THE OKLAHOMA BAR
Journal
Volume 90 — No. 13 — 7/6/2019

Court Issue

OKLAHOMA BAR ASSOCIATION LEADERSHIP ACADEMY

THE SEARCH FOR FUTURE BAR LEADERS IS UNDERWAY

Leadership Academy will begin in September 2019 and run through April 2020

The Oklahoma Bar Association will host its 7th OBA Leadership Academy, one of the Association's premier programs designed for Oklahoma lawyers who want to learn more about bar leadership and may be at a point where bar leadership is a way they can give back to our Association. The Academy focuses its programming in areas that prepare participants to serve our profession, our bar, and our citizens in a variety of leadership roles, and is the perfect forum to promote the goal of recognizing and celebrating lawyers who volunteer, serve, and give of themselves.

WHY should I participate? The personal and profession benefit you will derive through this unique experience will be immeasurable. You will meet and interact with bar leaders and some of the most accomplished legal and community leaders. You will also be exposed to the legislative and judicial systems; you will interact with high-level state and local officials and judges and meet many attorneys from the private and public sectors.

HOW do I apply? Participants are expected to attend each of the sessions, evening activities and the graduation ceremony in their entirety.

WHAT is my cost? There is a $50 non-refundable application fee and you are responsible for your own travel expenses. Send checks payable to OBA to the attention of Susan Damron, 1901 N. Lincoln Blvd., Oklahoma City, OK 73105. The OBA picks up the costs for all programming, food, and, for participants living more than 60 miles away, hotel accommodations.

Questions? Call or email OBA Educational Programs Director Susan Damron at 405-416-7028, SusanD@okbar.org.

APPLICATION DEADLINE EXTENDED TO JULY 15TH BY 5:00 P.M.

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THE OKLAHOMA BAR
Journal

Volume 90 – No. 13 – 7/6//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.

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Criminal Law Section

Professional Advocates of the Year Awards

Recipients Announced during the luncheon at the Criminal Law Annual Forensics Seminar

Send your submissions now!

The Criminal Law Section is seeking nominations for its prestigious **"Professional Advocate of the Year"** awards. These awards will be presented to the Prosecutor and the Defense Attorney who best exemplifies the criteria listed below. Nominations may be made by any member of the bar, even if you are not a member of the Criminal Law Section of the OBA. **In that this is a professional award, Prosecutors nominate Defense Attorneys and Defense Attorneys nominate Prosecutors.**

Defense Attorney - Professional Advocate of the Year Award: The recipient of this award must be an Oklahoma attorney who practices criminal defense (federal or state) in Oklahoma and is recognized as an ethical and professional advocate who defends and protects the constitutional rights of his/her individual client. The recipient should be an individual who exhibits superior advocacy skills before the court either at the trial or appellate level and consistently shows professionalism, courtesy, and respect to opposing counsel in the spirit of the adversarial system.

Prosecutor - Professional Advocate of the Year Award: The recipient of this award must be an Oklahoma attorney who represents the government in criminal prosecutions (federal or state) in Oklahoma and is recognized as an ethical and professional prosecutor who exercises prosecutorial discretion in an equitable manner towards the community as a whole. The recipient should be an individual who exhibits superior advocacy skills before the court either at the trial or appellate level and consistently shows professionalism, courtesy, and respect to opposing counsel in the spirit of the adversarial system.

We also solicit nominations for **Honorable Donald L. Deason Judicial Award** to an Oklahoma or Tenth Circuit Judge who is known for character, dedication, and professional excellence. Any licensed Oklahoma attorney or member of the Oklahoma Judiciary may submit a nomination.

Submission Guidelines:

Send nominations to both Mike Wilds, **wilds@nsuok.edu** ***and*** Trent Baggett, **Trent.Baggett@dac.state.ok.us.** That should prevent any nomination getting lost in a spam file. Be sure to support any nomination with a short letter that includes any anecdotes or individual achievements that serve to substantiate the nomination. **Submissions must be received by July 20th.**

Award recipients will be announced during lunch at the Criminal Law Section Annual Forensics Seminar which will be held at the University of Central Oklahoma Forensics Institute during the luncheon on August 9, 2019.

OKLAHOMA BAR ASSOCIATION

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2019 OK 38

In re: Creation of Rule 1.18 of the Oklahoma Supreme Court Rules Concerning Prisoner Filings

SCAD-2019-51. May 20, 2019

ORDER

Rule 1.18 of the Oklahoma Supreme Court Rules, as shown on the attached Exhibit "A", is hereby created, effective immediately.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 20th day of May, 2019.

/s/ Richard Darby
VICE CHIEF JUSTICE

Gurich, C.J., Darby, V.C.J., Kauger, Winchester, Edmondson, Colbert and Combs, JJ., concur.

Exhibit "A"

RULE 1.18 - PRISONER FILINGS, FRIVOLOUS OR MALICIOUS APPEALS AND ORIGINAL ACTIONS

A prisoner who has, on three or more prior occasions, while incarcerated or detained in any facility, or while on probation or parole, brought an action or appeal in a court of this state or a court of the United States that has been dismissed on the grounds that the case was frivolous, or malicious, or failed to state a claim upon which relief could be granted, may not proceed in a matter arising out of a civil case, or upon an original action or on appeal without prepayment of all fees required by law, unless the prisoner is under immediate danger of serious physical injury. 57 O.S. § 566.2(A).

The court administrator of the Oklahoma courts shall maintain a registry of those prisoners who have had any cases dismissed as frivolous or malicious or for failure to state a claim upon which relief can be granted. 57 O.S. § 566.2(8). When a prisoner files an appeal or original action, the Clerk of the Supreme Court shall check the prisoner's name with the Registry of Frivolous or Malicious Appeals to determine if that prisoner already appears three or more times on the Registry.

When a prisoner who appears three or more times on the Registry of Frivolous or Malicious Appeals initiates an original action or an appeal filed with the Supreme Court without prepayment of all fees required by law, the Clerk shall file and docket the original action or appeal and forward the filings to the Chief Justice for review.

The Supreme Court will direct the prisoner to show cause why the matter should be allowed to proceed without prepayment of all fees as required by law. 57 O.S. § 566.2(A). If the prisoner fails to show adequate cause, the matter shall be summarily dismissed by order of the Chief Justice.

2019 OK 48

OKLAHOMA COUNCIL OF PUBLIC AFFAIRS, INC., DOUGLAS P. BEALL, M.D., JONATHAN S. SMALL, II, and JENNIFER WITHERBY, R.N., Petitioners/Protestants, v. KELLY SMALLEY and ERIN TAYLOR, Respondents/Proponents.

No. 117,962. June 19, 2019

ORDER

¶1 Oral argument was held on June 18, 2019, concerning a challenge to the sufficiency of the gist and the constitutionality of Initiative Petition 419, State Question 802, pursuant to 34 O.S. Supp. 2015 § 8 (B) & (C). We find that the challenge to the gist's use of 133% in determining eligibility for the proposed Medicaid expansion is not misleading and is sufficient. In *McDonald v. Thompson*, we stated that "[b]y its very nature, the gist is a simple statement that summarizes the petition." 2018 OK 25, ¶ 12, 414 P.3d 367, 373. We believe the language of the gist is clear. The gist informs signers of what the proposed amendment is intended to do – "expand Oklahoma's Medicaid program to include certain low-income adults between the ages of 18 and 65 whose income does not exceed 133% of the federal poverty level, as permitted under the federal Medicaid laws." (emphasis added).

¶2 The remaining challenges to the constitutionality of Initiative Petition 419, State Question 802, are also denied.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 19th day of June, 2019.

/s/ Noma D. Gurich
CHIEF JUSTICE

CONCUR: Gurich, C.J., Darby, V.C.J., Kauger, J., Reif, S.J., Thornbrugh, S.J. and Swinton, S.J.

CONCUR IN PART; DISSENT IN PART: Winchester and Combs, JJ. and Bell, S.J.

Combs, J., with whom Winchester, J. and Bell, S.J., join, concurring in part; dissenting in part:

> **"I concur with the majority that the Protestant's constitutional challenges to Initiative Petition 419 are meritless. However, I dissent to its ruling that the gist is sufficient. The use in the gist of 133% of the federal poverty level rather than the more accurate 138% is misleading to signatories and therefore the petition should be stricken on that basis alone."**

RECUSED: Edmondson and Colbert, JJ.

2019 OK 49

In re: Amendments to Rule 10 and Rule 11 of the State Board of Examiners of Certified Courtroom Interpreters, 20 O.S. 2011, ch. 23, app. II

No. SCAD-2019-57. June 24, 2019

ORDER

Rule 10 and Rule 11 of the State Board of Examiners of Certified Courtroom Interpreters, 20 O.S. 2011, ch. 23, app. II, are hereby amended as shown on the attached Exhibit "A." Rules 10 and 11 with the amended language noted are attached as Exhibit "B". The amended rules shall be effective June 28, 2019.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 24TH DAY OF JUNE, 2019.

/s/ Noma D. Gurich
CHIEF JUSTICE

Gurich, C.J., Darby, V.C.J., Kauger, Winchester, Edmondson, Colbert and Combs, JJ., concur;

EXHIBIT A

Rules of the State Board of Examiners of Certified Courtroom Interpreters

Title 20, Chapter 23, Appendix II

Rule 10. Fees

The applicable fee must be paid for each examination or orientation training taken by a candidate. The fee will be forfeited if the candidate fails to appear for the examination or training, fails to cancel before the applicable deadline, or fails to complete the examination or training, unless an exception is granted by the Board.

Rule 11. Certified Courtroom Interpreter Requirements and Oral Interpreter Examination

a) To become a Certified Courtroom Interpreter in a spoken language, the candidate must:

1) Be currently enrolled as a Registered Courtroom Interpreter in Oklahoma in accordance with these Rules; and

2) Pass the NCSC Court Interpreter Oral Examination in the language being certified.

b) The NCSC Court Interpreter Oral Examination prescribed in the paragraph above shall be conducted at least once per calendar year and shall consist of the following three sections: Simultaneous Interpreting, Consecutive Interpreting, and Sight Translation of Documents. The Sight Translation section of the exam consists of two parts – sight translation of a document written in English interpreted orally into the non-English language and sight translation of a document written in the non-English language interpreted into oral English.

1) To pass the Court Interpreter Oral Examination, the candidate shall receive an overall score of seventy percent (70%) or better in each of the three sections of the examination. The scores of Part I and Part II of the Sight Translation section are combined for one overall score for that section.

2) The oral examination shall be administered and rated in accordance with the test administration and rating protocols of the NCSC.

3) The Board shall charge the applicant a fee in an amount approved by the Supreme Court for each section of the oral examination.

4) A candidate must initially take all three sections of the oral exam in the same test sitting, and may retain credit for passing score(s) on each section of the exam for twenty-four (24) months, unless an exception is granted by the Board. During the 24-month period, the candidate must retest at least once per year, and may take only the exam section(s) the candidate has not passed.

5) If more than one version of the NCSC oral examination for the same language is available, an applicant who fails to pass the oral examination must wait six (6) months to re-test, and must take a different version of the examination. An applicant may not take the same version of the oral examination more than once in a twelve (12) month period.

6) An applicant who has passed the NCSC oral examination in another state within the past twenty-four (24) months may apply to the Board for recognition of the score. The applicant shall prove to the satisfaction of the Board that the passing score is substantially comparable to that required by this Rule.

c) For languages in which the NCSC oral exam is unavailable, the Board may utilize an abbreviated NCSC oral examination, if one is available. If no abbreviated NCSC oral examination is available, the Board may, at its discretion, recognize other oral proficiency examinations or interviews on a per-language basis.

EXHIBIT B

Rules of the State Board of Examiners of Certified Courtroom Interpreters

Title 20, Chapter 23, Appendix II

Rule 10. Fees

The applicable~~full~~ fee must be paid for each examination or orientation training taken by a candidate. The fee will be forfeited if the candidate fails to appear for the examination or training, fails to cancel before the applicable deadline, or fails to complete the examination or training, unless an exception is granted by the Board.

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2) The oral examination shall be administered and rated in accordance with the test administration and rating protocols of the NCSC.

3) The Board shall charge the applicant a fee in an amount approved by the Supreme Court for each section of the oral examination.

4) A candidate must initially take ~~pass~~ all three sections of the oral exam in the same test sitting, and may retain . ~~A candidate who fails to achieve a passing score on one or more of the three sections~~ credit for passing score(s) on each section of the exam for twenty-four (24) months, unless an exception is granted by the Board. During the 24-month period, the candidate must ~~must~~ retest at least once per year, and may~~-~~ take only the exam

section(s) the candidate has not passed ~~entire oral exam~~.

5) If more than one version of the NCSC oral examination for the same language is available, an applicant who fails to pass the oral examination must wait six (6) months to re-test, and must take a different version of the examination. An applicant may not take the same version of the oral examination more than once in a twelve (12) month period.

6) An applicant who has passed the NCSC oral examination in another state within the past twenty-four (24) months may apply to the Board for recognition of the score. The applicant shall prove to the satisfaction of the Board that the passing score is substantially comparable to that required by this Rule.

c) For languages in which the NCSC oral exam is unavailable, the Board may utilize an abbreviated NCSC oral examination, if one is available. If no abbreviated NCSC oral examination is available, the Board may, at its discretion, recognize other oral proficiency examinations or interviews on a per-language basis.

