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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-2707-16T3

SHIRL DAVID,

Plaintiff-Appellant,

v.

ANTONIO WYNN,

Defendant-Respondent.

Argued February 15, 2018 – Decided March 5, 2018

Before Judges Haas and Gooden Brown.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket No. FM-12-2156-13.

Rajeh A. Saadeh argued the cause for appellant
(The Law Office of Rajeh A. Saadeh, LLC,
attorney; Rajeh A. Saadeh and Amanda E.
Rasheed, on the brief).

Respondent has not filed a brief.

PER CURIAM

In this post-judgment matrimonial matter, plaintiff appeals
from paragraphs three and eight of the Family Part's December 16,

2016 order, denying her motion to eject defendant from the former marital home and her request for counsel fees and costs. Plaintiff also appeals from paragraphs one, two, three, six, nine, and ten of the trial court's February 3, 2017 order, which denied her motion for: reconsideration of certain provisions of the December 16, 2016 order; the issuance of a bench warrant for defendant due to his failure to comply with court orders; and counsel fees and costs associated with her enforcement motion. We are constrained to reverse and remand because the trial court did not make findings of fact or conclusions of law on any of the issues raised in plaintiff's motions.

The parties were married in 1993 and divorced in 2014. Pursuant to their Marital Settlement Agreement (MSA), defendant was to assume the mortgage on the former marital home within forty-five days. If he failed to do so, the parties were required to list the house for sale and then equally divide the proceeds. Among other things, the MSA also directed defendant to pay \$237.50 per week in permanent alimony to plaintiff, together with half of the cost of a Qualified Domestic Relations Order (QDRO) required to distribute defendant's retirements accounts, and \$10,000 to be paid in installments toward plaintiff's counsel fees.

Defendant did not comply with the terms of the MSA, and plaintiff filed a series of enforcement motions between January

2015 and December 2016. Defendant was unable to assume the mortgage on the parties' home and, on January 9, 2015, the trial court ordered that it be listed for sale.

Because defendant was not cooperating with the sale of the home, the court issued an order on February 5, 2016, appointing a realtor to list the property for sale. On July 22, 2016, after plaintiff filed another enforcement motion, the court ordered defendant to either refinance the home in his name by November 1, 2016 or, if he failed to do so by that date, transfer his interest in the home to plaintiff so she could sell it. Defendant remained behind in his support and counsel fee obligations and had still not paid his half of the QDRO fee.

Plaintiff subsequently filed the motions that are the subject of this appeal. On December 16, 2016, the trial court granted plaintiff's motion to require defendant to convey his interest in the home to her by executing a quitclaim deed. Although defendant ultimately did transfer the home to plaintiff, he refused to leave the house or pay the mortgage on the property. Therefore, plaintiff asked that the court eject defendant from the home so it could be sold. The court denied this request in paragraph

three of the December 16 order, but gave no reasons for its decision.¹

The court also ordered defendant to pay his share of the QDRO within ten days, and to "immediately make the mortgage on the real property current[.]" Without prejudice, the court denied plaintiff's request for the issuance of a bench warrant to coerce defendant to comply with his obligations. However, the court stated, "In the event that . . . [d]efendant fails to comply with the terms of this [o]rder, . . . [p]laintiff may submit a certification, with notice to . . . [d]efendant, and a bench warrant may issue for . . . [d]efendant's arrest."

In paragraph eight of the December 16, 2016 order, the court denied plaintiff's motion for counsel fees and costs associated with her enforcement motion without prejudice. Although the court noted that it was required to consider a number of factors in reviewing such a motion,² it did not do so in its order. Instead,

¹ Paragraph three of the December 16, 2016 order stated, "Plaintiff's request that the [c]ourt eject [d]efendant from the real property is DENIED."

² An award of counsel fees in family actions is permitted by Rule 5:3-5(c) and Rule 4:42-9(a)(1). See Berkowitz v. Berkowitz, 55 N.J. 564, 570 (1970). Although the award is discretionary, N.J.S.A. 2A:34-23 requires the court to consider the following factors set forth by court rule:

the court merely stated that "[t]he financial ability of the [p]arties is unclear, and the [c]ourt finds no bad faith on the part of [d]efendant at this time."

When defendant did not comply with any of the provisions of the December 16, 2016 order, plaintiff filed another enforcement motion. Plaintiff asked the court to reconsider its decision not to eject defendant from the property because he was still interfering with its sale. In paragraphs one, two, and three of its February 3, 2017 order, the court denied plaintiff's request. The court again provided no explanation for its decision, and its order merely stated, "Plaintiff's motion requesting that the [c]ourt reconsider the December 16, 2016 [o]rder to eject [d]efendant from the real property is DENIED."

(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); See also Mani v. Mani, 183 N.J. 70, 93-94 (2005).]

Although the court had expressly invited plaintiff to file a new motion for the issuance of a bench warrant if defendant failed to abide by the December 16, 2016 order, the court denied plaintiff's request for this relief in paragraph six of the February 3, 2017 order without prejudice and without any explanation.

Finally, in paragraph ten of the February 3 order, the court denied plaintiff's request that defendant pay the counsel fees and costs she incurred in connection with her latest enforcement motion. The court again did not address all of the required factors and, instead, repeated verbatim what it had written in its December 16, 2016 order.³ This appeal followed.⁴

On appeal, plaintiff argues that the trial court incorrectly denied her motions to: (1) issue a bench warrant to compel defendant to comply with the court's prior orders or impose a different sanction upon him; and (2) grant her counsel fees and

³ In paragraph nine of the February 3, 2017 order, the court denied plaintiff's motion for reconsideration of its prior denial of her motion for counsel fees and costs associated with the enforcement motion that was the subject of the December 16, 2016 order.

⁴ At oral argument, plaintiff advised us that defendant left the former marital home sometime after she filed her appeal. Therefore, the arguments she raised in her appellate brief concerning the judge's denial of her motion for ejectment are now moot.

costs for her repeated enforcement motions. However, because the court failed to provide any explanation for the rulings it made on these subjects in the December 16, 2016 and February 3, 2017 orders, we are unable to consider plaintiff's contentions.

Rule 1:7-4(a) clearly states that a trial "court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon . . . on every motion decided by a written order that is appealable as of right[.]" See Shulas v. Estabrook, 385 N.J. Super. 91, 96 (App. Div. 2006) (requiring an adequate explanation of basis for court's action). Here, the court provided no reasons for denying the portions of plaintiff's motions that are involved in this appeal. See Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (requiring court to clearly state its factual findings and correlate them with the relevant legal conclusions). As a result, we have no way of knowing why the court decided to deny plaintiff's request for a bench warrant or another sanction, such as the entry of a judgment against defendant for the alimony and counsel fees he has already failed to pay; or her application for counsel fees and costs associated with the enforcement motions she filed to enforce the clear terms of the MSA.

"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)). The failure to provide findings of fact and conclusions of law "constitutes a disservice to the litigants, the attorneys, and the appellate court." Curtis, 83 N.J. at 569-70 (quoting Kenwood Assocs. v. Bd. of Adj. Englewood, 141 N.J. Super. 1, 4 (App. Div. 1976)). The trial court's complete failure to provide the findings of fact and conclusions of law required by Rule 1:7-4(a) on any of the provisions of the orders that are the subject of this appeal, combined with his failure to adequately consider plaintiff's enforcement motions, necessitates a remand for fulfillment of the court's obligation in this regard.

We therefore reverse the trial court's determinations in the December 16, 2016, and February 3, 2017 orders that are the subject of this appeal. We remand this matter with the direction that the trial court consider plaintiff's motions to enforce the court's prior orders, and her requests for counsel fees associated with those motions, and make detailed findings of fact and conclusions of law on all of the issues raised, within forty-five days of the date of this opinion.

Reversed and remanded. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION