Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

***20ENTRY ORDER**

SUPREME COURT DOCKET NO. 2020-124

NOVEMBER TERM, 2020

Jennifer Dasler v. Timothy Dasler*	}	APPEALED FROM:
	}	
	}	Superior Court, Windsor Unit,
	}	Family Division
	}	
	}	DOCKET NO. 74-6-17 Oedm
		Trial Judge: Thomas A. Zonay

In the above-entitled cause, the Clerk will enter:

Husband appeals pro se from the trial court's denial of his motion for contempt in this post-divorce proceeding. He seeks the return of personal property under the terms of the final divorce order. We affirm.

Both parties were represented by counsel below. Following a hearing, the trial court made the following findings. Prior to the issuance of the final divorce order in this case, there were at least three rounds of personal property drop-offs to husband and "the parties [had] a good understanding of just what personal property items each ha[d] in their possession or [were] possessed by the other party." A final divorce order issued in August 2018; a relief-from-abuse (RFA) order was in effect at the time. As relevant here, husband was awarded a holiday painting created by the parties' minor child as well as "[t]he tools, parts, wood, instruments and accessories, and any work in progress, or billing invoices, associated with his luthier business or violin selling business." The parties were also awarded the personal property in their possession. A property exchange occurred after the issuance of the final divorce order. Wife had packed boxes of items for husband, and husband did not at the time indicate that any items, including the holiday painting, were missing.

In September 2019, husband moved to enforce the property distribution alleging that he was missing certain items, including the holiday painting and items related to his business. As set forth above, the court found that wife packed the items awarded to husband in September 2018 and that husband took them. This finding was further supported by the absence of any prompt or specific communications to wife or her attorney identifying any missing item, including the holiday painting, which had been a focal point of dispute at trial. As to other items sought by husband, including a chainsaw, paint rollers and a tray, and a deck drilling jig, the court found that husband failed to establish that these items were associated with his luthier or violin-selling business. To the extent that husband argued that the final divorce order assigned to him any items falling under his self-employment generally, the court found that position unsupported by the plain language of the final divorce order. With respect to the pegboard components sought by husband, the court found that the pegboard components were located at the residence when the parties

bought the home and they had been sold as part of the home in the fall of 2019. The court found these components were part of the home and not part of the luthier and violin-selling business.

In addition to personal property disputes, husband's motion also raised disputes over the return of items sent by one parent with the child for visits. Husband claimed that certain items were not returned to him, such as clothes and a lunch box. The court recognized that this had become an issue between the parties but concluded that the final divorce order addressed only the return of clothing. The order stated that: "[e]ach parent shall supply the appropriate child's clothing for them for their scheduled time with the other parent. These clothes are to be considered the child's clothes and shall be returned with the child." Given the plain terms of the order, the court explained that each party should be aware that there was no obligation to return items, other than clothing, to the other party during transitions, and such return should not be expected as a matter of requirement under the order. The court noted that the child might have items that she wanted to take with her between homes, but it left it to the parties to work cooperatively to facilitate smooth transitions. The court thus denied husband's motion for contempt as it related to personal property and denied the motion for contempt as to items allegedly retained by wife after transitions.

On appeal, husband challenges the court's determination concerning the return of personal items with the child, and the court's ruling regarding husband's claim that he never received various items of personal property he was entitled to pursuant to the final divorce order. We consider each in turn.

With respect to the return of items brought by the child to the other parent's home, husband argues that the court prejudged the case and indicated at the outset of the hearing "that the parents should not expect compliance with the order." It is not clear if husband means the return of clothing or the return of nonclothing items, or both. In a related vein, husband also appears to argue that the final order's reference to "clothing" also includes "provisions" such as "lunches, . . . bedding (for naptimes) and other comforts" for a young child.

We find no error. The construction of the final divorce order presents "a question of law that we must determine independently." Sachs v. Sachs, 163 Vt. 498, 501 (1995). The plain terms of the divorce order require only the return of the child's clothing. The court recognized this obligation in its decision, and husband fails to show that he identified any particular item of clothing that was withheld. See In re S.B.L., 150 Vt. 294, 297 (1988) ("It is the burden of the appellant to demonstrate how the lower court erred warranting reversal. We will not comb the record searching for error."). The word "clothing" cannot be reasonably construed to cover the items husband identifies, and there is no other provision in the final divorce order that requires the return of these items. There was nothing improper about the trial court expressing hope that the parties could reach an agreement regarding the return of nonclothing items. The court did not indicate, before the hearing or otherwise, that the parties need not abide by the terms of the final divorce order. It made clear that, under that order, a parent should recognize that if he or she sends nonclothing items with the child, they may not be returned. With respect to the clothing husband alleged wife was not returning, we interpret the trial court's order as essentially granting husband's motion to enforce by reiterating that the parties are required to return clothing provided by the other and worn by the child, and denying his motion for contempt. The court's order clarified the rights and obligations of the parties with respect to clothing worn by the child and also non-clothing personal items. On this record, the trial court was within its discretion in declining to take evidence regarding specific instances of unreturned clothing for the purposes of husband's motion for contempt.

Concerning the return of various items awarded to him in the final divorce order, husband contends that the court erred in concluding that he waited too long to voice any complaint about missing items. He argues that he could not ask wife about these items sooner because he was subject to conditions of release that mirrored the terms of the expired RFA and prohibited communication with wife about nonchild-related matters. He also asserts that he sought mediation prior to filing his motion. Husband argues that the court should not have found that there was no communication with wife's attorney about missing items.

The court found that in September 2018, wife packed the items awarded to husband, which would necessarily include the holiday painting and bass bar that are among the subjects of this appeal, in boxes that husband picked up. The court's finding is supported by wife's testimony to this effect. See Jarvis v. Gillespie, 155 Vt. 633, 637 (1991) (explaining that, on appeal, trial court's "findings will stand if there is any reasonable and credible evidence to support them"). The court noted the absence of timely communication about missing items as additional support for this finding. It did not, as husband suggests, impose a time limit on husband's enforcement of the order; it simply cited this factor as additional support for its credibility determination that wife had, in fact, given husband all of the items to which he was entitled.

Moreover, the evidence supports the court's finding concerning the timing of husband's objection. Wife testified that she received no communication from husband about missing items after September 2018. The court acknowledged husband's assertion that he told his attorney about missing items, but it found no evidence to establish what husband told his attorney and no evidence that his attorney ever communicated to wife or her attorney that items were missing. It found that husband also failed to provide any evidence that he requested mediation over missing personal property items. Husband fails to show that any of these findings are clearly erroneous. In his testimony, husband stated that he did not know if his attorney ever communicated with wife about missing items, and he acknowledged that he did not itemize any particular missing items in an email discussing mediation with wife. The trial court considered the evidence and the parties' arguments, and we leave it to the factfinder "to determine the credibility of the witnesses and weigh the persuasiveness of the evidence." Cabot v. Cabot, 166 Vt. 485, 497 (1997).

We also reject husband's argument that the trial court improperly considered his failure to more timely report the items he claims were missing because he was prohibited by conditions of release from contacting wife. Husband does not identify any evidence admitted at the hearing that concerns the terms of his conditions of release. In fact, the record shows that, at the hearing, his attorney questioned wife only about the terms of the RFA order, which expired at the end of September 2018. Husband attempted to submit new evidence in a motion for reconsideration under Vermont Rule of Civil Procedure 59, including a copy of his conditions of release. The court rejected his attempt to do so, explaining that its review was limited to the evidence presented at the hearing. See Hoover v. Hoover, 171 Vt. 256, 258 (2000) ("[O]ur review is confined to the record and evidence adduced at trial. On appeal, we cannot consider facts not in the record."). It further found that, even if it accepted the evidence, it would not alter the court's findings and conclusions. Husband fails to show the court abused its discretion in reaching its conclusion. See Rubin v. Sterling Enters., Inc., 164 Vt. 582, 588-89 (1996) (recognizing that "[d]isposition of a Rule 59 motion is committed to the court's sound discretion," and finding no abuse of discretion in court's rejection of party's attempt to submit evidence in Rule 59 motion that could have been submitted at trial). Given the trial court's indication that it would not rule differently if it accepted evidence that husband's conditions of release precluded him from communicating with wife about the items he asserts were missing, we cannot conclude that any misapprehension by the court of husband's conditions of release impacted the court's finding that wife returned the items.

Husband also cites to an allegation that he made in an October 2019 filing and an exhibit—a copy of an email he sent to wife—attached to that filing, which was not submitted as evidence at the hearing. Our review is limited to the evidence presented at the March 2020 hearing, and we thus do not consider these materials. See Hoover, 171 Vt. at 258.

Husband also raises arguments concerning issues and orders that are not before us, including parental rights and responsibilities, parent-child contact, and a request for expedited relief sought by wife in September 2019. Because no ruling on these issues is before us, we do not address these arguments. To the extent husband is asserting that wife has somehow received preferential treatment in this case, or the court disregarded its judicial duties, we reject those arguments as unsupported by the record. See Klein v. Klein, 153 Vt. 551, 554 (1990) (recognizing that trial court is accorded a presumption "of 'honesty and integrity,' with burden on the moving party to show otherwise in the circumstances of the case"); see also Gallipo v. City of Rutland, 163 Vt. 83, 96 (1994) (recognizing that in support of claim of judicial bias, "it is not enough merely to show the existence of adverse rulings, no matter how erroneous or numerous, or that the judge expressed a comment or opinion, uttered in the course of judicial duty, based upon evidence in the case"). We similarly reject as baseless husband's assertion that the court's decision somehow violates his equal protection rights.

Affirmed.

BY THE COURT:

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Beth Robinson, Associate Justice

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Karen R. Carroll, Associate Justice

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William D. Cohen, Associate Justice