MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 19-14
Docket No. Han-18-156

DANIEL J. McLEOD

v.

LOUISE M. MACUL

Argued February 4, 2019
Decided February 12, 2019

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

MEMORANDUM OF DECISION

Daniel J. McLeod appeals from a judgment of the District Court (Ellsworth, *Roberts, J.*) denying his motion to modify the parties' 2012 divorce judgment so as to terminate his obligation to pay spousal support, and granting Louise M. Macul's motion to enforce payment of support arrears and her motion for contempt based on McLeod's nonpayment.[1]

Contrary to McLeod's contention, even though McLeod had not been served with a contempt subpoena, the court was not precluded from acting on Macul's contempt motion, which was based on McLeod's failure to pay spousal support, because McLeod had received the motion prior to the hearing; filed an

[1] In 2014, McLeod filed his first motion to terminate his spousal support obligation premised on his anticipated loss of employment. The court (*Romei, J.*) granted McLeod's motion, but on Macul's appeal, we vacated the order and remanded for reconsideration. *See McLeod v. Macul*, 2016 ME 76, ¶¶ 1, 26, 139 A.3d 920. On remand, the court denied McLeod's motion, which allowed the original support order to remain undisturbed. Nearly simultaneously with the court's issuance of that order, McLeod filed a second motion to modify the divorce judgment in order to terminate his support obligation, and the court's order on McLeod's second motion is, in part, the subject of this appeal.

answer to the motion; explicitly informed the court at the beginning of the hearing that he was ready to proceed on the motion; and presented evidence and was fully heard on the motion. *See* M.R. Civ. P. 66(d)(2); *Cayer v. Town of Madawaska*, 2009 ME 122, ¶ 9, 984 A.2d 207 (concluding that, despite the court's failure to issue a contempt subpoena, the court did not err by holding a contempt hearing when the respondent received notice of the contempt motion and filed a written answer to it—obviating the need for the court to issue a subpoena—and the court "had an ample record on which to base its decision" because it held a hearing and allowed the parties to submit additional evidence and argument); *cf. In re Guardianship of Ard*, 2017 ME 12, ¶ 23, 154 A.3d 609 (holding that the court erred by issuing a contempt order when it failed to issue a subpoena *and* did not hold a hearing or otherwise allow the respondent an opportunity to present evidence or be heard).

Further, when the court's factual findings supporting its modification order are reviewed for clear error and its ultimate determination is reviewed for an abuse of discretion, *see McNutt v. McNutt*, 2018 ME 86, ¶ 14, 188 A.3d 202, the court committed no error by reducing—but not altogether terminating—spousal support. *See* 19-A M.R.S. § 951-A(5) (2017); *Jandreau v. Lachance*, 2015 ME 66, ¶ 16, 116 A.3d 1273. Nor did the court err by declining to make that modification retroactive to the date McLeod filed the motion to modify. *See Finn v. Finn*, 534 A.2d 966, 967 (Me. 1987) (stating that in making its discretionary determination whether a modification decree should be made retroactive, "the court may properly consider whether the [former spouse] engaged in self-help by ceasing to make payments").

Finally, the court did not err by ordering McLeod to pay Macul's attorney fees, given the parties' relative abilities to bear that expense and the court's determination that McLeod was in contempt for inexcusably not having paid nearly $200,000 in spousal support. *See* 19-A M.R.S § 105(1) (2017); *Williams v. Williams*, 2017 ME 94, ¶ 13, 161 A.3d 710; *McBride v. Worth*, 2018 ME 54, ¶ 20, 184 A.3d 14.

The entry is:

Judgment affirmed.

Martha J. Harris, Esq. (orally), Paine, Lynch & Harris, P.A., Bangor, for appellant Daniel J. McLeod

Daniel A. Pileggi, Esq. (orally), Acadia Law Group LLC, Ellsworth, for appellee Louise M. Macul

Ellsworth District Court docket number FM-2011-52
FOR CLERK REFERENCE ONLY