SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3036-21

ANDREA MACRI, f/k/a
ANDREA KVEDERAS,

Plaintiff-Respondent,

v.

BRIAN KVEDERAS,

Defendant-Appellant.

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Argued May 2, 2023 – Decided June 23, 2023

Before Judges Geiger and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Somerset County, Docket No. FM-18-0150-12.

Vincent J. Stevens, Jr., argued the cause for appellant (Siragusa Law Firm LLC, attorneys; Vincent J. Stevens, Jr., of counsel and on the brief; Lynette Siragusa, on the brief).

John A. Kelleher argued the cause for respondent (Simon Law Group, attorneys; John Kelleher, on the brief).

PER CURIAM

In this appeal from various post-judgment motion rulings, defendant, a permanently disabled child support obligor, appeals two Family Part orders: the first enforced plaintiff's rights for arrears, granted her counsel fees, and denied defendant a reduction, modification, or termination of child support, and the second order declined reconsideration. The trial court denied oral argument on both motions, which defendant also appeals. Defendant argues his permanent disability has worsened, and the trial court abused its discretion in denying his requested relief and declining to grant oral argument. We disagree and affirm.

The trial court made detailed findings, including the fact that defendant's permanent disability predated the terms of the uncontested dual judgment of divorce by five years and was taken into consideration by the parties in establishing the initial off-guidelines amount of child support defendant was to pay. Additionally, defendant had raised the same issue in past motions, which had been fully adjudicated, warranting the court to decide the motions without the benefit of oral argument.

Plaintiff and defendant were married in October 2006 but divorced in May 2012. On May 30, 2012, they entered a consent order and dual judgment of divorce (DJOD). The parties have one child born of the marriage, a daughter

named Eva, born in 2009. Both parties agreed to forfeit spousal support and share joint legal custody of the child.

With respect to child support, the DJOD provides, in full:

> Defendant shall pay the plaintiff $200 per month as and for child support. The parties acknowledge that they are deviating from the Child Support Guidelines. Payments shall be made directly by the defendant to the plaintiff. In addition, the parties acknowledge that the plaintiff receives for the benefit of the parties' child, Eva, the sum of $900 per month from the Social Security Administration due to a disability of the defendant.

The Social Security Disability (SSD) benefits in the DJOD refer to benefits defendant has received since a 2007 workplace accident rendered him permanently disabled.

In May 2014, defendant unsuccessfully sought to recalculate his child support obligations and modify them based on his proposal to instead pay child support into a 529 education plan. In denying defendant's application, the trial court noted he failed to provide a case information statement (CIS) and copy of the prior judgment he was seeking to amend, as required pursuant to Rule 5:5-4. Noting these deficiencies, the trial court denied defendant's application in its entirety without prejudice.

In November 2021, plaintiff moved to enforce litigant's rights, seeking to enforce defendant's child support obligation. Plaintiff attached a current CIS, certified defendant's last support payment was remitted in February 2016, and alleged defendant was $13,800 in arrears.

Defendant filed opposition and a cross-motion seeking to have his support obligation reduced or terminated because of an increase in plaintiff's income, an alleged deterioration in his own physical and mental health, and payments he made to a 529 account in lieu of child support. Defendant sought oral argument on his cross-motion. As part of his application to the court, defendant provided several exhibits, including SSD monthly income statements, partial statements reflecting contributions to a 529 account reflecting a $6,339 account balance, and an updated CIS.

On February 16, 2022, the trial court granted plaintiff's motion to enforce litigant's rights and denied defendant's cross-motion on the papers. The trial court discussed defendant's proofs, and ruled:

> The real issue in this matter is the 529 account being voluntarily used by [d]efendant in lieu of child support directly to the [p]laintiff as [o]rdered. From what the [c]ourt can glean, there has never been an [o]rder, or agreement that would allow the [d]efendant to pay child support into the 529 account instead of to [p]laintiff.

The trial court noted defendant unilaterally contributed to a 529 account in lieu of child support, despite the May 2014 order expressly denying that relief, and noted "[s]uch a unilateral decision . . . is inappropriate." The court observed "529 accounts do not operate as a savings account and do fluctuate with the market," so it was impossible to verify defendant's contributions with the limited statement information before it, and ruled, "[d]efendant may not choose the manner in which he would like to pay child support or adjudicate the issues himself." The trial judge also dispensed with defendant's arguments about an agreement between the parties for this change to the parties' child support payment arrangement because there was no proof. The court noted:

> the possibility of confusion in which he may have believed that paying into the 529, rather than directly to plaintiff was permissible. However, once same was denied by the [c]ourt on May 16, 2014, all such payments should have ceased, and payments should have gone directly to plaintiff.

The court found plaintiff endured years without child support and defendant was still responsible for missed child support payments for that duration of time. The court allowed the 529 account contributions to count towards future contribution to college costs, but those costs were separate and apart from child support arrears. The court set the total amount of arrears at $16,770, which was calculated as defendant's $43 per week obligation

multiplied by 390 weeks, for the period between the May 16, 2014 and February 16, 2022 orders.

The court also denied defendant's cross-motion, finding no demonstration of changed circumstances. It dispensed with defendant's arguments regarding his increase in disability, noting defendant was permanently disabled at the time the DJOD was entered. The court also granted counsel fees, finding plaintiff was forced to file her motion because defendant continually failed to pay the child support obligation for six years and to abide by the terms of the DJOD and the court's prior order.

On February 24, 2022, defendant moved for reconsideration of the February 16 order, and requested oral argument and a case management conference. On March 29, 2022, the trial court denied reconsideration without granting oral argument or a case management conference.

The trial court found defendant did not highlight any incorrect finding in the court's previous ruling, and the court did not overlook any evidence. Regarding reconsideration of the child support credit issue, the trial judge found defendant revived the same arguments on reconsideration as he initially made to the trial court, chiefly that defendant deserved a credit against arrears for payments made to a 529 account. On this issue, the judge reiterated its initial

findings, highlighting defendant produced "no signed agreement" evidencing an addendum to express terms of the DJOD, and further highlighting "the May 16, 2014, [c]ourt [o]rder that explicitly stated [d]efendant is not permitted to pay into a 529 account in lieu of child support." The trial court correctly ruled it did not fail to consider evidence of the $13,000 defendant claims to have paid into the 529 account, but re-emphasized, pursuant to May 16, 2014 order, defendant "was required to pay child support directly to plaintiff" and deposits into the 529 account, "no matter the amount, do not satisfy his child support obligation, as he was previously warned."

The trial court also found reconsideration of defendant's request to modify or terminate his award inappropriate. Although defendant contended the trial court overlooked competent evidence, namely plaintiff's increase in income and his worsening condition, the trial court previously considered both of those arguments. The court found plaintiff's increased income did not affect defendant's duty or ability to pay, and his permanent disability, considered in the previous order, was also contemplated by the parties at the time they entered the DJOD. Moreover, the court noted, because the parties purposefully deviated from the child support guidelines in the DJOD, if the court were calculating a

modified support obligation pursuant to the guidelines,[1] defendant would owe more than the originally agreed to $200 per month in the parties' DJOD, even if changed circumstances were found.

With respect to counsel fees, the trial court found specifically:

> Defendant appears oblivious to his ongoing bad faith in continual violation of the May 16, 2014 [o]rder, which explicitly stated that payment into the 529 was not permitted in lieu of child support which was to be paid directly to plaintiff. Defendant, nonetheless, defied the [o]rder, and made some (there are no proofs of full deposits) payments into the 529 and demands a credit toward child support. Thus, the [c]ourt found this to be clear bad faith on the part of the [d]efendant warranting an award of counsel fees for the [p]laintiff.

The court also found defendant's claims regarding plaintiff's reciprocal bad faith unfounded. While defendant claimed he was denied access to school and medical decisions, he failed to demonstrate specific examples when plaintiff rebuffed his claims with proof he had access to both school and medical portals.

[1] Any modification of child support is automatically governed by the guidelines unless the parties have otherwise set forth an alternative accounting for future modification in a settlement agreement or judgment of divorce. See Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A, ¶¶2,3, www.gannlaw.com (2023); see generally Fall & Romanowski, Current N.J. Family Law, Child Custody, Protection & Support § 38:1-5 (2022-2023).

The trial court also explained why it denied oral argument on both the February 2022 and March 2022 motions. Citing Rule 5:5-4, the trial court acknowledged "requests for oral argument on substantive motions should routinely be granted." However, citing Fusco v. Fusco, 186 N.J. Super. 321, 328-29 (App. Div. 1982), the trial court also noted a judge maintains

> the option of dispensing with oral argument . . . when no evidence beyond the motion papers themselves or whatever else is already in the record is necessary to a decision. In short, it is the sole purpose of these rules to dispense with what is regarded as unnecessary or unproductive advocacy.

The trial court noted it considered defendant's contentions on child support and his disability constituting a change in circumstance and warranting a modification, and nevertheless, having read all the necessary information to decide the motion, decided oral argument was unnecessary to render a decision.

The court also noted defendant sought oral argument to litigate a dispute on an alleged handwritten note authored by plaintiff (not provided to us in the record on appeal) which purportedly amended the DJOD by authorizing payment to the 529 account in lieu of child support. The court ruled on this issue:

> The court notes there was no dispute on this note as once again, the defendant fails to acknowledge that this issue had been decided explicitly on May 16, 2014 in a court order. The court is not going to re-adjudicate that issue eight (8) years later.

This appeal by defendant, in which he revives the same points raised to the trial court, followed. Defendant raises the following issues on appeal:

> [POINT I]
> THE TRIAL COURT ERRED, AND ABUSED ITS DISCRETION, IN NOT AWARDING MR. KVEDERAS A CREDIT TOWARDS HIS CHILD SUPPORT ARREARAGES FOR SSD BENEFITS MR. KVEDERAS PROVIDED TO THE MINOR CHILD SINCE THE PARTIES DIVORCED
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> [POINT II]
> THE TRIAL COURT ERRED, AND ABUSED ITS DISCRETION, IN DENYING MR. KVEDERAS' REQUEST TO MODIFY OR TERMINATE HIS CHILD SUPPORT OBLIGATION BASED UPON A CHANGE IN CIRCUMSTANCES
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> [POINT III]
> THE TRIAL COURT ERRED, AND ABUSED ITS DISCRETION, IN AWARDING PLAINTIFF COUNSEL FEES AND DENYING MR. KVEDERAS' APPLICATION FOR COUNSEL FEES AND COURT COSTS IN HIS MOTION FILING
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> [POINT IV]
> THE TRIAL COURT ERRED, AND ABUSED ITS DISCRETION, IN NOT AWARDING ORAL ARGUMENT AS REQUESTED BY MR. KVEDERAS BEFORE RENDERING ITS MARCH 29, 2022, ORDER

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). Family Part orders are afforded deference in recognition of "the court's 'special jurisdiction and expertise in family matters.'" Ibid.; Thieme

v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare, 154 N.J. at 413). "Thus, 'findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence.'" Thieme, 227 N.J. at 283 (quoting Cesare, 154 N.J. at 411-12). We will disturb the trial court's factual findings and conclusions only where they "are so 'clearly mistaken' or 'wide of the mark' that a denial of justice would persist." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007)). The trial court's interpretations of the law and legal conclusions, however, are not entitled to deference and are reviewed de novo. Thieme, 227 N.J at 283.

Reconsideration is a matter within the sound discretion of the court. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). "It is not appropriate merely because a litigant is dissatisfied with a prior ruling or wishes to reargue a motion." Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). Instead, reconsideration should be limited to those cases "in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Ibid. (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

"Our courts are authorized to modify alimony and support orders "as the circumstances of the parties and the nature of the case" require. Halliwell v. Halliwell, 326 N.J. Super. 442, 447 (App. Div. 1999) (quoting N.J.S.A. 2A:34-23). Alimony and support orders are "always subject to review and modification on a showing of 'changed circumstances.'" Lepis v. Lepis, 83 N.J. 139, 146 (1980) (quoting Chalmers v. Chalmers, 65 N.J. 186, 192 (1974)). "The party seeking modification has the burden of showing such 'changed circumstances' as would warrant relief from the support or maintenance provisions involved." Id. at 157 (quoting Martindell v. Martindell, 21 N.J. 341, 353 (1956)).

Moreover, changed circumstances can be found even where support has been fixed by an agreement between the parties incorporated into the divorce judgment. See J.B. v. W.B., 215 N.J. 305, 326-327 (2013); Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 590 (App. Div. 2016). Thus, the existence of a valid support agreement will not generally bar a subsequent motion for child support modification of the agreed-upon amount. Kopak v. Polzer, 4 N.J. 327, 332-333 (1950); see generally Fall & Romanowski, Current N.J. Family Law, § 38:1-2.

Because there is no bright line rule by which to measure a change in circumstances, "such matters turn on the discretionary determination of Family

Part Judges." Larbig v. Larbig, 384 N.J. Super. 17, 23 (App. Div. 2006). Typically, a change in circumstances occurs where there is an increase or decrease in income or assets affecting the overall proportionate share of the obligor. Id. at 327. A downward modification of the total support amount or an obligor's share of the award may be warranted where the obligor has suffered an involuntary and permanent reduction in income. Ibid. An illness or disability must occur after the initial award to constitute change in circumstances. J.B. 215 N.J. at 327.

Defendant argues on appeal the combination of plaintiff's increase in income and an increase in his medical bills establish competent evidence to support a finding of changed circumstances. Defendant's claim is not supported by law or any documentation in the record.

Other than defendant's certification, there is no record to support his increase in liabilities, and the trial court did not abuse discretion finding he was in largely the same economic position as he was at the time of the DJOD. The trial court aptly noted:

> The [c]ourt to the best of its ability has gone through the parties' estimated current incomes in relation to child support. When calculating the child support using the plaintiff's new income, the defendant's percentage owed is less, but the total amount of support for the child is more. Therefore, the defendant's current child

> support obligation with the new incomes would be more than his current $200 per month obligation. The defendant fails to address that . . . .

There is a rebuttable presumption that any modification of child support is automatically governed by the child support guidelines unless the parties have otherwise set forth an alternative accounting for future modification in a settlement agreement or judgment of divorce. See Rule 5:6A ("The guidelines . . . shall be applied when an application to establish or modify child support is considered by the court. The guidelines may be modified or disregarded by the court only where good cause is shown."); see also Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A to R. 5:6A, ¶¶ 2, 3, www.gannlaw.com (2023) ("In accordance with Rule 5:6A, these guidelines must be used as a rebuttable presumption to establish and modify all child support orders . . . A rebuttable presumption means that an award based on the guidelines is assumed to be the correct amount. . . . ."); see generally Fall & Romanowski, Current N.J. Family Law, § 38:1-5.

The competent proofs provided to the trial court and on appeal demonstrated defendant was in virtually the same economic position as when the DJOD was entered and would have paid more than the agreed upon supplemental child support of $200 per month had modification been granted

and child support calculated pursuant to the guidelines.[2] Therefore, the trial court's findings on this point comported with the competent evidence.

Defendant argues the trial court erred by "refusing to award a credit to [his] for auxiliary SSD benefits provided for Eva's benefit . . . ." Relying on Diehl v. Diehl, 389 N.J. Super. 443 (App. Div. 2006), defendant argues the trial court should have credited defendant with years of SSD payments against his arrears. Defendant highlights, despite not paying his child support obligation of $43 per week, Eva has continually received the SSD benefit contemplated in the 2012 DJOD.

Plaintiff argues no support credit is due because the parties deviated from the child support guidelines in the DJOD, taking into account the full amount of the SSD benefit. Plaintiff argues deviating from the support guidelines allowed the court to enter sub-minimal supplemental support of $200 per month because the parties agreed Eva would also receive $900 of SSD in additional support.

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[2] Defendant did not present a completed child support guidelines worksheet, as contemplated by Rule 5:6A, to rebut the trial court's finding he would in-fact owe more pursuant to child support guidelines. R. 5:6A ("A completed child support guidelines worksheet . . . shall be filed with any order or judgment that includes child support that is submitted for the approval of the court. If a proposed child support award differs from the award calculated under the child support guidelines, the worksheet shall state the reason for the deviation and the amount of the award calculated under the child support guidelines.")

Plaintiff argues the initial deviation from the guidelines, at the time the parties entered the DJOD, bars plaintiff from seeking a credit pursuant to the guidelines years after the fact. We agree.

There are generally two categories of cases where SSD is applied as a set-off credit: retroactively and prospectively. Retroactive application occurs when an obligor becomes disabled and must wait to receive a lump sum disability payment. When the supporting parent receives that lump sum and remits it, a portion of that payment is credited to the obligor's arrears, but only for the portion of arrears which accrued during the corresponding disability period. See, e.g., Sheren v. Moseley, 322 N.J. Super. 338, 341 (App. Div. 1999). The rationale is disability payments "were earned by the wage earner during his period of employment and … constitute in effect insurance payments substituting for lost earning power." Id. at 342 (quoting Potter v. Potter, 169 N.J. Super. 140, 148 (App. Div. 1979)).

The second category, embodied by the holding in Diehl upon which defendant relies, expanded the holding in Sheren and Potter by concluding disability payments may be applied to future obligations based on equitable considerations. 389 N.J. Super. at 450-53. The equitable balance typically involves the disabled obligor's "lost earning power" during the period of

disability, and the child's benefit and current needs. Id. at 449. Thus, "although SSD benefits are paid on account of the parent's efforts and substitute for support the parent cannot earn, the benefits belong to the child." Ibid.

Defendant misconstrues the holding of Diehl. Pursuant to J.B., 215 N.J. at 327, an obligor's post-judgment illness or disability may constitute a change in circumstances. Here the trial court correctly noted the parties took into consideration both defendant's permanent disability and the amount of SSD support paid to Eva when calculating the initial off-guidelines support in the DJOD. As a direct result, the parties calculated a supplemental amount in addition to the SSD payments already occurring. If the parties had not taken the SSD payments into consideration, defendant's initial monthly child support obligation would have been significantly higher.

"An agreement that resolves a matrimonial dispute is no less a contract than an agreement to resolve a business dispute." Quinn v. Quinn, 225 N.J. 34, 45 (2016). "A settlement agreement is governed by basic contract principles." Ibid. (citing J.B. 215 N.J. at 326). Among those principles are that courts should discern and implement the intentions of the parties. Ibid. (citing Pacifico v. Pacifico, 190 N.J. 258, 265 (2007). Pursuant to Quinn:

> It is not the function of the court to rewrite or revise an agreement when the intent of the parties is clear. . . .

> Stated differently, the parties cannot expect a court to present to them a contract better than or different from the agreement they struck between themselves . . . . Thus, when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written . . . ."
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> [Ibid. (internal citations omitted)]

Here trial court observed in the February 2022 order:

> Defendant's disability was known at the time the obligation was set. When the obligation was set it factored in both the $900 SSD benefits as well as the $43 per week directly to plaintiff. Therefore, defendant's permanent disability is not a change in circumstances.

Although defendant urges Diehl supports a finding that the SSD benefit should function as a reduction against arrears, Diehl is inapposite because the trial court in Diehl found a change in circumstances from the prior support order.[3] Here, the trial court correctly found no change in circumstances because the parties knowingly deviated from the guidelines in the initial support order, crediting the $900 SSD payment to arrive at a sub-minimal additional amount of monthly support defendant owed. It is that supplemental amount that defendant failed to pay and constitutes the arrears.

[3] See Diehl, 389 N.J. Super. at 446, n.1 (explaining the case was subject to a previous appeal where the Appellate Division had already determined plaintiff made a prima facie showing of changed circumstances).

Defendant's disability is not a change in circumstances as contemplated in J.B. 215 N.J. at 327. Because defendant's disability predated the DJOD, the type of retroactive and prospective relief for periods of disability contemplated by Diehl and Sheren do not apply and, as a matter of law, pursuant to Quinn, 225 N.J. at 45, and basic contract principles, we will not make a better deal for the parties than they made for themselves. The SSD allocation in the DJOD was "in addition to" his separate child support payment and cannot provide the basis for a credit.

Notwithstanding the above, even if the court had found changed circumstances and undertaken modification of defendant's child support obligation, the trial court observed his obligation would actually increase if it applied the child support guidelines. See Zazzo v. Zazzo, 245 N.J. Super. 124, 129 (App. Div. 1990). Defendant did not dispute this finding and did not provide a completed guideline worksheet in his application for modification as contemplated by Rule 5:6A.

The decision to grant an award of counsel fees in a family action lies within the discretion of the trial court and will not be disturbed absent a finding of an abuse of discretion. N.J.S.A. 2A:34-23; R. 5:3-5(c). A party in a family action may move to recover counsel fees so long as the moving party supports

its application with "an affidavit of services addressing the factors enumerated in RPC 1.5(a). . . . [and] a recitation of other factors pertinent in the evaluation of the services rendered." R. 4:42-9(b). "In a family action a fee allowance both pendente lite and on final determination may be made pursuant to [Rule] 5:3-5(c)." Rule 4:42-9(a)(1). Furthermore, the trial court, in exercising its discretion, must consider the factors enumerated in Rule 5:3-5(c). N.J.S.A. 2A:34-23; Mani v. Mani, 183 N.J. 70, 93-95 (2005). Rule 5:3-5(c) provides:

> In determining the amount of the fee award, the court should consider, in addition to the information required to be submitted pursuant to R. 4:42-9, the following factors: (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.
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> [R. 5:3-5(c).]

Rule 1:10-3 states a trial court may award counsel fees on a motion to enforce litigant's rights. Usually, "the party requesting the award must be in financial need and the party paying the fees must have the financial ability to pay, and if those two factors have been established, the party requesting the fees

must have acted in good faith in the litigation." J.E.V. v. K.V., 426 N.J. Super. 475, 493 (App. Div. 2012). But "'where one party acts in bad faith, the relative economic position of the parties has little relevance' because the purpose of the award is to protect the innocent party from unnecessary costs and to punish the guilty party." Yueh v. Yueh, 329 N.J. Super. 447, 461 (App. Div. 2000) (quoting Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992).

A trial court abuses discretion when it fails to consider the factors, make required findings, and put forth its conclusions. Saffos v. Avaya Inc., 419 N.J. Super. 244, 270-71 (App. Div. 2011); R. 1:7-4(a). "A lawyer's fee shall be reasonable." RPC 1.5(a); Giarusso v. Giarusso, 455 N.J. Super. 42, 50 (App. Div. 2018).

> In a nutshell, in awarding counsel fees, the court must consider whether the party requesting the fees is in financial need; whether the party against whom the fees are sought has the ability to pay; the good or bad faith of either party in pursuing or defending the action; the nature and extent of the services rendered; and the reasonableness of the fees.
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> [Mani v. Mani, 183 N.J. 70, 94-95 (2005) (emphasis omitted) (citations omitted).]

The economic position of the parties will be largely irrelevant where a party acts in bad faith. Yueh, 329 N.J. Super. at 461.

Defendant argues he advanced a good faith position in moving for modification and characterizing his position as "bad faith" was an abuse of discretion. Defendant also argues the financial disparities between the parties favors plaintiff such that awarding her counsel fees against defendant was an abuse of discretion.

The economic positions of the parties is not relevant when the trial court awards counsel fees based on bad faith. Thus, defendant's contention regarding the financial disparities between him and plaintiff is irrelevant. Ibid. The issue is whether the court abused its discretion in evaluating defendant's legal position. The trial court made detailed findings regarding defendant's continued violations of court orders for over seven years, especially his continued contributions to a 529 account in express contravention of the May 2014 order. The award of counsel fees had less to do with the frivolity of the defendant's position, because a motion for changed circumstances may be made any time post-judgment pursuant to Lepis, 83 N.J. at 148-49, and more to do with the court finding he continued to flout previous orders. The award of counsel fees should not be disturbed.

Finally, a hearing on child support modification is not required unless the court finds there is a genuine dispute of material facts. Lepis,83 N.J. at 159;

Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007); See also Avelino-Catabran, 445 N.J. Super. at 592 (affirming trial court's decision to proceed without a hearing); Cf. Jacoby v. Jacoby, 427 N.J. Super. 109, 123 (App. Div. 2012) (remanding to motion judge to determine whether there are materially disputed issues that would require a plenary hearing). Additionally, defendant's request for a case management conference in a post judgment motion where the court found no changed circumstances has no support in the law.

The issues presented by defendant did not rise to the level of disputed material fact because there was not enough evidentiary support for his positions requiring submission to a fact finder. There was nothing outside the proofs submitted the trial court needed to decide the issues before it. R. 5:5-4.

Affirmed.