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IN THE
COURT OF APPEALS OF INDIANA

GREGG MILLER,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 71A04-1011-CT-738
	)	
AMERICA'S DIRECTORIES, INC. and STUDIO A ADVERTISING AND MARKETING,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE ST. JOSEPH CIRCUIT COURT
The Honorable Michael G. Gotsch, Judge
The Honorable David T. Ready, Magistrate
Cause No. 71C01-0112-CT-263

October 18, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-plaintiff Gregg Miller appeals the trial court's order granting summary judgment in favor of America's Directories, Inc. and Studio A Advertising and Marketing (ADI). Specifically, Miller contends that the trial court erred when it granted summary judgment in favor of ADI on Miller's wrongful termination claim because his employment with ADI fell outside the employment at will doctrine. Concluding that Miller has failed to provide this Court with a sufficient record on appeal to resolve this issue, we affirm.

FACTS

Miller began his employment with ADI on August 16, 1999. Prior to accepting the position with ADI, Miller had been a party to an employment agreement with Intelligent Communication Group LLC (ICG) (the ICG agreement). Miller's employment term under the ICG agreement was for five years and provided for the following: (1) base salary of $110,000; (2) discretionary bonus of up to 20% of the base salary; (3) ten sick days; (4) fifteen vacation days for first year and twenty days each year for the remainder of employment period; (5) health insurance; (6) entertainment expense account; and (7) stock options.

The ICG agreement allowed for termination "for Cause" with some types of cause requiring a thirty-day notice and opportunity to correct. Appellant's App. p. 14. It also allowed for termination "for any or no reason" during the period of employment, with such termination being effective thirty days following notification. Id. The ICG agreement further provided that if an employee was terminated without cause or if the employee voluntarily terminated his employment for good reason, the employee was entitled to: "(1)

all earned Base Salary, Accrued Vacation Pay, if any, and reimbursement for incurred business expenses . . .;" (2) discretionary bonus, if any, prorated to date of termination; and "(3) severance compensation in an amount equal to Employee's monthly Base Salary for a period of three (3) months following such termination." Id. at 15-16.

Although the record is unclear, at some point ADI terminated Miller. On November 2, 2006, Miller filed a complaint against ADI, alleging, among other things, that ADI wrongfully terminated him. Miller contended that he gave up his employment under the ICG agreement based on a promise by ADI that he would have the same or similar security in employment with ADI. Id. at 24.

On November 7, 2007, ADI filed a motion for summary judgment, which initially was denied. After reconsideration, the trial court reversed itself and granted summary judgment in favor of ADI on June 23, 2010. On November 17, 2010, the trial court made its ruling a final judgment under Indiana Trial Rule 54(B). Miller now appeals.

DISCUSSION AND DECISION

Miller argues that the trial court erred when it granted summary judgment in favor of ADI on his wrongful termination claim. A grant of summary judgment is reviewed de novo. Williams v. Tharp, 914 N.E.2d 756, 761 (Ind. 2009). When reviewing a grant or denial of summary judgment, we apply the same standard as the trial court. Dreaded, Inc. v. St. Paul Guardian Ins. Co., 904 N.E.2d 1267, 1269 (Ind. 2009). Considering only those facts that the parties designated to the trial court, we must determine whether summary judgment is appropriate because the designated evidence shows that there is no genuine issue of material

fact and that the moving party is entitled to judgment as a matter of law. Dreaded, 904 N.E.2d at 1269-70; see also Ind. Trial Rule 56(C). We construe the pleadings, affidavits, and designated evidence in the light most favorable to the non-moving party, and the moving party has the burden of demonstrating the absence of a genuine issue of material fact. Beatty v. LaFountaine, 896 N.E.2d 16, 20 (Ind. Ct. App. 2008).

Here, the parties submitted an agreed statement of the record that the trial court certified was "accurate and adequate for the resolution of issues presented by the appeal." Appellant's App. p. 10. We cannot agree with this determination and do not believe that the agreed record alone is adequate for the resolution of the issue raised on appeal. As stated above, our standard of review is de novo, and our review is limited to the evidence designated to the trial court. See Hughes v. King, 808 N.E.2d 146, 147 (Ind. Ct. App. 2004) (stating that "[o]ur review of a trial court's grant of summary judgment is de novo, but our review is limited to the designated evidence").

In the present case, the record on appeal does not contain any of the materials presented to the trial court and used in its determination on summary judgment. We do not have the motion for summary judgment, memoranda in support or opposition of such motion, any affidavits, depositions, discovery responses, or other designated materials, or any stipulation of facts. "Where, as here, a party appeals the trial court's entry of summary judgment, we can only conduct a de novo review if the parties have provided us with a complete copy of the evidence designated to the trial court." Id. at 148. This court has been provided with nothing by which a decision regarding summary judgment can be made. The

materials submitted by the parties on appeal fail to demonstrate either that there was no genuine issue of material fact or that summary judgment should have been granted as a matter of law.

That being said, one method of resolving this issue would be to suspend consideration of the appeal until an adequate record is obtained. However, although we review a trial court's grant of summary judgment de novo, the trial court's judgment is presumed to be valid. Malone v. Price, 755 N.E.2d 213, 216 (Ind. Ct. App. 2001). Accordingly, it was Miller's responsibility to show this Court that the trial court erred. See Bambi's Roofing, Inc. v. Moriarty, 859 N.E.2d 347, 351 (Ind. Ct. App. 2006) (stating that "[t]he party appealing the grant of summary judgment has the burden of persuading this court that the trial court's ruling was improper"). Because Miller has failed to provide us with an adequate record, he has failed to meet his burden. Consequently, we affirm the decision of the trial court.

The judgment of the trial court is affirmed.

BROWN, J., concurs.

KIRSCH, J., dissents with opinion.

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KIRSCH, Judge, dissenting.

While I fully agree with my colleagues that the record on appeal is inadequate to review the propriety of the trial court's grant of summary judgment, I disagree that the sanction here imposed is the proper remedy for such failure. Here, the parties and the trial court agreed and stipulated that the agreed record submitted by the appellant was adequate. Here, the parties and the trial court erred, but only the appellant bears the responsibility of their collective error. I believe such a result to be both bad law and bad policy.

Accordingly, I respectfully dissent.