

No. A-001380-22

IN THE
SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

**IN THE MATTER OF THE ESTATE OF TYRONE MAY, SR.,
Deceased**

On Appeal From The Superior Court – Chancery Division Of
Camden County, Docket No. CAM-CP-0097-20, From The Order Of
Hon. Honorable Sherrii L. Schweitzer J.Ch., Dated November 2,
2022, Awarding Counsel Fees And Sanction
Against Hazel May

APPELLANT HAZEL MAY'S OPENING BRIEF

LAWRENCE ALAN KATZ
Counsel for Appellant
Lento Law Group
3000 Atrium Way, Suite 200 Mt.
Laurel, NJ 08054
P: (856) 652-2000 Ext. 497
F: (856) 375-1010
lakatz@lentolawgroup.com

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PROCEDURAL HISTORY

This appeal arises from the Trial Court’s abuse of its discretion in ordering the Appellant to pay her adversary’s counsel fees and additional (duplicative) sanctions. In arbitrarily and unreasonably awarding the fees and sanctions, the Trial Court ignored the irrefutable fact that the Appellee engaged in a fishing expedition of an epic magnitude, delving into subjects totally irrelevant under probate law and often based solely on the unsupported “feelings” that some things must be true. Even worse, the Trial Court permitted and encouraged the Appellee’s discovery that was more of a flight of fancy than a legitimate search for relevant evidence. Then, the Trial Court ordered the Appellant to pay for Appellee’s counsel’s time engaged in these unnecessary and irrelevant activities. As if this is not enough to warrant the reversal of the fees and sanctions award, the Trial Court demonstrated a severe prejudice against the Appellant’s counsel through several disparaging remarks made by the Trial Court about said counsel. For these reasons, a reversal of the Trial Court’s December 2, 2022 Order is necessary to avoid a gross miscarriage of justice.

This lawsuit in the Camden County Superior Court, Chancery Department, Probate Division,¹ involves a Mother and Estranged Wife, each seeking to

¹ As the Court is aware, the procedural history of a lawsuit is usually contained in the court’s docket. The docket presents an official, organized documentation of what documents were filed, the date and order of filings, by whom the documents were filed, and when orders were entered. Appellant has been unable to obtain a docket from the Trial Court, and this has impeded a clear presentation of some of

administer the decedent's estate and divide probate assets. Because of dueling complaints, motions, cross-motions, etc., the use of the designations Plaintiff and Defendant will not contribute to a clear understanding of the case. Appellant is Hazel May, the mother of Tyrone May, deceased. Appellee is Teresa May, who had been the estranged wife of Tyrone May for 10 years before his death. For purposes of clarity, in this brief, the parties will be referred to as Mother and Estranged Wife. Similarly, references to Appellant's opening Appendix will be stated as M (for mother) A; "MA-#."

Tyrone May died of Covid-19 related complications on April 13, 2020. (MA-48) Mother filed a verified Amended Complaint seeking to be appointed Administratrix of Tyrone's estate. On April 23, 2020, the Trial Court issued a Rule to Show Cause why Mother should not be appointed Administratrix. (MA-71) On April 29, 2020, the Trial Court entered a modified Consent Order addressing funeral arrangements, control of the funeral, rights of Estranged Wife related to the funeral, etc. (MA-76)

On July 24, 2020, Estranged Wife filed a cross-motion to have herself appointed the Administratrix. It was accompanied by Estranged Wife's Certification. (MA-149, 151, 161) Mother responded to the cross-motion.

the procedural history. Several telephone conversations with the Trial Court staff resulted in the surprising revelation that the court maintains no written, typed, or digital docket of any type.

On August 14, 2020, the Trial Court appointed Mother as temporary Administratrix of Tyrone's estate. During the period of Fall 2020, the Trial Court focused on the initial accounting of probate assets. A series of documents were filed by both parties related to these issues. On November 20, 2020, after a hearing, Mother was removed as the temporary Administratrix. The Trial Court also permitted Estranged Wife to file a Petition for Counsel Fees, to be determined at a later time. (MA-68, 78)

The parties then engaged in probate assets discovery. The details of this discovery, and its unreasonable scope, will be discussed in the Statement of Facts. An Order dated March 1, 2021 addressed discovery issues. The Trial Court properly ordered Mother to bear the costs of her deposition of the Estranged Wife, but in the first of many unreasonable orders, the Trial Court also ordered Mother to advance the costs of Estranged Wife's taking of Mother's deposition. (MS-78)

The May Funeral Home was owned by Mother and her husband, Thomas. The decedent, Tyrone, had *no* ownership interest in it. Even though the Trial Court had no jurisdiction over the May Funeral Home, which was not a party to the lawsuit, on April 7, 2021, it entered a Receivership Order (although a Receiver was never appointed) for the funeral home, and compelled this non-party and those involved with the funeral home to provide the court-appointed Administratrix corporate records of several businesses, business tax returns, and governmental

filings. Even though life insurance proceeds are not subject to probate, the Trial Court also ordered an insurance agent to produce documents concerning insurance policies on Tyrone's life. Mother was further ordered to make certain that insurance companies and the insurance agent, over whom she had no control, complied with the Order. Additional unreasonable requirements were contained in the Order. Once again, all of the financial burden was placed on Mother. (MA-82)

On April 16, 2021, the Trial Court again ordered that Mother and her husband provide a massive amount of corporate and business records from an entity that was not a party to the lawsuit. (MA-87)

In a particularly bizarre part of the Order, the Trial Court compelled Mother's counsel to "clarify the role of Mr. John Groff in the Lento law firm"² and his role in the accounts into which insurance proceeds were placed. (MA-87) It is essential for the Court to understand that while Mr. Groff is the Lento Law Group's Firm Administrator, he had never been present at any hearing in this lawsuit, is not an attorney, and had no involvement in any legal aspect of this lawsuit. As will be discussed in the Statement of Facts, the Trial Court had a vendetta against Mr. Groff and that disdain for Mr. Groff contributed to the Trial Court's prejudicial treatment of Mother and her counsel. The Trial Court had no right to inquire into the internal

² The Court should note that the Lento Law Firm, a Pennsylvania entity, did not represent Mother. She was represented by the Lento Law Group, a New Jersey firm with offices throughout the nation.

operations of Mother's law firm and this vendetta provides an explanation for its arbitrary and unreasonable conduct.

Even though Mother had been removed as Administratrix on November 20, 2020, the Trial Court required Mother to pay the mortgage and other expenses on the property owned by Tyrone when he died. (MA-87, ¶ 7)

This Order also required Mother to pay the court-appointed Administratrix's fees associated with hiring an expert to analyze the irrelevant funeral home business records, the production of which was improperly ordered. (MA-87)

On April 20, 2021, the Trial Court issued another discovery order. This permitted the court-appointed Administratrix to retain a CPA to review the irrelevant funeral home tax documents. This expense was to be paid by the funeral home even though it was not a party. The Trial Court also ordered Joseph Lento, Esquire, to provide information about protected conversations with Mother and legal advice provided to her. Neither the attorney-client nor work product privileges restrained the Trial Court from its non-stop attack on Mother and her counsel. In another unreasonable and punitive act, the Trial Court also chastised Mother and her counsel for not obtaining documents from the independent insurance agent over whom they had no control. The Court also compelled the non-party, May Funeral Home, to pay the court-appointed Administratrix \$5,095.00 and the Estranged Wife's counsel fees of \$10,825. (MA-91, 92)

The Trial Court's April 23, 2021 Order, continued to require the production of irrelevant documents pursued by Estranged Wife's counsel in her search for documents concerning assets not subject to probate. Despite the irrelevant nature of the documents, the Trial Court continued to approve of Estranged Wife's counsel's boundless, but unjustified, harassment of Mother and the business she and her husband owned. (MA-95)

Not to anyone's surprise, on May 21, 2021, Mother's Motion to Reconsider the previously awarded counsel fees was granted in name only; it was reconsidered and the punitive fees to be paid by the non-party remained. (MA-101)

On May 27, 2021, the Trial Court ordered Mother to provide proof that, even though she was no longer the Administratrix, she was still paying the mortgage on the house she did not own. The production of irrelevant funeral home records and insurance documents continued. (MA-102)

On June 3, 2021, the Trial Court permitted the court-appointed Administratrix and the Estranged Wife's counsel to submit a petition for additional fees incurred since the prior fee order. Most of these fees were associated with the improper fishing expedition counsel engaged in with the approval, perhaps even encouragement, of the Trial Court. (MA-104) The Trial Court also ordered the sale of Tyrone's home. (MA-106)

On June 30, 2021, the Trial Court continued to approve Estranged Wife's unwarranted obsession with the irrelevant funeral home records and insurance documents. (MA-206)

Hearings were held from July 30, 2021 through November 28, 2022. They assessed cross-motions for summary judgment, reimbursement of Mother for the mortgage and related expenses she was forced to pay on the house she did not own, which assets were subject to probate, and Estranged Wife's counsel's continued obsession with insurance documents even though the proceeds were not subject to probate.

On November 2, 2022, the Trial Court entered the Order upon which this appeal is based. It awarded Estranged Wife's counsel an *additional* \$44,000.00 in fees and an additional \$20,000.00 in duplicative sanctions. (MA-66) Thereafter, this appeal was filed. (MA-1)

STATEMENT OF MATERIAL FACTS

As previously noted, this lawsuit in the Camden County Superior Court, Chancery Department, Probate Division, involves a Mother and Estranged Wife, each seeking to administer the decedent's estate and divide probate assets.

I. The May Marriage And Divorce

On April 13, 2020, Tyrone E. May, Sr. died after succumbing to COVID-19. Since he was a teenager, and at all times relevant, Tyrone participated in the

operations and workload of the family business, May Funeral Homes, Inc. However, he never had any ownership interest in the family business. Tyrone is survived by his mother, Hazel W. May, and by his three adult children, Jasmyne N. May, Tyrone E. May, Jr., and Tiffany Z. May (hereinafter, the “May Family”), who are all involved with the family funeral home business.

Tyrone married the Estranged Wife, Teresa May, on August 27, 2006. Tyrone and Teresa only lived together as a married couple for four years; they separated in October 2010. Even before the formal separation, Tyrone purchased a house to live in for himself on June 21, 2010. Specifically, in October 2010, Estranged Wife threw Tyrone out of a house that she owned. Tyrone spent the remainder of his life in his own house.

Since October 2010, Estranged Wife has not been involved in any way in the May Funeral Home. Between October 2010 and present, Tyrone and Estranged Wife had little or no contact with each other. Tyrone entered a romantic relationship with Zolaina Santiago in 2011. Zolaina Santiago and Tyrone were romantically involved until his death. In other words, Zolaina and Tyrone were together for approximately nine of the nearly ten years that Estranged Wife and Tyrone were separated.

During this time, although Estranged Wife had zero involvement in the May Funeral Home, Estranged Wife still received medical benefits through their marriage. Neither Tyrone nor the May Funeral Home received anything in return.

Estranged Wife sought to formally end the marriage and filed a divorce action in the Camden County Superior Court on February 11, 2020 (Docket No. FM-04-1082-19). Tyrone's only opposition during the course of this action was during multiple attempts by Estranged Wife to obtain financial relief through *pendente lite* motions, with the most recent motion being filed with the court on February 11, 2020. These motions were filed by lawyers who charge approximately \$400.00 per hour and Estranged Wife expected Tyrone to pay for such legal fees as part of the relief sought in said *pendente lite* motions.

Plainly stated, Estranged Wife desired to end the marriage with Tyrone through divorce. Plainly stated, Tyrone desired to end the marriage with Teresa through divorce. The Decedent passed away intestate before the divorce action could be fully resolved. (MA-208)

II. Hearings And Orders In This Case

Mother filed a verified Amended Complaint seeking to be appointed Administratrix of Tyrone's estate. On April 23, 2020, the Trial Court issued a Rule to Show Cause why Mother should not be appointed Administratrix. (MA-71) On April 29, 2020, the Trial Court entered a modified Consent Order addressing funeral

arrangements, control of the funeral, rights of Estranged Wife related to the funeral, etc. (MA-76)

On July 24, 2020, Estranged Wife filed a cross-motion to have herself appointed the Administratrix. It was accompanied by Estranged Wife's Certification. (MA-149, 151, 161) Mother responded to the cross-motion.

The Trial Court held no less than 11 hearings and issued no less than 18 Orders. Most of these hearings and resulting orders were necessitated by Estranged Wife's insistence on documents and information concerning property and assets clearly not subject to probate.

III. Disputed Assets

Tyrone was not wealthy, and he had very limited assets when he died. However, only two of them were subject to probate, Tyrone's 401(K) account and the home he owned by himself.

Tyrone's 401(K)

Tyrone opened a 401(K) account while separated from Estranged Wife. However, he completed the application as if he was not married and named Hazel as his beneficiary. Because he was "legally" married, and federal law required Estranged Wife's signature before Tyrone could name anyone other than her as a beneficiary, the designation of Hazel as the beneficiary was void. Hazel's counsel obtained the 401(k) disbursement check, notified the Trial Court and other

interested parties, and arranged for the 401(k) proceeds to be paid to the court-appointed Administratrix. (Tr. 7-30-21 at 4, 25)

Tyrone's Home

As an Estate asset, the Trial Court observed, "I believe that Ms. [Hazel] May is entitled to reimbursement for the expenses that she has been carrying for the marital home. And once that's done, then Teresa gets the first 50,000, and the rest of it gets shared in accordance with the statute." (Tr. 7-30-21 at 11) Even though Mother had been removed s Administratrix and had no ownership interest in the house, on November 20, 2020, the Trial Court required Mother to pay the mortgage and other expenses on the property owned by Tyrone when he died. (MA-87, ¶ 7) Obviously recognizing that it had exceeded its authority, the Trial Court ruled that Mother could be reimbursed for the expenses she paid. (Tr. 7-30-21 at 11)

Washington Funeral Home

Mother and her husband, Thomas, owned the May Funeral Home and related businesses. Estranged Wife's counsel admitted that Estranged Wife *never believed* that Tyrone had any ownership interest in the business. Despite recognizing that Tyrone had no ownership interest in the business, Estranged Wife and her counsel, with the permission and encouragement of the Trial Court, demanded, obtained, and analyzed the May Funeral Home tax documents, financial records, other business records, and government filings. Multiple hearings (five of eleven hearings)

addressed these funeral home documents and were the subject of several orders. The Trial Court prepared the appointment of a receiver of the funeral home and authorized that a CPA be retained to analyze the funeral home records. (MA- 82, 87, 91, 92, 95, 102, 206; Tr. 11-20-20 at 19-21, 7-10-21 at 30-32, 8-10-21 at 8-9, 11-16-21 at 18, and 10-28-22 at 16, 36) Estranged Wife’s counsel sought and received counsel fees and additional sanctions based on her time and trouble obtaining the May Funeral Home records—which they frequently asserted would establish that Tyrone had an ownership interest in the business—even though they actually knew that Tyrone had no such ownership interest. (MA-87) In doing so, Estranged Wife and her counsel perpetrated a fraud on the Trial Court, the court-appointed Administratrix, and Mother and her counsel.

Insurance Policies

It is black-letter law that “[t]he transfer of proceeds under an insurance policy is . . . a nonprobate asset.” *Edgardo Vasconi v. Guardian Life Ins. Co.*, 124 N.J. 338, 344 (1991). Neither the estate beneficiaries established by statute nor the Estate’s administrator has any claim over insurance policy proceeds. Nonetheless, Estranged Wife and her counsel, with the support and encouragement of the Trial Court, expended an absurd amount of time and effort obtaining life insurance company documents. Even though Mother produced documentation that Tyrone had purchased life insurance policies, changed the beneficiary from Teresa to his

Mother, and that the insurance companies made payment pursuant to the policy and change requests, Estranged Wife and her counsel, as well as the Trial Court, demanded additional documentation and the testimony of the life insurance agent. On multiple occasions, the Trial Court compelled Mother and her counsel to obtain documents from the insurance companies over which they had absolutely no control. Then, as with the funeral home records, counsel fees and additional sanctions were awarded to Estranged Wife and her counsel for the time spent obtaining documents clearly irrelevant to any probate issue before the Trial Court. In fact, several hearings were almost exclusively dedicated to the insurance policies that are not part of the Estate and over which the Estranged Wife has no claim. (MA-82, 87, 91-92, 102, 206; Tr. 7-30-21 at 3, 4, 6-11, 14, 16, 19-23, 34-47, 8-10-21 at 6, 7, 13-17, 22, 25, 27, 43, 44, 51, 4-28-22 at 6-85, 10-28-22 at 2-15, 18-24, 30, 34-36, 42, 43, 45, 50, 11-16-21 at 9, 14, 22, 33-38, 51, 58, 60, 64, 2-11-22 t 4, 5, 8-15, 2-7-22 at 5-21, 27, 29-44, 10-28-22 at 12, 18, 20, 22-24, 30, 31, 34, 35, 37, 41-43, 50, 4-20-22 at 6-53)

Mother and her husband transferred some of the insurance proceeds to a special Wyoming Trust. As the beneficiaries of the insurance proceeds, they had the right to use, invest, or transfer the money to any account they chose. However, despite it being irrelevant to the probate issues, Estranged Wife and her counsel explored the Wyoming Trust and persuaded the Trial Court to order the release of

funds from the trust in violation of Wyoming law. (Tr. 7-30-21 at 15, 27, 37, 43, 8-10-21 at 22, 27, 10-28-22 at 11, 13, 30, 31, 41, 50, 2-7-22 at 17-19, 24, 43, 10-28-22 at 11, 13, 30, 33, 41, 50, 11-16-21 at 34, 35, 55, 56, 2-11-22 at 13, 15)

IV. The Trial Court's Prejudice Against Mother's Counsel

“Central to a judicial proceeding is the right to a fair trial before an impartial judge.” *McGory v. SLS Landscaping*, 463 N.J. Super. 437, 458 (App. Div. 2020), *citing, State v. Storm*, 141 N.J. 245 (1995). In this case, the Trial Court was anything but impartial. Throughout the hearing, the Trial Court repeatedly disparaged Mother's law firm and their attorneys. See the following examples:

- Referring to the Lento firm, the Court said, “I got so much nonsense from them before it was ridiculous. So they're not top on my list right now.” (Tr. 8-10-21 at 60)
- “Because the Lento Law Firm has been the worst, if I could figure out a way to sanction them, I would because they have been despicable in this case” (Tr. 4-20-22 at 47)
- “So you know what . . . she [Mother] ought to go back and sue that [Lento] law firm.” (Tr. 4-28-22 at 84)
- “So, the next phone call you [Attorney Gallagher] make after the case is over should be to the Lento law firm to put their carrier on notice because Hazel May, because you represent her now, you have an obligation to tell her what her recourse is against that law firm.” (Tr. 4-28-22 at 66)
- “It's her -- her [Mother] investment with the Lento Law Firm. If she's foolish enough to leave it with these people . . .” (Tr. 2-7-22 at 19)
- Court accuses Lento firm of malpractice. (Tr. 8-10-21 at 28; 4-10-22 at 39; 10-28-22 at 14)
- Refers to the Lento firm as causing suspicion. (Tr. 2-7-22 t 43)
- “[A]ll these other things are going on with Lento . . .” (Tr. 2-7-22 at 43)
- “[F]rom the beginning the Lento firm kind of dropped the ball on this thing over and over and over again.” (Tr. 4-4-22 at 64)

Multiple disparaging remarks about only one party's law firm is not the hallmark of an impartial judge.

There is another interesting statement by the Trial Court that reflects its partiality against, and prejudice toward, Mother and her counsel. In its April 16, 2021 Order, the Trial Court compelled Mother's counsel to "clarify the role of Mr. John Groff in the Lento law firm" and his role in the accounts into which insurance proceeds were placed. (MA-87) It is essential for the Court to understand that while Mr. Groff is the Lento Law Group's Firm Administrator, he had never been present at any hearing in this lawsuit, is not an attorney, and had no involvement in any legal aspect of this lawsuit. Mr. Groff and the Trial Court had a prior, unpleasant history. Mr. Groff was involved in a lawsuit before Judge Formular. Representing himself, Mr. Groff asked Judge Formular to vacate or otherwise revise an order she had issued. The Judge told Mr. Groff that the court never provides the relief he requested. The Judge also publicly insulted Mr. Groff from the bench. Mr. Groff then showed the Judge an order in another case, signed by her, granting the identical relief she had just told Mr. Groff was never granted. It is respectfully submitted that the public embarrassment Mr. Groff caused Judge Formular was, at least in part, the reason that the Trial Court acted so improperly toward Mother's law firm.

Summary

The Estranged Wife and her counsel engaged in a massive fishing expedition. They spent an extraordinary amount of time and money seeking the May Funeral Home tax returns, business records, and other documents even though they knew that Tyrone had no ownership interest in the business. Furthermore, even though life insurance benefits are not part of the estate and are not deemed probate assets, Estranged Wife and her counsel spent an extraordinary amount of time and money seeking life insurance documents. Unfortunately, the Trial Court humored them and permitted, even encouraged, their time-consuming hunt for legally irrelevant materials. (Perhaps the Trial Court did so because of its prejudice toward the Lento firm where Mr. Groff, who had previously humiliated the Judge, was employed.)

In the most basic terms, Estranged Wife and her counsel essentially created busy work and then sought to be paid by Mother for performing that busy work. Under these circumstances, the Trial Court's grant of additional counsel fees and a duplicative sanction was arbitrary, unreasonable, and an abuse of the Trial Court's discretion.

QUESTION BEFORE THE COURT

This is a probate matter. The decedent's estranged wife and her counsel engaged in extensive discovery and motions to obtain voluminous records from the decedent's parents' business, in the hope of proving that the decedent had an ownership share in the business, even though they *knew* the decedent had no such interest. The decedent's estranged wife and her counsel also engaged in extensive discovery and motions to obtain life insurance documents, even though it is black-letter law that life insurance proceeds are not estate assets. The estranged wife's counsel then sought attorney's fees and other sanctions for the time spent engaging in the frivolous, unnecessary, and irrelevant discovery. Where the Trial Court awarded counsel fees substantially related to the improper discovery, and other duplicative sanctions, under these circumstances, should they be deemed an abuse of discretion because the award was arbitrary and unreasonable?

SUGGESTED RESPONSE: Yes. The Trial Court's award of counsel fees and sanctions should be reversed.

ARGUMENT

I. Standard Of Review

“Whether a court rule permits an award of counsel fees is a matter of legal interpretation. *Wiese v. Dedhia*, 188 N.J. 587, 592, 911 A.2d 479 (2006). Accordingly, this [Honorable Court] review[s] de novo the determination of whether counsel fees are permissible.” However, in doing so, the Court applies

the abuse of discretion standard. *Matter of Guardianship of DiNoia*, 464 N.J. Super. 562, 566-67 (App. Div. 2019); *Underwood Props., LLC v. City of Hackensack*, 470 N.J. Super. 202, 211-12 (App. Div. 2022).

“An abuse of discretion is demonstrated if the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error of judgment.” *In re Estate of Ehrlich*, 427 N.J. Super. 64, 67 (App. Div. 2012). The Court “may find an abuse of discretion when a decision ‘rest[s] on an impermissible basis’ or was ‘based upon a consideration of irrelevant or inappropriate factors.’” *In re Estate of Sogliuzzo*, No. A-3863-11T4, 2013 N.J. Super. Unpub. LEXIS 2895, at *31 (App. Div. Dec. 9, 2013). Furthermore, an abuse of discretion is found where the sanctions are based on “an arbitrary, capricious, whimsical, or manifestly unreasonable judgment.” *Flagg v. Essex Cty. Prosecutor*, 171 N.J. 561, 571 (2002).

When reviewing an award of counsel fees, the Court must determine the “reasonableness of the time actually expended in the litigation.” *Monogram Credit Card Bank of Ga. v. Tennesen*, 390 N.J. Super. 123, 125 (App. Div. 2007).

Any sanction imposed must be “fair and reasonable.” “Generally, financial sanctions . . . are limited to orders requiring reimbursement of the fees and expenses of a party.” *Int’l Ass’n of Machinists & Aero. Workers v. Werner-Masuda*, Nos. A-

4937-09T2, A-5067-09T2, 2012 N.J. Super. Unpub. LEXIS 2696, at *46-47 (App. Div. Dec. 11, 2012).

II. The Trial Court's November 2, 2022 Order Awarding The Estranged Wife \$44,000 In Additional Counsel Fees Was Unreasonable And An Abuse Of The Trial Court's Discretion Because The Work For Which Counsel Billed Was Unnecessary And Improper. (The Trial Court's Order is located at MA-66.)

Estranged Wife and her counsel sought the reimbursement of fees for the time and effort attempting to obtain documents concerning the May Funeral home. They filed several motions and participated in several hearings in pursuit of this information. They argued that this information was necessary to determine whether Tyrone had any ownership interest in the funeral home. However, in asserting the need for this information, Estranged Wife and her counsel perpetrated a fraud on the Trial Court, Mother, and her counsel. None of this information was necessary because Estranged Wife *knew* that Tyrone had no ownership interest in the funeral home. (Tr. 8-10-21 at 7-8) In light of this admission of knowledge, it can be presumed that the charade of trying to learn about Tyrone's ownership interest in the funeral home was nothing more than an effort by Estranged Wife and her counsel to harass her former in-laws and seek retribution for her in-law's legal efforts to control the funeral of their son, Tyrone. Whatever the reason for pursuing this completely unnecessary discovery, the Trial Court should have never awarded counsel fees for the time spent pursuing this frivolous discovery. The Trial Court's

award of counsel fees for the time spent allegedly seeking an answer to a question (i.e., whether Tyrone had an ownership interest in the funeral home) they already knew, was both arbitrary and unreasonable. It constituted an abuse of discretion requiring the reversal of the additional attorney fees awarded in the November 2, 2022 Order.

The Trial Court also improperly awarded counsel fees for the time involved in pursuing information and documents about life insurance policies on Tyrone's life. The Estranged wife and her counsel questioned whether Tyrone had actually or properly changed the beneficiaries from Estranged Wife to his parents. It is black-letter law that "[t]he transfer of proceeds under an insurance policy is . . . a nonprobate asset." *Edgardo Vasconi v. Guardian Life Ins. Co.*, 124 N.J. 338, 344 (1991). As such, the insurance policies were irrelevant to the probate issues before the Trial Court. If Estranged Wife and her counsel truly believed that the insurance benefits had been wrongfully paid to Tyrone's parents, they should have filed a lawsuit directly against the insurance companies. Not only did the Trial Court err when it issued several orders requiring Mother to obtain records from insurance companies over which she had no control, but it abused its discretion by awarding counsel fees for pursuing discovery on matters completely irrelevant to the probate issues before the court. Awarding counsel fees for a party pursuing frivolous

discovery is both arbitrary and unreasonable. This Honorable Court should reverse the attorney fees awarded in the November 2, 2022 Order.

III. The Trial Court's November 2, 2022 Order Awarding The Estranged Wife An Additional \$20,000 In Sanctions Was Unreasonable And An Abuse Of The Trial Court's Discretion Because The Work For Which Counsel Billed Was Unnecessary And Improper And The Sanctions Were Duplicative Punishment. (The Trial Court's Order is located at MA-66.)

As discussed above, it was an abuse of discretion for the Trial Court to award Estranged Wife's counsel fees for pursuing absolutely unnecessary and irrelevant discovery. Adding insult to injury, the Trial Court awarded a general sanction of \$20,000.00 on top of the counsel fees sanction. For the same reasons stated above, this additional monetary sanction was arbitrary and unreasonable and should be reversed.

Furthermore, the Appellate Division has held, "Generally, financial sanctions . . . are limited to orders requiring reimbursement of the fees and expenses of a party." *Werner-Masuda, supra*. The additional sanction of \$20,000.00 is merely duplicative, and therefore, excessively punitive. As such, the award of this extra \$20,000.00 was arbitrary and unreasonable and the November 2, 2022 Order awarding them should be reversed.

Despite Mother's repeated arguments that the funeral home business and tax records, and insurance documents, were irrelevant to the probate issues before the Trial Court, and their discovery was contrary to well-recognized legal doctrines,

Estranged Wife and her counsel continued to pursue the discovery. Whether this was simply caused by their lack of knowledge of the law, or their vindictive harassment of Tyrone's parents, it was improper and unnecessary. Estranged Wife and her counsel's wrongdoing should have never resulted in an award of counsel fees against Mother, let alone this duplicative and excessively punitive additional \$20,000.00 award. Therefore, the November 2, 2022 Order awarding them should be reversed.

Why the Trial Court awarded these monetary sanctions is unclear. However, the Court should not discount that it was motivated in part by the embarrassment caused the Judge in open court, several years earlier, by John Groff, the Mother's law firm's administrator. If this played even the slightest role in the Trial Court's award of counsel fees and sanctions, it renders them arbitrary and warrants their reversal.

CONCLUSION

The Trial Court awarded sanctions against Mother to reimburse Estranged Wife and her counsel for the hours spent pursuing discovery that was completely irrelevant to the probate issues before the court, and/or to answer a factual question that they knew not to be in dispute. Estranged Wife and her counsel chose to pursue discovery that was irrelevant under the law and undisputed facts and then asked to be paid for the busywork that it created. The award of counsel fees and duplicative

monetary damages rewarded the Estranged Wife and her counsel for their abuse of the discovery process and the legal system. It should not be tolerated.

Accordingly, Mother–Hazel May respectfully requests that this Honorable Court reverse the award of \$44,000.00 in counsel fees and \$20,000.00 in additional monetary sanctions contained in the Trial Court’s November 2, 2022 Order. (MA-66)

Respectfully submitted,

THE LENTO LAW GROUP

s/ Lawrence A. Katz, Esq.

LAWRENCE A. KATZ

Counsel for Appellant

Hazel May/Mother

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

IN THE MATTER OF THE ESTATE	)	CIVIL ACTION
OF TYRONE MAY, SR.,)	
	)	DOCKET A-001380-22T1
CROSS APPELLANT,)	
)	
	)	ON APPEAL FROM:
	)	SUPERIOR COURT OF NEW JERSEY
	)	CHANCERY DIVISION-PROBATE PART
	)	CAMDEN COUNTY
)	
	)	DOCKET BELOW: CP-0097-20
)	
	)	SAT BELOW:
	)	HONORABLE NAN S. FAMULAR,
	)	P.J.CH.
	)	HONORABLE SHERRI L.
	)	SCHWEITZER, P.J.CH.

TERESA MAY'S BRIEF
IN OPPOSITION TO HAZEL MAY'S APPELLATE BRIEF

Patricia Darden, Esquire
519 Sicklerville Road
Suite 2
Sicklerville, New Jersey 08081

Telephone: (856)262-1114
Telefax: (856)262-0130
E-Mail: patriciaadarden@aol.com

Attorney for Teresa May
Cross Appellant

Patricia A. Darden, Esquire
Attorney Identification No: 006631975

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APPENDIX

PROCEDURAL HISTORY

Tyrone May, Sr. passed away on April 13, 2020. On April 23, 2020, the Lento Law Firm filed an Order to Show Cause and Complaint on behalf of Hazel May, mother of the decedent, requesting that she be appointed Administratrix of her son Tyrone May, Sr.'s estate (107-A). On April 24, 2020, Patricia A. Darden, Esq. filed a Cross-Complaint and Order to Show Cause on behalf of Teresa May, the wife of the deceased, requesting that she be appointed Administratrix. (159-A)

The Honorable Nan S. Famular, P.J.Ch. held an emergent hearing via Zoom on April 24, 2020. The parties reached an agreement regarding how funeral arrangements would be handled, including the transportation of wife and a companion, and the recognition of Teresa May as the lawful spouse in any program, obituary, or written document. (74-A)

Thereafter, hearings were held on the following dates: April 24, 2020¹, August 14, 2020², October 22, 2020³, November 20, 2020⁴, April 5, 2021⁵, April 15, 2021⁶, April 19, 2021⁷, April 22, 2021⁸, April 27, 2021⁹,

¹ 1T- April 24, 2020 Transcript

² 2T- August 14, 2020 Transcript

³ 3T- October 22, 2020 Transcript

⁴ 4T- November 20, 2020 Transcript

⁵ 5T- April 5, 2021 Transcript

⁶ 6T- April 15, 2021 Transcript

⁷ 7T- April 19, 2021 Transcript

⁸ 8T- April 22, 2021 Transcript

⁹ 9T- April 27, 2021 Transcript

May 12, 2021¹⁰, May 18, 2021¹¹, May 21, 2021¹², July 30, 2021¹³, August 10, 2021¹⁴, October 29, 2021¹⁵, November 16, 2021¹⁶, February 7, 2022¹⁷, February 11, 2022¹⁸, April 4, 2022¹⁹, April 20, 2022²⁰, April 28, 2022²¹, October 28, 2022²².

Numerous Court Orders were issued before and after the above proceedings. In an effort to provide clarity, eliminate duplication, and condense this filing, this counsel respectfully requests permission to continue the presentation of Court Orders and transcripts pertaining to this matter in the Statement of Facts and arguments herein.

STATEMENT OF FACTS

Tyrone May, Sr. died on April 13, 2020, due to COVID. He was a long-time employee at his family's business, May Funeral Homes, listed with the State of New Jersey as a Domestic Profit Corporation beginning January 22, 1975. At the time of his death, Tyrone Sr. was serving as a General Partner overseeing the Company's six funeral homes because his

¹⁰ 10T- May 12, 2021 Transcript

¹¹ 11T- May 18, 2021 Transcript

¹² 12T- May 21, 2021 Transcript

¹³ 13T- July 30, 2021 Transcript

¹⁴ 14T- August 10, 2021 Transcript

¹⁵ 15T- October 29, 2021 Transcript

¹⁶ 16T- November 16, 2021 Transcript

¹⁷ 17T- February 7, 2022 Transcript

¹⁸ 18T- February 11, 2022 Transcript

¹⁹ 19T- April 4, 2022 Transcript

²⁰ 20T- April 20, 2022 Transcript

²¹ 21T- April 28, 2022 Transcript

²² 22T- October 28, 2022 Transcript

father, Thomas May, was medically incapacitated.

Teresa May met Tyrone Sr. when he handled her father's funeral in March 2004. He called her for a date the week after the funeral and then moved into her Pennsauken townhouse with two of his children, Tyrone Jr. and Jasmyne, a couple of months later. Jasmyne was in 5th grade and Tyrone Jr. was in the 4th grade when they moved in with Teresa. The couple married on August 27, 2006. Due to an affair, Teresa kicked Tyrone out of her townhouse in 2009. Tyrone's daughter Jasmyne remained with Teresa because it was her Senior year of high school. Theresa and Tyrone reconciled before Jasmyne's graduation in 2010 and began looking for a larger home to accommodate their combined families, which included Teresa's youngest son. The Sicklerville home was purchased in 2010 and the combined families all moved in together at the same time. The utilities and cable were in Teresa's name and the deed was in Tyrone's name.

Teresa also worked at the May Funeral Home in Sicklerville, which was walking distance from the marital home until 2012. (154-A) In 2012, Teresa left the marital home because Tyrone was having another affair. The parties would break up and reconcile over and over again because of Tyrone's infidelity. Teresa last spent overnight time in her home the weekend of December 28, 2018, after celebrating her birthday there (153-

A). In February of 2019, upon learning of an affair with Zoey Santiago, Teresa finally filed for divorce.

Tyrone was served with the divorce complaint on June 15, 2019, but refused to file an Answer; instead, he sought another reconciliation. Teresa was represented by Patricia A. Darden, Esq., and on February 11, 2020, a Motion for Pendente Lite Relief was filed on her behalf after May Funeral Home terminated her medical benefits. The Lento Law Firm filed an opposition to the Motion but once again did not file an Answer. The pending unanswered Complaint was dismissed on April 16, 2020, when Teresa's attorney advised the Court of Mr. May's death. (68-A)

On August 14, 2020, Judge Famular executed an Order appointing Hazel May as Temporary Administratrix of the Estate (R-1). Pursuant to the Order, the parties were permitted to engage in discovery and Hazel was required to file an Accounting. The First Accounting was dated October 9, 2020. (R-3). The Court held a hearing concerning the inadequacies in the Accounting highlighted by Teresa May's counsel on October 22, 2020. The Court advised the parties that Hazel May would be removed if the inadequacies existed and stated, "When I look at it, Ms. Darden, if it says what you say it says or lack thereof, this is what is going to happen. I am going to remove Hazel May as the temporary

administratrix and put a third party independent attorney or accountant in her place... (2T, 9-10).

After the hearing, John Fonte, Esq. on behalf of the Lento Law Group, wrote the Court on October 23, 2020, requesting another opportunity for Hazel to continue because her “lack of efforts to search and identify assets of the subject estate is likely the result of my personal misguidance”. (R-5).

Upon receipt of this letter the Judge allowed Hazel to continue and issued an Order on October 23, 2020, requiring a Second Accounting and a new discovery schedule including the conducting of depositions. (R-7)

Hazel May provided a Second Accounting on November 13, 2020. (R-9). This Accounting was also deficient, with Hazel failing to preserve or reveal the assets of the Estate. As a result, the Court had a hearing on November 20, 2020. Hazel May was removed as Administratrix for misconduct and Maisie Chin Smith, Esq. was appointed as the Court’s Administratrix. (12-A).

The transcripts, court orders and documents provided in the legal arguments presented herein will demonstrate that the Lento Firm and Hazel May conspired together to prevent Teresa, as Tyrone’s wife from

receiving any of the inheritance or insurance monies which she was legally entitled to.

Both before and from and after the appointment of the independent Court-appointed Administratrix, Maisie Chin Smith, both counsel for Teresa May, as well as Maisie Chin Smith, Esq., faced never-ending efforts by Hazel May, with the active participation of her counsel, the Lento Law Firm, to hide assets, and/or move assets out of reach, and or misrepresent the facts regarding assets, all designed to prevent Teresa May from discovering their existence and securing her rightful inheritance. A discussion of these assets, and their mishandling follows.

THE MARITAL HOME

Hazel May in her Verified Complaint to be appointed Administrator, falsely claimed that Teresa and Tyrone were married on August 27, 2006, lived together for only four years, and separated in October 2010 at which time Teresa forced him out of the house that she owned and Tyrone purchased the Sicklerville home for himself. Hazel May also falsely certified that Tyrone and Teresa had no contact for a decade, that Teresa never lived in the marital home and Tyrone Sr. had been involved in a romantic relationship with a woman named Zolaina Santiago since 2011 (108-A). These false statements were made to undermine Teresa's lawful claim for an interest in the marital home.

There were simply too many witnesses, inside and outside of the family, including May Funeral Home employees, to contradict this fictional scenario. Although the parties separated in 2009, they had reconciled by June 2010 when Jasmyne graduated. Tyrone Jr, Jasmyne, and Teresa's son all moved into the marital home together. Teresa walked across the street from her Sicklerville home to work at May Funeral Home located in Sicklerville, until 2012. Although Tyrone allowed another woman named Dawn to live in the home for a short period, after that breakup, Tyrone and Teresa had another reconciliation. She further certified that she and her husband last spent nights at the marital home together, for her birthday the weekend of December 28, 2018. (152-A).

Teresa had to produce the utility bills at the marital home in her name and serve Interrogatories on the May children. The May children had to state under oath that Teresa and her son moved into the marital home with them. Afterwards, counsel for Teresa May filed a Motion for Summary Judgment. On July 30, 2021, the Court held that Teresa was entitled to her spousal share of the first \$50,000 plus a 50/50 split on the remainder of the proceeds of the sale with his children. (13T 9, 5-10). The intentionally deceptive and false pleadings filed by the Lento Firm failed.

401(k) FUNDS

On April 24, 2020, the Court ruled that Teresa May must be acknowledged as the spouse on all written documents. (74-A). This Order was violated when Hazel May sought to unlawfully collect Tyrone’s Paychex 401(k) funds. Both counsel for Teresa May and the Court-appointed Administratrix, Maisie Chin Smith, Esq., were having difficulty getting information about her husband’s Paychex 401(k) which was obtained while working for May Funeral Homes. Ms. Chin Smith raised these issues at the Zoom hearing before Judge Famular on April 5, 2021 (5T 46 and 50). Ms. Chin Smith asked the Court: “Your Honor, could you ask Ms. Hazel May whether or not she contacted Paychex?” (5T, 47 lines 3-5). The Court could not get the information.

As a result, the Court issued an Order on April 7, 2021, requiring that the retirement information be provided. (81-A). Despite the Court Order, nothing was provided, necessitating another Order. On May 27, 2021, Judge Famular directed Daniel Gallagher, Esq., appearing as co-counsel for the Lento Law Firm to secure information regarding the status of the Paychex 401(k) including an update regarding the delay in processing the claim. (98-A). Hazel May and the Lento Law Firm continued to ignore these Orders as well requiring Judge Famular to issue another Order dated June 30, 2021. In this Order Mr. Gallagher was directed to provide the dates and times of his inquiries, the names of persons with whom he

spoke to and the response he received in Paragraph 3 of the Court Order dated June 30, 2021. (206-A).

The reason for disregarding the Courts repeated Orders became clear when Maisie Chin Smith was finally able to obtain a document regarding the 401(k) showing that on March 10, 2021, Tina May, on behalf of May Funeral Homes, submitted a sworn document to collect the Paychex 401(k) on behalf of Hazel May by falsely indicating Tyrone May, Sr. was not married at the time of his death. (R-16). These actions violated Judge Famular's Order a year earlier requiring that Teresa be recognized as the lawful spouse on all written documents (74-A).

Wrongfully securing the 401(k) monies, Hazel May was required to turn over the 401(k) proceeds check of \$73,782 to Maisie Chin Smith.

Teresa May had to continue litigating until the Court ruled in her favor on Summary Judgment that the 401(k) funds belonged to Teresa as Tyrone's wife because the spousal waiver requirements had not been met. (13T 11).

The AXA Incentive Life Legacy Flexible Premium Variable Life Insurance Policy #556201538 Originally Valued At \$250,000 But Valued at \$545,181.82 at the Time of Death

During their marriage, Tyrone Sr. and Teresa secured life insurance policies for each other repeatedly agreeing and assuring each other that they would keep their premiums current. Teresa did just that and her life insurance policy, naming Tyrone Sr. as the beneficiary, remained in force at the time of his death. Certain that she was the beneficiary of Tyrone Sr.'s life insurance, Teresa sought the information regarding the life insurance after his death. From the very beginning, she was ignored and unable to secure any information, not even as to funeral insurance. (155-A).

On or about September 15, 2020, discovery was served on Hazel May, by way of the Lento Law Firm, seeking answers to questions about the existence of insurance policies. Hazel May, with the assistance of the Lento Law Firm, not only gave false responses but took affirmative steps to prevent Teresa May, as well as Maisie Chin Smith, Esq., the Court-appointed Administratrix, and the Court from learning about Tyrone's life insurance policies, their value, their beneficiaries, any distributions, and the whereabouts of distributions. Despite Court Orders mandating that insurance information be

produced, the Orders were repeatedly violated and/or ignored, with information constantly hidden or misrepresented, and paperwork withheld. Indeed the very insurance policy which is the subject of this Appeal, has never been provided to anyone at all to this day, not the Court, the Administrator or Teresa May. Details are provided in the legal arguments herein.

LEGAL ARGUMENT

A. THE COURT WAS FULLY JUSTIFIED IN AWARDING ATTORNEY'S FEES TO TERESA MAY. (R-11)

In this matter, there is no doubt that the Cross-Appellant Teresa May was entitled to attorney's fees due to the overwhelming and shocking misconduct of both Hazel May and her counsel. The misconduct resulted in a Court Order being issued on November 2, 2022, which specifically stated:

The additional relief requested by Patricia A. Darden, Esquire on behalf of Theresa May is granted in that the Court finds that the actions in this case by Hazel May and her attorneys at the Lento Law Group were purposefully deceitful, willful and intentional in order to deceive the Court and all the estate's beneficiaries. (64-A)

It is notable that the Order at issue, which granted both attorney's fees and sanctions was entered by the Honorable Sherri L. Schweitzer, P.J.Ch., who was the second Judge assigned to this matter. Hazel May's brief raised repeated complaints about the First Judge who presided over this case but raises no similar concerns regarding the Second Judge who actually assessed the attorney's fees and the sanctions that are the subject of their appeal.

