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SUPERIOR COURT
OF THE V.I.

SUPERIOR COURT OF THE VIRGIN ISLANDS

APPELLATE DIVISION OF ST. CROIX

IN RE ESTATE OF ANN FRANCISCA WATSON, DECEASED,	**Case Number SX-91-PB-126**
LAWRENCE GEORGE, PETITIONER ON REVIEW, v. ALDEN TRANBERG-MARTINEZ, RESPONDENT ON REVIEW,	**On Petition for Review from the Magistrate Division**

ORDER

THIS MATTER is in the Appellate Division based on a notice of appeal filed by Lawrence George. Mr. George appeals an order issued by the Magistrate Court denying the motion he filed to reopen his mother's probate matter. For the reasons stated below, the order is reversed and this matter remanded to the Magistrate Division for further proceedings on the motion to reopen.

FACTUAL AND PROCEDURAL BACKGROUND

Ann Francisca Watson passed away on May 24, 1991, leaving behind a will. In her will—dated December 9, 1977 and admitted to probate by order entered January 22, 1992—Ms. Watson directed that her property, Plot 92 Estate Grove Place, Frederiksted, St. Croix, be divided equitably between her home and a duplex situated on the land. Once divided, her son, Lawrence George, would receive a life estate in the land surrounding the duplex while her daughters, Eleanor Tranberg and Alden Tranberg-Martinez, would inherit life estates in the land surrounding the home. Title to the portion of the land with the duplex on it would pass, after Mr. George's death, to his son, Ms. Watson's grandson, Troy A. George. Title to the other half of Plot 92, the portion with Ms. Watson's home on it, would pass to Gemenise Martinez after the life estates of Ms. Tranberg and Ms. Tranberg-Martinez had ended.[1] Ms. Watson's will also included a residuary clause that left the "rest, residue and remainder" of her estate to her children to "share and share alike."

After numerous delays unrelated to this appeal, the estate proceeding was converted to settlement without administration after which a final adjudication was entered by the Probate Court on April 14, 2008, as amended on May 16, 2008. As a result of the Final Adjudication, Plot 92, which comprises approximately 0.3 acres of land, was subdivided into Plot 92A and Remainder Plot 92.[2] Troy George was granted title to Plot 92A, subject to his father's life estate, while Gemenise Martinez was granted title to Remainder Plot 92, subject to the life estates of Eleanor Tranberg and Alden Tranberg-Martinez. Once the Final Adjudication was entered this matter was closed. None of the parties appealed.

Four years later, on January 26, 2012, Mr. George, through counsel, filed a motion to reopen probate. Mr. George argued that his mother's wish to "equitably apportion the land between the duplex and [her] home" was not honored because there were actually three structures on his mother's property "[a]t the time of probate," not two as reflected in the Final Adjudication. (Mot. to Reopen Probate 2, filed Jan. 26, 2012.) Mr. George served a copy of his motion on counsel for Alden Tranberg Martinez, executor of their mother's estate. Ms. Tranberg-Martinez did not appear or file an opposition to her brother's motion. When nothing further came before the court, the Magistrate Court issued an order, entered April 17, 2012, construing Mr. George's motion to reopen as a claim asserted against estate by a creditor, and denying it as untimely.

On May 10, 2012, Mr. George filed a document captioned "Notice of Filing Appeal" which the Clerk's Office, on May 14, 2012, construed as a petition for review and assigned to a Superior Court judge for further proceedings. *See* Super. Ct. R. 322.1(b)(1)(B). In an order entered on May 23, 2012, the judge to whom this appeal was initially assigned *sua sponte* dismissed the appeal as untimely under Superior Court Rule 322.1 since Mr. George's notice of appeal was filed more than ten days after the April 17, 2012 Order was entered. (*See generally* Order, entered May 23, 2012.) Three months later, Mr. George filed a document captioned "Motion for Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(B)" in which he requested that the Appellate Court set aside the May 23, 2012 Order dismissing the appeal and allow it to proceed. This time, Ms. Tranberg-Martinez appeared and, through counsel, filed a response on September 17, 2012, but one that opposed the wrong motion. Ms. Tranberg-Martinez argued that the court should deny the motion to reopen the probate case because Mr. George waited too long to request relief, not that the court should deny the motion to reinstate the appeal.

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[1] The will does not indicate whether Gemenise Martinez is related to Ms. Watson.

[2] The record is unclear by what authority Ms. Watson's property had been subdivided, but OLG Drawing Number D9-5933-Coo8, dated March 10, 2008, which is approximately a month before the final adjudication was entered, shows that Plot 92 had been subdivided into Plot 92A and Remainder Plot 92.

In an order entered October 15, 2012, the Appellate Court noted that Ms. Tranberg-Martinez had opposed the wrong motion and therefore had not articulated any basis for denying the motion to reinstate the appeal. The court then concluded that Mr. George had shown excusable neglect for his failure to timely appeal and granted his request to reinstate this internal appeal. In another order issued *sua sponte* on November 12, 2012, the court further explained that the October 15, 2012 Order was only intended to set aside the dismissal so that a Superior Court judge sitting in the Appellate Division could hear the appeal on the merits. The court then ordered that this appeal be returned to the Clerk's Office for reassignment and, in effect, recused from this matter.

The Clerk's Office later reassigned this appeal to another judge who, in an order entered May 13, 2013, set a briefing schedule for the parties to follow. Mr. George filed his brief on May 29, 2013. Ms. Tranberg-Martinez filed her responsive brief on June 13, 2013. To date nothing further has come before the Court.

DISCUSSION

Before turning to the arguments Mr. George raises on appeal, the Court must first address an argument Ms. Tranberg-Martinez raised in her responsive brief concerning the October 15, 2012 Order reinstating Mr. George's appeal. In her responsive brief, Ms. Tranberg-Martinez questioned "whether the [Appellate] Court had the authority to vacate its [dismissal] of the [appeal] . . . [and] allow the untimely review of the Magistrate[Court]'s denial of the Motion to Re-Open." (Resp.'s Br. 9, filed June 13, 2013.) Although Mr. George did not have a chance to respond, the Court finds it necessary to address Ms. Tranberg-Martinez's argument briefly only because it questions the authority of the Appellate Division to hear this internal appeal.

Superior Court Rule 322.1 directs that an internal appeal, also called a petition for review, from the Magistrate Division to the Appellate Division must be filed no later than ten days after the order to be reviewed on appeal was entered by the Clerk's Office. *See* Super. Ct. R. 322.1(b)(2)(A). Rule 322.1 further directs that "[t]he time for filing a petition for review may not be extended." Super. Ct. R. 322.1(b)(2)(B). But the ten-day deadline for filing an appeal is also governed by Superior Court Rule 9, which excludes "intermediate Saturdays, Sundays and holidays." Super. Ct. R. 9; *see also* Super. Ct. R. 322.1(j). In her brief Ms. Tranberg-Martinez points out that Mr. George did not timely appeal from the Magistrate Division to the Appellate Division. She is correct.

The Magistrate Court's order dismissing Mr. George's motion to reopen was entered on Tuesday, April 17, 2012. Ten days later was Tuesday, May 1, 2012, excluding intervening Saturdays and Sundays. Mr. George did not file his "Notice of Filing Appeal" until Thursday, May 10, 2012, which was nine calendar days, or seven business days, after the ten-day deadline to appeal had passed. But Ms. Tranberg-Martinez first raised this untimeliness in her responsive brief. She did not move to dismiss the appeal. Rather, it was the appellate court, acting on its own, who issued the May 23, 2012 Order and dismissed this appeal as untimely. When Mr. George later moved to set that Order aside and excuse his untimely appeal, Ms. Tranberg-Martinez did not explain in her September 17, 2012

Response why the appeal should not be reinstated. Instead, she argued the merits of the motion to reopen, something the appellate court highlighted in granting the motion to reinstate the appeal. (*See* Order 4, entered Oct. 15, 2012.) Ms. Tranberg-Martinez should have challenged the timeliness of the appeal in the September 17, 2012 Response, or even in a motion to reconsider the October 15, 2012 Order once the court pointed out that she had argued the wrong motion. By waiting to challenge the timeliness of the appeal for the first time in her responsive brief, Ms. Tranberg-Martinez waived that argument because Mr. George could not respond to it without leave of court. *See* Super. Ct. R. 322.1(i)(A). *Accord Perez v. Ritz-Carlton (V.I.), Inc.*, 59 V.I. 522, 528 n.4 (2013) ("Like an issue raised for the first time in an appellate reply brief, an issue raised for the first time in a reply brief supporting summary judgment is deemed waived because the opposing party typically does not have the opportunity to respond."); *Der Weer v. Hess Oil V.I. Corp.*, SX-2005-CV-274, 61 V.I. ___, 2014 WL 7340231, *3 (V.I. Super. Ct. Dec. 22, 2014) ("Raising new arguments for the first time in a reply is concerning.").

Turning to the merits, Mr. George argues on appeal that the Magistrate Court applied the wrong law in denying his motion to reopen. Ms. Tranberg-Martinez agrees, but counters that even though the Magistrate Court "may not have cited the appropriate authority, [it] nonetheless reached the correct result" and therefore the Court should affirm the dismissal of Mr. George's motion to reopen. (Resp.'s Br. 8.) In reviewing a decision from the Magistrate Division, a judge sitting in the Appellate Division functions as an appellate court, reviewing the facts found by the magistrate court for clear error but affording plenary review to the magistrate court's "[l]egal findings, statements of law, and the application thereof." Super. Ct. R. 322.3(b)(1)-(2). The appellate court may not disregard these standards of review, *see Henry v. Dennery*, S. Ct. Civ. No. 2012–0130, 2013 WL 206128, *2 (V.I. Jan. 11, 2013) (unpublished) (setting aside the standards of review "would render the proceedings that occurred in the Magistrate Division a complete nullity, and . . . signal to the magistrates in these cases that the work they dedicated to constructing the record is a complete waste of time."), nor can the court take additional evidence when reviewing the magistrate court's decision. *See In re Estate of Small*, 57 V.I. 416, 429 (2012) ("the magistrate is the finder of fact for all section 123(a)(4) original jurisdiction cases.").

Citing Section 195 of Title 15 of the Virgin Islands Code, the Magistrate Court first found that Mr. George's had not overcome "the presumption" that the May 16, 2008 Final Adjudication was "correct" since "'registration in the office of the proper recorder of deeds'" of a judgment in a probate case is "'prima facie proof of title to said property in the heir or heirs'" (Order 1, entered Apr. 17, 2012 (quoting 15 V.I.C. § 195).) The court then further found that Mr. George's motion was untimely because "over three and one half years had passed" since the Final Adjudication was entered. *Id.* at 2. The court then denied the motion as untimely by equating Mr. George to "a creditor, or person with a claim against the estate" who, under Section 200 of Title 15 of the Virgin Code, had 120 days from "'the entry of a judgment placing heirs in possession'" to void a transfer of property. *Id.* at 2 (quoting 15 V.I.C. § 200).

Relying on Section 195 of Title 15 of the Virgin Islands Code was erroneous for a number of reasons. First, Mr. George did not submit a copy of the final adjudication showing that it had been registered in the recorder of deeds office. Similarly, the docket—which on appeal includes "[t]he original case file" from the Magistrate Division, *see* Super. Ct. R. 322.1(h)(1)—also does not show that a registered copy of the final adjudication was ever filed in the probate matter. Furthermore, even if a register copy had been submitted below, Mr. George should have been given a chance to rebut it. "Prima facie proof," as directed by Section 195 of Title 15, does not mean not conclusive proof, but rather rebuttable proof. *See Island Tile & Marble, LLC v. Bertrand*, 57 V.I. 596, 625 (2012) ("The term 'prima facie evidence' is such a term of art, and means '[e]vidence that will establish a fact or sustain a judgment unless contradictory evidence is produced.'" (quoting *Black's Law Dictionary* 638–39 (9th ed. 2009) (emphasis omitted)). There simply was no factual basis for the Magistrate Court to find that Mr. George failed to overcome any presumption regarding the correctness of the Final Adjudication.

