STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-01-070

JLH - CUM - 1/30/2002

RICHARD N. BERRY,

      Appellant/Plaintiff

vs.

DECISION AND ORDER

MICHAEL A. SWEET,

      Appellee/Defendant

Richard Berry appeals from a small claims judgment (*Portland District Court*) in favor of Michael Sweet. The hearing was not recorded and Mr. Berry submitted a Statement of Evidence presumably pursuant to M.R. Civ. P. 76F(c). *See also* M.R.S.C.P. 11(d)(3).

The "record on appeal" includes the original papers and exhibits filed in the District Court, a certified copy of the docket entries and a transcript, if any, of a recorded hearing. M.R. Civ. P. 76F(a). In the absence of a transcript, an appellant may prepare a statement of the evidence if the underlying proceeding is one "in which electronic recording would be routine or has been timely requested" and the lack of a recording is "for reasons beyond the control of any party". M.R. Civ. P. 76F(c). The electronic recording of a small claims proceeding is not routine and, in this case, was not requested by either party. M.R.S.C.P. 6(a); *see also* M.R. Civ. P. 76F(c).
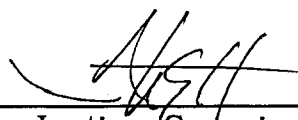
Mr. Berry acknowledges that he did not request a recording because he "was unaware that a request for a recording was required." Appellant's Statement of Evidence ¶¶ 1, 2. The court concludes that the lack of a recording or transcript in this case is not "for reasons beyond the control of any party" and, therefore, Mr. Berry's Statement of Evidence is not allowed.

An appeal by a plaintiff from a small claims decision is limited to questions of law. M.R.S.C.P. 11(d)(1). A careful reading of Mr. Berry's brief on appeal discloses that, although he argues that the trial court misapplied the motor vehicle laws, he actually challenges the court's factual determination that his negligence was at least equal to that of Mr. Sweet. Mr. Berry also asserts that the trial court erroneously considered evidence of a prior arbitration. However, the absence of an electronic recording or an allowable statement of the small claims proceedings precludes any meaningful appellate review by this court. *See*, M.R.S.C.P. Rule 11(d))(1); M.R.Civ.P. 76D, 76F(c) & (d); *Kingsbury v. Forbes*, 1998 ME 168, ¶ 5, 714 A.2d 149, 151.

Pursuant to M.R. Civ. P. 79(a), the Clerk is directed to enter this Decision and Order on the Civil Docket by a notation incorporating it by reference and the entry shall be:

> Judgment of the District Court AFFIRMED. Remanded to the District Court for entry of Judgment consistent with this Decision and Order.

Dated: January 30, 2002

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Justice, Superior Court

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Date Filed __11-19-01__ ____CUMBERLAND____ Docket No. __AP-01-070__
County

Action __APPEAL FROM D.C. - PERSONAL INJURY__

RICHARD N. BERRY   MICHAEL A. SWEET

vs.

Plaintiff's Attorney	Defendant's Attorney
PRO SE 650 BRIGHTON AVENUE PORTLAND, MAINE 04102-1035	PRO SE 38 WEST PRESUMPSCOT STREET PORTLAND, MAINE 04101 CHRISTOPHER DINAN, ESQ. JOHN WALL, ESQ. P.O. BOX 7046 PORTLAND, MAINE 04112-7046

Date of Entry	
2001 Nov. 20	Received 11-19-01: Plaintiff's Notice of Appeal to Superior Court filed. All paperwork received from 9th District Court, Division of Southern Cumberland (District Court #POR-SC-01-814).
" "	On 11-20-01. Briefing Schedule Mailed. Appellant's Brief due 12-31-01.
Nov. 26	Received 11/21/01: Plaintiff's Statement of Evidence or Proceedings filed.
" "	Plaintiff's Certificate of Service filed.
Dec. 5	Received 12/04/01: Appellee's Motion to Dismiss or for enlargement of Time, with Incorporate Memorandum of Law filed.
" "	Appellee's Request for Hearing on Motion to Dismiss or for Enlargement of Time filed.
Dec. 10	Received 12-6-01. Appellant's response to appellee's Motion to Dismiss filed.
Dec. 17	Received 12-14-01: Appellant's Brief on Appeal filed.
2002 Jan. 14	Received 1-11-02. Appellee's Motion for Enlargement of time, with incorporated Memorandum o: law filed.
" "	Appellee's, request for hearing filed.
" "	Proposed Order filed.
Jan. 18	Received 01-18-02. Appellant's Response to Appellee's Motion for Enlargement of Time filed.