SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3662-20

GINA IDELL,
n/k/a GINA COX,

Plaintiff-Appellant/
Cross-Respondent,

v.

MICHAEL IDELL,

Defendant-Respondent/
Cross-Appellant.

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Submitted April 27, 2022 – Decided May 12, 2022

Before Judges Hoffman, Geiger and Susswein.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-1814-05.

Toni Ann R. Marcolini, attorney for appellant/cross-respondent.

Hunnell Law Group, LLC, attorneys for respondent/cross-appellant (Stephanie C. Hunnell and Caitlin Holland, on the briefs).

PER CURIAM

In this post-judgment matrimonial matter, plaintiff Gina Idell, now known as Gina Cox, appeals from a July 16, 2021 Family Part order that granted summary judgment and other relief to defendant Michael Idell pertaining to an eleven-year long overpayment of child support. Plaintiff, on behalf of the parties' children, received both derivative social security benefits based on defendant's disability and direct child support payments from defendant. Plaintiff challenges the retroactive child support modification, failure to apply the doctrine of res judicata to the prior court rulings, and refunding of previously paid child support. Defendant cross-appeals from certain aspects of the same order, challenging the $28,376.49 credit awarded to plaintiff, the amount of the interest awarded to defendant, and the repayment rate set by the court. We affirm in part and remand in part.

We glean the following facts from the record. Plaintiff and defendant married in 1999 and had two sons, born in 2001 and 2004. The parties divorced in 2006. The amended final judgment of divorce awarded joint legal custody with plaintiff as parent of primary residence. Child support was set at $153 per week. Defendant became and was declared permanently disabled by the Social Security Administration (SSA) as of June 2, 2008, following a

motor vehicle accident. Defendant agreed to supervised parenting time because he was unable to drive with his children in his car as a result of lingering seizures from the accident. Under Social Security Disability (SSD) eligibility requirements, defendant's disability benefits began in December 2008. Both children began to receive derivative benefits in December 2008 as well. Defendant's full monthly benefit before deductions was set at $1,512.80 and each of his sons received derivative benefits of $378 per month which were mailed directly to plaintiff. The benefit amounts increased each year and in 2021 totaled $869 per month.

Defendant filed a pro se application to modify child support in April 2009, which was denied on May 1, 2009, for failure to provide required financial information and a failure to demonstrate a change in circumstances. Arrearages were set at $19,920.13. In January 2010, defendant again moved to reduce his child support obligation but on February 2, 2010, his motion was denied without prejudice for the same reasons. By then, defendant was current on the support order.

Defendant continued to pay child support while deductions were taken from his SSD benefits. As a result, plaintiff received double child support payments from December 2008 until August 2020, and the figure increased

due to annual cost-of-living adjustments. The following amounts of child support and SSD benefits paid to plaintiff are undisputed.

Year	SSD Benefits Total	Benefits Per Child Per Month	Child Support Paid by Defendant	Surplus Plaintiff Received from SSD	Support Per 5:6A, IXA
2009	$9,072	$378 x 2= $756	$7,956	$1,116	$0
2010	$9,072	$378 x 2= $756	$7,956	$1,116	$0
2011	$9,072	$378 x 2= $756	$8,936	$136	$0
2012	$9,408	$392 x 2= $784	$9,434	-$26	$26
2013	$9,552	$398 x 2=$796	$9,316	$236	$0
2014	$9,696	$404 x 2=$808	$9,516	$180	
2015	$12,374	$515.58 x 2= $1,031.16	$9,549	$2,825	$0
2016	$14,155	$9,910 A.I. & $4,245 B.I.	$9,672	$4,483	$0
2017	$14,155	Estimated to be the same as 2016	$9,702	$4,453	$0
2018	$13,544	Estimated to be an average of 2016/2019	$10,017	$3,527	$0
2019	$10,424	$8,688 A.I. & $1,736 B.I.	$9,898	$526	$0
Total=	**$120,524**		**$101,952**	$18,572	

A child support hearing was conducted by a hearing officer on June 9, 2016, to address the enforcement of support. In a June 9, 2016 order, the court set arrearages at $19,499.73 as of June 9, 2016, and imposed income withholding on defendant's income from the Pop In Café.

Defendant had trouble making the support payments because his SSD benefits were reduced by derivative benefits paid to the children through plaintiff. Despite his disability, defendant still tried to earn income to pay child support. The order continued child support at $186 per week plus an additional $40 per week toward arrears. The order noted:

> Defendant is not receiving his regular Social Security payments. The defendant provided a letter from Social Security [that] they are working to fix the problem. In the interim, the children did not receive their auxiliary benefits from Social Security or the child support from the income withholding. The defendant is working part time. The income withholding from the pa[r]t time job to remai[n] in effect until defendant's regular income withholding from Social Security is reinstated. Probation may terminate the income withholding through the part t[i]me employer when the Social Security income withholding is reinstated.

According to defendant, the double payments from his own savings and earnings and his SSD benefits forced him to search for part-time work despite being disabled. Plaintiff received at least $222,476 in child support and derivative benefits from 2009 to 2019.

On December 26, 2019, following months of unsuccessful negotiations, defendant filed a motion requesting in part: retroactive modification of child support; emancipation of the parties' eldest son; and to compel plaintiff to

provide details of the derivative Social Security benefits that she had received on behalf of the children. The court entered a February 28, 2020 order emancipating the parties' eldest son as of July 1, 2019, the date he joined the army, but did not modify the child support based on emancipation.

On June 19, 2020, defendant filed a motion for summary judgment to determine whether: (1) the governmental benefits should be included in the child support calculations; (2) defendant was entitled to a reduction of child support retroactive to the date of his first application for relief after his date of disability and the children's receipt of governmental benefits; (3) child support should be reduced to $0 per week retroactive to April 2009 and continuing through June 30, 2020; (4) recalculating child support retroactive to July 1, 2019, the date of the eldest son's emancipation; (5) a repayment schedule should be imposed for the overpaid child support at the rate of $500 per week plus an initial payment of $10,000; (6) further child support collection should be stayed pending appeal if the motion was denied; (7) to set a parenting time plan consistent with defendant's proposal; (8) to grant defendant unsupervised parenting time; and (9) to award defendant counsel fees and costs for the motion.

Plaintiff filed a cross motion to: (1) compel defendant to reimburse her for his share of the children's unreimbursed dental bills; (2) compel defendant to furnish proof of life insurance required by the judgment of divorce; (3) find defendant in violation of litigant's rights; (4) award plaintiff counsel fees and costs; and (5) compel defendant to provide three years of complete tax returns.

The court found there were no material facts in dispute and "that as a matter of law, government benefits shall be included in the Child Support guidelines[.]" The court issued August 14 and 20, 2020 orders that granted the motion and cross-motion in part and denied the motion and cross-motion in part. Relevant to this appeal, the orders granted summary judgment to defendant: (1) determining that the disability benefits shall be considered under the child support guidelines; and (2) defendant was entitled to a reduction in child support retroactive to the date of his first application to reduce support after his date of disability and upon the children's receipt of governmental benefits. The court directed the parties to engage in discovery on the issues of income, disability benefits received on behalf of the children for each year from 2009, and the payment of unreimbursed medical expenses for each year from 2009. The court denied imposing a repayment schedule without prejudice, noting it would address repayment after child support was

recalculated for the years 2009-2020. The court suspended defendant's child support obligation and enforcement thereof until further order. The court also directed defendant to submit three years of complete tax returns.

The court indicated that it would conduct a plenary hearing to determine the correct child support level and the child support overpayment that plaintiff received. Rather than participating in a plenary hearing, the parties agreed to submit the issues for a ruling on the papers.

The court issued a July 16, 2021 order that determined plaintiff owed defendant $68,430.45 in reimbursable child support paid by defendant, to be reimbursed at the rate of $525 per month, beginning on September 1, 2021, until paid in full. The order also reduced child support for the youngest child to $0 for so long as plaintiff received derivative Social Security benefits on behalf of the child. Once those benefits ended, plaintiff could apply for child support. The court declined to award counsel fees or costs to either party.

In its written decision, the court first addressed whether N.J.S.A. 2A:17-56.23 bars a retroactive modification of defendant's child support beyond the filing date of the motion. The court explained that defendant had filed pro se applications for modification of child support in April 2009 and January 2010, but they were denied without prejudice for failing to comply with the court

rules. The court found that this failure should "not be held against him" because it is "evident that [defendant's] permanent disability determination by the [SSA] warranted a modification of his child support." The court noted that plaintiff acknowledged receipt of the derivative SSD benefits since December 2008 and the benefits were discussed in the June 16, 2016 order, evidencing plaintiff's awareness of the accrued benefits.