Similarly, construing Mr. George as a creditor of the estate was also erroneous. Mr. George was not moving to reopen his mother's probate case to request money she owed him before she died. The term "creditor," defined in Section 89 of Title 15 of the Virgin Islands Code, means a "person, to whom . . . a debt defined in this section is to be paid." 15 V.I.C. § 89(a). Section 89 further defines debt as the "balance of money due on an accepted claim." *Id.* The Magistrate Court did not find that Mr. George had submitted a claim to the executor in accordance with Chapter 23 of Title 15 of the Virgin Islands Code, which governs claims against estates, or that he was trying to submit a claim. Instead, as he argues in his brief on appeal, Mr. George sought to reopen his mother's probate case as an heir. (*See* Pet'r's Br. 11, filed May 29, 2013 ("As a named heir and beneficiary in the Will, the Petitioner's rights of redress as an heir cannot be circumscribed by the time line of a creditor.").) While the term "heir" is not expressly defined in the Virgin Islands Code—and therefore would "be construed according to the common and approved usage of the English language" as one who has the right to inherit the property of another after that persons' death, *see* 1 V.I.C. § 42—Mr. George was unquestionably an heir under Virgin Islands law. *See* 15 V.I.C. §§ 1, 84(5). And it was in that capacity that he sought to reopen his mother's estate, not as a creditor. Denying the motion to reopen for failure to comply with these statutes was erroneous.

Although Mr. George captioned his motion as one to reopen, what he was actually seeking was relief from the Final Adjudication that had been entered approximately four years earlier. The Supreme Court of the Virgin Islands has held that "the final adjudication terminating administration of an estate constitutes the final judgment in a probate case, in that the final adjudication is what 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *In re Estate of George*, 59 V.I. 913, 919-20 (2014) (quoting *Estate of George v. George*, 50 V.I. 268, 274 (2008)). To set the Final Adjudication aside, Mr. George had to show in his motion that he was entitled such relief. At present, no Virgin Islands statute or Superior Court rule governs when and under what conditions probate matters may be reopened. The Virgin Islands Supreme Court also has not addressed this issue yet. But the Appellate Division of the District Court of the Virgin Islands has, holding in *In re Estate of Sewer*, 332 F. Supp. 2d 817, 824 (D.V.I. App. Div. 2004), that Federal Rule of Civil Procedure 60(b), which governs relief from final judgment, "fully applies" through Superior Court Rule 190 in probate cases "to protect the finality of judgments."[3] This precedent remains binding on the Superior Court, including the Magistrate Division. *See In re People of the V.I.*, 51 V.I. 374, 389 n.9 (2009) ("decisions rendered by the Third Circuit and the Appellate Division of the District Court are binding upon the Superior Court."). And even though the Virgin Islands Supreme Court has since held generally that the Superior Court can only apply the federal rules of procedure as rules of "last resort, rather than first resort," and then only after "a thorough review of applicable Virgin Islands statutes, Superior Court rules, and precedents from th[e Supreme] Court reveals the absence of any other procedure," *Sweeney v. Ombres*, 60 V.I. 438, 442 (2014), here a thorough review here reveals no other procedure. Accordingly, since no statute, Superior Court rule, or Supreme Court precedent governs setting aside final orders in probate matters, Federal Rule of Civil Procedure 60(b), as applied through Superior Court Rule 190,[4] governs as held by the Appellate Division. *Accord In re Estate of Novakovich*, 101 P.3d 931, 936 (Wyo. 2004) (explaining that "[t]he 'law of reopening estates is derived from the law of vacating judgments.'" (quoting *Pitzer v. Union Bank of Cal.*, 9 P.3d 805, 812 (Wash. 2000) (en banc))). By not following *Estate of Sewer* and applying Rule 60(b) in ruling on the motion to reopen, the Magistrate Court erred.

