

Connecticut Trial Court Official Decisions

TINNEY v. TINNEY, FA12-4062337-S (Sep. 20, 2013)

Jessica Tinney v. Joel Tinney.

2013 Ct. Sup. 2266

No. FA12-4062337-S

Connecticut Superior Court, Judicial District of Hartford at Hartford.

File Date: September 20, 2013

[EDITOR'S NOTE: This case is unpublished as indicated by the issuing court.]

OLEAR, J.

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MEMORANDUM OF DECISION

This action seeks the dissolution of the parties' nearly nine-year marriage. The action was commenced by a complaint dated May 9, 2012 which was returnable to the court on May 29, 2012.

The court conducted the trial on September 5 and 6, 2013 on the dissolution complaint and on the outstanding motions, to the extent the same were pursued. Each party was represented by counsel. The plaintiff rested her case in chief on September 5, 2013, but filed Amended Detailed Claims for Relief on September 6, 2013; over the objection of the defendant, the court accepted the same.

The court considered all of the evidence presented, applicable common and statutory law, including without limitation, General
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Statutes §§ 46b-56, 46b-56a, 46b-56c, 46b-81, 46b-82, 46b-84, and 46b-215a, and the provisions of the Child Support and Arrearage Guidelines (guidelines). The court also took judicial notice of the court orders in the file. The court made the following findings of fact by a fair preponderance of the evidence.

FINDINGS OF FACT

A. Relevant Facts

1. Initial Findings

The parties were married on October 7, 2003 in Clearwater, Florida. The parties lived in the State of Connecticut for at least one year before the filing of the dissolution complaint. All statutory stays have expired.

Hailey was born to the parties on November 5, 2004.

The parties agreed that the plaintiff would have sole legal custody of Hailey and to adopt the recommendations of the guardian ad litem, Attorney

Leo Diana (the GAL) (court exhibit 1).

2. The Plaintiff's and Defendant's Earnings and Retirement Assets

The plaintiff has a degree in civil engineering and works as a construction manager. According to her financial affidavit, she receives a weekly gross income of \$1,360, which equates to \$70,720 a year. At her recent deposition, she testified that she makes \$75,000 a year. In 2012 she received a bonus of \$1,250. No bonus has yet been paid in 2013.

The plaintiff worked as a construction project manager when the parties were married. Throughout the majority of the marriage she has consistently earned approximately \$65,000 to \$70,000.

According to her financial affidavit, her net income is \$775 a week — but that amount was derived, in part, by deducting a court ordered wage garnishment in the amount of \$186 a week and by deducting amounts withheld for dental and medical insurance. There was also testimony that the parties, when they were together, over-withheld on the amount of taxes so as to provide for a larger refund. For purposes of determining child support, in accordance with the guidelines, the court finds the plaintiff's net weekly income to be \$897.

The defendant was a licensed electrician, but he needs to take a refresher course (and he is scheduled to do so in October 2013) to renew his certification. The defendant, while he was working as an electrician, was last earning \$33 an hour, or about \$70,000 a year. In March 2009 he was injured.

The plaintiff testified that the injury suffered by the defendant occurred at home and therefore she believed that he was perpetrating a fraud by having pursued a workers' compensation claim. The plaintiff, after providing such testimony, abandoned any claim that she share in the amount of proceeds awarded to the defendant in connection with his workers' compensation claim.

The defendant testified that he was injured while working on a bridge and that the fall causing the injury was witnessed by other employees of his company and by workers for MetroNorth. He was represented by counsel who pursued the claim on his behalf. The defendant was awarded as a full and final settlement the sum of \$150,000. The defendant in such settlement released any right to make a claim for payment of all past, present and future medical bills. (Exhibit 10.)

The injuries the defendant suffered in his work-related accident included a tear of his ACL and MCL in his right knee and his bicep. He has had two surgeries. He testified that his bicep injury has been repaired, but that he now needs a knee replacement — requiring future surgeries.

The defendant was incarcerated during the term of the marriage; specifically, he was incarcerated from September 2012 until March 4, 2013. During his period of incarceration, it was learned that he had melanoma. He had two surgeries on his left temple in connection with the melanoma, which included, without limitation, performing a skin graft from his left tricep area.

