SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1315-15T2

LILLIAN DOBRE,

Plaintiff-Appellant/
Cross-Respondent,

v.

NIKSA DOBRE,

Defendant-Respondent/
Cross-Appellant.

Argued March 6, 2018 – Decided April 20, 2018

Before Judges Reisner, Hoffman and Mayer.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Passaic County, Docket No. FM-16-1270-13.

Peter R. Bray argued the cause for appellant/cross-respondent.

Ronda Casson Cotroneo argued the cause for respondent/cross-appellant.

PER CURIAM

Plaintiff Lillian Dobre appeals, and defendant Niksa Dobre cross-appeals, from their October 13, 2015 dual final judgment of

divorce (JOD).[1] For the reasons that follow, we affirm in part, and reverse and remand in part.

I.

The parties married in 2004 and had three children; at the time of the divorce, their ages were nine, seven, and four. In March 2013, plaintiff filed a complaint for divorce, seeking dissolution of the marriage, incorporation of the parties' prenuptial agreement into the JOD, joint legal and physical custody of the children, child support, and equitable distribution. Defendant's answer and counterclaim for divorce sought nullification of the prenuptial agreement and other relief.

Trial commenced in February 2015, and spanned ten non-consecutive days, ending in April 2015. During the trial, the judge issued a letter decision setting aside the prenuptial agreement. According to plaintiff, the court issued a written

[1] Plaintiff's amended notice of appeal states she appeals from the trial court's December 3, 2015 order, and defendant's notice of cross-appeal lists the trial court's November 6, 2015 order. Both of these orders pertain to the attorneys' fees award to defendant and his counsel. Because the parties' briefs clearly indicate they also intended to appeal from the JOD, we exercise our discretion and consider the entirety of the parties' arguments. But see W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458 (App. Div. 2008) ("It is clear that it is only the orders designated in the notice of appeal that are subject to the appeal process and review.").

opinion in July 2015,[2] and on October 13, 2015, the court entered the JOD.

In August 2015, plaintiff filed a motion for reconsideration, and defendant filed a cross-motion for reconsideration. The court addressed the parties' motions in two orders, both filed on November 4, 2015.

The judge issued a written decision dated November 5, 2015 in connection with the parties' applications for attorneys' fees, and by way of a November 6, 2015 order, the court awarded attorneys' fees to defendant's counsel, requiring plaintiff "to pay $59,910 [in] counsel fees to defendant's attorney." Shortly thereafter, plaintiff filed a notice of appeal, and defendant filed a cross- appeal.

On December 3, 2015, the court conducted a hearing on plaintiff's motion for a stay and defendant's application for entry of judgment. Following the hearing, the court issued two orders — one entered judgment against plaintiff in favor of defendant's attorneys for the $59,910 counsel fee award and the other entered judgment against plaintiff in favor of defendant for $300,459, representing the equitable distribution owing to defendant. The judge further denied plaintiff's motion for a

[2] The opinion contained within the record lacks a date.

stay, but stated he would grant a stay if plaintiff posted a bond. This occurred, and the judge entered an order granting a stay pending the outcome of this appeal.

On April 8, 2016, while the instant appeal remained pending, plaintiff moved to correct an error in the attorneys' fee award; defendant filed a cross-motion on a related issue. The trial judge stated he was "incorrect on the law," because the attorneys' fees order should have been entered in favor of defendant, not his attorney. However, the judge stated he lacked jurisdiction to revise the mistake because of this pending appeal. Defendant's trial counsel filed a motion to intervene, which the judge denied.

II.

Appellate "review of a trial court's fact-finding function is limited." Cesare v. Cesare, 154 N.J. 394, 411 (1998). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974)). This is particularly true in matters emanating from the Family Part, because of its special expertise. Ibid. Consequently, the factual findings and legal conclusions reached by the Family Part trial judge will not be set aside unless the court is "'convinced that they are so manifestly unsupported by or inconsistent with the competent,

relevant and reasonably credible evidence as to offend the interests of justice' or . . . we determine the court has palpably abused its discretion." Parish v. Parish, 412 N.J. Super. 39, 47 (App. Div. 2010) (quoting Cesare, 154 N.J. at 412). However, no special deference is owed to the trial court's conclusions of law. Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Moreover, trial courts have broad discretion to allocate marital assets subject to equitable distribution. Clark v. Clark, 429 N.J. Super. 61, 71 (App. Div. 2012). "Where the issue on appeal concerns which assets are available for distribution or the valuation of those assets, . . . the standard of review is whether the trial judge's findings are supported by adequate credible evidence in the record." Borodinksky v. Borodinksy, 162 N.J. Super. 437, 443-44 (App. Div. 1978). "[W]here the issue on appeal concerns the manner in which allocation of the eligible assets is made," the appellate court reviews for abuse of discretion. Id. at 444. Accordingly, "we will affirm an equitable distribution as long as the trial court could reasonably have reached its result from the evidence presented, and the award is not distorted by legal or factual mistake." La Sala v. La Sala, 335 N.J. Super. 1, 6 (App. Div. 2000).

III.

On appeal, plaintiff challenges the court's decision nullifying their prenuptial agreement, along with the court's rulings on equitable distribution, child support, and attorneys' fees. She also contends the judge erred in requiring immediate payment of the equitable distribution and attorneys' fees awards. Defendant's cross-appeal challenges the court's failure to adopt his parenting plan, and contends the court erred in failing to impute additional income to plaintiff. We address the arguments, and their attendant facts, in turn.

A. Prenuptial Agreement

The parties met in 2003, and soon after made plans to marry. Plaintiff testified defendant came to the United States in 1999, five years before their marriage. Defendant's first language is Serbian, but plaintiff maintains defendant could read and write English. Plaintiff also speaks Serbian, and the parties conversed in both languages.

Defendant testified he was born in Croatia and moved to the United States in 2001. He first entered the country on a six-month tourist visa and then, after the events on September 11, 2001, he had an opportunity to work for a "newspaper-agency from Montenegro" under a media visa. Defendant obtained the media visa with the help of his immigration attorney, George Akst. He

remained on visa status until obtaining a green card, following his marriage to plaintiff.

Plaintiff testified she refused to marry defendant without a prenuptial agreement, "[b]ecause he wasn't a citizen and [she] didn't know if he was marrying [her] just for papers or for love." She claimed she also wanted to retain gifts she received from her wealthy mother. Plaintiff testified defendant "was more than okay with it, because he wanted [to obtain] citizenship."

Plaintiff owned several properties prior to her marriage to defendant; on this appeal, the parties dispute the disposition of two parcels in Totowa — one on Battle Ridge Trail and one on Francis Street. Plaintiff bought the Battle Ridge Trail property with her first husband in 1997; when they divorced in 2002, plaintiff purchased her first husband's share of the property for $135,000. At the time of her marriage to defendant, plaintiff still had a mortgage on the property.

Plaintiff's mother purchased the Francis Street property — a two-family house — as an investment property; in 2003, she transferred the property to plaintiff. Plaintiff's mother paid off the mortgage on the property sometime around 2005. According to plaintiff, several months before their marriage, she and defendant discussed in both English and Serbian those properties, her debts, and "how things were gifted to [her]."

Plaintiff testified she hired Robert Nussbaum, an attorney she did not previously know, to prepare the prenuptial agreement. The agreement addresses only "[a]ssets and debts," and does not reference child support. It states, among other things, that

> [i]n the event that either party herein receives additional assets, in his or her name alone, by way of gift, devise or bequeath, then said assets in said party's name and all increments thereto may be kept and retained in said sole ownership, enjoyment[,] control and power of disposal of said party free and clear of any interest rights or claim of the other.
>
> . . . .
>
> In the event of a[] . . . final divorce between the parties hereto, each agrees that there shall be no equitable distribution of the assets set forth [herein] . . . but each shall keep and retain sole ownership . . . free and clear of any interest, rights or claims of the other.

The agreement also provides, "The parties do further warrant and represent that a schedule of the assets of each of them is attached to this agreement and made a part here of." The agreement contains an attachment, labeled Schedule A, which purports to identify plaintiff's assets and liabilities.[3] The schedule lists values for the Battle Ridge Trail and Frances Street properties, with each parcel followed by "(see appraisal)." The schedule also

[3] The agreement does not contain a schedule listing the assets and liabilities of defendant.

lists values for two bank accounts and a 401(k) account, with each account listing followed by "(see annexed)." Notwithstanding the phrase "see appraisal" and "see annexed," no appraisals or account statements are attached to the agreement. The schedule also lists "Oldja Developers, LLC (Membership Interest)" and "Oldja Developers, LLC (Stock Interest)" and indicates "unknown value" for each asset. The schedule lists two debts for plaintiff (a mortgage and a credit line). Finally, the schedule references plaintiff's 2002 tax return, followed by "(see annexed);" once again, the referenced document is not attached.

The agreement states the parties "have each been independently represented with respect to the negotiations and preparation of this agreement"; however, the agreement does not identify either party's attorney. Plaintiff testified that defendant hired Akst to review the agreement on his behalf, and she believed defendant paid the attorney himself. She further testified she and defendant signed the agreement at Akst's New York City office on July 6, 2004, with a notary present. She conceded a Serbian translator was not present during the signing.

According to defendant, plaintiff told him that he needed to sign "life insurance paperwork," in the event something should happen to her, so that the insurance proceeds would "[go] to her mother," which he "didn't have a problem with." He claims he

signed the document believing it merely waived any interest in any life insurance proceeds on plaintiff's life. Defendant stated he signed this paper in the kitchen of the Battle Ridge Trail home, and that no witnesses or notary were present, and that plaintiff's signature — but no notary stamp — was already on the agreement when she gave it to him to sign. Defendant testified that he saw the four-page prenuptial agreement for the first time in the office of his attorney during the divorce proceedings. Defendant further testified that he and plaintiff never discussed a prenuptial agreement or plaintiff's assets or liabilities prior to their marriage.

Akst, an attorney who stated he practices "exclusively in the area of immigration law," testified via telephone.[4] He recalled representing defendant for "just a couple of months," helping him obtain a visa concerning his employment with "a foreign magazine." Akst also testified he did not represent defendant during the preparation, review, negotiation, or execution of a prenuptial agreement. He further stated plaintiff never came to his office to discuss or sign a prenuptial agreement, and he had no recollection of the parties signing an agreement in his office in July 2004. Moreover, he testified he never had an employee with

[4] Plaintiff's attorney advised the court he had "no objection" to the court receiving this testimony by telephone.

the name indicated on the notary stamp reflected on the prenuptial agreement.

Prenuptial agreements are enforceable assuming full disclosure and comprehension, and absent unconscionability. Rogers v. Gordon, 404 N.J. Super. 213, 219 (App. Div. 2008). Pursuant to N.J.S.A. 37:2-38, the party seeking to invalidate a prenuptial agreement must prove by clear and convincing evidence that "[t]he party executed the agreement involuntarily," or the agreement is unconscionable. N.J.S.A. 37:2-38(c) also provides that an agreement is unconscionable if, before the execution, the party:

> (1) Was not provided full and fair disclosure of the earnings, property and financial obligations of the other party;
>
> (2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided;
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> (3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or
>
> (4) Did not consult with independent legal counsel and did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

Here, the judge voided the prenuptial agreement in a terse letter opinion. In fact, the opinion only states, "Dear Counsel: Please excuse this Brief Letter Decision. Time constraints [do

not] let me do more. It is my opinion that the [p]re-[n]uptial [a]greement shall be set aside and of no further force and effect."

Without question, the judge's letter opinion failed to satisfy the mandate of Rule 1:7-4(a), which requires the trial court, in all actions tried without a jury, to issue "an opinion or memorandum decision, either written or oral," setting forth its findings of facts and conclusions of law. "[A] judge's failure to perform the fact-finding duty 'constitutes a disservice to the litigants, the attorneys and the appellate court.'" Ricci v. Ricci, 448 N.J. Super. 546, 574-75 (App. Div. 2017) (quoting Curtis v. Finneran, 83 N.J. 563, 569-70 (1980)).

Notwithstanding the absence of findings and conclusions regarding the enforceability of the prenuptial agreement, we find the record sufficient for us to exercise original jurisdiction and affirm the decision setting aside the agreement. R. 2:10-5. "Resort to original jurisdiction is particularly appropriate to avoid unnecessary further litigation . . . where the record is adequate to terminate the dispute . . . ." Vas v. Roberts, 418 N.J. Super. 509, 523 (App. Div. 2011) (citing Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 2:10-5 (2011)); see also Bailes v. Twp. of E. Brunswick, 380 N.J. Super. 336, 347 (App. Div. 2005) ("Due to the absence of essential fact-finding in the trial court's opinion, we have made such findings of fact as are

necessary to bring this litigation to a conclusion."). We recognize, however, that "the exercise of original jurisdiction should not occur routinely . . . ." Roberts, 418 N.J. Super. at 524 (citation omitted).

The record here firmly convinces us of the prenuptial agreement's invalidity. The record lacks any convincing evidence that defendant, before signing the agreement, "consulted with independent counsel" or that he "voluntarily and expressly waive[d], in writing, the opportunity to consult with independent legal counsel." N.J.S.A. 37:2-38(c)(4). Regarding this issue, Akst's testimony provided compelling support for defendant's position and seriously undermined plaintiff's contentions. In addition, on cross-examination, plaintiff professed no recollection regarding most of the important facts and circumstances surrounding the preparation and execution of the agreement. Our review of the record compels the finding that defendant did not consult with independent counsel or voluntarily waive his right to do so before signing the agreement.

In addition, while plaintiff insisted she provided defendant with the Schedule A attachments before he signed the prenuptial agreement "[eleven] years ago," she had no explanation why defendant did not receive the attachments, before trial, in response to multiple discovery requests. Nor does plaintiff's

appendix include any purported Schedule A attachments, or any appraisals that predate the prenuptial agreement. Based upon our review of the record, we find that defendant did not receive "full and fair disclosure of the earnings, property and financial obligations" of plaintiff, as mandated by N.J.S.A. 37:2-38(c)(1). See also Ladenheim v. Klein, 330 N.J. Super. 219, 224 (App. Div. 2000) (noting the propriety of exercising original jurisdiction when the record discloses no support for a party's claim). Accordingly, we affirm the court's nullification of the prenuptial agreement, concluding that the agreement is "unconscionable," based upon the clear and convincing evidence in the record regarding the absence of both full disclosure and independent legal counsel. See N.J.S.A. 37:2-38(c).

B. Equitable Distribution of Gifts Received During Marriage

Plaintiff next argues the court erred in equitably distributing three properties plaintiff acquired during the marriage. She argues the judge erred in concluding the properties were not gifts, based upon his incorrect finding that plaintiff's mother "did not give up her ownership or control of the properties." Alternatively, plaintiff argues that if the properties are not exempt gifts, they should be exempt as assets held by plaintiff in a resulting trust for her mother.

The three properties at issue are: (1) two lots on Union Boulevard in Totowa; (2) a house on Dewey Avenue in Totowa; and (3) two condominium units in Sarasota, Florida. The record reflects the following facts relating to these properties.

In July 2009, plaintiff's mother purchased two lots on Union Avenue for $380,000 and $525,000. Plaintiff testified that title to the two properties was placed into an LLC, which she created per her mother's instructions, and she was the only member. At the time of trial, the LLC continued to own the properties.

Plaintiff stated her mother paid the carrying costs associated with the properties by depositing money into the LLC, then plaintiff, as the property manager, would pay the bills. Plaintiff alleges she did not contribute any personal or marital money to the property's carrying costs or the LLC; rather, she asserts the property was a gift from her mother, made with the expectation that plaintiff would "leave" the property to her children.

On January 31, 2008, plaintiff's mother used her personal funds to purchase a two-family home on Dewey Avenue for $525,000. The mortgage was in plaintiff's name, and title was placed into an LLC plaintiff had created per her mother's instruction; again, plaintiff was the LLC's only member. Plaintiff testified the property was a gift to her from her mother.

Plaintiff managed the property and claimed the rental income she received for it covered expenses. She further claimed she used no personal or marital money to maintain the property; however, she used the parties' home address as the LLC's business address. Defendant testified he had no understanding that the property was intended as a gift only for plaintiff, and said he maintained the property by cutting the lawn, cleaning, and responding to tenants' repair requests.

At her mother's instruction, plaintiff sold the property in 2014. Plaintiff testified she did not receive any proceeds from the sale.

Finally, plaintiff owned two condominium units in Sarasota, Florida. Around 2008 and 2011, plaintiff's mother used her personal funds to purchase the two units. Again, at her mother's instructions, plaintiff placed title to the two units into separate LLCs, with herself as the sole member. Both units were rented through a rental agency, but plaintiff received the rental income and managed the properties. The rental income covered the expenses for the properties, and plaintiff testified her mother would cover any shortfall.

Plaintiff argues the units were gifts from her mother, and defendant had no interest in either unit. Defendant testified that he and plaintiff went to Florida on vacation, where

plaintiff's mother showed them a condominium she stated she wanted to buy for them. He testified he believed the condominium was for both him and plaintiff because they were married and he was a part of the family.

In his opinion, the judge found the Union Boulevard property worth $490,000, the Dewey Avenue property worth $475,000, and the Sarasota condominiums worth $450,000, for a combined total of $1,415,000.[5] He further stated:

> The "legal status" of these properties is very, very confusing. . . . It was the testimony of the plaintiff and her mother that these properties were gifts from the mother to the daughter to help ensure the future financial safety of the plaintiff and the grandchildren.
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> . . . .
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> The transfers of property that took place in this case could not be gifts as the donor (plaintiff's mother) did not give up her ownership or control of the property. . . . Therefore, these items cannot be counted as gifts and exempt from equitable distribution.

A trial court in an action for divorce may "effectuate an equitable distribution of . . . property, both real and personal, which was legally and beneficially acquired by [the parties] or

[5] On plaintiff's motion for reconsideration, the judge reduced the value of the Dewey Avenue property to $400,000, based upon the sale of the property. This change reduced the combined total of all three properties to $1,340,000.

either of them during the marriage . . . ." N.J.S.A. 2A:34-23(h). Property acquired "by either party by way of gift, devise, or intestate succession" is not subject to equitable distribution. N.J.S.A. 2A:34-23(h).

"Proof of [a] gift requires evidence of unequivocal donative intent on the donor's part, actual or symbolic delivery of the gift's subject matter, and the donor's absolute and irrevocable relinquishment of ownership." Dotsko v. Dotsko, 244 N.J. Super. 668, 674 (App. Div. 1990) (citation omitted). A gift will be subject to distribution if it was used to finance the marital lifestyle, or it was placed in an account that regularly received deposits of income and earnings from the party's employment or received deposits of other non-exempt monies. Tannen v. Tannen, 416 N.J. Super. 248, 283 (App. Div. 2010). The burden of establishing an asset is exempt from equitable distribution rests with the party who seeks to exclude it. Pascale v. Pascale, 140 N.J. 583, 609 (1995).

We reject the trial judge's finding that the properties were not gifts. The record supports the conclusion that plaintiff's mother intended for plaintiff alone to be the recipient of the properties. Plaintiff's mother purchased the properties, and plaintiff placed title to them into LLCs, with herself as the only member. As such, plaintiff, and not her mother, had legal

ownership and control of the properties, thus evidencing her mother's relinquishment of ownership. Plaintiff's perceived "moral" responsibility to obey her mother's wishes is not dispositive of the issue.

Additionally, we have previously recognized that some influence over transferred property does not invalidate a gift's intent. In Brown v. Brown, 348 N.J. Super. 466, 480-82 (App. Div. 2002), a husband held outstanding stock in a family-owned business. The Family Part found the shares were not a gift because the husband's father retained control of the business. Id. at 481. We reversed, holding the father's continued control of the business was insufficient to negate the intent to make a gift, and therefore the stocks were not subject to equitable distribution. Ibid.

Moreover, we note the judge rejected defendant's testimony that he contributed to the properties in terms of physical labor, and in the case of the Union Boulevard property, by designing a commercial building for the site; in fact, the judge found "defendant's contribution to the properties and maintenance of the properties was relatively nothing." Nonetheless, the judge awarded defendant fifteen percent of the value of these properties, finding "defendant is entitled to some portion of equitable distribution of these very valuable assets." We disagree. As stated, plaintiff sufficiently established these properties were

gifts from her mother. Therefore, because these properties are not subject to equitable distribution, and the judge found defendant contributed "relatively nothing" to them, we reverse the equitable distribution award concerning these three properties. As a result, the trial court on remand shall reduce defendant's equitable distribution award by $201,000.

C. Equitable Distribution of Premarital Assets

Plaintiff further contends the court erred in awarding defendant one-half of the increase in the value of the marital home, Battle Ridge Trail, and an investment property located on Francis Street in Totowa. We reject this contention.

Plaintiff first claims the court erred in awarding defendant one-half of the increase in value of the Battle Ridge Trail property. As previously mentioned, plaintiff purchased her first husband's share of that property in 2002. In 2004, after the parties married, plaintiff's mother paid off the property's mortgage and line of credit.

In 2008, the parties decided to renovate the Battle Ridge Trail house; they added an addition to the second floor and a garage behind the house, more than doubling the house's size. Plaintiff's mother paid for all of the renovations.

Prior to the renovations, defendant started his own construction company — Aceria Construction, LLC.[6] According to plaintiff, defendant "wanted to oversee the [renovations] so that his name could be out there that his company is doing it." The parties agreed defendant would oversee the renovations and they would "all discuss" the subcontractors for it. Plaintiff further testified defendant and plaintiff's mother oversaw the renovations together.

Defendant narrated a video showing the work he claimed to have supervised or performed during the renovations. He also prepared a summary of the work he performed on the house and expenses he incurred. He testified plaintiff did not contribute towards those expenses or reimburse his construction company.

In 2003, plaintiff's mother purchased plaintiff an investment property on Francis Street in Totowa. The mortgage on that property was in plaintiff's name, and the property remained mortgaged at the time of the parties' divorce trial. Plaintiff testified she paid the Francis Street mortgage and operating expenses using only the money the property generated; she claimed defendant did not contribute to the mortgage payment, and she did not use marital funds to pay the expenses.

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[6] Also spelled "Asseria" throughout the record.

At some undefined point, plaintiff renovated the Francis Street property to include installation of a bathroom, new flooring, and painting. Plaintiff testified a contractor started the renovations, but defendant completed the work. She further testified defendant "would offer" to cut the property's lawn when it was vacant, but otherwise tenants performed that task. Finally, she denied defendant performed "general maintenance" on the property.

Defendant testified he was the contractor and supervisor for the Francis Street renovations. He claimed to have plastered and painted the home, renovated its basement, laid brick stairs, replaced siding, renovated the first floor bathroom, and changed carpets. He further agreed he worked on the property on "a regular basis," and performed tenants' requested repairs. He testified he performed these tasks because plaintiff gave him the impression it was their joint asset for their children.

Regarding Battle Ridge Trail, the court found "the value of the improvements to the marital home is $175,000," and found defendant was entitled to fifty percent of that increase. Regarding the Francis Street property, the court found defendant "rendered services to this property to bring about [an] increase in value," and awarded him fifty percent of the $20,000 increase in value.

The burden of establishing that an asset is immune from equitable distribution rests on the party who asserts that it was his or her sole property at the time of the marriage. Pascale, 140 N.J. at 609. When immunity is established, however, the party seeking to overcome immunity has the burden of showing that:

> (1) there has been an increase in the value of the asset during the term of the marriage;
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> (2) the asset was one which had the capacity to increase in value as a result of the parties' effort (an active immune asset); and
>
> (3) the increase in value can be linked in some fashion to the efforts of the non-owner spouse.
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> [Sculler v. Sculler, 348 N.J. Super. 374, 381 (Ch. Div. 2001) (footnote omitted).]

Any increase in value occurring in an "active immune asset"[7] during the marriage is generally eligible for distribution. Id. at n.1 (citation omitted).

We find no error in the judge awarding defendant fifty percent of the properties' increase in value. The judge appropriately determined defendant's sweat equity contributed to the properties' overall improvement. Therefore, because the judge's findings are

[7] "Passive immune assets are those whose value increases solely as a result of market conditions[,] and are not subject to equitable distribution. Active immune assets involve contributions and efforts by one or both spouses toward the asset's growth and development which directly increase its value." Ibid.

firmly grounded in the record, we find no abuse of discretion, and affirm. See Wadlow v. Wadlow, 200 N.J. Super. 372, 377 (App. Div. 1985).

D. Attorneys' Fees

We now consider the trial court's December 3, 2015 order, which directed plaintiff to pay $59,910 in attorneys' fees to defendant's counsel and denied plaintiff's request attorneys' fees. In his accompanying opinion, the judge apologized for the "long delay" because of "too much work coming in and not enough time to get it done." Nonetheless, the judge indicated he reviewed the certification of defendant's counsel stating defendant had paid $52,370 towards total fees charged of $160,898; mainly, the fees involved trial preparation and trial.

The judge analyzed the nine factors set forth in Rule 5:3-5(c), and found that although the parties were "modest wage earners" and "in relatively the same position" in terms of income, plaintiff was in a "better financial position [than] . . . defendant." The judge acknowledged "plaintiff's financial condition is totally dependent upon the largess of her mother," but also noted that plaintiff's interest in several LLCs was worth "in excess of one million dollars." Further, the judge found plaintiff had a "significant amount" of assets, whereas

defendant would leave the marriage with approximately $300,000 and his construction business, which was of limited value.

Importantly, the judge recognized defendant's attorneys' fees far exceeded that of plaintiffs; however, he ultimately determined it was "fair for . . . plaintiff to pay some of . . . defendant's fees," but "[n]ot all of the fees as . . . defendant request[ed]." Accordingly, the judge awarded plaintiff to pay defendant's counsel $59,910 — slightly more than one half of defendant's balance.

The award of attorneys' fees and costs in matrimonial cases is a matter committed to the discretion of the trial court; reversal is appropriate only when the trial court has abused its discretion, exceeded its authority, or made a determination that is not supported by the record. See Williams v. Williams, 59 N.J. 229, 233 (1971). In exercising that discretion, however, the court must comply with N.J.S.A. 2A:34-23, which requires consideration of "the factors set forth in the court rule on counsel fees, the financial circumstances of the parties, and the good or bad faith of either party." Mani v. Mani, 183 N.J. 70, 94 (2005) (quoting N.J.S.A. 2A:34-23).

Here, we find no abuse of discretion in the judge's award of attorneys' fees in favor of defendant. The judge considered the factors set forth under Rule 5:3-5, and provided adequate reasons

for his decision. Given plaintiff's significant assets, he found she was more capable of payment, and further noted plaintiff "was the cause of some of . . . defendant's work through her non-production of information." As a result, he found it "fair for . . . plaintiff to pay some of . . . defendant's" attorneys' fees.

Moreover, although attorneys' fees are typically awarded directly to the party, it is "a common and accepted practice" for courts to require payment of an attorneys' fee award directly to the attorney. Leavengood v. Leavengood, 339 N.J. Super. 87, 96 (App. Div. 2001); see also Williams, 59 N.J. at 234-35 (citation omitted) (holding although "counsel fees and costs are awarded to the litigant, they properly 'belong' to counsel . . . ."). Accordingly, we affirm the judge's attorneys' fees award and his requirement that plaintiff pay defendant's counsel directly.

E. Child Support

Plaintiff next challenges the court's child support award. Without citing any case law, she argues the award is inadequate to meet the children's needs and assumes her mother's financial generosity will continue.

In his opinion, the judge noted:

> There are no exceptional needs of the children. Fortunately, the three children are physically and mentally sound. The standard

> of living and economic circumstances of the parties are explained above . . . . The children are under ten and of good health. The children themselves have no debts or liability nor income. All of the factors applied above. A Child Support Guideline is attached hereto indicating that child support is $153 per week.[8] The court has based this on the known and identified incomes of the parties. The defendant at $65,500 . . . and the plaintiff $36,439 earned last year . . . . While this court certainly knows that there are more monies that were used for the children's needs, the court has absolutely no way to calculate what that was. The court does believe that the generosity of the children's grandmother will continue toward them.

