SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. PEN-23-473

LISA C. PRIEST,
PETITIONER-APPELLANT

v.

LISA M. LEIGHTON,
RESPONDENT-APPELLEE

ON APPEAL
FROM THE PROBATE COURT OF PENOBSCOT COUNTY

BRIEF OF PETITIONER-APPELLANT LISA C. PRIEST

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I. STATEMENT OF FACTS

This appeal arises from a Penobscot County[1] probate dispute concerning the Estate of Brian Priest, formerly of Pembroke, who died intestate on October 10, 2021. App. at 2. Petitioner-Appellant, Lisa C. Priest, was married to Brian Priest at the time of his death. *Id.* at 16, 31:3-11. Respondent-Appellee, Lisa M. Leighton, is Brian Priest's daughter. *Id.* at 19, 45:13-22.[2] The question on appeal is whether, under quitclaim deeds granted by the Town of Pembroke (the "Town"), Appellant holds title to her former marital residence with Brian Priest as a joint tenant or as a tenant in common. As a joint tenant, Appellant would now have exclusive ownership of the prior martial residence, having acquired Brian Priest's undivided half interest by right of survivorship. By contrast, as a tenant in common, Brian Priest's share of the property is treated as an Estate asset, and subject to Maine's intestate succession laws. *See* 18-C M.R.S.A. §§ 2-102 ("Share of Spouse"), 2-103 ("Share of heirs other than surviving spouse").

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[1] Because the Probate Judge for Washington County recused himself, the matter was transferred to the Penobscot County Probate Court on October 12, 2022, and heard before Penobscot County Probate Judge Zachary Brandmeir. *See* Appendix at 4. All citations herein are to the Appendix ("App."), filed with Appellant's Brief. M. R. App. P. 8(a)-(b).

[2] Lisa. M. Leighton was born to Brian Priest through a prior relationship; Appellant and Brian Priest did not have any children together. App. 19-20, 45:11-46:3.

A. Property Acquired by Appellant and Brian Priest as Joint Tenants is Released Back to Them Under Municipal Quitclaim Deeds

In 1998, Appellant and Brian Priest purchased property located on Leighton Point Road in Pembroke to serve as their residence (the "Property"). App. at 16, 31:3-11; *see also id.* at 40, 50. The couple took title to the Property as joint tenants with the right of survivorship, as evidenced by a Warranty Deed dated April 14, 1998, which was recorded in the Washington County Registry of Deeds. *Id.* at 16, 32:15-33:6; *see also id.* at 45 (Warranty Deed). The Warranty Deed expressly conveyed the Property to Appellant[3] and Brian Priest "as joint tenants and not as tenants in common." *Id.* at 45.

By the early 2000s, Appellant and Brian Priest had fallen behind on their municipal taxes. App. at 16. The Town recorded a tax lien against the Property in 2002 as a result. *Id.* at 40, 50. Following full payment of the tax lien and costs, the Town, "[m]eaning and intending to convey the Town's interest in the [Property] by virtue of [the] tax lien," released the Property back to Appellant and Brian Priest "for the consideration paid." *Id.* at 47. The conveyance was effected by a Municipal Quitclaim Deed dated June 30, 2005. As Appellant later noted before the Probate Court, however, when

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[3] Appellant's legal name at the time of this initial conveyance was Lisa C. Beal, as the Warranty Deed reflects.

the Town "rewrote" the deed back to her and Brian Priest, the Town "just put [] Brian and Lisa Priest. . . they didn't put common or joint." *Id.* at 16, 32:25-33:2. The prior, "as joint tenants and not as tenants in common," language was omitted. *Id.*

In 2009, after Appellant and Brian Priest again fell behind on their municipal taxes, the Town recorded a new tax lien against the Property. App. at 41, 51. The couple paid this tax lien and costs, as well. In a second Municipal Quitclaim Deed, dated December 30, 2011, the Town once more released the Property back to Appellant and Brian Priest "for the consideration paid . . . . [m]eaning and intending to convey the Town's interest in the [Property] by virtue of [the] tax lien." *Id.* at 48. This Municipal Quitclaim Deed, as with that granted in 2005, again contained no language expressing whether Appellant and Brian Priest were joint tenants or tenants in common. *Id.*

In the proceedings below, the Probate Court accepted and proceeded on the understanding that, by operation of law, the Municipal Quitclaim Deeds severed the prior joint tenancy and only granted to Appellant and Brian Priest a tenancy in common. *See* App. at 37, 115:6-15; *see generally* 33 M.R.S.A. § 159.

