

MAINE SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

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Law Docket No. Cum-25-357

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**ESTATE OF JOHN M. CARTER,**

*(Plaintiff/Appellee)*

v.

**ANN C. MARTIN,**

*(Defendant/Appellant)*

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On Appeal from the Cumberland County (Portland) District Court

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**REPLY BRIEF OF APPELLANT ANN C. MARTIN**

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**TABLE OF CONTENTS**

Argument ..... 4

    I. Mr. Carter’s passing is a record (and a real-life) fact. .... 4

    II. A judge rendering a final judgment is not a “clerical” task, a judgment that is definitionally not a final judgment is not a *final judgment*, and Appellee’s framing of the issue on appeal constantly ignores the significance of a party’s death prior to a final judgment. .... 5

    III. “Trends” in Maine law do not favor letting trial courts retain jurisdiction over divorce matters after a party has died. .... 12

    IV. States schemes referenced by Appellee are not practical models to emulate due to the origin of the specific abatement rules unique to those jurisdictions. .... 13

    V. Denial of the post-judgment motion pursuant to *Boland v. Belair* was wrong because it ignored fatal jurisdictional issues. .... 16

Conclusion ..... 18

Certificate of Service ..... 20

## TABLE OF AUTHORITIES

### CASES

<i>Alexander v. Alexander</i> , 2015 OK 52, 357 P.3d 481 .....	13
<i>Boland v. Belair</i> , 2025 ME 31, 334 A.3d 682 .....	17
<i>Boyer v. Boyer</i> , 1999 ME 128, 736 A.2d 273.....	9, 17
<i>Boynton v. Adams</i> , 331 A.2d 370 (Me. 1975).....	10, 17
<i>Chatfield v. Est. of Chatfield</i> , 2025 ME 69, 340 A.3d 126 .....	12
<i>Cloutier v. Cloutier</i> , 2003 ME 4, 814 A.2d 979 .....	17
<i>Estate of Banks v. Banks</i> , 2009 ME 34, 968 A.2d 525.....	6, 7, 16
<i>Frederick v. Superior Ct.</i> , 223 Cal. App. 4th 988, 167 Cal. Rptr. 3d 773 (2014)...	14
<i>Hawley v. Murphy</i> , 1999 ME 127, 736 A.2d 268 .....	5
<i>In re Hughes' Est.</i> , 80 Cal. App. 2d 550, 182 P.2d 253 (1947).....	15
<i>Jensen v. Jensen</i> , 2015 ME 105, 121 A.3d 809 .....	6, 8
<i>Toffling v. Toffling</i> , 2008 ME 90, 953 A.2d 375.....	9
<i>Tomer v. Me. Hum. Rts. Comm'n</i> , 2008 ME 190, 962 A.2d 335 .....	11
<i>Weinle v. Estate of Tower</i> , 2025 ME 62, 340 A.3d 66.....	12

### STATUTES

22 M.R.S. § 2846.....	4
Cal. Fam. Code § 2346 (West).....	14
Okla. Stat. Ann. tit. 12, § 696.2 (West) .....	14

### RULES

M.R. Civ. P. 25(a).....	4
M.R. Civ. P. 58.....	6, 7, 16
M.R. Civ. P. 60(b) .....	10
Ohio Civ. R. 54(A) .....	15
Ohio Civ. R. 58(A) .....	15

## ARGUMENT

### **I. Mr. Carter’s passing is a record (and a real-life) fact.**

The Appellee—who is the personal representative of the estate of John M. Carter—absurdly claims that it is not a “fact” that Mr. Carter died. Red Br. at 12-13. This is a morbidly cynical argument, and a toothless one at that. Although Appellee carefully avoids even mentioning Mr. Carter’s death in his recitation of facts (see Red Br. at 7-10), that deliberate omission is still undermined by the *fact* that, on the same date that Appellee submitted his brief in which he argues that Mr. Carter’s death is not a ‘record fact,’ Appellee filed Suggestion of Death and a Motion to Substitute Parties pursuant to M.R. Civ. P. 25(a). That motion included a certificate of death, a document that Ms. Martin presumably would not have been authorized to obtain after July 3, 2025, since the district court at that time issued a final judgment as to the divorce. 22 M.R.S. § 2846. (The death certificate appears to have been filed on July 1, 2025, further prohibiting the practical timeframe in which Ms. Carter could have obtained the document prior to the district court erroneously entering a final judgment for the divorce.)

This Court has already granted Appellee’s motion to substitute parties in which counsel represented, and documentation supports, the *fact* that Mr. Carter died on June 27, 2025. The Law Court is encouraged to take judicial notice that Mr. Carter did, in *fact*, die on June 27, 2025, as reflected in the record before this Court. (The

Court may also take judicial notice that June 27, 2025, is a calendar date that precedes July 3, 2025.) Further, it would not even matter when the issue was raised at the trial level, since a failure to challenge the subject matter jurisdiction does not preclude a party from raising the issue later, including on appeal for the first time. *Hawley v. Murphy*, 1999 ME 127, ¶ 8, 736 A.2d 268, 271.

Mr. Carter's death prior to the district court's final judgment is not a disputed fact, and the Appellee cannot escape such a *fact* because Ms. Martin did not file certain paperwork at a certain moment. Appellee's argument is not clever, because we do not actually live in a bureaucratic dystopia where reality is dictated solely by the filing of appropriate forms with governmental entities. Even if this argument might have had purchase in surreal abstraction, Appellee has set fire to the substance of the argument by asking the Court to acknowledge a *record fact* that plainly reflects Mr. Carter's June 2025 death, full stop, which this Court has ratified through its order.

Mr. Carter died before the final judgment was entered in this divorce case. Let's please move on.

**II. A judge rendering a final judgment is not a “clerical” task, a judgment that is definitionally not a final judgment is not a *final judgment*, and Appellee's framing of the issue on appeal constantly ignores the significance of a party's death prior to a final judgment.**

Largely through rhetorical license and contextual blindness, Appellee argues that the issuance of a final judgment is a mere “clerical” task, and more broadly, the

final judgment rule only operates for the “limited purpose” of setting deadlines for post-judgment motions and appeals. Red Br. at 14. Appellee argues that Rule 58 does not speak to “subject matter jurisdiction” or “the enforceability of settlement agreements put on the record.” *Id.* Rule 58, by its own language, expressly and implicitly challenges these characterization, since it plainly states: “[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.” (Emphasis added.) Rule 58 is implicated by subject matter jurisdiction concerns, since any final judgment “that is issued by a court that does not have subject matter jurisdiction to issue it is void.” *Jensen v. Jensen*, 2015 ME 105, ¶ 11, 121 A.3d 809, 812 (citation omitted).

Appellee touches on *Estate of Banks*, 2009 ME 34, 968 A.2d 525, only glancingly in his brief. That superficial consideration of a seminal case appears to stem from his reductionist view of its holding, arguing that the decision was only about “the timing of a written order’s finality . . . for the limited purpose of calculating post-judgment deadlines and [the] appealability of orders.” Red Br. at 14-15. The Law Court, though, elucidated much more than that paraphrasing suggests, stating:

Because Rule 58 states that a judgment is enforceable and effective upon signature, we conclude that that is when a judgment becomes final. The judgment’s entry on the docket determines the timing of certain filings, but is not dispositive of the judgment’s finality . . . . We

emphasize that the rule adopted here applies to judgments that result from contested hearings *as well as judgments incorporating previously-executed settlement agreements*. The court's signature is *the defining moment for a judgment's finality, regardless of the level of agreement between parties leading up to the judgment*.

*Est. of Banks*, 2009 ME 34, ¶ 9, 968 A.2d 525, 527-28 (emphasis added). Nowhere in *Estate of Banks* did the Law Court kneecap the significance of its ruling as Appellee suggests, and Appellee takes liberties in imputing unwritten motives into the Court's decision.<sup>1</sup> *Estate of Banks* clearly articulates a standard that tracks the language of Rule 58 itself, which implies that Appellee is arguing that the Court should abandon the language of the Rules of Civil Procedure and redefine the final judgment rule to uphold "final" judgments that are objectively *not* final judgments.

In fairness, Appellee does not sugarcoat his requested relief: he wants the Court to ignore or obviate Rule 58. Appellee thinks that the present issue before the Court speaks to the "enforceability and appealability of [unwritten] orders," and asks this Court to "reject the use of M.R. Civ. P. [Rule] 58 to restrict enforceability of oral settlement agreements placed on the record and incorporated into judgments." Red Br. at 17. Doing so would overturn *Estate of Banks* and rewrite Rule 58 from

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<sup>1</sup> Appellee's supposed clairvoyance into the inner workings of judicial reasoning also reveals itself when Appellee asserts, without evidence, that the district court judge signed the Divorce Judgment "*nunc pro tunc* to 6/6/25" in order "to accommodate the delay" as the parties readied documents and exchanged property prior to the final judgment being entered. Red Br. at 9. There are no indicia of any evidence whatsoever to impute any particular motive to the judge's order.

the bench, but that is apparently tolerable, because it is what Appellee perceives as being necessary to preserve the district court's *post mortem* final judgment.

To support his revolutionary goal, Appellee likens this case to others involving no relevant subject matter jurisdiction issues. This is a glaring contextual omission, because cases involving extant parties quibbling over agreements ask and answer different questions. Those courts in those cases had jurisdiction over the parties to render a *final* judgment on the contested issue of an enforceable or unenforceable agreement—jurisdiction, in each case cited by Appellee, was not to be an issue, hence the court's clear ability to rule on the dispute in the first place. However, when *jurisdiction* is lacking or limited, the extent of an agreement or disagreement is moot. *See, e.g., Jensen*, 2015 ME 105, ¶ 15, 121 A.3d 809 (ruling that a statutorily limited authority afforded to the magistrate judge divested the court of jurisdiction to enter a final judgment over objection regardless of the previous extent of agreement of the parties).<sup>2</sup>

Appellee understands this problem, insofar as he distinguishes his cited cases with some exquisite throat clearing: “But for the lack of a party’s passing,” Appellee whispers, these are comparable cases. Red Br. at 20. That distinction reveals the third rail that Appellee will not touch. Appellee urges the Court to follow, for

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<sup>2</sup> *Jensen* touches on the specific limits of a magistrate judge's subject matter jurisdiction in a contested proceeding, in particular, but the principle applies broadly: if a district court judge loses subject matter jurisdiction under statutory or common law principles, the voidness of the final judgment can be presumed.

example, *Toffling v. Toffling*, 2008 ME 90, 953 A.2d 375, without confronting the preliminary consideration of the court’s authority to act. Incidentally, the holding of *Toffling* is imbued with relevant qualifications, even if subject matter jurisdiction was not an issue in the case: “[T]he mere fact that [a party] subsequently objected to the terms of the judgment following his express agreement to them in open court 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.” *Toffling*, 2008 ME 90, ¶ 9, 953 A.2d 375 (emphasis added). Loss of subject matter jurisdiction is fatal to a court’s *authority* to adjudicate, and a court has *no discretion* to enter a final judgment in a case where it lacks jurisdiction. *Boyer v. Boyer*, 1999 ME 128, ¶ 5, 736 A.2d 273, 275. Appellee does not engage with this core issue, so much as he pole-vaults over it to demand that an oral ruling be enforced through a final order *even if* the court lacked jurisdiction over the parties at the time of the final judgment.

Trying to wriggle out of this jurisprudential death roll, Appellee redefines words and rules, such as his casual representation that a “final judgment” was entered on June 6, 2025, and contending that Ms. Martin’s motion for relief was filed “several weeks after entry of final [sic] judgment, [where she] for the first time argu[ed] the [c]ourt lacked subject matter jurisdiction to enter the written judgment.” Red Br. at 21. This argument is guilty of rhetorical and logical misdemeanors. First, there was no “final” judgment entered on June 6, 2025, according to Rule 58’s

definition, evidenced by the obvious fact that the court later *signed a final judgment* on July 3, 2025. Second, Ms. Martin could not seek relief from a “final judgment” in June 2025 absent a final judgment being signed by the court, so she could not file a Rule 60(b) motion prior to the entry of the signed final judgment on July 3, 2025 (a motion that she timely filed). *See Boynton v. Adams*, 331 A.2d 370, 373 n.2 (Me. 1975) (affirming court’s denial of a post-judgment motion as premature when filed before a written order was entered). Third, Ms. Martin did not raise subject matter jurisdiction issues when Mr. Carter was alive, because the court retained subject matter jurisdiction until he passed away prior to the entry of a final judgment. Simply declaring by fiat that the June 6, 2025, decision was a “final judgment” does not render it so, and observing that Ms. Martin timely raised appropriate arguments only when such arguments were appropriate to raise is hardly a criticism.

Appellee suggests that, as a matter of policy, robust enforcement of oral and non-final judgments outweighs the judiciary’s jurisdictional considerations. Appellee says that it would be “perverse” not to give full and final effect to “oral orders, at interim or final hearings,” because one or both parties may take advantage of “delays” in the post-hearing execution of written final orders.<sup>3</sup> Red Br. at 16-17.

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<sup>3</sup> Appellee’s concerns about delays in effectuating a written final judgment are easily allayed by best practices, whereby parties simply execute the necessary paperwork on the day of the final hearing/agreement, or else accept the risks inherent with procrastination or leaving yet-unresolved issues for another day. Contrary to Appellee’s fears, this Court need not rewrite the Rules of Civil Procedure for divorce litigants to have enforceable, effectuated, *signed* final judgment from the district court on the very same day that the parties ostensibly reach their agreements. The present rules do not inhibit attorneys from proactively following such practices when they can do so.

Appellee is silent to the inevitable confusion of treating orders that are non-final judgments as “final judgments” at a discretionary basis; courts holding parties accountable to oral rulings in the absence of written orders; courts holding parties to post-judgment deadlines when the finality of a judgment is ambiguously created by *either* oral or written judgments; and most critically, permissively letting a court exercise discretion to maintain jurisdiction over a dead party or parties. Policy concerns, on balance, do not favor Appellee’s position.

Finally, the most obvious tell that betrays Appellee’s entire appellate argument is summed up in his explicit insistence that the death of a party is “largely immaterial” to a court’s subject matter jurisdiction. Red Br. at 22. That belief is the crux of his argument, the lodestar guiding his reliance on case law, policy arguments, and his own retelling of the facts and procedural history of the case. At the expense of principled abatement upon a party’s death prior to a final judgment, Appellee wants to redefine “final judgments” and overhaul jurisdictional standards that are fundamental to the just operation of the courts. Subject matter jurisdiction is not a mere technicality, as enforced by the fact that, when appropriate to do so, this Court reverses cases on subject matter jurisdiction grounds *sua sponte*. See *Tomer v. Me. Hum. Rts. Comm’n*, 2008 ME 190, ¶ 8 n.3, 962 A.2d 335). This Court should, with respect, decline to entertain Appellee’s invitation to ignore, and change, Maine law.

**III. “Trends” in Maine law do not favor letting trial courts retain jurisdiction over divorce matters after a party has died.**

Appellee contends that Maine law is “trending away” from “death and abatement” rules, which misunderstands the divorce appeal cases discussed in Ms. Martin’s principal brief. Red Br. at 24. Appellee overextends some dicta from *Weinle v. Estate of Tower*, 2025 ME 62, 340 A.3d 66, suggesting that this Court decided that “Maine’s historical treatment of abatement in divorce had put in amongst the minority of jurisdictions.” Red Br. at 25 (*citing Weinle*, 2025 ME 63, ¶ 25, 340 A.3d 66, 73). That is wrong, or at least lacking in understanding, because the decision did not concern “abatement in divorce” at the trial level, but rather strictly during the pendency of an appeal *after* a final judgment. Nevertheless, Appellee bluntly characterizes the present case as being similar in posture to the “post-judgment” party death cases, when it is not. See Red Br. at 25. Appellee’s analysis of both *Weinle* and *Chatfield v. Est. of Chatfield*, 2025 ME 69, 340 A.3d 126, proceeds from a counterfactual assumption. Red Br. at 24-26. There is no “trend” applicable to these facts, whereby trial courts retain jurisdiction of a divorce matter *after a party has died and before a final judgment* has been effectuated by the court. A new “trend,” for reasons previously stated, should not start now.

**IV. States schemes referenced by Appellee are not practical models to emulate due to the origin of the specific abatement rules unique to those jurisdictions.**

As noted in Ms. Martin's principal brief, and not seriously challenged by Appellant, the majority of states follow the common law rule that the death of a party "marks an abatement of the court's jurisdiction over the dissolution proceeding and incidental issues, including property rights." Anthony Bologna, *Comment, the Impact of the Death of a Party to a Dissolution Proceeding on a Court's Jurisdiction over Property Rights*, 16 J. Am. Acad. Matrim. Law 507 (2000). Stuck in the minority, Appellee's brief refers the Court to four states where death of a party to divorce prior to a final judgment does not necessarily abate the action. Red Br. at 27-30. Three examples referenced by Appellee are not helpful to this Court, since those states specifically rely on specific statutory or regulatory provisions that allow a court to retain jurisdiction *even if* a party dies prior to the final judgment.

To wit: Appellee cites *Alexander v. Alexander*, 2015 OK 52, 357 P.3d 481, to support an argument that some states retain jurisdiction of a case even if one party passes away after an oral ruling. See Red Br. at 28. Ms. Martin's brief already cited this same case and pointed out that Oklahoma does, indeed, have such a policy, which is created by statute. See Blue Br. at 19-20. Oklahoma's retention of jurisdiction after a party to a divorce passes away prior to a final judgment is not an invention of the courts drawn from some jurisprudential zeitgeist; it is a mandate

from the Oklahoma legislature. See Okla. Stat. Ann. tit. 12, § 696.2 (West) (“A judgment, decree or appealable order, whether interlocutory or final, shall not be enforceable in whole or in part unless or until it is signed by the court and filed; except that the adjudication of any issue shall be enforceable when pronounced by the court in the following actions: divorce...”). There is no similar authority in Maine, and this example remains unenlightening, as previously noted.

Appellee’s comparisons to California courts are also apples to oranges, for the same reason. Red Br. at 29 (*citing Frederick v. Superior Ct.*, 223 Cal. App. 4th 988, 167 Cal. Rptr. 3d 773 (2014)). California laws permit a final judgment to be entered after to a party’s death *nunc pro tunc*. Cal. Fam. Code § 2346 (West). Appellee loosely suggests that this model of permissive retroactivity was a “judicial tool” that became “enshrined” in California law. Red Br. at 29. Not quite. The state courts have simply been following state law for decades, as when the state courts followed predecessor versions of the code that came into law in the 1930’s. The relevant history is recounted in a California appellate case from 1947:

Prior to 1935 the procedure for entry of final judgments of divorce was governed by section 132 of the [California] Civil Code. A marriage was dissolved only by and as of the date of entry of a final judgment and no provision was made for entry of such judgment *nunc pro tunc*. . . . In 1935 section 133 [of the California Civil Code] was enacted. It expressly authorizes the court to enter final judgment *nunc pro tunc* as of the date when final judgment could have been given or made in the event that by mistake, negligence, or inadvertence none has been

entered, or in the event one has been entered but by mistake, negligence or inadvertence has not been signed, filed or entered as soon as could have been done under the law if applied for.

*In re Hughes' Est.*, 80 Cal. App. 2d 550, 551-52, 182 P.2d 253, 255 (1947). Contrary to Appellee's imprecise claim, there was no "judicial tool" for common law *nunc pro tunc* final judgments that was later picked up by legislators and endorsed through legislation. The retroactive rule was, and is, a rule created by statute, which California courts have dutifully applied.

Ohio also offers murky, if unhelpful, guidance on this matter. Appellee implies that Ohio's regime reflects some relevant flexibility to enter a final judgment after a party in divorce dies, though the case cited refers specifically to the existence of a "final divorce decree" that was "not journalized" before the party's death. Red Br. at 29. The nuance here lies in the difference between a *final decree* that has yet to be *journalized* versus a case where there is *no final decree*. The Ohio Rules of Civil Procedure define "Judgment" as "a *written* entry ordering or declining to order a form of relief, *signed* by a judge, *and journalized on the docket of the court.*" Ohio Civ. R. 54(A) (emphasis added). "Journalizing" is an action of a clerk, not a judge: "[U]pon a decision announced . . . the court shall promptly cause the judgment to be prepared and, the court having signed it, the *clerk* shall thereupon enter it upon the journal. A judgment is effective only when entered by the clerk upon the journal." Ohio Civ. R. 58(A)(1) (emphasis added). Similar to how California and Oklahoma

follow unique statutes, Ohio's policy is dictated by the specific terms of its own civil rules of procedure, which include the distinctively ministerial action of *journalizing* a signed, written decision that is the responsibility of the clerk, as contrasted from the judge's own creation of the order. Since Maine law is distinguishable by M.R. Civ. P. Rule 58 and *Estate of Banks*, Maine cannot practically "follow" the example set by Ohio, because the judge's signature (and not the docketing or 'journalizing' of the order by the clerk) is the definitive action effectuating a final judgment.

Other than New York, it is unclear how many, if any, states have created a common law model that would permit a trial court to retain jurisdiction of a deceased party in a divorce case prior to a final judgment. In response to a single outlier, Ms. Martin politely refers the Court back to her principal brief, which highlights cases in Vermont, New Hampshire, Texas, South Dakota, Virginia, Hawaii, and Mississippi (there are others, to be sure, constituting this majority position), all favoring her arguments on the joint issues of abatement and the limits to *nunc pro tunc* judgments. Blue Br. at 17-22.

**V. Denial of the post-judgment motion pursuant to *Boland v. Belair* was wrong because it ignored fatal jurisdictional issues.**

As in the other sections of his brief, Appellee's discussion of Ms. Martin's Rule 60(b)(4) motion misses the mark by insisting that jurisdictional questions are superseded by the primacy of oral agreements. A final decision questioned under Rule 60(b)(4) 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.” *Boyer*, 1999 ME 128, ¶ 6, 736 A.2d 273, 275. The district court did not address the jurisdictional question raised by Ms. Martin, and Appellee follows suit.

Appellee’s arguments about *Boland v. Belair*, 2025 ME 31, 334 A.3d 682, do not burst with clarity. Appellee again insists that there was an “enforceable” court order on June 6, 2025, notwithstanding the fact that the oral ruling plainly does not satisfy Rule 58 and that a party died before a final judgment was entered. Red Br. at 32. Appellee then suggests that Ms. Martin’s request to set aside the final judgment was deficient as a matter of law (under *Boland*) because it was filed “after the Court’s execution of the Divorce Judgment.” Red Br. at 32. Again: a post-judgment motion in Maine should not be filed until a written judgment is entered. *Boynton*, 331 A.2d 370, 373 n.2 (Me. 1975). But then, Appellee even seems to argue that the district court’s citation to *Boland* raises issues that “do[] not apply” to this case, a point to which, well, Ms. Martin agrees. Red Br. at 32.

Appellee tiptoes around jurisdictional issues and then strays into the wilderness of equity concerns imputed by *Cloutier v. Cloutier*, 2003 ME 4, 814 A.2d 979, despite his own acknowledgement that equity arguments are immaterial to the legal issue of this case. Appellee knowingly cites *Boyer*, 1999 ME 128, ¶ 6, 736 A.2d 273, 275 (Red Br. at 31), intimating his understanding that the post-judgment motion did not concern discretionary equity concerns, but rather raised jurisdictional

questions that could void the judgment. It is obtuse, then, that Appellee levels sharp criticism at Ms. Martin for not raising or detailing equity arguments in her own brief (Red Br. at 33-34), because Ms. Martin clearly argues that this jurisdictional issue was never affected by equitable concerns. Equity implies some discretion to adjudicate the case based on fairness, not the strict legal rules that preempt the court's ability to weigh such matters when it wants jurisdiction. Equity is inconsequential to this case.

Much the same way that Appellee ignores the jurisdictional elephant in the room on other aspects of this appeal, his argument supporting the court's ruling on the Rule 60(b)(4) motion presumes jurisdiction without explaining how the court retained its jurisdiction. The district court's final judgment wanted for subject matter jurisdiction, and thus was entered in error, and dismissal of the post-judgment motion was similarly erroneous.

### **CONCLUSION**

This case should be decided by applying existing law through a simple syllogism: (i) a party to a divorce passed away before a final judgment was entered; (ii) want of jurisdiction is fatal to a case at any time prior to final judgment; (iii) the court lacked subject matter jurisdiction to enter the final judgment.; (iv) the final judgment should be vacated. Maintenance of a rational status quo, in the absence of contrary authority permitting courts to act differently, is appropriate and principled.

In contrast, Appellee asks this Court to (i) ignore Rule 58; (ii) overturn *Estate of Banks*; (iii) create uncertain rules where a court might retain jurisdiction over a deceased party in a divorce proceeding before a final judgment has been rendered, absent any textual or traditional authority for courts to do such a thing.

Given the obvious options, this Court should, with respect, reverse the district court's denial of Ms. Martin's post-judgment motion to vacate and instruct the district court to vacate its final judgment; or alternatively, directly vacate the final judgment for want of jurisdiction and order dismissal of the underlying action.

Dated: January 12 , 2025

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### **CERTIFICATE OF COMPLIANCE**

I, Carl Woock, Esq., hereby certify that that the foregoing Reply Brief complies with the requirements of Rule 7A(f)(1) of the Maine Rules of Appellate Procedure because it contains— as calculated by the Microsoft Office Word 365

word processing software used to prepare this brief—4,435 countable words (including footnotes) as set forth by that Rule.

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of this brief has been served via e-mail upon counsel for the appellee, Cody Mason, Esq., ([cmason@rangercopelandfrench.com](mailto:cmason@rangercopelandfrench.com)) on this same date.

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