

STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED

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LORI SALLS

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v.

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KENNETH CONLEY

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Washington Superior Court
Docket No. 246-5-06-1111
SUPERIOR COURT
WASHINGTON COUNTY

SMALL CLAIMS COURT APPEAL
Decision

This case came before the Court on appeal from the Findings and Order of the Small Claims Court dated March 28, 2006 in Docket #52-1-06 and #53-1-06, which were consolidated for hearing. The Court has reviewed the record in both cases, listened to the tape recording of the hearing on March 27, 2006, reviewed Appellant's Statement of Legal Questions filed April 28, 2006 by Lori Salls, and reviewed Appellee's response filed June 12, 2006 by Kenneth Conley.

The Court did not review the letter filed June 5, 2006 by Lori Salls, which appeared to attempt to introduce additional evidence. The hearing had already been completed. The Court cannot accept new evidence after the hearing is over, because the other party does not have an opportunity to respond to it.

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, and whether or not the Judge correctly applied the law and used proper procedure.

Appellant Lori Salls filed two cases in order to seek to recover an amount greater than \$3,500. The court consolidated the two cases, and treated them together under docket #52-1-06. In the complaints in the two different cases, she raised two claims: (1) that Mr. Conley owed her money to reimburse her for expenses she alone paid or may have to pay in the future in connection with a lease they both signed as tenants, as well as a portion of living expenses they had agreed to share while living together, and (2) half of a debt she incurred as a result of Mr. Conley overdrawing a joint bank account.

Lease and Living Expenses

Most of the attention at the hearing was devoted to the issues related to the lease and living expenses. The testimony of the two parties was quite different, and the Judge was required to determine which version of events was more credible. This Court will not change the Judge's conclusions about which evidence is more believable as long as there is enough evidence that was presented at trial that could have reasonably been believed by the Judge.

In her Statement of Legal Questions, Ms. Salls identifies several claims of error:

The Judge did not take into account that she was disabled and receiving social security. This is not error and grounds for reversal as the fact of disability was not a factor affecting any of the issues before the court.

The Judge did not take into account that Mr. Conley acknowledged that he took \$450 from the joint bank account. Both parties agreed that Mr. Conley did this, and the Judge made the same finding. The evidence is sufficient to support the decision of the trial court on this issue.

The Judge did not take into account that Mr. Conley withdrew from the joint account more money than he put in. The evidence before the Judge was sufficient to support the decision the Judge made on this issue. The Judge did not fail to take into account any evidence that he was asked to consider.

The Judge did not listen to proof that Ms. Salls had that she did not close the joint account on the same day the parties went to the bank together, but did it two days later. Even if the Judge had heard this testimony, it is clear that it would not have made a difference in the decision.

The Judge did not look at the cancelled checks that Ms. Salls had with her at the hearing. The tape recording does not show that she told the Judge that looking at them was important to proving her claim, nor does she explain how it would have made a difference in the decision.

The Judge did not look at the photo that Ms. Salls had with her of the wall work that was only half-done, and could cause her to lose a portion of her security deposit in the future. It is not clear from the tape that Ms. Salls asked the Judge to look at the photo. Even if the Judge had looked at it, the photo would have showed the same thing to which she testified, so any failure to look at it did not mean the information was absent from the evidence. There was sufficient evidence at the hearing to support the findings of fact that the Judge made in Paragraph 7.

In summary, as to all of the issues related to the lease and living expenses, there was sufficient evidence at trial for the Judge to decide the disputed facts the way he did, and the conclusions he reached are in accordance with law.

Claim for reimbursement of half of debt to bank due to overdrawing of account

Ms. Salls includes in her Statement of Legal Questions a statement about this issue, claiming as error that she should not have to pay the debt.

At the hearing, the Judge specifically clarified that as part of the claim in Docket #53-1-06 Wnsc, Ms. Salls was asking to be repaid for a debt she claimed she had as a result of Mr.

Conley overdrawing on the parties' joint checking account at Charter One bank. The Judge specifically determined that of the \$450.18 Ms. Salls was claiming in that docket number, \$350.36 was for the bank overdraft claim, and the rest was related to living expenses.

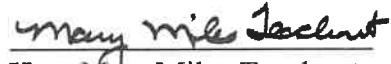
While the Judge heard extensive evidence about the issues related to the lease and living expenses, and made complete findings on that issue, the Findings of Fact and Conclusions of Law dated March 28, 2006 do not include any mention of the overdraft claim. The evidence includes Charter One bank statements, which was the account related to that claim, as well as Northfield Savings Bank evidence related to the second joint account from which the \$450 was taken.

Because this claim was plainly asserted by Ms. Salls, but no findings of fact or conclusions of law were made on this claim, Ms. Salls is entitled to have the matter remanded to the Judge for a decision on that issue.

Order

The Judgment is *affirmed* on the issue of the lease and living expenses, and the case is *remanded* to the Small Claims Judge to address the overdraft claim.

Date at Montpelier, Vermont this 7th day of February, 2007.


Hon. Mary Miles Teachout
Presiding Judge