

TRACY A. (WEBB) TATE

v.

JAMES A. WEBB JR.

Submitted on Briefs July 7, 2010

Decided August 12, 2010

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

MEMORANDUM OF DECISION

James A. Webb Jr. appeals from a judgment of the District Court (Newport, *Sparaco, J.*) concerning a contempt order. On September 18, 2009, the court (*Stitham, J.*) found him in contempt for failure to comply with a divorce judgment as amended because he did not deliver a tractor, cattle, and other items to Tracy A. Tate. In the contempt order, the court (1) sentenced Webb to thirty days in jail, to be suspended until September 30, 2009; (2) provided that Webb could purge the contempt by delivering the tractor and other items “intact and fully functioning” by September 30, 2009; and (3) found that Webb had the ability to deliver the property. Webb did not appeal that order. On September 30, 2009, the court (*Sparaco, J.*) found that Webb delivered the tractor, but it was not intact because the tractor canopy was missing and the hood was damaged. The court ordered Webb to begin his jail sentence but provided a new and additional option to purge the contempt by compensating Tate instead of arranging for the delivery of the canopy and the repair of the hood. The court erred by introducing the option of compensation without also finding that Webb had the ability to compensate Tate. *See Efstathiou v. Efstathiou*, 2009 ME 107, ¶ 11, 982 A.2d 339, 342; M.R. Civ. P. 66(d)(2)(D). However, the error was harmless because Webb still had the option of arranging for the delivery of the canopy and the repair of the hood, and the court

found Webb had the ability to perform those acts. *See Shaw v. Packard*, 2005 ME 122, ¶ 13, 886 A.2d 1287, 1290 (“Any alleged error of the trial court that does not affect the substantial rights of a party is harmless and therefore must be disregarded.”); M.R. Civ. P. 61. Webb’s other arguments are without merit.

The entry is:

Judgment affirmed.

Attorney for James A. Webb Jr.:

Charles W. Cox, Esq.
PO Box 327
Newport, Maine 04953-0327

Tracy A. (Webb) Tate did not file a brief.