

BRAD EWING

v.

KEVIN SCHMERSAL et al.

Submitted on Briefs February 24, 2021
Decided March 4, 2021

Panel: GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ.

MEMORANDUM OF DECISION

Kevin and Patricia Schmersal¹ appeal from a judgment of the Superior Court (Penobscot, *Stokes, J.*) in a small claims appeal, affirming the judgment of the District Court (Bangor, *Jordan, J.*) in favor of Brad Ewing in the amount of \$3,000 plus costs as a remedy available pursuant to 7 M.R.S. § 4155(2) (2018)² to a purchaser of a dog deemed “unfit for sale” that later died.

The Schmersals argue that the court erred in concluding that 7 M.R.S. § 4156 (2018)³ did not require Ewing to return the dog to them within two days after being informed by a veterinarian that the animal was unfit due to a health problem in order to obtain the remedy of a refund of the full purchase price of the dog. We disagree.

¹ The defendants’ full names, as stated in the complaint, are “Kevin Schmersal and Patricia Schmersal, d/b/a Lebenshunger German Shepherds.”

² This statute was amended after the cause of action accrued. See P.L. 2019, ch. 90, §§ 1-3. (effective Sept. 19, 2019) (codified at 7 M.R.S. § 4155 (2020)).

³ This statute was amended after the cause of action accrued. See P.L. 2019, ch. 90, § 4. (effective Sept. 19, 2019) (codified at 7 M.R.S. § 4156(2) (2020)).

The two-day return requirement applies to “an animal with a health problem,” not one that dies within one year. *See* 7 M.R.S. § 4156. The only requirement in section 4156(2), when read in conjunction with section 4155(2), for an animal that dies within a year of receipt is that the purchaser is required to provide the seller with a written statement from a veterinarian, within the one-year period, before seeking the remedies under section 4155(2). Ewing complied with this requirement.

Because the dog did die within one year of delivery due to a congenital defect that made it unfit for sale, Ewing was entitled to pursue his remedies for the death of the dog under section 4155(2). Section 4155(2) gave Ewing one of two possible remedies: a replacement animal of equal value or a full refund. Because he never received a replacement animal, he is entitled to a full refund.

The entry is:

Judgment affirmed.

William N. Palmer, Esq., Gray & Palmer, Bangor, for appellants Kevin Schmursal and Patricia Schmursal

Eric N. Columber, Esq., Eric N. Columber, P.C., Ellsworth, for appellee, Brad Ewing