

R & R TOYS, INC., d/b/a SUNRISE HOME & HEARTH

v.

BENJAMIN TIBBETTS III

Submitted on Briefs November 7, 2011

Decided November 29, 2011

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, GORMAN, and
JABAR, JJ.

MEMORANDUM OF DECISION

Benjamin Tibbetts III appeals from the judgment of the Superior Court (Penobscot County, *A. Murray, J.*) following a nonjury trial awarding a judgment of \$7,284.15 to R & R Toys, Inc., d/b/a Sunrise Home & Hearth. On appeal, Tibbetts contends that the court erred by allowing R & R Toys to delay until the day before trial in filing its exhibit and witness lists and in failing to consider insurance payments and restitution ordered paid to R & R Toys in determining that it was entitled to a judgment from Tibbetts of over \$7,200. Review of the record does not demonstrate any prejudice to Tibbetts resulting from the late disclosure of the exhibit and witness lists. On the damages questions, the evidence is more than sufficient to support the court's damages findings and to establish that none of the damages awarded had already been paid to R & R Toys through insurance payments or restitution that Tibbetts was ordered to pay as a result of his conviction for the thefts that gave rise to this civil action. *See Jenkins, Inc. v. Walsh Bros., Inc.*, 2001 ME 98, ¶ 18, 776 A.2d 1229 (stating that damages awards reviewed pursuant to clear error standard of review).

The entry is:

Judgment affirmed.

On the briefs:

Benjamin Tibbetts III, pro se

Eric Mehnert, Esq., Hawkes & Mehnert, LLP, Bangor, for
appellee R & R Toys, Inc.

Penobscot County Superior Court docket number CV-2008-220
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