

1 STATE OF OKLAHOMA

2 1st Extraordinary Session of the 54th Legislature (2013)

3 HOUSE BILL 1024

By: Perryman

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6 AS INTRODUCED

7 An Act relating to civil procedure; repealing 12 O.S.
8 2011, Section 2056, which relates to summary
9 judgment; providing procedure for summary judgment
and summary disposition of certain issues; and
providing for codification.

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12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. REPEALER 12 O.S. 2011, Section 2056, is
14 hereby repealed.

15 SECTION 2. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 2056.1 of Title 12, unless there
17 is created a duplication in numbering, reads as follows:

18 A. A party may move for either summary judgment or summary
19 disposition of any issue on the merits on the ground that the
20 evidentiary material filed with the motion or subsequently filed
21 with leave of court show that there is no substantial controversy as
22 to any material fact. The motion shall be accompanied by a concise
23 written statement of the material facts as to which the movant
24 contends no genuine issue exists and a statement of argument and

1 authority demonstrating that summary judgment or summary disposition
2 of any issues should be granted. Reference shall be made in the
3 statement to the pages and paragraphs or lines of the evidentiary
4 materials that are pertinent to the motion. Unless otherwise
5 ordered by the court, a copy of the material relied on shall be
6 attached to or filed with the statement.

7 The motion may be served at any time after the filing of the
8 action, except that, if the action has been set for trial, the
9 motion shall be served at least twenty (20) days before the trial
10 date unless an applicable scheduling order establishes an earlier
11 deadline. The motion shall be served on all parties and filed with
12 the court clerk.

13 B. Any party opposing summary judgment or summary disposition
14 of issues shall file with the court clerk within fifteen (15) days
15 after service of the motion a concise written statement of the
16 material facts as to which a genuine issue exists and the reasons
17 for denying the motion; provided, however, that a responsive
18 statement shall not be due from a party earlier than forty-five (45)
19 days after service of the first summons by, or upon, that party.
20 Unless otherwise ordered by the court, the adverse party shall
21 attach to, or file with, the statement evidentiary material
22 justifying the opposition to the motion, but may incorporate by
23 reference material attached to or filed with the papers of another
24 party. In the statement, the adverse party or parties shall set

1 | forth and number each specific material fact which is claimed to be
2 | in controversy and reference shall be made to the pages and
3 | paragraphs or lines of the evidentiary materials. All material
4 | facts set forth in the statement of the movant which are supported
5 | by acceptable evidentiary material shall be deemed admitted for the
6 | purpose of summary judgment or summary disposition unless
7 | specifically controverted by the statement of the adverse party
8 | which is supported by acceptable evidentiary material. If the
9 | motion for summary judgment or summary disposition is granted, the
10 | party or parties opposing the motion cannot on appeal rely on any
11 | fact or material that is not referred to or included in the
12 | statement in order to show that a substantial controversy exists.

13 | C. The affidavits that are filed by either party shall be made
14 | on personal knowledge, shall show that the affiant is competent to
15 | testify as to the matters stated therein, and shall set forth
16 | matters that would be admissible in evidence at trial. The
17 | admissibility of other evidentiary material filed by either party
18 | shall be governed by the rules of evidence. If there is a dispute
19 | regarding the authenticity of a document or admissibility of any
20 | submitted evidentiary material, the court may rule on the
21 | admissibility of the challenged material before disposing of the
22 | motion for summary judgment or summary disposition. A party
23 | challenging the admissibility of any evidentiary material submitted
24 | by another party may raise the issue expressly by written objection

1 or motion to strike such material. Evidentiary material that does
2 not appear to be convertible to admissible evidence at trial shall
3 be challenged by objection or motion to strike, or the objection
4 shall be deemed waived for the purpose of the decision on the motion
5 for summary judgment or summary disposition. If a trial of factual
6 issues is required after proceedings on a motion for summary
7 judgment or summary disposition, evidentiary rulings in the context
8 of the summary procedure shall be treated as rulings in limine.

9 D. Should it appear from an affidavit of a party opposing the
10 motion that for reasons stated the party cannot present evidentiary
11 material sufficient to support the opposition, the court may deny
12 the motion for summary judgment or summary disposition without
13 prejudice or may order a continuance to permit affidavits to be
14 obtained or depositions to be taken or discovery to be had or may
15 make such other order as is just. A motion filed pursuant to this
16 subsection shall not be deemed a consent to the exercise by the
17 court of jurisdiction over the party, or a waiver of the right to
18 file a motion to dismiss the action.

19 E. If it appears to the court that there is no substantial
20 controversy as to the material facts and that one of the parties is
21 entitled to judgment as a matter of law, the court shall render
22 judgment for said party.

23 If the court finds that there is no substantial controversy as
24 to certain facts or issues, the court may enter an order specifying

1 the facts or issues which are not in controversy and direct that the
2 action proceed for a determination of the remaining facts or issues.
3 An order denying either summary judgment or summary disposition is
4 interlocutory and is not reviewable on appeal prior to final
5 judgment.

6 F. The serving of a motion for either a summary judgment or
7 summary disposition of issues before a responsive pleading is served
8 where a responsive pleading is permitted does not preclude the
9 opposing party from amending the pleading without leave of court.
10 If a motion for either a summary judgment or summary disposition is
11 served after the case is at issue, the hearing on the motion and the
12 pretrial conference may, in the discretion of the court, be held at
13 one time. A court may decide a motion for either a summary judgment
14 or summary disposition without a hearing, and when this is done, the
15 court shall notify the parties of its ruling in writing by mail or
16 email.

17 G. The pleadings or the pretrial conference order may be
18 amended either before or during the hearing on a motion for either
19 summary judgment or summary disposition under this section, and the
20 court may continue the hearing to a subsequent time. After a court
21 grants a judgment under this section, neither the pleadings nor the
22 pretrial conference order may be amended by the addition of
23 allegations in regard to any fact which was known to the party and
24 which could have been presented at the hearing on the motion, and a

1 motion for a rehearing or for a new trial on the ground of newly
2 discovered evidence must comply with the provisions of Section 655
3 of Title 12 of the Oklahoma Statutes.

4 H. Judgments entered on motion for summary judgment or
5 appealable summary disposition are subject to accelerated appellate
6 review under Rule 1.36 of the Oklahoma Supreme Court Rules. The
7 record on appeal shall be limited to:

8 1. The memorialized entry of judgment; in multiparty or
9 multiclaim cases the judgment or dismissal order must either dispose
10 of all claims and all parties or entirely dispose of at least one
11 claim or one party and contain the express determination that there
12 is no just reason for delay with the express direction by the trial
13 judge that judgment be filed, in accordance with Section 994 of
14 Title 12 of the Oklahoma Statutes;

15 2. Pleadings proper as provided in subsection A of Section 2007
16 of Title 12 of the Oklahoma Statutes;

17 3. Applicable instruments on file, including the motion and
18 response with supporting briefs and materials filed by the parties
19 as prescribed by subsections A and B of this section;

20 4. Any other item on file which, according to some recitation
21 in the trial court's written journal entry or in some other order,
22 was considered in its decision;

23 5. Any other order dismissing the claim or determining the
24 issues as to some but not all parties or claims;

- 1 6. Any transcripts of the hearing on the motion; and
2 7. Any motions, along with supporting and responsive briefs,
3 for new trial, reexamination of summary judgment, or appealable
4 summary disposition process.

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6 54-1EX-50031 SD 09/03/13

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