SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3239-21
A-0662-22

TYLER RICHARDS,

Plaintiff-Appellant,

v.

ANN S. RICHARDS,

Defendant-Respondent.

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Argued May 16, 2023 – Decided June 22, 2023

Before Judges Gummer and Perez-Friscia.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FM-13-1615-16.

Tyler Richards, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

In these back-to-back appeals, which we consolidate for purposes of issuing a single opinion, plaintiff Tyler Richards appeals from portions of orders issued by Family Part judges post-judgment in this matrimonial dispute. Having reviewed the record and governing law, we reverse paragraphs one and four of a February 18, 2022 order in which the motion judge found a substantial change in circumstances regarding the parties' parenting-time schedule warranting a modification of plaintiff's child-support obligation and a March 2, 2022 order establishing a new child-support obligation based on that finding. We vacate paragraph five of the February 18, 2022 order and remand for an evidentiary hearing on the meaning of the parties' agreement to "clear remaining arrears" as memorialized in a December 11, 2019 consent order. We reverse paragraphs one, two, and three of a May 19, 2022 order denying plaintiff's motion for reconsideration. We otherwise affirm.

I.

Plaintiff and defendant Ann S. Richards were married in 2002. They had two children: a daughter who was born in 2007 and another child who was born in 2011 and tragically passed away in 2015. The parties divorced by way of a dual judgment of divorce (JOD) entered on April 17, 2018. The JOD

incorporated the parties' marital settlement agreement (MSA), which the parties had entered on the same day.

In the MSA, the parties agreed to joint legal and physical custody of their daughter. They agreed defendant would have parenting time from Monday after school until Wednesday morning before school, plaintiff would have parenting time Wednesday after school until Friday morning, and the parties would alternate having parenting time on the weekends, with the weekends beginning after school on Friday. They agreed plaintiff would pay defendant $200 monthly in child support, the parties would consult with each other about their daughter's extra-curricular activities, and each would pay fifty percent of the cost of those activities. The parties based the child-support obligation on plaintiff's income of $263,000 and defendant's imputed income of $35,000.

The parties agreed plaintiff would pay defendant "$721.00 per week ($3,100.00 per month)" in alimony for ten years and additional alimony of $348 weekly. They agreed the additional alimony, which the parties also refer to as the "equitable distribution alimony," was "consideration of concessions that are made within the equitable distribution provision," would "not be subject to modification by either party," and would terminate when the total amount of

$105,000 was paid. After the additional alimony terminated, the weekly alimony payment would increase to $1,070.

The parties' post-judgment litigation began almost immediately, with multiple motions regarding modification and enforcement of support obligations and modification of the parties' agreement regarding custody of their daughter. In an August 2018 statement of reasons, a Family Part judge noted "[d]efendant's current inability to exercise parenting time" and held he was suspending "any enforcement of [p]laintiff's alimony and child[-]support obligation" for 180 days. In an April 26, 2019 decision, the judge recognized "plaintiff's position as the primary provider for the parties' child," which was "different than the initial circumstances as contemplated in the parties' agreement." The judge, however, concluded "the circumstance to be temporary" and continued the suspension of the enforcement of plaintiff's alimony obligation for another 120 days and suspended his child-support obligation until further order of the court. In a June 7, 2019 order, the judge denied plaintiff's motion to change custody and to decrease his alimony obligation.

In a November 18, 2019 order, a different Family Part judge ordered the parties to mediate defendant's child-support obligation retroactive to October 21, 2019; plaintiff's alimony obligation retroactive to August 7, 2018; a payment

by plaintiff "towards remaining alimony arrears"; and a plan to reunify defendant with their daughter. In an attached statement of reasons, the judge expressly referenced "the $32,000 in alimony arrears [plaintiff] owed [defendant]." The judge found that since entry of the JOD, "the parental responsibilities have not occurred as enumerated in and contemplated by the MSA," with plaintiff being "responsible for nearly all child-rearing and childcare" and defendant, who had had only one minute of contact with their daughter since May 2019, "proceeding through reunification therapy." The judge determined "the continued child-rearing responsibilities being borne by [plaintiff] for the foreseeable future transforms this case to one where a prima facie demonstration of substantial, non-temporary changed circumstances exist" regarding parenting time. The judge, however, did not order a change in custody or parenting time. Instead, he ordered the parties to mediate their dispute and required defendant, pendente lite, to pay plaintiff $246 per week in child support.

The parties subsequently reached an agreement, which was memorialized in a December 11, 2019 consent order and included the following terms:

> 1. Both parties feel that [defendant] needs a place to call home to properly reunify with [the parties' daughter].

2. Both parties will do everything possible to make this as easy on [their daughter] as possible.

3. We are working towards the shared custody arrangement signed for in the MSA on [April 17, 2018.]

4. Both parties have agreed that the equitable distribution portion of the alimony signed for in the MSA will not be disturbed $1,500 per month for 70 months from the signing of the MSA on [April 17, 2018.]

5. Both Parties agree that $2,000 monthly will be paid in alimony until September 2024.

6. Both parties agree that $15,000 should be the lump sum paid on arrears to get [defendant] into a place for her and [the parties' daughter] within 72 hours of signing this document.

7. Probation will clear remaining arrears and readjust monthly responsibility to reflect #4 and #5 above, $3,500 per month, this will be effective [March 1, 2020].

8. As of [March 1, 2020, defendant] will no longer be responsible for child support.

9. Both parties agree that [their daughter's four] year college education will be paid by [plaintiff].

10. [Plaintiff] agrees to still pay [h]ealth and [l]ife [i]nsurance until September 2024.

11. Both parties agree that the alimony portion cannot be altered higher under any circumstance, it can only be lowered or eliminated under NJ statute regarding cohabitation as listed in the MSA.

> 12. If [defendant] does not retain a place for her and [the parties' daughter] in 120 days from the signing of this [t]erms [s]heet, the only portion of support that will be paid is the equitable distribution portion as stated in [paragraph 4].
>
> 13. All other provisions that were signed for in the MSA remain in full force and effect.
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> . . . .

Thus, the parties agreed plaintiff's monthly regular alimony obligation would be reduced from $3,100 to $2,000 until September 2024 while plaintiff's monthly additional alimony obligation would remain the same. The consent order did not contain any provision that altered plaintiff's monthly child-support obligation of $200.

The consent order did not end the parties' litigation. Six months later, defendant moved for an increase in plaintiff's alimony and child-support obligations, and plaintiff moved for a retroactive modification of child support. Defendant sought an increase in child support from the $200 monthly payment set forth in the MSA to a $1,000 monthly payment. At argument on July 17, 2020, after being placed under oath, defendant asserted she had physical custody of the parties' daughter "70 percent of the time"; plaintiff asserted the parties' parenting "time allocation is exactly how it's written in the MSA."

Defendant also contended she had been "homeless" and "wasn't collecting [her] alimony because it backed up to $33,000." Defendant explained she had "made a deal" with plaintiff in which "he would pay 15 grand, and [she] would take off 18 grand, just so [she] could get a house to be back with [her daughter], and [she] also dropped the alimony by $1,000 a month." She asked if her "probat[ion] account for child support could be cleared because, you know, giving [plaintiff] back $18,000 should have covered anything like that . . . ." While seeking an adjustment to her child-support arrears account with the Probation Division (Probation), she did not contend Probation's account for plaintiff's alimony arrears was inaccurate and did not seek an adjustment of that account.

In a July 17, 2020 order, the judge denied both motions. He found defendant had failed to establish a "substantial, non-temporary change in circumstances" and had ignored "other offsets" in the December 11, 2019 consent order.

About six months later, defendant moved for a finding of changed circumstances warranting an amendment to custody and parenting time, a designation of defendant as the parent of primary residence, a modification of parenting time and plaintiff's child-support obligation, a directive plaintiff make

current his alimony and additional alimony obligations, and other relief. Defendant submitted a certification in support of her motion in which she certified she had "long 'reunified' with [the parties'] daughter" and that their daughter was with her sixty-nine percent of the time because their daughter was with her four overnights and with plaintiff three overnights. She, however, also said the parties were "engaging in time sharing largely as set forth in [the] MSA," with defendant having parenting time Monday through Wednesday at 6:15 p.m., plaintiff having parenting time Wednesday evening through Friday morning, and the parties having parenting time on alternate weekends, with plaintiff picking up their daughter at defendant's home at 6:15 p.m. on Friday evening for his weekends. She asked the judge to impose on plaintiff a weekly child-support obligation of $455.

Defendant also certified plaintiff owed "a substantial amount of alimony arrears for . . . equitable distribution payable as additional alimony." Simply multiplying the number of months by the required amount of the monthly payments, she calculated that as of December 2021, plaintiff should have paid her $63,000 in additional alimony and $103,800 in regular alimony but had paid her only $63,117 in total alimony payments, leaving $103,683 in total alimony arrears. Defendant made no mention of the agreement she had testified about

during the July 17, 2020 oral argument or the December 11, 2019 consent order requiring plaintiff to make a $15,000 lump sum payment for "arrears" and Probation to "clear remaining arrears."

Plaintiff opposed defendant's motion and cross-moved, seeking enforcement of the provisions of an April 26, 2019 order regarding defendant's contribution to the parties' daughter's extra-curricular activity expenses and requiring defendant to make weekly payments towards her share of those expenses. In his certification, plaintiff denied any change of circumstances justified a modification of the December 11, 2019 consent order and did not otherwise dispute defendant's assertions regarding their current parenting-time schedule. He faulted defendant for her "convoluted formula to create alimony arrears she never mentioned before" and for failing to reference their agreement, as memorialized in the December 11, 2019 consent order, that Probation would clear his remaining arrears after he made the $15,000 lump sum payment.

Regarding his child-support obligation, plaintiff acknowledged his $200 monthly obligation set forth in the MSA had not changed but asserted he had paid child support "far in advance" and that all of the payments he had made to her, including payments for food delivery, meant his next child support payment would not be due until January 2024. In support of that assertion, he attached

pages that appear to be from a Venmo account and a Hello Fresh account. He asserted defendant owed him $6,691.64 because she had never paid her share of the expenses of their daughter's extra-curricular activities. He attached to his certification copies of credit-card account statements on which he had circled certain entries; indicated what he thought some of the entries referenced, including "food delivery to Ann"; and wrote his calculations of "extra curricular" expenses, broken down as "sports/school/[daughter's] care," "cell phone," and "clothes."

In a reply certification, defendant conceded the December 11, 2019 consent order provided that "remaining arrears" would be cleared by Probation but argued for the first time that because paragraph four of the order stated "the equitable distribution portion of the alimony signed for in the MSA will not be disturbed $1,500 per month for 70 months from the signing of the MSA on [April 17, 2018]," no arrears relating to "the equitable distribution payment" should have been cleared. Defendant contended she had contributed to payment of their daughter's extra-curricular activities and faulted plaintiff for submitting "illegible and insufficient" evidence in support of his claim that he was entitled to additional reimbursement.

During argument before a different Family Part judge, defense counsel conceded the arrears calculation in defendant's certification was "wrong." He then faulted Probation for having "lumped" together the additional alimony with the regular alimony in its accounting of arrears and asserted the December 11, 2019 consent order required the additional alimony and regular alimony "to be treated differently." The judge pointed out "there's only one way that Probation is able to collect [alimony]," which "was to collect that total sum each month . . . . Because [Probation does not] have the ability . . . to break it down." According to the judge, the Probation report indicated plaintiff had total arrears of $33,060.40 in December 2019 and was credited with a payment of $30,076.40 in January of 2020, after entry of the December 11, 2019 consent order. Defense counsel argued Probation had erred in applying the agreement in the consent order to "clear remaining arrears" to all arrears. While her counsel was arguing, defendant stated, "I forgave that" and "I forgave it." Plaintiff's counsel argued "Probation's records [were] absolutely consistent with the terms of the parties' consent order," which were "very clear with regard to what's to happen with alimony, the erasure of the arrears, which was, as the court pointed out, over $30,000." At the end of argument, the judge asked both parties to submit updated case information statements.

