

## STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2005-0059, James Knight & a. v. Charles Teryek & a., the court on July 27, 2005, issued the following order.**

Having considered the briefs and oral arguments of the parties, the court concludes that a formal written opinion is not necessary for the disposition of this appeal. We affirm.

Defendant Charles Teryek appeals an order of the Superior Court (O'Neill, J.) denying his request for appointment of counsel. He contends that the trial court deprived him of his right to counsel under the State and Federal Constitutions. N.H. CONST. pt. I, art. 15; U.S. CONST. amends. VI, XIV. We will affirm the trial court's legal rulings unless they are erroneous as a matter of law. New England Homes v. R.J. Guarnaccia Irrevocable Trust, 150 N.H. 732, 734 (2004). It is the burden of the appealing party, here Teryek, to provide this court with a record sufficient to decide his issues on appeal. See Rix v. Kinderworks Corp., 136 N.H. 548, 553 (1992); see also Sup. Ct. R. 13. Absent a transcript of the hearing in the trial court, we must assume that the evidence was sufficient to support its decision. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004). We must also assume that the trial court made all findings necessary to support its decision. In re Jonathan T., 148 N.H. 296, 304 (2002). We review the trial court's order for legal errors only. See Atwood v. Owens, 142 N.H. 396, 397 (1997).

On appeal, Teryek argues that the court erred because he was entitled to a court-appointed attorney under Part I, Article 15 of the State Constitution, the Sixth Amendment of the Federal Constitution, and the Due Process Clauses of the State and Federal Constitutions. N.H. CONST. pt. I, art. 15; U.S. CONST. amends. VI, XIV. In addition, he argues that he had the right to a court-appointed attorney where his incarceration was imminent.

We have held that the right to counsel guaranteed by the Sixth Amendment to the Federal Constitution and Part 1, Article 15 of the State Constitution does not apply to a civil contempt action. Duval v. Duval, 114 N.H. 422, 425-26 (1974). If there is a right to counsel in a civil contempt action, its source must be found in the Due Process Clause of the Fourteenth Amendment. Id.

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In Duval, we held that a trial court may in its discretion appoint counsel in a civil contempt action, but that it is not required to do so. Id. at 426. Whether to appoint counsel is decided on a case-by-case basis and depends upon factors such as the capability of a defendant to speak for himself, the character of the proceeding and the complexity of the issues. Id. Thus, due process does not require the appointment of counsel in every instance where the possibility of incarceration exists, but depends instead upon circumstances which show that the defendant would be treated unfairly if the assistance of counsel were not provided. Id.

Here, because Teryek failed to provide a transcript of the hearing, he has failed to demonstrate that he raised the present issue before the trial court. See Bean, 151 N.H. at 250. Although it is a long-standing rule that parties may not have judicial review of matters not raised at trial, we will assume without deciding that Teryek's request for counsel was preserved for appellate review. See id. In the order on January 14, 2005, the trial court stated only that Teryek was to be incarcerated for willful contempt until he had removed forty truckloads of junk from his property. The record is insufficient to determine whether Teryek was capable of speaking for himself, if he was indigent, or able to understand the character of the proceeding and the complexity of the issues. See Duval, 114 N.H. at 427. Further, the record provides us with no basis for reviewing whether Teryek was treated unfairly without court-appointed counsel. See id. Without a sufficient record, we cannot determine whether the trial court unsustainably exercised its discretion when it did not appoint counsel for Teryek. Thus, due to the lack of a transcript, we must assume that the evidence was sufficient to support the result reached by the trial court. See Bean, 151 N.H. at 250.

Finally, the court should conduct regular periodic reviews to determine whether Teryek has the physical, mental and financial capacity to comply with the court orders and thus should remain in contempt. In these regular periodic reviews, the trial court should determine whether appointment of counsel is necessary by assessing Teryek's physical and mental ability to represent himself and the resources available to him to obtain counsel. See Duval, 114 N.H. at 426.

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In light of our ruling, the intervenor's motion to dismiss this appeal is denied.

BRODERICK, C.J., and DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Affirmed.

**Eileen Fox,  
Clerk**

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