

KATHLEEN JELLISON et al.

v.

WAYNE ATWATER et al.

Submitted on Briefs February 27, 2014  
Decided March 4, 2014

Panel: ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

#### MEMORANDUM OF DECISION

Wayne Atwater appeals, and Kathleen Jellison and Elizabeth Hardison cross-appeal, from a default judgment entered in the Superior Court (Hancock County, *Cuddy, J.*) based on Atwater's failure to comply with a discovery order. Contrary to Atwater's contentions on appeal, the court did not abuse its discretion in denying Atwater's motion to enlarge and entering a default judgment against Atwater in the circumstances of this case. *See* M.R. Civ. P. 37(b)(2)(C) (authorizing the court to sanction a party's failure to comply with a discovery order by "rendering a judgment by default against the disobedient party"); *Estate of Hoch v. Stifel*, 2011 ME 24, ¶¶ 32-33, 16 A.3d 137 ("We review a trial court's imposition of sanctions for discovery violations for an abuse of discretion, and . . . do not lightly overrule the trial court's decision . . . ." (quotation marks omitted)).

Moreover, contrary to Jellison and Hardison's arguments in their cross-appeal, the court did not err in entering judgment in favor of Atwater on Jellison and Hardison's employment discrimination claims based on our holding in *Fuhrmann v. Staples the Office Superstore East, Inc.*, 2012 ME 135, ¶¶ 1, 35, 58 A.3d 1083. *See* M.R. Civ. P. 55(b)(2) (permitting the court, after entry of default, to conduct a hearing "to establish the truth of any averment by evidence or to make an investigation of any other matter"); *Feliciano-Hernández v.*

*Pereira-Castillo*, 663 F.3d 527, 537 n.5 (1st Cir. 2011) (“[A] court may, after entry of default, still conclude that a complaint fails to state a claim.”). Jellison and Hardison have waived any argument as to their claims for unpaid wages pursuant to 26 M.R.S. § 626 (2013) by failing to adequately develop them on appeal. *See Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290 (“[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.” (quotation marks omitted)).

The entry is:

Judgment affirmed.

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**On the briefs:**

Jeffrey C. Toothaker, Esq., Ellsworth, for appellants Kona’s LLC and Wayne Atwater

Julie D. Farr, Esq., Gilbert & Greif, P.A., Bangor, for appellees/cross-appellants Kathleen Jellison and Elizabeth Hardison