Federal Rule of Civil Procedure 60(b), as applied through Superior Court Rule 190, grants the Superior Court authority to "relieve a party or its legal representative from a final judgment" in six instances. The first three grounds—mistake or neglect, newly discovered evidence, and fraud, *see* Fed. R. Civ. P. 60(b)(1)-(3)—are limited to a year after the final judgment was entered. Fed. R. Civ. P. 60(c). Of the remaining three provisions, subsection (b)(4) allows relief from a final judgment when "the judgment is void," subsection (b)(5) allows relief when the judgment was "satisfied, released, or discharged," and subsection (b)(6) allows relief "for any other reason." Fed. R. Civ. P. 60(b)(4)-(6). Since the Final Adjudication was entered as amended on May 16, 2008, and Mr. George filed his motion to reopen on January 26, 2012, subsections (b)(1) through (b)(3) were not available as more than a year had passed. Additionally, subsection (b)(5) would not have applied since Mr. George did not allege that the Final Adjudication was satisfied. This left Rule 60(b)(4) or Rule 60(b)(6) as the only bases available for Mr. George to seek relief from the Final Adjudication and reopen the probate matter. But since the Magistrate Court applied the wrong law, the Court has no findings to review under Rule 60(b). Similarly, because Mr. George failed to cite any authority in his motion to reopen,

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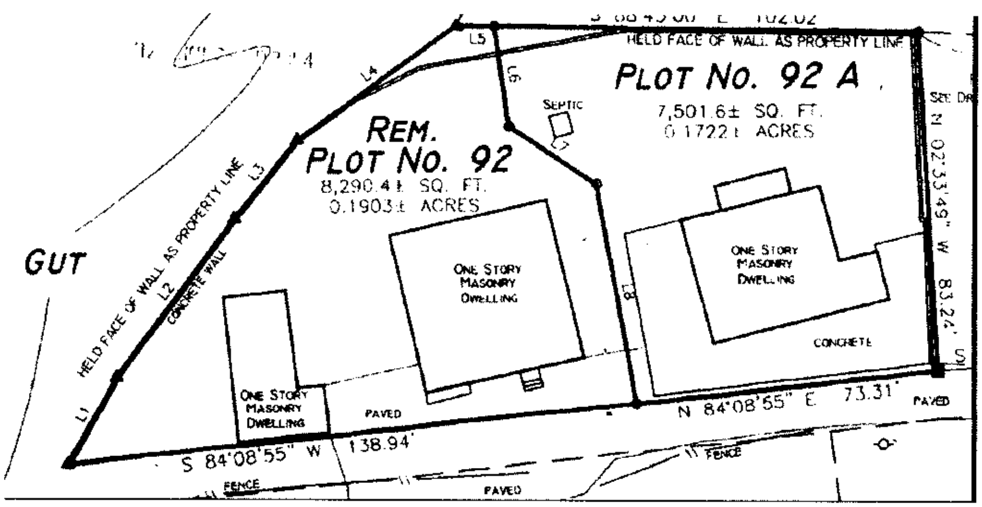
[3] Although the references in *Estate of Sewer* were to Territorial Court Rule 190, the same rule is currently designated as Superior Court Rule 190 as a result of amendments adopted in 2005 that replaced all references to "Territorial" with "Superior" throughout the court's rules. *See* Order, entered Mar. 3, 2005, *In re Order Amend. Terr. Ct. R.*, SX-05-MC-030, *available at* 2005 WL 7854009. Accordingly, for the sake of simplicity, the Court refers to the rule as currently designated.

