

JOSEPH GELBAND JR.

v.

MEGAN BATES et al.

Submitted on Briefs December 12, 2012  
Decided January 3, 2013

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD,  
GORMAN, and JABAR, JJ.

#### MEMORANDUM OF DECISION

Joseph Gelband Jr. appeals from a judgment entered in the Superior Court (Cumberland County, *Mills, J.*) following a bench trial awarding Megan Bates and Jillian Hilton damages for assault, battery, and punitive damages, and issuing summary judgment in favor of Hilton and Bates with regard to Gelband's complaint for malicious prosecution and intentional infliction of emotional distress. Contrary to Gelband's contentions on appeal, the trial court did not clearly err in finding Hilton's and Bates's testimony credible. *See Weinstein v. Sanborn*, 1999 ME 181, ¶ 3, 741 A.2d 459 ("No principle of appellate review is better established than the principle that credibility determinations are left to the sound judgment of the trier of fact."). Gelband's other assignments of error, that the court erred in finding emotional distress damages and awarded "arbitrary" attorney fees, are also without merit. *See Cimenian v. Lumb*, 2008 ME 107, ¶¶ 9-13, 951 A.2d 817 ("We review an award of attorney fees for an abuse of discretion. . . . A trial court possesses inherent authority to sanction parties and attorneys for abuse of the litigation process." (citations and quotation marks omitted)). *See, e.g.*, Restatement (Second) of Torts § 905(b), cmt. (c) (1979).

Hilton and Bates properly requested sanctions for filing a frivolous appeal pursuant to Maine Rule of Appellate Procedure 13(f) through a separately filed motion. *See* M.R. App. P. 13(f) Advisory Note to November 2011 amend. We denied the motion to dismiss the appeal, but provided that Hilton and Bates could request sanctions in their brief. Our order on that motion along with Bates and Hilton's request for sanctions in their brief constitute sufficient notice and provided Gelband an opportunity to respond. *Id.* Sanctions are appropriate because Gelband asserts that the court should have found the evidence he presented at trial credible and should not have believed the evidence presented by Hilton and Bates. Thus, he could not have expected to prevail on appeal. *See Labonte v. Thurlow*, 2009 ME 68, ¶ 7, 974 A.2d 914; *Fleet Bank of Me. v. Hunnewell*, 633 A.2d 853, 854 (Me. 1993) (awarding sanctions for an appeal taken without any reasonable likelihood of prevailing, which resulted in a delay in implementing the trial court's judgment and dissipated the time and resources of the Law Court). We hereby award costs and reasonable attorney fees to Hilton and Bates for the prosecution of this appeal. Counsel for Hilton and Bates have fourteen days from the date of this decision to submit by affidavit their request for costs and attorney fees, and they may submit their affidavits separately. Gelband may submit a response to that affidavit within seven days of the filing.

The entry is:

Judgment affirmed. Hilton and Bates are entitled to attorney fees and costs for the prosecution of this appeal. Within fourteen days, Hilton and Bates shall submit by affidavit their request for costs and attorney fees with the Clerk of the Law Court. Gelband may file a response within seven days of the filing of Appellees' affidavit.

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**On the briefs:**

Joseph Gelband, appellant pro se

Peter E. Rodway, Esq., Rodway & Horodyski, P.A., Portland,  
for appellee Megan Bates

Bruce M. Merrill, Esq., Law Offices of Bruce M. Merrill, P.A.,  
Portland, for appellee Jillian Hilton

Cumberland County Superior Court docket number CV-2010-376  
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