[Cite as *Dechellis v. Rakoff*, 2001-Ohio-3399.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

DARLENE DECHELLIS	)	CASE NO. 00-C.A.-156
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	O P I N I O N
	)	
MARTIN RAKOFF	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Mahoning County Area Court No. 5 of Mahoning County, Ohio Case No. 00 CVI 132

JUDGMENT: Affirmed in part and modified.

APPEARANCES:

For Plaintiff-Appellee: Darlene DeChellis, Pro se
425 Bradford Drive
Canfield, Ohio 44406

For Defendant-Appellant: Atty. Kimberlee J. Kmetz
100 Marwood Circle
Boardman, Ohio 44512

JUDGES:

Hon. Cheryl L. Waite
Hon. Joseph J. Vukovich
Hon. Mary DeGenaro

Dated: September 26, 2001

WAITE, J.

{¶1} This timely appeal arises out of a judgment in favor of

Darlene DeChellis ("Appellee") for $4,100.00 in a small claims action litigated in County Court No. 5, Mahoning County, Ohio. Martin Rakoff ("Appellant") argues that the award exceeds the jurisdiction of the small claims court and that the judgment was against the manifest weight of the evidence. R.C. §1925.02(A)(1) limits the jurisdiction of the small claims division to amounts not exceeding $3,000.00, exclusive of interest and costs. For the following reasons, we affirm the underlying decision but modify the judgment of the trial court by reducing Appellee's award to the jurisdictional maximum of $3,000.00, plus interest and costs.

{¶2} Appellee is Appellant's mother-in-law. (Tr. pp. 3, 4). During the pendency of the instant action, Appellant and Appellee's daughter, Tammy, were in the process of getting a divorce. (Tr. p. 3). The parties agreed orally that Appellant would reimburse Appellee for any expenses she incurred relating to the divorce. (Tr. pp. 3-4). Appellee had to borrow money for baby food, gas, living expenses and draperies relating to the divorce. (Tr. p. 4). Appellee spent the money on these items and Appellant refused to reimburse her. (Tr. p. 4).

{¶3} On May 15, 2000, Appellee filed a Small Claims Complaint in County Court No. 5, Mahoning County. Appellee claimed that Appellant owed her money for living expenses for his wife and daughter, and that the expenses totaled $4,100.00. Appellee's prayer for relief totaled $3,000.00. (5/15/00 Complaint).

{¶4} The court held a bench trial on June 9, 2000. Both

parties testified at the hearing. No exhibits were offered into evidence. Appellee testified as to her expenses.

{¶5} On June 9, 2000, the court entered judgment in favor of Appellee for $4,100.00, plus interests and costs. This timely appeal followed. Appellee did not file a responsive brief.

{¶6} Appellant's first assignment of error alleges:

{¶7} "THE SMALL CLAIMS COURT'S DECISION AWARDING PLAINTIFF/APPELLEE $4,100.00 PLUS INTEREST AND COSTS EXCEEDED ITS JURISDICTION PURSUANT TO O.R.C. 1925.02(A)(1) AND MUST BE REVERSED."

{¶8} Appellant argues that the jurisdiction of the small claims division is limited by R.C. §1925.02(A)(1), which states:

> **{¶9}** "(A)(1) Except as provided in division (A)(2) of this section, *a small claims division* established under section 1925.01 of the Revised Code *has jurisdiction in civil actions* for the recovery of taxes and money only, *for amounts not exceeding three thousand dollars*, exclusive of interest and costs." (Emphasis added.)

{¶10} Appellant also argues that the court was aware that the amount in controversy was more than $3,000.00. Appellant contends that the court had a duty to transfer the case to the regular docket pursuant to R.C. §1925.10(A), as follows:

> **{¶11}** "(A) A civil action that is duly entered on the docket of the small claims division shall be transferred to the regular docket of the court upon the motion of the court made at any stage of the civil action or by the filing of a counterclaim or cross-claim for more than three thousand dollars."

{¶12} Appellant's arguments focus on the meaning of the two cited statutes. The interpretation of the words of a statute are questions of law for the court and are reviewed *de novo*. *Neiman*

v. Donofrio (1992), 86 Ohio App.3d 1, 3.

{¶13} R.C. §1925.02(A)(1) limits small claims actions to amounts not exceeding $3,000.00, exclusive of costs and interests. Our research has not uncovered any cases, reported or unreported, elaborating on the consequences of a small claims court exceeding its dollar limit. There are a number of cases which require dismissal, without prejudice, of a claim made in municipal court where the complaint on its face exceeds the jurisdiction of the court. *State ex rel. National Employee Ben. Services, Inc.* (1990), 49 Ohio St.3d 49, 50; *Grossman v. Mathless & Mathless* (1993), 85 Ohio App.3d 525, 528. In the instant case the complaint states that Appellee borrowed $4,100.00, but that she only sought relief for $3,000.00 of that amount. We do not view Appellee's complaint, on its face, as exceeding the monetary limits of the small claims court.

{¶14} Appellant argues that the court should have certified the case to the regular docket of the county court, but R.C. §1925.10(A) does not require certification except upon motion of the court, apparently in the court's discretion, or upon the filing of a counterclaim or cross-claim for more than $3,000.00. None of these events occurred. Therefore the court was not required to transfer the case to the regular docket, although the court could have used its discretion to do so. R.C. §1925.10(B) permitted Appellant to file a motion to have the case transferred, at the discretion of the trial court, but Appellant did not avail

itself of this option.

{¶15} R.C. §1925.02(A)(1) does not allow a small claims court to award more than $3,000.00, excluding interest and costs. Nevertheless, the small claims jurisdictional statute does not address the situation which occurred in the instant case. In contrast, the jurisdictional statute for municipal courts, R.C. §1901.22(F), specifically contemplates a scenario in which a judgment exceeds the monetary limits of the court, and provides the following solution:

> **{¶16}** "When the amount due either party exceeds the sum for which a municipal court is authorized to enter judgment, such a party may in writing remit the excess and judgment shall be entered for the residue."

{¶17} There is no similar provision in either the small claims or county court jurisdictional statutes.

{¶18} It is obvious that the June 9, 2000, Judgment Entry exceeded the jurisdiction of the small claims court. It is apparent from Appellee's original complaint that she was aware that her claim might be worth more than the jurisdictional limit of the court. Under the circumstances, the trial court should have simply awarded Appellee the maximum award. See *White v. Kent* (1988), 47 Ohio App.3d 105, 107. Pursuant to App.R. 12(B), we hereby modify the judgment of the trial court to conform to the jurisdictional limits of that court.

{¶19} Appellant's second assignment of error asserts:

{¶20} "THE SMALL CLAIMS COURT'S DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND MUST BE REVERSED

AS THERE WAS NO WRITTEN DOCUMENTATION TO EVIDENCE ANY AGREEMENT NOR WERE THEIR RECEIPTS TO EVIDENCE ANY MONIES ALLEGEDLY EXPENDED BY PLAINTIFF/APPELLEE ON DEFENDANT/APPELLANT'S BEHALF."

{¶21} Appellant contends that there is no evidence in the record of a written agreement between himself and Appellee regarding the sum of $4,100.00, no receipts of any expenditures made by Appellee and no other evidence supporting Appellee's claim.

{¶22} Generally, an appellate court will not reverse a civil judgment as being against the manifest weight of the evidence if there is competent, credible evidence going to all of the essential elements of the case. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus.

{¶23} Appellee's small claims complaint is presented as a breach of an oral contract. To prove a breach of contract a plaintiff must show, "the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff." *Doner v. Snapp* (1994), 98 Ohio App.3d 597, 600. The testimony of a single witness can be sufficient to establish the existence of an oral contract. *Stokes v. Warren Nissan Mazda Subaru* (Sept. 29, 2000), Trumbull App. No. 99-T-0136, unreported. Although Appellant denied that he had promised to repay Appellee, resolution of the weight and credibility of his testimony were issues for the trier of fact to resolve. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 81.

{¶24} Appellee testified that there was an oral agreement for Appellant to reimburse her for certain expenses incurred by Appellant's wife and daughter while they were legally separated, that Appellant did not repay these expenses and that the expenses totaled $4,100.00. (Tr. p 4). Although Appellee's testimony is lacking much detail, the trial court apparently believed her testimony without the need of further proof. The record contains some competent and credible evidence going to the essential elements of Appellee's claim. Therefore, Appellant's second assignment of error is found to be without merit.

{¶25} For the foregoing reasons, we sustain Appellant's first assignment of error in part and hereby modify the June 9, 2000, judgment pursuant to App.R. 12(B). Accordingly, we enter judgment in favor of Appellee for $3,000.00, plus interest and cost. Appellant's second assignment of error is overruled.

Vukovich, P.J., concurs.

DeGenaro, J., concurs.