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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-2446-22**

**TIBOR S. SIMON,**

Plaintiff-Appellant,

v.

**BOB RUSCH and TOWNSHIP OF  
RIVER VALE,**

Defendants-Respondents.

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Submitted May 14, 2024 – Decided May 23, 2024

Before Judges Mayer and Paganelli.

On appeal from the Superior Court of New Jersey, Law  
Division, Bergen County, Docket No. L-5544-22.

Law Office of Will Kang, LLC, attorneys for appellant  
(Woo Jung Kang, on the briefs).

Schepisi & McLaughlin, PA, attorneys for respondents  
(Silvana D. Raso and Christian M. Hibinski, on the  
brief).

**PER CURIAM**

Plaintiff Tibor S. Simon appeals from a March 3, 2023 order granting summary judgment to defendants Bob Rusch and the Township of River Vale (Township) and dismissing his complaint with prejudice. For the reasons that follow, we vacate the order and remand for further proceedings.

We briefly summarize the facts relevant to the issue on appeal. In 2021, plaintiff applied to the Township for a permit to construct a deck on the first-floor roof of his home. Because plaintiff's application was incomplete, the Township denied the construction permit. Plaintiff then constructed the deck without a permit.

In March 2022, Rusch, as the Township's Construction/Zoning Official, issued a Notice and Order of Penalty, imposing a fine of \$2,000 against plaintiff for constructing the deck without a permit. In May 2022, the Township issued a Notice of Violation and Order to Terminate and a Notice of Unsafe Structure. Plaintiff appealed to the Bergen County Construction Board of Appeals (Board). After conducting a hearing, the Board denied plaintiff's appeal and sustained the Township's violation notices in a September 8, 2022 decision.

A month later, plaintiff filed a complaint in lieu of prerogative writs against defendants.

In February 2023, defendants moved for summary judgment. Defendants raised several arguments in support of their summary judgment motion, including plaintiff's failure "to comply with a single provision of the New Jersey Tort Claims Act" and failure "to enunciate any viable causes of action." Plaintiff failed to oppose the motion.<sup>1</sup>

In a March 3, 2023 order, the motion judge granted the summary judgment motion and dismissed plaintiff's complaint with prejudice. The order noted defendants' motion as "unopposed." The judge, in a typed addendum to defendants' form of order, indicated she "relie[d] on [defendants'] unrebutted presentation of facts and persuasive legal argument. R. 1:7-4; *Allstate Ins. Co. v. Fisher*, 408 N.J. Super. 289, 301 (App. Div. 2009)."

On appeal, plaintiff argues the judge erred in failing to render the required findings of fact and conclusions of law in support of the March 3, 2023 order. He also requests this court stay certain municipal court proceedings pending the outcome of this appeal.

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<sup>1</sup> On appeal, plaintiff asserts he did not file opposition to defendants' motion because he "was under the impression that a mutual understanding and/or settlement was agreed between the parties and thus failed to understand the consequences of not responding to the motion."

After reviewing the record, we are constrained to vacate the order and remand for further proceedings because the judge's decision falls short of the required oral or written findings of fact and conclusions of law under Rule 1:7-4.

However, we lack jurisdiction to stay any pending municipal court proceedings. Such an application must be made to the municipal court.

Rule 1:7-4 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 . . . on every motion decided by a written order that is appealable as of right." Accordingly, "[i]n support of an order granting summary judgment, a judge is required to detail the findings of fact and conclusions of law in a written or oral opinion." Allstate Ins. Co., 408 N.J. Super. at 299-300.

"[N]either the parties nor [the appellate court] are well-served by an opinion devoid of analysis." Great Atl. & Pac. Tea Co., Inc. v. Checchio, 335 N.J. Super. 495, 498 (App. Div. 2000). A motion judge "is obligated '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).'" Allstate Ins. Co., 408 N.J. Super. at 300 (alterations in original) (quoting Great Atl. & Pac. Tea

Co., Inc., 335 N.J. Super. at 498). "The court rules do not provide any exception from this obligation where the motion is unopposed." Ibid.

Furthermore, because the "function [of] an appellate court is to review the decision of the trial court, not to decide the motion tabula rasa," a motion judge fails to satisfy the requirements of Rule 1:7-4 "by a nebulous allusion to the reasons set forth in [the movant's] motion papers." Est. of Doerfler v. Fed. Ins. Co., 454 N.J. Super. 298, 302 (App. Div. 2018) (internal quotation marks removed). In the "absence of any factual findings or legal conclusions, meaningful review is impossible," requiring an appellate court to "reverse the order[] granting summary judgment . . . and to remand [the] matter to the trial court." Raspantini v. Arocho, 364 N.J. Super. 528, 533 (App. Div. 2003). Further, the court rule governing motions for summary judgment requires the trial court to "find the facts and state its conclusions in accordance with R[ule] 1:7-4." R. 4:46-2(c).


Here, the judge did not comply with the requirements of Rule 1:7-4 in stating her reliance on defendants' "unrebutted presentation of facts and persuasive legal argument." Defendants raised several legal arguments in support of their motion for summary judgment. However, the March 3, 2023 order failed to set forth which legal theory or theories the judge relied upon in

granting defendants' summary judgment motion. "In the absence of reasons, [an appellate court is] left to conjecture as to what the judge may have had in mind." In re Farnkopf, 363 N.J. Super. 382, 390 (App. Div. 2003) (quoting Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990)).

Under the circumstances, we vacate the March 3, 2023 order and remand the matter to the trial court. We take no position on the merits of the parties' claims or the outcome of any future motion for summary judgment that may be filed by defendants.

Vacated 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