

JOSEPH D. BIZIMANA

v.

FRANCOISE M. NSENGIYUMVA

Submitted on Briefs February 26, 2009  
Decided March 3, 2009

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

#### MEMORANDUM OF DECISION

Joseph D. Bizimana appeals from a judgment entered in the District Court (Portland, *Goranites, J.*) amending the provisions of a divorce judgment between him and Francoise M. Nsengiyumva to permit Nsengiyumva to move to Arizona and have primary custody of their minor child. Bizimana contends that: (1) the court abused its discretion by considering evidence that predated both the divorce judgment and the motions to amend the divorce judgment; (2) it considered evidence not relevant to the best interest of the child; (3) its factual findings were clearly erroneous; and (4) it abused its discretion by awarding custody to Nsengiyumva if she moves to Arizona.

Contrary to Bizimana's contentions, the court has discretion to consider pre-divorce conduct when it is assigning "one parent a dominant relationship with the child" for the first time. *Fraser v. Boyer*, 1998 ME 253, ¶ 11, 722 A.2d 354, 356. In addition, the evidence considered by the court was relevant to the best interest of the child, *see* 19-A M.R.S. § 1653(3)(I), (J), (N) (2008), and its factual findings were supported by competent evidence in the record, *see Conrad v. Swan*, 2008 ME 2, ¶ 15, 940 A.2d 1070, 1076. Bizimana contends that what occurred in his and Nsengiyumva's co-parent counseling sessions was confidential due to an agreement between the parties. However, he did not preserve this issue for appeal, and, furthermore, he does not provide evidence to support his claim that the parties had a confidentiality agreement. The court was well within its discretion when, in

light of the evidence and the court's factual findings, it awarded primary custody to Nsengiyumva. *See Williams v. Williams*, 1998 ME 32, ¶ 8, 706 A.2d 1038, 1040 (holding that trial courts have broad discretion in awarding the custody of minor children).

The entry is:

Judgment affirmed.

---

**Attorney for Joseph Bizimana:**

Paul Aranson, Esq.  
Scaccia, Lenkowski, Aranson & Bartlett  
PO Box 929  
Sanford, Maine 04073

**Francoise Nsengiyumva did not file a brief.**