ATTORNEYS FOR APPELLANT

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IN THE
COURT OF APPEALS OF INDIANA

Heather Harvey,
Appellant-Defendant,

v.

Keyed In Property Management, LLC,
Appellee-Plaintiff.

February 26, 2021

Court of Appeals Case No. 20A-SC-1459

Appeal from the Brown Circuit Court

The Honorable Mary Wertz, Judge

The Honorable Frank M. Nardi, Magistrate

Trial Court Cause No. 07C01-1904-SC-27

Altice, Judge.

Case Summary

[1] Keyed In Property Management, LLC (Keyed) filed a small claims action against Heather Harvey for unpaid rent and designated Betsy Arnold, a full-time employee, to represent Keyed in the matter rather than hiring an attorney.

Ind. Small Claims Rule 8(C) allows such a designation only where claims do not exceed $1500 and permits an LLC to waive any claim in excess of this amount in order to proceed without an attorney. On appeal, Harvey contends that the trial court erroneously interpreted and applied this rule, resulting in an excessive damages award.

[2] We affirm.

Facts & Procedural History

[3] Beginning on August 9, 2018, Harvey leased a rustic cabin in Brown County, which was owned by Albert and Carol Drake and managed by Keyed. Pursuant to the written lease agreement, Harvey paid a $900 security deposit and agreed to pay $900 monthly rent and late fees of $5 per day. The lease term was from August 9, 2018 through July 31, 2019.

[4] Harvey began having problems with mice and insect infestations shortly after moving in, and Keyed worked with her to try to resolve the issues. Thereafter, in November, Harvey discovered that the baseboard heater in the bedroom was not working. The heating issue was eventually resolved, and Albert paid the cost of the repair. Additionally, in January, Harvey had electrical work performed at the cabin in the amount of $408.78, and Keyed gave her a credit against her February rent in that amount.

[5] Another issue between the parties was the driveway access to the cabin. The driveway was steep, and heavy rains often caused erosions and ruts making it

difficult to traverse. Keyed had the driveway graded on multiple occasions but issues persisted and Harvey remained dissatisfied. In February, Harvey obtained an estimate in the amount of $2750 for repair of the driveway. Thereafter, on March 7, Harvey personally performed work on the driveway and weeks later gave an invoice to Albert in the amount of $570.85, the majority of which ($405.00) represented charges for her own labor. Harvey indicated on the invoice that she would be deducting this amount from her March rent, despite having been informed by Keyed, on February 6 and March 1, that she would no longer be reimbursed for expenses incurred without prior written authorization.

[6] Meanwhile, back in November and December 2018, Keyed experienced difficulty collecting timely rent payments from Harvey, with her paying weeks late and deducting certain amounts for repairs. She became current on her rent in January and then last paid rent in February 2019.

[7] On April 25, 2019, Keyed filed a Notice of Small Claim (the Notice) against Harvey for unpaid rent, late fees, and eviction. In the Notice, Keyed alleged damages well in excess of $1500 but requested judgment in the amount of $1500 plus court costs. Pursuant to S.C.R. 8(C)(5), Keyed then designated Arnold, its full-time employee, to appear in the matter on behalf of Keyed and agreed to waive any claim for damages in excess of $1500. Keyed also filed an Affidavit for Immediate Possession, which the trial court granted at an eviction hearing on May 30, 2019. On that date, Harvey was still residing at the

property, and the trial court ordered her to vacate by noon on June 10, 2019. Harvey moved out as ordered.

[8] At the evidentiary hearing on December 19, 2019, Keyed, through Arnold, presented evidence that Harvey had unpaid rent in the total amount of $3000 for March through her eviction. Keyed acknowledged, however, that its recovery was limited to $1500 by S.C.R. 8(C). Harvey admitted that she had not paid rent since February, but she argued that no rent was due because she had been constructively evicted based on all of the issues she encountered while living there. Aside from constructive eviction, Harvey asserted no other defenses or counterclaims. At the conclusion of the hearing, the court took the matter under advisement.

[9] On January 6, 2020, the court issued its written judgment. The court expressly rejected Harvey's claim of constructive eviction. Regarding damages, the court offset the $3000 in unpaid rent by the $900 security deposit held by Keyed, resulting in total damages of $2100. The court noted that pursuant to S.C.R. 8(C) "plaintiff's recovery is limited to $1500.00 for the reason that the plaintiff was not represented by an attorney." *Appendix* at 13. Accordingly, the court entered judgment in favor of Keyed and against Harvey in the amount of $1500 and ordered Harvey to pay court costs in the amount of $125.

[10] Harvey filed a Motion to Correct Error (MTCE) on January 9, 2020, arguing that the court improperly calculated the damage award and that the award should be reduced to $29.15. Specifically, she claimed that the court was

required to deduct the security deposit ($900) and the amount of her personal invoice for work on the driveway ($570.85) from the $1500 limit imposed by S.C.R. 8(C) rather than from the full amount of damages alleged by Keyed.

[11] At the MTCE hearing on July 16, 2020, Harvey altered her argument and claimed that actually she was owed a judgment against Keyed in the amount of $394.63. She asserted, incorrectly, that she was entitled to an additional credit of $408.78 for the electrical work she paid for in January,[1] as well as $15 in interest on her security deposit. The court took the matter under advisement and, on July 24, 2020, issued an order denying the MTCE. The court explained in part:

> 10. In determining the amount of the judgment in this case, the Court considered all of the damages claimed by the plaintiff and all of the credits alleged by the defendant. After rejecting the defendant's defense of constructive eviction, the Court found that the defendant owed the plaintiff $3,000.00 in unpaid rent. The evidence showed that the plaintiff had already given the defendant a credit against the rent for the electrical repairs and that the plaintiff agreed that the defendant should be given a credit for the driveway/landscaping repair.[2] The Court deducted the security deposit from the unpaid rent, which left an amount owing for the unpaid rent in the amount of $2100.00. If the Court allowed the defendant a credit for the driveway/

[1] The record established, and the trial court found, that Harvey had already deducted this amount from her February rental payment. This claim, which she continues to assert on appeal, is of no merit.

[2] We note the record does not establish that Keyed conceded that Harvey was entitled to a credit for the driveway repair, which was completed personally by Harvey without prior written consent as expressly required by Keyed. Regardless of the propriety of this credit, however, it would not affect the trial court's final damages award.

landscaping repairs, the plaintiff's damages would still exceed $1,500.00 by $29.15. The Court accordingly entered judgment in favor of the plaintiff in the amount of $1,500.00 because the plaintiff's recovery could not exceed $1,500.00.

11. It is clear that under Small Claims Rule 8, a plaintiff LLC, which chooses to proceed without an attorney, waives any claim for damages in excess of $1,500.00.

12. The defendant has argued that the Court cannot consider any evidence of damages in excess of the $1,500.00 limit because the Small Claims Rule uses the term "claim". It appears that the defendant is arguing that the plaintiff is limited to recover the amount that the plaintiff claims in the notice of small claim and that therefore the Court cannot consider evidence of any damages in excess of this amount.

13. The Court finds that the defendant appears to be arguing that the Court cannot consider the fact that the defendant owed delinquent rent in the amount of $3,000.00, but can consider all of the credits claimed by the defendant against the reduced claim for damages as opposed to considering all the damages and credits to arrive at a final amount of damages. The plaintiff did not ever maintain in this case that its damages were $1,500.00. In fact, the notice of small claim stated that the claimed damages exceeded $1,500.00. It would therefore be inconsistent and unequitable to apply the defendant's claimed credits against the reduced claim because this would not allow an accurate determination of total damages. Stated in a different way, the Rule does not state that the excess damages cannot be considered. Rather, the Rule indicates that if the excess damages exist, they are waived if the plaintiff chooses to proceed without an attorney. The Court finds that the Rule limits the plaintiff's recovery of damages to an amount of $1,500.00 or less.

Id. at 21-22. Harvey now appeals.

Standard of Review

[12] A deferential standard of review is particularly important in small claims actions, where trials are informal and the sole objective is dispensing speedy justice between the parties according to the rules of substantive law. *Lae v. Householder*, 789 N.E.2d 481, 483 (Ind. 2003); *Reeves v. Downin*, 915 N.E.2d 556, 558 (Ind. Ct. App. 2009). "However, this doctrine relates to procedural and evidentiary issues, but does not apply to the substantive rules of law which are reviewed de novo." *Reeves*, 915 N.E.2d at 558. Further, even where the appellee has not filed an appellate brief, as here, we will review questions of law de novo. *See McClure v. Cooper*, 893 N.E.2d 337, 339 (Ind. Ct. App. 2008).

Discussion & Decision

[13] Harvey contends that the trial court misconstrued S.C.R. 8(C) by considering alleged damages in excess of $1500 and deducting the security deposit and sums she paid for repairs from that larger amount. S.C.R. 8(C)(3) provides in relevant part:

> All corporate entities, Limited Liability Companies (LLC's), Limited Liability Partnerships (LLP's), and Trusts may appear by a designated full-time employee of the corporate entity … in the presentation or defense of claims arising out of the business *if the claim does not exceed one thousand five hundred dollars ($1,500.00). However, claims exceeding one thousand five hundred dollars ($1,500.00) must be defended or presented by counsel.*

Id. (emphasis supplied). Further, S.C.R. 8(C)(5) provides, in part, that to make such a designation, the entity must file a certificate of compliance in which it expressly accepts the liability and costs levied by the court and "waives any claim for damages in excess of one thousand five hundred dollars ($1,500.00) associated with the facts and circumstances alleged in the notice of claim."

[14] The purpose of requiring a corporate entity – or in this case an LLC – to be represented by legal counsel, unless the limited exception of S.C.R. 8(C)(3) applies, is to curtail the "unlicensed practice of law, the attendant ills of which can be exacerbated when one of the litigants is a corporation." *Stillwell v. Deer Park Mgmt.*, 873 N.E.2d 647, 649 (Ind. Ct. App. 2007) (quoting *Yogi Bear Membership Corp. v. Stalnaker*, 571 N.E.2d 331, 333 (Ind. Ct. App. 1991)), *trans. denied*.

[15] As recognized by Harvey and the trial court, S.C.R. 8(C) can be analogized to statutes imposing jurisdictional limits in small claims actions, such as Ind. Code § 33-29-2-2(b)(1) which provides that the small claims docket in superior courts has jurisdiction over:

> Civil actions in which the amount sought or value of the property sought to be recovered is not more than eight thousand dollars ($8,000). The plaintiff in a statement of claim or the defendant in a counterclaim *may waive the excess of any claim* that exceeds eight thousand dollars ($8,000) in order to bring it within the jurisdiction of the small claims docket.

Id. (emphasis supplied); *see also* Ind. Code § 33-28-3-4 (providing the same jurisdictional limits for circuit courts). Because there is a dearth of applicable

caselaw addressing the small claims rule at issue here, we look to cases applying the statutory jurisdictional limits that similarly allow for the waiver of the amount of any claims in excess of said limit.

[16] In *Klotz v. Hoyt*, 900 N.E.2d 1 (Ind. 2009), our Supreme Court expressly considered damages in excess of the jurisdictional limit – then $6000 – and applied setoffs and counterclaims against this larger amount. Specifically, the Court stated:

> Although not outcome determinative in this case, we express our disapproval of considering a landlord's trial exhibit itemizing damages as equivalent to the statutory notice of damages. In view of our holding in Part 1, even if the tenant is correct that the landlord's damage list exhibit fails to satisfy the notice of damages requirement, the effect would only preclude the landlord from recovering $2,848.94 in claimed physical damages to the premises and would entitle the tenants to the refund of their damage deposit and resulting attorney fees. Reducing the landlord's total claimed damages ($11,918.94), which are not challenged by the tenant, by the portion attributable to premises damages ($2,848.94), results in a difference of $9,070.00, which, even after an offset for the $600.00 damage deposit and reasonable attorney fees incurred by the tenant, would substantially exceed the $6,000.00 small claims court jurisdictional limit. But in many cases, a landlord's claim for total damages will likely be much smaller and the role of the statutory notice of damages may be quite significant, thus warranting our clarification.
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> Here, the landlord's total claims so exceed the $6,000.00 small claims jurisdictional limit that the inadequacy of the landlord's

> purported notice of damages is immaterial, even though it would preclude his recovery of the portion of his claim that consists of physical damages to the premises and attorney fees, and would require him to refund the tenants damage deposit and resulting attorney fees. This cause is remanded to the trial court for entry of a judgment for the landlord in the sum of $6,000.00.

Id. at 6-7.

[17] Similarly, in *Fortner v. Farm Valley-Applewood Apartments*, 898 N.E.2d 393 (Ind. Ct. App. 2008), a landlord filed a small claims action against its tenant for unpaid rent and physical damage to the apartment. In addition to alleged damages totaling over $3000, the landlord later added a request for over $4000 in attorney fees and expenses. The trial court determined that damages should be offset by the $380 security deposit, resulting in damages in the sum of $2664.96. To this amount, the trial court added an award of attorney fees of $1335.04, which raised the total judgment to $4000. On appeal, we determined, in relevant part, that the trial court applied an improper rationale for reducing the requested attorney fees, and we observed that trial court had jurisdiction to enter a total judgment up to the statutory limit of $6000 (now $8000). *Fortner*, 898 N.E.2d at 400 (citing I.C. § 33-28-3-4). Accordingly, we remanded for the trial court to "conduct a hearing to determine the reasonableness of the fees and to award such fees in an amount not to exceed $3,335.04, which represents the difference between the small claims jurisdictional limit ($6,000) and the damage award of $2,664.96." *Id*.

[18] In both of the above cases, the plaintiffs alleged damages above the jurisdictional amount and setoffs were taken against that greater amount. Based on the net proven damages, the jurisdictional limit was then applied, allowing the plaintiff to recover the full jurisdictional limit despite a setoff for the security deposit. In other words, the plaintiff was permitted to waive net damages in excess of the jurisdictional limit, and setoffs and counterclaims were not subtracted from the jurisdictional limit.

[19] We fail to see, and Harvey does not explain, why a different calculation should apply with respect to S.C.R. 8(C).[3] Although Keyed alleged damages in excess of $1500, it did not seek or obtain a damage award over $1500. *Cf. Stillwell*, 873 N.E.2d at 650 ("Because Deer Park sought and received damages over $1500, the plain language of Small Claims Rule 8 required it to be represented by counsel from the initiation of its claim."). Rather, Keyed consistently requested a judgment limited to $1500 (with $125 court costs) in its Notice and at the evidentiary hearing. The trial court properly applied S.C.R. 8(C) and entered judgment in favor of Keyed in the amount of $1500 plus $125 in court costs. For the same reasons, the court did not err in denying Harvey's MTCE.

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[3] Harvey's suggestion that certain statutes dealing with security deposits, Ind. Code § 32-21-3-12 through -16, apply here is puzzling. At no point has she argued that Keyed wrongfully withheld her deposit or that Keyed provided her with an untimely or inadequate statutory damage notice. *Cf. Klotz*, 789 N.E.2d at 3 (holding that "a landlord's untimely or inadequate statutory damage notice to a tenant precludes only the landlord's claims for physical damage to the premises and does not bar the landlord from recovery of unpaid rent and other losses").

[20] Judgment affirmed.

Mathias, J. and Weissmann, J., concur.