

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

J. Leroy Hadden, DVM
Plaintiff-Appellee

v.

Daniel Delorm
Defendant-Appellant

CIVIL DIVISION
Docket No. 289-5-18 Wncv

on appeal from

Small Claims
Docket No. 364-12-17 Wnsc

2018 AUG 24 A 9:55

DECISION ON APPEAL

Defendant-Appellant Daniel Delorm has appealed from a small claims judgment in favor of Plaintiff-Appellee J. Leroy Hadden, DVM, a veterinarian who saw his dog. In the small claims court, Dr. Hadden asserted that Mr. Delorm had refused to pay a fee associated with surgery for his dog, Rocco. Mr. Delorm explained that he refused to pay because Dr. Hadden did not do the surgery that Mr. Delorm had requested. The small claims court found in favor of Dr. Hadden, concluding that he made reasonable decisions about surgery under the circumstances.

An appeal from a small claims judgment is heard and decided "based on the record made in the small claims court." 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, 214 (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. Rocco arrived at Dr. Hadden's office for surgery to remove a tumor from his muzzle. Rocco was anesthetized. Dr. Hadden then noticed for the first time a large tumor in Rocco's throat that he believed was malignant and inoperable. The implication was that Dr. Hadden believed that Rocco probably had little time to live. He did not believe under the circumstances that it made any sense to put Rocco through the surgery on his muzzle because that was cosmetic only.

He stopped the procedure and called Mr. Delorm to explain the situation. The content of the conversation is unclear. The parties did not testify to it in any detail and the small claims judge did not inquire further. Dr. Hadden then removed a small tumor on Rocco's eyelid because it was bothering him. He did not perform the surgery on his muzzle. He billed Mr.

Delorm only for the work done, not for the larger surgery on Rocco's muzzle that he did not do. The small claims court's decision in Dr. Hadden's favor is reasonable and supported by the evidence. Dr. Hadden was exercising his professional judgment and he kept Mr. Delorm informed.

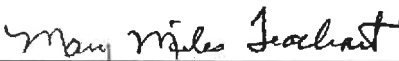
There was evidence to the effect that Dr. Hadden *later* said he would do the surgery on Rocco's muzzle if Mr. Delorm really wanted him to do it, even though his earlier advice was to not do it. However, it is clear that Dr. Hadden provided his advice to Mr. Delorm at the time of the surgery and there was no evidence that Mr. Delorm clearly instructed Dr. Hadden to perform the surgery on Rocco's muzzle at that time.

There is no error.

ORDER

The judgment of the small claims court is affirmed.

Dated at Montpelier, Vermont this 23rd day of August 2018.



Mary Miles Teachout,
Superior Judge