

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1138-21**

ALICIA M. SATSKY,

Plaintiff-Respondent,

v.

ELLIOT J. SATSKY,

Defendant-Appellant.

Argued January 19, 2023 – Decided March 28, 2023

Before Judges Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Essex County, Docket
No. FM-07-2689-95.

Carl J. Soranno argued the cause for appellant (Brach Eichler LLC, attorneys; Carl J. Soranno, of counsel and on the briefs; Kelley M. Rutkowski, on the briefs).

David S. Carton argued the cause for respondent (Mandelbaum Barrett PC, attorneys; David S. Carton, of counsel and on the brief; Vito Colasurdo, Jr., on the brief).

PER CURIAM

Defendant Elliot Satsky appeals from two Family Part orders entered post-judgment in this matrimonial matter. The first order, dated July 26, 2021, granted plaintiff Alicia Satsky's motion to enforce litigant's rights and awarded plaintiff \$5,050 in counsel fees; the second order, dated November 19, 2021, denied defendant's motion for reconsideration. Both orders were entered without the benefit of oral argument, although requested by defendant. Because we find the trial court erred in finding defendant violated litigant's rights, we reverse the award of counsel fees.

The parties were married in 1972, divorced in 1997, and have two children born of the marriage. A Final Judgment of Divorce was entered July 22, 1997 after trial, which, in relevant part, awarded plaintiff alimony in the amount of \$550 per week but noted "[t]he issues of child support and the schooling costs for Michael have been met by the trust set up by defendant's parents, Henry and Isabel Satsky, which trust pays Michael's expenses." The trust was ordered to pay \$500 per month until Michael's college graduation or a change in his residential custody occurred. The court found Jessica Satsky, the parties' daughter, was emancipated at the age of twenty-two because she was no longer attending college. The court did not award any child support for her.

In January 1999, the trial court entered a post-judgment order requiring defendant establish a \$500,000 Irrevocable Life Insurance Trust (ILIT) within sixty days. The trust was required to name the parties' children as beneficiaries with the "proceeds of said policy paid into the irrevocable trust established for the children" upon defendant's death. In addition, interest from the trust in the amount of \$30,000 was to be paid to plaintiff annually upon defendant's death as a replacement for alimony.¹

Twenty-one years later, defendant missed two alimony payments in the spring of 2020, which he alleges was due to disruption in his income caused by the COVID-19 pandemic. Plaintiff filed an enforcement motion requesting defendant become current on his alimony payments. In addition, for the first time, plaintiff also sought defendant's compliance with the terms of the 1999 order requiring the establishment of the ILIT. On November 24, 2020, the trial court issued an order, requiring defendant to make all alimony payments current

¹ The record is devoid of the reason for this order. There is no statement of reasons included in the appendix, and we cannot determine why the children would have a right to proceeds from a ILIT when all child support was addressed by Michael's grandparents' trust. However, as defendant does not raise this issue and the time for appeal has long since past, we accept the trial court's order.

and establish the ILIT consistent with the 1999 order.² Defendant was also ordered to provide proof of the trust and have the insurance carrier provide proof of the corresponding policy. The court awarded \$4,800 in counsel fees in connection with that motion.³

In December 2020, defendant had a draft of the ILIT document created and obtained a quote from Lincoln National, an insurance carrier. Lincoln National required defendant to undergo a physical examination and release his medical records to them before the policy could be established. Defendant sent the draft trust document to plaintiff on January 6, 2021. Plaintiff took issue with several provisions of the draft and refused to approve it. Defendant replied to plaintiff's concerns on January 26, 2021, making several suggestions to address plaintiff's objections, but plaintiff rejected them all. As of February 2021,

² The parties concede defendant had become current on alimony payments before both orders were entered. Again, it is unclear why an order enforcing the establishment of an ILIT naming the children as beneficiaries would be relevant twenty-one years later. To the extent the trust insured child support in the event of decedent's death, that child support would no longer be insurable as the children were well past the age of emancipation and in their forties. If the 2020 order was meant to provide life insurance in lieu of alimony in the event of decedent's death, a new order should have been entered by the trial court, as enforcement of the 1999 order naming the children as beneficiaries would have been moot. We have not been provided with a transcript of the 2020 hearing and cannot discern the trial court's reasoning.

³ The November 24, 2020 order is not the subject of this appeal.

Lincoln National was still in the process of obtaining defendant's medical records.

Plaintiff then outlined several alternative settlement proposals to defendant, requested she receive proof defendant was in the process of finalizing the life insurance policy and ILIT and stated she intended to file a motion seeking to enforce litigant's rights if the parties failed to reach agreement. On March 9, 2021, Lincoln National issued a policy in the amount of \$500,000.

Plaintiff filed a motion to enforce litigant's rights on March 8, 2021, seeking enforcement of the November 24, 2020 order and requesting sanctions pursuant to Rule 5:3-7(b). Plaintiff also requested: (1) defendant purchase an annuity of \$525,000 for alimony to be paid from or obtain a life insurance policy in the amount of \$525,000 and continue to pay current alimony or, alternatively, obtain a life insurance policy for \$1,000,000 to be paid in trust; (2) the court order defendant to provide proof of life insurance and the ILIT; and (3) defendant pay counsel fees. Plaintiff provided the court with a certification of legal services in support of her motion for \$6,237.50. Defendant filed opposition on April 15, 2021 and requested oral argument.

On July 26, 2021, without the benefit of oral argument and despite finding defendant had become current in his alimony payments, the trial court found

defendant in violation of litigant's rights as to paragraph two of the November 2020 order requiring defendant establish the ILIT pursuant to the January 1999 order. Finding defendant established a policy with only a face value of \$500,000 and did not name the children as beneficiaries, the trial court found defendant had failed to comply with the order. The court also erroneously found there was no provision in the draft ILIT document providing interest in the amount of \$30,000 per year payable to plaintiff.

The trial court also granted plaintiff's motion for counsel fees pursuant to Rule 5:3-5(c). The court noted Rules 4:42-9(b) and 5:3-5(c), (d) require motions for counsel fees to be supported by an affidavit for services addressing the factors in Rule of Professional Conduct (RPC) 1.5(a), including the parties' financial circumstances and any bad faith. The trial court also noted Rule 1:10-3 allows for counsel fees to be awarded in the family court's discretion "to any party awarded relief under this rule" but "any such reward is still subject to the requirements of [R.] 4:42-9. Barr v. Barr, 418 N.J. Super. 18, 46-47 (App. Div. 2011)." In granting plaintiff's motion for counsel fees, the trial court reasoned "[p]laintiff was forced to file this motion because of [d]efendant's failure to comply with the November 24, 2020 [o]rder" and found "\$5,000 for fees plus

\$50.00 in costs [is] fair and reasonable under the circumstances based upon the certification of services submitted by [p]laintiff's counsel."

Defendant filed a motion for reconsideration and again requested oral argument. The trial court did not hear oral argument and issued another order on November 19, 2021, denying defendant's motion for reconsideration. The trial court ruled defendant was ordered to establish an ILIT in 1999 in the amount of \$500,000 naming the children as beneficiaries, and the November 2020 order required defendant establish the trust within thirty days. Defendant's life insurance policy, which was issued prior to the finalization of the life insurance trust, did not name the children as beneficiaries. The trial court found "[d]efendant was clearly in violation of litigant's rights and still has not demonstrated full compliance with the prior orders[.]"

This appeal followed. On appeal, defendant argues the trial court abused its discretion in finding defendant in violation of litigant's rights because it based its conclusions on incorrect findings of fact. Defendant also argues the trial court abused its discretion in awarding plaintiff counsel fees because it failed to conduct an appropriate factor-based analysis pursuant to Rules 4:42-9(b), 5:3-5(c), and RPC 1.5(a). Finally, defendant argues the trial court impermissibly refused defendant's requests for oral argument.

We afford family part orders deference in recognition of "the court's 'special jurisdiction and expertise in family matters.'" Cesare v. Cesare, 154 N.J. 394, 411 (1998); Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016). We will disturb the trial court's findings and conclusions only where "the trial [court] went 'so wide of the mark that a mistake must have been made.'" Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 587 (App. Div. 2016) (quoting N.J. Div. of Youth & Fam. Servs. v. M.M., 189 N.J. 261, 279 (2007)). We owe no deference to the trial court on interpretations of law and legal conclusions are reviewed de novo. Thieme, 227 N.J. at 283.

We conclude the trial court erred in finding the defendant had willfully failed to comply with the court's prior order. In order to find a party in violation of litigant's rights, Rule 1:10-3 requires the court be satisfied the party had the capacity to comply with the order but was willfully contumacious. See Schochet v. Schochet, 435 N.J. Super. 542, 549-550 (App. Div. 2014); see also P.T. v. M.S., 325 N.J. Super. 193, 206-208 (App. Div. 1999) (providing the trial court erred in holding former wife in contempt without a finding that her failure to pay for reunification therapy was willful and not as the result of financial circumstances). The court made no finding with respect to defendant's ability to comply, particularly given plaintiff's opposition. Defendant had taken

substantial steps to form the ILIT and plaintiff had failed or refused to agree to the terms of the trust document. A life insurance policy had been issued the day after plaintiff filed her motion but she did not withdraw the motion. Because the trust was irrevocable, defendant could not finalize the ILIT until plaintiff agreed to all of its terms but by March 9, 2021, defendant had life insurance in place. As the parties disputed the terms of the ILIT, court intervention was required in order to finalize the document. At a minimum, defendant's efforts to comply should have been considered by the trial court in determining whether he was willfully in violation of litigant's rights. Defendant attempted to comply with the November 2020 enforcement order and the trial court's failure to consider these circumstances, including plaintiff's contributions to the delay, constitute abuse of discretion.

Further, the trial court erred in denying defendant's requests for oral argument. A family court ordinarily should grant oral argument requests when the issues raised are substantive, as with a motion to enforce litigant's rights. R. 5:5-4(a)(1). Although a trial court in a post-judgment family court matter need not hear oral argument if it would not assist in the determination of the motion, clearly it would have been beneficial to the court to hear the steps taken by defendant to comply with the order and the opposition he met in the form of

plaintiff's objections. "The denial of oral argument when a motion has properly presented a substantive issue to the court for decision 'deprives litigants of an opportunity to present their case fully to a court.'" Palombi v. Palombi, 414 N.J. Super. 274, 285 (App. Div. 2010) (quoting Mackowski v. Mackowski, 317 N.J. Super. 8, 14 (App. Div. 1998)). Defendant again raised the substantial roadblocks he faced in complying with the order in his motion for reconsideration; these circumstances were again not addressed by the trial court in denying reconsideration. Had oral argument been afforded in either of these instances, defendant would have had the opportunity to detail the circumstances regarding his attempted compliance with the prior order, aiding the trial court in rendering its decision as to whether defendant's lack of compliance was willful. Instead, the trial court made incorrect and insufficient findings based upon mistaken assumptions and deprived defendant of the opportunity to fully present his matter.

Finally, counsel fees should not have been awarded to plaintiff, both because the court erroneously determined defendant was in violation of litigant's rights and because the court failed to consider the applicable factors in awarding counsel fees. See Jersey City Redevelopment Agency v. Clean-O-Mat Corp., 289 N.J. Super. 381, 401, 405 (App. Div. 1996); Pressler & Verniero, Current

N.J. Court Rules, cmt. 4.4.5. on R. 1:10-3 (2023) ("[T]his rule provision allowing for attorney's fees recognizes that as a matter of fundamental fairness, a party who willfully fails to comply with an order or judgment entitling his adversary to litigant's rights is properly chargeable with his adversary's enforcement expenses.").

The decision to award counsel fees is within "the sound discretion of the trial court." Williams v. Williams, 59 N.J. 229, 233 (1971); Bisbing v. Bisbing, 468 N.J. Super. 112, 121 (App. Div. 2021). A party in a family action may move to recover counsel fees so long as the moving party supports its application with "an affidavit of services addressing the factors enumerated in RPC 1.5(a) [and] a recitation of other factors pertinent in the evaluation of the services rendered." R. 4:42-9(b). In providing an award of counsel fees, the trial 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.

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

The trial court erred in failing to make necessary findings of fact by not conducting a factor-based analysis pursuant to Rule 5:3-5. Saffos v. Avaya Inc., 419 N.J. Super. 244, 270-71 (App. Div. 2011); R. 1:7-4(a). The trial court referenced only the applicable court rules and statutes in granting plaintiff's motion for counsel fees. It did not make any findings addressing the factors enumerated in Rule 5:3-5. Although the trial court reasoned the \$5,050 counsel fee award was "fair and reasonable under the circumstances based upon the certification of services submitted by [p]laintiff's counsel[.]" it referenced only defendant's failure to comply with the November 24, 2020 order, which had already awarded counsel fees. A trial court cannot merely state its determination a counsel fee award is fair and reasonable based upon the certification of services submitted; such a finding falls short of its obligation to consider the factors, make required findings, and put forth its conclusions. See Saffos, 419 N.J. Super. at 270-71.

We reverse and vacate the July 2021 order because the trial court erred in finding defendant in violation of litigant's rights, awarding plaintiff counsel fees, and failing to make necessary findings of fact in consideration of the Rule 5:3-5 factors.

Reversed. We do not retain jurisdiction.

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

A handwritten signature in black ink, appearing to be 'JWA', is written over the printed text 'CLERK OF THE APPELLATE DIVISION'.

CLERK OF THE APPELLATE DIVISION