

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FRANK HOHN,)	
)	
Plaintiff,)	8:05CV552
)	
v.)	
)	MEMORANDUM AND ORDER
BNSF RAILWAY COMPANY,)	
)	
Defendant.)	

During the pretrial conference held on November 30, 2010, the parties raised an issue regarding defendant’s proposed uncontroverted facts, paragraphs 12 through 34 of the pretrial conference order. Citing Nebraska Civil Rule 56.1(b)(1), the defendant claims the facts in these paragraphs were not disputed by the plaintiff on defendant’s summary judgment motion, and accordingly they are admitted for the purposes of this case, including trial. The plaintiff disagrees, claiming many of the facts listed by the defendant were disputed in plaintiff’s summary judgment filings, and even if they were not, the facts are deemed undisputed only for the purposes of the summary judgment motion.

Under Nebraska Civil Rule 56.1(b)(1), “[p]roperly referenced *material facts* in the movant’s statement are *considered* admitted unless controverted in the opposing party’s response.” [NECivR 56.1\(b\)\(1\)](#) (emphasis added). For the purposes of summary judgment practice, only disputes over facts that might affect the outcome of the suit, i.e. “material facts,” will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not preclude summary judgment. [Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 \(1986\)](#). Moreover, uncontroverted material facts are “considered” undisputed for the purposes of ruling on the pending motion, not deemed undisputed for the purposes of the entire case. Under Rule 56 of the Federal rules of Civil Procedure, “[i]f a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may: . . . (2) consider the fact undisputed *for purposes of the motion.*”

Nebraska Civil Rule 56.1(b)(1) can clarify this court's procedures and practices on summary judgment, but it cannot abrogate the clear language of the federal rule. Accordingly, absent a court order designating which facts shall be considered uncontroverted for the purposes of the entire action, (see [Fed. R. Civ. P. 56\(g\)](#)), facts which are not contested or disputed on summary judgment are not deemed uncontroverted for all purposes in the case, including trial.

IT IS ORDERED that defendant's statement of uncontroverted facts in paragraphs 12 through 34 of the pretrial conference order is stricken.

December 1, 2010.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

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