SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0955-22

DEBORAH ANN POSNER,
f/k/a DEBORAH ANN WEISS,

Plaintiff-Respondent,

v.

ERIC WEISS,

Defendant-Appellant.

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Argued April 24, 2024 – Decided June 4, 2024

Before Judges Currier, Susswein, and Vanek.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FM-20-0803-08.

Eric Weiss, appellant, argued the cause pro se.

Ronald H. Carlin argued the cause for respondent (LaRocca Hornik Rosen Greenberg & Crupi, LLC, attorneys; Ronald H. Carlin, of counsel and on the brief).

PER CURIAM

Defendant Eric Weiss appeals portions of seven Family Part orders suspending his parenting time with his two now-adult children, increasing his child support and awarding attorney's fees in favor of his ex-wife, plaintiff Deborah Ann Posner f/k/a Deborah Ann Weiss. Defendant asserts certain portions of the orders were erroneously entered and his parenting time should be reinstated, his children should be ordered to engage in reunification therapy with him, the child support modification and counsel fee award in favor of plaintiff should be vacated, and plaintiff's counsel and one of the Family Part judges must be disqualified from handling this matter.

Based on our careful review of the record and prevailing law, we affirm the portions of the October 30, 2018, June 28, 2019, August 23, 2019,[1] September 25, 2019, August 24, 2022, and October 7, 2022 orders on appeal. The September 2, 2022 order is affirmed in all respects other than the counsel fee award. As explained below, we vacate the fee awarded to plaintiff and remand for the court to consider plaintiff's fee application and to provide an order with supporting reasons.

[1] There does not appear to be a relevant trial court order dated August 24, 2019 as designated in defendant's notice of appeal. We glean from the argument in defendant's merits brief the August 23, 2019 order is misdated in the notice of appeal. Accordingly, we reference August 23, 2019 as the order date.

I.

We summarize the facts in the record that are pertinent to the portions of the orders on appeal. After nearly seven years of marriage, the parties were divorced on April 1, 2009. On March 17, 2011, a consent order was entered establishing joint legal custody of the two then-minor children born of the marriage, S.W.,[2] born in 2004, and M.W., born in 2005, with plaintiff being designated as the parent of primary residence and defendant as the parent of alternate residence.

The parties have been involved in extensive litigation since their divorce.[3] The salient facts relevant to this appeal began on October 22, 2018, when M.W., then thirteen years old, relayed suicidal ideations to her school counselor, reporting

> that on a scale of "0 to 10," with "0" being "not at all" and "10" being "having a plan, date, time, access to means, and definitely intending to follow through w[ith] intent to end her life," [M.W.] reported being at

[2] The parties' children are referred to by their initials throughout this opinion to protect their privacy and the confidentiality of these proceedings. R. 1:38-3(d)(13).

[3] In a previous appeal almost ten years ago, this court noted that "[i]n the five years following their divorce, the trial court heard over fifty-two motions and orders to show cause." See Weiss v. Weiss, No. A-5160-12 (App. Div. Jan. 23, 2015) (slip op. at 1-2).

> a "7" or "7.5." She said that over the weekend, she was at an "8.5" and thought about swallowing a bunch of Tylenol.

M.W. told the counselor she was "aware of the location of the Tylenol," she was "at a '6' on the same scale related to self-injury" and "explained that she has scratched her arms and legs and made them bleed." During the meeting with the counselor, M.W. "reported that she could not guarantee that she would not try to harm herself or end her life." The school contacted plaintiff and had her sign a form acknowledging M.W. could not return to school until she was cleared by a mental health professional.

On the same day, a crisis counselor from Bridgeway Rehabilitation Services conducted a Psychiatric Emergency Screening Services evaluation of M.W. that revealed she "reported to have thoughts of suicide [two] weeks ago while she was visiting her father"; defendant is "[v]ery demanding and yells a lot"; she has "frequent fights" with him; and she has suicidal ideations "when she visits her father." Under "[c]ollateral [i]nformation," the counselor reported plaintiff said M.W. "has never mentioned [having] suicidal thoughts while at home, but reported to be having [suicidal ideations] for about a year every time she goes to her father." The crisis counselor ultimately found M.W. "is not a

danger to self or others at this time and has been cleared to return to school," but recommended counseling services.

Plaintiff also took M.W. to her primary care doctor, Bonita Gillard, M.D., on the same day. Dr. Gillard's report stated:

> I me[]t with [M.W.] today after she expressed suicidal ideation to a school counselor. When asked why she felt this way she admitted to feeling unsafe when with her father during their visitations with him. She has a plan of how she would attempt to harm herself. She admits to feeling this way for over one year. She met with a mental health professional today and was felt not to be a danger to herself at this time.
>
> I also spoke to her brother [S.W.] today. He too admits to not feeling safe with their father. . . .
>
> I feel that at this time that it is both medically and emotionally in the best interest of the children to not have visitations with their father. I feel that if there are visitations that it needs to be supervised. Also I do not think that overnight visits are advisable.

Plaintiff filed an order to show cause (OTSC) on October 23, 2018 seeking to temporarily suspend defendant's parenting time. In her certification in support of the OTSC, plaintiff stated she was advised by the school "that [M.W.] reported being constantly yelled at by [d]efendant; being afraid of [d]efendant; [d]efendant would often get in her face while shouting at her"; and he "commonly acted this way." Plaintiff certified defendant "had parenting time

with [the children] for the weekend of October 19 [to] October 21," preceding M.W. reporting suicidal ideations to her school counselor. Plaintiff contended she had texted M.W. on Friday morning before defendant's visitation weekend "wishing her a great day" and M.W. responded, "I'm nervous." According to plaintiff, "[k]nowing [M.W.] had expressed concern about what to expect during [d]efendant's upcoming parenting time" she texted M.W. back, "[y]ou are strong!" M.W. texted back, "can strong people still be scared?"

At oral argument on October 30, 2018, the Family Part judge stated she had reviewed the reports from the school counselor, Bridgeway, and Dr. Gillard, and concluded all of the evidence established "[M.W.] has issues when she is at [defendant's] house, and these issues have . . . existed for a period of time, and that she has thought about taking her life, and she's scared—or feels scared."

Defendant asserted M.W. was coached by plaintiff and denied yelling at the children. In response, the judge stated:

> [E]ven if I found that [plaintiff] had a hand in it and you had a hand in it, how can I take anything away from the current application but a mother who is concerned about her child who goes to a school counselor and says I wanted to commit suicide? That's what she said.
>
> . . . .
>
> And then I read notes where both children, say I'm afraid of my father . . . my father has a temper, my

father's demanding. No matter how you couch it, they are saying there are issues with [their] father. That's what they're currently saying.

After hearing argument, the judge found:

> [T]his [c]ourt is basing its decision on what the children are expressing to independent third parties.
>
> And I read the Bridgeway report. I read . . . Dr. Gillard's report. I read the Mobile Crisis recommendation. . . . And both children, in different ways, are expressing fear and concern when they're with their father.
>
> So [defendant] wants me to find that this is all [plaintiff's] fault and, basically, you know, allegations are being hurled at [plaintiff].
>
> I am not interested in any allegations being hurled between these two parties. What I'm interested in is the safety and well[-]being of these two children. And to suggest . . . that [plaintiff] may be in some way encouraging a child to go tell a . . . school counselor that she has suicidal ideations, I am not willing to make that leap.
>
> What I recognize and what everybody should recognize—and I am not so sure you do recognize this, [defendant], and this is my concern—is that your children are in crisis for whatever reason. Whether you mean it or not, these two children report having concerns when they're visiting with you. So that needs to be addressed.
>
> . . . .

> I have to be concerned with [M.W.]'s overall safety and well[-]being, and [S.W.]'s overall safety and well[-]being.

In paragraph four of the October 30, 2018 order granting plaintiff's OTSC, the judge temporarily suspended defendant's parenting time except for therapeutic visitation between defendant and the children, pending a recommendation from a therapist. The order directed the children and defendant to attend individual therapy and for the Division of Child Protection and Permanency (DCPP) and the therapist to provide recommendations as to defendant's continued parenting time with the children. The order also allowed defendant to communicate with M.W. via text message and to refrain from recording his conversations with the children.

On November 2, 2018, plaintiff wrote a letter to the court advising defendant had unexpectedly appeared at M.W.'s eye doctor appointment the day before which "frazzled [M.W.] and caused an unnecessary scene," and also violated the October 30, 2018 order. Plaintiff asked the court to "clarify its October 30, 2018 [o]rder so as to specifically indicate what it means for the [d]efendant's parenting time to be suspended (other than therapeutic visitation)." In response, the judge entered an order on November 2, 2018, amending the October 23 and October 30 orders to "suspend[]" "[a]ll of [d]efendant's contact

with [S.W.] and [M.W.] . . . including therapeutic visitation, pending further [o]rder of the [c]ourt."

On November 27, 2018, the judge appointed Resolve Community Counseling Center of Scotch Plains (Resolve) to provide therapeutic counseling for defendant and the children. After the children refused to engage in therapy with defendant, the judge ordered them to attend therapy in a February 21, 2019 order. The order also set forth "[i]f [S.W.] and [M.W.] want to call, and/or text, and/or email [d]efendant, they may do so" and "[defendant] may attend the children's events if they are public events, but may not approach the children," however the "children may approach him."

On March 26, 2019, the judge conducted an in camera interview of both children. Afterwards, the judge requested both parties' positions on how defendant's parenting time should proceed. Plaintiff argued defendant should undergo "an in-depth psychological evaluation" by a doctor appointed by the court who could report on "recommendations . . . regarding [defendant's] future attendance at therapy, attendance at any parenting classes, anger management, medication, etc." Further, plaintiff asserted "[t]hese recommendation should be followed for least six months before the issue of parenting time or reunification therapy is reviewed by the [c]ourt." Plaintiff sought temporary sole legal

custody and argued "[p]ending such a revisit, there should be zero communication between [defendant] and the children including not having [defendant] appear at any event of any kind."

Defendant, through his then-attorney,[4] argued the court should appoint Dr. Mark Singer "as a family/co-parenting therapist" and should also appoint "a therapeutic case manager who will manage the case," with each parent and child undergoing individual therapy. Defendant also recommended the court instruct each parent and the children "they must participate" in all therapy and "[i]f the children do not participate, they are not permitted to do any school activities . . . or individual extracurricular activities, and they cannot have 'screens' . . . or TV." Defendant also argued he should be "permitted to attend the children's public functions" and be "permitted to have complete access to the children and be allowed to phone, text message, email, etc. the children and they are to respond in a respectful way."

On May 13, 2019, the judge ordered defendant to undergo a psychiatric evaluation and suspended all contact with the children pending the results. Defendant filed an OTSC seeking a stay of the order, which the court converted

[4] Defendant is no longer represented by counsel and was self-represented throughout much of the litigation. Unless specified otherwise, defendant was proceeding as a self-represented litigant.

into a motion for reconsideration. Plaintiff opposed the motion and cross-moved for various relief seeking sole legal custody of the children, an increase in defendant's child support obligation, and an award of counsel fees.

Plaintiff set forth that defendant's child support obligation of $78 per week was calculated based on defendant's "income, his overnights, and the children's health insurance being free" with no modification "for the past eight years," other than cost of living adjustments. Plaintiff argued defendant's child support obligation was based upon an annual income of $40,000 but, according to plaintiff, defendant was earning over $200,000 during the marriage.[5] Plaintiff contended defendant "has had ample time to enhance his earnings to that which he earned during the marriage." Additionally, plaintiff argued defendant had not exercised overnight parenting time since the prior year and she had been paying the children's health insurance without contribution from defendant for the previous eight years at a cost of $56.36 per week. According to plaintiff's then-current case information statement, she was earning $86,100 per year as a teacher.

[5] Plaintiff previously appealed a post-judgment order imputing income to defendant of $45,000 and reducing his child support obligation to $65 per week. We affirmed. See Weiss v. Weiss, No. A-0680-10 (App. Div. Feb. 10, 2012) (slip op. at 3-5).

In addition to opposing plaintiff's cross-motion, defendant argued the trial court should reconsider its October 30, 2018 order and "use its [p]aren[s] [p]atria[e] powers and protect [the] children from their mother and employ the 'best interests standard'" to vacate the prior orders suspending his parenting time because "the basis for the granting of the order[s] w[as] unfounded [because] [M.W.] was never at risk." He also requested the judge recuse herself because plaintiff "[wa]s getting preferential treatment."

Defendant provided the court with an April 11, 2019 report from Resolve addressing the therapeutic visitation (the Resolve report). The Resolve report stated "[d]espite being a safe environment and [defendant] being out of sight in the therapy room, [M.W.] and [S.W.] refused to enter the building" and plaintiff "again stated []she does not want to push the children as she does not want them to resent her." The Resolve report stated "[M.W.] and [S.W.]'s reactions to attempts at reunification with their father continue to be extreme and maladaptive."

The Resolve report also concluded "[b]y leaving the decision up to the children, [plaintiff's] position, whether intentionally or inadvertent, undermines the process of developing a healthy family dynamic" and "[w]hether intentional or not, interpreting every attempt at connection by their father as predatory,

rather than as a father wanting to have a relationship with his children, is detrimental to the process of reunification." The Resolve report recommended a therapeutic case manager be assigned to ensure visitation and "[t]he children must be encouraged by all involved to work towards reunification as a positive step rather than as one to be feared and dreaded."

After argument concluded on June 28, 2019, the judge denied defendant's motion for reconsideration in an oral ruling based on a lack of new evidence and since defendant had not yet submitted the court-ordered psychiatric evaluation. The judge denied plaintiff's cross-motion for sole legal custody but found there was a prima facie case of changed circumstances resulting from the temporary suspension of defendant's parenting time sufficient to warrant revisiting child support. Accordingly, the June 28 order required defendant to submit his prior year's tax returns, his last three paystubs and a completed case information statement. The judge specified when defendant's parenting time is reinstated child support could be recalculated as "[t]hat would be another prima facie case."

The judge denied defendant's application seeking her recusal. She found defendant's "constant voluminous submissions are to make [plaintiff] incur attorney['s] fees over and over and over again for the regurgitation of the same

issues" and warned if "the same thing happens again" she would "not only sanction[]" him, but also "award[] counsel fees."

Defendant filed an OTSC on July 3, 2019 seeking, among other things, reconsideration of the court's June 28, 2019 order or a stay. On August 15, the judge entered an order denying a stay and reiterating defendant's parenting time would remain suspended until he complied with the court's prior order requiring him to undergo a psychiatric evaluation.

The judge also temporarily recalculated defendant's child support at $282 per week based on imputed income of $110,200. The judge imputed that income to defendant because he failed to comply with the June 28, 2019 order requiring him to produce financial documents and a case information statement so child support could be recalculated based on proofs. However, the order also specified "[i]f [d]efendant submits his financial information in complete accordance with . . . this [c]ourt's June 28 [][o]rder within ten (10) days, he will not be required to refile a separate [m]otion seeking to have the child support amount reconsidered."

Thereafter, defendant apparently submitted some financial documents since the judge stated on the record on August 23 that he had submitted some financial information that did "not make sense." The judge then entered an order

allowing both parties to participate in limited financial discovery to prepare for a plenary hearing on plaintiff's application for child support modification. The court's records indicate a plenary hearing was held on September 3. However, neither party provided a transcript in their appendix.[6]

On September 25, 2019, the judge entered an order memorializing the child support modification stating "[t]he [c]ourt imputes an income of $110,200 to [d]efendant as he has failed to comply with . . . this [c]ourt's June 28[], [o]rder" and "[d]efendant's child support obligation is recalculated and is established at $282 per week." The order referenced a child support worksheet as being attached, yet neither party included the worksheet in their appendix.

The following year, on November 5, 2020, defendant contacted the Center for Evaluation and Counseling, Inc. (CEC) and requested "a psychological risk assessment to determine if it is safe for our teenage children to have contact with me and in what 'situation.'"[7] Defendant told the licensed professional counselor (LPC) he had no contact with his children since the events in October 2018.

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[6] At oral argument on October 7, 2022 before a different judge, defendant argued the prior judge "imput[ed] an income that I haven't achieved in years. We even had a hearing on it . . . ."

[7] Defendant's request to CEC and the resulting report was introduced to the trial court as an exhibit in support of his motion to resume parenting time filed February 9, 2021.

The LPC concluded defendant "evidenced no symptoms of psychopathology or character disturbance" and "did not present as a potential danger to himself and/or others" but "could benefit from individual psychotherapy." Defendant was administered a "PAI," which was described as a standardized, self-report psychological test assessing personality and psychopathology. The PAI results "indicated that [defendant] may not have answered in a completely forthright manner" and "that [defendant] may exhibit more psychological difficulties than he was willing to admit on [the] instrument." "[A] standardized self-report psychological test which screens for child physical abuse factors in parents or caretakers [CAPI]" did not indicate defendant presented a risk for child physical abuse.

Approximately six months later, board-certified psychiatrist Dr. Jay D. Kuris examined defendant, spoke with plaintiff and authored a May 23 report.[8] Dr. Kuris found "there is no justification for requiring any additional psychotropic medication or mandatory psychiatric treatment in the absence of any significant psychiatric diagnosis which would require such medication or treatment" and opined defendant was not unable to parent his children.

[8] The parties mutually agreed to Dr. Kuris conducting the evaluation. Defendant submitted the resulting report to the court on May 25, 2021 in support of his motion to resume visitation.

Defendant filed a letter with the court asking "that the [c]ourt immediately order the resumption of therapeutic visitation" in light of Dr. Kuris's report, to which plaintiff objected. On August 17, 2021, the judge ordered the parties to "participate in the intake process with a reunification therapist who shall recommend [to] the [c]ourt whether reunification therapy should continue and if so, how it should proceed."

On October 28, 2021, defendant filed an OTSC to, among other things, vacate the October 30, 2018 and September 25, 2019 orders; "[o]rder reunification therapy"; sanction and arrest plaintiff if she interferes with therapy; order "the children are not permitted to participate in any extracurricular activities until they participate in reunification therapy"; appoint a guardian ad litem "to [e]nsure compliance"; grant defendant "temporary sole legal decision making for both children"; and order plaintiff to reimburse defendant for fees. On December 3, a second judge for the most part denied defendant's application finding the first judge "did not err in modifying [d]efendant's visitation time pending a recommendation from a therapist" and "the October 30, 2018 [order] was [entered] in accordance with what was in the best interests of the children at that time."

The second judge also found defendant "failed to prove any of the factors listed in [Rule] 4:50-1" sufficient to vacate the orders. In denying defendant's request for temporary sole legal custody, the judge stated "it is difficult for the [c]ourt to ascertain the current circumstances of the parties at this time" because the therapist reports defendant relied upon were "three (3) years old" and "[d]efendant has not seen the children in years and is not aware of where they stand academically or socially." The judge addressed defendant's claim plaintiff abuses the children and found "there is no evidence that [p]laintiff abuses or endangers the wellbeing of the children. Based on the many reports provided to the [c]ourt by the parties, the children appear to be happy and thriving."

The second judge denied defendant's request to vacate the September 25, 2019 order modifying child support stating "[d]efendant has failed to prove that events occurred subsequent to entry of the September 25 [][o]rder that would render the $282 per week child support obligation extreme and unduly burdensome." She also found "neither party has provided the [c]ourt with updated Case Information Statements, as required by [Rule] 5:5-2 in all contested family actions regarding child support."

Defendant filed another OTSC to, among other things, vacate the October 30, 2018 and September 25, 2019 orders. The second judge found defendant's

application was essentially a motion for reconsideration and denied relief in an order and accompanying written statement of reasons. On March 11, 2022, the judge ordered Dr. Singer to "provide the [c]ourt with a recommendation as to if, how and when reunification therapy shall commence between [d]efendant and the children."

In accordance with March 11, 2022 order, Dr. Singer submitted an April 6, 2022 letter to the court stating "[o]utpatient [r]eunification therapy with [defendant] and his [two] children, [S.W] and [M.W.], has not been successful" as "[S.W.], who is now 18, and [M.W.] have consistently refused to have any communication with their father." Dr. Singer reported both S.W. and M.W. "have shared narratives suggesting that [defendant] has been abusive in the past" and plaintiff had "reported similar information." In one session, plaintiff "did tell them that it [was] okay for them to have a relationship with their father and that, 'I'm leaving it up to them.'" Dr. Singer reported defendant "consistently denies ever being abusive and believes that [plaintiff] has engaged in alienation and lies" and "has aggressively pursued attempts to reconnect with his children and provided various documents to 'support his case' that alienation has occurred." According to Dr. Singer, "[w]hat is clear is that these children will not come to an outpatient setting to see their father."

Dr. Singer conducted over twelve hours of individual sessions with plaintiff, defendant, and the children and ultimately concluded:

> As outpatient efforts will not likely succeed, and as previous efforts at reunification have failed, the [c]ourt and the family may explore a more intensive treatment method (should reunification between father and children remain a goal).
>
> I have discussed the idea of a reunification camp with [S.W.], [M.W.], mother, and father. The children are consistent that they want no contact. [Plaintiff] is leaving the decision up to the children. [Defendant] is strongly motivated to have contact with the children. Outpatient therapy is not suitable for this family and more intense treatment may bring about a greater benefit and result.

On April 12, 2022, defendant filed an OTSC to enforce what he characterized as Dr. Singer's recommendation for defendant and the children to attend a reunification camp and to restore his visitation. Defendant also argued plaintiff "needs to be held accountable by financial sanction as well as incarceration" and her "lawyers should also be sanction[ed] for their participating for their fraud upon the [c]ourts." In response, plaintiff filed a cross-motion asking the court to deny all of defendant's pending applications, to find Dr. Singer "has made no recommendations with regard to reunification therapy" and for an award of counsel fees against defendant.

On September 2, 2022, a third judge entered an order on the pending motions finding Dr. Singer did not conclude reunification therapy would be in the children's best interests and opined the decision whether or not to attend therapy should be left to the children themselves. Defendant filed an OTSC to stay the order, arguing plaintiff "lie[d]" in October 2018 when she sought to temporarily suspend defendant's parenting time after M.W. reported suicidal ideations and claimed the third judge was biased against him. Defendant further contended the court should disqualify plaintiff's counsel, Ronald H. Carlin and his firm LaRocca Hornik Rosen Greenberg & Crupi, LLC (LaRocca Hornik), because defendant alleged he met with them to represent him in the divorce proceedings.

On September 13, 2022, the third judge denied defendant's OTSC based upon the failure to satisfy the criteria of Crowe.[9] Defendant then refiled the OTSC as a motion and sought largely the same relief. Plaintiff asserted the first judge had previously rejected defendant's argument that LaRocca Hornik had a conflict of interest. Plaintiff provided the court with a September 10, 2019 letter

[9] Under Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982), to be afforded emergent relief, the party must demonstrate their claim rests on settled law, has a reasonable probability of succeeding on the merits, relief is needed to prevent irreparable harm, and a balance of the equities favors relief.

Carlin sent to the first judge stating while defendant "may have consulted" with Steven J. Kaplan, his former partner at a previous firm, Carlin "never met with" defendant and had not "ever discuss[ed] [defendant's] case with Mr. Kaplan." Carlin reiterated he "knew nothing of [defendant] or his case until [he] began working on same when [he] joined LaRocca Hornik in October of 2016" and he "could not have 'personally acquired information protected by RPC 1.6 and RPC 1.9(c) []material to this matter'" because he "never met with [defendant] and never discussed his case with Mr. Kaplan (who again, never represented him)." Frank J. LaRocca, managing partner at LaRocca Hornik, sent a letter to the third judge advising him of this court's October 26, 2012 order denying defendant's motion to disqualify LaRocca Hornik from representing plaintiff.

Before the third judge could rule on defendant's motion to disqualify, defendant filed an application for a temporary restraining order (TRO) against plaintiff, alleging she made "[t]erroristic [t]hreats" stating she wants him dead and would have her father kill him. Plaintiff then filed an OTSC for "emergency relief naming [p]laintiff's sister . . . as joint temporary residential custodian of" M.W. in the event of her arrest on the "bogus" charges defendant raised against her and seeking an award of counsel fees. On October 7, 2022, the judge denied

plaintiff's OTSC, finding the custody issue was not ripe because she had not yet been arrested. The judge also dismissed the TRO sua sponte.

As to defendant's motion, the judge advised he would "be issuing a written decision as to the specific issues" but the application is "is going to be denied in its entirety." The judge stated:

> As I've noted in my prior decisions this is now by my count the 65th post-judgment application by [defendant]. It is I think the worst case of abus[]e [of] process I've ever seen. Every single application is as voluminous as it is meaningless. It's all written on half[-]truths, fabrications. And as counsel correctly notes[,] issues that have been decided time and time and time again . . . by myself, [and other judges] and now back to me again. And it's going to stop.

The judge declined to stay his order on defendant's oral application but told defendant he could file a separate motion seeking relief. A memorializing order was entered the same day denying plaintiff's OTSC "as the issues before the [c]ourt are not [r]ipe." In the statement of reasons denying defendant's motion to disqualify plaintiff's counsel, the judge set forth

> Defendant's arguments seeking counsel's disqualification have been heard an[d] denied by the court numerous times. Defendant here offers absolutely nothing new. Defendant claims that many years ago he consulted with [p]laintiff's counsel, which [p]laintiff's counsel has in the past and again today vehemently denied. There is no reason to revisit the prior order of the court.

As to defendant's request to vacate the court's prior orders, the judge found "[t]his [c]ourt is not satisfied that there is any basis to revisit the prior [o]rders of this [c]ourt" because "[defendant] constantly files reconsideration motions on no basis other than he suggests the [c]ourt made the wrong decision." The judge stated:

> None of the other requests warrants further discussion. This [c]ourt ultimately finds that all of [d]efendant's requests lack merit. Defendant simply disagrees with the decisions and orders of this [c]ourt filed on August 2[4], 2022 and September 2, 2022, respectively. As a result, he accuses everyone involved, namely: (1) this [c]ourt as well as the prior [j]udges who have presided over this matter; (2) the [p]laintiff, his former spouse; and (3) [p]laintiff's counsel, of being biased and vindictive against him. None of [d]efendant's assertions have any basis in either law or fact. They are based on half-truths and outright fabrications. The arguments are the exact same he has made innumerable times, been denied prior reconsiderations, and in some cases been denied by the Appellate Division as well.

The judge further found defendant's submissions amounted to frivolous litigation and concluded "that filing sixty[-]five applications seeking the same or similar relief time and time again based on the exact same reasoning is nothing short of harassment towards the opposing party." The judge noted "[t]his is particularly true when [defendant], who is self-represented, well knows

that [plaintiff] is represented and he is forcing her to incur legal fees, with no reasonable expectation that he will get a different result."

The October 7, 2022 order limited defendant's filings going forward to a notice of motion or OTSC, a certification, a proposed form of order and a list of proposed attachments, without the attachments themselves unless otherwise requested by the court. The order also specified plaintiff was not obligated to oppose any application filed by defendant, unless she desired to or it was requested by the court, with opposition to be presumed.

This appeal follows.

II.

Appellate courts "review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). Those factual findings are therefore "binding on appeal when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 411-12. Reversal is appropriate only where "the trial court's factual findings are 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Spangenberg v.

Kolakowski, 442 N.J. Super. 529, 535 (App. Div. 2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). Questions of law are reviewed de novo. Amzler v. Amzler, 463 N.J. Super. 187, 197 (App. Div. 2020).

Defendant argues on appeal the trial court improperly suspended his parenting time against the recommendations of experts, without first holding a hearing or making required findings of fact. Further, defendant seeks reversal of his modified child support obligation based on the trial court's failure to find a change of circumstances sufficient to warrant the modification. Defendant also requests an order to "force" his children "to comply in therapy" and to hold plaintiff accountable if the children fail to do so. Defendant also appeals the award of attorney's fees in favor of plaintiff and contends a new judge should be assigned to this matter on remand. Plaintiff argues the portions of the trial court orders on appeal were appropriately entered based on uncontroverted evidence in the record and should be affirmed.

We address defendant's arguments in turn.

III.

October 30, 2018 order

Defendant specifies he is appealing only paragraph four of the October 30, 2018 order suspending his parenting time pending a recommendation from a therapist. In defendant's merits brief, he argues the suspension of his parenting time was improperly entered "without a hearing, without a prima faci[e] showing of changed circumstances, a finding that defendant had done anything to put the children at risk . . . and was against the recommendation of all the therapeutic experts that have been involved in the case."

Parents have a fundamental, constitutional right to raise, care for, and maintain a relationship with their children. N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 102 (2008). Consequently, our law "favors visitation and protects against the thwarting of effective visitation rights." Wilke v. Culp, 196 N.J. Super. 487, 496 (App. Div. 1984). Nonetheless, "a parent's custody and visitation rights may be restricted, or even terminated, where the relation of one parent . . . with the child cause[s] emotional or physical harm to the child, or where the parent is shown to be unfit." Ibid. "[A] primary concern in determining questions of visitation and custody is the best interests of the child." Id. at 497; see Fiore v. Fiore, 49 N.J. Super. 219, 228 (App. Div. 1958)

("[P]arents should be warned that . . . courts are interested primarily in a child's welfare and happiness, and only secondarily in the parents' rights of custody and visitation.").

We are unconvinced by defendant's argument he was improperly denied a plenary hearing before the order temporarily suspending his parenting time pending a therapist recommendation was entered. "[A] hearing is not warranted in every contested proceeding for the modification of a judgment or order . . . ." Murphy v. Murphy, 313 N.J. Super. 575, 580 (App. Div. 1998). A plenary hearing should be ordered "only where the affidavits show that there is a genuine issue as to a material fact, and that the trial judge determines that a plenary hearing would be helpful." Ibid. (quoting Shaw v. Shaw, 138 N.J. Super. 436, 440 (App. Div. 1976)).

We find no error with the entry of the October 30 order without a plenary hearing. The judge was presented with medical substantiation of plaintiff's claims by the school counselor, Bridgeway, and Dr. Gillard. The first judge stated "if [plaintiff] just came into court and ask[ed the judge] to [suspend parenting time] without any medical substantiation, she would not be successful."

Our review of the record establishes there was substantial, credible evidence supporting the entry of the October 30 order temporarily suspending defendant's parenting time based on the submitted documents. Defendant's argument there was conflicting medical evidence necessitating a hearing is not borne out by the record. Thus, we conclude a plenary hearing on the matter was not necessary. See Murphy, 313 N.J. Super. at 580.

Although defendant argues the first judge had not determined the children needed protection from him when the October 30 order was entered, this argument is belied by the record. The judge entered the October 30 order in the best interests of the children after finding M.W. had documented suicidal ideations subsequent to parenting time with defendant and both children reported they felt unsafe with defendant, as reported by the school counselor, Bridgeway, and Dr. Gillard. See Wilke, 196 N.J. Super. at 496. The record establishes defendant's parenting time continued to be suspended after the children refused to engage with defendant in therapeutic visitation and the judge's in camera interview with the children revealed further safety concerns, including defendant's threatening them with shock collars.

Defendant contends the first judge's decision is contrary to opinions expressed by thirteen experts, without referencing any specific experts. We

reject defendant's only particularized argument that two DCPP workers issued "expert" opinions based upon determining certain allegations were "unfounded." DCPP case workers are not expert witnesses and the statutory findings of a state agency are not dispositive.

Likewise, defendant asserts Dr. Gillard's report is a "net opinion" without explaining why or citing any legal authority underpinning the argument. In failing to adequately brief the issues, defendant has waived that argument. See Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011) (finding "[a]n issue not briefed on appeal is deemed" abandoned).

Finally, we disagree with defendant's argument the first judge violated Rule 1:7-4(a) by failing to articulate an oral or written statement of reasons for her decision. While the judge did not attach a written statement of reasons to her October 30 order, she set forth a comprehensive oral decision on the record explaining why she was temporarily suspending defendant's parenting time. Thus, we affirm the entry of paragraph four of the October 30, 2018 order.

IV.

June 28, 2019, August 23, 2019 and September 25, 2019

Child Support Orders

The record before us does not establish the trial court's June 28, 2019 and September 25 orders modifying defendant's child support obligation and the August 23 interim discovery order were improvidently entered.

"When reviewing decisions granting or denying applications to modify child support, we examine whether, given the facts, the trial judge abused his or her discretion." J.B. v. W.B., 215 N.J. 305, 325-26 (2013) (quoting Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012)). "The trial court's 'award will not be disturbed unless it is manifestly unreasonable, arbitrary, or clearly contrary to reason or to other evidence, or the result of whim or caprice.'" Id. at 326 (quoting Jacoby, 427 N.J. Super. at 116).

"When a party . . . seeks to modify any support obligation, that party must meet the threshold standard of changed circumstances." Id. at 327 (citing Lepis v. Lepis, 83 N.J. 139, 146-48 (1980)). "When children are involved, an increase in their needs—whether occasioned by maturation, the rising cost of living or more unusual events—has been held to justify an increase in support by a financially able parent." Lepis, 83 N.J. at 151.

We find no error in the entry of paragraph nine of the June 28, 2019 order after the first judge found plaintiff had established a prima facie showing of a change in circumstances warranting a child support modification. It was undisputed defendant's overnight parenting time had been temporarily suspended and plaintiff took on the sole financial burden of the children's health care costs.

Since there was a prima facie showing of changed circumstances, the judge did not abuse her discretion in requiring defendant to submit his prior year's tax returns, copies of his last three paychecks and a completed case information statement. The judge recognized the temporary nature of the relief and stated when parenting time is reinstated child support could be recalculated.

The August 15, 2019 order calculated defendant's child support obligation at $282 per week based on the court's imputed income of $110,200 to "[d]efendant as he has failed to comply with . . . [the] [c]ourt's June 28[][o]rder." The judge advised she would reconsider the child support determination without requiring a separate motion if defendant supplied the requested information within ten days.

We lack a factual basis in the record to conclude the August 23 and September 25, 2019 orders were erroneously entered since we were not provided

with any of the financial documents, child support worksheets or transcripts of the proceedings leading to their entry. On appeal, defendant never specifies his actual annual income or provides any documents containing this information.

It is defendant's burden to demonstrate error with an order being appealed, Bowen v. Olesky, 37 N.J. Super. 19, 25 (App. Div. 1955) (stating every appellant has the burden "of showing error in the judgment under review"), aff'd, 20 N.J. 520 (1956), and to demonstrate why a downward modification of child support is warranted, Ibrahim v. Aziz, 402 N.J. Super. 205, 213 n.2 (App. Div. 2008) (noting defendant has the burden to show a change in income warranted a downward modification in a child support obligation). Rule 2:6-1(a)(1) requires an appellant's appendix to include "the complete pretrial order, if any, and the pleadings" and "such other parts of the record . . . as are essential to the proper consideration of the issues." Failure to include any item "essential to the proper consideration of the issues hinders . . . appellate review." Johnson v. Schragger, Lavine, Nagy & Krasny, 340 N.J. Super. 84, 87 n.3 (App. Div. 2001); see also Soc'y Hill Condo. Ass'n, Inc. v. Soc'y Hill Assocs., 347 N.J. Super. 163, 177 (App. Div. 2002) ("A party on appeal is obliged to provide the court with 'such other parts of the record . . . as are essential to the proper consideration of the issues.'" (quoting R. 2:6-1(a)(1)(I))). Where the appellant's appendix fails

to include the final order dismissing a claim or a transcript of the trial proceedings, "[t]hat deficiency prohibits review." Cipala v. Lincoln Tech. Inst., 179 N.J. 45, 55 (2004).

We conclude defendant has not provided any basis for finding the judge abused her discretion in entering the August 23, 2019 and September 25 orders. See J.B., 215 N.J. at 325-26; Johnson, 340 N.J. Super. at 87 n.3.

V.

August 23, 2022 order

Defendant argues this court "must reinstate all of [d]efendant[']s constitutionally and statutorily protected parenting and due process rights and vacate the Aug[ust] 2[3], 2022 order in the entirety" since "[t]he [c]ourt terminated [d]efendant[']s right without a hearing or complying with [Rule] 1:7-4." We are unconvinced and affirm.

Defendant filed an OTSC requesting oral argument on all pending motions, copies of various therapy reports, transcripts of proceedings, "copies of the child interviews," an order of sole legal custody of M.W. and an order prohibiting plaintiff from having any contact with the children until she obtains "therapy for her alienation." The third judge entered an order on August 23, 2022, stating "[d]efendant's [o]rder [t]o [s]how [c]ause is denied." Defendant

argues the judge did not comply with Rule 1:7-4 in denying the emergent application.

While the better practice is for the judge to provide a statement of reasons for the denial, or clarify the application was denied as non-emergent, we find no error in the entry of the August 23, 2022 order since defendant has not established he was entitled to emergent relief under Crowe, 90 N.J. at 132-34. Specifically, defendant did not demonstrate in his OTSC there would be imminent harm to the children or anyone else, or the application was otherwise emergent in nature. Id. at 132 (preliminary relief "should not issue except when necessary to prevent irreparable harm"). Further, defendant's arguments in this OTSC were presented again in later motions on which oral argument was held and were addressed by the judge in the rulings supporting the entry of the September 2, 2022 and October 7 orders.

We decline to find any error in the denial of defendant's request for "copies of the child interviews." Defendant cites to Rule 5:8-6, which provides the court may conduct an in camera interview with the child or children, and "[a] stenographic or recorded record shall be made of each interview" with "[t]ranscripts thereof [being] provided to counsel and the parties upon request and payment for the cost." Defendant did not specify what child interviews he

was referring to in his OTSC. The only in camera interview was conducted in 2019 and defendant was provided a copy of the audio recording of the interview.

Defendant has not specified on appeal which transcripts were requested and not provided to him. Thus, we lack a factual basis to review the issue. Without adequately briefing the issue, defendant has also waived this argument. See Sklodowsky, 417 N.J. Super. at 657 (App. Div. 2011). We reject defendant's argument his parenting rights must be "reinstate[d]" since the August 23, 2022 order did not suspend parenting time.

VI.

September 2, 2022 order

Defendant argues the September 2, 2022 order declining to compel reunification therapy was arbitrary and capricious and contrary to the recommendations of Dr. Singer. Based on our independent review of the evidence, we are unconvinced and affirm.

On March 11, 2022, the second judge ordered Dr. Singer to provide the court with a recommendation "as to if, how and when reunification therapy shall commence between [d]efendant and the children." In response, Dr. Singer submitted an April 6 letter stating reunification therapy failed because the children "refused to have any communication with their father" and both S.W.

and M.W. "have shared narratives suggesting that [defendant] has been abusive in the past."

Defendant filed an OTSC contending Dr. Singer's recommendation was for defendant and the children to attend a reunification camp and to restore his visitation. On September 2, 2022, the third judge denied defendant's request for the parties to be ordered to attend reunification therapy with Turning Points, Resolve, or any other program or therapist. The judge stated "that at this time, Dr. Singer has not concluded reunification therapy would be in the children's best interests and rather the decision whether or not to attend therapy should be left to the children themselves." We find no error since the judge's conclusion is amply supported by the document authored by Dr. Singer, which contains no recommendation for reunification camp and restoration of visitation.

We are also unconvinced the third judge abused his discretion in denying defendant's motion for reconsideration of the October 30, 2018, September 25, 2019 and March 11, 2022 orders. As set forth in Lawson v. Dewar, "Until entry of final judgment, only 'sound discretion' and the 'interest of justice' guides the trial court. . . ." 468 N.J. Super. 128, 134 (App. Div. 2021) (quoting R. 4:42-2(b)). We review a motion for reconsideration of an interlocutory order for abuse of discretion. R. 4:42-2(b); see Lombardi v. Masso, 207 N.J. 517, 535-

536 (2011). The proofs in the motion record did not establish any therapist recommended defendant's parenting time proceed. Instead, the unrebutted proofs established the near-adult children should make their own determination as to whether to proceed with reunification therapy.

We decline defendant's request for us to exercise original jurisdiction to intervene as parens patriae and force the now-adult children to attend therapy with defendant. Original jurisdiction "must be exercised only 'with great frugality and in none but a clear case free of doubt.'" Tomaino v. Burman, 364 N.J. Super. 224, 234-35 (App. Div. 2003) (quoting In re Application of Boardwalk Regency Corp. for a Casino License ., 180 N.J. Super. 324, 334 (App. Div. 1981), modified, 90 N.J. 361 (1982)). Aside from S.W. and M.W.'s present age, defendant has not shown the requested relief is necessary to "protect them from [any] physical and emotional harm." See N.J. Div. of Child Prot. & Permanency v. S.D., 453 N.J. Super. 511, 525 n.9 (App. Div. 2018); see also Segal v. Lynch, 413 N.J. Super. 171, 188 (App. Div. 2010).

Defendant argues plaintiff has violated their custody agreement "and does not inform or consult with [d]efendant regarding issues of the children's health and education" and "[s]he never informed or consulted [him] on any of [S.W.]'s or [M.W.]'s college plans, studies." The September 2, 2022 order granted

remedial relief, specifically requiring plaintiff to inform defendant where S.W. was going to college. No further remedy is warranted.

We conclude the third judge did not abuse his discretion in denying defendant's request to impose sanctions—including monetary penalties and incarceration—against plaintiff or her counsel. We review a trial judge's decision whether to impose sanctions for an abuse of discretion. Innes v. Carrascosa, 391 N.J. Super. 453, 498 (App. Div. 2007). Defendant contends he is entitled to sanctions because plaintiff lied to the court regarding M.W.'s suicidal ideations, which led to the entry of the October 30, 2018 order. However, we have found no error in that order. Therefore, there is no basis for the imposition of sanctions.

Defendant argues the $6,000 counsel fee award in plaintiff's favor should be vacated since there was no statement of reasons issued pursuant to Rule 1:7-4(a). Without an oral or written statement of reasons for the award and analysis of the factors in RPC 1.5(a) and Rule 5:3-5(c), we lack the ability to substantively consider the propriety of the award and "are left to conjecture as to what the judge may have had in mind." Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990). "Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion." Ibid.

For these reasons, we affirm the entry of the September 2, 2022 order as to all relief, except for the counsel fee award which is vacated and remanded to the trial court for further proceedings.

VII.

October 7, 2022 order

Defendant contends the third judge erred in entering the October 7, 2022 order since plaintiff's counsel should have been disqualified and the judge should have recused himself. We are unconvinced and affirm.

When defendant moved to stay the September 2, 2022 order, he argued the court should disqualify plaintiff's counsel because defendant allegedly "met with them to represent him in his divorce." Defendant also argued the judge was "bias[ed] against [p]ro [s]e [defendants] and himself" and the court's refusal to "vacate and restore" defendant's "contact with his children" was "in violation of well settled law and best interest of the children" and "gives the appearance of bias." The judge ultimately denied defendant's application in its entirety on October 7, stating the trial court previously ruled on the issues.

The determination of whether counsel should be disqualified is subject to de novo review. City of Atl. City v. Trupos, 201 N.J. 447, 463 (2010). A lawyer may be precluded from "representation of a client with interests materially

adverse to those of a former prospective client in the same or substantially related matter if the information acquired from the former prospective client could be significantly harmful to that person in the matter." Greebel v. Lensak, 467 N.J. Super. 251, 257 (App. Div. 2021) (quoting Michels, New Jersey Attorney Ethics: The Law of New Jersey Lawyering § 21:2-3 at 512-13 (2011)); see also RPC 1.18(b). "[T]he former client must make more than 'bald and unsubstantiated assertions' that []he disclosed 'business, financial and legal information' that the client believes might be related to the present matter." Ibid. (quoting O Builders & Assocs. v. Yuna Corp. of N.J., 206 N.J. 109, 129 (2011)).

When this issue was raised in 2019, Carlin maintained he did not know of defendant until he joined LaRocca Hornik and began representing plaintiff. The third judge found plaintiff's counsel "has in the past and again today vehemently denied" he ever met or consulted with defendant. Defendant does not contend to the contrary or specify any confidential communication counsel obtained. Without having met defendant or discussed defendant with his former partner, Carlin could not have acquired any "significantly harmful" information making his current representation of plaintiff "materially adverse" to defendant. See Greebel, 467 N.J. Super. at 257 (quoting Michels, § 21:2-3). There is no basis to disqualify plaintiff's counsel.

We also reject defendant's argument that the third judge should have recused himself. "Rule 1:12-2 authorizes a party to file a motion seeking to disqualify the judge presiding over the case." P.M. v. N.P., 441 N.J. Super. 127, 140 (App. Div. 2015). "The decision to grant or deny the motion for disqualification rests entirely within the sound discretion of the trial judge." Ibid. Rule 1:12-1 specifies when a judge "shall be disqualified on the court's own motion." Under the catch-all provision of Rule 1:12-1(g), "the judge must ask: 'Would an individual who observes the judge's personal conduct have a reasonable basis to doubt the judge's integrity and impartiality?'" P.M., 441 N.J. Super. at 141 (quoting In re Reddin, 221 N.J. 221, 223 (2015)). This standard applies "to assess whether a judge's personal behavior creates an appearance of impropriety." Ibid.

Overall, "[j]udges must avoid actual conflicts as well as the appearance of impropriety to promote confidence in the integrity and impartiality of the Judiciary." DeNike v. Cupo, 196 N.J. 502, 507 (2008). However, "[i]t is improper for a judge to withdraw from a case upon a mere suggestion he is disqualified 'unless the alleged cause of recusal is known by him to exist or is shown to be true in fact.'" Panitch v. Panitch, 339 N.J. Super. 63, 66 (App. Div.

2001) (quoting Hundred E. Credit Corp. v. Eric Schuster Corp., 212 N.J. Super. 350, 358 (App. Div. 1986)).

Defendant argues the third judge is biased and should be recused because he denied his motions and emergent applications in large part. Defendant's disagreement with the judge's decisions does not create an "objectively reasonable" "belief" "that the proceedings were unfair." Ibid. (quoting State v. Marshall, 148 N.J. 89, 279 (1987)); see also Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008) ("Bias cannot be inferred from adverse rulings against a party."); Liteky v. United States, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion."). We find no error in the judge's decision not to recuse himself from deciding defendant's applications.

Defendant also argues the October 7, 2022 order was erroneously entered because the third judge failed to comply with Rule 1:7-4(a). We are unconvinced. The judge issued a detailed statement of reasons for denying defendant's motion based on the application of his legal conclusions to his factual findings grounded in the record.

Affirmed in part, vacated and remanded in part. We do not retain jurisdiction.