

STATE OF MAINE
AROOSTOOK, ss

DISTRICT COURT
Location: CARIBOU
DOCKET NO. CARDC-SA-16-60

ROGER SIMON)	
PLAINTIFF)	
vs.)	ORDER REGARDING
)	COMPLIANCE WITH
RONALD SIMON)	14 M.R.S. §6008
DEFENDANT)	

On November 18, 2016 Ronald Simon (hereafter Ronald) filed a Notice of Appeal and Affidavit pursuant to 14 M.R.S. § 6008. Ronald was the Defendant in a forcible entry and detainer action initiated by Roger Simon (hereafter Roger) regarding property at 357 Thibodcau Road, Woodland, Maine. On November 8, 2016, Roger, as Plaintiff, was granted judgment for possession of the aforesaid premises. In his Notice of Appeal, Ronald incorrectly identified himself as the Plaintiff.

The Notice of Appeal and Affidavit form contains the following statement: IF YOU ARE THE DEFENDANT, YOU MUST PAY YOUR CURRENT MONTH'S RENT OR THE RENT ARREARAGE, WHICHEVER IS LESS, BEFORE THE FILING OF THIS APPEAL. 14 M.R.S. § 6008(2)

To respond to that statement, the appeal form has three alternative responses regarding the payment of rent pending appeal. Ronald checked off the third box which states "Not applicable, I am the Plaintiff."

On November 23, 2016, Roger filed with the court an Objection to Ronald Simon's Improper Notice of Appeal, and asked that the appeal be dismissed for failure to follow the requirements of Title 14 M.R.S. § 6008 or alternatively that the stay be removed and that a Writ of Possession issue. With the Objection, the 21 day Notice was given, specifically advising Ronald "Matter in opposition to this Motion must be filed with the Court not later than 21 days after filing of this Motion. Failure to file timely opposition will be deemed a waiver of objection to the Motion which may be granted without further notice or hearing."

14 M.R.S. 6008(2) and (6) state:

1. Appeal by defendant; record; stay. When the defendant appeals, the defendant shall pay to the plaintiff or, if there is a dispute about the rent, to the District Court, any unpaid portion of the current month's rent or the rent arrearage, whichever is less. The District Court shall promptly transmit the record and any such payments to the Superior Court without waiting for the preparation of a transcript of recorded testimony. The Superior Court may stay the issuance of a writ of possession pending disposition of the appeal.

6. Affidavit required. A notice of appeal filed by the defendant must be accompanied by an affidavit stating the defendant has complied with the requirements of subsection 2 regarding the payment of rent.

Although Ronald identified himself as the Plaintiff in the Notice of Appeal, he clearly was the Defendant, and was properly identified as such throughout the proceedings. His incorrectly identifying himself as Plaintiff may have been an innocent mistake due to unfamiliarity with the forms and legalese. But again, the appeal form contains the following instruction, in bold:

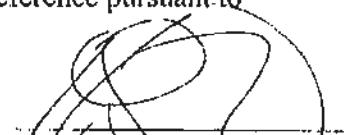
IF YOU ARE THE DEFENDANT, YOU MUST PAY YOUR CURRENT MONTH'S RENT OR THE RENT ARREARAGE, WHICHEVER IS LESS, BEFORE THE FILING OF THIS APPEAL. 14 M.R.S. § 6008(2).

Any reading of this instruction clearly puts the reader on notice that rent needs to be paid or otherwise addressed before filing the appeal. To the extent Ronald may have been unclear of his responsibilities to address rent with the filing of his appeal, he was bluntly put on notice of his error by the Objection filed by Roger which set forth the requirements of §6008(2), alleged that Ronald did in fact owe rent and alleged Ronald's failure to comply with §6008(2). Although put on notice of his potential error of not complying with § 6008(2), Ronald did not address his error, did not ask the court for leave or additional time, and did not otherwise address the rent. In addition, Ronald did not timely respond to the Objection despite the 21 day notice.

Failure to comply with 14 M.R.S. § 6008 (2) and (6) is grounds for dismissal of the appeal. See Perkins v. Lizotte, 2013 Me. Unpub. LEXIS 42 and also Portland Stage Co. v. Bad Habits Live, 2001 ME 110. However the court remains concerned of the possibility that Ronald was innocently mistaken of his responsibilities to comply with §6008 at the time he filed his notice of appeal. Therefore, it is ordered that Ronald comply with § 6008(2) and (6) within 21 days of this Order. His failure to do so may result in dismissal of the appeal or vacating of the stay of the issuance of the Writ of Possession. Action by the Court on Ronald's request for a transcript or audio recording of the underlying proceedings is deferred until compliance with this Order.

The Clerk shall incorporate this Order into the docket by reference pursuant to M.R.Civ.P. 79(a).

Dated: January 10, 2016


Justice, Superior Court

Appeal

Date Filed	11/18/2016	Aroostook	Docket No.	CARSC-AP-2016-006
		County		
Action	FE&D Appeal			
Plaintiff	Ronald Simon	vs.	Defendant	Roger Simon
Attorney	Pro Se		Attorney	Theodore M. Smith, Esq.

Date of Entry

- 01/06/2017 Original File received from Caribou District Court on 12/28/2016.
- 01/06/2017 Notice of Appeal and Affidavit filed by Ronald Simon on 11/18/2016.
- 01/06/2017 Transcript and Audio Order Form filed by Ronald Simon on 11/21/2016 together with Motion for Transcript at State Expense.
- 01/06/2017 Objection to Ronald Simon's Improper Notice of Appeal for Forcible Entry and Detainer with Motion to Set Aside Stay with Request for Writ of Possession filed by Theodore Smith on 11/29/2016.
- 01/10/2017 Order Regarding Compliance with 14 M.R.S. §6008 "ordered that Ronald comply with §6008(2) and (6) within 21 days of this Order. His failure to do so may result in dismissal of the appeal or vacating the stay of the issuance of the Writ of Possession. Action by the Court on Ronald's request for a transcript or audio recording of the underlying proceedings is deferred until compliance with this Order." entered by Justice Harold Stewart on 01/10/2017.