

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

14-P-1301

MICHELE MURPHY

vs.

JAMES SMITH.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

James Smith (father) appeals from that aspect of a judgment of contempt awarding attorney's fees to counsel for Michele Murphy (mother). On the date of the hearing on the mother's complaint for contempt, the parties entered a stipulation that provided that they both requested "that the following terms be entered as a [j]udgment of [c]ontempt by this Court." Although the parties agreed that some documentation relating to expenses totaling \$1,720.33 were to be reviewed by the father, the stipulation indicated that the father owed the mother an "arrearage" of \$7,882.97. The stipulation indicated that the father made a single payment on the day of the hearing of \$1,039.50 and that the arrearage -- exclusive of the \$1,720.33 which was payable on a later date -- was \$6,843.47. The stipulation included a paragraph that reads, "the issue of

[c]ounsel fees shall be presented to this Court for determination." As requested by the parties, the judge entered a "[j]udgment of [c]ontempt" ordering compliance with all terms and conditions of the stipulation, which was incorporated by reference. The judgment ordered the father to pay all arrearages by the end of the following month. Finally, the judgment ordered the father to pay attorney's fees to the mother's counsel in the amount of \$2,500 by the same deadline.

On appeal the father argues that if there had been a contested hearing, he could not, in fact, have been found in contempt, and that the award of attorney's fees was inappropriate because the wife could not have prevailed had he not entered the stipulation.

A judge of the Probate and Family Court has broad authority to award attorney's fees in a case like this, see G. L. c. 208, § 38; Wasson v. Wasson, 81 Mass. App. Ct. 574, 582 (2012), and we do not think it is limited to circumstances in which a party specifically has been found in contempt. When counsel obtains for a party through litigation an agreement by a recalcitrant opponent to pay an arrearage in child support, we do not think it is an abuse of discretion for a judge to award, as the judge did in this case, reasonable attorney's fees.

In any event, even if we are wrong about that, and fees are available only to a prevailing party in a contempt action, the

wife is such a prevailing party. The stipulation signed by the father and his attorney specified that the disposition to be entered by the court was to be a "[j]udgment of [c]ontempt." (By contrast, an earlier stipulation by the parties merely agreed that the court should enter an "order.")

Moreover, the stipulation signed by the father and his counsel specified that the question of attorney's fees would be presented to the judge for determination.

The judgment of contempt dated September 26, 2013, is therefore affirmed. The mother has requested appellate attorney's fees and costs. Because the father could have had no reasonable expectation of reversal, this appeal is frivolous. See Love v. Pratt, 64 Mass. App. Ct. 454, 459 (2005). We therefore exercise our discretion to award the mother appellate attorney's fees and double costs under the authority of Mass.R.A.P. 25, as appearing in 376 Mass. 949 (1979). The mother should submit to this court an application for appellate attorney's fees and costs, with any appropriate supporting materials, within fourteen days of the date of the rescript,

pursuant to Fabre v. Walton, 441 Mass. 9, 10-11 (2004). The father shall have ten days thereafter to respond.

So ordered.

By the Court (Berry, Katzmann  
& Vuono, JJ.<sup>1</sup>),

Clerk

Entered: August 28, 2015.

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<sup>1</sup> The panelists are listed in order of seniority.