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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1519-21**

BETH MARTIN-CATTIE,

Plaintiff-Appellant,

v.

KEVIN J. CATTIE, SR.,

Defendant-Respondent.

Argued December 20, 2022 – Decided January 9, 2023

Before Judges Messano and Paganelli.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Cape May County,
Docket No. FM-05-0028-15.

Ronald G. Lieberman argued the cause for appellant
(Adinolfi, Lieberman, Burick, Roberto & Molotsky,
PA, attorneys; Ronald G. Lieberman, on the briefs).

Drew A. Burach argued the cause for respondent
(Archer & Greiner, PC, attorneys; Drew A. Burach and
Antonio V. Sorrentino, of counsel and on the brief).

PER CURIAM

After twenty-seven years of marriage, plaintiff Beth Martin-Cattie and defendant Kevin J. Cattie, Sr. divorced in 2016. The dual final judgment of divorce (JOD) entered on June 28, incorporated a comprehensive property settlement agreement (PSA) negotiated with the assistance of counsel and executed the same day. In Section 16 of the PSA, entitled "Warranty of Disclosure," both parties warranted they had made full disclosure to each other of "all assets, liabilities and income."

At the time, defendant was employed by Oracle, and in November 2015, prior to entry of the JOD, the court entered an order compelling defendant to produce documentation of "his Oracle commissions" and his "Oracle stock options." There was apparently some concern on plaintiff's part whether defendant had fully produced the information, because paragraph 16(d) of the PSA stated:

Husband will provide an authorization in a form prepared by counsel for Husband allowing Wife's counsel and forensic expert at Wife's expense to receive documentation from Oracle to confirm information regarding Husband's compensation and other company sponsored benefits(s) (other than that already heretofore provided (i.e., Husband's paystubs and commission plan have already been provided)). Same shall be provided within thirty (30) days of the execution of this Agreement. In the event Husband has failed to disclose any additional Oracle compensation plan upon which Husband may be entitled to receive

income and/or any benefit(s) which should have been included in the calculation of alimony and child support or any asset which is subject to equitable distribution, this Agreement may be reformed to include Wife's entitlement to same, if any, upon application made to a Court of competent jurisdiction.

Because this appeal deals with plaintiff's protracted attempts to obtain the information she is entitled to receive under the PSA, we provide in detail the procedural history that followed.

Defense counsel did more than prepare an authorization as required under the PSA; he forwarded one himself to Oracle on August 3, 2016. Signed by defendant, the authorization asked Oracle to "advise whether [defendant] was entitled to any form of compensation and/or other company sponsored benefit other than those set forth in the authorization."¹ It is undisputed that defense counsel received information from Oracle in response, but deeming it irrelevant, counsel refused to provide it to plaintiff.

Plaintiff moved to enforce paragraph 16(d) on April 6, 2017. The resulting order of September 19, 2017 (2017 order) compelled defendant to

¹ The benefits listed in the authorization included: (1) "Base pay"; (2) "Commission plan"; (3) "Stock options purchase plan"; (4) "[H]ealth insurance" plans; (5) "Employee, Spouse, and Child Life Insurance plan"; (6) "Disability Insurance plan"; (7) "Accidental Death and Dismemberment plan"; and (8) "401(k) retirement plan."

provide plaintiff with authorization "consistent with that prior authorization" to obtain the information from Oracle. The 2017 order reiterated plaintiff's right to use the information for the limited purposes contained in paragraph 16(d), and, if upon receipt of the information, "should a call be necessary to Oracle . . . that call must take place with counsel for both parties present."

In January 2018, plaintiff's counsel forwarded an executed authorization to Oracle, which was in the same form defense counsel previously had sent. One month later, Oracle responded to the correspondence regarding its "former . . . employee," stating that based upon its "understanding of [plaintiff's] request, there [we]re no responsive documents." In March, plaintiff's counsel wrote to defense counsel advising of her intention to seek the "telephone conference with Oracle" as permitted by the 2017 order. Defense counsel's response reiterated there was no information that was responsive to the PSA's terms, and the "issue should be done." He left plaintiff's counsel free to pursue a telephone call with Oracle.

It is unclear what, if anything, happened thereafter beyond continued correspondence between counsel. The record contains defense counsel's January 2019 letter in response to plaintiff's counsel's correspondence earlier that month. Defense counsel then took the position that plaintiff "has

intentionally refrained from acting on her known rights[] for far too long" and had "knowingly relinquished and abandoned her right to continue to pursue this matter."

