THE OKLAHOMA BAR
Journal
Volume 89 — No. 30 — 11/10/2018

Court Issue

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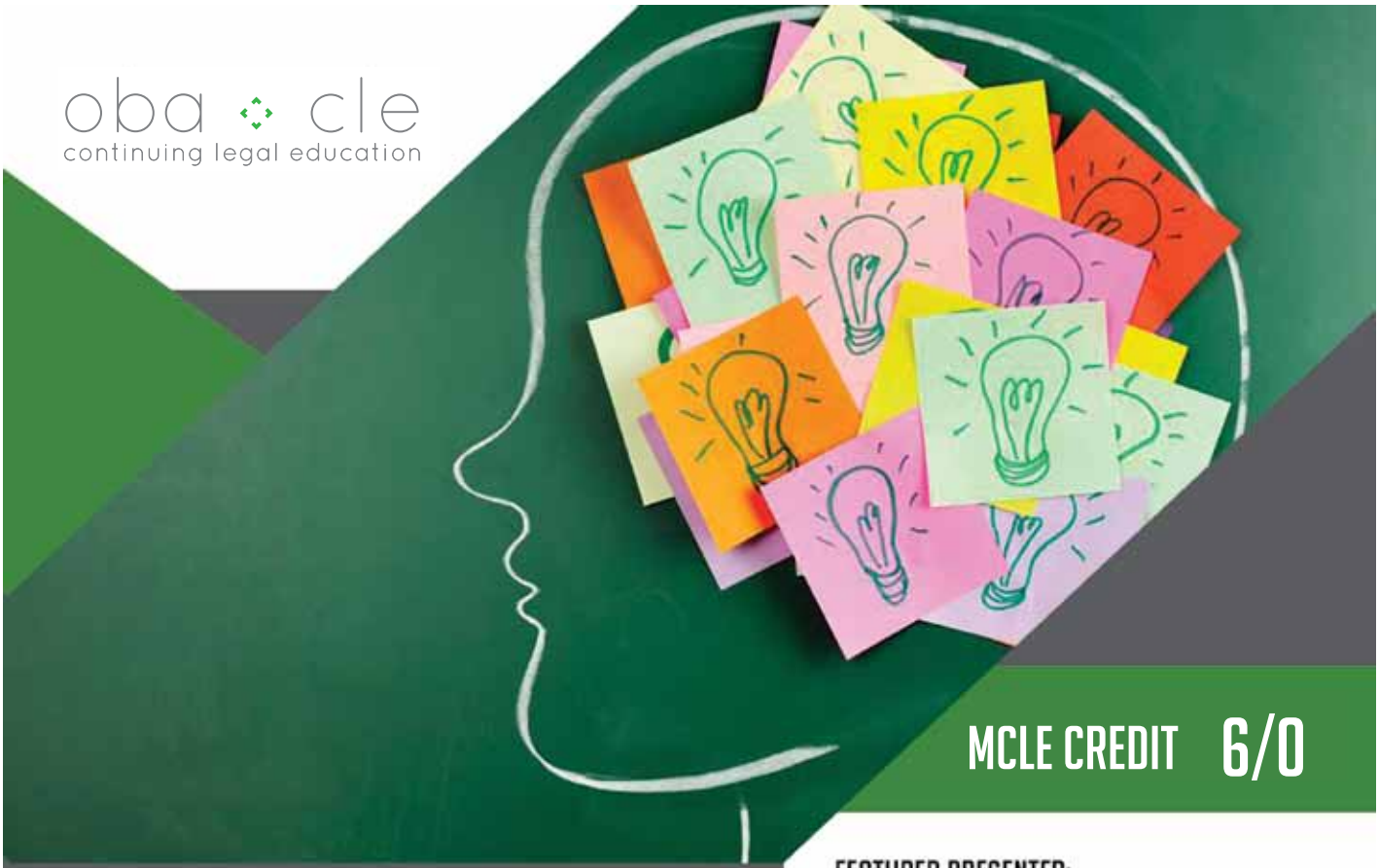
continuing legal education



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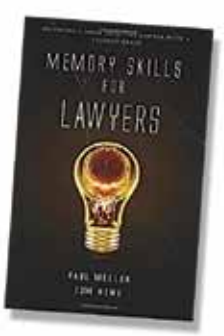

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THE OKLAHOMA BAR
Journal

Volume 89 – No. 30 – 11/10/2018

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Oklahoma Bar Association

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NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF JOHN WESSLEY WATSON, SCBD #6695 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S., Ch. 1, App. 1-A, that a hearing will be held to determine if John Wessley Watson should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **Tuesday, Dec. 18, 2018**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

2018 OK 79

In Re: Rules of the Supreme Court for Mandatory Continuing Legal Education [Rule 1, Rule 6(e) and Rule 7 Regulation 4.1.9]

SCBD 3319. October 8, 2018

ORDER

This matter comes on before this Court upon an Application to Amend Rule 1, Rule 6(e) and Rule 7 Regulation 4.1.9 of the Rules of the Supreme Court for Mandatory Continuing Legal Education, 5 O.S. ch. 1, app. 1-B, as proposed and set out in Exhibit "A" attached hereto. This Court finds that it has jurisdiction over this matter and the Rules are hereby amended as set out in Exhibits A, B & C attached hereto effective January 1, 2019.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 8th day of OCTOBER, 2018.

/s/ Douglas L. Combs
CHIEF JUSTICE

ALL JUSTICES CONCUR.

EXHIBIT A

Rules for Mandatory Continuing Legal Education

Chapter 1, App. 1-B

RULE 1. Mandatory Continuing Legal Education Commission

(a) There is hereby established a Mandatory Continuing Legal Education Commission (MCLEC) consisting of eleven (11) members who are ~~**resident**~~ members of the Bar of this State of which one voting member may be a non-resident of the State of Oklahoma. The Executive Director of the Oklahoma Bar Association and the Director of Continuing Legal Education of the Oklahoma Bar Association shall be ex-officio members without vote. The remaining nine (9) members shall be appointed by the President of the Oklahoma Bar Association with the consent of the Board of Governors of the Oklahoma Bar Association

(b) The MCLEC shall have the following duties:

(1) To exercise general supervisory authority over the administration of these rules.

(2) To adopt regulations consistent with these rules with approval of the Board of Governors.

(3) Report annually on the activities and operations of the Mandatory Continuing Legal Education Commission to the Board of Governors of the Oklahoma Bar Association and the Oklahoma Supreme Court.

(c) Five (5) Commissioners shall constitute a quorum of the MCLEC.

(d) A member of the MCLEC who misses three (3) consecutive regular meetings of the MCLEC, for whatever reason, shall automatically vacate the office.

EXHIBIT B

Rules for Mandatory Continuing Legal Education

Chapter 1, App. 1-B

Rule 6. Noncompliance and Sanctions.

(a) As soon as practicable after February 15th of each year, the Commission on Mandatory Continuing Legal Education shall furnish to the Executive Director of the Oklahoma Bar Association (1) a list of those attorneys who have not reported for the calendar year ending the preceding December 31st as required by Rule 5, Rules for Mandatory Continuing Legal Education, and (2) a list of attorneys who have reported on or before February 15th indicating that they have not complied with the requirements of Rule 3, Rules of Mandatory Continuing Legal Education.

(b) For a member who fails to comply with the Rule 3 continuing legal education requirement by December 31st of each year, there shall be added an expense charge of $100.00. For a member who fails to comply with the Rule 5 annual report requirement by February 15th of each year, there shall be added an expense charge of $100.00. The Commission is authorized to, and may waive the expense charge for a late filing of the Rule 5 annual report upon a finding by the Commission that the late filing was attributable to extreme hardship. Attorneys seeking a waiver shall do so by written application submitted to the Commission. The Commission is authorized to adopt, from time to time, policies and procedures as may be deemed appropriate for continuity in the exercise of the foregoing discretionary authority.

(c) The Executive Director of the Oklahoma Bar Association shall then serve by certified mail each attorney who has not complied with the Rules for Mandatory Continuing Legal Education, with an order to show cause, within sixty (60) days, why the attorney's license should not be suspended at the expiration of the sixty (60) days. Cause may be shown by furnishing the Board of Governors of the Oklahoma Bar Association with an affidavit by the attorney and a certificate from the MCLEC (a) indicating that the attorney has complied with the requirement prior to the expiration of the sixty (60) days or (b) setting forth a valid reason for failure to comply with the requirement because of illness or other good cause.

(d) At the expiration of sixty (60) days from the date of the order to show cause, if good cause is not shown, the Board of Governors shall file application with the Supreme Court recommending suspension of the delinquent's membership. Upon order of the Court, the attorney shall be so suspended and shall not thereafter practice law in this state until reinstated as provided herein. At any time within one (1) year after the order of suspension, an attorney may file with the Executive Director an affidavit by the attorney and a certificate from the MCLEC indicating compliance with the Rules for Mandatory Continuing Legal Education, and payment of a reinstatement fee of $500.00 and if satisfactory to the Executive Director, the member will be restored to membership and the Executive Director will notify the Clerk and the Chief Justice of the Supreme Court and cause notice of reinstatement to be published in the Oklahoma Bar Journal.

(e) A suspended member who does not file an application for reinstatement within one (1) year from the date the member is suspended by the Supreme Court for noncompliance with the Rules for Mandatory Continuing Legal Education, shall cease automatically to be a member of the Association, and the Board of Governors shall file an application with the Supreme Court recommending the member be stricken from the membership rolls. Subsequent to the Order of the Court, if the attorney desires to become a member of the Association <u>within two years</u>, the attorney shall be required to file with the Professional Responsibility Commission an affidavit by the attorney and a certificate from the MCLEC indicating compliance with the Rules for Mandatory Continuing Legal Education <u>for the year suspended for noncompliance with MCLE</u>, including payment of all fees and charges, and the attorney must comply with Rule 11 of the Rules Governing Disciplinary Proceedings of the Oklahoma Bar Association, <u>unless otherwise ordered by the Supreme Court of Oklahoma. If the attorney desires to become a member of the Association after two years and a day, the attorney shall be required to file with the Professional Responsibility Commission an affidavit by the attorney and a certificate from the MCLEC indicating completion of 24 CLE credits, including 2 legal ethics credits, including payment of all fees and charges, and the attorney must comply with Rule 11 of the Rules Governing Disciplinary Proceedings of the Oklahoma Bar Association, unless otherwise ordered by the Supreme Court of Oklahoma.</u>

EXHIBIT C

Rules for Mandatory Continuing Legal Education

Chapter 1, App. 1-B

Rule 7. Regulations.

Regulation 4.

4.1.1. The following standards will govern the approval of continuing legal education programs by the Commission.

4.1.2. The program must have significant intellectual or practical content and its primary objective must be to increase the participant's professional competence as an attorney.

4.1.3. The program must deal primarily with matters related to the practice of law, professional responsibility or ethical obligations of attorneys. Programs that cross academic lines may be considered for approval.

4.1.4. The program must be offered by a sponsor having substantial, recent, experience in offering continuing legal education or demonstrated ability to organize and present effectively continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the program.

4.1.5. The program itself must be conducted by an individual or group qualified by practical or academic experience. The program, including the named advertised participants, must be conducted substantially as planned, subject to emergency withdrawals and alterations.

4.1.6. Thorough, high quality, readable, and carefully prepared written materials must be made available to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable and approved by the MCLE Administrator. A mere outline without citations or explanatory notations will not be sufficient.

4.1.7. The program must be conducted in a comfortable physical setting, conducive to learning and equipped with suitable writing surfaces.

4.1.8. Approval may be given for programs where audiovisual recorded or reproduced material is used. Video programs shall qualify for CLE credit in the same manner as a live CLE program provided:

(a) the original CLE program was approved for CLE credit as provided in these regulations or the video program has been approved by the Commission under these rules, and

(b) each person attending the video program is provided written material as required in regulation 4.1.6 and

(c) each program is conducted in a location as required in regulation 4.1.7 and

(d) there are a minimum of five (5) persons enrolled and in attendance at the presentation of the video program unless viewed at the Oklahoma Bar Center or sponsored by a county bar association in Oklahoma.

4.1.9. Approval for credit may also be granted for the following types of electronic-based CLE programs:

a. Live interactive webcast seminars, webcast replay seminars live teleconferences, ~~and~~ teleconference replays, on-line, on-demand programs and downloadable podcasts. If approved, an attorney may earn credit for seminars provided by these various delivery methods without an annual limit.

~~b. Online, on-demand seminars and downloadable podcasts. If approved, an attorney may receive up to six approved credits per year for these types of electronic-based programs.~~

Such programs must also meet the criteria established in the Rules of the Oklahoma Supreme Court for Mandatory Continuing Legal Education, Rule7, Regulation 4, subject to standard course approval procedures and appropriate verification from the course sponsor.

1. The target audience must be attorneys.

2. The course shall provide high quality written instructional materials. These materials may be available to be downloaded or otherwise furnished so that the attorney will have the ability to refer to such materials during and subsequent to the seminars.

3. The provider must have procedures in place to independently verify an attorney's completion of a program. Verification procedures may vary by format and by provider. An attorney affidavit attesting to the completion of a program is not by itself sufficient.

4. If an online, on demand seminar is approved, it is approved only for twelve (12) months after the approval is granted. The sponsor may submit an application to have the course considered for approval in subsequent years.

2018 OK 84

STATE OF OKLAHOMA ex rel. OKLAHOMA BAR ASSOCIATION, Complainant, v. JOHN ELDON DALTON, Respondent.

SCBD No. 6684. O.B.A.D. No. 2194
October 29, 2018

¶0 ORDER APPROVING RESIGNATION PENDING DISCIPLINARY PROCEEDINGS

¶1 Complainant, Oklahoma Bar Association (Bar Association), has applied pursuant to Rule 8.2 of the Rules Governing Disciplinary Proceedings (5 O.S.2011 Ch. 1, App. 1-A) for an order approving the resignation of the respondent, John Eldon Dalton, pending disciplinary proceedings. The Bar's application and the respondent's affidavit of resignation reveal the following.

¶2 On September 20, 2018, the respondent both executed and filed with this Court his affidavit of resignation from membership in the Bar Association pending disciplinary proceedings.

¶3 The respondent's affidavit of resignation reflects that: (a) it was freely and voluntarily rendered; (b) he was not subject to coercion or duress; and (c) he was fully aware of the consequences of submitting the resignation.

¶4 The affidavit of resignation states respondent's awareness of an investigation by the Bar Association, regarding the following criminal convictions which suffice as a basis for discipline:

(a) ***State of Oklahoma v. John Eldon Dalton,* Oklahoma County, Case No. CF 2016-2943:** On April 19, 2016, Dalton was charged with (Count 1) Driving Under the Influence and (Count 2) Driving Under Revocation. On July 13, 2018, after Dalton pled guilty to these charges, he was sentenced to twenty years as to Count 1 and one year as to Count 2, suspended, all counts to run concurrent with each other and concurrent with his sentence in Oklahoma County, Case No. CF-2013-572 and to attend weekend community service and to pay fines.

(b) ***State of Oklahoma v. John Eldon Dalton,* Oklahoma County, Case No. CF-2013-572:** On January 24, 2013, Dalton was charged with (Count 1) Driving While Under the Influence and (Count 2) Speeding. On June 13, 2013, after Dalton pled guilty to these charges, he was sentenced to a ten-year suspended sentence as to Count 1 and a fine only as to Count 2.

(c) ***State of Oklahoma v. John Eldon Dalton,* Oklahoma County, Case No. CF-2009-1638:** On March 12, 2009, Dalton was charged with (Count 1) Driving Under the Influence and (Count 2) Driving While Privilege Revoked. Dalton entered a plea of guilty with a delayed sentencing agreement and performance contract for Drug /DUI Court on May 20, 2009. On December 30, 2010, this case was dismissed against Dalton for his successful completion of Drug/DUI Court.

(d) ***State of Oklahoma v. John Eldon Dalton,* Oklahoma County Case No. CF-2006-6224:** On September 25, 2006, Dalton was charged with (Count 1) Driving Under the Influence and (Count 2) Driving While Privilege Revoked. On May 16, 2007, after Dalton pled guilty to these charges, he was sentenced to six years suspended as to Count 1 and Count 2 was dismissed.

(e) ***State of Oklahoma v. John Eldon Dalton,* Oklahoma County, Case No. CF-2003-6442:** On November 24, 2003, Dalton was charged with Driving Under the Influence. On February 9, 2004, after he pled guilty to this charge, he was sentenced to five years, suspended, along with fines, community service, random urinalyses and other programs. As a result of this conviction, Dalton was issued a Private Reprimand by the Professional Responsibility Commission on March 26, 2004 (*State of Oklahoma ex rel. Oklahoma Bar Association v. John Eldon Dalton,* OBAD No. 1606).

¶5 The resignation states the respondent is aware the allegations against him, if proven, would constitute violations of Rules 1.3 of the Rules Governing Disciplinary Proceedings (RGDP) 5 O.S. 2011, CH. 1, APP. 1-a and Rules 8.4 (a) and (b) of the Oklahoma Rules of Professional Conduct (ORPC), 5 O.S. 2011, ch. 1, app. 3-A, and his oath as an attorney.

¶6 The respondent states he is aware the burden of proof regarding the allegations against him rests upon the Oklahoma Bar Association, and he waives any and all rights to contest the allegations.

¶7 The respondent states his awareness of the requirements of Rule 9.1 of the Rules Governing Disciplinary Proceedings, and he states he shall comply with that Rule within twenty (20) days following the date of his resignation.

¶8 The respondent states his intent that his resignation be effective from the date and time of its execution and that he will conduct his affairs accordingly. The Bar Association requests the Court make the resignation effective on the date of its execution by respondent. We note the resignation was executed by respondent, submitted to the Bar Association, and filed in this Court on the same day. *See State ex rel. Oklahoma Bar Ass'n v. Demopolos*, 2015 OK 50, ¶ 36 & n.56, 352 P.3d 1210, 1221 n.56 (a proper resignation may be made effective on the date of submission to the Court); *State ex rel. Oklahoma Bar Ass'n v. Bourland*, 2001 OK 12, ¶¶ 14-17, 19 P.3d 289, 291 (a proper resignation may be made effective on the date filed with the Court when the lawyer's conduct has treated the resignation as effective upon that date).

¶9 The respondent states his awareness that a Rule 8.2 resignation pending disciplinary proceedings may be either approved or disapproved by the Oklahoma Supreme Court.

¶10 The respondent states he is aware he may make no application for reinstatement prior to the expiration of five years from the effective date of the order approving his resignation, and that reinstatement requires compliance with Rule 11 of the Rules Governing Disciplinary Proceedings. *See* 5 O.S.2011 Ch. 1, App. 1-A, Rule 8.2, Rules Governing Disciplinary Proceedings; *State ex rel. Oklahoma Bar Ass'n. v. Bourland*, 2001 OK 12, 19 P.3d 289; *In re Reinstatement of Hird*, 2001 OK 28, 21 P.3d 1043.

¶11 The respondent states he is aware the Client's Security Fund may receive claims from his former clients, and he shall pay to the Oklahoma Bar Association, prior to reinstatement, those funds, including principal and interest, expended by the Client's Security Fund for claims against him. *See* 5 O.S.2011 Ch. 1, App. 1-A, Rule 11.1(b), Rules Governing Disciplinary Proceedings; *State ex rel. Oklahoma Bar Ass'n. v. Heinen*, 2003 OK 36, ¶ 9, 84 P.3d 708, 709.

¶12 The respondent states he surrendered his Oklahoma Bar Association membership card to the Office of the General Counsel.

¶13 The respondent acknowledges he must cooperate with the Office of the General Counsel by providing current contact information and identifying active cases wherein client documents and files should be returned to the client or forwarded to new counsel, and cases where fees or refunds are owed by respondent.

¶14 Respondent acknowledges the OBA has incurred costs in the amount of $14.10 in the investigation of this matter. Respondent agrees he is responsible for reimbursement of these costs.

¶15 The official roster name and address of the respondent is John Eldon Dalton, O.B.A. No. 19261, 7836 N.W. 133rd Terrace, Oklahoma City, OK 73142.

¶16 IT IS THEREFORE ORDERED that the application by the Bar Association for an order approving John Eldon Dalton's resignation be approved, and the resignation is deemed effective on the date it was executed and filed in this Court, September 20, 2018.

¶17 IT IS FURTHER ORDERED that respondent's name be stricken from the Roll of Attorneys and that he make no application for reinstatement to membership in the Oklahoma Bar Association prior to five years from the effective date of his resignation.

¶18 IT IS FURTHER ORDERED that the respondent pay costs in the amount of $14.10 within thirty days from the date of this order. Any consideration of any future Rule 11 petitions is conditioned upon such payment.

¶19 IT IS FURTHER ORDERED that if any funds of the Client's Security Fund of the Oklahoma Bar Association are expended on behalf of respondent, he must show the amount paid and that the same has been repaid, with interest, to the Oklahoma Bar Association to reimburse such Fund prior to reinstatement.

¶20 DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 29th DAY OF OCTOBER, 2018.

/s/ Douglas L. Combs

CHIEF JUSTICE

CONCUR: COMBS, C.J., GURICH, V.C.J., WINCHESTER, EDMONDSON, COLBERT, REIF, WYRICK, and DARBY, JJ.

CONCUR IN RESULT: KAUGER, J.

2018 OK 85

STATE OF OKLAHOMA ex rel., OKLAHOMA BAR ASSOCIATION, Complainant, v. SHAWNNESSY MURPHY BLACK, Respondent.

SCBD # 6557. October 30, 2018

ORIGINAL PROCEEDING FOR ATTORNEY DISCIPLINE

¶0 The Oklahoma Bar Association filed a Complaint against Shawnnessy Murphy Black alleging multiple violations of the Oklahoma Rules of Professional Conduct, 5 O.S. 2011, Ch. 1, App. 3-A, and the Rules Governing Disciplinary Proceedings, 5 O.S., 2011, Ch. 1, App. 1-A. The Oklahoma Bar Association (OBA) identified four separate client grievances. The issues raised by clients include missing court dates, fee disputes, Respondent's failure to provide accountings, and lack of communication. Following a hearing, the Professional Responsibility Tribunal (PRT), recommended Respondent be suspended for six months and she be required to enter into a contract with Lawyers Helping Lawyers for one year. The OBA agreed with the PRT. Upon *de novo* review, we determine the appropriate discipline is for Respondent to receive a public censure and be required to enter into a contract with Lawyers Helping Lawyers for a period of one year.

RESPONDENT PUBLICLY CENSURED; CONTRACT WITH LAWYERS HELPING LAWYERS; COSTS IMPOSED

Katherine M. Ogden, Oklahoma Bar Association, for Complainant,

Amy L. Alden, Jack S. Dawson, MILLER DOLLARHIDE, P.C., 309 NW 9th Street, Oklahoma City, OK 73102, for Respondent.

OPINION

EDMONDSON, J.:

¶1 On August 31, 2017, the OBA filed a formal complaint against Shawnnessy Murphy Black (Respondent), pursuant to Rule 6 of the Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2011, Ch. 1, App. 1-A, setting forth grievances from four separate clients alleging violations of Rules 1.3, 1.4, 1.5, 1.15, 8.1(b) and 8.4 of the Oklahoma Rules of Professional Conduct (ORPC) and Rules 1.3 and 5.2, RGDP, that warrant the imposition of professional discipline. The Respondent and the OBA appeared before a three-member panel of the PRT and presented joint stipulations, mitigation, and recommendations for discipline. The trial panel accepted the stipulations and filed its report setting out findings of fact, conclusions of law, and recommendation of discipline to this Court. The OBA filed its Brief-in-Chief and Respondent filed an Answer. The matter is before us for *de novo* review of the proceedings.

COUNT 1 - Donna Ford

¶2 Respondent was retained to represent Donna Ford in an employment litigation matter, Canadian County, CJ-2010-1104. Specifically, Respondent agreed to file an objection and contest an alleged agreement to settle. In the latter part of 2012 and in early 2013, communication with Respondent became difficult.[1] In early 2013, Respondent missed court dates. In 2014, Respondent and Ford attended an unsuccessful mediation. Later that year, Ford's case was dismissed due to Respondent's failure to respond to discovery and to appear at court deadlines. Respondent offered to file a motion to reopen the case. In 2015, Ford requested an accounting. Respondent did not respond to Ford. Respondent admits to receiving all funds paid by check. Ford testified there were additional cash payments made. There was no written record by Ford of these additional payments and Respondent disputed receiving cash funds. Respondent admitted that she did not have any underlying client files or accounting information. However, she believes her former spouse discarded her client files after he kicked her and her children out of the marital home. Prior to being kicked out, the files were located in her client filing cabinet. When she was allowed access again to her possessions, the filing cabinet was intact, but empty.

COUNT 3 - Talitia Watson

¶3 Respondent was retained by Talitia Watson to initiate a notice of relocation in a child custody matter. Watson paid Respondent a retainer and signed a contract. She also made an additional payment. After Respondent had prepared documents, Watson changed her mind and decided not to relocate and asked Respondent to take no further action. Watson asked for an accounting and requested that any unearned fees be returned to her. Respondent understood Watson and she agreed to a flat fee arrangement, and that the fee was earned when paid. Respondent did not reply to Watson's request for an accounting. Respondent did not timely reply to the OBA inquiry regard-

ing this matter. She responded on April 3, 2017 stating that the retainer paid was not refundable and that she had worked more than 10 hours. Respondent indicated her typical hourly rate was $150/hour and that she earned the entire fee.

COUNT 4 - Jerome Demby

¶4 In June of 2016, Respondent was retained to represent Jerome Demby in a custody matter, Oklahoma County Case No. FP-14-185. Demby paid Respondent $1500 to complete the matter. Respondent had difficulty communicating with Demby during the client relationship. Respondent entered her appearance in the case and attended mediation with Demby. Respondent subsequently stopped responding to Demby's communications and she did no further work in the case. Demby filed a complaint with the OBA. Respondent testified that she did not have a written contract with Demby. Respondent testified that she worked at least ten hours of time on this custody matter, and believes she earned the entire $1500 retainer paid. Respondent testified that Demby's direct deposit of monies into her account was easier for Demby due to his personal banking needs and travel schedule. The OBA mailed a letter dated May 10, 2017 to Respondent's official roster address to notify her that a matter had been opened for formal investigation. The OBA also requested that Respondent respond within twenty days as required by Rule 5.2, RGDP. Respondent failed to respond as required. Additional letters were sent with no response.

¶5 The PRT found that with respect to Counts 1, 3 and 4, the OBA proved by clear and convincing evidence that Respondent violated Rules 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.15(d) (Failure to provide accounting or unearned fees) and 8.4(d) (Conduct prejudicial to the Administration of Justice) of the Rules of Professional Responsibility.

COUNT 2 - Karen Thomas

¶6 Respondent and the OBA stipulated to all of the allegations contained in the Complaint with respect to the Thomas grievance. All of the allegations set forth in Count 2 of the OBA Complaint pertain solely to a violation of Rule 5.2 RGDP due to Respondent's failure to timely respond to the OBA's investigation of the Thomas grievance. The record does not contain any details regarding the substance of the grievance filed by Thomas.

¶7 The OBA investigator testified about the numerous efforts made by the OBA to provide notice to Respondent of the various client complaints that comprise this disciplinary matter. Respondent testified she was unable to provide much of the requested information as she had no access to the client file materials. Respondent did not dispute the efforts made by the OBA to contact her and she did not dispute her failure to timely respond to OBA inquiries. The PRT found the OBA proved by clear and convincing evidence that Respondent is in violation of Rule 5.2, RGDP.

STANDARD OF REVIEW

¶8 In bar disciplinary proceedings, this Court exercises exclusive jurisdiction as a licensing court, not as a reviewing tribunal. *State ex rel. Okla. Bar Ass'n. v. Berger*, 2008 OK 91, ¶ 12, 202 P.3d 822, 825. Our review of the proceedings is de novo and we are not bound by the recommendations of the PRT. *State ex rel. Okla. Bar Ass'n. v. Todd,* 1992 OK 81, 833 P.2d 260, 261; *State ex rel. Okla. Bar Ass'n. v. Boone*, 2016 OK 13, ¶ 2, 367 P.3d 509, 514.

¶9 It is this Court's responsibility to examine the record to determine whether it contains clear and convincing evidence of professional misconduct by the Respondent and, if so, determine the appropriate discipline. *State ex rel. Okla. Bar Ass'n. v. Stutsman*, 1999 OK 62, 990 P.2d 854. Protection of the public and purification of the Bar are the primary purposes of disciplinary proceedings rather than to punish the accused lawyer. *State ex rel. Okla. Bar Ass'n v. Givens,* 2014 OK 103, 343 P.3d 214. The record is sufficient for our *de novo* review.

DISCIPLINE

¶10 The PRT and the OBA recommended a six-month suspension for Respondent's client neglect and her failure to timely respond to the disciplinary inquiries from the OBA. However, the recommendation of the PRT for a six-month suspension is not binding on this Court. *State ex rel. Okla. Bar Ass'n v. McBride*, 2007 OK 91, ¶ 15, 175 P.3d 379, 386. This Court has imposed a wide range of discipline for similar conduct ranging from public censure to suspension. *State ex rel.Okla. Bar Ass'n. v. Chapman,* 2005 OK 16, ¶ 13, 114 P.3d 414, 416.[2] We have *consistently* held that where an attorney is guilty of client neglect "without affirmative acts of harmful conduct, the appropriate discipline is public censure." *State ex rel. Okla. Bar*

Ass'n. v. Borders, 1989 OK 101, ¶ 13, 777 P.2d 929, 930.

¶11 The record before us has no evidence of any intentional act of harmful conduct by the Respondent. To the contrary, there is overwhelming evidence of overlapping and potentially devastating life events endured by Respondent that serve to mitigate the severity of discipline to be imposed.

¶12 From approximately 2010 through 2017, Respondent had significant family events occur in her life. She had two marriages end in divorce, she lived with domestic violence, she lived without a permanent residence for 3 months after her husband threw her out, she was unable to drive for an extended period of time due to a medical condition, her brother was diagnosed with terminal cancer and died, her sister had brain cancer and surgery, and her mother had surgery. Some of the hospitalizations of family members were overlapping. Respondent also had two young children at home. During the periods of time of family hospital stays, Respondent would work all day, come home to care for her children, and then go to the hospital to oversee care for her loved ones. She would then either remain at the hospital all night or return back home late at night and then begin this cycle over again the next day. Respondent also became a foster parent to a teenage mother with an infant and a toddler. The foster teenage mother abandoned her young children with Respondent, leaving her with the sole responsibility for the care of the infant and toddler.

¶13 As a result of these events, Respondent developed anxiety and depression. She did not recognize at the time that she was ill and needed assistance. In 2017 she was diagnosed with major depression. She was prescribed medication and began counseling. Since being diagnosed, Respondent has faithfully followed the guidance and treatment recommendations for these conditions.

¶14 Today, Respondent's depression and physical health problems are under control and monitored by appropriate health care professionals. Her treating medical providers have opined that she is fit to return to the practice of law. Respondent has altered her lifestyle and has gained necessary coping skills. Once Respondent realized the severity of her condition and gravity of the disciplinary complaints, she has been cooperative and has expressed deep and sincere remorse for her actions.

¶15 This is Respondent's first disciplinary proceeding with no prior complaints. In addition, the evidence from multiple witnesses substantiated that Respondent is a dedicated child advocate and has gained the respect of the judges and her co-workers at the Juvenile Justice Center. In fact, the consistent testimony was that while Respondent was employed by the non-profit, Oklahoma Lawyers for Children, she would go above and beyond the requirements of her job to ensure the deprived children were well represented.

¶16 The cases relied on by the OBA in support of a six-month suspension involve attorneys who made intentional misrepresentations to clients, had *at least one* prior disciplinary complaint, had failed to respond or appear before the PRT, lacked insight into their behavior, failed to accept responsibility for their actions and/or caused irreparable harm to their clients.[3]

¶17 This record has *no evidence* of any intentional act of harmful conduct by the Respondent. In contrast, the record is filled with evidence that Respondent endured multiple serious life events but lacked the reserves and tools to sustain herself. On the other hand, witnesses came forward to testify about Respondent's diligence and competency in representing clients.

¶18 We have previously determined that a public censure is the appropriate discipline for an attorney who had neglected client matters, failed to timely and adequately respond to the disciplinary process, but also had significant mitigating factors. *State ex rel. Okla. Bar Ass'n. v. Chapman,* 2005 OK 16, 114 P.3d 414. We have consistently recognized that public censure is appropriate where "there is scant evidence of intentional acts of harmful conduct" by the offending attorney. *Id.* ¶ 14; *see also State ex rel. Okla. Bar Ass'n. v. Prather,* 1996 OK 87, 925 P.2d 28; *State ex rel. Okla. Bar Ass'n. v. Busch*, 1992 OK 68, 832 P.2d 845. A public censure for Respondent in this matter is appropriate given the goal of our disciplinary process is not "punishment but to preserve the integrity of the bar and courts to protect the public." *Prather,* 1996 OK 87, ¶ 19, 925 P.2d at 30-31.

¶19 The evidence reflects that the life events that occurred during this difficult time in Respondent's life left her depressed and unable to appropriately respond. Respondent has never

had any other disciplinary matter before this Court. As of the time of the PRT hearing she was deemed to be competent and fit to return to the practice of law. The evidence also reflects that once she realized the depth of her depression, she sought treatment and has consistently followed all recommendations and has expressed a commitment to ongoing treatment.

¶20 When considering other similar cases that have come before this Court, this matter warrants a public censure, a one-year contract with Lawyers Helping Lawyers, and payment of $3,862.44 in costs as an appropriate discipline to be imposed. Respondent shall pay costs within six months of the filing of this Opinion.

¶21 **RESPONDENT PUBLICLY CENSURED; CONTRACT WITH LAWYERS HELPING LAWYERS; COSTS IMPOSED.**

CONCUR: COMBS, C.J., GURICH, V.C.J., EDMONDSON, WYRICK, and DARBY, JJ.

CONCUR IN PART; DISSENT IN PART: KAUGER, WINCHESTER, COLBERT, and REIF, JJ.

KAUGER, J., with whom Winchester, Colbert, and Reif, JJ join, concurring in part; dissenting in part

I would issue a private reprimand and strike the costs.

EDMONDSON, J.:

1. Transcript, Vol. 1, page 30 and OBA Exhibit 1, page 54-69, OBAD #2146, SCBD #6557, *State of Oklahoma, ex rel., The Oklahoma Bar Association, Complainant, v. Shawnnessy Murphy Black, Respondent.*

2. *State ex rel. Okla. Bar Ass'n. v. Prather*, 1996 OK 87, 925 P.2d 28, public censure for attorney who had *three* prior private reprimands who engaged in unprofessional conduct for client neglect; *State ex rel. Okla. Bar Ass'n. v. Busch*, 1992 OK 68, 832 P.2d 845, public reprimand for attorney who failed to prosecute cases and dismissed without client knowledge, with prior discipline history of private reprimand, but had no affirmative acts of misconduct; *State ex rel. Okla. Bar Ass'n. v. Angel*, 1993 OK 2, 848 P.2d 549, public reprimand for client neglect with two prior private reprimands for neglect; *State ex rel. Okla. Bar Ass'n. v. Kelley*, 2002 OK 10, 48 P.3d 777, public censure for attorney for neglect of client matter without affirmative acts of harmful conduct against client. *See also infra* note 3.

3. *State ex rel. Okla. Bar Ass'n. v. Sheridan*, 2003 OK 80, 84 P.3d 710; *State ex rel. Okla. Bar Ass'n. v. Rowe*, 2012 OK 88, 288 P.3d 535; *State ex rel. Okla. Bar Ass'n. v. Boone*, 2016 OK 13, ¶ 20, 367 P.3d 509, attorney had two prior disciplinary actions with private reprimands and demonstrated a "disturbing pattern of failing to communicate to clients and neglecting their cases"; *State ex rel. Okla. Bar Ass'n. v. McCoy*, 2010 OK 67, 240 P.3d 675, attorney was disbarred by the 10th Circuit, and although he had significant mitigation evidence he lacked insight and blamed others for difficulties; his actions also included multiple counts of misconduct involving *deceit, dishonesty and fraud*.

