SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2772-21

MALEK SAADEH,

Plaintiff-Appellant/
Cross-Respondent,

v.

MAJESTIC TOWING &
TRANSPORT, INC.,
d/b/a MAJESTIC TOWING &
RECOVERY, and MAJESTIC
TOWING, and KARL L. JACKSON,

Defendants-Respondents/
Cross-Appellants.

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Argued May 3, 2023 – Decided July 18, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-2402-20.

Lindsay A. McKillop argued the cause for appellant/cross-respondent (The Law Office of Rajeh A. Saadeh, LLC, attorneys; Rajeh A. Saadeh and Lindsay A. McKillop, on the briefs).

Thales A. Nazario argued the cause for respondents/cross-appellants (Law Offices of Frank J. Shamy, LLC, and Nazario & Parente, LLC, attorneys; Frank J. Shamy, on the brief).

PER CURIAM

In this consumer fraud action, plaintiff Malek Saadeh appeals from provisions of an April 12, 2022 Law Division order granting him $6,500 in attorneys' fees and costs, an amount substantially less than the requested award of $21,334.[1] The counsel fee award followed a January 28, 2022 order granting plaintiff partial summary judgment and finding that defendants, Majestic Towing & Transport Inc., d/b/a Majestic Towing & Recovery and Majestic Towing (Majestic), and Karl Jackson, Majestic's sole owner and director, were liable for violations of the Predatory Towing Prevention Act, N.J.S.A. 56:13-7 to -23 (Towing Act). Defendants cross-appeal from the April 12 and January 28, 2022 orders, as well as from a March 24, 2022 order denying reconsideration. We affirm in part and reverse in part.

I.

We glean these facts from the motion record. On March 7, 2018, at approximately 7:00 p.m., plaintiff parked a vehicle belonging to his sister-in-

[1] We round all monetary amounts to the nearest dollar.

law in the parking lot of the North Plainfield Community Center. Due to a subsequent snowstorm, plaintiff did not return to retrieve the vehicle until two days later, at 5:10 p.m. on Friday, March 9. When he arrived at the parking lot, plaintiff discovered that the vehicle was missing, prompting him to call the North Plainfield Police Department (NPPD). The NPPD informed him that Majestic had towed the vehicle that morning at the NPPD's request.

After speaking with the police, "at approximately 5:50 p.m.," plaintiff called Majestic "to inquire as to the location of the . . . vehicle." During the call, plaintiff spoke with "[a]n employee of . . . Majestic," who informed him that "the . . . vehicle was located where . . . Majestic . . . does business." The employee also informed plaintiff that he "would not be permitted to retrieve the . . . vehicle until 9:00 a.m. on March 12, 2018," which was the following Monday, "as the . . . vehicle could not be retrieved after 5:00 p.m. or during the weekend." As a result, plaintiff and his brother went to Majestic's South Plainfield location on Monday, March 12, to retrieve the vehicle. They ultimately paid Jackson a fee of $346 to release the vehicle, which fee included charges for storing the vehicle over the weekend.

On April 20, 2020, plaintiff filed a two-count complaint alleging that defendants' conduct constituted violations of the Towing Act and the New Jersey

Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -227. Plaintiff sought treble damages, punitive damages, and attorneys' fees pursuant to N.J.S.A. 56:8-19. Defendants filed a contesting answer asserting various affirmative defenses, including that Jackson had no personal liability.

After discovery concluded, over defendants' objection, plaintiff moved for summary judgment. During oral argument, defendants argued that there were disputed issues of material fact regarding the identity of the person with whom plaintiff had spoken when he called Majestic on March 9, and whether plaintiff would have been able to retrieve the vehicle on Saturday. Defendants conceded, however, that "the business hours at the location were from 9 [a.m.] to 5[p.m.]," which plaintiff countered established a clear violation of the Towing Act.

At the conclusion of the hearing, the trial judge entered an order on January 28, 2022, granting partial summary judgment to plaintiff on defendants' liability for violating the Towing Act. In an oral opinion, the judge explained that it was "beyond dispute" that when plaintiff called Majestic on March 9 "to inquire about picking up the car," plaintiff "was advised that [Majestic] closed at 5 [p.m.]" in clear violation of N.J.S.A. 56:13-15(a)(1), which requires towing facilities to remain open during specified times. The judge also found that there was a violation of N.J.S.A. 56:13-14(b), establishing specified fees, because

"Saturday and Sunday's storage fee should never have happened." However, because the total damages and counsel fee awards were undetermined, the judge deferred those decisions in anticipation of future motion practice or trial.

On February 10, 2022, plaintiff filed an unopposed motion for summary judgment on damages. On February 17, 2022, while plaintiff's summary judgment motion was pending, defendants filed a motion for reconsideration of the January 28, 2022 order. The judge entered an order on March 24, 2022, denying defendants' reconsideration motion without oral argument. The judge found defendants' arguments were "clearly lacking in merit," and explained that reconsideration was inappropriate under Rule 4:42-2 because it was not consonant with "the interest of justice." The judge added that defendants "ma[de] a completely new argument which was not raised in the initial motion, [and] which [was] improper for reconsideration."

After denying defendants' reconsideration motion, the judge entered an order on April 1, 2022, granting plaintiff summary judgment as to damages and awarding damages in the amount of $3,567, excluding counsel fees. Because the motion was unopposed, it was adjudicated on the papers. Plaintiff subsequently filed a certification of attorney services pursuant to Rule 4:42-9(b) and N.J.S.A. 56:8-19 to support his request for counsel fees. In the certification,

plaintiff's counsel requested a fee award of $21,334, "plus an upward adjustment" to the extent allowed by Rendine v. Pantzer, 141 N.J. 292 (1995).

Counsel certified that the requested fee was "comparable or lower than the fee customarily charged in the locality for similar legal services given [her] experience and education" and averred that "the fee [was] a hybrid contingency-hourly arrangement." Counsel further explained that while "the questions involved" in the matter "were neither novel nor difficult," the fees were nevertheless incurred because of "[d]efendants' unreasonable positions regarding their own palpable, undisputed fraud." Counsel supported the application with itemized statements documenting the time both she and her colleague spent on plaintiff's case, as required by Rule 4:42-9(b).

On April 12, 2022, the judge entered an order amending the April 1 order to include a counsel fee award of $6,500. Like the April 1 order, the April 12 order was unopposed. The April 12 order granted plaintiff a judgment in the amount of $9,617, consisting of: (1) $1,039, or three times plaintiff's ascertainable loss; (2) $1,732 in punitive damages, or five times the award of compensatory damages; (3) $346 in restitution; and (4) $6,500 in attorneys' fees. Although the counsel fee award was significantly less than the amount requested, no explanation accompanied the order other than the following brief

statement: "The [c]ourt finds that reasonable attorney's fees, filing fees and reasonable cost of suit amount to a total of $6,500." These appeals followed.

On appeal, plaintiff argues the judge's counsel fee award was "[w]ithout legal basis" and the judge erred in entering the award "without determining the lodestar, following any steps required by Rendine, or considering any [Rule of Professional Conduct (RPC)] 1.5(a) factor." Plaintiff also asserts the judge's "summary" and "conclusory characterization" of the fee as "reasonable" fell "woefully short of [his Rule] 1:7-4(a) obligation." Plaintiff further contends that because his attorney worked on a "hybrid contingency-hourly arrangement," both "the statute and caselaw support [p]laintiff's request for an enhancement of the fees sought," particularly in light of his "resounding success on CFA liability and damages."

In their cross-appeal, defendants contend that the judge erred in granting both summary judgment motions and denying their reconsideration motion because genuine disputes of material fact exist as to their alleged violations of the Towing Act. Specifically, defendants argue that the record contained insufficient evidence to justify piercing the corporate veil with respect to Jackson "for the alleged actions of Majestic," and that disputes of material fact regarding their business office hours precluded summary judgment. Defendants

further contend that plaintiff failed to produce sufficient evidence to support a finding that their fees were excessive in violation of the Towing Act. Finally, in response to plaintiff's appeal, defendants urge us to affirm the judge's counsel fee award, arguing that the certification of plaintiff's counsel is rife with "examples of the excess time spent on this matter."

II.

"[W]e review the trial court's grant of summary judgment de novo under the same standard as the trial court." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). That standard is well-settled.

> [I]f the evidence of record—the pleadings, depositions, answers to interrogatories, and affidavits—"together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact," then the trial court must deny the motion. On the other hand, when no genuine issue of material fact is at issue and the moving party is entitled to a judgment as a matter of law, summary judgment must be granted.
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> [Steinberg v. Sahara Sam's Oasis, LLC, 226 N.J. 344, 366 (2016) (citations omitted) (quoting R. 4:46-2(c)).]

Whether a genuine issue of material fact exists depends on "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary

standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). "If there is no genuine issue of material fact, we must then 'decide whether the trial court correctly interpreted the law.'" DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007)). "We review issues of law de novo and accord no deference to the trial judge's [legal] conclusions . . . ." MTK Food Servs., Inc. v. Sirius Am. Ins. Co., 455 N.J. Super. 307, 312 (App. Div. 2018).

Applying these principles, we discern no error in the judge's decision granting summary judgment to plaintiff as to defendants' liability for violating the Towing Act. The Towing Act was enacted to protect individuals from "[p]redatory towing practices," such as "charging unwarranted or excessive fees, particularly in connection with towing vehicles from private parking lots which do not display any warnings to the vehicle owners or operators, or overcharging persons for towing services provided under circumstances where the person has no meaningful opportunity to withhold consent." N.J.S.A. 56:13-8(b). "The Towing Act makes breach of its provisions a violation of the CFA." Pisack v. B & C Towing, Inc., 240 N.J. 360, 368 (2020) (citing N.J.S.A. 56:13-21(a)).

Pertinent to this dispute, the Towing Act provides that a motor vehicle that is towed without the consent of its owner or operator may not be towed to or stored at a storage facility unless the facility "has a business office open to the public between 8 a.m. and 6 p.m. at least five . . . days a week, excluding holidays." N.J.S.A. 56:13-15(a)(1). The Act also requires towing companies to "provide reasonable accommodations for after-hours release of stored motor vehicles." N.J.S.A. 56:13-15(b).

Here, it is undisputed that plaintiff's vehicle was towed by Majestic and stored at Majestic's place of business. By defendants' own account, the office hours at that location were 9 a.m. to 5 p.m., Monday through Friday, a plain violation of N.J.S.A. 56:13-15(a). "[I]f there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact." Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 450 (2007) (quoting Brill, 142 N.J. at 540).

Further, defendants produced no evidence to dispute plaintiff's account that he was informed by Majestic's employee that he would not be able to pick up the vehicle until Monday, a violation of N.J.S.A. 56:13-15(b). Defendants' "'[c]onclusory and self-serving assertion[]'" that an accommodation, namely,

weekend pickup, may have been available "under certain circumstances" is "'insufficient to overcome the motion.'" Sullivan v. Port Auth. of N.Y. & N.J., 449 N.J. Super. 276, 283 (App. Div. 2017) (quoting Puder v. Buechel, 183 N.J. 428, 440-41 (2005)). "[W]hen the evidence 'is so one-sided that one party must prevail as a matter of law,' the trial court should not hesitate to grant summary judgment." Brill, 142 N.J. at 540 (citation omitted) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)).

Because defendants have failed to demonstrate a genuine dispute of material fact regarding their violations of N.J.S.A. 56:13-15(a) and (b) of the Towing Act, we need not address defendants' arguments regarding the reasonableness of their fees as prescribed by N.J.S.A. 56:13-14(b). Pursuant to N.J.S.A. 56:13-21(a), "[i]t is an unlawful practice and a violation of [the CFA] to violate any provision of th[e Towing Act]." (Emphasis added). Thus, defendants' violations of N.J.S.A. 56:13-15(a) and (b) suffice to support summary judgment as to defendants' liability.

Defendant Jackson argues that the judge erred in entering judgment against him individually. According to Jackson, despite being the sole owner and director of Majestic, he bore no responsibility for "scheduling pickups and office hours," and plaintiff has otherwise "failed to provide any evidence

required to pierce the corporate veil." Despite the issue being tangentially pled in defendants' answer as an affirmative defense, Jackson did not raise this argument in opposition to the January 28, 2022 summary judgment order finding defendants liable for Towing Act violations. Instead, defendants made the argument for the first time in support of their motion for reconsideration.

Under these circumstances, we are satisfied that "'it would be unfair, and contrary to our established rules,' to decide [this] issue when [plaintiff] was 'deprived of the opportunity to establish a record that might have resolved the issue.'" Chirino v. Proud 2 Haul, Inc., 458 N.J. Super. 308, 319 (App. Div. 2017) (quoting State v. Witt, 223 N.J. 409, 419 (2015)), aff'd o.b., 237 N.J. 440 (2019). "Appellate review is not limitless." State v. Robinson, 200 N.J. 1, 19 (2009). With "finite, qualified exceptions," id. at 20, none of which apply here, we generally "decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available." Chirino, 458 N.J. Super. at 318 (quoting Witt, 223 N.J. at 419).

Jackson had an opportunity to contest his individual liability when summary judgment was sought and did not do so. Therefore, we will not "consider the facts and the theory [Jackson] now advance[s], which plaintiff[]

never had the opportunity to refute." Id. at 319. For similar reasons, we discern no abuse of discretion in the judge's denial of reconsideration.

"[A] trial court's reconsideration decision will be left undisturbed unless it represents a clear abuse of discretion." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015). "Where the order sought to be reconsidered is interlocutory, as in this case, Rule 4:42-2 governs the motion." JPC Merger Sub LLC v. Tricon Enters., Inc., 474 N.J. Super. 145, 160 (App. Div. 2022). "Reconsideration under this rule offers a 'far more liberal approach' than Rule 4:49-2, governing reconsideration of a final order." Ibid. (quoting Lawson v. Dewar, 468 N.J. Super. 128, 134 (App. Div. 2021)).[2]

"Rule 4:42-2 declares that interlocutory orders 'shall be subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice.'" Lawson, 468 N.J. Super. at 134 (quoting R. 4:42-2(b)); see also Pressler & Verniero, Current N.J. Court Rules, cmt. 3 on R. 4:42-2 (2023) ("[A]n order adjudicating less than all the claims is subject to revision in the interests of justice at any time before entry of final judgment."). We are satisfied that the judge's denial of defendants' motion for reconsideration was

[2] Defendants apply the wrong standard in their brief.

correct under the Rule 4:42-2 standard. See Medina v. Pitta, 442 N.J. Super. 1, 18 (App. Div. 2015) ("Filing a motion for reconsideration does not provide the litigant with an opportunity to raise new legal issues that were not presented to the court in the underlying motion.").

Turning to the counsel fee award, "[a]ny person who suffers any ascertainable loss of moneys . . . as a result" of a Towing Act violation "may bring an action" to recover "threefold the damages sustained" and "reasonable attorneys' fees, filing fees and reasonable costs of suit," as well as "any other appropriate legal or equitable relief" as determined by the court. N.J.S.A. 56:8-19. As our Supreme Court has explained, "an award of treble damages and attorneys' fees is mandatory under N.J.S.A. 56:8-19 if a consumer-fraud plaintiff proves both an unlawful practice under the [CFA] and an ascertainable loss." Cox v. Sears Roebuck & Co., 138 N.J. 2, 24 (1994); see also Delta Funding Corp. v. Harris, 189 N.J. 28, 41 (2006) (noting that "[a]n award of attorney's fees and costs to prevailing plaintiffs is mandatory" in CFA actions). However, "[t]he amount of reasonable attorneys' fees to be awarded pursuant to N.J.S.A. 56:8-19 . . . is within the sound discretion of the trial court, guided by those principles that run consistently through our caselaw when courts address the appropriate quantum of fees allowable pursuant to various fee-shifting

statutes." Branigan v. Level on the Level, Inc., 326 N.J. Super. 24, 31 (App. Div. 1999).

In granting an award of attorneys' fees, "[t]he court's first step . . . is determining the lodestar, 'which equals "the number of hours reasonably expended multiplied by a reasonable hourly rate."'" Jacobs v. Mark Lindsay & Son Plumbing & Heating, Inc., 458 N.J. Super. 194, 209 (App. Div. 2019) (quoting Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21 (2004)).

