

STATE OF MICHIGAN
COURT OF APPEALS

FIA CARD SERVICES, N.A.,

Plaintiff-Appellee,

v

JENNIE M. SELIM,

Defendant-Appellant.

UNPUBLISHED

December 29, 2009

No. 286522

Wayne Circuit Court

LC No. 07-710070-CZ

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

MEMORANDUM.

Defendant appeals as of right from a circuit court order affirming an arbitration award for \$32,585.52. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant challenges the circuit court's determination that defendant assented to the arbitration provision in the credit card agreement. She claims that the circuit court erred in granting summary disposition in favor of plaintiff pursuant to either MCR 2.116(C)(9) or (10). This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The evidence does not support defendant's assertion that the arbitration provision was added by amendment. The affidavit of the custodian of the records indicates that the provision was part of the agreement at its inception. Defendant did not present any admissible evidence to support her assertion to the contrary.

She neglects to address the circuit court's reasoning that her assent to the arbitration provision was established by her use of the credit card. Her failure to address the basis for the circuit court's decision should alone preclude appellate relief. *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987) (appellate relief is precluded where the appellant fails to address the basis of the trial court's decision). In any event, the circuit court's determination is consistent with MCL 445.862(a) and case law. See *Weldon v Asset Acceptance, LLC*, 896 NE2d 1181, 1186 (Ind App, 2008) ("It is well-established that a credit cardholder may agree to arbitration 'by conduct[.]'" (citation omitted); *Temborius v Slatkin*, 157 Mich App 587, 596; 403 NW2d 821 (1986) (recognizing that implied contracts may be based on the conduct of the parties).

Because defendant has not presented a persuasive reason to overturn the circuit court's order, it is affirmed.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ E. Thomas Fitzgerald

/s/ Kurtis T. Wilder