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This opinion shall not "constitute precedent or be binding upon any court." 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-0532-21**

ALAN DICKSTEIN,

Plaintiff-Respondent,

v.

CATHERINE GOLFINOPOULOS,

Defendant-Appellant.

Submitted November 16, 2022 – Decided December 12, 2022

Before Judges Currier and Mayer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FD-02-0247-12.

Catherine Golfinopoulos, appellant pro se.

Bremer Buckner, LLC, attorneys for respondent (Keri
L. Greene and Joshua T. Buckner, on the brief).

PER CURIAM

Defendant Catherine Golfinopoulos appeals from the provision in a
September 30, 2021 order denying her request for modification of parenting time

for her daughter. She also appeals from another provision in that same order awarding counsel fees to plaintiff Alan Dickstein. We affirm.

We reviewed a prior appeal related to various disputes between the parties, including matters related to their child. See Dickstein v. Golfinopoulos, No. A-2491-19 (App. Div. Dec. 16, 2021). We provide a brief summary of the current dispute in this appeal.

The parties, who never married, are the parents of a daughter born in July 2011. On August 1, 2017, they executed an agreement, converted to a consent order by a Family Part judge, addressing issues related to the child. The consent order established a four-week physical custody schedule which divided the daughter's parenting time equally between plaintiff and defendant. The document also appointed a parenting coordinator to mediate disputes concerning the child.

There have been several applications filed by the parties since the entry of the consent order. The most recent dispute arises from defendant's application to modify parenting time. Based on her daughter's declining grades, increased anxiety, and the school's implementation of a 504 education plan, defendant had concerns regarding the child's academic development. As a result, defendant sought to modify the existing parenting schedule, which defendant believed

would improve her daughter's school performance by providing more consistency in the child's life.

Plaintiff filed a cross-application seeking enforcement of a prior order compelling defendant to attend individual therapy, memorializing various recommendations by the parenting coordinator in a signed court order, and requiring defendant's payment of plaintiff's counsel fees.

On September 2, 2021, the Family Part judge heard the parties' arguments regarding the pending applications. Although the judge did not conduct an evidentiary hearing, he was familiar with the issues based on the prior applications submitted by the parties which were contained in the court's file. After hearing the arguments, the judge declined to modify the parenting plan, explaining "there's a [c]onsent [o]rder that was entered into which is relatively new and I don't find that there are anything other than conclusory allegations, and thus the moving party here, [defendant], has failed to show a substantial change in circumstances." In a September 30, 2021 written decision supplementing the order, the judge wrote:

The defendant's application to modify [the] parenting time schedule is denied as the defendant failed to establish a prima facie case for modification of custody and parenting time. A parent cannot obtain a modification simply because that parent does not like the arrangement in place. . . . It is incumbent upon the

defendant to demonstrate a substantial change in circumstances and in this case, the defendant has failed to do so.

In this case, the defendant simply submitted her own statements which failed to establish a substantial change of circumstances alluding to the child's best interests. A judge must disregard "conclusory allegations" about a change in circumstances and their impact on the child. . . . Such allegations which this [c]ourt finds to be conclusory were presented by defendant.

Regarding the payment of plaintiff's counsel fees, the judge awarded the sum of \$5,436.25 to be paid by defendant to plaintiff. The judge had the benefit of the court's entire file in this non-dissolution action which contained information regarding prior attorney fee awards. Thus, the judge had information to apply the factors in awarding counsel fees.

In applying the factors for a counsel fee award under Rule 5:3-5(c), the judge found:

[T]he defendant has made multiple requests for the same relief and those requests have been previously denied by those [c]ourts. The defendant has been in noncompliance with previous [c]ourt [o]rders, including refusing to engage in therapy and refusing to cooperate with the recommended therapist for the child. In addition, the defendant blatantly refuses to co-parent. In addition, the defendant fails to abide by the recommendations of the [p]arent[ing] [c]oordinator. Accordingly, the defendant's application is based in bad

faith. This has forced the plaintiff to incur costs in enforcing his rights.

This [c]ourt has considered the following factors; the financial circumstances of the parties, the ability of the parties to pay their own fees or contribute to the fees of the other party. The reasonableness and good faith of the positions advanced by the parties. This [c]ourt finds that the defendant's position was unreasonable and the main extent of the plaintiff's application was the enforcement of previous [c]ourt [o]rders. The extent of the fees incurred by both parties. Any fees previously awarded. The amount of fees previously paid to counsel by each party. The plaintiff paid extensive attorney fees to his attorney. The results obtained by both parties. The plaintiff was successful nearly in the entirety of his application. The degree to which fees were incurred to enforce existing order[s] or compel discovery. The plaintiff was enforcing existing orders.

On appeal, defendant argues the judge abused his discretion "by summarily denying [her] request to modify parenting time in contravention of [her] voluminous exhibits demonstrating a substantial change in circumstances" regarding her "daughter's school performance and anxiety." She also challenges the judge's award of counsel fees. We reject defendant's arguments.

Our review of a family court order is limited. See Cesare v. Cesare, 154 N.J. 394, 411 (1998). Generally, the family court's factual findings "are binding on appeal when supported by adequate, substantial, credible evidence." Id. at

411-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)).

We review orders concerning custody and parenting time for abuse of discretion. Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012). "A party seeking to modify custody [or parenting time] must demonstrate changed circumstances that affect the welfare of the children." Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007).

"Where there is already a judgment or agreement affecting custody in place, it is presumed it 'embodies the best interests determination' and should be modified only where there is a 'showing [of] changed circumstances which would affect the welfare of the children.'" A.J. v. R.J., 461 N.J. Super. 173, 182 (App. Div. 2019) (quoting Todd v. Sheridan, 268 N.J. Super. 387, 398 (App. Div. 1993)). "Specifically, with respect to agreements between parents regarding custody or parenting time, '[a] party seeking modification . . . must meet the burden of showing changed circumstances and that the agreement is now not in the best interests of a child.'" Slawinski v. Nicholas, 448 N.J. Super. 25, 33 (App. Div. 2016) (quoting Abouzahr v. Matera-Abouzahr, 361 N.J. Super. 135, 152 (App. Div. 2003)).

We are satisfied the Family Part judge did not abuse his discretion in denying defendant's application to modify parenting time without conducting a plenary hearing. The judge correctly stated that defendant had the burden of demonstrating changed circumstances to warrant modification of parenting time. He found defendant failed to offer any evidence in support of the requested relief beyond her own self-serving statements and documents lacking attestation from the authors of the attached texts, emails, and other exhibits. Defendant's conclusory allegations, absent competent and admissible evidence, such as corroborating sworn statements from an expert or personnel affiliated with the child's school, were insufficient to demonstrate changed circumstances to alter the parenting time arrangement in the consent order.

We next address defendant's claim that the judge erred in awarding counsel fees to plaintiff. We "will disturb a trial court's determination on counsel fees only on the 'rarest occasion,' and then only because of clear abuse of discretion." Slutsky v. Slutsky, 451 N.J. Super. 332, 365 (App. Div. 2017) (quoting Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008)). An abuse of discretion occurs where the decision is "'made without a rational explanation, inexplicably depart[ing] from established policies, or rest[ing] on

an impermissible basis.'" Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

An award of counsel fees may be appropriate when one party acts in bad faith, regardless of the parties' economic circumstances. See Yueh v. Yueh, 329 N.J. Super. 447, 461 (App. Div. 2000) (quoting Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992)) ("[W]here one party acts in bad faith, the relative economic position of the parties has little relevance' because the purpose of the award is to protect the innocent party from unnecessary costs and to punish the guilty party."). Bad faith may consist of a party's "constant disregard" of court orders, Yueh, 329 N.J. Super. at 460, as well as "misusing or abusing process . . . intentionally misrepresenting facts or law, or otherwise engaging in vexatious acts for oppressive reasons." Slutsky, 451 N.J. Super. at 367 (citing Borzillo v. Borzillo, 259 N.J. Super. 286, 293-94 (Ch. Div. 1992)).

We are satisfied the Family Part judge properly awarded counsel fees to plaintiff. The judge noted defendant failed to comply with numerous prior court orders and plaintiff had to incur counsel fees in seeking to compel defendant's compliance with those orders. The judge found defendant acted in bad faith by filing repetitive motions seeking the same relief. In finding bad faith conduct

on the part of defendant, a detailed analysis of the factors for the award of counsel fees by the judge was not required.

Affirmed.

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



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