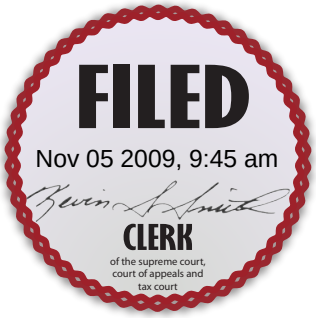

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IN THE
COURT OF APPEALS OF INDIANA

EDWARD R. HALL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0902-CV-43
	)	
ALLIED WASTE SERVICES, INC.,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Julie N. Cantrell, Judge
The Honorable Michael N. Pagano, Magistrate
Cause No. 45D09-0804-SC-1480

November 5, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Edward R. Hall appeals the small claims court's judgment for Allied Waste Services ("Allied Waste"). We affirm.

Issue

Hall raises two issues, which we consolidate and restate as whether the small claims court properly enforced the terms of the contract between Hall and Allied Waste.

Facts

In early November 2004, Hall entered into a contract with Illiana Disposal & Recycling, a subsidiary of Allied Waste, for waste removal services at his law office in Merrillville, Indiana. The contract provided:

> TERM: THE INITIAL TERM (THE "INITIAL TERM") OF THIS AGREEMENT IS THREE (3) YEARS FROM THE DATE SERVICE IS COMMENCED ("EFFECTIVE SERVICE DATE"). THIS AGREEMENT SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE THREE (3) YEAR TERMS (THE "RENEWAL TERM") THEREAFTER UNLESS EITHER PARTY SHALL GIVE WRITTEN NOTICE OF TERMINATION BY CERTIFIED MAIL TO THE OTHER AT LEAST SIXTY (60) DAYS PRIOR TO THE TERMINATION OF THE INITIAL TERM OR ANY RENEWAL TERM.

Pl.'s Exhibit 1 p. 5. The contract also provided for liquidated damages amounting to six months of the monthly payments if Hall terminated the contract prior to its expiration.

In December 2007, Allied Waste sent Hall a letter and a "new service agreement" for his review. App. p. 32. The new service agreement was almost identical to the prior contract between Hall and Allied Waste. In the letter, Allied Waste requested that Hall review the new service agreement for accuracy and notify it of any incorrect details. Hall's office

manager, Laura Hanuf, called Allied Waste on December 11, 2007, and informed Allied Waste that she was not going to sign the new service agreement and asked for a reduced rate. Hanuf was informed that her representative was unavailable, so Hanuf called back the next day. Hanuf was informed that her representative was unavailable until the following week, and because she was leaving for vacation, Hanuf decided to cancel Allied Waste's service.

On December 18, 2007, Allied Waste sent a letter to Hall informing him that their contract would not expire until November 2011 and that Hall was responsible for paying his outstanding balance and $399.06 in liquidated damages as a result of his early cancellation. Allied Waste filed a notice of claim in small claims court against Hall. At the small claims court trial, Hall argued that the automatic renewal term of the contract was an "evergreen clause" and that the use of the evergreen clause violated the provisions of an antitrust consent decree signed by Allied Waste in 2000. Tr. p. 52.

The small claims court entered judgment for Allied Waste. The court noted that the determinative issue was whether the evergreen clause of the contract was unconscionable. The small claims court acknowledged that "the [antitrust] consent decree and the government's position on the issue [of the evergreen clause] can have no binding effect on the case at bar." App. p. 148. The court concluded that "[s]hort of a similar showing in northwest Indiana, the court would be hard pressed to conclude that this contract language violates public policy." Id. Next, the court found that Hall had failed to prove that the contract was unconscionable. The court entered judgment for Allied Waste in the amount of

$608.59, representing Hall's outstanding balance due on his account and liquidated damages. Hall filed a motion to correct error, which the small claims court denied.

Analysis

The issue on appeal is whether the small claims court erred by enforcing the terms of the contract between Hall and Allied Waste. Judgments in small claims actions are "subject to review as prescribed by relevant Indiana rules and statutes." Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1067 (Ind. 2006) (quoting Ind. Small Claims Rule 11(A)). "Under Indiana Trial Rule 52(A), the clearly erroneous standard applies to appellate review of facts determined in a bench trial with due regard given to the opportunity of the trial court to assess witness credibility." Id. This "deferential standard of review is particularly important in small claims actions, where trials are 'informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law.'" Id. at 1067-8 (quoting City of Dunkirk Water & Sewage Dep't v. Hall, 657 N.E.2d 115, 116 (Ind. 1995)). However, this 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. Id. at 1068.

On appeal, Hall argues that the automatic renewal term of the 2004 contract is unenforceable because it violates a 2000 antitrust federal court consent decree involving Allied Waste. "Indiana courts have recognized that it is in the best interest of the public not to unnecessarily restrict persons' freedom to contract." Putz v. Allie, 785 N.E.2d 577, 579 (Ind. Ct. App. 2003), trans. denied. In general, "the law allows competent adults the utmost liberty in entering into contracts which, when entered into freely and voluntarily, will be

enforced by the courts." Id. Nevertheless, courts will refuse to enforce agreements that are contrary to statute or public policy. Id. Our supreme court has noted that "courts have refused to enforce private agreements on public policy grounds in three types of situations: (i) agreements that contravene statute; (ii) agreements that clearly tend to injure the public in some way; and (iii) agreements that are otherwise contrary to the declared public policy of Indiana." Continental Basketball Ass'n, Inc. v. Ellenstein Enterprises, Inc., 669 N.E.2d 134, 139 (Ind. 1996).

Hall contends that the automatic renewal term of the contract is an "evergreen clause" and that it violates a federal court order issued in United States v. Allied Waste Industries, Inc., and Republic Services, Inc., No. 00-1469, 2000 WL 33225559 (D.D.C. 2000). The order related to a civil antitrust action brought by the government against Allied Waste and Republic after the two companies entered into purchase agreements to exchange waste-hauling and disposal assets in several markets throughout the United States, including assets in Anderson, Indiana, and Sellersburg, Indiana. The complaint alleged that the asset exchange would lessen competition in the areas at issue, resulting in higher prices and fewer services for consumers. The parties entered into a consent decree, which, among other things, required Allied Waste and Republic to offer new contracts to small container solid waste commercial customers in specified markets. The contracts could not have a renewal term longer than a year, could not require more than thirty days notice of termination, and could not require the customer to pay liquidated damages in excess of three times the average monthly charge during the first year of service or two times the average monthly charge after

the first year of service. App. p. 74. The consent decree required that Republic offer the new contracts in Sellersburg. Other areas of Indiana were not at issue in the consent decree.

Hall asks that we "find that the Federal consent decree entered in Allied & Republic applies in all counties in the State of Indiana." Appellant's Br. p. 8. We must decline Hall's invitation.[1] First, nothing in the consent decree required that Allied Waste change its contracts throughout Indiana. In fact, the consent decree required only that Republic change its contract in the Sellersburg area. Moreover, the United States Supreme Court has held that an antitrust "consent decree is not enforceable directly or in collateral proceedings by those who are not parties to it even though they were intended to be benefited by it." Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 750, 95 S. Ct. 1917, 1932 (1975). Hall, who was not a party to the consent decree, may not attempt to enforce and expand the consent decree in a separate, completely unrelated proceeding. We conclude that Hall cites no relevant authority demonstrating that the automatic renewal provision of the contract is unenforceable.[2]

Alternatively, Hall argues that the new service agreement sent to him by Allied Waste in December 2007 was "an acknowledgement that the initial contract term would expire" and

[1] Hall also cites to the government's Competitive Impact Statement as part of the district court's order. However, the Competitive Impact Statement is document required to be filed by the government, not part of the court's final judgment. See 15 U.S.C. § 16.

[2] Hall also argues that the "evergreen clause" is contrary to statute and against public policy because it violates Indiana Code Section 24-1-1-1 and Indiana Code Section 24-1-2-1, but he did not make this argument to the small claims court. Consequently, Hall has waived the argument, and we will not address it. See, e.g., Swami, Inc. v. Lee, 841 N.E.2d 1173, 1180 (Ind. Ct. App. 2006) (holding that the appellant had waived an argument by failing to assert it before the trial court), trans. denied.

was "a new offer, which was subsequently not accepted." Appellant's Br. p. 11. Having concluded that the automatic renewal provision of the 2004 contract was enforceable, we note that the 2004 contract had already renewed in November 2007 for an additional three years. Even though Hall did not sign the December 2007 agreement, the previous contract had already automatically renewed and was enforceable. Consequently, Hall's argument fails.

Conclusion

While we express no opinion as to the enforceability of evergreen provisions in general, under the circumstances of this case, Hall's arguments fail. The consent decree did not make the automatic renewal provision of the contract between Hall and Allied Waste unenforceable. The small claims court did not err by enforcing the contract and ordering Hall to pay liquidated damages based on the contract. We affirm.

Affirmed.

NAJAM, J., concurs.

KIRSCH, J., dissents without opinion.