

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

LAW DOCKET NO. OXF-25-44

ALEXANDER SOUTTER

Plaintiff-Appellant

v.

BEVERLEY SOUTTER

Defendant-Appellee

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

REPLY 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**

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	3
I. ARGUMENT	4
The issue of possession of Griffin is one to which Mr. Soutter has the right to trial by jury.	4
II. CONCLUSION	9
CERTIFICATE OF SERVICE	11

TABLE OF AUTHORITIES

Page

Cases

<i>Atl. Home Sols., Inc. v. Pham</i> , 2022 ME 6, ¶ 10, 267 A.3d 1106	4
<i>Colonial Builders & Inv'rs, Inc. v. Meier</i> , 417 A.2d 422 (Me. 1980) 7, 8	
<i>North School Congregate Housing v. Merrithew</i> , 558 A.2d 1189 (Me. 1989)	5
<i>Walker v. Heber</i> , 534 A.2d 969, 970 (Me. 1987)	9

Statutes

14 M.R.S. § 6008	6
14 M.R.S. § 6012	4
14 M.R.S. § 7071	4

Other Authorities

P.L. 1989, ch. 377	6
P.L. 2009, ch. 245	4

Rules

M.R. Civ. P. 80D	6
M.R. Civ. P. 80L	5

I. ARGUMENT

The issue of possession of Griffin is one to which Mr. Soutter has the right to trial by jury.

Title 14 M.R.S. § 7071 was enacted in 2009. P.L. 2009, ch. 245, § 6. The same public law that enacted § 7071 repealed 14 M.R.S. § 6012. *Id.* § 5. Indeed, this Court has referred to § 6012 as the predecessor to § 7071. *Atl. Home Sols., Inc. v. Pham*, 2022 ME 6, ¶ 10, 267 A.3d 1106. Relevant language of former § 6012 includes:

1. Action to resolve dispute. If 2 or more persons claim rights in, title to or possession of personal property, any claimant may bring an action in District Court to resolve a dispute among the claimants. The plaintiff has the option of bringing the action by way of summary proceeding or plenary proceeding.

* * *

4. Appeal. Any party may appeal within 30 days of the judgment. Any issue triable by right by a jury may be appealed to a trial de novo in the Superior Court. Security may be required in accordance with the provisions of section 6008, subsection 5.

* * *

6. Equity. The remedy provided in this section is a remedy in equity and is in addition to and not in lieu of other remedies. There is no right of removal.

Given the similar language in former § 6012 and current § 7071, this Court’s interpretation of the former helps to determine the import of the latter.

In *North School Congregate Housing v. Merrithew*, 558 A.2d 1189 (Me. 1989), this Court held “that a tenant has a constitutional right to a jury trial, but only after the District Court enters judgment.” *Id.* at 1190. In *Merrithew*, the Court reviewed 200 years of history relating to forcible entry and detainer (“FED”) suits. The Court’s decision concluded that “article I, section 20 of the Maine Constitution requires that a jury trial be available in an FED action,” and it held M.R. Civ. P. 76D’s language that appeals to the Superior Court “shall be on questions of law only” inapplicable to appeals of FED actions from the District Court. *Id.* at 1197. The Court’s opinion concluded with its expectation that it would have to promulgate a new rule comparable to M.R. Civ. P. 80L, the rule used for appeals in small claims actions where there is a right to jury trial de novo in Superior Court. *Id.* Until that change occurred, the Court held that the Superior Court could use M.R. Civ. P. 80L by analogy in FED cases. *Id.*

The Legislature responded to the *Merrithew* decision and amended 14 M.R.S. § 6008 to add the language, “Either party 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.” P.L. 1989, ch. 377. That law also added the language, “The procedures with respect to the appeal of an issue triable by right by a jury to a trial de novo in Superior Court shall be set forth in rules to be promulgated by the Supreme Judicial Court.” *Id.* M.R. Civ. P. 80D was then amended to provide for the right to a jury trial de novo on appeal to the Superior Court. See M.R. Civ. P. 80D advisory note to 1990 amend., Me. Judicial Branch website/rules/rules-civil.

In 1989 when *Merrithew* was decided, 14 M.R.S. § 6012 was part of the FED statutory framework. Although *Merrithew* concerned a more traditional landlord-tenant FED, this Court’s decision did not distinguish the language in § 6012 pertaining to personal property disputes from landlord-tenant disputes. The amendment to M.R. Civ. P. 80D likewise did not make such a distinction. Moreover, despite former § 6012(6) providing that the remedy in § 6012 was an equitable remedy, there was no carve out to the right to a jury trial.

