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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2003-20**

ALLAN R. WILLIAMS,

Plaintiff-Appellant/
Cross-Respondent,

v.

HEATHER B.N. WILLIAMS,

Defendant-Respondent/
Cross-Appellant.

Argued June 7, 2022 – Decided January 19, 2023

Before Judges DeAlmeida and Smith.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Somerset County,
Docket No. FM-18-0774-19.

Stilianos M. Cambilis argued the cause for
appellant/cross-respondent (The Law Office of Rajeh
A. Saadeh, LLC, attorneys; Rajeh A. Saadeh and
Stilianos M. Cambilis, on the briefs).

Kristin S. Pallonetti argued the cause for
respondent/cross-appellant (Law Office of Steven P.

Monaghan, LLC, attorneys; Kristin S. Pallonetti, on the briefs).

The opinion of the court was delivered by
DeALMEIDA, J.A.D.

Plaintiff Allan R. Williams appeals from the July 31, 2020 order of the Family Part denying his motion for summary judgment with respect to the marital standard of living, and from the February 9, 2021 amended dual final judgment of divorce (JOD). He challenges the court's decisions on alimony, distribution of debt incurred by defendant Heather B.N. Williams, distribution of Allan's¹ 401(k), and attorney's fees. Heather cross-appeals from the portion of the JOD denying her request for a Mallamo² adjustment. We affirm.

I.

Allan and Heather were married in December 2004 and have three children born during the marriage. One of the children has epilepsy and requires significant care. Allan filed a complaint for divorce in March 2019, and at a case management conference in September 2019, both parties were ordered to exchange case information statements (CIS). Heather listed the joint marital

¹ Because the parties share a surname, we refer to them by their first names. No disrespect is intended.

² Mallamo v. Mallamo, 280 N.J. Super. 8 (App. Div. 1995).

lifestyle monthly expenses as \$4,320 and her current monthly lifestyle expenses as \$3,546 in her CIS. In both of Allan's CISs, he left the marital lifestyle expenses section blank. Based on the CISs of both parties, Allan moved for summary judgment, requesting the court make findings regarding the marital lifestyle. In response, Heather provided an updated CIS, reporting marital expenses of \$4,788 and lifestyle expenses of \$3,766, and argued that her initial CIS did not reflect her relocation from Antigua to Florida, and neglected to include various lifestyle expenses. Heather claimed her initial CIS was lower because Allan refused to pay support, so her monthly expenses were "artificially low." Despite having not listed marital expenses on his CISs, Allan argued summary judgment was warranted because he agreed with the marital expenses listed by Heather.

In a July 31, 2020 order, the court denied Allan's motion. The court held that because there were discrepancies between Allan's CISs, Heather's CISs, and testimony given by Heather, a genuine issue of material fact, the marital lifestyle, was still in dispute.

After the summary judgment proceedings, Heather prepared a third CIS, where she disclosed a ScotiaBank certificate of deposit (CD) valued at \$29,603

that was collateral for a loan of \$27,287, and listed Allan's Verizon 401(k) profit sharing plan, valued at \$81,109, as subject to equitable distribution.

After a seven-day trial, the court issued an oral opinion setting forth findings of fact and conclusions of law supporting its decision granting a JOD, equitably distributing assets, including Allan's Verizon 401(k) and Heather's ScotiaBank account, establishing Allan's alimony, life insurance, and child support obligations, denying Heather's request for a Mallamo adjustment, and granting Heather attorney's fees.

On the issue of marital lifestyle, the court found that Allan filed his motion for summary judgment in bad faith because he was advised by the court to not file a summary judgment motion because the court would decide the marital lifestyle after testimony from both parties. The court found that Heather's CISs were not demonstrative of her current standard of living for multiple reasons, including her relocation from Antigua to Florida, and the "curtailment" of her lifestyle due to a lack of support from Allan. Therefore, the court held the marital lifestyle expenses set forth in Heather's CISs were not fair or equitable for both parties and were subject to judicial fact finding.

