IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

LVNV FUNDING, LLC,	:	APPEAL NO. C-260078 TRIAL NO. A-2405040
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY*
MICHAEL HIGGINS,	:	
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, and the briefs.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 10/23/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer A. Hensley
Administrative Judge

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Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N*
MICHAEL HIGGINS,	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: October 23, 2026

Stenger & Stenger, P.C., *David Hoff*, *Law Office of Boyd W. Gentry, LLC*, and *Boyd W. Gentry*, for Plaintiff-Appellee,

A Barnes Law, LLC, and *Andrew Barnes*, for Defendant-Appellant.

NESTOR, Judge.

{¶1} Plaintiff-appellee LVNV Funding, LLC, ("LVNV") is the assignee of defendant-appellant Michael Higgins's $1,139.22 credit card debt. LVNV filed a complaint to collect the balance owed. Higgins challenged the validity of the debt assignment and alleged that LVNV had engaged in unfair debt collection practices. The trial disagreed and ordered Higgins to pay LVNV the amount owed.

{¶2} On appeal, Higgins challenges the trial court's grant of LVNV's motion for summary judgment. Upon a review of the record, we affirm the trial court's judgment.

I. Factual and Procedural History

{¶3} Higgins opened a credit card account with Credit One Bank in 2017. He eventually stopped making the minimum monthly payment on the card and incurred a balance of $1,139.22. In July 2019, Credit One charged-off the account. Credit One then assigned all its rights, title, and interest in several charged-off credit card accounts and their corresponding receivables to MHC Receivables, LLC. Higgins's account was one of those transferred. MHC Receivables, LLC, then assigned its rights to the accounts to Sherman Originator III LLC, and the receivables to FNBM, LLC. FNBM, LLC, assigned its rights to the receivables to Sherman Originator III LLC. Sherman Originator III LLC, assigned its rights to Sherman Originator LLC, which then immediately assigned its rights to LVNV.

{¶4} In September 2024, LVNV filed a complaint against Higgins to recover the $1,139.22 balance. Higgins's answer disputed the debt owed and LVNV's ability to collect the amount claimed. Higgins also filed a counterclaim alleging that LVNV violated the Fair Debt Collection Practices Act ("FDCPA") and the Ohio Consumer Sales Practices Act ("OCSPA").

{¶5} LVNV subsequently filed a motion for summary judgment on the complaint and Higgins's counterclaim. LVNV attached to its motion copies of Higgins's credit card statements and past-due amounts, answers to interrogatories from Higgins, and documents setting forth the assignment of Higgins's account to LVNV. LVNV's interrogatory responses included copies of the assignment documents originating with Credit One and ultimately ending with LVNV. Attached to the assignment documents was a catalog of the various charged-off accounts assigned between the parties, with all accounts redacted except Higgins's.

{¶6} Higgins filed a motion in opposition to LVNV's summary judgment motion. He claimed, among other things, that LVNV violated the FDCPA and OCSPA and failed to prove the assignment of the accounts. Yet Higgins offered no evidence to support any of his claims. The trial court granted LVNV's summary judgment motion and dismissed Higgins's counterclaims for failure to support any of his claims with evidence. Higgins now appeals and raises three assignments of error.

II. Analysis

{¶7} In his first assignment of error, Higgins argues that the trial court erred as a matter of law for failing to take judicial notice pursuant to Evid.R. 201. In his second assignment of error, Higgins argues that the trial court erred in finding that LVNV is not a debt collector when LVNV failed to provide evidence to the contrary. In his third assignment of error, Higgins argues that the trial court erred in relying on hearsay documents and failing to view the disputed facts in a light most favorable to Higgins and by failing to resolve all reasonable inferences in favor of Higgins on summary judgment.

A. First Assignment of Error

{¶8} In his first assignment of error, Higgins argues that the trial court erred

by not considering his motion for judicial notice pursuant to Evid.R. 201(D). We review a trial court's decision regarding judicial notice for an abuse of discretion. *State ex rel. AG v. Hamm*, 2026-Ohio-2304, ¶ 84 (1st Dist.), citing *State ex rel. Harris v. Bruns*, 2023-Ohio-2344, ¶ 21.

{¶9} Evid.R. 201(D) requires a court to take judicial notice of an *adjudicative fact* "if requested by a party and supplied with the necessary information." (Emphasis added.) *Burd v. Artis*, 2025-Ohio-625, ¶ 15 (1st Dist.), quoting Evid.R. 201(D). Otherwise, judicial notice is discretionary. Evid.R. 201(C). Courts are not required to take judicial notice of facts that are not relevant to the issues before them. *State ex rel. Ware v. City of Akron*, 2021-Ohio-624, ¶ 10.

{¶10} Higgins submitted seven requests for judicial notice to the trial court. He first requested that the trial court take judicial notice that the original creditor, Credit One Bank, is an FDIC entity. However, because Credit One is not a party to the dispute, its FDIC status was not relevant to the issues in this case.

{¶11} Higgins's additional six requests asked the trial court to take notice of various federal regulations pertaining to covered financial institutions under Evid.R. 201(D). Civ.R. 44.1 contemplates judicial notice of *law*, although Higgins failed to make any argument as to how his requests would be appropriate under that rule. *See* Civ.R. 44.1(A)(3) ("A party who intends to rely on . . . administrative regulations of any other state, territory, and jurisdiction of the United States shall give notice in his pleadings or other reasonable notice. The court . . . *may* inform itself in such a manner it deems proper[.]") (Emphasis added.). Accordingly, the trial court did not abuse its discretion by failing to consider Higgins's seven requests for judicial notice pursuant to Evid.R. 201(D).

{¶12} We overrule Higgins's first assignment of error.

B. Second Assignment of Error

{¶13} In his second assignment of error, Higgins argues that the trial court erred in granting LVNV's motion for summary judgment when it found that LVNV was not a debt collector under the FDCPA. In its order granting LVNV's motion for summary judgment, the trial court found that Higgins's counterclaim under the FDCPA failed because "[LVNV] is not a debt collector; [LVNV] is a creditor."

{¶14} We review a trial court's decision granting or denying a motion for summary judgment under a de novo standard of review. *Wilson v. CSX Transp., Inc.*, 2025-Ohio-819, ¶ 20 (1st Dist.), quoting *Smathers v. Glass*, 2022-Ohio-4595, ¶ 30, citing *A.J.R. v. Lute*, 2020-Ohio-5168, ¶ 15. "Entry of summary judgment is appropriate against a party who fails to establish the evidence of an element to the party's case upon which the party bears the burden of proof at trial." *Wynn v. Duke Energy Ohio, Inc.*, 2014-Ohio-3464, ¶ 14 (1st Dist.), citing *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). "[A]n adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E).

{¶15} Higgins first argues that the trial court erred in failing to consider LVNV's party-opponent statement under Evid.R. 801(D)(2) that it is a debt collector. LVNV's complaint included a statement at the bottom of the page which stated, "THIS IS A COMMUNICATION FROM A DEBT COLLECTOR." However, Higgins's reliance on Evid.R. 801(D)(2) is misplaced, as this rule merely indicates that statements by party opponents are nonhearsay. *See* Evid.R. 801(D)(2).

{¶16} Higgins also argues that the trial court erred in finding that LVNV was not a debt collector because LVNV's response to Higgins's interrogatories indicates

that Credit One charged-off his account before it was assigned to LVNV.

{¶17} The FDCPA defines a debt collector as a person (1) "who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts," or (2) "who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C 1692a(6). An assignee of an account may be considered a debt collector if the debt to be collected was in default when it was acquired by the assignee. *D.A.N. Joint Venture III, L.P. v. Armstrong*, 2007-Ohio-898, ¶ 45 (11th Dist.), citing *Pollice v. Natl. Tax Funding, L.P.*, 225 F.3d 379, 403-404 (3d Cir. 2000). However, the United States Supreme Court has indicated that the second enumerated definition of a debt collector does not include those who collect debts for their own account, but rather encompasses those collecting debts owed to another. *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 83 (2017); *see Trinity Fin. Servs., LLC v. Unknown Heirs*, 2024-Ohio-2377, ¶ 26 (2d Dist.) (explaining the Supreme Court's holding in *Henson*).

{¶18} Across his filings in the trial court and in this court, Higgins does not consistently articulate which debt-collector definition he attributes to LVNV. Regardless of the determination as to whether LVNV is a debt collector, Higgins failed to provide any evidence to support his arguments that LVNV violated the FDCPA. Higgins had to prove four elements to establish a prima facie case of an FDCPA violation, one of which was that LVNV violated a provision of the Act by act or omission. *Taylor v. First Resolution Invest. Corp.*, 2016-Ohio-3444, ¶ 9, citing 15 U.S.C.A. 1692a-1692o; 15 U.S.C.A. 1692a; 15 U.S.C.A. 1692k. Failure to establish any element is fatal to the claim. *Id.*

{¶19} Higgins put forth no evidence to support his allegation that LVNV

violated the FDCPA by act or omission. Thus, the trial court did not err in granting LVNV's motion for summary judgment on Higgins's counterclaims because Higgins failed to establish all the elements of an FDCPA violation. Without proof of each element, the determination of whether LVNV was a debt collector is immaterial.

{¶20} We overrule Higgins's second assignment of error.

C. Third Assignment of Error

{¶21} In his third assignment of error, Higgins argues that that the trial court relied on unauthenticated hearsay evidence and failed to view all disputed facts and reasonable inferences in a light most favorable to him. He contends that "the record reflects disputes regarding: 1) the authenticity of records, 2) assignment documents[,] and 3) that the plaintiff is a debt collector." Higgins argues that LVNV's interrogatory responses supplied improperly authenticated documents. Because we resolved the debt-collector issue in the previous assignment of error, we focus this analysis on Higgins's other two arguments.

{¶22} A trial court "may award summary judgment to a moving party who can show (1) 'that there is no genuine issue as to any material fact,' (2) 'that the moving party is entitled to judgment as a matter of law,' and (3) that 'it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to' the nonmoving party." *Id.*, quoting Civ.R. 56(C).

1. Authentication

{¶23} A trial court shall grant summary judgment if "the pleadings, depositions, *answers to interrogatories*, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, 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." (Emphasis added.) Civ.R. 56(C). "'[T]here is no requirement in Civ. R. 56 that any party submit affidavits to support a motion for summary judgment[.]'" *Fowler v. Fimiani*, 2017-Ohio-9333, ¶ 35 (11th Dist.), quoting *Dresher v. Burt*, 75 Ohio St.3d 280, 298 (1996). The motion "may be supported by . . . other material(s) listed in Civ.R. 56(C)." *Id.*, citing *Taylor v. Uhl*, 2014-Ohio-3090, ¶ 17 (11th Dist.). However, the moving party must "'specifically point to something in the record that comports with the evidentiary materials set forth in Civ.R. 56(C).'" *Id.*, quoting *Dresher* at 298.

{¶24} "If a party fails to authenticate a document that is not specifically authorized by Civ.R. 56, the document generally has no evidentiary value, and the trial court should not consider it when determining whether to grant summary judgment." *Nationstar Mtge., LLC v. Krehnbrink*, 2025-Ohio-4445, ¶ 34 (1st Dist.), citing *Nuckols v. CONRAIL*, 2024-Ohio-1070, ¶ 23 (6th Dist.). Evid.R. 803(6) governs the authentication of business records. *Great Seneca Fin. v. Felty*, 2006-Ohio-6618, ¶ 9-10 (1st Dist.); Evid.R. 901(B)(10). The party seeking to admit business records into evidence must establish three elements: (1) the record must be one regularly made in a regularly conducted activity; (2) the contents of the record must have been entered or transmitted by a person with knowledge of the act, event, or condition recorded therein; and (3) the act, event, or condition must have been recorded at or near the time of the transaction. *Id.*, citing Evid.R. 803(6). The records custodian or other qualified witness must lay the foundation for the record's admissibility. *Id.*, citing Evid.R. 901(B)(10).

{¶25} Here, LVNV attached to its interrogatory responses records that showed Higgins's account with Credit One and the accumulation of the $1,139.22 balance. LVNV also attached a series of "Transfer of Bill of Sales," "Assignments of Accounts,"

and "Assignments of Receivables" showing the order of the assignments. The interrogatory responses were prepared by Kim Hannigan, an authorized representative of LVNV. She stated that (1) the records attached were business records made by a person with knowledge of the events described therein at or near the time of the event, (2) they were kept in the ordinary course of business, (3) they were true and accurate copies of the business records of LVNV, and (4) it was regular practice to make and rely on such records. Hannigan also attached a signed verification of the responses to the interrogatories, indicating under oath that her responses were "true to the best of [her] knowledge gained through [her] review of the business records cited herein."

{¶26} The trial court properly considered documents authenticated by LVNV. Higgins did not submit evidence in his opposition to LVNV's summary judgment motion. Therefore, Higgins has not demonstrated a genuine dispute of material fact regarding the authenticity of the attached documents.

2. Assignment Documents

{¶27} Higgins argues that "there is nothing to prove any consideration provided by LVNV for the [assignment of the] account." In an action on an account, the assignee attempting to collect on the account must "allege and prove the assignment." *Worldwide Asset Purchasing, L.L.C. v. Sandoval*, 2008-Ohio-6343, ¶ 26 (5th Dist.), citing *Zwick & Zwick v. Suburban Constr. Co.*, 103 Ohio App. 83 (8th Dist. 1956). "[T]he assignee must prove that they are the real party in interest for purposes of bringing the action. An assignee cannot prevail on the claims assigned by another holder without proving the existence of a valid assignment agreement." *Id.*, citing *Natl. Check Bur., Inc. v. Cody*, 2005-Ohio-283 (8th Dist.).

{¶28} Ohio courts have held that a debtor does not have standing to challenge

the validity of an assignment because they are not a party to the assignment. *Deutsche Bank Natl. Trust Co. v. Whiteman*, 2013-Ohio-1636, ¶ 16 (10th Dist.) (explaining that a debtor did not have standing to challenge the validity of the assignment of a note and mortgage); *see Credit Adjustments, Inc. v. Barlage*, 2016-Ohio-8377, ¶ 8, 16 (6th Dist.) (holding that a debtor lacked standing to challenge assignments of past-due health debts because he was not a party to the assignments); *Buckner v. Bank of N.Y.*, 2014-Ohio-568 ¶ 15 (12th Dist.), quoting *Thorton v. Windsor House*, 57 Ohio St.3d 158, 161 (1991) ("'Only a party to a contract or an intended third-party beneficiary of a contract may bring an action on a contract in Ohio.'"); *Druso v. Bank One*, 124 Ohio App.3d 125, 132 (8th Dist. 1997) ("Generally, the right to contest the validity of an assignment may be asserted only by the person who can raise the particular ground in his own right.").

{¶29} Because Higgins was not a party to the assignment of the account from Sherman Originator to LVNV, he lacks standing to challenge the validity of the assignment here.

{¶30} We overrule Higgins's third assignment of error.

III. Conclusion

{¶31} Having overruled all assignments of error, we affirm the judgment of the trial court.

Judgment affirmed.

ZAYAS, P.J., and **CROUSE, J.,** concur.