

SHELLY (LIBBY) LAKE

v.

EDWARD F. LIBBY

Argued November 10, 2009

Decided December 8, 2009

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

MEMORANDUM OF DECISION

Edward F. Libby appeals from a judgment entered in the District Court (Portland, *Powers, J.*) affirming and adopting an order of a family law magistrate (*Kelly, M.*) denying his motion to modify child support. We review the magistrate's decision directly. *See Pratt v. Sidney*, 2009 ME 28, ¶ 7, 967 A.2d 685, 688.

Contrary to Libby's contentions: (1) the court did not, as a matter of law, apply the wrong method to determine whether or not there was a "substantial change" to justify modification of his child support payment obligations, *see* 19-A M.R.S. § 2009(3) (2008); (2) the court was not compelled to find that Libby had met his burden of producing credible evidence to show his current income, and therefore, the court did not err in not finding his current income and instead utilizing his previously-determined income for purposes of applying 19-A M.R.S. §§ 2006, 2009(3) (2008)¹; *see Estate of Fournier*, 2009 ME 17, ¶ 14, 966 A.2d 885, 889; *Jabar v. Jabar*, 2006 ME 74, ¶¶ 13-14, 899 A.2d 796, 799; and (3) the

¹ Title 19-A M.R.S. § 2006 has since been amended in part by P.L. 2009, ch. 290, §§ 11-16 (effective Sept. 12, 2009) (to be codified at 19-A M.R.S. § 2006).

court did not conclude that limited liability company distributions are gross income within the meaning of 19-A M.R.S. § 2001(5) (2008).²

Shelly (Libby) Lake has requested an award of attorney fees and costs on appeal. Considering the circumstances of the parties and the issues presented on appeal, we conclude that Lake is entitled to her reasonable attorney fees for defending this appeal, to be determined on remand by the District Court.

The entry is:

Judgment affirmed. Remanded to the District Court to determine and award Shelly (Libby) Lake her reasonable attorney fees for defending this appeal.

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Portland District Court docket number FM-2001-1138
FOR CLERK REFERENCE ONLY

² Title 19-A M.R.S. § 2001(5) has since been amended in part by P.L. 2009, ch. 290, § 7 (effective Sept. 12, 2009) (to be codified at 19-A M.R.S. § 2001(5)).