

**SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT**

**LAW DOCKET NO. OXF-25-44**

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**ALEXANDER SOUTTER**

**Plaintiff-Appellant**

**v.**

**BEVERLY SOUTTER**

**Defendant-Appellee**

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**ON APPEAL FROM THE OXFORD COUNTY SUPERIOR  
COURT**

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**BRIEF OF APPELLANT**

**Bradford A. Pattershall, Esq. – Bar No. 8939  
William F. Campbell, Esq. – Bar No. 10646**

**Norman, Hanson & DeTroy, LLC  
220 Middle Street  
P.O. Box 4600  
Portland, Maine 04112  
(207) 774-7000  
Attorneys for Appellant**

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## **I. INTRODUCTION**

This case is an appeal from an order of the Superior Court (Oxford County) dismissing an appeal from the District Court (Bridgton) in a matter brought pursuant to 14 M.R.S. § 7071. It is also an appeal from the denial of a motion to reconsider that order.<sup>1</sup> The Superior Court's order, issued using form CV-SC-134, dismissed the appeal from the District Court for the reason "[t]hat the appellant has not shown in light of all affidavits and the entire record that there is a genuine issue of material fact as to which there is a right by trial by jury." Appellant Alexander Soutter ("Mr. Soutter") asserts that this is the incorrect standard by which to determine the viability of an appeal pursuant to 14 M.R.S. § 7071(8) and that the Superior Court lacked the authority to deny his appeal.

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<sup>1</sup> M.R. App. P. 2B(c)(2) provides pertinently that a notice of appeal need not be filed within 21 days after entry of judgment if a timely motion for reconsideration is filed under M.R. Civ. P. 59. It also provides that a notice of appeal filed within 21 days after entry of the order on a motion to reconsider "shall be treated as an appeal from both the judgment and the order on the motion."

## **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY OF THE CASE**

This case stems from a dispute between Mr. Soutter and his estranged wife, Appellee Beverly Soutter (“Mrs. Soutter”), regarding the ownership and possession of a German Shepard dog named Griffin.<sup>2</sup> Until around April of 2024, the parties cohabitated with Griffin. After they separated, Mr. Soutter was in possession of Griffin. Mrs. Soutter brought an action in District Court in Bridgton, pursuant to 14 M.R.S. § 7071, to recover personal property, namely Griffin, against Mr. Soutter.

A hearing was held on July 24, 2024, *see* Appendix (“App.”) p. 5, and both parties presented evidence and offered testimony supporting their respective claims of possession and ownership. After hearing the parties’ respective claims of ownership, the District Court found Mrs. Soutter was entitled to possession of Griffin, but noted it was a “difficult decision.”

On July 31, 2024, Mr. Soutter exercised his right to have the issue of ownership of Griffin decided by a jury, and he filed a form CV-187 “Notice of Appeal and Affidavit.” App. p. 6. The Superior Court summarily dismissed Mr. Soutter’s appeal on January 3,

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<sup>2</sup> The parties are still married but are separated, and a divorce proceeding is pending.

2025, checking the box on form CV-SC-134 that when checked reads, “The court has reviewed the record on appeal and affidavits submitted by the parties and finds: That the appellant has not shown in light of all affidavits and the entire record that there is a genuine issue of material fact as to which there is a right by trial by jury.” App. p. 8. Mr. Soutter filed a motion to reconsider on January 13, 2025, which was denied on January 22, 2025. Mr. Soutter filed a notice of appeal on January 27, 2025. App. p. 7.

### **III. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

Whether the Superior Court erred in dismissing Mr. Soutter's § 7071(8) appeal based upon its finding that a genuine issue of material fact had not been generated.

#### **IV. ARGUMENT**

**The Superior Court erred in dismissing the appeal from the District Court because a genuine issue of material fact is not a prerequisite to an appeal under § 7071(8).**

**A. There is a constitutional right to a jury trial on the issue of property ownership.**

The Superior Court does not have discretion to summarily dismiss § 7071(8) appeals. Section 7071(8) provides pertinently, “An appeal of a judgment or order under this section is governed by Title 4, section 57 and the Maine Rules of Appellate Procedure, *except that any issue triable by right by a jury may be appealed to a trial de novo in Superior Court.*” (Emphasis added). The possession of Griffin is an issue triable by right by a jury as reflected in the constitutional protections afforded by Article 1, § 20 of the Maine Constitution.

Article 1, § 20 of the Maine Constitution provides that citizens have a right to a jury trial in all “civil actions” and “controversies concerning property.” Me. Const. art. 1, § 20. Article I, § 20 reads in full, “In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced.” The exception to this right to a jury trial applies only if prior to 1820,



when Maine became a state, juries could not decide controversies concerning property. The qualification preserves the right to jury trials for legal claims but excludes equitable claims, which historically were not tried by juries in common law courts. *Cyr v. Cote*, 396 A.2d 1013 (Me. 1979). However, as noted *infra*, § 7071(8) does not contemplate the nature of the *claims* being asserted. It speaks to the jury deciding certain *issues*. Although, there is abundant case law differentiating equitable claims from legal claims, there does not appear to be a case decided by this Court that defines what an “*issue* triable by right by a jury” (emphasis added) is.

With regard to the right to jury trials for certain *claims*, this Court has stated, “To determine the often elusive question of whether a claim is legal or equitable, there must be an appraisal of the basic nature of this issue presented, including the relief sought.” *Id.* at 1016. This Court has emphasized there is a presumption that claims are legal, and it “will presume there is a right to a jury in a civil case ‘unless it is affirmatively shown that a jury trial was unavailable in such a case in 1820.’” *Kennebec Fed. Sav. & Loan Ass’n v. Kueter*, 1997 ME 123, ¶ 3, 695 A.2d 1201

(quoting *North School Congregate Housing v. Merrithew*, 558 A.2d 1189, 1190 (Me.1989)).

There is an inconsistency within § 7071 itself. Subsection 8 contains the language regarding an appeal for a jury trial de novo in Superior Court where an *issue* is triable by right by a jury. Section 10, however, provides, “The *remedy* provided in this section is a remedy in equity and is in addition to and not in lieu of another remedy.” (Emphasis added). The question is whether ownership and possession of property are *issues* that may be decided by a jury. Subsection 10 cannot render subsection 8 meaningless. *E.g.*, *Schaefer v. State Tax Assessor*, 2008 ME 148, ¶ 13, 956 A.2d 710 (“We do not construe a statute in a way that renders portions of it meaningless.”). Although § 7071 may be an equitable remedy, issues may remain that a party has a right ask a jury to decide. Thus, unlike the language in *Cyr*, the focus must be on the “issue presented” and *not* on the “relief sought” when analyzing the import of § 7071(8).

Shortly after the Civil War, this Court held that when the question as to ownership of personal property depends upon oral as well as written evidence, the decision is properly left to the jury.

*Boody v. Goddard*, 57 Me. 602 (1868). *Boody* involved the question of ownership of interests in certain permits, and there was conflicting evidence on this point. This Court wrote, “Under these circumstances, no judge would have been justified in withdrawing the question of ownership from the jury.” *Id.* at 605. Although this Court has recognized that certain claims involving property did not historically carry a jury trial right, *see e.g., Cyr*, 396 A.2d at 1019 n. 8 (“a suit brought in equity and seeking equitable replevin does not entitle the parties to a jury trial”), there does not appear to be precedent suggesting the issue of ownership of property cannot be determined by a jury. Indeed, *Boody* suggests otherwise. There is therefore no basis to invoke the exception in Article 1, § 20 of the Maine Constitution entitling a party to a jury trial in controversies concerning property.

**B. Provisions applicable to appeals in forcible entry and detainer actions and small claims actions are not applicable to § 7071 appeals.**

Actions brought pursuant to § 7071 trigger the constitutional entitlement to a jury trial, for they almost invariably involve “controversies concerning property” where the question of ownership depends on the oral and written evidence. For better or for worse, form CV-SC-134 is a form used for appeals from

judgments in small claims court, forcible entry and detainer (“FED”) actions, and actions to recover personal property. The distinction between a § 7071(8) appeal and a small claims or FED appeal, however, is not recognized in the form. Another form, CV-187, is the form used to appeal an action brought pursuant to § 7071. Its title includes the terms “Notice of Appeal *and Affidavit*” (emphasis added) despite § 7071(8) not requiring any affidavits whatsoever.

The distinction between § 7071 appeals and appeals in small claims or FED actions is critical. The civil rule applicable to FED’s, M.R. Civ. P. 80D(g), provides pertinently:

(2) Appeal by Jury Trial De Novo.

(A) Notice of Appeal and Demand for Jury Trial. Either party may appeal to the Superior Court by jury trial de novo on any issue so triable of right by filing a notice of appeal as provided in Rule 76D. *A party who seeks a jury trial de novo shall include in the notice of appeal a written demand for jury trial and shall file with the notice an affidavit or affidavits meeting the requirements of Rule 56(e) and setting forth specific facts showing that there is a genuine issue of material fact as to which there is a right to trial by jury.* Failure to make demand for jury trial with accompanying affidavit or affidavits constitutes a waiver of the right to jury trial, and the appeal shall be on questions of law only, as provided in paragraph (1) of this subdivision.

(Emphasis added). Title 14 M.R.S. § 6008(1) provides, like § 7071(8), that either party to an FED action “may appeal on any

issue triable by right by a jury to a trial de novo in the Superior Court as provided in this section.” Section 7071, however, has no rule of procedure akin to Rule 80D(g).

M.R.S.C.P. 11(d)(2), like M.R. Civ. P. 80D(g) provides pertinently:

(2) An appeal by a defendant may be on questions of law only or, on any issue so triable of right, by jury trial de novo at the election of the defendant. *A defendant who seeks a jury trial de novo shall briefly state the grounds of the appeal and demand a jury trial in writing on the notice of appeal and shall file with the notice an affidavit or affidavits meeting the requirements of Rule 56(e) of the Maine Rules of Civil Procedure, and setting forth specific facts showing that there is a genuine issue of material fact as to which there is a right to trial by jury.* Failure to make demand for jury trial with accompanying affidavit or affidavits constitutes a waiver of the right to jury trial de novo.

Again, § 7071(8) has no similar affidavit requirement, and a genuine issue of material fact is not a prerequisite to the viability of an appeal.

Although § 7071 actions are often scheduled on FED court days—some people even refer to them as “personal property FED’s”—they unquestionably are not the same statutory cause of action as an FED or small claims case. Section 7071(8) contains no affidavit requirement, yet form CV-SC-134 allows the denial of a §

7071 appeal for reasons *not* contained in the statute or in any Rule of Court. In essence M.R. Civ. P. 80D(g) and M.R.S.C.P. 11(d)(2) have mistakenly been incorporated in form CV-SC-134 to apply to § 7071 appeals.

**V. CONCLUSION**

A § 7071 action almost by definition involves a controversy concerning property. There is therefore a constitutional right to a jury trial on such issues despite § 7071(10) providing that the statutory *remedy* is equitable. The prerequisites for appeals of small claims actions and FED's do not apply to § 7071 appeals. In other words, *because* there is a right to have the issue of ownership decided by a jury, the Superior Court does not have the statutory or rule authority to deny an appeal. The box on form CV-SC-134 allowing a dismissal of an appeal based on the lack of a genuine issue of material fact in "the affidavits and entire record" cannot, as a matter of law, apply to § 7071 appeals. The Superior Court erred in dismissing the appeal from the District Court.

Appellant Alexander Soutter respectfully requests that this Court reverse the decision of the Superior Court, which dismissed his appeal from the District Court, and remand this case for a jury

trial de novo in the Superior Court as required by 14 M.R.S. §  
7071(8).

Dated at Portland, Maine this 25<sup>th</sup> day of July, 2025.

Respectfully submitted,

/s/ Bradford A. Pattershall

/s/ William F. Campbell

Attorneys for Appellant Alexander  
Soutter

Bradford A. Pattershall, Esq.—Bar  
No. 8939  
William F. Campbell, Esq.—Bar No.  
10646  
Norman, Hanson & DeTroy, LLC  
Two Canal Plaza  
P.O. Box 4600  
Portland, ME 04112  
(207) 774-7000  
bpattershall@nhdlaw.com  
wcampbell@nhdlaw.com