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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-1493-21

QINGYOU YAN,

Plaintiff-Respondent,

v.

YIXIONG XU,

Defendant-Appellant.

Submitted February 14, 2023 – Decided April 19, 2023

Before Judges Sumners and Susswein.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-2387-18.

Yixiong Xu, appellant pro se.

Kornitzer Family Law, LLC, attorney for respondent
(Robert B. Kornitzer, on the briefs).

PER CURIAM

In this post-judgment divorce matter, defendant Yixiong Xu appeals from three Family Part orders: (1) a June 23, 2021 order enforcing the rights of

plaintiff Qingyou Yan under the previously entered dual final judgment of divorce (JOD); (2) a December 10, 2021 order denying defendant's motion to vacate the June 23 order; and (3) a March 10, 2022 order again enforcing plaintiff's rights under the JOD. Defendant raises numerous contentions on appeal, none of which warrant extensive discussion. Defendant does not present a substantive defense to his violations of the JOD. Rather, his foundational argument is that he was not served with the motion that resulted in the June 23 order. He contends the alleged lack of service tainted the ensuing orders. After carefully reviewing the record, we affirm substantially for the reasons explained in the Family Part judges' oral opinions.¹

I.

Judge Gallina-Mecca presided over the divorce trial and, on July 21, 2020, entered the JOD that dissolved the parties' thirty-year marriage. Neither party appealed. Among other things, the JOD ordered that the former marital residence "shall be immediately listed for sale." Defendant was ordered to prepare the house for sale at the direction of a listing agent. Despite that order,

¹ We note defendant's appeal brief fails to comply with the Court Rules. Although we might have dismissed the appeal on that basis, we choose to decide the appeal on the merits.

defendant did not cooperate in the sale of the house and did not abide by other provisions of the JOD.

Plaintiff filed a motion to enforce litigant's rights. That motion was unopposed and was granted by Judge Michael Antoniewicz on June 23, 2021. Regarding the service of process, which is at the heart of this appeal, Judge Antoniewicz accepted plaintiff's attorney's certification that defendant had been served by hand delivery. In addition to the attorney's certification, an affidavit of service shows that a process server delivered the motion directly to defendant on April 12, 2021. That document indicates that defendant "refuse[d] to sign." Later, in response to defendant's motion to vacate the June 23 order, the process server signed a separate affidavit explaining that he went to defendant's address, confirmed defendant's name, "left the envelope inside the home," and unsuccessfully tried to have defendant sign the affidavit of service. Defendant claims that never happened.

Judge Gallina-Mecca convened a hearing via Zoom on December 10, 2021 to address defendant's motion to vacate the June 23 order. Defendant was sworn in at the beginning of that hearing. After hearing argument, Judge Gallina-Mecca ultimately was convinced that defendant had been properly served. The judge noted defendant "has a history of avoiding information" and that it was

"abundantly evident" that defendant was in violation of the JOD. She concluded defendant's motion was "no more than another delay tactic on [defendant]'s part to prevent [plaintiff] from finalizing this divorce."

In January 2022, plaintiff again moved to enforce litigant's rights in response to defendant's continued failure to comply with the JOD and the June 23 order. Defendant opposed that motion and cross-moved for stays of the June 23 and December 10 orders. Judge Gallina-Mecca heard oral arguments via Zoom on March 10, 2022. After hearing the arguments, the judge denied defendant's request for stays and granted plaintiff's motion aside from a request to have defendant vacate the home within ten days of the order. Judge Gallina-Mecca made clear, however, that defendant was ordered to sell the home in accordance with the previous rulings.

Defendant raises the following contentions for our consideration²:

POINT I

THE COURT ABUSED ITS DISCRETION BY
ENTERING AN ORDER WHERE DEFENDANT
WAS NOT SERVED.

² Defendant's brief does not have clearly defined point headings. See R. 2:6-2(a)(1). The "Legal Arguments" section includes twenty-three subsections and sub-subsections. For purposes of this opinion, we treat the main subsections as if they were point headings.

POINT II

THE COURT FALSELY CHARACTERIZED AND RULED THAT DEFENDANT[']S "SKIN WAS WHITE ACCORDING TO [THE] JUDGE'S PERSONAL OBSERVATION DURING A LENGTHY TRIAL."

POINT III

THE COURT ERRED BY FAILING TO HAVE A HEARING/TRIAL TO ADDRESS A DISPUTE WHERE THERE WAS A GENUINE ISSUE OF MATERIAL FACT OVER SERVICE OF THE UNDERLYING MOTION.

POINT IV

THE COURT'S DETERMINATION WAS BIAS[ED].

POINT V

THE COURT'S DECISION WAS NOT BASED ON THE FACTS BEFORE IT, BUT RATHER MERELY ON THE JUDGE'S PERSONAL PERCEPTION AND PRESIDED [SIC] MINDSET.

POINT VI

THE COURT ERRED BY DENYING DEFENDANT DUE PROCESS OF LAW.

POINT VII

JUDGE ANTONIEWICZ SHOULD HAVE HEARD AND DECIDED THE MOTION TO VACATE HIS OWN JUNE 23, 2021 ORDER.

POINT VIII

THE COURT ERRED BY MAKING AN ARBITRARY DECISION.

POINT IX

THE PLAINTIFF DID NOT FOLLOW ANY OF THE COURT RULES FOR SERVICE OF A MOTION UPON [DEFENDANT].

POINT X

THE COURT ERRED BY FAILING TO MAKE ADEQUATE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

POINT XI

JUDGE [GALLINA-]MECCA SHOULD HAVE RECUSED HERSELF FROM HEARING THIS MATTER.

POINT XII

UPON REMAND, A NEW JUDGE SHOULD HEAR THIS MATTER.

POINT XIII

ADDITIONAL CONCERNS WITH [THE] MARCH 10, 2022 ORDER (NOTABLY THIS WAS ADDED TO [THE] APPEAL AFTER FILING [THE] NOTICE OF APPEAL).

II.

Defendant's contentions on appeal can be distilled into four basic arguments. First, he contends he was not served with the initial motion to enforce litigant's rights, tainting the ensuing orders. Second, he contends he should have been afforded an evidentiary hearing to address his service of process claim. Third, he contends Judge Gallina-Mecca was biased against him and should not have heard his motion to vacate the June 23 order. Finally, he contends he should not be required to set aside proceeds from the sale of the house to pay for fees generated by a court-appointed accountant.

"The general rule is that findings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence." Gnall v. Gnall, 222 N.J. 414, 428 (2015) (citing Cesare v. Cesare, 154 N.J. 394, 411–12 (1998)). "Appellate courts owe deference to the trial court's credibility determinations as well because it has 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" C.R. v. M.T., 248 N.J. 428, 440 (2021) (quoting Gnall, 222 N.J. at 428)). We "accord great deference to discretionary decisions of Family Part judges." Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (citing Donnelly v. Donnelly, 405 N.J. Super. 117, 127 (App. Div. 2009)). The legal conclusions of Family Part judges, however, are reviewed de novo. Ibid. (citing Crespo v. Crespo, 395 N.J. Super. 190, 194 (App. Div. 2007)).

Judge Gallina-Mecca's finding that defendant was served with plaintiff's initial motion to enforce litigant's rights was "supported by adequate, substantial, credible evidence." See Gnall, 222 N.J. at 428. That finding is therefore binding on appeal. Ibid.

Defendant was not entitled to an evidentiary hearing. We review a trial court's decision to deny a request for a plenary hearing under the abuse of discretion standard. Costa v. Costa, 440 N.J. Super. 1, 4 (App. Div. 2015) (citing Hand v. Hand, 391 N.J. Super 102, 111–12 (App. Div. 2007)). In the related context of modifying a divorce agreement, we held in Bermeo v. Bermeo that "a movant is entitled to a plenary hearing only when demonstrating the existence of a genuine issue of material fact entitling the party to relief through competent supporting documents and affidavits." 457 N.J. Super. 77, 83 (App. Div. 2018). "Courts should be free to exercise their discretion to prevent unnecessary duplication of proofs and arguments." Lepis v. Lepis, 83 N.J. 139, 159 (1980). We see no abuse of discretion in Judge Gallina-Mecca's conclusion that an evidentiary hearing was not needed to determine whether defendant had been served.

We likewise reject defendant's contention that Judge Gallina-Mecca should not have heard defendant's motion. "Motions for disqualification must

be made directly to the judge presiding over the case." State v. McCabe, 201 N.J. 34, 45 (2010); see also R. 1:12-2. Furthermore, motions for recusal or disqualification "are entrusted to the sound discretion of the judge and are subject to review for abuse of discretion." McCabe, 201 N.J. at 45. "[T]he fact that a litigant is disappointed in a court's ruling" does not provide a basis for disqualification. State v. Marshall, 148 N.J. 89, 186 (1997). We see no abuse of discretion in having the judge who presided over the divorce trial and issued the JOD determine whether to vacate an order to enforce litigant's rights under that JOD.

Defendant's remaining arguments lack 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