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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5338-14T3

BARBARA A. HOPKINS,

Plaintiff-Respondent,

v.

JOHN J. HOPKINS, III,

Defendant-Appellant.

Submitted March 8, 2017 – Decided December 26, 2017

Before Judges Fuentes and Gooden Brown.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Monmouth
County, Docket No. FM-13-1904-13.

Keith, Winters & Wenning, LLC, attorneys for
appellant John J. Hopkins, III, (John J.
Hopkins, III, on the pro se brief).

Newsome, O'Donnell, LLC, attorneys for
respondent (Edward J. O'Donnell, of counsel
and on the brief; Carmen Diaz-Duncan and Jenny
R. Barry, on the brief).

The opinion of the court was delivered by

GOODEN BROWN, J.A.D.

Defendant John J. Hopkins, III, appeals from the amended
final judgment of divorce entered by the Family Part on June 26,

2015. Having reviewed the record in light of the applicable legal principles, we affirm.

The pertinent factual background is as follows. The parties were married for approximately twenty-two years and have three teenage daughters, born November 1996, December 1998, and September 2001. Defendant has been an attorney in Monmouth County for over twenty years and is a certified public accountant. Plaintiff has an undergraduate degree in public accounting and a graduate degree in taxation.

Plaintiff filed a complaint for divorce on May 14, 2013, alleging irreconcilable differences. Defendant filed an answer and counterclaim on August 2, 2013. Plaintiff moved to Union County with the children in September 2013, while defendant remained in the marital residence located in Monmouth County. The parties engaged in extensive motion practice throughout the proceedings, including interlocutory appeals. Most of the motions involved discovery issues and defendant's continuous noncompliance with court orders.

In a March 5, 2014 amended order primarily addressing custody, parenting time, and pendente lite support for defendant, Judge Lisa P. Thornton denied defendant's application for a venue transfer. Defendant requested the transfer because "he is a practicing attorney in Monmouth County." However, in denying the

request, the judge explained that "[t]he parties have litigated this matter in Monmouth County for months and [d]efendant never previously requested a venue transfer." Moreover, according to Judge Thornton, "[o]ver the course of four years, with the exception of the present matter, this court has no recollection of ever handling a matrimonial matter in which [d]efendant was counsel. There is no question that this court can be fair and impartial in this matter." See R. 4:3-3(a).

On April 4, 2014, Judge Thornton struck defendant's pleadings without prejudice because he failed to comply with discovery requests and refused to provide documents necessary to complete a business evaluation and cash flow analysis of his practice by the joint financial expert, Cowan, Guteski & Co., LLP (Guteski). Judge Thornton explained that defendant failed to cooperate "in any way, shape or form, virtually for five months[.]" The judge advised defendant "[w]hen and if you decide you would like to reinstate your pleadings and participate in [the] litigation, you can feel free to make an application and provide the requested discovery." However, the judge noted that it was "absurd" that defendant failed to provide documents and execute a retainer agreement for five months after the entry of "several orders," and the submission of "five different letters" from Guteski detailing defendant's recalcitrance.

On the same date, as to mediation ordered pursuant to Rule 5:5-6, Judge Thornton determined that defendant "did not act in good faith" because "he was [forty-five] minutes late and after . . . three hours," indicated he had retained new counsel so the mediation "was not going to be fruitful." Accordingly, the judge ordered defendant to pay plaintiff's share of the mediation fees and entered an award of \$2500 for plaintiff's counsel fees to be paid by defendant within thirty days, or "it will be taken out of [defendant's] share of equitable distribution." A memorializing order was entered on June 10, 2014. Defendant never retained new counsel and proceeded to represent himself for the duration of the proceedings.

On August 1, 2014, Judge Kathleen A. Sheedy denied defendant's motion to reinstate his pleadings because "it [was] undisputed that he [had] not complied with the requirements of [Guteski]" [b]y both failing to execute the retainer and fail[ing] to provide copies of documentation requested or an affidavit showing that the documents [did] not exist[.]" On the same date, Judge Sheedy denied defendant's renewed request to change venue. On September 16, 2014, we denied defendant's motion for leave to appeal, for a stay, for a change of venue and to reinstate his pleadings.