Calendar of Events

November

12 **OBA Closed** – Veterans Day

13 **OBA Legislative Monitoring Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Angela Ailles Bahm 405-475-9707

OBA Women in Law Committee meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City with BlueJeans; Contact Melanie Christians 405-705-3600 or Brittany Byers 405-682-5800

14 **OBA Clients' Security Fund Committee meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Micheal Salem 405-366-1234

15 **OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Telana McCullough 405-267-0672

OBA Professionalism Committee meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Linda Scoggins 405-319-3510

19 **OBA Member Services Committee meeting;** 1:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Peggy Stockwell 405-321-9414

20 **OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Rod Ring 405-325-3702

21 **OBA Family Law Section meeting;** 11:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Jeffrey H. Crites 580-242-4444

22-23 **OBA Closed** – Thanksgiving

27 **OBA Access to Justice Committee meeting;** 11:30 a.m.; Oklahoma Bar Center, Oklahoma City with BlueJeans; Contact Rod Ring 405-325-3702

28 **OBA Bar Center Facilities Committee meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Bryon J. Will 405-308-4272

December

4 **OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Melissa L. Blanton 405-521-6600

6 **OBA Lawyers Helping Lawyers Discussion Group;** 6 p.m.; Office of Tom Cummings, 701 NW 13th St., Oklahoma City, OK 73012; RSVP to Jeanie Jones 405-840-0231

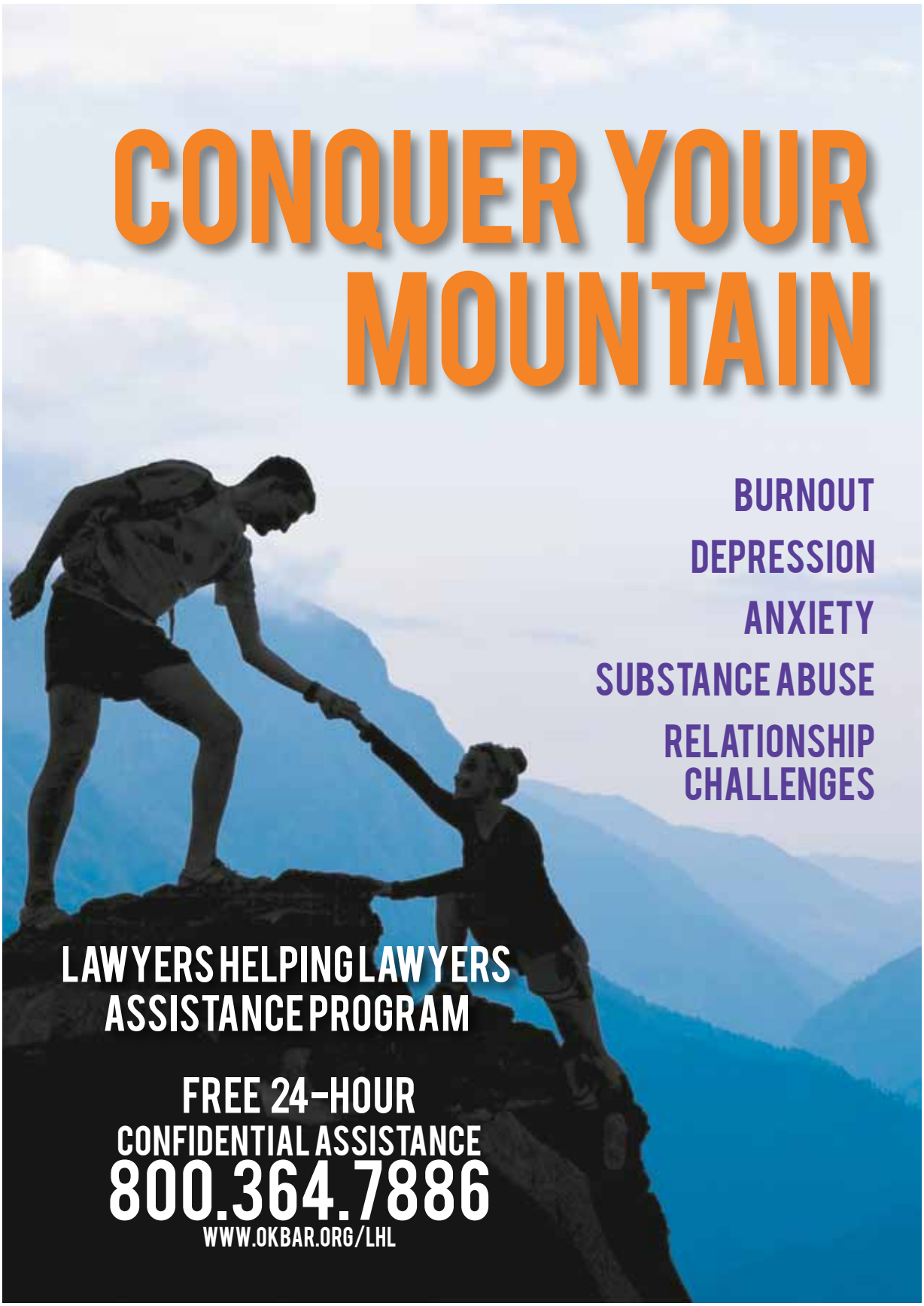
7 **OBA Board of Governors meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000

OBA Alternative Dispute Resolution Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Clifford R. Magee 918-747-1747

11 **OBA Women in Law Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Melanie Christians 405-705-3600 or Brittany Byers 405-682-5800

14 **OBA Professional Responsibility Commission meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Gina Hendryx 405-416-7007

OBA Law-Related Education Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Amber Peckio Garrett 918-895-7216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Opinions of Court of Civil Appeals

2018 OK CIV APP 64

GREEN COUNTRY PHYSICAL THERAPY L.P., and ZURICH AMERICAN INSURANCE COMPANY, Petitioners, vs. ANTHONY JOSEPH SYLVESTER, and THE WORKERS' COMPENSATION COMMISSION, Respondents.

Case No. 116,524. April 23, 2018

PROCEEDING TO REVIEW AN ORDER OF A THREE-JUDGE PANEL OF THE WORKERS' COMPENSATION COMMISSION

HONORABLE TARA A. INHOFE, ADMINISTRATIVE LAW JUDGE

SUSTAINED

Richard W. Wassall, Mary Ann Godsby, Tulsa, Oklahoma, for Petitioners

Mike Jones, Bristow, Oklahoma and Bob Burke, Oklahoma City, Oklahoma, for Respondents

KEITH RAPP, JUDGE:

¶1 Green Country Physical Therapy, L.P. (Employer) and its Insurer, Zurich American Insurance Company, appeal the decision of the Three-Judge Panel (Panel) ruling that Anthony Joseph Sylvester's (Claimant) workers' compensation claim is not barred by the statute of limitations provided in 85A O.S. Supp. 2017, § 69(B)(1) of the Administrative Workers' Compensation Act (AWCA).

BACKGROUND

¶2 The facts are not disputed. Claimant suffered a work-related injury on March 28, 2014. He did not file a claim. He underwent related surgery, paid for by Employer's insurer. Then, Employer's Insurer paid temporary total disability benefits with the last payment made on September 27, 2014. Claimant needed additional medical care for his injury and medical care was provided on May 3, 2016, paid by Insurer.

¶3 As a result of the medical consultation on May 3, 2016, Claimant was advised that he would either have to have additional surgery or be monitored, probably for life. A dispute arose about providing additional medical care.

¶4 Claimant then filed a formal claim, CC Form 3, on July 15, 2016. Employer asserted that the claim was barred by Section 69(B)(1).

¶5 Section 69 provides, in part:

> A. Time for Filing.
>
> . . . .
>
> B. Time for Filing Additional Compensation.
>
> 1. In cases in which any compensation, including disability or medical, has been paid on account of injury, a claim for additional compensation shall be barred unless filed with the Commission within one (1) year from the date of the last payment of disability compensation or two (2) years from the date of the injury, whichever is greater.[1]
>
> 2. The statute of limitations provided in this subsection shall not apply to claims for the replacement of medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus permanently or indefinitely required as the result of a compensable injury, when the employer or carrier previously furnished such medical supplies, but replacement of such items shall not constitute payment of compensation so as to toll the statute of limitations.
>
> C. A claim for additional compensation shall specifically state that it is a claim for additional compensation. Documents which do not specifically request additional benefits shall not be considered a claim for additional compensation.[2]

85A O.S. Supp. 2017, § 69(B)(1)(2) and (C) (emphasis added).

¶6 The AWCA defines "compensation" and "disability" as:

> 10. "Compensation" means the money allowance payable to the employee or to his or her dependents and includes the

> medical services and supplies provided for in Section 50 of this act and funeral expenses.[3]
>
> . . . .
>
> 16. "Disability" means incapacity because of compensable injury to earn, in the same or any other employment, substantially the same amount of wages the employee was receiving at the time of the compensable injury.

85A O.S. Supp. 2017, §§ 2(10) and (16).

¶7 The Administrative Law Judge (ALJ) agreed with Employer and dismissed the claim. The ALJ concluded that a claimant had to file a claim within two years from the date of injury or one year from the date of payment of disability compensation, whichever was longer. Thus, here, Claimant would have two years from March 28, 2014 (injury), or one year from September 27, 2014 (date last disability payment was made). The former date provided the longer time, so using the injury date resulted in a last date to file of March 28, 2016. The ALJ ruled that the statute did not extend the filing deadline based upon the last date of paid medical treatment. The ALJ dismissed the action because Claimant filed his Form 3 in July of 2016.

¶8 The Panel reversed. The Panel first analyzed the contention that the alternative claim filing deadline was measured solely on the date of last payment of disability benefits. The Panel reasoned that this construction would create a disparity between workers filing a claim and workers whose employers voluntarily undertake workers' compensation without filing a claim. The Panel concluded that using the last payment of disability benefits afforded the claim-filing workers a longer period to seek additional benefits than the workers not filing a claim. The Panel also concluded that the foregoing construction of the statute would result in unnecessary litigation of uncontested clams. In either case, the result was not intended by the Legislature.

¶9 Next, the Panel found that the Employer's construction is inconsistent with Subsection B(2). The Panel read the statute to provide that payment of medical compensation extended the deadline and the replacement of medical supplies did not constitute compensation. Last, the Panel concluded that Employer's construction of the limitations provision did not serve the function of a limitations statute.

¶10 The Panel held that Section 69(B)(1) extended the statute of limitations for one year following the payment of medical or disability compensation. Consequently, Claimant filed a timely Form 3.

¶11 Claimant also argued that Employer's construction of the statute violated Due Process of Law and the special law provision of the Oklahoma Constitution. The ALJ and the Panel did not reach those arguments in their respective rulings.

¶12 Employer and Insurer appeal. Employer argues that the plain language of the statute bars the claim here and the ALJ was correct. In addition, Employer argues that the current statutory language is different from its predecessor statutes which would have permitted Claimant's filing. Thus, Employer argues that the Legislature changed the limitation period so that it runs from date of injury or the last date disability compensation was paid, whichever was later. In either case, Claimant's action is barred.

STANDARD OF REVIEW

¶13 The appeal involves interpretation of the foregoing statute. This presents a reviewable question of law. 85 O.S. Supp. 2017, § 78. The review is *de novo*. *American Airlines, Inc. v. State ex rel. Oklahoma Tax Commission,* 2014 OK 95, ¶ 25, 341 P.3d 56, 62-63. The Court set out the rules of statutory construction in *American Airlines, Inc*. with the primary rule being to give effect to legislative intent. *Id*. 2014 OK 95 ¶ 33, 341 P.3d at 64-65.

¶14 Claimant also argues that the statute is unconstitutional if the statute is interpreted as called for by Employer and determined by the ALJ.[4] When determining the constitutionality of a statute, "courts are guided by well-established principles, and a heavy burden is cast on those challenging a legislative enactment to show its unconstitutionality." *Lee v. Bueno,* 2016 OK 97, ¶ 7, 381 P.3d 736, 740. "The party seeking a statute's invalidation as unconstitutional has the burden to show the statute is clearly, palpably, and plainly inconsistent with the Constitution." *Lafalier v. Lead-Impacted Cmtys. Relocation Assistance Trust*, 2010 OK 48, ¶ 15, 237 P.3d 181, 188.

ANALYIS AND REVIEW

¶15 Section 69(B) establishes a time limit to file for "additional compensation." Thus, the event which brings Section 69(B) into consideration is a filing for "additional compensation" and, without question, Claimant filed for "additional compensation." Next, there are two starting dates: (1) date of "last payment of disability compensation," and (2) date of injury. It is undisputed that Claimant missed the deadline using the date of injury as the starting date.[5]

¶16 In order to have a timely filing of the Form 3, Claimant must equate "payment of disability compensation" with the payment of the last medical treatment provided to him. The first hurdle is the amending language of Section 69. The statute replaced by Section 69 provided:

> The right to claim compensation under the Workers' Compensation Code shall be forever barred unless, within two (2) years after the date of accidental injury or death, a claim for compensation is filed with the Workers' Compensation Court. Provided however, a claim may be filed within two (2) years of the date of the last medical treatment authorized by the employer or the insurance carrier or the date of the payment of any compensation or remuneration paid in lieu of compensation.

85 O.S.2011, § 318(A)(emphasis added) (similar "last medical treatment" language is in its predecessor, 85 O.S. 2011, § 43).

¶17 Thus, the initial inquiry is whether the Legislature intended to — and did — alter the law. *See Dean v. Multiple Injury Trust Fund*, 2006 OK 7, 145 P.3d 1097. Section 318(A) does not distinguish between an original claim and a claim for "additional compensation" whereas Section 69 separates the original and additional compensation types of claims.

¶18 This Court concludes that the Legislature did alter prior law. Section 69(A) is the amending language for the prior Section 318. Section 318 provided time deadlines for filing an original claim. Section 69(A) does likewise. Section 69(A) is headed "Time for Filing" whereas Section 69(B) is headed: "Time for Filing Additional Compensation." Section 69(A) provides, in part:

> 1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Commission within one (1) year from the date of the injury. If during the one-year period following the filing of the claim the employee receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter. For purposes of this section, the date of the injury shall be defined as the date an injury is caused by an accident as set forth in paragraph 9 of Section 2 of this act.

85A O.S. Supp. 2017, § 69(A)(1).

¶19 By enacting Sections 69(A) and (B) the Legislature distinguished, for limitations purposes, an original claim from a claim for additional benefits. As a result, Section 69(B) is the amending provision of 85 O.S.2011, § 318(F). Section 318(F) provides:

> F. The jurisdiction of the Court to reopen any cause upon an application based upon a change in condition for the worse shall extend for three (3) years from the date of the last order in which monetary benefits or active medical treatment was provided, and unless filed within such period of time, shall be forever barred. An order denying an application to reopen a claim shall not extend the period of the time set out in this act for reopening the case. A failure to comply with a medical treatment plan ordered by the Court shall bar reopening of a claim. This subsection shall be considered to be substantive in nature.

85 O.S.2011, § 318(F) (emphasis added).

¶20 Section 69(B) broadens the scope from "reopening any cause" to the instance in "which any compensation, including disability or medical, has been paid on account of injury." Thus, Section 69(B) covers cases filed and cases where compensation has been provided voluntarily without a Form 3 action being filed. Claimant falls within the latter classification.

¶21 Therefore, Claimant must equate the payment for his last medical appointment with the Section 69(B) triggering date of "last payment of disability compensation." "Compensation" includes "medical services." 85A O.S. Supp. 2017, § 2(10). This definition is the same whenever used in the AWCA, absent a plainly contrary legislative intention. 25 O.S.2011, § 2.[6]

¶22 In past versions of the limitations statute, the language separated monetary benefits and active medical treatment. That separation is no longer the case, as the Legislature now uses a comprehensive phrase "disability compensation" in Section 69(B) without limitation or exception.[7]

¶23 Therefore, this Court holds that payment of the Claimant's medical services and the last date thereof established the date on which the limitations period began. Claimant's Form 3 was filed timely. The judgment of the Panel ruling that Claimant's claim is not barred is sustained on the basis of the foregoing analysis.

SUMMARY AND CONCLUSION

¶24 Claimant sustained a work-related injury. He received surgery and temporary disability payments. Later, he was provided medical services. Claimant had not filed a claim and Employer and its insurer had voluntarily provided the benefits.

¶25 A dispute arose about continuing benefits. Claimant filed a Form 3 to seek additional benefits. The filing date was outside the deadline set out in 85 O.S. Supp. 2017, § 69(B)(1) unless the provision of the last medical services furnished the beginning date for calculating the deadline.

¶26 This Court holds that the provision of medical services falls within the broad category of payment of disability compensation. The AWCA's definitions provisions, the past statutory language replaced by the current statute, and the failure of the Legislature to limit or exempt payment of medical services all lead to the conclusion that Claimant's filing of his Form 3 was not time barred. Therefore, the judgment of the Panel is sustained for the reasons stated herein.

¶27 **SUSTAINED.**

BARNES, P.J., and GOODMAN, J., concur.

KEITH RAPP, JUDGE:

1. "Compensation" is defined in 85A O.S. Supp. 2017, § 2(10):
   10. "Compensation" means the money allowance payable to the employee or to his or her dependents and includes the medical services and supplies provided for in Section 50 of this act and funeral expenses.

2. Claimant's Form 3 checked "Yes" in the box providing: "Is this a claim for additional benefits (*e.g.* additional temporary total disability, additional medical.)" Record, p. 3 (emphasis added). Thus, the Form 3 is not explicit as called for in the statute. However, the ALJ's Order notes that the claim is for "permanent partial disability and continuing maintenance." This brings the claim within the definition of "compensation" and cures any ambiguity arising from the Form 3 use of "additional benefits" without specificity.

3. Section 50 lists a complete range of medical services from surgery to devices to continuing medical maintenance. 85A O.S. Supp. 2017, § 50.

4. Claimant also presented an estoppel theory to the ALJ. However, that theory has not been pursued in this appeal.

5. It would appear that the same two-year problem would exist if Claimant were to prevail on his constitutional argument. Thus, if Section 69B(1) is deemed unconstitutional, it would be severed. *See, Benedetti v. Cimarex Energy Co.*, 2018 OK 21, ¶ 8, _ P.3d_ (pending official release). Claimant would be left with the shorter period of Section 69(A).

6. Quoting the Oklahoma Court of Criminal Appeals, the Oklahoma Supreme Court stated:

> As the Oklahoma Court of Criminal Appeals appropriately said in *Minnix v. State* [1955 OK CR 37, 282 P.2d 772]. (sic) "[I]t is within the province of the legislative body to define words appearing in legislative acts, and where an act passed by the legislature embodies a definition, it is binding on the courts. *Traxler v. State*, 96 Okl.Cr. 231, 251 P.2d 815. And as stated in 50 Am.Jur., Statutes, § 262: 'Indeed, a statutory definition supersedes the commonly accepted, dictionary, or judicial definition. Where a statute contains its own definition of a term used therein, the term may not be given the meaning in which it is employed in another statute, although the two may be *in pari material*.'"

*Oliver v. City of Tuls*a, 1982 OK 121, ¶ 19, 654 P.2d 607, 611.

7. This Court does not find the use of the word "disability" to be a limitation excluding medical services. All compensation under the AWCA is for a disability, temporary or permanent. Moreover, nothing in the plain meaning of the phrase "disability compensation" limits it to monetary compensation paid directly to an injured employee.

2018 OK CIV APP 65

TONY R. WHISENANT, on behalf of himself and others similarly situated, Plaintiff/Appellee, vs. STRAT LAND EXPLORATION CO., Defendant/Appellant.

Case No. 115,660. April 10, 2018

APPEAL FROM THE DISTRICT COURT OF BEAVER COUNTY, OKLAHOMA

HONORABLE JON K. PARSLEY, TRIAL JUDGE

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS

Rex A. Sharp, REX A. SHARP, P.A., Prairie Village, Kansas, for Plaintiff/Appellee

Mark Banner, HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C., Tulsa, Oklahoma, for Defendant/Appellant

DEBORAH B. BARNES, PRESIDING JUDGE:

¶1 Defendant Strat Land Exploration Co. (Strat Land) appeals from the trial court's order granting the motion for class certification filed by Plaintiff Tony R. Whisenant (Whisenant) on behalf of himself and others similarly situated. Based on our review, we reverse and remand for further proceedings.

BACKGROUND

¶2 In February 2015, Whisenant filed his "Second Amended Class Action Petition" as-

serting "claims based upon [Strat Land's] underpayment or non-payment of royalties on natural gas and/or constituents of the gas stream produced from wells in Oklahoma[.]" Whisenant asserts he has a royalty interest in a well — in particular, the Tretbar Family 1-15 well in Beaver County, Oklahoma — "owned in part and operated by [Strat Land]." He asserts Strat Land "has operated over 100 wells which produce gas in Oklahoma and many more in which it holds a working interest," and that the members of the proposed class are "so numerous and geographically dispersed that joinder of all members is impracticable." The wells in question are all located on or adjacent to the Oklahoma Panhandle in Ellis, Harper, Beaver, and Texas Counties.

¶3 Whisenant asserts there are questions of law and fact common to Whisenant and the other class members, including, among others, whether "raw gas [is] in Marketable Condition at the meter run/gathering line inlet," whether "[Strat Land] . . . deduct[ed] (in cash or in kind) amounts for placing the gas (and its constituents) into Marketable Condition before paying royalty to [Whisenant] and the other Class Members," whether "[Strat Land] [paid] royalty to [Whisenant] and the other Class Members for all gas constituents, such as condensate, fractionated NGLs, nitrogen, and helium, produced from their wells," and whether "[Strat Land's] uniform practice of paying royalties based on the net, instead of the gross, gas contract value constitute[d] a breach of [Strat Land's] lease obligations to [Whisenant] and the other Class Members[.]"

¶4 Whisenant asserts "[he] is typical of other Class Members[] because [Strat Land] pays royalty to [him] and other Class Members using a common method" — *i.e.*, "[Strat Land] pays royalty based upon the net revenue [Strat Land] receives under its marketing contracts" rather than based upon the gross amount the midstream company — in particular, DCP Midstream (f/k/a Duke Energy Field Services) — receives from its sale of the gas at the interstate (or intrastate) pipeline.[1]

¶5 In December 2015, Whisenant filed a motion for class certification. As set forth in the trial court's order granting class certification, the proposed class consists of all royalty owners in Oklahoma wells

> (a) operated by [Strat Land]; (b) marketed by Strat Land to DCP Midstream (f/k/a Duke Energy Field Services); and (c) that have produced gas and/or gas constituents (such as residue gas, natural gas liquids, helium, or condensate) from February 12, 2009 to the time Class Notice is given.
>
> Excluded from the class are: (1) Office of Natural Resources Revenue f/k/a the Mineral Management Service (Indian tribes and the United States); (2) [Strat Land] and its employees, officers, and directors; (3) Any NYSE and NASDAQ listed company (and its subsidiaries) engaged in oil and gas exploration, gathering, processing, or marketing; and, (4) leases that contain clear and express language authorizing the deduction from royalty of "the cost incurred in processing, gathering, treating, compressing, dehydrating, transporting, and marketing, or otherwise making such gas or other substances ready for sale or use," the cost incurred in delivering, processing, compressing or otherwise making such gas merchantable," or similar clear and express language.

¶6 In its order granting the motion for class certification, the trial court determined the requirements under 12 O.S. Supp. 2014 § 2023 were satisfied. Among other things, the trial court determined that "generalized" evidence (in contrast to "individualized" evidence) could properly be used to prove the merits on a class-wide basis, citing to *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016), and *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). The trial court determined Whisenant had made a prima facie showing that Strat Land paid royalties in the same manner across the board — *i.e.*, that it paid royalties based on what it received from DCP Midstream rather than based on what DCP Midstream received for the gas at the interstate (or intrastate) pipeline inlet. The court acknowledged that in order for the proposed class — a class of approximately one thousand royalty owners throughout the United States — to win on the merits, it would have to prove that, for each of the approximately eighty-eight wells in question, Strat Land's royalty payment and cost-deduction method was improper. However, the court concluded that "predominantly generalized proof" was sufficient to determine this issue "in one stroke." The trial court stated that "the liability (and even damages) in this case will be decided entirely by a 'battle of experts,' which

is a classic reason to certify a class action," citing, *inter alia, Tyson*.

¶7 From the trial court's order granting the motion for class certification, Strat Land appeals.

STANDARD OF REVIEW

¶8 An order certifying a class action "shall be subject to a *de novo* standard of review by any appellate court reviewing the order." 12 O.S. Supp. 2014 § 2023(C)(2).[2] *See also Marshall Cnty. v. Homesales, Inc*., 2014 OK 88, ¶ 8, 339 P.3d 878 ("[T]he district court's disposition of the class action issue does not ultimately determine any issues of fact. As a result, class certification resolves only a question of law and the *de novo* standard required by [§ 2023(C)(2)] is appropriate for appellate review of class certification orders[.]"). "Some consideration of the merits is appropriate in a class certification, but only insofar as it informs what individual issues might be a part of the adjudicatory process." *Weber v. Mobil Oil Corp.*, 2010 OK 33, ¶ 13, 243 P.3d 1 (footnote omitted).

ANALYSIS

I. Prerequisites to a Class Action

¶9 "The class action is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (internal quotation marks omitted) (citation omitted). "In order to justify a departure from that rule, a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Id.* at 348-49 (internal quotation marks omitted) (citation omitted). In Oklahoma, class actions are governed by § 2023, which, like its federal counterpart, provides, in part, as follows:

> A. PREREQUISITES TO A CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if:
>
> 1. The class is so numerous that joinder of all members is impracticable;
>
> 2. There are questions of law or fact common to the class;
>
> 3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
>
> 4. The representative parties will fairly and adequately protect the interests of the class.

The requirements of subsection A are generally referred to as numerosity, commonality, typicality, and adequacy of representation. *Harvell v. Goodyear Tire & Rubber Co.*, 2006 OK 24, ¶ 8, 164 P.3d 1028. A party seeking certification of a class action has the burden of satisfying all four requirements of subsection A, as well as one of the additional requirements contained in § 2023(B).[3] *Id.* Pertinent to this case, § 2023(B)(3) requires predominance of common questions of law or fact to class members and superiority of class action adjudication.

¶10 The primary issue on appeal is whether there are common questions of law or fact. However, because the trial court certified the class action under § 2023(B)(3), "we consider [the issue of commonality] in conjunction with the court's further conclusion that common questions also predominate." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 365 (4th Cir. 2014). This is so because when a class action is certified under section § 2023(B)(3) — the federal counterpart of which is Federal Rule of Civil Procedure 23(b)(3) — the "'commonality' requirement is subsumed under, or superseded by, the more stringent Rule 23(b)(3) requirement that questions common to the class 'predominate over' other questions." *Amchem Prod., Inc. v. Windsor,* 521 U.S. 591, 609 (1997).[4]

¶11 In the present case, class certification is inappropriate because a "highly individualized" review of the facts pertaining to each of the numerous wells is necessary. *Strack v. Cont'l Res., Inc*., 2017 OK CIV APP 53, ¶ 32, 405 P.3d 131, *cert. denied*. Determining Strat Land's liability, and the appropriate damages (if any) to be awarded, to each of the royalty owners in the proposed class is not susceptible to class-wide resolution "in one stroke." [5] As the following discussion shows, common questions of law or fact do not predominate in this case.

II. *Mittelstaedt v. Santa Fe Minerals, Inc*.: Oklahoma's Fact-Intensive Inquiry

¶12 The trial court's order states that Strat Land had a common corporate policy of not paying royalty on the gross value of the gas produced under the leases. However, the determination in Oklahoma of the moment in time when oil or gas extracted from any particular well becomes a "marketable product" and, thus, reaches its royalty-valuation point, requires a fact-intensive inquiry. Also fact inten-

sive is the related determination of whether costs incurred after the royalty-valuation point is reached (sometimes called post-production costs) can be proportionately charged against royalties.[6] The fact that the same company — Strat Land — extracted the minerals from the numerous wells in question and that they were then sold to the same midstream company does not lend any support to an inference that the royalty-valuation point or allowable deductions, if any, are all the same or even substantially similar for each particular well. The mere fact that Strat Land engaged in uniform conduct with regard to paying royalties is also insufficient to satisfy § 2023(B)(3).[7]

¶13 In Oklahoma, absent express language to the contrary, a lessee is generally prohibited "from deducting a proportionate share of transportation, compression, dehydration, and blending costs," but only "when such costs are associated with creating a marketable product." *Mittelstaedt v. Santa Fe Minerals, Inc.*, 1998 OK 7, ¶ 2, 954 P.2d 1203. The *Mittelstaedt* Court further stated that

> the lessor must bear a proportionate share of such costs if the lessee can show (1) that the costs enhanced the value of an already marketable product, (2) that such costs are reasonable, and (3) that actual royalty revenues increased in proportion with the costs assessed against the nonworking interest. Thus, in some cases a royalty interest may be burdened with post-production costs, and in other cases it may not.

Id. ¶ 2 (footnote omitted).

¶14 Regarding the moment in time when a marketable product exists, the *Mittelstaedt* Court stated, "It is common knowledge that raw or unprocessed gas usually undergoes certain field processes necessary to create a marketable product." *Id.* ¶ 21. The Court did not further define the meaning of "marketable product," nor has it done so since.[8] Rather, the Court has, for good reasons, largely left the issue open to resolution on a case-by-case basis.[9] The *Mittelstaedt* Court stated, for example, that "field activities" necessary to create a marketable product "may include, but are not limited to, separation, dehydration, compression, and treatment to remove impurities." *Id.* ¶ 21. The *Mittelstaedt* Court also stated: "When the gas is shown by the lessee to be in a marketable form at the well the royalty owner may be charged a proportionate expense of transporting that gas to the point of purchase." *Id.* ¶ 18 (emphasis added). For example, in *Foster v. Merit Energy Co.*, 289 F.R.D. 653 (W.D. Okla. 2012), the court, in denying class certification, quoted the following explanation of Professor Owen Anderson:

> While sweet, dry gas is in a marketable condition (but not necessarily in a marketable location) at the wellhead, sour or water-saturated gas, depending on market realities, may not be in a marketable condition (or a marketable location) at the wellhead.
>
> Owen L. Anderson, *Royalty Valuation: Should Royalty Obligations be Determined Intrinsically, Theoretically, or Realistically?*, 37 Nat. Resources J. 611, 634 (1997).

289 F.R.D. at 658.[10]

¶15 Thus, as articulated recently by a separate division of this Court, "highly individualized and fact-intensive review of each Class Members' claim would be necessary to determine if [the defendant] underpaid oil or gas royalties." *Strack v. Cont'l Res., Inc.*, 2017 OK CIV APP 53, ¶ 32, 405 P.3d 131. *See also Foster v. Apache Corp.*, 285 F.R.D. 632, 638 (W.D. Okla. 2012) ("While it is easy to articulate the marketable-product rule, application of it to a particular circumstance is difficult. Doing so in the class action context is even more difficult[.]" (footnote omitted)). The *Strack* Court relied upon *Mittelstaedt*, where the Court stated that post-production costs, for example, "must be examined on an individual basis to determine if they are within the class of costs shared by a royalty interest." *Strack*, 2017 OK CIV APP 53, ¶ 30 (quoting *Mittelstaedt*). The *Strack* Court stated: "Pursuant to *Mittelstaedt*, these wells located in various places, with different gas qualities and production conditions, differences in the custom and usage in the industry, as well as the various marketing arrangements under which the gas was sold, necessitates an individual inquiry of the facts of each gas sale." *Strack*, ¶ 29. This statement and the following conclusion are equally applicable to the present case:[11]

> The question of where and when particular gas is marketable is not settled in Oklahoma. In addition, there is no categorical rule with respect to when post-production costs may be considered for royalty valuation. *Mittelstaedt*, [¶ 2] ("in some cases a royalty interest may be burdened with post-production costs, and in other cases it may not").

> Notably, "post-production costs must be examined on an individual basis to determine if they are within the class of costs shared by a royalty interest." *Id.* [¶ 19] (emphasis added); *Howell*, 2004 OK 92, ¶ 20, 112 P.3d at 1160 ("[T]he courts must carefully scrutinize the figures to determine the correct amount.").
>
> As a result, highly individualized and fact-intensive review of each Class Members' claim would be necessary to determine if [the defendant] underpaid oil or gas royalties. Thus, "[c]ertification is improper [because] the merits of the claim turn on the defendant's individual dealings with each plaintiff." *Harvell*, 2006 OK 24, ¶ 27, 164 P.3d at 1038.

Strack, ¶¶ 31-32.

III. *Tyson Foods, Inc. v. Bouaphakeo*, and Wal-*Mart Stores, Inc. v. Dukes*

¶16 For the reasons set forth above, Whisenant's assertion is unavailing that "[c]lass action treatment will allow a large number of similarly situated individuals to prosecute their common claims in a single forum, simultaneously, efficiently, and without duplication of time, expense and effort on the part of those individuals, witnesses, the courts and/or [Strat Land]." Also unavailing is Whisenant's assertion that "class action treatment will avoid the possibility of inconsistent and/or varying results in this matter arising out of the same facts." Inconsistent and varying results are likely if this case were to proceed as a class action to be determined by generalized proof. As stated by the court in *Foster v. Merit Energy Co.*, 289 F.R.D. 653, 658 (W.D. Okla. 2012), even assuming,

> with [a large number of] wells, there are less than [that particular number of] "market realities" affecting defendant's compliance with royalty provisions and the implied covenant to market, this case still presents a wide variety of combinations of quality of gas produced, proximity of interstate pipelines, and availability and proximity of processing plants (leaving variations in lease language out of the discussion for the time being).

¶17 Whisenant states on appeal that "[a]ll experts agreed it was possible" that gas could "be in marketable condition at the well," but he further asserts that, according to his experts, this could not be so "under the facts of this case based on the objective, generalized facts of the gas analysis, low pressure, high water vapor content, and [midstream] gas service contracts that required midstream services to prepare the gas for the market where the 'proceeds' were obtained."[12] We disagree that determinations of the quality of gas and other facts pertinent to each well are susceptible to generalized proof.

¶18 In *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016), the United States Supreme Court explained that

> [a]n individual question is one where members of a proposed class will need to present evidence that varies from member to member, while a common question is one where the same evidence will suffice for each member to make a *prima facie* showing [or] the issue is susceptible to generalized, class-wide proof.

Id. at 1045 (internal quotation marks omitted) (citation omitted).[13]

¶19 In *Tyson*, the putative class consisted of employees who claimed they were inappropriately denied compensation under the Fair Labor Standards Act for the "time spent donning and doffing the required protective gear[.]" *Id.* at 1046. The employer argued that a determination of the time spent by each employee putting on the protective gear was "necessarily person-specific . . . , making class certification improper." *Id.* The employees "counter[ed] that these individual inquiries are unnecessary because it can be assumed each employee donned and doffed for the same average time observed in [one expert's] sample." *Id.* (emphasis added).

¶20 The *Tyson* Court ultimately found in favor of the employees and allowed class certification. However, in the present case, an assumption analogous to that forwarded by the employees in *Tyson* — *i.e.*, an assumption that, for each gas well within the proposed class, the royalty-valuation point and deductible costs can be set at the same average point and amount — is unwarranted. The *Tyson* Court explained that the permissibility of an average of a representative or statistical sample "turns not on the form a proceeding takes — be it a class or individual action — but on the degree to which the evidence is reliable in proving or disproving the elements of the rel-

evant cause of action." *Id.* Thus, the *Tyson* Court stated:

> One way for [the employees] to show, then, that the sample relied upon here is a permissible method of proving classwide liability is by showing that each class member could have relied on that sample to establish liability if he or she had brought an individual action. If the sample could have sustained a reasonable jury finding as to hours worked in each employee's individual action, that sample is a permissible means of establishing the employees' hours worked in a class action.

Id. at 1046-47. The Tyson Court concluded "the representative evidence" was a permissible means of establishing the employer's liability for the length of time its employees took to put on and off the protective gear. *Id.* at 1047.

¶21 However, in the present case, a class-wide determination for the numerous wells (and approximately one-thousand royalty owners in the putative class) based either upon the variables as they exist at Tretbar Family 1-15 well in Beaver County, in which Whisenant owns a royalty interest, or on an average sampling (*i.e.*, of gas quality, proximity of interstate pipelines, availability and proximity of processing plants, market realities, and so forth) would result in distorted and inconsistent awards to the various members of the class.[14] Indeed, such a method could result in forcing Strat Land to pay royalty owners amounts where such amounts are not owed at all pursuant to the facts specific to certain wells, and vice versa.[15] As stated by a separate division of this Court, "Under our rule of law, a judgment must be based upon evidence that establishes essential facts as probably, not merely possibly being true," and a finding of fact cannot be based on mere conjecture and speculation. *Tyson Foods, Inc. v. Marez*, 1996 OK CIV APP 137, ¶ 8, 931 P.2d 760 (citations omitted). Thus, under the test set forth by the United States Supreme Court — *i.e.*, if a sample could sustain a reasonable jury finding for an individual action, that sample constitutes a permissible means of proving the merits in a class action, *Tyson*, 136 S. Ct. at 1047 — class certification is inappropriate in the present case involving numerous and disparate wells.

¶22 Indeed, consistent with the United States Supreme Court's discussion in *Tyson*, the present case has more in common with the circumstances presented in the earlier case of *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). As explained in *Tyson*, in *Wal-Mart* "the employees were not similarly situated, so none of them could have prevailed in an individual suit by relying on depositions detailing the ways in which other employees were discriminated against by their particular store managers." *Tyson*, 136 S. Ct. at 1040. The *Tyson* Court explained that, "[i]n contrast, the employees here, who worked in the same facility, did similar work, and were paid under the same policy, could have introduced [the average of the sampling] in a series of individual suits." *Id.* In *Tyson*, the facts pertaining to any particular employee's donning and doffing of the protective gear could be accurately predicted, with perhaps negligible variation, based upon the time it took for a sampling of other employees to don and doff the same protective gear. In the present case, however, an analogous assumption cannot be made regarding the pertinent variables at issue for each well and, more fundamentally, regarding the respective royalty-valuation points and deductible costs. A reliance upon facts derived from other wells would be as impermissible as it would have been to determine liability in *Wal-Mart* based upon generalized evidence derived from other store managers. Thus, Whisenant's assertion is unavailing that class action certification is appropriate because "the case will rely on admissible expert testimony to prove class-wide liability[.]"

¶23 "Generally, in determining whether the predominance standard is met, a court focuses on the issue of liability, and if the liability issue is common to the class, common questions are held to predominate over individual ones." *In re Farmers Med-Pay Litig.*, 2010 OK CIV APP 12, ¶ 19, 229 P.3d 551 (internal quotation marks omitted) (citation omitted). Here, even assuming Strat Land paid royalties to the members of the putative class using a common method — *i.e.*, based, as Whisenant asserts, upon the net revenue Strat Land received under its marketing contracts rather than based upon the gross amount the midstream company received from its sale of the gas at the pipeline — the establishment of this common fact fails to resolve the issue of liability, an issue which remains individual rather than common. Thus, we disagree with Whisenant's assertion that the alleged common method of payment was "either right or wrong, class-wide."

¶24 For all these reasons, we conclude that questions of law or fact common to the members of the class do not predominate over questions affecting only individual members, and that a class action is not superior to other available methods for the fair and efficient adjudication of the controversy. Upon our *de novo* review, we conclude the trial court erred in granting the motion for class certification.

CONCLUSION

¶25 We conclude the requisites for a class action have not been met and we therefore reverse the trial court's order granting class certification. The matter is remanded for further proceedings consistent with this opinion.

¶26 **REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.**

GOODMAN, J., concurs, and RAPP, J., concurs specially.

RAPP, J., concurring specially:

¶1 I concur with the Majority's decision.

¶2 I write to note that the determination of the amount of payment and when payment is due on the royalty interests is an issue in the natural gas industry. This issue affects the ability to sustain a class action based on numerous individual wells spaced over a large geographic area.

¶3 Historically, in order to establish the quality and quantity content of the gas hydrocarbons and contaminants produced at the wellhead, the standard practice has been to measure the pressure, volumetric flow, the crude gas content, energy content, and hydrocarbon content.

¶4 The volume of gas as severed at the wellhead is not generally used by the producers to determine the royalty because of the unknown and precise nature of the gas pressure, hydrocarbon content, quality, and contaminants. After wellhead severance, the gas is transported via a gathering pipeline to a processing station.[1] After processing to determine the hydrocarbon qualities and impurities content at the processing station, the gas is transported to the market pipeline where it is sold.[2] Separated wellhead gas and its constituents may be sold separately by the processor after processing and without lessor's knowledge, thereby reducing lessor's royalty of wellhead gas produced. The remainder of the gas after processing is then transported to a market pipeline where it receives a gross market value for the gas. In short, producer pays owner on "net" rather than "gross" thereby reducing royalty.[3]

¶5 The royalty reduction is often unknown to the lessor. The royalty reduction, when at the lessor's expense, could under some circumstances constitute conversion.[4] This, I believe, was part of the basis for Plaintiff's suit. However, Plaintiff's claim lacks the element of uniformity because each well generally produces a volume and content different from another. Further, its classification at the wellhead cannot generally sustain a class action due to the numerosity of wells named and the inability to obtain uniform results.

¶6 Thus, I believe the Majority reached the correct result.

DEBORAH B. BARNES, PRESIDING JUDGE:

1. For a recent summary of similar allegations, *see McKnight v. Linn Operating, Inc.*, No. CIV-10-30-R, 2016 WL 756541, at *2 (W.D. Okla. Feb. 25, 2016), where the court stated as follows:

> Producers, like the Defendants herein, often enter into contracts with midstream companies which process the gas under either percentage of proceeds ("POP"), fee or keep-whole contracts. Typically, these contracts allow the midstream companies to acquire title or possession of the unprocessed and therefore unmarketable gas at the wellhead or somewhere upstream of the midstream company's processing facilities and producers then declare that a "wellhead sale" has occurred and contend that the raw gas is "marketable" at the wellhead. This is an attempt to seemingly comply with the implied duty to market. However, the midstream companies provide the services of gathering, compressing, dehydrating, treatment and processing ("GCDTP") the gas and then remitting to the producer either a percentage of what the midstream company receives from the purchaser (POP) or the amount received from the pipeline minus a fee in kind or in cash charged for performing the GCDTP services. Producers then calculate and pay royalties based on the net amounts received from the midstream companies rather than the gross amount the midstream companies receive from the pipeline sales. By calculating the royalty payments on such net amounts, the royalty owners bear the costs of transforming the raw gas into a marketable product.

Nevertheless, the McKnight Court denied the motion for class certification, finding, among other things, "that common questions of law and fact do not predominate over questions affecting[] only individual members." *Id.* at *8. *See also Chieftain Royalty Co. v. XTO Energy, Inc.*, 528 F. App'x 938 (10th Cir. 2013), in which the court stated: "[The plaintiff] claims [the defendant] does not itself place gas into marketable condition, but instead hires various 'mid-stream' companies who perform the necessary GCDTP services to make gas marketable," and, "[a]ccording to [the plaintiff], 'the net result . . . is an effective deduction to the royalty owners for [GCDTP services]'" — "[e]ssentially, [the plaintiff] contends that royalty owners 'should be paid the gross product value, not the net value after subtraction of the service fees.'" *Id.* at 940-41.

2. Compare this standard of review with the older standard articulated, for example, in one of the Court of Civil Appeals opinions relied upon by the trial court in its order granting class certification — *Greghol Limited Partnership v. Oryx Energy Company*, 1998 OK CIV APP 111, 959 P.2d 596 — in which a separate division of this Court stated: "A trial court's order granting class certification is entitled to great deference." *Id.* ¶ 6 (citation omitted).

3. As summarized by the *Harvell* Court,

> Subsection 1 through 3 of § 2023(B) requires either: 1) a risk of inconsistent adjudications by separate actions or substantial impairment of non-parties to protect their interests; 2) appropriateness of final injunctive or declaratory relief; or 3) predomi-

nance of common questions of law or fact to class members and superiority of class action adjudication.

2006 OK 24, ¶ 8.

4. Viewed another way, the failure to satisfy one requirement is fatal to class certification, as indicated above. *See Harvell*, 2006 OK 24, ¶ 8. Therefore, if the predominance requirement is not met, no further analysis is necessary.

5. We note that the appellate record of the pleadings and motions filed below spans eight volumes and over 1,800 pages (not including the expansive exhibits and transcripts provided on appeal). As stated by the trial court in its order granting class certification, Whisenant's motion for class certification

> involves substantial briefing (approximately 86 pages with over 1,000 pages of exhibits in hard-copy and four DVDs containing every lease, gas contract, plant statement, and gas analysis produced in the litigation, as well as various spreadsheets summarizing the voluminous documentation), testimony from eight witnesses (Plaintiff Whisenant, Strat Land's representative Mr. McGhee, and six experts) and 59 exhibits that were presented over two days in a live hearing before the Court, which resulted in a hearing transcript of more than 520 pages.

6. The separate opinion in *Mittelstaedt v. Santa Fe Minerals, Inc.*, 1998 OK 7, 954 P.2d 1203, describes Oklahoma case law as erroneously treating marketability as a question of law. *See* 1998 OK 7, ¶ 15 (Opala, J., dissenting in part). However, the Majority in *Mittelstaedt* did not describe the issue as such nor did prior cases dealing with the issue. Instead, the *Mittelstaedt* Court reviewed case law concerning the implied duty to market, noting that the issues involved in the cases reviewed required a fact-intensive analysis as to, for example, which costs are deductible and which are not. In this regard, *see Garman v. Conoco, Inc.*, 886 P.2d 652 (Colo. 1994) (cited with approval by the Majority in *Mittelstaedt*, ¶¶ 15-16), in which the Supreme Court of Colorado described the issue of whether a lessee has reasonably met its duty to market as one of fact. The *Garman* Court stated: "Such a determination is a question of fact to be decided based on competent evidence in the record." *Id.* at 661 n.28.

7. The following discussion in *EQT Production Co. v. Adair*, 764 F.3d 347 (4th Cir. 2014), is instructive:

> The district court identified numerous common royalty payment practices. For example, it noted that [one of the defendants] sells all of the [coalbed methane gas (CBM)] it produces in Virginia to an affiliate . . . and that "all royalty owners within the same field have been paid royalties based on the same sales price for the CBM." . . . .
>
> That the defendants engaged in numerous common practices may be sufficient for commonality purposes. As noted above, the plaintiffs need only demonstrate one common question of sufficient importance to satisfy Rule 23(a)(2).
>
> But the mere fact that the defendants engaged in uniform conduct is not, by itself, sufficient to satisfy Rule 23(b)(3)'s more demanding predominance requirement. The predominance inquiry focuses not only on the existence of common questions, but also on how those questions relate to the controversy at the heart of the litigation. *See Amchem Prods.*, 521 U.S. at 623 . . . (noting that the predominance inquiry "trains on the legal or factual questions that qualify each class member's case as a genuine controversy"). Even a plethora of identical practices will not satisfy the predominance requirement if the defendants' common conduct has little bearing on the central issue in the litigation — in this case, whether the defendants underpaid royalties. Absent such a relationship, there is no basis for concluding that individual issues will not predominate.

EQT, 764 F.3d at 366.

8. *But see Howell v. Texaco, Inc.*, 2004 OK 92, ¶¶ 17-20, 112 P.3d 1154 (The Oklahoma Supreme Court considered the question of market value of produced gas "at the wellhead" and described three ways to establish market value, but the marketability of the gas (*i.e.*, whether a marketable product existed) "at the wellhead" was not at issue, and the defendants' claim that gas was marketable at the wellhead was not challenged by the royalty owners.).

9. *See* n.6, *supra*.

10. In the trial court's order, it is suggested that raw gas for every well either is or is not in a marketable condition at the wellhead, across the board. The court stated, for example, that if it is "true that raw gas is a marketable product at the gathering line inlet, it appears that [Strat Land] would win class-wide and all of the Midstream . . . Costs would be properly deductible (though, this result seems untenable given that is the same result that would occur if Texas law were applied . . .)." Interestingly, in *Chieftain Royalty Co. v. XTO Energy, Inc.*, 528 F. App'x 938 (10th Cir. 2013), the district court reached this same conclusion, relying upon the same expert (Daniel T. Reineke) relied upon by the trial court in the present case. On appeal in *Chieftain*, the Tenth Circuit Court of Appeals stated:

> [T]he district court appears to have concluded that no gas is in marketable condition at the well: "The raw gas at the wellhead …. requires conditioning to eliminate or reduce the contaminants to acceptable limits to make th[e] gas marketable." Chieftain, 2012 WL 1231837, at *1 (citing expert affidavit of Daniel T. Reineke).

Chieftain, 528 F. App'x at 941. The Tenth Circuit explained that,

> under Oklahoma law, there is a possibility that some gas could be in marketable condition at the well. *See Mittelstaedt*, 954 P.2d 1203, 1208 ("When gas is shown by the lessee to be in marketable form at the well the royalty owner may be charged a proportionate expense of transporting that gas to the point of purchase.").

528 F. App'x at 943 (emphasis in original). The *Chieftain* Court vacated the district court's class certification order and remanded the case to the district court to consider various issues related to the class certification, including "whether identifying the point at which a particular stream of gas becomes marketable will require an individualized inquiry and, if so, whether that inquiry will overwhelm questions common to the class." *Id.* at 943 n.4.

11. The circumstances presented in *Strack* are not exactly the same as those presented here. For example, in *Strack* the putative class included more than 1,100 Oklahoma wells and 14,000 royalty owners. The putative class in the present case includes approximately eighty-eight Oklahoma wells and approximately 1,000 royalty owners throughout the United States. However, the precise number of wells and royalty owners pertains, more than anything, merely to the numerosity requirement for class action certification. The *Strack* Court also confronted various legal issues which are not presented in this case.

12. (Emphasis added).

13. In particular, the *Tyson* Court was concerned in this portion of its analysis with whether questions of law or fact common to class members predominate over any questions affecting only individual members. Such a predominance inquiry is also applicable to the present case, as stated further above.

14. Whisenant asserts "[t]he gas quality can be determined from the gas analysis, gas contracts, and plant statements already in the record and will be presented through expert testimony . . . to prove or disprove whether gas reaches marketable condition at the wellhead, as Strat Land contends, or at the tailgate of the plant, as [he] contends." Whether Whisenant is here asserting that a single, unvarying class-wide determination will be imposed on all of the wells as a matter of law, or whether he is asserting the facts pertaining to each well will be individually analyzed and adjudicated, class action certification is inappropriate.

15. Thus, class certification would not just be unfavorable to Strat Land, but also to those potential royalty owners who would be under-compensated but bound by the class-wide determination. *See, e.g., Amchem Prod., Inc. v. Windsor,* 521 U.S. 591, 593 (1997) ("The dominant concern" of the class action prerequisites is that "a proposed class have sufficient unity so that absentees can fairly be bound . . . .").

RAPP, J., concurring specially:

1. This station is often owned by the producer. The producer generally charges a processing fee for determining produced gas volumetric content, contaminants, and hydrocarbon content. After separation, each of the separated constituents has a distinct market value. The producer then pays royalty on "net revenues" rather than gross value at the pipeline.

2. The processing consists in part of stripping the high end esters and selling them separately, thereby reducing the content value of the gas at market sales as well as the owners' royalty.

3. The ultimate result is that the gas producer and the purchasers set the amount of royalty on a basis not necessarily contemplated by the base document — the oil and gas lease.

4. Royalty reduction might be permissible if the Lease clearly stated where and how the final wellhead royalty value would be determined. In this case, there does not appear to be a general or uniform value for royalty reduction for each well. This could be resolved by a requirement in each individual lease for a detailed report of the wellhead pressure, volume, contaminants, and hydrocarbon content. The lease would also require a provision specifying whether royalty was based on quantity or quality, an accounting of all sales information, and royalty division.

2018 OK CIV APP 66

DORRICE LEWIS (formerly SARTIN), Plaintiff/Appellant, vs.

ROBERT K. INMAN, Personal Representative of the ESTATE OF EDDIE RAY INMAN, Defendant/Appellee.

Case No. 116,205. October 2, 2018

APPEAL FROM THE DISTRICT COURT OF ROGERS COUNTY, OKLAHOMA

HONORABLE SHEILA A. CONDREN, TRIAL JUDGE

AFFIRMED

Wilfred K. Wright, Jr., WRIGHT LAW, PLC, Claremore, Oklahoma, and

William R. Higgins, HIGGINS LAW, Claremore, Oklahoma, for Plaintiff/Appellant

Sidney K. Swinson, Brandon C. Bickle, GABLEGOTWALS, Tulsa, Oklahoma, for Defendant/Appellee

JANE P. WISEMAN, PRESIDING JUDGE:

¶1 Plaintiff Dorrice Lewis (formerly Sartin) appeals from orders of the trial court granting summary judgment in favor of Defendant Eddie Ray Inman and denying her motion to reconsider. We are asked to consider whether granting summary judgment in favor of Inman was proper and whether it was an abuse of discretion then to deny Lewis's motion to reconsider. This appeal proceeds according to Oklahoma Supreme Court Rule 1.36, 12 O.S. Supp. 2017, ch. 15, app. 1, without appellate briefing. After review, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 In their March 5, 2013 petition, Lewis and Terry Lee Sartin (Plaintiffs)[1] allege they entered into an employment agreement with Inman on December 15, 2004, pursuant to which, "upon the payment of forfeitures and all expenses related therewith, and the release and expungement of all bonds or undertakings any balance in the Build Up Fund[] was to be disbursed fifty percent (50%) to Defendant [and] the remaining fifty percent (50%) to Plaintiffs." Plaintiffs demanded an accounting of the Build Up Fund and asserted claims for breach of contract and breach of fiduciary duty.

¶3 Inman filed an answer and counterclaim, stating that he is a licensed professional bondsman who employed Lewis from December 2004 through December 2007 and Sartin from December 2004 through August 2007. He admitted there was a Build Up Fund and that the contract provided that it should be disbursed as claimed by Plaintiffs. He denied any funds are owed to Plaintiffs because they owed him money and they agreed to turn over the Build Up Fund to repay him. Inman asserted that although Plaintiffs executed a promissory note payable to Inman for $50,000 and a second mortgage to secure the note, Plaintiffs never made a payment and defaulted on the note. He claimed that, when the first mortgage holder, RCB Bank, sued to foreclose on the property secured by the mortgages, "the Plaintiffs contacted the Defendant about the foreclosure and made an agreement to have the Defendant release his mortgage and note . . . in return for the transfer of all the [Plaintiffs'] claims to the build up fund." Inman says he relied on Plaintiffs' statements and released the mortgage. Inman asserted that, if the court finds against the terms of his agreement with Plaintiffs, it should grant him judgment against the Plaintiffs for $66,286.16, plus interest, costs, and attorney fees. Inman further claimed that Lewis owed him $3,932.72 for unpaid bond premiums and Sartin owed him $1,097.86 for a loan.

¶4 In her answer to Inman's counterclaims, Lewis denied she entered into an agreement for the release of the mortgage or that she owed him money for unpaid premiums.

¶5 Lewis filed a motion for summary judgment in which she claimed as undisputed the facts we now summarize and quote. Lewis entered into an employment agreement with Inman, who is a professional bondsman licensed by the State of Oklahoma. Pursuant to Section 4.11 of the parties' written contract, "upon the payment of forfeitures and all expenses related therewith, and the release or expungement of all bonds or undertakings any balance in the Build Up Fund[] was to be disbursed fifty percent (50%) to Defendant the remaining fifty percent (50%) to Ms. Lewis." The money in the Build Up Fund was to be distributed to Lewis according to the contract's terms, but Inman refused to disburse the funds to Lewis. Lewis filed a bankruptcy petition in Arizona on November 2, 2008, and she listed Inman as a creditor on the note and mortgage. The Bankruptcy Court entered an order on March 23, 2009, "[d]ischarging all debts and thereby permanently enjoining any listed cred-

itor from taking action against Ms. Lewis related to the debts identified therein." Inman filed his counterclaim in this action on April 5, 2013, "claiming Ms. Lewis is indebted to the Defendant for this Note and Mortgage that was included in the bankruptcy estate." Lewis stated that a true and correct accounting of the Build Up Fund as attached to her motion shows Inman owes her $460,971.

¶6 Inman also filed a motion for summary judgment alleging the following as undisputed facts. Both Plaintiffs were Inman's employees. Lewis was employed as a bail bond agent beginning December 15, 2004, and ending December 2007 when she moved to Arizona. The parties' employment agreement "provided that the Plaintiffs retain 55% of the premium, remit 35% to the Defendant, with the remaining 10% to be held in a 'build up' fund to be held for bail bond forfeitures and costs of apprehension of defendants who did not appear." Plaintiffs' bankruptcy petition, filed in the United States Bankruptcy Court, District of Arizona, "did not disclose any claims against the Defendant nor any interest in the 'build up' fund." Inman said, "The [Plaintiffs'] bankruptcy was a no asset case . . . and the Plaintiffs were discharged on the 23rd day of March, 2009."

¶7 Inman asserted "Plaintiffs are estopped from pursuing any claims against [him] due to the failure to disclose any claims in the petition for bankruptcy." He also asserted, "The Plaintiffs are not the proper party in interest to pursue this action" because the real party in interest is the bankruptcy trustee.

¶8 After Inman died on November 22, 2013, Robert Kenneth Inman was appointed personal representative of his estate and was substituted in that capacity as the party defendant on December 19, 2014.[2]

¶9 In a separate response to Lewis's summary judgment motion, Inman says Lewis in her motion claimed an erroneous amount in controversy owed to her in the Build Up Fund. Inman says the amount in the Build Up Fund in which Lewis can claim an interest, after totaling the bond premiums collected, applying the 10% going to the Build Up Fund, and deducting half the cost of bond forfeitures and apprehension costs, is $30,575.97. Inman in his response does not specifically identify which facts are controverted in Lewis's statement of undisputed facts as required by Rule 13, Oklahoma District Court Rules, 12 O.S. Supp. 2013, ch. 2, app.[3]

¶10 In her response to Inman's motion for summary judgment, Lewis also fails to admit or deny Inman's statement of undisputed facts. She does set out her own list of facts she claims are in dispute, many of which are the same facts she claimed were undisputed in her motion for summary judgment.

¶11 We now summarize and quote the facts she claims are in dispute. Section 4.11 of the contract provides that any balance in the Build Up Fund was to be disbursed fifty percent to Inman and fifty percent to Lewis. "[T]he Build Up Fund should have been distributed according to the terms of the contract," but Inman refused to pay Lewis the funds he owed her. She filed a bankruptcy petition in the Bankruptcy Court for the District of Arizona and listed Inman as a creditor for the note and mortgage. The Bankruptcy Court discharged her debt on March 23, 2009, "thereby permanently enjoining any listed creditor from taking any action against Ms. Lewis related to the debts identified therein." Inman filed his counterclaim on April 5, 2013, in which he claimed Lewis was indebted to him for the note and mortgage. "Inman was aware of the facts surrounding the accounting of the fund. (Monies and the account were in his possession; so he knew or should have known.)" Although "Inman was a trustee to Ms. Lewis of the funds he held," he "failed to disclose the account of the build-up fund to Ms. Lewis, failed to disclose the account of the build-up fund to the bankruptcy trustee and failed to disclose the build-up fund account to the bankruptcy court." When Lewis filed bankruptcy, she "had no knowledge of the amount of money in the buildup fund, or if there was any money in the build up fund." "The documents currently being used to determine the amount of monies owed were a result of the present lawsuit and uncovered in discovery of the financial information that was never disclosed by Eddie Inman to me prior to the bankruptcy." Inman never disclosed the Build Up Fund to her or the Bankruptcy Court even though he had full knowledge of the money in the Build Up Fund. Although Inman was the trustee of the Build Up Fund and had full knowledge and control of the amount of money in the Build Up Fund, he failed to account for the fund to her, the bankruptcy court, or the trial court in this action.

¶12 Lewis explained her claim: (1) "[a]ll bonds written had to be reported to the Insurance Department in Oklahoma City, Ok.;" (2) "[t]he Rogers County District Court had to report the same and the reports had to match;" (3) "[t]he bond would be written by power of attorney on Eddie Ray Inman for the face amount of the bond (the entire amount)"; (4) and "[t]he client would pay the bondsman a percentage (10-15%) called a premium" and ten percent "of the premium was paid to Mr. Inman to go into the Build-up Fund." The Build Up Fund was intended to cover bond forfeitures, and if a forfeiture occurred, the bondsman then had to return the defendant within 90 days or forfeit the amount of the bond on the 91st day. If that happened, "[t]he bondsman had an additional 89 days in which to return the defendant to the jurisdiction of the court to file a motion to receive a remitter." A bondsman's liability on a bond continues until it is exonerated. "When all bonds were exonerated, by agreement with Mr. Inman the build-up fund would be released to the bondsman." Lewis terminated her agreement with Inman in December 2007, at which time he advised her she had no money in the Build Up Fund. She called Inman in 2008 and 2009 to see if he could release money from the Build Up Fund, and he told her she had no money in the Build Up Fund. Inman told her "not to call again and [she] would never get money from the build-up fund." "Approximately 4 years after my termination with Mr. Inman I asked that a case be filed to get an accounting of the build-up fund."

¶13 She asserted there has been no determination of the Build Up Fund's status and no legal determination of when "her share of buildup fund contractually commenced to run." Although Inman told her she had no contractual claim to monies in the Build Up Fund before she filed bankruptcy, her "contractual claim to the buildup fund could not occur until post-bankruptcy when all bonds were exonerated by agreement with Inman." She asserted, "There is a question of fact as to the status of the contractual nature of when Ms. Lewis' claim first commenced (factually and legally)."

¶14 Lewis argued that the doctrine of judicial estoppel is not applicable:

> [T]he application of such judicial estoppel is usually justified when the "creditors" were not told initially of a pending lawsuit or claim. Here, however, the largest creditor, main creditor, of Ms. Lewis' bankruptcy is the defendant in this action. Inman was identified as a creditor in the bankruptcy. However, Inman was also well aware of the "build-up fund", the amount in the build-up fund, and withheld that information from the bankruptcy trustee in hopes of skirting free and clear of over $400,000 that he would have had to pay into the bankruptcy case.

Lewis further asserted Inman has unclean hands and that the "bankruptcy trustee may seek to reopen the bankruptcy."

¶15 Lewis filed a supplement to her motion for summary judgment and response to Inman's motion for summary judgment. She attached a spreadsheet and her affidavit stating, "The attached spreadsheet is true and correct and amends or corrects the previous spreadsheet." She further stated, "I believe based on the information provided to me that the amount owed of $46,099.60 is the correct amount owed to me by the Defendant, Eddie Ray Inman."

¶16 Lewis filed a second supplement in which she moved the "Court to deny Inman's Motion for Summary Judgment as Mr. Inman's claim for judicial estoppel is inappropriate as the Bankruptcy case has now been reopened as evidenced by the attached exhibits." Lewis attached documents from the United States Bankruptcy Court for the District of Arizona showing the bankruptcy case had been reopened.

¶17 Inman filed a supplement to the summary judgment briefing in which he again asserted that Plaintiffs never made a payment and had defaulted on the note and mortgage. He alleged:

> Well after the Plaintiffs' employment with Eddie Inman terminated, on or about August 19, 2008, the Buildup Fund was closed by Eddie Inman, who, with the agreement of the Plaintiffs, exercised his right to set off his claim under the Inman Loan against the Plaintiffs' claims under their employment agreements. The amount in the Build-up Fund at that time was less than the amount claimed by the Plaintiffs.

He said Plaintiffs failed to account for the costs of apprehension and their share of bond forfeitures when they calculated the amount they claimed he owed them when the Build Up

Fund was closed. He further asserted Plaintiffs "did not list a claim against Eddie Inman as an asset of their bankruptcy estate."

¶18 Inman argued that the principal amount of the note was $50,000 and Plaintiffs' claim against him in this action was for $46,099.60. He contends, "While the Plaintiffs' claim amount is disputed, it is undisputed that Eddie Inman's claim against them was larger than their claim against him when the setoff occurred." He argued that the doctrine of setoff should be applied.

¶19 In her response, Lewis argued the contract provided the Build Up Fund was not to be paid until all the bonds were exonerated. She attached a spreadsheet showing some bonds were not exonerated until after her bankruptcy case was concluded. Until the hearing on the summary judgment motions where this belief was corrected by the court, Lewis maintained one bond was still not exonerated, the money in the Build Up Fund was not due and owing because all of the bonds were not exonerated, and setoff was therefore not proper.

¶20 A hearing was held on May 31, 2017. After the trial court heard arguments on the motions for summary judgment, it announced its findings. The court found these facts to be undisputed:

> The parties entered into an employment contract in December of 2004 whereby the premiums obtained from bail bonds would be split 55 percent to be retained by plaintiff; 35 percent would be paid to Eddie Inman, and the remaining 10 percent would be paid into the build up fund.
>
> Pursuant to Section 5.4 of the contract, if the agreement was not terminated, it would not cause the build up fund to be paid to either party until such time as all bonds and undertaking of the employees shall be released, exonerated, and/or paid pursuant to the terms of the agreement.
>
> Although plaintiff claims in the paperwork that there is a bond still outstanding in Rogers County Case No. CF-2005-678, and thus the build up fund is not yet due to her, a review of the docket sheet reveals that the bond in this case was exonerated by minute of October 16, 2006.
>
> Further noted that, if plaintiff's argument were true, the plaintiff's case would be premature and that there would be no case or controversy at this time.
>
> For purposes of this motion, the defendant agrees to use the damage amount claimed by the plaintiff of approximately $46,000. Mortgage claim listed in the Plaintiff's bankruptcy paperwork indicates they owe $52,000 to the defendant.
>
> The common-law doctrine [of] setoff grants the creditor the right to offset a mutual debt, owing by such creditor to the debtor so long as both debts arose before commencement of the bankruptcy action and are indeed mutual, valid, and enforceable.
>
> Both sides agree that there is a build up fund to which plaintiff is entitled to monies. Further, both sides agree that the plaintiff owed defendant around $50,000 for their second mortgage. Plaintiff argues that the note and mortgage can't be used here since the obligation was discharged in bankruptcy. Contrary to the plaintiff's contentions, the defendant's [sic] may not seek to directly collect the funds due [to] him, but he may pursue the issue of setoff, as he is doing here.

The trial court found that "there are mutual debts to and flowing to and from each party and these debts existed prior to the bankruptcy." It further found, "Although the exact amount of the build up fund was unknown, the obligation certainly existed prior to the bankruptcy, which is the operative fact here." The court concluded, "Both debts are valid and enforceable and the parties are in privity of contract." It noted, "Regardless of when the setoff occurred, whether it was prior to the bankruptcy or last week, it was proper the right to setoff survives the bankruptcy, and the Court grants the defendant's motion for summary judgment in that regard."

¶21 In an order filed on June 7, 2017, the court granted Inman's motion for summary judgment and denied Plaintiffs' motion for summary judgment. The court entered judgment for Inman against Lewis and Sartin.

¶22 On June 12, 2017, Lewis filed a motion to reconsider pursuant to District Court Rule 17 and 12 O.S. § 651(6). She again argued that several bonds were not exonerated until after her bankruptcy discharge. She claimed "Inman did not have any legal right to unilaterally close the Buildup Fund" and that "Inman illegally

transferred the trust monies to himself to create a false offset." She asserted the debt from the $50,000 loan from Inman was discharged in bankruptcy. Lewis argued that there was no agreement or settlement between the parties that allowed Inman to take the money in the Build Up Fund.

¶23 The trial court denied the motion to reconsider, and Lewis appeals.

STANDARD OF REVIEW

¶24 "A motion to reconsider may be treated as a 12 O.S. § 651 motion for new trial when the motion to reconsider is filed within a ten-day period after the filing of a judgment, decree or appealable order." *Andrew v. Depani-Sparkes,* 2017 OK 42, ¶ 15, 396 P.3d 210. "A trial court's denial of a motion for new trial is reviewed for abuse of discretion." *Reeds v. Walker*, 2006 OK 43, ¶ 9, 157 P.3d 100. "Where, as here, our assessment of the trial court's exercise of discretion in denying defendants a new trial rests on the propriety of the underlying grant of summary judgment, the abuse-of-discretion question is settled by our *de novo* review of the summary adjudication's correctness." *Id.*

¶25 Summary judgment is properly granted "when the pleadings, affidavits, depositions, admissions or other evidentiary materials establish that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Davis v. Leitner*, 1989 OK 146, ¶ 9, 782 P.2d 924. In reviewing a summary judgment, we view "all inferences and conclusions to be drawn from the evidentiary materials . . . in a light most favorable to the party opposing the motion." *Id.* "This Court bears 'an affirmative duty to test all evidentiary material tendered in summary process for its legal sufficiency to support the relief sought by the movant.'" *Lewis v. Wal-Mart Stores East, L.P.*, 2009 OK CIV APP 81, ¶ 4, 225 P.3d 6 (quoting *Copeland v. The Lodge Enters., Inc*., 2000 OK 36, ¶ 8, 4 P.3d 695).

¶26 An appeal from an order granting summary judgment is subject to *de novo* review. *Shull v. Reid*, 2011 OK 72, ¶ 3, 258 P.3d 521. In a *de novo* review, we re-examine the record and the trial court's legal rulings without deference to its reasoning or result. *Bronson Trailers & Trucks v. Newman*, 2006 OK 46, ¶ 5, 139 P.3d 885.

ANALYSIS

¶27 Lewis raises three issues for review. First, the trial court erred when it found Inman "was entitled to an offset when there is no dispute that no debt was owed by Defendant to Plaintiff before Plaintiff filed bankruptcy." Second, the trial court's summary judgment was improper "under the undisputed facts wherein Defendant took the monies held in trust in the Build-Up Fund and paid himself without the knowledge or consent of the Plaintiff; in order to offset a promissory note defaulted by Plaintiff and owed to Defendant prior to the Plaintiff filing bankruptcy." Third, Lewis asks us to consider "[w]hether summary judgment was proper as to Plaintiff's claims for an accounting, breach of payment of services and breach of fiduciary duty."

¶28 The trial court found the doctrine of setoff should be applied and granted summary judgment in Inman's favor, finding that Lewis's obligation to Inman exceeded his obligation to her from the Build Up Fund. The United States Supreme Court has stated, "The adjustment of defendant's demand by counterclaim in plaintiff's action rather than by independent suit is favored and encourage[d] by the law. That practice serves to avoid circuity of action, inconvenience, expense, consumption of the courts' time, and injustice." *Chicago & N.W. Ry. Co. v. Lindel*l, 281 U.S. 14, 17, 50 S. Ct. 200, 201, 74 L. Ed. 670 (1930). The Oklahoma Supreme Court has also long applied the doctrine of setoff:

> "The power to allow a set-off of debts by a court of equity exists independent of the statute, where grounds of equitable interposition are shown, such as fraud, embarrassment in enforcing the demand at law, or special circumstances, such as insolvency or nonresidence, which render it probable that party will lose his demand and be compelled to pay the demand of the other."

State Bank of Dakoma v. Weaber, 1926 OK 200, ¶ 16, 256 P. 50 (quoting *Caldwell v. Stevens*, 1917 OK 250, ¶ 0, 167 P. 610 (syl. no. 1 by the Court)). The concept of setoff is "grounded in concepts of fairness and equity" and "'allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding the absurdity of making A pay B when B owes A.'" *In re Myers*, 362 F.3d 667, 672 (10th Cir. 2004) (quoting *Citizens Bank v. Strumpf,* 516 U.S. 16, 18, 116 S. Ct. 286, 289, 133 L. Ed. 2d 258 (1995)). "In the bankruptcy context, setoff al-

lows one creditor to be paid more than other creditors," but "[t]he Bankruptcy Code does not create a federal right of setoff." *In re Myers*, 362 F.3d 667, 672 (10th Cir. 2004). Instead, "the Code simply preserves setoff rights that might otherwise exist under federal or state law." *Id.*

¶29 The Bankruptcy Court apparently did not consider the issue of setoff before Lewis's bankruptcy discharge because Lewis in her bankruptcy schedules did not list the Build Up Fund or the debt Inman owed her. At the May 2017 hearing on the parties' motions for summary judgment, counsel for both parties acknowledged that the bankruptcy case had been reopened to list the Build Up Fund as an asset in the estate and to establish the bankruptcy trustee as the proper party either to pursue the money Lewis was entitled to in the Build Up Fund or to abandon it. Counsel also agreed that the trustee declined to pursue the Build Up Fund on behalf of the bankruptcy estate, and the claim to money in the Build Up Fund was abandoned. The controversy then returned to the Rogers County District Court for the resolution of the parties' competing claims and the trial court's resolution of the summary judgment motions.

¶30 It is undisputed that Plaintiffs failed to pay the $50,000 note due on June 1, 2008, as required by the note, and RCB Bank filed a foreclosure action on its first mortgage on the property against Plaintiffs, ultimately taking judgment against them on October 20, 2008. Inman claimed "the Plaintiffs contacted the Defendant about the foreclosure and made an agreement to have the Defendant release his mortgage . . . in return for the transfer of all the [Plaintiffs'] claims to the build up fund." Inman says he relied on Plaintiffs' statements and released the mortgage. A copy of the mortgage release recorded in Rogers County on September 26, 2008, is attached to Inman's answer and counterclaim. Inman also presented in his answer and counterclaim a copy of an agreement containing these terms, but that agreement is undated and unsigned. Although Lewis admitted a debt was owed, she maintains she never agreed to this exchange but claims her debt was discharged in bankruptcy and not through any agreement with Inman. Lewis does not dispute Inman's explanation for his release of the second mortgage, nor does she offer her own account of why the mortgage was released.

¶31 Lewis and Inman agreed in their summary judgment briefing that the amount Lewis was entitled to from Inman in the Build Up Fund was $46,099.60, and at the hearing, the trial court accepted this as the correct amount. The trial court also accepted the $52,000 amount Lewis listed in her bankruptcy schedule as the debt she owed to Inman on the note and second mortgage, a figure Inman did not dispute. The court further found that, contrary to Lewis's argument that Inman cannot use Lewis's note obligation as a setoff because it was discharged in bankruptcy, Inman may not "seek to directly collect the funds due him, but he may pursue the issue of setoff, as he is doing here." Holding that "[r]egardless of when the setoff occurred, whether it was prior to the bankruptcy or last week, it was proper the right to setoff survives the bankruptcy," the court granted Inman's motion for summary judgment. This in essence allowed Inman to set off the $46,000 he owed to Lewis against the $52,000 Lewis had failed to repay him under the note.

¶32 With or without Lewis's assent, Inman had the right to this setoff, and the bankruptcy filing after the setoff did not alter this outcome. There can be no question that, although the exact amount might then have been in question, substantial funds had accrued to Lewis's benefit in the Build Up Fund before she filed bankruptcy and that Inman had set off any amounts he owed her against the amount she owed him on the defaulted note. Lewis's assertion that the right to setoff did not survive the bankruptcy is not correct. The case of *In re Davidovich*, 901 F.2d 1533 (10th Cir. 1990) tells us:

> The common law doctrine of setoff, as recognized in section 553 of the Bankruptcy Code, grants a creditor the right "to offset a mutual debt owing by such creditor to the debtor" so long as both debts arose before commencement of the bankruptcy action and are indeed mutual. 11 U.S.C. § 553(a).… This mutuality requirement mandates that the debts involved be between the same parties standing in the same capacity … and that each debt be valid and enforceable. … The mutual debt need not, however, have arisen out of the same transaction in order for setoff to be available under the statute.

Id. at 1537 (citations omitted). The circumstances under which Inman exercised his common law right of setoff meet these criteria. As the

Davidovich Court stated, "the right to assert a setoff against a mutual, prepetition debt owed by the bankrupt estate survives even the Bankruptcy Court's discharge of the bankrupt's debts." *Id.* at 1539. And, although Lewis argues that the debt Inman owed to her was not presently due before the bankruptcy because a handful of bonds had not been exonerated, she was certainly owed a substantial sum that had accrued to her under the parties' agreement which Inman could not repudiate.

¶33 As Inman points out, even if he could not affirmatively collect on the note after Lewis's bankruptcy discharge, he could certainly defensively assert the uncollected amount as a setoff against Lewis's claim to the Build Up Fund. Although Lewis contends it would be inequitable to allow the setoff, we fail to see how this is so. A creditor's right to setoff is "a universally recognized right grounded in principles of fairness that [is] not, with a few limited exceptions, affected by the Bankruptcy Code." *Id.* We agree with Davidovich that it would "'be unfair to deny a creditor the right to recover an established obligation while requiring the creditor to fully satisfy a debt to a debtor.'" *Id.* (quoting *In re G.S. Omni Corp. v. United States*, 835 F.2d 1317, 1318 (10th Cir. 1987).

CONCLUSION

¶34 The undisputed material facts and applicable law are just as the trial court described them, requiring the entry of summary judgment in Inman's favor and the denial of Lewis's motion to reconsider. The decisions are affirmed.

¶35 **AFFIRMED**.

THORNBRUGH, C.J., and FISCHER, J., concur.

JANE P. WISEMAN, PRESIDING JUDGE:

1. Plaintiff Terry Lee Sartin is not a party to this appeal.
2. For ease of reference, we continue to refer to Defendant as Inman.
3. Rule 13(b), Oklahoma District Court Rules, 12 O.S. Supp. 2013, ch. 2, app., provides that when opposing a motion for summary judgment, "the adverse party or parties shall set forth and number each specific material fact which is claimed to be in controversy and reference shall be made to the pages and paragraphs or lines of the evidentiary materials."

Disposition of Cases Other Than by Published Opinion

COURT OF CRIMINAL APPEALS
Thursday, October 18, 2018

F-2017-311 — Appellant, Kinney J. Glasson, Jr., was tried by jury and convicted of Murder in the First Degree in District Court of Oklahoma County Case Number CF-2014-8319. The jury recommended as punishment imprisonment for life. The trial court sentenced Appellant accordingly. It is from this judgment and sentence that Appellant appeals. The Judgment and Sentence of the District Court is hereby AFFIRMED. Opinion by: Lumpkin, P.J.; Lewis, V.P.J., Concur in Results; Hudson, J., Concur; Kuehn, J., Concur; Rowland, J., Recuse.

F-2016-1131 — Quinton A. Riddle, Appellant, was tried by jury in Case No. CF-2015-203, in the District Court of Osage County, for the crimes of Counts 1, 2, 4, 5 and 7: Child Sexual Abuse; Count 6: Rape by Instrumentation; Count 8: First Degree Rape by force or Fear; and Count 9: Forcible Sodomy. The jury returned a verdict of guilty and recommended as punishment Count 1 – five years imprisonment; Count 2 – ten years imprisonment; Count 4 – ten years imprisonment; Count 5 – five years imprisonment; Count 6 – twenty-five years imprisonment; Count 7 – fifteen years imprisonment; Count 8 – life imprisonment; and Count 9 – twenty years imprisonment. The Honorable B. David Gambill, Associate District Judge, sentenced Appellant in accordance with the jury's verdicts. Judge Gambill ordered these sentences to run consecutively each to the other and imposed various costs. From this judgment and sentence Quinton A. Riddle has perfected his appeal. AFFIRMED. Opinion by: Hudson, J.; Lumpkin, P.J., Concurs; Lewis, V.P.J., Concurs; Kuehn, J., Concurs; Rowland, J., Concurs.

M-2017-411 — Following a jury trial before the Honorable Joe Sam Vassar, District Judge, in the District Court of Creek County, Case No. CF-2015-258, Marc Randall Long, Appellant, was found guilty of Violation of a Protective Order. In accordance with the jury's verdict, Judge Vassar, on April 12, 2017, imposed a term of five (5) months in the county jail and a $1,000.00 fine. Appellant appeals that conviction. AFFIRMED. Opinion by: Lewis, V.P.J.; Lumpkin, P.J., concurs; Hudson, .J., concurs; Kuehn, J., concurs; Rowland, J., concurs.

F-2017-795 — Maurice Dean Ballard, Appellant, was tried by jury for the crime of Assault and Battery with a Dangerous Weapon, After One Former Felony Conviction in Case No. CF-2016-0252 in the District Court of Muskogee County. The jury returned a verdict of guilty and set punishment at life imprisonment. The trial court sentenced accordingly. From this judgment and sentence Maurice Dean Ballard has perfected his appeal. AFFIRMED. Opinion by: Rowland, J.; Lumpkin, P.J., concurs; Lewis, V.P.J., concurs; Hudson, J., concurs; Kuehn, J., concurs.

F-2017-613 — Marcus Dewayne Verner, Appellant, was tried by jury for the crime of Conjoint Robbery After Former Conviction of Two or More Felonies, in Case No. CF-2016-1000 in the District Court of Tulsa County. The jury returned a verdict of guilty and recommended as punishment 35 years imprisonment. The trial court sentenced accordingly. From this judgment and sentence Marcus Dewayne Verner has perfected his appeal. AFFIRMED. Opinion by: Kuehn, J.; Lumpkin, P.J., concur; Lewis, V.P.J., concur in result; Hudson, J., concur; Rowland, J., concur.

F-2017-436 — Tien Nhat Le, Appellant, was tried by jury for the crime of Burglary in the First Degree, after two or more felony convictions, in Case No. CF-2014-7020 in the District Court of Oklahoma County. The jury returned a verdict of guilty and recommended as punishment 20 years imprisonment. The trial court sentenced accordingly. From this judgment and sentence Tien Nhat Le has perfected his appeal. AFFIRMED. Opinion by: Kuehn, J.; Lumpkin, P.J., concur; Lewis, V.P.J., concur; Hudson, J., concur; Rowland, J., concur.

Thursday, October 25, 2018

RE-2017-0850 — Appellant, Antonio Dewayne Hooks, entered a negotiated plea of guilty to Attempted Robbery With a Dangerous Weapon, after two prior felony convictions, in Oklahoma County District Court Case

No. CF-2010-7267. He was sentenced to twenty years, with seven years imprisonment and thirteen years suspended, with rules and conditions of probation. The State filed an application to revoke Appellant's suspended sentence on January 27, 2017. Following a revocation hearing held on August 11, 2017, before the Honorable Timothy R. Henderson, District Judge, Appellant's suspended sentence was revoked in full, thirteen years. Appellant appeals the revocation of his suspended sentence. The revocation of Appellant's suspended sentence is AFFIRMED. Opinion by: Lumpkin, P.J.; Lewis, V.P.J.: Concur; Hudson, J.: Concur; Kuehn, J.: Concur; Rowland, J.: Recuse.

C-2018-250 — Petitioner David Wayne Hagin entered a negotiated plea of guilty in the District Court of Carter County, Case No. CF-2017-218, to one count of Possession of a Controlled Dangerous Substance with Intent to Distribute, After One Previous Felony Conviction in violation of 63 O.S.Supp.2012, § 401(B)(2). The Honorable Thomas K. Baldwin, Associate District Judge, accepted Hagin's guilty plea and sentenced him to ten years imprisonment and a fine of $1,000.00. Hagin filed a timely motion to withdraw his plea which Judge Baldwin denied. Hagin appeals the denial of his motion to withdraw plea. The Petition for Writ of Certiorari is DENIED. Opinion by: Rowland, J.; Lumpkin, P.J., concurs; Lewis, V.P.J., concurs; Hudson, J., concurs; Kuehn, J., concurs.

F-2017-79 — Lateef Aswan Perkins, Appellant, was tried by jury for the crimes of Count 1: Burglary in the First Degree, After Two or More Felony Convictions; and Count 4: Malicious Injury to Property Under $1,000.00, a misdemeanor, in Case No. CF-2016-17, in the District Court of Kingfisher County. The jury returned a verdict of guilty and recommended as punishment thirty-eight years imprisonment on Count 1 and six months imprisonment on Count 4. The Honorable Paul K. Woodward, District Judge, sentenced accordingly ordering the sentences to run consecutively and imposed various costs and ordered credit for time served. From this judgment and sentence Lateef Aswan Perkins has perfected his appeal. AFFIRMED. Opinion by: Hudson, J.; Lumpkin, P.J., Concurs; Lewis, V.P.J., Concurs; Kuehn, J., Concurs; Rowland, J., Concurs.

S-2017-1086 — Appellee John Jesse Trejo was charged with First Degree Manslaughter in violation of 21 O.S.2011, § 711, in McClain County District Court, Case Number CF-2015-437. Trejo filed a motion to suppress and after hearings held on March 23, 2017, June 1, 2017, and October 12, 2017, District Court Judge Leah Edwards granted Trejo's motion to suppress. The State of Oklahoma appeals the suppression order. The Order of the District Court sustaining Trejo's motion to suppress evidence is REVERSED and the matter REMANDED for further proceedings. Opinion by: Rowland, J.; Lumpkin, P.J., concurs; Lewis, V.P.J., concurs; Hudson, J., concurs; Kuehn, J., concurs.

Thursday, November 1, 2018

M-2017-1292 — Appellant Ryan Dalee Strader was convicted following a non-jury trial in the Municipal Court of Record, City of Oklahoma City, State of Ok-lahoma, of Count 1 - Other Criminal Violation, in violation of Oklahoma City Municipal Code, 2010 § 7-3 (2000), and Count 2 - Interfering With Official Process Other Than Threat, in violation of Oklahoma City Municipal Code, 2010 § 30-58 (2003). Appellant was fined $100.00 on Count 1 and $150.00 on Count 2. Appellant appeals from the Judgment and Sentence imposed. Judgment and Sentence AFFIRMED. Opinion by: Hudson, J.; Lumpkin, P.J.: Concur; Lewis, V.P.J.: Concur; Kuehn, J.: Concur; Rowland, J.: Concur.

F-2017-435 — Nicholas Frank Moody, Appellant, was tried by jury for the crimes of Count 1, first degree murder, and Count 2, shooting with intent to kill, both after former conviction of two or more felonies in Case No. CF-2015-7818 in the District Court of Oklahoma County. The jury returned a verdict of guilty and set punishment at life imprisonment without the possibility of parole in both counts. The trial court modified the sentence in Count 2 to a legal sentence of twenty years imprisonment and ordered both sentences to be served concurrently. From this judgment and sentence Nicholas Frank Moody has perfected his appeal. The Judgment and Sentence of the District Court is AFFIRMED. Opinion by: Lewis, V.P.J.; Lumpkin, P.J., concurs; Hudson, J., concurs; Kuehn, J., concurs; Rowland, J., recuses.

F-2017-401 — Phillip Wayne Ishman, Appellant, was tried by jury for the crimes of Count 1, assault and battery with deadly weapon; Count 2, forcible sodomy; and Count 3, assault and battery with a dangerous weapon in Case No. CF-2014-293 in the District Court of Garvin County. The jury returned a verdict of guilty and set punishment at thirty years imprisonment in Count 1, five years imprisonment in Count 2, and ten years imprisonment in Count

3. The trial court sentenced accordingly and ordered the sentences to be served consecutively. From this judgment and sentence Phillip Wayne Ishman has perfected his appeal. The Judgment and Sentence of the District Court is AFFIRMED. Opinion by: Lewis, V.P.J.; Lumpkin, P.J., concurs; Hudson, J., concurs; Kuehn, J., concurs; Rowland, J., concurs.

COURT OF CIVIL APPEALS
(Division No. 1)
Wednesday, October 17, 2018

116,018 — In Re the Marriage of Agha: Fatme Agha, Petitioner/Appellee, v. Najib Agha, Respondent/Appellant. Appeal from the District Court of Tulsa County, Oklahoma. Honorable Tammy Bruce, Trial Judge. Petitioners/Appellants DeAndre'a Tatum (Step-Father) and Chellse White (Mother) (collectively, Appellants) appeal an order denying their application to adjudicate Mother's minor child, A.W.L.W., eligible for adoption without the consent of Respondent/Appellee Kennon White (Natural Father). Appellants sought adoption without consent based on Natural Father's failure to support the child and failure to maintain a relationship with the child. Natural Father argued Mother had prevented him from maintaining a relationship. The trial court found Appellants had failed to meet their burden of proving by clear and convincing evidence that Natural Father's consent was unnecessary, based in part on the trial court's finding that any judicial action by Natural Father would have been futile. The trial court's finding that Mother prevented Natural Father from maintaining a relationship with the child is not against the clear weight of the evidence and we AFFIRM. Opinion by Buettner, J.; Bell, P.J., and Joplin, J., concur.

(Division No. 2)
Thursday, October 25, 2018

115,726 — In re the Marriage of: Sarah Faith Baker, now Cox, Petitioner/ Appellee, vs. Scott Thomas Baker, Respondent/ Appellant. Appeal from an order of the District Court of Muskogee County, Hon. Weldon Stout, Trial Judge. Scott Thomas Baker (Father) appeals a dissolution of marriage decree asserting the trial court erred (1) in imputing his income "resulting in inequities in [his] child support obligation, support alimony obligation and in his share of the property awarded," and (2) in awarding property to the parties or ordering the sale of property, "which property was subject to ownership or claims of ownership interest in unrepresented third-parties while those claims were known to the Court." We conclude Father failed to provide the trial court with any evidence that would obviate the necessity to impute income to him, and we see no abuse of discretion by the trial court in imputing income to him in fulfilling its obligation to set child support and decide the question of support alimony. We further see no abuse of discretion in finding the Fort Gibson property and a certain vacant lot to be marital property subject to division. AFFIRMED. Opinion from the Court of Civil Appeals, Division II, by Wiseman, P.J.; Thornbrugh, C.J., and Fischer, J., concur.

116,244 (Companion with Case Nos. 116,722 & 116,896) — Lena Renee Roodzant, Petitioner/Appellee, vs. Daniel Charles Roodzant, Respondent/ Appellant. Appeal from an order of the District Court of Custer, County, Hon. Donna L. Dirickson, Trial Judge. Daniel Charles Roodzant (Husband) appeals a decree of dissolution of marriage asserting the trial court (1) erred in finding it had proper venue to hear the case, (2) abused its discretion in awarding Lena Renee Roodzant (Wife) the marital home and the equity in the home, (3) abused its discretion by finding that Husband dissipated and diverted assets of the marital estate, and (4) abused its discretion in finding Wife established a need for support alimony. We conclude Husband has failed to show the trial court erred or abused its discretion in its venue decision or in its division of property. We affirm the trial court's decree. AFFIRMED. Opinion from the Court of Civil Appeals, Division II, by Wiseman, P.J.; Thornbrugh, C.J., and Fischer, J., concur.

(Division No. 3)
Friday, October 19, 2018

115,340 — Jane Swagger, Plaintiff/Appellant, vs. Lilly Ferrell, A.P.R.N., and Lisa Waterman, D.O., Defendants/Appellees. Appeal from the District Court of Cleveland County, Oklahoma. Honorable Jeff Virgin, Trial Judge. Plaintiff/Appellant Jane Swagger (Plaintiff) appeals from an order dismissing without prejudice her petition against Defendants/Appellants Lilly Ferrell, A.P.R.N., and Lisa Waterman, D.O. (collectively Defendants) entered on August 15, 2016. Plaintiff argues that the petition was properly served on Defendants by substitute service in a timely manner, and that she was exempt from the requirement of attaching an affidavit of merit to her petition. Because the Plaintiff's service of process upon an individual not a party to the case and not authorized by

appointment or by law to receive process for Defendants was insufficient to effect service upon Defendants, the court's order of dismissal without prejudice was proper. AFFIRMED. Opinion by Swinton, P.J.; Goree, V.C.J., and Mitchell, J., concur.

116,141 — Hamid Farzaneh, Plaintiff/Appellee, vs. Hester Anne Brown, Defendant/Appellee, and Jeffrey David Nachimson, Appellant. Appeal from the District Court of Oklahoma County, Oklahoma. Honorable Aletia Timmons, Judge. Appellant Jeffrey David Nachimson (Appellant) appeals from an order denying his motion for attorney fees stemming from his representation of Defendant/Appellee Hester Anne Brown in a paternity action brought by Plaintiff/Appellee Hamid Farzaneh. We dismiss Appellant's appeal for failure to comply with Oklahoma Supreme Court orders and for failure to timely file his brief-in-chief. APPEAL DISMISSED. Opinion by Mitchell, J.; Swinton, P.J., and Goree, V.C.J., concur.

116,249 — Cindy Darrow, Individually, and Cindy Darrow as Trustee of the Cindy Darrow 2009 Living Trust, Plaintiff/Appellant, vs. Keith C. Darrow, Individually, and as Successor Trustee of the John C. Darrow Living Trust, Dated January 5, 1995, Defendant/Appellee, Gary Dewayne Darrow, Individually and Patricia Ruth Shurley, Individually, Defendants. Appeal from the District Court of Canadian County, Oklahoma. Cindy Darrow, individually, and Cindy Darrow as trustee of the Cindy Darrow 2009 Living Trust (Cindy Darrow) appeals an order enjoining her from entering upon certain real property claimed to be owned by her husband's cousin, Keith Darrow. She sued Keith C. Darrow, individually, and as successor trustee of the John C. Darrow Living Trust, Dated January 5, 1995 (Keith Darrow). She also appeals the court's order directing her to deposit the proceeds of a contested sale of water into her attorney's client trust account. We affirm because the trial court's order preserved the status quo, and Cindy Darrow did not demonstrate the court's decision was an abuse of discretion. *Dowell v. Pletcher,* 2013 OK 50, 304 P.3d 457. AFFIRMED. Opinion by Goree, V.C.J.; Swinton, P.J., and Mitchell, J., concur.

116,260 — (Comp. w/116,798) Jeffrey Garcia, d/b/a Garcia Properties, LLC, Plaintiff/Appellant, vs. Ted Raburn and Jill Raburn, Defendants/Appellees. Appeal from the District Court of Tulsa County, Oklahoma. Honorable Linda G. Morrissey, Judge. In this replevin action, Plaintiff/Appellant Jeffrey Garcia d/b/a Garcia Properties, LLC (Garcia) appeals from an order awarding $6,140.00 in prevailing-party attorney fees to Defendants/Appellees Ted and Jill Raburn. Garcia also appeals from the trial court's denial of his request for prejudgment delivery of the truck at issue in this case. After *de novo* review, we find the trial court's attorney fee award is not contrary to law. We further find Garcia's challenge to the court's denial of his request for prejudgment delivery of the truck is untimely. Accordingly, we AFFIRM. Opinion by Mitchell, J.; Swinton, P.J., and Goree, V.C.J., concur.

116,798 — (Comp. w/116,260) Jeffrey Garcia, d/b/a Garcia Properties, LLC, Plaintiff/Appellant, vs. Ted Raburn and Jill Raburn, Defendants/Appellees. Appeal from the District Court of Tulsa County, Oklahoma. Honorable Linda G. Morrissey, Judge. In this replevin action, Plaintiff/Appellant Jeffrey Garcia d/b/a Garcia Properties, LLC (Garcia) appeals from an order granting summary judgment in favor of Defendants/Appellees Ted and Jill Raburn (the Raburns), as well as the denial of Garcia's motion for new trial. Garcia further appeals from the trial court's $7,736.50 prevailing-party attorney fee award. After *de novo* review, we find the trial court did not err as a matter of law when it found the Raburns were bona fide purchasers for value and that Garcia was estopped from asserting his replevin claim. The undisputed facts show Garcia knew his wife had taken the title to his truck two years before she forged his signature and sold it to the Raburns. The undisputed facts further show the Raburns purchased the vehicle through a third party and were unaware of the forgery. We also find the court did not err by awarding attorney fees pursuant to 12 O.S. 2011 §1580. AFFIRMED. Opinion by Mitchell, J.; Swinton, P.J., and Goree, V.C.J., concur.

Tuesday, October 29, 2018

116,125 — Jill Bednar, Petitioner/Appellee, vs. Alex Bednar, Respondent/Appellant. Appeal from the District Court of Oklahoma County, Oklahoma. Honorable Howard Haralson, Trial Judge. In this appeal from a decree of dissolution, Husband did not file his petition in error for approximately seven months following the denial of his motion to vacate the decree. Because the appeal was filed more than 30 days after the denial of the motion to vacate, it is untimely. As a result, the appeal is DIS-

MISSED. Opinion by Goree, V.C.J.; Mitchell, Acting P.J., and Joplin, J. (sitting by designation), concur.

116,706 — Rick Stewart Enterprises, Inc., Plaintiff/Appellant, vs. Cartledge & Cartledge Oil Company, an Oklahoma corporation, Defendant/Appellee. Appeal from the District Court of Creek County, Oklahoma. Honorable Douglas Golden, Trial Judge. The trial court granted summary judgment in favor of Defendant based on its defense of accord and satisfaction. Summary judgment is appropriate where the pleadings and evidence show there is no genuine issue as to any material fact and the Defendant is entitled to judgment as a matter of law. 12 O.S. § 2056(C). A review of the record reveals a dispute concerning the parties' intentions on the purported accord and satisfaction agreement. Because the question of whether Plaintiff and Defendant entered into an accord and satisfaction agreement is a material question of fact, we hold that the district court erred in granting summary judgment in favor of Defendant. REVERSED and REMANDED. Opinion by Goree, V.C.J.; Swinton, P.J., and Mitchell, J., concur.

116,892 — (Comp. w/116,893 and 116,894) Environmental Action, Inc., Plaintiff/Appellee vs. Alan Kaspar, Defendant/Appellant and The Blakeney Company, Inc., an Alabama corporation, and Real Estate Remediation, Inc., an Alabama Limited Liability Company, Defendants. Appeal from the District Court of Ottawa County, Oklahoma. Honorable Robert Haney, Judge. Defendant/Appellant Alan Kaspar (Kaspar) appeals from summary judgment entered in favor of Plaintiff/Appellee Environmental Action, Inc. (EAI) on EAI's claims for unjust enrichment and lien enforcement. EAI provided asbestos abatement services during the demolition of the former Goodrich Plant in Miami, Oklahoma on property that was owned by Kaspar when the work was conducted. After *de novo* review, we find the trial court did not err by granting summary judgment on EAI's unjust enrichment claim. However, we find there is a question of material fact concerning whether Kaspar hired the general contractor, who, in turn, hired EAI. That question should have precluded summary judgment on EAI's lien enforcement claim. WE AFFIRM IN PART, REVERSE IN PART, AND REMAND FOR FURTHER PROCEEDINGS. Opinion by Mitchell, J.; Swinton, P.J., and Goree, V.C.J., concur.

116,893 — (Comp. w/116,892 and 116,894) Lowder Transportation Company, INC., Plaintiff/Appellee, vs. Alan Kaspar, Defendant/Appellant, and The Blakeney Company, Inc., an Alabama corporation, and Real Estate Remediation, Inc., an Alabama Limited Liability Company, Defandants. Appeal from the District Court of Ottawa County, Oklahoma. Honorable Robert Haney, Judge. Defendant/Appellant Alan Kaspar (Kaspar) appeals from summary judgment entered in favor of Plaintiff/Appellee Lowder Transportation Company, Inc. (Lowder Transportation) on Lowder Transportation's claims for unjust enrichment and lien enforcement. Lowder Transportation provided transportation and disposal services of asbestos during the demolition of the former Goodrich Plant in Miami, Oklahoma on property that was owned by Kaspar when the work was conducted. After *de novo* review, we find the trial court did not err by granting summary judgment on Lowder Transportation's unjust enrichment claim. However, we find there is a question of material fact concerning whether Kaspar hired the general contractor, who, in turn, hired Lowder Transportation. That question should have precluded summary judgment on Lowder Transportation's lien enforcement claim. WE AFFIRM IN PART, REVERSE IN PART, AND REMAND FOR FURTHER PROCEEDINGS. Opinion by Mitchell, J.; Swinton, P.J., and Goree, V.C.J., concur.

116,894(Comp. w/116,892 and 116,893) — Apex Distributing - Wolf Warehouse, an Oklahoma Corporation Plaintiff/Appellee, vs. Alan Kaspar, Defendant/Appellant, and The Blakeney Company Inc., an Alabama corporation, and Real Estate Remediation, Inc., an Alabama Limited Liability Company, Defendants. Appeal from the District Court of Ottawa County, Oklahoma. Honorable Robert Haney, Judge. Defendant/Appellant Alan Kaspar (Kaspar) appeals from summary judgment entered in favor of Plaintiff/Appellee Apex Distributing – Wolf Warehouse (Apex Distributing) on Apex Distributing's claims for unjust enrichment and lien enforcement. Apex Distributing provided asbestos abatement materials and supplies during the demolition of the former Goodrich Plant in Miami, Oklahoma on property that was owned by Kaspar when the work was conducted. After *de novo* review, we find the trial court did not err by granting summary judgment on Apex Distributing's unjust enrichment claim. However, we find there is a question of material fact concerning

whether Kaspar hired the general contractor, who, in turn, hired Apex Distributing. That question should have precluded summary judgment on Apex Distributing's lien enforcement claim. WE AFFIRM IN PART, REVERSE IN PART, AND REMAND FOR FURTHER PROCEEDINGS. Opinion by Mitchell, J.; Swinton, P.J., and Go-ree, V.C.J., concur.

116,903 — Kylee Summers, Plaintiff/Appellant, vs. Jacob Williams, Defendant/Appellee. Appeal from the District Court of Tulsa County, Oklahoma. Honorable Mary Fitzgerald, Trial Judge. Plaintiff/Appellant Kylee Summers (Summers) appeals from an order of the trial court sustaining the motion to reconsider filed by Defendant/Appellee Jacob Williams (Williams), vacating its prior denial of Williams' motion to dismiss, and dismissing Summers' automobile negligence action with prejudice. Summers claims the trial court erred by finding her second petition was untimely. After *de novo* review, we find, pursuant to the plain language of 12 O.S. Supp. 2013 §2004(I) and case law interpreting §2004(I), the court did not err. We AFFIRM. Opinion by Mitchell, J.; Swinton, P.J., and Goree, V.C.J., concur.

(Division No. 4)
Friday, October 26, 2018

116,257 — In re The Marriage of: Jessi Caddell, Petitioner/Appellant, v. Adam Carl Caddell, Respondent/Appellee. Appeal from an Order of the District Court of Cimarron County, Hon. Ronald L. Kincannon, Trial Judge. The petitioner, Jessi Caddell (Wife), appeals from a Decree of Dissolution of Marriage in an action where the respondent is Adam Caddell (Husband). The parties have a dispute about property values. The primary premise for each side is the chosen valuation date for each property component. Wife argues for the date she and Husband physically, but not financially, separated. Husband offered alternative dates. The trial court is not bound by a single date and, in the exercise of discretion, considers the facts and circumstances to select the proper date. Here, Wife has not shown that the trial court abused its discretion or decided the matter contrary to law when awarding property to each party. It is a task beyond the function of an appellate court to restate the values of the marital property and rearrange the property division simply because one party or another argues for specific values. This Court's concern is whether the trial court abused its discretion and made a decision unsupported by the clear weight of the evidence and the law. Therefore, the trial court's property division is affirmed. Wife has not shown that the trial court erred regarding her request for appointment of a receiver while Wife was an owner of the property or by not finding Husband to be in violation of the automatic stay. The trial court's rulings on these issues are affirmed. The trial court found that both parties had the same income potential. In addition, the parties have a joint custody plan calling for equal legal and physical custody. The trial court determined to deviate from the Guidelines. Wife did not establish that the income finding was against the clear weight of the evidence. In addition, the fact of a joint and equal legal and physical custody plan authorizes the trial court to consider deviation from the Guidelines. However, the statute imposes certain requirements on the trial court when the decision is to deviate. Not all of those requirements have been met in this instance. Therefore, the case is remanded to the trial court on the child support issue to comply with the statute's deviation requirements. On remand, the trial court shall provide that the expense Wife actually incurs for children's health insurance be determined and divided in the same proportion as other of children's expenses. AFFIRMED IN PART AND REMANDED IN PART WITH INSTRUCTIONS. Opinion from Court of Civil Appeals, Division IV, by Rapp, J.; Barnes, P.J., concurs, and Goodman, J., dissents.

116,994 — Michael S. King, Plaintiff/Appellant, v. State of Oklahoma ex rel. Department of Public Safety, Defendant/Appellee. Appeal from the District Court of Canadian County, Hon. Barbara Hatfield, Trial Judge. Following an administrative hearing, the State of Oklahoma ex rel. Department of Public Safety (the Department) entered an order revoking for 180 days the driving privileges of Michael S. King. King appealed to the district court, which entered an order sustaining in part, and modifying in part, the revocation order. King now seeks review of the district court's order. Contrary to King's argument on appeal, the district court properly admitted evidentiary materials which amply support its determination that the breathalyzer test performed in this case was performed on a properly maintained testing device; no evidence was presented suggesting otherwise. The Board of Tests for Alcohol and Drug Influence's certificate and detailed documentation show that the device in question was not merely tested by the third-party

manufacturer but was tested and regularly maintained by the Board of Tests. Because the district court's order is not unsupported by evidentiary foundation, we must affirm the district court's order sustaining in part and modifying in part the order of revocation. AFFIRMED. Opinion from Court of Civil Appeals, Division IV, by Barnes, P.J.; Rapp, J., and Goodman, J., concur.

ORDERS DENYING REHEARING
(Division No. 1)
Wednesday, October 17, 2018

116,292 — In the Matter of the Construction of The W.M. Brown Trust, as Established on July 24, 1972, and In the Matter of the Construction of The Katherine E. Brown Trust, as Established on July 24, 1972: Stephen E. Pollard and John Mark Pollard, Trustees of the W.M. Brown Trust and the Katherine E. Brown Trust, Petitioners, vs. Marsha K. Schubert, formerly Marsha K. Pollard, Brandon Schubert, Hillary Schubert Patterson, Garret Lee Schubert, Respondents/Appellants, and Barry L. Pollard, Respondent/Appellee. Appellants' Petition for Rehearing filed September 19th, 2018 is *DENIED*.

(Division No. 4)
Monday, October 22, 2018

116,579 — Riverbend Land, LLC, Plaintiff/Appellant, vs. State of Oklahoma, ex rel Oklahoma Turnpike Authority, Defendant/Appellee. Appellee's Petition for Rehearing is hereby *DENIED*.

Monday, November 5, 2018

115,578 — Norma Jean Schritter, individually and as trustee of the Norma Jean Schritter Living Trust, Plaintiff/Appellee, vs. Ernie Schritter, individually and as trustee of the Ernie Schritter Living Trust, Defendant/Appellant. Appellant's Petition for Rehearing is *DENIED.*

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POSITIONS AVAILABLE

CHILD SUPPORT SERVICES ATTORNEY IV - Recruitment ID# 181015-UNCE-318. Visit www.jobs.ok.gov to apply. Applications must be submitted online by Friday, Nov. 30, 2018. Basic purpose of position: The DHS Child Support Services – Canadian County CSS has an opening for a full-time attorney (CSS attorney IV, $5,044.91 monthly) with experience in child support enforcement. This position will be located at 7201 NW 10th Street, Oklahoma City, OK 73127. Typical functions: The position involves preparation and filing of pleadings and trial of cases in child support related hearings in district and administrative courts. Duties will also include consultation and negotiation with other attorneys and customers of Oklahoma Child Support Services, and interpretation of laws, regulations, opinions of the court and policy. Position will train and assist staff with preparation of legal documents and ensure their compliance with ethical considerations. Knowledge, skills and abilities: Knowledge of legal principles and their applications; of legal research methods; of the scope of Oklahoma statutory law and the provisions of the Oklahoma Constitution; of the principles of administrative and constitutional law; of trial and administrative hearing procedures; and of the rules of evidence; and skill in performing research, analyzing, appraising and applying legal principles, facts and precedents to legal problems; presenting explanation of legal matters, statements of facts, law and argument clearly and logically in written and oral form; and in drafting legal instruments and documents. Minimum qualifications: Preference may be given to candidates with experience in child support and/or family law. This position may be filled at an alternate hiring level as a Child Support Services attorney III (beginning salary $4,405.00 monthly), Child Support Services attorney II (beginning salary $4,067.91 monthly), or as a Child Support Services attorney I (beginning salary $3,689.25 monthly), dependent on child support or family law experience and minimum qualifications as per state policy. Notes: A conditional offer of employment to final candidate will be contingent upon a favorable background check and a substance abuse screening. Veteran's preference points do not apply to this position. If you need assistance in applying for this position contact Stefanie Hanson at 405-522-0023 or Stefanie.Hanson@okdhs.org. Benefits: This is a full-time unclassified state position with full state retirement and insurance benefits, including paid health, dental, life and disability insurance. Annual leave of 10 hours per month and sick leave of 10 hours per month begin accruing immediately.

ESTABLISHED, DOWNTOWN TULSA, AV-RATED LAW FIRM SEEKS ASSOCIATE ATTORNEY with 3 - 6 years' commercial litigation experience, as well as transactional experience. Solid deposition and trial experience a must. Our firm offers a competitive salary and benefits with bonus opportunity. Send replies to "Box J," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

CHILD SUPPORT SERVICES ATTORNEY IV - Recruitment ID# 181017-UNCE-323. Visit www.jobs.ok.gov to apply. Applications must be submitted online by Friday, Nov. 30, 2018. Basic purpose of position: The DHS Child Support Services – Tulsa County CSS Office has two openings for a full-time attorney (CSS attorney IV, $5,044.91 monthly) with experience in child support enforcement. This position will be located at 3666 Peoria Ave., Tulsa, OK 74106. Typical functions: The position involves preparation and filing of pleadings and trial of cases in child support related hearings in district and administrative courts. Duties will also include consultation and negotiation with other attorneys and customers of Oklahoma Child Support Services, and interpretation of laws, regulations, opinions of the court and policy. Position will train and assist staff with preparation of legal documents and ensure their compliance with ethical considerations. Knowledge, skills and abilities: Knowledge of legal principles and their applications; of legal research methods; of the scope of Oklahoma statutory law and the provisions of the Oklahoma Constitution; of the principles of administrative and constitutional law; of trial and administrative hearing procedures; and of the rules of evidence; and skill in performing research, analyzing, appraising and applying legal principles, facts and precedents to legal problems; presenting explanation of legal matters, statements of facts, law and argument clearly and logically in written and oral form; and in drafting legal instruments and documents. Minimum qualifications: Preference may be given to candidates with experience in child support and/or family law. This position may be filled at an alternate hiring level as a Child Support Services attorney III (beginning salary $4,405.00 monthly), Child Support Services attorney II (beginning salary $4,067.91 monthly), or as a Child Support Services attorney I (beginning salary $3,689.25 monthly), dependent on child support or family law experience and minimum qualifications as per state policy. Notes: A conditional offer of employment to final candidate will be contingent upon a favorable background check and a substance abuse screening. Veteran's preference points do not apply to this position. If you need assistance in applying for this position contact Stefanie Hanson at 405-522-0023 or Stefanie.Hanson@okdhs.org. Benefits: This is a full-time unclassified state position with full state retirement and insurance benefits, including paid health, dental, life and disability insurance. Annual leave of 10 hours per month and sick leave of 10 hours per month begin accruing immediately.

POSITIONS AVAILABLE

HELMERICH & PAYNE, INC. IS A CONTRACT DRILLING COMPANY HEADQUARTERED IN TULSA and engaged primarily in the drilling of oil and gas wells for exploration and production companies. The company stands as one of the primary land and offshore platform drilling contractors in the world and is an industry leader in innovation, a fact most notably demonstrated by our FlexRig technology. H&P is a global enterprise with land operations across the United States, offshore operations and international operations. H&P has been a top industry performer for over 95 years and is committed to maintaining this reputation through its unparalleled innovation and service. The attorney for Helmerich & Payne will act as a legal advisor and business partner. The primary focus of the role is to provide legal and business advice and support with respect to corporate and transactional matters (e.g. structuring, negotiating and drafting agreements, providing legal interpretation of existing agreements and evaluating and recommending methods of avoiding or managing legal risks). Job responsibilities will include, but not be limited to: Drafting, reviewing and negotiating a diverse range of agreements common to the oil and gas industry, including drilling contracts, master services agreements, master purchase agreements and confidentiality agreements; analyzing and interpreting laws, statutes and regulations and identifying areas of compliance, as well as potential vulnerability and risk; partnering with the appropriate business unit(s) and/or operations in order to develop and implement appropriate action plans; providing legal guidance and assisting the company's efforts on all corporate and strategic transactions, including acquisitions, dispositions, joint ventures, inter-company relationships, complex commercial agreements and other corporate activities; assisting Human Resources on a variety of employment issues; providing advice in a wide array of practice areas and special projects as needed; keeping up-to-date with respect to industry related laws and regulations to help identify changes and incorporate into or help create policies and procedures based on such development; performing additional tasks as requested by the general counsel and other corporate officers, and provide other legal advice and services as the legal needs of the organization arise. Qualifications for attorney position: J.D. from an accredited law school and admitted to practice in Oklahoma; 3-5 years relevant experience in-house or with a strong regional and/or national law firm; experience in the oil and gas industry a plus; ability to quickly and effectively prioritize, review and negotiate agreements in the context of business circumstances, and to provide advice that recognizes and integrate legal risk, business objectives and leverage; ability to interact and communicate effectively with individuals from multiple departments and disciplines at all levels of the organization; ability to work independently while being able to contribute successfully to cross-functional teams; ability to demonstrate sound judgment even in ambiguous situations; strong attention to detail and proactive approach; and excellent verbal and written communication skills. Please visit our website at www.hpinc.com to apply online.

POSITIONS AVAILABLE

THE OKLAHOMA CORPORATION COMMISSION HAS AN OPENING FOR AN ATTORNEY in the Judicial & Legislative Services Division, representing the Petroleum Storage Tank Division. This is an unclassified position with a salary of $61,750 - 69,750 annually, depending upon experience. Applicants should be admitted to the bar for at least 3 years and have at least one year of litigation experience, with some administrative law experience preferred. Strong research and writing skills required. Send resume and writing sample to: Oklahoma Corporation Commission, Human Resources Division, P.O. Box 52000, Oklahoma City, OK 73152-2000. For inquiries, contact Lori Mize at 405-521-3596 or at HR3@occemail.com. Deadline: Nov. 26, 2018.

LOOKING FOR LOST WILL

IN SEARCH OF THE ATTORNEY WHO PREPARED A WILL FOR MONA SUE BRASWELL of Longview, Texas. Please contact Barbara Ketring (Sue's sister) 918-946-3968. ASAP.

CLASSIFIED INFORMATION

REGULAR CLASSIFIED ADS: $1.50 per word with $35 minimum per insertion. Additional $15 for blind box. Blind box word count must include "Box ___," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152."

DISPLAY CLASSIFIED ADS: Bold headline, centered, border are $70 per inch of depth.

DEADLINE: See www.okbar.org/barjournal/advertising or call 405-416-7084 for deadlines.

SEND AD (email preferred) stating number of times to be published to:

advertising@okbar.org, or
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MCLE CREDIT 12/2

BARRY AND JOHNNY ALBERT MEMORIAL MOCK TRIAL:

9TH ANNUAL LEARNING FROM THE OKLAHOMA CRIMINAL JURY TRIAL MASTERS

THURSDAY & FRIDAY, NOVEMBER 29 & 30

9 A.M. - 2:50 P.M.

*Oklahoma Bar Center - **THIS PROGRAM WILL NOT BE WEBCAST***

FOR DETAILS AND TO REGISTER, GO TO WWW.OKBAR.ORG/CLE

Stay up-to-date and follow us on

PROGRAM PLANNERS:
David T. McKenzie, Elliott Crawford, Malcolm Savage, Josh Smith & Victor Albert

ETHICS ADVISOR:
Garvin A. Isaacs, Jr.,
Garvin A. Isaacs, Inc., Oklahoma City

The State of Oklahoma v. Bobby Dale Jordan

This program will provide a reenactment of the criminal jury trial of *The State of Oklahoma v. Bobby Dale Jordan*. The program offers a trial-like atmosphere in recreating the events and parties to the case of this criminal matter. Criminal trial experience is unnecessary as you learn from a panel of Oklahoma Criminal Jury Trial Masters. A complete copy of the court transcript is provided in electronic format only to registered guests.

Early-Bird - November 21, 2018
$300 - Nov. 22, 2018 - Nov. 28, 2018
$325 - Walk-ins
$150 - Members licensed 2-yrs or less (late fees apply)
No Other discounts apply
$25 cancel fee within 4 business days of program
No Cancels, refunds, transfers after seminar date

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MCLE CREDIT 12/1
DAY ONE - 6/0 DAY TWO - 6/1

LEGAL UPDATES 2018

NOVEMBER 29 & 30
9 A.M. - 2:50 P.M.
Double Tree by Hilton, Tulsa Warren Place, 6110 S. Yale Ave., Tulsa

DECEMBER 13 & 14
9 A.M. - 2:50 P.M.
*Oklahoma Bar Center - **LIVE WEBCAST AVAILABLE***

FOR DETAILS AND TO REGISTER, GO TO WWW.OKBAR.ORG/CLE

Stay up-to-date and follow us on

TOPICS TO BE COVERED:

DAY ONE
- Bankruptcy Law
- Labor and Employment Law
- Health Law
- Criminal Law
- Oklahoma Tax Law
- Insurance Law

DAY TWO
- Business and Corporate Law
- Family Law
- Real Property
- Estate Planning & Probate Law
- Law Office Management & Technology
- Ethics

THESE COURSES HAVE BEEN APPROVED FOR TEXAS MCLE CREDIT:
DAY ONE: MCLE 5/0 DAY TWO: MCLE 5/.75