

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2886-13T1

SCHIFFMAN ABRAHAM KAUFMAN &
RITTER, P.C.,

Plaintiff-Respondent,

v.

MEREDITH FISHER,

Defendant-Appellant.

Submitted February 11, 2015 – Decided May 29, 2015

Before Judges Waugh, Maven, and Carroll.

On appeal from the Superior Court of New
Jersey, Law Division, Bergen County, Docket
No. L-4311-13.

Meredith Fisher, appellant pro se.

Schiffman, Abraham, Kaufman & Ritter, P.C.,
respondent pro se (Daniel S. Eichhorn, on
the brief).

PER CURIAM

Defendant Meredith Fisher appeals the Law Division's
January 24, 2014 order granting summary judgment in favor of
plaintiff Schiffman, Abraham, Kaufman & Ritter, P.C. (Firm), and
awarding it \$52,235.72 in legal fees and costs, plus interest.

We reverse and remand for reconsideration and full findings of fact and conclusions of law.

I.

We discern the following facts and procedural history from the record on appeal.

Fisher and the Firm entered into a retainer agreement dated November 12, 2013, and signed by Fisher on November 26. The agreement provided that the Firm would represent Fisher in connection with the mediation in the guardianship matter involving Fisher's mother, which was pending in Bergen County. However, the agreement further provided that, "[i]f mediation is not successful and you continue to litigate, you agree to engage other counsel."

The agreement established hourly rates that ranged between \$250 and \$475, depending on the experience of the attorney performing the work. Lorraine A. Abraham was designated as Fisher's primary attorney, with an hourly rate of \$450. Fisher paid the Firm a retainer of \$10,000. Fees were initially to be billed against the retainer. Once the funds from the retainer were reduced to \$2500, Fisher was to receive monthly invoices for all fees. The retainer agreement provided that the Firm would be entitled to reasonable attorneys' fees and court

costs in the event that it was required to file a collection action against Fisher.

In February 2013, Fisher concluded that the mediation would not result in a settlement. By that time, the Firm's fees and expenses exceeded \$29,000. According to Fisher, she was concerned about the amount of the fees and the fact that the Firm's representation had extended beyond the mediation and to the underlying litigation. According to Abraham, the judge presiding over the guardianship case had required her to represent Fisher in connection with both the mediation and the litigation.

On March 1, Abraham sent Fisher an email requesting her to sign a substitution of attorney in order to avoid the Firm having to file a motion to be relieved. Abraham also expressed her displeasure at Fisher's having notified other counsel in the guardianship matter that the Firm was no longer representing her, without having first advised her that she wished to terminate the relationship. On March 12, Abraham advised the judge she would like to be relieved. The parties consented to a substitution of attorney, which was signed and filed. However, the judge then advised Abraham that, because the trial had been scheduled for July 1, the Firm would have to make a motion to withdraw pursuant to Rule 1:11-2(a)(2).

On March 27, the Firm filed its motion, accompanied by Abraham's certification and executed consents from counsel for all other parties. The certification recited that, although the retainer agreement had only covered the mediation, the Firm had also provided services to Fisher for the underlying guardianship action, including amending her complaint for removal of her co-guardians, preparing discovery requests, and representing Fisher at conferences. The certification explained that Abraham had only limited contact with Fisher after March 5. Finally, it referred to unpaid legal fees and expenses totaling \$52,235.72, noting that Fisher had failed to pay any of the Firm's invoices submitted to her.

The probate judge granted the Firm's motion to be relieved as counsel on April 19, with Fisher being substituted as pro se counsel. The order provided that the "substitution of attorney shall not delay the proceedings, including the trial." The judge denied the Firm's application for payment of its fees out of the assets of the guardianship estate.

On May 2, the probate judge dismissed Fisher's complaint in the guardianship action for failure to comply with discovery orders. In a June 21 order, the dismissal was converted into a dismissal with prejudice.

In May, the Firm gave Fisher notice under Rule 1:20A-6 and N.J.S.A. 2A:13-6 that it was seeking to recover \$52,235.72 in unpaid legal fees. Fisher did not pursue fee arbitration, though the Firm advised her of her right to do so. In June, the Firm filed a four-count complaint seeking fees and expenses on theories of contract, quantum meruit, account stated, and book account. Fisher filed an answer pro se, denying that fees and expenses of \$52,235 were reasonable or necessary.

Prior to any discovery, the Firm moved for summary judgment. Abraham certified that the Firm sent Fisher monthly invoices throughout the period of its representation.¹ She further certified that Fisher had never complained about the amount of fees or the quality of the legal services rendered by any of the Firm's attorneys.

Abraham asserted that she charged Fisher an hourly rate of \$450, her usual rate for probate matters and related litigation, which was her main area of practice. She asserted that the hourly rate was reasonable and mirrored rates charged by attorneys who, like her, had been practicing for over forty years in Northern New Jersey, and who had similar abilities and

¹ In March and April 2013, even though the Firm had sent Fisher the substitution paperwork, it continued to work on the case, including correspondence with the judge and reviewing discovery in the underlying matter. It also billed her for work on the substitution of attorney.

experience. Abraham further certified that the fees charged were reasonable and necessary.

Fisher submitted a certification in opposition to the motion. She asserted that the legal services for which it sought compensation were performed deficiently, outside of the scope of the retainer agreement, and after she attempted to terminate the Firm's representation. She explained:

When in late February 2013 it became apparent mediation efforts had failed I advised [the Firm]'s [r]epresentative that [the Firm]'s services were no longer required. However, notwithstanding the terms of our retainer agreement, [Abraham] informed me that until a hearing was held on her motion to substitute myself, pro se, for [the Firm], which was scheduled to be heard in late April 2013, I had no choice but to continue to be represented by [the Firm]. As there was no objection from opposing counsel, I requested the substitution be done forthwith by consent, but my request was ignored. [The Firm] used the waiting period for [Abraham's] motion to be heard as an opportunity to bill me for over \$21,000 of additional legal services.

On January 24, 2014, the motion judge granted summary judgment in favor of the Firm.² The judge attached the following "rider" to the order:

[Fisher]'s opposing papers indicate that she no longer wanted [the Firm] to

² Although the order states that there was oral argument, the notice of appeal states that there was no verbatim record. There is no transcript from January 24 in the record before us.

represent her. However, her papers are not accompanied by any other proofs wherein she attempted to terminate representation. Additionally, [Fisher] merely indicates that the bill is too high and does not set forth specifically the legal services she claims were performed and/or billed for at excessive rates.

This appeal followed.

II.

On appeal, Fisher raises the following issues:

I. THE MOTION COURT FAILED TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW MANDATING A REMAND.

II. THE MOTION COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF [THE FIRM] AND AGAINST [FISHER] BECAUSE THERE WERE GENUINE DISPUTED ISSUES OF MATERIAL FACT THAT REQUIRED DETERMINATION.

A. [The Firm] Failed to Make a Prima Facie Case or Alternatively There Were Genuine Disputed Issues of Material Fact Regarding the Existence of an Agreement for [Fisher] to Perform Legal Service Making Grant of [the Firm]'s Motion for Summary Judgment Reversible Error.

B. Alternatively There Were Genuine Disputed Issues of Material Fact Concerning [the Firm]'s Entitlement to a Quantum Meruit Recovery for Litigation Related Legal Services.

1. There were Genuine Disputed Issues of Material Fact as to Whether [the Firm]'s Failure

to Act in Good Faith Bars a Recovery Quantum Meruit.

2. There Were Genuine Disputed Issues of Material Fact as to Whether [Fisher]'s Acceptance of Legal Services Under Duress Barred Recovery in Quantum Meruit.

3. There Were Genuine Disputed Issues of Material Fact As to Whether [the Firm] had an Expectation of the Substantial Compensation Billed.

4. There Were Genuine Disputed Issues of Material Fact as to What the Reasonable Value of [the Firm]'s Services Was.

III. THE MOTION COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE IT FAILED TO DETERMINE THE REASONABLENESS OF THE FEES CHARGED BY [THE FIRM] FOR THE MEDIATION.

IV. THE MOTION COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE IT IMPROPERLY SHIFTED THE BURDEN OF PROOF FROM [THE FIRM] TO [FISHER].

In a supplemental brief, Fisher raises these additional numbered points:

I. ALL ARGUMENTS RAISED BY [FISHER] SHOULD BE CONSIDERED ON APPEAL.

II. SUMMARY JUDGMENT WAS IMPROPERLY GRANTED TO [THE FIRM] ON ANY OF ITS FOUR THEORIES OF RECOVERY.

A. [The Firm] Was Not Entitled to Summary Judgment on Its Breach of Contract, Book Account or Debt on Account Claims.

B. [The Firm] Was Not Entitled to Summary Judgment on Its Quantum Meruit Claim.

III. REMAND TO THE MOTION COURT IS MANDATED

A. The Motion Court's Failure to Make Findings of Fact and Conclusions of Law Mandates a Remand.

B. Exercis[e] of Original Jurisdiction by the Appellate Court is Inappropriate.

IV. THE MOTION COURT IMPROPERLY SHIFTED THE BURDEN OF PROVING THE REASONABLENESS OF [THE FIRM]'S FEES FROM [THE FIRM] TO FISHER.

We review a grant of summary judgment under the same standard as the motion judge. Rowe v. Mazel Thirty, LLC, 209 N.J. 35, 41 (2012). We must determine whether there are any genuine issues of material fact when the evidence is viewed in the light most favorable to the non-moving party. Id. at 38, 41. "The inquiry is 'whether the evidence presents a sufficient disagreement to require submission to a [finder of fact] or whether it is so one-sided that one party must prevail as a matter of law.'" Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)). "[T]he legal conclusions undergirding the summary judgment motion itself" are

reviewed "on a plenary de novo basis." Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 385 (2010).

Fisher's basic arguments on appeal are (1) that the motion judge did not adequately explain his reasons for granting the Firm's motion for summary judgment and (2) that his decision was wrong on the merits.³ We agree with Fisher's first assertion, as a consequence of which we are unable to consider her second one.

"Trial judges are under a duty to make findings of fact and to state reasons in support of their conclusions." Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996) (citing R. 1:7-4). "'Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion.'" Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008) (quoting Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990)). "Naked conclusions do not satisfy the purpose of R. 1:7-4.

³ We note that Fisher raises numerous issues for the first time on appeal, both in her initial brief and her reply brief. We need not consider issues raised for the first time on appeal. State v. Robinson, 200 N.J. 1, 20-22 (2009); Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973); see also Pressler & Vernerio, Current N.J. Court Rules, comment 2 on R. 2:6-2 (2015). In addition, arguments raised for the first time in a reply brief are considered to have been waived and need not be considered. L.J. Zucca, Inc. v. Allen Bros. Wholesale Distribs. Inc., 434 N.J. Super. 60, 87 (App. Div. 2014) (citing Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011)).

Rather, the trial court must state clearly its factual findings and correlate them with the relevant legal conclusions." Curtis v. Finneran, 83 N.J. 563, 570 (1980). The judge's findings and conclusions in this case do not satisfy that standard.⁴

We also note that a full explanation of decisions in cases involving the scope of representation and the reasonableness of attorneys' fees is important in light of the judiciary's "exclusive responsibility to regulate the conduct of attorneys, N.J. Const. art. VI, § II, ¶ 3, State v. Rush, 46 N.J. 399, 411 (1966), [which] extends to every aspect of the attorney-client relationship, including agreements for fees." Cohen v. Radio-Elecs. Officers Union, 146 N.J. 140, 155 (1996) (citing In re LiVolsi, 85 N.J. 576, 585 (1981)). Although retainer agreements are contracts, they are subject to the ethical constraints set forth in the Rules of Professional Conduct. Ibid. The motion judge's cursory statement provides no explanation of why the fees were reasonable and the work and hours spent necessary. In addition, it fails to address the issue raised with respect to

⁴ The judge's "rider" appears to contain an error in that the judge states that there were no proofs in the record that Fisher attempted to terminate representation by the Firm. That assertion was, in fact, made in Fisher's certification in opposition to the Firm's summary judgment motion. In addition, as evidenced by Abraham's March 1, 2013 email, the Firm was aware of Fisher's desire to terminate the relationship by that time.

the scope of the work performed in light of the scope of the retainer, which provided the Firm would not represent Fisher if the underlying matter had to be litigated.

We are constrained to reverse the order on appeal and remand the case to the Law Division for further consideration. On remand, the judge shall carefully reconsider the motion for summary judgment, with oral argument if there was no oral argument the first time. The judge must then issue findings of fact and conclusions of law in sufficient detail to permit meaningful appellate review.⁵

Reversed and remanded for further proceedings consistent with this opinion.

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



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⁵ We express no view on the merits of the Firm's claims, Fisher's defenses, or even whether this is an appropriate case for decision of any or all issues by summary judgment or prior to a reasonable period for discovery.