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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-2563-22**

CARL PETTY,

Plaintiff-Respondent,

v.

MARIA BASILE,

Defendant-Appellant.

Argued April 30, 2024 – Decided May 30, 2024

Before Judges Mayer, Paganelli and Augustini.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Union County, Docket
No. FM-20-1837-15.

Patrick T. Collins argued the cause for appellant
(Skoloff & Wolfe, PC, attorneys; Patrick T. Collins, on
the briefs).

Lizanne J. Ceconi argued the cause for respondent
(Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins,
PC, attorneys; Lizanne J. Ceconi and Elissa W. Levine,
on the brief).

PER CURIAM

Defendant Maria Basile appeals from a March 17, 2023 order finding her in violation of litigant's rights and ordering her to pay \$7,900 in counsel fees. We affirm.

The parties have engaged in contentious litigation over many years primarily involving custody and parenting issues. This appeal arises from enforcement of provisions in their marital settlement agreement (MSA) requiring them to confer, consult and communicate on all issues involving their child.

We glean the following procedural history and facts from the motion record. The parties married in October 2010, separated in 2015, and divorced in 2018. The parties' final judgment of divorce incorporated their MSA. During the marriage the parties had one child.

In their MSA, the parties agreed to share joint legal custody of their child and to designate plaintiff as the parent of primary residence. Several provisions in the MSA established the parties' responsibility to communicate and confer with each other regarding their son. Specifically, paragraphs 2.5 and 2.6 required the parties to "keep [each] other informed" regarding the child's health, to "consult" with each other regarding the child's school, school activities and all other extracurriculars, and to "keep [each] other

informed as to all activities of the child and all matters concerning his interests, happiness and welfare." In paragraph 10.7 the parties agreed "at all times [to] keep [each] other informed of his or her place of residence."

At the time of their divorce, defendant had limited supervised parenting time with the child. The MSA provided that if the parties were unable to agree to a modified parenting schedule for defendant, "after six (6) months from the date of this [a]greement, the court [would] appoint a neutral [g]uardian ad [l]item" (GAL) tasked with making recommendations on "whether the restrictions of supervised parenting time should be lifted" along with other issues related to the child's best interests.

In March 2019, the judge appointed a GAL to address unresolved parenting issues. Upon the GAL's recommendation, the parties retained an expert to conduct a best interests evaluation and to assist the GAL with making recommendations consistent with the child's best interests. The GAL issued his report in January 2023 and adopted the parenting plan proposed by the expert. The GAL noted the parties had historically been unable to communicate effectively on issues concerning their son in violation of their MSA and their ability to communicate had likely worsened over time. The GAL stated:

The critical and potentially disruptive issue is the longstanding disdain and distrust the parents ha[d] for

each other, which ha[d] made the prospect of coparenting and working together in accordance with . . . the terms of Article II of their MSA challenging, at best and detrimental to the maximization of [their son's] emotional well-being, at worst.

Following the issuance of the GAL's report, the judge, sua sponte, issued a February 13, 2023 order incorporating the parenting time and holiday schedule as recommended in the GAL's January 2023 report.

A mere eight days later, defendant filed a motion requesting the parties install landlines in their son's respective bedrooms in each of their homes to allow him to call the other parent during parenting time, and requiring plaintiff to afford defendant the right of first refusal when he is away from home during his parenting time.

Plaintiff objected and filed a cross-motion seeking to hold defendant in violation of litigant's rights for: (1) failing to comply with various provisions of the MSA pertaining to communication regarding the child; (2) enforcement of provisions in the MSA; and (3) an award of counsel fees relative to the application.

Plaintiff cited various examples of defendant's failure to: (1) communicate with him, such as, defendant's failure to respond for almost nine days to plaintiff's communications pertaining to scheduling parenting time or

return of their son; (2) consult with plaintiff regarding obtaining a therapy dog for the child; and (3) alert plaintiff of changes to the child's school program and child's therapy sessions. Plaintiff also contended defendant relocated to a new home without advising him and interfered with the child's medical appointments.

The judge denied defendant's motion in its entirety in a March 17, 2023 order, and in a written statement of reasons, reinforced the parties' obligation to follow the GAL's recommendations noting neither of defendant's requests were recommended by the GAL. Regarding the cross-motion, the judge held defendant in violation of litigant's rights for not abiding by the provisions in the parties' MSA regarding the duty to consult, confer, and communicate with plaintiff. As a result, the judge awarded plaintiff counsel fees of \$7,900 to be paid within thirty days.

On appeal, defendant argues the judge erred in finding her conduct violated plaintiff's litigant's rights and awarding counsel fees to plaintiff. Plaintiff counters that the judge's determinations must be given deference and there was no abuse of discretion in awarding counsel fees.

The scope of our review is limited. We afford "great deference to discretionary decisions of Family Part judges," Milne v. Goldenberg, 428 N.J.

Super. 184, 197 (App. Div. 2012), in recognition "of the family courts' special jurisdiction and expertise in family matters," Cesare v. Cesare, 154 N.J. 394, 413 (1998). We review a judge's enforcement of litigant's rights pursuant to Rule 1:10-3 for abuse of discretion. Lipsky v. N.J. Ass'n of Health Plans, Inc., 474 N.J. Super. 447, 463 (App. Div. 2023). "An abuse of discretion occurs when a decision was 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Wear v. Selective Ins. Co., 455 N.J. Super. 440, 459 (App. Div. 2018) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). Governed by these principles, we discern no reason to disturb the March 17, 2023 order.

Turning first to defendant's assertion the judge erred in finding her in violation of litigant's rights, considering our deferential standard of review, we are satisfied the judge's determination was supported by adequate, substantial, and credible evidence in the record.

In their MSA, the parties agreed to share joint legal custody of their child, and by agreeing to this legal arrangement, the parties inherently acknowledged that they "have an ongoing obligation to attempt to communicate and cooperate with each other on important child-related issues, consistent with the child[]'s best interests." A.W. v. T.D., 433 N.J. Super. 365, 375 (Ch. Div. 2013).

Additionally, specific provisions in the MSA clearly established the obligation to confer and communicate with each other.

In his written opinion accompanying the March 17, 2023 order, the judge determined defendant made several unilateral decisions regarding the child's schooling and care without attempting to confer with plaintiff. The record supports this finding in several respects; for instance, defendant: (1) did not respond to plaintiff's communications regarding the parenting schedule after the issuance of the February 13, 2023 order; (2) unilaterally changed the day of the child's therapy session and failed to notify plaintiff of the change; (3) failed to notify plaintiff of a change in the child's remote school session; and (4) did not advise plaintiff she was periodically staying overnight with her parents during her parenting time or that she relocated to their home.

Moreover, eight days after the judge issued the February 13, 2023 order resolving the parenting time issues, defendant filed a motion, regarding landline phones and back-up childcare, without conferring with plaintiff and immediately resorting to litigation. Thus, we discern no abuse in the judge's decision holding defendant in violation of litigant's rights for failing to communicate as required in the MSA.

As to the counsel fee award, we begin with the long-established principal that the decision to shift counsel fees "rests in the discretion of the [trial] court." Williams v. Williams, 59 N.J. 229, 233 (1971). "We will disturb a trial court's determination on counsel fees only on the 'rarest occasion,' and then only because of clear abuse of discretion." Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

Here, the judge properly considered the factors set forth in Rule 5:3-5(c). Specifically, factor three—"the reasonableness and good faith of the positions advanced by the parties"—weighed prominently in the judge's analysis. The parties' litigation had been ongoing for eight years and instead of attempting to confer with plaintiff, defendant immediately filed another motion. The court found the motion "unnecessary" "given its proximity and relationship to the February [o]rder."

The judge also correctly concluded plaintiff prevailed in his cross-motion to enforce terms of the MSA and defendant did not prevail in her motion. Rule 5:3-5(c)(7) provides the judge should consider "the results obtained."

Over the course of the litigation, plaintiff incurred attorney's fees totaling over \$625,000. Here, he was required to incur additional fees responding to an "unnecessary" motion and in pursuit of his cross-motion. As a result, we discern

no abuse of discretion in the judge's decision to award counsel fees under these circumstances.

To the extent we have not specifically addressed defendant's remaining contentions, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION