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

REPLY BRIEF OF PETITIONER-APPELLANT LISA C. PRIEST

Andrew K. Lizotte, ME Bar # 5693
156 Lawrence Street
Dover-Foxcroft, ME 04426
(617) 899-1318
aklizott@gmail.com

Counsel for Petitioner-Appellant
Lisa C. Priest

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

STATE STATUTES

MAINE RULES OF APPELLATE PROCEDURE

I. ARGUMENT

Appellant Lisa C. Priest hereby files the instant reply brief confined to the arguments raised in Appellee Lisa M. Leighton's brief ("Appellee's Brief" or "Appellee's Br."), stating as follows. M. R. App. P. 7(c).[1]

A. The Municipal Quitclaim Deeds Left Appellant's Joint Tenancy Intact

Appellee is mistaken that the Legislature's amendment of 33 M.R.S.A. § 159 created only "one very specific exception" under which to find that Appellant's joint tenancy endured. Appellee's Br. at 6. Maine public policy, the precedent of this Court, and the statutory text are not so narrow.

At the outset, Appellee misconstrues the "longstanding rule[s] of construction" applicable to the Municipal Quitclaim Deeds. Appellee's Br. at 5-6. Appellee cites a passage[2] from this Court's decision in *Palmer v. Flint*, 156 ME 103, 161 A.2d 837 (Me. 1960), to argue that "English common law may have once favored joint tenancies, but that has not been the case in

[1] All capitalized terms used herein (*e.g.*, the "Property," the "Municipal Quitclaim Deeds") refer back to those from Appellant's opening brief ("Appellant's Brief" or "Appellant's Br.") filed on July 24, 2024.

[2] "'With the substantial abolishment of tenures …joint tenancies became disfavored, and as a result statutes have been enacted in practically all of our states, either abolishing or changing the common law rule. Our state as early as 1821 enacted legislation modifying this rule. The statute relating to conveyances … [in effect on] August 1, 1940, reads as follows: … Conveyances not in mortgage, and devises of land to two or more persons, create estates in common, unless otherwise expressed.' *Palmer v. Flint,* 161 A.2d 837, 839 (Me. 1960)."

[] Maine for a very long time." Appellee's Br. at 5 n.2. Appellee neglects to provide the salient discussion from *Palmer v. Flint* that follows:

> [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). This Court went on to highlight that joint tenancies are, in fact, "looked upon with favor rather than with disfavor," and that "deeds, if possible, should be construed as joint tenancies in the entire estate parted with by the grantor." *Id.* at 113, 842. Maine law is not antagonistic to joint tenancies. The opposite is true.

Moreover, in construing the statutory text of 33 M.R.S. §§ 159 and 161, Appellee fails to meaningfully address the critical import of this Court's decision in *Sargent v. Coolidge*, 399 A.2d 1333 (Me. 1979). Neither statute is absolute. "Conveyances not in mortgage and devises of land to 2 or more persons create estates in common, *unless otherwise expressed*" under 33 M.R.S. § 159, and pursuant to 33 M.R.S. § 161, quitclaim deeds are only capable of conveying an estate "which the grantor *has and can convey. . .*"

(Emphasis added.) Contrary to Appellee's position, *Sargent v. Coolidge* states that quitclaim deeds do not convey any type of estate ownership. *Contra* Appellee's Br. at 6 n.3. Nor is Appellant's interpretation "at direct odds with the plain language of 33 M.R.S.A § 161," *see id.*, given that *Sargent v. Coolidge* was discussing 33 M.R.S.A. § 161 when it held that "[n]otwithstanding the above statutory enactment" [33 M.R.S.A. § 161], it would appear that our Court has interpreted the same as not applicable to quitclaim deeds that convey only the 'right, title and interest' of the grantor in land as distinguished from a deed of conveyance, quitclaim or otherwise, which conveys the land itself." 399 A.2d 1333, 1343 (Me. 1979).

As interpreted in *Sargent v. Coolidge*, the "longstanding rule of conveyance reflected in 33 M.R.S. § 161" (Appellee's Br. at 6) is therefore not as monolithic as Appellee suggests. Rather, "notwithstanding" 33 M.R.S. § 161, 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). Here, the Municipal Quitclaim Deeds were executed as "releases" merely "to convey the Town's interest in the [Property] by virtue of [the] tax lien." App. at 47-48. Neither instrument was a deed of bargain and sale. *Sargent*, 399 A.2d at 1343. Neither instrument effected an actual conveyance of land. *Id.* As

such, under *Sargent v. Coolidge*, the particular language used in the Municipal Quitclaim Deeds "otherwise expressed" that "estates in common" were *not* created (33 M.R.S.A. § 159); because the Municipal Quitclaim Deeds conveyed no lands, there was no estate which the Town had and could convey (33 M.R.S.A. § 161). Accordingly, the particular language used in those instruments should not have been construed to alter Appellant's prior joint tenancy in the Property.

