STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. OXF-24-84

THOMAS E. RIDEOUT,

Appellant,

v.

MARTHA L. VANDERWOLK,

Appellee.

ON APPEAL FROM THE RUMFORD DISTRICT COURT
Docket No. RUMDC-FM-2020-00043

APPELLEE'S BRIEF

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STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Procedural History

The appealed-from Divorce Judgment reflects that this matter is before the Law Court after a complicated and protracted procedural path—a path that was the process of discussion and agreement between the parties over the course of the last four years.

It began when Mr. Rideout filed a complaint for divorce on May 18, 2020, which was duly served upon Ms. VanderWolk. (Appendix (App.) at p. 1.) The parties engaged in interim motion practice, extensive discovery requiring several discovery conferences, competing motions for sanctions, and mediation until April 8, 2022, when the Court appointed J. Dionne as Referee by agreement of the parties. (*Id.* at pp. 1-10.)

Referee Dionne, after conducting a three-day hearing on June 6, July 1, and July 22, 2022, issued his report on November 22, 2022, which was filed the same day with the Court. (*Id.* at pp. 10, 15.) Although the docket does not reflect that notice of the filing of the Report was sent to the parties, both parties received it, as they filed objections to it on December 1st (Ms. VanderWolk) and December 5th (Mr. Rideout). (*Id.* at p. 10.) Further confirming Mr. Rideout's timely receipt of the referee's report, Mr. Rideout filed another motion for an expedited interim

hearing shortly thereafter on December 11, 2022, which cited the Referee's Report. (*Id.*) This latest motion was denied on December 27, 2022. (*Id.* at p. 11.)

The Court then held a Status Conference on February 2, 2023, and issued an Order that required the parties to confer with the Referee to determine whether he would be issuing a supplemental report based on the objections. If not, the Court would schedule the matter for oral argument. If so, the Court would determine the procedure at a later Court event. (*Id.*)

Referee Dionne thereafter filed with the Court a Supplemental Final Report of Referee, dated February 9, 2023, which was docketed on February 13, 2023. (*Id.*at pp. 11, 36-54.) Again, although the docket does not reflect that notice of the filing of the Supplemental Report was sent to the parties, both parties received it, as they filed objections to it on February 22nd and March 23rd (Ms. VanderWolk) and March 24, 2023 (Mr. Rideout)[1]. (*Id.* at p. 12.) On April 11, 2023, Mr. Rideout advised the Court that neither party wanted a hearing and that they were satisfied with the Court deciding the objections on the written submissions. (*Id.* at p. 15.)

The Court (Nofsinger, J.) thereafter issued an Order on Parties' Objections to Referee Report, dated May 31, 2023. (*Id.* at pp. 56-67.) As set forth *infra*, Judge Nofsinger determined that several significant factual findings of the Referee

[1] Mr. Rideout moved for additional time to object to the Supplemental Report, which was granted for both parties to March 24, 2023, at which point Ms. VanderWolk filed an amended objection. (*Id.* at p. 11.)

were clearly erroneous and, therefore, she rejected his overall recommendation of a property distribution, award of spousal support, use of a CPA and responsibility of the costs of litigation. (*Id.* at p. 67.) Judge Nofsinger indicated that the parties thereafter had four enumerated options: remanding the case back to the Referee, having a new trial before the District Court Judge, agreeing to allow the Court to make additional findings based on the written record, or a judicial settlement conference. (*Id.*) At a conference on June 15, 2023, the parties agreed to attempt a judicial settlement conference, which was held on September 8, 2023. (*Id.* at p. 12.)

After the judicial settlement conference was unsuccessful, Judge Nofsinger held a conference of counsel on October 17, 2023, to discuss the next steps in the case. By way of an Order dated October 19, 2023, Judge Nofsinger noted that the Court's options were limited to recommitting the Report to the Referee with instructions or to "receive further evidence" pursuant to M.R. Civ. P. 53(2). The Court held that the written record was sufficient to make the necessary factual findings to resolve the contested issues, but because the Court did not hear the evidence, it needed to conduct a hearing for the sole purpose of admitting the exhibits admitted at trial and the transcript. (*Id.* at p. 81.) As Mr. Rideout's counsel was not able to attend this conference due to a family emergency, the Court gave Mr. Rideout ten (10) days to object to this procedural order and further

stated that if either party objected to the procedural order, it would be addressed before a hearing was held. (*Id.* at p. 81.) Mr. Rideout did not object to this procedural order within this timeframe or at all prior to the instant appeal, and so the limited evidentiary hearing was held on December 1, 2023.[2] (*Id.* at p. 13.) During this hearing, Mr. Rideout did not object to the nature or procedure of the hearing. All he requested was an opportunity to file another legal memorandum. (*Id.* at p. 123.) The Trial Court explained that briefing at this stage of the reference process was not permitted but that Mr. Rideout could have such an opportunity if he filed a motion for reconsideration, a motion for relief for judgment or in an appeal. (*Id.*) Mr. Rideout's counsel did not object to these options or the Court's ruling; she simply said "Okay." (*Id.* at p. 124.)

The Trial Court (Nofsinger, J.) thereafter issued the appealed from Divorce Judgment on January 29, 2024, which was docketed the same day. (*Id.* at p. 13.) Mr. Rideout did not file a motion under M.R. Civ. P. 52, 59 or 60, as the Trial Court suggested. He instead filed a Notice of Appeal on February 20, 2024.

B. Statement of Facts

The parties were married on July 17, 2008, after dating since 2006. (*Id.*at pp. 16, 34[3].) Both were of advanced age had been married and divorced before and

[2] Mr. Rideout's Procedural History summary on appeal contains no claim he filed the permitted objection at any point, which is a concession none was filed. (*See* Appellant's Brief at pp. 3-4.)
[3] Unless otherwise stated, the facts are drawn from the Divorce Judgment.

had adult children from previous relationships. (*Id.* at p. 16.) At the time of the Referee's Report, Mr. Rideout was 71, and Ms. VanderWolk was 70. (*Id.*at p. 16.)

Ms. VanderWolk had worked as an educator for her entire professional career in various capacities and entered the marriage to Mr. Rideout with "significant retirement savings and other assets." (*Id.* at p. 2.) Mr. Rideout, conversely, had worked as a registered guide and reporter during his career but entered the marriage with little as his debts were discharged in bankruptcy just a month prior to the parties' marriage. (*Id.* at pp. 16-17.)

Prior to the parties' marriage, Ms. VanderWolk filed a certification of formation in New Hampshire in September 2007, under the name Magalloway Publishing, LLC (MP LLC) with its purpose being to publish a newspaper. At that time, Ms. VanderWolk was the sole member of MP LLC. (*Id.* at p. 17.) The parties began operating and publishing the New Hampshire Outdoor Gazette but eventually agreed to sell it. After that sale fell through, the publication was discontinued.

In the Spring of 2009, they became aware of a property for sale in Maine named the Big Buck Camps. (*Id.*) Not wanting to incur debt, Ms. VanderWolk approached her family for assistance. Ms. VanderWolk is one of five siblings, and their parents divorced and remarried during their lifetimes. Prior to the death of Ms. VanderWolk's father in 2008, he created the W.W. VanderWolk Marital Trust

(hereinafter, the Marital Trust) that provided a lifetime income interest to his second wife, Anne, and then to his children as remainder beneficiaries after Anne's passing. After their father passed, the VanderWolk children learned that Ms. VanderWolk had been left out from being a remainder beneficiary of the Marital Trust—a surprise to them all. (*Id.* at p. 18.) It was described by Ms. WanderWolk's brother, Jefferson, as an "unwelcome shock." (*Id.*)

When Big Buck Camps became available in 2009, Ms. VanderWolk approached her siblings for financial help with the purchase. They disagreed with their father's decision to disinherit Ms. VanderWolk and devised a plan to effectively split the Marital Trust five ways instead of four to give Ms. VanderWolk a perceived rightful share of inheritance. However, because Anne was entitled to lifetime income and then still living, the VanderWolk siblings could not simply distribute Marital Trust assets. (*Id.*) What they decided to do instead was "invest" money from the Trust so that Ms. VanderWolk could buy the Camps, in return for 400 Class B shares in MP LLC, which had debt characteristics in that MP LLC paid 2% interest to the Marital Trust, which at the time was the arm's-length rate according to the IRS. Ms. VanderWolk would have 100 Class A shares. Eventually by the time of Anne's passing, the Marital Trust "invested" $475,000—initially $400,000 to buy the Camps and another $75,00 thereafter. (*Id.* at pp. 18, 139-140.)

Ms. VanderWolk amended the MP LLC certificate of formation in August 2009 to make the LLC's primary purpose "outdoor recreation, information and Education." MP LLC then purchased the Big Buck Camps on September 24, 2009, using the funds "invested" by her siblings. (*Id.* at pp. 18, 136-138.) She did not add Mr. Rideout as a member to the LLC at this time or any time.

After the purchase, the parties ran the camps together under the new assumed name of Sturtevant Pond Camps. Ms. VanderWolk contributed additional inheritance money and money from her siblings to fund improvements and operations of the Camps. (*Id.* at pp. 19.) Mr. Rideout contributed his time and earnings from guiding to the business, and he received benefits from the business, including ongoing access to funds and a free place to live. In total, the Trial Court held that both parties contributed both labor and resources to the running of the Camps. (*Id.* at p. 29.)

After Anne's passing in 2016, the four other VanderWolk siblings received the 400 Class B shares as remainder beneficiaries of the Marital Trust, as planned. Although they had the right to require Ms. VanderWolk to "purchase his or her preferred shares in MPLLC for one fourth of the total amount invested by the Trust in MPLLC," Ms. VanderWolk's siblings "sold" their 400 Class B shares in MP LLC to Ms. VanderWolk for a nominal $4--$1 per sibling. (*Id.*) As the Marital Trust had invested a total of $475,000 at the time of Anne's death, each of Ms.

VanderWolk's siblings gave up his or her right to require Ms. VanderWolk to purchase his or her share for $118,750. (*Id.* at pp. 18, 139-148.) Thus, the Trial Court held that Ms. VanderWolk received the 400 Class B shares as a gift, which rendered them non-marital property. The Court found the Class A shares to be marital property. (*Id.* at pp. 18, 25.)

Prior to filing for divorce the Camps were listed for sale and after languishing on the market, they were eventually sold for $515,000 on June 27, 2021, which netted $481,188.46 to MP LLC after costs and fees.[4] (*Id.* at pp. 19-20.) In order to determine the value of the Class A shares of MP LLC at the time of marriage and at the time of divorce, the Trial Court first noted that the total assets of MP LLC at the time of divorce was $482,584.75—the value of the property after sale plus a small amount in the LLC's bank account. (*Id.* at p. 25.) After reviewing the MP LLC's membership agreements and Title 31, the Trial Court held that the appropriate way to value the Class A and B shares was to divide the shares by the total assets of MP LLC. (*Id.* at pp. 25-28.) Thus, the Class A shares were valued at $92,941.33 (1/5th of the total value), which was marital property. (*Id.* at p. 28.)

With respect to the real estate Ms. VanderWolk owned prior to marriage in Vermont (titled the 'Vermont Real Estate' in the Divorce Judgment), the Trial

[4] That sum remains escrowed the Ms. VanderWolk's counsel.

Court rejected the Referee's factual finding of the value of the property as of the date of marriage used in comparison with the value of the property at the time of divorce—the value of which were taken from tax assessments in 2008 and 2021. (*Id.* at pp. 21, 64.) The Trial Court rejected the value of the property at the date of marriage in 2008 from the tax assessment because Ms. VanderWolk sold off a piece of this property in 2011, so that the property that was assessed in 2021 was not the same property that was assessed in 2008. (*Id.* at p. 64.) In sum, the Trial Court held that comparing the two assessments was like comparing an apple with an orange, and there was no other evidence of value from 2008. As such, the Referee's finding was clear error.

The Trial Court then looked to which party had the burden to establish the value of the Vermont Real Estate in 2008. As Mr. Rideout was the party arguing that a premarital asset increased in value during the marriage, the Court held that it was his burden to show that an increase occurred and how much that increase was. (*Id.* at pp. 21-22.) The Trial Court held that Mr. Rideout failed to meet his burden as he provided insufficient evidence from which the Court could undertake the analysis necessary to determine the marital component of a non-marital asset. As a result, the Trial Court held that the Vermont Real Estate was nonmarital and set it aside to Ms. VanderWolk.

With respect to Ms. VanderWolk's investment accounts, the Trial Court adopted the Referee's findings as to the value of these accounts and the amount of each account as marital and non-marital. (*Id.* at pp. 22-23, 46-48, 59.)

Having exhaustively set forth its factual findings and legal conclusions as to what assets and debts were marital and non-marital, the Trial Court then considered all of the factors set forth in 19-A M.R.S. §953(1) and divided the parties' marital assets and debts in a just and equitable manner. (*See id.* at pp. 28-29.) Mr. Rideout was awarded half of the value of the Class A shares of MP LLC in recognition of his contribution to the operation of the Sturtevant Pond Camps, primarily in the form of labor. He was also awarded tens of thousands of dollars from Ms. VanderWolk's investment accounts and bank account, which the Court found to be marital property. (*Id.*) All told, the entire marital estate was valued at $310,278. Mr. Rideout was awarded more than half of the marital estate. He was awarded assets valued at $156,860 and no debts, and Ms. VanderWolk was awarded $153,418 in marital assets and debts. In terms of non-marital assets, the Trial Court set aside to Mr. Rideout real property at Wilson Mills, and to Ms. VanderWolk the non-marital value of MP LLC, her Vermont Real Estate and her premarital investment account balances. (*Id.*)

As it relates to spousal support, the Trial Court adopted the Referee's findings and conclusions in their entirety. (*Id.* at pp. 29-30.) Referee Dionne

reviewed the evidence and the sixteen enumerated factors in 19-A M.R.S.§ 951-A(2)(A). Central to his conclusion, the Referee found that Mr. Rideout had taken from Ms. VanderWolk $17,500 during the pendency of the divorce, that the parties had been married for 11 and ¾ years at the time of filing of divorce, that both parties were in their 70s and retired at the time of hearing, that that both parties had limited work capacity although Ms. VanderWolk had more, that Mr. Rideout owned real property in Wilson Mills that was in better condition than when the parties married although he lived elsewhere in Bethel, and that the marital property distribution was relatively equal. (*Id.* at pp. 51-52.) As a result, the Referee denied Mr. Rideout's request for general spousal support and retroactive spousal support but awarded Mr. Rideout nominal support of $1 per year for five years. (*Id.*)

Finally, the Trial Court held that each party was responsible for their own attorney fees, adopting the Referee's conclusions on this point. (*See id.* at pp. 30, 52.) The Trial Court, however, declined to adopt the Referee's finding and conclusion as to the payment of his fees. The Referee had ordered his fees paid from the MP LLC funds escrowed with counsel from the sale of the Camps. (*Id.* at p. 54.) The Trial Court held that neither the Referee nor Trial Court could issue an order compelling the disbursement of the assets of a non-party LLC. (*Id.*at p. 30.) As a result and under the same analysis it used for the assessment of attorneys'

fees, the Trial Court ordered the parties to each pay for half of the Referee's costs, with Ms. VanderWolk to be reimbursed to the extent she had already paid more than half. (*Id.*)

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Any procedural error in the referee process was harmless, and Mr. Rideout failed to preserve review of the issues about which he now complains. (Appellant's Issue A)

II. There is competent evidence in the record to support the Trial Court's conclusion that the monetary value Ms. VanderWolk received from her siblings through the Class B shares in Magalloway Publishing LLC was a gift and, therefore, non-marital property. (Appellant's Issues B and C)

III. The Trial Court had jurisdiction to value and allocate the parties' marital and non-marital membership interest(s) in the Class A and B shares of Magalloway Publishing, LLC. (Appellant's Issue D)

IV. The Trial Court committed no clear error in finding Ms. VanderWolk's Vermont real estate was entirely non-marital because Mr. Rideout failed to meet his burden to provide the Court with sufficient evidence to determine the specific amount of marital interest in an otherwise non-marital asset. (Appellant's Issue E)

V. The Trial Court committed no clear error in using the value of the parties' investment accounts in the record to divide marital and non-marital property, and Mr. Rideout failed to preserve appellate review of this issue. (Appellant's Issue F)

VI. The Trial Court committed no clear error in its division of marital property or acceptance of the Referee's recommendation regarding spousal support, attorney's fees or referee fees. (Appellant's Issue G)

SUMMARY OF ARGUMENT

It is respectfully stated that Mr. Rideout has not met his burden on appeal, and Ms. VanderWolk requests that This Honorable Court affirm the Trial Court's orders so that the parties' divorce can be final after four years of protracted litigation.

Although Mr. Rideout complains about every aspect of the Divorce Judgment in which Ms. VanderWolk was awarded anything, almost none of the issues about which he complains on appeal were raised before the Trial Court or Referee. These waived arguments include perceived procedural deficiencies under M.R. Civ. P. 53 and the Trial Court's use of property and asset values in the record, rather than reopening the record for admission of updated evidence.

As to the few issues that Mr. Rideout has preserved for appeal, only one was developed at length: the finding that Ms. VanderWolk's receipt of membership interest in a non-marital asset, Magalloway Publishing LLC, was a gift from her siblings and therefore non-marital property. As set forth herein, the Trial Court committed no clear error as to this finding, and there was competent evidence in the record to support the Trial Court's factual findings and resulting legal conclusions as to the nature and value of the marital and non-marital assets and debts of the parties generally.

Having made no clear error in any factual finding, the Trial Court's division of marital property and orders regarding spousal support, attorneys' fees and referee's fees reflect no abuse of discretion.

ARGUMENT

I. Any Procedural Error in the Referee Process was Harmless, and Mr. Rideout Failed to Preserve Review of the Issues about Which He Now Complains.

Mr. Rideout contends that the Trial Court's handling of this matter pursuant to M.R. Civ. P. 53 was deficient because (1) both parties filed objections that did not sufficiently detail the bases for their objections; (2) the Clerk of the Court did not serve notice of the filing of the Referee's Reports upon the parties, and (3) the Trial Court did not permit the parties to file additional written materials in response to its Order on Parties' Objections to Referee's Report on May 31, 2023. (*See* Appellant's Br. at p. 15.)

Mr. Rideout does not contend or allege that he objected to any of these perceived failings before the Trial Court or that he was prejudiced in any manner. It is respectfully stated that Mr. Rideout is foreclosed from seeking appellate review of these perceived procedural deficiencies because he did not preserve these issues and because any error in the process was harmless.

With respect to Mr. Rideout's preservation of these issues, it is axiomatic that a party must have opposed or objected to a determination or challenge it by timely motion in order for it to be considered on appeal. Appellate review is to be denied when a party seeks to raise an issue for the first time at the appellate level because he or she has, in legal effect, waived the issue. *See Off. of the Pub. Advoc.*

v. Pub. Utilities Comm'n, 2024 ME 11, ¶ 25 (holding that a party waived an argument on appeal because it did not raise the argument before the administrative agency).

In this matter, Mr. Rideout failed to object to or challenge any of these issues before the Trial Court despite multiple opportunities to do so and only raises them now, for the first time on appeal. Mr. Rideout does not claim that he alleged that both parties' objections were insufficiently detailed at any point, nor does he explain how he was prejudiced or indeed could be prejudiced by his own filing. Likewise, Mr. Rideout never objected to not receiving notice of filing either Referee Report or alleged that he was prejudiced in some manner from not receiving it, nor does he allege any prejudice occurred on appeal. And, finally, the record shows that Mr. Rideout agreed that the Trial Court could rule on the parties' objections *without* receiving additional argument. (*See supra* at p. 2, Appellant's Br. at p. 3.)

Although Mr. Rideout claims that he "specifically sought at the final 'hearing' to provide a response to the Court's decision on the objections, and was denied," (Appellant's Br. at p 12) a review of the transcript reveals this to be an overstatement of what occurred. At the final hearing, Mr. Rideout's attorney simply asked if she could provide "written comments" or a "response to your

order[5]." (App. at p 123.) Judge Nofsinger indicated that responses to a Trial Court's orders are limited to a motion for reconsideration or for relief from judgment, or when there is an appeal. (*Id.*) Mr. Rideout's counsel confirmed her understanding and then said "Okay." (*Id.* at p. 124.) Asking a question and then saying 'okay' to the response does not qualify as a preserved objection. Nor does the record reflect that Mr. Rideout ever filed a motion for reconsideration under M.R. Civ. P. 59 at any point, a motion for relief from judgment under M.R. Civ. P. 60 or any objection to the Trial Court's October 19, 2023 Order setting forth the process for the final hearing. In sum, Mr. Rideout had multiple opportunities to contest the issues about which he now complains before the Trial Court and did not do so, which forecloses him from seeking redress on appeal.

Even if Mr. Rideout had preserved these issues or if the Trial Court committed an error(s), any such error(s) was/were harmless because they did not affect Mr. Rideout's substantial rights and because they did not affect the outcome. *See In re Sarah C.*, 2004 ME 152, ¶ 14 ("An error is harmless if it is highly probable that the error did not affect the fact[-]finder's judgment.") (citing *State v. Kalex*, 2002 ME 26, ¶ 22); *Banks v. Leary*, 2019 ME 89, ¶ 19 ("Any alleged error of the trial court that does not affect the substantial rights of a party is harmless and therefore must be disregarded.") (citations omitted).

[5] This is a reference to the Order on Parties' Objections to Referee's Report on May 31, 2023.

With respect to the alleged insufficiently detailed objections, Mr. Rideout cannot claim to be prejudiced because of *his own objection's failings*, which he admits were similarly undetailed. He does not explain how the Trial Court's decision would have been different or better for him if Ms. VanderWolk's objections had been more detailed. Indeed, the parties have been litigating and briefing issues in this case for years such that any argument Mr. Rideout saw in an objection is likely one he has seen before, especially since he had the benefit of reviewing Ms. Vanderolk's objection to the Supplemental Referee Report before filing his own because he received an extension.

With respect to the parties' non-receipt of a notice of filing from the Clerk of the Referee's Reports, the parties received both Reports and both filed timely Objections that were considered by the Referee and Trial Court. There is no prejudice to this error, nor does Mr. Rideout claim to have suffered one.

Finally, there was no harm in the Trial Court not permitting additional briefing by the parties after the final hearing in which it received the transcripts and exhibits from the hearing before the Referee. Mr. Rideout has identified no arguments he would have made that would have changed the outcome, and Mr. Rideout had other briefing opportunities available to him before the final hearing that he did not pursue in a timely fashion. Moreover, he could have objected to the

October 19, 2023 Order and requested a briefing opportunity, which he failed to do.

II. There Is Competent Evidence in the Record to Eupport the Trial Court's Conclusion that the Monetary Value Ms. VanderWolk Received from Her Siblings through the Class B Shares in Magalloway Publishing LLC Was a Gift and, therefore, Non-Marital Property. (Appellant's Issues B and C)

On appeal, Mr. Rideout contends that there is no evidence to support the Trial Court's conclusion that the Class B shares of MP LLC were given to Ms. VanderWolk as a gift from her siblings and that the Trial Court erred in finding the Class B shares were non-marital property of Ms. VanderWolk.

This Honorable Court reviews a Trial Court's factual findings for clear error. *Young v. Young*, 2009 ME 54, ¶ 8. Clear error exists only if there is "no competent evidence in the record to support the finding, if the finding is based on a clear misapprehension by the Trial Court of the meaning of the evidence, or if the force and effect of the evidence, taken as a total entity, rationally persuades to a certainty that the finding is so against the great preponderance of the believable evidence that it does not represent the truth and right of the case." *Violette v. Violette*, 2015 ME 97, ¶15, citing *In re A.M.*, 2012 ME 118, ¶ 12 (quotation marks omitted).

In undertaking this review, This Honorable Court reviews "the record, and reasonable inferences that may be drawn from the record, in the light most favorable to the trial court's judgment to determine if the findings are supportable by competent evidence." *Sloan v. Christianson*, 2012 ME 72, ¶ 2. Where, as here,

Mr. Rideout did not move for additional findings of fact and conclusions of law pursuant to M.R. Civ. P. 52(b), the Court will "infer that the trial court made any factual inferences needed to support its ultimate conclusion." *Pelletier v. Pelletier*, 2012 ME 15, ¶ 20.

With respect to Mr. Rideout's contention that the Class B shares Ms. VanderWolk were gifted were transmuted into marital property, that was Mr. Rideout's burden to demonstrate at trial. As a result, the Trial Court's factual finding will only be vacated if a contrary finding is "*compelled* by the evidence." *St. Louis v. Wilkinson L. Offs., P.C.*, 2012 ME 116, ¶ 16 (emphasis added). The Trial Court's legal conclusion is reviewed only for an abuse of discretion or error of law. *Violette v. Violette*, 2015 ME at ¶¶13-28.

Contrary to Mr. Rideout's contention on appeal[6], there is evidence that supports the Trial Court's finding that Mr. VanderWolk's receipt of the Class B shares in MP LLC for $4 when she owed $475,000 was a gift from her siblings. The Divorce Judgment cites to numerous pages of testimony as well as several exhibits in its findings regarding this planned gift. *(See* App. at p. 18.) Specifically, one of Ms. VanderWolk's brother's, Jefferson, drafted the documents

[6] *See* Appellant's Brief at p. 15 ("Mr. Rideout contends that "[n]o evidence exists that the investment funds [from Ms. VanderWolk's siblings] were intended to be a gift.") and p. 16 ("No material evidence exists that was the plan," referencing the plan for the Trust to 'invest' funds that would later be forgiven when Anne passed away.).

to effectuate the Marital Trust "investment" and he testified that he spoke with his siblings, and they planned this investment so they would receive the 400 Class B shares as remainder beneficiaries of the Marital Trust and then forgive the "debt" MP LLC owed them, which is exactly what happened. (Tr. at pp. 252:13 – 259:24.) Jefferson testified that there was never any intent to make Ms. VanderWolk pay back the $475,000 that the Marital Trust "invested." (*Id.* at p. 280:10-14.)

As it relates to the gifting of the 400 Class B shares after Anne's passing, Jefferson testified that it was the VanderWolk siblings' intent that "Martha [have] have total control over that to use as she saw fit," referencing MP LLC. (*Id.* at p. 271:1-9.) He also testified that "We intended that obligation [the payment of $4] to repay the investments to be eliminated and for Martha to be free of that obligation," to repay the $475,000. (*Id* at p. 271:19-22; *see also* 277:2-6 ("REFEREE DIONNE: So, if I understand it, the sibling intent was let's find a way to give our sister $475,000 that she didn't receive from our father's estate planning, correct? THE WITNESS: Correct.").)

In sum, the Trial Court committed no error in finding that the VanderWolk siblings' transfer of 400 Class B shares in MP LLC to Ms. VanderWolk, effectively forgiving her of the $475,000 "debt" to the Marital Trust, was a gift because sufficient evidence exists in the record to support this finding, with all reasonable inferences drawn from the record in support of the Divorce Judgment.

Although Mr. Rideout suggests on appeal that the gifting of the 400 Class B shares should have been viewed as a gift to both he and Ms. VanderWolk, Jefferson testified specifically that the siblings' intent was to give Ms. VanderWolk the benefit of the inheritance she should have received, in their view. Mr. Rideout was specifically not included. (*See* Tr. at p. 262:8-14 ("Q. When this agreement was made with your sister, was the intent for the money to go to Martha or was the intent of the money to go to both Martha and Tom? A. No, the intent was to benefit Martha and enable her to purchase the camp, as I said earlier. The agreement was made solely with Martha and the later sale of the shares was solely to Martha.").

As it relates to Mr. Rideout's position on appeal that his contributions to the operation of the Sturtevant Pond Camps transmuted non-marital property into marital property, one must initially note that the Trial Court *agreed* with Mr. Rideout on this point as it relates to Ms. VanderWolk's premarital Class A shares. (*See* App. at pp. 25-28.) It was only the Class B shares of MP LLC that were found to be Ms. VanderWolk's non-marital property. Mr. Rideout's argument on appeal, then, must be that Ms. VanderWolk objectively manifested an intent to transmute the membership interest in the Class B shares she obtained in 2016 from her siblings into marital property.

At no time has Ms. VanderWolk objectively manifested an intent to transmute MP LLC or the Sturtevant Pond Camps into marital property.[7] Mr. Rideout was never on the deed to the Camps. (App. at pp. 136-138.) Mr. Rideout never had a membership interest in MP LLC, and Ms. VanderWolk amended the LLC's paperwork to convey an interest to the Marital Trust during the parties' marriage without making such a change—even after Mr. Rideout's bankruptcy was completed. (*See* Tr. at p. 360:13-17.) Mr. Rideout's exclusion from MP LLC was intentional. (*Id.* at p. 352:1-2.) In addition, he was never an owner on the MP LLC's bank account at any point during the marriage, and the Marital Trust's funds went into this bank account, alone. (*See id.* at pp. 353: 8-21, 360:18-20.)

The record is devoid of evidence that would support a finding that Ms. Rideout transmuted her Class B shares into marital property, and the Trial Court's finding was not error. *See Coppola v. Coppola*, 2007 ME 147 (finding that non-marital property held in an LLC was not marital property because the "record [was] devoid of any evidence that [husband] intended to transmute his nonmarital interest in the property"). Based on the foregoing, the Trial Court's legal conclusion that Ms. VanderWolk's membership interest in the MP LLB Class B

[7] Mr. Rideout never raised this issue prior to the filing of the instant appeal before the Referee or Trial Court. Mr. Rideout's contention through this matter has been that Ms. VanderWolk never received the Class B shares from her siblings as a gift, and he did not argue in the alternative. Although Mr. Rideout has not preserved this issue for appeal, Ms. VanderWolk addresses it for the sake of completeness.

shares remained her non-marital property was not an error of law or an abuse of discretion.

III. The Trial Court Had Jurisdiction to Value and Allocate the Parties' Marital and Non-Marital Membership Interest(s) in the Class A and B Shares of Magalloway Publishing, LLC. (Appellant's Issue D)

Mr. Rideout's contentions in this Section are twofold[8]. *First,* he contends that the Trial Court incorrectly applied This Honorable Court's decisions in *Coppola v. Coppola* and *Littell v. Bridges*. *Second,* he contends that there was an error in the valuation of the shares of MP LLC. The standard of review on the Trial Court's factual findings and legal conclusions here are as stated in Section II.

With respect to Mr. Rideout's contention that the Trial Court misunderstood or misapplied *Coppola v. Coppola* and *Littell v. Bridges*, it's not clear what Mr. Rideout is arguing. The Trial Court held that it did not have jurisdiction over MP LLC such that it could not order the LLC to dissolve or distribute its assets, but it could value and set aside membership interests aside to one party or another. (App. at p. 27.) That is what This Honorable Court held in *Littell v. Bridges*, 2023 ME 29, at ¶¶11-13, and that is precisely what the Trial Court did. Mr. Rideout has not seemingly identified any error of law.

[8] Mr. Rideout in this Section also restates arguments previously raised in the prior Sections regarding MP LLC. Ms. VanderWolk has endeavored to respond to these arguments cohesively in Section II of her Brief for the sake of readability and is not waiving them by not repeating them again in this Section.

With respect to the Trial Court's valuation of Ms. VanderWolk's Class A and Class B membership interests in MP LLC, the Trial Court provided a detailed analysis of how it arrived at the Class A and B shares being valued the same proportionally. (*See* App. at p. 27-28.) This analysis included a review of Title 31 as well as the relevant corporate documents and the evidence. Mr. Rideout's statement that the Trial Court equitably divided the shares of MP LLC "with no explanation/verification of value of shares in respect to the total value of the corporation" is not supported by a review of the record. (Appellant's Br. at p. 22.) Competent evidence exists in the record to support the Trial Court's valuation of the Class A and Class B shares of MP LLC collectively and separately. Indeed, Mr. Rideout admits that the sole asset of the LLC are funds escrowed with counsel, the Camps are sold and that MP LLC is not an ongoing concern, so he does not seemingly contest the overall valuation of MP LLC being the money left over from the sale of the property. (Appellant's Br. at p. 23.)

Moreover, at no point before the Trial Court or on appeal does Mr. Rideout suggest that a different finding of valuation of any of the set of shares is compelled by the evidence or what that might be. He failed to offer any evidence at trial as to what the valuation of the shares of MP LLC might be. The Trial Court's explanation of how it arrived at its valuation is supported by the evidence, and the Trial Court committed no clear error in its valuation of MP LLC.

IV. The Trial Court Committed No Clear Error in Finding Ms. VanderWolk's Vermont Real Estate Was Entirely Non-Marital because Mr. Rideout Failed to Meet His Burden to Provide the Court with Sufficient Evidence to Determine the Specific Amount of Marital Interest in an Otherwise Non-Marital Asset. (Appellant's Issue E)

Mr. Rideout's contention on appeal appears to be that the Trial Court erred by finding Ms. VanderWolk's Vermont Real Estate to be non-marital property, rather than remanding the issue to the Referee or to conduct a hearing to admit additional evidence. Mr. Rideout does not challenge the Trial Court's factual finding that the property assessments in 2008 and 2021 were of different properties. (*See supra* at pp. 8-9; Appellant's Br. at p. 24 (noting that neither party objects to the statement that the property was not the same in the two assessments).)

Mr. Rideout's sole objection is to not having an opportunity to cure his failure to carry his burden of proof prior to the issuance of the Divorce Judgment. As set forth in the Procedural History section of Appellee's Brief, Mr. Rideout agreed that the Trial Court did not need to hold a hearing on the parties' objections to the Referee's Supplemental Report; he then agreed to a Judicial Settlement Conference in lieu of remand after the Trial Court ruled on the parties' objections in May 2023; he failed to object to the Trial Court's procedural order setting this matter up for a limited final hearing even after being given ten days to do so; and he thereafter failed to file a motion for reconsideration or for findings of fact or

conclusions of law or for relief from order after the Divorce Judgment was issued. (*See supra* at pp. 2-4.)

Based on the foregoing, Mr. Rideout waived and has not preserved this argument on appeal. Even if he did, Mr. Rideout had ample opportunity over the course of years in this litigation to prepare and present all of the evidence to support his contentions that certain property was marital, in whole or in part. That he failed to do so is not a sufficient reason to require remand of this divorce—which has been pending for more than four years—back to a fact finder for the admission of additional evidence. This Honorable Court is not obligated to so order. *Accord Howard v. White*, 2024 ME 9, ¶¶ 36-42 (vacating the Trial Court's order on an issue "far more complex than we have previously suggested" and creating new legal precedent but remanding the case without an opportunity for the parties to proffer additional evidence consistent with the Court's ruling when the matter had been pending for just over four years).

V. The Trial Court Committed No Clear Error in Using the Value of the Parties' Investment Accounts in the Record to Divide Marital and Non-Marital Property, and Mr. Rideout Failed to Preserve Appellate Review of This Issue. (Appellant's Issue F)

Mr. Rideout does not contest on appeal the Trial Court's determination that Ms. VanderWolk's investment accounts were marital or non-marital in any amount or proportion. (Appellant's Br. at pp. 25-27.) His only contention is that the Trial Court erred when it used the value of the accounts in the record to equitably divide

marital assets, rather than reopen the record to establish the value of the accounts at the date of distribution or to issue a decision dividing assets proportionally based on the date of distribution rather than specific amounts. (*See id.* at p. 27.)

This argument is not preserved for appeal. Mr. Rideout did not raise this issue in his initial objection to the Referee's Report, his amended objection to the Supplemental Referee' Report, in the status conferences with the Court prior to the final hearing, in response to being given the opportunity to object to the Trial Court's October 19, 2023 Order or in the final hearing before the Trial Court. (*See* App. at pp. 123-124.) In addition, the proposed divorce judgment filed by Mr. Rideout before the Referee requested that a specific sum be set aside to him from Ms. VanderWolk's investment accounts based on the date of the divorce decree, not the value of the accounts as of the date of distribution. (*See* Plaintiff's Proposed Divorce Judgment, dated August 3, 2022, p. 8[9].) *See Foster v. Oral Surgery Assocs., P.A.*, 2008 ME 21, ¶ 22 ("An issue raised for the first time on appeal is not properly preserved for appellate review.")

As Mr. Rideout failed to preserve this issue for appellate review, This Honorable Court only reviews the Trial Court's use of investment values in the record for obvious error. *Morey v. Stratton*, 2000 ME 147, ¶ 10. It is respectfully

[9] Mr. Rideout did not number his pages; this number comes from counting the pages of the document manually.

stated that it cannot be obvious error for a Trial Court to use the evidence in the record from a hearing before a Referee to issue a Divorce Judgment where the parties have consented to the review of a Referee's Reports without the taking of additional evidence, have declined the Trial Court's offer to remand the case to a Referee for additional proceedings and never sought to introduce additional evidence before the entry of a final divorce judgment. While the Trial Court could have issued a different decision and perhaps could have if Mr. Rideout objected or made such a request, the Trial Court did not obviously err under the facts in this case.

VI. The Trial Court Committed No Clear Error in Its Division of Marital Property or Acceptance of the Referee's Recommendation Regarding Spousal Support, Attorney's Fees or Referee Fees. (Appellant's Issue G[10])

In the final section of his Brief, Mr. Rideout contends that the Trial Court's division of marital property was not just and makes a few conclusory, rapid-fire references about various other aspects of the Divorce Judgment with which he disagrees without developing these arguments in any meaningful regard. Mr. Rideout also repeats his arguments from the prior Section that the Trial Court should have allowed the parties to update various financial information before

[10] The title of Appellant's Section and Issue G reference "personal property," but the related discussion does not make any argument about personal property except a stray reference on page 30 of Appellant's Brief about the presumed depreciation of personal property since the hearing before the Referee. Mr. Rideout does not challenge in any respect the specific division of personal property, and so it is not addressed herein.

issuing a Divorce Judgment and used those numbers. (*Id.*at pp. 29-30.) As Ms. VanderWolk has already addressed Mr. Rideout's failure to preserve the issue for appeal of updating or introducing additional evidence before the District Court *supra*, she will focus on addressing only the new points Mr. Rideout raises in this Section.

With respect to Mr. Rideout's new arguments, Mr. Rideout references the perceived unjust division of marital property as being relevant to "no apportioned award of attorney fees, referee fees, and only a nominal $1/year in spousal support." (Appellant's Br. at p. 29.) On the following page, Mr. Rideout makes reference to the fact that a "lopsided award" without an "accommodation" of spousal support and award of legal fees and reference fees cannot be just. (*Id.* at p. 30.) Ms. VanderWolk respectfully contends that Mr. Rideout's perfunctory reference to attorneys' fees and referee fees are insufficient for this issue to be considered. *See Mehlhorn v. Derby*, 2006 ME 110, ¶ 11 ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.").

Even if these issues were properly before This Honorable Court, the standard of review is a high threshold that Mr. Rideout's arguments fail to meet. The award of spousal support, attorneys' fees and the overall division of marital property are all reviewed only for an abuse of discretion. *See Violette v. Violette*,

2015 ME 97, ¶ 18 (spousal support); *Kezer v. Cent. Maine Med. Ctr.*, 2012 ME 54, ¶ 28 (attorney's fees); *Leary v. Leary*, 2007 ME 63, ¶ 9 (overall division of marital property). On these issues, the Trial Court's decision will only be overturned "if it results in a 'violation of some positive rule of law or if the division results in a plain and unmistakable injustice, so apparent that it is instantly visible without argument.'" *Bradbury v. Bradbury*, 2006 ME 26, ¶ 4 (citing *Bradshaw v. Bradshaw*, 2005 ME 14, ¶ 15).

Mr. Rideout's primary argument is that the division of marital property was unjust because it was close to equal in value even though he received more[11], given Ms. VanderWolk's award of a greater amount non-marital assets[12]. As Mr. Rideout has identified no positive rule of law that the Trial Court's division violated, Ms. VanderWolk presumes that Mr. Rideout's contention on appeal is that the Trial Court's division of property is a plain and unmistakable injustice. While it is true that Ms. VanderWolk had set aside to her more non-marital property, the Trial Court was not obligated to equalize the marital property division as a result. As This Honorable Court has noted on numerous occasions, a "just distribution is not synonymous with an equal distribution." *Doucette v. Washburn*,

[11] The entire marital estate was valued at $310,278. Mr. Rideout was awarded more than half of the marital estate: $156,860. Ms. VanderWolk was awarded $153,418. (App. at pp. 28-29.)
[12] In terms of non-marital property, the Trial Court set aside to Mr. Rideout real property totaling $80,000 and $868,865 to Ms. VanderWolk, which was primarily the value of the Class B shares in MP LLC and her premarital investment accounts. (App. at pp. 28-29.)

2001 ME 38, ¶ 24 (affirming a disparate award of marital property). The Trial Court held that it considered all of the factors set forth in 19-A M.R.S. §953, and This Honorable Court infers that it made any factual inference necessary to support its conclusion because Mr. Rideout did not move for additional findings of fact and conclusions of law pursuant to M.R. Civ. P. 52(b). *Pelletier v. Pelletier*, 2012 ME 15, ¶ 20. The record on appeal does not support the conclusion that the disparate award of non-marital property rendered the division of marital property wildly and obviously unjust in this case.

Although Mr. Rideout contends that he was "left with no marital residence" as a result of the Trial Court's decision (Appellant's Br. at p. 29), he forgets that the Wilson Mills Property was set aside to him as non-marital property. This property not only produces rental income, but it could also be a residence for Mr. Rideout, if he so chose. He could also sell the property to fund the purchase of a new residence, if it does not suit him. In addition, Mr. Rideout repeats again his arguments about being entitled to a marital share of MP LLC, but he actually received an equal half share of the marital portion of MP LLC. This is consistent with his position that both parties contributed to the Sturtevant Pond Camps on appeal. (*See* Appellant's Br. at pp. 28-29.)

There is no aspect of the Trial Court's division of marital or non-marital property that shocks the conscience. Mr. Rideout left the marriage with what he

entered it with and more: an income-producing rental property, half of the value of the Class A MP LLC shares, two vehicles, a significant portion of the marital value of Ms. VanderWolk's investment and retirement accounts, cash from Ms. VanderWolk's bank account and various items of personal property. (*See* App. at pp. 28-29.) Given that he entered the marriage fresh from bankruptcy with little to his name, his departure from the marriage after eleven years with more than $150,000 plus personal property is not unjust in any sense.

Mr. Rideout's remaining contention is that the disproportionate award of non-marital property must have been accommodated via an offsetting award of spousal support, attorneys' fees or referee fees. He cites no legal support for this contention, nor is it supported by the facts. The Referee specifically considered the division of property on these issues among a host of factors, and although the Trial Court did not adopt the Referee's distribution of property, the end comparative result was the same insofar as the parties were awarded relatively equal amounts of the marital estate. (*Compare* App. at pp. 28-30 and 51-53.) The Trial Court was not required as a matter of justice to order Ms. VanderWolk to pay Mr. Rideout spousal support or contribute to his fees more than she already had. Both parties are retired with limited earning capacity and drawing from their retirement accounts and government entitlements. These facts are set forth in detail in the record. (*See* App. at pp. 15-30.) As a result, Mr. Rideout has not met his burden to

establish that an abuse of discretion occurred by the Trial Court on any of these issues.

CONCLUSION

For the reasons described herein and in the record before the Court, Appellee respectfully requests that this Court deny the appeal, affirm the orders of the District Court, and award her costs on appeal.

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/s/ Amy Dieterich

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