On February 18, 2022, the judge issued an order with an attached statement of reasons, granting in part defendant's motion and denying plaintiff's cross-motion. The judge held defendant had established a "substantial change in circumstances, specifically, defendant's reunification with [the parties' daughter], as to warrant a formal change in the parenting schedule to reflect the current parenting schedule," which she described as defendant having parenting time from Monday through Wednesday until 6:15 p.m., plaintiff having parenting time from Wednesday evening through Friday during the day, and the parties having alternate weekends, with the weekends beginning after school on Friday. The judge granted defendant's request to establish a child-support obligation by plaintiff based on the purportedly revised parenting-time schedule and on the parties' recently submitted case information statements.

Regarding the change in circumstances, the judge found that after entry of the JOD, the court required defendant "to address her need for sobriety" and that while defendant was in treatment, the parties' daughter was unable to reside with her. The judge recognized that in the December 11, 2019 consent order, the parties stated they were "working towards the shared custody" arrangement set forth in the MSA and that since then defendant and their daughter had been "reunified" and the parties had "cooperated in incrementally re-establishing the

same parenting time schedule, essentially, as provided in the MSA." Comparing the agreement under the MSA with the parties' current arrangement, the judge determined defendant had "one additional parenting overnight per week, reflecting a 4:3 parenting overnight split per week." Although she found "the substantial changed circumstances of reunification," the judge concluded the changed circumstances did not warrant a change in custody or parenting time and stated she was simply "formaliz[ing] the parenting time currently enjoyed by [their daughter] with each party." The judge also held that because of her finding of substantial changed circumstances, "child support [would] be calculated using a shared parenting worksheet under the child support guidelines."

The judge granted in part defendant's request that plaintiff bring his regular alimony and additional alimony obligations current, found he owed $17,883 in "additional/equitable distribution alimony" arrears, and directed Probation to add that amount to plaintiff's alimony arrears account and plaintiff to pay those arrears in monthly payments of $715 from February 2022 to February 2024 with the final payment being $723.

As for alimony arrears, the judge held that in the December 11, 2019 consent order, the parties had "agreed to clear plaintiff's arrears for primary

alimony but leave plaintiff's arrears for equitable distribution undisturbed" and that "Probation mistakenly interpreted the [consent order] and credited plaintiff with an arrears adjustment of $30,076.40, effectively clearing the arrears for both regular alimony and equitable distribution alimony." Assuming the first $3,100 paid by plaintiff in any given month was for regular alimony and applying the rest of what he had paid, if any, to additional alimony, the judge held plaintiff owed $17,833 in additional alimony arrears and directed Probation to add that amount to his alimony arrears account.

As for plaintiff's motion regarding extra-curricular activity expenses, the judge held plaintiff had "failed to establish the amount defendant owes, let alone $6,691.64 as her share of [the] extra-curricular expenses."

After considering the parties' updated case information statements and related submissions, the judge issued a separate order and statement of reasons on March 2, 2022, requiring plaintiff to pay $164 weekly in child support. The judge based that modification on her prior finding defendant had the parties' daughter for "one more overnight per week" and on the documents the parties had submitted regarding their current income. The judge faulted defendant for "having not been entirely forthright with the court," in that she had not disclosed a dog-walking job until argument and had not submitted complete tax returns or

pay stubs. The judge imputed to defendant a full-time minimum wage income of $520 per week based on a letter from her counsel in which he stated defendant had been terminated from her dog-walking job. The judge faulted plaintiff for failing to provide evidence of his actual income and for submitting a case information statement containing "various inconsistencies and omissions." She attributed to plaintiff an annual business income of $150,522 and non-taxable income of $6,512. Considering those figures plus the $2,000 monthly regular alimony plaintiff had agreed to pay plaintiff in the December 11, 2019 consent order and the child support guidelines, the judge imposed on plaintiff a new child-support obligation of $164 per week.

