

COURT OF APPEALS

Thorvald B. Melum,
Appellant,

Case No.: 22-AC-007

v.

Date: December 30, 2022

Patricia A Silas,
Respondent.

INITIAL REVIEW DECISION

This matter has come before Court of Appeal Judges Michele Doxtator, Leland Wigg-Ninham, and Diane House.

BACKGROUND

The Appellant, Thorvald B. Melum (hereinafter “Melum”), filed a Notice of Appeal with this Court on December 5, 2022. Said filing was perfected with the Notice of Appeal filed on December 9, 2022. Melum also filed an Addendum to his Notice of Appeal on December 9, 2022. Melum is appealing a Contempt Order issued the Oneida Family Court (hereinafter “OFC”), dated November 14, 2022, in Case No. 20-DI-16, wherein the OFC reviewed Melum’s allegations against Respondent, Patricia A. Silas (hereinafter “Silas”), for failure to follow OFC’s scheduling order issued on June 13, 2022, and the divorce judgment entered on August 18, 2022.

In Melum’s Notice of Appeal, he states that the OFC addressed only two of the three contempt allegations against Silas and did not address issues involving personal property and the business evaluation required for the Financial Disclosure Statement in Case No. 20-DI-16.

ANALYSIS

Melum filed a Motion for Contempt against Silas in the OFC on October 20, 2022. The OFC held a hearing on Melum’s Motion for Contempt on November 10, 2022. In the hearing, both parties were present and were provided an opportunity to present their positions before the OFC. The OFC found Silas in contempt for failure to follow the June 13, 2022, scheduling order and ordered her

to pay Melum for half of the home appraisal cost. Melum does not take issue with this finding of the Contempt Order. However, Melum's issue with the Contempt Order is that he believes it failed to address issues surrounding reimbursement for the business evaluation he obtained and other personal property.

Melum is requesting reimbursement for half of the cost (\$1,000.00) of the business appraisal as ordered by the OFC. The OFC denied this request and determined that because Melum and Silas each sought individual evaluations and failed to follow the part of the order to obtain a joint business evaluation and equally divide the cost of that business evaluation, neither Melum nor Silas is required to split the cost of the business evaluation appraisal. Melum is alleging that only one business evaluation was obtained in accordance with the OFC's order (his), and that the OFC's denial of splitting his appraisal costs with Silas is not supported by the evidence on the record taken as a whole.

Oneida Judiciary Law, section 801.8-3(a)(1) states that findings of fact may only be rejected where the Appellate Court determines they are "clearly erroneous." This means that when reviewing the Trial Court decision, we apply a clearly erroneous standard to factual findings and a de novo standard to legal issues. We also will follow the requirement in §801.8-3(a) that we "shall not substitute [our] judgment or wisdom of the credibility of testimony or the weight of evidence for that of the original hearing body." Based upon evidence presented, the OFC determined that each party obtained separate valuations, costing Melum \$2000.00 and Silas \$400.00 respectively. This Court supports the OFC in its finding of individual valuations obtained being contrary to the OFC's order to obtain a joint valuation, thus nullifying the part of that order to split the cost for the business valuation. As a result, we agree with the OFC finding on this matter of not holding the other party responsible to split the cost of the valuation they obtained on their own.

Regarding the issues surrounding possession of personal property in Melum's Contempt Motion, the OFC determined that based upon testimony provided by both parties at the contempt hearing, it was too difficult to determine who is in possession of said items. This issue of who has possession of this personal property has been before the OFC on two occasions: in the divorce proceedings and in the contempt proceedings. In both proceedings, the OFC was unable to decide who was in possession of the personal property. We again follow the requirement in §801.8-3(a)

that we "shall not substitute [our] judgment or wisdom of the credibility of testimony or the weight of evidence for that of the original hearing body." As a result, we support the OFC's findings that it cannot determine that Silas has possession of the personal property and is willfully and intentionally refusing to obey the OFC's order. Therefore, Melum's request for relief in his appeal of OFC's Contempt Order in the amount of \$9,300.00 for this personal property is also denied.

DECISION

After review of the information contained in the Perfected Notice of Appeal, the Addendum and the OFC's Contempt Order, it is determined that Melum has not sufficiently alleged that the OFC's decision:

1. Violated applicable provisions of the Constitution;
2. Violated provisions, substantive or procedural, of applicable Tribal law or applicable federal law;
3. Is an administrative decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or
4. Is not supported by the substantial evidence on the record taken as a whole.

For the reasons stated above, this appeal is **DENIED** for review. All previous orders remain in effect.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, the appeal is **DENIED** for review. Dated this 30th day of December 2022, in the matter of Case No. 22-AC-007, *Thorvald B. Melum v. Patricia A. Silas*.

It is so ordered.