IN THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

NIPUN GUPTA, Plaintiff-Appellant, v. AMRITA RAJE, Defendant-Respondent	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO: A-002170-23 ON APPEAL FROM: CHANCERY DIVISION SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, FAMILY PART HUDSON COUNTY DOCKET NO: FM-09-1198-19 Hon Gary Potters, J.S.C. Sat below

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BRIEF OF PLAINTIFF-APPELLANT NIPUN GUPTA
Submitted on July 29, 2024

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PRELIMINARY STATEMENT

The post-judgment orders being appealed in the instant docket not only infringe upon cherished rights such as liberty interest in international travel and procedural due process rights but also run afoul of multiple Court Rules – Rule 1:7-4(a), Rule 2:9-1, Rule 5:5-4(a)(1), Rule 1:5-3, and Rule 2:5-3(c) as argued under the respective legal points. The January 12, 2024 trial court order (Pa1149) directing the parties to deposit their and the child's passports with the court within 5 days that was issued without any hearing lacks a statement of findings of facts and conclusions of law in support of the decision and is inexplicably contrary to the trial court's factual finding that defendant failed to provide any evidence for her claim that plaintiff was about to flee the country. (Pa1148).

The motion judge failed to exercise due diligence and violated Rule 2:9-1 by modifying the March 1, 2023 Judgement Of Divorce (JOD) order and the June 6, 2023 orders which are pending appeal before this court in Docket # A-003224-22. Trial court also failed to enforce litigant's rights of plaintiff by overlooking defendant's contumacy in intentionally violating the provision of the Judgement of Divorce directing parties to claim the child tax credit in alternate years. Further, the judge effectively fabricated a new Court Rule on the fly that a movant must provide USPS tracking number of service of the motion on the adversary as a prerequisite for motion hearing or adjudication. Needless to add, the judge did not have the legal authority to do so.

Regarding the matter of abbreviation of transcript in Docket # A-003224-22, I first note that this court unreasonably created hurdles (Pa1057-58) in my ability to

comply with Rule 2:5-3(c)(2). Those hurdles were dismantled only after the Supreme Court of New Jersey summarily remanded the matter to the trial court for consideration of a renewed motion to abbreviate trial transcript by its order (Pa1267) on my motion for leave to appeal. Trial court's May 3, 2024 order (Pa1331) denying the renewed motion to abbreviate transcript is a testament to the motion judge's utter failure to grasp the gist of Rule 2:5-3(c), application of irrelevant factors such as the length of the divorce trial or the number of pages in the JOD decision, and failure to apply the correct legal standard for abbreviation of transcript. Further, the trial court's failure to address or even acknowledge plaintiff's core argument in the moving certification strongly suggests that the judge adjudicated the motion without earnestly reading the motion certification and properly considering the arguments advanced in favor of abbreviation of transcript. Trial court rationalized its decision by resorting to conclusory statements that do not comply with the requirements of Rule 1:7-4(a).

More disconcerting than the multitude of legal errors in the orders being appealed is the motion judge's pronounced propensity, too conspicuous to be missed, to cut corners, expediently evade the dutiful discharge of his judicial responsibilities, and needlessly delay the resolution of the issues raised by the litigants in complete disregard of Canon 3 of the Code of Judicial Conduct.

PROCEDURAL HISTORY

On November 9, 2023, defendant filed simultaneously a motion (Pa1060) and an Order To Show Cause (OTSC) (Pa1091) seeking inter alia enforcement of the June 6, 2023 order directing payment of her share of marital assets within 50 days and immediate payment of alimony withheld by plaintiff. Trial court denied her OTSC on November 13, 2023, deeming the relief sought as non-emergent, and converted the OTSC to a motion returnable on January 12, 2024. (Pa1089). Plaintiff filed a reply certification (Pa1110) in opposition to the defendant's motion on December 13, 2023 explaining why he withheld alimony. Defendant filed her response to plaintiff's reply certification, on January 2, 2024. (Pa1125). Before the return date of January 12, 2024, defendant filed another OTSC on January 2, 2024 alleging that plaintiff was about to flee the country to evade his equitable distribution obligation and requesting the court to take custody of plaintiff's passport. (Pa1152). Trial court denied her request for emergent relief on January 3, 2024, noting that the defendant "failed to provide a basis for her belief that the plaintiff was about to flee the country or a sufficient showing warranting depriving the plaintiff of his liberty interest in freedom of travel". (Pa1148). The court converted the OTSC to a motion and set January 12, 2024 as the return date along with the prior OTSC converted to a motion scheduled for the same date. (Pa1148). In opposition to the defendant's OTSC, the plaintiff filed a reply certification on January 5, 2024 denying defendant's allegation that he intended to flee the country. (Pa1171). Based solely on the parties' written submissions and without conducting any hearing, the trial

court entered an order on January 12, 2024, ordering both parties to deposit their passports along with the child's passport within 5 days. (Pa1150). The January 12, 2024 order also denied defendant's request for the transfer of the marital assets awarded to her. Further, plaintiff was directed to pay the withheld alimony to defendant within 15 days. Plaintiff paid the outstanding alimony amount on the same day i.e. January 12, 2024. (Pa1207). On January 16, 2024 plaintiff filed an OTSC seeking vacation of the provision in the January 12, 2024 order directing deposit of the passports or a stay pending the outcome of a contingent appeal in the Appellate Division. (Pa1183). The following day the trial court granted partial relief allowing plaintiff to travel internationally conditional on the deposit of the entire net equitable distribution obligation as security. (Pa1180). The court order directed both parties to state their position regarding the net equitable distribution amount due from plaintiff to defendant. (Pa1180). Plaintiff and defendant submitted their statements on January 19 and January 24, 2024 respectively. (Pa1216, Pa1218). Following a review of the parties' written submissions, trial court entered an order on January 26, 2024 directing plaintiff to deposit $125,000 into the account of the Superior Court of New Jersey or set up a joint account with the defendant or obtain a letter of credit to be held in escrow. (Pa1214). The court reiterated its January 12, 2024 directive requiring the deposit of the child's passport within 5 days with the court. (Pa1215). On January 31, 2024 plaintiff filed a motion for reconsideration of the January 12, 2024 and January 26, 2024 orders seeking compliance of those orders with Rule 1:7-4(a) and enforcement of his litigant's rights as

to his entitlement to the child tax credit for the even year 2022 as directed in the March 1, 2023 JOD opinion. (Pa1225). On February 8, 2024 the court scheduled plaintiff's motion for a remote hearing on March 8, 2024. (Pa1241). On the scheduled motion hearing date of March 8, 2024, without conducting a hearing, the trial court entered an order denying plaintiff's motion on grounds of failure to provide the USPS tracking number of the mail serving the motion on defendant. (Pa1224). See also Pa1370-71.

The Matter of abbreviation of the trial transcript

Plaintiff filed a motion to abbreviate transcripts in the trial court and concurrently filed a Notice of Appeal (Docket # A-003224-22) on June 26, 2023. On the motion return date of August 18, 2023, the trial court denied the motion to abbreviate transcripts without prejudice on grounds of procedural error of serving defendant by email. (Pa1056) Plaintiff emailed a copy of the trial court order on abbreviation of transcript along with Form C, the transcript order form on August 18, 2023 to the Appellate Division case manager. The transcript request form ordered the abbreviated transcripts which were delivered to the Appellate Division by the transcriber on September 25, 2023. (Pa1042) On October 23, 2023, plaintiff filed a motion in the Appellate Division for temporary remand to renew the motion for abbreviated transcript. The Appellate Division denied the motion for temporary remand on November 13, 2023. (Pa1057) On November 21, 2023, plaintiff filed a motion for reconsideration of the November 13, 2023 order. The Appellate Division denied the motion for reconsideration on December 4, 2023. (Pa1058) On December 18, 2023,

plaintiff filed in the Supreme Court of New Jersey a motion for leave to appeal (MLA) the November 13 and December 4, 2023 orders of the Appellate Division.

While plaintiff's motion for leave to appeal was pending in the Supreme Court, plaintiff submitted via email the appellant's brief and multiple volumes of appendices on December 20, 2023. A physical copy of the documents was delivered to the Clerk's Office of Appellate Division on December 22, 2023. However, the Clerk's Office returned plaintiff's submissions unfiled citing the outstanding issue of completion of transcripts. On December 27, 2023, plaintiff filed a motion for admission of the appellant's brief and appendix. The Clerk's Office notified plaintiff on January 5, 2024 that the motion (M-002454-23) had been filed but not scheduled. On January 9, 2024 plaintiff submitted a letter to the Clerk seeking the scheduling of the motion. The Clerk did not respond to plaintiff's letter. Plaintiff filed another motion for admission of appellant's brief and appendices on July 1, 2024, which was denied by the Appellate Division on July 17, 2024. (Pa1354).

In its order (Pa1267) on plaintiff's MLA, filed on March 22, 2024, the Supreme Court of New Jersey effectively reversed the denial of remand by the Appellate Division by summarily remanding the matter to the trial court for consideration of a renewed motion to abbreviate the transcript. Plaintiff filed a renewed motion to abbreviate transcript in the trial court on April 5, 2024. (Pa1269) Defendant filed a cross-motion opposing plaintiff's motion on April 18, 2024. (Pa1312) Plaintiff filed a reply certification

on April 25, 2024. (Pa1325) On the motion return date of May 3, 2024, trial court denied plaintiff's motion to abbreviate transcript.

STATEMENT OF FACTS

The parties are self-represented and have been registered with Judiciary Electronic Document Submission (JEDS) since June 2020. The parties filed several motions through JEDS during the divorce litigation spanning over four years and mutually served the motion papers exclusively via email for a period of more than three years since June 2020.

The parties were divorced on February 28, 2023 following a trial. The trial court issued a written opinion (Pa1) accompanying the judgment of divorce on March 1, 2023 followed by an amplification of its order on March 15, 2023 (Pa66). An order on the parties' respective motions for reconsideration was entered on June 6, 2023. (Pa506). The June 6, 2023 order directed plaintiff to pay the outstanding equitable distribution amount to defendant within 50 days. (Pa506). On June 26, 2023, plaintiff filed a Notice of Appeal (Pa1043) of four orders dated 03/01/2023, 03/15/2023, 06/06/2023, and an interlocutory order dated 04/08/2021 challenging various financial aspects of the judgment of divorce such as equitable distribution, alimony, Mallamo credits, counsel fees, and QDRO fees. (Pa1355-1417). While the appeal remains pending in this court, a dispute arose between the parties regarding plaintiff's entitlement to child tax credit for the year 2022 as provided in the March 1, 2023 order. (Pa59). Plaintiff withheld alimony for five months to coerce defendant to comply with the child tax provision of the March

1, 2023 order. Plaintiff sent several emails to defendant offering to immediately pay the withheld alimony if she executed the requisite IRS documents. (Pa1119-22). Defendant filed a motion (Pa1061) and OTSC (Pa1092) simultaneously on November 9, 2023 seeking inter alia payment of withheld alimony and enforcement of the June 6, 2023 order directing plaintiff to pay outstanding equitable distribution obligation within 50 days. Defendant annexed the June 6, 2023 order as Exhibit 4 (Pa1081) to the certification of her motion. The OTSC was converted to a motion returnable on January 12, 2024. Defendant's subsequent OTSC filed on January 2, 2024 seeking the court to take custody of plaintiff's passport was also converted to a motion by a January 3, 2024 order that noted: "*Defendant provides no basis for her belief plaintiff is about to flee the country"*. (Pa1148)

On the designated return date of January 12, 2024 trial court called off the scheduled hearing and adjudicated the motions on papers. Trial court's January 12, 2024 order reversed the provision in the June 6, 2023 order (Pa506) directing plaintiff to pay the outstanding equitable distribution obligation within 50 days by denying defendant's request for transfer of equitable assets. (Pa1150). The January 12, 2024 order explained the trial court's decision directing the deposit of the passports by noting that it was to "*address defendant's concerns*". There was no further explanation.

Trial court's January 12, 2024, January 26, 2024 and March 8, 2024 orders did not address the matter of defendant's noncompliance with the child tax credit claim provision in the March 1, 2023 JOD order that plaintiff raised in his December 13, 2023

reply certification (Pa1111), January 16, 2024 OTSC (Pa1195) and January 31, 2024 motion for reconsideration (Pa1230-32).

On May 3, 2024, the trial court denied plaintiff's motion to abbreviate transcript by concluding "*that the only manner in which the reviewing Court will be possessed of the myriad findings of fact and conclusions of law is by receiving the entirety of the trial transcript.*" (Pa1331-32). The motion was adjudicated by a judge who did not preside over the divorce trial.

All the orders being appealed were adjudicated on papers. See also Pa1371-72.

ARGUMENT

POINT I

TRIAL COURT VIOLATED THE CONSTITUTIONALLY ENSHRINED DUE PROCESS RIGHTS AND LIBERTY INTEREST OF PLAINTIFF AND HIS CHILD BY ORDERING THE CONFISCATION OF THEIR PASSPORTS WITHOUT CONDUCTING A PLENARY HEARING, WITHOUT PROVIDING ANY LEGAL AND FACTUAL BASIS FOR ITS DECISION, AND DESPITE ITS CLEAR FINDING THAT DEFENDANT DID NOT PROVIDE ANY EVIDENTIARY BASIS OF HER BELIEF THAT PLAINTIFF WAS ABOUT TO FLEE THE COUNTRY. (Pa1150-51)

In its January 12, 2024 order (Pa1149), trial court ordered the confiscation of the parties' and the child's passports based on a mere expression by defendant of her suspicion of plaintiff's intent to flee the country to evade his equitable distribution obligation to her. The trial court did so despite its factual finding in the January 3, 2024 order (Pa1148) that there was no evidence before the court that plaintiff was about to flee the country, a finding that was reiterated in the January 26, 2024 order (Pa1214). Further, in my reply certification (Pa1171) filed on January 5, 2024, I categorically denied (Pa1172) that defendant's allegation had any factual basis. On January 12, 2024, trial court inexplicably called off the hearing scheduled by the January 3, 2024 order and

ordered the deposit of the parties' and the child's passport within 5 days thereby severely curtailing the liberty interest of plaintiff in international travel.

The United States Supreme Court has held that the right to international travel is an aspect of the liberty interest guaranteed by the Fifth and Fourteenth Amendment due process clauses. See Aptheker v. Sec. of State, 378 U.S. 500 (1964); Kent v. Dulles, 357 U.S. 116, 125 (1958). The Ninth Circuit has concluded the right to travel internationally is protected by substantive due process. See Eunique v. Powell, 302 F.3d 971 (9th Cir.2002). Trial court's decision to order the confiscation of the parties' and child's passports without conducting a hearing constitutes a violation of due process rights. "Fundamentally, due process requires an opportunity to be heard at a meaningful time and in a meaningful manner." Doe v. Poritz, 142 N.J. 1, 106 (1995).

It is disconcerting that the trial court ordered the confiscation of passports without conducting a hearing despite finding there was no evidence before the court that plaintiff was planning to flee the country. The parties had made conflicting claims in their respective certifications with defendant claiming (Pa1159) that the plaintiff was planning to flee the country and the plaintiff denying defendant's allegation (Pa1172). A trial court must hold a plenary hearing when a motion raises a genuine issue of material fact. Tretola v. Tretola, 389 N.J. Super. 15, 20-21 (App. Div. 2006). Further, defendant had expressly requested an oral argument in her motion (Pa1061) and OTSC (Pa1092) filed simultaneously on November 9, 2023, and the subsequent OTSC (Pa1152) filed on January 4, 2024. Because defendant's request seeking the court to take custody of the

plaintiff's passport was a substantive issue, pursuant to R. 5:5-4(a)(1), the trial court was required to grant the defendant's request for an oral argument instead of conveniently adjudicating the motion on papers.

