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ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

MICHAEL T. WALLACE
Robert & Bishop
Indianapolis, Indiana

MATTHEW S. LOVE
Feiwell & Hannoy, P.C.
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

GENEVIEVE S. YORK,

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)

Appellant-Defendant,

)

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vs.

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No. 03A01-0612-CV-543

)

CITIFINANCIAL MORTGAGE
COMPANY, INC.

)

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)

Appellee-Plaintiff.

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APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0605-MF-967

July 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Genevieve S. York appeals the trial court's in rem summary judgment and decree of foreclosure in favor of Citifinancial Mortgage Company, Inc. ("Citifinancial"). York claims that her default on the mortgage is a question of fact that rendered summary judgment inappropriate.¹

We affirm.

FACTS AND PROCEDURAL HISTORY

Citifinancial held a note and a mortgage executed by York for her residence located in Bartholomew County. On May 30, 2006, Citifinancial brought a foreclosure action against York alleging she had failed to make timely payments and that her mortgage was in default. On August 6, 2006, Citifinancial moved for in rem summary judgment and attached to its motion an affidavit by Martin Corrales (the "Corrales Affidavit"), a Citifinancial foreclosure manager, that stated his review of York's account showed that she had failed to make scheduled payments and was in default. York filed a response and a motion to dismiss and attached unverified documentation of payments and taxes.

The trial court held a hearing on Citifinancial's motion for summary judgment and York's motion to dismiss. Four days later, the trial court denied York's motion to dismiss and issued an order granting in rem summary judgment and a decree of foreclosure in favor of Citifinancial. In its order, the trial court set forth the Corrales Affidavit as its reason for its decision. *Appellant's App.* at 240, 181. York now appeals.

¹ York also claims that the trial court erred in failing to grant her motion to dismiss which she identifies as a counterclaim. Because we affirm the trial court, York's counterclaim is moot.

DISCUSSION AND DECISION

On appeal from summary judgment, we face the same issues that were before the trial court and follow the same process. *Diversified Invs., LLC v. U.S. Bank, NA*, 838 N.E.2d 536, 539 (Ind. Ct. App. 2005), *trans. denied* (2006). The party appealing a denial of summary judgment has the burden of persuading this court that the trial court's ruling was improper. *Id.* Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* (citing Ind. Trial Rule 56(C)).

A factual issue is "genuine" if it cannot be conclusively foreclosed by reference to undisputed facts. *Am. Mgmt., Inc. v. MIF Realty, L.P.*, 666 N.E.2d 424, 428 (Ind. Ct. App. 1996) (citation omitted). Although there may be genuine disputes over certain facts, only disputes over material facts survive summary judgment. *Id.* A fact is "material" when its existence facilitates the resolution of an issue in the case. *Id.* Again, the threshold burden is on the moving party to demonstrate the absence of a genuine issue of material fact. *Id.* Any doubt as to the existence of an issue of material fact or an inference to be drawn from the facts, must be resolved in favor of the nonmoving party. *Id.*

When the trial court enters findings of fact and conclusions thereon in ruling on a motion for summary judgment, the findings and conclusions "merely afford the appellant an opportunity to address the merits of the trial court's rationale." *Id.* (quoting *Campbell v. Spade*, 617 N.E.2d 580, 582 (Ind. Ct. App. 1993)). The findings and conclusions also aid appellate review by providing an explanation for the trial court's action. *Id.* However, we

must base our decision upon the material facts *designated* to the trial court. *Id.* (citing *Shourek v. Stirling*, 652 N.E.2d 865, 867 (Ind. Ct. App. 1995)) (Emphasis added).

Here, Citifinancial's designated facts, i.e., the Corrales Affidavit, could have been more specific to its calculation of indebtedness and basis for default. Further, the affidavit contained a conclusory statement -- ". . . debtor has failed to make the scheduled payments when due and is in default" -- that was inappropriate for summary judgment consideration. *See* Ind. Trial Rule 56(E) ("shall set forth facts as would be admissible in evidence"). However, in all other respects, the affidavit contained sufficient facts that alone supported a finding that York was in default. *Appellant's App.* at 181-82. York's failure to file an affidavit in opposition, a verified statement, or any designated evidence to rebut the materials facts in the Corrales Affidavit left no genuine dispute as to the material facts necessary for summary judgment. We, thus, affirm the trial court's decision.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.