The knee injury has hindered his ability to work as an electrician as it has made it difficult to kneel and climb ladders, but it has not precluded the same.

The defendant has not worked since the injury. He was offered a job by his former employer after his release from incarceration, however, as the work was in the Commonwealth of Massachusetts and as the defendant was on parole at that time, he was not able to take the position. The parole prohibition has been lifted, but the job is not available. His inability to take the job was caused by his criminal conduct;

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but for his parole, he had the ability to work in Massachusetts. He testified that he would have been paid \$26.00 per hour on the job in Massachusetts. In *Hart v. Hart*, 19 Conn.App. 91, 94-99, cert. denied, 212 Conn. 813 (1989), the payor voluntarily quit a position to take a job paying less money, and despite the loss of income, he was attributed an earning capacity akin to that he previously enjoyed. See also *Miller v. Miller*, 181 Conn. 610, 611-12 (1980). In this case, the defendant voluntarily engaged in conduct which he could reasonably foresee would result in a loss of employment. If he had been able to take the position, he would have earned approximately \$47,320 a year (\$26 x 35 x 52).

The court finds it appropriate to determine that the defendant has an earning capacity at this time and attributes to him a specific earning capacity based on the Massachusetts position available to him (but for his conduct),[fn1] of \$903 per week gross and \$694 net.

At this time, neither party has any retirement assets remaining — each having spent the money in their respective accounts.

The defendant has no life insurance at this time. The plaintiff has life insurance with a death benefit of \$500,000.

The defendant received a workers' compensation settlement of \$150,000 in connection with his injury. After paying his counsel, he received a net award of \$120,000. The money has been spent. He did not retain enough to fund the cost of future knee surgery that he requires. He spent money on his counsel fees in connection with the 2010 divorce petition (which was not pursued), his criminal matters and for the pending dissolution action. He also spent money to repair a boat, the Lincoln Navigator and the 2004 Dodge Ram; and to buy the 2003 Chevy Duramax and the Honda Waverunner. The acquisition of additional playthings (such as a waverunner) is indicative of the spending habits of these parties. A small amount of money went to pay outstanding bills.

The plaintiff testified that she was unaware of how he spent the money from the award. The court does

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not find that claim to be credible.

The defendant paid \$3,000 for child support — in advance — to cover the time during which he would be incarcerated.

Neither party has filed federal income tax returns for the years 2010, 2011 and 2012 and no state of Connecticut income tax returns for six years. It is unknown if the plaintiff, upon filing the federal returns (as the defendant had no income and therefore no tax obligation), would enjoy a refund or be required to pay additional taxes.

3. The marital residence, motor vehicles and personal property

The parties own a home at 104 Ash Swamp Road, Glastonbury. The defendant purchased the home in 1999 and he is the mortgagee on the first mortgage encumbering the property. He is unable to remember the amount of the down

payment he made on the home and therefore is not pursuing a claim for a premarital contribution. In 2007, he quitclaimed an undivided one-half interest in the property to the plaintiff. The parties then placed a second mortgage on the home for which they are jointly and severally liable.

The property was originally improved with a two-bedroom, two-bath single-story home. The parties undertook a significant renovation of the home to add a two-story addition. They also increased the size of the garage. The plaintiff estimated the cost of the renovations as approximately \$60,000. At the time of Hailey's birth, the renovation work had not been completed and work remains unfinished.

The defendant valued the home at \$295,000 and the plaintiff valued the same at \$250,000. The court finds the value to be \$295,000.

The defendant has been out of the marital home since 2011 and has not had access to the statements from the holders of the mortgages.

No payments have been made on the first mortgage for a significant period of time. No payments have been made on the second mortgage for 2012 or 2013 — the plaintiff testified the holder of the mortgage would not accept payments until the arrearage on the first mortgage was cured.

The balance of the first mortgage as of August 2013 was approximately \$127,000 — with late fees and interest continuing to accrue. The principle balance of the second mortgage is approximately \$92,000 — with late fees and interest continuing to accrue. The amount required

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to reinstate both loans is approximately \$62,000. There are other liens on the property but the amount thereof is not ascertainable from the evidence presented. The credible evidence is that the aggregate of such liens approximates \$8,000 to \$10,000. The equity in the home is therefore approximately \$65,000 and declining.

The plaintiff reported on her earlier financial affidavits that she was paying a mortgage/rent in the amount of approximately \$351 a week. She was not. Her financial affidavit filed on the first day of trial corrected the error.

The parties own or may have owned several motor vehicles, boat(s), all terrain vehicles, waverunners and other motorized machines. They appear to own a 2004 Dodge Ram, a 2006 BMW M5, a 2003 Chevy Duramax truck and a 2004 Lincoln Navigator. There may also be a 2002 Volkswagen Jetta, a 2006 Yamaha R1, 2006 Yamaha Rg, 2000 Kawasaki Waverunner, a Honda Aquasport, and 1999 Wellcraft Eclipse.

The defendant, as an electrician, has also accumulated a fair amount of tools that he desires to have returned to him to be utilized in the conduct of his trade. The plaintiff has requested the tools so she can work on the house — to finish the work that has gone unfinished while she has been in the house.

In addition to the motorized vehicles above, the parties owned or may have owned specialized rims, plows, four generators, a camper, tractor, mover, log splitter, fishing rods, winch, and a significant quantity of other tools, a tanning bed, work out equipment, as well as household furnishings and furniture including four or five large flat screen televisions.

The court indicated above that the parties own or may have owned such personal property, because the list of property the plaintiff attached to

her financial affidavit is fictitious. It purported to be a list of all the property owned and a value attributable thereto. She testified, however, that the list she provided is not an inventory of the property that she knows is present and accounted for, but is a compilation of the list of property the defendant provided to her (apparently during settlement discussions) and of other items — the basis for including the other items is not clear to the court. The plaintiff testified that she was not sure as to whether certain items remain in her possession. The defendant has not had access to any of the

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personal property but created the list he provided to the court from his memory of what property was owned by the parties (Exhibit J). The court makes the reasonable assumption, based on the credible evidence, that an unknown amount of property has been transferred, sold or otherwise removed from the marital home.

The plaintiff has an inchoate cause of action against a prior landlord for money she claims to have put into the rental property in which she lived for a time in 2011 in connection with improvements she made and she did not list the same on her financial affidavit. The amount of the claim is approximately \$8,000.

4. Breakdown of the Marriage

The parties met in 2001. The plaintiff testified that at the time of the marriage she was aware of a prior arrest of the defendant and one period of incarceration and that she only learned during the course of the marriage of the extent of his criminal history. The defendant testified she was well aware of the extent of his criminal history and that he had discussed the same with her. He testified that she wanted to be with a "bad boy gone good."

During the marriage he was arrested again; in 2004 for theft of power and then later arrested — at the marital home — for felony possession of a weapon and incarcerated from September 2012 to April 3, 2013.

Even prior to his latest incarceration, the marriage was, at best, rocky. In 2010, the plaintiff filed a divorce petition. The same was not ultimately pursued. The credible evidence is that they enjoyed some time together at a campground over the summer of 2010.

In October 2010, the plaintiff was in a single-car accident which caused her significant injuries. She was on pain medications and bedridden for months. The defendant ran the household during that time. In March or April 2011, the parties separated and the plaintiff moved out of the house.

It is clear that the ability of the parties to continue to acquire significant "toys" such as the waverunners, numerous motor vehicles, televisions, and the like was impacted by the defendant's injury and then his incarceration. Once the parties were unable to continue to buy "toys," the marriage — which was not on firm ground — floundered further.

The defendant has not been able to provide the level of support he had previously
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supplied. The mortgages and other bills were going unpaid and the money problems multiplied.

During the last year, the defendant failed a drug test and the marriage suffered further as a result thereof. His incarceration certainly played a

role in the breakdown of the marriage.

It is clear that the marriage has broken down irretrievably. The court finds both parties to have contributed to the breakdown of the marriage; but the defendant bears the greater fault.

