

STATE OF MAINE

KENNEBEC, ss.

KANE P. COFFIN,

Plaintiff/ Appellee

v.

ALLAN LAPON,

Defendant/ Appellant

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-03-06

SKS - KEN - 10/15/2003

DECISION ON APPEAL

**DONALD L. GARBRECHT
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OCT 21 2003

This matter comes before the court on appeal by pro se appellant Allan Lapon from a decision of the District Court granting the plaintiff judgment on his complaint for forcible entry and detainer. The date of the judgment, dated September 24, 2002, was later amended on January 2, 2003, to correct the address of the premises involved – the appellant's primary issue on appeal.

Hearing on the appeal was scheduled for September 3, 2003. Both parties appeared, but appellant Lapon orally requested a continuance due to illness. The court granted the continuance over the appellee's objection, but ordered the appellant to file a note from his health care provider concerning his illness. No note was ever sent to the court.

A new court date for the hearing was set for October 8, 2003. Just prior to the time for hearing, the appellant called the clerk's office to report that he was not feeling well. Mr. Lapon did not appear before the court either on that date or during the two days subsequent. As a result of Mr. Lapon's failure to follow the appropriate procedures for requesting continuances and his failure to file a doctor's note as previously ordered, it is clear to the court that his complaints of illness, though they

may have some basis in fact, are primarily a stalling tactic to avoid the inevitable denial of his appeal.¹

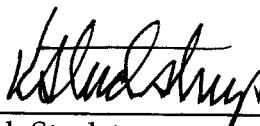
Based on the foregoing and the court's own motion, the entry will be:

(1) The appeal is DISMISSED for want of prosecution or, in the alternative, as a sanction for the appellant's delaying tactics.

(2) Appellee Coffin's motion for release of funds paid to the court by appellant Lapon is GRANTED.

(3) This matter is REMANDED to the District Court for issuance of a writ of possession pursuant to the previous order of the District Court.

Dated: October 15, 2003



S. Kirk Studstrup
Justice, Superior Court

¹ Based on the minimal record filed (no transcript) and the action of the District Court Judge in correcting the address, which is the sole read upon which the appellant clutches for his appeal, the likelihood of success on the merits is nil.

Date Filed 1/30/03

Kennebec
County

Docket No. AP03-06

Action District Court
FED

J. STUDSTRUP

Kane P. Coffin

vs.

Allan Lapon

Plaintiff's Attorney

John S. Bobrowiecki, Esq.
P.O. Box 120
Gardiner, Maine 04345

Defendant's Attorney

~~Stanley E. Sproul, Esq.~~
~~21 Western Avenue~~
~~Augusta, Maine 04330~~

38 WATER ST APT. 5
AUGUSTA MAINE 04330

Date of
Entry

2/3/03

Appeal from Southern District with all papers, filed.

2/5/03

Notice of briefing schedule mailed to attys of record.

2/10/03

Plaintiff's Motion for Relief and Proposed Order, filed. s/Bobrowiecki, Esq.

3/3/03

Defendant's Motion Opposing Plaintiff's Motion for Relief, filed.
s/Allan Lapon, Pro Se

3/12/03

Defendant's Motion for Acceptance of Late Filing of Appel Brief and
Correction of Inadvertant Errors, filed. s/Lapon, Pro Se

Brief of Appellant, filed. s/Lapon, Pro Se

3/17/03

Plaintiff's Response to Defendant's Motion for Acceptance of Late
Filing of Appeal Brief and Correction of Inadvertent Errors, filed.
s/Bobrowiecki, Jr., Esq.

Motion to Dismiss, filed. s/Bobrowiecki, Esq.
Proposed Order, filed.

4/4/03

Defendant's Response to Plaintiffs' Opposition to Defendant's Motion for
Acceptance of Late Filing of Appeal Brief and Correction of Inadvertant
Errors, filed. s/Allan Lapon, Pro Se

4/8/03

ORDER ON MOTION FOR RELIEF, Studstrup, J. (dated 4/7/03)
Motion granted in part. Granting defendant's request to waive the filing
fee on appeal does not waive statutory requirement of payment of current
month's rent or arrearages and continued payment pending appeal. Defendant
must deposit with the Clerk of Court \$365.00 per month beginning 4/14/03
or the appeal will be dismissed and the writ issued.
Copies mailed to atty and Dft.

4/14/03

Appellee's Brief, filed. s/J. Bobrowiecki, Esq.

4/15/03

Payment in the amount of \$365.00 (per order of Studstrup, J.) received
4/14/03.

4/28/03

Appellant's Response to Appellee's Brief, filed. s/Allan Lapon, Pro Se