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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1906**

Portfolio Recovery Associates, LLC,
Respondent,

vs.

Carolyn J. Dahlen, a/k/a Carolyn J. Meyer, a/k/a Carolyn Peterman,
Appellant.

**Filed August 13, 2012
Affirmed
Willis, Judge***

St. Louis County District Court
File No. 69DU-CV-11-1643

Joel R. Boon, Johnson, Rodenburg & Lauinger, Bismarck, North Dakota (for respondent)

Carolyn Dahlen, Duluth, Minnesota (pro se appellant)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Willis, Judge.

UNPUBLISHED OPINION

WILLIS, Judge

Appellant challenges the district court's summary judgment in favor of respondent on its claim for recovery of credit-card debt, arguing that there is a genuine issue of material fact regarding whether the debt was properly assigned to respondent by the card-

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

issuing bank and that the court erred by failing to consider her motion to dismiss and asserted defenses. We affirm.

FACTS

Pro se appellant Carolyn Dahlen opened a credit-card account with Advanta Bank Corp. Dahlen stopped making payments and owed \$12,056.80 when Advanta Bank transferred her account to respondent Portfolio Recovery Associates LLC (PRA). The bill of sale and assignment transferred from Advanta Bank to PRA all “right, title and interest in . . . together with the right to collect all principal, interest, other amounts due or other proceeds of any kind with respect to the Accounts remaining due and owing,” which included Dahlen’s account.

On June 30, 2010, PRA served Dahlen with a summons and complaint seeking judgment against Dahlen for (1) debt owed on the account in the amount of \$12,056.80; (2) interest owed in the amount of \$1,480.51; (3) additional interest to date of judgment; and (4) court costs to that date and to the date of judgment. On August 4, 2010, PRA served Dahlen with requests for admissions, but she did not respond.

On May 23, 2011, PRA filed a summary-judgment motion. PRA submitted a memorandum in support of its motion; a copy of the requests for admissions; a statement of undisputed facts, based in part on the unanswered requests for admissions; an affidavit by Kelly Roberts, the custodian of records for PRA; and an exhibit showing that Advanta Bank charged off Dahlen’s account and no amount is owed to Advanta Bank.

In response, Dahlen submitted a sworn document entitled “Sworn Motion in Opposition to Summary Judgment,” in which she asserted affirmative defenses and

argued against summary judgment. Dahlen signed the document on June 3, 2011, and the district court filed it on June 6, 2011.

PRA provided Dahlen with a copy of the bill of sale and assignment before the hearing on the summary-judgment motion began on July 25, 2011. At the hearing, Dahlen was not represented by counsel. Dahlen alleged that she responded to the summons and complaint by providing PRA with a document entitled “Sworn Motion to Dismiss Based on Failure to Attach Indebtness Contract and for a More Definite Statement.” Dahlen signed the document but did not date it, and it is not notarized. Dahlen told the district court that she sent the motion to dismiss to PRA by certified mail but did not file it with the court because there was no case number on the summons and complaint.

PRA’s counsel explained to the district court that PRA commenced the lawsuit by serving the summons and complaint on Dahlen but filed no papers with the court until it moved for summary judgment. Thus, the court did not assign a case number to the matter until May 2011, when PRA filed its notice of motion and motion for summary judgment. Dahlen had sent her motion to dismiss and memorandum opposing summary judgment to PRA, but when it received the documents is unclear from the record. When the court asked counsel when PRA received Dahlen’s motion to dismiss, counsel explained that PRA had the envelopes in which the two documents it received from Dahlen were delivered: a certified-mail envelope dated June 3, 2011, and a first-class envelope on which the mailing date is illegible. PRA attached copies of these envelopes to its memorandum in reply to Dahlen’s opposition to summary judgment.

Dahlen argued that she could not have timely responded to the complaint because there was no case number and PRA did not provide a copy of the indebtedness contract. Dahlen challenged the bill of sale's legitimacy and asserted that she did not have the opportunity to consult legal counsel on this issue because PRA did not provide her with a copy until just before the hearing began. She also argued that PRA violated consumer-protection laws. The district court continued the hearing to allow Dalen to file her motion to dismiss and consult legal counsel regarding the legitimacy of the bill of sale.

Dahlen filed her motion to dismiss on July 28, 2011, but did not request a hearing on the motion. On August 15, 2011, the district court held the continued hearing on the summary-judgment motion. Dahlen argued that there was a material issue of fact concerning the legitimacy of the bill of sale and that PRA did not prove that it lawfully acquired her debt from Advanta Bank or that she owes the debt to PRA. She submitted no evidence to support her arguments. The court granted summary judgment to PRA, concluding that Dahlen failed to establish a "genuine issue of material fact with respect to the validity or amount of the original debt to Advanta Bank." This appeal follows.

