

SUPREME JUDICIAL COURT OF THE STATE OF MAINE

SITTING AS THE LAW COURT

LAW COURT DOCKET NO. PEN-24-581

ANDREW D. CUNNINGHAM,

Plaintiff-Appellee

vs.

KAREN CUNNINGHAM,

Defendant-Appellant

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**BRIEF OF
PLAINTIFF-APPELLEE
ANDREW D. CUNNINGHAM**

ON APPEAL FROM THE NEWPORT DISTRICT COURT,
DOCKET NUMBER NEWDC-FM-2023-17

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STATEMENT OF FACTS

The parties were married on December 30, 2001. Transcript (hereinafter “Tr.”) p. 109. Andrew filed for divorce on February 06, 2023. Appendix, p. 3. The parties had three biological children together, all of whom reached the age of majority by the time of final hearing. Tr., p. 10. Both parties are disabled and volunteer for Penquis Cap as drivers. Appendix p. 15.

The parties own three pieces of marital real estate purchased during the marriage; 127 Boston Road, Winterport, Maine (marital residence), 130 Boston Road, Winterport, Maine (unimproved lot), and 761 Lebanon Road, Winterport, Maine (investment property). Appendix, p. 17.

In addition to her disability, medical set aside, and income from Penquis, Karen receives approximately \$200 per week in rental income from the Lebanon Road Property. Tr., p. 244. She could be charging the same amount of rent for a second tenant who is currently staying on the property rent free in exchange for labor on the properties. *id.*

Karen received a workers’ compensation award on or about 2010. Tr., p. 201. The settlement was comprised of an unspecified lump sum award of \$265,570.79 and a guaranteed medical set aside benefit of \$199,538 payable in annual installments of \$8,652 through may of 2030 and for an additional 12 years if she is alive. Appendix, p. 16. Karen presented no evidence that the \$265,570.79

award was non-marital or had a non-marital component. Karen used the \$265,570.79 lump sum award to purchase an annuity through Wells Fargo. Appendix p.16. Karen used the Wells Fargo annuity to purchase the Lebanon Road Property. Tr., p. 202, line 1-10

Andrew received a personal injury settlement in 2022 in the amount of \$68,433.02. Appendix, p. 15. Karen spent the entire settlement without Andrew's knowledge or consent. Appendix p. 16. The court awarded the remainder of the lump sum award and any future payments under the medical set aside to Karen. Appendix, p. 13.

Neither party moved for further findings of fact or conclusions of law following final hearing. Karen filed a motion for new trial on the grounds of judicial conflict after the divorce judgment issued. Karen asserts vaguely that the trial court, some undefined time in the past, represented her in a criminal matter and that she was displeased with the outcome. The trial judge had no independent recollection of any representation of Karen and did not throughout the proceedings including and up through the final hearing or entry of divorce judgment. Appendix, p. 5. Further, according to the docket record, the trial judge appeared in at least four court events prior to trial. Appendix, p. 3-10. Karen never raised the issue of conflict until after the issuance of the divorce judgment.

ISSUES PRESENTED FOR REVIEW

- I. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT KAREN'S ENTIRE WORKERS' COMPENSATION SETTLEMENT WAS MARITAL PROPERTY.**
- II. WHETHER THE DISTRICT COURT ERRED IN FINDING THAT THE REAL ESTATE LOCATED AT 761 LEBANON ROAD WAS MARITAL PROPERTY.**
- III. WHETHER THE DISTRICT COURT ERRED IN DENYING KAREN'S MOTION FOR A NEW TRIAL BASED ON THE COURT'S PREVIOUS ATTORNEY-CLIENT RELATIONSHIP WITH KAREN.**
- IV. WHETHER THE DISTRICT COURT ERRED IN VALUING THE 127 BOSTON ROAD PROPERTY AT \$237,500.**
- V. WHETHER THE COURT CONSIDERED ALL OF THE STATUTORILY REQUIRED FACTORS IN MAKING A FAIR AND JUST PROPERTY DISTRIBUTION.**

LEGAL ARGUMENTS

I. BECAUSE KAREN DID NOT MEET HER BURDEN OF PROOF, THE DISTRICT COURT DID NOT ERR IN FINDING THAT KAREN'S ENTIRE WORKERS' COMPENSATION SETTLEMENT WAS MARITAL PROPERTY.

The determination of whether property is marital or nonmarital is a question of fact that this court reviews for clear error. *Warren v. Warren*, 2005 ME 9, ¶7. However, the application of the law to the facts is reviewed de novo. *Spooner v. Spooner*, 2004 ME 69, ¶ 7. When this court is asked to "determine [which] rule should be utilized in deciding whether property is marital or nonmarital, the court must do so de novo without deferring to the trial court's view of the law but honoring the trial court's finding of the facts as long as they are supported by the evidence." *Id.*

Neither party moved for further findings of fact. Therefore, the court must assume that there was competent evidence in the record, which the lower court considered, to support the divorce judgment. *Coppola v. Coppola*, 2007 ME 147, ¶25. The trial court found that during the marriage Karen finalized a workers' compensation claim and "received a total of \$265,570.79 in a lump sum cash payment as well as a "guaranteed" medical set aside benefit of \$199,538.00..." Appendix, p. 16, par. 6. The trial court further found that later in 2010 Karen used much of the lump sum cash payment to purchase an annuity. Appendix, p. 17, par. 1. Based on the record facts, the court then

concluded as a matter of law that Karen failed to meet her burden of proof to establish which part, if any, of her workers' compensation settlement was non-marital. Appendix, p. 19, par. 2.

On appeal, Karen largely ignores the fact that she used her uncategorized lump sum award to purchase an annuity at Wells Fargo. Transcript (hereinafter "Tr."), p. 202, lines 4-10. Karen then testified that the medical set aside portion of her workers' compensation award was deposited in the "Jackson account." Tr., p. 202, lines 2-18.

Karen argues "the court's finding that a portion of the lump sum settlement proceeds were to continue in annual installments to May of 2030 and for an additional 12 years thereafter if Karen is still living is inconsistent with its finding that Karen failed to prove a portion of those settlement funds were nonmarital and is legally erroneous..." This blatantly misstates the record evidence and the trial court's findings. The court specifically found, as Karen testified, that she used the lump sum portion of her settlement to purchase an annuity through Wells Fargo. The court then specifically found, consistent with Karen's testimony regarding the "Jackson account¹," that **as well as** the lump sum award she also received a guaranteed medical set aside benefit of \$199,538

¹ Or another Wells Fargo account, see Trial Transcript, pg. 206, line 15.

in which she may be eligible to continue to receive funds after May of 2030 should she still be alive. Appendix, p. 16-17, par. 6 (pg. 16) – par. 1 (pg. 17.) emphasis added. The court’s findings as articulated above are entirely supported by record evidence and illustrate that Karen presented no evidence that any portion of the workers’ comp award (especially the lump sum award and funds already received) were non-marital. This court must then review the trial court’s application of law to the facts. *Spooner v. Spooner*, 2004 ME 69, ¶ 7.

Applying the law to these facts the trial court concluded that Karen failed to meet her burden of proof to establish that the workers’ compensation award was non-marital². The parties were married on December 30, 2001. Karen received her workers’ compensation settlement sometime in 2010, 2011, or 2012. Tr., p. 201, line 17.

Title 19-A M.R.S.A. §953(3) states in relevant part, “All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property regardless of whether title is held individually or by the spouses in some form of coownership such as joint

² Though the court did not specifically find that the medical set aside to be received by Karen after the divorce to be Karen’s non-marital property, the court did specifically award the remainder of the settlement to her including the set aside in addition to the remainder of the lump sum award. Any error here is harmless as the net result is the same.

tenancy, tenancy in common, tenancy by the entirety or community property.”

Karen had the burden of proof at trial to rebut this presumption.

The evidentiary record is entirely lacking any factual basis to overcome this presumption. The evidence shows only that Karen received her workers’ compensation settlement during the marriage. The evidence shows that the award was in the amount of \$519,538.00, that Karen likely netted \$465,108.79 comprised of an undefined lump sum in the amount of \$265,570 in addition to a medical set aside of \$199,538.00. Undersigned, states “likely” because these figures are in reliance on Plaintiff’s Exhibit 20. Plaintiff’s Exhibit 20 is unsigned³. When asked, “The settlement you got through Cumberland Farms, you provided the settlement disclosure for that, and that’s Defendant’s Exhibit 20; is that correct?” Karen responded, “I do not have a clue.” Tr., p. 201, line 15. Further, Karen could not recall the precise year she received the settlement but conceded that it was either in 2010, 2011, or 2012. Tr., p. 201, line 17. Further, the trial court found that Karen “refused to provide full responses in discovery and was less than forthcoming in the information she was required to share.” Appendix p. 19.

³ The trial court found that Karen was “less than forthcoming” in discovery and sanctioned her \$1,808.50 in attorney fees. Appendix, p. 19.

From here, we know Karen then used the undefined lump sum payment to open a Wells Fargo annuity account. Tr., p. 202-203. There is zero record evidence detailing what the lump sum award was allocated for, only that it was received during the marriage. This court has consistently held that “[n]othing can be clearer, however, than our often repeated admonition that the spouse urging a nonmarital designation has the burden of presenting evidence in support of that conclusion.” *Doucette v. Washburn*, 2001 ME 38, ¶ 19.

Karen unequivocally failed to rebut the presumption that the lump sum settlement was marital property. Alternatively, even if the Court concludes that “the evidence in the record, and the reasonable inferences to be drawn from such evidence, are inadequate to provide a basis for any reasoned finding upon a particular issue, the issue should be resolved against the party with the burden of proof. *See Warren v. Warren*, 2005 ME 9, ¶ 26, 866 A.2d 97, 103. *Ayotte v. Ayotte* 2009 ME 20, ¶ 7. Either way, the inevitable result is that Karen failed to meet her burden of proof or that the issue should be resolved against her.

II. BECAUSE KAREN FAILED TO MEET HER BURDEN TO REBUT THE PRESUMPTION THAT HER WORKERS' COMPENSATION SETTLEMENT WAS MARITAL THE DISTRICT COURT DID NOT ERR IN FINDING THAT THE REAL ESTATE AT 761 LEBANON ROAD WAS MARITAL PROPERTY.

As stated above, the determination of whether property is marital or nonmarital is a question of fact that this court reviews for clear error. *Warren v. Warren*, 2005 ME 9, ¶7. However, the application of the law to the facts is reviewed de novo. *Spooner v. Spooner*, 2004 ME 69, ¶ 7. When this court is asked to "determine [which] rule should be utilized in deciding whether property is marital or nonmarital, the court must do so de novo without deferring to the trial court's view of the law but honoring the trial court's finding of the facts as long as they are supported by the evidence." *Id.*

Karen's entire argument regarding the non-marital nature of the 761 Lebanon Road property is based on the lynchpin assertion that the workers' compensation award was non-marital (or had a non-marital component with which she purchased the property with). As stated above, this assertion is mistaken as Karen summarily failed to rebut the marital presumption applied to the workers' compensation award as it was received during the marriage. Specifically, the 761 Lebanon Road was purchased during the marriage purportedly out of the Wells Fargo annuity which was funded by the undefined

lump sum portion of her settlement. Tr., p. 202, line 1-10. This portion of the settlement specifically was undefined, which offers no basis for the court to conclude anything other than for the funds to be marital property. There is no evidence on record that any of the funds used to purchase the Lebanon Road property were from any aspect of Karen's settlement intended to compensate Karen for wages or medical expenses for any time or expense outside of the marriage.

III. THE DISTRICT COURT DID NOT ERR IN DENYING KAREN'S MOTION FOR NEW TRIAL.

Karen's motion for new trial was untimely and "her failure to file a timely motion constitutes an implicit waiver of the objections to the judge's qualification. Once judgment is entered, a party has waived his right to disqualify the trial judge and if he has waived that issue, he cannot be heard to complain following an unfavorable result." *Charette v. Charrette*, 2013 ME 4, ¶22. The court need not analyze the issue any further.

However, it is noteworthy to point out that according to the docket record, the trial judge presided over the "OTHER HEARING HELD ON 9/18/2023", the "PRETRIAL/STATUS HELD ON 10/31/2023", the "HEARING – OTHER HEARING HELD ON 1/11/2024", and the "HEARING – PRETRIAL STATUS CONFERENCE HELD ON 3/25/2024." That is four prior court appearances over which the trial judge presided. In addition to his appearance at these proceedings, that necessarily means that there were at least four orders bearing the trial judge's signature that would have been shared with Karen. Appendix, p. 3-10.

Additionally, the trial judge clearly stated that he had no independent recollection of any representation of Ms. Cunningham and did not throughout the proceedings including and up through the final hearing or entry of divorce judgment. Appendix, p. 5. Karen offers only a bald assertion regarding former representation without providing any real substantive detail. Further, this is only after receiving what she

argues to be an unjust result in the divorce. This is exactly the situation contemplated in *Charette*.

IV. THE DISTRICT COURT DID NOT ERR IN VALUING THE 127 BOSTON ROAD PROPERTY.

Because neither party filed for further findings of fact this court must assume that there was competent evidence in the record, which the court considered, to support the divorce judgment. *Coppola v. Coppola*, 2007 ME 147, (2007) ¶ 25. The trial court, as the finder of fact, evaluated the evidence presented as well as weighed the credibility of each witness.

To that extent, neither party offered expert witness testimony to advance their position at trial. The parties each testified as owners of the real estate in forming their opinion of value. Neither one of them are qualified as an appraiser or a real estate professional. Karen testified that she worked as a carpenter for an undefined amount of time after high school. Tr. p. 124. Nothing about her line of testimony makes her any more qualified to offer an opinion of value than Andrew. Further, Karen had every incentive to minimize the value of the Boston Road property as she sought to retain it in the divorce.

Andrew testified credibly that his opinion of the value, \$237,000, was in consideration of the defects articulated by Karen. Tr., p. 252. Further, Andrew testified that if the repairs were made, then he would list the home at \$250,000. Tr., p. 255. Andrew further testified that he thinks the materials required for repairs would be approximately \$5,000. Tr., p. 256.

The party's son also testified that Karen was in the process of remodeling a room in the home "because my mom was wanting to put older people into the home . . ." Tr., p. 238. Further, their son testified that he and his roommate were presently doing repair work on the Boston Road home at no cost. Tr., p. 244.

The trial court, considering all of the evidence, acknowledged that the home was in need of some repairs and found the value of the home to be \$237,500. This finding is supported by competent record evidence and is not clearly erroneous.

V. THE DISTRICT COURT CONSIDERED ALL OF THE STATUTORILY REQUIRED FACTORS AND MADE A FAIR AND JUST PROPERTY DISTRIBUTION.

Because neither party filed for further findings of fact this court must assume that there was competent evidence in the record, which the court considered, to support the divorce judgment. *Coppola v. Coppola*, 2007 ME 147, (2007) ¶ 25. The trial court, as the finder of fact, evaluated the evidence presented as well as weighed the credibility of each witness. The court then applied the evidence to the statutorily required factors in crafting a fair and just property division.

The trial court specifically considered all statutorily mandated factors as articulated in Paragraph 20 of the Court's Findings of Fact and Conclusions of Law. Appendix, p. 18. This includes reference to the Court's consideration of the contribution of each spouse to the acquisition of marital property, including the contribution of a spouse as homemaker and the economic circumstances of each spouse at the time the division of property is to become effective. As stated, neither party moved for further findings of fact or conclusions of law.

The trial court's finding that the "parties have one child together, who is now an adult" is not tantamount to reversible error. It is just as likely that the court intended to state that the parties had one minor child together at the time the divorce was initiated and that child has now reached the age of majority.

Regardless, this is a fact that could have been easily clarified or corrected by Karen filing an appropriate post judgment motion. It clearly was not significant enough of an error for her to do so at the time. To the extent there is an error in the trial court's finding, it is harmless.

Karen is asking this Court to step into the shoes of the trial court and apply greater weight to her contributions as a homemaker so much so as to result in a disproportionate property distribution. In considering all relevant factors and all the evidence, the court used sound discretion in weighing this factor against the others in crafting an equitable distribution.

Regarding Karens financial contributions, the trial court specifically found that "Karen was largely responsible for managing the parties' finances when they were together." Appendix, p. 16. All of Andrew's money went into the joint account managed by Karen. Tr., p. 56, line 16. It is a stretch for Karen to argue on appeal that she spent \$146,480.97 on marital purposes. This infers that she was spending in the greater good of the marital estate. The trial court found that Karen engaged in "financially questionable conduct over the course of the marriage" and that "the funds for both parties appear to have been used at times to make poor financial decisions..." Appendix, p. 18. It is noteworthy to point out here that Karen spent over \$68,000 dollars of Andrew's personal injury settlement and refused to tell Andrew where she spent the money. Appendix, p. 16. She used her

power of attorney over Andrew to purchase a \$35,373.92 vehicle while Andrew was hospitalized with Covid-19. She “initially denied using the POA authority, but later admitted she had done so after the purchase agreement with her signature was admitted into evidence.” Appendix, p. 12.

The trial court carefully considered the economic circumstances of each spouse at the time the division of property was to become effective. Once again, Karen did not file for further findings of fact or conclusions of law. Karen argues that that the court erred in “essentially dividing the marital property equally between them.” However, the property distribution arguably favors Karen. Regarding real estate, Karen will retain physical possession of the real property after she refinances. This is significant not only because of the inherent value of real estate as a long-term investment but also because the Lebanon Road property is income producing. Karen is receiving \$200/week from her son in rent and is currently not charging her son’s roommate as she is bartering construction services with him. Tr., p. 244. \$200 per week is \$10,400 annually. With two tenants the Lebanon property should gross \$20,800 in annual rental income. The property is unencumbered. This is income Karen is completely ignoring in her argument.

Further, Karen deceived Andrew and spent his entire personal injury settlement without his consent or knowledge (\$68,000+). Conversely, the court awarded Karen the remainder of her settlement, \$59,083.85. Appendix, p. 17. The

court also awarded Karen all future proceeds that she will be eligible for post judgment. Specifically, \$8,652 paid annually for her medical set aside through May of 2030 including additional payments in the same amount for another 12 years if she is living. Appendix, p. 16. This is additional income relevant to Karen's financial circumstances that she is completely ignoring on appeal.

The trial court did not err in dividing marital property.

CONCLUSION

For the reasons stated above, Karen's appeal must be denied.

Respectfully submitted,

/s/ William J. Johnson

Dated: 07/08/2025

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CERTIFICATE OF SERVICE

I, William J. Johnson, Esquire, hereby certify that I have this date made due service of the above entitled Brief of Plaintiff-Appellee Andrew D. Cunningham upon C. Peter Bos, Esquire, attorney for Defendant-Appellant Karen Cunningham, by mailing two conformed copies of the Brief to him at Gray & Palmer, 6 State Street, Suite 407, Bangor, Maine 04401, by regular United States mail, postage prepaid and by electronically forwarding the same to him at info@grayandpalmer.com

Dated: 07/08/2025

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