

MARY L. ANDERSON

v.

NEAL K. ANDERSON

Submitted on Briefs May 12, 2020
Decided May 19, 2020

Panel: MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ.

MEMORANDUM OF DECISION

Neal K. Anderson appeals from a judgment of the District Court (West Bath, *Dobson, J.*) granting Mary L. Anderson's motion to dismiss his motion to modify a 2009 divorce judgment and incorporated settlement agreement.

Contrary to Neal's contention, the court was not required to treat Mary's motion to dismiss as one for summary judgment when it considered the 2009 divorce judgment and settlement agreement, attached as exhibits to Mary's motion.¹ M.R. Civ. P. 12(b); *see, e.g., Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 11, 843 A.2d 43 (holding that "official public documents, documents that are central to the plaintiff's claim, and documents referred to in the complaint may be properly considered on a motion to dismiss without converting the motion to one for a summary judgment when the authenticity of such documents is not challenged.").

¹ To the extent that Neal's argument pertains to Exhibit C, a copy of the certified mailing envelope, it is a failing one because those documents were not related to Mary's M.R. Civ. P. 12(b)(6) defense. *See* M.R. Civ. P. 12(b).

Neal further contends that the court erred when it concluded that the monthly payments at issue were part of a property settlement, not spousal support, and thus not modifiable. It is clear from the explicit terms of the divorce judgment, however, that the monthly payments were “payment on an existing mortgage *pursuant to separation of property* according to a Marital Separation Agreement” Therefore, the court did not err in dismissing Neal’s motion to modify for failure to state a claim upon which relief could be granted. *See McNutt v. McNutt*, 2018 ME 86, ¶ 19 n.6, 188 A.3d 202; *Wardwell v. Wardwell*, 458 A.2d 750, 752 (Me. 1983) (“In the absence of statutory authorization to modify a judgment dividing marital property, the courts are without jurisdiction to do so.”).

Finally, Neal argues that the court erred in determining that Maine Rule of Civil Procedure 60(b) was not a basis for relief in this case. Contrary to this contention, Neal never filed a motion invoking the rule and alleging facts sufficient to generate consideration of Rule 60(b). *See Bonner v. Emerson*, 2014 ME 135, ¶ 10, 105 A.3d 1023; *Merrill v. Merrill*, 449 A.2d 1120, 1125 (Me. 1982); *see also* M.R. Civ. P. 7(b)(1).

The entry is:

Judgment affirmed.

Tamara N. Gallagher, Esq., Law Office of Tamara Gallagher, Westbrook, for appellant Neal K. Anderson

Wenonah M. Wirick, Esq., and Ian M. L’Heureux, Esq., Conley & Wirick, P.A., Bath, for appellee Mary L. Anderson