These fees and sanctions were the direct consequence of conduct which included repeated violations of court orders, failures to turn over documents as requested and efforts to conceal funds from the jurisdiction of

the Court. They were discussed and explained in depth during the October 28, 2022, hearing by counsel for Teresa May, the Court-Appointed Executrix, Maisie Chin Smith, and the Court.

The Court stated to Hazel May's counsel:

Just because I'm new to the case, doesn't mean I'm new to the bench. Doesn't mean I can't read. And it doesn't mean I didn't figure out what happened here when I read all of the transcripts,... I read in transcripts where Judge Famular said your client should notify the prior attorneys of a malpractice claim. I mean, all of these attorney's fees - I mean, they hid information, certifications are contradictory. So please don't-" (22T 14)

The manner in which the truth unfolded was a complicated, time-consuming saga because of the deception and misconduct of Hazel May and her attorneys. After Hazel May filed the application below to release insurance funds with a distorted history before the newly assigned Judge, it was clearly necessary for Teresa to respond with an accurate account.

Teresa May knew that there were insurance policies with her name on them. When she couldn't get answers, the Court gave her the power to obtain this information through discovery. The Interrogatories were served on the Lento Firm for Hazel May in September 2020 and asked the specific question:

Interrogatory #37.- What insurance policies of any kind did Tyrone May, Sr. have? Please list name of company, contact

information, and policy number. (R-21).

Hazel May provided her Answers on December 4, 2020. Her response was:

Answer to #37.- Decedent had health insurance at the time of his death. Decedent did not have a life insurance policy at the time of his death. (R-31)

Teresa May's Notice to Produce requested the following:

38. **QUESTION:** "Copies of any and all policies of insurance on the Decedent's life in effect at the time of the Decedent's death." (R-43)

Hazel May responded on December 4, 2020:

38. **ANSWER:** "Plaintiff is not in possession of any documents responsive to this Request. As with all other responses, Plaintiff reserves the right to amend this Response should she discover documentation responsive to this Request." (R-43)

Because of the deceit and false responses, the Lento Firm and Hazel May were intentionally hiding the mere existence of insurance policies of any kind from Teresa May and the Court. This deception would not have been necessary if the Lento Firm truly believed Hazel May was entitled to the insurance monies.

The lack of disclosure pertaining to these insurance policies was compounded by the fact that when Hazel May received the proceeds of the insurance policies, she deposited them into the Lento Law Firm's Bank account. Shockingly, with the assistance of the Lento Law Firm the proceeds

were then transferred the funds into a trust in Wyoming in an effort to put them beyond the reach of the Court in New Jersey.

When it came time to assessing fees and sanctions, the Court appointed Executrix, Maisie Chin Smith, Esq., fully supported Teresa May's request. She discussed difficulties in getting information, the need for weekly or bi-weekly hearings, hiding the decedent's mail, and refusing to even give her a death certificate. (22T 32, lines 9-23)

When the Court explained its reasoning behind the issuance of fees against Hazel May, it provided a litany of reasons.

I mean, we could start with [Hazel May] had to be removed. They wouldn't give the EIN number. They lied in responses to discovery. Outwardly lied about what insurance existed. There was concerted effort to hide money, to hide assets. There was a concerted effort by your client to make sure that money was hidden and the information about the 401k hidden, any information about life insurance policies hidden. I can assume the creation of this Wyoming trust was done so that you could say to me in good faith this Court has no jurisdiction to touch that money, or your client could. (22T 40, lines 20-25)

The Court further stated:

Your client has gone to great lengths to ignore Court Orders, avoid their responsibilities, and to ensure that this litigation, which should have been simple, turned into a mockery. It turned - ever time they- she could do something to thwart the administration

of this Estate, it's clear that that's what happened. The simple request for the EIN number. The answers to discovery were an abomination. They're - with full knowledge that there was a life insurance policy. They only answer was there was health insurance? My head almost came off its shoulders. Judge Famular had to remove your client because of her actions. This case went on for a year longer than it needed to because none of the information could be supplied simply. (22T 42)

An award of attorney's fees in a probate action is first governed by R.

4:42-9(3):

In a probate action, if probate is refused, the court may make an allowance to be paid out of the estate of the decedent. If probate is granted, and it shall appear that the contestant had reasonable cause for contesting the validity of the will or codicil, the Court may make an allowance to the proponent and the contestant, to be paid out of the estate.

Awards of attorney's fees in contested administration are normally granted, to be paid by the estate, except in weak or meretricious cases. In re: Reisdorf, 80 N.J. 319, 326 (1979).

In this matter, there is no doubt that the attorney for Teresa May was successful in the litigation. The Court granted Teresa, her lawful share of the estate and entered many orders during the process to protect the estate and the assets from the naked misconduct of Hazel May and her attorneys.

In a situation where attorney's fees are assessed, once the requirement

of the Court rule is met entitling a party to an award of attorney's fees, the party seeking attorney's fees must submit an Affidavit of Service consistent with R. 4:42-9(b). In this case that Affidavit of Service was properly filed. (R-109)

The next step is an analysis of nine (9) factors outlined in the matter of In re: Blomer, 37 N.J. Super. 85, 94 (App. Div. 1955). Those factors are (1) the amount of the estate and the amount thereof in dispute or jeopardy as to which professional services were made necessary; (2) the nature and extent of the jeopardy or risk involved; (3) the nature, extent and difficulty of the services rendered; (4) the experience and legal knowledge required and the skill, diligence, ability and judgment shown; (5) the time necessarily spent by the attorney in performance of his services; (6) the results obtained; (7) the benefits or advantages resulting to the estate, and their importance; (8) any special circumstances including the standing of the attorney for integrity and skill; and (9) the overhead expense to which the attorney has been put. As discussed at length above and throughout this brief, the basis for the award of fees could not be any clearer.

Once the Court determines that fees are appropriate, the Court then engages in a two-step process. First, it calculates the basic, reasonable rate for ordinary probate work and then it adjusts it upwards or downwards where the factors suggested in the relevant court rules are present. In re:

Trust of Brown, 213 N.J.Super. 489,501 (Law Div. 1986). The Court then examines the hours of services rendered and multiplies it against a load-star rate to determine the award of fees. Rendine v. Pantzer, 141 N.J. 292, 337 (1995). A comprehensive discussion of this analysis can be found in the matter of the Estate of Reisen, 313 N.J.Super. 623, 628- 31 (Ch. Div. 1998).

In this matter, as noted throughout, the conduct not only of Hazel May but also of her counsel was repugnant. Hazel May and counsel missed deadline after deadline, provided incomplete accountings, repeatedly lied to the Court, hid assets, apparently attempted to steal assets and engaged in misconduct all of which was clearly intended to deprive and defraud.

The only error committed by the Court with respect to the issuance of the fee award is that it was not enough. The Court in its Order of November 2, 2022, found that the services rendered by Teresa May's attorney were only reasonable in the amount of 111 hours at \$400. While the Court discussed why it was removing some of the fees at issue, which included \$34,768 that was incurred in the filing of the cross-motion, it did not explain why it was reducing the fee further.

Moreover, Teresa May's fee application was not merely the filing of a Certification of Services. It was a necessary response to the distorted history presented by Hazel May to a judge newly assigned to the matter.

Ms. Chin herself commended Teresa May's attorney for her diligence noting that but for her efforts, the results of litigation would have been starkly different, and an injustice would have befallen the parties. The Court appointed Administratrix thanked Teresa May's counsel on the record and clearly supported every penny of the fee request.

Ms. Chin Smith stated:

Well, it – it was -- it was like pulling teeth, Your Honor. I've never – I've been an attorney for well over 20 years and this case, like you said, reads like a miniseries. I was shocked at every twist and turn. And I still try to read this in my mind how this got this far, but Your Honor, there was a reason why Judge Famular had us appear almost every other week, or every week, or every few days, because the compliance was not there. There was no – it – getting any legitimate documentation, Your Honor, -- they knew what we were asking for. We kept asking for the same things. They kept giving us the same documents over and over again saying that they had given us what we wanted, but we were asking for more and we were not getting it, Your Honor. It was – it was extremely, extremely difficult... (22T 29)

So obviously, Your Honor, it was very flawed reasoning on behalf of the Lento Law Group and, you know, no one comes from Lento Law Group anymore to be a part of these proceedings given what happened back in April of 2021, but Your Honor, they still are involved in this case. They are still very much aware of what's going on and they brought in Mr. Gallagher as co-counsel... (22T 31)

But again, Your Honor, I feel badly for Ms. Darden because there was a lot of back history that happened before I was even appointed for which I really can't – you know, because I wasn't involved at that time in this case.

But just to get me appointed Ms. Darden had to jump through incredible hoops... (22T 33)

And if they had just been honest from the beginning, they wanted to run an end route. That's what it appears. That – you know, looking back on this case, this case was from the beginning, you could tell there was no intent to cooperate? (22T 34)

Thus, for the foregoing reasons, Cross-Appellant respectfully submits that the award of attorney's fees is appropriate.

As discussed above, the real question is not why fees were issued but why were the requested fees reduced? This is an area where the Court below did abuse its discretion. Approximately \$40,000 in fees were removed with no reason given. Pursuant to R. 1:7-4, the Court is required to make specific findings of fact so that appellate review can be possible. Here, although the Court justified an award of attorney's fees, it did not explain why two-thirds of the request was reduced and thus it is respectfully submitted that an additional award of fees should be granted.

B. SANCTIONS WERE APPROPRIATE (R-25)

Sanctions were warranted in this case. Judge Schweitzer's Order dated November 2, 2022, stated:

"The actions in this case by Hazel May and her attorneys at the Lento Law Group were purposefully deceitful, willful and intentional in order to deceive the Court and all the estate's beneficiaries." (64-A)

The Court's explanation of sanctions could not be any clearer,

I'm also imposing sanctions in the amount of \$20,000. I think Hazel May's actions in this case were intentional, willful, and malicious. I think that her inability to provide information that was readily available was done solely for the purpose to deceive this Court, to deceive Teresa May and to retain as much of these funds for herself as possible to the detriment of anyone else... (22T 49)

The fact that your client had to be removed as the administrator for her actions, and her actions were intentional. They were for the sole purpose of trying to make sure no one else received any of the money....(22T 50)

So when someone sits here and pretends I don't know why this was even an issue, it was an issue because your client lied every single turn of the way from the onset of the matter as to what assets were a part of the Estate. She - no one knew, because she hid them. She took willful and intentional actions to hide where the money was, what the assets were, the 401k. Everything that was done in this case was done to be painful. It was done to be intentional.

I actually think your-your client created bank

accounts in Wyoming thinking that this Court could not access them. It's obvious. I think everything she did was to avoid the responsibility to the proper beneficiaries of this Estate (22T 50)

Generally, when it comes to the imposition of sanctions, a trial court has wide discretion in the imposition of sanctions for violations of discovery rules. Mauro v. Owens Corning Fiberglass Corp., 225 N.J. Super. 196, 201 (App. Div. 1998), affirmed 116 N.J. 126 (1989).

Hazel May argues, "generally financial sanctions are limited to orders requiring reimbursement of the fees and expenses of a party," but there is no rule requiring that they always be so. Generally, the purpose of a sanction related to attorney's fees is to reimburse a party for the cost of the misconduct. Wolfe v. Malberg, 334 N.J. Super. 630,637 (App. Div. 2000). "Generally", however, does not mean "always". In the instant matter, the misconduct of Hazel May and counsel not only dramatically increased the cost incurred by Teresa May, they were an affront to the dignity and authority of the Court. The Court-appointed administrator Maisie Chin Smith stated:

And again, your Honor, if there was ever a case that should have sanctions, I definitely – it you feel it's within your power, this would be one of them. (22T 31, line 22-25)

While few cases warrant the imposition of a financial sanction not tied directly to attorney's fees, this case is the exception. Furthermore, it would be very easy to tie the assessment of the \$20,000 sanction to attorney's fees based

upon the facts of this case.

For the foregoing reasons, Teresa May respectfully submits that the assessment of the sanction was not only warranted, but appropriate and necessary.

C. The Court Erred When It Reduced the Counsel Fee Award from \$125,716 to \$44,000. (64-A)

The litigation in this matter began on April 24, 2020. The Honorable Nan S. Famular, P.J.Ch. who presided over the case for two years issued a Court Order dated April 29, 2022, setting aside \$67,968.86, representing the balance of the funds held in the Administrator's Account, for counsel fees and sanctions. (R-115)

The Court Order in no way indicated that this was a cap or ceiling on what amounts could or should be ultimately awarded.

On September 28, 2022, Daniel Gallagher, Esq., on behalf of the Lento Firm, filed a Motion to Release the Funds being held by the Court - appointed Administratrix. (R-71). The application was supported by a nine (9) page Certification from Mr. Gallagher with attached Exhibits A through S.

Counsel for Teresa May filed a Cross-Motion on October 21, 2022, seeking sanctions against Hazel May and the Lento Law Firm along with counsel fees and costs covering a sixteen (16) month period from June 2021 through October 2022. (R-143)

This Cross-Motion was supported by a Certification of Patricia A. Darden, Esq., that included transcripts, Court Orders and proofs that provided an accurate background and procedural history of the proceedings to the newly assigned

Judge. The scant, inaccurate pleadings provided on behalf of Hazel May clearly failed to provide an accurate history.

On August 14, 2020, when the Court appointed Hazel May as temporary Administratrix, the Order also set a discovery period which included a Notice to Produce and Interrogatories. (R-1). Pursuant to that Court Order, counsel for Teresa May served Interrogatories and a Notice to Produce, on counsel for Hazel May on September 15, 2020. Teresa May was permitted to inquire as to whether Tyrone May, Sr. had any ownership interest in the May Funeral Home. Hazel May refused to respond to the Notice to Produce and counsel for Teresa May sought enforcement. The court set a revised discovery period on October 23, 2020, that directed responses to discovery by November 30, 2020, and depositions by January 15, 2021. (R-25) Teresa May responded to Interrogatories and a Notice to Produce. Teresa May also appeared for depositions. Hazel May, however, refused to respond to her Notice to Produce. Counsel for Teresa May was forced to reach out to the Court and Judge Famular convened a conference call to discuss the noncompliance on April 5, 2021. The certification provided by Mr. Gallagher in support of his application did not address any of these issues or the April 5, 2021 hearing.

Immediately at that start of the hearing Judge Famular stated:

"All right. And we have-today is the day for a case management conference. And I got a letter from Ms.

Darden dated March 29th that goes through a lot of different issues, one of which is did Hazel May's deposition take place as planned?" (5T 4, lines 17-24)

Ms. Darden responded:

No, Your Honor. I had no documentation whatsoever from Mr. Fonte on behalf of Hazel May, which would have made the- deposition fruitful." (5T 4 lines 22-25)

Judge Famular then addressed Mr. John Fonte from the Lento Law Group.

"Mr. Fonte let me hear from you. What - are you having difficulty with your client or what's the story?" (5T 5 lines 20-22)

At this point Mr. Fonte made the startling admission that his client, Hazel May, was refusing to provide the documents to him. He stated:

I - I am. I absolutely am. I hesitate to say that, because I always hate in any way throwing a client under the bus, but I am having difficulty in getting some of those documents.... but the main issue is the documents that were identified in the March 2021 court order by Your Honor asking for the documents of the May Funeral Homes pertaining to ownership or- (5T 5, lines 23-25)

The Court: Right.

Mr. Fonte: -- any change in the ownership, I sent letters, emails, phone calls out to Hazel May. I sent letters, emails, phone calls out to the manager from May Funeral Homes, Toni May. I don't- I'll be candid with you, Your Honor, I don't have a good reason why those things haven't been produced. (5T 6, 15-25)

Judge Famular reacted to the seven-month period of time that Hazel

May had refused to respond to any discovery pertaining to the ownership of the business by stating it was a simple question and if Hazel May's lack of cooperation continued, she would consider appointing a receiver.

During the course of the telephone conference Hazel May came on the Zoom and was sworn in by the Judge. She stated that the only proof she had of the business ownership was her tax returns. (5T 23) She indicated she would have her daughter Toni follow through with the accountant.

Both the Court and the Court-appointed Administratrix, inquired about the E.I.N. number for the Estate. Ms. Chin Smith stated she had never had difficulty obtaining an E.I.N. number and wondered if her difficulty was related to the possibility that someone else was connected to the Estate prior to her appointment. (5T 27, 11-13) Hazel May denied any knowledge about an E.I.N. number. (5T 26) The Court advised Ms. Chin Smith that it would provide an Order requesting information about the E.I.N number. (5T 28, 12-14)

During the telephone conference, Maisie Chin Smith also asked the Court to question Hazel May about the missing Paychex 401(k) retirement funds for the deceased. (5T 47, 1-4) Hazel said that her daughter Tina was contacting them and handling that matter.

The Court then required that Tina May join the conference call. Tina May denied knowing the status of the Paychex funds or the amount, even though she handled the books. She stated her mother was the beneficiary. (5T 51).

Ms. Darden then asked the Court to inquire about insurance policies. The Court asked Hazel May if Tyrone had insurance policies and for the first time Hazel May finally admitted that he had a personal policy and claimed that she was the beneficiary. (5T 64, lines 8-10)

"I didn't even know he had a policy until he died... I didn't know he had one until he died. (5T 65, 8-10)

The Court responded by asking, "How much was it worth?" Hazel May responded, "It was worth - - I would say it was worth 800 and something thousand dollars." (5T 66)

Because Hazel May, with the assistance of the Lento Law Firm, had repeatedly denied that the decedent had any life insurance at the time of his death in Answers to Interrogatories and in responses to a Notice to Produce this admission was shocking to the Court, Patricia Darden, Esq., and Maisie Chin Smith, Esq.

When Hazel May continued to insist that she did not know her son had the insurance policy, Judge Famular asked her:

Court: Since you were the recipient-you eventually got the money, it was payable to you right? (5T-69, 21-23)

Ms. H. May.: Okay.

The Court: You were able to cash the check or deposit the check, a copy of the policy we need to know where you deposited it-where you put the money and the checks written to the children. (5T-69 125 and 70, 1-3)

The Court responded:

Right now, my objective is to get as much information as we can so we can sort out who is supposed to get what, and let's see where the money went. And if there's any left, I can only say, Ms. May, I would advise you not to spend it, and were going to put that in a court order,... (5T-70, lines 16-23).

At the close of the telephone conference the Court indicated that she wanted a comprehensive Order that covered all the matters raised during the hearing and requested that Maisie Chin Smith and Patricia A. Darden compare their notes, draft a proposed Order and send it to Mr. Fonte allowing him an opportunity to raise any objections or issues. (5T, 72 lines 23-25).

On April 7, 2021, John Fonte, Esq. objected to the form of Order submitted pertaining to the April 5 hearing. Mr. Fonte objected to the requirement that he, Hazel May, and Toni May-Jervey provide sworn statements as to whether or not anything was done to obtain an E.1.N. number. He wanted that requirement deleted. The Court would not delete the requirement.

Judge Famular executed the Court Order pertaining to the April 5, 2021 hearing on April 7, 2021. (80-A). This Order was not based on "wild

and undocumented accusations" as Mr. Gallagher had alleged in Paragraph 9 of his Motion to Release Funds. (R-120)

The Order contained several critical requirements:

4. David Pozzi, Insurance Agent for May Funeral Homes, must provide to the Court-appointed Administratrix, Maisie Chin Smith, Esq., and Patricia A. Darden, Esq. a copy of all policies of any kind that contain the name of the decedent, Tyrone E. May, Sr., including retirement, funeral, burial, key man, life, or any other kind of policy including changes in beneficiary documents within the last fifteen (15) years, within seven (7) days of the date of this Order. May Funeral Homes must assure that their insurance agent complies with this Order. Any failure in the future of the Pozzi Agency or its affiliates to fully cooperate with the Court-appointed Administratrix shall be sternly addressed by the Court:

5. John Fonte, Esq., Hazel May and Toni May Jervey must provide a sworn statement regarding any and all efforts or contacts that were made by any member of the May family or any member of the Lento law firm to obtain an E.I.N. number pertaining to the decedent and said statements must be provided to the Court, Maisie Chin Smith, Esq. and Patricia A. Darden, Esq. within five (5) days or no later than April 12, 2021. Eventually the IRS will reveal why the Court Administratrix cannot get an E.I.N. number. If anyone has any information on this issue it must be revealed to the Court and the Court-appointed Administratrix, Maisie Chin Smith, Esq., immediately.

7. With regard to the life insurance policy on the decedent's life that exceeds \$800,000, the insurance Agency must provide a copy of the application that Tyrone May submitted for the policy, a copy of the entire policy, and a copy of any changes made to this policy;

12. Hazel May must promptly comply with all outstanding Orders of the Court and requests from the Court Administratrix, Maisie Chin Smith, Esq. Everyone is to be reminded that this Order is directed to persons who are licensed, including Funeral Directors, Attorneys, Accountants, and Insurance Agents. John Fonte, Esq. is to assure that a copy of this Order is served upon Thane Martin and Dave Pozzi. The failure to produce the documents referenced herein will not be tolerated:

13. The Court reserves decision on sanctions and other relief against Hazel May and May Funeral Homes;

On April 12, 2021, Mr. Fonte provided a sworn Certification pertaining to the E.I.N. number. Mr. Fonte started by stating as counsel, he was familiar with the facts of this case and then stated in Paragraph 2:

2. I make this Certification in response to the Court's April 5, 2021 ruling, wherein the Court ordered me, Hazel W. May, and Toni May-Jervey to provide a sworn statement to the Court in regard to efforts to obtain an Employer Identification Number ("EIN") for the Estate of Tyrone E. May, Sr., Deceased (hereinafter, the "Estate"). (R-267)

He then indicated that he contacted the manager of May Funeral Homes and stated in Paragraph 6:

6. That same day, because I work remotely due to COVID-19, I telephoned my paralegal, Denise Stone, and supervisor, John Groff, regarding the firm's efforts to obtain an EIN. Both indicated that they "believed" they had taken care of that, and that they would get back to me with the relevant information. (R-268)

Thereafter, Mr. Fonte advised the Court that the EIN number was an

"outstanding issue". In Paragraph 10 and 11, Mr. Fonte stated:

10. Much to my chagrin, however, sometime between February 26 and March 2, 2021, I was told that no EIN was taken out for the Estate; no accounts were opened in the name of the Estate.

11. I was surprised by this response and asked my office staff to double-check this. On March 2, 2021, Mr. Groff confirmed with me that no EIN was taken out. (R-268)

Attached to Mr. Fonte's Certification was an email from John Groff dated March 2, 2021- It stated:

NO TRUST, that has nothing to do with the Estate. Denise confirmed that no Estate accounts were opened nor was an EIN established. (R-268)

Mr. Fonte then certified in Paragraph 12:

12. Based upon this information, I subsequently informed Ms. Smith that Ms. Hazel May did not take out an EIN for the Estate, and that the only avenue to obtain more information would be to make a request with the IRS. (R-757)

The parties next appeared via Zoom court on April 15, 2021. During the hearing Mr. Fonte, Hazel May and David Pozzi, all blamed each other for why the insurance policies or ownership information was not provided. At one point Judge Famular directed Mr. Pozzi to provide a copy of all the insurance policies. Mr. Pozzi stated:

"In order to get a copy of the policy, she would have to complete something at the company and pay a fee to get a copy of the policy." (6T-22).

Thereafter, Mr. Pozzi requested that Hazel May give him permission

to obtain the policies and Hazel May gave him permission on the record. (6T-24). It was absolutely clear that both Hazel May and David Pozzi understood their obligation to do what was necessary to provide copies of all the insurance policies to the Court. (6T-24)

Maisie Chin Smith then spoke and advised the Court that she had finally been able to get access to the decedent's mail and she was finding information about insurance policies for the decedent and payments being made. (6T-27). Maisie Chin Smith also advised the Court that she found mail indicating that there was a BB&T Bank account opened on or about September 14, 2020, where \$879,265.63 was deposited. She further advised the Court that the account was in Hazel's name and TMFT Inc. which had an address in Sheridan, Wyoming. (6T-42)

Judge Famular asked Hazel May: Who is TMFT? (6T-42).

Hazel May responded: That's my lawyer John Lento, that's from his company. (6T-42).

When Hazel May made this statement there was an immediate reaction.

Ms. Darden: What? (6T-43)

The Court: What? 6T-43)

Maisie Chin Smith: Okay, Your Honor? (6T-43).

Judge Famular stated: Mr. Lento or Mr. Fonte, speak up, say something. Please, what is she talking about? (6T-43)

Mr. Fonte responded: I don't know. (6T-43)

The Court: You don't know? You don't know what TMFT, Inc. is? And it's- she says it's your partner. Something to do with your partner Lento. You think it's Mr. Lento? (6T-43)

The Court stated: Stop. Who puts \$879,000 in an account with a company that you have no idea who even owns it and it's located in Wyoming? (6T-44)

Ms. H. May: I didn't say no. I-1 guess, it's me and the lawyer company. I guess we own it together-whatever, we own it together. I just – (6T-44)

The Court: Who and who owns it together? Who? (6T-45)

Ms. H. May: Okay. John -John-

The Court: John's not going to bail you out on this one, because, you know what – (6T-45)

Ms. H. May: I'm not- (indiscernible-overlapping speech)- I didn't say it was him.

The Court- his license is on the line. He's not going to say a word.

Ms. H. May: I didn't say it was him. I'm not saying him. No, no. So John Groff from the company, we did this together so that the money only went to the children. I got nothing. (6T-45).

After Hazel May testified that she and John Groff owned the TMFT account together, Mr. Pozzi came back on the line. He stated:

Mr. Pozzi: This is Mr. Pozzi. I'm still on this phone call. I don't know if I need to be on all this, but I just need - - so I can hang up, I just need two things to be said. (6T-47).

The Court responded:

The Court: Well, what you're going to get is you're going to get an order that's going to be sent to you by Pat Darden. She's a lawyer. And you may hear from Maisie Smith. Maisie Chin-Smith is also a lawyer who I have appointed as administratrix for this estate. I took Hazel May off, I put Maisie Chin-Smith in. So, anything she ask you for, you're obligated to provide. Ms. Hazel May knows that this is the rule, this is the

order of the Court, and that's how we're going to do it. (6T-47).

The Court asked if there was a conflict with Mr. Fonte since Mr. Groff appeared to be involved in some way. (6T-64).

The Court also stated: The disturbing part of this Mr. Fonte, is that-

The Court: I feel like this information is something that you knew about or have an idea about, because you're not - - you didn't seem the least bit surprised when we talked about this TMFT. Not the least. So, you knew about it.

Mr. Fonte: Quite to the contrary, Your Honor. I had no response because I was absolutely stunned. That was the first time I had heard those letters.

The Court: I have this very scary feeling for you, that there's a lot more here. If you say you don't know about, you best find out about it and get- and extricate yourself from this or fire this guy if he's done something wrong. Because all of your names, every one of your partners, is on the hook if he has done something inappropriate or improper. He's under your guidance. You know that. He's just an office manager. Come on. I mean, you guys better wake up, because this is going to be a bigger problem than you want for a very little bit of money, 800, \$900,000, that's worth everybody losing your license and closing the firm? I don't think so. So, get busy. I would talk to your senior partners. I would bring everybody in on this and say we don't know what this man's been doing, who has knowledge of what he's doing, because you're telling me you don't have an idea that he even did it. Maybe none of the partners do, but then he's going to start-then he's going to start chirping, and he's going to tell me all the people that knew about this and what he was in on with the firm, which we know is totally inappropriate for a firm to have this kind of a business connection with a client.

And the money just keeps getting more and more. So, this is a very scary thing. But let's talk again on Monday when you've had a chance to round up your partners or - I don't know if you're an associate or a partner in the firm. Somebody-you've got to talk to somebody who is a senior member and say we got to dig in here and find out what this Groff did, and under whose instruction, because I - - I don't have a - - I have a feeling he wouldn't know how to prepare those documents himself. It would have had to come from another lawyer in the firm who may have known how to prepare corporate documents, a trust - - I don't know what. So, we've got a lot of investigation to do. (6T).

The Court issued an Order on April 16, 2021 pertaining to the April 15, hearing (85-A). This Order contained the following Paragraphs:

Paragraph 3- David Pozzi has received Hazel May's consent to cooperate fully with the Court and the Court's appointed Administrator, Maisie Chin Smith, Esq., immediately in complying with Section 4 of the Court's Order dated April 7, 2021. Mr. Pozzi must also provide a copy of all applications that were filled out or submitted by him or Tyrone May, Sr. or anyone on behalf of Tyrone May, Sr. for any policies. Mr. Fonte is to immediately serve Mr. Pozzi with the Court's Order dated April 7, 2021. Maisie Chin Smith, Esq. is permitted to follow through with Mr. Pozzi on behalf of the Court regarding any documents received or needed. She is also permitted to share this information with counsel.

