

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-389

AUGUST TERM, 2006

Texann Benjamin

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APPEALED FROM:

}

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v.

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Franklin Family Court

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Kirk Allen Benjamin

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DOCKET NO. 201-7-04 Frdm

Trial Judge: James Crucitti

In the above-entitled cause, the Clerk will enter:

Husband appeals the family court=s order denying his motion for contempt and/or enforcement of the property division between husband and wife in this divorce case. We affirm.

On November 22, 2004, the family court ordered a division of property in which, among other things, husband was awarded his tools. The tools were in wife=s possession at the time. Apparently, transfer of the tools was complicated by the fact that husband was incarcerated and wife had to make arrangements with

husband=s mother for the transfer. Husband filed a motion for contempt/ enforcement on April 19, 2005, alleging that the tools had not yet been transferred.

The family court addressed this motion at the final divorce hearing held on June 21, 2005. At that time, wife agreed to contact husband=s mother in the next 30 days to make arrangements to transfer husband=s remaining tools, and husband consented to this resolution of the issue. On July 27, 2005, however, husband filed a second motion for contempt/enforcement, alleging that wife had transferred some of his tools to husband=s mother, but not all of them. His motion attached a detailed inventory that purported to list all of husband=s tools. In her response, wife stated that she delivered everything in her possession that belonged to husband to husband=s family, and that she no longer had any of his belongings. Wife stated she could not respond regarding the specific tools that husband listed in the attachment to his motion because she was unfamiliar with the tools and their names. Both parties appeared pro se and signed their respective filings.

The family court denied husband=s motion, concluding that it was Aunable to determine that all tools held by [wife] have not been transferred.@ Husband appeals this ruling. We review the family court=s decision on a motion for contempt or enforcement for an abuse of discretion. Hixson v. Plump, 167 Vt. 202, 208 n.2 (1997) (contempt); Elmore v. Elmore, 159 Vt. 278, 282 (1992) (enforcement). Here, the family court was presented with conflicting assertions from the parties regarding whether all of husband=s tools had been transferred by wife to husband=s family. Furthermore, the court was already familiar with the issue to some extent from the parties= testimony at the November 22, 2004 and June 21, 2005 hearings. This provided the family court with a sufficient basis to conclude that neither an order for enforcement nor contempt was appropriate. The family court was within its discretion in denying the motion.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice