

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-330**

David Tillman,
Appellant,

vs.

David Werner, et al.,
Defendants,

BB Motors, LLC
d/b/a Luther Brookdale Chevrolet,
Respondent.

**Filed November 10, 2009
Affirmed
Lansing, Judge**

Hennepin County District Court
File No. 27-CV-07-24701

Jeffrey C. Brown, Jeffrey C. Brown & Assoc., PLLC, 1900 Fifth Street Towers, 100 South Fifth Street, Minneapolis, MN 55402 (for appellant)

Paul E. D. Darsow, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., 500 Young Quinlan Building, 81 South Ninth Street, Minneapolis, MN 55402 (for respondent)

Considered and decided by Lansing, Presiding Judge; Shumaker, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

LANSING, Judge

In litigation arising from David Tillman's uncompleted sale of a truck that he originally purchased from BB Motors, LLC, the district court granted default judgment for Tillman against Werner Trans, Inc., the intended purchaser, and summary judgment dismissing Tillman's claims against BB Motors. On appeal, Tillman challenges the summary-judgment dismissal of Tillman's claim against BB Motors for failure to adhere to the title-transfer timelines in Minn. Stat. § 168A.11 (2006) and on his claim for misrepresentation of the truck's status on titling documents under Minn. Stat. § 325E.15 (2006). Because the district court properly determined that Tillman failed to provide evidence of causation under section 168A.11 or liability under section 325E.15, we affirm.

FACTS

David Tillman purchased a 2006 GMC Sierra truck from BB Motors, LLC for \$46,494 on June 14, 2007. Tillman purchased the truck at the behest of David Werner, the sole shareholder and officer of Werner Trans, Inc., in preparation for taking a job with Werner Trans. Tillman does not dispute that he knew when he purchased the truck that it was used and had more than 3,600 miles on it. After completing his first transport, Tillman decided against working for Werner Trans. According to Tillman, Werner Trans initially offered to assume the finance payments for the truck or purchase the truck from him. Before executing a written financing or purchase agreement, Tillman allowed Werner Trans to use the truck and Werner Trans drove it for more than 7,000 miles.

Werner Trans reneged on its offer to buy the truck or assume finance payments, and Tillman retrieved it on July 11, 2007. Tillman contacted BB Motors about reselling the truck to them or trading it in on another purchase. But he chose not to do so after BB Motors estimated that Tillman would lose approximately \$11,000 because of sales taxes, past payment, and the additional 7,000 miles that Werner Trans logged on the truck.

On July 19, 2007, David Werner, on behalf of Werner Trans, offered Tillman a contract to buy the truck for \$46,000. Tillman signed the contract, but Werner Trans failed to perform on the contract or on any of its oral agreements to assume finance payments. Tillman eventually traded in the truck, with 11,755 miles on it, to BB Motors on October 6, 2007, for a credit of \$38,000.

Tillman sued David Werner and Werner Trans for damages for failing to purchase the truck for \$46,000. Tillman later amended his complaint to assert claims against BB Motors under Minnesota Statutes sections 168A.11 and 325E.15, alleging damages for BB Motors' failure to timely transfer title and for making false disclosures. In the course of the litigation, David Werner filed for bankruptcy, Werner Trans refused to respond to requests and court orders for discovery, and their attorney withdrew from the action in July 2008. BB Motors subsequently moved for summary judgment against Tillman on the claims Tillman had asserted under Minnesota Statute sections 168A.11 and 325E.15. The district court concluded that Tillman had failed to provide sufficient proof of causation on the necessary elements of his claims and granted BB Motors' motion. Two months later, the district court entered a default judgment for Tillman against Werner

Trans in the amount of \$19,640 including damages and fees. Tillman appeals the district court's grant of summary judgment for BB Motors.

DECISION

On appeal from summary judgment, we determine whether there are any genuine issues of material fact and whether a party is entitled to judgment as a matter of law. *Yang v. Voyagaire Houseboats, Inc.*, 701 N.W.2d 783, 788 (Minn. 2005). We view the evidence in the light most favorable to the party against whom judgment was granted. *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008).

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law.” *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). There is no genuine issue of material fact for trial “when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). We apply these standards, first, to Tillman's title-transfer claim under section 168A.11 and, second, to his claim of making false sale-disclosures under section 325E.15.

I

Section 168A.11 governs the title-transfer obligations of vehicle dealers. It provides that a vehicle dealer need not immediately apply for a certificate of title when it

buys a vehicle and holds it for resale. Minn. Stat. § 168A.11, subd. 1(a). But when the dealer transfers the vehicle to another person, the dealer is required to “promptly execute the assignment and warranty of title by a dealer.” *Id.* The dealer then must “deliver the certificate to the registrar or deputy registrar with the transferee’s application for a new certificate and appropriate taxes and fees, within ten business days.” *Id.*, subd. 1(d).

In his amended complaint Tillman alleged that BB Motors violated section 168A.11, subdivision 1(d). Relying on that theory, Tillman sought damages in a civil action against BB Motors under the private attorney general provisions in Minn. Stat. § 8.31, subd. 3a (2006). The district court concluded that Tillman’s claim under section 168A.11 failed because “there exists no evidence . . . that [d]efendant BB Motors’ actions were the cause of the parties’ failure to finalize the transaction.” *See Group Health Plan, Inc. v. Philip Morris Inc.*, 621 N.W.2d 2, 13-14 (Minn. 2001) (holding that private civil action under section 8.31 requires proof of causation). We agree that the record lacks adequate evidence of causation to establish a triable issue on Tillman’s title-transfer claim.

It is undisputed that BB Motors ultimately filed the application to transfer title to Tillman on August 1, 2007. For purposes of summary judgment, BB Motors agrees that it failed to comply with the ten-day, title-transfer requirement in section 168A.11, subdivision 1(d). But no available evidence reasonably indicates that the failure of BB Motors to deliver the title-transfer application until August 1, 2007, was the cause of the refusal by Werner Trans to purchase the truck. The evidence indicates only that Werner Trans’s financing company told Tillman’s attorney in mid-August 2007 that it required

clear title to finance a purchase. But BB Motors had filed the necessary title-transfer application on August 1, 2007. The record contains no evidence that Tillman was asked to deliver title to Werner Trans before that date or that any delay by BB Motors in transferring title prevented Tillman from meeting any title-transfer deadline. Tillman argues that the district court disregarded record documents that he contends create genuine issues of material fact on causation. The first is Werner Trans's allegations, asserted as a defense to Tillman's claim for breach of contract, and the second is Tillman's deposition testimony that "[BB Motors] couldn't find the title card, and after several months [Werner Trans] backed out."

We conclude that Werner Trans's affirmative defenses to the breach-of-contract action are insufficient to show a causal link between BB Motors' actions and Tillman's losses. Tillman asserts that Werner Trans "affirmatively stated" that it breached the purchase agreement because Tillman failed to produce title to the truck in a timely fashion. But the affirmative defense in Werner Trans's responsive pleading alleges that Tillman breached the purchase agreement by misrepresenting the state of the title and that Tillman should be precluded from recovery based on estoppel, laches, and unclean hands. These claims, even if assumed true, do not allege that Werner Trans refused to proceed with the purchase of the truck because of BB Motors' failure to deliver title. And, even if this had been alleged, it would not rise to a fact issue because unproven allegations cannot raise a genuine issue of material fact. *See Morgan v. McLaughlin*, 290 Minn. 389, 393, 188 N.W.2d 829, 832 (1971) (stating that "upon a motion for summary judgment the party opposing the motion cannot rely upon the naked allegations of his pleadings and

must present specific facts showing genuine issues for trial”). The allegations fall short because they are not evidence of fact and because they allege misrepresentation by Tillman, not a failure of BB Motors to act. No evidence explains what occurred between BB Motors’ application to transfer title to Tillman on August 1, 2007, and Werner Trans’s statement in mid-August 2007 that Tillman must provide title to the truck to obtain financing.

The other evidence advanced by Tillman is his own statement that “[BB Motors] couldn’t find the title card, and after several months [Werner Trans] backed out.” This general statement does not specifically link the delay in finding the title card to Werner Trans’s default, and even if it implied a causal relationship it is not based on any specific evidence. A conclusory and self-serving submission that provides no basis for an uncorroborated belief of fault does not create a genuine issue of material fact. *See* Minn. R. Civ. P. 56.05 (stating that party opposing summary judgment “must present specific facts showing that there is a genuine issue for trial”); *see also Erickson v. Gen. United Life Ins. Co.*, 256 N.W.2d 255 (Minn. 1977) (providing that general averment is insufficient to avoid summary judgment; it is necessary to show specific facts to establish genuine issue for trial).

Viewing the record in the light most favorable to Tillman, we conclude that Tillman failed in district court to identify any evidence demonstrating a causal link between the failure of BB Motors to transfer title within the statutory period and Werner Trans’s refusal to proceed with the purchase of the truck. Because Tillman therefore failed to establish an essential element of his claim under section 168A.11, the district

court properly granted summary judgment on that claim. And because summary judgment was proper, Tillman's dependent claim for costs or attorney fees under section 8.31 also fails.

II

Section 325E.15 prohibits false mileage disclosure when a motor vehicle is transferred. Minn. Stat. § 325E.15. The statute adopts the regulations contained in the Code of Federal Regulations, title 49, sections 580.1 to 580.17, to implement the disclosure requirement. Section 325E.15 prohibits violation of these federal regulations or "knowingly giv[ing] a false statement . . . in making any disclosure required by the regulations." Minn. Stat. § 325E.15. The statutes authorize private suit for damages when section 325E.15 is violated. Minn. Stat. § 325.16 (2006).

The district court properly granted summary judgment against Tillman on his claim under section 325E.15. Tillman failed to raise a genuine issue of material fact that could establish BB Motors' liability under this statute for three separate and independent reasons: (1) BB Motors did not report an incorrect odometer reading to Tillman; (2) BB Motors did not violate a regulation adopted under this section; and (3) Tillman did not submit evidence of actual damages, barring recovery under section 325E.16.

Documents that BB Motors prepared for Tillman and for the Minnesota Department of Public Safety reported the truck's mileage as 3,645 at the time of the sale. BB Motors and Tillman do not dispute this mileage. BB Motors, however, reported the truck's status as "used" on the handwritten bill of sale and "new" on the typed bill of sale that was executed the same day. We agree with the district court that this discrepancy

was likely a clerical error, not a false statement made knowingly, particularly in light of the truck's agreed-upon mileage at the time of sale. Additionally, disclosure of the status of a vehicle—new or used—is not required by section 325E.15 or its implementing regulations. *See* 49 C.F.R. § 580.5 (2006) (specifying information transferor of vehicle must disclose to transferee). BB Motors did not violate section 325E.15 in its statements to Tillman: it did not report an incorrect odometer reading, and its error on the typed bill of sale does not amount to a violation of section 325E.15 or its implementing regulations.

Tillman argues that BB Motors' failure to timely transfer title triggers liability under section 325E.15, relying on *Carousel Autos., Inc. v. Gherity*, 527 N.W.2d 813 (Minn. 1995). The Minnesota Supreme Court, in *Carousel Autos.*, held that a car dealer, acting as a pass-through entity, was liable to the buyer under section 325E.15 for falsely representing itself as the transferor on a form required by the Minnesota Department of Public Safety, even though the car's mileage was stated correctly. 527 N.W.2d at 815-19. The court's holding was predicated on the fact that the dealer made a false statement in connection with disclosures required by rules in effect at the time, which were adopted under the statute. *Id.* BB Motors' failure to comply with the statutory time period for transferring title did not constitute a false statement or violate the federal regulations adopted under section 325E.15. *See* 49 C.F.R. § 580.5 (describing required disclosures). Unlike the dealer's actions in *Carousel Autos.*, BB Motors' violation of section 168A.11 alone does not support Tillman's claim under section 325E.15. *See Carousel Autos.*, 527 N.W.2d at 816-19 (emphasizing that form used at time implemented both sections

168A.11 and 325E.15 and that false statement violated rule adopted under section 325E.15).

Section 325E.16 describes the penalties and remedies available for violations of sections 325E.13–.16 and states that any person injured by a violation “shall recover the actual damages together with costs and disbursements.” Minn. Stat. § 325E.16. Without actual damages, a person is not injured within the meaning of the statute. *Bachovchin v. Stingley*, 504 N.W.2d 288, 290 (Minn. App. 1993). Even if BB Motors’ delay in the transfer of title violated section 325E.15, Tillman failed to identify any evidence of actual damages caused by BB Motors. The fact that Tillman prevailed in his claim for damages against Werner Trans does not indicate that BB Motors caused these damages. Without evidence of actual damages caused by BB Motors’ actions, Tillman cannot recover under section 325E.16.

Affirmed.