

STATE OF MAINE  
SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

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LAW DOCKET NO. KEN-14-456

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**ELISABETH M. KINNEY,**  
**Plaintiff/Appellee**

**v.**

**TANYA J. BUSCH,**  
**Defendant/Appellant**

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ON REPORT OF A QUESTION TO THE LAW COURT  
FROM THE MAINE DISTRICT COURT  
PURSUANT TO M.R.App.P. 24(a) and (c)

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**APPENDIX**

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Scott J. Lynch, Esq.  
Lynch & Van Dyke, P.A.  
261 Ash Street  
P.O. Box 116  
Lewiston, ME 04243-0116  
Attorney for  
Defendant/Appellant

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STRICT COURT  
JUGUSTA  
cket No. AUGDC-FM-2013-00021

ISABETH KINNEY - PLAINTIFF  
VESPER ST  
PORTLAND ME 04101

**DOCKET RECORD**

Attorney for: ELISABETH KINNEY  
SUSAN SCHULTZ MCEVOY - INACTIVE  
01/31/2013  
SUSAN M SCHULTZ LLC  
PEARL ST SECOND FLOOR  
PORTLAND ME 04101

Attorney for: ELISABETH KINNEY  
WRENCE B GOODGLASS - WITHDRAWN  
01/23/2014  
WRENCE GOODGLASS ATTORNEY AT  
LAW  
7 CONGRESS ST 5TH FLOOR  
PORTLAND ME 04101

Attorney for: ELISABETH KINNEY  
JIMMY HAM THOMPSON - RETAINED  
01/22/2014  
JARRIS LAW PA  
CENTRAL MAINE CROSSING  
PO BOX 120  
PORTLAND ME 04345-0120

Tanya J BUSCH - DEFENDANT  
GREENVILLE ST  
PORTLAND ME 04347

Attorney for: TANYA J BUSCH  
KENNETH ALTSHULER - WITHDRAWN 01/18/2013  
LAW OFFICE OF KENNETH ALTSHULER  
7 DEERING AVENUE  
PORTLAND ME 04103

Attorney for: TANYA J BUSCH  
JOE J LYNCH - RETAINED  
LYNCH & VANDYKE PA  
1 ASH ST  
PO BOX 116  
PORTLAND ME 04243-0116

Filing Document: COMPLAINT  
Filing Date: 01/18/2013

Minor Case Type: DIVORCE WITHOUT CHILDREN

**Docket Events:**  
01/18/2013 FILING DOCUMENT - COMPLAINT FILED ON 01/18/2013  
  
01/23/2013 Party(s): ELISABETH KINNEY  
ATTORNEY - RETAINED ENTERED ON 01/18/2013  
Plaintiff's Attorney: SUSAN SCHULTZ MCEVOY

01/23/2013 Party(s): TANYA J BUSCH  
ATTORNEY - RETAINED ENTERED ON 01/18/2013  
Defendant's Attorney: KENNETH ALTSHULER

01/23/2013 Party(s): ELISABETH KINNEY  
SUMMONS/SERVICE - SUMMONS W/ PRELIM INJUNCTION FILED ON 01/18/2013  
  
Party(s): ELISABETH KINNEY  
OTHER FILING - ENTRY OF APPEARANCE FILED ON 01/18/2013

03/08/2013 Party(s): TANYA J BUSCH  
RESPONSIVE PLEADING - ANSWER & COUNTERCLAIM FILED ON 02/05/2013  
Defendant's Attorney: KENNETH ALTSHULER

03/08/2013 Party(s): ELISABETH KINNEY  
RESPONSIVE PLEADING - RESPONSE FILED ON 02/05/2013  
Plaintiff's Attorney: SUSAN SCHULTZ MCEVOY  
ANSWER TO DEFENDANT'S COUNTERCLAIM

03/14/2013 ORDER - SCHEDULING ORDER ENTERED ON 03/14/2013  
VALERIE STANFILL, JUDGE  
AUGUST 2013

04/05/2013 Party(s): ELISABETH KINNEY  
FINANCIAL DOCUMENTS - FINANCIAL STATEMENT/AFFIDAVIT FILED ON 04/02/2013

04/30/2013 Party(s): TANYA J BUSCH  
FINANCIAL DOCUMENTS - FINANCIAL STATEMENT/AFFIDAVIT FILED ON 04/29/2013

05/14/2013 MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 05/10/2013  
Plaintiff's Attorney: SUSAN SCHULTZ MCEVOY

05/15/2013 MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 05/14/2013  
VALERIE STANFILL, JUDGE

07/18/2013 HEARING - PRETRIAL/STATUS SCHEDULED FOR 08/08/2013 AT 02:30 P.M. in Room No. 1  
  
HEARING - PRETRIAL/STATUS NOTICE SENT ON 07/18/2013 in Room No. 1

07/23/2013 Party(s): ELISABETH KINNEY  
MOTION - OTHER MOTION FILED ON 07/23/2013  
Plaintiff's Attorney: SUSAN SCHULTZ MCEVOY  
PLT'S REQUEST TO PARTICIPATE BY PHONE BY BOTH ATTORNEYS

07/25/2013 Party(s): ELISABETH KINNEY  
MOTION - OTHER MOTION GRANTED ON 07/23/2013  
BETH DOBSON, JUDGE  
PLT'S REQUEST TO PARTICIPATE BY PHONE BY BOTH ATTORNEYS

08/09/2013 HEARING - PRETRIAL/STATUS HELD ON 08/08/2013  
JOSEPH H FIELD , JUDGE  
CONTINUED FOR 60 DAYS PTC TO BE SET

09/12/2013 Party(s): TANYA J BUSCH  
OTHER FILING - ENTRY OF APPEARANCE FILED ON 09/10/2013  
BY ATTY SCOTT LYNCH. (NEED MOTION TO WITHDRAW FROM ATTY. ALTSHULER)

10/16/2013 Party(s): ELISABETH KINNEY  
MOTION - MOTION PENDING FILED ON 10/07/2013  
Plaintiff's Attorney: SUSAN SCHULTZ MCEVOY

10/16/2013 HEARING - PRETRIAL/STATUS REQUESTED ON 10/11/2013  
Plaintiff's Attorney: SUSAN SCHULTZ MCEVOY

10/16/2013 HEARING - PRETRIAL/STATUS SCHEDULED FOR 10/30/2013 AT 08:30 A.M. in Room No. 1

10/16/2013 Party(s): TANYA J BUSCH  
ATTORNEY - RETAINED ENTERED ON 09/10/2013  
Defendant's Attorney: SCOTT J LYNCH

10/16/2013 HEARING - PRETRIAL/STATUS NOTICE SENT ON 10/16/2013

10/16/2013 Party(s): TANYA J BUSCH  
RESPONSIVE PLEADING - RESPONSE FILED ON 10/16/2013  
Defendant's Attorney: SCOTT J LYNCH  
OBJECTION TO PLTS MOTION PENDING

10/21/2013 Party(s): ELISABETH KINNEY  
MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED ON 10/18/2013

10/30/2013 Party(s): ELISABETH KINNEY  
OTHER FILING - ENTRY OF APPEARANCE FILED ON 10/30/2013

10/30/2013 Party(s): ELISABETH KINNEY  
ATTORNEY - RETAINED ENTERED ON 10/30/2013  
Plaintiff's Attorney: LAWRENCE B GOODGLASS

10/31/2013 Party(s): ELISABETH KINNEY  
MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 10/30/2013  
BETH DOBSON , JUDGE

10/31/2013 HEARING - PRETRIAL/STATUS HELD ON 10/30/2013  
BETH DOBSON , JUDGE

10/31/2013 ORDER - PRETRIAL/STATUS ENTERED ON 10/30/2013  
BETH DOBSON , JUDGE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL  
ADDENDUM TO STATUS CONFERENCE ORDER ATTACHED

10/31/2013 HEARING - INTERIM HEARING SCHEDULED FOR 11/18/2013 AT 02:30 P.M. in Room No. 1  
VALERIE STANFILL , JUDGE

10/31/2013 HEARING - INTERIM HEARING NOTICE SENT ON 10/31/2013

10/31/2013 Party(s): ELISABETH KINNEY  
ATTORNEY - INACTIVE ENTERED ON 10/31/2013  
Plaintiff's Attorney: SUSAN SCHULTZ MCEVOY

11/19/2013 HEARING - INTERIM HEARING HELD ON 11/18/2013  
VALERIE STANFILL , JUDGE

11/19/2013 ORDER - INTERIM ORDER ENTERED ON 11/18/2013  
VALERIE STANFILL , JUDGE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL

11/21/2013 Party(s): ELISABETH KINNEY  
DISCOVERY FILING - RULE 26(G) LETTER FILED ON 11/21/2013

11/27/2013 HEARING - OTHER MOTION SCHEDULED FOR 12/02/2013 AT 10:00 A.M. in Room No. 2  
26 G

HEARING - OTHER MOTION NOTICE SENT ON 11/27/2013 in Room No. 2  
26 G

11/27/2013 Party(s): TANYA J BUSCH  
LETTER - FROM PARTY FILED ON 11/27/2013  
IN REGARDS TO 26G LETTER

12/02/2013 Party(s): TANYA J BUSCH  
OTHER FILING - OTHER DOCUMENT FILED ON 12/02/2013  
WITHDRAWAL OF COUNSEL

12/02/2013 Party(s): TANYA J BUSCH  
ATTORNEY - WITHDRAWN ORDERED ON 01/18/2013  
Defendant's Attorney: KENNETH ALTSHULER

12/02/2013 HEARING - OTHER MOTION HELD ON 12/02/2013  
26 G

12/02/2013 ORDER - COURT ORDER ENTERED ON 12/02/2013  
CHARLES DOW , JUDGE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL

AFTER 26 G CONFERENCE, COURT ORDERS THAT REQUESTED DISCOVERY BE PROVIDED NO LATER THAN 12/15/13

12/03/2013 HEARING - PRETRIAL/STATUS SCHEDULED FOR 01/23/2014 AT 02:00 P.M. in Room No. 1

HEARING - PRETRIAL/STATUS NOTICE SENT ON 12/03/2013 in Room No. 1

01/24/2014 HEARING - PRETRIAL/STATUS HELD ON 01/23/2014  
BETH DOBSON, JUDGE

01/24/2014 ORDER - PRETRIAL/STATUS ENTERED ON 01/23/2014  
BETH DOBSON, JUDGE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL

CASE STATUS - REFERRED TRAILING DOCKET ON 01/24/2014

01/24/2014 HEARING - OTHER HEARING SCHEDULED FOR 03/04/2014 AT 02:00 P.M. in Room No. 2  
FM TD; 1.5-2 DAYS

HEARING - OTHER HEARING NOTICE SENT ON 01/24/2014 in Room No. 2  
FM TD; 1.5-2 DAYS

02/28/2014 Party(s): ELISABETH KINNEY  
MOTION - MOTION TO ENFORCE FILED ON 02/28/2014  
ALONG WITH REQUEST FOR EXPEDITED HEARING

03/05/2014 Party(s): TANYA J BUSCH  
OTHER FILING - OTHER DOCUMENT FILED ON 03/05/2014  
DEF<sub>i</sub>S OBJECTION TO PLAINTIFF<sub>i</sub>S MOTION TO ENFORCE

03/05/2014 HEARING - OTHER HEARING HELD ON 03/04/2014

03/06/2014 ORDER - COURT ORDER ENTERED ON 03/05/2014  
VALERIE STANFILL, JUDGE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL  
COURT HAS NO ABILITY TO EXPEDITE HEARING SOONER THAN SCHEDULED TRAILING  
DOCKETS

03/12/2014 Party(s): TANYA J BUSCH  
OTHER FILING - WITNESS & EXHIBIT LIST FILED ON 03/12/2014

03/14/2014 Party(s): ELISABETH KINNEY  
OTHER FILING - WITNESS & EXHIBIT LIST FILED ON 03/14/2014

03/18/2014 Party(s): ELISABETH KINNEY  
OTHER FILING - WITNESS & EXHIBIT LIST FILED ON 03/18/2014  
AMENDED



03/18/2014 Party(s): TANYA J BUSCH  
FINANCIAL DOCUMENTS - FINANCIAL STATEMENT/AFFIDAVIT FILED ON 03/18/2014

03/19/2014 Party(s): TANYA J BUSCH  
LETTER - FROM PARTY FILED ON 03/18/2014  
LETTER FROM S.LYNCH IN REGARDS TO PROTECTION FROM BACK UP DAY (3/27/14)  
GRANTED- J.STANFILL- 3/18/14

03/20/2014 Party(s): TANYA J BUSCH  
OTHER FILING - WITNESS & EXHIBIT LIST FILED ON 03/20/2014  
SECOND AMENDED EXHIBIT LIST

03/20/2014 Party(s): TANYA J BUSCH  
OTHER FILING - WITNESS & EXHIBIT LIST FILED ON 03/19/2014  
DEFENDANT'S AMENDED EXHIBIT LIST

03/21/2014 Party(s): TANYA J BUSCH  
SUBPOENA - SUBPOENA TO TESTIFY FILED ON 03/21/2014  
JAMES BOWDOIN

03/21/2014 Party(s): TANYA J BUSCH  
SUBPOENA - SUBPOENA TO TESTIFY FILED ON 03/21/2014  
LAURIE STEVENS

03/21/2014 Party(s): TANYA J BUSCH  
SUBPOENA - SUBPOENA TO TESTIFY FILED ON 03/21/2014  
SUSAN FARNSWORTH, ESQ

03/21/2014 Party(s): TANYA J BUSCH  
SUBPOENA - SUBPOENA TO TESTIFY FILED ON 03/21/2014  
LONI GRAIVER

03/27/2014 Party(s): ELISABETH KINNEY  
OTHER FILING - WITNESS & EXHIBIT LIST FILED ON 03/25/2014  
2ND AMENDED WITNESS & EXHIBIT LIST

03/31/2014 HEARING - OTHER HEARING SCHEDULED FOR 04/08/2014 AT 02:00 P.M. in Room No. 2  
APRIL TD

HEARING - OTHER HEARING NOTICE SENT ON 03/31/2014 in Room No. 2  
APRIL TD

04/01/2014 Party(s): ELISABETH KINNEY  
FINANCIAL DOCUMENTS - FINANCIAL STATEMENT/AFFIDAVIT FILED ON 04/01/2014

04/09/2014 HEARING - OTHER HEARING HELD ON 04/08/2014

04/09/2014 HEARING - MOTION TO ENFORCE SCHEDULED FOR 05/15/2014 AT 03:00 P.M. in Room No. 1

04/09/2014 HEARING - MOTION TO ENFORCE NOTICE SENT ON 04/09/2014 in Room No. 1

04/09/2014 ORDER - COURT ORDER ENTERED ON 04/08/2014  
VALERIE STANFILL, JUDGE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL  
THIS CASE IS UNABLE TO BE REACHED ON APRIL TD AND UNLIKELY TO BE REACHED ON MAY  
TD BECAUSE OF LIMITED TIME. IN ORDER TO DEAL WITH MORTGAGE ISSUES FROM PLT<sub>6</sub>S  
MOTION A COUPLE MONTHS AGO, IT IS ORDERED: 1. SHORT INTERIM HEARING 2. CASE  
CONTINUED TO JUNE TD

04/09/2014 HEARING - INTERIM HEARING SCHEDULED FOR 05/15/2014 AT 03:00 P.M. in Room No. 1  
IN RE: TO PLT<sub>6</sub>S MTE, SEE 4/8/14 COURT ORDER

HEARING - INTERIM HEARING NOTICE SENT ON 04/09/2014 in Room No. 1  
IN RE: TO PLT<sub>6</sub>S MTE, SEE 4/8/14 COURT ORDER

04/09/2014 HEARING - OTHER HEARING SCHEDULED FOR 06/03/2014 AT 02:00 P.M. in Room No. 2  
JUNE TD CALL; 1-1.5 DAYS FH

HEARING - OTHER HEARING NOTICE SENT ON 04/09/2014 in Room No. 2  
JUNE TD CALL; 1-1.5 DAYS FH

05/20/2014 HEARING - INTERIM HEARING HELD ON 05/15/2014  
BETH DOBSON, JUDGE

05/20/2014 Party(s): ELISABETH KINNEY  
MOTION - MOTION TO ENFORCE GRANTED ON 05/20/2014

05/20/2014 ORDER - COURT ORDER ENTERED ON 05/20/2014  
BETH DOBSON, JUDGE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL  
ORDER ON PLAINTIFF<sub>6</sub>S MOTION TO ENFORCE

05/22/2014 Party(s): ELISABETH KINNEY  
OTHER FILING - ENTRY OF APPEARANCE FILED ON 05/22/2014  
TAMMY HAM THOMPSON

05/22/2014 HEARING - MOTION TO ENFORCE HELD ON 05/15/2014  
BETH DOBSON, JUDGE

05/23/2014 Party(s): ELISABETH KINNEY  
MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED ON 05/23/2014

05/27/2014 Party(s): ELISABETH KINNEY  
MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 05/23/2014  
BETH DOBSON, JUDGE

05/27/2014 Party(s): ELISABETH KINNEY  
ATTORNEY - WITHDRAWN ORDERED ON 05/23/2014  
Plaintiff's Attorney: LAWRENCE B GOODGLASS

05/27/2014 Party(s): ELISABETH KINNEY  
ATTORNEY - RETAINED ENTERED ON 05/22/2014  
Plaintiff's Attorney: TAMMY HAM THOMPSON

06/03/2014 Party(s): TANYA J BUSCH  
MOTION - OTHER MOTION FILED ON 06/02/2014  
DEFENDANT'S VERIFIED MOTION TO RECONSIDER ORDER DATED MAY 20, 2014 AND MOTION  
TO MODIFY PRELIMINARY INJUNCTION

06/04/2014 HEARING - OTHER HEARING HELD ON 06/03/2014  
VALERIE STANFILL, JUDGE

06/04/2014 ORDER - COURT ORDER ENTERED ON 06/03/2014  
VALERIE STANFILL, JUDGE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL  
CONTINUED TO JULY TD (UNABLE TO SCHEDULE)

06/04/2014 HEARING - OTHER HEARING SCHEDULED FOR 07/08/2014 AT 02:00 P.M. in Room No. 2  
JULY DOCKET CALL; 1.5-2 DAYS FH

HEARING - OTHER HEARING NOTICE SENT ON 06/04/2014 in Room No. 2  
JULY DOCKET CALL; 1.5-2 DAYS FH

06/25/2014 Party(s): ELISABETH KINNEY  
RESPONSIVE PLEADING - RESPONSE FILED ON 06/23/2014  
PLAINTIFF'S OBJECTION TO DEFENDANT'S VERIFIED MOTION TO RECONSIDER ORDER DATED  
MAY 20, 2014 AND TO MODIFY PRELIMINARY INJUNCTION

06/25/2014 Party(s): ELISABETH KINNEY  
MOTION - OTHER MOTION FILED ON 06/25/2014  
PLAINTIFF'S MOTION TO QUASH DEFENDANT'S SUBPOENA

06/30/2014 Party(s): TANYA J BUSCH  
MOTION - OTHER MOTION DENIED ON 06/30/2014  
BETH DOBSON, JUDGE  
DEFENDANT'S VERIFIED MOTION TO RECONSIDER ORDER DATED MAY 20, 2014 AND MOTION  
TO MODIFY PRELIMINARY INJUNCTION  
DENIED FOR REASONS SET FORTH IN PLT'S OPPOSITION & FURTHER THAT DEF POSITION AT  
HEARING WAS ESSENTIALLY SHE FAILED TO MEET HER OBLIGATION TO PAY MORTGAGE DUE  
TO NO AVAILABLE FUNDS- A POSITION INCONSISTENT WITH HER MOTION. PLT HAS  
POSSESSION & OBLIGATION TO PAY BEGINNING 7/1/14.

06/30/2014 ORDER - COURT ORDER ENTERED ON 06/30/2014  
BETH DOBSON, JUDGE

ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL  
PLT NEED NOT COMPLY WITH SUBPOENA ON 7/3/14. DEF HAS UNTIL JULY 7, 2014 TO RESPOND  
TO PLTS MOTION

07/08/2014 Party(s): TANYA J BUSCH  
OTHER FILING - OTHER DOCUMENT FILED ON 07/07/2014  
DEFENDANT'S OBJECTION TO PLAINTIFF'S MOTION TO QUASH SUBPOENA

07/09/2014 Party(s): ELISABETH KINNEY  
MOTION - MOTION PENDING GRANTED ON 11/18/2013  
INTERIM ORDER BY AGREEMENT OF THE PARTIES ENTERED 11/18/13

07/09/2014 HEARING - OTHER HEARING HELD ON 07/08/2014  
CHARLES DOW, JUDGE

07/09/2014 Party(s): ELISABETH KINNEY  
MOTION - OTHER MOTION DENIED ON 07/07/2014  
CHARLES DOW, JUDGE  
PLAINTIFF'S MOTION TO QUASH DEFENDANT'S SUBPOENA

07/09/2014 HEARING - FINAL HEARING SCHEDULED FOR 07/24/2014 AT 08:30 A.M. in Room No. 2  
FINAL DIVORCE HEARING; DAY 1 OF 2; DAY 2 SET FOR 7/25/14 @ 8:30A  
  
HEARING - FINAL HEARING NOTICE SENT ON 07/09/2014 in Room No. 2  
FINAL DIVORCE HEARING; DAY 1 OF 2; DAY 2 SET FOR 7/25/14 @ 8:30A

07/22/2014 Party(s): ELISABETH KINNEY  
FINANCIAL DOCUMENTS - FINANCIAL STATEMENT/AFFIDAVIT FILED ON 07/21/2014  
UPDATED

07/22/2014 Party(s): ELISABETH KINNEY  
OTHER FILING - AFF FOR CONFIDENTIAL ADDRESS FILED ON 07/21/2014

07/22/2014 Party(s): ELISABETH KINNEY  
MOTION - OTHER MOTION FILED ON 07/21/2014  
MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

07/22/2014 Party(s): ELISABETH KINNEY  
MOTION - OTHER MOTION FILED ON 07/21/2014  
MOTION IN LIMINE TO EXCLUDE EVIDENCE AND/OR ARGUMENT PERTAINING TO THE ISSUE  
THAT THERE IS NOT A VALID MARRIAGE BETWEEN THE PARTIES

07/22/2014 Party(s): TANYA J BUSCH  
OTHER FILING - WITNESS & EXHIBIT LIST FILED ON 07/22/2014  
THIRD AMENDED EXHIBIT LIST

07/22/2014 Party(s): TANYA J BUSCH  
RESPONSIVE PLEADING - RESPONSE FILED ON 07/22/2014

DEFENDANT<sub>i</sub>S OBJECTION TO PLAINTIFF<sub>i</sub>S MOTION IN LIMINE

07/23/2014 Party(s): TANYA J BUSCH  
SUBPOENA - SUBPOENA TO TESTIFY FILED ON 07/23/2014

07/23/2014 Party(s): TANYA J BUSCH  
SUBPOENA - SUBPOENA TO TESTIFY FILED ON 07/23/2014

07/23/2014 HEARING - FINAL HEARING NOT HELD ON 07/23/2014  
MOTION IN LIMINE PENDING AND ORDER TO FILED BY J STANFILL

07/29/2014 Party(s): ELISABETH KINNEY  
SUBPOENA - SUBPOENA TO TESTIFY FILED ON 07/29/2014

07/29/2014 Party(s): ELISABETH KINNEY  
SUBPOENA - SUBPOENA TO TESTIFY FILED ON 07/29/2014

07/29/2014 Party(s): TANYA J BUSCH  
SUBPOENA - SUBPOENA TO TESTIFY FILED ON 07/29/2014

07/30/2014 Party(s): TANYA J BUSCH  
OTHER FILING - OTHER DOCUMENT FILED ON 07/28/2014  
DEFENDANT<sub>i</sub>S LIMITED OBJECTION TO PLAINTIFF<sub>i</sub>S MOTION FOR LEAVE TO FILE AN  
AMENDED COMPLAINT

08/07/2014 Party(s): ELISABETH KINNEY  
MOTION - OTHER MOTION GRANTED ON 07/22/2014  
VALERIE STANFILL, JUDGE  
MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

08/07/2014 Party(s): TANYA J BUSCH  
OTHER FILING - WITNESS & EXHIBIT LIST FILED ON 07/28/2014  
4TH AMENDED EXHIBIT LIST

08/07/2014 Party(s): ELISABETH KINNEY  
MOTION - OTHER MOTION GRANTED ON 08/06/2014  
VALERIE STANFILL, JUDGE  
MOTION IN LIMINE TO EXCLUDE EVIDENCE AND/OR ARGUMENT PERTAINING TO THE ISSUE  
THAT THERE IS NOT A VALID MARRIAGE BETWEEN THE PARTIES

08/07/2014 ORDER - COURT ORDER ENTERED ON 08/06/2014  
VALERIE STANFILL, JUDGE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL  
ORDER ON MOTION IN LIMINE

08/12/2014 Party(s): TANYA J BUSCH  
RESPONSIVE PLEADING - ANSWER FILED ON 08/12/2014  
DEFENDANT<sub>i</sub>S ANSWER TO AMENDED COMPLAINT

08/13/2014 SUPPLEMENTAL FILING - AMENDED COMPLAINT FILED ON 08/13/2014  
FILED BY THE PLAINTIFF

08/26/2014 Party(s): TANYA J BUSCH  
MOTION - OTHER MOTION FILED ON 08/26/2014  
DEFENDANT'S MOTION TO REPORT CASE TO THE LAW COURT

09/16/2014 Party(s): ELISABETH KINNEY  
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 09/15/2014

09/16/2014 Party(s): ELISABETH KINNEY  
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 09/16/2014  
VALERIE STANFILL, JUDGE

09/22/2014 Party(s): ELISABETH KINNEY  
RESPONSIVE PLEADING - RESPONSE FILED ON 09/19/2014  
PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO REPORT CASE TO LAW COURT

10/15/2014 Party(s): TANYA J BUSCH  
MOTION - MOTION EXPEDITED HEARING FILED ON 10/14/2014

10/20/2014 ORDER - COURT ORDER ENTERED ON 10/17/2014  
VALERIE STANFILL, JUDGE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL  
SET FOR HEARING NEXT AVAILABLE DATE- 1/2 HR (ANY JUDGE)

10/20/2014 HEARING - MOTION EXPEDITED HEARING SCHEDULED FOR 12/01/2014 AT 01:00 P.M. in Room No. 2  
  
HEARING - MOTION EXPEDITED HEARING NOTICE SENT ON 10/20/2014 in Room No. 2

10/20/2014 Party(s): ELISABETH KINNEY  
RESPONSIVE PLEADING - RESPONSE FILED ON 10/20/2014  
PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION FOR EXPEDITED HEARING

10/22/2014 Party(s): TANYA J BUSCH  
MOTION - OTHER MOTION GRANTED ON 10/20/2014  
VALERIE STANFILL, JUDGE  
DEFENDANT'S MOTION TO REPORT CASE TO THE LAW COURT  
AGREED UPON ORDER

10/22/2014 ORDER - COURT ORDER ENTERED ON 10/20/2014  
VALERIE STANFILL, JUDGE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL  
AGREED UPON ORDER ON DEFENDANT'S MOTION TO REPORT CASE TO THE LAW COURT

11/06/2014 NOTE - OTHER CASE NOTE ENTERED ON 11/06/2014  
AFTER SPEAKING WITH J.STANFILL TODAY, THE EXP. HEARING WILL REMAIN SET FOR 12/1

AND IT IS FINE TO BE HEARD IN FRONT OF J.DOW. THE TIME NEEDED FOR THIS HEARING IS 1/2 HR. THIS IS THE EXCEPTION TO THE STAY THAT WAS ORDERED IN THE ORDER SIGNED BY J.STANFILL ON 10/20/14, AGREED UPON ORDER ON DEFENDANT'S MOTION TO REPORT CASE TO THE LAW COURT.

11/07/2014 ORDER - COURT ORDER ENTERED ON 11/05/2014  
ELLEN A GORMAN , JUSTICE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT.  
COPIES TO PARTIES/COUNSEL  
ORDER FROM LAW COURT

11/07/2014 APPEAL - RECORD ON APPEAL DUE IN LAW COURT ON 11/10/2014  
NOTICE OF DOCKETING IN THE LAW COURT

11/10/2014 APPEAL - RECORD ON APPEAL SENT TO LAW COURT ON 11/07/2014

11/10/2014 Party(s): TANYA J BUSCH  
OTHER FILING - TRANSCRIPT ORDER FORM FILED ON 11/10/2014

11/10/2014 Party(s): TANYA J BUSCH  
OTHER FILING - TRANSCRIPT ORDER FORM SENT TO REPORTER/ER ON 11/10/2014

11/25/2014 Party(s): TANYA J BUSCH  
MOTION - MOTION TO CONTINUE FILED ON 11/24/2014

11/25/2014 Party(s): TANYA J BUSCH  
MOTION - MOTION TO CONTINUE GRANTED ON 11/25/2014  
VALERIE STANFILL , JUDGE

11/25/2014 HEARING - MOTION EXPEDITED HEARING CONTINUED ON 11/25/2014  
VALERIE STANFILL , JUDGE

12/05/2014 HEARING - MOTION EXPEDITED HEARING SCHEDULED FOR 02/02/2015 AT 01:00 P.M. in Room No. 1  
HEARING - MOTION EXPEDITED HEARING NOTICE SENT ON 12/05/2014 in Room No. 1

12/24/2014 SUBPOENA - SUBPOENA TO TESTIFY FILED ON 12/23/2014  
WITNESS SUBPOENA FOR HEARING OR TRIAL TO OFFICER RONALD GROTON

Receipts

01/18/2013	Misc Payment	\$120.00	paid.
10/28/2014	Misc Payment	\$150.00	paid.

A TRUE COPY

ATTEST: \_\_\_\_\_  
Clerk

DISTRICT COURT  
LOCATION: Augusta  
DOCKET NO.: AUGDC-FM-13-021

AGREED UPON  
ORDER ON DEFENDANT'S MOTION  
TO REPORT CASE TO THE  
LAW COURT

**TANYA J. BUSCH,**  
**Defendant**

Received and Indexed  
OCT 20 2014  
Auguste District Court  
Klamath Superior Court

## I. BACKGROUND

<sup>1</sup> The parties were legally married in the State of Massachusetts on October 14, 2008. At that time, the State of Maine only recognized “the union of one man and one woman joined in traditional monogamous marriage.” That law was repealed by public initiative, effective December 2012. See 19-A M.R.S.A § 650 (repealed); 19-A M.R.S. § 650-A. (Laws 2011, I.B.3, § 5, adopted at election November 6, 2012; Laws 2011, I.B.3. §§ 1-2, adopted at election November 6, 2012.)



The parties have agreed that a report to the Law Court to review this question of law was appropriate pursuant to Rule 24. See *Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c)*, dated August 25, 2014.

## II. REPORT PURSUANT TO RULE 24(a)

Rule 24(a) provides:

**Report by Agreement of Important or Doubtful Questions.** The court may, where all parties appearing so agree, report any action in the trial court to the Law Court if it is of the opinion that any question of law presented is of sufficient importance or doubt to justify the report, provided that the decision thereof would in at least one alternative finally dispose of the action.

The Court finds that the requirements of Rule 24(a) are met and that it is expeditious and appropriate to report the action.

*First*, all parties agree to the report.

*Second*, the question presented is of sufficient importance to justify the report. The issue presented is one of first impression, is of importance to the parties and to many others similarly situated, and is one capable of frequent repetition.

*Third*, the reported question in this matter is not able to be decided by other possible dispositions. In a divorce action, a court must make a preliminary fact-finding determination as to the parties' legal date of marriage prior to being able to equitably divide the marital estate. The date of marriage and the length of the marriage are critical factors in determining what property/debt is marital or non-marital and whether or not a spouse is entitled to receive spousal support.

*Fourth*, if the Law Court accepts the report, a decision on this reported question would, in at least one alternative, dispose of the action. As stated in the Order on Plaintiff's Motion in Limine, had this issue "been resolved in Defendant's favor, it would

question is one of first impression, important, capable of repetition and apt to affect other similarly situated persons.<sup>2</sup>

For these reasons, the Court additionally and alternatively orders this question of law reported and all further proceedings in this Court stayed pending action by the Law Court.<sup>3</sup>

In sum, it is hereby **ORDERED**:

1. Defendant's Motion to Report Case to the Law Court is granted.
2. All further proceedings in this case are stayed except as necessary to preserve the rights of the parties.
3. Pursuant to M.R. App. P. 24(d) any report presented to the Law Court is addressed in the same manner as any appeal. The filing of the order of report is treated as the notice of appeal. The party who is aggrieved by the reported interlocutory ruling is deemed to be the appellant. Therefore, the Defendant is hereby considered to be the appellant and is responsible for paying the appeal fee within two weeks from the date of this order.

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<sup>2</sup> It is unclear whether Rule 24(c) requires that a ruling by the Law Court be able to dispose of the action. Commentators are split on this point. Compare C. Harvey, 3A *Maine Civil Practice*, A24:4 at 204 (2013) ("Such interlocutory reports are not limited to those cases where a decision of the interlocutor question would in at least one alternative dispose of the action") (footnote with citations omitted) with D. Alexander, *Maine Appellate Practice*, § 24.1 at 171 (3d ed. 2008) (stating that precedent establishes this prerequisite). Language suggesting this is a factor that may be considered appears in *Swanson v. Roman Catholic Bishop of Portland*, 1997 ME 63, ¶ 6, 692 A.2d 441, 443, ¶ 3, 782 A.2d 788, decided under Rule 24's predecessor, M.R.Civ.P. 72, and *Liberty Ins. Underwriters v. Estate of Faulkner*, 2008 ME 149, ¶ 9. In other instances, the Law Court has not applied this requirement, e.g., *York Register v. York County Probate Court*, 2004 ME 57, ¶¶ 11-12, 847 A.2d 425, and *Thermos Co. v. Spence*, 1999 ME 129, ¶ 5, 735 A.2d 484. The better view may be as stated by the Law Court in *Morris v. Sloan*, 1997 ME 179, ¶ 7, 698 A.2d 1038, which is that the Court "may take into account" whether it will finally dispose of the matter (emphasis supplied). As noted above, resolution of the question presented here will essentially resolve this action. Even if it did not, and this is a factor that may be considered, this Court believes that a report is still appropriate, given the importance of the question presented and that the interests of justice and the just, speedy and inexpensive determination of the action will be served by interlocutory determination. See *Maine Civil Practice*, § A24:4 at 204. With respect to the issue of judicial economy, the Court notes that as resolved by the Court, further proceedings include a trial that is expected to last at least two days.

<sup>3</sup> Under Rule 24(a), the entire action is reported; under Rule 24(c), only the question of law is reported.

all but dispose of the case." *Order in Limine* at ¶ 2, p 2 (Aug. 6, 2014). If the Law Court rules as requested by the Defendant, that ruling would resolve all issues pertaining to the division of tangible and intangible, marital and non-marital property, as there would no longer be any property to be equitably divided within the divorce statute. The only issue that would remain would be issuing an order divorcing the parties on the grounds of irreconcilable differences. Since the parties do not dispute that irreconcilable marital differences exist between them, there would be no need for any further litigation in this divorce action and the remaining action before the <sup>District</sup>~~Superior~~ Court would be effectively ministerial.

For these reasons, the Court orders this action reported pursuant to Rule 24(a).

### III. REPORT PURSUANT TO RULE 24(c)

Rule 24(c) provides:

**Report of Interlocutory Rulings.** If the trial court is of the opinion that a question of law involved in an interlocutory order or ruling made by it ought to be determined by the Law Court before any further proceedings are taken, it may on motion of the aggrieved party report the case to the Law Court for that purpose and stay all further proceedings except such as are necessary to preserve the rights of the parties without making any decision therein.

The Court finds the criteria for report under this subsection of the Rule met as well.

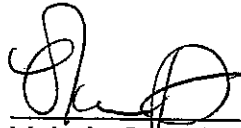
*First*, the Defendant, the party aggrieved by the Court's ruling on the motion on limine, has sought the report.

*Second*, for the reasons given above, the Court is of the opinion that the legal question presented in the effectively dispositive Motion in Limine ought to be determined before any further proceedings take place and the divorce is finalized: the

4. Pursuant to M.R. App. P. 24(a) and (c) the action and following question is being reported to the Law Court:

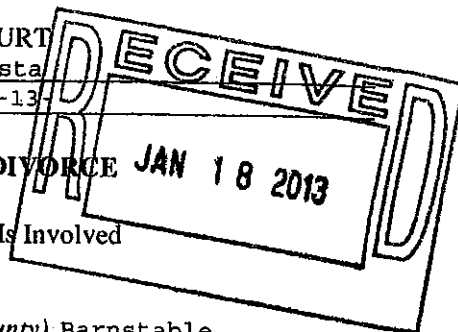
May property acquired between October 14, 2008, and December 29, 2012, by a same-sex couple married in the State of Massachusetts on October 14, 2008, be treated as marital property for the purposes of equitable division of property in a divorce action filed on January 18, 2013?

Dated: 10/20, 2014

  
\_\_\_\_\_  
Valerie Stanfill, Judge  
Maine District Court

## STATE OF MAINE

DISTRICT COURT

Location AugustaDocket No. FM-13ELISABETH KINNEY Plaintiff

vs

TANYA JANE BUSCH DefendantCOMPLAINT FOR DIVORCE  
(no minor children)☒ Title to Real Estate Is Involved

1. Plaintiff was lawfully married to defendant in (town) Provincetown, (county) Barnstable, (state) MA, on October 4, 2006 (month/date/yr.)
2. Plaintiff now resides in (town) Hallowell, (county) Kennebec, (state) Maine.

If either party wishes to keep his/her address confidential, that party may complete an Affidavit for Confidential Address (FM-057). This form is available at the Clerk's Office.

3. ☒ Defendant now resides in (town) Hallowell, (county) Kennebec, (state) Maine, OR  
☐ Residence of the Defendant is unknown and Plaintiff has used reasonable efforts and cannot locate Defendant.
4. The court has jurisdiction because (check all of the statements that apply):  
☒ A. Plaintiff resided in Maine in good faith for six months before filing this complaint;  
☐ B. Plaintiff is a resident of Maine and the parties were married in Maine;  
☒ C. Plaintiff is a resident of Maine and the parties resided in Maine when the grounds for divorce arose;  
☒ D. Defendant is a resident of Maine.
5. ☒ Neither party has filed for divorce or annulment from the other before this complaint, OR  
☐ A complaint for divorce or annulment was filed before in (court name, town and state of court) \_\_\_\_\_, Docket No. \_\_\_\_\_.  
That case: ☐ Was dismissed on (date) \_\_\_\_\_. ☐ Is still pending.
6. The parties have personal property, AND  
☒ Either or both parties has an interest in real estate, (file and exchange form FM-056), OR  
☐ Neither party has an interest in real estate.
7. Plaintiff lists the following grounds for divorce:  
☒ Irreconcilable marital differences exist between the parties.  
☐ Other \_\_\_\_\_

## PLAINTIFF REQUESTS that a divorce be granted and that the court; (Check all the boxes that apply)

- ☒ Set apart the non-marital property to each party and divide the marital property (file and exchange form FM-043);  
☐ Order that spousal support be paid to Plaintiff by Defendant (file and exchange form FM-043);  
☒ Award reasonable attorney's fees to Plaintiff's attorney (file and exchange form FM-043); and  
☐ Change Plaintiff's name to \_\_\_\_\_

Date: 1/16/2013

Attorney for Plaintiff: Susan M. Schultz,  
Address: 75 Pearl St., Second Floor  
Portland, Maine 04101

Telephone: (207) 210-6555

Elisabeth Kinney  
(Plaintiff's signature)

Plaintiff: Elisabeth Kinney  
Address: 67 Central Street  
Hallowell ME 04347

Telephone: (207) 212-5221

Defendant has 20 days after being served with this complaint (being given a copy), to file an answer with the Court and must provide copies of all filings to other party.

STATE OF MAINE

Kennebec, ss.

DISTRICT COURT

Location: Augusta

Docket No. FM-13-

ELISABETH KINNEY,

Plaintiff

v.

TANYA JANE BUSCH,

Defendant

ACKNOWLEDGEMENT OF  
SERVICE

I, Kenneth Altshuler, attorney for Defendant, Tanya Jane Busch, in the above-captioned action, accept and acknowledge that I have received service of the Plaintiff's Complaint for Divorce on behalf of Defendant and waive any defense based on insufficiency of service of process.

DATED: At Portland, Maine, this 21<sup>st</sup> day of January, 2013

  
\_\_\_\_\_  
Kenneth Altshuler, Esq. Bar No.  
*Attorney for Defendant*

STATE OF MAINE  
KENNEBEC, ss.

DISTRICT COURT  
LOCATION: AUGUSTA  
DOCKET NO.

ELISABETH KINNEY,  
Plaintiff  
v.  
TANYA JANE BUSCH,  
Defendant

**ANSWER AND COUNTERCLAIM**

TO THE Honorable Judge of the District Court:

NOW COMES the Defendant, by and through her attorney, and states that:

1. The Defendant admits the allegations contained in paragraphs 1 through 7 of the Plaintiff's Complaint.

**COUNTERCLAIM**

The Defendant realleges paragraphs 1 through 7 of the Plaintiff's Complaint for Divorce as if more fully set forth herein.

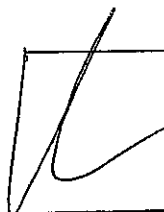
WHEREFORE, the Defendant/Counterclaimant prays that:

1. A divorce from the bonds of matrimony between herself and the Plaintiff be adjudged;

2. The property of each party be set apart and the marital property be divided pursuant to Title 19-A M.R.S.A. §953; and

3. The Plaintiff pay reasonable counsel fees to the attorney  
for the Defendant/Counterclaimant.

Dated: 2/1/13

---

KENNETH P. ALTSHULER, Esq.  
BAR NUMBER 3121

CHILDS, RUNDLETT, FIFIELD & ALTSHULER  
257 Deering Avenue  
Portland, Maine 04103-4898  
Telephone #(207) 773-0275  
Attorneys for the Defendant/  
Counterclaimant



STATE OF MAINE  
KENNEBEC, ss.

DISTRICT COURT  
Location: Augusta  
Docket No. FM-13-

ELISABETH KINNEY,

Plaintiff

v.

TANYA JANE BUSCH,

Defendant

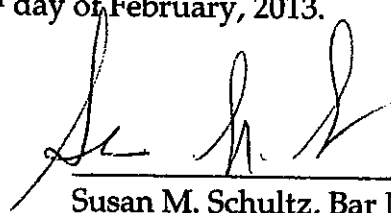
**ANSWER TO DEFENDANT'S  
COUNTERCLAIM**

Now Comes Plaintiff, by and through undersigned counsel, and responds to Defendant's counterclaim as follows:

1. Plaintiff admits the allegations contained in Paragraphs 1 through 7 of Defendant's counterclaim but denies the relief sought therein.

**WHEREFORE**, Plaintiff prays Defendant's counterclaim be dismissed and for costs.

DATED at Portland, Maine, this 4<sup>TH</sup> day of February, 2013.



Susan M. Schultz, Bar No. 7207  
Attorney for Plaintiff

Susan M. Schultz, LLC  
Attorney at Law  
75 Pearl Street, 2nd Floor  
Portland, Maine 04101  
Tel. (207) 210-6555  
Fax (207) 772-0385  
sms@schultzfamilylawyer.com  
www.schultzfamilylawyer.com

STATE OF MAINE  
KENNEBEC, ss.

DISTRICT COURT  
LOCATION: Augusta  
DOCKET NO. FM-13-21

ELISABETH KINNEY, )  
 )  
Plaintiff )  
 )  
v. )  
 )  
TANYA JANE BUSCH, )  
 )  
Defendant )

PLAINTIFF'S MOTION PENDING  
DIVORCE

NOW COMES Plaintiff, Elisabeth Kinney, by and through her attorney, and moves this Honorable Court enter an Interim Order based upon the following:

1. There is a divorce pending between the parties.
2. Plaintiff has relocated from the marital home located at 40 Greenville Street, Hallowell, Maine.
3. Defendant continues to reside at the marital home.
4. There is an outstanding loan secured by the home that lists both parties as mortgagees. Defendant has the financial ability and it is reasonable for her to pay the monthly mortgage and all other expenses associated with this property.
5. Defendant did not pay the mortgage in September. To protect her credit rating and history, Plaintiff made the payment.
6. As of the date of this motion, Defendant has not paid the October mortgage payment.
7. Plaintiff does not have the financial resources to finance her separate residence and the marital residence.
8. Plaintiff seeks an interim order requiring Defendant to be solely responsible for all debt and expenses associated with 40 Greenville Street, Hallowell, Maine and to indemnify and hold Plaintiff harmless against same.

9. Plaintiff seeks monthly proof from Defendant that Defendant has timely paid all debt and expenses for which Plaintiff is a named debtor on or before the date the expense is due.

10. Plaintiff's name should be removed from utility accounts associated with the residence.

11. Plaintiff seeks reimbursement from Defendant for the September mortgage payment and any other payments for which Defendant is responsible paid by Plaintiff to protect her credit.

12. In the alternative, Plaintiff seeks exclusive possession of 40 Greenville Street, Hallowell, Maine.

### MEMORANDUM OF LAW

The legal authority for this Motion is M.R. Civ. P. 80(d), Title 19-A M.R.S.A. §§ 904, 951, 952, 1651, 2001.

**WHEREFORE**, Plaintiff moves this Honorable Court for an Order:

1. Order Defendant to pay all mortgage payments and all other expenses (e.g, insurance, taxes, utilities) associated with the property located at 40 Greenville Road, Hallowell, Maine, on or before the date the expense is due.

2. Order Defendant to provide Plaintiff with proof that payments for the mortgage and other expenses have been timely made within five (5) days of the date the payment was due.

3. Order Defendant immediately reimburse Plaintiff for the September mortgage payment.

4. Order Defendant reimburse Plaintiff for any other payments made by Plaintiff for which Defendant is responsible under this order within fourteen (14) days of the original due date of the balance owed.

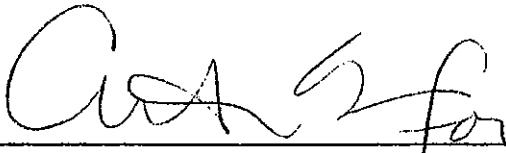
5. Order Defendant to cause Plaintiff's name to be removed from any and all utility accounts associated with 40 Greenville Road, Hallowell, Maine.

6. Order Defendant pay Plaintiff's reasonable attorney fees and costs in prosecuting this action.

7. In the alternative to paragraphs (1) through (5), Order that Plaintiff have exclusive possession of 40 Greenville Road, Hallowell, Maine;

8. Order such other relief as this court deems necessary, proper and just.

Dated: 10/4/2013

  
\_\_\_\_\_  
Susan M. Schultz, Bar No. 7207  
Attorney for Plaintiff

**IMPORTANT NOTICE:** Any opposition to this motion must be filed not later than twenty-one (21) days after the filing of this motion unless another time is provided by Rule 7(b)(1) of the Maine Rules of Civil Procedure or set by the court. Failure to file timely opposition will be deemed a waiver of all objections to this motion, which may be granted without further notice of hearing.

## STATE OF MAINE

DISTRICT COURT  
DISTRICT  
DOCKET NO.Augusta  
11-13-21

Date

OTHER COURT ACTION

Kinney  
✓

Busch

Interim Order

Upon agreement of parties, it is ordered on an interim basis that

1. Def. shall be entitled to sole use/possession of Halliwell residence
2. Def shall be solely responsible to pay mortgage + utilities

Further, no order is made today with regard to reimbursement for past mortgage payments, as such may be dependent on validity of 2007 agreement, and that issue should be decided by trial judge, so it is deferred.

Rehearing to be set in January 2014.

This order may be incorporated by reference on the docket.

11/18/2013

J. D. O., Judge

Kennebec, ss

Augusta District Court  
FM-13-21

Elisabeth Kinney

MOTION TO ENFORCE AND REQUEST FOR  
EXPEDITED HEARING

V.

Tanya Jane Busch

Plaintiff, through counsel Lawrence Goodglass requests that this Court enforce its interim Order of November 18, 2013 which requires Defendant to pay the mortgage at 40 Greenville Street, Hallowell Maine and for the reasons stated in the attached affidavit of Lawrence Goodglass, requests that a hearing on this motion be expedited.

1. Defendant is residing at 40 Greenville Street, and was ordered to make the monthly payments of \$1800.00 to Chase Bank. Both Plaintiff and Defendant are on the mortgage,

2. Defendant failed to make the payment in February of 2014. Plaintiff made the payment in order to protect her credit. Likewise, prior to the hearing, Plaintiff had made the payments in September and October of 2013.

3. These mortgage payments are due on the first of each month, and the last date the payment may be made is the 15<sup>th</sup> of each month, Chase has a "no forgiveness" policy for late payments,

4. Undersigned counsel was informed by e mail by Defendant's counsel Scott Lynch that Defendant is claiming she does not have the money to make the payments. For a number of reasons that Plaintiff is prepared to assert at an expedited hearing, Defendant's claim lacks credibility.

5. Even if Defendant sticks to her incredible claim of poverty, this Court has jurisdiction to award Plaintiff at least temporary, and immediate sole possession of the 40 Greenville property so that she can rent it and try to recover some of her money.

WHEREFORE, Plaintiff requests that this matter be set for hearing, and that for the reasons set forth in the attached affidavit, that the hearing be scheduled on an expedited basis.

Respectfully Submitted

February 27, 2014 



Lawrence Goodglass  
3665

STATE OF MAINE  
KENNEBEC, ss.

DISTRICT COURT  
Location: AUGUSTA  
DOCKET NO. AUG-FM-13-21

Elisabeth Kinney, Plaintiff

vs

Tanya Busch, Defendant

**Order on Plaintiff's Motion to Enforce**

This matter came before the court for hearing on May 15, 2014 on Plaintiff's Motion to Enforce filed 2/28/14. Both parties were present, represented by counsel and testified.

There is no material dispute about the facts relating to this Motion. By Interim Order dated 11/18/13, and upon agreement of the parties, Defendant is entitled to sole use and possession of the residence at 40 Greenville Street, Hallowell, Maine. Defendant is also to be solely responsible to pay the mortgage and utilities.

Defendant did not pay the mortgage for the months of October 2013, February, March, April and May 2014. As Plaintiff is on the mortgage and claims a marital interest in the real estate, to protect her credit rating and to prevent the commencement of a foreclosure action, Plaintiff paid the mortgage for those months in the total amount of \$9,403.64. See Plaintiff's exhibit #1.

Plaintiff has been renting in Ogunquit for \$1,000 per month, this means her monthly payments are approximately \$3,000 total. She is living in one place and paying for two.

The parties acquired the real estate in question by deed dated September 6, 2006. The parties were married in Provincetown, Massachusetts on October 4, 2006. On December 15, 2007 (after the Massachusetts marriage and after the real estate acquisition) the parties entered into an agreement regarding the subject real estate which addressed contributions and re-allocations of proceeds. Plaintiff later, by deed dated September 1, 2012 conveyed the property to Defendant. No testimony was offered regarding the circumstances of that deed.

Plaintiff's current gross income is \$70,000, thus she has the capacity to pay the mortgage going forward, until final divorce judgment determines disposition. She has the desire to live in the house over the longer term and the capacity to buy out Defendant's interest if the real estate is set aside to her.

Curiously Defendant argued that the house be placed for sale at this time because the market has improved, prices have appreciated and there is less real



estate inventory, and yet her 2013 income is reported as \$21,869 (AGI at \$5,195). and her 2014 income year to date as \$1,500. This is against the back drop of her pre-recession success as a real estate broker and in fact her post-recession or within the recession income of \$79,285 in 2012. Based on Defendant's own current income, being derived from real estate sales in the current market, the court is not reassured that a quick sale at a reasonable price is likely.

On these largely undisputed facts, the parties argued for distinct remedies.

Plaintiff argued that since Defendant has not been paying as ordered it is not fair that Plaintiff have to continue to pay to protect her credit rating and not have use of the house. Plaintiff wants to live in the house over the longer term and has the income and credit to make the payments in the short term and to refinance to buyout Defendant's interest in the longer term. The property has at least some marital component. Even if the trial judge determines that the September 12, 2012 deed was a "gift" which would have otherwise exempted the property from being characterized as marital (a hypothetical which the court is not at all certain about). Plaintiff's payments of almost \$10,000 in mortgage payments since October 2013 alone creates a marital component.

Defendant argued that she should be able to retain possession of the house and place the house on the market even though she has essentially no capacity to pay the mortgage, the utilities and the costs of readying the property for sale. Defendant argued that the asset is non-marital by virtue of the deed and that the Defendant made most of the mortgage payments over a period of 7 years. However, those payments were during the marriage and at a time when the parties were not separated and at a time when neither party was under any court ordered obligation to pay the mortgage.

It is ordered: Pending final divorce Plaintiff has the right to exclusive possession of the real estate at 40 Greenville Street in Hallowell and the obligation to pay mortgage, mortgage related expenses such as insurance taxes and utilities. Plaintiff's right to possession and obligation to pay expenses begins July 1, 2014. Defendant must relinquish possession by midnight of June 30, 2014. Plaintiff agreed to allow Defendant to have access to the property to tend to her medical marijuana business and it is so ordered.

Plaintiff's motion to enforce is granted as set forth herein.

The Clerk will incorporate this order by reference on the docket at the direction of the Court pursuant to M.R.Civ. P. 76(a):

Date: \_\_\_\_\_

5/20/14



Judge Beth Dobson  
Maine District Court

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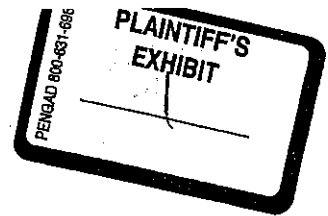
The Clerk will incorporate this order by reference on the docket at the direction of the Court pursuant to M.R.Civ. P. 76(a):

Date:

5/20/14



Judge Beth Dobson  
Maine District Court



Mortgage payments made by Elisabeth Kinney for 40 Greenville St. Hallowell

<https://payments.chase.com/PnT/PayBills/PaymentActivity/Index>

### Past Payments

<b>Date</b>	<b>Status</b>	<b>Amount</b>	<b>Pay From</b>
05/12/2014	<b>Completed</b>	<b>\$2,012.84</b>	TD (...xxxx)
04/30/2014	<b>Completed</b>	<b>\$1,856.56</b>	TD (...xxxx)
03/31/2014	<b>Completed</b>	<b>\$1,856.56</b>	TD (...xxxx)
02/18/2014	<b>Completed</b>	<b>\$1,856.56</b>	TD (...xxxx)
10/15/2013	<b>Completed</b>	<b>\$1,821.12</b>	TD (...xxxx)
	<b>TOTAL</b>	<b>\$9403.64</b>	

STATE OF MAINE  
KENNEBEC, ss

DISTRICT COURT  
LOCATION: Augusta  
DOCKET NO.: AUGDC-FM-13-021

ELISABETH M. KINNEY,  
Plaintiff

vs.

TANYA J. BUSCH,  
Defendant

\* MOTION IN LIMINE TO EXCLUDE  
\* EVIDENCE AND/OR ARGUMENT  
\* PERTAINING TO THE ISSUE  
\* THAT THERE IS NOT A VALID  
\* MARRIAGE BETWEEN THE PARTIES  
\*

NOW COMES, the Plaintiff, Elisabeth M. Kinney, by and through counsel, and submits Motion *in Limine* to Exclude Evidence and/or Argument Pertaining to Issue that there is not a Valid Marriage Between the Parties and/or that the court's jurisdiction for considering the parties' respective marital interest only begins on November 6, 2012, as set forth in this incorporated memorandum of law:

#### FACTUAL BACKGROUND

The parties in this action were domestic partners who began residing together in the spring of 2007. On May 15, 2007, the State of Maine Deputy State Registrar certified the parties' Declaration of Domestic Partnership. On October 14, 2008, Plaintiff and Defendant were married in Provincetown, County of Barnstable, and State of Massachusetts. On or about January 16, 2013, the Plaintiff, Elizabeth M. Kinney, executed a Complaint for Divorce which was properly served on the Defendant, Tanya Jane Busch, on or about January 31, 2013. On or about February 1, 2013, Defendant through counsel filed an Answer and Counterclaim to Divorce in which Defendant did not move to dismiss this action for want of subject matter jurisdiction.

#### ARGUMENT

Defendant, through counsel, is now arguing the issue as to the validity of the parties marriage and whether or not the court is able to find a marital interest in the parties' assets given that the parties were married in the State of Massachusetts on or about October 14, 2008 which was prior to the State of Maine adopting 19-A M.R.S.A. § 650-A and 19-A M.R.S.A. 650-B. Defendant argues that because this statute was not adopted until November 6, 2012, and the fact that the parties did not marry in the State of Maine or get married in another state after this date, that there is not a valid marriage or in the alternative, if there is a valid marriage, the

court may only consider it to be a valid marriage from November 6, 2012 forward. A significant amount of time and energy will be spent in this matter arguing this legal issue. It is imperative for this court to determine this issue ahead of trial so that it is not a waste of the parties' time, money and effort or the judicial resources of this court to have a two day trial in a matter that Defendant argues this court does not have jurisdiction to decide or limited jurisdiction.

The Supreme Court of Wyoming faced with a similar situation (although not exact) ruled in *Paula Christiansen v. Victoria Lee Christiansen*, 253 P.3d 153, 2011 WY 90 that it had subject matter jurisdiction to dissolve a legal relationship created under the laws of Canada. The facts of this case are simple.

Paula and Victoria were validly married in Canada and seek a divorce in Wyoming, where they reside. The district court, after engaging in a review of the pertinent statutes, dismissed the action for lack of subject-matter jurisdiction. The district court reasoned that "the jurisdictional grant to dissolve marriages is premised on the definition of marriage." Since Wyo. Stat. Ann. § 20-1-101 (LexisNexis 2009) defines a marriage, in pertinent part, as "a civil contract between a male and a female person," the district court determined "the Wyoming Statutes do not grant the Court jurisdiction to dissolve a same-sex marriage." *Id.* at 153-154.

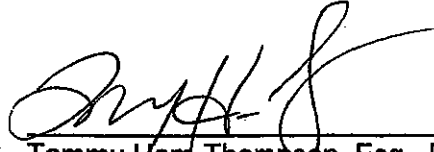
In that case the narrow issue was whether or not "Wyoming district court has subject-matter jurisdiction to entertain a divorce action to dissolve a same-sex marriage lawfully performed in Canada." *Id.* The Supreme Court of Wyoming found that the district court did have jurisdiction. In drawing that conclusion, the Supreme Court of Wyoming stated:

recognizing a valid foreign same-sex marriage for the limited purpose of entertaining a divorce proceeding does not lessen the law or policy in Wyoming against allowing the creation of same-sex marriages. A divorce proceeding does not involve recognition of a marriage as an ongoing relationship. Indeed, accepting that a valid marriage exists plays no role except as a condition precedent to granting a divorce. After the condition precedent is met, the laws regarding divorce apply. Laws regarding marriage play no role. *Id.* at 156.

Unlike Wyoming, Maine has recognized same-sex marriages. Further, pursuant to 19-A M.R.S.A. 650-B "[A] marriage of a same-sex couple that is validly licensed and certified in another jurisdiction is recognized for all purposes under the laws of this State." If Maine is to recognize same-sex marriages from other states, it cannot simply accept same sex marriages from November 6, 2012, as valid because doing so would be contrary to the grant of subject matter jurisdiction which is essential to exercising this grant of judicial power.

WHEREFORE, Plaintiff moves *in limine* to exclude any evidence and/or argument Evidence and/or Argument Pertaining to issue that there is not a valid marriage between the parties and/or that the court's jurisdiction for considering the parties' respective marital interest only begins on November 6, 2012.

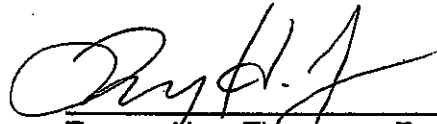
Dated: July 21, 2014

  
\_\_\_\_\_  
Tammy Ham-Thompson, Esq., Bar No. 9432  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I, Tammy Ham-Thompson, Esq., attorney for the Plaintiff, Elisabeth M. Kinney, in the above action, do hereby certify that I have made due service of the within Plaintiff's Motion In Limine to Exclude Evidence and/or Argument Pertaining to the Issue that there is not a Valid Marriage Between the Parties dated July 21, 2014, with proposed Order to Scott J. Lynch, Esq., attorney for Defendant, Tanya J. Busch, at P.O. Box 116, Lewiston, ME 04243-0116, by regular course of the United States Mail, postage prepaid.

Dated: July 21, 2014

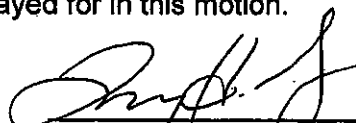
  
\_\_\_\_\_  
Tammy Ham-Thompson, Esq., Bar No.9432  
Attorney for Plaintiff

**NOTICE OF MOTION  
IMPORTANT NOTICE TO DEFENDANT**

IMPORTANT WARNING pursuant to Rule 7 (b) (1) of the Maine Rules of Civil Procedure, notice is hereby given that if you intend to oppose this motion, then you must prepare and file a written memorandum in opposition to the motion, including all objections, denials and affirmative defenses within twenty-one (21) days from the date this motion was served upon you unless another time is provided by the Maine Rules of Civil Procedure or set by the Court.

If you fail to file a written memorandum in opposition to the motion within the twenty-one (21) day period cited above, or if after you file your memorandum in opposition you fail to appear at any time the Court notifies you to do so, a Judgment may be entered against you in your absence for any and all relief prayed for in this motion.

Dated: July 21, 2014

  
\_\_\_\_\_  
Tammy Ham-Thompson, Esq., Bar No.9432  
Attorney for Plaintiff

STATE OF MAINE  
KENNEBEC, ss

DISTRICT COURT  
LOCATION: Augusta  
DOCKET NO.: AUGDC-FM-13-021

ELISABETH M. KINNEY,  
Plaintiff

vs.

TANYA J. BUSCH,  
Defendant

MOTION FOR LEAVE TO FILE AN  
AMENDED COMPLAINT

NOW COMES the Plaintiff, Elisabeth M. Kinney, by and through undersigned counsel, and moves this Honorable Court for leave to file an amendment of the complaint in this matter pursuant to M.R.Civ.P. 15 and this incorporated memorandum of law:

#### PROCEDURAL HISTORY

On or about January 16, 2013, the Plaintiff, Elizabeth M. Kinney, executed a Complaint for Divorce which was properly served on the Defendant, Tanya Jane Busch, on or about January 31, 2013. On or about February 1, 2013, Defendant through counsel filed an Answer and Counterclaim to Divorce.

In both the Complaint and Answer and Counterclaim for Divorce the parties alleged that they were married on October 4, 2006. The parties were in fact married on October 14, 2008. Please see Certificate of Marriage attached hereto and incorporated herein as Exhibit A. As a result, Plaintiff seeks leave to amend paragraph 1 of her Complaint for Divorce in order to have the Complaint for Divorce accurately reflect the date of marriage as being October 14, 2008.

#### ARGUMENT

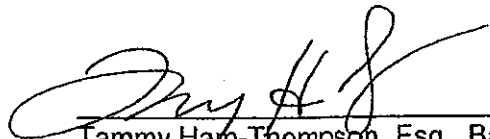
Rule 15(a) of the Maine Rules of Civil Procedure has always been deemed lenient in allowing amendment of pleadings. The rule expressly provides that, "...a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires."

In this case, justice may only be served by allowing the Plaintiff to amend her Complaint so as to reflect the correct date of marriage as the date of marriage is necessary for this court to determine the equitable distribution of marital property/debts.

Counsel for the Plaintiff, has consulted with Counsel for the Defendant and he does not object to this Motion for Leave to File an Amended Complaint.

WHEREFORE the Plaintiff respectfully requests this Honorable Court grant leave to file an Amended Complaint to change the parties' date of marriage from October 4, 2006 to the parties' actual date of marriage of October 14, 2008, and for such other and further relief as this Court deems just and appropriate.

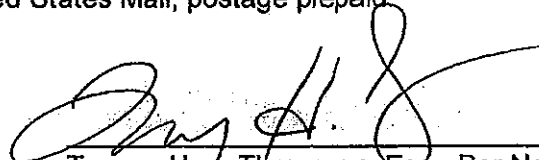
Dated: July 21, 2014

  
\_\_\_\_\_  
Tammy Ham-Thompson, Esq., Bar No. 9432  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Tammy Ham-Thompson, Esq., attorney for the Plaintiff, Elisabeth M. Kinney, in the above action, do hereby certify that I have made due service of the within Plaintiff's Motion for Leave to File an Amended Complaint dated July 21, 2014, with proposed Order to Scott J. Lynch, Esq., attorney for Defendant, Tanya J. Busch, at P.O. Box 116, Lewiston, ME 04243-0116, by regular course of the United States Mail, postage prepaid.

Dated: July 21, 2014

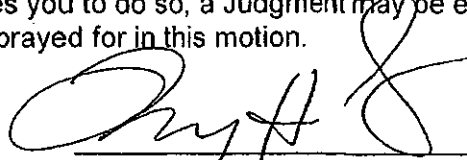
  
\_\_\_\_\_  
Tammy Ham-Thompson, Esq., Bar No. 9432  
Attorney for Plaintiff

**NOTICE OF MOTION  
IMPORTANT NOTICE TO DEFENDANT**

IMPORTANT WARNING pursuant to Rule 7 (b) (1) of the Maine Rules of Civil Procedure, notice is hereby given that if you intend to oppose this motion, then you must prepare and file a written memorandum in opposition to the motion, including all objections, denials and affirmative defenses within twenty-one (21) days from the date this motion was served upon you unless another time is provided by the Maine Rules of Civil Procedure or set by the Court.

