IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

AUDLEY BECKER, an individual, Respondent, v. ITMSOURCE, INC., a Washington corporation (UBI #602055369); and DARREN VARNADO, aka DARREN PLATER, and JANE DOE and their marital community, Appellants.	)	No. 66468-9-1 DIVISION ONE UNPUBLISHED OPINION FILED: June 11, 2012

Becker, J. — ITMSource Inc. and Darren Varnado contend the trial court erred by entering summary judgment against them after they neglected to file responses to the plaintiff's motion for summary judgment or discovery requests. We affirm.

FACTS

According to pleadings filed in the trial court, Audley Becker worked for ITMSource as a sales executive from February 2003 until Becker's resignation effective September 4, 2009. Darren Varnado was the president and chief executive officer of the company. On December 17, 2009, Varnado was

personally served with Becker's summons and complaint for breach of contract and exemplary damages under chapter 49.52 RCW. Becker alleged ITMSource and Varnado had failed to pay the remainder of Becker's agreed upon wages, benefits, and commissions, totaling $139,412.64, as well as medical insurance premiums totaling $1,195.50. Varnado answered on January 8, 2010, claiming lack of knowledge and therefore denying all allegations in the complaint.

On May 11, 2010, Varnado was served with Becker's requests for admission and for production of documents. Varnado did not respond.

On September 10, 2010, Becker moved for summary judgment. He asked the court to rule under CR 36 that by failing to reply to his requests for admission, Varnado had, as a matter of law, "admitted" each allegation contained in the requests. Varnado did not file any response to Becker's summary judgment motion.

The court heard argument on the motion on October 29, 2010. Varnado appeared at the hearing pro se. The court granted Becker's motion for summary judgment. The court entered judgment holding ITMSource and Varnado jointly and severally liable to Becker in the amount of $277,978.80 plus reasonable attorney fees and costs.

Varnado retained counsel and moved for reconsideration, which was denied. This appeal followed.

analysis

This court reviews summary

judgment orders de novo, engaging in the same inquiry as the trial court. Cornish Coll. of the Arts v. 1000 Virginia Ltd. P'ship, 158 Wn. App. 203, 216, 242 P.3d 1 (2010), review denied, 171 Wn.2d 1014 (2011). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show 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." CR 56(c). We construe the evidence and inferences from the evidence in favor of the nonmoving party. Cornish Coll., 158 Wn. App. at 216.

Varnado and ITMSource (collectively Varnado) contend the trial court erred by refusing to grant them additional time under CR 56(f) to respond to Becker's motion. The record supplied on appeal does not show that Varnado requested a continuance from the trial court, that he filed an affidavit presenting reasons justifying such a continuance, or that any particular piece of admissible evidence had been previously "unavailable" to him, such as would justify application of this rule. See Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989). Varnado has cited no authority requiring the trial court to raise the question of a CR 56(f) continuance *sua sponte*. The court's failure to grant a continuance under this rule was not a manifest abuse of discretion. MRC Receivables Corp. v. Zion, 152 Wn. App. 625, 629, 218 P.3d 621 (2009).

Varnado contends his situation warranted an exemption from strict application of CR 56(f) because he appeared *pro se* at the hearing. He cites no authority supporting such a broad grant of

exemption from the rule.

Varnado contends under CR 59(a)(7) that the evidence before the court presented no reasonable inference justifying a ruling in favor of Becker. Varnado ignores the effect of CR 36. That rule provides, in pertinent part:

> **(a) Request for Admission.**
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> . . . .
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> Each matter of which an admission is requested shall be separately set forth. *The matter is admitted unless, within 30 days after service of the request,* or within such shorter or longer time as the court may allow, *the party to whom the request is directed serves upon the party requesting the admission a written answer or objection* addressed to the matter, signed by the party or by his attorney . . . .
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> . . . .
>
> **(b) Effect of Admission.** *Any matter admitted under this rule is conclusively established* unless the court on motion permits withdrawal or amendment of the admission.

CR 36 (emphasis added). As indicated in the trial court's minute entry, Varnado did not respond to Becker's discovery requests. As a result of this omission, Varnado admitted the facts alleged therein, which were sufficient to support the judgment.

Varnado argues his failure to respond to Becker's discovery requests was immaterial since by answering the complaint he "essentially already answered" Becker's requests for admission. Varnado cites no authority requiring, or even permitting, a court to consider a litigant's answer in place of CR 36 discovery responses. Varnado failed to comply with the requirements of CR 36:

> A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. *An answering*

> *party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.*

CR 36(a) (emphasis added).

Varnado contends the requests for admission improperly called for Varnado to "admit or deny facts central to the questions of liability and damages which are questions for the jury and/or fact finder." Varnado fails to identify any individual request he deems objectionable. And the time for objecting to the scope of Becker's discovery requests has passed. See CR 36(a).

Varnado contends the court improperly rested its ruling on technicalities while avoiding the merits. The record does not support this characterization. The court ruled in this matter more than five months after Varnado was personally served with Becker's discovery requests, and nearly two months after Becker moved for summary judgment. Varnado was not deprived of an opportunity to present his defense.

Varnado contends the court should have reconsidered its ruling because his lack of response was due to a medical disability and legal problems. The record does not support his claim. To the contrary, it establishes that Varnado was capable of swiftly retaining counsel to assist him in this matter, as shown by the motion for reconsideration filed by counsel no fewer than seven days after the judgment was entered. There was no abuse of discretion.

Affirmed.

WE CONCUR: