

## Bisbing v. Bisbing: An Appellate Ruling in 2021 Confirms Non-Dischargeability of \$425,000 Counsel Fee Award

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July 8, 2021 | by Matheu Nunn

On July 7, 2021, the Appellate Division of New Jersey decided *Bisbing v. Bisbing*, \_\_\_ N.J. Super. \_\_\_ (App. Div. 2021). The published decision follows two prior published decisions in *Bisbing v. Bisbing*, 445 N.J. Super. 207 (App. Div. 2016) and *Bisbing v. Bisbing*, 230 N.J. 309 (2017).

### Background of the Bisbing Relocation Matter and the Best Interests Standard

The prior decisions involved the Plaintiff-Mother's attempt to relocate to Utah with the parties' children. The Supreme Court of New Jersey, in a landmark decision, changed the *Baures v. Lewis* standard for relocation, replacing it with a best interests standard (*Bisbing*, 230 N.J. at 309).

### On Remand, Trial Court Rules Against Relocation and Awards Counsel Fees

With the new best interests standard, the Supreme Court remanded the matter for a trial on whether the proposed move would serve the best interests of the children. After a remand trial of more than 30 days before Judge Gaus, the trial court concluded that a move to Utah was not in the children's best interests. At the same time, the court awarded the Defendant-Father in excess of \$400,000 in counsel fees. The Plaintiff-Mother then sought to discharge the counsel fee award on more than one occasion in Bankruptcy court. The issue ultimately returned to the trial court, wherein Judge Gaus concluded that the counsel fees were non-dischargeable in bankruptcy; Plaintiff appealed the decision.

### Appellate Court Affirms that Obligations to Spouse Constitute Non-Dischargeable Debt

In its July 7, 2021 decision, the Appellate Division affirmed Judge Gaus and provided guidance for future courts on how to address the issue of dischargeability of fees that are in the nature of “support.” The court noted that Plaintiff’s effort to avoid paying the fee award was not an abstract dispute, as Plaintiff had previously sought bankruptcy to discharge the fee award. The court held that Defendant was entitled to be protected from future efforts by Plaintiff to try to discharge the debt. The court further affirmed the trial court’s ruling, finding that all obligations to a spouse or former spouse in connection with a divorce or related action, including child relocation, constituted non-dischargeable debts. The court noted that the fee award was intended to compensate Defendant for litigation expenses that could have gone to support the parties’ children.

Matheu D. Nunn, Esq., who has represented Mr. Bisbing since the 2016 Appellate Division case, handled the newest matter with assistance from Jessie M. Mills, Esq. and Kristi L. Terranova, Esq.

The decision is available here:

<https://www.njcourts.gov/attorneys/assets/opinions/appellate/published/a0138-20.pdf?c=gHM>