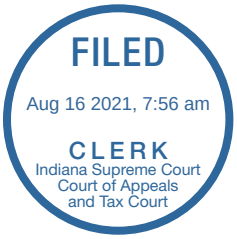
MEMORANDUM DECISION



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IN THE COURT OF APPEALS OF INDIANA

CouponCabin, LLC,
Appellant-Defendant,

v.

Michael Christofield,
Appellee-Plaintiff.

August 16, 2021

Court of Appeals Case No. 21A-SC-410

Appeal from the Lake Superior Court

The Honorable Robert J. Boling, Magistrate

Trial Court Cause No. 45D09-2101-SC-254

Brown, Judge.

[1] CouponCabin, LLC, appeals the small claims court's judgment in favor of Michael Christofield of $76.86 plus court costs. We affirm.

Facts and Procedural History

[2] On January 14, 2021, Christofield filed a notice of claim against CouponCabin alleging that he earned $76.86 using the company's cash back service, that prior to terminating his account the company's customer service representative told him that his account was in good standing and that he would receive a check for the pending amount, and that no check was sent. A number of exhibits were attached to Christofield's notice of claim, including a timeline of events, an email from CouponCabin stating that he had $76.86 pending, an offer to earn cash back of $75.00 on a purchase from Walmart, a confirmation email in November 2018 stating Christofield had earned cash back of $75.00, and numerous messages and letters between Christofield and CouponCabin. A message from CouponCabin to Christofield dated January 15, 2019, stated that the company's security system had detected what it deemed unnatural activity from Christofield's account and/or computer network, as a result his account was eligible for check payments only, and that his account remained in good standing, a message from Christofield to CouponCabin dated the following day stated he would accept a check but would also be looking into whether he had any legal recourse, and a reply message from CouponCabin to Christofield stated: "Given your desire to seek legal action, we feel that the best course is to close your account and issue a final payment for the cash back you have pending. This is usually a ten-day process; but based on your note, I will

escalate this to our Chief Financial Officer so we can get a final payment processed within the next 48 hours." Appellant's Appendix Volume II at 25. A message from Christofield to CouponCabin dated February 23, 2019, indicated that he had not received a check.

[3] On February 10, 2021, CouponCabin submitted a response to Christofield's notice of claim asserting that only $0.51 of cash back was validly earned and owed to Christofield and that he violated its terms and conditions by using two accounts to claim offers.[1]

[4] On February 17, 2021, the court held a trial, which was held virtually and at which Christofield was present, Scott Kluth was present for CouponCabin, and neither party was represented by counsel. The court did not place Christofield or Kluth under oath. The court noted that it had read all of the documents

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[1] According to CouponCabin's response, its "Terms & Conditions" stated in part:

> Single use: Certain Special Cash Back Offers or new Cash Back member offers in connection with initial registration are limited to a one-time, single use (1 use) per household or computer network/IP address. . . . Any use of multiple accounts or computer networks/IP addresses to circumvent such limits, or other fraudulent or abusive action, . . . is prohibited, and each such account is subject to, in the sole discretion of CouponCabin, cancellation and the loss of Cash Back and any other credits.
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> * * * * *
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> CouponCabin reserves the right to terminate your membership and account for, among other reasons, any of the following, in each case as determined in the sole and exclusive discretion of CouponCabin: . . . (2) any suspected fraud or abuse relating to the accrual, generation or receipt of Cash Back, including but not limited to the use of multiple accounts, multiple devices or multiple computer networks/IP addresses to circumvent Cash Back restrictions or limits, and including fraud or abuse with respect to generating clicks of grocery coupons; . . . .

Appellant's Appendix Volume II at 104. Christofield argues this document was not sent to him prior to the hearing.

submitted by the parties and stated that Christofield signed up and was a member of CouponCabin, the company had a website or portal through which members were directed to retailers, and the members earned refunds or rebates, and Kluth agreed and stated the company received a commission and gave away cash back. Kluth stated that Christofield's account had been flagged by the company's security system, Christofield threatened legal action, the company decided to part ways, and during that process it found that his account had violated its terms to earn the seventy-five dollars. The court noted the exhibits indicated the company agreed to pay him the seventy-five dollars but that the payment would have to be by check, and Kluth stated that was correct but that anytime an account is flagged there is a final review and the review here showed the seventy-five dollars was invalidly earned. The court asked if at one point the company agreed to pay Christofield the seventy-five dollars and close his account, and Kluth replied affirmatively.

[5] Christofield stated that he was notified that he had $76.68 pending in his account, he was told that his payment would have to be made by a paper check, he discovered information on another website that many times the security system flags benign activity, the company closed his account and the customer service agent said that his account was in good standing and that the company would pay him the amount pending in his account, and the company never sent him the check. Kluth stated that CouponCabin is a large company with specific algorithms to make sure people are not invading its system, there are a lot of bad actors, he was not saying Christofield was one of them, and its systems are

very sophisticated. Kluth stated that "two accounts from his IP address both tried to [] claim this offer" which was why the seventy-five dollars was forfeited, that only one account per IP address may claim member only offers, "[w]hen we did a [] review of his account, we found his second account . . . email address account," and "[t]hat was a second account [] that was also claiming member's only offers."[2] Transcript Volume II at 12. He said, "for that account to have been flagged, there would have been a member's only claim within sixty days or more which Christofield made." *Id*. at 13. Christofield stated "I would think that they would have some proof of the transactions if I had claimed a member offer with another account" and that the company's responses to his demands did not mention any such violation. *Id*. at 14.

[6] The court stated that CouponCabin did not have to accept Christofield's business and that it was up to the company if it did not want him as a customer anymore, but that at one point there was an agreement to send Christofield a check in the amount requested and the check was not sent. The court entered judgment in favor of Christofield and against CouponCabin in the amount of $76.86 plus court costs.

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[2] The transcript also attributes the following statements to Kluth: "I do not have any knowledge of the second CouponCabin account. This is the first that I am hearing about this. And considering that this has been going on for two years, it would seem like if that was something that was a problem, they would have brought that up at some point in the past two years." Transcript Volume II at 13. Christofield notes CouponCabin did not request a correction to the transcript.

Discussion

[7] CouponCabin appeals from a negative judgment. We will reverse only if the evidence leads to but one conclusion and the small claims court reached the opposite conclusion. *Kim v. Vill. at Eagle Creek Homeowners Ass'n, Inc.*, 133 N.E.3d 250, 252 (Ind. Ct. App. 2019). Judgments in small claims actions are subject to review as prescribed by relevant Indiana rules and statutes. *Eagle Aircraft, Inc. v. Trojnar*, 983 N.E.2d 648, 657 (Ind. Ct. App. 2013) (citing Ind. Small Claims Rule 11(A)). The reviewing court does not reweigh the evidence or determine the credibility of witnesses but considers only the evidence supporting the judgment and the reasonable inferences to be drawn from that evidence. *Id*. We presume the court correctly applied the law. *Id.* Where a small claims case turns solely on documentary evidence, our review is de novo. *Id*. The interpretation of a contract is a question of law. *Id.* A general judgment may be affirmed on any theory supported by the evidence. *Coffman v. Olson & Co., P.C.*, 906 N.E.2d 201, 207 (Ind. Ct. App. 2009), *trans. denied*.

[8] CouponCabin first asserts that reversal is necessary because the small claims court did not place Christofield and Kluth under oath. In *Griffith v State*, this Court noted that Ind. Evidence Rule 603[3] governs the oath or affirmation and

[3] At the time of *Griffith*, Ind. Evidence Rule 603 provided: "Before testifying, every witness shall swear or affirm to testify to the truth, the whole truth, and nothing but the truth. The mode of administering an oath or affirmation shall be such as is most consistent with, and binding upon the conscience of the person to whom the oath is administered." Ind. Evidence Rule 603 was amended, effective January 1, 2014, and now provides: "Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience."

embodies a pre-existing statute and that Indiana courts have held that the requirement that testimony be given under oath or affirmation may be waived by failing to object. 898 N.E.2d 412, 414-415 (Ind. Ct. App. 2008) (citing *Sweet v. State*, 498 N.E.2d 924, 926 (Ind. 1986) (holding the requirement that a witness be sworn can be waived if no objection is made and appellate review was foreclosed as there was no objection), *superseded on other grounds*; *Pooley v. State*, 116 Ind. App. 199, 202-203, 62 N.E.2d 484, 485 (1945) (holding the requirement that a witness be sworn can be waived by the parties and if no objection is made waiver will be presumed), *reh'g denied*).

[9] CouponCabin argues that "in *Griffith*, and the cases it mentions, the litigant waiving the objection was represented by legal counsel, which is not the case here" and that "[t]hese participants can hardly be held to the same standard of care Indiana law holds trained lawyers and the parties they represent in general court, especially where, as here, they are following the lead of the presiding judicial officer." Appellant's Brief at 10. Christofield cites Ind. Trial Rule 61[4] and argues that any error was harmless, the parties' rights were not affected, and both parties were able to present their evidence.

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[4] Ind. Trial Rule 61 provides:

> No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order in anything done or omitted by the court or by any of the parties is ground for granting relief under a motion to correct errors or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order or for reversal on appeal, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

[10] While Christofield and Kluth were not administered an oath, there was no objection or challenge to the testimony of either of them on that basis, and the issue is waived. *See Griffith*, 898 N.E.2d at 414-415; *Meade v. Levett*, 671 N.E.2d 1172, 1179 (Ind. Ct. App. 1996) (holding, where a witness was not placed under oath and the appellant did not object to the testimony, any error in the manner in which the evidence was admitted was waived); 12 INDIANA PRACTICE § 603.101 (4th ed.) ("The requirement that testimony be given under oath or affirmation can be waived by failure to object.") (citing *Griffith* and *Meade*). Further, we do not find the argument that reversal is required because the parties were not represented by counsel to be persuasive. A *pro se* litigant is held to the same standards as a trained attorney. *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). There is no assertion the small claims court failed to provide sufficient opportunity for CouponCabin to present testimony and evidence. The record reveals that Christofield and Kluth testified in detail and that the court questioned them and read all of the submitted documents. We cannot say that CouponCabin's substantial rights were affected or that reversal is warranted on this basis.

[11] CouponCabin next urges us to reverse on the grounds that Christofield was in violation of its terms and conditions and argues its agreement to send Christofield a paper check occurred before it discovered the violation. Christofield responds that the terms and conditions appear to permit multiple accounts to use the same IP address as long as a single account claims a particular cash back offer, that CouponCabin did not provide any evidence a

second account attempted to claim the Walmart offer which he had claimed, and that, weighing the lack of evidence against the promise to pay, the court's ruling was supported by the evidence.

[12] The parties do not dispute that CouponCabin agreed to send a paper check to Christofield in the amount of the cash back pending in his account and that the company never sent the check. The record reveals that, while Kluth indicated the company's review found a second account, Christofield responded that he thought CouponCabin would have proof of the transaction if he had claimed an offer with another account. The court read all of the submitted documents, heard Christofield and Kluth's testimony regarding the parties' communications and the terms and conditions, and thoroughly questioned them. Based on our review of the record, we cannot say that the evidence leads to but one conclusion and the small claims court reached the opposite conclusion.

[13] For the foregoing reasons, we affirm.

[14] Affirmed.

Najam, J., and Riley, J., concur.