SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2447-21

XUEHAI LI,

Plaintiff-Appellant,

v.

YUN ZHANG,

Defendant-Respondent.

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Argued April 26, 2023 – Decided June 26, 2023

Before Judges Gooden Brown and DeAlmeida.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Mercer County, Docket No. FM-11-0704-15.

Katherine Kramer (DGW Kramer LLP) of the New York Bar, admitted pro hac vice, argued the cause for appellant (Balance Law Firm, attorneys; Beixiao Liu and Katherine Kramer, on the briefs).

Seth D. Josephson argued the cause for respondent.

PER CURIAM

In this post-judgment matrimonial matter, plaintiff Xuehai Li appeals from a March 25, 2022 Family Part order denying relief from a December 1, 2020 reconsideration order, and denying his motion to vacate an arbitration award entered on July 7, 2021. We affirm.

I.

We detail the complex procedural history of the case for context. Plaintiff and defendant Yun Zhang were married in China and have one child together, M.L., born in 2004. After approximately seven years of marriage, plaintiff filed a divorce complaint on March 4, 2015. Following years of contentious litigation and defiance of court directives on the part of plaintiff, a final judgment of divorce (FJOD) was entered on August 20, 2019. The FJOD incorporated an arbitration agreement and a "Chinese [c]ompliance [a]greement."

Under the arbitration agreement, the parties agreed to submit all outstanding marital issues to binding arbitration. Specifically, the parties agreed that the arbitrator would rule on "[a]ll matters of equitable distribution, including allocation of debt, alimony, child support, counsel fees, arbitration fees and related cost[s]." They also agreed that "as th[e] matter proceed[ed]," additional matters could be added "to the list of issues to be arbitrated" but that any of the aforementioned issues could "not [be] remove[d]."

In the arbitration agreement, the parties designated the Hon. Bradley J. Ferencz, J.S.C. (Ret.), as the arbitrator and specified that he had "the right to determine how the hearing w[ould] proceed." Further, the parties agreed that the arbitrator would "apply New Jersey law," that the arbitrator's decision would not "be challenged, vacated, amended or changed except in limited circumstances[,] and that there [would] be no appeal, except for the reasons set forth in [N.J.S.A.] 2A:23B-23 [to]-24."

Under the Chinese compliance agreement, the parties confirmed their understanding that the arbitrator's "decisions [were] final" and that they were "waiv[ing] the right to seek the dissolution of the marriage through any other legal means." The parties further agreed that "[t]o the extent the arbitration decision require[d] enforcement . . . in China, [they would] not object to the use of the arbitration decision" and it was their intention "that the Chinese [c]ourts provide the arbitration decision with full faith and credit."

In January 2020, the arbitrator ordered plaintiff to liquidate an investment asset worth $536,000 "to provide funding for the arbitration for both parties, or in lieu of liquidation . . . , to make a deposit of $350,000 in advance." Plaintiff's attorney at the time, Jennifer Millner, Esq., of Stark & Stark, moved for reconsideration of the arbitrator's decision. After the motion was denied, with

Millner's consent, Valerie Wong, Esq., moved to substitute herself as plaintiff's counsel. On February 27, 2020, the arbitrator denied Wong's motion based primarily upon the potential for delay.

On March 13, 2020, three days before the arbitration trial was scheduled to begin, plaintiff filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. On June 16, 2020, the bankruptcy court entered an order approving plaintiff's retention of Wong as special counsel in the bankruptcy proceedings. However, the order limited Wong's representation to the bankruptcy proceedings and noted that "[h]er role in the state court proceeding was still to be decided by [the] arbitrator."

On August 14, 2020, the court-appointed bankruptcy trustee filed a motion with the bankruptcy court to vacate the June 16, 2020 Wong retention order. In support, the trustee asserted that Wong "had exceeded the scope of her representation by filing . . . motion[s] with the state court to disqualify the [a]rbitrator and . . . for sanctions against [defendant's] counsel." The bankruptcy judge agreed and on August 25, 2020, entered an order terminating Wong's "retention as special counsel" and directing Wong to "withdraw all motions she ha[d] filed in the [m]atrimonial [c]ase."

In the August 25, 2020 order, the bankruptcy judge explained:

> [t]he appointment of a Chapter 11 [t]rustee . . . changed the extent of the authority that [plaintiff] has in the [m]atrimonial [c]ase. To wit, the right to equitable distribution is property of the [b]ankruptcy [e]state subject to the exclusive control of the Chapter 11 [t]rustee. As such, [plaintiff] lacks authority to address issues relative to equitable distribution in the [m]atrimonial [c]ase pursuant to 11 U.S.C. §§ 323 and 1106. The [t]rustee has exclusive authority to pursue property of the estate, including equitable distribution claims.
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> . . . As a result of the appointment of the Chapter 11 [t]rustee, [plaintiff] no longer needs the services of any counsel paid by the [e]state to represent him generally in the matrimonial case; this does not preclude [plaintiff] from retaining counsel, using non-estate funds or assets, to represent his interests specific to [plaintiff] (i.e. custody, visitation, maintenance, etc.).
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> . . . For purposes of clarity, neither [plaintiff] nor his counsel may pursue claims for equitable distribution unless and until the Chapter 11 [t]rustee formally abandons [the] same; until such time, only the Chapter 11 [t]rustee and her counsel may pursue equitable distribution rights.

On September 18, 2020, the Family Part judge presiding over the state court matrimonial case entered an order staying the "matrimonial matter . . . pending the conclusion of . . . plaintiff's bankruptcy proceedings." The order placed the matter "on the inactive list" and ordered plaintiff to "promptly notify th[e] court of the conclusion of the bankruptcy proceedings."

That same day, the Family Part judge issued a second order relieving Millner as plaintiff's matrimonial attorney in the state court proceeding.

On October 6, 2020, defendant moved for reconsideration of the Family Part judge's September 18, 2020 stay order. Notice was delivered by first-class mail to Wong, Millner, and the arbitrator. On November 10, 2020, the judge's staff emailed Wong and defense counsel to confirm the scheduled November 19, 2020 oral argument date. Wong responded by "request[ing] an adjournment" so that she could "have time to follow up with [her] client and work out [her] schedule." She explained that "[she] ha[d] not been able to follow up on [plaintiff's] case since August" because she was "on trial for a matrimonial case in New York" and "[her] client [was] in China." The judge denied Wong's request for an adjournment, cancelled oral argument, and advised the parties that the motion would "be heard on the papers." Wong never filed any opposition to defendant's motion.

While defendant's reconsideration motion was pending in state court, the bankruptcy judge entered a November 4, 2020 consent order requiring the parties to "proceed with final, non-appealable and binding arbitration" under federal bankruptcy law "for determination as to [defendant's] equitable distribution claim." The consent order required the parties to "enter into an

arbitration agreement, separate and apart from the arbitration agreement entered into as part of the matrimonial proceedings," that would "mirror in all material respects the [m]atrimonial [a]rbitration [a]greement." Pursuant to the consent order, the same arbitrator designated in the matrimonial arbitration agreement would serve as the arbitrator.

The consent order further specified

> that the result of the arbitration will be (i) determinative of the extent of [defendant's] claim in this and any future bankruptcy proceeding; and (ii) deemed a resolution of her right to equitable distribution as pursued in the [m]atrimonial [p]roceeding. The arbitration will not address issues of custody or domestic support obligations of any nature.

About a month later, in an order entered on December 1, 2020, the Family Part judge granted defendant's unopposed reconsideration motion, acknowledged that the bankruptcy court "ha[d] ordered that the [e]quitable [d]istribution portion of th[e bankruptcy] matter be determined by way of binding arbitration," and ordered that the matrimonial arbitration proceed "in the context of the current bankruptcy proceeding, deciding all issues related to th[e matrimonial] matter, including, but not limited to [e]quitable [d]istribution, [c]hild [s]upport and [a]limony." The order specified that the ancillary matrimonial issues "that fall outside of the [b]ankruptcy [c]ourt's jurisdiction,

i.e., [c]hild [s]upport and [a]limony" would be determined by the arbitrator pursuant to the matrimonial arbitration agreement, and the court would "enforce any such [a]rbitrator [d]ecisions." The preamble of the December 1, 2020 order noted that plaintiff and his counsel had been "provided notice" of the motion for reconsideration but "fil[ed] no reply."

Plaintiff received a copy of the reconsideration order the following day, December 2, 2020. In addition, as a result of concerns raised by the bankruptcy trustee regarding plaintiff's representation and receipt of notice of the arbitration proceeding, on November 17, 2020, the bankruptcy judge entered a notice order, which provided:

> A. The arbitrator . . . is proceeding with the [a]rbitration of certain matrimonial issues, including the equitable distribution of assets, which may impact [plaintiff's] rights. [Plaintiff] is entitled to seek the retention of counsel to represent his interests in the [a]rbitration and/or [s]tate [c]ourt [f]amily [l]aw [c]ase.
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> B. The [a]rbitration is not to proceed for at least thirty . . . days following the entry of this [o]rder to allow [plaintiff] time to obtain counsel to represent his interests in any family law matter, including the [a]rbitration, the [s]tate [c]ourt [f]amily [l]aw [c]ase, or any matrimonial issues that may arise in this [b]ankruptcy [c]ase.
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> C. After the expiration of the thirty . . . days from the entry of this [o]rder, the [a]rbitrator and all parties

> to the [a]rbitration may proceed with scheduling and completing the [a]rbitration.

On December 22, 2020, plaintiff's general bankruptcy counsel moved to withdraw as counsel. The following day, December 23, 2020, Beixiao Liu, Esq., began representing plaintiff in the state court matrimonial matter, and entered "a substitution of attorney" with the bankruptcy court on January 22, 2021.

The arbitration trial began in January 2021 and concluded in March 2021. On June 25, 2021, the arbitrator issued a detailed sixty-six-page written decision adjudicating all the issues, and, on July 1, 2021, entered an amended arbitration order incorporating the findings contained in the written decision. Critically, the arbitrator found defendant "credible." On the other hand, plaintiff, "a self-made multi-millionaire businessman," "repeatedly and purposely attempted to mislead the [t]ribunal" about "the ownership and value of the marital property." As a result, the arbitrator determined defendant was entitled to $2,708,531 in "total equitable distribution." As to the ancillary matrimonial issues, the arbitrator ordered plaintiff to pay defendant: (1) a "[b]ad faith counsel fee[] and fee shifting award" of $267,023; (2) a lump sum of $504,000 for "accumulated alimony"; (3) $73,436 for outstanding child support; (4) a "child support obligation [of] $700 per week which shall continue . . . until [the child's] emancipation or graduation from a [four]-year college[,] whichever comes

[last]"; and (5) seventy-five percent of the total cost of their child's college expenses at a "[four]-year private college." The arbitrator also ordered plaintiff to "maintain medical insurance coverage on the child . . . until the child's emancipation" and "a $500,000 life insurance policy naming [d]efendant . . . as beneficiary." Subsequently, the Family Part judge issued a July 6, 2021 order enforcing the arbitration award.

While the arbitration proceedings were concluding, plaintiff moved in the bankruptcy court for relief from four orders pertaining to the arbitration agreement. In support, plaintiff cited "numerous notice and due process violations" that he claimed rendered "the entire arbitration process 'irreparably flawed.'" On December 8, 2021, the bankruptcy judge issued a detailed written decision discussing the complicated procedural history of the case, the arbitration agreement incorporated in the FJOD, and the arbitration agreement adopted in the bankruptcy consent order. Ultimately, the bankruptcy judge denied plaintiff's motion to invalidate the arbitration agreement.

While his motion to overturn the arbitration agreement was pending in the bankruptcy court, on or about October 29, 2021, plaintiff moved in the state court for: (1) "an order pursuant to [Rule] 4:50-1 for relief from the [December 1, 2020] reconsideration order" that had permitted the arbitration to proceed in

the first place; and (2) "an order vacating the arbitration award." In support, plaintiff submitted certifications authored by himself and his attorney, Liu.

Plaintiff claimed in his certification that the December 1, 2020 reconsideration order should be vacated because defendant failed to provide him with notice. He certified that "[he] did not have legal representation . . . between September 19[and] December 22, 2020" and that "[t]he first time [he] heard about" defendant's reconsideration motion was on December 2, 2020, when "opposing counsel . . . forwarded [him] a copy of the [r]econsideration [o]rder."

To support his claims that the arbitration award should be vacated, plaintiff stated "[he] was denied the opportunity to present pertinent and material evidence or call witnesses to testify" on "several" occasions. Specifically, plaintiff claimed he was unable to present: (1) a witness "who helped [him] transfer funds from China to the [United States] to purchase the [marital] residence;" (2) his "accountant, who [was] familiar with all aspects of [his] financial condition, including [his] loans and other borrowings;" (3) "a realtor . . . who helped [the parties] find the [marital] residence;" (4) "[a] written statement by [his] realtor in Toronto, who was familiar with the circumstances around the purchase of [a] Toronto property;" and (5) "[a] pre-nuptial agreement/marital agreement signed by [the parties] in June 2018." Plaintiff

also claimed that the arbitration award was procured through defendant's fraud. According to plaintiff, defendant made "repeated misrepresentation[s]" about "her financial condition to th[e] [trial c]ourt and to the arbitration tribunal," which "played a decisive role in motivating [plaintiff] to enter into th[e] arbitration agreement."

In his certification, Liu confirmed that he represented plaintiff during the arbitration of both the bankruptcy and the ancillary matrimonial matters. To support plaintiff's claim that the arbitration award should be vacated, Liu cited instances of what he described as the "[p]artiality of the [a]rbitrator." Liu also reiterated plaintiff's contention of fraud on defendant's part by citing instances in which defendant allegedly misrepresented her financial situation. According to Liu, defendant certified to the trial court in 2018 and 2019 that "she would be unable to pay her lawyer . . . or the experts" because "she could only transfer $50,000 to the [United States] each year."

However, Liu averred that defendant's pre-arbitration statements were directly contradicted by wire transfers defendant made to Benton B. Camper, defendant's paramour, and his family members, who assisted defendant in purchasing a home in Princeton. According to Liu, plaintiff first became aware of these wire transfers during the arbitration when he learned that "between July

and October 2018," defendant "had transferred . . . approximately $591,000 . . . from China to the [United States]," directly contradicting her "repeated representation[s] . . . that she could only transfer $50,000 each year." Liu acknowledged, however, that the arbitrator was aware of these transfers because of defendant's testimony during the arbitration proceedings.

Following oral argument, the Family Part judge entered a March 25, 2022 order denying plaintiff "relief from . . . th[e] . . . December 1, 2020 [r]econsideration [o]rder" as well as his "application to vacate the [a]rbitration [a]ward." Defendant had filed a cross-motion, which the judge granted in part by awarding "counsel fees and costs in the amount of $12,513.96." The judge, however, denied defendant's "application to sanction plaintiff pursuant to [Rule] 1:4-8" because "defendant failed to make [her] application by way of a separate motion as required by [Rule 1:4-8(b)(1)]." The judge also denied "[p]laintiff's application for sanctions," finding that defendant had not "violated [Rule] 1:4-8(a)."

In an accompanying written decision, the judge rejected each of plaintiff's contentions and affirmed the arbitrator's award in its entirety. Acknowledging the trial court's limited role under the New Jersey Arbitration Act (NJAA), N.J.S.A. 2A:23B-1 to -32, the judge analyzed the statutory criteria for vacating

an arbitration award under N.J.S.A. 2A:23B-23(a)(1) to (4) and concluded that plaintiff failed to meet his burden. As to plaintiff's motion to vacate the December 1, 2020 reconsideration order, the judge concluded that plaintiff failed to bring his Rule 4:50-1 motion within a "reasonable time" as required by Rule 4:50-2.

In this ensuing appeal of the March 25, 2022 order, plaintiff argues the judge erred by denying his motion to vacate the arbitration award under N.J.S.A. 2A:23B-23(a)(1) to (4). Notably, transcripts of the arbitration proceedings were not provided to the judge or included in the record on appeal. Plaintiff also asserts the judge erred by denying his Rule 4:50-1 motion for relief from the December 1, 2020 reconsideration order. We reject both of plaintiff's claims.[1]

II.

[1] Defendant argues she is entitled to additional counsel fees incurred in connection with the appeal and under the frivolous litigation statute. As to the former, defendant's request is premature. See R. 2:11-4 (allowing application for appellate counsel fees "after the determination of the appeal"). As to the latter, defendant did not cross-appeal from the March 25, 2022 order denying her application for sanctions. See Sikes v. Twp. of Rockaway, 269 N.J. Super. 463, 465-66 (App. Div. 1994) (explaining that an issue raised in a brief but not designated in a notice of appeal was not properly before the court).

"[T]he scope of review of an arbitration award is narrow." Fawzy v. Fawzy, 199 N.J. 456, 470 (2009). "It is well-settled that New Jersey's strong public policy favors settlement of disputes through arbitration." Minkowitz v. Israeli, 433 N.J. Super. 111, 131 (App. Div. 2013). This "strong public policy" also favors "using arbitration in family litigation." Id. at 131-32. Accordingly, "'courts grant arbitration awards considerable deference.'" Id. at 135 (quoting Borough of E. Rutherford v. E. Rutherford PBA Loc. 275, 213 N.J. 190, 201 (2013)).

"[B]ecause of the strong judicial presumption in favor of the validity of an arbitral award, the party seeking to vacate it bears a heavy burden." Del Piano v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 372 N.J. Super. 503, 510 (App. Div. 2004). Under the NJAA, "a trial judge can vacate [an arbitration] award only in certain circumstances." Manger v. Manger, 417 N.J. Super. 370, 375 (App. Div. 2010). "As the decision to vacate an arbitration award is a decision of law, this court reviews the denial of a motion to vacate an arbitration award de novo." Minkowitz, 433 N.J. Super. at 136 (quoting Manger, 417 N.J. Super. at 376).

Pertinent to this appeal, the circumstances for vacating an award under the statute are:

> (1) the award was procured by corruption, fraud, or other undue means;
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> (2) the court finds evident partiality by an arbitrator; corruption by an arbitrator; or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
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> (3) an arbitrator . . . refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to [N.J.S.A. 2A:23B-15], so as to substantially prejudice the rights of a party to the arbitration proceeding; [and]
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> (4) an arbitrator exceeded the arbitrator's powers.
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> [N.J.S.A. 2A:23B-23(a)(1) to (4).]

To support his contention that the arbitration award was procured improperly under N.J.S.A. 2A:23B-23(a)(1), plaintiff relies on defendant's purported misrepresentations regarding her ability to transfer funds from China to the United States to support his claim that defendant's testimony in that regard "constituted undue means of influencing [the arbitrator] to rule in [her] favor."

Under N.J.S.A. 2A:23B-23(a)(1), an arbitration award may be vacated where "the award was procured by corruption, fraud, or other undue means." Undue means exist where "the arbitrator has made an acknowledged mistake of fact or law or a mistake that is apparent on the face of the record." State, Off. of Emp. Rels. v. Commc'ns Workers of Am., 154 N.J. 98, 111 (1998) (citing

PBA Loc. 160 v. Twp. of North Brunswick, 272 N.J. Super. 467, 474 (App. Div. 1994)). To constitute "undue means" under N.J.S.A. 2A:23B-23(a)(1), the error must be "'so gross as to suggest fraud or misconduct.'" Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 357 (1994) (quoting Perini Corp. v. Greate Bay Hotel & Casino, Inc., 129 N.J. 479, 494 (1992)).

Here, the record belies plaintiff's contention that the arbitrator was misled and the award was procured by undue means. As plaintiff acknowledges, "[d]efendant ultimately revealed the truth about her financial means" during her testimony at the arbitration proceedings. Thus, the arbitrator was fully informed of defendant's true financial situation before he rendered his decision.

Next, plaintiff argues the arbitration award should be vacated under N.J.S.A. 2A:23B-23(a)(2) due to multiple instances of what he describes as the arbitrator's "partiality and misconduct." Specifically, defendant claims the arbitrator demonstrated "serious animosity against [p]laintiff," showed "bias in favor of [d]efendant" by failing to consider "[defendant's] previous misrepresentations and evasiveness . . . in evaluating her credibility," "proactively present[ed] evidentiary objections on behalf of [d]efendant's counsel," and "was upset that [p]laintiff had filed a request for recusal and [an] ethics complaint against him."

To ensure impartiality of arbitration proceedings, N.J.S.A. 2A:23B-12 requires arbitrators to make certain disclosures of "any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding," including "a financial or personal interest in the outcome of the arbitration proceeding" and "an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators." N.J.S.A. 2A:23B-12(a). "An arbitrator has a continuing obligation to disclose," N.J.S.A. 2A:23B-12(b), and "[i]f an arbitrator discloses a fact required by [N.J.S.A. 2A:23B-12(a) or (b)] to be disclosed and a party timely objects . . . based upon the fact disclosed, . . . the objection may be a ground pursuant to [N.J.S.A. 2A:23B-23(a)(2)] for vacating an award made by the arbitrator," N.J.S.A. 2A:23B-12(c). Similarly, if an arbitrator does not disclose a fact as required by N.J.S.A. 2A:23B-12(a) or (b), the court may vacate an arbitration award pursuant to N.J.S.A. 2A:23B-23(a)(2). N.J.S.A. 2A:23B-12(d).

In order for a court to vacate an arbitration award pursuant to N.J.S.A. 2A:23B-23(a)(2), the court must find there was "evident partiality by an arbitrator; corruption by an arbitrator; or misconduct by an arbitrator

prejudicing the rights of a party to the arbitration," and the party seeking to vacate the award pursuant to N.J.S.A. 2A:23B-23(a)(2) must prove the underlying ground by a "preponderance of the evidence." Del Piano, 372 N.J. Super. at 509 (citing Barcon Assocs., Inc. v. Tri-Cnty. Asphalt Corp., 86 N.J. 179, 191 (1981)). Critically, an arbitrator's impermissible "interest or bias must be 'direct, definite, and capable of reasonable demonstration, rather than remote or speculative.'" Id. at 516 (quoting Nat'l Ass'n of Sec. Dealers, Code of Arb. § 10312(d)(3) (1996)).

Here, plaintiff failed to sustain his burden of proof to justify vacating the award under N.J.S.A. 2A:23B-23(a)(2). Plaintiff does not set forth any facts requiring disclosure under N.J.S.A. 2A:23B-12, which might reasonably support an inference of partiality, corruption, or misconduct by the arbitrator. Instead, plaintiff's arguments focus on the arbitrator's evidentiary and credibility determinations. As the arbitrator noted in his decision in response to plaintiff's accusation of bias, "the only reasons given were [plaintiff's] disagreement with the [t]ribunal's rulings and findings and the trial fee owed [to] the [t]ribunal by . . . [p]laintiff." However, mere dissatisfaction with the arbitrator's evidentiary rulings and credibility assessments are insufficient to disturb an arbitration award.

Plaintiff also challenges the arbitration award under N.J.S.A. 2A:23B-23(a)(3), asserting that "[t]he arbitrator erred by failing to consider evidence material to the controversy," which "substantially prejudiced [his] rights." In support, plaintiff reiterates the claims in his certification regarding evidence he was allegedly prevented from presenting.

Pursuant to N.J.S.A. 2A:23B-15(a), "[a]n arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding." While parties to an arbitration "ha[ve] a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses," N.J.S.A. 2A:23B-15(d), "[t]he [r]ules of [e]vidence are not . . . strictly applied in arbitration proceedings," Fox v. Morris Cnty. Policemen's Ass'n, P.B.A. 151, 266 N.J. Super. 501, 515 n.7 (App. Div. 1993).

Instead, the arbitrator's expansive authority "includes the power to . . . determine the admissibility, relevance, materiality, and weight of any evidence." N.J.S.A. 2A:23B-15(a); see also Minkowitz, 433 N.J. Super. at 144 ("The [NJAA's] broad conferral of authority 'does not require any particular procedures, mandate discovery, compel the maintenance of a record, command a statement by the arbitrator regarding his findings and conclusions, or an

expression of the reasons why he reached the result that he did' . . . ." (quoting Johnson v. Johnson, 204 N.J. 529, 546 (2010))). Moreover, "[a]n arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties . . . and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective." N.J.S.A. 2A:23B-17(c).

Applying these principles, we are unpersuaded by plaintiff's unsubstantiated claims that the arbitrator conducted the hearing contrary to N.J.S.A. 2A:23B-15, or refused to consider certain evidence material to the controversy, substantially prejudicing plaintiff's rights. On the contrary, as the arbitrator noted,

> while discovery had been closed years before and the case had been marked ready to try before the Family Court in 2019, . . . [p]laintiff was permitted to call new previously undisclosed witnesses, [and] he was allowed to produce and submit additional previously unseen documents. To insure that . . . [p]laintiff's rights were fully protected he was permitted to produce virtually all of the evidence that he felt relevant to prove his case.
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> In an effort to give . . . [p]laintiff every possible opportunity to prove his case the legitimate objections of . . . [d]efendant that [p]laintiff had failed to produce the names, statements or summaries of testimony of these new witnesses[] was overruled.

Indeed, any prejudice plaintiff suffered was of his own doing. Critically, in his decision, the arbitrator "question[ed] . . . plaintiff's over[all] candor and honesty" and found that the "[f]alse in one false in all" maxim applied to plaintiff "[b]ased on the multitude of inconsistent statements and the significant evidence that st[ood] in opposition to much of what . . . [p]laintiff sa[id]." The arbitrator suggested that plaintiff "abuse[d] the process" by unnecessarily "prolong[ing] the proceedings," unjustifiably "increas[ing] the cost[s]," "submitting false evidence," "creat[ing] self-serving fraudulent documents," and providing "perjured testimony."

Finally, plaintiff challenges the arbitration award under N.J.S.A. 2A:23B-23(a)(4), arguing "[the arbitrator] exceeded his authority by ruling on domestic support issues and obligations – such as alimony and child support, and parenting time – in addition to equitable distribution." According to plaintiff, because the arbitration hearing "arose from the bankruptcy action . . . and not the state court action," the "scope of the arbitrator's authority was to determine equitable distribution of marital property" only. In support, plaintiff relies on the bankruptcy court's "November 2020 [c]onsent [o]rder" which states in relevant part that "[t]he arbitration [would] not address issues of custody or domestic support obligations of any nature." Plaintiff also relies on the

arbitrator's acknowledgement in the opening paragraph of his decision that his "findings in the bankruptcy and matrimonial matter relative to equitable distribution" were made "by order of the Federal Bankruptcy Court."

While the procedural history is convoluted, the bankruptcy court's consent order and the state court reconsideration order make clear that the arbitrator had concurrent authority to address both equitable distribution and the ancillary matrimonial issues. The bankruptcy court's consent order authorized the arbitrator to make "a determination as to [defendant's] equitable distribution claim" under bankruptcy law. As to the remaining issues "outside of the [b]ankrutpcy [c]ourt's jurisdiction" such as "[c]hild [s]upport and [a]limony," the state court reconsideration order authorized the arbitrator to "decid[e] all issues related to th[e matrimonial] matter."

Moreover, the record reveals that Liu, plaintiff's arbitration counsel, consistently acknowledged the dual purposes of the arbitration proceeding. In a January 18, 2021 email, Liu confirmed his "understanding of the arbitration proceeding [as] a hybrid process," stating that

> [o]n the one hand, it's an arbitration regarding [equitable distribution] issues; on the other hand, it's an arbitration regarding child support, visitation, and alimony issues. For the former, [plaintiff] primarily serve[s] as a witness to the [t]rustee; however, for the latter, [plaintiff] will be a party to the arbitration

> proceeding. As [plaintiff's] attorney, I'll advise [him] on both roles that he will play in this hybrid process.
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> [(Emphasis added).]

In a February 14, 2021 email, Liu again acknowledged the "hybrid" arbitration proceeding, explaining:

> At the very beginning of our arbitration hearings a month ago, this group decided collectively, that because the equitable distribution aspect and child support/visitation aspect are so intertwined, these two aspects are essentially merged and will be treated as one proceeding. That's been the consensus of this group. Now if we were to deviate from this consensus, and treat the past month's hearings as "[plaintiff's] case[,"] then that would mean that the trustee's equitable distribution case has not even started yet, and the trustee would need to call [plaintiff] to testify all over again for the trustee's equitable distribution case starting from this week. That kind of duplication should be avoided if we want to wrap up the case.
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> [(Emphasis added).]

The same understanding was also reflected in the opening paragraph of the arbitration decision, where the arbitrator wrote:

> By agreement of counsel and by order of the Federal Bankruptcy Court please find . . . the [t]ribunal's findings in the bankruptcy and matrimonial matter relative to equitable distribution. Please also find the [t]ribunal's decision relative to the ancillary family related issues including but not limited to alimony, child support, college contribution, parenting

> time, medical coverage, life insurance, counsel fees and arbitration costs.
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> [(Emphasis added).]

We are therefore satisfied there is no basis to vacate the arbitration award under N.J.S.A. 2A:23B-23(a)(4).

Turning to plaintiff's challenge to the Family Part judge's denial of his application to vacate the reconsideration order under Rule 4:50-1, plaintiff asserts the reconsideration order "violated [his] due process rights" because he "did not receive actual notice of [d]efendant's motion for reconsideration." Plaintiff claims he was "in the midst of changing counsel" at the time and the "contentious" nature of the procedural history shows that it is "highly improbable" that "[p]laintiff would simply consent without opposition to a motion for reconsideration." Plaintiff further argues the judge erred in concluding that his Rule 4:50-1 motion "was not reasonably timely" because he raised the issue "less than a year after the December 2020 [r]econsideration [o]rder."

Under Rule 4:50-1, a party may move for relief from a judgment or order for the following reasons:

> (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due

> diligence could not have been discovered in time to move for a new trial under [Rule] 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

Rule 4:50-1 "[was] designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 123 (App. Div. 2021) (quoting Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977)). As such, a motion to reopen a judgment is "granted sparingly." State Div. of Youth & Fam. Servs. v. T.G., 414 N.J. Super. 423, 434 (App. Div. 2010) (quoting F.B. v. A.L.G., 176 N.J. 201, 207 (2003)).

Rule 4:50-2 provides that a motion for relief from a final judgment must "be made within a reasonable time, and for reasons (a), (b) and (c) of [Rule] 4:50-1 not more than one year after the judgment, order or proceeding was entered or taken." R. 4:50-2. We have explained

> that a reasonable time is determined based upon the totality of the circumstances, and in regard to motions brought under Rule 4:50-1(a), (b) and (c) that one year "represents only the outermost time limit for the filing of a motion."
>
> This expressly means that motions under subsections (a), (b) and (c) must be filed within a "reasonable time" and "not more than one year after the judgment," while motions under subsections (d), (e) and (f) must be brought within a "reasonable time," which could be more or less than one year after the judgment, depending on the circumstances.
>
> [Romero v. Gold Star Distrib., LLC, 468 N.J. Super. 274, 296 (App. Div. 2021) (citations omitted) (quoting Orner v. Liu, 419 N.J. Super. 431, 437 (App. Div. 2011)).]

A motion to vacate based on Rule 4:50-1 "is a determination left to the sound discretion of the trial court, guided by principles of equity." F.B., 176 N.J. at 207. As such, the "[trial] court's judgment will be left undisturbed 'unless it represents a clear abuse of discretion.'" Ibid. (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). A court abuses its discretion "'when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis."'" Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

Both on appeal and in the trial court, plaintiff failed to specify which provision of Rule 4:50-1 he believes entitles him to relief. Nevertheless, we are satisfied the judge did not abuse her discretion in denying plaintiff's motion to vacate the reconsideration order. As the judge noted, defendant served Wong with the motion and "Wong held herself out" as plaintiff's attorney by requesting "an adjournment of the matter" and "referring to plaintiff as '[her] client.'"

Further, by his own admission, plaintiff was aware of the reconsideration order as early as December 2, 2020. Nonetheless, as the judge explained, neither plaintiff, who claimed to be "self-represented" at that time, nor Liu, who began representing plaintiff in the state court matter twenty-two days later on December 23, 2020, "took [any] action" to challenge service of defendant's reconsideration motion until nearly eleven months had elapsed. By then, the trustee, the arbitrator, and defendant had expended significant time and resources engaging in three months of binding arbitration and the arbitrator had issued an exhaustive decision that was unfavorable to plaintiff.

In rejecting plaintiff's lack of notice claim, the judge stated:

> This court is in no way undermining or glossing over the integrity of the judicial process which upholds and recognizes the procedural issues and protections that notice and service of process provide to litigants. But as [the bankruptcy judge] stated in her decision when plaintiff similarly alleged a due process issue in

> the bankruptcy court, "[t]here has been more than adequate time for [plaintiff] to be heard. He has remained silent."
>
> [(Second and third alterations in original).]

We have recognized that a party's "conduct after being notified of the action may . . . estop the [party] from challenging the service of process." Wohlegmuth v. 560 Ocean Club, 302 N.J. Super. 306, 311 (App. Div. 1997). Estoppel is appropriately applied in this case.

As the judge pointed out, Rule 4:50-2 required plaintiff to file his motion to vacate the reconsideration order within a reasonable time. We agree with the judge that under "the totality of the circumstances," the lapse of eleven months was not a reasonable amount of time under Rule 4:50-2, and plaintiff failed to demonstrate any unique or "exceptional circumstance[s]" to warrant granting him "such extraordinary relief." See Romero, 468 N.J. Super. at 297 (holding that a motion to vacate a judgment brought 359 days after the defendant learned of the matter was not reasonable under the totality of the circumstances).

Affirmed.