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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0453-20**

JOHN T. PALLAY,

Plaintiff-Respondent,

v.

JAYNEE PALLAY,

Defendant-Appellant.

Submitted February 14, 2022 – Decided April 28, 2022

Before Judges Rothstadt and Natali.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Somerset County,
Docket No. FM-18-0300-15.

Dwyer, Bachman, Newman & Solop, attorneys for
appellant (Elliot S. Solop, of counsel and on the briefs;
Lauren Conway, on the briefs).

John T. Pallay, respondent pro se.

PER CURIAM

In this post-judgment dissolution matter, defendant Jaynee Pallay appeals from Family Part Judge Haekyoung Suh's August 7, 2020 order that addressed issues relating to the enforcement of the parties' Dual Judgment of Divorce (DJOD) and ensuing Family Part orders relating to alimony, personal property, the sale of the former marital home, and counsel fees. She also challenges the judge's September 25, 2020 order denying defendant's motion to reconsider the August 7 order and granting plaintiff John T. Pallay's cross-motion to enforce.

On appeal, defendant argues the judge abused her discretion by (1) not requiring plaintiff to pay his alimony arrears and future payments through a qualified domestic relations order (QDRO) that would transfer plaintiff's share of his retirement assets to defendant; (2) failing to require plaintiff to pay defendant's counsel fees and costs associated with her motion that led to the August 7 order; (3) requiring defendant to account for personal property that plaintiff claimed had been in defendant's possession and that she be sanctioned if she failed to do; and (4) requiring the former marital home to be sold after plaintiff interfered with defendant's right under their DJOD to refinance the existing mortgage and obtain title to the property.

After considering defendant's contentions in light of the record and applicable principles of law, we affirm substantially for the reasons stated by Judge Suh in each of her written decisions issued with the challenged orders.

The salient facts taken from the record are summarized as follows. The parties married on October 22, 1999. They had no children. They divorced pursuant to a January 28, 2019 DJOD, which incorporated a September 12, 2018 arbitration award that had been amended on October 12, 2018.

The arbitration award required, among other things, plaintiff to pay limited duration alimony in the amount of \$6,000 per month until 2029. It also required the parties to equally share the proceeds of the sale of the marital home and the value of the marital portion of plaintiff's retirement accounts through a QDRO to be prepared by Pension Appraisers, Inc. within fifteen days, with costs to be shared equally. The award also set forth a procedure for the distribution of the parties' personal property and provided for plaintiff paying a portion of defendant's counsel fees. The DJOD incorporated the arbitration award but modified it by also providing defendant with a sixty-day period to refinance the marital home so as to "absolve [plaintiff] of any financial obligation to the mortgagee, . . . or . . . sell the property."

Over the next year and a half, the parties engaged in extensive motion practice, which resulted in one judge's April 11, 2019 order, addressing enforcement issues relating to alimony, the QDRO, counsel fees, personal property, and the marital home. In that order, among other things, a judge again ordered the parties to retain Pension Appraisers within fourteen days to prepare the QDRO, and to cooperate and share costs. On November 15, 2019, another judge entered an order, again addressing enforcement issues with the QDRO and personal property. In entering that order, a judge found defendant paid only \$299 for an online QDRO in violation of the April 11, 2019 order. The judge therefore ordered her to reimburse plaintiff for his overpayment towards the QDRO and to pay Pension Appraisers the full \$495 to commence the QDRO's preparation within seven days.

On July 6, 2020, defendant filed a motion seeking, among other things, enforcement of the DJOD's alimony provisions by having arrears paid through a QDRO that would transfer plaintiff's "retirement assets" to defendant from which she could receive payment of both the arrears and future alimony obligations. To this end, defendant also sought an order granting her the ability to sign all documents necessary to accomplish her goal through a limited power of attorney.

In her supporting certification, defendant explained that, as of January 2020, plaintiff stopped making alimony payments and was in arrears in the amount of \$29,085. Defendant also noted that plaintiff had changed jobs without informing her. She also provided a Case Information Statement that she claimed demonstrated her financial hardships. Defendant also described various medical conditions from which she was suffering, and which caused her additional financial issues. Defendant also provided information about her efforts to resolve her claims and how plaintiff responded by stating he was unemployed due to Covid-19 issues and needed to rely on his 401(k) retirement funds for support. Plaintiff stated he started his own business months before but was "not under contract for work due to the Covid-19 outbreak" and "had been deemed unemployed by the State of North Carolina [where he now resides] with a starting date of February 28, 2020" for unemployment benefits.

Plaintiff responded to defendant's motion with a cross-motion and certification. In his motion, plaintiff again sought, among other relief, enforcement of defendant's obligation to cooperate in the processing of the QDRO and requiring her to provide an accounting of missing personalty, including proving that she donated certain items to charities. He also sought an order compelling defendant to cooperate in the sale of the former marital home

as contemplated in the DJOD. In his supporting certification, plaintiff explained that defendant had not paid her share of the costs associated with the preparation of the QDRO, which had left him without access to the needed funds and caused him to suffer financial hardships.

Notably, plaintiff did not seek any reduction or termination of his alimony obligation. Instead, he stated he needed the retirement funds to pay what he owed defendant. As to the sale of the home, plaintiff claimed he possessed an option to purchase from a buyer offering \$331,000, far more than the parties had been offered at the time of their divorce.

Thereafter, defendant filed a reply certification, contesting many of plaintiff's assertions but noting that his cross-motion did not include any request to be relieved of his alimony obligation.

According to Judge Suh's order, prior to the entry of her August 7 order, the parties consented to plaintiff paying his arrears from his retirement funds after they were distributed by a QDRO. Judge Suh incorporated that agreement in her order because she found that there was no dispute that arrears were owed and plaintiff did not ask to terminate or modify his alimony obligation. She ordered the QDRO to be completed within thirty days.

However, the judge denied the balance of relief sought by defendant. Specifically, in denying any transfer of plaintiff's share of his retirement funds to defendant, the judge found that plaintiff agreed to pay his past and future obligations once he received his retirement funds, and that defendant had been uncooperative again in meeting her obligation to ensure that the QDRO necessary to the release of those funds was prepared by refusing to pay her \$495 share of Pension Appraisers' fee.

The judge therefore granted plaintiff's motion to compel defendant to cooperate in the QDRO process. She also ordered defendant to account for plaintiff's personalty and to cooperate in the immediate sale of the former marital home because prior orders entered in the matter required defendant to do so and she never complied. As to the sale of the former marital home, the judge found that it "was contemplated by the parties" and "[d]efendant's reassurance that she will be able to [refinance] upon completion of the QDRO is unsubstantiated and too late."

In denying defendant's motion for counsel fees, the judge reviewed the applicable factors and concluded "both parties failed to fulfill their obligations under the DJOD." However, she found that defendant's refusal to cooperate in the QDRO's preparation prevented plaintiff from using his retirement funds "as

a backup resource" for the payment of alimony "when he became unexpectedly unemployed and strapped." Under those circumstances, the judge found that the "factors do not weigh in favor of defendant[]." "

Defendant then filed a motion for reconsideration and claims for additional relief. In her supporting certification, she provided a detailed explanation of the parties' litigation history and why she believed the judge's earlier order was wrong.

Plaintiff responded with a cross-motion to enforce because defendant failed to comply with the August 7 order by still not cooperating in efforts to secure the QDRO. Evidently, according to plaintiff, the parties disagreed over which services should be used by Pension Appraisers to prepare the QDRO and at what cost.

In response, Judge Suh entered the September 25, 2020 order that denied defendant's motion to reconsider or award any other relief and granted in part and denied in part plaintiff's motion to enforce. In the order, she granted plaintiff a limited power of attorney to sign on behalf of defendant all documents needed to complete the QDRO and directed that plaintiff can pay any necessary fees and that defendant's share would be deducted from her portion of the retirement assets if she does not reimburse plaintiff.

The judge also ordered that defendant pay \$100 to cover the costs of reproducing plaintiff's personalty, including yearbooks and diplomas. As to the sale of the home, the judge appointed a realtor to effectuate the sale to the purchaser identified in plaintiff's certification filed in support of his original cross-motion.

In her written decision, Judge Suh explained that defendant continued to thwart the preparation of the QDRO. She further reasoned her denial of plaintiff's request to secure future alimony payments through the QDRO was sound because "the court properly recognized the exigent circumstances COVID-19 created for plaintiff and acknowledged [he] consistently paid alimony before COVID-19" and because defendant did not provide any reason to not trust plaintiff that the judge did not already consider. Last, Judge Suh reasoned defendant's self-serving claim, that plaintiff caused the QDRO to not be completed by not paying his alimony, did not change her decision that the QDRO was not completed because defendant refused to pay \$495 to Pension Appraisers.

As to the house, the judge found that defendant has been living in the "mar[ital] home for free and has prolonged its sale long enough." Addressing reconsideration, the judge concluded defendant failed to meet the criteria for

same and no further orders were required as to the enforcement of plaintiff's alimony obligation, and the additional relief sought by defendant that related to plaintiff's arrears were "outside the scope of reconsideration." Regarding the judge's earlier denial of counsel fees, the judge concluded that "[d]efendant's repeated assertions that plaintiff's applications have been in bad faith, without more, are insufficient to compel reconsideration." As to the sale of the home, the judge found defendant did not offer "anything the court did not previously consider." This appeal followed.

We begin by acknowledging that our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "We review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare, 154 N.J. at 413). "Thus, 'findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence,'" id. at 283 (quoting Cesare, 154 N.J. at 411-12), and it is "[o]nly when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should [we] intervene and make [our] own findings to ensure that there is not a denial of justice," N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of

Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007)). We do not, however, owe any deference to the court's "interpretation of the law." Thieme, 227 N.J. at 283 (quoting D.W. v. R.W., 212 N.J. 232, 245 (2012)).

An order granting a motion to enforce litigant's rights is reviewed under an abuse of discretion standard. N. Jersey Media Grp., Inc. v. State, Off. of Governor, 451 N.J. Super. 282, 296, 299 (App. Div. 2017). So too are orders denying reconsideration. Granata v. Broderick, 446 N.J. Super. 449, 468 (App. Div. 2016). A court abuses its discretion "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

The deferential standard we afford to Family Part orders is, as already noted, founded upon that court's expertise, as well as its ability to fashion equitable remedies when confronted with violations of its orders as the circumstances demand, especially in the area of spousal support and equitable distribution. The Family Part "possesses broad equitable powers to accomplish substantial justice" and may tailor an appropriate remedy for violation of its

orders. Finger v. Zenn, 335 N.J. Super. 438, 447 (App. Div. 2000). In addition, N.J.S.A. 2A:34-23 provides:

[A]fter judgment of divorce . . . the court may make such order as to the alimony or maintenance of the parties . . . as the circumstances of the parties and the nature of the case shall render fit, reasonable and just [U]pon default in complying with any such order, the court may award and issue process for the immediate sequestration of the personal estate, and the rents and profits of the real estate of the party so charged, and appoint a receiver thereof, and cause such personal estate and the rents and profits of such real estate, or so much thereof as shall be necessary, to be applied toward such alimony and maintenance as to the said court shall from time to time seem reasonable and just; or the performance of the said orders may be enforced by other ways according to the practice of the court.

Our Supreme Court has held that "the trial court may exercise its 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, 102 (2005). The Family Part's ability to fashion appropriate relief in a divorce proceeding is no less expansive where a party persists, post judgment, in refusing to comply with court orders relating to equitable distribution and alimony obligations. See Slayton v. Slayton, 250 N.J. Super. 47, 50 (App. Div. 1991) ("An item which was equitably distributed may

indeed be tapped as a fund out of which otherwise calculated alimony may be satisfied.").

Rule 1:10-3 "provide[s] a mechanism, coercive in nature, to afford relief to a litigant who has not received what a Court Order or Judgment entitles that litigant to receive." D'Atria v. D'Atria, 242 N.J. Super. 392, 407 (Ch. Div. 1990). The power of a court to enforce an order is beyond question, and "[t]he particular manner in which compliance may be sought is left to the court's sound discretion." Bd. of Educ. of Middletown v. Middletown Twp. Educ. Ass'n, 352 N.J. Super. 501, 509 (Ch. Div. 2001). However, the court must balance the interests of the parties, "without losing sight of the legal system's interest in the integrity of judicial orders." Anyanwu v. Anyanwu, 333 N.J. Super. 345, 351-52 (App. Div. 2000) (determining ordering the incarceration of a parent to be appropriate when the parent violated court orders by removing his child from the country and not returning the child to his mother's custody).

Applying these guiding principles, here, we conclude that defendant's arguments on appeal are without merit. As already noted, we affirm the challenged orders primarily for the reasons expressed by Judge Suh in her two written decisions. We add only the following comments.

The gist of defendant's argument on appeal is that Judge Suh "wrongfully entrusted that [plaintiff] would satisfy his alimony arrears even though he has shown no good faith effort to do so for the last several months." She argues "the [judge] had no basis in the record to" find "that [plaintiff's] inability to pay alimony [in 2020] is due to his choice to start his own busines [sic] and the COVID-19 pandemic." Contrary to defendant's assertion, the evidence in the record established that up to approximately February 2020, plaintiff was current in his alimony obligation, defendant repeatedly failed to perform her obligation to cooperate in the QDRO's preparation by paying the balance of the amount owed for Pension Appraisers services, and defendant did not meet the deadlines under the DJOD or subsequent orders for refinancing the mortgage, even before plaintiff stopped making alimony payments.

Clearly, that record supported Judge Suh's determination that once plaintiff had access to his share of his retirement benefits, he would pay his arrears and resume his monthly obligation, which again he did not seek to terminate or reduce. And, as Judge Suh found, defendant "ha[d] not furnished any other reason why the court should not trust plaintiff" because, aside from sheer speculation, defendant did not provide any sound reasons why plaintiff would not pay his obligation upon access to his retirement funds. Under these

circumstances Judge Suh's determinations were supported by substantial evidence and are unassailable.

Moreover, on reconsideration, defendant merely rehashed the history of the parties' disputes and reiterated her view that her failure to comply with the DJOD and subsequent orders was plaintiff's fault. Her assertions did not meet the criteria for reconsideration and for that reason her motion was properly denied. We have no cause to disturb the results here.

Finally, as to the denial of counsel fees in the August 7 order, we conclude the judge appropriately considered all the applicable factors, see N.J.S.A. 2A:34-23; R. 5:3-5(c), and her determination did not constitute an abuse of discretion. See Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (stating a fee determination will be disturbed "only on the 'rarest occasion,' and then only because of [a] clear abuse of discretion" (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995))).

To the extent we have not specifically addressed any of defendant's remaining arguments, we conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION