

Hillsborough
No. 6913

CAROLYN S. MALO v. WILLIAM F. MALO

July 19, 1974

Winer, Lynch, Pillsbury & Howorth, by brief, for the plaintiff.

Peter Makris for defendant, filed no brief.

MEMORANDUM OPINION

The plaintiff brought an action in assumpsit against the defendant for arrearage allegedly due to her for alimony and child support under the terms of a stipulation executed by the parties in a divorce action. After a trial without jury, the Trial Court (*Cann*, J.) rendered a verdict for the plaintiff in the sum of \$9,775, the full amount of the arrearage. The defendant excepted to the trial court's finding and filed a motion for rehearing which was denied and transferred by that court.

The stipulation provided that the defendant was obligated to pay a certain sum to the plaintiff for alimony and child support "on the understanding that the libelant [the defendant] will have a gross income between \$25,000 to \$30,000 per year" and that in the event his gross income exceeded \$30,000 in any one year, "ten (10%) percent of the excess" would be paid to the plaintiff and the child. The defendant stated in his motion for rehearing that his uncontradicted testimony established that his gross income was not in excess of \$30,000 and that this testimony was

unrecorded. This case has been transferred without a brief in the defendant's behalf or any documentary evidence to support his position. However, we would note that there is no indication in the defendant's motion or the reserved case that the trial court did not provide the defendant with an opportunity to record his original testimony. On the record before us we cannot say that the denial of the defendant's motion was error. *See* RSA 519:26 (Supp. 1973); *LeClair v. New England Tel. & Tel.*, 112 N.H. 187, 294 A.2d 698 (1972).

Defendant's exception overruled.

Epping Municipal Court
No. 6575

STATE OF NEW HAMPSHIRE

v.

LEONARD WOODMAN

July 30, 1974

[REDACTED]

[REDACTED]

[REDACTED]