

STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
CIVIL ACTION

Docket No. AP-07-21

Charles Austin,
Plaintiff

JLH - PEN - 11/20/07
FILED & ENTERED
SUPERIOR COURT
NOV 08 2007
PENOBSCOT COUNTY

v.

Order on Appeal

Joseph Messina d/b/a Joe's Garage,
Defendant

DONALD GARBRECHT
CIVIL LIBRARY

FEB 06 2008

Charles Austin appeals from a judgment entered against him on a small claims statement of claim adjudicated in the District Court (Newport).

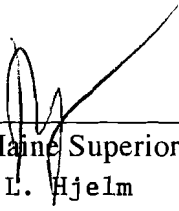
Austin has moved to default Joseph Messina on this appeal because Messina did not file a brief on appeal. The court denies the motion. When an appellee fails to file an appellate brief, that party is precluded from participating at oral argument. *See* M.R.Civ.P. 76G(b) (controlling appellate proceedings from small claims actions, *see* M.R.Sm.Cl.P. 11(e)). Here, as is its uniform practice, the court dispenses with oral argument and considers the issues on appeal based on the appellate record and those briefs that have been filed. Thus, despite the absence of any brief filed by Messina, the court considers the merits of Austin's arguments on appeal.

The court has reviewed the record on appeal. To the extent that Austin's arguments on appeal relate to matters addressed at trial, he is not entitled to relief because he has not filed a transcript of that proceeding.¹ *Putnam v. Albee*, 1999 ME 44, ¶ 10, 726 A.2d 217, 219-220. Further, Austin has not established here that the trial court erred or abused its discretion in its rulings on pre-trial discovery issues, and the absence of a trial transcript precludes any finding that Austin was prejudiced by any such rulings.

¹ By motion, Austin sought and was granted an enlargement of time to complete arrangements for the preparation of the transcript. The Electronic Recording Division has advised that Austin failed to make arrangements to pay for such a transcript and that it has cancelled his transcript order. Thus, the record – which does not include the transcript – must be deemed complete.

The entry shall be: Judgment affirmed.

Dated: November 7, 2007



Justice, Maine Superior Court
Jeffrey L. Hjelm

Parties
Pro Se