2019 OK 50

IN RE: FEE SCHEDULE FOR THE STATE BOARD OF EXAMINERS OF CERTIFIED COURTROOM INTERPRETERS

No. SCAD-2019-58. June 24, 2019

ORDER

PURSUANT TO the provisions of 20 O.S. § 1707, the Court hereby approves and authorizes the attached Fee Schedule for the State Board of Examiners of Certified Courtroom Interpreters. This fee schedule shall become effective June 28, 2019, and it shall supersede the Fee Schedule issued on June 20, 2016, by administrative order No. SCAD-2016-48.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 24TH DAY OF JUNE, 2019.

/s/ Noma D. Gurich
CHIEF JUSTICE

Gurich, C.J., Darby, V.C.J., Kauger, Winchester, Edmondson, Colbert and Combs, JJ., concur;

Fee Schedule of the Oklahoma State Board of Examiners of Certified Courtroom Interpreters

Fees for Interpreter Credentialing

Application for Provisional Status	$100.00
Application for Certification by Reciprocity	$100.00
Application to Become a Registered Courtroom Interpreter – Full Program (Fee includes enrollment in one Two-Day Orientation Training, one Written Examination and one Basic Proficiency Assessment)	$200.00
Application to Become a Registered Courtroom Interpreter – Application Only	$100.00
Background Check	$15.00 *(or actual cost, whichever is greater)*
Two-Day Orientation Training	$100.00
Court Interpreter Written Examination	$50.00
Basic Proficiency Assessment – Written Translation Test	$50.00
Basic Proficiency Assessment – Oral Proficiency Interview	$75.00
Oral Examination *(full exam must be taken initially - separate fees apply to re-tests)*	
Consecutive	$90.00
Simultaneous	$80.00
Sight Translation	$80.00
TOTAL FOR COMPLETE EXAM	$250.00

Fees for Certificate Renewal and Continuing Education

Annual Certificate Renewal Fee

- Annual certificate renewal shall become effective on January 1, 2016 — $30.00

Delinquent Payment Fee

- Assessed for failure to renew certificate on or before February 15 — $100.00

Continuing Education Penalty Fee

- Assessed for failure to obtain CE hours on or before December 31 of the year in which they are required

• Annual CE requirements shall become effective on January 1, 2016	$100.00
Continuing Education Suspension Fee	$100.00
Reinstatement After Administrative Revocation or Inactive Status	$100.00

Continuing Education Courses; Training Classes; Workshops – a reasonable Registration Fee may be charged for education and training events sponsored by the Board or the Administrative Office of the Courts

2019 OK 51

IN RE: Establishment of Rule 1.19 of the Oklahoma Supreme Court Rules - Use of Credit Cards, Debit Cards and Other Forms of Electronic Payment

SCAD-2019-59. June 24, 2019

ORDER ESTABLISHING NEW OKLAHOMA SUPREME COURT RULE 1.19 CONCERNING USE OF CREDIT CARDS, DEBIT CARDS AND OTHER FORMS OF ELECTRONIC PAYMENT AND ADOPTION OF FORM NO. 4A, RULE 1.301 OF THE OKLAHOMA SUPREME COURT RULES

The following new Rule 1.19 of the Oklahoma Supreme Court concerning use of credit cards, debit cards and other forms of electronic payment, is hereby adopted and codified at Part I of the Oklahoma Supreme Court Rules, Okla. Stat. tit. 12, ch. 15, app. 1, and is attached as Exhibit "A" to this order.

The following new Form No. 4A, Rule 1.301, an affidavit of intent to remit cost deposit via credit card or debit card or other forms of electronic payment, is hereby adopted and codified at Part X, Oklahoma Supreme Court Rules, Okla. Stat. tit. 12, ch. 15, app. 1, and is attached as Exhibit "B" to this order.

Rule 1.19 is immediately effective and shall apply to all pending cases before this Court or the Court of Civil Appeals.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 24th day of June, 2019.

/s/ Noma D. Gurich
CHIEF JUSTICE

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

Kauger, J., concurs in part and dissents in part.

EXHIBIT A

Oklahoma Statutes Citationized

Title 12. Civil Procedure

Appendix 1 - Oklahoma Supreme Court Rules

Article Part I. Rules of General Application

Section RULE 1.19 – USE OF CREDIT CARDS, DEBIT CARDS AND OTHER ELECTRONIC PAYMENTS

A. Payment for any fee, fine, forfeiture, cost, penalty assessment or other charge or collection to be assessed or collected by the Clerk of the Supreme Court under the laws of this state, may be made by a personal or business check, U.S. currency or a nationally recognized credit or debit card or other electronic payment method meeting the criteria authorized by the Administrative Office of the Courts and the criteria below.

1. The Clerk of the Supreme Court accepts the following nationally recognized credit cards: Visa, MasterCard, Discover and American Express. Debit cards will be processed as a credit card without the use of a PIN number. The Clerk of the Supreme Court shall not collect a fee for the acceptance of the nationally recognized credit or debit card.

2. The term "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value. The term "debit card" means an identification card or device issued to a person by a business organization which permits such person to obtain access to or activate a consumer banking electronic facility.

B. If payment is made in person, payment in the form of a nationally recognized credit or debit card or other electronic payment method must be tendered and accepted concurrently with the initial pleadings by a person authorized to tender said form of payment in person at the office of the Clerk of the Supreme Court, pursuant to Rule 1.23(b). In the event of a power outage, processing failure, equipment failure

or other unforeseen circumstance which prevents the immediate processing of the remittance, the filer may file an affidavit as set forth in subparagraph C.

C. In the event the initial pleadings are being sent to the Clerk of the Supreme Court pursuant to Rule 1.4(c) for filing by any method other than appearing in person at the office of the Clerk of the Supreme Court, the filer shall include an affidavit of intent to remit cost deposit via credit or debit card or other form of electronic payment which shall be filed concurrently with the initial pleadings.

1. The affidavit of intent to remit cost deposit with a credit or debit card or other electronic payment shall be in substantial compliance with the form prescribed by Rule 1.301 Form No. 4A. The filer shall provide the requested contact information but shall not include the actual card numbers or other sensitive information. A photocopy of the credit or debit card shall not be sent with the pleadings.

2. It shall be the responsibility of the filer to ensure the Clerk of the Supreme Court has received and successfully processed the cost deposit and any failure to do so is the sole responsibility of the filer. The Clerk of the Supreme Court may extend the time for payment by two business days in order to complete payment, in the event of a power outage, processing failure, equipment failure or other unforeseen circumstance which prevents the immediate processing of the remittance.

D. It is anticipated that initial pleadings may be filed on the due date. As long as payment or the Form 4A affidavit is received on or before the due date, the initial pleadings will be considered timely filed. In any instance in which a filer submits an affidavit of intent to remit cost deposit with a nationally recognized credit or debit card or other electronic payment, the initial pleading will be filed as if a cost deposit was actually provided. Submission of the affidavit alone without subsequent communication with the Clerk of the Supreme Court to provide any and all information necessary to process the cost deposit, or failure to provide an alternate form of payment in the event of a declination of the cost deposit, may result in dismissal of the initial pleadings.

EXHIBIT B

Form No. 4A. Affidavit of intent to remit cost deposit via credit or debit card or other form of electronic payment

AFFIDAVIT OF INTENT TO REMIT COST DEPOSIT VIA CREDIT CARD OR DEBIT CARD OR OTHER FORM OF ELECTRONIC PAYMENT

STATE OF OKLAHOMA

In the Supreme Court of Oklahoma:

I, _____, depose and say that I am the _____, in the above-entitled case. I further state that it is my intent to remit the cost deposit for this cause of action via credit card, debit card or other form of electronic payment, and that I am authorized to utilize the provided method of payment.

I understand that it is my responsibility to remit the cost deposit and to ensure that the Clerk of the Supreme Court has received and successfully processed the cost deposit not later than two business days after the date of filing this Form 4A. I accept full responsibility to provide the Clerk of the Supreme Court with any and all information needed for the processing of my remittance. I further understand that if I fail to timely and successfully remit the cost deposit for this cause of action in the form and manner prescribed by the Rules of the Supreme Court, my cause of action may be dismissed for failure to remit the cost deposit as required by Oklahoma law.

I further understand that I should not provide, on this Form 4A, the actual credit or debit card numbers or any other sensitive information for the processing of this cost deposit. I understand that the Clerk of the Supreme Court will not retain any of this information for any use other than the processing of this cost deposit after I have communicated with the Clerk and provided it.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

_____ _____

Date Affiant

Contact Information:

Name (Printed):_____

Address: _____

_____

Phone Number: _____

E-mail address: _____

DO NOT PUT THE ACTUAL CREDIT OR DEBIT CARD NUMBERS ON THIS FORM, AND DO NOT SEND A PHOTOCOPY OF THE CREDIT OR DEBIT CARD

2019 OK 52

LORI SCHNEDLER, Petitioner/Appellant, v. HEATHER NICOLE LEE, Respondent/ Appellee, and KEVIN PLATT, Third Party Defendant/Appellee.

No. 115,362. June 25, 2019

CERTIORARI TO THE COURT OF CIVIL APPEALS, DIVISION 2; ON APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY

HONORABLE J. ANTHONY MILLER, TRIAL JUDGE

¶0 A same-sex couple conceived a child through artificial insemination and co-parented together as a family for eight years. The couple separated, and after the biological mother refused visitation with their minor child, the non-biological parent petitioned for shared legal custody and physical visitation under the doctrine of *in loco parentis*. The biological mother objected, asserting that the couple's genetic donor, who had never sought any determination of his own parental rights, was a necessary party to the proceedings. Agreeing that the donor's consent was a necessary requirement, the trial court dismissed the non-biological mother's petition for lack of standing. The non-biological mother appealed, and the Court of Civil Appeals affirmed the trial court's dismissal for lack of standing. We granted *certiorari* to clarify the legal rights of non-biological co-parents in same-sex relationships, and we now reverse.

OPINION OF THE COURT OF CIVIL APPEALS VACATED; JUDGMENT OF THE DISTRICT COURT REVERSED; CAUSE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH TODAY'S PRONOUNCEMENT

Christopher U. Brecht, McDaniel Acord & Lytle, PLLC, Tulsa, Oklahoma, and Michael F. Smith, McAfee & Taft, Tulsa, Oklahoma, for Lori Schnedler, Petitioner/Appellant.

Bryan J. Nowlin, Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., Tulsa, Oklahoma, for Heather Nicole Lee, Respondent/Appellee.[1]

No appearance for Kevin Platt, Third Party Defendant/Appellee.

GURICH, C.J.

¶1 Lori and Heather, a same-sex couple, built and shared a life together in the ten or so years before Oklahoma recognized marriages between two people of the same sex.[2] In the course of their committed relationship, they started a family together through assisted reproduction. In 2007, Heather gave birth to J.L. Eight years went by in which young J.L. grew up in a nurturing and loving environment with two parents, during which time J.L. came to know Lori as a parent in every significant sense. Lori and Heather separated in April 2015. When Heather abruptly denied Lori any further visitation with their daughter, Lori petitioned the district court for shared legal custody of, and visitation with, J.L. under the doctrine of *in loco parentis* and this Court's precedent in *Ramey v. Sutton*, 2015 OK 79, 362 P.3d 217.

¶2 Interpreting our decision in *Ramey* as prioritizing and privileging the veto power of a *genetic donor* – in this case, Kevin, who at no point in those eight years had sought any determination of his own parental rights – over the parental rights of the non-biological same-sex parent, the district court concluded that Lori lacked standing to seek any adjudication of custody, visitation, or support. Lori appealed; the Court of Civil Appeals affirmed the district court's dismissal for lack of standing. We are now tasked with deciding whether our law recognizes Lori's right to seek custody and visitation on the same equal terms as a legal parent. We hold here that it must.

Facts and Procedural History

¶3 Lori Schnedler and Heather Lee met each other in the early 2000s while working for the Bartlesville Police Department, staying only acquaintances at first. As their relationship advanced, they began living together in a mod-

est apartment. Once Lori returned from her overseas military deployment in 2004, they bought a home. For the nearly eleven years that followed – with the sole exception of a brief separation early in the relationship – Lori and Heather lived in the home they had purchased together.

¶4 At that time, of course, they were unable to legally marry in (or have their marriage recognized by) the State of Oklahoma. Before the landmark rulings in *Obergefell v. Hodges*[3] and *Bishop v. Smith*,[4] marriage between them would have been a "legal nullity." *Ramey*, 2015 OK 79, ¶¶ 12, 17, 362 P.3d at 220-21. Yet they became a family in every meaningful sense of the word, culminating in their mutual decision to have a child.

¶5 A work friend of Heather's, Kevin Platt, agreed to serve as the sperm donor. Heather became pregnant and delivered J.L. in July 2007, with her family and Lori present in the delivery room. Lori cut the umbilical cord, and the couple gave the newborn Lori's middle name. From the outset of Heather's pregnancy, both women agreed that they intended to raise J.L. together as their daughter.

¶6 Though Lori and J.L. do not share blood ties, J.L. recognized Lori as her "momma" or "Momma Lori." For the first eight years of J.L.'s life, Lori was a parent to her in every respect. By Heather's own admission, Lori provided "food, clothing, and shelter" for J.L. and "supplied all the financial stability" for the entire family. Moreover, her contributions to J.L.'s wellbeing were not limited to financial support: Lori was a full and active participant in J.L.'s emotional, social, and intellectual development.

¶7 Lori and Heather ended their relationship in April 2015. Heather left the home they had shared, and took J.L. with her. In the initial months following their separation, Lori and Heather adhered to a regular visitation schedule for J.L. This arrangement seemed workable for seven months, until Heather suddenly denied Lori any further contact with their daughter. Since that time, Lori has neither seen nor spoken with J.L.

¶8 In December 2015, Lori filed a petition in Tulsa County District Court for an adjudication of J.L.'s custody, visitation, and child support on *in loco parentis* grounds.[5] Heather objected and sought to join Kevin, the biological father and genetic donor, as a necessary party to the proceedings. Additionally, both Heather and Kevin brought crossclaims in the action, requesting the trial court's determination that Kevin was J.L.'s "biological and natural father" and therefore entitled to full parental rights of custody, visitation, and support.

¶9 Before this litigation began, Kevin was not demonstrably involved in J.L.'s life.[6] Since the start of these legal proceedings, however, J.L. has been staying with Kevin for overnight visits, and she has met Kevin's wife and children.[7] She refers to him as "Kevin," although the recently increased frequency of their interactions has led to her calling him "dad" on occasion. Kevin testified that this surge in interaction between himself and J.L. came about because Lori's custody action "forced [his] hand" in entering J.L.'s life earlier than he expected, though he had always hoped to do so at some unspecified future time.

¶10 Both Heather and Kevin challenged Lori's standing to seek *in loco parentis* status. Following an evidentiary hearing in which Lori, Heather, and Kevin all gave testimony, the trial court – citing our decision in Ramey – found that Lori "has not met her burden of being considered a parent under the doctrine of *in loco parentis* . . . and shall not be entitled to further pursue the aforementioned action relative to the custody, visitation and child support" of J.L. Specifically, the trial court interpreted the final prong of our holding in Ramey as requiring the biological donor's consent to, and encouragement of, the non-biological same-sex partner's parental role. The Court of Civil Appeals affirmed. We granted certiorari to clarify the standing of non-biological co-parents in same-sex relationships, and to create a meaningful and comprehensive framework for the adjudication of the same. We now reverse.

Standard of Review

¶11 The dismissal of a petition by the trial court is reviewed *de novo*. *Ramey*, ¶ 5, 362 P.3d at 219; *Eldredge v. Taylor*, 2014 OK 92, ¶ 3, 339 P.3d 888, 890. "Court supervision over the welfare of children is equitable in character." *In re Bomgardner*, 1985 OK 59, ¶ 17, 711 P.2d 92, 97; *see also In re Guardianship of Sherle*, 1984 OK CIV APP 23, ¶ 10, 683 P.2d 78, 80 ("Court supervision over the custody and welfare of children is equitable in nature."). "'The purpose of a court sitting in equity is to promote and achieve justice with some degree of flexibility.'" *Merritt v. Merritt,* 2003 OK 68, ¶ 13, 73 P.3d 878, 883

(quoting *Garrett v. Arrowhead Improvement Ass'n*, 826 P.2d 850, 855 (Colo. 1992)). Doing so "requires an inquiry into the particular circumstances of the case." *Id*. In a case of equitable cognizance, this Court "will administer complete relief on all issues formed by the evidence regardless of whether the pleadings specifically tendered them for resolution."[8] *In re Estate of Bartlett*, 1984 OK 9, ¶ 4, 680 P.2d 369, 374.

¶12 "Whenever possible, an appellate court must render or cause to be rendered, that judgment which in its opinion the trial court should have rendered." *Clark v. Edens*, 2011 OK 28, ¶ 5, 254 P.3d 672, 675; *see also Snow v. Winn*, 1980 OK 27, ¶ 3, 607 P.2d 678, 680-81. "We are bound neither by the reasoning nor by the findings of the trial court." *Estate of Bartlett*, ¶ 4, 680 P.2d at 374. Though this Court does not disturb the trial court's factual findings merely because we disagree with them, we will substitute our own view when "the trier's decision is manifestly wrong." *Sides v. John Cordes, Inc.*, 1999 OK 36, ¶ 17, 981 P.2d 301, 307-08.

Analysis

¶13 In *Ramey*, we confronted an issue in many ways similar to that here. That case also involved a custody dispute between separated same-sex partners. There, we established a trifold test for acknowledging the *in loco parentis* standing of a non-biological parent in a same-sex relationship where "the couple, prior to *Bishop*, or *Obergefell*, (1) were unable to marry legally; (2) engaged in intentional family planning to have a child and to co-parent; and (3) the biological parent acquiesced and encouraged the same sex partner's parental role following the birth of the child." *Ramey*, 2015 OK 79, ¶ 2, 362 P.3d at 218.

¶14 Here, the trial court correctly found that Lori and Heather were unable to marry at the time of J.L.'s conception, and also that the couple had consciously decided to co-parent together.[9] But the trial court erred in concluding that the third prong of this test required Kevin's acquiescence in, and encouragement of, Lori's parental role. In short, this was a fundamental misreading of *Ramey*. The only acquiescing "biological parent" contemplated by *Ramey* is the same-sex partner who "entered into an intentional intimate relationship and made a conscious decision to have a child and co-parent as a family." *Id*. ¶ 17, 362 P.3d at 221. Only Heather could have fulfilled that role here.

¶15 The trial court's faulty application of our precedent found root in footnote four of the *Ramey* opinion. The footnote specified that the biological father in *Ramey* had never had a relationship with the subject child, and thus had never asserted a claim for custody or visitation. *Id*. n.4, 362 P.3d at 219 n.4. But here, because Kevin alleged he had maintained some relationship – albeit minimal and covert – with J.L., the trial court erroneously reasoned that Ramey likewise required his consent before Lori could assume a parental role after the birth of J.L. To be abundantly clear, *Ramey* focuses on the carefully and consciously chosen intentions of the parties *within the same-sex relation*ship – not the subjective beliefs of the third-party donor. *Id*. ¶¶16, 17, 362 P.3d at 221.

¶16 In this case, the record amply and plainly reflects that Heather both acquiesced in and encouraged Lori's role as a co-parenting mother to J.L. Accordingly, all three prongs of *Ramey's* standing test were satisfied – irrespective of Kevin's consent, or lack thereof, to Lori's parental role. This determination, however, does not end our analysis. Just as we broadened Eldredge's holding in *Ramey* to remove the barrier of an express, written co-parenting agreement between same-sex partners, we hold that a non-biological same-sex co-parent has the right to seek custody, visitation, and support of his or her child on the same equal terms as the biological parent.

¶17 The fundamental guiding principle of our family-law jurisprudence is the pursuit of the best interests of the child. *Rowe v. Rowe*, 2009 OK 66, ¶ 3, 218 P.3d 887, 889 (the "best interests of the child must be a paramount consideration" in determining custody and visitation); *In re Adoption of M.J.S.*, 2007 OK 44, ¶ 17, 162 P.3d 211, 218 (applying the "best interests" doctrine to adoption proceedings); *Daniel v. Daniel*, 2001 OK 117, ¶ 21, 42 P.3d 863, 871.

¶18 Our jurisprudence has been consistent in considering issues of parental rights to be equitable in nature, as this approach has allowed us to most adaptively serve the best interests of the child. *E.g., Bomgardner*, 1985 OK 59, ¶ 17, 711 P.2d at 97 ("Court supervision over the welfare of children is equitable in character."); *Ex parte Yahola*, 1937 OK 306, ¶ 14, 71 P.2d 968, 972 (explaining that "the supervision of the courts over the custody and welfare of children is of itself equitable, and not strictly legal, in nature").

¶19 We have also long recognized that the right of custody and visitation is not bound to the strict confines of biological relation. *Ex parte Yahola*, 1937 OK 306, ¶ 5, 71 P.2d at 970 (the right of a biological parent to custody "is not an absolute right, but one which must at all times be qualified by considerations affecting the welfare of the child"). But, in the context of same-sex parentage, we have thus far allowed a non-biological parent standing to assert parental rights only *in loco parentis*. We have not presumed parentage for the non-biological parent in same-sex couples, but allowed the pursuit and validation of such rights only when there exists some prior agreement between the couple regarding the same – and only where the same-sex couple was "unable to marry legally" before *Bishop* and *Obergefell*. *Ramey*, 2015 OK 79, ¶ 2, 362 P.3d at 18. We can no longer say that this approach serves the best interests of the children of these relationships.

¶20 Indeed, "a person standing *in loco parentis* is one who acts 'in the place of a parent.'" *United States v. Floyd*, 81 F.3d 1517, 1524 (10th Cir. 1996). Consequently, i*n loco parentis* status – at root, a legal fiction – is "by its very nature, a temporary status." *Id*. Temporary and uncertain parental status only exacerbates the frequency of cases like today's, and creates an inherently more unstable environment for the children of same-sex couples. Their children see them as mom or dad. The law should treat them as such.

¶21 While some states have enacted clear statutory reforms to address the ambiguities of same-sex parentage,[10] others have relied on their common-law precedents and equitable powers to do so as well.[11] The experience of these states provides a helpful and persuasive framework for Oklahoma, with the best interests of the child as our polestar. This holding is consonant with the constitutional protections guaranteed in *Obergefell* as well, for it ensures that children like J.L. will not "suffer the stigma of knowing their families are somehow lesser." 135 S. Ct. at 2590.

¶22 In announcing today's decision, we are mindful of the need to establish practical guidelines for state courts. We conclude that, to establish standing, a non-biological same-sex co-parent who asserts a claim for parentage must demonstrate – by a preponderance of the evidence – that he or she has

> engaged in family planning with the intent to parent jointly
>
> acted in a parental role for a length of time sufficient to have established a meaningful emotional relationship with the child, and
>
> resided with the child for a significant period while holding out the child as his or her own child.

As always, a court shall assess these factors with the best interests of the child as its foremost aim. When a continuing relationship with the non-biological parent is in those best interests, a court must honor its validity and safeguard the perpetuation of that bond. In such proceedings, parties may continue to invoke equitable doctrines and defenses, *e.g.,* equitable estoppel.

¶23 A non-biological same-sex parent stands in parity with a biological parent. Once an individual has standing, the court shall adjudicate any and all claims of parental rights – including custody and visitation – just as the court would for any other legal parent, consistent with the best interests of the child.

Conclusion

¶24 Lori did not act in the place of a parent; she *is* a parent. The record in this case cannot reasonably be read otherwise. Lori has emphatically demonstrated standing to seek a determination of visitation and custody of J.L. under the *Ramey* test. Consistent with the best interests of children in similar scenarios, we hold that non-biological same-sex parents may attain complete parity with biological parents. The trial court's judgment is reversed. This matter is remanded for further proceedings consistent with this opinion.

OPINION OF THE COURT OF CIVIL APPEALS VACATED; JUDGMENT OF THE DISTRICT COURT REVERSED; CAUSE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH TODAY'S PRONOUNCEMENT

¶25 Gurich, C.J., Kauger, Winchester, Edmondson, Colbert, Combs, JJ., Reif , S.J., and Bass, S.J., concur;

¶26 Darby, V.C.J., dissents (by separate writing).

DARBY, V.C. J., dissenting:

¶1 I agree with the majority that the *Ramey* test has been satisfied, *Ramey v. Sutton*, 2015 OK 79, ¶ 2, 362 P.3d 217, 218, and Lori has *in loco parentis* standing. I dissent from the rest of the majority opinion. The majority compares its expansion of rights and creation of guidelines as similar to our broadening *Eldredge's* holding in *Ramey*. However, *Ramey* removed the requirement of an express, written co-parenting agreement between same-sex partners in a case where there was none. Here, the majority finds that all of the requirements for the requested *in loco parentis* standing are met. The majority then goes on to state that the *Ramey* test no longer serves the best interest of children and creates in its place guidelines the courts must follow for claims of parentage by a non-biological same-sex co-parent. This Court does not issue advisory opinions. *Scott v. Peterson*, 2005 OK 84, ¶ 27, 126 P.3d 1232, 1239. Therefore, I believe the Court should use judicial restraint in this matter and base the holding on the narrowest grounds possible.

GURICH, C.J.

1. Identified herein are only those counsel who have entered an appearance for the parties in this cause in conformance with the requirements of Sup. Ct. R. 1.5(a).

2. *See Bishop v. Smith*, 760 F.3d 1070 (10th Cir. 2014) (holding that Oklahoma's ban on same-sex marriage was an unconstitutional burden on same-sex couples' fundamental right to marry). We do not mean to be patronizing or overly familiar in referring to the parties by their first names. We do so as a convenience to the readers of this opinion and, "in part, to humanize a decision resolving personal legal issues which seriously affect [the parties'] lives." *In re Marriage of Smith*, 274 Cal. Rptr. 911, 913 n.1 (Cal. Ct. App. 1990).

3. 135 S. Ct. 2584 (2015).

4. 760 F.3d 1070 (10th Cir. 2014).

5. "The term '*in loco parentis*' means in the place of a parent, and a 'person *in loco parentis*' may be defined as one who has assumed the status and obligations of a parent without a formal adoption." *Workman v. Workman*, 1972 OK 74, ¶ 10, 498 P.2d 1384, 1386, *overruled on other grounds by Unah ex rel. Unah v. Martin*, 1984 OK 2, 676 P.2d 1366 (quotations omitted); *see also In re B.C.*, 1988 OK 4, ¶ 19, 749 P.2d 542, 545 (same).

6. Kevin has explained that he, Heather, and J.L. met on a monthly basis for approximately an hour at a time – unbeknownst to Lori and with no documentation of the same – throughout the first year after J.L.'s birth. During the course of these clandestine monthly meetings, he gave Heather several hundred dollars for J.L.'s support. Shortly after J.L.'s birth, Kevin and Heather had signed a document waiving any claims against Kevin for future child support. He testified that he provided these payments only out of a moral obligation.

7. At the trial-court hearing on Lori's standing, Kevin testified that he has "[f]ive-six" children.

8. In addition, "[w]hen resolving a public-law controversy, the reviewing court is generally free to grant corrective relief upon any applicable legal theory dispositive of the case." *Russell v. Bd. of Cty. Comm'rs, Carter Cty.*, 1997 OK 80, ¶ 10, 952 P.2d 492, 497; *see also Eldredge v. Taylor*, 2014 OK 92, ¶ 3, 339 P.3d 888, 890 (noting that same-sex partner's claim for custody and visitation implicates a question of public law).

9. Neither Heather nor Kevin has appealed these determinations by the trial court.

10. Oklahoma's Uniform Parentage Act, 10 O.S. §§ 7700-101 to 7700-902, was enacted in 2006 and appears to have in no way anticipated conflicts between biological and non-biological same-sex co-parents regarding the parental rights of children artificially conceived. Given that same-sex marriage would not even be legally recognized until nearly a decade after the Uniform Parentage Act's adoption, this omission is understandable. Still, this Court is left with "absolutely no textual indication" of how to proceed and "can derive no help from the textual analysis of the Act." *State ex rel. Macy v. Bd. of Cty. Comm'rs of Cty. of Okla.*, 1999 OK 53, ¶ 6, 986 P.2d 1130, 1135.

11. *See, e.g., Frazier v. Goudschaal*, 295 P.3d 542, 553 (Kan. 2013); *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010); E.N.O. v. L.M.M., 711 N.E.2d 886, 891 (Mass. 1999) ("A child may be a member of a nontraditional family in which he is parented by a legal parent and a *de facto* parent."); *In re Parentage of L.B.*, 122 P.3d 161, 173 (Wash. 2005); *In re Custody of H.S.H.-K.*, 533 N.W.2d 419, 436 (Wis. 1995).

2nd Annual Legislative Debrief Aug. 22

By Angela Ailles Bahm

The end of the 57th session of Oklahoma legislature was May 23. Gov. Stitt signed approximately 493 bills into law. At the bottom of the article is the "original" list from Reading Day which has been whittled down to those bills that are now law. Clearly this list is only the tip of the mountain of bills. Even if you are just a casual consumer of political news, you must realize there were significant changes made to our state. Legislation was passed to give effect to State Question 780 which re-classifies certain criminal offenses. The Legislature approved HB 2366 which provides for redistricting of the Supreme Court and Court of Criminal Appeals. There are now five districts from which members of the Supreme Court will be chosen, as well as four at-large positions. How the directors of core-service agencies are appointed and how they will be monitored, all was changed dramatically.

To learn more about what bills have become law, please join us for the second Annual Legislative Debrief. It will take place Aug. 22 at the bar center starting at 2 p.m. All attendees will receive two hours of *free* MCLE credit. The debrief will be presented like Reading Day; presenters will share those bills that they believe have the most impact on the subject area of practice.

In addition, our Administrator of the Courts Jari Askins has agreed to moderate a legislative panel. They will talk for 30 minutes at the conclusion of the session.

To attend, you will need to email Debbie Brink at debbieb@okbar.org or call 405-416-7014. I look forward to seeing you there!

On a personal note, this is my last article on behalf of the Legislative Monitoring Committee. I want to thank our Executive Director John Williams for his stewardship – without him and his team, Debbie Brink, Debra Jenkins, Carol Manning and many more, the ship would sink! I want to thank all of you who have so generously donated your time and energy to the committee and to the programs! For me, personally, if I have affected one person to become more informed and engaged in the political process, I feel I have been successful. Please, please keep being engaged!

Committee member and presenter extraordinaire, Miles Pringle, will be taking over as chair. He is also an at-large member of the OBA Board of Governors and liaison for the committee. He will continue to advance the effort of education of the members of the bar. Again, thank you. If you have any suggestions on the improvement of the committee or programming, contact Mr. Pringle.

Family Law Bills

HB 2270. Title 10. Relates to uniform parentage act and limitations of paternity actions.

HB 2091. Title 22. Increases number of members on Domestic Violence Fatality Review Board.

SB 833. Title 63. Modifies information to be gathered and incorporated into the annual report of the Office of Child Abuse Prevention.

HB 1222. Title 16. Provides for effective conveyances by married grantors.

SB 742. Title 63. Pertains to child abuse prevention and school districts.

Criminal Law Bills

HB 1019. Oklahoma criminal discovery code – access to discovery.

HB 1030. Title 37A. New law; alcoholic beverages; allows certain felons to possess an employee's license.

HB 1269. Acts on State Question 780; reclassifies certain offenses.

Estate Planning/Banking/General Business Bills

SB 732. Title 14 A. UCC. Changes to dollar amounts from Reference Base Index.

SB 737. Title 18. Add real estate appraisers to Professional Entity Act.

SB 204. Title 18. Includes a "natural person" as a "charitable organization."

Government Law Bills

HB 1391. Title 74. Pertaining to fingerprinting and back ground checks.

HB 1921. Title 62. New law; Oklahomans Virtually Everywhere Act.

SB 198. Title 74. New law; Guidelines for social media.

Civil Procedure/Courts Bills/Worker's Compensation

HB 1092. Provides for collection of attorney's fees in small claims cases.

HB 1332. Title 47. Allows ATVs to be driven on certain municipal and county roadways.

HB 2366. Redistricting of the Supreme Court and Court of Criminal Appeals.

HB 2367. Comprehensive workers' compensation bill.

Environmental/Natural Recourses Bills

HB 2474. Title 82. Disclosure and website of applications to Oklahoma Water Resources Board.

School Bills

SB 441. Pertains to length of school year.

Indian/Real Estate Law Bills

HB 1916. Title 60. New law prohibiting transfers of certain items of tangible personal property to public trust.

HB 2121. Title 60. Provides for notice relating to Uniform Unclaimed Property Act.

SB 915. Title 16. Relates to remote online notorial acts.

Also provided an update to the Stigler Act amendments in the lawsuit, *Carpenter vs. Murphy.*

ABOUT THE AUTHOR

Angela Ailles Bahm is the managing attorney of State Farm's in-house office and serves as the Legislative Monitoring Committee chairperson.

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Opinions of Court of Civil Appeals

2019 OK CIV APP 31

RIVERBEND LAND, LLC, Plaintiff/ Appellant, vs. STATE OF OKLAHOMA, ex rel. OKLAHOMA TURNPIKE AUTHORITY, Defendant/Appellee.

Case No. 116,579. August 10, 2018

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

HONORABLE PATRICIA G. PARRISH, TRIAL JUDGE

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS

Kraettli Q. Epperson, Maris A. Skinner, MEE MEE HOGE & EPPERSON PLLP, Oklahoma City, Oklahoma, for Plaintiff/Appellant

Phillip G. Whaley, Grant M. Lucky, RYAN WHALEY COLDIRON JANTZEN PETERS & WEBBER PLLC, Oklahoma City, Oklahoma, for Defendant/Appellee

DEBORAH B. BARNES, PRESIDING JUDGE:

¶1 In this quiet title action, Riverbend Land, LLC (Riverbend) appeals from an order of the district court granting summary judgment to State of Oklahoma, ex rel. Oklahoma Turnpike Authority (OTA). Based on our review of the summary judgment record and the applicable law, we reverse and remand for further proceedings.

BACKGROUND

¶2 Mamosa Properties, L.L.C. and Shana, L.L.C. (collectively, Mamosa) acquired title to certain tracts of land by warranty deed on December 30, 1997, from Property Enterprises Corporation. This property was subsequently conveyed to Expert SWC Rockwell Memorial, LLC (Expert) in 2007.[1] On November 6, 2009, by special warranty deed and corrected warranty deed, Riverbend acquired certain real property from Expert that had been conveyed to Expert by Mamosa. Two tracts of land were conveyed to Riverbend, but only one tract, consisting of approximately 7.34 acres, is the subject of Riverbend's quiet title action.[2]

¶3 Prior to Expert's and Riverbend's acquisition of the subject property, in November 1998, Mamosa conveyed to OTA by general warranty deed the following described property "together with abutter's rights, if any, to wit:"

> A tract of land in the NE¼ of Section 17, T-13-N, R-4-W, I.M., Oklahoma County, Oklahoma, being more particularly described as;
>
> Beginning in the NE Corner of said NE¼ (NE Corner being a PK Nail w/Tag); Thence S 00°19'07" E on the East Line of said NE¼, a distance of 886.72 feet to a point; Thence S 89°40'53" W, a distance of 33.00 feet to a point; Thence N 03°30'05" W, a distance of 725.53 feet to a point; Thence N 86°07'52" W, a distance of 2000.02 feet to a point; Thence N 00°08'41" E, a distance of 33.00 feet to a point; Thence S 89°51'19" E, a distance of 2067.76 feet to the Point or Place of Beginning.
>
> Containing 245,748.76 square feet or 5.64 acres more or less, of new right-of-way, the area included in the above description being right-of-way occupied by the present turnpike, together with all abutters rights, including access from the remaining portion of the grantors land onto the LIMITED ACCESS TURNPIKE to be constructed on the above described property, except that the grantors, their heirs, successors or assigns, shall have the right of access to the Section Line Road, along the East side of the above described property, beginning at a point on the East Line of the NE¼ a distance of 486.70 feet South of the NE Corner of said NE¼ and extending South, also except that the grantors, their heirs, successors or assigns, shall have the right of access from the West 1673.95 feet of the NE¼ onto the frontage road to be constructed between said property and the LIMITED ACCESS TURNPIKE, also except that the grantors, their heirs, successors or assigns, shall not have the right of access onto a frontage road to be constructed between said property and the LIMITED ACCESS TURNPIKE beginning at the NE Corner of said NE¼ and extending West 1071.09 feet on the North Line of said NE¼ and beginning at the NE Corner of said NE¼ and extending South 412.22 feet on the East Line of said NE¼[.][3]

¶4 Riverbend initiated the present action because OTA claims the abutters rights to portions of the 7.34 acre tract through the 1998 OTA/Mamosa Deed. In 2016 Riverbend attempted to sell the subject land to a third party, but that sale did not occur because of OTA's claim. It is undisputed that the title insurance companies used by Expert, Riverbend, and the prospective purchaser did not disclose OTA's claim to the abutters rights. Riverbend filed a motion for summary judgment in which, among other arguments, it claims it is a bona fide purchaser for value and had no notice (actual or constructive (of the OTA/Mamosa Deed.

¶5 Riverbend argues nothing in the deeds or in its chain of title states the grantors' "Express Reservation of the Riverbend Lands Abutters Rights."[4] It argues, neither Mamosa nor Expert "reserved" the abutters rights in the Mamosa/Expert Deed or the Expert/Riverbend Deed. Riverbend argues the abutters rights are a part of the fee simple title it acquired through the Property/Mamosa Deed, Mamosa/Expert Deed (and correction deed) and Expert/Riverbend Deed (and correction deed), and "such … Riverbend Lands Abutters Rights were neither expressly reserved by Riverbend's predecessors in title (*i.e.*, Property, [Mamosa], and Expert), nor conveyed of record to the OTA." Consequently, it argues, Riverbend acquired the entire fee simple interest in the subject property including the abutters rights.[5] Riverbend further contends that unless OTA can "show a conveyance to it including the specific legal description . . . describing (the remaining portion of the grantors land) . . . that would have covered the related Riverbend Lands Abutters Rights . . . such rights were not conveyed to OTA."

¶6 Further, Riverbend argues, it cannot be held to have had constructive notice of the OTA/Mamosa Deed because neither the legal description for the entirety of Mamosa's "remaining portion" of land nor the legal description for Riverbend's 7.34 acre tract was specifically described in the OTA/Mamosa Deed. It argues 16 O.S. 2011 § 16[6] and 19 O.S. 2011 § 298[7] require a specific legal description to impose constructive knowledge on a subsequent bona fide purchaser for value. Further, 16 O.S. § 15 provides in pertinent part: "no deed . . . or other instrument relating to real estate . . . shall be valid as *against third persons* unless acknowledged *and recorded* as herein provided." (Emphasis added.)

¶7 Riverbend argues that what was conveyed by the OTA/Mamosa Deed was the 5.64 acre tract of land described by a specific legal description in what it labels as "Tract 1" and set forth in the first paragraph of that deed.[8] Riverbend asserts that in the second paragraph of that deed there is some further description of Tract 1 in the first clause of the first sentence, but further argues that the rest of that sentence references what it labels as "Tract 2" through the following language:

> together with all abutters rights, including access from *the remaining portion of the grantors land* onto the LIMITED ACCESS TURNPIKE to be constructed on the above described property[.][9]

¶8 It is Tract 2, Riverbend argues, that has no legal description of "the remaining portion of the grantors land" but is alleged by OTA to be the real property from which some of the "bundle of rights" of that real property – that is, the abutters rights – have been conveyed to OTA in the OTA/Mamosa Deed.

¶9 Riverbend does not deny that it and Expert have some "common owner." "[B]ut," it argues, "such fact is irrelevant and immaterial to the issue in front of this court: Did the indefinite phrase[] 'remaining portion of the grantors land' give a third party notice of a specific claim of real property interest? The vague description would be impossible to locate and is invalid." It further argues, "What is at issue is the adequacy of the [OTA/Mamosa Deed's] language concerning the land whose abutter's rights are at issue" – "vague legal descriptions are inadequate to give constructive notice to third parties."

¶10 Thus, Riverbend argues it did not have constructive notice even though the OTA/Mamosa Deed was filed of record and predates the Expert/Riverbend Deed. "[T]he existence and the recording of [the OTA/Mamosa Deed] is irrelevant and immaterial," it argues, because the OTA/Mamosa Deed "fails to adequately describe the lands being stripped of such abutter's rights." "Again, the only question in front of this court . . . is whether the 'remaining portion of the grantors land' phrase is specific enough to constitute constructive notice."

¶11 In its response in opposition to Riverbend's motion, OTA argues, among other

things, that Riverbend had constructive notice presumed in law pursuant to 16 O.S. 2011 § 16.[10] OTA argues the OTA/Mamosa Deed was accepted for recording by the county clerk and was filed of record for more than ten years prior to the Expert/Riverbend Deed. It asserts that deed describes both "the 5.64 acres of real property purchased by OTA" and "describes that OTA, together with real property purchased, also acquired the grantor's abutters rights, including access from the 'remaining portion of the grantor's land' onto the limited access turnpike[.]" OTA argues that deed also contained exceptions such that "grantors were given access at specifically described areas along Rockwell and what is now Memorial Road[.]" The OTA/Mamosa Deed also excluded from OTA limits of no access certain "remaining portions of the grantors land," including along the east side of the right of way conveyed to OTA "beginning at a point on the East Line of the NE¼ a distance of 486.70 feet South of the NE Corner of said NE¼ and extending South" – land that encompasses part of the subject property later conveyed to Riverbend. Thus, OTA argues it is "absurd to suggest that you can't figure out where the property that is going to be blocked access here from [the OTA/Mamosa Deed]." OTA, therefore, contends Riverbend is presumed in law to have constructive knowledge of the OTA/Mamosa Deed and its provisions pursuant to 16 O.S. 2011 § 16.

¶12 Additionally, OTA argues Riverbend had record notice of the OTA/Mamosa Deed because that deed is in the chain of title of Riverbend's 7.34 acre tract. It asserts "Riverbend erroneously here seeks to limit chain of title to only those conveyances made to the successive holders of record title, while ignoring conveyances by the holders to persons other than successors." OTA argues that while "a purchaser of real estate is not bound to take notice of registered liens or deeds created or executed by any person other than those through whom he is compelled to deraign his title,"[11] a "purchaser (like Riverbend) is charged with notice of all deeds created or executed by the successive holders of record title through which the purchaser acquires his/her interest (like Mamosa)." Having such record notice, OTA contends, Riverbend is presumed to have had notice of the entirety of the deed's provisions and, thus, was on notice of the blocked access areas, or is at least on notice that further inquiry was needed.

¶13 The trial court granted summary judgment to OTA finding Riverbend was not a bona fide purchaser for value because it had constructive knowledge of OTA's rights in the subject property. The trial court's judgment implicitly determined the OTA/Mamosa Deed was within the chain of title in the Mamosa/Expert Deed and subsequent Expert/Riverbend Deed. The trial court found the 7.34 acre tract "acquired by Riverbend was previously owned by Mamosa from 1997 until 2007, and was a part of the NE/4 owned by Mamosa at the time of the [OTA/Mamosa Deed] and was adjacent to the 5.64 acre tract of real property … Mamosa conveyed to [OTA] in 1998 through the [OTA/Mamosa Deed]." The court determined "Riverbend was thus put on constructive notice of the rights and interests conveyed to [OTA] through the recording of the [OTA/Mamosa Deed], including, but not limited to, the abutter's rights described therein." The trial court evidently made this determination because the Mamosa/Expert Deed and the OTA/Mamosa Deed conveyed real property owned by Mamosa prior to the Expert/Riverbend Deed and conveyed real property within the same township, section and range, and because Mamosa was the common grantor among OTA, Expert, and Riverbend.

¶14 Riverbend appeals from the grant of summary judgment to OTA, specifically arguing the inadequacy of the description in the OTA/Mamosa Deed to give it or other third parties constructive notice of OTA's purported abutters rights "associated with an unspecified tract of land." It also argues the 5.64 tract of land conveyed to OTA, the legal description of which is set out in the OTA/Mamosa Deed, is "outside the chain of title to the subject [property.]"

STANDARD OF REVIEW

¶15 "This appeal stems from a grant of summary judgment, which calls for *de novo* review." *Woods v. Mercedes-Benz of Okla. City,* 2014 OK 68, ¶ 4, 336 P.3d 457 (citations omitted). Under the *de novo* standard, this Court is afforded "plenary, independent, and non-deferential authority to examine the issues presented." *Harmon v. Cradduck*, 2012 OK 80, ¶ 10, 286 P.3d 643 (citation omitted). This appeal also concerns statutory construction, which is a question of law, *State v. Tate,* 2012 OK 31, ¶ 7, 276 P.3d 1017, and, consequently, requires a *de novo* review standard, *Kluver v. Weatherford Hosp. Auth.,* 1993 OK 85, ¶ 14, 859 P.2d 1081.

ANALYSIS

¶16 Although OTA objected to Riverbend's motion for summary judgment on various grounds including what is termed inquiry notice,[12] the only basis upon which the trial court granted summary judgment to OTA was on the ground of constructive notice presumed in law pursuant to 16 O.S. 2011 § 16.[13] Because we conclude the OTA/Mamosa Deed does not contain the required legal description of "the remaining portion of the grantors land" and thus does not contain a legal description of the 7.34 acre tract at issue here, the mandate of 19 O.S. 2011 § 298(A) has not been met, and a third party, therefore, cannot be held to have had constructive notice of that deed pursuant to 16 O.S. 2011 § 16. We likewise conclude the OTA/Mamosa Deed did not give Riverbend constructive notice through OTA's chain-of-title argument with respect to the 7.34 acre tract because that deed does not comply with the recording statutes.

¶17 Section 298(A) "require[s] that the mandates of the Legislature be complied with, as expressed in Sections 287 and 291," and requires that the deed or other instrument "shall by its own terms describe the property by its *specific legal description*, and provide such information as is necessary for indexing as required in Sections 287 and 291 of this title[.]" (Emphasis added.) Therefore, to be "recorded as prescribed by law," 16 O.S. § 16, such that constructive notice of the deed is presumed in law as to third parties, § 298(A) clearly and unambiguously provides that a record of the deed must be made as required by both §§ 287 *and* 291 – that is, in both the grantor/grantee index and the tract index, both of which require a description of the property – and that a specific legal description of the property must be provided.[14]

¶18 We are not persuaded by OTA's apparent argument that the legal descriptions in the OTA/Mamosa Deed pertaining to the exceptions provide such notice. That argument rests upon a supposition that Riverbend had, in effect, a duty or obligation, to locate a filed deed that did not contain a specific legal description of real property Riverbend subsequently purchased, though arguably that deed affected interests in the real property Riverbend subsequently purchased. That is, the mere fact that a filed deed may contain information from which one could "figure out" what interest was restricted, is not, in our view, sufficient to impose constructive notice of the existence of that deed on a third party pursuant to 16 O.S. § 16.[15]

¶19 Though the issue presented was one principally concerned with the intent of the parties to an assignment of an interest in oil and gas, in *Plano Petroleum, LLC v. GHK Exploration, L.P.*, 2011 OK 18, 250 P.3d 328, the Oklahoma Supreme Court addressed the infirmity of "an instrument which contains absolutely no legal description of the leased premises." *Id.* ¶ 9. The Supreme Court stated:

> There is a long-standing black letter rule of law that "the description of the premises conveyed must be so certain and definite as to enable the land to be identified." *Arbuckle Realty Trust v. Southern Rock Asphalt Co.,* 1941 OK 237, ¶ 8, 116 P.2d 912, 914. *See also Key v. Key*, 1963 OK 288, ¶ 22, 388 P.2d 505, 511. That requirement is more than a legal nicety, it is essential for recording in the county clerk's office and for establishing a chain of title. [*Coley v. Williams*, 1924 OK 323, ¶ 3, 224 P. 345, 346.]

Plano, ¶ 9 (emphasis added). The Court further explained: "[T]he want of an adequate and precise description of the premises tends to render [the] title unmarketable and objectionable to future purchasers; and . . . a conveyance, though admitted to record, is not notice to subsequent purchasers, unless the granted premises be therein so plainly and clearly described that a person reading the deed may locate and identify the property therefrom." *Id.* ¶ 9 n.4 (quoting *Coley*).[16]

¶20 Nor are we persuaded by OTA's argument that Riverbend had constructive notice of the OTA/Mamosa Deed because Mamosa is Riverbend and OTA's common grantor.[17] OTA argues that its deed is in Riverbend's chain of title because of their common grantor, even though, as previously discussed, no legal description of Riverbend's 7.34 acre tract appears in OTA's deed. This chain-of-title argument stands in contravention of the recording statutes.

> The general rule is that the record of an instrument entitled to be recorded will give constructive notice to persons bound to search for it. But constructive notice being a creature of statute, no record will give constructive notice unless such effect has been given to it by some statutory provision.

Crater v. Wallace, 1943 OK 250, ¶ 11, 140 P.2d 10[18] (citation omitted). In *Crater*, the instrument at issue was not one entitled to be recorded so it could not be found to have given constructive notice to some third party. Thus, in the present case, the record of the OTA/Mamosa Deed will not give constructive notice to Riverbend "unless such effect has been given to it by some statutory provision." That statutory authority, as above discussed, is found in the recording statutes and they require a specific legal description of the property affected by the OTA/Mamosa Deed.[18] OTA's argument would, in effect, defeat the express requirements of the recording statutes.

¶21 Consequently, on the summary judgment record herein, Riverbend's position as a bona fide purchaser for value cannot be defeated on the basis of constructive notice in law pursuant to 16 O.S. § 16 or under the chain-of-title argument offered by OTA.[19]

CONCLUSION

¶22 We conclude the trial court erred in granting summary judgment to OTA for the reasons herein discussed and, therefore, we reverse the judgment and remand the cause for further proceedings.

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

RAPP, J., and GOODMAN, J., concur.

DEBORAH B. BARNES, PRESIDING JUDGE:

1. Various general warranty, special warranty, and correction special warranty deeds are filed of record pertaining to land conveyed to Riverbend and OTA as well as to land conveyed by Mamosa to Expert and other entities unconnected to this lawsuit. The parties do not dispute the accuracy of the legal descriptions contained in the various correction deeds and all the deeds at issue were filed of record.

2. This tract of land (the subject property) is located in Oklahoma City and "contains 7.34 acres, more or less." The eastern boundary of the subject property borders a right of way acquired by OTA and by Rockwell Avenue, and the northern boundary borders a right of way acquired by OTA and by Memorial Road and lies to the south of the Kilpatrick Turnpike.

3. (Emphasis in original.)

4. Under Oklahoma law, "[t]here is a statutory presumption that every estate in land granted by a deed shall be deemed an estate in fee simple unless limited by express words." *Cleary Petroleum Corp. v. Harrison,* 1980 OK 188, ¶ 8, 621 P.2d 528 (citing 16 O.S. [now 2011] § 29: "Every estate in land which shall be granted, conveyed or demised by deed or will shall be deemed an estate in fee simple and of inheritance, unless limited by express words.").

5. In support of this argument, Riverbend relies on, among others, 16 O.S. 2011 § 29 and *State ex rel. Department of Highways v. Allison*, 1962 OK 151, ¶ 5, 372 P.2d 850 ("The right to 'access, light, air or view' constitutes 'abutters rights' which are now recognized in most jurisdictions. These rights are in the nature of easements belonging to the owners of property abutting public highways, and they exist regardless of whether the State owns the fee of the highway, or merely an easement therefor." (citations omitted)).

6. Title 16 O.S. 2011 § 16 provides: "Every conveyance of real property acknowledged or approved, certified and recorded as prescribed by law from the time it is filed with the register of deeds for record is constructive notice of the contents thereof to subsequent purchasers, mortgagees, encumbrancers or creditors."

7. Title 19 O.S. 2011 § 298(A) concerning the information needed for indexing and the duty of the register of deeds provides, in part, as follows:

> Every county clerk in this state shall require that the mandates of the Legislature be complied with, as expressed in Sections 287 and 291 of this title, and for that purpose, every instrument offered which may be accepted by the county clerk for recording, affecting specific real property whether of conveyance, encumbrance, assignment, or release of encumbrance, lease, assignment of lease or release of lease, shall be an original or certified copy of an original instrument and clearly legible in accordance with the provisions of subsection B of this section, *and shall by its own terms describe the property by its specific legal description*, and provide such information as is necessary for indexing as required in Sections 287 and 291 of this title[.]

(Emphasis added.) Section 287 requires the register of deeds to keep an index of deeds direct and inverted that shall be divided into columns, with headings for the respective columns identifying, among other matters, the grantor, grantee, the property recorded and description of the property. Section 291 requires the county clerk to keep a numerical index "in which shall be noted all deeds relating to tracts of land and units within unit ownership estates within the limits of such county," and, among other things, requires a legal description of the property. Section 291 further provides:

> It shall be the duty of the county clerk to make correct entries in such numerical index of all instruments recorded concerning tracts of land under the appropriate heading, and in the subdivision devoted to the particular quarter section described in the instrument making the conveyance, and the county clerk shall enter in their appropriate division, before any other entries are made, all the transfers embraced in the instrument recorded within his office, commencing with the first.

8. *See*, n.3, *supra*, and accompanying text.

9. (Emphasis added.) Riverbend does not reference the remaining language in this sentence which describes certain "exceptions."

10. *See* 25 O.S. 2011 § 12 ("Constructive notice is notice imputed by the law to a person not having actual notice.").

11. OTA quotes *Smith v. Williams,* 1928 OK 333, ¶ 37, 269 P. 1067 (emphasis omitted), in support of its argument.

12. OTA argues Riverbend had constructive notice implied from the facts and circumstances about which it did have actual knowledge but about which it failed to make reasonable inquiry, relying on 25 O.S. 2011 § 13. Section 13 provides: "Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself." Though not addressing constructive notice as concerns deeds and third party purchasers, in discussing "implied notice," another division of this Court stated "the rule of '[i]mplied notice' deals with a presumption of fact, relating to 'what one can learn by reasonable inquiry[.]" *Red Rock Distrib. Co. v. State ex rel. Reneau*, 1999 OK CIV APP 124, ¶ 10, 993 P.2d 142 (citing *Charles v. Roxana Petroleum Corp.*, 282 F. 983, 988 (8th Cir. 1922), *cert. denied*, 261 U.S. 614 (1923). In discussing 16 O.S. § 16, the Charles Court explained:

> A recorded deed is therefore constructive notice under this section of the contents thereof – that is, of what appears on the face of the instrument. There is considerable misuse of the term "constructive notice." Constructive notice is a presumption of law. Implied notice is a presumption of fact. Constructive notice makes it impossible for the person to deny the matter concerning which notice is given. Implied notice relates to what one can learn by reasonable inquiry. It arises from actual notice of circumstances, and not from constructive notice. . . .

Id. at 988-89. In discussing 25 O.S. § 13, the federal court further explained:

> The Oklahoma statute makes constructive notice under certain circumstances and conditions take the place of what is usually termed implied notice. There is no constructive notice, however, under the Oklahoma statute, unless there is actual notice of circumstances sufficient to put a prudent man on inquiry. . . .
>
> . . . .
>
> While the general doctrines of notice, as enunciated in the decisions of most of the courts, do not go as far as the Oklahoma statute on the subject of constructive notice, yet the doctrine of implied notice from knowledge of facts sufficient to put a reasonably prudent man on inquiry in its results reaches the same end and accomplishes practically the same purpose.

282 F. at 989 (citations omitted). *See also Crater v. Wallace*, 1943 OK 250, ¶ 17, 140 P.2d 1018 (Title 16 O.S. § 16 could not provide constructive notice to an innocent purchaser of value of certain surface and mineral rights because the instrument at issue was not one entitled to be recorded nor a conveyance of property; nor could 25 O.S. § 13 defeat plaintiff's quiet title action because he had "no actual knowledge of [certain] adverse claims, or knowledge of any facts that would impose on him constructive notice of such claims.").

13. OTA contends that arising from other circumstances about which Riverbend allegedly had actual knowledge, Riverbend had constructive notice of the OTA/Mamosa Deed or OTA's interest in the subject property. OTA sets out a number of "circumstances" it asserts should have prompted Riverbend to make further inquiry about whatever rights OTA might have in the subject property. Riverbend challenges the adequacy of the circumstances asserted by OTA as prompting or imposing a need for inquiry, and, among other things, denies it had knowledge of other circumstances raised by OTA. Assuming, without deciding, the rule of "implied notice" might defeat Riverbend's quest to quiet title in the subject property based on these alleged circumstances, what it may or may not have known and whether inquiries it made were "prudent" – *i.e.*, were reasonable – involve questions of fact that are not properly considered on summary judgment. "Summary judgment is appropriate [only] when there is no dispute as to material facts or any inferences drawn from undisputed facts and the law favors the movant's claim or liability defeating defense." *Vasek v. Bd. of Cnty. Comm'rs*, 2008 OK 35, ¶ 10, 186 P.3d 928 (citation omitted). Consequently, we do not consider these circumstances for purposes of this appeal.

14. "The fundamental rule of statutory construction is to ascertain the intent of the legislature," *State v. Tate*, 2012 OK 31, ¶ 7 (citation omitted), "and that intent is first sought in the language of the statute," *YDF, Inc. v. Schlumar, Inc.*, 2006 OK 32, ¶ 6, 136 P.3d 656 (citation omitted). "Where the language of a statute is plain and unambiguous and its meaning clear and no occasion exists for the application of rules of construction, the statute will be accorded the meaning as expressed by the language" used. *Berry v. State ex rel. Okla. Pub. Emps. Ret. Sys.*, 1989 OK 14, ¶ 6, 768 P.2d 898 (citation omitted).

15. *Cf. Burgess v. Indep. Sch. Dist. No. 1 of Tulsa Cnty.*, 1959 OK 37, ¶ 23, 336 P.2d 1077 ("The primary purpose of the recording statutes is to provide means for making public all claims of title and interests in real property. It is incumbent upon persons claiming such interests to see that their claim or interest is correctly described. Persons who wish to keep their interests in lands secret must do so at their own peril and not rely upon the cloak of the doctrine of constructive notice to protect such interests."). While principally concerned with the issue of the discovery rule and whether the statute of limitations had run on a claim by a grantor, the Oklahoma Supreme Court recently noted the object of the recording statutes

> is to require the public to act with the presumption that recorded instruments exist and are genuine. *See, Lewis v. State*, 32 Ariz. 182, 256 P. 1048 (1927). The object of the registry laws in providing recordation of an instrument is to afford "notice of its contents, and of all rights, title, and interest, legal or equitable, created by or embraced within it, to every person subsequently dealing with the subject matter whose interest or duty it is to make a search of the record." *Conly v. Indus. Trust Co.*, 27 Del. Ch. 28, 29 A.2d 601, 602 (1943). The statutory recording requirement for validity of an interest in real property provides notice to the public of a conveyance of or encumbrance on real estate and serves to protect both those who already have interests in land and those who would like to acquire such interests. *C.F. Investments, Inc. v. Option One Mortg. Corp.*, 163 N.H. 313, 42 A.3d 847 (2012).

Calvert v. Swinford, 2016 OK 100, ¶ 13 n.23, 382 P.3d 1028. In *Lewis*, the Supreme Court of Arizona stated, "[t]he very fact that the state has specified an instrument may or shall be filed, registered, or recorded is evidence that in its public policy it deems it important enough for the general good of its citizens that a place and *a manner be provided* where the existence of the instrument may be established[.]" 256 P. at 1050 (emphasis added).

16. The decisional law upon which OTA relies for its argument that the description "remaining portion of the grantors land" is a sufficient legal description does not address the constructive notice issue presented herein. In *Janko v. State ex rel. Department of Highways*, 1969 OK 79, 455 P.2d 681, the "remaining portion of the defendants' land" as a description of the real property sought to be condemned was not an issue, rather the issue was the amount in damages to which the defendants were entitled. Janko did not consider the adequacy of "the remaining portion of defendants' land" as a description of the real property for purposes of constructive notice to third parties. In *State ex rel. Department of Highways v. Gosselin*, 1972 OK 12, 493 P.2d 430, the issue of whether "remaining portion of [the property owner's] property" is sufficient for constructive notice was not raised. There the defendants sought compensation for the damage to their "remaining portion," but no issue was presented about what property constituted the "remaining portion." They also sought reverse condemnation and sought money damages for the condemnation of a particular acreage of easement; an issue the Court said was not before it on appeal. In *Lloyd v. State*, 1967 OK 99, 428 P.2d 261, another condemnation case, the issue was the adequacy of the description of the "remaining land" in a certified copy of excerpts from the minutes of a meeting of the Oklahoma State Highway Commission and whether the statutory requirements of the condemnation statutes had been met. That case, like the others offered by OTA, did not involve the adequacy of "remaining portion of [the property owner's] property" as providing constructive notice to a third party under 16 O.S. § 16.

17. OTA relies on *Smith v. Williams*, 1928 OK 333, 269 P. 1067, wherein the Oklahoma Supreme Court explained:

> The rule seems to be well established in this state that the purchaser of real estate is not bound to take notice of registered liens or deeds created or executed by any person other than those through whom he is compelled to deraign his title. *Perkins v. Cissell*, [1912 OK 399], 124 P. 7; *Reigel v. Wood*, [1924 OK 113], 229 P. 556. In the latter case, it was said:
>
> > "The grantee is not required to take notice of conveyances not within his chain of title or those conveyances through which the purchaser is not compelled to deraign his title." [*Reigel*, ¶ 2].

Smith, ¶ 37. In *Smith*, the purported deed about which the defendants were asserted to have had notice was void. *Id.* ¶ 36. In *Perkins*, notice of ratification of a contract pertaining to certain real property was filed by one who was not the person from whom the plaintiff purchased *that* real property and was found to be outside the record chain of title of *that* property. 1912 OK 399, ¶ 3. In our view these cases do not stand for the proposition that a third party has constructive notice of conveyances of real property made by a common grantor that do not contain a legal description of the real property conveyed to the third party.

18. *See also* 16 O.S. 2011 § 15 ("Except as hereinafter provided, no acknowledgment or recording shall be necessary to the validity of any deed, mortgage, or contract relating to real estate as between the parties thereto; *but no deed . . . shall be valid as against third persons unless* acknowledged and *recorded as herein provided*. (emphasis added)). *Cf.* M. Merrill, *Merrill on Notice*, § 981, at 555 (1952) ("Another outgrowth of the chain of title requirement is the rule that ordinarily the record of an instrument relating to a particular tract does not impress one who subsequently deals with the title to another tract with notice of matters touching that title which appear in the document affecting the first tract.").

19. As previously noted herein, we make no decision concerning actual or implied notice or about any other issue currently undetermined below.

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LUCKY DUCK DRILLING, LLC and WAYNE CLARK, each in their Capacity as Limited Partners of American Oil for Americans, LP, an Oklahoma Limited Partnership, Running Springs Oil and Gas, LP, an Oklahoma Limited Partnership, and Joy Oil, LP, an Oklahoma Limited Partnership; and RICHARD & BARBARA BARNEY 2009 FAMILY TRUST, in its capacity as Limited Partner of American Oil for Americans, LP, an Oklahoma Limited Partnership, and Running Springs Oil and Gas, LP, an Oklahoma Limited Partnership, Plaintiffs/Appellees, vs. AMERICAN OIL FOR AMERICANS, LP, an Oklahoma Limited Partnership; AMERICAN OIL FOR AMERICANS, INC., a Managing General Partner of American Oil for Americans, LP; RUNNING SPRINGS OIL & GAS, LP, an Oklahoma Limited Partnership; RS OIL CORP., as Managing General Partner of

Running Springs Oil & Gas, LP; JOY OIL, LP, an Oklahoma Limited Partnership; JOY OIL & GAS CORP., as Managing General Partner of Joy Oil LP; and PARALEE OBELE, Defendants/Appellants.

Case No. 116,744. May 31, 2019

APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

HONORABLE TREVOR PEMBERTON, TRIAL JUDGE

VACATED AND REMANDED

Bradley E. Davenport, CENTER FOR ECONOMIC DEVELOPMENT LAW, Oklahoma City, Oklahoma, for Plaintiffs/Appellees

Ryan A. Pittman, GABLEGOTWALS, Tulsa, Oklahoma, for Defendants/Appellants

JERRY L. GOODMAN, JUDGE:

¶1 American Oil for Americans, LP, American Oil for Americans, Inc., Running Springs Oil and Gas, LP, RS Oil Corp., Joy Oil, LP, and Joy Oil & Gas Corp. (collectively, "Appellants") appeal a June 1, 2018, order denying their motion to vacate a January 9, 2018, default judgment entered against them. Based upon our review of the record and applicable law, we find all proceedings and orders entered in violation of the stay entered on December 8, 2017, to be of no effect, unenforceable, and void. Accordingly, all orders entered after the entry of the stay are vacated.

BACKGROUND

¶2 Lucky Duck Drilling, LLC, Wayne Clark, and the Richard & Barbara Barney 2009 Family Trust (collectively, "Appellees") are limited partners in American Oil for Americans, LP, Running Springs Oil and Gas, LP, and Joy Oil, LP (collectively, "Limited Partnerships").[1] Each Limited Partnership has a managing general partner that is a corporate entity.[2]

¶3 Appellees filed a petition for declaratory judgment in Oklahoma County District Court on July 24, 2017, seeking to inspect and examine the Limited Partnerships' books and records pursuant to the Oklahoma Uniform Limited Partnership Act of 2010, 54 O.S.2011, § 500-304A. On September 5, 2017, Appellees filed a motion to shorten time for response to requests for production of documents and inspection, requesting the court shorten Appellants' time to respond to ten days.[3] Appellants objected to the motion, asserting Appellees were seeking the documents and information that were the subject of the declaratory action.

