

2013 WL 8351139 (Me.) (Appellate Brief)  
Supreme Judicial Court of Maine.

Estate of Mary E. HILLER.

No. K-13-78.  
June 24, 2013.

On Appeal from the Knox County Probate Court

**Brief of Appellee Estate of Mary E. Hiller**

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## \*1 STATEMENT OF FACTS and PROCEDURAL HISTORY

On January 23, 2009, Mary E. Hiller executed a power of attorney (“POA”) naming her son, Paul A. Ligor, Jr. (“Ligor”) as attorney-in-fact. Appendix (“App.”) at 22. At that time, Mary E. Hiller was an **elderly** patient of Maine Medical Center, Portland Maine. From the period beginning January 23, 2009 until her death on May 16, 2010, Mary E. Hiller was an inpatient at various medical institutions in Maine and Massachusetts with the exception of approximately two weeks. App. at 110. On the date the POA was signed, Ligor induced Mrs. Hiller to sign a check from her personal account in the amount of \$45,000 to “World Capital Management”, a company exclusively owned by him. App. At 134. On March 25, 2009, Ligor created a “Scottrade” stock trading account jointly owned by him and Mrs. Hiller. The account was funded entirely with Mrs. Hiller’s assets, which totaled approximately \$160,000 at that time. App at 111.

From approximately June of 2009 until October of 2010, Ligor withdrew approximately \$200,510 from the Scottrade account for his own personal use. App. at 111,112. Ligor asserted that this money was payment to “replace lost income” as a result of “caregiver” services he and his wife provided to Mrs. Hiller, \$26,800 of which was “paid” after Mrs. Hiller died. App. at 112.<sup>1</sup> Ligor claimed to have provided these “caregiver” services despite the fact that between January of 2009 and her death on May 16, 2010, Mrs. Hiller resided entirely in health care facilities for all but one to two weeks.<sup>2</sup> App. at 110. The Probate

Court determined that Ligor transferred a total of \$271,815 of Mrs. Hiller's assets to himself, either as direct payments for \*2 "caregiver" services, or through the purchase of in-kind goods and services for his direct benefit. App. at 13.

After her death on May 16, 2010, and as described in detail in Petitioners' December 10, 2010 Probate Court Petitions, to wit: for Removal of Personal Representative; for Formal Probate or Appointment of Personal Representative, or Both; and for Review of Agent's Conduct, for Appropriate Relief, and to Determine Agent's Liability, Appellees attempted to ascertain the disposition of Mrs. Hiller's estate assets to no avail. The details surrounding the Scottrade account, Ligor's withdrawals from that account and other bank accounts, and the records concerning the \$45,000 check were only revealed during the discovery process. As outlined in their filings, the Petitioners were compelled to file the petitions as the only means to determine the affairs of the estate to which they were beneficiaries.

On December 30, 2010, Ligor filed an answer to the Petitions with the Probate Court denying the allegations with respect to his conduct as attorney-in-fact. App at 40-48. Ligor asserted as affirmative defenses that the Petitioners lacked standing and that the Court lacked subject matter jurisdiction. Additionally, Ligor asserted that the Petitioners failed to state a claim, failed to allege sufficient facts, and sought to apply law *ex post facto*. At a pre-trial hearing on February 16, 2011, Ligor's counsel, Keith Dunlap, Esq., made a generalized and informal motion to dismiss the case. The Court directed Ligor to file a written motion to dismiss specifically addressing the Petitions. Ligor never filed that motion. On June 6, 2011, attorney Dunlap withdrew from the litigation.<sup>3</sup> On September 9, 2011, the Petitioners filed a memorandum of law with the Probate Court detailing both the jurisdictional aspects of the case and the claims against Ligor. App at 74. No response was ever filed by the Respondent.

\*3 The Probate Court set the first trial date for September 14, 2011 at 10:00 a.m. Just prior to the trial that morning, Ligor's bankruptcy attorney alerted the Court and the Petitioners that Ligor had filed a Bankruptcy Petition in Federal Court approximately twelve hours earlier, at 8:00 pm on September 13th. Ligor failed to appear on September 14, 2011. No prior notice was provided to the Court, the Petitioners, the witnesses, or the Estate attorney (Miles Hunt, Esq.). Despite all parties other than Ligor being present and prepared for trial, the Probate Court was left with no option other than to enter an order staying the proceeding pursuant to the automatic stay provision of the Federal Bankruptcy law, [11 U.S.C. §362](#).

The Petitioners then filed an adversarial proceeding against Ligor in Federal Bankruptcy Court on December 9, 2010 in order to preserve their claims against him as presented in the Probate Court petitions.<sup>4</sup> The Petitioners also filed a motion with the Bankruptcy Court to relieve the automatic stay provision. On January 10, 2012, the Federal Bankruptcy Judge granted the motion to relieve the stay, allowing the probate court litigation to recommence. Upon motion by the Petitioners, the Probate Court then re-scheduled the trial for May 16, 2012. \*4 Ligor's Bankruptcy petition was then dismissed based on his voluntary waiver of discharge filed on May 2, 2012 pursuant to [11 U.S.C. 727\(a\)\(10\)](#).<sup>5</sup>

Based on evidence presented during two separate trial dates<sup>6</sup> at which neither Ligor nor his counsel appeared, the Court made factual findings that Mary E. Hiller "was not of sound mind on that date [January 23, 2009] and was able to be easily influenced, due to her physical and mental health issues." App. at 12. Additionally, the Probate Court found that, "[N]o evidence was presented that her physical and mental health improved before her death." App. at 12. As a result, the Probate Court found that Ligor breached his fiduciary duty to Mrs. Hiller by executing the POA and the \$45,000 check during a time during which she was mentally and physically incapacitated. Further, even if the POA had been valid, the Probate Court found that Ligor breached his fiduciary duties as attorney-in-fact by creating the jointly-owned stock trading account exclusively with Mrs. Hiller's assets, having used the entirety of the funds from that account for his own personal benefit. App. at 12,13.

Based upon the evidence presented through the exhibits, the Court determined that Ligor was liable to the Estate in the amount of \$244,815 “for violation of his fiduciary duty, and for diminishing the value of the estate of Mary E. Hiller by that amount.” App at 13. The Probate Court further found that “P. Ligor paid himself/his wife as “caregivers” after his mother’s death, \*5 from May 26, 2010 until August 16, 2010, the sum of \$26,800.” The Probate Court further ordered that “P. Ligor be SURCHARGED \$26,800 and that amount shall be returned to the Estate...” App. at 13. Ligor does not dispute his liability for this surcharge amount in his - original 60(b) motion filed with the Probate Court. Further, he does not raise this portion of the Probate Court’s order on appeal to the Law Court. Therefore, this portion of the Probate Court’s order is final.

