

# RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-0953-21

I.B.,<sup>1</sup>

Plaintiff-Appellant,

v.

M.S.,

Defendant-Respondent.

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Submitted October 25, 2023 – Decided November 6, 2023

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Burlington County,  
Docket No. FV-03-0706-21.

Foda Law Group, LLC, attorneys for appellant (Rasha  
B. Foda, on the briefs).

Weinberg, Kaplan, & Smith, PA, attorneys for  
respondent (Dawn Kaplan, of counsel; Jill Dell'Aquilo,  
on the brief).

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<sup>1</sup> We use initials to protect the parties' privacy. R. 1:38-3(d)(10).

## PER CURIAM

Plaintiff I.B. appeals from the parenting time provisions contained in a July 7, 2021 amended final restraining order (FRO) and a July 14, 2021 amended FRO. After hearing testimony during a domestic violence trial conducted over ten non-consecutive days between March and May, 2021, a Burlington County Family Part judge entered a June 28, 2021 FRO in favor of plaintiff and against defendant M.S.<sup>2</sup>

Plaintiff also appeals from an October 15, 2021 order awarding her the sum of \$24,588.25 in counsel fees, and a November 18, 2021 order establishing a schedule for M.S.'s payment of the awarded fees. Plaintiff contends the judge erred in denying the full amount of her requested counsel fees.

For the reasons that follow, we dismiss plaintiff's appeal from the amended FROs as moot and affirm the orders addressing the award of counsel fees.

The details leading to the issuance of the FRO are not pertinent to the issues on appeal. We provide some limited background for context.

In rendering a decision on plaintiff's application for an FRO, the Burlington County Family Part judge addressed the exercise of parenting time

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<sup>2</sup> Plaintiff does not challenge the entry of the FRO.

with the parties' then two-year-old child. Plaintiff, dissatisfied with the judge's parenting time decision, raised an objection by way of a letter from her attorney. On July 7, 2021, the judge supplemented his parenting time decision. By that date, defendant had filed a divorce complaint in Bergen County.

Based on the pending divorce action in another county, the judge believed plaintiff was "using the domestic violence court to dictate the parameters of parenting time." In his reasons stated on the record and in the amended FROs, the judge advised that future parenting time issues, including overnight parenting time, would be resolved by the Bergen County Family Part judge in the divorce action.<sup>3</sup>

As a domestic violence victim, plaintiff filed a separate application for an award of counsel fees under N.J.S.A. 2C:25-29(b)(4), requesting \$83,794.60 in attorney's fees. On October 15, 2021, the Burlington County Family Part judge awarded her fees in the amount of \$24,588.25. He found plaintiff was successful in her application for an FRO but deducted attorney's fees associated with plaintiff's applications for emergent relief before the Appellate Division and reduced the amount of fees associated with plaintiff's defense of defendant's

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<sup>3</sup> A few months later, on October 29, 2021, the Bergen County Family Part judge entered an order allowing defendant overnight parenting time with the child on alternate weekends.

cross-complaint for an FRO. In a November 18, 2021 order, the judge established a schedule for defendant's payment of plaintiff's counsel fees.

In challenging the parenting time provisions in the July 7 and July 14, 2021 amended FROs, plaintiff takes issue with the judge's finding that defendant did not pose a risk to the child. Plaintiff also challenges the judge's stated belief that she used the domestic violence laws to dictate defendant's exercise of parenting time. In addition, plaintiff argues the Burlington County Family Part judge erred in failing to award child support retroactive to the date of her domestic violence complaint. Further, plaintiff contends the judge abused his discretion in awarding only partial attorney's fees and denying her request for punitive damages.

We decline to address and dismiss as moot plaintiff's arguments other than her argument related to the award of attorney's fees. We do so for the following reasons.

We note appeals are taken from orders and judgments, not a trial judge's statement of reasons or written decisions. See Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001) ("[I]t is well-settled that appeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion."); see also R. 2:2-3(a).

Here, plaintiff challenges statements made by the Burlington County Family Part judge in reaching his parenting time decisions in the amended FROs. The judge's reasons are not properly the subject of an appeal.

Further, orders regarding custody or parenting time associated with the entry of an FRO are considered temporary as a trial judge's determination regarding such issues flow from the limited information available during a domestic violence proceeding. See R.K. v. F.K., 437 N.J. Super. 58, 64 (App. Div. 2014) (addressing an award of temporary custody in a domestic violence proceeding because such proceedings "must be conducted expeditiously" and the judge must resolve issues based on limited information); see also N.J.S.A. 2C:25-29(b)(3).

Additionally, to the extent plaintiff argues the credibility findings made by the Burlington County Family Part judge in the domestic violence action may be relied upon by the Bergen County Family Part judge in the divorce action, we reject those arguments as speculative. The Bergen County Family Part judge should render independent factual findings and credibility determinations based on the testimony and evidence adduced during the divorce matter. Plaintiff may address any arguments concerning the Bergen County Family Part judge's factual findings in an appeal from orders entered in the divorce action.

Also, plaintiff's challenge to the parenting time provisions in the amended FROs has been rendered moot by subsequent parenting time orders issued by the Bergen County Family Part judge in the divorce action. An issue is moot when "our decision sought in a matter, when rendered, can have no practical effect on the existing controversy." Deutsche Bank Nat'l Trust Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011) (citing Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006)). Because the Bergen County Family Part judge issued subsequent orders addressing parenting time, the orders challenged by plaintiff in this appeal no longer have any effect with respect to the exercise of parenting time. See also Redd v. Bowman, 223 N.J. 87, 104 (2015) (quoting Deutsche Bank Nat'l Trust Co., 422 N.J. Super. at 221-22) (noting when a judge re-examines a temporary or interim order, the latter order becomes the only order governing the parties and any further review of the preceding order would "have no practical effect on the existing controversy").