On October 10, 2014, Judge James J. McGann denied defendant's motion to reinstate his pleadings. Citing Rule 4:23-1, the judge

determined that defendant failed to comply with plaintiff's discovery requests, and Guteski's requests for documents and a signed retainer agreement. The judge rejected defendant's contention that "there was no order requiring him to sign a retainer agreement for [Guteski]." According to the judge,

in the case management order of September 10th, 2013[,] the parties, through their attorneys, agreed to retain joint or [c]ourt appointed experts for appraisal of the business by September 20th, 2013[,] [r]eserving the right to retain an individual expert. Although not specifically listed in that order[,] . . . Guteski was agree[d] upon, this was made clear by [defendant's] former counsel's email of September 18th And the joint engagement letter confirms that on September 24th, 2013.

[Defendant] ignored the expert's request initially. The order of February 21st, 2014 . . . directed [defendant] to comply with all the expert's request[s]. . . .

At the case management conference on April 4th, 2014[,] [defendant] . . . for the first time took the position that he would not retain . . . Guteski.

. . . .

[T]he trail of documents and the fact that there was never any objection voiced to the joint expert being retained or being appointed until April of this year leaves the [c]ourt to conclude that . . . Guteski [was] appointed as a joint expert. Any objection to that should have been voiced by [defendant] from the start. Instead he let his counsel proceed under the assumption that it was

acceptable. And didn't object to that until seven months later.

The judge ordered defendant to comply with plaintiff's discovery demands, sign the Guteski retainer agreement and "submit a letter to the [c]ourt from . . . Guteski certifying that he [had] complied with all the discovery requests as a prerequisite to filing a motion to reinstate his pleadings." In addition, finding that defendant's motion "was made in bad faith to delay the proceedings[,]" Judge McGann awarded plaintiff \$1500 in counsel fees.

On January 16, 2015, the judge again denied defendant's motion to reinstate his pleadings, finding that defendant "still [had] yet to comply" with the court's order. As defendant's non-compliance with the courts' orders continued, on February 5, 2015, at plaintiff's request, Judge McGann scheduled a default hearing. The judge informed defendant that "the ball [was] in [defendant's] hands" because he could "provide all this information and avoid going through the default hearing."

Notwithstanding the fact that defendant's pleadings remained stricken, defendant moved for "determinations of whether certain assets [were] included within . . . equitable distribution." Specifically, defendant sought a determination that the mortgage on the marital home and the unpaid interest were separate assets

belonging to defendant because the parties had obtained the mortgage loan from defendant's now deceased parents. Defendant also sought a determination that the following items were exclusively his assets: (1) loans defendant's parents made to the parties; (2) a \$31,000 executor commission defendant received from his father's estate that was used to build an addition onto the marital residence; (4) a \$28,000 personal injury award defendant received in 1999 that was used to build an addition onto the marital residence; (5) one half of a severance package plaintiff received from her employer; (6) one half of bonuses plaintiff received in 2013 and 2014; and (7) one half of plaintiff's retirement account.

On March 13, 2015, Judge McGann denied defendant's motion without prejudice, noting that "in the event" defendant cures the discovery deficiencies, and "get[s] back in the case, at some point he'd have the right to have these determined." Additionally, according to the judge, "a substantial number of these involve factual questions which have to be resolved at a trial." As to counsel fees, Judge McGann reviewed the Rule 5:3-5 factors as well as the financial circumstances of the parties and their ability to pay. The judge acknowledged that although defendant operated his own law practice, his income was unknown. Plaintiff, on the other hand, had recently lost her job and, to date, had incurred

counsel fees of almost \$150,000. Judge McGann again questioned defendant's "good faith" noting that although defendant was "not in the case formally" and "can't seek affirmative relief, he advances positions . . . most of which will have to abide the factual determinations at trial." Accordingly, the judge awarded plaintiff "\$1200 in [c]ounsel fees . . . to be paid within [thirty] days."

On April 30, 2015 when the default hearing was scheduled to begin, Judge McGann initially addressed another motion filed by defendant the week before to compel discovery and reinstate his pleadings. The judge denied defendant's motion on procedural and substantive grounds. Judge McGann read into the record an April 10, 2015 letter from Guteski detailing defendant's continued non-compliance with document requests, which prevented the completion of the valuation and cash flow analysis of his practice. The judge rejected defendant's claims that he provided discovery to Guteski, finding that his claims were "directly contradicted by their letters of [February 5] and [April 10]." The judge then proceeded with the default hearing, noting "[defendant] had plenty of opportunity to comply with discovery" and failed to do so.¹

¹ The judge also denied defendant's request for a stay in order to seek appellate review.

The default hearing was conducted over several dates. Relying on Jugan v. Pollen, 253 N.J. Super. 123, 129 (App. Div. 1992), Judge McGann limited defendant's role to cross-examination. During the hearing, plaintiff's testimony established jurisdiction and grounds for the divorce. Plaintiff also detailed her employment history. Plaintiff testified she worked for CNA Insurance Company in 1991 when they were first married. Ten years later, she took a position with Global Risk Consultants (GRC), an engineering consulting firm. She worked for GRC for fourteen years and was ultimately promoted to Treasurer in 2007 with an annual base salary of \$280,000. She also received bonuses and a company car. In September 2013, as a result of a corporate merger, plaintiff's position with GRC was eliminated. Upon her separation from GRC, she received a severance package of nine-months' salary.

Eight weeks later, she took a position with WDF, a major HVAC and plumbing company, as the Director of Finance at an annual salary of \$240,000. However, in May 2014, the company underwent financial restructuring and her salary was reduced to \$175,000. In November 2014, she was laid off from WDF and received a four-week severance package. After four months of unemployment, in April 2015, plaintiff accepted a position with Giachetti Plumbing and Heating, a much smaller plumbing company, at an annual salary of \$140,000.

Nonetheless, plaintiff proposed a child support award predicated on her earning an annual salary of \$175,000 because that was the salary she earned at WDF and that was "the highest potential salary" she came across while interviewing for a new position. Regarding defendant's income, plaintiff testified that she had "reservations" about the accuracy of defendant's reported income as reflected in his tax returns over the last several years "based on issues that [they] had with the IRS" for the 2003 and 2005 tax returns. After they were subjected to an IRS audit and assessed "significant tax penalties[,]," plaintiff began filing a separate tax return in 2010 because she questioned defendant's accounting. Therefore, to calculate child support, plaintiff proposed "using the Bureau of Labor Statistics mean wage for an attorney in the State of New Jersey of [\$140,000]" As to custody and parenting time, plaintiff agreed with the proposals submitted by their respective experts, recommending joint custody with plaintiff designated as the parent of primary residence and defendant being afforded liberal parenting time.

Regarding alimony, plaintiff testified that "[b]ased on [their] education and work experience, there's no reason why [they] can't support [themselves]." She testified that at age fifty and fifty-six, respectively, she believed she and defendant were "both in excellent health" and neither suffered from any disabilities

or physical ailments. She denied defendant's assertion that he was "basically blind in one eye" or had "a permanent lazy eye." She testified that any impairment to his vision did not prevent him from operating a car or a boat or discharging a firearm.

Turning to the marital assets, plaintiff testified that they purchased the marital residence in 1994 for \$165,000. The property was held as tenants by the entirety and thus subject to partition upon divorce. Defendant's parents gave them the down payment of \$45,000, and "held back a mortgage in the amount of \$120,000." According to plaintiff, the mortgage was a five-year interest-only mortgage that they intended to refinance if necessary.

Initially, they made payments to defendant's parents on the mortgage. However, in 1997 or 1998, when defendant left his firm and became a solo practitioner, they could not afford the payments. They thought that "in a couple more years when [defendant] got on his feet and his practice started making money, then [they] would continue making payments on the mortgage but that never happened and the mortgage was never . . . refinanced or refiled or anything."

Defendant's father died in 1999 and his mother died in 2006. Their five children were the beneficiaries of their estate. According to plaintiff, after the death of defendant's father, his estate made no demands for payment of the mortgage. Plaintiff

recalled that defendant received an executor's commission from his father's estate but did not know the amount.² Plaintiff also acknowledged the settlement of a personal injury lawsuit in which defendant was the plaintiff but did not know the amount of the settlement.

Plaintiff testified that, for "at least the last [ten] years," she paid the property taxes, the utility bills and most of the repair costs for the marital residence. Plaintiff acknowledged that defendant's mother had also loaned them \$25,000 for an addition to the house. Plaintiff's earnings were deposited into a joint account while defendant's remained in his business account. According to plaintiff, whenever she received a bonus, it was "used to make improvements on the home[,] "vacations[,] and to "pay down credit card debts" "[O]ne year, [they] bought a boat" with her bonus, and another year, she "bought [defendant] a car" from "a really nice promotion from GRC."

Within the past year, plaintiff and defendant each had the house appraised and both appraisals "came out to [\$]380,000." Plaintiff testified that there was a home equity line of credit

² As executor of his parents' estate, defendant had a fiduciary duty to secure all of the estate's assets for the benefit of the named beneficiaries. These assets included the debt owed by him and his wife, as secured by the mortgage. Parenthetically, we note defendant's role as both executor and debtor posed an irreconcilable conflict of interest.

(HELOC) on the property "basically to finance [defendant's] practice" She explained that she "never had any access to draw down on the HELOC" and they took out the HELOC because it afforded them a lower interest rate than the line of credit defendant had on his business. However, from the date she filed the complaint for divorce, she had made all the HELOC payments, totaling \$14,950, because "[defendant] never made any payments." The outstanding balance on the HELOC was \$81,000.

Regarding the remaining assets, plaintiff testified that when she filed the divorce complaint, there was \$30,000 in liquid funds, an ING 401(k) account from her employment at GRC totaling \$265,000, a TD Ameritrade stock account totaling \$20,000, and a TD Ameritrade IRA totaling \$48,450. Plaintiff consolidated the three investment accounts by rolling them into a TD Ameritrade IRA account. From that account, plaintiff made several pendente lite distributions, including \$65,000 for a down payment on a house and \$45,000 for legal fees. Plaintiff also made tax payments and advances to defendant for experts and attorney fees. In addition, plaintiff made payments from her income, including a \$8000 payment to Guteski and additional advances to defendant. Plaintiff proposed that her "small pension with CNA" be split "50/50[,]" but that defendant be allowed to keep his retirement account, and that they

should each maintain their respective credit card debt. Further, plaintiff waived any interest in defendant's practice.

As to counsel fees, plaintiff testified that she incurred "about \$173,000" in legal fees over the last two years of the litigation. She attributed the "significant" legal fees to defendant "show[ing] up to the [c]ourt proceedings late," requiring her "to pay for counsel fees while . . . waiting on him[,] " and defendant "fil[ing] [ten] motions, many of them repeatedly on the same topic" and "three appeals."

Following the default hearing, on May 18, 2015, Judge McGann issued an oral decision granting a final judgment of divorce. The judge "found [plaintiff] to be a credible witness[,] " answering all questions "directly" without any attempt "to deceive" or be "argumentative." According to Judge McGann, plaintiff's testimony was also corroborated by documentary evidence. First, addressing "the child related issues[,] " the judge awarded the parties joint legal custody, and plaintiff residential custody with defendant being afforded parenting time every other weekend. As to child support, defendant was ordered to pay \$330 per week, effective May 1, 2015. The judge accepted plaintiff's accounting of her employment and earnings history but rejected defendant's reliance on his income tax returns where he reported earning "[\$]29,000 in 2011, [\$]9,500 in 2012 and [\$]9,961 in 2013."

Judge McGann set the child support award reasoning:

In this case, [plaintiff] has been prevented from obtaining the real cash flow of [defendant] as well as the value of his business by his obstructionist tactics in preventing the expert from being able to set his income for child support purposes.

The [c]ourt accepts [plaintiff's] position as reasonable in setting [defendant's] income at the mean for attorneys in New Jersey at [\$]147,700. . . . especially when one considers that he has over 20 years experience as an attorney as well as a CPA background.

The [c]ourt also . . . finds that [defendant's] position of having negative or little income despite having a practice for over 20 years is not . . . credible.

The [c]ourt also accepts as reasonable [plaintiff's] setting her income at [\$]175,000, the base salary at her previous employer despite the fact she's presently only receiving [\$]140,000 at her present employer

As further evidence of the reasonableness of [plaintiff's] position, she is willing to accept the figure yielded by the child support guidelines and not seek over the guidelines child support as [Caplan v. Caplan, 182 N.J. 250 (2005)] would allow, despite the fact that this is an over the guidelines case.

As to alimony, Judge McGann noted that although "[defendant] had asked in his counter claim for alimony," he "was not entitled to present an affirmative claim because of his . . . default." Nonetheless, the judge applied the factors delineated in N.J.S.A.

2A:34-23, and concluded that "given the fact that the incomes are approaching equipoise, [and] the lack of affirmative case by [defendant] showing his needs," defendant was "not entitled to alimony." In finding "no health impairments," the judge rejected defendant's assertion that "he had a lazy eye," noting that defendant "gave no proof of the disability . . . or how it . . . would affect his making a living." In addition, the judge considered that defendant's "bad faith . . . has left . . . both parties with substantial depletion of assets as a result of counsel fees."

Applying N.J.S.A. 2A:34-23.1, the judge awarded equitable distribution as follows: each party to receive 50% of the proceeds of the sale of the marital residence; defendant to receive 25% of plaintiff's Ameritrade IRA, accounting for tax consequences; defendant to retain 100% of his Wells Fargo IRA; the marital portion of plaintiff's CNA pension to be divided equally by way of a Qualified Domestic Relations Order (QDRO); and defendant to retain 100% of his law practice. Relying on Reinbold v. Reinbold, 311 N.J. Super. 460 (App. Div. 1998), the judge exempted plaintiff's severance package, less unused vacation time, from equitable distribution finding that it was "a substitute for future earnings." Judge McGann noted "when the [c]ourt takes into consideration she's waiving his business, she's waiving his Wells

Fargo and she paid taxes on the marital home for two years[,]" in conjunction with the fact that "[s]he was unemployed for a two-month period and received no child support, . . . that's a reasonable distribution."

In determining that the marital residence was a joint asset, the court considered the contributions of defendant's parents. However, the court also considered plaintiff's contributions to the maintenance of the home both during the marriage and since the separation, plaintiff's payment of the HELOC, which was used solely to fund defendant's practice, and that title to the home was in both parties' names. The court rejected defendant's assertions that the personal injury award or the executor's commission or loans made by his parents under various circumstances were exempt from equitable distribution. The judge found sufficient evidence of commingling with jointly held assets and determined that defendant failed to make a sufficient showing to justify an exemption.

The judge also ordered defendant to pay plaintiff \$75,000, representing one-half of plaintiff's counsel fees. Judge McGann "culled out \$15,000" from counsel's certification and applied the factors enunciated in Rule 5:3-5(c) and 4:4-2(9). The judge found that over the course of two years, plaintiff paid "to maintain the house[,]" "the joint IRS debt," "medical fees" and "a host of

other things for which she's not going to be compensated[,] in particular, two years of child support. Further, plaintiff "paid for a lot of this from an exempt asset[,] . . . the severance package."

Judge McGann stressed that

[m]uch of the time spent in this case was brought about by the conduct of the husband which at times was, . . . at best unreasonable and [a]t worst bad faith, whether it be failure to provide discovery, to fully participate in mediation, the filing of frivolous motions, unnecessary appeals to the Appellate Division.

[Defendant] filed two orders to show cause, two motions to transfer venue, three motions for leave to appeal, five motions to reinstate pleadings and serve[d] four subpoenas on [plaintiff's] employer resulting in the motions to quash.

