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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-5039-15T1

DEANNA TOMASSO-ADDEO,

Plaintiff-Respondent,

v.

ERIC ADDEO,

Defendant-Appellant.

Submitted February 6, 2018 – Decided February 27, 2018

Before Judges Reisner, Hoffman and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Somerset
County, Docket No. FM-18-0596-13.

Eric Addeo, appellant pro se (Gregory A.
Pasler, on the brief).

Shimalla, Wechsler, Lepp & D'Onofrio, LLP,
attorneys for respondent (Sarah Mahoney Eaton,
on the brief).

PER CURIAM

Defendant Eric Addeo appeals from a June 8, 2016 Family Part
order denying his motion for reconsideration of the court's April
4, 2016 order regarding the sale of the parties' former marital

home. The April 4, 2016 order granted plaintiff \$55,000 from the net proceeds of the sale of the home, after the court found defendant in violation of litigant's rights based upon his failure to comply with a June 26, 2015 consent order. Defendant contends the order granting plaintiff the \$55,000 is contrary to the parties' previous agreement regarding the distribution of the home-sale proceeds. On reconsideration, the court rejected defendant's contentions, concluding that defendant "failed to satisfy the high bar established for reconsideration." We affirm.

Plaintiff and defendant married in June 1994, and divorced in June 2013. The parties signed a marital separation agreement (MSA), which they incorporated into their dual final judgment of divorce (JOD). The MSA provided defendant could elect to buy out plaintiff's equity in the former marital home for \$55,000, or the parties would list the house for sale and split equally the net proceeds after closing costs.

Defendant initially chose to list the house for sale. The parties listed the house for sale in September 2013 for \$439,000. There were several disputes as to the price and whether to make certain repairs to the house. In February 2015, the parties received an offer for \$405,000. Three days later, defendant decided to refinance and buy out plaintiff's equity; therefore the parties rejected that offer.

The parties then filed the June 26, 2015 consent order, which provided defendant would refinance the mortgage and buy out plaintiff's equity by paying her the \$55,000 agreed upon in the MSA. The consent order further provided the parties would split equally all closing costs associated with the refinance, with the closing to occur no later than November 30, 2015. Defendant failed to refinance by the November 30 deadline.¹

On February 16, 2016, plaintiff filed a motion to enforce litigant's rights based on defendant's "failure to comply with the June 26, 2015 Consent Order[,]" regarding the purchase of plaintiff's equity in the former marital home. On April 4, 2016, the court entered an order granting plaintiff's motion for enforcement of litigant's rights. That order provided defendant shall close on refinancing by April 30, 2016, or a judgment shall enter against defendant in favor of plaintiff for \$55,000, and the court shall grant plaintiff a limited power of attorney to sell the house. The order also included a provision instructing the parties to submit a consent order the same day, and further provided, "Upon entry, that consent order shall supersede the relevant provisions of [the court] order." The parties submitted

¹ Defendant did not apply to refinance the home until November 28, 2015, even though the consent order required him to do so by October 15, 2015.

a consent order stating defendant was unable to refinance and the parties will relist the house for sale. The consent order did not address how the parties would distribute the proceeds from the sale of the house.

On April 29, 2016, defendant filed a motion for reconsideration and clarification of the court's April 4, 2016 order. That motion requested the court vacate provisions two through four of the April 4, 2016 court order regarding the refinancing of the mortgage, alleging they conflict with the consent order. The motion also requested that the court order the parties to split equally the net proceeds, after all closing costs, from the sale of the house.

On June 8, 2016, the court denied defendant's motion for reconsideration of the April 4, 2016 order. In his statement of reasons, the judge reasoned there was no need to vacate provisions two through four of the court order because the order clearly states the consent order supersedes relevant provisions of the court order. The judge went on to uphold his decision granting plaintiff \$55,000 from the net proceeds from the sale of the house, reasoning defendant acted in bad faith in delaying the sale and refinancing of the house. The judge also awarded plaintiff counsel fees associated with defendant's motion for reconsideration.

On appeal, defendant argues the court abused its discretion in (1) declining to vacate provisions two through four of its April 4, 2016 order, (2) awarding plaintiff \$55,000 from the net proceeds of the former marital home, and (3) awarding plaintiff counsel fees.

Preliminarily, plaintiff questions the timeliness of defendant's appeal. We note that defendant only appeals from the order denying reconsideration and not the underlying order. The appeal from the order denying reconsideration was timely, and we therefore address it.

When a trial court denies a party's motion for reconsideration, we overturn the denial only in the event the trial court abused its discretion. Marinelli v. Mitts & Merrill, 303 N.J. Super. 61, 77 (App. Div. 1997) (citing Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996)). In determining whether such an abuse has taken place, a reviewing court should be mindful that a party should not utilize reconsideration just because of "dissatisfaction with a decision of the [c]ourt." Capital Fin. Co. of Delaware Valley v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

Courts should only grant reconsideration when "either (1) the [c]ourt has expressed its decision based upon a palpably incorrect

or irrational basis, or (2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002) (quoting D'Atria, 242 N.J. Super. at 401). Trial courts should grant motions for reconsideration "only under very narrow circumstances." Ibid.

Defendant first argues we should vacate provisions two through four of the April 4, 2016 court order, regarding the refinancing of the mortgage because they conflict with the parties' April 4, 2016 consent order. Both parties and the trial court agree the consent order supersedes conflicting provisions of the court order. Plaintiff therefore argues, and the trial court agreed, it is unnecessary to vacate those provisions within the court order.

The consent order specifically states that if defendant is unable to refinance, the parties will relist the house for sale. The consent order, however, did not address the distribution of the proceeds from the sale of the house. Provisions two and three address only refinancing, and therefore the consent order supersedes them and it is unnecessary to vacate them. However, provision four contains language regarding the remedy for failure to refinance, which is not addressed in the consent order and therefore not superseded. Specifically, provision four determines

a remedy if defendant fails to refinance by April 30, 2016, and the parties must relist the house for sale; namely that plaintiff is still entitled to \$55,000. The trial court's decision was not palpably incorrect, nor did defendant offer any evidence the trial court failed to consider. We therefore affirm the trial court's decision declining to vacate provisions two through four.

Defendant next argues awarding plaintiff \$55,000 of the net proceeds from the sale of the home, regardless of the actual sale price, contradicts the parties' prior agreements calling for defendant to give plaintiff \$55,000 only if defendant refinances. Defendant also argues giving plaintiff \$55,000 of the net proceeds from the sale of the home after all closing costs are paid, essentially means he pays all closing costs. He notes the MSA states the parties shall split equally the net proceeds, after closing costs, from the sale of the house. This argument lacks merit.

The trial court found defendant breached the implied covenant of good faith and fair dealing. See Wilson v. Amerada Hess Corp., 168 N.J. 236, 244 (2001) (holding "[a] covenant of good faith and fair dealing is implied in every contract in New Jersey"). The court found defendant failed to abide by both the MSA and then the June 2015 consent order stating he would refinance. Plaintiff relied on defendant's promise to refinance in agreeing to the June

2015 consent order and rejecting the offer on the house. The trial court reasoned defendant acted in bad faith in delaying the sale and refinancing of the house, and inducing plaintiff to reject the offer for \$405,000 and sign a consent order allowing defendant to refinance.

Because defendant breached the consent order by failing to refinance, the trial judge was within his discretion to award a remedy. We find the remedy here – that plaintiff receive the \$55,000 she would have received but for defendant's non-compliance with the MSA and later court orders – represents a reasonable response to address the consequences of defendant's bad faith conduct. Also, although defendant is correct that he is indirectly responsible for all closing costs, such an order is also reasonable considering defendant's bad faith. We therefore affirm the trial court's order granting plaintiff \$55,000 from the net proceeds, after closing costs, of the sale of the house.

Defendant next argues the trial court should not have awarded counsel fees because he was not acting in bad faith and filed a legitimate motion for reconsideration. Rule 4:42-9(a)(1) authorizes an award of counsel fees in a Family Part action. The award of fees is discretionary. J.E.V. v. K.V., 426 N.J. Super. 475, 492 (App. Div. 2012) (citing R. 5:3-5(c)). "An award of counsel fees is only disturbed upon a clear abuse of discretion."

City of Englewood v. Exxon Mobile Corp., 406 N.J. Super. 110, 123 (App. Div. 2009) (citing Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001)).

Rule 5:3-5(c) provides the following list of factors for consideration in the award of 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 both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously 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.


In its order denying reconsideration, the trial court awarded plaintiff counsel fees attributable to the motion for reconsideration. The court reasoned defendant's motion for reconsideration "was unnecessary and [a] waste of limited judicial resources." The court considered the factors in Rule 5:3-5(c), finding that although defendant did not submit his application in bad faith, he "behaved in bad faith throughout the pendency of this action." The court also found defendant's use of "dilatory tactics" forced plaintiff to file a cross-motion to enforce litigant's rights. The court granted that motion to enforce

litigant's rights and most of the relief requested. The trial court did not abuse its discretion in awarding counsel fees.

Finally defendant argues the trial court abused its discretion in granting plaintiff power of attorney for the limited purpose of selling the house; however, the court granted that power of attorney in a May 3, 2016 order. Because defendant failed to list that order in his notice of appeal, we decline to address it.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION