



Kenneth B. Sturdy, (“Sturdy”) appeals from the trial court’s order granting summary judgment in favor of Asset Acceptance LLC (“Asset”). Sturdy presents several issues for our review. However, we find the following issue to be dispositive: whether Asset was entitled to summary judgment after Sturdy failed to designate evidence in opposition to Asset’s motion for summary judgment.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On June 25, 2007, Asset filed a complaint against Sturdy alleging that Asset had purchased Sturdy’s credit card account from Citibank. Asset sought payment of the balance due on the account. Sturdy, *pro se*, filed a response to the complaint in which he requested that the complaint be dismissed. Asset filed a motion for summary judgment with its designation of evidence on March 24, 2008. The trial court issued an order setting Asset’s motion for summary judgment for hearing, explaining in general the summary judgment procedure, and advising Sturdy as follows:

8. That this Order is not meant to be a comprehensive summary of all requirements under Trial Rule 56, the Court strongly urges that a non-represented party consult with legal counsel if the party opposes the Motion for Summary Judgment.

*Appellee’s App.* at 28. Sturdy, *pro se*, filed a response to Asset’s motion for summary judgment, but did not designate evidence.

At the beginning of the summary judgment hearing, the trial court inquired as follows:

THE COURT: . . . .And the Defendant is present pro se. . . .Mr. Sturdy, first of all you've chosen to be represented without counsel?

MR. STURDY: Yes.

THE COURT: Okay, and you've not designated any evidence, but you have responded to the summary judgment.

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MR. STURDY: --responded to the, yes, summary judgment. Correct.

*Id.* at 4. The trial court heard the parties' arguments, took the matter under advisement, and stated the following:

THE COURT: You never filed a formal answer either, did you? You filed a response on July 11<sup>th</sup>. Then you filed a response to the summary judgment request on April 15<sup>th</sup> of this year. I'm going to give you the benefit of doubt and show those three exhibits as designated—those[sic] you didn't actually do so. I will research the law and issue a decision.

*Id.* at 20. The exhibits were: (1) a letter from the National Arbitration Forum requesting additional information in an arbitration between Sturdy and Asset; (2) an order from the National Arbitration Forum dismissing the arbitration between Sturdy and Asset without prejudice; and (3) a letter from Sturdy's attorney regarding settlement of federal Fair Debt Collection Practices Act claims. *Id.* at 54-56.

Ultimately, the trial court issued an order that Asset was entitled to the entry of summary judgment in their favor finding that "[Sturdy] has not denied owing the debt and [Asset] has provided sufficient evidence on the record to prove that the account was transferred from the original creditor to [Asset]." *Appellant's App.* at 3. Thereafter, Sturdy filed a motion to vacate judgment which the trial court treated as a motion to correct error. The trial court denied Sturdy's motion reiterating that "Sturdy, failed to

designate any evidence in his Response to Plaintiff's Motion for Summary Judgment that disputed the debt. Therefore, the Court's finding that the Defendant, Kenneth B. Sturdy, did not (officially) dispute the debt owed to Plaintiff stands." *Id.* at 7. Sturdy now appeals.

### **DISCUSSION AND DECISION**

On appeal, the standard of review for summary judgment is the same as used in the trial court: summary judgment is appropriate only where the evidence shows there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Boggs v. Tri-State Radiology, Inc.*, 730 N.E.2d 692, 695 (Ind. 2000). Review of a summary judgment motion is limited to those material facts designated to the trial court. *Id.* All facts and reasonable inferences drawn from those facts are read in favor of the non-moving party. *Id.* A grant of summary judgment may be affirmed upon any theory supported by the designated evidence. *Purdy v. Wright Tree Serv., Inc.*, 835 N.E.2d 209, 212 (Ind. Ct. App. 2005). Summary judgment must be carefully reviewed to ensure that no party is denied their day in court. *Reeder v. Harper*, 788 N.E.2d 1236, 1240 (Ind. 2003).

Trial Rule 56(C) requires that "[a]t the time of filing the motion [for summary judgment] or response, a party shall designate to the court all parts of pleadings, depositions, answers to interrogatories, admissions, matters of judicial notice, and any other matters on which it relies for purposes of the motion." "Parties may choose the placement of evidence designation." *Filip v. Block*, 879 N.E.2d 1076, 1081 (Ind. 2008). "Designation may be placed in a motion for summary judgment, a memorandum

supporting or opposing the motion, a separate filing identifying itself as the designation of evidence, or an appendix to the motion or memorandum.” *Id.* “The only requirement as to placement is that the designation clearly identify listed materials as designated evidence in support of or opposition to the motion for summary judgment.” *Id.* Trial Rule 56(C) provides that “[s]ummary judgment shall not be granted as of course because the opposing party fails to offer opposing affidavits or evidence, but the court shall make its determination from the evidentiary matter designated to the court.”

Here, Sturdy did not designate evidence in opposition to Asset’s motion for summary judgment. However, the trial court gave Sturdy the benefit of the doubt and considered the three exhibits Sturdy offered. Asset, on the other hand, in support of its motion for summary judgment designated, the complaint with an attached affidavit of balance and statement of account, Sturdy’s response to the complaint, Asset’s motion and memorandum in support of summary judgment with attached exhibits, and a notice of filing with attached documents.

Our review of the designated evidence leads us to the conclusion that the trial court properly granted summary judgment in favor of Asset. Although Sturdy made the argument that he disputed the debt, he did not designate any evidence in his response to Asset’s motion for summary judgment that supported his claim. The three exhibits he relied on, but did not designate, do not dispute the debt Asset sought to collect. On the other hand, Asset presented evidence that supported its claim.

Affirmed.

BAKER, C.J., and BARNES, J., concur.