

KATHY VIOLETTE

v.

AAA NORTHERN NEW ENGLAND

Argued April 10, 2019

Decided July 9, 2019

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

#### MEMORANDUM OF DECISION

AAA Northern New England appeals from a judgment entered by the Superior Court (Kennebec County, *Murphy, J.*) affirming in part and vacating in part a judgment granted to Kathy Violette by the District Court (Augusta, *Nale, J.*) in a consolidated small claims action for insurance coverage.<sup>1</sup>

Statewide Towing purports to cross-appeal from the judgment of the Superior Court.<sup>2</sup> Notwithstanding the consolidation of the small claims actions, Statewide was not a party to Violette's claim against her insurer, AAA. Therefore, Statewide's cross-appeal of the judgment concluding that Violette was entitled to partial reimbursement from her insurance policy with AAA is

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<sup>1</sup> The consolidated claims consisted of *Kathy Violette v. AAA Northern New England*, AUGDC-SC-17-429 (Me. Dist. Ct., Augusta, Nov. 14, 2017), and *Statewide Towing v. Kathy Violette*, No. AUGDC-SC-17-250 (Me. Dist. Ct., Augusta, Nov. 14, 2017).

<sup>2</sup> Statewide Towing was granted judgment against Violette at the small claims proceeding, *see Statewide Towing v. Kathy Violette*, No. AUGDC-SC-17-250 (Me. Dist. Ct., Augusta, Nov. 14, 2017), but did not appeal that decision to the Superior Court.

hereby dismissed for want of standing.<sup>3</sup> See *Stull v. First Am. Title Ins. Co.*, 2000 ME 21, ¶ 11, 745 A.2d 975. Thus, the only case before us is AAA's appeal from the small claims judgment entered by the District Court in favor of Violette.

An appeal from the District Court in a small claims action by a defendant is limited to questions of law, unless the defendant requests a jury trial and submits affidavits raising genuine issues of material fact. See M.R.S.C.P. 11(d)(2); *Ring v. Leighton*, 2019 ME 8, ¶ 14, 200 A.3d 259. Here, the defendant, AAA, did not request a jury trial and therefore the only issues that can be raised on appeal are questions of law. See *Portfolio Recovery Assocs., LLC v. Bickford*, 2017 ME 140, ¶ 8, 166 A.3d 986.

In this case, the District Court made a factual finding that there was property damage for which Violette was liable as a result of her operation of her insured vehicle.<sup>4</sup> Given that unchallenged finding, the court did not err in concluding that Violette's insurance policy with AAA covered that property damage. See *Travelers Indem. Co. v. Bryant*, 2012 ME 38, ¶ 8, 38 A.3d 1267. We do, however, agree with the Superior Court that the insurance policy does not cover the costs of storing Violette's vehicle.

Accordingly, we affirm the judgment of the Superior Court affirming the District Court's judgment awarding Violette \$2,755 in damages and vacating the District Court's judgment awarding Violette \$3,245 in storage fees.

The entry is:

Appeal of Statewide Towing dismissed.  
Judgment of the Superior Court affirmed.

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<sup>3</sup> Because Violette adopted by reference Statewide's brief, see M.R. App. P. 7A(h), we assign all of Statewide's contentions to Violette.

<sup>4</sup> The court did not make an explicit factual finding regarding the identity of the landowner to whom Violette was liable as a result of her vehicle's harm to that property. Because of the procedural posture of this small claims case, that factual gap is not dispositive.

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William J. Gallitto, III, Esq. (orally), Bergen & Parkinson, LLC, Saco, for cross-appellant Statewide Towing

Charles T. Ferris, Esq., Ferris, Gurney, Grant & Crook, P.A., Waterville, for appellee Kathy Violette

Kennebec County Superior Court docket number AP-2017-64  
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