

GARY D. MACDONALD

v.

PATRICIA L. MACKINNON

Argued April 13, 2017  
Decided May 4, 2017

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

#### MEMORANDUM OF DECISION

Patricia L. MacKinnon appeals from a judgment of the District Court (Portland, *Montgomery, J.*) denying her motion to enforce a provision in the judgment granting her a divorce from Gary D. MacDonald that allowed for a “post-divorce adjustment and further division of assets.” The parties’ divorce settlement agreement entitled MacKinnon to a post-divorce adjustment only in the event that MacDonald was not required to repay certain promissory notes. The court found, based on competent evidence in the record, that those promissory notes had neither been paid nor forgiven, and the applicable statute of limitations had been tolled.

Contrary to MacKinnon’s contentions, the court did not err when it construed the “not required to repay” provision of the settlement agreement to mean either that the statute of limitations had run so that repayment was barred by operation of law or that MacDonald had otherwise been relieved of the debt. *See Ramsdell v. Worden*, 2011 ME 55, ¶ 17, 17 A.3d 1224. Furthermore, because MacKinnon argues for the first time on appeal that a reasonable time limit for repayment should be imposed, the argument is

deemed waived. *See Cyr v. Cyr*, 432 A.2d 793, 797 (Me. 1981); *Teel v. Colson*, 396 A.2d 529, 534 (Me. 1979). Also, the court did not err or abuse its discretion in finding that deposition testimony taken before the entry of the divorce judgment was irrelevant to the determination of whether there had been a post-judgment change of circumstances. *See* M.R. Evid. 401; *Ames v. Ames*, 2003 ME 60, ¶ 13, 822 A.2d 1201.

The entry is:

Judgment affirmed.

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Thomas F. Hallett, Esq. (orally), Hallett, Zerillo & Whipple P.A., Portland, for appellant Patricia MacDonald

Michael J. Donlan, Esq. (orally), and Taylor R. Neff, Esq., Verrill Dana, LLP, Portland, for appellee Gary MacDonald