SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3453-19

IN THE MATTER OF THE IRREVOCABLE TRUST OF JOHN L. MARCHISOTTO, DECEASED.

Submitted January 3, 2022 - Decided April 21, 2022

Before Judges Accurso and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket No. 18-000394.

John F. Marchisotto, appellant pro se.

Respondents Debra E. Canova and JP Morgan Chase Bank, N.A. have not filed a brief.

PER CURIAM

In this one-sided, commonplace probate matter, petitioner John F. Marchisotto appeals from the April 1, 2020 final order dismissing his complaint with prejudice for failure to answer interrogatories pursuant to Rule 4:23-5(a)(2) and otherwise provide discovery or comply with court orders; the

May 7, 2020 order denying his motion for reconsideration; and the June 2, 2020 order for sanctions pursuant to N.J.S.A. 2A:15-59.1 and Rule 1:4-8 directing he pay his sister Debra Canova, executor of their father's estate and administrator of his irrevocable trust, sanctions of $81,848.70 in fees and $3,976.33 in costs. Marchisotto also appeals from a number of interlocutory orders and the denial of several post-judgment applications, many of which he has failed to address in his brief on appeal. Having reviewed the eleven transcripts filed in this matter as well as Marchisotto's brief and five-volume appendix, we are satisfied the order dismissing his accounting and fraud action with prejudice, as well as the award of sanctions, are reasonably supported by the record Marchisotto has put before us. Accordingly, we affirm.

Although Marchisotto's brief and 977-page appendix are stuffed with matters extraneous to the issues on appeal, his failure to include certain basic documents, including his verified complaint and order to show cause, the will and irrevocable trust he challenges, the prior will and 2003 revocable trust, the estate's answer or a full set of the interrogatories at issue and his answers — with proof of filing with the court — make summarizing the facts or procedural history a challenge. We draw most of what occurred from a series

of careful and comprehensive orders and opinions by Judge Goodzeit when she managed the case in Somerset.

As best we understand it, Marchisotto is one of three children of the decedent, John L. Marchisotto. He has two sisters, Debra E. Canova and Diane Cusack. Their mother apparently died in June 2003.[1] The decedent was treated for cancer in 2015 and hospitalized in 2016. In June 2016, he signed a retainer agreement with Louis Lepore to prepare new estate planning documents, including a will, an irrevocable trust instrument and a durable power of attorney in favor of Canova. Canova was already the decedent's attorney-in-fact pursuant to a durable power he executed over a dozen years before.

Although we cannot state this with any certainty as we've not been provided the pleadings, we gather the case may have started as an action to compel an accounting and not a will challenge. Judge Goodzeit entered a case management order in May 2018, two months into the case, noting Marchisotto's "representation on the record that he is not seeking to invalidate

[1] We know that seemingly irrelevant bit of information only because Marchisotto advised in his answers to interrogatories that he wished to question one of his sisters about "who signed plaintiff's deceased mom (sic) signature to a public document in 8/2003, that [was] falsely notarized."

the irrevocable trust, but, rather, he is seeking his and his children's appropriate share thereunder." Although we've not been provided a copy of the 2016 irrevocable trust, Marchisotto's three minor children are apparently beneficiaries, as are Canova's three children and Cusack's daughter.

Marchisotto changed his position at some point, however, and now alleges, without any competent evidence as far as we can tell, that Canova misused the power of attorney to swindle their father and improperly influenced him to change his will — although apparently not in her favor — four months prior to his death in October 2016, when he was allegedly ill and infirm and dependent upon her for his care.[2] While, again, we've not been provided the will or the irrevocable trust, Marchisotto did not dispute the

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[2] The decedent did not live with Canova. She lived in Staten Island and he lived alone in Franklin Township. Nevertheless, defendant asserts in his preliminary statement in his appellate brief that

> Canova['s] threat of withholding medication, or food, or threat[] to keep him living at the Roosevelt nursing home, that she put him in, and he did not want to stay at, can be enough to force a victim to sign documents, or take actions, he otherwise would never do. And these "threats" need not be expressed. Just knowing that someone who controls your medicine and food, medical care, hospital care, home health aide care, and that wants you to do something, is enough of a "threat" to overcome the victim John L. Marchisotto['s], deceased['s], free-will.

