

SUPREME JUDICIAL COURT OF MAINE

John C. McGarvey v. Susan L. McGarvey

McGarvey, 2019 ME 40 (Supreme Judicial Court of Maine 2019) · No. Cum-18-412 · Decided March 12, 2019

SUMMARY

Susan L. McGarvey appealed the denial of her motion to modify a divorce judgment, arguing that substantial changes in circumstances warranted modification. The Maine Supreme Judicial Court affirmed, concluding that the absence of a transcript required it to presume the lower court's findings were supported by competent evidence, and it denied the appellee's sanctions request because no separate sanctions motion had been filed.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Jabar, J.; Alexander, J.; Mead, J.; Gorman, J.; Hjelm, J.; Humphrey, J.
JURISDICTION	Maine
DECIDED	March 12, 2019
DOCKET	Cum-18-412
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the District Court's denial of Susan L. McGarvey's motion to modify a divorce judgment and motion for reconsideration.
STANDARD OF REVIEW	The court reviewed the modification judgment for error, but because Susan failed to provide a transcript of the modification hearing, it presumed that the District Court's findings were supported by competent evidence in the record.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Susan L. McGarvey v. John C. McGarvey

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QUESTIONS PRESENTED

1. Whether the District Court erred in determining that no substantial change in circumstances justified modification of the divorce judgment.
2. Whether the appellee's request for sanctions stated only in his appellate brief was sufficient to permit imposition of sanctions.

HOLDINGS

1. The judgment denying Susan's motion to modify was affirmed because, without a transcript of the modification hearing, the appellate court had to presume that the District Court's findings were supported by competent evidence, and the appellate court could discern no error on that record.
2. A request for sanctions stated only in a party's brief is insufficient under Maine Rule of Appellate Procedure 13(f); a separate motion requesting sanctions is required.

KEY QUOTATIONS

“because Susan failed to provide us with a transcript of the hearing on her motion to modify, we must assume that the court’s findings are supported by competent evidence in the record.” (¶ 5)

“the Maine Rules of Appellate Procedure require that a party seeking the imposition of sanctions file a separate motion requesting sanctions, M.R. App. P. 13(f); a request for sanctions stated only in a party’s brief is not sufficient” (¶ 6)

FACTUAL BACKGROUND

John and Susan McGarvey were divorced in February 2007, with the divorce judgment providing for shared parental rights and responsibilities and shared primary residence of their two children. In 2017, after Susan failed to appear at a hearing on John's motion to modify, the District Court awarded John primary residence of their daughter, allocated him most parental rights and responsibilities, and ordered Susan to pay child support. Susan later filed another motion to modify, but the District Court found no substantial change in circumstances and denied both that motion and her motion for reconsideration.

PROCEDURAL HISTORY

The parties were divorced in 2007 under a judgment providing shared parental rights and shared primary residence. After John obtained a 2017 modification awarding him primary residence of the parties' daughter and ordering Susan to pay child support, Susan unsuccessfully sought to set aside that judgment for inadequate notice, and the Supreme Judicial Court affirmed. Susan then moved to modify the divorce judgment, asserting changed circumstances; the District Court denied the motion and her motion for reconsideration, and she timely appealed. The Supreme Judicial Court affirmed and denied John's request for sanctions because he had not filed a separate sanctions motion.

DISPOSITION

affirmed

CASES CITED

- McGarvey v. McGarvey, Mem-17-83 (Oct. 5, 2017)
- Springer v. Springer, 2009 ME 118, ¶¶ 2, 8, 984 A.2d 828
- Edwards v. Campbell, 2008 ME 173, ¶ 11, 960 A.2d 324

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