SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3354-16T4

STACY MUNI, n/k/a FERNER,

Plaintiff-Respondent,

v.

ANTHONY MUNI,

Defendant-Appellant.

Submitted May 8, 2018 – Decided May 22, 2018

Before Judges Yannotti and Mawla.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Burlington County, Docket No. FM-03-1387-12.

Anthony Muni, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant Anthony Muni appeals from a February 24, 2017 order that required him to pay for summer day camp and unreimbursed medical expenses, and sanctioned him on a per diem basis until the expenses were satisfied. We affirm.

We derive the following facts from the motion judge's order, and the materials provided in defendant's appendix. The parties were married on May 27, 1999. Three children were born of the marriage. The parties divorced on December 27, 2012, and a final judgment of divorce (FJOD) was entered, which in pertinent part required defendant to pay child support, fifty percent of summer camp/day care tuition, and fifty-five percent of unreimbursed medical expenses for the children.[1]

Post-judgment the parties entered into a consent order dated November 22, 2013, which addressed, among other issues, a credit to be applied to defendant's child support arrears. After crediting defendant's probation account $11,398, the parties agreed the court would determine how the remainder of the arrears would be satisfied.

On December 19, 2016, the court entered an order, which stated as follows:

> Therefore, the [c]ourt [orders] that [d]efendant shall be required to provide a $10,000 lump sum payment to [p]laintiff as follows: $5,000 by January 20, 2017 and $5,000 by April 14, 2017. Defendant shall then be required to pay $100 per month towards the remaining arrears balance. Payment shall be made on the first of every month, and payment shall commence on May 1, 2017. In the event the [d]efendant fails to make any of the lump sum payments and/or monthly payments set forth

[1] We have not been provided with the FJOD.

> above, the [c]ourt will enter [j]udgment in the amount that is due in favor of the [p]laintiff and against the [d]efendant upon submission of a [c]ertification and form of [o]rder for [j]udgment, which shall also be served on the [d]efendant. In addition, the [p]laintiff shall have the right to file a further application seeking additional sanctions, which include, but are not limited to, a bench warrant being issued. The [c]ourt further notes that the [p]laintiff may also wish to consider the other remedies available to her as a result of the entry of the former judgment as well as any further [j]udgments that may be entered as a result of this [o]rder.

Plaintiff filed a motion to enforce the December 19, 2016 order. She certified defendant did not pay the $5,000 lump sum on January 20, 2017, and only made one payment of $272 toward his support obligation. Defendant also failed to pay the children's summer day camp tuition pursuant to the FJOD. Plaintiff certified defendant owed her $703.25, representing his one-half share of this expense. Plaintiff also certified defendant did not pay his fifty-five percent share of the children's unreimbursed medical expenses for 2016, and owed $507.21 for those expenses.

On February 22, 2017, defendant wrote the court, explaining:

> I did not receive any correspondence with regard to a motion by [plaintiff]. I did, however, receive a "notice to appear in court" this Friday, February 24, 2017. Upon receipt of the court notice, I presumed it was in response to my lawyer['s] . . . response to the court with regard to the outstanding credit I was still owed.

On February 23, 2017, defendant's counsel also wrote the court, stating:

> The [c]ourt [o]rder notes that [d]efendant appears represented by me and that [d]efendant did not file a response. I advised [y]our [h]onor's [l]aw [c]lerk that I never received any motion papers from the plaintiff to file a response. Also, [defendant] informed the court directly that he did not receive a copy of plaintiff's motion papers.
>
> I ask for a motion hearing to address (1) notice; (2) plaintiff's assertions of [defendant's] noncompliance, and (3) . . . monetary sanctions coupled with [defendant's] ability to pay.

The motion judge adjudicated plaintiff's enforcement motion. The February 24, 2017 order entered by the judge found:

> [P]laintiff asserts that [d]efendant failed to make the required lump sum payment of $5,000 on January 20, 2017 as ordered. Defendant does not respond to [p]laintiff's assertions. After a review of [p]laintiff's submissions, the [c]ourt does not find that it is appropriate to issue a bench warrant at this time. However, the [c]ourt will [order] that it shall impose monetary sanctions in the amount of $50.00 per day for each day of non-compliance until [defendant] pays the required lump sum payment per the December 19, 2016 [o]rder.

The judge also granted plaintiff's request for an order adding $703.25 to defendant's arrears for the unreimbursed camp expenses.

In addition to his written findings, the motion judge also made oral finding on the service of process issue raised by the correspondence from defendant and his attorney. The judge found:

> There [were] some issues with respect to service. The [c]ourt[] [is] satisfied from the proofs that there was proper service made. Defendant's attorney sent a letter indicating that he didn't think proper service was made. The [c]ourt did not agree with this analysis.

This appeal followed.

