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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-3287-21

QINGYOU YAN,

Plaintiff-Respondent,

v.

YIXIONG XU,

Defendant-Appellant.

Submitted May 15, 2024 – Decided June 3, 2024

Before Judges Susswein and Vanek.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-2387-18.

Yixiong Xu, appellant pro se.

Kornitzer Family Law, LLC, attorneys for respondent
(Robert B. Kornitzer, on the brief).

PER CURIAM

Defendant Yixiong Xu appeals the May 10, May 31, and June 10, 2022
Family Part orders enforcing the parties' dual final judgment of divorce (the

FJOD) requiring him to vacate the residential property jointly owned by the parties during their marriage (the Property) so it could be immediately sold and the proceeds equitably distributed. Because defendant ultimately vacated the Property, which was sold to a third party, the issues before us have been rendered moot. Even if the issues on appeal were not moot, we find no abuse of discretion in the judge's entry of the orders declaring defendant to be in violation of litigant's rights and enforcing the FJOD.

Therefore, we affirm.

I.

The factual landscape of this protracted litigation is set forth in our decision on defendant's appeal of the entry of prior post-judgment enforcement orders.¹ We recount only the facts material to our review of the May 10, May 31, and June 10, 2022 orders on appeal.²

¹ Defendant previously appealed the June 23, 2021, December 10, 2021, and March 10, 2022 Family Part orders enforcing the FJOD. We affirmed. Yan v. Xu, No. A-1493-21 (App. Div. Apr. 19, 2023) (slip op. at 7).

² Although defendant makes references to alleged errors in other post-judgment orders and writs of possession, only the May 10, 2022, May 31, 2022, and June 10, 2022 orders "designated in [defendant's] notice of appeal . . . are subject to the appeal process and review." W.H. Indus., Inc. v. Fundicao Balancins, Ltda., 397 N.J. Super. 455, 458 (App. Div. 2008).

The FJOD was entered on July 21, 2020 after a trial before Judge Gallina-Mecca. The FJOD states the Property

shall be immediately listed for sale. Defendant is responsible for all repairs and cleaning as may [be] recommended by the listing agent for the proper marketing of the [P]roperty, to be deducted from his share of the net proceeds of sale. Defendant shall cooperate with the cleaning of and repairs to the home and with the listing of the home for sale. The parties shall mutually agree upon a listing agent. In the event they cannot agree, either party may file an appropriate application to the court. If either party must file an application with the court to compel performance in accordance with this provision, counsel fees may be awarded in connection with any such application upon a finding that the other party was non-cooperative or unreasonable[.]

The sale was required to proceed immediately to allow for the swift equitable distribution of the net proceeds so the parties could pay for their daughter's college tuition. When defendant repeatedly refused to vacate the Property and failed to cooperate in effectuating its court-ordered sale, plaintiff Qingyou Yan filed numerous enforcement applications which ultimately led to the entry of a March 10, 2022 order adjudicating defendant in violation of litigant's rights for failure to abide by the FJOD requiring sale of the Property. Because of defendant's failure to cooperate with the sale, plaintiff was appointed attorney-in-fact to immediately list the Property for sale, interface with realtors,

accomplish necessary cleaning and repairs, and execute any documents required in the process. Defendant was also ordered to cooperate with the sale of the Property and allow the realtor, along with the plaintiff, to enter the Property on forty-eight hours' notice.

The March 10 order required defendant to vacate the Property by April 9, 2022. Plaintiff's request for a writ of possession was denied without prejudice, with plaintiff being granted leave to renew the request for relief if defendant did not vacate by that extended deadline.

When defendant again failed to vacate the Property as ordered, plaintiff filed an order to show cause (OTSC) seeking enforcement of the March 10, 2022 order. Defendant alleged he was improperly served with the OTSC. Judge Gallina-Mecca found service was proper, but afforded defendant additional time to prepare his opposition, thus curing any prejudice alleged.

After finding defendant had not complied with her court orders on yet another occasion and the Property still had not been sold, Judge Gallina-Mecca again adjudicated defendant in violation of litigant's rights and entered a May 10, 2022 order requiring defendant to vacate the Property by May 20. Plaintiff was permitted to file an application for an ex-parte writ of possession if defendant remained after that date.

Plaintiff was again appointed attorney-in-fact to execute the contract and all documents necessary to effectuate the sale of the Property based on defendant's non-compliance. She was also given the sole authority to make all decisions regarding the sale, including determining the ultimate sales price. When defendant complained the Property was not being listed for sale at an appropriate value, the judge reiterated that plaintiff, as attorney-in-fact, was not required to consult or interface with defendant and could make unilateral decisions to accomplish the sale. Plaintiff was to provide the agent with defendant's comparative market analysis dated May 7, 2022 and defendant was to be notified of the Property's listing price.

Judge Gallina-Mecca found defendant had approached the court with unclean hands since he had not complied with the prior court orders. Plaintiff's request for the imposition of a coercive monetary penalty against defendant and to be awarded economic damages was denied without prejudice.

When defendant still refused to vacate the Property, Judge Gallina-Mecca issued writs of possession on May 31 and June 10, 2022. Defendant's applications to stay the May 10 order were denied.

After filing the notice of appeal, defendant finally vacated the Property on July 18, 2022. The Property was thereafter sold for \$850,000 on September 13

yielding a net profit of \$671,984.22. Both parties accepted an initial distribution of \$250,000.

II.

On appeal, defendant argues if the May 10, May 31, and June 10, 2022 orders are not vacated he will suffer irreparable harm. In relation to the May 10 order, defendant also contends he suffered an economic loss because plaintiff sold the Property for less than fair market value. Plaintiff argues the issues on appeal are rendered moot by defendant's relocation and the sale of the Property, both of which occurred after defendant filed this appeal.

Whether the issues on appeal are moot "is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm." Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010). "An issue is 'moot when our decision sought in a matter, when rendered, can have no practical effect on the existing controversy.'" Redd v. Bowman, 223 N.J. 87, 104 (2015) (quoting Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011) (internal quotation marks omitted)). We generally "do not resolve issues that have become moot due to the passage of time or intervening

events." Wisniewski v. Murphy, 454 N.J. Super. 508, 518 (App. Div. 2018) (quoting State v. Davila, 443 N.J. Super. 577, 584 (App. Div. 2016)).

After filing this appeal, defendant vacated, the Property was sold, and an initial distribution of \$250,000 from the sales proceeds was accepted by each of the parties. As a result, even if we were to reverse the orders enforcing the FJOD, there would be no practical effect on any existing controversy. Therefore, we conclude defendant's appeal of the May 10, May 31, and June 10, 2022 orders is moot.

III.

Notwithstanding the issues before us are moot, we briefly address defendant's argument that the Family Part erred in entering the May 10, May 31, and June 10, 2022 orders enforcing the FJOD. We review a trial court's enforcement of litigant's rights pursuant to Rule 1:10-3³ under an abuse of discretion standard. Lipsky v. N.J. Ass'n of Health Plans, Inc., 474 N.J. Super. 447, 463 (App. Div. 2023). Generally, Rule 1:10-3 is "a civil proceeding to coerce the defendant into compliance with the court's order." Pasqua v.

³ Rule 1:10-3 sets forth, in part: "Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action."

Council, 186 N.J. 127, 140 (2006) (quoting Essex Cnty. Welfare Bd. v. Perkins, 133 N.J. Super. 189, 195 (App. Div. 1975)).

We discern no abuse of discretion by Judge Gallina-Mecca in entering the May 10, 2022 order declaring defendant in violation of litigant's rights and ordering correlating remedies. Nor did the judge abuse her discretion by issuing the May 31 and June 10 writs of possession to remove defendant from the Property. The FJOD clearly ordered the immediate sale of the Property and equitable distribution of the proceeds. It is undisputed defendant refused to vacate and, thus, did not cooperate with the sale of the Property. We find no abuse of discretion by the trial court in enforcing the prior orders of the court.

IV.

Finally, we address defendant's argument that, as the court-appointed attorney-in-fact, plaintiff improperly sold the Property for less than its fair market value. Plaintiff was given the sole decision-making authority to establish the listing price and to execute all documents to accomplish the sale, based upon defendant's undisputed failure to cooperate in the court-ordered sale pursuant to the FJOD. The court order required the real estate agent and plaintiff to consider defendant's proofs on valuation in setting the sales price. Thus, defendant preemptively raised the issue to the trial court and it was


addressed. Despite that plaintiff's counsel sent an email to defendant informing him there were two offers on the house, defendant did not file any other application to adjust the sales price, stop the sale, or for any other relief.

Defendant has not proffered any law or further argument on appeal other than contending that he lost money on the conveyance. Thus, not only did defendant fail to pursue relief before the trial court, but has not presented a justiciable issue to us on appeal. Janicky v. Point Bay Fuel, Inc., 410 N.J. Super. 203, 208 (App. Div. 2009).

Defendant's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

This appeal is dismissed as moot.

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



CLERK OF THE APPELLATE DIVISION