

BRANDY SPRUCE et al.

v.

WILLIE JACKSON

Submitted on Briefs October 6, 2004
Decided December 1, 2004

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER,
CALKINS, and LEVY, JJ.

MEMORANDUM OF DECISION

Brandy Spruce and Ava Spruce, as guardian and next friend of Maria Spruce, appeal from an order of the Superior Court (Penobscot County, *Mead, J.*) granting KeyBank's motion for relief from default judgment pursuant to M.R. Civ. P. 60(b)(1). Contrary to the Spruces' contention, the court properly concluded that it lacked subject matter jurisdiction at the time it entered the default judgment because this Court's mandate from a prior appeal in the underlying case had not yet issued. *See* M.R. App. P. 3(b), 14(a)(2); *Cheoros v. Cheoros*, 1997 ME 37, ¶ 3 n.1, 690 A.2d 974, 975-76. In addition, the court acted within the bounds of its

discretion by considering KeyBank's trustee disclosure even though KeyBank served the disclosure more than twenty days after the service of the trustee summons. *See* M.R. Civ. P. 4B(e) ("A trustee shall serve that trustee's disclosure under oath within 20 days after the service of the trustee summons upon that trustee, *unless the court otherwise directs.*") (emphasis added).

The entry is:

Judgment affirmed.

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