B. Appellant Petitions the Probate Court to Reform the Municipal Quitclaim Deed

Following Brian Priest's death, formal intestacy adjudication proceedings were begun in early 2022. App. at 1-2. Soon after, a dispute arose between Appellant and Appellee, each of whom filed dueling motions respectively seeking appointment as the personal representative of the Estate. *Id.* at 2-4. Against that backdrop, Appellant further moved the Probate Court to reform the Municipal Quitclaim Deed purporting to sever the joint tenancy and to find, on that basis, that the Property did not qualify as an Estate asset. *Id.* at 40, 49.[4]

Appellant's Petition to Reform Deed was filed first on the basis of the Probate Court's equitable jurisdiction. *Id.* at 41-42, 53. Her arguments were additionally made pursuant to 18-C M.R.S. § 2-805. *Id.* Appellant detailed the Town's 2005 and 2011 conveyances, each of which—in contrast to the prior 1998 warranty deed—omitted joint tenancy language. *Id.* at 40, 50. Appellant denied that any portion of the Property was an asset of the Estate

[4] The Penobscot County Probate Court docket (App. at 2-5), which presumably reflects the filings made to the Washington County Probate Court prior to the recusal and transfer, only reflects Appellant's filing of a Petition to Reform Deed on August 24, 2022. The August 2022 Petition to Reform Deed was handwritten and submitted by Appellant *pro se*. *See* App. at 49-55. However, during the hearing on the matter held on August 1, 2023, Appellant testified that her previously retained counsel had filed an earlier Petition to Reform Deed on June 16, 2022. App. 16, 32:2-14. The case file obtained from Appellant's previously retained counsel does indeed contain a Petition to Reform Deed dated June 16, 2022, with a Certificate of Service showing that same date. The Petition to Reform Deed dated June 16, 2022 is therefore included in the Appendix on the understanding that it was part of the Probate Court file. *See* App. at 40-48; *see also* M. R. App. P. 8(g)(1). Both versions are substantively the same.

and subject to probate, noting that "it was the intention of her and the Decedent, at all times, that the Property be held as joint tenants with the right of survivorship such that sole ownership would pass to the surviving spouse by operation of law." *Id.* at 41, 52. She averred that it had been a "mistake by the Town of Pembroke in failing to note the joint tenancy in the [Municipal Quitclaim Deeds] in question and [that] at all points in time relevant to this matter, the Town never intended to sever the joint tenancy." *Id.* Appellant further cited to 36 M.R.S.A. § 943, which provides that

> When a municipality conveys the premises back to the former record titleholder or to a successor of that holder who obtained title before the foreclosure for a consideration of the taxes and costs due, the rights of the other parties claiming an interest of record in the premises at the time of foreclosure, including mortgagees, lien creditors or other secured parties, are revived as if the tax lien mortgage had not been foreclosed.

See App. at 42, 53-54.

C. The Probate Court Holds an Evidentiary Hearing on the Petition to Reform the Municipal Quitclaim Deed

On August 1, 2023, the Probate Court held an evidentiary hearing on Appellant's Petition to Reform Deed, as well as on to the cross-motions for appointment of a personal representative of the Estate. App. at 4; *see generally id.* at 8-39 (Hearing Transcript). Sworn testimony was provided by Appellant and Appellee, as well as by Appellee's brother, Ryan Priest.

Appellant testified that she and Brian Priest had purchased the Property in 1998 and built their home there on Leighton Point Road in Pembroke. *Id.* at 16, 31:3-8, at 22; *see also id.* 57:17-19 (Testimony of Appellee). She had been married to Brian Priest for 23 years. *Id.* at 16, 9-11. Appellant and Brian Priest had been in a relationship for six years prior to getting married. *Id.*

Soon after the purchase in 1998, Appellant and Brian Priest improved the Property to increase its value. *Id.* at 34, 104:12-13. They traded in a double-wide trailer and purchased a modular home twice the size of their former residence. *Id.* at 34, 104:13-17. They installed a cellar. *Id.* at 34, 104:17-18. Closer in time to Brian Priest's death, they had begun remodeling the property. *Id.* at 35, 106:7-12. A new toilet was put in. *Id.* at 35, 106:12-13. A new vanity was installed. *Id.* at 35, 106:13. Appellant painted one of the hallways of the residence, and installed trim molding and tongue and groove flooring. *Id.* at 35, 106:13-19.

Following Brian's Priest's death, Appellant continued to pay the home insurance on the Property, and continued to maintain it. *Id.* at 18, 38:11-39:1. As of the hearing, she had made the necessary house payments and paid the taxes on the Property. *Id.* at 34, 102:15-25; *see also id.* at 16, 32:20-24 (discussing mortgagee First National Bank). Appellant also

maintained electricity to the residence and drained the water pipes prior to the winter months setting in. *Id.* at 34, 103:1-9.

Appellant opined that

> Whatever [the Town] done, it was clearly an error, and it wasn't anything that Brian and Lisa Priest done wrong because we didn't do anything wrong. We would have had no knowledge that they changed our deed and the wording in it. I mean, who would ever guess?

