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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0990-21**

JAMES ORSINI,

Plaintiff-Respondent,

v.

KATHRYN ROST ORSINI,

Defendant-Appellant.

Submitted October 18, 2022 – Decided December 15, 2022

Before Judges Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-1742-13.

Kathryn Rost Orsini, appellant pro se.

Piro, Zinna, Cifelli, Paris & Genitempo, LLC, attorneys
for respondent (Frank J. Zinna and Alex A. Pastore, on
the brief).

PER CURIAM

The parties to this post-judgment matrimonial action return to us for a second time. Defendant, Kathryn Rost-Orsini, appeals from a November 19, 2021 order issued by Judge Terry Paul Bottinelli temporarily suspending her in-person supervised parenting time and denying her request to modify the allocation of the costs of therapy and visitation supervisor services. After carefully reviewing the record in light of the governing legal principles, we affirm.

Judge Bottinelli acted well within his discretion in ordering a temporary sanction—suspending defendant's in-person parenting time—until she completes a court-ordered parenting supervision reevaluation. Nor did the judge abuse his discretion in denying without prejudice defendant's request to modify previous court orders relating to the payment of various fees.

I.

We presume the parties are familiar with the facts and procedural history of this protracted matrimonial litigation. We need not recite in detail those circumstances, many of which are recounted in our prior opinion. See Orsini v. Orsini, No. A-2821-18 (App. Div. Mar. 5, 2020) (slip op. at 2–4). We, therefore, only briefly summarize the facts pertinent to the specific order at issue in this appeal.

Plaintiff, James Orsini, and defendant were married in 2011 and have three minor children. In 2014, the parties divorced pursuant to a Dual Judgment of Divorce (DJOD) that incorporated their Marital Settlement Agreement (MSA). The MSA provided for shared physical and legal custody of the children and included a parenting-time schedule. After the DJOD, defendant relocated to Maryland, rendering the agreed-upon shared custody arrangement and parenting plan geographically unworkable.

Since 2016, multiple Family Part judges convened various hearings and conducted numerous case conferences to resolve the parties' custody and parenting-time disputes. In June 2018, defendant failed to return the children to New Jersey and comply with an order to appear in-person at a case management conference. Judge Jane Gallina-Mecca ordered defendant to immediately return the children to plaintiff's residence or else a warrant would issue for her arrest. Judge Gallina-Mecca also suspended defendant's unsupervised parenting time pending a parenting evaluation by a psychologist, Dr. LaCouture.¹

Almost two years after the entry of Judge Gallina-Mecca's order, defendant contacted Dr. LaCouture on April 13, 2020 to schedule the court-

¹ The judge ordered both parties to submit to a parenting evaluation with Dr. LaCouture. After defendant was offered and declined an appointment, Dr. LaCouture could not move forward with interviewing plaintiff.

ordered evaluation. In response, Dr. LaCouture informed her that services could not be initiated without an updated court order and a signed service agreement showing informed consent from both parties. On August 31, 2020, Dr. LaCouture also conveyed those requirements to defendant's attorney.

The record shows that from June 2018 to September 2020, defendant did not attempt to exercise in-person parenting time. In September 2020, defendant filed an order to show cause and notice of motion. Prior to the ruling on the order to show cause, on September 4, 2020, the court entered a consent order detailing a supervised parenting-time schedule. On October 21, 2020, the court entered an order in response to defendant's order to show cause and plaintiff's cross-motion. That order directed defendant to immediately engage the services of Dr. LaCouture to conduct a parenting-time evaluation, the cost of which was to be paid solely by defendant. The order further provided that the costs of visitation supervision were to be paid solely by defendant.

Defendant thereafter engaged Dr. LaCouture to complete the parenting evaluation. Dr. LaCouture's report was submitted to the court in January 2021. Dr. LaCouture recommended: (1) defendant be observed parenting the children without the maternal grandmother present; (2) defendant model appropriate behavior and respect for the benefit of the children; (3) supervision continue

during parenting time; (4) defendant secure therapeutic supports with a New Jersey provider on a weekly basis consistently for three consecutive months; (5) the children enroll in family therapy with both plaintiff and defendant participating when necessary; (6) defendant reengage Dr. LaCouture for reevaluation of the need for supervised visitation after completing three months of individual therapy; (7) after reevaluation, the family engage the services of a co-parenting therapist; (8) all children attend at least one parenting-time session each week or face parental consequences set by plaintiff; (9) parenting-time exchanges occur at neutral pick-up points or for only one parent to be at the exchange with the parenting-time supervisor; (10) a therapist assist defendant in understanding how changes in her living situation may negatively impact the children; and (11) maternal grandmother not be present at parenting-time exchanges and at Wednesday visits, but could attend up to two hours of the Saturday visits.

