

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

RWI CONSTRUCTION SERVICES, INC.,
Plaintiff/Appellee,

v.

SKYZ, LLC,
Defendant/Appellant.

No. 1 CA-CV 21-0496
FILED 5-31-2022

Appeal from the Superior Court in Maricopa County
No. CV2019-056797
The Honorable Daniel G. Martin, Judge

VACATED AND REMANDED

COUNSEL

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MEMORANDUM DECISION

Presiding Judge David D. Weinzweig delivered the decision of the Court, in which Judge Brian Y. Furuya and Judge Jennifer M. Perkins joined.

WEINZWEIG, Judge:

¶1 SKYZ, LLC (“Owner”) appeals the superior court’s grant of summary judgment to RWI Construction Services, Inc. (“Contractor”) on all claims and counterclaims. We vacate and remand.

BACKGROUND

¶2 Contractor sued Owner for breach of a construction contract. Owner counterclaimed for breach of contract and breach of good faith and fair dealing. Contractor later moved for partial summary judgment on its breach of contract claim. Owner responded with multiple arguments. The superior court granted Contractor’s motion in October 2020 (“First Summary Judgment”), reasoning “there are no genuine issues of material fact and [Contractor] is entitled to Judgment as a matter of law.”

¶3 Contractor then moved for summary judgment on Owner’s counterclaims. Owner again responded with multiple arguments. The superior court granted this motion in April 2021 (“Second Summary Judgment”). This time, the court found summary judgment was required because the Owner “failed to adduce any admissible evidence that would compel a conclusion different from that reached by the Court in [granting the First Summary Judgment].”

DISCUSSION

¶4 The final sentence of Arizona Rule of Civil Procedure 56(a) instructs: “The [superior] court should state on the record the reasons for granting or denying [a] motion [for summary judgment].” Ariz. R. Civ. P. 56(a). Arizona’s rules adopted this language in 2013 to parrot Federal Rule of Civil Procedure 56(a). *See* Ariz. R. Civ. P. 56, cmt. (2013 amendment).

¶5 Arizona courts have interpreted the word “should” to “indicate[] a mandatory provision” or “express [an] obligation or duty.” *See Arizona Minority Coal. for Fair Redistricting v. Arizona Indep. Redistricting Comm’n*, 211 Ariz. 337, 353 (App. 2005); *see also McNutt v. McNutt*, 203 Ariz.

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28, 34, ¶ 26 (App. 2002); American Heritage Dictionary (5th ed. 2022). Using this definition of “should,” Rule 56(a) requires the superior court “to state on the record the reasons for granting or denying the motion.” Ariz. R. Civ. P. 56(a).

¶6 We may also consult federal law when construing the same language in our rules. *See Waltner v. JPMorgan Chase Bank, N.A.*, 231 Ariz. 484, 488, ¶ 18 (App. 2013) (federal court interpretations are “instructive and persuasive in construing our rules”). When adopted by federal courts in 2010, the federal Advisory Committee Notes explained Rule 56(a) “adds a new direction that the court should state on the record the reasons for granting or denying the motion.” The Advisory Committee addressed the advantages of this “new direction,” and the limited content required of trial judges:

Among other advantages, a statement of reasons can facilitate an appeal or subsequent trial-court proceedings. It is particularly important to state the reasons for granting summary judgment. The form and detail of the statement of reasons are left to the court’s discretion. . . . The statement on denying summary judgment need not address every available reason. But identification of central issues may help the parties to focus further proceedings.

Fed. R. Civ. P. 56(a), Advisory Committee Notes, 2010 amend.

First Summary Judgment

¶7 The superior court granted the First Summary Judgment because “there are no genuine issues of material fact and [Contractor] is entitled to Judgment as a matter of law,” only quoting the standard in Rule 56. It did not “state on the record the reasons for granting” partial summary judgment to Contractor. *See* Ariz. R. Civ. P. 56(a). Nor did it offer further guidance with questions or statements at oral argument.

¶8 We hold this was insufficient and the superior court was required to provide a minimal explanation of the “reasons” for granting summary judgment. *See Rasor v. Nw. Hosp., LLC*, 243 Ariz. 160, 166, ¶ 31 (2017) (“Because the trial court did not explain the basis for granting summary judgment in favor of NWMC, we cannot know whether the court changed its mind and found that Ho could not serve as a standard-of-care witness.”). After all, by granting summary judgment, the court ended the lawsuit. *See United States v. Massachusetts*, 781 F. Supp. 2d 1, 19–20 (D. Mass.

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2011) (recognizing that “it is particularly important” to state the reasons for granting summary judgment, but not for denying summary judgment).

¶9 Moreover, the motion practice at summary judgment raised different issues and arguments, including (1) whether Owner’s affidavit was admissible, (2) whether the law of the case doctrine required summary judgment, and (3) whether the record reflected a genuine, triable issue of material fact. *See Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1081 (9th Cir. 2000) (“[W]hen multiple grounds are presented by the movant and the reasons for the district court’s decision are not otherwise clear from the record, [the appeals court] may vacate a summary judgment and remand for a statement of reasons.”).

¶10 To that point, we cannot even determine the proper standard of review. If the court concluded the Owner’s affidavit was inadmissible, we review for an abuse of discretion. *See Baker v. Univ. Physicians Healthcare*, 231 Ariz. 379, 387, ¶ 30 (2013) (abuse of discretion standard “equally applies to admissibility questions in summary judgment proceedings”). But if the court examined the record, with the affidavit, and found it could not withstand summary judgment, our review is de novo. *See Jackson v. Eagle KMC LLC*, 245 Ariz. 544, 545, ¶ 7 (2019).

¶11 As a result, we vacate and remand the First Summary Judgment for the superior court to state its reasons for granting summary judgment.

Second Summary Judgment

¶12 The superior court offered little more when it granted the Second Summary Judgment, only adding that Owner “failed to adduce any admissible evidence that would compel a conclusion different from that reached by the Court in [granting the First Summary Judgment].” For the above reasons, we vacate and remand entry of the Second Summary Judgment for the superior court to provide a statement of its reasons for granting summary judgment.

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CONCLUSION

¶13 We vacate and remand the First Summary Judgment and Second Summary Judgment for the superior court to “state on the record the reasons” for granting summary judgment. Ariz. R. Civ. P. 56(a).



AMY M. WOOD • Clerk of the Court
FILED: AA