2011 WL 8187040 (Me.) (Appellate Brief)
Supreme Judicial Court of Maine.

Thomas WALTON, Plaintiff-Appellant,
v.
Carl WALTON, Defendant Appellee.

No. YOR 11-407.
December 6, 2011.

On Appeal from the York Superior Court Sitting as an Appellate Court

Brief

Scott Giese 4294, 160 Main St. Suite 101, Biddeford, ME 04005, 207 710 2300.

***1** *STATEMENT OF ISSUES*

The Superior Court's determination that Appellant did not have good cause to set aside the judgment of a mediator in this case is an abuse of discretion, clear error, and not supported by the facts because the Court failed to fully consider Appellant's argument that he signed the Mediation Agreement with a lack of sufficient knowledge, consent, and under the duress and pressure to sign the agreement, both from the mediator, and *from* the mediation process itself; therefore, the Superior Court's denial of the appeal should be reversed and remanded for further consideration in the form of a hearing to determine the validity of the agreement.

***2** *TABLE OF AUTHORITIES*

***3** *QUESTION PRESENTED*

Should the Superior Court's Order denying Plaintiff's appeal to the Superior Court from a judgment of the District Court be reconsidered because the Court's denial was an abuse of discretion, clear error, and not supported by the facts because the Court failed to consider Appellant's argument that he signed the Mediation Agreement with a lack of sufficient knowledge, consent, and under the duress and pressure to sign the agreement, both from the mediator, and from the mediation process itself?

***4** *SUMMARY OF APPEAL*

The Appellant appeals from the July 22, 2011 Order of the Superior Court, which denied Appellant the right to appeal from a Small Claims judgment of the District Court entered on February 4, 2011. The Superior Court found that the fact that a party has a change of mind after a judgment has been entered does not constitute good cause to set aside the judgment. Appellant believes that the Court's finding was an abuse of discretion, clear error, and not supported by the facts because the Court failed to consider that Appellant entered into the Mediation Agreement with a lack of sufficient knowledge, consent, and under the duress and pressure to sign the agreement, both from the mediator, and from the mediation process itself.

STATEMENT OF THE CASE

1. Appellant, Thomas Walton, filed a Small Claims action against Appellee, Carl Walton, in the Biddeford District Court on May 27, 2010. (Record, STATEMENT OF CLAIM (Small Claims), dated 05-27-10.)

2. Appellant and Appellee attended a mediation session on February 4, 2011 pursuant to Maine Rule of Small Claims Procedure 5. (Record, Court Alternative Dispute Service Report of Completed- Small Claims dated 02-04-11.)

3. In the report of the mediation session, the mediator noted that the parties agreed as follows: "Plaintiff dismisses the case with prejudice. Parties agree that cemetery will decide placement of headstone but that Plaintiff may be buried on Lot 8 as close as possible to Lot 9 or on Lot 9 if allowed by Cemetery." (Record, Court Alternative Dispute Service Report of Completed- Small Claims dated 02-04-1 1.)

***5** 4. Notice of Judgment was entered in the Biddeford District Court on February 4, 2011, incorporating by reference the above-mentioned mediated agreement. (Record, Notice of Judgment (Small Claims), dated 02-04-11.)

5. Appellant appealed to the Superior Court from the Judgment of the District Court on February 10, 201 1. (Record, Notice of Appeal, Small Claims, dated Feb 10 20 11.)

6. A hearing in the York County Superior Court, sitting at Alfred, was held on July 21, 2011. (Record, Notice of Hearing (Oral Arguments -76G Appeal), dated June 10, 2011.)

7. After hearing, the Superior Court denied Appellant's appeal, affirmed the Judgment, and remanded the case to the District Court. (Record, Order, dated July 22, 2011.)

8. Appellant, by this action, appeals the Order and Decision of the Superior Court. (Record, Notice of Appeal (Civil Appeal), dated July 29, 2011.)

***6** *ARGUMENT*

The Superior Court's determination that Appellant did not have good cause to set aside the judgment of a mediator in this case is an abuse of discretion, clear error, and not supported by the facts because the Court failed to consider Appellant's argument that he signed the Mediation Agreement with a lack of sufficient knowledge, consent, and under the duress and pressure to sign the agreement, both from the mediator, and from the mediation process itself; therefore, the Superior Court's denial of the appeal should be reversed and remanded for further consideration in the form of a new hearing to determine Appellant's ability to fully consent and agree to the mediated agreement.

STANDARD OF REVIEW

When the Superior Court acts in its appellate capacity, the Law Court reviews the decision of the District Court directly for abuse of discretion, errors of law, or findings not supported by the evidence. *Tisdale v. Rawson*, 2003 ME 68, 822 A.2d 1136, 1140 (Me. 2003), citing *Franklin Printing v. Harvest Hill Press*, 202 ME 116, 801 A.2d 1004, 1006 (Me. 2002).

ANALYSIS

Appellant argues that he signed the Mediation Agreement under pressure and duress of both the mediator, and the Small Claims procedure in the District Court as a whole. Appellant believes that the Law Court should seriously consider the prejudicial and confusing nature of Small Claims proceedings.

On February 4, 2011, Appellant attended a Court-mandated mediation without the benefit of counsel, beginning by sitting through a docket call with about one hundred other small claims cases. As is customary, the Court spent approximately one hour calling the docket. After the docket call, Appellant waited for his chance to be heard by the mediator. The mediation took place in approximately fifteen minutes. Although Appellant was advised that he need not sign any agreement, the haste and confusing nature of the process, the fact that he is **elderly**, the ***7** mention of the case costing more money if no agreement was reached, and the prospect of coming back to court, compelled him to sign the agreement.

Appellant could not appreciate or understand the legal implications of the agreement he was entering. The Court merely needs to read the transcript form oral argument to understand that Petitioner's understanding of the process is limited at best. Appellant never appeared in front of a judge or justice; rather, the mediated agreement was summarily signed by a judge outside of the presence of Appellant. Appellant alleges that the mediation process as conducted by the District Court results in agreements that are, effectually, entered into under duress, coercion, and with pressure to resolve cases without hearing.

Appellant further states that the Superior Court found that "[t]he fact that a party has a change of mind after the judgment has been entered does not constitute good cause to set aside the judgment." (Record, ORDER, dated July 22, 2011.) Nowhere in the transcript does it appear in the record, ort the transcript, that Appellant had merely "changed his mind."Appellant argues that the Superior Court abused its discretion and ignored facts on the record by failing to consider that Appellant entered into the Mediation Agreement with a lack of sufficient knowledge, consent, and under the duress and pressure to sign the agreement. (Record, NOTICE OF APPEAL (Civil Appeal), dated July 29, 2011.)

It is clear that the Superior Court summarily dismissed the appeal without fully considering Appellant's argument when he summarily cut Appellant's rambling argument short, and stated "Let me - let me take a look at it, and you'll get something in writing from me." See, Transcript Page 5. Line 9. Appellant argues that from the very beginning of his attempt at Appealing the mediated agreement that he this was not a mere change of mind, but rather was attempting to rectify an agreement that he did not knowingly enter into. If this Court refers to:
A. Appellant's Notice of Appeal and his brief he states "I was informed if no agreement was reached I would have to pay money to continue, that is why I signed off under protest. Had I know it would cost me $150.00 dollars to appeal I would not have sign."

The Court can see that from the beginning, at the time of mediation, Appellant was confused, not sure who or what he was to pay money for if he did not agree. Ironically, ***8** Appellant would not have had to pay a cent more if he did not agree to the mediated agreement, but would rather go directly to trial. The confusion on part of Appellant is obvious in the record.

B. Transcript Page 2, Line 6, 8. "and we went through a mediator and I couldn't get it." Again, Appellant's lack of understanding of the mediation and small claims process is glaring. Let alone, the reading of the remainder of the rambling transcript which clearly indicates a litigant who did not understand the process he was entering into.

Appellant believes that there is sufficient good cause to set aside the Judgment of the District Court. Appellant argues that the Superior Court erroneously **neglected** to consider this factual information in making its decision to deny Appellant's appeal.

In *Cloutier v. Cloutier*, 2003 ME 4, 814 A.2d 979 (Me. 2003), Defendant appealed from a divorce judgment arguing that the District Court improperly ignored a pretrial order and mediation agreement. Plaintiff and Defendant entered into a mediation agreement pursuant to which some, but not all, of the issues would be agreed upon, including the sale of the couples residence upon their divorce. The wife requested that the Court disregard the mediation agreement and award her sole possession of the residence. The Supreme Judicial Court affirmed the judgment. The Court stated:

> Because the court will not set the agreement aside without cause, we address several factors that may be considered in making the decision to enforce or set aside a pretrial agreement. The court should consider, among other things, whether the parties have agreed to set aside the agreement; whether leaving the agreement in place would result in significant inequity; whether there has been unanticipated and substantial

> change in the parties' circumstances since the creation of the agreement; whether the court can resolve the matters not contained within the agreement in a reasonable manner in light of the parties' agreed upon resolution of the settled matters ... *Id.* 2003 ME at 7-8, 814 A.2d at 983.

Appellant argues, based on the considerations denoted in *Cloutier,* that failing to set aside the Mediation Agreement and Judgment in this case would cause manifest injustice because leaving the Judgment in place deprives Appellant the right to a trial where facts and issues may be fully presented and explained. Further, Appellant will not have the ability to call witnesses or to testify on his own behalf. The inequity in enforcing the Mediation Agreement outweighs the ***9** benefits of allowing both parties to proceed to a fair resolution in this case. Furthermore, it is a clear miscarriage of justice to enforce a mediation agreement when one of the parties clearly had little to no understanding of what he was entering into or the process by which he was undertaking.

In conclusion, because the Court failed to consider Appellant's cause for entering into the mediation agreement; because the mediation process is by nature rushed, over-crowded, and coercive; because Appellant is **elderly** and could not appreciate or understand the nature of his signing of the agreement in the absence of counsel; and because Appellant will face significant inequity if the agreement is not set aside, the case should be remanded for reconsideration, including a hearing to determine if in fact Appellant entered into a fair and fully knowledgeable agreement.

End of Document