In March 2021, defendant filed another order to show cause and notice of motion. On April 20, 2021, Judge Bottinelli issued an order addressing the requests of both parties. Of relevance to this appeal, the order affirmed that both parties were to comply with all aspects and recommendations of Dr. LaCouture's report, and that defendant was to be solely responsible for the cost and fees of

Dr. LaCouture's evaluation and for implementing her recommendations, consistent with the October 2020 order.

In May 2021, defendant filed another order to show cause and notice of motion.² On June 25, 2021, Judge Bottinelli issued an order which, among other things, denied defendant's request to lift the supervision requirement on her parenting time and affirmed that defendant bear the cost of family therapy.

Following the June 25, 2021 order, both parties scheduled appointments with Dr. LaCouture. Defendant's appointment was scheduled for July 29, 2021. On that date, Dr. LaCouture sent an email to both counsel advising that defendant failed to appear for her appointment without providing notice. There is nothing in the record to indicate defendant ever rescheduled that appointment.

On September 21, 2021, defendant filed another order to show cause and notice of motion requesting, among other relief, that the maternal grandmother be permitted to act as a supervisor during parenting time. Plaintiff opposed that request, arguing Dr. LaCouture specifically recommended the maternal

² Prior to the return date, defendant's counsel sent a letter to the court asking Judge Bottinelli to reassign the matter, citing defendant's concerns of religious and cultural bias, as well as a bias in favor of plaintiff and his counsel. In a letter dated June 4, 2021, Judge Bottinelli advised defendant that a request for recusal required the filing of a formal motion pursuant to Rule 1:12-2. Defendant did not file a motion.

grandmother not be present at parenting-time exchanges or at parenting time other than for two hours on Saturday visitation dates, which the court adopted and ordered.

The record shows counsel for both parties agreed in chambers that the maternal grandmother would not be present at parenting-time exchanges and that defendant would instead utilize a ride service for transportation.³ Upon that agreement, defendant withdrew her emergent requests, and the balance of her application was converted into a notice of motion. Defendant's counsel thereafter withdrew the motion.

Despite the agreement reached in chambers, on Saturday, September 25, 2021, the maternal grandmother drove defendant to the parenting exchange, was present at the parenting exchange, and was present for the entirety of the parenting time. Plaintiff's counsel advised defendant that parenting time would not proceed on the following Wednesday if the maternal grandmother was present in violation of the agreement reached in chambers as well as Dr. LaCouture's recommendations. Defendant appeared for the following

³ Defendant claimed that she had an epileptic seizure and her doctor advised her not to drive until further tests could be run. Defendant's counsel agreed to produce substantiating documentation. Despite multiple requests from plaintiff, such documentation was never provided.

Wednesday exchange on her own, but drove herself rather than use a ride service as previously agreed. Plaintiff requested documentation that defendant was medically cleared to operate a vehicle, given her previous representations to the contrary.

On October 5, 2021, defendant filed another order to show cause and notice of motion claiming plaintiff was threatening to withhold parenting time. Plaintiff's counsel submitted a letter in lieu of more formal opposition. Shortly thereafter, defendant agreed to use a ride service for transportation and withdrew the fifth order to show cause on October 6, 2021.

On October 25, 2021, plaintiff filed a notice of motion, which defendant opposed. Judge Bottinelli convened oral argument via Zoom on November 19, 2021, after which he entered an order that "[d]efendant's court[-]ordered supervised parenting time is suspended until such time that she engages with Dr. LaCouture for an updated report and complies with Dr. LaCouture's personal therapy recommendations and a psychiatric evaluation. Once engaged, supervised parenting time can resume in accordance with prior court order." Judge Bottinelli did not suspend defendant's virtual parenting time. The judge also denied without prejudice "[d]efendant's request that the parties share the

cost of uncovered therapy costs and supervisor costs, and the evaluation by Dr. LaCouture, in accordance with respective income proportions."

Defendant raises the following contentions for our consideration on appeal:

POINT I

THE COURT ERRED IN SUSPENDING APPELLANT[']S SUPERVISED PARENTING TIME UNTIL SHE RE-ENGAGED DR. LACOUTURE TO CONDUCT A PSYCHIATRIC EVALUATION SOLELY OF HER.

POINT II

THE COURT ERRED IN DENYING APPELLANT[']S REQUEST THAT THE PARTIES SHARE THE COST OF THE SUPERVISORS, THERAPIST AND DR. LACOURTURES' PSYCHOLOGICAL EVALUATION OF APPELLANT.

II.

"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 v. Cesare, 154 N.J. 394, 413 (1998)). Thus, "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Ibid. (quoting Cesare, 154 N.J. at 411–12). We interfere

"[o]nly when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' . . . 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)).

"Discretionary determinations, supported by the record, are examined to discern whether an abuse of reasoned discretion has occurred." Ricci v. Ricci, 448 N.J. Super. 546, 564 (App. Div. 2017) (citing Gac v. Gac, 186 N.J. 535, 547 (2006)). An abuse of discretion occurs when a trial court's decision "rested on an impermissible basis, considered irrelevant or inappropriate factors, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." Elrom v. Elrom, 439 N.J. Super. 424, 434 (App. Div. 2015) (citations and internal quotation marks omitted).

It is also well-established that Family Part judges are afforded discretion in fashioning remedies to address the failure to comply with court orders. "Once 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." Milne v. Goldenberg, 428 N.J. Super. 184, 198 (App. Div. 2012) (citing Saltzman v. Saltzman, 290 N.J. Super. 117, 123 (App. Div. 1996)). Such

decisions are reviewed applying an abuse of discretion standard. Milne, 428 N.J. Super. at 197–99.

Sanctions imposed under Rule 1:10-3 are intended to induce a party's compliance. Ridley v. Dennison, 298 N.J. Super. 373, 381 (App. Div. 1997). Sanctions may be imposed pursuant to Rule 1:10-3, which provides that, in family actions, the court may also grant additional remedies as provided by Rule 5:3-7. Rule 5:3-7(a) provides in pertinent part:

On finding that a party has violated an order respecting custody or parenting time, the court may order, in addition to the remedies provided by R. 1:10–3, any of the following remedies, either singly or in combination: . . . (5) counseling for the children or parents or any of them at the expense of the parent in violation of the order; (6) temporary or permanent modification of the custodial arrangement provided such relief is in the best interest of the children; . . . and (10) any other appropriate equitable remedy.

Applying these principles, we first address defendant's contention that Judge Bottinelli erred in suspending her in-person parenting time. This post-judgment litigation has been marked by defendant's repeated failure to comply with court orders, particularly those relating to her obligation to submit to evaluations. Defendant presents no principled reason for us to second-guess Judge Bottinelli, particularly in light of the undisputed fact that defendant did not submit to the parenting supervision reevaluation as outlined in Dr.

LaCouture's January 2021 report. Defendant did not attempt to reengage with Dr. LaCouture until after the June 2021 order was entered. In July 2021, she failed to attend her scheduled appointment and, so far as the record reflects, never attempted to reschedule the appointment. Nor has she offered proof that she engaged in weekly individual psychotherapy appointments consistently for a period of three consecutive months, which was a prerequisite set by Dr. LaCouture for the reevaluation.

Rather than submit to the court-ordered reevaluation, she has taken the position that the reevaluation is no longer necessary. We reject defendant's argument on appeal that there is no current need for Dr. LaCouture's reevaluation or individual psychotherapy based on the reports of the visitation supervisor. Defendant asserts that she has complied with all of Dr. LaCouture's recommendations; this is belied by the record.

Judge Bottinelli, who is intimately familiar with the facts of this case, explained that he

believe[d] that the [re]evaluation from Dr. [LaCouture] needs to go forward, that [defendant] has to participate in that if she is going to have a meaningful [sic] with the children. And that she needs to have therapy to address how she is going to confront the issues that have been raised repeatedly in this case.

. . . This[,] I think[,] is the only way that [defendant] is going to get a wake-up call, that she can't just do what she wants to do, she cannot just disregard court orders, that they're meaningful orders, they're not entered into without consideration of both sides of the coin, but [defendant] needs to do something to help herself.

Judge Bottinelli concluded, "until such time that she engages in therapy and complies with Dr. [LaCouture's] . . . recommendations, . . . she is only going to be afforded virtual parenting time with the children." We add that the judge considered and rejected defendant's claim that she could not afford Dr. LaCouture's fee. The only evidence defendant provided to support her assertion were tax returns that relied entirely on a profit and loss statement, which Judge Bottinelli found did not sufficiently establish her inability to pay. The judge questioned the legitimacy of the claimed financial hardship, citing defendant's ability to pay for her New York apartment and subsequent relocation, as well as the fact defendant had months to comply and only now raised the issue of financial hardship as a reason for not complying with court orders to submit to reevaluation.

In sum, given the deference we afford to Family Part judges, we are satisfied Judge Bottinelli's decision to temporarily suspend in-person parenting

time was supported by the record and that there is no basis for appellate intervention.

We next turn to defendant's contention that Judge Bottinelli erred in denying her request to modify the October 21, 2020 order determining the parties' financial contributions for professional services. Judge Bottinelli noted that he previously "made an allocation for the reasons that I placed on the record for those prior events and right now I'm not making any changes to that." The judge further explained that "there's [no] reasons to show any significant change in circumstances in this." Accordingly, he denied defendant's request, but expressly did so without prejudice, noting that she could revisit the cost allocation at a later date. The judge reasoned it was best to first "find out what the recommendation[s] are going to be with regard to family therapy and then we can address it." We see no abuse of discretion in reaching that conclusion.

To the extent we have not addressed them, any remaining arguments raised by defendant lack sufficient merit to warrant discussion. 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