As to the level of child support, the court noted defendant's child support obligation was originally set at $153 per week or $658 per month. Beginning in December 2008, both children received $378 per month as derivative beneficiaries. This resulted in the obligation being overpaid by $98 per month. The court explained that the child support guidelines instruct that "no support award should be ordered while the child is receiving the benefits" because the derivative benefits exceed the calculated obligation. As a result, "[defendant's] weekly child support amount from April 2009 must be calculated as $0 per week since the children were receiving derivative benefits that always exceeded what his child support amount would be if no derivative benefits were paid on behalf of the children."

The court then calculated the total amount of paid child support by defendant. It found that defendant paid a total of $101,952 in child support

from 2009 to 2019 and plaintiff has also received $120,524 in derivative benefits. Therefore, defendant was "entitled to a credit of $101,952."

The court had previously directed the parties to conduct discovery on issues related to the children's medical and dental bills, based on plaintiff's concerns that defendant owed reimbursement. Plaintiff submitted evidence of medical, dental, and summer camp expenses. The court found plaintiff was entitled to credits which totaled $5,145.06.

In addition, the court included the credit plaintiff was entitled to under the May 1, 2009 order, which had a principal amount of $19,920.13. Interest on the principal amount was recalculated based on Rule 4:42-11(a)(ii)-(iii). The court calculated that plaintiff was entitled to a total credit of $33,521.55. Subtracting that amount from the $101,952 defendant had paid, yielded a net amount plaintiff owed defendant of $68,430.45. The court directed that amount be paid at a rate of $525 per month commencing September 1, 2021, which would result in full reimbursement being paid in eleven years, which was "commensurate with the time [defendant] was making his payments."

As to defendant's application for an award of counsel fees and costs, the court considered the factors enumerated in Rule 5:3-5(c), and summarily concluded that each party would be responsible for their own fees and costs.

On July 20, 2021, the trial court granted plaintiff's request to stay enforcement of the July 16, 2021 order pending appeal.

This appeal and cross-appeal followed. On appeal, plaintiff argues:

> I. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT ON THE ISSUE OF RETROACTIVE MODIFICATION OF CHILD SUPPORT BACK TO 2009 AND FAILING TO APPLY RES JUDICATA TO THE PRIOR RULINGS OF THE COURT.
>
> II. THE LOWER COURT ERRED IN COMPELLING PLAINTIFF TO REFUND PREVIOUSLY PAID SUPPORT.

In his cross-appeal, defendant argues:

> I. THE LOWER COURT ERRED IN ITS CALCULATION OF THE CREDIT DUE TO [PLAINTIFF].
>
> II. THE LOWER COURT ERRED IN SETTING AN ARBITRARY RATE OF REPAYMENT TO THE [DEFENDANT].

We review the trial court's grant or denial of a motion for summary judgment de novo. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). When reviewing a grant of summary judgment, an appellate court ordinarily applies the same standard as the motion judge and considers "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder

to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); accord Rozenblit v. Lyles, 245 N.J. 105, 121 (2021). Here, however, the parties waived their right to a plenary hearing by electing to have the court render its decision on the papers submitted without hearing testimony.

Appellate courts "review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). "Thus, 'findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence.'" Id. at 283 (quoting Cesare, 154 N.J. at 411-12). "[H]owever, the trial judge's legal conclusions, and the application of those conclusions to the facts, are subject to our plenary review." Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Child Support awards are governed by Rule 5:6A, which provides that the child support guidelines

> shall be applied when an application to establish or modify child support is considered by the court. The guidelines may be modified or disregarded by the court only where good cause is shown. Good cause

> shall consist of a) the considerations set forth in Appendix IX-A, or the presence of other relevant factors which may make the guidelines inapplicable or subject to modification, and b) the fact that injustice would result from the application of the guidelines. In all cases, the determination of good cause shall be within the sound discretion of the court.

