

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2021-0373

IN THE MATTER OF BRIAN COLSIA
AND ALLANA-KELLEY COLSIA

**BRIEF OF WAYNE COLSIA
INTERVENOR IN FAMILY DIVISION PROCEEDING**

Appeal Pursuant to Supreme Court Rule 8 from
9th Circuit – Family Division – Merrimack
Docket No. 657-2015-DM-00092

Attorneys for Wayne Colsia

Bernstein, Shur, Sawyer & Nelson, P.A.
Roy W. Tilsley, Jr., Esq., Bar No. 9400
Hilary H. Rheaume, Esq., Bar No. 265510
670 N. Commercial Street, Suite 108
P.O. Box 1120
Manchester, New Hampshire 03105
(603) 623-8700
rtilsley@bernsteinshur.com
hrheaume@bernsteinshur.com

December 28, 2021

TABLE OF CONTENTS

TABLE OF AUTHORITIES 5

QUESTIONS PRESENTED 7

STATEMENT OF THE CASE AND FACTS 8

STANDARD OF REVIEW 15

SUMMARY OF ARGUMENT 15

ARGUMENT 17

I. INTERLOCUTORY APPEAL QUESTION NO. 1 SHOULD BE ANSWERED IN THE AFFIRMATIVE BECAUSE THE FAMILY DIVISION, WHICH APPOINTED A RECEIVER FOR THE MARITAL ESTATE, HAD AUTHORITY TO APPROVE A SETTLEMENT AGREEMENT BETWEEN THE RECEIVER AND WAYNE 17

 A. This Issue Was Not Preserved for Appeal 17

 B. In the Event this Court Determines the Issue was Preserved, then the Court Must Still Conclude that the Family Division Did Not Err When It Granted the Motion to Approve Wayne Settlement 18

II. INTERLOCUTORY APPEAL QUESTION NO. 2 SHOULD BE ANSWERED IN THE AFFIRMATIVE BECAUSE THIRD-PARTY MORTGAGEES HAVE STANDING TO INTERVENE IN A DIVORCE PROCEEDING TO SUPPORT A RECEIVER’S SETTLEMENT OF LITIGATION IN ANOTHER FORUM 22

 A. The Family Division Has Discretion to Grant Intervenor Status to Third Parties 22

B.	The Family Division Applied the Appropriate Legal Standard When It Granted Wayne Intervenor Status for the Limited Purpose of Defending the Motion to Approve Wayne Settlement	23
C.	The Family Division Did Not Transform the Marital Proceeding into a Creditor’s Proceeding by Granting Wayne Intervenor Status for the Limited Purpose of Defending the Motion to Approve Wayne Settlement	25
D.	Allana Did Not Allege that She was Prejudiced By the Family Division’s Decision to Grant Intervenor Status to Wayne for Purposes of Supporting the Motion to Approve Wayne Settlement	26
III.	INTERLOCUTORY APPEAL QUESTION NO. 3 SHOULD BE ANSWERED IN THE AFFIRMATIVE BECAUSE THE FAMILY DIVISION HAD AUTHORITY TO APPROVE A SETTLEMENT AGREEMENT BETWEEN THE RECEIVER AND WAYNE WITHOUT REVIEW AND APPROVAL BY THE SUPERIOR COURT	27
IV.	INTERLOCUTORY APPEAL QUESTION NO. 4 SHOULD BE ANSWERED IN THE NEGATIVE BECAUSE THE FAMILY DIVISION DID NOT ERR WHEN IT GRANTED THE MOTION TO APPROVE WAYNE SETTLEMENT OVER THE OBJECTION OF A DIVORCING SPOUSE	30
A.	The Family Division Did Not Err When It Approved the Receiver’s Request to Settle Claims that Affect Allana’s Interest in the Marital Estate	31
B.	The Family Division Did Not Err When It Granted the Motion to Approve Wayne Settlement Because the Settlement Is in the Best Interest of the Marital Estate	33
V.	INTERLOCUTORY APPEAL QUESTION NO. 5 SHOULD BE ANSWERED IN THE NEGATIVE BECAUSE A PARTY THAT	

MOVED TO HAVE A RECEIVER APPOINTED WITH BROAD SETTLEMENT POWERS AND FAILED TO CHALLENGE THE FAMILY DIVISION’S ISSUANCE OF AN ORDER PROVIDING THE RECEIVER WITH SUCH SETTLEMENT POWERS CANNOT SUBSEQUENTLY CHALLENGE THE RECEIVER’S ABILITY TO EXERCISE SUCH SETTLEMENT POWERS 35

CONCLUSION 36

ORAL ARGUMENT 36

STATEMENT OF COMPLIANCE 37

CERTIFICATE OF SERVICE 38

TABLE OF AUTHORITIES

New Hampshire Supreme Court Cases

<i>Dodge v. Leavitt</i> , 59 N.H. 245, 246 (1879)	21
<i>Fabich v. Fabich</i> , 144 N.H. 577 (1999)	15
<i>G2003B, LLC v. Town of Weare</i> , 153 N.H. 725 (2006)	19, 21
<i>Halstead v. Murray</i> , 130 N.H. 560 (1988)	19
<i>In re Mallet</i> , 163 N.H. 202 (2012)	18
<i>In re Muller</i> , 164 N.H. 512 (2013)	18, 25
<i>In re Thayer</i> , 146 N.H. 342 (2001)	15, 26
<i>Kukene v. Genuardo</i> , 145 N.H. 1 (2000)	15
<i>Simpson v. Wal-Mart Stores, Inc.</i> , 144 N.H. 571 (1999)	27
<i>Snyder v. New Hampshire Sav. Bank</i> , 134 N.H. 32, 35 (1991)	23, 24
<i>State v. Mouser</i> , 168 N.H. 19 (2015)	17, 33

<i>State v. Pelkey</i> , 145 N.H. 133 (2000)	15
---	----

Other Cases

<i>Edmond J. Ford (In His Capacity as Receiver in the Matter of Brian Colsia and Allana Kelley-Colsia, Merrimack Circuit Court – Family Division, Case No. 657-2015-MD-00092) v. Wayne Colsia</i> , Docket No. 216-2020-CV-00454, Hillsborough County Superior Court—Northern District	13
---	----

<i>Vinu R. Patel, et al. v. Waterway Realty, LLC, et al.</i> Docket No. 226-2017-CV-00556, Hillsborough County Superior Court—Southern District	11
--	----

<i>Town of Newton v. 48 North Road, LLC, et al.</i> , Docket No. 218-2019-CV-01531, Rockingham County Superior Court	12
---	----

Statutes

R.S.A. 458:16-a	18, 28, 29
R.S.A. 490-D:2(I)	18

Other Authorities

N.H. Circuit Ct. Fam. Div. R. 2.7(A)	23
Wiebusch, 4 New Hampshire Practice, Civil Practice and Procedure § 176 (1984)	24

QUESTIONS PRESENTED

1. Does the Family Division, which appointed a receiver for the marital estate, have authority to approve a settlement between the receiver and intervenors where, in one instance, since long prior to the receiver's appointment, the spouse objecting to one of the settlements had been litigating, and remains in litigation in the superior court, regarding the validity of two of the mortgages affecting the marital estate and a related question of damages occasioned by alleged civil conspiracy-related fraud associated with those mortgages and, in the other instance, the intervenor has not at any time filed an action in the superior court to determine the validity of two other mortgages affecting the estate? (*See Int. Appeal St. at p. 11.*)

2. Do third-party mortgagees possess standing to intervene in a divorce proceeding in order to assert and advocate for approval of the receiver's settlement of litigation pending in another forum concerning the validity and enforceability of the mortgages against the marital estate? (*See Int. Appeal St. at p. 12.*)

3. Did the receiver have authority to negotiate and approve a settlement with intervenors regarding the aforesaid mortgages over the objections of a spouse and without review and approval by the superior court, under the foregoing circumstances? (*See Int. Appeal St. at p. 12.*)

4. Did the Family Division err in approving the settlements over a spouse's objections? (*See Int. Appeal St. at p. 12.*)

5. Can a party that moved to have a receiver appointed with broad settlement powers and failed to challenge the Family Division's issuance of an order providing the receiver with such settlement powers subsequently

challenge the receiver's ability to exercise such settlement powers? (*See Int. Appeal St. at p. 12.*)

STATEMENT OF THE CASE AND FACTS

On or around March 23, 2015, the Petitioner, Brian Colsia ("Brian") initiated a divorce proceeding (the "Marital Proceeding") against the Respondent, Allana Kelley-Colsia ("Allana"). (*Int. Appeal St. at 3.*) Allana subsequently filed a Cross-Petition for Divorce, in which she named Danielle Colsia ("Danielle") as a Co-Respondent to the Marital Proceeding. (*Id.*) Wayne Colsia ("Wayne") is an Intervenor in the Marital Proceeding. (*See Resp. App. at 70-71.*)

Wayne is Brian's brother. (*Id.*) On January 30, 2015, Brian executed a promissory note in the principal amount of \$2,000,000.00 in favor of Wayne (the "Note"). (*Id.*) The Note was secured by a mortgage (the "Mortgage") on real property owned by Waterway Realty, LLC ("Waterway Realty"). (*Id.*) The properties encumbered by the Mortgage were subsequently transferred from Waterway Realty to 48 North Road, LLC ("48 North Road") via deed in lieu of foreclosure. (*Id.*)

On October 13, 2015, Allana filed a Motion to Add 48 North Road to the Marital Proceeding on the basis that 48 North Road was an "alter ego" of Brian. (*Id.*) In an Order, dated May 9, 2016, the Family Division granted Allana's request to add 48 North Road to the Marital Proceeding for discovery purposes and potential fraudulent conveyance issues. (*Id.*) On September 1, 2016, Allana filed a Motion for an *Ex Parte* Attachment on "all property owned by 48 North Road, LLC" in the amount of \$1,800,000.00 (the "Attachment"), which was subsequently granted by the Family Division. (*Id.*)

On July 9, 2019, the Family Division issued an Order, in which it declared that 48 North Road was an alter ego of Brian. To reach its conclusion, the Family Division drew upon factual findings of the Superior Court (*Wageling, J.*), which were issued in an order granting a default judgment against Brian, Danielle, 48 North Road and Stuart White, a third party to the Marital Proceeding, and purportedly pierced the veil of 48 North Road.

Allana subsequently filed a motion to appoint a receiver in the Marital Proceeding, in which she requested the appointment of a receiver with broad powers, including the power to compromise claims in his or her discretion, over the assets of 48 North Road. (*Id.* at 4.) The Family Division subsequently granted Allana's request for the appointment of a receiver and appointed Edmond J. Ford, Esq. (the "Receiver") as the Receiver, in relevant part, over the assets of 48 North Road.¹ (*Id.*; *see also* Resp. App. at 22-23.) The Family Division authorized the Receiver to liquidate the assets of 48 North Road on the basis that it purportedly pierced the corporate veil of 48 North Road.

The Court's Order on the Motion for Substituted Receiver (the "Receivership Order") provides that:

the receivership will cover the following real properties and any and all proceeds thereof, which shall include any and all inchoate, equitable and/or residual rights, such as the right to bring suit to aside fraudulent transfers or otherwise recover property that has been improperly removed from the marital estate:

¹ In the event the New Hampshire Supreme Court overturns the Settlement Order, then Wayne reserves the right to challenge the Receiver's appointment over the assets of 48 North Road in any pending or future proceeding.

1. 49 Union St., Belmont
2. 155 Baptist Hill Road., Canterbury
3. 239 Drake Side Rd., Hampton
4. 80 Gould Pond Road, Hillsborough
5. 306 Armory St., Manchester
6. 310 Wadleigh Falls Rd., Newmarket
7. 103 North Main St., Newton
8. 24 Forest Rd., Windham
9. 63 Cedar Crest Ln., Auburn
10. 132 Loudoun (sic) Rd., Concord

The receivership shall also encompass any and all membership interests of either party to the following corporate entities and any and all real estate owned thereby, which shall include any and all residual rights, such as the right to bring suit to set aside a fraudulent transfer or otherwise recover property that has been improperly removed from the marital estate:

11. 48 North Road, LLC
12. Bonnie & Clyde Property Management, LLC

As set forth in the December 17, 2019 order clarifying appointment of receiver (#528), the receiver will take full title to and control of all assets, accounts and credits of 48 North Rd., LLC and Bonnie & Clyde Property Management, LLC; to arrange for the liquidation of all such assets in a commercially reasonable manner forthwith; to collect all rents from all of the properties of those entities; to initiate and prosecute such actions and to defend against such actions, as the receiver may deem reasonable to recover and protect the assets of those entities, and, in effect, the assets of the marital estate....

(Id.) In other words, the Family Division authorized the Receiver to, in relevant part, (1) take full title to and control over all of the assets, accounts, and credits of 48 North Road, and (2) initiate and prosecute such actions and to defend against such action, including alleged fraudulent transfers, as the

receiver may deem reasonable to recover and protect the assets of those entities, and, in effect, the assets of the marital estate. Allana did not file a Motion to Reconsider the Receivership Order. (Int. Appeal St. at 5.)

