

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-25-357

JOHN M. CARTER v. ANN C. MARTIN

ON APPEAL from the Cumberland County District Court (Portland)

BRIEF OF APPELLEE

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STATEMENT OF THE CASE

A. Procedural History

Appellee, Plaintiff in the underlying matter, filed for divorce from Appellant on June 13, 2023, in Portland's District Court. APP003. The case proceeded for two years, through extensive motion practice, discovery hearings, multiple mediations, and management conferences. *See* APP003-019. The case was tentatively slated to resolve by a two-day contested hearing on June 6 and June 12, 2025. APP016-017. However, on the first of the two trial days, the parties announced a full settlement to the Court and made an oral request for an uncontested hearing. APP019, 035. An uncontested hearing was held by Zoom in front of the Honorable Jennifer Nofsinger on June 6, 2025, with all parties in attendance. *Id.*

B. Final Hearing Summary

Appellee appeared with counsel, who directly examined Appellee. APP036-042. Appellee testified that: he was married to Appellant as his wife, APP036; he sought a divorce on the grounds of irreconcilable differences, *id.*; the parties were married in Maine, APP037; he had lived in Maine for at least the last six months, *id.*; and that he was residing in Maine at the time of the divorce, *id.* Appellee then testified to the content of the full settlement terms made with Appellant, including the disposition of all real estate, tangible and intangible property, debts, spousal support, attorney fees, and a mutual release of claims. *See* APP037-042. Appellee

acknowledged that he had seen and agreed to the proposed divorce judgment drafted by counsel for Appellant. APP037. Appellee affirmed that the terms of the divorce judgment were fair and equitable. APP042.

Counsel for Appellant then directly examined Appellant. *Id.* Appellant verified the terms of, and her full agreement with, the divorce judgment put on record by Appellee. *See* APP043-044. Jurisdiction was not contested. *See id.* Appellant further confirmed that she, too, believed the terms of the settlement to be fair and equitable. Both parties committed thereafter to filing waivers of appeal that each had executed at the time of the hearing. APP045.

After testimony was provided by the parties, the Court orally accepted the terms of the proposed judgment and granted the divorce. APP046. The Court stated that once the waivers of appeal had been filed, the divorce judgment would be final as of that day, June 6, 2025. *Id.* Counsel for Appellee informed the Court that a draft Real Estate Order for the property to be set aside to Appellee had been completed, but not for those being set aside to Appellant. APP047. For the properties being set aside to Appellant, the Court requested that counsel for Appellant draft and submit the remaining Real Estate Orders. APP049. Counsel for Appellant committed to the same. *Id.* The unsigned Divorce Judgment itself was submitted to Court for signature on June 6, the same day as the hearing. APP019.

C. Final Divorce Judgment

Among the disposition of marital interests in property, the Divorce Judgment contained a “duty to cooperate,” whereby each party was compelled to cooperate with the other in effecting the intent of the terms of the Divorce Judgment. APP027. Said duty included the “obligation to execute and deliver any documents reasonably necessitated by the terms” of the Judgment. *Id.* The Divorce Judgment further required each party to “immediately sign any documents required to effectuate” the Judgment. *Id.* Separate from the form waivers of appeal, the Divorce Judgment included a provision waiving the right to appeal. *Id.*

Following the uncontested hearing on June 6, 2025, Appellant failed to submit the Real Estate Orders requested by the Court. *See* APP019. The record reflects an inquiry made by the Court to counsel for Appellant on June 18, ordering submission of the Real Estate Orders no later than June 30, 2025. *Id.* After another week of silence, the Court again inquired of Appellant’s attorney on June 26, 2025.

After finally receiving the Real Estate Orders from Appellant, the Court signed the final Divorce Judgment on July 3, 2025. APP020, 032. However, to accommodate the delay, Judge Nofsinger signed the Divorce Judgment “*nunc pro tunc* to 6/6/25, when the divorce judgment was placed on the record.” APP032.

D. Post-Judgment

Neither party filed an objection to, or appeal of, the Divorce Judgment itself. *See* APP020-021. However, Appellant filed a Motion for Relief from Judgment And/Or To Alter Judgment pursuant to M.R. Civ. P. 59(e) and 60(b)(4) on July 16, 2025. APP021; *see also* APP061-071. Appellant's motion asserted that Appellee passed away after the hearing but prior to the Court's signing of the Divorce Judgment on July 3, 2025. APP061-062. Appellant ultimately sought an order vacating the Divorce Judgment on various grounds, such as an assertion that the Court loses jurisdiction upon the death of a party, and that the divorce abated prior to the signing of the Divorce Judgment in spite of the Court's retroactive application to June 6, 2025. *See* APP062-070. No suggestion of death, nor evidence generally of the death of a party, has been offered or put on record to date. *See* APP020-022. On July 17, 2025, the Court denied Appellant's motion, citing *Boland v. Belair*, 2025 ME 31, ¶ 11, as controlling.

Appellant now appeals the Court's denial of her motion.

ISSUES PRESENTED FOR REVIEW

- I. Whether the district court had subject matter jurisdiction sufficient to fully adjudicate the divorce proceeding by agreement and oral testimony of the parties, even if the final judgment was not signed until after a party's alleged death?

- II. Whether the Court abused its discretion in upholding or otherwise refusing to set aside the parties' agreements, when denying Appellant's motion for relief, citing *Boland v. Belair*, 2025 ME 31, ¶ 11, as controlling?

ARGUMENT

I. Standard of Review

Generally, the denial of a motion for relief brought pursuant to M.R. Civ. P. 60(b) is reviewed for an abuse of discretion. *Chatfield v. Estate of Chatfield*, 2025 ME 69, ¶ 7, 340 A.3d 126, 129. However, when a party is alleging that a judgment is void pursuant to M.R. Civ. P. 60(b)(4) for lack of subject matter jurisdiction, this Court reviews it de novo. *Boyer v. Boyer*, 1999 ME 128, ¶ 6, 736 A.2d 273, 275. “A challenged judgment is either valid or void and thus a motion for relief pursuant to M.R. Civ. P. 60(b)(4) is not subject to the discretion of the court.” *Id.*

Appellant bears the burden of “demonstrat[ing] affirmatively from the face of the record that the court lacked [subject matter] jurisdiction.” *Warren v. Waterville Urban Renewal Auth.*, 259 A.2d 364, 366 (Me. 1969). Appellate review is “limited to the facts and evidence in the record before the trial court.” *Beane v. Maine Ins. Guar. Ass’n*, 2005 ME 104, ¶ 9, 880 A.2d 284, 286. “[A]ppellant bears the burden of providing an adequate record upon which the reviewing court can consider the arguments on appeal.” *Springer v. Springer*, 2009 ME 118, ¶ 2, 984 A.2d 828, 829.

II. Argument

Appellant’s appeal fails for numerous and distinct reasons, each independently sufficient to affirm the lower court’s entry of the Divorce Judgment. As an initial bar to relief, Appellant has failed to establish the underlying ‘fact’

which predicates all of her arguments—that Appellee is deceased. The only support on the record for this allegation is Appellant’s own bare assertion, located within her motion for relief. APP061. Said motion was not supplemented by affidavit, death certificate, or suggestion of death. *See generally* APP061-071. Furthermore, the docket record lacks any entries pertaining to the death of a party. *See generally* APP003-023.

Appellee did not die on June 26, 2025, as Appellant states without reference. Of course, without sufficient facts or evidence on record, the lower court lacked a basis upon which to find whether or not he did. Such an occasion highlights the importance of evidentiary support and basis in the record. Because appellate review is limited to the facts and evidence on record, Appellant has failed to “demonstrate affirmatively from the face of the record that the Court lacked jurisdiction” due to the death of a party. *Warren*, 259 A.2d at 366. While this Court’s analysis could stop at this juncture, Appellee responds in turn below to Appellant’s remaining arguments.

- a. **The divorce proceeding concluded with enforceable orders prior to any alleged death of a party, and only clerical matters remained post-death.**

Appellant first argues that no enforceable final divorce judgment existed in this matter prior to the passing of Appellee. Appellant Br. 10. Appellant relies on M.R. Civ. P. 58, which states that “[a]ny judgment or other order of the court is

effective and enforceable upon signature by the court, or if not signed by the court, then upon entry of the judgment in the civil docket.” The Court signed and docketed the Divorce Judgment on July 3, 2025. APP020. Judge Nofsinger issued it *nunc pro tunc*, applying it retroactively to the date of the uncontested divorce hearing on June 6, 2025. APP028. The parties were explicitly informed that the divorce would be entered as of June 6. APP046. Preliminarily and as noted above, the record bears no substantiation that Appellee predeceased the signing of the final divorce judgment. *See generally* APP001-071. The issue of a party’s death was not raised until Appellant filed her motion for relief on July 16, 2025, nearly two weeks after the Court had signed the final Divorce Judgment. APP021, 061-071.

Regardless, Appellant’s arguments pertaining to the application of M.R. Civ. P. 58 and supporting caselaw are not controlling upon the issues presented by Appellant on appeal. The authorities cited by Appellant do not address the issue of subject matter jurisdiction, the ‘pendency’ aspect of litigation, or the enforceability of settlement agreements put on record. Said authorities further do not define the range of judicial acts capable of enforcement. Rather, the authorities discuss and dictate the timing of a written order’s finality, primarily for the limited purpose of calculating post-judgment deadlines and appealability of orders. *See Est. of Banks v. Banks*, 2009 ME 34, ¶ 9, 968 A.2d 525 (“[A] judgment is enforceable and

effective upon signature... [t]he judgment's entry on the docket determines the timing of certain filings"); *Carroll v. Town of Rockport*, 2003 ME 135, ¶ 16, 837 A.2d 148 (“[A]ppeals may only be considered from final judgments... A final judgment... is a decision that fully decides and disposes of the entire matter pending before the court”); *see also Roberts v. Roberts*, 2007 ME 109, ¶ 8, 928 A.2d 776; *Boynton v. Adams*, 331 A.2d 370, 373 n.2 (Me. 1975). This Court is not now faced with questions pertaining to the ability of Appellant to appeal the Divorce Judgment and denial of her 60(b)(4) motion, nor whether the notice of appeal was timely filed, nor whether the signed Divorce Judgment was a final order. By citing M.R. Civ. P. 58 and relevant caselaw in support, Appellant's initial argument conflates or collapses the distinctions between enforceability of an order and finality of an order for post-judgment purposes.

Narrowing Appellant's argument, then, to an assertion that no enforceable orders existed prior to the death of party, the assertion is plainly in error. Both historical and recent cases continue to make clear that settlement agreements following an uncontested hearing are enforceable as a matter of law. In *Muther v. Broad Cove Shore Association*, the court held that

when... the parties to a dispute report to the court that they have reached a settlement, read the terms of the agreement into the record with the assistance of counsel, and then express clear consent to those terms as recited, that settlement becomes an enforceable agreement and, upon acceptance by the court, is incorporated as a judgment of the court.

Muther v. Broad Cove Shore Ass'n, 2009 ME 37, ¶ 7, 968 A.2d 539, 542. More recently, this Court held that a settlement agreement “became a judgment of the court after the court accepted the agreement and pronounced it ‘official,’” following the guidance of *Muther*. *Boland v. Belair*, 2025 ME 31, ¶ 12, 334 A.3d 682, 685; *see also Keep v. Indorf*, 2024 ME 14, ¶ 20, 314 A.3d 141, 146 (adhering to the factors outlined in *Muther* in upholding an oral agreement on record as enforceable).

Each of the factors outlined in *Muther* are affirmatively demonstrated by the record in this matter. The parties reported to the Court that a full resolution of all matters in the divorce had been reached. APP035. Both parties read the terms of the Divorce Judgment into the record, each assisted by their respective counsel. APP036-047. Both parties expressed clear consent to the terms recited. APP041-042, 044. The agreements recited were expressly accepted by the Court, informing the parties the divorce and judgment would be final “as of today” on June 6, 2025. APP046, 049-050. Therefore, under the guidance of *Boland*, *Muther*, and *Keep*, the settlement agreement became enforceable and incorporated as a judgment of the Court on June 6, 2025.

Utilizing M.R. Civ. P. 58 and Appellant’s rationale for the purpose of invalidating such orders would produce perverse results. Any party subject to a court’s oral orders, at interim or final hearings, could create, manipulate, or

passively take advantage of post-hearing delays in the execution of written orders to avoid the court's commands. This is true for both contested and uncontested actions. To demonstrate, the approximate one-month delay in the Court's signing of the Divorce Judgment in this case was due, at least in part, to Appellant's dilatory filing of her Real Estate Orders several weeks after the final hearing. *See* APP019-020, 049. Had Appellant filed the documents requested by the lower court in a diligent manner, the issues within this appeal would likely have been avoided.

Appellee herein asks this Court to draw a distinction between enforceability and appealability of orders, and therefore, to reject the use of M.R. Civ. P. 58 to restrict enforceability of oral settlement agreements placed on the record and incorporated into judgments. The underlying premise of Appellant's argument, that no enforceable orders existed prior to the death of party, is factually and legally incorrect. While the written Divorce Judgment signed on July 3, 2025, inarguably triggered post-judgment deadlines for purposes of M.R. Civ. P. 58, it did not create enforceable orders for the first time. The Divorce Judgment commemorated the terms that the parties expressly agreed to be bound by on June 6, 2025. *Compare* A024-028 *with* A036-044. Moreover, Appellant identified no issue, dispute, or other unresolved marital interest in which the Court needed to address following the hearing on June 6, 2025, and no provision within the signed Divorce Judgment that was new or contrary to what had been orally ordered prior. *See id.*

If the issue is reframed to whether an enforceable order resolving all issues of divorce existed prior to the death of a party in this matter, the answer would indisputably be ‘yes.’ While July 3, 2025, was the date the final judgment became final for purposes of calculating post-judgment deadlines in accordance with M.R. Civ. P. 58, cases such as *Boland*, *Muther*, and *Keep* uniformly embrace the concept that the settlement agreements in this matter were enforceable the day they were presented on June 6.

b. The Court exercised its jurisdiction while the parties were alive, and did not lose subject matter jurisdiction or the ability to enter a final judgment irrespective of the timing of the alleged death.

In its pursuit, Appellant ultimately asks this Court to find that the divorce action could not have ended or finalized until the lower court signed the written Divorce Judgment, after the uncontested hearing and alleged passing of Appellee, and therefore the action abated. Appellant Br. 11-12. Historically, “the death of a party as a rule abated all court proceedings by or against him.” *Hayford v. Mun. Officers of City of Bangor*, 103 Me. 434, 69 A. 688, 689 (1908). Appellant’s argument portrays an interrelation between abatement, and as a consequence following abatement, the loss of a court’s jurisdiction. Appellant Br. 12-17. Appellant’s argument for this purpose necessarily presumes that the defining moment of the exercise of the Court’s jurisdiction occurred only upon the signing of the Divorce Judgment, and that all other judicial acts or prior oral orders

completely resolving the divorce are void. As Appellant notes accurately, however, the precise sequence in this matter is not directly envisioned or addressed in Maine’s caselaw. *Id.* at 12.

Focusing on the ‘resolution’ aspect of the divorce and reincorporating the arguments above regarding enforceability of settlement agreements, it is clear the Court retained the ability to enter judgment on July 3, 2025. In *Toffling v. Toffling*, the lower divorce court informed the parties that it would “consider the order effective [as of the date of hearing]” and that the oral agreements were to be honored after the parties presented a settlement agreement to the court. *Toffling v. Toffling*, 2008 ME 90, ¶ 9, 953 A.2d 375, 377. The Court in *Toffling* reaffirmed that “a stipulation of record that sufficiently covers the settlement agreement can be summarily enforced by the entry of judgment.” *Id.* at ¶ 8 (citing *Page v. Page*, 671 A.2d 956, 957 (Me.1996)). Even when the lower court signed the final written judgment over the subsequent objection of a party, *Toffling* decided that the objection “did not affect the authority of the court, in the exercise of its discretion, to enter a judgment containing the terms previously stipulated to by the parties.” *Id.* at ¶ 9. The Court in *Toffling* took particular umbrage with the fact that the objecting party, as part of the oral settlement agreement, had been relieved of allegations of contempt made by the non-objecting party. *Id.* at ¶ 10. As a result, the non-objecting party was being disadvantaged not only by the appellate delay in

receiving what the objecting party had orally promised, but also by a waiving a right conceded specifically for purposes of settlement. *Id.*

But for the lack of a party's passing, the facts in *Toffling* largely track those here. On June 6, the date of the uncontested hearing, the parties were informed that the divorce and judgment would be effective "as of today." APP046. A stipulation of recited terms orally presented to the Court was incorporated and summarily enforced by the entry of a judgment. APP024-028. As part of the settlement agreement, Appellee voluntarily moved to dismiss a motion for contempt previously filed against Appellant. APP041-042. Said motion was dismissed and Appellant was relieved of any potential contempt liability. *See* APP021. Appellee, thus, is now disadvantaged by both the delay in finality of the divorce after Appellant's express and unequivocal intent to be bound by the terms placed on record, and by the inability to pursue and hold Appellant in contempt for prior willful noncompliance with the Court's orders. As such, this Court should follow the guidance of *Toffling* in finding that the Court retained the ability to enter written judgment following incorporation of a comprehensive settlement agreement, even over a party's retroactive attempt at an objection.

Turning back to the jurisdiction element, it is inarguable that the Court had both personal and subject matter jurisdiction at the time of the uncontested divorce hearing on June 6, 2025. As for personal jurisdiction, the Court resolved an early

dispute in rejecting Appellant's requests to dismiss the divorce for lack of personal jurisdiction. *See* APP007. In a divorce, a court has subject matter jurisdiction over a married couple if:

- A. The plaintiff has resided in good faith in this State for 6 months prior to the commencement of the action;
- B. The plaintiff is a resident of this State and the parties were married in this State;
- C. The plaintiff is a resident of this State and the parties resided in this State when the cause of divorce accrued; or
- D. The defendant is a resident of this State.

19-A M.R. S. § 901(1). On June 6, 2025, Appellee testified that he was the plaintiff; that he was married to Appellant in Maine; that he sought a divorce on the grounds of irreconcilable differences from Appellant; that he lived in Maine for the six months preceding the action; and that the grounds for divorce arose while he was living in Maine. APP036-037. Appellee's testimony satisfied at least two separate jurisdictional grounds. *See* § 901(1)(A), (B). Appellant did not contest any of the above facts or the Court's exercise of jurisdiction in her testimony. *See* APP043-044. Appellant also did not file an objection to the Court's jurisdiction at any time prior to the issuance of a written judgment. *See* APP019-021.

Instead, Appellant filed a motion for relief pursuant to M.R. Civ. P. 60(b)(4) several weeks after entry of final judgment, for the first time arguing the Court lacked subject matter jurisdiction to enter the written judgment. APP021; *see also* APP062-070. Notably, Appellant does not contest that the Court had jurisdiction at

the time of hearing or during the pendency of the case, generally. *See id.* Appellant effectively argues that because no married couple existed on July 3, 2025, the Court lacked an ability to enter and memorialize orders previously issued because jurisdiction had been divested. This theory is flawed, particularly in circumstances where there is no longer any substantive consideration, act, or dispute that remained for the Court to conduct or resolve after the final hearing. The matter had been entirely adjudicated, leaving only the clerical signing of documents drafted by a party which contained identical terms explicitly agreed-to and orally ordered at hearing. *See* APP019-021.

The analysis here forces contemplation, separately, of when the Court was exercising subject matter jurisdiction, and when the Court no longer has said jurisdiction. While Appellee does not argue that death limits the ability for a Court to engage in certain acts, it does argue that a full and proper exercise of jurisdiction prior to death renders the death largely immaterial. To demonstrate, we consider how a court exercises its jurisdiction. “In a divorce proceeding, the District Court has subject matter jurisdiction to determine the ownership interests of the spouses in order to divide their marital property.” *Howard v. Howard*, 2010 ME 83, ¶ 11, 2 A.3d 318; *see also* 19-A M.R.S. § 953(1) (“[T]he court shall set apart to each spouse the spouse's property and shall divide the marital property”).

Once the elements of subject matter jurisdiction had been met under 19-A M.R. S. § 901(1), the Court's exercise of jurisdiction under § 953(1) was the use of authority occurring exclusively on June 6, 2025, when the Court: conducted a full hearing with both parties and their counsel present; placed both parties under oath; received complete and unambiguous terms of a settlement agreement; questioned both parties as to their intentions and understandings; confirmed the agreements to be fair and equitable; and announced that the divorce would be final as of that day. APP035-050. The Court determined, based on the parties' stipulated agreements on June 6, who owned what property, who would be responsible for which debts, what payment obligations existed between the parties, and how all other marital assets and liabilities would be divided. *See id.* Nothing remained for the Court's future determination as the divorce was finally resolved. The Court had "fully decide[d] and dispose[d] of the entire matter pending before the court" when both parties were alive and present. *Carroll v. Town of Rockport*, 2003 ME 135, ¶ 16, 837 A.2d 148.

Said differently, the adjudication of the matter on June 6, 2025, constituted the Court's exercise of jurisdiction, and the signing of the written order only memorialized the use of that exercise. The Court's signing of a document did not require a new adjudication or a determination of the parties' rights under 19-A M.R.S. § 953. The signing only confirmed decisions previously made by the Court.

Therefore, even if jurisdiction was lost after a party's death, the Court's use of jurisdiction occurred properly prior to death. The written Final Judgment that followed should be upheld as a mere memorialization of jurisdictional exercise that was conducted during the life of both parties.

- i. Maine precedent is trending away from bright-line death and abatement rules, and toward finality of divorce proceedings and survival of rights post-death.

In years prior, a death occurring during an appeal would moot a final judgment and abate the underlying divorce proceeding. *See Panter v. Panter*, 499 A.2d 1233 (Me. 1985). *Panter*, relying on M.R. Civ. P. 62(a), observed that a stay of execution is placed on a final judgment while an appeal is pending. *Id.* By contrast, the Court in *MacPherson v. Est. of MacPherson* distinguished itself from *Panter* in finding that “there was no appeal pending when [a party] died, and accordingly, the divorce judgment was not stayed prior to [the deceased party's] death.” *MacPherson v. Est. of MacPherson*, 2007 ME 52, ¶ 7, 919 A.2d 1174, 1176. Thus, prior Courts' application of abatement in post-divorce proceedings has been limited to cases wherein execution of a judgment was stayed by appeal.

Similar to the circumstances in *MacPherson*, no appeal was pending in this case at the time of a party's death. Appellant alleges the Appellee was deceased on June 26, 2025. *See* APP061. The Court issued a final written judgment on July 3, 2025. APP020, 028. Appellant filed her 60(b) motion on July 16, 2025, which was

denied two days later. APP021. An appeal in this matter was not filed until August 6, 2025. *Id.* Pursuant to M.R. Civ. P. 60(b), “[a] motion under this subsection (b) does not affect the finality of a judgment or suspend its operation.” Procedurally, it follows that the written divorce judgment was enforceable, at minimum, from July 3 upon signing until August 6 when the appeal was filed and judgment stayed. Even if *Panter* was current authority, it would not have required abatement of a divorce matter wherein execution of a written divorce judgment persisted for over one month prior to the filing of an appeal.

Of course, *Panter*’s precedent was overturned earlier this year in *Weinle v. Estate of Tower*, which held that “the death of a party during the pendency of an appeal from a divorce judgment does not moot the appeal as to the parties’ property rights.” *Weinle v. Estate of Tower*, 2025 ME 62, ¶ 28, 340 A.3d 66, 74. The *Weinle* Court observed that it was time to abandon *Panter*, as Maine’s historical treatment of abatement in divorce had put it amongst the minority of jurisdictions. *Id.* at ¶ 25. Even more recently, this Court continued its embrace of *Weinle* in upholding a party’s ability to appeal the denial of a 60(b) motion when that party passed during the appeal, just as if it were an appeal from a divorce judgment itself. *Chatfield*, 2025 ME 69, ¶¶ 8-9, 340 A.3d at 129. *Weinle* and *Chatfield* do not directly resolve the issues presented in the case, albeit favoring the vesting of a party’s rights post-divorce that survive the death of that party.

The most natural and consistent application of the above trends to this case can produce only one result-- that the divorce action and judgment did not abate upon the death of Appellee. Unlike *Panter's* outdated line of precedent, the judgment had not been stayed when a party became deceased. Like *MacPherson*, the written Divorce Judgment was active for over one month before appeal. *Weinle* and *Chatfield* overturned *Panter's* archaic application of the abatement doctrine to divorces, recognizing that “the heirs or personal representative of a deceased party have an interest sufficient to make the cause of action survive as to property interests determined by the divorce judgment.” *Weinle*, 2025 ME 62, ¶ 23, 340 A.3d at 73. Even after execution of the Divorce Judgment was stayed on appeal, *Weinle* and *Chatfield* make clear that the isolated and untimely death of a party on appeal does not render moot the divorce or the rights contained in the Divorce Judgment. The rights or interests contained within the written Divorce Judgment had vested in the parties, or their heirs, before the appeal was filed.

In addition, Maine cases overwhelmingly favor the finality of a divorce upon presentation of a settlement agreement. In *Toffling*, the Court went so far as to issue sanctions against a party who appealed a written judgment that said party had previously consented to at a hearing. *See Toffling*, 2008 ME 90, ¶¶ 9-11, 953 A.2d at 378 (“[T]his appeal has unnecessarily delayed the finality of the divorce judgment in this case for an additional year”). In *Page*, the Court held that “a

stipulation of record that sufficiently covers the settlement agreement can be summarily enforced by the entry of a judgment.” *Page*, 671 A.2d at 958. *Page* rejected a “requirement that the parties' consent to a judgment must continue until it is signed by the court.” *Id.* Implicitly recognizing inherent delays between the presentation of oral agreements and the signing of written orders, both *Toffling* and *Page* reiterate its conclusions reflect a “need to protect the court's administration of justice, as well as to control its calendar.” *Toffling*, 2008 ME 90, ¶ 8, 953 A.2d at 377 (citing *Page*, 671 A.2d at 958). Appellant’s views run contrary to these goals, instead creating obstacles to finality by opening the door to a broad array of situational, purposeful, inadvertent, administrative, or party-induced delays between a final hearing and a court’s signing of an order. To remain consistent with current trends, this Court should find that the divorce process finalized upon entry of the parties’ settlement agreement on June 6, 2025, and that the Divorce Judgment is valid and enforceable.

- ii. Insofar as foreign judgments may provide persuasive authority in this matter, various other states would uphold the focal Divorce Judgment as valid in these circumstances.

While not controlling in the case at bar, other states have adopted the principle that an oral divorce is enforceable even when a party dies prior to the issuance of written judgment. In New York, the Court in *Cristando v. Lozada* was faced with a similar dilemma in that the divorce had been orally adjudicated, but a

party passed away before the Court’s issuance of final written orders. *See Cristando v. Lozada*, 118 A.D.3d 846, 987 N.Y.S.2d 621 (2014). Identical to arguments made herein, the Court in *Cristando* found that “the action did not abate upon the death of the wife, since the court had made the final adjudication of divorce before the wife’s death, but had not performed the ‘mere ministerial act of entering the final judgment.’” *Id.* at 847, 987 N.Y.S.2d at 622. More broadly, New York law dictates that “a cause of action for equitable distribution does not abate upon the death of a spouse.” *Id.*

In Oklahoma divorces, “adjudication of any issue shall be enforceable when pronounced by the court.” *Alexander v. Alexander*, 2015 OK 52, ¶ 12, 357 P.3d 481, 484. In *Alexander*, the Court first upheld the lower court’s ability to bifurcate the issues of marital interests and the granting of a divorce generally. *See id.* at ¶ 14. In doing so, *Alexander* then upheld the validity of an oral granting of the divorce while the parties were alive, in spite of a lack of resolution of the marital interests prior to a party’s death. *See id.* Like Maine, Oklahoma is an equitable distribution state. *See Okla. Stat. Ann. tit. 43, § 121(B)* (requiring a “fair and just division” of marital property).

Courts in California have, in a fashion similar to this case, upheld a lower court’s authority to “enter [a] *nunc pro tunc* order and amended judgment as of the date it orally granted the judgment of dissolution of marriage and reserve[]

jurisdiction over all other issues—a date prior to [a party’s] death.” *Frederick v. Superior Ct.*, 223 Cal. App. 4th 988, 992, 167 Cal. Rptr. 3d 773, 775 (2014). This judicial tool is enshrined in California’s statutory family laws. *See* Cal. Fam. Code § 2346(c), (d). In this case, Judge Nofsinger entered the written Divorce Judgment *nunc pro tunc* to a date prior to a party’s death, after having orally granted the dissolution of marriage on said date. *See* APP019, 030.

Ohio courts have followed the same line of reasoning. In *Anderson v. Anderson*, the Court found that the “parties’ divorce action did not abate upon the death of the Appellee. The record demonstrates that all issues were adjudicated in that the parties reached an agreement on June 23, 2016. While the final divorce decree was not journalized prior to Appellee’s death, there were no unadjudicated issues.” *Anderson v. Anderson*, 2017-Ohio-2827, ¶ 36, 86 N.E.3d 349, 356. Ohio, too, is an equitable distribution state. *See* Ohio Rev. Code Ann. § 3105.171(C) (A court “shall divide [the marital property] between the spouses in the manner the court determines equitable”). All issues in the instant matter were adjudicated upon agreement of the parties on June 6, 2025; no unadjudicated issues remained after a death. *See* APP046.

If this Court were to look to the guidance of other jurisdictions, states throughout the country have upheld the finality of divorces and judgments in

circumstances that closely track ours. This is particularly true for states that take an equitable approach to the distribution of property in divorces, just as Maine does.

- c. The Court’s use of *nunc pro tunc*, pursuant to M.R. Civ. P. 60(a), was proper when correcting a non-substantive omission so as to make the record reflect what, and when, judicial action was taken.**

Conceptually, the function of a *nunc pro tunc* entry is to “correct an omission in a prior journal entry so as to enter upon the record judicial action actually taken but erroneously omitted from the record.” *Roth v. Roth*, 65 Ohio App. 3d 768, 771, 585 N.E.2d 482, 484 (1989). The use of *nunc pro tunc* in Maine derives primarily from statutory authorities. “[O]rders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative.” M.R. Civ. P. 60(a); *see also Bubar v. Sinclair*, 146 Me. 155, 158, 79 A.2d 165, 166 (1951) (“Judicial records that reflect the actions of a court must show what actually and truly occurred in that court). The notes to rule 60(a) elaborate that a “court has the power of correction at any time.” *Id.* at Reporter’s Notes (1959). Other cases clarify that a court’s use of 60(a) to correct is “limited to clerical mistakes and is not available to correct substantive errors.” *Beedle v. Beedle*, 2022 ME 45, ¶ 8, 279 A.3d 399, 402.

In the instant matter, the Court’s use of *nunc pro tunc* was proper and customary. Because the date of a court’s physical signing of a stipulated order is arbitrary in nature, the Court’s use of *nunc pro tunc* was a non-substantive correction

to issue the Divorce Judgment as of the date that Court action was actually taken on June 6, 2025. The Court's exercise of correctional authority was well within the bounds of M.R. Civ. P. 60(a). Appellant can identify no action taken or decision made by the Court on July 3, 2025, other than the physical signing of documents provided to the Court by Appellant. *See* APP020. Appellant also cannot identify any judicial act taken by the Court on June 6, 2025, "when judgment was placed on the record," that was improper, illegal, or otherwise devoid of authority. *Id.* Therefore, the timing of the signing of the written order is a clerical issue that bears no relation to the Court's authority to enter judgment on June 6, 2025, regardless of a party's subsequent passing.

- d. **The denial of Appellant's 60(b) motion was based upon legal, not equitable considerations; even if equity is considered, Appellant suffered no prejudice when the Court upheld the parties' settlement agreements.**

As mentioned earlier, the Court's denial of Appellant's 60(b) motion is not reviewed for an abuse of discretion, but *de novo* to determine whether the Divorce Judgment was void as a matter of law. *See Boyer*, 1999 ME 128, ¶ 6, 736 A.2d at 275. This section counters Appellant's arguments to the extent that the Court's refusal to set aside the parties' agreements was an abuse of discretion. In accordance with Appellant's chosen authorities, such arguments fail.

Under *Cloutier*, the Court acknowledged that "[a] family matter agreement does not become an order of the court until it is presented to and approved by the

court.” *Cloutier v. Cloutier*, 2003 ME 4, ¶ 8, 814 A.2d 979. This is precisely what happened in this matter, “and so at the end of the settlement hearing the parties were left with an enforceable court order.” *Boland*, 2025 ME 31, ¶ 11, 334 A.3d at 685. Appellant emphasizes that, according to *Boland*, a court may set aside an agreement that has not been incorporated in a court order if it concludes there is a basis to do so. *See* Appellant Br. 24; *Boland*, 2025 ME 31, ¶ 11, 334 A.3d at 685. The Court here incorporated a settlement agreement into the written Divorce Judgment on July 3, 2025. *See* APP020, 028. Appellant’s request to void the Divorce Judgment came after the Court’s execution of the Divorce Judgment. *See* APP021. Thus, the discretionary authority referenced in *Boland* does not apply, as the Court’s discretion to set aside the settlement agreement ended when the Divorce Judgment was executed.

Appellant references factors outlined in *Cloutier* that assist a court in determining whether to set aside an agreement on equitable grounds. *See* Appellant Br. 25. Initially fatal to this argument is the observation that *Cloutier* applied to pretrial agreements, specifically a mediation agreement in that case. *Cloutier*, 2003 ME 4, ¶ 8, 814 A.2d at 982. This matter pertains to a final agreement, not a pretrial agreement. Nevertheless, the considerations outlined in *Cloutier* focus on the presence of inequities or unfairness created by a court’s the acceptance of the parties’ agreements. *See id.* at ¶ 11. Appellant’s equity argument includes the usage of M.R.

Civ. P. 59(e), specifically stating that a judgment should be vacated when “it is reasonably clear that prejudicial error has been committed.” Harvey & Merritt, *Maine Civil Practice* § 59:6; Appellant Br. 24. *Boland* summarized that the Court’s discretionary authority to set aside agreements is elevated in divorces when manifesting substantial detriment to children involved. *Boland*, 2025 ME 31, ¶ 12, 334 A.3d at 685. No children were involved in this case, thus no elevated discretion existed.

Appellant has not articulated a cognizable prejudice or inequity caused by the Court’s acceptance of the parties’ settlement agreements. Appellant does not even argue that the agreements were inequitable. Instead, Appellant relies solely on the passing of a party in contending, seemingly, that it is unfair to continue be held to her own agreements. In reality, Appellant took an oath and testified to the acceptance of the settlement agreements. *See* APP042-044. Appellant verified that she understood the terms of “this divorce judgment to be fair and equitable.” APP044. Appellant drafted the proposed judgment that the Court eventually signed as the final Divorce Judgment. *See* APP037. Consequently, the Court issued written orders authored by Appellant that precisely tracked the parties’ agreements, to which Appellant explicitly agreed to be bound. *See* APP024-028, 044. It cannot be stated that Appellant has suffered any substantive, prejudicial, or inequitable harm. It also cannot be stated that the Court’s refusal to set aside the parties’ agreements, after

evolving into an executed Divorce Judgment, was an abuse of discretion in any form, particularly if the Court was without proof of a party's passing.

III. Conclusion

The record establishes that the District Court fully exercised its subject matter jurisdiction on June 6, 2025, when it conducted an uncontested divorce hearing, placed both parties under oath, accepted their comprehensive settlement agreements, and expressly declared the divorce final as of that date. Nothing substantive remained for future adjudication. Under well-settled law, those oral rulings constituted enforceable judicial action, and the written Divorce Judgment signed on July 3, 2025, merely memorialized what the Court had already decided while both parties were alive and present. Even if a party's death could limit the Court's subsequent authority to adjudicate unresolved issues, it does not retroactively nullify a jurisdictional exercise already completed when it inarguably had jurisdiction.

Appellant's jurisdictional challenge fails at the outset because it rests on an unproven factual premise. The record contains no affidavit, death certificate, suggestion of death pursuant to M.R. Civ. P. 25, or docket entry establishing that Appellee died before entry of judgment. A judgment is void under M.R. Civ. P. 60(b)(4) only where the absence of jurisdiction affirmatively appears on the face of the record, and unsworn assertions cannot divest a court of jurisdiction. Appellant

therefore failed to meet her burden, and the Court properly denied relief on that basis alone.

Maine and other states distinguish between adjudicatory acts and ministerial or clerical acts. The signing of a written judgment that identically tracks prior oral orders falls squarely in the latter category. The Court's *nunc pro tunc* entry did not create jurisdiction after the fact; it accurately reflected the date on which jurisdiction was exercised and judgment was rendered by the Court. The parties' settlement agreements became enforceable and incorporated as a judgment of the Court when the Court accepted them and pronounced the divorce final "as of today." The signing of written documents that followed memorializing these adjudicated terms was purely ministerial—a clerical act of documentation, not a new exercise of judicial authority. The distinction between the Court's jurisdiction to adjudicate disputes (exercised on June 6, 2025) and its administrative function to document those adjudications (performed on July 3, 2025) is critical and disposes of Appellant's jurisdictional challenge.

Appellant's reliance on M.R. Civ. P. 58 conflates procedural finality with subject matter jurisdiction. Rule 58 governs appealability and post-judgment deadlines, not the validity or enforceability of a judgment placed on the record and accepted by the court. Accepting Appellant's position would invite manipulation, reward delay, and undermine the finality of uncontested divorce proceedings—

results Maine precedent roundly rejects. As a prime example within the current matter, the delay in signing of the Divorce Judgment was caused substantially by Appellant's own dilatory failure to submit Real Estate Orders as requested by the Court, a delay of which Appellant now seeks to benefit from.

This Court's recent decisions in *Weinle* and *Chatfield* reflect our movement away from rigid abatement rules and toward recognizing that property rights determined in divorce judgments vest in the parties and survive death. The Divorce Judgment here was not stayed when Appellee allegedly died. Execution continued for over a month before any appeal was filed, and the parties' property rights had fully vested through their comprehensive settlement agreement and written Divorce Judgment. Appellant's position, if accepted, would undermine the finality of divorce proceedings and work substantial injustice on parties who, like Appellee, make concessions in good-faith settlement negotiations.

Because the District Court possessed subject matter jurisdiction, exercised it fully before any alleged death, and entered a judgment that was neither void by law nor inequitable, the denial of Appellant's Rule 60(b)(4) motion was correct as a matter of law. The Divorce Judgment should be affirmed.

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Certificate of Service

I, Cody B. Mason, Esq., counsel for Appellee, John M. Carter, hereby certify that I have today served Appellee's Brief upon each of the following parties, by causing these said copies to be delivered to via regular mail and electronic mail to the parties at:

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Certificate of Word and Page Conformity

I, Cody B. Mason, Esq., hereby certify under oath that my operating software indicates that this brief has less than 10,000 words and is less than 40 pages.

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