"When reviewing decisions granting or denying applications to modify child support, we examine whether, given the facts, the trial judge abused his or her discretion." J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012)). "The trial court's 'award will not be disturbed unless it is manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice.'" Id. at 326 (quoting Jacoby, 427 N.J. Super. at 116).

The Summary Judgment Granted to Defendant

Plaintiff contends the trial court committed several errors in granting summary judgment to defendant. She argues that Rule 2:4-1(a), the doctrines of res judicata and collateral estoppel, the anti-retroactivity statute (N.J.S.A. 2A:17-56.23a), lack of a hearing on defendant's alleged disability, Rule 4:49-2, and Rule 4:50 precluded summary judgment in favor of defendant. We are unpersuaded.

Rule 2:4-1(a) requires appeals to be filed within forty-five days of the entry of an order. Plaintiff notes that defendant did not file a timely appeal from the orders entered in 2009, 2010, or 2016. She contends that because defendant did not file a formal appeal to the 2009 denial of his motion to modify support, he lost his chance to refile such a motion. We disagree. Defendant's 2009 and 2010 motions were denied without prejudice because defendant, who was then pro se, did not submit necessary financial information. The court did not issue a decision on the merits. As a result, the court concluded that defendant's "failure to comply with appropriate [c]ourt procedures should not be held against him."

Plaintiff next argues that the denial of defendant's 2009 motion has preclusive res judicata effect. The application of res judicata and collateral estoppel are legal issues, Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000), which we review de novo, Manalapan Realty, 140 N.J. at 378. "Res judicata prevents a party from relitigating for a second time a claim already determined between the same parties." In re Vicinage 13 of the N.J. Superior Ct., 454 N.J. Super. 330, 341 (App. Div. 2018). It applies when a particular controversy has been fully and fairly adjudicated, which bars further litigation. McAllister, 327 N.J. Super. at 172-73.

In assessing whether the doctrine applies, courts consider five factors:

> (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.
>
> However, "even where these requirements are met, the doctrine, which has its roots in equity, will not be applied when it is unfair to do so."
>
> [Vicinage 13, 454 N.J. Super. at 341 (quoting N.J. Div. of Youth & Fam. Servs. v. R.D., 207 N.J. 88, 115 (2011) and Olivieri v. Y.M.F. Carpet, 186 N.J. 511, 521 (2006)).]

The doctrine of collateral estoppel (or "issue preclusion") is "that branch of the broader law of res judicata, which bars relitigation of any issue which was actually determined in a prior action, generally between the same parties, involving a different claim or cause of action." Ibid. (quoting State v. Gonzalez, 75 N.J. 181, 186 (1977)). In determining whether collateral estoppel applies, a court considers the same factors as when deciding if res judicata applies. Pace v. Kuchinsky, 347 N.J. Super. 202, 215 (App. Div. 2002). Like res judicata, courts should not apply collateral estoppel "when it is unfair to do so[,]" even if a party shows all five requirements. Ibid.

In her brief, plaintiff did not state, analyze, or apply the res judicata factors. Instead, she summarily states there must be "some res judicata effect" and conveniently ignores that defendant's motion was denied without prejudice without a final determination of the issue on the merits.

Plaintiff further argues that the child support anti-retroactivity statute, N.J.S.A. 2A:17-56.23a, bars retroactive reduction of the child support order. We disagree. Defendant's application to reduce child support was based on the payment of derivative SSD benefits to the children, through plaintiff. Those derivative payments should have been treated as child support payments. They were not, resulting in plaintiff being overpaid child support at defendant's expense.

N.J.S.A. 2A:17-56.23a prohibits retroactive modification of child support and child support arrearages. Keegan v. Keegan, 326 N.J. Super. 289, 293 (App. Div. 1999). Thus, for example, "[a] change of circumstances, such as loss of a job, could . . . not be used as a basis to modify retroactively arrearages which already accrued under a child support order." Mahoney v. Pennell, 285 N.J. Super. 638, 643 (App. Div. 1995). In Keegan, we held that "the anti-retroactivity support statute's applicability is limited to prevent retroactive modifications decreasing or vacating orders allocated for child

support." Keegan, 326 N.J. Super. at 291. N.J.S.A. 2A:17-56.23a does not preclude correcting overpayments or the failure to properly credit payments on account. In Diehl v. Diehl, we confirmed that "retroactive reduction of child support was appropriate" where there was an "error . . . disregarding the SSD benefits paid to the child." 389 N.J. Super. 443, 452 (App. Div. 2006). N.J.S.A. 2A:17-56.23a did not bar defendant's motion. Rather, retroactive reduction or elimination of the support award is appropriate only to the date of the initial request, made by motion or advance notice. See, e.g., Ibrahim v. Aziz, 402 N.J. Super. 205, 214 (App. Div. 2008) (permitting three-year retroactivity to the date of plaintiff's initial motion).

Here, the trial court applied Diehl based on the error of disregarding the social security derivative benefits that the children were receiving from 2009 to 2020. Defendant attempted to bring the issue of double payments to the court's attention in April 2009 and May 2010 but was unsuccessful for failure to follow procedure. The date of the original request for modification was April 1, 2009. Pursuant to N.J.S.A. 2A:17-56.23a, and 42 U.S.C. § 666(a)(9)(C), support could be modified back to that date. Ruling to the contrary would result in an unfair windfall at defendant's expense.

Plaintiff argues that despite defendant being deemed disabled by the SSA, "that is not automatically a decision on the issue of disability and earning capacity." She argues "the SSA adjudication of disability constitutes prima facie showing that plaintiff is disabled, and therefore unable to be gainfully employed, and the burden shifts to defendant to refute that presumption via a hearing." She explains that because she was never able to refute defendant's disability, by questioning his doctors or subjecting him to an independent evaluation, "a court cannot accurately calculate support today that would have been awarded eleven years ago[.]"

This argument lacks merit, especially considering that plaintiff and her children have long benefitted from defendant being declared disabled. Having accepted the financial benefits of that fact-sensitive designation for many years, she is hard pressed to now suddenly challenge the basis for defendant's disability determination. Plaintiff and the children greatly benefitted from defendant being declared disabled by the SSA. Moreover, during an October 20, 2020 case management conference, plaintiff was offered an opportunity to participate in a plenary hearing. Plaintiff elected to forgo the plenary hearing and have the court decide the motion on the papers. She cannot now complain

that she was not afforded the opportunity at a hearing to refute the presumption that defendant was disabled from gainful employment.

Plaintiff additionally argues that the trial court's 2020 decision violated Rule 4:49-2 pertaining to motions for reconsideration, and Rule 4:50, pertaining to relief from orders and judgments. We disagree.

The time limit imposed by Rule 4:49-2 for filing motions for reconsideration does not apply to interlocutory orders or denials without prejudice. See e.g., Rusak v. Ryan Auto., L.L.C.,418 N.J. Super. 107, 117 n.5 (App. Div. 2011) (noting that the filing deadline applies only to final judgments and orders). Similarly, the time limit imposed by Rule 4:50-2 for filing motions for relief from orders and judgments does not apply to denials without prejudice. See Lopez v. Columbo, 379 N.J. Super. 96, 99 (App. Div. 2005) (noting that the trial court erred in failing to restore a complaint because a bankruptcy stay is "necessarily . . . without prejudice" and Rule 4:50 only applies to final judgments and orders).

Compelling Plaintiff To Refund Previously Paid Child Support

Plaintiff argues that the trial court erred by ordering disgorgement of child support already paid. Plaintiff accuses defendant of unclean hands and that the overpaid child support was already used by the children. She alleges

the trial court arbitrarily calculated the refund. Plaintiff relies on an unpublished opinion[1] that is factually distinguishable.

In Diehl, we held that the defendant-obligor was entitled to a credit against child support obligation for SSD benefit payments received by the child from the date of divorce to the date his obligation was modified. 389 N.J. Super. at 452-53. Here, there was no lump sum disability benefits payment. As we have noted, an obligor parent is entitled to a credit against child support arrears that accumulated "contemporaneous with SSD benefit payments" made to a child. Id. at 449.

The propriety and extent "of a credit depends upon the equities of the case" and are subject to limitations. Ibid. Thus, "[a]bsent specific evidence of the [obligor] parent's ability to pay, retroactive payments of [social security disability] benefits that are equivalent to or less than a support obligation are deemed a substitute for support and are applied to reduce arrears that accumulated during the period of disability" covered by the benefit payments. Ibid.; accord Sheren v. Moseley, 322 N.J. Super. 338, 341-44 (App. Div. 1999). The principles underlying the court's decision in Diehl apply equally to the circumstances presented here.

[1] Unpublished opinions have no precedential value, are not binding on any court, and shall not be cited by any court. R. 1:36-3.

The Repayment Rate Set By The Trial Court

The court ordered plaintiff to reimburse defendant for the overpaid child support at the rate of $525 per month and stayed the commencement date for those payments pending appeal. Defendant challenges the repayment rate, noting it will take eleven years to satisfy the $68,430.45 reimbursement obligation at that rate. He argues the court abused its discretion in setting that rate of repayment without considering "the financial positions of the parties, the amount owed, or any lump sum payment."

Enforcement and collection of support arrears is left to the sound discretion of the court. In re Rogiers, 396 N.J. Super. 317, 327 (App. Div. 2007). The trial court's obligation is to consider an obligor's ability to pay. See Crespo v. Crespo, 395 N.J. Super. 190, 195 (App. Div. 2007) (holding collection of arrears may be suspended until "such time as defendant has the ability to pay the arrears from income or assets, actual or imputed"). Those same principals should apply when setting the rate of repayment of a support overpayment.

The eleven-year repayment period imposed by the court was intended not randomly selected. The court intended to match the period the repayment to the period of overpayment. Despite affording the parties time to engage in

discovery, defendant has not demonstrated that plaintiff is able to reimburse the overpayment in less time or by lump sum payment. We discern no abuse of discretion.

Interest On The Support Arrearages

Defendant argues that the trial court did not account for post-judgment interest in his calculations. He contends Rule 5:7-5 implements N.J.S.A. 2A:17-56.23a by specifying that child support judgments are subject to post judgment interest. Defendant claims the $8,456.36 interest award was miscalculated by the court, thereby incorrectly increasing plaintiff's credits. We agree.

In May 2009, the court entered a child support arrears judgment against defendant for $19,920.13, representing his then existing arrearages. Upon setting defendant's child support at $0 retroactive to April 1, 2009, defendant asserts that the $19,920.13 judgment should have been reduced by at least one month of overpayment and any amounts received thereafter should have been credited toward reducing the judgment. Additionally, the court calculated defendant's overpayment through 2019 even though his SSD benefits were garnished through August 2020.

Rule 5:7-5(d) provides:

> In accordance with N.J.S.A. 2A:17-56.23a, past-due child support payments are a judgment by operation of law on or after the date due and are subject to post-judgment interest at the rates prescribed in Rule 4:42-11 at the time of satisfaction or execution. Past-due child support payable through the Probation Division shall be automatically docketed as civil judgments with the Clerk of the Superior Court on the first day of the month following the date the payment was due.

See also Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 5:7-5 (2022) ("Paragraph (d) renders past-due child support payments as a judgment by operation of law without special docketing and provides expressly for post-judgment interest calculations on child support judgments."). Rule 5:7-5(d) further provides that "[t]he Probation Division may, with the authorization of a child support judgment creditor, assist that party in calculating post-judgment interest in accordance with Rule 4:42-11 at the time an offer of satisfaction is tendered or an execution on assets is initiated." In instances, as here, where child support is paid through probation, probation is obligated under Rule 5:7-5(d) to calculate and collect post-judgment interest. Pryce v. Scharff, 384 N.J. Super. 197, 215 (App. Div. 2006); see also Administrative Directive #24-19, "Child Support Enforcement – Calculation of Interest on Child Support" (Dec. 2, 2019) (providing for calculation of interest on child support judgments). We conclude that post-judgment interest likewise accrues on support

overpayment judgments. See Pressler & Verniero, cmt. 1.2.1 on R. 4:42-11(a) (2022) ("It is clear that the post-judgment interest provided for by the rule applies to a money judgment obtained in any cause of action.").

It appears that post-judgment interest began accruing as of April 1, 2009, not the following month. We therefore direct that post-judgment interest be recalculated pursuant to Rule 5:7-5(d) "at the rates prescribed in Rule 4:42-11[,]" and remand for the Probation Department to calculate the amount of interest that is due. Pursuant to Rule 5:7-5(d), subsequent interest that accrues during the repayment period can be calculated by Probation when the judgment would otherwise be satisfied by a tendered payment.

Affirmed in part and remanded in part. We do not retain jurisdiction.