Treating § 6012 uniformly with the other FED statutes is consistent with this Court's language in *Colonial Builders & Inv'rs, Inc. v. Meier*, 417 A.2d 422 (Me. 1980). The *Meier* Court explained:

Section 6012 of Title 14, which created the action of forcible entry and detainer for the recovery of possession of personal property, is structured in its entirety (mutatis mutandis) in the mold of the statutory process of forcible entry and detainer respecting real property (14 M.R.S.A. ss 6001-6008). The statutory language is the same for both actions, whether involving real or personal property, and the respective judicial process is contained in the same chapter entitled Entry and Detainer (chapter 709). Identical legislative provisions, although applicable to different objects, indicate on the part of the Legislature a common underlying intent to provide in 14 M.R.S.A. § 6012 a judicial process for the recovery of possession of personal property similar to the forcible entry and detainer action long-available in the case of real estate. It is the duty of this Court to view as a single piece of legislation the several statutes governing the same general subject matter such as the summary recovery of property, notwithstanding they may refer to different particular types of property within the general classification. We must presume that the Legislature, in setting up parallel remedies, sought to establish a single consistent remedial pattern, compelling a similar construction of its several provisions worded in the same terminology.

Id. at 424-25 (citation omitted).

When § 7071 was enacted in 2009, there was no accompanying rule of procedure governing appeals. That remains the case today. The provisions of § 7071 relating to the nature of

the action, appeals, and remedy being equitable are nearly identical to former § 6012. Accordingly, insofar as *Merrithew* addressed the FED statutory scheme as a whole, including § 6012, it applies to § 7071 to convey the right to a jury trial in such actions. Indeed, § 7071(8) provides such a right, and this subsection would be rendered meaningless if § 7071(10) took that right away.

The *Merrithew* Court permitted the use of M.R. Civ. P. 80L by analogy to FED cases. It was not permitted until that holding, and its use is now unnecessary in FED cases given M.R. Civ. P. 80D. Perhaps it is time to permit the use of Rule 80D by analogy in § 7071 cases and perhaps such a holding will lead—as it did with FED cases—to the implementation of a rule governing § 7071 appeals. This Court has not heretofore permitted such use, however, and the Legislature has expressly excluded § 7071 from the FED statutory framework. Mr. Soutter was required to follow the law and procedure that *is* in place with respect to § 7071 appeals, and he did exactly that.¹ Neither the law nor the

¹ Mr. Soutter does not wish to argue in depth Mrs. Soutter's claim that this appeal is frivolous, but he of course denies that accusation. The unclear procedure to be followed in § 7071 appeals—the only issue on appeal—is enough to show that this appeal is not without merit and that this is far from an egregious case. *Walker v. Heber*, 534 A.2d 969, 970 (Me. 1987).

procedure currently makes the generation of a genuine issue of material fact by affidavit, or otherwise, a prerequisite to a § 7071 appeal for a jury trial de novo.

II. CONCLUSION

For the foregoing reasons, and those set forth in his appellate brief, Appellant Alexander Soutter respectfully requests that this court reverse the Superior Court's decision to dismiss his appeal from the District Court and remand this case to the Superior Court for a trial de novo as required by 14 M.R.S. § 7071(8).

Dated at Portland, Maine this 18th day of September, 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
220 Middle Street
P.O. Box 4600
Portland, ME 04112
(207) 774-7000
bpattershall@nhdlaw.com
wcampbell@nhdlaw.com

CERTIFICATE OF SERVICE

I, Bradford A. Pattershall, Esq., hereby certify that I have caused to have served one copy of the Brief of Appellant on counsel for Appellee by placing said document in the United States mail, postage prepaid, addressed as indicated below. An electronic copy has also been sent to the e-mail address listed below.

Cassandra Morin, Esq.
Desmond, Rand & Guerard, P.A.
55 Stroudwater Street
Westbrook, ME 04092
cassandramorin@outlook.com
Attorney for Appellee

DATED at Portland, Maine, this 18th day of September 2025.

/s/ Bradford A. Pattershall
Bradford A. Pattershall, Esq. (Bar No. 8939)
Attorney for Appellant

NORMAN, HANSON & DeTROY, LLC
220 Middle Street
P.O. Box 4600
Portland, ME 04112-4600
(207) 774-7000
bpattershall@nhdlaw.com