BRITTANY R. WOOD et al.

v.

JOHN M. OLIVEIRA

Submitted on Briefs January 24, 2024
Decided February 1, 2024

Panel:  MEAD, HORTON, CONNORS, LAWRENCE, and DOUGLAS, JJ.

MEMORANDUM OF DECISION

John M. Oliveira appeals from a judgment entered after a jury-waived trial by the Superior Court (Penobscot County, *A. Murray, J.*) finding that Oliveira entered into an oral contract to sell his two American bully dogs to Brittany R. and Thomas Wood.  Contrary to Oliveira's contentions, the court did not err in finding that there was a contract between the parties and that Brittany Wood did not breach her fiduciary duty when she acted pursuant to Oliveira's power of attorney.[1]  *See Rice v. Cook*, 2015 ME 49, ¶ 11, 115 A.3d 86; *Pelletier v. Pelletier*, 2012 ME 15, ¶ 13, 36 A.3d 903; *L.J. Upton & Co., Inc. v. Colbath*, 122 Me. 188, 188-89, 119 A. 384, 386 (1923); *Sullivan v. Porter*, 2004 ME 134, ¶ 14, 861 A.2d 625; *Goldberg Realty Grp. v. Weinstein*, 669 A.2d 187, 190 (Me. 1996); *Shostak v. Shostak*, 2004 ME 75, ¶ 20, 851 A.2d 515.  Further, the court did not err or abuse its discretion in awarding the Woods $13,500 in incidental damages.  *See Est. of Hoch v. Stifel*, 2011 ME 24, ¶¶ 39, 43, 16 A.3d

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[1]  Oliveira's claim that the statute of frauds defense applies here is unpreserved and there is no obvious error.  *See Kuperman v. Eiras*, 586 A.2d 1260, 1261 (Me. 1991); *Lawrence v. Chase*, 54 Me. 196, 199-202 (1866); *Sullivan v. Porter*, 2004 ME 134, ¶¶ 16-20, 861 A.2d 625.

137; *Peabody v. Conley*, 111 Me. 174, 176, 88 A. 411, 412-13 (1913); *King v. King*, 507 A.2d 1057, 1060 (Me. 1986).

The entry is:

Judgment affirmed.

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Gene Sullivan Jr., Esq., Law Office of Joseph Baldacci, Bangor, for appellant John M. Oliveira

F. David Walker, IV, Esq., Rudman Winchell, Bangor, for appellees Brittany R. and Thomas Wood