

SUPREME JUDICIAL COURT OF MAINE

Paul S. Douglas v. Lisa M. Douglas, 2012 ME 67

43 A.3d 965 (2012) · No. Kno-11-321 · Decided May 22, 2012

SUMMARY

The Maine Supreme Judicial Court affirmed a District Court order modifying a divorce judgment to permit limited, supervised, therapeutic reunification between a father and his child after finding a substantial change in circumstances. The court vacated the portion of the order allocating guardian ad litem fees because the trial court failed to make sufficient findings regarding the fees' reasonableness, necessity, and apportionment.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Jabar, J.; Saufley, C.J.; Alexander, J.; Levy, J.; Silver, J.; Mead, J.; Gorman, J.
JURISDICTION	Maine
DECIDED	May 22, 2012
DOCKET	Kno-11-321
DISPOSITION	vacated
PROCEDURAL POSTURE	Lisa M. Douglas appealed from the District Court's order granting Paul S. Douglas's motion to modify the parties' divorce judgment and allocating additional guardian ad litem fees.
STANDARD OF REVIEW	An order on a post-divorce motion is reviewed for abuse of discretion or other error of law. When a motion for findings under Maine Rule of Civil Procedure 52(a) has been filed, the reviewing court cannot infer findings from the record and requires findings sufficient to support the judgment.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Lisa M. Douglas v. Paul S. Douglas

TOPICS

child custody visitation family law procedure appellate procedure attorney fees

PRACTICE AREAS

family law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the District Court abused its discretion or committed legal error by modifying the divorce judgment to permit limited, supervised, therapeutic reunification between Paul and the child.
2. Whether the District Court properly approved and apportioned the guardian ad litem fees without providing an opportunity to respond and without making findings concerning the reasonableness and necessity of the fees and the parties' ability to pay.

HOLDINGS

1. A post-divorce modification requires a substantial change in circumstances affecting the child's best interests and, if that threshold is met, a determination of the modification that advances the child's best interests. The District Court had sufficient evidence to find a substantial change in circumstances and properly ordered limited, therapeutic, supervised contact between Paul and the child.
2. When a party files a motion for findings under Maine Rule of Civil Procedure 52(a), the trial court must make explicit findings sufficient to support its judgment. An order requiring a party of limited means to pay guardian ad litem fees must address the basis and reasonableness of the fees and the party's ability to pay; absent sufficient findings, the fee order must be vacated and remanded.

KEY QUOTATIONS

“First, whether since the prior order there has occurred a change in circumstances sufficiently substantial in its effect upon the children's best interests to justify a modification; and second, if so, how should the custody arrangement be modified in furtherance of the children's best interests.” (¶ 14)

“On our review of an appeal from a judgment when a motion for findings has been filed and denied, we cannot infer findings from the evidence in the record.” (¶ 27)

FACTUAL BACKGROUND

The parties divorced in 2008, and Lisa received sole parental rights and responsibilities after allegations that Paul had sexually abused their son; Paul initially had no visitation. The criminal charge against Paul was dismissed, and by the time of the modification hearing Paul had undergone evaluation, participated in counseling, and complied with the guardian ad litem's recommendations. Based on changed circumstances, including the child's increased age, resolution of the abuse allegations, counseling, and the parties' changed circumstances, the District Court ordered a gradual, supervised, therapeutic reunification plan. The court also assessed an additional \$2,400 in guardian ad litem fees without giving the parties an opportunity to object or making sufficient findings concerning the fees and ability to pay.

PROCEDURAL HISTORY

The District Court modified the 2008 divorce judgment to permit limited, supervised, therapeutic reunification between Paul and the parties' child. It also ordered the parties to share an additional \$2,400 in guardian ad litem

fees. Lisa moved for findings under Maine Rule of Civil Procedure 52(a), filed a timely appeal after the court did not address the fee issue, and the Supreme Judicial Court affirmed the modification but vacated and remanded the fee order.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The District Court must reconsider the amount of the guardian ad litem fees and how the fees should be apportioned between the parties, making findings concerning the basis and reasonableness of the fees and the parties' ability to pay. The modification of the divorce judgment is affirmed.

CASES CITED

- Smith v. Padolko, 2008 ME 56, 955 A.2d 740
- Bayley v. Bayley, 602 A.2d 1152, 1153-54 (Me. 1992)
- Jarvis v. Jarvis, 2003 ME 53, 832 A.2d 775
- State v. Greenleaf, 2004 ME 149, 863 A.2d 877

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