# RECORD IMPOUNDED



SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1101-21

D.T.H.,[1]

Plaintiff-Respondent/
Cross-Appellant,

v.

M.L.L.,

Defendant-Appellant/
Cross-Respondent.

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Argued May 23, 2023 – Decided September 5, 2023

Before Judges Gilson and Rose.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Hunterdon County, Docket No. FM-10-0185-10.

Thomas J. DeCataldo, Jr., argued the cause for appellant/cross-respondent (Manzi Epstein LoMurro & DeCataldo, LLC, attorneys; Thomas J. DeCataldo, Andrew J. Rhein and Betsy W. Bresnick, on the briefs).

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[1] In view of the sexual abuse allegations asserted, we use initials and pseudonyms to protect the privacy of the parties and their children. See R. 1:38-3(d)(10).

Daniel B. Tune argued the cause for respondent/cross-appellant. (Martin & Tune, LLC, attorneys; Daniel B. Tune, of counsel and on the briefs.)

PER CURIAM

The crux of the issues raised on this appeal and cross-appeal is the parties' dispute about the emancipation of their two oldest children M.H. (Mary), born June 2000, and K.H. (Karen), born April 2002. The parties' third child, C.H. (Cathy), born January 2005, is an unemancipated minor. Defendant M.L.L., known as M.L.H. during the marriage, appeals from certain paragraphs of Family Part orders entered on: (1) June 30, 2020,[2] granting plaintiff D.T.H.'s summary judgment motion, emancipating Mary without a plenary hearing, and granting plaintiff's fee application; (2) January 8, 2021, denying plaintiff's motion for reconsideration of the June 30, 2020 order; (3) June 30, 2021, granting plaintiff's motion to compel legal fees; and (4) October 29, 2021, granting plaintiff's summary judgment motion emancipating Karen, and granting plaintiff's motion to enforce litigant's rights. Plaintiff cross-appeals from the October 29, 2021 order that denied his requests to: (1) retroactively emancipate Mary and Karen; and (2) collect defendant's share of pension payments until her obligation to plaintiff is satisfied. Having reviewed the parties' contentions in

[2] Incorrectly designated in defendant's notice of appeal as June 20, 2021.

light of the record and applicable legal principles, we discern no reason to disturb the orders under review, which are accompanied by cogent statements of reason. Accordingly, we affirm.

I.

The parties' 1999 marriage was dissolved by a January 13, 2012 final judgment of divorce (JOD), which converted a March 23, 2010 judgment of divorce for separate maintenance and incorporated a February 25, 2010 property settlement agreement (PSA). The PSA included the following relevant provisions:

> 13. EMANCIPATION EVENT: The obligation of Husband and Wife to pay any child support on behalf of M[ary], K[aren], or C[athy] shall terminate upon the first happening of any emancipation or termination event in accordance with New Jersey Statutes. In addition, the following events constitute an emancipation or termination event:
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> . . . .
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> e) The attainment of 18 years of age by the child or graduation from high school, whichever event last occurs, if said child has not been enrolled in college or other post-high school education program. If the child continues schooling beyond high school and is enrolled in college or other post-high school education program at the time of his [sic] high school graduation, the parent's obligation of

> support shall be reviewed for determination of continuation and if so, the amount until such time as the child completes his/her course of study so long as he/she continues to participate in the program in good faith and on a full time continuous basis. In no event shall payer have any obligation for the support of the child after he/she attains the age of 23 years.
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> [(Emphasis added).]

The PSA further provided: "Child support shall be recalculated as a result of any change in circumstances," and "[t]he parties will divide the marital portion of Husband's pension equally, based upon the coverture fraction."

The ensuing post-judgment litigation between the parties can best be described as hotly contentious; the relationship between plaintiff and his daughters as estranged. As one notable example, following their eighteenth birthdays, Mary and Karen assumed their mother's surname. We outline the events that precipitated the orders under review.

It is undisputed that plaintiff had abused alcohol during the pendency of the marriage; thereafter plaintiff agreed to alcoholism-related treatment. The parties strenuously dispute the sexual abuse allegations made by the children, commencing in 2011. Cathy's counselor reported to the Division of Child Protection and Permanency (DCPP) that Cathy had disclosed plaintiff

inappropriately touched her vagina. Mary and Karen did not report sexual abuse but said their father "occasionally bathed them together and slept in bed with them." DCPP and the Hunterdon County Prosecutor's Office (HCPO) investigated the allegations. DCPP found the allegations were not substantiated. The HCPP declined to prosecute plaintiff.

In September 2017, Judge Julie M. Marino issued an order modifying child support and ordering Mary and Karen to attend reunification therapy with a court-appointed therapist. The judge found defendant "ha[d] not encouraged a relationship between [plaintiff] and the children, but ha[d] in fact, intentionally inhibited one." Mary and Karen attended reunification therapy once; thereafter, they refused to participate.

In March 2018, defendant moved to compel plaintiff to pay his share of Mary's college expenses and suspend his parenting time based on allegations that plaintiff had sexually abused Cathy. In a comprehensive statement of reasons that accompanied the April 25, 2018 order, Judge Marino denied defendant's motion for Mary's college expenses. Relevant to these appeals, the judge found, "The parties agree that [p]laintiff does not have a relationship with M[ary]." Further, despite plaintiff's "several attempts to repair [their] relationship," Mary "rebuffed" him. The judge noted defendant "d[id] not assert

that [p]laintiff abused M[ary] in any way, or that M[ary] was aware of the alleged abuse that was perpetrated against her sister." However, the judge ordered a plenary hearing regarding Cathy's allegations against plaintiff.

Three weeks later, on May 18, 2018, defendant moved for reconsideration of the April 25, 2018 order, claiming Mary remembered her father had sexually abused her. In a July 10, 2018 order, Judge Marino scheduled a plenary hearing "to determine if M[ary] ha[d] a legitimate and understandable reason for avoiding a relationship with her father which would justify requiring [plaintiff] to contribute to the cost of her college" vis-à-vis her knowledge of Cathy's allegations against their father. The judge ordered the parties to propound interrogatories, and Mary to submit to a sexual assault evaluation.

In their written reports, the court-appointed experts concluded that the allegations against defendant were not substantiated. One expert opined: "[C]onsidering that C[athy] would be unlikely to remember this event from her childhood, it is very likely that this event has been talked about within her family over the years and influenced her perception of the event."

On May 13, 2019, Judge Marino executed a consent order, administratively dismissing the litigation. However, the parties retained the

right to engage in limited discovery, including the depositions of Mary and the experts by dates certain.

In August 2019, defendant voluntarily withdrew her request for plaintiff to pay Mary's college expenses. Defendant asserted Mary was "undergo[ing] therapy to address the trauma that occurred during her childhood," and Mary's therapist advised against "discuss[ing] the details of the sexual abuse." Defendant reserved the "right to reinstate this case or start a new case, if M[ary] cho[se] to do so in the future." The plenary hearing did not occur.

Against that protracted procedural history, we turn to the orders under review. In January 2020, plaintiff moved for summary judgment seeking various forms of relief, including: the emancipation of Mary, retroactively to June 1, 2018, and the recalculation of child support accordingly; the emancipation of Karen and Cathy as of their future dates of graduation from high school; termination of defendant's right to any portion of plaintiff's pension; and the cancellation of the April 25, 2018 and July 10, 2018 orders that granted plenary hearings. Defendant cross-moved for the denial of that relief.

On June 30, 2020, Judge Marino issued an order granting, in part, plaintiff's motion to emancipate Mary and terminate child support, retroactively to January 14, 2020, i.e., the date his motion was filed, and cancel the plenary

hearings. The judge also denied without prejudice the preemptive emancipation of Karen and Cathy. Further, the judge awarded plaintiff counsel fees and costs for the motions decided on April 25, 2018 and July 10, 2018. In her accompanying statement of reasons, the judge noted that although the May 13, 2019 consent order administratively dismissed the plenary hearings regarding Mary's sexual abuse allegations, the expert reports were "inconclusive because [they] were never deposed or cross-examined by the parties."

On January 8, 2021, Judge Marino denied defendant's ensuing motion to reconsider Mary's emancipation and the cessation of financial support, and plaintiff's award of expert and counsel fees. The judge denied without prejudice plaintiff's application to emancipate Karen, effective July 1, 2020, but ordered defendant to provide documentation regarding Karen's college attendance. Judge Marino denied plaintiff's application to find defendant in violation of litigant's rights and to attach her pension distribution. However, the judge ordered defendant to pay counsel fees regarding the present motions.

In an accompanying twenty-two-page statement of reasons, Judge Marino detailed the protracted litigation between the parties and her rationale underscoring the current and prior orders. Because defendant withdrew her

request for a plenary hearing, the judge could not determine whether plaintiff was "an uninvolved or abusive parent, or anything else about his parenting."

The judge painstakingly summarized her reasons for granting plaintiff's motion to emancipate Mary. Pertinent to these appeals, the judge explained:

> There is a procedural issue which requires attention in this matter. In or about March 2018, [d]efendant initially moved to compel [p]laintiff to contribute toward college costs (and other relief). Plaintiff opposed that motion but did not specifically seek to emancipate M[ary] in his cross-motion. Even in the most rudimentary concept of due process, [d]efendant is correct that the [c]ourt did not specifically emancipate M[ary] in 2018, because that relief was not specifically requested by [p]laintiff at that time. Therefore, [d]efendant had no notice that that relief was being sought in 2018 and was not heard on it. The specific relief of emancipation of M[ary] was neither sought nor granted in 2018. However, in June 2020, the [c]ourt did grant [p]laintiff's request to emancipate M[ary]. The [c]ourt denied the retroactive termination of child support for M[ary] for the duration sought by [p]laintiff and instead ordered termination of child support for M[ary] retroactive to January 14, 2020 – the filing date of [p]laintiff's motion to deem M[ary] emancipated.

Judge Marino also rejected defendant's argument that plaintiff was provided "sufficient and appropriate information concerning college selection, costs, basics of M[ary]'s living arrangement"; Mary's reason for refusing to engage in a relationship with her father; and that the judge ignored the terms of

the parties' PSA. Citing the PSA's emancipation provision, the judge determined "there is no automatic continuation of support following high school graduation." Moreover, defendant "failed to meet her burden under the PSA that M[ary] is enrolled in school full time and is making good faith progress." Because defendant chose to forgo the plenary hearing, the judge noted she was unable to determine the relationship, if any between plaintiff and Mary. The judge also found emancipation was warranted based on the governing legal principles.

Citing our decision in Newburgh v Arrigo, 88 N.J. 529, 543 (1982), the judge recognized: "the issue of whether a child is emancipated with the correlative termination of the right to parental support is fact sensitive and requires critical review of all facts and circumstances surrounding the child." The judge elaborated:

> The undisputed facts here include that M[ary] has refused any contact, communication, or any semblance of a relationship with [p]laintiff. She does not share any college information with him. M[ary] does not share information about her life, she does not seek or desire his guidance or influence in her life choices. She has gone so far as to change her surname from [her father's to her mother's]. Because she is an adult, M[ary] was able to independently file this name change, having made her own decision to proceed in this manner.

> M[ary] has most certainly moved beyond the sphere of influence of [p]laintiff, and she is emancipated. As a result of this emancipation, it is appropriate for [p]laintiff to be relieved of his financial obligations to her.
>
> Defendant and M[ary] were given every opportunity to present evidence reflecting M[ary]'s college enrollment status, demonstrating what information was provided to [p]laintiff, presenting information related to M[ary]'s financial and living situation, as well as the basis for her apparent immutable decision to terminate all contact with [p]laintiff. These are the very factors the [c]ourt would review and make findings on for both college costs and emancipation pursuant to Newburgh.

The judge also awarded counsel fees regarding the June 30, 2020 and July 10, 2019 orders, pending receipt of the requisite certification of services and the parties' updated financial information.

After the parties submitted the requested documentation, Judge Marino issued a June 30, 2021 order concerning the reserved provisions of the previous order. Because defendant submitted the requisite documentation, the judge found "a prima facie showing of K[aren]'s college and enrollment and attendance" had been met. The judge therefore denied plaintiff's motion to emancipate Karen, noting he "may file any appropriate application should there be a change in circumstances." The judge did not consider plaintiff's application under the governing legal principles.

Following an extensive application of the factors set forth in Rule 5:3-5(c) and RPC 1.5(a), Judge Marino determined plaintiff's fee and cost award. Finding the fees totaled $56,004, the judge "estimate[d] that approximately 60% of the fees incurred were related to M[ary]'s litigation." However, the judge reduced the award to account for plaintiff's non-meritorious claims. Accordingly, the judge set the fee award at $28,750.

The next month, plaintiff moved to emancipate Karen, effective July 1, 2020, and garnish the receipt of defendant's pension payment until her obligation is satisfied. Plaintiff cross-moved to stay Mary's emancipation and the fee award, and to deny Karen's emancipation. Defendant did not request a plenary hearing.

Following oral argument held on two non-consecutive days in August and October 2021, Judge Bradford M. Bury granted plaintiff's motion to emancipate Karen and enforce the previous fee award. The judge denied defendant's motion to garnish defendant's receipt of pension payments, instead entering an executable judgment of $32,544.03 against her. He also denied defendant's motion to stay Mary's emancipation and the fee award.

Relevant to defendant's contentions on appeal, Judge Bury recognized the rationale underlying Judge Marino's June 30, 2021 order denying Karen's

emancipation was defendant's submission of proof that Karen was enrolled in college. Judge Bury noted, however, that Judge Marino only determined Karen was enrolled in college full-time; Judge Marino did not consider whether the relationship between plaintiff and Karen satisfied the case law governing emancipation.

Applying the factors set forth in Black v. Black, 436 N.J. Super. 142 (2013), Judge Bury found:

> Factually M[ary] and K[aren] are almost indistinguishable as to their relationship with their father. Similar to M[ary], it is undisputed that K[aren] has no relationship with [her father], has changed her last name from [father's to mother's], and refused to participate in previously ordered reunification therapy . . . . It is undisputed that M[ary] and K[aren] attended a single reunification therapy session in April of 2018, clearly stated their intent to not participate, and subsequently refused to participate or communicate further with [p]laintiff. Moreover, [p]laintiff was completely excluded in the process of applying to schools and K[aren]'s ultimate decision to matriculate at the University of Florida.
>
> The circumstances of this case indicate that K[aren], like M[ary], is emancipated under the Black v. Black framework. Through actions displayed over several years, K[aren] has clearly expressed her position: there is no longer a parent-child relationship between her and [p]laintiff. K[aren]'s emancipation shall be effective the date of [p]laintiff's motion filing, July 20, 2021.

This appeal followed.

Defendant raises four arguments on appeal: (1) Judge Marino ignored the terms of the parties' PSA, and both judges improperly relied on the seminal case law in their decision to emancipate Mary and Karen; (2) there was no change in circumstances warranting Judge Bury's October 29, 2021 decision to emancipate Karen following Judge Marino's June 20, 2021 order denying plaintiff's application; (3) both judges failed to hold a plenary hearing; and (4) Judge Marino abused her discretion by granting plaintiff's application for counsel and expert fees.

Plaintiff challenges the emancipation dates ordered by both judges, maintaining Mary's emancipation date should be retroactively set as June 1, 2018, and Karen's as June 1, 2020. Asserting the executable judgment ordered is "uncollectable," plaintiff also argues Judge Bury erroneously denied his application to collect defendant's share of pension payments.

II.

Our review of Family Part orders is limited. See Cesare v. Cesare, 154 N.J. 394, 411 (1998). "Appellate courts accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare, 154

N.J. at 412). "Only when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should we interfere." Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008)). "We will reverse only if we find . . . trial judge[s] clearly abused [their] discretion." Clark v. Clark, 429 N.J. Super. 61, 72 (App. Div. 2012). However, "all legal issues are reviewed de novo." Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017).

Emancipation occurs "when the fundamental dependent relationship between parent and child is concluded, the parent relinquishes the right to custody and is relieved of the burden of support, and the child is no longer entitled to support." Filippone v. Lee, 304 N.J. Super. 301, 308 (App. Div. 1997). Although there exists a rebuttable presumption that a child is emancipated at age eighteen, "the issue is always fact-sensitive and the essential inquiry is whether the child has moved 'beyond the sphere of influence and responsibility exercised by a parent and obtains an independent status of his or her own.'" Ibid. (quoting Bishop v. Bishop, 287 N.J. Super. 593, 598 (Ch. Div. 1995)). The court's determination involves a "critical evaluation of the prevailing circumstances including the child's need, interests, and independent resources, the family's reasonable expectations, and the parties' financial ability,

among other things." Dolce v. Dolce, 383 N.J. Super. 11, 18 (App. Div. 2006) (citing Newburgh, 88 N.J. at 545).

When there is an explicit emancipation provision in a property settlement agreement, the terms therein govern. See ibid. (recognizing agreements to "voluntarily extend the parental duty of support beyond the presumptive age of emancipation" are enforceable, provided they are just and equitable). Indeed, matrimonial settlement agreements are "'entitled to considerable weight with respect to their validity and enforceability' in equity, provided they are fair and just" because they are "essentially consensual and voluntary in character." Id. at 20 (quoting Petersen v. Petersen, 85 N.J. 638, 642 (1981)).

As a practical matter, such agreements are often comprehensive and particularized, and thus are "more carefully tailored to the peculiar circumstances of the parties' lives." Lepis v. Lepis, 83 N.J. 139,154 (1980). Accordingly, such agreements are "entitled to significant consideration." Glass v. Glass, 366 N.J. Super. 357, 372 (App. Div. 2004). Only where enforcement of the agreement becomes inequitable should an exception be made to the strict enforcement of the agreement's terms. Id. at 379. Nonetheless, courts retain the equitable power to modify support provisions at any time. Lepis, 83 N.J. at 145.

In view of these principles, we reject defendant's contentions that Judge Marino ignored the terms of the PSA. On the contrary, as the judge accurately determined, the PSA by its plain terms expressly state that if the child enrolls in school after high school graduation, "the parent's obligation of support shall be reviewed for determination of continuation." In conducting that review, both judges correctly considered the breakdown in the relationship between the children and their father in view of the governing law. Indeed, the judges' findings that Mary and Karen were estranged from plaintiff and wanted no relationship with him – evidenced by their assumption of defendant's surname shortly after their eighteenth birthdays – demonstrated that the children have moved well "beyond the sphere of influence exercised by [their father]." See Bishop, 287 N.J. Super. at 598; see also Filippone, 304 N.J. Super. at 308. We therefore conclude the emancipation orders are amply supported by substantial credible evidence in the record.

We also reject defendant's argument that the judges failed to hold a plenary hearing. Generally, plenary hearings are required when there are "contested issues of material fact on the basis of conflicting affidavits." Conforti v. Guliadis, 128 N.J. 318, 322 (1992) (quoting Conforti v. Guliadis, 245 N.J. Super. 561 (App. Div. 1991)); see also Tretola v. Tretola, 389 N.J. Super. 15,

20 (App. Div. 2006) (reversing an emancipation order and requiring a plenary hearing because the court failed to recognize material facts in dispute and evidence beyond the motion papers necessary for resolution of the matter). Based on the undisputed evidence that neither Mary nor Karen desired any relationship whatsoever with plaintiff, there was no need for a plenary hearing.

Nor are we convinced by plaintiff's argument that the judges improperly denied his application to set Mary's emancipation date as June 1, 2018, and Karen's emancipation date as June 1, 2020. As a general matter, N.J.S.A. 2A:17-56.23a prohibits the retroactive reduction of court-ordered child support. The statute's anti-retroactivity requirement has been construed, however, to be inapplicable to a reduction of child support based on a child's emancipation. As we noted in Bowens v. Bowens, the statute "does not bar the cancellation of child support arrearages which accrued subsequent to the date of the emancipation of the minor." 286 N.J. Super. 70, 73 (App. Div. 1995); see also Mahoney v. Pennell, 285 N.J. Super. 638, 643 (App. Div. 1995) (emancipating and terminating child support for two children two years apart in age, with each emancipation effective retroactive to each child's eighteenth birthday and holding "[w]here there is no longer a duty of support by virtue of a judicial declaration of emancipation, no child support can become due"). The court

should also consider fairness and equity in determining whether a parent is entitled to modification of a previously paid child support obligation. See Harrington v. Harrington, 446 N.J. Super. 399, 411 (Ch. Div. 2016).

In the present matter, Judge Marino thoroughly explained her reasons for Mary's emancipation date. The judge noted that in his opposition to plaintiff's application to compel his contribution to college expenses, he did not seek to emancipate Mary. The judge therefore set Mary's emancipation date retroactively to January 14, 2020, the date plaintiff filed his motion to emancipate Mary. Similarly, Judge Bury set Karen's emancipate date retroactively to July 20, 2021, the filing date of his motion to emancipate Karen.

Lastly, we address defendant's challenge to plaintiff's fee award. "An allowance for counsel fees is permitted to any party in a divorce action, R[ule] 5:3-5(c), subject to the provisions of Rule 4:42-9." Slutsky v. Slutsky, 451 N.J. Super. 332, 366 (App. Div. 2017). "The award of counsel fees and costs in a matrimonial action rests in the [sound] discretion of the trial court." Guglielmo v. Guglielmo, 253 N.J. Super. 531, 544-45 (App. Div. 1992).

"Fees in family actions are normally awarded to permit parties with unequal financial positions to litigate (in good faith) on an equal footing." J.E.V. v. K.V., 426 N.J. Super. 475, 493 (App. Div. 2012) (quoting Kelly v. Kelly, 262

N.J. Super. 303, 307 (Ch. Div. 1992)). Additionally, "where a party acts in bad faith[,] the purpose of the counsel fee award is to protect the innocent party from [the] unnecessary costs and to punish the guilty party." Welch v. Welch, 401 N.J. Super. 438, 448 (Ch. Div. 2008) (citing Yueh v. Yueh, 329 N.J. Super. 447, 461 (App. Div. 2000)).

To demonstrate the reasonableness of the fee application, "'all applications for the allowance of fees shall be supported by an affidavit of services addressing the factors enumerated by RPC 1.5(a).'" Slutsky, 451 N.J. Super. at 366 (quoting R. 4:42-9(b). In determining whether and to what extent a counsel fee award is appropriate, the court should consider:

> (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.
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> [R. 5:3-5(c).]

Additionally, when calculating a fee award, a court must determine the reasonableness of the rates proposed by prevailing counsel and the

reasonableness of the time spent. Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21-22 (2004) (citing Rendine v. Pantzer, 141 N.J. 292, 335-36 (1995)).

A trial court's decision to grant or deny attorney's fees in a family action will be disturbed "only 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). That abuse occurs when the family court's "decision is 'made without a rational explanation, [and] inexplicably depart[s] from established policies, or rest[s] on an impermissible basis.'" Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigr. and Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir.1985)).

Having considered defendant's argument concerning fees in view of these legal principles, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Judge Marino, who was well-familiar with the parties' tortured procedural history, performed a thorough analysis of the RPC 1.5(a), Rule 4:42-9, and Rule 5:3-5(c) factors and concluded they weighed in favor of an award of fees to plaintiff. We affirm substantially for the reasons expressed by the judge in her through statement of reasons that accompanied the June 30, 2021 order.

To the extent we have not addressed a particular argument, it is because either our disposition makes it unnecessary, or the argument was without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.