NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4481-19

CHRISTINE ANN DEVERS,

Plaintiff-Appellant,

v.

JEFFREY ERIC DEVERS,

Defendant-Respondent.

APPROVED FOR PUBLICATION

April 11, 2022

APPELLATE DIVISION

Argued March 29, 2022 – Decided April 11, 2022

Before Judges Fisher, Currier and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FM-07-1537-09.

Jeffrey S. Mandel argued the cause for appellant.

Jeffrey P. Weinstein argued the cause for respondent (Weinstein Family Law, attorneys; Jeffrey P. Weinstein, of counsel and on the brief; Erika P. Handler, on the brief).

The opinion of the court was delivered by

FISHER, P.J.A.D.

In this matrimonial appeal, plaintiff Christine Ann Devers contends the trial judge erroneously found a lack of subject matter jurisdiction over her claim that an account held by a limited liability company controlled by defendant Jeffrey E. Devers is a marital asset. A handful of procedural circumstances have been offered as obstacles to our reaching that jurisdictional issue. We find, however, those unique circumstances inessential to our examination of the merits and conclude the trial judge's jurisdictional holding was erroneous.

In 2009, Christine commenced this action to dissolve her nearly twenty-three-year marriage to Jeffrey. Of relevance here, the record reveals Jeffrey managed a hedge fund, which included several investment groups located throughout the United States and the Cayman Islands. The hedge fund began winding up its affairs in 2002 and certain funds (approximately $1,500,000) were transferred into an account in the United States held by Gauss LLC, of which Jeffrey is the sole member.

In May 2017, after a thirty-four-day trial spanning three calendar years,[1] the parties entered into a settlement agreement, which resolved, as it expressly stated, "all issues remaining and shall be binding and enforceable upon each party" with one exception: Christine's claim to the Gauss account. The trial

[1] The trial started on March 4, 2013, and ended May 18, 2016.

judge ordered a plenary hearing to take up Christine's argument that the Gauss account is a marital asset and Jeffrey's argument that the account is not a marital asset but consists of funds belonging to investors.

After the hearing was scheduled but before it occurred, Christine moved for summary judgment seeking to vindicate her view of the Gauss account. Jeffrey cross-moved for the appointment of a fiduciary manager for Gauss LLC. Notwithstanding Christine's argument that the issue could be decided as a matter of law,[2] the judge conducted a plenary hearing over three days in the spring and summer of 2019. Once the hearing was concluded, the judge did not resolve the factual dispute about the Gauss account or any other issues raised about the evidence or sufficiency of expert testimony except one: she found the court lacked subject matter jurisdiction to determine the true nature of the Gauss account. Both the judge's January 16, 2020 opinion and the memorializing order

[2] We note the presence in the record on appeal of an April 18, 2018 order that, among other things, "reserved until the time of the [p]lenary [h]earing" Christine's application to release $1,499,513 from the Gauss account to her, and denied without prejudice Jeffrey's request for the appointment of a fiduciary manager to represent Gauss at the plenary hearing.

denied the claim "without prejudice," the latter stating Christine's summary judgment motion[3]

> is hereby denied, without prejudice, as this [c]ourt lacks subject matter jurisdiction to determine whether the $1,512,224.97 held by Gauss LLC, are marital assets of [d]efendant or investor proceeds.
>
> [Emphasis added.]

The parties then engaged in litigation about other matters[4] and Christine did not move for reconsideration of the January 16, 2020 order until three months after its entry. The judge denied the reconsideration motion by way of an order and written opinion entered on July 16, 2020, by concluding that the January 16, 2020 order was a final order and Christine's reconsideration motion was untimely. See R. 4:49-2 (declaring that motions to alter or amend final orders and final judgments must be filed within twenty days).

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[3] Although we interpret the order as denying Christine's claim to the Gauss account, the order actually states that it was Christine's earlier motion – the summary judgment motion – that was denied without prejudice.

[4] On November 14, 2019 – after the completion of the hearing but prior to the rejection of Christine's claim to the Gauss account – Jeffrey moved for enforcement of an order entered ten years earlier in this divorce action, resulting in the judge's February 18, 2020 order that enforced the 2009 order and awarded Jeffrey counsel fees. A mistake in that order was corrected through entry of an order on February 25, 2020, and Christine's motion for reconsideration was denied on June 19, 2020.

Christine filed a notice of appeal on August 14, 2020, seeking review of the January 16, 2020 order and the July 16, 2020 order that denied reconsideration.[5] Questions about the proper scope of the appeal were raised early in these proceedings, causing Christine to move for leave to file her appeal of the January 16, 2020 order out of time. A judge of this court entered an October 8, 2020 order that limited the scope of our review in this appeal to the July 16, 2020 order denying reconsideration.[6] When Christine filed her merits brief, she nevertheless included arguments challenging the January 16, 2020 order, causing Jeffrey to move to strike the brief. We denied that motion but again confirmed the appeal was limited to our consideration of the July 16, 2020 order denying reconsideration.

The appeal was then placed on a plenary calendar. Before hearing oral argument, however, we asked the parties to brief whether this panel may reconsider the two orders issued by this court that limited the scope of the appeal

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[5] The notice of appeal also identified the February 25, 2020 enforcement order, and the June 19, 2020 order that denied Christine's motion for reconsideration of that order, as matters to be reviewed.

[6] Although the order that similarly denied Jeffrey's cross-motion to dismiss the appeal was denied for similar reasons – that is, by noting that the appeal was limited to the July 16, 2020 order – it is not entirely clear to us that the order meant to dismiss the appeal of the February 25, 2020 enforcement order or the June 19, 2020 order denying reconsideration.

and, if we are not bound, whether we should take a different view of the appeal's scope. In addition, we asked the parties to describe what they believe the scope of the appeal should be if we provide relief from our prior interlocutory orders. And we invited Jeffrey to respond to Christine's arguments about the legitimacy of the January 16, 2020 order and all other issues Christine raised in her merits brief that Jeffrey had not briefed because of our interlocutory rulings about the appeal's scope. The parties accepted our invitation and filed supplemental briefs.

In considering all this, we turn first to the binding effect – if any – of the prior one-judge interlocutory orders entered by this court. If we are bound at all, it would be by the law of the case doctrine, which exists to "prevent relitigation of a previously resolved issue" in the same case. Lombardi v. Masso, 207 N.J. 517, 538 (2011) (quoting In re Estate of Stockdale, 196 N.J. 275, 311 (2008)). This doctrine requires a weighing of "the value of judicial deference for the rulings of a coordinate [court] against those 'factors that bear on the pursuit of justice and, particularly, the search for truth.'" Id. at 538-39 (quoting Hart v. City of Jersey City, 308 N.J. Super. 487, 498 (App. Div. 1998)). Despite our respect for the prior interlocutory rulings on motions in this appeal, we are satisfied that a perpetuation of the limitations placed on the appeal by those orders would cause an injustice. In the final analysis, courts need not "slavishly

follow an erroneous or uncertain interlocutory ruling," Gonzalez v. Ideal Tile Importing Co., 371 N.J. Super. 349, 356 (App. Div. 2004), aff'd, 184 N.J. 415 (2005), but are instead entitled to reconsider and set aside prior interlocutory orders and rulings in the interest of justice up until the entry of final judgment, R. 4:42-2; Lombardi, 207 N.J. at 539.

What we underappreciated or undervalued when ruling on Christine's motion to file an appeal of the January 16, 2020 order out of time and Jeffrey's cross-motion to dismiss the appeal is how a convoluted matrimonial action may generate questions and uncertainties about trial-court finality. As noted, the parties litigated for many years and eventually participated in a lengthy trial that resulted in a 2017 settlement agreement memorialized in a judgment. That judgment, however, was not a final judgment because the court and parties stipulated there remained a dispute about the Gauss account. Expressed in the familiar terms implicitly embodied in Rule 2:2-3, the trial court had not resolved all issues as to all parties. See Silviera-Francisco v. Bd. of Educ. of City of Elizabeth, 224 N.J. 126, 136 (2016); Petersen v. Falzarano, 6 N.J. 447, 452-53 (1951).

Instead, after the plenary hearing was conducted about the Gauss account, the judge rendered a written decision, concluding – without resolving any of the

evidentiary or factual disputes presented – that the court lacked subject matter jurisdiction over the Gauss account. The January 16, 2020 order memorialized the judge's disposition of that last remaining issue and, all things being equal, even though the disposition was not an adjudication on the merits, see R. 4:37-2(d), it represented a final resolution of the last remaining issue before the trial court.

The judge's order, however, unintentionally triggered doubt about finality. In her January 16, 2020 order, the judge denied Christine's claim because the court "lack[ed] subject matter jurisdiction," but she also stated the denial was "without prejudice," a phrase often used to convey similar but not exactly equal meaning. For example, it has been said that a dismissal without prejudice "is not an adjudication on the merits," Woodward-Clyde Consultants v. Chem. & Pollution Sciences, Inc., 105 N.J. 464, 472 (1987), that the dismissed claim has not been finally resolved and may be reinstated in the same action, Czepas v. Schenk, 362 N.J. Super. 216, 228 (App. Div. 2003), and that the dismissal does not bar reinstitution of the same claim in a later action, Christiansen v. Christiansen, 46 N.J. Super. 101, 109 (App. Div. 1957). It is often used by family court judges to express at both pendente lite and post-judgment stages that the trial court had not yet finally resolved or fully considered a particular issue.

In this case, we assume the trial judge did not mean to suggest the Gauss account dispute would continue to be entertained in the trial court; she instead used the phrase "without prejudice" as an acknowledgement that the denial of the claim on jurisdictional grounds did not preclude Christine from asserting her claim in another forum. Because of the multiple ways the phrase may be and has been used in our courts, the insertion of "without prejudice" in the January 16, 2020 order[7] could ensorcel the unwary about whether there was more to occur in the trial court and that trial-court finality had not yet been achieved.[8] This potential is further buttressed by the order's reference to Christine's summary judgment motion as the matter being denied; indeed, Christine's counsel argued in support of her motion for leave to file the appeal out of time that the order suggested the summary judgment motion had been denied without prejudice, a

[7] The judge stated much the same thing in her written opinion without additional amplification as to the precise connotation of "without prejudice" here, stating Christine's "application to have the Gauss funds liquidated and transferred to her is hereby denied, without prejudice, as this [c]ourt lacks jurisdiction."

[8] This possibility was further suggested by the parties' skirmish about whether Christine had violated a 2009 no-harassment order. Although enforcement motions, as a general matter, are not part of what constitutes "all issues as to all parties," but are merely requests allowed by Rule 1:10 to gain the trial court's aid to enforce decisions already made, the fact that motions were pending and being decided in the wake of the January 16, 2020 order could certainly have engendered confusion about trial-court finality.

ruling that normally suggests there was more to do in the trial court. See, e.g., Gonzalez, 371 N.J. Super. at 356 (recognizing that the denial of summary judgment "decides nothing and merely reserves issues for future disposition").

We are mindful of our prior decisions that require consideration of an order's essence rather than its labels. See, e.g., Mamolen v. Mamolen, 346 N.J. Super. 493, 498 (App. Div. 2002). We have taken this same approach when determining whether a trial court order is interlocutory or appealable as of right in cases like Grow Co. v. Chokshi, 403 N.J. Super. 443 (App. Div. 2008). But in those situations, our approach was driven by an overriding policy not applicable here: appellate review as of right cannot be created by a mislabeled order. Id. at 457-61; see also Parker v. City of Trenton, 382 N.J. Super. 454, 458 (App. Div. 2006).

This appeal presents an example of the flip side of the same coin: the "without prejudice" label can give an order an interlocutory appearance despite its finality. The jurisprudential problem considered in cases like Grow Co. and Parker resulted only in more work in the trial court and a delay in the aggrieved party's appeal, while the circumstances here are offered in support of a determination that Christine permanently forfeited her right to appeal the

January 16, 2020 order by not recognizing its finality and by not filing her notice of appeal sooner.

In the final analysis, Christine's misunderstanding about the inclusion of "without prejudice" in the critical order should not be the undoing of her appeal. To allow this quandary to go unremedied is to do exactly what our Supreme Court cautioned against in recognizing "[o]ur rules of procedure are not simply a minuet scored for lawyers to prance through on pain of losing the dance contest should they trip." State v. Williams, 184 N.J. 432, 442 (2005) (quoting Justice Clifford's dissent in Stone v. Twp. of Old Bridge, 111 N.J. 110, 125 (1988)); see also Romagnola v. Gillespie, Inc., 194 N.J. 596, 604 (2008); Kellam v. Feliciano, 376 N.J. Super. 580, 588 (App. Div. 2005). To bar Christine's appeal of the January 16, 2020 order – because she made the mistake of believing the dismissal without prejudice meant all issues as to all parties had not been resolved in the trial court – would produce a result wholly foreign to the policies of fairness and justice that lie at the heart of our rules of procedure. Ragusa v. Lau, 119 N.J. 276, 283 (1990). The policy of finality of judgments that forms the basis for Jeffrey's position must take a backseat to our courts' overriding interest in producing fair outcomes. See, e.g., LVNV Funding, LLC v. Deangelo, 464 N.J. Super. 103, 109 (App. Div. 2020). For these reasons, we vacate our

prior interlocutory orders and consider the merit of Christine's arguments about the January 16, 2020 order.

In dismissing Christine's claim to the Gauss account, the judge concluded that the Investment Advisers Act, 15 U.S.C. §§ 80b-1 to -21, applies here. In partially quoting 15 U.S.C. § 80b-14a, the judge concluded this Act "grants federal courts jurisdiction for 'all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of [Investment Advisers Act] or the rules, regulations, or orders thereunder.'" While the judge accurately quoted part of the statute, she prefaced that quoted portion with the assertion that the Act "grants federal jurisdiction" over the claims and suits described. That is true, but the statute does more. In quoting the statute, the judge left out the part where the statute declares the courts of the United States have jurisdiction "concurrently with State and Territorial courts." 15 U.S.C. § 80b-14(a) (emphasis added).

In short, the judge's determination that federal courts have exclusive jurisdiction to resolve the dispute about the nature of the Gauss account is simply erroneous. State courts have concurrent jurisdiction to do the same thing. In so holding, we do not opine on how the Investment Advisers Act applies to the parties' dispute; we simply hold that the Act does not deprive the trial court of

jurisdiction to determine whether the account is a marital asset or whether the account's contents belong to investors.

We are mindful that the trial judge has already conducted a plenary hearing to resolve the dispute and that evidentiary issues were raised at that time. Because the judge did not determine the nature of the account or resolve the evidentiary disputes or do anything but dismiss the claim for lack of jurisdiction, we remand for a resolution of all the issues raised in the trial court about the Gauss account that have yet to be decided.

The January 16, 2020 order is vacated[9] and the matter remanded for further proceedings consistent with this opinion.[10] We do not retain jurisdiction.

[9] That disposition renders unnecessary our consideration of whether the trial judge correctly denied Christine's reconsideration motion.

[10] We lastly observe that Christine also appeals the February 25, 2020 order that enforced a 2009 order and restrained Christine from sending harassing or threatening communications to Jeffrey, as well as a June 16, 2020 order that denied her reconsideration motion. We find insufficient merit in her arguments about those orders to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).