SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1529-20

KEVIN D. KELLY,

Plaintiff-Appellant,

v.

DEBORAH E. KELLY,

Defendant-Respondent.

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Argued April 6, 2022 – Decided April 21, 2022

Before Judges Firko and Petrillo.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Warren County, Docket No. FM-21-0163-19.

Kevin D. Kelly, appellant, argued the cause pro se.

Deborah E. Kelly, respondent, argued the cause pro se.

PER CURIAM

In this post-judgment matrimonial matter, plaintiff Kevin D. Kelly, an attorney who is self-represented, appeals from a January 20, 2021 Family Part

order entered by Judge Robert A. Ballard. Judge Ballard denied plaintiff's motion seeking relief from orders entered on October 15, 2018 and March 27, 2020, pursuant to Rules 4:50-1(f) and 1:1-2. The October 15, 2018 order, entered by Judge Haekyoung Suh, compelled plaintiff to satisfy his support obligations as set forth in the parties' final judgment of divorce confirming arbitration award (FJOD) and placed him on a single missed payment bench warrant status. On March 27, 2020, Judge Suh entered an order compelling plaintiff to reimburse defendant Deborah E. Kelly relative to a judgment levied against her bank account due to his failure to make payments related to their former joint marital Newton Commons Townhouse (Townhouse). On April 20, 2020, plaintiff filed a motion to stay the March 27, 2020 order and to vacate the bench warrant provisions contained in the October 15, 2018 and March 27, 2020 orders, which Judge Suh denied on May 22, 2020. For the reasons that follow, we affirm.

I.

The parties are familiar with the procedural history and facts of this case, and therefore, they will not be repeated in detail here.[1] We briefly summarize

[1] The initial chronology is set forth in this court's unpublished opinion entered on October 17, 2016, in which we affirmed the Family Part's order enforcing the

the facts pertinent to this appeal from the record. The parties were married in 1987 and have five children who are now emancipated. In 2010, plaintiff filed a complaint for divorce. The parties consented to binding arbitration to resolve their outstanding issues. On October 7, 2015, the arbitrator rendered a final decision and award, which ultimately was incorporated into the FJOD on October 27, 2017.[2] Plaintiff was ordered to pay defendant limited duration alimony of $3,000 per month plus $400 per month towards arrearages until satisfied in full. Alimony was to be paid for a term of ten years and was to be paid until expiration of the term, death of either party, remarriage of defendant or her cohabitation "as defined by the [c]ourts of the State of New Jersey at that time, whichever occurs first."

In addition, plaintiff was ordered to pay child support for two of the children, who were unemancipated at the time, in the sum of $286 per week as calculated in accordance with the child support guidelines worksheet. Child support was subject to modification when the two children were in college and

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parties' voluntary agreement to binding arbitration. See Kelly v. Kelly (Kelly I), Docket No. A-2637-14 (App. Div. Oct. 17, 2016). We incorporate, by reference, the facts stated in our prior opinion.

[2] We affirmed the validity of the parties' agreement to refer their matrimonial issues to binding arbitration. See Kelly I, slip op. at 4.

was to be paid through the probation department until their emancipation. The FJOD also addressed equitable distribution and ordered plaintiff to "provide life insurance on his life in the amount of $100,000[], naming the two (2) unemancipated children . . . as beneficiaries until they became emancipated." No life insurance was ordered to secure alimony payments.

Two months later on December 13, 2017, plaintiff filed a third-party complaint against defendant in the Law Division alleging "the subject matter of this litigation was not decided by the [a]rbitration [o]rder or [FJOD]."[3] On January 23, 2018, defendant filed an answer to the third-party complaint, and the matter was referred to non-binding arbitration on June 14, 2018. After the arbitration was unsuccessful, a settlement conference was conducted on November 2, 2018, but the matter was not resolved. On December 19, 2018, the Law Division judge issued an order, which: (1) granted defendant's motion for summary judgment and dismissed plaintiff's third-party complaint with prejudice; and (2) granted defendant's motion to deem the third-party complaint

[3] On June 30, 2017, the State of New Jersey Higher Education Student Assistance Authority filed an eighteen-count complaint against plaintiff "seeking [j]udgment of $222,350.66 plus interest and attorneys' fees for nine student loans . . . . spent for the college education of [plaintiff]'s [two] oldest children." See N.J. Higher Educ. Student Assistance Auth. v. Kelly, No. WRN-L-0311-18. This case is ongoing.

frivolous. Consequently, plaintiff was sanctioned in the amount of $3,000 for filing the frivolous third-party complaint against defendant.

On December 13, 2017, the Sussex County Probation Department issued a bench warrant for plaintiff's arrest for non-payment of support. In response, plaintiff filed an emergent application to vacate the arrest warrant. On January 2, 2018, Judge Noah Franzblau vacated plaintiff's bench warrant based on his pending appeal. On April 26, 2018, Judge Ralph Amirata ordered plaintiff to immediately pay the sum of $2,976 towards child support arrearages which dated back to January 2018, otherwise a bench warrant would issue for his arrest. On June 6, 2018, defendant filed a motion to enforce the FJOD claiming plaintiff was in arrearages for child support and alimony in excess of $117,000. Plaintiff opposed defendant's motion for enforcement and requested a stay of the proceedings because the issues related to the October 7, 2015 arbitration order and decision were pending appeal.

On October 15, 2018**,** Judge Suh issued an order[4] denying plaintiff's application to stay enforcement of the FJOD pending appeal and granted

[4] Defendant's June 6, 2018 enforcement action was initially filed with the Sussex County Family Part. On July 1, 2018, however, plaintiff was appointed to the position of Sussex County Counsel, and the case was transferred to Warren County. An enforcement hearing was conducted on August 9, 2018, and

defendant's motion to compel enforcement. Relevant to the current appeal, Judge Suh based her decision on a calculation of plaintiff's total net yearly income based, in part, on his part-time employment as Sussex County Counsel, for which he netted $149,812 per year. When combined with plaintiff's claimed net annual income of $53,646, his total net yearly income equated to $203,458. Even paying the yearly expenses and alimony obligation, Judge Suh found "plaintiff will enjoy a surplus of $89,026."

Therefore, the judge denied plaintiff's application to modify enforcement of his financial obligations pending appeal. Judge Suh ordered plaintiff to continue paying $295 per week for his child support obligation and $3,000 per month for base alimony, plus $400 per month towards alimony arrears. Plaintiff was placed on a single missed payment bench warrant status. The record shows

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a prior Warren County Family Part judge "ordered plaintiff to make a lump sum payment of $800" on August 31, 2018. The matter was subsequently transferred to Judge Suh.

plaintiff did not file a motion for reconsideration,[5] notice of appeal,[6] or a motion for relief based upon mistake[7] relative to Judge Suh's calculation of his income.

The October 15, 2018 order also denied, without prejudice, defendant's request to compel plaintiff to obtain and maintain a $250,000 life insurance policy naming her as beneficiary until he satisfied all of his financial obligations under the FJOD. However, on July 19, 2019, Judge Suh issued an order granting defendant's renewed motion to compel plaintiff to obtain and maintain a life insurance policy naming her as beneficiary in response to his continued "failure to comply with the FJOD." During oral argument, plaintiff stated he has not obtained a life insurance policy as ordered because he is uninsurable. And, the order required "plaintiff to pay defendant $2,474 each month, in addition to his

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[5] Rule 4:49-2 provides a motion for "reconsideration seeking to alter or amend a[n] . . . order shall be served no later than [twenty] days after service of the" order. (Emphasis added). "The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred . . . ." Ibid.

[6] Rule 2:4-1(a) requires an appeal of a final order to "be filed within [forty-five] days of their entry." (Emphasis added).

[7] Rule 4:50-1(a) permits relief from an "order if there has been a mistake." DiPietro v. DiPietro, 193 N.J. Super. 533, 539 (App. Div. 1984). "A motion for such relief must be made within one year after entry of the judgment." Ibid. (citing R. 4:50-2).

other financial obligations, until he obtain[ed] such a policy."[8] The July 19, 2019 order also "directed [p]laintiff to ensure [d]efendant was not liable for any outstanding judgments arising out of the" Townhouse, pursuant to the FJOD, which required him to indemnify and hold her harmless from same.

On March 27, 2020, in response to plaintiff's failure to indemnify defendant, Judge Suh issued an order compelling plaintiff to pay defendant $12,598 in satisfaction of a judgment levied against her bank account arising out of defaults of payments and fees related to the Townhouse. The order required plaintiff to provide proof of payment by April 27, 2020, otherwise a bench warrant would issue. On April 20, 2020, plaintiff filed a motion to stay the March 27, 2020 order and vacate the two bench warrant provisions set forth in the October 15, 2018 and March 27, 2020 orders. Judge Suh denied plaintiff's motion on May 22, 2020.

The matter was subsequently transferred to Judge Ballard. On September 14, 2020, Judge Ballard issued an order denying plaintiff's motion to reconsider

[8] On November 15, 2019, Judge Suh issued another order compelling plaintiff to either: (1) furnish proof of a life insurance policy in compliance with the July 19, 2019 order; or (2) "pay the monthly sanction in the amount of $2,474," which at the time had accrued to the amount of $7,422 and would "continue to accrue monthly until [plaintiff] complie[d] with the July 19, 2019 order."

the October 15, 2018 and March 27, 2020 orders. Even giving plaintiff the benefit of the doubt as to the timeliness of his motion for reconsideration, Judge Ballard found the October 15, 2018 and May 22, 2020 orders had "fully considered the matters at issue" and an ability-to pay-hearing was warranted. The ability-to-pay hearing was ultimately scheduled for January 22, 2021.

On November 23, 2020, plaintiff filed a motion seeking relief from the October 15, 2018 and March 27, 2020 orders, pursuant to Rules 4:50-1(f) and 1:1-2. Plaintiff claimed his income had been erroneously calculated by Judge Suh, and the subsequent orders entered against him were based upon her miscalculation. Defendant filed a notice of cross-motion seeking to hold plaintiff in willful violation of the orders entered on October 15, 2017, July 19, 2019, November 15, 2019, and March 27, 2020. Defendant also requested a bench warrant be issued for plaintiff's arrest. Oral argument was scheduled on January 22, 2021 at the parties' request. However, two days earlier on January 20, 2021, the parties were provided with Judge Ballard's written statement of reasons pursuant to Rules 1:6-2(f) and 1:7-4 and were advised by the court that an appearance was unnecessary on January 22, 2021.[9]

[9] In his brief, plaintiff contends Judge Ballard rendered an opinion without the benefit of oral argument or testimony from the parties. However, plaintiff did

In his statement of reasons, Judge Ballard highlighted the portion of Judge Suh's October 15, 2018 order that served as the basis for plaintiff's motion:

> According to plaintiff[']s [case information statement] submitted July 19, 2018, he made a net income of $53,646 last year. During oral argument, [p]laintiff revealed he also makes about $150/hour, working part-time for [thirty] hours a week as Sussex County Counsel. This amounts to $234,000 per year. Pursuant to Appendix[,] [p]laintiff makes a net income of $1,617 per week ($234,000/52weeks=$4,500-$1,619=$2,881) or $149,812 net per year as Sussex County Counsel. Therefore, [p]laintiff stipulates to a total net yearly income of $203,458 ($149,812 + $53,646).

Judge Ballard reasoned that "[t]he purpose and effect of the above paragraph was not to calculate [p]laintiff's income" but "to explain why Judge Suh denied [his] motion for a stay of enforcement of his already established alimony and child support obligations." In addition, Judge Ballard emphasized "Judge Suh's examination of [p]laintiff's financials was [done] to explain why

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not brief the argument as to whether the judge was required under the law to schedule a hearing. Therefore, we deem the issue waived. See Telebright Corp. v. Dir., N.J. Div. of Tax'n, 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming an issue waived when the brief includes no substantive argument with respect to the issue); Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011) (stating "[a]n issue not briefed on appeal is deemed waived"); Mid-Atl. Solar Energy Indus. Ass'n v. Christie, 418 N.J. Super. 499, 508 (App. Div. 2011) (declining to consider issue raised "without a separate point heading"); DeSoto v. Smith, 383 N.J. Super. 384, 395 n.1 (App. Div. 2006) (refusing to consider issue not set forth as a separate issue in the legal argument of the appellate brief).

the [c]ourt believed that [p]laintiff had the ability to comply with his existing obligations while waiting for a decision from the Appellate Division." Therefore, Judge Ballard found Judge Suh's "summary of [p]laintiff's financial situation" was "irrelevant to his already existing obligations."

