

GLEN A. TENAN

v.

JANICE M. TENAN

Submitted On Briefs April 2, 2008
Decided May 29, 2008

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

MEMORANDUM OF DECISION

Janice M. Tenan appeals from a judgment modifying the terms of her divorce entered in District Court (Machias, *Romei, J.*) on Janice's motions for contempt and to modify, and Glen A. Tenan's cross-motion for contempt and to modify. Contrary to Janice's contentions, the court did not err or act beyond its discretion: (1) in awarding primary residence of the parties' minor son to Glen, limiting Janice's visitation with the son to alternating weekends, and allocating to Glen the authority to make decisions regarding the son's education, *see Ricci v. Delehanty*, 1998 ME 231, ¶ 9, 719 A.2d 518, 521 (stating that trial court's findings are sufficient if they adequately indicate the factual basis of the ultimate conclusion); *Dunning v. Dunning*, 495 A.2d 821, 824 (Me. 1985) (stating that it is for the trial court to decide whom to believe and how much to believe, even as to expert witnesses); (2) when it allowed Glen to claim a tax exemption for the son and denied Janice's motion for attorney fees, *see* 19-A M.R.S. § 2007(3)(L) (2007); *Brown v. Habrle*, 2008 ME 17, ¶ 18, 940 A.2d 1091, 1096; *Carter v. Carter*, 2006 ME 68, ¶ 22, 900 A.2d 200, 205; (3) when it denied Janice's motion for contempt against Glen, *see Gillman v. Dep't of Human Servs.*, 1998 ME 122, ¶ 10, 711 A.2d 154, 156; and (4) when it denied Janice's motion for additional findings of fact and conclusions of law, *see Estate of Colburn*, 2006 ME 125, ¶ 11, 909 A.2d 214, 217-18. We do, however, note that the court utilized an incorrect

income amount when it ordered child support. *See Carolan v. Bell*, 2007 ME 39, ¶ 12, 916 A.2d 945, 948. At trial, Glen stipulated that his earning capacity was \$43,680, and yet, when calculating the child support, the court used an earning capacity of \$35,788. Accordingly, although we affirm the judgment in all other respects, we vacate that part of the judgment awarding child support, and we remand to the court for a recalculation of the child support order.

The entry is:

Remanded for recalculating the child support order. In all other respects the judgment is affirmed.

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