

BERTELLE SMITH et al.

v.

MARIA SHERRER

Submitted on Briefs July 9, 2003
Decided August 5, 2003

Panel: RUDMAN, DANA, ALEXANDER, CALKINS, and LEVY, JJ.

MEMORANDUM OF DECISION

Bertelle and Kimberly Smith bring an interlocutory appeal of the decisions of the Superior Court (Kennebec County, *Marden, J.*) denying their motion for attachment and denying their motion to strike. The Smiths contend that the Superior Court erred in denying their motion for attachment by basing its decision on facts not in the record. They also contend that the court erred by denying their motion to strike portions of Maria Sherrer's counterclaim that, they assert, contained immaterial facts and inflammatory language.

In evaluating the facts in light of the affirmative defense of defense of premises, *see* 17-A M.R.S.A. § 104 (1983), and determining that the Smiths had

not demonstrated that they were more likely than not to recover judgment, M.R. Civ. P. 4A(c), the court did not abuse its discretion or commit clear error. *See Liberty v. Liberty*, 2001 ME 19, ¶ 11, 769 A.2d 845, 847; *Boisvert v. Boisvert*, 672 A.2d 96, 97-98 (Me. 1996). The appeal of the denial of the motion to strike is an interlocutory appeal not subject to any exceptions to the final judgment rule. It must be dismissed. *Austin v. Universal Cheerleaders Ass'n.*, 2002 ME 174, ¶ 4, 812 A.2d 253, 255-56.

The entry is:

Denial of motion for attachment affirmed. Appeal
of denial of motion to strike dismissed.

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