As to the applicability of Rule 4:50-1 advanced by plaintiff, Judge Ballard concluded he "has not suffered any 'unjust result'" thereby barring invocation of the rule. The judge denied defendant's cross-motion to issue a bench warrant for plaintiff's arrest "pending the ability-to-pay hearing." This appeal followed.[10]

Plaintiff raises the following issues on appeal:

> (1) the motion judge applied the wrong standards in denying relief to plaintiff;
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> (2) plaintiff is entitled to relief pursuant to Rule 4:50-1(f);
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> (3) plaintiff is entitled to relief pursuant to Rule 1:1-2; and
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> (4) proceedings upon remand must be before a different judge to preserve the appearance of a fair and unprejudiced hearing.

[10] On February 10, 2021, plaintiff filed his notice of appeal as to the January 20, 2021 Family Part order. Plaintiff's ability-to-pay hearing was subsequently adjourned pending the outcome of the within appeal.

Having carefully reviewed the record, we affirm primarily for the reasons expressed in the thorough statement of reasons Judge Ballard issued with the order under review. R. 2:11(e)(1)(E). We add the following remarks.

II.

Appellate "review of Family Part orders is limited." Gormley v. Gormley, 462 N.J. Super. 433, 442 (App. Div. 2019). This court accords general "deference to Family Part judges due to their 'special jurisdiction and expertise in family [law] matters.'" Ibid. (alteration in original) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). Therefore, we will uphold a Family Part judge's fact-finding so long as it is "supported by adequate, substantial, credible evidence." Ibid. (quoting Cesare, 154 N.J. at 411-12). Reversal is warranted only when the Family Part judge's fact-findings "are 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Ibid. (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)); see also Lombardi v. Lombardi, 447 N.J. Super. 26, 33 (App. Div. 2016) (noting this standard applies to the Family Part's decisions regarding alimony and child support).

The judge's interpretation of law or its legal conclusions, however, are reviewed de novo. See Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div.

2017); Spangenberg v. Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015) (quoting Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

"[A] Rule 4:50-1 decision rests within 'the sound discretion of the trial court,' and [this court] will not disturb it 'absent an abuse of discretion.'" BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 124 (App. Div. 2021) (quoting Mancini v. EDS ex rel N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)). Rule 4:50-1 provides:

> On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R[ule] 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.
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> [Emphasis added].

"[A] motion for relief from judgment based on any one of the six specified grounds should be granted sparingly," Pressler & Verniero, Current N.J. Court

Rules, cmt. 1 on R. 4:50-1 (2022); see In re G'ship of J.N.H., 172 N.J. 440, 473-74 (2002), and "may not be used as a substitute for a timely appeal," In re Est. of Schifftner, 385 N.J. Super. 37, 43 (App. Div. 2006) (quoting Wausau Ins. Co. v. Prudential Prop. & Cas. Ins. Co., 312 N.J. Super. 516, 519 (App. Div. 1998)). "The rule applies only to final orders and judgments." Pressler, cmt. 2 on R. 4:50-1; but see Pressler, cmt. 6.1 on R. 4:50-1 (noting "[a]s a general matter, judgments and orders in family actions are covered by this rule.").

As asserted by plaintiff, Rule 4:50-1(f) "is the 'elusive catchall category'" for relief. (Quoting Pressler, 5.6.1 on R. 4:50-1). "No categorization can be made of the situations which would warrant redress under subsection (f). . . . [T]he very essence of [subsection] (f) is its capacity for relief in exceptional situations. And in such exceptional cases its boundaries are as expansive as the need to achieve equity and justice." DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 269–70 (2009) (first and second alterations in original) (emphasis added) (quoting Ct. Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966)). "Whether exceptional circumstances exist is determined on a case by case basis according to the specific facts presented." J.N.H., 172 N.J. at 474.

