

RECORD IMPOUNDED

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION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-1776-20

F.J.C.,

Plaintiff-Respondent,

v.

J.L.C.,

Defendant-Appellant.

Submitted February 2, 2022 – Decided May 24, 2022

Before Judges Geiger and Susswein.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Passaic County,
Docket No. FM-16-1419-16.

Law Office of Katherine G. Houghton, attorney for
appellant (Nicholas T. Delaney, on the briefs).

F. J. C., respondent pro se.

PER CURIAM

This appeal arises from contentious and protracted divorce proceedings.¹ The matter returns to us after we previously remanded for the trial court to re-evaluate whether to award counsel fees. We held in our prior opinion that the trial court had failed to adequately analyze several relevant factors. We also remanded on the issue of whether to award appellate counsel fees. On remand, the trial court again denied defendant's request for counsel fees for services rendered at the trial level, and also denied defendant's request for attorney fees for services rendered at the appellate level. Defendant appeals from those decisions, arguing that the trial court did not follow our instructions and once again abused its discretion. After carefully reviewing the trial court's latest findings in view of our prior decision and the governing legal principles, we affirm.

I.

We presume the parties are familiar with the relevant facts and procedural history leading up to our November 18, 2020 decision. Those circumstances are spelled out in our prior opinion and need not be repeated here. F.J.C. v. J.L.C., No. A-5007-18 (App. Div. Nov. 18, 2020) (slip op. at 2–10). We focus instead on the trial court's January 15, 2021 oral decision denying counsel fees at the

¹ The record in this case is impounded. R. 1:38-3(f)(4).

trial level and its March 4, 2021 decision denying counsel fees at the appellate level.

We summarize the trial court's findings on remand with respect to the nine factors listed in Rule 5:3-5(c):

As to factor one (financial circumstances of the parties), the trial court made similar findings to those it had made in its initial June 4, 2019 order. The parties agreed that plaintiff earned an annual salary of \$125,000 in 2017 and that defendant's income would be imputed to be \$40,000. Additionally, once the Final Judgment of Divorce (FJOD) was entered, plaintiff was to make a lump sum, non-taxable payment of \$35,000 to defendant. The trial court determined that "while the plaintiff's income [was] substantially higher than . . . defendant's, his expenses [were] correspondingly higher." In making this finding, the trial court relied on evidence that (1) plaintiff purchased a home and borrowed additional funds to fulfill financial obligations under the FJOD and Marital Settlement Agreement (MSA); (2) defendant lived with her parents; and (3) plaintiff began representing himself because he could no longer afford his attorney's fees. The trial court concluded that "the parties['] financial circumstances appear[ed] to be relatively comparable. That is[,] they each had considerable debt and expenses when compared to their respective income."

As to factor two (ability of the parties to pay their own fees or contribute fees of the other party), the trial court again recognized the disparity between plaintiff's and defendant's respective incomes. However, the trial court reiterated that plaintiff has significantly higher expenses and could no longer pay his counsel fees, resulting in self-representation. Therefore, the trial court concluded that "[n]either party appear[ed] to be financially able to pay their own fees, much less to contribute to the fees of the other party."

As to factor three (the reasonableness and good faith of the parties), the trial court noted,

Defendant argues in support of her motion for an award of attorneys[] fees that it was plaintiff's, quote, "spiteful," . . . conduct that unnecessarily prolonged this case and caused it to incur additional fees because plaintiff sought to be the parent of sole custody in bad faith.

The defendant portrays plaintiff as having been unreasonable because he was opposed to unsupervised and equal parenting time for the children at a time when the defendant had completed [fifteen] months of rehabilitation for substance abuse. The defendant accused plaintiff of abusing steroids, of domestic violence, and of alienating her children from her. During the litigation defendant sought drug testing of the plaintiff, specifically, for steroid use and issued subpoenas to plaintiff's employer seeking information on whether plaintiff had ever been tested for steroids.

In considering that information, the trial court found that plaintiff consented to submit to steroid testing on at least two occasions. The trial court also noted that defendant's "profoundly serious" allegations against plaintiff with respect to steroid abuse were never established. The trial court also rejected defendant's domestic violence claims because "there were never any restraining orders sought or granted to defendant. And . . . the only restraining order between the parties was granted to the plaintiff"

The trial court noted that the parties resolved most of the major issues in the MSA and that discovery issues had been resolved through case management orders. Furthermore, the matter was resolved through a voluntary settlement agreement. The court stressed that it "took no testimony and made no findings with respect to the parties' allegations and with respect to the positions each advanced throughout the litigation, or even as to the merits of the settlement agreement." The trial court explained, "[c]ourts look favorably upon such agreements because [their] consensual and voluntary nature allows divorced couples to reach accommodations, resolve their differences and assure stability in the post[-]divorce relationship." The trial court thus concluded with respect to factor three that the parties negotiated and resolved their differences without the need for a trial, and that neither party demonstrated bad faith. The court

explained, "[u]nfortunately, I again emphasize it was nothing more . . . than the parties' mutual distrust that played an intricate role in the proliferation of litigation in this matter."

As to factor four (extent of fees incurred by the parties), the trial court determined that defendant had incurred counsel fees in the amount of \$86,759.75. The trial court noted that plaintiff did not submit a certification of services but rather only a two-page invoice, reflecting an outstanding balance of \$68,955 in fees owed to plaintiff's former attorney. The trial court also recognized that plaintiff's total fees could have been more than defendant's fees but for the fact that he began representing himself in February 2018.

As to factor five (fees previously awarded), the trial court noted,

[w]hile attorneys['] fees and costs were granted to defendant on January 4th, 2019 and July 25th, 2019 by the Honorable Rudolph Filko, Presiding Judge of the Superior Court, on post judgment motions filed by the defendant to enforce litigant's rights pursuant to the [F]JOD[,] this factor does not weigh in favor of awarding fees to the defendant since the motion before this [c]ourt seeks attorneys['] fees or fees that were incurred prior to the entry of the judgment of divorce on May 15, 2018.

Furthermore, the trial court recognized that it had "reserved on both parties' requests for attorneys['] fees in August of 2017 based upon the parties' resolution of the steroid testing issue . . . and the parties' referral . . . to custody

parenting time mediation to resolve their issues." The trial court did not find any bad faith on the part of either party. Finally, the trial court noted that it "denied attorneys['] fees to plaintiff in its November 3rd, 2017 order."

As to factor six (amount of fees paid to counsel by each party), the trial court stated, "[d]efendant paid . . . \$21,362.50 toward her counsel fees. The amounts of counsel fees paid by plaintiff to his former counsel is unknown." This was the same finding that the trial court previously made.

As to factor seven (results obtained), the trial court referred to and incorporated by reference its discussion of factor three. The trial court added, "[s]ignificantly[,] resolution or finality was accomplished as a result of the parties' voluntary and good faith negotiations which resulted in the parties MSA that was incorporated into the [F]JOD dated May 15, 2018."

As to factor eight (the degree to which fees were incurred to enforce existing orders or to compel discovery), the trial court again referred to its discussion of factor three. Additionally, the trial court noted that

other than defendant's application to enforce the restraints prohibiting both parties from posting their children's photos on social media that was denied on November 3rd, 2017[,] there were no other application[s] to enforce court orders as against either party.

Additionally, no discovery motions were ever made or granted to either party and all discovery issues were resolved by way of Case Management orders.

Finally, as to factor nine (any other factors bearing on the fairness of an award), the trial court reiterated its conclusion that there was no bad faith on the part of either party. Rather, the trial court "emphasize[d] that it was the high level of conflict between the parties and their understandable mutual mistrust of one another which caused the proliferation of the divorce litigation that centered primarily around their children."