Further, the New Jersey Domestic Violence Procedures Manual (2022) (Manual) sets forth the manner in which a court must address issues, including parenting time, when there is a simultaneously pending divorce action and a domestic violence proceeding. See Finamore v. Aronson, 382 N.J. Super. 514,

520 (App. Div. 2006). The Manual provides: "If there is a pending FM, all reliefs except the restraints shall be incorporated into the FM with the restraints continuing in the FV docket and on the FRO. Subsequent applications or modifications for support, custody or parenting time should take place within the FM docket number."<sup>4</sup> Ibid.; see also N.J. Domestic Violence Procedures Manual (2022) at IV-86. In accordance with the Manual, the parties' disputes as to parenting time, custody, and child support are to be addressed in the Bergen County divorce action. As a result, we are satisfied plaintiff's challenge to the parenting time provisions in the amended FROs is moot.

We next consider plaintiff's challenge to the counsel fee orders entered by the Burlington County Family Part judge in the domestic violence matter. We note plaintiff's challenge to these orders is not moot because the orders are final judgments and, therefore, reviewable by this court. Plaintiff asserts the judge erred in failing to award the full amount of the fees she requested. We disagree.

An award of fees in a domestic violence action rests within the discretion of the trial judge. McGowan v. O'Rourke, 391 N.J. Super. 502, 507-08 (App. Div. 2007). We will disturb a trial court's determination on counsel fees "only

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<sup>4</sup> Here, the FM docket is the Bergen County divorce action and the FV docket is the Burlington County domestic violence action.

on the 'rarest occasion,' and then only because of clear abuse of discretion[,]" Strahan v. Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)), or a clear error in judgment, Tannen v. Tannen, 416 N.J. Super. 248, 285 (App. Div. 2010). Where a trial judge correctly applies the case law, statutes, and court rules governing attorney's fees, the fee award is entitled to our deference. Yueh v. Yueh, 329 N.J. Super. 447, 466 (App. Div. 2000); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 4.7 to R. 5:3-5 (2024).

The Prevention of Domestic Violence Act (Act), N.J.S.A. 2C:25-17 to -35, authorizes an award of "reasonable attorney's fees." N.J.S.A. 2C:25-29(b)(4). The Act provides for counsel fees "to avoid a chilling effect on the willingness of domestic violence victims to come forward with their complaints." M.W. v. R.L., 286 N.J. Super. 408, 411 (App. Div. 1995). If, after considering the factors in Rule 4:42-9(b) and Rule of Professional Conduct (RPC) 1.5, the "court finds that the domestic violence victim's attorney's fees are reasonable, and they are incurred as a direct result of domestic violence, then a court, in an exercise of its discretion, may award those fees." McGowan, 391 N.J. Super. at 508.



Here, the Burlington County Family Part judge properly considered and appropriately applied the factors under Rule 4:42-9 and RPC 1.5(a) in awarding fees to plaintiff. The judge discounted the amount requested because he found the fees incurred by plaintiff during the domestic violence trial were inflated as a result of plaintiff's presentation of numerous witnesses, who offered cumulative testimony, which resulted in an unnecessarily protracted trial. The judge also found plaintiff's counsel provided the court with many "block billing" entries, rendering it difficult to determine the amount of time plaintiff's counsel spent on each task. Notwithstanding these findings, the judge reviewed the affidavit of services submitted by plaintiff's counsel and awarded fees which reasonably compensated plaintiff for expenses associated with the domestic violence trial. Under these circumstances, we are satisfied the Burlington County Family Part judge did not abuse his discretion regarding the amount of fees awarded.

We next consider plaintiff's arguments, raised for the first time on appeal, that the Burlington County Family Part judge erred in calculating child support and failing to sua sponte award her punitive damages. These arguments were not presented to the Burlington County Family Part judge. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (declining to consider questions or

issues not properly presented to the trial court unless the matter is addressed to the jurisdiction of the trial court or concerns matters of great public interest). Plaintiff's arguments related to child support and punitive damages do not challenge the jurisdiction of the trial court nor do they concern matters of great public interest. Therefore, we need not consider them.

Additionally, plaintiff's merits brief is devoid of any argument regarding punitive damages. It is well-established that an issue not briefed on appeal is deemed abandoned or waived. See, e.g. State v. Shangzhen Huang, 461 N.J. Super. 119, 125 (App. Div. 2018), aff'd, 240 N.J. 56 (2019). While plaintiff's moving brief indicated punitive damages would be addressed in her reply brief, she failed to do so. Because the issue was not briefed by plaintiff, we are satisfied her argument regarding punitive damages was waived.

Lastly, we note our December 6, 2022 order deferred plaintiff's motion to strike defendant's brief and appendices "to the merits panel so it can decide in context what, if any, objected to materials it will consider." Having reviewed the record, and in light of our May 2, 2022 order denying plaintiff's motion to supplement the record with documents from the pending divorce action in Bergen County, we have not considered, and need not consider, comments by either party pertaining to the divorce action other than to acknowledge the

Bergen County Family Part judge issued parenting time orders subsequent to the parenting time orders entered by the Burlington County Family Part judge.

Affirmed as to plaintiff's appeal from the October 15, 2021 and November 18, 2021 orders regarding the award of counsel fees. Dismissed as moot as to plaintiff's appeal from the July 7, 2021 and July 14, 2021 amended FROs addressing parenting time.

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



CLERK OF THE APPELLATE DIVISION