THE OKLAHOMA BAR
Journal
Volume 90 — No. 10 — 5/18/2019

Court Issue

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THE OKLAHOMA BAR
Journal

Volume 90 – No. 10 – 5/18/2019

The Oklahoma Bar Journal Court Issue is published twice monthly and delivered electronically by the Oklahoma Bar Association, 1901 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

Subscriptions $60 per year that includes the Oklahoma Bar Journal magazine published monthly, except June and July. Law students registered with the OBA and senior members may subscribe for $30; all active members included in dues.

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DIVERSITY AWARDS

Nominations due July 31

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Oklahoma Bar Association

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2019 OK 14

STATE OF OKLAHOMA ex rel. OKLAHOMA BAR ASSOCIATION, Complainant, v. CHARLOTTE LINN CLABORN, Respondent.

OBAD No. 2206. SCBD No. 6746
March 25, 2019

¶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, Charlotte Linn Claborn, pending disciplinary proceedings.

¶2 On March 8, 2019, Claborn filed with this Court her affidavit of resignation from membership in the Bar Association pending disciplinary proceedings. The affidavit was executed March 6, 2019.

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

¶4 The affidavit of resignation states Claborn's awareness of a grievance received by the Bar Association concerning her conduct and alleging she engaged in conflicting representation of clients. The Bar's Complaint based on this grievance alleges: (1) Claborn represented Daniel Geiser in a divorce case against April Geiser; (2) Claborn visited April Geiser in 2013 while April was incarcerated in order to obtain a waiver of her appearance in the divorce; (3) The documents April Geiser signed "gave up custody of her older child", stated Daniel Geiser was not the father of April Geiser's unborn child, April (hereafter Geiser) was not awarded visitation, and she was required to pay child support; (4) Claborn contacted Geiser in April 2014 to discuss Geiser's intentions concerning her unborn child and Claborn's representation of Geiser in a Judicial Review of her criminal case; (5) Claborn started discussions with Geiser about placing her child with Claborn's daughter until Geiser was no longer incarcerated; (6) Claborn delivered a letter to Geiser from Claborn's daughter stating Claborn's daughter would take care of Geiser's child; Geiser gave birth to a boy and she agreed to a temporary guardianship with Claborn's daughter and son-in-law; (7) The infant was released from the hospital to Claborn's daughter and son-in-law who started calling the child by a name other than the one selected by Geiser; (8) Claborn filed a petition for guardianship on behalf of her daughter and son-in-law; (9) The guardianship was granted and included language allowing for the adoption of the child; (10) Claborn informed Geiser by letter that Claborn's daughter and son-in-law were planning to adopt the child, and had decided to give the child a different first name because "they do not believe the child should be named after the biological father;" (11) Claborn then filed an Application for Judicial Review concerning Geiser's criminal case and the application was denied; (12) Claborn's daughter and son-in-law, as guardians, filed a petition for adoption without consent; (13) Claborn was not the lawyer for the guardians on their petition for adoption; (14) Geiser filed a petition to modify the guardianship stating she was deceived by Claborn, and Claborn had "only sent part of the guardianship papers to her to get her to sign;" (15) Geiser stated she was unaware the guardianship was not a temporary guardianship or that it included a possible adoption; (16) Geiser was released from incarceration; (17) The assigned trial judge denied the petition for adoption and characterized Claborn's actions as "the most dishonest, deceitful and unethical behavior" the judge had seen in several years; and (18) Geiser was reunited with her child.

¶5 The Complaint against Claborn states she represented Geiser in a criminal case while representing Claborn's daughter in the guardianship case involving Geiser's son, and Claborn created a conflict of interest in violation of Rule 1.7 of the Oklahoma Rules of Professional Conduct, 5 O.S.2011, Ch.1, App. 3-A, (ORPC).[1] The Complaint states Claborn had conversations with Geiser when she lacked an attorney, and these conversations were false and mis-

leading regarding Claborn's interests. The Bar asserts Claborn's conduct violated Rules 4.1 and 4.3 of the Oklahoma Rules of Professional Conduct, 5 O.S.2011, Ch.1, App. 3-A.[2] The Complaint alleges Claborn's conduct was prejudicial to the administration of justice and in violation of the Oklahoma Rules of Professional Conduct, 5 O.S.2011, Ch.1, App. 3-A, Rule 8.4(a), (c), and (d),[3] and Rule 1.3 of the Rules Governing Disciplinary Proceedings (RGDP), 5 O.S.2011, Ch. 1, App. 1-A.[4]

¶6 Respondent's resignation states she is aware the allegations against her, if proven, would constitute violations of Rules 1.3 of the Rules Governing Disciplinary Proceedings, 5 O.S.2011, Ch. 1, App. 1-A, and Rules 1.7, 4.1, 4.3, and 8.4 (a), (c), and (d) of the Oklahoma Rules of Professional Conduct, 5 O.S.2011, Ch.1, App. 3-A, as well as her oath as an attorney.

¶7 Respondent states she is aware the burden of proof regarding the allegations against her rests upon the Oklahoma Bar Association, and she waives any and all rights to contest the allegations. The record before us shows a motion by the Bar Association before the trial panel to have the allegations in the Complaint be deemed admitted, and an order of a presiding master of the Professional Responsibility Tribunal which grants the motion deeming the Complaint's allegations admitted.[5] We need not examine the allegations deemed admitted *for the purpose of imposing the proper professional discipline in this proceeding*. A proper resignation pending disciplinary proceedings will necessarily result in the Court imposing a rule-mandated degree of discipline tantamount to disbarment.[6] Further, the particularized list of all allegations of misconduct against her stated in her affidavit satisfy the requirements of Rule 8.1(b) of the Rules Governing Disciplinary Proceedings.[7]

¶8 Respondent states her awareness of the requirements of Rule 9.1, of the Rules Governing Disciplinary Proceedings, and she states she shall comply with that Rule "within twenty (20) days following the date of her resignation."[8]

¶9 Her resignation states she surrendered her Oklahoma Bar membership card to the Bar Association "with this resignation." The affidavit from the Bar Association states Claborn surrendered her Bar Association membership card to the Bar on March 6, 2019. Respondent's resignation was executed March 6, 2019. Her statement of compliance with Rule 9.1 shows she is using the "date of the resignation" for performing professional obligations. The Bar Association filed its application for approval of the resignation in this Court on March 8, 2019.

¶10 If the Court approves a resignation pending discipline, then the Court may determine an effective date for the resignation to be the date it was submitted to the Bar Association when the resignation is contemporaneously filed with this Court and the attorney is treating the date of submission as an effective date for all of the attorney's professional obligations.[9] The two days between March 6th and March 8th is sufficiently contemporaneous for dating the resignation from the date of its submission to the Bar Association in the circumstance of respondent treating the resignation as effective on March 6, 2019. We determine the effective date of resignation to be March 6, 2019.

¶11 Respondent states her awareness of Rule 8.2, Rules Governing Disciplinary Proceedings, and that approval or disapproval of her resignation is within the discretion of the Supreme Court.[10]

¶12 Respondent states she is aware she may make no application for reinstatement prior to the expiration of five years from the effective date of the order approving her resignation. We construe this language to mean she is aware she may make no application for reinstatement prior to the expiration of five years from the effective date of the order approving her resignation or the effective date of her resignation as determined by the Court.[11] Respondent states she is aware that reinstatement requires compliance with Rule 11 of the Rules Governing Disciplinary Proceedings.[12]

¶13 Respondent states she is aware the Client's Security Fund may receive claims from her former clients, and she 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 her.[13]

¶14 Respondent acknowledges she 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 Claborn.

¶15 The application for approval of Claborn's resignation filed by the Bar Association states costs were incurred in the investigation, and

the Bar Association seeks reimbursement of costs. Respondent's resignation states she has been informed by the Bar Association that costs in the investigation were incurred and the Bar Association is seeking reimbursement. If professional discipline occurs in the form of the Court approving a resignation pending discipline, then costs may be awarded and a respondent shall pay those costs within ninety (90) days unless the Court has determined otherwise upon good cause shown.[14]

¶16 The Application lists individual items of cost for which the Bar Association seeks reimbursement, and the Application states a sum of these costs. The expressly specified total amount of costs pled in the Application is $1,148.19. However, this total appears to be approximately 79% of the total amount of the individual items of costs listed in the Application. When the individual items of cost are added together the sum is $1,448.19. The individual items of costs listed in the Application are supported by exhibits attached to the Application. The individual items of costs include three transcript expenses totaling $978.10, and an additional $470.09 for postage, travel mileage for the Bar's investigator and Trial Panel members, and a witness fee with travel mileage.

¶17 The Court's exercise of exclusive original jurisdiction in a Bar disciplinary proceeding includes a full-scale exploration of all relevant facts.[15] Due process requires the Bar to allege facts sufficient to put an attorney on notice of the claims asserted against the attorney.[16] Respondent had notice the Bar's Application sought costs in the amount of $1,448.19. We award costs in the amount of $1,448.19, and they shall be paid within 90 days of the effective date of this Order.

¶18 The official roster name and address of the respondent is Charlotte Linn Claborn, O.B.A. No. 21139, P. O. Box 13, Stonewall, OK 74871-0013.

¶19 IT IS THEREFORE ORDERED that the application by the Bar Association for an order approving Charlotte Linn Claborn's resignation be approved, and the resignation is deemed effective on the date it was executed and submitted to the Oklahoma Bar Association, March 6, 2019.

¶20 IT IS FURTHER ORDERED that respondent's name be stricken from the Roll of Attorneys and that she make no application for reinstatement to membership in the Oklahoma Bar Association prior to five years from the effective date of her resignation, March 6, 2019.

¶21 IT IS FURTHER ORDERED that respondent shall pay costs in the amount of $1,448.19 to the Oklahoma Bar Association within ninety (90) days from the effective date of this order.

¶22 IT IS FURTHER ORDERED that if any funds of the Clients' Security Fund of the Oklahoma Bar Association are expended on behalf of respondent, she 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.

¶23 DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 25th DAY OF MARCH, 2019.

/s/ Noma D. Gurich
CHIEF JUSTICE

¶24 ALL JUSTICES CONCUR.

1. 5 O.S.2011, Ch.1, App. 3-A, ORPC, Rule 1.7:
(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
(1) the representation of one client will be directly adverse to another client; or
(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
(2) the representation is not prohibited by law;
(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
(4) each affected client gives informed consent, confirmed in writing.
2. 5 O.S.2011, Ch.1, App. 3-A, ORPC, Rule 4.1:
In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.
5 O.S.2011, Ch.1, App. 3-A, ORPC, Rule 4.3:
In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.
3. 5 O.S.2011, Ch.1, App. 3-A, ORPC, Rule 8.4(a), (c), and (d):
It is professional misconduct for a lawyer to:
(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; ...
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice; ....

4. 5 O.S.2011, Ch. 1, App. 1-A, RGDP, Rule 1.3:

> The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all.

5. If allegations against an attorney are deemed admitted in the context of a trial panel proceeding, then this Court exercises exclusive and original jurisdiction using *de novo* review *to impose and determine discipline* based upon clear and convincing evidence of professional misconduct. *State ex rel. Oklahoma Bar Ass'n v. Knight*, 2015 OK 59, 359 P.3d 1122, 1128-1129; *State ex rel. Oklahoma Bar Ass'n v. Seratt*, 2003 OK 22, ¶ 8, 66 P.3d 390, 392.

6. *State ex rel. Oklahoma Bar Ass'n v. Caporal*, 2014 OK 104, ¶ 6, 350 P.3d 106, 107 (a resignation pending discipline is tantamount to disbarment); 5 O.S.2011 Ch. 1, App. 1-A, RGDP, Rule 11.1 (e) (attorney may not make an application for reinstatement prior to the expiration of five years from the effective date of disbarment). *See infra* note 12, stating RGDP, Rule 8.1 (c) (attorney may not make an application for reinstatement prior to the expiration of five years from the effective date of resignation).

7. 5 O.S.2011, Ch. 1, App. 1-A, RGDP, Rule 8.1, states in part:

> A lawyer who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may resign membership in the Oklahoma Bar Association, and thereby relinquish the right to practice law, only by delivering to the Commission an affidavit stating that the lawyer desires to resign and that:...
>
> (b) The lawyer is aware that there is presently pending an investigation into, or proceedings involving, allegations that there exist grounds for discipline, specifying particularly the misconduct alleged;....

8. 5 O.S.2011, Ch. 1, App. 1-A, RGDP, Rule 9.1:

> When the action of the Supreme Court becomes final, a lawyer who is disbarred or suspended, or who has resigned membership pending disciplinary proceedings, must notify all of the lawyer's clients having legal business then pending within twenty (20) days, by certified mail, of the lawyer's inability to represent them and the necessity for promptly retaining new counsel. If such lawyer is a member of, or associated with, a law firm or professional corporation, such notice shall be given to all clients of the firm or professional corporation, which have legal business then pending with respect to which the disbarred, suspended or resigned lawyer had substantial responsibility. The lawyer shall also file a formal withdrawal as counsel in all cases pending in any tribunal. The lawyer must file, within twenty (20) days, an affidavit with the Commission and with the Clerk of the Supreme Court stating that the lawyer has complied with the provisions of this Rule, together with a list of the clients so notified and a list of all other State and Federal courts and administrative agencies before which the lawyer is admitted to practice. Proof of substantial compliance by the lawyer with this Rule 9.1 shall be a condition precedent to any petition for reinstatement.

9. *State ex rel. Oklahoma Bar Ass'n v. Demopolos*, 2015 OK 50, ¶ 36 & n. 56, 352 P.3d 1210, 1221 (a proper resignation may be made effective on the date of submission to the Oklahoma Bar Association); *State ex rel. Oklahoma Bar Ass'n v. Bourland*, 2001 OK 12, ¶¶ 14-17, 19 P.3d 289, 291-292 ("the usual effective date for a resignation is the date it is submitted to the Oklahoma Bar Association . . . [when] the resignation was executed, tendered to the Bar Association, and contemporaneously filed with the Court with a statement therein that the respondent was treating the resignation as effective upon the date of filing"). *See also State ex rel. Oklahoma Bar Ass'n v. Perkins*, 1988 OK 65, 757 P.2d 825, 827 ("effective date of a resignation is upon filing the resignation with the Executive Director").

10. 5 O.S.2011, Ch. 1, App. 1-A, RGDP, Rule 8.2:

> Upon receipt of the required affidavit, the Commission shall file it with the Clerk of the Supreme Court and the Supreme Court may enter an order approving the resignation pending disciplinary proceedings. A lawyer who so resigns shall only be permitted to apply for reinstatement after the lapse of five (5) years and under the provisions of Rule 11.

11. *See, e.g., In re Morgan*, 2014 OK 110, ¶¶ 4-5, 340 P.3d 1, 2-3 (application for reinstatement was timely when based upon Court's determination of the effective date of resignation pending discipline).

12. 5 O.S.2011 Ch. 1, App. 1-A, RGDP, Rule 8.1(c) (no application for reinstatement may be filed prior to the lapse of five years from the effective date of the resignation); *State ex rel. Oklahoma Bar Ass'n v. Bourland*, 2001 OK 12, ¶ 12, 19 P.3d 289; *In re Reinstatement of Hird,* 2001 OK 28, 21 P.3d 1043. *See supra* note 10, stating 5 O.S.2011 Ch. 1, App. 1-A, RGDP, Rule 8.2.

13. 5 O.S.2011 Ch. 1, App. 1-A, RGDP, Rule 11.1(b); *State ex rel. Oklahoma Bar Ass'n v. Heinen*, 2003 OK 36, ¶ 9, 84 P.3d 708, 709.

14. *State ex rel. Oklahoma Bar Ass'n v. Williams*, 2009 OK 88, ¶ 2, 228 P.3d 1195 (citing 5 O.S.2001 Ch. 1, App. 1-A, Rule 6.16, Rules Governing Disciplinary Proceedings); *State ex rel. Oklahoma Bar Ass'n v. Anton*, 2007 OK 84, ¶ 13, 175 P.3d 364, 368 (same); *State ex rel. Oklahoma Bar Ass'n v. O'Neal*, 2007 OK 13, ¶ 13, 154 P.3d 1270, 1273-1274 (same).

15. *State ex rel. Oklahoma Bar Ass'n v. Carpenter*, 1993 OK 86, 863 P.2d 1123, 1128.

16. *State ex rel. Oklahoma Bar Ass'n v. Giger*, 2003 OK 61, n.17, 72 P.3d 27, 34.

2019 OK 18

In re: Amendments to Rule 3 and Rule 4 of the State Board of Examiners of Certified Shorthand Reporters, 20 O.S. 2011, ch. 20, app. 1

No. SCAD-2019-30. Monday, April 8, 2019

ORDER

Rule 3 and Rule 4 of the State Board of Examiners of Certified Shorthand Reporters, 20 O.S. 2011, ch. 20, app. 1, are hereby amended as shown on the attached Exhibit "A." Rules 3 and 4 with the amended language noted are attached as Exhibit "B". The amended rules shall be effective April 12, 2019.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 8TH DAY OF APRIL, 2019.

/s/ Noma D. Gurich
CHIEF JUSTICE

ALL JUSTICES CONCUR.

EXHIBIT A

Rules of the State Board of Examiners of Official Shorthand Reporters
Title 20, Chapter 20, App. 1
Rule 3. Eligibility.

a) Every candidate who seeks to be examined for enrollment as a certified shorthand reporter shall:

1) Prove to the satisfaction of the Board that he/she is:

i) of legal age;

ii) meets the requisite standards of ethical fitness; and

iii) has at least a high school education, or the equivalent thereof.

This information shall be furnished to the Board by a sworn, notarized affidavit;

2) Prove to the satisfaction of the Board that he/she possesses a minimum level of court reporting proficiency which would allow the

applicant to meet the examination requirements established in Section 1503(B)(1) of Title 20. An applicant may satisfy such requirements by obtaining verification through a court reporting school official of the applicant's level of proficiency, as outlined by the test application; by passing a preliminary proficiency examination, which has been approved by the Board; or by proving that the applicant has previously held any state or national shorthand reporting certificate or license;

3) Submit to the Secretary of the Board, or a designee, a properly completed application form provided by the Board, accompanied by such evidence, statements or documents as required by the Board, including an examination fee receipt from the Clerk of the Supreme Court showing payment of the fees required by the Board and approved by the Supreme Court;

4) Declare that he/she is a writer of shorthand by one of the accepted methods set forth in Section 1503(D) of Title 20 of the Oklahoma Statutes; and

5) Provide such additional proof as may be required by the Board to establish that the candidate meets the requirements set forth in Section 1503 of Title 20 of the Oklahoma Statutes.

b) Academic dishonesty during the examination process will result in the applicant's disqualification, and the applicant may not take the examination again for two (2) years from the date of the examination at which the applicant was disqualified.

c) A candidate who has previously failed an examination may be re-examined at any subsequent regular examination upon giving the Board notice via the standard application, and payment of the applicable examination fee as set by the Board and approved by the Supreme Court. The examination fee will be forfeited if the candidate fails to appear for the examination, or fails to complete the examination, unless an exception is granted by the Board.

Rules of the State Board of Examiners of Certified Shorthand Reporters
Title 20, Chapter 20, App. 1
Rule 4. Test Requirements.

a) The examination for enrollment as a certified shorthand reporter shall consist of the following:

1) Testimony and Proceedings Skills Examination – A two-voice question-and-answer dictation of testimony at two hundred (200) words per minute for five (5) minutes. Speaker designations such as "Q" and "A" will not be read nor counted as words, but must be appropriately indicated in the transcript. One (1) hour will be given for the transcription of the question-and-answer dictation.

2) Literary Materials Skills Examination – A five-minute dictation of literary material at one hundred eighty (180) words per minute. One (1) hour will be given for the transcription of the literary dictation.

3) The Oklahoma Written Knowledge Test – A written knowledge test of not less than twenty-five (25) multiple choice questions relating to the Oklahoma law and court rules, duties of certified shorthand reporters, and general court procedure. This section of the examination will be administered in forty-five (45) minutes. Applicants will be provided with the study aids from which the test questions will be taken.

b) Candidates may take one or both of the skills examinations at any regularly scheduled examination. A candidate who has successfully completed either of the skills examinations may retain the credit for that portion of the examination for two (2) years from the date passed, and will not be required to retake that portion of the examination during the two (2) year period.

c) Candidates may take the Oklahoma Written Knowledge Test at any regularly scheduled examination. Proof of minimum proficiency shall not be required for candidates taking only the Oklahoma Written Knowledge Test. A candidate who has successfully completed the Oklahoma Written Knowledge portion of the examination may retain the credit for that portion of the examination for two (2) years from the date passed, and will not be required to retake that portion of the examination during the two (2) year period.

d) A candidate who provides proof of passing the Registered Professional Reporter Examination of the National Court Reporters Association, or an equivalent test as authorized by the Supreme Court, is eligible for enrollment without taking the skills examinations described in paragraphs a(1) and a(2) of this Rule. The applicant must, prior to certification, pass the Oklahoma Written Knowledge portion of the examination, and meet all other applicable eligibility requirements.

EXHIBIT B

Rules of the State Board of Examiners of Official Shorthand Reporters
Title 20, Chapter 20, App. 1
Rule 3. Eligibility.

a) Every candidate who seeks to be examined for enrollment as a certified shorthand reporter shall:

1) Prove to the satisfaction of the Board that he/she is:

i) of legal age;

ii) meets the requisite standards of ethical fitness; and

iii) has at least a high school education, or the equivalent thereof.

This information shall be furnished to the Board by a sworn, notarized affidavit;

2) Prove to the satisfaction of the Board that he/she possesses a minimum level of court reporting proficiency which would allow the applicant to meet the examination requirements established in Section 1503(B)(1) of Title 20. An applicant may satisfy such requirements by obtaining verification through a court reporting school official of the applicant's level of proficiency, as outlined by the test application; by passing a preliminary proficiency examination, which has been approved by the Board; or by proving that the applicant has previously held any state or national shorthand reporting certificate or license;

3) Submit to the Secretary of the Board, or a designee, a properly completed application form provided by the Board, accompanied by such evidence, statements or documents as required by the Board, including an examination fee receipt from the Clerk of the Supreme Court showing payment of the fees required by the Board and approved by the Supreme Court;

4) Declare that he/she is a writer of shorthand by one of the accepted methods set forth in Section 1503(D) of Title 20 of the Oklahoma Statutes; and

5) Provide such additional proof as may be required by the Board to establish that the candidate meets the requirements set forth in Section 1503 of Title 20 of the Oklahoma Statutes.

b) Academic dishonesty during the examination process will result in the applicant's disqualification, and the applicant may not take the examination again for two (2) years from the date of the examination at which the applicant was disqualified.

c) A candidate who has previously failed an examination may be re-examined at any subsequent regular examination upon giving the Board notice via the standard application, and payment ~~in full~~ of the applicable examination fee as set by the Board and approved by the Supreme Court. ~~The examination fee must be paid for each examination taken by a candidate, regardless of the candidate's failure to pass a prior examination or any portion thereof.~~ The examination fee will be forfeited if the candidate fails to appear for the examination, or fails to complete the examination, unless an exception is granted by the Board.

Rules of the State Board of Examiners of Certified Shorthand Reporters
Title 20, Chapter 20, App. 1
Rule 4. Test Requirements.

a) The examination for enrollment as a certified shorthand reporter shall consist of the following:

1) Testimony and Proceedings Skills Examination – A two-voice question-and-answer dictation of testimony at two hundred (200) words per minute for five (5) minutes. Speaker designations such as "Q" and "A" will not be read nor counted as words, but must be appropriately indicated in the transcript. One (1) hour will be given for the transcription of the question-and-answer dictation.

2) Literary Materials Skills Examination – A five-minute dictation of literary material at one hundred eighty (180) words per minute. One (1) hour will be given for the transcription of the literary dictation.

3) The Oklahoma Written Knowledge Test – A written knowledge test of not less than twenty-five (25) multiple choice questions relating to the Oklahoma law and court rules, duties of certified shorthand reporters, and general court procedure. This section of the examination will be administered in forty-five (45) minutes. Applicants will be provided with the study aids from which the test questions will be taken.

b) Candidates may take one or both of the skills examinations at any regularly scheduled examination. A candidate who has successfully completed either of the skills examinations may retain the credit for that portion of

the examination for two (2) years from the date passed, and will not be required to retake that portion of the examination during the two (2) year period. ~~There will be no reduction in examination fee for any applicant retaining credit for either skills portion of the examination.~~

c) Candidates may take the Oklahoma Written Knowledge Test at any regularly scheduled examination. Proof of minimum proficiency shall not be required for candidates taking only the Oklahoma Written Knowledge Test. A candidate who has successfully completed the Oklahoma Written Knowledge portion of the examination may retain the credit for that portion of the examination for two (2) years from the date passed, and will not be required to retake that portion of the examination during the two (2) year period. ~~There will be no reduction in examination fee for any applicant retaining credit for the written knowledge portion of the examination.~~

d) A candidate who provides proof of passing the Registered Professional Reporter Examination of the National Court Reporters Association, or an equivalent test as authorized by the Supreme Court, is eligible for enrollment without taking the skills examinations described in paragraphs a(1) and a(2) of this Rule. The applicant must, prior to certification, pass the Oklahoma Written Knowledge portion of the examination, and meet all other applicable eligibility requirements.

2019 OK 35

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL 2875, ROBERT GREEN, Plaintiffs/Appellants, and William Fox, Plaintiff, v. CITY OF NORMAN, OKLAHOMA, a municipal corporation, Defendant/Appellee.

No. 114,640. May 14, 2019

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS, DIVISION III

¶0 Robert Green, a member of his local union, was discharged from his job with the City of Norman, Oklahoma (City). Green appealed the decision and this matter was ultimately presented to an arbitrator for a determination. Arbitrator determined there was no "just cause" for discipline and he ordered reinstatement of Green's employment. The union filed a petition in district court to enforce the arbitration award. City filed a cross petition asking the district court to vacate the arbitration award. Both parties sought summary relief from the district court. The district court denied relief to Green and granted summary judgment in favor of City. The district court held the arbitrator exceeded his authority under the collective bargaining agreement and vacated the arbitrator's opinion and award. Green and the union filed a Petition in Error; the Court of Civil Appeals affirmed the district court's grant of summary judgment to City but remanded the matter for the arbitrator to resolve the issue of progressive discipline. Green and the union sought certiorari relief from this Court. We hold the arbitrator acted within the scope of his authority under the terms of the CBA when determining whether the City had "just cause" to discipline Green. We vacate the opinion of the Court of Civil Appeals, we reverse the ruling of the district court and remand this matter for proceedings consistent with this opinion.

CERTIORARI PREVIOUSLY GRANTED; OPINION OF THE COURT OF CIVIL APPEALS VACATED; JUDGMENT OF THE DISTRICT COURT IS REVERSED AND REMANDED.

Douglas D. Vernier, Moore & Leaman, Oklahoma City, Oklahoma, for Appellants,

Kathryn D. Terry, Phillips Murrah, Oklahoma City, Oklahoma, for Appellees.

OPINION

EDMONDSON, J.

¶1 Appellants, American Federation of State, County and Municipal Employees, Local 2875 (Union), and Robert Green (Green),[1] seek certiorari relief from the Court of Civil Appeals' (COCA) opinion affirming the trial court's grant of summary judgment in favor of the City of Norman and reversing an arbitration award in favor of Green and Union.

¶2 On certiorari, Union and Green assert the following reasons in support of the review of the Court of Civil Appeals' decision: (1) COCA decided a question of substance in a way not in accord with applicable decisions of this Court because (a) COCA found the grievance only raised the issue of progressive discipline and it did not raise the issue of "just cause" for discipline and (b) COCA found the arbitrator exceeded his authority when he found that the

term "progressive discipline" contained in Article 12, Section 1 of the CBA, is not inconsistent with "just cause" and the two concepts are intertwined; (2) the courts below have so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision as follows: (a) by applying 12 O.S. 2011, § 1874(A)(4), the Uniform Arbitration Act, which specifically does not apply to arbitrations arising from a collective bargaining agreement, 12 O.S. 2011 § 1855(D) and (b) by applying a standard borrowed from the Sixth Circuit by the court in *Fraternal Order of Police, Lodge 142 v. City of Perkins*, 2006 OK CIV APP 122, 146 P.3d 829; the 6th Circuit has since vacated the opinion relied on by the Court of Civil Appeals, *see Michigan Family Resources, Inc., v. Service Employees Int'l. Union Local 517M*, 475 F.3d 746 (6th Cir. 2007).

¶3 City responded that this Court should decline review of this matter because the district court and COCA's finding that the arbitrator far exceeded the grant of authority pursuant to the CBA was correct as a matter of fact and law. Appellee also argued that (1) COCA's opinion is in accord with the decisions of this Court and (2) that COCA did not depart from the usual course of judicial proceedings. City also argued, as it had below, that Green failed to raise the issue of "just cause" as it related to his termination, and thus, this issue was not within the scope of the arbitrator's review.

FACTS AND PROCEDURAL HISTORY

¶4 Union and Appellee, City of Norman (City) are parties to a Collective Bargaining Agreement (CBA) effective July 1, 2012 through June 30, 2013. The purpose of the CBA was for "the promotion of harmonious relationships between the City and the Union, the establishment of an equitable and peaceful procedure for the resolution of differences...."[2] The parties contractually agreed to the following process for filing grievances and to determine the scope of the arbitrator's authority:

> Authority of the Arbitrator – The arbitrator shall only consider and make a decision with respect to the specific issue or action being appealed to him or her in the grievance(s), and the arbitrator shall have no right or authority to make a decision concerning any other actions or issues.... This decision shall be based solely upon the arbitrator's interpretation of the meaning and application of the express provisions of this Agreement as such relates to the facts of the grievance as presented.[3]

Under the CBA, the arbitrator has the sole authority to receive the evidence and interpret the meaning of the factual information as it relates to relevant portions of the CBA.

¶5 In spite of this absolute grant of authority to the arbitrator, City successfully argued below that the arbitrator acted outside of his scope by deciding that City did not have "just cause" to terminate Green. The crux of City's contention was that Green's failure to include the words "just cause" in his grievance, was a fatal flaw. Accordingly, City argued, arbitrator's decision in this regard could not be considered a "specific issue or action being appealed." Thus, arbitrator's decision in this regard was outside the scope of his authority under the CBA. This narrow focus distorts the actual evidence by ignoring critical information in the official grievance. In addition, the City, district court and COCA neglected to consider key portions of the CBA which define the parameters for the submission of a grievance as well as the extent of deference given to the arbitrator as the sole decision maker.

¶6 The United States Supreme Court has made clear that courts have no business overruling an arbitrator's decision "because their interpretation of the contract is different from his." *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599, 80 S.Ct. 1358, 1362, 4 L.Ed.2d 1424 (1960). Otherwise, "settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." *Id.* at 596, 80 S.Ct. at 1360.

¶7 Almost forty years ago, Oklahoma adopted the principles set forth in *Enterprise Wheel,* noting that an arbitration award must be enforced if the arbitrator stays within the submission of issues and makes an award within the authority granted in the agreement. *Voss v. City of Okla. City*, 1980 OK 148, ¶ 6, 618 P.2d 925, 928. More recently, we again announced that the arbitrator is entitled to great deference with respect to the decision and "we will not review the factual or legal findings of the arbitrator nor consider the merits of the award." *City of Yukon v. International Ass'n of Firefighters, Local 2055*, 1990 OK 48, ¶ 8, 792 P.2d 1176, 1179 (citations omitted). In fact, "this Court may only consider whether the arbitrator's decision 'draws its essence from the collective bargaining agreement.'" *Id.* It is with this lens that the

CBA must be reviewed to determine if the arbitrator in this matter has acted within the scope of the CBA. This Court's inquiry is narrow; it is not to re-examine the evidence below and determine whether the arbitrator made a correct decision.

¶8 On April 2, 2014, City terminated long term employee Green, alleging that he routinely and frequently took excessive rest and lunch breaks, failed to perform work, and then falsified his time records by not reflecting the extended breaks. City alleged these acts violated the City of Norman policy, as well as the CBA. Green disputed the grounds for his discharge. Green and Union filed a grievance challenging the termination. City denied the grievance.

¶9 City successfully argued at the trial court and also before the Court of Civil Appeals, that Union's failure to include the specific words "just cause" in the grievance prevented the arbitrator from rendering a decision in this regard. Instead, City urged that the only issue properly before the arbitrator was the issue of progressive discipline. City's over-simplification not only ignores the plain language of the CBA directing the content and manner in which a grievance is filed, but also the actual language of the grievance as submitted.

Grievable Issues

¶10 The CBA specifically allows a Union member like Green to file a grievance that includes the interpretation and application of provisions within the CBA. The CBA outlines "the issues and actions which shall be considered and treated as grievable"[4] which include the following:

> a. Issues - An issue which involves either of the following: (1) The meaning, interpretation or application of the express provisions of this Agreement; or (2) The application of the rules and regulations established and enforced by the City. (Emphasis added)
>
> ****
>
> c. Disciplinary Actions - Any of the following disciplinary actions: (1) the oral reprimand or written reprimand of an employee; (2) The suspension or pending suspension of an employee; (3) The involuntary demotion or pending demotion of an employee, but excluding any such demotion which occurs in conjunction with the bumping procedure; (4) The discharge of an employee.[5]

On the line where Green was to "list applicable violation," Union and Green specifically identified Article 12, Section 1, as the section at issue. The first sentence of this Article 12, Section 1 states: "The City may discipline any employee for **just cause**."[6]

Official Grievance as Submitted by Union

¶11 The CBA outlines the following directions for filing a grievance:

> No grievance shall be processed through the various Grievance Steps unless it is submitted to the Human Resources Department on the approved "Grievance Form," and unless it is properly completed, signed and dated by the aggrieved employee or group of employees. In this regard, the "Grievance Form" must contain a statement of the grievant's complaint, the appropriate grievance number, the Section(s) of the Agreement allegedly violated, the date of the alleged violation, and the relief or remedy sought. However, an incorrect date and/or improper Section citation shall not in itself be grounds for denial of the grievance.
>
> In the event that it is necessary for the Human Resources Director to work with the employee, the group of employees, and/or the Union to clarify the grievance as stated on the "Grievance Form," and/or necessary for the employee, the group of employees, and/or the Union to correct and resubmit the "Grievance Form," such additional time as my be required for this shall not be counted towards the time limits established for the various Grievance steps.
>
> If a grievance is not submitted in the manner set forth above, it shall be considered "waived."[7]

The "Official Grievance Form" consists of a one page document, with approximately 1/4 of this form dedicated to providing the "Statement of Grievance." Within this section are two headings: "List applicable violation" and "Adjustment required."[8] This form is required to be used for all grievance submissions.

¶12 In the matter before us, the official grievance as filed by Union stated as follows:

STATEMENT OF GRIEVANCE:

List applicable violation: ART. 12, SEC 1; NO PREVIOUS DISCIPLINE IN THE PAST 5 YEARS; MR. GREEN HAS BEEN EMPLOYED WITH THE CITY FOR OVER 30 YEARS.

Adjustment required: FOLLOW PROGRESSIVE DISCIPLINE.[9]

¶13 It is undisputed, Union listed in its official "Statement of Grievance" that City had violated Art. 12, Sec.1. This section states as follows:

ARTICLE 12

DISCIPLINARY ACTIONS

Section 1. Types of Disciplinary Actions - **The City may discipline for *just cause***. In this regard, employees who violate the established rules and regulations of the City, are negligent in the performance of their duties or the use of City equipment or vehicles, are insubordinate, or are otherwise involved in similar acts of misfeasance (performance of authorized tasks, duties and responsibilities in an improper or negligent manner), malfeasance (performance of an unauthorized or unlawful act), or nonfeasance (failure to perform required tasks and duties, or to carry out assigned responsibilities) which reflect discredit upon the municipal service or are a direct hindrance to the effective performance of the municipal government functions, shall be subject to having disciplinary actions or measures taken against them.

The City agrees with the concept of progressive disciplinary action and, to the extent circumstances warrant such, the City shall impose disciplinary actions in a progressive manner, In this regard, however, the City and the Union also understand that each infraction giving rise to disciplinary action must be judged accordingly, and that consequently a major or particularly serious infraction or a series of repeated infractions, may warrant the imposition of a more severe disciplinary action, including discharge. Likewise, the weight to be given prior recorded disciplinary actions is reduced by a reasonable passage of time without further disciplinary actions.[10]

The very first violation listed by Union on the Official Grievance Form was, Article 12, Section 1. This section uses the very words "just cause" as the basis for any disciplinary action. The record before us belies City's argument that Union and Green failed to raise the issue of "just cause."

¶14 After City denied the grievance, the matter progressed to an arbitration hearing. Following the hearing, on November 24, 2014, the arbitrator issued an Opinion and Award finding that the City did not have "just cause" to terminate Green's employment and ordered reinstatement. The issues before this Court on certiorari relate to the following portion of the arbitrator's decision:

VII. AWARDS

For all the reasons set forth and discussed above, which all are encouraged to read with care, it is the Award of the undersigned Arbitrator that the grievances of Bill Fox and Bobby Green are SUSTAINED. The City did not have just cause to discharge these grievants; they had done nothing wrong.

As remedy, Green and Fox are to be immediately reinstated to their former employment with the City, and made abundantly whole with respect to back pay, including lost overtime, and all contractually related benefits to which they are entitled, including seniority. Given the circumstances, there is to be no offset to the award of back pay. It is further ordered that this entire matter be purged from all records of their employment and is not to be used in any manner against them in the future.[11]

The arbitrator also determined the City's actions against Green were wholly unfounded and noted in his opinion that the real reason Green was terminated was because of whistle blowing. Arbitrator received evidence from terminated employees and other witnesses from management. He then concluded that the investigation against Green was initiated after Green had reported suspected misconduct by his supervisor, calling Green a whistle blower. Arbitrator found no evidence to support any misconduct by Green and found no basis for his discharge. Instead, arbitrator found that "the City's prolonged 'investigation' was nothing more than a preconceived lynching of Green and Fox.... The Union's conclusion that 'Management's fault in the matter runs high,'

understates the City's duplicity."[12] The arbitrator also awarded punitive damages against the City "plus all legal fees to the Local Union 2875 for prosecution of the grievances."[13]

¶15 On February 24, 2015, Union and Green filed a Petition in district court, and requested "judgment against Defendant, enforcing the Arbitration Award in all respects, except punitive damages, and ordering Defendant to comply with the Award, plus interest, and awarding Plaintiffs' attorney fees and costs of this action."[14] City filed a counter petition asking the court to vacate the arbitrator's opinion. City argued that the arbitrator had exceeded his grant of authority under the CBA because he rendered a decision that involved an analysis of "just cause" for termination. City argued Union and Green did not use the words "just cause" in the Official Grievance form, thus any consideration of this issue by the arbitrator was outside the scope of the authority granted in the CBA. City urged that the only issue preserved by Green was the listed remedy of "progressive discipline."

¶16 Green and Union filed a motion for *partial* summary judgment, asking the district court to render a ruling on the enforcement of the arbitration award as it relates to the reinstatement of employment of Green. Union did not request a ruling on attorney fees in its partial summary relief motion. Thus, there is no ruling or issue relating to attorney fees before this Court on certiorari.

¶17 The district court denied Union and Green's motion for partial summary relief and granted City's motion for summary judgment and vacated the arbitrator's award. The district court after reviewing the testimony and evidence presented held:

> 1. An arbitration award is only legitimate if it "draws its essence from the collective bargaining agreement." If the arbitrator's words manifest an infidelity to this duty, the reviewing court has no choice but to refuse to enforce the award. The Sixth Circuit has stated an arbitrator's award does not draw its essence from the CBA when it:
>
> 1. conflicts with express terms of the collective bargaining agreement;
>
> 2. imposes additional requirements that are not expressly provided in the agreement;
>
> 3. is without rational support or cannot be rationally derived from the terms of the agreement; or
>
> 4. is based on general considerations of fairness and equity instead of the precise terms of the agreement. *Cement Divisions, National Gypsum Co. v. United Steelworkers of America,* 793 F.2d 759, 766 (6th Cir. 1986).
>
> 2. In the present case, the Collective Bargaining Agreement (CBA) specifically addresses the arbitrator's authority. The CBA states "[t]he arbitrator shall only consider and make a decision with respect to the specific issue or action being appealed to him or her in the grievance(s), and the arbitrator shall have no right or authority to make a decision concerning any other actions or issues. CBA p. 13.
>
> 3. The CBA further states that grievances must contain a statement of the complaint and the relief or remedy sought. The grievance at issue in this matter states Robert Green has not been disciplined in the past five (5) years and Mr. Green has been employed with the City of Norman (City) for over thirty 30 years. (Official Grievance Form, Robert Green). Further, in the "adjustment required" section, Mr. Green requested the City "follow progressive discipline." *Id.* As such, the Court finds the authority of the arbitrator in this matter, Mr. Bankston, was limited to the issue of progressive discipline.
>
> 4. Mr. Bankston did not limit his analysis and decision making to the issue of progressive discipline. Rather, Mr. Bankston analyzed whether the City had just cause to terminate Mr. Green and Mr. Fox. *See, Arbitration Opinion and Award of E.W. Bankston, Arbitrator,* issued November 24, 2014, pg. 3. Mr. Bankston's Arbitration Opinion and Award (Opinion and Award) states "just cause is always at issue in matters of discipline. First, the City must prove that the cause of the disciplinary sanction is just. Only then is the application of progressive discipline at issue." *Id.* at 18. As a result, Mr. Bankston did not address the issue of progressive discipline.
>
> 5. Based upon the language of the CBA referenced above as well as the grievances filed by Mr. Green and Mr. Fox, the Court finds the Opinion and Award issued by Mr.

> Bankston conflicts with the express terms of the CBA. The Court believes it is clear that the only issue that should have been addressed by Mr. Bankston was progressive discipline. Therefore, the Court finds that by addressing the issue of just cause and basing the award on the same, Mr. Bankston exceeded his authority as arbitrator. As such, the Opinion and Award does not draw its essence from the CBA. Consequently, the Opinion and Award must be vacated.[15]

¶18 Following the trial court's ruling, Green filed a Petition in Error urging the trial court erred both in fact and law when it vacated the arbitrator's decision. COCA affirmed the trial court but remanded the matter back to the trial court with instructions to remit this matter to the arbitrator to resolve the issue of progressive discipline. We hold the arbitrator acted in accordance with the terms of the CBA and we vacate the Court of Civil Appeals' opinion, and reverse the trial court's judgment.

STANDARD OF REVIEW

¶19 This Court has adopted the review standard set forth by the U.S. Supreme Court in the *Steelworkers Trilogy,*[16] which affords "great deference to the decision of the arbitrator; we will not review the factual or legal findings of the arbitrator nor consider the merits of the award. *City of Yukon, supra*. 1990 OK 48, at ¶ 8, 792 P.2d at 1179 (citations omitted).

LEGAL ANALYSIS

¶20 The U.S. Supreme Court has continued to refine the standard of review in the enforcement of arbitration awards rendered under a collective bargaining agreement. *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987). Relying on the foundation of the *Steelworkers Trilogy, Misco* reminded litigants that the courts have a very limited role when the losing party in an arbitration proceeding seeks judicial intervention. *Id.* at 36, 108 S.Ct. at 364. COCA affirmed "the trial court's determination that the arbitrator exceeded his powers under the CBA when he made findings of fact and conclusions regarding the issue of 'just cause.'"[17] In order to clarify whether an award "draws its essence from the contract" or whether it impermissibly reflects the "arbitrator's own notions of industrial justice," *Misco* offers this guidance: "as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." *Id.* at 38, 108 S.Ct. at 364. However, arbitral decisions procured by fraud or through the arbitrator's dishonesty are not enforceable. *Id.* at 38, 108 S.Ct. at 371. There are no allegations or evidence of fraud or dishonesty in the matter before us. Thus, the focus of our inquiry will be whether the arbitrator was arguably construing or applying the contract and acting within his scope of authority.

¶21 This approach honors the purpose of arbitration "to preclude court intervention into the merits of disputes when arbitration has been provided for contractually." *Voss, supra,* 1980 OK 148, ¶ 5, 618 P.2d at 927. The teachings of *Misco* have been adopted by this Court, that the courts are not authorized to reconsider the merits of an award, even with allegations of errors of fact or misinterpretation of the contract. *City of Yukon, supra*. 1990 OK 48, ¶ 8, 792 P.2d at 1179.

¶22 It is not for this Court to weigh the evidence below to determine whether: (1) the arbitrator's decision is supported by the facts, (2) the arbitrator correctly interpreted the contract, or (3) the arbitrator correctly applied the facts to the provisions of the contract. The lens of our review is restricted to whether the arbitrator, in formulating the Opinion and Award at issue, was arguably construing or applying the contract and acting within the scope of his authority therein. *City of Yukon*, *Id.*

¶23 We begin with examining the CBA and the grant of authority given to the arbitrator. The section of the CBA labeled "Authority of the Arbitrator" clearly provides that the arbitrator's decision shall be based solely upon the arbitrator's interpretation of the meaning and application of the express provisions of this Agreement as such relates to the facts of the grievance as presented.[18] As noted by City, trial court and COCA, the arbitrator is limited and "shall only consider and make a decision with respect to the specific issue or action being appealed to him or her in the grievance(s), and the arbitrator shall have no right or authority to make a decision concerning any other action or issues."[19] There is no question from the CBA that the arbitrator is the sole decision maker upon receiving evidence and analyzing within the provisions of the CBA. The arbitrator's decision is limited to the actions or issues listed in the grievance.

¶24 Next we examine the grievance as submitted by Union and Green to determine whether the issue of "just cause" is an issue listed within the grievance and thus, within the scope of the arbitrator's authority. Beside the heading, "List applicable violation," the very first provision listed is Article 12, Section 1. As noted herein, the very first sentence of this CBA provision states: "The City may discipline for just cause." Thus, this is the section within the CBA that includes a discussion of just cause. The CBA outlines that an "issue" includes "the meaning, interpretation or application of the express provisions"[20] of the CBA. The CBA further directs that the "Grievance Form" must contain the "Section(s) of the Agreement allegedly violated"[21] and the relief sought.

¶25 The submitted grievance lists the section alleged as being violated, Article 12, Section 1. As previously noted, the very first sentence of Article 12, Section 1, provides that "the City may discipline for ***just cause***."[22] We agree with *Misco,* that the focus of the our inquiry is to determine whether the arbitrator was *arguably construing or applying the contract and acting within his scope of authority*[23] in deciding that the City did not have "just cause" to terminate Green. Stating the question differently, was the arbitrator acting within the scope of his authority when he examined the very provision of the CBA listed by grievants, Article 12, Section 1, which makes "just cause" the premise for any disciplinary action? Before answering this question, we are reminded that under the CBA, the arbitrator was given the sole authority to serve as the decision maker "with respect to the specific issue or action being appealed to him or her in the grievance(s)." The arbitrator examined the section listed in the grievance, analyzed it with respect to the evidence and rendered a decision. It is elementary that it is within the scope of authority for the arbitrator to examine the very provision of the CBA listed in the grievance. Arbitrator was clearly "arguably acting within the scope of authority," when examining Article 12, Section 1, and rendering a decision that included an analysis of whether City had "just cause" to discipline Green. We hold that under the facts presented, the arbitrator was acting within the scope of his authority when deciding the issue whether City had "just cause" to terminate the employment of Green. In accordance with the terms of the CBA, the arbitrator's decision is final and binding in this regard.

¶26 It was also error for COCA to affirm the district court's decision relying on the four-part test set forth in *Cement Divisions., Nat. Gypsum Co. (Huron) v. United Steelworkers of America, AFL-CIO-CLC, Local 135*, 793 F.2d 759 (6th Cir. 1986). This four part test was specifically overruled in 2007 when the 6th Circuit determined that the four part test was not in accordance with the guidance of the U.S. Supreme Court. *Michigan Family Resources, Inc., v. Service Employees Intern. Union Local 517M,* 475 F.3d 746 (6th Cir. 2007). *Michigan Family* relied on the pronouncements of *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.,* 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987) and *Major League Baseball Players Ass'n v. Garvey,* 532 U.S. 504, 121 S.Ct. 1724, 149 L.Ed.2d 740 (2001).[24] Relying on the pronouncements of *Misco*, the *Michigan Family* court instead posed the following questions: (1) did the arbitrator act outside his authority by resolving a dispute not committed to arbitration, (2) did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award, or (3) in resolving any legal or factual disputes in the case, was the arbitrator "arguably construing or applying the contract?" *Michigan Family,* 475 F.3d at 753.

¶27 The opinion of the Court of Civil Appeals is vacated and the judgment of the district court is reversed. We remand for proceedings consistent with this opinion.

CERTIORARI PREVIOUSLY GRANTED; OPINION OF THE COURT OF CIVIL APPEALS VACATED; JUDGMENT OF THE DISTRICT COURT IS REVERSED AND REMANDED

GURICH, C.J., DARBY, V.C.J., KAUGER, WINCHESTER, EDMONDSON, COLBERT, and COMBS, JJ., concur.

EDMONDSON, J.

1. Plaintiff William Fox and the City of Norman reached an agreement resolving the arbitration award with respect to Fox's interests and therefore Fox is not a party to this appeal.

2. Record, Tab 2, B, Agreement Between The City of Norman, Oklahoma and American Federation of State, County, and Municipal Employees Local No. 2875, (CBA), Preamble, p. 1.

3. *Id.*, Article 7, Section 8 (d), Authority of Arbitrator, p. 13.

4. *Id.*, Article 7, Section 1 (a), (c), pp. 5-6.

5. *Id.*

6. *Id.*, Article 12, Section 1, p. 23

7. *Id.*, Article 7, Section 5, (a)-(b), Grievance Filing Requirement and Procedure, Record, pp. 8-9.

8. *Id.*, App. D, Official Grievance Form.

9. Record, Tab 6, Defendant's Response and Objection to Plaintiffs' Motion for Partial Summary Judgment and Cross-Motion for Summary Judgment and Brief in Support, Exhibit 1, AFSCME, Official Grievance Form.

10. Record, Tab 2 (B), CBA, Article 12, Disciplinary Actions, p. 23

11. Record, tab 2, C, Opinion and Award of Ed W. Bankston, Arbitrator, In a Matter of Dispute Between: City of Norman, Oklahoma and American Federation of State, County and Municipal Employees, Local 2875, dated 11-24-14, p.46.

12. *Id*. at p. 45.

13. *Id*.

14. Record, tab 2, Petition to Enforce Arbitration Award.

15. Record, Tab 11, Ruling on Plaintiffs' Partial Motion for Summary Judgment and Defendant's Cross-Motion for Summary Judgment.

16. *United Steelworkers v. Warrior & Gulf Navigation Co*., 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960), (questions regarding whether a collective bargaining agreement requires a dispute to be resolved through arbitration, "[d]oubts should be resolved in favor of coverage," and an order to arbitrate should not be denied unless there it is clear that the arbitration clause does not cover the asserted dispute. *Id*. at 582-83, 80 S.Ct. at 1347; *United Steelworkers v. American Manufacturing Co*., 363 U.S. 564, 80 S.Ct. 1363, 4 L.Ed.2d 1432 (1960), (where the collective bargaining agreement directs contract disputes to arbitration, questions of contract interpretation are for the arbitrator. *Id*. at 568, 80 S.Ct. at 1363. The Court noted that courts "have no business weighing the merits of the grievance, considering whether there is equity in a particular claim...." *Id*.; *United Steelworkers v. Enterprise Wheel & Car Corp*., 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960), (the Court examined the role of the federal courts in enforcing arbitration awards).

17. *American Federation of State, County and Municipal Employees, Local 2875, Robert Green, Plaintiffs/Appellants, and William Fox, Plaintiff, vs. City of Norman, Oklahoma, a Municipal Corporation, Defendant/Appellee*, Case No. 114,640, Opinion from the Court of Civil Appeals.

18. Record, Tab 2, B, CBA, Article 7, Section 8 (d), p. 13.

19. *Id*.

20. *Id*., Article 7, Section 1, Issues and Actions Subject to Grievance, p. 5.

21. *Id*., Article 7, Section 5, Grievance Filing Requirement and Procedure, p. 8.

22. *Id*., Article 12, Disciplinary Actions, p. 23.

23. *Misco, supra*. 484 U.S. at 38, 108 S.Ct. at 364.

24. *See also, Eastern Associated Coal Corp. v. Mine Workers*, 531 U.S. 57, 62, 121 S.Ct. 462, 466, 148 L.Ed.2d 354, reiterating that even when a court is convinced the arbitrator committed serious error, this alone does not suffice to overturn an honest arbitrator's decision; *Garvey, supra*, 532 U.S. at 509, 121 S.Ct. at 1728, judicial review is limited in an arbitration decision and courts are not authorized to review decision even with allegations of factual errors or misinterpreting the collective bargaining agreement.

2019 OK 36

IN THE MATTER OF THE REINSTATEMENT OF: RUTH BRUMMETT RICKEY TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION AND TO THE ROLL OF ATTORNEYS

SCBD 6717. May 14, 2019

ORIGINAL PROCEEDING FOR RULE 11 BAR REINSTATEMENT

¶0 Petitioner, Ruth Brummett Rickey, filed a petition for reinstatement to membership in the Oklahoma Bar Association. The Oklahoma Bar Association recommends that Petitioner's reinstatement be conditioned on her successful completion of the Oklahoma Bar Exam. The Professional Responsibility Tribunal unanimously recommended that Petitioner's reinstatement be conditioned on her successfully completing the Oklahoma Bar Exam, completing CLE courses for the calendar year in which she is reinstated, and paying costs and dues. After our *de novo* review, we find the Petitioner should be reinstated contingent on her successfully passing the Oklahoma Bar Exam, and payment of membership dues and completion of the required continuing legal education for the year she passes the bar exam.

REINSTATEMENT GRANTED UPON SUCCESSFUL COMPLETION OF THE CONDITIONS SET OUT IN THIS OPINION

Ruth Brummett Rickey, Petitioner/*Pro Se*.

Tracy Pierce Nester, Assistant General Counsel, Oklahoma Bar Association, Oklahoma City, Oklahoma, for Respondent.

COMBS, J.:

¶1 On November 2, 2018, the Petitioner, Ruth Brummett Rickey, filed her Petition for Reinstatement requesting she be readmitted as a member of the Oklahoma Bar Association (OBA) pursuant to Rule 11, Rules Governing Disciplinary Proceedings, 5 O.S. 2011, Ch. 1, App. 1-A (RGDP). Petitioner graduated from the Oklahoma University School of Law in 1987. She was admitted to practice law that same year. During law school, she worked as a Licensed Legal Intern. Petitioner practiced law for six years after graduating law school. At her first firm, she devoted most of her time to bankruptcy proceedings. After three years, she was recruited to another firm where she primarily worked bankruptcy cases. She remained with her second firm for four years until she voluntarily left due to firm-wide internal conflict.[1] She reviewed contracts for a short term at Eagleton & Nicholson. In 1994, she worked as a hearing officer for the Oklahoma Employment Securities Division. She remained in that position for the allotted six months. The position did not require a licensed attorney. Petitioner let her license lapse and was stricken from the rolls of the Oklahoma Bar Association in 1995 for failure to complete CLEs in 1993 and failure to pay dues in 1994.[2]

¶2 Petitioner went on to work as a cake decorator and eventually opened her own bakery. In 2001, Petitioner was diagnosed with a rare form of leukemia and due to medical complications was unable to work for several years. Once petitioner was able, she began participating in several charitable organizations. These organizations focus on the advancement of leukemia research and providing financial assistance to those undergoing medical treatment. In 2018, she began working part-time for Allegiance Credit Union. After filing her petition, the Professional Responsibility Tribunal (PRT) held a hearing pursuant to Rule 6, RGDP. The

Petitioner testified she has worked her way up to a full-time position and on the urging of the Credit Union's CEO and CFO began seeking reinstatement. The CEO testified that Petitioner would be an asset to the credit union by saving them the costs of outside counsel. Petitioner's role should she be reinstated would focus on compliance matters, vendor management, contract review, and handling creditor proceedings.

¶3 The PRT recommends that Petitioner's reinstatement be denied until she successfully completes the Oklahoma Bar Exam, completes the required CLEs for the year she is reinstated, and pays fees and dues. It found by clear and convincing evidence that the Petitioner has shown she possesses good moral character sufficient to be admitted to the OBA and that she has not engaged in the unauthorized practice of law. However, she did not demonstrate by clear and convincing evidence that she possesses the required competence in the learning of the law. Therefore the PRT conditioned her reinstatement on successful completion of the bar exam. The Respondent, OBA, agreed with the PRT in its answer brief that Petitioner should be required to successfully complete the OBA Bar Exam before her reinstatement.

STANDARD OF REVIEW

¶4 This Court has the non-delegable, constitutional responsibility to regulate both the practice and the ethics, licensure, and discipline of Oklahoma practitioners of the law. *In re Reinstatement of Kerr*, 2015 OK 9, ¶6, 345 P.3d 1118. Our review of the record is made *de novo. State ex rel. Oklahoma Bar Association v. Hulett*, 2008 OK 38, ¶4, 183 P.3d 1014. In a proceeding involving no prior imposition of discipline for lawyer professional misconduct, the focus of our inquiry concerns 1) the present moral fitness of the applicant; 2) conduct subsequent to suspension as it relates to moral fitness and professional competence; 3) whether the attorney has engaged in the unauthorized practice of law; and 4) whether the attorney has complied with the rule-mandated requirements for reinstatement. *In re Reinstatement of Christopher,* 2014 OK 73, ¶5, 330 P.3d 1221. The PRT's recommendations concerning these matters, while entitled to great weight, are advisory in character and the ultimate decision rests with this Court. *In re Reinstatement of Pate*, 2008 OK 24, ¶3, 184 P.3d 528; *In re Reinstatement of Floyd*, 1989 OK 83, ¶3, 775 P.2d 815. Rule 11.4, RGDP, provides an applicant seeking reinstatement will be required to present stronger proof of qualifications than one seeking admission for the first time. In addition, Rule 11.5, RGDP provides as an element in pertinent part:

> (c) Whether or not the applicant possesses the competency and learning in the law required for admission to practice law in the State of Oklahoma, except that any applicant whose membership in the Association has been suspended or terminated for a period of five (5) years or longer, or who has been disbarred, shall be required to take and successfully pass the regular examination given by the Board of Bar Examiners of the Oklahoma Bar Association. Provided, however, before the applicant shall be required to take and pass the bar examination, he shall have a reasonable opportunity to show by clear and convincing evidence that, notwithstanding his long absence from the practice of law, he has continued to study and thus has kept himself informed as to current developments in the law sufficient to maintain his competency. If the Trial Panel finds that such evidence is insufficient to establish the applicant's competency and learning in the law, it must require the applicant to take and pass the regular bar examination before a finding as to his qualifications shall be made in his favor.

We have held this provision creates a rebuttable presumption that one who has been suspended for five years will not possess sufficient competency in the law to be reinstated, absent an extraordinary showing to that effect. *In re Reinstatement of Farrant*, 2004 OK 77, ¶7, 104 P.3d 567. Each application for reinstatement to the OBA must be considered on its own merits. *In re Reinstatement of Kerr,* 2015 OK 9, ¶19, 345 P.3d 1118.

ANALYSIS

I. Moral Fitness

¶5 Except for her suspension in 1995 for failure to pay dues and complete her CLEs, the Petitioner has never faced disciplinary action. Nine letters were admitted as evidence that strongly supported a finding that Petitioner possessed good moral character.[3] Additionally, the petitioner has engaged in several philanthropic activities fundraising and advocating for cancer research.[4] Testimony at the hearing also supported Petitioner's good moral character.[5] No contrary evidence was presented. The PRT found Petitioner had shown by clear and convincing evidence that she possessed the

good moral character to be readmitted to the OBA. After an examination of the record, we agree with this finding.

II. Professional Competence Sufficient for Reinstatement

¶6 Rule 11.5, RGDP, requires a petitioner for reinstatement to show they possess the competency and learning in the law required for admission. If they have been suspended or terminated for more than five years, there is a rebuttable presumption they will be required to retake the regular bar examination. In determining competency, our precedent has placed an emphasis on law-related work following suspension. We have also considered other ways a petitioner has kept abreast of the law including the completion of continuing legal education courses and the reading of bar journals.

¶7 In *In re Reinstatement of Bodnar*, this Court noted some of our previous opinions had rejected a finding of competency when the petitioner's preparation had consisted mainly of completing only twelve to twenty-four hours of continuing legal education courses prior to petitioning for reinstatement. 2016 OK 12, ¶23, 367 P.3d 916.

¶8 By contrast, other opinions have given great weight to a petitioner's work experience and approved reinstatement. In *In re Reinstatement of Gill*, a lawyer was licensed to practice law in Oklahoma in 1979 and was later suspended for failure to pay dues in 1983. 2016 OK 61, ¶¶ 1, 2, 376 P.3d 200. She was also licensed to practice law in California and did so until 1999. *Gill,* 2016 OK 61, ¶1. From 2001 through 2013, she worked for an urban land use planning company. *Id*. ¶8. She placed her California bar license on inactive status in 2002, but continued to take continuing legal education courses. *Id.* ¶7-8. She was not practicing law for the company, however, her duties included drafting and managing contracts, assisting the management of the company's legal teams and performing work concerning environmental compliance. *Id.* ¶8. In 2014, she moved back to Oklahoma and performed clerical and administrative tasks as well as supervised legal research for a law firm. *Id.* ¶11-12. The following year she petitioned for reinstatement. *Id.* ¶1. Since 2015 she had also completed twenty-four hours of continuing legal education. *Id.* ¶14. The PRT recommended reinstatement and this Court agreed finding she possessed the competency and learning in the law required for reinstatement without re-taking the bar examination. *Id.* ¶22.

¶9 In cases where a Petitioner was unable to show he possessed competency and learning in the law, this Court has allowed reinstatement conditioned on the applicant successfully completing the Oklahoma Bar Exam. In *In re Reinstatement of Drain*, the petitioner voluntarily left the practice of law and for three years managed a business. 2016 OK 68, ¶¶3-4, 376 P.3d 208. The attorney also worked as a paralegal before requesting reinstatement ten years after leaving the practice of law. *Drain,* 2016 OK 68, ¶¶5-7. This Court stated that "in order for petitioner to demonstrate his competency and learning in the law, Petitioner must retake and successfully pass the Oklahoma Bar Examination." *Id.* ¶14. Similarly, in *In re Reinstatement of Duke,* the Petitioner resigned from the practice of law for sixteen years pending disciplinary action. 2016 OK 58, ¶1, 382 P.3d 501. When Petitioner applied for reinstatement, his law-related work experience consisted of writing courses for legal assistant certifications for eight years and work as a paralegal for less than a year. *Duke*, 2016 OK 58, ¶3-5. This Court took issue only with the Petitioner's lack of competency and learning in the law. *Id.* ¶11. This Court granted reinstatement on the condition that Petitioner successfully complete the Oklahoma Bar Exam. *Id*.

¶10 In the present matter, the Petitioner has taken twenty-one hours of continuing legal education in the previous year.[6] The Trial Panel's Report determined that Petitioner has completed five to six Kaplan bar review modules with three to six hours of lecture per model.[7] Petitioner's work after her license lapsed does not include hands-on supervised legal experience. The Petitioner's relevant work for the past year consists of reviewing contracts and researching news and other states' laws.[8] The Petitioner has not practiced law or engaged in law-related work for 25 years. One year of continued legal education and completing Kaplan bar review modules after 25 years does not display sufficient learning and competence in the law. Especially when the standard requires stronger proof of qualifications than one seeking admission for the first time. Rule 11.4, RDGP.

¶11 Rule 11.5, RGDP, states only one restriction that may be imposed on attorneys who do not show the necessary learning and competence in the law – passage of the Oklahoma Bar Exam. This Court's precedent is consistent with that directive. The PRT recommended that the

Petitioner's reinstatement be conditioned upon her successful completion of the Oklahoma Bar Exam. We agree with this recommendation.

III. Unauthorized Practice of Law

¶12 Rule 11.1, RGDP provides a mechanism for determining whether a petitioner has engaged in the unauthorized practice of law. Paragraph (a) of the rule requires the petitioner to submit an affidavit, attached to the petition for reinstatement, from each court clerk of the several counties in which she resided after suspension or termination of the right to practice law, establishing the petitioner has not practiced law in their respective courts during that period. Petitioner submitted her affidavit wherein she attests to not having engaged in the unauthorized practice of law since her suspension.[9] She provided an affidavit from Oklahoma County, Oklahoma wherein the Court Clerk attests the Petitioner has not appeared before any judge in the county since her suspension.[10] Jamie Lane, the Investigator for the General Counsel's Office of the Oklahoma Bar Association, testified at the January 24, 2019, PRT hearing. She stated her investigation into whether the petitioner engaged in the unauthorized practice of law found no cause for concern.[11]

¶13 The PRT's report found the Petitioner had proven by clear and convincing evidence she has not engaged in the unauthorized practice of law nor has she appeared in court as an attorney of record for any party or in any litigation. We find no evidence to the contrary.

MCLE, BAR DUES, AND APPLICATION TO ASSESS COSTS

¶14 An affidavit from the OBA's MCLE Administrator states the Petitioner does not owe any MCLE credit or any MCLE fees.[12] An affidavit from the OBA's Director of Administration states the Petitioner will owe only her current membership dues of two hundred and seventy-five dollars ($275.00) for the year of her reinstatement.[13] The OBA filed an Application to Assess Costs, pursuant to Rule 11.1 (c), RGDP. The application requests the Petitioner pay, on a date certain, the amount of two hundred and fourteen dollars and eighty-nine cents ($214.89) for the expenses related to this investigation. It indicates the Petitioner has already been invoiced directly for the costs of the transcript of the proceedings. On February 26, 2019, the OBA filed a receipt of costs stating all costs in this matter have been paid. The record also reflects no payments have ever been expended from the Clients' Security Fund on the Petitioner's behalf.

CONCLUSION

¶15 We hold the Petitioner has demonstrated her moral fitness and that she has not engaged in the unauthorized practice of law, however she has failed to demonstrate her competency and learning of the law by clear and convincing evidence. To demonstrate her competency and learning in the law, Petitioner must retake and successfully pass the Oklahoma Bar Examination. She shall also be required to pay the OBA membership dues and complete the required continuing legal education for the year she passes the bar exam.

¶16 Upon the successful completion of the Oklahoma Bar Exam, and payment of membership dues and completion of the required continuing legal education for the year she passes the bar exam, Ruth Brummett Rickey shall be reinstated to membership in the Oklahoma Bar Association and her name shall be added to the roll of attorneys.

REINSTATEMENT GRANTED UPON SUCCESFUL COMPLETION OF THE CONDITIONS SET OUT IN THIS OPINION

¶17 Gurich, C.J., Darby, V.C.J., Edmondson, Colbert and Combs, JJ., concur;

¶18 Kauger and Winchester, JJ., dissent.

¶19 **Kauger, J., with whom Winchester, J., joins, dissenting:**

I would reinstate the petitioner instanter.

COMBS, J.:

1. Four years after Petitioner left the firm, her supervisor resigned pending disciplinary proceedings by the Oklahoma Bar Association for misappropriation of funds and a criminal investigation for misappropriation and embezzlement while serving as a bankruptcy trustee. His twenty-count indictment was negotiated down to a single guilty plea after he restored $105,000 to the bankruptcy estate. He was reinstated in 2009. *In re Reinstatement of Mumina*, 2009 OK 76, ¶ 1- 2, 225 P.3d 804.

2. Exs. 3 & 4, *Jt. Hearing Exhibits*, for the PRT hearing held Jan. 24, 2019.

3. Exs. 13-20, 22, *Jt. Hearing Exhibits*, for the PRT hearing held Jan. 24, 2019.

4. Tr. at 26, *In re Reinstatement of: Ruth Brummett Rickey* (SCBD #6717; Jan. 24, 2019).

5. *Id.* at 73-74.

6. Ex. 9, *Jt. Hearing Exhibits*, for the PRT hearing held Jan. 24, 2019.

7. Pg 4 Trial Panel Report

8. Tr. at 72, 79-80, *In re Reinstatement of: Ruth Brummett Rickey* (SCBD #6717; Jan. 24, 2019).

9. Ex. 11, *Jt. Hearing Exhibits*, for the PRT hearing held Jan. 24, 2019.

10. Ex. 10, *Jt. Hearing Exhibits*, for the PRT hearing held Jan. 24, 2019.

11. Tr. at 92, *In re Reinstatement of: Ruth Brummett Rickey* (SCBD #6717; Jan. 24, 2019).

12. Ex. 7, *Jt. Hearing Exhibits*, for the PRT hearing held Jan. 24, 2019.

13. Ex. 5, *Jt. Hearing Exhibits*, for the PRT hearing held Jan. 24, 2019.

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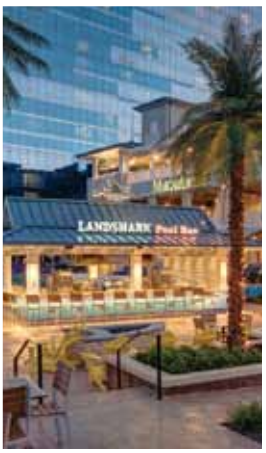

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NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF TAMMY LAVERNE BASS-LESURE, SCBD #6765 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

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 Tammy Laverne Bass-Lesure 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, JUNE 18, 2019**. 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

2019 OK CR 7

SALVADOR MARTINEZ, Petitioner, v. THE STATE OF OKLAHOMA, Respondent.

No. PC-2017-322. May 9, 2019

ORDER DENYING MOTION TO SUPPLEMENT THE RECORD ON APPEAL, AND DENYING POST-CONVICTION RELIEF

¶1 The Petitioner has appealed to this Court from an order of the District Court of Oklahoma County denying his application for post-conviction relief in Case No. CF-2004-4488. Petitioner has also tendered for filing a motion to supplement the record in this matter with the transcripts of his jury trial and sentencing hearings. The Clerk of this Court is directed to file the tendered motion. Petitioner has not established that those transcripts are a necessary part of the record in this matter. *See* Rule 5.2(C)(6), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019). The motion to supplement the record is **DENIED**.

¶2 Petitioner was sixteen years old when he committed his crimes in Case No. CF-2004-4488. He was convicted by a jury of Murder in the First Degree (Count 1) and Shooting with Intent to Kill (Counts 2 and 3). He was sentenced in accordance with the jury's verdict to life imprisonment on Count 1, and fifteen years imprisonment on each of Counts 2 and 3, with the sentences ordered to run consecutively. Petitioner appealed to this Court and his Judgment and Sentence was affirmed. *Martinez v. State*, No. F-2006-1027 (Okl.Cr. February 11, 2008)(not for publication).

¶3 Petitioner's arguments in this matter are primarily based upon this Court's decision in *Luna v. State*, 2016 OK CR 27, 387 P.3d 956, and the United States Supreme Court decisions in *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012)(holding the Eighth Amendment's cruel and unusual punishments clause forbids a sentencing scheme that mandates life in prison without the possibility of parole for all juvenile offenders) and *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016)(holding *Miller* announced a new substantive rule of constitutional law that must be applied retroactively in cases on collateral review). The Supreme Court had previously held that the Eighth Amendment's cruel and unusual punishments clause categorically prohibits imposition of life without parole sentences on juvenile offenders who committed non-homicide offenses. *Graham v. Florida*, 560 U.S. 48, 74, 130 S.Ct. 2011, 2030, 176 L.Ed.2d 825 (2010).

¶4 After the District Court issued its order denying Petitioner's application for post-conviction relief, the United States Court of Appeals for the Tenth Circuit issued its decision in *Budder v. Addison*, 851 F.3d 1047 (10th Cir.), *cert. denied*, ___U.S.___, 138 S.Ct. 475, 199 L.Ed.2d 374 (2017). In *Budder*, the juvenile defendant was convicted of two counts of first degree rape, one count of assault and battery with a deadly weapon, and one count of forcible oral sodomy committed when he was sixteen years old. *Id.* at 1049. His sentence, as modified by this Court, totaled three life terms plus twenty years all to be served consecutively, making him eligible for parole only after serving 131.75 years in prison.[1] *Id.* at 1049-50. The Tenth Circuit, viewing the four sentences in the aggregate as though they were one, interpreted *Graham* and its progeny as applying to "any sentence that denies a juvenile nonhomicide offender a realistic opportunity to obtain release in his or her lifetime, whether or not that sentence bears the specific label 'life without parole.'" *Id.* at 1057.

¶5 *Budder* was a federal habeas action brought pursuant to 28 U.S.C. § 2254, under which a federal court may grant relief upon a finding that a state court's ruling was an unreasonable application of federal law as determined by the United States Supreme Court. The Tenth Circuit held it clearly established that *Graham* applied to offenders with multiple crimes and multiple charges. *Budder*, 851 F.3d at 1057. However, we do not find it clearly established law, and on the contrary, find it is a question which continues to divide state and federal courts. Missouri, Colorado, Pennsylvania, and Minnesota are among those states that have held that each individual sentence must be analyzed separately under the Eighth Amendment. *See Commonwealth v. Foust*, 2018 Pa. Super. 39, 180 A.3d 416 (2018); *Will-*

banks v. Dep't of Corr., 522 S.W.3d 238, (Mo.), *cert. denied*, ___U.S.___, 138 S.Ct. 304, 199 L. Ed.2d 125 (2017); *Lucero v. People*, 2017 CO 49, 394 P.3d 1128, *cert. denied*, ___U.S.___, 138 S.Ct. 641, 199 L.Ed.2d 544 (2018); *State v. Ali*, 895 N.W.2d 237 (Minn. 2017), *cert. denied*, ___U.S.___, 138 S.Ct. 640, 199 L.Ed.2d 543 (2018). Other state and federal courts have held that the cumulative effect of multiple sentences is the benchmark for compliance with the Eighth Amendment. *See Budder,* 851 F.3d at 1057, 1059 (holding multiple sentences which, when considered in the aggregate, would have required juvenile defendant to serve 131.75 years prior to parole eligibility for non-homicide offenses, violated the Eighth Amendment); *State v. Ramos,* 187 Wash. 2d 420, 439, 387 P.3d 650, 660 (2017) ("Whether that sentence is for a single crime or an aggregated sentence for multiple crimes, we cannot ignore that the practical result is the same."), *cert. denied*, ___U.S.___, 138 S.Ct. 467, 199 L.Ed.2d 355 (2017). This Court has an independent duty and authority to interpret decisions of the United States Supreme Court. *Brown v. State*, 1997 OK CR 1, ¶ 24, 933 P.2d 316, 323 ("While it is true that the Supremacy Clause of the United States Constitution demands that state law yield to federal law, it is also true that neither the federal Supremacy Clause nor any other principle of law requires that this state court's interpretation of federal law give way to a lower federal court's interpretation."). *See also Johnson v. Williams*, 568 U.S. 289, 305, 133 S.Ct. 1088, 1098, 185 L.Ed. 2d 105 (2013)("But the views of the federal courts of appeals do not bind the California Supreme Court when it decides a federal constitutional question, and disagreeing with the lower federal courts is not the same as ignoring federal law."); *Evans v. Thompson*, 518 F.3d 1, 8 (1st Cir. 2008)("State courts are not bound by the dictates of the lower federal courts, although they are free to rely on the opinions of such courts when adjudicating federal claims."); *Surrick v. Killion,* 449 F.3d 520, 535 (3d Cir. 2006)("[D]ecisions of the federal district courts and courts of appeal[s], including those of the Third Circuit Court of Appeals, are not binding on Pennsylvania courts, even when a federal question is involved.") (internal quotation omitted); *Freeman v. Lane*, 962 F.2d 1252, 1258 (7th Cir. 1992)("In passing on federal constitutional questions, the state courts and the lower federal courts have the same responsibility and occupy the same position; there is a parallelism but not paramountcy for both sets of courts are governed by the same reviewing authority of the Supreme Court.")(internal quotations omitted).

¶6 We also note that *Budder* involved non-homicide offenses and nowhere in the opinion does it address juvenile homicide offenders. In this case, Martinez was sixteen years old when he and two fellow gang members walked up to a residence and opened fire with a revolver and an assault rifle. While driving away, they fired additional shots at the residence from their vehicle. Two adult women inside were wounded and a nine-year-old boy sleeping on the couch was killed by the gunfire. According to the transcript of his sentencing hearing, Martinez was accused in four previous drive-by shootings and, at the time of the shooting in this case, was wearing a GPS ankle monitor while on pre-trial release concerning one of those prior shootings. If his sentences are considered in the aggregate and his sentences of life in prison plus thirty years constitute one *de facto* sentence of life without parole, and if Martinez is not found to be incorrigible, one or more of his heinous crimes are likely to be forever erased for purposes of sentencing. This is troubling, because even after *Graham, Miller,* and *Montgomery,* "defendants convicted of multiple offenses are not entitled to a 'volume discount' on their aggregate sentence." *Foust,* 2018 Pa. Super. 39, 180 A.3d at 434. Thus, we hold that where multiple sentences have been imposed, each sentence should be analyzed separately to determine whether it comports with the Eighth Amendment under the *Graham/Miller/Montgomery* trilogy of cases, rather than considering the cumulative effect of all sentences imposed upon a given defendant.

¶7 Petitioner claims that he is currently scheduled for parole consideration on his life sentence on Count 1 in October of 2042, when he will be 54 years old. He calculates that he will have to serve an additional 25½ years, 85% of his two 15 year sentences, before being eligible for parole on Counts 2 and 3. Petitioner claims he will thus not be eligible for release on parole until he is 79 years old, which he claims is past his life expectancy. Petitioner argues that his consecutive sentences in Case No. CF-2004-4488 constitute a *de facto* sentence of life without parole for a crime committed as a juvenile and thus, his sentences violate the United States and Oklahoma Constitutions' ban on cruel and unusual punishment, pursu-

ant to *Miller* and *Montgomery*. We find that they do not.

¶8 A State is not required to guarantee eventual freedom to a juvenile offender. *Graham,* 560 U.S. at 74, 130 S.Ct. at 2030; *Miller,* 567 U.S. at 479, 132 S.Ct. at 2469. Based upon the length of Petitioner's sentences and the current status of the law, we find that Petitioner has some meaningful opportunity to obtain release on parole during his lifetime. Petitioner's post-conviction appeal should be, and is hereby, **DENIED**.

¶9 Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2019), the **MANDATE** is **ORDERED** issued forthwith upon the filing of this decision with the Clerk of this Court.

¶10 **IT IS SO ORDERED**.

¶11 **WITNESS OUR HANDS AND THE SEAL OF THIS COURT** this 9th day of May, 2019.

/s/ DAVID B. LEWIS,
Presiding Judge

/s/ DANA KUEHN,
Vice Presiding Judge

/s/ GARY L. LUMPKIN,
Judge

/s/ ROBERT L. HUDSON,
Judge

/s/ SCOTT ROWLAND,
Judge

ATTEST:
John D. Hadden
Clerk

LEWIS, PRESIDING JUDGE, DISSENTING:

¶1 I respectfully dissent. The Eighth Amendment, as interpreted in *Miller v. Alabama,* imposes substantive limitations on a State's permanent imprisonment of juvenile homicide offenders. The majority intends to take the narrowest possible approach to these limitations in as many cases and for as long as possible, until the United States Supreme Court enjoins it to do otherwise. I would grant post-conviction relief according to principles already clearly established in *Miller*.

¶2 The Court today seeks to avoid *Miller's* constitutional limitations in two disagreeable ways. The first, and most doubtful, is the contrivance of viewing a series of consecutive sentences without regard to their aggregate effect and probable administration by State corrections officials. The second is the Court's admittedly cunning suggestion that no clearly established federal law is involved in its method, by which the Court hopes to insulate its extreme approach from unwelcome scrutiny in federal habeas proceedings. I part with the majority in my view that *Miller* logically dictates and clearly establishes enforceable limits on the State's power to punish Petitioner and others like him.

¶3 If consecutive sentences imposed on a juvenile homicide offender, considered in the aggregate, guarantee that the offender will die in prison without any reasonable opportunity to obtain release, the offender's punishment is equivalent to life without parole. Life without parole is a legal punishment for a juvenile homicide offender, but it must either comply with, or yield to, the constitutional limitations established in *Miller,* even if the conviction and punishment was final when *Miller* was decided. *Montgomery v. Louisiana*, 577 U.S. ___, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016) (holding Miller is retroactive to final cases).

¶4 In this case, the aggregate term of imprisonment on these consecutive sentences guarantees that Petitioner will die in prison before he has a reasonable opportunity for release on parole. Considering Petitioner's life expectancy, his current chances of an eventual opportunity to plead for release on parole are at best slim, and, more realistically, none. This life without parole-equivalent punishment, imposed without a finding that Petitioner was an irreparably corrupt or permanently incorrigible juvenile, clearly violates the Eighth Amendment.

¶5 I would remedy this constitutional error practically, inexpensively, and immediately, by affirming the sentence of life imprisonment with the possibility of parole for murder, and modifying the other terms to be served concurrently. *Montgomery,* 577 U.S. at ___, 136 S.Ct. at 736 (holding that a State may remedy a *Miller* violation, without re-litigating the sentence, by affording the offender an opportunity for eventual release on parole).

¶6 I am authorized to state that Judge Kuehn joins in this dissenting opinion.

HUDSON, J., SPECIALLY CONCUR:

¶1 I concur in today's Order. I write separately to expand upon the Court's holding that when a juvenile offender is convicted of multiple offenses, each sentence imposed should be analyzed separately under the Eighth Amendment. To hold otherwise would effectively give crimes away. *See Pearson v. Ramos*, 237 F.3d 881, 886 (7th Cir. 2001) ("[I]t is wrong to treat stacked sanctions as a single sanction. To do so produces the ridiculous consequence of enabling a prisoner, simply by recidivating, to generate a colorable Eighth Amendment claim."); *see also O'Neil v. Vermont*, 144 U.S. 323, 331, 12 S. Ct. 693, 696-9736 L. Ed. 450 (1892) (observing that "[i]f the penalty were unreasonably severe for a single offense, the constitutional question might be urged; but here the unreasonableness is only in the number of offenses which the respondent has committed."). The "Eighth Amendment analysis focuses on the sentence imposed for each specific crime, not on the cumulative sentence for multiple crimes." *Hawkins v. Hargett*, 200 F.3d 1279, 1285 n.5 (10th Cir. 1999). "If [Martinez] has subjected himself to a severe penalty, it is simply because he committed a great many [ ] offences." *O'Neil*, 144 U.S. at 331, 12 S. Ct. at 696-97.

1. Budder's jury fixed his punishment on the two rape charges at life imprisonment without the possibility of parole, but those sentences were modified on direct appeal to life terms with the possibility of parole.

Notice of Judicial Vacancy

The Judicial Nominating Commission seeks applicants to fill the following judicial office:

Justice of the Supreme Court
District Two

The vacancy will be created by the resignation of the Honorable Patrick R. Wyrick effective April 12, 2019.

To be appointed to the office of Justice of the Supreme Court, an individual must have been a qualified elector of the applicable Supreme Court Judicial District, as opposed to a registered voter, for one year immediately prior to his or her appointment, and additionally, must have been a licensed attorney, practicing law within the State of Oklahoma, or serving as a judge of a court of record in Oklahoma, or both, for five years preceding his/her appointment.

Application forms can be obtained on line at www.oscn.net, click on Programs, then Judicial Nominating Commission or by contacting Tammy Reaves at (405) 556-9300. Applications must be submitted to the Chairman of the Commission at the address below **no later than 5:00 p.m., Friday, June 28, 2019. If applications are mailed, they must be postmarked by midnight, June 28, 2019.**

Mike Mordy, Chairman
Oklahoma Judicial Nominating Commission
Administrative Office of the Courts
2100 N. Lincoln Blvd., Suite 3
Oklahoma City, Oklahoma 73105

Calendar of Events

May

22 **OBA Immigration Law Section meeting;** 11:00 a.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Lorena Rivas 918-585-1107

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

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

27 **OBA Closed** – Memorial Day

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

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

June

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

OBA Estate Planning, Probate and Trust Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact A. Daniel Woska 405-657-2271

11 **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 teleconference; Contact Melanie Dittrich 405-705-3600 or Brittany Byers 405-682-5800

18 **OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact David B. Lewis 405-556-9611 or David Swank 405-325-5254

19 **OBA Family Law Section meeting;** 11:30 a.m.; Oklahoma Bar Center, Oklahoma City with video-conference; Contact Amy E. Page 918-208-0129

OBA Financial Institutions and Commercial Law Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Miles T. Pringle 405-848-4810

20-22 **OBA Solo & Small Firm Conference;** River Spirit Casino Resort, Tulsa

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

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

26 **OBA Immigration Law Section meeting;** 11:00 a.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Lorena Rivas 918-585-1107

THE SOVEREIGNTY SYMPOSIUM XXXII

Treaties, Etc.

Presented by the Oklahoma Supreme Court and the Sovereignty Symposium, Inc.

June 5 - 6, 2019 | Skirvin Hilton Hotel | Oklahoma City, Oklahoma

Wednesday Morning

4.0 CLE credits / 0 ethics included

7:30 - 4:30 Registration

8:00 - 8:30 Complimentary Continental Breakfast

10:30 - 10:45 Morning Coffee / Tea Break

12:00 - 1:15 Lunch on your own

8:30 - 11:45 PANEL A: ECONOMIC FUTURES | CRYSTAL ROOM

CO-MODERATOR: JAMES COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation

CO-MODERATOR: LISA BILLY, (*Chickasaw*), Oklahoma Secretary of Native American Affairs

MATT PINNELL, Lieutenant Governor of Oklahoma

KAREN BELL, British Consul General, Houston

KAY RHOADS, (*Sac and Fox*), Chief of the Sac and Fox Nation

MELOYDE BLANCETT, Oklahoma House of Representatives, District 78

LESLIE OSBORN, Oklahoma State Labor Commissioner

JOHN BUDD, Chief Operating Officer for Oklahoma

REGGIE WASSANA, (*Cheyenne and Arapaho*), Governor, Cheyenne and Arapaho Tribes of Oklahoma

JOY HOFMEISTER, Oklahoma Superintendent of Public Instruction

DANA MURPHY, Chair, Oklahoma Corporation Commission

TERRY NEESE, Institute for the Economic Empowerment of Women

The Sovereignty Symposium was established to provide a forum in which ideas concerning common legal issues could be exchanged in a scholarly, non-adversarial environment. The Supreme Court espouses no view on any of the issues, and the positions taken by the participants are not endorsed by the Supreme Court.

Artwork: Poteet Victory, The Night Guardian; Joseph French Photography

8:30 - 11:45 PANEL B: SIGNS, SYMBOLS AND SOUNDS | GRAND BALLROOMS A-C

(THIS PANEL CONTINUES FROM 3:00 - 6:00)

CO-MODERATOR: JAY SCAMBLER, Collector of Native American Art

CO-MODERATOR: ERIC TIPPECONNIC, (*Comanche*), Artist and Professor, California State University, Fullerton

WILLIAM DAVIS, (*Muscogee* (*Creek*)), Singer

KELLY HANEY, (*Seminole*), Artist, Former Oklahoma State Senator, former Principal Chief of the Seminole Nation

JERI REDCORN, (*Caddo/Potawatomi*), Potter

VANESSA JENNINGS, (*Kiowa/Gila River Pima*), Artist

LES BERRYHILL, (*Yuchi/Muscogee*), Artist

HARVEY PRATT, (*Cheyenne/Arapaho*), Peace Chief, Artist, Designer of the Smithsonian's National Native American Veterans Memorial

GORDON YELLOWMAN, (*Cheyenne*), Peace Chief, Assistant Executive Director of Education, Cheyenne and Arapaho Tribes

POTEET VICTORY, (*Cherokee/Choctaw*), Artist, 2019 Symposium Poster

CHRIS MORRISS, Oklahoma State Protocol Officer

GREGORY H. BIGLER, (*Euchee*), District Judge, Muskogee (Creek) Nation

8:30 - 11:45 PANEL C: SPIRITUAL TRADITIONS | CENTENNIAL 1-2

MODERATOR: NOMA GURICH, Chief Justice, Oklahoma Supreme Court

KRIS LADUSAU, Reverend, Dharma Center of Oklahoma

ROBERT HAYES JR., Bishop, United Methodist Church, Retired

ELIZABETH KERR, Special Judge, Oklahoma County

LINDSAY ROBERTSON, Faculty Director, Center for the Study of American Indian Law and Policy, Professor, University of Oklahoma

GORDON YELLOWMAN, (*Cheyenne*), Peace Chief, Assistant Executive Director of Education, Cheyenne and Arapaho Tribes

BRADFORD MORSE, Dean of Law, Thompson Rivers University

ROBERT JOSEPH, (*Maori*), Senior Lecturer, Research Centre Director MIG (Law), The University of Waikato

11:45 LUNCHEON HONORING TRIBAL LEADERS AND FACULTY | VENETIAN ROOM

MASTER OF CEREMONIES: NOMA GURICH, Chief Justice, Oklahoma Supreme Court

PRAYER: WILLIAM WANTLAND, (*Seminole, Chickasaw and Choctaw*), Episcopal Bishop of Eau Claire, Retired

GREETING: EMMA NICHOLSON, BARONESS NICHOLSON OF WINTERBOURNE, HOUSE OF LORDS

Wednesday Afternoon

4 CLE credits / 0 ethics included

7:30 - 4:30 Registration

2:45 - 3:00 Tea / Cookie Break for All Panels

6:00 Mini Reception in Honor of the Flute Circle

1:10 CAMP CALL: GORDON YELLOWMAN,

(*Cheyenne*), Peace Chief, Assistant Executive Director of Education, Cheyenne and Arapaho Tribes

1:15 - 2:45 OPENING CEREMONY AND KEYNOTE ADDRESS | GRAND BALLROOMS D-F

MASTER OF CEREMONIES: STEVEN TAYLOR, Justice, Oklahoma Supreme Court, Retired

PRESENTATION OF FLAGS

HONOR GUARD: KIOWA BLACK LEGGINGS SOCIETY

SINGERS: SOUTHERN NATION

INVOCATION: KRIS LADUSAU, Reverend, Dharma Center of Oklahoma

INTRODUCTION OF KEYNOTE SPEAKER: KAREN BELL, British Consul General, Houston

SPEAKER: EMMA NICHOLSON, BARONESS NICHOLSON OF WINTERBOURNE, House of Lords

WELCOME: NOMA GURICH, Chief Justice, Oklahoma Supreme Court

WELCOME: KEVIN STITT, (*Cherokee*), Governor of Oklahoma

WELCOME: DAVID HOLT, (*Osage*), Mayor, Oklahoma City, Oklahoma

WELCOME: CHARLES CHESNUT, President, Oklahoma Bar Association

PRESENTATION OF AWARDS: YVONNE KAUGER, Justice, Oklahoma Supreme Court

HONOR AND MEMORIAL SONGS: SOUTHERN NATION

CLOSING PRAYER: ROBERT HAYES JR., Bishop, United Methodist Church, Retired

3:00 - 6:00 PANEL A: INTERTWINED INTERNATIONAL INDIGENOUS ECONOMIC INTERESTS | CRYSTAL ROOM

CO-MODERATOR: WAYNE GARNONS-WILLIAMS, Senior Lawyer and Principal Director, Garwill Law Professional Corporation, Chair, International Intertribal Trade and Investment Organization

CO-MODERATOR: RODGER RANDLE, Director, Center for Studies in Democracy and Culture and Professor, University of Oklahoma

RICHARD HYDE, British Consul General Designate, Houston

ROBERT JOSEPH, (*Maori*), Senior Lecturer, Research Centre Director MIG (Law), The University of Waikato

BRADFORD MORSE, Dean of Law, Thompson Rivers University

BINA SENGAR, Assistant Professor, Department of History and Ancient Indian Culture, School of Social Sciences, Dr. Babasaheb Ambedkar Marathwada University

RICO BUCHLI, Honorary Consul, Switzerland
ENRIQUE VILLAR-GAMBETTA, Honorary Consul, Peru
JAMES COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation

3:00 - 6:00 PANEL B: SIGNS, SYMBOLS AND SOUNDS | GRAND BALLROOMS A-C

CO-MODERATOR: JAY SCAMBLER, Collector of Native American Art
CO-MODERATOR: ERIC TIPPECONNIC, (*Comanche*), Artist and Professor, California State University, Fullerton

CHAD SMITH, (*Cherokee*), Attorney
KENNETH JOHNSON, (*Muscogee/Seminole*), Contemporary Jewelry Designer and Metalsmith
JAMES PEPPER HENRY, (*Kaw/Muscogee* (*Creek*)), Director and Chief Operating Officer, American Indian Cultural Center Foundation
JIM VAN DEMAN, (*Delaware*), Artist and former Vice-Chief of the Delaware Nation
KELLY LEWIS, Talk Jive Radio
THOMAS WARE, Talk Jive Radio
JEROD IMPICHCHAACHAAHA' TATE, (*Chickasaw*), Composer
TIMOTHY TATE NEVAQUAYA, (*Comanche*), Artist and Musician
BRENT GREENWOOD, (*Chickasaw/Ponca*), Artist and Southern Nation Singer

3:00 - 6:00 PANEL C: CRIMINAL LAW | CENTENNIAL 1-2

CO-MODERATOR: DANA KUEHN, (*Choctaw*), Vice-Presiding Judge, Oklahoma Court of Criminal Appeals
CO-MODERATOR: ARVO MIKKANEN, (*Kiowa/Comanche*) Assistant United States Attorney and Tribal Liaison, Western District of Oklahoma

TRENT SHORES, United States Attorney for the Northern District of Oklahoma
COLLEEN SUCHE, Judge of the Manitoba Court of Queen's Bench
MIKE HUNTER, Attorney General of Oklahoma
ROBERT RAVITZ, Chief Public Defender, Oklahoma County
JOHN CANNON, Attorney The Cannon Law Firm
STEVE MULLINS, Attorney, Lyle, Soule and Curlee
CALLANDRA MCCOOL, (*Citizen Potawatomi*), Research Editor, American Indian Law Review, University of Oklahoma College of Law

WEDNESDAY PROGRAMS WILL CONCLUDE WITH A FLUTE CIRCLE IN GRAND BALLROOM A-C. PLEASE BRING YOUR FLUTE TO PARTICIPATE IN THIS EVENT.

6:00 MINI RECEPTION IN HONOR OF THE FLUTE CIRCLE | HALLWAY OUTSIDE OF GRAND BALLROOMS A-C

Thursday Morning

4.0 CLE credits / 2 ethics included
7:30 - 4:30 Registration
8:00 - 8:30 Complimentary Continental Breakfast
10:30 - 10:45 Morning Coffee / Tea Break
12:00 - 1:15 Lunch on your own

8:30 - 12:00 PANEL A: JUVENILE LAW AND CHILDREN'S ISSUES | GRAND BALLROOMS A-B

CO-MODERATOR: DEBORAH BARNES, Vice Presiding Judge, Oklahoma Court of Civil Appeals, Division Two
CO-MODERATOR: MIKE WARREN, Associate District Judge, Harmon County, Oklahoma

STEVE HAGER, Director of Litigation, Oklahoma Indian Legal Services
RICHARD KIRBY, Associate District Judge, Oklahoma County
ALAN WELCH, Special Judge, Oklahoma County
GREGORY RYAN, Special Judge, Oklahoma County
PHIL LUJAN, (*Kiowa/Taos Pueblo*), Judge of the Seminole and Citizen Potawatomi Nations
JACK TROPE, Senior Director, Casey Family Programs
DORIS FRANSEIN, District Judge, Tulsa County, Retired

8:30 - 12:00 BEYOND CONSERVATION: PREPARING FOR THE FUTURE AND THE FOODS OF THE LAND | GRAND BALLROOMS D-F

CO-MODERATOR: PATRICK WYRICK, District Judge, United States District Court for the Western District of Oklahoma
CO-MODERATOR: JANIE HIPP, (*Chickasaw*), CEO, Native American Agriculture Fund

BLAKE JACKSON, (*Choctaw*), Policy Officer/Staff Attorney at Indigenous Food and Agriculture Initiative, University of Arkansas
BLAYNE ARTHUR, Secretary and Commissioner of Agriculture, Oklahoma
JOHN BERREY, Chairman, Quapaw Nation
JERRY MCPEAK, (*Muscogee* (*Creek*)), Former Oklahoma State Legislator
JOHN HARGRAVE, Attorney
NATHAN HART, (*Cheyenne*), Executive Director, Department of Business, Cheyenne and Arapaho Tribes
VINCE LOGAN, (*Osage*), CFO/CIO, Native American Agriculture Fund
ANOLI BILLY, (*Chickasaw*), Representing the Voices of Next Generation Food Producers
JULIE CUNNINGHAM, Executive Director, Oklahoma Water Resources Board

8:30 - 9:30 PANEL C: ETHICS | CENTENNIAL 1-3

MODERATOR: JOHN REIF, Justice, Oklahoma Supreme Court, Retired

FOLLOWED BY A DISCUSSION OF THE CONCERNS OF STATE, FEDERAL AND TRIBAL JUDGES MODERATED BY JUSTICE REIF

JOHN TAHSUDA, Principal Deputy Assistant Secretary of Indian Affairs
SUZANNE MITCHELL, Magistrate, United States District Court for the Western District of Oklahoma
WILLIAM HETHERINGTON, Judge, Oklahoma Court of Civil Appeals, Retired
RICHARD OGDEN, District Judge, Oklahoma County
ALETIA HAYNES TIMMONS, (*Cherokee*), District Judge, Oklahoma County
CARLA PRATT, Dean, Washburn University School of Law
GREGORY D. SMITH, Justice, Pawnee Nation Supreme Court
ELIZABETH BROWN, (*Cherokee*), Associate District Judge, Adair County
BRENDA PIPESTEM (*Eastern Band of Cherokee Indians***),** Associate Justice, Eastern Band of Cherokee Indian Supreme Court
MIKE KISS, MIS Interim Director, Administrative Office of the Courts

8:30 - 12:00 PANEL D: TREATIES | CRYSTAL ROOM

MODERATOR: BOB BLACKBURN, Executive Director, Oklahoma Historical Society

JAY HANNAH, Executive Vice-President of Financial Services, BancFirst
LINDSAY ROBERTSON, Faculty Director, Center for the Study of American Indian Law and Policy, Professor, University of Oklahoma
LEE LEVY, Former AFSC Commander
ROBERT MILLER, Professor of Law, Arizona State University, Sandra Day O›Connor College of Law
KELLY CHAVES, Professor of History and Director of Fine Arts, Oklahoma School of Science and Mathematics

Thursday Afternoon

4.5 CLE credits / 0 ethics included

3:30 - 3:45 Tea / Cookie Break for All Panels

12:00 - 1:30 WORKING LUNCH FOR FEDERAL, STATE AND TRIBAL JUDICIARY | CENTENNIAL 1-3

FACILITATOR: DOUGLAS COMBS, (*Muscogee* (*Creek*)), Justice, Oklahoma Supreme Court

1:30 - 5:30 PANEL A: JUVENILE LAW | GRAND BALLROOMS A-B

CO-MODERATOR: DEBORAH BARNES, Vice Presiding Judge, Oklahoma Court of Civil Appeals, Division Two
CO-MODERATOR: MIKE WARREN, Associate District Judge, Harmon County, Oklahoma
ELIZABETH BROWN, (*Cherokee*), Associate District Judge, Adair County, Oklahoma
STEVEN BUCK, Executive Director, Oklahoma Office of Juvenile Affairs
JARI ASKINS, Administrative Director of the Courts
JOE DORMAN, Oklahoma Institute for Child Advocacy
NIKKI BAKER LIMORE, (*Cherokee*), Executive Director, Child Welfare, Cherokee Nation
NORMAN RUSSELL, Associate District Judge, Kiowa County, Retired

1:30 - 5:30 PANEL B: GAMING | GRAND BALLROOMS D-F

CO-MODERATOR: NANCY GREEN, ESQ., (*Choctaw*), Green Law Firm, P.C., Ada, Oklahoma
CO-MODERATOR: MATTHEW MORGAN, (*Chickasaw*), Director of Gaming Affairs, Division of Commerce, Chickasaw Nation

ERNIE STEVENS, (*Oneida*), Chairman, National Indian Gaming Association
JONODEV CHAUDHURI, (*Muscogee* (*Creek*)), Chairman, National Indian Gaming Commission
KATHRYN ISOM-CLAUSE, (*Taos Pueblo*) Vice Chair, National Indian Gaming Commission
MIKE MCBRIDE, III, Crowe and Dunlevy
GRAYDON LUTHEY, JR., Gable Gotwals
WILLIAM NORMAN, JR., (*Muscogee* (*Creek*)), Hobbs, Straus, Dean and Walker
ELIZABETH HOMER, (*Osage*), Homer Law
SHEILA MORAGO, (*Gila River Indian Community*), Executive Director, Oklahoma Indian Gaming Association
KYLE DEAN, Associate Professor of Economics, Director of Center for Native American & Urban Studies, Oklahoma City University
TRACY BURRIS, (*Chickasaw*), Executive Director, Muscogee (Creek), Nation Office of Public Gaming

1:30 - 5:30 PANEL C: ECONOMIC FUTURES | CRYSTAL ROOM

CO-MODERATOR: JAMES COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation
CO-MODERATOR: LISA BILLY, (*Chickasaw*), Oklahoma Secretary of Native American Affairs

BILL LANCE, Secretary of Commerce, Chickasaw Nation
TIM GATZ, Executive Director, Oklahoma Department of Transportation and the Oklahoma Turnpike Authority
SEAN KOUPLEN, Oklahoma Secretary of Commerce and Workforce Development
CHRIS BENGE, Executive Director, Center for Rural and Tribal Health, Oklahoma State University
TAMMYE GWIN, Senior Director of Business Development, Choctaw Nation of Oklahoma
DEREK OSBORN, Tulsa Field Office Director for Senator James Lankford

This agenda is subject to revision.

NOTICE

There will be a working lunch for State, Tribal and Federal Judges to be held at 12 noon on June 6, 2019.

A panel on the mutual concerns of State, Tribal and Federal Judges will be held beginning at 9:30 on June 6, 2019.

The Sovereignty Symposium XXXII

June 5 - 6, 2019
Skirvin Hilton Hotel
Oklahoma City, Oklahoma

Name: _____ Occupation: _____

Address: _____

City: _____ State _____ Zip Code _____

Billing Address (if different from above) _____

City: _____ State _____ Zip Code _____

Nametag should read: _____

Other: _____

Email address: _____

Telephone: Office _____ Cell _____ Fax _____

Tribal affiliation if applicable: _____

Bar Association Member: Bar # _____ State _____

16.5 hours of CLE credit for lawyers will be awarded, including 2.0 hours of ethics. **NOTE:** Please be aware that each state has its own rules and regulations, including the definition of "CLE;" therefore, certain portions of the program may not receive credit in some states.

# of Persons		Registration Fee	Amount Enclosed
_____	Both Days	$275.00 *($300.00 if postmarked after May 21, 2019)*	_____
_____	June 6, 2019 only	$175.00 *($200.00 if postmarked after May 21, 2019)*	_____
		Total Amount	_____

We ask that you register online at **www.thesovereigntysymposium.com**. This site also provides hotel registration information and a detailed agenda. For hotel registration please contact the Skirvin-Hilton Hotel at 1-405-272-3040. If you wish to register by paper, please mail this form to:

THE SOVEREIGNTY SYMPOSIUM, INC. The Oklahoma Judicial Center, Suite 1 2100 North Lincoln Boulevard Oklahoma City, Oklahoma 73105-4914

Presented By THE OKLAHOMA SUPREME COURT and THE SOVEREIGNTY SYMPOSIUM

2019 OK CIV APP 24

SARAH JANE GILLETT and ANNE ELIZABETH RICHMOND, Petitioners/ Appellants, vs. DEBORAH B. MCKINNEY, Respondent/Appellee.

Case No. 115,742. April 4, 2019

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

HONORABLE MARTHA OAKES, TRIAL JUDGE

AFFIRMED

James A. Kirk, Amber M. Brock, KIRK & CHANEY PLLC, Oklahoma City, Oklahoma, for Petitioner/Appellant

Charles O. Schem, HESTER SCHEM HESTER & DEASON, Oklahoma City, Oklahoma, for Respondent/Appellee

JOHN F. FISCHER, JUDGE:

¶1 Kenneth N. McKinney,[1] appeals the district court's order in this divorce action denying his request for credit for all of the 2014 and 2015 federal income tax credits and overpayments. Based on our review of the record, the district court's order in favor of Deborah B. McKinney is not against the clear weight of evidence and is affirmed.

BACKGROUND

¶2 The parties were married in 1998. They separated on October 3, 2015, and the petition for divorce was filed on October 20, 2015. The parties resolved the majority of their issues through mediation. They did not resolve who was to receive credit for the excess taxes paid in conjunction with their 2014 income tax returns or the excess in estimated taxes paid for their 2015 income tax liability. The district court held a hearing to resolve those issues. The district court found that husband's deposit of his separate funds into the parties' joint accounts "took away the separate identity and character" of those funds. The court also found that any of husband's separate funds used to pay the parties' income taxes had been commingled with their marital funds. According to the district court, wife's use of one-half of those funds was "fair and equitable." Based on these findings, the district court denied husband's request to credit him with all of the tax credits and overpayments. Husband appeals the district court's disposition of the 2014 and 2015 tax issues.

STANDARD OF REVIEW

¶3 In an action for divorce, the division of property "is one of equitable cognizance and in reviewing a case of equitable cognizance, the judgment of the trial court will not be disturbed unless the trial court abused its discretion or unless the court's finding was clearly against the weight of the evidence." *Hough v. Hough*, 2004 OK 45, ¶ 12, 92 P.3d 695 (citing *Merritt v. Merritt*, 2003 OK 68, ¶ 7, 73 P.3d 878). "A trial court's valuation of a marital estate will not be disturbed unless it is against the clear weight of evidence, and our cases demonstrate considerable deference to a trial court's valuation of marital assets in a divorce." *Childers v. Childers*, 2016 OK 95, ¶ 12, 382 P.3d 1020.

ANALYSIS

¶4 Husband raises two issues in this appeal. First, he argues that the district court erred in not awarding him $115,994 in tax refunds and overpayments as his separate property. Second, he contends that the district court erred when it did not order wife to reimburse him for $9,625 in additional taxes he had to pay because wife filed a separate, rather than a joint income tax return for 2015.

I. The Separate Property Issue

¶5 The parties filed joint individual income tax returns for the 2014 tax year and received a partial refund for the taxes paid in conjunction with that return. In addition, during 2015 and prior to the filing of the petition for divorce, the parties made estimated tax payments for the 2015 tax year. The estimated tax payments exceeded the amount of income tax eventually owed for 2015.

¶6 At the hearing on this matter, husband called an expert witness who testified that he could trace the source of the 2014 and 2015 tax payments to deposits made to the parties' joint account. According to the expert, deposits

made to cover those payments came from withdrawals from husband's IRA. Wife used one-half of the 2014 refund and one-half of the 2015 overpayments, in the total amount of $115,994, to pay her 2015 income tax liability. It is not disputed that the funds and assets in husband's IRA are his separate property. Nor is it disputed that, from time to time, husband would withdraw funds from his IRA and deposit those funds into the parties' joint accounts. Some of these deposits approximately coincide with the 2014 and 2015 tax payments at issue in this case. The question is whether the funds withdrawn from husband's IRA remained his separate property once they were deposited in the parties' joint accounts, even if the tax payments can be "traced" to some of the deposits.

¶7 Husband urges us to follow the approach taken in the Uniform Marital Property Act of 1983. *See* Unif. Marital Prop. Act §§ 1-26, 9A U.L.A. 110-158 (Master Ed.1998). Section 14(a) of that Act provides that "mixing marital property with property having any other classification reclassifies the other property to marital property unless the component of the mixed property which is not marital property can be traced." *Id.* at 141. Oklahoma has not adopted the Uniform Marital Property Act. And, despite husband's argument to the contrary, we do not find that provision consistent with Oklahoma law. The deposit of separate property into a joint account may not automatically convert the separate property into marital property. *Cf., Smith v. Villareal*, 2012 OK 114, ¶ 9, 298 P.3d 533 ("A transfer by one spouse of separate property to another does not by itself erase the separate character of the asset or real property transferred . . . ."). However, separate property given to a spouse is no longer separate property even though it might be traced. *Chastain v. Posey*, 1983 OK 46, 665 P.2d 1179 (transfer of title to separate property from one spouse to another presumes a gift of the separate property to the other spouse). Therefore, we decline to accept husband's invitation to follow the Uniform Marital Property Act of 1983, particularly when the Oklahoma Legislature has not chosen to adopt the Act during the last thirty-five years. Consequently, husband's separate ownership of the excess tax payments depends on existing Oklahoma precedent.

¶8 At the conclusion of this divorce proceeding, the district court was required to "enter its decree confirming in each spouse the [separate] property owned by him or her before marriage and the undisposed-of property acquired after marriage by him or her in his or her own right." 42 O.S. Supp. 2012 § 121(B). As relevant to this case, separate property means: "property owned by a spouse prior to the marriage, which retained its separate status during the marriage because it was maintained as separate property . . . ." *In re Estate of Hardaway*, 1994 OK 30, ¶ 9, 872 P.2d 395. Husband's expert testified that he was able to "trace" the tax payments to the husband's separate funds because the comparatively large tax payments generally coincided with comparatively large deposits into the joint accounts made a few days before or a few days after withdrawals from husband's IRA.

¶9 Although the expert's tracing evidence has some record support, it is not conclusive. The most notable example concerns the estimated taxes paid for the third quarter of 2015. On September 15, 2015, checks totaling $73,684 were written to the IRS and the Oklahoma Tax Commission from the parties' joint checking account. On September 22, 2015, $20,000 was withdrawn from husband's IRA and deposited in the parties' joint checking account. However, on September 14 and 15, $60,000 was withdrawn from the parties' joint savings account and deposited into the parties' joint checking account. Apparently, those two deposits were necessary to cover the $73,684 in tax payments.

¶10 It is not disputed that the savings account was a joint account, but husband's expert argued that this $60,000 also should be attributed to husband because funds in the joint savings account could be traced to a deposit made a year earlier from husband's separate funds. On August 15, 2014, $250,000 was withdrawn from husband's IRA and deposited in the parties' joint checking account. On August 21, 2014, $200,000 was transferred from the joint checking account to the joint savings account, which had a balance of $648.80 before the deposit. The expert provided no evidence about the balance in the checking account prior to the $250,000 deposit, the purpose for which the deposit was made or the use of the $50,000 that was not transferred to the joint savings account.

¶11 If the $60,000 in the joint savings account were not husband's separate funds, then $53,684 of the September 2015 tax payments were made from marital property. The district court was not required to accept the expert's testimony on this issue. The district court could

give that testimony the value it thought the testimony should receive. *Childers v. Childers,* 2016 OK 95, ¶ 18, 382 P.3d 1020. And, for the following reasons discussed, we are not persuaded that funds from husband's separate property, "traced" to deposits in the parties' joint accounts, remained husband's separate property.[2]

¶12 It does appear from the expert's testimony and exhibits that deposits into the parties' joint checking account from husband's IRA on June 16, 2015, exceeded, by $61, the checks written on June 14, 2015, to cover their second quarter estimated tax payments. On the other hand, deposits from husband's IRA did not cover $15,600 of the $282,600 paid on April 14, 2015, in conjunction with the parties' requested extension to file their 2014 tax returns.

¶13 Also problematic with the expert's approach is the number of comparatively large withdrawals from husband's IRA deposited in the parties' joint accounts at times when no tax payments were made. In 2014, husband made five withdrawals from his IRA, $38,000 in April, $50,000 in May, $22,000 in June, $80,000 in July and the $250,000 withdrawal in August previously discussed. Likewise, in 2015 husband withdrew $60,000 in March, $267,000 in April, $91,500 in June, $15,000 in July and $20,000 in September from his IRA. The expert attributes only the April, June and September withdrawals to tax payments. The April withdrawal was $15,600 less than the payment amount; the June withdrawal exceeded the amount paid by $16,000, and the September withdrawal was $53,784 less than the amount paid.

¶14 Viewed in isolation, the three "tax deposits" support to some extent the expert's method of "tracing" tax payments to husband's separate funds. However, it is equally plausible that on ten occasions during this time period husband withdrew relatively large amounts from his IRA, which he deposited in the parties' joint accounts. Those funds, commingled with wife's separate property and other marital income, were used to pay for the parties' living expenses, including their taxes. Only three of those ten withdrawals occurred in proximity with payments made to the IRS and the Oklahoma Tax Commission. Husband's expert conceded that some withdrawals from husband's IRA were properly used by the parties to pay their marital expenses such as utility bills, ad valorem taxes, insurance and similar items. However, the expert offered no explanation as to why the three tax deposits should be treated as traceable separate property, when the other deposits admittedly became marital property.

¶15 Following this expert's theory to its logical conclusion, all of the deposits from husband's separate property could be traced to the parties' marital expenses, the payment of which husband was jointly liable. Husband's expert offered no explanation why only the tax payments, and not payment of all the marital expenses, should be traceable to husband's separate property. Husband does not seek reimbursement for the funds used to pay these other marital expenses, and he would not be entitled to that relief. *See Teel v. Teel*, 1988 OK 151, 766 P.2d 994 (marital debts can offset value of marital property in determining equitable division of property). Although husband was the only party to call an expert witness, his expert's testimony, even if accepted, does not resolve the issue of the ownership of husband's separate property once the funds were deposited into the parties' joint accounts.

¶16 When a deposit is made into a bank account held in the name of two or more persons, "such deposit, or any part thereof, or any interest thereon, may be paid to either of the persons . . . ." 6 O.S.2011 § 901(A). Although the deposit of separate funds into a joint account does change the title to those funds, merely placing one spouse's name on the title to separate property does not automatically convert the separate property into marital property. "A transfer by one spouse of separate property to another does not by itself erase the separate character of the asset . . . ." *Larman v. Larman,* 1999 OK 83, ¶ 8, 991 P.2d 536. *Accord Smith v. Villareal*, 2012 OK 114, ¶ 9, 298 P.3d 533 (husband rebutted presumption that real property purchased with his separate funds was intended as a gift to wife merely because it was purchased during the marriage and husband put wife's name on the title). However, the separate nature of property may be lost if it is commingled with other property. *See in re Mullendore's Estate,* 1956 OK 81, 297 P.2d 1094 (property devised to another lost its separate character when the proceeds from the sale of that property were commingled with testatrix's other funds in her bank account). The classification of the property depends on the facts of the case.

¶17 Even though it is undisputed that the IRA was husband's separate property, a spouse

"may treat separate property in a manner so that it alters their legal relationship to the property, and it becomes property of the marital estate." *Standefer v. Standefer,* 2001 OK 37, ¶ 16, 26 P.3d 104. Separate property "retains its separate status during coverture because it is maintained in an uncommingled state as a spouse's individual property." *Thielenhaus v. Thielenhaus*, 1995 OK 5, ¶ 9, 890 P.2d 925.

¶18 Here, the withdrawals from husband's IRA were not deposited into a separate account but into an account jointly owned by husband and wife and commingled with wife's separate property. The taxes and the parties' living expenses were paid from the joint account. According to this record, the only source of deposits into the joint account, other than deposits from husband's IRA, came from marital property, that is, husband and wife's earned income during the marriage, and wife's separate property – gifts and distributions from her parents and their business. Absent an agreement between the parties to use wife's income to pay living expenses and husband's separate property to pay income taxes, there is no basis to distinguish joint account funds to pay living expenses from joint account funds used to pay the parties' income tax liability. There is no such agreement in this record.

¶19 Further, when husband withdrew funds from his IRA, he incurred a tax liability. Husband's expert testified that the withdrawals from husband's IRA during this time were generally made without withholding the taxes due on the withdrawal. It does not appear that husband treated this liability as his personal obligation for which he filed a separate tax return. The tax due on these withdrawals was treated as the obligation of both parties and included in the joint return the parties filed for 2014.

¶20 Finally, wife paid $109,795 for the 2015 tax year. The expert identified $37,903 of wife's separate funds that she used to pay those taxes. The difference is $71,892. Nonetheless, husband argues that wife used $115,994 of his separate money to pay her taxes and that he is entitled to that entire amount.

¶21 This not a case where proof of a gift of marital property to one spouse from the other is necessary, as husband argues. The deposits from husband's IRA were used to pay marital debts for which he was personally liable. "The elements necessary to establish an inter vivos gift include "freedom of will on the part of the donor." *In re Estate of Estes*, 1999 OK 59, ¶ 29, 983 P.2d 438. Discharging one's personal liability, even if the debt is owed jointly with a spouse, does not constitute the "freedom of will" necessary for an inter vivos gift. In addition, a "gift must be gratuitous and irrevocable and go into immediate and absolute effect with the donor relinquishing all control." Husband's "gift" was deposited into a joint account over which he retained control.

