

STATE OF MAINE
ANDROSCOGGIN, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-17-09

WILLIAM ORR,
Appellee

v.

JOHN RANDOLPH,
Appellant.

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ORDER

OCT 3 '17 AM 11:24
ANDRO SUPERIOR COUR

Before the Court is Appellant John Randolph's appeal of district court civil action pursuant to 76G of the Maine Rules of Civil Procedure.

I. Background

On May 3, 2017, following Appellant's failure to appear in an action filed against him, default judgment was entered in the Lewiston District Court, Docket No. LEWDC-SC-2017-00179. On June 1, 2017, Appellant filed a motion to set aside default and relief from judgment pursuant to Maine Rule of Civil Procedure 60(b). So as not to waive his right to appeal, on June 1, 2017, Appellant also filed a notice of appeal to this court. Pursuant to Maine Rule of Appellate Procedure 3(b), by handwritten order dated June 19, 2017, the District Court judge declined to rule on Appellant's Rule 60(b) motion pending disposition of the appeal in this court.

II. Discussion

Maine Rule of Small Claims Procedure 11(a) authorizes an appeal from a judgment of the District Court in a small claims action to the Superior Court pursuant to Maine Rule of Civil Procedure 76D. However, once a default judgment has been entered, a party who has not previously appeared cannot obtain direct appellate review of the court's exercise of discretion in entering a default judgment and must instead pursue relief under

Rule 60(b) before the trial court. *Richter v. Ercolini*, 2010 ME 38, ¶ 12, 994 A.2d 404. Therefore, because the District Court has not yet considered Appellant's Rule 60(b) motion, this case is not ripe for appeal. As requested by Appellant, this Court will stay this appeal and remand to the District Court for consideration of Appellant's Rule 60(b) motion.

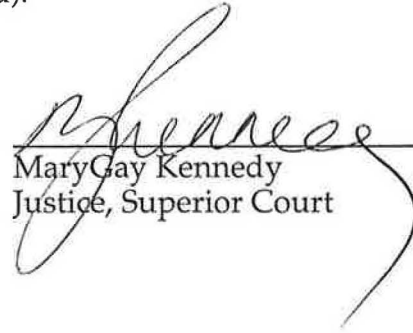
IV. Conclusion

This Court STAYS Appellee's Rule 76G Appeal and REMANDS this case to the District Court for consideration of Appellant's motion to set aside default and relief from judgment pursuant to Maine Rule of Civil Procedure 60(b).

The Clerk is directed to incorporate this Order into the docket by reference pursuant to Maine Rule of Civil Procedure 79(a).

Dated: _____

10/3/17



Mary Gay Kennedy
Justice, Superior Court

Action: Small Claims Appeal

William Orr
32 Kerri Farms Drive
Standish, ME 04084

vs.

Arthur Randolph

Plaintiff's Attorney

Defendant's Attorney

Pro se

John Conway, Esq.

Date of Entry

2017

- June 20 Received 06-20-17:
Notice of Appeal Small Claims filed.
Notice is hereby given that the Defendant appeals to the Superior Court from the Judgment entered in this action on May 3, 2017.
- July 17 On 07-17-17:
Notice and Briefing Schedule filed.
Petitioner Brief is due on or before August 28, 2017.
Copies to parties.
- July 31 Received 07-31-17:
Respondent's Opposition for Requested Appeal filed.
- Aug 28 Received 08-28-17:
Appellant's Brief filed.
- Aug 31 Received 08-31-17:
Requested Appeal of John Randolph be denied filed.
- Sept 12 Received 09-7-17:
Appellee's Brief and Opposition for Requested Appeal filed.
- Sept 21 Received 09-21-17:
Appellant's Response to Opposition to Requested Appeal filed.
- Oct 3 Received 10-3-17:
Order filed. (Kennedy, J.)
The Court STAYS Appellee's Rule 76G Appeal and REMANDS this case to the District Court for consideration of Appellant's motion to set aside default and relief From judgment pursuant to Maine Rule of Civil Procedure 60(b).
Copies to parties.
- Oct 3 On 10-03-17:
All original paperwork sent to the Maine District Court.