

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1433**

Kelly Bell, et al.,
Appellants,

vs.

St. Joseph Mutual Insurance Company,
Respondent,

Grinnell Mutual Reinsurance Co., et al.,
Defendants.

**Filed May 1, 2023
Reversed and remanded
Bratvold, Judge
Concurring specially, Johnson, Judge**

Mille Lacs County District Court
File No. 48-CV-21-840

Kelly Bell and Thomas Bell, Milaca, Minnesota (pro se appellants)

John J. Neal, Boe M. Piras, Willenbring, Dahl, Wocken & Zimmermann, PLLC, Cold Spring, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Johnson, Judge; and Bryan, Judge.

SYLLABUS

When a district court proceeds under Minn. R. Civ. P. 56.06(c) to consider summary judgment on its own initiative, the district court's notice must identify for the parties the material facts that may not be genuinely in dispute, which requires identification of the issue under consideration for summary judgment.

OPINION

BRATVOLD, Judge

Appellants Kelly and Thomas Bell seek review of the district court's grant of summary judgment on its own initiative to respondent St. Joseph Mutual Insurance Company. The Bells sued St. Joseph and two other defendants seeking a judgment declaring that a homeowners' insurance policy covered property damage to their home as well as a judgment awarding money damages. The two other defendants moved for summary judgment, but St. Joseph did not seek summary judgment.

After a hearing on the summary-judgment motions of the two other defendants, the district court issued an order notifying the parties that it intended to issue a judgment independent of the motions filed by the parties and requesting supplemental briefing. None of the parties filed supplemental briefs. Citing Minn. R. Civ. P. 56.06, the district court granted summary judgment for St. Joseph after concluding the Bells failed to show "legal entitlement to relief."

Rule 56.06 allows a district court to grant summary judgment independent of a party's motion after giving the parties notice and a reasonable time to respond. On appeal, the Bells contend that the district court failed to provide the notice required by rule 56.06(c). We agree. When a district court proceeds under rule 56.06(c), the district court's notice must identify for the parties the material facts not genuinely in dispute, which requires identification of the issue under consideration for summary judgment. Because the district court granted summary judgment for St. Joseph on its own initiative and the district court's notice did not comply with rule 56.06(c), we reverse and remand.

FACTS

The following summarizes the undisputed facts in the district court's summary-judgment order along with record evidence helpful to understand the issues on appeal.

Kelly and Thomas Bell own a home in Milaca. The Bells bought homeowners' insurance through an independent agent. The policy was issued by St. Joseph¹ and covered the Bells' home through August 2018. The Bells "were out of state and did not reside at their Milaca home from January 1, 2018 to May 9, 2018." While the Bells were away, Kelly's daughter S.P. "occupied the home under a lease agreement until May 1, 2018." When the Bells returned home, they discovered parts of the home and their personal property were "stolen and damaged." "[I]t was determined that methamphetamine had been manufactured in the home."

The Bells submitted an insurance claim for \$68,436.51 in damages. St. Joseph "refused to pay" the Bells' property-damage claim, asserting that the Bells had rented the property, and "rentals were not covered under the policy issued."

¹ The Bells also sued defendants Benton Insurance Agency and Grinnell Mutual Reinsurance Company; the Bells' complaint alleged that Benton negligently sold them the homeowners' policy that was issued by St. Joseph and Grinnell. As discussed below, the district court granted summary judgment to Benton and Grinnell. The Bells' brief to this court does not raise any issue on the judgments for Benton and Grinnell. Thus, this opinion only discusses the Bells' claims against Benton and Grinnell as relevant to understand the procedural history of this appeal.

In February 2020, the Bells sued St. Joseph and two other defendants. The Bells sought a judgment declaring that the homeowners' insurance policy covered the property damage to their home along with a money judgment.

In February 2022, St. Joseph moved to dismiss the Bells' action "for failure to prosecute their claims and respond to discovery" or, in the alternative, to sanction the Bells for "failing to cooperate in submitting a discovery plan" and to compel the Bells "to provide initial disclosures" and respond to discovery. At about the same time, the other two defendants moved for summary judgment.² The Bells answered St. Joseph's discovery requests. After a hearing on the parties' motions, the district court issued a written order on April 7 granting summary judgment for one of the other two defendants.³

On June 6, the district court notified the parties in an order "of its intent to issue a Judgment Independent of the Motion," citing Minn. R. Civ. P. 56.06. The order stated that the district court "requests (but does not require) supplemental briefing" on the following: (1) "[the Bells'] cause(s) of action with respect to each Defendant and the necessary elements of such action(s)" and (2) "[t]he factual basis for the claim(s), including

² We note that neither Benton's nor Grinnell's summary-judgment motion contended that the Bells' homeowners' policy did not cover the claimed property damage. Benton argued that it "did not breach the duty of care it owed the Bells" because "the Bells did not instruct Benton . . . to procure a policy that would provide coverage while the property was rented." Grinnell contended that the Bells "seek coverage for damages caused by theft and vandalism," which are "insured by St. Joseph," not Grinnell.

³ The district court's order granted summary judgment for Grinnell but did not state the grounds. We note, however, that in support of Grinnell's summary-judgment motion, its attorney filed an affidavit with a homeowner's policy issued by St. Joseph for the Bells' home.

identifying specific facts which may be in dispute (if any).” St. Joseph filed a letter with the court stating it would “allow [the Bells] to answer the Court’s questions.” The Bells did not respond.

On June 29, the district court issued a written order granting summary judgment for St. Joseph under rule 56.06, as well as for the other remaining defendant.⁴ The district court explained it “presumed” the Bells’ claim against St. Joseph was for breach of contract and determined that “[n]o contractual language related to the insurance policy has been presented,” and “such language is essential to establishing [the Bells’] prima facie case.” The district court concluded the Bells “fail[ed] to establish a legal entitlement to relief.” The district court ended by noting it did “not need to consider whether any genuine issues of material fact exist.”

The Bells appeal.

ISSUE

Did the district court err under Minn. R. Civ. P. 56.06(c) by granting summary judgment on its own initiative in favor of St. Joseph?

ANALYSIS

Appellate courts review the grant of summary judgment de novo. *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020). “On appeal from summary judgment, [appellate courts] examine whether there [are] any genuine issues of material fact and whether the district court erred in its application of the law.” *Id.*; see *Septran, Inc.*

⁴ The district court’s order granted summary judgment for Benton, stating that the Bells “fail to articulate any basis to believe Defendant Benton owed [them] a duty to specifically note that rental coverage was excluded from the policy.”

v. Indep. Sch. Dist. No. 271, 555 N.W.2d 915, 918-21 (Minn. App. 1996) (applying the same standard of review to a district court’s sua sponte grant of summary judgment), *rev. denied* (Minn. Feb. 26, 1997).

The Bells argue that the district court erred by granting summary judgment to St. Joseph and relying on the Bells’ failure to present or produce the homeowners’ insurance policy. The Bells’ initial brief contends that the record includes the relevant insurance policy, which was “attached . . . to the affidavit of [one of the] defense attorney[s].” St. Joseph argues that the “presence” of the insurance policy in the record does not “affect” the judgment because Minn. R. Civ. P. 56.03(c) only requires a district court to consider cited materials. St. Joseph points out that the Bells cited no materials because the Bells did not respond to the district court’s rule 56.06 notice, and the duty to demonstrate coverage lies with the insured.

In their reply brief, the Bells assert, first, that rule 56.03 does not apply here. Next, the Bells contend that the district court’s rule 56.06 notice was inadequate because it did not identify the material facts that may not be genuinely in dispute and did not inform the Bells that “the existence of the insurance contract or the language of the contract was in dispute.” The Bells also argue that the “presence of an insurance policy between the parties in this case is not contested” because St. Joseph “admitted it insured [the Bells’ home] in its Answer.”

Thus, the parties raise three issues: (A) what notice is required before a district court grants summary judgment independent of a party’s motion under rule 56.06; (B) what record must the district court consider when deciding whether to grant summary judgment

under rule 56.06; and (C) the merits of the district court’s summary-judgment decision. We consider each issue in turn.

A. Notice Under Rule 56.06

The first step in applying the language of a rule of civil procedure is to determine whether the language, on its face, is ambiguous. *See Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001) (articulating the procedure for interpreting a statute). When the language of the rule is unambiguous, appellate courts apply the rule’s plain meaning. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 601 (Minn. 2014). We also give effect to all parts of the relevant rule to avoid rendering any part null or void. *328 Barry Ave., LLC v. Nolan Props. Grp.*, 871 N.W.2d 745, 749 (Minn. 2015).

Rule 56.06 provides that “[a]fter giving notice and a reasonable time to respond,” a district court may

- (a) grant summary judgment for a nonmovant;
- (b) grant the [summary-judgment] motion on grounds not raised by a party; or
- (c) consider summary judgment on its own initiative after identifying for the parties the material facts that may not be genuinely in dispute.

Minn. R. Civ. P. 56.06.

Minnesota adopted the current rule 56.06 in 2018. No precedential caselaw has interpreted the rule since its adoption.⁵ The Minnesota Supreme Court adopted rule 56.06 after many years of caselaw recognizing the district court’s inherent power to grant

⁵ The Federal Rules of Civil Procedure include a provision that has language nearly identical to Minn. R. Civ. P. 56.06. *See* Fed. R. Civ. P. 56(f) (adopted in 2010).

summary judgment sua sponte. *See Septran*, 555 N.W.2d at 920 (“A district court may, sua sponte, grant summary judgment if, under the same circumstances, it would grant summary judgment on motion of a party.” (quotation omitted)); *Del Hayes & Sons, Inc. v. Mitchell*, 230 N.W.2d 588, 591-92 (Minn. 1975) (stating that although no “procedural rule gives the trial court express authority to enter a summary judgment on its own motion,” the trial court has “the inherent power . . . to dispose summarily of litigation when there remains no genuine issue as to any material fact and judgment must be ordered for one of the parties as a matter of law”).

Caselaw reviewing a district court’s decision to grant summary judgment sua sponte established that a district court must give the parties notice of its intent to do so and a reasonable time to respond. *See Phelps v. State*, 823 N.W.2d 891, 895 (Minn. App. 2012) (reversing the district court’s sua sponte grant of summary judgment where plaintiffs were “without adequate notice that the district court was considering summary judgment” and were “unable to submit [relevant] documents or any other evidence”); *Septran*, 555 N.W.2d at 921 (affirming the district court’s sua sponte grant of summary judgment when the district court gave the parties notice of the issue and 18 days to submit briefs).⁶

⁶ Generally, an appellate court does not grant relief on appeal based solely on a district court’s deficient notice that it may grant summary judgment independent of a party’s motion. Caselaw predating rule 56.06 held that “[u]nless an objecting party can show prejudice from lack of notice,” the district court’s sua sponte grant of summary judgment “should not be disturbed.” *Fed. Land Bank of St. Paul v. Obermoller*, 429 N.W.2d 251, 255 (Minn. App. 1988), *rev. denied* (Minn. Oct. 26, 1988). Here, the parties do not discuss whether the Bells were prejudiced by the district court’s rule 56.06 notice. Thus, we assume without deciding that the district court’s grant of summary judgment for St. Joseph prejudiced the Bells.

The caselaw predating the adoption of rule 56.06 did not describe what notice is required. *See, e.g., Hebrink v. Farm Bureau Life Ins. Co.*, 664 N.W.2d 414, 419 (Minn. App. 2003) (concluding that the district court erred in its sua sponte grant of summary judgment because “no evidence in the record . . . indicates appellant knew . . . he was expected to address a potential summary-judgment motion” on the issue the district court decided).⁷

These rulings provide helpful background for applying rule 56.06, given that the first line of the new rule requires a district court to give “notice and a reasonable time to respond.”⁸ Minn. R. Civ. P. 56.06. To determine what notice a district court must give before proceeding under rule 56.06, we begin with the unambiguous language of rule 56.06. Although rule 56.06 does not describe the required notice in the first line of the rule, the three circumstances described in the rule suggest the required notice. Circumstance (a) describes a district court considering summary judgment “for a nonmovant”; circumstance (b) describes a district court considering granting a summary-judgment motion “on grounds

⁷ Federal caselaw does not agree on what notice is required under Fed. R. Civ. P. 56(f) but suggests that notice should include the grounds the district court will consider, *see McCoy v. Town of Pittsfield*, 59 F.4th 497, 505 (1st Cir. 2023), and give sufficient notice so the losing party has an opportunity to demonstrate a genuine issue of material fact, *see Moore v. Equitrans, L.P.*, 27 F.4th 211, 224-27 (4th Cir. 2022).

⁸ The Bells do not claim that the district court failed to give them a reasonable time to respond. We note that the advisory-committee comments interpret the “reasonable time” requirement in rule 56.06 by referring to rule 56.02. The committee comment states: “[N]otice [under rule 56.06] should precede any order for summary judgment by the 14-day minimum notice period specified in Rule 56.02.” Minn. R. Civ. P. 56.06 2018 advisory comm. cmt.; *see also* Minn. R. Civ. P. 56.02 (describing the 14-day minimum notice period for summary-judgment motions). As St. Joseph correctly points out in its brief, the district court gave the parties 16 days to file supplemental briefs before it issued its decision. Thus, it appears to be undisputed that the district court complied with the reasonable-time requirement in rule 56.06.

not raised by a party”; and circumstance (c) describes a district court considering granting summary judgment “on its own initiative.” Minn. R. Civ. P. 56.06.

We focus on the notice required when proceeding under rule 56.06(c) because the district court informed the parties that it was proceeding on its own initiative under rule 56.06 after reviewing St. Joseph’s motion, which did not seek summary judgment.⁹ Rule 56.06(c) provides that a district court may grant summary judgment on its own initiative after identifying for the parties the “material facts” that may not be genuinely in dispute.

The Bells argue that the district court’s notice was inadequate because it did not identify the material facts or the disputed legal issue.¹⁰ Rule 56.06(c) expressly requires a district court to identify for the parties the material facts that may not be genuinely in dispute, but it does not directly refer to the legal issue. Still, there is a connection between the material facts and the issue for summary judgment. A fact cannot be material unless it is relevant to the legal analysis. “A material fact is one of such a nature as will affect the result or outcome of the case depending on its resolution.” *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976). And which facts are material depends on which legal issue is under consideration for summary judgment. *See Black’s Law Dictionary* 1170 (11th ed. 2019) (defining “material” as “[o]f such a nature that knowledge of the item would affect a person’s decision-making”); *see generally Watab Twp. Citizen All. v. Benton Cnty. Bd.*

⁹ Because it is unnecessary to our decision, we do not consider or determine whether this case implicates the circumstances described in Minn. R. Civ. P. 56.06(a) or (b).

¹⁰ To be clear, the Bells argue that the district court “never identified for the parties the material facts that may not be genuinely in dispute, and specifically did not identify that the existence of the insurance contract or the language of the contract was in dispute.”

of *Comm'rs*, 728 N.W.2d 82, 90 (Minn. App. 2007) (stating that material evidence is relevant or consequential evidence), *rev. denied* (Minn. May 15, 2007). So, for example, the material facts for a statute-of-limitations issue differ from the material facts for a contract-damages issue or a contract-breach issue. Because identifying the material facts that may not be genuinely in dispute requires first identifying the legal issue under consideration for summary judgment, rule 56.06(c) implies that a district court's notice must fairly express both aspects. Thus, we conclude that a district court proceeding under rule 56.06(c) must notify the parties and identify the material facts that may not be genuinely in dispute, which requires identification of the issue under consideration for summary judgment.

We next compare the district court's rule 56.06 notice with the language of rule 56.06(c). The district court's notice contained broad language, requesting supplemental briefing by "all remaining parties" on the Bells' causes of action "with respect to each Defendant and the[ir] necessary elements" and identifying "the factual basis" for their claims. The district court's notice did not conform with rule 56.06(c) for two reasons. First, the district court's notice did not identify for the parties "the material facts that may not be genuinely in dispute." Minn. R. Civ. P. 56.06(c).¹¹ Indeed, the district court's rule 56.06

¹¹ In its later order granting summary judgment for St. Joseph, the district court states it did not consider "whether any genuine issues of material fact exist." The same order, however, summarizes the relevant facts and describes them as "findings" even though a district court does not find facts on summary judgment. *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997) ("The district court's function on a motion for summary judgment is not to decide issues of fact . . ."). We understand the district court's order granting summary judgment to be referring to undisputed material facts, which is generally what is required to grant summary judgment. *See* Minn. R. Civ. P. 56.01 (allowing a district court to grant

notice does not discuss any facts relating to the parties' claims and defenses. Second, the district court's notice did not identify the issue under consideration for summary judgment.

In sum, the district court considered summary judgment on its own initiative under rule 56.06(c) and thus needed to identify for the parties the material facts that may not be genuinely in dispute, which requires identifying the issue under consideration for summary judgment. Because the district court's notice failed to conform with the notice required under rule 56.06(c), we conclude the district court erred in granting summary judgment for St. Joseph. Thus, we reverse and remand.

B. Record for Rule 56.06 Summary Judgment

Because we reverse and remand on the first issue, we need not decide the second issue raised by the parties: what record must the district court consider when deciding whether to grant summary judgment under rule 56.06. To provide guidance on remand, however, we address St. Joseph's argument on Minn. R. Civ. P. 56.03(c).

Rule 56.03(c) provides that, on a party's motion for summary judgment, the district court "need consider only the cited materials, but it may consider other materials in the record." Minn. R. Civ. P. 56.03(c). St. Joseph argues that under rule 56.03(c), even though the insurance policy is in the record, the district court need not consider the policy because the Bells "failed to cite any materials" in response to the district court's request for supplemental briefing.

summary judgment if the movant shows there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law).

Because neither St. Joseph nor the Bells moved for summary judgment, rule 56.03(c) is not direct authority for St. Joseph's argument. And St. Joseph cites no caselaw applying rule 56.03(c) to a district court's grant of summary judgment under rule 56.06(c).

Further, we have concerns about applying rule 56.03(c) in the rule 56.06(c) context where the district court is considering granting summary judgment on its own initiative. The advisory committee comment for rule 56.03(c) states that "the court is not required to consider any matters beyond those filed in conjunction with the motion for summary judgment" and may base summary judgment "on any factual material contained in . . . the entire court file record." Minn. R. Civ. P. 56.03(c) advisory comm. cmt. We read rule 56.03(c) to refer to both the narrow record underlying a party's motion for summary judgment and the broad record comprised of all materials filed in district court. When the district court proceeds under rule 56.06(c), however, the underlying record may not contain "fil[ings] in conjunction with the motion for summary judgment" unless the parties submit materials in response to the district court's rule 56.06 notice.

By analogy to rule 56.03(c), it is reasonable to conclude that in considering summary judgment under rule 56.06(c), a district court must consider the record cited by the parties in response to a rule 56.06(c) notice. Whether a district court may also consider other materials in the record before granting summary judgment under rule 56.06(c) would depend on the notice provided to the parties before granting the motion.

C. The Merits

Alternatively, we note that even if we were to set aside the shortcomings in the district court's rule 56.06 notice, the district court appears to have granted summary

judgment prematurely. The district court's order granted summary judgment for St. Joseph because the Bells did not produce "the language for which they claim entitlement to the relief sought." The district court's order does not say more or explain whether the language at issue involves insurance coverage or an exclusion.

The Bells have the burden to prove insurance coverage, and St. Joseph has the burden to prove any exclusion. *Compare Domtar, Inc. v. Niagara Fire Ins. Co.*, 563 N.W.2d 724, 736 (Minn. 1997) ("The initial burden of demonstrating coverage rests with the insured"), with *SCSC Corp. v. Allied Mut. Ins. Co.*, 536 N.W.2d 305, 313-14 (Minn. 1995) ("If the policy contains an exclusion clause, the burden then shifts to the insurer to prove the applicability of the exclusion as an affirmative defense. It is not the insured's obligation to show that the exclusion has become operative." (citations omitted)), *overruled on other grounds, Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910 (Minn. 2009).

As the Bells argue on appeal, the district court's summary-judgment order includes facts that suggest coverage may not be a disputed issue. The district court's order states that, at the time of the damage to their home, the Bells maintained a homeowners' insurance policy that St. Joseph issued; that St. Joseph "refused to pay" the Bells' damage claim; and that "the property had been rented and rentals were not covered under the policy issued." St. Joseph's answer to the Bells' complaint is equivocal. St. Joseph admitted that it provided homeowners' insurance for the Bells' home, that the policy period included the date the Bells incurred damage, and that St. Joseph denied the Bells' claim because the Bells rented the property.

Based on the district court's summary-judgment order and the record, we cannot determine whether the issue decided on summary judgment involved insurance coverage or an exclusion, and thus, we cannot determine whether the district court correctly assigned the burden of proof. Thus, in the alternative, we conclude it was premature for the district court to grant summary judgment for St. Joseph without first determining which party had the burden of proof on the issue under consideration for summary judgment.

DECISION

We conclude that when a district court considers granting summary judgment on its own initiative under Minn. R. Civ. P. 56.06(c), its notice must identify for the parties the material facts that may not be genuinely in dispute, which requires identifying the issue under consideration for summary judgment. Here, the district court gave notice of its intent to issue summary judgment independent of the parties' motions under rule 56.06, but the district court's notice failed to conform with the requirements of rule 56.06(c). Thus, the district court erred in granting summary judgment for St. Joseph under rule 56.06(c), and we reverse and remand on that basis. Because it may provide guidance to the parties on remand, we also conclude that, in considering summary judgment under rule 56.06(c), a district court must consider the record cited by the parties in response to a rule 56.06(c) notice of summary judgment. In the alternative, we conclude that the district court granted summary judgment prematurely without first determining which party had the burden of proof on the issue under consideration for summary judgment. Thus, we reverse the district

court's grant of summary judgment for St. Joseph and remand for further proceedings consistent with this opinion.

Reversed and remanded.

JOHNSON, Judge (concurring specially)

I concur in part A of the opinion of the court insofar as it reasons that the district court erred because it did not identify for the parties the material facts that may not be genuinely in dispute, as required by rule 56.06(c) of the rules of civil procedure. I respectfully disagree with part A of the opinion of the court to the extent that it reasons that the district court erred by not identifying “the issue” (*i.e.*, the *legal* issue) under consideration. There is no such requirement in the applicable provisions of rule 56.06.

If a district court elects to initiate summary-judgment proceedings pursuant to rule 56.06(c), the district court must give notice to the parties, must “identify[] for the parties the material facts that may not be genuinely in dispute,” and must give the parties “a reasonable time” in which “to respond” to the notice. Minn. R. Civ. P. 56.06, 56.06(c). No more is required. The district court is *not* required to attempt to identify the governing law. Rather, the parties, having received notice of “the material facts that may not be genuinely in dispute,” *see id.*, may and should present arguments to the district court concerning whether there is a genuine dispute of material fact and, in addition, whether any party is entitled to judgment as a matter of law in light of the legal principles that govern the parties’ claims and defenses.

In the vast majority of cases, summary-judgment proceedings are initiated by a party. In that event, the moving party is required to “identify[] *each claim or defense—or the part of each claim or defense—on which summary judgment is sought.*” Minn. R. Civ. P. 56.01 (emphasis added). In addition, the moving party must include in a memorandum of law a “statement . . . of *the issues* involved which are *the grounds* for the motion for

summary judgment.” Minn. R. Gen. Prac. 115.03(d)(1) (emphasis added). But rule 56.06(c) does not contain any such language. When a district court initiates summary-judgment proceedings pursuant to rule 56.06(c), the district court is not required to identify claims, defenses, legal issues, or grounds.

In this case, appellants argue that the district court erred because it did not identify for the parties the material facts that may not be genuinely in dispute. Appellants do *not* argue that the district court erred by not identifying a legal issue that was under consideration. Appellants are correct that the district court did not identify the material facts that may not be genuinely in dispute. For that reason, I agree that the case should be reversed and remanded to the district court for further proceedings. I also concur in part B of the opinion of the court, but I would not reach the issue discussed in part C.