Paragraph 4- Mr. Fonte must clarify the role of Mr. John Groff in the Lento firm and what steps he took to assist or encourage Hazel May in opening a Bank account to deposit insurance funds. Mr. Fonte must provide all information pertaining to the corporate entity also used to establish the account identified as TMFT, including date of incorporation, principles, and

the business conducted by this entity. In light of the information revealed on the Zoom call pertaining to this account, Mr. Fonte must update his certification to specifically address whether Denise Stone or John Groff took any steps to apply for, obtain or use an E.I.N. number on behalf of any member or with any member of the May family. (85-A)

On April 18, 2021, John Fonte, Esq. submitted a Second Certification pertaining to the E.I.N. issue. He certified that he spoke to John Groff, the Firm's office manager and was informed of the following:

Paragraph 7- During that discussion, Mr. Groff informed me of the following facts: (R-271)

- a. Sometime after the passing of the Decedent (I was not told a specific date), Tyrone E. May, Sr., Ms. Hazel May reached out to the Lento Law Group in regard to protecting assets pertaining to a life insurance policy of the Decedent.
- b. In connection with this request, Mr. Haislip reached out to "an attorney" in Wyoming (I was not told a specific name) to help set up a trust account in Ms. Hazel May's name, for the benefit of her and the Decedent's children.
- c. When asked why the account was set up in the State of Wyoming, Mr. Groff said that based upon his knowledge of Wyoming law, Wyoming law is very protective over trust information and assets, and therefore the trust was created there in an effort to protect the policy.
- d. Mr. Groff further went on to say the (1) the State of New Jersey would have no jurisdiction to enforce the production of an account outside of the State, and (2) even if the trust account was not set up by an attorney, assisting an individual in setting up a bank account is not "engaging in the practice of law", whether under the professional conduct rules of New Jersey or Wyoming.
- e. I asked about whether an EIN was requested or obtained

in connection with this trust account. Mr. Groff said that one was obtained, but that it was taken out in Ms. Hazel May's individual name- not the Estate- because trust account setting up requesting an EIN and not the individual's SSN. Because nothing was taken out in connection with the Estate, Mr. Groff maintains that the EIN would not affect the Estate's ability to obtain an EIN for itself. (R-272)

He further indicated that he reached out to David Haislip, the Lento Firm's treasurer/accountant but Mr. Haislip did not get back to him. Finally, he stated the following in Paragraph 10.

Paragraph 10. In addition to setting forth the details of the Court's ruling to Mr. Groff on Thursday April 15, 2021, I asked Mr. Groff on the aforementioned phone call for documents pertaining to the EIN for the trust account, the trust account, the trust itself, the Wyoming attorney, and documents pertaining to TMFT, Inc., indicating that an Order by the Court to this effect would be anticipated. As of the date of this Certification. I have not received anything. (R-273)

The parties were scheduled to appear for another hearing on April 19, 2021. Prior to the hearing Maisie Chin Smith advised the Court that she was requesting a forensic expert, Martin Abo, to join in the call because she was seeking additional assistance in the matter. In response, Mr. Fonte quickly forwarded documentation pertaining to the E.I.N. number. The documentation showed that the E.I.N. number had been obtained for the Estate of Tyrone E. May, Sr. by Hazel May on November 12, 2020. (R-275).

At the commencement of the April 19, 2021 hearing, Mr. Fonte told the Court that according to Mr. David Haislip, "we took out one for the Estate." Mr. Fonte advised the Court that Haislip and Groff had been with the Lento Firm for a few years and that previously Mr. Groff had been with the firm of Conrad Benedetto. As the hearing continued and it became clear that the Lento Law Firm had hidden and made false statements about the existence of the E.I.N. number. Requesting to be heard, Ms. Darden asked to be heard and stated:

MS. DARDEN: Your Honor, if I may?

THE COURT: You have to. I mean, I don't --1 just --

MS. DARDEN: Your Honor, I have to speak now. I think that the Court must be aware of certain information that is public and relevant to what is going on right now.

THE COURT: Is it criminal?

MS. DARDEN: John Groff-

THE COURT: Yes.

MS. DARDEN: -- has a criminal record --

THE COURT: I know.

MS. DARDEN: -- in the State of New Jersey for insurance fraud.

THE COURT: I know he does. I know the man. He was in my courtroom, Ms. Darden.

MS. DARDEN: He served seven years. This account was set up September 20th, 2020. September 25th. Do you know how easy it is to find out when TMFT started to exist? You just have to Google it. Mr. Fonte is in this firm where every time we've made a move to get anything pertaining to insurance or taxes, we have been stopped. We served discovery, and my question Number 37 in interrogatories is what insurance policies of any kind does the decedent have or did he have. The answer was "health insurance".

THE COURT: Yeah.

MS. DARDEN: I knew it wasn't true. And you know how many hearings we've had after discovery questions -
THE COURT: Right. (7T 22, lines 1-25).

MS. DARDEN: -- about insurances of any kind? Now, Mr. Pozzi is moving. I did not expect to see that work any time soon. We have a circle of people that have been involved in this case. While Hazel May was the administrator, they opened up that account. You had appointed her an administrator and she opened up that account in Wyoming, and she said on the record the last time, that she did it because she wanted to keep the money away from Teresa and make sure it went to the kids. (7T 23).

Ms. Darden also revealed additional information to the Court about John Groff's actions when Tyrone Sr. was in ICU critically ill with COVID.

MS. DARDEN: -- but I wanted to tell you, because when we were on the phone the last time for the last conference, I kept telling you I've seen the name John Groff somewhere in this case before. (7T 29)

THE COURT: Yeah

MS. DARDEN: And I believe you should be aware of that document, and that it should be made a part of the record. I received in discovery in trying to deal with this case, a copy of an email, and the email is from John Groff. And that email goes to two people in the firm, and he cc's Mr. Fonte. And in that email -- this is when Tyrone May was in the hospital with Covid critically ill -- Mr. Groff gives the instructions as to what is to be done legally. And he writes this email -- and I remember saying who is Mr. Groff- (7T 29)

THE COURT: Yeah.

MS. DARDEN: --to Denise. And it's very short. He says: "Tyrone is in isolation room 308 at Jefferson Washington Township. He has pneumonia and possibly COVID-19. Here is the response to the motion. Get the social worker on the phone or director of nursing for his floor. Explain that he is expecting this and it must be

signed and sent back to us as the Court is waiting. Do what you need to do to get it done. Once done, let me know." Now, the attorney reacts to Mr. Groff's email. And Mr. Lento is cc'd, when he was the attorney that was supposed to be representing Tyrone when Tyrone wasn't responding to the divorce. But that was why it struck out to me because the role he appeared to be playing at that time -- and I was pretty disgusted that this Mr. Groff pushed a piece of paper which was in response to our motion to Tyrone while he was in the hospital in ICU, when all they -- they had to do as a firm of attorneys was to call Judge Bernardin and say that your client is ill, can we postpone the motion. It is that kind of direction from Mr. Groff to attorneys is very troubling. (7T 29 and 30).

Maisie Chin Smith also advised the Court of the following:

"Your Honor, this morning Mr. Fonte was kind enough to send us paperwork, additional paperwork, which perhaps Your Honor has not seen. Perhaps actually, Patricia Darden has not seen. It was, obviously, the EIN number, which we just got, but there was also attachments: a letter that was dated July 8th, 2020 from the Lento Law Group signed by Joseph D. Lento, which forwarded to the AXA Equitable Life Insurance Company a letter of instruction for three policies, Your Honor, and attached signed limited powers of attorney, which Thomas May and Hazel May both signed and had notarized by Denise Stone, who I know is employed by the Lento law firm. It's both dated July 20th, 2020 and it gives, "limited power of attorney to the Lento Law Group and/or Joseph D. Lento, Esq., collectively as L.L.G., as my attorney in fact to act in my place for the purpose of executing my signature to any document that may be required by AXA Equitable Life Insurance Company, Many Life Insurance Company of America, and/or AXA Equitable Life and Annuity Company (to include its employees, agents, and officers) for the processing of documents that are required by the agency to make a claim of life insurance benefits." (7T 34).

As a result of this revelation the Court required John Lento, Esq., the Senior Partner of the Firm, to prepare a Certification regarding the EIN issue. In his Certification signed on April 21, 2021, Mr. Lento acknowledged in Paragraph 4 that his firm had a Power of Attorney to obtain all insurance information on behalf of Hazel May which Power of Attorney had been executed on July 8, 2020, (R-817). Mr. Lento further acknowledged that he was fully aware the Firm had taken out an E.I.N. number in order to set up the TMFT trust in Wyoming established to protect Hazel's interest in the life insurance policies. (R-817)

Counsel for Teresa May then had to file a Motion to force Hazel May to turn over the 401(k) monies valued at \$73,782.87.

There has also been misconduct and deception with respect to the other insurance policies which will be detailed further in the legal argument pertaining to the AXA life insurance policy.

Counsel for Teresa May made a good faith and thorough effort to inform the newly assigned Judge of the facts and history pertaining to these matters and the fact that the prior Judge had reserved decision on fees and costs related to all of these proceedings.

The \$125,716 legal bill not only covered the fees and costs of the motion, but it covered fees and costs incurred during the sixteen-month period from June 30, 2021 to October 20, 2022. Judge Famular always found

that the work performed by counsel in this case was necessary and reasonable and the Court either approved all prior submissions or reserved decision.

In the last Court Order executed by Judge Famular for fees in this matter dated September 29, 2021, for fees incurred prior to June 30, 2021, Judge Famular used the following language:

1. Any fees paid by Hazel May or the May Funeral Home to Maisie Chin Smith and/or Patricia Darden are/were ordered paid due to the following: repeated delays and lack of transparency by Hazel May in failure to disclose the EIN, failure to produce corporate tax returns, the lack of cooperation and veil of secrecy regarding the real estate owned by the decedent, the life insurance policies which had originally named Theresa May as beneficiary and failure to produce supporting documents for beneficiary changes, the lack of transparency and information regarding the 401K, the blame going back and forth between Hazel May and the Lento Law firm to avoid responsibility for failure to properly administer the Estate and follow Court Orders, the need for numerous and at times weekly status conferences, the need for the administer the estate and perform the duties required of her in providing an inventory and marshalling assets¹ failure to provide accounting as ordered, the failure to direct Mr. Pozzi to produce documentation regarding all life insurance policies, among other acts of deception and subterfuge too numerous to outline. (R-658)

The conduct of the parties did not change after June 30, 2021, as evidenced by the record in this case. Even though Judge Schweitzer was not presiding over the case when most of these fees were incurred, there was no basis on the record below for her reaching the conclusion that counsel lacked integrity, inflated

costs or that the time spent was not necessary. Indeed, both Judge Famular and the Court-appointed Administratrix had lamented many times about the time involved in this case and prior to leaving the bench Judge Famular assured both, counsel for Hazel May and the Court-Administratrix, they would be addressed. Judge Schweitzer's ruling granted Maisie Chin Smith fees for the sixteen-month period but denied the majority of the fees and costs incurred by Teresa May's counsel for the sixteen month period, even though the Court-appointed Administratrix fully endorsed and supported their necessity.

The standard of review for an award of attorney's fees is abuse of discretion. "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). Counsel fees may be awarded when a party has unnecessarily prolonged the litigation. Marx v. Marx, 265 N.J. Super. 418,428 (Ch. Div. 1993).

Although the ordinary "abuse of discretion" standard defies precise definition, it arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis. In other words, a functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue. It may be an arbitrary, capricious, whimsical, or manifestly unreasonable judgment.

Flagg v. Essex County Prosecutor, 171 N.J. 561, 572 (2002)

(Citations omitted).

In determining the amount of an award of counsel fees a litigant is entitled to receive, a trial judge may not impose his or her own policy considerations to arbitrarily reduce a litigant's otherwise legally justifiable application. In Re Probate of Will and Codicil of Macool, 416 N.J Super. 298, 314 (App. Div. 2010).

While there is no doubt but that an award of attorney's fees and sanctions was necessary, the Judge who ultimately heard the final application arbitrarily and without justification reduced the requested fees for the legal work covering the preceding 16 months based solely on the Court's objection to the fees sought to prepare the final application to the Court. That application was comprehensive and extensive in order to correct the distortions presented to the new Judge by Mr. Gallagher pertaining to the preceding two (2) years of complex litigation. In those sixteen (16) months, legal fees in the amount of \$125,716 were incurred of which only \$34,768 was related to the final application presented to Judge Schweitzer. \$90,948 was incurred in proceedings before Judge Famular and prior to the final application. Clearly, during the sixteen-month period Hazel May and the Lento Firm were acting in bad faith. Judge Schweitzer only awarded \$44,000

in fees for the entire period. Assuming arguendo that the entirety of the final application was unnecessary, a conclusion that is not supported by the facts or law, then the award of fees should have been no less than \$90,948 not \$44,000.

With regard to the \$34,768 incurred for the final application, those fees and costs were absolutely necessary and legally justifiable. These fees were necessary not only because of the history and complexity of the case, but because of the extent of the misconduct and misleading filings by Hazel May and her legal team.

The motion Judge's reduction of the \$125,716 was arbitrary and capricious. There was no explanation provided at all for most of the \$81,716 that was eliminated from the request. The Court essentially discounted most of the prior 16 months of protracted litigation with no basis and thus the reduced order constitutes an abuse of discretion. The fees sought were legally justifiable and necessary, due to the extensive misconduct of Hazel May and counsel set forth in Judge Famular's opinion, and thus there was no basis for a reduction.

D. The Court Erred When It Released The Insurance Proceeds For The 538 AXA Policy To Hazel May (R-115)

Teresa May relies on the facts and history previously provided herein but will repeat some matters necessary for this argument. Teresa May, the wife of the deceased Tyrone May, Sr., certified that while she was employed at May Funeral Homes their insurance agent, David Pozzi, sold life insurance policies to the couple. They agreed to maintain a policy for the benefit of each other. She also asserted that he had recently confirmed the premiums on her policy were current and she confirmed that her premiums on his policy were current. After her husband passed, she asserted that she was having difficulty getting policy information from May Funeral Home's insurance agent, David Pozzi.

Judge Famular executed Orders allowing the parties to engage in discovery. The sworn Answers Hazel May provided with the assistance of the Lento Law Group were knowingly false. It took over two years of hearings, motions, letters, and pleadings to learn the truth.

The discovery Orders also required the parties to respond to a Notice to Produce and attend depositions. Hazel May refused to respond to the Notice to Produce and refused to attend depositions. The Court held a hearing on April 5, 2021 to address Hazel's noncompliance and Mr. Fonte

made the startling admission that his client, Hazel May, was refusing to provide the documents to him.

The Court stated:

Right now, my objective is to get as much information as we can so we can sort out who is supposed to get what, and let's see where the money went. And if there's any left, I can only say, Ms. May, I would advise you not to spend it, and we're going to put that in a court order,...

Judge Famular executed the Court Order pertaining to the April 5, 2021 hearing on April 7, 2021. (R-82).

The Order contained several critical requirements:

4. David Pozzi, Insurance Agent for May Funeral Homes, must provide to the Court-appointed Administratrix, Maisie Chin Smith, Esq., and Patricia A. Darden, Esq. a copy of all policies of any kind that contain the name of the decedent, Tyrone E. May, Sr., including retirement, funeral, burial, key man, life, or any other kind of policy including changes in beneficiary documents within the last fifteen (15) years, within seven (7) days of the date of this Order. May Funeral Homes must assure that their insurance agent complies with this Order. Any failure in the future of the Pozzi Agency or its affiliates to fully cooperate with the Court-appointed Administratrix shall be sternly addressed by the Court:

5. John Fonte, Esq., Hazel May and Toni May Jervey must provide a sworn statement regarding any and all efforts or contacts that were made by any member of the May family or any member of the Lento law firm to obtain an E.I.N. number pertaining to the decedent

and said statements must be provided to the Court, Maisie Chin Smith, Esq. and Patricia A. Darden, Esq. within five (5) days or no later than April 12, 2021. Eventually the IRS will reveal why the Court Administratrix cannot get an E.I.N. number. If anyone has any information on this issue it must be revealed to the Court and the Court-appointed Administratrix, Maisie Chin Smith, Esq., immediately.

6. With regard to the life insurance policy on the decedent's life that exceeds \$800,000, the insurance Agency must provide a copy of the application that Tyrone May submitted for the policy, a copy of the entire policy, and a copy of any changes made to this policy; (R-82)

The parties next appeared in court on April 15, 2021. During the hearing Mr. Fonte, Hazel May and David Pozzi, all blamed each other and nothing at all was provided. At one point Judge Famular directed Mr. Pozzi to provide a copy of all the insurance policies. Mr. Pozzi stated he needed Hazel May's permission, which she gave him on the record. Mr. Pozzi also stated Hazel May could get a complete copy of the policy by merely paying a fee. (6T 22)

Maisie Chin Smith then spoke and advised the Court that she had finally been able to get access to the decedent's mail, which had been withheld since her November appointment, and she was finding information about insurance policies for the decedent and payments being made. She also found mail indicating that there was a BB&T Bank account opened on or about September 14, 2020, that deposited \$879,265.63. She further

advised the Court that the account was in Hazel's name and TMFT Inc. which had an address in Sheridan, Wyoming. (6T 27)

It is no coincidence that John Groff, of the Lento Law Group, assisted Hazel May in moving insurance money that the Firm had helped her obtain from their bank account, on or about the same time that the Lento Firm received the discovery requests from Teresa May. They fully intended to forever deceive the Court about the existence of insurance monies.

Neither the Court nor the Court-appointed administrator were aware that Hazel May had executed a Power of Attorney to the Lento Firm on June 20, 2020, which fully permitted them to act on her behalf, obtain documents, and deposit insurance funds into the Lento Firms Trust account. (R-660). Each and every false statement and violation of a Court Order requiring information about the insurance policies and the E.I.N. number must be viewed with hindsight in light of this deception.

The documentation discovered by Maisie Chin Smith indicated that with the assistance of John Groff, Hazel May collected money for three life insurance policies that were issued to Tyrone May. It took over a year to learn the amounts of these policies because of the subterfuge and false and inconsistent answers provided by the Lento Law Group and their co-counsel, Daniel Gallagher, Esq. During this period of time Hazel May was rapidly

dispersing these funds at amounts just below \$10,000. Some of these checks were cashed without signatures. Evidence of this activity was provided by Maisie Chin Smith, Esq. (R-726).

Tyrone May took out an insurance policy for \$150,000 made payable to his father Thomas May. He had two policies that were made payable to his wife, Teresa May. One policy had a face value of \$350,000 when purchased and had the Policy Number #106025611, herein referred to as the AXA 611-policy. (R-877) The second policy had a face value of \$250,000 when purchased and has the Incentive Life Legacy Policy Number #556201538 and is referred to as the 538-policy. (R-858)

When the Lento Group was forced to reveal this information, they insisted that both the policies that were made payable to Teresa May had been changed and the new beneficiary on those two policies was Hazel May. Both counsel for Hazel May and Judge Famular demanded to see the change form request. David Pozzi, the insurance agent, was only able to provide a change form request for the 611-policy.

At the Summary Judgment hearing on July 30, 2022, the absence of the change form for the 538-policy was a major issue because it had been three months since the numerous April Orders requiring that it be produced.

Maisie Chin Smith advised the Court:

MS. CHIN-SMITH: We only got one -- we only saw one letter from AXA saying that they received the change of beneficiary for the one policy, but there was no similar second letter for the second policy. (13T 44)

THE COURT: Right.

MS. CHIN-SMITH: And that I find highly suspicious, Your Honor. Now, if I saw documentation from AXA which showed that the payout occurred after they made the claim, then I probably would not have any issue, but we have never seen any paperwork regarding the payout of these three policies from AXA to the May family, Your Honor. (13T 44).

Following Ms. Chin Smith's comments, Ms. Darden then states:

MS. DARDEN: And that's why the payout is important too, particularly when we look at when it occurred. (13T 45).

The Court responded:

THE COURT: And that's where I think Mr. Gallagher, you can short circuit this whole mess by getting from your client the delineation of what those two checks paid -- what was the amount of each check for each of those two policies. Not the one to Thomas, the other two that were to Hazel; the 350 and the 250. (13T 45).

At this point in time, the Court, Patricia Darden, and Maisie Chin Smith were still under the impression that the policy amounts were valued at \$250,000 for the 611-policy and \$350,000 for the 538-policy. The Court asked Mr. Gallagher, "What was the amount of each check for each of the two policies?"

Mr. Gallagher gave conflicting responses when asked about the checks

which began to demonstrate his own participation in hiding the true payout and value of the policies.

MR. GALLAGHER: So, Your Honor, if I produce those, I may not get a transmittal letter, but I have change of beneficiary forms, I have the beneficiary life -- the life insurance benefit claims for both policies, and that would be Exhibit O and Exhibit R, --

THE COURT: Hm-hm.

MR. GALLAGHER: -- and I have the actual checks. (13T 45).

Everyone reacted when Mr. Gallagher said he had the actual checks. The checks had never been produced. The Court asked:

THE COURT: Where are they? I don't have them. (13T 45)

Mr. Gallagher quickly changed his response after the Court asked him where they were.

MR. GALLAGHER: I don't have the checks. (13T 46)

THE COURT: Oh.

MR. GALLAGHER: I don't have the checks. I don't have the check numbers or copies of the checks.

THE COURT: Right.

MR. GALLAGHER: I wish I had that. If I'm to get the -- if I was to go to the trust or the BB&T -- (indiscernible - speech garbled)

THE COURT: Yes.

MR. GALLAGHER: BBT--you get it, the bank, and get copies of those checks, --

THE COURT: Right.

MR. GALLAGHER: -- do I need anything more? I feel like-

THE COURT: No. No.

MR. GALLAGHER: Okay.

THE COURT: If you get copies of the checks, I'm going to ask Ms. Smith to -- Yes, Ms. Smith?

MS. CHIN-SMITH: I just want to see a letter of the payouts. So, when the policy is paid, Your Honor, there is tax withholdings, there's other, you know, accrued interest, da, da da da. So, I wanted to see how they arrived at the net value of the check that was distributed as the final proceeds for each of the life insurance policies to Hazel May, Your Honor.

MS. DARDEN: And that's why I'm saying what you would normally see, Your Honor, you don't see in this case, and we've asked for it in many different ways. And you've actually even ordered it. So, it's like you submit a paperwork, they take the paperwork, somebody responds to it, somebody -- you have to submit money to get a payout on an insurance claim.

THE COURT: Okay.

MS. DARDEN: You don't call on the phone and say somebody died.

MR. GALLAGHER: You have it.

MS. DARDEN: Ever -- there's -- the normal things that would flow that should be like this -- (snaps fingers) -- Mr. Pozzi should have them like that. He says he gave them to Hazel May. Hazel May said she gave it to them. They didn't give it to us. We actually got paperwork, Your Honor, telling us that it was attached. And I wrote you a letter saying, Your Honor, what Terrell Ratcliff [sic] said he attached it, it wasn't attached. We have played this hide and seek game here- (13T 47)

THE COURT: I know.

MS. DARDEN: -- and this -- all this -- why? If it's all - - you're asking Mr. Gallagher to get the information from Mr. Pozzi? Your Honor, this information has to come from AXA. It has to come from an independent person in these proceedings.

MR. GALLAGHER: Your Honor, I'm going to get the checks. I'm going to try and get the checks from BBT tank -- BBT Bank -- I'll get it right one of these days-- BBT Bank. If the checks are made out to Hazel May, --

THE COURT: Right.

MR. GALLAGHER: --what the delineation for principle and interest is of no business or concern for this Estate. (13T 48)

Essentially Mr. Gallagher took the position that these insurance questions were “no business or concern for this Estate.”

MR. GALLAGHER: They're not part of the Estate. I'll get the checks. I don't want to go out and get the checks and them say, oh, I don't have a -- I don't have a cover letter for this one policy, so therefore the policy is void. Obviously it was accepted and paid out by the company. If I get copies of the check, I don't -- I can't get anything more. (13T 48)

THE COURT: Hm-hm. No.

MS. DARDEN: I think -- I think the Court understands that my bigger question is whether the checks should have been made payable to Hazel May. And AXA may also have a problem here, and I am not assuming that they don't based upon the way this was handled, and based upon the way Paychex answered. Paychex told Maisie Chin that they worked for Hazel May. That's how close these entities are to each other and their relationships are to each other. I don't know that Hazel May should have received that check. And I think AXA's silence is disturbing. (13T 48)

THE COURT: Well, let's see what AXA is going to do, but in the meantime I've resolved quite a bit of this, and I think that the only thing that we have that's still is going to be a problem or that we're still looking into are the checks for the two policies, and as Ms. Smith said, if she has an outstanding subpoena, I expect that to be honored. I don't know why it hasn't been. So, Mr. Gallagher, maybe you can contact AXA and tell them to get off their duff and do what they're supposed to do to resolve this thing. (13T 48)

The parties appeared for a subsequent Zoom hearing on August 10, 2021, and there was still no compliance with prior Orders. Mr. Gallagher was ordered to comply with all outstanding Orders on September 29, 2021. (R-658) Once again, he did not comply. A hearing was held on October 29, 2021. No Court ordered documents were provided. On November 23, 2021, Mr. Gallagher wrote a letter to Judge Famular that provided some of the requested documents. The cover letter itself contained numerous inaccuracies and false claims that some documents had been previously provided, and a false claim that some documents were attached which were not actually attached.

In response to Mr. Gallagher's communication, counsel for Teresa May wrote the Court on February 5, 2022. (R-580). The newly provided documents contained proof that the Lento Law Firm had aided and assisted Hazel May in lying under oath about the existence of insurance monies and hiding insurance monies since the death of Tyrone May, Sr. For the first time it was learned that on June 20, 2020, shortly after his death, John Groff, of the Lento Law Group assisted Hazel May in the collection of monies on three life insurance policies. What was also learned for the first time was that the **538**-insurance policy which initially was named to his wife and was valued at \$250,000 at the time of purchase,

was valued at \$545,181.82 when he passed. The cancelled check for the \$545,181.82 was not provided although Mr. Gallagher falsely indicated that it was provided.

The newly discovered documents also provided proof that when Hazel May obtained the insurance proceeds checks these monies were deposited in the Lento Law Firm bank account in July 2020. These insurance monies were in Lento Law Firm bank account when the Lento Law Firm was served with discovery requests by Patricia A. Darden, Esq. on behalf of Teresa May for Hazel May to answer.

The connection between the Lento Firm's refusal to provide the E.I.N. number and the insurance policy problems began to be revealed. According to John Groff the E.I.N. number was needed "in regard to protecting assets pertaining to a life insurance policy" (R-267). John Fonte, Esq.'s First Certification to the Court regarding the previously hidden E.I.N. number for the Estate was done prior to the Lento Firm acknowledging that they had obtained an E.I.N. number for the estate. At that point, they were denying any involvement with an E.I.N. number and John Fonte's certification also included a representation from Mr. Groff, which stated the following in Paragraph 7: (R-268)

Paragraph 7- During that discussion, Mr. Groff informed me of

the following facts:

- a. Sometime after the passing of the Decedent (I was not told a specific date), Tyrone E. May, Sr., Ms. Hazel May reached out to the Lento Law Group in regard to protecting assets pertaining to a life insurance policy of the Decedent.
- b. In connection with this request, Mr. Haislip reached out to "an attorney" in Wyoming (I was not told a specific name) to help set up a trust account in Ms. Hazel May's name¹ for the benefit of her and the Decedents children.
- c. When asked why the account was set up in the State of Wyoming, Mr. Groff said that based upon his knowledge of Wyoming law, Wyoming law is very protective over trust information and assets, and therefore the trust was created there in an effort to protect the policy.
- d. Mr. Groff further went on to say the (1) the State of New Jersey would have no jurisdiction to enforce the production of an account outside of the State, and (2) even if the trust account was not set up by an attorney, assisting an individual in setting up a bank account is not "engaging in the practice of law", whether under the professional conduct rules of New Jersey or Wyoming.
- e. I asked about whether and EIN was requested or obtained in connection with this trust account. Mr. Groff said that one was obtained, but that it was taken out in Ms. Hazel May's individual name- not the Estate- because trust account setting up requesting an EIN and not the individual's SSN. Because nothing was taken out in connection with the Estate, Mr. Groff maintains that the EIN would not affect the Estate's ability to obtain an EIN for itself. (R-268)

He further indicated that he reached out to David Haislip, the Lento Firm's treasurer/accountant but Mr. Haislip did not get back to him. Finally, he stated the following in Paragraph 10. (R-268)

Paragraph 10. In addition to setting forth the details of

the Court's ruling to Mr. Groff on Thursday April 15, 2021, I asked Mr. Groff on the aforementioned phone call for documents pertaining to the EIN for the trust account, the trust account, the trust itself, the Wyoming attorney, and documents pertaining to TMFT, Inc., indicating that an Order by the Court to this effect would be anticipated. As of the date of this Certification. I have not received anything.