Plaintiff moved for reconsideration of the February 18, 2022 order. Among other things, plaintiff asked the judge to "[a]cknowledge that the present parenting schedule is what the parties signed for in the MSA," asserted the MSA "clearly demonstrates an equal split of overnights," and contended the judge had erred in finding a change of circumstances. He argued the parties had not limited the clearing of alimony arrears to regular alimony arrears in the December 11, 2019 consent order. He again argued he had provided proof of having overpaid his child-support obligation from January 3, 2021, through November 28, 2021, by $4,339.62 and faulted the judge for not giving him credit for that alleged

overpayment. He asked the judge to order Probation to stop billing him $2,000 per month in regular alimony on September 1, 2024, and to stop billing him $1,500 per month in additional alimony on February 1, 2024, pursuant to the December 11, 2019 consent order. Defendant opposed plaintiff's reconsideration motion and cross-moved to enforce litigant's rights and compel plaintiff to comply with payment obligations set forth in the February 18, 2022 order, specifically the additional monthly payments of $715 towards alimony arrears.

After hearing argument and placing a decision on the record, the judge issued an order on May 19, 2022, denying plaintiff's motion and granting defendant's cross-motion to enforce litigant's rights. The judge found plaintiff had not met the standard for reconsideration and, in granting defendant's cross-motion, she again required plaintiff to make monthly payments towards alimony arrears.

On May 9, 2022, plaintiff moved in the Family Part to enforce a $1,526.85 judgment he purportedly had obtained against defendant in a lawsuit he had filed in the Special Civil Part of the Law Division and to enforce defendant's outstanding child-support obligation of $238.86 by crediting his child-support obligation account maintained by Probation. In a June 22, 2022 order and

statement of reasons, the judge denied the motion as to the judgment and granted it as to defendant's outstanding child-support obligation. The judge denied the judgment aspect of the motion because plaintiff had submitted copies of documents regarding the purported judgment with no "explanation," "argument," or "legal basis for which the court can credit a child support obligation with a judgment provided in a Superior Court Special Civil case."

On June 15, 2022, plaintiff moved to enforce paragraph 4.3 of the MSA, which requires each party to pay fifty percent of the cost of their daughter's agreed-upon extra-curricular activities. On or about June 24, 2022, plaintiff moved for reconsideration of the June 22, 2022 order and separately moved for a change in custody, his child-support obligation, and other relief. On or about August 11, 2022, defendant moved to enforce litigant's rights based on plaintiff's alleged failure to comply with the support obligations set forth in the February 18, 2022 order.

After hearing argument, the judge issued an order with an attached statement of reasons on August 26, 2022. The judge granted in part plaintiff's motion regarding extra-curricular costs, requiring defendant to contribute $1,000 towards the parties' daughter's softball costs. The judge otherwise denied plaintiff's motions. The judge granted defendant's motion in part, requiring

plaintiff to pay $4,290 in additional alimony arrears. After considering Rules 4:42-9 and 5:3-5(c), the judge awarded defendant $1,000 in counsel fees and costs based on defendant's successful effort to enforce the support provisions of the February 18, 2022 order.

According to his second amended notice of appeal in A-3239-21, plaintiff appeals certain portions of the February 18, 2022 order, the entirety of the March 3, 2022 order, and the entirety of the May 19, 2022 order. He contends the judge erred: (1) in finding a substantial change in circumstances had occurred; (2) by rewriting the December 11, 2019 consent order and directing plaintiff to pay more than the parties had agreed in that consent order; (3) in not ordering defendant to pay money towards the parties' daughter's extra-curricular expenses after he had submitted proof of those expenses in his motion for reconsideration; (4) in not giving credit for an over payment of child support from January 1, 2021, to November 28, 2021; and (5) in not putting a stop date on his regular and additional alimony obligations.

