

CHRISTINE COURCHESNE

v.

MARK MALINICK

Submitted on Briefs October 23, 2003
Decided October 29, 2003

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER,
CALKINS, and LEVY, JJ.

MEMORANDUM OF DECISION

Mark Malinick appeals from the divorce judgment granted by the District Court (Portland, *Eggert, J.*). Malinick contends that the court erred in its division of personal property by not ordering returned to him a portion of funds in a joint bank account and a large amount of his personal property that was in Christine Courchesne's possession. Malinick contends that this error occurred because (1) he was incarcerated and unable to attend the hearing; (2) his attorney was incompetent in not presenting evidence regarding property in Courchesne's possession; and (3) Courchesne perjured herself in claiming that most of

Malinick's personal property was not in her possession and had been stored with his parents or elsewhere.

The record indicates that the court offered to accommodate Malinick's inability to be present by allowing him to file a subsequent deposition responding to any testimony at the proceedings. Because there is no transcript of the proceedings, it is not possible to determine how this offer was resolved prior to the court's decision. Where no transcript of the proceedings is available, we will assume that proper procedures were followed on issues which a transcript could have addressed and that the court's fact-findings are sufficiently supported by the evidence. *See State v. Nugent*, 2002 ME 111, ¶ 2, 801 A.2d 1001, 1002. Accordingly, on the available record, we must affirm the divorce judgment. *See Alley v. Alley*, 2002 ME 162, ¶ 2, 809 A.2d 1262.

The entry is:

Judgment affirmed.

For plaintiff:

Christine Courchesne
[address confidential]

For defendant:

Mark Malinick
138 East Milan Road
Berlin, NH 03570

