

STATE OF MAINE  
CUMBERLAND, ss.

SUPERIOR COURT  
CIVIL ACTION  
Docket No. AP-13-40  
TDW=Cum-9/13/2013

AARON BIGGS, et al,

Plaintiffs-Appellees

v.

ORDER

MELODY BOULTON,

Defendant-Appellant

STATE OF MAINE  
Cumberland, ss. Clerk's Office

SEP 13 2013

RECEIVED

On September 12, 2013 the court received from the clerk's office a motion by plaintiffs-appellees Aaron and Jill Biggs to dismiss this appeal, which is brought by defendant-appellant Melody Boulton from a small claims judgment entered by the District Court (Powers, J.) on June 13, 2013. The small claims judgment awarded the Biggses \$4,055 plus costs and attorneys fees.

Boulton has filed an affidavit seeking a jury trial. However, the June 13, 2013 judgment was entered by default based on Boulton's failure to appear. The Law Court has ruled that a defendant who defaults in a small claims action may not invoke the procedure for seeking a jury trial on appeal. H & H Oil Co., Inc. v. Dineen, 557 A.2d 604, 605 (Me. 1989). Boulton contends that H & H Oil Co. was wrongly decided but her arguments are not convincing, and this court is bound by applicable Law Court precedent in any event.

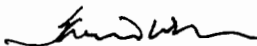
Boulton also argues that, although the file contains a notice of the June 13 hearing indicating that it was sent to her counsel at his correct address, neither she nor her counsel actually received notice of the hearing. This is not an issue that can be raised on appeal. Where the file reflects that notice was given, any request for relief from the

judgment based on an alleged failure to receive notice must be addressed to the District Court under M.R. Small Claims P. 9 and M.R.Civ.P. 60(b).

The entry shall be:

The motion by plaintiffs-appellees to dismiss this appeal is granted. The Clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: September 13, 2013

  
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Thomas D. Warren  
Justice, Superior Court

Date Filed 7/16/13

CUMBERLAND

Docket No. AP-13-40

County

Action DISTRICT COURT APPEAL (SMALL CLAIMS)

AARON BRIGGS  
JILL BRIGGS

MELODY BOULTON

vs.

Plaintiff's Attorney

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PORTLAND MAINE 04112

Date of  
Entry