

Docketed 03/19/2026

COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

SUPERIOR COURT DEPARTMENT

NORFOLK, ss.

Civil Action No. 2582CV00364

DANY ABOUELHKIER,
Plaintiff,

v.

MARINA BAY RESIDENCES, LLC, BOZZUTO

MANAGEMENT CO., and DELANEY BARRETT,
Defendants,

**MINOR K.F.'S MOTION TO VACATE VOID JUDGMENT AS TO MINOR, STRIKE
IMPROPER PARTY ADDITION, AND DISMISS MINOR FROM ACTION, WITH
MEMORANDUM OF LAW**
**(STRICT LIMITED SPECIAL APPEARANCE SOLELY TO CONTEST JURISDICTION
AND VOIDNESS; NO CONSENT TO PERSONAL JURISDICTION)**

NOW COMES minor K.F., by and through his parent and next friend, Sandra Fernandez (self-represented), appearing strictly and solely for the limited purpose of contesting personal jurisdiction and seeking relief from a void judgment, and respectfully moves, pursuant primarily to Mass. R. Civ. P. 60(b)(4), and alternatively Rule 60(b)(6), as well as Mass. R. Civ. P. 3, 4(d)(2), 12(b), 12(h), 15, 17, 21, and 54(b), G.L. c. 231, § 51, G.L. c. 190B, § 1-404, and the Court's inherent authority, for an order:

1. Vacating the February 17, 2026 judgment as void as to minor K.F.;
2. Striking minor K.F. as an improperly added party;
3. Dismissing minor K.F. from this action without prejudice;

4. Declaring that the February 17, 2026 judgment has no force, effect, or preclusive impact as to minor K.F.; and

5. Granting such further relief as justice requires.

This motion is based on the grounds that minor K.F. never filed a complaint, never asserted claims, was never properly joined through pleading or amendment, was never served with process as required by the Massachusetts Rules of Civil Procedure, never voluntarily appeared for jurisdictional purposes, and therefore was never subject to the Court's personal jurisdiction. Because jurisdiction never attached, the judgment is void and must be vacated.

This motion is filed under strict limited special appearance solely to contest jurisdiction and voidness and does not constitute consent to jurisdiction or waiver of any jurisdictional objection. See Mass. R. Civ. P. 12(b), 12(h).

MEMORANDUM OF LAW

I. PROCEDURAL BACKGROUND

This severed action originated from the Court's transfer of individual claims asserted by plaintiff Dany Abouelkhier.

The operative complaint filed April 1, 2025 named Dany Abouelkhier as plaintiff and asserted claims solely on his behalf. It did not name minor K.F. and did not assert any claims by or against the minor.

Minor K.F.:

- never filed a complaint;
- never filed an amended or supplemental pleading;

- never asserted any claims;
- never moved to intervene;
- never consented to joinder;
- was never served with summons or process; and
- never voluntarily invoked the Court's jurisdiction.

On November 20, 2025, the Court entered an order purporting to add minor K.F. as a plaintiff despite the absence of any pleading asserting claims by the minor.

The docket reflects no motion seeking joinder of minor K.F., no amended complaint naming minor K.F., and no notice or hearing pursuant to Mass. R. Civ. P. 21 prior to entry of that order.

On February 9, 2026, minor K.F., through his parent, filed a Notice of Objection and Limited Special Appearance expressly contesting jurisdiction and objecting to party status.

On February 17, 2026, the Court allowed Defendants' Motion to Dismiss for Failure to Prosecute pursuant to Mass. R. Civ. P. 41(b)(2) and ordered judgment for Defendants.

Because minor K.F. was never made a party through pleading, amendment, or service of process, the Court lacked personal jurisdiction over the minor and lacked authority to enter judgment affecting him.

II. RELIEF IS REQUIRED WHERE A JUDGMENT IS VOID FOR LACK OF PERSONAL JURISDICTION

Mass. R. Civ. P. 60(b)(4) mandates relief where a judgment is void. The Supreme Judicial Court has made clear that "[a] judgment entered without jurisdiction over the

person is void.” See *Harris v. Sannella*, 400 Mass. 392, 395 (1987). Likewise, “[a] judgment entered without proper service is void.” See *Farley v. Sprague*, 374 Mass. 419, 424–25 (1978).

Where a court lacks personal jurisdiction due to defective service, any resulting judgment is a legal nullity and must be vacated upon motion. Entry of judgment against a person who was never properly made a party also violates fundamental procedural due process and independently renders the judgment void.

III. MINOR K.F. WAS NEVER MADE A PARTY THROUGH PLEADING OR AMENDMENT

Under Mass. R. Civ. P. 3, a civil action is commenced by the filing of a complaint. Rules 8 and 10 require that claims be asserted through pleadings that identify the parties and state the causes of action.

The operative complaint filed on April 1, 2025 did not name minor K.F. as a party and asserted no claims by or against the minor. No amended complaint was filed pursuant to Mass. R. Civ. P. 15 to add or assert claims involving minor K.F., nor was any supplemental pleading filed. No pleading invoking jurisdiction over minor K.F. was ever submitted.

Although G.L. c. 231, § 51 permits amendment relating back where an amendment is properly allowed, no such amendment occurred in this matter.

Accordingly, absent a pleading asserting claims by or against him, minor K.F. was never properly made a party to this action.

IV. THE COURT NEVER ACQUIRED PERSONAL JURISDICTION OVER MINOR K.F.

Personal jurisdiction requires valid service of process or a voluntary appearance that invokes the court's jurisdiction. See Mass. R. Civ. P. 4(d)(2), 12(b)(2), 12(h)(1).

No summons was issued naming minor K.F., and no complaint naming minor K.F. was ever served. Accordingly, no valid service of process occurred.

The February 9, 2026 filing by minor K.F. constituted an appearance solely to contest personal jurisdiction pursuant to Rule 12(b)(2). An appearance limited to challenging jurisdiction does not confer personal jurisdiction. See *Harris v. Sannella*, 400 Mass. 392, 395 (1987).

Absent proper service or a voluntary appearance waiving jurisdictional objections, personal jurisdiction over minor K.F. never attached.

V. RULE 21 JOINDER WAS PROCEDURALLY DEFECTIVE AND DID NOT CREATE JURISDICTION

Mass. R. Civ. P. 21 permits parties to be added "after hearing" and on just terms.

The docket reflects no motion for joinder, no amended pleading, no notice of hearing, and no hearing prior to the November 20, 2025 order purporting to add minor K.F.

Rule 21 does not eliminate the fundamental jurisdictional requirements of pleading, service of process, and due process.

Absent pleading and service, jurisdiction cannot be created by joinder order alone.

**VI. ADMINISTRATIVE DOCKET ENTRIES DO NOT CREATE PERSONAL
JURISDICTION**

The docket reflects administrative entries purporting to indicate an appearance on behalf of the minor or next friend. However, no notice of appearance was filed by the minor or next friend, and no pleading invoking jurisdiction over the minor was ever submitted.

Administrative docket entries cannot substitute for valid service of process or a voluntary appearance waiving jurisdictional objections. Personal jurisdiction must arise from proper service or waiver under the Rules of Civil Procedure and cannot be established by clerical or administrative notation. See *Harris v. Sannella*, 400 Mass. 392, 395 (1987) (judgment entered without personal jurisdiction is void).

**VII. RULE 41(b) DISMISSAL CANNOT CREATE JURISDICTION OR BIND A NON-
PARTY**

Mass. R. Civ. P. 41(b)(2) authorizes dismissal of claims that are properly before the Court. The rule presupposes that the Court has personal jurisdiction over the party against whom dismissal is entered.

A dismissal under Rule 41(b) cannot confer jurisdiction where jurisdiction was never established through proper service or voluntary appearance. Jurisdiction must exist before a court may adjudicate rights or enter binding judgment.

Minor K.F. never asserted claims, was never named in a pleading, and was never properly served or made a party to this action. In the absence of personal jurisdiction, the February 17, 2026 judgment is void as applied to minor K.F.

**VIII. RULE 17 AND G.L. c. 190B, § 1-404 CONFIRM THE COURT'S DUTY TO
PROTECT MINORS**

Rule 17 permits minors to sue through a next friend or guardian ad litem but does not eliminate pleading and jurisdictional requirements.

G.L. c. 190B, § 1-404 confirms the Court's authority and duty to protect minors' legal rights.

The Court should not allow a dispositive judgment to stand against a minor who was never properly made a party.

IX. THE JUDGMENT HAS NO PRECLUSIVE EFFECT AGAINST MINOR K.F.

A judgment entered without personal jurisdiction is void and has no legal or preclusive effect.

Because jurisdiction never attached, the February 17, 2026 judgment cannot bind minor K.F.

**X. THE SEVERED ACTION DID NOT AND COULD NOT TRANSFORM THE PRIOR
COMPLAINT INTO CLAIMS ASSERTED BY MINOR K.F.**

Severance under Mass. R. Civ. P. 21 does not create new claims or substitute plaintiffs absent pleading and service. Because minor K.F. never filed a complaint, was never named in a pleading, and was never served with process, the severed action did not confer personal jurisdiction over him. The February 17, 2026 judgment is therefore void as to minor K.F. pursuant to Mass. R. Civ. P. 60(b)(4).

ALTERNATIVELY, RELIEF IS WARRANTED UNDER RULE 60(b)(6)

Even if analyzed under Rule 60(b)(6), relief is warranted to prevent manifest injustice where a minor was subjected to a dispositive judgment without ever being properly made a party.

WHEREFORE

Minor K.F. respectfully requests that this Court:

1. Vacate the February 17, 2026 judgment as void as to minor K.F.;
2. Strike minor K.F. as an improperly added party;
3. Dismiss minor K.F. from this action without prejudice;
4. Declare that the judgment has no force or preclusive effect as to minor K.F.;

and

5. Grant such further relief as justice requires.

Respectfully submitted,

K.F, a minor, by and through his Next Friend and Parent,
SANDRA FERNÁNDEZ, PRO SE,

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Date: February 18, 2026

/s/ Sandra Fernandez

Sandra Fernandez

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2026 a copy of the foregoing was served electronically on all counsel of record.

DEFENDANT,
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