Missouri Court of Appeals
Southern District

In Division

PAUL METZGER, and
JACQUELINE METZGER,

Respondents,

v.

WAYNE MORELOCK, and
KATHY MORELOCK,

Appellants.

No. SD38930

Filed: March 12, 2026

APPEAL FROM THE CIRCUIT COURT OF STONE COUNTY

Honorable Alan M. Blankenship, Judge

AFFIRMED

The trial court granted summary judgment to Paul Metzger and Jacqueline Metzger ("Respondents") on their claim for a prescriptive easement over a small portion (the "disputed area") of a paved driveway located between their home and the home of their neighbor's, Wayne Morelock and Kathy Morelock ("Appellants"). Appellants now

appeal, challenging the trial court's grant of summary judgment with two points relied on. We affirm.

Briefing Issues

We must first address Appellants' statement of facts. Appellants' brief fails to meet the mandatory requirements of rules 84.04(c) and 74.04(c) as their statement of facts cites to various depositions, affidavits and other exhibits and not to Respondents' Statement of Uncontroverted Material Facts ("SUMF") and responses.[1] Summary judgment can only be based on the facts established by the SUMF and responses thereto submitted under the numbered-paragraph-and-response framework set out in Rule 74.04(c)(1)-(4). ***Hershey v. Curators of Univ. of Mo.***, 719 S.W.3d 915, 921 (Mo. App. E.D. 2025).

"Appellate review of a summary judgment is similarly limited solely to those facts." ***Id.*** "Affidavits, exhibits, discovery, etc. generally play only a secondary role, and then only as cited to support Rule 74.04(c) numbered paragraphs or responses, *since parties cannot cite or rely on facts outside the Rule 74.04(c) record*." ***Green v. Fotoohighiam***, 606 S.W.3d 113, 117 (Mo. banc 2020) (quoting ***Jones v. Union Pac. R.R. Co.***, 508 S.W.3d 159, 161 (Mo. App. S.D. 2016)).

"Because the Rule 74.04(c) facts are the only ones 'relevant to the questions presented' on appeal of a summary judgment, those are the facts that Rule 84.04(c)

[1] Unless otherwise indicated, all rule references are to Missouri Court Rules (2025).

requires the appellant to set forth fairly, concisely and without argument in the statement-of-facts section of a brief to this Court." ***Hershey***, 719 S.W.3d at 921. "The 'relevant portion[s]' of the record in a summary judgment appeal are the documents containing the Rule 74.04(c) numbered paragraphs and responses: namely, the movant's SUMF and the non-movant's response, the non-movant's additional SUMF and the movant's reply, and the movant's supplemental SUMF and the non-movant's surreply." ***Id.***; Rule 74.04(c)(1)-(5).

Failure to cite to the relevant facts justifies dismissal. *See* ***Crossley v. King Const. Inc.***, No. SD38899, 2025 WL 3280564, at *2 (Mo. App. S.D. Nov. 25, 2025). However, Appellants' brief allows us to decipher which SUMF and responses are being referenced. Thus, we elect to exercise our discretion to review the trial court's summary judgment ruling, *ex gratia*. *See* ***Ludwig v. Missouri Soybean Merch. Council***, 691 S.W.3d 13, 18 (Mo. App. W.D. 2024). We limit our *ex gratia* review to the Rule 74.04(c) numbered paragraphs and responses. *See* ***Jerigan v. Mercy Hosp. East Comms.***, No. ED 113609, 2025 WL 3760269, at *5 (Mo. App. E.D. Dec. 30, 2026).

Standard of Review

Summary judgment shall be granted if "the motion, the response, the reply and the sur-reply 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[.] Rule 74.04(c)(6)[.]" ***A.O. v. Lester E. Cox Med. Ctrs.***, 719 S.W.3d 923, 932 (Mo. App. S.D. 2025). Our review of a trial

court's decision to grant summary judgment is *de novo*. ***Green***, 606 S.W.3d at 115. "Our *de novo* standard of review means that we look at the summary judgment issues presented on appeal as the trial court should have initially under Rule 74.04, and we give no deference to the trial court's ruling." ***A.O.***, 719 S.W.3d at 932 (quoting ***Great Southern Bank v. Blue Chalk Constr., LLC***, 497 S.W.3d 825, 834 (Mo. App. S.D. 2016)). We review the record in the light most favorable to the party against whom summary judgment was entered, and that party is entitled to the benefit of all reasonable inferences. ***Green***, 606 S.W.3d at 116.

> While we apply *de novo* review to summary judgment, it does not grant an appellant a license to craft arguments free from the constraints of Rule 74.04. Rather, our *de novo* decision on appeal must be in accordance with *all* the requirements of Rule 74.04 and, therefore, must be made in the very same manner the trial court should have applied that rule in the first instance. This means that our review does not consider the entire trial court record but, instead, we *only* look to the facts from the summary judgment record as established through the non-moving party's responses to a motion for summary judgment under the numbered-paragraphs-and-responses framework. Reviewing only this summary judgment record, we must determine whether *uncontroverted* facts established via Rule 74.04(c) paragraphs and responses demonstrate the movant's right to judgment *regardless of other facts or factual disputes*.

A.O., 719 S.W.3d at 934 (quoting ***Martin Leigh, PC v. Williamson***, 699 S.W.3d 538, 542 (Mo. App. S.D. 2024)). A movant must establish that there is no genuine dispute as to those material facts upon which they would have the burden of proof at trial. ***Green***, 606 S.W.3d at 117. The burden then shifts to the non-moving party to demonstrate that one or more of the material facts is genuinely disputed. ***A.O.***, 719 S.W.3d at 933. A denial may not rest upon the mere allegations or denials of the party's pleading. Rather,

the response shall support each denial with specific references to the discovery, exhibits or affidavits that demonstrate specific facts showing that there is a genuine issue for trial. ***Id.***; Rule 74.04(c)(2). A denial which fails to conform with Rule 74.04(c)(2) is deemed admitted. ***J.D. by and through Storment v. Sanders***, 688 S.W.3d 828, 831 n.2 (Mo. App. S.D. 2024).

Analysis

Point 1

Appellants' first point states:

> The trial court erred in granting summary judgement [(sic)]to [Respondents] on their claim for a prescriptive easement because a summary judgement [(sic)]is only proper when there is no genuine dispute as to the material facts and the movant is entitled to summary judgment as a matter of law, in that the prerequisites for a prescriptive easement have not met [(sic)] or, at the very least, there are genuine disputes as to the material facts necessary to establish these elements including if [Respondents] have used [Appellants'] property openly, continuously, uninterrupted for [(sic)] ten-year period, adversely under a claim of right and with notice of the use and claim of right.

We first note that this point is multifarious as it raises separate claims of error, alleging that there were disputed facts as to various elements of a prescriptive easement. However, Appellants' argument on this point is sufficiently understandable and we again exercise our discretion to address the merits *ex gratia*. *See* ***Jokerst v. Huckaby***, 711 S.W.3d 189, 198 n.7 (Mo. App. S.D. 2025); ***Noble v. Noble***, No. WD 87485, 2026 WL 503096, at *4 (Mo. App. W.D. Feb. 24, 2026).

"A party claiming a prescriptive easement bears the burden of proving five elements by clear and convincing evidence: use of the claimed easement was (1) continuous; (2) uninterrupted; (3) visible; and (4) adverse for (5) a period of 10 years." ***Jokerst***, 711 S.W.3d at 199 (quoting ***Hodgkinson v. Hatten***, 687 S.W.3d 201, 206 (Mo. App. S.D. 2024)). Appellants' argument generally alleges that Respondents did not show undisputed facts supporting several of these elements. We disagree.

The undisputed facts support all the elements of a prescriptive easement. Here, the requisite elements were met primarily based on the use of the disputed area by the Respondents' predecessor-in-interest, Deborah Ruhl ("Ruhl"). Ruhl constructed the house which Respondents now own and she lived in the property from 2001 to 2014. During that time, Ruhl's understanding was that she had the right to use the disputed area whenever she needed to. Ruhl never asked for permission to use the disputed area of the driveway from Appellants' predecessor-in-interest ("Krause"). Krause never had any conversations with Ruhl granting her permission or license to use the disputed area.

Although Ruhl herself did not store a vehicle in the basement garage, she would occasionally drive across the disputed area to access the basement garage. Ruhl also frequently directed movers, propane delivery drivers, gravel deliveries, landscaping crews, and other contractors to use the disputed area for her benefit. During that nearly 13-year timeframe, Krause knew that Ruhl used the disputed area and never attempted to block or stop Ruhl from doing so. Further, when Respondents purchased the property

in 2014, they used the disputed area on nearly a daily basis, and would also cross the disputed area in order to store a vehicle in the basement garage. Respondents equally did not request permission from Krause to use the disputed area.

Although Appellants "denied" many of the SUMF and Additional SUMF submitted by Respondents, the trial court found that Appellants' responses failed to comply with Rule 74.04 because the materials cited by Appellants in their responses did not actually support their denials and were generic, "non-responsive" denials. *See* Rule 74.04(c)(2). Thus, the trial court deemed Respondents' SUMF and Additional SUMF as admitted. We agree, and do the same. *See* ***Storment***, 688 S.W.3d at 831 n.2; ***Yes Chancellor Farms, LLC v. Merkel***, 670 S.W.3d 214, 222 (Mo. App. E.D. 2023). In this record, drawn from the Rule 74.04(c) paragraphs and responses, there was no genuine issue of material fact as to any of the elements for a prescriptive easement. Point 1 is denied.

Point 2

Appellants' second point contends that the trial court erred in failing to strike the affidavit of Ruhl that was used to support Respondents' Additional SUMF. Appellants contend that the statements in Ruhl's affidavit contradict her earlier deposition testimony and that the trial court erred in considering her affidavit.

Affidavits are one of the ways parties may present evidence in a summary judgment or response under Rule 74.04. "[A]ffidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show

affirmatively that the affiant is competent to testify to the matters stated therein. Rule 74.04(e). The issue is whether the affidavit of Ruhl, a non-party, was contradictory with prior deposition testimony. [2] If an affidavit is not contradictory, it should be considered. *See* ***id.***

Ruhl's deposition transcript discusses her general use of the disputed area in response to questions of counsel. Her affidavit describes specific instances where the disputed area was used by contractors, workers and delivery people. The affidavit also outlined her use of the disputed area during a landscaping project which took over a year to complete. None of these specific examples of use contradicts any of her previous deposition testimony. Accordingly, the trial court did not err in considering the affidavit. *See* ***id.***

[2] We note an affidavit may submit contradictory testimony where it is clear that the party was originally mistaken or misspoke. ***Calvert v. Plenge***, 351 S.W.3d 851, 855 (Mo. App. E.D. 2011). However, that is not an issue in this case.

Conclusion

Under our *ex gratia* review, we find that no genuine issue of material fact existed to preclude the trial court from entering summary judgment in favor of Respondents on their claim for a prescriptive easement. We affirm the judgment of the trial court.

BRYAN E. NICKELL, J. – OPINION AUTHOR

JEFFREY W. BATES, J. – CONCURS

MATTHEW P. HAMNER, J. – CONCURS