[4] Although the Court in *Sweeney* was referring to the application of the federal rules through Superior Court Rule 7, which applies to practice in the Superior Court generally, and not to Superior Court Rule 190, which applies only probate and other fiduciary proceedings, there is no doubt that the same concerns attending Rule 7 would equally apply to Rule 190 since the overarching concern is with the federal rules rendering the Superior Court's rules "wholly superfluous." *See, e.g.*, *Fuller v. Browne*, 59 V.I. 948, 953 (2013). That concern is not present here since no Superior Court rule applies with the possible exception of Superior Court Rule 50, which provides that "the court . . . may set aside . . . [a] judgment after . . . hearing." But unlike Rule 7, which is designated as a rule of general application for all matters in the Superior Court, Rule 50 is designated as one of the rules that apply only to proceedings in the Civil Division. Moreover, proceedings in the Probate Division are, in addition to the general rules, governed by the rules provided in Part VII, namely Rules 190 through 213. Thus, since Rule 50 is not one of the general rules that apply to all proceedings, it would not apply in probate matters. But even if it did, Federal Rule of Civil Procedure 60(b) would still govern as Superior Court Rule 50 makes Federal Rules of Civil Procedure 59 through 61 "inclusive" applicable to requests to set aside judgment.

whether binding or persuasive, the Court cannot determine on this record which subsection might have applied. For example, "Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *United Student Aid Funds v. Espinosa*, 559 U.S. 260, 271 (2010). In contrast, Rule 60(b)(6) concerns justice more broadly, and represents the "grand reservoir of equitable power" granted to courts "to do justice in a particular case." *A.P. v. Gov't of the V.I. ex rel. C.C.*, 961 F. Supp. 122, 124-25 (D.V.I. App. Div. 1997) (internal quotation marks and citation omitted). But Rule 60(b)(6) also "does not confer on the courts a 'standardless residual discretionary power to set aside judgments.'" *Id.* at 125 (quoting *Moolenaar v. Gov't of the V.I.*, 822 F.2d 1342, 1346 (3d Cir. 1987)). Here, Mr. George alleged a sufficient factual basis to warrant further inquiry, particularly in light of the overall "purpose of Rule 60(b)" which 'is to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done.'" *Id.* at 124 (quoting *Boughner v. Sec. of Health, Educ. & Welfare*, 572 F.2d 976, 977 (3d Cir. 1978)).

In his motion, Mr. George explained that there was a third building on his mother's property "[a]t the time of probate" that was not expressly mentioned in her will and therefore was not distributed in the Final Adjudication. (Pet'r's Mot. to Reopen 2.) As support, he attached a copy of a map of Plot 92 after it had been subdivided.



The map shows three structures on the land, situated essentially side-by-side from east to west, with the line subdividing the land into Remainder Plot 92 and Plot 92A running north to south. As a result of the subdivision, Remainder Plot 92 has two structures on it while Plot 92A has one structure on it. But neither the map, the will, nor the Final Adjudication identified which of the structures was the duplex and which was Ms. Watson's home.

Assuming that Plot 92 was subdivided correctly, meaning that the structure located on what is now Plot 92A is the duplex referenced in Ms. Watson's will, that still would not clarify which of the two structures on what became Remainder Plot 92 was Ms. Watson's home and which is the "third structure" Mr. George referenced in his motion. If the middle structure was Ms. Watson's home, then subdividing the land in such a way that it curves around that structure may have been correct. In other words, if the line ran straight down the middle, it would have run underneath the middle structure, leaving half on Plot 92A and half on Remainder Plot 92. But if the smaller structure to the far west was Ms. Watson's home, then dividing Plot 92 in such a way that the daughters inherited two properties and the son only one may have been inequitable. The Court cannot tell from this record because Mr. George did not identify the buildings in his motion to reopen, the Probate Court failed to account for a third structure, and the Magistrate Court made no findings regarding the property. But Mr. George did allege in his motion that Plot 92 was inequitably divided and that Ms. Watson's intentions were not honored. He also claimed that Remainder Plot 92 was "sufficiently large to be [further] subdivided" so that the third structure, and the land under it, could have passed to all three children through the residual clause of his mother's will. (Pet'r's Mot. to Reopen 2.) In other words, Mr. George argued that the Probate Court could have subdivided Plot 92 into three plots: one plot with the land surrounding Ms. Watson's home, a second plot with the land surrounding the duplex, and then a third plot with the land surrounding the third structure.[5]

While the assertions Mr. George made in his motion would not have, without more, justified reopening this matter since "unsworn representations of an attorney are not evidence," *Henry v. Dennery*, 55 V.I. 986, 994 (2011), they nevertheless warranted further inquiry, particularly when viewed in conjunction with the map of Plot 92. Ms. Watson's will referenced two structures, not three: her home and a duplex on her land. As Mr. George argues on appeal "the very fact that the [w]ill was silent as to the third dwelling should have put the [Magistrate] Court . . . on notice of the need to determine if the third dwelling was indeed devised." (Pet'r's Br. 9.) Mr. George's motion, coupled with the map, was enough to at least raise a question as to whether Ms. Watson's intent was followed.

It is not the duty of the magistrate court to make a litigant's case for him, *cf. Moore v. Walters*, S. Ct. Civ. No. 2013-0088, 61 V.I. ___, 2014 WL 5573354, *3 (V.I. Oct. 29, 2014), especially when represented by counsel. While the better course may have been to order Mr. George to brief what authority he was relying on, rather than rule on his motion without that information, binding precedent nonetheless established that Rule 60(b) applies through Superior Court Rule 190. By not construing Mr. George's motion under that rule, and by not having a "full hearing," particularly if the motion were brought under Rule 60(b)(6), *A.P.*, 961 F. Supp. at 125,[6] the Magistrate Court erred and the April

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[5] The Court questions whether there is a distinction between the third building being on the property at the time of probate, as Mr. George alleged in his motion to reopen, rather than at the time the will was executed or when the will was first admitted to probate. The Court also questions whether individual structures, such as homes and duplexes, can be devised or bequeathed separately from the land or real property on which they sit. Here, for example, Ms. Watson may have referenced her home and the duplex on her land simply to specify in her will how she wanted her property divided and who she wanted to inherit which portion. If so, then Mr. George might not have had a basis for reopening his mother's estate since real property is devised with whatever buildings or other structures are on it. In other words, it might not have made a difference if there were seventeen structures peppered across Ms. Watson's land, for example, so long as the home and the duplex, both referenced in the will, were identifiable and the land underneath them could be conveyed as directed by the will. The Court expresses no opinion on these questions but does note them here as they could affect the outcome on remand.

[6] A hearing may also have been required if Mr. George were proceeding under Rule 60(b)(4). *See, e.g.*, 11 Wright & Miller, *Federal Practice & Procedure* § 2865 (2011) ("The court need not hold a hearing on a motion for relief from judgment *if*

17, 2012 Order must be reversed and this matter remanded.

On remand, the Magistrate Court must allow Mr. George an opportunity to identify what rule he is proceeding under, i.e., whether Rule 60(b)(4) or under 60(b)(6), and then to allow him to present whatever basis for relief he may have. But the Court cautions that even fundamental errors are final unless timely challenged. *Cf. In re Blouin's Estate*, 430 A.2d 822, 825 (Me. 1981) (noting that even fundamental errors are final and will not be disturbed if not timely appealed). It may very well be that on remand that Mr. George cannot show that he is entitled to relief. The concern, however, is that he was not given the chance to try in light of his motion to reopen, the map, and the overall record, which warranted further inquiry.

Accordingly, for the reasons stated above, it is hereby

ORDERED that the Order, entered on April 17, 2012, is **REVERSED** and this matter is **REMANDED** to the Magistrate Division for further proceedings consistent with this Order.

DONE and so ORDERED this 19th day of March, 2015.

DENISE A. HINDS ROACH, JUDGE

ATTEST:
Estrella H. George
Acting Clerk of the Court

By: Frances N. Carney
Court Clerk Supervisor

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the motion clearly is without substance and merely an attempt to burden the court with frivolous contentions." (emphasis added)). The Court expresses no opinion on this issue, but instead leaves it to the sound discretion of the Magistrate Court. *Accord Atkinson v. Prudential Property Co., Inc.*, 43 F.3d 367, 374 (8th Cir. 1994) ("Neither the Federal Rules of Civil Procedure nor the local rules require the district court to hold a hearing or make specific findings in dealing with a Rule 60(b) motion. Rather, whether to grant a hearing or make specific findings in ruling upon a Rule 60(b) motion is left to the district court's discretion.").