

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. WAL-25-248

Mitchell D. Brown v. Diahanne L. Morse

ON APPEAL FROM THE SUPERIOR COURT
WALDO COUNTY

BRIEF OF THE APPELLANT
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INTRODUCTION

This is an appeal from a Partial Summary Judgment in which the Appellee sought to void certain amendments to a trust and to appoint himself as successor Trustee. The fact that he had resigned as Trustee and was not serving on the date that the Settlor of the trust died is at issue. The plain language of the Trust requires that in order for a nominated death trustee to become a successor Trustee they must be serving at the time of the settlor's death. Appellee was seeking to replace Appellant as Trustee, a position she assumed pursuant to the Trust Amendments that were disputed by the Appellee. The Appellant is appealing the Partial Summary Judgment Order on the grounds that there are significant genuine issues of material fact set out in the Appellant's Separate Statement of Material Facts and further argued orally during the May 1, 2023 Motions hearing.

The Appellant has also raised the issues of laches, lack of subject matter jurisdiction of the Superior Court and finally the Appellant is challenging the dismissal of Appellee's case without prejudice, the imposition of costs imposed on the Appellant and the dismissal of Appellant's counterclaims as "moot".

STATEMENT OF FACTS AND PROCEDURAL HISTORY

In order to understand the case between the parties, Appellant provides this brief history between the parties and their relationship.

Appellee Mitchell Brown is the uncle of Appellant Diahanne Morse. On October 27, 2016, Cecil Armstrong executed a Durable Power of Attorney appointing Tina J. Bowden as his agent. (R. May 25, 2021 Power of Attorney attached to Appellant's Emergency Motion to Dissolve Ex-parte Motion, Exhibit F). Cecil Armstrong was the step-father of Mitchell Brown, Tina J. Bowden, Glenn L. Brown, Ralph E. Brown, Michael J. Brown and step grandfather of Sara Allenwood and Alton Allenwood. Appellant Diahanne Morse is the daughter of Tina J. Brown. (R. May 25, 2021 Emergency Motion to Dissolve Ex-part Motion, Affidavit of Diahanne Morse ¶14 & 15).

On May 23, 2017, Cecil Armstrong executed a living Trust naming himself, Tina J. Bowden and Mitchell D. Brown as co-trustees. The Trust was signed by all three parties individually and a separate identical certification by Tina J. Bowden under a power of attorney for Cecil Armstrong. (A. 189-192) The Durable Power of Attorney as well as the Trust were drafted by Attorney Joseph Moser. (A. 68 and Tr. Page 36, line14-16).

Mitchell Brown resigned as Trustee of the Trust on April 26, 2019. (A. 214) The Appellee's initial complaint filed on January 19, 2021 acknowledges that Tina Bowden was the sole trustee at the time of her death. (A. 32).

Tina Bowden amended the Trust document using her Power of Attorney. The amendment did not change the beneficiaries but did clarify that the purpose of the Trust was to provide funds for Cecil Armstrong's care so he could remain in his home. (A. 215) The amendment also provided for the appointment of a successor trustee in the event of her death. (A. 217)

Cecil Armstrong died on November 12, 2019, (A. 24). Soon after his death Tina Bowden began the process of liquidating trust assets in anticipation of distributing the net proceeds to the named beneficiaries. On January 17, 2020, her attorney sent each of the beneficiaries, including the Appellee, an identical letter stating what assets remained in the Trust and her plan to sell the real estate. (R. May 25, 2021 Emergency Motion to Dissolve Ex-parte Motion, Exhibit E).

Prior to the January 17, 2020 letter, on January 13, 2020 the Appellant sent a letter to Appellee's attorney Kate Grossman, Esq.

who had inquired as to the status of the Trust. The letter included copies of the Trust amendment, the resignation of Mitchell D. Brown, and the appointment of a successor Trustee in the event of Tina Bowden's death. (R. May 25, 2021 Emergency Motion to Dissolve Ex-part Motion, Exhibit D)

On April 12, 2022, Appellee filed a Motion for Partial Summary Judgment which requested that the Amendment to the Trust be voided and that Mitchell Brown be nominated as the Trustee.

(A. 47) On November 14, 2022 Justice Robert Murray, Jr. recused himself since he had presided over the criminal case involving the murder of the Appellant's parents by her uncle, Glenn Brown who is a named beneficiary of the Trust. Justice Daniel I. Billings was assigned to the case on November 16, 2022. (A. 9)

On May 1, 2023, a hearing was held on all pending Motions including the Motion for Partial Summary Judgement. (Tr. May 1, 2023 hearing). On May 17, 2023 the Court entered an Order requiring the Appellee to file a complete copy of the Trust. (A.18) In response Appellee again filed a copy of the Trust omitting the duplicate signature pages. (R. Supplement to Plaintiff's Motion for Summary Judgment filed June 2, 2023) Appellant filed a response

to the Supplemental filing on June 29, 2023. (R. Response to Plaintiff's Supplement to Motion for Summary Judgment filed on June 29, 2023).

Appellant also filed a Motion to Appoint Diahanne Morse as Trustee on May 23, 2023. (A. 189) The Motion was not opposed by Appellee. (A. 4-17) On June 21, 2023 the Appellant filed Reply Memorandum to Plaintiff's Opposition to Defendant's Motion for Appointment of Successor Trustee¹ The Court ruled the Motion was "moot" in its April 28, 2025 Order. (A. 21 and 22)

On December 18, 2023, the Court granted Appellee's Motion for Partial Summary Judgment using the Appellee's proposed Judgment. (A. 19). The Order in part, "nominated" Mitchell Brown as the Trustee. No findings were made for the ruling. (A. 19) Appellant filed a Motion for Findings of Fact (R. December 28, 2023) and a Motion to Alter or Amend the Order (R. January 4, 2024). The Appellee did not file an opposition to the Motions but rather joined

¹ The Reply Memorandum stated, 1. The Plaintiff Mitchell D. Brown has failed to file memorandum in opposition to Defendant's Motion for Appointment of Successor Trustee and therefore pursuant to Civil Procedure Rule 7 (c) (3) "shall be deemed to have waived all objections to the motion".

but did not sign, in the response of Ralph Brown's attorneys in BELSC-CV-2020-17. (A. 13).

Both Motions were denied without findings on April 16, 2024. (A. 20). The Appellant appealed the summary judgment but the appeal was dismissed as interlocutory. (A.14) A request for a final Order was denied May 20, 2024. (A. 14)

On January 22, 2025, Appellee sent the Court a letter, followed by a Motion to Dismiss. The Motion to Dismiss stated that the claims which Mitchell Brown made regarding the transfer of title and undisclosed amendments are not viable. (A. 15) The Court apparently agreed with Appellee and dismissed all his claims not just the ones listed in his Motion, without prejudice on April 28, 2025. (A. 21-22)

The Appellant filed a Motion to Dismiss for lack of subject matter jurisdiction on January 23, 2025 (A. 134) The motion was denied in the April 28, 2025 Order. (A.21-22) The Court stated that the Order on the Partial Summary Judgment was now final. (A.21-22).

The Appellant filed her appeal of the May 17, 2023, December 18, 2023, April 16, 2024, and the April 28, 2025 Orders on May 29, 2025. (A. 17)

STATEMENT OF THE ISSUES

1. Whether or not there were genuine issues of material fact which would preclude the Court from granting a Partial Summary Judgment.
2. Whether or not Appellee Mitchell Brown's resignation as Trustee before the death of the Settlor Cecil Armstrong disqualifies him from serving as death trustee is a genuine issue of material fact.
3. Whether or not the defense of laches presents genuine issues of material fact.
4. Whether or not the original Cecil Armstrong Trust could be amended by the use of a pre-existing Durable Power of Attorney pursuant to 18B M.R.S.A. §411 and 412, presents a genuine issue of material fact.
5. Whether or not the Court should have granted the Motion to Dismiss Appellee's claims without prejudice and the dismissal of Appellant's Counterclaims as "moot" pursuant to M.R. Civ.P. 41(a)(2).

6. Whether or not the Superior Court had subject matter jurisdiction.

SUMMARY OF ARGUMENT

This appeal is predicated on the Court's grant of partial summary judgment for the Appellee which the Appellant argues was granted in error since there were genuine issues of material fact that should have prevented the Order issued in favor of the Appellee; that the Court did not make the requisite findings with regard to the affirmative defense of laches; that the power of attorney given to the Appellant before the creation of the trust authorized the Appellant to make revisions to the trust pursuant to Title 18-B M.R.S.A. § 411(1); that the Appellee's failure to reply to the Appellant's Additional Statements of Material fact deemed those facts admitted; that the Court lacked subject matter jurisdiction to hear the case; that the dismissal of Appellee's claims without prejudice, an award of costs levied against the Appellant, and the declaration that counterclaims were "moot" was an abuse of discretion.

ARGUMENT

The primary issues in this appeal relate to the granting of a Motion for a Partial Summary Judgment for the Appellee. The standard for appellate review for a Summary Judgments requires the Court to consider the evidence in the summary judgment record in the light most favorable to the nonmoving party, to determine, de novo, whether the parties' filings in the summary judgment show any dispute of material fact and whether the moving party is entitled to a judgment as a matter of law based on undisputed facts put forth by the moving party. *Ocean Communities Federal Credit Union v. Roberge*, 144 A.3d 1178 (ME 2013) at ¶4 . The standard of review is further clarified in the case of *Berry v. Main Street Finance*, 202 A.3d 1195 (ME 2019). The *Berry* Court stated, "We review a grant of summary judgment de novo "and consider both the evidence and any reasonable inferences that the evidence produces in the light most favorable to the party against whom the summary judgment has been granted." *Cannery v. Strathglass Holdings, LLC* 159 A.3d 330 (ME 2017) (quotation marks omitted). The Court goes on to say "Summary Judgment is appropriate only "when the parties' statements of material facts and the portions of the record

referred to therein disclose no genuine issues of material facts and reveal that one party is entitled to judgment as a matter of law. *Id.* ; see M.R. Civ. P. 56(c).” *Id* Page 1198 ¶6

The *Berry* Court goes on to explain that “As a central tenant of summary judgment motion practice, “[f]acts not set forth in the statement of material facts are not in the summary judgment record, even if the fact in question can be gleamed from affidavits and other documents attached to, and even referred to in portions of, a statement of material fact.” *HSBC Bank USA, NA v Gabay*, 2011ME 101, ¶22, 28 A. 3d 1158 (alteration and quotation marks omitted.) *Id* at Page 1198 ¶7.

1. Whether or not there were genuine issues of material fact which would preclude the Court from granting a Partial Summary Judgment.

The standard of review for a summary judgement as set above is de novo, which requires the Court to consider the evidence in the summary judgment record in the light most favorable to the nonmoving party, to determine de novo, whether or not the parties’ filings show any dispute of material fact and whether the moving party is entitled to a judgment as a matter of law based on

undisputed facts. It is the Appellant's position that there were multiple genuine issues of material fact and the summary judgment should not have been granted.

In the present case, the Appellee as the moving party, was required to show that there were no issues of material fact which would entitle the Appellee to a judgment as a matter of law. The Appellee's Motion for Partial Summary Judgment includes within the Motion, a Statement of Material Facts which includes general non-specific references to pleadings and includes general references to the Trust. At the motion hearing on May 1, 2023, it was pointed out to the Court that the Appellee had not included the two signature pages; one signed by the Settlor individually and the other signed by Tina Bowden under a Power of Attorney. This was also included in the Appellant's Additional Statements of Material Facts, 8 (A. 58). This is just one of the genuine issues of material fact which will be addressed in this Brief.

2. Whether or not Appellee Mitchell Brown's resignation as Trustee before the death of the Settlor Cecil Armstrong disqualifies him from serving as death trustee is a genuine issue of material fact.

The standard of review for the summary judgment order is de novo.

The Summary Judgment Order signed by the Judge on December 18, 2023 states that Mitchell D. Brown is the nominated Trustee of the Cecil N. Armstrong Jr. Living Trust dated May 23, 2017. The Order states that Mitchell Brown is *nominated* not appointed. Since the Court provided no findings of fact or conclusions of law and denied both of Appellant's Motions Pursuant to Rule 52 (a) and (b), the Appellant can only presume that the Court nominated Appellee as Trustee but did not appoint or declare that he was the successor Trustee.²

Under the terms of the original 2017 Trust document, page 12-3, section c entitled "My Trustees upon My Death" provides that "On my death, all of the following Death Trustees shall replace all of my initial Trustees, *if they are then serving*, or all of the Disability Trustees, *if they are then serving*: Tina J. Bowden and Mitchell D. Brown." (A. at 138) The Appellant's Opposition to Statement of Facts and Additional Statement of Facts provides that at the time of Cecil Armstrong's death, Mitchell Brown was not serving as Trustee

² M.R.Civ. P. 52(a) does not require a Court in a Summary Judgment matter to make findings of fact and conclusions of law, but in this case it would have been helpful for the Court to issue a ruling on that issue based on the clear requirements of the Trust document. (A. 136-138).

since he had resigned prior to Cecil's death. The Appellee's initial complaint acknowledges that Tina Bowden was the sole trustee at the time of her death, (R. January 19, 2021; A. 4) The Appellee's counsel argued at the May 1, 2023 hearing as follows;

"COURT: But here, I guess the---the---the simpler issue is, does there seem to any dispute of fact that Mitchell Brown's resignation as initial trustee didn't have anything to do with the death trustee issue that had not yet come into being when he resigned?

MR. BIFULCO: I think the only evidence we have is the document he signed, and that the trust itself designates different titles. What Mitchell ---Mitchell Brown intended by that he could be asked you know, but I don't think deciding that issue is necessary to get to the issue of whether or not the trust could be amended by an agent in a power of attorney. (TR. At page 33, lines 16-25 and page 34 lines 1-4)

THE COURT: Right. Thank you.
Attorney Bifulco, if -- if I grant your motion for summary judgment, who's the trustee?

MR. BIFULCO: I would look to the terms of the trust, and I would suggest that the Court appoint one based on the other motion.
(Tr.at page 89 lines 20-25)

Clearly, the Statements of Facts and the Opposition to the Statement of facts show there is a genuine issue of material fact as to whether or not Mitchell Brown was serving as Trustee at the time of Cecil Armstrong's death given the fact that he had resigned as Trustee. His own attorney side stepped the issue. Instead Appellee's

attorney said that Mitchell could be asked as to what his intension was in signing the resignation form. Clearly there is a factual issue which is material as to whether or not Mitchell Brown should be the successor trustee.³

The Appellee was not entitled to a Partial Summary Judgment nominating Mitchell Brown as Trustee since there is a genuine issue of this material fact on this issue.

3. Whether or not the defense of laches presents genuine issues of material fact.

The standard of review for this issue is the same as set forth in issue number 1. in that the standard for appellate review of a Summary Judgment requires the Court to consider the evidence in the summary judgment record in the light which is most favorable to the nonmoving party, which in this case is the Appellant, to determine de novo, whether the parties' filings show any dispute of material fact. *Ocean Communities at* ¶4.

The Appellant raised the defense of Laches in her Answer and Counterclaim, (R. March 1, 2021; A. 5) The Appellant again raised the issue of Laches in her Additional Statements of Material Facts

³ The Order ruling that Mitchell Brown is the *nominated* trustee leaves the issue of who should become the *appointed* death trustee unresolved.

numbered 5, 6, 7 and 10. (A. 57-58) The docket shows that Appellee did not respond to the Additional Statements of Material facts. (A. 4-17).

Pursuant to M.R. Civ. P 56 (h) (4), “Facts contained in a supporting or opposing statement of material facts, if supported by record citations as required by this rule, shall be deemed admitted unless properly controverted.” The facts regarding Mitchell Brown’s knowledge of the amendment of the Trust, the present interest of the beneficiaries being revoked and the appointment of Diahanne Morse as the successor Trustee in January of 2020 would therefore be taken as admitted. Since none of Appellant’s Additional Statement of Material Facts were controverted, pursuant to Rule 56 (h)(4) those facts are also admitted.

The Court has stated that, “We review de novo whether the doctrine of laches bars a claim.” *Brochu v. McLeod* 148 A.3d 1220 (ME 2016) ¶13.

“The affirmative defense of laches applies when a party (1) has failed to assert a right for an unexplained and unreasonable length of time (2) under circumstances that have been prejudicial to an

adverse party and (3) it would be inequitable to enforce the right.”
Quirk v Quirk 241 A.3d 851 (ME 2020) at page 854 ¶11.

Since 1941, Maine Courts have held that “Laches cannot be predicated on passage of time alone. In addition, there must be prejudice to the adverse party because of the delay, and for the delay there must be no reasonable excuse.” *Tewskbury v. Noyes*, 138 Maine Reports 127, (1941) at Page 128.

The uncontroverted additional statements of material fact establish that Appellee Mitchell Brown knew that the Trust had been amended, that the present interest provision had been revoked, and that Diahanne Morse had been appointed as the successor Trustee in the event of Tina J. Bowden’s death, in January of 2020. During that time Appellee had been represented by counsel. Appellee did not object to the amendment and successor Trustee appointment at the time that Tina J. Bowden was alive and while she continued to administer the Trust as the sole trustee. By the Appellee not asserting any objection during Tina’s lifetime, the Appellant has been prejudiced since she assumed that the appointment was valid and Tina J. Bowden is not available to testify as to the circumstances surrounding the appointment.

In light of the Appellee's failure to assert his objection after receiving notice and copies of the documents in January of 2020, it would be inequitable to allow his claim at this time. In addition, the Appellee did not deny the facts stated in the additional statement of material facts which are therefore admitted.

The Judge at the May 1, 2023 Motion hearing did not make the required findings regarding laches, other than to say, "Is that really laches..." *TR. Page 89 line 2*

Having met the three requirements set out in the *Quick* case to prove a case of laches, and the Appellee's failure to controvert the Appellant's Statements of Opposing Material Facts and additional statement of material facts, the Appellee's Motion for Partial Summary Judgment should have been denied. The Appellant would instead be entitled to a judgment in her favor on the issues of laches.

4. Whether or not the original Cecil Armstrong Trust could be amended by the use of a pre-existing Durable Power of Attorney pursuant to 18-B M.R.S.A. §411 and 412, presents a genuine issue of material fact.

The standard of review for Summary Judgment appellate review is de novo. It is the Appellant's position that the Cecil Armstrong Trust

could be amended by the use of a pre-existing Durable Power of Attorney pursuant to 18-B M.R.S.A. §411(1).

Subsequent to the Motions hearing held on May 1, 2023, on May 23, 2023 the Appellant filed a Motion to Appoint Diahanne L. Morse as Successor Trustee Pursuant to 18-B § 411(5); 18-B § 412.

The December 18, 2023 Order granting the Partial Summary Judgment provided, in part that the Amendments to the trust were void. The Court provided no basis for its decision, instead opting to use the proposed Order provided by the Appellee.

While the Appellant did not specifically reference the relevant statutes during the motions hearing held on May 1, 2023 she did argue that duplicate signature pages, signed under authority of the power of attorney, the fact that the same attorney prepared both the Trust Document and the Power of Attorney suggested that she had the authority to exercise the Power of Attorney to make amendments to the trust. 18-B § 411(1) states in part;

“ settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust...” (emphasis added).

The word “or” typically functions as a disjunctive, meaning

that fulfilling any one of the listed conditions is sufficient.

During the motions hearing the Court appeared to contemplate such an eventuality but apparently presumed, incorrectly, the trust document in question was in place before the power of attorney was executed.

THE COURT: -- “because I could imagine a lawyer writing a power of attorney as requested by their client with very broad language, and including amending trusts, creating trusts, all those kinds of things. But that wouldn't change a trust document that's already in effect.” Tr. P. 37 lines 2-6.

The Appellant argued, in her Opposing Statements of Material Facts 1. b. the facts regarding the grant of power of attorney and its use in creating and amending the Trust document. (A. 56-57)

The Appellee did not file a reply to the Appellant's Opposition to the Appellee's Statement of material facts with additional opposing material facts and therefore the opposing statements of material fact are deemed admitted. The docket shows no response was filed by Appellee.

The Appellee's Motion for Partial Summary Judgment should have been denied and the Appellant Diahanne Morse acknowledged or appointed as the successor Trustee.

5. Whether or not the Court should have granted the Motion to Dismiss Appellee's claims without prejudice and the dismissal of Appellant's Counterclaims as "moot" pursuant to M.R.Civ.P. 41(a)(2).

The standard of review on a procedural issue is examined to determine whether the trial court "abused its discretion" or "exceeded the bounds of its discretion" when ruling as it did.

Donald Alexander, Maine Appellate Practice, 5th Edition, 2018 at page 325.

The Appellee filed his case on January 19, 2021 and his Complaint alleged that Tina J. Bowden, among other allegations, had transferred trust assets to herself including transferring of trust real estate. After four years, the Appellee filed a Motion pursuant to M.R. Civ. P 41 stating that Appellee made the original claim based on "the apparent behavior of the defendant as trustee. Plaintiff was concerned there were undisclosed trust amendments or unrecorded deeds executed by the Defendant prior to the commencement of the lawsuit." The Appellee also claimed that after discovery⁴ "it appears" that there wasn't any basis for the claims

⁴ The Court, although it was required to do so, never issued a scheduling Order in this case and there was never any formal discovery undertaken by Appellee.

and therefore the claims are no longer being asserted. (*R. Motion to Dismiss*)

The Appellant filed an Opposition to Plaintiff/Appellee's Motion to Dismiss requesting that the Motion to Dismiss be granted with prejudice. The Appellee had acted in bad faith in pursuing his lawsuit alleging transfer of real estate and other assets. Appellee was aware of the amendment and appointment of successor Trustee through Attorney Moser and his subsequent attorneys. Attorney Moser represented Tina J. Bowden as well as Mitchell Brown. Attorney Moser then joined Appellee's present lawyer's law firm where he would have access to all the Trust information.

It was an abuse of the Court's discretion to dismiss the Complaint without prejudice and to award costs to the party who essentially wasted the Court's time with his Complaint. Had Appellee done the most rudimentary investigation before filing his complaint he would have known that he had no viable claims. Appellee also admits in his Motion that he also has a similar case in the Probate Court.

In addition to dismissing without prejudice, the Court declared the Appellant's Counterclaims to be "moot". (A. 21)

Rule 41 (a)(2) provides that an action shall not be dismissed at the Plaintiff's request without an Order from the Court and with conditions as the court deems proper. In addition; "If a counterclaim has been pleaded by a defendant before service upon the defendant of the plaintiff's motion to dismiss, the counterclaim shall remain pending for independent adjudication by the court despite the dismissal of the plaintiff's claim." *Id.*

The appellant's counterclaims were plead in March of 2021. (A. 6). The Court Order, after dismissing the Appellee's Complaint, then declared Appellant's counterclaims as moot. Claiming the counterclaims were moot effectively dismissed the counterclaims and was a clear abuse of judicial discretion. The counterclaims should have remained pending pursuant to Rule 41 (a)(2).

The abuse of discretion standard in Maine continues to be "highly deferential" to the lower court's decision. The decision in the *Charlesworth v. American Express Co. 117 ME 219 (1918)* states "The chief test is whether or not a proper exercise of judicial discretion is whether in any given case it is in furtherance of justice. If it serves to delay or defeat justice it may well be deemed

an abuse of discretion.” In the case of *Young v. Carignan*, 152

*Me.*332, 129 A2d 216 (1957) the Law Court held:

“There is no error in a discretionary ruling unless indeed [the Justice] has plainly and unmistakably done an injustice so apparent as to be instantly visible without argument. When the determination of any question rests in the judicial discretion of the trial court, the exercise of that discretion cannot be reviewed by an appellate court unless it is made to appear that the decision was clearly wrong or that it was based upon some error in law. When some palpable error has been committed or an apparent injustice has been done, the ruling is reviewable on exceptions.” ⁵

In the present case, it is clear that the counterclaims should not have been declared “moot”. Rule 41 clearly states that counterclaims *shall* remain pending so it would be an error in law to permit the counterclaims to be effectively dismissed. The imposition of an award of costs is not a proper exercise of judicial discretion and it defeats justice. *Charlesworth* The Appellee admits in his Motion to Dismiss that he had no basis for his claims after years of delay. Under any standards, it is unjust to now award costs to the party who did not have a valid claim in the first place. The Appellant has had to respond to the Complaint and Motions at great expense and should not have to pay the costs incurred by the

⁵ Reference is also made to *Andrew Mead, Abuse of Discretion: Maine’s Application of a Malleable Appellate Standard*, 57 *Me.L.Rev.* 519 (2005)

Appellee who brought a lawsuit against the Appellant without having good grounds to bring the action.

The Appellee's Motion to Dismiss should be vacated and replaced with an Order granting the Motion to Dismiss the Appellee's case with prejudice and the Counterclaims remain pending. The Appellant should be granted her costs.

6. Whether or not the Superior Court had subject matter jurisdiction.

The Appellant filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction on January 22, 2025. Since that filing, the Court granted Appellee's Motion to Dismiss and finalized the Order granting the Motion for Partial Summary Judgment. If this Court should grant this Appeal by vacating the Partial Summary Judgment and returning the case to the court for trial, then this issue would be relevant.

The existence of subject matter jurisdiction can be challenged at any time. *Luongo v Luongo*, 306 A. 3d 610 (ME 2023) The legislature as well as the Law Court have further clarified the subject matter jurisdiction of the Probate Court. Title 18-C M.R.S.A. §3-105 of the Probate Court was updated in 2023 and provides in

part that “the court has exclusive jurisdiction of formal proceedings to determine how decedent’s estates subject to the laws of this State are to be administered, expended and distributed.”

In the earlier case of *Zani v Zani* 299 A. 3d 9 (ME 2023) the Court stated that “The Superior Court does not have jurisdiction to issue a declaratory judgment on the question of whether a decedent left a valid will or to determine how a decedent’s estate should be distributed.” *Id at* ¶14. The Court continued on to say that “As we have held, “the authority to set aside [a] will exists exclusively with the Probate Court,” and “the authority to resolve the contest over the distribution of assets under a will rests solely with the probate Court.” *Id at* ¶14.

The later case of *Luongo* expands the subject matter jurisdiction in the Probate Court. The Court found that there was an attempt “to circumvent the Probate Court’s exclusive jurisdiction over the administration and distribution of property pursuant to a will and a trust by filing a claim for conversion in the Superior Court cannot vest the Superior Court with concurrent subject matter jurisdiction.” *Id at* ¶13. The *Luongo* Court went on to say “The matter on appeal is plainly and unquestionably a contest over

the administration of a trust and the distribution of assets under a will and related trust. “ *Id at* ¶12.

In the present case, the Appellee Mitchell Brown brought a Motion for Partial Summary Judgment which asserted claims regarding the terms and administration of the Trust by Tina Bowden (deceased Trustee) and Diahanne Morse as the presumptive successor trustee including the appointment of a successor trustee. The Motion for Partial Summary Judgment was “unquestionably a contest over administration of a trust and the distribution of assets under a will and related trust.” *Luongo*. Since Appellee’s remaining claims have been dismissed upon the request of Appellee, the only remaining claim involved the administration of and distribution under the Trust.

In light of the rulings in both the *Zani* and *Luongo* case as well as Title 18-C M.R.S.A. §3-105, the Appellant respectfully requests that this Court issue an Order of Dismissal for lack of subject matter jurisdiction and to vacate the December 18, 2023 Order granting the Appellee’s Motion for Partial Summary Judgment.

CONCLUSION

For the reasons set forth in this brief, the Appellant respectfully states that a de novo review of the Partial Summary Judgment shows that there are genuine issues of material fact and that the Partial Summary Judgment should be set aside and vacated. In addition, the April 28, 2025 Order should be vacated, and Appellee's claims be dismissed with prejudice with costs to the Appellant, and Appellant's counterclaims to remain pending. If the Court finds there is a lack of subject matter jurisdiction, then the Appellant respectfully requests that the Partial Summary Judgment be set aside and vacated and the case dismissed.

Respectfully submitted,

Dated: August 18, 2025

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CERTIFICATE OF SERVICE

I, Susan C. Thiem, Esq. hereby certify that I have caused two copies of the foregoing brief of the Appellant to be served upon the attorney listed below, by emailing a copy of the brief to help@penbaylaw.com and by mailing a copy USPS regular mail to the office address listed below as follows;

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Dated : August 18, 2025

/s/Susan C. Thiem, Esq.