Trial court's decision to call off the hearing that it had scheduled in the January 3, 2024 order and decide the motion on papers would have been legally sustainable only if the trial court were to deny defendant's request for the court to take custody of plaintiff's passport in the January 12, 2024 order which indeed would have been the right decision because there was nothing before the court that lent credence to defendant's claim of plaintiff's intent to abscond. Further, the judge was aware that the plaintiff had filed an appeal against several provisions (Pa1355-1417) of the Judgement of Divorce following the due process of law, which a prospective fugitive is unlikely to do. Without the application of mind or law, the judge ordered the confiscation of the passports based merely on defendant's claim that plaintiff was a potential absconder. Although the court granted relief to plaintiff from depositing his passport in its January 17 and January 26, 2024 orders conditional on deposit of $125,000, paragraph 9 of the January 12, 2024 continues to remain in effect as provided in the January 26, 2024 order – "*The Court specifically enforces par. 9 of the January 12, 2024, Order and requires that the child's passport shall be deposited with the Court*" (Pa1215). I do not know whether defendant complied with the said provision and deposited the child's passport with the court. Assuming she did, the trial court has unlawfully and without good cause taken possession of my daughter's passport.

In conclusion of the instant argument, I raise the following question before this court – Are the liberty interests in the jurisdiction of New Jersey so tenuous that all it takes for an individual to be deprived of the custody of his passport is an unsubstantiated allegation of intent-to-abscond by a former spouse in a court filing? I hope this court answers the question posed resoundingly in the negative and directs the motion judge to return the child's passport to the custodial parent immediately if the trial court has custody of the child's passport.

POINT II

TRIAL COURT ABUSED ITS DISCRETION AND FAILED TO COMPLY WITH RULE 1:7-4(a) BY ORDERING THE CONFISCATION OF THE PARTIES' AND THEIR CHILD'S PASSPORTS WITHOUT PROVIDING ANY RATIONAL EXPLANATION, FINDINGS OF FACTS, AND LEGAL CONCLUSIONS IN SUPPORT OF ITS DECISION. (Pa1150)

The January 12, 2024 order, being a final order that is appealable as of right, is subject to R. 1:7-4(a). Family Part orders that dispose of post-judgment motions without requiring further proceedings or hearings are final orders and therefore appealable as of right. See Saltzman v. Saltzman, 290 N.J. Super. 117, 124 (App. Div. 1996). However, the trial court woefully failed to comply with R. 1:7-4(a) by ordering the confiscation of the child's and the parties' passports without any fact-finding and conclusions of law. Rule 1:7-4(a) required that the trial court explain the factual and legal basis for ordering both parties to surrender their passports along with the child's passport. Trial court's rationalization of its draconian decision to impound the child's and the parties' passports by a terse explanation "*To address defendant's concerns*" in paragraph 9 of the January 12, 2024 order (Pa1150) manifestly fails to meet the requirements of R. 1:7-4(a). "These

requirements are unambiguous and cannot be carried out by the motion judge by a nebulous allusion to the reasons set forth in defendant[s]' motion papers." Estate of Doerfler v. Fed. Ins. Co., 454 N.J. Super. 298, 302 (App. Div. 2018).

The January 12, 2024 order leaves several questions unanswered. Did the court find any credible evidence that the plaintiff was about to flee the country? If so, what was the credible evidence that prompted the trial court to order the impounding of passports? If not, why did the court order plaintiff to surrender the passport based merely on defendant's allegation lacking any prima facie evidence? What compelled the trial court to impulsively order the plaintiff to surrender his passport despite its clear factual finding in its January 3, 2024 order - "*Defendant provides no basis for her belief plaintiff is about to flee the country and does not establish a sufficient showing warranting depriving plaintiff of his liberty interest of freedom of travel*"? (Pa1148). All these questions beg an answer. "Family judges are under a duty to make findings of fact and to state reasons in support of their conclusions." Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996).

Surpassing the irrationality and capriciousness of its order to confiscate plaintiff's passport is the trial court's sua sponte decision to impound defendant's and the child's passport. In my reply certification (Pa1171), I did not seek any travel restrictions on either the defendant or the child but the trial court inexplicably ordered the confiscation of the defendant's and the child's passport. Apparently, the motion judge believed that inflicting injustice on both parties who were self-represented was a reasonable means of balancing equities in a court of equity.

In a motion for reconsideration (Pa1225, Pa1227) seeking compliance with Rule 1:7-4(a), I sought answers to the foregoing questions. However, because the judge was not in a position to explain his arbitrary and capricious decision to confiscate the child's and the parties' passports, he evaded compliance with Rule 1:7-4(a) by conveniently denying the motion on frivolous and legally baseless grounds of failure to furnish a USPS tracking number of the mail serving the motion on the defendant. The denial of the reconsideration motion is the subject of Point V.

POINT III

TRIAL COURT VIOLATED RULE 2:9-1 BY MODIFYING THE MARCH 1, 2023, AND JUNE 6, 2023 TRIAL COURT ORDERS WHILE THOSE ORDERS WERE UNDER APPEAL BEFORE THE APPELLATE DIVISION. TRIAL COURT'S JANUARY 12, 2024, AND JANUARY 26, 2024 ORDERS ENTERED DESPITE LACK OF JURISDICTION SHOULD BE DECLARED VOID AB INITIO EXCEPT FOR THE ALIMONY ENFORCEMENT PROVISION. (Pa1150, Pa1214)

The March 1, 2023 JOD order (Pa2) and June 6, 2023 (Pa506) order on reconsideration of JOD were identified among the orders being appealed in the Notice of Appeal (Pa1043) that was initially filed on June 26, 2023. Therefore, the trial court's jurisdiction was limited to the enforcement of the existing orders pursuant to Rule 2:9-1. Trial court violated R. 2:9-1 by entering provisions in its January 12 and January 26, 2024 orders that went beyond enforcement, and effectively modified the March 1, 2023, and June 6, 2023 orders under appeal. The March 1, 2023 order granted permission to defendant to travel internationally, subject only to the condition that international travel of the child shall be discussed between the parents before the child travels abroad. (Pa10). Further, no travel restrictions were imposed on the plaintiff. The January 12,

2024 order (Pa1149-50) modified the freedom of travel provision in the March 1, 2023 order by ordering the confiscation of the passports, thereby drastically curtailing international travel of the parties and the child. "[I]n the matrimonial context, any modification orders entered by the trial court while the appeal of a matter is pending are void." Rolnick v. Rolnick, 262 N.J. Super. 343, 366 (App. Div. 1993). "Unquestionably, as a general rule, once an appeal is filed, the trial court loses jurisdiction to make substantive rulings in the matter." McNair v. McNair, 332 N.J. Super. 195, 199 (App. Div. 2000)

Further, the January 12, 2024 order reversed the express provision in the June 6, 2023 order – "*Mr Gupta has 50 days from the date of this order to pay outstanding equitable distribution* (Pa506)" by denying defendant's request seeking enforcement of the June 6, 2023 order regarding the distribution of marital assets within 50 days. The reason provided by the trial court – "*The excerpted information provided in the submissions is insufficient to permit meaningful review and to permit the Court to determine whether the relief is enforcement in nature or the subject of plaintiffs appeal.*" in Paragraph 4 of the January 12, 2024 order (Pa1150) is both factually and legally erroneous. Defendant was seeking enforcement (Pa1063-64) of the June 6, 2023 order and had duly attached the June 6, 2023 order as Exhibit 4 (Pa1081) to the certification of her enforcement motion filed on November 9, 2023. Therefore, not only was defendant compliant with Rule 5:5-4(a)(3) but had also provided sufficient information that established the relief she was seeking, i.e., distribution of marital assets in her November 9, 2023 motion was a request for

enforcement of the June 6, 2023 order of the trial court. There was no need for her to attach the March 1, 2023 JOD order (Pa1) because the timeline for equitable distribution was established in the June 6, 2023 order (Pa506) that she was seeking to enforce. Further, it was not unreasonable for defendant to assume that the March 1, 2023 JOD order would be readily accessible to the trial court as the parties did not know in advance that the motion would be adjudicated by a judge who did not conduct the divorce trial. It is inconceivable that the motion judge did not have the ability to retrieve the March 1, 2023 Judgement of Divorce order from the docket record. Even if the judge believed that litigants had the responsibility to provide the court with a copy of the March 1 JOD order, he should have reserved his order, directed the parties to provide a copy of the March 1 order, and then adjudicated defendant's request for distribution of marital assets as stipulated in the June 6, 2023 order. Axiomatically, it is the responsibility of the judge, not the litigants, to ensure that trial court orders do not breach the jurisdictional limits imposed by Rule 2:9-1 during the pendency of an appeal. The buck stops with the judge. Regarding the disposition of defendant's request seeking enforcement of the June 6, 2023 order, the trial court had only two options - either it should have enforced the June 6 order by ordering distribution of the marital assets pursuant to R. 2:9-1(a)(7) or it should have expressly stayed the distribution of marital assets pursuant to R. 2:9-5(b). By denying defendant's request for distribution of assets, the motion judge effectively reversed the June 6, 2023 order and violated Rule 2:9-1.

Further, trial court's January 26, 2024 order directing plaintiff to deposit an amount of $125,000 to secure his equitable distribution obligation despite its clear finding that "*defendant offered nothing other than her concern that plaintiff may not return to the United States*" has no legal basis. While it is true that I offered to deposit security with the court in the January 16, 2024 OTSC that I filed (Pa1188), I did so to secure relief from the trial court's draconian, arbitrary, and whimsical decision of impounding my passport. Having already complied with the trial court's questionable decision by depositing $125,000 into the trust account of the Superior Court of New Jersey (Pa1223), I question the legality of the decision as the trial court did not cite any authority in support of its decision. To the best of my knowledge, the trial court's decision has no precedent in case law. Trial court's decision may have been tenable only if it had found any evidence of plaintiff planning to flee the country to evade his equitable distribution obligation.

POINT IV

TRIAL COURT ERRED IN FAILING TO ENFORCE THE LITIGANT'S RIGHTS OF PLAINTIFF BY INEXPLICABLY IGNORING THE MATTER OF DEFENDANT'S NONCOMPLIANCE WITH THE PROVISION OF THE MARCH 1, 2023 JUDGEMENT OF DIVORCE ORDER DIRECTING THE EXECUTION OF IRS DOCUMENTS FOR CLAIMING THE CHILD TAX CREDIT IN ALTERNATE YEARS. (Pa1149, Pa1214, Pa1224)

To provide relevant context, I draw this court's attention to the violation of multiple court orders by defendant during the parties' divorce litigation spanning over four years, as the trial court unequivocally noted in the March 1, 2023 JOD order – "*Defendant intentionally withheld the items* (Pa61)". However, defendant faced no consequences as the trial court let defendant walk away with impunity. For a full

exposition of defendant's unrelenting contumacy, see Pa1413-15. The regrettable failure of the divorce trial judge to hold defendant accountable for the intentional violation of multiple orders further fueled her contumacy and reinforced in her mind a misguided belief that compliance with court orders is dispensable. Having tasted blood, defendant decided not to comply with the following provision in the March 1, 2023 order – "*The parties shall alternate claiming the child as a dependent yearly. Plaintiff shall claim the child in all even year tax filings and Defendant shall claim the child in all odd year tax filings. Both shall execute all documents required by the IRS to effectuate this filing status.*" (Pa59). I sent her several emails (Pa1119-22) seeking a signed IRS form for the tax year 2022 that would enable me to claim the child tax credit as provided by the March 1, 2023 order. As she did not cooperate, I withheld five alimony payments for the months of July 2023, and October 2023 through January 2024. Although the alimony amount established in the March 1, 2023 order is under appeal (Pa1395-98), I recognize that existing orders of the trial court remain in effect. I withheld alimony solely as a coercive measure to compel her compliance with the child tax credit provision as I explained in the reply certification (Pa1111) that I filed on December 13, 2023.

In its January 12, 2024 order, the trial court ordered plaintiff to pay the alimony within 15 days of the order. I complied with the order by making 5 payments of $2166.67 each on January 12, 2024. (Pa1192, Pa1207). I candidly acknowledge that the trial court took the right decision because I did not have permission from the court to withhold alimony payments. However, the trial court's January 12, 2024 order

completely ignored the matter of defendant's noncompliance with the child tax credit provision of the JOD order. I raised the issue of defendant's noncompliance again in the OTSC that I filed on January 16, 2024. (Pa1195). While it is understandable that the trial court did not address the issue in its preliminary order on the OTSC filed on January 17, 2024, because the matter was not emergent as I acknowledged myself in the OTSC, trial court failed to address the issue even in the subsequent and final January 26, 2024 order (Pa1214). I sought defendant's compliance with child tax credit provision yet again in a motion for reconsideration that I filed on January 31, 2024. (Pa1230-32) On the motion return date of March 8, 2024, the motion judge evaded the adjudication of the motion by denying it without a hearing on grounds of failure to provide a USPS tracking number which has no basis in law as I contend in Point V.

Trial court's failure to evenhandedly enforce the litigant's rights of both parties not only provides an impetus to the contumacy of the offending party but also demoralizes the aggrieved party and reasonably shakes the faith of the latter in the judicial process. "We insist on compliance with judicial orders to promote order and respect for the judicial process." State v. Gandhi, 201 N.J. 161, 190 (2010). I don't have a penny in alimony or child support arrears. I am compliant with all court orders including the trial court's questionable decision directing a deposit of $125,000 as security but the defendant, having already walked away with impunity after violating multiple orders before the divorce trial (Pa1413-15), continues to remain delinquent on her obligation to execute IRS documents for the year 2022 that would enable me to claim the child tax

credit as directed in the March 1, 2023 order. Equally disconcerting is the motion judge looking the other way and failing to address the matter of defendant's noncompliance in the January 12, January 26, and March 8, 2024 orders. "The court's failure to consider defendant's clear violations of the order was without any explanation, and overlooked the purpose of Rule 1:10–3: ensuring compliance with court orders." N. Jersey Media Grp. Inc. v. State, 451 N.J. Super. 282, 300 (App. Div. 2017). "Ultimately, the court is responsible for ensuring that its duly issued orders are honored." State v. Garcia, 195 N.J. 192, 204 (2008).

I request this court to direct the motion judge to address the matter of defendant's noncompliance in a time-bound manner without the plaintiff having to incur the cost of filing yet another motion. Although the $50 motion filing fee is not a princely sum, as a matter of principle, litigants should not have to bear the cost of filing repeated motions if the judge fails to address all the issues raised in a motion or an OTSC.

