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IN THE
COURT OF APPEALS OF INDIANA

QUAN NING HUANG,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 02A03-1012-MF-661
	)	
TANAS B. DONEV,	)	
	)	
Appellee.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Daniel G. Heath, Judge
Cause No. 02D01-0812-MF-797

May 23, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Quan Ning Huang, pro se, appeals the trial court's grant of summary judgment and corresponding entry of a decree of foreclosure in favor of Tanas B. Donev. Huang presents the following consolidated and restated issue for our review: Did the trial court err in granting summary judgment?

We affirm.

On March 2, 2007, a default judgment was entered against Huang and Li Song in the sum of $90,720.00 plus costs. After Huang and Song failed to pay said judgment, Donev filed a foreclosure action against Huang on December 8, 2008, seeking to foreclose upon certain commercial property owned by Huang. Shortly thereafter, Huang and Song filed a motion to set aside default judgment in the original action. The foreclosure action was stayed pending resolution of the underlying circuit court case. When Huang and Song failed to appear at the hearing, the circuit court denied their motion to set aside. Huang and Song then appealed the denial. Finding no merit to their pro se appeal in light of their complete failure to present any evidence below in support of their motion, another panel of this court affirmed the trial court in a memorandum decision issued August 14, 2009. *Huang v. Donev*, Cause No. 02A03-0902-CV-72, *trans. denied*.

Thereafter, on September 10, 2010, Donev filed a motion for summary judgment, along with designated evidence, in the foreclosure action. The court set the matter for hearing on November 16, 2010. Huang did not respond to the motion for summary judgment, nor did he seek an extension of time to respond. Rather, on November 12, Huang filed in the circuit court a second motion to set aside the underlying default judgment.[1] Four

[1] We observe that this second motion was filed more than two months after Donev's motion for summary judgment and well after Huang had missed his opportunity to designate evidence.

days later in the instant case, Huang appeared pro se at the summary judgment hearing and informed the court that he had recently filed in the circuit court a new motion to set aside the underlying default judgment. As Huang had failed to timely respond to the summary judgment motion, the trial court found no genuine issue of material fact. Based upon Donev's designated evidence, the trial court entered summary judgment against Huang and subsequently issued its decree of foreclosure.

On appeal, Huang argues that the trial court was required to take judicial notice of Huang's second motion to set aside the default judgment filed in the circuit court four days before the summary judgment hearing.[2] Huang claims that the motion to set aside creates "genuine issues of material fact as to the validity of the underlying judgment, judgment lien and the present foreclosure action." *Appellant's Brief* at 6.

> Indiana Trial Rule 56, which governs summary judgment proceedings, provides that "[a]n adverse party shall have thirty (30) days after service of the motion to serve a response and any opposing affidavits." Ind. Trial Rule 56(C). It also provides, "For cause found, the Court may alter any time limit set forth in this rule upon motion made within the applicable time limit." T.R. 56(I). When a nonmoving party fails to respond to a motion for summary judgment within thirty days by either filing a response, requesting a continuance under Trial Rule 56(I), or filing an affidavit under Trial Rule 56(F), the trial court cannot consider summary judgment filings of that party subsequent to the thirty-day period. *Borsuk v. Town of St. John*, 820 N.E.2d 118, 123 n. 5 (Ind. 2005).

Regalado v. Estate of Regalado, 933 N.E.2d 512, 518 (Ind. Ct. App. 2010). "If the non-movant fails to properly respond or designate evidence within the thirty-day time period set forth in T.R. 56, and the moving party has shown that he is entitled to summary judgment,

then summary judgment *must* be entered against the non-moving party." *Morton v. Moss*, 694 N.E.2d 1148, 1151 (Ind. Ct. App. 1998) (emphasis supplied). In other words, the non-movant "may not wait until the summary judgment hearing to oppose the motion." *Id*.

In the instant case, Huang did not respond in writing to Donev's motion for summary judgment and did not file a request for an extension of time to respond. Rather, at the summary judgment hearing, Huang attempted to orally designate evidence by asking the court to take judicial notice of another proceeding. This untimely request was properly denied by the trial court. *See* T.R. 56(C) ("[a]t the time of filing the motion 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") (emphasis supplied).

Because Huang failed to properly respond, the trial court was obligated to grant Donev's motion as long as Donev's designated evidence warranted entry of summary judgment. *See Morton v. Moss*, 694 N.E.2d 1148. Huang does not challenge the court's finding that Donev's designated evidence supported the grant of summary judgment.

We conclude that Huang's pro se appeal is wholly without merit, as was his previous appeal in the underlying action. The trial court properly granted summary judgment in favor of Donev, who is entitled to collect on his 2007 civil judgment without further delay.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.

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[2] Shortly after the summary judgment hearing in this case, the circuit court denied Huang's second motion to set aside the default judgment. Huang has appealed that ruling, and his (third) appeal is currently pending