

MAINE SUPREME JUDICIAL COURT
Sitting as the Law Court

DOROTHY POOLE, individually and as
PR of the Estate of Tyler,
Appellants,

Docket No. Pen-24-535

v.

HANCOCK COUNTY, ET AL.
Appellees

ON APPEAL FROM THE PENBSCOT COUNTY SUPERIOR COURT

**SURREPLY BRIEF OF APPELLEES/CROSS-APPELLANTS HANCOCK
COUNTY, SCOTT KANE, NOAH LEWEY, CHRISTOPHER STANLEY,
JILLIAN JONES, RUSSELL WILSON, TIMOTHY RICHARDSON, AND
FRANK SHEPARD**

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TABLE OF AUTHORITIES

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STATEMENT OF PROCEDURAL HISTORY AND FACTS

The County Appellees repeat and incorporate by reference the Statement of Procedural History and Facts contained in their prior Brief of Appellees/Cross-Appellants dated May 13, 2025. The County Appellees also add that this surreply is filed in response to the Court's Order Requiring Surreply Brief received on November 10, 2025.

ISSUE PRESENTED FOR REVIEW

1. Does the Law Court's decision in *Carney v. Hancock County*, 2025 ME 36, 34 A.3d 717, control the Court's consideration of the instant appeal and cross-appeal?

ARGUMENT

1) *Carney* Is Not a Ruling On the Merits of the Immunity Issue.

Carney does not control this appeal because the *Carney* Court explicitly declined to reach the arguments presented regarding the County Appellants' MTCA immunity in deference to ongoing litigation in the U.S. District Court. 2025 ME 36 at ¶ 25 & n. 10. Thus, there is no decision from which to draw binding authority.

Poole appears to recognize this fact in her reply brief, because while she urges the Court to "apply the same principles of comity and justice," she does not argue that the *Carney* court's decision to forgo ruling on the immunity question is in any way binding on the Court in this case. Reply Brief at 28-29.

2) Even If *Carney* Is Binding, Deference to the Federal Court Does Not Require Reversing the Superior Court’s Grant of Summary Judgment In Favor of Hancock County.

Even if the Court determines that *Carney* controls and defers to the federal court on the issue of MTCA immunity, the Superior Court’s summary judgment order does not undermine that deference nor offend principles of comity because the Superior Court was acting as part of the panel process when it issued the order. *Estate of Cox v. Eastern Maine Medical Center*, 2007 ME 15, ¶ 8, 915 A.2d 418 (referring to the Superior Court’s order granting summary judgment to appellee hospital as “a part of the panel proceeding” and “not reviewable by this Court.”).

Poole’s attempt to distinguish *Estate of Cox* on this point is unpersuasive. She contends that *Estate of Cox* is unavailing because the panel proceeding in that case had already concluded before the interlocutory appeal was filed. Reply Brief at 29-30. Yet the Court’s mention of the timing of the interlocutory appeal concerned a separate discovery order, not the Superior Court’s summary judgment order. *Estate of Cox* at ¶ 7. To the contrary, the Law Court held that the Superior Court issued its summary judgment order “*within* the panel proceeding” and not as part of some separate stage. *Id.* at ¶ 8 (emphasis added). Consequently, the Court concluded that the Superior Court’s summary judgment order was not a “final judgment” and thus was not reviewable. *Id.* at ¶ 8.

Applying this rationale to the instant appeal, if the Superior Court acted as a part of the panel process and did not issue a final judgment, *see id.* at ¶ 8, then concerns of judicial deference and discretion are obviated. In that circumstance, the Superior Court’s summary judgment order would no more interfere with the federal court’s authority to decide pendent state law claims than the prelitigation panel’s other work. Poole has not cited any authority to contradict or distinguish the holding of *Estate of Cox*, other than to flatly contradict it by stating that “the Superior Court is not the ‘referee’ in this case,” without any accompanying citation to authority. Reply Brief at 30.

Ironically, Poole’s observation that “[a] complaint is not pending in Superior Court,” Reply Brief at 30, only serves to reinforce the fact that the Superior Court acted as a creature of the prelitigation screening panel rather than a court of independent jurisdiction. If there is no complaint pending in the Superior Court, then there was no avenue for the Superior Court to consider the parties’ cross motions for summary judgment except as part of the screening panel. *Estate of Cox*, 2007 ME at ¶ 8.

CONCLUSION

For the reasons discussed above, the County Appellees respectfully request that this Court uphold the Superior Court’s grant of summary judgment to Hancock County.

Dated: November 25, 2025

/s/ Peter T. Marchesi

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CERTIFICATE OF SERVICE

Undersigned counsel represents that counsel for all parties have been provided with two paper copies of the Surreply Brief of Appellees/Cross Appellants, said copies having been sent via United States Mail to:

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An electronic copy of the Surreply Brief of Appellees/Cross Appellants has also been forwarded electronically to counsel for Appellees at the email addresses listed above.

Dated: November 25 2025

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