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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1517**

Discover Bank,
Respondent,

vs.

Ayrlahn H. Johnson,
Appellant.

**Filed May 13, 2013
Affirmed
Halbrooks, Judge**

Dakota County District Court
File No. 19HA-CV-11-5859

Jason A. Adams, Rausch, Sturm, Israel, Enerson & Hornik, LLC, Minneapolis,
Minnesota (for respondent)

Ayrlahn H. Johnson, Burnsville, Minnesota (pro se appellant)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant Ayrlahn Johnson challenges the district court's grant of summary judgment in favor of respondent Discover Bank on its claim for recovery of credit-card debt. Because the evidence reveals that Johnson had an existing account with Discover

Bank with a stated debt of \$11,741.98 and because Johnson's arguments on appeal are without merit or support, we affirm.

FACTS

Discover Bank issued a credit card to Johnson and sent him monthly statements on the account. The billing statements reflect that Johnson received extensions of credit from the bank and made multiple payments on the account. Johnson never objected to these statements or the amounts due on his account. The amount of debt owing on Johnson's account fluctuated between approximately \$10,600 and \$11,700 for about two years. In February 2010, he owed \$11,741.98.

Discover Bank filed a collection action based on an account-stated theory to recover the \$11,741.98 owing on Johnson's account plus costs and disbursements. Discover Bank then moved for summary judgment, which Johnson opposed. The district court continued the matter at Johnson's request to allow him additional time to conduct discovery.

After responding to Johnson's discovery requests, Discover Bank renewed its motion for summary judgment. In support of its motion, Discover Bank submitted an affidavit from its custodian of records, Nataslia Stetyzie, in which she attests that Discover Bank's business records include copies of the parties' credit-card agreement and that the bank provided Johnson with a notice to cure default.

Johnson opposed Discover Bank's motion and filed an untimely motion for a judgment on the pleadings, which the district court considered. Johnson's sole argument was that Discover Bank had not proved that a relationship existed between the parties.

The district court concluded that Discover Bank established a debtor-creditor relationship between the parties based on the monthly billing statements that indicate that Johnson “obtained extensions of credit on the account and made multiple payments on the account.” The district court further determined that Johnson had assented to the accuracy of the statements by retaining them and by making multiple partial payments on the account without any objection, thereby establishing an account stated between Johnson and Discover Bank. Concluding that Johnson failed to raise any genuine issues of material fact, the district court granted summary judgment to Discover Bank, denied Johnson’s motion for judgment on the pleadings, and awarded Discover Bank \$11,741.98, the amount due under the account, plus costs and disbursements of \$666, for a judgment totaling \$12,407.98. This appeal follows.

D E C I S I O N

We review a district court’s summary-judgment decision de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment. *Id.* No genuine issue of fact exists if “the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). We view the evidence in the record “in the light most favorable to the party

against whom judgment was granted.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

An account stated is established by the “manifestation of assent by a debtor and creditor to a stated sum as an accurate computation of an amount due the creditor.” *Am. Druggists Ins. v. Thompson Lumber Co.*, 349 N.W.2d 569, 573 (Minn. App. 1984). “A party’s retention without objection for an unreasonably long time of a statement of account rendered by the other party is a manifestation of assent.” *Id.* If an account stated is established, it constitutes a promise to pay whatever balance is acknowledged. *Meagher v. Kavli*, 251 Minn. 477, 487, 88 N.W.2d 871, 879 (1958).

Johnson challenges the district court’s grant of summary judgment, arguing that (1) Discover Bank did not establish an account stated; (2) there are genuine issues of material fact; (3) the district court improperly weighed the contents and credibility of Stetyzie’s affidavit; (4) the district court improperly questioned Johnson; and (5) the district court committed additional error.

1. Account stated

Discover Bank sought to establish an account stated by submitting Stetyzie’s affidavit together with a copy of the parties’ credit-card agreement and various monthly billing statements on Johnson’s account. These documents establish that Johnson obtained credit extensions from the bank and made multiple partial payments on his credit-card account and that billing statements to which Johnson never objected were sent to him on a monthly basis. Based on the record, the district court properly concluded that

Johnson “assented to the correctness of the account statements,” establishing that an account with a stated debt existed between the parties.

2. Genuine Issues of Material Fact

Johnson argues that summary judgment is inappropriate because issues of material fact exist as to whether or not there are copies of the parties’ credit-card agreement and whether a “notice to cure default” was ever sent to him. We disagree. First, there is no question that a copy of the credit-card agreement exists—it was produced as an exhibit to Discover Bank’s motion for summary judgment. And, with respect to a notice to cure default, Johnson neither challenges Stetyzie’s statement that the bank provided Johnson with this notice nor suggests that he did not receive the document. Instead, he narrowly asserts that Discover Bank has not adequately proved that the notice was sent, who sent it, and what it looks like. But Johnson fails to explain the relevance of these questions, in what way they are genuinely disputed by the parties, and, importantly, on what basis they are material to Discover Bank’s account-stated theory and the outcome of the case.

3. Discover Bank’s affidavit

Johnson asserts that the district court improperly weighed the contents and credibility of Stetyzie’s affidavit and viewed the document in the light most favorable to the bank. This argument is unavailing because the district court made no credibility findings with respect to the affidavit. Furthermore, the district court was under no requirement to discredit Stetyzie’s affidavit, particularly since Johnson did not challenge the veracity of her statements. Johnson’s argument on this point is again extremely narrow. He suggests that summary judgment is improper simply because it is

theoretically possible that Stetyzie could have been lying. Yet he makes no assertion that she was lying. This unfounded hypothetical circumstance does not create a genuine issue of material fact.

4. The summary-judgment hearing

Johnson states that the district court improperly questioned him at the summary-judgment hearing. During the hearing, the district court asked several questions in an effort to understand Johnson's position that no proof of the parties' relationship had been presented. But Johnson has failed to explain on what basis these questions were improper or prejudicial. And we will not consider the mere assertion of error in an appellate brief that is unsupported by argument and legal authority. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971).

5. Other assertions of error

Johnson also asserts, without any briefing or legal citation, that the district court failed to note "discovery violations" that occurred. While we typically decline to reach issues without adequate briefing, *see State Dep't of Labor & Indus. by the Special Comp. Fund v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997), we are compelled to note that here there is no evidence that Discover Bank committed any discovery violations.

Finally, without citing any supporting evidence, Johnson accuses the district court of "intolerance, discrimination and heavy handed treatment" and suggests that the case was not decided on its merits. This assertion is without any factual support whatsoever.

In conclusion, the evidence supports the district court's finding that Johnson retained credit-card statements from Discover Bank without objection, manifesting his assent to their accuracy and his implied promise to pay the amount due stated in the statements. Appellant has not satisfied his burden to rebut that showing. The district court therefore did not err in granting summary judgment in favor of Discover Bank on the basis of an existing account with a stated debt of \$11,741.98, plus costs and disbursements of \$666, for a judgment totaling \$12,407.98.

Affirmed.