representations made on the record by the executor's counsel in December 2018 that decedent's prior will divided his assets evenly among his three children, and that the 2016 "pour over" will and irrevocable trust reduced each of their shares from a third to a quarter, with the remaining quarter to be divided among decedent's seven grandchildren. It was because Marchisotto's minor children stand to benefit from their grandfather's 2016 irrevocable trust that Judge Goodzeit appointed a guardian ad litem for them when Marchisotto changed his position. A successful attack on the irrevocable trust would disinherit Marchisotto's children, making their interest in the litigation adverse to their father's. See R. 4:26-2(a); Matter of Will of Maxwell, 306 N.J. Super. 563, 580 (App. Div. 1997).

While Marchisotto complains about the manner in which the judges handled this case, it's clear to us that Judge Goodzeit, who presided over most of it, was appropriately concerned about the effects of the cost of Marchisotto's quest on all the beneficiaries, including Marchisotto. Although Marchisotto was self-represented, meaning he was not looking to the estate to fund his will challenge, see Rule 4:42-9(a)(3); In re Reisdorf, 80 N.J. 319, 326 (1979), the judge had ordered Canova to file a formal accounting in response to Marchisotto's complaint, presumably pursuant to Rule 4:87-1(b), rarely an

inexpensive undertaking, see In re Estate of Wharton, 47 N.J. Super. 42, 47 (App. Div. 1957) (noting trustee's entitlement to charge the trust for legal services rendered in connection with the preparation and filing of the account, responding to exceptions and other services necessary for its approval).

While Marchisotto has also not included that accounting in his appendix, Canova's counsel stated on the record it ran to 875 pages with statements and backup. Given the size of the estate, noted in some places in the record to be in the vicinity of $800,000, and the costs of the litigation, which in December 2018 was apparently already approaching $150,000, Judge Goodzeit asked Marchisotto on the record to consider whether "to go from twenty-five percent to a third" under the prior will, with a no-contest clause, made economic sense. She cautioned the parties that if they "continue[d] to litigate, we're going to use up half of the money and no one's going to benefit."

Marchisotto, however, who had already been the recipient of several safe-harbor notices from trustee's counsel pursuant to Rule 1:4-8, told the judge he would never agree to Lepore getting "even one cent," and that he should be sued for malpractice. When the judge explained that Lepore wasn't his lawyer, and thus Marchisotto could not sue him for malpractice, Marchisotto replied that he "should have been able to get Debra — defendant

Canova removed as the executor and trustee and then [he] would have proceeded with a malpractice lawsuit against" the lawyer.[3]

Marchisotto's preoccupation with Lepore appears to be one of several drivers causing what should have been a simple case to go off the rails.[4] As best we can tell, Marchisotto never filed formal exceptions to the accounting. See R. 4:87-8. That implies, although the record on appeal allows no definitive conclusion, there was nothing about the accounting that appeared

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[3] Marchisotto had originally included Lepore as a defendant in the case, allegedly for conspiring with Canova. Judge Goodzeit dismissed the claims against Lepore as well as fraud and conspiracy claims against Canova in August 2018.

[4] In addition to reporting Lepore to several law enforcement agencies, Marchisotto appears obsessed with establishing — in this action — that Lepore is misrepresenting the corporate form of his practice and is without required malpractice insurance, apparently believing it has some unspecified connection to the veracity of the accounting at issue in this matter. Although we've not been provided these documents, Marchisotto has admitted on the record that he presented Lepore's full accounting and all attachments to the Office of Attorney Ethics. Lepore claimed on the record that OAE audited the accounting, producing its own 600-page report and 26-page opinion finding no wrongdoing. We obviously make no findings in this regard. We note it only because it appears emblematic of what the judges in the trial court found to be Marchisotto's misuse of the judiciary's neutral forum to attack the estate's counsel, the guardian ad litem and at least one witness, the doctor who happened to examine the decedent to clear him for surgery the day before he signed a new will and irrevocable trust, putting them all to great trouble and expense, completely irrelevant and far afield from the simple issues presented for resolution in the case.

amiss. The only issue raised on the record appears to relate to the trustee's error in depositing the proceeds of the sale of decedent's home into the estate account instead of the trust, an error Lepore claimed was caught and accounted for without loss to the trust. Instead of filing exceptions, Marchisotto demanded Canova additionally account for several months prior to the creation of the trust in June 2016, apparently concerned that funds may have been diverted before reaching the trust's accounts. Judge Goodzeit accommodated his concern by ordering the executor to provide Marchisotto an informal accounting going back three months before the trust was created.

Marchisotto, however, was not satisfied, contending the copies attached to the accounting and those pre-dating it had been "tampered with." He claimed, "there's a lot of money that's been stolen," and charged, with no evidence, that the bank and brokerage house statements Lepore had attached to the accountings were fraudulent. The estate appears to have attempted to assuage his concerns by producing original statements for his review in open court. Marchisotto, however, wanted to subpoena decedent's banks and brokerage houses for the original statements[5] and began his own

[5] Judge Goodzeit had quashed Marchisotto's first subpoenas, including those directed at Canova's personal accounts, because they were improperly drawn.

investigations, contacting the institutions with his allegations of fraud, and reporting the estate and Lepore, as well as Lepore's wife, an attorney with no real involvement in this matter, to the Criminal Investigation Division of the Internal Revenue Service and a host of law enforcement agencies, including the Somerset Prosecutor's Office, the Attorney General, the United States Attorney and the Federal Bureau of Investigation. He also reported Lepore to the attorney disciplinary authorities in New Jersey and New York and reported a doctor, who had attested to the decedent's competence the day before he changed his will, to the Board of Medical Examiners.

Although there's nothing in the record to suggest any of those agencies uncovered any wrongdoing, Marchisotto's actions caused the estate difficulties with its New York bank, which apparently froze the trust's account in response to Marchisotto's allegations of fraud, and eventually filed an interpleader action in New York. It also led to the estate propounding interrogatories to

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The judge then spent an inordinate amount of time attempting to assist Marchisotto in crafting subpoenas that could properly be served in accordance with the court rules. Her months of effort, however, came to naught as Marchisotto's failure to answer interrogatories resulted in the dismissal of his complaint without prejudice before his subpoenas could be approved for service.

discover the basis of Marchisotto's claims and all those persons with knowledge of any facts underpinning them.

Despite Judge Goodzeit's efforts to encourage Marchisotto to see the litigation objectively and consider a cost/benefit approach to its prosecution, Marchisotto continued to file innumerable rambling, nearly incomprehensible motions and other submissions with the court, seemingly mindless of the cost to the trust or the court rules governing his conduct. In December 2018, the judge discussed the appointment of a discovery master to try and rein in Marchisotto's abuse of the court and the deputy surrogate. The guardian ad litem spoke in favor of the proposal, noting the amount of material he had received when he came into the case was "ridiculous," that most of Marchisotto's filings were "not comprehensible" and that "a discovery master is essential because this is just — this is out of control."[6]

[6] The guardian ad litem was eventually relieved, at his request, after Marchisotto filed a motion to have the lawyer disqualified, making what Marchisotto later admitted, under oath, were scurrilous allegations the guardian ad litem was "a fraudulent and frivolous party from an ex-parte list" supplied by the trustee's counsel, that he failed to protect the minors' legal rights and helped Lepore and Marchisotto's sisters "get away with their financial crimes, fraud, theft, and elder abuse," all having absolutely no basis in fact. This example is only one of dozens of Marchisotto treating his bald assertions as undisputed facts.

Because Marchisotto claimed he was without the funds for a discovery master, the judge ordered him to submit certain personal financial information for her in camera review to allow her to assess his ability to contribute to the cost. Marchisotto failed to comply, seeking leave to file an interlocutory appeal of that order as well as several others, including the judge's denial that she recuse herself following his complaint about her to the Supreme Court's Advisory Committee on Judicial Conduct. All his applications and motions were denied, both here and in the Supreme Court.

In March 2019, Judge Goodzeit dismissed Marchisotto's complaint without prejudice, pursuant to Rule 4:23-5(a)(1), for his failure to answer interrogatories. In April, she denied his application for a stay of her March order and denied his motion to reinstate his pleadings, although ordering, notwithstanding, that should Marchisotto provide the estate "comprehensible responses" to specific interrogatories that she would reconsider her ruling. Marchisotto thereafter sued Judge Goodzeit for civil rights violations in federal court, and the matter was transferred to Middlesex County.[7]

[7] The Third Circuit has since affirmed the dismissal of Marchisotto's claims against Judge Goodzeit. See Marchisotto v. Goodzeit, No. 20-1870, 2021 U.S. App. LEXIS 23068, at *2-3 (3d Cir. Aug. 4, 2021).

In December 2019, the parties appeared before Judge Rivas on defendant's motion to dismiss Marchisotto's complaint with prejudice. After conducting a lengthy hearing to review the questions and answers, Judge Rivas did not grant the motion, instead allowing Marchisotto yet another opportunity to provide responsive answers to the trustee's interrogatories. The judge explained to Marchisotto his answers were not specific or direct as required by the court rules, and that he could not "cut and paste the same answer over and over." The judge entered a specific order detailing precisely what interrogatories remained to be answered and warning Marchisotto he would not be permitted to "cut and paste" responses. The order also advised the answers "must be specific and germane to the issues of the case" and as to persons with knowledge, that Marchisotto identify the "specific issue relevant to the case" implicated by the anticipated testimony.

Marchisotto filed another application for emergent relief that was likewise denied by this court and the Supreme Court. In a now familiar pattern, Marchisotto thereafter sued Judge Rivas in federal court for civil

rights violations and moved to recuse him from hearing defendant's renewed motion to dismiss the complaint with prejudice.[8]

Following receipt of Marchisotto's revised answers, the trustee moved again to dismiss Marchisotto's complaint with prejudice. This time, Judge Rivas granted the motion. Despite the judge's painstaking efforts to explain to Marchisotto the abuse of the litigation process posed by listing individuals with no connection to the issues in the case and the importance of the requirement that he link an individual's knowledge or proposed testimony to an actual contested issue, Marchisotto failed to comply with the court's order. Although he has not provided us with a copy of the trustee's motion, nor any file-stamped copy of his own response to it, what we do have is repetitive material not responsive to the specific questions asked — particularly as it relates to relevance. Marchisotto continued to persist in groundlessly maligning his adversary and attacking witnesses about matters unrelated to the simple issues we understand, based on the truncated record he has provided us, were before the trial court, that is, the decedent's testamentary capacity;

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[8] Marchisotto has sued other judges and justices in federal court in connection with the denial of his many interlocutory appeals and motions, including a member of the panel deciding this appeal. Those actions do not prevent us from fairly considering this matter. See R. 1:12-1; Comparato v. Schait, 180 N.J. 90, 101 (2004); Amoresano v. Laufgas, 171 N.J. 532, 555 (2002).

whether the 2016 will and irrevocable trust were the product of undue influence; and whether Marchisotto could identify any asset of the estate or trust for which Canova did not faithfully account.

Marchisotto appeals, raising ten points of error, which we reprint without alteration:

POINT 1

THE TRIAL COURT ERRED IN GRANTING ORDER ON 06/02/2020 DURING THE HEARING, THE JUDGE SAID "HE FILED NUMEROUS ACTIONS IN NEW YORK AND NEW JERSEY MAKING BASELESS ALLEGATIONS (INDISCERNIBLE) AFTER DEFENDANT (INDISCERNIBLE) CAUSING THE FINANCIAL INSTITUTIONS NOT TO COOPERATE WITH THE DEFENDANT (INDISCERNIBLE) DISMISS THE CLAIMS AGAINST (INDISCERNIBLE)."

POINT 2

THE TRIAL COURT ERRED IN GRANTING ORDER ON 06/02/2020, DURING THE HEARING THE JUDGE SAID "THE COURT FOUND MARCHISOTTO'S (INDISCERNIBLE) TO BE INCOMPREHENSIBLE IN AN AUGUST, 2018, (INDISCERNIBLE) HAVE NOT IMPROVED. THE CONTINUE TO BE REPETITIVE AND (INDISCERNIBLE) AND ARE NUMEROUS. THE RECORD IS CRYSTAL CLEAR THAT MR. MARCHISOTTO IS A VEXATIOUS LITIGANT. HE IGNORES COURT ORDERS. HE ENGAGES IN (INDISCERNIBLE) – THEREFORE, THE COURT WILL GRANT (INDISCERNIBLE) APPLICATION AND WILL ORDER MARCHISOTTO TO PAY $81,841.72 AND THE ADDITIONAL 3,000 - (INDISCERNIBLE) IN EXPENSES AND COSTS. THE COURT REVIEWED THE PLAINTIFF'S AFFIDAVIT (INDISCERNIBLE) CONSISTENT WITH THE RATES CUSTOMARILY CHARGED IN NEW JERSEY. THE HOURS SPENT WERE NOT EXCESSIVE. CONSIDERING MR. MARCHISOTTO'S (INDISCERNIBLE) (INDISCERNIBLE) SPECIFICALLY, THE ARGUMENTS HE HAS

MADE ARE NOT WARRANTED BY THE FACTS OR THE LAW. AND ORDER WILL BE ENTERED UPON (INDISCERNIBLE)."

POINT 3

THE TRIAL COURT ERRED IN GRANTING ORDER ON 06/02/2020, DURING THE HEARING SAID, "THE RECORD IS CRYSTAL CLEAR THAT MR. MARCHISOTTO IS A VEXATIOUS LITIGANT. HE IGNORES COURT ORDERS, HE ENGAGES IN (INDISCERNIBLE)."

POINT 4

THE TRIAL COURT ERRED IN GRANTING ORDER ON 06/02/2020, SANCTION IS APPROPRIATE ONLY WHERE THE OFFENDER HAS WILLFULLY ABUSED JUDICIAL PROCESS OR OTHERWISE CONDUCTED LITIGATION IN BAID FAITH. IN RE ITEL SEC. LITIG., 791 F.2D 672, 675 (9TH CIR. 1986); KREAGER V. SOLOMON & FLANAGAN, P.A., 775 F.2D 1541, 1542-43 (11TH CIR. 1985); LIPSEIG V. NAT'L STUDENT MKTG. CORP., 663 F.2D 178, 180-81 (D.C. CIR. 1980); LINK V. WABASH R.R. CO., 370 U.S. 626, 632 (1962).

POINT 5

THE TRIAL COURT ERRED ON 05/07/2020, DENYING APPELLANT MOTION FOR RECONSIDERATION, THE JUDGE SAID "TODAY IS MAY 7TH. THIS IS A MOTION FOR RECONSIDERATION WHERE THE COURT IS PUTTING ITS DECISION ON THE RECORD. THIS MATTER COMES BEFORE THE COURT ON PLAINTIFF'S MOTION FOR RECONSIDER DISMISSAL OF HIS COMPLAINT WITH PREJUDICE FOR REPEATED FAILURES TO ADEQUATELY RESPOND TO DISCOVERY REQUESTS. THIS CAUSE OF ACTION REACHES THIS COURT ON A TRANSCRIPT FROM SOMERSET VICINAGE; A RELATED MATTER WAS REPORTED IN UNITED STATES DISTRICT COURT IN THE DISTRICT OF NEW JERSEY UNDER CASE NUMBER 3:19CV12540. THE SELF-REPRESENTED PLAINTIFF, JOHN F. MARCHISOTTO, HAS BEEN DESCRIBED AS A VEXATIOUS LITIGANT. PLAINTIFF HAS PREVIOUSLY FILED MOTIONS SEEKING SANCTIONS TO THIS COURT BY COUNSEL

IN THOSE MATTERS. ALL OF THOSE MOTIONS WERE DENIED. IN ADDITION TO NAMING OPPOSING COUNSEL AS A DEFENDANT IN THIS MATTER, PLAINTIFF HAS NAMED MULTIPLE SUPERIOR COURT JUDGES WHO HAVE PREVIOUSLY PRESIDED OVER THIS MATTER AS DEFENDANTS IN A FEDERAL LAWSUIT."

POINT 6

ON 04/01/2020, JUDGE RIVAS "HARMFUL ERROR," DISMISSING APPELLANT COMPLAINT WITH PREJUDICE. APPELLANT HAD FULLY, RESPONSIVELY, AND PROPERLY ANSWERED DEFENDANT INTERROGATORY QUESTIONS 13, AND 14, AS PER THE 12/09/2020, ORDERS.

POINT 7

DURING THE HEARING, THE JUDGE SAID "IN ADDITION, PLAINTIFF HAS CLAIMED THAT IN SITE OF THE JUDGE'S ATTORNEYS, AND EXPERT WITNESSES, THE DEFENDANTS IN (INDISCERNIBLE) OR GRIEVANCES IN THE DISTRICT COURT WITH THE INTERNAL REVENUE SERVICE. PLAINTIFF READILY ASSERTS UNSUPPORTED CLAIMS OF FRAUD AND CIVIL CONSPIRACY. PLAINTIFF'S MOVING PAPERS HAVE BEEN DESCRIBED BY ADVERSARIES AS BASELESS, NONSENSICAL, RAMBLING, AND HARASSING PLAINTIFF'S BEHAVIOR AS HARASSING."

POINT 8

DURING THE HEARING, THE JUDGE SAID "FURTHERMORE, PLAINTIFF HAS CLAIMED WHETHER LEPORE PRACTICED LAW IN A DEFUNCT PROFESSIONAL CORPORATION AND HAS FAILED TO CARRY MALPRACTICE INSURANCE AS REQUIRED BY THE RULES OF COURT AND PROFESSIONAL CONDUCT. AGAIN, THESE CLAIMS WERE CONSISTENTLY UNSUPPORTED BY ANY CONCRETE EVIDENCE BEYOND PLAINTIFF'S ORAL ASSERTIONS."

POINT 9

DURING THE HEARING, THE JUDGE SAID "ALL RIGHT. LET'S FIRST ADDRESS MR. MARCHISOTTO'S MOTION TO RECUSE THE COURT. THE COURT HAS CONSIDERED THAT MOTION AND FINDS THAT THERE IS NO BASIS FOR RECUSAL. IN PANITCH V. PANITCH, 339 NEW JERSEY SUPERIOR COURT AT 63, PAGES 66 TO 67, APPELLATE DIVISION 2001 – MR. MARCHISOTTO HAS TAKEN THE POSITION THESE PROCEEDINGS ARE UNFAIR, ALTHOUGH A BELIEF THAT THEY'RE UNFAIR IS NOT SUFFICIENT. THERE HAS TO BE OBJECTIVE REASONABLE EVIDENCE TO CONCLUDE IF THE PROCEEDINGS HAVE BEEN UNFAIR. IT IS MR. MARCHISOTTO'S M.O. THAT WHENEVER HE IS UNHAPPY WITH A DECISION THAT A JUDICIAL OFFICER MAKES, HE FILES OTHER LAWSUITS IN AN ATTEMPT TO GET THE CASE REMOVED FROM THAT JUDGE AND HE'S DONE SO HERE, WHICH IS WHAT I MEANT WHEN I SAID BACK ON DECEMBER 9TH, I KNOW YOU, MR. MARCHISOTTO, THAT HAS BEEN YOUR M.O. SINCE 2019."

POINT 10

DURING THE HEARING, THE JUDGE SAID "YOU HAVE FILED FEDERAL CASES AGAINST JUDGE GOODZEIT. YOU HAVE FILED FEDERAL CASES AGAINST ME, AND THERE IS OTHER PROCEEDINGS THAT YOU HAVE FILED, AND YOU HAVE DONE SO IN AN ATTEMPT TO (INDISCERNIBLE) THIS LITIGATION. UNDER STATE V. BILAL, (PHONETIC), 221 NEW JERSEY 608 (2018), THE COURT STATED, A PLAINTIFF IS SEEKING, CITED THE UNITED STATES V. GREENSPAN, 26 F. 3D (INDISCERNIBLE). BILAL CITED THAT CASE AND SAID, WHEN A PLAINTIFF SEEKS TO OBTAIN ANOTHER JUDGE (INDISCERNIBLE) SEEKS TO DELAY THE PROCEEDINGS, SEEKS TO HARASS THE LITIGANTS AND HAS FILED (INDISCERNIBLE), ALL OF WHICH THE COURT FINDS HAVE TAKEN PLACE IN THIS CASE. WHEN HE WAS SPECIFICALLY ASKED ON THE RECORD, WHAT IS THE BASIS FOR THE STATEMENT THAT WAS CONTAINED IN HIS SO-CALLED ANSWERS? HE GOES, IT IS A BELIEF THAT HE HAS. HE HAS NO FACTUAL

> BACKGROUND, NO FACTUAL EVIDENCE OR ANYTHING TO SUSTAIN THAT (INDISCERNIBLE). THE COURT IN DECEMBER GAVE HIM ANOTHER OPPORTUNITY TO ANSWER THE INTERROGATORIES. HE CAME BACK WITH ESSENTIALLY THE SAME ANSWERS, CLEARLY CUT AND PASTE, CLEARLY NOT TAILORED SPECIFICALLY TO WHAT WAS BEING ASKED. MR. MARCHISOTTO CITES THE FACT THAT HE IS SELF-REPRESENTED. BUT HE HAS BEEN INVOLVED IN THIS LITIGATION AND IT'S BEEN EXPLAINED TO HIM SEVERAL TIMES HOW HE (INDISCERNIBLE) THE PARTICULAR MATTERS AND HE REFUSES TO DO SO. INSTEAD, HE GOES AND FILES OTHER ACTIONS IN AN ATTEMPT TO DEFLECT, DELAY, AND OBSTRUCT."

Our review of the record Marchisotto has provided us convinces us that none of these arguments is of sufficient merit to warrant any extended discussion in a written opinion. R. 2:11-3(e)(1)(E).

We review a trial court's discovery orders only for abuse of discretion, "a standard that cautions appellate courts not to interfere unless an injustice appears to have been done." Abtrax Pharm. v. Elkins-Sinn, 139 N.J. 499, 517 (1995). "We will not ordinarily reverse a trial court's disposition of a discovery dispute 'absent an abuse of discretion or a judge's misunderstanding or misapplication of the law.'" Brugaletta v. Garcia, 234 N.J. 225, 240 (2018) (quoting Capital Health Sys., Inc. v. Horizon Healthcare Servs., Inc., 230 N.J. 73, 79-80 (2017)).

Applying that standard here, Marchisotto has provided us no basis to conclude Judge Rivas abused his discretion in finally dismissing this Probate matter with prejudice. Marchisotto relies on Zimmerman v. United Services Automobile Association, in arguing the court erred in dismissing his complaint with prejudice because his was not a failure to answer but a bona fide dispute over whether his answers were fully responsive. See 260 N.J. Super. 368, 378 (App. Div. 1992). Marchisotto's reliance on Zimmerman is misplaced.

Our courts generally follow Judge Pressler's admonition in Zimmerman that if the discovery dispute is one over the responsiveness of the answers, the trial court should resolve the dispute — not dismiss a plaintiff's complaint with prejudice. Id. at 376-78. See Adedoyin v. Arc of Morris Cty. Chapter, Inc., 325 N.J. Super. 173, 181 (App. Div. 1999). But there is an important caveat. In Zimmerman, Judge Pressler wrote "that when the real discovery dispute is not a failure to answer but rather an alleged failure to answer in a 'fully responsive' manner, it is the dismissal with prejudice which is inappropriate unless the answering party has been ordered to answer more fully and fails to do so." Zimmerman, 260 N.J. Super. at 378 (emphasis added).

Marchisotto had been ordered to provided more fully responsive answers to specific interrogatories — not once but several times. While our courts are

understandably loathe to impose the draconian remedy of dismissal for a party's failure to provide discovery, part of our reluctance is based on our unwillingness to deprive a party of a potentially meritorious claim based on his counsel's failure to comply with the court rules. See A&M Farm & Garden Ctr. v. Am. Sprinkler Mech. L.L.C., 423 N.J. Super. 528, 539 (App. Div. 2012). Here, the flagrant and continuous failures to comply with the rules, despite the repeated efforts of two trial judges to explain to Marchisotto what he needed to do to move the case forward, rested with him and no one else.

The animating purpose of our rules is "the fair and efficient administration of justice." A.T. v. Cohen, 231 N.J. 337, 351 (2017) (quoting Shulas v. Estabrook, 385 N.J. Super. 91, 102 (App. Div. 2006)). That, of course, implies fairness to all parties. Given the trustee's costs of defending against a suit brought by a beneficiary are ordinarily borne by the trust, Mears v. Addonizio, 336 N.J. Super. 474, 480 (App. Div. 2001), a Probate judge must be mindful, as Judge Goodzeit obviously was, that the costs of the litigation will deplete the corpus in which all the beneficiaries share. Thus, allowing a beneficiary to run up litigation costs in unnecessary and wasteful motions unfairly burdens beneficiaries not parties to the trust litigation.

We think that cost calculus had to be weighed in determining whether dismissal with prejudice was warranted for Marchisotto's persistent failures to comply with discovery obligations, especially in light of his failure to ever muster any support for his extravagant assertions of fraud. In the over two years this matter was pending in the trial court, Marchisotto never filed exceptions to the formal accounting he forced the trust to file and never offered the slightest proof of his claim that funds had been misappropriated.

Marchisotto has continually asserted that he was without proof only because he was not permitted to subpoena decedent's banks and brokerage houses for the original statements on which the trustee's formal accounting was based. Leaving aside that there was nothing to suggest the copies presented to the court were "tampered with" as Marchisotto alleged, Judge Rivas noted issuing a subpoena wasn't the exclusive mechanism for Marchisotto to bring forth evidence of missing funds. Marchisotto claimed he had reviewed the trustee's formal accounting, including all of its attachments, with the decedent's long-time accountant, who Marchisotto asserted had ten years of the decedent's tax returns in his possession. Yet Marchisotto never proffered a certification from this allegedly knowledgeable accountant that there were

other monies that should have gone into the trust, much less the $800,000 Marchisotto claimed was unaccounted for.

In sum, our review of the transcripts in this matter convinces us the trial judges presided over this trying case fairly and impartially. We can find no abuse of discretion in the decision to dismiss this matter with prejudice for Marchisotto's failure to comply with discovery despite repeated orders. See Abtrax Pharm., 139 N.J. at 515 (noting a party invites the drastic sanction of dismissal "by deliberately pursuing a course that thwarts persistent efforts to obtain the necessary facts").

As to the award of sanctions, we have only brief comment. Although Marchisotto has provided us the transcript in which the court ruled the trustee had established her entitlement to frivolous litigation sanctions pursuant to N.J.S.A. 2A:15-59.1 and Rule 1:4-8 and deemed the requested award of attorneys' fees and costs reasonable, he has not provided us the trustee's motion for sanctions, including Lepore's supporting certification on which the court relied in determining both that sanctions were warranted and the requested fees and costs were reasonable.

Marchisotto's decision to so truncate the record has deprived us of any ability to assess his claim of error in the award of sanctions, leaving us no

basis on which to disturb the court's ruling. See Noren v. Heartland Payment Sys., 448 N.J. Super. 486, 500 (App. Div. 2017) (finding cross-appellant's "selective inclusion of exhibits it considers relevant and exclusion of exhibits" relied on by its adversary prohibited review of decision, requiring dismissal of cross-appeal).

Our disposition makes it unnecessary to address Marchisotto's remaining arguments, none of which is of sufficient merit to warrant discussion in a written opinion in any event. See 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