

STATE OF VERMONT  
WINDSOR COUNTY

MARY ANN JASINSKI,  
Defendant/Appellant,

v.

JASON CURTIS,  
Plaintiff/Appellee

)  
)  
)  
)  
)  
)  
)

Windsor Superior Court  
Docket No. 808-11-08 Wrcv

SMALL CLAIMS APPEAL  
Decision

Defendant Mary Ann Jasinski appeals from a Small Claims Court judgment awarding plaintiff Jason Curtis \$2,500 as compensation for items that he purchased for her under a reasonable expectation of repayment. Ms. Jasinski contends that the award is not supported by the evidence. For the following reasons, the judgment is reversed.

Oral argument on the appeal was heard on March 2nd, 2009. Ms. Jasinski was represented by attorney Melvin D. Fink. Mr. Curtis was represented by attorney Richard K. Bowen.

It is not the function of the Superior Court to substitute its own judgment for that of the Small Claims Court Judge. Rather, the role of the Superior Court is to determine whether or not the evidence presented at the hearing supports the facts that the Judge decided were the credible facts, whether the conclusions are supported by the findings, and whether or not the Judge correctly applied the proper law and procedure. V.R.S.C.P. 10(d); *Blanchard v. Villeneuve*, 142 Vt. 267, 269-70 (1982).

Decision and Order of the Small Claims Court

The Small Claims Court Judge made the following findings and conclusions in his written decision. Mr. Curtis and Ms. Jasinski met in July 2007, and began a romantic relationship shortly thereafter.

During the earliest weeks of the relationship, Mr. Curtis purchased a number of items for Ms. Jasinski, including workout clothes, an office refrigerator, sandals, children's toys, and half the cost of a tattoo. There are no findings regarding whether any of these specific items were purchased under an expectation of repayment, other than a finding indicating that Ms. Jasinski offered to repay Mr. Curtis for the office refrigerator, but that he refused repayment.

FILED

APR 29 2009

The parties continued their relationship over the next several months, and more items were purchased. Sometime during October 2007, Ms. Jasinski told Mr. Curtis that she was pregnant. She did not expressly tell him that he was the baby's father, but she also let him believe that he might be the father. The parties subsequently made "informal, preliminary plans to be engaged, to marry, [and] to raise [the] children together." During the following months, Mr. Curtis bought maternity clothes and other items related to the pregnancy and the child. He also bought other items that did not relate directly to the pregnancy, such as glasses and holiday presents.

The relationship was tenuous throughout the fall and early winter. In January 2008, Ms. Jasinski told Mr. Curtis that she no longer wanted to be in a relationship with him. She also told him that the child was not his. The relationship ended within a month.

The parties discussed finances in a number of email exchanges that occurred both before and after their relationship ended. Many of the emails sent during the pendency of the relationship involved Ms. Jasinski directly or indirectly asking Mr. Curtis to buy something for herself or for her son, and Mr. Curtis saying that he "would be interested in you and I sitting down and talking finances." After the relationship ended, Mr. Curtis sent a letter suggesting that there was a need to set up a payment plan for Ms. Jasinski to repay him for what he had spent on her.

In his written conclusions of law, the Judge stated that he did not find either party "wholly credible about events that were intense and stressful," but that he found Mr. Curtis to be "substantially more credible" than Ms. Jasinski. He also stated that he found Ms. Jasinski's actions to be "disingenuous" and "in clear bad faith."

The Judge additionally found that Mr. Curtis had spent more than \$5,000 for Ms. Jasinski's benefit during the relationship, and that there had been a reasonable expectation that "she would repay him for some of that amount." However, the Judge explained that "[b]ecause there is no written agreement before the court, and because the parties were also in a romantic relationship, the court cannot determine with any precision what [Mr. Curtis] bought with the expectation of reimbursement and what he bought with the intent of its being an outright gift."

The Judge therefore concluded by stating that Mr. Curtis had "some reasonable expectation of repayment," and that Ms. Jasinski "acquired much if not all [Mr. Curtis'] largesse under deceptive circumstances, but that this was in the context of a romantic relationship in which it's more likely than not that some of [Mr. Curtis's] purchases were meant to be outright gifts." The Judge then awarded \$2,500 to Mr. Curtis for the reason that that amount represented "half the statutory limit (\$5,000) on his claim."

### Discussion

Ms. Jasinski argues on appeal that the damages award is inconsistent with the findings of fact. She claims that when the Judge found that he could not determine "with any precision" whether the items were purchased under an expectation of repayment or

**FILED**

instead as outright gifts, he essentially found that Mr. Curtis had not met his burden of proving breach of a repayment agreement by a preponderance of the evidence. Ms. Jasinski argues that the Judge was therefore required to enter judgment in her favor.

The circumstances presented by this case are similar to those involved in *Shanks v. Lavallee*, where the question was whether certain transactions between family members had been loans or gifts—and if loans, whether the evidence was sufficient to prove the amount of the loans beyond a matter of “speculation or surmise.” 118 Vt. 433, 436 (1955). In that case, the Vermont Supreme Court held that the judgment in favor of the plaintiff was supported by evidence that several specific transactions were loans rather than gifts.

In this case, however, the Judge expressly found that some items had been purchased with an expectation of repayment, but that he could not determine which ones, and that it was “more likely than not” that other items “were meant to be outright gifts.” See *Shanks*, 118 Vt. at 437 (explaining that the donee bears the burden of proving that a transaction was a gift). In addition, the Judge found that, given the romantic relationship, he could not determine “with any precision” whether any particular transactions had been loans or gifts.

The thrust of these findings is that Mr. Curtis did not meet his burden of proving breach of a repayment agreement with respect to any specific purchases, and further that he did not meet his burden of proving the amount of his damages by a preponderance of the evidence. In other words, the evidence was not sufficient to support an award of damages beyond a matter of speculation and surmise. Once the Judge reached this conclusion, he should have entered judgment for Ms. Jasinski as a matter of law, since failure to prove damages is fatal to a claim for breach of contract. *Smith v. Country Village Intern., Inc.*, 2007 VT 132, ¶¶ 9–10; *Dufresne-Henry Engineering Corp. v. Gilcris Enters., Inc.*, 136 Vt. 274, 277 (1978).

Furthermore, an award of damages that is calculated by halving the amount of the plaintiff’s claim cannot be affirmed as a “general verdict” on the grounds that some of the items were purchased with an expectation of repayment, since the calculation does not bear a reasonable relation to the evidence. The findings of fact indicate that Mr. Curtis did not prove the elements of his claim by a preponderance of the evidence, and that the amount of damages was not proven beyond a matter of speculation and surmise. These findings do not reasonably support the entry of any judgment in favor of Mr. Curtis. See *Maciejko v. Lunenburg Fire Dist. No. 2*, 171 Vt. 542, 543 (2000) (mem.) (explaining that judgments may be affirmed when the conclusions are “reasonably supported by the findings”).

Finally, the court is not persuaded that the judgment can be affirmed under a theory of negligent or intentional misrepresentation. Even assuming that Ms. Jasinski acted improperly by allowing Mr. Curtis to believe that he was the baby’s father, neither the findings nor the evidence provide a basis for discerning whether any particular purchases were made in reliance on that misrepresentation, rather than in the general

FILED

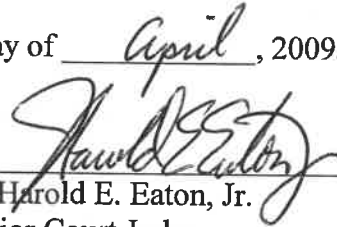
context of the parties' romantic relationship. See Restatement (Second) of Torts § 552(1) (explaining that liability for misrepresentation requires the plaintiff to show "justifiable reliance upon the information" provided by the alleged tortfeasor). Proof of damages is an essential element of fraud and misrepresentation, and the evidence in this case does not provide a basis beyond mere speculation for determining the amount of damages. *Smith*, 2007 VT 132, ¶ 10; *Donovan v. Towle*, 99 Vt. 464, 472 (1926).

For the foregoing reasons, the court concludes that the judgment in favor of Mr. Curtis must be reversed, and that the findings of fact instead support judgment in favor of Ms. Jasinski.

### ORDER

The Judgment of the Small Claims Court dated October 15, 2008 is *reversed*. Judgment is entered in favor of defendant Mary Ann Jasinski.

Dated at Woodstock, Vermont this 29 day of April, 2009.



Hon. Harold E. Eaton, Jr.  
Superior Court Judge

**FILED**

**APR 29 2009**