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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-2301-20**

**IN THE MATTER OF THE
ESTATE OF JOSEPH CAPPELLO,
deceased.**

Argued March 28, 2023 – Decided May 9, 2023

Before Judges Geiger and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
P-000523-19.

Ronald Gutwirth argued the cause for appellant
Stephen Rinbrand (Law Offices Constantine Bardis,
LLC, attorneys; Ronald Gutwirth, of counsel and on the
briefs).

Geoffrey D. Mueller argued the cause for respondent
Frank J. Falconieri (Law Offices of Geoffrey D.
Mueller, LLC, attorneys; Geoffrey D. Mueller, of
counsel and on the brief).

PER CURIAM

In this appeal, Stephen Rinbrand seeks reversal of the April 9, 2021 order
granting respondent's post-judgment motion for reconsideration awarding

attorneys' fees. Rinbrand is the executor of the estate of Helene Cappello, decedent and sole beneficiary of a support trust created by her father, decedent Joseph Cappello. Because the limited record before us is replete with procedural deficiencies which deprive us of the ability to conduct a meaningful review, we dismiss the appeal.

We discern the following facts from the limited record before us. Joseph Cappello died testate in May 2012. As part of his last will and testament, he left to his daughter, Helene Cappello, a support trust for her benefit, with his spouse Lynn Zawonski, and nephew, Mitchell Zawonski, named as co-trustees of the trust and co-executors of his estate. Decedent provided, in the event his daughter Helene predeceased him, his nephew, Frank Falconieri, would be the residuary beneficiary of his estate, but not the support trust.

At some point, Mitchell Zawonski was removed as co-trustee for cause. When Helene Cappello died intestate in 2018, the parties began litigating the testamentary intent of decedent, and whether he wished his nephew, Frank, as contingent beneficiary of the estate, to also become contingent beneficiary of the support trust.

The litigation concluded in December 2020 with the trial court awarding summary judgment to appellant as executor of the estate of Helene Cappello. That order was not appealed.

Following summary judgment, the trial court invited all counsel to submit fee certifications pursuant to Rule 4:42-9(3). An order entered on February 26, 2021, granted certain counsel fees, and, in relevant part, denied others including Frank Falconieri's counsel fees, based upon an alleged misrepresentation made to the court by the estate of Helene Cappello. The estate alleged a prior order dated September 18, 2019, in the same litigation, which had previously granted fees, had been expressly vacated by some subsequent order which denied respondent's fees. Neither the September 18, 2019 order nor the alleged subsequent order vacating that order appear in the trial record or the record on appeal.

Respondent Frank Falconieri moved for reconsideration of the trial court's order denying his counsel fee based upon the fact that no prior order had been entered vacating the September 9, 2018 order, as the estate of Helene Cappello alleged. After entertaining oral argument, on April 9, 2021, the trial court entered an order reconsidering part of the previous February 26, 2021 order

denying respondent's fee, and granted respondent's fee pursuant to the prior September 9, 2018 order, which was not appealed and was never vacated.

We dismiss for violation of the court rules governing appeals. The deficiencies of the record comprising this appeal include, most glaringly, failing to provide critical documentation of the record comprising this appeal, including the September 9, 2018 order and any transcripts or any accompanying statement of reasons, and the alleged subsequent order which vacated the September 9, 2018 order, and any transcripts or statement of reasons accompanying thereto.¹ R. 2:5-1. Additionally, appellant's appendix does not contain the purported record it claims to, including the critical September 9, 2018 order, and any subsequent order amending or vacating that order, and appellant has not filed an amended case information statement if the orders being appealed from have changed.

Without the benefit of critical documentation of trial court proceedings, we are constrained to find defendant raises all issues without support of facts or evidence provided in the appendix. These deficiencies deprive us of the ability

¹ Appellant also originally failed to include transcripts of the December 22, 2021, and February 26, 2021, underlying proceedings which informed the underlying April 2021 motion for reconsideration and provided them only after we requested them prior to oral argument.

to conduct a meaningful appellate review of the order granting reconsideration, which is being appealed. R. 2:8-2; R. 2:9-9; see Cherry Hill Dodge, Inc. v. Chrysler Credit Corp., 194 N.J. Super. 282, 283 (App. Div. 1984). "Despite the indulgence with which we are ordinarily inclined to treat procedural deficiencies in the interests of justice, the deficiencies here cannot be overlooked since they make it impossible for us to properly review this matter." In re Zakhari, 330 N.J. Super. 493, 495 (App. Div. 2000). Thus, "while we are loathe to dismiss an appeal on procedural-deficiency grounds . . . we have no alternative in this case." Ibid.

The appeal is dismissed.

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



CLERK OF THE APPELLATE DIVISION