NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0

VICTORIA FREEMAN,

Plaintiff-Appellant,

v.

SCOTT FREEMAN,

Defendant-Respondent.

October 18, 2013

Submitted October 7, 2013 -- Decided

Before Judges Harris and Kennedy.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Cape May County, Docket No. FM-05-0360-97.

Victoria Freeman, appellant pro se.

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Cynthia Ann Brassington, attorney for respondent.

PER CURIAM

Plaintiff appeals from two Family Part orders. On October 15, 2012, the Family Part denied her motion for reconsideration of an order entered on September 6, 2012. That order, in turn, granted, in part, plaintiff's motion to compel defendant to pay seventy percent of the college costs of the parties' son, but granted, as well, defendant's cross-motion to "recalculate" child support and vacated defendant's obligation to continue to pay child support to plaintiff. Plaintiff argues the motion court erred in deciding the motions without oral argument or a plenary hearing, and failed to provide "any specific reason" for the decision.

We agree that the motion judge failed to make the required findings of fact and conclusions of law in support of his initial order of September 6, 2012. Accordingly, we remand this matter to the motion judge to set forth his findings and conclusions as required by R. 1:7-4. In the event the motion judge, upon reflection, determines that a plenary hearing is necessary to resolve these issues, he may enter an appropriate order vacating his prior orders and setting the matter down for a hearing.

I.

We set forth the facts appearing in the record, but forego recounting much of the acrimonious history between the parties.

The parties were married in 1987 and divorced in 1997 in Nevada. Two children were born of the marriage: a daughter in 1989 and a son in 1992. Plaintiff moved with the children to New Jersey, where on April 1, 1998, the Family Part issued a "[f]inal [j]udgment in resolution of collateral issues" that, among other things, gave physical custody of the children to plaintiff, required defendant to provide child

support, and acknowledged that the parties intended "to afford their children a college education" and "shall consult and agree as to [their] proportionate financial responsibility" for the costs.

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In 2008, defendant agreed to pay seventy percent of the college costs of the daughter, net of loans, grants and other aid. Unbeknownst to defendant, however, plaintiff did not enroll the daughter in a college, but, rather, a technical school. Also, defendant learned that his daughter was not living at home, despite his continued payment of child support on her behalf to plaintiff. Thereafter, the Family Part deemed her emancipated and reduced defendant's child support obligation to $343 per week for the son only.

The parties' son began attending a community college in September 2010, and defendant paid seventy percent of the costs associated with his attendance, including tuition, books, fees and other expenses. After completing many credits at the community college, the son was admitted to a State college and wished to enroll as a full-time resident student for the Fall 2012 semester.

In July and August of 2012, plaintiff filed motions to increase child support for the son and to compel defendant to contribute seventy percent of the cost of the State college, which plaintiff estimated would cost over $35,000 for room, board and tuition per year. Defendant responded with a cross-motion to "calculate" his responsibility for those costs and to "[r]ecalculate child support" in light of the son's decision to board at college. In a reply, plaintiff explained that the son would be home on "weekends, semester breaks, holidays" and at other times, and that without child support plaintiff would "fear for" herself and the son.

After considering the submissions of the parties, the motion judge entered an order on September 6, 2012, requiring defendant to pay seventy percent of the son's college expenses, net of financial aid, and vacating child support as of August 15, 2012. In an addendum to the order, the motion judge reviewed the parties' arguments, including plaintiff's assertion that even though the son would be living on campus, he would nonetheless "be at home at least [six] months of the year." He

further noted that defendant had "no objection" to paying seventy percent of the costs of the son's college expenses, net of aid, but "objects to child support as [the son] no longer resides with plaintiff." The judge thereafter concluded that under the circumstances the "most comprehensive and fairest" solution was to vacate child support entirely and require defendant to pay seventy percent of the net college costs.

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Plaintiff thereafter filed a timely motion for reconsideration, claiming that the son's college classes would not begin until September and that it was inequitable to cut off child support as of August 15. She also restated her argument that the son would be home for about six months, even though living on the college campus, and that it was unfair to vacate child support in its entirety. Defendant replied, but neither party requested oral argument or a plenary hearing.

On October 15, 2012, the motion judge denied reconsideration and in an addendum to the order, the judge reviewed the parties' arguments, set forth the law governing reconsideration motions, and stated:

> [] Plaintiff attempts to bring to the Court's attention the [son's] Fall 2012 Academic calendar, which was information that she had access to at the time the previous order was entered. In Palombi v. Palombi, 414 N.J. Super. 274, 289 (App. Div. 2010), the Appellate Division affirmed the trial court's denial of a [p]laintiff's reconsideration in which he raised assertions, known to him prior to the entry of the order. This is essentially what [] [p]laintiff is attempting to do here, with regards to the child support amount and the effective date. Thus, [p]laintiff's motion for reconsideration is denied.

This appeal followed.

II.

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The motion judge's order of September 6, 2012, is supported by an addendum that merely sets forth the relief sought by the parties, summarizes their arguments and then concludes that defendant's "suggestion [that he pay seventy percent of the son's college expenses, net of financial aid, and child support be vacated] is the fairest and most comprehensive under the circumstances." The judge does not explain why this is so and does not set forth any findings of fact or enumerate any factors he considered in entering the order.

Consequently, we cannot defer to the judge's determinations on child support and college expenses because there are no relevant factual findings or legal reasons provided. All that is stated is the conclusion. Unfortunately, we cannot bring this litigation to an end through exercise of our original jurisdiction because the record is not sufficiently clear. R. 2:10-5; Tomaino v. Burman, 364 N.J. Super. 224, 234-35 (App. Div. 2003), certif. denied, 179 N.J. 310 (2004).

A reviewing court's authority to defer is largely dependent upon the judge's compliance with his or her obligation to state findings of fact and conclusions of law as required by Rule 1:7-4. In order to comply, the judge must articulate factual findings and correlate them with the principles of law. Curtis v. Finneran, 83 N.J. 563, 570 (1980). When that is not done, a reviewing court cannot know whether the ultimate decision is based on the law and facts or is the product of arbitrary action resting on an impermissible basis. See Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986) (discussing the necessity for an adequate explanation of a judge's reasons that correlates the facts and legal conclusions); see generally State v. Madan, 366 N.J. Super. 98, 109-10 (App. Div. 2004) (discussing "judicial discretion").

Substantively, addressing the question of the effect of a child's full-time residence at a college or university upon a parent's child support obligations is a nuanced task. This court has previously recognized that when a child is attending college and living on campus, contributions to college expenses and continued support for that child are "discrete yet related obligations," the extent of which "depends on the facts

of each case." Hudson v. Hudson, 315 N.J. Super. 577, 584-85 (App. Div. 1998); see Beck v. Beck, 239 N.J. Super. 183, 190 (App. Div. 1990) (discussing tuition and reduction in child support included in unallocated alimony); cf. R. 5:7-4 (requiring a showing of "good cause" for award of unallocated support). The decision to allocate responsibility for college expenses and support is left to the discretion of the trial court, which is to be applied after considering the relevant facts, including any agreement about college, and applying the relevant statutory factors and case law. See N.J.S.A. 2A:34-23(a); Newburgh v. Arrigo, 88 N.J. 529, 545 (1982); Hudson, supra, 315 N.J. Super. at 582, 584-85.

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We recognize that "not every factual dispute that arises in the context of matrimonial proceedings triggers the need for a plenary hearing." Harrington v. Harrington, 281 N.J. Super. 39, 47 (App. Div.) (citing Adler v. Adler, 229 N.J. Super. 496, 500 (App. Div. 1988)), certif. denied, 142 N.J. 455 (1995). Where material facts are disputed or depend on credibility evaluations, a plenary hearing is required. Tancredi v. Tancredi, 101 N.J. Super. 259, 262 (App. Div. 1968); certif. denied, 149 N.J. 409 (1997).

"Where the need for a plenary hearing is not . . . obvious, the threshold issue is whether the movant has made a prima facie showing that a plenary hearing is necessary." Hand v. Hand, 391 N.J. Super. 102, 106 (App. Div. 2007). This rule was crafted with an eye to judicial economy, given that "practically every dispute in the matrimonial motion practice involves a factual dispute of some nature." Klipstein v. Zalewski, 230 N.J. Super. 567, 576 (Ch. Div. 1988).

However, where, as here, the question before the court is whether changed circumstances warrant a diminution in child support or even the elimination of child support, the resolution of that question is particularly fact-sensitive. Accordingly, a plenary hearing ordinarily would be required to resolve the factual issues attendant upon the question. Conforti v. Guliadis, 128 N.J. 318, 326-27 (1992).

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Defendant argues that the motion judge properly vacated his child support obligation because plaintiff refused or failed to provide information pertaining to the expenses she incurred for the son and his "college expenses and credits." However, the motion judge made no such finding in his opinion and the record merely disclosed a factual dispute between the parties on this issue.

Given the above, we agree with plaintiff that the motion judge's addenda to both the original order and the order denying reconsideration are insufficiently detailed to permit meaningful appellate review, and, accordingly we remand and require the motion judge to explicitly set forth his findings of fact and conclusions of law, as required by R. 1:7-4. Moreover, we do not foreclose the motion judge from vacating his prior orders, if, after considering the parties' prior submissions, he determines a plenary hearing is required to resolve contested issues.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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