

A-324-04T2

WJ

ORDER ON MOTION

SHARON M HUNTER
VS
EDWARD L HUMPHREY

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A -000324-04T2
MOTION NO. M -000447-04
BEFORE PART: E
JUDGE(S): WEFING
FALL

MOTION FILED: SEPTEMBER 21, 2004
ANSWER(S) FILED: OCTOBER 20, 2004

BY: EDWARD L HUMPHREY
BY: SHARON M HUNTER

RECEIVED
APPELLATE DIVISION

NOV 08 2004

SUBMITTED TO COURT: OCTOBER 13, 2004

SUPERIOR COURT
OF NEW JERSEY

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS
1st DAY OF November, 2004, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT
- FOR SUMMARY DISPOSITION
- FOR REMAND

GRANTED DENIED OTHER
(X) (X) (X)

SUPPLEMENTAL:

See attached.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.
Jon Flynn
CLERK OF THE APPELLATE DIVISION.

FILED
APPELLATE DIVISION

NOV 08 2004

Jon Flynn
CLERK

MER FM-11-585-04

FOR THE COURT:

JUDLK

Dorothea O'Connell Weffing
DOROTHEA O'CONNELL WEFING J.A.D.

The application of defendant for summary disposition is granted, and the matter is remanded to the trial court for further proceedings consistent with this order. The application of defendant to vacate the final judgment of divorce entered on August 5, 2004, is granted in part and denied in part. Defendant has failed to demonstrate good cause to vacate entry of default on the cause of action, and his dilatory actions have caused the procedural difficulties that have characterized this action. Although, after having been served with the summons and complaint on March 2, 2004, defendant filed his pleading captioned as an "Answer and Counter Petition" with the Family Part on April 27, 2004,—some 20 days late—he failed to follow the instructions contained in the summons accompanying the complaint by not serving a copy of that pleading upon plaintiff's counsel. Moreover, after receiving the May 7, 2004, notification from the Family Part of his late filing, with the accompanying pro se motion kit, defendants still waited until June 30, 2004, before filing the motion to vacate default. Those circumstances do not constitute a showing of "good cause."

However, upon our review of the documentation in the record, including defendant's case information statement, the notice of claim for equitable distribution, and the equitable distribution, support and financial provisions contained in the final judgment of divorce, we conclude that the interests of justice dictate that we vacate portions of the final judgment and remand to the Family Part for further proceedings. We note that R. 4:42-1(a)(4) requires that judgments contain "a separate numbered paragraph for each separate substantive provision of the judgment[.]" Here, the final judgment of divorce does not contain the required numbered paragraphs; rather, the paragraphs contained "headings." Accordingly, our references herein are to those headings.

The granting of the dissolution of the parties' marriage is summarily affirmed, as are those paragraphs entitled "Custody," "Medical Insurance," "Life Insurance," "Vehicles," "Counsel Fees," and "Personal Property."

The provisions of those paragraphs contained in the final judgment of divorce entitled "College," "Child Support," "Alimony," "Marital Residence," "Pension/Retirement Accounts," and "Debts" are vacated and remanded to the Family Part for further proceedings to litigate those issues; provided, however, that defendant shall be required to comply with the amounts of child support and alimony contained in the final judgment of

divorce, on a pendente lite basis, until fully reviewed, litigated and adjudicated by the trial court.

Plaintiff's cross-motion to dismiss defendant's appeal on the basis that it was filed out of time is denied, since we construe the appeal as being timely filed from the terms of the final judgment of divorce. However, our summary disposition as contained in this order disposes of this appeal and we do not retain jurisdiction.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this order.