According to his amended notice of appeal in A-0662-22, plaintiff appeals paragraph two, eight, and eleven of the August 26, 2022 order. Plaintiff contends the judge erred in denying his motion for reconsideration of the June

22, 2022 order regarding the Special Civil Part judgment and in awarding defendant counsel fees and costs.[1]

Defendant did not respond to plaintiff's appeals.

II.

Our review of a Family Part judge's findings is limited. We "afford substantial deference to the Family Part's findings of fact because of that court's special expertise in family matters." W.M. v. D.G., 467 N.J. Super. 216, 229 (App. Div. 2021) (citing Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). The family court's findings are binding on appeal when "supported by adequate, substantial, credible evidence." Gormley v. Gormley, 462 N.J. Super. 433, 442 (App. Div. 2019) (quoting Cesare, 154 N.J. at 411-12). "Reversal is warranted only if the findings were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Amzler v. Amzler, 463 N.J. Super. 187, 197 (App. Div. 2020)

[1] In his brief in support of A-3239-21, plaintiff did not brief all issues addressed in the orders he appeals. In his brief in support of A-0662-22, plaintiff did not brief the issue regarding his additional-alimony arrears. Accordingly, he waived those issues on appeal, and we address only those issues he briefed. See N.J. Dep't of Env't Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div. 2015) (finding an issue not briefed is deemed waived on appeal).

(quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). We review questions of law de novo. Ibid.

Settlement of matrimonial disputes is "encouraged and highly valued in [the judicial] system." Quinn v. Quinn, 225 N.J. 34, 44 (2016). "The prominence and weight [courts] accord such [settlements] reflect the importance attached to individual autonomy and freedom, enabling parties to order their personal lives consistently with their post-marital responsibilities." Weishaus v. Weishaus, 180 N.J. 131, 143 (2004) (quoting Konzelman v. Konzelman, 158 N.J. 185, 193 (1999)). "'[S]trong public policy favor[s] stability of arrangements' in matrimonial matters." Konzelman, 158 N.J. at 193 (quoting Smith v. Smith, 72 N.J. 350, 360 (1977)); see also Quinn, 225 N.J. at 44.

Matrimonial settlement agreements are governed by basic contract principles and, as such, courts should discern and implement the parties' intentions. J.B. v. W.B., 215 N.J. 305, 326 (2013). "[W]hen the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result." Quinn, 225 N.J. at 45. "[A] court should not rewrite a contract or grant a better deal than that for which the parties expressly bargained." Ibid. "At the same time, 'the law grants particular leniency to agreements made in the domestic

arena,' thus allowing 'judges greater discretion when interpreting such agreements.'" Pacifico v. Pacifico, 190 N.J. 258, 266 (2007) (quoting Guglielmo v. Guglielmo, 253 N.J. Super. 531, 542 (App. Div. 1992)). "The court's role is to consider what is written in the context of the circumstances at the time of drafting and to apply a rational meaning in keeping with the 'expressed general purpose.'" Ibid. (quoting Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953)). The "[i]nterpretation and construction of a contract is a matter of law for the court subject to de novo review." Steele v. Steele, 467 N.J. Super. 414, 440 (App. Div. 2021) (quoting Fastenberg v. Prudential Ins. Co. of Am., 309 N.J. Super. 415, 420 (App. Div. 1998)).

"In custody cases, it is well settled that the court's primary consideration is the best interests of the children." Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007). "A party seeking to modify custody must demonstrate changed circumstances that affect the welfare of the children." Ibid. "Where there is already a judgment or an agreement affecting custody in place, it is presumed it 'embodies a best interests determination' and should be modified only where there is a 'showing [of] changed circumstances which would affect the welfare of the children.'" A.J. v. R.J., 461 N.J. Super. 173, 182 (App. Div. 2019) (quoting Todd v. Sheridan, 268 N.J. Super. 387, 398 (App. Div. 1993)).

However, "our courts' commitment to enforce such agreements is tempered by its equitable power to review and modify support and custody orders upon a showing of changed circumstances." Slawinski v. Nicholas, 448 N.J. Super. 25, 32 (App. Div. 2016). "Specifically, with respect to agreements between parents regarding custody or parenting time, '[a] party seeking modification . . . must meet the burden of showing changed circumstances and that the agreement is now not in the best interests of a child.'" Id. at 33 (quoting Abouzahr v. Matera-Abouzahr, 361 N.J. Super. 135, 152 (App. Div. 2003)).

The motion judge who issued the February 18, 2022 order erred in finding a substantial change in circumstances. The judge based that finding on her conclusion that defendant's reunification with the parties' daughter was a substantial change in circumstances and on her miscalculation that defendant post-reunification had one additional overnight with her daughter compared to the parenting time she had pursuant to the MSA. Defendant's reunification with her daughter was not a change in circumstances; it was a return to the circumstances contemplated by the parties when they entered the MSA. As the first motion judge correctly anticipated, defendant's inability to care for the parties' daughter and to follow the agreed-upon parenting-time schedule set forth in the MSA was a "temporary" circumstance.

The judge also erred in finding plaintiff had "an additional parenting overnight per week." The number of overnights plaintiff had after the reunification matched the number of overnights she had pursuant to the MSA. As in the MSA, defendant post-reunification had overnight parenting time on Mondays and Tuesdays and alternate Fridays, Saturdays, and Sundays. Thus, in the week she had parenting time on the weekends, she had five overnights and in the alternate week with no weekend parenting time, she had two overnights. In a two-week period, both in the MSA and post-reunification, the parties had an equal number of overnights. The only difference between the scheduled set forth in the MSA and the post-reunification schedule is that in the MSA, plaintiff's parenting time on Wednesday began after school and post-reunification it began at 6:15 p.m. The difference of a few hours is not a substantial change of circumstances warranting modification of the parties' agreement.

Because the judge erred in finding a substantial change in circumstances, we reverse paragraphs one and four of the February 18, 2022 order. With no substantial change in circumstances, defendant was not entitled to a modification in child support. Accordingly, we reverse the March 2, 2022 order in its entirety. We also reverse paragraphs one and two of the May 19, 2022

order denying the aspects of plaintiff's motion for reconsideration concerning the judge's change-of-circumstance and child-support determinations.

The judge erred in determining without an evidentiary hearing that the parties' agreement to "clear remaining arrears," as memorialized in the December 11, 2019 consent order, meant they intended to clear only the regular alimony arrears and not the additional alimony arrears. Defendant's initial argument regarding the alimony arrears was based on a calculation that ignored the December 11, 2019 consent order and, as her attorney conceded during argument, was "wrong." Defendant did not raise Probation's purported misapplication of the consent order until her reply brief. We question the judge's construction of the language of the consent order. In agreeing to "clear remaining arrears," the parties made no distinction between regular alimony or additional alimony. As the judge acknowledged, Probation does not have a mechanism to distinguish between regular and additional alimony and, thus, presents arrears as a total sum. Moreover, defendant appeared to concede under oath during the July 17, 2020 argument that the parties had agreed plaintiff "would pay 15 grand, and [she] would take off 18 grand."[2]

[2] The record is not clear as to whether the motion judge had a copy of the transcript of that argument.

Given the possible different interpretations of the language of the December 11, 2019 consent order and the parties' conflicting assertions regarding the meaning of the language, the judge should have conducted an evidentiary hearing to determine the parties' intent. Accordingly, we vacate paragraph five of the February 18, 2022 order and remand for an evidentiary hearing on the meaning of the parties' agreement to "clear remaining arrears" as memorialized in a December 11, 2019 consent order. We also reverse paragraph three of the May 19, 2022 order, in which the judge denied reconsideration of this aspect of the February 18, 2022 order. Given our remand, we need not address plaintiff's argument regarding the judge's purported failure to include in her orders a "stop date" for his alimony payments. We take no position as to the outcome the judge should reach on remand following the evidentiary hearing.

Plaintiff's arguments regarding the judge's orders concerning his applications for payment of additional extra-curricular expenses and credit for a purported overpayment of child support are without merit. He attempted to support those applications by attaching copies of various invoices and account statements, circling entries on those documents, and writing a word or two of explanation. Those submissions, with no certified statements explaining what the entries were and how they constituted proof of payment of extra-curricular

activities or child support, were not sufficient to demonstrate plaintiff's entitlement to payment of extra-curricular expenses or credit for child support. In addition, plaintiff failed to explain how charges for veterinary bills, a Spotify account, "nails," "hair," school lunches, and a cell phone, among others, were charges for "extra-curricular activities" as contemplated by the parties in the MSA.

We affirm paragraph two of the August 26, 2022 order in which the judge denied plaintiff's motion for reconsideration of the June 22, 2022 order. Plaintiff seeks to enforce and collect on a Special Civil Part judgment by deducting the judgment amount from the amount of his arrears in his Probation account. As the judge found, plaintiff failed to support that request with any legal authority enabling a judgment creditor to collect a judgment by reducing the support arrears in his Probation account. Rule 6:7-1 details the procedure to enforce a Special Civil Part judgment, beginning with the judgment creditor seeking and obtaining a writ of execution. See also R. 4:59-1(a) (providing "[p]rocess to enforce a judgment . . . shall be a writ of execution . . . ."). Nothing in that Rule authorizes the court to do what plaintiff wants it to do: direct Probation to reduce his support arrears by the amount of a Special Civil Part judgment. Accordingly, we perceive no abuse of discretion in the judge's denial of

plaintiff's motion for reconsideration. See Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (applying an abuse-of-discretion standard of review when considering an order regarding a reconsideration motion).

We also affirm paragraph one of the August 26, 2022 order in which the judge awarded defendant $1,000 in counsel fees and costs. Plaintiff argues paragraphs 14.1 and 2.7 of the MSA prohibit an award of counsel fees. Paragraph 14.1 provides only that "[e]ach party shall be responsible for their own respective legal and expert's fees, and hold the other party harmless against same." That paragraph applies to the parties' then-existing legal fees; it is silent as to legal fees incurred in post-judgment litigation. Paragraph 2.7 expressly addresses legal fees incurred in post-judgment litigation: "[s]hould either [party] fail to abide by the terms of this [MSA], the defaulting party shall indemnify the other for all reasonable expenses and costs, including, but not limited to, attorneys' fees incurred in successfully enforcing this [MSA]." In defendant's cross-motion, plaintiff was the defaulting party. Moreover, Rule 1:10-3 authorizes a judge to award counsel fees in a motion to enforce litigant's rights. We perceive no abuse of discretion in the judge's award of counsel fees and costs to defendant. See Slutsky v. Slutsky, 451 N.J. Super. 332, 365 (App. Div. 2017) (applying abuse-of-discretion standard of review in considering

order regarding a counsel-fee award); Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (finding "[w]e will disturb a trial court's determination on counsel fees only on the 'rarest occasion,' and then only because of clear abuse of discretion" (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995))).

In sum, we reverse paragraphs one and four of the February 18, 2022 order and the entirety of the March 2, 2022 order. We vacate paragraph five of the February 18, 2022 order and remand for an evidential hearing regarding the meaning of the parties' agreement to "clear remaining arrears" as memorialized in the December 11, 2019 consent order. We reverse paragraph one, two, and three of the May 19, 2022 order denying plaintiff's motion for reconsideration. We otherwise affirm.

Affirmed in part; reversed in part; and vacated and remanded in part for proceedings consistent with this decision. We do not retain jurisdiction.