MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dominic Desando,
Appellant-Plaintiff,

v.

Andrew Jacobs, Jr.
Appellee-Defendant

February 17, 2021

Court of Appeals Case No. 20A-SC-866

Appeal from the Washington Township Small Claims Court

The Honorable John Kitley, Judge

Trial Court Cause No. 49K07-1909-SC-003257

May, Judge.

[1] Dominic Desando appeals the small claims court's order granting judgment in favor of Andrew Jacobs, Jr. Desando asserts the evidence presented was insufficient to support the trial court's judgment. Specifically, Desando argues the trial court erred in finding the parties entered a valid and controlling written

settlement agreement, which disposed of Desando's claims for damages. We affirm.

Facts and Procedural History

[2] Desando and Jacobs, both recent graduates of Indiana University McKinney School of Law, agreed to lease an apartment together at The Whit in Indianapolis, Indiana.[1] Desando, Jacobs, and The Whit apartment complex entered into a year-long lease agreement on December 15, 2018. However, by March 2019, it became clear that the co-tenancy relationship was not functioning well. Desando and Jacobs therefore decided to discontinue living together prior to the expiration of their lease.

[3] Beginning on March 4, 2019, the parties engaged in a back-and-forth email exchange to parcel out obligations and responsibilities. On March 5, 2019, the discussion culminated in a proposed arrangement whereby both parties agreed to terminate the lease and split the termination penalty, in return for Desando's release of Jacobs from any further legal liability. The email agreement, in relevant part, proceeded as follows:

[1] The parties disagree about the facts on which we should rely. However, when reviewing a trial court's judgment after trial, we consider the record most favorable to the trial court's ruling. *See Nehi Beverage Co., Inc. v. Petri*, 537 N.E.2d 78, 82 (Ind. Ct. App. 1989), *trans. denied*.

> [Jacobs]: Let's be done with this. I am willing to pay half the termination fee if you will agree to a mutual release of all liabilities related to the whole thing.
>
> [Desando]: I am for this, as I understand it, this requires 60 days notice and each of us paying $2400. We must both give them notice, the sooner we do this the sooner the clock starts. At the end of the sixty days we will each pay $2400 and we will be done with the lease. I only want out of this, as do you, since we have reached an agreement and am splitting the money/responsibility evenly, I will not pursue further action.

(Appellant's App. Vol. II at 69.)

[4] On March 12, 2019, Desando, on the advice of counsel, sent Jacobs a certified letter stating that Desando did not agree to termination of the lease agreement, that Desando instead would prefer to transfer the lease because transfer was cheaper than termination, and that Desando would file suit against Jacobs for damages if Jacobs did not cooperate. Jacobs submitted a check for his half of the termination fee in the amount of $2,375.00 to The Whit on March 19, 2019. (*Id*. at 68.)

[5] On September 3, 2019, Desando filed a claim against Jacobs for breach of contract and failure to perform various obligations. Specifically, Desando calculated a claim for $5,657.48 in damages, alleging that:

> Parties mutually entered into a lease agreement with TWG Management LLC "The Wit" [sic] and mutually agreed to certain terms regarding animal care. In return for animal care, Plaintiff afforded Defendant certain rights and amenities regarding the housing arrangement. Defendant breached the

> agreement between the parties and agreed to mutually "transfer" their lease arrangement with TWG. Defendant instead "terminated" the lease which caused Plaintiff's lease with TWG to terminate as well, causing economic harm to Plaintiff.

(Appellee's App. Vol. II at 2.)

[6] On January 15, 2020, Jacobs filed an Answer addressing and refuting Desando's claims. Jacobs denied that he entered into an oral agreement to take care of Desando's dog in exchange for a preferential room allocation. Rather, Jacobs asserted he agreed to walk Desando's pit bull occasionally to be friendly, but he received no additional consideration for doing so as the bedroom and bathroom layouts of the apartment provided each tenant essentially the same amount of space. As an affirmative defense, Jacobs presented the agreement from the March 5, 2019, email conversation between himself and Desando as Defendant's Exhibit C during the bench trial. Jacobs argued the email conversation created a final and enforceable written settlement agreement fully barring Desando's recovery on all grounds after Jacobs paid the landlord.

[7] After a bench trial on January 23, 2020, the trial court ruled in favor of Jacobs, finding "[p]laintiff takes nothing pursuant to Complaint. Court finds [defendant's] exh[ibit] 'C' outcome determinative coupled [with the] entire body of evidence." (*Id.* at 11) (original handwritten). Furthermore, the Court explained to Desando at trial that:

> [W]hen [Jacobs] made the offer that 'I'm going to do "A" in exchange for "B"' and you said 'Okay, I will not pursue any further legal action' it's done — unless you can show me

> something where he changed — he said 'Nope, I agree to let you out of that agreement.' That was an agreement. That was an offer and acceptance, consideration and it was done.

(Tr. Vol. II at 71.) On February 21, 2020, Desando filed a Motion to Correct Error alleging that the Court's decision to regard Jacobs' Exhibit C as dispositive was contrary to Indiana law and not supported by the evidence. The Court denied Desando's motion to correct error on March 13, 2020.

