

NORELLA MEERZON

v.

DOMINGOS NOBREGA

Submitted on Briefs September 26, 2013

Decided December 5, 2013

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

AMENDED MEMORANDUM OF DECISION

Domingos Nobrega appeals from a civil judgment entered by the Superior Court (Penobscot, *Cuddy, J.*) awarding Norella Meerzon \$20,000 in damages for assault and battery, and imposing a constructive trust on Nobrega's vehicle. After a review of the record, including listening to an audio recording of the trial proceeding, we conclude, contrary to Nobrega's contention, that the trial court's findings are well supported by the record.

It is clear from the audio recording that Nobrega had notice of the hearing, had an opportunity to be heard, and even obtained the assistance of the court in subpoenaing three witnesses. Nobrega participated in the initial phase of the proceeding by phone. The court made every effort to provide a process by which Nobrega could participate meaningfully in that fashion. Despite the court's efforts, Nobrega failed to participate constructively and hung up the phone early in the process. The court then discharged Nobrega's three witnesses and the matter proceeded without his participation.

The opportunity to be heard by telephonic appearance pursuant to M.R. Civ. P. 43(a), is in accord with the Due Process Clause of the Fourteenth

Amendment. *See Morrison v. Sawyer*, 2011 ME 136, ¶ 8, 33 A.2d 432 (“A trial participant need not always appear in person in court to assure that his or her rights to a hearing are respected.”). We find no constitutional infirmities. The remainder of his arguments are without merit.

The entry is:

Judgment affirmed.

On the briefs:

Domingos Nobrega, appellant pro se

Stephen C. Smith, Esq., Bangor, for appellee Norella Meerzon