POINT V

TRIAL COURT ABUSED ITS DISCRETION IN DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION ON LEGALLY BASELESS GROUNDS OF FAILURE TO PROVIDE THE USPS TRACKING NUMBER OF SERVICE OF MOTION ON DEFENDANT. NO COURT RULE REQUIRES THE MOVANT TO FURNISH A TRACKING NUMBER AS A PREREQUISITE FOR MOTION HEARING OR ADJUDICATION. MISINTERPRETATION OR DISTORTION OF COURT RULES BY TRIAL COURT IS SUBJECT TO DE NOVO REVIEW. (Pa1224)

Following the filing of plaintiff's motion for reconsideration on January 31, 2024, the parties were notified (Pa1241-42) that the motion was scheduled for a remote hearing on March 8, 2024, at 9:00 am. The parties were advised to contact the court for

information as to whether the hearing would be over video or phone. (Pa1241). However, on the motion return date of March 8, 2024, without conducting a hearing the judge denied the motion on grounds of failure to provide a USPS tracking number of the mail serving the motion on defendant. Significantly, defendant did not make any representation before the court that she had not received the motion papers. Given the 02/08/2024 date of scheduling notice, it follows from Rule 1:6-2(b)(1) that the judge received and reviewed the motion papers on February 8, 2024. The email (Pa1244) from judge's law clerk to the parties on March 7, 2024 establishes that the judge had taken a predetermined decision to deny the motion without conducting a hearing on the following day on baseless grounds of failure to provide USPS tracking number. No court rule requires a movant to provide a USPS tracking number as a prerequisite for motion hearing or adjudication. Because there is no such requirement in court rules, as the movant, I could not have dreamt, divined, or surmised while filing the motion that the judge would require a tracking number as a prerequisite to hearing my motion.

The denial of the motion on legally baseless grounds of failure to provide a tracking number betrays the motion judge's ignorance of Rule 4:4-4, Rule 1:5-3, Rule 1:5-4, and Rule 1:6-3. First, I note that the rote reference to R. 4:4-4 in the March 8, 2024 order is misplaced and misguided. R. 4:4-4 has zero relevance here. "Service of post-judgment motion papers is governed by R. 1:5-1(a), R. 1:5-2, and R. 1:5-4(a), not R. 4:4-4 as referenced by the motion judge." Youssefi v. Youssefi, 328 N.J. Super. 12, 23 (App. Div. 2000). Second, Rule 1:5-3 requires only a certification of service. Rule 1:5-3

does not mention any requirement to submit a tracking number. "[T]he language of Rule 1:5-3 is clear and unambiguous. The rule requires that the proof of service indicate that a mailing was sent to a party's last known address and nothing more. That, of course, does not preclude a party from including additional details in respect of the outcome of a certified mailing, but the rule does not require such information. First Resol. Inv. Corp. v. Seker, 171 N.J. 502, 511 (2002). (emphasis added).

As to the trial court's conclusion that "*Email is not a proper form of service under the Court Rules*" (Pa1224), I note that R. 1:5-2 was relaxed to permit service of process by electronic filing using an approved electronic filing system, and R. 1:5-3 was relaxed to suspend the requirement to file a separate proof of service document for those pleadings electronically filed using an approved electronic filing system. (Pa1248-50) By Order dated May 5, 2020, the Supreme Court of New Jersey confirmed that the Judiciary Electronic Document Submission (JEDS) system is an approved electronic filing system. (Pa1253-55). Because JEDS is an approved electronic filing system and because both self-presented parties have been registered as participants under JEDS since June 2020, the relaxations of R. 1:5-2 and R. 1:5-3 applied to the plaintiff's motion for reconsideration filed on January 31, 2024. For over three years since June 2020, both parties filed motions or OTSCs through JEDS and reciprocally served the motion papers exclusively via email without any objection from divorce trial judge Hon. Maureen Mantineo. The motion judge ought to have taken judicial notice of the Supreme Court

orders permitting service of process by electronic filing under R. 1:5-2 but failed to do so.

The suggestion in an email from the motion judge's law clerk to plaintiff that the court was required to "check on-line the status of delivery" (Pa1246) has no basis in law and exposes the judge's ignorance of Rule. 1:5-4(b) which provides that "service shall be deemed complete on mailing of the ordinary mail." New Jersey courts "have recognized a presumption that mail properly addressed, stamped, and posted was received by the party to whom it was addressed." SSI Medical Services, Inc. v. State, Dept. of Human Services, 146 N.J. 614, 621 (1996). "Pursuant to Rule 1:6-3(c), . . .If service is by ordinary mail, receipt will be presumed on the third business day after mailing." Murray v. Comcast Corp., 457 N.J. Super. 464, 469 (App. Div. 2019). No court rule required the judge to verify online the delivery of plaintiff's mail serving the motion to defendant by navigating to some website on the internet.

Significantly, Rule 1:5-3 provides inter alia that "Failure to make proof of service does not affect the validity of the service, and the court at any time may allow the proof to be amended or supplied unless an injustice would result." The March 8, 2024 order does not explain why the court did not exercise its authority under Rule 1:5-3 and provide plaintiff an opportunity to submit additional proof such as a tracking number if it had any concerns regarding the service of motion instead of summarily denying the motion. It is hard to escape the conclusion that the motion judge allowed expediency to

prevail over the professionalism and conscientiousness expected of a New Jersey Superior Court Judge.

Because the motion for reconsideration was denied without prejudice, I recognize that the March 8, 2024 order would be deemed interlocutory for which technically a leave to appeal needs to be sought pursuant to Rule 2:5-6. However, because the March 8, 2024 order is a naked exercise in procrastination and evasion of judicial responsibilities by the motion judge in violation of Canon 3 of the Code of Judicial Conduct, I respectfully request this court to grant the leave to appeal nunc pro tunc and adjudicate on merits the appeal of the March 8, 2024 order in the interests of justice as well as judicial economy instead of dismissing the appeal as interlocutory.

POINT VI

MOTION JUDGE VIOLATED CANON 3 OF CODE OF JUDICIAL CONDUCT BY FAILING TO DISCHARGE HIS JUDICIAL DUTIES DILIGENTLY, EXPEDITIOUSLY, AND IMPARTIALLY. AS A SUPERVISING COURT, THE APPELLATE DIVISION SHOULD REVIEW MOTION JUDGE'S DILATORY CONDUCT AND ACTIONS WITHOUT ANY DEFERENCE. (Pa1149, Pa1224)

The motion judge's orders reek of a disconcerting propensity on the part of the judge to cut corners, evade judicial responsibilities, and needlessly delay the disposition of the real issues raised by the pro se litigants.

Considering the March 8, 2024 denial of the motion for reconsideration on baseless grounds to furnish a USPS tracking number, as mentioned before, defendant made no representation to the court that she did not receive the motion papers. Yet the motion judge conveniently assumed that she had not been served the motion, inexplicably called off the remote hearing that had been scheduled for 9:00 am on March

8 (Pa1241) and denied the motion. Had the remote hearing proceeded, it would have established right away at the outset of the hearing whether defendant received plaintiff's motion or not. Even if the judge was too busy to conduct a remote hearing, he could have reserved his order and directed plaintiff to submit additional evidence of service of motion to the satisfaction of the court as provided in Rule 1:5-3. Just because defendant elected not to respond to plaintiff's motion by filing a reply certification or a cross-motion, the motion judge opportunistically assumed that defendant did not receive the motion. The motion judge's presumption in favor of the contumacious party perversely encourages that party to not respond to a motion that was seeking inter alia enforcement of plaintiff's litigant's rights. The judge's conduct failed to adhere to the standards of Canon 3 of the Code of Judicial Conduct. "Every judge is duty bound to abide by and enforce the standards in the Code of Judicial Conduct. See R. 1:18" In re DiLeo, 216 N.J. 449, 467 (2014). "The Code of Judicial Conduct, adopted by this Court in 1974, requires that "[a] judge should dispose promptly of the business of the court." Canon 3A(5)" Matter of Alvino, 100 N.J. 92, 96 (1985).

Further, defendant had served her motion and OTSC on plaintiff by email (Pa1073, Pa1139) and certified mail without providing any tracking number. The judge adjudicated those motions and OTSC in the January 12, 2024 order but took exception to plaintiff serving defendant by email in the March 8, 2024 order even though defendant had additionally been served via USPS mail. There is no legitimate rationale or

legal basis for applying differential standards to the parties regarding the mode of service of the motion.

Similarly, the January 3, 2024 order provided that "*Matter is listed, along with the other converted OSC on 1/12/24, at 9:00 a.m.*" (Pa1148). However, on January 12, 2024, the judge inexplicably called off the hearing and precipitously ordered the confiscation of passports despite the court's unequivocal finding in the January 3, 2024 order that "*Defendant provides no basis for her belief plaintiff is about to flee the country and does not establish a sufficient showing warranting depriving plaintiff of his liberty interest in freedom of travel.*" (Pa1148). One is left wondering what transpired between January 3 and January 12, 2024 that compelled the judge to take the draconian decision of impounding passports without conducting a hearing as provided in the January 3, 2024 order. It appears that the judge's arbitrary decisions are driven in part by his condescending attitude towards self-represented litigants. I fully recognize that self-represented litigants are not entitled to any greater rights than litigants represented by counsel. By the same token, the trial court should also not be biased against self-represented litigants. "It is nevertheless fundamental that the court system is obliged to protect the procedural rights of all litigants and to accord procedural due process to all litigants." Rubin v. Rubin, 188 N.J. Super. 155, 159 (App. Div. 1982). Further, the real and substantive issue before the court was the distribution of marital assets according to the timeline established by the June 6, 2023 order (Pa506) and in the manner prescribed by the March 1, 2023 JOD order (Pa1). Because the proper consideration of defendant's request for enforcement of the

distribution of marital assets required expenditure of the motion judge's time and effort in diligently reviewing the prior orders of the trial court, the judge cut corners and evaded the real issue of distribution of marital assets by expediently ordering the confiscation of the passports of the pro se litigants and their child. "The court's obligation to the litigants was to rule on the motion requests, not defer their disposition." Parish v. Parish, 412 N.J. Super. 39, 52 (App. Div. 2010). The judge took the arbitrary decision of impounding passports under a misguided belief that the self-represented parties with limited understanding of the law would have no option but to put up with his whimsical order.

Continuing the conspicuous pattern of taking recourse to shortcuts while adjudicating motions, on May 3, 2024, the judge denied (Pa1331-32) the motion to abbreviate transcripts by indolently assuming that a complete trial transcript was needed just because the divorce trial was conducted over several days and JOD decision was 64-pages long instead of thoroughly reading the motion certification and earnestly considering the arguments presented therein as a conscientious judge would do. The denial of plaintiff's motion to abbreviate transcripts is the subject of the following arguments.

POINT VII

DENIAL OF PLAINTIFF'S MOTION TO ABBREVIATE TRANSCRIPTS IS A REVERSIBLE ERROR EMANATING FROM THE MOTION JUDGE'S MISUNDERSTANDING OF THE LAW AS TO THE CONTENTS OF THE TRIAL TRANSCRIPT. THE MOTION JUDGE'S CONCLUSION THAT THE TRIAL COURT'S FINDINGS OF FACTS AND CONCLUSIONS OF LAW APPEAR IN THE TRIAL TRANSCRIPT MISCONCEIVES THE LAW AND IS THEREBY SUBJECT TO DE NOVO REVIEW. (Pa1331-32)

Trial court denied plaintiff's motion to abbreviate transcript by concluding that "*the only manner in which the reviewing Court will be possessed of the myriad findings of fact and conclusions of law is by receiving the entirety of the trial transcript.*" (Pa1332). The denial rests on the motion judge's grievous misunderstanding that the trial transcript contains findings of fact and conclusions of law and betrays an incredible ignorance of Rule 1:7-4(a) which provides that "[t]he court shall by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon . . . on every motion decided by a written order that is appealable as of right . . ." Simply put, the trial court is required by law to state its findings of fact and conclusions of law in its final order or judgement. Further, in the matter of Pardo v. Dominquez, 382 N.J. Super. 489 (App. Div. 2006), the Appellate Division rejected the suggestion that a judge's comment or question in a colloquy during court proceedings can provide the reasoning for an opinion which requires findings of fact and conclusions of law. Id. at 492 Therefore, from Rule 1:7-4(a) and Pardo it follows that the trial court's findings of facts and conclusions of law appear in the final order of the trial court, not in the trial transcript. As the May 3 order notes, in the instant case, the trial court issued an elaborate 64-page final Judgement of Divorce (JOD) written decision with the court's findings of fact and conclusions of law. The final JOD 64-page opinion (Pa1) included as the first item in the appellant's appendix permits a proper review of the arguments which for the most part contend that the trial court failed to correctly apply the law to its largely undisputed factual findings.

The denial of the motion to abbreviate transcripts has its underpinning in the inexperienced motion judge's fundamental misconception of law that findings of fact and conclusions of law are contained in the trial transcript. If the judge misconceives or misapplies the law, his discretion lacks a foundation and becomes an arbitrary act. When that occurs, the reviewing court should adjudicate the matter in light of the applicable law to avoid a manifest denial of justice. In re Presentment of Bergen Cty. Grand Jury, 193 N.J. Super. 2, 9 (App.Div. 1984).

POINT VIII

TRIAL COURT FAILED TO IDENTIFY AND APPLY THE APPROPRIATE LEGAL STANDARD FOR ABBREVIATION OF TRANSCRIPT AND DENIED THE MOTION BASED ON IRRELEVANT FACTORS. TRIAL COURT'S LEGAL CONCLUSION THAT AN APPELLANT HAS THE OBLIGATION TO APPRISE THE APPELLATE DIVISION OF ALL ISSUES IS LOGICALLY AND LEGALLY ERRONEOUS AND CONTRARY TO THE RAISON D'ÊTRE OF RULE 2:5-3(c). (Pa1331-32)

Trial court failed to apply the appropriate legal standard for abbreviation of transcript and instead denied the motion on the basis of irrelevant factors as demonstrated by the following rationalization of denial in the May 3, 2024 order – "*Trial in this matter was conducted over many days over an extended period of time. The decision is 64 pages single spaced and addresses the multitude of issues raised by the parties, and plaintiff in particular.*" (Pa1331) That the trial was conducted over several days with "multitude" of issues raised or that the JOD decision is 64 pages "single-spaced" does not ipso facto warrant a conclusion that the questions raised on appeal cannot be adequately and properly addressed with an abbreviated transcript. If the length and the complexity of the trial were the determinative factors for the abbreviation of transcripts, the Appellate Division

would not have been able to adjudicate the appeal on merits in the matter of N.J. Dep't of Envtl. Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272 (App. Div. 2018) where the bench trial was conducted over sixty-six days, yet the Appellate Division was able to productively review the appeal on merits even in the face of unilateral abbreviation of transcripts by the appellants because the arguments on appeal concerned matters of law.

The appropriateness of abbreviating transcripts depends on the characteristics of the arguments being raised on appeal. "Given the nature of the issues raised on the present appeal, those transcripts appear to be unnecessary to our review." Milford Mill 128 v. Borough of Milford, 400 N.J. Super. 96, 103 n.5 (App. Div. 2008). See also See N.J. Dep't of Envtl. Prot. at 282 n.1. However, the motion judge erringly focused on the characteristics of the trial such as the duration or the purported complexity of the trial. Following is the correct standard that the trial court ought to have applied but failed to do so – "According to R. 2:5-3(c), the transcript may be abbreviated by consent or order of the trial judge whenever the questions presented by an appeal can be determined without an examination of all the pleadings, evidence, and proceedings in the trial court." Robinson v. St. Peter's Medical Center, 236 N.J. Super. 94, 98 (Law Div. 1989) (emphasis added). Ironically, the motion judge cited In re Guardianship of Dotson, 72 N.J. 112, 117 (1976) but failed to assimilate the essence of Rule 2:5-3(c)(2), which, as the Court succinctly summarized in In re Guardianship of Dotson, permits an abbreviation of the trial transcripts on appeal, "[w]here the specified grounds of appeal do not require a complete transcript." Id. at 117. Beyond broad, sweeping statements, the May 3, 2024

order is devoid of any critical analysis that establishes that the grounds of appeal specified in the plaintiff's motion certification call for a complete transcript. Therefore, the May 3 order is a fit case for reversal. If the "court ignores applicable standards, we are compelled to reverse and remand for further proceedings." Gotlib v. Gotlib, 399 N.J. Super. 295, 309 (App. Div. 2008).

The motion judge mistakenly believed that an appellant is obliged to apprise the Appellate Division of all issues as evidenced by the following statement in the May 3, 2024 order– "*only be (sic) reviewing the entirety of the trial record will the Appellate Division be completely informed on all issues*…" (Pa1331). In the instant matter, only the financial aspects of the marriage dissolution are being appealed, not the child custody and child relocation determinations of the court. (Pa1355-1417) It is self-evidently irrational for the trial court to opine that an appellant must inform the reviewing court of all issues, even the ones that are not on appeal or have no bearing on the proper consideration of the arguments raised on appeal. "A party on appeal is obliged to provide the court with such other parts of the record . . . as are essential to the proper considerations of the issues." Society Hill Con. v. Society Hill A., 347 N.J. Super. 163, 177 (App. Div. 2002). Further, the trial court's conclusion that the appellant must apprise the Appellant Division of all issues by providing the complete transcript is contrary to the counsel of the Supreme Court - "[W]e encourage courts to restrict the required portions of a transcript to the minimum necessary for that review, thereby minimizing the impact on the public fisc. See R. 2:5-3(c)" In the Matter of Adoption of a Child by J.D.S, 176 N.J. 154, 159 (2003).

While I fully recognize that the Court issued the advisory in the context of an indigent parent facing termination of parental rights, the context does not invalidate the underlying universal rationale that requiring an appellant to provide the complete transcript despite the relevance of only a subset of the transcript and for the Appellate Division to review the redundant full transcript is a needless waste of both the appellant's and judicial resources. I note that the Supreme Court's holding in In re Adoption of a Child by J.D.S. on the requirement to provide only necessary transcripts is judiciously consistent with the Federal Rule of Appellate Procedure 10(b) rather than the New Jersey Rule 2:5-3(b). "Within 14 days after filing the notice of appeal … the appellant must do either of the following: (A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary …; or (B) file a certificate stating that no transcript will be ordered." Fed. R. App. P. 10(b)(1) (emphasis added). In contrast that defies logic, Rule 2:5-3(b) by default indiscriminately requires an appellant to order the transcript of "entire proceedings" regardless of whether the specified grounds of appeal require a complete transcript or not.

POINT IX

TRIAL COURT VIOLATED RULE 1:7-4(a) BY DENYING PLAINTIFF'S MOTION TO ABBREVIATE TRANSCRIPTS WITHOUT ANY FACT-FINDING AND TENABLE CONCLUSIONS OF LAW. THE CONCLUSORY STATEMENTS IN THE MAY 3, 2024 ORDER OVERLOOK PLAINTIFF'S CORE ARGUMENT THAT THE POINTS RAISED ON APPEAL LARGELY CONCERN MATTERS OF LAW. TRIAL COURT'S FAILURE TO ADDRESS PLAINTIFF'S PRINCIPAL ARGUMENT LEADS TO A LOGICAL INFERENCE THAT THE JUDGE ADJUDICATED THE MOTION WITHOUT READING THE MOTION CERTIFICATION OR COMPREHENDING AND ANALYZING THE ARGUMENT THEREIN. (Pa1331-32)

The May 3, 2024 order (Pa1331), being a final order that is appealable as of right, is subject to Rule 1:7-4(a) but the trial court regrettably failed to comply with Rule 1:7-4(a) by denying the plaintiff's motion to abbreviate without any fact-finding and meaningful conclusions of law. The trial court rationalized its decision with conclusory statements such as "*the plaintiff misapprehends the import of both the Rule and many of the cited decisions*" (Pa1331) that failed to specify what the plaintiff's misapprehension was or the basis of its determination that the plaintiff misapprehended the rule. Similarly, another conclusory statement – "*this argument misses the mark and leads to the opposite conclusion sought to be drawn by plaintiff*" (Pa1331) does not explain why the motion judge was led to draw an opposite conclusion. Such conclusory statements are of little value in answering the pivotal question of whether the abbreviated transcript permits proper consideration of the questions raised on appeal. "Naked conclusions do not satisfy the purpose of R. 1:7-4. Rather, the trial court must state clearly its factual findings and correlate them with the relevant legal conclusions." Curtis v. Finneran, 83 N.J. 563, 570 (1980). "Mere conclusory terminology such as utilized by the trial judge does not suffice. Such perfunctory treatment constitutes a disservice to the litigants, the attorneys and the appellate court." Kenwood Assocs. v. Bd. of Adj. Englewood, 141 N.J. Super. 1, 4 (App. Div. 1976). "The absence of adequate findings, as here, necessitates a reversal" Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996).

The core argument in plaintiff's 19-page moving certification (Pa1269-87) was that abbreviated transcripts are sufficient for the Appellate Division to properly consider

the merits of the appellant's arguments because the questions presented on appeal concern matters of law as opposed to a challenge to the trial court's factual findings barring limited exceptions. Trial court's failure to acknowledge, much less address plaintiff's core argument leads to a logical inference that the judge adjudicated the motion in a predetermined manner without reading the moving certification and considering the central argument therein.

Illustratively, consider the leading argument on appeal in Docket # A-003224-22 that the trial court erred in distributing marital assets based on legally impermissible considerations of fault and without weighing all 16 factors under the NJ equitable distribution statute. (Pa1372-82) Put differently, the argument is that reasons articulated in the 64-page JOD decision are not legally permissible grounds for distributing parties' marital assets. Common sense and logic dictate that the Appellate Division only needs to review the detailed equitable distribution analysis running into 20-plus pages (Pa36-57) within the 64-page JOD opinion to determine whether the appellant's contentions have merit or not. Other than conclusory statements or reliance on irrelevant factors such as the length of the divorce trial, the trial court does not offer any tenable explanation in the May 3 order for its determination that the Appellate Division would need to review the entire trial transcript. For the rest of the arguments, see Pa1355-1417. Fundamentally and logically, the reason why a complete trial transcript is not required is that the appellant's legal arguments in Docket # A-003224-22 are based on the trial court's findings of facts and legal conclusions, as stated in the 64-page March 1, 2023 JOD

opinion and the transcript of the May 30, 2023 hearing (designated as the "3T" transcript).

From the lack of any meaningful analysis in the May 3, 2024 order beyond conclusory statements, it can be logically inferred that instead of diligently and conscientiously considering the merits of the plaintiff's arguments, the motion judge who did not conduct the divorce trial expediently or naively assumed that abbreviated transcripts were insufficient just because the trial was conducted over several days and was complex as he put it. The facile generalizations and blanket statements in the May 3 order such as "*only be* [sic] *reviewing the entirety of the trial record will the Appellate Division be completely informed on all issues, nuances, and the interrelated facts on this complex dissolution trial*" (Pa1331) or "*the only manner in which the reviewing Court will be possessed of the myriad findings of fact and conclusions of law is by receiving the entirety of the trial transcript.*" (Pa1332) do not constitute even a semblance of cogent and meaningful analysis that holds any persuasive value in substantiating the trial court's conclusion that complete transcript is essential for the proper consideration of the questions presented on appeal.

Before concluding I am compelled to expound further on the festering issue of abbreviation of transcripts which has dogged the interconnected Appellate Division Docket # A-003224-22 for over a year leading to extensive litigation in this court, the trial court, and even the Supreme Court. Toward this end, it is instructive to draw this court's attention to the relevant Appellate Rule on transcripts in other jurisdictions.

A. As noted before, under Federal Rule of Appellate Procedure 10, an appellant must "order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary . . . [or] file a certificate stating that no transcript will be ordered." Fed. R. App. P. 10(b)(1)(A) and (B) (emphasis added)

B. Texas Rule 38.5 in pertinent part provides - "At or before the time a party's brief is due, the party must file one copy of an appendix containing a transcription of all portions of the recording that the party considers relevant to the appellate issues or points" *Rule 38.5 - Appendix for Cases Recorded Electronically*, Tex. R. App. P. 38.5 (emphasis added)

C. North Carolina Rules of Appellate Procedure, Article II, Rule 7 in pertinent part provides – "A party may order a transcript of any proceeding that the party considers necessary for the appeal" *Rule 7 - Transcripts*, N.C. R. App. P. 7(emphasis added)

D. Florida Rules of Appellate Procedure, Rule 9.200 in pertinent part provides - "Within 10 days of filing the notice of appeal, the appellant shall designate those portions of the proceedings not on file deemed necessary for transcription and inclusion in the record" *Rule 9.200 - THE RECORD*, Fla. R. App. P. 9.200 (emphasis added)

E. Illinois Supreme Court Rules, Article III, Part C, Rule 323 in pertinent part provides – "Within the time for filing the docketing statement under Rule 312 the appellant shall make a written request to the court reporting personnel as defined

in Rule 46 to prepare a transcript of the proceedings that appellant wishes included in the report of proceedings" *Rule 323 - Report of Proceedings*, Ill. Sup. Ct. R. 323 (emphasis added)

F. Indiana Rules of Appellate Procedure, Rule 9 in pertinent part provides - "A designation of all portions of the Transcript necessary to present fairly and decide the issues on appeal." *Rule 9 - Initiation of the Appeal*, Ind. R. App. P. 9

G. California Rules of Court, Chapter 2, Article II, Rule 8.120 in pertinent part provides "A notice under rule 8.121 designating a reporter's transcript must specify the date of each proceeding to be included in the transcript and may specify portions of designated proceedings that are not to be included." *Rule 8.130 - Reporter's transcript*, Cal. R. 8.130

H. New York - APPENDIX METHOD IN CIVIL APPEALS – CPLR 5528 (a) (5); 22 NYCRR 1250.5(c), 1250.7(d) provides - "The appendix shall include those portions of the record necessary to permit the court to fully consider the issues which will be raised by the appellant and the respondent including …. the material excerpts from transcripts of testimony

(Source: https://www.nycourts.gov/courts/ad4/clerk/forms/perf-appeal.pdf)

The New Jersey Court Rule 2:5-3(b) seems to be an anomaly in indiscriminately requiring an appellant by default to order the transcript of "entire proceedings" regardless of whether the specified grounds of appeal require a complete transcript or not. Even as this court is governed by the New Jersey Court Rules, it does not operate in

a vacuum and cannot ignore the manifestly sensible appellate requirement in other jurisdictions to order only relevant transcripts which is grounded in a sound rationale that transcends jurisdictional boundaries. This court cannot plausibly claim that the rationale applies in other jurisdictions but not in New Jersey. Indeed, none other than the United States Supreme Court has characterized the blind inclusion of a complete transcript in the record as a waste of the appellant's money. "[T]he fact that an appellant with funds may choose to waste his money by unnecessarily including in the record all of the transcript does not mean that the State must waste its funds by providing what is unnecessary for adequate appellate review" Draper v. Washington, 372 U.S. 487, 496 (1963).

As a self-represented appellant with a limited understanding of the law but immense faith in the rule of law, I have spent countless hours researching case law and preparing my merits brief (Pa1355-1417) in Docket # A-003224-22 with the expectation that this court will at least read the brief. As the eminent jurist, the late Judge Pressler noted – "When an unrepresented litigant appears in court pursuant to a notice of motion, reasonably expecting from the text of the notice that his procedural rights will be protected by his appearance in court on the noticed date, he is ordinarily owed the fulfillment of that expectation. Turning him away as was done here without any opportunity, either orally or in writing, to address the merits of the motion he opposed, constituted a denial of fundamental procedural due process which can only serve to bring the court system into disrepute, to cast doubt on the legitimacy of the judicial

process and ultimately to disserve the litigating public." Rubin 188 N.J. Super. at 159. Although Judge Pressler's observation was made in a slightly different context, the principle that a litigant is owed the fulfillment of his expectation that the court will hear him fully applies here. Should this court decide to read my merits brief (Pa1355-1417), it will find that the appellant has faithfully and diligently discharged an appellant's obligation to provide that portion of the record including the relevant transcripts which are germane to the issues raised on appeal. All the contentions in the brief are duly supported by citations to authorities or pointed references to the record including transcripts as applicable. Beyond the set of three volumes of transcripts delivered to this court on September 25, 2023, no additional transcripts are needed. What is needed is the intent and intellectual honesty on the part of this court to read the merits brief instead of assuming that a complete trial transcript is required and summarily dismissing the appeal in Docket # A-003224-22 for an alleged lack of prosecution premised on trial court's error-ridden May 3, 2024 order. The merits brief of Docket # A-003224-22 is included in the appendix pursuant to Rule 2:6-1(a)(1)(A) because it was attached as Exhibit H (Pa1211) to plaintiff's OTSC certification filed on January 16, 2024 and as Exhibit A (Pa1288) to plaintiff's certification in support of the motion to abbreviate transcript filed on April 5, 2024.

I emphasize that I am not seeking any special treatment. In several published and therefore precedential opinions, this court has consciously overlooked the appellants' failure to comply with Rule 2:5-3(b). See N.J. Dep't of Envtl. Prot. v. Exxon Mobil

Corp., 453 N.J. Super. 272 (App. Div. 2018); Newman v. Isuzu Motors America, 367 N.J. Super. 141 (App. Div. 2004); Cipala v. Lincoln Technical Institute, 354 N.J. Super. 247 (App. Div. 2002); Barsotti v. Merced, 346 N.J. Super. 504 (App. Div. 2002); Torwich v. Torwich, 282 N.J. Super. 524 (App. Div. 1995); Schmoll v. J.S. Hovananian, 394 N.J. Super. 415 (App. Div. 2007); N.J. Div. of Child Prot. & Permanency v. A.S.K. (In re Guardianship of N.D.K.), 457 N.J. Super. 304 (App. Div. 2017); Town of Phillipsburg v. Block, 380 N.J. Super. 159 (App. Div. 2005); Milford Mill 128 v. Borough of Milford, 400 N.J. Super. 96 (App. Div. 2008). In all these cases the appellants unilaterally abbreviated transcripts without consent or a trial court order in contravention of Rule 2:5-3(c), yet this court not only allowed the appellants to submit their brief and appendices but also adjudicated the appeal on merits rightly recognizing that a complete transcript is not always indispensable. The doctrine of stare decisis requires that this court apply the same standard in Docket # A-003224-22. Further, this court has the authority to do so under Rule 1:1-2(a). "In our judicial system, justice is the polestar and our procedures must ever be moulded and applied with that in mind." Salazar v. MKGC Design, 458 N.J. Super. 551, 557 (App. Div. 2019) (internal quotes and citations omitted). [T]he Court Rules "shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." R. 1:1-2(a). For that reason, "[u]nless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice." Ibid.

CONCLUSION

After considering my arguments above, I request this court to grant the following relief (1) Reverse specifically the provision in the January 12, 2024 order ordering the confiscation of the parties' and their child's passport and direct the trial court to return the child's passport if it has the custody of the child's passport (2) Declare January 12, 2024, and January 26, 2024 orders null and void except for the alimony enforcement provision in the January 12, 2024 order (2) Direct trial court to enforce plaintiff's litigant's rights as to his entitlement to the child tax credit for the year 2022 as provided in the March 1, 2023, JOD order (4) Reverse March 8, 2024 order on motion for reconsideration. Additionally, I request that the May 3, 2024 order denying the abbreviation of the trial transcript be reversed, and this court consolidate the pending appeals in the Appellate Division Docket # A-002170-23 and A-003224-22 in the interests of justice and judicial economy and adjudicate both appeals in a consolidated opinion.

Respectfully submitted,

By: _____

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Pro Se

Dated: July 29, 2024