SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1173-15T3

ANTHONY UDECHUKWU,

Plaintiff-Appellant,

v.

ESTHER UDECHUKWU,

Defendant-Respondent.

Submitted January 31, 2017 – Decided February 27, 2017

Before Judges Ostrer and Vernoia.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FM-07-0538-01.

Ejike N. Uzor, attorney for appellant.

Esther Udechukwu, respondent pro se.

PER CURIAM

Plaintiff appeals an October 23, 2015 Family Part order denying his motion for reconsideration of a September 4, 2015 order directing him to sign a qualified domestic relations order (QDRO), pay defendant $250 for plaintiff's share of the costs for preparation of the QDRO, and reimburse defendant $2800 for medical

expenses she incurred as the result of domestic violence incidents. Because the trial court made no findings of fact supporting its order, we reverse and remand for further proceedings.

I.

Plaintiff and defendant were married in 1988 and divorced in 2001. Their dual judgement of divorce incorporated the terms of a property settlement agreement (PSA), which in pertinent part required that plaintiff transfer to defendant "by means of a [QDRO]" a portion of his interest in his "pension/retirement plan(s)" with the State of New Jersey Public Employees Retirement System. The parties agreed "William Troyan, Inc." would prepare the QDRO and they would equally share its preparation costs. The PSA also required that plaintiff reimburse defendant for medical expenses she incurred as the result of domestic violence incidents that were the subject of her counterclaim in the divorce proceeding.

Troyan prepared the QDRO, which defendant accepted and signed. Defendant also paid Troyan $500 for the full cost of its preparation of the QDRO. Plaintiff rejected the QDRO and refused to sign it. He sent letters to Troyan's representatives, and an affidavit from the attorney who represented him during the divorce proceedings and negotiation of the PSA, asserting the QDRO was inconsistent with the PSA's terms.

In August 2015, defendant filed a motion in aid of litigant's rights,[1] requesting that the court order plaintiff to sign the QDRO and reimburse her $250 for plaintiff's fifty-percent share of the cost of its preparation. Defendant also requested that the court order plaintiff to reimburse her $2800 for medical expenses she incurred as a result of the domestic violence incidents alleged in her counterclaim in the divorce proceeding. On September 4, 2015, the court granted defendant's motion.[2]

On September 25, 2015, plaintiff filed a motion for a stay and reconsideration of the court's September 4, 2015 order pursuant to Rule 4:49-2, and requested oral argument. Plaintiff argued the order was entered in error because the QDRO was "inconsistent with and is in violation of the terms of the PSA." Plaintiff also claimed the court erred by ordering the reimbursement of medical expenses because they were covered by defendant's insurance and she produced no evidence she actually incurred the claimed expenses.

[1] The record does not reveal the reason for the lengthy passage of time from the parties' 2001 divorce to the preparation of the QDRO in 2014, and does not explain defendant's delay in seeking reimbursement of medical expenses prior to the filing of her August 2015 motion.

[2] Plaintiff did not appeal the September 4, 2015 order.

On October 23, 2015, the court denied plaintiff's reconsideration motion without hearing oral argument. The court did not provide any findings supporting its decision in a written or oral opinion but instead entered only an order stating:

> 1. Plaintiff's application for re-consideration of this [c]ourt's September 4, 2015 [o]rder is hereby DENIED, for failure to comply with [R.] 4:49-2. Plaintiff did not timely file his motion for reconsideration. In addition, thereto, [p]laintiff has not met the standards for re[]consideration per [R.] 4:49-2 and Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996);
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> 2. Any relief not addressed in the present [o]rder is hereby DENIED.

Following entry of the order,[3] plaintiff appealed.

II.

We review a trial court's decision to grant or deny a motion for reconsideration under the abuse of discretion standard. Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). As a result, "a trial court's reconsideration decision will be left undisturbed unless it represents a clear abuse of discretion." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015). A court abuses its discretion "when a

[3] The court also entered an order on December 18, 2015, denying plaintiff's motion to stay enforcement of the court's October 23, 2015 order pending appeal. Plaintiff did not appeal the December 18, 2015 order.

decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Ibid. (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)).

Plaintiff first argues the trial court erred by finding the reconsideration motion was not timely filed under Rule 4:49-2, which states in pertinent part:

> Except as otherwise provided by [Rule] 1:13-1 (clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it.

The twenty-day limitation applies only to final judgments and orders. Rusak v. Ryan Automotive, L.L.C., 418 N.J. Super. 107, 117 n.5 (App. Div. 2011). A motion to amend or reconsider interlocutory orders may be made at any time until final judgment in the court's discretion and in the interests of justice. Akhtar v. JDN Props. at Florham Park, LLC, 439 N.J. Super. 391, 399-400 (App. Div.), certif. denied, 221 N.J. 566 (2015).

Plaintiff's motion requested reconsideration of the September 4, 2015 order entered in aid of litigant's rights, a final order

appealable as of right.[4] Under Rule 4:49-2, plaintiff was required to file the motion within twenty-days of service of the order on "all parties by the person obtaining it." The court recognized the applicability of the deadline and denied the motion, concluding plaintiff's motion was untimely. Plaintiff argues he received the September 4, 2015 order on or around September 7, 2015, and therefore his motion was timely filed on September 25, 2015.[5] Plaintiff argues the trial court abused its discretion in finding otherwise.

