No. _____

In the Supreme Court of the United States

KEVIN YEUNG,

Applicant,

v.

SHANNON HUMPHREY,

ON APPLICATION FOR AN EXTENSION OF THE TIME TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

FOR THE ELEVENTH CIRCUIT, JUSTICE CLARENCE THOMAS, PRESIDING

APPLICATION FOR AN EXTENSION THE TIME TO PETITION FOR WRIT OF CERTIORARI

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JUNE MMXXVI

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APPLICATION FOR AN EXTENSION THE TIME TO PETITION FOR WRIT OF CERTIORARI

For the Eleventh Circuit, Justice Thomas, Presiding

Pursuant to S. Ct. R. 13.5, Applicant Kevin Yeung seeks a 60-day extension of time to petition for writ of certiorari to the Court of Appeals of Georgia's judgment in No. A25A1330, entered on October 29, 2025.

JURISDICTION

The Supreme Court of Georgia's denied discretionary review on March 31, 2026. The Supreme Court of Georgia denied rehearing on April 21, 2026. This Court has jurisdiction under 28 U. S. C. §1257(a).

REASONS JUSTIFYING THE EXTENSION OF TIME

Yeung recently retained undersigned counsel for representation in the instant proceeding.

Counsel currently has multiple pending appeals, pre-trial, and upcoming trial court proceedings with deadlines to meet before various trial and appellate courts before various courts in the jurisdictions of the States of Florida, North Carolina, Texas, and United States courts in other unrelated cases. As a result of counsel's busy schedule, it is of good cause to seek an extension of time to petition for certiorari to permit counsel to better review the extensive lower court records and conduct thorough legal research, and would permit the best, diligent, and most well-thorough representation of Yeung. Additionally, counsel is new to this case, providing further good cause in support of the foregoing causes.

The application is not sought to delay the proceedings and is presented in good faith to permit a diligent and thorough representation of Yeung. Humphrey would not suffer any prejudice in the event an extension were to be granted.

CONCLUSION

This Court should grant the petition extending the time to file for 60-days, to September 18, 2026.

Respectfully submitted

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JUNE 2026

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FIFTH DIVISION
MCFADDEN, P. J.,
HODGES and PIPKIN, JJ.

October 29, 2025

NOT TO BE OFFICIALLY REPORTED

In the Court of Appeals of Georgia

A25A1330. YEUNG v. HUMPHREY.

MCFADDEN, Presiding Judge.

Kevin Yeung appeals from the trial court's grant of Shannon Humphrey's motion for summary judgment on Yeung's claim for nuisance.[1] Yeung contends that the court erred in refusing to consider purported expert reports on the basis that the reports were unsworn and constituted hearsay. But the rules of evidence generally apply on summary judgment, and Yeung has failed to show that the court abused its discretion in failing to consider the unsworn reports. Yeung also contends that the court erred in granting summary judgment on his nuisance claim. But Humphrey

[1]The trial court also granted summary judgment to Humphrey on Yeung's claim for negligence per se and denied Yeung's opposing motion for summary judgment. But Yeung has not challenged those rulings in this appeal.

pointed to an absence of evidence on essential elements of the nuisance claim, and Yeung has failed to cite any evidence creating a genuine issue of material fact. So we affirm.

1. *Facts and procedural posture*

Yeung filed a pro se complaint against Humphrey, claiming that Humphrey's installation of a swimming pool on her property caused a nuisance of water flowing onto Yeung's neighboring property. Yeung and Humphrey filed opposing motions for summary judgment. After a hearing, the trial court denied Yeung's motion and granted Humphrey's motion.

In its summary judgment order, the trial court refused to consider three purported expert reports filed by Yeung that were unsworn. The court also found that Yeung had admitted in his deposition that he was simply assuming that erosion and dying vegetation on his property were caused by Humphrey's pool project, but that he did not actually have any evidence. The court concluded that Humphrey was entitled to summary judgment because Yeung had presented no competent evidence that the installation of the pool had caused excess water to flow onto his property. This appeal followed.

2. *Unsworn reports*

Yeung contends that the trial court erred in refusing to consider the unsworn reports. We disagree.

"[T]he admissibility of evidence on motion for summary judgment, whether contained in affidavits or otherwise, is subject to the rules relating to the admissibility of evidence generally, so that evidence inadmissible on a hearing of the case would generally be inadmissible on motion for summary judgment." *Atkinson v. City of Atlanta*, 325 Ga. App. 70, 72 n. 3 (725 SE2d 130) (2013) (citation and punctuation omitted). Accord *Goodhart v. Atlanta Gas Light Co.*, 349 Ga. App. 65, 72 (2) (a) (825 SE2d 465) (2019) ("The admissibility of evidence on motion for summary judgment is governed by the rules relating to form and admissibility of evidence generally.") (citation and punctuation omitted). Indeed, "a court should consider only admissible evidence in connection with a motion for summary judgment[.]" *An v. Active Pest Control South*, 313 Ga. App. 110, 114 (720 SE2d 222) (2011). Thus, "[a]ll hearsay evidence, unsupported conclusions, and the like, must be stricken or eliminated from consideration in a motion for summary judgment." *Goodhart*, supra (citation and punctuation omitted).

In this case, the "reports are hearsay themselves, and . . . are unsworn, unauthenticated documents. . . . Such reports must fit within a hearsay exception before they can be considered as substantive evidence in support of a claim. [But Yeung] has shown no such exception for these reports and they therefore have no weight or force whatsoever." *Adamson v. General Elec. Co.*, 303 Ga. App. 741, 742 (1) (694 SE2d 363) (2010) (refusing to consider unsworn reports filed by plaintiff in opposition to defense motion for summary judgment). See also *Tselios v. Sarsour*, 341 Ga. App. 471, 474-475 (800 SE2d 636) (2017) (plaintiff presented no affidavits or other sworn documents, and unsworn pleadings do not constitute evidence and cannot be considered in addressing a motion for summary judgment); *Schluter v. Perrie, Buker, Stagg & Jones*, 230 Ga. App. 776, 778 (1) (498 SE2d 543) (1998) (unsworn statements do not constitute competent evidence to support a motion for summary judgment). Yeung has made no argument in his brief as to any hearsay exception, has cited no evidence of any such exception, and has thus failed to show that he laid an adequate foundation for the admission of the three unsworn reports based on a hearsay exception. See *Maloof v. MARTA*, 330 Ga. App. 763, 765-766 (1) (b) (769 SE2d 174) (2015) (unsworn statement did not fall under exception to hearsay rule where

appellant did not show that it had complied with the foundational requirements for such an exception).

Instead, Yeung cites *Hayes v. SNS Partnership*, 326 Ga. App. 185 (756 SE2d 273) (2014) to argue that his unsworn reports should have been considered by the trial court. But his reliance on *Hayes* is misplaced since it actually reaffirms that the unsworn reports in this case were properly excluded from consideration on summary judgment. Unlike the instant case, *Hayes* involved sworn statements that were in fact considered by a trial court on summary judgment. Moreover, in affirming the trial court's consideration of such sworn statements, we explained that the forms of evidence set out in OCGA § 9-11-56 (c) are not the exclusive means of presenting evidence on summary and that a "trial court may consider any material which would be admissible or useable at trial." *Hayes*, supra at 187 (1) (emphasis omitted). Since the sworn statements would be admissible at trial, we held that the trial court properly denied a motion to strike them from consideration on summary judgment. Id. Conversely, Yeung has made no showing that the unsworn reports in this case were admissible like the sworn statements in *Hayes*.

Nevertheless, Yeung argues, the trial court should have granted him an opportunity to put the unsworn and unauthenticated reports in proper form because of his pro se status. But Yeung has not shown that he made such a request in the trial court and "[w]e repeatedly have warned that one who knowingly elects to represent himself assumes full responsibility for complying with the substantive and procedural requirements of the law." *Forsyth County v. Mommies Props.*, 359 Ga. App. 175, 185 (2) (855 SE2d 126) (2021) (citation and punctuation omitted). Here, Yeung acknowledged at his deposition that he consulted several attorneys but decided to proceed without counsel. At a motions hearing, after the judge expressly informed Yeung that he would be bound by the rules of evidence and applicable laws, Yeung confirmed that he still wanted to represent himself. Moreover, defense counsel indicated at that hearing that Yeung had been a pro se litigant in other cases. Given these circumstances, Yueng has failed to show that he was not bound by the same evidentiary and procedural rules as any other party simply because he had chosen to proceed pro se. See *Harvey v. Sullivan*, 272 Ga. 392, 393 (1) (529 SE2d 889) (2000) ("Pro se parties are generally bound by the same rules of practice and procedure as a lawyer.") (citation and punctuation omitted).

"We review a trial court's decision regarding the admission or exclusion of evidence for an abuse of discretion." *Goodhart*, supra (citation and punctuation omitted). We find no abuse of discretion since the unsworn reports could not "be considered [on] summary judgment . . . and were properly disregarded by the trial court." *Wojcik v. Windmill Lake Apts.*, 284 Ga. App. 766, 769 (645 SE2d 1) (2007) (trial court correctly refused to consider uncertified, unauthenticated documents).

3. *Summary judgment on nuisance claim*

Yeung argues that the trial court erred in granting Humphrey's motion for summary judgment on the nuisance claim. We disagree.

> Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." OCGA § 9-11-56 (c). A defendant moving for summary judgment may demonstrate that she is entitled to summary judgment by either presenting evidence negating an essential element of the plaintiff['s] claims or establishing from the record an absence of evidence to support such claims. Once the defendant has met this burden, the plaintiff[] must point to specific evidence giving rise to a triable issue or suffer summary judgment. We review a grant or denial of summary judgment de novo and construe the evidence in the light most favorable to the nonmovant.

Keng v. Keng, 375 Ga. App. 797, 798-799 (2) (917 SE2d 810) (2025) (citations and punctuation omitted).

In support of summary judgment, Humphrey has both presented evidence negating essential elements of Yeung's claim and pointed to the absence of evidence showing that the swimming pool caused excess water to flow from her property onto Yeung's property. Humphrey cites Yeung's deposition testimony, during which he admitted that he has not observed the pool overflowing onto his property. When asked about the allegation in his complaint that pool water which drains into a pop-up emitter on Humphrey's property then goes onto his yard, Yeung admitted that he does not know if that allegation is true and that it is merely his assumption. When asked about his allegations that overflow water from Humphrey's property had damaged grass and a walkway on his property, Yeung admitted that he does not actually know what caused the purported damage and that he was simply assuming it was caused by Humphrey. When asked about his claim that chlorine from the pool had contaminated his soil, Yeung admitted that he does not have any evidence to support the claim, that he does not even know if chlorine is used in the pool, and that the claim was based on his assumptions. Yeung further deposed that he does not actually know how Humphrey's activity on her property has made anything worse on his property.

Humphrey has also pointed to the absence of any video or photographic evidence from Yeung showing water flowing from her property onto his. Conversely, Humphrey provided a video showing that during a rainstorm her drainage system properly directed water away from Yeung's property. Yeung admitted during his deposition that the video in fact showed that no water was coming from Humphrey's property onto his property.

Humphrey also submitted the affidavit of a civil engineer who testified that there was no overflow of water from Humphrey's property causing damage to Yeung's property, that Humphrey's drainage and storm water management system ensured that there would be no water runoff onto the Yeung lot, and that there was no flood risk to Yeung's property. The engineer further opined that the issues complained about by Yeung were the result of his failure to appropriately maintain his own lot and that Yeung had made inaccurate assumptions based on his land being downhill from Humphrey's property.

Humphrey also submitted affidavits from a code enforcement officer and from a building inspector who had both made many visits to the Humphrey and Yeung properties during construction of the pool. The code enforcement officer testified that

he had never observed any evidence of damage to Yeung's property caused by overflow water from Humphrey's property; that the drainage system directed water toward a street and away from both properties; and that during a rain event he observed that water was flowing as intended through the drainage system and was not affecting Yeung's property. Similarly, the building inspector testified that she had not oobserved any condition that would cause water runoff and erosion from the Humphrey property onto the Yeung property, and that she had not seen any evidence of excess water running from the Humphrey property onto the Yeung property.

"To recover under a nuisance claim, the plaintiff must show the existence of the nuisance complained of, that he or she has suffered injury, and that the injury complained of was caused by the alleged nuisance." *Bord v. Hillman*, 335 Ga. App. 18, 21 (1) (780 SE2d 725) (2015) (citation and punctuation omitted). Given Humphrey's citation of evidence negating the alleged nuisance of her pool installation causing excess water to flow onto Yeung's property, Yeung must point to specific evidence creating a genuine issue of material fact on his nuisance claim. See *Keng*, supra at 799 (2) (once the defendant has met her burden on summary judgment of negating an

essential element of the plaintiff's claim, the plaintiff must point to specific evidence giving rise to a triable issue).

Yeung cites his own deposition testimony that modifications to Humphrey's property were causing water runoff issues. He argues that the trial court erred in ignoring this testimony and in relying instead on his other testimony in which he admitted, as discussed above, that he had not actually observed water flowing from the pool onto his property, that he had no evidence of the cause of the purported damage to his property, and that he had simply assumed the purported damage was caused by water from Humphrey's property.

"But to the extent that a party's sworn testimony is self-contradictory without offering a reasonable explanation for the contradiction, we apply the rule in *Prophecy Corp. v. Charles Rossignol, Inc.*, 256 Ga. 27, 28 (1) (343 SE2d 680) (1986), to discount the testimony that is more favorable to that party." *280 Partners v. Bank of North Ga.*, 352 Ga. App. 605, 606 (1) (a) (835 SE2d 377) (2019). Yeung claims that contradictions in his testimony may have been due to his difficulty with the English language. But Yeung has not supported this claim with any citations to the record. He has not cited any evidence of a language difficulty, has not identified a specific instance during the

deposition showing a language barrier, and has not shown he ever raised this issue below. On the contrary, the record shows that Yeung filed numerous pro se legal documents in English that reveal no language difficulty, that he testified clearly in English during the deposition without any apparent deficiency, and that he expressly testified that he knew the purpose of the deposition and that there was nothing preventing him from giving his full attention to the proceeding.

Under these circumstances, Yeung's ostensible explanation for any self-contradictory deposition testimony is not reasonable. See *Merritt v. State Farm Fire & Casualty Co.*, 218 Ga. App. 652, 654 (463 SE2d 42) (1995) (to be reasonable, the explanation must show that an honest mistake has been made). "We therefore apply the *Prophecy* rule against [Yeung] and discount [his] testimony to the [extent it contradicts his testimony that he had not seen water flow from Humphrey's property onto his land and that he had simply assumed damages from an overflow]." *Hayward v. The Kroger Co.*, 317 Ga. App. 795, 799 (3) (a) (733 SE2d 7) (2012).

Yeung also cites his wife's affidavit testimony that one rainy day she observed water channeling down to their basement, which she had never seen before. But the affidavit did not state where the water came from or that the wife actually saw water

flowing from Humphrey's property and onto Yeung's property. Likewise, photographs filed by Yeung also fail to show any water flowing from Humphrey's property onto his property.

"Although property must accept the natural runoff of water from neighboring lands, an artificial increase or concentration of water discharge may give rise to a cause of action." *Bord*, supra at 22-23 (1) (citation and punctuation omitted). And "when a surface-water invasion has taken place, whether it amounts to a compensable tort is a question of fact for the jury." Id. at 23 (1) (citation and punctuation omitted). But here, Yeung has not cited any competent evidence of even a negligible increase in water flow onto his property from Humphrey's property. As discussed above, he actually deposed that he had not seen water overflowing from the pool and he has failed to point to any other evidence showing the alleged water runoff from the Humphrey property. Compare *Hayman v. Paulding County*, 349 Ga. App. 77, 82-83 (1) (825 SE2d 482) (2019) (noting that lay witness' personal observations of water flow are probative of causation issues in nuisance cases where plaintiffs testified to observing such overflow onto their property from a clogged ditch); *Bord*, supra at 22-23 (plaintiffs' personal observation that neighbor's retaining wall had increased water

on their property coupled with expert testimony demonstrating such an increase was sufficient to defeat defense motion for summary judgment on nuisance claim). Because Yeung has failed to point to any competent evidence showing triable issues as to the existence of the alleged nuisance or that the injury complained of was caused by it, "the trial court properly granted summary judgment to [Humphrey] on [the] nuisance claim." *Bartenfeld v. Chick-fil-A*, 346 Ga. App. 759, 768 (4) (815 SE2d 273) (2018). See also *Grinold v. Farist*, 284 Ga. App. 120, 122-123 (2) (643 SE2d 253) (2007) (where record devoid of evidence that defendant maintained alleged nuisance, trial court properly granted summary judgment to defendant on nuisance claim).

Judgment affirmed. Hodges and Pipkin, JJ., concur.

SUPREME COURT OF GEORGIA
Case No. S26C0493

March 31, 2026

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

KEVIN YEUNG v. SHANNON HUMPHREY.

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur, except Warren, P.J., not participating.

Court of Appeals Case No. A25A1330

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

SUPREME COURT OF GEORGIA
Case No. S26C0493

April 21, 2026

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

KEVIN YEUNG v. SHANNON HUMPHREY.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur, except Warren, P. J., not participating.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk