

LAURA NICKERSON et al.

v.

JOSEPH M. SMITH

Submitted on Briefs: January 11, 2018  
Decided January 23, 2018

Panel: ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

## MEMORANDUM OF DECISION

Joseph M. Smith appeals from a judgment of the Superior Court (Aroostook County, *Hunter, J.*) awarding damages to Laura Nickerson and Graham Williams based on Smith's breach of a Contractor's Agreement that was part of a sale of a house and garage from Smith to Nickerson and Williams. *See* M.R. App. P. 2(b)(3) (Tower 2016).<sup>1</sup> We affirm the judgment.

Contrary to Smith's contention, it is clear that the court performed its judicial function because the judgment contains the court's own findings along with some—but not all—of the findings that were proposed by Nickerson and Williams. *See In re Marpheen C.*, 2002 ME 170, ¶ 7, 812 A.2d 972 (concluding that it was "evident that the court developed its own order" and exercised its independent judgment when the court adopted some proposed findings but adjusted or added statements as needed to reach its own findings and conclusions).

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<sup>1</sup> This appeal was filed before September 1, 2017; therefore, the restyled Maine Rules of Appellate Procedure do not apply. *See* M.R. App. P. 1 (restyled Rules).

As to the merits, the court did not err by concluding that the warranty included in the Contractor's Agreement covered the defects that formed the basis for its judgment, and competent evidence supports the court's findings that Smith breached the warranty because of defects in the structures. *See Paine v. Spottiswoode*, 612 A.2d 235, 237-39 (Me. 1992). Further, the court did not err in its determination of damages, including adjustments for the cost of betterments, because the award is supported by competent evidence in the record. *See VanVoorhees v. Dodge*, 679 A.2d 1077, 1081 (Me. 1996) (stating that damages for defective construction may be based on the "amount reasonably required to remedy the defect" and that a damages award will be vacated only when there is no competent evidence in the record to support it).

The entry is:

Judgment affirmed.

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Alan F. Harding, Esq., Hardings Law Office, Presque Isle, for appellant Joseph M. Smith

Laura Nickerson and Graham Williams did not file a brief