

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2010-0419, In the Matter of Elaine Rockwell and Natt Rockwell, the court on May 5, 2011, issued the following order:

Penny Dean, counsel for the respondent, Natt Rockwell, appeals an order of the trial court fining her \$250 “for filing duplicitous motions, for failing to distribute dispositive pleadings prior to the commencement of the parties['] April 13, 2010 hearing, for making representations to [the trial] court that have been unrealistic and not made in good faith and for her misrepresentations relative to the degree by which her client has complied with the court[']s orders during the last 62 months.” She advances many claims of error, with little supporting legal citation. We affirm.

The imposition of a sanction is a matter left largely to the discretion of the trial court. Lillie-Putz Trust v. Downeast Energy Corp., 160 N.H. 716, 723 (2010). When we review its decision, we will sustain its findings and rulings unless they lack evidentiary support or are tainted by error of law. Id. We note that our cases use the term "duplicitous" as a term of art, referring to an indictment as "duplicitous" when it charges two or more offenses in one count. See, e.g., State v. Patch, 135 N.H. 127, 128 (1991). We will assume that the trial court used the term in an analogous manner when referring to counsel's motions. Having reviewed the appellant's arguments that challenge the factual findings of the trial court, we conclude that the record supports those findings. See, e.g., Roy v. Perrin, 122 N.H. 88, 94 (1982) (weight to be given testimony depends on credibility of witnesses and witness credibility is for trial court to determine).

We turn then to her argument that the trial court's order deprived her of due process. Based upon the extensive record before us, we find this argument unpersuasive. We have previously held that “due process guarantees the right to be heard at a meaningful time and in a meaningful manner.” N.H. Dep't of Env'tl. Servs. v. Mottolo, 155 N.H. 57, 61 (2007) (quotations omitted). In one of the motions that she filed subsequent to oral argument, Dean concedes she was warned about the possibility of sanctions for her continued conduct. In criticizing the trial court, she states that she “was implicitly and explicitly warned, threatened and berated by the trial court and warned about sanctions for her vigorous defense of Mr. Rockwell, and furthermore, even before the April 2010 explicit threats of sanctions, it was clear by the trial court's tone, demeanor and language that [she] was ultimately going to have to choose between continuing to adequately and vigorously defend Mr. Rockwell, or to simply avoid any personal

risk to [herself] to mount little or no practical defense.” Thus, aside from her characterization of her conduct as simply zealous advocacy, with which we disagree, there is no question that she was adequately warned. Moreover, the record before us establishes that she filed a motion to reconsider following imposition of the fine and that the trial court addressed the motion in a narrative order.

Dean’s motion to reopen the record for additional trial orders is denied. Her motion to amend her brief is granted.

Affirmed.

HICKS, CONBOY and LYNN, JJ., concurred.

**Eileen Fox,
Clerk**