

JEAN R. PERRON

v.

RENE L. PERRON

Submitted on Briefs July 7, 2010

Decided July 13, 2010

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

#### MEMORANDUM OF DECISION

Rene L. Perron appeals from a judgment of the District Court (Springvale, *Janelle, J.*) entered pursuant to Jean R. Perron's motion for contempt. We issued a memorandum of decision in this case on February 16, 2010, affirming the trial court's decision. *Perron v. Perron*, Mem-10-17 (Feb. 16, 2010). Thereafter, Rene filed a motion for reconsideration. We granted the motion, withdrew the memorandum of decision, and remanded the case to the trial court for settlement and approval of the statement of the evidence, which Rene had filed in lieu of a transcript, pursuant to M.R. App. P. 5(d). After a second remand, the trial court has issued an order in which the court attempts to settle or approve the statement of the evidence. The statement has been made part of the record on appeal, and the case is now ready for decision.

Contrary to Rene's contentions, we discern no error in the District Court's judgment for Jean and against Rene for \$30,919.58, together with post-judgment interest, absent a finding that Rene was in contempt. Rene, as the appellant, had the burden to provide us with a record that is sufficient to permit fair consideration of the issues on appeal. *See NCO Portfolio Mgmt. v. Folsom*, 2007 ME 152, ¶ 6, 938 A.2d 24, 26. Based on the record as provided, including the statement of the evidence, we are unable to determine whether the parties agreed or acquiesced in treating the motion for contempt as a motion to enforce the divorce judgment. Accordingly, we find no error.

Further, *res judicata* did not bar the court from ruling on Rene's liability to Jean for back taxes pursuant to the divorce judgment. *See Efstathiou v. Efstathiou*, 2009 ME 107, ¶¶ 7, 8, 982 A.2d 339, 342 (reasoning that present ability to comply with the divorce judgment is not the identical issue as ability to comply at the time of prior proceeding); *see also Gillman v. Dep't of Human Servs.*, 1998 ME 122, ¶ 10, 711 A.2d 154, 156 (stating that there are reasons why the court could have denied a previous motion for contempt "that are not based on a finding that the underlying basis for the contempt request has no merit.").

Finally, Rene did not establish that the court erred when failing to credit certain repayments, which he contends Jean received from the Internal Revenue Service, based on his undisputed testimony at the hearing. Rene's statement of the evidence was not approved by the trial court on this point, leaving us with a record insufficient to permit appellate review of the issue. *See NCO Portfolio Mgmt.*, 2007 ME 152, ¶ 6, 938 A.2d at 26. Even if the statement of the evidence had been approved on this point, the trial court, as fact-finder, was free to disbelieve his testimony on that issue. *See State v. Pease*, 2007 ME 155, ¶ 10, 940 A.2d 189, 191 ("The court may consider but disbelieve claims to support a particular point, even if that testimony or claim is not directly contradicted.").

The entry is:

Judgment affirmed.

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