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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-3526-15T4

ANITA SEIGEL,

Plaintiff-Respondent/
Cross-Appellant,

v.

NORMAN SUTTA,

Defendant-Appellant/
Cross-Respondent.

Submitted January 9, 2018 – Decided January 24, 2018

Before Judges Fasciale, Summers and Moynihan.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Passaic
County, Docket No. FM-16-6049-92.

Ziegler & Zemsky, LLC, attorneys for
appellant/cross-respondent (Steven M.
Resnick, on the briefs).

Lomberg & Del Vescovo, LLC, attorneys for
respondent/cross-appellant (Paul Lomberg, on
the briefs).

PER CURIAM

Defendant appeals from a January 22, 2016 order denying his
motion to terminate his alimony obligation due to changed

circumstances; and a March 24, 2016 order denying reconsideration. Plaintiff cross-appeals from the same orders, which denied her request for counsel fees. We remand for further proceedings consistent with this opinion.

The parties married in December 1972, and in May 1994, the court entered a Dual Judgment of Divorce (JOD) and Stipulation of Settlement requiring defendant to pay plaintiff \$1250 per month in alimony. In 2007, defendant retired, which prompted his efforts to terminate his alimony obligation. In February 2009, an earlier judge denied defendant's initial motion for alimony termination based upon his retirement, yet reduced his alimony obligation from \$1250 to \$1000 per month. Although the JOD did not specify the duration of alimony, that judge stated that it "shall continue on a permanent basis." Defendant did not appeal from the February 2009 order.

In 2015, defendant again moved to terminate his alimony obligation. Plaintiff cross-moved for counsel fees. The judge who entered the orders under review conducted oral argument, but denied both motions without making findings of fact or conclusions of law. The parties moved for reconsideration and requested oral argument, but before conducting oral argument or receiving defendant's opposition, the judge denied the reconsideration

motions, also without providing findings of fact or conclusions of law.

On appeal, defendant argues that the judge failed to analyze N.J.S.A. 2A:34-23(j)(3) and make the appropriate findings regarding his changed circumstances. Relying on N.J.S.A. 2A:34-23(j)(3), defendant maintains that his retirement constitutes a changed circumstance requiring termination of his alimony. This statute provides that "the court shall consider the ability of the obligee to have saved adequately for retirement as well as [eight] factors in order to determine whether the obligor, by a preponderance of the evidence, has demonstrated that modification or termination of alimony is appropriate." N.J.S.A. 2A:34-23(j)(3).

It is undisputed that alimony orders "may be revised and altered by the court from time to time as circumstances may require." N.J.S.A. 2A:34-23. Thus, alimony obligations, whether set in judicial orders or parties' agreements, "are always subject to review and modification on a showing of 'changed circumstances.'" Lepis v. Lepis, 83 N.J. 139, 146 (1980) (quoting Chalmers v. Chalmers, 65 N.J. 186, 192 (1974)). Our ability to consider the soundness of the orders under review, however, has been hampered by the judge's failure to make findings of fact and conclusions of law. Rule 1:7-4(a) requires that "[t]he court

shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right." A judge cannot satisfy this rule with "[n]aked conclusions." Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986). "This requirement is particularly applicable to matrimonial cases. Without such findings it is impossible for an appellate court to perform its function of deciding whether the determination below is supported by substantial credible proof on the whole record." Ibid. (citations omitted). "Litigants and their attorneys are entitled to know the factual and legal basis of the court's determination, and they are disserved if the trial court fails in this obligation." Filippone v. Lee, 304 N.J. Super. 301, 306 (App. Div. 1997).

Furthermore, the judge ruled on the reconsideration motions before receiving defendant's opposition to plaintiff's cross-motion, and without conducting oral argument. Rule 5:5-4(a) states that "the court shall ordinarily grant requests for oral argument on substantive and non-routine discovery motions."¹ Being a

¹ Requests for oral argument on substantive issues may be denied pursuant to Rule 1:6-2(d) where the court sets forth its reasoning for the denial on the record. Raspantini v. Arocho, 364 N.J. Super. 528, 531-32 (App. Div. 2003).

substantive motion regarding alimony termination, the parties should have been allowed to argue orally and the judge abused his discretion by denying them that right. See, e.g., Filippone, 304 N.J. Super. at 306; Mackowski v. Mackowski, 317 N.J. Super. 8, 14 (App. Div. 1998).

On remand, the judge should conduct oral argument on the reconsideration motions, and then make the appropriate findings of fact and conclusions of law as to those motions as well as defendant's motion to terminate alimony and plaintiff's cross-motion for fees. We leave the details of the remand proceedings to the discretion of the judge. We do not retain jurisdiction because the further proceedings will result in orders entered after the parties have created a more complete record from which the parties may or may not appeal.

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


CLERK OF THE APPELLATE DIVISION