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IN THE
COURT OF APPEALS OF INDIANA

DONALD FRAZIER,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 71A03-0903-CV-87
	)	
ASSET ACCEPTANCE, LLC,	)	
	)	
Appellee-Petitioner.	)	
	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jenny Pitts Manier, Judge
Cause No. 71D05-0708-CC-1096

November 24, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Donald Frazier, *pro se*, appeals the trial court's judgment arising from a case in which Asset Acceptance, LLC, purchased his delinquent Citibank credit card account and sought to collect from him the amounts due on the account. Frazier contends that the trial court erred in denying his motion to reconsider his motion for relief from judgment under Trial Rule 60(B)(6), which provides that a court may upon motion relieve a party from a void judgment. His Trial Rule 60(B)(6) motion alleged that the judgment was void because the trial court lost subject matter jurisdiction when it entered judgment on a claim not properly pled in Asset Acceptance's complaint. Finding no defect in the trial court's subject matter jurisdiction, we affirm.

Facts and Procedural History[1]

In early 2001 Frazier secured a credit card with Citibank and subsequently accrued a balance on the account. Upon delinquency, Citibank "charged-off" the account in June 2003.[2] In April 2006 Citibank assigned to Asset Acceptance for value Frazier's account, which had at that point a principal balance of $4849.28. In August 2007 Asset

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[1] We remind Frazier that the statement of facts should be presented in narrative form in the light most favorable to the judgment and should not be argumentative. *See* Ind. Appellate Rule 46(A)(6).

[2] At trial, the court asked Asset Acceptance's witness to explain the term "charge off":

> Q And when you say "charge off," what does that mean? What do you mean by that?
> A Well, various creditors, depending on their situation, will -- if an account does go into delinquency, they have a policy whereby if it's delinquent for, just for an example, six months, then they will charge it off.
> Q On their books?
> A Right. They write it off on their books.

Tr. p. 13.

Acceptance filed a complaint in St. Joseph Superior Court alleging that Frazier "is indebted to the Plaintiff under the agreement or account evidenced by the exhibit(s), as attached and incorporated hereto as Exhibit 'A.'" Appellant's App. p. 5. Exhibit A includes: (1) a "Statement of Account" indicating Asset Acceptance as Citibank's assignee with regards to Frazier's account and details of that account, *id.* at 6, and (2) an affidavit of Asset Acceptance's supervisor stating that Frazier owed $4849.28 to Asset Acceptance because it had purchased Frazier's account and all the rights connected to it, *id.* at 7.

After a bench trial on April 4, 2008, the trial court entered judgment in favor of Asset Acceptance. On April 23, 2008, Frazier, *pro se*, filed a motion to correct errors. Because the Chronological Case Summary does not indicate that the trial court ever issued a ruling on the motion, it was deemed denied pursuant to Indiana Trial Rule 53.3(A) on June 9, 2008. Approximately six months later, on December 8, 2008, Frazier, *pro se*, filed a Trial Rule 60(B)(6) motion, which alleged that the judgment was void because the trial court lost subject matter jurisdiction when it entered judgment on a claim not properly pled in Asset Acceptance's complaint.[3] In January 2009 Asset Acceptance filed a response, a hearing on the motion was held, and the motion was denied. That same month, Frazier, *pro se*, filed a motion to reconsider his Trial Rule 60(B)(6) motion, which was also denied. Frazier, *pro se*, now appeals.[4]

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[3] In his Trial Rule 60(B)(6) motion, Frazier also alleged violations of various federal statutes; however, these issues are not raised on appeal.

[4] Contrary to Frazier's contentions in his appellate brief, *pro se* litigants are held to the same standard as are licensed lawyers. *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005).

Discussion and Decision

Frazier contends that the trial court erred in denying his motion to reconsider his Trial Rule 60(B)(6) motion. His Trial Rule 60(B)(6) motion alleged that the judgment was void because the trial court lost subject matter jurisdiction when it entered judgment on a claim not properly pled in Asset Acceptance's complaint. Specifically, Frazier stated, "The Court did not have authority or inherent power to transform the Plaintiff's claim for breach of agreement to another account stated action." Appellant's Br. p. 10. Frazier's argument assumes that such a procedural error results in a loss of subject matter jurisdiction. Our Supreme Court has commented on the frequent mischaracterization of the effect of a procedural error:

> Attorneys and judges alike frequently characterize a claim of procedural error as one of jurisdictional dimension. The fact that a trial court may have erred along the course of adjudicating a dispute does not mean it lacked jurisdiction. As Justice Arterburn wrote four decades ago:
>
> > Far too often there is an inclination in a law suit to attempt to convert a legal issue into one of "jurisdiction" and from that point contend all actions of the court are void, and that the question of jurisdiction may be raised at any time or that the proceedings are subject to collateral attack and are a matter for original writs in this court.

K.S. v. State, 849 N.E.2d 538, 541 (Ind. 2006) (quoting *J.I. Case Co. v. Sandefur*, 245 Ind. 213, 217-18, 197 N.E.2d 519, 521 (1964)). "'The question of subject matter jurisdiction entails a determination of whether a court has jurisdiction over the general class of actions to which a particular case belongs.'" *Id.* at 542 (quoting *Troxel v. Troxel*, 737 N.E.2d 745, 749 (Ind. 2000), *reh'g denied*). The Indiana Code provides that the St. Joseph Superior Court has "[o]riginal, appellate, concurrent, and coextensive jurisdiction

with the circuit court in all civil cases, criminal cases, and probate matters." Ind. Code § 33-33-71-8(1). Thus, the St. Joseph Superior Court had subject matter jurisdiction over the instant case because it is a civil case, and whether the judgment was based on a claim not properly raised does not affect that subject matter jurisdiction.[5] Because the instant case does not implicate subject matter jurisdiction, Frazier's Trial Rule 60(B)(6) motion presented no valid basis for a void judgment. The trial court did not err in denying his motion to reconsider it. We will not allow Frazier to use Trial Rule 60(B)(6) to resurrect his right to appeal.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.

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[5] We note that the complaint was sufficiently pled. Frazier contends that the complaint did not give him sufficient notice that it was based on his failure to pay an account stated. Generally, Indiana is a notice pleading state. *Wee Scots, LLC v. Fleming*, 765 N.E.2d 668, 671 (Ind. Ct. App. 2002). Under Indiana Trial Rule 8(A), a complainant must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." To comply with our notice pleading system, the pleading need not adopt a specific legal theory of recovery to be adhered to throughout the case, but merely requires pleading the operative facts so the opposing party is on notice as to the evidence to be presented at trial. *City of Clinton v. Goldner*, 885 N.E.2d 67, 74 (Ind. Ct. App. 2008). Therefore, the issue of whether a complaint sufficiently pleads a certain claim turns on whether the opposing party has been sufficiently notified concerning the claim so as to be able to prepare to meet it. *Id.*

Here, Asset Acceptance's complaint alleged that Frazier was "indebted to the Plaintiff under the agreement or account evidenced" by the attached exhibit. Appellant's App. p. 5. The exhibit included a "Statement of Account" indicating Asset Acceptance as Citibank's assignee with regards to Frazier's account and details of that account. The exhibit also included an affidavit of Asset Acceptance's supervisor stating that Frazier owed $4849.28 to Asset Acceptance because it had purchased Frazier's account and all the rights connected to it. With all this information included in Asset Acceptance's complaint, we cannot say that the complaint did not adequately advise Frazier that it was based on an account stated.