the Supreme Court, in a 5-4 decision, held that the Court of Civil Appeals opinion "should be accorded precedential value and released for publication."[84] Perhaps foreshadowing a schism in the court's future handling of Section 2056, the dissenting justices stated that they "would not give this opinion precedential value."[85]

The Oklahoma Supreme Court's tacit approval of Section 2056 speaks volumes in what is left unsaid. The Supreme Court could have ruled Section 2056 wholly unconstitutional for infringing on the right to trial. Alternatively, the Supreme Court could have ruled that, in enacting Section 2056, the Oklahoma Legislature lacked the authority to usurp Rule 13. Instead, the court avoided those issues. By according the Court of Appeals' decision with precedential value, the Supreme Court at the very least acquiesced to Section 2056's facial validity. Beyond Section 2056's facial validity, there remain other issues that could yet surface. The Supreme Court's order and the Court of Civil Appeals' decision do not address whether Section 2056's adoption brings with it the full extent of the federal standard, or whether Oklahoma's constitutional right to trial prevents this result. These issues will likely be hotly debated.

CONCLUSION

It is unclear at this point how the Oklahoma Supreme Court ultimately will interpret and apply Section 2056. Oklahoma courts are likely to continue to apply Rule 13 to the extent that it does not contradict Section 2056. As indicated by some of the decisions discussed in this article, the courts have applied portions of Section 2056 where necessary to reach a decision. At some point, though, Oklahoma courts may be required to address, in a more conclusive fashion, whether Section 2056 requires the adoption of the *Anderson* trilogy in Oklahoma, and whether such a result is allowed under Oklahoma constitutional law.

Authors' note: Thanks to Mitchell H. Craft, 3L student at OU College of Law, for examination of the Oklahoma Constitution's requirement for re-enactment of statutes at the time of a statutory amendment.

1. Okla. Stat. tit. 12, §2056.

2. *See* 2009 Okla. Sess. Laws 228 §§1, 17.

3. *Brewer v. Murray,* 2012 OK 100, ¶1, 290 P.3d 758, 759.

4. *Brewer v. Murray,* 2012 OK CIV APP 109, ¶5, 292 P.3d 41, 45 (approved for publication by the Oklahoma Supreme Court and accorded precedential value under Okla. R. Civ. P. 1.200(c)(B)).

5. The CLRA, enacted in 2009, was determined unconstitutional in 2013 based on the Oklahoma Constitution's prohibition against log-rolling. *Douglas v. Cox Retirement Properties, Inc.*, 2013 OK 37, ¶10, 302 P.3d 789, 794. Section 2056 was amended in 2011. 2011 Okla. Sess. Laws 13 §2. It appears that this 2011 amendment may have saved Section 2056 from the *Douglas* decision. The Oklahoma Constitution requires that an amendment to a statute must re-enact the statute. Okla. Const. art. V, §57 ("[N]o law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length."). The Legislature may have reached the same conclusion. Initially, at least some legislators intended to re-enact Section 2056 during the 2013 Special Session. *See* Tim Talley, *Lawmakers Seek to Revive Lawsuit Limits, The Journal Record*, June 10, 2013, at 1. Special Session House Bill 1024 contained a re-enactment of Section 2056, but was not included in the 23 bills that were passed and signed by the Governor during the Special Session. [legiscan.com/OK/bill/HB1024/2013/X1 (accessed October 4, 2013)].

6. Okla. Stat. tit. 12, §2056(C).

7. Rule 13 of the Rules for District Courts of Oklahoma.

8. Section 2056 introduces some other changes as well. For instance, practitioners will have noticed that many Oklahoma state court judges now comply with Section 2056(D)'s suggestion that "[i]f summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It should then issue an order specifying what facts, including items of damages or other relief, are not genuinely at issue. The facts so specified must be treated as established in the action." Okla. Stat. tit. 12, §2056(D). (Note the statute's use of "should" rather than "shall.") Likewise, the appellate courts have noted the different standard for evidentiary substitutes in Section 2056(E) as compared to District Court Rule 13(C). *See MidFirst Bank v. Wilson*, 2013 OK CIV APP 15, ¶10, 295 P.3d 1142, 1145. This article focuses on the standard of review of summary judgment motions.

9. These other provisions appear to be stricken as unconstitutional. *Douglas*, 2013 OK 37, ¶10, 302 P.3d at 794. Like Section 2056, some of these provisions may have been saved by subsequent amendments.

10. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

11. For an indispensable analysis of the differences between the "no evidence" and "insufficient evidence" standards for pre- and post-trial motions, *see* William Powers Jr. & Jack Ratliff, *Another Look at ""No Evidence" and "Insufficient Evidence,"* 69 Tex. L. Rev. 515 (1991).

12. *See, e.g.*, 1A Charles W. Adams & Daniel J. Boudreau, *Vernon's Oklahoma Forms 2d, Civil Procedure* 110 (2d ed. Supp. 2012) (introductory comment to Chapter 4B).

13. *See Barnett v. Simmons*, 2008 OK 100, ¶16, 197 P.3d 12; *Payne v. Dewitt*, 1999 OK 93, ¶¶8, 9, 995 P.2d 1088.

14. William W. Schwarzer et al., *The Analysis and Decision of Summary Judgment Motions: A Monograph on Rule 56 of the Federal Rules of Civil Procedure*, 139 F.R.D. 441, 449 (1991).

15. *Id.*

16. *Id.; Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 153, 157 (1970).

17. *See Kepler v. Strain*, 1978 OK 52, ¶7, 579 P.2d 191, 192; *Reams v. Tulsa Cable Television, Inc.*, 1979 OK 171, ¶¶4-7, 604 P.2d 373, 375-76.

18. *See generally* Paul J. Cleary, *Summary Judgment in Oklahoma: Suggestions for Improving a "Disfavored" Procedure*, 19 Okla. City U.L. Rev. 251 (1994). Cleary's 1994 article is a seminal essay providing an in-depth and thorough analysis of the differences between federal and Oklahoma state summary judgment standards.

19. *Celotex*, 477 U.S. at 323.

20. *Id.* at 331.

21. *Id.* at 332.

22. *Id.* at 322-23.

23. *Id.* at 323.

24. *See* Okla. Stat. tit. 12, §2056; Rule 13 of the Rules for District Courts of Oklahoma.

25. *Hadnot v. Shaw*, 1992 OK 21, ¶25, 826 P.2d 978, 987; *Hargrave v. Canadian Valley Electric Coop., Inc.*, 1990 OK 43, ¶14, 792 P.2d 50, 55.

26. N.D. Okla. L.R. 7.1(C); E.D. Okla. L.R. 14(a); W.D. Okla. L.R. 14(A).

27. *Spirgis v. Circle K Stores*, 1987 OK CIV APP 45, ¶9, 743 P.2d 682, 685 (approved for publication by the Oklahoma Supreme Court, and accorded precedential value under Okla. R. Civ. App. P. 1.200(c)(B)). It remains to be seen whether Section 2056 successfully adopts the federal approach. *See* Okla. Stat. tit. 12, §2056(E) ("If the opposing party does not … respond, summary judgment should, if appropriate, be entered against that party.").