¶22 We have reviewed the record and find that the evidence produced at the hearing on this issue supports the district court's decision. It is not disputed that the parties maintained joint accounts and that the contested tax payments were made from the parties' joint checking account. It is not disputed that wife earned approximately $200,000 per year during this time and deposited all of her paychecks into the joint accounts. And, it is not disputed that annual gifts from wife's parents to the parties and wife's distribution of her separate property from her family's business were deposited into the joint accounts. All of these funds were commingled in the joint checking account and were used to pay the parties' utility bills, ad valorem taxes, husband's substantial medical bills, insurance bills and other household expenses, including the parties' income tax liability. "Both parties liquidated their personal holdings and combined the accumulation to jointly [pay their debts]." *Johnston v. Johnston,* 1968 OK 47, ¶ 14, 440 P.2d 694.

¶23 Money, once combined, "becomes a fungible unidentifiable property." *State ex rel. Okla. Bar Ass'n v. Combs*, 2007 OK 65, n.24, 175 P.3d 340. The fungible character of the money deposited into the parties' joint accounts defeats husband's attempt to "trace" the payment of the parties' joint tax liability to a particular source, including the deposits from husband's IRA.

II. Husband's Additional Tax Issue

¶24 Husband argues that the district court erred in refusing to order wife to reimburse him for $9,625 husband claims he had to pay in taxes because wife filed a separate tax return, "married filing separately," for 2015. There is no dispute that if the parties had filed a joint return, as they had in prior years, their cumulative tax liability would have been $9,625 less. However, there is evidence in this record showing that wife separately filed her return because husband's agents refused to communicate with

her concerning the filing of their 2015 return. Based on our review of this evidence, we do not find the district court's ruling to be against the clear weight of the evidence or inequitable.

CONCLUSION

¶25 We have reviewed the record in this divorce action and find that the district court ruling on the tax issues is not unjust, inequitable or clearly against the weight of the evidence. The district court's order is affirmed.

¶26 AFFIRMED.

THORNBRUGH, J., concurs, and GOODMAN, J., concurs in result.

JOHN F. FISCHER, JUDGE:

1. During this appeal, Mr. McKinney died. The motion to substitute Sarah Jane Gillett and Anne Elizabeth Richmond, McKinney's personal representatives, was granted on October 31, 2018.

2. Husband's expert also testified that additional "flow-through" deposits totaling $15,114.20 were made during this time period from sources attributable to husband's separate property. Even if those deposits were treated as husband's separate property, an additional $38,570 of marital property would have been required to cover the September 2015 tax payments.

2019 OK CIV APP 25

OKLAHOMA ATTORNEYS MUTUAL INSURANCE COMPANY, Plaintiff/Appellee, vs. DAVID A. COX, Defendant/Appellant, CHRISTOPHER MANSFIELD; GAYLE BOYLE; SHARON C. HART; KATHRYN R. STEWART; JIM McGOUGH; CATHERINE WELSH, Defendants.

Case No. 117,480. April 5, 2019

APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY, OKLAHOMA

HONORABLE REBECCA NIGHTINGALE, JUDGE

AFFIRMED

Andrew C. Jayne, Emily C. Krukowski, BAUM GLASS JAYNE & CARWILE, Tulsa, Oklahoma, for Plaintiff/Appellee,

Ronald E. Durbin, John E. Rooney, Jr., DURBIN LAW FIRM, PLLC, Tulsa, Oklahoma, for Defendant/Appellant David Cox,

Sean P. Downes, DOWNES LAW OFFICE, Sapulpa, Oklahoma, for Defendant Christopher Mansfield,

Johnny P. Akers, Frederick S. Esser, LAW CENTER OF AKERS & ESSER, PLLC, Bartlesville, Oklahoma, for Defendants Gayle Boyle, Sharon C. Hart, and Kathryn R. Stewart,

Stephen L. Andrews, Renee Williams, ANDREW & Williams, P.C., Tulsa, Oklahoma, for Defendants Jim McGough and Catherine Welsh.

Kenneth L. Buettner, Judge:

¶1 This appeal arises from a declaratory action by Plaintiff/Appellee Oklahoma Attorneys Mutual Insurance Company (Insurer) against a former attorney, Defendant Christopher Mansfield (Mansfield), and some of his former clients (collectively "Defendants"), including Defendant/Appellant David A. Cox (Cox). Insurer sought a declaratory judgment stating it was not obligated to defend or cover Mansfield in certain civil suits brought by Cox and other Defendants because Mansfield's conduct giving rise to Defendants' claims was excluded from coverage under the "crime/fraud exclusion" in the policy. Insurer moved for summary judgment. Finding no factual dispute, the trial court granted Insurer's motion. Cox appeals. Because Mansfield's conduct giving rise to Defendants' claims was excluded under the terms of the policy, we hold that Insurer was entitled to judgment as a matter of law and affirm.

¶2 Mansfield was previously licensed as an attorney in the state of Oklahoma. As such, Mansfield regularly received court appointments in probate, adoption, and guardianship matters. In 2009, a court appointed Mansfield as Special Administrator of the estate of Elizabeth S. Cox (the Cox Estate), to which Cox was an heir. In 2010, the same court appointed Mansfield as Personal Representative of the Cox Estate. On January 16, 2014, the Oklahoma Bar Association filed a complaint against Mansfield, alleging misconduct by Mansfield with regard to his management of the Cox Estate. Adopting the recommendation of the Professional Responsibility Tribunal, the Supreme Court of Oklahoma found that Mansfield violated the Oklahoma Rules of Professional Conduct by diverting funds from the Cox Estate without authorization. The Oklahoma Supreme Court suspended Mansfield from the practice of law for eighteen (18) months starting April 13, 2015.

¶3 After the suspension of his law license for his mismanagement of the Cox Estate, Mansfield was accused of similar misconduct regarding other estates.[1] Mansfield entered into agreed judgments in at least five disputes regarding these other estates, totaling in excess

of $1 million in judgments against him. The Supreme Court accepted Mansfield's resignation from the Oklahoma Bar January 1, 2016.

¶4 In addition to the professional misconduct proceedings, the United States brought criminal charges against Mansfield for his conduct in managing one of the estates, alleging bank fraud and unlawful monetary transaction. *United States v. Mansfield*, No. 4:16-CR-00114-1-GKF (N.D. Okla. March 16, 2017). In response to the charges, Mansfield pleaded guilty and agreed to a forty-one-month prison sentence. Mansfield also agreed to pay approximately $400,000 in restitution to the victim estate, as well as another $131,000 in restitution to other allegedly victimized estates – including the Cox Estate. A criminal judgment was entered against Mansfield March 16, 2017.

¶5 Cox filed suit against Mansfield September 12, 2014, alleging negligence, gross negligence, breach of duty by personal representative, deceit/fraud, unjust enrichment, and seeking punitive damages. *Cox v. Mansfield,* No. CJ-2014-3523 (Tulsa Cty. Dist. Ct. filed Sept. 12, 2014) [hereinafter the *Cox* suit]. The *Cox* suit is ongoing. The other Defendants filed suit against Mansfield August 4, 2017, alleging breach of fiduciary duty/legal malpractice and negligence, and claiming respondeat superior on the part of Mansfield's employer. *McGough v. Mansfield*, Case, No. CJ-2017-3072 (Tulsa Cty. Dist. Ct., default judgment granted November 13, 2018) [hereinafter the *McGough* suit]. The trial court granted default judgment against Mansfield in the *McGough* suit November 13, 2018.[2]

¶6 Prior to the allegations of misconduct Mansfield had purchased a "Lawyers Professional Liability Claims-Made Policy" from Insurer for the period of July 13, 2013 to July 13, 2014 (Policy 1). Policy 1 was canceled when Mansfield's law license was suspended. Mansfield then purchased a "Three Year Extended Reporting Endorsement" beginning June 1, 2015 (Policy 2). Insurer was notified of the *Cox* suit during Policy 1, and of the *McGough* suit during Policy 2 (hereinafter referenced jointly as "the Policies").

¶7 Insurer filed this action September 18, 2017, seeking a declaratory judgment that it has no duty to defend or cover Mansfield in the *Cox* or *McGough* suits. Insurer moved for summary judgment February 5, 2018, alleging there was no dispute as to material fact and it was entitled to judgment as a matter of law. Insurer asserted that Mansfield's conduct giving rise to the *Cox* and *McGough* suits was excluded from coverage under the "crime/fraud exclusion" in the Policies. Insurer also obtained a stay of discovery while the motion for summary judgment was pending. After a hearing, the trial court granted summary judgment in favor of Insurer July 11, 2018, and issued an order September 24, 2018. Cox appeals.

¶8 The sole question on appeal is whether the trial court erred by granting summary judgment and holding that Insurer was entitled to judgment as a matter of law because Cox's claims were excluded from coverage under the crime/fraud exclusion in the Policies. Summary judgment will be affirmed only where there is no dispute as to a material fact and the moving party is entitled to judgment as a matter of law. *Lowery v. Echostar Satellite Corp.*, 2007 OK 38, ¶ 11, 160 P.3d 959. The interpretation of an insurance policy, with its exclusions, is a question of law. *Wiley v. Travelers Ins. Co,* 1974 OK 147, ¶ 15, 534 P.2d 1293. Questions of law are reviewed *de novo,* "which affords this Court with plenary, independent, and nondeferential authority to examine the issues presented." *Sheffer v. Carolina Forge Co.*, 2013 OK 48, ¶ 10, 306 P.3d 544.

¶9 In Oklahoma, the guiding principle in an insurance coverage dispute is that "an insurance policy is a contract." *Duensing v. State Farm Fire & Cas. Co.*, 2006 OK CIV APP 15, ¶ 18 131 P.3d 127. Accordingly, the parties to the contract may agree to such terms as they see fit and this Court is not at liberty to rewrite those terms. *Id.* The terms of an insurance policy should be construed according to their plain meaning, so long as the language is not ambiguous and the construction does not bring about an absurd result. *Wiley,* 1974 OK 147, ¶ 16, 534 P.2d 1293. Insurance contracts should be liberally construed "in favor of the object to be accomplished." *Am. Motorists Ins. Co., v. Biggs*, 1963 OK 87, ¶ 18, 380 P.2d 950 (citing 44 C.J.S. Insurance § 297c(1) (1945)). If the provisions of a policy can be construed two ways, the court should construe the terms against the insurer and in favor of the insured. *Id.*

¶10 An insurer may limit its own risk via the terms of the policy. *Wiley,* 1974 OK 147, ¶ 16, 534 P.2d 1293 (citing *C.P.A. Co. v. Jones*, 1953 OK 345, ¶ 23, 263 P.2d 731). The general declaration of coverage usually determines the insurer's liability and rights. *Dodson v. St. Paul Ins. Co.*, 1991 OK 24, ¶ 13, 812 P.2d 372. An

"exclusion" is a policy term eliminating coverage where it otherwise would have existed under the general declaration. *Id.* ¶ 13 n. 11. "[P]olicy exclusions are read seriatim; each exclusion eliminates coverage and operates independently against the general declaration of insurance coverage and all prior exclusions by specifying other occurrences not covered by the policy… In case of doubt, exclusions exempting certain specified risks are construed strictly against the insurer." *Id*.

¶11 Cox asserted six claims in the *Cox* suit: (1) negligence, (2) gross negligence, (3) breach of duty by personal representative, (4) deceit/fraud, (5) unjust enrichment, and (6) punitive damages. Cox conceded two of his claims are excluded from coverage – deceit/fraud and punitive damages. This appeal therefore concerns only the four remaining claims.

¶12 Per the "Insuring Agreement" between Insurer and Mansfield, Insurer agreed to pay "money damages" owed as a result of:

> any claim or claims first made against [Mansfield] reported to [Insurer] . . . relating to the quality of legal services provided, arising out of any act or omission of [Mansfield] in rendering or failing to render, professional services for others in [Mansfield's] capacity as a lawyer, and caused by [Mansfield] or any other person whose acts or omissions [Mansfield] is legally responsible, except as excluded or limited by the terms, conditions and exclusions to this policy. The term "money damages" shall not be construed to mean the return, restitution, or disgorgement of fees paid to, claimed, or retained by [Mansfield.][3]

Insurer also agreed to "defend any suit against [Mansfield] alleging such act or omission and seeking damages which are payable under the terms of [the Policies]."

¶13 Insurer argues the claims in the *Cox* suit are excluded from coverage because Mansfield's conduct giving rise to the claims falls under the crime/fraud exclusion. This exclusion states that the Policies do not apply "to any claim arising out of any dishonest, fraudulent, criminal, malicious or knowingly wrongful act or omission or deliberate misrepresentation committed by, at the direction of, or with the knowledge of [Mansfield]." Insurer maintains that Cox's claims for negligence, gross negligence, unjust enrichment, and breach of duty "arise out of" Cox's fraudulent and/or criminal conduct.

¶14 Here, the language of the crime/fraud exclusion is not ambiguous on its face. The parties do not dispute the meaning of the words "dishonest, fraudulent, criminal, malicious or knowingly wrongful" and agree that all such conduct should be excluded from coverage. Instead, the parties disagree on whether Mansfield engaged in separate, non-fraudulent/non-criminal behavior that gives rise to additional liability.

¶15 At summary judgment, the moving party has the burden to establish that no dispute as to a material fact exists. Reeds v. Walker, 2006 OK 43, ¶ 9, 157 P.2d 100. The non-moving party does not share the same burden, but instead must merely show that, at least by the date of trial, it will be able to present some evidence of its claims. *Schovanec v. Archdiocese of Okla. City*, 2008 OK 70, ¶ 48, 188 P.3d 158 (citing *Copeland v. Lodge Enter., Inc.*, 2000 OK 36, ¶ 9, 4 P.3d 695).

¶16 Insurer attached thirty-one (31) documents to its motion for summary judgment, including: the Oklahoma Supreme Court ruling suspending Mansfield's law license, the United States' response to Mansfield's Motion for Variance in his criminal proceeding, Mansfield's plea agreement in his criminal proceeding, the judgment in Mansfield's criminal case, and Cox's petition in the *Cox* suit.

¶17 In order to withstand summary judgment, Cox needed to present evidence indicating he sustained damages from Mansfield's negligent conduct which are separate from those sustained as a result of Mansfield's fraudulent and/or criminal conduct. In re-sponse to Insurer's motion for summary judgment, Cox attached only three documents in support: the Supreme Court ruling suspending Mansfield's license, Cox's own petition in the *Cox* suit, and the docket sheet for Mansfield's criminal proceedings. Cox also later submitted his own affidavit.

¶18 The evidence presented at summary judgment failed to demonstrate that Cox suffered an injury from Mansfield's conduct that was separate from that which has been deemed fraudulent or criminal by the suspension of Mansfield's law license and his criminal conviction. In his petition in the *Cox* suit, Cox alleges that Mansfield negligently mismanaged the Cox Estate, breached his duty as personal representative by failing to act in the best interest of the Estate, and was unjustly enriched

in his role as personal representative. Without providing additional sworn statements or evidentiary materials delineating these harms from those addressed in Mansfield's professional suspension and criminal proceedings, the claims in the *Cox* suit appear to derive from Mansfield's criminal and fraudulent/knowingly wrongful conduct.

¶19 In response to Insurer's motion for summary judgment, Cox argued (1) that the Supreme Court never concluded that Mansfield "misappropriated" funds from the Cox Estate, and (2) that Mansfield was never found to have "embezzled" money from the Cox Estate. Though these statements may be true, they are not conclusive in establishing that Cox's claims are covered by the Policies.

¶20 It is true that the Supreme Court did not find that Mansfield "misappropriated" funds from the Cox Estate, but the court *did* find that Cox had "commingled" and "converted" funds from the estate. *State ex rel. Okla. Bar Ass'n v. Mansfield*, 2015 OK 22, ¶¶ 9-30, 350 P.3d 108. The Supreme Court made this determination because Cox's transfer of funds would have likely ultimately been approved by the probate court – though he failed to seek permission beforehand – and because there was no indication that Mansfield had "sought to intentionally inflict grave economic harm upon the Cox Estate." *Id.* ¶ 30. The Supreme Court found that Mansfield's conduct with regard to the Cox Estate fell short of "purposely depriv[ing] a client through deceit and fraud," but still found that Mansfield was culpable and deserving of discipline. *Id.* ¶¶ 18, 49 (quoting *State ex rel. Okla. Bar Ass'n v. Combs*, 2007 OK 65, ¶ 15, 175 P.3d 340).

¶21 Further, though Mansfield's criminal conviction was primarily based upon his actions regarding another estate, his diversion of funds from the Cox Estate contributed to both his plea and sentencing. As stated in Mansfield's plea agreement, the criminal court was "not limited to the amounts alleged in the count(s) to which the defendant is pleading guilty" in determining restitution to be paid, but was permitted to include other relevant conduct indicated in the plea agreement. *United States v. Mansfield*, No. 4:16-CR-00114-1-GKF (N.D. Okla., plea agreement entered Nov. 15, 2016). Mansfield's plea provided that restitution was due to several other victim estates, including the Cox Estate, and that the acts committed against these other estates "gave rise to [the] plea agreement." *Id.* In rendering judgment, the criminal court ordered that Mansfield pay restitution to the other victim estates, including $5,225.53 to the Cox Estate. *Id.* (judgment entered March 16, 2017).

¶22 These findings of professional culpability and criminal guilt by the Oklahoma Supreme Court and the federal court are highly probative on the issue of whether Mansfield's conduct giving rise to the *Cox* suit comes within the purview of the crime/fraud exclusion in the Policies. Cox does not argue that Mansfield's conversion of funds from the Cox Estate was not "knowingly wrongful" or a "deliberate misrepresentation," but instead argues that there was other, lesser conduct that harmed Cox. In order to withstand summary judgment, Cox needed to present evidence that would show that he suffered a harm separate from that incurred as a result of the conduct for which Mansfield was disbarred and criminally convicted, *i.e.* that Cox was harmed from some negligent conduct apart from his conversion of estate assets. Cox made no such showing, and instead relied solely on his own allegations and the findings in the aforementioned proceedings against Mansfield. Cox therefore did not meet his burden.

¶23 Because the record fails to indicate that the claims in the Cox suit arise from conduct separate from that which has already been deemed knowingly wrongful or criminal, Cox's claims are excluded from coverage under the crime/fraud exclusion in the Policies. The trial court therefore properly concluded there was no dispute as to a material fact and Insurer was entitled to judgment as a matter of law.

¶24 AFFIRMED.

GOREE, C.J., and JOPLIN, P.J., concur.

Kenneth L. Buettner, Judge:

1. The other Defendants in this case are interested persons with regard to these other allegedly mismanaged estates, whether as heirs, representatives, or decedents.

2. In accordance with Oklahoma Supreme Court Rule 1.1(d), this Court reviewed the online district court docket via the OSCN website and took note of the disposition of the case.

3. The policy provisions quoted here are identical in Policy 1 and Policy 2.

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Disposition of Cases Other Than by Published Opinion

COURT OF CRIMINAL APPEALS
Thursday, April 25, 2019

F-2018-83 — On December 5, 2016, Appellant Lance Alfredo Coburn was admitted to the Kay County Drug Court Program in Kay County District Court Case Nos. CF-2012-511, CF-2013-665, CF-2014-734, CM-2016-377, and CF-2016-588. The sentencing agreement was delayed sentencing pending successful completion of the Drug Court program. On July 11, 2017, the state filed an application to terminate Appellant's participation in Drug Court. Following a hearing on the application the Honorable David R. Bandy, Associate District Judge, terminated Appellant's participation in Drug Court and sentenced Appellant pursuant to his drug court plea agreement. Appellant appeals. The termination of Appellant's participation in Drug Court is AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J.: concurs; Kuehn, V.P.J.: concurs; Lumpkin, J.: concurs; Rowland, J.: concurs.

F-2017-639 — Appellant, Christopher Lantz Wildman, was tried by jury and convicted of First Degree Manslaughter, in District Court of McCurtain County Case Number CF-2016-271. The jury recommended as punishment imprisonment for twelve (12) years. The trial court sentenced Appellant in accordance with the jury's recommendation and directed that Appellant receive credit for the time he had served awaiting trial. It is from this judgment and sentence that Appellant appeals. The Judgment and Sentence of the District Court is hereby AFFIRMED. Opinion by: Lumpkin, J.; Lewis, P.J., Concur in Results; Kuehn, V.P.J., Concur in Results; Hudson, J., Concur; Rowland, J., Concur.

F-2017-1191 — Appellant, Leroy Edward Gilbert, Jr., was tried by jury and convicted of First Degree Murder (Count 1) in District Court of Tulsa County Case Number CF-2015-2579. The jury recommended as punishment imprisonment for life without the possibility of parole. The trial court sentenced 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, J.; Lewis, P.J., Concur; Kuehn, V.P.J., Concur in Part Dissent in Part; Hudson, J., Concur; Rowland, J., Concur.

F-2017-1021 — Byrin Carr, Appellant, appeals from his misdemeanor Judgment and Sentence entered after a jury trial before the Honorable Timothy D. Haworth, Associate District Judge, in Case No. CM-2016-655 in the District Court of Garfield County. Appellant was convicted of Threaten to Perform an Act of Violence, and was sentenced to a term of six months in the Garfield County Jail. AFFIRMED. Opinion by: Lewis, P.J.; Kuehn, V.P.J, concurs; Lumpkin, J., concurs in results; Hudson, J., concurs; Rowland, J., concurs.

F-2018-617 — Appellant Douglas Edward Scott was tried in a non-jury trial before the Honorable Cynthia Ferrell Ashwood, District Judge, and convicted of Domestic Assault and Battery by Strangulation, After Former Conviction of a Felony (Count I) (21 O.S.Supp.2014, § 644(J)) and Petit Larceny (Count II) (21 O.S. Supp.2017, § 1704), in the District Court of Lincoln County, Case No. CF-2017-206. The trial court sentenced Appellant to eight (8) years imprisonment in Count I and six (6) months in the county jail in Count II, said sentences to run concurrently. It is from this judgment and sentence that Appellant appeals. The Judgment and Sentence is hereby AFFIRMED. Opinion by: Lumpkin, J.; Lewis, P.J., Concur; Kuehn, V.P.J., Concur; Hudson, J., Concur; Rowland, J., Concur.

F-2017-147 — Brian A. Staley, Appellant, was tried by jury, in Case No. CF-2016-21, in the District Court of Caddo County of Count 1: Trafficking in Illegal Drugs; Count 2: Acquiring Proceeds from Drug Activity; Count 3: Possession of Firearm During the Commission of a Felony; and Count 4: Unlawful Possession of Drug Paraphernalia. The jury recommended a sentence of fifteen years imprisonment and a $75,000.00 fine on Count 1; two years imprisonment on Count 2; five years imprisonment on Count 3; and a $1,000.00 fine on Count 4. The Honorable Wyatt Hill, Associate District Judge, sentenced Appellant in accordance with the jury's verdicts. Judge Hill imposed various costs and fees and ordered Appellant's sen-

tences to run consecutively. From this judgment and sentence Brian A. Staley has perfected his appeal. AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J., Concurs; Kuehn, V.P.J., Concurs in Part/Dissents in Part; Lumpkin, J., Concurs; Rowland, J., Concurs.

F-2016-375 — James Stanford Poore, Appellant, was tried by jury, in Case No. CF-2013-865, in the District Court of Tulsa County, of four Counts of Murder in the First Degree (Counts 1-4), After Former Conviction of Two or More Prior Felonies, and two counts of Robbery with a Firearm, After Former Conviction of Two or More Prior Felonies, (Counts 5-6). The jury recommended sentences of life imprisonment without the possibility of parole on each of Counts 1-4; and life imprisonment on both Counts 5 and 6. The Honorable Kurt G. Glassco, District Judge sentenced Poore in accordance with the jury's verdicts. Judge Glassco also imposed a $10,000.00 fine on both Counts 5 and 6. The court further imposed various costs and fees. From this judgment and sentence James Stanford Poore has perfected his appeal. AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J., Concurs; Kuehn, V.P.J., Concurs; Lumpkin, J., Concurs; Rowland, J., Concurs.