> There are four considerations in setting the lodestar. The first is the reasonableness of the attorney's fee, evaluated under the factors set forth in RPC 1.5(a). Second, the court considers the reasonableness of the time billed by the attorney, since a party is not entitled to counsel fees for excessive and unnecessary hours. Third, the court determines whether the award should be decreased because the plaintiff "achieved limited success in relation to the relief he [or she] had sought." Fourth, the court must decide whether the attorney is entitled to a fee enhancement if the attorney worked under a contingency agreement.
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> [Heyert v. Taddese, 431 N.J. Super. 388, 443-44 (App. Div. 2013) (footnote omitted) (citations omitted) (first citing Furst, 182 N.J. at 21-22; then quoting Furst, 182 N.J. at 23).]

In considering the reasonableness of the attorney's proposed fee, "the court evaluates the 'rate of the prevailing attorney in comparison to rates "for similar services by lawyers of reasonably comparable skill, experience, and

reputation" in the community.'" Jacobs, 458 N.J. Super. at 210 (quoting Furst, 182 N.J. at 22). As for the reasonableness of the time billed, the court must consider "whether the time expended in pursuit of the 'interests to be vindicated,' the 'underlying statutory objectives,' and recoverable damages is equivalent to the time 'competent counsel reasonably would have expended to achieve a comparable result.'" Ibid. (quoting Furst, 182 N.J. at 22). If, "after having . . . established the amount of the lodestar fee," Rendine, 141 N.J. at 337, the court determines that a fee enhancement is warranted, "'the court should consider the result achieved, the risks involved, and the relative likelihood of success in the undertaking' to determine the amount of [the] enhancement." Jacobs, 458 N.J. Super. at 210 (quoting Furst, 182 N.J. at 23).

We generally do "not set aside an award of attorneys' fees except 'on the rarest occasions, and then only because of a clear abuse of discretion.'" Garmeaux v. DNV Concepts, Inc., 448 N.J. Super. 148, 155 (App. Div. 2016) (quoting Rendine, 141 N.J. at 317). Under that standard, we may set aside an award of counsel fees "if the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error in judgment." Heyert, 431

N.J. Super. at 444 (quoting Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005)).

However, "[i]n order to perform our review, we must be provided with adequate reasons for the trial judge's determinations." Gormley v. Gormley, 462 N.J. Super. 433, 449 (App. Div. 2019). "Trial judges are under a duty to make findings of fact and to state reasons in support of their conclusions." Romero v. Gold Star Distrib., LLC, 468 N.J. Super. 274, 304 (App. Div. 2021) (quoting Giarusso v. Giarusso, 455 N.J. Super. 42, 53 (App. Div. 2018)); see also R. 1:7-4(a) (requiring courts to "find the facts and state . . . conclusions of law thereon," either orally or in writing, "on every motion decided by a written order that is appealable as of right"). Our court rules explicitly extend this obligation to motions for summary judgment, R. 4:46-2(c), even those that are uncontested and decided on the papers. See Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 302 (App. Div. 2009) ("[E]ven in an uncontested motion, the judge must consider whether undisputed facts are sufficient to entitle a party to relief.").

Here, in setting the fee award, the judge stated only that he "f[ound] that reasonable attorney's fees, filing fees and reasonable cost of suit amount to a

total of $6,500."[3] However, our Supreme Court has made it clear that "a trial court must analyze the Rendine factors in determining an award of reasonable counsel fees and then must state its reasons on the record for awarding a particular fee." Furst, 182 N.J. at 21 (citing R. 1:7-4(a)). Nothing in the record shows the judge considered the requisite factors. "Failure to make explicit findings and clear statements of reasoning '"constitutes a disservice to the litigants, the attorneys, and the appellate court."'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Curtis v. Finneran, 83 N.J. 563, 569-70 (1980)). "Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion." Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990). Therefore, we are constrained to reverse and remand the matter for a determination of a reasonable fee award consistent with the principles governing the award of attorneys' fees set forth in our cases and reiterated herein, and a clear articulation of factual findings correlated to the relevant legal principles.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

[3] Although the order states that "[a]dditional reasons [were] set forth on the record on April 1, 2022," the judge's statements in the transcript of that hearing provided in the record discussed only his decision to consider the damages motion uncontested.