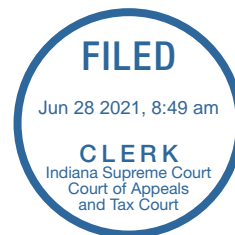


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE

Brent A. Taylor
Fort Wayne, Indiana

IN THE COURT OF APPEALS OF INDIANA

Brent A. Taylor,
Appellant-Defendant,

v.

Public Service Credit Union,
Appellee-Plaintiff.

June 28, 2021

Court of Appeals Case No.
20A-CC-2233

Appeal from the Allen Superior
Court

The Honorable Craig J. Bobay,
Judge

Trial Court Cause No.
02D02-1912-CC-3306

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Brent A. Taylor (Taylor), appeals the trial court's summary judgment in favor of Appellee-Plaintiff, Public Service Credit Union (PSCU), on PSCU's enforcement of a loan agreement upon Taylor's default.
- [2] We affirm.

ISSUE

- [3] Taylor presents this court with seven issues, which we consolidate and restate as the following single issue: Whether PSCU is entitled to damages as a matter of law after Taylor defaulted on his loan agreement.

FACTS AND PROCEDURAL HISTORY

- [4] The designated evidence, as found by the trial court, recited the following undisputed material facts. On June 27, 2019, Taylor executed a loan agreement and consumer credit disclosure statement with PSCU for the purchase of collateral, a black 2013 Cadillac ATS. PSCU financed the purchase of the collateral for the sum of \$12,357. Taylor agreed to repay the loan to PCSU in 58 monthly installments of \$232.21, beginning July 27, 2019. Taylor failed to make any payments on the debt. The loan agreement provided that Taylor would be in default when he failed to "make any payment or perform any obligation under this Agreement or any other Agreement you may have with the Credit Union." (Appellant's App. Vol. II, p. 7). Although the loan agreement provided for repossession of any collateral provided for the loan, the collateral was never repossessed by PSCU.

- [5] On December 12, 2019, PSCU filed its Complaint, in which it sought to recover, in addition to the defaulted principal balance, interest and late fees, as well as collection expenses and reasonable attorney fees. On September 23, 2020, PSCU filed its motion for summary judgment, along with a designation of evidence and supportive memorandum. Taylor, proceeding *pro se*, submitted his unverified response on October 8, 2020, and his unverified supplemental response on October 15, 2020. On November 2, 2020, the trial court granted summary judgment to PSCU and awarded damages in the amount of \$12,357, as well as interest, late fees, and reasonable attorney fees.
- [6] Taylor now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

- [7] Initially we note that one of Taylor’s main appellate claims focuses on the *pro se* nature of his representation. As he is “a *pro se* defendant with no legal training,” he contends that the “trial court has a duty to send notice to [him], a *pro se* defendant, of the danger or consequence of responding to summary judgment not in the form of an affidavit.” (Appellant’s Br. pp. 12, 13).
- [8] It is well-settled that *pro se* litigants are held to the same legal standards as licensed attorneys. *Basic v. Amouri*, 58 N.E.3d 980, 983 (Ind. Ct. App. 2016), *reh’g denied*. This means that *pro se* litigants, like Taylor, are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). These consequences include waiver for failure to present cogent

argument on appeal. *Id.* Despite Taylor’s request, we will not become an advocate for a party, warn him of potential pitfalls in a proceeding, or address arguments that are inappropriate or too poorly developed or expressed to be understood. *See Basic*, 58 N.E. 3d at 984.

[9] In his appellate brief, Taylor relies mainly on the Federal Rules of Civil Procedure and federal jurisprudence to support his numerous claims. Although Indiana Trial Rule 56 mirrors the Federal Rule of Civil Procedure 56, Indiana courts have long recognized that Indiana’s summary judgment procedure is quite different from the federal summary judgment practice. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). While federal summary judgment practice allows the moving party to “merely show that the party carrying the burden lacks evidence on a necessary element;” Indiana courts, however, require the moving party “to affirmatively negate an opponent’s claim.” *Id.* “Indiana consciously errs on the side of letting marginal cases proceed to trial on the merits, rather than risk short-circuiting meritorious claims.” *Id.* at 1004. Accordingly, Taylor’s reliance on federal jurisprudence to advocate his cause is unavailing.

[10] When reviewing a grant [or denial] of summary judgment, our standard of review is the same as that of the trial court. *Seth v. Midland Funding LLC*, 997 N.E.2d 1139, 1140 (Ind. Ct. App. 2013). Considering only those facts that the parties designated to the trial court, we must determine whether there is a “genuine issue as to any material fact” and whether “the moving party is entitled to a judgment as a matter of law.” *Id.* In answering these questions,

the reviewing court construes all factual inferences in the non-moving party's favor and resolves all doubts as to the existence of a material issue against the moving party. *Id.* The moving party, PSCU, bears the burden of making a *prima facie* showing that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law; and once the movant satisfies the burden, the burden then shifts to the non-moving party, Taylor, to designate and produce evidence of facts showing the existence of a genuine issue of material fact. *See id.*

[11] In ruling on a motion for summary judgment, the trial court will consider only properly designated evidence which would be admissible at trial. *Id.* at 1141. Unsworn statements and unverified exhibits do not qualify as proper Rule 56 evidence. *Id.* When a non-moving party does not come forward with specific, properly designated evidence in opposition to properly submitted materials that support summary judgment, the moving party's designated materials are accepted as true. *Myers v. Irving Materials*, 780 N.E.2d 1226, 1228 (Ind. Ct. App. 2003). Apparently relying on Indiana Trial Rule 56(F), Taylor contends that the trial court should have refused PSCU's motion for summary judgment and instead should have granted a continuance because he had notified the trial court that he was unable to collect the essential documents to oppose PSCU's motion for summary judgment due to his current incarceration. Pursuant to Indiana Trial Rule 56(F),

Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts

essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained[.]

It appears from the trial court's summary judgment that, in support of its motion, PSCU submitted properly designated evidence, consisting of the loan agreement, consumer credit disclosure statement, member account inquiry, member transaction register, affidavits of the debt, and an affidavit of attorney fees.¹ In response, Taylor submitted an unsworn, unverified response and an unsworn, unverified supplemental response. Accordingly, as Taylor did not come forward with properly designated evidence in opposition to the evidence submitted by PSCU, the trial court could not consider Taylor's materials or claims and had to accept as true Taylor's liability on the debt, as evidenced by PSCU's designated materials. Therefore, we affirm the trial court's grant of summary judgment in favor of PSCU.

CONCLUSION

[12] Based on the foregoing, we conclude that no genuine issue of material fact exists that prevented the grant of summary judgment to PCSU.

¹ We note that Taylor's appendix is woefully incomplete and deficient to the point that it prevents a full appellate review by this court. Taylor's appendix consists, in main part, of the chronological case summary, the trial court's summary judgment, Taylor's Second Response to Motion for Summary Judgment, and Taylor's Request to Appeal Adversarial Comments Regarding Grant for Summary Judgment and Motion for Reconsideration. His appendix does not contain PSCU's motion for summary judgment and designated evidence, materials which are necessary for resolution of the issues raised on appeal. *See* Appellate Rule 50(A)(f). We therefore rely on the trial court's summary judgment which enumerated the designated evidence.

[13] **Affirmed.**

[14] **Mathias, J. and Crone, J. concur**