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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NOS. A-0813-22
A-1906-22

IN THE MATTER OF THE
Yael SILBERBERG 2012
APPOINTED TRUST
ESTABLISHED BY DANIEL
WEINGARTEN U/A/D
AUGUST 31, 2012.

IN THE MATTER OF THE Yael
SILBERBERG 2012 APPOINTED
TRUST AGREEMENT, DANIEL
WEINGARTEN, SETTLOR,
DATED AUGUST 31, 2012.

Submitted May 15, 2024 – Decided June 3, 2024

Before Judges Firko and Vanek.

On appeal from the Superior Court of New Jersey,
Chancery Division, Bergen County, Docket Nos.
P-000457-22 and P-000528-22.

Yael Silberberg, appellant pro se.

Archer & Greiner, PC, attorneys for respondent
Thomas J. Herten, Esq., Guardian Ad Litem for the
minor children of Yael Silberberg (Thomas J. Herten,

of counsel and on the brief; Matthew Michael Nicodemo, on the brief).

Lowenstein Sandler, LLP, attorneys for respondent Earl Smith (Jeffrey J. Wild and Craig Laurence Dashiell, on the brief).

Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, PC, attorneys for respondent Daniel Weingarten, join in the brief of respondent Earl Smith.

Lentz & Gengaro, LLP, attorneys for respondents Judy Spero, Shera Tuchman, and Gaya Bernstein, join in the brief of respondent Earl Smith.

PER CURIAM

Yael Silberberg, one of the beneficiaries of the Yael Silberberg¹ September 2012 Appointed Trust (Trust), appeals from a September 29, 2022 order awarding Thomas J. Herten, Esq., the Guardian Ad Litem (GAL) to the Silberberg children, \$23,097.84 in counsel fees and costs. Yael also appeals from: (1) the January 17, 2023 orders denying her motion to hold the GAL and Trustee Earl Smith in contempt and granting the Trustee's cross-motion to dismiss her October 14, 2022 verified complaint (the contempt complaint); and (2) the February 13, 2023 order granting the GAL additional fees and costs incurred for defending the contempt complaint. These consolidated appeals are

¹ We refer to the parties and individuals by their first names for ease of reference because they share the same surname. By doing so we intend no disrespect.

calendared back-to-back with docket number A-2534-22. We affirm all of the orders under review.

I.

The details underlying the extensive history of this matter are set forth in our prior opinion and need not be repeated here. See HUNY & BH Assocs. Inc. v. Silberberg, No. A-1696-17 (App. Div. Dec. 27, 2021). Pertinent to this appeal, Daniel Weingarten created Trusts for his children, including his only daughter, Yael. Silberberg, slip op. at 4. Daniel is a real estate investor and received generational wealth through Trusts and fractional interests in real estate in a manner his family believed would ensure their children financial security and also encourage them to live productive lives. Id. at 5.

The family placed property in their children's names or in Trusts but actively controlled the assets during their own lifetime. Id. at 5-6. Daniel continued the same family wealth plan, establishing Trusts for each of his four children—Yael, and sons Hillel, Uri, and Natan Weingarten. Daniel also made his children shareholders in his real estate holding company. Id. at 6.

In 1992, Daniel established Yael's Trust, shortly after her thirteenth birthday. Ibid. "Rather than hire an attorney to draft a [T]rust that met his goals," he recycled a Trust form the family had been using. After March 2004

when Yael was engaged to Avi Silberberg, "Daniel asked Avi to sign both religious and secular prenuptial agreements—as others in his extended family had done in the past." Id. at 10. Avi declined and suggested taking the assets out of Yael's name. Ibid.

"Over the years, Daniel became concerned that Avi, whom he and other family members described as controlling, would try to interfere with Yael's [T]rust and other family assets." Id. at 10-11. "Avi was terminated from his job as an attorney, relied on public assistance to provide for the family, did not earnestly seek employment, and made several requests to Daniel and other family members for large sums of money." Id. at 11.

In August 2012, Daniel consulted an attorney and established a new Trust, which "provided for payment to Yael of the net [T]rust income for life and any other distributions the Trustees determined appropriate for her benefit, and designated [T]rusts for her children as residuary beneficiaries." Ibid. After former Trustees resigned and "in the wake of growing friction between Daniel and his daughter and son-in-law, Daniel appointed his long-time accountant, Shane Yurman, in their stead." Id. at 12-13. Daniel also appointed Earl, who accepted the Trusteeship. Id. at 13. Yael is the income beneficiary, and Yael and Avi's children are the residuary beneficiaries under the Trust. Id. at 11.

"[B]elieving there was a gap in the Trusteeship which triggered her right to appoint [T]rustees . . . Yael prepared a letter on December 5, 2013, at Avi's request, designating him, his sister, Judy Saltzman, and [his] mother, Yaffa Silberberg, as the . . . [T]rustees." Id. at 13. Yaffa then demanded that Daniel immediately distribute the "entire Trust Fund." Ibid. (alterations omitted). However, "Daniel formally removed the new purported [T]rustees." Ibid.

On August 7, 2014, a now retired judge entered an order appointing the GAL to represent Yael's children in the Trust litigation because Yael's efforts to obtain outright distribution of the Trust's entire corpus conflicted with her children's interests. The order provided that the GAL's fees were to be paid from the Trust.

On September 26, 2017, after three years of litigation and a bench trial, Judge Mary F. Thurber rendered a decision holding that Yael could not invade the Trust. We affirmed Judge Thurber's ruling, Silberberg, slip op. at 52-67, upheld the Trust, and our Court denied Yael and Avi's petition for certification, HUNY & BH Assoc. v. Silberberg, 252 N.J. 260 (2022). Judge Thurber also authorized payment of the GAL's fees in her September 26, 2017 order. On April 1, 2022, Judge Thurber entered an amended order, which in relevant part, provides:

Any subsequent applications shall be filed in Chancery Probate and shall be submitted via hard copy with the appropriate filing fee to the Bergen County Surrogate, who is the Deputy Clerk of the Superior Court, Chancery Division[-]Probate Part. Any party intending to file is advised to contact Christopher Hummel at the Bergen County Surrogate's Office, 201-336-6700, to discuss procedures and fees.

The April 1, 2022 order authorized the release of principal and income from the Trust pending the next Trust accounting. The order provided that an application to pay Trust expenses be brought before the Chancery Division-Probate Part before the next accounting. Specifically, the order states:

Between the date of this [o]rder and further [c]ourt [o]rder the Trustee shall not use any principal or income of the Trust to pay any [e]xpenses other than taxes due on account of the Trust, unless the Trustee has first applied to the [c]ourt on notice and received permission from the [c]ourt to pay any other [e]xpenses during this time period. Nothing in this [o]rder shall preclude the Trustee from filing an application before the Chancery Division[-]Probate Part at any time to modify the 2018 Income Order so as to seek leave to pay [e]xpenses, including but not limited to legal fees caused by the pending appeals by . . . [Yael] and Avi . . . out of the Trust's gross income, or the right of any of the parties to oppose any such motion.

[(Emphasis added).]

Thereafter, on July 11, 2022, the GAL sent an email to the Trustee's counsel inquiring about being paid from the Trust for his work in connection

with Yael's appeals. On July 12, 2022, counsel for the Trustee informed the GAL that the Trust's accountants were still preparing the Trust's accounting, and that a separate "motion likely will be needed" if the GAL sought his fees prior to that accounting being completed under the terms of the April 1, 2022 order.

On July 15, 2022, counsel for the Trustee confirmed to the GAL that the Trust had sufficient funds to cover his fees, and stated, "In light of Judge Thurber's last order, either your firm or mine needs to bring an application [or] proceeding before Judge [Edward A.] Jerejian in [the] Probate Part for approval to pay your fees."

On August 31, 2022, in accordance with the April 1, 2022 order, the GAL filed an application in the Probate Part "for an [o]rder authorizing the Trustee of the Yael Silberberg 2012 Appointed Trust to pay the GAL's fees and costs." The GAL submitted a certification in support of the motion setting forth his professional background and experience, services performed, hourly rates, and expenses for his services as GAL for the period December 2021 through August 26, 2022. In a separate certification, the GAL stated that "the Trustee, through counsel, will be filing a joinder to this application and such other pleadings as may be necessary to comply with Judge Thurber's March 31, 2022 [o]rder." The

GAL's motion was served on all interested parties, including Yael and the Trustee.

The GAL certified that his hourly rate in this matter is \$645 per hour, which is a "customary and usual" rate in Bergen County for an attorney having his years of experience. The GAL stated he billed 30.8 hours for the relevant time period, which totals \$19,866. The GAL's certification summarized the dates, fees, costs, and totals for each invoice, which included time spent by an associate at \$335 per hour, for a total of \$3,216, and expenses in the amount of \$15.84. The total amount requested was \$23,097.84.

On September 8, 2022, the Trustee submitted a letter joining the GAL's motion and represented the Trust had "sufficient available funds from the gross income currently in the Trust to honor the obligation" to the GAL. The Trustee also submitted a revised proposed form of order regarding payment of the GAL's fees.

Yael submitted written opposition to the GAL's motion, which is not contained in the record. On September 12, 2022, the GAL filed another certification in further support of his motion seeking fees and costs and in response to Yael's opposition. The GAL certified that contrary to Yael's claims, the Trustee's certification was submitted with the initial moving papers.

In addition, the GAL stated "[t]here is no conflict of interest," and he has "dutifully and faithfully served as GAL since [his] appointment on August 7, 2014—over [eight] years ago." The GAL explained that he "was appointed because there was a conflict between the Silberbergs, who were attempting to invalidate the Trust and to take ownership of the Trust corpus, contrary to the terms of the Trust and the intention of the Settlor" and "the rights of their children as contingent income beneficiaries."

The GAL certified "the creation and implementation of the Trust must be upheld by the [c]ourt" and that he presented argument before an appellate panel on Yael's original appeal. The GAL added that "[t]here is no jurisdictional issue," and the Probate Part was the "appropriate forum" for the fee application. The GAL certified that his fees and costs were "all reasonable" and "were necessarily incurred in the performance of [his] duties to the court and the Silberberg [c]hildren with respect to the Trust," and attached invoices to support the motion.

On September 29, 2022, Judge Jerejian conducted a hearing on the GAL's fee application. Yael did not attend the hearing and relied on her written opposition. Following the hearing that day, Judge Jerejian rendered an oral decision granting the GAL's fee application. The judge found the GAL's fees

were reasonable under the lodestar method, and that "although [the GAL] filed the original notice of motion, since he is asking for his fees, . . . the attorney for the [T]rustee, joined in the motion. As far as this [c]ourt is concerned, it serves as the [T]rustee also filing the application."

Judge Jerejian further noted that he "ha[d] no objection or—as to [the Trustee's law firm] joining in, or actually it would be I think their duty to do so to indicate that the [T]rustee does not have any objection." Thus, the judge held "that everyone has followed the correct procedure, [and] filed the proper papers," in accordance with Judge Thurber's April 1, 2022 order. The judge applied the RPC 1.5(a) factors² and awarded the GAL \$23,082 in fees and \$15.84 in costs. A memorializing order was entered.

² RPC 1.5(a) provides:

A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

Shortly thereafter, on October 18, 2022, Yael filed the five-count contempt complaint and an order to show cause (OTSC) seeking to: (1) prohibit the Trustee's law firm from continuing to represent the Trustee or any person or entity involved with the Trust and related matters; (2) require the Trustee's counsel to pay monetary damages to Yael "of at least \$50,000," in accordance with Rule 1:10-3;³ (3) prohibit the GAL from representing the Silberberg children or any person or entity involved in the Trust and related matters; (4) require the GAL to pay monetary damages to Yael of at least \$50,000, in accordance with Rule 1:10-3; and (5) have the Trustee's counsel and GAL

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

³ Rule 1:10-3 set forth, in part: "Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action."

incarcerated for purportedly not following the correct court procedures for applying for the Trust to pay its expenses.

On November 3, 2022, Yael filed a notice of appeal from the September 29, 2022 order. On November 28, 2022, the GAL filed a notice of cross-motion seeking to dismiss the contempt complaint with prejudice pursuant to Rule 4:6-2(e) based on insufficiency of process because Yael never personally served the GAL, failure to state a claim, and for an award of counsel fees and costs.

On the same date, the Trustee also filed a notice of cross-motion to dismiss the contempt complaint, for counsel fees based on frivolous litigation, for approval of the third interim accounting for the Trust, and authorizing a resumption of payment by the Trustee of professional fees and expenses of the Trust.

Following oral argument, Judge Jerejian denied the OTSC and dismissed Yael's contempt complaint with prejudice, holding that "that they [the GAL and Trustee] complied with the order completely." "[The GAL] . . . made a proper motion. It was joined in by the [T]rustee. The [c]ourt heard it. Granted it." In addressing Yael's contempt allegations, the judge agreed "[t]here is none here" under Rule 1:10-3. The judge concluded that the GAL and Trustee complied with the court orders by seeking permission for the Trust to pay the GAL's fees.

In addition, Judge Jerejian granted the Trustee's cross-motion for approval of the Trust's third interim accounting for the period from January 1, 2018, through January 31, 2022, and for the Trustee to "resume payment of the professional fees and other expenses of the [T]rust in the ordinary course . . . without waiver of [Yael's] right to challenge any such payments."

On January 17, 2023, Judge Jerejian entered two orders, one dismissing the contempt complaint with prejudice, and the other granting the cross-motions to dismiss the contempt complaint. The judge awarded the GAL counsel fees and costs incurred in connection with responding to Yael's contempt pleadings but denied the GAL's request that Yael be held individually responsible to pay his counsel fees and costs.

The GAL submitted a certification of services seeking additional counsel fees and costs relative to the contempt complaint, which Yael did not oppose. On February 13, 2023, Judge Jerejian entered an order granting the GAL's additional fees and costs and awarded \$13,516 for fees and \$364.59 for expenses, for a total of \$13,880.59, to be paid by the Trust.

Yael separately appealed from Judge Jerejian's orders. We consolidated these appeals for the purpose of writing one opinion.⁴ On appeal, Yael primarily argues that the judge erred in granting the GAL fees because the Trustee was prohibited from using any principal or income from the Trust and did not file a formal notice of the fee application on behalf of the GAL. Yael also contends the judge erred in dismissing the contempt action with prejudice, awarding associated fees and costs, and not allowing discovery on her contempt and embezzlement allegations against the GAL and the Trustee.

II.

A.

We begin our analysis by acknowledging the legal principles governing this appeal. As a general proposition, we "grant substantial deference" when reviewing "a trial court's conclusions in a non-jury civil action." Lanzi v. North, 295 N.J. Super. 80, 84 (App. Div. 1996) (citing Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 483-84 (1974)). More specifically, "fee determinations by trial courts will be disturbed only on the rarest of occasions,

⁴ We entered an order consolidating docket numbers A-0813-22 and A-1906-22 on April 10, 2023. In the Matter of Yael Silberberg 2012 Appointed Trust Established by Daniel Weingarten U/A/D, No. A-0813-22 (App. Div. Apr. 19, 2023).

and then only because of a clear abuse of discretion." Packard-Bamberger & Co., Inc. v. Collier, 167 N.J. 427, 444 (2001) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

"An abuse of discretion 'arises when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'"" Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). "[T]he first step in the fee-setting process is to determine the 'lodestar': the number of hours reasonably expended multiplied by a reasonable hourly rate." Rendine, 141 N.J. at 334-35. In the Court's view, "the trial court's determination of the lodestar amount is the most significant element in the award of a reasonable fee." Id. at 335.

Yael challenges the September 29, 2022 order awarding counsel fees and costs to the GAL on the basis the Trustee did not file a formal notice of motion with a certification seeking to amend the April 1, 2022 order, which prohibits the Trustee from using any principal or income of the Trust to pay any expenses other than taxes due on account of the Trust "unless the Trustee has first applied to the [c]ourt on notice and received permission from the [c]ourt to pay any other expenses" Yael claims that Earl only signed a certification that he is the

Trustee, which does not suffice as an application on notice to modify prior orders entered in this matter. We are unpersuaded.

Rule 4:26-2(e) allows a GAL appointed on behalf of a minor to seek a fee on "written notice with the court," which shall include the fee amount sought and an affidavit, or certification, of services. Here, the April 1, 2022 order specified that an application to pay Trust expenses be brought before the Probate Part before the next accounting. Further, the order provided for the Trustee to file an application for permission to pay expenses for "legal fees caused by the pending appeals" by Yael and Avi "out of the Trust's gross income."

The GAL filed a motion for fees and costs, and the Trustee joined in the motion by way of letter through his counsel. There were no procedural irregularities here. See e.g., Finderne Heights Condo. Ass'n, Inc. v. Rabinowitz, 390 N.J. Super. 154, 158 (App. Div. 2007) (joining in points on motion to dismiss by filing a letter joining the motion); Quarry Hill Dev. Corp. v. New Jersey Dep't of Transp., 267 N.J. Super. 1, 5 (App. Div. 1993) ("[J]oin[ing] in the motion [to dismiss] by letter."). Judge Jerejian correctly determined that the Trustee joining the GAL's motion served as the Trustee also filing the motion, and everyone "filed the proper papers."

Moreover, the judge explained his reasons were consistent with the RPC 1.5(a) factors and in accordance with Rendine, applied the lodestar method. The judge observed the GAL's fee was "customary" considering "his background and experience." In particular, the judge applied the lodestar method and found, "based on the complexity of this case and [his] background and experience, the [GAL's] hourly rate is appropriate." We note that Yael did not question any of the detailed time entries contained in the GAL's motion. With these findings, there is no basis to disturb the judge's award of counsel fees and costs to the GAL. We also discern no abuse of discretion and affirm the September 29, 2022 order.

B.

Next, Yael argues dismissal of her contempt complaint with prejudice before discovery was complete was error. Yael contends the GAL and counsel for the Trustee "conspired to embezzle" her trust funds and pay the GAL's counsel fee "without a motion," in violation of the April 1, 2022 order.

We begin our discussion with a review of the principles governing our analysis. "Rule 4:6-2(e) motions to dismiss for failure to state a claim upon which relief can be granted are reviewed de novo." Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (citation omitted). Thus, "we owe no

deference to the trial judge's conclusions." State ex rel. Comm'r of Transp. v. Cherry Hill Mitsubishi, Inc., 439 N.J. Super. 462, 467 (App. Div. 2015) (citation omitted). In undertaking our review,

it is essential to canvass the complaint to determine whether a cause of action can be found within its four corners. In so doing, we must accept the facts asserted in the complaint as true. A reviewing court must search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned from an obscure statement of claim, opportunity being given to amend if necessary. Accordingly, all reasonable inferences are given to plaintiff. Courts should grant these motions with caution and in the rarest instances.

[Ballinger v. Del. River Port Auth., 311 N.J. Super. 317, 321-22 (App. Div. 1998) (alteration in original) (internal citations and quotations omitted).]

"At this preliminary stage of the litigation the [c]ourt is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citation omitted). "The examination of a complaint's allegations of fact required by the aforesaid principles should be one that is at once painstaking and undertaken with a generous and hospitable approach." Ibid.

"[D]emonstration of a mens rea, willful disobedience and lack of concern for the order of the court, is necessary for a finding of contempt" In re

Adoption of N.J.A.C. 5:96 and 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1, 17 (2015) (quoting Lusardi v. Curtis Point Prop. Owners Ass'n, 138 N.J. Super. 44, 49 (App. Div. 1975)). Applying these well-established principles to this matter, given these facts, and considering the Rule 4:6-2(e) standard, we are satisfied the judge did not err in dismissing Yael's contempt complaint with prejudice. First, we note that the first, second, and third counts of the contempt complaint did not allege sufficient facts to support any of the five causes of action. The record shows the GAL and Trustee have executed their respective responsibilities faithfully and reliably for many years. The GAL was court-appointed back in 2014.

Second, the fourth and fifth counts of the contempt complaint seeking a \$50,000 coercive monetary sanction against the GAL and Trustee and their incarceration were properly dismissed with prejudice because there was no violation or attempted violation of a court order. And, the email exchange between the GAL and counsel for the Trustee from July 11 to July 12, 2022, negates that any purported disobedience was "willful" but instead supports the conclusion that they were concerned about complying with the orders of the court. Additionally, the Trustee's September 7, 2022 email to Yael confirms this conclusion: "[Trustee's counsel] wrote me about [GAL's] invoice that he

received. He asked me to pay it. I told him that under the orders of the court of which I had last been made aware by him I was not allowed to do that."

Thus, we reject Yael's argument that the Trustee's email stating his counsel asked him to pay the GAL fees was an "admission" that his counsel instructed him to violate orders of the court. There is no evidence whatsoever supporting Yael's argument, or the timeframe counsel wanted the Trustee to pay the GAL's fees, or if counsel wanted the Trustee to pay the GAL's fees without first applying to the court for approval. On the contrary, the emails illustrate the GAL and the Trustee were concerned about complying with the orders and ultimately an appropriate motion—on notice to Yael—was filed and adjudicated.

The record is also devoid of any evidence that the GAL, the Trustee, or his counsel, tried to embezzle funds from the Trust. There was also no attempt to obstruct justice under Rule 1:10-3. Therefore, we affirm the January 17, 2023 orders denying Yael's motion to hold the GAL and Trustee in contempt and granting the Trustee's cross-motions to dismiss the contempt complaint with prejudice and approve the Trust's third interim accounting.

C.

Finally, Yael argues she was entitled to summary relief on her application to hold the Trustee in contempt because the Trustee failed to file an answer to her contempt complaint. She also contends the judge prematurely dismissed her contempt complaint with prejudice and erred by not affording her a period of discovery. Again, we reject Yael's arguments.

First, the Trustee was permitted to file a motion to dismiss in lieu of filing an answer. Rule 4:6-2 allows parties to raise defenses by way of a motion to dismiss rather than filing a responsive pleading. Additionally, a defendant may respond to an OTSC by filing and serving "an answer, an answering affidavit, or a motion returnable on the return day." R. 4:67-4(a). Therefore, the Trustee properly responded to the OTSC and contempt complaint by filing a motion to dismiss in lieu of an answer.

Second, the judge did not err in not granting discovery. "In general, we apply an abuse of discretion standard to decisions made by our trial courts relating to matters of discovery." Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011). Under that standard, "[w]e generally defer to a trial court's disposition of discovery matters unless the court has abused its discretion or its determination is based on a mistaken understanding of the applicable law."

Ibid. (alteration in original) (quoting Rivers v. LSC P'ship, 378 N.J. Super. 68, 80 (App. Div. 2005)). As we have explained:

The public policies underpinning our discovery rules include "expeditious handling of cases, avoiding stale evidence, and providing uniformity, predictability and security in the conduct of litigation." In furtherance of those policies, "[t]he discovery rules were designed to eliminate, as far as possible, concealment and surprise in the trial of law suits to the end that judgments rest upon real merits of the causes and not upon the skill and maneuvering of counsel."

[Mernick v. McCutchen, 442 N.J. Super. 196, 199-200 (App. Div. 2015) (alteration in original) (first quoting Zaccardi v. Becker, 88 N.J. 245, 252 (1982); and then quoting Oliviero v. Porter Hayden Co., 241 N.J. Super. 381, 387 (App. Div. 1990)).]


The judge's findings regarding the Rule 4:6-2(e) motion addressed Yael's inability to establish a prima facie case as to any of the five causes of action in her contempt complaint. Thus, the judge did not abuse his discretion in denying discovery.

To the extent we have not addressed any of Yael's arguments, including those raised in her reply brief,⁵ we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

⁵ Yael advanced new arguments in her reply brief, which is improper. See R. 2:6-5; see also State v. Smith, 55 N.J. 476, 488 (1970); accord City of Elizabeth

Affirmed.

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



CLERK OF THE APPELLATE DIVISION

v. Elizabeth Fire Off., 198 N.J. Super. 382, 384-85 (App. Div. 1985); Brown v. Shaw, 174 N.J. Super. 32, 39 (App. Div. 1980); Bacon v. N. J. State Dep't of Educ., 443 N.J. Super. 24, 38 (App. Div. 2015) ("We generally decline to consider arguments raised for the first time in a reply brief."); Bouie v. N.J. Dep't of Comm. Affairs, 407 N.J. Super. 518, 525-26 (App. Div. 2009) (explaining "a party may not advance a new argument in a reply brief[,] and finding an argument raised for the first time in a reply brief "was abandoned"); Borough of Berlin v. Remington & Vernick Eng'rs, 337 N.J. Super. 590, 596 (App. Div. 2001) ("Raising an issue for the first time in a reply brief is improper.").