NOT DESIGNATED FOR PUBLICATION

No. 125,473

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

LINDA AGESEN,
Appellant,

v.

RANDY SINGLETARY,
Appellee.

MEMORANDUM OPINION

Appeal from Leavenworth District Court; JOAN M. LOWDON, judge. Opinion filed August 4, 2023. Affirmed.

Andrew E. Werring, of Farris, Fresh, and Werring Law Office, LLC, of Atchison, for appellant.

Jeffery A. Sutton, of Sutton Law Office, L.L.C., of Basehor, for appellee.

Before ATCHESON, P.J., MALONE and PICKERING, JJ.

PER CURIAM: Linda Agesen appeals the Leavenworth County District Court's ruling that the statute of limitations barred her civil action against Randy Singletary for delinquent rent he owed her from years ago in his continuing residential tenancy. On appeal, Agesen asserts the landlord-tenant relationship became an open account at the end of the original lease term, so no limitations period applied to the delinquency. We reject that claim as legally erroneous. She also asserts Singletary's partial payments and payments exceeding the monthly rent to reduce the arrearage tolled any statute of limitations. We reject that claim as insufficiently preserved for our consideration. The judgment of the district court for Singletary is affirmed.

FACTUAL AND PROCEDURAL SETTING

The relevant facts may be quickly recounted. In July 2011, Agesen entered into a written lease with Singletary calling for him to pay $1,450 a month for a house in Leavenworth he would occupy as his principal residence. The lease had a one-year term and imposed various rights and duties on Agesen and Singletary respectively as landlord and tenant. One of the provisions stated: "When the term of this Lease has expired, this Agreement shall continue on a month-to-month basis unless a new lease is signed[.]"

Sometime after the original term, Singletary lost his job and fell behind in paying rent. He paid no rent some months and less than the full amount other months. Agesen permitted Singletary to continue living in the house. Later, Singletary paid more than $1,450 for many months, and he testified at the trial he believed he had gotten current, so he paid the agreed-upon monthly rent going forward.

Agesen talked with her son about the situation. They looked at various records and prepared a ledger of Singletary's monthly payments. Their accounting showed Singletary had underpaid the rent by $34,650 through July 2021. Agesen filed this action on September 17, 2021, to recover the delinquent rent from Singletary. She did not seek possession of the premises. Singletary duly answered and asserted a host of affirmative defenses, including the running of the statute of limitations. See K.S.A. 2022 Supp. 60-208(c)(1) (identifying statute of limitations among other affirmative defenses).

The district court held a bench trial in April 2022, made oral findings and conclusions at a hearing a few weeks later, and made further oral findings later still at Singletary's request. Key for our purposes, the district court found that: (1) A three-year statute of limitations applied; (2) each failure to pay the full monthly rent amounted to an actionable wrong subject to the limitations period; (3) Singletary had timely paid rent for the three years preceding the filing of this action; (4) the parties had no agreement as to

how Singletary's monthly payments should be credited against the delinquency; and (5) the tenancy did not become an open account after the expiration of the original lease term. Accordingly, the district court entered judgment for Singletary based on his statute of limitations defense. The district court filed a one-page journal entry incorporating those rulings by reference. Agesen has timely appealed.

LEGAL ANALYSIS

Governing Limitations Period

The district court concluded the three-year statute of limitations in K.S.A. 60-512(1) governed because the landlord-tenant relationship was based on a contract "not in writing" after the expiration of the lease's one-year term. On appeal, Agesen says Singletary suggested to the district court the five-year limitations period for written contracts applied. See K.S.A. 60-511(1). The record shows that during the trial Singletary advocated for a three-year period. Agesen does not make an independent legal argument to us either that the district court erred or that a five-year statute of limitations governs. We, therefore, have no reason to look behind what the parties declined to actively dispute in front of the district court and, in turn, what the district court determined to be the appropriate limitations period. So we assume without deciding that the periodic rental payments at issue derive from an unwritten contract for purposes of the statute of limitations and, in turn, K.S.A. 60-512(1) applies.

As we understand the trial record, the parties did not dispute the amounts and dates of the rental payments contained in the ledger Agesen and her son prepared. The accuracy of the document has not been questioned on appeal. The ledger shows Singletary last underpaid the set rent in July 2018. In other words, from August 2018 forward, he paid no less than $1,450 and paid more in some months. After March 2019, he paid exactly $1,450 each month. Based on that evidence, the district court concluded

no underpayment or nonpayment of rent occurred in the three years immediately before Agesen filed suit in September 2021. And, thus, any otherwise actionable breaches of the agreement were barred because they happened outside the relevant limitations period.

Agesen's Claim for an Open Account

On appeal, Agesen reprises the argument to the district court that when the one-year term of the written lease ended, her landlord-tenant relationship with Singletary somehow transformed into an open account. We, like the district court, are unpersuaded.

In the leading case on open accounts, the Kansas Supreme Court outlined the transactional relationship this way:

> "[A]n account usually and properly kept in writing wherein are set down by express or implied agreement of the parties concerned a connected series of debit and credit entries of reciprocal charges and allowances, and where the parties intend that the individual items of the account shall not be considered independently, but as a continuation of a related series, and that the account shall be kept open and subject to a shifting balance as additional related entries of debits or credits are made thereto, until it shall suit the convenience of either party to settle and close the account, and where pursuant to the original, express, or implied intention there is but one single and indivisible liability arising from such series of related and reciprocal debits and credits, which liability is to be fixed on the one part or the other as the balance shall indicate at the time of settlement or following the last pertinent entry of the account. [Citations omitted.]" *Spencer v. Sowers*, 118 Kan. 259, 261-62, 234 P. 972 (1925).

That remains the working definition of an open account. See *Roderick v. XTO Energy, Inc.*, No. 08-1330-EFM-GEB, 2016 WL 4039641, at *14 (D. Kan. 2016) (unpublished opinion); *Sheldon Grain & Feed Co. v. Schuetz*, 207 Kan. 108, 112, 483 P.2d 1033 (1971). As the definition suggests, each debit entered in an open account does not trigger

a distinct statute of limitations because those obligations compose a single legal obligation to pay. *Spencer*, 118 Kan. at 261-62.

But a residential landlord-tenant relationship does not create an open account. Here, the lease itself did not. And its language expressly provided that the "Agreement," as embodied in the lease, would continue "on a month-to-month basis," negating the creation of an open account. The reciprocal rights and duties did not suddenly morph into an open account or some other contractual relationship at the end of the original one-year term. In short, the language of the lease is plainly to the contrary.

More broadly, the Kansas Residential Landlord and Tenant Act (KRLTA), K.S.A. 58-2540 et seq., undercuts the notion Agesen advances. Nothing in the Act suggests that a month-to-month tenancy should be treated as an open account. Rather, the relationship imposes substantial statutory rights and obligations on both landlords and tenants that extend well beyond a simple open account recording amounts owed or paid for goods or services provided periodically. See *Schartz v. Foster*, 15 Kan. App. 2d 213, 214-15, 805 P.2d 505 (1991) (upon expiration of one-year lease term, tenancy continued on month-to-month basis and remained subject to KRLTA); K.S.A. 58-2553 (duties of landlord); K.S.A. 58-2555 (duties of tenant).

Agesen has cited no authority holding a residential tenancy to be an open account. She suggests the district court erroneously distinguished *Sacher v. Paige*, 149 Kan. 662, 88 P.2d 1013 (1939), and, thus, at least indirectly offers the case as supporting authority for her position. The district court properly found *Sacher* inapposite. In *Sacher*, the Kansas Supreme Court affirmed a ruling that a landlord and a commercial tenant maintained an open account when the tenant regularly did work for the landlord. 149 Kan. at 664. The account included the tenant's rental payments due the landlord and the charges to the landlord for the tenant's work and for materials the tenant purchased to do

the work. The parties incorporated those recurrent and offsetting financial obligations into a single tab or account for their business relationship.

The circumstances in *Sacher* were materially different from the financial relationship between Agesen and Singletary. They had neither a commercial arrangement nor an interlocking exchange of services with concomitant payment obligations on each of them. Singletary was to pay an agreed-upon monthly amount to Agesen to live in a house she owned and rented to him. Nothing more and nothing less. Moreover, the KRLTA—a comprehensive statutory regulation that lay 35 years in the future when the court decided *Sacher*— governs their dealings and usurps an open account theory on these facts.

Application of Payments Made

As a cognate argument, Agesen submits she applied the payments Singletary made first to his delinquent rent even if a payment corresponded to the amount of the current month's rent or exceeded that amount. At the trial, she acknowledged she had no such agreement with Singletary. He testified that he understood the amount he paid above the monthly rent would be credited to the delinquency. In short, the parties did not discuss, let alone reach an express understanding on, crediting the payments. The lease did not address the situation. Nor does the KRLTA.

Here, the contractual arrangement was silent rather than ambiguous. In other words, Agesen and Singletary had not considered the possibility and never addressed it. That's different from addressing it in a vague or confusing way. A court may infer a reasonable term when the parties have failed to foresee a particular situation but have otherwise manifested an intent to be bound to a set of contractual expectations. *NEA-Coffeyville v. U.S.D. No. 445*, 268 Kan. 384, 398-400, 996 P.2d 821 (2000). The district court found Singletary's understanding to be reasonable and gave legal effect to it.

Agesen attempts to invoke a common-law doctrine that a debtor may direct how a payment should be applied against multiple obligations owed the same creditor but absent such direction the creditor may make the choice. She cites *Aetna Casualty and Surety Co. v. Hepler State Bank*, 6 Kan. App. 2d 543, Syl. ¶ 13, 630 P.2d 721 (1981), for that proposition and claims a right to credit the payments as she wished.

