

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. YOR-25-135

KELLY J BOYD,
Appellant/Defendant

v.

THOMAS BOYD,
Cross Appellant/Plaintiff

On Appeal from the Biddeford District Court
for the County of York and State of Maine

APPELLANT'S BRIEF

Peter J. Cyr (9037)
Attorney for the Appellee
Law Offices of Peter J. Cyr
85 Brackett Street
Portland, ME 04102
(207) 828-5900
peter@peterjcyrlaw.com

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STATEMENT OF THE CASE

The following facts were found by the trial court and all specifically set forth in the trial court's November 1, 2024, Judgment. *See* November 1, 2024 Judgment, Appendix at 17.

Kelly Boyd, Appellant/Defendant (herein after referred to as Kelly) and Thomas Boyd, Cross Appellant/Plaintiff (herein after referred to as Thomas) (collectively as the Parties) met in March of 2004. *See id* at 18. "They soon became a couple and moved in together in an apartment in Maine." *Id.* "Kelly was a veteran having served in the Marine Corps." *Id.* "She was honorably discharged." *Id.* "When Kelly was discharged from the Marines she had a 30% disability rating." *Id.* "At the time they met, Kelly was working at Unum Provident in their customer service department." *Id.* "Thomas was a drywaller." *Id.*

"On June 22, 2005, Thomas purchased a property located at [REDACTED] Old Orchard Beach, Maine (herein after [REDACTED] property) for \$173,000." *Id.* "Thomas purchased the [REDACTED] property with no money down by financing it entirely with two loans: \$34,600 (Interest only Balloon payment) and (\$138,400)." *Id* at 19. "Total debt borrowed to purchase the [REDACTED] Property \$173,000." *Id.* "The Deed, Notes, and Mortgages were in Thomas' name alone." *Id.*

"From 2005 to 2011 Kelly and Thomas resided together in the [REDACTED] property." *Id.* "Thomas continued to work as a drywaller, while Kelly worked for Unum Provident, waited tables at the 99 restaurant, and taught ballet." *Id.* "The Parties agreed Thomas would pay the monthly mortgage and Kelly would pay the remaining living expenses." *Id.*

“In 2007, Kelly went to school to become a surgical tech.” Id. “There after she was a full time employee with Maine Medical Center.” Id.

“In early 2011, the Parties decided to refinance the [REDACTED] property.” Id. “Thomas wanted to refinance to get out from under the interest only loan from 2005.” Id. “Thomas testified that he wanted to “help” Kelly out by allowing her to be on the note to improve her credit.” Id. **The trial court found that Thomas’ testimony was “not supported by the credible evidence”.** Id. The trial court further found that “it is clear that refinancing with Kelly on the Note benefited Thomas significantly and also created significant risk for Kelly.” Id. “It got Thomas out from under a risky, and high interest balloon loan, and provided them with low interest low monthly payment loan going forward.” Id at 19-20.

“Kelly testified that the Parties had a discussion whereby Thomas agreed to put Kelly on the deed if she agreed to be on the note.” Id at 20. “Kelly testified that it was necessary for her to be on the note in order to obtain better financing.” Id. **“Thomas testified that the refinancing of the [REDACTED] property was a ‘joint endeavor’”.** Id. “He further testified that he had no intent to put Kelly on the deed.” Id. **The trial court found “Kelly’s testimony to be credible”.** Id. “Kelly testified that her credit was not an issue.” Id.

The trial court found “Kelly’s testimony regarding this issue is supported by Defendant’s exhibit 7, in evidence”. *See* id at 20; *see also* Defendant’s Exhibit 7, Appendix at 101.¹ “Exhibit 7 is a Uniform Residential Loan Application that is unsigned and undated.” Id at 20. “Kelly testified that she was given a packet after the Parties closed on the refinancing on February 16, 2011, that included exhibit 7.” Id. “She took the packet home with her and placed it in a cabinet for safe keeping.” Id. “The application provides details of the loan, including principle

¹ All exhibits referenced were admitted in evidence. *See* November 1, 2024, Judgment, Appendix at 20.

amount and interest rate and term.” Id. “It further provides the title to the [REDACTED] property would be held as ‘joint tenants’”. Id. “The document indicates that the title would be held in both Thomas’ and Kelly’s names.” Id. **The Court found that “Kelly testified credibly that she believed that she would be placed on the deed at the time of the February 16, 2011, closing.”** See id at 20.

The trial court found “Defendant’s exhibit 47 further supports Kelly’s testimony.” Id at 21; *see also* Defendant’s Exhibit 47, Appendix at 171. “Exhibit 47 consists of the signed Uniform Residential Loan Applications dated February 16, 2011, of both Thomas and Kelly.” Id. “The first 4 pages of Exhibit 47 consists of the identical loan application as Exhibit 7 except: (1) Thomas Boyd signs as borrower, (2) it is dated February 16, 2011, and (3) Kelly’s name is crossed off in the box, ‘title will be held in what name(s)’”. Id. “There are initials that are circled next to Kelly’s crossed off name.” Id. “The following four pages are identical to Exhibit 7, except: (1) Kelly Ryan signs as the borrower, (2) it is dated February 16, 2011, and again (3) Kelly’s name is crossed off in the box, ‘title will be held in what name(s)’”. Id. “Again, there are unreadable initials that are next to Kelly’s crossed off name, but they are not circled.” Id. “Kelly testified that she remembered signing Exhibit 47, but her name was NOT crossed out at the time of signing.” Id. “In both applications the section ‘manner in which title will be held’ remains as ‘joint tenants’”. Id.

“Kelly testified that the Parties signed Exhibit 47 separately.” Id.

“Defense Exhibit 8 consists of the Settlement Statement (HUD-1) relating to the refinancing of the [REDACTED] property signed by both Parties dated February 16, 2011.” Id; *see also* Defendant’s Exhibit 8, Appendix at 113. The document indicates the payoff for the first mortgage to be \$138,610 and the second

balloon mortgage to be \$32,026. (Total payoff \$170,635).” Id. Only \$2,365 was paid off from the principle balance of the original two notes.” Id.

