

SUPREME COURT OF NEW HAMPSHIRE

In the Matter of Gretchen M. Conner and Roger T. Conner

156 N.H. 250, 931 A.2d 1252 (2007) · No. 2006-807 · Decided September 25, 2007

SUMMARY

The New Hampshire Supreme Court affirmed post-divorce orders finding Roger T. Conner in contempt for failing to pay his share of daycare and miscellaneous expenses and modifying the parties’ parenting plan to require him to administer prescribed medication to a child. The court held that the trial court did not unsustainably exercise its discretion by denying a request to convert the hearing to a structuring conference or by declining to appoint a guardian ad litem. It also held that the record supported the contempt finding and declined to address due process claims not properly raised below.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                             |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Hampshire                                                                                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Duggan, J.; Broderick, C.J.; Dalianis, J.; Galway, J.; Hicks, J.                                                                                                                                                                                                                                                            |
| JURISDICTION          | New Hampshire                                                                                                                                                                                                                                                                                                               |
| DECIDED               | September 25, 2007                                                                                                                                                                                                                                                                                                          |
| DOCKET                | 2006-807                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | The father appealed two post-divorce orders of the Brentwood Family Division: an order finding him in contempt for failing to pay his share of daycare and miscellaneous expenses, and an order modifying the parenting plan to require him to administer prescribed medication to a child.                                 |
| STANDARD OF REVIEW    | The Supreme Court reviewed the trial court's management of proceedings, its decision whether to appoint a guardian ad litem, and its contempt ruling under the unsustainable exercise of discretion standard. The appellant had to show that the ruling was clearly untenable or unreasonable to the prejudice of his case. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                              |
| PARTIES               | Roger T. Conner v. Gretchen M. Conner                                                                                                                                                                                                                                                                                       |

TOPICS

family law procedure

child custody

visitation

contempt

due process

## PRACTICE AREAS

family law

family law procedure

child custody

contempt

constitutional law

## QUESTIONS PRESENTED

1. Whether the Family Division abused its discretion by denying the father's request to convert the final hearing into a structuring conference to allow discovery and appointment of a guardian ad litem.
2. Whether the Family Division abused its discretion by declining to appoint a guardian ad litem before requiring the father to administer the child's prescribed medication.
3. Whether the Family Division abused its discretion by finding the father in contempt for failing to pay his share of daycare and miscellaneous expenses.
4. Whether the father's asserted state constitutional due process claims were preserved for appellate review.

## HOLDINGS

1. The Family Division did not unsustainably exercise its discretion by denying the father's request to convert the hearing and proceeding on the motions.
2. The Family Division did not unsustainably exercise its discretion by declining to appoint a guardian ad litem.
3. The Family Division did not unsustainably exercise its discretion by finding the father in contempt for failing to pay his share of daycare and miscellaneous expenses.
4. The Supreme Court declined to address the father's state constitutional due process assertions because he failed to demonstrate that he properly raised them below.

## KEY QUOTATIONS

*"In future cases, we expect parties to comply with such provisions in parenting plans."* (156 N.H. at 252)

*"The trial court has broad discretion in managing the proceedings before it."* (156 N.H. at 253)

*"Under RSA 461-A:16, I (Supp.2006), whether to appoint a GAL is within the trial court's discretion."* (156 N.H. at 254)

*"The contempt power is discretionary and the proper inquiry is not whether we would have found the respondent in contempt, but whether the trial court unsustainably exercised its discretion."* (156 N.H. at 255)

## FACTUAL BACKGROUND

The parties' divorce decree included a parenting plan and a stipulation requiring them to share equally the daycare and miscellaneous expenses of their children. The mother sought to modify school-week visitation and require the father to administer medication prescribed for a child's attention deficit hyperactivity disorder. She also sought contempt sanctions based on the father's failure to pay his share of daycare expenses. The Family

Division modified the parenting plan, ordered the father to provide the medication or forfeit custodial time, and ordered him to pay \$1,240 in expenses.

## PROCEDURAL HISTORY

The parties' final divorce decree was entered on December 13, 2005, incorporating permanent stipulations and a parenting plan. The mother later moved to modify the parenting plan and hold the father in contempt. After denying the father's request to convert the merits hearing into a structuring conference, the Family Division granted both motions. The Supreme Court of New Hampshire affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Murray v. Developmental Services of Sullivan County, 149 N.H. 264, 267-68, 818 A.2d 302 (2003)
- Blevens v. Town of Bow, 146 N.H. 67, 72, 767 A.2d 446 (2001)
- State v. Lambert, 147 N.H. 295, 296, 787 A.2d 175 (2001)
- In the Matter of Stall & Stall, 153 N.H. 163, 168, 889 A.2d 18 (2005)
- State v. Dellorfanio, 128 N.H. 628, 632, 517 A.2d 1163 (1986)

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