

STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

2019 APR -1 P 3:36

CIVIL DIVISION  
Docket No. 541-9-18 Wncv

COURTNEY HERRICK  
Plaintiff-Appellant

on appeal from

v.

Small Claims  
Docket No. 318-11-17 Wnsc

VT DOC  
Defendant-Appellee

DECISION ON APPEAL

Plaintiff-Appellant Courtney Herrick, a Vermont inmate, has appealed from a small claims judgment in favor of Defendant-Appellee the Vermont Department of Corrections. Mr. Herrick had sought to establish the DOC's liability for the destruction or loss of use of his personal property when he was transferred from a privately operated prison in Michigan to a state-operated facility in Pennsylvania. Following an evidentiary hearing, the small claims court ruled in the DOC's favor. On appeal, Mr. Herrick in part disagrees with the small claims court's findings and conclusions and in other respects argues that the court failed to make findings or address issues.

An appeal from a small claims judgment is heard and decided "based on the record made in the small claims court." 12 V.S.A. § 5538. The "appeal is limited to questions of law." V.R.S.C.P. 10(d). If the small claims court has applied the correct law, this court will affirm its "conclusions if they are reasonably supported by the findings." *Maciejko v. Lunenburg Fire Dist. No. 2*, 171 Vt. 542, 543 (2000) (mem.). In turn, the findings of fact must be supported by the evidence, *Brandon v. Richmond*, 144 Vt. 496, 498 (1984), and such findings "must be construed, where possible, to support the judgment," *Kopelman v. Schwag*, 145 Vt. 212, 214 (1984). The court's review of the small claims court's legal conclusions, however, is "non-deferential and plenary." *Maciejko*, 171 Vt. at 543 (quoting *N.A.S. Holdings, Inc. v. Pafundi*, 169 Vt. 437, 439 (1999)). The court has listened to the recording of the small claims hearing and reviewed the entire record of this case.

The court understands Mr. Herricks claims as follows. He asserts that when Vermont inmates were transferred from Michigan to Pennsylvania that communications to Vermont inmates by Vermont DOC staff were confusing and constantly changing as to which items of personal property would be allowed in Pennsylvania. This caused him (1) to send home, and thus permanently lose access to, certain items of property that were allowed in Pennsylvania, and (2) to take other items to Pennsylvania which were not allowed and which were then destroyed by the Pennsylvania corrections department. He also claims (3) that the Vermont DOC should have done more to persuade the Pennsylvania corrections department to have a more expansive list of "grandfathered" (i.e., permissible) items.

The small claims hearing was devoted largely to the testimony of a DOC employee who was involved in the relocation of Vermont inmates from Michigan to Pennsylvania. The purport of his testimony was that the Vermont DOC had no discretion over which items would be allowed in Pennsylvania and made efforts to inform Vermont inmates in Michigan what Pennsylvania would allow and otherwise paid for them to ship not-allowed items home or to other third parties.

The small claims court characterized Mr. Herrick's claim as one of "disparate treatment," as though he was seeking to have the same rules that apply to Vermont inmates in Vermont apply to him while located in out of state facilities. On review, however, the court perceives no such claim in this case.

To the extent that the small claims court addressed the claims that Mr. Herrick actually asserted, it ruled that the Vermont DOC's role was merely to inform Vermont inmates about Pennsylvania standards and that, if those standards were wrong or deceptive, Mr. Herrick's claim is against the Pennsylvania corrections department rather than the Vermont DOC. In this respect, the court affirms the small claims court's ruling insofar as it rejected Mr. Herrick's third claim, that the Vermont DOC should have done something to persuade the Pennsylvania corrections department to modify the list of allowable property. There was clear evidence that the Vermont DOC never had any authority to do that, and thus there can be no basis for liability predicated on such a duty.

Otherwise, the small claims court's findings and conclusions do not fairly address Mr. Herrick's claims that the *manner* in which the Vermont DOC communicated Pennsylvania property standards, as opposed to the content of those standards, which was controlled by Pennsylvania, was confusing and constantly in flux and caused the losses claimed by Mr. Herrick.

On remand, a new trial is necessary to ensure that Mr. Herrick has a fair opportunity to explain why he believes that the communications from the Vermont DOC caused his losses. See V.R.S.C.P. 6(a) ("All witnesses . . . will be examined by the judge with the objective of laying out the evidence pertaining to the contentions reasonably available to the parties.").

#### ORDER

For the foregoing reasons, the small claims court's judgment is affirmed in part to the effect that the Vermont DOC had no duty to modify or attempt to modify the list of allowed property in the Pennsylvania facility. Otherwise, the small claims court's decision is vacated and this case is remanded for a new hearing.

Dated at Montpelier, Vermont this 1st day of <sup>April</sup>~~March~~ 2019.

Mary Miles Teachout  
Mary Miles Teachout,  
Superior Judge