After the judgment was entered, Ligor made no effort to file any motions pursuant to Rule 52(a) of the Main Rules of Probate Procedures for additional findings of fact and conclusions of law. Ligor failed to file any motions pursuant to Rule 52(b) requesting that the Probate Court amend its findings or make additional findings or amend the judgment. Furthermore, Ligor did not file any motion to set aside the default as permitted by Rule 55(c), nor did he file any motions pursuant to Rule 59 for a new trial or to alter or amend the judgment. Finally, Ligor elected not to file an appeal of the factual or legal findings by the Probate Court. Although Ligor had every opportunity to dispute and disprove these facts and findings both before and after two scheduled trials and a Court order issued on May 31, 2012, he elected not to do so.

The Probate Court ordered the removal of Ligor as Personal Representative of the Estate of Mary E. Hiller in its May 31, 2012 order and appointed Lynne Spugnardi as the new Personal Representative. On August 21, 2012, Ms. Spugnardi filed with the Probate Court the Sworn Statement of Personal Representative Closing Estate under 18-A-M.R.S. §3-1003.

Subsequently, on August 28, 2012, Ligor filed the Motion for Relief from Judgment pursuant to [Rule 60\(b\) of the Maine Rules of Probate Procedure](#). Although Ligor originally sought relief under sections 60(b)(1) for mistake, inadvertence, surprise, or excusable **neglect** \*6 and 60(b)(4) claiming the judgment is void, he eventually proceeded solely under section 60(b)(4). This is the sole basis of Ligor’s appeal to this Court.<sup>7</sup> Specifically, Ligor argued in this motion that (1) the Probate Court had no jurisdiction to award money damages, (2) the Probate Court had no authority to apply the Maine Uniform Power of Attorney Act retroactively, (3) the Probate Court mistakenly concluded that the accounts jointly owned by Ligor and Mary E. Hiller passed to the Estate, and (4) the Probate Court erroneously concluded that the Petitioners proved their intentional interference claim.

On January 11, 2013, the Probate Court issued an order on the motion for relief from judgment and a “corrected” Probate Court order. App at 8 and 11, respectively. In its order on the motion, the Probate Court vacated its May 16, 2012 default judgment based on Ligor’s original answer to the Petitions and his participation in some of the pre-trial conferences. The Probate Court then resolved the issue of money “damages” by ordering that all references to payments of sums by Ligor to his siblings or other devisees be deleted from its order, and clarified that all such funds be repaid to the Estate as a result of Ligor’s breach of fiduciary duty. Through this finding, the Court made moot Ligor’s contention that it had exceeded its jurisdictional authority when it ordered Ligor to repay \$244,815.<sup>8</sup> The Probate Court determined that it was unnecessary to resolve Ligor’s assertions concerning the intentional interference claim as the Court had never relied on a tort theory or claim in issuing its May 31, 2012 decision. The \*7 Court reiterated that the analysis in its May 31, 2012 order concerning Ligor’s liability in the case rested solely with Ligor’s fiduciary duty as an agent/attorney-in-fact to Mary E. Hiller as a principal. Further, the Court denied Ligor’s contention that it lacked-authority to apply the Maine Uniform Power of Attorney Act (“MUPOAA”). The Probate Court determined that under [18-A M.R.S. §5-963](#), the Maine Uniform Power of Attorney Act applied to both the proceeding, and Ligor’s actions as agent/attorney-in-fact. Further, the Probate Court found that even if MUPOAA did not apply to Ligor’s actions as agent/attorney-in-fact, the issue is resolved by the fact that Ligor violated his common law fiduciary obligations as agent/attorney-in-fact. As such, the Probate Court had jurisdiction over the matter to order a recovery of the Estate’s assets under [Title 4 M.R.S. §251](#).

In the January 11, 2013 “corrected” order, the Probate Court reiterated all of its factual findings regarding Mrs. Hiller's incapacity when the POA was signed, as well as the fact that she remained incapacitated until her death on May 16, 2010. App at 12. The Probate Court again found that even if the POA had been valid, Ligor had breached his fiduciary duty to Mrs. Hiller under the MUPOAA by creating the joint Scottrade stock trading account, and by withdrawing all of Mrs. Hiller's assets from that account for his own personal use. The Court determined that this breach diminished the value of the Estate in the amount of \$244,815, and ordered Ligor to restore that amount to the Estate. The Probate Court also ordered Ligor to repay the additional \$26,800 surcharge for the funds he continued to transfer after Mrs. Hiller's death, which he continued to maintain were for “caregiver” services rendered, despite the fact that Mrs. Hiller had been dead since May 16, 2010, and thus did not require any “caregiver” services.

Ligor filed this appeal of the denied portions of his 60(b) motion, and the corresponding sections of the corrected Probate Court order, on January 31, 2013.

#### **\*8 STATEMENT OF THE ISSUES ON APPEAL**

I. Whether the Appellant has met his burden of proof in order to prevail on a motion for relief from judgment under [Maine Rules of Probate Procedure 60\(b\)](#).

A. Whether the Probate Court properly exercised subject matter jurisdiction over the proceedings.

B. Whether the Probate Court employed the proper remedy under the Maine Uniform Power of Attorney Act and Maine Common Law.

C. Whether the Probate Court properly applied the Maine Uniform Power of Attorney Act.

D. Whether jointly-held assets passing through to account-holder's Estate.

#### **ARGUMENT**

The Probate Court, in both of its orders of January 11, 2013, resolved all issues raised by Appellant's motion for relief from judgment under [Rule 60\(b\)](#). Contrary to the Appellant's contention, the Probate Court did not exceed its subject matter jurisdiction when it determined the matter before it, to wit: Ligor's removal as Personal Representative of the Estate, and a review of his conduct as attorney-in-fact prior to the principal's death. The Probate Court had the authority to review Ligor's conduct as attorney-in-fact, to make findings of fact and law regarding that conduct, and to order Ligor to pay restitution to the Estate based on his breaches of fiduciary duty. Once probate proceedings were initiated on December 10, 2010, the Probate Court was bound by statute to apply the Maine Uniform Power of Attorney Act, enacted on July 1, 2010. It did so properly and without error. Even if the Probate Court misapplied the MUPOAA, it did not do so in a manner that would result in its order being “void” under [\\*9 M.R.C.P. 60\(b\)\(4\)](#). The Court had the jurisdiction to decide the matter on common law grounds, and it properly did so in the alternative to its holdings pursuant to the MUPOAA.

Appellant's motion under [Rule 60\(b\)](#) is an impermissible attempt to file a time barred appeal of the Probate Court's May 31, 2012 order. That order found him responsible for breach of fiduciary duties that diminished the value of Mrs. Hiller's Estate by \$271,815, and ordered him to restore that amount to the Estate. The subsequent, corrected order of January 11, 2013, properly reaffirmed the holdings with respect to Ligor's breach of fiduciary duties and the resulting diminution of the value of the Estate. The January 11, 2013, order clarified the Probate Court's proper use of its equitable powers by ordering Ligor to restore the Estate to its pre-breach asset value, rather than make restitution to the devisees, directly. Under Maine statutory law, as well as the common law, the Probate Court properly determined the material facts, applied the proper legal standards, and exercised its equitable powers appropriately. Under no circumstances can the January 11, 2013, corrected order be deemed “void”.

## I. Appellant has failed to meet his burden of proof for relief under M.R.P.P. 60(b).

### Standard of Review.

Rule 60(b) relief is an extraordinary remedy. This Court has stated unequivocally:

“Rule 60(b) provides collateral remedial relief against unjust or inequitable final judgments, but the rule presupposes that a party has performed his duty to take legal steps to protect his own interests in the original litigation. This rule was not intended as an alternative method of appellate review, nor as a procedural means by which legal errors readily correctable on appeal may be challenged in a second round of litigation. Laudable as the goal of providing relief from injustices which Rule 60(b) contemplates, courts must strike a balance between that goal and the salutary policy of finality in litigation.” *Reville v. Reville*, 370 A.2d 249, 253-254 (Me. 1977).

In other words, a Rule 60(b) proceeding is not a “substitute for appeal.” *Scott v. Lipman & Katz, P.A.*, 648 A.2d 969, 975 (Me. 1994) and “is not intended as an alternative method of appeal.” *Kolmosky v. Kolmosky*, 631 A.2d 419, 421 (Me. 1993). Thus, relief under Rule 60(b) “will only \*10 be appropriate when the appellant has diligently pursued his rights” throughout the course of the proceeding. *Putnam v. Albee*, 726 A.2d 217 (Me. 1977).<sup>9</sup> Ligor was never an active participant at the trials and therefore did not preserve his rights.

On appeal, the Appellant relies on section four of Rule 60(b) as a basis to assert that the Probate Court's order is “void.” A motion for relief from judgment pursuant to Rule 60(b)(4), based on an assertion that the judgment is void, is not subject to the discretion of the trial court. It is either valid or it is void. *Land Use Regulation Comm'n v. Tuck*, 490 A.2d 649, 653 (Me. 1985). A party may move for Rule 60(b)(4) relief from judgment on the basis that the court lacked jurisdiction, or it adjudicated issues beyond the scope before the court, or it acted inconsistently with due process. *Id.* at 652. (See also *Coombs v. Government Employees Ins. Co.*, 534 A.2d 676, 678 (Me. 1987)). Thus, it is the Appellant's burden to show that the Probate Court, (a) lacked jurisdiction, (b) adjudicated issues beyond the scope before the Court, or (c) acted inconsistently with due process.

The Appellant makes no claim that the Probate Court acted inconsistently with due process. The entirety of the Appellant's argument on appeal rests with the issue of subject matter jurisdictions and the applicability of MUPOAA. As demonstrated below, all of these arguments are without merit.

### A. The Probate Court had Subject Matter Jurisdiction

Subject matter jurisdiction refers to the “[p]ower of a particular court to hear the type of case that is then before it.” See \*11 *Wright v. Department of Defense and Veterans Servs.*, 623 A.2d 1283, 1284 (Me. 1993) (internal citations omitted). It is the burden of the party attacking the judgment “to demonstrate affirmatively from the face of the record that the court lacked [subject matter] jurisdiction.” *Warren v. Waterville Urban Renewal Auth.*, 290 A.2s 362, 366 (Me. 1972). If the court in which the proceedings took place had jurisdiction to render the judgment that it did, no error in the proceedings which did not affect the jurisdiction will render the proceedings void, and the judgment will stand. *Id.* at 366. (See also *Blaisdell v. Inhabitants of the Town of York*, 110 Me. 500, 509, 97 A. 361 (Me. 1913)).

Five statutory provisions outline the Probate's Court jurisdiction over this matter. With respect to the Probate Court's authority over Ligor's actions as attorney-in-fact, Title 18-A M.R.S.A. §1-302 clearly sets out the Court's subject matter jurisdiction:

(a) To the full extent provided in sections 3-105, 5-102, 5-402, 7-201 and 7-204, the court has jurisdiction over all subject matter relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents and estates of protected persons; (2) protection of minors and incapacitated persons; and (3) trusts.

(b) The Court has full power to make orders, judgments and decrees *and take all other action necessary and proper to administer justice in the matters which come before it.*

(Emphasis added).

Title 4 M.R.S.A. § 251 states that the Probate Court has “jurisdiction of all matters relating to the settlement of such estates.” Additionally, [Section 252 of Title 4](#) provides for the broad equity jurisdiction of the Probate Court:

The Courts of Probate shall have jurisdiction in equity, concurrent with the Superior Court, of all cases and matters relating to the administration of the estates of deceased persons, to wills and to trusts which are created by will or other written instrument. Such jurisdiction may be exercised upon complaint according to the usual course of proceedings in civil actions in which equitable relief is sought. [4 M.R.S.A. § 252.](#)

\*12 The Law Court has held that the phrase “relating to the settlement of estates” depends on whether the issues to be decided “involve a common core of facts closely related to each other.” *Estate of Hodgkins*, 2002 Me 154, 807 A.2d 626, 630. Appellant acknowledges this principle in his brief on page 10. All the allegations set forth in the Appellees' Petitions directly relate to, and are inextricably linked with, the settlement of the Estate of Mary E. Hiller. If the Probate Court in *Hodgkins* had jurisdiction over the tortious acts involved in that case, it certainly had jurisdiction over Ligor's multiple breaches of fiduciary duty in this matter, and the equitable power to order that the Estate be restored to its asset value prior to the point where those breaches diminished the Estate's value.

Finally, the Probate Court has exclusive jurisdiction over proceedings to determine how decedents' estates are to be administered, expended and distributed, and make determinations of heirs and successors of decedents. See [18-A M.R.S.A. §§ 3-102, 3-105](#). More specifically, the Probate Court “has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate may be a party, including action to determine title to property alleged to belong to the estate...” [18-A M.R.S.A. § 3-105](#).

Maine's new Uniform Power of Attorney Act provides the following:

The following persons may petition the Probate Court or the Superior Court for the county in which either the principal or the agent resides to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(5) An individual who would qualify as a presumptive heir of the principal;

(6) A person named as a beneficiary to receive any property, benefit or contractual right on the principal's death or as a beneficiary of a trust created for the principal that has a financial interest in the principal's estate;... [18-A M.R.S.A. § 5-916](#).

It is clear from the above statutory framework that the Probate Court had jurisdiction over every aspect of the case and the underlying claims brought by the Appellees. Ligor was Mrs. Hiller's agent/ attorney-in-fact prior to her death in May of 2010. After her death, Ligor was the \*13 Personal Representative of the Estate of Mrs. Hiller. Under [Title 18-A M.R.S.A. § 1-302\(a\)](#), the Probate Court had the authority to determine that Mrs. Hiller was an “incapacitated person” when it found that Mrs. Hiller “was not of sound mind on that date [January 23, 2009] and was able to be easily influenced, due to her physical and mental health issues.” App. at 12. Further, the Probate Court had “the full power to make orders, judgments and decrees *and take all other action necessary and proper to administer justice in the matters which come before it*” concerning the Estate of Mrs. Hiller. *See Id* at § (b) (emphasis added). This language is unambiguous. Under this statutory authority, the Probate Court was well within its power to determine that Ligor had breached his fiduciary duty to Mrs. Hiller and to order Ligor to restore the Estate to its previous value prior to the breach. The order to restore the Estate by the total amount of \$271,815 is an equitable action squarely within the parameters of [Title 4 M.R.S.A. § 252](#).<sup>10</sup>

Appellant attempts to argue that the Probate Court's finding of breach somehow materializes into a basis for finding that the Probate Court lacked jurisdiction over the entire matter. Appellant Brief at 12. Appellant attempts to justify this assertion by citing a 1906 Supreme Judicial Court decision, *Taber v. Douglass*, 101 Me. 363, 64 A. 653 (1906). Rather than deal with the actual controlling, superceding, statutory framework that provides direct \*14 jurisdiction for the Probate Court, Appellant claims *Taber* as some sort of trump card based on the proposition that “preliminary requisites and the course of proceedings prescribed by law” were not complied with during the underlying litigation. *See Id.* For this, Appellant attempts to find fault with the Appellees' original Petitions before the Probate Court, specifically that they did not allege sufficient facts to show the authority and power of the [probate] court to issue the decree prayed for. The Petitions being somehow defective, as the argument goes, the Probate Court was powerless to make the findings it did or issue the orders it did. This argument is entirely without merit.

First, the Supreme Judicial Court has been clear that claimed deficiencies in pleadings or proof “do not deprive the court of jurisdiction.” *Pederson v. Cole*, 501 A.2d 23, 25 n.2 (Me. 1985); *Foley v. Adam*, 638 A.2d 718 (Me 1994). Moreover, the failure of a complaint to state a claim is a defense that cannot be raised after trial. M.R.Civ.P. 12(h)(2); see also *Foley v. Adam*, 638 A.2d 718 (Me 1994). Thus, the Appellant's right to raise this defense has been waived. Ligor chose not to argue these points at trial and/or appeal the final determinations of the Probate Court. That being the case, his arguments regarding the viability of the Petitioners' pleadings have been lost. He cannot resurrect them in a collateral Rule 60(b) motion on the theory that deficiencies in pleadings cause the Probate Court's jurisdiction over the matter to fail.

Additionally, as stated above, the superceding, statutory framework specifically outlines the Probate Court's jurisdictional authority. Each element of the Probate Court's corrected order of January 11, 2013, falls under one of these statutory authorities, including the findings of breach and the order to restore to the Estate by \$271,815. Second, even if *Taber* did provide this remedy, the Petitions placed before the Probate Court by the Appellees were in no way defective so as to strip the Court of its jurisdictional power to hear the case and order relief based on the \*15 evidence presented. Specifically, in the Petition for Removal of the Personal Representative, the Appellees clearly allege that Ligor, as Personal Representative, “breached his fiduciary responsibilities and duties as set forth in Title 18-A M.R.S. §§ 3-703, 3-705, 3-706 and 3-709.” App. at 36. The Petition goes on to state, in resoundingly clear terms, that the “actions listed above...constitute a breach of the Personal Representative's Fiduciary Duty to the beneficiaries of the Estate of Mary E. Hiller under Maine's Uniform Probate Code and *Maine Common Law*.” (Emphasis added). *See Id.*

## **B. The Legal Authority of the Probate Court to Provide Remedy**

Ligor argues that the Probate Court's Order to reimburse the Estate a total of \$271, 815 (\$244,815 plus a \$26,800 surcharge amount), in and of itself, violates the Probate Court's statutory and common law jurisdictional limitations. It is an established principle that “decrees of probate courts in matters of probate, *within the authority conferred upon them by law*, are conclusive against collateral attack.” *Clough v. Newton*, 160 Me. 201,306, 203 A.2d 690, 693 (1964)(internal citations omitted)(emphasis added). Here, the power to determine the administration and extent of the assets of Mrs. Hiller's estate was well within the purview of the Probate Court and therefore a collateral attack cannot be sustained.

Appellant asserts that the Petitioners “never requested that the personal representative claw back assets either improvidently or fraudulently transferred through any mechanism, such as perhaps, the *common law*, the predecessor statute or something else.” Appellant Brief at 11. Quite to the contrary, the recovery of the fraudulently transferred funds was at the core of the Petitioners' Complaint. As clearly stated in the Petition for Removal, Ligor, as the Personal Representative, had a fiduciary duty under 18-A M.R.S. §§ 3-703, 3-705, 3-706 and 3-709 and under “Maine Common Law” to reimburse the Estate “for loss in value which has resulted from \*16 his numerous breaches of his fiduciary duties.” App. at 36. The Petition not only cites the material breaches of fiduciary duty by Ligor that were later found by the Probate Court to be true, it further cites the appropriate statutory authorities, and the common law as a basis for remedy. The Probate Court did exactly that. As expressed in its January 11, 2013 decision on the Rule 60(b) motion for relief:



“The Court further found that Ligor, as agent, had diminished his mother's estate by the amount of the sums outlined in its findings, and as a Personal Representative under 18-A M.R.S 3-709 and 715, he had a duty to recover possession of this property. He did not take any action to recover this money; hence, the Court removed him as Personal Representative and appointed his sister Lynne Spugnardi as Personal Representative.” App. at 9.

Additionally, the Probate Court stated,

“Inasmuch as the Court's decision was based solely on Mr. Ligor's violation of his fiduciary duty and not on tort theory, the Court's Order must be corrected to delete all references to payment of the aforementioned sums by Ligor directly to his siblings or other devisees and to clarify that the sum should be repaid to the estate. Upon repayment, the estate's assets will then be distributed in accordance with the decedent's Will.” App. at 9.

The Probate Court then ordered the reimbursement of the Estate, and ordered an additional surcharge amount, totaling \$271,815, in its corrected order issued on the same day. It is well settled that it is perfectly within the powers of the Probate Court to vacate or amend a prior Order that was made in legal error. *Clough v. Newton*, 160 Me. At 307, 203 A.2d at 693-94 (1964) (internal citations omitted). The order to reimburse was therefore within the Court's statutory power and in keeping with Maine common law, which was also pled by the Appellees and relied upon by the Court in its findings.

Further, in the Petition to Review Agent's Conduct and for Appropriate Relief and To Determine Agent's Liability (App. at 15-21), the Petitioners specifically cite the following allegations with respect to Ligor:

\*17 “as attorney-in-fact” (Count I, part 1),

“failure to account for the disposition of the majority of Mrs. Hiller's liquid assets...and...for profits and losses” (Count I, part 12.B.),

“failure to prevent the occurrence of a conflict of interest and his failure to act in good faith” (Count I, part 12.D.),

“failure...to preserve the Principal's estate plan” (Count I, part 12.F.),

“failure...to act in good faith, to act only within the scope of authority granted...to act loyally...to act with care, competence and diligence ordinarily exercised by agents in similar circumstances to preserve the Principal's estate plan” (Count I, part 12.G.)

“The investment of the Principal's assets in high risk stocks and the unexplained disappearance of funds approximating \$190,000 from a certain investment account managed by the agent.” (Count I, part 12.K.),

“enjoyed a confidential relationship with Mary E. Hiller as evidenced by Mary Hiller's appointment of Paul Ligor as Durable power of attorney, his familial connection and...obvious trust and reliance on Paul Ligor” (Count II, part 15),

“Through a combination of fraudulent activity, exercise of undue influence and improper exercise of his authority...diminished the value of Mary E. Hiller's estate” (Count II, part 16),

“appropriated assets and funds...for his personal use and gain during the period of time in which he acted as her attorney-in-fact” (Count II, part 20),

“Despite the demand for accounting and return of the converted funds to the Estate of Mary E. Hiller, Paul Ligor has failed to comply in any substantial way either by providing an appropriate and complete accounting or by returning any funds to the Estate of Mary E. Hiller.” (Count II, part 25).

Contrary to Appellant's claims, this was an exceedingly detailed and well-pled case before the Probate Court. Without exception, the Petitions trigger each of the statutory provisions regarding subject matter jurisdiction and alleges the appropriate facts (i.e. confidential relationship, breach of fiduciary duties, diminution of Estate value, etc.), as well as the substantive common law requirements for breach and remedy. Thus, even if Appellant's analysis of *Taber's* applicability were correct, which it is not, the Appellees' Petitions clearly \*18 meet all the "preliminary requisites", including alleging sufficient facts to show the "authority and power of the court to make the decree prayed for." *Taber v. Douglass*, 101 Me. 363, 64 A. 653 (1906). The Probate Court made the correct findings of fact and law, and ordered the appropriate equitable remedy, which was to order Ligor to restore the Estate to the value it had been prior to his numerous breaches of his fiduciary duty.

Appellant goes on to state in his Brief at 12 that the Probate Court's order "did not address what elements of fiduciary relationship were possibly breached." Appellant also asserts that the Probate Court "never discussed whether a confidential relationship existed between the principal and agent or whether such a relationship contributed to the agent's liability." Neither of these points have any relevance in a [Rule 60\(b\)\(4\)](#) motion for relief. The Appellant is attempting to substitute his 60(b) motion for the appeal he never filed. Whether or not, and to what extent, the Probate Court decided to expound upon these legal and factual findings in its order, the issue has nothing to do with the Court's jurisdiction over the matter, and thus whether the order is "void" pursuant to [Rule 60\(b\)\(4\)](#). *Land Use Regulation Comm'n v. Tuck*, 490 A.2d 649, 652 (Me. 1985). Therefore, these points of argument by the Appellant cannot possibly support a motion for relief under [Rule 60\(b\)](#).

The Law Court should note that the Appellant does not proffer that the Probate Court did not have jurisdiction to decide the facts and issues of law surrounding Ligor's confidential, fiduciary relationship and his numerous breaches. The entirety of the argument from the Appellant rests on his dissatisfaction with the findings themselves, and the brevity of the Probate Court in dealing with them. This issue has absolutely nothing to do with the Probate Court's jurisdiction or lack thereof. They are a result of the Appellant's failure to attend either trial dates, file any substantive briefs on the issues, file any post judgment motions, or take an appeal \*19 of the judgment, itself. The Probate Court decided the facts and issues of law based on the overwhelming evidence presented by the Petitioners at both trials, particularly the second trial on May 16, 2012, which he failed to attend. Neither the Probate Court nor the Petitioners were obligated to present Mr. Ligor's arguments to the contrary in absentia, nor were they obligated to insure that those arguments were addressed in the Court's judgment in a manner that he found personally satisfactory.

Even if the Probate Court's judgment lacked sufficient explanatory language to the extent that it constituted a legal error, a [Rule 60\(b\)\(4\)](#) motion is not a vehicle that may be used to overturn the order. The only errors amenable to a [Rule 60\(b\)\(4\)](#) review are errors related to the Court deciding matters for which it had no jurisdiction, adjudicating issues beyond its scope, or acting inconsistently with due process. *Id.* at 652. Nowhere in case law has the Law Court expanded the use of [Rule 60\(b\)](#) and its subsections to include, as a basis for relief from judgment, any and all legal errors that may be found in a particular court order. [Rule 60\(b\)](#) relief is very narrowly tailored and offers limited and extraordinary relief. It may not be used as a vehicle to attack an entire judgment based on harmless, legal errors or as a second chance for appeal. The burden was upon Ligor, at that point in the litigation, to file a timely appeal. The Appellant elected not to do that.

The Appellant misstates the law with respect to his assertion that the Probate Court failed to set forth the elements of a fiduciary relationship and whether a confidential relationship existed between Mrs. Hiller and her son. The Probate Court did not need to explain the elements of a fiduciary relationship because a power of attorney had been signed by Mrs. Hiller, making her son her agent/attorney-in-fact. App. at 22. With the POA, and as an attorney-in-fact under that POA, a per se fiduciary relationship existed. [Title 18-A M.R.S. 5-914\(a\)](#). This relationship \*20 existed when the document was executed on January 23, 2009. All of Ligor's breaches of his fiduciary duty, and the money transfers associated with them, occurred on or after this date of execution. The entire restitution amount ordered by the Probate Court, \$271,815, relates solely to those breaches of fiduciary duty occurring *on or after* January 23, 2009. Therefore, whether or not a confidential relationship existed at all is entirely immaterial.<sup>11</sup> It would have been entirely superfluous for the Probate Court to include such a discussion in its order. Such findings would not have been material to the determinative facts and law in this case.

### C. The Probate Court's Authority to Apply the Maine Uniform Power of Attorney Act to this Case.

The Appellant claims that the Probate Court misapplied the Maine Uniform Power of Act, in that it applied it “retroactively” to this case. Appellant argues that because of this, all findings and conclusions by the Probate Court are entitled to “no weight” and therefore requires the Law Court to vacate the entire judgment. This line of argument is also unavailing as it fails to address the Appellants burden of proof to succeed on a [Rule 60\(b\)\(4\)](#) motion. As stated above, the Appellant is required to show that the Court erred in a manner that resulted in an improvident assumption of jurisdiction, that it adjudicated issues beyond the scope before the court, or that it acted inconsistently with due process. \*[21 Land Use Regulation Comm'n v. Tuck 490 A.2d at 652 \(Me. 1985\)](#). Whether or not the Probate Court misapplied MUPOAA, which it did not, the Appellant fails to explain how any of these three legal prongs were triggered. He purports that any error by the Probate Court requires vacating the entire judgment under [Rule 60\(b\)](#). This is contrary to the legal standards of a motion made pursuant to [Rule 60\(b\)\(4\)](#). Therefore, based on Appellant's failure to meet his burden of proof on this point, the Law Court need not address the general issue of whether the MUPOAA is retroactive. That issue would best be left for a future case where the retroactivity of the MUPOAA was actually material to the disposition of the matter.

