THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2009-0077, In the Matter of Maureen A. Bowman and Donald Andersen, Jr., the court on November 5, 2009, issued the following order:

The respondent, Donald Andersen, Jr., appeals an order of the trial court: (1) finding that he was in arrears on his child support and alimony obligations; (2) finding him in contempt for failing to make the required child support and alimony payments; (3) ordering him to pay 80% of his children's uninsured medical expenses; and (4) awarding the petitioner, Maureen A. Bowman, attorney's fees. We vacate and remand.

The respondent contends that he received multiple notices of the hearing that resulted in the order currently on appeal; the notices contained different dates for the hearing. He further contends that he relied upon the last notice that he received and did not appear for the November 12 hearing because he had received notice that the hearing would be held on November 14. Because he relied upon that notice, he argues that the trial court erred in: (1) proceeding with the November 12 hearing thereby violating his due process rights under the State and Federal Constitution; and (2) finding him in contempt and awarding the petitioner her attorney's fees.

The petitioner has filed a motion to strike certain items from the respondent's appendix to his notice of appeal and from his brief. While it is our practice to consider on appeal only evidence and documents presented to the trial court, see Lake v. Sullivan, 145 N.H. 713, 717 (2001); Sup. Ct. R. 13, in this case the last order of notice that the respondent alleges he received should be in the trial court's file. We therefore deny the motion to the extent that it seeks to strike that document; in light of our ruling, the remainder of the motion is moot.

In his motion to reconsider filed in the trial court, the respondent asserted that: (1) he received the last notice of hearing on November 11 when he returned home to attend the previously scheduled November 12 hearing; (2) the notice received on November 11 advised that the hearing would be held on November 14; (3) he therefore returned to New York and called the Clerk's Office to confirm the latest scheduling change; (4) after being advised by the Clerk's Office that the notice received on November 11 was sent in error, he immediately contacted the petitioner and petitioner's counsel "to inform them of the clerical error and the situation." Based upon the record before us, we vacate the trial court's November 14, 2008 order and remand this case so that the trial court can determine the scheduled date for the hearing contained in the last notice received

by the respondent. If the date was November 14, the respondent was entitled to rely upon it and should be given an opportunity to address the issues that were scheduled to be heard at that time.

Vacated and remanded.

DALIANIS, DUGGAN and CONBOY, JJ., concurred.

Eileen Fox,
Clerk