[Cite as *Lester v. Don's Automotive Group, L.L.C.*, 2021-Ohio-4397.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

Stephen M. Lester

Appellant

v.

Don's Automotive Group, LLC

Appellee

Court of Appeals No. F-21-007

Trial Court No. CVI 210004

DECISION AND JUDGMENT

Decided: November 19, 2021

* * * * *

Stephen Lester, pro se.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a February 17, 2021, judgment of the Fulton County Western District Court, ruling in favor of appellee following a pro se, small claims trial between used car purchaser Stephen M. Lester ("appellant") and used car dealership Don's Automotive Group, LLC ("appellee") in connection to appellant's purchase of a

used pickup truck from appellee. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant sets forth the following sole assignment of error:

> The small claims court committed plain error as to allowing a limited liability company, managing member, to engage in a pro se defense that allowed arguments, submission of evidence, and acts of advocacy which was contrary to Ohio. Rev. Code § 1925.17 and *Cleveland Bar. Assn. v. Pearlman*, [106 Ohio St.3d 136, 2005-Ohio-4107, 832 N.E.2d 1193].

{¶ 3} The following undisputed facts are relevant to this appeal. On November 20, 2020, appellant went to Don's Automotive Group, a used car dealership located in Wauseon, to explore acquiring a used pickup truck for utilization in appellant's business.

{¶ 4} While at the dealership, appellant selected a 2005 Ford F-250 pickup truck, with approximately 160,000 miles on it, and took the truck out for a half-hour test drive. Following the test drive, appellant advised the salesman that he wished to purchase the truck.

{¶ 5} In the course of the ensuing transaction, an inspection of the vehicle was conducted by the dealership at appellant's request. Following inspection, the dealership notified appellant that both exhaust manifolds were leaking and also an engine mounting

tab securing a coil was broken. Appellant was not dissuaded by the inspection results and proceeded in the purchase.

{¶ 6} On November 23, 2020, appellant purchased the vehicle for $4,222.60 on an "[A]s-is, for parts only" basis. The record reflects that the dealership incorporated the above-quoted language into the purchase agreement documents, executed by appellant, expressly reflecting that the sale was being made, "[A]s is, for parts only."

{¶ 7} Given the nature of the purchase, the record consistently reflects that no warranty was included in connection to the sale.

{¶ 8} On November 23, 2020, appellant went to the dealership, executed the above-referenced purchase agreement documents, took possession of the truck, and drove it home.

{¶ 9} On November 28, 2020, five days after the "[A]s in, for parts only" purchase agreement was executed and appellant took possession of the truck, appellant notified the dealership that the truck was "hesitating."

{¶ 10} Despite no warranty accompanying the completed purchase, appellee voluntarily agreed that their service department would conduct a complementary inspection in response to appellant's report.

{¶ 11} Following the complementary inspection, appellee notified appellant that their service department had determined that the vehicle may need a new timing chain.

In response, appellant summarily notified an employee of the dealership, via text message, that he wanted the dealership to "take the truck back."

{¶ 12} In the ensuing communications between the parties, the dealership voluntarily offered to split the cost of replacing the timing chain, despite no warranty, or in the alternative, the dealership offered several other cooperative resolutions to appellant, such as having the dealership auction the vehicle for appellant. Appellant declined all proposals from the dealership.

{¶ 13} Appellant next demanded either a full refund, or in the alternative, that a new engine be installed at the dealership's expense, in an amount approximately double appellant's original purchase price of the vehicle.

{¶ 14} The dealership declined to reverse the completed purchase or to voluntarily expend the amount demanded by appellant, ranging from $7,366.00-$7,900.00, on a 15-year-old vehicle for which appellant had paid $4,222.60. The parties were at an impasse.

{¶ 15} On January 5, 2021, appellant filed a complaint in small claims court against the dealership regarding this used truck purchase. The grounds for relief set forth in appellant's complaint claimed that the dealership furnished an express warranty to appellant, and that the dealership allegedly committed fraud in the sale to appellant.

{¶ 16} On February 12, 2021, the case proceeded to trial. Appellant represented himself on a pro se basis during the proceedings. The record shows that appellant conducted capable and detailed direct examinations of the salesman, the dealership

service manager, and the owner/managing member of the dealership, as well as a cross-examination of the dealership finance manager.

{¶ 17} Appellant also testified on his own behalf. Appellant offered testimony regarding his past experience in acquiring and repairing multiple used vehicles over the years, including vehicles in such disrepair that they were advertised as "mechanic's specials." By his own testimony, appellant was not a novice in used car dealings.

{¶ 18} Appellant alleged that his purchase underlying this appeal was unlawful based upon his claim that the sale should be construed as having included a warranty based upon a text message by the salesman to appellant during their communications in course of the sale stating, "It's not like it has a blown engine."

{¶ 19} Conversely, the record reflects that the engine did not blow during appellant's November 20, 2020 half-hour test drive. The engine did not blow when appellant returned on November 23, 2020, executed the purchase agreement, and successfully drove home in the truck that he purchased. The record is devoid of evidence in support of appellant's suggestion that the dealership sold him a vehicle with a "blown engine."

{¶ 20} On November 28, 2020, appellant reported that the truck was "hesitating." Appellant ultimately demanded either a full refund or that a new engine be installed at the dealership's cost, at a cost approximately double the amount that appellant had paid for the truck. Appellee declined.

{¶ 21} In addition to the warranty claim, appellant also alleged that the dealership had fraudulently sold him the used vehicle by selling him a 2005 Ford F-250 that, "[B]roke down immediately after I took use of it." When pressed by the trial court to articulate the basis of the fraud claim, appellant unpersuasively stated, "Fraud was basically that they were providing the vehicle."

{¶ 22} We reiterate that appellant first reported vehicle hesitation issues five days after the purchase and there is no evidence that appellant was sold a broken-down, inoperable vehicle.

{¶ 23} Don Hayati, the managing member of the dealership, also did not utilize legal counsel in the small claims trial. Accordingly, the crux of this appeal entails an application of R.C. 1925.17 to the case.

{¶ 24} R.C. 1925.17 establishes that a corporation, which is a party in interest to a small claims action, may present its' claim or defense via an officer or employee, so long as said person does not, "[E]ngage in cross-examination, argument, or other acts of advocacy."

{¶ 25} Notably, Hayati's testimony to the court occurred only after appellant himself notified the court that he wished to call Hayati as a witness and conduct a direct examination.

{¶ 26} Prior to the testimony, the trial court advised Hayati that he would not be permitted to argue or advocate, such as an attorney could, on behalf of the corporation. He was cautioned that he could not call or cross-examine witnesses.

{¶ 27} The trial court elaborated, in relevant part, "I've already advised you essentially of what your limitations are here. I will let you present any documents that you wish to present for the LLC, and I'll let you provide me with any statement she was to state for the LLC here, but that's all I can do."

{¶ 28} Hayati was then questioned by appellant, as well as by the trial court itself.

{¶ 29} Upon completion of the trial, the trial court held, "The court is going to find that the plaintiff has failed to meet its burden of proof. That will be the conclusion of the case today." This appeal ensued.

{¶ 30} In the sole assignment of error, appellant argues that the trial court erred in allowing Hayati to testify to the court, in contravention of R.C. 1925.17.

{¶ 31} Appellant does not cite or identify particular excerpts from the Hayati testimony as allegedly constituting argument or advocacy in contravention of R.C. 1925.17.

{¶ 32} Appellant specifically argues in support of this appeal, "*[Appellant] avers that any argument by Mr. Hayati (acting in pro se) was prohibited* * * * as they were an act of advocacy and were amid [sic] at persuading the court to render a verdict in favor of the LLC. *Mr. Hayati presented his arguments via testimony*." (Emphasis added).

{¶ 33} Appellant's position is perplexing given that, as mentioned above, the record shows that it was appellant himself who initiated Hayati as a witness.

{¶ 34} The record reflects that after appellant concluded questioning several witnesses employed by the dealership, the trial court inquired of appellant, "Any other witnesses?" Appellant replied, "I would ask to question Don [Hayati]." The court conveyed to Hayati the statutory limitations related to any testimony from him.

{¶ 35} Again, R.C. 1925.17 establishes that any such person may not, "[E]ngage in cross-examination, argument, or other acts of advocacy."

{¶ 36} We have scrutinized the entire transcript of the trial in this case, paying particular attention to an application of the R.C. 1925.17 prohibitions to the Hayati testimony.

{¶ 37} First, the transcript shows that Hayati did not engage in any cross-examination during the trial. Accordingly, our focus centers upon whether any of Hayati's testimony may have constituted argument or advocacy.

{¶ 38} The record reflects that prior to the commencement of Hayati's testimony, the trial court stated, "I've already advised you essentially of what your limitations are here. I will let you present any documents that you wish to present for the LLC, and I'll let you provide me any statements * * * speaking for the LLC here, but that's all I can do."

{¶ 39} Hayati then presented the written documents utilized by the parties in the course of appellant's used truck purchase. Both appellant and the trial court questioned Hayati on the various documents.

{¶ 40} Although the record reflects that a few, sporadic excerpts of Hayati's testimony could possibly be construed as transgressing into arguments or advocacy, more importantly, the record also reflects appellant's failure to object to that testimony.

{¶ 41} For example, during testimony regarding the dealership's evaluation of the vehicle prior to appellant's completion of the purchase, Hayati presented a work order prepared in response to appellant's request that the dealership perform an inspection of the vehicle prior to appellant's completion of the purchase.

{¶ 42} After objectively presenting and identifying the document, Hayati further opined, "If he was going to have us check something out, he was going to pay for that *because nothing was implied on this car at all*." (Emphasis added).

{¶ 43} A claim could possibly be made that such a statement constituted R.C. 1925.17 argument or advocacy on behalf of the LLC. However, no objection was made.

{¶ 44} Shortly thereafter, Hayati presented the trial court a document known as a book-out sheet, reflecting a retail value of $8,175.00 on the used truck sold to appellant for $4,222.60. Hayati explained, "[W]e obviously took an offer of almost half the retail value because the car was sold as-is."

{¶ 45} Upon additional inquiry from the court, Hayati further stated, "I'm trying to show that this estimate was not an estimate that * * * said the motor was blown * * * *There's no nothing that states that this motor is blown*." (Emphasis added).

{¶ 46} A claim could possibly be made that such a statement constituted R.C. 1925.17 argument or advocacy on behalf of the LLC. However, no objection was made.

{¶ 47} Nevertheless, as discussed more fully below, the presence of such testimony does not establish that a reversal is warranted in this case, given an application of the legal doctrines relevant to our resolution of this case, such as the waiver doctrine and structural error.

{¶ 48} To begin, the Ohio Supreme Court has upheld the constitutionality of R.C. 1925.17. In *Cleveland Bar Assn. v. Pearlman*, 106 Ohio St.3d 136, 2005-Ohio-4107, 832 N.E.2d 1193, the court determined at ¶ 24, "Rather than view R.C. 1925.17 as intruding on our authority to regulate the practice of law or our rulemaking power, we see it as a mere clarification, stating the corporations may use Small Claims Courts as individuals may, i.e., without attorneys, *so long as the representatives do not otherwise act as advocates*." (Emphasis added).

{¶ 49} In addition, as held at ¶ 17 in *Cawley JV, L.L.C. v. Wall St. Recycling, L.L.C.*, 35 N.E.3d 30, 2015-Ohio-1846 (8th Dist.), "Arguments raised for the first time on appeal are generally barred. Such arguments are barred by the doctrine of waiver * * * *[A] party cannot raise any new issues or legal theories for the first time on appeal.*

Litigants must not be permitted to hold their arguments in reserve for appeal, thus evading the trial court process." (Emphasis added). *See also State v. Talley*, 6th Dist. Lucas Nos. L-20-1131/1132, 2021-Ohio-2558, ¶ 22.

{¶ 50} Demonstrative of the waiver doctrine's impact upon appeals such as this one, premised upon alleged breaches of R.C. 1925.17, when faced with a scenario in which R.C. 1925.17 violations were definitively shown, the court held in *Hunter Modular Homes v. Myers*, 2d Dist. Miami Nos. 13-CA-12/13, 2013-Ohio-5758, that although the trial court did err in allowing the corporate officer to advocate and argue at certain times during trial, in violation of R.C. 1925.17, the issue nevertheless fails upon appeal, "*[B]ecause Myers never objected to the error at trial, he waived any error*." (Emphasis added). *Accord Myles v. Richardson*, 2d Dist. Montgomery No. 23186, 2009-Ohio-6394, ¶ 33.

{¶ 51} In addition, we further find that although structural trial court error can culminate in reversal, irrespective of waiver, the very limited scenarios in which such an outcome is warranted is inapplicable to the instant case.

{¶ 52} As held by the Ohio Supreme Court in *State v. Perry*, 101 Ohio St.3d 118, 2004-Ohio-297, 802 N.E.2d 643, ¶ 17-18, "[S]tructural errors are constitutional defects that * * * affect the framework within which the trial proceeds, rather than simply being an error in the trial process itself * * * *Such errors permeate the entire conduct of the*

trial from beginning to end so that the trial cannot reliable serve its function as a vehicle for determination of guilt or innocence." (Emphasis added).

{¶ 53} As applied to the instant case, the record reflects that although it could be asserted that the trial court possibly erred in several, sporadic instances regarding prohibited R.C. 1925.17 argument or advocacy, it clearly did not permeate the proceedings, so as to undermine the trial court's function and determination, constitute structural error, and warrant reversal.

{¶ 54} Wherefore, we find that even assuming arguendo that Hayati did not fully comply with R.C. 1925.17, the arguable, minor transgressions were waived, and regardless of waiver, they did not constitute structural error.

{¶ 55} Accordingly, we find appellant's assignment of error not well-taken.

{¶ 56} On consideration whereof, the judgment of the Fulton County Western District Court is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.	_______________________ JUDGE
Christine E. Mayle, J.	
Gene A. Zmuda, P.J. CONCUR.	_______________________ JUDGE
	_______________________ JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.