

ORDER ON MOTION

YATOU KHATKHAT
V.
MOEZ HUSSEIN

COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-4979-05T2
MOTION NO.:
BEFORE PART: T
JUDGE(S): PARRILLO
SABATINO

EMERGENT APPLICATION FILED:
AUGUST 17, 2006

BY: David Perry Davis,
attorney for Hussein (Mr.
Davis on the brief).

ANSWER(S) FILED:
August 18, 2006

BY: Hudson County Legal
Services, attorneys for
Khatkhat (Mary O'Brien on the
brief).

REPLY BRIEF FILED:
August 18, 2006

BY: David Perry Davis
attorney for Hussein (Mr.
Davis on the brief).

APPEARANCE ONLY: None.

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON
THIS 18 DAY OF AUGUST, 2006, HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
APPLICATION TO HEAR MATTER ON EMERGENT BASIS	(X)	()	()
APPLICATION FOR EMERGENT RELIEF FROM ORDERS OF INCARCERATION FOR FAILURE TO PAY CHILD SUPPORT ENTERED ON AUGUST 11 AND 15, 2006	(X)	()	(X)

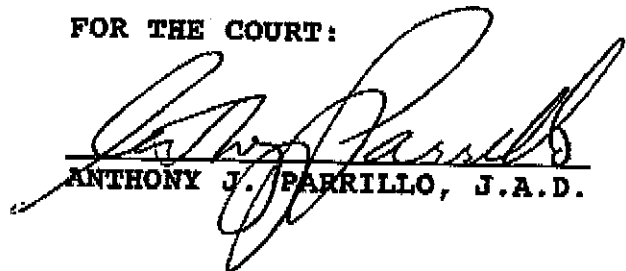
SUPPLEMENTAL:

The Family Part orders of August 11 and August 15, 2006, setting a release amount of \$5000 and resulting in appellant's continued incarceration, are summarily reversed. Appellant shall be released from incarceration forthwith conditioned on his cooperation with future enforcement proceedings. The matter is remanded to the Family Part for a hearing, to be conducted within five days of receipt of this order, and for determination as to whether appellant is indigent, to be accompanied by the requisite findings of facts and conclusions of law. R. 1:7-4(a); Fasqua v. Council, 186 N.J. 127 (2006). See also Directive # 2-04 issued by Administrative Director, Administrative Office of the Courts (AOC), dated March 16, 2004; Memorandum dated December 29, 2004, AOC Administrative Director (establishing protocol and identifying factors to be considered). If the Family Part judge finds verification of indigency, the judge may proceed with the enforcement hearing, Rule 5:23-3(d)(2), making appropriate findings and ordering appropriate relief, but because publicly-funded counsel is not now available, the judge may not incarcerate appellant to coerce compliance with the underlying child support order of May 11, 2006. If, on the other hand, the Family Part judge determines

appellant's claim of indigency has not been verified, and that appellant has the ability to pay the required child support but willfully refuses to do so, incarceration is available as a relief. The court must articulate findings of fact and conclusions of law in support of its decision.

We do not retain jurisdiction.

FOR THE COURT:



ANTHONY J. PARRILLO, J.A.D.