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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
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-3291-15T4

PAMELA MACEK,

Plaintiff-Respondent,

v.

HENRY PEISCH,

Defendant-Appellant.

Argued October 18, 2017 — Decided November 6, 2017

Before Judges Fuentes, Koblitz and Suter.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-0896-10.

Adrián E. Bermúdez argued the cause for
appellant.

Pamela Macek, respondent, argued the cause pro
se.

PER CURIAM

Defendant Henry Peisch appeals from a March 24, 2016 order,
which confirmed an earlier finding that he was not indigent and
incarcerated him for non-payment of spousal and child support. We
dismiss his appeal based on the legal doctrine of fugitive

disentitlement. A litigant may not obtain the protection of our judicial system to appeal a non-indigency finding while avoiding arrest on an outstanding child-support bench warrant. See Matison v. Lisnyansky, 443 N.J. Super. 549, 550 (App. Div. 2016).

Defendant was \$101,010.85 in arrears when he came before the court December 14, 2015 after an arrest for non-payment of support. See Pasqua v. Council, 186 N.J. 127, 153 (2006) (holding that parents arrested on warrants for nonsupport must be brought before the court and, if indigent, afforded counsel prior to coercive incarceration). Defendant's most recent support payment was \$7 sixteen months before the hearing. The court reviewed a January 2015 probation interview of defendant regarding his financial situation. See AOC Directive # 2-14 (describing the process to be used by the court when a parent is arrested on a child-support warrant). Defense counsel represented at oral argument before us that defendant has sued all three lawyers appointed to represent him at different child support enforcement hearings. We held previously that appointed counsel's conflict in representing defendant based on a malpractice lawsuit was not grounds to deny defendant counsel, and that, should he be found indigent in the future, counsel should again be provided by the court prior to coercive incarceration. Macek v. Peisch, No. A-3721-14 (App. Div. Sep. 15, 2016) (slip op. at 8-9).

On this occasion, in December 2015, the court asked defendant questions to supplement the outdated probation interview. Defendant revealed that, although he had earned about \$130,000 in a prior year, and an annual salary of \$110,000 had been imputed to him at the time of his divorce, he was currently unemployed. Defendant, who is right-handed, said his left wrist was injured seven years before, but he is otherwise healthy. He is supported by his eighty-two-year-old mother. He lives in her rented home, for which she pays about \$3800 per month in rent. She provides for his needs, including a cellular phone. The court found he was willfully unemployed and not indigent, and gave defendant an opportunity for another ability-to-pay hearing after retaining counsel. Another judge subsequently denied reconsideration of the determination of non-indigency. It is from this March 2016 order denying reconsideration that defendant appeals.

After the court did not find defendant to be indigent, and found him to be willfully unemployed, defendant was incarcerated in the Bergen County work release program facility at the Bergen County Jail. Due to his refusal to cooperate with the program, he was later placed in general population at the jail. We were informed at oral argument by defendant's appellate counsel, who was not appointed by the court, that defendant was subsequently released and another warrant was later issued for his arrest for

failure to pay support after his release. Defendant has not surrendered to face this warrant. Because defendant is a fugitive, we dismiss this appeal.

Dismissed.

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



CLERK OF THE APPELLATE DIVISION