

ARN PEARSON

v.

MARY LOU WENDELL

Submitted on Briefs April 9, 2019

Decided April 18, 2019

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

#### MEMORANDUM OF DECISION

Mary Lou Wendell appeals from a judgment of the District Court (Portland, *J. French, J.*) entered pursuant to Arn Pearson's motion for contempt of an order issued in July 2016, following the parties' divorce. Contrary to Wendell's contentions, we discern no error in the court's order finding Wendell in contempt for (1) interfering with Pearson's efforts to establish counseling for the parties' children; (2) failing to obtain a parental capacity evaluation; (3) refusing to furnish any contact information for the professionals she engaged on behalf of the children; and (4) failing to return Pearson's personal property. There is competent evidence in the limited record Wendell presented on appeal to support each of the court's findings; therefore, the court did not abuse its discretion in holding Wendell in contempt of its earlier order. *Beckerman v. Pooler*, 2015 ME 80, ¶ 7, 119 A.3d 74; *see also Springer v. Springer*, 2009 ME 118, ¶ 8, 984 A.2d 828 (In the absence of a transcript, or an approved substitute for it, "we are bound to accept the court's factual findings and to assume that they are supported by sufficient competent evidence in the record.").

Moreover, the court did not abuse its discretion in ordering Wendell to pay compensatory fines and attorney fees. *See True v. Harmon*, 2015 ME 14, ¶ 7, 110 A.3d 650; *Viola v. Viola*, 2015 ME 6, ¶ 11, 109 A.3d 634. Trial courts have the discretion to sanction “[a] continuing failure to comply with a court order, when the contemnor has the capacity to comply.” *Harshman v. Harshman*, 2019 ME 48, ¶ 14 n.6, --- A.3d --- (affirming a judgment of contempt and sanction of imprisonment where the plaintiff repeatedly refused to comply with a court order to establish a life insurance policy for his ex-wife and their children despite having the financial ability to comply). Not only was Wendell warned that her failure to comply with the court’s July 2016 order—particularly with regard to the personal property provision—would result in compensatory fines, this is the fourth time that Wendell has been held in contempt of a court order in this case. It is clear from this pattern that something more than a simple court order is necessary to bring Wendell into compliance. The court, therefore, did not abuse its discretion in enforcing the \$2,000 compensatory fine for her failure to return Pearson’s property and imposing a \$10,000 coercive fine if she continues to defy the court’s order. *See* M.R. Civ. P. 66(d)(3)(B)-(C); *True*, 2015 ME 14, ¶ 7, 110 A.3d 650. Because Wendell’s cyclical behavior has caused Pearson to incur substantial attorney fees, the court similarly did not abuse its discretion in ordering her to pay these fees pursuant to M.R. Civ. P. 66(d)(3)(C). *See Viola*, 2015 ME 6, ¶ 11, 109 A.3d 634

Finally, the court did not abuse its discretion in determining, after voir dire and a formal offer of proof, that the testimony of Wendell’s witness, one of the children’s former counselors, was irrelevant and immaterial. *See Levesque v. Cent. Me. Med. Ctr.*, 2012 ME 109, ¶ 16, 52 A.3d 933; *Ames v. Ames*, 2003 ME 60, ¶ 13, 822 A.2d 1201. The counselor had not worked with the children or had an opportunity to observe the family since the fall of 2015, months before the July 2016 order, and nothing in her proffered testimony addressed the substance of the motion for contempt at issue. Therefore, the court properly excluded her testimony.

The entry is:

Judgment affirmed.

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Mary Lou Wendell, appellant pro se

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Portland District Court docket number FM-2013-1222  
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