Summary of SC98262, *Marcia Green v. Mehrdad Fotoohighiam*
Appeal from the Boone County circuit court, Judge Robert L. Koffman
Argued and submitted June 23, 2020; opinion issued August 11, 2020

Attorneys: Fotoohighiam was represented by Michael G. Berry and John T. Brooks of Newman, Comley & Ruth in Jefferson City, (573) 634-2266. Green was represented by Matthew B. Woods and Andrew L. Veatch of Eng & Woods in Columbia, (573) 874-4190.

This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals the judgment finding him liable for a fire that burned a woman's home and caused her damages. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the judgment. The circuit court did not err in granting the woman partial summary judgment as to liability or in overruling the man's motion for new trial because the materials the woman submitted in support of her summary judgment motion, as required by Rule 74.04, demonstrated there were no genuine issues of material fact and she was entitled to judgment as a matter of law.

Facts: Marcia Green awoke to find her mobile home on fire. She escaped but was injured, and her mobile home and the personal property inside were destroyed. Mehrdad Fotoohighiam owned a mobile home on a lot adjacent to Green's. Green subsequently sued Fotoohighiam, James Hall and David Reed, among other defendants, for conspiring to set fire to her mobile home, causing her mental and physical harm as well as property damage. During his deposition, Fotoohighiam asserted his Fifth Amendment right in declining to answer certain questions. Following discovery, Green moved for partial summary judgment against Fotoohighiam on the issue of liability. Pursuant to Rule 74.04, she included with her motion a statement of uncontroverted material facts setting forth certain allegations, each citing to deposition testimony or an affidavit supporting it. The supporting documents included portions of Fotoohighiam's deposition testimony that Green did not cite or otherwise reference. Fotoohighiam failed to file a timely response to Green's motion. The circuit court entered partial summary judgment in Green's favor as to liability, finding it uncontroverted that Fotoohighiam paid the co-conspirators to burn Green's mobile home and they did burn her home, causing her damage. In its order, the circuit court noted Fotoohighiam's failure to file a timely response resulted in an admission to all the facts set forth in Green's statement of uncontroverted facts. The issue of damages was tried to a jury, which returned verdicts in Green's favor, awarding her $250,000 in actual damages and $2.5 million in punitive damages. The circuit court entered judgment accordingly and overruled Fotoohighiam's motion for new trial. Fotoohighiam appeals.

AFFIRMED.

Court en banc holds: The circuit court did not err in entering partial summary judgment in Green's favor as to Fotoohighiam's liability or in overruling his motion for new trial. As required by Rule 74.04(c), Green's motion for partial summary judgment included a statement of uncontroverted material facts – each described with particularity in separately numbered

paragraphs with specific references to the pleadings, discovery, exhibits or affidavits supporting the facts – as well as the supporting documents. The rule required Fotoohighiam to file a response either admitting or denying Green's material facts, but he failed to do so, resulting in his admission to all of Green's uncontroverted material facts. He is not permitted at this stage of the proceedings to rely on uncited portions of his deposition testimony to create a genuine issue of material fact. Neither the circuit court nor this Court is required to search the record to identify disputed issues; a court need only consult what was put properly before it. To the extent the appeals court's 2016 decision in *Street v. Harris* is inconsistent with this opinion and Rule 74.04, it is overruled.