2026 IL App (2d) 250351-U
No. 2-25-0351
Order filed September 18, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ELIZABETH VACCARIELLO, Plaintiff-Appellant,

v.

TAYLOR PRYSTAWSKY and CHRISTOPHER PRYSTAWSKY, Defendants-Appellees.

Appeal from the Circuit Court of Kane County.
Honorable Elizabeth K. Flood, Judge, Presiding.
No. 24-EV-738

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLAREN and MULLEN concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiff forfeited her arguments on appeal by failing to raise them before the trial court.

¶ 2 Plaintiff, Elizabeth Vaccariello, appeals the Kane County Circuit Court's judgment awarding her past due rent from defendants, Taylor and Christopher Prystawsky. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 23, 2024, plaintiff filed her first amended complaint, alleging that defendants sold her their residence in February 2007. Thereafter, Christopher and Taylor—then plaintiff's stepdaughter—moved into plaintiff's home while plaintiff rented the subject property to unrelated tenants. Approximately a year later, defendants entered into an oral rental agreement

with plaintiff, under which they agreed to pay plaintiff $1,300 each month to stay at the subject property. Beginning in January 2014, defendants began to fall behind on their rent payments. In May 2024, plaintiff's marriage to Deborah Warda, Taylor's biological mother, was dissolved. Thereafter, "[s]ometime prior to June 18, 2024, *** defendants vacated the property." Consequently, plaintiff argued that she was entitled to $56,880 in unpaid rent from defendants, as outlined in a "rent schedule" she attached to the complaint.

¶ 5 On June 25, 2025, the matter proceeded to bench trial. According to a bystander's report, defendants and Deborah disputed the amount of unpaid rent, referencing undisclosed cash payments or an " 'in-kind' agreement with [plaintiff specifying] that certain rent payments would be forgiven."

¶ 6 On July 21, 2025, the court entered its judgment, awarding plaintiff $28,440 in unpaid rent, plus costs. Specifically, the court reasoned that, because "there was an expectation that at least some of the rent would be forgiven due to the parties' familial relationship," "it would not be equitable to enter judgment on the full amount requested by the [p]laintiff."

¶ 7 Plaintiff timely appeals.

¶ 8 II. ANALYSIS

¶ 9 On appeal, plaintiff argues that the trial court erred by reducing her damages based solely on what she characterizes as "equitable principles" and that the reduction constituted an "impermissible remittitur." However, as a preliminary matter, we must address defendants' contentions that plaintiff forfeited these issues by failing to raise them below.

¶ 10 "It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal." *Haudrich v. Howmedica, Inc.*, 169 Ill.2d 525, 536 (1996). "The purpose of this court's forfeiture rules is to encourage parties to raise issues in the trial court, thus

ensuring both that the trial court is given an opportunity to correct any errors prior to appeal and that a party does not obtain a reversal through his or her own inaction." *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.,* 2015 IL 118372, ¶ 14.

¶ 11 Supreme Court Rule 366(b)(3)(ii) (eff. Feb. 1, 1994) additionally provides that the failure to file a posttrial motion does not limit the scope of review over nonjury cases. Illinois courts have inconsistently interpreted this rule. See *In re Marriage of Henry*, 297 Ill. App. 3d 139, 141 (1998). Specifically, some decisions have found that Rule 366(b)(3)(ii) preserves any errors "pertaining to the substance of the final judgment at issue," regardless of any contemporaneous objection or posttrial motion. *Henry*, 297 Ill. App. 3d at 142 (citing *In re Marriage of Wright*, 212 Ill. App. 3d 392, 398 (1991)). Under this view, which this court has followed at times, procedural issues must be preserved via contemporaneous objection or posttrial motion, but substantive challenges to a judgment need not be preserved in *any* way. *Id.*

¶ 12 Other decisions have understood Rule 366(b)(3)(ii) as dispensing only the extra requirement of a posttrial motion where an issue was otherwise preserved during a bench trial. *Bridges v. Neighbors*, 32 Ill. App. 3d 704, 707 (1975) ("The civil practice rule that in a non-jury case, neither the filing of, nor the failure to file, a post-trial motion limits the scope of review *** only provides that issues which have been considered by the trial court in a non-jury case[ ]need not be included or specified in any post-trial motion to be preserved for appeal.").

¶ 13 For example, in *Elsener v. Brown*, 2013 IL App (2d) 120209, ¶ 3, the plaintiff brought suit against the defendant, the president of his employer, Brown Business Ledger, LLC (BBL), for violations of the Illinois Wage Payment and Collection Act (Act) (820 ILCS 115/1 *et seq*.). Following a bench trial, the trial court agreed with the plaintiff that the defendant had knowingly violated the Act. *Id.* ¶ 53. However, in pronouncing its judgment, the trial court did not expressly

find that BBL had also violated the Act. *Id.* ¶¶ 28-31. The defendant filed a posttrial motion, but he did not raise any argument involving the question of BBL's liability. After the trial court denied the motion, he appealed, arguing that the court could not have found him liable for violating the Act without making a prerequisite finding of BBL's liability for the same wage violation. *Id.* ¶ 53. The plaintiff argued that the defendant forfeited the contention by failing to raise it in his posttrial motion. *Id.* In agreeing with the plaintiff, we noted that, while Rule 366(b)(3)(ii) renders a posttrial motion unnecessary "to preserve issues in an appeal from a bench trial," the defendant nonetheless had an independent obligation to make his argument before the trial court. *Id.* Consequently, the defendant forfeited the argument by "fail[ing] altogether to raise the contention below, *whether at trial or in his posttrial motion.*" (Emphasis added.) *Id.*

¶ 14 Here, defendants argue that plaintiff failed to raise any arguments below concerning any equitable reduction of damages. Thus, defendants contend that plaintiff forfeited her contentions on appeal. Plaintiff acknowledges that she never filed a posttrial motion to dispute the trial court's reduction of damages. However, citing *Elsener*, she argues that this failure does not limit the scope of our review, especially where the trial court's error—"the equitable reduction of proven damages"—is apparent from the face of the judgment.

¶ 15 We continue to follow our approach in *Elsener*, which directly undermines plaintiff's argument. There, as here, the appeal followed a bench trial, after which the trial court's alleged error became apparent only after it issued its judgment. *Id.* ¶ 53. Thus, in both cases, the parties only had an opportunity to raise their respective arguments in a posttrial motion. Most importantly, neither did so. Given these material similarities, *Elsener* compels us to conclude that plaintiff's arguments are forfeited.

¶ 16 Further, the portion of *Elsener* that plaintiff cites contains no language indicating that parties to a bench trial need not preserve errors that are apparent on the face of a judgment. Still, even if we were to accept this proposition, the face of the instant judgment does not establish that plaintiff proved that she was entitled to $56,880, or that the court entered a remittitur based on equitable principles.

> "A remittitur is an agreement by the plaintiff to relinquish, or remit, to the defendant that portion of the jury's verdict which constitutes excessive damages and to accept the sum which has been judicially determined to be properly recoverable damages. It is a judicial determination of recoverable damages and should not be construed as an agreement between the parties or a concession by the plaintiff that the damages were excessive." *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 253 (2006).

In its judgment, the trial court found that plaintiff was not entitled to the full $56,880 in damages because there was evidence of "an expectation that at least some of the rent would be forgiven due to the parties' familial relationship." Otherwise put, and despite plaintiff's contrary assertions, the judgment makes clear that plaintiff never proved the full amount of her damages to the trial court. Further, the judgment never references a remittitur, which relates to excessive jury verdicts. *Id.*

¶ 17 Plaintiff additionally cites *Lyntel Products, Inc. v. Alcan Aluminum Corp.*, 107 Ill. App. 3d 176, 180 (1981), to argue that "a post-trial motion is unnecessary where the complaining party could not reasonably raise [an] error before the court issued its ruling." *Lyntel* is distinguishable. There, the defendant argued that the trial court improperly granted judgment to the plaintiffs based on an unpled liability theory. *Id.* at 179-180. The plaintiffs, on the other hand, contended that the defendant forfeited its argument by failing to raise it below. *Id.* The First District observed, however, that the purported error only became apparent once the trial court had already ruled on

the defendant's posttrial motions. *Id.* at 180 n.3. Because the defendant therefore "could not have alleged [the] error" at trial or in its posttrial motion, the First District interpreted Rule 366(b)(3)(ii) to preserve the issue. *Id*. at 180 n.3. Here, by contrast, the damages issues became apparent immediately following the trial court's judgment, while plaintiff was still able to file a posttrial motion. Thus, unlike the defendant in *Lyntel*, plaintiff had an available mechanism to present her arguments to the trial court but elected not to do so. Accordingly, *Lyntel* is distinguishable and does not support plaintiff's contentions that her arguments were preserved.

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 20 Affirmed.