This opinion will be unpublished and
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Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1887

Midland Funding LLC, et al.,
Respondents,

vs.

Joy Ford,
Appellant.

Filed April 20, 2020
Affirmed
Reilly, Judge

Ramsey County District Court
File No. 62-CV-18-8184

Derrick N. Weber, Stephanie S. Lamphere, Katie D. Figgins, Messerli & Kramer, P.A., Plymouth, Minnesota (for respondents)

Darren B. Schwiebert, DBS Law LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Respondent-creditor's-assignee sued appellant-debtor to collect a $508.52 unpaid credit card bill. The district court granted summary judgment to respondent-assignee on its breach-of-contract claim and appellant's counterclaims against respondent-assignee and respondent-assignee's counsel under the Fair Debt Collection Practices Act (FDCPA).

Appellant argues that the district court (1) abused its discretion by ruling that certain evidence was properly authenticated and admissible under Minn. R. Evid. 803(6); (2) erred in concluding that respondent-assignee had standing; (3) erred by granting summary judgment in favor of respondent-assignee on its breach-of-contract claim; (4) erred by granting summary judgment in favor of respondents, dismissing her FDCPA counterclaims; (5) abused its discretion by denying her motion to amend her counterclaim; and (6) abused its discretion by denying her motion for additional discovery under Minn. R. Civ. P. 56.04. We affirm.

FACTS

On June 13, 2016, Comenity Bank (Comenity) issued a credit card to Joy Ford. The next day, Ford used the credit card to purchase several items, incurring a balance of $161.90. Ford subsequently failed to make the minimum payment due on the account, and a $27 late fee was assessed. Ford then made a $30 payment on the account on August 7, 2016, and made another purchase of $35.95 that same day. But Ford failed to make any more payments on the account, and on March 16, 2017, Ford's account was "closed and charged-off." At the time the account was closed, Ford owed a balance of $508.52.

In June 2017, Comenity transferred Ford's account to respondent Midland Funding LLC (Midland).[1] Midland then filed suit against Ford in conciliation court seeking to recover the debt owed by Ford on the account. Following a trial, the conciliation court

[1] In addition to Ford's account, Midland purchased "a pool of charged-off accounts" from Comenity.

concluded that Midland was entitled to recover $508.52 and ordered Ford to pay that amount plus the $85 filing fee.

In December 2018, Ford removed the case to district court. Ford also filed a counterclaim against Midland and respondent Messerli & Kramer P.A.,[2] the law firm representing Midland in its debt-collection action against Ford, alleging that respondents violated several provisions of the FDCPA. *See* 15 U.S.C. §§ 1692-1692p (2018).

Respondents moved for summary judgment. Shortly thereafter, Ford moved to amend her counterclaim to add an additional FDCPA claim under 15 U.S.C. § 1692f, alleging that Midland failed to comply with sections 131(a) and 131(b) of its 2015 United States Government's Consent Order (consent order). Ford filed a motion to compel discovery, and to postpone the summary-judgment hearing until the additional discovery was completed. Ford also filed a motion for partial summary judgment on her FDCPA counterclaims.

The district court granted summary judgment in favor of Midland on its breach-of-contract claim. The district court also granted respondents' motion for summary judgment, dismissing Ford's counterclaims. Finally, the district court denied Ford's motion to postpone the summary-judgment hearing under rule 56.04, and denied, as moot, Ford's motions to compel discovery and amend the counterclaim. This appeal follows.

[2] Midland and Messerli & Kramer P.A. shall hereinafter be collectively referred to as "respondents."

DECISION

Summary judgment is appropriate if the moving party shows that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. This court reviews a district court's summary-judgment decision de novo, assessing whether any genuine issues of material fact exist and whether the district court misapplied the law. *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814, 819 (Minn. 2016). We view the evidence in the light most favorable to the nonmoving party and resolve doubts regarding the existence of material facts in that party's favor. *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017).

I. The district court did not abuse its discretion by ruling that certain evidence was properly authenticated and admissible under Minn. R. Evid. 803(6).

Ford challenges the admissibility of the affidavits and supporting documents submitted by Midland in support of its summary-judgment motion.[3] While a district court's summary-judgment decision is reviewed de novo, *McKee v. Laurion*, 825 N.W.2d 725, 729 (Minn. 2013), this court reviews "a district court's evidentiary rulings, including rulings on foundational reliability, for an abuse of discretion," *Doe 76C v. Archdiocese of St. Paul and Minneapolis*, 817 N.W.2d 150, 164 (Minn. 2012). Decisions on foundation are within the sound discretion of the district court, and a district court may allow a qualified witness other than the custodian of a business record to establish foundation for

[3] At the outset, we note that Ford consistently relies on unpublished decisions to support her various arguments. But unpublished decisions are not precedential. *See* Minn. Stat. § 480A.08, subd. 3(c) (2018); *see also Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993).

admissibility of another business's records. Minn. R. Evid. 803(6), 901(a); *Nat'l Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 62 (Minn. 1983) (holding that district court should be guided by certain principles relating to whether evidence was prepared for presentation in case being tried, whether report was made by independent agency or hired agency, when report was made, and nature of organization preparing the report).

A document must be authenticated or identified to be admissible. Minn. R. Evid. 901(a). This requirement "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." *Id.* The rules of evidence provide several examples of the procedure for authenticating or identifying evidence, including testimony of a knowledgeable witness "that a matter is what it is claimed to be." *Id.* at (b)(1).

Here, in order to authenticate the documents supporting its motion for summary judgment, Midland submitted the affidavits of a legal specialist employed with Midland, and the Chief Financial Officer (CFO) of Comenity. Ford argues that these affidavits do not satisfy the requirement of Minn. R. Civ. P. 56.03(d) that supporting affidavits be made on personal knowledge setting forth such facts as would be admissible in evidence. We disagree.

The CFO's affidavit established that electronic and other records, including the bill of sale, were transferred to Midland, and that the transferred records were kept by Comenity in the course of regularly conducted business and were a part of its regular business practice. In addition, the legal specialist's affidavit established that the attached cardholder agreement, billing agreements, the CFO's affidavit, and the bill of sale were kept by Midland in the course of regularly conducted business activities and were made a part of

Midland's regular business practice, which was based upon her personal knowledge, industry experience, and review of records prepared in the ordinary course of Midland's business practice. And the legal specialist testified that she was provided with these records as part of her position at Midland as legal specialist, and that she was "familiar with and trained on the manner and method by which [Midland] creates and maintains its business record pertaining to [Ford's] account." The affiants demonstrate that they reviewed the relevant documents and had knowledge that Ford owed an amount to Comenity and that Comenity sold the account to Midland. Ford is unable to demonstrate that the district court abused its discretion in concluding that the challenged affidavits were properly authenticated.

Ford further contends that although the legal specialist, as Midland's agent, may be qualified to offer documents as to Midland's business, she is not qualified to offer documents or business records of Comenity because she lacks sufficient firsthand knowledge of their business practices.[4] But under rule 803(6):

> Business records are admissible under the business-records exception if the custodian or another qualified witness can testify that the records were (1) made by a person with personal knowledge of the matters recorded and a business duty to report accurately or from information transmitted by a person with such knowledge, (2) made at or near the time of the

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[4] Ford also argues that a document attached with the bill of sale, which is referred to by the district court as a "summary spreadsheet," should be excluded because it was a document created just for litigation. In the alternative, Ford contends that the "summary spreadsheet" should be excluded under Minn. R. Evid. 1006 because respondents failed to produce the original document. But Ford failed to raise these arguments below and, therefore, they are not properly before us. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that a "reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court").

> recorded event, (3) kept in the course of a regularly conducted business activity, and (4) made as part of the regular practice of that business activity.

In re Child of Simon, 662 N.W.2d 155, 160 (Minn. App. 2003) (citing Minn. R. Evid. 803(6)). "[O]ne business entity may submit the records of another business entity to establish a proposition at trial." *Nat'l Tea*, 339 N.W.2d at 61-62 (citation omitted). The actual custodian need not testify, but the person laying foundation must be familiar with how the business compiles its documents. *Id.* at 62.

In this case, the legal specialist's affidavit states that she reviewed the billing statements between Comenity and Ford, the bill of sale between Comenity and Midland, the affidavit of sale by Comenity, and the cardholder agreement between Ford and Comenity. The legal specialist's affidavit also states that her statements are "based upon personal knowledge of those account records maintained on [Midland's] behalf," that she has access to and has "reviewed the electronic records pertaining to the account maintained by [Midland]," and that she is "authorized to make this affidavit on [Midland's] behalf." The affidavit further states that the electronic records the legal specialist reviewed "consist of data acquired from the seller when [Midland] purchased the account, together with records generated by [Midland] in connection with servicing the account since the date the account was purchased by [Midland]." The affidavits submitted by Midland satisfy the requirements of rule 803(6). Therefore, the district court did not abuse its discretion by determining that the challenged affidavits provided sufficient foundation for the documents supporting Midland's summary-judgment motion.

II. The district court did not err when it determined that Midland had standing to sue.

Ford challenges the district court's conclusion that Midland had standing to pursue its claim against Ford.[5] This court reviews matters of standing de novo. *See In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 784 (Minn. 2016).

"Standing is a legal requirement that a party have a sufficient stake in a justiciable controversy to seek relief from a court." *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 338 (Minn. 2011) (quotation omitted). A standing analysis focuses on whether the plaintiff is the proper party to bring a particular lawsuit. *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). To establish standing, a plaintiff must have a sufficient personal stake in a justiciable controversy. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). A sufficient stake may exist if the party has suffered an "injury-in-fact" or if the legislature has conferred standing by statute. *Id.*

Ford argues that because the "summary spreadsheet"[6] document and the legal specialist's affidavit are inadmissible, Midland failed to provide admissible evidence that it is the present owner of the account in controversy. Thus, Ford argues that the district

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[5] We note that standing is a threshold consideration in determining whether a litigant is entitled to have courts determine the merits of a dispute. *Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989). This is because jurisdiction is essential to a court even hearing a matter. *See* Minn. R. Civ. P. 12.08(c) (requiring dismissal if court lacks jurisdiction). But because the standing issue here is dependent upon the admissibility of the challenged affidavits and related documents, we address it after the evidentiary issue.

[6] Ford refers to this document as the "data printed" document.

court erred in concluding that Midland had standing to bring suit against Ford because Midland failed to establish that it suffered an injury-in-fact.[7]

As addressed above, the legal specialist's affidavit was properly authenticated and admitted under the business-records exception to the hearsay rule. And as noted previously, Ford failed to challenge the admissibility of the "summary spreadsheet" document below. The legal specialist's affidavit and attached documents, which include the bill of sale transferring the debt to Midland, establish that Midland suffered an injury-in-fact. The district court did not err by concluding that Midland had standing to bring suit against Ford.

III. The district court did not err by granting summary judgment in favor of Midland on its breach-of-contract claim.

Ford challenges the district court's decision that no genuine issue of material fact exists and that Midland is entitled to summary judgment on its breach-of-contract claim. A genuine issue of material fact exists "when reasonable persons might draw different conclusions from the evidence presented." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). "[T]here is no genuine issue of material fact . . . when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue." *Id*. at 71. For summary judgment, the nonmoving party may not rely upon mere averments in the pleadings or unsupported allegations, but must come forward with specific facts to satisfy

[7] Respondents argue that Ford waived this argument because standing is an affirmative defense, which she failed to assert in her responsive pleadings. But standing may be raised at any time and cannot be waived. *In re Horton*, 668 N.W.2d 208, 212 (Minn. App. 2003).

its burden. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001).

"A contract consists of a binding promise or set of promises. A breach of contract is a failure, without legal excuse, to perform any promise that forms the whole or part of the contract." *Lyon Fin. Servs., Inc. v. Ill. Pater & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014) (footnote and citation omitted). To prevail on a breach-of-contract claim, the plaintiff must show (1) the formation of a contract, (2) the plaintiff's performance of conditions precedent to its right to demand performance from the defendant, and (3) the defendant's breach of the contract. *Id.*

Ford argues that she presented a genuine issue of material fact because she claimed that she never entered into a credit card agreement with Midland or Comenity. To support her claim, Ford points to her sworn affidavit in which she "denied owing any money to Midland on this account, denied that she had ever agreed to or even seen the generic cardholder agreement, and denied that she had received or retained any of the account statements." But respondents submitted affidavits, a bill of sale, a cardholder agreement, and account statements with Ford's name and address, establishing that Ford had a credit card account with Comenity, that she owed approximately $500 on the account, and that Midland purchased Ford's account from Comenity. This evidence supports the district court's determination that Midland conclusively established its breach-of-contract claim. Other than her own affidavit, Ford submitted no evidence disputing Midland's claim. The general assertions contained in Ford's self-serving affidavit are insufficient to create a genuine issue of material fact. *See Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d

845, 848 (Minn. 1995) (stating that "general assertions" are not enough to create a genuine issue of material fact). Accordingly, the district court did not err by granting summary judgment in favor of Midland on its breach-of-contract claim against Ford.

IV. The district court did not err by granting summary judgment in favor of respondents, dismissing Ford's counterclaims under the FDCPA.

Ford contends that the district court erred by granting summary judgment in favor of respondents, dismissing her counterclaims under the following provisions of the FDCPA: 15 U.S.C. §§ 1692e(3), 1692e(14), 1692f.

A. Claim under 15 U.S.C. § 1692e(3)

The FDCPA provides that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. This includes "[t]he false representation or implication that . . . [a] communication is from an attorney." 15 U.S.C. § 1692e(3). Federal courts have held that a debt collection letter from a law firm or lawyer violates section 1692e(3) if an attorney was not "directly and personally involved" with the debtor's account—such as reviewing the debtor's file—before the letter was sent. *See, e.g.*, *Avila v. Rubin*, 84 F.3d 222, 228 (7th Cir. 1996); *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232, 1237-38 (5th Cir. 1997).

Ford argues that the district court erred by granting summary judgment in favor of respondents, dismissing her claim under 15 U.S.C. § 1692e(3). We disagree. Respondents submitted documents demonstrating that Messerli & Kramer P.A. conducted a thorough and meaningful review of Ford's account-documentation prior to signing the complaint.

The documents reflect that this review included an examination of the name on Ford's account, the last four digits of the account number associated with the debt at the time it was charged off, and the claimed amount, caption, venue, principal balance, account number, purchased debt, bankruptcy, fraud claim, and applicable statute of limitation. This evidence supports the district court's determination that respondents complied with section 1692e(3). Although Ford claims that Messerli & Kramer P.A. violated section 1692e(3) by failing to review the full chain of title transferring the debt from Comenity to Midland, Ford cites no published caselaw requiring Messerli & Kramer P.A. to conduct such a full chain of title review.[8]

Ford also contends that the district court' decision is erroneous because it relied on Exhibit B to one of Messerli & Kramer P.A.'s attorney's declarations. Ford argues that the district court's reliance on this documentation is improper because it was inadmissible hearsay. But as the district court noted, although the "exhibit was not attached when it was originally filed" by respondents, it was submitted upon inquiry by the district court. The district court determined that respondents "stated that it was its intention to attach the exhibit to the declaration," and "Ford did not object to it being submitted." Because Ford failed to object to the admission of Exhibit B below, she has forfeited her argument that the documents submitted by respondents were inadmissible. *Estate of Hartz v. Nelson*, 437 N.W.2d 749, 752 (Minn. App. 1989), *review denied* (Minn. July 12, 1989); *see also* Minn. R. Civ. P. 51.03, .04; *State v. Beaulieu*, 859 N.W.2d 275, 278 (Minn. 2015) (clarifying that

[8] In any event, we note that the chain of title was only one link long: from Comenity to Midland.

"forfeiture is the failure to make the timely assertion of a right" (quotation omitted)). The documents submitted by respondents support the district court's determination that respondents complied with 15 U.S.C. § 1692e(3). The district court did not err by granting summary judgment in favor of respondents, dismissing Ford's counterclaim under section 1692e(3).

B. Claim under 15 U.S.C. § 1692e(14)

Next, Ford argues that the district court erred by dismissing her claim under 15 U.S.C. § 1692e(14), which prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," including, the "use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization."

In her counterclaim, Ford alleged that respondents violated section 1692e(14) when Midland captioned its identity as "Midland Funding LLC as successor-in-interest to Comenity Bank," rather than using its true name of Midland Funding LLC. But in analyzing section 1692e(14), the United States Supreme Court stated that "[a]lthough the FDCPA does not say what a true name is, its import is straightforward: A debt collector may not lie about his institutional affiliation." *Sheriff v. Gillie*, 136 S. Ct. 1594, 1602 (2016) (quotation omitted).

Here, as the district court observed, "Midland did not lie about its institutional affiliation." Midland's caption used its true name, "Midland Funding LLC," and then identified itself as the "successor-in-interest" of the Comenity debt, which is also true. There is nothing deceptive or misleading about the title used by Midland.

Ford argues that the "FDCPA is a strict liability statute" with "no separate materiality requirement for a violation of [section] 1692e(14)." Thus, Ford argues that Midland violated section 1692e(14) by simply not using its "true name." We disagree.

The Eighth Circuit Court of Appeals has joined other federal circuit courts in recognizing a materiality requirement for claims brought under 15 U.S.C. § 1692e. *See Hill v. Accounts Receivable Servs., LLC*, 888 F.3d 343, 346-47 (8th Cir. 2018). In *Hill*, the court adopted the reasoning of the Seventh Circuit Court of Appeals where the Seventh Circuit stated that the FDCPA "'is designed to provide information that helps consumers to choose intelligently, . . . immaterial information neither contributes to that objective (if the statement is correct) nor undermines it (if the statement is incorrect).'" *Id.* (quoting *Hahn v. Triumph Partnerships LLC*, 557 F.3d 755, 757-58 (7th Cir. 2009)). Moreover, Ford specifically pleaded that Midland's alleged violation "constitutes a *material* violation" of the FDCPA, which indicates that she understood that a violation of section 1692e(14) must be material in order to be actionable. (Emphasis added.) Midland's failure to use its "true name" was not a material violation of section 1602e(14) because an unsophisticated consumer would not be misled by the alleged violation. Accordingly, the district court did not err by dismissing Ford's claim under 15 U.S.C. § 1692e(14).

C. Claim under 15 U.S.C. § 1692f

The FDCPA provides that "[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt," which includes, but is not limited to, the "collection of any amount (including any interest, fee, charge, or expense incidental to the

principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C. § 1692f(1).

Ford argues that respondents' conduct violated section 1692f by (1) failing to comply with Minn. Stat. § 358.116 (2018)[9]; and (2) failing to comply with a September 23, 2016, Ramsey County Amended Standing Order (2016 standing order).

1. Minn. Stat. § 358.116

Section 358.116 of the Minnesota Statutes provides:

> Unless specifically required by court rule, a pleading, motion, affidavit, or other document filed with a court of the Minnesota judicial branch, or presented to a judge or judicial officer in support of a request for a court order, warrant, or other relief, is not required to be notarized. Signing a document filed with the court or presented to a judge or judicial officer constitutes "verification upon oath or affirmation" as defined in section 358.52, without administration of an oath under section 358.07, provided that the signature, as defined by court rules, is affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.

Minn. Stat. § 358.116.

Ford argues that respondents violated 15 U.S.C. § 1692f(1) when they failed to comply with section 358.116 by omitting, from the Statement of Claim and Summons, the state and county where the document was signed. But section 1692f prohibits the use of

[9] Minn. Stat. § 358.116 was amended in 2018. 2018 Minn. Laws ch. 176, art. 2, § 3, at 268. Although the 2017 version of the statute was in effect at the time Midland filed its Statement of Claim and Summons, we cite to the most recent version because it was not amended in relevant part.

"*unfair or unconscionable* means to collect or attempt to collect any debt." 15 U.S.C. § 1692f (emphasis added). As the district court determined, although Midland's attorney "did not include the county when he signed the Statement of Claim and Summons, such a mistake cannot be seen as 'unfair or unconscionable.'" Therefore, the district court did not err by granting summary judgment in favor of respondents, dismissing Ford's claim under 15 U.S.C. § 1692f(1).

2. 2016 standing order

Ford also argues that respondents violated 15 U.S.C. § 1692f(1) by "failing to comply with the requirements" of the 2016 standing order. But the complaining party has the obligation to provide the appellate court with a record sufficient to show any alleged error. *See Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968) (dismissing appeal for an inadequate record, stating both that "[e]rror cannot be presumed" and that the appellant has the burden to provide an adequate record on appeal). Our review of the record reveals that the 2016 standing order is not part of the record on appeal, and Ford's brief contains no citations to the 2016 standing order in the record. And the 2016 standing order does not appear to be available online, perhaps because Ramsey County issued a new standing order for consumer credit case types on May 14, 2019, that "supersedes all previous standing or administrative orders related to consumer credit cases." Because the 2016 standing order is not part of the record before this court, it is impossible for us to determine whether the district court erred by concluding that the 2016 standing order does not apply to conciliation court. *See Truesdale v. Friedman*, 127 N.W.2d 277, 279 (Minn. 1964) (stating that a record is adequate if it is "sufficient to show the alleged errors and all

matters necessary for consideration of the questions presented"). Ford, therefore, cannot establish that the district court erred by granting summary judgment in favor of respondents, dismissing her claim under 15 U.S.C. § 1692f.

V. The district court did not abuse its discretion by denying Ford's motion to amend her counterclaim.

Ford challenges the district court's denial of her motion to amend her counterclaim. We review a district court's decision to deny amendments to pleadings for an abuse of discretion. *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003).

Under Minn. R. Civ. P. 15.01, "a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given," except when it would prejudice the opposing party. *See Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). In *TCF Bank & Sav. F.A. v. Marshall Truss Sys., Inc.*, this court held that a district court "must" rule on a motion to amend a complaint and that a failure to rule on such a motion is prejudicial error. 466 N.W.2d 49, 54 (Minn. App. 1991), *review denied* (Minn. Apr. 29, 1991), *overruled on other grounds by Lloyd F. Smith Co. v. Den-Tal-Ez, Inc.*, 491 N.W.2d 11 (Minn. 1992); *see also Voicestream Minneapolis, Inc. v. RPC Props., Inc.*, 743 N.W.2d 267, 272 (Minn. 2008) (acknowledging that the "court of appeals has required a district court to rule on a motion to amend").

Citing *TCF Bank*, Ford argues that her case must be reversed and remanded because the district court failed to rule on the merits of her motion to amend. But in *TCF Bank*, the district completely failed to rule on the motion to amend. In contrast, the district court here explicitly denied the "motion to amend the counterclaim [as] moot." Because the district

court denied the motion, its decision is reviewable for an abuse of discretion. *See Voicestream*, 743 N.W.2d at 272 (stating that a denial of a motion to amend "would have been explicit and reviewable for an abuse of discretion").

Ford also argues that the district court abused its discretion by denying the motion to amend as moot because "the fact that the district court granted summary judgment on respondents' debt claim does not moot the FDCPA claims asserted in the proposed amendment to the counterclaim." (Emphasis omitted.) We agree that the granting of summary judgment in favor of respondents did not necessarily moot the motion to amend because, although Ford's pleaded claims under the FDCPA did not survive summary judgment, the claims sought to be added might have. *See Kahn v. Griffin*, 701 N.W.2d 815, 821 (Minn. 2005) (stating that a case is moot if there is no longer a justiciable controversy for the court to decide). But a motion to amend is properly denied "when the additional claim could not survive summary judgment." *Voicestream*, 743 N.W.2d at 272.

Here, by denying Ford's motion to amend as "moot," the district court implicitly determined that the claim would not survive summary judgment. Indeed, Ford sought to amend her counterclaim to include the two additional FDCPA violations by Midland. First, Ford claimed that Midland violated the consent order by failing to produce the following required information discussed in paragraph 131(a): "A certified or otherwise properly authenticated copy of each bill of sale or other document evidencing the transfer of ownership of the Debt at the time of Charge-off to each successive owner . . . ." But an authenticated copy of the bill of sale was provided by respondents. Thus, there is no

genuine issue of material facts as to whether respondents produced the information required by paragraph 131(a) of the consent order.

Second, Ford claimed that Midland violated paragraph 131(b) of the consent order by "failing to communicate to the consumer the required notice prior to filing the conciliation court action." But in its opposition to Ford's motion to amend, respondents submitted the pre-legal notification letter that was sent to Ford prior to the commencement of the conciliation-court action. As the district court implicitly determined, that letter was in compliance with paragraph 131(b) of the consent order. Because Ford's additional claims would not have survived summary judgment, the district court did not abuse its discretion by denying Ford's motion to amend.

VI. The district court did not abuse its discretion by denying Ford's motion for additional discovery under Minn. R. Civ. P. 56.04.

Finally, Ford challenges the district court's denial of her motion under Minn. R. Civ. P. 56.04. Under that rule, if the nonmovant shows by affidavit that, for specified reasons, it cannot present facts essential to justify the party's opposition, the district court may defer consideration of the motion or deny it, allow additional time to obtain affidavits or take discovery, or issue any other appropriate order. Minn. R. Civ. P. 56.04. There is a "presumption in favor of granting continuances to allow sufficient time for discovery." *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 231 (Minn. App. 2006). A district court's decision to rule on a summary-judgment motion without allowing additional discovery is reviewed for an abuse of discretion. *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45 (Minn. App. 2010).

The district court must consider two factors in determining whether to grant a motion for a continuance: (1) whether the nonmoving party is seeking further discovery in the good-faith belief that material facts will be uncovered or merely engaging in a fishing expedition; and (2) whether the nonmoving party has been diligent in obtaining or seeking discovery. *City of Maple Grove v. Marketline Constr. Capital, LLC*, 802 N.W.2d 809, 818 (Minn. App. 2011). But when discovery would not assist the district court or change the result of the summary-judgment motion, the court does not abuse its discretion by granting the summary-judgment motion without granting the continuance. *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Ass'n*, 778 N.W.2d 393, 400 (Minn. App. 2010).

Ford argues that "[i]t was arbitrary and unfair for the [district] court to restrict discovery in this case based on what the . . . court deemed the 'simplicity' of the claims and the relatively small dollar amount in controversy." We disagree. Minn. R. Civ. P. 1 provides that "[i]t is the responsibility of the court and the parties to examine each civil action to assure that the process and the costs are proportionate to the amount in controversy and the complexity and importance of the issues." And rule 26.02(b) provides:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

Minn. R. Civ. P. 26.02(b).

Here, as the district court determined, the amount in controversy concerns a $500 credit card debt, and the amount in controversy in Ford's counterclaim consists of alleged damages of approximately $1,000, plus attorney fees. Moreover, as analyzed above, the claims are relatively simple. But despite the simple claims, and the insubstantial amount in controversy, the district court record is extensive, containing over 100 entries. As the district court found, "[t]o allow additional written discovery or to allow depositions, would add to the disproportionate discovery that has already taken place."

The size of the district court record, and the lengthy memorandum Ford filed in opposition to respondents' summary-judgment motion, also indicates that Ford had sufficient time and information to oppose the summary-judgment motion. And in light of the straight-forward issues presented in this case, the district court did not abuse its discretion by determining that Ford's request for additional discovery amounts to merely a "fishing expedition." Finally, as the district court noted, "it is difficult" to see how the requested discovery would change the results of the summary-judgment motion. The district court properly considered the factors in entertaining Ford's rule 56.04 motion and determined that additional discovery was not warranted. Ford has not shown that the district court's decision was an abuse of discretion.

Affirmed.