Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

APR 20 2009

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-340

APRIL TERM, 2009

Janet Lafoe (Pearce)	}	APPEALED FROM:
	}	
	}	
v.	}	Windham Family Court
	}	
	}	
David Lafoe	}	DOCKET NO. 53-2-06 Wmdm
		Trial Judge: John P. Wesley

In the above-entitled cause, the Clerk will enter:

Wife appeals pro se from the family court's denial of her motion for enforcement and contempt of court. We have reviewed the proceedings below, and considered all of wife's arguments, and we conclude that the family court acted within its discretion in denying wife's motion. See Sheehan v. Ryea, 171 Vt. 511, 512 (2000) (mem.) ("Civil contempt is a coercive measure, which is necessarily discretionary." (citation omitted)). Other than the alleged failure of husband to fully comply with the court's order to transfer certain personal property, wife alleges no underlying circumstance substantially different from what was evident to the court at the last merits hearing six months earlier.

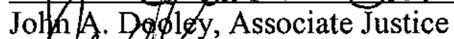
At that time, the court found that husband spent the entire proceeds of a workers' compensation settlement in violation of a court order and was in arrears on child support, while he was on Social Security disability, recovering from cancer, and, as a practical matter, without financial means or ability to satisfy any significant judgment for damages that might be awarded in the instant case. This state of affairs was shown to be ongoing by wife's new pleading which, reasonably anticipating husband's failure to satisfy any such judgment, sought a standing order for incarceration as a remedy, with release conditioned upon payment. The trial court correctly observed that its power to incarcerate for civil contempt was limited to situations where a contemnor had the fiscal means to effectuate her or his release. Id. at 512. No such means were fairly suggested here, where the court had recently determined husband to be recalcitrant, but homeless and disabled.

The trial court recounted the long history of the parties' dispute and the days already spent in litigation with very limited results. Considering the court's explanation, wife could have moved, but did not, for reconsideration under Vermont Rule of Civil Procedure 59 to proffer why continuing the litigation would likely yield more than an idle gesture. Given the family court's scarce resources already devoted to little appreciable

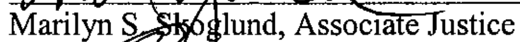
result, it was no abuse of discretion to curtail the instant action where the ultimate remedy sought, coercive incarceration, was reasonably perceived by the court to be futile. We therefore affirm the family court's decision.

Affirmed.

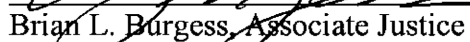
BY THE COURT:



John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice