

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

LAW COURT DOCKET NO. Yor-26-114

Pat Doe,

Appellee

v.

Leslie Tidwell,

Appellant

**REPLY BRIEF OF
APPELLANT LESLIE TIDWELL**

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PREFACE TO ARGUMENT

As a preliminary matter, Appellant points to M.R. App. 7A(a)(1)(D) which requires that the statement of facts be supported by citations to the record that supports each fact asserted. On numerous occasions, in both the statement of facts and in the argument, Appellees interject subjective characterizations of the facts and of Tidwell that are unsupported by the record and absent from the trial court's findings. For example, in the statement of facts, the Appellees' brief describes Appellant's due process argument as "feeble." (Br. 7). The brief interjects a description of Tidwell as "*posing* as an environmentalist." (Br. 9). The Appellees' brief says that "Tidwell initiated *assiduous* efforts to terminate the Does' (and others') use of Godfrey Pond Road and the pebbly beach at its terminus." (Br. 10.). The brief indicates that Tidwell's account was "*rife with hyperbole and exaggeration.*" (Br. 11). It describes Tidwell as employing "*efforts to manipulate*" Officer Marrie and that the conversation continued "in an *ominous vein*" (Br. 14). Appellees state that "Tidwell's Complaint fail[ed] to state a claim" (Br. 15) despite the fact that this issue was never decided by the lower court, and Tidwell's complaints generated a temporary order a final hearing on the merits. (*See Docket Records at App. 11-22*).

In the argument section, the brief continues to interject Appellees' subjective gloss on Tidwell's conduct, similarly unsupported by the record. Appellees write that Tidwell acted from an "*emotionally manipulative, and dangerous* mindset"

(Br. 24) in a “*transparent attempt*... to instill fear” (Br. 25); and that she ran a “*phony* road association imposing *exorbitant* road maintenance fees” which she enforced through “*caustic* letters” (Br. 26 n.10). The brief is replete with examples like these. The Appellant trusts that this Court recognizes the difference between an attempt at advocacy as opposed to assertions of fact. Appellant respectfully requests that the Court disregard these subjective characterizations in favor of the factual record.

More concerning, the Appellee’s brief misrepresents the record regarding two main points that are squarely at issue in this Appeal.

1. Appellees Incorrectly Assert the Legal Conclusion That the Does Had a Right to Traverse Tidwell’s Property.

The Brief asserts that Tidwell “knew... that the Does’ traversals of Godfrey Pond Road and the pebbly beach were decades-longstanding, and not criminal in their character.” Br. 27. The brief also states that the Does did not commit a crime “as they had an easement interest in the disputed area by deed, implication, plan and/or prescription.” The arguments in the brief rely on this unsupported legal conclusion. First and foremost, the District Court adjudicated no such interest. The District Court expressly declined to decide the issue stating that “[y]ou may all have to go to some other court to determine the rights-of-way. (Tr. 59-60). The District Court similarly stated “we don’t need to talk about rights of way and deeds” as that issue is “beyond what I am tasked with figuring out today.” (Tr.

82-83). No deeds were entered into the record. The Does testified that they had “a deeded right” to which the Court responded that “the question was, do you remember that she — the fence was installed” and then instructed the parties to proceed to the next question. (Tr. Tr. 86). There was testimony that the Does “have a legal easement, a deeded easement to the ocean” and again the District Court indicated to move to the “next question.” (Tr. 89). Tidwell testified that she had done “extensive deed research” since the conversation with the officers and when asked if she knew the Does had a right to access her property, Tidwell replied, “no I don’t.” (Tr. 82). The Court responded that “we don’t need to talk about rights of way and deeds.” (Tr. 82). That the Does “had access across Tidwell’s property by an easement in interest by deed, implication, plan or prescription” as asserted in the brief is a legal conclusion that is not supported by the record and as stated above was explicitly not reached by the District Court. Any review of the District Court’s findings must be viewed in that light. Any argument that relies on the assertion of this legal conclusion should be disregarded as arguing facts and legal conclusions beyond what is included in the record.

2. The Appellees Misconstrue the Record Regarding the October 2nd Incident.

Appellees place substantial weight on an alleged rock-throwing incident despite the fact that the Court did not find that Tidwell threw rocks or otherwise contacted Doe’s vehicle. Appellee’s own Exhibit 15 squarely contradicts

Appellees' narrative that, as Doe began moving forward, Tidwell "accosted" her; Doe heard "projectiles, what she believed to be rocks, ricocheting off her car"; and Doe then maneuvered "quickly, trying to depart the scene, frightened" by Tidwell's gun statement. (Br. 13).

Defendants' (Appellees') Exhibit 15 contains two videos filmed from a camera in Pat Doe's Care. *See Exhibit 15*. The first video of Exhibit 15 is titled "10.02.25 0902AM - EXTERIOR VIEW (First Rock Hits + Crash).mp4. (hereinafter referred to as Exhibit 15-video 1).

This video is 1 minute long. The opening of the video shows the view from Pat Doe's dashboard facing Tidwell's house. *Exhibit 15-video 1 at 00:00*. Please see the screen-grab at the Addendum at 32 for the position of the dismantled fence to the left of the hood of the vehicle, and the dismantled slats to the right of the hood, the pebbled "road", and Tidwell's House. Neither Tidwell nor rocks are visible in the 1:00 video. In fact, at approximately 00:005-00:007 what *is* visible is a branch dropping onto the hood of Pat Doe's car. *Exhibit 15-video 1 at 00:05-00:007*. Please see the screen-grab at the Addendum at 32. (The branch is visible to the right and below the play bar.) Pat Doe's vehicle remains stationary for approximately 26 seconds. *Exhibit 15-video 1 at 00:00-00:26*. Pat Doe then drives forward toward Tidwell's house, past the fence before starting to turn around. *Exhibit 15-video 1 at 00:26-00:40*. As Pat Doe reverses, she states "take that you f***ing b****." *Exhibit 15 video 1 at 00:42*. Pat Doe then backs her

vehicle up culminating in impacting the tree. *Exhibit 15-video 1 at 00:52*. After the impact, another branch falls on Pat Doe's vehicle. *Exhibit 15-video 1 at 00:55; Addendum at 33*.

The second video is labeled "10.02.25 0903AM-EXTERIOR VIEW (Tidwell Has a Gun).MP4 (hereinafter referred to as Exhibit 15-video 2.). This video is 30 seconds and appears to pick up from the end of Exhibit 15-video 1 as Pat Doe continues to reverse. At 00:08, a leaf appears to hit the hood of the vehicle. *Exhibit 15-video 2 at 00:008, Addendum at 33*. Tidwell can be heard starting at 00:17 of that video. At 00:23, Pat Doe starts turning around, showing that prior to this moment, Pat Doe's vehicle was located beyond Tidwell's driveway. *Exhibit 15-video 2 at 00:24, Addendum at 34*. Tidwell is visible standing at the end of her driveway holding her phone in an apparent attempt to film Pat Doe. *Exhibit 15-video 2 at 00:24-00:30. Addendum at 34*. Tidwell does not have a firearm in her hands. *Id.*

The Appellees own exhibit clearly contradicts the assertion that Tidwell threw rocks at Pat Doe's vehicle and that Tidwell "accosted" Doe or used "physical aggression" as Appellees describe. While Pat Doe may have subjectively believed that Tidwell threw rocks at her vehicle, the admitted recording clearly contradicts this fact. When an objective recording plainly contradicts a litigant's account, a court need not accept the contradicted version. *Scott v. Harris*, 550 U.S. 372 (2007).

The District Court found Doe credible that she heard Tidwell yell that she had a gun and saw Tidwell coming toward the car. The District Court did not state that it credited Doe's account concerning rocks, did not find that Tidwell threw anything, and did not rely on rock throwing in its ultimate explanation for finding terrorizing. (Tr. 104). The court's actual findings did not establish that physical-aggression premise. (Tr. 104). Appellant respectfully requests that in light of the record, the Court disregard any of Appellees' arguments that rely on the unfounded argument that Tidwell "threw rocks", "accosted" Doe's vehicle, or "exhibited physical aggression" on October 2, 2025.

ARGUMENT IN RESPONSE TO APPELEE

I. THE TRIAL COURT WAS REQUIRED TO MAKE FINDINGS REGARDING THE PROPERTY DISPUTE TO DETERMINE WHETHER HARASSMENT HAD OCCURRED (Response to IV.B)

The Appellee's brief argues that the "trial court correctly decided that determination of real property title interests was not a prerequisite to determining whether harassment occurred." Despite this argument, Appellees repeatedly assert the legal conclusion that the Does held an "easement in interest by deed, implication, plan or prescription" in support of their argument that because the Does had a right to access Tidwell's property, their presence was "lawful" and "not criminal." The appellees' argument follows then that Tidwell's conduct against the Does was not protected by law.

The Appellees invoke 5 M.R.S. § 4655(4) to support the absence of any such finding and in support of their own decision not to present evidence regarding the title. This statute forbids a protection-from-harassment order from affecting title—in this case it would prevent the District Court from allocating the disputed property rights to Tidwell or to the Does. This statute does not prohibit the District Court from making appropriate findings of fact to support its conclusion regarding harassment. Nor does the statute remove Tidwell’s Due Process protection that the District Court must make a specific finding regarding the elements of harassment, as well as regarding Tidwell’s “protected by law” defense simply because a belief about property rights underpinned both parties’ actions.

5 M.R.S. § 4655(4) limits the remedy available to the parties, but not the fact-finding required to be made by the District Court. The provision prevents a protection from harassment order from adjudicating or reallocating title, but it does not relieve a court of making the findings its chosen theory of harassment demands.

The Law Court does not find facts in the first instance, and an appellee may urge an alternative ground of affirmance only where the record supports it. M.R.App. P. 2C(a)(1). A property interest that the trial court expressly declined to find is not a ground “supported by the record.”

Neither *Patane* nor *Allen* hold that the District Court is prevented from making the findings necessary to support a finding of harassment. Both held that

ownership of property is not *dispositive* of harassment, and that a harassment order does not *decide* title. In each decision, the finding of harassment rested on wrongful conduct independent of ownership. In the instant case, the Does' theory of harassment against Tidwell- criminal threatening, Tidwell's Defense of criminal threatening, and Tidwell's theory of harassment against the Does- criminal mischief- specifically turn on the nature of the property rights dispute. In order to apply the appropriate analysis to the elements of the various theories, the District Court was required to make a finding regarding the property rights.

In prosecuting her complaints, and asserting her defense, Tidwell did not ask the District Court to assign title to either party. Her due process argument is that the District Court should have either, (a) made findings of fact regarding the property dispute sufficient to apply the criminal trespass, protected-act and criminal mischief analysis to the parties conduct, or (b) issued an order that rests on an independent ground that did not require a finding regarding the property dispute at all. The Court did neither of those things.

The District Court found that Tidwell terrorized Doe. Tidwell's § 4651(2) protected-act defense required the court to decide whether she was lawfully defending her own land. 5 M.R.S. § 4651(2), 17-A M.R.S. § 104(1), *State v. Glassman*, 2001 ME 91 ¶ 11, 772 A.2d 863, 867. Yet, when it arose, the court terminated the line of inquiry stating that the parties will have to go elsewhere to determine the rights of way and that the District Court was not talking about rights

of way and deeds. (Tr. 83). The findings contained no determination of whether the Does' access was lawful or unlawful, the very fact on which the protected-act defense relies upon. The Appellees brief attempts to supply the missing finding by assumption. The brief argues that the Does' traversals of Tidwell's property were "not criminal in their nature," (Br. 27) that Tidwell "wrongly" viewed that as trespass or mischief, (Br. 28) and that the alleged threats were not conditional because the Does "had an easement interest in the disputed area by deed, implication, plan and/or prescription" (Br. 30). Each argument presupposes the lawful character of the Does' conduct. The Appellees' main basis to support the District Court's order is the exact legal conclusion the District Court expressly declined to decide.

Tidwell's due process argument is not that the court declined to issue a title declaration. Rather, it is that the District Court predicated the findings against Tidwell without deciding the underlying property rights dispute when it bears directly on the elements of Tidwell's defense. The District Court then issued an order that in operation treated the Does' access to Tidwell's land as lawful and Tidwell's defense of her own land as unjustified. The Appellees now ask the Law Court to assume that the Does had lawful access to Tidwell's land despite the District Court barring the parties from presenting evidence on this issue and explicitly declining to decide the issue.

An appellee may urge affirmance on a ground the trial court did not adopt, but only where that ground is supported by the record. *See Town of Lisbon v. Thayer Corp.*, 675 A. 2d 514, 517 (Me. 1996). Here, the lawful-access theory finds no support in the record because the District Court precluded the parties from making a record on it. Despite Appellees' subjective belief about the theory, a theory the trial court affirmatively kept out of evidence is the antithesis of a ground supported by the record.

Nor may this Court supply the determination the District Court declined to make. Whether Appellees had lawful access to Tidwell's land is a fact-intensive question that turns on the existence and scope of any such right. Where the trial court has not made the necessary findings, the remedy is a remand so that the findings can be made and then reviewed. *Sears v. Sears*, 2023 ME 45, ¶¶ 16, 26 299 A. 3d 15, 20 & 22 To affirm on the Appellees' theory, the Court would resolve the decisive issue on a record the parties were denied an opportunity to make. That would deny Tidwell the opportunity to be heard on the very ground used to the decide the case. As argued in Section II of the original brief, this would violate Tidwell's Right to Procedural Due Process.

Because the District Court did not make finding about the property rights, the Appellee asks this Court to affirm the order based on their unsupported assertion that the Does had the right to traverse Tidwell's property. The Law Court should disregard every argument by Appellees that depends on the assumed

property interest. As originally argued in Section III of Appellant’s brief, the Law Court should find that the failure to resolve the property interest in dispute is reversible error.

II. The Trial Court Did Not Properly Find a Single Predicate Act of Terrorizing. (Response to IV.A)

Appellees correctly note that factual findings made by the District Court ordinarily receive deference by this Court. That principle does not relieve a court of the obligation to apply the statutory definition of harassment to identified facts. The Law Court reviews the application of a legal standard to the facts *de novo*. *Anctil v. Cassesse*, 2020 ME 59 ¶ 6, 232 A.3d 245, 249.

A protection-from-harassment order under 5 M.R.S. § 4651(2)(C) requires a qualifying single act or course of conduct constituting one of the enumerated criminal offenses. The trial court therefore had to identify an act that itself established the elements of terrorizing under 17-A M.R.S. § 210.

The court did not do so. It discussed three separate incidents:

1. Tidwell’s September 1 statements to Officer Monaco;
2. Tidwell’s October 5 statements to Officer Marrie; and
3. Tidwell’s October 2 statement to Doe.

It then concluded that “there is a single act that constitutes among those incidences terrorizing.” (Tr. 103.) That finding does not identify which incident was the qualifying act, nor does it determine which particular statement satisfies the

elements of criminal threatening including: was a threat to commit a crime of violence, whether Tidwell consciously disregarded the requisite risk, and whether the statement's natural and probable consequence was to place Doe in reasonable fear that a crime would be committed.

Appellees attempt to supply those missing findings by arguing that the Law Court may infer them from the record. This Court cannot affirm based on a factual theory that the trial court did not articulate. The Law Court has vacated a protection order when the trial court's findings rested on an erroneous premise and did not clearly establish whether any other incident independently met the statutory standard. *Doe v. Lindahl*, 2023 ME 28, ¶19, 293 A.3d 439, 444-445.

a.) The Record Does not Support a Finding That Tidwell Acted Recklessly As Required by the Statute

The Appellees' footnote 9 misreads the statute and the Georgia authorities cited by Tidwell. First, *Counterman* raised the constitutional floor to subjective recklessness. The Georgia cases were presented as examples of cases in which communication to a third party without a showing that the defendant intended or expected the communication to reach the victim did not support the reckless state of mind required by the statute. That the cases were decided pre-*Counterman* is not dispositive to their helpfulness. The Georgia statute in question at the time of the opinions required proof of "reckless disregard of the risk of causing such

terror.” The similarity of the statutes, including the requirement of recklessness, means these opinions are instructive to the instant case.

Second, the Appellee argues that Maine’s statute which explicitly includes “or another” renders the Maine’s statute sufficiently different than Georgia’s to make the cases inapplicable. If Georgia’s statute required that the victim of the threat also be the direct recipient of the threat, then the cases would have been decided on that basis. The cases were instead decided on the whether the Defendant intended the statement to be communicated to the victim. As argued in Section I of Appellant’s original brief, in the protection from harassment context, Doe is only entitled to an order of protection if *she* is the victim of the crime. In the context of evaluating Tidwell’s intent to place Doe in fear, the application of the Georgia cases are directly on point.

The Court did not make an element-specific finding. The Court aggregated the findings and never identified which communication satisfied the terrorizing of Doe. Nor did the Court find that Tidwell consciously disregarded a risk that a particular statement would reach Doe and place her in fear. Clear-error review presupposes findings to review; the District Court made no specific findings regarding the dispositive elements. The aggregation of the three incidents without determining which independent act satisfied the statute, is reversible error. *Doe v. Lindahl*, 2023 ME 28, 292 A.3d 138.

It is not a reasonable inference to draw that Tidwell “knew or should have known (Br. 24) that her statements would be relayed to Doe. This theory is Appellee’s and was not articulated by the Court. This theory does not satisfy the elements of §210 and cannot support an alternative basis for the Court’s order.

The statements made to Officer Monaco were conveyed to the Does “not in full... but in sum and substance” Tr. 15. There is no evidence on this record that the statements made to Officer Marrie were ever communicated to the Does. Treating a request to the police for help as a reckless communication of a threat stretches the “natural and probable consequence” of the statement past its limits. The natural and probable consequence of asking police for help is intervention, not third-party terrorizing. The District Court even characterized these statements as made by someone who was “frustrated with how the police handle things, that no one seems to be listening to her.” Tr. 103.

With respect to the alleged rock-throwing incident, the Appellees argue that the court could infer Tidwell’s intent by her conduct. This argument rests on multiple mis-assertions of the record as outlined above. First, the argument references the “Watchguard videos by the officers” as revealing Doe’s subjective fear. (Br. 26). Watchguard is a specific recording system used by police officers. As such there are no watchguard videos by the officers that captured this incident. Secondly, the video that *did* capture this incident was captured from Doe’s own dashcam and entered into evidence as *Exhibit 15*. As outlined above, no rocks

were thrown and Tidwell is visible standing in her own driveway. Finally, the Trial Court limited its findings with respect to this incident that Doe “heard Ms. Tidwell yelling that she had a gun and that she saw Ms. Tidwell coming to her car.” (Tr. 104). The Court made no such findings about rocks being thrown or striking Doe’s car. The video does not support, nor did the Court make any findings that Tidwell was “accosting” the vehicle or exhibiting “physical aggression” as described in Appellees’ brief. (Br. 26).

This interaction is also relied upon by Appellees for the proposition that the District Court could properly infer that Doe’s fear was reasonable and the natural and probable result of Tidwell’s actions. (Br. 26). This incident occurred *after* Tidwell’s statement to Officer Monaco. That Doe is continuing to traverse Ms. Tidwell’s property after the statement was made to Monaco supports the opposite inference that Doe was in fact not placed in fear by Tidwell’s statements to Monaco. Pat Doe’s demeanor captured on the video, “take that you f****ing b****” is more indicative of anger or spite than fear.

This incident occurred *before* Tidwell’s statement to Marrie so is irrelevant to any evaluation of the statements Tidwell made to Marrie. In addition, as argued above, there is no record evidence showing that the statements Tidwell made to Marrie were ever conveyed to Doe. As argued in the original brief section I(b)(i), a statement of possessing a gun is not the same as threatening to use a gun and does not support a finding of harassment. Because the Trial Court never identified

which incident it relied upon to make its finding regarding terrorizing, the Appellee's argument that this incident supports the reasonableness of Doe's fear is overly broad and does not support the inferences it asks the Court to draw.

b.) Tidwell's Acts Were Protected By Law

Appellee's argument against the conditional nature¹ of the statements and the protected-act analysis both rely upon the unadjudicated easement. As argued above, the property rights were expressly not decided and therefore cannot support Appellees' arguments.

The Statutory Definition of harassment excludes an "act protected by law." 5 M.R.S. § 4651(2). The property-rights evidence evidence was relevant to the inquiry of whether Tidwell's acts were protected by law. Tidwell asserted that she believed she was on her property and terminating a criminal trespass. Using words to terminate a criminal trespass is protected by law as argued in section I(b)(i) of the original brief.

The Court did not need to make a final allocation of property in the PFH order but it did need to permit a meaningful presentation of the relevant evidence. The Court expressly declined to decide the property rights in issue, yet Appellees now asks this Court to assume that their property interest exists. As argued above, because the District Court did not allow the parties to present evidence regarding

¹ In this Response, Appellant is focused on the lack of record evidence to support Appellee's assertion that an easement interest existed. Appellant stands on original brief Section I (b)(ii) for the broader treatment of the Conditionality analysis of Tidwell's statements.

the property dispute, the Court cannot affirm the lower court's order based merely on Appellee's unsupported conclusion that the Does had a right to traverse Tidwell's property. The Court should vacate the Finding of Harassment against Tidwell.

III. TIDWELL WAS DENIED DUE PROCESS BASED ON THE LIMITATION OF TIME AND SCOPE OF THE HEARING (Response to IV.C)

The parties agree that the trial court's management of hearing time is reviewed for abuse of discretion. *Doe v. Plourde*, 2019 ME 109 ¶¶5, 7, 211 A.3d 1153. Whether a party received the due process required, is a question of law reviewed *de novo*. *Citibank, N.A. v. Moser*, 2024 ME 19 ¶8, 314 A.3d. 194, 196.

A trial court has discretion to set reasonable time limits, but the limit must be consistent with due process. *Bank of America, NA v. Camire*, 2017 ME 20, ¶ 8, 155 A.3d 416, 419. In *Bank of America*, the opinion turned on the parties having had advanced notice of the constraint and a fair chance to try the case within it. *Id.* at ¶ 10.

In this case the time-limit was fixed at the beginning of the hearing, and applied to asymmetric burdens. The Court indicated that it would divide the time equally between the two attorneys. (Tr. 5). This division was imposed despite the fact that Tidwell had the burden of proof in two of the three consolidated complaints. (Tr. 34).

The Appellee faults Tidwell for “frittering away” time during her presentation even though the things she tried to present were relevant to the inquiry. The “subsequent encounters with Tidwell’s relatives and the Does” was testimony with respect to an allegation that the Does violated the temporary order which was relevant to the motion filed by Tidwell. The “*anemic* harassment allegation” was an example of Doe communicating with Tidwell after the temporary order. The “ecology of her property” (Br. 9) testimony was relevant regarding the present and historical condition of the property with respect to the Does’ claims of access.

One specific instance of limited time was with respect to the alleged rock-throwing incident. Tidwell offered additional video evidence captured from her home security system which offered a broader view of the incident. This footage was not presented. (Tr. 64).

The Appellee argued that Tidwell did not object to the time constraints nor make an offer of proof and therefore did not preserve the argument. Please see page 15 of appellant’s original brief for a recitation of the times in which Tidwell stated she would admit evidence if she had more time. Even if Tidwell did not object in form, she voiced her objection in substance. In addition, the pre-trial conference during which the time limit was initially imposed was not recorded. Therefore, this Court cannot conclude from the record that Tidwell’s counsel did not object. Finally, as argued in Brief Section III, a due process error of this kind is

reviewable for obvious error where it worked substantial injustice. *Nou v. Huot*, 2025 ME 44 ¶ 31 & n.8, 335 A.3d 603, 613.

While a Court has broad discretion to manage hearings and impose reasonable limits, that discretion is not unbounded. *Doe v. Plourde*, 2019 ME 109, 211 A.3d 681. A restriction violates due process when it materially prevents a party from presenting evidence directly responsive to the evidence upon which the court ultimately relies. As argued in Section II of the original brief, the denial of the opportunity to present a meaningful defense violated Tidwell’s Due Process rights.

The fixed time limit combined with the court’s refusal to receive the relevant property evidence denied Tidwell a meaningful opportunity to present her case.

IV. THE COURT DID NOT CORRECTLY APPLY THE CRIMINAL MISCHIEF STATUTE TO THE FACTS. (Response to IV.D)

Whether the trial court applied the correct legal standard—here, the tampering prong of 17-A M.R.S. § 806(1)(A)—is a question of law reviewed de novo. *Anctil* 2020 ME at ¶ 6. Where, as here, the party who bore the burden did not prevail, the further question is whether the evidence compelled a contrary finding; but that question is not reached until the correct prong is applied, and it was not. In this case, the Court found that Tidwell’s fence was “taken down” (Tr.

102) but denied the PFH complaint because it did not find “damage or destruction” to the fence.

Section 806(1)(A) states three disjunctive theories: a person is guilty who “[d]amages or destroys the property of another ...; damages or destroys property to enable ... insurance proceeds ...; *or* tampers with the property of another, having no reasonable grounds to believe that the person has the right to do so, and thereby impairs the use of that property.” 17-A M.R.S. § 806(1)(A) (emphasis added).

Tidwell’s complaint rests on the third theory of liability. The Appellee’s ‘entire response, “it didn’t look damaged ... it looked disassembled” (Br. 37), “reassembled using the same components” (Br. 38), “did not render the fence ... useless” (Br. 39), addresses only the first theory of liability. Tampering that impairs use requires neither damage, destruction, nor uselessness. The Appellees distinguish *Jacques* and *Essig* on the ground that Doe’s conduct “did not render the fence ... useless” (Br. 38–39). *Allen*’s valve-stem destruction (Br. 39 n.14) does not limit § 806 to destruction; the tampering theory is an independent basis to find criminal mischief.

As argued in Section IV of the original brief, the Does’ conduct supports a finding of tampering. The tampering prong is satisfied by unauthorized interference with another’s property that impairs its use; it does not require that the property be broken or rendered permanently useless. In *State v. Jacques*, 537 A.2d 587 (Me. 1988), the defendant did not destroy the telephone, he removed the cords,

impairing its use; that was tampering. So too in *State v. Essig*, 31 Or. App. 639, 571 P.2d 170 (1977) (keys removed, impairing use of the trucks).

The District Court stopped at “no damage” and never analyzed the tampering. The court’s findings treat the fence as having been “taken down” and reassembled; they contain no analysis of whether dismantling the fence and laying it aside was an unauthorized interference that impaired the fence’s use as a barrier. (Tr. 102–104; App. 32–34.) That omission is the legal error.

The Appellees argue that the Does had “reasonable grounds” to tamper with the fence because of their self-proclaimed easement over Tidwell’s property. As argued above, the Does’ right to access Tidwell’s property was never adjudicated and cannot be relied upon in support of the Does’ defense of an allegation of criminal mischief.

Appellees *again* ask this Court to make a finding based on their unsupported assertion that they have a right to traverse Tidwell’s property. Because the District Court expressly did not allow the parties to present evidence regarding this issue, and expressly declined to make a finding regarding this issue, the Appellees cannot now rest their support of the Court’s order on their unsupported assertion of the rights.

Because the trial court adjudicated only damage and destruction and never applied the independent tampering-and-impaired-use prong, the denial of Tidwell’s complaints should be vacated. When this Court applies the proper law to the facts

under *de novo* review, it should find that Tidwell proved criminal mischief, and therefore was entitled to an order of protection from harassment against the Does.

V. The Trial Court did Not Abuse Its Discretion by Declining to Award the Does Attorney’s Fees (Response to IV.E)

The Court should uphold the District Court’s denial of fees. A fee award under the PFH statute is discretionary and there is nothing in the record to support a finding that the District Court abused its discretion. *Doe v. Plourde*, 2019 ME 109, 211 A.3d 681.

Under 5 M.R.S. § 4655 (1-A), The court *may* award fees if the Court finds that the Complaint is frivolous. In the District Court’s Order it highlighted the discretionary nature imparted by “*may*.” (App. 38). The District Court indicated that it had “considered the manner in which the parties have litigated these cases, and after hearing in these matters, the Court does not find that Plaintiff’s complaint in either PA-25-1013 or 1014 was frivolous.”

Haskell outlines three factors this Court should look at when reviewing an order for abuse of discretion:

(1) are factual findings, if any, supported by the record according to the clear error standard; (2) did the court understand the law applicable to its exercise of discretion; and (3) given all the facts and applying the appropriate law, was the court’s weighing of the applicable facts and choices within the bounds of reasonableness.” *Haskell v. Haskell*, 2017 ME 912, ¶¶16 160 A.3d 1176, 1180.

Appellees argue that the District Court’s explanation is not a “clear explanation” of its reasons. The Appellees read into this language an implicit finding that the District Court faulted their conduct in the litigation. This Court need not read that conclusion into the order in order to uphold the order. Appellant urges a broader reading of this language which is that its purpose was to show that the District Court reviewed all information available to it, as well as being the Judge that heard the final hearing. The District Court found nothing in the manner of the litigation warranted a conclusion that Tidwell frivolously filed the complaints. (App. 37-39). It is clear from the order that the District Court understood the law applicable to its discretion. *Id.* Finally, the Appellants argue that the district court “did not allow for an articulation of the reasons” so its finding was beyond the bounds of reasonableness. The Does had plenty of opportunity to articulate their reasons for their request; they filed a motion for fees, an affidavit in support of the motion and a motion for reconsideration of the original denial of an award of fees. The District Court had all of this information available to it when it made its determination. None of the *Haskell* factors support a finding of abuse of discretion in this case.

In the instant case, Tidwell filed complaints against the Does. After reviewing Tidwell’s complaints, the Court granted temporary orders against the Does. *App. 11, 17.* A temporary order will issue only when the complainant has “provided sufficient information to substantiate the alleged harassment” 5 M.R. §

4654(2). Therefore, the District Court made an initial determination that the allegations were substantiated enough to warrant relief. In addition, the Does filed a motion to dismiss Tidwell's complaints and a motion for judgment as a matter of law against Tidwell's complaints which the District Court declined to act on. The District Court scheduled a final hearing in both complaints. The District Court found that there was a justiciable issue. That Tidwell failed to carry her burden at trial does not convert the action to a frivolous one. See *Nadeau v. Frydrich*, 2014 ME 154, 108 A.3d 1254. (In which the Law Court vacated a fee award because the complaint was legally sufficient to survive dismissal; the legal sufficiency of the allegations are separate from the provability of the allegations.). A complaint in which a temporary order was granted, and that was scheduled for a merits hearing crosses the sufficiency threshold that *Nadeau* treats as inconsistent with frivolousness.

Finally, under the statute, even if the District Court *had* found that the complaints were frivolously filed, it *still* had discretion to decline to award attorney's fees. There is nothing in the record that compels a contrary finding with respect to either frivolousness or the award of fees. The District Court did not abuse its discretion when it denied the Does' request for attorney's fees. The Law Court should affirm the District Court's denial of attorney's fees.

CONCLUSION

The trial court erred as a matter of law when it granted Pat Doe's complaint

for a protection order against Tidwell. The trial court improperly found that Tidwell engaged in one act of terrorizing. The Law Court should vacate the order against Tidwell and remand with instructions that the facts as found do not support a finding that Tidwell engaged in one act of terrorizing. In addition, the trial court violated Tidwell's right to procedural due process by excluding from the court's inquiry a determination of the property rights in dispute; and separately by imposing a two-hour time limit on the proceedings. The Law Court should vacate the order against Tidwell and remand with instructions that the trial court conduct a hearing consistent with its order regarding procedural due process. The trial court erred by failing to apply the "tampers with" definition of criminal mischief to Pat Doe's conduct. The Law Court should vacate the trial court's order denying Tidwell's complaints against Doe and Roe and remand with instructions that the facts as found by the trial court require a finding that Doe and Roe engaged in an incident of criminal mischief, and therefore Tidwell is entitled to an order for protection of harassment against the Does. Finally, the Trial Court did not abuse its discretion in denying Does' request for attorney's fees and this Court should affirm that order.

Dated this 30th day of August, 2026,

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that I have caused a true copy of this brief to be served via electronic service to Attorney Jens-Peter Bergen, via email at jwbergen@mainelawyer.net.

Dated this 30th day of August, 2026,

Respectfully Submitted,

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ADDENDUM