We need not — and indeed cannot — determine whether the court correctly concluded plaintiff's motion was untimely because the

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[4] Defendant's notice of motion requested enforcement of litigant's rights, which is relief available under Rule 1:10-3. A trial court's decision on contempt motions are generally subject to appeal as a final disposition. See Pressler & Verniero, Current N.J. Court Rules, comment 4.5 on R. 1:10-3, comment 2.3.3 on R. 2:2-3 (2012); cf. Saltzman v. Saltzman, 290 N.J. Super. 117, 123 (App. Div. 1996) (holding an order directing the issuance of an arrest warrant for the purpose of producing in court the obligor for an ability-to-pay hearing is interlocutory because no final determination respecting remediable non-compliance with the underlying order had yet been made). Here, the court's order was entered pursuant to Rule 1:10-3 and directed plaintiff to take certain actions without the need for any further proceedings. The order was therefore final, appealable as of right, and subject to the twenty-day deadline in Rule 4:49-2.

[5] Although it appears undisputed that plaintiff's motion was filed on September 25, 2015, we note that plaintiff's motion papers show his notice of motion and certification of service were signed on September 24, 2015. His certification of service states that it was made on September 25, 2015, but signed on September 24, 2015.

court erred by failing to make any findings of fact supporting its determination. R. 1:7-4. A trial court "must state clearly [its] factual findings and correlate them with relevant legal conclusions, so that parties and the appellate courts [are] informed of the rationale underlying th[ose] conclusion[s]." Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 594-95 (App. Div. 2016) (quoting Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986)). When that is not done, a reviewing court does not know whether the ultimate decision is based on the facts and law or is the product of arbitrary action resting on an impermissible basis. Monte, supra, 212 N.J. Super. at 565.

Here, the timeliness of the reconsideration motion was dependent on multiple facts, including the date of service of the September 4, 2015 order "upon all parties by the party obtaining it" and the filing date of the motion. R. 4:49-2. The court's order, however, contained only the legal conclusion that plaintiff failed to file his motion within the time permitted under Rule 4:49-2. See Catabran, supra, 445 N.J. Super. at 595 (finding that a trial court does not discharge its fact-finding obligation by merely stating a legal conclusion). "The judge's failure to make findings and conclusions is not only in disregard of oft-stated admonitions," but also causes "a substantial disservice, for [the appellate court is] left unable to resolve the meritorious issues

which they project." Girandola v. Allentown, 208 N.J. Super. 437, 440-41 (App. Div. 1986). We are therefore constrained to reverse the court's order finding the motion was untimely under Rule 4:49-2.

For the same reason, we reverse the court's order finding that plaintiff's motion did not satisfy the standard for relief under Rule 4:49-2 and Cummings, supra, 295 N.J. Super. at 384. Reconsideration of an order is warranted only when "1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Cummings, supra, 295 N.J. Super. at 384 (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401-02 (Ch. Div. 1990)). "Alternatively, if a litigant wishes to bring new or additional information to the [c]ourt's attention which it could not have provided on the first application, the [c]ourt should, in the interest of justice . . . consider the evidence." Ibid. (quoting D'Atria, supra, 242 N.J. Super. at 401-02).

Plaintiff argues the court erred in denying the reconsideration motion by failing to consider evidence showing the September 4, 2015 order was clearly erroneous. Plaintiff contends the court disregarded that the QDRO conflicted with the PSA's requirements, the parties were in the process of modifying the

QDRO's terms, and Troyan's representatives acknowledged the problems with the QDRO's terms by offering to mediate the parties' dispute.

We do not address the merits of plaintiff's contentions, nor could we, because the order denying the reconsideration motion is devoid of any findings of fact, and instead includes only a conclusory legal determination that plaintiff failed to satisfy his burden under Rule 4:49-2 and Cummings, supra, 295 N.J. Super. at 384. Again, the lack of findings renders it impossible for us to determine if the court's decision was based upon the facts and law or constitutes an arbitrary action resting on an impermissible basis. Monte, supra, 212 N.J. Super. at 565. Thus, we reverse the court's determination that plaintiff failed to establish an entitlement to relief under Rule 4:49-2.

We further observe that the court's lack of findings may in part be the product of its failure to grant plaintiff's request for oral argument on the reconsideration motion. Requests for oral argument in family actions are governed by Rule 1:6-2(d) except as otherwise provided in Rule 5:5-4. Rule 1:6-2(d) provides in pertinent part that "no motion shall be listed for oral argument unless a party requests oral argument in the moving papers or in timely-filed answering or reply papers, or unless the court directs." Rule 5:5-4(a) states:

> [I]n exercising its discretion as to the mode and scheduling of disposition of motions, the court shall ordinarily grant requests for oral argument on substantive and non-routine discovery motions and ordinarily deny requests for oral argument on calendar and routine discovery motions.

"This provision has generally been interpreted to require oral argument 'when significant substantive issues are raised and argument is requested.'" Palombi v. Palombi, 414 N.J. Super. 274, 285 (App. Div. 2010) (quoting Mackowski v. Mackowski, 317 N.J. Super. 8, 14 (App. Div. 1998)). "The denial of oral argument when a motion has properly presented a substantive issue to the court for decision 'deprives litigants of an opportunity to present their case fully to a court.'" Ibid. (quoting Mackowski, supra, 317 N.J. Super. at 14). The court, however, retains discretion to dispense with oral argument on substantive issues where the record provides all that is necessary to make a decision on the issue presented. Ibid. Guided by these principles, we leave it to the trial court's discretion to determine if oral argument is required on remand.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.