

WILLIAM BURRELL JR.

v.

COLLEEN MORSE

Submitted on Briefs June 27, 2012

Decided July 10, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

William Burrell Jr. appeals from a judgment entered in the District Court (Portland, *Powers, J.*) modifying his parental rights and responsibilities with respect to his teen daughter, and denying his motion for contempt against the daughter's mother. We disagree with Burrell's contentions and affirm the court's judgment.

The court did not abuse its discretion when it denied the father's motion for contempt. The father failed to establish by clear and convincing evidence that the mother was able, but refused, to comply with the court order requiring that the daughter return to the father at the end of her summer vacation. *See Efstathiou v. Efstathiou*, 2009 ME 107, ¶ 11, 982 A.2d 339; *see also* M.R. Civ. P. 66(d). The mother's actions, in response to the daughter's unhappiness and threat that she would run away if returned to the father, were reasonable: she sought legal advice and filed a motion to modify parental rights. *See Ames v. Ames*, 2003 ME 60, ¶ 23, 822 A.2d 1201 (concluding that mother was unable to comply with visitation provisions of divorce judgment because child did not want to visit father and his "unwillingness . . . manifested itself in a variety of debilitating physical and emotional problems").

Nor did the court abuse its discretion when it granted the mother's motion to modify parental rights, which included ordering that the daughter's primary

residence be with the mother. *See Akers v. Akers*, 2012 ME 75, ¶ 2, --- A.3d ---. The court’s factual findings regarding a substantial change of circumstances and the daughter’s best interest are supported by evidence in the record. *See Desmond v. Desmond*, 2011 ME 57, ¶ 3, 17 A.3d 1234 (noting that the “overriding consideration whenever a proposed modification is sought is the best interest of the minor child,” which is evaluated using the factors in 19-A M.R.S. § 1653(3) (2011) (quotation marks omitted)); *Coppersmith v. Coppersmith*, 2001 ME 165, ¶ 2, 786 A.2d 602 (“Before a change is made in a child’s residential custody, the trial court must find a ‘substantial change of circumstances.’”).

The entry is:

Judgment affirmed.

On the briefs:

William L. Burrell Jr., pro se appellant

Colleen Morse did not file a brief