Finally, 36 M.R.S.A. § 943 alternatively supports Appellant's arguments that her rights in the Property—as one of the "other parties" under Section 943 "claiming an interest"—were revived as if the Town's tax liens had not been foreclosed. *Contra* Appellee's Br. at 7. Section 943 does not "refer unambiguously to interest holders *other than* the former titleholders." Appellee's Br. at 7 (emphasis original). For example, in addition to secured creditors, former title holders, and successors, municipalities themselves may have an interest revived if a new tax lien is filed during the pendency of the tax lien mortgage foreclosure but has not yet been completed within the 18-month period. 36 M.R.S.A. § 943. Moreover, unaddressed by Appellee is the fact that the only "party" referenced in the statutory language is "the party named on the tax lien mortgage"—here, Appellant and Brian Priest, as party-defendants.

B. The Probate Court Erred in Ruling Against Reformation

While it is true that Appellant—then proceeding *pro se*, nearly two decades after the entry of the first Municipal Quitclaim Deed—"called no one on behalf of the [T]own to speak to the Town['s] intentions," she did present sufficient evidence to establish reformation. *Contra* Appellee's Br. at 8-9. Appellant submitted the Municipal Quitclaim Deeds themselves. These operative instruments were not so much as mentioned by the Probate Court below. Appellee, too, now elides any mention of the actual language, which provides the best evidence of the parties' intentions.

The terms of the Municipal Quitclaim Deeds make clear that Appellant's joint tenancy was not meant to be disturbed. Appellant and Brian Priest twice made full payment to the Town of all tax liens and costs. It was "for th[is] consideration paid" that the Town, only "[m]eaning and intending to convey the Town's interest in the [Property] by virtue of [the] tax lien[s]," released the Property back. The Town's interests under the tax liens were not possessory. No grant of land was made. And no particular estate was transferred. The language of the Municipal Quitclaim Deeds therefore made clear that no change to the status quo was intended. As recognized by *Sargent v. Coolidge*, the Town would not have been intending to convey—or alter—any particular estate in the Property. Nor

would it have had any reason to unilaterally and through its silence act as final arbiter of Appellant's survivorship rights.

II. CONCLUSION

The issues presented by this case are critical not just for Appellant, but also for the larger—and largely unknown—number of Mainers who decades later may find themselves affected by a town clerk's similar approach in tax foreclosure proceedings. Appellant's plea to the Probate Court, colloquial as it was, concisely framed this nascent problem:

> [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?

App. at 32. Appellee's interpretation of the law may persistently and insidiously impact individuals who, like Appellant, fully repay tax liens and costs, only to later learn that their bargained-for joint tenancy lacks its distinguishing feature, the right of survivorship. Appellant submits that her interpretation is the fairer one, paying closer fidelity to the parties' intentions and to the law. Construing the particular language of the Municipal Quitclaim Deeds shows that no particular estate in the land was granted, and that the prior joint tenancy endured.

In the final analysis, the Probate Court therefore erred in proceeding on the faulty assumption that Appellant's joint tenancy was severed by the Municipal Quitclaim Deeds. Even had severance occurred, strong bases for reformation existed, and were overlooked—or not even considered—by the Probate Court. Accordingly, Appellant's joint tenancy in her Property should be recognized, and the Probate Court's order to the contrary reversed, or a remand entered.

Dated at Dover-Foxcroft, Maine, this 11th day of October, 2024.

Respectfully Submitted

Andrew K. Lizotte, ME Bar # 5693
156 Lawrence Street
Dover-Foxcroft, ME 04426
(617) 899-1318
aklizott@gmail.com

Counsel for Petitioner-Appellant
Lisa C. Priest

CERTIFICATE OF SERVICE

I, Andrew K. Lizotte, attorney of record for Petitioner-Appellant, hereby certify that I have on this 11th day of October, 2024, caused two copies of the foregoing Reply 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 Reply Brief has also been emailed to the Clerk of the Law Court and to counsel for Respondent-Appellee.

Dated at Dover-Foxcroft, Maine, this 11th day of October, 2024.

Respectfully Submitted

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Andrew K. Lizotte, ME Bar # 5693
156 Lawrence Street
Dover-Foxcroft, ME 04426
(617) 899-1318
aklizott@gmail.com

Counsel for Petitioner-Appellant
Lisa C. Priest