

STATE OF MAINE  
SOMERSET, SS.

SUPERIOR COURT  
CIVIL ACTION  
Docket No. AP-00-004

EAG-SOM-7/5/2000

JACK KAPLAN,  
Petitioner,

DONALD L. GARSNECHT  
LAW LIBRARY

v.

DECISION AND JUDGMENT

JUL 10 2000

JAMES CLARK,  
Respondent.

By Judgment dated February 17, 2000, the District Court awarded Jack Kaplan \$400, plus costs, on his small claim against James Clark. Mr. Clark filed a notice of Appeal on March 15, 2000 and requested that the appeal fee be waived. That request was denied on March 20, 2000. Mr. Clark paid the \$120 on March 30, 2000, and the case was transferred to the Superior Court on the same date.

Although his Notice of Appeal included a request for a jury trial de novo, Mr. Clark failed to comply with Rules of Small Claims Procedure 11(d)(2). He did not state, in writing, the grounds for his appeal, and he did not file any affidavits to demonstrate that there was a genuine issue of material fact giving rise to the right for a jury trial. In fact, Mr. Clark never filed anything except the Notice of Appeal form.

Based upon his failure to comply with Rules of Small Claims Procedure 11(d)(2), the court finds that Mr. Clark has waived his right to a jury trial de novo. Based upon his failure to file a brief, or any written statement setting forth the grounds for his appeal, the appeal is denied.


Because Mr. Clark's failures were apparently due to his ignorance of the law,

and not any attempt to avoid judgment, the court has indicated that it would grant a request for a refund of his appeal fee. However, that refund would be paid to Mr. Kaplan, as partial payment of the Small Claims Judgment.

Based upon the record, the court affirms the decision of the District Court.

The Clerk may incorporate this Decision and Judgment upon the docket by reference.

Dated: July 5, 2000

  
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JUSTICE, MAINE SUPERIOR COURT

Action Small Claims Appeal - District Court

**DONALD L. GARBRECHT**  
LAW LIBRARY

**JUL 10 2000**

Jack Kaplan

vs.

James Clark

Plaintiff's Attorney

Jack Kaplan, Pro Se  
RR #1 Box 3480  
North Anson ME 04958

Defendant's Attorney

James Clark, Pro Se  
219 Four Mile Square Road  
Anson ME 04911

Date of Entry	
04/19/00	<p>The following documents were received and filed 04/10/00 from the 12th District Court under Notice of Appeal - Small Claims:</p> <ol style="list-style-type: none"><li>1 - Statement of Claim</li><li>2 - Statement of Services rendered</li><li>3 - Notice of Judgment</li><li>4 - Transcript Order</li><li>5 - Indigency Affidavit</li><li>6 - Application to Proceed Without Payment of Fees</li><li>7 - Notice of Appeal - Small Claims</li><li>8 - Copy of Notice of Appeal</li><li>9 - Copies of District Court Docket Entries</li></ol> <p>Notice to Parties, Small Claims Appeal forwarded to Jack Kaplan and James Clark on this day notifying them that the Plaintiff has 10 days after mailing of this notification to file a counteraffidavit or affidavits together with a brief statement of the grounds of any cross appeal for which a notice was filed.</p>
05/01/00	Letter received and filed 04/26/00 from Jack Kaplan, Pro Se considered as an answer to Notice of Appeal, Small Claims.
05/02/00	Notice and Briefing Schedule forwarded to Jack Kaplan and James Clark.
05/10/00	Letter filed by Plaintiff 05/08/00 considered as a brief.
05/18/00	Receipt for the certified letter to James Clark. Date of Service: May 8, 2000.
07/07/00	District Court Small Claims Appeal scheduled for hearing on July 5, 2000 before the Hon. Ellen Gorman. Electronic Recording, Tape No. #169, Index No. #898-1030. Jack Kaplan, Pro Se as Plaintiff present and addressed court. James Clark, Pro Se present as Defendant and addressed court. Decision and Judgment filed. By Judgment dated February 17, 2000, the District Court awarded Jack Kaplan \$400, plus costs, on his small claim against James Clark. Mr. Clark filed a notice of Appeal on March 15, 2000 and requested that the appeal fee be waived. That request was denied

Date of  
Entry

Docket No. AP-00-004 (P2)

on March 20, 2000. Mr. Clark paid the \$120 on March 30, 2000, and the case was transferred to the Superior Court on the same date. Although his Notice of Appeal included a request for a jury trial de novo, Mr. Clark failed to comply with Rules of Small Claims Procedure 11(d)(2). He did not state, in writing, the grounds for his appeal, and he did not file any affidavits to demonstrate that there was a genuine issue of material fact giving rise to the right for a jury trial. In fact, Mr. Clark never filed anything except the Notice of Appeal form. Based upon his failure to comply with Rules of Small Claims Procedure 11(d)(2), the court finds that Mr. Clark has waived his right to a jury trial de novo. Based upon his failure to file a brief, or any written statement setting forth the grounds for his appeal, the appeal is denied. Because Mr. Clark's failures were apparently due to his ignorance of the law, and not any attempt to avoid judgment, the court has indicated that it would grant a request for a refund of his appeal fee. However, that refund would be paid to Mr. Kaplan, as partial payment of the Small Claims Judgment. Based upon the record, the court affirms the decision of the District Court. The Clerk may incorporate this Decision and Judgment upon the docket by reference. Dated: July 5, 2000 /s/ Ellen A. Gorman, JSC.  
cc: Jack Kaplan, James Clark, attested docket entries and Order sent to the District Court, Goss Data Services, Inc., Ms. Deborah Firestone, and the Donald Garbrecht Law Library.