State of New Hampshire
Supreme Court

NO. 2016-0107

2016 TERM

NOVEMBER SESSION

In the Matter of Melissa Allen

and

Lawrence Holdsworth

RULE 7 APPEAL OF FINAL DECISION OF THE
CLAREMONT FAMILY COURT

REPLY BRIEF

Joshua L. Gordon, Esq.
Law Office of Joshua L. Gordon
(603) 226-4225 www.AppealsLawyer.net
75 South Main St. #7
Concord, NH 03301
NH Bar ID No. 9046

TABLE OF CONTENTS

ARGUMENT. 1
I. Tractor Belongs to Ms. Allen. 1
II. Mr. Holdsworth Failed to Pay the TDS Bill. 2

CONCLUSION. 2

CERTIFICATION. 3

TABLE OF AUTHORITIES

State v. Stern,
150 N.H. 705 (2004).. 1

Town of Epping v. Harvey,
129 N.H. 688 (1987). 2

Webster v. Powell,
138 N.H. 36 (1993). 1

ARGUMENT

I. Tractor Belongs to Ms. Allen

In his brief Mr. Holdsworth admits he abandoned the tractor or left it stored at Ms. Allen's house. He had moved just up the road, and could have driven it away; he testified he was "without a problem" to trailer it away. The court gave Mr. Holdsworth sufficient opportunity to get his things from Ms. Allen, and by not exploiting it, he accepted the risk of loss.

In his brief, and relying on a purported email not in the record, Mr. Holdsworth suggests the insurance claim was denied because he owned the tractor. OPPOSING BRF. at 6. However, the only evidence in the record regarding why coverage was denied – under a claim made by Mr. Holdsworth to Ms. Allen's carrier – is that he no longer lived at her house, having moved out after Ms. Allen procured a restraining order the year before trial. *Post-Divorce Hrg.* at 16. The email appears to have been appropriately ignored by the court. *Id.* at 8-9.

The divorce decree is not ambiguous. Ms. Allen got "[a]ll items in her possession not specifically awarded to Larry." There is thus no basis now for exploring inferences or equities. Mr. Holdsworth claims it is a "mystery" why tractor was not listed amongst "Larry's Belongings." OPPOSING BRF. at 6. But the proposed decree, with the list attached, was timely placed before the court and the parties, giving Mr. Holdsworth and his attorney an opportunity to amend the list had there been a reason. Mr. Holdsworth alternatively claims a "scrivener's error" for the tractor's absence from the list. OPPOSING BRF. at 6. Although correction of a scrivener's error may result in alteration of the meaning of phrases, *State v. Stern*, 150 N.H. 705, 712 (2004), there must be evidence beyond a party's bare allegation that an error is merely clerical. *Webster v. Powell*, 138 N.H. 36 (1993).

Accordingly, a plain reading of the documents and circumstances indicate the tractor belongs to Ms. Allen.

II. Mr. Holdsworth Failed to Pay the TDS Bill

In his brief Mr. Holdsworth appears to dispute either the existence of the TDS bill, the arrearage amount, or his responsibility to pay it. OPPOSING BRF. at 9. Those matters were all determined at the time of the divorce, however, and cannot now be contested; in its contempt order the court noted Mr. Holdsworth's "failure to pay the TDS bill." ORDER (Dec. 22, 2015) at 2, *Appx*. at 44.

The penalty here is not mere windfall, but had legitimate basis – Ms. Allen's rural location, personal safety, and ability to run her business. The discretion afforded the family division in divorce matters is not related to its authority to enforce its orders, which impacts the dignity of the court. *See, Town of Epping v. Harvey*, 129 N.H. 688 (1987). That Mr. Holdsworth did not care to pay is not reason to view the decree as a bluff.

CONCLUSION

For the foregoing reasons, this Court should declare the tractor the property of Ms. Allen, enforce the penalty provisions regarding the TDS bill, and award attorney's fees.

Respectfully submitted,

Melissa Allen
By her Attorney,
Law Office of Joshua L. Gordon

Dated: November 9, 2016

Joshua L. Gordon, Esq.
Law Office of Joshua L. Gordon
(603) 226-4225 www.AppealsLawyer.net
75 South Main St. #7
Concord, NH 03301
NH Bar ID No. 9046

CERTIFICATION

I further certify that on November 9, 2016, copies of the foregoing will be forwarded to Peter Decato, Esq.

Dated: November 9, 2016

Joshua L. Gordon, Esq.