

STATE OF MAINE
CUMBERLAND, ss

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CLERK'S OFFICE

SUPERIOR COURT
CIVIL ACTION
DOCKET NO AP -09-28 ✓

SUSAN MCGARVEY
Plaintiff

2009 OCT 15 P 3: 09

ORDER ON
DEFENDANT'S APPEAL
FROM SMALL CLAIMS
JUDGMENT

v.

KATHLEEN SCOTT
Defendant

BACKGROUND

Before the court is Kathleen Scott's appeal from a judgment in a small claims action in the District Court. On June 11, 2009, a default judgment was entered against Scott because she failed to appear at the small claims hearing. The judgment ordered Scott to pay \$4,120.45 to Susan McGarvey, a former tenant in one of Scott's properties, who filed the underlying claim against Scott on November 10, 2008. McGarvey had rented a house in Scarborough, Maine from Scott. McGarvey sought a judgment against Scott for double her \$1,500.00 security deposit pursuant to 14 M.R.S. § 6034(2), damages for property destroyed by flooding at Scott's rental property, and costs.

The original hearing date was set for April 16, 2009, but due to a medical emergency Scott requested the hearing to be postponed until June 2009. The hearing was rescheduled for June 11, 2009, and notice of the hearing was sent on April 9, 2009. On June 11th, Scott failed to appear at the hearing and the default judgment was entered. Following the default judgment Scott filed a notice of appeal on June 15, 2009. Scott claims that she did not receive notice of the hearing date. However Scott filed a brief that only addressed the underlying claim and did not address the notice issue.

DISCUSSION

Rule 8 of the Maine Rules of Small Claims Procedure permits the court to enter default judgment against a defendant who fails to appear at the small claims hearing. A party seeking relief from a small claims judgment has two avenues for relief: (1) she may file a request for relief from judgment pursuant to Rule 9 of the Maine Rules of Small Claims Procedures, or (2) she may file an appeal pursuant to Rule 11 of the Maine Rules of Small Claims Procedure. Under Rule 11, “[a]n appeal by a defendant may be on questions of law only or, on any issue so triable of right, by jury trial de novo at the election of the defendant.” M.R.S.C.P. 11(d)(2). Scott has not presented a question of law in her appeal, and Scott has not requested a jury trial in Superior Court. Failure to demand a jury trial results in waiver of that right. *Id.* Therefore, Rule 9 provides Scott her only remaining potential avenue of relief.

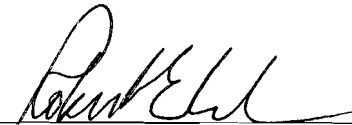
Through Rule 9, a party may be granted relief in accordance with Rule 60 of the Maine Rules of Civil Procedure upon a written request for relief from judgment setting forth reasons showing good cause. M.R.S.C.P. 9. Among other reasons, Rule 60(b) of the Maine Rules of Civil Procedure permits the court to relieve a party from final judgment where there exists mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud. In her appeal, Scott claims she did not have notice of the new hearing date, however her brief only discusses the underlying claim. Scott has not offered a justification under Rule 60(b) of the Maine Rules of Civil Procedure to set aside the default judgment. *See e.g. Putnam v. Andrews*, 1991 Me. Super. LEXIS 14, *2, CV-90-219 (Me. Super. Ct., Pen. Cty., Jan. 9, 1991) (J. Beaulieu) (where court denied

defendant's appeal from small claims court because defendant was out of town on the day of the hearing).

Therefore, the entry is:

Defendant's appeal from the June 11th default judgment is DENIED, and the entry of default judgment against the Defendant is AFFIRMED. Case is remanded to District Court.

Dated at Portland, Maine this 14th day of October, 2009.



Robert E. Crowley
Justice, Superior Court

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