

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-1211-20**

JANELL VANDERWALL,

Plaintiff-Respondent,

v.

JOSHUA VANDERWALL,

Defendant-Appellant.

Submitted May 9, 2022 – Decided May 18, 2022

Before Judges Fasciale and Sumners.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Atlantic County,
Docket No. FM-01-0493-19.

Joshua Vanderwall, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant appeals from a December 10, 2020 final judgment of divorce (FJOD). Plaintiff filed her divorce complaint in January 2018.¹ Defendant did not comply with discovery requests and the judge struck defendant's answer and dismissed defendant's counterclaim. Defendant's status remains in default. Plaintiff's counsel filed a motion on notice seeking the FJOD, which led to a Zoom hearing on December 10, 2020—defendant did not attend. The judge treated the proceeding as a default judgment hearing. The judge accepted the proposed FJOD but only after evaluating on the merits the pending issues, including equitable distribution of property.

Defendant primarily argues that the judge violated his constitutional rights by conducting the proceeding without his presence. Before the hearing that led to the FJOD, defendant did not move to vacate the order suppressing/dismissing his pleadings. By not doing so, his answer and counterclaim remain suppressed and dismissed. After the Zoom hearing, defendant did not move to vacate the FJOD. Although the judge was within his discretion under Rule 5:5-10, on this record, we decline to assess the merits of defendant's appeal, which we dismiss without prejudice.

¹ Plaintiff did not file an appellate brief.

If desired, defendant can file motions in the trial court seeking to vacate the suppression/dismissal order and the FJOD. We take no position on the merits of those motions, or any other motions that defendant might file in the trial court.

Appeal dismissed without prejudice.

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



CLERK OF THE APPELLATE DIVISION