The judge computed the parties' income by considering their income tax information. He found that during most of the marriage, plaintiff earned income in the $30,000 range as a real estate broker and property manager for her mother. He found defendant was a painter when the parties met and then opened a construction business that was "never really successful . . . ." Defendant's other enterprises during the marriage, including authoring a book about soccer and writing songs, were also unsuccessful. However, in recent years, defendant earned $40 per hour, and stated he grossed $1200 per week for an annual income of $62,400. The judge

[8] After defendant moved for reconsideration, the court reduced the child support award to $117, finding it mistakenly omitted $1450 in rental income for plaintiff.

noted that, based on a forty-hour work week, defendant's annual income would be $83,200. Finally, after considering the parties' Case Information Statements, testimony, and tax returns, the judge found they "led a lifestyle consistent with an income of about $70,000 to $75,000 per year."

When determining child support awards, the trial court has "substantial discretion." Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012); see also Pascale, F140 N.J. at 594. A child support award that is consistent with the applicable law "will not be disturbed unless it is manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice." Gotlib v. Gotlib, 399 N.J. Super. 295, 309 (App. Div. 2008) (quoting Foust v. Glaser, 340 N.J. Super. 312, 315-16 (App. Div. 2001)). "[A]n award based on the guidelines is assumed to be the correct amount of child support unless a party proves to the court that circumstances exist [that] make a guideline-based award inappropriate in a specific case." Musico v. Musico, 426 N.J. Super. 276-285 (Ch. Div. 2012) (citing Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A, www.gannlaw.com (2017)).

Here, the judge adequately considered the factors set forth under the child support guidelines, N.J.S.A. 2A:34-23(a), which support his findings. Moreover, plaintiff's position lacks legal

and evidentiary support, and fails to establish that the needs of the children are not being met under the current child support award. Accordingly, we affirm the judge's child support award.

F. Parenting Plan

Defendant appeals the judge's parenting plan, arguing the judge failed to provide for equal shared physical custody of the children, as endorsed by Dr. Paul Dasher.[9] Defendant requested to have physical custody of the children on every Wednesday and Thursday, and alternate weekends.

The judge's parenting plan provided for defendant to have the children one weekday per week and alternate weekends. He found this schedule "will give each parent significant time with the children." In arriving at the parenting schedule, the judge found Dr. Paul Dasher's report to be "significant" because it was the only independent source of information as to the children; however, he noted that the report was "dated material" in that quite some time had passed since the doctor created the report.

The judge also expressed concern that "defendant seemed quite bitter at plaintiff" and "never failed to try and tell this court something negative about [her]." In contrast, plaintiff "at no time impu[g]ned [defendant's] love for his children or his capacity

[9] The record lacks Dr. Paul Dasher's report, which was stipulated into evidence during the trial.

to function as a parent." The judge further noted "the court cannot really assess the parent's cooperation, communication, agreement, willingness to accept or provide for custody and interaction, as the parties still reside together on a daily basis under the same roof."

"The touchstone for all custody determinations has always been 'the best interest[s] of the child.'" Faucett v. Vasquez, 411 N.J. Super. 108, 118 (App. Div. 2009) (alteration in original) (quoting Kinsella v. Kinsella, 150 N.J. 276, 317 (1997)). "Custody issues are resolved using a best interests analysis that gives weight to the factors set forth in N.J.S.A. 9:2-4(c)." Ibid. (quoting Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007)). "[T]he decision concerning the type of custody arrangement [is left] to the sound discretion of the trial court. . . ." Nufrio v. Nufrio, 341 N.J. Super. 548, 555 (App. Div. 2001) (alteration in original) (citation omitted). Therefore, on appeal, "the opinion of the trial judge in child custody matters is given great weight . . . ." Terry v. Terry, 270 N.J. Super. 105, 118 (App. Div. 1994).

We affirm the judge's parenting plan. He thoroughly explained his factual findings, which were supported by "adequate, substantial and credible evidence" in the record. Rova, 65 N.J. at 484. Although the plan is not exactly equal, the arrangement

allows each parent to have significant time with the children, and is a practical plan for school-aged children.

To the extent we have not addressed any argument raised by the parties, we conclude such arguments lack sufficient merit to warrant comment in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, and reversed and remanded in part. We remand for entry of an amended JOD to reflect our partial reversal of the trial court's equitable distribution award. See supra Section III.B. We do not retain jurisdiction.