While the judge acknowledged that defendant had the right to seek the reinstatement of his pleadings, the judge noted that defendant's actions were "fraught with bad faith." According to Judge McGann, "when you don't do it right the first time and you come back four more times and do it, then it really becomes a question of . . . the reasonableness of your position." On June 26, 2015, a memorializing amended judgment of divorce was entered, incorporating the judge's oral decision.³ This appeal followed.

³ Judge McGann denied defendant's application for a stay on May 18, 2015.

On appeal, defendant raises the following arguments for our consideration:

I. THE TRIAL JUDGE ERRED BY DISMISSING THE DEFENDANT'S PLEADINGS, NOT ALLOWING THE DEFENDANT TO IDENTIFY ASSETS FOR DISTRIBUTION, AND VIOLATING THE AMERICANS WITH DISABILITIES ACT FOR FAILING TO ALLOW THE DEFENDANT TO PRESENT HIS DISABILITY AT TRIAL FOR CONSIDERATION AS TO INCOME.

A. THE DEFENDANT WAS DENIED HIS DUE PROCESS RIGHTS BY THE TRIAL JUDGE, REQUIRING THAT THE AMENDED JUDGMENT OF DIVORCE BE VACATED AND THIS MATTER REMANDED FOR A NEW TRIAL.

B. THE . . . TRIAL JUDGE VIOLATED THE AMERICANS WITH DISABILITIES ACT (ADA) BY REFUSING TO ACKNOWLEDGE OR HEAR EVIDENCE OF THE DEFENDANT'S DISABILITY OR TAKING INTO CONSIDERATION THAT THE DISABILITY AFFECTS THE DEFENDANT'S INCOME.

II. THE TRIAL JUDGE FAILED TO EVENLY RULE ON THE EQUITABLE DISTRIBUTION OF THE ASSETS OF THE MARRIAGE.

A. THE MARITAL HOME WAS PURCHASED BY THE PARENTS OF THE DEFENDANT, JOHN J. HOPKINS[,] III AND IS A SEPARATE ASSET.

B. THE PARENTS OF JOHN J. HOPKINS, III, HELD THE MORTGAGE ON THE PRINCIPAL RESIDENCE, WHICH WAS DEVISED AND DISTRIBUTED ALONG WITH THE ACCRUED INTEREST AFTER SEPARATION TO JOHN J. HOPKINS, III AND SHOULD HAVE BEEN A SEPARATE ASSET.

C. THE DEFENDANT'S PERSONAL INJURY AWARD IS A SEPARATE ASSET WHICH WAS INVESTED IN THE MARITAL RESIDENCE, ANOTHER SEPARATE ASSET.

D. THE EXECUTOR'S COMMISSION AWARDED TO JOHN J. HOPKINS, III, FOR THE ADMINISTRATION OF HIS FATHER'S ESTATE IS A SEPARATE ASSET BELONGING TO JOHN J. HOPKINS, III.

E. THE LOANS GIVEN TO THE PARTIES BY THE PARENTS OF JOHN J. HOPKINS, III, WITH EXPECTATION OF PAYBACK WERE A PART OF THE ESTATES OF THE DEFENDANT'S PARENTS AND LEFT TO HIM AS A SEPARATE ASSET.

F. THE TERMINATION BENEFIT GIVEN UPON THE TERMINATION OF BARBARA HOPKINS WAS BASED UPON YEARS OF SERVICE TO THE COMPANY, WHICH WERE ALL DURING THE MARRIAGE AND SHOULD BE CONSIDERED JOINT INCOME.

G. CHILD SUPPORT AND ALIMONY WERE CALCULATED ARBITRARILY BY THE JUDGE WHICH WAS UNSUPPORTED BY THE RECORD, RESULTING IN A FINDING OF NO ALIMONY AND AN INCORRECT CHILD SUPPORT CALCULATION.