Courts should consider, among other factors: (1) "the 'extent of the delay in making the application for relief'"; (2) "the underlying reasons or cause"; (3)

"fault or blamelessness of the litigant"; and (4) "any prejudice that would accrue to the other party." Ibid. (internal quotation marks omitted) (quoting C.R. v. J.G., 306 N.J. Super. 214, 241 (1997)); see BV001 REO Blocker, LLC, 467 N.J. Super. at 126. "[T]he correctness or error of the original judgment," however, "is ordinarily an irrelevant consideration." Pressler, cmt. 5.6.1 on R. 4:50-1.

> The very purpose of a Rule 4:50 motion is not, as in appellate review, to advance a collateral attack on the correctness of an earlier judgment. Rather, it is to explain why it would no longer be just to enforce that judgment. The issue is not the rightness or wrongness of the original determination at the time it was made but what has since transpired or been learned to render its enforcement inequitable.
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> [J.N.H., 172 N.J. at 476 (emphases added).]

Here, plaintiff contends Judge Ballard erred in denying relief pursuant to Rule 4:50-1 because he applied the wrong standards. First, plaintiff argues Judge Ballard refused to reconsider the merits of Judge Suh's decisions. Specifically, plaintiff claims: (1) Judge Suh's October 15, 2018 order denying his request to stay proceedings pending appeal and compelling him to pay child support, alimony, and arrearages was based on an incorrect "finding that plaintiff receives a salary as an employee of Sussex County," (emphasis added); and (2) Judge Suh's March 27, 2020 order compelling him to satisfy the

Townhouse judgment "was clearly imposed as the result of her prior erroneous conclusion that plaintiff 'enjoys a surplus of $89,092' per year."

We note both of plaintiff's arguments rely on the correctness of the original decisions, which "is ordinarily an irrelevant consideration." Pressler, cmt. 5.6.1. on R. 4:50-1. However, plaintiff fails "to explain why it would no longer be just to enforce [the] judgment[s]," J.N.H., 172 N.J. at 476 (emphasis added). Indeed, plaintiff has provided no argument, facts, or legal authority to support his contention why an un-appealed, three-year-old calculation[11] constitutes an exceptional circumstance warranting redress "to achieve equity and justice."[12] DEG, 198 N.J. at 270 (quoting Court Inv. Co., 48 N.J. at 341).

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[11] Plaintiff claims "he had not fully reviewed the October [15,] 2018 [o]rder until over a year later."

[12] Plaintiff's reliance on our holding in DiPietro, 193 N.J. Super. 533, is misplaced. In DiPietro, the Family Part erred in calculating a vested pension's value for purposes of equitable distribution. See id. at 536-37. The Family Part "intended [the] plaintiff to have [twenty-five percent] of [the] defendant's pension. Through [the judge's] mathematical mistake, however, [the defendant] [would] receive at least twice what the judge intended." Id. at 539. Therefore, we concluded relief was proper under Rule 4:50-1(a). Ibid. First, under Rule 4:50-1(a), the Family Part may correct "a mistake in expressing his [or her] judgment mathematically" within one year. Id. at 539; see R. 4:50-2. Second, the mathematical mistake was relevant to calculating a vested pension's value for purposes of equitable distribution. See id. at 536-37. We did not address Rule 4:50-1(f) in our opinion, as argued in the matter under review. Here, Judge Suh's calculation was not relevant to calculating plaintiff's alimony and child

Plaintiff's belated arguments with regard to the Family Part's purported errors in considering plaintiff's income and ability-to-pay would more properly have been handled at an ability-to pay-hearing, which he did not request. See Schochet v. Schochet, 435 N.J. Super. 542, 549-50 (App. Div. 2014) ("[A]n [ability-to-pay] hearing has a far more limited purpose: to determine whether the failure to pay was willful."). Therefore, we reject plaintiff's argument that he was entitled to Rule 4:50-1(f) relief. Moreover, even giving plaintiff the most indulgent presumption, his argument relative to the calculations made by Judge Suh in her October 15, 2018 order is time-barred pursuant to Rule 2:4-1(a)[13] because the forty-five-day time limit to file an appeal has long expired. Rule 2:4-3(e) permits the tolling of the forty-five-day limit if a "timely" motion for

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support obligations because his obligations had been previously calculated, entered, and affirmed. Moreover, Judge Suh's calculation did not alter plaintiff's obligations. Rather, the sole purpose of Judge Suh's calculation was to determine whether to grant or deny plaintiff's motion to stay enforcement of his financial obligations pending appeal. Unlike in DiPietro, where the Family Party's mathematical mistake had financial ramifications between the parties, here, Judge Suh's mathematical calculation created no financial ramifications between the parties because she merely enforced plaintiff's already existing financial obligations pending appeal.

[13] Rule 2:4-1(a) addresses Time: From Judgments, Orders, Decisions, Actions and from Rules. "Except as set forth in subparagraphs (1) and (2), appeals from final judgments of courts, final judgments or orders of judges sitting as statutory agents and final judgments of the Division of Workers' Compensation shall be filed within [forty-five] days of their entry." Ibid.

reconsideration is filed with the Family Part. The record shows no such motion was filed in the matter under review.

III.

Next, plaintiff argues Judge Ballard applied the wrong standards in denying relief, and "erred by giving undue deference to the erroneous rulings of [Judge Suh] to such an extent that he declared that its 'accuracy' was 'irrelevant.'"

Plaintiff relies on our recent holding in Lawson v. Dewar,[14] in which we stated:

> If a prior judge has erred or entered an order that has ceased to promote a fair and efficient processing of a particular case, the new judge owes respect but not deference and should correct the error. The polestar is always what is best for the pending suit; it is better to risk giving offense to a colleague than to allow a case to veer off course.
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> [468 N.J. Super. 128, 135 (App. Div. 2021) (citations omitted) (Emphasis added).]

Again, we reject plaintiff's argument.

Judge Ballard did not give undue deference to Judge Suh's previous findings but stressed "the accuracy of [her] summary of [p]laintiff's financial situation" was "irrelevant" to enforcing his existing obligations set forth in the

[14] We note that our holding in Lawson addressed a Rule 4:42-2 motion dealing with judgment upon multiple claims, not a Rule 4:50-1(f) motion.

October 15, 2018 and March 27, 2020 orders. In arguing Judge Ballard erred by declaring the accuracy of plaintiff's income to be "irrelevant," plaintiff asserts our holding in Lawson entitles him to relief. Plaintiff also claims "the error was obvious" regarding the calculation of his income after he became Sussex County counsel because the County is a client of his law firm, Kelly & Ward, LLC, and not him personally.

Plaintiff also asserts he is entitled to relief pursuant to Rule 1:1-2(a), which provides:

> [T]he Court Rules "shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." For that reason, "[u]nless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice."
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> [Salazar v. MKGC + Design, 458 N.J. Super. 551, 558 (App. Div. 2019) (second alteration in original) (citation omitted) (quoting R. 1:1-2(a)).]

Plaintiff does not present a specific argument or cite to facts or legal authority in his brief supporting his contention that he is entitled to relief pursuant to Rule 1:1-2(a). Rather, he merely claims relief "is warranted for all the same reasons and in furtherance of the facts, argument and legal authority set forth" in Rule 4:50-1(f). Consequently, plaintiff has waived the issue. See

State v. Hild, 148 N.J. Super. 294, 296 (App. Div. 1977) ("[P]arties may not escape their initial obligation to justify their positions by specific reference to legal authority.").

We discern no abuse of discretion with Judge Ballard's analysis. The record supports a finding that plaintiff's income changed and ostensibly increased since the FJOD was entered. Plaintiff's child support and alimony arrearages continue to increase, to the detriment of defendant.[15] Moreover, enforcement of the January 20, 2021 order has not even been executed because the ability-to-pay hearing has not yet occurred. Under these circumstances, we conclude enforcement of the January 20, 2021 order would not be unjust or inequitable. See BV001 REO Blocker, 467 N.J. Super. at 124.

