

RITA A. PHILBROOK

v.

SCOTT SHEPHERD

Argued March 6, 2018
Decided March 29, 2018

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

MEMORANDUM OF DECISION

Rita (Wysote-Shepherd) Philbrook appeals from a judgment of the District Court (Augusta, *E. Walker, J.*) finding her in contempt of the court's earlier order that provided a specific schedule for Scott Shepherd's visitation with the parties' minor daughter. *See* 19-A M.R.S. § 1653(7) (2017); M.R. App. P. 2A; M.R. Civ. P. 66(d)(2)(G). The court issued two orders on Scott's motion for contempt:¹ (1) on May 1, 2017, the court's first order found Rita in contempt for withholding the daughter from Scott's scheduled visitation and continued the matter for three months "to see how visitation progresses" and "what, if any, sanction should be imposed"; and (2) the court's order dated September 12, 2017, imposed remedial sanctions against Rita, including a suspended fourteen-day term of incarceration and an award of \$500 in

¹ The court's issuance of two orders—one finding Rita in contempt and the other imposing sanctions—separated by an intervening period of time, ostensibly as a probationary term, complicates appellate review. It is unclear from the court's orders whether it was the initial act of contempt or conduct during the probationary term or a combination of the two that caused the court to impose the sanctions. The better practice is to impose sanctions in a single proceeding, as then deemed appropriate, based upon the specific acts that justified the finding of contempt. *See* 19-A M.R.S. § 1653(7) (2017); M.R. Civ. P. 66(d)(2)(D), (3).

attorney fees to Scott. Additionally, the court modified and increased Scott's existing visitation, explaining that it was not establishing the expanded visitation as a sanction for Rita's contempt but rather because it found that the increased visitation was in the daughter's best interest. *See* 19-A M.R.S. § 1653(3) (2017).

Rita contends (1) that the court erred by finding her in contempt of the visitation provisions of the court's earlier order despite her compliance with that order following the filing of Scott's motion for contempt; (2) that the court abused its discretion by determining that increased visitation with Scott was in the daughter's best interest;² and (3) that the court abused its discretion by imposing remedial sanctions of a suspended jail sentence and an award of attorney fees. Regarding the first and third issues, which remain justiciable, we conclude that there is clear and convincing evidence in the record that supports the court's finding that Rita was in contempt of its previous order and that the court acted within its discretion by imposing the sanctions of a suspended term of incarceration and attorney fees. M.R. Civ. P. 66(d)(2)(D), (3)(A), (C); *see* *Murphy v. Bartlett*, 2014 ME 13, ¶¶ 17-18, 86 A.3d 610. We affirm.

The entry is:

Judgment affirmed.

² Rita's argument regarding increased visitation was effectively rendered moot by the court's entry of an order on January 26, 2018, with the agreement of the parties, that substantially expanded and superseded the visitation provisions of the September 12 order. Even if we were to grant the relief she has requested on this issue—vacating the September 12 visitation provision—she would obtain no practical relief or benefit. The terms of the January 26, 2018, order offer a significantly expanded visitation scheme beyond that of the September 12, 2017, order. *See Young v. Young*, 2002 ME 167, ¶ 7, 810 A.2d 418 (“Because the parental rights and responsibilities provision in the . . . order [under review] is no longer operative, there are no practical effects that will flow to either party from our determination of this appeal.”); *Finn v. Finn*, 517 A.2d 317, 319 (Me. 1986). Because our decision today resolves the mootness issue raised by Scott's motion to dismiss that part of the appeal, we dismiss that motion. *See* M.R. App. P. 10(a)(4).

Sarah Mitchell, Esq., and Amy Dieterich, Esq. (orally), Skelton Taintor & Abbott, Auburn, for appellant Rita A. Philbrook

Scott F. Hess, Esq., The Law Office of Scott F. Hess, LLC, Augusta, for appellee Scott Shepherd

Augusta District Court docket number FM-2009-459
FOR CLERK REFERENCE ONLY