D E C I S I O N

On appeal from summary judgment, this court examines the record to determine whether any genuine issues of material fact exist and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). There is no genuine issue of fact that precludes granting summary judgment if the nonmoving party presents evidence "which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving

party's case to permit reasonable persons to draw different conclusions.” *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009) (quotation omitted). We view the evidence in the record “in the light most favorable to the party against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Dahlen argues that she offered sufficient proof of issues of material fact to defeat summary judgment. She asserts that she showed that Advanta Bank's assignment of her debt to PRA was “questionable” because PRA provided neither an affidavit of the person who signed the bill of sale nor any “testimony.” Dahlen's assertion that PRA did not provide “testimony” is incorrect: PRA provided Roberts's affidavit. *See e.g., MacRae v. Grp. Health Plan, Inc.*, 753 N.W.2d 711, 722 (Minn. 2008) (referring to affidavit submitted to the district court as testimony in considering summary-judgment motion). Affidavits are admissible and appropriate to support a motion for summary judgment. *See* Minn. R. Civ. P. 56.03 (stating that summary judgment is appropriate when “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law”).

In addition to Roberts's affidavit and the attached copy of Advanta Bank's statement of Dahlen's account, PRA submitted a copy of the bill of sale. This evidence establishes that Dahlen had a credit-card account with Advanta Bank, that Dahlen owed \$12,056.80 on the account, and that Advanta Bank transferred Dahlen's account to PRA. The bill of sale states that Advanta Bank transferred to PRA all “right, title and interest” and “the right to collect” the amount owing on the account. Dahlen provides no citation

of authority to support her assertions that the bill of sale and Roberts's affidavit were insufficient to show that Advanta Bank lawfully assigned Dahlen's account to PRA or that an affidavit of the person who signed the bill of sale is required to prove its legitimacy. Additionally, Dahlen submitted no evidence to support her contention that the assignment of her account to PRA was not lawful. Thus, there is no evidence in the record that creates a genuine issue of fact regarding the amount owed on the account or the legitimacy of the assignment of her debt by Advanta Bank to PRA.

On appeal, Dahlen makes several other unpersuasive arguments. She alleges that the district court erred by failing to consider her motion to dismiss. We disagree. Dahlen's motion to dismiss was based on PRA's failure to attach a cardholder's agreement and copy of the bill of sale to the complaint. The Minnesota Rules of Civil Procedure do not impose such requirements at the pleading stage. *See* Minn. R. Civ. P. 8.01 (stating that a pleading setting forth claim for relief "shall contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought"). Moreover, when the court considered the motion for summary judgment at the continued hearing, Dahlen had received a copy of the bill of sale and had been provided with time to consult counsel on the issue of its legitimacy.

Dahlen also complains that PRA "never scheduled the motion to dismiss and moved for summary judgment despite the pending dismissal motion." But PRA was not required to schedule a hearing for Dahlen's motion, and Dahlen did not schedule a hearing. *See* Minn. R. Gen. Pract. 115.02–.03 (outlining the requirements to obtain a hearing on a dispositive motion, including the requirement that the party bringing a

motion must obtain a motion date and time from the court administrator and provide timely notice of the hearing to the other parties).

Dahlen argues that the district court erred by failing to address the defenses that she raised in opposing summary judgment. This argument is unavailing. In her memorandum opposing summary judgment, Dahlen claimed that PRA “violated the truth in lending act . . . when [it] offered and executed the loa[n]” and “violated [the] fair credit and collection act by their actions.” At the first hearing, Dahlen asserted orally that PRA engaged in unfair collection practices in several particulars. But Dahlen did not raise this issue at the second hearing, and at no point did she offer any evidence to support her claims. And on appeal, Dahlen points to no evidence that supports her claims or that creates an issue of material fact precluding summary judgment on the claims.

“[T]his court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and they must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). “When an appellant acts as attorney pro se, appellate courts are disposed to disregard defects in the brief, but that does not relieve appellants of the necessity of providing an adequate record and preserving it in a way that will permit review.” *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), *review denied* (Minn. Apr. 13, 1990). A party opposing summary judgment “may not rest upon the mere averments or denials of the adverse party’s pleading but must present specific facts showing that there is a genuine issue for trial.” Minn. R. Civ. P. 56.05. Because Dahlen presents no evidence to support

her claims that PRA violated her rights under consumer-protection laws, summary judgment is appropriate.

Dahlen contends that because she denied PRA's requests for admissions, the district court's order and memorandum of law "indicat[ing] that [Dahlen] never responded to the requests for admissions" is "not true." It is undisputed that PRA served requests for admissions on Dahlen on August 4, 2010. If a party does not respond within 30 days to matters of which an admission is requested, the matters are deemed admitted. Minn. R. Civ. P. 36.01. At the first hearing, Dahlen asserted that she responded to the requests for admissions in her motion to dismiss. But on appeal, Dahlen concedes she did not serve her motion to dismiss until July 2011, which is well beyond the 30-day time period, and in any event, our review of the record does not support Dahlen's contention that she denied the requests for admissions in her motion to dismiss. And even excluding PRA's submission of undisputed facts based on the unanswered requests for admissions, the evidence PRA submitted at summary judgment establishes the facts essential to its claim.

The district court did not err in granting summary judgment.

Affirmed.