

MAINE FAMILY LAW ADVISORY COMMISSION

Report to Maine Legislature Joint Standing Committee on Judiciary On LD 1129

“An Act to Clarify Standards for Defendant’s Post-judgment Motions for Relief from Protection from Abuse Orders.”

Introduction

The Maine Family Law Advisory Commission hereby reports to the Maine Legislature, Joint Standing Committee on Judiciary, on LD 1129 **“An Act to Clarify Standards for Defendant’s Post-judgment Motions for Relief from Protection from Abuse Orders.”** For the reasons set out below, the Commission supports limiting defendants’ ability to file motions to extinguish final orders for protection from abuse (“PFAs”). On the other hand, although the Commission believes that PFA defendants’ motions to enforce and for contempt are rarely appropriate, the Commission opposes making this post-judgment relief unavailable to defendants in all circumstances. Regarding defendants’ motions to enforce and for contempt, the Commission submits amended language for consideration.

Discussion

LD 1129 adds a paragraph to 19-A §4111 to clarify the post-judgment relief available to defendants in PFA proceedings. First, the bill prohibits defendants from filing motions to extinguish a final order absent extraordinary circumstances. Although the current PFA statute implies that motions to extinguish are not generally available to defendants (only the paragraph addressing “action by plaintiff” mentions extinguishment), the lack of clarity in the statute has led to inconsistent application of the statute across the state. Motions to extinguish a final PFA that a defendant agrees to or that a judge grants after a contested hearing are rarely appropriate. Defendants have other, more suitable mechanisms to address the most common issues that arise post-judgment, including family matters cases for issues pertaining to children, and divorces, personal property FEDs, and small claims cases for issues pertaining to property. The Commission supports amending the statute to explicitly empower judges to deny these motions without a hearing and before written opposition to conserve judicial resources and to curb litigation abuse.

For the same reasons that FLAC supports limiting defendants’ motions to extinguish final PFAs, the Commission also supports limiting defendants’ motions to enforce and for contempt. For issues regarding children, family matters are almost always the more appropriate venue to address ongoing concerns. Indeed, Maine Rule of Civil Procedure 127 instructs the court to consider both parties’ action or inaction with regard to initiating an FM proceeding when deciding whether to schedule a motion to amend the portions of a PFA addressing parental rights. However, FLAC also believes that there may be limited circumstances where it is appropriate for the court to consider a defendant’s motion regarding the portions of a PFA addressing parental rights and

responsibilities. This may include a situation where a plaintiff is withholding parent-child contact in violation of a PFA order and obtaining expeditious relief through a family matter is not practical. Therefore, FLAC proposes that the PFA statute allow judges to consider defendants' motions to enforce and for contempt only regarding portions of final PFAs pertaining to parental rights and responsibilities. Recognizing that most child-related issues should be handled in a family matter proceeding rather than a post-judgment PFA motion, FLAC proposes that the statute should explicitly authorize judges to deny these motions without hearing too, where appropriate.

Based on the foregoing, FLAC proposes that the Committee substitute the following amendment in place of the current bill draft:

4. Action by Defendant. A defendant may not file a motion to extinguish a final order absent extraordinary circumstances. Neither motions to enforce nor motions for contempt are available post judgment remedies for defendants under this chapter with the exception of motions pertaining to parental rights and responsibilities. The court may dismiss or deny any motions under this section without a hearing and before opposon is filed.

Conclusion

FLAC supports limiting PFA defendants' ability to file motions to extinguish final protection orders. FLAC opposes prohibiting PFA defendants from filing motions to enforce and for contempt in all circumstances and submits amended language that would permit judges to consider defendants' motions to enforce and for contempt only regarding issues of parental rights and responsibilities.

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Respectfully submitted:
Maine Family Law Advisory Commission

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Maine Family Law Advisory Commission
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