MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

James Wisco
Foley Peden & Wisco, P.A.
Martinsville, Indiana

IN THE COURT OF APPEALS OF INDIANA

KRS Corp d/b/a Strength School,

Appellant-Plaintiff,

v.

Judi Clark, William Spalding, Dale Edson, Joyce Fulford, and Sue Geier

Appellees-Defendants

July 30, 2021

Court of Appeals Case No. 21A-SC-289

Appeal from the Morgan Superior Court

The Honorable Terry E. Iacoli, Jr., Judge

Trial Court Cause Nos. 55D03-2007-SC-330, -332, -346, -347, -348

Crone, Judge.

Case Summary

[1] KRS Corp, d/b/a Strength School (Strength School) brings a consolidated appeal from various small claims judgments entered regarding its breach of contract claims against Judi Clark, William Spalding, Dale Edson, Joyce Fulford, and Sue Geier (collectively the Aggrieved Members). We affirm.

Facts and Procedural History

[2] Strength School is a "fitness facility offering personal training services" located in Morgan County that is owned and operated by Shane Reuter. Tr. Vol. 2 at 43. Strength School offers "term membership" options for either three months, twelve months, or eighteen months. *Id*. at 45. Strength School does not currently have a month-to-month membership option. All members provide authorization to Strength School to make automatic withdrawals of membership fees from their bank accounts. Memberships are "set up to renew automatically at the end of the term for an additional term of the same time" unless the member gives notice of cancellation "at least thirty days prior to the end of the term." *Id*. at 46. Strength School has approximately seventy members.

[3] On various dates in 2018, 2019, and 2020, each of the Aggrieved Members entered into a contract for services with Strength School. Specifically, eighty-two-year-old Clark, eighty-five-year-old Spalding, seventy-two-year-old Edson, and sixty-six-year-old Geier each signed contracts for twelve-month terms at a rate of $170 per month. Sixty-eight-year-old Fulford signed a contract for an

eighteen-month term at a rate of $147 per month. Each of the Aggrieved Members signed their respective agreements, some with help from Strength School staff, by using a computer mouse while the agreement was displayed on a computer/television monitor mounted near the ceiling at the facility, making it illegible. Indeed, none of the Aggrieved Members recalled reading the agreement, being able to see what they were signing, or knowing that they were signing a membership agreement for a specified term. *See id.* at 11, 20, 26, 61, 62 (Spalding: "[I]t was up high, I couldn't read it."; Fulford: "You don't know what you're signing there, because there's a monitor attached to the ceiling. You can't read that monitor."; Clark: "Well not seeing the screen, which was very black, and clear at the top of the ceiling, there's no way I could see anything …. There was not a word said about a contract."; Edson and Geier: "[T]his contract that was floating on the screen above our heads that had to be above the door frame…. So it was hard to read. And there's a class going on with music…. So I don't remember it all."). The Aggrieved Members did not know exactly what they were agreeing to, but they did know that they were signing authorizations to allow Strength School to make automatic withdrawals from their respective bank accounts on a monthly basis. However, there is no evidence in the record that anyone from Strength School explained to the Aggrieved Members that early termination of membership would subject them to liability for the entirety of a specified term.

[4] Each of the Aggrieved Members attended fitness and/or personal training classes at Strength School for differing periods of time prior to the COVID-19

pandemic, which began in March 2020. Each Aggrieved Member subsequently stopped attending and notified Strength School in writing of his or her desire to terminate the membership due to age-related health and safety concerns.[1] Reuter responded to each Aggrieved Member that he would not terminate any membership until the "full remaining balance" for the term of the agreement had been paid, and he threatened each of them that he would be sending their accounts to his "attorney for collections." Ex. Vol. 1 at 12, 23. Each of the Aggrieved Members stopped paying his or her monthly fees after March 2020.[2]

[5] On July 17 and 24, 2020, Strength School filed separate notices of claim for breach of contract against each of the Aggrieved Members in Morgan Superior Court Small Claims Division. Against Clark, Strength School sought $1,570 for breach of contract plus court costs and attorney's fees. Against Spalding, Strength School sought $1,060 for breach of contract plus court costs and attorney's fees. Against Fulford, Strength School sought $922 plus court costs and attorney's fees. Against Edson, Strength School sought $1,050 plus court costs and attorney's fees. And against Geier, Strength School sought $1,050 plus court costs and attorney's fees.

---

[1] In addition to age-related health and safety concerns, Fulford explained to Reuter that she is a cancer survivor and was advised by her doctor not to return to Strength School during the pandemic. Ex. Vol. 1 at 23.

[2] Strength School closed during April and May 2020 and suspended automatic payments during that time. Strength School "started to have issues" with payments when it resumed billing in June 2020. Tr. Vol. 2 at 51.

[6] On January 20, 2021, a consolidated bench trial was held on Strength School's claims against Clark, Spalding, and Fulford. Strength School appeared by counsel, and the defendants appeared pro se. Following the trial, the trial court found and concluded that the relevant contract provision regarding membership cancellation was ambiguous and therefore should be construed against Strength School and in favor of the defendants. As to Clark and Spalding, the trial court awarded Strength School $365 against each defendant plus court costs but denied attorney's fees.[3] As to Fulford, the trial court awarded Strength School $319 plus court costs but denied attorney's fees.[4]

[7] On February 10, 2021, a consolidated bench trial was held on Strength School's claims against Edson and Geier. Strength School appeared by counsel, and each defendant appeared pro se. Following the trial, the trial court again found and concluded that the relevant contract provision regarding membership cancellation was ambiguous and therefore should be construed against Strength School and in favor of the defendants. The trial court awarded Strength School $355 against each defendant plus court costs but denied attorney's fees.[5]

---

[3] The trial court found that both Clark and Spalding terminated their contracts by email on July 18, 2020, and pursuant to their contracts, they were then obligated to pay membership fees for July and August. Accordingly, the court determined that each defendant "owes $340 for July and August, plus $25 declined transaction fee for July, for a total of $365." Appealed Order at 2, 5.

[4] The trial court found that Fulford terminated her contract by email on July 19, 2020, and pursuant to her contract, she was then obligated to pay membership fees for July and August. Accordingly, the court determined that Fulford "owes $294 for July and August, plus $25 declined transaction fee for July, for a total of $319." Appealed Order at 8.

[5] The trial court found that Edson and Geier terminated their contracts by email on May 11, 2020, and pursuant to their contracts, they were then obligated to pay membership fees for May and June. Accordingly,

Strength School filed motions to correct error as to all five judgments, which the trial court denied. This consolidated appeal ensued.

Discussion and Decision

[8] As an initial matter, we observe that none of the Aggrieved Members submitted an appellate brief, and it is not our burden to argue on their behalf. *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014). Under such circumstances, we will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error. *Id*. In this context, prima facie error is defined as, "at first sight, on first appearance, or on the face of it." *Id*.

[9] We must also observe that "our standard of review in small claims cases is particularly deferential in order to preserve the speedy and informal process for small claims." *Heartland Crossing Found., Inc. v. Dotlich*, 976 N.E.2d 760, 762 (Ind. Ct. App. 2012). Indiana Trial Rule 52 provides that claims tried in a bench trial are reviewed pursuant to a clearly erroneous standard. *Vance v. Lozano*, 981 N.E.2d 554, 557-58 (Ind. Ct. App. 2012). Specifically, the appellate court cannot set aside the judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witness. *Id*. Indeed, the small claims court is the sole judge of the evidence and the credibility of witnesses, and on appeal we neither reweigh the evidence nor reassess witness credibility. *Heartland*, 976 N.E.2d at 762. "If the

---

the court determined that each defendant "owes $340 for May and June, plus a $15 late fee for May, for a total of $355." Appealed Order at 12, 15.

