

STEPHANIE PEDERSEN

v.

KIMO MCEWEN et al.

Submitted on Briefs May 4, 2020  
Decided May 21, 2020

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

#### MEMORANDUM OF DECISION

Jordis McEwen and Kimo McEwen appeal from an order entered by the District Court (Portland, *Woodman, J.*) granting Stephanie Pedersen's motion to dismiss Jordis McEwen's complaint for declaratory relief and entering judgment for Pedersen on her complaint.

Kimo McEwen purchased a dog from Pedersen, and although he agreed to have the pet neutered as part of that purchase, he failed to do so. Pedersen filed a complaint for recovery of personal property, seeking to recover possession of the dog. At a mediation held on June 20, 2019, the day Pedersen's complaint was scheduled for trial, the McEwens<sup>1</sup> agreed that Pedersen would be granted judgment for possession of the dog if they did not have the dog neutered by a stated deadline. The court accepted and incorporated the

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<sup>1</sup> Although not then a party, Kimo McEwen's wife, Jordis McEwen, also signed the mediation agreement.

agreement in an order. The McEwens failed to meet the agreed-upon deadline, although they claim to have since arranged for the dog to be neutered.<sup>2</sup>

On August 14, 2019, the day when the case was rescheduled in order to determine whether the McEwens had caused the dog to be neutered, Jordis McEwen filed a motion to intervene. She also filed a document that purported to be a “complaint for declaratory relief.” Pedersen objected to both and filed a motion to dismiss the new complaint. The court granted Jordis’s motion to intervene, but also granted Pedersen’s motion to dismiss Jordis’s “complaint,” based on its determination that the dispute concerning the dog had “already been resolved” by its earlier order. The McEwens appealed from that judgment.

Contrary to the McEwens’ position, the court acted well within its discretion in dismissing Jordis’s complaint for declaratory relief. *See Waterville Indus. v. Fin. Auth. of Me.*, 2000 ME 138, ¶ 24, 758 A.2d 986 (“The trial court’s exercise of discretion in granting or denying [declaratory relief] is accorded deference on appeal.” (quotation marks omitted) (alteration in original)); *see also Perry v. Hartford Accident & Indem. Co.*, 481 A2d 133, 136 (Me. 1984).

The entry is:

Judgment affirmed.

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Jens-Peter W. Bergen, Esq., Law Office of Jens-Peter W. Bergen, Kennebunk, for appellants Kimo McEwen and Jordis McEwen

Stephanie Pedersen did not file a brief

Portland District Court docket number SA-2019-512  
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<sup>2</sup> Although the McEwens claim to have arranged for the dog to be neutered, we do not determine whether they have, in fact, complied with the court’s judgment.