

STATE OF VERMONT

SUPERIOR COURT  
Caledonia Unit

CIVIL DIVISION  
Docket No. 176-8-19 Cacv

DARLINGS AUTO REPAIR  
Plaintiff-Appellee

on appeal from

v.

FILED

JAN 13 2020

Small Claims  
Docket No. 80-3-19 Casc

CHARLOTTE HICKEY  
Defendant-Appellant

CALEDONIA COURTS

DECISION ON APPEAL

Defendant-Appellant Charlotte Hickey has appealed from a small claims judgment in favor of the Plaintiff-Appellee, a towing company, for services involved in pulling her car from where it lay partially on its side in trees after it went off the road during a significant snowstorm. After taking testimony at a hearing in small claims court, the small claims court judge delivered findings and conclusions orally and issued a judgment for the \$300 towing bill plus costs. On appeal, Ms. Hickey argues that because she was a minor at the time, she was not accountable for a contract not related to food or medical attention. She was 17 years old at the time of the incident.

An appeal from a small claims judgment is "heard and decided based on the record made in the small claims procedure." 12 V.S.A. § 5538. The "appeal is limited to questions of law." V.R.S.C.P. 10(d). If the small claims court has applied the correct law, this court will affirm its "conclusions if they are reasonably supported by the findings." *Maciejko v. Lunenburg Fire Dist. No. 2*, 171 Vt. 542, 543 (2000) (mem.). In turn, the findings of fact must be supported by the evidence, *Brandon v. Richmond*, 144 Vt. 496, 498 (1984), and such findings "must be construed, where possible, to support the judgment," *Kopelman v. Schwag*, 145 Vt. 212, 213-14 (1984). The court's review of the small claims court's legal conclusions, however, is "non-deferential and plenary." *Maciejko*, 171 Vt. at 543 (quoting *N.A.S. Holdings, Inc. v. Pafundi*, 169 Vt. 437, 439 (1999)).

The court has listened to the recording of the small claims hearing and reviewed the entire record of this case. At the hearing, Ms. Hickey testified and so did her father. He argued that she was a minor and could not be responsible for a contract. He also testified that he believed that the bill was too high for the services provided, that it should not have been more than \$150, and that he believed the towing company was taking advantage of his daughter in charging that much.

The small claims judge ruled that while a minor does not generally have the legal capacity to enter into a contract, there is an exception for when a minor contracts for necessities such as safety and well-being. He ruled that under the circumstances of the situation, getting the car back on the road qualified as a necessity. The circumstances were that Ms. Hickey's car was

well off the road in the middle of a bad snowstorm with the roads exceedingly slippery. Even one of the tow service vehicles went off the road on the way to the spot where her car was off the road.

He also ruled that given the work performed by the towing company, the amount of the charge was "more than reasonable." He took extensive testimony about the details of the services performed, which included bringing two vehicles from the shop in case they would need to use a winch to hoist the car up from over a bank (the second vehicle was not needed and not charged for), getting the car back on the road without any damage despite that it was partially on its side next to a rock and resting on saplings, and giving Ms. Hickey a ride to her destination as well as driving her car there so she would not have to drive again on the slippery road. Her car did not have snow tires.

A contract entered into by a minor is generally voidable by the minor unless it was a contract for necessities. *Adams v. Barcomb*, 125 Vt. 380, 382 (1966) ("It has always been the law in this state that contracts made by minor during infancy, if not for necessities, may be avoided by him if disaffirmed within a reasonable time after arriving at full age"). A primary legal treatise on contracts points out that when a minor accepts services for necessities, it is not really a contract but a "quasi-contract." 5 Williston on Contracts § 9:18 (4th ed. 2019). A quasi-contract is "[a]n obligation created by law for the sake of justice . . . A quasi-contract is not actually a contract but instead is a remedy that allows the plaintiff to recover a benefit conferred on the defendant." Black's Law Dictionary, contract (11th ed. 2019) (WL). In other words, the law requires payment under such circumstances because it would not be fair for a minor to get the benefit of necessary services without any payment whatsoever. 5 Williston on Contracts § 9:18 (4th ed. 2019) (a minor "may avoid her contracts to pay for necessities just as she may avoid any other contracts, but that if she does so, a quasi-contractual liability will be imposed upon her by the law, which liability she cannot avoid").

Thus, if the towing services constituted a "necessity," even though no contract is enforceable against her, the law may obligate her to pay the reasonable value of the services.

The question of what constitutes a necessary is, in a broad sense, a mixed question of law and fact: whether the nature of a contract is such that it can, under any circumstances, be regarded as a contract for necessities is a question of law; but, if the court decides as a matter of law that under some circumstances such a contract may be for necessities, it then becomes a question of fact for the jury whether it was so in the particular case. It is therefore clear that if the goods or services at issue in a particular case might qualify as necessities, it depends upon the facts in each case whether the particular goods or services contracted for by a minor are in fact necessities. . . the same thing may be necessary to one person under certain circumstances and unnecessary to another person under other circumstances.

5 Williston on Contracts § 9.19 (4th ed. 2019).

The court determines that when a minor's car goes completely off the road in a bad snowstorm with slippery roads and she thus has no protection from the weather and no means of

travel, as a matter of law towing services to pull her car back onto the road and take it and her to a safe place may qualify as a necessity. See *Russell v. Buck*, 116 Vt. 40, 45 (1949) ("the term 'necessaries' is not confined merely to such things as are required for bare subsistence, and is held to include those things useful, suitable, and necessary for the minor's support, use, and comfort") (quoting *Utterstorm v. Myron D. Kidder, Inc.*, 124 Me. 10 (1924)). Furthermore, there was sufficient evidence for the small claims judge to determine that the towing services provided under the circumstances of this case qualified as a necessity because of the bad weather, the position of the car, and the slipperiness of the roads, even though such services on a clear warm day in the summer may not qualify as a necessity. *Russell*, 116 Vt. at 45 ("It is true that what are necessities depends on the facts of a particular case").

Thus, even though Ms. Hickey could not have the legal ability to contract, she received the benefit of services constituting a necessity, and thus has the obligation to pay the reasonable value of those services.

The small claims judge determined as a matter of fact that a \$300 charge was "more than reasonable" for the work performed, and there was ample evidence to support this finding.

In her memorandum on appeal, Ms. Hickey also asserted that the Vermont court did not have authority to hear the case because she is a New Hampshire resident and the "contract" in question happened in another state. This issue was not raised in the small claims court below, and thus was not preserved for appeal. Nonetheless, the record shows that the small claims judge addressed this point himself to confirm that the court had jurisdiction. Specifically, he elicited evidence that although the incident happened in New Hampshire, when the police arrived they gave Ms. Hickey the opportunity to have a towing company of her choice. When she declined, the police called the Plaintiff, which was the on-call service for that time period. Darlings Auto has a place of business in Groton, Vermont. They were contacted in Vermont to provide the service, which they did, sending out vehicles and personnel from their place of business in Caledonia County. Thus, there was sufficient activity in Vermont to support the jurisdiction of the Vermont court over the matter.

For the foregoing reasons, there was no legal or factual error in the decision of the small claims judge.

#### ORDER

The judgment of the small claims court is *affirmed*.

Dated at St. Johnsbury, Vermont this 9<sup>th</sup> day of January, 2020.

Mary Miles Teachout  
Mary Miles Teachout  
Superior Judge