STATE OF VERMONT

SUPERIOR COURT
Orange Unit

CIVIL DIVISION
Docket No. 246-11-10 Oecv

Barbara Griffin
Plaintiff

v.

Jason Abbott
Amanda Kenyon
Defendant

DECISION ON APPEAL

This is an appeal of a small claims judgment entered on October 1, 2010 for Plaintiff following hearing. Oral argument was heard on this appeal on April 11, 2011. All parties were present. In addition to the oral argument, the Court has listened to the recording of the Small Claims proceeding and has reviewed the exhibits.

Plaintiff has appealed on several points. The Court will address these seriatim:

Issue #1-Costs-

The Small Claims Court awarded Plaintiff judgment of $169.96 plus court costs of $75 representing the filing fee, for a total judgment of $244.96. The Small Claims Court did not include the service of process fees of $111.44 for service on the two Defendants in the awarded court costs.

The Small Claims Court issued a judgment in favor of the Plaintiff. As such, the judgment order should have included the costs of service of process pursuant to V.R.S.C.P. 6 (e) as Plaintiff was the prevailing party.

The failure to award Appellant her costs for service of process was error.

Issue #2-Lack of Credible Evidence to Support Breach of Warranty Claim-

Appellant claims the Small Claims Court lacked credible evidence to support a claim for breach of warrant of habitability. At two places in the hearing the Defendant Kenyon testified that the apartment lacked water for two weeks each month as the water problem progressed. Appellant disputed this at the hearing and disputes this claim now.

It is not for this Court to reweigh the evidence on appeal. *Harrison v. Harrison*, 110 Vt. 254 (1939). The trial court based its decision concerning breach of warranty claim, in part, upon the testimony of Ms. Kenyon concerning the lack of water. There was other testimony and evidence which impacted upon the breach of warranty claim, including the existence of the water problem by Appellant's own testimony since the spring of 2007, and written notice to the Appellant of the water problem in September 2008 provided by Washington Electric Cooperative, Inc. (Plaintiff's exhibit #7). This Court understands that Appellant does not agree with the extent of the problem as testified to by Kenyon. But her testimony did provide a basis for Judge Pease's determination even though Appellant may believe her evidence was superior or more worthy of belief. The weight to be given to evidence is a matter for the trial court. *Jeffords v. Poor*, 115 Vt. 147 (1947). The court did not agree with Appellant concerning the extent of the water problem. It was free to believe Ms. Kenyon and it did so.

That this Court might have decided an issue differently than the trial court is not the appropriate test; a trial court's findings must stand unless they are clearly erroneous. *In re Nash*, 158 Vt. 458 (1991). This means that findings must stand unless, taking the evidence in the light most favorable to the prevailing party, without modifying evidence, there is no evidence to support the findings. *Hoover v. Hoover*, 171 Vt. 256 (2000). Here there was evidence to support the court's findings concerning the extent of the water problem.

Appellant, in essence, is asking this Court to reject the interpretation of the evidence found convincing by the Small Claims Court and adopt an interpretation favorable to her. This Court is not at liberty to do so. Simply stated, the trial court concluded the evidence supported Appellees' position concerning the extent of the water problem and its duration, not Appellant's. As the trial court, such was its province. *Landmark Trust (USA) Inc. v. Goodhue*, 172 Vt. 515 (2001).

There was no error on this issue.

Issue #3-Admissibility of photographs on CD-

During the hearing Appellant attempted to present photographs on a CD. While the record is not entirely clear, apparently Appellant had a laptop with her upon which she was prepared to let the Court and Appellees view the photographs. Judge Pease refused to allow viewing of the CDs with the Appellant's laptop and did not admit the CD.

Trial courts have broad discretion in ruling on the relevance and admissibility of evidence, reversible only for abuse of that discretion. *Bazzano v. Killington Country Village*, Inc.,175 Vt. 534 (2003); *Southface Condo. Owners Ass'n, Inc. v. Southface Condo. Ass'n, Inc.*, 169 Vt. 243, (1999).

The Court is mindful that small claims proceedings are intended to provide for the simple, informal and inexpensive disposition of every action. V.R.S.C.P. 1. This does not mean that the judge is without authority to refuse to admit certain evidence. V.R.S.C.P. 6 requires that evidence to be admissible be of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. This is a limitation on the content of documentary evidence, not the

manner of its presentation. The trial judge has discretion to control the manner in which evidence, otherwise admissible, is presented. *State v. Richards*, 144 Vt. 16 (1983); *State ex rel. State Highway Commission of Missouri*, 612 S.W. 2d 866 (Mo. App. 1981). Judge Pease elected not to admit a CD to be viewed on a laptop provided by the Appellant. This was within the exercise of her discretion, even though the photos themselves might have been of the type commonly relied upon. The Court is not required to pass around a laptop or to congregate around one in order to view Plaintiff's evidence. There was no abuse of Judge Pease's discretion in not allowing the evidence to be presented in the manner offered by Appellant.

That this Court might have afforded Plaintiff greater latitude in the presentation of her evidence does not mean Judge Pease was in error in refusing to use Plaintiff's laptop. The manner of presentation of evidence is within the discretion of the trial court.

The Court has listened to the hearing and reviewed the findings of fact. It would have been more accurate to state that the Court did not find the manner of viewing the photographs, using a laptop provided by Appellant thereby requiring, Appellant, the Appellees, and the Court to try to view the photographs at the same time, or to attempt to view them at different times, to be an acceptable method of presenting the photographs. The term "admissible fashion" as employed by the Small Claims Court was not directed at the content of the pictures. Nonetheless, the end result is the same. The Court did not find the manner in which Appellant attempted to present the photographs to be acceptable and did not admit them for that reason.

In addition, the Court held that even if the photos had been viewed by the Court, the outcome of the damages claim by Plaintiff would not have been different. The Small Claims Court did not deny the property damage claim because it found there had not been any damage to the property; the claim was denied because there was insufficient evidence in the view of the Small Claims Court upon which to award damages. No receipts for repairs, estimates of damages from tradesmen, or bills for materials purchased were introduced. Receipt of the photographs would not have overcome this lack of evidence.

There was no error on this issue.

Issue #4-Did the Appellant's evidence meet the criteria for admissibility as set forth in V.R.C.S.P. 6-

For the reasons stated in issue #3 above, the exclusion of the photographs was not error. Judge Pease's decision on the admissibility of the photographs did not turn on the content of the photographs. She did not exclude the photographs because they failed to meet the requirements of V.R.S.C.P. 6. She excluded them because they were not presented in a manner which she found acceptable. Even despite the informal nature of small claims proceedings, the trial judge has discretion on the methods used to present evidence.

There was no error on this issue.

Issue #5-Did Appellant establish a violation of 9 V.S.A. § 4456-

Appellant attempted to establish a claim for damages by Appellees through their use of #3 fuel, thereby necessitating cleaning and repair of the furnace. What was missing from Appellant's proof was any testimony that the use of the fuel by Appellees was responsible for the need to repair and clean the furnace. Appellant's argument is that Appellees admitted they used #3 fuel, and that #3 fuel can contain debris, and that because it can contain debris the fuel actually used by Appellees did contain debris, and the debris it contained is what required the furnace repair and cleaning. Entirely missing from Appellant's proof is that there was in fact debris in the fuel used by Appellees (or any expert opinion in that regard), and that the fuel caused the problems with the furnace.

While small claims procedures are informal, proof that an event occurred after another event is not proof that the second event occurred because of the first one. This is simply *post hoc ergo propter hoc* (after this, therefore because of this) reasoning and is not proper proof. *Tampa Times Co. v. National Labor Relations Board*, 193 F. 2d 582 (5th Cir. 1952). The inferences drawn by Appellant may or may not be true. They were not proven.

There was no error on this issue.

Issue #6-Did Judge Pease act in an honorly manner consistent with the Code of Judicial Conduct-

This is an appeal of the findings and conclusions made by Judge Pease. This is not the proper forum for any complaint concerning her conduct. The issues proper for review here are whether the case was decided according to the evidence and the laws of Vermont. If Appellant feels Judge Pease's conduct in deciding this case did not comport with appropriate standards for judicial officers, a complaint may be directed to the appropriate body for review. The Court has reviewed the merits of the decision reached by Judge Pease as is appropriate for appellate review.

ORDER

Having in mind that Small Claims Court is intended to provide an inexpensive procedure to determine disputes, this Court will not remand for amendment of the judgment. Rather, this Court will amend the judgment to include $111.44 in service costs. A new judgment order shall issue.

The Small Claims judgment is **AFFIRMED** in all other respects. In light of the affirmance on most, but not all, of the issues raised by Appellant, the Court declines to award costs of appeal.

Dated at Chelsea this 12th day of April, 2011.

Harold E. Eaton, Jr.
Superior Court Judge

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Amended Judgment

The judgment order of October 1, 2010 is amended. Judgment is entered in favor of Plaintiff Barbara Griffin against Defendants in the amount of $169.96, plus filing fee of $75, and service costs of $111.44, for a total judgment of $356.40

Dated at Chelsea this 12th day of April, 2011.

Harold E. Eaton, Jr.
Superior Court Judge

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