

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 21, 2012

512777

NANCY MILLS,
Appellant,
v

DAVID MILLS,
Defendant.

MEMORANDUM AND ORDER

DAVID VAN BENSCHOTEN,
Respondent.

Calendar Date: April 25, 2012

Before: Peters, P.J., Rose, Lahtinen, Malone Jr. and Garry, JJ.

Law Office of Moran & Gottlieb, Kingston (Andrea Moran of counsel), for appellant.

David Van Benschoten, Saugerties, pro se, and DeGraff, Foy & Kunz, L.L.P., Albany (David F. Kunz of counsel), for respondent.

Lahtinen, J.

Appeal from an order of the Supreme Court (Melkonian, J.), entered October 4, 2010 in Ulster County, which denied plaintiff's motion to hold David Van Benschoten in civil contempt.

The underlying facts are set forth in our prior decision where we upheld the February 2009 order of Supreme Court (Lynch, J.) finding David Van Benschoten in civil contempt for violating the court's February 2008 order by making payments on a building contract that went directly to defendant rather than through the

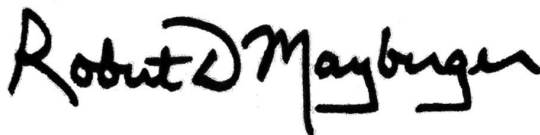
temporary receiver (72 AD3d 1296 [2010]). In May 2010, plaintiff moved to have Van Benschoten again held in civil contempt. Supreme Court (Melkonian, J.) denied the application without a hearing. Plaintiff appeals, and we reverse.

The parties' submissions raised a question of fact regarding whether Van Benschoten failed to pay the temporary receiver payments owed to defendant under Supreme Court's February 2008 order from February 2009 until termination of the subject contract. As such, the matter is remitted for a hearing on the motion.

Peters, P.J., Rose, Malone Jr. and Garry, JJ., concur.

ORDERED that the order is reversed, on the law, without costs, and matter remitted to the Supreme Court for further proceedings not inconsistent with this Court's decision.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court