Docket No. WAL-25-248

IN THE MAINE SUPREME JUDICIAL COURT SITTING AS THE LAW COURT

MITCHELL D. BROWN,
Plaintiff/Appellee,

vs.

DIAHANNE L. MORSE,
Defendant/Appellant.

On appeal from the Waldo Superior Court
Docket no. BELSC-CV-2021-00001.

BRIEF OF THE APPELLEE

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INTRODUCTION

This appeal is about whether the Trustee of a living Trust could unilaterally modify the Trust instrument's provisions. The answer is no, under both Maine statute and the plain language of the Trust itself, and the Superior Court was correct when it granted summary judgment on those grounds.

The instant case revolves around the Armstrong Trust and the actions of its former trustee, Tina Bowden. Ms. Bowden served both as trustee of the

Armstrong Trust and as Mr. Armstrong's attorney-in-fact. Both Mr. Armstrong, the settlor of the Trust, and Ms. Bowden passed away prior to this litigation.

Before she passed, Ms. Bowden purported to amend the Trust instrument in her capacity as attorney-in-fact for Mr. Armstrong. Among others, the purported amendment granted Ms. Bowden the right to nominate a successor Trustee. She did so, nominating Diahanne Morse (the Defendant/Appellant in this case).

There was a problem, though: the plain language of the Trust explicitly prohibited amendment of the Trust instrument by power of attorney. On that basis, the Superior Court granted summary judgment and declared Ms. Bowden's purported amendments to the Trust void ab initio. This result means that Appellant Morse is not and never was a trustee of the Armstrong Trust.

That outcome was correct as a matter of law, and this Court should affirm. Further, the Court should award attorney fees based on the bad faith litigation of Appellant's counsel.

STATEMENT OF FACTS

The facts stated in the Appellant's Brief are largely true, if a bit convoluted. A short synopsis follows:

This suit revolves around the Cecil N. Armstrong, Jr. Living Trust, dated May 23, 2017 (hereafter, the Trust). A. at 17.[1] Mr. Cecil Armstrong was the settlor of the Trust, and he served as an initial trustee along with Tina Bowden and Mitchell Brown (the Appellee here). A. 53. Ms. Bowden also served as Mr. Armstrong's attorney-in-fact through a durable power of attorney.

At some point, Mr. Armstrong became incompetent to manage his own affairs, A. 33, and Mr. Brown resigned as an initial Trustee in April 2019, A. 214. Mr. Armstrong passed later that year, in November 2019. Blue Brief at 8. As a result of Mr. Armstrong's incapacity, Ms. Bowden was the sole Trustee after Mr. Brown resigned.

[1] The entire Trust instrument is in the Appellant's Appendix at pages 68-190.

During the time she was sole trustee, Ms. Bowden attempted to amend the Trust in her capacity as Mr. Armstrong's attorney-in-fact. Among others, Ms. Bowden's unilateral amendment of the Trust purported to "remove Mitchell D. Brown as Trustee" and to "authorize the remaining Trustee to nominate a successor Trustee" (hereafter, the Amendment) A. 217. That is, Ms. Bowden tried to give herself the power to appoint a new trustee not contemplated by the Trust instrument itself. Pursuant to this purported power to appoint in the Amendment, Ms. Bowden appointed Diahanne L. Morse, who is the Appellant here. Ms. Bowden has since also passed away.

This is the crux of the case. After learning about the purported Amendment to the Trust, Mr. Brown filed suit seeking declaratory and other relief on the basis that the Amendment was void ab initio, and thus any Trust-related actions taken by Appellant Morse were ultra vires. The Superior Court granted partial summary judgment in favor of Appellee Brown and dismissed the remainder of the case.

SUMMARY OF THE ARGUMENT

The Blue Brief is fundamentally unpersuasive, and the Court should affirm because the Appellant has not carried her burden of persuasion. Among other problems, the brief appears to confuse factual issues with legal ones. Partially as a result of that confusion, the brief fails to grapple with the legal substance of the Superior Court's decision.

At bottom, the case is about the construction and interpretation of a legal document. Here, the Trust instrument. The question presented below was whether Ms. Bowden's attempt to unilaterally modify the Trust was legally effective. The court determined it was not, as a matter of law, because the plain language of the Trust prohibited any attorney-in-fact from modifying Trust provisions. This settled the matter: the plain language of the Trust is unambiguous, and therefore interpretation of the language was a matter of law for the court. Of all Appellant Morse's arguments to the contrary, none of them engage with that basis of decision and therefore the arguments all fail.

This brief begins by refuting Appellant Morse's jurisdictional analysis in Part I. Part II addresses the language of the Trust itself, and shows that Ms. Bowden's attempt to amend it was ultra vires. Part III rebuts each of the Blue Brief's remaining (non-jurisdictional) arguments, and Part IV requests this Court impose sanctions on the Appellant.

ARGUMENT

I. The Superior Court had jurisdiction over the subject matter of this suit.

The Superior Court had subject matter jurisdiction over this suit as a matter of blackletter law. This conclusion follows from two points. First, this suit revolves around a trust instrument and purported amendments thereto. Everyone, including Appellant Morse, agrees on this. *See* Blue Brief at 6 ("This is an appeal from a Partial Summary Judgment in which the Appellee [Brown] sought to void certain amendments to a trust ..."). And second, the Maine Uniform Trust Code explicitly confers jurisdiction over trusts to the Superior Court: "The Probate Court and the Superior Court have concurrent jurisdiction of all proceedings in this State involving a trust." 18-B M.R.S. §203(1).

Appellant Morse's argument to the contrary thus misses the mark. *See* Blue Brief at 29-31. Indeed, all of Appellant Morse's arguments rely on inapposite law. The Zani case, for instance, involved the question whether a will should be set aside, or whether the will was valid at all. Zani v. Zani, 2023 ME 42, ¶14. Likewise, Luongo dealt with "the distribution of assets under a will and related Trust." Luongo v. Luongo, 2023 ME 75, ¶12 (emphasis added). That is, both cases presented questions about "how decedents' estates ... are to be administered, expended and distributed"—and those questions can only be adjudicated by a probate court under 18-C M.R.S. §3-105.

This case, by contrast, concerns an inter vivos Trust and requested declaratory and injunctive relief related to the Trust document itself; it does not involve the administration/distribution of a decedent's estate. See, e.g., Complaint at 3 (alleging breach of trust). For that reason, the narrow jurisdiction found in §3-105 doesn't apply, and neither Zani or Luongo support a different conclusion. Maine statute bestows concurrent jurisdiction in the Superior Court to adjudicate issues like these, 18-C

M.R.S. § 1-302(1)(C), and Maine law recognizes that trust disputes—especially those involving breach of trust, appointment of trustees, or construction of trust terms—may be heard in Superior Court. Together, §§ 1-302 and 1-303 preserve the concurrent jurisdiction that previously appeared in 18-B M.R.S. § 203(1) ("The Probate Court and the Superior Court have concurrent jurisdiction of all proceedings in this State involving a trust").

Under 18-C, the Probate Court retains primary probate functions, but trust-related proceedings—such as construction, modification, breach, or trustee appointment—remain concurrently within the Superior Court's jurisdiction, consistent with long-standing Maine law.

In short, the Superior Court had subject matter jurisdiction under Maine statute to adjudicate the Trust dispute at issue here, because it did not involve probate issues or estate administration or interpretation of a will. The Appellant's argument to the contrary is unsupported and the Court should reject it.

II. The Trust instrument and Maine statute both prohibit an attorney-in-fact from modifying the Trust's terms.

Maine law prohibits an agent (attorney-in-fact) from modifying a trust document, unless the Trust specifically allows such modification. "[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." 18-B M.R.S. §411(1).[2]

That default—that only the settlor can consent to modify a trust, unless explicit authorization allows the settlor's agent to act—applies here, because the Trust does not include any such authorization. In fact, the Trust explicitly prohibits an agent from modifying its terms. Article Four, Section 1(d) states:

> *This right to amend or revoke is personal to me and may not be exercised by a legal representative or agent acting on my behalf.*

[2] Appellant Morse takes the position that 18-B M.R.S. §411 applies to the Trust. *E.g.*, Blue Brief at 12. Appellee Brown does not concede this issue, because section 411 appears to apply on its face to irrevocable trusts only and it's not clear the Trust was irrevocable at the time of the purported Amendment. In any event, this brief accepts Appellant's briefing position *arguendo*. In the end, though, it doesn't matter because the plain language of the Trust is clear as explained below, and conclusively settles the matter in Appellee Brown's favor.

A. at 77 (Trust at page 4-2).

In short, the plain language of the Trust and the plain language of Maine law both agree—no one but Mr. Armstrong, the settlor of the Trust, could amend the Trust. It therefore follows *a fortiori* that Ms. Bowden was powerless to amend the Trust as a matter of blackletter law.

As a result, Ms. Bowden's attempt to modify the Trust by executing the "First Amendment" document had no force or effect—she made the purported amendment in her capacity as Mr. Armstrong's agent, which she had no power to do. *See* A. at 218 (Ms. Bowden signing the "First Amendment" in her capacity as Mr. Armstrong's "attorney in fact"); *id*. at 220 (Ms. Bowden purporting to appoint a successor trustee pursuant to the First Amendment); *see also* Blue Brief at 8 (explaining that "Tina Bowden amended the Trust document using her Power of Attorney.").

The Superior Court was thus correct when it declared the First Amendment void ab initio. And the natural legal consequence of that correct ruling was that any activity undertaken by authority of the First Amendment was likewise void. The court, then, was similarly correct to

declare that Appellant Morse was not and never had been a Trustee, because her appointment had been pursuant to the (void) First Amendment. See A. at 19. This Court should affirm.

III. Appellant Morse's arguments are wholly without merit.

The prior conclusion—that the First Amendment is void ab initio and thus all actions under it are also void—is dispositive of the appeal. Nonetheless, this brief responds to each of Appellant Morse's points in order.

Point 1. The first argument, according to its heading, is that there were materials issues of fact that precluded summary judgment. Blue Brief at 15-16. But the thrust of the argument appears to have more to do with the burden on summary judgment; that because Mr. Brown's summary judgment motion omitted two signature pages, granting summary judgment was somehow erroneous. *See id*. at 16 ("[I]t was pointed out to the [Superior] Court that the Appellee [Brown] had not included the two signature pages").

The argument is not exactly clear, frankly, but at bottom it doesn't matter. Appellant Morse has not carried her burden of persuasion on appeal to explain the legal consequence of the supposedly missing pages. Indeed, she doesn't even cite to them, or put the signature pages in the Appendix. In any event, it's difficult to understand exactly how they constituted a disputed material fact, and this Court should reject the argument.

Point 2. The second argument is that, because Mr. Brown had previously resigned as co-trustee, he could not serve as a so-called Death Trustee. Blue Brief at 16. The most obvious problem with this argument is that it conflates factual issues with legal ones. The legal effect of Brown's resignation is not a question of fact, it's a conclusion of law. This is because there is no ambiguity in the Trust document, and it is hornbook law that interpretation of an unambiguous legal document is a question of law. *See Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶11.

Here, the relevant language is clear:

> 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
>
> MITCHELL D. BROWN
>
> If any one or more of the Death Trustees is unwilling or unable to serve as a Trustee, or if a Trustee cannot continue to serve for any other reason, then the remaining trustees shall serve alone.

A. at 138 (Trust art. 12, § 3(c)).

Nothing in this section disqualifies a Death Trustee from serving if that person had previously resigned as an initial Trustee. Instead, the plain meaning of this section is that the Trust contemplates that the two Death Trustees replace whatever other trustees exist at the time of the settlor's death, regardless of whether the existing trustees were "initial Trustees" or "Disability Trustees." *See id*.

Put differently, the Trust does not say that a Death Trustee who resigned prior to the settlor's death is forever disqualified; rather, it provides a mechanism for the Death Trustees to take over the Trust by operation of law on the death of the settlor. And this conclusion is reinforced by elsewhere in the Trust. For example, the Trust makes explicit the idea that a single person can be named as different flavors of trustee:

> A Trustee may be listed more than once in this Section or an initial Trustee may also be named As a Disability Trustee or a Trustee who will serve upon my death. Naming a Trustee more than once is done as a convenience only and is not to be construed as a termination of that Trustee's trusteeship.

A. at 138 (Trust art. 12, § 3(e)). In short, subsection (e) confirms subsection (c)'s plain meaning: Tina Bowden and Mitchell Brown were to assume trusteeship on the death of the settlor.

In any event, the Court need not reach this issue for two reasons. First, Appellant Morse has not explained how the question "whether or not Mitchell Brown was serving as Trustee at the time of Cecil Armstrong's

death" is material to the dispute. *See* Blue Brief at 18. The intent of Mr. Brown, *see id*. at 19 ("[he] could be asked as to what his intension [sic] was"), is irrelevant, and the plain meaning of the Trust controls.[3]

Second, Appellant Morse has no standing to contest the language of the Trust generally or the appointment of Death Trustees specifically. This is because she has no legally cognizable interest in the Trust, due to her purported appointment as trustee being void ab initio as explained above in Argument II.

Point 3. Appellant Morse next argues that the doctrine of laches somehow applies to this case. Laches requires both (1) an unreasonable and unexplained delay and (2) prejudice to the opposing party. *Johnson v. Dedham*, 490 A.2d 1187, 1189 (Me. 1985). Mere passage of time is never enough. *Elston v. Elston & Co.*, 131 Me. 149, 156 (1932). But both elements must exist for laches to apply.

[3] Appellant Morse asserts, without support, that "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." Blue Brief at 6; *see also id*. at 16-18. The Court should reject this argument because, in addition to being wrong, it is also unpreserved—Ms. Morse never argued this to the Superior Court.

Here, neither does apply. Mr. Brown acted promptly after learning of Tina Bowden's death and the illegitimate amendments. There was no meaningful period of inaction at all, let alone an "unreasonable" one. Further, Appellant Morse cannot show prejudice: no third parties relied on her status, and the only funds disbursed were to Appellant's own counsel for drafting the void ab initio Trust amendments. The litigation posture made clear from nearly the outset that trusteeship was contested. *See* A. at 45.[4]

The pleadings show that Mr. Brown acted promptly after learning of the purported trust amendments and the death of Tina Bowden. He filed to intervene and protect the trust assets, citing risk of irreparable harm to beneficiaries if action was not taken. Maine courts are reluctant to apply laches where the party acted to protect a clear legal interest and where the

[4] Appellant Morse's only argument in support of prejudice is that "Appellant [Morse] has been prejudiced since she assumed that the appointment [as trustee] was valid." Blue Brief at 21. It's unclear from the briefing how exactly that means "it would be inequitable [for Mr. Brown] to enforce [his] right." *See Quirk v. Quirk*, 2020 ME 132, ¶ 11. Giving legal effect to this argument incentivizes illegal behavior, in that once someone purports illegitimate control and seizes trust assets, the ownness is on those adversely affected to capitulate or incur legal expense.

delay is justified by the need to clarify facts or legal standing. Giving legal effect to the plain unambiguous intentions of the settlor is a clear legal interest, in fact the only reason for the existence of the Trust. With no delay and no prejudice, laches collapses. *Cf*. *Guay v. Kennedy*, 2011 Me. Super. LEXIS 22 (determining a decades-long delay was excused where there was no showing of prejudice).

Point 4. Appellant Morse's fourth point is about whether the Trust could be modified by an agent under a power of attorney. Blue Brief at 22. As with her other arguments, this one too conflates facts with law. It is not a question of fact whether Maine statute allows amendment; that is a quintessential question of law. In any event, this question is the crux of this case, and this brief has conclusively established that the answer is no—neither the Trust nor Maine law allows amendment by the settlor's agent. *See supra* Argument II.

Point 5. The fifth point has to do with both voluntary dismissal and with mootness. Specifically, Appellant Morse contends that the trial court erred by dismissing Mr. Brown's additional claims—breach of trust, undue

influence, and improvident transfer—without prejudice, and when it dismissed her own counterclaims as moot. Blue Brief at 25-29.

Both contentions are meritless. As to the dismissal without prejudice issue, the Superior Court's decision was legally correct and equitable because (1) the pleadings allege facts that, if proven, support these claims under Maine law, and (2) the legal conclusions necessary to adjudicate them depend on the outcome of this appeal. Because a dismissal with prejudice "operates as an adjudication on the merits," *Bank of N.Y. v. Dyer*, 2016 ME 10, ¶ 11, and because the allegations were not in fact adjudicated, dismissal without prejudice was the correct decision.

As to the mootness issue, the Blue Brief opines that Morse's counterclaims were not moot. But she does not offer a list of those claims, or even include them in the Appendix, and she certainly doesn't explain how they were not mooted by the court's summary judgment ruling.

Here, the pleadings reveal that Ms. Morse's counterclaims were based on the same legal issues as Mr. Brown's claims—namely, the validity of trust amendments, appointment of trustees, and alleged breaches of

fiduciary duty. Once the court determined that purported Trust amendments were void, and that the Trust's internal succession provisions controlled, there was no longer a live controversy regarding Ms. Morse's entitlement to serve as trustee or to otherwise benefit from the voided amendments. That is, her counterclaims rested on the validity of the amendments and so when the amendments themselves were declared void, her counterclaims necessarily evaporated too. Or, phrased in a term of art, her counterclaims were moot.

Point 6. The final argument of Appellant Morse is that the Superior Court lacked subject matter jurisdiction over the suit. This is an odd argument to put last, and it fails because Maine law explicitly grants superior courts concurrent jurisdiction over trusts, as explained above in Argument I.

IV. Request for sanctions.

Pursuant to Rule 11 of the Maine Rules of Civil Procedure and M.R. App. P. 13(f), Appellee Brown respectfully requests that the Court impose sanctions on the Appellant and Appellant's counsel for filing this appeal

for the sole purpose of delay and for lack of candor to the Court. The record demonstrates a pattern of conduct that is frivolous, ethically improper, and prejudicial to the Trust and its beneficiaries.

Legal Basis for Sanctions. Rule 11, M.R. Civ. P. provides that "[i]f a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction." The rule expressly authorizes the Court to act sua sponte and does not require a separate motion.

M.R. App. P. 13(f) further empowers the Law Court to award damages and single or double costs when an appeal is frivolous or filed for an improper purpose, such as to harass or cause unnecessary delay. The Court's inherent authority to sanction bad-faith litigation conduct is well established.

The Maine Rules of Professional Conduct, Rule 3.3, impose a duty of candor toward the tribunal, prohibiting attorneys from knowingly making

false statements of law or fact or failing to disclose directly adverse authority.

Frivolous Positions and Misrepresentations. The Appellant's brief omits controlling Trust language, misstates governing law, and fails to disclose adverse authority. These omissions are not inadvertent—they are deliberate acts designed to mislead the Court and delay resolution. Examples include:

1. Mischaracterization of Amendment Authority. The brief asserts that Tina Bowden, acting under a power of attorney, could amend the Trust under 18-B M.R.S. §§ 411–412, despite the Trust's explicit prohibition: "This right to amend or revoke is personal to me and may not be exercised by a legal representative or agent acting on my behalf." (Art. Four, § 1(d)). Maine law enforces such terms. See 18-B M.R.S. § 411(1).
2. Omission of Succession Provisions. The Appellant selectively quotes "if they are then serving" while ignoring provisions that

allow remaining Death Trustees to serve if one is "unwilling or unable." (Art. Thirteen, §§ c, e).

3. Jurisdictional Misstatement. Appellant relies on Zani v. Zani, 2023 ME 42, a will-contest case, while ignoring statutes granting concurrent jurisdiction to the Superior Court over trust disputes. See 18-B M.R.S. §§ 202–203; 4 M.R.S. § 252.
4. Laches Argument Without Basis. The record shows Mr. Brown acted promptly; Appellant's contrary claim omits material facts.
5. Counterclaims and Mootness. Appellant ignores Rule 41(a)(2) and case law allowing dismissal of dependent claims as moot.

This pattern of selective omission and distortion demonstrates bad faith and warrants sanctions.

Additional Ethical Violations: Conflict of Interest. The misconduct extends beyond appellate briefing. Attorney Susan Thiem advised the Trustee to execute amendments using a power of attorney—advice plainly contrary to the Trust's terms—and then continued to represent both the Trustee and the successor Trustee named in those illegitimate

amendments. This dual representation created a direct conflict of interest, violating the Maine Rules of Professional Conduct.

Attorney Thiem was warned by Plaintiff/Appellee that she would be a key witness in any malpractice claim and was the sole witness to the execution of the invalid amendments. Despite this, she did not withdraw, compounding the ethical breach. Her continued representation prejudiced the Trust, delayed resolution, and increased litigation costs—conduct that meets the standard for sanctions under Aubuchon v. Blaisdell, 2023 ME 5, and Whittet v. Whittet, 2017 ME 156.

Prejudice and Harm. These actions have wasted judicial resources, increased costs, and undermined the Trust's administration. The appeal serves no legitimate purpose; as was the defense, counterclaims and the trust amendments themselves, it is a vehicle for delay and harassment.

Requested Relief. The Court should impose sanctions under Rule 11 and M.R. App. P. 13(f), including:

- Punitive fines, an award of attorney's fees, and double costs;
- Referral to the Board of Overseers for disciplinary review; and

- Any further relief necessary to deter similar misconduct.

CONCLUSION

The Court should affirm the Superior Court and impose sanctions on Appellant's counsel for the reasons stated above.

Dated: October 7, 2025

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