

This is a small claims action filed by Babysitter against Ben's Mom after Mom stopped payment on the check provided as payment for babysitting services. Mom's defense is that Babysitter breached first, to such a degree that she was relieved of an obligation to pay for services rendered.

Evidence for the defendant tended to show that plaintiff and defendant had an oral agreement whereby plaintiff agreed to babysit for defendant's ten-year-old son Thursday through Sunday in return for \$90. Defendant left plaintiff a note indicating that her son Ben was to have a friend spend the night with him on Friday. The note asked plaintiff to "help Ben remember to water [the] outside plants?" and stated: "I'm sure he would like pancakes & sausage [for breakfast on] Sat. & Sun...." The evidence further showed that plaintiff called the mother of Ben's friend and asked if Ben could spend Friday evening with her, so that plaintiff could have dinner with her family. The friend's mother agreed, but asked plaintiff to pick Ben up no later than 9:00 p.m. Plaintiff agreed to this, but did not return for Ben until 10:30 p.m. There was also evidence that plaintiff did not get up until noon on Saturday and Sunday; and that by that time Ben had already fixed cereal for breakfast. Ben testified that plaintiff did not feed him dinner Friday night, but defendant did not find out about that until two months after she stopped payment on the check. Plaintiff testified that she took Ben to her family's house on Saturday where they stayed past 9:00 p.m.; and that on Sunday she and Ben accompanied plaintiff's family and other families on a picnic to King's Mountain, approximately 40 miles outside of Charlotte.