the record from the seventeen day divorce trial and defendant's thirty-five prior motions. Based on her analysis of defendant's motion, the judge concluded that the relief sought had been denied previously by another judge. The judge found that the case involved "a situation of a vexatious litigant who keeps coming back . . . to try to get relief that has already been denied by prior orders and prior judges." The judge denied defendant's motion in its entirety because defendant failed to demonstrate changed circumstances justifying his renewed application. The judge also ordered that future motions submitted by the parties would require leave of the court prior to filing.[2]

On appeal, defendant argues the following: the assigned family court judges had ex parte communications with plaintiff and plaintiff's attorney, failed to read defendant's motion papers, and committed unspecified violations of the court rules and ethics rules; defendant was not given an opportunity to respond to plaintiff's motions; and the judge who signed the March 18, 2016 order caused defendant undue duress.

Self-represented litigants are required to comply with the court rules the same as litigants who are represented by counsel.

[2] The judge's oral ruling required both parties to seek leave of court before filing future motions. However, the written order imposed this requirement as to defendant only.

Rubin v. Rubin, 188 N.J. Super. 155, 159 (App. Div. 1982). On appeal, defendant failed to comply with the court rules by untimely filing an appeal as to certain orders, raising issues on appeal that were not raised before the family court, and including improper material in his appellate brief and appendix.

Appeals from final judgments of courts must be taken within forty-five days of their entry. R. 2:4-1(a). Defendant's notice of appeal was filed on April 21, 2016. Only the March 18, 2016 order was appealed within the required forty-five day time period. We decline to consider issues related to the orders dated August 24, 2015, October 16, 2015, and January 13, 2016, because defendant failed to file timely notices of appeal from those orders.[3]

On appeal, defendant raises several new issues not presented to the family court. Issues not raised below may be considered on appeal under the plain error rule. We consider errors not brought to the trial court's attention if the errors have a clear capacity to produce an unjust result. See R. 2:10-2; see also

[3] Defendant's arguments related to the August 24, 2015, October 16, 2015, and January 13, 2016 orders include the following: failure to consider new legislation terminating alimony based on cohabitation, ex parte communications between plaintiff and the judges assigned to the case, failure to serve papers on defendant, judicial bias, and new evidence.

N.J. Div. of Youth and Family Servs. v. B.H., 391 N.J. Super. 322, 343 (App. Div.), certif. denied, 192 N.J. 296 (2007).

Defendant fails to identify the specific errors committed by the family judges, as well as the "unjust result" from such errors. Defendant's dissatisfaction with the judges' decisions is not "error." His frustration with prior orders does not evidence a clear capacity to produce an unjust result. Rather than cite specific errors allegedly committed by the family court judges, defendant speculates that denial of his motions was due to improper ex parte communications between plaintiff and the family court judges and the failure of the family court judges to read or consider his submissions. Defendant provides no support for his allegations.

In his appeal, defendant raises the issue of judicial bias, a matter not raised before the family court. Our court rules provide that a judge shall be disqualified "when there is any . . . reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." R. 1:12-1(g). A party may file a motion to disqualify a judge for alleged bias in accordance with Rule 1:12-2. Defendant never moved to disqualify the family court judges assigned to his case. As a reviewing court, we are constrained to review orders issued by the Superior Court trial divisions.

See R. 2:2-3(a)(1). Because defendant never filed a motion to disqualify the family court judges assigned to this matter, there is no order for our review.[4] See Zamboni v. Stamler, 199 N.J. Super. 378, 383 (App. Div. 1985) (holding an appellate court's jurisdiction not properly invoked to render an advisory opinion or to decide cases in the abstract, without a developed factual basis).

Defendant also includes improper material in his appellate papers. An appellate appendix shall contain the order appealed from and any such other parts of the record "as are essential to the proper consideration of the issues" on appeal. R. 2:6-1(a)(1). Defendant's appendix includes orders and motions dating as far back as the DJOD without explaining how those materials are essential to our consideration of his appeal. We are unable to consider unrelated materials in defendant's appellate submission.

Additionally, defendant argues "undue duress" as a result of the judge's sanction requiring leave of court prior to filing future motions. "The court has the inherent power to protect itself and litigants against harassment and vexatious litigation

[4] Defendant also raises for the first time in his appeal that venue in this matter should be transferred. Motions to transfer venue are governed by Rule 4:3-3. Similar to his judicial bias claim, defendant failed to file a motion to transfer venue so there is no order for our consideration.

and an abuse of process." Triffin v. Automatic Data Processing, Inc., 394 N.J. Super. 237, 252 (2007) (quoting Atkinson v. Pittsgrove Twp., 193 N.J. Super. 23, 32 (Ch. Div. 1983)). A court should exercise its discretion to limit a litigant's ability to present a claim sparingly, reserved to those situations where the judge found past pleadings to be frivolous and tried to abate such abuse by employing appropriate sanctions. Parish v. Parish, 412 N.J. Super. 39, 54-55 (App. Div. 2010).

In Parish v. Parish, we held that the motion judge erred by restricting the parties' exercise of the right to file motions in the absence of "a specific finding of the need to control frivolous or vexatious litigation." Parish, supra, 412 N.J. Super. at 44. While "complete denial of the filing of a claim without judicial review of its merits would violate the constitutional right to access of the courts," courts have "the inherent authority, if not the obligation, to control the filing of frivolous motions and to curtail 'harassing and vexatious litigation.'" Id. at 48 (quoting Rosenblum v. Borough of Closter, 333 N.J. Super. 385, 387 (App. Div. 2000)). In Parish, we emphasized that "enjoining the filing of motions should be considered only following a determination that the pleadings demonstrate the continuation of vexatious or harassing misuse of judicial process." Id. at 58.

Findings by the family court judges are binding on appeal when supported by "adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). We "should 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'" or when the court has palpably abused its discretion. Id. at 412 (quoting Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). Since judges assigned to the family court have special expertise in family matters, a family judge's fact-finding should be accorded deference on appeal. Id. at 413.

We agree with the family court judge that defendant is a vexatious litigant, as evidenced by his thirty-five motions asserting the same claims and demanding the same relief. Defendant repeatedly failed to make a prima facie showing of changed circumstances justifying the requested relief. See Lepis v. Lepis, 83 N.J. 139, 157-59 (1980). It is within the court's power to impose sanctions on a self-represented party for frivolous litigation. Zehl v. City of Elizabeth Bd. of Educ., 426 N.J. Super. 129, 141 (App. Div. 2012) ("Judges retain the inherent authority to impose reasonable conditions on motion practice to

allow for appropriate case management and the efficient and effective administration of the case.")

In this case, because defendant is indigent and receives disability, the judge properly recognized that money sanctions would have been unfair. As the usual form of deterrence would have economically disadvantaged defendant, the judge, after reviewing the entire file and finding that defendant's repetitive and constant motions were vexatious, appropriately tailored her order by requiring leave of court before defendant could file future motions.[5]

We find that the judge's sanction was a suitable exercise of judicial discretion imposed to ensure that defendant refrains from filing repetitive motions and was not an abuse of discretion. Similarly, we find that the judge's order dated March 18, 2016, was supported by competent and credible evidence as defendant failed to make a prima facie showing of changed circumstances entitling him to the requested relief.

Affirmed.

[5] According to the transcript of the March 18, 2016 motion hearing, plaintiff had not filed a motion for "nearly a decade," and had no opposition to the judge's ruling that neither party would be permitted to file future motions absent leave of court.