

VT SUPERIOR COURT
STATE OF VERMONT
CIVIL DIVISION

SUPERIOR COURT
Washington Unit

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CIVIL DIVISION
Docket No. 355-6-15 Wncv

CINDY DOUGLASS
Defendant–Appellant

2015 SEP -3 A 11: 45

on appeal from
Docket No. 612-12-14 Wnsc

v.

FILED

VERMONT NEA
Plaintiff–Appellee

SMALL CLAIMS APPEAL
Decision

Ms. Cindy Douglass has worked in the Windham Northeast Supervisory Union for many years. Until the 2013–2014 school year, she was a member of the union, the Vermont NEA, and her dues were automatically deducted from her pay. For the 2013–2014 school year, she decided to not be a member and has refused to pay the “agency fee” to the Vermont NEA that is statutorily required of nonmembers by 21 V.S.A. § 1734(d). The Vermont NEA filed this small claims action to establish Ms. Douglass’s liability for the unpaid agency fee (\$245.13) as well as prejudgment interest. Ms. Douglass counterclaimed, seeking a refund of several years of dues she paid as a member from October 2002 to December 2008 because the form by which a member elects to have dues automatically deducted from pay could not be located in her file. The small claims court ruled for the Vermont NEA and awarded prejudgment interest. It rejected Ms. Douglass’s counterclaim.

Ms. Douglass appealed. On appeal, she argues that the small claims court erred by denying her counterclaim on a statute-of-limitations basis because she had no notice of the missing paperwork until recently. She also argues that the small claims court ruled that prejudgment interest was unavailable but then included it in the judgment. Lastly, she seeks reconsideration of the small claims court’s rejection of her defense to paying the 2013–2014 agency fee—that it is too high.

An appeal from a small claims judgment is heard and decided “based on the record made in the small claims court.” 12 V.S.A. § 5538. “Where the evidence is conflicting the [small claims] court has the sole responsibility for determining its weight and the credibility of the witnesses.” *Whipple v. Lambert*, 145 Vt. 339–40, 1985 (per curiam). The court on appeal will not interfere with a small claims judgment if the findings are sufficient to support the conclusions of law. *Bartley-Cruz v. McLeod*, 144 Vt. 263, 264 (1984).

Statute of limitations

At the hearing, the small claims judge brought up the issue of whether the counterclaim seeking a refund for dues paid in 2008 and earlier is outside the 6-year statute of limitations

applicable to contract actions. Near the end of the hearing, she indicated that it was one of the reasons that she was going to deny the counterclaim. She then retracted that comment in favor of more reflection. In her written decision, the judge explained that because the Vermont NEA had not affirmatively raised the issue, the court was not deciding on that basis. In the end, the statute of limitations was irrelevant.

There was no dispute at the hearing that Ms. Douglass was a member during the years at issue and knew that her dues were being deducted automatically. She sought a refund because the Vermont NEA could not produce a form that she presumably had signed at some point a long time ago authorizing the dues to be automatically deducted from her pay. That was the only issue. The small claims court found that it was more likely than not that the form had been signed and simply no longer existed in Ms. Douglass's file and that there was no basis for a refund. That finding has a basis in the evidence and thus cannot be modified on appeal. Additionally, even if Ms. Douglass had never signed the form, her conduct—awareness of the automatic deductions when they occurred and failure to object to them until many years later—is highly likely to waive any claim that the dues should not have been automatically deducted and is more unlikely to warrant a refund in any event. There is no error.

Prejudgment interest

At the end of the small claims hearing, the Vermont NEA requested an award of prejudgment interest. The court asked it to identify a statutory basis for prejudgment interest, indicating that if there is no *statutory* basis, there could be no interest. The Vermont NEA was unable to identify such a statute on the spot. The court gave the Vermont NEA 10 days to identify legal authority for prejudgment interest and it did. See Letter from Corey F. Wood (filed April 27, 2015), citing *Winey v. William E. Dailey, Inc.*, 161 Vt. 129, 141 (1993), for the proposition that prejudgment interest is appropriate when the damages are liquidated or readily ascertainable. On that basis, the court awarded prejudgment interest. There is no error.

Reconsideration of the amount of the agency fee

As the court understands Ms. Douglass's objection to the agency fee, it is not that she feels that she should not have to pay some agency fee. It is, after all, required by statute. Her objection is that the agency fee is set at 85% of membership dues, an amount that is so close to the cost of membership that there is no real benefit to choosing against membership.

At the hearing, the Vermont NEA explained that the agency fee is determined by a computation based on "chargeable hours," those hours that are allowed to form the basis of the agency fee. There also are non-chargeable hours that are not allowed to be included in that computation. By statute, the agency fee cannot exceed 85% of the dues paid by members. 21 V.S.A. § 1722(1). The Vermont NEA explained that its chargeable activities routinely exceed 85% and thus its agency fee tends to be 85% of membership dues, as it was in the 2013–2014 school year.

While the small claims court did not make detailed findings on this matter, it clearly found no indication in the evidence of any miscalculation or other reason that the agency fee

charged to Ms. Douglass was inaccurate or, as a legal matter, "too high." It thus ruled for the Vermont NEA. Ms. Douglass had no lawful basis to refuse to pay the fee in violation of 21 V.S.A. § 1734(d).

ORDER

For the foregoing reasons, the judgment of the small claims court is affirmed.

Dated at Montpelier, Vermont this 3rd day of ~~August~~^{September} 2015.

Mary Miles Teachout
Mary Miles Teachout
Superior Judge