

STATE OF MAINE  
SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

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Law Docket No. YOR-25-135

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KELLY J BOYD,  
Appellant/Defendant

v.

THOMAS BOYD,  
Cross Appellant/Plaintiff

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

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APPELLANT'S REPLY BRIEF

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## **ARGUMENT**

### **I. The trial court's inclusion of interest along with principal payments when determining the marital portion of the [REDACTED] Property is Harmless Error.**

Maine Rules of Civil Procedure 61 states in pertinent part as follows:

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

M.R.Civ.P.61. The trial court calculated the marital component of the [REDACTED] property to be \$242,757 (\$102,757: interest and principal payments during marriage plus \$140,000<sup>1</sup>: appreciation in value of [REDACTED] property during marriage). In his principal brief, Thomas argues that the trial court's calculation of the marital component of the [REDACTED] property should be reduced by the amount of interest paid during the marriage (\$55,262 interest paid = \$102,757: total of interest and principal payments made during the marriage less \$47,495: principal only). In essence, Thomas is asking the court to remand this matter to the trial court to recalculate the total value of the marital component of the [REDACTED] property less the \$55,262 of interest payments that the trial court included in

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<sup>1</sup> Cross Appellant does not contest the court's finding that the [REDACTED] property increased \$140,000 in value during the course of the marriage. Nor does cross appellant challenge the court's inclusion of the \$140,000 increase in value in the marital component of the [REDACTED] property.

its final tally. In its findings, the trial court found that the Parties invested \$46,200 in marital money, based on Thomas' own numbers, to improve the [REDACTED] property during the marriage. *See* Judgment, Appendix at 31. It does not appear that the trial court took this \$46,200 amount into consideration when making its determination of the marital component of the [REDACTED] property.

Kelly does not agree that the court's inclusion of interest is error. She further argues that if the inclusion was error, it is harmless. By including the interest payments (\$55,262) but not the value of the marital investment (\$46,200), the trial court's presumed error is harmless. The two amounts come very close to factoring each other out.

**II. Should this Court determine the trial court's inclusion of interest along with principal payments when determining the marital portion of the [REDACTED] Property is not harmless error, the matter must be remanded to permit the trial court an opportunity to reconsider it's entire judgment including the final distribution of the marital estate, debt, spousal support, and attorney fees.**

If this Court does find that the trial court's inclusion of the interest payments is not harmless error, this matter must be remanded to allow the trial court to reconsider the appropriate distribution of the marital estate given Thomas' increased non marital estate. In other words, when the trial court made its conclusion that the total marital estate should be divided equally, it believed the marital estate was greater and Thomas' non martial estate was less.

19-A M.R.S. section 953 is very clear in its directive that the trial court must first determine and separate out the Parties' non marital property, then allocate the marital property taking into consideration among other things, the non marital property awarded to each party. If Thomas' non marital estate increases, the trial court is well within the law to take that into consideration when equitably distributing the marital estate.

This Court in *Miliano* remanded for clarification and reconsideration after it determined the trial court had erred in its assessment of the non marital property of one of the parties. *See Miliano* 2012 ME 100 at ¶20 (“The Court’s task to set apart non marital property and then factor the value of that property into its division of marital property can not be completed unless and until the nature and extent of each spouses interest in any non marital property can be determined. . .” *See Miliano* 2012 ME 100, ¶20. This Court in *Miliano* added: “On remand, the court may reconsider its entire Judgment including its award of spousal support.” *See id* at ¶29.

Thus, should this Court determine the inclusion of interest in the marital component of the [REDACTED] property is error and not harmless error, this matter should be remanded to the trial court to reconsider its distribution of the marital estate taking into consideration the now different increased value of Thomas' non marital estate (Thomas' non marital estate would increase in value by

\$55,262). For the reasons set forth above, Kelly requests that this Court remand this matter back to the District Court for reconsideration of it's distribution of the marital estate.

In it's judgment, the trial court determined that each Party is responsible for their own attorney fees. If this matter is remanded to the trial court with instructions to increase Thomas' non marital estate by \$55,262, the trial court should further be instructed that it may reconsider the award of attorney fees given Thomas' increased ability to absorb the cost of litigation.

Lastly, in it's judgment, the trial court did not award spousal support to either party. Kelly timely filed a Motion for further findings of facts and conclusion of law requesting the trial court reconsider its decision denying spousal support. *See* appendix at 71, 84. If this matter is remanded to the trial court with instructions to increase the non marital value of the [REDACTED] property, the trial court should further be instructed that it may reconsider its denial of spousal support given the increased value of Thomas' non marital estate. The Court may take into consideration the value of non marital property it sets aside to a party when determining whether to award spousal support or in determining the nature of spousal support awarded. *See* Miliano 2012 ME 100 ¶28 ("Spousal support that reflected the parties' contributions to the marriage, and to provide for reimbursement is appropriate"). *See id.*

**III. The trial court's lack of explanation as to how it handled the Parties' marital debt in its final decision on distributing the marital estate requires remand to the trial court.**

In his brief, Thomas argues the matter should be remanded to the trial court to justify and explain its determination and allocation of the parties' marital debt. Thomas' brief on page 23 sets forth a table with his interpretation of the correct values for the Parties' assets and debts. The values set forth by Thomas are not accurate, nor do they accurately represent the trial court's findings. For example, Thomas lists the value of the Parties' time share to be \$20,000. *See* Cross Appellant's brief at page 23. The trial court provided in its judgment for the Parties' time share to be sold and the proceeds split equally, once Thomas paid any back fees owed (\$1,243). *See* appendix at 37. Thus the \$20,000 value should not be included in any table setting forth the total value of the marital estate. The Court in its attachment A to the Divorce Judgment, lists on going real estate taxes of \$7,078 and seemingly allocates half to each party (\$3,539). *See* appendix at 46. However, this division is contradicted by the trial court's own finding that Kelly paid the entire amount of the \$7,078 tax bill herself. *See* appendix at 32. The judgment does not provide any mechanism that would have Thomas reimbursing Kelly for the real estate taxes she paid. The trial court further finds that Kelly paid a total of \$8,280 for vehicle insurance for both her and Thomas' vehicle. *See* appendix at 32. However, the

court does not provide any mechanism in its judgment for Thomas to reimburse Kelly for payment of his vehicle insurance.

In the end, Kelly agrees with Thomas' request that the matter be remanded to the trial court for the trial court to reconsider how it allocates responsibilities for the Parties' marital debt. Depending on how the trial court allocates the marital debt may very well impact the court's final determination as to how it allocates the parties' marital estate, and whether spousal support and or attorney fees are awarded. Moreover, should this Court increase the value of Thomas' non marital estate, the matter should be remanded to the trial court for reconsideration of it's allocation of debt, spousal support determination, and attorney fee award.

#### **IV. The transmutation doctrine is applicable to this case.**

Thomas argues in his brief that this Court's decision in Long v. Long, 1997 ME 171 ¶¶10-13, is dispositive of the issue. *See* Cross Appellant's brief at page 26.

Thomas suggests that the only way to transmute non marital real estate into marital real estate is with a deed that transfers the property to the marital estate. *See id.*

Thomas does concede that this Court's opinion in Long, distinguished Carter v. Carter, 419 A.2d 1018 (1980) but did not overrule the transmutation doctrine set forth in Carter (the transmutation doctrine requires a showing of an objectively manifested exercise of intent). Thomas does not cite to any case for the

proposition that the only way to transmute non marital property into marital property is through the execution of a deed. As Carter sets forth, either spouse can transmute separate property into marital property by “an exercise of actual intention objectively manifested”. *See Young v. Young*, 329 A.2d at 387.

In this case at bar, Thomas is correct that there is no deed executed and recorded with the registry of deeds transferring his non marital interest in the [REDACTED] property to the marital estate (to Kelly and Thomas in joint tenancy). However, the trial court did make sufficient findings that support the conclusion that Thomas’ intent was to transmute the [REDACTED] property and that that intention was objectively manifested.

Thomas testified that the refinancing of the [REDACTED] property was a joint endeavor. He further testified that he did not intend to place Kelly’s name on the deed. Kelly testified that her understanding of the agreement she reached with Thomas was that she would place her name on the note, in exchange for Thomas placing Kelly on the deed to the [REDACTED] property. The trial court found that Thomas’ testimony was “not supported by the credible evidence.” The trial court further found that Kelly’s testimony was credible. The trial court could thus infer that Thomas agreed to place Kelly’s name on the deed in exchange for Kelly obligating herself to the note. Thomas’ statement to Kelly that he would place her

on the deed and his statement that it was a “joint endeavor” is an objective manifestation of his intent.

On two separate occasions, the [REDACTED] property was refinanced. The first of those occasions in 2011 was just prior to the Parties’ wedding. The trial court found that the loan application that Kelly signed, indicated the property would be held jointly.

On the second refinancing occasion, the application again indicated that the [REDACTED] property would be held jointly by the parties.<sup>2</sup> This second 2021 application was signed by Thomas just below the following language: “The information I have provided in this application is true, accurate, and complete as of the date I signed the application.” *See* appendix at page 127. Thomas’ signature on the May 2021 loan application is an objective manifestation of his intent to transfer his non marital interest in the [REDACTED] property to the marital estate.

The above facts and circumstances are unique. They are distinguishable from the facts of the *Coppola v. Coppola* 2007 ME 147, case cited by Thomas. Based on the above unique facts, Thomas’ intent to transmute the [REDACTED] property to marital property was objectively manifested.

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<sup>2</sup> Thomas states in his brief on page 28 that the May 2021 application “mistakenly listed the title to the [REDACTED] property as jointly held.” The trial court does NOT make the finding that the listing on the May 2021 loan application that the [REDACTED] property would be “jointly held” was a mistake. To the contrary, the trial court may very well have inferred based on the facts it found, that the “jointly held” language was intentionally placed on the loan application by Thomas.

## **CONCLUSION**

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

**DATED** at Portland, Maine, this 29th day of September 2025.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Peter J. Cyr, attorney for Appellant, hereby certify that on this date, September 29, 2025, I have caused to be emailed to Cross Appellant an accurate electronic copy of Appellant's Response Brief. I further certify that I have emailed to the Court an electronic pdf version of Appellant's Response Brief pursuant to the Maine Rules of Appellate Procedure Rule 1E.

**DATED** at Portland, Maine, this 29th day of September 2025.

Respectfully submitted,

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