

**THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE**

**SITTING AS THE LAW COURT**

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**LAW COURT DOCKET NO. YOR-24-226**

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**PAT DOE, APPELLEE**

**V.**

**JOHN COSTIN, APPELLANT.**

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**On Appeal from the District Court (Biddeford)**

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**BRIEF OF APPELLEE, PAT DOE**

**Brittany M.R. Sawyer, Esq.**  
**Maine Bar Registration # 5730**  
**Attorney for Appellee**  
**Holmes Legal Group, LLC.**  
**P.O. Box 1647**  
**Wells, ME 04090**  
**(207) 646-1068**

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## **SUMMARY OF THE ARGUMENT**

The Appellant's appeal is untimely as to the underlying Order for Protection from Harassment as no appeal was taken within 21 days of the final order. Because the Order for Protection from Harassment has expired the Appellant's appeal is moot. He is unable to demonstrate any exception to the mootness doctrine. Even if he were able, the trial court did not err in granting the Plaintiffs an Order for Protection from Harassment with modifications to protect the minor children from Defendant's conduct while at school. Attorney fees were appropriate under the statute following multiple hearings.

## STATEMENT OF THE CASE

On May 5, 2023, Pat Doe filed a Complaint for Protection from Harassment on behalf of her two minor children, 16-year-old high school students. (Appendix “A.” 18, 22-26.) Appellant, Mr. Costin, lives on Dane Street, a public road, in the Town of Kennebunk. (A. 18-19.) Dane Street is a short road with a 25 mile per hour posted speed. (A. 18.) Mr. Costin repeatedly targets motorists that he believes drive too fast on Dane Street by setting out “little plastic men with flags,” stepping into the road, gesturing at drivers, screaming at vehicles and making obscene gestures. (A. 19.) Prior to May 4, 2023, Mr. Costin had “repeatedly targeted” the minor children involved in this matter. (A. 19.) He “repeatedly yelled and screamed at them, he made visual contact with the minors, he gestured at them, he walked into the street to block their passage, he backed his own vehicle onto Dane Street to block their passage.” (A. 19.) Mr. Costin entered the roadway, yelling at the minors, the week prior to May 4, 2023, while LB was driving to school and EB was a passenger. (Tr. Vol. II, pg. 23, ln. 3-20.) He was pointing and yelling at them. (Tr. Vol. II, pg. 43, ln. 7-16.) LB felt threatened. *Id.* Both children were scared and crying after this incident. (Tr. Vol. I, pg. 61, ln. 17.) Prior to both incidents, Mr. Costin approached EB’s car, yelling, when EB was driving alone on Dane Street. (Tr. Vol. I, pg. 59, ln. 2-9.) She was scared. (Tr. Vol. I, pg. 60, ln. 2.)

On May 4, 2023, while driving to school on Dane Street, Mr. Costin was waiting at the end of his driveway in his vehicle. (Tr. Vol. I, pg. 62, ln. 15-20.) As they passed, he pulled his vehicle behind them and followed them to the red light at the end of Dane Street. (Tr. Vol. I, pg. 62, ln. 19-20.) They were not speeding. (Tr. Vol. I, pg. 66, ln. 3; Tr. Vol. II, pg. 25, ln. 16.) Mr. Costin tailgated them for a mile and a half, drove onto their campus, and followed them to the student parking lot. (A. 20.) EB watched Mr. Costin the entire way and did not want to frighten her sister who was driving. (Tr. Vol. I, pg. 62, ln. 17; pg. 64, ln. 16.) She grew more concerned and watched him in the spot mirrors. *Id.* Mr. Costin pulled in behind the minors' vehicle and vertically blocked it pulling up within feet behind it. (Tr. Vol. I, pg. 65, ln. 16-24; Tr. Vol. II, pg. 27, ln. 14.) Mr. Costin then opened his window, yelled at the Appellees while pointing his finger. (A. 20.) He was taking pictures or videos of them as he had his camera up after he stopped. (Tr. vol. I, pg. 64, ln. 11-13.)

EB got out of the car and stated that they had not been speeding, to which Costin replied that "teenagers can kill people." (Tr. Vol. I, pg. 66, ln. 4.) EB was crying during this exchange and was frightened. (Tr. Vol. I, pg. 64, ln. 10.) The children were shaken and frightened when they made it into school. (A. 20.) EB called Doe crying so hard that Doe believed the children had been in a car accident. (Tr. Vol. I, pg. 40, ln. 13.) The children had not had their driver's licenses for nine

months by that time and were only allowed to drive with each other. (Tr. Vol. I, pg. 35, ln. 1-4.)

A Temporary Order for Protection from Harassment was issued May 5, 2023, on behalf of the two minor children against Mr. Costin<sup>1</sup>. (A. 1.) The Order had a term until June 15, 2024. (A. 11.) On May 9, 2023, Appellees filed a Motion to Seal the Pleadings to protect the names of the minor children. (A. 2.) That Motion was granted on May 15, 2023. (A. 2.)

After the Temporary Order was issued, Mr. Costin attempted to subpoena confidential education records regarding the minor children from RSU 21. (A. 3) Appellee filed a Motion to Quash the Subpoena. (A. 4.) Mr. Costin filed a response to this Motion to Quash. (A. 4.) Mr. Costin also attempted to subpoena witness statements and investigation records from the Kennebunk Police Department related to the incident of May 4, 2023. (A. 3.) The Town of Kennebunk filed a Motion to Quash Subpoena on May 30, 2023. (A. 3.) Mr. Costin filed an Opposition to the Town's Motion and filed the subpoenas with attachments with the court (A. 3-4.) Because of this filing, Appellees filed a Motion to Quash Subpoenas and Request for Protective Order. (A. 4.)

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<sup>1</sup> The Complaint for Protection from Harassment was filed "individually and on behalf of" the minor children but at final hearing, Doe indicated that she had no interest in receiving an order on her behalf but wished to have one issued protecting the children. (Tr. vol. I, pg. 40, ln. 8-20.)

The court quashed the subpoena to the Kennebunk Police Department on May 30, 2023. (A. 4.) The court quashed the subpoena to RSU 21 on June 6, 2023. (A. 4.) Due to Mr. Costin’s ongoing attempts to obtain documents related to the minor children from RSU 21 after the subpoena had been quashed, the Appellees had to file a Motion to Clarify. (A. 5.) The court granted the Motion to Clarify on July 14, 2023, and affirmatively stated “[b]y way of clarification, Defendants request to subpoena RSU 21 records pertaining to EB and LB is denied. The court grants Plaintiff’s Motion to Quash the subpoena served upon RSU 21.” (A. 5.)

The hearing on the Protection from Harassment Complaint was set for August 7, 2023. (A. 5.) Appellees called the following witnesses: Doe; EB; LB; Jeremy Sirois, RSU 21 high school principal; and Officer Ben Murphy, Kennebunk Police Officer. (Tr. Vol. II, pg. 2.) Appellant called his neighbors, Lelia Carroll and Michael Cleary and himself. (Tr. Vol. II, pg. 2.) Jeremy Sirois testified that he had never seen the minor children come to school in the emotional state they were in on May 4, 2023. (Tr. Vol. I, pg. 100, ln. 14-20.) They were flustered and upset. *Id.* He spent quite a bit of time getting them settled and able to go to school. *Id.* Mr. Sirois viewed the school security cameras and confirmed Mr. Costin entered the campus and blocked in the vehicle of the minor children as they had described. (Tr. Vol. I, pg. 101, ln. 5-9.) He then contacted the school resource officer who issued a “no trespass” order for the school. *Id.* Mr. Costin contacted Mr. Sirois and was upset that



he had not been contacted to give “his side of the story” before the no trespass order was issued. (Tr. Vol. I, pg. 101, ln. 21.) He raised his voice at the principal when Mr. Sirois told him the obligation of the school is to protect the students. (Tr. Vol. I, pg. 102, ln. 2-4.) Mr. Sirois believed that Mr. Costin presented a threat to the minors. (Tr. Vol. I, pg. 108, ln. 17-21.)

Kennebunk Police Officer Ben Murphy was present when Mr. Costin was served with no trespass and cease harassment orders. (Tr. Vol. I, pg. 112, ln. 2-11.) Mr. Costin acknowledged to Officer Murphy that he followed the minor children to school “to provide the police with an accurate plate of the vehicle, to confirm that [] and [] were the drivers.” (Tr. Vol. I, pg. 113, ln. 12-19.) Mr. Costin did not contact the police with that information after following the minors to school. *Id.* Mr. Costin told his neighbor, Mr. Cleary, that “he was being taken to court” because “he had followed [some teenagers] to high school to try to reprimand them for speeding.” (Tr. Vol. I, pg. 30, ln. 4-10.)

Mr. Costin acknowledged that he followed the minor children to school on May 4, 2023. (Tr. Vol. II, pg. 83, ln. 5-9.) Mr. Costin acknowledged that he parked behind the minors in the student parking lot and told them that “teenagers can kill people with cars too.” (Tr. vol. II, pg. 86, ln. 5.) During Mr. Costin’s testimony, the court made several attempts to refocus the discussion on the harassment issue before

the court and not on the police investigation of alleged speeding on Dane Street or the no trespassing order for RSU 21. (Tr. Vol. II, pg. 98, ln. 19; pg. 99, ln. 6.)

Mr. Costin acknowledged that he is not a trained police officer, does not have a radar gun and only believes that he can gauge speed by observation. (Tr. Vol. II, pg. 101, ln. 11-22.) He acknowledged following the minors and did take their picture at the high school. (Tr. Vol. II, pg. 102, ln. 9-25.) Mr. Costin was unable to understand how his conduct and interaction with two 16 year old minors new to driving would have frightened them. (Tr. Vol. II, pg. 107, ln. 6-23; Tr. Vol. II, pg. 109, ln. 23- pg. 110, ln. 13.) Upon inquiry from the court, Mr. Costin could not identify a single accident that had occurred on Dane street in 2021, 2022 or 2023. (Tr. Vol. II, pg. 110, ln. 18-24.) Officer Ben Murphy is specially trained in traffic control and observation of speed on the roadway and confirmed it would be “very difficult” to estimate speed without specialized training. (Tr. Vol. II, pg. 17, ln. 21- pg. 18, ln.7.) The court determined that the “trial testimony suggests that it is Costin’s conduct, not the motorists’ conduct, that causes safety issues on Dane Street.” (A. 19.)

The hearing did not conclude within one day. A second day of trial was held on August 9, 2023. (A. 5.) At the conclusion of the second day, the court requested that the attorneys meet with the court in chambers. (Tr. Vol. II, pg. 117, ln. 25.) The court gave the parties additional time to work out an agreement. (A.17.) On August 15, 2023, the Appellees notified the court that no agreement had been reached. (A.

5.) On August 16, 2023, the court (*Janelle*, ARJ) issued an Order for Protection from Harassment on behalf of the minor children with a finding that Mr. Costin had harassed them. (A. 10-11.) There was no appeal or tolling motion filed after this final order was entered and the order became final. (Blue brief, pg. 14; A. 18.)

On September 12, 2024, the Appellees filed a Motion to Modify the Order because Mr. Costin underwent efforts to have the no trespass order issued by RSU 21 rescinded. (Blue Brief, pg. 14; A. 6; Tr. Vol. III, pg. 5, ln. 15-23.) RSU 21 had agreed to keep the no trespassing order in place until the court could make a determination on the Motion to Modify the PFH but it allowed the no trespass order to expire. (Tr. Vol. III, pg. 4, ln. 4-22.) Mr. Costin continued his efforts to obtain confidential records from RSU 21 regarding the minor children after the final Order for Protection from Harassment was issued. (Tr. Vol. III, pg. 3, ln. 24; pg. 4, ln. 3.) On September 22, 2023, Mr. Costin filed an Opposition to Plaintiff's Motion to Modify<sup>2</sup>. (A. 30-39.) Mr. Costin unsuccessfully argued that the Motion would unlawfully infringe upon his fundamental rights. (A. 36.) On January 18, 2024, Mr. Costin filed a subsequent request renewing his Opposition to the Motion to Modify and requesting the court find the Motion frivolous and award him attorney fees. (A. 14-15.)

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<sup>2</sup> Costin misapprehends the Motion to Modify and couches it as an untimely Motion to Reconsider. (Blue Brief, pg. 14.) The Appellees did not file a Motion to Reconsider because the Protection from Harassment Order issued. The court does not have jurisdiction over the RSU 21 no trespass order and it is irrelevant to the trial court's amendment of the PFH.

The parties appeared for hearing on the Motion to Modify on January 11, 2024. (A. 63.) The court continued the case as the judge recused himself. (A. 63.) The case was rescheduled for hearing on February 12, 2024. (A. 7.) Each of these appearances required the minor children to miss school.

The court granted the Motion to Modify and issued an Amended Order for Protection. (A. 12-13.) The court checked boxes D & E and softened the prohibition on being at RSU 21 high school with the following language “Defendant may enter Kennebunk High School to meet with school officials only at such times as neither Plaintiff is on school premises (buildings, fields, parking lot, and outdoor & communal areas).” (A. 12.) The Amended Order for Protection from Abuse was not extended and expired on June 15, 2024, following the high school graduation of the minor children. (A. 11, 13.)

The court denied Mr. Costin’s request for attorney fees on February 15, 2024. (A. 14.) On February 16, 2024, Mr. Costin filed a Motion for Findings of Fact and Conclusions of Law. (A. 40-43.) The Appellees filed an Objection on or about February 22, 2024 (A. 44-49.) On February 22, 2024, the Appellees filed a Motion for Attorney Fees. (A. 56-57.) Mr. Costin then filed a Reply to the Opposition to Motion for Findings of Fact and Conclusions of Law. (A. 50-55.)

On April 22, 2024, the court issued Orders and Findings. (A. 17-21.) The court found that Mr. Costin has taken it upon himself to slow motorists down. (A. 19.) The

court also found, “he has position himself on the sidewalk motioning motorists to slow down, he has stepped into the road in front of moving motor vehicles to get motorists to stop. Costin screams at motorists, and he makes obscene gestures at motorists to get them to slow down on Dane Street.” (A. 19.) The court found that Costin’s conduct is a safety issue on Dane Street. (A. 19.) The court found that Mr. Costin placed Appellees in fear “by engaging in threatening and harassing behaviors and where he knowingly restricted their movements by parking behind their car.” (A. 20.)

The court found that Mr. Costin repeatedly targeted Appellees, “Costin repeatedly yelled and screamed at them, he made visual contact with the minors, he gestured at them, he walked into the street to block their passage, he backed his own vehicle onto Dane Street to block their passage.” (A. 19.) The court found that an amended order was necessary to protect the children. (A. 20.) The court concluded its order “[t]here are consequences to violating people’s rights when a Defendant chooses to harass and intimidate Plaintiffs.” (A. 21.) The court ordered Mr. Costin to pay \$6,500.00 in legal fees based on the supporting Affidavit of Attorney Fees. (A. 21.) This appeal followed. On August 1, 2024, Appellees filed a Motion to Dismiss Appeal. The Court denied that Motion but stated that the Court is not prevented from dismissing the appeal.

For the reasons stated herein, this award of attorney fees should be affirmed, with appellate fees and interest on the award. Otherwise, this appeal should be dismissed as moot given that the underlying Order for Protection from Harassment has expired.

## STANDARD OF REVIEW

The trial court's findings are reviewed for clear error. *Allen v. Rae*, 2019 ME 53, ¶ 7, 206 A.3d 902. Findings will be affirmed when there is competent evidence in the record to support them. *Id.* An award of attorney fees and costs in a protection from harassment is reviewed for an abuse of discretion. *Jefts v. Dennis*, 2007 ME. 129 ¶ 10, 931 A.2d 1055.

## LEGAL ARGUMENTS

### **I. THE TRIAL COURT DID NOT ERR IN FINDING APPELLANT HARASSED THE APPELLEES.**

#### **A. APPELLANT’S APPEAL IS UNTIMELY AS TO THE ORDER FOR PROTECTION FROM HARASSMENT ISSUED AFTER HEARING ON AUGUST 23, 2023.**

A party may not appeal a decision until a final judgment has been made in a case and all issues have been fully disposed of. *Marks v. Marks*, 2021 ME 55, ¶ 10, 262 A.3d 1135. Pursuant to M.R. App. P. 2B(c)(2)(1), a civil appeal may be taken “within 21 days after entry onto the docket of the judgment or order appealed from.” M.R. App. P. 2B(c)(1). “Strict compliance with the time limits of M.R. App. P. 2(b).. is a prerequisite to the Law Court entertaining an appeal.” *Bourke v. City of S. Portland*, 2002 ME 155, ¶ 4, 806 A.2d 1255.

The District Court issued an Order for Protection from Harassment on August 16, 2023. (A. 11.) No appeal was taken from the Order for Protection from Harassment. (A. 18.) The Order issued on August 16, 2023 is a final judgment. (Blue brief, pg. 14.) No post judgment motions were filed that would toll the time for appeal. Appellant acknowledges that the August 16, 2023 Order for Protection from Harassment was final and the time for appeal had expired. (Blue Brief pg. 14; Tr. Vol. III. pg. 7, 11-15.)



The Appellant did not file a Notice of Appeal until May 13, 2024. The Appellant's appeal of the 2023 Order is untimely. The appeal as to the August 23, 2023 Order is frivolous and should be dismissed.

**B. THE APPELLANT'S CONDUCT CONSTITUTES HARASSMENT UNDER 5 M.R.S. §4651(2)(A)-(C).**

Even if the Court were to consider the sufficiency of the evidence in this case, it is unquestionable that Mr. Costin acted in a manner that was intimidating and frightening to two minors who were traveling on a public roadway. His conduct was harassing under 5. M.R.S. § 4651(2)(A)-(C). It is Mr. Costin's conduct that was unsafe to the community and the court acted within its statutory authority to grant and Order for Protection, amend it as necessary to protect the children and order attorney fees be paid by Mr. Costin. (A. 19-20.)

Harassment is defined as "three or more acts of intimidation, confrontation, physical force or the threat of physical force directed against any person, family or business that are made with the intention of causing fear, intimidation or damage to personal property and that do in fact cause fear, intimidation or damage to personal property." 5 M.R.S. §4651(2)(A)(2024). A court may also grant a protection from harassment order "based upon a single act...constituting a violation of certain enumerated criminal offenses." *Allen v. Rae*, 2019 ME 53, ¶ 8, 206 A.3d 902 (internal quotations omitted). In a protection from harassment proceeding, the "court

need only find that a person committed one of the enumerated statutory offenses by a preponderance of the evidence to make a finding of harassment under section 4651(2)(C).” *Id.* “Even when an individual may have a legal right to do something, the manner in which a legal act is performed can constitute harassment.” *Cates v. Donahue*, 2007 ME 38, ¶ 11, 916 A.2d 941.

If this Court determined that the Appellant could proceed with his appeal as to the August 2023 Order, there is competent evidence in the record to support a finding of harassment. In this case there have been three or more incidents of harassment as well as a single act of stalking. The court found that Appellant had harassed the Appellees:

repeatedly on Dane Street and he has, without reasonable cause, followed them to Kennebunk High School where he placed them in fear by engaging in threatening and harassing behaviors and where he knowingly restricted their movements by parking behind their car thus preventing them from driving away from the scene.

(A. 20.)

The first incident was when Mr. Costin came out to EB’s vehicle in the roadway. The second incident was when both of the minor children were in the vehicle, and Mr. Costin came up to the children in the roadway. Then there was the third incident of May 4<sup>th</sup> where Mr. Costin waited for the children in his driveway, tailgated them to school, blocked them into their parking space, rolled down his window to yell at them and record them. (A. 25.) This final incident also constitutes

a single act of stalking or restriction of civil rights under the statute. 5. M.R.S. § 4651(2)(C). During all of these incidents the children were scared of Mr. Costin and what he may do next.

This case is not about speeding. Mr. Costin does not have the qualifications to determine speeding and his effort to excuse his conduct by acting in the shoes of a police officer was not credible. His neighbor testified that Mr. Costin informed him he was being taken to court because “he had followed [some teenagers] to high school to try to reprimand them for speeding.” (Tr. Vol. I, pg. 30, ln. 4-10.)

This case is not about how the police or the school responded to Mr. Costin. The sole issue for the court was whether Mr. Costin harassed the minor children pursuant to 5 M.R.S §4651(2)(A)-(C). There was ample testimony to support a finding by preponderance of the evidence of harassment in this case as Mr. Costin repeatedly targeted these children. (A. 17-21.) The court did not abuse its discretion in finding harassment had occurred pursuant to the statute.

**II. THE TRIAL COURT WAS WITHIN ITS DISCRETION TO GRANT THE MOTION TO MODIFY TO PRECLUDE APPELLANT FROM GOING TO SCHOOL WHEN THE HARASSMENT OCCURRED AT THE SCHOOL OF THE MINOR CHILDREN.**

The Appellees filed a Motion to Modify pursuant to 5 M.R.S. §4655(2) which allows the court to modify the order “for sufficient cause...as circumstances require.” Protection from Harassment Orders are “intended primarily to protect plaintiffs from

harassment.” *Waltz v. Waltz*, 2013 ME 1, ¶ 9, 58 A.3d 1127. “A trial judge may, at any stage of proceeding, take judicial notice of the findings and conclusions contained in any prior judgments or orders.” *In re Scott S.*, 2001 ME 114, ¶ 13, 775 A.2d 1144.

Appellant argues that Doe sought to restrict Mr. Costin’s liberty. (Blue brief, pg. 35.) However, the Appellees sought a modification of the Order to ensure they were safe and protected at their school. (A. 29.) Mr. Costin had taken the Order to the school and sought access to the high school whether the minor children were there or not because boxes E & F were not checked on the Order. (A. 29.) He was seeking the ability to attend events on campus and gain access to the school property. (A. 32.) Additionally, Mr. Costin continued to attempt to obtain records from the school regarding the minor children. (Tr. Vol. III. pg. 3, ln. 24-25.) This included the statements of the minor children and the video footage of the school parking lot. (Tr. Vol. III. pg. 8, 6-9.) The court found that “[w]ithout notice to [Appellees] RSU 21 allowed its No Trespass Order to “lapse.” (A. 20.) The amendments requested by the Appellees to the Order were “necessary, in the court’s view, to protect these [Appellees] from Costin’s harassment.” (A. 20.) The court was within its discretion to amend the Order for Protection from Harassment<sup>3</sup>.

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<sup>3</sup> The Appellant relies on *Rowland v. Kingman*, 1997 ME 80 ¶ 4, 692 A.2d 939 for the premise that the Appellees did not meet their burden under the statute for modification. *Rowland* involved a post judgment motion filed in a family matter related to the parental rights and responsibilities and primary residence of children. Under 19-A. M.R.S. §1657(2) the moving party must establish a substantial change in

The Amended Order was narrowly tailored to protect the children and balanced Mr. Costin’s desire to attend certain public events at the school. (A. 12.) The court found, reasonably, that the need for protection for the children on campus outweighed Mr. Costin’s “desire to be on campus whenever he chooses to go there<sup>4</sup>.” (A. 20-21.) Mr. Costin had no children that attended Kennebunk High School. (Tr. Vol. II, pg. 60, ln. 15-18.) There was sufficient cause to modify the Order given the circumstances. The Order, as modified, was not extended. (A. 13.)

The Order in this case expired on June 15, 2024. (A. 13.) The Court has previously found that a protective order can be appealed even after the order has expired if there are collateral consequences following the Order. *Chretien v. Chretien*, 2017 ME 192, ¶¶ 9, 10, 170 A.3d 260. The Court has determined that an appeal is moot when “the collateral consequences that would flow from the decision are not more than conjectural and insubstantial consequences. *Witham Family Ltd.*

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circumstances since the issuance of the initial Order. That is a wholly different statute than Protection from Harassment and the court was well within its statutory authority to issue a modification that was protective of the minor children who had been harassed by Costin.

<sup>4</sup> The administrative matters that Mr. Costin has with RSU 21 is neither relevant nor the concern of the Appellees. While Mr. Costin repeatedly attempted to shift the focus to his need to be heard, attend plays or preserve his rights, the Protection from Harassment is solely focused on the impact that Mr. Costin’s behavior had on the minor children. Even though prompted and questioned multiple times during the hearing, Mr. Costin could not shift his thinking to consider the impact of his behavior on the minor children. He continues throughout his brief to disavow the trial court’s findings and reiterates the impact of the matter on him. His ongoing failure to take any responsibility for his actions and his further attempts following the order to obtain confidential education records of the minor children further underscores the appropriateness of the initial order and the modification.

*P'ship v. Town of Bar Harbor*, 2015 ME 12, ¶ 9, 110 A.3d 642 citing *Sordyl v. Sordyl*, 1997 ME 87, ¶ 6, 692 A. 2d 1386 (quotation marks omitted).

Therefore, any appeal of the Amended Protection from Harassment issued on February 14, 2024 that expired on June 15, 2024 is moot. No exception to the mootness doctrine applies in this case. Mr. Costin has not identified any ongoing collateral consequences that flow from the expired Order. Therefore, his appeal should be dismissed.

### **III. THE TRIAL COURT DID NOT ERR IN AWARDING ATTORNEY FEES TO APPELLEES.**

Pursuant to 5 M.R.S. §4655(1)(E), the Appellees requested attorney fees be awarded. Section 4655 allows a Plaintiff in a Protection from Harassment matter to be awarded attorney fees after a hearing and a finding of harassment has been made.<sup>5</sup> The court has the discretion in awarding attorney fees and costs, “upon finding that the defendant has committed the harassment alleged”. *Jefts v. Dennis*, 2007 ME 129, ¶ 8, 9, 931 A.2d 1055. Maine follows the American rule as to attorney fees. *Indorf v. Keep*, 2023 ME 11, ¶ 15, 288 A.3d 1214. “A court may, however, award attorney fees under the following exceptions to the American rule: 1) a contractual agreement

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<sup>5</sup> This provision is satisfied by the full two days of hearing that were held on the initial complaint. When the parties appeared in February of 2024 on the Motion to Modify there was an agreement to proceed by way of offer of proof rather than a testimonial hearing. The same judge presided over all three days.

of the parties, 2) clear statutory authority, or 3) the court's inherent authority to sanction egregious conduct in a judicial proceeding. *Id.*

This case falls into one of the exceptions to the American rule as there is statutory authority for the court to award attorney fees to a plaintiff in a protection from harassment proceeding. 5 M.R.S. §4655(1)(E).

Because the court found Appellant had harassed the Appellees, which was not in error, the trial court acted within its discretion in awarding attorney fees and costs. *Jefts v. Dennis*, 2007 ME 129, ¶ 9, 931 A.2d 1055. The court reviewed the entirety of the record with the accompanying affidavit of attorney fees and ordered Mr. Costin to pay \$6,500 to Appellees after hearing and argument. (A. 21.) No due process was denied, the Appellant and the statutory authority exists to issue the award. The court found this award reasonable under the entirety of the record, including the conduct of the Appellant and the harassment outlined in the Order against the minor children. (A. 17- 21.) The court considered the arguments both for and against an award of attorney fees and did not abuse its discretion in ordering Mr. Costin to pay attorney fees to Appellees.

### **CONCLUSION**

Based upon the foregoing, the Appellee hereby moves this Honorable Court should dismiss the Appellant's appeal as to the 2023 Order for Protection from

Harassment as untimely, deny the appeal as to the modification as moot and affirm the attorney fees award with interest.

Dated this 1st day of October 2024.

/s/ Brittany M.R. Sawyer, Esq.

Brittany M.R. Sawyer, Esq.  
Counsel for Appellees  
Bar No. 5730  
Holmes Legal Group, LLC.  
PO Box 1647  
Wells, ME. 04090

### **CERTIFICATE OF SERVICE**

I certify that two copies of the foregoing Brief of Appellees have been served upon Counsel for Appellant, Scott Dolan, Esq.

Dated this 1st day of October 2024.

/s/ Brittany M.R. Sawyer, Esq.

Brittany M.R. Sawyer, Esq.  
Counsel for Appellees



STATE OF MAINE

SUPREME JUDICIAL COURT  
Sitting as the Law Court  
Docket No. YOR-24-226

Pat Doe

**CERTIFICATE OF SIGNATURE**

v.

John Costin

I am filing the electronic copy of a brief with this certificate. I will file the paper copies as required by M.R. App. P. 7A(i). I certify that I have prepared (or participated in preparing) the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R. App. 7A(f) and conform to the form and formatting requirements of M.R. App. 7A(g).

**Name of the party on whose behalf the brief is filed:** Pat Doe

**Attorney's name:** Brittany Sawyer, Esq.

**Attorney's Maine Bar. No.:** 5730

**Attorney's email address:** [brittany@holmeslegalgroup.com](mailto:brittany@holmeslegalgroup.com)

**Attorney's street address:** 2145 Post Road, Wells, ME 04090

**Attorney's business telephone number:** 207-646-1068

**Date:** October 1, 2024