

JAMES MARGITAN

v.

MEGAN SOULE HATCH

Submitted on Briefs January 22, 2009

Decided March 10, 2009

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

MEMORANDUM OF DECISION

James Margitan appeals from a judgment of divorce entered in the District Court (Wiscasset, *Tucker, J.*), arguing that the court erred by denying his motion to continue because it prevented him from testifying fully in the divorce hearing while criminal charges were pending against him; that the court erred by holding the divorce hearing while his appeal of the court's denial of his motion to continue was pending; and that the court erred by granting sole parental rights to Megan Hatch and denying him parental contact with their son.

Any error associated with the court's holding of the divorce hearing while Margitan's appeal was pending, *see* M.R. App. P. 3(b), was harmless because: (1) Margitan was not deprived of his right to remain silent and the court did not consider evidence of Margitan's pending criminal charges; (2) the court's denial of Margitan's motion to continue was not a final judgment and Margitan's subsequent appeal did not fall under any exception for interlocutory appeals, *see Passalacqua v. Passalacqua*, 2006 ME 123, ¶¶ 8-9, 908 A.2d 1214, 1217; and (3) the court acted within its discretion in denying Margitan's motion to continue, *see Wright & Mills v. Bispham*, 2002 ME 123, ¶ 13, 802 A.2d 430, 433.

Contrary to Margitan's remaining arguments, the court did not err by granting sole parental rights to Hatch or by denying Margitan parental contact with

his son. *See Conrad v. Swan*, 2008 ME 2, ¶ 15, 940 A.2d 1070, 1076; 19-A M.R.S. § 1653(6) (2008). Nor does the record establish that the court failed to consider the testimony of Margitan's therapist. *See Preston v. Tracy*, 2008 ME 34, ¶ 11, 942 A.2d 718, 720. Finally, the court did not err by commenting on the circumstances Margitan would likely need to demonstrate in order to prevail in a subsequent modification proceeding. The court's language was advisory and did not circumscribe Margitan's ability to assert grounds for modification other than those mentioned by the court.

The entry is:

Judgment affirmed.

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