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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-123 / 91-930

SPURGEON'S OF IOWA, INC., d/b/a SPURGEON'S STORE, (SPURGEON'S HOLDING COMPANY-Amended)

Appellee,

vs.

JOHN E. MULVILLE,

Appellant.

Appeal from the Iowa District Court for Appanoose County, Richard J. Vogel and James P. Rielly, Judges.

The defendant appeals a judgment of the district court granting summary judgment against him in favor of the plaintiff for monies owed on a revolving charge account and for dismissal of defendant's counterclaim. **AFFIRMED.**

John E. Mulville, Moravia, pro se.

Ray Batkiewicz, Chicago, Illinois, for appellee.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

DONIELSON, J.

The present case originated in a small claims action filed by the plaintiff, Spurgeon's, against the defendant, John Mulville, for $384.85 in regard to a revolving charge account at plaintiff's store. Mulville subsequently filed a counterclaim against Spurgeon's alleging overcharges and damages in the sum of $15,338.88 for violation of the Consumer Credit Protection Act, 15 U.S.C. section 1601. Mulville also filed a motion to remove the case to federal court and also filed a demand for a jury trial. The motion to remove was denied by the federal district court.

Spurgeon's filed a motion for summary judgment on February 15, 1991. The district court granted summary judgment on March 4, 1991. Mulville did not appeal the summary judgment award. Spurgeon's then filed a motion to dismiss Mulville's counterclaim, which was granted by the district court.

Mulville appeals, pro se, the judgments of the district court granting summary judgment against him in favor of Spurgeon's for monies owed on a revolving charge account and for dismissal of his counterclaim.

Before discussing the arguments presented by Mulville, we note throughout the appellant's brief, Mulville did not comply with Iowa Rule of Appellate Procedure 14(a)(5), failing to state how the issues he raised were preserved for review. The failure to address issue preservation requires the court to make an independent determination on

each issue. The appellant is admonished to adhere to the Iowa Rules of Appellate Procedure.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. On our review, we affirm the judgments of the district court.

I. Summary Judgment. Mulville argues the district court erred both in granting summary judgment against him and in favor of Spurgeon's for monies owed on a revolving charge account and in granting summary judgment against him and dismissing his counterclaim.

Summary judgment is appropriate only if there exists no genuine issue of material fact. Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact. Id. The evidence must be viewed in the light most favorable to the nonmoving party. Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). This procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. Id. A fact issue is generated if reasonable minds can differ on how the issue should be resolved. Id. If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423.

However, the nonmoving party may not simply rest on its pleadings and allegations once a motion for summary judgment is filed.

> When a motion for summary judgment is made and supported as provided in [Iowa R. Civ. P. 237], an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Iowa R. Civ. P. 237(e).

A. District Court's Grant of Summary Judgment on Plaintiff's Claim. Mulville first argues the district court erred in granting summary judgment against him in favor of Spurgeon's for monies owed on a revolving charge account. He asserts numerous procedural errors, claiming the district court erred in not granting him a jury trial, in not granting his motion to dismiss, in deciding the action in equity, in honoring a "defective" affidavit, and in not requiring Spurgeon's to prove compliance with certain provisions of the "Truth in Lending Act."

Spurgeon's accompanied its motion for summary judgment with an affidavit of Tom Kappes, a store manager under whose control the records of the store's accounts are kept. The affidavit established Mulville had entered into a credit agreement with Spurgeon's and the account records showed Mulville owed Spurgeon's a total of $384.85.

Mulville may not simply rest on his pleadings and allegations once a motion for summary judgment is entered.

Mulville did not file any affidavit which contradicted the affidavit filed by Spurgeon's. Therefore, we find summary judgment was properly entered.

Because summary judgment was properly entered, we find the procedural errors Mulville has asserted in this portion of his appeal to be without merit. Furthermore, we find no preservation of error. The appellate court will not review issues which were not presented to the district court. State ex rel. Iowa Dep't of Human Servs. v. Duckert, 465 N.W.2d 871, 873 (Iowa 1991). We determine these issues are without merit.

B. District Court's Grant of Summary Judgment on Defendant's Counterclaim. Mulville also argues the district court erred in granting summary judgment against Mulville, dismissing Mulville's counterclaim. Specifically, he asserts the district court erred in not providing a "damage breakdown," and in not addressing his motion to compel Spurgeon's answers to the interrogatories.

Spurgeon's moved for summary judgment on Mulville's counterclaim, asserting the March 4, 1991, ruling which entered summary judgment in favor of Spurgeon's established that sums claimed by Spurgeon's were due and that those finance charges were fair and within the law. Spurgeon's accompanied its motion with an affidavit of Tom Kappes, a store manager. The affidavit established the credit plan between Spurgeon's and Mulville indicated a finance charge

would be made and indicated how that charge would be computed.

Mulville may not simply rest on his pleadings and allegations once a motion for summary judgment is filed. Mulville did not file any affidavit which contradicted the provisions of the affidavit filed by Spurgeon's. Therefore, summary judgment on Mulville's counterclaim was properly entered.

Regarding the failure of the court to compel answers to the interrogatories and the failure of the district court to provide a "damage breakdown," we find no preservation of error. The appellate court will not review issues which were not presented to the district court. State ex rel. Iowa Dep't of Human Serv. v. Duckert, 465 N.W. 2d 871, 873 (Iowa 1991). Therefore, we determine these issues are without merit.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit.

The costs of this appeal are taxed to Mulville.

For all the reasons stated, we affirm the district court.

AFFIRMED.