

SUPREME COURT OF THE STATE OF MONTANA

In re the Marriage of Carter-Scanlon

2016 MT 190 (2016) · No. DA 15-0727 · Decided August 9, 2016

SUMMARY

The Montana Supreme Court affirmed the denial of Joseph Scanlon's motion to modify his child support obligation. The court held that although Scanlon established a significant change affecting his ability to pay, the change was temporary and did not make the support obligation unconscionable under Montana law. The court also noted that the district court's stay of support was not properly before it because the appellee had not cross-appealed.

CASE DETAILS

|                       |                                                                                                                                                                                                    |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of Montana                                                                                                                                                              |
| WRITING FOR THE COURT | Justice Jim Rice; Jim Rice; Mike McGrath; James Jeremiah Shea; Laurie McKinnon; Beth Baker                                                                                                         |
| JURISDICTION          | Montana                                                                                                                                                                                            |
| DECIDED               | August 9, 2016                                                                                                                                                                                     |
| DOCKET                | DA 15-0727                                                                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Joseph D. Scanlon appealed the First Judicial District Court's denial of his motion to modify his child support obligation.                                                                        |
| STANDARD OF REVIEW    | A district court's decision on child-support modification is reviewed for abuse of discretion. Factual findings are reviewed for clear error, and conclusions of law are reviewed for correctness. |
| PRECEDENTIAL VALUE    | Published Montana Supreme Court opinion; precedential.                                                                                                                                             |
| PARTIES               | Joseph D. Scanlon v. Lona Ann Carter-Scanlon                                                                                                                                                       |

TOPICS

- child support
- family law procedure
- standard of review
- appellate procedure

PRACTICE AREAS

- family law
- child support
- appellate procedure

## QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by denying Joseph's motion to modify his child support obligation based on changed circumstances and alleged disability.

## HOLDINGS

1. The District Court did not abuse its discretion in denying Joseph's motion to modify child support because the evidence supported its conclusion that Joseph's changed circumstances were temporary and did not make the support obligation unconscionable.
2. The finding that Joseph's changed circumstances were temporary was supported by substantial evidence and was not clearly erroneous.

## KEY QUOTATIONS

*“A district court may modify maintenance or support “upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable.”” (§ 10)*

*“The District Court’s denial of Joseph’s motion to modify his child support obligation was not an abuse of discretion.” (§ 16)*

## FACTUAL BACKGROUND

Joseph and Lona have two children and Joseph was obligated to pay \$814 per month in child support. Joseph sought to reduce the obligation to \$21.50 per month per child after Montana Vocational Rehabilitation designated him a person with a most significant disability and developed an employment plan requiring possible shoulder and neck surgeries. The District Court found that Joseph's condition significantly affected his ability to pay but was temporary and not sufficiently substantial and continuing to make the support obligation unconscionable. Evidence also showed that Joseph's income was higher than reported on his tax returns, that he owned a 25 percent interest in a 300-lot subdivision, and that he had recently won a national ski-joring competition.

## PROCEDURAL HISTORY

After the parties' 2003 divorce, Joseph moved in April 2015 to reduce his monthly child support obligation based principally on his designation by Montana Vocational Rehabilitation as a person with a most significant disability. Following a hearing, the District Court denied modification, although it sua sponte stayed the support obligation for thirteen months and required repayment of the accrued amount over the following twelve months. Joseph appealed the denial of modification; Lona did not cross-appeal the stay.

## DISPOSITION

affirmed

## CASES CITED

- In re Marriage of Carter-Scanlon, 2014 MT 97, 374 Mont. 434, 322 P.3d 1033

- In re Marriage of Wilson, 2009 MT 203, ¶ 12, 351 Mont. 204, 210 P.3d 170
- In re Kessler, 2011 MT 54, ¶ 15, 359 Mont. 419, 251 P.3d 147
- In re Marriage of Damschen, 2011 MT 297, ¶ 22, 363 Mont. 19, 265 P.3d 1245
- Pastimes, LLC v. Clavin, 2012 MT 29, ¶ 18, 364 Mont. 109, 274 P.3d 714
- In re Marriage of Pearson, 1998 MT 236, ¶¶ 30, 41, 291 Mont. 101, 965 P.2d 268
- Siebken v. Voderberg, 2015 MT 296, ¶ 12, 381 Mont. 256, 359 P.3d 1073
- Marriage of Schmitz, 255 Mont. 159, 165, 841 P.2d 496, 500 (1992)
- Gabriel v. Wood, 261 Mont. 170, 178, 862 P.2d 42, 47 (1993)

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