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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-1226-16T1

ROBERT G. ISETTS,

Plaintiff-Appellant,

v.

ANGELA ISETTS,

Defendant-Respondent.

Submitted December 11, 2017 – Decided March 9, 2018

Before Judges Sabatino and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Essex County,
Docket No. FM-07-1027-08.

The Cintron Firm, LLC, attorneys for appellant
(Sasha C. Intriago, on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff Robert G. Isetts appeals from an August 9, 2016
order awarding defendant Angela Isetts counsel fees. We reverse
and remand.

We discern the following relevant facts from the record on appeal. In August 2008, Robert¹ and Angela divorced and entered a property settlement agreement (PSA). Thereafter, in November 2015, Robert moved to modify his support obligation, arguing changed circumstances. Angela opposed this motion and sought arrears through probation, proof of life insurance as required by the PSA, and counsel fees.

Following oral arguments, on March 28, 2016, the Family Part judge entered an order, denying Robert's request, granting Angela back alimony due within thirty days, requiring Robert to produce proof of a life insurance policy within ten days, and instructing Angela to submit a certification for counsel fees within five days, which Robert could respond to within three days. On April 1, 2016, Angela's attorney submitted a certification in support of counsel fees pursuant to Rule 5:3-5, and on April 6, 2016, Robert filed a response.

On May 3, 2016, Robert allegedly contacted the Family Part judge to inquire about any further orders or opinions and was advised that there were no outstanding issues. On May 9, 2016, Robert then filed a notice of appeal challenging the March 28,

¹ For ease of reference, we refer to the parties by their first names, and in doing so, we mean no disrespect.

2016 order and after curing several deficiencies, filed an amended notice of appeal on May 31, 2016.²

While the appeal was pending, on June 24, 2016, Angela moved to enforce litigant's rights, seeking an order finding Robert in violation of the March 28, 2016 order, forcing him to pay all past-due alimony per the March 28, 2016 order, ordering a judgment against Robert and a suspension of his driver's license if he failed to pay within three days, and further ordering the issuance of an arrest warrant upon any future violations. Robert opposed this motion and filed a cross-motion, requesting the life insurance requirement be voided.

On August 9, 2016, the Family Part judge decided the motions on the papers and entered an order, directing Robert to submit payment for past-due arrears, finding Robert in violation of the March 28, 2016 order, ordering a lien against Robert's estate if he did not provide life insurance, awarding Angela \$3000 in counsel fees, and denying Robert's cross-motion.

Robert thereafter filed a motion for reconsideration, arguing, among other things, the Family Part lacked jurisdiction

² In Isetts v. Isetts, No. A-3799-15 (App. Div. Oct. 20, 2017), we affirmed the Family Part's March 28, 2016 order, finding the Family Part judge did not err in denying Robert modification, ordering Robert to produce proof of life insurance, and declining to suspend enforcement of support.

to award counsel fees because an appeal was pending, and even if the court had jurisdiction, it failed to make requisite findings of fact and law. Angela opposed this motion. Oral arguments were held on October 18, 2016. That same day, the Family Part judge entered an order, denying reconsideration and finding he had jurisdiction to order counsel fees because the March 28, 2016 order allowed for it. This appeal followed.

On appeal, Robert argues: (1) the Family Part lacked jurisdiction to award Angela counsel fees because an appeal was then pending; and (2) alternatively, if the Family Part had jurisdiction, the counsel fee award must be set aside because the Family Part judge did not make findings of fact and conclusions of law.

We find that the Family Part had jurisdiction to award counsel fees even though Robert had filed an appeal. Pursuant to Rule 2:9-1:

Except as otherwise provided . . . , the supervision and control of the proceedings on appeal or certification shall be in the appellate court from the time the appeal is taken or the notice of petition for certification filed. The trial court, however, shall have continuing jurisdiction to enforce judgments and orders

Accordingly, because the March 28, 2016 order explicitly contained a provision for counsel fees, the Family Part continued to have jurisdiction to enforce this order.

Turning to Robert's alternative argument, we find the Family Part erred by not making requisite findings for an award of counsel fees.

An award of counsel fees in a matrimonial case lies within the sound discretion of the Family Part judge. See Williams v. Williams, 59 N.J. 229, 233 (1971). Rule 5:3-5(c) provides enumerated factors the Family Part judge should consider in awarding counsel fees, including:

- (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;
- (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.

Additionally, "[t]rial 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) (citing Rule 1:7-4). A counsel fee award that is unsupported by adequate findings must be set aside. Clarke v. Clarke ex rel. Costine, 359

N.J. Super. 562, 572 (App. Div. 2003); see also Gordon v. Rozenwald, 380 N.J. Super. 55, 79 (App. Div. 2005).

Here, the Family Part judge did not make the required findings in awarding counsel fees. Consequently, we remand for the judge to consider whether to award counsel fees and to make findings of fact and conclusions of law. We defer to the trial court as to whether it wishes to request additional submissions from the parties.

We reverse the award of counsel fees to Angela and remand for reconsideration on that issue. 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