

COURT OF APPEALS OF MARYLAND

Shawn R. Torboli v. Joseph A. Torboli, 365 Md. 52

775 A.2d 1207 (2001) · No. No. 123, September Term, 1999 · Decided July 11, 2001

SUMMARY

The Maryland Court of Appeals held that reconciliation during the term of a protective order may be offered as a defense to enforcement of the order's emergency family maintenance provisions. The court distinguished a defense to enforcement from a formal modification or rescission of the protective order under Family Law § 4-507(a)(1). The court affirmed the judgment of the Court of Special Appeals.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Bell, C.J.; Eldridge, J.; Rodowsky, J.; Raker, J.; Wilner, J.; Cathell, J.; Harrell, J.
JURISDICTION	Maryland
DECIDED	July 11, 2001
DOCKET	No. 123, September Term, 1999
DISPOSITION	affirmed
PROCEDURAL POSTURE	Shawn R. Torboli petitioned for a writ of certiorari from the judgment of the Court of Special Appeals affirming the circuit court's refusal to enforce certain emergency family maintenance payments during a period of reconciliation.
STANDARD OF REVIEW	De novo review of the legal interpretation and application of Md. Code, Family Law § 4-507(a)(1); the sufficiency of the evidence establishing reconciliation was not challenged on appeal.
PRECEDENTIAL VALUE	Published precedential opinion of the Maryland Court of Appeals
PARTIES	Shawn R. Torboli v. Joseph A. Torboli

TOPICS

- domestic violence
- family law procedure
- statutory interpretation
- remedies
- family law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Md. Code, Family Law § 4-507(a)(1), which governs modification or rescission of protective orders during their terms after notice and a hearing, precludes a respondent from defending against enforcement of an expired protective order based on evidence of reconciliation that occurred during the order's term.
2. Whether reconciliation can constitute a defense to enforcement of emergency family maintenance provisions in an expired protective order even though the order was never formally modified or rescinded.

HOLDINGS

1. Section 4-507(a)(1) prescribes the method by which the issuing court may modify or rescind a protective order during its term, after notice and a hearing, but it does not govern an enforcement action on an expired protective order.
2. A respondent may offer evidence of reconciliation occurring during the term of a protective order as a defense to a later enforcement action, even if the evidence could have supported modification or rescission during the order's term.

KEY QUOTATIONS

“We hold that, while § 4-507(a)(1) prescribes the method by which a protective order may be modified or rescinded, by whom and when, it does not address an enforcement action and it does not preclude the offer of a defense to such action, even if that defense consists of evidence that, had it been offered during the term of the protective order, would have been a basis for its modification or rescission.” (1214-15)

FACTUAL BACKGROUND

The Circuit Court for Washington County issued a six-month protective order requiring Joseph A. Torboli to pay Shawn R. Torboli \$750 per month in emergency family maintenance. After the order expired, Shawn sought enforcement, alleging that only \$640 had been paid. The circuit court found that the parties had bona fide reconciled and lived together for most of the period from July 1 through December 15, 1995, and therefore declined to enforce the maintenance obligation during the reconciliation period while enforcing the earlier arrearage.

PROCEDURAL HISTORY

The Circuit Court for Washington County initially dismissed the petitioner's enforcement request because the protective order had expired. The Court of Special Appeals reversed and remanded for further proceedings. On remand, the circuit court found that the parties had reconciled during part of the protective order's term and declined to enforce the emergency family maintenance award for that period, while enforcing it for the earlier period; the Court of Special Appeals affirmed. The Court of Appeals affirmed the intermediate appellate court's judgment on different reasoning.

DISPOSITION

affirmed

CASES CITED

- Torboli v. Torboli, 127 Md. App. 666, 736 A.2d 400 (1999)
- Torboli v. Torboli, 119 Md. App. 684, 705 A.2d 1186 (1998)
- Torboli v. Torboli, 357 Md. 190, 742 A.2d 520 (1999)
- Thomas v. Thomas, 294 Md. 605, 451 A.2d 1215 (1982)
- Wallingsford v. Wallingsford, 6 H. & J. 485, 488 (1825)
- Mayor and City Council of Baltimore v. Chase, 360 Md. 121, 128, 756 A.2d 987, 991 (2000)
- Chesapeake and Potomac Telephone Co. of Maryland v. Director of Finance for Mayor and City Council of Baltimore, 343 Md. 567, 578-79, 683 A.2d 512, 517-18 (1996)
- Oaks v. Connors, 339 Md. 24, 35, 660 A.2d 423, 429 (1995)
- Blitz v. Beth Isaac Adas Israel Congregation, 352 Md. 31, 33, 720 A.2d 912, 913 (1998)

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