

CHARLES TORRES

v.

LISA (TORRES) MOUNT

Submitted On Briefs October 14, 2009

Decided November 19, 2009

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

MEMORANDUM OF DECISION

Charles Torres appeals from a judgment entered by the District Court (Houlton, *O'Mara, J.*), after a four-day testimonial hearing, dismissing his protection from abuse complaint against his ex-wife, Lisa Mount,¹ denying his motion to modify the divorce judgment, and granting Mount's motion to amend the divorce judgment.

Contrary to Torres's contention, the District Court's factual findings were not clearly erroneous as they were based on competent evidence in the record. *See Preston v. Tracy*, 2008 ME 34, ¶ 11, 942 A.2d 718, 720 ("It is well established that determinations regarding witness credibility are the exclusive province of the fact-finder."); *see also Wells v. Powers*, 2005 ME 62, ¶ 2, 873 A.2d 361, 363 (stating that findings of fact are reviewed for clear error); M.R. Civ. P. 52(a) ("Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."); *Boulos Co. v. McDevitt*, 522 A.2d 1301, 1302 (Me. 1987) ("We will not substitute our

¹ The judgment states: "Charles has not proven his complaint for protection from abuse dated July 31, 2008 and the same is DISMISSED." Because the court determined the merits of the protection from abuse complaint and concluded that Charles had failed to prove the claim, we construe the dismissal as a judgment in favor of Lisa Mount.

judgment for that of the trial court and will defer to the court's superior position to evaluate the weight of evidence and the credibility of witnesses.”).

Torres's arguments that the District Court erred in awarding Mount primary physical residence of the parties' minor child, basing its order on matters that were not properly before the court, and misrepresenting the factual and procedural history of the case are also without merit. *See Grenier v. Grenier*, 2006 ME 99, ¶ 20, 904 A.2d 403, 408 (“We review child custody decisions for a clear abuse of discretion or error of law.”); *see also Sager v. Town of Bowdoinham*, 2004 ME 40, ¶ 11, 845 A.2d 567, 570 (stating that “[a] party appealing a decision committed to the reasonable discretion of . . . [the] decisionmaker has the burden of demonstrating that the decisionmaker abused its discretion in reaching the decision under appeal”).

Lastly, we do not consider the procedural due process and equal protection claims raised by Torres because he did not properly preserve these issues for appellate review. *See Foster v. Oral Surgery Assocs., P.A.*, 2008 ME 21, ¶ 22, 940 A.2d 1102, 1107 (stating that a constitutional issue is not properly preserved for review if raised for first time on appeal); *Chasse v. Mazerolle*, 580 A.2d 155, 156 (Me. 1990) (“We consider an issue raised and preserved if there was sufficient basis in the record to alert the court and any opposing party to the existence of that issue.”).

The entry is:

Judgment affirmed.

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