

AMIE THIBODEAU WILLWERTH

v.

BRADLEY J. THIBODEAU

Submitted on Briefs October 2, 2008

Decided November 18, 2008

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

MEMORANDUM OF DECISION

Bradley J. Thibodeau appeals from an amended divorce judgment entered in the District Court (Caribou, *Daigle, J.*) granting Amie Thibodeau Willwerth's motion to modify the provisions of the divorce judgment relating to custody of the parties' three children. Contrary to Thibodeau's contentions, the court did not err in determining that Willwerth's intended move to Florida constitutes a substantial change in circumstances. *See* 19-A M.R.S. § 1657(2)(A) (2007); *Fraser v. Boyer*, 1998 ME 253, ¶ 10, 722 A.2d 354, 356. Furthermore, contrary to his contentions, *res judicata* does not entitle Thibodeau to primary physical residence of the children as a matter of law because the doctrine does not apply to child custody proceedings. *See Dep't of Human Servs. v. Lowatchie*, 569 A.2d 197, 200 (Me. 1990); *see also Rowland v. Kingman*, 1997 ME 80, ¶ 3, 692 A.2d 939, 941. Finally, the court did not abuse its discretion by finding that primary residence with Willwerth is in the children's best interest, despite her plans to relocate to Florida. *See Villa v. Smith*, 534 A.2d 1310, 1312 (Me. 1987).

The entry is:

Judgment affirmed.

Attorney for Bradley J. Thibodeau:

James M. Dunleavy, Esq.
Dunleavy Law Offices, P.A.
PO Box 33
Presque Isle, Maine 04769

Attorney for Amie Thibodeau Willwerth:

Matthew A. Hunter, Esq.
PO Box 430
Presque Isle, Maine 04769