With respect to alimony, the court first concluded that in Antigua, the parties had an upper middle-class lifestyle, but once Heather moved to Florida,

she occupied a two-bedroom apartment with two of her children, lacked financial resources for therapy sessions for the parties' disabled daughter, and had to cut expenses to make ends meet. The court noted Allan's income was \$185,000 per year, while Heather's income was approximately \$25,000. The court acknowledged Heather had a master's degree, but found that her career prospects were limited because of her role as primary caretaker of the parties' daughter. The court found that Heather was employed to the best of her abilities. The court also considered the social security disability payments Heather received for her daughter. After considering all the factors, the court awarded Heather limited durational alimony of \$600 per week for ten years.

With respect to equitable distribution of Heather's ScotiaBank CD, the court found the account had \$80,000 Eastern Caribbean dollars (\$29,603 U.S. dollars) on deposit, but was encumbered by a loan of \$73,743 Eastern Caribbean dollars (\$27,287 U.S. dollars). Heather testified she took out the loan on the account to buy a truck, which she stated was a necessity because her car at the time in Antigua was unreliable. She also claimed when she moved to Florida, she transferred the title of the vehicle to her mother, who agreed to pay the remainder of the loan, and her oldest son began using the truck.

The court determined the loan was used by Heather "to support herself and the parties' three children" because Allan was not providing adequate support at the time. The court held Allan was not responsible for the payment of the loan, and distributed the remainder of the account balance between the parties, which was \$2,316 U.S. dollars.

With respect to equitable distribution of the Verizon 401(k), the court found the balance of the asset was \$81,109 and was subject to a Qualified Domestic Relations Order (QDRO). The court found no pre-marital exception applied, and so the marital portion of the plan was calculated from the date of marriage to the date Allan filed the complaint for divorce in March 2019, and Heather "shall receive 50% of the coverture fraction, plus or minus gains and losses on said amount to the date of distribution."

Regarding counsel fees, the court held Allan had acted in bad faith throughout the litigation in a variety of ways. First, the court referenced Allan's summary judgment motion, which it had requested he not file, and his omission of marital lifestyle expenses on his CIS. The court also acknowledged Allan had previously told the court he could not afford to pay a \$15,000 order against him in New Jersey, but instead hired a lawyer in Florida for \$5,000. The court also found that Allan opened Heather's mail without her permission during the

litigation. The court found Allan was able to pay for both parties' fees, and Heather had minimal ability to pay fees and was borrowing from friends and family to meet expenses. The court awarded Heather \$40,000 in counsel fees after going through the factors set forth in Rule 5:3-5(c) and the R.P.C. 1.5.

With respect to Heather's request for a Mallamo adjustment, the court noted that it ordered Allan to pay \$500 per week in pendente lite alimony effective July 16, 2020, and Heather was now requesting a credit retroactive to March 28, 2019 for the \$100 increase in alimony awarded by the court. The court held there was no need to retroactively adjust the pendente lite spousal support because of the slight increase in the final alimony award.

This appeal follows. Allan argues that the trial court erred by: (1) denying his motion for summary judgment; (2) setting alimony at \$600 per week; (3) distributing debt incurred by Heather to purchase a truck; (4) distributing the Verizon 401(k) plan; and (5) awarding Heather attorney's fees. On cross-appeal, Heather challenges the Family Part's denial of a Mallamo adjustment.

II.

A.

We begin with Allan's appeal of the order denying his motion for summary judgment. Our review of Family Part orders is limited. Cesare v. Cesare, 154

N.J. 394, 411 (1998). We "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 413). Generally, "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 411-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). We will not disturb the factual findings and legal conclusions unless convinced they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Ricci v. Ricci, 448 N.J. Super. 546, 564 (App. Div. 2017) (quoting Elrom v. Elrom, 439 N.J. Super. 424, 433 (App. Div. 2015)). Challenges to legal conclusions, as well as a trial court's interpretation of the law, are subject to de novo review. Id. at 565.

We review summary judgment rulings de novo, applying the same legal standard as the trial court. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue

as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Ibid. (quoting R. 4:46-2(c)).

Establishing an accurate marital standard of living is crucial for determining alimony, see Crews v. Crews, 164 N.J. 11, 35 (2000), and rests in the trial court's discretion. Our careful review of the record reveals no error in the trial court's decision denying summary judgment. Allan, in bad faith, failed to list marital expenses in his CISs. He attempted to sidestep his omission by asserting that he agreed with the marital expenses listed in Heather's CIS. The court was not bound to accept Allan's position. There is support in the record for the trial court's finding that the marital lifestyle expenses listed by Heather were not reflective of the actual marital standard and that that testimony and additional evidence was necessary to determine the marital lifestyle.

B.

We turn to Allan's challenge to the trial court's decision setting his alimony obligation. "A Family Part judge has broad discretion in setting an alimony award and in allocating assets subject to equitable distribution." Clark v. Clark, 429 N.J. Super. 61, 71 (App. Div. 2012). "Of course, [as to alimony] the exercise of this discretion is not limitless[,] and is "frame[d]" by the

statutory factors set forth in N.J.S.A. 2A:34-23(b). Steneken v. Steneken, 367 N.J. Super. 427, 434 (App. Div. 2004).

A proper alimony award "assist[s] the supported spouse in achieving a lifestyle that is reasonably comparable to the one enjoyed while living with the supporting spouse during the marriage." Tannen v. Tannen, 416 N.J. Super. 248, 260 (App. Div. 2010) (quoting Steneken v. Steneken, 183 N.J. 290, 299 (2005)). "[A] judge awarding alimony must methodically consider all evidence to assure the award is 'fit, reasonable and just' to both parties, N.J.S.A. 2A:34-23, and properly balances each party's needs, the finite marital resources, and the parties' desires to commence their separate futures, N.J.S.A. 2A:34-23[(c)]." Gnall v. Gnall, 432 N.J. Super. 129, 149 (App. Div. 2013).

Allan argues there should be no alimony granted because Heather is receiving Social Security income for their disabled child, federal child tax credits, and is not paying state income tax in Florida. He claims the payment of alimony will allow Heather to live above the marital standard of living they enjoyed during the marriage.

We have carefully reviewed the record in light of Allan's arguments, and we find no basis to conclude the court misapplied its discretion when setting alimony. There is sufficient support in the record for the court's findings that

Heather's current income and federal benefits were insufficient to allow her to have a lifestyle reasonably comparable to the life the parties enjoyed in Antigua, and that Allan could afford to give Heather support. Heather and the children have struggled since arriving in Florida, as she is the sole caretaker of a child with significant disabilities and has struggled to provide for the children without Allan's support.

C.

"Appellate review pertaining to the division of marital assets is narrow." Valentino v. Valentino, 309 N.J. Super. 334, 339 (App. Div. 1998) (citing Wadlow v. Wadlow, 200 N.J. Super. 372, 377 (App. Div. 1985)). "We decide whether the trial [court] mistakenly exercised its broad authority to divide the parties' property and whether the result was 'reached by the trial judge on the evidence, or whether it is clearly unfair or unjustly distorted by a misconception of law or findings of fact that are contrary to the evidence.'" Ibid. (quoting Wadlow, 200 N.J. Super. at 382).

Allan argues that the trial court erred by not giving him a credit for the \$27,287 of marital funds Heather used to purchase a truck in Antigua, claiming she dissipated those assets. When equitably distributing property, courts will consider "[t]he contribution of each party to the acquisition, dissipation,

preservation, depreciation or appreciation in the amount or value of the marital property" N.J.S.A. 2A:34-23.1(i). "Dissipation may be found where a spouse uses marital property for his or her own benefit and for a purpose unrelated to the marriage at the time when the marriage relationship was in serious jeopardy." Kothari v. Kothari, 255 N.J. Super. 500, 506 (App. Div. 1992) (quoting Head v. Head, 168 Ill. App. 3d 697, 702 (Ill. App. Ct. 1988)). The determination of dissipation is within the sole discretion of the trial court and is fact sensitive. Ibid. Courts look to various factors to determine dissipation, including:

- (1) the proximity of the expenditure to the parties' separation, (2) whether the expenditure was typical of expenditures made by the parties prior to the breakdown of the marriage, (3) whether the expenditure benefitted the 'joint' marital enterprise or was for the benefit of one spouse to the exclusion of the other, and (4) the need for, and amount of, the expenditure.

[Id. at 507.]

Courts will also consider whether the assets were "expended by one spouse with the intent of diminishing the other spouse's share of the marital estate." Ibid. (citing Robinette v. Robinette, 736 S.W.2d 351, 354 (Ky. Ct. App. 1987)).

There is ample support in the record for the trial court's determination that the loan was not taken by Heather to diminish Allan's share of the marital estate,

but rather to adequately provide for her and the children's lifestyle. The trial court concluded that Heather used the funds from the ScotiaBank CD to obtain a vehicle because her previous vehicle was unreliable. She was caring for the parties' children in Antigua and used the truck for that purpose. When Heather left Antigua for Florida, the oldest son began to use the truck, and Heather's mother took ownership of the car and the corresponding debt. The court found that Heather did not bring the truck to Florida because the cost of overseas transport outweighed any benefits to having the truck in Florida.

Allan also argues the trial court erred by distributing his Verizon 401(k) as of the date of October 2019, rather than as of the filing of the complaint for divorce. Generally, assets are valued at the time of the filing of the complaint. Bednar v. Bednar, 193 N.J. Super. 330, 332 (App. Div. 1984). However, "[p]assive assets, the value of which fluctuate after the filing of the complaint by virtue of market forces, should be valued as of the date of trial or distribution, not the date of the filing of the divorce complaint." Platt v. Platt, 384 N.J. Super. 418, 427 (App. Div. 2006) (citing Scavone v. Scavone, 243 N.J. Super. 134, 137 (App. Div. 1990)). If the increase in the asset's value is due to the actions of one party, then the increase is not subject to distribution. Addesa v. Addesa, 392 N.J. Super. 58, 77 (App. Div. 2007).

The court found that the value of the asset would be calculated as of the date of the complaint of divorce but would also include any passive increases made until the date of distribution, which it ultimately calculated as \$81,891. Allan argues Heather received credit for both post-complaint contributions he made and the passive market growth of those contributions, but there is no evidence in the record of Allan making post-complaint contributions, nor of increases in the value of the account due to factors other than passive market gains. Our review of the record uncovered no basis on which to disturb the trial court's decision.

D.

The decision of whether to award attorney's fees is within the sole discretion of the trial court. Maudsley v. State, 357 N.J. Super. 560, 590 (App. Div. 2003). Counsel fee determinations made "by trial courts will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)). Abuse of discretion is found when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (quoting Iliadis v. Wal-

Mart Stores, Inc., 191 N.J. 88, 123 (2007)). Furthermore, a trial judge need not consider every factor of Rule 5:3-5(c) to determine an award of attorney's fees. Reese v. Weis, 430 N.J. Super. 552, 586 (App. Div. 2013). As long as the "factual findings [are] adequately justifi[ed]" the trial judge need not analyze every factor. Ibid.

We detect no abuse of the trial court's discretion with respect to its award of attorney's fees to Heather. The court undertook a detailed and well-reasoned analysis of Rule 5:3-5(c) and R.P.C. 1.5 and its findings, including that Allan acted in bad faith on several occasions, were reasonable and supported by the record.

E.

Heather argues in her cross-appeal that the trial court erred by not awarding a Mallamo adjustment. She claims that since she was ultimately awarded \$600 per week in alimony, up from the \$500 per week in alimony order pendente lite, the pendente award should be modified retroactively.

"[P]endente lite support orders are subject to modification prior to entry to final judgment . . . and at the time of entry of final judgment." Mallamo, 280 N.J. Super. at 12 (citing Capodanno v. Capodanno, 58 N.J. 113, 120 (1971)). "Any changes in the initial orders rest with the trial judge's discretion." Slutsky

v. Slutsky, 451 N.J. Super. 332, 368 (App. Div. 2017). "A retroactive increase in the ordered pendente lite support should be considered when the amount initially awarded based on limited information at the inception of a matrimonial matter is later determined 'woefully inadequate' or 'obviously unjust' once all facts and circumstances are fleshed out at trial." Id. at 368-69. We find no abuse of the trial court's discretion when it determined that the \$100 increase in alimony after trial was not indicative of woefully inadequate pendente lite alimony.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION