

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-167

AUGUST TERM, 2002

Virginia M. King

v.

Gary L. King

}	APPEALED FROM:
}	
}	Bennington Family Court
}	
}	
}	DOCKET NO. 363-12-94 Bndm
}	
}	Trial Judge: Karen R. Carroll
}	
}	
}	

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

Defendant appeals from orders of the Bennington Family Court finding him in civil contempt and denying a motion to reconsider. He contends the court: (1) abused its discretion and violated his due process rights by proceeding with a hearing on the contempt motion despite his failure to appear; and (2) erred by refusing to reconsider the contempt order. We affirm.

The facts may be summarized as follows. The parties were divorced by final order of the Bennington Family Court in October 1995. The divorce decree provided that defendant was solely responsible for all expenses, including mortgage payments, related to a mobile home and lands located in Bennington. Thereafter, defendant filed for bankruptcy and was discharged from the mortgage payments. The bankruptcy petition failed to list plaintiff, defendant's former wife, as a creditor. Plaintiff was later sued, and judgment was entered against her, for non-payment of the promissory note on the mobile home. Her wages were garnished in an amount totaling \$8,682.48. A later relief-from-abuse order made defendant responsible for payments on a new mobile home. The court later found that defendant had failed to make one payment in the amount of \$407.00.

In November 2001, plaintiff moved for enforcement of the provisions of the divorce decree and relief-from-abuse order, and for a finding of contempt. The record reveals that, on December 10, 2001, the court issued a notice of hearing on the contempt motion to be held on February 8, 2002. The record further discloses that the court issued a second notice, the following day, rescheduling the hearing to February 13, 2002. Defendant failed, however, to appear at the hearing on the 13th. The trial court noted for the record that notice of the hearing was sent to defendant. The court then proceeded with the evidentiary hearing, made findings on the record, and issued a written order. The order held defendant in contempt for failure to compensate plaintiff for the garnished wages and for failure to make the payment on the mobile home, and ordered that he satisfy the payment obligation or face civil contempt sanctions. The court further found that defendant had been duly noticed of the contempt and enforcement hearing by mailed notice to his last known address. A subsequent motion for reconsideration was denied. This appeal followed.

Defendant contends the court erred in proceeding with the hearing in his absence without evidence of proof of service of the court's notice. Defendant mistakenly relies on V.R.C.P. 5(d), which requires proof of service when an adverse party raises a question of notice of a party's filings. The notice of hearing was sent by the court, not by plaintiff, and the court's records plainly disclose that notice of the February 13 hearing date was sent to defendant at his last known address. Nothing further was required. Moreover, nothing in the record corroborates defendant's claim that he failed to receive the notice contained in the file.

Defendant also contends the court abused its discretion in denying the motion to reconsider a default judgment. The court did not, however, enter a default judgment; it proceeded with the scheduled evidentiary hearing, and issued findings and conclusions in support of the judgment. See Leiter v. Pfundston, 150 Vt. 593, 595 (1988) ( judgment not a default judgment where defendant was denied continuance, failed to appear for scheduled hearing, and court proceeded with evidence in defendant's absence and issued findings and judgment). Moreover, nothing in the record supports defendant's claim that he failed to receive due notice of the hearing. Accordingly, we discern no abuse of discretion in the court's denial of the motion for reconsideration. See Rubin v. Sterling Enters., Inc., 164 Vt. 582, 588-89 (1996) (motion for reconsideration committed to court's sound discretion, and ruling will not be disturbed absence abuse of discretion).

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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James L. Morse, Associate Justice

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Marilyn S. Skoglund, Associate Justice