MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 22-67
Docket No. And-22-3

CHRISTINA L. IRVINE

v.

JENNIFER L. CHURCHILL

Submitted on Briefs July 19, 2022
Decided July 26, 2022

Panel: STANFILL, C.J., and MEAD, JABAR, HORTON, and CONNORS, JJ.

MEMORANDUM OF DECISION

Jennifer L. Churchill appeals from a judgment entered by the District Court (Lewiston, *S. Driscoll, J.*) determining parental rights and responsibilities as to her minor child with Christina L. Irvine. Churchill contends that the trial court abused its discretion by (1) establishing a contact schedule that is not in the best interest of the child because it limits the child's ability to participate in extracurricular activities and (2) allocating to Irvine the right to claim the child for tax purposes.[1] *See* 19-A M.R.S. § 1653(3) (2022).

Because there is no evidence in the record regarding extracurricular activities and Churchill offers this theory for the first time on appeal, we deem the contact schedule issue waived. *See McMahon v. McMahon*, 2019 ME 11, ¶ 14, 200 A.3d 789 ("[W]e do not consider new facts, new exhibits or other material relating to the merits of the appeal that [were] not presented to the

[1] To the extent Churchill raises other issue on appeal, her arguments are either without merit or were not properly raised, and we do not consider them further. *See Bayview Loan Servicing, LLC v. Bartlett*, 2014 ME 37, ¶ 16, 87 A.3d 741; *Teel v. Colson*, 396 A.2d 529, 534 (Me. 1979); *see also Dep't of Env't Prot. v. Woodman*, 1997 ME 164, ¶ 3 n.3, 697 A.2d 1295 ("It is well established that pro se litigants are held to the same standards as represented parties.").

trial court and included in the trial court record." (quotation marks omitted)); *Teel v. Colson*, 396 A.2d 529, 534 (Me. 1979) ("[P]roper appellate practice will not allow a party to shift his ground on appeal and come up with new theories after being unsuccessful on the theory presented in the trial court. It is a well settled universal rule of appellate procedure that a case will not be reviewed by an appellate court on a theory different from that on which it was tried in the court below."). Furthermore, because Churchill voluntarily surrendered her right to claim the child for tax purposes, we do not consider the issue. *See Sullivan v. Porter*, 2004 ME 134, ¶ 22, 861 A.2d 625 (declining to review a claimed error when a litigant in a civil action not only failed to object but acquiesced affirmatively in the action taken).

Even if we were to reach Churchill's arguments on the merits, we discern no error or abuse of discretion. The trial court established a contact schedule that gave each parent equal time with the child while reducing the number of transitions between households, and it allocated the right to claim the child for tax purposes to the parent who would receive the greatest benefit. *See* 19-A M.R.S. § 1653(3); *Grant v. Hamm*, 2012 ME 79, ¶ 6, 48 A.3d 789 (reviewing a trial court's factual findings in a parental rights and responsibilities judgment for clear error); *Papadopoulos v. Phillips*, 2018 ME 74, ¶¶ 8-9, 186 A.3d 852 (reviewing a trial court's custodial arrangements for a minor child for an abuse of discretion); *Bojarski v. Bojarski*, 2012 ME 56, ¶ 25, 41 A.3d 544 (reviewing a trial court's allocation of dependent tax exemptions for an abuse of discretion); *cf.* 19-A M.R.S. § 2007(3)(L) (2002) ("In determining the allocation of tax exemptions for children, the court may consider which party will have the greatest benefit from receiving the allocation.").

The entry is:

Judgment affirmed.

Jennifer L. Churchill, appellant pro se

Christina L. Irvine did not file a brief

Lewiston District Court docket number FM-2021-128
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