Even if the issue were material to the present case, the Probate Court did not misapply the MUPOAA. The Probate Court specifically found:

“That actions taken by P. Ligor as agent for Mrs. Hiller violated his fiduciary duty to her under the Maine Uniform Power of Attorney Act.” App. at 12.

Based on this finding, the Court specifically ordered Ligor to restore the value of Mrs. Hiller's estate to what it would have been if he had not violated the MUPOAA. The Court had proper jurisdiction under the MUPOAA to make these determinations. [Title 18-A M.R.S § 5-916\(a\)](#) states that, among others, “a named beneficiary” may petition either the Probate Court or the Superior Court “to construe a power of attorney or review the agent's conduct and grant appropriate relief.” That is exactly what occurred in this case, and exactly what the Probate Court did. Under [Title 18-A M.R.S § 5-917](#), an Agent that violates any chapter of the MUPOAA is liable to the principal or the principal's successors in interest for the amount required to:

- (a) Restore the value of the principal's property to what it would have been had the violation not occurred; and
- (b) Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

\*[22](#) Thus, the order to restore to the Estate the amount of \$271,815 was in keeping with every requirement of the MUPOAA.

With respect to the retroactivity argument, the Probate Court properly applied the MUPOAA given that the Petitions were filed in December of 2010, well after its date of enactment on July 1, 2010. [Title 18-A M.R.S. § 5-963](#) states:

“Except as otherwise provided in this Part, on July 1, 2010:

- (a). This Part applies to a power of attorney created before, on or after July 1, 2010;
- (b). This Part applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2010; and
- (c). This Part applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2010, unless the court finds that application of a provision of this Part would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.

An act done before July 1, 2010 is not affected by this Part.”

First, as the POA in this matter was created on January 23, 2009, section (a) clearly makes the MUPOAA applicable by the Court as it was created “before” July 1, 2010. Second, the Probate Court had no choice but to apply the MUPOAA to its judicial proceeding because section (b) required it to do so since it was “commenced” after July 1, 2010 given that the Petitioners filed their petitions in December of 2010. By this plain language, the MUPOAA is clearly retroactive in nature.

Appellant cites *In re Guardianship of Jeremiah T.*, 2009 ME 74, ¶ 18, 976 A.2d 955, 960 for the proposition that courts should resort to “the common law presumption that, absent language to the contrary, legislation affecting procedural or remedial rights should be applied retroactively, whereas legislation affecting substantive rights should be applied prospectively.” That case further states that, “[A]n amendment may be deemed substantive if it changes the legal \*23 significance or consequences of acts or events that occurred before the amendment’s effective date.” *Id.* at 960. However, *Jeremiah T.* also states that, “[W]e also apply the rule of statutory construction all statutes will be considered to have a prospective operation only, unless the legislative intent to the contrary is clearly expressed or necessarily implied from the language used.” *Id.* at 960 (citing *Greenvall v. Me. Mut. Fire Ins. Co.*, 2001 ME 180, ¶7, 788 A.2d 165 at 167). All three subsections to Title 18-A M.R.S. §5-963 clearly express or imply retroactive operation of the MUPOAA. They instruct a Probate Court to apply the MUPOAA to a power of attorney created *before* its enactment, and it instructs a Probate Court to then apply the MUPOAA to a proceeding that commences after the effective date. Section (c) instructs a Probate Court that, even a proceeding were commenced prior to enactment, it may apply MUPOAA “unless the court finds that application of a provision of this Part would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.” There is no ambiguity in the language that would lead one to arrive at any other conclusion other than that the Maine Legislature’s intent was to make the MUPOAA have retroactive effect.

Appellant urges the Law Court to construe the last line of Title 18-A M.R.S. §5-963, “An act done before July 1, 2010 is not affected by this Part.”, and apply that to the rest of the statutory section. However, in doing so, Appellant ignores controlling case law on this point. This Court, in *Estate of Antoinette Baril*, 697 A.2d 70 (Me 1997), addressed a similar issue regarding Title 18-A M.R.S. §8-401, which was enacted in 1981, and superseded the pre-Code provision at 18 M.R.S. §1555 Title 18-A M.R.S. §8-401(b) has similar language regarding the retroactivity of its operation. Specifically, Title 18-A M.R.S. §8-401(b)(4) states, “[A]n act \*24 done before the effective date in any proceeding and any accrued right is not impaired by this Code.”

A similar analysis is appropriate in the present case. Appellant is attempting to use the same “An act done” language to nullify parts (a) and (b) of section 5-963, which clearly allow the Probate Court in this case to apply the MUPOAA to Ligor’s actions as agent/attorney-in-fact pursuant to a POA “created before” July 1, 2010. If the Law Court is to give any meaning to the last line of 18-A M.R.S. § 5-963, it must do so consistent with the plain intent of the rest of the statute, which clearly expresses retroactive operation. The crux of statutory interpretation is that statutes should be read so as to be internally consistent. Appellees contend that the “An act done” language should be given meaning in accordance with that common textual rule of interpretation. By this rule, when a word or phrase is ambiguous, its meaning may be determined by reference to the rest of the statute. Assuming that there is ambiguity in the use of any of the terms in “[A]n act done before July 1, 2010 is not affected by this Part”, Appellees would argue that all of the terms must be read so as to have their meaning determined by the preceding parts (a) through (c). Therefore, Appellees would suggest that the “An act done” phrase merely refers to the fact that when the Legislature enacted the MUPOAA, they did not intend for any prior actions by agents (or others) to be effected by the enactment itself. In other words, if an agent agreed to sell a house pursuant to authority in a POA on June 30, 2010, the enactment of the MUPOAA on July 1, 2010 did not effect that transaction, or that “act”. Viewed in this manner, the “An act done” language is consistent with the rest of section 5-963. The Appellant’s interpretation of the phrase, as stated above, turns the entire statute on its head. For that reason alone, the Law Court should reject the Appellant’s interpretation.

\*25 Even if a Court were to agree with the Appellant’s interpretation that the Probate Court impermissibly applied the MUPOAA retroactively, it was harmless and did not result in a substantive legal error that would have “affected” Ligor’s substantive rights in a manner that is inconsistent with *Jeremiah T.* The Probate Court also decided the issues in this case under

the alternate rubric of Maine Common Law. The Probate Court dealt with this issue in its January 11, 2013 decision denying the [Rule 60\(b\)](#) motion (in part). Specifically, the Probate Court found:

“[H]owever, even if portions of the Maine Uniform Power of Attorney Act do not apply directly to Ligor's action while agent for his mother, his common law fiduciary duty as agent/attorney-in-fact under the durable power attorney, requires the Court to find that he violated this duty. The estate property that rightfully belonged to it, but for the actions of the agent in violation of his fiduciary duty, must be recovered by the Personal Representative of the estate. Because this requirement to recover the estate's property directly related to determining estate assets, the Probate Court has jurisdiction over this matter.” The Probate Court “...has jurisdiction of all matters relating to the settlement of such estates (in Knox County).” [4 M.R.S. § 251](#). App. at 10.

The Probate Court's judgment supports this analysis with respect to each of its findings. This alternative common law finding by the Probate Court, therefore, makes the issue regarding whether “legislation affecting substantive rights should be applied prospectively” irrelevant. See *In re Guardianship of Jeremiah T.*, 2009 ME 74, ¶ 18, 976 A.2d at 960. Even if the Probate Court erred in applying the MUPOAA retroactively, Ligor's substantive rights remained entirely unaffected. The facts, the common law, and the resulting decision would not have been any different. The preponderance of evidence standard regarding breaches of fiduciary duty and the equitable remedy applied (i.e. restitution/reimbursement of the funds transferred as a result of Ligor's breaches of duty) remains exactly the same under either the MUPOAA analysis, or the common law analysis.<sup>12</sup> The error, if there was one at all, was entirely harmless. Such an error \*26 would certainly not rise to the level of voiding the order under any of the three *Land Use Regulation Comm'n v. Tuck* prongs (jurisdiction, adjudicating beyond the scope, or inconsistent with due process).

#### **D. Accounts Jointly Owned by Ligor and Mrs. Hiller Passed to the Estate.**

Appellant's remaining argument to support that the Probate Court's order is void is that the sums attributable to the \$271,815 figure were placed in jointly held accounts.<sup>13</sup> For such accounts, he argues, [Title 18-A M.R.S § 6-104\(a\)](#) requires the Probate Court to find that all sums in these accounts went to Ligor upon Mrs. Hiller's death, absent clear and convincing evidence otherwise. This argument is also without merit.

Appellant ignores, and cites no authority for, how a legal finding regarding the applicability of [Title 18-A M.R.S § 6-104\(a\)](#) affects the Probate Court's jurisdiction, the question of its adjudication of issues beyond its scope, or the question of whether any of its actions were inconsistent with due process. Although Ligor raised this issue in passing in his answer to the Petitions, the Probate Court was under no obligation to make a finding regarding the applicability of [Title 18-A M.R.S § 6-104\(a\)](#) either way. Simply put, once the Probate Court found that Ligor had breached his fiduciary duties as of the signing of the POA on January 23, 2009, [Title 18-A M.R.S § 6-104\(a\)](#) became entirely immaterial. All of the \$271,815 was \*27 transferred on or after the date when Ligor breached his fiduciary duty to Mrs. Hiller, a finding that only requires the application of the preponderance of evidence standard as explained above.

According to the Appellant, any fiduciary may protect himself or herself from even the remotest possibility of a finding of breach by simply putting all assets of the principal into a joint account. Once that is accomplished, according to Ligor, [Title 18-A M.R.S.6-104\(a\)](#) would then act as a shield from liability unless injured parties could reach a clear and convincing standard of proof that the (now dead, in this case) principal intended the funds to go to anyone other than the agent. This proposed legal regime would also impermissibly shift the burden of proof to the injured party to show undue influence, which would otherwise be presumed (*Ruebsamen v. Maddocks*, 340 A.2d 31, 36 (Me 1975)), in addition to elevating it. This would be inconsistent with the entire purpose of the statute. The Probate Court in this case clearly found, based on the evidence presented, that Mrs. Hiller “was not of sound mind on that date [January 23, 2009] and was able to be easily influenced due to her physical and mental health issues.” As a fiduciary on this date and beyond, it is Ligor's burden to show “fairness on his part and freedom of the other from undue influence.” (*Id.*) Ligor never met this burden because he never participated in the Probate Court trials,

filed any post-judgment motions, or filed an appeal of the Probate Court judgment on these issues. Thus, all of the Probate Court's findings were proper.

[Title 18-A M.R.S §6-104\(a\)](#) applies to “sums remaining on deposit *at the death of a party...*” (Emphasis added) which then belong to the surviving party. In this case, \$244,815 had been removed by Ligor prior to the death of Mrs. Hiller for his own personal benefit. Thus, as to these funds at least, no argument can be made that they remained on deposit when Mrs. Hiller died on May 16, 2010. By May 16, 2010, only \$26,800 (the Probate Court's surcharge amount) \*28 remained on deposit “at the death of the party...” Simply stated, this statutory section does not apply to the facts or the law of this case.

## CONCLUSION

On January 23, 2009, Ligor induced Mary E. Hiller, his mother, to execute a POA in his favor. On this day, Mrs. Hiller was not of sound mind and body and was able to be easily influenced. Upon obtaining fiduciary power, Ligor transferred \$271,815 of Mrs. Hiller's money to himself and his immediate family in breach of his fiduciary duties. Despite requests by the Petitioners to account for, and return these amounts to the Estate, Ligor refused. Upon the filing of Petitions by the Appellees to restore these monies to the Estate, Ligor proceeded through discovery in the underlying litigation, but elected not to attend either of the Probate Court's trials. The Heirs presented overwhelming evidence of Ligor's breaches of his fiduciary duties and established beyond the shadow of a doubt his liability to the Estate for \$271,815. The Probate Court properly adjudicated all questions of law and fact and issued a lawful judgment on January 11, 2013, ordering Ligor to restore the Estate to its value prior to his breaches of his fiduciary duty.

The Appellant's [Rule 60\(b\)\(4\)](#) motion requesting relief from this judgment fails because the Appellant has not shown that the judgment is “void” by reason of the Probate Court's lack of jurisdiction, that it adjudicated issues beyond the scope before the court, or that it acted inconsistently with due process. The Appellant further attempts to attack the order with perceived “errors” of law, none of which robbed the Probate Court of jurisdiction or in any way established that the order it issued is “void.” The appeal of the denial of portions of the Appellant's [Rule 60\(b\)](#) motion should be dismissed and the Probate Court's January 11, 2013 corrected judgment order should be affirmed.

### Footnotes

- 1 The Law Court will note from Appendix at 111,112 that, aside from direct transfers, Ligor used the funds to satisfy his own tax liabilities and his daughter's tuition to Bates College.
- 2 It has never been in dispute that the costs associated with the stays in these health care facilities were provided for by Mrs. Hiller's medical insurance company, Martin's Point. None of the monies procured by Ligor, either by way of the \$45,000 check, or the \$200,510 from the Scottrade account, were used to reimburse these various health care facilities.
- 3 The withdrawal was accepted by the Probate Court on July 7, 2011.
- 4 The Law Court may take judicial notice of the bankruptcy proceedings of Paul A. Ligor, Jr., docket #11-21339. These proceedings, and the three adversarial actions filed against Ligor based on those proceedings, are all closed and are all a matter of public record. See docket #11-02004, *United States Trustee v. Paul A. Ligor, Jr.*; 11-02091, *LaBay, et. al. v. Paul A. Ligor, Jr.*; 11-02090, *Ligor, et. al. v. Paul A. Ligor, Jr.* (this is the Heirs' case, which included the Estate of Mary E. Hiller as a complaining party). The Law Court will note that the Heirs and the Estate of Mary E. Hiller were victorious in their adversarial action. The Bankruptcy Court denied discharge to Ligor in the amount of \$271,815 pursuant to [11 U.S.C. §§ 523\(a\)\(2\)\(A\)](#) (false pretenses, false representation or actual fraud), [523\(a\)\(4\)](#) (for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny), and [523\(a\)\(19\)](#) ((i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or (ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security).
- 5 The Law Court should note that the voluntary waiver of discharge was in response the U.S. Department of Justice, Office of the Trustee's adversarial proceeding brought against Ligor. See docket #11-02004, *United States Trustee v. Paul A. Ligor, Jr.*; 11-02091. In its complaint, the U.S. Trustee moved to deny Ligor discharge based on U.S.C. §§ [727\(a\)\(3\)](#) (concealment of financial records), [\(4\)](#) (fraudulent intent or reckless disregard of the truth), and [\(6\)](#) (willful and intentional refusal to provide documents). After failing

to comply with several discovery orders, the voluntary waiver of discharge was filed and accepted by the Bankruptcy Court on May 2, 2012. The Law Court will also note that key elements of the UST's complaint were based specifically on Ligor's conversion of Mrs. Hiller's assets, the evidence he presented during the Probate Court litigation, and his misrepresentations concerning both. For example, as a basis for converting the assets, Ligor asserted to the Probate Court that the assets were to "replace lost income". However, in sworn testimony before the U.S. Trustee Ligor asserted that the assets were given to him by Mrs. Hiller as a "gift".

6 Neither the Appellant nor his attorneys appeared at either the September 14, 2011 Probate Court trial, or the subsequent May 16, 2012 Probate Court trial.

7 Although Appellant's brief mentions [Rule 60\(b\)\(1\)](#) on page 18, this appears to be an error as no legal or factual basis for including 60(b)(1) in the appeal has ever been put forward. See footnote 13, supra.

8 In his motion, Ligor argued that the Probate Court exceeded its jurisdictional authority by ordering that the \$244,815 be paid directly to the Heirs instead of to the Estate, claiming that this crossed a jurisdictional line that prohibits the Probate Court from ordering legal, as opposed to equitable, relief. In clarifying that it was not ordering the payment of legal "damages", the Probate Court corrected the issue by ordering Ligor to repay the \$244,815 to the Estate. By ordering Ligor to restore the Estate to the position it had been prior to his breach of fiduciary duty, the Probate Court made clear that it was ordering a clear form of equitable relief (i.e. restitution). There is no dispute among the parties that the Probate Court has jurisdictional power to impose equitable relief.

9 The Law Court will note that all of Appellant's incorrect assertions concerning the Probate Court's "errors" in his [Rule 60\(b\)](#) motion, and his brief to this Court, fail to acknowledge that he never filed a motion for Specific Findings of Fact and Conclusions of Law during the underlying litigation. Thus, it is presumed that the Probate Court found all facts necessary to support the particulars of its judgment. *Powell v. Powell*, 645 A.2d 622 (Me 1994). The Appellant cannot escape this law and reargue the factual and substantive issues of this case beyond the narrow confines of [Rule 60\(b\)\(4\)](#).

10 The Probate Court properly addressed (in its corrected order) Ligor's claim in his initial 60(b) motion regarding the confusion surrounding the Court's initial order to pay the petitioning Heirs of the Estate a portion of the \$271,815 in equal shares directly, rather than ordering that Ligor pay the entire corpus of the monies go to the Estate itself. Ligor claimed that the order to pay the Heirs directly constituted a judgment for money damages, which would be a legal rather than an equitable remedy. In order to avoid even the appearance of violating this Court's holding in *Voisine v. Tomlinson*, 955 A.2d 748, the Probate Court issued the corrected order. The Law Court would also note that, in *Voisine*, the Court had no issue, from a jurisdictional standpoint, with respect to that probate court's finding of breach. The jurisdictional issue only concerned whether the probate court could order legal (i.e. money) damages as opposed to an alternative equitable remedy. Properly read, *Voisine* allows a probate court to make a finding of breach, but the remedy must be an equitable one. Such is the case here, where the Probate Court ordered the restitution of the Estate's funds to the level they were at prior to the occurrence of Ligor's breaches of his fiduciary duty.

11 Additionally, the Law Court has already determined that a "confidential relationship" is synonymous with a "fiduciary relationship" for the purposes of determining whether either relationship was abused or violated in a manner requiring equitable relief. *Estate of Campbell*, 704 A.2d 329, 331 (Me 1997) (citing *Ruebsamen v. Maddocks*, 340 A.2d 31, 35 (Me 1975)). Thus, Appellant is entirely incorrect when he asserts that the Probate Court was required to determine whether a confidential relationship ever existed. It did exist - as a matter of law. The Probate Court's finding that Ligor was Mrs. Hiller's agent/attorney-in-fact is purely a question of fact. *See Id.* at 35 (finding that the determination that a confidential relationship exists is a question of fact). On a [Rule 60\(b\)](#) motion, the Appellant may not dispute a finding of fact. The factual record in the underlying case is closed. Therefore, the Appellant may not dispute the Probate Court's finding that Ligor was a fiduciary, and that he committed numerous breaches of his fiduciary duty totaling \$271,815.

12 Undue influence may be presumed if the plaintiff shows by a preponderance of the evidence that a confidential relationship existed between the defendant and the decedent. *Theriault v. Burnham*, 2010 ME 82, ¶ 2 A.3d 324, 326. Therefore, undue influence was presumed based on the POA and the resulting fiduciary relationship. Furthermore, a Court's finding of a breach of a fiduciary duty or confidential relationship does not require such a showing [of clear and convincing evidence] as for constructive fraud. The party seeking the remedy need only establish by a preponderance of evidence standard that a confidential/fiduciary relationship existed, and that such relationship was abused. *See generally*, *Estate of Campbell*, 1997 ME 212, ¶ 7-8, 704 A.2d 329 331-333.

13 Although the Appellant cites [Rule 60\(b\)\(1\)](#) in addition to 60(b)(4) as a basis here, this reference is legally incorrect. As discussed above, 60(b)(1) refers to "mistake, inadvertence, surprise, or excusable **neglect**" by one of the parties to the litigation. A purported substantive legal error by the Court does not fall into one of these categories, and the Appellant cites no case law to support this proposition (because it does not exist).