III. THIS MATTER SHOULD BE SUMMARILY REMANDED TO A NEUTRAL COUNTY FOR A RE-TRIAL OF THE FACTS AND RULINGS OF LAW.

IV. THE MATTER SHOULD HAVE BEEN TRANSFERRED TO ANOTHER JURISDICTION WHERE THE ISSUES DECIDED IN THIS CASE WOULD NOT AFFECT THE DEFENDANT'S CONTINUING ABILITY TO REPRESENT CLIENTS IN THIS COURT.

V. THE TRIAL JUDGE ERRED BY REPEATEDLY AWARDED ATTORNEYS FEES TO PLAINTIFF'S COUNSEL

WHICH VIOLATED COURT RULES AND LAWS OF NEW
JERSEY.

We reject defendant's contentions and affirm substantially for the reasons set forth by Judge McGann in his comprehensive and well-reasoned oral decision. We add the following brief comments.

Our standard of review in dissolution matters is limited. We accord deference to decisions of the Family Part based on its expertise in matrimonial disputes and we accord particular deference to the factual determinations of trial judges hearing such cases. Cesare v. Cesare, 154 N.J. 394, 411-13 (1998). We will not disturb those decisions "unless the trial court's findings 'went so wide of the mark that a mistake must have been made.'" N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (quoting Snyder Realty, Inc. v. BMW of N. Am., Inc., 223 N.J. 65, 69 (1978)). We are cognizant, however, that we owe no special deference to a Family Part judge's conclusions of law, which we review de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

We review a trial judge's determinations on equitable distribution, alimony, child support and an award of counsel fees for abuse of discretion. See Steneken v. Steneken, 367 N.J. Super. 427, 434 (App. Div. 2004), aff'd in part and modified in part, 183 N.J. 290, 873 (2005) (noting that equitable distribution remains

within the broad discretion of the trial court in applying the factors enumerated in N.J.S.A. 2A:34-23.1 in concert with the facts of each case to effect a fair and just division of marital assets); Clark v. Clark, 429 N.J. Super. 61, 73 (App. Div. 2012) (noting that when determining whether an award of alimony is warranted, a trial judge must issue specific findings on the evidence presented weighing the objective standards delineated in N.J.S.A. 2A:34-23(b)); Caplan, 182 N.J. at 271 (leaving to the trial court's discretion the methodology employed in arriving at a child support award that is in the best interest of the child after giving due consideration to the factors enumerated in N.J.S.A. 2A:34-23(a) and the child support guidelines); J.E.V. v. K.V., 426 N.J. Super. 475, 492 (App. Div. 2012) (recognizing that the award of counsel fees in matrimonial cases rests in the sound discretion of the trial judge in applying the criteria embodied in Rule 5:3-5(c)). Thus, we must defer to the court's determinations unless they plainly lack support in the record, are contrary to the record or are based on a misapplication or disregard of the law. Tannen v. Tannen, 416 N.J. Super. 248, 280-81 (App. Div. 2010).


Rule 4:23-5 allows for the dismissal of a party's pleadings with prejudice for failure to provide discovery or demonstrate "exceptional circumstances" R. 4:23-5(a)(2). In enforcing

the rule, the trial court "should consider whether the refusal of a party to make the discovery was flagrant and contumacious and whether the undisclosed information demanded might go to the proof of plaintiff's case." Douglas v. Harris, 35 N.J. 270, 277-78 (1961). The extent of the defaulting party's participation in the hearing conducted pursuant to Rule 5:5-10 following the entry of default is also a matter of judicial discretion. See Jugan, 253 N.J. Super. at 129. Although the entry of a default would preclude a defendant from offering testimony in defense, it does not obviate the obligation of plaintiff to furnish proof on the issues by a preponderance of the evidence. See Pressler & Verniero, Current N.J. Court Rules, comment on R. 4:43-2 (2017).

Here, Judge McGann properly considered the legal standards governing each determination. Defendant's arguments are predicated upon his disagreement with the judge's findings. However, the judge's findings are supported by the record and his assessment of plaintiff's credibility, and we discern no abuse of discretion. We have also considered defendant's remaining arguments and conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION