

OXF-25-44

MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

ALEXANDER SOUTTER,

Appellant,

v.

BEVERLEY SOUTTER,

Appellee.

ON APPEAL FROM THE OXFORD COUNTY SUPERIOR COURT

BRIEF FOR APPELLEE BEVERLEY SOUTTER

Cassandra L. Morin, Esq.

Desmond, Rand & Guerard, P.A.
55 Stroudwater Street
Westbrook, ME 04092
Attorney for Appellee

Bradford A. Pattershall, Esq.

William F. Campbell, Esq.

Norman, Hanson & DeTroy, LLC
220 Middle Street, P.O. Box 4600
Portland, ME 04112
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
ARGUMENT	4
1. Standard of Review	4
2. Claims brought under 14 M.R.S. § 7071 are equitable and do not entitle a defendant to a jury trial absent a showing of an “issue triable by right by a jury.” ...	4
3. The requirements of M.R.Civ.P. 11(d)(2) and 80L(c)(1) or M.R.Civ.P. 80D were properly applied to this appeal.	8
CONCLUSION	11

TABLE OF AUTHORITIES

MAINE CONSTITUTIONAL PROVISIONS

Me. Const. art. 1, § 20.....	5,8
------------------------------	-----

MAINE SUPREME COURT CASES

<i>Auburn Harpswell Ass’n v. Day</i> , 438 A.2d 234, 238-39 (Me. 1981).....	11
<i>Boody v. Goddard</i> , 57 Me. 602 (1868).....	7-8
<i>Cyr v. Cote</i> , 396 A.2d 1013 (Me. 1979).....	5,6
<i>Design Dev., Inc. v. Ferraiolo Constr.</i> , 522 A.2d 1308 (Me. 1987).....	8-9
<i>DesMarais v. Desjardins</i> , 664 A.2d 840 (Me. 1995).....	6
<i>Ela v. Pelletier</i> , 495 A.2d 1225 (Me. 1985).....	7
<i>Falmouth v. Long</i> , 578 A.2d 1168 (Me. 1990).....	6,7
<i>H & H Oil Co. v. Dineen</i> , 557 A.2d 604 (Me. 1989).....	8
<i>King v. King</i> , 507 A.2d 1057, 1059 (Me. 1986).....	5
<i>Thermos Co. v. Spence</i> , 1999 ME 129.....	4,5
<i>Wellstone Partners v. J & M Constr. Co.</i> , 581 A.2d 789 (Me. 1990).....	4

MAINE STATUTES

14 M.R.S. § 7071.....	4-7, 9, 10
14 M.R.S. § 1802.....	11

MAINE RULES OF PROCEDURE

M.R.Civ.P. 56.....	10
M.R.Civ.P. 76D.....	9
M.R.Civ.P. 80D.....	4,8,9,10
M.R.Civ.P. 80L.....	4,8,9,10
M.R.S.C.P. 11.....	4,8,9,10

ARGUMENT

1. Standard of Review

In reviewing the denial of a jury trial demand, the Court must “first determine that the case was a proper one for a jury, that a request therefor was made at the proper time, that such request was refused, and that the issue has been preserved for appellate review.” *Wellstone Partners v. J & M Constr. Co.*, 581 A.2d 789, 791 (Me. 1990).

2. Claims brought under 14 M.R.S. § 7071 are equitable and do not entitle a defendant to a jury trial absent a showing of an “issue triable by right by a jury.”

The issue to be determined by this Court is whether a defendant filing a notice of appeal on a claim brought under 14 M.R.S. § 7071 (also referred to as “§ 7071” or “Section 7071”) is required to file a supporting affidavit showing a genuine issue of material fact to prove there is an issue triable by right by a jury in accordance with M.R.Civ.P. 11(a)(2) and 80L(c)(1) or M.R.Civ.P. 80D.

A party’s right to a jury trial in civil matters may be founded “in statute or in the Maine Constitution.”¹ § 7071(8) provides that “[a]n appeal of a judgment or order under this section is governed by Title 4, Section 57 and the Maine Rules of

¹ *Thermos Co. v. Spence*, 1999 ME 129, ¶ 7.

Appellate Procedure, except that any issue² triable by right by a jury may be appealed to a trial de novo in Superior Court.” The statute specifically limits an Appellant’s right to a jury trial to “issues triable by right by a jury,” which requires an analysis of the Maine Constitution and its surrounding case law for further interpretation.

The Maine Constitution provides that parties have a right to a trial by jury in “all civil suits and controversies concerning property, except in cases where it has heretofore been otherwise practiced.”³ The Court has interpreted this to mean that the Maine Constitution provides a right to jury trial for “legal but not equitable claims.”⁴ A claim is legal when the plaintiff seeks “damages as full compensation for an injury[,]”⁵ and equitable claims are “those requiring creative, injunctive, or unique action by the court.”⁶ While it is undisputed that this case — and all claims brought under § 7071 — concern property, the statute explicitly states that this action sounds in equity and does not carry a right to a jury trial, absent a showing of a “legal” claim (i.e., an “issue triable by right by a jury”) to be heard by a jury on appeal.

² Appellant’s distinction between claims and issues is insignificant because the Constitution refers to “all civil suits,” and because the Court has used the terms interchangeably. *See Cyr v. Cote*: “Our constitutional provision safeguards the right to a jury trial in all legal claims. [Citation Omitted] As to equitable issues, viz., ‘cases where it has heretofore been otherwise practiced’, no jury trial right exists by virtue of art. 1, § 20 [...]” 396 A.2d 1013, 1016 (Me. 1979) (Emphasis added).

³ Me. Const. art. 1, § 20.

⁴ *King v. King*, 507 A.2d 1057, 1059 (Me. 1986).

⁵ *Id.*

⁶ *Thermos Co. v. Spence*, 1999 ME 129, ¶ 18.

As Appellant pointed out, to determine whether a claim is legal or equitable, the Court must appraise “the basic nature of the issue presented, including the relief sought,”⁷ and it is usually based on the pleadings.⁸ When the issue cannot be classified as either strictly legal or equitable (such as in cases of fraud), the remedy sought is a “highly significant factor in determining the right to a jury trial.”⁹ To the extent that claims brought for recovery of personal property under this statute are similarly ambiguous, the statute/legislature has clarified; § 7071(10) explicitly states that the remedy provided in this section is a remedy in equity.

Still, an analysis of the nature of the issue on appeal in this case is certainly appropriate. In appraising the nature of the issue in *Falmouth v. Long*, the Court reviewed the nature of the proceedings, including the “gravamen of the Town’s complaint” and the powers exercised by the court in the determination of remedies available under the cause of action at hand.¹⁰ In simpler terms, the Court analyzed the plaintiff’s complaint to extract the essence of the issue presented to the court, and then considered whether the lower court used powers sounding in equity or its legal authority in awarding the remedy. In the complaint form for summary proceedings brought for recovery of personal property cases, as can be seen in the Appendix on page 10, the gravamen of Appellee’s complaint was a request for

⁷ *Cyr v. Cote*, 396 A.2d 1013, 1016 (Me. 1979).

⁸ *DesMarais v. Desjardins*, 664 A.2d 840, 844 (Me. 1995).

⁹ *Cyr* at 1019.

¹⁰ 578 A.2d 1168, 1171 (Me. 1990).

injunctive relief, i.e., commanding Appellant to return certain personal property to Appellee. Most notably, she does not request damages as full or even partial compensation for her loss; only “such other relief as the Court deems appropriate.”¹¹

In addition to the remedy sought, the Court also considers the powers needed and exercised in accomplishing said remedy.¹² Section 7071 grants the Court broad equitable powers and various opportunities to provide equitable relief. Section 7071(5) specifies that the Court has “*equitable* power to make an appropriate order in relation to the personal property and the parties to the action[,]” and § 7071(6) grants the Court additional “preliminary, interim or other *equitable* relief upon a sufficient showing that the preliminary, interim or other *equitable* relief is justified.”¹³ The statute explicitly confers authority sounding in equity to the court to issue equitable remedies to the prevailing party, further supporting the conclusion that claims asserted under 14 M.R.S. § 7071 are equitable and do not entitle a defendant to a jury trial absent a showing of an issue triable by right by a jury.

Boody v. Goddard is distinguishable from claims brought under 14 M.R.S. 7071.¹⁴ *Boody* was based on a contractual dispute between the parties — a legal claim — and the relief sought was not the return of the property (in this case, the

¹¹ Even if she had requested additional relief, it would not convert the proceeding from an equitable proceeding to an action at law entitling Appellant to a jury trial. *See Falmouth v. Long*, 578 A.2d 1168, 1171-72 (Me. 1990); *Ela v. Pelletier*, 495 A.2d 1225, 1227 (Me. 1985).

¹² *See Falmouth* at 1171.

¹³ Emphasis added.

¹⁴ 57 Me. 602 (1868).

logs), but damages for the loss of revenue due to the breach (in this case, approximately five thousand dollars).¹⁵ The court's determination of ownership was incidental and not the "gravamen" of the complaint, and the relief requested was damages as full compensation for the injury, not equitable relief.

To summarize, the plain language of the statute indicates that claims brought under this statute are equitable in nature and, in the absence of an issue triable by right by a jury presented to the Superior Court in a supporting affidavit, do not entitle Appellant to a jury trial.

3. The requirements of M.R.Civ.P. 11(d)(2) and 80L(c)(1) or M.R.Civ.P. 80D were properly applied to this appeal.

The affidavit requirement set forth in M.R.Civ.P. 11(d)(2) and 80L(c)(1), which can also be found in 80D(g)(2), is appropriate for personal property recovery appeals because it provides a "threshold determination in the Superior Court of whether the affidavit presents a material issue of fact entitling the appealing defendant to a trial by jury." *H & H Oil Co. v. Dineen*, 557 A.2d 604, 605 (Me. 1989). If Appellee implies that the affidavit requirement is unconstitutional, the Court has already ruled on the constitutionality of the affidavit requirement under Me. Const. art. 1, § 20. In the case of *Design Dev., Inc. v. Ferraiolo Constr.*, this Court held that there was "no merit in the contention [...] that [M.R.S.C.P. 11]

¹⁵ *Id.* at 602-603.

unconstitutionally burdens the right to a jury trial” because the Rule provides a “reasonable opportunity to file the necessary documents” and “[t]he requirement of the rule for an affidavit most frequently can be met by the defendant’s own affidavit.”¹⁶ An appeal brought under § 7071 offers the same reasonable opportunity, and the defendant’s own affidavit can also meet the requirement (and could have in Appellant’s case as well).

Appellant argues that any appeal brought under 14 M.R.S. § 7071 automatically entitles a defendant to a jury trial, but in the same breath, argues that provisions that apply to forcible entry and detainer (“F.E.D.”) actions do not apply because no rule similar to M.R.Civ.P. 80D(g) applies to § 7071 appeals. While there are no rules specific to appeals of recovery of personal property recovery claims, M.R.S.C.P. 11(d)(2) states that “[w]hen a jury trial is demanded, [...] the action shall be tried to a jury by the Superior Court in accordance with Rule 80L of the Maine Rules of Civil Procedure.” Although the statute never explicitly states that M.R.S.C.P. 11 applies to § 7071 cases, the statute does not reference any particular set of rules under which the appeal is governed, and the appeal must be governed by some rule. M.R.Civ.P. 76D cannot be appropriate because appeals under that rule “shall be on questions of law only and shall be determined by the Superior Court without jury on the record on appeal as specified in Rule 76F.” M.R.Civ.P. 80D

¹⁶ 522 A.2d 1308, 1310 (Me. 1987).

clearly applies to F.E.D. actions in the District Court and on appeal to the Superior Court. Just because no rule is explicitly stated as applicable to appeals under this statute does not mean no procedural rules apply to such appeals.

Although the rule is titled “Forcible Entry and Detainer”, Rule 80D(g) could reasonably be applied to appeals brought under 14 M.R.S. § 7071 because both actions inherently involve a property dispute, and both actions provide equitable remedies to the prevailing party. In F.E.D. cases, the Court must decide the rights of the landlord and the tenant to possess and/or occupy the premises. The remedies provided in F.E.D. actions and § 7071 cases are also the same; the prevailing party’s remedy is possession of the property in question.

Either way, both Rules 80L(c) and 80D require a defendant to submit an affidavit meeting the requirements of Rule 56(e) of the Maine Rules of Civil Procedure 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, and one of them must apply to appeals brought under this statute. The primary difference between an appeal of a small claims judgment under M.R.S.C.P. 11(d)/M.R.Civ.P. 80L and an appeal of an F.E.D. judgment under M.R.Civ.P. 80D(2)(A), at least in pertinent part, is whether or not the plaintiff can request a jury trial de novo, which is immaterial in this case.

No matter what procedural rule this Court deems applicable to appeals under this statute, because Appellant failed to submit any supporting affidavit with his

Notice of Appeal and was represented by counsel in filing said Notice,¹⁷ who knew or should have known the affidavit is necessary in perfecting such an appeal, this appeal is blatantly frivolous and, when taken in conjunction with Appellant's Motion to Stay Enforcement of Judgment Pending Appeal,¹⁸ is clearly intended to delay the return of Appellee's personal property as ordered by the Bridgton District Court.

CONCLUSION

In consideration of the entire record on appeal, Maine statutory law, the holdings of the Maine Supreme Court, and for the reasons stated above, the Appellee respectfully requests that this Honorable Court rule in favor of Appellee and award Appellee treble costs based on Appellee's accumulated attorney's fees and costs in accordance with 14 M.R.S. § 1802¹⁹ or, in the alternative, Appellee's reasonable attorney's fees and costs.

Respectfully Submitted,

DATED: September 8, 2025

/s/Cassandra L. Morin
CASSANDRA L. MORIN, Esq.
Maine Bar No. 6708
Attorney for Beverley Soutter, Appellee

¹⁷ Appendix, page 99.

¹⁸ Appendix, page 104.

¹⁹ This Court has stated that it will exercise this power when "an appeal is obviously without any merit and has been taken with no reasonable likelihood of prevailing, and results in delayed implementation of the judgment of the lower court; increased costs of litigation; and dissipation of the time and resources of the Law Court." *Auburn Harpswell Ass'n v. Day*, 438 A.2d 234, 238-39 (Me. 1981).