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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-1729-21

VITO MAZZA, IV,

Plaintiff-Respondent,

v.

TARA MAZZA,

Defendant-Appellant.

Submitted March 20, 2023 – Decided June 7, 2023

Before Judges Mawla and Smith.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FM-02-0968-19.

Hegge & Confusione, LLC, attorneys for appellant (Michael Confusione, of counsel and on the brief).

Dimin Fierro, LLC, attorneys for respondent (William N. Dimin, on the brief).

PER CURIAM

Defendant Tara Mazza appeals the January 7, 2022 order of the Family Part granting plaintiff Vito Mazza's motion to enforce litigant's rights and denying her cross-motion to vacate a default final judgment of divorce (FJOD) pursuant to Rule 4:50-1. We affirm.

Plaintiff and defendant were married on March 25, 2011. Two children were born from the marriage. The record shows a lengthy and contentious litigation history in the Family Part. Multiple trial judges in the Family Part heard various motions, made findings, and issued orders as the parties litigated custody, parenting time, and child support issues. For brevity's sake, we focus on the court orders germane to the issues before us.

On December 16, 2020, the motion judge found defendant in contempt of court and in violation of litigant's rights by failing to comply with several previous Family Part court orders. The judge found defendant failed to pay her share of fees for a court-appointed psychologist and the guardian ad litem. The judge also found defendant failed to supply certain discovery. Defendant was ordered to pay the fees and both parties were ordered to submit updated Case Information Statements and supply all outstanding discovery by January 15, 2021.

Defendant failed to meet the discovery deadline. Soon after, her counsel sought and was granted leave to withdraw. On March 19, 2021, pursuant to plaintiff's motion, the motion judge entered an order striking defendant's answer and counterclaim. The court also entered default against her. The judge made findings, and established child support arrears at $24,360. Finally, the judge's order set a date of May 10, 2021 for entry of default judgment.

The trial court adjourned the hearing date to May 24, 2021 at plaintiff's request, and also moved the start time from 1:30 p.m. to 9:00 a.m. Three days before the hearing, defendant sought an adjournment, which the judge denied, finding defendant had received proper notice of the hearing and had not made a sufficient showing to merit any postponement.

The judge made findings and entered a final judgment of divorce by default, ordering: plaintiff to have sole custody of the children; termination of defendant's parenting time; defendant's weekly child support payment be established at $294 per month with the arrears set forth in the March 19, 2021 order to remain in force; equitable distribution of various assets and the award of $37,315 in counsel fees to plaintiff. Defendant did not seek reconsideration of the order or file a direct appeal from the FJOD.

In September 2021, plaintiff filed a motion for enforcement of litigant's rights. Defendant, represented by counsel, filed a cross-motion, seeking: vacation of the default FJOD and related orders; vacation of the entry of default; shared custody and reinstatement of parenting time; recalculation of child support; and other relief.

The cross-motions were heard on January 7, 2022. The judge rejected defendant's motion to vacate entry of default, finding she did not show good cause. The judge found defendant had notice of plaintiff's March 19, 2021 request to enter default and failed to appear. Next, the judge found defendant had notice of the May 24, 2021 default hearing, and after the court entered final judgment, defendant was served with the order. The judge found defendant failed to show excusable neglect or a meritorious defense, and concluded defendant failed to meet her burden under Rule 4:50-1. Moving to defendant's application to modify custody, parenting time, and child support, the judge found defendant failed to show changed circumstances warranting any modification of the FJOD.

On appeal, defendant contends the judge erred in granting plaintiff's motion to enforce litigant's rights. She also argues the judge erred in denying the cross-motion to vacate the FJOD.

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394 (1998). We "accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare, 154 N.J. at 413). Generally, "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 411-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). As such, we will defer to the Family Part's factual findings and legal conclusions unless convinced they are "manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Ricci v. Ricci, 448 N.J. Super. 546, 564 (App. Div. 2017) (quoting Elrom v. Elrom, 439 N.J. Super. 424, 433 (App. Div. 2015)). Challenges to legal conclusions, as well as a trial court's interpretation of the law, are subject to de novo review. Amzler v. Amzler, 463 N.J. Super. 187, 197 (App. Div. 2020) (citing McGovern v. Rutgers, 211 N.J. 94, 108 (2012)).

A trial court should view a motion to set aside a default judgment under Rule 4:50-1 and Rule 4:43-3, "'with great liberality,' and should tolerate 'every reasonable ground for indulgence . . . to the end that a just result is reached.'" Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330,

334 (1993) (quoting Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div.), aff'd, 43 N.J. 508 (1964)).

Defendant makes three primary arguments on appeal. She contends the trial court abused its discretion by: denying defendant's motion to vacate; granting the entry of default while she was in Texas; and depriving defendant of due process by entering the FJOD. We affirm, substantially for the reasons set forth in the findings made on the record by the judge, which also incorporated the motion judge's May 24, 2021 findings. We add the following brief comments.

Defendant's reasons why she failed to comply with numerous orders of the Family Part, were all properly rejected by the court. Defendant had the opportunity to show good cause and excusable neglect, but failed to present the necessary proofs needed to demonstrate excusable neglect pursuant to Rule 4:50-1. Pursuant to our review of the record, we conclude deference "to the Family Part because of its 'special jurisdiction and expertise'" is particularly appropriate. Harte, 33 N.J. Super. at 461.

The record also shows defendant failed to demonstrate a meritorious defense under Rule 4:50-1. We note the motion judge made a substantial record at the May 24, 2021 default hearing, rejecting as not credible defendant's

arguments about her alleged lack of notice of the hearing and also addressed, in detail, her failure to comply with outstanding discovery orders, despite having ample time to do so. These findings not only established the procedural and substantive basis for the FJOD, but also undercut any meritorious defense argument defendant could have had. Again, we defer to the Family Part judges' detailed findings.

Finally, while we review defendant's appeal in the context of Rule 4:50-1, we note defendant's cross-motion also sought a modification of custody, parenting time, and child support. The court rejected that application, finding defendant failed to show changed circumstances. We find no error.

To the extent we have not addressed any of defendant's arguments, we conclude they are without sufficient merit to warrant discission 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