

Tennessee Summary Judgment Now Consistent with Federal Rule

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In *Rye, et. al. v. Women's Care Center of Memphis, M PLLC, et. al.*, No. W2013-00804-SC-R11-CV, (Tenn. Oct. 26, 2015), the Supreme Court of Tennessee reconsidered the summary judgment standard previously adopted in *Hannan v. Alltel Publishing Co.*, 270 S.W.3d 1 (Tenn. 2008).^[1] The Supreme Court overruled *Hannan* and returned the Tennessee summary judgment standard consistent with Rule 56 of the Federal Rules of Civil Procedure.

In Tennessee, as in the federal system, when the moving party seeking summary judgment does not bear the burden of proof at trial, the moving party may satisfy its burden of production by either **(1) affirmatively negating an essential element of the nonmoving party's claim or (2) demonstrating that the nonmoving party's evidence at the summary judgment stage is insufficient to establish the nonmoving party's claim or defense.** *Rye* at *35 (emphasis added).

The moving party, however, when attacking the nonmoving party's lack of evidence must do more "than make a conclusory assertion that summary judgment is appropriate on this basis." *Id.* Rather, Rule 56.03 of the Tennessee Rules of Civil Procedure requires the moving party to support its motion with "a separate concise statement of material facts as to which the moving party contends there is no genuine issue for trial." *Id.*; Tenn.R.Civ.P. 56.03. "Each fact is to be set forth in a separate, numbered paragraph and supported by a specific citation to the record." *Id.* Any party then opposing the summary judgment must file a response to each fact set forth by the nonmovant in the manner provided in Rule 56.03. *Id.*

To survive a motion for summary judgment, the nonmoving party cannot simply rely upon “mere allegations or denials of [its] pleading” but must respond, and by affidavits or one of the other means provided in Rule 56, “set forth specific facts” at the summary judgment stage, “showing that there is a genuine issue for trial.” *Id.*; Tenn.R.Civ.P. 56.06. The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). The nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party. *Id.* If, however, summary judgment is filed before adequate time for discovery has been provided, then the nonmoving party may seek a continuance to engage in additional discovery as provided by Rule 56.07. *Id.* After adequate time for discovery has been provided, however, summary judgment should be granted if the nonmoving party’s evidence *at the summary judgment stage* is insufficient to establish the existence of a genuine issue of material fact for trial. *Id.*; Tenn.R.Civ.P. 56.04, 56.06 (emphasis in original). The focus is on the evidence the nonmoving party comes forward with at the summary judgment stage, not on hypothetical evidence that theoretically could be adduced, despite the passage of discovery deadlines, at future trial.

In footnote 9 of *Rye*, the Supreme Court addressed Tennessee Code Annotated section 20-16-101 (basically enacted to replace *Hannan*), **burden of proof in summary judgment motions**, which states:

In motions for summary judgment in any civil action in Tennessee, the moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it:

- (1) Submits affirmative evidence that negates an essential element of the nonmoving party's claim; or
- (2) Demonstrates to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.

The Supreme Court stated the plaintiffs’ suggestion that any decision overruling *Hannan* and adopting the standards of the *Celotex* trilogy amounts to an impermissible retroactive application of Tennessee Code Annotated section 20-16-101, which violates article I, section 20 of the Tennessee Constitution, is incorrect. See Tenn. Cons. art. 1, § 20 (“[N]o retrospective law, or law impairing the obligations of contracts, shall be made.”). According to the Supreme Court of Tennessee, section 20-16-101 is irrelevant to this appeal, and as such, the Court was not retroactively applying it. According to the Supreme Court, overruling the manner in which *Hannan* interpreted Tennessee Rule 56 amounts instead to a proper exercise of the Court’s authority to reconsider, and when appropriate, abandon rules of law previously articulated in judicial decisions. In civil cases, judicial decisions overruling prior cases generally are applied retrospectively. *Hill v. City of Germantown*, 31 S.W.3d 234, 239 (Tenn. 2000) (emphasis in original).

For questions or more information, please contact one of MGC's [attorneys](#).

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[1] To be successful on a motion for summary judgment in state court in Tennessee, the moving party “must either (1) affirmatively negate an essential element of the nonmovant’s claim, or (2) show that the nonmoving party cannot prove an essential element of its claim at trial.” 270 S.W.3d, 1, 9 (Tenn. 2008).