STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1332

Discover Bank,
Respondent,

vs.

Leon M Wiechmann,
Appellant.

Filed June 23, 2025
Affirmed
Reyes, Judge

Meeker County District Court
File No. 47-CV-24-104

Julie R. Landy, Paige A. Naig, Faegre Drinker Biddle & Reath, LLP, Minneapolis, Minnesota (for respondent)

John E. Mack, New London Law, PA, New London, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Cochran, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant-cardholder challenges the district court's grant of summary judgment and award of $6,342.85 to respondent-bank, arguing that a dispute of material fact and a superseding statute made summary judgment improper. We affirm.

FACTS

Appellant Leon Wiechmann held a credit card that respondent Discover Bank issued to him. An account statement reflects $5,200 in charges for the February 21, 2022 to March 20, 2022 billing period. Discover sent Wiechmann several statements notifying him of these charges, but Wiechmann did not pay the outstanding charges. Discover wrote off the debt in October 2022.

In February 2023, Discover served Wiechmann with a summons and complaint seeking recovery of the outstanding balance, which then totaled $5,902.85 with accumulated interest. Later that month, Wiechmann served an answer in which he alleged that (1) he made all required payments on the card; (2) he had not used the card since August 2021; (3) someone may have compromised the account; and (4) Discover never informed him of the relevant charges or issues with his account.[1] In August 2023, Discover served discovery requests on Wiechmann, including several requests for admission. Wiechmann did not respond to any of the discovery requests.[2]

In February 2024, Discover filed the complaint in district court. The next month, Wiechmann filed a motion for summary judgment. The only supporting documentation that Wiechmann offered was bank-account statements that showed payments to Discover predating the time of the relevant charges. He also submitted an affidavit in which he

[1] Wiechmann additionally raised a counterclaim seeking $50,000 in damages. This counterclaim is not at issue on appeal.

[2] At the summary-judgment hearing, counsel for Wiechmann stated that he never received the discovery requests. Wiechmann did not bring a motion to withdraw or amend the admissions resulting from his failure to respond to the requests for admissions nor does he raise this issue on appeal.

stated, "I have made no charges on a Discover Card since 2020. I have had no Discover Card since about 2020. Someone else was making unauthorized charges on this account. I informed Discover that someone was making unauthorized charges on it. I received no response except this lawsuit." Discover subsequently filed a summary-judgment motion to which it attached the discovery requests and Wiechmann's account statements. The district court granted Discover's summary-judgment motion, determining that Wiechmann failed to establish a dispute of material fact and that Discover established liability under the account-stated doctrine. This appeal follows.

DECISION

I. Standard of Review

"Summary judgment is appropriate if 'there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.'" *Metro. Transp. Network, Inc. v. Collaborative Student Transp. of Minn., LLC.*, 6 N.W.3d 771, 778 (Minn. App. 2024) (quoting Minn. R. Civ. P. 56.01), *rev. denied* (Minn. July 23, 2024). Appellate courts review de novo a district court's grant of summary judgment "to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). Further, appellate courts "view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002) (citations omitted).

II. The district court properly determined that Wiechmann failed to establish a dispute of material fact.

Wiechmann asserts that his affidavit created a dispute of material fact that made summary judgment improper. We disagree.

To establish a dispute of material fact and "defeat a properly supported motion for summary judgment, a nonmoving party must offer significant probative evidence." *Mountain Peaks Fin. Servs. v. Roth-Steffen*, 778 N.W.2d 380, 387 (Minn. App. 2010), *rev. denied* (Minn. Apr. 28, 2010). In so doing, the nonmoving party "must demonstrate at the time the motion is made that specific facts are in existence which create a genuine issue for trial." *Erickson v. Gen. United Life Ins. Co.*, 256 N.W.2d 255, 259 (1977). We have previously held that "self-serving affidavits that contradict other testimony generally are not sufficient to create a fact issue for trial." *Mountain Peaks Fin. Servs.*, 778 N.W.2d at 388. Relatedly, the supreme court has held that, in an account-stated case, an affidavit attesting that the nonmoving party "continuously objected to the [moving party's] statements and accountings" was "general in nature" and "insufficient" to prevent summary judgment. *Erickson*, 256 N.W.2d at 258.

In Wiechmann's affidavit, he merely attested that he did not incur the relevant charges, that he did not have a Discover Card since about 2020, and that he informed Discover about these charges. Absent in this affidavit and in his other summary-judgment materials is any information or documentation to support these vague statements, such as what specific efforts he took to make Discover aware of the disputed charges or close his

account, when he contacted Discover, how he contacted Discover, and who he contacted. We therefore conclude that Wiechmann failed to show a genuine issue of material fact.

III. The district court properly determined that Discover established Wiechmann's liability under the account-stated doctrine.

Wiechmann next argues that the district court improperly decided that he is liable for the account balance under the account-stated doctrine. We are not convinced.

"An account stated is a manifestation of assent by a debtor and creditor to a stated sum as an accurate computation of an amount due the creditor." *Mountain Peaks Fin. Servs.*, 778 N.W.2d at 387 (quotation omitted). The account-stated doctrine allows a claimant to recover a debt upon showing "(1) a prior relationship as debtor and creditor, (2) . . . mutual assent between the parties as to the correct balance of the account, and (3) a promise by the debtor to pay the balance of the account." *Id.* However, an account stated is only prima facie evidence of the accuracy of the account and liability, and a party may challenge an account stated by showing clear and convincing evidence of fraud or mistake. *Erickson*, 256 N.W.2d at 259. We analyze each prong in turn.

A. Creditor-Debtor Relationship

Under the first prong, the parties do not dispute that the record supports that they had a prior relationship as creditor and debtor. Although Wiechmann contests whether there is presently a creditor-debtor relationship, that issue is immaterial because the account-stated inquiry merely addresses whether there was a *prior* relationship as a debtor and creditor. *See Mountain Peaks Fin. Servs.*, 778 N.W.2d at 387. Further, Wiechmann

presents no information other than a self-serving statement in his affidavit that he no longer used the relevant card and closed his account with Discover.

B. Mutual Assent to Account Balance

Turning to the second prong, a creditor can show mutual assent to the accuracy of the account balance either through an admission by the debtor or through implied acquiescence by the debtor's retention of an account statement without objecting within a reasonable time. *Meagher v. Kavli*, 88 N.W.2d 871, 879 (Minn. 1958).

Here, Wiechmann admitted to the correctness of the balance by failing to respond to Discover's requests for admissions. Discover served on Wiechmann the following requests for admission: "[t]hat the Monthly Periodic Billing Statements for the charge card are genuine" and that "[t]here remains an unpaid principal amount owing to [Discover] of $5,902.85 under the Terms and Conditions." Failing to respond to a request for an admission constitutes an admission, Minn. R. Civ. P. 36.01, and these admissions are conclusively established "unless the court on motion permits withdrawal or amendment of the admission," Minn. R. Civ. P. 36.02. Although Wiechmann contends that he never received the requests for admission, the record does not indicate that he moved to withdraw or amend these imputed admissions. Wiechmann therefore admitted to the correctness of the account balance.

C. Promise to Pay Balance on Account

Wiechmann also failed to respond to requests for admission that he admit the genuineness of the card's terms and conditions, that he agreed to be bound by those terms, and that he defaulted under the terms and conditions by failing to make the required

payments. The terms and conditions require Wiechmann to "pay [Discover] for all amounts due on [his] Account." Because Wiechmann failed to respond to these requests, he has admitted them. *See* Minn. R. Civ. P. 36.

We conclude that the district court did not clearly err by finding that Discover established each element of the account-stated claim, which entitled Discover to recovery on the account balance. Nor did Wiechmann raise a dispute of material fact that would prevent summary judgment. We therefore affirm the district court's grant of summary judgment to Discover.[3]

Affirmed.

[3] Wiechmann additionally appears to argue that Discover is unable to recover from him because it failed to follow procedures under a federal statute. Because Wiechmann failed to present this argument to the district court, we decline to consider it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented [to] and considered by the trial court in deciding the matter before it." (quotation omitted)).