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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0275-21**

RANDI LUPO,

Plaintiff-Respondent,

v.

LILY LUPO,

Defendant-Respondent,

and

DEWEY EDWARDS,

Defendant-Appellant.

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Argued December 19, 2022 – Decided February 6, 2023

Before Judges Whipple, Smith, and Marczyk.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Monmouth County,  
Docket No. FD-13-0585-20.

Kevin C. Orr argued the cause for appellant Dewey  
Edwards (Law Offices of Kevin C. Orr, attorney;  
Kevin C. Orr, on the brief).

Lily Lupo, respondent, argued the cause pro se.

Randi Lupo, respondent, argued the cause pro se.

#### PER CURIAM

Defendants Dewey Edwards and Lily Lupo (Lily),<sup>1</sup> appeal a February 10, 2021 order which determined New Jersey had temporary emergency jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), N.J.S.A. 2A:34-53 to -95. Defendants also appeal a September 2, 2021 order denying their motion for reconsideration and application for attorneys' fees. This appeal assails the findings and procedures utilized by the court under the UCCJEA. We discern no error by the trial court and therefore affirm.

Plaintiff Randi Lupo, Lily's mother and a New Jersey resident, took custody of defendants' newborn son, D.E., on January 24, 2020. According to Randi, Edwards asked her to take D.E. because he was struggling with a substance abuse problem. Randi and her husband, Patrick Mirucki, flew to Texas, where defendants resided at the time and where D.E. was born, to pick up D.E. Randi said both parents signed a power of attorney authorizing her to provide food, clothing, shelter, and everyday care for D.E.; view his medical

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<sup>1</sup> Since Lily Lupo and Randi Lupo share a last name, we use first names to avoid confusion. In doing so, we mean no disrespect.

records; and make medical decisions until July 24, 2020. The power of attorney was notarized in Texas.

On February 24, 2020, Edwards called Randi and told her he and Lily were going to take D.E. back. The next day, Randi filed a complaint in the Monmouth County Family Part seeking temporary sole legal and residential custody of D.E. She argued certain parameters were needed in order to transfer custody back to the parents, including clean drug and hair follicle tests for a year.

At the initial emergency hearing, Randi explained why she believed it was an emergency:

They would like to come pick up their child, and I think that we are taking excellent care of him, we are meeting all of his needs, all of his medical needs, all his social [and] all of his emotional needs. My fear is if he goes back home, he will not be cared for. They have drug addiction issues, they're both on crack, and they both have emotional issues.

. . . .

[Edwards] swore to me that he was going to take care of things. He said they were going to come to New Jersey, get Medicaid, and then seek drug treatment here, and now I don't know what happened to that story.

This child will not be safe there. I would constantly get phone calls from both of them. Lily

would threaten to commit suicide, she was emotionally unstable. He claims she kept running after her drug dealer. . . . Lily's on disability, and every time the Social Security disability check comes, they don't pay their rent, they were just evicted, they use the money . . . to buy crack.

Because someone would need to care for the child, still a newborn, at least until Lily and Edwards could pick him up, the court granted temporary custody to Randi until March 4, 2020, when there would be a follow-up hearing before a different judge. The court made a referral to the New Jersey Division of Child Protection and Permanency (Division) to alert it to D.E.'s situation.

At the March 4 hearing, the court heard testimony from defendants and learned Edwards had moved to Texas in November of 2018. Lily had been living there for about a year. The court then read a letter from D.E.'s doctor's office into the record:

[D.E.] has been under our care since January 28, 2020. [D.E.] was born at the Woman's Hospital of Texas where he spent two weeks in the NICU<sup>2</sup> due to hypoglycemia, intrauterine growth restriction, and congenital neurosyphilis. The patient's diagnoses can be correlated to the mother's engagement in risky behaviors during her pregnancy. The patient's mother reported smoking greater than a half a pack of

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<sup>2</sup> Neonatal Intensive Care Unit.

cigarettes per day during pregnancy and was arrested for cocaine possession in March of 2019.

The mother brought the patient for a routine exam at the pediatrician's office in Texas on December 9, 20[19] . . . but failed to follow-up thereafter as instructed. Due to the patient's congenital neurosyphilis diagnosis, he was to receive multiple doses of antibiotics and was instructed to follow-up with ophthalmology, none of which were done.

Since [Randi] has had temporary power of attorney since January 24, 2020, the patient has been thriving and has been taken to all recommended visits. He has seen infectious disease and ophthalmology [specialists] where he will require additional visits every three months.

He appears to be extremely well-taken care of under the maternal grandmother's care.

At this time, I am requesting further investigation before relinquishing the child back to the parents. He has a long-term diagnosis requiring close monitoring and adequate care. I do not believe, due to neglect, his parents are capable of handling [D.E.] at this time in reviewing his past records.

Both defendants took drug tests that day. Lily's test came back positive for cocaine. The court ordered both defendants to undergo a hair follicle test within seventy-two hours. It also gave plaintiff and Mirucki temporary sole legal and residential custody. Two months later, Edwards relocated from Texas to Bowling Green, Kentucky.

A plenary hearing began on October 20, 2020. The hearing continued over a span of a few months, until February 3, 2021. Edwards testified about D.E.'s condition at his premature birth. Lily was diagnosed with syphilis, for which she had not been treated before she gave birth to D.E. As a result, D.E. was treated with penicillin for fourteen days, with the concern he might have had congenital neurosyphilis. According to Edwards, following three negative tests recommended by the hospital's infectious disease doctor soon after D.E.'s birth, no further treatment was necessary.

Randi testified that during the infant's first family gathering in December 2019, Edwards told her he was struggling with addiction to crack. She said Edwards asked her if she could pick up D.E. so he could get help regarding his addiction. Mirucki also testified regarding Lily's mental health issues and defendants' drug use. He also corroborated Randi's testimony that Edwards had called in January seeking help with D.E.

Lily testified defendants were simply letting plaintiff take D.E. for "a visit" of "up to [thirty] days." As for the power of attorney, Edwards denied signing it. He and Lily claim the document was notarized without their signatures on it. Defendants also offered the court evidence regarding doctor's

visits in New Jersey that indicated treatment with penicillin was no longer necessary in January and February of 2020.

On February 10, 2021, the court issued an oral opinion. The court found Randi and Mirucki were credible witnesses, but Edward and Lily were "very often non-responsive and combative in their answers." The court found the defendants were "in crisis" at the time they allowed plaintiff to take D.E., and did not believe they were simply sending him "halfway across the country . . . to accede to [plaintiff's] pressures to have the child visit . . . ." It therefore determined New Jersey had emergency jurisdiction over the case at the time of the order on March 4, 2020.

Nonetheless, the court determined the emergency ceased to exist, and therefore New Jersey no longer had jurisdiction. Recent drug tests were negative for both defendants, and the home had since stabilized. Lily and Edwards had married and were both living in Kentucky, Lily had given birth to another son, and Edwards was stably employed. The court thus relinquished custody of the child to Lily and Edwards without making a final custody determination under N.J.S.A. 2A:34-68(b).

Edwards moved for reconsideration on February 25, 2021, and applied for attorney's fees and costs under Rule 5:3-5 and reimbursement for his

necessary and reasonable expenses during the course of the proceedings under N.J.S.A. 2A:34-72(c). The court heard the motion on May 25, 2021.

In an oral opinion, the court denied Edwards' motion for reconsideration and application for fees. Regarding the fee determination, the court considered the factors outlined in Rule 5:3-5 and found defendant's arguments unconvincing.

Edwards appealed. He argues the court erred in finding temporary emergency jurisdiction under the UCCJEA and made incorrect findings causing him to unjustly incur costs, expenses, and fees. He seeks on appeal an award of fees as the prevailing party.

We defer to the trial court's findings of fact "when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998); see also Gnall v. Gnall, 222 N.J. 414, 428 (2015). However, that review is altered slightly in Family Part cases. "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare, 154 N.J. at 413. Legal decisions of Family Part judges are reviewed under the same de novo standard applicable to legal decisions in other cases. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019).



We review a trial judge's decision on whether to grant or deny a motion for reconsideration under Rule 4:49-2 (motion to alter or amend a judgment or final order) for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). "The rule applies when the court's decision represents a clear abuse of discretion based on plainly incorrect reasoning or failure to consider evidence or a good reason for the court to reconsider new information." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2022). We find no abuse of discretion here.

The UCCJEA, N.J.S.A. 2A:34-53 to -95, "governs the determination of subject matter jurisdiction in interstate . . . custody disputes" and was enacted "'to avoid jurisdictional competition and conflict' between jurisdictions in favor of 'cooperation with courts of other states . . . as necessary to ensure that custody determinations are made in the state that can best decide the case.'" Sajjad v. Cheema, 428 N.J. Super. 160, 170-71 (App. Div. 2012) (quoting Griffith v. Tressel, 394 N.J. Super. 128, 138 (App. Div. 2007)).

The UCCJEA instructs that a child's "home state" has "exclusive basis for jurisdiction of a custody determination." Id. at 171; see also N.J.S.A. 2A:34-65(a). The home state is "the state in which a child lived with a parent . . . for at least six consecutive months immediately before the commencement

of a child custody proceeding" or, if the child is less than six months old, "the state in which the child lived from birth with any of the persons mentioned." N.J.S.A. 2A:34-54.

Even if New Jersey is not the "home state" however, it may still exercise temporary emergency jurisdiction under N.J.S.A. 2A:34-68. To have jurisdiction, the child must have been abandoned or "subjected to or threatened with mistreatment or abuse." N.J.S.A. 2A:34-68(a). A plenary hearing is held to determine whether such circumstances exist. See, e.g., Benda v. Benda, 236 N.J. Super. 365, 368 (App. Div. 1989).

Edwards argues the trial court erred in finding New Jersey had temporary emergency jurisdiction in early 2020, when plaintiff first filed the complaint. Specifically, he submits it applied the wrong standard, erred in allowing some evidence and excluding other evidence, and improperly found mistreatment of D.E. based on drug use alone.

Appeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion. Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001); see also MacFadden v. MacFadden, 49 N.J. Super. 356, 359 (App. Div. 1958)

("The written conclusions or opinion of a court do not have the effect of a judgment. From them no appeal will lie.").

The court initially found jurisdiction existed at the beginning of the litigation, but in the February 10, 2021 order, it determined any emergency had ended and relinquished custody back to defendants. Defendants prevailed. If the court, after six days of testimony at the plenary hearing, determined New Jersey never had emergency jurisdiction, the result would have been the same. This case is ultimately only about the denial of a fee application.

"[A] reviewing court will disturb a trial court's award of counsel fees 'only on the rarest of occasions, and then only because of a clear abuse of discretion.'" Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 386 (2009) (quoting Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001)).

Though the award of attorney's fees is discretionary, Eaton v. Grau, 368 N.J. Super. 215, 225 (App. Div. 2004), the trial court must consider the factors enumerated in Rule 5:3-5(c).<sup>3</sup>

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<sup>3</sup> Rule 5:3-5(c) allows for the granting of attorney's fees in family actions:

[T]he court in its discretion may make an allowance . . . to be paid by any party to the action, including, if deemed to be just, any party successful in the action . . . . All applications or motions seeking an award of attorney fees shall include an affidavit of services at

The court did so here. For the financial circumstances of the parties, though "no extensive financial documentation was submitted," the court noted Edwards' current employment and income. It also noted, addressing the second factor, that both parties said they could not afford to pay each other's legal fees. Furthermore, Edwards was "gainfully employed" and had paid a portion of his legal fees already, indicating he had some ability to pay his own legal fees.

In his certification, Edwards made several allegations of plaintiff's bad faith and unreasonableness, including her refusal "to return the child." The court rejected the allegations, as it did at trial, and found plaintiff was not unreasonable in not ending the litigation. In contrast, it found Edwards to be

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the time of initial filing . . . . In determining the amount of the fee award, the court should consider . . . 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.

the unreasonable party because he did not submit to a hair follicle test until "the eve of trial." The court said "he had an opportunity to take [the test] all along, and that may very well . . . have ended . . . the whole affair."

The court noted both parties had significant legal fees and both had paid some portion of them. Edwards had a balance of \$15,708.90 and plaintiff had \$15,000. As for the results obtained, the seventh factor, the court noted jurisdiction existed at first, then it ended because the emergency ceased to exist.

The court recognized Edwards' other arguments based on the court's refusal to admit evidence concerning medical neglect but reiterated its credibility findings and the fact it determined jurisdiction based on "drug issues" rather than "the treatment of medical issues."

The court found, "based largely on the issue of reasonableness," counsel fees were not warranted. There is nothing in the record indicating "a clear abuse of discretion" that would warrant a reversal of the trial court's fee determination. Litton Indus., Inc., 200 N.J. at 386.

Next, Edwards argues he was entitled to relief under N.J.S.A. 2A:34-72, which states in relevant part:

- a. [I]f a court of this State has jurisdiction under this act because a person invoking the jurisdiction has

engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless [certain exceptions apply.]

. . . .

c. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection a. of this section, it shall charge the party invoking the jurisdiction of the court with necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings . . . .

[N.J.S.A. 2A:34-72 (footnote omitted).]

The trial court here did not address Edwards' argument for reimbursement under this statute. According to Edwards, this is "presumably because it improperly concluded that it ha[d] temporary emergency jurisdiction." On appeal, Edwards urges the panel to "exercise original jurisdiction" and award him attorney's fees. We decline to do so.

The statute is inapplicable to this situation because the court did find New Jersey had temporary emergency jurisdiction. Even if it had determined there was no emergency, and thus no jurisdiction, it would still not entitle Edwards to reimbursement because plaintiff did not engage in unjustifiable conduct. Unjustifiable conduct has been found in cases where the child is wrongfully removed from another state. See, e.g., Stevens v. Stevens, 177 N.J.

Super. 167, 171-72 (App. Div. 1981); Pozzi v. Pozzi, 210 N.J. Super. 522, 526-27 (Ch. Div. 1986). The court found here that Edwards asked Randi to take care of D.E. Even in defendants' version of the story, in which they were simply sending D.E. to visit Randi, there is still no wrongful removal of the child from Texas. Randi had permission.

We do not address defendants' remaining arguments as 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