

installed the system. However, the Rybolts were dissatisfied with the workmanship and system performance, and sued Costello for breach of contract, negligence, fraud, and a violation of Ohio's Consumer Sales Practices Act. Sometime after filing their complaint, the Rybolts voluntarily dismissed their claim regarding the consumer act, but prosecuted the other three claims. Costello answered the Rybolts' complaint and filed a counter-claim, alleging that the Rybolts failed to honor the terms of a separate oral contract.

{¶13} Before the trial was to begin, Costello informed his attorney that he wanted to proceed pro se for financial reasons, and further instructed counsel to withdraw from the case. The day before the trial was set to begin, Costello's counsel filed a motion to withdraw. The morning of the trial, the trial court heard counsel's motion to withdraw and offered Costello the opportunity to explain his request to proceed pro se. During the exchange, Costello mentioned the possibility of limiting costs by having a bench trial instead of empanelling a full jury to hear the case. After considering the issue and speaking to his counsel, Costello agreed to a bench trial and signed a waiver of jury trial.

{¶14} The trial court heard the facts and evidence, and ruled in favor of the Rybolts for \$7,250. Costello now appeals the decision of the trial court, pro se, raising the following assignments of error.² Initially, we note that instead of challenging the trial court's direct judgment in favor of the Rybolts or the merits of the breach of contract claim, Costello's assignments of error focus on collateral issues raised before the bench trial began. Costello's first two assignments of error are interrelated, and for ease of discussion, will be discussed together.

{¶15} Assignment of Error No. 1

{¶16} "THE TRIAL COURT ERRED BY DENYING [COUNSEL'S] MOTION TO

1. Pursuant to Loc.R. 6(A), this case is hereby removed, sua sponte, from the accelerated calendar and placed on this court's regular calendar.

WITHDRAW AS COUNSEL."

{¶7} Assignment of Error No. 2

{¶8} "THE TRIAL COURT ERRED BY NOT ALLOWING APPELLANT PRO SE APPEARANCE."

{¶9} In his first two assignments of error, Costello argues that by denying his counsel's motion to withdraw, the trial court violated his right to proceed pro se. This argument lacks merit.

{¶10} Essentially, Costello asserts that the trial court denied his attorney's motion to withdraw as counsel, thereby denying his right to represent himself pro se at the scheduled jury trial. However, the record is clear that the trial court never denied the motion to withdraw and instead, that Costello voluntarily agreed to proceed with a bench trial after conferring with his counsel.

{¶11} Before the bench trial began, the trial court gave Costello's counsel the opportunity to argue his motion to withdraw. After listening to counsel explain the financial burdens Costello faced, the trial court permitted Costello to expound on his reasons for wanting to proceed pro se.

{¶12} "[Costello] Two days ago I received some bills from [counsel] that I realized at that point my costs far exceeded what I could afford. I also, Your Honor, was unaware or maybe just misunderstood that without a jury trial, if we did it through a judge, it would be much shorter, less expensive process. That may be something I want to consider. I didn't realize it would be a lot shorter. If I could discuss that with my counsel as an option.

{¶13} "[Court] Yes. You want to discuss it now?"

2. The Rybolts did not submit an appellees' brief, and according to App.R. 18(C), were not heard at oral arguments.

{¶14} "[Costello] If I may.

{¶15} "[Court] Go out in the hall and discuss it."

{¶16} The trial court then went off of the record while Costello and his counsel conferred in the hallway. When they returned, the court went back on the record and Costello announced his intention to withdraw the jury request and proceed with a bench trial. After the Rybolts also agreed to proceed with a bench trial, the trial court had the parties sign a jury waiver and the bench trial began.

{¶17} Costello's statements before the bench trial began demonstrate that he continued to consider himself represented, and that he believed a bench trial would be financially feasible. Costello addressed the court and asked for permission to discuss the idea of a bench trial "with my counsel," after broaching the subject of a bench trial without any prompting from the trial court. After the private hallway discussions, Costello voluntarily signed a jury waiver that listed Costello's counsel as "attorney for defendant." Because Costello went forward with the bench trial with retained counsel, the trial court never ruled on counsel's motion to withdraw, nor did it deny Costello the right to proceed pro se.

{¶18} Contrary to his assertion that the trial court denied his counsel's motion to withdraw, the record contains no such denial or entry. Instead, the record is clear that Costello voluntarily agreed to maintain counsel and proceed with a bench trial after waiving his right to a jury. Because the trial court neither denied counsel's motion to withdraw nor denied Costello the right to proceed pro se, Costello's first and second assignments of error are overruled.

{¶19} Assignment of Error No. 3

{¶20} "THE TRIAL COURT ERRED BY ALLOWING PLAINTIFF'S ATTORNEY TO FILE PRETRIAL STATEMENT BEYOND COURT DEADLINES."

{¶21} In his third assignment of error, Costello asserts that the trial court erred in accepting the Rybolts' pretrial statement because it was untimely filed. This argument lacks merit.

{¶22} It is within the sound discretion of the trial court to accept untimely filings, and the decision to do so will not be disturbed on appeal absent a showing of an abuse of discretion. *The News-Herald v. Bahr*, Lake App. No. 2002-L-176, 2003-Ohio-6223, ¶29. More than mere error of law or judgment, an abuse of discretion requires that the court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶23} Costello challenges the trial court's decision to accept the Rybolts' pretrial statement because it was filed on the day before trial, rather than at least seven days prior to the pretrial conference. Initially, we note that Costello never objected to the late filing. "Failure to timely object waives the opportunity for appellate review of any issue not preserved." *Fairlawn Landscape Supply v. Cook*, Summit App. No. 20547, 2001-Ohio-1635, 2001-WL-1280519, *1.

{¶24} Beyond waiver, Costello has failed to address the trial court's discretion or what impact the late filing had on his case. Instead of explaining why the court's attitude was unreasonable, arbitrary, or unconscionable in accepting the untimely filing, Costello's entire argument states, "all attorneys must adhere to court rules and deadlines."

{¶25} While we agree with Costello that the Butler County Court of Common Pleas Loc.R. 4.14(C) requires a party to file a pretrial statement seven days prior to the pretrial conference, he has failed to otherwise demonstrate how the trial court abused its discretion in accepting the untimely filing. Costello does not even contend that he was prejudiced by the late filing, or that the statement contained any information he was not

already aware of. In short, Costello failed to explain what impact the late filing had on the bench trial or how the decision was unreasonable, arbitrary, or unconscionable.

{¶26} Furthermore, Costello himself made several filings on the day before the trial was to begin, including a finalized witness and exhibit list. Given that both parties made untimely filings, neither party objected to the untimely filings of the other party, and Costello has failed to explain how he was prejudiced by the pretrial statement, we find no abuse of discretion in the trial court's decision.

{¶27} Even if Costello had preserved his untimely filing argument, he has failed to demonstrate that the trial court's decision was unreasonable, arbitrary, or unconscionable. Having found no abuse of discretion, Costello's final assignment of error is overruled.

{¶28} Judgment affirmed.

YOUNG, P.J., and POWELL, J., concur.