If you fail to file a written memorandum in opposition to the motion within the twenty-one (21) day period cited above, or if after you file your memorandum in opposition you fail to appear at any time the Court notifies you to do so, a Judgment may be entered against you in your absence for any and all relief prayed for in this motion.

Dated: July 21, 2014

  
\_\_\_\_\_  
Tammy Ham-Thompson, Esq., Bar No. 9432  
Attorney for Plaintiff





Office of the Town Clerk  
Town of Provincetown

260 Commercial Street  
Provincetown, MA 02657  
TEL: 508 487-7013  
FAX: 508 487-9560



The Commonwealth of Massachusetts  
DEPARTMENT OF PUBLIC HEALTH  
REGISTRY OF VITAL RECORDS AND STATISTICS  
**CERTIFICATE OF MARRIAGE**

1 Place of Marriage: Provincetown 2 Date of Marriage: October 14, 2008  
(Do not enter name of village or section of city or town) (Month) (Day) (Year)

3 FULL NAME PARTY A: Tanya J. Busch 11 FULL NAME PARTY B: Elisabeth Mary Kinney  
3A SURNAME AFTER MARRIAGE: Busch 11A SURNAME AFTER MARRIAGE: Kinney

4 DATE OF BIRTH: May 8, 1963 5 OCCUPATION: Realtor 12 DATE OF BIRTH: October 22, 1966 13 OCCUPATION: Behavior Analyst

6 RESIDENCE NO. & ST.: 40 Greenville Street 14 RESIDENCE NO. & ST.: 40 Greenville Street  
CITY/TOWN: Hallowell ST. ME CODE: 04347 CITY/TOWN: Hallowell ST. ME CODE: 04347

7 NUMBER OF MARRIAGE (1st, 2nd, 3rd, etc.): 1st 7A WIDOWED OR DIVORCED: NO 15 NUMBER OF MARRIAGE (1st, 2nd, 3rd, etc.): 1st 15A WIDOWED OR DIVORCED: NO

8 BIRTHPLACE: Lewiston, Maine 16 BIRTHPLACE: Washington, D.C.  
(City or town) (State or country) (City or town) (State or country)

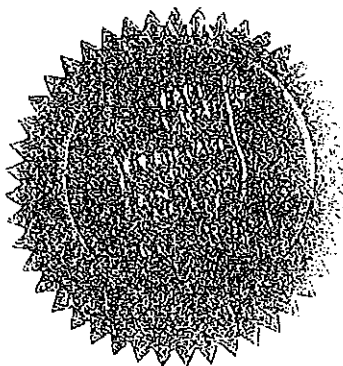
9 NAME OF MOTHER/PARENT: Sandra J. Busch/Tripp 17 NAME OF MOTHER/PARENT: Mary Jo Kinney/McAuliffe  
10 NAME OF FATHER/PARENT: Harry J. Busch 18 NAME OF FATHER/PARENT: James Edward Kinney

19 THE INTENTION OF MARRIAGE by the above-mentioned persons was duly entered by me in the records of the Community of Provincetown, according to law, this 9th day of October, 2008.  
☐ COURT WAIVER Issued October 14, 2008 by [Signature] (City or Town Clerk or Registrar)  
☐ AGE ORDER (Month) (Day) (Year)

20 I HEREBY CERTIFY that I solemnized the marriage of the above-named persons at No. 54 COMMERCIAL St., PROVINCETOWN on OCTOBER 14, 2008.  
(Name of city or town) (Month) (Day) (Year)  
Signature: Rev. David L. Clarke CLERGY  
(Member of the Clergy, Priest, Rabbi, Imam, or Justice of the Peace, etc.)  
Address: 16 COURT STREET, PROVINCETOWN, MA 02657  
(Print or type name)

21 Certificate recorded by city or town clerk: October 16, 2008 [Signature]  
(Month) (Day) (Year) CLERK OR REGISTRAR

22 PARTY A SEX: ☐ MALE ☒ FEMALE 23 PARTY B SEX: ☐ MALE ☒ FEMALE



A TRUE COPY ATTEST  
[Signature]  
TOWN CLERK, PROVINCETOWN



STATE OF MAINE  
KENNEBEC, ss

DISTRICT COURT  
LOCATION: Augusta  
DOCKET NO.: AUGDC-FM-13-021

ELISABETH M. KINNEY,  
Plaintiff

vs.

TANYA J. BUSCH,  
Defendant

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ORDER ON PLAINTIFF'S  
MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT

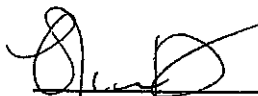
This matter came before this Court upon the Plaintiff's Motion for Leave to File to Amended Complaint. After notice and opportunity for hearing, it is ORDERED and ADJUDGED as follows:

Motion for Leave to File Amended Complaint is hereby granted. Amended Complaint may be filed. Defendant, Tanya J. Busch shall have twenty (20) days from the date of the granting of this motion in which to file an answer to the Amended Complaint.

The clerk is directed to make the following entry in the civil docket pursuant to Maine Rule of Civil Procedure 79(a).

Dated:

July 22, 2014



Judge, District Court

cc: Tammy Ham-Thompson, Esq.  
Scott J. Lynch, Esq.

STATE OF MAINE  
KENNEBEC, SS.

DISTRICT COURT  
LOCATION: AUGUSTA  
CIVIL ACTION  
DOCKET NO. AUGDC-FM-13-21

ELISABETH KINNEY,

Plaintiff

v.

TANYA JANE BUSCH,

Defendant

**DEFENDANT'S OBJECTION TO  
PLAINTIFF'S MOTION IN LIMINE**

NOW COMES the Defendant, Tanya Jane Busch, by and through undersigned counsel, and objects to Plaintiff's Motion in Limine as follows:

1. The Law Prior to November 6, 2012

Prior to the citizen initiative on November 6, 2012, Maine law was very clear that "persons of the same sex may not contract marriage." 19-A M.R.S.A. sec. 701(5)

Moreover, former 19-A M.R.S.A. sec. 701(1-A) stated that any marriage performed in another state that would violate subsection (5) "is not recognized in this state and is considered void if the parties take up residence in this state."

The parties were married in Massachusetts on October 14, 2008. Prior to November 6, 2012, their marriage was null and void. The parties never remarried in Maine. In fact, they separated in August 2012 before the November initiative. The Plaintiff filed for divorce on January 31, 2013.

That initiative resulted in 19-A M.R.S.A. sec. 650-B stating that "A marriage of a same-sex couple that is validly licensed and certified in another jurisdiction is recognized for all purposes under the laws of this state."

There was no retroactivity provision to the referendum or the legislation. This omission is significant and dispositive.

This court certainly has jurisdiction to grant a divorce. The parties were considered married in Maine effective November 6, 2012. The condition precedent to a divorce, i.e., an existing marriage satisfies the Plaintiff's concerns in citing *Christiansen v. Christiansen*, 263 P.3d 151, 2011 WY 2011. However, what the Plaintiff really wants the Court to adjudicate is that the marital property statute applies to the period of October 14, 2008 to November 6, 2012. The law in Maine is quite contrary to this proposition.

The Law Court has been abundantly clear that Maine law abhors retroactive application of substantive law changes:

"The power of the Legislature, and likewise the power of the people in initiating legislation, to enact retroactive measures is limited. For example, in Maine, the Legislature may enact statutes affecting remedies but not substantive rights." *Opinion of the Justice*, 370 A.2d 654, 660. (Me. 1977)

Here, this Court may simply grant the remedy sought which is a divorce from the bounds of matrimony. The court may not, however, effect the substantive rights of a couple who were broken up before they were even considered married in Maine.

Moreover, the Law Court has been clear that retroactivity is never favored in the law. Enactments and administrative rules do not have retroactive effect unless their language specifically references retroactivity. *Weeks v. Allen and Coles Moving Systems*, 1997 ME 205 par. 6, 704 A.2d 320, 323 (Workers Comp Board has no authority to order retroactive benefits from the date of injury to the date of decree denying her petition for award).

Legislation must state "clearly and unequivocally" that it is retroactive. *Lane Construction Corp. v. Tn. Of Washington*, 2007 ME 31 par. 7, 916 A.2d 973, 976. In *Lane*, the ordinance did not provide it was "retroactive" nor did it state it was applicable in any way other than prospectively. Indeed, there is a preference for prospective application only. *Id.*

at par. 2, 916 A.2d at 976. Whenever the Law Court has sustained retroactive application of a statute, it favors a statute that states the date that it is retroactive to. See *MacImage of Maine v. Androscoggin County*, 2012 ME 44, par. 23, 40 A.3d 975, 986-987 (statute specifically states it was applied retroactively to September 1, 2009.)

Retroactive application of laws without clear legislative intent is dangerous precedent. In *Charron v. Amaral*, 451 Mass. 767 (2008), 889 N.E.2d 946, the Supreme Judicial Court addressed the question of whether marital rights, including a claim of loss of consortium, could be retroactively applied to a same sex couple who were not legally married at the time of an injury but subsequently did marry when the law changed in Massachusetts. The Supreme Judicial Court recognized that where a change in law was “radical” and “changed the history of marriage law” the change could be “prospective only.” *Id.* at 773.

The Court concluded that a loss of consortium claim could not be brought by a same sex couple whose marriage did not exist under the laws of Massachusetts at the time of the accident concluding:

“however sympathetic we may be to the discriminating effects of the marriage licensing statute had before our *Goodridge* decision, ... to allow Kalish to recover for a loss of consortium ... could open numbers of cases in all areas of the law to the same argument.” *Id.*

The concurring opinion rejoined that granting relief to the same sex couple would “... create uncertainty in the private as well as the public sphere ...” *Id.* at 774

One need only pose the following hypothetical to see how uncertain retroactive application of the marital property statute could be. Assume a same sex couple separated in August 2012 and that one of the spouses won the lottery in September 2012 and spent all the money. It would be incongruous and absurd to argue that with the passage of the November 6, 2012 initiative, that the other spouse could retroactively argue that his/her spouse had committed economic misconduct as to “marital” property. In the hypothetical,

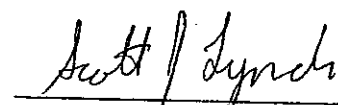
the lottery winner conducted themselves as a private citizen who was unmarried because they were in fact unmarried when the lottery money was spent.

Finally, in Utah, the Federal Court had to consider a requested retroactive ban on same sex marriages. *Evans v. State of Utah*, Case No. CV550OAK (May 19, 2014) (D. Utah 2014) The court noted that "the presumption against retroactive application of changes in the law is deeply rooted in principles of fairness and due process." *Id.* at p. 16 "The principle that the legal effect of conduct should be assessed under the law that existed when the conduct took place has timeless and universal appeal. *Id.* at 18 quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994). "A court will and ought to struggle hard against a construction which will, by retroactive operation, affect the rights of parties." *Evans*, Case No. 2:14 CV55DAK (May 19, 2014), p. 18.

Accordingly, the Court may grant a remedy -- the divorce -- based on the October 14, 2008 Massachusetts marriage -- but the Court should not retroactively apply the marital property division concepts for the period October 14, 2008 to November 6, 2012.

WHEREFORE, the Motion in Limine should be denied.

Dated: July 22, 2014



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Scott J. Lynch, Esquire  
Maine Bar No. 7314  
Attorney for Defendant

STATE OF MAINE  
KENNEBEC, SS.

DISTRICT COURT  
LOCATION: AUGUSTA  
CIVIL ACTION  
DOCKET NO. AUGDC-FM-13-21

ELISABETH KINNEY,

Plaintiff

v.

TANYA JANE BUSCH,

Defendant

**DEFENDANT'S LIMITED OBJECTION  
TO PLAINTIFF'S MOTION FOR LEAVE  
TO FILE AN AMENDED COMPLAINT**

NOW COMES the Defendant, Tanya Jane Busch, by and through undersigned counsel, and objects to Plaintiff's Motion for Leave to File an Amended Complaint as follows:

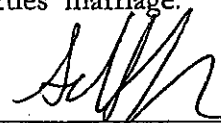
1. Defendant agrees that the parties were married in Massachusetts on October 14, 2008. The date of October 4, 2006 contained in the Complaint and the Counterclaim is factually incorrect.

2. However, the parties' marriage was not effective in Maine until 30 days after the Secretary of State certified a successful citizen's initiative to legalize same sex marriages. The initiative was held on November 6, 2012 and the effective date of the law was December 29, 2012.

3. Moreover, the parties separated in August 2012 before the initiative was passed.

WHEREFORE, Defendant sets forth her position on the Motion for Leave to File an Amended Complaint and the effective date of the parties' marriage.

Dated: July 24, 2014



Scott J. Lynch, Esquire  
Maine Bar No. 7314  
Attorney for Defendant

STATE OF MAINE  
KENNEBEC, ss

DISTRICT COURT  
LOCATION: AUGUSTA  
DOCKET NO. FM-13-021

Elisabeth Kinney,

*Plaintiff,*

v.

Tanya Busch,

*Defendant.*

**Order on Motion in Limine**

This matter is before the court on Plaintiff's Motion in Limine to exclude evidence or argument that the parties were not legally married on October 14, 2008 or that this marriage is not recognized by Maine. After considering the argument of the parties, the court grants the motion and orders as follows.

The parties were legally married in Massachusetts on October 14, 2008 at a time when Maine did not recognize the validity of marriage between same-sex partners. Maine also did not recognize same-sex marriages validly performed in other states. See 19-A M.R.S. §701(1-A), (5). Since then, the prohibition on recognizing same-sex marriages from other states was repealed, Laws 2011, I.B. 3, § 5, adopted at election Nov. 6, 2012. Moreover, Maine affirmatively now recognizes same sex marriages in this state. 19-A M.R.S. §§ 650-A, 650-B (Laws 2011, I.B. 3, §§ 1-2, adopted at election Nov. 6, 2012).

This divorce action was filed on January 18, 2013, very shortly after the changed laws became effective. The parties have no minor children; the issues in this divorce relate to the equitable division of property. The key to this case is whether the Massachusetts marriage shall be recognized as having occurred in 2008 for purposes of this divorce action. If, as Defendant argues, the Massachusetts marriage is not considered valid until the effective date of the statutes



adopted in the 2012 referendum, then the parties have little or no marital property. If this court recognizes the date of marriage as occurring in 2008, as Plaintiff argues, then there is a significant amount of marital property and debt to be divided.

As enacted pursuant to the 2012 referendum, Maine law currently provides as follows:

A marriage of a same-sex couple that is validly licensed and certified in another jurisdiction is recognized for all purposes under the laws of this State.

19-A M.R.S. § 650-B. There is no question, therefore, that this court must recognize the 2008 Massachusetts marriage as valid under that statute.

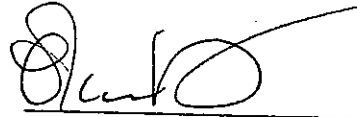
Defendant argues that the statute cannot be retroactively applied. The court disagrees; it appears to be the clear intent and policy of the statute to recognize the out-of-state marriages in existence at the time the statute was passed. Even if that were not the case, however, the common law would be that out-of-state marriages are recognized unless prohibited. Recognition of the parties' Massachusetts marriage is not prohibited under Maine law. Such recognition *was* prohibited until the 2012 repeal of 19-A M.R.S. § 701(5). The court finds no basis, however, not to give effect to that repeal. Therefore, this court finds that Maine recognizes the parties' 2008 marriage, and the law of divorces in Maine applies to the marriage.

Certainly the question is one of importance to these parties and to many others. If it had been resolved in Defendant's favor, it would all but dispose of the case. This court believes, with the concurrence of the parties and in the interest of judicial economy, that this issue ought to be reviewed by the Law Court prior to an expensive trial expected to last at least two days. Therefore it is ordered that the trial is continued. Defendant shall have 30 days from this order to request that the matter be reported pursuant to Me. R. App. 24. If no request is filed, then the matter shall be returned to the trailing docket.

The entry is: Motion in Limine granted; this order may be incorporated on the docket of the case by reference pursuant to Me. R. Civ. P. 79(a).

Dated: \_\_\_\_\_

August 6, 2014



Valerie Stanfill  
Judge, Maine District Court

DISTRICT COURT  
LOCATION: AUGUSTA  
CIVIL ACTION  
DOCKET NO. AUGDC-FM-13-21

Defendant

**DEFENDANT'S MOTION TO REPORT  
CASE TO THE LAW COURT  
PURSUANT TO M.R.App.P. 24(a) and (c)**

5. The Court granted the Plaintiff's Motion in *Limine* excluding all evidence and argument that the parties should not be considered married until December 29, 2012.

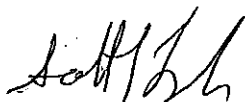
6. The Defendant maintains her objection to the motion and the ruling.
7. M.R.App.P. 24(c) authorized a report on a question of law involving an interlocutory order or ruling if the trial court is of an opinion that it ought to be determined by the Law Court before any proceedings are taken.
8. This Court noted in its ruling that the issue that was the subject of the Motion in *Limine* ought to be reviewed by the Law Court. The Court further noted it was a question of importance to these parties and many others.
9. The Court further noted that the parties agreed to report the issue to the Law Court and that "if [the Motion in *Limine*] had been resolved in Defendant's favor, it would all but dispose of the case." (Order, p. 2)
10. M.R.App.P. 24(a) also allows a report to the Law Court where the parties agree and the trial court believes the "question of law is of sufficient importance or doubt to justify the report ..."
11. Accordingly, it appears the matter is properly reportable to the Law Court pursuant to either or both M.R.App.P. 24(a) and (c).
12. An examination of case law makes it apparent that an actual question or questions must be framed to present to the Law Court. See *Liberty Ins. Underwriters v. Estate of Faulkner*, 2000 ME 149, 957 A.2d 94.
13. The Defendant proposes the following questions which may certainly be edited by the Court for report:
  - A. Whether the trial court erred in its Order on Motion in *Limine* in giving retroactive effect to the November 6, 2012, vote repealing the ban on same sex marriage and affirmative recognizing same sex marriage from other states?

B. From what date should the Court apply the marital property division statute, 19 M.R.S.A. sec. 953(1)-(9), when determining an equitable division of marital assets and debt, i.e. either December 29, 2012 or October 14, 2008?

14. Counsel requests a chambers conference to further frame the precise language of the questions to be reported to the Law Court.

WHEREFORE, the Plaintiff prays that this Honorable Court grant the motion and relief claim herein.

Dated: August 25, 2014

  
\_\_\_\_\_  
Scott J. Lynch, Esquire  
Maine Bar No. 7314  
Attorney for Defendant

#### **IMPORTANT NOTICE OF DEFAULT**

Pursuant to Rule 7 (c) of the Maine Rules of Civil Procedure, if you wish to oppose this motion, you must file a memorandum (answer) and any supporting affidavits within 21 days of service of this motion, unless another time is provided by the Maine Rules of Civil Procedure or set by the court. **Failure to file timely opposition will be deemed to be a waiver of all objections to the motion, which may be granted without further notice of hearing.**

#### **ORDER**

Defendant's Motion to Report Case to the Law Court is hereby granted/denied.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Justice, Maine Superior Court

STATE OF MAINE  
KENNEBEC, ss

DISTRICT COURT  
LOCATION: Augusta  
DOCKET NO.: AUGDC-FM-13-021

ELISABETH M. KINNEY,  
Plaintiff

vs.

TANYA J. BUSCH,  
Defendant

\*  
\*  
\*  
\*  
\*  
\*  
\*

PLAINTIFF'S RESPONSE TO  
DEFENDANT'S MOTION TO REPORT  
CASE TO LAW COURT  
PURSUANT TO M.R. App. P. 24(a) AND (c)

NOW COMES, the Plaintiff, Elisabeth M. Kinney, and hereby responds to Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c) as follows:

1. The Plaintiff admits the allegations contained in Paragraph 1 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).
2. The Plaintiff admits the allegations contained in Paragraph 2 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).
3. The Plaintiff admits the allegations contained in Paragraph 3 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).
4. The Plaintiff denies the allegations contained in Paragraph 4 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).
5. The Plaintiff admits the allegations contained in Paragraph 5 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).
6. The Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c) and, therefore, denies the same.
7. Paragraph 7 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c) purports to state a legal conclusion and, therefore, no response is required. To the extent a response is required the Plaintiff admits the allegations contained in Paragraph 7 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).
8. The Plaintiff admits the allegations contained in Paragraph 8 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).
9. The Plaintiff admits the allegations contained in Paragraph 9 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).

10. Paragraph 10 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c) purports to state a legal conclusion and, therefore, no response is required. To the extent a response is required the Plaintiff admits the allegations contained in Paragraph 10 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).

11. The Plaintiff admits the allegations contained in Paragraph 11 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).

12. Paragraph 12 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c) purports to state a legal conclusion and, therefore, no response is required. To the extent a response is required the Plaintiff admits the allegations contained in Paragraph 12 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).

13 (A). The Plaintiff denies the allegations contained in Paragraph 13 (A) of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).

13 (B). The Plaintiff denies the allegations contained in Paragraph 13 (B) of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).

14. The Plaintiff admits the allegations contained in Paragraph 14 of the Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c).

#### **MEMORANDUM OF LAW IN SUPPORT OF CASE BEING REPORTED**

By Order of the Maine District Court on August 6, 2014, on Plaintiff's Motion in Limine, the District Court ruled "[T]he court finds no basis, however, not to give effect to that repeal. Therefore, this court finds that Maine recognizes the parties' 2008 marriage, and the law of divorces in Maine applies to the marriage." *Order on Motion in Limine*, at ¶ 1, p 2 (Aug. 6, 2014). The Defendant argued and continues to argue that 19-A M.R.S. §§ 650-A, 650-B which affirmatively now recognizes same-sex marriages in this state may not be applied retroactively despite repealing the prohibition on recognizing same-sex marriages from other states. (Laws 2011, I.B.3, § 5, adopted at election November 6, 2012; Laws 2011, I.B.3. §§ 1-2, adopted at election November 6, 2012.) See generally *Order on Motion in Limine* and *Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c)*. Given the Defendant's arguments, the fact that this issue is one of first impression, is of importance to the parties as well as the many others similarly situated, is one capable of frequent repetition and, that a decision by the Law Court in Defendant's favor will all but dispose of this case, the Maine

District Court and the parties are in agreement that this issue should be reported to the Law Court pursuant to M.R. App. P. 24 (a) and (c).

Although the Maine District Court and the parties believe that the question is being appropriately reported to the Law Court prior to final judgment, the Law Court has been clear in deciding what issues it will review prior to final judgment:

Although the trial court makes a preliminary determination of the propriety of its report, we retain 'the power to make our own independent determination whether in all circumstances of a given case our decision on a report would be consistent with our basic function as an appellate court and we would not be cast in the role of an advisory board.' *Morris v. Sloan*, 698 A.2d 1038, 1041 (Me. 1997). Citing *Sirois v. Winslow*, 585 A.2d 183, 184-185 (Me. 1991).

In the case at bar, the Law Court would not be cast in the role of an advisory board. The Maine District Court has already made its ruling on the Plaintiff's Motion in Limine and is prepared to move forward with trial. See in general *Order on Motion in Limine* (Aug. 6, 2014). Therefore, the Maine District Court is not seeking guidance on how to make its decision. However, in making its decision, the Maine District Court properly noted that this question is one of importance to these parties and the many others that may follow. *Id.* p. 2. Further, this case would be all but disposed of if the Law Court were to rule in the Defendant's favor. In the interest of judicial economy, both in expense and in the court's valuable time, the Maine District Court and the parties agree that this case, being one of first impression, is of sufficient importance that it should be addressed prior to an expensive trial that is expected to last at least two days. *Id.*

"A report pursuant to Rule 72(c) is an exception to the final judgment rule and should be used sparingly." *Morris v. Sloan*, 698 A.2d 1038, 1040 (Me. 1997) citing *Luhr v. Bickford*, 661 A.2d 1141, 1142 (Me. 1995). Questions of law reported must be of sufficient importance and doubt to outweigh policy against piecemeal litigation." *Swanson v. The Roman Catholic Bishop of Portland, et. al.* 692 A.2d 441, 443 (Me. 1997) and *York Register of Probate v. York County Probate Court*, 847 A.2d 395, 398 (Me. 395). "The text of M.R.Civ.P. Rule 72(c) was abrogated effective December 31, 2001. Appeals filed after January 1, 2002 are governed by M.R. App. P. 24..." *Despres v. Moyer*, 827 A.2d 61, 65 (Me. 2003). "Rule 24 relating to report of cases, tracks very closely to M.R. Civ. P. 72." Associate Justice Donald G. Alexander, *Maine Appellate*



*Practice*, at p. 189 (4<sup>th</sup> Edition 2013). When a question is reported to the Law Court pursuant to M.R. App. P. 24(a) the Law Court must determine whether or not it is acting in its basic function as an appellate court or in the role of an advisory board. *Bank of America, N.A. v. Cloutier*, 61 A.3d 1242, 1244 (Me. 2013) citing *Baker v. Farrand*, 2011 ME 91, ¶7, 26 A.3d 806. In examining its role, the Law Court considers whether:

- (1) The question reported is of sufficient importance and doubt to outweigh the policy against piecemeal litigation;
  - (2) The question might not have to be decided because of other possible dispositions; and
  - (3) A decision on the issue would, in at least one alternative, dispose of the action. *Id.*
- See also Associate Justice Donald G. Alexander, *Maine Appellate Practice* at p. 190 (4<sup>th</sup> Edition 2013).

The question reported to the law court is of sufficient importance and doubt to outweigh the policy against piecemeal litigation. The State of Maine now affirmatively recognizes same-sex marriages: 19-A M.R.S. §§ 650-A and 650-B. When the State of Maine recognized same-sex marriages, it also repealed the prohibition on recognizing same-sex marriages from other states. *Laws 2011, I.B. 3, §5*, adopted at election November 6, 2012. Based upon that repeal the Maine District Court in this matter has ruled "...this court must recognize the 2008 Massachusetts marriage as valid under the statute." *Order on Motion in Limine*, at p 2 (Aug. 6, 2014). This issue has never been addressed by the Law Court. As a result, the question being reported is a case of first impression that is capable of repetition. In at least two separate occasions the Law Court found that when a question is considered to be a case of first impression and is capable of repetition that it should accept the reporting. See *Depres v. Moyer*, 827 A.2d 61, 65 (Me. 2003) and *York Register of Probate v. York County Probate Court*, 847 A.2d 395, 398 (Me. 2004). The repeal of the prohibition on recognizing same-sex marriages from other states, the silence in the statute as to its retroactivity, and the property rights of those affected based upon this change in the law regarding recognition of out of state same-sex marriages makes this question ripe for reporting as it is of sufficient importance and doubt to outweigh the policy against piecemeal litigation.

Further, the reported question in this matter is not able to be decided by other possible dispositions. "We also consider whether 'a question raised on report might not have reached the Law Court in the normal course of the appellate process' – that is, whether the issue might not have to be decided at all because of other possible dispositions." *Morris v. Sloan*, 698 A.2d

1038, 1041, (Me. 1997). There simply isn't any other possible disposition. In a divorce action, a court must make a preliminary fact finding determination as to the parties' legal date of marriage prior to being able to equitably divide the marital estate. The date of marriage and the length of the marriage are critical factors in determining what property/debt is marital or non-marital and whether or not a spouse is entitled to receive spousal support. Because a court is unable to determine the respective rights of the parties in a divorce action without first determining the legal date of their marriage, there is absolutely no other possible disposition that would allow the court to resolve a divorce case without having to make a preliminary fact finding determination regarding the legal date of marriage. Therefore, the resolution of this question must be decided as it is a necessary preliminary fact finding requirement which is unable to be decided through other possible dispositions.

If the Law Court were to accept the reporting, a decision on this reported question would, in at least one alternative, dispose of the action. The Maine District Court in its Order on Plaintiff's Motion in Limine dated August 6, 2014, specifically states, "[I]f it had been resolved in Defendant's favor, it would all but dispose of the case." *Order in Limine* at ¶ 2, p 2 (Aug. 6, 2014). If the Law Court ruled as requested by the Defendant, the ruling would resolve all issues pertaining to the division of tangible and intangible, marital and non-marital property as there would no longer be any property to be equitably divided within the divorce statute. The only issue that would remain would be issuing an order divorcing the parties on the grounds of irreconcilable differences. Since the parties do not dispute that irreconcilable marital differences exist between them, there would be no need for any further litigation in this divorce action.

Finally, according to Associate Justice Donald G. Alexander, *Maine Appellate Practice* (4<sup>th</sup> Edition 2013) "...these above referenced prerequisites should be stated in the written order of the trial court reporting the legal questions to the Law Court." p. 190. The Court in its Order did include all of the prerequisites as required. See *Order on Motion in Limine* (Aug. 6, 2014).

This matter is also being reported to the Law court pursuant to M.R. App. P. 24 (c). The necessary criteria for the trial court to report a case to the Law Court pursuant to M.R.App. P. 24(c) is as follows:

If the trial court is of the opinion that a question of law involved in an interlocutory order or ruling made by it ought to be determined by the Law Court before any further proceedings are taken, it may on motion of the aggrieved party report the case to the Law Court for that purpose and stay all further proceedings except such as

are necessary to preserve the rights of the parties without making any decisions therein. *Despres v. Moyer*, 827 A.2d 61, 64 (Me. 2003) and see also Associate Justice Donald G. Alexander, *Maine Appellate Practice* at p. 191 (4<sup>th</sup> Edition 2013).

Further, this rule authorizes a report of interlocutory rulings by the trial court with or without an agreement of the parties. M.R. App. P. 24(c).

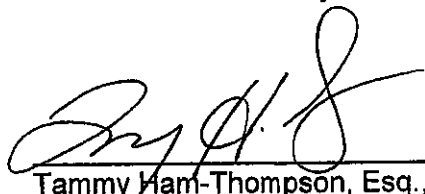
Rule 24 (c) does not explicitly require a determination that (i) the issue involved is of sufficient importance or doubt to justify the report, or (ii) the report will in at least one alternative, finally dispose of the action. However, precedent establishes that both prerequisites govern Law Court consideration of Rule 24 (c) reports. Associate Justice Donald G. Alexander, *Maine Appellate Practice* at p. 191 (4<sup>th</sup> Edition 2013).

As can be seen from the Order on Motion in Limine (Aug. 6, 2014), and the arguments above, the question being reported has met all of the requirements of M.R. App. P. 24 (a) and 24(c). As a result, the Plaintiff respectfully requests this Honorable Court report the following question to the Law Court:

*Is*  
May property acquired by a same-sex couple married in the State of Massachusetts on October 14, 2008, be treated as marital property for the purposes of equitable division of property in a divorce action filed on January 18, 2013?

WHEREFORE, the Plaintiff prays that this Honorable Court grant in part Defendant's Motion to Report Case to the Law Court Pursuant to M.R.App.P. 24(a) and (c) for the sole purpose of reporting the case to the Law Court; Plaintiff further requests that Defendant's questions not be reported to the Law Court and instead report Plaintiff's question to the Law Court for final determination of the issue in this case; award Plaintiff her costs for defending this action, and for such other and further relief as this Court deems just and proper.

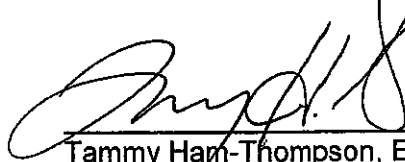
Dated: September 19, 2014

  
\_\_\_\_\_  
Tammy Ham-Thompson, Esq., Bar No. 9432  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Tammy Ham-Thompson, Esq., attorney for the Plaintiff, Elisabeth M. Kinney, in the above action, do hereby certify that I have made due service of the within Plaintiff's Response to Defendant's Motion to Report Case to the Law Court Pursuant to M.R. App. P. 24(a) and (c) to Scott J. Lynch, Esq., attorney for Defendant, Tanya J. Busch, at P.O. Box 116, Lewiston, ME 04243-0116, by regular course of the United States Mail, postage prepaid.

Dated: September 19, 2014

  
\_\_\_\_\_  
Tammy Ham-Thompson, Esq., Bar No.9432  
Attorney for Plaintiff



# 125th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2012

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Legislative Document

No. 1860

I.B. 3

House of Representatives, March 12, 2012

### **An Act To Allow Marriage Licenses for Same-sex Couples and Protect Religious Freedom**

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Transmitted to the Clerk of the 125th Maine Legislature by the Secretary of State on March 8, 2012 and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 19-A MRSA §650-A is enacted to read:

3 **§650-A. Codification of marriage**

4 Marriage is the legally recognized union of 2 people. Gender-specific terms relating  
5 to the marital relationship or familial relationships must be construed to be gender-neutral  
6 for all purposes throughout the law, whether in the context of statute, administrative or  
7 court rule, policy, common law or any other source of civil law.

8 Sec. 2. 19-A MRSA §650-B is enacted to read:

9 **§650-B. Recognition of marriage licensed and certified in another jurisdiction**

10 A marriage of a same-sex couple that is validly licensed and certified in another  
11 jurisdiction is recognized for all purposes under the laws of this State.

12 Sec. 3. 19-A MRSA §651, sub-§2, as amended by PL 1997, c. 537, §12 and  
13 affected by §62, is further amended to read:

14 **2. Application.** The parties wishing to record notice of their intentions of marriage  
15 shall submit an application for recording notice of their intentions of marriage. The  
16 application may be issued to any 2 persons otherwise qualified under this chapter  
17 regardless of the sex of each person. The application must include a signed certification  
18 that the information recorded on the application is correct and that the applicant is free to  
19 marry according to the laws of this State. The applicant's signature must be  
20 acknowledged before an official authorized to take oaths. Applications recording notice  
21 of intentions to marry must be open for public inspection in the office of the clerk. When  
22 the application is submitted, the applicant shall provide the clerk with the social security  
23 numbers of the parties. The application must include a statement that the social security  
24 numbers of the parties have been provided to the clerk. The clerk shall record the social  
25 security numbers provided by each applicant. The record of the social security numbers  
26 is confidential and is not open for public inspection.

27 Sec. 4. 19-A MRSA §655, sub-§3 is enacted to read:

28 **3. Religious exemption.** This chapter does not require any member of the clergy to  
29 perform or any church, religious denomination or other religious institution to host any  
30 marriage in violation of the religious beliefs of that member of the clergy, church,  
31 religious denomination or other religious institution. The refusal to perform or host a  
32 marriage under this subsection cannot be the basis for a lawsuit or liability and does not  
33 affect the tax-exempt status of the church, religious denomination or other religious  
34 institution.

35 Sec. 5. 19-A MRSA §701, as amended by PL 2007, c. 695, Pt. C, §4, is further  
36 amended to read:

1       **§701. Prohibited marriages; exceptions**

2           **1. Marriage out of State to evade law.** When residents of this State, with intent to  
3 evade this section and to return and reside here, go into another state or country to have  
4 their marriage solemnized there and afterwards return and reside here, that marriage is  
5 void in this State.

6           **1-A. Certain marriages performed in another state not recognized in this State.**  
7 Any marriage performed in another state that would violate any provisions of subsections  
8 2 to § 4 if performed in this State is not recognized in this State and is considered void if  
9 the parties take up residence in this State.

10          **2. Prohibitions based on degrees of consanguinity; exceptions.** This subsection  
11 governs marriage between relatives.

12           A. A man may not marry his mother, grandmother, daughter, granddaughter, sister,  
13 brother's daughter, sister's daughter, father's sister, mother's sister, the daughter of his  
14 father's brother or sister or the daughter of his mother's brother or sister. A woman  
15 may not marry her father, grandfather, son, grandson, brother, brother's son, sister's  
16 son, father's brother, mother's brother, the son of her father's brother or sister or the  
17 son of her mother's brother or sister. A person may not marry that person's parent,  
18 grandparent, child, grandchild, sibling, nephew, niece, aunt or uncle.

19           B. Notwithstanding paragraph A, a man may marry the daughter of his father's  
20 brother or sister or the daughter of his mother's brother or sister, and a woman may  
21 marry the son of her father's brother or sister or the son of her mother's brother or  
22 sister as long as, pursuant to sections 651 and 652, the man or woman provides the  
23 physician's certificate of genetic counseling.

24          **3. Persons under disability.** A person who is impaired by reason of mental illness  
25 or mental retardation to the extent that that person lacks sufficient understanding or  
26 capacity to make, communicate or implement responsible decisions concerning that  
27 person's property or person is not capable of contracting marriage. For the purposes of  
28 this section:

29           A. "Mental illness" means a psychiatric or other disease that substantially impairs a  
30 person's mental health; and

31           B. "Mental retardation" means a condition of significantly subaverage intellectual  
32 functioning resulting in or associated with concurrent impairments in adaptive  
33 behavior and manifested during the developmental period.

34          **4. Polygamy.** A marriage contracted while either party has a living wife or husband  
35 from whom the party is not divorced is void.

36          ~~**5. Same-sex marriage prohibited.** Persons of the same sex may not contract~~  
37 ~~marriage.~~

## SUMMARY

This initiated bill repeals the provision that limits marriage to one man and one woman and replaces it with the authorization for marriage between any 2 persons that meet the other requirements of Maine law. It also specifies that a marriage between 2 persons of the same sex in another state that is valid in that state is valid and must be recognized in this State. It also provides that a member of the clergy is not required to perform and a church, religious denomination or other religious institution is not required to host a marriage in violation of the religious beliefs of that member of the clergy, church, religious denomination or other religious institution and that any such refusal cannot be the basis for a lawsuit or liability and does not affect the tax-exempt status of the church, religious denomination or other religious institution.



STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND TWELVE

I.B. 3 - L.D. 1860

An Act To Allow Marriage Licenses for Same-sex Couples and Protect  
Religious Freedom

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 19-A MRSA §650-A is enacted to read:

**§650-A. Codification of marriage**

Marriage is the legally recognized union of 2 people. Gender-specific terms relating to the marital relationship or familial relationships must be construed to be gender-neutral for all purposes throughout the law, whether in the context of statute, administrative or court rule, policy, common law or any other source of civil law.

Sec. 2. 19-A MRSA §650-B is enacted to read:

**§650-B. Recognition of marriage licensed and certified in another jurisdiction**

A marriage of a same-sex couple that is validly licensed and certified in another jurisdiction is recognized for all purposes under the laws of this State.

Sec. 3. 19-A MRSA §651, sub-§2, as amended by PL 1997, c. 537, §12 and affected by §62, is further amended to read:

2. **Application.** The parties wishing to record notice of their intentions of marriage shall submit an application for recording notice of their intentions of marriage. The application may be issued to any 2 persons otherwise qualified under this chapter regardless of the sex of each person. The application must include a signed certification that the information recorded on the application is correct and that the applicant is free to marry according to the laws of this State. The applicant's signature must be acknowledged before an official authorized to take oaths. Applications recording notice of intentions to marry must be open for public inspection in the office of the clerk. When the application is submitted, the applicant shall provide the clerk with the social security numbers of the parties. The application must include a statement that the social security numbers of the parties have been provided to the clerk. The clerk shall record the social

security numbers provided by each applicant. The record of the social security numbers is confidential and is not open for public inspection.

**Sec. 4. 19-A MRSA §655, sub-§3 is enacted to read:**

**3. Religious exemption.** This chapter does not require any member of the clergy to perform or any church, religious denomination or other religious institution to host any marriage in violation of the religious beliefs of that member of the clergy, church, religious denomination or other religious institution. The refusal to perform or host a marriage under this subsection cannot be the basis for a lawsuit or liability and does not affect the tax-exempt status of the church, religious denomination or other religious institution.

**Sec. 5. 19-A MRSA §701, as amended by PL 2007, c. 695, Pt. C, §4, is further amended to read:**

**§701. Prohibited marriages; exceptions**

**1. Marriage out of State to evade law.** When residents of this State, with intent to evade this section and to return and reside here, go into another state or country to have their marriage solemnized there and afterwards return and reside here, that marriage is void in this State.

**1-A. Certain marriages performed in another state not recognized in this State.** Any marriage performed in another state that would violate any provisions of subsections 2 to 5 if performed in this State is not recognized in this State and is considered void if the parties take up residence in this State.

**2. Prohibitions based on degrees of consanguinity; exceptions.** This subsection governs marriage between relatives.

A. A man may not marry his mother, grandmother, daughter, granddaughter, sister, brother's daughter, sister's daughter, father's sister, mother's sister, the daughter of his father's brother or sister or the daughter of his mother's brother or sister. A woman may not marry her father, grandfather, son, grandson, brother, brother's son, sister's son, father's brother, mother's brother, the son of her father's brother or sister or the son of her mother's brother or sister. A person may not marry that person's parent, grandparent, child, grandchild, sibling, nephew, niece, aunt or uncle.

B. Notwithstanding paragraph A, a man may marry the daughter of his father's brother or sister or the daughter of his mother's brother or sister, and a woman may marry the son of her father's brother or sister or the son of her mother's brother or sister as long as, pursuant to sections 651 and 652, the man or woman provides the physician's certificate of genetic counseling.

**3. Persons under disability.** A person who is impaired by reason of mental illness or mental retardation to the extent that that person lacks sufficient understanding or capacity to make, communicate or implement responsible decisions concerning that person's property or person is not capable of contracting marriage. For the purposes of this section:

A. "Mental illness" means a psychiatric or other disease that substantially impairs a person's mental health; and

B. "Mental retardation" means a condition of significantly subaverage intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period.

**4. Polygamy.** A marriage contracted while either party has a living wife or husband from whom the party is not divorced is void.

~~**5. Same-sex marriage prohibited.** Persons of the same sex may not contract marriage.~~

AGREEMENT REGARDING JOINTLY OWNED REAL ESTATE

This agreement is entered into this 15th day of December, 2007, by and between TANYA J. BUSCH, hereinafter "TANYA", and ELISABETH M. KINNEY, hereinafter "LISA", both of 40 Greenville Street in Hallowell, Kennebec County, State of Maine.

The purpose of this agreement is to memorialize our mutual agreements with respect to our financial obligations to each other related the real estate at 40 Greenville Street, in Hallowell, Maine that we recently purchased.

In consideration of our mutual promises described herein, we, TANYA and LISA, hereby declare and agree as follows:

**1. RE CONTRIBUTIONS TO MORTGAGE PAYMENTS.**

A. We acknowledge that the deed for the property at 40 Greenville Street in Hallowell is in both our names, as joint tenants, but that the mortgage on this property is solely in TANYA's name. We further acknowledge that having TANYA alone on the mortgage at this time is, in part, because LISA's solely owned real estate at 23 Greenville Street in Hallowell still has not sold.

B. Notwithstanding that Lisa's name is not on the mortgage at this time, we agree that we intend to be equally and jointly responsible for the purchase and maintenance of this property at 40 Greenville Street. In the event that this equal responsibility, for whatever reason, is not reflected in monthly expenditures made by us, we wish by this agreement to assure that it will be reflected in the allocation and distribution of net profits from this property at the time of sale or transfer of this property.

C. Also, LISA acknowledges and agrees generally that, when her other property is either sold or rented, she will, and is expected to by TANYA, contribute half the cost thereafter of the monthly mortgage for 40 Greenville Street. LISA agrees to make a good faith effort to either sell her other property or rent it a fair market rental amount so that she will be in position to contribute to the mortgage for the Greenville Street property.

**2. RE ALLOCATION OF PROCEEDS.**

A. Regardless of when and how much LISA contributes to the mortgage payments for 40 Greenville Street, TANYA and LISA agree to the following allocation of proceeds from sale or transfer of the property at 40 Greenville Street in Hallowell. This allocation of proceeds is intended to apply in the event of a joint sale by us to a third party, a buyout by one of us of the other's interest, or to any other transfer of ownership from either or both of us to another.

B. We agree that "net proceeds," as that phrase is defined herein below, shall be divided equally between us. We agree that "net proceeds" shall be defined as the amount of proceeds remaining after:

10/15/11  
SF 12/15/07

10/15/11  
SF 12/15/07

10/15/11  
SF 12/15/07

- (1) Payoff of the mortgage balance;
- (2) payoff of any home equity loan;
- (3) reimbursement to the contributing owner for "owner's contributions" (as defined below) made by either of us; and
- (4) payment of costs of future sale or transfer, including realtor's fee, if any, and closing costs.

C. We agree that the phrase "owner's contributions" shall be defined as the following expenses of either party, as a contributing owner, related to our property at 40 Greenville Street property:

(1) stipulated amount of \$280,000 contributed by Tanya Busch to date for the purposes: costs of inspection, downpayment, closing costs at time of our purchase, and improvements to date;

(2) contributions after this date by either party for improvements and repairs in excess of one hundred (\$100.00) to the property, provided receipts are kept or the parties have stipulated in writing signed by the parties to a contribution by one or both of them;

(3) payments on the mortgage in excess of our respective share of 1/2 the regularly scheduled monthly mortgage payment or any additional payments made by either of us on the principal; and

(4) expenses paid for future listing and sale of the property.

D. We agree to keep records documenting our respective owner's contributions, as defined above, to this property and will jointly review such records, at least annually, by ourselves and with each other to assure that we remain in accord about the contributions made by each of us to this property.

**3. DISPUTE RESOLUTION.** We further agree that to promptly raise and discuss any concerns either of us has about this property and this agreement. In the event we have any dispute that we can not resolve between ourselves about the interpretation or application of this agreement, we agree to submit such dispute to a mutually acceptable mediator prior to seeking relief through a court.

4. We acknowledge that this agreement was drafted at our request by attorney Susan Farnsworth. By signing below, each of us indicates we have read this agreement before signing and we each have had reasonable opportunity to consult individually with an attorney of our own, other than Susan Farnsworth, prior to signing.

IN WITNESS WHEREOF, the parties have signed this Agreement on the day and year set forth next to their signature.

  
TANYA J. BUSCH  
Date 12/15/07

  
ELISABETH M. KINNEY  
Date 12/15/07

Susan Farnsworth Bar #548 12/15/07  
Witness to both (printed name):

TRANSFER  
TAX  
PAID

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that We, Dan E. Duniho and Kathryn Phillips-Duniho, of Hallowell, County of Kennebec, State of Maine for consideration paid, *Kinney* GRANT(S) to Tanya J. Busch and Elisabeth M. ~~Kinney~~, as joint tenants, whose mailing address is 112 Poland Corner Road, Poland, ME 04274 with WARRANTY COVENANTS, the land together with the buildings thereon, if any, situated in Hallowell, County of Kennebec and State of Maine, described as follows:

See Schedule A attached hereto and incorporated herein by reference.

WITNESS our hands and seals this 6<sup>th</sup> day of September, 2007.

Signed, Sealed and Delivered  
in the presence of:

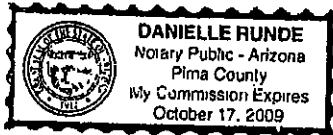
\_\_\_\_\_  
Dan E. Duniho

\_\_\_\_\_  
Kathryn Phillips-Duniho

STATE OF ARIZONA  
COUNTY OF Pima

September 6, 2007

Then personally appeared the above named Dan E. Duniho and Kathryn Phillips-Duniho and acknowledged the foregoing instrument to be their free act and deed.



Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law  
Print Name: Danielle Runde

McCullum & McCullum  
Academy Title  
8 Crosby Street, Augusta, Maine 04330

2) Title Use

## SCHEDULE A

Certain lots or parcels of land, with any buildings thereon, situated in Hallowell, County of Kennebec and State of Maine, on the east side of Greenville Street, bounded and described as follows, to wit:

First Parcel: Beginning on said Greenville Street at the second post from a cherry tree in the fence of Greenville Street about twelve (12) rods north of land now or formerly of Charles Richardson; thence southerly on said Street to land now or formerly of said Richardson; thence easterly on the north line of said Richardson's land about twenty (20) rods to the corner of said Richardson's land and land now or formerly of Charles Huff; thence westerly from said corner two (2) rods to a point twenty-two (22) feet from land now or formerly of John Chadbourne; thence westerly in a straight line to the point of beginning.

Second Parcel: Lot Number One (1) as delineated on a certain plan of lots by C.A. Milliken, said plan begin made by R. B. Capen, C.E. in 1889 and recorded in Kennebec Registry of Deeds in Plan Book 1, Page 34.

Also included in this deed is all our right, title and interest in and to a certain passageway leading from the premises above described to the main highway leading from Augusta to Gardiner.

Subject to a deed from Verne W. Grant to Frank L. and Mary Rich dated December 21, 1973, recorded in said Registry, Book 1698, Page 69.

Also subject to an Easement Deed from Marguerite Grant to William B. Goldberg dated December 9, 1999, recorded in said Registry, Book 6116, Page 217.

Meaning and intending to hereby convey the same premises as conveyed to Dan E. Duniho and Kathryn Phillips-Duniho by Warranty Deed of Marguerite Grant dated June 3, 2003 and recorded in the Kennebec County Registry of Deeds, Book 7439, Page 337.

2980-07 Duniho to Busch/Kerney WD

Received Kennebec SS.  
09/11/2007 1:44PM  
# Pages 2 Attest:  
BEVERLY BUSTIN-HATHEWAY  
REGISTER OF DEEDS

TRANSFER  
TAX  
PAID

Doc # 2012023755  
Book 11157 Page 0122

Received Kennebec SS.  
09/10/2012 10:45AM  
# Pages 1 Attest:  
BEVERLY BUSTIN-HATHEWAY  
REGISTER OF DEEDS

## Warranty Deed

KNOW ALL PERSONS BY THESE PRESENTS, that I, Elisabeth M. Kinney, presently of Hallowell, Maine, for consideration paid, grant to Tanya J. Busch, whose mailing address is 40 Greenville Street, Hallowell, Maine, with Quitclaim Covenants, all my right, title and interest in the following described premises situated at 40 Greenville Street, Town of Hallowell, County of Kennebec and State of Maine:

Certain lots or parcels of land, with any buildings thereon, situated in Hallowell, County of Kennebec and State of Maine, on the east side of Greenville Street, bounded and described as follows, to wit:

First Parcel: Beginning on said Greenville Street at the second post from a cherry tree in the fence of Greenville Street about twelve (12) rods north of land now or formerly of said Richardson; thence easterly on the north line of said Richardson's land about twenty (20) rods to the corner of said Richardson's land and land now or formerly of Charles Huff; thence westerly from said corner two (2) rods to a point twenty-two (22) feet from land now or formerly of John Chadbourne; thence westerly in a straight line to the point of the beginning.

Second Parcel: Lot Number One (1) as delineated on a certain plan of lots by C.A. Milliken, said plan begin made by R.B. Capen, C.E. in 1889 and recorded in the Kennebec Registry of Deeds in Plan Book 1, page 34.

Also included to the deed is all our right, title, and interest in and to a certain passageway leading from the premises above described to the main highway leading from Augusta to Gardiner.

Subject to a deed from Verne W. Grant to Frank L. and Mary Rich dated December 21, 1973 recorded in said Registry, Book 1698, Page 69.

Also subject to an Easement Deed from Marguerite Grant to William B. Goldberg dated December 9, 1999, recorded in said Registry Book 6116, Page 217.

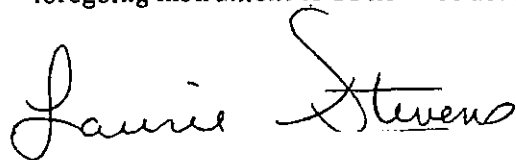
Being the same premises conveyed to the Grantors herein by Dan E. Duniho and Kathryn Phillips-Duniho dated September 6, 2007 and recorded in the Kennebec Registry of Deeds in Book 9496 Page 0050-0051 as well as Deed of Marguerite Grant dated June 3, 2003 and recorded in the Kennebec County Registry of Deeds, Book 7439, Page 337.

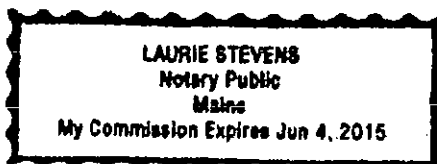
STATE OF MAINE  
COUNTY OF KENNEBEC

  
Elisabeth M. Kinney

Sept  
August 1, 2012

Then personally appeared the above name Elisabeth M. Kinney and acknowledged the foregoing instrument to be her free act and deed, before me.





SEAL



TRANSFER  
TAX  
PAID

WARRANTY DEED  
Corporate Grantor

Know all Men by these Presents,

That Purgatory Properties, LLC, a limited liability company organized and existing under the laws of the State of Maine, and having a mailing address of 126 Western Avenue #147, Augusta, Maine 04330, for consideration paid, grant to:

Tanya Busch

of Hallowell, County of Kennebec and State of Maine, whose mailing address is: 40 Greenville Street, Hallowell, Maine 04347, with warranty covenants, the land in Hallowell, County of Kennebec, and State of Maine, described as follows:

A certain lot or parcel of land, together with any buildings and improvements thereon, situated in the City of Hallowell, County of Kennebec, and State of Maine as set forth in Exhibit A attached hereto and made a part hereof.

In Witness Whereof, the said Purgatory Properties, LLC, has caused this instrument to be executed by Leo C. Dymkoski, its Member thereunto duly authorized, and Susan A. Thomas, its Member thereunto duly authorized this 20<sup>th</sup> day of the month of November, 2007.

Signed, Sealed and Delivered  
in presence of

Leo C. Dymkoski

Susan A. Thomas

PURGATORY PROPERTIES, LLC

By: Leo C. Dymkoski

Its: Member

By: Susan A. Thomas

Its: Member

Province of Ontario, Country of Canada ss.

November 20<sup>th</sup>, 2007

Then personally appeared the above named Leo C. Dymkoski and Susan A. Thomas, Members of said Purgatory Properties, LLC and acknowledged the foregoing instrument to be their free act and deed in their said capacity, and the free act and deed of said Purgatory Properties, LLC.

Before me,

Attorney at Law/Notary Public

Printed Name: Coulson Mills

416-465-0380

16547R Linc.

Hopkinson + Abbotson 511 Congress St. Suite 801, Hld 04101

**EXHIBIT A**  
**41 Winthrop Street, Hallowell, Maine**

A certain lot or parcel of land with the buildings thereon, situated in the City of Hallowell, County of Kennebec and State of Maine, bounded and described as follows, to wit:

Bounded southerly by Winthrop Street; westerly by Pleasant Street; northerly by land now or formerly of Mrs. Charles H. Paine; and easterly by land formerly owned by Josiah Robbins.

Also another certain lot situated in said Hallowell, bounded as follows:

Beginning at the west side of the stable formerly of C.F. Clement at a point in the line between land formerly of said Clement and land formerly owned by A.M. Spear; thence running northerly and easterly by said Clement's stable to (formerly) Clement's land.

Also conveying all the right, title and interest of Eric Brown and Pamela Brown, f/k/a Pamela St. Peter, acquired pursuant to a certain boundary line agreement recorded in the Kennebec County Registry of Deeds, Book 2727, Page 344.

Being the same premises conveyed to the Grantor herein by warranty deed from Kris L. Lindholm dated June 21, 2002 and recorded in the Kennebec County Registry of Deeds in Book 6953, Page 285.

Received Kennebec SS.  
12/18/2007 1:41PM  
# Pages 2 Attest:  
BEVERLY BUSTIN-HATHEWAY  
REGISTER OF DEEDS

Ref. 100.0. N

STATE OF MAINE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DECLARATION OF DOMESTIC PARTNERSHIP

STATE FILE NO.

**"DOMESTIC PARTNER means one of two unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare."**

**DOMESTIC PARTNER A:**

1a. FIRST NAME Tanya	1b. MIDDLE NAME J	1c. LAST NAME Busch	1d. INCLUDE ANY FORMER NAMES None
2. STREET ADDRESS: 23 Greenville St		3. CITY Hallowell	4. STATE ME
		5. ZIP CODE 04347	
6. COUNTY USA	7. DATE OF BIRTH 5/8/1963	8. PLACE OF BIRTH (STATE OR FOREIGN COUNTRY) Lewiston, ME	9. EVER REGISTERED AS DOMESTIC PARTNER IN MAINE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO DATE OF TERMINATION

**DOMESTIC PARTNER B**

10a. FIRST NAME Elisabeth	10b. MIDDLE NAME M	10c. LAST NAME Kinney	10d. INCLUDE ANY FORMER NAMES None
11. STREET ADDRESS 23 Greenville St		12. CITY Hallowell	13. STATE ME
		14. ZIP CODE 04347	
15. COUNTY Kennebec	16. DATE OF BIRTH 10/22/1966	17. PLACE OF BIRTH (STATE OR FOREIGN COUNTRY) Washington D.C.	18. EVER REGISTERED AS DOMESTIC PARTNER IN MAINE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO DATE OF TERMINATION

By signing this declaration, we hereby certify that:

- The partners named above are not prohibited under Title 19-A M.R.S.A. §701 (2), (3), or (4) from marriage.
- That this declaration does not create a marriage between the partners herein mentioned.
- That the partners named above have been legally domiciled together in this State for at least 12 months preceding the filing of this document.
- That neither partner named above is married or in a registered domestic partnership with another person; and
- That each partner named above is the sole domestic partner of the other and expects to remain so.

**Registration of this declaration may affect property and inheritance rights. It is not a substitute for a will, a deed or a partnership agreement and any rights conferred by registration may be completely superceded by a will, a deed or other instruments that may be executed by either partner. REGISTRATION OF DOMESTIC PARTNERSHIP IS NOT EFFECTIVE UNTIL THIS DECLARATION IS SIGNED AND DATED BY REGISTRAR AT THE OFFICE OF VITAL RECORDS. A \$35.00 REGISTRATION FEE MUST ACCOMPANY THE DECLARATION. CHECKS SHOULD BE MADE PAYABLE TO: 'TREASURER, STATE OF MAINE'**

**SEND COMPLETED DECLARATION TO:**

OFFICE OF VITAL RECORDS  
#11 STATE HOUSE STATION  
AUGUSTA, ME 04333-0011

I hereby certify under oath, first being duly sworn, that I have read this declaration in its entirety, I understand the terms or conditions outlined above, and that all the statements herein are true.

SIGNATURE OF PARTNER 	DATE SIGNED 4/25/07	SIGNATURE OF PARTNER 	DATE SIGNED 5/3/07
<input checked="" type="checkbox"/> I hereby certify that I have reviewed the termination instructions on the reverse side of this declaration.		<input checked="" type="checkbox"/> I hereby certify that I have reviewed the termination instructions on the reverse side of this declaration.	
SIGNATURE OF NOTARY PUBLIC 		SIGNATURE OF NOTARY PUBLIC 	
DATE COMMISSION EXPIRES Mona M. Pelletier Notary Public State of Maine My Comm Exp. 9-02-2010		DATE COMMISSION EXPIRES Mona M. Pelletier Notary Public State of Maine My Comm Exp. 9-02-2010	
PRINTED NAME OF NOTARY PUBLIC Mona M. Pelletier		PRINTED NAME OF NOTARY PUBLIC Mona M. Pelletier	

**SIGNATURE AND DATE BELOW FOR OFFICE OF VITAL RECORDS USE ONLY.**

SIGNATURE OF REGISTRAR

DATE FILED



Office of the Town Clerk  
Town of Provincetown

260 Commercial Street  
Provincetown, MA 02657  
TEL: 508 487-7013  
FAX: 508 487-9560

The Commonwealth of Massachusetts  
DEPARTMENT OF PUBLIC HEALTH  
REGISTRY OF VITAL RECORDS AND STATISTICS  
**CERTIFICATE OF MARRIAGE**

(State file number)  
Provincetown  
(City or town making return)  
Registered No. 358  
Intention No. 2008-386

1 Place of Marriage: Provincetown  
City or Town (Do not enter name of village or section of city or town)  
2 Date of Marriage: October 14, 2008  
(Month) (Day) (Year)

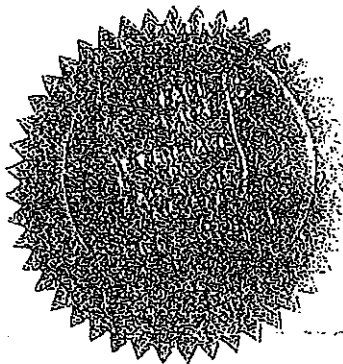
3 FULL NAME PARTY A Tanva J. Busch	11 FULL NAME PARTY B Elizabeth Mary Kinney
3A SURNAME AFTER MARRIAGE Busch	11A SURNAME AFTER MARRIAGE Kinney
4 DATE OF BIRTH May 8, 1963	12 DATE OF BIRTH October 22, 1966
5 OCCUPATION Realtor	13 OCCUPATION Behavior Analyst
6 RESIDENCE NO. & ST. 40 Greenville Street CITY/ TOWN Hallowell ST. ME CODE 04347	14 RESIDENCE NO. & ST. 40 Greenville Street CITY/ TOWN Hallowell ST. ME CODE 04347
7 NUMBER OF MARRIAGE (1st, 2nd, 3rd, etc.) 1st	15 NUMBER OF MARRIAGE (1st, 2nd, 3rd, etc.) 1st
7A WIDOWED OR DIVORCED	15A WIDOWED OR DIVORCED
8 BIRTHPLACE Lewiston Maine (City or town) (State or country)	16 BIRTHPLACE Washington D.C. (City or town) (State or country)
9 NAME OF MOTHER/PARENT Sandra J. Busch/Tripp	17 NAME OF MOTHER/PARENT Mary Jo Kinney/McAuliffe
10 NAME OF FATHER/PARENT Harry J. Busch	18 NAME OF FATHER/PARENT James Edward Kinney

19 THE INTENTION OF MARRIAGE by the above-mentioned persons was duly entered by me in the records of the Community of Provincetown according to law, this 9th day of October 20 08  
(Name of Community)  
☐ COURT WAIVER Issued October 14, 2008 by [Signature] (City or Town Clerk or Registrar)  
☐ AGE ORDER (Month) (Day) (Year)

20 I HEREBY CERTIFY that I solemnized the marriage of the above-named persons at No. 54 COMMERCIAL St. (If marriage was solemnized in a church, give its NAME instead of street and number)  
PROVINCETOWN on OCTOBER 14, 2008  
(Name of city or town) (Month) (Day) (Year)  
Signature: Rev. David L. Clarke  
REV. DAVID L. CLARKE  
(Print or type name)  
Address: 16 COURT STREET, PROVINCETOWN, MA 02657  
(Member of the Clergy, Priest, Rabbi, Imam, or Justice of the Peace, etc.)

21 Certificate recorded by city or town clerk: October 16, 2008 [Signature]  
(Month) (Day) (Year) CLERK OR REGISTRAR

22 PARTY A SEX: ☐ MALE ☒ FEMALE  
23 PARTY B SEX: ☐ MALE ☒ FEMALE



A TRUE COPY ATTEST  
[Signature]  
TOWN CLERK, PROVINCETOWN

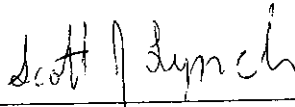


## **CERTIFICATE OF SERVICE**

I, Scott J. Lynch, Esq., Attorney for Defendant/Appellant, Tanya J. Busch, in the within matter, certify that I have on this date delivered one copy of the Appendix by mailing said copy via U.S. Mail, postage pre-paid to the following:

Tammy Ham-Thompson, Esq.  
Farris Law Office  
6 Central Maine Crossing  
P.O. Box 120  
Gardiner, Maine 04345

Dated: February 11, 2015

  
\_\_\_\_\_  
Scott J. Lynch, Esq.  
Bar No. 7314  
Attorney for Defendant/Appellant  
Tanya J. Busch

DISTRICT COURT

AUGUSTA

Docket No. AUGDC-FM-2013-00021

ELISABETH KINNEY - PLAINTIFF

2 VESPER ST

PORTLAND ME 04101

Attorney for: ELISABETH KINNEY

SUSAN SCHULTZ MCEVOY - INACTIVE

03/31/2013

SUSAN M SCHULTZ LLC

5 PEARL ST SECOND FLOOR

PORTLAND ME 04101

Attorney for: ELISABETH KINNEY

LAWRENCE B GOODGLASS - WITHDRAWN

05/23/2014

LAWRENCE GOODGLASS ATTORNEY AT

177 CONGRESS ST 5TH FLOOR

PORTLAND ME 04101

Attorney for: ELISABETH KINNEY

GAMMY HAM THOMPSON - RETAINED

05/22/2014

GARRIS LAW PA

5 CENTRAL MAINE CROSSING

PO BOX 120

BARDINER ME 04345-0120

vs

TANYA J BUSCH - DEFENDANT

10 GREENVILLE ST

HALLOWELL ME 04347

Attorney for: TANYA J BUSCH

KENNETH ALTSHULER - WITHDRAWN 01/18/2013

LAW OFFICE OF KENNETH ALTSHULER

157 DEERING AVENUE

PORTLAND ME 04103

Attorney for: TANYA J BUSCH

SCOTT J LYNCH - RETAINED

LYNCH & VAN DYKE PA

261 ASH ST

PO BOX 116

LEWISTON ME 04243-0116

Filing Document: COMPLAINT

Filing Date: 01/18/2013

Minor Case Type: DIVORCE WITHOUT CHILDREN

Docket Events:

01/18/2013 FILING DOCUMENT - COMPLAINT FILED ON 01/18/2013

01/23/2013 Party(s): ELISABETH KINNEY  
ATTORNEY - RETAINED ENTERED ON 01/18/2013  
Plaintiff's Attorney: SUSAN SCHULTZ MCEVOY

DOCKET RECORD