We begin by reciting our standard of review. "Generally, the special jurisdiction and expertise of the family court requires that we defer to factual determinations if they are supported by adequate, substantial, and credible evidence in the record." Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012). Findings of fact by a Family Part judge "will be disturbed only upon a showing that the findings are 'manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence' to ensure there is no denial of justice[.]" Ibid. (quoting Platt v. Platt, 384 N.J. Super. 418, 425 (App. Div. 2006)). "[W]e accord great deference to discretionary decisions of Family Part judges." Ibid.

"[J]udicial discretion connotes conscientious judgment, not arbitrary action; it takes into account the law and the particular circumstances of the case before the court." Ibid. (alteration

in original) (quoting Hand v. Hand, 391 N.J. Super. 102, 111 (App. Div. 2007)). "An abuse of discretion 'arises when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis."'" Ibid. (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)).

On appeal, defendant asserts neither he nor his attorney were served with plaintiff's motion. Defendant argues he was deprived of the opportunity to submit an opposition and to specifically oppose plaintiff's motion on the grounds of an inability to pay. He also asserts he was denied the ability to oppose the payment of camp costs by arguing plaintiff had unilaterally selected the camp in violation of the FJOD, which requires his input.

Rule 1:6-3(c) entitled "Completion of Service," states as follows: "For purposes of this rule, service of motion papers is complete only on receipt at the office of adverse counsel or the address of a pro se party. If service is by ordinary mail, receipt will be presumed on the third business day after mailing." Rule 1:5-3 provides:

> Proof of service of every paper referred to in R[ule] 1:5-1[2] may be made (1) by an acknowledgment of service, signed by the attorney for a party or signed and

[2] Rule 1:5-1 addresses service of various pleadings including "written motions (not made ex parte)."

> acknowledged by the party, or (2) by an affidavit of the person making service, or (3) by a certification of service appended to the paper to be filed and signed by the attorney for the party making service. If service has been made by mail the affidavit or certification shall state that the mailing was to the last known address of the person served. A proof of service made by affidavit or certification shall state the name and address of each attorney served, identifying the party that attorney represents, and the name and address of any pro se party. The proof shall be filed with the court promptly and in any event before action is to be taken on the matter by the court. Where service has been made by registered or certified mail, filing of the return receipt card with the court shall not be required. Failure to make proof of service does not affect the validity of the service, and the court at any time may allow the proof to be amended or supplied unless an injustice would result.

Here, plaintiff provided a certification of service, and a certified mail receipt with a tracking number, which proved she served defendant at his residence. Defendant has not explained why this information was inaccurate or unreliable. Defendant's address was valid because he wrote to the court on February 22, 2017, confirming he received the court generated notice of the motion hearing at the same address, which he believed to be a hearing in response to his attorney's request for credits against his probation account. Moreover, the motion judge made a specific finding on the issue of service, having considered and rejected defendant's and his attorney's assertions.

We recognize that defendant's attorney was not served with the motion; however, it is clear defendant had actual notice of the motion and received a notice to appear in court. Therefore, defendant's claim that he did not have notice of the motion is without merit. We are satisfied the motion judge did not abuse his discretion in finding plaintiff had served her motion on defendant.

Because service of the motion was valid, it was adjudicated unopposed. In Milne, we noted "Rule 1:10-3 allows a court to enter an order to enforce litigant's rights commanding a disobedient party to comply with a prior order . . . ." Milne, 428 N.J. Super. at 198 (citing Saltzman v. Saltzman, 290 N.J. Super. 117, 125 (App. Div. 1996)). We held "[o]nce the court determines the non-compliant party was able to comply with the order and unable to show the failure was excusable, it may impose appropriate sanctions." Ibid. (citing Saltzman, 290 N.J. Super. at 123). However, "[w]hen faced with evidence of disputed material facts, a judge must permit a plenary hearing in order to reach a resolution." Id. at 201 (citing Tretola v. Tretola, 389 N.J. Super. 15, 20 (App. Div. 2006)).

Defendant argues the motion judge's imposition of sanctions was erroneous because "[t]he lack of [a] hearing at the time of determination of the sanction in a meaningful manner deprived

[defendant] of the opportunity to present the primary expected defense—that he was unable, not unwilling to make the payment at issue at the time that the sanction is entered." We disagree.

The motion was unopposed. Thus, there was no material dispute of fact requiring the motion judge to hold a hearing.[3] Finally, we note:

> It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available "unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest."
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> [Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (quoting Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)).]

The facts here did not concern "matters of great public interest." For these reasons we reject defendant's assertion he could not be sanctioned without a hearing.

Affirmed.

[3] Although we have held that no hearing was required at the time the judge entered the sanction, a hearing would be required on subsequent enforcement of the court's order where defendant participates and presents a material dispute in fact as to his inability to pay. Pasqua v. Council, 186 N.J. 127, 153 (2006).