IV.

Finally, plaintiff argues "[s]ince Judge Ballard has already conscientiously expressed his opinion about this matter[,] . . . future proceedings must be held before another [j]udge to preserve the appearance of a fair and unprejudiced hearing," pursuant to Rule 1:12-1(d). (Citing generally Steele v. Steele, 467 N.J. Super. 414, 445 (App. Div.), cert. denied, 248 N.J. 235 (N.J.

[15] During oral argument, defendant advised the arrearages are now in excess of $200,000.

2021)). Specifically, plaintiff argues Judge Ballard's deference to Judge Suh's rulings shows he "was not going to seriously reconsider any part of this tortured litigation." Plaintiff references Judge Ballard's comments—"I've reviewed Judge Suh's recent detailed order of May 22[,] 2020. She makes it very clear as to the length that [plaintiff] has gone to avoid his responsibilities;" and "I've reviewed all of the prior orders you have which basically exhausted any credibility with this [c]ourt through your years of efforts."

Rule 1:12-1(d) provides that a judge "shall be disqualified on the court's own motion and shall not sit in any matter, if the judge . . . has given an opinion upon a matter in question in the action." Under this rule, a matter remanded after an appeal should be assigned to a different judge if: (1) the matter is remanded for a new trial; and (2) the judge "expressed conclusions regarding witness credibility." See Pressler, cmt. 4 on R. 1:12-1 (emphasis added).

Alternatively, the appellate court may direct a matter remanded to be assigned to a different judge "to preserve the appearance of a fair and unprejudiced hearing." Ibid.; Graziano v. Grant, 326 N.J. Super. 328, 349 (App. Div. 1999) ("That power may be exercised when there is a concern that the trial judge has a potential commitment to his or her prior findings."); see e.g., Steele, 467 N.J. Super. at 445 (directing another judge to preside over the matter after

remand where the first judge "already conscientiously expressed his opinion about the fairness of the [marital agreement]" and the portion of the JOD that enforced the marital agreement was vacated). However, "such authority is ordinarily sparingly exercised." Pressler, cmt. 4 on R. 1:12-1.

Generally, we leave "the issue of recusal to the judge." Ibid. In Graziano, where the trial judge found the defendant to be pursuing frivolous litigation and inferred he had "engaged in 'chicanery, artifice, sharkness' and 'shady conduct,'" we concluded "[t]his case does not clearly call for the assignment of the matter to another judge." 326 N.J. Super. at 349-50. We held:

> [C]onsideration must be given to the fact that, to some extent, it would be counterproductive to require a new judge to acquaint himself or herself with the litigation. Rather, we believe that an application for disqualification pursuant to R[ule] 1:12-1 should initially be made to the motion judge . . . . If the judge believes that he [or she] is committed to the findings he [or she] has previously made, or there is any other reason which might preclude a fair and unbiased hearing and judgment or which might reasonably lead counsel or the parties to believe so, R[ule] 1:12-1(f), we have every confidence that the judge will recuse himself [or herself].
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> [Id. at 350 (citation omitted).]

We find no basis to have a different judge be assigned to this matter for future proceedings. Plaintiff has failed to demonstrate how Judge Ballard is

biased or provide "any other reason[,] which might preclude a fair" hearing or judgment. Ibid.[16]

To the extent we have not addressed any of plaintiff's arguments, it is because we have concluded they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). The Family Part shall schedule an ability-to-pay hearing forthwith. We do not retain jurisdiction.

Affirmed.

[16] In her appellate opposition brief, defendant asks the court to address and restrain plaintiff's "pattern of frivolous litigation." Because defendant did not file a cross-appeal, we decline to consider her argument. See State v. Eldakroury, 439 N.J. Super. 304, 307 n.2 (App. Div. 2015) ("Where a [respondent] is seeking to expand the substantive relief granted by the trial court, as opposed to merely arguing an additional legal ground to sustain the trial court's [decision], the [respondent] must file a cross-appeal.").