Id. at 16, 33:7-15. Appellant shared that she and her prior legal counsel had lodged Freedom of Access requests with the Town on the issue of the Municipal Quitclaim Deeds, but that her requests had gone unanswered. *Id.* at 16, 33:15-24; *see also id.* at 32, 95:17-25.[5] As the Probate Court correctly summarized the issue,

> THE COURT: . . . And you think the deed should be reformed because you're saying that when you originally had the deed, you made it in good faith as joint tenants. And then pursuant to a property tax foreclosure, the town, upon its own initiative, failed to include the joint tenant language on the subsequent deed; is that right?
>
> MS. L. PRIEST: Absolutely, absolutely.
>
> THE COURT: Okay. All right.

Id. at 17, 35:16-23; *see also id.* at 38, 119:1-13 ("I pray the judge does the right thing and reforms our deed to our original one and the only one that

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[5] Appellant did not subpoena any witnesses from the Town to testify at the hearing. App. at 32, 95:1-5.

we had done ourselves to protect each other. That's why we had written it up with the word 'joint tenants.' We had no idea the town had rewrote our deed to. . . joint tenants."). Throughout the hearing, Appellant emphasized her dilemma:

> [People] need to check their deeds and see what actually has gone on with all their deeds when they – when they – many people have gotten behind on their taxes. That's not uncommon. And I bet a lot of people aren't aware that the deed – the wording has been changed in their deeds. They would have no – why would they possibly believe that their wording had been changed?

Id. at 32, at 96:6-12.

D. The Probate Court Denies Appellant's Petition to Reform the Municipal Quitclaim Deed

On October 10, 2023, Probate Judge Zachary Brandmeir denied and dismissed Appellant's Petition to Reform Deed. App. at 6-7. The Probate Court observed that it was empowered to "reform [the] terms of a governing instrument pursuant to 18-C M.R.S. § 2-805." *Id.* at 2. It stated, however, that "to do so, the Court must have evidence of the transferor's intention." *Id.* The Probate Court emphasized that the "transferor is a local government taxing authority," the Town. *Id.* Accordingly, "[t]here was no evidence on the record showing the intention of the transferor at the time the deed was drafted." *Id.* The Probate Court did not address Appellant's equity arguments, or 36 M.R.S.A. § 943. This appeal followed. *Id.* at 4.

II. STATEMENT OF ISSUES

The first issue presented on this appeal, unaddressed by the Probate Court, concerns the Probate Court's faulty premise that the Municipal Quitclaim Deeds severed the joint tenancy, when in fact they did not. The second issue concerns whether the Municipal Quitclaim Deeds required reformation, either in equity or pursuant to 18-C M.R.S.A. § 2-805.

III. SUMMARY OF ARGUMENT

The Municipal Quitclaim Deeds did not sever Appellant's joint tenancy. The plain terms of the Tax Foreclosure Statute, 36 M.R.S.A. § 943, instead dictate that the joint tenancy was revived under the Municipal Quitclaim Deeds. Separately, the tax foreclosure instruments released and granted only the Town's interest in the Property by virtue of its liens. Such conveyances do not constitute a grant of the land itself nor of any particular estate in the land. *See Sargent v. Coolidge*, 399 A.2d 1333, 1343 (Me. 1979). Appellant's joint tenancy therefore survived. Recognition of the joint tenancy aligns with Maine law and public policy, which favors joint tenancies and limits their severance.

If this Court does determine that the Town conveyed a tenancy in common to Appellant through the Municipal Quitclaim Deeds, grounds nonetheless exist to reform the governing instruments to a joint tenancy, or

to remand for further proceedings. As an initial matter, the Probate Court erred in proceeding on a statutory basis under the newly enacted 18-C M.R.S.A. § 2-805. Rather, both in the interest of justice and because of the infeasibility of applying Section 2-805, the formerly applicable reformation procedure sounding in equity applied. Even if Section 2-805 were appropriately employed, Appellant showed by clear and convincing evidence—the language of the Municipal Quitclaim Deeds themselves—that the Town intended to convey the Property as a joint tenancy but, by its silence, mistakenly expressed a tenancy in common.

IV. ARGUMENT

A. Standard of Review

"When an order of the Probate Court is appealed," this Court "defer[s] to the Probate Court on factual findings unless they are clearly erroneous, but [] review[s] *de novo* the application of the law to the facts." *Estate of Horne*, 2003 ME 73, ¶ 17. "As with any other appeal, on issues on which the plaintiff had the burden of proof, the clear error standard of review requires that, to overturn a finding that a plaintiff has failed to prove one or more elements of a claim, the plaintiff must demonstrate that a contrary finding is compelled by the evidence." *St. Louis v. Wilkinson Law Offices, P.C.*, 2012 ME 116, ¶ 16, 55 A.3d 443, 445.

Also reviewed *de novo* is a Probate Court's interpretation of the Probate Code. *Carrier v. Sec'y of State*, 2012 ME 142, ¶ 12, 60 A.3d 1241, 1245.[6] On questions of statutory interpretation, this Court looks "to the plain meaning of the statute, interpreting its language to avoid absurd, illogical, or inconsistent results," but if confronted with any ambiguity, inquires "beyond the statutory language to determine the legislature's intent, including the legislative history and the whole statutory scheme for which the section at issue forms a part." *Estate of Reed*, 2016 ME 90, ¶ 6, 142 A.3d 578, 580 (quotations and citations omitted).

B. The Probate Court Erred in its Assumption that the Municipal Quitclaim Deeds Severed the Joint Tenancy

Section 943 of Title 36 of the Maine Revised Statutes provides that Appellant's rights under her joint tenancy were "revived as if the tax lien mortgage had not been foreclosed." A contrary interpretation cannot be squared with that statute's plain terms, and would lead to absurd results. The Town's Municipal Quitclaim Deeds also did not convey any particular estate in the Property, and as such, would have left appellant's prior joint tenancy undisturbed. Maine law and public policy further supports the recognition of Appellant's joint tenancy.

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[6] The "[c]onstruction of a deed," too, "is a question of law." *River Dale Ass'n v. Bloss*, 2006 ME 86, ¶ 6, 901 A.2d 809, 811.

1. Appellant's joint tenancy was revived as if the tax lien mortgage had not been foreclosed by operation of 36 M.R.S.A. § 943

The Municipal Quitclaim Deeds by which the Town released its interest in the Property back to Appellant and Brian Priest were conveyed during a tax lien foreclosure proceeding under to 36 M.R.S.A. § 943. Such "statutes governing the procedures whereby an owner may lose his property for the nonpayment of taxes are to be strictly construed against the taxing authority." *Johnson v. Town of Dedham*, 490 A.2d 1187, 1190 (Me. 1985) (quoting *City of Augusta v. Allen*, 438 A.2d 472, 474 (Me. 1981)). Under Section 943, "[w]hen a municipality conveys the premises back to the former record titleholder"—as the Town did here—"the rights of the other parties claiming an interest of record in the premises at the time of foreclosure. . . are revived as if the tax lien mortgage had not been foreclosed."

Section 943 non-exhaustively includes "mortgagees, lien creditors or other secured parties" as those whose rights "are revived as if the tax lien mortgage had not been foreclosed." *Id.* Yet according to the plain meaning of the statute, "the former record titleholder," too, should be read as one of the interested "parties." *See Pierce v. City of Bangor*, 105 Me. 413, 74 A. 1039, 1040 (Me. 1909) (to work of "construing a statute is to ascertain the

intent of the Legislature. . . . by an examination of the phraseology of the statute itself"). Section 943 must be construed by reference to its plain language, considering such language "in the context of the whole statutory scheme to avoid absurd, illogical, or inconsistent results." *Kennebec Cnty. v. Me. Pub. Emp. Ret. Sys.*, 2014 ME 26, ¶ 20, 86 A.3d 1204, 1210 (citations and quotations omitted); *see also Harrington v. State*, 2014 ME 88, ¶ 5, 96 A.3d 696, 697 (same). Applying this approach proves the term "parties" to be clear and unambiguous, and readily applied here in accordance with its plain meaning—that Appellant and her husband were "parties" to the tax lien foreclosure proceeding. *See, e.g., Carrier v. Sec'y of State*, 2012 ME 142, ¶ 12, 60 A.3d 1241, 1245; *Gaeth v. Deacon*, 2009 ME 9, ¶ 15, 964 A.2d 621, 625. As such, their joint tenancy was "revived."

Neither Section 943 nor the definitional provision found in 36 M.R.S.A. § 501 defines "parties." The term must therefore be afforded its "plain, common, and ordinary meaning, such as people of common intelligence would usually ascribe." *Dickau v. Vt. Mut. Ins. Co.*, 2014 ME 158, ¶ 22, 107 A.3d 621, 628 (citations and quotations omitted); *see generally* 1 M.R.S.A. § 72(3) (words must be construed "according to the common meaning of [their] language").

The common usage and definition of "parties" encompasses those "who take[] part in a transaction," or "by or against whom a lawsuit is brought." BLACK'S LAW DICTIONARY, 12th ed. 2024; *see also Kotch v. Am. Protective Servs., Inc.*, 2002 ME 19, ¶ 10, 788 A.2d 582, 585 (analyzing plain meaning of statute "[a]s a matter of common usage" by reference to dictionary definition). Here, Appellant was a primary party to the Municipal Quitclaim Deeds. Moreover, as the prior warranty deed holder, she was the adverse party in both tax lien foreclosure proceedings. The text of Section 943 supports this reading. The only party referenced in the statutory language is "the party named on the tax lien mortgage." Those named on the tax lien mortgage were Appellant and Brian Priest, as party-defendants.

Fairly read in context, Appellant's rights in the Property—as one of the "parties" under Section 943 "claiming an interest"—were therefore revived as if the tax lien mortgage had not been foreclosed. Her joint tenancy endures. A contrary interpretation would risk "results that are absurd, inconsistent, unreasonable, or illogical." *Harrington v. State*, 2014 ME 88, ¶ 5, 96 A.3d 696, 697 (quoting *State v. Fournier*, 617 A.2d 998, 999 (Me. 1992)). It would be nonsensical for banks and creditors to be returned to the status quo, on the one hand, but for the actual landowners of a

property to have their estate and tenancy interests fundamentally modified by the mere happenstance of a town clerk's silence or omission.

The Legislature signaled as much through its amendment of 33 M.R.S.A. § 159, when it provided that any conveyances "by a taxing or assessing authority of real property acquired from joint tenants by foreclosure of a tax or assessment lien mortgage, if made to such persons, recreates the joint tenancy held by the persons at the time of the foreclosure unless otherwise indicated anywhere in the conveyance by appropriate language." Although this amendment applies only to conveyances made on or after January 1, 2012, *see id.*, and therefore does not control the Court's decision, Appellant suggests that the Court may nonetheless be guided "by the public policy it embodies, [] because [it] look[s] to the legislature as the constitutionally designated primary expositor of public policy." *See Maine Savings Bank v. Bridges*, 431 A.2d 633, 636 (Me. 1981).

2. Under *Sargent v. Coolidge*, the language used in the Municipal Quitclaim Deeds did not alter the prior joint tenancy

Maine law distinguishes between "deeds of conveyance of lands, including deeds of quitclaim, as distinguished from deeds where only the grantor's 'right, title and interest' in the land is transferred." *Sargent v. Coolidge*, 399 A.2d 1333, 1343 (Me. 1979). Here, the Municipal Quitclaim

Deeds each were executed as a "release," merely meant and intended "to convey the Town's interest in the [Property] by virtue of [the] tax lien." The Municipal Quitclaim Deeds releasing the Property were unconditional.[7] Neither instrument, by its terms, was a deed of bargain and sale constituting an actual conveyance of land. *Sargent*, 399 A.2d at 1343. Rather, these were conveyances "merely of 'a right, title and interest' in land." *Id.* As noted in *Sargent*, this "Court has continued to hold that a quitclaim deed merely of 'a right, title and interest' in land is not a grant of the land itself *nor of any particular estate in the land. . .*" *Id.* (emphasis added).[8]

Accordingly, notwithstanding the Municipal Quitclaim Deeds' silence on the issue of joint tenancy, the particular language used in those instruments should not have been construed to alter Appellant's prior joint tenancy in the Property.

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[7] Tax lien foreclosures are distinct from mortgage deed foreclosures. *See Martel v. Bearce*, 311 A.2d 540, 543 (Me. 1973) (Maine "has accepted the doctrine that a mortgage is regarded as a conditional conveyance vesting the legal title in the mortgagee"). The conditional conveyance inherent in the nature of mortgage deeds means that, "[w]hen the mortgage is foreclosed, the joint tenancy is severed and the mortgagee becomes a tenant in common." *Schaefer v. Peoples Heritage Sav. Bank*, 669 A.2d 185, 187 (Me. 1996). Put differently, a "mortgage deed [is] effective to sever the joint tenancy, subject only to the right of redemption." *Id.*

[8] This Court noted, in the context of the title dispute at issue in *Sargent*, that prima facie evidence of title might still be established on the basis of a quitclaim deed of "a right, title and interest" in land where "where the predecessor of the quitclaim deed claimant either had obtained his title by warranty deed or was actually in possession of the land." 399 A.2d at 1343. Although Appellant obtained title via a warranty deed and also possessed the land, this *Sargent* dicta did not indicate what effect, if any, such factors would have on the particular estate in the land.

3. Recognition of the joint tenancy aligns with Maine law and public policy favoring joint tenancies

As recognized by this Court in *Palmer v. Flint*,

> [T]he legal profession of this state for many years has utilized the words "as joint tenants and not as tenants in common" when desiring to effectuate a conveyance of property in joint tenancy. In recent years this practice has become increasingly prevalent. A high percentage of conveyances to husband and wife, or to persons in close relationship, especially of residential property, have contained these words in some part of the instrument of conveyance. They have been placed in deeds with the obvious intention of creating an estate in joint tenancy with all of the well recognized attributes and incidents of such an estate at common law.

156 ME 103, 112-13, 161 A.2d 837, 842 (Me. 1960). Joint tenancies are accordingly "looked upon with favor rather than with disfavor," and such "deeds, if possible, should be construed as joint tenancies in the entire estate parted with by the grantor." *Id.* at 113, 842.

Appellant's "right of survivorship" is "the distinguishing feature of a joint tenancy." *Milliken v. First Nat'l Bank of Pittsfield*, 290 A.2d 889, 891 (Me. 1972). The joint tenancy was an attempt to create a present estate assuring "to whichever joint tenant survive[d] absolute ownership of the whole subject matter of the joint tenancy, provided that the tenancy has not been severed during the life of both joint tenants." *Strout v. Burgess*, 144 Me. 263, 280, 68 A.2d 241, 252 (Me. 1949). Here, Appellant seeks recognition that, as a joint tenant, she "held with her husband an undivided

one-half interest" in the Property, such that after Brian Priest's death, she "acquired his interest in the [P]roperty as [] a surviving joint tenant." *Hardigan v. Kimball*, 553 A.2d 1265, 1266 (Me. 1989); *see also Milliken*, 290 A.2d at 891 ("if one cotenant dies, the property remains in the possession of the survivor—there is no transfer since each cotenant had already possessed the whole and had an undivided interest in it").

In addition to the legal and equitable grounds already argued here, public policy militates against severance of the joint tenancy under the circumstances presented. Severance is ordinarily a decision left to the joint tenants themselves, where "a joint tenant would have had the power during their joint lives to sever the estate and transform it into a tenancy in common and thus destroy the right of survivorship." *Strout*, 144 Me. at 280, 68 A.2d at 252. Put differently, "the right of severance" is an "incident of [the] joint tenancy," exercisable in the first instance by the joint tenants. *Palmer v. Flint*, 156 ME 103, 112, 161 A.2d 837, 842 (Me. 1960).

As such, severance is primarily an issue to be pressed only by one of the joint tenants, rather than by a third-party, such as the Town here. As between joint tenants, '[s]uch right can be exercised [] by a unilateral act of conveyance to sever the joint tenancy and to create an immediate, non-contingent ownership of an undivided one-half." *Maine Savings Bank v.*

Bridges, 431 A.2d 633, 635-36 (Me. 1981). The evidence of record shows no such unilateral act on the part of either Appellant or Brian Priest to sever the joint tenancy. *Cf. Estate of Hatch*, 2020 ME 46, ¶ 10 (holding, in the context of a divorce judgment silent as to parties' intentions on the disposition of property, that an immediate severance should not be presumed).

C. The Probate Court Erred in its Finding that Appellant had Failed to Prove Reformation, Either as a Matter of Equity or Pursuant to 18-C M.R.S.A. § 2-805

In the event this Court determines that the Town conveyed a tenancy in common, the Probate Court nonetheless erred in determining that Appellant had failed to meet her burden of proving reformation.

1. The Probate Court should have addressed the issue of reformation as a matter of equity, rather than governed by 18-C M.R.S.A. § 2-805

The Probate Court proceeded pursuant to 18-C M.R.S.A. § 2-805, empowering it to

> reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

See App. at 7 (Order on Petition to Reform Deed). A "deed" is a "governing instrument" subject to reformation. 18-C M.R.S.A. § 1-201(21). Appellant,

as the petitioning party, shouldered the burden of proving reformation by clear and convincing evidence. *Estate of Giguere*, 2024 ME 41, ¶ 16. The clear and convincing standard for deed reformation has historically carried with it a stricter, "higher kind of proof." *Liberty v. Haines*, 103 Me. 182, 193, 68 A. 738, 742-43 (Me. 1907).

The Probate Court erred at the outset, however, in applying 18-C M.R.S.A. § 2-805. Notwithstanding the apparent applicability of this provision, it was the former Probate Code found in Title 18-A of the Maine Revised Statutes, rather than Title 18-C, which was in effect during the key conveyances in 2005 and 2011 underlying this appeal. *See* 18-C M.R.S.A. § 8-301(1) (setting an effective date of September 1, 2019, as the effective date of Title 18-C). While the present version of the Probate Code generally applies to current court proceedings, it contains an exception, however, "to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code." *Id.* at § 8-301(2)(B).

Here, the interest of justice strongly favored assessing reformation as an equitable remedy, rather than on a statutory basis under Section 2-805. Appellant moved on the basis of equity, in the alternative to 18-C M.R.S.A.

§ 2-805. App. at 41, 53. The parties and the Probate Court discussed Appellant's assertion of a claim for equitable reformation. *Id.* at 37, 114:12-21 ("the motion had referred to the [] reformation law in the probate code of 2-805," but "also referenced just a general equity claim").

