

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kenny Johnson,
Appellant-Defendant,

v.

John Lewis,
Appellee-Plaintiff,

November 29, 2021

Court of Appeals Case No.
21A-SC-671

Appeal from the Hendricks
Superior Court

The Honorable Rhett M. Stuard,
Judge

Trial Court Cause No.
32D02-2008-SC-843

Robb, Judge.

Case Summary and Issue

- [1] John Lewis sued Kenny Johnson in small claims court for a breach of contract for repairs to Lewis' 1979 Oldsmobile Cutlass ("Vehicle"). Johnson appeals the small claims court's judgment against him in the amount of \$3,450 raising one issue for our review, which we restate as whether the late fee provision in their agreement amounts to an unenforceable penalty. Concluding that Johnson failed to preserve this issue in small claims court and has therefore waived his right to raise the issue on appeal, we affirm.

Facts and Procedural History

- [2] In November 2018, Lewis and Johnson entered into a "handshake deal" ("Contract") that Johnson would make repairs to the Vehicle for \$3,500. Transcript of Evidence, Volume 2 at 22. Johnson took custody of the Vehicle and parked it in his repair shop's garage. The Vehicle remained unrepaired for the next calendar year.
- [3] In December 2019, Lewis made a \$500 down payment on the Contract. However, as of March 2, 2020, the Vehicle was still not repaired, and Lewis and Johnson entered into a written agreement ("Agreement") for repairs to be made by March 16, 2020. The Agreement provides:

I[,] Kenny Johnson, [c]onfirm that all agreed upon work for the [Vehicle] owned by [Lewis] will be completed on or before 3/16/20. If I fail to satisfactorily complete work and return the

[Vehicle] to [Lewis] by that date, I agree to pay a penalty of \$50 per day to [Lewis] until such work is complete.

Exhibit Volume, Volume 3 at 4. Even with the Agreement in place, the repairs were not completed until June 23, 2020.

[4] In August 2020, Lewis filed a breach of contract claim against Johnson in small claims court. At the hearing on Lewis' claim, Lewis claimed that Johnson owed him over \$5,000 including \$3,450 for damages owed under the Agreement plus additional amounts for lost and damaged parts and insurance Lewis paid on the Vehicle while it was in Johnson's possession. Lewis proposed the following accounting for damages Johnson owed under the Agreement:

\$50 per day penalty x 129 days:	\$6,450
Amount Lewis Owed on the Contract:	- <u>\$3,000</u>
Total Owed:	\$3,450

See Tr., Vol. 2 at 8. Lewis also detailed his claims for lost and damaged parts and insurance payments. However, Lewis presented no evidence as to which parts, if any, were contracted for. Also, it was established at the hearing that the insurance payments were never a part of the Contract and were not an anticipated expense as all inventory within Johnson's garage was covered by his own insurance policy. Additionally, neither party had any documentation detailing the Contract's contents or the exact items to be repaired.

- [5] Johnson denied owing Lewis for lost and damaged parts and the insurance payments but acknowledged that the Vehicle was in his possession since November 2018, he entered the Agreement, the repairs were completed 129 days late, and he owed the fees associated with the Agreement. However, neither Johnson nor Lewis addressed how the \$50 per day fee was determined. Johnson testified that he ultimately did not charge Lewis for repairs due to his delays. Johnson did not argue that the Agreement or award requested was an unenforceable penalty.
- [6] On March 19, 2021, the small claims court entered a final judgment in favor of Lewis. The small claims court ordered Johnson to pay Lewis \$3,450 plus court costs. Johnson now appeals the award of \$3,450.

Discussion and Decision

I. Standard of Review

- [7] Judgments from small claims court actions are provided a deferential standard of review. *Harvey v. Keyed In Prop. Mgmt., LLC*, 165 N.E.3d 584, 587 (Ind Ct. App. 2021), *trans. denied*. This deferential standard is particularly appropriate because small claims courts were designed to dispense justice efficiently by applying substantive law in an informal setting. *N. Ind. Pub. Serv. Co. v. Josh's Lawn & Snow, LLC.*, 130 N.E.3d 1191, 1193 (Ind. Ct. App. 2019).

II. Penalty

- [8] On appeal, Johnson argues for the first time that the Agreement and the damages awarded pursuant to the Agreement do not constitute liquidated damages and are instead inappropriate as an unenforceable penalty. Specifically, Johnson argues the late fee provision of the Agreement indicating, “I agree to pay a penalty of \$50 per day to [Lewis] until such work is complete[,]” Ex. Vol., Vol. 3 at 4, is facially unenforceable as a penalty because the amount is not correlated and is disproportionate to the damages suffered.
- [9] Despite Johnson’s current argument, we cannot evaluate his claim further as he failed to argue in small claims court that either the Agreement or the resulting award constituted an unenforceable penalty. As a general rule, issues not raised before the small claims court are not preserved for appeal. *Gaddis v. Stardust Hills Owners Ass’n, Inc.*, 804 N.E.2d 231, 236 (Ind. Ct. App. 2004). Failure to raise an issue at the appropriate stage of the adjudicative process results in a waiver of that issue. *Clarkson v. Dep’t of Ins. of State of Ind.*, 425 N.E.2d 203, 206 (Ind. Ct. App. 1981). Waiver is a discretionary judicial doctrine that forecloses an issue on appeal. *Bunch v. State*, 778 N.E.2d 1285, 1287 (Ind. 2002). Indeed, the rules of procedure are construed so that only questions ruled upon by the lower court and presented to the reviewing court in the same way will be reviewable. *Hammond v. Scot Lad Foods, Inc.*, 436 N.E.2d 362, 364 (Ind. Ct. App. 1982).

[10] Here, the record is completely devoid of any instance in which Johnson argued to the small claims court that the Agreement itself or the award requested by Lewis amounted to an unenforceable penalty. Instead, the facts show that the two parties entered into the Agreement on March 2, 2020, and that at trial Johnson testified that he owed the fees associated with the penalty. *See* Tr., Vol. 2 at 22. Johnson only argued that Lewis' total claim of over \$5,000, the alleged damages for lost and damaged parts, and the alleged damages associated with insurance were inappropriate. This court has previously held that by failing to raise the defense in small claims court that a late fee is an impermissible penalty, the appellant also fails to preserve that same issue on appeal. *Gaddis*, 804 N.E.2d at 236. Accordingly, because Johnson made no argument in the small claims court that the Agreement or the award requested constituted an unenforceable penalty, we conclude that his argument was not preserved and is thereby waived on appeal.¹

Conclusion

[11] We conclude that Johnson failed to preserve his argument that the late fee provision in the Agreement constituted an unenforceable penalty. Therefore,

¹ Johnson also argues that if the small claims court did not intend for the \$3,450 award to be the result of the Agreement and instead meant for it to cover the lost or damaged parts and insurance damages sought by Lewis, the award should be vacated because such an award is not supported by the record. However, the record makes it clear that the award was the result of the Agreement. The judgment is for the exact amount Lewis claimed under the Agreement.

Johnson waived the same argument on appeal. As a result, we affirm the small claims court's award to Lewis of \$3,450 in damages.

[12] Affirmed.

Bradford, C.J., and Altice, J., concur.