5. Relationship of the Parties with the Child

It is clear the relationship between the child and the defendant is broken at this time. The parties have agreed that it is in the child's best interest that the plaintiff have sole custody of the minor child at this time.[fn2]

The proposed orders of the GAL were endorsed by both parties with the caveat that the plaintiff had some reservations with respect to the reunification efforts and was, at least initially, looking for the elimination of the same if measurable or significant progress is not apparent in a relatively short time.

ADDITIONAL FINDINGS AND ORDERS

The court makes the additional findings and enters the following orders:

A. Jurisdiction and Dissolution

The court has jurisdiction in this matter which has been pending for more than ninety days.

The allegations of the complaint have been proven to be true. The marriage has broken down irretrievably. A decree of dissolution may enter.

B. Child Custody and Parenting Plan

The court makes the following orders and finds the same to be in the best interest of the minor child:

The plaintiff shall have sole custody of the minor child.

The court adopts as orders of the court the Guardian ad Litem Recommendations dated September 5, 2013, which incorporate therein the conditions set forth in the three paragraphs of the July 17, 2013 agreement of the parties and order of the court (Court Exhibit I and the July 17, 2013 order is document 125.60) and the same herein by reference thereto. The court orders that there shall be a review of such recommendations and of the progress of the reunification efforts on February 26, 2014 and in August 2014 on a date to be selected by the parties at the conclusion of the February
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26, 2014 review.

C. Post-Majority Education

Pursuant to the provisions of General Statutes § 46b-56c, the court reserves jurisdiction to determine educational support and either party may file a future motion or petition for an educational support order.

D. Child Support and Defendant's Duty to Report Employment

Based on the income of the parties as found above, the court finds, under the guidelines, the presumptive support payable by the defendant for one

child with the plaintiff having primary residential custody to be \$121 a week.

After considering the credible testimony and reviewing the financial affidavits, the earnings of the respective parties, and the deviation criteria set forth in Section **46b-215a-3(b)(6)** of the guidelines, the court finds the application of the guidelines to be appropriate and orders the defendant to pay child support in the amount of \$121 per week. The court orders the child support payments to be made by immediate wage withholding.

The court orders the defendant to pay 35% of the costs of unreimbursed medical, dental, optical, pharmaceutical, psychological, psychiatric, and orthodontic expenses, including any deductibles, as they pertain to the minor child. The plaintiff shall be responsible for the balance of such costs.

The defendant is ordered to continue to search for employment and when he gains employment to report to the plaintiff within three business days the name of the employer and the compensation to be paid.

E. Alimony

Based upon the facts of this case, and after consideration of applicable law, including without limitation, the statutory factors set forth in General Statutes § **46b-82**, each party shall pay \$1.00 per year alimony to the other, modifiable as to amount only if (i) a party is called upon to pay the debt obligations of the other whether said debts are discharged in bankruptcy or not; and/or (ii) a party fails to deliver to the other the personal property specifically awarded under the orders of the court set forth in Sections G.2(a) and (b). Said alimony shall terminate when each party satisfies his or her obligations as set forth herein.

Except as set forth above, the CT Page 2266-J court does not award alimony to either party.

F. Medical Insurance for the Parties and the Child

The plaintiff shall continue to provide medical insurance for the minor child so long as the cost is reasonable.

If medical insurance for the minor child is not available to either party at a reasonable cost, which is defined as an amount not to exceed 7.5% of their respective net income, then the plaintiff shall enroll the child in the HUSKY program or its equivalent.

The parties shall maintain, at their own expense, medical and dental insurance coverage for themselves.

G. Division of Property

"The trial court is empowered to deal broadly with the equitable division of property incident to a dissolution proceeding, and, consistent with the purpose of equitable distribution statutes generally, the term property should be interpreted broadly as well . . . General Statutes § **46b-81** confers broad powers upon the court in the assignment of property, and the allocation of liabilities and debts is a part of the court's broad authority in the assignment of property." (Citations omitted; internal quotation marks omitted.) *Roos v. Roos*, **84 Conn.App. 415, 420**, cert. denied, **271 Conn. 936** (2004); see *Clark v. Clark*, **115 Conn.App. 500, 505** (2009); also see General

Statutes § 46b-81.

In coming to a division of the property, the court has crafted a mosaic and has also considered the requests of the parties for the allocation of assets and liabilities.

I. Marital home

The plaintiff does not want to sell the home yet her income alone is not sufficient to pay her current expenses (which do not include a payment for mortgage or rent) and, as the second mortgage has not been paid for well over one year, the court makes the reasonable assumption that her credit history has been negatively impacted, which would likely hamper her ability to obtain financing to satisfy the first mortgage and to refinance the second mortgage on her own.

The court, in crafting the mosaic, orders the home to be immediately placed on the market for sale with a listing agent having at least ten years of experience in the geographic area. If the parties cannot agree on a listing agent, then Prudential Connecticut Realty shall be utilized. The property shall be listed at the greater of (i) the listing price suggested by the listing agent or (ii) \$295,000. The parties shall accept any offer within 5 percent of the listing price. Every sixty days, the parties shall review the listing price of the property with the agent and the listing price will be reduced to the greater of (i) the revised listing price suggested by the listing agent or (ii) 95 percent of the prior listing price. Both parties shall actively participate in the sale of the property with the intent of selling the property as quickly as possible.

The court shall retain jurisdiction over the terms and conditions of the sale. Upon the closing of sale of the marital home, the sale proceeds shall be utilized to pay in full the following expenses: all conveyance taxes, real estate sales commissions, legal fees for closing of sale, and other normal expenses incurred in connection with the sale and the amount due to pay off the mortgages, taxes, liens and judgments on said premises and the remaining proceeds shall be allocated 66% to the plaintiff and 34% to the defendant.

Pending the sale of the home, the plaintiff shall have the exclusive right to occupy said premises. During said time and while she remains in possession of the property, the plaintiff shall pay the homeowner's insurance and the utilities. The plaintiff shall maintain the home in good condition reasonable wear and tear excepted and shall use reasonable efforts to keep it picked up and in "showable" condition. In the event the plaintiff hinders or delays the marketing of the property, the court reserves the right to require her to vacate the property prior to the sale.

2. Personal property

(a) The court awards to the defendant the following items of personal property: (i) the 2003 Chevy Duramax 2500HD and any rims and other equipment that is an appurtenance thereto; and (ii) the following tools: nitros kit, rigid compound mitre saw with laser, 16' fiberglass extension ladder, one Hitachi 7 1/4" circular saw, Milwaukee buffer & grinder, the Dwalt sheetrock screw guns, CT Page 2266-L Milwaukee right angle drill, Milwaukee hole Howg drill, battery charger Schumocher, Big Compress & Air Tools-Husky Red, Dewall Cordless Drills and 2

of the 4 saws, electrical benders, Greenlee Loppers & tips for cutting wire, 26' fiberglass extension ladder, 8' Fiberglass extension ladder, Makila Metal Cutting Chop Saw, 1 Milwaukee Sausalls and wire pulling dollies/stands.

(b) The plaintiff is awarded (i) the 2006 BMW M5, 1994 Dodge Ram 2500, 2004 Lincoln Navigator and the 2002 Volkswagen Jetta, but only if and to the extent that the same remain in the possession of the plaintiff (i.e., if one or more of the same have been disposed of in any manner, the defendant shall not owe any alimony to the plaintiff pursuant to the provisions of Section E above); and (ii) the master bedroom furniture, Hailey's bedroom furniture, Dillon's bedroom furniture and the family room furniture; and (iii) the HP home computer and monitor. The plaintiff is also awarded her inchoate claim against her prior landlord.

(c) Each party is awarded their own jewelry and clothing.

(d) Based on the evidence submitted, the court is unable to further allocate between the parties the personal property to be awarded to them. All other items of personal property not awarded by the court above and not agreed to by the parties will be mediated by an agreed third party (and if the parties are unable to agree, the court will appoint a mediator). Each party is responsible for one-half of the fees of the mediator. The Court will retain jurisdiction to oversee any such distribution of personalty.

3. Bank accounts

(a) The plaintiff and defendant shall retain as her/his sole property free and clear of any claim by the other their respective bank accounts as shown on their financial affidavits.

4. Life insurance

To the extent available at a reasonable cost, each party shall maintain life insurance in an amount of not less than \$100,000, naming the child the irrevocable beneficiary thereon, so long as such child is a full-time student or until such child reaches twenty-three years of age, whichever is first to occur.

These amounts are further modifiable, based upon a change in income and the remaining eligibility of the child for support under General Statutes §§ 46b-84 and 46b-56c.

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To the extent the same is available, the parties shall provide proof of maintenance of said policies and the payment of applicable premiums therefore to the other party on or before September 30 of each year. The parties shall also notify the insurance companies to send to the other party duplicate notices of any potential lapse or cancellation for non-payment of premium for such policies.

H. Income Tax Filings and Tax Exemptions

For the past tax years, the parties may elect to file joint or individual tax returns. If the parties file joint returns, each party shall indemnify the other for any liability resulting from a failure to accurately disclose their respective income, earnings, distributions or dividends. If the parties file joint federal and state income tax returns, the parties shall share any refund 66% to the plaintiff and 34% to the defendant and any

liability equally. If the parties do not agree to file jointly, they shall then file separately and the plaintiff shall claim the minor child as an exemption and take all of the home-related deductions (such as mortgage interest and real estate taxes paid during the applicable tax year) on her individual returns.

From and after the 2013 tax year, and for so long as the child is eligible to be taken or claimed as a tax exemption, the plaintiff shall claim the child until such time as the defendant is earning not less than \$30,000 a year. From and after such time as the defendant is earning at least \$30,000 a year, then the plaintiff shall claim the child in odd-numbered years and the defendant shall claim the child in even-numbered years.

To the extent necessary, for each tax year (including 2013) each parent shall deliver to the other a fully executed IRS form 8322 (or successor form thereof) allowing such parent to take the tax exemption for the minor child, so long as the child remains as a qualifying child for tax purposes.

I. Tax Indemnification

Each of the parties will indemnify and hold the other harmless with respect to any deficiency found by reason of that party's income or deductions.

J. Tax Information

For so long as the defendant has an obligation to pay child support, the parties will annually exchange their W-2s, 1099s, K-1 and similar forms by February 15 each year and will provide each other with their income tax returns

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within five days of filing.

K. Fees

Except as set forth below, each party shall be responsible for the payment of their respective attorneys fees and costs incurred in connection with the prosecution and defense of the dissolution proceeding.

As of August 28, 2013, the parties had a balance payable to the GAL in the amount of \$3,126: \$1,563 due from the plaintiff and \$1,563 due from the defendant. Said fees are to be paid by the parties, if not sooner paid, as follows: \$750 by each party to the GAL on or before October 25, 2013 and the balance on or before December 3, 2013.

Additional fees were incurred from and after the amount that was billed on August 28, 2013 through the first day of trial. The parties shall be responsible for payment of such fees: the plaintiff shall be responsible for 34% of said fees and the defendant responsible for the balance of the same. Said fees shall be paid within forty-five days of the later of (i) receipt of a statement from the GAL for such fees or (ii) the date of filing of this memorandum.

If payment in full is not made by the stated end date by either party, that party's outstanding balance shall accrue interest at the rate of 10% per annum commencing as of the end date of such payment (i.e., the date of December 3, 2013 for the balance due as of August 28, 2013 and the date that is forty-five days of the later of (i) receipt of a statement from the GAL for such fees or (ii) the date of filing of this memorandum with respect to the fees due to the GAL for the period after the fees billed on August 28,

2013).

L. Effectuation of Orders

Each party is ordered to sign whatever documents are necessary, and as presented to them by the other party, to effectuate these orders within ten days of presentment.

Unless otherwise specifically set forth herein, these orders are effective immediately.

M. Pending Motions

1. Plaintiff's motions for contempt (136) and (145)

When an allegation of contempt is made our courts have noted that "[i]n a civil contempt proceeding, the movant has the burden of establishing, by a preponderance of the evidence, the existence of a court order and noncompliance with that order." *Statewide Grievance Committee v. Zadora*, **62 Conn.App. 828**,

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832 (2001). A finding of contempt cannot be based on an order that is vague and indefinite. *Wilson v. Wilson*, **38 Conn.App. 263, 271** (1995). "The contempt remedy is particularly harsh . . . and may be founded solely upon some clear and express direction of the court . . . One cannot be placed in contempt for failure to read the court's mind." *Eldridge v. Eldridge*, **244 Conn. 523, 529** (1998). "Noncompliance alone will not support a judgment of contempt." *Prial v. Prial*, **67 Conn.App. 7, 14** (2001). "[A] court may not find a person in contempt without considering the circumstances surrounding the violation to determine whether such violation was willful (sic)." *Wilson v. Wilson, supra*, 38 Conn.App. 275-76; *Niles v. Niles*, **9 Conn.App. 240, 253-54** (1986) (sufficient factual basis to explain plaintiff's failure to obey order).

"[E]ven in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order." *Nelson v. Nelson*, **13 Conn.App. 355, 367** (1988); see also *Fitzgerald v. Fitzgerald*, **16 Conn.App. 548, 553**, cert. denied, **210 Conn. 802** (1988) (though party's actions did not constitute contempt, court's remedial orders were well within the court's general remedial discretion).

"It is elementary that court orders must be complied with until they are modified by a court or successfully challenged." *Eldridge v. Eldridge*, **244 Conn. 523**,
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530 (1998).

The following additional facts have been found by a fair preponderance of the evidence and are necessary to address the pending motions.

(a) *As to motion 136*: On October 11, 2012, the court, Carbonneau, J., entered certain pendente lite orders, including, without limitation, the following:

- order 7: that the defendant provide a full accounting of his workers' compensation award by no later than November 12, 2012;
- order 10: that the defendant return the family dog; and order 11: that the defendant take all reasonable steps to move the Chevrolet truck to a more suitable location on the property.

The defendant was incarcerated at the time of the orders.

The defendant ultimately provided a list of the disbursements made from his settlement. It may not have been timely. There was credible evidence that he attempted to comply with the order. Given the circumstances, the delay is not unreasonable. The practical effect of the delay is inconsequential as the plaintiff has waived any claim to any portion of the proceeds.

The defendant still has not returned the dog. He testified that the believed the dog was being maltreated. It is clear the dog had run away. It is not clear at all that there was any maltreatment. Nonetheless, the order of the court has not been modified or terminated and the defendant was wrong to resort to self help.

The defendant, while incarcerated, contacted a third party, Mr. Tedford, to go to the house in an effort to comply with the order. Mr. Tedford credibly testified that he went to remove the truck. The plaintiff would not allow for the removal of the truck. The order does require the truck be moved, not removed. Nonetheless, the defendant, given all of the relevant circumstances, made more than a reasonable effort to comply with the order.

The court does not find contempt as to orders 7 and 11. As to order 10, the defendant had the ability to comply. He willfully chose not to do so. The defendant is in contempt for failure to comply with the order. The defendant is ordered to immediately return the family dog, Izzy, to the plaintiff. If the defendant does not return the dog within ten days of the date of filing of this memorandum,

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the defendant shall be sanctioned at the rate of \$25 a day each day until the dog is returned. The defendant is further ordered to pay attorneys fees in the amount of \$250 to counsel for the plaintiff. Such fees are to be paid on or before November 29, 2013.

(b) *As to motion 145:* The motion speaks to an alleged violation by the defendant of the automatic orders by withdrawing funds from various accounts and using the same for his own personal use. The motion refers to various dates from and after June 2012. The withdrawals made from and after June 2012 were from the workers' compensation funds — and there is no marital claim made as to such funds. There is no violation of the automatic orders. The motion for contempt is denied.

SO ORDERED.

[fn1] See *Tanzman v. Meurer*, 309 Conn. 105 (2013).

[fn2] The court notes that the plaintiff's closing argument included a statement that it was a "victory" for the plaintiff to be awarded sole custody. The court hopes that was only an unfortunate choice of words and that the plaintiff will not hinder the reunification efforts that are ordered below.