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This opinion shall not "constitute precedent or be binding upon any court."  
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-0185-14T2

PAUL CIBELLI, JR.,

Plaintiff-Appellant,

v.

JEANNETTE P. QUIROGA,

Defendant-Respondent.

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Argued December 14, 2017 – Decided February 14, 2018

Before Judges Simonelli, Rothstadt and Gooden  
Brown.

On appeal from Superior Court of New Jersey,  
Law Division, Hudson County, Docket No. L-  
5258-11.

Anthony J. Randazzo argued the cause for  
appellant (Anthony J. Randazzo, attorney; Paul  
Cibelli, Jr., on the pro se briefs).

Donald D. Campbell argued the cause for  
respondent (Campbell & Campbell, attorneys;  
Donald D. Campbell, on the brief).

PER CURIAM

Paul Cibelli, Jr. appeals from the July 25, 2014 Law Division  
order granting summary judgment to Jeannette P. Quiroga, his ex-

girlfriend, and dismissing counts one through three of his four-count complaint.<sup>1</sup> We reverse.

Quiroga and Cibelli began a romantic relationship in 2006. In June 2007, Cibelli was convicted for murder of a former girlfriend and incarcerated until September 2009, when his conviction was reversed and he was released on bail pending a re-trial. After his release, Cibelli resumed his relationship with Quiroga until the end of September 2010, when the relationship ended.

Following their break up, on October 12, 2010, Quiroga filed a domestic violence civil complaint and obtained a temporary restraining order (TRO) against Cibelli alleging harassment. During the ex parte TRO proceeding before a municipal court judge, Quiroga testified that although she had broken up with Cibelli "two weeks ago," he was "following" her and "text[ing] [her] every single day" despite telling him "to leave [her] alone" and to stop texting her. Quiroga testified that she was in "fear for [her] kids' li[ves] and [her] life."

In addition to issuing the TRO, on the same date, the municipal court judge found "probable cause" for the issuance of

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<sup>1</sup> The remaining count of the complaint was dismissed without prejudice by a different judge on August 11, 2014. Plaintiff does not appeal that dismissal.

a criminal complaint charging Cibelli with harassment, N.J.S.A. 2C:33-4. The police officer who had responded to Quiroga's home after she reported Cibelli to the police appeared before the municipal court judge to swear to the complaint. Upon questioning, the officer told the municipal court judge that he had "viewed [Quiroga's] cell phone" and there were "[fifteen] text messages from the 1st of October up until today . . . trying to reconnect with her." According to the officer, one of the text messages was "a picture text" of "an intimate photo" showing Quiroga topless, which "[Cibelli] basically threatened to print . . . and bring . . . to [Quiroga's] place of employment . . . ." The officer stated that Quiroga told him "all these text messages started" after Quiroga told Cibelli "she want[ed] no part of him anymore" and refused to "testify on his behalf . . . as a character witness" at his upcoming re-trial.

On October 13, 2010, Cibelli was served with the TRO, arrested on the criminal complaint, and jailed. On the same date, the prosecutor on the murder charge filed an application in the Law Division "to revoke [Cibelli's] bail and remand him to the Correction Center pending the conclusion of this [re-]trial." The application was predicated upon the TRO and the criminal complaint issued the day before. The prosecuting attorney argued that Cibelli was "a danger to the community" based upon "[his] history

of domestic violence with respect to his former wife and because of his actions now . . . ." Instead of revoking Cibelli's bail on the murder charge, the Law Division judge increased the bail from \$1 million to \$1.3 million, resulting in Cibelli being remanded.

On November 19, 2010, a final restraining order (FRO) hearing was conducted during which Cibelli disputed that he engaged in harassing conduct. On the contrary, Cibelli claimed "they were involved in a dialogue about the relationship" and he "was only kidding" about threatening to expose the intimate photograph. At the hearing, Cibelli's aunt testified that she had two phone conversations with Quiroga in September 2010 during which Quiroga demanded "money" on a credit card debt she believed Cibelli owed her and threatened to "have [Cibelli] arrested" if "she [didn't] get the money . . . ." On cross-examination, Quiroga denied calling Cibelli's aunt solely about the credit card debt. According to Quiroga, she called his aunt because Cibelli "was scaring [her] because of the picture" and Cibelli had threatened "that if [she] were to call the attorney and his aunt . . . to tell them what was going on[, ] that [she] was going to regret it."

Ultimately, the Family Part judge denied Quiroga the FRO and dismissed the TRO and the domestic violence complaint. As for the criminal complaint, on February 17, 2011, a municipal court judge

dismissed the complaint based on Quiroga's failure to appear, despite the court notifying her of the court date on January 12, 2011. Subsequently, Quiroga moved to restore the criminal complaint out of time over Cibelli's objection. On December 20, 2011, the municipal court judge denied Quiroga's motion but modified the dismissal order to indicate "[d]ismissal [was] not based on victim's failure to appear."

On October 11, 2011, Cibelli filed a four-count civil complaint against Quiroga for malicious prosecution, abuse of process, severe emotional distress, and breach of contract. In the complaint, Cibelli alleged that after their relationship "resumed[,]" from September 2009 to September 2010, he "made various improvements to and fixed various items in [Quiroga's] residence and an investment property she owned[,]" and "[Quiroga] permitted [him] to use her credit card to buy construction materials needed" for the work. However, "[a]s [Cibelli's] October 1, 2010 retrial approached," Quiroga demanded payment of "\$6000 in credit card charges" and "threaten[ed] to take action against [Cibelli] if he did not pay . . . ."

According to Cibelli, when "[he] refused [Quiroga's] demands insisting he did not owe her anything[,]" Quiroga "without any probable cause and with malice swore out a criminal complaint . . . against [Cibelli] . . . charging him with harassment[,]"

. . . and . . . caused a [TRO] to be issued against [him]" based on the same allegation. Cibelli alleged that, subsequently, Quiroga's "request for a permanent restraining order was denied[,]" and the TRO and the criminal complaint were dismissed. However, as a result of Quiroga's "malicious prosecution" and "malicious abuse of process[,]" Cibelli "was arrested, imprisoned, and forced to defend against [Quiroga's] false charges" and "suffered severe emotional distress." Cibelli alleged that his "bail on his Middlesex County charges was revoked by his trial judge and he was remanded to the Middlesex County Jail for the remainder of his trial." Cibelli also alleged that "[he] agreed to make repairs and improvements to [Quiroga's] various properties in return for compensation" and demanded \$7070 "for [his] services." In response, on November 21, 2011, Quiroga filed a contesting answer and affirmative defenses.

On February 6, 2013, an arbitrator awarded Cibelli \$3500 in damages and Quiroga filed a timely notice of demand for trial de novo. On June 16, 2014, Quiroga moved for summary judgment, waived oral argument, and consented to disposition on the papers. In her affidavit submitted in support of her motion, Quiroga averred that "[she] filed the harassment complaint based on the advice of the Bayonne police officer who investigated [her] complaint." Quiroga further certified that "[w]hile [Cibelli] lived at [her] house,

he didn't pay rent and [she] paid for all materials[,] and "[they] never ever discussed him charging [her] on a per hour or per job basis." Quiroga continued that it was not until "[a]lmost a year after [Cibelli] moved out and after his second [murder] conviction" that she was sent the bill for services. Cibelli opposed the motion and requested oral argument.

When oral argument was rescheduled from July 23 to July 25, 2014, Cibelli's attorney notified the motion judge that because "neither [he] nor [his] adversary [was] available on July 25," which was the judge's "last day before vacation," and "the trial date . . . [was] August 11, 2014, . . . there [was] no alternative but to decide the motion on the papers." Accordingly, without oral argument and without making findings of fact and conclusions of law, on July 25, 2014, the motion judge entered an order granting Quiroga summary judgment and dismissing counts one, two and three of the complaint. The only reasoning provided by the motion judge was a notation on the order stating "charges pursued in municipal court [and] substantiated. Court found sufficient probable cause for claims. Thus no genuine issues of material facts in dispute."<sup>2</sup> This appeal followed.

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<sup>2</sup> As to count four, the order stated "[g]enuine issues of material fact in dispute as to existence of verbal contract. Summary judgment denied as to contract claims."

On appeal, Cibelli raises the following points for our consideration:

POINT I

THE COURT BELOW COMMITTED REVERSIBLE ERROR BY THE ENTRY OF SUMMARY JUDGMENT AND DISMISSAL OF COUNTS ONE, TWO, AND THREE OF THE PLAINTIFF'S COMPLAINT CONTRARY TO THE GENUINE ISSUES OF MATERIAL FACTS PRESENTED WHICH DEFEAT SUMMARY JUDGMENT AND SHOULD BE SUBMITTED TO THE JURY.

POINT II

THE COURT BELOW COMMITTED REVERSIBLE ERROR AND ABUSED ITS DISCRETION BY FAILING TO PROVIDE A WRITTEN OR ORAL OPINION IN SUPPORT OF ITS DECISION TO GRANT SUMMARY JUDGMENT RESULTING IN AN ARBITRARY AND CAPRICIOUS DISMISSAL ON COUNTS ONE, TWO AND THREE OF THE PLAINTIFF'S COMPLAINT.

Because we agree with Cibelli's second point, we will not address the first.

Except for pre-trial discovery motions or motions directly addressed to a calendar, oral argument "shall be granted as of right" if a party requests it in the moving, answering, or reply papers. R. 1:6-2(d). Where a request for oral argument on a substantive motion is properly made, denial, absent articulation of specific reasons for denial on the record, constitutes reversible error. Raspantini v. Arocho, 364 N.J. Super. 528, 531-34 (App. Div. 2003). However, the court may deny such request when special or unusual circumstances exist. Filippone v. Lee,



304 N.J. Super. 301, 306 (App. Div. 1997). The court may also deny such a request if the motion is frivolous or unsubstantiated. Kozak v. Kozak, 280 N.J. Super. 272, 274-76 (Ch. Div. 1994).

Here, it is of great concern to us that the motion judge failed to accommodate the request for oral argument or specify the special or unusual circumstances for the denial of oral argument on the record. Of even greater concern, however, is the fact that the motion judge failed to make written or oral findings of fact and conclusions of law for the motion. A trial judge has an obligation to render "an opinion or memorandum decision, either written or oral, [with] find[ings of] fact[] and . . . conclusions of law thereon in all actions tried without a jury." R. 1:7-4(a). "The purpose of the rule is to make sure that the court makes its own determination of the matter." In re Tr. Created by Agreement Dated Dec. 20, 1961, by & between Johnson & Hoffman, Lienhard & Perry, 399 N.J. Super. 237, 254 (App. Div. 2006).

"When a trial court issues reasons for its decision, it '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) (alterations in original) (quoting Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986)). In

particular, when a trial judge issues an order granting summary judgment, the "judge is required to detail the findings of fact and conclusions of law in a written or oral opinion. Those findings and conclusions must then be measured against the standards set forth in [Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)]." Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 299-300 (App. Div. 2009) (citations omitted) (quoting Great Atl. & Pac. Tea Co. v. Checchio, 335 N.J. Super. 495, 498 (App. Div. 2000)). When that is not done, a reviewing court does not know whether the judge's decision is based on the facts and law or is the product of arbitrary action resting on an impermissible basis. See Monte, 212 N.J. Super. at 565.

The manner in which a trial judge complies with Rule 1:7-4(a) is left to the judge's discretion. In re Tr. Created by Agreement Dated Dec. 20, 1961, 399 N.J. Super. at 253. A judge is not required to specify grounds for the grant or denial of a motion and, instead, can rely upon reasons expressed by a party. Id. at 253-54. However, the judge must make "such reliance 'explicit,'" Fisher, 408 N.J. Super. at 301 (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 1:7-4 (2018)), and make "clear the extent of [the judge's] agreement with and reliance on [the] proposed findings of fact and conclusions of law[,]" demonstrating that the judge "carefully considered the evidentiary

record and did not abdicate [the judge's] decision-making responsibility." In re Tr. Created by Agreement Dated Dec. 20, 1961, 399 N.J. Super. at 254.

To be sure, a judge "does not discharge [his or her] function simply by recounting the parties' conflicting assertions and then stating a legal conclusion, or . . . incorporating by reference one of the parties' arguments." Avelino-Catabran, 445 N.J. Super. at 595. Rather, "an articulation of reasons is essential to the fair resolution of a case." O'Brien v. O'Brien, 259 N.J. Super. 402, 407 (App. Div. 1992). Here, there is nothing in the order under review that confirms the motion judge made an independent decision based upon an analysis of the facts and applicable law. "While the failure to provide reasons necessitates a remand, we are left with the option of remanding for a statement of reasons or reversing and remanding for consideration of the motion . . . anew. We determine that the latter course of action is appropriate here." Fisher, 408 N.J. Super. at 303.

The order under review is vacated. The matter is remanded and the court is directed to conduct oral argument, consider the motion anew, and enter a new order together with a written or oral statement of reasons in conformity with Rule 1:7-4(a). We do not retain jurisdiction.

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