Pursuant to the Receivership Order, the Receiver started to liquidate the properties owned by 48 North Road, i.e., the properties listed within the Receivership Order. (*Id.*) However, the properties were encumbered by the Mortgage held by Wayne, the validity of which Allana and the Receiver disputed. (*Id.*) As a result, the Receiver and Wayne entered into an agreement, in which Wayne agreed to execute a partial release for each respective property on the condition that the sales proceeds were held in escrow until the issues concerning the validity of the Mortgage were resolved. (*Id.*) The Receiver presented the agreement to the Family Division for approval, and Allana did not file an objection. (*See id.*) The Family Division approved the agreement. (*See id.*) Pursuant to this agreement, Wayne cooperated with the Receiver's requests to execute partial releases of the Mortgage to facilitate the sale of the properties listed in the Receivership Order and the sale proceeds are currently being held in escrow. (*Id.* at 5-6.)

A. Superior Court Lawsuits

In 2017, Vinu R. Patel and Manju V. Patel (the "Patels"), the holders of a mortgage granted by Waterway Realty, filed a Petition for Bill of Interpleader in the Hillsborough County Superior Court – Southern District, Docket No. 226-2017-CV-00556 (the "Patel Interpleader Action") for the distribution of excess proceeds from a foreclosure sale on the mortgage. (*Id.* at 6.) The amount of the interpleader funds is \$101,711.11 (the "Patel Interpleader Funds"). (*Id.*) In the Patel Interpleader Action, the Patels named the parties that either claim, or could potentially claim, an interest in the Patel

Interpleader Funds, including: (1) Wayne, (2) Allana, (3) Waterway, and (4) 48 North Road. (*Id.*) The Superior Court entered a default against Waterway and 48 North Road for failure to timely file an appearance. (*Id.*) Wayne's claim to the Patel Interpleader Funds arises out of the Mortgage. (*Id.*) Allana's claim to the Patel Interpleader Funds arises out of the Attachment. (*Id.*) Additionally, Allana filed a cross-claim against Wayne for a declaratory judgment that the Mortgage is invalid and, thus, unenforceable. (*Id.*)

In 2019, the Town of Newton (the "Town") filed a Bill of Interpleader to determine the distribution of excess proceeds from the sale of tax-deed property that was owned by 48 North Road (the "Town Interpleader Action"). (*Id.*) The amount of the interpleader funds is approximately \$50,000.00 (the "Town Interpleader Funds"). (*Id.*) The following individuals and/or entities are parties to the Town Interpleader Action: (1) 48 North Road, (2) Allana, (3) Wayne, (4) Equity Trust Company Custodian f/b/o Robert C. Douglas IRA, and (5) Robert C. Douglas. (*Id.*) The Superior Court entered a default against Equity Trust Company Custodian f/b/o Robert C. Douglas IRA and Robert C. Douglas. (*Id.*) Again, Wayne's claim to the Town Interpleader Funds arises out of the Mortgage. (*Id.* at 6-7.) Allana's claim to the Town Interpleader Funds arises out of the Attachment. (*Id.* at 7.) Additionally, Allana filed cross-claims against Wayne for a declaratory judgment that the Mortgage is invalid and, thus, unenforceable and she sought damages and attorney's fees against Wayne. (*Id.*)

On or around March 30, 2020, the Receiver filed a Partially Assented-to Motion for Leave to File a Petition in Superior Court Seeking to Avoid and Invalidate Mortgages Granted to Wayne Colsia with Respect to All Properties Which are Subject to Receivership. (*Id.*) Allana assented to the

Receiver's request. (*Id.*) In its Order granting the Receiver's Motion (the "Order Approving the Receiver's Action"), the Family Division ordered that:

[t]he receiver shall exercise his discretion in prosecuting the case and negotiating a resolution. The receiver shall seek court approval prior to finalizing any settlement that does not have the assent of Brian and Allana Kelley-Colsia.

(*Id.*) Allana did not seek reconsideration of the Order Approving the Receiver's Action. (*Id.*)

The Receiver subsequently initiated a lawsuit against Wayne in the Hillsborough County Superior Court – Northern District entitled *Edmond J. Ford, as Receiver in the Matter of Brian Colsia and Allana Kelley-Colsia, Merrimack Circuit Court Family Division, Case No. 657-2015-MD-00092, v. Wayne Colsia*, Docket No. 216-2020-CV-00454 (the "Receiver's Action"). (*Id.* at 7.) Allana filed a Motion to Intervene in the Receiver's Action, which was granted. (*Id.*) Subsequently, Allana filed a Cross-Petition Against Defendant, Wayne Colsia, for Declaratory Judgment and Injunctive Relief and Damages, in which she "aver[ed] her entitlement to a judgment and associated relief against Wayne in each of the following same respects and on the same grounds as are averred in the [Receiver's] Petition." (*Id.*) In October 2020, Allana filed a Motion to Consolidate the Patel Interpleader Action, the Town Interpleader Action, and the Receiver's Action, which the Superior Court granted. (*Id.*) Wayne and the Receiver had not filed an Objection to the Motion to Consolidate at the time it was granted.

The Receiver filed a Motion to Approve Wayne Settlement. (*Id.* at 8.) In the Motion to Approve Wayne Settlement, the Receiver explained that he negotiated a resolution with Wayne, which would resolve the Patel

Interpleader Action, the Town Interpleader Action, and the Receiver's Action. (*Id.*) Specifically, Wayne would agree to discharge the Mortgage and release any claims against the marital estate, in exchange for the sum of \$300,000.00 from the marital estate. (*Id.*) To effectuate the settlement, the Receiver requested that the Attachment be discharged. (*Id.*) Further, the settlement agreement provides that the settlement will be terminated if it is not effectuated on or before April 30, 2022. (*Id.*) Allana filed an objection to the Motion to Approve Wayne Settlement. (*Id.*)

B. The Wayne Settlement Order

On January 12, 2021, the Family Division held a hearing on the Motion to Approve Wayne Settlement. (*Id.* at 10.) On or around February 16, 2021, the Family Division issued the Wayne Settlement Order, in which it granted the Motion to Approve Wayne Settlement (with one modification related to the discharge of the Attachment). (*Id.*; *see also* Resp. App. at 40-44.) Allana filed a Motion to Reconsider the Wayne Settlement Order on the basis that the release language within the Court approved settlement agreement was insufficient to fully release Wayne and Allana's known or unknown claims against each other. (*Id.*; *see also* Resp. App. at 46-50.) Allana did not raise any other arguments in her Motion to Reconsider the Settlement Order. (*See id.*) Wayne filed an objection on the basis that he would agree to a full release of such claims, so the Court should not reconsider the Settlement Order for that reason. (*Id.*) The Court denied Allana's Motion to Reconsider. (*Id.*; *see also* Resp. App. at 62.) Allana subsequently filed a Motion to Stay Effectuation of Orders Regarding Wayne Colsia and Faither Deeter-Macomber/Foxtrot Delta, LLC (the "Motion to Stay Effectuation of Settlement"), which the Court granted. (*Id.*; *see* Resp.

App. at 64-68.) As a result, the Settlement Order has been stayed pending resolution of the instant appeal.

STANDARD OF REVIEW

The Court’s standard of review is an abuse of discretion. “Trial courts are afforded broad discretion in divorce matters, and we will not overturn the trial court’s rulings regarding property settlement absent an abuse of discretion, or error of law.” *In re Thayer*, 146 N.H. 342, 343-44 (2001) (quoting *Fabich v. Fabich*, 144 N.H. 577, 579 (1999)). “To show an abuse of discretion, the petitioner must demonstrate that the court’s ruling was clearly untenable or unreasonable to the prejudice of her case.” *Id.* at 344 (internal brackets omitted) (quoting *State v. Pelkey*, 145 N.H. 133, 135 (2000)). “If there is some support in the record for the trial court’s determination, [the Supreme Court] will uphold it.” *Id.* (quoting *Kukene v. Genualdo*, 145 N.H. 1, 3 (2000)).

SUMMARY OF THE ARGUMENT

The Family Division did not abuse its discretion when it granted the Motion to Approve Wayne Settlement.

As a preliminary matter, the Family Division did not err when it granted Wayne intervenor status for the limited purpose of defending the Motion to Approve Wayne Settlement because Wayne, as a third party to the Marital Proceeding, had a direct right and interest in the outcome of the Motion to Approve Wayne Settlement. Further, the Family Division’s grant of intervenor status to Wayne *for the limited purpose of defending the Motion to Approve Wayne Settlement* does not transform the Marital Proceeding into a creditor’s proceeding.

Additionally, the Family Division did not err when it granted the Motion to Approve Wayne Settlement over Allana's objection. In contrast to Allana's position, the Family Division had authority to grant the Motion to Approve Wayne Settlement. The Parties do not dispute that the Family Division cannot adjudicate the validity of a third party's interest in a mortgage. However, the Family Division never adjudicated the validity of the Mortgage, nor did it (or any parties) attempt to do so in the Marital Proceeding. Rather, the Receiver simply presented a settlement to the Family Division for approval, which, in effect, would settle claims arising out of a mortgage on real property subject to the marital estate. Since the Family Division approved the Motion to Approve Wayne Settlement *without* rendering a decision on the merits of the Mortgage, the Family Division did not exceed its authority.

Additionally, the Family Division was not required to obtain Allana's approval of the settlement before it granted the Motion to Approve Wayne Settlement. As described herein, Allana acquiesced to the Family Division's Orders instructing the Receiver to initiate, defend and/or negotiate claims on behalf of the marital estate. Since Allana failed to object to the Family Division's Orders within a timely manner, she cannot now seek to prevent the Receiver's settlement of certain claims on behalf of the marital estate. Further, the Family Division granted the Attachment, which forms the sole basis for Allana's standing to pursue her claims against Wayne in Superior Court. Since the Family Division granted the Attachment, the Family Division can dissolve the Attachment and, thus, moot Allana's claims in the Superior Court without Allana and/or the Superior Court's permission.

Finally, the Family Division determined that the settlement was in the best interest of the marital estate and, thus, did not err when it granted the Motion to Approve Wayne Settlement.

ARGUMENT

I. INTERLOCUTORY APPEAL QUESTION NO. 1 SHOULD BE ANSWERED IN THE AFFIRMATIVE BECAUSE THE FAMILY DIVISION, WHICH APPOINTED A RECEIVER FOR THE MARITAL ESTATE, HAD AUTHORITY TO APPROVE A SETTLEMENT AGREEMENT BETWEEN THE RECEIVER AND WAYNE.

A. This Issue Was Not Preserved for Appeal.

As a preliminary matter, Allana's argument that the Family Division lacked authority to approve a settlement between the receiver and intervenors should not be considered by this Court because it was not properly preserved for appeal on the Motion to Approve Wayne Settlement. Notably, Allana argued that the Family Division did not have authority to approve the settlement *for the first time* in her Motion to Stay Effectuation of Settlement, which was filed *after* the Family Division entered the Settlement Order and Allana filed a Motion to Reconsider the Settlement Order. Put simply, the Family Division was not provided with an opportunity to consider Allana's novel argument before the Settlement Order and/or the Order on the Motion to Reconsider were entered and, thus, Allana's argument concerning the Family Division's authority to approve the settlement was not properly preserved for appeal. *See State v. Mouser*, 168 N.H. 19, 27-28 (2015) (explaining that, to preserve an issue for appeal, the trial court must have been provided with an opportunity to consider the issue before its decision was issued and/or on a motion for reconsideration).

B. In the Event this Court Determines the Issue was Preserved, then the Court Must Still Conclude that the Family Division Did Not Err When It Granted the Motion to Approve Wayne Settlement.

Assuming *arguendo* that this Court determines that the issue was preserved, then the Court must still conclude that the Family Division did not err when it granted the Motion to Approve Wayne Settlement because the Family Division granted the Motion to Approve Wayne Settlement *without* rendering a decision on the merits of the Mortgage.

In contrast to Allana's position, the Family Division did not adjudicate the merits of the Mortgage when it granted the Motion to Approve Wayne Settlement and, thus, the Family Division did not exceed the scope of its authority. The Parties do not dispute that the Family Division is a "court of limited subject matter jurisdiction" and its powers are "limited to those conferred by statute." *In re Mallet*, 163 N.H. 202, 207 (2012). The Family Division's subject matter jurisdiction is derived from R.S.A. 490-D:2(I), which provides that the Family Division has jurisdiction "over petitions for divorce, nullity of marriage, alimony, custody of children, support, and to establish paternity." *See* R.S.A. 490-D:2(I).

Further, the Parties do not dispute that the Family Division's subject matter jurisdiction is limited to "property that belongs to the divorcing parties" and, thus, the Family Division lacks subject matter jurisdiction to invalidate the mortgage interest of a third party. *See* R.S.A. 458:16-a; *see also In re Muller*, 164 N.H. 512, 518 (2013) (explaining that the mortgage interest at-issue in the proceeding belonged to a third party, so the family division lacked the jurisdiction to invalidate it"). In other words, the Parties

agree that the Family Division can only distribute property that belongs to the divorcing parties, but it cannot invalidate a third parties' mortgage interest in real property subject to the marital estate.

Here, the Parties have a fundamental disagreement about whether the Family Division could grant the Motion to Approve Wayne Settlement without validating and/or invalidating the Mortgage. According to Allana, the Family Division's approval of the Motion to Approve Wayne Settlement constitutes a ruling on the validity of the Mortgage merely because Wayne will receive a settlement payment (less than the amount due under the Mortgage), in exchange for releasing his claims against the marital estate. However, Allana cites no legal support for her argument that the Family Division's approval of a settlement in a compromised amount, which benefits the marital estate (*see* Section IV(B) below), constitutes an adjudication on the validity of the Mortgage.

Presumably, Allana cited no case law to support her position because the case law supports Wayne's—not Allana's—position. For example, Allana's argument that a court-approved settlement constitutes a ruling on the merits would conflict with "New Hampshire's well-established principle of favoring the settlement of litigation," since litigants would be deterred from entering into settlements in an effort to avoid an incidental ruling on the merits. *G2003B, LLC v. Town of Weare*, 153 N.H. 725, 728 (2006) (citing *Halstead v. Murray*, 130 N.H. 560, 564 (1988)).

Further, there is no language within the Settlement Order that would constitute a ruling on the validity of the Mortgage. In fact, the Family Division *never* renders a decision in the Settlement Order (or otherwise) on the validity of the Mortgage. Indeed, the Family Division expressly states in

the Settlement Order that it is not ruling or making a finding on the validity of the Mortgage. (Resp. App. at 43 (“To be clear, by approving the settlement, the Family Division is not ruling or making any kind of finding on the actual merits of the fraud or priority claims as they relate to Wayne.”)) Rather, the Family Division sets forth its concerns with protracted litigation in the Superior Court and the effect that such litigation would have on the marital estate, i.e., a depletion of the marital estate assets. (*Id.* (“The court is selecting between two poor options and evaluating whether the receiver’s proposed settlement falls within the realm of reasonableness for a settlement, given the costs, delay and risks of litigation. The receiver’s motion (#666 as it modifies and replaces #640) is granted.”))

Similarly, there is no language in the Settlement Agreement, in which the Receiver and/or Wayne agree on the validity of the Mortgage. Rather, the Settlement Agreement expressly includes the following “No Admission of Liability” provision:

This Agreement represents the compromise of disputed claims and nothing herein, including the terms, covenants, and payment set forth, is deemed to be an admission of liability by the Receiver or Wayne in any pending or future proceeding.

Allana also takes issue with Wayne’s decision to enter into a settlement agreement with the Receiver on the basis that Wayne filed a Motion for Summary Judgment in the Receiver Action concerning the Family Division’s authority to appoint a receiver over the assets of 48 North. However, the Settlement Agreement expressly provides that, in the event the settlement is not effectuated, then Wayne does not waive his “jurisdictional arguments” concerning the Family Division’s ability to exercise jurisdiction

over the assets of 48 North. Put simply, in contrast to Allana’s position, the settlement agreement between Wayne and the Receiver does not require the Family Division to render a decision on the merits of the Mortgage, nor does it require Wayne to waive his arguments concerning the Family Division’s authority to appoint a receiver over the assets of 48 North. Rather, the settlement between the Receiver and Wayne aligns with the long-standing policy in New Hampshire to encourage settlement of litigation to avoid protracted litigation without conceding any liability in the lawsuit. *See G2003B, LLC*, 153 N.H. at 728; *see also Dodge v. Leavitt*, 59 N.H. 245, 246 (1879) (“The defendant could make overtures for a settlement to avoid litigation, without being prejudiced thereby.”).

Based on the foregoing, there is no valid basis to conclude that the Family Division rendered a decision on the merits of the Mortgage. Assuming *arguendo* that the assets subject to the settlement agreement are a part of the marital estate, then there can be no finding that the Family Division exceeded the scope of its authority when it granted the Motion to Approve Wayne Settlement because the Family Division did not render a decision on the merits of the Mortgage. Rather, the Family Division simply approved a settlement of claims against the marital estate, which it concluded was in the best interest of the marital estate. Since the Family Division did not render a decision on the validity of the Mortgage, the Family Division did not err when it granted the Motion to Approve Wayne Settlement.

II. INTERLOCUTORY APPEAL QUESTION NO. 2 SHOULD BE ANSWERED IN THE AFFIRMATIVE BECAUSE THIRD-PARTY MORTGAGEES HAVE STANDING TO INTERVENE IN A DIVORCE PROCEEDING TO SUPPORT A RECEIVER'S SETTLEMENT OF LITIGATION IN ANOTHER FORUM.

In her Brief, Allana argues that the Family Division erred when it granted Wayne intervenor status in the Marital Proceeding for purposes of the Motion to Approve Wayne Settlement. According to Allana, Wayne, as a mortgagee on real property in the marital estate, “lacked standing” to advocate for approval of the settlement in the Marital Proceeding because such advocacy would “effectively turn[] the marital dissolution proceeding into a creditor’s proceeding.” (Resp. Brief at 28.) However, Allana’s position lacks merit because (1) the Family Division has discretion to grant intervenor status to third parties, (2) the Family Division applied the appropriate legal standard when it granted Wayne intervenor status, and (3) the Family Division did not transform the marital dissolution proceeding into a creditor’s proceeding by granting Wayne intervenor status for the limited purpose of defending the Motion to Approve Wayne Settlement.

A. The Family Division Has Discretion to Grant Intervenor Status to Third Parties.

There can be no dispute that the Family Division has discretion to grant intervenor status to third parties. In fact, the New Hampshire Circuit – Family Division Rules expressly address intervention by third parties as follows:

[a]ny person asserting an interest in the proceedings may seek to intervene as a party in the action by filing a motion to intervene. The motion must include a brief statement

concerning the person's relationship to the subject matter of the case and reason for seeking intervention.

See N.H. Circuit Ct. Fam. Div. R. 2.7(A) (emphasis added).

Notably, Allana is well aware of the fact that the Family Division has discretion to grant intervenor status on third parties. In 2017, Allana served a subpoena *duces tecum* on Wayne. (*See* Resp. App. at 7-14.) In response, Wayne sought intervenor status in the Marital Proceeding for the limited purpose of filing a motion to quash the subpoena *duces tecum*. (*Id.* at 70.) Not only did the Family Division grant Wayne's request to intervene on a limited basis in the Marital Proceeding, but also *Allana subsequently objected to Wayne's request to withdraw his intervention status* in 2019. As a result, Wayne has been an intervenor on a limited basis in the Marital Proceeding since 2017.

Based on the foregoing, the Family Division has discretion to grant intervenor status to third parties, which is exactly what it did here.

B. The Family Division Applied the Appropriate Legal Standard When It Granted Wayne Intervenor Status for the Limited Purpose of Defending the Motion to Approve Wayne Settlement.

The Family Division applied the appropriate legal standard to determine whether Wayne should be granted intervenor status for the limited purpose of defending the Motion to Approve Wayne Settlement. In New Hampshire, a trial court has discretion to grant a motion to intervene when the person seeking intervenor status has a "*right* involved in the trial and his *interest* must be direct and apparent; such as would suffer if not indeed be were the court to deny the privilege." *See Snyder v. New Hampshire Sav.*

Bank, 134 N.H. 32, 35 (1991) (describing the “standard a trial court should use in deciding whether to grant a motion to intervene”) (quoting R. Wiebusch, 4 *New Hampshire Practice, Civil Practice and Procedure* § 176, at 129-30 (1984)) (emphasis added).

The Family Division properly applied the legal standard set forth in *Snyder* to determine whether Wayne should be granted intervenor status for the limited purpose of defending the Motion to Approve Wayne Settlement. For example, when the Family Division entered its Order on the Motion for Interlocutory Appeal, the Family Division also addressed Allana’s argument that Wayne had not been granted intervenor status in the Marital Proceeding. (Resp. App. at 70.) Specifically, the Family Division clarified that Wayne was granted intervenor status “for the purpose of defending the receiver’s settlement *nunc pro tunc* to September 18, 2020.” (*Id.*) The Family Division reasoned that such intervenor status was appropriate because “Wayne’s interest in approval of the settlement is sufficiently direct and apparent to warrant limited intervention on that issue at the trial court level.” (*Id.*) Further, the Family Division explained that Wayne, as a holder of a disputed lien on real estate proceeds in the marital estate and a party to a settlement approved by the Family Division, had certain rights that would be affected by the outcome of the Motion to Approve Wayne Settlement and, thus, intervention was appropriate. (*Id.*)

Based on the foregoing, the Family Division applied the appropriate legal standard when it determined that Wayne should be granted intervenor status for the limited purpose of defending the Motion to Approve Wayne Settlement.

C. The Family Division Did Not Transform the Marital Proceeding into a Creditor's Proceeding by Granting Wayne Intervenor Status for the Limited Purpose of Defending the Motion to Approve Wayne Settlement.

According to Allana, the Family Division's decision to grant Wayne intervenor status in the Marital Proceeding transformed a divorce proceeding into a creditor's proceeding on the basis that it allows third parties to dispute the validity of certain debts and/or assets in the marital estate. In contrast to Allana's assertion, Wayne was not granted intervenor status to litigate the validity of the Mortgage in the Marital Proceeding, nor did Wayne ever attempt to litigate the validity of the Mortgage in the Marital Proceeding. Rather, the Family Division granted Wayne intervenor status to *support* the Motion to Approve Wayne Settlement—the resolution of which does not require the Family Division to issue a ruling on the validity of the Mortgage. The distinction between the Family Division's authority to grant the Motion to Approve Wayne Settlement and the Family Division's authority (or lack thereof) to adjudicate the merits of the Mortgage is described more fully in Section I(B) above and incorporated herein.

Put simply, the Family Division can approve the settlement between the Receiver and Wayne *without* adjudicating the merits of the Mortgage. Further, the Family Division has expressly defined the bounds of its subject matter jurisdiction for purposes of addressing the Mortgage in the Marital Proceeding. (Resp. App. at 4 (citing *In re Muller* for the proposition that the Family Division “lacks jurisdiction to invalidate or disregard mortgage interest belonging to a third party, that is, not a party to the divorce”).) The Family Division has never invited the Parties to litigate the validity of the

Mortgage in the Marital Proceeding, nor has Wayne ever attempted to do so. As a result, Allana's assertion that the Family Division's decision to grant Wayne intervenor status in the Marital Proceeding somehow transformed the divorce proceeding into a creditor proceeding that involved litigating the validity of the Mortgage is baseless.

D. Allana Did Not Allege that She was Prejudiced By the Family Division's Decision to Grant Intervenor Status to Wayne for Purposes of Supporting the Motion to Approve Wayne Settlement.

Finally, Allana has not articulated in her Brief, or otherwise, how Wayne's status as an intervenor for purposes of supporting the Motion to Approve Settlement creates any prejudice to her position. Notably, the Receiver—not Wayne—filed the Motion to Approve Wayne Settlement. Further, the Family Division did not state in its Settlement Order that it decided to grant the Motion to Approve Wayne Settlement solely because Wayne made some compelling argument that it would not have otherwise considered. Put simply, Allana would be in the same position regardless of whether the Family Division allowed Wayne to intervene for purposes of the Motion to Approve Wayne Settlement. Therefore, Wayne's status as an intervenor does not present any prejudice to Allana.

Similarly, Allana has not alleged that the Family Division abused its discretion when it allowed Wayne to intervene for purposes of supporting the Motion to Approve Wayne Settlement. The Family Division's decision to approve the settlement between Wayne and the Receiver is discretionary. *In re Thayer*, 146 N.H. at 343-44 (explaining that “[t]rial courts are afforded broad discretion in divorce matters, and we will not overturn the trial court's

rulings regarding property settlement absent an abuse of discretion, or error of law.”). “To show an abuse of discretion, the defendant must demonstrate that the court’s ruling was clearly untenable or unreasonable to the prejudice of his case.” *Simpson v. Wal-Mart Stores, Inc.*, 144 N.H. 571, 575 (1999). As set forth above, Allana has not argued—or even alleged—that the Family Division’s decision to allow Wayne to intervene for purposes of supporting the Motion to Approve Wayne Settlement was untenable and/or unreasonable to the prejudice of her case. As a result, Allana has not demonstrated that the Family Division abused its discretion when it allowed Wayne to intervene in the Marital Proceeding for purposes of supporting the Motion to Approve Wayne Settlement.

Based on the foregoing, the Family Division did not err when it granted Wayne intervenor status for the limited purpose of defending the Motion to Approve Wayne Settlement.

III. INTERLOCUTORY APPEAL QUESTION NO. 3 SHOULD BE ANSWERED IN THE AFFIRMATIVE BECAUSE THE FAMILY DIVISION HAD AUTHORITY TO APPROVE A SETTLEMENT AGREEMENT BETWEEN THE RECEIVER AND WAYNE WITHOUT REVIEW AND APPROVAL BY THE SUPERIOR COURT.

For purposes of this appeal, Allana accepts that the real property liquidated by the Receiver is a part of the marital estate.² In her Brief, Allana argues that the Family Division did not have authority to grant the Motion to Approve Wayne Settlement because the settlement would preclude Allana

² As set forth in the settlement agreement, Wayne reserves the right to challenge the Receiver’s appointment over the assets of 48 North Road in any pending or future proceeding.

from pursuing her claims against Wayne that are pending in the Superior Court. As set forth above, Allana's pending claims against Wayne in the Superior Court are limited to cross-claims filed in the two Interpleader Actions and cross-claims filed in the Receiver's Action. To note, Allana has not initiated her own, separate lawsuit against Wayne in the Superior Court. Rather, her claims are limited to cross-claims that were filed in the Interpleader Actions and the Receiver's Action. Although Allana takes issue with the Family Division's ability to moot her cross-claims in the Interpleader Actions and the Receiver's Action, Allana's argument fails to account for the basis of her standing to pursue the cross-claims in these matters.

As the Family Division explained,

there has been no allegation that any of the assets subject to the receivership were ever titled solely in Allana's name. They appear to have been owned by business entities owned by Brian during the marriage, or purchased with money taken from business entities owned by Brian. As near as the court can tell, Allana's interest in those assets therefore arise *solely* from *this court's* statutory power under R.S.A. 458:16-a to equitably divide assets between divorcing spouses. To the extent that Allana has been granted standing to participate in various Superior Court actions because she is an attaching creditor, she is only an attaching creditor because *this court* granted her a pre-judgment attachment to secure her right to equitable division of marital property. This occurred where there was a credible preliminary showing of fraudulent conduct by Brian. The attachment order from *this court* put Allana on record at the registry of deeds and gave her standing to, for example, participate in the other Superior Court case, such as an interpleader action....[The Court] is unable to find and articulate *any* standing in these cases that Allana would have

separate and apart from her interest in an equitable division of marital property by this court in this divorce proceeding.

(Resp. App. at 42 (emphasis in original.)) In other words, Allana would not have standing to file cross-claims against Wayne—or even appear—in the Interpleader Actions, but for the Attachment that the Family Division granted to Allana in 2016. Put simply, Allana did not have standing to appear in that litigation separate and apart from The Family Division granted the Attachment and, thus, has jurisdiction to dissolve the Attachment. *See* R.S.A. 458:16-a. Upon doing so, Allana would not have *any* standing to appear in the Superior Court lawsuits. As for the Receiver’s Action, the Receiver—not Allana—has standing to represent the interests of the marital estate. Allana, as a divorcing spouse, relinquished her right to bring such an action when she assented to the *Receiver’s* request to file the lawsuit against Wayne.

Finally, to the extent the Family Division did not have authority to moot Allana’s claims in the Interpleader Action by dissolving the Attachment (it did have such authority), then the Family Division still had authority to approve a settlement in the Receiver’s Action. In the event the Family Division only approved the settlement of the Receiver’s Action (and not the Interpleader Actions), then the Receiver could still pay the settlement amount of \$300,000.00 to Wayne, in exchange for Wayne releasing the Mortgage. Upon doing so, Wayne would no longer have an interest in the Interpleader Action and, to the extent Allana’s attachment was still in existence, she could proceed against the other parties in the Interpleader Actions.

Based on the foregoing, the Family Division did not err when it granted the Motion to Approve Wayne Settlement, even though such approval would, in effect, moot Allana’s cross-claims pending against Wayne in the Superior

Court because Allana's standing in the Superior Court arises directly out of the Attachment granted by the Family Division. Therefore, the Family Division did not err when it granted the Motion to Approve Wayne Settlement, which, in effect, mooted Allana's claims pending against Wayne in the Superior Court.

IV. INTERLOCUTORY APPEAL QUESTION NO. 4 SHOULD BE ANSWERED IN THE NEGATIVE BECAUSE THE FAMILY DIVISION DID NOT ERR WHEN IT GRANTED THE MOTION TO APPROVE WAYNE SETTLEMENT OVER THE OBJECTION OF A DIVORCING SPOUSE.

According to Allana, the Family Division abused its discretion when it granted the Motion to Approve Wayne Settlement over Allana's objection. Notably, Allana focuses on technical arguments to argue that the Family Division erred when it granted the Motion to Approve Wayne Settlement. For example, Allana asserts that the Family Division erred when it approved the Receiver's request to settle claims that affect Allana's interest in the marital estate over the objection of a divorcing spouse. However, Allana fails to acknowledge that the Receiver was appointed *at her request*, she acquiesced to the Family Division's Order appointing a Receiver with broad powers, and *assented* to the Receiver's request to file a lawsuit against Wayne, which specifically allowed the Receiver to negotiate and settle claims affecting the marital estate. At this point, Allana's purported "objection" to the settlement is too little, too late.

To the extent Allana argues that the Family Division should not have granted the Motion to Approve Wayne Settlement because the *substance* of the settlement is not in the best interest of the marital estate, then such an argument has not been preserved for appeal.

A. The Family Division Did Not Err When It Approved the Receiver's Request to Settle Claims that Affect Allana's Interest in the Marital Estate.

In contrast to Allana's position, the Family Division did not err when it approved the Receiver's request to settle claims that affect Allana's interest in the marital estate because Allana acquiesced to the Family Division's appointment of a receiver with broad powers, which included the ability to prosecute, settle, and negotiate claims affecting the marital estate.

In or around 2019, Allana moved the Family Division to appoint a receiver with broad powers. (Resp. App. at 41.) Specifically, Allana requested that the Family Division grant the receiver the power to "compromise claims in his or her discretion." (*Id.*) In February 2020, the Family Division appointed the Receiver and authorized the Receiver, in relevant part, to:

[T]ake full title to and control of all assets, accounts and credits of 48 North Rd., LLC and Bonnie & Clyde Management, LLC; ... to initiate and prosecute such actions and to defend against such actions, as the receiver may deem reasonable to recover and protect the assets of those entities, and, in effect, the assets of the marital estate.

(*Id.* at 22-23.) The Family Division clarified that the receivership included certain real property "and any and all proceeds thereof, which include any and all inchoate, equitable and/or residual rights, such as the right to bring suit to set aside fraudulent transfers or otherwise recover property that has been improperly removed from the marital estate." (*Id.* at 22.)

Allana did not object to the Family Division's appointment of the Receiver and/or the scope of the Receiver's appointment. Not only did

Allana acquiesce to the Receiver's authority to "initiate and prosecute" actions that affected the marital estate, but she *requested* that the Receiver be provided with the authority to compromise claims that affect the marital in his discretion. (*See* Resp. App. at 41 (explaining that Allana requested the appointment of a receiver with broad powers, which included the authority to "compromise claims in his or her discretion."))

Interestingly, Allana also assented to the Receiver's subsequent request to initiate a lawsuit against Wayne and/or the Family Division's approval of that request. Notably, the concept that the Receiver could settle a claim that affects the marital estate *without* Allana's approval was expressly contemplated in the Family Division's Order authorizing the Receiver to bring suit against Wayne, however, Allana did not object or raise any issue with this possibility. (Resp. App. at 41 ("Additionally, when the court authorized the receiver to bring suit against Wayne to challenge Wayne's mortgage, the court required the receiver to seek court approval of any settlement of that matter that did not have the assent of Brian and Allana."))

Now, Allana takes issue with the Receiver's authority to settle a claim that affects the marital estate simply because the settlement does not comport with Allana's idea of fairness. However, the Family Division did not appoint a Receiver to settle claims that affect the marital estate *only if Allana agrees*. Rather, Allana was fully aware that the Family Division appointed a Receiver with authority to settle a claim that affects the marital estate *over a divorcing spouse's objection*, since the Family Division expressly addressed such a scenario in its order authorizing the Receiver to initiate a lawsuit against Wayne. Allana should not be rewarded now, after the Parties have entered into a settlement, for her failure to timely notify the Family Division that she

opposes the Receiver's ability to settle claims that affect the marital estate over her objection. The proper time to raise such an objection has passed.

Since the Receiver acted within the scope of the Family Division's Orders concerning his ability to settle a claim that affected the marital estate, the Family Division did not err when it granted the Motion to Approve Wayne Settlement over Allana's objection.

B. The Family Division Did Not Err When It Granted the Motion to Approve Wayne Settlement Because the Settlement Is in the Best Interest of the Marital Estate.

According to Allana, she is entitled to the entire marital estate and the Family Division's issuance of the Settlement Order precludes her ability to use the marital funds at her discretion. As a preliminary matter, Allana failed to raise this argument in her Objection to the Motion to Approve Wayne Settlement and/or her Motion for Reconsideration of the Settlement Order. Rather, Allana raised this issue for the first time in her Motion to Stay Effectuation of Settlement, which was filed after the Family Division entered the Settlement Order and Allana filed a Motion to Reconsider the Settlement Order. Since the Family Division was not provided with an opportunity to consider Allana's argument before the Settlement Order and/or the Order on the Motion to Reconsider were entered, Allana's argument that she is entitled to all of the assets in the marital estate was not properly preserved for appeal. *See Mouser*, 168 N.H. at 27-28.

Notably, the Family Division has not ruled that Allana is entitled to the entire marital estate. Assuming *arguendo* that the Family Division distributes the entire marital estate to Allana, then the Family Division's issuance of the

Settlement Order was not an abuse of discretion because, in effect, the Settlement Order preserves the marital estate.

For example, in the event the Family Division did not issue the Settlement Order, then the ultimate disposition of the marital assets would be held in abeyance pending the resolution of Allana's litigation against Wayne. In the event Allana prevails in her litigation against Wayne, then the marital estate will be approximately \$2,000,000.00, less any expenses incurred in the litigation by either Allana and/or the Receiver. In the event Wayne prevails in the litigation, then the marital estate will likely be depleted in its entirety. Accordingly, the Family Division's decision to grant the Motion to Approve Wayne Settlement preserves the assets in the marital estate at around \$2,000,000.00, without subtracting any litigation expenses, and provides the Parties with the most cost-saving approach. (Resp. App. at 43.) As the Family Division explained,

the court believes that the receiver has presented a realistic proposal that will make a significant amount of unencumbered money available for distribution. Approving the settlement will also have no adverse effect on Allana's right to ask this court for a property division that favors her and disfavors Brian because of Brian's fraudulent conduct. In sum, Allana has not shown that continuing all of the Superior Court litigation will make more money available for equitable division than the amount she could ask to be awarded out of Brian's share because of what it took to free the marital assets from the questionable mortgage that Brian gave Wayne. In fact, if the court permits Allana to continue the Superior Court cases and fund them with marital assets, and she does not achieve a better result against Wayne at a lower litigation cost, that would significantly and unnecessarily complicate the court's equitable division of a smaller pie.

(*Id.*)

Based on the foregoing, the Family Division did not err when it granted the Motion to Approve Wayne Settlement because the decision was in the best interest of the marital estate.

V. INTERLOCUTORY APPEAL QUESTION NO. 5 SHOULD BE ANSWERED IN THE NEGATIVE BECAUSE A PARTY THAT MOVED TO HAVE A RECEIVER APPOINTED WITH BROAD SETTLEMENT POWERS AND FAILED TO CHALLENGE THE FAMILY DIVISION'S ISSUANCE OF AN ORDER PROVIDING THE RECEIVER WITH SUCH SETTLEMENT POWERS CANNOT SUBSEQUENTLY CHALLENGE THE RECEIVER'S ABILITY TO EXERCISE SUCH SETTLEMENT POWERS.

For the reasons set forth in Section IV(A), which are incorporated in their entirety herein, Allana's current challenge of the Receiver's ability to exercise his broad settlement powers is untimely because (1) Allana moved the Family Division to appoint a receiver with broad settlement powers, (2) Allana did not object to the Family Division's appointment of a receiver and/or the scope of the receiver's authority until *after* the Receiver filed the Motion to Approve Wayne Settlement, and (3) Allana acquiesced to the Family Division's appointment of a receiver with broad powers, which included the ability to prosecute, settle, and negotiate claims affecting the marital estate. Based on the foregoing, Allana cannot challenge the Receiver's ability to exercise his broad settlement powers and attempt to interfere with the Receiver's settlement with Wayne.

CONCLUSION

For the reasons set forth herein, the Court should affirm the Family Division's Order approving the Receiver's settlement with Wayne and answer the questions presented as follows:

1. Yes. The Family Division has authority to approve a settlement between a receiver and intervenor that concerns real property in the marital estate.

2. Yes. Third-party mortgagees have standing, as parties to a settlement agreement, to intervene in a divorce proceeding for purposes of advancing a position related to that settlement agreement.

3. Yes. The Receiver acted within the scope of his appointed authority when he negotiated a settlement with Wayne concerning the Mortgage over the objection of Allana and without approval by the Superior Court.

4. No. The Family Division did not err when it approved the Settlement Agreement over Allana's objection.

5. No. A party's failure to object to the Family Division's order granting broad settlement powers to a receiver later precludes that same party from arguing that the receiver's settlement powers are too broad at the time such powers are exercised.

ORAL ARGUMENT

Pursuant to the Clerk's Order, dated September 22, 2021, the Court will decide the Interlocutory Appeal on the briefs, so no oral argument is necessary.

Respectfully Submitted,
Wayne Colsia

By and through his counsel,

/s/ Roy W. Tilsley, Jr.

Roy W. Tilsley, Jr., Esq., Bar No. 9400
Hilary H. Rheaume, Esq., Bar No. 265510
Bernstein, Shur, Sawyer & Nelson, P.A.
670 N. Commercial Street, Suite 108
P.O. Box 1120
Manchester, New Hampshire 03105
(603) 623-8700
rtilsley@bernsteinshur.com
hrheaume@bernsteinshur.com

December 28, 2021

STATEMENT OF COMPLIANCE

I hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 8,284 words, which is fewer than the 9,500-word limit permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

/s/ Roy W. Tilsley, Jr.

Roy W. Tilsley, Jr., Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of forgoing was served this 28th day of December, 2021 through the electronic-filing system on all counsel of record.

/s/ Roy W. Tilsley, Jr.
Roy W. Tilsley, Jr., Esq.