Nonetheless, still having received no information from Oracle or defendant, plaintiff moved again in October 2019 to enforce the 2017 order. On November 11, 2019, a second judge granted plaintiff's request and entered an order (the 2019 order) that provided:

Plaintiff's Request to Enforce . . . the September 19, 2017 Order is **GRANTED**. Counsel for the parties shall confer to pick dates convenient for counsel and the parties to engage in telephone calls to Marriot, American Airlines and Oracle. In the event this is not accomplished within forty-five days (45) as a result of Plaintiff's failure to act, her request for enforcement and for the underlying information is deemed waived.

[Emphasis added.]

Albeit not within forty-five days, in accordance with the 2019 order and without objection from defendant, plaintiff sent another letter to Oracle requesting a phone call with their Human Resources/Legal Department. Approximately one month later, Oracle responded that defendant's stock options had not vested at the time of the parties' divorce, that it would not participate in a phone conference, and it suggested that plaintiff obtain a subpoena for the information she sought.

Plaintiff took no action from February to June 2020, when defendant filed a motion to modify his alimony obligations under the PSA. Contemporaneously, plaintiff served Oracle with a subpoena. About one week later, on July 23, 2020, defendant withdrew his motion, and plaintiff withdrew the subpoena.²

About ten months later, in May 2021, plaintiff's counsel wrote to defendant's then-counsel seeking to resolve the Oracle issue and sought production of the material Oracle produced in 2016 in response to defense counsel's request. The issue appears to have gone unresolved because plaintiff's attorney made the request again in June 2021; however, defense counsel at the time responded that he no longer represented defendant.

On September 1, 2021, plaintiff filed the motion resulting in the order we now review. She sought: 1) enforcement of the PSA; 2) production of the response defendant received from Oracle in 2017; 3) permission to subpoena

² It is somewhat unclear from the record what were the circumstances surrounding plaintiff's withdrawal of the subpoena. Plaintiff was represented by a different firm than the one now representing her on appeal, and defendant was represented by a different firm than the one that represented him throughout the litigation to that point, resumed representation thereafter, and represents him now on appeal. Later, during oral argument on the motion resulting in the order we review, plaintiff's counsel said the subpoena was issued in the context of defendant's motion to modify alimony, and, once the motion was withdrawn, she believed she could not "issue a subpoena."

Oracle; and 4) counsel fees. Defendant cross-moved seeking denial of plaintiff's application in its entirety and an award of counsel fees.

A fourth Family Part judge heard argument on the motion and cross-motion over two days. During the first day, the judge expressed some confusion as to why the parties were still contesting plaintiff's issuance of a subpoena for the Oracle information, stating, "I can't imagine that two competent attorneys cannot just issue a subpoena." She questioned why defendant was "fighting so hard."

The judge held a conference with the lawyers that is not transcribed. When she returned on the record, the judge noted defendant's argument that plaintiff "sat on her hands" in trying to get the information, but the judge recognized delays on court processes occasioned by the COVID-19 pandemic. She adjourned the hearing to familiarize herself further with the record and advised the parties that the attorneys would be speaking in an attempt to resolve the issue.

When the hearing resumed one month later, counsel advised the judge the issue could not be resolved. After hearing further argument from the attorneys, the judge terminated the hearing without decision.

On December 30, 2021, the judge issued a written decision explaining her reasons for denying plaintiff's motion. The judge recounted much of the procedural history as we have done. Accepting defendant's argument that plaintiff failed to act within the time set forth in the 2019 order, the judge stated there "need[ed] to be closure and finality." The judge concluded the "law of the case doctrine" accorded finality to the 2019 order, which "resolved the issue of [p]laintiff's right to obtain information from Oracle for the PSA." According to the judge, "[d]efendant should not be burdened by the fear that [p]laintiff will come back to the court to relitigate the issue." The judge ordered that defendant had no obligation to turn over the response he received from Oracle in 2016 pertaining to the perquisites received by defendant, and plaintiff waived her right to subpoena records from Oracle. The judge did not award either party counsel fees.

Plaintiff appeals, arguing the judge misapplied the law of the case doctrine and erred in concluding her former attorney's inattention amounted to a knowing, voluntary waiver of plaintiff's rights under the PSA. Plaintiff also contends that by condoning defendant's wrongdoing in failing to turn over the Oracle information, the judge's order violates equitable principles and public

policy. Defendant reprises the arguments he made before the motion judge. We agree with plaintiff and reverse.

The law of the case doctrine generally applies to definitive rulings made on an earlier motion, Lombardi v. Masso, 207 N.J. 517, 539 (2011), and "is a non-binding rule intended 'to prevent relitigation of a previously resolved issue.'" Jacoby v. Jacoby, 427 N.J. Super. 109, 117 (App. Div. 2012) (quoting In re Estate of Stockdale, 196 N.J. 275, 311 (2008)). "When applicable, it prohibits 'a second judge on the same level, in the absence of additional developments or proofs, from differing with an earlier ruling[.]'" Ibid. (alteration in original) (quoting Hart v. City of Jersey City, 308 N.J. Super. 487, 497 (App. Div. 1998)).

But "[u]nlike the doctrine[] of . . . collateral estoppel, which a court cannot ignore . . . the law of the case . . . merely expresses the practice of the courts generally to refuse to reopen what has been decided." State v. K.P.S., 221 N.J. 266, 277 (2015) (alterations in original) (quoting Devilla v. Schriver, 245 F.3d 192, 197 (2d Cir. 2001)). "[A] hallmark of the law of the case doctrine is its discretionary nature, [asking] the deciding judge to balance the value of judicial deference for the rulings of a coordinate judge against those 'factors that bear on

the pursuit of justice and, particularly, the search for truth.'" Jacoby, 427 N.J. Super. at 117 (quoting Hart, 308 N.J. Super. at 498).

Here, the law of the case doctrine had nothing to do with resolution of plaintiff's motion because plaintiff was not asking the judge to overturn or modify the 2019 order, but rather to enforce it. The 2019 order was clear that only if plaintiff failed to act would her inaction be deemed a waiver of her right to the Oracle information. Plaintiff never failed to act.

In January 2020, she attempted to obtain the information from Oracle using a signed authorization that was the same authorization defense counsel used in 2016 to obtain documents from the company, documents which counsel unilaterally determined were irrelevant.³ Oracle's response to plaintiff's request, however, was quite different; the company advised plaintiff's counsel to obtain a subpoena. Plaintiff tried to do so, in July 2020, but her attorney withdrew the request when defendant withdrew his motion to modify his alimony obligations

³ As we understand it, defendant has not asserted that because plaintiff's counsel served the authorization in January 2020, more than forty-five days after entry of the 2019 order, plaintiff waived her rights. If that was the argument, we would reject it out-of-hand. See, e.g., Parker v. Marcus, 281 N.J. Super. 589, 595 (App. Div. 1995) (finding the plaintiff was entitled to reinstatement of the complaint because "plaintiff's dilemma was not occasioned by his own dereliction or ambivalence concerning whether or not to proceed with the suit. The dismissal . . . rests squarely on the shoulders of his prior attorney, whose dereliction is unquestioned.").

under the PSA. Plaintiff nevertheless continued trying to obtain the information throughout the summer 2021, and, failing to do so, finally made a motion in September 2021.

The judge's improper application of the law of the case doctrine apparently led her to interpret the 2019 order in a manner inconsistent with applicable law and equitable principles. The judge concluded that plaintiff waived her rights to the Oracle information — information plaintiff bargained for in 2016 when she executed the PSA, information defense counsel obtained in 2016 and refused to produce, information that Oracle initially acknowledged possessing, but claimed was not responsive, and information that Oracle ultimately required plaintiff to subpoena.

"Waiver is the voluntary and intentional relinquishment of a known right." Knorr v. Smeal, 178 N.J. 169, 177 (2003) (citing W. Jersey Title & Guar. Co. v. Indus. Trust Co., 27 N.J. 144, 152 (1958)). "An effective waiver requires a party to have full knowledge of his legal rights and intent to surrender those rights," although intent to waive may be implied where "the circumstances clearly show that the party knew of the right and then abandoned it, either by design or indifference." Ibid. (emphasis added) (citing W. Jersey Title & Guar. Co., 27 N.J. at 153; and then citing Merchs. Indem. Corp. of N.Y. v. Eggleston, 68 N.J.

Super. 235, 254 (App. Div. 1961)). In this case, plaintiff never expressly or implicitly waived her right to the Oracle information, and it was legal error for the judge to find so under these facts.

We need not address the balance of plaintiff's arguments in detail, except to note that "[d]ivorce agreements are necessarily infused with equitable considerations and are construed in light of salient legal and policy concerns." Holtham v. Lucas, 460 N.J. Super. 308, 319 (App. Div. 2019) (quoting Konzelman v. Konzelman, 158 N.J. 185, 194 (1999)). Therefore, in addition to being legal error, finding that plaintiff waived her rights to obtain the information from Oracle was also inequitable.

We reverse the order under review and remand the matter to the motion judge who shall, in accordance with plaintiff's choice, either: 1) issue a subpoena for plaintiff to obtain all relevant information from Oracle in accordance with the intent of section 16(d) of the PSA; or 2) conduct an in camera review of the information defense counsel obtained from Oracle in 2016 and release all relevant documents to plaintiff's counsel. The remand is ordered to be completed within thirty days.

Reversed and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION