NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5829-13T1
A-2813-14T1

NANCY G. SLUTSKY,

Plaintiff-Respondent/
Cross-Appellant,

v.

KENNETH J. SLUTSKY,

Defendant-Appellant/
Cross-Respondent.

NANCY G. SLUTSKY,

Plaintiff-Respondent,

v.

KENNETH J. SLUTSKY,

Defendant-Appellant.

DONAHUE, HAGAN, KLEIN &
WEISBERG, LLC,

Respondent.

APPROVED FOR PUBLICATION

August 8, 2017

APPELLATE DIVISION

Argued December 1, 2016 - Decided August 8, 2017

Before Judges Lihotz, Hoffman and Whipple.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Morris County, Docket No. FM-14-1535-08.

Edward S. Snyder argued the cause for appellant/cross-respondent in A-5829-13 and appellant in A-2813-14 (Snyder, Sarno, D'Aniello, Maceri & DaCosta, LLC, attorneys; Mr. Snyder, of counsel and on the briefs; Scott D. Danaher, on the briefs).

Ronald M. Abramson argued the cause for respondent/cross-appellant in A-5829-13 (Winne, Banta, Basralian & Kahn, PC, attorneys; Mr. Abramson, of counsel and on the brief).

Donahue, Hagan, Klein & Weisberg, LLC, pro se respondent in A-2813-14 (Francis W. Donahue, of counsel and on the brief).

The opinion of the court was delivered by

LIHOTZ, P.J.A.D.

These two appeals arise from the parties' matrimonial litigation. The court scheduled the matters back-to-back before the same panel to address all issues in a single opinion.

In Docket No. A-5829-13, defendant Kenneth J. Slutsky appeals from a May 30, 2014 final judgment of divorce (final judgment). He challenges various aspects of final judgment; most significantly, the rejection of evidence regarding the need to repay family loans and the valuation and equitable distribution of his interest as an equity partner in a large New Jersey law firm. Additionally, defendant appeals from the ordered equitable distribution of what he asserts were premarital IRAs and the awarded counsel fees and expert costs to plaintiff Nancy Slutsky. Defendant further challenges a July

28, 2014 order denying his motion for reconsideration, and a second order filed the same date, which implemented a payment schedule for the ordered amount of equitable distribution and fees.

Plaintiff cross-appeals, challenging the final judgment and the July 28, 2014 orders. She argues the judge improperly denied her claim for financial adjustments to account for insufficient pendente lite support, and maintains the trial judge abused his discretion in not ordering defendant to satisfy the entirety of her counsel fees and expert costs, by allowing defendant to satisfy ordered obligations over time.

In the second matter, Docket No. A-2813-14, defendant appeals from a January 9, 2015 order denying his motion to dismiss for lack of standing, a petition filed by plaintiff's former counsel to enforce the order mandating defendant remit payment to satisfy obligations owed to plaintiff. Defendant argues counsel no longer represented plaintiff in the application, making counsel adverse to her interests.

Before this court, defendant moved to supplement the record with subsequent orders relating to the amount of plaintiff's counsel fee obligation. The reviewing motion panel deferred the matter for consideration in this opinion. We grant the motion.

For the reasons discussed in our opinion, we affirm the order rejecting defendant's request to require plaintiff to contribute to the repayment of monies transferred from various family trusts; we reverse the evaluation of the goodwill attached to defendant's interest in his law firm, as well as the percentage interest in this asset, granted to plaintiff; we reverse the July 28, 2014 order subjecting defendant's Union Central and Wells Fargo IRAs to equitable distribution; we reverse the award of counsel fees, but affirm defendant's ordered payment of expert costs. Additionally, we affirm the final judgment provision denying plaintiff's request for an allocation of additional support based on the pendente lite award and reject as unavailing her claim for an award of additional attorney's fees.

Because various provisions in the final judgment are vacated, the order under review in A-2813-14 is reversed. The matter must be reviewed on remand by a different Family Part judge.

I.

After thirty years of marriage, plaintiff filed a complaint for dissolution of the parties' marriage and review of her related requests for alimony, equitable distribution, and satisfaction of debts, counsel fees, and costs. The litigation

was difficult and protracted. Some delays in the final disposition occurred from June 2009 to April 2013, to abide the conclusion of a guardianship proceeding and another delay resulted in 2011, to accommodate one party's medical concerns. Ultimately, trial commenced on January 6, 2014, and was conducted over nineteen days. The judge issued a written opinion, addressing all disputed issues. Final judgment was filed on May 30, 2014.

Post-trial cross-motions sought to modify certain provisions of the final judgment and the judge issued an amended final judgment, correcting clerical errors. On the same date, two other orders were filed. These orders effectuated provisions of the amended final judgment, and included a payment schedule for defendant's satisfaction of the ordered obligations. Motion practice continued. Subsequent orders denied defendant's request to stay pending appeal the financial obligations set forth in the final judgment; denied defendant's request for additional findings of fact and conclusions of law; and granted a limited stay to allow defendant to request this court stay execution of the amended final judgment. We denied defendant's stay motion.

The parties challenged various provisions of the final judgment arguing the judge's insufficient factual findings could

not sustain the legal conclusions reached, and contended legal error and abuse of discretion require reversal. We recite the well-settled standards guiding our review of Family Part orders and judgments.

In our review of a non-jury trial, we defer to a trial judge's factfinding "when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 412 (1998). We also note proper factfinding in divorce litigation involves the Family Part's "special jurisdiction and expertise in family matters," which often requires the exercise of reasoned discretion. Id. at 413. In our review, "[w]e do not weigh the evidence, assess the credibility of witnesses, or make conclusions about the evidence." Mountain Hill, LLC v. Twp. of Middletown, 399 N.J. Super. 486, 498 (App. Div. 2008) (alteration in original) (quoting State v. Barone, 147 N.J. 599, 615 (1997)), certif. denied, 199 N.J. 129 (2009). Consequently, when this court concludes there is satisfactory evidentiary support for the trial court's findings, "its task is complete and it should not disturb the result." Beck v. Beck, 86 N.J. 480, 496 (1981) (quoting State v. Johnson, 42 N.J. 146, 161-62 (1964)).

In bench trials, our "[d]eference is especially appropriate when the evidence is largely testimonial and involves questions

of credibility." Cesare, supra, 154 N.J. at 412 (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). We recognize a trial judge who observes witnesses and listens to their testimony, develops "a feel of the case" and is in the best position to "make first-hand credibility judgments about the witnesses who appear on the stand." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008). In contrast, review of the cold record on appeal "can never adequately convey the actual happenings in a courtroom." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012).

Reversal is warranted when 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." Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div.), certif. denied, 40 N.J. 221 (1963)). All "legal conclusions, and the application of those conclusions to the facts, are subject to our plenary review." Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013).

In this matter, the trial judge issued a written opinion, identified the undisputed facts, related aspects of expert testimony, and stated his conclusions. Noting not all decisions

set forth in the final judgment are challenged on appeal, we limit our discussion to facts underlying discrete challenges, which we include in the discussion of each individual issue.

II.

We start with the nine issues raised by defendant on appeal. Where appropriate, we have combined arguments directed to similar matters.

A.

Initially, defendant argues he was denied a fair trial because plaintiff engaged in "willful, contumacious behavior that made a mockery of justice," for which the judge declined to sanction her. Defendant contends, "no reported case in New Jersey has recited facts demonstrating more of an affront to the justice system than the actions of this plaintiff" during the pendency of this case. Review of defendant's argument recites plaintiff's obstreperous behavior "effectively precluded [him] from cross-examining plaintiff . . . the key witness on the issue of family loans." Defendant maintains the judge should have sanctioned plaintiff, followed through on his threats to strike her pleadings, and, at the very least, draw an adverse inference on the loan issue "instead of placating plaintiff" and treating her in a solicitous manner. Defendant's argument in Point I strikes only at his request to equitably allocate monies

borrowed from several family trusts; a related issue is raised in Point V.

Defendant testified regarding the nature and amount of the loans from various family trusts. He explained plaintiff's spending resulted in a "tsunami" of credit card debt, which could only be met by borrowing, and asserted approximately $1.9 million was loaned by the trusts to maintain the marital lifestyle, between the years 1987 and 2008. When received, the monies were deposited into a joint account with plaintiff and all must be repaid. The trustees did not intervene in the litigation to seek repayment.

Admitted into evidence was a "revolving promissory note," dated June 15, 1998, executed by defendant and issued to the June Slutsky Trust. June Slutsky is defendant's mother and this testamentary trust was created by her mother, Rose Gross. The trust granted a lifetime interest to June and her sisters. The remainder of June's interest passes to defendant. The note contained a grid of blank boxes, which were to be completed with amounts borrowed on stated dates. A similar note, also dated June 15, 1998, was executed by defendant to borrow money from a credit shelter trust established by his late father.[1] June Slutsky was the sole trustee and defendant held her power of

[1] The notes were not included in the appendix on appeal.

attorney. The third trust was an inter vivos insurance trust. The insurance policy pays a death benefit to the named beneficiary, defendant, upon the death of both insureds, defendant's parents. Defendant is the trustee and borrowed against the cash value of the insurance policy. There was no documentation for borrowings from the life insurance trust.

Defendant testified he received permission for each trust withdrawal and insisted he must repay the obligations. Defendant's testimony differentiated these borrowed sums from gifts made by June.

In addition, defendant presented a legal pad containing his and plaintiff's handwriting, which he explained was prepared while they engaged in estate planning. Defendant urged plaintiff falsely testified she knew nothing about the loans because he told her each time he borrowed money and the notes demonstrated her knowledge of the debts and the requirement for repayment. The legal pad notes purportedly calculated additional life insurance purchased to assure plaintiff's financial security in the event defendant predeceased June, who required the debts be repaid and essentially "pull the rug out from her [plaintiff] right away."

In her scattered testimony, plaintiff did not agree she knew of the obligation for repayment of the monies borrowed.

She also denied understanding the debts were accounted for during estate planning discussions. In fact, in the course of her cross-examination on this subject, plaintiff was non-responsive, ignored questions asked, as well as the judge's instructions to answer "yes" or "no."

Plaintiff's expert, Gary Phillips, analyzed the documents and opined the facts raised risks these trust transfers triggered tax consequences and would not be considered loans, but rather a trust distribution to June, which were followed by a gift to defendant. Phillips acknowledged the trustees of all three trusts were empowered to engage in loans; however, he stated the notes executed by defendant lacked an interest component, the instruments' grids were not completed when borrowings were made, so amounts stated on the notes were significantly less than totals claimed by defendant. For example, the June Slutsky Trust note reflected borrowing of $56,000, yet defendant claimed the actual amount loaned was $256,000; the credit shelter trust note reflected loans of $275,500, yet defendant claimed $700,000 was borrowed. Phillips further challenged the claimed loan status for all trust borrowings because he found no record defendant made repayments.

Plaintiff also presented de bene esse deposition testimony of a bank loan officer responsible for reviewing documentation

submitted to obtain mortgage loans secured by the marital home. The loan officer testified the family trust debts were not disclosed on the loan applications completed by defendant and plaintiff.

On appeal, defendant asserts plaintiff's failure to respond to questions regarding her handwritten notes, showing she understood the debts, required the judge to draw an adverse inference. He highlights plaintiff's extensive higher education, which includes a bachelor's degree in economics from an Ivy League institution, a master's degree in finance from New York University, and certifications as a public accountant and a financial planner, as belying her claims of ignorance and lack of understanding. He also argues the judge erroneously misapplied the law.

"Generally speaking, in dividing marital assets the court must take into account the liabilities as well as the assets of the parties." Monte v. Monte, 212 N.J. Super. 557, 567 (App. Div. 1986); see also N.J.S.A. 2A:34-23.1(m) (requiring "debts and liabilities of the parties" to be considered when determining equitable distribution). Where marital debts are proven, courts should deduct marital debts from the total value of the estate, or allocate the obligations between the parties. See Pascarella v. Pascarella, 165 N.J. Super. 558, 563 (App.

Div. 1979) (holding the trial judge was required to deduct debt incurred during the marriage between husband and his mother); Ionno v. Ionno, 148 N.J. Super. 259, 262 (App. Div. 1977) (holding obligations should be allocated between the husband and wife).

These matters are fact sensitive. When a particular debt is claimed to be owed to a member of one spouse's family, the burden of proof rests on the claiming spouse to establishing a bona fide obligation to repay the monies asserted as loans. Monte, supra, 212 N.J. Super. at 567-68.

In Monte, the defendant questioned whether the loans to the plaintiff's family were "bona fide." Id. at 568. This court stated:

> Under these circumstances it would not be equitable to require [the] defendant to be charged with any portion of the loans if [the] plaintiff is not likewise required to pay. Moreover, absent a finding as to whether the debts to [the] plaintiff's relatives did or did not exist, it may be necessary for those relatives to establish the basis and amount of the debts.
>
> [Ibid.]

Following review of the facts at hand, we are not persuaded defendant suffered prejudice by plaintiff's non-responsiveness during cross-examination or her disruptive behavior tolerated by the trial judge warranted a new trial. We are hard-pressed to

criticize the trial judge's attempts to control the courtroom. In hindsight, one reading the trial transcripts might suggest things should have been done differently. However, we are not convinced possible errors when dealing with plaintiff prevented defendant from presenting his case.

We understand defendant argues plaintiff's claimed lack of understanding of family finances and estate planning is incompatible with her extensive financial and tax educational achievements. This may be true. In the trial judge's words, plaintiff's testimony was scattered and, "tenuous at best." His credibility findings imply some of plaintiff's conduct aligned with her "fixed agenda," which included among other things "'getting back' at [d]efendant." The judge further characterized plaintiff as "belligerent" and "fixated."

That said, we also cannot overlook plaintiff suffered health and emotional problems. Early in the litigation defendant asserted the necessity to appoint a guardian ad litem for plaintiff. In the companion guardianship matter a different judge conducted a trial and concluded plaintiff was competent.

In our view, the trial judge is in the best position to discern whether plaintiff feigned ignorance. He did not make such a finding. Rather, his opinion conveys plaintiff was

fixated on a given set of results on somewhat specific issues, and "she clearly was stressed beyond her limits."

Importantly, despite his general finding defendant was credible,[2] and although there is no serious challenge to the fact the parties' living expenses exceeded defendant's earnings necessitating supplemental funds unquestionably provided by the family trusts, the judge rejected defendant's position seeking plaintiff to share in the obligation to repay the loans. This decision turned on a conclusion defendant did not satisfactorily meet his obligation to prove he must repay the debts. This conclusion is supported by the record.

In finding defendant's proofs deficient, the judge noted: the notes contained no specific terms for interest or repayment; the trust did not intervene in the litigation to protect its interest; documents produced lacked specificity as to the total amounts distributed, which were asserted only by defendant; and defendant generally held a beneficial interest in the trusts. Most significant among the judge's findings was the absence of disclosure of the debts on the 2002 and 2004 mortgage loan

[2] The judge found defendant to be "cooperative, forthcoming and credible." He "responded in a candid, straight forward, direct, non-evasive manner to questions on direct and cross-examination."

applications and the loan officer's lack of recollection to corroborate defendant's testimony he orally revealed the debts.

Even if plaintiff were aware of the borrowings, as defendant now argues, the judge determined defendant's claim of required repayment was neither binding nor determinative. Rather, he scrutinized the evidence and found defendant's assertions of necessary repayment was "not credible." We defer to these supported factual findings, including this credibility assessment. Cesare, supra, 154 N.J. at 412. Accordingly, we discern no basis to interfere with the conclusion plaintiff was not obligated to reimburse these monies.

B.

Next, in Points II, III, and IV, defendant raises several arguments attacking the trial judge's valuation and equitable distribution of his interest in the law firm. Defendant suggests there are factual flaws in the findings and further seeks reversal based on a misapplication of the law. For the reasons discussed below, we conclude the calculation of the value of defendant's law practice and percentage interest granted to plaintiff must be reversed.

We first recite the pertinent facts. Defendant joined his firm in 1978 when he graduated from Harvard Law School. He specialized in complex tax matters and billed over 2000 hours

each year. He was named an equity partner on January 1, 1984, and owned one share of stock. The firm modified its structure on January 1, 2013, changing from a professional corporation to a limited liability partnership. Defendant was required to provide a $300,000 capital contribution, financed through a four-year note.

Detailed and lengthy testimony from the firm's chief administrative officer (CAO) and the parties' respective forensic accounting experts — Ilan Hirschfeld for plaintiff, and Thomas J. Hoberman for defendant — described defendant's annual compensation, and offered opinions on the fair value of his interest in the law firm as of May 20, 2008, the date plaintiff filed her complaint for divorce.

Defendant is a party to a shareholder's agreement with the firm. The agreement includes the firm's obligation to purchase a shareholder's stock when he or she ceases to be employed by the firm, and defines the formula fixing the amount of payment for the interest.

The CAO explained the firm's compensation system for equity partners, including the calculation of each partner's interest in the firm, known as the termination credit account (TCA).[3]

[3] The CAO testified as of the date of trial, based on the firm's status, partners no longer received W-2s, no longer (continued)

Throughout the year, partners received a draw and expenses and benefits, such as pension contributions, professional dues and associations, medical claims, as well as professional liability and life insurances. These payments reduced an individual's TCA. Then, at year-end, the firm's nine-member compensation committee computed the firm's excess income, which is allocated among the equity partners, based on a defined formula replenishing the TCA as of December 31. The allocation considered billable hours, "evaluated time," that is, collection of billings, and origination of new business. Seniority does not affect compensation, and past performance may be subjectively considered in a specific allocation. In essence, the TCA represents the equity partner's interest in the firm.

Much of defendant's workload is originated by fellow partners. He was not a significant originator of new clients; rather, he worked many hours in his highly specialized practice area. Defendant received a gross bi-monthly draw, a quarterly distribution and a variable amount of excess distributions, based on his allocation of firm's year-end net income, or profit. There also was an interest component attached to the TCA.

(continued)
participate in the employee pension plan, and are not permitted to participate in flexible spending plans.

Although the firm no longer imposes a mandatory retirement age, once an equity partner reached age sixty-five, the board of directors determines whether the individual could continue to participate in the allocation system or whether he or she moves to senior status, which is a salaried position. If a partner moved to senior status, the TCA account would not increase by future allocations, and charges against the account would cause it to decrease. The balance of the TCA would be paid out over four years, when an equity partner left the firm. Further, upon defendant's completion of thirty-years of partnership participation, he became eligible to receive a discretionary longevity bonus equal to twenty-five percent of the average salary earned during the five highest of his final ten years of service. In May 2008, defendant had not accrued the requisite vesting period; however, he achieved this milestone on December 31, 2013, prior to trial.

Hirschfeld's report computed "a calculation of value" of defendant's interest in the firm, comprised of his TCA "as well as the value of his interest in the enterprise value or goodwill, of the Firm." The latter intangible "includes, but is not limited to, it[]s business reputation, national name recognition, and established relationship with its clients and

employees, all of which provide value to the Firm and its owners."

In determining defendant's TCA account, Hirschfeld assumed defendant would retire at age seventy, used an annual two percent growth period, and an average of defendant's annual compensation over five years, adjusted for extraordinary non-reoccurring distributions. Also, an adjustment was made to include the projected longevity bonus. Following this methodology, he calculated the after tax TCA value as $350,830. Following cross-examination, prior to redirect, Hirschfeld prepared a revised computation, making several adjustments to his original calculations. On redirect, he explained the changes resulted because he agreed some of Hoberman's challenges. The bottom line was a revised TCA value of $292,908.

Goodwill was added as a component of defendant's firm interest. First, Hirschfeld determined the reasonable compensation of an attorney with defendant's education and experience.[4] The differential between the reasonable compensation and the distributions made represented defendant's

[4] Both Hirschfeld and Hoberman relied on data published in the Survey of Law Firm Economics by Altman Weil Publications, Inc. as a reference for annual billable hours and reasonable compensation for those working in defendant's legal specialty; Hirschfeld used the 2007 issue, while Hoberman used 2008.

share of the firm's profits as an owner. Earnings based on historic data were projected to defendant's retirement date at age seventy adjusted for taxes, using a forty percent tax rate, then reduced to present value. Following these calculations, Hirschfeld opined the goodwill value of defendant's individual interest in the firm was $1,198,770. This too was revised on redirect, after various corrections were made, to $1,185,304.

Hoberman's methodology to compute the TCA was similar to Hirschfeld's; however, his overall opinion of value differed, as he concluded there was no separate goodwill interest in defendant's firm ownership. In computing the TCA, Hoberman noted equity partners contracted to subordinate their TCA accounts to the firm's equity credit line. Defendant asserted $98,463 of his TCA was subordinated as security to this line of credit. Hoberman opined the billable hours, hourly rate of compensation, and average billings as reported for defendant were consistent with the Altman Weil survey for an attorney similarly situated. It was Hoberman's opinion defendant's accrual basis income allocation was similar to the reported reasonable compensation data. Therefore, the TCA account alone represented the true value of defendant's interest in the firm, and there was no additional goodwill component. He computed the TCA account balance on the date of the complaint as $620,000,

which discounted for present value and adjusted for taxes determined defendant would realize $285,000.

Hoberman disagreed with Hirschfeld's calculations, noting areas where Hirschfeld double counted items; added perquisites, which defendant did not receive; used a depressed reasonable compensation amount. Further, Hoberman disagreed the TCA would steadily increase annually as Hirschfeld assumed and asserted Hirschfeld wrongly allocated non-reoccurring special allocations as if they would be regularly received. Finally, Hoberman explained his rejection of the inclusion of goodwill.

In his written opinion, the trial judge found it "incredible" the firm had no goodwill value. Consequently, the judge rejected Hoberman's opinion. Although the opinion recites Hoberman's testimony identifying errors and flaws in Hirschfeld's report, the judge, without clarification, accepted the original unadjusted valued stated by Hirschfeld: that is, the TCA as $350,830 plus goodwill for defendant's interest valued as $1,198,077. The judge reduced the total by the $300,000 debt defendant incurred to fund his capital account upon the firm's restructuring. He then awarded plaintiff one-half of the remainder as her equitable interest.

On appeal, defendant argues the court's conclusion demonstrates a "misunderstanding of the facts, [a]

misapplication of the law and . . . [an] abdication of . . . responsibility to reach a result that was the product of a careful and reasoned application of the law to the actual facts." He notes the judge used Hirschfeld's initial calculations of value even though Hirschfeld had changed his opinion and reduced the total value on redirect.[5]

On the issue of goodwill, defendant asserts the trial judge erred by assuming because the firm had goodwill, individual partners must separately have goodwill. Another legal error defendant raises is the reliance on an unpublished opinion to justify the trial conclusion. Moreover, defendant maintains prior New Jersey Supreme Court opinions support his position that he has no goodwill interest in his firm. Alternatively, he argues the amount fixed for this intangible asset was neither explained nor supported.

Defendant additionally argues the judge abused his discretion by awarding a fifty-percent distribution to plaintiff, effectively allocating the same dollars three times. We consider these issues.

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[5] Defendant also notes the judge misunderstood the impact of defendant's required capital contribution and accompanying debt incurred during the firm's restructuring. He notes this benefited him because the judge reduced his interest by the debt amount even though the debt and the capital account offset each other. He makes this point to demonstrate the judge's lack of understanding of the issues.

Trial courts must always remember,

> "[t]he goal of equitable distribution . . . is to effect a fair and just division of marital [property]." Steneken v. Steneken, 183 N.J. 290, 299 (2005) (citation omitted). To fashion an equitable distribution award, the trial judge must identify the marital assets, determine the value of each asset, and then decide "how such allocation can most equitably be made." Rothman v. Rothman, 65 N.J. 219, 232 (1974). In addition, the judge must consider, but is not limited to, the sixteen statutory factors set forth in N.J.S.A. 2A:34-23.1. Fashioning an equitable distribution of marital assets and debts requires more than simply "mechanical division"; it requires a "weighing of the many considerations and circumstances . . . presented in each case." Stout v. Stout, 155 N.J. Super. 196, 205 (App. Div. 1977).
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> [Elrom v. Elrom, 439 N.J. Super. 444 (App. Div. 2015).]

"A Family Part judge has broad discretion . . . in allocating assets subject to equitable distribution." Clark v. Clark, 429 N.J. Super. 61, 71-72 (App. Div. 2012). However, "discretion is not unbounded and is not the personal predilection of the particular judge." Catholic Family & Cmty. Serv. v. State-Operated Sch. Dist. of Paterson, 412 N.J. Super. 426, 442 (App. Div. 2010) (quoting State v. Madan, 366 N.J. Super. 98, 109 (App. Div. 2004)). "[T]he authority to exercise . . . discretion is not an arbitrary power of the individual judge, to be exercised when, and as, his caprice, or passion, or

partiality may dictate . . . ." Ibid. (quoting Madan, supra, 366 N.J. Super. at 109). Rather, the nature of judicial discretion requires a trial judge to determine whether to act, and if so, to render a decision "guided by the spirit, principles and analogies of the law, and founded upon the reason and conscience of the judge, to a just result in the light of the particular circumstances of the case." Smith v. Smith, 17 N.J. Super. 128, 132 (App. Div. 1951), certif. denied, 9 N.J. 178 (1952). "Moreover, the court must provide factual underpinnings and legal bases supporting the exercise of judicial discretion." Clark, supra, 429 N.J. Super. at 72.

We must reverse if we find the trial judge clearly abused his or her discretion, such as when the stated "findings were mistaken[,] or that the determination could not reasonably have been reached on sufficient credible evidence present in the record[,]" or where the judge "failed to consider all of the controlling legal principles." Gonzalez-Posse v. Ricciardulli, 410 N.J. Super. 340, 354 (App. Div. 2009); see also Wadlow v. Wadlow, 200 N.J. Super. 372, 382 (App. Div. 1985) (reversal is required when the results could not "reasonably have been reached by the trial judge on the evidence, or whether it is clearly unfair or unjustly distorted by a misconception of the law or findings of fact that are contrary to the evidence."

(quoting Perkins v. Perkins, 159 N.J. Super. 243, 247 (App. Div. 1978))).

It is a settled legal question that intangible goodwill may attach to an attorney's interest in a professional practice. Dugan v. Dugan, 92 N.J. 423, 433 (1983). If found, the value of goodwill is subject to the equitable distribution claims of the non-titled spouse. Ibid. However, the determination of the amount ascribed to goodwill is a complex question of fact.

In this case, the ultimate question that must be resolved is the value of goodwill defendant had as an equity partner in the firm. In concluding goodwill existed as a component of value of this marital asset, the trial judge failed to make specific factual findings to support the value of attendant goodwill. Consequently, we are constrained to reverse the resultant unsupported conclusions.

The most straightforward basis for our conclusion is the value of defendant's interest in his law firm, as stated in the final judgment, was taken from Hirschfeld's original opinion without consideration of Hirschfeld's revised testimony. After initially testifying, Hirschfeld distinctly reduced his initial calculations of the TCA and the goodwill components, admitting they were flawed. Inexplicably, the trial judge overlooked this evidence and incorporated the original calculations.

Next, the judge's stated factual findings are predominately conclusory. The judge recited the experts' testimony and acknowledged Hoberman's criticisms of Hirschfeld's calculations. Thereafter, the judge rejected Hoberman's opinion the value of goodwill was zero, and ordered the value originally opined by Hirschfeld. However, no reasons were offered for why Hoberman's challenges to Hirschfeld's value apparently was found unpersuasive, and no analysis or evidence supports the ultimate conclusion.

Certainly, a factfinder may accept or reject expert testimony in whole or in part, Brown v. Brown, 348 N.J. Super. 466, 478 (App. Div.), certif. denied, 174 N.J. 193 (2002), but there must be a weighing and evaluation of the evidence to reach whatever conclusion may logically flow from the aspects of testimony the court accepts. All conclusions must be supported.

As Dugan instructs, the start of the examination of goodwill considers whether excess earnings exist. Dugan, supra, 92 N.J. at 439-40. This was a highly contested issue on which the experts used slightly different resources and offered greatly disparate opinions. Factual findings regarding this pivotal question were not provided.

A judge's failure to perform factfinding "constitutes a disservice to the litigants, the attorneys and the appellate

court." Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (quoting Kenwood Assocs. v. Bd. of Adjustment Englewood, 141 N.J. Super. 1, 4 (App. Div. 1976)); R. 1:7-4(a); see also Kas Oriental Rugs, Inc. v. Ellman, 407 N.J. Super. 538, 562-63 (App. Div.), certif. denied, 200 N.J. 476 (2009) (requiring a judge, to "find the facts and state [all] conclusions of law . . . on every motion decided by a written order that is appealable as of right").

The judge also made no findings when fixing plaintiff's entitlement to defendant's interest in his law firm at fifty-percent. The equitable distribution statute "reflects a public policy that is 'at least in part an acknowledgment that marriage is a shared enterprise, a joint undertaking, that in many ways [] is akin to a partnership.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 284 (2016) (quoting Smith v. Smith, 72 N.J. 350, 361 (1977)). But, equitable is not synonymous with equal. See Rothman, supra, 65 N.J. at 232 n.6. Our courts must remain true to the legislative mandate expressed in N.J.S.A. 2A:34-23.1, which assures an ordered equitable distribution be "designed to advance the policy of promoting equity and fair dealing between divorcing spouses." Barr v. Barr, 418 N.J. Super. 18, 45 (App. Div. 2011). This requires evaluation of unique facts attributed to each asset.

The omission of necessary findings requires we vacate provisions in the final judgment fixing the value and distribution of defendant's interest in the firm. To aid the remand proceeding, the outcome of which will require analysis and establishment of supporting factual findings necessary to resolve the complex question of value surrounding a goodwill component attached to an interest in a law firm, we recite the authority establishing goodwill as an intangible asset subject to equitable distribution, as well as the required analysis to be undertaken by a trial court when fixing goodwill value.

In Stern v. Stern, 66 N.J. 340 (1975), the Court examined the defendant's challenges to ordered equitable distribution of his partnership interest in a "very successful, well-known and highly respected law firm." Id. at 344. In part, the defendant contested "the propriety of considering his earning capacity as being a separately identified and distinct item of property." Ibid. The Court agreed, stating:

> [A] person's earning capacity, even where its development has been aided and enhanced by the other spouse, as is here the case, should not be recognized as a separate, particular item of property within the meaning of N.J.S.A. 2A:34-23. Potential earning capacity is doubtless a factor to be considered by a trial judge in determining what distribution will be "equitable" and it is even more obviously relevant upon the issue of alimony. But it should not be

> deemed property as such within the meaning of the statute.
>
> [Id. at 345 (footnote omitted).]

The Court also discussed the methodology for making this difficult assessment of value. Id. at 346. In this regard, the partnership agreement was the starting point.

> Generally speaking, the monetary worth of this type of professional partnership will consist of the total value of the partners' capital accounts, accounts receivable, the value of work in progress, any appreciation in the true worth of tangible personalty over and above book value, together with good will, should there in fact be any; the total so arrived at to be diminished by the amount of accounts payable as well as any other liabilities not reflected on the partnership books. Once it is established that the books of the firm are well kept and that the value of partners' interests are in fact periodically and carefully reviewed, then the presumption to which we have referred should be subject to effective attack only upon the submission of clear and convincing proofs.
>
> [Id. at 346-47 (footnotes omitted).]

Although not reviewing the valuation of the intangible goodwill of the defendant's partnership interest, the Court explained:

> The good[]will of a law firm, for ethical reasons, may not be sold or transferred for a valuable consideration. N.J. Advisory Committee on Professional Ethics, Op. 48, 87 N.J.L.J. 459 (1964); Opinion 80, 88 N.J.L.J. 460 (1965). It may, however, in a given case, be possible to prove that it does

> exist and is a real element of economic worth. Concededly, determining its value presents difficulties. Rev. Rul. 609, 1968-2 Cum. Bull. 327.
>
> [Id. at 347 n.5.]

Years later, in Dugan, the Court undertook review of whether goodwill was part of the value of the plaintiff's, a solo practitioner, law practice, "if so, whether it constitutes property subject to equitable distribution; and, if so, how it is to be evaluated." Dugan, supra, 92 N.J. at 428. Noting intangible goodwill is "essentially reputation that will probably generate future business," the Court suggested goodwill encompasses the "advantages of an established business that contribute to its profitability," such as a good name, capable staff, and a reputation for superior services. Id. at 429-30. Further, "[g]oodwill can be translated into prospective earnings." Id. at 431. Emphasizing "future earning capacity, per se, is not goodwill," the Court held, "[W]hen that future earning capacity has been enhanced because reputation leads to probable future patronage from existing and potential clients, goodwill may exist and have value. When that occurs the resulting goodwill is property subject to equitable distribution." Id. at 433; see also Levy v. Levy, 164 N.J. Super. 542, 554 (Ch. Div. 1978) ("What is being measured is in reality the capacity of repeat patronage and of a certain

immunity to competition to produce earnings beyond the average for that kind of business."). The Court explained:

> After divorce, the law practice will continue to benefit from that goodwill as it had during the marriage. Much of the economic value produced during an attorney's marriage will inhere in the goodwill of the law practice. It would be inequitable to ignore the contribution of the non-attorney spouse to the development of that economic resource. An individual practitioner's inability to sell a law practice does not eliminate existence of goodwill and its value as an asset to be considered in equitable distribution. Obviously, equitable distribution does not require conveyance or transfer of any particular asset. The other spouse, in this case the wife, is entitled to have that asset considered as any other property acquired during the marriage partnership.
>
> [Dugan, supra, 92 N.J. at 434.]

"For purposes of valuing the goodwill of a law practice, the true enhancement to be evaluated is the likelihood of repeat patronage and a certain degree of immunity from competition." Ibid. Careful consideration in assigning value to goodwill in a divorce action is required because the attorney-spouse is essentially "forced to pay the ex-spouse 'tangible' dollars for an intangible asset." Id. at 435.

Dugan articulated "one appropriate method to determine the value of goodwill of a law practice." Id. at 139. This computation is "accomplished by fixing the amount by which the

attorney's earnings exceed that which would have been earned as an employee by a person with similar qualifications of education, experience and capability." Ibid.; see also Levy, supra, 164 N.J. Super. at 547 ("Where the business is a service organization then the question of excess [net earnings] requires comparison of the net earnings with the reasonable value of the personal services which produced them."). The methodology followed requires a trial court to

> first, ascertain what an attorney of comparable experience, expertise, education and age would be earning as an employee in the same general locale. The effort that the practitioner expends on his law practice should not be overlooked when comparing his income to that of the hypothetical employee. A sole practitioner who, for example, works a regular sixty-hour week may have a significantly greater income than an employee who regularly works a forty-hour week, and the income may be due to greater productivity rather than the realization of income on the sole practitioner's goodwill. Next, the attorney's net income before federal and state income taxes for a period of years, preferably five, should be determined and averaged. The actual average should then be compared with the employee norm. If the attorney's actual average realistically exceeds the total of (1) the employee norm and (2) a return on the investment in the physical assets, the excess would be the basis for evaluating goodwill.
>
> The excess is subject to a capitalization factor [which is] the number of years of excess earnings a purchaser would be willing to pay for in advance in

> order to acquire the goodwill. The precise capitalization factor would depend on [a variety of factors including] [t]he age of a lawyer . . . because . . . goodwill would probably terminate upon death. . . . Subject to such adjustments, . . . a figure close to the true worth of the law practice's goodwill may be obtained.
>
> [Dugan, supra, 92 N.J. at 439-400 (citations omitted).]

The Court's discussion also makes it clear this stated methodology was not dispositive. Understanding Dugan involved a solo practitioner, the Court acknowledged other means of reaching the required determination may be appropriate, including reference to partnership or shareholder agreements, and consideration of

> the limitations to which we have previously alluded, as well as the expertise and age of the individual should be factored into any evaluation. Moreover, potential federal tax consequences should be considered in determining equitable distribution.
>
> [Id. at 441.]

Here, a nuanced valuation methodology is required because defendant is an equity partner in a large firm, who generally is not responsible for originations, and who is bound by the firm policies and a shareholder agreement.

Each expert offered an opinion of the reasonable compensation for an attorney similarly situated, having comparable experience and expertise, to discern the reasonable

compensation for defendant's services and whether he received excess earnings. Yet, the judge failed to analyze the differences in these opinions, which essentially drove the conclusion reached by each expert. Further, Hoberman's identification of flaws in Hirschfeld's analysis, some of which were conceded by Hirschfeld, were completely overlooked.

We believe the trial judge misunderstood Hoberman's conclusion, as suggesting goodwill did not exist for the firm. Actually, Hoberman's opinion asserted the TCA of each equity partner accounted for any goodwill. Further, plaintiff, who was not an originator but a worker in a highly specialized legal area, was actually paid what a similarly skilled lawyer would be paid. Thus, defendant's compensation matched his earning capacity, nothing more. This view considered whether defendant's "future earning capacity has been enhanced because reputation leads to probable future patronage from existing and potential clients" and concluded it did not. Accordingly, there was no additional component of goodwill. Id. at 433.

In this matter, any analysis of goodwill must evaluate the firm's shareholder's agreement to determine whether it is an appropriate measure of the total firm value, including goodwill. That formula computes an exiting partner's interest, calculated as a portion of the firm's excess earnings. See Levy, supra,

164 N.J. Super. at 534. The Court must discern the objectiveness and accuracy of the formula and calculations. When "it is established that the books of the firm are well kept and that the value of partners' interests are in fact periodically and carefully reviewed, then the presumption to which we have referred should be subject to effective attack only upon the submission of clear and convincing proofs." Stern, supra, 66 N.J. at 347.

Further, when calculating the value of his firm asset, the analysis must consider defendant's projected term of future employment. As noted, Hirschfeld assumed defendant would continue as an equity partner until age seventy. However, evidence was presented showing defendant's working status may change once he reaches age sixty-five. At that point, the firm could require defendant to become a salaried employee. The firm's established policies may make the use of earnings over an additional five-year period as an equity partner, rather than senior status inappropriate. If so, the calculation used by Hirschfeld must be considered to discern if they artificially inflated goodwill. This area of analysis was not undertaken. See R. 1:7-4.

The value attributed by the judge to defendant's TCA interest suffers similar faults. First, Hirschfeld modified his

initial value, reducing it from $350,830 to $292,908. Second, the modified value assumed defendant would remain an equity partner until age seventy, continuing to work at the same pace regardless of his advanced age. As noted, the facts in evidence tear at the accuracy of this assumption. Finally, no findings were made to support why Hoberman's computation was rejected in favor of Hirschfeld's. The conclusory determination by the judge is unfounded.

Once the value of defendant's interest in his firm is determined, an analysis must be made to discern plaintiff's interest in the asset. This demands an examination of equitable factors set forth in N.J.S.A. 2A:34-23.1. The Legislature has mandated: "In every case . . . the court shall make specific findings of fact on the evidence relevant to all issues pertaining to asset eligibility or ineligibility, asset valuation, and equitable distribution, including specifically, but not limited to, the factors set forth in this section." Ibid. Specific to this asset, a measure of consideration must be given to the lack of intrinsic value associated with any amount determined as individual goodwill. N.J.S.A. 2A:34-23.1(p); see also Dugan, supra, 92 N.J. at 435.

For these reasons, the provisions of the final judgment fixing the value of defendant's interest in his law firm, as

well as setting plaintiff's equitable interest in this marital asset, must be vacated and the matter remanded for further consideration consistent with this opinion. We understand the trial judge has been assigned to a different trial division, and because certain credibility determinations were made, which are now set aside as unsupported, we order the matter reassigned by the Presiding Judge of the Family Part to a new trial judge. We need not further analyze the argument offered by defendant in Point IX.

We reject as unavailing defendant's argument that the inclusion of properly computed goodwill double counts the same dollars. See Steneken, supra, 183 N.J. at 298 (emphasizing because alimony and equitable distribution serve two separate purposes, it is not required that "a credit on one side of the ledger must perforce require a debit on the other side").

Another issue related to this obligation, set forth in Point VII, challenges the payment schedule to satisfy plaintiff's equitable distribution interest, provided in the July 18, 2014 post-judgment order. Although a payment schedule for satisfaction of equitable distribution may be equitable here, the payment provisions must be vacated because the amount of the assets and plaintiff's interest remains subject to further review.

C.

In Point VIII, defendant argues the trial court erred in distributing his Union Central and Wells Fargo IRAs urging they were funded with monies from a premarital bank account. Following trial, the judge accepted defendant's proofs and concluded the assets were exempt from equitable distribution. See Valentino v. Valentino, 309 N.J. Super. 334, 338 (App. Div. 1998) ("Any property owned by a husband or wife at the time of marriage will remain the separate property of such spouse and in the event of divorce will be considered an immune asset and not eligible for distribution."). Upon plaintiff's motion for reconsideration, the judge changed his mind, stating "there was no believable evidence produced by [d]efendant to establish that these funds were premarital and the so-called proofs postdated the marriage by eight years. Obviously the court was mistaken in its decision." This explanation is lacking, and conflicts with the very detailed credibility findings made by the court, accepting defendant's trial testimony, as stated in the final judgment.

Although no documents verifying the establishment of the premarital bank account were presented, evidence in the form of defendant's testimony was presented on this issue. Also, defendant admitted two checks from the account and explained

other records were destroyed when the parties' home was flooded. The checks reflect the asset was titled solely to defendant and note payments were transferred to the subject IRA accounts. Plaintiff cross-examined defendant in an effort to challenge his credibility, but provided no testimony of evidence refuting his claims.

We are unable to reconcile the statements in the post-judgment order referencing "so-called proofs" or why defendant's testimony first found "forthcoming," "candid, straight-forward, direct," and "non-evasive," was thereafter characterized as "no believable evidence." Testimony is evidence, and the contradictory conclusions without more require the provision in the July 28, 2014 order be vacated and the issues reviewed anew on remand.

D.

Lastly, defendant argues the court abused its discretion in awarding plaintiff counsel fees and expert costs in connection with litigation. The assessment of counsel fees is discretionary. Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001); Eaton v. Grau, 368 N.J. Super. 215, 225 (App. Div. 2004). In our review, "[w]e will disturb a trial court's determination on counsel fees only on the 'rarest occasion,' and then only because of clear abuse of discretion." Strahan v.

Strahan, 402 N.J. Super. 298, 317 (App. Div. 2008) (citing Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

An allowance for counsel fees is permitted to any party in a divorce action, R. 5:3-5(c), subject to the provisions of Rule 4:42-9. The rule provides that "all applications for the allowance of fees shall be supported by an affidavit of services addressing the factors enumerated by RPC 1.5(a)." R. 4:42-9(b). To determine whether and to what extent such an award is appropriate, the court must consider:

> (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.
>
> [R. 5:3-5(c).]

Here, the judge evaluated the statutory factors in rendering his award to plaintiff. He ordered defendant pay $467,793.38 in fees and $23,804.24 in expert costs. However, we determine certain findings were mistaken, and the need for

additional review requires reversal. Rova Farms, supra, 65 N.J. at 484.

First, we comment on certain findings made on this issue, which must be set aside. The judge stated defendant was "extremely well-off . . . earning in excess of $1,000,000 per year." This finding failed to account for ordered obligations, which significantly impact defendant's available income, including alimony and equitable distribution payments along with debts for which defendant was solely responsible.

Next, the judge found defendant's positions regarding the loans and the zero goodwill value in his firm evinced badges of bad faith. This finding is unsupported. The existence of the borrowings was not disputed. At issue was repayment. The position was not fallacious; rather, the proofs were found insufficient. Further, we reversed the findings regarding value of defendant's interest in his firm.

That a party advances a legal position reasonably supported which the court rejects, is not the equivalent of "bad faith." Tagayun v. AmeriChoice of N.J., Inc., 446 N.J. Super. 570, 580 (App. Div. 2016) ("When [a party]'s conduct bespeaks an honest attempt to press a perceived, though ill-founded and perhaps misguided, claim, he or she should not be found to have acted in bad faith." (quoting Belfer v. Merling, 322 N.J. Super. 124,

144-45 (App. Div.), certif. denied, 162 N.J. 196 (1999)). Examples of bad faith include misusing or abusing process, seeking relief not supported by fact or law, intentionally misrepresenting facts or law, or otherwise engaging in vexatious acts for oppressive reasons. Borzillo v. Borzillo, 259 N.J. Super. 286, 293-94 (Ch. Div. 1992). None of these events occurred.

Second, certain findings are no longer accurate. The judge considered the amount of fees plaintiff incurred, stated as more than "$1.7 million," finding plaintiff would be forced to expend a portion of her equitable distribution to pay her remaining counsel fees. However, the supplemental orders entered on June 7, 2016, stipulated plaintiff's indebtedness to her attorneys stood at $450,000, plus interest. This sum is less than the amount defendant was ordered to contribute.

Although we reject defendant's suggestion of collusion, the debt owed by plaintiff is unquestionably relevant to any award imposed on the adverse party. Argila v. Argila, 256 N.J. Super. 484, 490 (App. Div. 1992). Whatever the reason plaintiff's counsel consented to compromise the sums claimed due, a burden placed on defendant for payment must fairly account for the obligation plaintiff owes.

The judge's reliance on the results obtained by plaintiff has now been altered on appeal as we have vacated the provisions fixing the value of defendant's interest in his law firm. Finally, no assessment was made regarding plaintiff's actions, her refusal to answer, being disruptive and otherwise uncooperative, and causing the trial to extend over nineteen days.

The order cannot stand because it was based on insufficient, and now, vacated findings. The provision ordering defendant to pay plaintiff's fees is vacated. We direct the issue reviewed on remand.

We do not disturb the ordered expert fees. The sums ordered represent a reasonable allocation to assure a level playing field between the parties. Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992).

III.

Plaintiff's cross-appeal argues the trial judge abused his discretion by refusing to retroactively award her an additional $300,000 in pendente lite support for the period June 2009 through June 2014, plus $53,000 to repay a loan she incurred. We disagree.

The September 19, 2008 pendente lite support order directed defendant to pay all plaintiff's monthly shelter and

transportation expenses as listed in her Case Information Statement (CIS); an additional $10,000 for monthly personal expenses. Further, defendant remained obligated to maintain medical insurance, pay plaintiff's medical expenses, and continue all life and car insurance. On May 21, 2009, the judge granted defendant's motion to halve his monthly contribution to plaintiff's personal expenses, effective June 15, 2009, based on proof of a decrease in his income. Plaintiff did not seek further review or adjustment of support and evidence shows plaintiff's income increased from the 2009 levels.

Pendente lite support orders are subject to modification at the time final judgment is entered. Mallamo v. Mallamo, 280 N.J. Super. 8, 12 (App. Div. 1995). Any changes in the initial orders rest with the trial judge's discretion. Jacobitti v. Jacobitti, 263 N.J. Super. 608, 617 (App. Div. 1993), aff'd, 135 N.J. 571 (1994). A retroactive increase in the ordered pendente lite support should be considered when the amount initially awarded based on limited information at the inception of a matrimonial matter is later determined "woefully inadequate" or "obviously unjust" once all facts and circumstances are fleshed out at trial. Id. at 617-18.

In denying plaintiff's request for an award amounting to an additional $5000 per month for the period June 2009 through June 2014, the trial judge found:

> Plaintiff has failed to set forth any justifiable reason to give her a windfall of this nature. She has not demonstrated any additional need. She did not prove that she needed a $53,000.00 insurance loan. The $5,000 [pendente lite] order for [p]laintiff's [personal] expenses entered in May of 2009 was consistent with the marital lifestyle. The evidence established that during the [pendente lite] timeframe, [p]laintiff received a far larger share of [d]efendant's net income than he did . . . . Plaintiff likewise failed to account for the income she received during that period.

Plaintiff's motion for reconsideration of this order was denied, as plaintiff had not "convinced the court of the efficacy of her argument." The judge stated:

> The alimony awarded to her of $260,000.00 per year is before taxes. After taxes are deducted she nets only about $175,000.00. Therefore[,] using her own logic, she has received in excess of the $144,000.00 lifestyle. The net result is substantially the same considering the passage of 6 years since the original Case Information Statement . . . was filed. Furthermore, most of the plaintiff's so-called financial woes were caused by her. She put HIPPA blocks on her medicals creating havoc and resulting in unpaid bills/judgments against her. She switched the cell phone billing. She switched the EZ Pass. None of these actions were necessary. Plaintiff failed and refused to confer with [d]efendant who was paying those bills. Plaintiff also raises tuition issues which

> are self-imposed. While the pursuit of higher education is certainly a noble endeavor, at some point in your life you must pursue your career. Plaintiff was 58 at the time of the trial with an advanced education and a professional degree and license. There is no evidence that her income will be greatly improved by her securing an additional advanced degree.

These findings are supported by the substantial, credible evidence of record. We will not intervene. Beck, supra, 86 N.J. at 496.

IV.

The consolidated appeal regards a challenge to the denial of defendant's motion to dismiss a petition, initiated by plaintiff's trial attorneys, to enforce defendant's payment of the counsel fee award.[6] Defendant posited counsel lacked standing to seek enforcement of the matrimonial order. Notably, plaintiff's counsel subsequently informed the judge plaintiff was disputing the invoice, and a motion for a charging lien was filed. The judge denied defendant's motion, and directed him to pay the ordered $254,950.03 to plaintiff's counsel's trust account within thirty days and to comply with the payment schedule established in the July 28, 2014 order. On appeal, defendant renews his argument.

[6] Also, defendant sought the judge's recusal, an issue we need not reach.

Traditionally, courts in New Jersey have taken a "generous view of standing." In re N.J. State Contract, 422 N.J. Super. 275, 289 (App. Div. 2011). A litigant has standing to prosecute an action when that litigant has a "sufficient stake and real adverseness with respect to the subject matter of the litigation, and a substantial likelihood that some harm will fall upon it in the event of an unfavorable decision." In re N.J. Bd. Of Pub. Utils., 200 N.J. Super. 544, 556 (App. Div. 1985) (citing N.J. State Chamber of Commerce v. N.J. Election Law Enf't Comm'n, 82 N.J. 57, 67 (1980)). Courts will not entertain proceedings brought by parties who are merely interlopers or strangers to a dispute. Ridgewood Educ. Ass'n v. Ridgewood Bd. of Educ., 284 N.J. Super. 427, 432 (App. Div. 1995). A financial interest in the outcome of the litigation may confer standing. See Jen Elec., Inc. v. Cty. of Essex, 197 N.J. 627, 644 (2009)

Defendant challenges plaintiff's counsel's right to move for enforcement when he was contemporaneously seeking relief adverse to his former client. Further, he argues to allow plaintiff's attorney to petition for enforcement permits preferential treatment of counsel, who is merely one of many of plaintiff's creditors.

In Williams v. Williams, 59 N.J. 229 (1971), counsel petitioned for an award of counsel fees for legal services rendered to the plaintiff in the matrimonial action, who had passed away. Id. at 231. Noting there was "no dispute that had the litigation proceeded to final judgment, [the] plaintiff-wife would have been entitled to an award of counsel fees and costs[,]" the Court found "no logical reason why the wife's untimely demise should relieve the husband of an obligation which as a matter of policy and justice he ought to bear." Id. at 233-34. The Court also rejected the defendant-husband's argument to deny counsel's application because the award was sought directly and counsel lacked standing, stating:

> In our view, petitioners have standing as unpaid solicitors. Our cases recognize that while counsel fees and costs are awarded to the litigant, they properly "belong" to counsel and the allowances are to be held in trust for the attorneys who furnished the services. Thus, the attorney is a party in interest to that extent. Here, there is no possibility of recovery from the decedent's estate; and, unless petitioners are allowed to press their application, they will go uncompensated and defendant will be unjustly enriched to that extent. In such circumstances, we think it clear that petitioners should be allowed to proceed in their own right.
>
> [Id. at 234-35 (citations omitted).]

In Tagliabue v. Tagliabue, 183 N.J. Super. 547 (Ch. Div. 1982), Judge Conrad W. Krafte considered a similar question.

The defendant objected to the petition by plaintiff's former attorney for fees, maintaining the attorney "[d]oes not have the right to apply for counsel fees" and counsel "no longer represents" the plaintiff because "he voluntarily withdrew from this case." Id. at 548. The defendant's argument was rejected because: "Equity, which will not permit a wrong to occur without providing a remedy which is lacking at law, will not be bound by tight constraints imposed by the law courts in establishing third-party beneficial status." Id. at 550. The judge concluded: "This court interprets [Rule] 4:42-9(a)(1) . . . to create an equitable third-party beneficiary status in favor of the attorney. Given such status, he may, independently, pursue his remedy . . . ." Ibid.

The reasoning expressed in these holdings establishes the interest counsel has in fee awards, based upon proof of the reasonable value of work performed in the litigation. Defendant's recitation of excerpts from Rosenberg v. Rosenberg, 286 N.J. Super. 58, 63-64 (App. Div. 1995) and Poch v. Haag, 105 N.J. Super. 44, 46 (App. Div. 1969), to suggest a counsel fee award belongs to the client, ignores the context of the cited passages. Rosenberg involved a client's attempt to limit the obligation due by her to the sum fixed in the matrimonial litigation when assessing fees due from the adversary.

Rosenberg, supra, 286 N.J. Super. at 61-69. In dicta, this court in Poch noted it was "doubtful" the law firm could appeal pro se, to challenge the amount of a fee award rendered to its client. Poch, supra, 105 N.J. Super. at 46. These factual differences provide the context for excerpts, which distinguish these holdings.

The right to seek establishment of a counsel fees award paid by an adversary belongs to the client. The client must present supporting proofs justifying the award. The amount of any award is based on the reasonable value of work performed by counsel, after a factual analysis guided by Rule 5:3-5(c) and Rule 4:42-9. Similarly, a challenge to the amount of fees awarded is a claim held by the client. Rosenberg, supra, 286 N.J. Super. at 61-69. However, once a fee award is granted, Williams identifies the interest of counsel holds in enforcing payment. Williams, supra, 59 N.J. at 232.

Two aspects of this order are troublesome. First, counsel's petition sought to receive all sums due to plaintiff under the final judgment, not simply attorney fees awarded. Absent imposition of a constructive trust or establishment of an attorney's lien, the awards of all sums due plaintiff as a means to satisfy counsel fees was too broad a remedy. The order in this regard is error and vacated.

Second, the petition discloses plaintiff disputed the reasonableness of fees billed and elected fee arbitration. See R. 1:20A-3. Under these circumstances, no action to enforce payment of the fees can be made pending arbitration. R. 1:20A-6; see Rosenfield v. Rosenfield, 239 N.J. Super. 77, 78 (Ch. Div. 1989). If the amount of fees is fixed in arbitration, the attorney may not seek a statutory lien for a greater sum, R. 1:20A-3(e), with the caveat proceedings to preserve the lien and restrain disposition of lawsuit proceeds pending arbitration are permitted. Thus, no fees should be remitted to counsel from defendant or plaintiff until the arbitration proceeding is competed.

Here, plaintiff and her former attorneys, after fee arbitration was initiated, agreed to a stipulated fee amount; that sum is less than the amount defendant was ordered to contribute. As stated above, the reduction in the fee obligation of plaintiff bears directly on any fee awarded she receives. Leavengood v. Leavengood, 339 N.J. Super. 87, 96 (App. Div. 2001). For all of these reasons the January 9, 2015 determination must be reversed and the matter remanded for additional review in light of our opinion.

V.

In summary, regarding Docket No. A-5829-13, we affirm the provisions of the final judgment of divorce and the post-judgment orders denying reconsideration of the treatment of the family loans and adjustments based upon the pendent lite support order. We reverse the provision of the final judgment and orders regarding the valuation of defendant's interest in his law practice as well as the percentage interest accorded to plaintiff of this asset. We also reverse the July 28, 2014 order reversing the final judgment's provision concluding the IRA's were not exempt and the award of counsel fees and costs to plaintiff. Each of these issues must be reviewed on remand by a newly assigned Family Part judge. The orders challenged in Docket No. A-2813-14 are reversed, as the amount of attorney's fees, if any, must be addressed on remand.

Any issues raised but not otherwise addressed were found to lack sufficient merit to warrant discussion in our opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, reversed in part, and remanded.