

SUPREME JUDICIAL COURT OF MAINE

Ames v. Ames, 2003 ME 60

822 A.2d 1193 (Me. 2003) · Decided April 28, 2003

SUMMARY

The Maine Supreme Judicial Court affirmed the denial of a father’s motion to hold the mother in contempt for noncompliance with court-ordered visitation and affirmed an increase in his child support obligation. The court addressed the admissibility of statements concerning the child’s fear of the father and alleged abuse, the burdens of production and persuasion in a civil contempt proceeding, and the authority to increase and retroactively apply child support based on the mother’s response to the father’s modification motion.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Dana, J.; Alexander; Calkins; Dana; Levy; Rudman; Saufley
JURISDICTION	Maine
DECIDED	April 28, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Lavon Ames appealed a District Court judgment denying his motion to hold Crystal Ames in contempt and enforce visitation provisions of their divorce judgment, and increasing his child-support obligation.
STANDARD OF REVIEW	Relevancy determinations are reviewed for clear error; the ultimate admission of evidence is generally reviewed for abuse of discretion. Denial of a motion for civil contempt is reviewed for abuse of discretion absent clear error in the underlying factual determinations. Child-support determinations are not disturbed unless they violate a positive rule of law or reach a plainly and unmistakably unjust result.
PRECEDENTIAL VALUE	published
PARTIES	Lavon Ames v. Crystal Ames

TOPICS

[family law procedure](#)[visitation](#)[child support](#)[contempt](#)[hearsay](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the District Court properly admitted testimony concerning the child's statements to his counselor, Crystal's reports of abuse, and recent domestic-dispute complaints involving Lavon.
2. Whether the District Court applied the proper burden of proof in denying contempt based on Crystal's failure to comply with the court-ordered visitation schedule.
3. Whether the District Court could increase Lavon's child-support obligation and apply the increase retroactively when Crystal had not filed a separate Rule 80(k) motion requesting an increase.

HOLDINGS

1. The child's statements to the licensed clinical social worker that he feared his father and did not want to visit were admissible under Maine Rule of Evidence 803(4) because they were reasonably pertinent to diagnosis or treatment.
2. The evidence of Lavon's pre-divorce abuse was relevant to the cause of the child's fear and was not unfairly prejudicial. The appellate challenges to the relevance and prejudice of Officer Moore's testimony were not preserved because those grounds were not asserted at trial.
3. A moving party establishes a prima facie case of contempt by showing that the alleged contemnor failed to comply with a valid court order that implies the ability to comply. The alleged contemnor then bears the burden of production to present evidence of inability to comply, but the moving party retains the ultimate burden of persuasion.
4. The District Court did not err by considering the child's best interests when deciding whether Crystal's failure to enforce visitation was contemptuous, and it did not give dispositive weight to the child's preference.
5. The issue of increasing Lavon's child-support obligation and applying the increase retroactively was properly before the court because Crystal's response to Lavon's modification motion expressly notified him that an increase, rather than a decrease, might be warranted.

KEY QUOTATIONS

“Once the failure to comply has been established, “the [alleged contemnor] has the burden of production, of going forward with evidence of his inability to comply. The burden of persuasion, however, remains with the [moving party].”” (¶ 22)

“Because Lavon must bear the ultimate burden of persuasion, we decline to hold Crystal to a standard that would demand that she conclusively prove her inability to comply.” (¶ 24)

“We conclude, therefore, that the issue of increasing Lavon’s child support obligation and applying it retroactively was properly before the court.” (¶ 30)

FACTUAL BACKGROUND

Lavon and Crystal Ames were divorced in 1999, with shared parental responsibility for their son, primary residence with Crystal, and a visitation schedule requiring regular overnight contact with Lavon. During 2001, the child had substantially fewer overnight visits than the judgment required because the child expressed fear of Lavon and displayed physical and emotional problems; a licensed clinical social worker advised Crystal not to force visitation. Lavon sought contempt and claimed his income had declined, while Crystal presented evidence of substantial assets, cash purchases, property, and income-related circumstances supporting an increased child-support obligation.

PROCEDURAL HISTORY

After the parties' 1999 divorce, Lavon moved for contempt and enforcement of the visitation provisions, together with modification of child support based on an asserted decrease in income. Crystal denied interfering with visitation and argued that Lavon's income supported an increase in child support. The District Court denied the contempt motion, increased Lavon's weekly child-support obligation, and applied the increase retroactively; the Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Howe, 2001 ME 181, ¶ 8, 788 A.2d 161, 163
- State v. Hebert, 480 A.2d 742, 748 (Me. 1984)
- Zink v. Zink, 687 A.2d 229, 232-33 (Me. 1996)
- Wrenn v. Lewis, 2003 ME 29, ¶ 26, 818 A.2d 1005
- Mitchell v. Flynn, 478 A.2d 1133, 1135 (Me. 1984)
- State v. Harper, 675 A.2d 495, 497 (Me. 1996)
- Cloutier v. Lear, 1997 ME 35, ¶ 8, 691 A.2d 660, 663
- Fowler v. Fowler, 1997 ME 281, ¶ 6, 704 A.2d 378, 374
- Longo v. Goodwin, 2001 ME 153, 783 A.2d 159
- Hinkley v. Hinkley, 2000 ME 64, ¶ 9, 749 A.2d 752, 754
- Piercey v. Piercey, 727 N.E.2d 26, 32 (Ind. Ct. App. 2000)
- In re Marriage of Rideout, 110 Wash. App. 370, 40 P.3d 1192, 1196 (2002)