Based on the foregoing analysis, the trial court denied defendant's request for counsel fees at the trial level. On March 4, 2021, the trial court also denied defendant's application for counsel fees associated with the appeal. The trial court explained it was doing so "for all the same reasons that were placed on the record on January 15, 2021." This appeal follows.

Defendant raises the following contentions for our consideration:

POINT I

THE PANEL SHOULD REVERSE THE TRIAL COURT'S ORDER ON [JANUARY 15, 2021] BECAUSE THE FAMILY PART WAS OBLIGATED ON REMAND TO FOLLOW THE APPELLATE OPINION ON [NOVEMBER 18, 2020] FINDING THAT PLAINTIFF HAD IN BAD FAITH VIOLATED COURT ORDERS TO SUBMIT TO STEROID TESTING, WHETHER THE FAMILY PART

AGREED WITH THE APPELLATE OPINION OR NOT.

POINT II

THE PANEL SHOULD ALSO REVERSE THE TRIAL COURT'S ORDER DENYING DEFENDANT COUNSEL FEES ON REMAND BECAUSE THE FAMILY PART ABUSED ITS DISCRETION IN DENYING DEFENDANT'S APPLICATIONS FOR COUNSEL FEES AGAIN.

POINT III

THE PANEL SHOULD REVERSE THE TRIAL COURT'S ORDER DENYING AN AWARD OF COUNSEL FEES ON APPEAL BECAUSE THE FAMILY PART FAILED TO MAKE ANY FINDINGS UNDER RULES 5:3-5, 4:23-1, 1:10-3, & N.J.S.A 2A:34-23, AS TO THE PARTIES' CIRCUMSTANCES AT THE TIME OF THE DEFENDANT'S APPLICATIONS FOR FEES & COSTS IN NOVEMBER 2020.

POINT IV

THE PANEL SHOULD DECIDE THE AMOUNT OF COUNSEL FEES BY EXERCISING ITS ORIGINAL JURISDICTION TO ENSURE THAT DEFENDANT MAY FINALLY BEGIN TO LITIGATE POST-JUDGMENT DISPUTES ON EQUAL FOOTING WITH PLAINTIFF.

II.

We begin our analysis by acknowledging the legal principles and standards governing this appeal. N.J.S.A. 2A:34-23 provides, in relevant part:

Whenever any other application is made to a court which includes an application for pendente lite or final award of counsel fees, the court shall determine the appropriate award for counsel fees, if any, at the same time that a decision is rendered on the other issue then before the court and shall consider the factors set forth in the court rule on counsel fees, the financial circumstances of the parties, and the good or bad faith of either party.

Rule 4:42-9(a)(1), in turn, permits the trial court to award counsel fees in a family action pursuant to Rule 5:3-5(c), which lists nine factors the trial court should consider in determining the amount of the fee award. Those are:

(1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.

Importantly for purposes of this appeal, the law is well-settled that "[t]he application of these factors and the ultimate decision to award counsel fees rests within the sound discretion of the trial judge." Loro v. Colliano, 354 N.J. Super. 212, 227 (App. Div. 2002) (citing Yueh v. Yueh, 329 N.J. Super. 447, 460 (App. Div. 2000); Guglielmo v. Guglielmo, 253 N.J. Super. 531, 544–45 (App. Div.

1992)). "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." Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

An abuse of discretion occurs when a trial court makes "findings inconsistent with or unsupported by competent evidence," utilizes "irrelevant or inappropriate factors," or "fail[s] to consider controlling legal principles." Elrom v. Elrom, 439 N.J. Super. 424, 434 (App. Div. 2015) (citations omitted). An abuse of discretion is also demonstrated if the court fails to consider "all relevant factors" or its decision "amounts to a clear error in judgment." Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005) (citing Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

Furthermore, we will not disturb the trial court's factual findings unless they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Ricci v. Ricci, 448 N.J. Super. 546, 564 (App. Div. 2017) (quoting Elrom, 439 N.J. Super. at 433). Challenges to legal determinations, in contrast, are subject to de novo review. Id. at 565 (citing Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

Pursuant to N.J.S.A. 2A:34-23, a court reviewing an application for counsel fees must consider "the good or bad faith of either party." That statute "in unmistakable terms authorizes a trial court to take into consideration the good or bad faith of the party against whom counsel fees are sought to be assessed." Kothari v. Kothari, 255 N.J. Super. 500, 513 (App. Div. 1992); see also R. 5:3-5(c)(3). A party acts in bad faith, for example, when he or she disregards court orders and fails to make discovery. See Yueh, 329 N.J. Super. at 460–61.

Because the determination of whether and to what extent a party has acted in bad faith is important to the ultimate determination as to whether to award counsel fees, the relative economic positions of the parties are less significant if one of the parties has acted in bad faith. Id. at 461 (quoting Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992)). That is so because the fee award serves to "protect the innocent party from unnecessary costs" by imposing those costs on the party acting in bad faith. Ibid.

III.

We first address defendant's contention that the trial court did not follow our remand instructions. Specifically, defendant argues that we had directed the

trial court to find that plaintiff acted in bad faith. We disagree with defendant's interpretation of our prior opinion.

In reaching this conclusion, we recognize that "[i]t is beyond dispute that a trial judge has the responsibility to comply with pronouncements of an appellate court." Tomaino v. Burman, 364 N.J. Super 224, 232 (App. Div. 2003). On remand, a trial court must follow the mandate of an appellate court. Id. at 233 (quoting Jersey City Redev. Agency v. The Mack Props. Co. No. 3, 280 N.J. Super. 553, 562 (App. Div. 1995)). A "trial court has no discretion when a mandate issues from an appellate court. It simply must comply." Ibid. (citing In re Plainfield-Union Water Co., 14 N.J. 296, 303 (1954)). That is so even when a trial court determines that the appellate court's decision was "manifestly erroneous." Ibid.

In this instance, although our prior opinion suggested that plaintiff had acted in bad faith at various points in this vexatious litigation, we do not interpret our remand instructions to require the trial court to find bad faith on the part of plaintiff, as defendant now suggests. Rather, we interpret our remand

instructions to require the trial court to consider plaintiff's conduct as part of the totality of the circumstances for determining whether to award counsel fees.²

The critical question before us is whether the trial court followed our remand instructions: "the [trial] court shall consider plaintiffs conduct that led to the June 2017 motion, his prior conduct, the motion practice that resulted, and the reasonableness of the fees sought, along with the other pertinent factors, based on the motion record. The court shall issue its decision within thirty days."

After carefully reviewing the court's comprehensive oral opinion, we are satisfied that, on remand, the trial court carefully reexamined the three specific factors we took issue with—factors three, five, and eight pursuant Rule 5:3-5(c)—and also made findings pursuant to Rules 4:23-1 and 1:10-3, which the trial court had not previously examined. We are thus satisfied the trial court on remand complied with our instructions by addressing the deficiencies in its prior ruling that led us to remand the case.

² We add that even if we were to assume for purposes of argument that the trial court was obligated to accept our suggestion that plaintiff had acted in bad faith, although that is an important circumstance, the trial court retained its discretion to deny counsel fees considering the totality of relevant circumstances. See Loro, 354 N.J. Super. at 227 ("The ultimate decision to award counsel fees rests within the sound discretion of the trial judge.").

As to the trial court's reevaluation of factor 8 (fees incurred to enforce existing orders or to compel discovery), the trial court found that

other than defendant's application to enforce the restraints prohibiting both parties from posting their children's photos on social media that was denied on November 3rd, 2017 there were no other application to enforce court orders as against either party.

Additionally, no discovery motions were ever made or granted to either party and all discovery issues were resolved by way of Case Management orders.

We acknowledge that this finding is contrary to our prior observation that "[w]ithout question, the counsel fees incurred by defendant related in large part to enforcing prior orders and obtaining discovery." F.J.C., No. A-5007-18, slip op. at 14. For purposes of determining whether the trial court complied with our remand instructions, we reiterate and stress that the trial court was obligated only to consider the motion practice in its analysis, not to parrot our characterization of that practice.

Finally, with respect to defendant's contention that the trial court did not comply with our remand instructions, we note that the trial court on remand considered Rules 4:23-1 and 1:10-3. As we noted in our prior decision, those rules provide an independent basis for awarding counsel fees, specifically in situations where a party is forced to compel discovery or where a party does not

comply with an order or judgment. E.J.C., No. A-5007-18, slip op. at 14–15. The trial court on remand concluded that neither rule applied because the record did not support a finding that defendant was compelled to move for discovery due to plaintiff's refusal to provide discovery or that plaintiff was under an obligation to submit to steroid testing.

The trial court also determined that applications for relief were made by both parties at various stages of the litigation. For example, the trial court specifically noted that the plaintiff did not continuously oppose defendant's custody and parenting applications to increase attorney's fees, but rather did so out of "valid concerns for the safety of their children" because defendant admitted to having a relapse and needing to return to a rehabilitation center. Regarding defendant's June 2017 motion, the trial court stated that defendant did not provide anything "strikingly new in her order to show cause than that which was previously presented to the [c]ourt in August of 2016 when the [c]ourt determined that there was insufficient evidence to warrant compelling the plaintiff to submit to blood and urine steroid testing." The trial court further stated that

[t]he only thing that changed between August 2016 and June 2017 was that defendant now claims that she learned in June of 2017 that plaintiff had

misrepresented to the [c]ourt in August of 2016 that he was tested for steroids, . . . "as a police officer."

However, this fact in [and] of itself still did not establish that the plaintiff was, therefore, abusing steroid drugs. The plaintiff throughout the litigation maintained that defendant was very aware of the fact that he suffered from a hormone deficiency and had been prescribed testosterone and Arimidex for many years. The fact that the plaintiff orally misrepresented on one occasion on a motion before the [c]ourt that he was tested for steroids, quote, "as a police officer," end quote, did not compel the conclusion that the plaintiff was being evasive or had failed to comply with discovery or other court orders as the plaintiff suggested in her order to show cause application and in her present motion.

In considering this information for the purpose of determining counsel fees, the trial court determined that "[t]he drug testing that was ordered on June 14th, 2017 and on August 17, 2017 was ordered with the consent of the plaintiff who despised defendant's persistent allegations and demands. [Defendant] [a]ppeared to simply want to put the issue to rest."

While we might not have reached the same conclusion were it our decision to make in the first instance, we are satisfied that the trial court's detailed and comprehensive discussion of the motions practice satisfied our remand instruction for the court to make findings pursuant to Rules 4:23-1 and 1:10-3.

In sum, we are satisfied that trial complied with the letter and spirit of the remand instructions set forth in our prior opinion.

IV.

We next address defendant's contention that the trial court on remand again abused its discretion in balancing the nine factors set forth by Rule 5:3-5(c). We note that, in our prior opinion, we expressed concern only with the trial court's analysis of factors three, five, and eight, as well as the trial court's failure to consider Rules 4:23-1 and 1:10-3. We did not hold that the court had abused its discretion with respect to its consideration of the other Rule 5:3-5(c) factors. Nonetheless, on remand, the trial court reconsidered all nine factors rather than limiting its review to those factors that we held were not adequately addressed in its initial ruling. That was entirely appropriate since the enumerated factors are not mutually exclusive and because the decision to award counsel fees must be based on the totality of the relevant circumstances. In the present appeal, defendant challenges the trial court's findings with respect to those other factors. We next address those specific contentions.

As to factor one (financial circumstances of the parties), defendant argues that the trial court failed to properly account for the income disparity between the two parties. However, while "a disparity in income often suggests some

entitlement to a fee allowance," J.E.V. v. K.V., 426 N.J. Super. 475, 494 (App. Div. 2012), "the ultimate decision to award counsel fees rests within the sound discretion of the trial judge." Loro, 354 N.J. Super. at 227 (citing Yueh, 329 N.J. Super. at 460). In other words, a disparity in income does not categorically require that the lower-income party is entitled to a fee allowance.

Here, the trial court determined that "the parties['] financial circumstances appear to be relatively comparable" accounting for the fact that "they each had considerable debt and expenses when compared to their respective incomes." While defendant certainly has a lower income relative to plaintiff,³ the trial court determined that defendant does not have the same expenses. The trial court noted that plaintiff had to relocate and borrow additional funds to fulfill his obligations under the FJOD and MSA. The trial court further stressed that plaintiff had to begin representing himself because he could not pay his own attorney's fees. Defendant, on the other hand, was living with her parents and was still represented by counsel. We are satisfied that the trial court properly considered relevant evidence in determining that the parties' financial

³ Defendant also relies on Winegarden v. Winegarden, 316 N.J. Super. 52 (App. Div. 1998), which addressed when the disparity in income levels is substantial. That case is distinguishable. In Winegarden, defendant agreed to pay plaintiff's counsel fees in the settlement agreement. Id. at 57.

circumstances were relatively comparable and did not abuse its discretion in concluding that factor one did not militate in defendant's favor.

Regarding factor two (ability of the parties to pay their own fees or to contribute to the fees of other party), defendant argues that the trial court erred when evaluating this factor because (1) the expenses were described in vague and general terms, (2) plaintiff failed to supply a Case Information Statement (CIS) as required pursuant to Rules 5:7-2 and 5:5-2, and (3) the trial court failed to infer that plaintiff had a greater ability to pay fees. See D.H. v. D.K., 251 N.J. Super. 558, 564 (App. Div. 1991) (noting that "[i]n light of plaintiff's decision not to submit highly relevant financial information to the trial court, his greater ability to underwrite the litigation expenses may be inferred.").

Defendant relies on Gordon v. Rozenwald for the proposition that the trial court described its findings vaguely or in general terms. 380 N.J. Super. 55, 77 (App. Div. 2005). In that case, we concluded that the trial court erred in not making specific findings as to the marital standard of living. Ibid. We emphasized that the trial judge in that case had access to a report prepared by a court appointed expert but failed to make proper findings in light of that report. Ibid. Nor did the trial court in Gordon provide reasons for rejecting the report or not utilizing it. Ibid.

The present case is distinguishable. For one thing, the trial court did not have the benefit of a detailed expert report as in Gordon. The trial court in this matter should not be expected to make findings with the level of detail that had been presented in the expert report in Gordon. We are satisfied that the trial court made sufficiently specific findings. As we have already explained, the trial court recognized the income disparity but also accounted for the fact that plaintiff had higher expenses and could no longer pay his own counsel fees, resulting in self-representation. On the record before us, we have no basis to second-guess the trial court's conclusion that "[n]either party appears to be financially able to pay their own fees, much less to contribute to the fees of the other party."

In reaching this conclusion, we acknowledge that plaintiff failed to submit a CIS. The trial court acknowledged this as well but declined to infer that plaintiff had a greater ability to underwrite the litigation expenses. See D.H., 251 N.J. Super. at 564. We see no abuse of discretion in declining to draw that inference, especially in view of defendant's inability to pay for his own legal representation.

In D.H., we determined "the record [was] silent regarding plaintiff's income, assets and liabilities." Ibid. Here, conversely, the trial court knew

plaintiff's salary and other relevant information. We add that we did not previously find an abuse of discretion in the trial court's evaluation of factor two, which explicitly acknowledged plaintiff's failure to submit a CIS. We see no reason to reach a different conclusion now.

Regarding factor four (extent of fees incurred by the parties), the defendant argues that the trial court did not analyze the reasonableness of fees incurred. In making that argument, defendant relies on J.E.V. v. K.V., for the proposition that "[i]n fashioning an attorney fee award, the judge must determine the 'lodestar,' which equals the number of hours reasonably expended multiplied by a reasonable hourly rate." 426 N.J. Super. at 493. Defendant further contends that the trial court erred in relying on plaintiff's uncertified claims about his own attorney's billing.

We believe defendant's reliance on J.E.V. is misplaced. The "lodestar" principle is used to determine the amount of a fee award, not whether to award counsel fees. Having determined that neither party was entitled to a fee award accounting for the other factors, there was no need for the court to make a specific calculation applying the rule in J.E.V.

Relatedly, as to factor six (amount of fees paid to counsel by each party), the trial court stated: "[d]efendant paid . . . \$21,362.50 toward her counsel fees.

The amounts of counsel fees paid by plaintiff to his former counsel is unknown." This incomplete statement would seem to be insufficient to determine whether this factor favors defendant or plaintiff. We note, however, that the court on remand applied the same analysis it had used in its initial ruling and we found no abuse of discretion as to this factor. We decline to do so now and note that any deficiencies with respect to the analysis of this factor would not change the final result, considering the other relevant circumstances that the trial court found that militate against awarding counsel fees. We see no purpose in protracting this litigation further by remanding for the court to make a more complete finding as to the amount of counsel fees plaintiff paid his former attorney.

As to factor seven (results obtained), defendant argues that the resolution of this case was not a result of voluntary and good faith negotiations. The trial court found to the contrary that "[s]ignificantly[,] resolution or finality was accomplished as a result of the parties' voluntary and good faith negotiations which resulted in the parties['] MSA that was incorporated into the [F]JOD dated May 15, 2018." We defer to the determination made by the trial court.

Finally, as to factor nine (any other factor bearing on the fairness of an award), defendant argues that the trial court should have considered additional

information, such as the claim that plaintiff recorded oral settlement discussions in the courthouse and entered the courthouse in an entrance reserved for court personnel as an intimidation tactic. We do not believe the trial court abused its discretion by failing to address these allegations.

In sum, we are satisfied that in applying the relevant factors, the trial court relied on credible evidence in the record, see Ricci, 448 N.J. Super. at 564, and did not abuse its discretion, see Loro, 354 N.J. Super. at 227 (citing Yueh, 329 N.J. Super. at 460) ("The application of these factors and the ultimate decision to award counsel fees rests within the sound discretion of the trial judge.").

V.

We next address defendant's contention that the trial court erred in denying attorney's fees associated with the appeals process. Specifically, defendant argues that the trial court did not consider Rules 5:3-5, 4:23-1, 1:10-3, and N.J.S.A. 2A:34-23. Those arguments lack sufficient merit to warrant further discussion in view of the determinations we have already made in this opinion. See R. 2:11-3(e)(1)(E). We reiterate that the trial court complied with our remand instructions and did not abuse its discretion in analyzing the relevant factors. Those findings also support the trial court's decision not to award attorneys' fees associated with the appeals process.

We likewise reject defendant's request that we exercise original jurisdiction and determine the amount of attorneys' fees to award. See R. 2:10-5 ("The appellate court may exercise such original jurisdiction as is necessary to the complete determination of any matter on review."). Because we conclude the trial court did not abuse its discretion on remand, there is no need for us to intervene further and make our own findings.

To the extent we have not addressed them, any remaining arguments raised by defendant, including those made in her reply brief, lack sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E). We add only that the dispute, for example, over whether plaintiff failed to submit to steroid testing, or whether plaintiff made unfair allegations concerning defendant's character in his brief, does not alter our conclusion that, considering the totality of the relevant circumstances, the trial court did not abuse its discretion in declining to award counsel fees.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION