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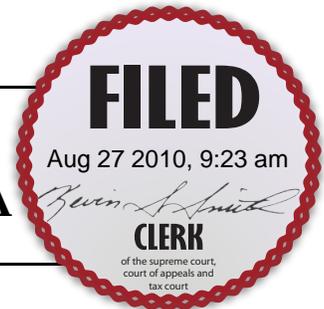
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**IN THE
COURT OF APPEALS OF INDIANA**



RONALD C. HEDGES,
Appellant-Plaintiff,

vs.

WEYERBACHER FARMS,
Appellee-Defendant.

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No. 87A05-1003-PL-275

APPEAL FROM THE WARRICK CIRCUIT COURT
The Honorable David O. Kelley, Judge
Cause No. 87C01-0301-PL-1

August 27, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

The plaintiff filed a lawsuit against the defendant at the beginning of 2003. Over the next seven years, the plaintiff repeatedly failed to respond to discovery in a timely fashion until compelled to do so by the trial court, delaying the litigation. The plaintiff repeatedly sought to vacate the trial date within one to two weeks of trial. And the plaintiff changed attorneys two times and was pro se for nearly a year, causing further delays. In 2009, the defendant served requests for admission to the plaintiff. The plaintiff failed to respond, and when the plaintiff sought to withdraw the admissions six months later, the trial court denied the request because, in essence, it did not believe the plaintiff's explanation for the failure to respond. We defer to the trial court's credibility assessment and find that it did not err by denying the request to withdraw the admissions.

Appellant-plaintiff Ronald C. Hedges appeals the trial court's orders (1) denying Hedges's request to withdraw admissions to requests for admissions that had previously been submitted by appellee-defendant Weyerbacher Farms (Weyerbacher), and (2) granting Weyerbacher's motion for summary judgment. Finding no error, we affirm.

FACTS

On January 2, 2003, Hedges filed a complaint against Weyerbacher for breach of a pasture lease between Hedges and Weyerbacher. Hedges also sought a declaratory judgment abating rent payments until certain bonds were released by the Indiana Department of Environmental Management and extending the term of the lease. Weyerbacher filed a counterclaim against Hedges for unpaid rent. During the ensuing years, the litigation encountered multiple delays:

- On June 23, 2004, Weyerbacher served requests for production upon Hedges. Hedges failed to respond, so Weyerbacher filed a motion to compel on October 8, 2004. The trial court granted the motion on October 25, and Hedges responded shortly thereafter.
- On November 23, 2004, Weyerbacher served Hedges with interrogatories. Hedges failed to timely respond and the trial court eventually granted Weyerbacher's motion to compel and ordered Hedges to answer the interrogatories by March 29, 2005. Hedges failed to respond by that date, so Weyerbacher filed a motion to dismiss. The trial court granted the motion but stated that if Hedges answered the interrogatories by June 13, 2005, then the trial court would not enter the order of dismissal. On June 13, 2005, Hedges responded to the interrogatories.
- On July 6, 2005, Weyerbacher moved to vacate the previously-scheduled trial date of August 3, 2005, on the basis of Hedges's belated discovery responses. The trial court granted the motion.
- On May 8, 2006, Hedges's first attorney moved to withdraw his appearance, which the trial court granted.
- On August 14, 2007, within nine days of the scheduled trial date, the trial court granted Hedges's motion to vacate the trial date over Weyerbacher's objection.
- On March 28, 2008, within five days of the scheduled trial date, the trial court granted Hedges's motion to vacate the trial date over Weyerbacher's objection.
- On September 26, 2008, Hedges's second attorney moved to withdraw his appearance, which the trial court granted. Hedges was pro se for nearly one year; his third attorney entered an appearance on September 17, 2009.

On March 19, 2009, Weyerbacher served requests for admission on Hedges via United States mail at Hedges's home address. Hedges failed to respond to the requests by the April 21, 2009, deadline.

On May 6, 2009, Weyerbacher filed a motion for summary judgment, based largely upon the requests for admission that had been deemed admitted because of

Hedges's failure to respond. On June 6, 2009, Hedges filed an "objection [sic] to materials relied upon for the motion for summary judgment" because he "has not had 30 days to answer defendants [sic] request for admissions to plaintiff due to out of town, sickness and hospital." Appellant's App. p. 240-41. The trial court granted an extension of time to respond to the summary judgment motion until July 6, 2009.

On July 6, Hedges filed a report to the trial court that he was "seeking council [sic] but review of case has not been finished," requesting additional time. Appellee's App. p. 46. Hedges also filed an answer to the summary judgment motion, averring that he never received the requests for admission because he "left [the] area on March 17, 2009 and returned about May 27, 2009; and intered [sic] the horspital [sic]. He left horspital [sic] about June 2, 2009. Returned home and filed for extension with court." Id. Finally, Hedges also filed responses to the requests for admission. In response to these filings, the trial court permitted Hedges to file any additional information in response to the summary judgment motion by August 1, 2009. On August 3, 2009, Hedges requested another extension of time; the trial court denied the request.

On September 17, 2009, Hedges's third attorney entered his appearance. Over Weyerbacher's objection, the trial court granted Hedges an extension of time. On October 19, 2009, Hedges filed an amended response to the summary judgment motion. Included within that pleading was a request to withdraw his admissions to the March 19 requests served by Weyerbacher. Hedges filed an affidavit attesting that he had been out of town beginning in March and returned home, only to be hospitalized due to serious health problems, and that he did not receive the requests for admissions before June 2009.

On November 23, 2009, the trial court held a hearing on the summary judgment motion and Hedges's motion to withdraw the admissions. On December 14, 2009, the trial court denied Hedges's motion, finding that he "has presented nothing to the Court to verify [his] illness other than an affidavit that he was sick during the period of appropriate response. The Court is not persuaded by the Plaintiff's argument but rather finds that the request should be denied." Id. at 38. The same day, the trial court entered summary judgment in favor of Weyerbacher. Hedges now appeals.

DISCUSSION AND DECISION

Hedges first argues that the trial court erred by denying his request to withdraw the admissions that he made by failing to respond in a timely fashion to Weyerbacher's requests for admission.

Requests for Admission: General Rules

Pursuant to Indiana Trial Rule 36(A), a matter raised by a request for admission is deemed admitted unless the party to whom the request is directed answers or objects to the matter within thirty days. See Corby v. Swank, 670 N.E.2d 1322, 1325 (Ind. Ct. App. 1996) (explaining that if a party fails to timely respond to a request for admission, the matter set forth by the request is conclusively established by operation of law). Matters that can be admitted include legal conclusions. Gen. Motors Corp. v. Aetna Cas. & Surety Co., 573 N.E.2d 885, 888 (Ind. 1991). Once the admission is obtained, the need to otherwise prove the matter is eliminated and the factfinder may not disregard it. Corby, 670 N.E.2d at 1324. When a party fails to timely answer requests for admission and the result of such failure is the admission of all facts material to the lawsuit, nothing remains

to litigate and the requesting party is entitled to summary judgment. Bryant v. County Council of Lake County, 720 N.E.2d 1, 6 (Ind. Ct. App. 1999).

Trial Rule 36(B) provides, however, that the trial court

may permit withdrawal or amendment [of an admission] when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits.

(Emphasis added). When seeking to withdraw or amend admissions, the movant has the burden of establishing both conditions of Trial Rule 36(B). Cross v. Cross, 891 N.E.2d 635, 640 (Ind. Ct. App. 2008).

Our Supreme Court has explained that only in “rare cases” should a request to withdraw admissions be granted. Gen. Motors Corp., 573 N.E.2d at 889 (quoting 8 C. Wright & A. Miller, Fed. Practice and Procedure § 2264 (1970)). Furthermore, our Supreme Court cautioned that even if both of the conditions set forth in Trial Rule 36(B) are satisfied, “the rule does not compel the trial court to grant withdrawal or amendment. Rather, the rule states that the court ‘may’ then grant such request.” Gen. Motors Corp., 573 N.E.2d at 889. Inasmuch as the ruling is within the trial court’s discretion, we will reverse only if the trial court has abused that discretion. Cross, 891 N.E.2d at 640. As a general matter, when considering a trial court’s ruling on discovery issues, we defer to the trial court’s credibility assessments. Allstate Ins. Co. v. Scrogan, 851 N.E.2d 317, 322 (Ind. Ct. App. 2006).

Trial Court's Assessment of Hedges's Credibility

Here, the trial court did not engage in an explicit Trial Rule 36(B) analysis. We will assume that the trial court concluded that, in fact, Hedges met his burden of establishing both conditions of the rule. Even so, as noted above, the trial court is not required to grant the request to withdraw the admissions; instead, the ruling is within the trial court's discretion.

In the order denying Hedges's motion to withdraw the admissions, the trial court found that he "has presented nothing to the Court to verify [his] illness other than an affidavit that he was sick during the period of appropriate response. The Court is not persuaded by the Plaintiff's argument but rather finds that the request should be denied." Id. at 38. In other words, the trial court assessed Hedges's credibility and found it wanting.

We infer from the order that the trial court took into consideration the following facts: (1) the litigation had been pending for nearly seven years; (2) Hedges's behavior, including at least two prior instances of failure to respond to discovery in a timely fashion, caused multiple delays; and (3) Hedges was on his third attorney, following a year of being without counsel, at the time the instant issues were considered. Having considered the lengthy history of the litigation and Hedges's obstreperous behavior, the trial court simply decided that it did not believe his explanation for his failure to respond to Weyerbacher's requests for admission. Although we prefer to resolve cases squarely on their merits, when we defer to the trial court's credibility assessment herein, we cannot

say that the trial court abused its discretion by denying Hedges's motion to withdraw the admissions.

Service of the Requests for Admission

Hedges also argues that he was improperly served with the requests for admission. He maintains that Weyerbacher should be required to produce evidence that Hedges actually received the requests. We cannot agree. Nothing in the Indiana Trial Rules requires that requests for admission be served via certified mail with return receipt requested. See Ind. Trial Rule 5(B)(2) (providing rules for service by United States Mail). Weyerbacher completed a Certificate of Service indicating that the requests for admission were served via United States Mail, postage prepaid, to Hedges at his home address, which was the trial court's address of record for Hedges. This service complies with Rule 5(B)(2), and we decline to set aside the trial court's denial of Hedges's motion to withdraw on this basis.

No Remaining Issues of Material Fact

Finally, Hedges argues that even if his admissions remain in the record, the trial court erred by granting summary judgment in Weyerbacher's favor because there are remaining issues of material fact. Summary judgment is appropriate only if the pleadings and evidence considered by the trial court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Owens Corning Fiberglass Corp. v. Cobb, 754 N.E.2d 905, 909 (Ind. 2001); see also Ind. Trial Rule 56(C).

Hedges sued Weyerbacher for breach of a pasture lease, contending, among other things, that he had not been permitted to pasture cattle on certain portions of the leased land. Pursuant to Hedges's admissions, however, he admitted the following facts and legal conclusions: (1) Hedges breached the lease by failing to make all required rent payments; (2) Hedges knew, when he executed the lease, that certain portions of the leased land were "under bond" and therefore would not be available to pasture cattle; (3) Weyerbacher performed all of its obligations under the lease; (4) Weyerbacher did not breach the lease; and (5) Hedges is not entitled to damages for breach of lease and is not entitled to a declaratory judgment. See Gen. Motors Corp., 573 N.E.2d at 888 (Ind. 1991) (holding that matters that can be admitted include legal conclusions).

Hedges argues that these admissions merely constitute inadmissible personal interpretations of the lease provisions. We disagree. The requests ask that Hedges admit the legal effect of certain lease provisions and reach certain legal conclusions, which are both permissible and admissible. Hedges's admissions conclusively establish that Weyerbacher has no liability to him and that he is liable to Weyerbacher for unpaid rent, prejudgment interest, attorney fees, post-judgment interests, and costs. There are no remaining issues of material fact to litigate, and the trial court did not err by granting summary judgment in Weyerbacher's favor.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.