

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4140-12T3

CATHERINE JACKSON,

Plaintiff-Appellant/
Cross-Respondent,

v.

JOYCE DUVAL, CHRISTIE DUVAL,
DAVID A. GOMEZ, DANIELLE C.
GOMEZ, JULIO GOMEZ, MICHAEL
GOMEZ AND NICHOLAS M. GOMEZ,

Defendants,

and

RYAN M. DELARO¹ AND LISA
GOMEZ-DELARO,

Defendants-Respondents/
Cross-Appellants.

Argued March 19, 2014 – Decided May 6, 2014

Before Judges Fuentes, Simonelli and Haas.

On appeal from the Superior Court of New
Jersey, Law Division, Passaic County,
Docket No. L-3799-11.

Deborah Masker Edwards argued the cause
for appellant/cross-respondent (Sciarra &
Catrambone, LLC, attorneys; Matthew R.

¹ Ryan M. Delaro incorrectly pled as Bryan M. Delaro.

Curran, of counsel and on the briefs; Ms. Masker Edwards, on the briefs).

Theodore E. Kyles, Jr. argued the cause for respondents/cross-appellants.

PER CURIAM

Plaintiff Catherine Jackson appeals from: the February 8, 2013 consent order, granting summary judgment to defendants Lisa Gomez-Delaro and Ryan M. Delaro² and dismissing the complaint; and the March 25, 2013 judgment for frivolous lawsuit sanctions. We reverse the order and judgment and remand for trial.³

We derive the following facts from the record. Plaintiff resides in California, but owns a home in Clifton, which she leased to defendant Joyce Duval and Duval's children. After evicting Duval from the home in 2010, plaintiff discovered it had been "totally destroyed." She called the police, who advised her of the procedure for filing a criminal complaint.

Plaintiff established from police reports, personal rent checks, mail, and utility bills bearing defendants' names, that defendants also resided in the home in 2010. Defendants

² We shall sometime refer to Gomez-Delaro and Delaro collectively as defendants.

³ Because we reverse the judgment, we need not address defendants' cross-appeal from the denial of their demand for damages for abuse of process and/or malicious prosecution and defamation, and the denial of frivolous litigation fees for defending a criminal matter.

admitted they lived in the home at one time, but left before 2010, and did not know who caused the damage.

In July 2010, plaintiff signed a criminal complaint against Gomez-Delaro in the Clifton municipal court for third-degree criminal mischief, N.J.S.A. 2C:17-3a(2), and third-degree theft of movable property, N.J.S.A. 2C:20-3a. The municipal court found probable cause for the issuance of the complaint and summons. Thereafter, on December 7, 2010, a grand jury indicted Gomez-Delaro for criminal mischief and theft. The record does not reveal why the indictment was dismissed on May 9, 2011.

On August 11, 2011, plaintiff filed a civil complaint against defendants and others, seeking damages in the amount \$98,329.09. Defendants filed an answer and counterclaim. Gomez-Delaro sought damages for abuse of process, malicious prosecution, and defamation, and Delaro sought damages for defamation.

After completion of depositions, in October 2012, plaintiff's attorney decided not to proceed with the complaint. He obtained plaintiff's consent to dismiss the complaint. Defendants would agree to dismiss their counterclaim, and on January 3, 2013, they filed a motion for summary judgment,

returnable after the trial date.⁴ Plaintiff's attorney advised the motion judge that he would not oppose the motion.

On February 8, 2013, the judge entered a consent order granting summary judgment to defendants and dismissing the complaint. Although the consent order did not specifically grant summary on the counterclaim, it provided

that the sole remaining issue to be determined by the [c]ourt, namely the issue of the [d]efendants['] damages, if any, as sought in the causes of action set forth in the Counterclaim, and/or pursuant to [Rule] 1:4-8 is to be decided by the [c]ourt upon written papers to be submitted by counsel[.]

The judge made no findings of fact or conclusions of law before granting summary judgment. Plaintiff's attorney did not advise plaintiff of the summary judgment motion until after entry of the consent order.

On February 22, 2013, defendants submitted a brief with respect to frivolous litigation sanctions pursuant to N.J.S.A. 2A:15-59.1 and Rule 1:4-8 for defending the criminal and civil matters. In a March 4, 2013 certification, plaintiff established her reasonable basis for filing the civil complaint.

In a March 15, 2013 oral opinion, the judge awarded defendants \$19,502.50 for attorney fees only for their defense

⁴ On November 19, 2012, the court notified the parties of the February 4, 2013 trial date.

of the civil complaint. The judge did not find that plaintiff acted in bad faith. Rather, he found, incorrectly, that there was "a judicial determination of insufficiency of evidence" to proceed with the indictment that should have forewarned plaintiff she had insufficient evidence to pursue a civil claim. The judge made no factual findings or legal conclusions, and provided no reasons for the amount awarded.

Our review of this appeal is complicated by the trial court's failure to render a statement of reasons, as required by Rule 1:7-4, explaining the basis for his orders granting summary judgment and frivolous lawsuit sanctions. See Pressler and Verniero, Current N.J. Court Rules, comment 1 on R. 1:7-4 (2014) (emphasizing that the Rule "requires findings to be made on all motions decided by written orders appealable as of right", and the "critical importance of that function"). Findings of facts and conclusions of law are required even in deciding an unopposed summary judgment motion. Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 300-01 (App. Div. 2009). Where the trial judge decides a motion without issuing adequate findings and conclusions, we have reversed summary judgment and remanded for additional findings. Pardo v. Dominguez, 382 N.J. Super. 489, 491-92 (App. Div. 2006).

Because it is readily apparent that the present circumstances did not warrant summary judgment or frivolous lawsuit sanctions, we will spare the parties and the trial court the burden of a remand for additional findings. We are satisfied that plaintiff's March 4, 2013 certification established facts on which a reasonable jury could conclude that defendants resided in the home during the relevant period and are responsible for the damage, and established plaintiff's reasonable basis for filing the civil complaint. We, thus, reverse the order granting summary judgment and the judgment for frivolous litigation sanctions.

Reversed.

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


CLERK OF THE APPELLATE DIVISION