IN THE UTAH COURT OF APPEALS

----ooOoo----

Collection Center, Plaintiff and Appellee, v. Evan B. Anderson, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060341-CA F I L E D (November 9, 2006) 2006 UT App 455

Fifth District, St. George Department, 050501654
The Honorable Eric A. Ludlow

Attorneys: Dexter L. Anderson, Fillmore, for Appellant
Jonathan K. Jensen, Bountiful, for Appellee

Before Judges Bench, McHugh, and Orme.

BENCH, Presiding Judge:

Evan B. Anderson appeals the district court's order granting Collection Center's (the Center) motion for summary judgment. Anderson first contends that the district court erred in considering the Center's affidavit because the Center failed to attach it to the motion for summary judgment. When the Center filed its motion, for reasons unknown to the district court and the parties, the district court did not receive the affidavit. However, the affidavit was attached to Anderson's copy of the motion. And once the district court informed the Center of the missing affidavit, the Center filed a copy of the affidavit with its Notice to Submit Judgment. We conclude that the district court did not err in accepting the affidavit given that Anderson had proper notice of the affidavit, the responsible party for the missing affidavit is unknown, and the court received the affidavit before rendering its decision.

Anderson next asserts that the district court prematurely granted summary judgment on November 16. Anderson argues that because the Center did not file its affidavit with the district court until November 7, Anderson had until November 17 to file an opposing affidavit. See Utah R. Civ. P. 7(c)(1) ("Within ten days after service of the motion and supporting memorandum, a

party opposing the motion shall file a memorandum in opposition." (emphasis added)). The fact that the district court may not have initially received the attached affidavit does not affect Anderson's notice. Because the Center served Anderson on October 21 with its motion for summary judgment and the attached affidavit, the district court's November 16 order was not premature.

Anderson next contends that the district court erred by granting summary judgment the day before a scheduling conference. Anderson's contention, however, is not supported by any Utah rule or case law, and his reliance on Oseguera v. Farmers Insurance Exchange, 2003 UT App 46, 68 P.3d 1008, is misplaced. Because the facts in this case differ, Oseguera does not apply.

Anderson also asserts that the Center's affidavit established a genuine issue of material fact precluding summary judgment. See Utah R. Civ. P. 56(c). The affidavit includes an itemized financial record. The financial record reflects an outstanding amount of $16,856.70, as attested to by the affiant. Although the financial record could be interpreted in various ways, the affiant, as custodian of the record, is competent to interpret the information. We conclude that the affidavit presented sufficient evidence to show that Anderson is liable for $16,856.70, and that it does not create an issue of material fact as asserted by Anderson. "When a motion for summary judgment is made and supported by affidavit as provided in [r]ule 56, an adverse party may not rely upon mere allegations or denials of his pleadings to avoid summary judgment but must set forth specific facts showing there is a genuine issue for trial." Bangerter v. Poulton, 663 P.2d 100, 102 (Utah 1983). In Anderson's response to the motion for summary judgment, he points out alleged ambiguities in the Center's affidavit, and questions the validity of the financial record. Anderson fails, however, to present any evidence to establish a genuine issue of fact as to his liability on the account or the amount due thereunder. See id. Thus, the district court did not err in granting the Center's motion for summary judgment.

Anderson further contends that the district court, in denying his post-judgment rule 60(b) motion, erred in concluding that Anderson was "not a stranger to the judicial system," and consequently holding Anderson to strict compliance with the rules. Regardless of whether the district court erred in ruling that Anderson's pro se status did not warrant special leniency, Anderson fails to show how the outcome would have been different if the court had allowed leniency. "If the error was harmless, that is, if the error was sufficiently inconsequential that there is no reasonable likelihood that it affected the outcome of the

case, then a reversal is not in order." Armed Forces Ins. Exch. v. Harrison, 2003 UT 14,¶22, 70 P.3d 36 (quotations and citation omitted).

Finally, Anderson argues that the district court erred in denying his Motion for Rule 11 Sanctions. See Utah R. Civ. P. 11. Anderson claims that the Center's attorney violated rule 11 by incorrectly representing to the district court in the motion for summary judgment that he attached an affidavit and that Anderson made admissions in his answer to the complaint. "Rule 11 does not call for the imposition of sanctions whenever there are factual errors; the misstatements must be significant and sanctions will not be imposed when they are not critical and the surrounding circumstances indicate that counsel did conduct a reasonable inquiry." Morse v. Packer, 2000 UT 86,¶28, 15 P.3d 1021 (quotations and citation omitted). The Center's attorney stated that, to the best of his knowledge, he believed that he had attached the affidavit to the motion. His statement is supported by the fact that Anderson received the attached affidavit with his copy. Further, because the district court relied on the affidavit in making its ruling, any possible misstatements in reference to Anderson's answer were insignificant.

Accordingly, we affirm.

_____
Russell W. Bench,
Presiding Judge

WE CONCUR:

_____
Carolyn B. McHugh, Judge

_____
Gregory K. Orme, Judge