

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-1049-21

K.D.,

Plaintiff-Respondent,

v.

P.D.,

Defendant-Appellant.

Submitted December 12, 2022 – Decided March 23, 2023

Before Judges Gooden Brown and DeAlmeida.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-0162-13.

P.D., appellant pro se.

Atkins, Tafuri, Minassian, D'Amato, Beane & Miller,
PA, attorneys for respondent (Jay R. Atkins, on the
brief).

PER CURIAM

Defendant P.D. appeals from the October 7, 2021 order of the Family Part denying his motion for various forms of relief in this post-judgment matrimonial matter.¹ We affirm.

I.

P.D. and plaintiff K.D. were married in 2001. They had two children, M.D. and J.D., during the marriage. In 2012, P.D. filed a complaint in the Family Part seeking a divorce. After contentious proceedings, the parties were divorced by way of an Amended Dual Final Judgment of Divorce entered in 2014.

Pre- and post-judgment proceedings in this matter have been extensive and included an action brought by DCPD against the parties alleging abuse and neglect of the children. Relevant to this appeal are two trial court orders sealing documents related to the children. On April 3, 2019, the court entered an order that records relating to J.D.'s treatment at a therapeutic center, including a 2019 psychological evaluation by Dr. Kevin O'Keefe, be released to P.D. for use only in the then-pending abuse and neglect proceeding. The court ordered that the records not be disclosed to any other person for any reason without permission

¹ We identify the parties by their initials in order to preserve the confidentiality of records of the Division of Child Protection and Permanency (DCPP). R. 1:38-3(d)(12).

of the court. In addition, in 2020, K.D. filed an order to show cause concerning J.D.'s placement at an inpatient residential school program. P.D. submitted a certification in opposition to the order to show cause. The court entered an order on July 21, 2020, directing that exhibits A, B, C, D, E and I to P.D.'s certification be sealed. Dr. O'Keefe's evaluation was among the exhibits protected by the order.

On or about April 6, 2021, P.D. filed a motion seeking:

(1) an order finding K.D. to be in violation of litigant's rights for violating the April 3, 2019, and July 21, 2020 orders. P.D. alleged K.D. violated the orders by releasing, without the trial court's approval, Dr. O'Keefe's evaluation to agents of the board of education responsible for J.D.'s education. Elements of the evaluation were incorporated into J.D.'s individualized education plan (IEP) approved in a settlement of an action brought by K.D. against the school board. P.D. alleged K.D. gave the report to the school board on or about July 28, 2020. He sought \$800,000 in sanctions against K.D. for violating the court's orders;

(2) an order vacating the trial court's June 26, 2017 order requiring him to pay fees to Dr. Hatton, a court-appointed parenting coordinator (PC). In 2012, at the court's suggestion, the parties executed a consent order appointing Dr.

Hatton as PC. They also signed a retainer agreement that provided they would be evenly responsible for Dr. Hatton's fees.

P.D. later refused to pay his portion of Dr. Hatton's fees. This resulted in Dr. Hatton applying to the court for an order directing payment from P.D. On June 26, 2017, the court ordered P.D. to pay Dr. Hatton \$37,426.70 for his services as PC, \$30,769.10 for fees Dr. Hatton incurred with respect to filing his application with the court, and \$119,069.50 for the time Dr. Hatton spent addressing P.D.'s meritless grievances and in attempting to collect invoices from P.D. before making his court application.

P.D. argued that the June 26, 2017 order should be vacated pursuant to R. 4:50-1(f) based on newly discovered evidence that K.D. and Dr. Hatton fraudulently represented to the court that Dr. Hatton received confidential information from DCPD. According to P.D., once the abuse and neglect action was terminated with a finding that the allegations were unfounded, he was able to access documents that proved that DCPD never released confidential information to Dr. Hatton. It appears that P.D. believes K.D. gave Dr. Hatton a copy of Dr. O'Keefe's evaluation, and perhaps other DCPD documents. As a remedy, P.D. sought a refund of all fees paid to Dr. Hatton by both parties or, in

the alternative, the reallocation to K.D. of 100% responsibility for Dr. Hutton's fees;

(3) an order finding K.D. defamed P.D. through the disclosure of the confidential DCPD documents to the school board and Dr. Hatton. He alleged the documents contain disproven allegations that he sexually, physically and emotionally abused J.D. and physically abused M.D. P.D. sought an award of compensatory damages, punitive damages, and sanctions in the amount of \$1.5 million.

K.D. opposed P.D.'s motion. She submitted a certification in which she stated that she was represented by counsel in negotiations with the board of education over J.D.'s IEP. She stated that her attorney in that matter turned the O'Keefe evaluation over to the school district's attorney on March 7, 2019, before entry of either trial court order. According to K.D., the judge was aware that K.D. had already given a copy of the O'Keefe evaluation to the school board when she entered the April 3, 2019 order. In addition, K.D. noted that J.D.'s IEP is confidential and available only to the parties and the child's study team.

On October 7, 2021, the trial court issued a written opinion denying P.D.'s motion. The court found that "it is not clear from [P.D.'s] moving papers how [he] concluded the O'Keefe Report was released on July 28, 2020" The

court noted, however, that the settlement agreement between K.D. and the school district noted that a meeting of the parties involved in that matter took place on July 28, 2020, during which an IEP was developed. "Presumably," the court observed, P.D. "relied on this statement when he claimed that" K.D. released the report on July 28, 2020. The court found, however, that K.D. established that she released the O'Keefe evaluation to the school district before entry of either order sealing the DCPD records. Thus, the court concluded, K.D. did not violate either order.

With respect to P.D.'s motion for relief pursuant to R. 4:50-1(f), the court found no exceptional circumstances warranted vacating the June 26, 2017 order. The court found that P.D. had, on numerous occasions, attempted to relitigate his liability for Dr. Hatton's fees, did not produce evidence that K.D. or Dr. Hatton lied under oath, and failed to serve his motion on Dr. Hatton.

The court also concluded that P.D.'s defamation claim was meritless. The court found that the abuse and neglect action did not definitively conclude that the statements recounted in the O'Keefe evaluation were false. Thus, the court found that P.D. cannot prove that submission of the evaluation defamed him.

Finally, the court engaged in a detailed analysis of legal precedents and court rules concerning the award of attorney's fees. After careful review of each

relevant factor, and after concluding that P.D.'s conduct demonstrated ill intentions in an attempt to re-litigate the long-decided issue of his liability for Dr. Hatton's fees, the court awarded K.D. \$4,500 in attorney's fees. An October 7, 2021 order memorializes the court's decision.

P.D. subsequently wrote to the court seeking permission to file a motion for reconsideration, a draft of which was attached to his submission.² The court reviewed the draft moving papers and, on November 9, 2021, issued a letter to P.D. The court explained that P.D. did not present evidence or convincing legal arguments that it erred when it entered the October 7, 2021 order and informed P.D. he should consider his motion for reconsideration to be denied.

This appeal followed. P.D. raises the following arguments.

POINT I

THE COURT ERRED AND ABUSED ITS[]
DISCRETION IN FAILING TO FIND THE
PLAINTIFF IN VIOLATION OF THE COURT['S]
ORDER(S) AND FAILING TO AWARD
DEFENDANT SAN[C]TIONS FOR PLAINTIFF['S]
DISSEMINATION OF CONFIDENTIAL DCP
INFORMATION.

² P.D.'s prior conduct resulted in the entry of a trial court order prohibiting him from filing any motion without permission of the court.

POINT II

THE COURT ERRED AND ABUSED ITS[] DISCRETION IN FAILING TO VACATE OR REAPPORTION FEES FROM IT[S] JUNE 26, 2017 ORDER WITHOUT HOLDING A PLENARY HEARING.

POINT III

THE COURT ERRED AND ABUSED ITS[] DISCRETION IN FAILING TO FIND THE PLAINTIFF LIABLE FOR DEFAMATION OF THE DEFENDANT.

POINT IV

THE COURT ERRED AND ABUSED ITS[] DISCRETION IN AWARDING ATTORNEY FEES.

II.

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). Given the Family Part's "special jurisdiction and expertise in family matters," id. at 413, substantial deference is owed to the Family Part's factual findings so long as they are supported by "adequate, substantial, [and] credible evidence." Id. at 412. "[W]e do not overturn those determinations unless the court abused its discretion, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." Storey v. Storey, 373 N.J. Super. 464, 479 (App. Div. 2004). The

trial court's legal conclusions are reviewed de novo. Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995).

We begin with P.D.'s argument that the trial court erred when it denied his request for relief in aid of litigant's rights. "Rule 1:10-3 provides a 'means for securing relief and allow[s] for judicial discretion in fashioning relief to litigants when a party does not comply with a judgment or order.'" N. Jersey Media Grp., Inc. v. State, Off. of Governor, 451 N.J. Super. 282, 296 (App. Div. 2017) (alteration in original) (quoting In re N.J.A.C. 5:96, 221 N.J. 1, 17-18 (2015)). "Relief under [Rule] 1:10-3, whether it be the imposition of incarceration or a sanction, is not for the purpose of punishment, but as a coercive measure to facilitate the enforcement of the court order." Ridley v. Dennison, 298 N.J. Super. 373, 381 (App. Div. 1997). "We review a court's order enforcing litigant's rights under Rule 1:10-3 for an abuse of discretion." Savage v. Twp. of Neptune, 472 N.J. Super. 291, 313 (App. Div. 2022).

We are not persuaded by P.D.'s argument that the trial court abused its discretion when it found that K.D. had not violated any court order by releasing Dr. O'Keefe's evaluation to agents of the board of education responsible for J.D.'s IEP. There is support in the record for the trial court's determination that

K.D.'s attorney in her suit against the board of education disclosed the evaluation prior to entry of the April 3, 2019, and July 21, 2020 orders.

Our review of the record also revealed no basis on which to disturb the trial court's denial of P.D.'s motion to vacate the June 26, 2017 order. Rule 4:50-1(f), under which P.D. sought relief, provides:

[o]n motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: . . . (f) any other reason justifying relief from the operation of the judgment or order.

An application to set aside an order pursuant to Rule 4:50 is addressed to the motion judge's sound discretion, which should be guided by equitable principles. Hous. Auth. v. Little, 135 N.J. 274, 283 (1994). The trial court's determination is entitled to substantial deference and will not be reversed in the absence of a clear abuse of discretion. US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). To warrant reversal, P.D. must show that the decision was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Ibid. (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007) (internal quotations omitted)).

In determining whether a party should be relieved from a judgment or order, courts must balance "the strong interests in the finality of litigation and

judicial economy with the equitable notion that justice should be done in every case." Jansson v. Fairleigh Dickinson Univ., 198 N.J. Super. 190, 193 (App. Div. 1985).

Relief under subsection (f) of Rule 4:50-1 is available only when "truly exceptional circumstances are present." Little, 135 N.J. at 286 (citation omitted). "The movant must demonstrate the circumstances are exceptional and enforcement of the judgment or order would be unjust, oppressive or inequitable." Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999) (citation omitted).

The trial court did not mistakenly exercise its discretion when it concluded that P.D. was not entitled to vacate the order that long ago established his liability for Dr. Hatton's fees. As the trial court impliedly found, P.D. did not make a prima facie showing that a hearing was warranted to resolve material factual disputes. See Harrington v. Harrington, 281 N.J. Super. 39, 47 (App. Div. 1995). We see no basis on which to reverse the trial court's finding that P.D.'s motion is part of his ongoing and unfounded attempts to avoid his responsibility to pay his share of Dr. Hatton's fees.


We also find no error in the trial court's rejection of P.D.'s defamation claim. Claims for monetary damages for torts based on the alleged post-

judgment acts of a former spouse are outside the jurisdiction of the Family Part in a dissolution action.

Finally, we turn to P.D.'s appeal of the award of fees to K.D. A Family Part judge may award counsel fees at his or discretion subject to the provision of Rule 4:42-9. The judge "shall consider the factors set forth in [Rule 5:3-5(c)], the financial circumstances of the parties, and the good or bad faith of either party." N.J.S.A. 2A:34-23. Application of these factors and the decision to award fees is within the trial judge's discretion. Gotlib v. Gotlib, 399 N.J. Super. 295, 314-15 (App. Div. 2008). That is, an "award of counsel fees in matrimonial actions is discretionary with the trial court, [Rule] 4:42-9(a)(1), and an exercise thereof will not be disturbed in the absence of a showing of abuse." Berkowitz v. Berkowitz, 55 N.J. 564, 570 (1970). Here, the trial court analyzed the Rule 5:3-5(c) factors at length in its written opinion, which is supported by sufficient evidence in the record.

Affirmed.³

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


CLERK OF THE APPELLATE DIVISION

³ Although P.D. lists the court's November 9, 2021 letter denying his motion for reconsideration in his notice of appeal, he does not address the letter in his briefs. We consider his appeal from that order waived. "[A]n issue not briefed is deemed waived." Pressler and Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2023); Telebright Corp. v. Dir., N.J. Div. of Tax'n, 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming a contention waived when the party failed to include any arguments supporting the contention in its brief).