Most significant to the interest of justice, however, was the lapse of time between the underlying acts at issue on this appeal and the Probate Court's hearing of Appellant's reformation claim. The salient facts concern a warranty deed conveyed in 1998 and the Town's initial Municipal Quitclaim Deed in 2005. Yet the hearing before the Probate Court on these issues proceeded roughly 18 years later, in 2023. As of that time, Section 2-805 was "new, with no previous counterpart in the now-repealed Title 18-A." *See* ME. PROBATE AND TRUST LAW ADV. COMM'N, *Report to Maine Legislature Joint Standing Committee on Judiciary Re: LD 123*, "An Act To Recodify and Revise the Maine Probate Code," *available at* https://lldc.mainelegislature.org/Open/Rpts/kf765_z99m34_2019.pdf.[9] As such, the "the former procedure" (*see* 18-C M.R.S.A. § 8-301(2)(b)) of reformation should have controlled. The standards and rules applicable to equitable reformation claims were well-established under Maine law,[10]

[9] The legislative history highlights that 18-C M.R.S.A. § 2-805 "constitutes a substantial change to Maine law. . ." *Id.*

[10] *See infra* Section C.2.

whereas the parties labored to coherently apply the newer, less developed Section 2-805 standard, which focuses solely on the intent of the transferor.

Relatedly, the infeasibility of applying Section 2-805 in the context of this case is apparent from the record. "[T]he transferor's intention," as mentioned, provides the analytical keystone under Section 2-805. Yet, as the Probate Court observed in its order here, "the transferor is a local government taxing authority." App. at 7. There are significant, practical differences and difficulties in navigating what a municipality's intentions were when signing an "instrument [] in its corporate name," *see* App. at 47, 48, versus the intentions of an individual who once owned and conveyed a property. Focusing on the Town's intentions here highlights the difficulties. Eighteen years had passed. Appellant, despite submitting Freedom of Access requests to the Town, had received no information. *Id.* at 16, 33:15-24. Gleaning the Town's purposes in 2005 (or 2011)—though possible, *see* Sections C.2-C.3—thus required the parties as well as the Probate Court to employ a statutory analysis ill-suited to the context of this particular case. 18-C M.R.S.A. § 8-301(2)(b). The approach also ignored the clear and convincing evidence of Appellant's and Brian Priest's intentions, which would have balanced the equities in Appellant's favor.

2. Appellant proved reformation as a matter of equity

The Probate Court erred by declining to consider Appellant's claim for equitable reformation.[11] App. at 7. While its failure to do so provides grounds for remand, because Plaintiff proved her equitable claim by clear and convincing evidence, Appellant urges the Court to find *de novo* that a joint tenancy inures under a reformed or cancelled Municipal Quitclaim Deed.

> Reformation, in equity, provides a
>
> > remedy by which an instrument may be corrected when a mistake is discovered so as to reflect the real intention of the parties. To secure reformation based upon mistake, a party must prove by clear and convincing evidence that the parties to the deed labored under a mutual mistake of fact regarding a term of the written instrument, such as the location or description of the property

Gravison v. Fisher, 2016 ME 35, ¶ 30 (citations and quotations omitted); *see also Jordan v. Shea*, 2002 ME 36, ¶ 18, 791 A.2d 116 ("[r]eformation is an equitable remedy by which an instrument may be corrected when a mistake is discovered so as to reflect the real intention of the parties"). The Probate Court was required to consider evidence not just of the Town's

[11] Maine Probate Courts are vested with "broad authority" in equity by virtue of Section 1-302(b) of Title 18-C and Section 252 of Title 4 of the Maine Revised Statutes. *See generally Estate of Kingsbury*, 2008 ME 79, ¶ 9, 946 A.2d 389, 393; *Staples v. King*, 433 A.2d 407, 412 (Me. 1981) ("the modern Probate Court" is "endowed with equity jurisdiction in all matters relating to the administration of decedents' estates").

intentions, but of Appellant's and Brian Priest's intentions, as well. *See Longley v. Knapp*, 1998 ME 142, ¶ 18, 713 A.2d 939, 944 (looking to whether a mutual mistake existed between the Town of Anson and a property owner, following the town's conveyance of a quitclaim deed arising from a tax lien foreclosure). Based on the evidence, the Probate Court was then required to "balance the equities between the parties and reach an equitable result." *Sargent v. Coolidge*, 399 A.2d 1333, 1346 (Me. 1979).

Here, after balancing the equities, the Probate Court should have ruled either to reform the deed or cancel it in Appellant's favor. *Sargent* 399 A.2d at 1346. As to Appellant's and Brian Priest's intentions, the record is virtually unchallenged[12] that the Town, as phrased by the Probate Court, "upon its own initiative[] failed to include the joint tenant language on the subsequent deed." App. at 17, 35:16-23. On their respective parts, a joint

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[12] The only countervailing testimony elicited from Appellee on this point was speculative on its face:

> Q You – you heard Lisa Priest express that she didn't exactly get to the point of – of what the intention of the person who transferred – or the town of Pembroke transferring the property back in the quit claim deed. But you heard her say it was not their intention for it to be in tenants in common. Do you – is it possible that your – it was your intention – your father's intention that it be in tenants in common? That he knew that it was a tenancy in common deed?
>
> A I think my father was a really smart man, and if – if – he'd pay attention to something like that. He would want it to be Ryan and I's. That's why he left it the way it was. He never talked about it any other way.

