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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-0055-16T2

LEONEL SERIO,

Plaintiff-Respondent,

v.

FIDELITY & GUARANTY INSURANCE
UNDERWRITERS, INC. d/b/a
TRAVELERS INSURANCE COMPANY,

Defendant-Respondent.

NYSA-ILA WELFARE FUND,

Intervenor-Appellant.

Argued December 7, 2017 – Decided December 21, 2017

Before Judges Simonelli and Rothstadt.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. L-5125-
14.

James R. Campbell argued the cause for
appellant (The Lambos Firm, LLP and John P.
Sheridan (Marrinan & Mazzola Mardon, PC),
attorneys; James R. Campbell and John P.
Sheridan, on the briefs).

Peter J. Dahl argued the cause for respondent Fidelity & Guaranty Insurance Underwriters, d/b/a Travelers Insurance Company (Law Offices of William E. Staehle, attorneys; Peter J. Dahl, on the brief).

Matthew V. Villani argued the cause for respondent Leonel Serio (Ginarte Gallardo Gonzalez Winograd LLP, attorneys, join in the brief of respondent Fidelity & Guaranty Insurance Underwriters, d/b/a Travelers Insurance Company).

PER CURIAM

Plaintiff Leonel Serio was involved in a motor vehicle accident with an underinsured motorist. Plaintiff had uninsured and underinsured coverage under his automobile insurance policy with defendant Fidelity & Guaranty Insurance Underwriters, Inc. (Fidelity).

Plaintiff filed a claim with his employer for disability benefits arising out of the accident. He subsequently received disability benefits in the amount of \$13,624 from intervenor NYSA-ILA Welfare Fund (Fund), and gave the Fund a lien against any recovery he obtained and a right to subrogation.

Plaintiff also filed a complaint in the Law Division against Fidelity for underinsured motorist benefits. Fidelity filed a motion for an order pursuant to N.J.S.A. 2A:15-97 barring evidence of benefits the Fund paid to plaintiff. Fidelity requested oral argument if opposition was filed. Plaintiff filed a cross-motion

for an order barring the Fund from asserting a lien on his recovery. The Fund filed a motion for an order permitting it to intervene, and opposed Fidelity's motion and plaintiff's cross-motion.

Without oral argument, and without making findings of fact and conclusions of law, the motion judge entered orders on March 18, 2016 and April 6, 2016, granting the motion and cross-motion, respectively. The judge merely made a brief statement in the March 18 order that "[the] Fund is a mixed plan which provides insured benefits to N.J. beneficiaries and falls under [the] collateral source rule." These were errors requiring us to vacate the orders and remand for further proceedings.

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) (emphasis added). 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, Fidelity requested oral argument if opposition was filed, and the Fund filed opposition. It is of great concern to us that the motion judge denied oral argument and failed to state specific reasons for the denial on the record. Because there were no special or unusual circumstances, and no indication the motion or opposition was frivolous or unsubstantiated, the judge should have held oral argument.

It also is of great concern to us that the motion judge failed to make written or oral findings of fact and conclusions of law for both motions. 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. "The purpose of the rule is to make sure that the court makes its own determination of the matter." In re Tr. Agreement Dec. 20, 1961, by & between Johnson & Hoffman, Lienhard & Perry, 399 N.J. Super. 237, 254 (2006), aff'd, 194 N.J. 276 (2008). "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 (App. Div. 2016) (alteration in original) (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 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 is left to the judge's discretion. In re Tr. Agreement 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,'" Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 301 (App. Div. 2009); 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. Agreement Dec. 20, 1961, 399 N.J. Super. at 254.

A judge "does not discharge [his] 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. "[A]n 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).

There is nothing in the orders 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 orders under review are vacated. The matter is remanded and the court is directed to conduct oral argument, consider the motions anew, and enter new orders together with a written or oral statement of reasons in conformity with Rule 1:7-4. 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