

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE AMENDMENT )  
SDCL 15-26A-87.1 )  
)

RULE 22-02

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A hearing was held on November 9, 2021, at Pierre, South Dakota, relating to the amendment of SDCL 15-26A-87.1 and the Court having considered the proposed amendment, oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-26A-87.1 be and it is hereby amended to read in its entirety as follows:

**SDCL 15-26A-87.1. Disposition on briefs and record--  
Grounds--Citation of decisions restricted.**

(A) After all briefs have been filed in any appeal, the Supreme Court by unanimous action may, sua sponte, enter an order or memorandum opinion affirming the judgment or order of the trial court for the reason that it is manifest on the face of the briefs and the record that the appeal is without merit because:

- (1) The issues are clearly controlled by settled South Dakota law or federal law binding upon the states;
- (2) The issues are factual and there clearly is sufficient evidence to support the jury verdict or findings of fact below; ~~or~~
- (3) The issues are ones of judicial discretion and there clearly was not an abuse of discretion; or
- (4) Other good cause exists for summary affirmance, in which case the order or memorandum shall contain a succinct statement of the reason for affirmance.

(B) Notwithstanding the provision in section (A) requiring unanimous action, an order or memorandum opinion affirming the judgment or order of the trial court may be entered pursuant to subsections (1) through ~~(3)~~ (4) of section (A) on a majority vote, even though the claim may have merit in the view of the minority, provided that all justices participating in the action shall agree that such summary disposition of the action may be made.

**RULE 22-02**

(C) After all briefs have been filed in any appeal, the Supreme Court by unanimous action may, sua sponte, enter an order or memorandum opinion reversing the judgment or order of the trial court for the reason that it is manifest on the face of the briefs and the record that it is clear the order or judgment is clearly erroneous for one or more of the following reasons:

- (1) Summary judgment was erroneously granted because a genuine issue of material fact exists;
- (2) The judgment or order was clearly contrary to settled South Dakota law or federal law binding upon the states; ~~or~~
- (3) The issue on appeal is one of judicial discretion and there clearly was an abuse of discretion; or
- (4) Other good cause exists for summary reversal, in which case the order or memorandum shall contain a succinct statement of the reason for reversal.

(D) Notwithstanding the provision in section (C) requiring unanimous action, an order or memorandum opinion reversing the judgment or order of the trial court may be entered pursuant to subsections (1) through ~~(3)~~ (4) of section (C) on a majority vote, even though the claim may have merit in the view of the minority, provided that all justices participating in the action shall agree that such summary disposition of the action may be made.

(E) A list indicating the disposition of all decisions rendered by the Supreme Court under this section shall be published quarterly in the Northwestern Reporter. Such decisions shall not be cited or relied upon as authority in any litigation in any court in South Dakota except when the decision establishes the law of the case, res judicata or collateral estoppel, or in a criminal action or proceeding involving the same defendant or a disciplinary action or proceeding involving the same person.

A petition for rehearing of a cause decided under this section may be served and filed pursuant to the provisions of § 15-30-4.

Costs in favor of the prevailing party shall be assessed as provided in chapter 15-30.

Rule 22-02


IT IS FURTHER ORDERED that this rule shall become effective February 1, 2022.

DATED at Pierre, South Dakota, this 5th day of January, 2022.

BY THE COURT:

  
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Steven R. Jensen, Chief Justice

ATTEST:

  
\_\_\_\_\_  
Clerk of the Supreme Court  
(SEAL)


SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

JAN - 5 2022

  
Clerk

STATE OF SOUTH DAKOTA  
In the Supreme Court  
I, Shirley A. Jamason-Fergal, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this

5 day of Jan 20 22

  
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Deputy