

STATE OF MAINE

YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-09-052
PAF - YOR - 4/18/2011

RICHARD HATCH and
RODNEY HATCH d/b/a
HIGHPINE MOBILE HOME PARK,

Plaintiffs

v.

ORDER

SCOTT BASTON,

Defendant

HISTORY

Mr. Baston is the owner of a mobile home and rents a lot in the plaintiffs' mobile home park in Wells. The defendant was given a notice to quit and a complaint for forcible entry and detainer was brought alleging non-payment of rent and violation of the park rules by sub-renting of the mobile home.

After a hearing in the District Court (York, *Douglas, J.*) a judgment of forcible entry and detainer was entered on September 16, 2009 with a writ of possession to issue on November 16, 2009.

On November 13, 2009 the defendant filed a motion for relief from judgment alleging that a new tenancy had been created by the acceptance of rent after the judgment was entered on September 16, 2009. That motion was denied on November 30, 2009. The defendant also filed on November 13, 2009 a motion for temporary restraining order and motion to quash writ of possession which was denied on November 30, 2009.

Mr. Baston filed a notice of appeal on December 7, 2009 stating that, "Plaintiff clearly stated that tenancy will be reinstated if all filing fees, process fees and arrears are paid in full before the writ of possession issues. These terms have been met. The presiding judge has made an error by dismissing or not taking into consideration the plaintiff's statement."

TIMELINESS OF APPEAL

Pursuant to 14 M.R.S.A. §6008, "The time for filing an appeal of the judgment of the District Court expires upon the issuance of the writ of possession pursuant to section 6005 or 30 days from the time the judgment is entered, whichever first occurs." The appeal of the September 15, 2009 judgment was untimely. Also see *Housing Authority of the City of Bangor v. Maheux*, 2000 ME 60, ¶4, 748 A.2d 474, 476.

Even if Rule 76D M.R.Civ.P. applied and excusable neglect existed to extend the appeal deadline by an additional period "not exceeding 30 days ... " the appeal would still be late.

As the appeal is untimely the Superior Court does not have jurisdiction on appeal to review the District Court's decision.

The entry is:

Appeal dismissed. Writ of possession to issue May 28, 2010.

Dated: April 12, 2010

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