

RECORD IMPOUNDED

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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-2738-20

S.K.,¹

Plaintiff-Appellant,

v.

N.L.,

Defendant-Respondent.

Submitted May 16, 2022 – Decided June 1, 2022

Before Judges Vernoia and Firko.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Hunterdon County,
Docket No. FM-10-0328-16.

S.K., appellant pro se.

N.L., respondent pro se.

PER CURIAM

¹ As in our prior opinion, we use initials to protect the confidentiality of the children. R. 1:38-3(d)(1).

In this post-judgment matrimonial matter, plaintiff S.K. appeals from a March 29, 2021 Family Part order awarding \$12,512.80 in counsel fees to be paid by her to defendant N.L. For the reasons that follow, we affirm.

I.

This matter comes before us for a second time. The parties are familiar with the procedural history and facts of this case, and therefore, they will not be repeated in detail here.² In her brief on appeal, plaintiff argues:

I. THE TRIAL COURT ABUSED ITS DISCRETION AND DEMONSTRATED EXTREME BIAS AGAINST [PLAINTIFF] BY FAILING TO HOLD FURTHER PROCEEDINGS TO DETERMINE THE FINANCIAL CIRCUMSTANCES OF THE PARTIES AND THEIR ABILITY TO PAY. THE TRIAL COURT FURTHER [BLATANTLY] IGNORED THE HISTORY OF AWARDS OF ATTORNEY'S FEES, FINES AND SANCTIONS AGAINST [DEFENDANT] IN THIS LITIGATION.

II. THE TRIAL COURT ABUSED ITS DISCRETION AND DEMONSTRATED EXTREME BIAS AGAINST [PLAINTIFF] BY ACCEPTING [DEFENDANT]'S ATTORNEY'S INVOICES WHICH WERE LARGELY REDACTED; AMBIGUOUS AS

² The chronology is set forth in this court's unpublished opinion entered on March 10, 2021, in which we affirmed a February 27, 2020 Family Part order insofar as it granted defendant's motion to enforce litigant's rights. However, we reversed the award of counsel fees and remanded to the Family Part because the judge did not analyze the factors set forth in Rules 4:42-9(a), 5:3-5(c), or N.J.S.A. 2A:34-23. S.K. v. N.L., No. A-3325-19 (App. Div. Mar. 10, 2021) (slip op. at 16-18).

TO THE SUBJECT MATTER OF THE LEGAL SERVICES RENDERED; UNRELATED TO THE UNDERLYING MOTION; AND UNREASONABLE, EXORBITANT, AND NON-STANDARD FOR LEGAL SERVICES NECESSARY TO FILE A SINGULAR ISSUE MOTION.

The judge complied with our mandate and issued a comprehensive five-page, single-spaced statement of reasons. In her decision, the judge noted she reviewed the "detailed" certification of services submitted by defendant's counsel. The judge found the fees requested were "reasonable" in light of counsel's "experience and expertise" and consistent with "fees customarily charged in Hunterdon County." In addition, the judge highlighted that plaintiff "filed a cross-motion and sought denial of [d]efendant's motion" but did not address his request for counsel fees "or any of the required factors." The judge also emphasized that plaintiff did not provide any updated financial information, and she did not argue an inability to pay defendant's counsel fees.

The judge concluded plaintiff should pay the sum of \$12,512.80 to defendant for his counsel fees within sixty days of the entry of her March 29, 2021 order. This appeal followed.

II.

Trial courts are authorized to award counsel fees in a family action. N.J.S.A. 2A:34-23; R. 4:42-9(a)(1); R. 5:3-5(c). The award of counsel fees falls

within the "sound discretion of the trial court." Bisbing v. Bisbing, 468 N.J. Super. 112, 121 (App. Div. 2021) (citing Williams v. Williams, 59 N.J. 229, 233 (1971)). Rule 5:3-5(c) enumerates the factors the court should consider in making an award of counsel fees in a family action.

In a nutshell, in awarding counsel fees, the court must consider whether the party requesting the fees is in financial need; whether the party against whom the fees are sought has the ability to pay; the good or bad faith of either party in pursuing or defending the action; the nature and extent of the services rendered; and the reasonableness of the fees.

[Mani v. Mani, 183 N.J. 70, 94-95 (2005) (emphasis in original) (citations omitted).]

A trial judge's failure to consider the appropriate factors, make the required findings, and state its conclusions of law constitutes a clear abuse of discretion. See Saffos v. Avaya Inc., 419 N.J. Super. 244, 270-71 (App. Div. 2011); R. 1:7-4(a). "A lawyer's fee must be reasonable." Giarusso v. Giarusso, 455 N.J. Super. 42, 50 (App. Div. 2018) (quoting Rosenberg v. Rosenberg, 286 N.J. Super. 58, 69 (App. Div. 1995)). Determining the reasonableness of the fee "involves determining the number of hours reasonably expended multiplied by a reasonable hourly rate." Id. at 51 (citing Rendine v. Pantzer, 141 N.J. 292, 334-35 (1995)). The factors to be considered include "the time and labor

required," "the results obtained[,] and whether the fee is fixed or contingent." Ibid. (quoting RPC 1.5(a)(1), (4), and (8)).

We apply a deferential standard of review. An appellate court will not disturb a counsel fee award in a matrimonial case except "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, 141 N.J. at 317). "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.'" Steele v. Steele, 467 N.J. Super. 414, 444 (App. Div. 2021) (alteration in original) (quoting Elrom v. Elrom, 439 N.J. Super. 424, 434 (App. Div. 2015)).

Any party in a family action is permitted to recover attorney's fees so long as the party requesting the fees supports its application with "an affidavit of services addressing the factors enumerated by RPC 1.5(a). . . . [and] a recitation of other factors pertinent in the evaluation of the services rendered." R. 4:42-9(b). Moreover, Rule 1:10-3 provides that a judge may award counsel fees on a motion to enforce litigant's rights to the party accorded relief on the motion.

In exercising its discretion, the trial court must abide by N.J.S.A. 2A:34-23, requiring consideration of "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." Mani, 183 N.J. at 93-94 (quoting N.J.S.A. 2A:34-23). Rule 5:3-5(c), in turn, requires the trial court to consider the following factors:

In determining the amount of the fee award, the court should consider, in addition to the information required to be submitted pursuant to [Rule] 4:42-9, the following factors: (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.

[Id. (quoting R. 5:3-5(c)).]

Here, the judge considered the factors set forth in N.J.S.A. 2A:34-23; Rule 4:42-9(a)(1); and Rule 5:3-5(c). Plaintiff defaulted relative to her financial and parental obligations under the two consent orders negotiated by the parties and their former respective counsel dated May 7, 2019. And, both parties are attorneys. The record shows plaintiff did not proffer any evidence as to change of circumstances in terms of finances or an inability to pay the counsel fee award. The judge found defendant substantially complied with the parties' consent orders addressing financial issues and matters involving their daughter.


Moreover, the judge concluded plaintiff acted in "bad faith" by failing to comply with the terms of the consent orders and in the positions she advanced in her notice of cross-motion.

In considering the Rule 4:42-9 factors, the judge highlighted that neither party provided an updated case information statement with their respective motions. Through counsel's representation, the judge accepted defendant is employed pursuant to a March 2019 consent order and that plaintiff was "imputed with income of \$150,000 per year." In addition, the judge emphasized that "both parties have the ability to pay or contribute to counsel fees." Furthermore, the judge found "[n]either party argued that they did not have the ability for same." Citing Uslar v. Uslar, 253 N.J. Super. 289, 297 (App. Div. 1992), the judge noted "[a] party may be required to resort to borrowing funds to satisfy his [or her] financial obligations under an order such as payment of counsel fees." Id. We discern no abuse of discretion.

To the extent that we have not specifically addressed any of 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