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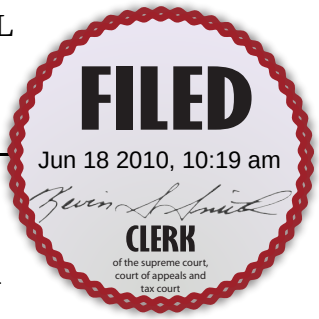

IN THE COURT OF APPEALS OF INDIANA

BERNARD ARVIN,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 53A04-0909-CV-509
	)	
CAPITAL ONE BANK,	)	
	)	
Appellee.	)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable E. Michael Hoff, Judge
Cause No. 53C01-0909-CC-1969

June 18, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Bernard Arvin appeals the trial court's grant of summary judgment in favor of Capital One Bank ("Capital One"). We affirm.

Issue

The dispositive issue before us is whether Arvin established that Capital One's suit to recover a credit card debt from Arvin is barred by the applicable statute of limitations.

Facts

In 2001, Capital One issued a Mastercard to Arvin, and Arvin used the card for various purchases and cash advances. Based on the credit card statements in the record, Arvin last made a payment on the account in June 2005, although he continued making charges on the account until mid-July 2005. Capital One continued sending statements to Arvin for several more months. The last statement in the record, dated December 19, 2005, reflects a balance of $4,453.49 and a minimum payment request by Capital One in the same amount.

On August 15, 2008, Capital One filed suit against Arvin. It sought the balance of $4,453.49 plus fees and interest accruing at the contract rate of 27.74%. On April 3, 2009, Capital One moved for summary judgment against Arvin, designating as evidence an affidavit of indebtedness and copies of Arvin's statements. Arvin, acting pro se, filed a response that did not include any designation of evidence, and instead argued generally that "[a] large portion of the open ended account debt exceeds the time limit for collections under the fair debt collections practice act." App. p. 21. After conducting a

hearing, on August 3, 2009, the trial court granted summary judgment in Capital One's favor. It awarded Capital One the principal sum of $4,453.49, pre-judgment interest in the amount of $4,387.94, and $125.00 in attorney fees. Arvin now appeals pro se.

Analysis

When reviewing a summary judgment ruling, we apply the same standard as the trial court. Auto-Owners Ins. Co. v. Harvey, 842 N.E.2d 1279, 1282 (Ind. 2006). Summary judgment is proper "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C); Harvey, 842 N.E.2d at 1282. We must construe all facts and reasonable inferences drawn from them in favor of the nonmoving party. Harvey, 842 N.E.2d at 1282. We may affirm a summary judgment ruling if it is sustainable on any legal theory or basis found in the evidentiary matter designated to the trial court. West American Ins. Co. v. Cates, 865 N.E.2d 1016, 1020 (Ind. Ct. App. 2007), trans. denied.

We first note that Arvin seems to challenge the manner in which the trial court conducted the summary judgment hearing, claiming he was improperly prohibited from introducing evidence and making certain arguments. Although Arvin requested a transcript of this hearing, it apparently was not recorded. However, he did not undertake to recreate a record of the hearing pursuant to Indiana Appellate Rule 31, which allows a preparation of a statement of the evidence if a transcript of a hearing is unavailable. In the absence of any official record of the hearing, we are completely unable to review

Arvin's claims regarding the manner in which the hearing was conducted. Furthermore, Arvin "cannot take refuge in the sanctuary of his amateur status." Shepherd v. Truex, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). "[A] litigant who chooses to proceed pro se will be held to the same rules of procedure as trained legal counsel and must be prepared to accept the consequences of his action." Id.

We now turn to the merits of Arvin's contention that Capital One's suit as to part or all of his credit card debt was barred by the applicable statute of limitations. We recently addressed the question of credit card debt and the applicable statute of limitations in Smither v. Asset Acceptance, LLC, 919 N.E.2d 1153 (Ind. Ct. App. 2010).[1] After considering various sources, we concluded that a credit card account is similar to an open account for statute of limitations purposes, and that the six-year limitations period of Indiana Code Section 34-11-2-7(1) governs actions to collect credit card debt. Smither, 919 N.E.2d at 1158. We noted, "[t]he general rule is that the statute of limitations for an action on an open account 'commences from the date the account is due.'" Id. at 1160 (quoting 1 Am.Jur.2d Accounts & Accounting § 22 (2005)). Additionally, "when the last activity on an open account, such as the charging of an item or the making of a payment on the account, has occurred beyond the statutory limitations period, any action as to the entire balance of the account or any part of the balance is time-barred." Id. In Smither, the company attempting to collect credit card debt sued the debtor more than six years after any payment or activity on the account had occurred, and

[1] Indeed, most of the argument section of Arvin's brief is a direct quote from this opinion, although he does not cite it by name.

more than six years after the due date of the first payment that the debtor had failed to make. Under those circumstances, we held that the collection company's suit against the debtor was completely time-barred. Id. at 1162.

Here, by contrast, Arvin last made a payment on his Capital One account in June 2005, and last used it to make a purchase in July 2005. Capital One filed this action in August 2008, or much less than six years after the last activity on the account and/or Arvin's first defaulted payment. Although he seems to suggest it, Arvin fails to make a cogent argument that despite the timeliness of this filing, Capital One still was barred from collecting that part of the credit card balance that arose from charges made more than six years before August 2008. The question of whether the statute of limitations may run from the date of each item charged on an open account, or runs solely from the date of the last account activity, is not something we had to address in Smither, and there is no uniform answer to that question. See 1 Am.Jur.2d Accounts & Accounting § 22 (2005). In the absence of cogent argument, we will not delve into resolving this question. See Ind. Appellate R. 46(A)(8)(a); Wingate v. State, 900 N.E.2d 468, 475 (Ind. Ct. App. 2009) (holding that a party waives appellate review of an argument when the party fails to develop a cogent argument).

This case is clearly distinguishable from Smither, as Capital One filed suit within the statute of limitations for open accounts. Arvin fails to make an adequate argument that Capital One's attempt to collect any part of his credit card debt is time-barred, and he makes no other argument that would refute Capital One's right to collect this debt.

Conclusion

The trial court properly granted summary judgment in favor of Capital One. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.