

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Josh Hammond, Respondent,

v.

Richard Tod Hammond, Appellant,

v.

Titan Logging, LLC, Third-Party Defendant.

Appellate Case No. 2015-002524

Appeal From Lancaster County
DeAndrea G. Benjamin, Circuit Court Judge

Unpublished Opinion No. 2018-UP-431
Submitted September 19, 2018 – Filed December 5, 2018

AFFIRMED

Francis L. Bell, Jr., of Francis Bell Law Firm, LLC, of
Lancaster, for Appellant.

Stephen Lewis Goldfinch, Jr. and Ryan Patrick Compton,
both of Goldfinch Winslow, LLC, of Murrells Inlet, for
Respondent.

PER CURIAM: In this action claiming conversion of land clearing and logging equipment, Appellant Richard Tod Hammond (Father) argues the circuit court erred in finding no genuine issue of material fact existed as to his alleged ownership interest in three pieces of equipment and in granting partial summary judgment to Respondent Josh Hammond (Son). Father further contends partial summary judgment was inappropriate because Son attempted to use a memorandum of law instead of an affidavit as a means of introducing his supporting documentation at the hearing. Because the circuit court permitted both parties to supplement the record, and the necessary supporting affidavit was filed to support the introduction of the evidence, we affirm.

I. Documentation on Summary Judgment

Pursuant to Rule 56(a), SCRCF:

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 30 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

"A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." Rule 56(b), SCRCF. Under Rule 56(c), SCRCF, the circuit court shall render the judgment sought "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Although Rule 56(c) provides "[t]he adverse party may serve opposing affidavits not later than two days before the hearing," Rule 56(d), SCRCF, states in pertinent part:

When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at

some other time. The moving party may serve reply affidavits at any time before the hearing commences.

"The admission of evidence is within the sound discretion of the trial judge, and absent a clear abuse of discretion amounting to an error of law, the trial court's ruling will not be disturbed on appeal." *Peterson v. Nat'l R.R. Passenger Corp.*, 365 S.C. 391, 399, 618 S.E.2d 903, 907 (2005).

Son sued Father for the conversion of certain land clearing and logging equipment. Father counterclaimed, alleging Son converted the equipment and certain business funds (two checks). Son subsequently moved for partial summary judgment as to his ownership of the equipment. Prior to the summary judgment hearing, Father filed and served an affidavit with documentation purporting to support his alleged ownership interest. Son elected not to serve and file affidavits prior to the hearing. Instead, he provided a memorandum of law with numerous attachments, including pleadings and discovery responses.

Because the parties agreed the submitted documents had been exchanged in discovery, the circuit court allowed them into evidence and completed the hearing. Significantly, the court did not rule from the bench but left the record open for fifteen days to allow the parties to produce additional evidence, including necessary supporting affidavits, regarding ownership. Father submitted a memorandum of law, three affidavits, and multiple documents. Son submitted an affidavit along with many of the previously admitted supporting documents.

The circuit court cured any error in admitting the challenged documents at the hearing by leaving the record open for both parties to supplement it as needed. The Form 4 order indicates the circuit court relied on the "affidavits of the parties" in making its determination. Under these circumstances, we find the circuit court did not abuse its discretion by considering Son's supporting documents, which were attached to both his memorandum of law as well as his affidavit and which were available to both parties prior to the summary judgment hearing.

II. Summary Judgment

"When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable

to the nonmoving party." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009).

Initially, we note Father has failed to address on appeal the circuit court's grant of partial summary judgment regarding Son's ownership interest in the questioned checks. He did not set forth the check issue in his statement of the issues on appeal or otherwise raise it in his brief. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."); *see also* *Allen v. Pinnacle Healthcare Sys.*, 394 S.C. 268, 277, 715 S.E.2d 362, 367 (Ct. App. 2011) (holding health care group failed to preserve for appellate review its assertion that trial court abused discretion, when issue was not included in the statement of issues in appeal). Thus, we address only the alleged conversion of the three pieces of equipment.

Father failed to present any evidence supporting the existence of a genuine issue of material fact as to his alleged ownership interest in the logging equipment. Our review of the record reveals Father failed to produce *any* evidence regarding the actual ownership of the three pieces of equipment either prior to or after the August 24, 2015 hearing. Instead, Father focused on submitting evidence pertaining to the ownership of the business, Hammond Land Clearing, which is not at issue here.

Thus, viewing the evidence "in the light most favorable to the nonmoving party," the circuit court properly found no triable issue of fact exists regarding Son's ownership of the three pieces of logging equipment. Father's affidavit states that in 2009, he decided to grow the logging side of Hammond Land Clearing, which necessitated the purchase of new equipment, and Father requested and directed Son to obtain loans for the new equipment "to help his son establish his credit and get loans in his name." However, all of the evidence submitted by the parties reflects that the accounts, loans, and contracts of sale pertaining to the three pieces of equipment at issue are in Son's name alone. Father's submissions simply do not raise a triable issue of fact to the contrary.

AFFIRMED.¹

KONDUROS, MCDONALD, and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.