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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1151-20**

MARK J. MOLZ,

Plaintiff-Appellant,

v.

THERESA MITCHELL,  
f/k/a THERESA MOLZ,

Defendant-Respondent.

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Argued March 21, 2022 – Decided April 7, 2022

Before Judges Rose and Enright.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Mercer County,  
Docket No. FM-11-0626-12.

Mark J. Molz, appellant, argued the cause pro se.

Andrew L. Rochester argued the cause for respondent  
(Morgenstern & Rochester, attorneys; Andrew L.  
Rochester, on the brief).

PER CURIAM

In this post-judgment matrimonial matter, plaintiff Mark J. Molz appeals from the October 14 and December 11, 2020 orders entered in favor of his ex-wife, plaintiff Theresa Mitchell (f/k/a Molz). We affirm, substantially for the reasons outlined in the cogent oral opinions accompanying the challenged orders entered by Judge Catherine Fitzpatrick.

The parties were married in 1994 and have two adult daughters. Their marriage ended in January 2018 with the entry of a judgment of divorce (JOD). Plaintiff, a practicing attorney, appealed from the JOD. In part, he challenged Judge Fitzpatrick's awards of alimony, equitable distribution, and counsel fees to defendant. He also appealed from two post-judgment orders dated May 14, and September 17, 2018, which enforced the JOD and held him in contempt.

We affirmed the JOD and contested orders. Molz v. Molz, No. A-2888-17 (App. Div. May 1, 2020). The Supreme Court denied plaintiff's petition for certification. 244 N.J. 163 (2020).

In July 2020, plaintiff filed a post-judgment motion requesting: the right to buy out defendant's share of equity in the former marital home and the parties' office property based on appraisals he secured; a credit for payments defendant received from a certain bank account as of 2011, which he claimed were "never credited through Probation" against his support obligation; and a reservation of

"all rights and positions" if the Supreme Court granted his then-pending certification petition.

One month later, defendant filed a cross-motion, seeking to enforce the JOD, as well as certain post-judgment orders, and requesting the denial of plaintiff's motion.<sup>1</sup> Within weeks of hearing argument, the judge rendered an oral opinion on the cross-applications and entered the October 14 order, denying plaintiff's motion in its entirety and granting the bulk of defendant's enforcement motion.

In denying plaintiff's request to buy out defendant's one-half share of the equity in the former marital home, the judge stated:

This prayer for relief is just a clear example of the disingenuous filing by [plaintiff] with regard to obtaining subsequent appraisals, which the court issued an order saying he's not to do that.

. . . .

[Plaintiff] completely ignores other post-judgment orders submitted by this court. If the house value has gone down, it's only as a result of his delay tactics, when this house should have been put on the market or he should have done the buyout a long time ago.

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<sup>1</sup> The court-appointed receiver also filed a cross-motion, opposing plaintiff's application and seeking to enforce prior orders.

And he has clearly not been taking care of the property . . . . He has committed waste on the property . . . .

. . . .

This also applies to his . . . application . . . to purchase the defendant's interest in the office property . . . .

. . . .

So [plaintiff] continues his course of action which is defying court orders and continuing to keep this litigation going, all to the detriment, clearly, of the defendant.

The judge further observed that to effectuate the sale of the former marital home, she previously had authorized the court-appointed receiver "to evict the [p]laintiff and drill the locks if necessary" and "require[d] the marital residence to be maintained in a show ready condition."

Regarding plaintiff's request to be credited for monthly annuity payments defendant received from a certain bank account, the judge acknowledged plaintiff was due a credit to offset the monthly alimony he was obliged to pay through the Probation Department. But the judge stated, "plaintiff is not going to get the credit until he complies with the prior court orders . . . all of which required [him] to direct payment of [his] two annuities to Probation." She explained, "[a]s soon as the plaintiff complies with [this order], the credit will

be calculated by the defendant and she shall provide notice to the Probation Department of the credit." Because plaintiff had been ordered multiple times to have his annuity payments forwarded to the Probation Department, the judge also announced plaintiff's "continued contempt and failure to direct payment of two annuities through the Probation Department will result in a daily sanction against [him] until [he] complies with this order." In fact, the judge granted defendant's request for a daily sanction of \$250 "until such time as plaintiff comes into compliance with all provisions of the order from this motion." Finally, the judge denied as moot plaintiff's request to preserve his "rights and positions" during the pendency of his Supreme Court petition because by then, his petition had been denied.

Regarding defendant's cross-motion, and pertinent to this appeal, the judge granted defendant's requests that plaintiff: immediately sell the marital home and office property, and keep them in show ready condition until their sale; vacate the marital home and have other resident occupants do the same within thirty days; pay the carrying costs on properties subject to equitable distribution; provide proof of life insurance per the JOD; pay defendant \$9,000, representing half of the parties' loss from a delayed boat sale; pay defendant half of certain sailboat proceeds and satisfy various boat-related debts; reimburse

defendant \$2,000 in appraisal fees; forfeit a \$2,500 deposit for failing to complete the purchase of certain motor vehicles; pay sanctions of \$250 per day pending compliance with existing orders; satisfy outstanding counsel fee awards; and pay defendant an additional counsel fee of \$3,327.50.

The judge also granted the receiver's request to enforce a May 15, 2020 order requiring "plaintiff to turn over all business records for all businesses [in] which plaintiff claims an interest . . . ." Further, the judge ordered plaintiff to provide proof of the mortgage debt on the office property, given he claimed the debt was marital but defendant alleged the debt was fraudulent.

Plaintiff moved for reconsideration and a stay of the October 14 order. He certified he was unable to vacate the former marital home with his daughters within thirty days and had "serious concerns" about moving out during the pandemic. Additionally, he claimed the business records ordered to be released to the receiver could not be turned over because the business entities did not consent to producing this information. Plaintiff made this representation as the attorney for the entities.

Defendant filed a cross-motion, opposing plaintiff's application; the receiver filed a certification opposing plaintiff's motion, but did not object to

giving plaintiff more time to move from the marital home, considering the deadline for plaintiff's move had passed.

Shortly before the return date of the cross applications, plaintiff sent Judge Fitzpatrick a letter — not a filed formal motion — asking the judge to recuse herself based on a pending lawsuit he filed against her. When argument on the motions commenced on December 4, 2020, the judge declined to recuse herself, stating she could be impartial, and "it would be unduly unfair to [defendant] to bring another judge into this longstanding litigation when this court knows . . . all the applications that have been made . . . since 2014." Following argument, the judge reserved decision on the formal motions.

On December 11, the judge issued an order denying plaintiff's reconsideration motion and request for a stay. In the oral opinion she rendered the same day, the judge found plaintiff had "provided no persuasive arguments at all for th[e] court to reconsider [its] decision" from October 14. Further, she noted the receiver had certified plaintiff remained in violation of court orders to make various payments, provide documents, or maintain the marital home in "show ready condition." The judge expressed regret at plaintiff's "continued lack of candor with the court" and his "recalcitrant behavior for years," concluding defendant was "entitled to resolution of these equitable distribution

issues." Still, she afforded plaintiff a brief extension of time to vacate the former marital home. The judge also granted defendant's enforcement application and awarded her counsel fees, referencing the level of income imputed to plaintiff in the JOD and finding "the bad faith of [plaintiff] is clear."

On appeal, plaintiff argues the judge erred by: (1) denying him a credit for annuity payments defendant received and ordering the assignment of his premarital annuities to defendant; (2) directing him and the parties' daughters to vacate the former marital home; (3) denying him a credit for carrying costs paid on the home and office properties; (4) failing to hold a hearing regarding the condition of the home; (5) ordering the office property's sale; (6) compelling the production of corporate records; (7) crediting defendant for the loss of a boat sale; (8) compelling him to forfeit a \$2,500 deposit toward the purchase of certain cars; (9) awarding defendant a \$2,000 appraisal fee and counsel fees; (10) imposing a \$250 daily sanction; and (11) failing to recuse herself.

We start our analysis mindful that many of plaintiff's contentions were previously raised and rejected by us when we affirmed the JOD, and the May 14, and September 17, 2018 orders. For example, we affirmed the May 14 order directing plaintiff's two annuity payments to be paid through Probation to offset his monthly alimony obligations and rejected his claim to receive credits for

pendente lite payments beyond those already afforded to him. "If an issue . . . has been determined on the merits in a prior appeal[,] it cannot be re-litigated in a later appeal of the same case, even if of constitutional dimension." Washington Commons, LLC v. City of Jersey City, 416 N.J. Super. 555, 564 (App. Div. 2010).

Further, it is clear to us plaintiff attempts to collaterally challenge recent enforcement orders despite failing to appeal from earlier orders providing for the same relief. By way of example, defendant failed to appeal from the June 25, 2018 order requiring him "to pay all carrying costs . . . associated with the [marital] properties for as long as plaintiff retains access to the marital properties referenced in the . . . [JOD]." Similarly, he did not appeal from two orders dated May 15, 2020 directing him, in part, to: pay defendant a \$9,000 credit for loss of a boat sale; forfeit a \$2,500 deposit if he failed to purchase certain motor vehicles; reimburse defendant for a \$2,000 appraisal fee; and "turn over all business records for all businesses [in] which plaintiff claims an interest, including, but not limited to, tax returns for the last ten years, . . . valuations of assets, [and] credit applications . . . ." Such untimely challenges to these rulings are barred under Rule 2:4-1(a). Additionally, we are convinced each of plaintiff's arguments lack merit. R. 2:11-3(e)(1)(E).

