

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-231

NOVEMBER TERM, 2017

Saint Mary's Press	}	APPEALED FROM:
	}	
	}	Superior Court, Orange Unit,
v.	}	Civil Division
	}	
	}	
Joseph Roche	}	DOCKET NO. 129-10-16 Oecv

Trial Judge: Timothy B. Tomasi

In the above-entitled cause, the Clerk will enter:

Defendant appeals pro se from an adverse judgment in this breach-of-contract dispute. We affirm.

In October 2016, plaintiff Saint Mary's Press filed a complaint against defendant alleging that defendant owed it \$3258.53 for goods and/or services. Plaintiff attached a copy of an invoice showing the amount owed. Shortly thereafter, defendant filed an answer, denying that he owed plaintiff any money. In mid-November 2016, plaintiff moved for summary judgment, reiterating the basic facts stated above. It included an affidavit from its Chief Financial Officer who reiterated that defendant owed it \$3258.53. Defendant filed a response in which he suggested that the motion for summary judgment was premature, and that plaintiff's attorney had knowingly made untruthful statements and was using the motion to harass him. In a December 2016 entry order, the court directed defendant to submit a response that conformed to the requirements of Vermont Rule of Civil Procedure 56 by January 20, 2017, or he would be deemed to have waived that opportunity. On January 23, 2017, defendant filed a one-sentence response, denying that he owed any money to plaintiff.

In May 2017, the court granted summary judgment to plaintiff. It explained that although it had afforded defendant additional time to file a response that complied with Rule 56, he failed to do so. Most importantly, defendant failed to submit a statement of disputed material facts or to provide any admissible evidence that would raise a genuine issue of material fact concerning plaintiff's claim. Under such circumstances, the court accepted plaintiff's statement of undisputed facts, as supported by the accompanying affidavit, as established. See V.R.C.P. 56(c)(3), (e)(2). The uncontested facts showed that plaintiff was entitled to judgment as a matter of law. This appeal followed.

Defendant asserts that plaintiff's claim was without merit, noting that he denied owing plaintiff any money below. He also states that there is no trial record because he was not provided a hearing. Additionally, defendant complains that no trial or court date was afforded to him under Vermont Rule of Small Claims Procedure 6.

We review a grant of summary judgment using the same standard as the trial court. Richart v. Jackson, 171 Vt. 94, 97 (2000). Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.R.C.P. 56(a). The rules identify how a party must support an assertion that a fact is genuinely disputed. See V.R.C.P. 56(c); see also White v. Quechee Lakes Landowners’ Ass’n, Inc., 170 Vt. 25, 28 (1999) (explaining that party must support allegations “by affidavits or other evidentiary material,” and “mere conclusory allegations without facts to support them” will not suffice). If a party fails to comply with the rule’s requirements, the court may “consider the fact undisputed for purposes of the motion” and “grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it.” V.R.C.P. 56(e)(2), (3).

That is precisely what happened here. Defendant failed to file a proper response to the motion for summary judgment. The court then appropriately considered plaintiff’s facts to be undisputed and the undisputed facts establish that plaintiff was entitled to judgment as a matter of law. Because the facts were undisputed, no hearing or trial was necessary. See, e.g., Sykas v. Kearns, 135 Vt. 610, 612 (1978) (explaining that “function of a summary judgment is to avoid a useless trial” (citation omitted)). We note that this case was not filed as a small claims action, and thus the Rules for Small Claims Procedure do not apply.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Marilyn S. Skoglund, Associate Justice

Karen R. Carroll, Associate Justice