MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. Ken-24-480

MAINE HUMAN RIGHTS COMMISSION,

(*Plaintiff/Appellee*)

v.

D&L APARTMENTS, ET AL.

(*Defendants/Appellants*)

On Appeal from the Kennebec County Superior Court

REPLY BRIEF OF APPELLANTS D&L APARTMENTS, ET AL.

Carl E. Woock, Esq. – Bar No. 5657
Stephen C. Smith, Esq. – Bar No. 8720
Attorneys for Appellants
STEVE SMITH TRIAL LAWYERS
191 Water Street
Augusta, ME 04330
207-622-3711
info@mainetriallaw.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I. INTRODUCTION

The Superior Court erred by misconstruing the statutory language of the Maine Human Rights Act ("MHRA") and in finding that the law allows for Justin Engstrom ("Mr. Engstrom and/or "the Plaintiff") to obtain relief under 5 M.R.S. § 4582-A(3) due to the ostensibly-protected disability status of *not having a service animal*. As argued in Appellants' principal brief, the Superior Court fundamentally erred by supplying an unnatural reading of the statute that, in function and effect, erroneously protects a general population of Mainers from hypothetical injury, rather than protecting disabled Mainers in their actual use of qualifying service animal. Appellee the Maine Human Rights Commission ("MHRC" and/or the "Appellee"), unsurprisingly, argues that the decision is correct. Two of the more novel arguments proffered by Appellee warrant response.

First, Appellee's brief argues that the lower court's decision flows from a justifiable (albeit irrational) reading the statute's construction. To prop up a fragile argument that defies logic and linguistic conventions, the Appellee invents a grammatical "rule" and posits that a single word, "or," separates two distinct protected populations, which in turn justifies the lower court's holding. In grasping for legal support its argument—the Appellee's invented "Rule of Or"—the Appellee's reasoning reveals itself to be internally inconsistent and out of step with this Court's past precedent. Appellee's argument, like the lower court's own

statutory interpretation, is ungrammatical and conspicuously inconsistent with this Court's past ruling on similarly-constructed statutes.

Second, the Appellee concedes that there would be standing issues for a person who might "bring a claim for the denial of use of an assistance animal under the MHRA [when] they are not disabled." Red Br. at 17. This imputed limitation is supplied only from Appellee's reassuring brief, not the lower court's own holding. On its face, there is nothing about the lower court's decision that would appear to bar able-bodied Mainers from seeking relief under Section 4582-A(3)—and indeed, it is fantasy to suggest that only disabled people can own "service animals," especially hypothetical ones. If standing is an issue that might have barred the original complaint, it can be an issue on appeal. *See Clardy v. Jackson*, 2024 ME 61, ¶ 11, 322 A.3d 1158, 1163 (standing is reviewed de novo and may be raised sua sponte even if the parties have not raised it) *(citing Black v. Bureau of Parks & Lands*, 2022 ME 58, ¶ 26, 288 A.3d 346). The decision below found that the plaintiff in this case has standing to sue under Section 4582-A(3) *without a service animal and without a present need for a service animal*. If that is the law, standing appears conferred as a matter of law to any person regardless of whether they (a) own a service animal, (b) are eligible for a service animal, and (c) even actually desire a service animal. The rules of standing compel higher barriers on litigants seeking

relief under Maine law, and the decision can be overturned on this basis, per Appellee's own argument.

For all those reasons, and those which were previously set forth in Appellants' primary brief, the Court should reverse and remand the decision below and set forth the appropriate interpretation of Section 4582-A(3).

A. Appellee's 'Rule of Or' is an incoherent invention out of step with Law Court Precedent.

Appellee argues that the linguistic key to decoding of Section 4582-A(3) turns on an elegantly simple rule: the word "or," by itself, "does the heavy lifting by separating the clauses" of [a] refusing use of a service animal or [b] "otherwise discriminat[ing] against" disabled persons who actually use a service animal. App. 10. Appellee insists that, in statutory texts, "one cannot link what 'or' has separated." Red Br. at 12. However, as a blunt tool, a prescriptivist Rule of Or does not lead any reader to clear meaning. If "or" is naturally disjunctive as an internal clause-separator, as proposed by the Appellee, then the single statutory subsection at issue here has a dozen separate clauses. Consider the nine-odd "clauses" in just the first sentence of the assistance animal statute (segmented below as Appellee seemingly proposes), which makes it unlawful discrimination

> For any owner, lessor, sublessor, managing agent ***or***
> other person having the right to sell, rent, lease ***or***
> manage a housing accommodation ***or***
> any of their agents to refuse to permit the use of an assistance animal
> ***or***

> otherwise discriminate against an individual with a physical ***or*** mental disability who uses an assistance animal at the housing accommodation unless it is shown by defense that the assistance animal poses a direct threat to the health ***or*** safety of others ***or*** the use of the assistance animal would result in substantial physical damage to the property of others ***or*** would substantially interfere with the reasonable enjoyment of the housing accommodation by others.

5 M.R.S. § 4582-A(3) (breaks and emphasis added). Appellee's grammatical mandates must mean that each "or" in the sentence cited above possibly announces separate ideas disconnected from the preceding clause—that is, the subjects are not internally linked, just as the predicates are not internally linked, because the Legislature told us so, by using "or." Such inherent linguistic absolutism is, by Appellee's definition, necessary to "afford 'or' its due respect." Red Br. at 11.

Or maybe not. Knowing that "or" is not truly disjunctive at every use, Appellee does not argue that its proposed grammar rule holds true for each intervening "or" in the disputed statute. See Red Br. at 9-12. What Appellee argues—ignoring the consequences of its own robust prescriptivism—is that while there are several uses of the word "or" in Section 4582-A(3), one special "or" separates two predicates when other "ors" previously served to link subjects and, later, exceptions.[1] In other words, "or" is inclusive as to the subjects, but does the

[1] The latter portion of the first sentence of Section 4582-A(3) carves out exceptions to the accommodation rule where "it is shown by defense that the assistance animal poses a direct

opposite as to the predicates, then reverts back to linkage in the exceptions, and this polarity-switching grammatical effect is known only to those who possess keener insights into "the arts of statutory language." Red Br. at 10. "Or" means one thing, except for when it means another thing, and only true grammarians know the difference. Appellee's rule is less an interpretative guide, and more a fever dream of Schoolhouse Rock-meets-Ouija Board mysticism. As a principle to be applied with any coherent standard, it fails.

Appellee's Rule of Or is not intuitive, and indeed, it is out of step with how this Court reads Maine laws. Appellee notably tiptoes around this Court's ruling in *Dussault v. RRE Coach Lantern Holdings, LLC*, 2014 ME 8, 86 A.3d 52, reducing the significance of the case only to a passing comment on disparate impact analysis. See Red Br. at 19-20. *Dussault*, however, is a full-blooded model for interpreting similar statutory language in the Maine Human Rights Act to that which is relevant here. (See Blue Br. at 21-22 for full discussion of *Dussault*.)

In *Dussault*, the Law Court looked at a statute making it unlawful housing discrimination for any landlord "to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public

---

threat to the health *or* safety of others *or* the use of the assistance animal would result in substantial physical damage to the property of others *or* would substantially interfere with the reasonable enjoyment of the housing accommodation by others." 5 M.R.S. § 4583-A(3) (emphasis added).

assistance. . .” 5 M.R.S. § 4582 (2007), *repealed* by P.L. 2011, c. 613, § 12. *Dussault* quite literally demonstrates that a Rule of Or is untenable and inconsistent with past statutory interpretation. Contrary to Appellee’s prescriptivist claim that “one cannot link what ‘or’ has separated,” Red Br. at 12, the Law Court did not bluntly dissect Section 4581-A(4) prohibition’s between one “refus[al] to rent,” as one standalone clause applicable broadly, against its separate prohibition on “impos[ing] different terms of tenancy to individual[s] who [are] recipient[s] of . . . public assistance.” Instead, the Court expressly held that the statute prohibited a combined type of discrimination against one group of people. *See Dussault*, 2014 ME 8, ¶ 14, 86 A.3d 52 (holding that “[t]he *only* discrimination that the MHRA prohibits with respect to public assistance recipients is ‘refus[al] to rent or impos[ition of] different terms of tenancy’ based *primarily on a person’s status as a recipient*” (emphasis added)).

Further, the fact that the Law Court applied a straightforward reading to Section 4581-A in 2014’s *Dussault* ruling makes highly implausible that the Legislature, in drafting legislation that would become 5 M.R.S. § 4582-A(3) in 2016, intended for a fundamentally different use of the English language to dictate the interpretation of that legislation. P.L. 2016, ch. 457, § 3. If the Legislature meant for all citizens to be protected by part of Section 4582-A(3), and not just individuals “with a physical or mental disability who use[] an assistance animal at

the housing accommodation," the statute could simply say so (e.g., by not using that qualifying language about the protected individuals, or by separating generally applicable prohibitions from actions only directed toward people who use a service animal), rather than mirroring the structure of Section § 4581-A(4).

Appellee has no answer for why the Court did not torture Section § 4581-A(4) with unnecessary grammatical surgery ten years ago, severing "refusal to rent" writ large from the latter conduct against only recipients of public assistance. Alas, *Dussault* plainly rejects the Rule of Or—and indeed, rejects the Superior Court's logic in the decision below, to the extent that there was any supplied policy justification to read the "first" clause broadly and the "second" clause as one limited to active uses of service animals. Ultimately, there is no Rule of Or, to whatever extent that its invention represents a "rule" in any sense of the word. Nor does the MHRC offer a particularly useful legal argument to justify the lower court's parsing of Section 4582-A(3). The lower court's erroneous interpretation of the law should be corrected, and the decision below vacated and remanded accordingly.

B. Appellee misconstrues the holding below in arguing that able-bodied people cannot legally own assistance animals, which highlights the problematic standing implications of the Superior Court's decision.

Another issue with the Superior Court's reading of Section 4582-A(3) is that it goes out of its way to protect an individual who never owned an assistance

animal, and for whom it is not even clear would have been eligible to own a statutorily compliant assistance animal. This standard makes the established precedent of a legal challenge from someone like Mr. Engstrom (without a service animal and without disclosing any disability), conversing with a hearing-disabled prospective landlord in Darrell Sproul, especially fraught.

Appellee implies that it is not the purpose and/or effect of Section 4582-A(3) to protect individuals who are not disabled, and further claims that it is a "bizarre assertion" to read the Superior Court decision as one that protects able-bodied Mainers who own (or seek to own) an assistance animal from discrimination under Section 4582-A(3). Red Br. at 16. The Appellee concedes that a person without disabilities "would not have standing" to bring a claim for the "denial" of use of an assistance animal, because they "are not disabled." Red Br. at 17.

These claims do not square with each other. Appellee believes that the supposed limitation lies not with Section 4852-A(3), but with the definition of "assistance animal" at 5 M.R.S. § 4553(1-H). On its face, though, the statutory definition of service animal does not limit the persons protected under Section 4852-A(3) under the lower court's ruling. In fact, the assistance animal statutes apply to animals who are "individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability." 5 M.R.S. § 4553(1-H)(B). From this definition, Appellee's claim that it is impossible for an able-

bodied person to own an animal that fits the statutory definition of a service animal belies a limitation on creativity. See Red Br. at 16. An adult may be the lawful owner of a service animal for a disabled minor child. An assistance dog may outlive its disabled owner. If an animal were trained to provide a benefit for a disabled owner, at one time, even if it currently lives with a foster parent or the decedent's kin, Appellee seems to suggest that the animal's statutory status ends with the original owner. This argument is without precedent or intuitive basis.

Regardless of Appellee's reassurances, the lower court did not find that there was any assistance animal that met such statutory criteria one way or the other, past or present, real or imagined. The Plaintiff in this case was *only on a list* to possibly—and eventually never—get a service animal. This haphazard status cannot be enough for standing, because there was no finding that being on the list was also verification of his need and eligibility for a qualifying animal. Under the record facts, a person need only get on a list for a service animal, and, before being vetted for eligibility, remove himself from a list, but then from a brief conversation with a landlord, generates some abstract civil liability under the Legislature's plan.

II. Conclusion

The Superior Court's interpretation of the MHRA plainly broadens the protections of the Maine Human Rights Act far beyond its purpose. As held by the lower court, any person without a service animal, without concrete plans to get a

service animal, without any need for a service animal, may be unlawfully discriminated against based on protections purposely reserved for disabled Mainers who use a service animal, based on an arbitrary clever applied in the middle of the statute. The Appellee does not anchor its arguments justifying this decision in logic, reason, or grammatical convention. The Court would be legislating from the bench to expand the scope of legislative intent. This Court should, with respect, reverse and remand.

Dated: April 8, 2025

/s/Carl Woock
Carl E. Woock, Esq. Bar No. 5657
Stephen C. Smith, Esq., Bar No. 8720
Attorneys for Appellants D&L Apartments and Darrell Sproul
STEVE SMITH TRIAL LAWYERS 191 Water Street
Augusta, ME 04330
(207) 622-3711
Info@MaineTrialLaw.com

CERTIFICATE OF SERVICE

I, Carl E. Woock, Esq., hereby certify that a copy of this was mailed via electronic mail to the following people on this date.

Barbara Archer Hirsh, Esq.
Colin Hurd, Esq.
Maine Human Rights Commission
barbara.archerhirsch@mhrc.maine.gov
colin.hurd@mhrc.maine.gov

Dated: April 8, 2025

/s/Carl Woock
Carl E. Woock, Esq., Bar No. 5657