court rules against the party with the burden of proof, as here, it enters a negative judgment that we may not reverse for insufficient evidence unless 'the evidence is without conflict and leads to but one conclusion, but the court reached a different conclusion.'" *Id*. (quoting *Eppl v. DiGiacomo*, 946 N.E.2d 646, 649 (Ind. Ct. App. 2011)). "However, this deferential standard does not apply to the substantive rules of law, which are reviewed de novo just as they are in appeals from a court of general jurisdiction." *Scott-LaRosa v. Lewis*, 44 N.E.3d 89, 94 (Ind. Ct. App. 2015) (citation and quotation marks omitted).

Section 1 – The trial court's damage awards to Strength School are not clearly erroneous.

[10] Strength School first complains that, although the trial court did award it some damages from each Aggrieved Member for certain fees the court deemed were owed pursuant to the parties' membership agreements, the court did not award the much larger amounts sought by Strength School. Specifically, Strength School argues that the "unambiguous contract terms entitle Strength School to an award of damages for the entire contract term," and that the trial court clearly erred when it concluded otherwise. Appellant's Br. at 9. We disagree.

[11] Interpretation of a contract is a pure legal question that we review de novo. *Claire's Boutiques, Inc. v. Brownsburg Station Partners, LLC*, 997 N.E.2d 1093, 1097 (Ind. Ct. App. 2013). The record here reveals that each Aggrieved Member entered into a contract for services with Strength School that contained the following provision:

> 8. Cancellation of Membership by Member
> …
>
> (c) A member may terminate its membership for any other reason with thirty (30) days written notice before the end date of their membership agreement. Membership will terminate on the 1st day of following month after the thirty (30) day notice has expired. Please remember partial months are not permitted. If a member cancels on or after the 2nd of any month, then a payment will still be due the following month on the 1st. There are no refunds for membership fees and Strength School will not prorate a cancelled membership. Members who enter into "3 Month Contracts", "12 Month Contracts", or "18 Month Contracts" may terminate only after fulfilling their three (3) month, twelve (12) month, or eighteen (18) month contractual obligation, respectively, given the standard thirty (30) day notice. Notice of termination must be delivered in person to a Strength School employee or by email to info@strenghschools.com.

Appealed Order at 2.

[12] "When interpreting a written contract, we attempt to determine the intent of the parties at the time the contract was made." *Trustcorp Mortg. Co. v. Metro Mortg. Co.*, 867 N.E.2d 203, 213 (Ind. Ct. App. 2007). We do this by examining the language used in the instrument to express the parties' rights and duties. *Ryan v. TCI Architects/Eng'rs/Contractors, Inc.*, 72 N.E.3d 908, 914 (Ind. 2017). "A contract should be construed so as to not render any words, phrases, or terms ineffective or meaningless." *Id*. A contract is ambiguous if reasonable people would find it subject to more than one interpretation. *Brugh v. Sailors*, 130 N.E.3d 149, 155 (Ind. Ct. App. 2019). If we find that the language of a contract is ambiguous and susceptible to more than one interpretation, we construe the

contract against the party responsible for the wording, here, Strength School. *Celadon Trucking Servs., Inc. v. Wilmoth*, 70 N.E.3d 833, 839 (Ind. Ct. App. 2017), *trans. denied.*

[13] The relevant contractual language in this case concerns membership cancellation. While language at the beginning of paragraph 8(c) indicates that a member may terminate his or her membership by giving thirty days' written notice any time before the end date of the membership agreement, conflicting language at the end of the paragraph indicates that a member may terminate his or her membership only after fulfilling his or her *entire* contractual obligation, whether that be a three-month, twelve-month, or eighteen-month obligation. We agree with the trial court's finding that this conflicting language creates an ambiguity, as reasonable people would find the cancellation provision confusing and subject to more than one interpretation.

[14] On appeal, Strength School attempts to explain away any confusion or ambiguity by arguing that "[t]he clear meaning of Section 8(c) is that month-to-month members may cancel the contract upon 30[-]day notice at any time" and that the "existence of month-to month memberships harmonizes section 8(c)" and explains "why that termination clause differentiated term members within the clause." Appellant's Br. at 11. The testimony presented at the hearings, however, belies Strength School's explanation. Reuter stated at the hearing, "We provide [new and potential clients] three different options[:] three months, twelve months, or eighteen-month options." Tr. Vol. 2 at 33. Indeed, Reuter conceded that Strength School does not offer clients a month-to-month option.

Id. at 45. Thus, if we were to interpret paragraph 8(c) as Strength School suggests, the language at the beginning of the paragraph would be wholly ineffective and meaningless because, in reality, no member would be able to terminate his or her membership early. Because Strength School is responsible for the wording of the agreement, we construe the ambiguity against it. The trial court's interpretation of the cancellation provision of the contract in favor of the Aggrieved Members, permitting termination of membership upon thirty days' written notice, was reasonable, and the court's damage awards made pursuant to that interpretation are not clearly erroneous.[6]

Section 2 – The trial court did not abuse its discretion in denying Strength School's request for attorney's fees.

[15] Strength School further challenges the trial court's denial of its request for attorney's fees.[7] We review a trial court's decision to grant or deny a request for attorney's fees for an abuse of discretion. *R.L. Turner Corp. v. Town of Brownsburg*, 963 N.E.2d 453, 457 (Ind. 2012). A trial court abuses its discretion

---

[6] Strength School briefly argues that an interpretation of paragraph 8(c) allowing term members to cancel their agreements early simply by giving proper notice renders void the following paragraph, 8(d), which indicates that Strength School can "deny" a request for early contract termination "for any reason." Appealed Order at 11. However, we find the above-quoted language of paragraph 8(d) substantively unconscionable in the present context and decline to address it further. *See Missler v. State Farm Ins. Co.*, 41 N.E.3d 297, 303 (Ind. Ct. App. 2015) (substantive unconscionability refers to oppressively one-sided and harsh terms of contract). Moreover, ample evidence was presented that the entire membership agreement may suffer from procedural unconscionability, and the trial court would have been well within its discretion in so concluding. *See DiMizio v. Romo*, 756 N.E.2d 1018, 1024 (Ind. Ct. App. 2001) (procedural unconscionability issues arise from irregularities in the bargaining process or from characteristics peculiar to one of the parties), *trans. denied* (2002). In short, we are convinced that the trial court's damage awards were patently fair and reasonable under the circumstances.

[7] The record indicates that Strength School requested an attorney's fee award of $500 per claim.

if its decision clearly contravenes the logic and effect of the facts and circumstances or if the court has misinterpreted the law. *Id*.

[16] Strength School points to a fee-shifting provision of the contract that provides:

> 11. Enforcement – If Strength School has to initiate collection attempts or litigation to enforce any part of this agreement, then the breaching party shall be responsible for all costs and reasonable attorney fees.

Ex. Vol. 1 at 6. However, because we agree with the trial court that the current litigation was brought to enforce an ambiguous contract provision susceptible to multiple interpretations, we cannot say that Strength School met its burden to prove that the Members were "breaching" parties as contemplated by the fee-shifting provision. We disagree with Strength School's assertion that the court's award of "any amount" of damages in its favor necessarily means that the court found that the Aggrieved Members were "breaching" parties. Appellant's Br. at 13. To the contrary, the trial court found, implicitly as to Clark, Spalding, and Fulford, and explicitly as to Edson and Geier, that no breach of contract occurred. *See* Appealed Order at 12, 15. The trial court's denial of Strength School's request for attorney's fees does not clearly contravene the logic and effect of the facts and circumstances before the court. We affirm the trial court's judgments in all respects.

[17] Affirmed.

Bailey, J., and Pyle, J., concur.