

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2003-0778, In the Matter of Susan E. Sayers and Gerald H. Sayers, Jr., the court on October 4, 2004, issued the following order:

The respondent, Gerald H. Sayers, Jr., appeals an order of the trial court finding him in contempt for failing to comply with the parties' divorce decree. We affirm.

The contempt power of the trial court is discretionary; the proper inquiry is not whether we would have found the respondent in contempt, but whether the trial court unsustainably exercised its discretion in doing so. See In the Matter of Giacomini & Giacomini, 150 N.H. 498, 500 (2004).

The parties were divorced in March 2003; no appeal was filed. The finding of contempt was made in September 2003. The record reflects that the respondent failed to comply with certain financial provisions of the decree. The record contains no financial affidavit of the respondent and only a broad statement made by his counsel at the hearing that he had no ability to pay the amount ordered in the decree. Cf. Super Ct. R. 197. Based upon the record before us, we find no error in the trial court's finding of contempt.

The respondent also argued that the trial court erred in failing to find the petitioner in contempt for enrolling the parties' children in the Portsmouth school system without consulting with him. After oral argument, he filed a motion to withdraw this issue. His motion is hereby granted.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox
Clerk

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