

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-04-12 ✓

SEP 10 P 3:02

MERVIN J. SHOEMAKER,

Appellant

v.

DECISION AND ORDER

EVERGREEN CREDIT UNION,

Appellee

SEP 24 2004

This matter is before the court on the appeal of Mervin Shoemaker from the decision of the District Court (*District Ninth, Portland*) granting a small claims judgment to the appellant Evergreen Credit Union ("Evergreen"). The hearing was not recorded and no agreed upon statement of the facts or the evidence was provided.

An appeal by a plaintiff from a small claims decision is limited to questions of law. M.R.S.C.P. 11(d)(1); M.R. Civ. P. 76F. As the appellant, Mr. Shoemaker has the burden of providing an adequate record. *Lamb v. Euclid Ambler Assoc.*, 563 A.2d 365, 367 (Me. 1989). The "record on appeal" includes the original papers and exhibits filed in the District Court, a certified copy of the docket entries and a transcript of the hearing. M.R. Civ. P. 76F(a). The absence of an electronic recording or an allowable statement of the small claims proceedings precludes any meaningful appellate review. *Id.*; see also *Kingsbury v. Forbes*, 1998 ME 168, ¶ 5, 714 A.2d 149, 151.


In the underlying small claims action, Mr. Shoemaker alleged that Evergreen impermissibly turned over funds in his account to the Internal Revenue Service (IRS) pursuant to a Notice of Levy. His arguments on appeal appear to be that (1) the IRS

acquired his funds pursuant to a "Notice of Levy," which is not a levy and, therefore, the IRS was not entitled to seize his funds, and (2) Larry Leder, whose signature appears on the Notice of Levy, "was never authorized by the Secretary of the Treasury" to seize his property and, therefore, the seizure was invalid. Because there is no adequate record of the small claims hearing, this court must assume "that there was sufficient evidence in the record to support the court's findings" that lead to its ultimate ruling granting judgment to the defendant. *Lamb*, 563 A.2d at 367.

Pursuant to M.R. Civ. P. 79(a), the Clerk is directed to enter this Decision and Order on the Civil Docket by a notation incorporating it by reference and the entry is

The Small Claims Judgment of the District Court is AFFIRMED.

Dated: September 7, 2004



Justice, Superior Court

Date Filed 03-11-2004

Cumberland

County

Docket No. AP-04-12

Action Appeal from Lower Court

MERVIN J. SHOEMAKER

EVERGREEN CREDIT UNION

vs.

Plaintiff's Attorney

(PRO SE)

Mervin J. Shoemaker
29 Mill Pond Drive
Windham, ME 04062

Defendant's Attorney

Daniel Cummings, Esq.
Roderick Rovzar, Esq.
Norman, Hanson & DeTroy
415 Congress Street
P.O. Box 4600
Portland, ME 04112
207-774-7000

Date of
Entry

2004

March 12

"

"

Mar. 16

March 23

Apr 20

May 3

May 12

Sep. 3

Sep. 10

Received 03-11-04.

Plaintiff's Notice of Appeal to Superior Court filed.

All paperwork received from 9th District Court, Division of Southern
Cumberland County (District Court Docket No: PORDC-SC-2004-43).

On 3-16-04.

Briefing schedule mailed. Appellant's brief due 4-20-04.

Received 3-23-04.

Entry of Appearance of Daniel Cummings, Esq. on behalf of Appellee
Evergreen Credit Union filed.

Received 4-20-04:

Plaintiffs Brief filed.

Received 5-3-04.

Appellee's brief filed.

Received 05-11-04:

Appellant Brief filed.

On 09-02-04:

Hearing held on DC appeal.

Court takes matter under Advisement.

Presiding, Justice Thomas Humphrey: Tape no 2414-Index 3 - 624.

Received 09-10-04:

Decision and Order filed. (Humphrey, J.).

Pursuant to M.R.Civ.P.79(a), the Clerk is directed to enter this
Decision and Order on the Civil Docket by a notation incorporating
it by reference and the entry is The Small Claims Judgment of the
District Court is AFFIRMED.

On 09-10-04 Copies mailed to Daniel Cummings, Roderick Rovzar and
Mervin Shoemaker at 29 Mill Pond Drive, Windham, Maine 04062.