Following receipt of Ms. Darden's letter dated February 5, 2022, raising the issue of inaccuracies and the lack of attachments that Mr. Gallagher falsely claimed he previously provided, the Court held a Zoom hearing on February 11, 2022. After the hearing, the Court signed an Order on February 22, 2022, making it clear that Gallagher still had to produce unprovided documentation pertaining to the **538**-policy which had increased in value from \$250,000 to \$545,181.82. Thereafter, counsel for Teresa May wrote a comprehensive letter dated March 29, 2022, which provided the Court with Mr. Gallagher's submissions demonstrating the inappropriate conduct by the Lento Firm and Mr. Gallagher with regard to these insurance monies. (R-621).

The March 29, 2022 letter is a three hundred page document including the Exhibits and it fully exposes the lack of any evidence demonstrating that a change form request was received by the Insurance Company for the 538-policy; that a change of beneficiary occurred or how it occurred. Even though the beneficiary change request form provided by the Lento Group has the two policy numbers on it, there was nothing to support a conclusion that the form

with the two policy numbers was ever received or when. The letter provided the following breakdown:

With respect to the 611-policy, Hazel May has produced the following four documents:

1. A change request form dated February 22, 2011. (**See Exhibit G**).
2. A fax cover sheet from David Pozzi to the insurance company requesting a change in beneficiary for the 611-policy dated **February 24, 2011**. (**See Exhibit H**).
3. Proof that David Pozzi actually faxed the change request for the 611-policy to the insurance company on February 24, 2011. (**See Exhibit I**).
4. A two-page document from the insurance company dated March 2, 2011, addressed to Tyrone May, copied to David Pozzi, the insurance agent regarding the 611 change in beneficiary and including the statement: The proceeds shall be paid in a single sum to the following beneficiary, the insured's mother, Hazel May. (**See Exhibit J**). It should also be noted that the document confirming that the change was made contains the following language: **"AXA Equitable certifies this change has been recorded."** (R-624)

None of these documents were provided for the 538-policy. To date proof of receipt, acceptance and recording for the 538-policy has never been provided.

The March 29 letter also provided a breakdown of the value of the policies and how the Lento Law Firm hid the increase in value of the 538-policy from the Court, the Maisie Chin Smith and counsel for Teresa May. The

Court was told the following policy amounts were at issue.

\$350,000 policy for Hazel May
\$250,000 policy to Hazel May
\$150,000 policy to Thomas May
\$750,000

This false scenario ended on November 23, 2021 when Mr. Gallagher was forced to provide cancelled checks. The actual amounts were:

\$350,025.60 for the 611-policy
\$545,181.32 for the 538-policy
\$168,505.60 for the Thomas May policy
\$1,063,712.24 (See Exhibit K) (R-626)

The Court held another Zoom hearing on April 4, 2022. Although there had been a flurry of activity attempting to get the missing documents for the 538-policy they were not provided. Mr. Gallagher started by claiming that he had “original policies” from the company and change beneficiary forms (19T 6). Counsel for Teresa May responded that the 538-policy had not been provided, the change of beneficiary forms had not been provided, and acknowledgment from the insurance company that they had received a change of beneficiary were not provided, nor was there proof that the change was recorded. She stated: “We don’t know how or when the change of beneficiary was done on this policy.” (19T 7, lines 17-25).

The Court executed an Order dated April 6, 2022, requiring Daniel Gallagher to produce all the documentation for the 538-policy that had been

provided for the 611-policy no later than April 18, 2021. (R-932). The Court also instructed Hazel May to produce documents pursuant to a Notice in Lieu of Subpoena from Teresa May's counsel.

The parties appeared via Zoom for trial on April 20, 2022. Mr. Gallagher failed to produce anything. The Court asked him if he had a full copy of the policy and the same information for the 538-policy that he provided for the 611-policy. (20T 4).

Mr. Gallagher stated that he had endeavored to go through AXA and Pozzi but could only get what was previously provided. He proclaimed that everything was "done right". If somebody else thinks something was done wrong, they have the right to bring in AXA. They have the right to bring in Pozzi. The burden is not on me. (20T 6).

Mr. Gallagher did not want to proceed but Judge Famular insisted that he call Pozzi stating, "Get Pozzi on the line." (20T 10). The Court gave Mr. Gallagher a break to talk to Pozzi and Pozzi called in to the Court.

Mr. Pozzi made it clear that he did not want to testify. He responded to a few questions from Mr. Gallagher but when cross-examined, stated he did not feel comfortable and needed to call his company regarding the legal aspects of testimony (20T 22). Thereafter he was reluctant, evasive, and cautious. Ultimately, the Court adjourned the case and instructed Mr. Gallagher and

Pozzi to supply the outstanding paperwork.

The parties were scheduled to appear again on April 28, 2022. The night before the hearing, suddenly, an email arrived alleging that Hazel May was the changed beneficiary for the **538**-policy.

The Zoom hearing began on April 28, 2022, with Ms. Darden objecting to the last-minute email, which was unreliable, inconsistent with the Court's Order, and without a complete insurance policy. Ms. Darden argued that there was no way to test the authenticity or know whether the document was legitimate or whether the terms and conditions of the policy were met. Ms. Darden also stated that in light of the record of this case, the Court should not rely on a document that could not be verified or authenticated. She argued that the failure to produce a copy of the insurance policy was fatal.

Mr. Gallagher replied: "We provided the original policy." (20T 11, line 6).

This statement was blatantly false. No policy was ever provided. Mr. Gallagher then argued that insurance policies were highly sensitive contracts, and the policy could not be provided. That statement was also inaccurate because the Lento Group had a Power of Attorney to obtain these documents and Mr. Pozzi had been served with both a subpoena and Court Order. Indeed, Mr. Pozzi had testified that he could obtain a copy of the policy for Hazel May if a small fee was paid. (20T

32, lines 14-23).

During Mr. Pozzi's brief testimony he was evasive and largely unresponsive. He claimed that he obtained the email with the change form by calling a customer service representative, but he didn't want to give the name of the representative. He eventually stated:

I don't know the rabbit hole this is going down, and if now, you're going to then try to reach out to this poor service person that's just doing her job, but her name is Patricia Kornegay, K-O-R-N-E-G-Y, who is just a policy service person working for the Equitable in Charlotte, North Carolina, who forwarded to me those documents, which I then forwarded to you. (21T 20 lines 22-25 and 21T 21, lines 1-3).

Ms. Darden then began to question Mr. Pozzi about the transmission or email that he sent to the insurance company requesting information. Mr. Pozzi said he emailed Mr. Gallagher and was confused by the question asking for his communication to the insurance company. Judge Famular intervened and stated:

THE COURT: I guess that's what she's asking for. Well, she had asked that from before, any and all faxes, emails, correspondence, et cetera between the insurance company and you. And so, that -- we didn't see any of those and I know, you know, you probably don't think they're important because it's just- (21T 21 and 22).

At that point, Mr. Gallagher interrupted the Judge. Ms. Darden asked if he objected to the question. Mr. Gallagher stated:

MR. GALLAGHER: It is an objection. I'm asking as to

the relevancy of a forwarding email. If- - if Ms. Darden's getting at or trying to state that somehow that this document, which she indicated before that somehow AXA could have altered or changed the document or done something to that effect, then we're going down a whole other -- a whole other line of testimony. Mr. Pozzi has just testified that he got the change, he forwarded the change to me, I forwarded the change to everybody else. How is a forwarding email remotely relevant to the change of beneficiary form that was accepted back in 2001? (21T 22, lines 19-25 and 21T 23, lines 1-5).

The Court responded to Mr. Gallagher.

THE COURT: The problem is this: that the subpoena was sent a long time ago and the objection would have been appropriately made then, not today. Today is the trial so she's entitled to ask for it. She doesn't have it. She asked for it before. There was no objection received by the Court. No motion to quash by Mr. Gallagher, so I would say, yeah, it should have been produced. But let's get back to basics, Ms. Darden. (21T 23, lines 10-18).

Ms. Darden stated Yes. The Court responded:

THE COURT: They have not complied. There is no compliance. I agree with you. You don't need to keep arguing that. You have asked for many, many things that you don't have as of today. (21T 23, lines 19-24).

The Judge then gave the option of not continuing the trial. Ms.

Darden responded that the Court could make a decision based upon their failure to produce the documents and the trial should not be continually delayed because they won't comply. (21T 24 lines 8-12).

The Court responded:

THE COURT: If I get to the end of this case and I say to them, listen, you didn't produce what you were supposed to produce. She had to try this thing in a blind, and that may be a basis for your appeal. I don't know if things don't go your way and it also may be a basis for a hefty sanction because of the non-compliance, and there hasn't been a motion to quash. (21T 24 lines 16-22).

Ms. Darden continued to try to question Mr. Pozzi about the request he sent to AXA and Pozzi continued to insist upon answering that he forwarded a document to Mr. Gallagher. The Court tried to get Mr. Pozzi to respond. The Court stated:

THE COURT: No, the one from the insurance company --the woman who spoke to you, Patricia whatever her name was, she sent to you or somebody there sent to you the documents we are now looking at for the change of beneficiary form. Ms. Darden says, where's the transmittal whether it's email, fax, whatever it is that came -- that brought those documents to you. I imagine it'll be from the insurance company. (21T 26, lines 1-9).

After the Court's statement, Ms. Darden again asked Mr. Pozzi for the forwarding document. Mr. Pozzi again resisted. This time he stated:

THE WITNESS: -- I'm having a problem here because I don't know if I am allowed to be sending internal documents from my company to just all these different people. I really don't know. I mean, I'm being put into such a position here as an insurance agent that I

just don't know what to do without my own legal representation. (21T 26, 15-21)

After Mr. Pozzi appeared frightened and announced that he might need his own legal representation, Ms. Darden stated:

Mr. Pozzi, you're only required to tell the truth. (21T 26, lines 23-24).

Ms. Darden asked him again where were the documents he was court ordered to produce. Mr. Pozzi then began to Answer a series of questions by stating, "I don't recall" and also responded, "I can't obtain insurance contracts". He even responded to one question by stating, "I don't have the ability to get the copy of an insurance policy." Ms. Darden asked him why he didn't get the copy of the insurance policy when he told the Judge he needed a release? Why didn't he follow through? He responded, "I don't know". (21T 32, lines 8-14). Ms. Darden then addressed the Court because Mr. Gallagher was not visible on the Zoom on the Zoom screen. Ms. Darden asked:

MS. DARDEN: Your Honor, is Mr. Gallagher off the screen? (21T 33 lines 5-6).

The Judge responded:

THE COURT: No, he's still on. Because he hasn't spoken -- he must have shut off his video but he's still here. I see him. I mean, I see his name.

MS. DARDEN: Your Honor, I have -- I have an issue

with Mr. Gallagher disappearing off the screen when we're in the middle of doing this; particularly when his witness, Mr. Pozzi's on the stand. In the courtroom, you can't just walk away. (21T 33, lines 7-14).

When Mr. Gallagher returned to the screen, he stated that Mr. Pozzi was not his witness. Mr. Gallagher did the direct examination of Mr. Pozzi on April 20, 2022. Mr. Pozzi was on cross-examination when Mr. Gallagher disappeared from the Zoom screen. Yet, Mr. Gallagher stated:

MR. GALLAGHER: Mr. Pozzi's not my witness. He's not my client. He's not -- I don't even know where he's at. Where he's at? (22T 33, lines 17-19).

THE COURT: He has to be your witness, Mr. Gallagher. Otherwise, there's no way to get the papers in.

MR. GALLAGHER: Okay. (22T 33, lines 20-23).

The transcript of the remainder of the hearing will reflect that Mr. Pozzi never provided a credible reason for why he did not produce the Court Ordered documents, which included the insurance policy and the forms submitted to obtain the insurance funds. The Court eventually ruled that even though there were missing documents, the fact that the insurance company paid the money to Hazel May demonstrated that the insurance company was satisfied that Hazel May was the owner of the policy. The Court ordered that the insurance proceeds for the **538-** policy be released to Hazel May.

The Court erred in releasing these funds to Hazel May because Hazel May had the burden of proof to show that she satisfied the terms and conditions of the policy. Hazel May refused to produce the policy. She willfully could not show that she met the terms and conditions.

In Czoch v. Freeman 317 NJ Super. 273, 285, the Appellate Division held that: We note also that the trial judge did not address which party had the burden of proof on this issue. In our view the burden of proof to change the designated beneficiary of an insurance policy is upon the party seeking to upset the beneficiary designation. See Woehr v. Travelers Ins. Co. 134 N.J.Eq. 38, 40-41, 34 A.2d 136 (Ch.1943) ("...one who makes claim to the insurance moneys by virtue of an alleged change of beneficiary must carry the burden of proving that the substitution was permitted by the policy and that the change was made in strict compliance with the terms of the policy").

In the Matter of the Estate of Ronny Mohammed Saleh v Hannia Saleh, Docket No. A-0030-16T3, decided February 18, 2018, the Appellant Division stated the following: The payment of a life insurance benefit is generally governed by contract. See Metro. Life Ins. Co. v. Woolt 138 N.J. Eq. 450, 454-55 /E. & A. 1946). The rule is tempered by the doctrine of substantial compliance; so, our courts will effectuate a change of beneficiary where the insured has substantially complied with the relevant policy provisions. Haynes v Metro. Life Ins. Co., 166 N.J. Super. 308, 313{App. Div. 1979).

However, the insured must have "made every reasonable effort to effect [the] change of beneficiary." Ibid. There is no proof that Ronny did so here. There is no confirmation of receipt from the employer or the insurer, nor is there any evidence that Ronny attempted to confirm that his alleged beneficiary designation was effective. (This is an unpublished opinion and pursuant to the Court Rules it has already been provided.)

Counsel for Hazel May has argued that Teresa May is alleging or must show that the insurance company committed fraud. This argument is a diversion and has never been a position taken by Teresa May. It is Hazel May and the Lento Firm that Teresa May alleges have used nefarious means to collect and hide insurance monies that Hazel May was not entitled to. Hazel May had a burden of proof to show she had obtained these insurance monies by conforming to the terms and conditions of the policy and submitting the proper change documents that were provided to the company. She refused to meet her burden. The facts demonstrate that the **538**-policy monies were obtained through deception similar to the means used to collect the 401(k) funds with the assistance of John Groff and the Lento Law Firm.

Based upon the record in this case the refusal to follow Court orders, the failure to produce the relevant documents, the misconduct by Hazel May and her attorneys, and the plethora of deceit regarding all matters pertaining to this insurance policy, Hazel May did not meet her burden of proof. The conduct in this case warrants that this case not be remanded but that Hazel May must return the monies collected for the 538-policy to Teresa May.

CONCLUSION

Based upon the foregoing, Teresa May respectfully requests that this Court grant the relief requested and permit counsel to submit a Certification of Attorney's Fees and costs pursuant to the Court rules for consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Patricia Darden". The signature is written in a cursive, flowing style.

PATRICIA DARDEN, ESQUIRE
Attorney for Cross-Appellant Teresa May