Under the circumstances here, Singletary's tender of the specific amount due as the current rent sufficiently manifested an intent to have the payment credited to that obligation rather than to any delinquency. See *Daube and Cord v. LaPorte County Farm Bureau Co-Op. Ass'n*, 454 N.E.2d 891, 894 (Ind. Ct. App. 1983); 70 C.J.S., Payment § 39 ("[P]ayment of the exact sum due on one of two claims indicates that the sum was intended in payment of the claim it would exactly pay."); 60 Am. Jur. 2d, Payment § 57. By parity of reasoning, the same would be true of those payments that exceeded the monthly rent—the first $1,450 should have been credited to the current rent and the balance to the arrearage absent a clear understanding otherwise. Here, too, Singletary paid only the agreed-upon monthly rent from March 2019 through July 2021 because he believed he had satisfied the arrearage. Agesen apparently neither disabused him of that mistaken belief nor informed him of how much she thought he still owed. Those circumstances suggest Agesen had not been applying the payments in the manner she claimed and did not realize Singletary remained delinquent until she consulted her son.

Avoiding Statute of Limitations Bar

Finally, Agesen alternatively argues that Singletary's partial payments reset any applicable statute of limitations under K.S.A. 60-520(a). She does not cite the statute but relies on caselaw construing it or legally comparable language in its predecessors. We decline to reach the merits of the argument because Agesen has not preserved the point for appellate review.

First, Agesen did not present or preserve the point in the district court in the way she now argues it to us. During closing argument in the bench trial, Agesen's lawyer told the district court that as a result of the partial payments, Singletary "abandon[ed] any argument . . . that the statute of limitations would have run." And the lawyer later stated, the statute of limitations defense should be rejected because "Mr. Singletary's own actions" in making partial payments in 2018 and 2019 "revived" the delinquencies—a position he presented "in the alternative" to the open account argument. But the lawyer never expanded on the argument by citing K.S.A. 60-520, referring to any caselaw, or explaining why the partial payments would have that legal effect. The record on appeal indicates K.S.A. 60-520 was not otherwise called to the district court's attention during the trial or in any filings from the parties.

Had the lawyer presented the argument in that abbreviated way to us, we would have rejected it as insufficiently briefed. *State v. Gonzalez*, 307 Kan. 575, 592, 412 P.3d 968 (2018) ("Simply pressing a point without pertinent authority, or without showing why it is sound despite a lack of supporting authority or in the face of contrary authority, is akin to failing to brief an issue."); *Mid-Continent Specialists, Inc. v. Capital Homes*, 279 Kan. 178, 191, 106 P.3d 483 (2005). Likewise, the perfunctory recitation of a legal proposition in a sentence or two to a district court without elaboration or supporting authority does not present the issue in a way demanding a determination on the merits. The federal courts have so recognized. *AtriCure, Inc. v. Meng*, 12 F.4th 516, 531 (6th Cir. 2021); *Doe v. Trump Corporation*, 6 F.4th 400, 410 (2d Cir. 2021); *Soo Line Railroad Company v. Consolidated Rail Corporation*, 965 F.3d 596, 601 (7th Cir. 2020). On the whole, the rule is a good one. A district court should have no obligation to formally digest and address every fleeting legal thought spun out for the first time in a lawyer's oral argument. A lawyer's quick reference incorporating an argument detailed in earlier filings would be another matter. But that's not what happened here.

We need not consider a detailed legal argument presented on a point raised for the first time on appeal. *In re Adoption of Baby Girl G.*, 311 Kan. 798, 801, 466 P.3d 1207 (2020); *Joritz v. University of Kansas*, 61 Kan. App. 2d 482, 505, 505 P.3d 775 (2022). In her appellate brief, Agesen failed to identify where in the district court record she preserved this issue, as required by Supreme Court Rule 6.02(a)(5) (2023 Kan. S. Ct. R. at 36). That omission alone would permit us to decline consideration of the argument as unpreserved. See *Adoption of Baby Girl G.*, 311 Kan. at 802-03. Even so, a party may request that an argument be considered for the first time on appeal in narrowly defined situations when: (1) The point turns on a question of law or undisputed facts and would decide the litigation; (2) review would serve the ends of justice or preserve a fundamental right; or (3) the district court reached the correct result for the wrong reason. 311 Kan. at 804. An appellate court may make a discretionary decision to take up an argument upon such a showing. Here, Agesen did not engage the process for presenting a new point and did not invite review based on any of the three recognized grounds.

We, therefore, find Agesen's argument that Singletary's partial payments may have tolled or reset the statute of limitations in some way to be unpreserved. Agesen has not endeavored to explain why we should consider the argument despite the lack of preservation. Accordingly, we decline to reach the merits of the contention.

Affirmed.