“Defendant’s Exhibit 10 consists of the Note that was signed by both Thomas and Kelly obligating both Parties to pay back the principal sum of \$176,433.” Id at 22; *see also* Defendant’s Exhibit 10, Appendix at 117. “At the top of the document the [REDACTED] property is listed.” Id. “The Note indicates a favorable interest rate of 5.125% with a monthly payment of \$960.65 (principal and interest).” Id.

“The February 16, 2011, Note, signed by both Parties and obligated both Parties, to the debt on the [REDACTED] property.” Id.

“The Parties continued their original practice of Thomas paying the mortgage and Kelly paying for everything else, such as the bills and household expenses.” Id.

“In November of 2011, during the Thanksgiving holiday, Thomas asked Kelly to marry him. Kelly agreed.” Id. “The Parties were married to each other on June 20, 2012, in St. Croix, U.S. Virgin Islands.” Id.

“From 2012 to 2015 Kelly continued to work full time as a surgical tech and Thomas continued to work as a dry wall subcontractor.” Id. “In addition, Kelly earned her nursing degree.” Id.

“In 2015, Kelly started working full time for Maine Eye Center in Portland, Maine.” Id. “From 2015 to 2020, she earned \$25-\$30 per hour.” Id. “Kelly also received a monthly disability payment from the Marine Corp in the approximate amount of \$600 to \$700 per month.” Id.

“In 2015, Kelly was formally diagnosed with Usher Syndrom Type IV.” Id. “In addition to her 30% disability associated with her service as a veteran, Kelly had hearing loss that started when she was younger.” Id. “Despite her prior

disabilities and the onset of Usher Syndrome, Kelly continued to work full time.” Id at 23.

“There is no evidence that Thomas has any disabilities or other major health problems.” Id.

“Defendant’s Exhibit 33 consists of the Parties 2017 joint tax return.” Id. “In 2016 the Parties earned \$46,057.” Id. “Thomas’ contribution was listed at \$711 (business income).” Id.

“In 2017, the Parties joint tax return shows Kelly’s w2 income to be \$45,633, while Thomas’ income was reported to be \$3,008.” Id.

“In 2019, Kelly earned \$38,753 and Thomas’ business income was reported to be \$5,539.”

“In 2020, Kelly earned \$45,671 working at Maine Eye Center.” Id. “This income does not include the \$600-\$700 monthly disability payments that Kelly contributed to the joint marital endeavor.” Id. “Thomas’ business income contributed \$3,099.” Id. “In November of 2020, Kelly was unable to continue her employment with Maine Eye Center as a result of her failing eye sight.” Id. “She started earning short term disability in November of 2020.” Id.

“In February of 2021, Kelly started earning long term disability and stopped working.” Id at 24. “In total, for 2021, Kelly earned \$54,593 in disability and \$6,999 in w2 wages.” Id. “Thomas contributed \$8,095.” Id.

During the course of the Parties marriage, they purchased two lots in Lincoln, Maine. See Id at 27. In September of 2014, the Parties purchased a camp lot in Lincoln, Maine with their friend Corey Dorais, Lot 9, 40 Hidden Brook Road.” Id. “The Parties used marital fund and took out debt with Corey to purchase the 40 Hidden Brook Road Property.” Id. “The Parties made improvements to the 40 Hidden Brook Road Property by building a storage shed and screened house, a dock and adding necessary fill.” Id. In his July 9, 2021 financial statement,

Thomas stated that the 40 Hidden Brook Road property² was “non marital” with no debt. *See* Defendant’s Exhibit 38, Plaintiff’s Financial Statement dated July 9, 2021, Appendix at 148. However, on August 19, 2022, Thomas filed a second financial statement listing the same property as “marital” with a debt of \$16,500. *See id* at 160. The trial court found: “Thomas indicated on the witness stand that he made a ‘mistake’ when he indicated no debt on this property **is not credible.**” *Id* at 28.

At Trial, Kelly testified that the debt was paid off when Thomas gave Corey 2 snowmobiles, a snowmobile trailer, and an aluminum bass boat. *See id* at 28. The trial court found: “No credible evidence refuted this testimony and therefore finds no existing debt on the property.” *See id* at 28. The trial court found the Parties’ interest in the 40 Hidden Brook property to be \$34,000. *See id* at 29.

“On October 11, 2017, the Parties Purchased a second lot in Lincoln, Lot 10, 60 Hidden Brook Road.” *Id.* “Thomas testified that this property was purchased with funds that were given to him by his mother (\$30,000).” *Id.* The trial court excepted this testimony, with reservation.” *Id.* “During the Parties’ marriage, primarily Thomas would spend significant time on the 60 Hidden Brook Road Property making improvements and building a camp. *See id* at 30. Thomas used his skills as a contractor to build a camp.” *Id.* “He worked on the property making significant improvements.” *Id.* Although Thomas downplays the new building on the 60 Hidden Brook Road property and refers to it as a shed that stores his friend’s motorcycle, it is clearly more than that and is a significantly completed, large ‘camp’”. *Id.* Thomas “put over \$19,000 worth of materials to construct the building now on the property.” *Id.* “That \$19,000 came from martial funds.” *Id.* The trial court found [T]he Parties’ interest in this property is thus \$155,000.” *Id.*

² The 9 Whispering Pine property listed in the July 9, 2021 financial statement is the 40 Hidden Brook Road property.

“In the Spring of 2021, the Parties decided to refinance the [REDACTED] Property once again in order to make improvements on the [REDACTED] kitchen among other things and for funds to complete the camp in Lincoln, Maine.” Id at 24. “The Parties further sought to eliminate mortgage insurance.” Id.

“Kelly testified credibly that her credit score was in the 800’s at this time.” Id.

“Defendant’s Exhibit 13 consists of the Parties’ Uniform Residential Loan Application signed by both Parties and dated May 28, 2021.” Id at 24; *see also* Defendant’s Exhibit 13, Appendix at 120. The Parties indicate that they are married filing for joint credit; Thomas’ income is listed as \$107.41 per month, while Kelly’s income is listed as \$4,616.46 per month; the Parties state they have \$16,331.26 in savings and checking accounts; approximately \$15,000 in debt and liabilities; the loan amount of \$174,500; the [REDACTED] Property value of \$290,000; AND that the title to the [REDACTED] Property is held jointly with spouse. (See Defendant’s Exhibit 13 section 5a of page 6 of 11)” Id; *see also* Appendix at 125.

“Defendant’s Exhibit 14 consists of the Settlement Statement signed by both Parties and dated May 28, 2021.” Id. “The principal loan payoff from the 2011 Note is \$140,437.77.” Id. “The total amount paid off since 2011 is \$35,995.” Id. “The Principal loan amount is \$174,500.” Id. “The Parties received \$28,635 in cash back.” Id. “Both Parties testified that the cash back was to be used to continue and complete the camp in Lincoln and to make improvements to the [REDACTED] Property.” Id at 24-25.

“Defendant’s Exhibit 15 consists of the Closing Disclosure.” Id. “Again, the refinancing benefited the Parties in that their interest rate was reduced to 3.125 % and the monthly principal and interest payment was reduced to \$747.52.” Id at 25.

“Defendant’s Exhibit 17 consists of the Note signed by both Parties and dated May 28, 2021, obligating both Kelly and Thomas to pay back \$174,500 in principal.” Id at 25; see also Defendant’s Exhibit 17, Appendix at 138.

“After the May 2021, closing, significant issues arose in the relationship of the Parties.” Id at 25.

“Thomas believed that the cash payout of \$28,635 would be deposited into his individual account.” Id. “It was not and Kelly testified he was angry.” Id. “He called Kelly demanding that she call the bank and have the funds transferred into his account.” Id. “Kelly obeyed his request and called the credit union asking them to transfer the funds.” Id. “The bank deposited the fund into Kelly’s account.” Id. “Thomas was enraged.” Id. “He threatened Kelly that if he had to drive down from Lincoln it would not be pretty.” Id. “Based on this statement which can be perceived reasonably as a threat, Kelly arranged for half the funds to be deposited into Thomas’ account.” Id. “When Thomas discovered that only half the funds were deposited into his account, he threatened Kelly for a second time stating, ‘if you don’t transfer the other half I will burn the Old Orchard house down.’” Id at 25-26.

“At the time, Thomas was in Lincoln working on the camp belonging to the Parties.” Id. “Kelly remained on Old Orchard Beach.” Id.

“Thomas returned to Old Orchard Beach and an argument ensued regarding the deposit of funds from the loan.” Id. “Thomas again was enraged that Kelly would not do what he wanted with the funds still in her account.” Id. “He demanded that she give him \$5,000 from the funds in her account to pay for a camper he wanted to purchase from his parents.” Id. “When Kelly said no, Thomas became angry at Kelly, ripped the Kitchen island out of place, and threw it at Kelly cutting her foot.” Id. “Kelly ran out of the [REDACTED] Property to her friends.” Id. “She went to the courthouse the next day and obtained a temporary

protection from abuse order.” Id. “She returned to the [REDACTED] Property once the order was served on Thomas.” Id.

“The Parties appeared in Court on the PFA complaint and agreed to a one year order without a finding that granted Kelly possession of the [REDACTED] Property (Order dated July 6, 2021, Janelle, J.)” Id. “That initial order was extended after a hearing on July 19, 2022 (Sutton, J.)” Id. “That order was again extended for a one year after a hearing on September 11, 2023 (Janelle, J.)” Id. “Another motion to Extend was filed by Kelly Boyd [was filed] on March 29, 2024, seeking another one year extension.” Id. That motion was ultimately consolidated with the hearing on Divorce (Order dated June 26, 2024, Tice, J.)” Id at 26-27.

“Defendant’s Exhibit 18 consists of Thomas’ bank statements.” Id. “Statement 05/20/2021 through 06/20/2021 shows Kelly’s deposit of half the cash payout.” Id. “Statement 06/21/2021 through 07/20/2021 shows the second half being deposited into Thomas’ account.” Id.

“The entire cash payout from the May refinancing went to Thomas (\$28,635).” Id.

“Thomas testified that he spent \$14,000 of the cash payout on a new engine for his truck.” Id. “Thomas testified that his truck, even with a brand new engine, was only worth \$14,000.” Id. “Thomas testified that he spent the rest of the money on living costs.” Id.

“During the course of the Parties’ marriage many improvements were made on the [REDACTED] Property.” Id at 30. “Thomas itemizes most of the improvements in his Exhibit a, attached to his July 9th 2021, financial statement.” Id; *see also* Defendant’s Exhibit 38, Appendix at 148. “Based on Thomas’ own numbers, \$46,200 was spent on materials alone in improvements on the [REDACTED] [REDACTED] Property.” Id at 31. “Thomas claims that the improvements were made by

his effort and with his money.” Id. “However, money earned by Thomas during the marriage is marital money.” Id. “‘Sweat’ equity exerted during the marriage is marital effort.” Id. **“Thomas testified that the [REDACTED] property was a joint effort between him and Kelly when they both decided to refinance in 2011 and again in 2021.”** Id.

“Following the Parties split in June of 2021, Kelly has remained in the [REDACTED] Property.” Id. “Kelly has paid all household expenses as well as the mortgage payments and taxes.” Id. “In August of 2022, Kelly became aware that the taxes on the [REDACTED] Property had not been paid.” Id. “Defendant’s Exhibit 20 consists of a Tax lien dated August 5, 2022, in the amount of \$2,606.85.” Id. “It further consist of a discharge dated September 12, 2022 and further payment history indicating consistent payments of \$235.” Id. “Kelly paid off the tax lien on or about September 12, 2022.” Id. “Following that payment, Kelly has made monthly payments towards the real estate taxes in the amount of \$235 for 22 months (\$5,170).” Id at 31 “Kelly has paid \$7,078 in real estate taxes since June of 2021.” Id at 32.

“Since June of 2021, Kelly has paid all mortgage payments in the amount of 747.52.” Id. “After refinancing in May of 2021, the total principal owed on the Note for the [REDACTED] Property was \$174,500.” Id. “As of June of 2024, the balance owed is now 162,961. *See* Defendant’s Exhibit 43.” Id. “Kelly has thus paid off \$11,539 from the original note since June of 2021.” Id.

“Since June of 2021, Kelly has paid the house insurance and insurance for both her vehicle and Thomas’ truck in the amount of \$230 per month 36 months @ \$230 per month = \$8,280.” Id. “In her September 7, 2022, Financial Statement (Defendant’s Exhibit 41), Defendant listed \$6,053 of unsecured credit card debt (Discover).” Id. “15 months later, Kelly’s unsecured credit card debt had increased to \$20,484 (Defendant’s Exhibit 42).” Id.

“Kelly’s attorney fees up to January of 2024, not including trial prep and trial equaled \$24,201 (USSA Loan in the amount of \$17,645).” *Id.* “A significant portion of Kelly’s attorney fees were spent defending Judge Sutton’s decision in June of 2022 granting Kelly an extension on her protection from abuse order.” *Id.* at 32; *see also* Except of Judge Sutton’s Abuse Order, Defendant’s Exhibit 31, Appendix at 141.

Thomas filed a complaint for divorce on July 6, 2021. *See* Docket Record, Appendix at 4; *see also* Complaint, Appendix at 63. Kelly responded by filing an answer and counter claim on July 21, 2021. *See* Appendix at 67. Final hearing in this matter was held on June 20th and 28th of 2024. *See* Appendix at 13.

Judgment in this matter was rendered November 1, 2024. *See* November 1, 2024 Judgment, Appendix at 17.

As set forth above in detail, the trial court made very specific findings of fact. *See id.* With respect to the [REDACTED] property, the court awarded the property to Thomas as his non marital property. *See id.* However, the trial court concluded that there was a significant marital component, in a determinable amount. *See id.* The Court relied on this Court’s opinion in *Miliano v. Miliano*, 2012 ME 100, in concluding that the marital component of the [REDACTED] property to be \$242,757.15. *See id.* at 33-35.

The trial court concluded the marital interest in the 40 Hidden Brook Road property to be \$34,000 and awarded the property to Thomas. *See id.*

The trial court concluded the marital interest in the 60 Hidden Brook Road property to be \$125,000 and awarded the property to Thomas. *See id.*

The trial court awarded Thomas all the personal property in his possession and listed specifically the items and the value of the item. *See id.*

The trial court awarded all debt in Thomas’ name to be his responsibility and all debt in Kelly’s name to be her responsibility.

The trial court concluded Kelly's retirement account was marital and awarded it to Kelly in its entirety. *See id.* The trial court awarded Kelly her pension from Maine Medical Center which does not vest until Kelly reaches retirement age (\$200/month at retirement age). *See id.* at 41.

The trial court awarded Kelly her vehicle. *See id.* at 40.

The trial court determined the equitable payment for Thomas to pay Kelly to be \$95,500. *See id.* at 43. In support of this award the trial court attached two attachments to its judgment (Attachment A to Divorce Judgment) consisting of two pages. *See Appendix* at 45-46. The trial court did not explain the content of its Attachment A. *See Appendix* at 17. The only other justification for the award of \$95,500 as an equitable payment is set forth in the Judgment as follows:

"Because the Court is allocating all of Defendant's 401k to Defendant, and all of the debt in Defendant's name to her, and because the Court is awarding all three pieces of real property to Plaintiff, the equitable payment is \$95,500." *See id.* at 43.

The trial court declined to award spousal support to either party and declined to award attorney fees to either party. *See id.* The trial court gave no explanation or justification as to its decision to deny spousal support for Kelly and to deny an award of attorney fees to Kelly. *See id.*

The trial court further neglected to make any findings and conclusions regarding economic abuse. *See id.* at 17. The trial court did not provide any rationale other than as stated above for its \$95,500 equitable payment award to Kelly. *See id.*

Following the Court's November 1, 2024, Judgment, both Parties filed Motions pursuant to Maine Rules of Civil Procedure 52(a)(b) and 59(e). *See Appendix* at 14-15.

In her Rule 52 motion, Kelly first argues that the trial court's math was incorrect when it determined the equitable payment. *See id.* at 72. In her motion,

Kelly assumed the trial court sought to divide the marital estate equally. In doing so, Kelly created Exhibit A, Value of Marital Estate. *See id* at 87. Exhibit A adds all the court's findings regarding the value of the marital estate and divides the total by 2. *See id*. The exhibit then reduces Kelly's half share by the value of the property allocated to Kelly by the trial court leaving the correct equitable payment of \$174,769.58. *See id*. Kelly states plainly in her motion that she does not dispute any of the trial court's findings regarding the total value of the marital estate. *See id* at 72. In her motion Kelly asks the court at the very least to correct the mathematical error. *See id* at 73.

Kelly then asks the trial court to make additional findings of facts and conclusions of law regarding how the trial court justified an equal distribution stating that Maine Law is clear, equitable distribution does not necessarily mean equal distribution. *See id*.

Kelly further requests the trial court to make findings of fact and conclusions of law regarding economic abuse perpetrated against her by Thomas. *See id* at 7680.

Kelly requests the trial court make findings of fact and conclusion of law with respect to Kelly's argument that the [REDACTED] property was transmuted into marital property. *See id* at 80.

Lastly, Kelly requests the trial court make findings of facts and conclusions of law regarding the trial court's denial of spousal support. *See id* at 84.

In his motion for further findings and to reconsider, Thomas asks the trial court to reconsider its determination regarding the value of the marital component of the [REDACTED] property. *See id* at 71.

On February 13, 2025, the trial court granted Kelly's Rule 52 motion in part by correcting its mathematical error and amending its Judgment to require

Thomas to pay Kelly \$174,769.58 as an equitable payment. *See* Appendix at 56. The trial court summarily denied Kelly's motion in all other respects. *See id.*

On the same day, the trial court summarily denied Thomas' Rule 52 motion in all respects. *See id.* at 57.

Following the trial courts orders on the Parties' Rule 52 and 59 motions, Thomas filed a notice of appeal and Kelly cross appealed.³ *See* Appendix at 15. This appeal follows:

ISSUES PRESENTED

- I. Whether the trial court erred by declining to find that the [REDACTED] property was transmuted from non marital to marital property when Thomas, on two separate occasions, refinanced, essentially purchasing the property anew with a note obligating both himself and kelly?**
- II. Whether the trial court erred when it declined to find that Thomas economically abuse Kelly?**
- III. Whether the trial court abused its discretion when it declined to allocate more of the parties' property to Kelly based on Thomas' economic abuse; the non marital property awarded to Kelly; and the court's disproportionate allocation of marital debt to Kelly?**

SUMMARY OF THE ARGUMENT

This case involves economic abuse perpetrated by Thomas against Kelly, from prior to the marriage until the Parties separated in June of 2021. The abuse at

³Thomas filed his notice of appeal first, however failed to include the filing fee. Kelly filed a cross appeal based on being served with Thomas' notice of appeal. *See* Docket Record, Appendix at 15. The docket record does list Kelly as "Cross Appeal". *See id.*

times was subtle and at times overt. It began prior to the marriage in 2011, when Thomas agreed to make Kelly a joint owner in the [REDACTED] property in exchange for Kelly assisting Thomas with refinancing a high interest loan encumbering the property. Little did Kelly know at the time, what Thomas had in mind should the relationship not work out according to Thomas' needs. The abuse continued throughout the marriage as Kelly worked full time despite her disabilities, contributing to the marital estate while Thomas earned very little and contributed only when it suited his needs. All the while, Thomas acquired real estate in his name only, despite Kelly's contributions and her understanding that their marriage was a joint endeavor. In the end, Thomas threatened Kelly that if she didn't do what he said "it would not be pretty". Thomas further threatened Kelly that he would burn the house down if she didn't place funds into his individual account.

The unique facts surrounding the Parties refinancing of the [REDACTED] property on two occasions, one prior to the marriage and once after the Parties were married, amount to the transmutation of the [REDACTED] property from non marital to marital. On both refinance occasions, the property was essentially purchased with the note obligating Kelly and Thomas. Thomas' intent to make the [REDACTED] property marital was objectively manifested when he signed not one but two loan applications indicating that the property was to be held jointly with

Kelly. When Kelly asked the trial court to make findings of facts and conclusions of law relating to the transmutation issue, economic abuse, and the trial court's ultimate distribution of the marital estate, the trial court denied her motion without providing the rationale necessary to understand the court's decision. For these reasons, the trial court's November 1, 2024, Judgment must be vacated and the case remanded to the trial court with instructions to take into consideration the equities based on the findings the trial court did make in this case.

ARGUMENT

- I. The trial court erred by declining to find that the [REDACTED] property was transmuted from non marital to marital property when Thomas, on two separate occasions, refinanced, essentially purchasing the property anew with a note obligating both himself and Kelly.**

A. Standard of Review

When a court has entered its judgment, and a party has, thereafter, filed a motion for findings pursuant to M.R. Civ. P. 52(a), the court must make findings sufficient to support its judgment. Those explicit findings must be based on the evidence in the record and must be sufficient to support the result, and to inform the parties and any reviewing court of the factual and legal basis for the trial court's decision. On our review of an appeal from a judgment when a motion for findings has been filed and denied, we cannot infer findings from the evidence in the record. Instead, the court's decision must include sufficient findings to support its result or the order must be vacated.

Douglas v. Douglas, 2012 ME 67 ¶ 26 and ¶27 (citations omitted).

A party may, pursuant to M.R.Civ.P. 52(b) request a court to “amend its findings or make additional findings.” The trial court “‘has a duty to make findings sufficient to inform the parties of the reasoning underlying its conclusions and to provide for effective appellate review.’ ” “If the judgment does not set forth adequate findings on the contested issues and the court does not make the requested findings pursuant to M.R. Civ. P. 52, intelligent appellate review is impossible and the denial of a motion for further findings of fact constitutes an abuse of discretion.”

Dargie v. Dargie, 778 A.2d 353, 355 (Me. 2001) (citations omitted).

A trial court’s determination of whether property owned by the parties is part of the marital estate or is nonmarital, is reviewed for clear error. Such a determination made by the trial court will not be disturbed if it is supported by competent evidence in the record.

Murphy v. Murphy, 2003 ME 17 ¶ 20 (citations omitted).

B. The trial court’s denial of Kelly’s Rule 52(a)(b) Motion regarding the [REDACTED] property and whether it was transmuted from non marital to marital property without making the requested findings and conclusions of law constitutes an abuse of discretion.

In its November 1, 2024, Judgment, the trial court concluded that the [REDACTED] property was Thomas’ non marital property with a marital component. The trial court relied on this Court’s opinion in *Miliano v. Miliano*, 2012 ME 100.

Kelly filed a timely motion under M.R.Civ.P. 52(a)(b) asking the court to make specific findings of facts and conclusions of law. In particular, Kelly asked the court to find that the [REDACTED] property was transmuted from non marital

property to marital property when on two occasions, the property was refinanced with notes signed by Kelly. The trial court found “On both occasions, during the refinancing process, the property was essentially purchased by the note obligating both parties.” *See* November 1st Judgment, Appendix at 34.

The Defendant further requested in her Rule 52 motion that the trial court find that the [REDACTED] property was transmuted based on this Court’s opinions in *Carter v. Carter*, 419 A.2d 1018 (Me. 1980) and *Young v. Young*, 329 A.2d 386 (1974). On February 13, 2025, the trial court summarily denied Defendant’s Rule 52 motion as it related to the [REDACTED] property without any further findings or conclusions of law. The trial court’s failure to make the requested findings of facts and conclusions of law constitutes an abuse of discretion. The Judgment must be vacated and the matter remanded to the trial court for re consideration.

C. The "transmutation" doctrine applies when Thomas’ intent to make the [REDACTED] property marital property was objectively manifested during the refinancing process on two separate occasions, once prior to the marriage and once after.

The Parties refinanced the [REDACTED] property in 2011, shortly before they were married. The Parties refinanced in order to get Plaintiff out from under a risky high interest only balloon loan, and to provide the Parties with a low monthly payment loan going forward.

Refinancing with Kelly on the note benefited Thomas significantly and also created significant risk for Kelly.

Even according to Thomas, the refinancing of the [REDACTED] property was a joint endeavor.

Prior to the refinancing in 2011, the Parties had a discussion in which **Thomas agreed** to place Kelly on the deed if Kelly agreed to be on the note. At the time of trial in 2024, Thomas testified that he had no intention of placing Kelly on the deed. However, the trial court found Kelly's testimony to be credible with respect to this difference in the testimony of the Parties. *See* Appendix at 20, paragraph 15 of the trial court's Judgment.

In 2011, Kelly completed a loan application during the refinancing of the [REDACTED] property that was unsigned and undated. This original loan application contained Kelly's completed information along with details of the loan, including principle amount and interest rates and term. It further provides that the title to the [REDACTED] property would be held as "joint tenants" and be held in both Parties' names. Kelly believed that she would be placed on the deed at the time of the February 16, 2011, closing. Kelly was provided this unsigned application which she took home and stored in a cabinet for safe keeping. *See*

supra. “Kelly testified credibly that she believed that she would be placed on the deed at the time of the February 16, 2011, closing. *See* Appendix at 20.

Kelly signed the loan application as it appeared to her above. She signed the loan application separately from Thomas.

The February 16, 2011, loan application signed by both parties indicated the “manner in which title will be held” is as “joint tenants”. *See* Appendix at 171. By signing the loan application that indicated the property would be held as joint tenants, Thomas’ intent was objectively manifested to make the [REDACTED] property marital.

In May of 2021, the Parties again decided to refinance the note on the [REDACTED] property. The loan application was signed by both Parties on May 28, 2021. The loan application indicated that the [REDACTED] property was held “jointly with your spouse”. *See* Defendant’s Exhibit 13, Appendix at 125 and 126. Thomas signed this Residential Loan Application. *See id* at 127. Above Thomas’ signature appears the following language: “The information I have provided in this application is true, accurate, and complete as of the date I signed this application.” *See id* at 127. By signing the above mentioned Residential Loan Application, Thomas’ intention was objectively manifested. The property was thus transmuted.

The parties refinanced to obtain a better rate and to take out cash to make improvements on the [REDACTED] property and to complete the Parties' camp in Lincoln, Maine. Thomas signed both loan applications that indicated the property would be held jointly with spouse. On both occasions, during the refinancing process, the property was essentially purchased by the note obligating both Parties. By signing both loan applications from 2011 and 2021, Thomas evidenced his intent to make a gift to the marital estate. Thomas' intent to make the [REDACTED] [REDACTED] property part of the marital estate is further evidenced by the Parties' shared enterprise when it came to sharing the monthly expenses and using marital funds to make improvements on the property and to pay down the loans.

Moreover, when the Parties refinanced in 2021, they were married. The [REDACTED] property was essentially purchased with the note signed by both Parties making the property acquired during the marriage and thus marital property.

In *Carter v. Carter*, 419 A.2d 1018 (Me.1980), the law court adopted the transmutation doctrine and said that when one spouse transferred title of real estate from sole ownership into joint ownership with the spouse, the transfer evidenced the spouse's intent to gift the property to the marital estate. *Id.* at 1022. *Carter* established a presumption that real estate transferred into joint tenancy was marital, and the presumption could be rebutted by clear and

convincing evidence that it was not the transferring spouse's intent to place the property in the marital estate. The Court in *Carter* clarified the transmutation doctrine as requiring a showing of an objectively manifested exercise of intent. *See id.*

In *Young v. Young*, 329 A.2d at 387. The wife in *Young* urged us to adopt the "transmutation" doctrine from community property jurisdictions, whereby either spouse can "transmute" separate property into marital property by "an exercise of actual intention objectively manifested." *Id.* at 389. We declined to apply the doctrine in *Young* on technical grounds the parties could not have intended to create marital property because it was acquired before the marital property statute went into effect.

Furthermore, in *Carter v. Carter* this Court determined that the transmutation doctrine considered in *Young v. Young* would apply when one spouse transfers property to both spouses jointly during a marriage.

Based on the facts set forth above, Kelly has provided sufficient proof that the [REDACTED] property was transmuted into marital property.

On both refinancing occasions, Kelly agreed to take on the risk of being obligated to the loan used to purchase the [REDACTED] property in exchange for her being placed on the deed.

On both occasions, Thomas acted consistently with Kelly's beliefs by signing loan applications indicating the property would be held jointly.

For the above reasons, this Court should vacate the trial court's November 1st Judgment and remand this matter back to the trial to make the finding that the [REDACTED] property is marital.

II. The trial court erred when it declined to find that Thomas economically abused Kelly.

A. Standard of Review

When a court has entered its judgment, and a party has, thereafter, filed a motion for findings pursuant to M.R. Civ. P. 52(a), the court must make findings sufficient to support its judgment. Those explicit findings must be based on the evidence in the record and must be sufficient to support the result, and to inform the parties and any reviewing court of the factual and legal basis for the trial court's decision. On our review of an appeal from a judgment when a motion for findings has been filed and denied, we cannot infer findings from the evidence in the record. Instead, the court's decision must include sufficient findings to support its result or the order must be vacated.

Douglas v. Douglas, 2012 ME 67 ¶ 26 and ¶27 (citations omitted).

A party may, pursuant to M.R.Civ.P. 52(b) request a court to "amend its findings or make additional findings." The trial court "has a duty to make findings sufficient to inform the parties of the reasoning underlying its conclusions and to provide for effective appellate review." "If the judgment does not set forth adequate findings on the contested issues and the court does not make the requested findings pursuant to M.R. Civ. P. 52, intelligent appellate review is impossible and the denial of a motion for further findings of fact constitutes an abuse of discretion."

Dargie v. Dargie, 778 A.2d 353, 355 (Me. 2001) (citations omitted).

This Court reviews the trial court's determination of economic abuse for abuse of discretion.

B. The trial court's denial of Kelly's Rule 52(a)(b) Motion regarding Thomas' economic abuse of Kelly, without making the requested findings and conclusions of law constitutes an abuse of discretion.

The trial court issued its Judgment on November 1st making some findings of facts relating to economic abuse, however never made any conclusion as to whether economic abuse occurred in this case or whether it factored in economic abuse when distributing the marital estate.

Kelly timely file a Rule 52(a)(b) motion asking the trial court to make a determination as to whether economic abuse occurred and asking the court to make specific findings relating to whether the economic abuse was factored into the trial court's allocation of the marital estate. *See* Appendix at 71. On February 13, 2025, the trial court summarily denied Kelly's Rule 52(a)(b) motion as it pertained to economic abuse without providing any further findings and conclusions of law. The trial court's failure to make the requested findings of facts and conclusions of law constitutes an abuse of discretion. For this reason, this Court must vacate the trial court's judgment and remand the matter to the trial court for further proceedings.

C. The trial court erred when it declined to find economic abuse and factor in that economic abuse in its final allocation of the marital estate.

Title 19A M.R.S.A. section 4102(5) defines economic abuse as follows:

"Economic abuse" means causing or attempting to cause an individual to be financially dependent **by maintaining control over the individual's financial resources**, including, but not limited to, unauthorized or **coerced use of credit or property, withholding access to money** or credit cards, forbidding attendance at school or employment, stealing from or **defrauding an individual of money or assets, exploiting the individual's resources for personal gain of the defendant** or withholding physical resources such as food, clothing, necessary medications or shelter.

Thomas economically abuse Kelly. Thomas came to an agreement with Kelly that if she put her credit on the line and signed the note to purchase the [REDACTED] property in 2011, that she would be put on the deed and share ownership with Thomas. Kelly relied on Thomas' representation that he would put her on the deed and obligated herself to the note. Thomas allowed the loan application to be altered without informing Kelly, thus allowing her to maintain her understanding that the title would be held jointly. Kelly earned the majority of the Parties' yearly income as shown by the Parties' joint tax returns. *See* appendix at 23. She invested her earnings into the [REDACTED] property and both Lincoln properties with the understanding that she was on the deed to the [REDACTED] property.

Again in May of 2021, Thomas led Kelly to believe that she was on the deed to the [REDACTED] property by signing the loan application that indicated that the property was held jointly. The refinancing resulted in a cash payout in the amount of \$28,635. In May and June of 2021, Thomas used threats of violence to force Kelly to place the refinance cash payment into his account. Kelly did what Thomas told her to do in fear that Thomas would harm her. Thoms used these threats to take control of the property. The Parties separated. Thomas used the \$28,635 for his own needs. Kelly was forced to borrow money on credit to pay for the note, real estate taxes and monthly expenses associated with the [REDACTED] property. While Thomas spent \$14,000 on his own living expenses, Kelly had to take out debt. The trial court's judgment in this case obligates Kelly to be responsible for all the debt in her name. *See* Appendix at 42.

Following the Parties' separation, Kelly sought a protection from abuse order. She received an order for protection from abuse by agreement. Approximately a year later, Thomas fought Kelly when she sought to extend the protection order to allow her to remain in the marital home pending the outcome of the divorce proceedings. Kelly was forced to incur significant attorney fees to assist her with being able to remain in the [REDACTED] property pending the resolution of the Parties' divorce. Thomas appealed the court's decision to grant the extension of Kelly's protection order causing Kelly to incur more attorney fees to respond to

Thomas' appeal. *See* Judge Sutton's ruling on Kelly's Motion to Extend her protection order, Defendant's Exhibit 31, Appendix at 141.

Based on the above facts, the trial court erred by not finding Thomas economically abused Kelly and factoring economic abuse into its final allocation of the marital estate.

III. The trial court abused its discretion when it declined to allocate more of the parties' marital property to Kelly based on Thomas' economic abuse; the non marital property awarded to Thomas; Kelly's contributions; and the court's disproportionate allocation of marital debt to Kelly.

A. Standard of Review

When a court has entered its judgment, and a party has, thereafter, filed a motion for findings pursuant to M.R. Civ. P. 52(a), the court must make findings sufficient to support its judgment. Those explicit findings must be based on the evidence in the record and must be sufficient to support the result, and to inform the parties and any reviewing court of the factual and legal basis for the trial court's decision. On our review of an appeal from a judgment when a motion for findings has been filed and denied, we cannot infer findings from the evidence in the record. Instead, the court's decision must include sufficient findings to support its result or the order must be vacated.

Douglas v. Douglas, 2012 ME 67 ¶ 26 and ¶27 (citations omitted).

A party may, pursuant to M.R.Civ.P. 52(b) request a court to "amend its findings or make additional findings." The trial court "has a duty to make findings sufficient to inform the parties of the reasoning underlying its conclusions and to provide for effective appellate review." "If the judgment does not set forth adequate findings on the contested issues and the court does not make the requested findings pursuant to M.R. Civ. P. 52, intelligent appellate

review is impossible and the denial of a motion for further findings of fact constitutes an abuse of discretion.”

Dargie v. Dargie, 778 A.2d 353, 355 (Me. 2001) (citations omitted).

“We review the division of marital property for an abuse of discretion.” The District Court’s division of marital property will be vacated only if there is a “violation of some positive rule of law or if the division results in a ‘plain and unmistakable injustice, so apparent that it is instantly visible without argument.’

A divorce court is not required to divide marital property equally, but rather, “is required to make the division fair and just considering all of the circumstances of the parties.

Dargie v. Dargie, 778 A.2d 353, 355-356 (Me. 2001) (citations omitted).

B. The trial court’s denial of Kelly’s Rule 52(a)(b) Motion regarding the allocation of marital property without making the requested findings and conclusions of law constitutes an abuse of discretion.

Judgment in this matter was entered November 1, 2024. In its judgment the Court gave the following rationale for its equitable payment to Kelly: “Because the Court is allocating all of Defendant’s 401(k) to Defendant, and all of the debt in Defendant’s name to her, and because the Court is awarding all three pieces of real property to Plaintiff, the equitable payment is \$95,500.”⁴ Appendix at 43.

Kelly timely filed her Motion for Conclusions of Law and Findings of Fact pursuant to M.R.Civ.P. 52(a)(b) specifically regarding the allocation of marital

⁴ Defendant’s Rule 52 Motion requested the court fix a mathematical error among other relief. The trial court granted Defendant’s Rule 52 motion only with respect to fixing the mathematical error. The remaining prays for relief were denied. In the end, the trial court’s amended judgment, after the mathematical error was fixed provided for a \$174,769.58 equitable distribution to Defendant.

property. *See* appendix at 71. The trial court summarily denied Kelly's Rule 52(a)(b) motion as it pertained to the trial court's allocation of marital property. *See* Appendix at 57.

The trial court's November 1st Judgment does not sufficiently make findings or conclusions of law to support its Judgment awarding half the marital property to each Party. The trial court's rationale for its equal distribution of the marital estate does not make sense. The trial court points to the fact that it awarded Kelly all of her retirement account in support of an equal distribution of the marital estate. On the same token, the trial court found that all the value of Kelly's retirement account was marital. The trial court found that the marital estate was valued at \$538,695 allocating half to Defendant, \$269,348. *See* appendix at 87. The trial court awarded Defendant two marital assets, her Rav 4 (\$5,523) and her retirement account (\$89,055) and Thomas the remaining marital assets. *See id.* The trial court then calculated Kelly's equitable share by subtracting the value of the two marital assets awarded to her from her half of the marital estate (\$269,348 less \$94,578 = \$174,770).⁵ The fact that the trial court awarded Kelly her entire retirement account is a distinction without meaning. It doesn't help the Parties or this court with understanding why the trial court decided to distribute the marital estate equally in

⁵ This is the number the trial court came to for an equitable distribution to Kelly after correcting its mathematical error. *See* trial court's order dated February 13, 2024, granting in part and denying in part Kelly's Rule 52(a)(b) motion, Appendix at 56.

this case.

The trial court further justified its equal distribution of the Parties' marital estate based on it allocating all the debt in Kelly's name to Kelly. Again, this makes no sense. One would think the more debt allocated to a party would result in that party receiving more of the equity.

Lastly, the trial court justifies an equal distribution of the marital estate based on allocating all three pieces of real estate to Thomas. The trial court's rationale does not provide the Parties or this appellate court with the reasoning underlying its conclusions. This, despite the fact that Kelly requested the trial court to do so in her Rule 52(a)(b) Motion. *See* Appendix at 71.

Moreover, the trial court does not provide any analysis of the factors set forth in 19-A M.R.S.A. section 953(1). Title 19-A M.R.S.A. section 953(1) states in pertinent part as follows:

In a proceeding for a divorce . . . the 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 . . . D. Economic abuse by a spouse. For the purposes of this paragraph, "economic abuse" has the same meaning as in section 4102, subsection 5

19-A M.R.S.A. section 953(1) (2023). The trial court does not mention any of the above factors in it's judgment, nor does the trial court analyze the above factors as they pertain

to the facts found by the court. Thus leaving the Parties to guess and surmise as to how the court came to its ultimate conclusion to allocate the marital estate 50/50. Lastly, when requested to do so by Kelly in her Rule 52(a)(b) motion, the court summarily denies Kelly's request and fails to make the requested findings. Thus, the trial court's summary denial of Kelly's Rule 52 Motion as it pertained to the allocation of the Parties' marital property constitutes an abuse of discretion. For this reason, this Court must vacate the trial court's judgment and remand this matter back to the trial court to make the requisite findings and conclusions of law.

C. The trial court's equal distribution of the Parties' marital estate results in a plain and unmistakable injustice, so apparent that it is instantly visible without argument.

When one reviews the facts found by the trial court and analyzes them with the 951(1) factors it is plain, apparent, and instantly visible that the allocation of marital property should weigh in favor of Kelly.

The first factor: who contributed to the marital estate, favors more of an allocation to Kelly. Kelly's good credit contributed to the marital estate. The tax returns introduced into evidence establish that Kelly was the major bread winner of the Parties. *See* Appendix at 23. Kelly contributed all her earnings towards the marital estate.

The second factor: the value of the property set aside to each spouse also favors more of an allocation of the marital estate to Kelly. The trial court's November 1st

Judgment allocates ALL three real properties to Thomas. [REDACTED] property; 40 Hidden Brook Property; and 60 Hidden Brook Property all with no to little debt and significant equity. Kelly is allocated no real estate. Pursuant to the Court's amended Judgment, Thomas will walk away with \$323,591 after the divorce and Kelly will walk away with \$269,348 after the divorce (the difference, \$54,243.42 in Thomas' favor).

The third factor: the economic circumstances of each spouse at the time the division of property is to become effective, also favors allocating more to Kelly. Kelly is now on a fixed income. She is going blind slowly and losing her hearing. Thomas on the other hand is healthy AND well suited to earn significant money, if he so chooses as a skilled drywaller and contractor. The value of Thomas' skills, this day and age, cannot be understated.

Moreover, Kelly has significant credit card debt, \$23,000 and attorney fees owed. This Court found that Kelly had \$6,053 in credit card debt in September of 2022. That credit card debt had increased to \$20,484 in just 15 months as a result of Kelly paying the property taxes for the [REDACTED] property (\$7,078); Thomas' and Kelly's vehicle insurance and the home owner's insurance on the [REDACTED] property (\$8,280). Thomas benefited significantly as a result of Kelly's indebtedness. The trial court allocated all of the debt in Kelly's name to her.

The fourth factor, economic abuse, also favors Kelly receiving more of the marital estate. *See supra*. As discussed above, the economic abuse commenced prior to the Parties' marriage, when in 2011, Thomas refinanced using Kelly's good credit. The economic abuse continued throughout the marriage culminating in threats of violence against Kelly which caused her to give her share of the 2021 refinancing cash pay out to Thomas.

Given the trial court's own factual findings as set forth above, it is plain, apparent and instantly visible that an equal distribution of the marital estate does not amount to an equitable distribution in this case. The trial court thus abused its discretion and the matter must be remanded for further consideration by the trial court.

CONCLUSION

For the reasons set forth above, the Appellant prays that this Honorable Court vacates the trial court's Judgment and remands the matter back to the trial court for further considerations consistent with this court's opinion.

DATED at Portland, Maine, this 27th day of June 2025.

Respectfully submitted,

/s/ Peter J. Cyr
Peter J. Cyr, Esq. (9037)
Attorney for Appellant
peter@peterjcyrlaw.com

CERTIFICATE OF SERVICE

I, Peter J. Cyr, attorney for Appellant, hereby certify that on this date, June 27, 2025, I have caused to be emailed to Cross Appellant an accurate electronic copy of Appellant's Brief. I further certify that I have emailed to the Court an electronic pdf version of Appellant's Brief pursuant to the Maine Rules of Appellate Procedure.

DATED at Portland, Maine, this 27th day of June 2025.

Respectfully submitted,

/s/ Peter J. Cyr
Peter J. Cyr, Esq. (9037)
Attorney for Appellant
peter@peterjcyrlaw.com