

STATE OF MAINE
Sagadahoc, ss.

SUPERIOR COURT
AND-0001-5 3 2011

SCOTT MONSEN,

Plaintiff/Appellant

v.

Docket No. SAGSC-AP-11-002

MATTHEW ATWOOD

Defendant/Appellee

DECISION AND ORDER

This small claims appeal is before the court on the appeal of the small claims plaintiff, Scott Monsen, from the decision of the West Bath District Court granting him judgment for less than he had requested against the Defendant Matthew Atwood. The court elects to decide the appeal without oral argument.

When the plaintiff in a small claims case appeals to the Superior Court, the appeal is on questions of law only, based on the record on appeal. M.R. S.C. P. 11(d)(1). The record on this appeal includes the original papers and exhibits filed in the District Court, a certified copy of the docket entries. M.R. Civ. P. 76F(a). The record in this case also includes a transcript of the trial proceedings.

The appellant, Mr. Monsen, has not pointed to any particular error of law in the small claims judgment. His primary argument is that the judge's factual findings were wrong in some respects. He also claims that he has additional evidence to support his claim. Lastly, he says that Mr. Atwood has paid nothing on the judgment.¹

¹ One reason Mr. Atwood has not paid on the judgment may be that the judgment was not final as a result of Mr. Monsen's appeal. Once the judgment is final, Mr. Monsen may pursue a disclosure action if the judgment remains unpaid.

Because a small claims plaintiff can appeal only on errors of law, in effect Mr. Monsen had to show that the District Court committed an error of law in awarding him half, but not all, of the damages he requested. Mr. Monsen's claim was for a full refund of \$6,000 he had paid Mr. Atwood for Mr. Atwood to perform work on Mr. Monsen's vehicle. Mr. Atwood's defense was that he had done some work on the vehicle when Mr. Monsen suddenly took it back before Mr. Atwood had the opportunity to finish the job. In awarding Mr. Monsen \$3,000, the court plainly determined that Mr. Atwood was entitled to retain some of what he had been paid as compensation for the work he had done. The law permits a party who has partly performed under a contract to be compensated for the value of the part performance.

Because the appellant Scott Monsen has not established any error of law in the small claims court's ruling, his appeal must be denied.

It is hereby ORDERED that the appeal is denied. The Notice of Judgment of the West Bath District Court Docket No. WESDC-SC-10-355 dated January 6, 2011 is hereby affirmed.

Pursuant to M.R. Civ. P. 79(b), the Clerk is hereby directed to incorporate this order by reference in the docket.

Dated 3 May 2011



Justice, Superior Court