

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. PEN-24-581

ANDREW D. CUNNINGHAM,

Plaintiff/Appellee

v.

KAREN CUNNINGHAM,

Defendant/Appellant

ON APPEAL FROM AN ORDER ENTERED BY THE NEWPORT DISTRICT
COURT, DOCKET NO. NEWDC-FM-2023-00017

BRIEF OF APPELLANT
KAREN CUNNINGHAM

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INTRODUCTION

This case is a divorce matter between Andrew Cunningham (“Andrew”) and Karen Cunningham (“Karen”) involving no children who remained minors at the time of the divorce judgment. The primary issues related to the determination of marital versus nonmarital property and the division of marital property, including several parcels of real estate and numerous vehicles. Karen contends that the court erred in its determination of marital versus nonmarital property since Karen received a lump sum workers’ compensation settlement based on an injury that occurred prior to the marriage, which was intended to compensate her for both past and future lost wages and medical expenses. The portion of that settlement which compensates Karen for lost wages and medical expenses after the divorce should have been classified as Karen’s nonmarital property.

Furthermore, a piece of real estate that Karen purchased with her workers’ compensation settlement funds should have been classified as nonmarital. Karen’s undisputed testimony was that she used some of those nonmarital settlement funds, with Andrew’s knowledge, to purchase the real estate at 761 Lebanon Road, such that the court should have found that real estate to be Karen’s nonmarital property. Karen also contends that the court made various errors in the valuation and distribution of the marital property, including erroneously valuing the parties’ marital residence at its tax-assessed value without consideration of the significant

damage and disrepair which has dramatically decreased the value of that property. Karen further contends that the court's ultimate distribution of marital property was not fair and equitable, and it failed to take into consideration the relative economic circumstances of each spouse at the time of the distribution. Finally, Karen contends that the District Court failed to grant her motion for a new trial when, after seeing the judge's name on the divorce judgment, Karen recognized the judge's name as an attorney who had previously represented her in a criminal matter, with whose representation Karen had been seriously dissatisfied.

STATEMENT OF FACTS

Andrew Cunningham and Karen Cunningham were married on December 30, 2001. Transcript (hereinafter "Tr."), p. 109. Andrew filed for divorce in January 2023. The parties had four children¹ (Tr., p. 110, 114), but by the time the divorce was granted, the parties' youngest child had attained the age of majority (Tr., p. 10), so no issues were presented regarding child custody or child support.

Andrew testified that he was a tractor-trailer truck driver during the marriage and continued as such up until "maybe three years ago." Tr. at 16. In contrast, Karen testified that Andrew had been a truck driver up until only 2012, when he was going in for his sixth or seventh cardiac stent. Tr. at 110-11. Andrew agreed that he had

¹ The parties had three children together and Karen had a child from a previous relationship. The District Court erroneously stated that the parties had only one child. Appendix, p. 15.

trouble remembering things. Tr. at 17. He testified that he stopped working as a truck driver for numerous health reasons. Tr. at 17-18. At the time of hearing, however, he testified that he was still medically capable of driving a truck. Tr. at 18. At the time of the hearing, Andrew was receiving Social Security benefits and also worked as a volunteer driver for Penquis Transportation (sometimes referred to by the parties as “Lynx”), for which he got paid reimbursement for transporting dialysis patients and medical patients. Tr. at 10. He testified that he had no other income at that time. Tr. at 10.

Karen testified that she has been disabled since a work injury sustained on August 30, 1996. Tr. at 119. She was seriously injured when a 7-foot-tall stack of juices fell on her, and has since undergone eight surgeries and has a pain pump in her stomach. Tr. at 119. Karen has received Social Security Disability benefits since 2001. Tr. at 108-09. She also is a volunteer driver for Penquis CAP, for which she is reimbursed for mileage. Tr. at 108. Karen testified that during the marriage, she and Andrew made money by plowing driveways, and she handled all financial aspects of collecting the money for their services. Tr. at 107-08. Karen also made extra money during the marriage by landscaping, growing and canning vegetables, making pickles, and selling those items. Tr. at 110. She also made money babysitting, once having a total of 12 kids besides the parties’ own four children to watch. Tr. at 110. The parties’ respective incomes were direct-deposited into a joint checking account

which by agreement Karen managed and used to pay the household expenses. Tr. at 56-57, 111-112.

Recently,² Andrew was hospitalized with a very bad case of COVID and was on a ventilator for several weeks. Tr. at 18-19, 58, 116. Prior to Andrew's hospitalization, Karen and her son cared for him at home for two weeks until he could no longer get up to go to the bathroom. Tr. at 116-17. The parties separated and Andrew moved out in November of 2022 then filed for divorce in January 2023. Tr. at 24, 42. Following a hearing held on July 18, 2024, the court (Ociepka, J.) entered a divorce judgment on September 13, 2024. Upon reading the judgment, Karen realized that the trial judge, Hon. Sean Ociepka, was the same attorney who had previously represented her on a criminal matter in Waldo County, the result of which left her extremely dissatisfied. Karen thereafter moved for a new trial on grounds that the prior representation had influenced the outcome of the divorce. The court held a final conference on December 2, 2024 during which Judge Ociepka addressed, and ultimately denied, Karen's motion for a new trial. This timely appeal followed.

² The court found in the divorce judgment that Andrew had been hospitalized in 2021 (Appendix, p. 16); however, Andrew testified that he received settlement funds from a Roundup lawsuit while he was in the hospital. Tr. at 19. The dates on the Roundup settlement checks are February 4, 2022 and July 5, 2022 respectively. Exhibit 19.

ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT KAREN'S ENTIRE WORKERS' COMPENSATION SETTLEMENT WAS MARITAL PROPERTY.

II. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT THE REAL ESTATE AT 761 LEBANON ROAD WAS MARITAL PROPERTY, SINCE IT WAS PAID FOR WITH KAREN'S WORKERS' COMPENSATION SETTLEMENT.

III. WHETHER THE DISTRICT COURT ERRED IN DENYING KAREN'S MOTION FOR A NEW TRIAL BASED ON THE COURT'S PREVIOUS ATTORNEY-CLIENT RELATIONSHIP WITH KAREN.

IV. WHETHER THE DISTRICT COURT ERRED IN VALUING THE 127 BOSTON ROAD PROPERTY AT \$237,500 DESPITE UNREFUTED TESTIMONY REGARDING EXTENSIVE DAMAGE AND DISREPAIR THAT SIGNIFICANTLY REDUCED THE VALUE OF THAT PROPERTY.

V. WHETHER THE DISTRICT COURT ERRED IN FAILING TO MAKE A JUST AND FAIR DISTRIBUTION OF THE MARITAL PROPERTY.

VI. WHETHER THE DISTRICT COURT ERRED IN FAILING TO TAKE INTO CONSIDERATION THE PARTIES' RELATIVE CONTRIBUTIONS TO THE ACQUISITION OF MARITAL PROPERTY AND THE ECONOMIC CIRCUMSTANCES OF EACH SPOUSE AT THE TIME OF THE PROPERTY DIVISION.

LEGAL ARGUMENTS

I. THE DISTRICT COURT ERRED IN FINDING THAT KAREN’S ENTIRE WORKERS’ COMPENSATION SETTLEMENT WAS MARITAL PROPERTY.

This Court “will disturb a divorce judgment only if (1) the court’s factual findings are clearly erroneous, (2) the court has erred as a matter of law, or (3) the court has abused its discretion in crafting the judgment.” *Doucette v. Washburn*, 2001 ME 38, ¶ 7, 766 A.2d 578 (citations omitted). A court’s determination of what property is marital or nonmarital is reviewed for clear error, and this Court “will not disturb the determination if there is competent evidence in the record to support it.” *Sewall v. Saritvarich*, 1999 ME 46, ¶ 14, 726 A.2d 224 (citation omitted). However, this Court reviews the application of the law to the facts de novo. *Bojarski v. Bojarski*, 2012 ME 56, ¶ 15, 41 A.3d 544 (citation omitted).

The court addressed Karen’s lump sum settlement in Findings of Fact and Conclusions of Law accompanying the divorce judgment. The court found that Karen finalized the settlement in 2010 based on injuries that occurred prior to the marriage. The court found that she “received a total of \$265,570.79 in a lump sum payment as well as a ‘guaranteed’ medical set aside benefit of \$199,538.00, to be paid to her in annual installments of \$8,652.00 through May of 2030. She may also receive continued annual payments of \$8,652.00 after May of 2030 for another 12 years, if living.” Appendix, p. 16, par. 14. The court found that Karen used “much

of the lump sum cash payment she received to purchase an annuity” out of which she had withdrawn \$222,980.97 by the end of 2023, with the remaining value of the annuity being \$59,083.85 as of December 29, 2023. Appendix, p. 17, par. 15. The court found that Karen had not met her burden of proving that specific components of her settlement were nonmarital; thus, the court concluded that the entire lump sum settlement was marital property. Appendix, p. 19, par. 23.

The court’s finding that a portion of the lump sum settlement proceeds were to continue in annual installments to May of 2030 and for an additional 12 years thereafter if Karen is still living is inconsistent with its finding that Karen failed to prove a portion of those settlement funds were nonmarital and is legally erroneous as a matter of law. Moreover, the lump sum settlement disbursement sheet, Plaintiff’s Exhibit 20, delineated separate amounts for medical payments (\$199,538.00) versus wage replacement benefits (\$320,000.00), and as to the latter, delineated what portion was paid for past due benefits from January 31, 2006 to the date of the settlement, December 8, 2010 (\$79,917.17). By implication, the remainder of the wage replacement benefits paid in the lump sum (\$240,082.83) were forward-looking over the remainder of Karen’s working life, which will obviously continue for many years after the parties’ separation and divorce; thus, that portion of the divorce judgment must be vacated.

“It is well established that property acquired by either spouse during the marriage is presumed to be marital property.” *Cummings v. Cummings*, 540 A.2d 778, 779 (Me. 1988) (citations omitted). “In order to invoke this presumption, however, the property being characterized as marital must have been acquired during the marriage. *Id.* Here, the trial court expressly found that a portion of Karen’s workers’ compensation settlement would be paid in annual installments of \$8,652.00 per year going forward after the divorce potentially up until May 12, 2043 if Karen is still living. Since the parties separated in 2022 and the divorce judgment was entered in September 2024, any annual payments made after that time are, by definition, not marital property. The District Court erred in finding the entirety of Karen’s lump sum settlement to be marital property, and the judgment must be reversed on that ground.

Although that error alone is sufficient to require reversal of the judgment, the District Court also erred in finding that Karen had not met her burden of proving that a portion of the workers’ compensation benefits paid to her in a lump sum was non-marital property. In *Doucette v. Washburn*, 2001 ME 38, 766 A.2d 578, the Law Court addressed the issue of whether a lump sum workers’ compensation settlement was marital or nonmarital. It noted that because workers’ compensation benefits usually represent a replacement for lost earnings, they are presumed to be marital property unless proven otherwise. *Id.*, 2001 ME 38 at ¶ 9. “That proof may be

accomplished by demonstrating that the award is intended to compensate the recipient for earnings that would not have accrued during the marriage.” *Id.* at ¶ 13.

In the present case, the first page of Plaintiff’s Exhibit 20 was a lump sum disbursement sheet describing the gross settlement, the attorney’s fees to be paid, and the net settlement funds to be paid to Karen. That document demonstrates that a portion of the gross settlement (\$199,538.00) was for a medical set aside, and the remainder of the settlement (\$320,000.00) was not expressly allocated. However, the document also shows that Karen’s attorney sought a 30% fee on accrued benefits for past lost earnings for the period of January 31, 2006 up to the date of settlement, December 8, 2010 (see also Petition for Approval of Attorney’s Fees on Accrued Benefits, which is also part of Plaintiff’s Exhibit 20); thus, by necessary implication, the remainder of the settlement was to compensate Karen for lost earnings going forward after the date of settlement. Karen’s date of birth is August 6, 1969, making her only 41 years old at the time of the lump sum settlement and 55 years old at the time of the divorce judgment. Therefore, Karen’s normal retirement age of 65 will occur ten years after the divorce, and a portion of the wage replacement benefits paid in the lump sum settlement should have been determined to be nonmarital property, as they are to compensate Karen for earnings that would not have accrued during the marriage. See *Doucette*, 2001 ME 38 at ¶¶ 14-15 (finding that the court properly found a portion of a workers’ compensation lump sum settlement was not marital

property because it represented earnings that defendant would have earned over his remaining lifetime, including after the divorce).

II. THE DISTRICT COURT ERRED IN FINDING THAT THE REAL ESTATE AT 761 LEBANON ROAD WAS MARITAL PROPERTY, SINCE IT WAS PAID FOR WITH KAREN'S WORKERS' COMPENSATION SETTLEMENT.

A court's determination of what property is marital or nonmarital is reviewed for clear error, and this Court "will not disturb the determination if there is competent evidence in the record to support it." *Sewall v. Saritvarich*, 1999 ME 46, ¶ 14, 726 A.2d 224 (citation omitted).

As set forth above, a portion of Karen's workers' compensation settlement was intended to compensate her for medical expenses and lost earnings into the future, long after the divorce, and is properly characterized as nonmarital. Karen testified at the divorce hearing that she purchased the property at 761 Lebanon Road for \$36,500 using funds drawn from her trust established from the workers' compensation lump sum settlement funds. Tr. at 121-22. Indeed, the check to purchase the property was made out by the trust company, Wells Fargo, and paid directly to the selling company. Tr. at 204-205. Karen further testified that she did over \$40,000 worth of work to the property thereafter. Tr. at 122. The deed to that property is solely in Karen's name; it is not held in joint ownership with Andrew. Tr. at 123. Karen put "sweat equity" in the property, drawing on her past experience working as a builder and a carpenter for more than seven years. Tr. at 124. The only

work that Andrew did to that property was to put up a few pieces of vinyl siding (which had to be ripped off because they were installed incorrectly), mowed the grass once, and plowed the driveway multiple times. Tr. at 124-125.

Andrew corroborated Karen's testimony that she purchased the Lebanon Road property with her settlement funds. Tr. at 52-55. Andrew agreed that his name was never on the deed for that property and he never signed a mortgage to pay for that property. *Id.* He also agreed that he didn't want anything to do with the property, that it was "her baby," Tr. at 259, in other words, her non-marital property.

The Law Court has held that if a party presents evidence to show that the purchase of a property was financed in part with nonmarital funds, the portion of the value of the property attributable to the nonmarital funds remains nonmarital (with the exception of when the property is acquired in joint tenancy with the spouse during marriage, which is not the case here). *Clum v. Graves*, 1999 ME 77, ¶ 10, 729 A.2d 900. Because Karen purchased the Lebanon Road property with nonmarital funds and also paid for improvements to the property with nonmarital funds, the court erred in holding that the Lebanon Road house was marital property.

III. THE DISTRICT COURT ERRED IN DENYING KAREN'S MOTION FOR A NEW TRIAL BASED ON THE COURT'S PREVIOUS ATTORNEY-CLIENT RELATIONSHIP WITH KAREN.

This Court reviews the granting or denying of a motion to recuse for an abuse of discretion. *Robertson v. Gerakaris*, 2015 ME 83, ¶ 10, 119 A.3d 739; *Charette v.*

Charette, 2013 ME 4, ¶ 23, 60 A.3d 1264. Where a party fails to make a timely motion for recusal, however, this Court reviews for obvious error. *Samsara Mem'l Trust v. Kelly, Remmel & Zimmerman*, 2014 ME 107, ¶ 25, 102 A.3d 757.

Following the entry of the divorce judgment, Karen filed a motion for a new trial on grounds that she had previously been represented by the judge in a criminal matter and had been extremely dissatisfied with that experience. She explained that she didn't raise the issue sooner because she did not recognize the judge until she saw his name on the divorce judgment. Karen believed that the prior representation influenced the outcome of the hearing.

In *Charette*, the Law Court treated a party's motion for findings of fact that alleged bias on the part of the judge as a request that the court recuse itself post-judgment. Karen's motion for a new trial here was also effectively a motion for post-judgment recusal.

The court held a virtual conference by video/telephone on December 2, 2024 to discuss Karen's motion for a new trial. Judge Ociepka stated that it was his habit to introduce himself at the outset of any proceeding, and that "It's likely I did that at the very outset of the final hearing in this case, as well, identified myself, and Ms. Cunningham did not raise any issue at that time whether through pretrial proceedings or at the outset of the final hearing." Appendix, p. 29. The court stated that under the Maine Code of Judicial Conduct and *Charette*, if there was a concern about the

propriety of a judge hearing a case, “that needs to be raised prior to a judgment being entered, or otherwise, that issue is waived.” Appendix at p. 29-30. Judge Ociepka also indicated that he had no recollection of his representation of Karen and that therefore it could not have affected the outcome of the hearing. As such, the court denied Karen’s motion for a new trial. Appendix, p. 31-32.

Review of the transcript of the final hearing makes it apparent that despite Judge Ociepka’s usual habit of introducing himself at the outset of any proceeding, he did not do so at the final hearing in this case. Moreover, at the outset of the hearing, Karen indicated that she was having difficulty hearing until she was given a hearing device to use. Tr. at 5-6. Thus, her failure to raise the issue of potential judicial bias at the time of the hearing is excusable, as the judge did not introduce himself. Moreover, Karen’s experience with Judge Ociepka was when he was a lawyer, and she had no reason to know that he was now a judge who would be deciding her case. Unlike in *Charette* where the facts underlying the recusal motion were known to the parties and attorneys at all times during the proceedings, the fact of Judge Ociepka’s prior representation of Karen was not remembered by Karen, and not within the knowledge of her attorney, prior to the entry of judgment in this case. As such, the court’s decision that Karen had waived her objection by failing to raise it sooner is an abuse of discretion.

“Pursuant to the Maine Code of Judicial Conduct, ‘a judge must recuse himself on motion for recusal made by any party in which his impartiality might reasonably be questioned or in which the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning a proceeding.’” *Charette*, 2013 ME 4, ¶ 21. See also Rule 2.11(A)(1), which requires recusal where the judge has personal knowledge of facts in dispute in the proceedings “when the personal knowledge that would form the basis for disqualification has been gained outside the regular course of present or prior judicial proceedings.”

Here, the judge’s personal knowledge relating to representation of Karen in a previous criminal charge may have colored the judge’s assessment of Karen’s credibility or character. Karen was extremely displeased with the prior representation, and her displeasure with Judge Ociepka may have affected his perception of her. Any information that Judge Ociepka gained from Karen while he was acting as her attorney in a criminal matter in the past was gained outside the regular course of present or prior judicial proceedings. At the very least, the prior representation raises the distinct appearance of impropriety, and it was an abuse of discretion for the court to deny Karen’s motion for a new trial before an impartial judge.

IV. THE DISTRICT COURT ERRED IN VALUING THE 127 BOSTON ROAD PROPERTY AT \$237,500 DESPITE UNREFUTED TESTIMONY REGARDING EXTENSIVE DAMAGE AND DISREPAIR THAT SIGNIFICANTLY REDUCED THE VALUE OF THAT PROPERTY.

A court's valuation of marital property is reviewed for clear error. *Nadeau v. Nadeau*, 2008 ME 147, ¶ 42, 957 A.2d 108. "The value of the parties' property is determined as of the time it is to be distributed...." *Littell v. Bridges*, 2023 ME 29, ¶ 10, 293 A.3d 445 (quoting Levy, *Maine Family Law* § 7.8[1] at 7-64 (8th ed. 2013)).

Andrew and Karen owned two properties together on Boston Road – the marital residence at 127 Boston Road, and a vacant parcel at 130 Boston Road. Andrew testified that the marital residence had been purchased in roughly 2002 and that at the time of the divorce hearing, it had "poor value. It's had a lot of damage done...to it." Tr. at 11-12. Andrew testified that he had relied on the tax-assessed value of the house in valuing the property in his financial statement at \$237,500, with approximately \$67,000 remaining in debt on the property. Tr. at 12. On cross-examination, Andrew clarified that the property had holes in the walls, the bathroom was torn out for renovations that were not completed, the house was infested with mice, the back deck had rotted and been torn off, doors needed replacing, and there were unfinished rooms in the house. Tr. at 43-45, 48-49. Significantly, Andrew agreed that in its present condition, the home could not sell for the assessed value, but if it was fixed, "perhaps" it could sell for more. Tr. at 104-05. Andrew also

admitted that he had not seen the house since he left the marital home in November 2022, so any basis for his opinion of value would date back two years. Tr. at 255.

Karen testified that in spite of the Town's tax-assessed value, the home at 127 Boston Road was not worth more than \$60,000, and the mortgage balance exceeded that value. Tr. at 125-26. Karen clarified on cross-examination that she meant the house itself was worth about \$60,000, and the home, garage and land had a total value of approximately \$124,500. Tr. at 177-78. The basement of the home has been flooded multiple times, and there is water damage and mold to the first two feet of every wall in the basement. Tr. at 126-27. Karen testified that the windows of the basement need to be sealed because every time it rained, water infiltrated the basement. Tr. at 127. The basement was a finished basement except for an area where they stored firewood, but at the time of the hearing, it had two and a half inches of water in it. Tr. at 127. Karen testified that the front deck had been constructed improperly with only one sill, so the deck had fallen almost six inches and was in "total disarray," and she and her son were in the process of jacking it up and putting in a new frame. Tr. at 128-130. Karen testified that there was new vinyl siding that needed to be put back up, and the roof had been trimmed incorrectly and was "starting to fold up." Tr. at 130. The door to the basement is off-kilter and can't be opened or closed completely, and the back deck needs to be completely replaced. Tr. at 130. Karen testified that the foundational sills are rotten and need to be

replaced. Tr. at 130-31. Although there was an oil furnace in the basement, it had never been hooked up. Tr. at 132. The only other source of heat, a wood stove, was damaged as a hole had burned through the metal, and it needs to be either repaired or replaced. Tr. at 133, 135. The flue for the chimney for the wood stove also needs to be replaced. Tr. at 135. The interior of the house needs walls to be patched and painted. Tr. at 137. At a time when Andrew was in the hospital with COVID, Karen started renovations to a bathroom to put in a handicap shower and began redoing a bedroom so Andrew would have a place to recover, as she understood he would require in-home medical services. Tr. at 138-39. Karen estimated that the cost to bring the home back to its assessed value would be \$162,000. Tr. at 140. Karen's opinion was based on her prior experience working as a carpenter doing all kinds of household-improvement jobs, including building, putting in windows, fixing cabinets, preparing estimates, shopping for materials, replacing walls and sills, and the like. Tr. at 141-44.

Andrew and Karen's 23-year-old son, Jarrod, confirmed his mother's testimony regarding the condition of the Boston Road home. He testified that he grew up in that property and now goes there one or two days a week to work on the home. Tr. at 236-37. He testified that three of the six front windows are broken, and three of eight posts holding up the porch are degraded. Tr. at 237. He stated that they had to jack up the porch to hold it in place because the whole front is bowed and the

left side has sunken six to eight inches. Tr. at 237. There are holes in the walls of the house and an unfinished bedroom that was in the middle of being remodeled. Tr. at 237-38. Jarrod testified that the garage sills are corroded and it leaks “like crazy” during the winter and when it rains. Tr. at 239.

Given the unrefuted testimony that the 127 Boston Road residence was in a serious state of disrepair, it was clear error for the court to simply accept the assessed tax valuation of that property and find that the property’s value was \$237,500. Based on that finding, the court ordered Karen to refinance the mortgage debt to remove Andrew’s name and pay Andrew \$85,328, representing his share of the marital equity in the real estate, Appendix, p. 11 (\$237,500 minus the outstanding mortgage debt of \$67,644, Appendix, p 17).³ In so finding, the court appears to have credited Andrew’s testimony over Karen’s, although Andrew admitted that even installing vinyl siding on a house was outside his capability, since he reiterated twice at the hearing that he was “not a carpenter.” Tr. at 15, 47. In contrast, Karen worked as a carpenter for more than seven years, Tr. at 124, 142, and was therefore familiar with preparing estimates for construction and repairs. Tr. at 142-43. The court’s clearly erroneous finding as to the value of the 127 Boston

³ The court appears to have made a mathematical error. Using the court’s numbers, \$237,500 minus the outstanding mortgage debt of \$67,644 is \$169,856, not \$170,656 as the court stated at paragraph 16 of its Findings of Fact. Appendix, p. 17. Thus, one-half of the equity in the property would be \$84,928, not \$85,328.

Road property requires reversal of the divorce judgment for reconsideration of the actual present value of the Boston Road property in its state of serious disrepair.

V. THE DISTRICT COURT ERRED IN FAILING TO MAKE A JUST AND FAIR DISTRIBUTION OF THE MARITAL PROPERTY.

This Court “review[s] the division of marital property for an abuse of discretion and will not disturb a property distribution ‘if there is competent evidence in the record to support it.’” *Viola v. Viola*, 2015 ME 6, ¶ 9, 109 A.3d 634 (quoting *Nadeau v. Nadeau*, 2008 ME 147, ¶ 42, 957 A.2d 108).

A. The District Court Erred in Failing to Take Into Consideration the Parties’ Relative Contributions to the Acquisition of Marital Property and the Economic Circumstances of Each Spouse at the Time of the Property Division.

In a divorce action, a court “shall set apart to each spouse the spouse’s property and shall divide the marital property in proportions the court considers just after considering all relevant factors, including: A. The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker; B. The value of the property set apart to each spouse; C. The economic circumstances of each spouse at the time the division of property is to become effective . . .; and D. Economic abuse by a spouse.” 19-A M.R.S. § 953(1). “A just distribution of property is not synonymous with an equal distribution”; rather, the court “is required to make the division fair and just considering all of the circumstances of the parties. *Doucette v. Washburn*, 2001 ME 38, ¶ 24, 766 A.2d 578. Here, the court erred in failing to adequately consider subsections A and C to

Section 953(1): the contributions of each spouse to acquisition of marital property, and the economic circumstances of each spouse at the time of the divorce.

1. The District Court failed to consider Karen's significant contributions to the acquisition of marital property, including her contributions as a homemaker and her contribution from her workers' compensation settlement.

The District Court prefaced its findings of fact and conclusions of law by noting that Andrew and Karen "have one child together, who is now an adult." Appendix, p. 15. The parties actually had a total of four children, whom Karen raised while Andrew worked as a truck driver from the beginning of their marriage in 2001 until approximately 2012 when he stopped driving a truck due to his health conditions. Tr., p. 110-11, 114. Thus, the court failed to consider the value of Karen's contributions to the household in raising the four children throughout the course of the marriage.

During the marriage, Karen received Social Security Disability benefits and Andrew worked as a truck driver; therefore, both Karen and Andrew contributed financially to the parties' acquisition of marital property. Karen and Andrew also both made money by plowing driveways, and Karen further contributed by handling the financial aspects of collecting the money for their services. Tr. at 107-08. Karen also made extra money during the marriage by growing and canning vegetables, making pickles, and selling those items. Tr. at 110. She also made money babysitting, once having a total of 12 kids besides the parties' own four children to

watch. Tr. at 110. The parties' respective incomes were direct-deposited into a joint checking account, which Karen managed and used to pay the household expenses.

Tr. at 56-57, 111-112.

Karen and Andrew both received settlement monies from legal proceedings during the course of the marriage. Andrew received a total of \$68,433.02 in settlement of a Roundup lawsuit in 2022. Plaintiff's Exhibit 19. Karen received a lump sum workers' compensation settlement in 2010, some of which is nonmarital as discussed in Section I above. She used a portion of those funds to pay for the 761 Lebanon Road property, as discussed in Section II above. However, as the District Court correctly found, Karen withdrew \$222,980.97 of her settlement funds between 2010 and the end of 2023, during the marriage. Excluding the amounts she used for the purchase and repair of the 761 Lebanon Road property (\$76,500)⁴, therefore, the remainder of the withdrawn funds, or \$146,480.97, were used for marital purposes, including paying marital debts and the acquisition of marital property. Thus, Karen's contribution to the marital household from her workers' compensation settlement far exceeded (indeed, was more than double than) the amount that Andrew contributed to the household from his Roundup settlement. The District Court erred in failing to

⁴ Karen had originally intended to fix up the Lebanon Road property and "flip" it – that is, resell it at a profit – to use those funds to pay off the family home so she and Andrew could live free of debt. Tr. at 51, 122. That did not happen because Andrew filed for divorce in January 2023.

take Karen's greater contribution to the marital household into account in determining what would be a just and fair distribution of the marital property.

2. The District Court failed to consider the economic circumstances of each spouse at the time the division of property was to become effective.

In addition to failing to consider Karen's significant contributions to the marital property both in acting as homemaker, raising the parties' four children, and in contributing nearly \$150,000 of her workers' compensation settlement funds to the parties' finances, the District Court also erred in failing to consider Karen and Andrew's relative economic circumstances at the time of the divorce.

At the time of the divorce, both Andrew and Karen were working as volunteer drivers for Penquis CAP, for which they each received mileage reimbursement. That factor is therefore equal for both parties. However, Andrew and Karen's other circumstances diverged greatly. Both Andrew and Karen receive Social Security benefits. Andrew's Social Security benefit is \$1,933 per month, Plaintiff's Exhibit 3,⁵ while Karen's is \$1,324 per month, Tr. at 108, a difference of \$609 per month in Andrew's favor. Karen has been solely paying the mortgage on the marital home since November of 2022 when the parties separated. Tr. at 69-70. That mortgage payment is \$981.62 per month (Plaintiff's Exhibit 4); thus, Karen had paid nearly

⁵ The court erroneously found that Andrew's benefit was \$1,900 per month. Appendix, p. 15.

two years' worth⁶ of that mortgage by the time the divorce judgment was entered on September 13, 2024. The court made no adjustment to take that significant contribution by Karen into consideration.

The court also did not consider the fact that going forward, Karen must continue paying the mortgage on the home,⁷ as the court found that the mortgage balance remaining was \$67,644. Appendix, p. 17. In contrast, Andrew is now living with his girlfriend, Tr. at 77-78, and does not have a mortgage payment. Exhibit 3 at p. 8. Andrew's total monthly household expenses are \$672.19. Exhibit 3, p. 9. With transportation and personal expenses, Andrew's total monthly living expenses are \$2,042.62.

In contrast, Karen's monthly household expenses are \$1,779.52, nearly three times Andrew's. Exhibit 4, page 9. With transportation and personal expenses, Karen's total monthly living expenses are \$4,663.47, Exhibit 4 at 10, over double those of Andrew and well in excess of Karen's monthly income. Furthermore, Karen

⁶ November 2022 to September 2024 is 22 months; therefore, at the rate of \$981.62 per month, Karen had paid \$21,595.64 toward the mortgage on the Boston Road property between the parties' separation and the divorce judgment.

⁷ The court ordered Karen to refinance the home and pay Andrew \$85,328 for the Boston Road marital home. Appendix at 11. The court also ordered Karen to pay Andrew \$46,550 for the Lebanon Road property. Appendix at 12. Karen cannot afford to refinance the Boston Road home, Tr. at 186, let alone pay Andrew that large sum of money; thus, the court's judgment will effectively require her to sell her home.

testified at the hearing that after the parties separated, she had an accident in which she broke her back in February 2023. Tr. at 107. Karen testified that because of that injury, she would not be able to plow snow for extra money the winter of 2024. Tr. at 108.

Given the respective economic circumstances of Andrew and Karen, the District Court erred in essentially dividing the marital property equally between them. Karen has less income than Andrew, as they both do volunteer driving for Penquis CAP and Karen's Social Security is over \$600 a month less than Andrew's. Karen has significantly more expenses than Andrew, since she must continue paying for the mortgage and upkeep of the marital home, while Andrew lives with his girlfriend and has no mortgage or upkeep obligation. This is hardly a fair or just result, and the court's judgment should be vacated.

CONCLUSION

For the foregoing reasons, the trial court's judgment of divorce must be vacated for the above reasons. This Court should vacate the Judgment of Divorce and remand this matter to the District Court for a new trial before a different judge, given Judge Ociepka's previous attorney-client relationship with Karen. In the alternative, the Judgment should be vacated and the matter remanded to the trial court for further proceedings consistent with this Court's opinion.

Dated at Bangor, Maine this _____ day of May, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of May, 2025, I caused one electronic copy of the Brief and one electronic copy of the Appendix to be served upon Appellee by sending it via electronic mail to the following address:

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