

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-025

JUNE TERM, 2010

Robert L. Rotax	}	APPEALED FROM:
	}	
v.	}	Addison Family Court
	}	
Jodi Rotax	}	DOCKET NO. 18-1-07 Andm

Trial Judge: Cortland T. Corsones

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

Husband appeals the family court's December 17, 2009 order denying his motion for contempt. We affirm.

The parties were divorced by a March 12, 2008 final order in which the family court stated that husband had engaged in conduct that could be viewed as an attempt to defraud wife from her share of the marital estate and that, at the very least, raised serious questions concerning his honesty and credibility. Wife filed a motion for relief from judgment after discovering that, following the final hearing but before the court issued its decision, husband had surreptitiously withdrawn \$80,000 from the parties' home equity line of credit, thereby considerably reducing the equity in the home that the court had awarded to wife. Concluding by clear and convincing evidence that husband's actions constituted fraud and misconduct, the court ordered husband to repay the money within a specified time frame. In the event that he did not, the court authorized wife to repay the equity line of credit with husband's share of a cashed retirement account that the court had previously placed in wife's control for safekeeping.

Husband did not repay the money, but instead filed a motion for relief from judgment claiming a newly found tax liability of approximately \$60,000. At the same time, he filed a motion to stay previous court orders pending a hearing on his motion for relief from judgment. Wife asked the court for permission to liquidate marital assets to pay sums due, including the equity line of credit. Husband opposed the motion. The court set both motions for a January 20, 2009 hearing. One day before the hearing, husband filed for bankruptcy protection, which further delayed matters until September 28, 2009, when the bankruptcy court granted the trustee's motion to approve a settlement between the bankruptcy estate and wife in her capacity as a creditor. Only then was wife able to apply husband's remaining share of the cash retirement account towards the equity line of credit.

On November 24, 2009, husband filed a motion for contempt, claiming that wife had failed to repay the equity line of credit in a timely manner pursuant to the family court's October 8, 2008 order, thereby improperly diminishing the retirement funds and increasing the shortfall when wife finally was able to apply the funds towards repaying the line of credit. The family court denied the motion following a hearing, finding that virtually all of the delay in wife

applying the funds towards repaying the line of credit was the result of husband's, not wife's, actions. On appeal husband argues that the shortfall of funds available in the retirement account to pay off the equity line of credit would have been only \$4,315 rather than \$30,794 if wife had used the funds to repay the equity line of credit at the time ordered by the court. We conclude that this argument is completely frivolous, given the findings of the court, which are supported by the record, demonstrating that husband's actions, not wife's, caused the delay in repaying the equity line of credit. Husband has failed to explain, let alone prove, how the court abused its discretion in denying his motion for contempt. Vermont Women's Health Center v. Operation Rescue, 159 Vt. 141, 146-47 (1992) (stating that person appealing from trial court's ruling on motion for contempt has burden to show that court's discretion was entirely withheld or was exercised on clearly untenable grounds). Nor has husband demonstrated how the court abused its discretion in refusing to set aside an earlier award of attorney's fees. None of the other arguments raised by husband are properly within the scope of this appeal.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice