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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0715-16T4

H.S.,

Plaintiff-Respondent,

v.

D.S.,

Defendant-Appellant.

Submitted September 12, 2017 – Decided September 29, 2017

Before Judges Hoffman, Gilson and Mayer.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FM-12-1381-13.

Weinberger Law Group, LLC, attorneys for appellant (Gregory A. Pasler, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant D.S. (Dawn)¹ appeals from certain provisions of a September 19, 2016 order issued by the family court on her post-

¹ We use initials and pseudonyms to protect the privacy of the parties and their child.

judgment motion seeking relief against her ex-husband, H.S. (Hal). Dawn argues that the judge failed to issue written or oral findings of fact and conclusions of law in support of his rulings in accordance with Rule 1:7-4(a). She further contends that the judge failed to conduct a plenary hearing prior to ordering the parties to undergo a psychological evaluation and altering parenting time. We agree with Dawn's contentions and therefore reverse and remand this motion to the family court.

Dawn and Hal married in 1993 and had a daughter in 2008. The parties divorced in 2014. An amended judgment of divorce (AJOD) incorporated the parties' agreement regarding custody of their daughter and established a parenting time schedule. Hal moved to California. Dawn remained in New Jersey with the child and remarried in 2015.

In 2015, Hal filed a motion to terminate alimony based on Dawn's remarriage. Dawn cross-moved for various relief including modification of child support. A different family court judge granted Hal's motion terminating alimony and granted Dawn's motion modifying child support in an order dated September 4, 2015. That judge also established that Hal would be responsible for paying seventy-six percent of all work-related child care.

About one year later, Dawn filed a post-judgment motion to enforce litigant's rights based upon Hal's non-compliance with the

September 4, 2015 order and requested attorneys' fees. Hal cross-moved for increased parenting time, including Skype time, and for a mental health evaluation for the parties, their daughter, and Dawn's new husband. On September 19, 2016, the family court judge issued a thirty-six paragraph order denying Dawn's application to enforce litigant's rights and attorneys' fees, compelling Dawn to pay 100 percent of the work-related child care expenses and seek reimbursement from Hal, and granting Hal's motions for a psychological evaluation and for extra parenting and Skype time with the parties' child.

The judge who issued the September 19, 2016 order failed to set forth specific findings of fact and conclusions of law as to his denial of Dawn's enforcement motion. While the judge determined Hal failed to comply with the court's prior order concerning proof of life insurance for the benefit of the daughter,² the judge denied Dawn's motion to enforce litigant's rights because Hal obtained an alternate life insurance policy naming Dawn as beneficiary. The judge, without conducting a hearing, determined that Hal's alternate life insurance policy satisfied the prior court order. Hal also failed to comply with

² The prior order required Hal to provide annual proof of life insurance expressly naming Dawn as trustee and the child as irrevocable beneficiary.

the AJOD because he did not provide the required proof of life insurance until Dawn filed her enforcement motion. The judge failed to explain the denial of Dawn's enforcement motion in light of Hal's non-compliance with the AJOD and prior court order.

Additionally, in denying Dawn's enforcement motion compelling Hal's payment of work-related child care, the judge found disputed facts pertaining to the necessity of such expenses. Instead of conducting a hearing to resolve the disputes, the judge ordered Dawn to pay 100 percent of the expenses and pursue reimbursement from Hal. The judge modified the prior court order governing payment of work-related child care notwithstanding that neither party requested such relief. Given that Hal earns four times more than Dawn, requiring Dawn to pay 100 percent of those expenses was financially burdensome, as well as contrary to the prior court order. Moreover, the judge failed to resolve the parties' disputes concerning the necessity and legitimacy of the work-related child care expenses.

Pursuant to Rule 1:10-3, litigants in any action are permitted to seek relief if they are denied "what is due" to them under a court order. Dep't of Health v. Roselle, 34 N.J. 331, 337-38 (1961). Here, Dawn sought to enforce litigant's rights based upon Hal's failure to pay work-related child care expenses and his failure to provide annual proof of a compliant life insurance

policy. While the judge found Hal had not complied with the prior court order and AJOD, he denied Dawn's enforcement motion without providing findings of facts and conclusions of law in support of his determination.

Further, the judge ordered a psychological evaluation of the parties, their child, and Dawn's new husband without explaining his reasons in support of such relief. Dawn vehemently contested Hal's allegation that their daughter was experiencing conflict due to interfamily dynamics. The certifications filed by Hal and Dawn on the alleged interfamily conflict suffered by their daughter were diametrically opposite. Each parent accused the other of dishonesty on this issue. Nevertheless the judge did not conduct a plenary hearing to resolve the disputed contentions concerning the psychological evaluation. When the issues "hinge on factual determinations, credibility and diverse contentions, a plenary hearing is required." Dunne v. Dunne, 209 N.J. Super. 559, 571 (App. Div. 1986); see also Hand v. Hand, 391 N.J. Super. 102, 105 (App. Div. 2007).

The judge also modified the prior court order establishing Hal's parenting time with his daughter. Hal requested one extra week of parenting time during the summer vacation. The judge granted Hal's request without providing a statement of reasons, despite acknowledging that a change in circumstances and the best

interests of the child were the applicable standards for modification of a mediated agreement regarding parenting time. "A party seeking to modify custody must demonstrate changed circumstances that affect the welfare of the children." Hand v. Hand, supra, 391 N.J. Super. at 105. The record is devoid of any facts reflecting a change in circumstances warranting the judge's adjustment to the agreed-upon parenting time schedule.

Lastly, the judge denied Dawn's application for attorneys' fees without examining the statutory factors typically considered on a fee application. See N.J.S.A. 2A:34-23; see also R. 5:3-5(c). The following factors are to be considered in determining an award of counsel fees in family actions: whether one spouse lacked independent financial means; the spouses' financial ability to pay; whether the action was instituted in good faith; and whether counsel incurred attorneys' fees in expectation of an award. See Williams v. Williams, 59 N.J. 229, 233-34 (1971). Fees in a family action are normally awarded to parties in unequal financial positions to permit litigation on equal footing. See Kelly v. Kelly, 262 N.J. Super. 303, 307 (Ch. Div. 1992) (citing Anzalone v. Anzalone Bros., Inc., 185 N.J. Super. 481, 486-87 (App. Div. 1982)). In denying Dawn's motion for counsel fees, the judge failed to make findings as to the financial circumstances of the parties, the parties' good or bad faith in filing the

applications, and the parties' financial ability to pay an award of counsel fees.

Family "judges are under a duty to make findings of fact and to state reasons in support of their conclusions." Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996); see R. 1:7-4(a). "Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion." Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008) (quoting Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990)). "Naked conclusions do not satisfy the purpose of [Rule] 1:7-4." Curtis v. Finneran, 83 N.J. 563, 570 (1980).

Because the judge failed to set forth findings of fact and conclusions of law as required by Rule 1:7-4(a), we are compelled to reverse the September 19, 2016 order and remand the matter to the family court to develop a complete record. The judge may require an appropriate period for discovery on the contested issues and, if necessary, conduct a plenary hearing to resolve any disputed material facts. The matter is remanded for the judge to comply with the rule, and render findings of fact and conclusions of law consistent with this opinion. We do not retain jurisdiction.

Reversed and remanded.

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


CLERK OF THE APPELLATE DIVISION