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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2318-21**

MICHAEL CATCHPOLE,

Plaintiff-Respondent,

v.

HUI ZHANG,

Defendant-Appellant.

Submitted October 11, 2023 – Decided October 26, 2023

Before Judges Whipple, Mayer and Enright.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Essex County, Docket
No. FM-07-1130-12.

Hui Zhang, appellant pro se.

Lesnevich & Marzano-Lesnevich, LLC, attorneys for
respondent (Carlye Goldstein, of counsel and on the
brief; Thomas A. Brewer, on the brief).

PER CURIAM

In this post-judgment matrimonial matter, defendant Hui Zhang appeals

from an October 22, 2021 order granting an enforcement motion filed by her ex-husband, plaintiff Michael Catchpole. She also challenges a March 4, 2022 order denying her motion to reconsider the October 22 order. We affirm both orders, substantially for the reasons set forth in Judge Arthur Batista's cogent oral and written opinions.

I.

This matter is before us for a second time. Our prior opinion detailed the contentious litigation that led to the entry of the parties' 2015 judgment of divorce (JOD) and a resolution of their existing custody and parenting time issues. Catchpole v. Zhang, No. A-5344-14 (App. Div. Aug. 9, 2017) (slip op. at 1-12, 26). Therefore, we need only summarize the facts relevant to this appeal.

In 2015, Judge Michael Casale presided over the parties' six-day divorce trial. After assessing the testimony of the parties and their custody evaluator, Judge Casale issued a comprehensive written opinion, finding defendant knowingly violated a pendente lite custody and parenting time order, failed to keep plaintiff "in the loop with regard to important decisions[,] and violate[d] her duties as a joint legal custodian." Id. at 8. However, the judge concluded it was in the best interest of the parties' then five-year-old daughter for defendant

to be designated as the child's parent of primary residential and for plaintiff to be the child's parent of alternate residence. Id. at 9. Noting defendant "continual[ly] interfere[d] with [plaintiff's] parenting time in the past," ibid., the judge also found plaintiff was entitled to expanded parenting time, including alternating weekends, midweek dinners, alternating holidays, and vacation time.

Defendant appealed from various provisions of the JOD. We affirmed the judgment as modified and remanded the matter to allow the trial court to delete a provision in the JOD restricting defendant's right to seek to relocate with the parties' daughter to China. Id. at 26.

On January 20, 2017, the parties entered into a consent order (CO), modifying the parenting time schedule set forth in the JOD. The CO granted plaintiff parenting time on alternating weekends and alternating holidays, plus midweek telephonic visits, but also provided that "[c]ommencing in 2017[,] the summer recess w[ould] be divided[,] with [plaintiff] having parenting time for the last week of June and for the entire month of . . . July or August."

Motion practice over parenting time issues continued between the parties. On March 15, 2019, Judge Annette Scoca granted plaintiff's motion to enforce the CO, and during the hearing, the judge told defendant:

I will make my ruling extremely clear today so that there [are] no future misunderstanding[s] I'm not

going to award counsel fees today, Ms. Zhang. But if . . . plaintiff has to come back again on these same [parenting] issues, I will award counsel fees.

In March of 2020, in response to the COVID-19 pandemic, Governor Philip D. Murphy issued various Executive Orders, including Executive Order 107, which "established statewide social mitigation strategies for combatting" the virus. That month, and for some time thereafter, the parties agreed plaintiff would forego parenting time with the parties' daughter due to the ongoing pandemic. However, neither party formally moved to modify the CO. The parties subsequently arranged for plaintiff to make up the parenting time he missed.

In April 2021, plaintiff e-mailed defendant to address his desire to exercise parenting time during the summer, consistent with the terms of the CO. The following month, defendant emailed plaintiff, explaining she did "not feel comfortable going back to the original parenting time" schedule set forth in the CO. In June 2021, defendant emailed plaintiff to inform him she would "consider switching . . . back to" the CO when their daughter returned to school.

In July 2021, defendant moved to change venue of the divorce matter from Essex to Somerset County, where she now lived with the parties' child. Around this time, plaintiff also notified defendant he would file an emergent application

to enforce the CO if she did not permit him to exercise his parenting time with their daughter for the full month of August. Defendant did not agree to his request. Therefore, he filed an order to show cause (OTSC) on August 2, 2021, seeking enforcement of the CO and specifically asking the trial court to hold defendant "in violation of litigant's rights" due to her "failure to confirm that she will comply with the parties' [CO]."

On August 3, 2022, Judge Batista denied the OTSC, finding plaintiff "failed to establish that the emergent relief requested [was] necessary to prevent irreparable harm." Notably, however, the judge expressly directed in the August 3 order that "[t]he issues raised" by plaintiff would "be dealt with by the court in the normal motion course."

The judge scheduled plaintiff's motion and defendant's motion regarding venue to be heard in September 2021, but both motions were adjourned to the following month. In the interim, defendant filed a cross-motion, asking, in part, that Judge Batista, "void" the CO and implement a modified parenting time schedule.

Following argument on the parties' cross-applications on October 22, 2021, Judge Batista granted plaintiff's motion to enforce the CO, finding defendant violated plaintiff's parenting time rights. He also denied defendant's

motion for a venue change, concluding there was "no legal basis for it," and denied her cross-motion, finding it was "wholly without merit or support of any kind."

In his October 22 oral opinion, the judge found defendant "not only . . . interfered with [plaintiff's] parenting time, pursuant to [prior] orders . . . but [she] also had a history of failing to comply with the [c]ourt's orders" as "documented" by judges who previously heard her matter, including Judges Casale and Scoca. Further, because Judge Batista concluded defendant "habitual[ly] interfere[d]" with plaintiff's parenting time, he ordered her to engage in "parenting classes, or an individual counseling program, with a focus on abiding by family court orders, respecting another parent's right to parenting time, and understanding the damage that [her] habitual interference ha[d] upon [the parties'] daughter." Additionally, the judge directed that, in the future, she would "be sanctioned \$100 per day for each day . . . [she] with[e]ld parenting time from . . . plaintiff." He also awarded plaintiff counsel fees in an amount to be determined, finding defendant's "continued violations of . . . plaintiff's [parenting time] rights . . . were purposeful, . . . unreasonable, . . . unwarranted, [and] . . . in bad faith."

Defendant moved for reconsideration of the October 22, 2021 order;

plaintiff opposed the application. During argument on the parties' cross-applications on March 4, 2022, defendant's attorney claimed Judge Batista erred in adjudicating defendant in violation of plaintiff's parenting time rights because he mistakenly found other Family Part judges, besides Judge Casale had admonished defendant for violating parenting time orders. Judge Batista rejected this argument and entered an order later that day, denying defendant's motion for reconsideration.¹

In a well-reasoned written opinion accompanying the March 4 order, Judge Batista determined there was no basis for him to reconsider the October 22 order. He noted Judge Casale previously found defendant "'continual[ly] interfere[d]' with . . . [p]laintiff's parenting time" and warned that if she "continued with her behavior, the [c]ourt would impose sanctions." Judge Batista also stated, "[u]nfortunately for both parties and their daughter, . . . [d]efendant did not take Judge Casale's admonition to heart." Judge Batista explained that "[i]n 2019, Judge Scoca . . . encountered the very same issues confronted by Judge Casale," and warned defendant she would

¹ Under the March 4, 2022 order, Judge Batista also granted defendant's requests to: (1) clarify various parenting time provisions in the CO and the March 15, 2019 order; and (2) enforce the JOD to compel plaintiff to contribute to the extracurricular activity costs of the parties' daughter.

award counsel fees to plaintiff if he had "to come back again on these same issues."

Additionally, Judge Batista stated that despite this warning, "[d]efendant elected to continue infringing upon and restricting . . . [p]laintiff's parenting time, this time using the Covid-19 pandemic as her veneer." He concluded she "use[d] parenting time as a bargaining tool." Further, he found there was "absolutely no question . . . that . . . [d]efendant sought to exercise control and limit . . . plaintiff's parenting time because she was dissatisfied with the court's prior orders," but her "dissatisfaction with the verbiage of [prior c]ourt [o]rders . . . [was] not a . . . basis for a motion for reconsideration." Judge Batista also concluded defendant "failed to demonstrate that the [c]ourt . . . based its [October 22, 2021] decision upon a palpably incorrect basis, or that [it] . . . failed to appreciate the significance of probative, competent evidence."

II.

On appeal, defendant argues Judge Batista erred in finding she violated plaintiff's rights when this relief was "not . . . included in [plaintiff's] motion." She also contends the judge "fail[ed] to look at the facts," and instead "rel[ie]d on [the] history of the case[,] creating bias towards [her as a] self[-]represent[ed] litigant." These arguments lack merit. R. 2:11-3(e)(1)(E). We add the

following comments.

Our review of a Family Part order is limited. See Cesare v. Cesare, 154 N.J. 394, 411 (1998). "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Id. at 413. Therefore, "[w]e will reverse only if we find the [trial court] clearly abused [its] discretion." Clark v. Clark, 429 N.J. Super. 61, 72 (App. Div. 2012). We review a Family Part judge's interpretation of the law de novo. D.W. v. R.W., 212 N.J. 232, 245-46 (2012) (citation omitted).

A decision concerning custody or parenting time rests within the Family Part judge's sound discretion. See Pascale v. Pascale, 140 N.J. 583, 611 (1995). In any custody or parenting time dispute, "it is well settled . . . the court's primary consideration is the best interests of the child[]." Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007) (citation omitted). "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 child[.]'" A.J. v. R.J., 461 N.J. Super. 173, 182 (App. Div. 2019) (first alteration in original) (quoting Todd v. Sheridan, 268 N.J. Super. 387, 398 (App. Div. 1993)).

A Family Part judge "possesses broad equitable powers to accomplish substantial justice" and may tailor an appropriate remedy for violation of the court's orders. Finger v. Zenn, 335 N.J. Super. 438, 446, (App. Div. 2000). Accordingly, a judge may impose sanctions against a non-compliant party under Rule 1:10-3 and grant additional remedies in family actions for violations of a custody or parenting time order, including:

(1) compensatory time with the children; (2) economic sanctions, including . . . the award of monetary compensation for the costs resulting from a parent's failure to appear for scheduled parenting time or visitation such as child care expenses incurred by the other parent; . . . (5) counseling for the children or parents or any of them at the expense of the parent in violation of the order; (6) temporary or permanent modification of the custodial arrangement[,] provided such relief is in the best interest of the children; . . . and (10) any other appropriate equitable remedy.

[R. 5:3-7(a).]

We review a trial court's imposition of sanctions against a litigant under Rules 1:10-3 and 5:3-7(a) for an abuse of discretion. See Innes v. Carrascosa, 391 N.J. Super. 453, 498 (App. Div. 2007).

A trial court's decision to deny a motion for reconsideration also is reviewed for an abuse of discretion. Granata v. Broderick, 446 N.J. Super. 449, 468 (App. Div. 2016). Reconsideration is appropriate in two circumstances: (1)


when the court's decision is "based upon a palpably incorrect or irrational basis," or (2) when "it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). When a litigant is dissatisfied with a court's decision, reconsideration is not appropriate; rather, the litigant should pursue an appeal. D'Atria, 242 N.J. Super. at 401.

Governed by these standards, we conclude Judge Batista's factual findings are entirely supported by competent, credible evidence in the record and that his legal conclusions are unassailable. Our review of the record also convinces us there is no evidence to support defendant's contention that Judge Batista's review of the parties' litigious history created a bias against her. See Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008) ("Bias cannot be inferred from adverse rulings against a party."). Accordingly, we affirm the October 22, 2021 and March 4, 2022 orders, substantially for the reasons the judge expressed in his thoughtful oral and written opinions.

Any remaining arguments raised by defendant are without 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