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APPROVAL OF THE APPELLATE DIVISION**

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-2931-16T3

J.R.,

Plaintiff-Appellant,

v.

BOROUGH OF RUTHERFORD,  
RUTHERFORD MAYOR JOSEPH  
DESALVO, RUTHERFORD COUNCIL  
MEMBER KIM BIRDSALL,  
RUTHERFORD COUNCIL MEMBER  
MICHAEL SARTORI, RUTHERFORD  
COUNCIL MEMBER JOHN  
PARNOFIELLO, RUTHERFORD  
COUNCIL MEMBER DAVID PORTER,  
RUTHERFORD COUNCIL MEMBER JACK  
BOYLE, RUTHERFORD COUNCIL MEMBER  
GEORGE FECANIN, ACTING RUTHERFORD  
POLICE CHIEF HAL CISER, (Defendants  
named in their official capacities),

Defendants-Respondents.

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Argued telephonically May 17, 2018 – Decided May 30, 2018

Before Judges Reisner and Hoffman.

On appeal from Superior Court of New Jersey,  
Law Division, Bergen County, Docket No.  
L-019846-14.

Catherine M. Elston argued the cause for  
appellant (C. Elston & Associates, LLC,

attorneys; Catherine M. Elston, of counsel and on the briefs; Cathlene Y. Banker, on the brief).

Dominic P. DiYanni argued the cause for respondents (Eric M. Bernstein & Associates, LLC, attorneys; Eric M. Bernstein, of counsel and on the brief; Steven Siegler, on the brief).

PER CURIAM

In this discrimination and civil rights dispute, plaintiff J.R. appeals from a January 20, 2017 order granting summary judgment in favor of defendants and a March 3, 2017 order denying reconsideration. In light of the confusion surrounding the return date of the summary judgment motion, we reverse the order denying reconsideration, vacate the order granting summary judgment, and remand for the trial court to decide the summary judgment motion anew.

I

Plaintiff, a military veteran, passed a Civil Service exam for the position of police officer. The Civil Service Commission placed him on a certification list given to defendant Borough of Rutherford (the Borough). The Borough informed plaintiff it selected him for one of the open police officer positions, subject to passing a medical and psychological examination. Plaintiff alleges he "passed the psychological examination and was deemed qualified for the position," but the Borough denied him the

position due to his post-traumatic stress. The Borough contends it removed plaintiff from the hiring list because he failed the psychological examination.

Plaintiff filed a complaint against the Borough and its mayor, council members, and police chief alleging civil rights and discrimination violations. Discovery began in February 2015 with an initial end date in May 2016; however, the court extended discovery multiple times. In August 2016, defendants filed a motion for summary judgment arguing plaintiff failed to exhaust administrative remedies, defendants are entitled to immunity, and plaintiff cannot prove the pretext required for discrimination. The trial court adjourned that motion multiple times because discovery was ongoing.

The clerk's office apparently scheduled the summary judgment motion for January 20, 2017; however, neither attorney received notice of the scheduling. Plaintiff had not yet filed opposition because discovery remained incomplete. Nevertheless, the trial court granted defendants' motion for summary judgment as "unopposed," and also dismissed plaintiff's outstanding discovery motion as moot. The record does not include any written or oral opinion from the court. Plaintiff's counsel learned of the order granting summary judgment when she called the court on January 27, 2017 to withdraw a motion to compel.

Plaintiff then filed a motion for reconsideration, which the court denied, reasoning plaintiff failed to provide any evidence the court failed to consider. Plaintiff appeals from the January 20, 2017 order granting summary judgment and the March 3, 2017 order denying reconsideration.

## II

A decision whether to deny a motion for reconsideration is addressed to the trial judge's discretion. Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002). Trial courts should grant motions for reconsideration "only under very narrow circumstances." Ibid. Reconsideration should only be granted when "either 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 v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

When a trial court denies a party's motion for reconsideration, a reviewing court shall overturn the denial only in the event the court abused its discretion. Marinelli v. Mitts & Merrill, 303 N.J. Super. 61, 77 (App. Div. 1997). In determining whether such an abuse has taken place, a reviewing court should be mindful that a party is not to utilize reconsideration just

because of "dissatisfaction with a decision of the [c]ourt." Capital Fin. Co. of Del. Valley v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) (quoting D'Atria, 242 N.J. Super. at 401). In this case, the trial court misapplied discretion in denying reconsideration, where the failure to file opposition was due to understandable confusion about the scheduled return date.

Further, in granting defendants' summary judgment motion, the trial court issued no statement of factual findings or legal conclusions as required by Rule 4:46-2(c) and Rule 1:7-4(a). In deciding a summary judgment motion, a "trial judge is obliged to set forth factual findings and correlate them to legal conclusions. 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)." Great Atl. & Pac. Tea Co. v. Checchio, 335 N.J. Super. 495, 498 (App. Div. 2000).

Rule 4:46-2(b) provides that all sufficiently supported material facts will be deemed admitted for purposes of the motion unless "specifically disputed" by the party opposing the motion. However, pursuant to Rule 1:7-4(a), the judge must still correlate those facts to legal conclusions. See Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 301 (App. Div. 2009) (citing Pressler, Current N.J. Court Rules, cmt. 1 on R. 1:7-4 (2009)) ("The trial judge may satisfy the court rules by relying on the facts or reasons advanced

by a party; however, the court is obligated to make the fact of such reliance 'explicit.'). The court rules do not provide an exception from that obligation where the motion is unopposed. R. 1:7-4(a); R. 4:46-2(c).

In granting summary judgment, the trial court did not express any basis for its decision, therefore, on reconsideration we cannot determine if it was palpably incorrect or irrational. Furthermore, we do not know what evidence the court considered, therefore we cannot determine if the court failed to consider any evidence. Because we have no basis to review either the summary judgment or reconsideration decisions, we reverse the trial court's denial of reconsideration, vacate the court's grant of summary judgment, and remand for the court to consider the summary judgment motion anew.

On remand, the trial court shall allow plaintiff to submit opposition to defendants' summary judgment motion regarding the administrative exhaustion and immunity issues, as they do not require further discovery. If plaintiff's complaint survives these motions, then the court shall enter an order providing for the completion of discovery and dates for filing any additional dispositive motions, and trial.

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