F-2017-1140 — Michael Harold Denham, Appellant, was tried by jury for the crime of Domestic Assault and Battery by Strangulation, in Case No. CF-2017-126, in the District Court of Custer County. The jury returned a verdict of guilty and recommended as punishment three years imprisonment. The Honorable Doug Haught, District Judge sentenced accordingly and imposed various costs and fees and ordered credit for time served. From this judgment and sentence Michael Harold Denham has perfected his appeal. AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J., Concurs; Kuehn, V.P.J., Concurs in Results; Lumpkin, J., Concurs; Rowland, J., Concurs.

RE-2018-22 — On March 30, 2011, Appellant Matthew Earl Lavender entered a plea of guilty to Possession of a Controlled Substance (Count 1), Eluding/Attempting to Elude a Police Officer (Count 2), and Driving Without a Driver's License (Count 3). He was convicted and sentenced to twenty years imprisonment for Count 1, with all except the first ten years suspended, one year imprisonment for Count 2, and fined for Count 3. On March 29, 2017, the State filed a petition seeking to revoke Appellant's suspended sentence. Following a December 4, 2017, revocation hearing, Judge Newburn revoked Appellant's remaining suspended sentence in full. The revocation is AFFIRMED. Opinion by: Rowland, J.; Lewis, P.J., concurs; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs.

RE-2018-644 — Appellant Dustin Ardell Cruce entered a plea of guilty to Assault With a Dangerous Weapon, in violation of 21 O.S. § 645 (Count 1), Assault and Battery With a Dangerous Weapon (Count 2), Burglary in the Second Degree (Count 3), Knowingly Concealing Stolen Property (Count 4), and Possession of a Controlled Dangerous Substance (Count 5) in Case No. CF-2016-143. Appellant was convicted and sentenced to ten years imprisonment each for Counts 1 and 2, seven years imprisonment for Count 3, and five years imprisonment each for Counts 4 and 5. Judge Parish suspended the execution of Appellant's sentences in whole and ordered them served concurrently. On October 31, 2017, the State filed a Motion to Revoke Suspended Sentence. Following a revocation hearing, Judge Parish revoked five years of Appellant's remaining suspended sentence. The revocation is AFFIRMED. Opinion by: Rowland, J.; Lewis, P.J., concurs; Kuehn, V.P.J., concurs in results; Lumpkin, J., concurs; Hudson, J., concurs.

RE-2017-113 — On November 18, 2011, Appellant Ruben Geraldo Velazquez pled guilty in Caddo County District Court Case Nos. CF-2011-74, CF-2011-181, and CF-2011-182. Appellant was convicted and sentenced in Case No. CF-2011-74 to twenty-five years imprisonment, with all but ten years suspended, for Count 1, one year imprisonment for Counts 2, thirty days imprisonment for Count 3, and six months imprisonment for Count 4; in Case No. CF-2011-181 to eighteen and one half years imprisonment, with all but three and one half years suspended, for Count 1 and six months imprisonment for Count 2; and in Case No. CF-2011-182 to twenty-five years imprisonment, with all but ten years suspended. On May 26, 2016, the State filed a petition to revoke in each case. Following a February 1, 2017, hearing on the petitions, the trial court revoked Appellant's remaining suspended sentence. The revocation is AFFIRMED. Opinion by: Lewis, P.J.; Kuehn, V.P.J.: Concur; Lumpkin, J.: Concur; Hudson, J.: Concur; Rowland, J.: Concur.

F-2017-1230 — Oleithia June Cudjo, Appellant, was tried by jury for the crimes of Count 1, second degree murder, while in the commission of felony driving under the influence;

Count 3, driving while privilege suspended; and Count 4, transporting an open container of liquor, all after former conviction of two or more felonies in Case No. CF-2012-6970 in the District Court of Oklahoma County. The jury returned a verdict of guilty as charged on Counts 3 and 4 and on the lesser related offense of first degree manslaughter with driving under suspension as the underlying offense on Count 1. The jury set punishment at thirty years imprisonment on Count 1 and six months on each of Counts 3 and 4. At sentencing, the trial court merged Count 3 with Count 1 and sentenced Cudjo in accordance with the jury's verdict on Counts 1 and 4, with the sentences to be served concurrently with each other and with credit for time served. From this judgment and sentence Oleithia June Cudjo has perfected her appeal. The Judgment and Sentence is AFFIRMED. Opinion by: Lewis, P.J.; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs; Rowland, J., recuses.

Thursday, May 2, 2019

S-2018-521 — Appellee Erik Allen Harmon was charged with the crimes of Possession of Methamphetamine, After Conviction of Two or More Felonies, Possession of a Firearm After Conviction of a Felony, After Conviction of Two or More Felonies and Possession of Drug Paraphernalia in Case No. CF-2017-543 in the District Court of Payne County. At a May 11, 2018 hearing the trial court granted Defendant's Motion to Suppress. The State has perfected its appeal of the trial court's suppression of the evidence. The Payne County District Court's order suppressing evidence is RE-VERSED and the matter is REMANDED. Opinion by: Kuehn, V.P.J.; Lewis, P.J., concur; Lumpkin, J., concur in result; Hudson, J., concur; Rowland, J., concur.

F-2017-1146 — Scott Milton Donley, Appellant, was tried at a bench trial and convicted the crimes of Count I - Assault with a Dangerous Weapon After Former Conviction of Two or More Felonies, and Count II - Domestic Abuse Assault and Battery (Misdemeanor) in Case No. CF-2016-309 in the District Court of Lincoln County. He was sentenced to 20 years imprisonment and a $100.00 fine in Count I and one year and a $100.00 fine in Count II. From this judgment and sentence Scott Milton Donley has perfected his appeal. AFFIRMED. Opinion by: Kuehn, V.P.J.; Lewis, P.J., concur; Lumpkin, J., concur in results; Hudson, J., concur; Rowland, J., concur.

C-2018-1019 — Petitioner Michael Cleophus Stewart entered a negotiated plea of guilty in the District Court of Tulsa County, Case No. CF-2018-2686, to one count of Assault and Battery – Domestic, Resulting in Great Bodily Harm, After Former Conviction of Two or More Felonies (Count 1), three counts of Violation of a Protective Order (Counts 3-5), and one count of Threatening an Act of Violence (Count 6). The Honorable James M. Caputo, District Judge, accepted Stewart's plea and sentenced him in accordance with the plea agreement to five years imprisonment and a $500 fine on Count 1, one year in the Tulsa County Jail and a $250 fine on each of Counts 3, 4, and 5, and six months in the Tulsa County Jail on Count 6. Judge Caputo ordered all sentences to run concurrently and awarded credit for time served. Stewart filed a timely motion to withdraw plea that Judge Caputo denied following an evidentiary hearing. Stewart has initiated an appeal of that order before this Court. Stewart's appellate counsel filed a motion to withdraw as counsel pursuant to Anders and brief in support. Appellate counsel's Motion to Withdraw is GRANTED. The Petition for a Writ of Certiorari is DENIED. The order of the District Court of Tulsa County denying Stewart's motion to withdraw guilty plea is AFFIRMED. Opinion by: Rowland, J.; Lewis, P.J., concurs; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs.

S-2018-613 — On February 27, 2018, Appellee was charged in Texas County District Court Case No. CF-2018-59 with Count 1 - Driving a Motor Vehicle While Under the Influence of Alcohol, Count 2 – Resisting an Officer, Count 3 – Driving Without a Valid Driver's License, Count 4 – Failure to Carry Security Verification Form, and Count 5 – Improper Tail Lamps. After evidence concluded at preliminary hearing, the District Court of Carter County, the Honorable A. Clark Jett, Associate District Judge, sustained Appellee's Motion to Dismiss Part II. That ruling was affirmed on review by the Honorable Paul K. Woodward, District Judge. From this ruling, the State appeals. The District Court orders are AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J., not participating; Kuehn, V.P.J., concurs; Lumpkin, J.., concurs; Rowland, J., concurs.

F-2017-356 — Elizabeth A. Jennings, Appellant, was tried by jury for the crime of Permitting Child Sexual Abuse, in Case No. CF-2016-1836, in the District Court of Tulsa County. The jury

returned a verdict of guilty and recommended as punishment fourteen years imprisonment. The Honorable William D. LaFortune, District Judge, sentenced accordingly. From this judgment and sentence, Elizabeth A. Jennings has perfected her appeal. AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J., Concurs in Results; Kuehn, V.P.J., Concurs; Lumpkin, J., Concurs; Rowland, J., Concurs.

F-2017-1285 — Isaac Avila, Appellant, was tried by jury for the crimes of Counts 1-4, kidnapping; Count 5, possession of a firearm during the commission of a felony; and Count 6, resisting an officer in Case No. CF-2016-457 in the District Court of Stephens County. The jury returned a verdict of guilty and set punishment at five years imprisonment on Count 1; fifteen years imprisonment on each of Counts 2-4; five years imprisonment on Count 5; and a $100.00 fine on Count 6. The trial court sentenced accordingly and ordered the sentences on Counts 1 and 5 to run concurrently to one another, but consecutively to Counts 2-4. Counts 2-4 were ordered to run consecutively to one another. From this judgment and sentence Isaac Avila has perfected his appeal. The judgment and sentence is AFFIRMED. Opinion by: Lewis, P.J.; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs; Rowland, J., concurs.

Thursday, May 9, 2019

C-2018-225 — Petitioner, Steven Leon Grimmett, was charged by Information in District Court of Pottawatomie County Case No. CF-2016-860 with Burglary in the First Degree After Two or More Felony Convictions. He was further charged by Information in District Court of Pottawatomie County Case No. CF-2017-326 with Grand Larceny (Count 1) and Endangering Others while Eluding (Count 2) After Two or More Felony Convictions. On November 15, 2017, Petitioner entered a blind plea of no contest to these charges with the assistance and advice of retained counsel. The Honorable John G. Canavan, District Judge, accepted Petitioner's pleas and set the matters for sentencing pending receipt of the pre-sentence investigation report. On January 3, 2018, the court sentenced Petitioner to imprisonment for thirty (30) years in each count and ordered each of the sentences to run concurrently. On January 11, 2018, Petitioner filed his Motion to Withdraw Plea. The District Court appointed conflict counsel to represent Appellant and held an evidentiary hearing on Petitioner's motion on February 14, 2018. The District Court denied the motion. Petitioner timely filed his Notice of Intent to Appeal seeking to appeal the denial of his motion in Case No. CF-2016-860 but failed to perfect an appeal in Case No. CF-2017-326. The District Court's order denying Petitioner's Motion to Modify to Withdraw Plea is AFFIRMED. Opinion by: Lumpkin, J.; Lewis, P.J., Concur; Kuehn, V.P.J., Concur; Hudson, J., Concur; Rowland, J., Concur.

M-2018-212 — On February 9, 2016, Appellant Rodney Eugene Smith was tried by jury and convicted of domestic assault and battery in McIntosh County District Court Case No. CM-2017-227. Judge Pratt sentenced Appellant to one year of confinement in the county jail and a $5,000.00 fine. Appellant's Judgment and Sentence is AFFIRMED. Opinion by: Lewis, PJ.; Kuehn, V.P.J.: Concur; Lumpkin, J.: Concur in Results; Hudson, J.: Concur; Rowland, J.: Concur.

F-2017-1240 — Appellant Kevin Eugene Fowler was tried by jury and found guilty of five (5) counts of Child Neglect (Counts I-V), in the District Court of Tulsa County, Case No. CF-2016-6855. The jury recommended as punishment imprisonment for thirty (30) years in each of Counts I - IV, and ten (10) years imprisonment in Count V. The trial court sentenced accordingly, ordering the sentences to run consecutively. It is from this judgment and sentence that Appellant appeals. The Judgment and Sentence is AFFIRMED. Opinion by: Lumpkin, J.; Lewis, P.J., Concur; Kuehn, V.P.J., Concur; Hudson, J., Concur; Rowland, J., Concur.

F-2017-1248 — Appellant Aislyn Jonelle Miller was tried by jury and found guilty of five (5) counts of Child Neglect (Counts I-V), in the District Court of Tulsa County, Case No. CF-2016-6855. The jury recommended as punishment imprisonment for thirty (30) years in each of Counts I - IV, and ten (10) years imprisonment in Count V. The trial court sentenced accordingly, ordering the sentences to run consecutively. It is from this judgment and sentence that Appellant appeals. The Judgment and Sentence is AFFIRMED. Opinion by: Lumpkin, J.; Lewis, P.J., Concur; Kuehn, V.P.J., Concur; Hudson, J., Concur; Rowland, J., Concur.

RE-2018-342 — On March 31, 2017, Appellant Joshua Eric Armstrong entered a plea of no contest in Woodward County District Court Case No. CF-2017-5 to Possession/Concealing Stolen Property and was convicted and sentenced to five years imprisonment, with all

except the first two months suspended. On March 8, 2018, the State filed a petition seeking to revoke Appellant's suspended sentence. Following a March 27, 2018, hearing the trial court revoked four years of Appellant's remaining suspended sentence. The revocation is AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J.: concur; Kuehn, V.P.J.: concur; Lumpkin, J.: concur; Rowland, J.: concur.

F-2018-272 — On May 20, 2014, Appellant Lavonte Antonio Johnson entered a plea of guilty in Oklahoma County District Court Case No. CF-2014-2033. Appellant's sentencing was deferred for five years. On February 13, 2018, the State filed an application to accelerate the deferred sentencing. Following a March 6, 2018, hearing on the application Judge Elliott accelerated sentencing and Appellant was sentenced to 27 years imprisonment. The acceleration order is AFFIRMED. Opinion by: Lewis, P.J.; Kuehn, V.P.J.: concur; Lumpkin, J.: concur; Hudson, J.: concur; Rowland, J: concur

COURT OF CIVIL APPEALS
(Division No. 1)
Friday, April 26, 2019

116,773 — In Re the Marriage of Price: Anthony Price, Petitioner/Appellee, v. Susan Price, Respondent/Appellant. Appeal from the District Court of McClain County, Oklahoma. Honorable Charles Gray, Judge. Opinion by Kenneth L. Buettner, Judge: Respondent/Appellant Susan Price (now Foster) (Mother) appeals from a journal entry modifying child support. The challenged journal entry ordered that Mother was to pay Petitioner/Appellee Anthony Price (Father) monthly child support, that Mother owed Father past due child support, and that Father had overpaid Mother in child support in years past. Mother asserts that Father should have been designated the obligor for child support purposes, instead of her, because Father has a greater gross monthly income. Mother also argues that the trial court erred by awarding Father past due child support and by holding that Father had previously overpaid Mother. We REVERSE AND REMAND for further proceedings. Opinion by Buettner, J.; Goree, C.J., and Joplin, P.J., concur.

116,874 — In the Matter of the Estate of Frederick Newton Chadsey, IV, Deceased: Stanley Chadsey, Petitioner/Appellant, v. Virginia Chadsey, Respondent/Appellee. Appeal from the District Court of Mayes County, Oklahoma. Honorable Shawn S. Taylor, Judge. Opinion by: Larry Joplin, Presiding Judge. Petitioner/Appellant Stanley Chadsey, Co-Successor Trustee (Trustee) of the Sarah E. Lancaster Revocable Trust dated November 21, 2000 (Trust), seeks review of the trial court's order granting the motion to dismiss of Respondent/Appellee Personal Representative of the Estate of Frederick Newton Chadsey, IV, Virginia Lynn Ashley (PR), the Petition to Probate the Estate of Frederick Newton Chadsey, IV (Decedent), by which Petitioner sought to assert a tort claim against the Decedent's estate for purported breach of fiduciary duty by Decedent, occurring in Oklahoma, while serving as predecessor Trustee of the Trust. Trustee asserts the tort claim, arising from the conveyance of Oklahoma Trust property by Decedent as Trustee to himself in his individual capacity, constitutes an asset of the Trust estate located in Oklahoma, requiring the probate of that Oklahoma property in this state. The claim for breach of fiduciary duty against Decedent (or Decedent's estate) is not an asset of Decedent's estate. Decedent died in Maryland, and inasmuch as Decedent possessed no Oklahoma property at the time of his death, the trial court lacked authority to appoint an Oklahoma personal representative of Decedent's estate. AFFIRMED. Opinion by Joplin, P.J.; Goree, C.J., and Buettner, J., concur.

116,906 — Assets Management Holdings II, LLC, Plaintiff/Appellee, v. Rhonda Henry, Defendant/Appellant, Gregory Henry, Fleet Mortgage Corp., Norwest Mortgage Inc. And State of Oklahoma, ex rel., Oklahoma Tax Commission, Defendants. Rhonda Henry, Defendant/Appellant, appeals the trial court's order denying her motion to vacate a foreclosure judgment in rem entered in favor of Asset Management Holdings II, LLC, Plaintiff/Appellee. Pursuant to 12A O.S. §3-309, Asset Management sought to enforce the lost promissory note. We hold the trial court's judgment was not an abuse of discretion because there was a sufficient showing that Henry was adequately protected against a potential claim by another person to enforce the instrument. We also hold the foreclosure was commenced within the 6 year period prescribed by 12A O.S. §3-118(a), and the judgment was not entered due to an irregularity within the meaning of 12 O.S. §1031 (3) where Henry presented unsubstantiated argument that her attorney compromised her case without her authority. Opinion by Goree, C.J.; Joplin, P.J., and Buettner, J., concur.

117,199 — Callie Jordan and Leslie Plunkett, Plaintiffs/Appellees, v. Tayl'r Wood, Defendant/Appellant, and Makala Leatherwood, Kyle Leatherwood, Dwane Leatherwood, and Sherrie Leatherwood, Defendants. Appeal from the District Court of LeFlore County, Oklahoma. Honorable Mike Hogan, Judge. Opinion by Kenneth L. Buettner, Judge: Defendant/Appellant Tayl'r Wood (Ms. Wood) appeals from a small claims judgment entered against her in favor of Plaintiff/Appellee Callie Jordan (Ms. Jordan). Ms. Jordan sued Ms. Wood for replevin of certain personal property. The trial court entered judgment in favor of Ms. Jordan, requiring that Ms. Wood pay Ms. Jordan $1250 and return the retained personal property. Ms. Wood appeals. We AFFIRM the judgment of the trial court. Opinion by Buettner, J.; Goree, C.J., and Joplin, P.J., concur.

(Division No. 2)
Tuesday, April 30, 2019

115,918 (Consolidated with Case No. 115,948) — Max A. Acton, Trustee of the C.M. Acton Revocable Trust Dated May 1, 1991, Plaintiff/Appellee, vs. Vanell Oil & Gas, LP, a Texas Limited Partnership; REI CORP, an Oklahoma Corporation; RS LEE ENTERPRISES, INC., an Oklahoma Corporation; and G.J. LEE LLC, CO., an Oklahoma Corporation, Defendants/Appellants, and Dollie E. Canfield, an Individual; Barbara E. Chapman, an Individual; and Dollie E. Canfield and Barbara E. Chapman, Co-Executrix of the Estate of Dollie Ethel Groom, Deceased, Intervening Defendants/Appellants. Appeal from an Order of the District Court of Logan County, Hon. Phillip Corley, Trial Judge, quieting title in Plaintiff after finding that an oil and gas lease terminated under the terms of the lease's habendum clause due to lack of production, and a defeasible term mineral interest terminated under the terms of the deed in which it was set forth, also due to lack of production. The trial court's decision is not clearly against the weight of the evidence and is in accord with Oklahoma law. AFFIRMED. Opinion from the Court of Civil Appeals, Division II, by Thornbrugh, J.; Fischer, P.J., and Goodman, J., concur.

Thursday, May 2, 2019

117,115 — Heather W. Collins and Lewis F. Collins, Plaintiffs/Appellants, vs. Robert S. Ryan, M.D. and St. Anthony Hospital, Defendants/Appellees. Appeal from Order of the District Court of Oklahoma County, Hon. Trevor Pemberton, Trial Judge. Heather and Lewis Collins appeal the district court's order denying their Motion to Vacate Judgment on Motion to Dismiss and Request for Leave to Amend Petition. In October 2012, the Collinses filed a medical negligence action against Robert S. Ryan, M.D. and St. Anthony Hospital. The Collinses failed to obtain service of process within the one hundred and eighty-day time period required by 12 O.S. Supp. 2013 § 2004(I). That action was deemed dismissed on the one hundred and eighty-first day after it was filed. The Collinses filed their second action three and one-half years later. That filing was not within one year of the dismissal of their first case, as required by 12 O.S.2011 § 100. The district court's order denying the Collinses' motion to vacate the court's February 16, 2018 judgment is affirmed. AFFIRMED. Opinion from the Court of Civil Appeals, Division II, by Fischer, J., Thornbrugh, C.J., concurs, and Wiseman, P.J., concurs in result.

Monday, May 6, 2019

117,044 — In re the Marriage of: Clayton M. Collins, Petitioner/Appellee, vs. Heather D. Collins, Respondent, and Richard Ducote, Esq., Appellant. Appeal from Orders of the District Court of Rogers County, Hon. David Smith, Trial Judge, denying a motion to admit Attorney Ducote, an out-of-state lawyer, to practice before the Rogers County District Court. Petitioner Clayton Collins and Respondent Heather Collins have been litigating custody of their minor child since their divorce. Respondent hired Attorney, who is a member of the Louisiana and Pennsylvania bar associations, as counsel. Petitioner objected, and Attorney filed his reply. The trial court, after examining the evidence, ultimately found Attorney ineligible for admission to practice before it, and denied the Motion to Associate Counsel. Attorney appeals. We conclude the only party with standing to ask for relief in the form of admission to practice before the Rogers County District Court is Respondent, who first sought Attorney's admission as her counsel. We note that Respondent has not appealed the trial court's order denying Attorney's permission to practice, and therefore we deny Attorney's requested relief. Further, upon review of this record, we find no abuse of discretion occurred, and the trial court's order is affirmed. AFFIRMED. Opinion from Court of Civil Appeals, Division II, by Goodman, J.; Fischer, P.J., and Thornbrugh, J., concur.

(Division No. 3)
Friday, May 3, 2019

115,375 — Wilson K. Pipestem and Brenda Toineeta Pipestem, Plaintiffs/Appellees, vs. Julia L. Mushrush, Trustee of the Julia L. Mushrush Private Express Revocable Trust dated February 1, 1999; and Andy Ting and Candy Ting, Trustees, or their successors in Trust under the Ting Living Trust dated 10/28/1998, Defendants/Appellants, and Osage Rural Water District #15, Osage County, Oklahoma, and Verdigris Valley Electric Cooperative, Defendants. Appeal from the District Court of Osage County, Oklahoma. Honorable Bruce David Gambill, Trial Judge. Defendants/Appellants Julia L. Mushrush, Trustee of the Julia L. Mushrush Private Express Revocable Trust dated February 1, 1999, and Andy Ting and Candy Ting, Trustees, or their Successors in Trust Under the Ting Living Trust Dated 10/28/1998 (collectively Appellants) appeal from a judgment entered in favor of Plaintiffs/Appellees Wilson K. Pipestem and Brenda T. Pipestem (collectively Pipestems). The trial court held that a private road and utility easement entered into by the parties' predecessors in interest provided for an easement 80 feet wide in favor of the Pipestems, and also awarded them attorney fees and costs. Appellants assert that the trial court erred in holding that the easement agreement provided for an 80-foot easement, that the finding of an easement amounted to an improper taking of private land for public use, and that the award of attorney fees was erroneous. We reverse and remand for further proceedings. Opinion by Swinton, J.; Mitchell, P.J., and Bell, J., concur.

115,514 — (Consol. w/115,516) In Re the Estate of Fred Franklin James, Sr., deceased, and In the Matter of the Creditor Claims of Pamela A. Flener, Plaintiff/Appellee, and Glenn Flener, Plaintiff, vs. F. Nils Raunikar, Personal Representative of the Estate of Fred Franklin James, Sr., deceased, Defendant/Appellant, and Fred Franklin James, Jr., Appellant, and Dale Bryan James, Appellee. Appeal from the District Court of Latimer County, Oklahoma. Honorable Jennifer H. McBee, Trial Judge. Appellant F. Nils Raunikar, as Personal Representative of the Estate of Fred Franklin James, Sr., seeks review of two interlocutory orders entered subsequent to the admission of Mr. James' last will and testament. As relevant here, the first order determined two of Mr. James' children, Pamela Flener and Dale Bryan James, were pretermitted heirs. The second order determined Estate owned real property claimed by Pamela and Glen Flener, ordered Estate to refund their $17,100 payments and the value of improvements, if any, and granted them rent-free occupancy during the probate proceedings. After review of the orders, the parties' briefs, applicable law, and the appellate record, we find no reversible error appears. and "the findings of fact of the trial court are supported by sufficient competent evidence." The trial court's separate orders filed October 11, 2016 are AFFIRMED UNDER OKLA. SUP. CT. R. 1.202(b). Opinion by Swinton, J.; Mitchell, P.J., and Bell, J., concur.

116,547 — Twin Lakes Sports Club, Inc., Plaintiff/Appellant, vs. John W. Billingsley, Defendant/Appellee, and Stephanie D. Billingsley and Wells Fargo Bank, N.A., Defendants. Appeal from the District Court of Logan County, Oklahoma. Honorable Phillip C. Corley, Judge. Plaintiff/Appellant Twin Lakes Sports Club, Inc. appeals from the denial of its motion to vacate judgment dismissing its claims for failure to prosecute. In its motion to vacate, Twin Lakes specifically asserted "mistake, neglect, or omission of the clerk or irregularity in obtaining a judgment or order," 12 O.S. §1031(3), as the ground for vacating the judgment. However, on appeal, Twin Lakes completely fails to address 12 O.S. §1031(3). We find the trial court did not abuse its discretion by denying Twin Lakes' motion to vacate. We AFFIRM. Opinion by Mitchell, P.J.; Bell, J., and Swinton, J., concur.

117,287 — Darlene Williams, Plaintiff/Appellant, vs. Billy Gene Craft (deceased) and Ina Lavonne Craft as Co-Trustees of the Billy Gene Craft Revocable Trust Dated January 3, 1997, Billy Gene Craft (deceased) and Ina Lavonne Craft as Co-Trustees of the Ina Lavonne Craft Revocable Trust Dated January 3, 1997, Ina Lavonne Craft, individually, Defendant/Appellee, and Crown Castle Tower 09 LLC, Defendant. Appeal from the District Court of Mayes County, Oklahoma. Honorable Terry H. McBride, Judge. Plaintiff/Appellant Darlene Williams (Buyer) appeals from the trial court's order dismissing Buyer's petition with prejudice and granting summary judgment to Defendant/Appellee Ina Craft, both individually and as co-trustee of the Billy Gene Craft Revocable Trust and the Ina Lavonne Craft Revocable Trust (Seller), finding Buyer's claims relating to an easement on property she had purchased from Seller were time-barred and thus failed to

state a claim for which relief may be granted. After *de novo* review, we find the court did not err by granting summary judgment on Buyer's claim seeking rescission of the purchase contract and deed because it was barred by the five-year statute of limitations for actions based upon a written contract. However, in her petition, Buyer also sought recovery of previously-paid installment payments related to the easement, as well as an order compelling Defendant Crown Castle Tower 09 LLC (Easement Holder) to make future installment payments to Buyer. This claim is controlled by the fifteen-year statute of limitations for actions involving the recovery of an interest in real property and is not untimely. Accordingly, we AFFIRM IN PART, REVERSE IN PART, AND REMAND FOR FURTHER PROCEEDINGS. Opinion by Mitchell, P.J.; Bell, J., and Swinton, J., concur.

(Division No. 4)
Tuesday, April 16, 2019

117,078 — Danielson Marketing Services, LLC, Plaintiff/Counterclaim Defendant/Appellee, v. Independent Printers Worldwide, Inc., Defendant/Counterclaim Plaintiff/Appellant, Independent Printers Worldwide Inc., Third-Party Plaintiff/Appellant, vs. Michael S. Lawson, Scott T. Cole, Steven C. Hopkins, and Danielson Oil Company of Oklahoma LLC, Third-Party Defendants/Appellees. Appeal from an Order of the Distrcit Court of Cleveland County, Hon. Lori Walkley, Trial Judge. This is a summary judgment action where DMS was granted summary jdugment against IPW on IPW's claim that the parties had a partnership. It is undisputed that the parties did not have a partnership based upon their Letter of Intent. IPW maintains that a partnership was formed separately from LOI. However, DPS has demonstrated that IPW has not shown that the parties had an agreement for sharing profits and losses. Such agreement is a critical element of the formation of a partnership. Furthermore, IPW's presentations do not establish genuine issues of fact pertaining to any other indicator of the existence of a partnership formed separately from the LOI. Therefore, the summary judgment in favor or DMS is affirmed. The Third-Party claim by IPW depends upon the finding that a partnership existed between IPW and DMS. Therefore, the summary judgment of the Third-Party Defendants is affirmed. AFFIRMED. Opinion from Court of Civil Appeals, Division IV, by Rapp, J.; Barnes, P.J., and Wiseman, V.C.J., concur.

Wednesday, April 24, 2019

117,419 — Joseph G. Parker, Plaintiff/Appellant, v. Global Health Initiative, Defendant, Amjad Iqbal, Garnishee/Appellee. Appeal from an Order of the District Court of Tulsa County, Hon. Rebecca B. Nightingale, Trial Judge. The plaintiff, Joseph Parker (Parker), appeals an Order denying a motion for new trial or reconsideration. The underlying Order is an Order Dismissing (Parker's) Garnishment Action for Lack of Jurisdiction. Parker sought garnishment against the garnishee, Amjad Iqbal (Iqbal). Parker has an unsatisfied worker's compensation judgment. Parker issued garnishment to Iqbal, a non-resident of Oklahoma. Iqbal challenged jurisdiction and the trial court agreed and dismissed the action. Although Parker claims that Iqbal had a prior history of involvement with the now defunct employer, Parker has not sued Iqbal. Parker argues that he can employ long-arm service. A claim against a potential non-resident defendant is an entirely different matter than a garnishment. The former seeks to hold the defendant responsible and bases jurisdiction on the defendant's related acts in the forum state. Absent default, a garnishee has no liability for the plaintiff's claim. There was no jurisdiction. The trial court is affirmed. AFFIRMED. Opinion from Court of Civil Appeals, Division IV, by Rapp, J.; Barnes, P.J., concurs, and Wiseman, V.C.J., concurs in result.

Friday, May 3, 2019

116,668 — In re the Marriage of: Daniel Alan Falconer, Petitioner/Appellant, vs. Anna Kathleen Vietti, formerly Falconer, Respondent/Appellee. Appeal from an order of the District Court of Comanche County, Hon. Scott Meaders, Trial Judge, denying Father Daniel Alan Falconer's motion to vacate a previously filed order transferring the case to the "Superior Court of the State of California, County of Shasta, Case No. 16 CV FL 018433." Father argues the trial court abused its discretion in transferring the case to California to determine modification of child support, and he asserts the Oklahoma trial court retained continuing, exclusive jurisdiction pursuant to the Uniform Interstate Family Support Act to determine any such modification. Mother argues that Father "initiated a modification of custody, visitation and child support action in the state of Califor-

nia where Mother and the minor children were residing" and stipulated he would be bound by the jurisdiction of the California court regarding child support issues. Mother alleges that Father did not contest the findings or order of the California court, and that Father did not object when the order was filed in Oklahoma. We conclude the California order containing the parties' stipulations agreeing to California's exclusive jurisdiction on the issue of child support and the order's subsequent registration, without objection, in Oklahoma fulfills the statutory requirement of filing a consent "in a record in the issuing tribunal." The evidence in the appellate record shows no abuse of trial court discretion in denying Father's motion to vacate the order transferring the case to Shasta County Superior Court in California, and we affirm. AFFIRMED. Opinion from the Court of Civil Appeals, Division IV, by Wiseman, V.C.J.; Barnes, P.J., and Rapp, J., concur.

Monday, May 6, 2019

116,730 — Deann Zavala, Plaintiff/Appellant, v. BRSI, L.L.C. d/b/a Big Red Kia and Aegis Automotive Finance Company, L.L.C., Defendants/Appellees. Appeal from the District Court of Oklahoma County, Hon. Lisa Davis, Trial Judge. Plaintiff appeals from the district court's order denying her motion to vacate an arbitration award. Under the restrictive standard of review applicable to this appeal, Plaintiff – whose arguments on appeal all implicitly seek re-adjudication or examination of the merits determinations made by the arbitrator – fails to make the exceptional showing required to upset the finality of arbitration. We affirm the district court's order denying her motion to vacate the arbitration award. AFFIRMED. Opinion from Court of Civil Appeals, Division IV, by Barnes, P.J.; Wiseman, V.C.J., and Rapp, J., concur.

ORDERS DENYING REHEARING

(Division No. 3)
Tuesday, April 16, 2019

117,442 — James Nisbett, Plaintiff/Appellant, vs. State of Oklahoma ex rel., Oklahoma Department of Corrections and Joe Allbaugh in his official capacity, Defendants/Appellees. Appellant's Motion for Reconsideration from order affirmed on March 19, 2019, hereinafter treated as a Petition for Rehearing pursuant to Okla.Sup.Ct.R. 1.13, filed April 10, 2019, is *DENIED*.

116,818 — Hamid Farzaneh, Petitioner/Appellee, vs. Hester Anne Brown, Respondent/Appellant. Appellant's Application for a Rehearing filed March 22, 2019, is *DENIED*.

(Division No. 4)
Tuesday, April 23, 2019

117,122 — The Queens LLC; Cherokee Queen, LLC and Larry Steckline, Plaintiffs/Appellees, vs. The Seneca-Cayuga Nation formerly known as the Seneca-Cayuga Tribe of Oklahoma; William L. Fisher; Jerry Crow; Sara and Sue Channing; Sallie White; Lisa Spano; Geneva Fletcher and Calvin Cassidy, Defendants/Appellants. Appellee's Petition for Rehearing is hereby *DENIED*.

Wednesday, April 24, 2019

116,349 (Companion with Case No. 116,078) — In the matter of the Guardianship of Harold S. Wood, a Partially Incapacitated Person. Virginia L. Wood, Plaintiff/Appellant, vs. Mark Lyons, Defendant/Appellee. Appellant's Petition for Rehearing and/or Clarification is hereby *DENIED*.

Monday, April 29, 2019

116,948 — In Re the Marriage of: Aeric Wynn Creekmore II, Petitioner/Appellee, vs. Sindi Hart Creekmore, Respondent/Appellant. Appellant's Petition for Rehearing is hereby *DENIED*.

Friday, May 3, 2019

116,081 — State of Oklahoma ex rel., Oklahoma State Board of Behavioral Health Licensure, Petitioner/Appellee, vs. Vanita Matthews-Glover, LPC, Respondent/Appellant. Appellant, Vanita Matthews-Glover LPC's Petition for Rehearing is hereby *DENIED*.

Monday, May 6, 2019

117,286 — RJRK, LLC, an Oklahoma Limited Liability Company, Plaintiff/Appellee, vs. Reginal Stafford a/k/a Reginal L. Stafford and Deborah Stafford a/k/a Deborah A. Stafford, Defendants/Appellants, and The Occupants, if any, of 114 S.W. 23rd St., Oklahoma City, Oklahoma, Defendants. Appellants' Petition for Rehearing is hereby *DENIED*.

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NORMAN BASED FIRM IS SEEKING A SHARP & MOTIVATED ATTORNEY to handle HR-related matters. Attorney will be tasked with handling all aspects of HR-related items. Experience in HR is required. Firm offers health/dental insurance, paid personal/vacation days, 401k matching program and a flexible work schedule. Members of our firm enjoy an energetic and team-oriented environment. Position location can be for any of our Norman, OKC or Tulsa offices. Submit resumes to justin@polstontax.com.

MAKE A DIFFERENCE AS THE ATTORNEY FOR A MEDICAL/LEGAL PARTNERSHIP. Are you fervent about equal justice? Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. If you are passionate about advocating for the rights of underserved, LASO is the place for you, offering opportunities to make a difference and to be part of a dedicated team. LASO has 20 law offices across Oklahoma, and LASO has an opening for a passionate attorney in our Lawton office to assist with a medical/legal partnership between LASO and Comanche County Memorial Hospital (Lawton). The successful candidate will function in all areas of the law impacting medical conditions, from housing to family, etc. This is a unique opportunity to make a real difference in the lives of clients. LASO offers a competitive salary and a very generous benefits package, including health, dental, life, pension, liberal paid time off and loan repayment assistance. Additionally, LASO offers a great work environment and educational/career opportunities. The online application can be found at https://legalaidokemployment.wufoo.com/forms/z7x4z5/. Website www.legalaidok.org. Legal Aid is an Equal Opportunity/Affirmative Action Employer.

HARRISON & MECKLENBURG INC., A WELL-ESTABLISHED AV-RATED FIRM with offices in Kingfisher, Stillwater and Watonga, is looking for an associate with a strong academic background and preferably 2-5 years' transactional, tax, estate planning, real estate and/or general business law experience. Please visit hmlaw office.com for additional information about the firm. For more information or to submit a resume and law school transcript, please email austin@hmlawoffice.com.

THE OKLAHOMA BAR ASSOCIATION HEROES program is looking for several volunteer attorneys. The need for FAMILY LAW ATTORNEYS is critical, but attorneys from all practice areas are needed. All ages, all counties. Gain invaluable experience, or mentor a young attorney, while helping someone in need. For more information or to sign up, contact Margaret Travis, 405-416-7086 or heroes@okbar.org.

POSITIONS AVAILABLE

MAKE A DIFFERENCE AS THE ATTORNEY FOR DOMESTIC VIOLENCE SURVIVORS. Do you want to ensure that survivors of domestic violence obtain justice and an end to violence in their lives for themselves and their children? Are you fervent about equal justice? Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. If you are passionate about advocating for the rights of domestic violence survivors, LASO is the place for you, offering opportunities to make a difference and to be part of a dedicated team. LASO has 20 law offices across Oklahoma. The successful candidate should have experience in the practice of family law, with meaningful experience in all aspects of representing survivors of domestic violence. We are seeking a victim's attorney in Pawhuska. This is an embedded position, providing the attorney with access to clients in need. LASO offers a competitive salary and a very generous benefits package, including health, dental, life, pension, liberal paid time off and loan repayment assistance. Additionally, LASO offers a great work environment and educational/career opportunities. The online application can be found at https://legalaidokemployment.wufoo.com/forms/z7x4z5/. Website www.legalaidok.org. Legal Aid is an Equal Opportunity/Affirmative Action Employer.

THE OKLAHOMA OFFICE OF THE ATTORNEY GENERAL IS CURRENTLY SEEKING A FULL-TIME ASSISTANT ATTORNEY GENERAL for our Medicaid Fraud Control Unit with an emphasis on criminal prosecution. The Medicaid Fraud Control Unit investigates and prosecutes Medicaid fraud; as well as abuse, neglect, exploitation and drug diversion in long-term board and care facilities. The successful candidate will have outstanding legal judgment and be able to effectively and professionally research, prepare, analyze and understand complex information and legal issues. The successful candidate must maintain the integrity of the Attorney General's Office as well as the confidentiality of information as required by the Oklahoma attorney general. Extensive in-state travel, including some over-night travel, is required. Applicants must be a licensed attorney in the state of Oklahoma with at least 3 years of professional experience in the practice of law. Strong writing and oral advocacy skills are required. The Oklahoma Office of Attorney General is an equal employment employer. Please contact our office directly if you require a reasonable accommodation applying. Please send resume to resumes@oag.ok.gov and indicate which particular position you are applying for in the subject line of the email.

WATKINS TAX RESOLUTION AND ACCOUNTING FIRM is hiring attorneys for its Oklahoma City and Tulsa offices. The firm is a growing, fast-paced setting with a focus on client service in federal and state tax help (e.g. offers in compromise, penalty abatement, innocent spouse relief). Previous tax experience is not required, but previous work in customer service is preferred. Competitive salary, health insurance and 401K available. Please send a one-page resume with one-page cover letter to Info@TaxHelpOK.com.

POSITIONS AVAILABLE

MAKE A DIFFERENCE AS A BILINGUAL ATTORNEY FOR THE LATINO COMMUNITY. Are you fervent about equal justice? Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. If you are passionate about advocating for the rights of the Latino community and domestic violence survivors, LASO is the place for you, offering opportunities to make a difference and to be part of a dedicated team. LASO has 20 law offices across Oklahoma, and LASO has an opening for a passionate bilingual attorney in its Oklahoma City law office. The attorney will be imbedded at the Latino Community Action Agency in Oklahoma City. Clients will be domestic violence survivors. LASO offers a competitive salary and a very generous benefits package, including health, dental, life, pension, liberal paid time off and loan repayment assistance. Additionally, LASO offers a great work environment and educational/career opportunities. The online application can be found at https://legalaidokemployment.wufoo.com/forms/z7x4z5/. Website www.legalaidok.org. Legal Aid is an Equal Opportunity/Affirmative Action Employer.

IN-HOUSE TRANSACTIONAL REAL ESTATE ATTORNEY. Established, stable and growing corporation headquartered in Oklahoma City is seeking a transactional real estate attorney with three to five years' of experience for a staff real estate counsel position in its Real Estate Department. This full-time position will work closely with other members of the Real Estate Department and provide legal representation and counsel to management, business personnel and affiliate companies primarily in the areas of commercial leasing, real estate acquisitions and commercial transactions. The ideal candidate will possess a positive attitude, initiative, excellent interpersonal skills and the ability to work effectively in a team environment. A Juris Doctor with a license in good standing to practice law is required. The company offers excellent benefits and values a positive work/life balance. To be considered for this position, applicants must provide a cover letter describing the applicant's particular interest in the position, salary requirements and a current resume to Susan Walker at susan.walker@hobbylobby.com by May 24, 2019.

THE LAW OFFICES OF JEFF MARTIN IS SEEKING AN ASSOCIATE WITH 0-5 YEARS OF EXPERIENCE. We handle all injury cases, motor vehicle accidents, slip and falls, social security disability and veterans' benefits. Competitive salary with health, dental, vision, life insurance and 401k benefits. Paid vacation. Customer service, sales, insurance or medical background is a plus. This is NOT a research/writing position. You will be regularly interacting with clients. We are a team-oriented firm committed to positive outcomes for our clients. Send resumes to hansen@jeffmartinlaw.com. All resumes are strictly confidential.

POSITIONS AVAILABLE

THE CITY OF BETHANY IS CONSIDERING BOTH PART-TIME AND FULL-TIME CITY ATTORNEY POSITIONS DEPENDING UPON QUALIFICATIONS OF APPLICANT. Job duties include reports to city council; provides legal services and counsel to the city council, city administrator, department directors and all boards and commissions as requested; conducts legal research, handles litigation, prepares documents, reviews contracts and other documents and communicates effectively; attends numerous nightly meetings. Qualifications: requires a Juris Doctorate degree or equivalent from an accredited law school and five years of professional legal experience in government, administration and related areas preferred; must be a member in good standing of the Oklahoma Bar Association and be admitted to practice in all necessary courts; must possess a valid Oklahoma driver's license and be able to attend evening meetings in Bethany as directed. Submit a letter of interest including a resume to City of Bethany, Attn: City Clerk, P.O. Box 219, Bethany, OK 73008 or email to Berkeley.Penner@bethanyok.org. Position open until filled. Compensation negotiable based upon experience. The City of Bethany is an Equal Opportunity Employer.

MAKE A DIFFERENCE! Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. Funded in part by the federal Legal Services Corporation, LASO serves all of Oklahoma's 77 counties and has 20 offices statewide. LASO is hiring staff attorneys for its Guymon office. This position presents an opportunity to fill the dire need for high-quality representation of low-income persons in rural areas. The Guymon office, located on the Great Plains, serves the elderly and impoverished of the Oklahoma panhandle, including a sizeable immigrant worker population drawn by the meatpacking industry. Over 20 languages and dialects are represented in the English Language Learner program in the public school system. Guymon is centrally located for road trips to the American West – Denver is a six-hour drive, and Santa Fe is a five-hour drive. Historic Route 66 features prominently in the region, with Oklahoma City located four hours away and Amarillo, Texas, located two hours away. Applicants should be licensed Oklahoma attorneys, or out-of-state attorneys or law graduates eligible to sit for the next Oklahoma bar exam. Salaries are competitive for the civil legal aid sector. LASO offers a generous fringe benefit package, including health, dental, pension, loan repayment assistance and more. Complete an application online at https://legalaidokemployment.wufoo.com/forms/z7x4z5/. The position is open until filled, and interviews will be conducted on a rolling basis.

THE OKLAHOMA INDIGENT DEFENSE SYSTEM (OIDS) HAS TWO OPENINGS FOR A DEFENSE COUNSEL position in our Non-Capital Trial Divisions: Clinton and Mangum satellite offices. Visit us at http://www.ok.gov/OIDS/ for more details and how to apply. Deadline is May 28, 2019.

POSITIONS AVAILABLE

ANNOUNCEMENT #19-N031U.1 - CHILD SUPPORT SERVICES ATTORNEY IV - Recruitment ID#190426-UNCE-201. Visit www.jobs.ok.gov to apply. Applications must be submitted online by Tuesday, June 11, 2019. Basic purpose of position: The DHS Child Support Services – Oklahoma 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 9901 SE 29th Street, Midwest City, OK 73130. 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 (KSA's): 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 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.

REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA SEEKS ASSISTANT GENERAL COUNSEL with a minimum of five years' experience. Litigation, employment and higher education experience preferred. Excellent health and retirement benefits. Salary between $65,000 and $77,000 commensurate with level of experience. Please send resume to general counsel for RUSO at dlyon@ruso.edu. For best consideration, please apply by May 24, 2019.

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NW OKC AV RATED FIRM seeks associate attorney with at least two years' experience in general civil matters. Experience in probates, guardianships, real estate, a plus. Must have strong communication and writing skills. Need a self-starter who is dedicated, dependable and detailed and can work independently. Send resumes to okclawad@gmail.com. All applications are confidential.

POSITIONS AVAILABLE

CURRENT EMPLOYMENT OPPORTUNITY AT CHEROKEE NATION. Position closing 06/01/2019, #2019-16274 R/FT Assistant Attorney General I, Office of Attorney General/Admin., Tahlequah, OK. Cherokee Nation offers exceptional employee benefits, including comprehensive health and life insurance, 401(K), holiday pay, sick leave and annual leave. If you are interested in working for the Cherokee Nation, visit our website at www.cherokee.org, or contact us at Cherokee Nation Human Resources Department, P.O. Box 948, Tahlequah, OK 74465. Telephone: 918-453-5292 or 918-453-5050. Employment will be contingent upon drug test results. Indian preference is considered.

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THURSDAY, SEPTEMBER 19, 2019
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