App. at 21, 51:21-52:9.

tenancy was intended. Appellant testified that neither she nor Brian Priest had any knowledge that they had received deeds from the Town purporting to convey only a tenancy in common. *Id.* at 16, 33:7-15. The evidence showed that as of both 2005 and 2011, the four elements essential for a joint tenancy—unity of time, title, interest, and of possession—were intact between them, as was the case in 1998 at the time of the warranty dead. *See Palmer v. Flint*, 156 ME 103, 112, 161 A.2d 837, 842 (Me. 1960). Moreover, in the years leading up to the first Municipal Quitclaim deed, Appellant and Brian Priest had been improving the Property, in a manner suggestive of their dual commitment to maintaining the joint tenancy. App. at 34, 104:12-18. In later years those improvements continued, and after Brian Priest's passing, Appellant maintained and paid for the Property.

Extrinsic evidence of the intentions of the Town is admittedly scant. That said, the particular language used in—and the context of—the Municipal Quitclaim Deeds themselves establishes that the Town intended to recognize the joint tenancy, yet mistakenly omitted the necessary terminology. As discussed above, *supra* Section B.2, the Municipal Quitclaim Deeds in question were fashioned as "releases" to Appellant and Brian Priest "for the consideration paid." It follows that the Town was simply returning back to Appellant and Brian Priest all rights to and

enjoyment of the estate in the Property to which they had been privy at the time of the original warranty deed creating their joint tenancy. "[F]or the consideration paid," Appellant and Brian Priest would not have bargained for less, given their full payment of the tax liens and costs. No language is included in either Municipal Quitclaim Deed otherwise purporting to recharacterize or reconstitute their prior estate. The Municipal Quitclaim Deeds, on their faces, were only "[m]ean[t] and intend[ed] to convey the Town's interest in the [Property] by virtue of a tax lien. . ." Applying *Sargent v. Coolidge*, the Town would not have been intending to convey—or alter—any particular estate in the Property. 399 A.2d 1333, 1343 (Me. 1979).

Accordingly, the reformation or cancellation of the Municipal Quitclaim Deed should be granted *de novo*, or the matter remanded for further proceedings.

3. Appellant also proved reformation pursuant to 18-C M.R.S.A. § 2-805, to the extent applicable

On the basis of the arguments above, *see supra* Section C.2, the Town's intention was that the joint tenancy remain; the terms of the governing instruments, in their expression, were affected by mistake; and both the intention and the mistake were proved by clear and convincing evidence. 18-C M.R.S.A. § 2-805. The language of the Municipal Quitclaim

Deeds establish that the Town did not intend to fundamentally alter the estate to which Appellant and Brian Priest claimed ownership. The Town, by contrast, had no intention to grant any particular estate at all. That it arguably did so by omitting joint tenancy language was therefore a mistake, requiring reformation "to conform the terms to the transferor's intention." 18-C M.R.S.A. § 2-805.

Reformation or cancellation of the Municipal Quitclaim Deed should be granted *de novo*, accordingly, or the matter remanded for further proceedings.

V. CONCLUSION

Maine municipalities cannot fundamentally alter homeowners' estate and survivorship rights in tax lien foreclosure proceedings by the mere filing of a quitclaim deed silent on the issue of joint tenancy. No severance of Appellant's joint tenancy by the Town of Pembroke occurred, as the quitclaim deeds did not change Appellant's prior ownership interest. Even were reformation required, as a matter of equity and statutory law, Appellant met her burden. Appellant's joint tenancy in her property on Leighton Point Road in Pembroke should be found to have endured, and the Probate Court's order to the contrary reversed, or a remand ordered.

Dated at Dover-Foxcroft, Maine, this 24th day of July, 2024.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I, Andrew K. Lizotte, attorney of record for Petitioner-Appellant, hereby certify that I have on this 24th day of July, 2024, caused two copies of the foregoing Brief to be served upon the counsel of record in this action by U.S. Mail addressed as follows, in addition to the ten copies also filed contemporaneously with the Clerk of the Law Court:

Nate Hodgkins, Esq.
9 Free St. P.O. Box 143
Machias, Maine 04654

I further certify that one electronic copy of the foregoing Brief has also been emailed to the Clerk of the Law Court and to counsel for Respondent-Appellee.

Dated at Dover-Foxcroft, Maine, this 24th day of July, 2024.

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