We defer to the family court's factual findings if "supported by adequate, substantial, and credible evidence in the record." D.A. v. R.C., 438 N.J. Super. 431, 451 (App. Div. 2014) (citing Cesare v. Cesare, 154 N.J. 394, 411-13 (1998)). However, we owe no deference to fact findings that are not based on witness testimony or credibility findings. Yueh v. Yueh, 329 N.J. Super. 447, 461 (App. Div. 2000). We also review a Family Part's formulation of equitable remedies to enforce one of its orders for an abuse of discretion. Milne v. Goldenberg, 428 N.J. Super. 184, 197-98 (App. Div. 2012). The same standard of review is applicable to orders denying reconsideration, Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996), fee sanctions, Slutsky v. Slutsky, 451 N.J. Super. 332, 365 (App. Div. 2017), and counsel fee awards, Tannen v. Tannen, 416 N.J. Super. 248, 285 (App. Div. 2010), aff'd o.b. 208 N.J. 409 (2011). We review de novo the court's legal conclusions. Barr v. Barr, 418 N.J. Super. 18, 31 (App. Div. 2011) (citing Zabilowicz v. Kelsey, 200 N.J. 507, 512-13 (2009)).

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, and require reasonable security for the due observance of such orders . . . . [O]r the performance of the said orders may be enforced by other ways according to the practice of the court.

Additionally, our Supreme Court has held "the trial court may exercise its discretion to order the sale of marital assets and the utilization of proceeds in a manner as 'the case shall render fit, reasonable, and just.'" Randazzo v. Randazzo, 184 N.J. 101, 113 (2005). While Randazzo involved the sale of real property prior to a final judgment of divorce, plaintiff makes no convincing argument as to why the court's ability to fashion appropriate relief in a divorce proceeding should be any less expansive where a party persists, after entry of a JOD, in refusing to comply with orders establishing his equitable distribution, alimony, and related obligations. See e.g., Slayton v. Slayton, 250 N.J. Super. 47, 50 (App. Div. 1991) ("An item which was equitably distributed may . . . be tapped as a fund out of which otherwise calculated alimony may be satisfied.").

Further, "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" or face sanctions. Milne, 418 N.J. Super. at 198. Sanctions under the Rule are intended

to coerce a party's compliance. Ridley v. Dennison, 298 N.J. Super. 373, 381 (App. Div. 1997). See also R. 5:3-7 (outlining remedies a Family Part judge may employ upon a finding of a violation of a judgment or order).

Next, per Rule 5:3-5(c), a judge has discretion to award counsel fees in a matrimonial action, Tannen, 416 N.J. Super. at 285; such fees "are normally awarded to permit parties with unequal financial positions to litigate (in good faith) on an equal footing." J.E.V. v. K.V., 426 N.J. Super. 475, 493 (App. Div. 2012) (quoting Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992)). Where 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." Yueh, 329 N.J. Super. at 461 (internal quotation marks omitted). Bad faith may consist of a party's "constant disregard" of court orders, id. at 460, or the "intentional misrepresentation of facts," Borzillo v. Borzillo, 259 N.J. Super. 286, 294 (Ch. Div. 1992).

Regarding the issue of recusal, we observe Rule 1:12-2 provides, "[a]ny party, on motion made to the judge before trial or argument and stating the reasons therefor[e], may seek that judge's disqualification." (Emphasis added). Motions for recusal must be made "directly to the judge presiding over the

case." State v. McCabe, 201 N.J. 34, 45 (2010) (citing R. 1:12-2; Magill v. Case, 238 N.J. Super. 57, 63 (App. Div. 1990)). "They are entrusted to the sound discretion of the judge and are subject to review for abuse of discretion." Ibid. (citing Panitch v. Panitch, 339 N.J. Super. 63, 66, 71 (App. Div. 2001)). As we explained to plaintiff when he argued for Judge Fitzpatrick's recusal after entry of the JOD, "[b]ias cannot be inferred from adverse rulings against a party." Molz, slip op. at 33 (quoting Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008)).

Governed by the standards we have outlined, we perceive no basis to disturb either the October 14 or December 11 orders, particularly given plaintiff's flagrant and longstanding refusal to comply with the JOD and numerous post-judgment orders, including those he never challenged on appeal.

To the extent we have not specifically addressed plaintiff's remaining arguments, we conclude they lack 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