

STATE OF VERMONT
ORANGE COUNTY

FILED
NOV - 4 2008
ORANGE SUPERIOR COURT.

CRAIG R. SMITH,)
Appellee,)
v.)
DONALD VALENTINE,)
Appellant.)

Orange Superior Court
Docket No. 274-11-07 Oecv
on appeal from
Docket No. 73-3-07 Oesc

SMALL CLAIMS COURT APPEAL
Decision

In Small Claims Docket No. 73-3-07 Oesc, plaintiff Craig Smith filed a complaint seeking collection on a construction invoice billed to defendant Donald Valentine. In response, Mr. Valentine filed an answer on April 6, 2007, along with a letter indicating his position that Mr. Smith's claims were "so tightly interwoven" with another lawsuit apparently pending that the complaint should either be "combin[ed]" with that matter or held aside until the other matter was adjudicated "to see if it becomes moot at that time."

Mr. Valentine then filed a "Motion to Consolidate" on June 14, 2007, which sought to "consolidate" Mr. Smith's complaint with another action apparently pending in Chittenden County. Mr. Valentine explained that then Chittenden County case was "the primary case that has arisen from the course of events which this action is based upon" and that "[i]t makes little sense to me to here [sic] all these things separately when they all involve the same chain of events and the same people either as litigants or witnesses."

The Small Claims Judge denied the Motion to Consolidate on June 19th. Mr. Valentine then purported to appeal the denial of the motion to this court in Docket No. 274-11-07 Oecv. In his notice of appeal, he indicated his belief that the appeal should be heard by the Vermont Supreme Court rather than the Orange Superior Court.

The procedure for appeals from decisions of the Small Claims Court is set forth by 12 V.S.A. § 5538 and the Vermont Rules of Small Claims Procedure. As a general matter, the Small Claims Court Judge first conducts a hearing on the merits on the complaint, makes findings of fact and states conclusions of law, and enters judgment either in favor of the plaintiff or the defendant. V.R.S.C.P. 6. Any party may then appeal from the judgment to the Superior Court, where a judge who did not participate in any way in the underlying judgment will decide the appeal based on the record made in the Small Claims Court. 12 V.S.A. § 5538; V.R.S.C.P. 10(c) & (d). Only then may a party seek permission to appeal to the Vermont Supreme Court from the decision of the Superior Court by filing a request for permission to appeal with the clerk of the Superior Court. 12 V.S.A. § 5538; V.R.S.C.P. 10(e).

Thus, it is proper for the present appeal to be decided by the undersigned because (1) the appeal seeks review of a decision of the Small Claims Court Judge, (2) the appeal has not yet been heard by the Superior Court, and (3) the undersigned did not participate in any way in the underlying decision.

However, the present appeal must be dismissed because it has been taken from an interlocutory order of the Small Claims Court rather than from a final judgment. Appeals may only be taken from a "judgment" of the Small Claims Court, which means the final decision of the court on the merits of the case which finally resolves all of the issues in the case. 12 V.S.A. § 5538; V.R.S.C.P. 10(a); see also *Morrisette v. Morissette*, 143 Vt. 52, 58 (1983) (explaining the term "judgment"). The Small Claims Judge's decision on the motion to consolidate did not resolve all of the issues in the case, and is therefore not a final judgment from which an appeal may be taken.

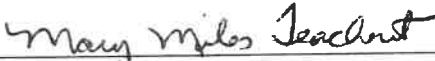
The Rules of Small Claims Procedures do not permit appeals from interlocutory orders of the Small Claims Court in a manner analogous to Vermont Rule of Appellate Procedure 5.

For these reasons, the present appeal must be *dismissed* and the matter remanded to the Small Claims Court for further proceedings.

ORDER

Mr. Valentine's appeal is *dismissed* and the matter is remanded to the Small Claims Court.

Dated at Chelsea, Vermont this 4th day of November, 2008.



Hon. Mary Miles Teachout
Superior Court Judge