

STATE OF VERMONT  
CALEDONIA COUNTY, SS.

FILED

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CHERYL LARSEN

v.

JO GRADY ARMSTRONG

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CALEDONIA SUPERIOR COURT  
Docket No. 260-12-97 Cacv

CALEDONIA COUNTY COURTS

NOTICE OF DECISION  
APPEAL FROM SMALL CLAIMS COURT

This case is before the Court on appeal from a decision in a Small Claims case. It has a history that is unfortunately lengthy for a Small Claims case, but is worth reviewing because of the nature of the issue presented to the Court at present.

Plaintiff filed three small claims actions against Defendant seeking payment of wages for three months ( December 1992, January 1993, and February 1993) during which she was part of a commune located on real estate belonging to Defendant. The docket numbers are as follows: 529-12-94 Cacs, 20-1-95 Cacs, and 89-2-95 Cacs. In the complaints, Plaintiff specifically stated that her claim was based on 21 V.S.A. §347, which is part of Vermont's Employment Practices Law, and provides for recovery of unpaid wages in a civil action. A hearing was held on April 12, 1995 before Judge White, who consolidated the three cases. All subsequent documents have used the Docket No. 529-12-94 Cacs. During the hearing, Plaintiff was clear that she was seeking recovery based on the following grounds: (1)a written employment contract, (2)an "implicit" contract (Transcript, page 25), which Judge White interpreted as a claim for unjust enrichment, (3)Vermont State law on employment obligations (Transcript, page 19, 42-44, and 61) and (4)the United States Fair Labor Standards Act (Transcript, pages 19, 38, 40, 43, 61, and 67-69). Judge White stated Findings and Conclusions on the record. She found that the parties had not entered into an employment contract, and that Plaintiff had not proved a claim of unjust enrichment. There was no mention of claims based on Vermont statutory law, or on the federal Fair Labor Standards Act. Based on the conclusions, Judge White entered judgment for the Defendant. Plaintiff appealed.

On appeal, Judge Morris issued a decision dated January 8, 1997, in which he stated that the court had erred in failing to consider the merits of the Plaintiff's Fair Labor Standards Act claim, and he remanded for further hearing "solely as to whether the plaintiff-appellant's claim under the Fair Labor Standards Act is sustainable under the evidence given and if so, what, if any, damages are to be awarded. . . In the court's assessment, this issue is subject to further evidentiary proceedings on remand. The decision of the Small Claims court is otherwise affirmed

as there was no error in the court's treatment of the other issues and claims raised." Order, January 8, 1997, Docket No. 108-5-95 Cacv. In response to a Motion to clarify whether further evidence was to be taken upon remand, Judge Morris issued an Entry Order as follows: "Order contemplates further evidentiary proceedings on Fair Labor Standards Act issue." Order, March 18, 1997, Docket No. 529-12-94 Casc. In an Entry Order dated May 13, 1997, Judge Morris stated that upon remand, "the parties would be free to introduce new evidence pertaining to the Plaintiff's federal Fair Labor Standards Act claim, and that the proceedings would not be confined to the original record." Entry Order, May 14, 1997, Docket No. 529-12-94 Casc.

The case was set for hearing on remand before Judge Cheever. The hearing on remand took place on September 23 and 24, 1997. Both parties were represented by counsel. At the beginning of the hearing, Plaintiff, through her attorney, sought to clarify that the issues before the Court included claims based on both the Vermont and federal statutes. Defendant's counsel objected, claiming that only the single issue of the federal statute was before the Court. Judge Cheever ruled that "Judge Morris, from my reading of it, had agreed that there was one issue, but there wasn't a second issue, so it is limited then to the Federal. . . question." Transcript, September 23, 1997, page 11. Following the hearing, Judge Cheever issued a six page Decision and Order, including Findings and Conclusions, in which he concluded, based on the findings set forth therein and those of Judge White, that Plaintiff was not entitled to recovery under the federal Fair Labor Standards Act. Decision and Order, November 1, 1997. Pursuant to his ruling on September 23, 1997, he did not address any claim based on the Vermont statutes. Plaintiff appealed, and is before the Court in this docket. Oral argument on the appeal took place on July 8, 1998.

Plaintiff-Appellant has identified several grounds on which the appeal is taken, which are addressed in turn below.

Plaintiff-Appellant claims that the findings of fact by the Court were not supported by testimony or evidence. The Court has reviewed the transcripts of the two days of hearing below and the Court's findings of fact, and has examined Plaintiff's Appendix 1 in which she sets forth her claim. It is not this Court's role to reach independent findings based on the evidence, but only to determine whether there is evidence in the record to support the findings of fact of the court below. This Court concludes that there is sufficient evidence in the transcripts and the documentary evidence admitted to support the findings set forth by the Court in its Decision of November 1, 1997.

Plaintiff-Appellant claims that the Court erred in its application of the Fair Labor Standards Act to the facts. The Court found that the dairy operation operated by Defendant is engaged in interstate commerce and is therefore subject to regulation under §206 of the Fair Labor Standards Act (FLSA), but that it is exempt under §213(a)(6) because of its small size. The Court also found that the FLSA did not apply to the elder care activities in which Plaintiff worked because these were operated not by Defendant but by the Circle of Angels spiritual community, which was not primarily engaged in care of the sick, aged, or mentally ill, and thus

did not fall within the regulatory authority of the FLSA. The Court also concluded that the school operated on the premises was not operated by the Defendant, but by the Circle of Angels spiritual community, and thus Plaintiff had not made out a claim against the Defendant as an employer as operator of a school. This Court agrees with Plaintiff-Appellant that the Court did err in one respect. With respect to the applicability of the FLSA to the Defendant as operator of a dairy, the Court stated that it was the Plaintiff's burden, after showing that the FLSA applies, to "demonstrate" that the operation does not fall within any of the exceptions in §213. This is incorrect, and Plaintiff-Appellant correctly argues that it is the employer's burden to show that she qualifies for an exception. The error is harmless, however, as the transcript shows that it was the Defendant employer who provided the credible testimony adopted by the Court in its findings about the number of man-days of labor used in the dairy, which was the basis for qualification for the exemption. Therefore, the error is harmless and does not support a reversal of the decision below. In other respects, having studied the Plaintiff-Appellant's memorandum and oral argument, the Court finds no error in the Court's application of the FLSA.

The third claim of error is that the Court failed to reach a conclusion that was consistent with the findings. This Court, after thorough review, is satisfied that the conclusions of the Court were consistent with, and properly based upon, its findings.

Plaintiff-Appellant argues that the Court erred in failing to make sufficient findings on the material issues raised by the pleadings and the evidence, and that the Court erred in not making findings essential to the disposition of the cause. With the exception of the error set forth in the following paragraph, this Court finds no error. Plaintiff-Appellant disagrees with the trial court's interpretation of the evidence and its resulting findings, conclusions, and disposition, but the fact that the Plaintiff-Appellant does not agree with the findings and results of the Court does not mean the Court erred.

Plaintiff-Appellant argues that her claim based upon the Vermont Employment Practices Law has never been addressed, and this Court agrees that this is so. Plaintiff-Appellant was clear from the beginning, in a manner uncharacteristic of small claims actions and to be commended, that the law upon which she relied in bringing her claim was Vermont statutory law set forth in 21 V.S.A. §347. At the hearing before Judge White on April 12, 1995, four grounds for the Plaintiff's claim were identified as stated above, and only two were addressed. Judge White ruled on the claim of an explicit employment contract, and the claim for unjust enrichment based on an "implicit" contract. She did not mention either the claim based on Vermont statutory law on employment practices, or the claim based on the federal Fair Labor Standards Act. On appeal, Judge Morris remanded for further hearing, including evidentiary hearing, on the "Fair Labor Standards Act." At the hearing below, the Court ruled that the remand was for a single issue, and determined that to be the claim based on the federal Fair Labor Standards Act, and proceeded accordingly. The problem with that ruling is that it excluded from the case altogether the one basis on which the Plaintiff had relied from the beginning: the Vermont statutory basis for relief as contained in 21 V.S.A. §347, which Plaintiff had originally cited in her complaint as the basis for

her claim.<sup>1</sup> The ruling was on overly restrictive interpretation of Judge Morris's ruling on remand. It is reasonable to interpret Judge Morris's Order as combining the federal and State claims, because there is an interrelationship between the two statutes. See 21 V.S.A. §342b. In this case, the Order of Judge Morris on remand must be interpreted this way because if it is not, Plaintiff-Appellant will have never had her Vermont statutory claim addressed, and that is the one claim about which she was manifestly clear from the beginning.

Defendant-Appellee argues that Judge Morris's Order of January 8, 1997 states that the decision of Judge White on "other issues and claims" is affirmed, and that therefore the claim based on Vermont statutory law was disposed of already on the first appeal. The problem with this argument is that it ignores the fact that Judge White said nothing about the Vermont statutory basis for a claim, and explicitly ruled only on the contractual and quasi-contractual grounds. For this reason, it makes more sense to interpret Judge Morris's Order as an order to remand for consideration of the related state and federal Fair Labor Standards Act statutes.

Defendant-Appellee also points out quite correctly, and this was clearly the basis for Judge Cheever's decision, that in an Entry Order dated May 13, 1997, Judge Morris stated that upon remand, "the parties would be free to introduce new evidence pertaining to the Plaintiff's *federal* Fair Labor Standards Act claim, and that the proceedings would not be confined to the original record." (emphasis added). Entry Order, May 14, 1997, Docket No. 529-12-94 Casc. The focus of that Entry Order, however, was on whether or not the Court intended for the remand hearing to be an evidentiary one or one based on legal arguments. One can only conclude that Judge Morris overlooked the fact that the Vermont statutory claim had not been addressed when he used the word "federal". Otherwise, as Plaintiff-Appellant correctly points out, she will never have had a chance to present or argue in any way the basis for her claim as she originally framed it.

Where a trial court has failed to resolve a claim made to it, the proper remedy is to remand. Martin v. Blanchard, 149 Vt. 658 (1988). Despite two hearings at the trial court level, neither trial court has yet addressed Plaintiff's Vermont statutory claim. Therefore, the case is remanded to the trial court for consideration of Plaintiff-Appellant's claim based on Vermont statutory law. It will be for the trial court Judge to determine whether or not a further evidentiary hearing will be held.

Plaintiff-Appellant's final issue is whether there are grounds for relief from judgment under V.R.C.P. 60(b). This is premature, as there has not yet been a final order in the case. This

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<sup>1</sup>While Plaintiff was willing to give up her claim for double the value of unpaid wages in order to keep the case in Small Claims court as opposed to filing again in Superior Court after the consolidation of the three cases (See Transcript of April 12, 1995 Hearing, pages 13-14), that does not mean that she gave up her Vermont statutory claim altogether. There is no suggestion in the record that she intended to do that, or that the Court was interpreting her waiver of double damages in that manner.

issue was also not presented in any way prior to Plaintiff-Appellant's memorandum. It is not a grounds for action by this Court at this time.

### **ORDER**

For the foregoing reasons, this case is remanded to the trial court below for consideration of Plaintiff-Appellant's claim based on 21 V.S.A. §347. It will be for the trial court Judge to determine whether or not a further evidentiary hearing will be held.

Dated at St. Johnsbury this 31<sup>st</sup> day of August, 1998.

Mary Miles Teachout  
Mary Miles Teachout  
Presiding Superior Judge