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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-2273-15T3

WARREN F. HORTON,

Plaintiff-Appellant,

v.

CASSANDRA L. BROWN,

Defendant-Respondent.

Submitted September 12, 2017 — Decided September 20, 2017

Before Judges Leone and Mawla.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket No. FM-12-2154-99.

Warren F. Horton, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Plaintiff appeals from an order dated December 3, 2015,
denying his motion for reconsideration of an order dated April 13,
2012, which denied his request for reimbursement of child support
paid to defendant. Plaintiff claims child support should be
reimbursed because defendant was receiving welfare, social

security and child support at the same time. Because plaintiff's reconsideration application was not timely, and because he has presented no basis to support his claim for reimbursement, we affirm.

The following facts are taken from the record. The parties share two daughters, one of whom was emancipated on April 30, 2009, and the other on April 7, 2010. Beforehand, effective July 2006, plaintiff was declared disabled and began receiving social security disability (SSD) benefits, and the children derivative benefits. As a result of the children's emancipation, plaintiff's child support obligation was terminated effective April 7, 2010, becoming an arrears-only obligation.

The trial court entered an order on April 13, 2012, confirming plaintiff satisfied the child support arrears as of February 2012. As a part of the relief considered by the trial court in the April 13, 2012 order, plaintiff sought reimbursement of child support paid from April 2010 to February 2012, claiming defendant had been overpaid. The trial court denied his request, noting plaintiff's SSD benefits had been garnished during this time period and the funds applied to satisfy plaintiff's child support arrears.

Plaintiff filed a motion more than three years later seeking reconsideration of the April 13, 2012 order denying him reimbursement of child support from April 2010 to February 2012.

The trial court entered the December 3, 2015 order denying reconsideration as not timely.

Plaintiff challenges this order asserting his SSD benefits were continually garnished until February 2012 "in disregard of derivative benefits [the children] received from [the] social security administration." Specifically, he argues the garnishment continued even though child support terminated in April 2010, and claims he should be reimbursed the sums paid for the twenty-two month period between April 2010 and February 2012.

A decision whether to deny a motion for reconsideration is addressed to the trial judge's discretion. Fusco v. Newark Bd. of Educ., 349 N.J. Super. 455, 462 (App. Div. 2002). Pursuant to Rule 4:49-2, "a motion for . . . reconsideration . . . shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it." The twenty-day time period within which to seek reconsideration cannot be relaxed. See Baumann v. Marinaro, 95 N.J. 380, 388-89 (1984); see also R. 1:3-4(c). We see no reason to disturb the trial judge's decision to deny reconsideration. Plaintiff's application in 2015 seeking reconsideration of an order entered in 2012 was grossly out of time.

Even if we were to reach the substance of plaintiff's claims, there would be no basis to revisit the April 13, 2012 order.

Plaintiff has not objectively demonstrated the alleged overpayment of child support after the emancipation of the second child. Although plaintiff's child support obligation ended when the second child was emancipated, plaintiff still had arrears, which Probation confirmed were paid off in February 2012. SSD benefits are considered income for child support purposes. Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-B to R. 5:6A at www.gannlaw.com (2017) (see "Government Benefits for the Child" stating SSD "is counted as income . . . for the parent whose contribution is the source of the benefit."). Therefore, SSD benefits are not immune from garnishment to satisfy child support arrears.

Furthermore, plaintiff's argument the children's derivative benefit obviated the garnishment of his SSD is belied by the legal authority cited in his brief. Indeed, as noted in the Child Support Guidelines, a child's receipt of derivative benefits eliminates child support only if the benefits are greater than the child support and reduce the total support obligation to zero. Child Support Guidelines, Pressler & Verniero, Current N.J. Court Rules, Appendix IX-A(10)(c)(2) at www.gannlaw.com (2017). There is no evidence the derivative benefits reduced plaintiff's child support to zero or eliminated his arrears obligation.

Affirmed.