Discussion and Decision

[8] We review a trial court's grant or denial of a motion to correct error for an abuse of discretion, which occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Indiana Bureau of Motor Vehicles v. Watson*, 70 N.E.3d 380, 384 (Ind. Ct. App. 2017). Our review of the trial court's ruling on Desando's motion to correct error necessarily involves review of the underlying order. *See In re Paternity of H.H.*, 879 N.E.2d 1175, 1177 (Ind. Ct. App. 2008) (review of motion to correct error includes review of underlying order). "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). We do not reweigh the evidence, nor do we assess the credibility of the witnesses. *Id*.

[9] The burden of proof in a small claims civil lawsuit is the same as the burden in a civil action not on the small claims docket. *Harris v. Lafayette LIHTC, LP*, 85

N.E.3d 871, 876 (Ind. Ct. App. 2017). We will affirm a judgment in favor of the party bearing the burden of proof "if the evidence was such that from it a reasonable trier of fact could conclude that the elements of the party's claim were established by a preponderance of evidence." *Eagle Aircraft, Inc., v. Trojnar*, 983 N.E.2d 648, 657 (Ind. Ct. App. 2013). A small claims court is not required to enter special findings along with its judgment. *Wynne v. Burris*, 105 N.E.3d 188, 192 (Ind. Ct. App. 2018). In reviewing such a judgment, we presume the trial court followed the law, and we may affirm based on any legal theory supported by the evidence. *Rea v. Shroyer*, 797 N.E.2d 1178, 1181 (Ind. Ct. App. 2003).

[10] Desando alleges that neither he nor Jacobs considered the "incomplete email thread" communications represented in Exhibit C to be a formal or valid agreement. (Br. of Appellant at 11.) The trial court, however, found the communication conveyed a contractual agreement that barred Desando's breach of contract claims due to his written release of Jacobs from any additional liability. In sum, the trial court regarded Exhibit C as a "resolution." (Tr. Vol. II at 55.) Therefore the dispositive question before us is solely whether the written settlement agreement constituted a binding and controlling contract.

[11] Interpretation of a settlement agreement presents a question of law and is reviewed de novo. *Bailey v. Mann*, 895 N.E.2d 1215, 1217 (Ind. 2008). Construction of settlement agreements is governed by contract law. *Ind. State Highway Comm'n v. Curtis*, 704 N.E.2d 1015, 1018 (Ind. 1998). The law concerning contracts is well settled in Indiana; a valid contract requires offer,

acceptance, consideration, and manifestation of mutual assent. *Krieg v. Hieber*, 802 N.E.2d 938, 947 (Ind. Ct. App. 2004). If the contract language is clear and unambiguous, the court must give effect to the terms of the contract in order to effectuate the intent of the parties. *Fackler v. Powell*, 891 N.E.2d 1091, 1096 (Ind. Ct. App. 2008), *trans. denied*. A contract is considered ambiguous if a reasonable person would find the contract subject to more than one interpretation; however, the terms of a contract are not ambiguous merely because the parties disagree as to their interpretation. *Id*. Thus, when the contract terms are unambiguous and do not require consideration of extrinsic evidence, we will apply the contractual provisions as indicative of the parties' intent in their clear and ordinary meaning. *Id*.

[12] Here, in Exhibit C, Jacobs proposed splitting the cost of terminating the parties' lease in exchange for a full mutual release of all liabilities associated with this dispute. Desando in turn accepted the terms by responding "I'm all for this," and stating, "we have reached an agreement." (Appellant's App. Vol. II at 69.) Seemingly, both Desando and Jacobs achieved their desired result. They agreed to equally split payment of the lease termination fee and sever their co-tenancy relationship. Desando argues, however, that the language "did not constitute acceptance of Jacobs' offer, because Jacobs refused to pay utilities" and that this was a vital term to be agreed upon before resolution could be reached. (Br. of Appellant at 11-12.) He further asserts the trial court ignored a certified letter Desando sent to Jacobs on March 12, 2019, after their email conversation and contends the trial court should have based its decision on the

terms of that letter, as it demonstrates the incompleteness of their previous negotiations.

[13] However, the record demonstrates the trial court considered the certified letter and Desando's arguments, as well as the totality of all the email communications from March 4, 2019, to March 14, 2019. The trial court noted that the "self-serving" certified letter demonstrates nothing more than Desando's attempt to quietly retract his binding acceptance, due to the availability of a cheaper lease transfer alternative. (Tr. Vol. II at 70-71.) Regarding utilities, the court stated Jacobs' post-agreement payment of $100 towards the utilities went "above and beyond" the requirements and conditions of the resolution. (*Id*. at 74.) Desando's arguments on appeal are a clear invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do. *See Jasinski v. Brown*, 3 N.E.3d 976, 980 (Ind. Ct. App. 2013) (small claims court's damage award was supported by the evidence, appellant's challenges amount to a request to reweigh evidence which the reviewing court may not do). We find no error in the trial court's interpretation of the email exchange as a binding agreement between the parties.

Conclusion

[14] We conclude the trial court did not err when it determined the email exchange in Exhibit C created a conclusive and binding settlement agreement. Accordingly, we affirm the judgment in favor of Jacobs.

[15] Affirmed.

Riley, J., and Altice, J., concur.