

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. AP-01-56

2001-10-3/0002

WILLIAM FRENCH,

Appellant

v.

**DECISION ON APPEAL**

GAIL ANNE HEMPHILL,

Appellee

This matter comes on for hearing on the appeal of the plaintiff below, William French. French's small claim alleged that defendant Hemphill had taken certain property belonging to French and did not return it. French sought return of all of the listed items or replacement cost, which he estimated to be \$4,500. After a hearing at which both parties appeared and had the opportunity to present evidence, the court granted judgment to defendant Hemphill noting, "The plaintiff has failed to prove entitlement to recover." French appeals from that judgment.

Apparently no electronic recording of the hearing in the District Court was made, since no transcript was provided as part of the record. Nor has the defendant requested a trial de novo. In the absence of a transcript of the trial below, or a trial de novo, or even a record on agreed statement in accordance with M.R. Civ. P. 76F(d), the appellate court must assume that the trial court made all of the necessary findings based upon whatever evidence was presented. In the present case, the trial court indicated that the plaintiff had failed to sustain his burden of proving his case,

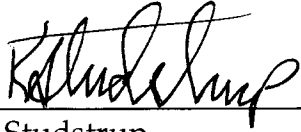
and the appellant presents nothing to substantiate any claim that this finding was in error. In addition, the court finds no error of law or abuse of discretion.

The appellant has also alleged at oral argument that the trial judge was prejudiced against the plaintiff and in favor of the defendant. However, again in the absence of a record to study for any indication of bias or prejudice, the argument must fail.

For the reasons stated above, the entry will be:

Appeal DENIED; REMANDED to the District Court.

Dated: January 23, 2002

  
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S. Kirk Studstrup  
Justice, Superior Court

Action Appeal From District Court  
Small Claims

**J. STUDSTRUP**

William French

vs.

Gail Anne Hemphill

Plaintiff's Attorney

William French, Pro Se  
46 Windsor Street  
Randolph, Maine 04346

Defendant's Attorney

Gail Anne Hemphill, Pro Se  
610 Eastern Ave.  
Augusta, Maine 04330

Date of  
Entry

7/31/01

Appeal from Southern Kennebec District Court with all papers, filed.  
Notice to Parties, Small Claims Appeal, mailed to parties.

8/6/01

Letter filed by William French, filed. s/French, Pro Se

8/7/01

Notice of briefing schedule mailed to parties.

8/9/01

Letter (Brief), filed. s/Hemphill.

1/9/02

Hearing had on oral arguments with Hon. Justice Kirk Studstrup, presiding.  
William French, Pro Se Plaintiff and Gail Anne Hemphill, Pro Se Deft.  
Tape #591 Index 6238-6666.  
Oral arguments made to the court. Court to take matter under advisement.

1/23/02

DECISION ON APPEAL, Studstrup, J.  
Appeal DENIED; REMANDED to the District Court.  
Copies mailed to parties.

Copies mailed to Deborah Firestone, Garbrecht Library and Goss.