¶4 Appellants filed a motion to stay proceedings and to compel arbitration on September 12, 2017, asserting Appellees had executed Limited Partnership Agreements that contained arbitration clauses covering their dispute. Appellees filed a response, objecting to arbitration. Appellees asserted their declaratory judgment action was not a "dispute" within the arbitration clause, they never signed the agreements, *inter alia*.

¶5 By order entered on September 19, 2017, Judge Patricia G. Parrish, sitting on behalf of Judge Roger Stuart, granted Appellees' motion to shorten time.[4] The order provides, in relevant part:

> IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that each of the Defendant Limited Partnerships shall produce to [Appellees] the "required information" referenced in 54 O.S. § 500-304A(a) and defined in 54 O.S. § 500-111A on or before Monday, October 2, 2017.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of the Defendant Limited Partnerships shall provide its written responses to [Appellees'] Requests For Production of Documents and Inspection that was addressed to each Defendant Limited Partnerships, respectively, on or before Monday, October 2, 2017.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Order shall not prejudice Defendants' pending Motion to Stay Proceedings and Compel Arbitration, which is set separately for hearing on October 6, 2017 at 9:00 a.m.

Appellees filed a motion for indirect contempt on October 3, 2017, asserting the Limited Partnerships had willfully failed and refused to comply with the court's September 19, 2017, order.

¶6 By minute order entered on October 6, 2017, Judge Thomas E. Prince, sitting on behalf of retired Judge Stuart, sustained Appellants' motion to stay and to compel arbitration. A journal entry was subsequently entered on December 8, 2017, staying the proceedings in court pending the outcome of arbitration.[5]

¶7 Appellants filed an objection to the motion for indirect contempt on November 29, 2017, asserting the case had been stayed.[6] A hearing on the motion for indirect contempt was held on November 30, 2017. By journal entry entered on December 8, 2017, Judge Parrish granted in part and denied in part Appellees' motion. Judge Parrish held Appellants had failed to fully comply with the court's September 19, 2017, order, finding Appellants had produced only part of the required information. Judge Parrish rejected Appellants' assertion that Judge Prince's minute order deprived her of the authority or jurisdiction to enforce the September 19, 2017, order. Judge Parrish further ordered Appellants to produce the required information and documents identified in 54 O.S.2011, § 500-111A. Finally, the journal entry provides:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that should [Appellants] fail to produce the documents to [Appellees] as ordered . . . on or before December 31, 2017, this Court will enter default judgment in favor of [Appellees] and against [Appellants] without further hearing on all relief sought in [Appellees'] petition.

¶8 On January 5, 2018, counsel for Appellees sent Judge Parrish a letter, asserting Appellants had failed to fully comply with the December 8, 2017, journal entry and requesting Judge Parrish enter default judgment against Appellants without further hearing. By journal entry entered on January 9, 2018, and based on Appellees' letter, Judge Parrish entered default judgment against Appellants. On February 2, 2018, Appellants filed a motion to set aside *ex parte* default judgment, asserting the case had been stayed and arbitration ordered. They further asserted the default judgment was entered without any prior notice to them. Appellants further filed a motion to stay enforcement of the default judgment pending reconsideration and appeal.

¶9 By journal entry entered on June 1, 2018, Judge Trevor Pemberton denied Appellants' motion to set aside *ex parte* default judgment and motion to stay enforcement of judgment pending appeal. Appellants appeal.

STANDARD OF REVIEW

¶10 Appellants filed their motion to set aside *ex parte* default judgment more than ten days but less than thirty days after the trial court's journal entry. Appellants' motion is therefore the functional equivalent of a motion to vacate. We review a trial court's order refusing to vacate a default judgment for abuse of discretion. *Ferguson Enters. Inc. v. H Webb Enters. Inc.*, 2000 OK 78, ¶ 5, 13 P.3d 480, 482. "An abuse of discretion takes place when the decision is based on an erroneous interpretation of the law, on factual findings that are unsupported by proof, or represents an unreasonable judgment in weighing relevant factors." *Oklahoma City Zoological Trust v. State ex rel. Pub. Employees Relations Bd.*, 2007 OK 21, ¶ 5, 158 P.3d 461, 464. When an appellate court reviews an order refusing to vacate a final judgment, "the appellate court's inquiry does not focus on the underlying judgment, but rather on the correctness of the trial court's response to the motion to vacate." *Central Plastics Co. v. Barton Indus. Inc.*, 1991 OK 103, ¶ 2, 818 P.2d 900.

ANALYSIS

¶11 On appeal, Appellants assert the trial court erred in refusing to vacate the default judgment. Appellants contend the case had been stayed and ordered to arbitration prior to entry of the *ex parte* default judgment. Appellees disagree, asserting the court retained jurisdiction to enforce its previously issued discovery order through a collateral contempt proceeding.

¶12 The record provides the parties signed Limited Partnership Agreements containing arbitration clauses. The clauses provided the parties will resolve any dispute regarding the Limited Partnership Agreements by binding arbitration in accordance with the Federal Arbitration Act (FAA), 9 U.S.C. § 1 et seq. The FAA applies to contracts affecting interstate commerce. *See* 9 U.S.C. § 2; *Allied-Bruce Terminix Co. v. Dobson*, 513 U.S. 265, 273, 115 S.Ct. 834, 839 (1995). Oklahoma has adopted a modified version of the Uniform Arbitration Act, the Oklahoma Uniform Arbitration Act (OUAA). *See* 12 O.S.2011, §§ 1851-1881, originally effective on October 1, 1978, at 15 O.S. § 801 *et seq.; Wilbanks Sec., Inc. v. McFarland,* 2010 OK CIV APP 17, ¶ 8, 231 P.3d 714, 718. The record on appeal does not provide whether the trial court determined that the Limited Partnership Agreements involve interstate commerce. Regardless of whether the proceedings before the trial court are analyzed under the FAA or under the OUAA, the result is the same.

¶13 Pursuant to 9 U.S.C. § 3, when the court finds the parties have entered into a valid and enforceable agreement to arbitrate their dis-

putes and the dispute at issue falls within the scope of that agreement, the FAA requires the court to stay judicial proceedings and compel arbitration in accordance with the agreement's terms. The plain language specifies the court "shall" stay proceedings pending arbitration.[7] Oklahoma state law is consistent with the FAA. Title 12 O.S.2011, § 1858(G) provides, in relevant part: "If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration."[8] Accordingly, under both the FAA and the OUAA, the trial court was required to stay the proceedings once it determined the parties' claim was subject to arbitration.

¶14 In the present case, the record provides Judge Prince determined the Appellees' claim was subject to arbitration and issued a final appealable order on December 8, 2017, staying the proceedings and ordering the parties to arbitration. *Oklahoma Oncology & Hematology P.C. v. US Oncology, Inc.*, 2007 OK 12, ¶ 17, 160 P.3d 936, 943. This order was not appealed and is now final.

¶15 Although the trial court retains jurisdiction when it grants a stay, Oklahoma Orders Compelling Arbitration, 5 Okla. Prac., Appellate Practice § 4:31 (2018 Ed.), the power of the court to issue or modify orders is suspended. *See e.g., In re G.C.*, 2012 OK CIV APP 40, ¶ 16, 275 P.3d 150, 154 (addressing a stay pending appellate review) (A stay preserves the status quo and generally suspends the power of the lower court to issue or modify orders.). A stay is in effect an injunction, preventing any further steps in the court action during the period of stay. 6 C.J.S. Arbitration § 59. The stay arrests further action by the court until the arbitration is completed. 6 C.J.S. Arbitration § 53. "The effect of a stay of proceedings is to prevent the taking of any further steps in the action during the period of the stay. . . ." 1 Alt. Disp. Resol. § 25:19 (4th ed.)(citing *A.P. Brown Co. v. Superior Court*, 490 P.2d 867, 869 (Ariz.App. 1971)). Accordingly, any subsequent trial court order inconsistent with the intent of the stay is ineffective, unenforceable, and a nullity.

¶16 The record provides three orders were issued after the stay was entered. Judge Parrish issued a journal entry on December 8, 2017, granting Appellees' motion for indirect contempt. A review of the docket sheet reveals Judge Prince's order staying the proceedings and ordering the parties to arbitration was filed immediately prior to Judge Parrish's order.

¶17 The record further provides on January 5, 2018, counsel for Appellees sent Judge Parrish a letter asserting Appellants had failed to fully comply with her December 8, 2017, journal entry and requesting Judge Parrish enter default judgment against Appellants without further hearing.[9] By journal entry entered on January 9, 2018, and based on Appellees' letter, Judge Parrish entered default judgment against Appellants.[10]

¶18 Finally, by order entered on June 1, 2018, Judge Pemberton denied Appellants' motion to set aside *ex parte* default judgment and motion to stay enforcement of judgment pending appeal.[11]

¶19 Accordingly, Judge Parrish's December 8, 2017, and January 9, 2018, orders, and Judge Pemberton's June 1, 2018, order, are in violation of the stay and are therefore of no effect, are unenforceable, and void. The orders are therefore vacated. Upon remand, the matter is to be placed on Judge Prince's docket, subject to the supervisory power of the Chief Judge pursuant to Oklahoma County District Court Rules.

¶20 **VACATED AND REMANDED**.

FISCHER, P.J., and THORNBRUGH, J., concur.

JERRY L. GOODMAN, JUDGE:

1. The Richard & Barbara Barney 2009 Family Trust is only a limited partner in American Oil for Americans, LP and Running Springs Oil and Gas, LP.

2. American Oil for Americans, Inc. is the Managing General Partner of American Oil for Americans, LP; RS Oil Corp. is the Managing General Partner of Running Springs Oil and Gas, LP; and Joy Oil & Gas Corp. is the Managing General Partner of Joy Oil, LP.

3. Appellees served Appellants with Requests for Production of Documents on September 5, 2017.

4. Judge Stuart retired on October 1, 2017.

5. Appellees filed a motion to reconsider on December 8, 2017, requesting Judge Prince reconsider his ruling due to conflicting orders by two judges. The motion was deemed moot by order entered on June 1, 2018.

6. Appellants further noted a protective order was entered on November 14, 2017, and that they subsequently produced 877 documents.

7. 9 U.S.C.A. § 3 provides:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

8. Notably, § 1858(F) also provides:

> If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

9. The letter was also sent to Appellants' counsel.

10. The Court further notes that Judge Parrish's January 9, 2018, order granting default judgment was based on Appellees' unfiled and

unverified letter of January 5, 2018. The trial court did not permit Appellants the opportunity to respond to the allegations made therein. Due process requires an orderly proceeding in which the parties are given an opportunity to be heard and to defend, enforce, and protect their rights. *In re Estate of Bleeker*, 2007 OK 68, ¶ 26 fn. 36, 168 P.3d 774, 783 fn. 36. In addition, Oklahoma County District Court Rule 16 requires a motion for default judgment be filed, a hearing be set, and notice provided to the defaulting party.

11. The entry of conflicting orders in the present case could have been prevented if the trial court followed Oklahoma County District Court Rule 6.

> RULE NO. 6 ASSIGNMENT OF CASES AND TRANSFER OF CASES FOR TRIAL:
> A. ASSIGNMENT OF CASES
> ***
> 2. If, after a case has been assigned, the assigned judge becomes disqualified or unable to hear it, it shall be transferred to the Chief Judge for random reassignment. . . .

2019 OK CIV APP 33

DUSTIN B. GRAHAM and COURTNEY J. GRAHAM, husband and wife, Plaintiffs/Appellants, vs. CARRINGTON PLACE PROPERTY OWNERS ASSOCIATION, INC., a domestic not-for-profit corporation, and THE CITY OF NORMAN, a political subdivision of the State of Oklahoma, Defendants/Appellees.

Case No. 116,968. September 25, 2018

APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY, OKLAHOMA

HONORABLE LORI M. WALKLEY, TRIAL JUDGE

REVERSED AND REMANDED WITH INSTRUCTIONS

John M. Dunn, THE LAW OFFICES OF JOHN M. DUNN, PLLC, Tulsa, Oklahoma, for Plaintiffs/Appellants

Blake Sonne, SONNE LAW FIRM, PLC, Norman, Oklahoma, for Defendant/Appellee Carrington Place Property Owners Association, Inc.

Rickey J. Knighton II, Jeanne M. Snider, Kristina L. Bell, ASSISTANT CITY ATTORNEYS, CITY OF NORMAN, Norman, Oklahoma, for Defendant/Appellee City of Norman

DEBORAH B. BARNES, PRESIDING JUDGE:

¶1 Dustin and Courtney Graham appeal from the trial court's order granting summary judgment in favor of Defendants in this declaratory judgment action. In August 2014, Mr. Graham entered a guilty plea to several felony counts in the District Court of Oklahoma County. He was thereafter incarcerated in the custody of the Oklahoma Department of Corrections (DOC) until his release in May 2016.

¶2 While Mr. Graham was incarcerated, Ms. Graham purchased real property in Norman, Oklahoma located within 2,000 feet of a park established and operated by Defendant Carrington Place Property Owners Association, Inc., a homeowners' association. Mr. Graham is listed as a joint tenant on the deed, along with Ms. Graham and one other individual, and the deed is dated October 29, 2015. The property was purchased with the intention that Mr. Graham would move there to live with his wife, Ms. Graham, immediately following his release from custody.

¶3 The Grahams state they were aware Mr. Graham's criminal offenses would require him to register as a sex offender pursuant to the Sex Offenders Registration Act, 57 O.S. Supp. 2012 §§ 581–590.2 (SORA), and that Mr. Graham would be unable to live within 2,000 feet of a statutorily restricted area following his release from incarceration. However, at the time of Mr. Graham's conviction, SORA did not set forth any residential restriction pertaining to parks controlled by a homeowners' association. That is, at the time of Mr. Graham's conviction, as well as at the time of the purchase of the property and execution of the deed, SORA provided, in pertinent part, as follows:

> It is unlawful for any person registered pursuant to [SORA] to reside, either temporarily or permanently, within a two-thousand-foot radius of . . . a playground or park that is established, operated or supported in whole or in part by city, county, state, federal or tribal government . . . .

57 O.S. Supp. 2012 § 590(A). Effective November 1, 2015, however, this provision was amended as follows:

> It is unlawful for any person registered pursuant to [SORA] to reside, either temporarily or permanently, within a two-thousand-foot radius of . . . a playground or park that is established, operated or supported in whole or in part by *a homeowners' association* or a city, town, county, state, federal or tribal government . . . .

57 O.S. Supp. 2015 § 590(A) (emphasis added).

¶4 The Grahams argue the version of SORA in effect at the time of Mr. Graham's conviction should apply. Indeed, it is undisputed they were in compliance with this version of SORA because the park that is located near their

property was not established and is not operated or supported in whole or in part by a city, county, state, federal or tribal government. However, the Grahams acknowledge Mr. Graham would stand in violation of the version of SORA in effect at the time of his release and registration – i.e., the version of § 590 that went into effect on November 1, 2015, during his incarceration – because the property is located within 2,000 feet of a park established, operated or supported by a homeowners' association.

¶5 Around the time of Mr. Graham's release from custody in May 2016, he executed an Oklahoma Sex Offender Registration Form on June 9, 2016.[1] Mr. Graham also submitted a Sex Offender Registration Form to the Norman Police Department, executed on May 23, 2016, as a result of his intention of moving to the Norman property upon his release from custody.

¶6 Based on the undisputed facts, the trial court awarded summary judgment in favor of Defendants, who argued that the version of § 590 in effect at the time of Mr. Graham's release from custody should apply. The trial court agreed and stated that, in line with the Oklahoma Supreme Court's analysis in *Starkey v. Oklahoma Department of Corrections*, 2013 OK 43, 305 P.3d 1004, the version of SORA "which is applicable to a defendant is the version in effect at the time a defendant becomes subject to the act." The order states that "some offenders may become subject to the act upon conviction, [but] the statute as well as the ruling in *Starkey* make it clear that this is not always the case." The trial court concluded in its order that Mr. Graham did not become subject to SORA until his release and registration as a sex offender and, therefore, the applicable version of SORA is the version in effect at the time of his release – i.e., the version that prohibits Mr. Graham from residing within 2,000 feet of a playground or park that is established, operated or supported in whole or in part by a homeowners' association.

¶7 The trial court also determined that application of the version in effect at the time of Mr. Graham's release from custody did not constitute an ex post facto violation. The trial court stated, among other things, that the version in effect at the time of Mr. Graham's release does not

> expose [Mr. Graham] to a greater punishment . . . . The undisputed facts of this case indicate that [Mr. Graham] never resided at the residence in question, that the residence was purchased while [he] was incarcerated and therefore that he is not being expelled from his residence as a result of the amendment which occurred two days after the property was purchased. He retains the same property interest in the residence that he had at the time that the new statute went into effect.

From this order, the Grahams appeal.

STANDARD OF REVIEW

¶8 "This appeal stems from a grant of summary judgment, which calls for de novo review." *Woods v. Mercedes-Benz of Okla. City*, 2014 OK 68, ¶ 4, 336 P.3d 457 (citation omitted). Under the *de novo* standard, this Court is afforded "plenary, independent, and non-deferential authority to examine the issues presented." *Harmon v. Cradduck*, 2012 OK 80, ¶ 10, 286 P.3d 643 (citation omitted). Summary judgment is appropriate "[i]f it appears to the court that there is no substantial controversy as to the material facts and that one of the parties is entitled to judgment as a matter of law[.]" Okla. Dist. Ct. R. 13(e), 12 O.S. Supp. 2013, ch. 2, app.

ANALYSIS

I. If it is the legislative intent that the residential restrictions found in § 590 of SORA are to be applied prospectively, then, pursuant to Cerniglia v. Oklahoma Department of Corrections, the applicable version of SORA is that which was in effect at the time of Mr. Graham's conviction.

¶9 In *Starkey v. Oklahoma Department of Corrections*, 2013 OK 43, 305 P.3d 1004, the plaintiff "pled *nolo contendere* and received a deferred adjudication on October 12, 1998, to a charge of sexual assault upon a minor child in the District Court of Calhoun County, Texas." *Id.* ¶ 1. The plaintiff then moved to Oklahoma later that same year. The *Starkey* Court explained that, in 2007, the Oklahoma Legislature "created a system to assign sex offenders a level of 1 to 3 based upon their risk." *Id.* ¶ 28 (footnote omitted). The plaintiff in *Starkey,* despite having received his sentence almost ten years prior to these 2007 amendments, was subsequently assigned by the DOC "a level 3 life-time registration classification with no opportunity for a hearing." *Id.* ¶ 8. The *Starkey* Court explained that, based on the specific language used by the Legislature in the 2007 amendments – i.e., the 2007 amendments to § 582.1 and § 582.2 of

SORA – the amendments were not intended to apply retroactively and, thus, could only apply prospectively. The *Starkey* Court further explained that, regarding those portions of SORA intended by the Legislature to apply prospectively, the law that applies to individuals who are convicted in another jurisdiction and who subsequently move to Oklahoma is that which is in effect when such individuals voluntarily move to this state. The Court explained that because the plaintiff moved to Oklahoma in 1998, the 2007 amendments did not apply to him.[2]

¶10 The *Starkey* Court did not conclude that all provisions of SORA were intended by the Legislature to apply prospectively. In fact, the *Starkey* Court next examined a certain 2004 amendment to § 583, and concluded "the 2004 amendment to § 583 was intended to apply retroactively." *Id.* ¶ 34. However, the *Starkey* Court, after a detailed analysis, concluded the 2004 amendment, if applied retroactively, would constitute an ex post facto violation.

¶11 Soon after *Starkey* was decided, the Oklahoma Supreme Court issued *Cerniglia v. Oklahoma Department of Corrections*, 2013 OK 81, 349 P.3d 542. In *Cerniglia*, the Oklahoma Supreme Court explained as follows:

> The lesson to be found in *Starkey* is that the applicable version of SORA is the one in effect when a person becomes subject to its provisions. A person convicted in another jurisdiction is not subject to SORA until they enter Oklahoma with the intent to be in the state. Whereas, a person like Cerniglia, who was convicted in Oklahoma, became subject to SORA when she was convicted. This is true even though she was incarcerated. . . . [A]t the time of Cerniglia's conviction and as a consequence of that conviction SORA obligated her to register in the future upon her release. Therefore, she became subject to SORA upon her . . . conviction and the provisions of SORA in effect at that time are controlling even though she did not have to begin registration until she was released.

Cerniglia, ¶ 6 (citation omitted).

¶12 In the present case, Mr. Graham was convicted (i.e., entered a guilty plea) in August 2014. Regardless of the fact that he was subsequently incarcerated, pursuant to Cerniglia Mr. Graham became subject to SORA upon his conviction, "and the provisions of SORA in effect at that time are controlling[.]" *Id.* Consequently, assuming the legislative intent is – like the legislative intent in the 2007 amendments to § 582.1 and § 582.2 of SORA analyzed in *Starkey* – for § 590 to apply prospectively, then, pursuant to Cerniglia, the version of § 590 in effect at the time of Mr. Graham's conviction controls. Accordingly, because it is undisputed Mr. Graham was in compliance with the version of § 590 in effect at the time of his conviction, summary judgment must be awarded to the Grahams.

II. If it is the legislative intent that the residential restrictions in § 590 of SORA are to be applied retroactively, then, because retroactive application would violate the ex post facto clause of the Oklahoma Constitution, the version of § 590 in effect at the time of Mr. Graham's conviction still applies.

¶13 Even if the legislative intent is for § 590 to apply retroactively, we would reach the same result as above. The *Starkey* Court explained that "[a]mendments enacted which increase[] the duties and obligations of a sex offender, including increasing the registration period, are substantive amendments and not merely procedural remedial amendments." *Starkey*, ¶ 20 (footnote omitted). Substantive amendments apply prospectively unless "the purposes and intention of the Legislature to give a statute a retrospective effect are expressly declared or are necessarily implied from the language used." *Id.* ¶ 21 (citation omitted).

¶14 Section 590, which limits where a sex offender may reside and which, in some instances, requires the relocation of an offender, is a substantive law and not merely a "remedial or procedural [one] which [does] not create, enlarge, diminish, or destroy vested rights[.]" *State v. Shade*, 2017 OK CIV APP 68, ¶ 8, 407 P.3d 790 (citation omitted). Thus, § 590, which does not expressly declare an intention that it apply retroactively or prospectively, is presumed to apply prospectively "unless the purposes and intention of the Legislature to give [it] a retrospective effect . . . [are] **necessarily implied** from the language used." *Starkey*, ¶ 24 (citation omitted). Indeed, the Oklahoma Supreme Court has stated that "the presumption against retroactivity should not be followed in complete disregard of factors that may give a clue to the legislative intent. Only if we were to fail in detecting legislative intent after looking at all the available indicia, would the presumption of prospectivity operate." *Id.* ¶ 22 (citation

omitted). Thus, even where retroactive intent is not expressly stated, if "no other construction can be fairly given," and if "the intention of the Legislature cannot be otherwise satisfied," then such implicit retroactive intent will be upheld so long as it is not unconstitutional to do so. *Id.* ¶ 25 (citations omitted).

¶15 Although we need not definitively determine whether it is the legislative intent that § 590 be applied retroactively, it is clear that § 590 addresses itself to all individuals registered under SORA. For example, all versions of § 590 begin as follows: "It is unlawful for any person registered pursuant to [SORA] to reside, either temporarily or permanently, within a two-thousand-foot radius" of the various locations listed. Thus, the version of § 590 in effect at the time of Mr. Graham's release and registration states it applies to "any person registered pursuant to [SORA]," indicating an intent for retroactive application. Furthermore, the 2015 version contains language which appears to be intended to function as at least a partial protection against some of the harsh consequences that may occur as a result of retroactive application. For example, 57 O.S. Supp. 2015 § 590(A) provides that the "[e]stablishment of a day care center or park in the vicinity of the residence of a registered sex offender will not require the relocation of the sex offender or the sale of the property," and "[n]othing in this provision shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender."

¶16 However, even assuming the legislative intent is for § 590 to apply retroactively, the *Starkey* Court explicitly discussed § 590 in its analysis and application of the Oklahoma Constitution's ex post facto clause.[3] Although the *Starkey* Court was, as indicated above, specifically concerned with whether retroactive application of the 2004 amendment to § 583 – a section which contains SORA's registration provisions – would violate Oklahoma's ex post facto clause, the *Starkey* Court examined SORA in its entirety for punitive effects. The *Starkey* Court stated as follows:

> In addition to the "in person" registration and verification requirements, offenders in Oklahoma, among other things, *have restrictions placed on where they can live* and with whom they can live. An offender may not reside, either temporarily or permanently, within a two-thousand-foot radius of any public or private school, educational institution, property or campsite whose primary purpose is working with children, a playground or park operated or supported in whole or part by public funds, or a licensed child care center. *This restriction is made regardless of whether the original victim was a child or an adult.* It is also unlawful for an offender to reside with minor children if their original victim was a minor child. *A violation is a felony punishable by one to three years in prison. . . .*

Starkey, ¶ 50 (emphasis added) (footnotes omitted). The *Starkey* Court then stated that "SORA's residency restrictions are similar to the traditional punishment of banishment." *Id.* ¶ 60.

¶17 Moreover, the *Starkey* Court discussed with approval a determination of the Supreme Court of Kentucky:

> [T]he Supreme Court of Kentucky determined a similar residency restriction was "regarded in our history and traditions as punishment." The court found the restriction expels registrants from their homes even if they resided there prior to the statute's enactment. The Oklahoma version of SORA *is even more restrictive* than the Kentucky law because the restrictive distance is twice as large as Kentucky's one-thousand-foot distance.

Starkey, ¶ 60 (emphasis added).

¶18 The *Starkey* Court stated that "SORA promotes deterrence through the threat of negative consequences, for example, eviction, living restrictions, and humiliation," *id.* ¶ 63, and, for these reasons, concluded retroactive application of SORA's registration provisions would constitute a violation of the Oklahoma Constitution's ex post facto clause.[4] *See also Bollin v. Jones ex rel. State ex rel. Okla. Dep't of Corr.*, 2013 OK 72, ¶ 15, 349 P.3d 537 (The *Starkey* Court "held SORA and its numerous amendments when viewed in their entirety, have a punitive effect that outweighs their non-punitive purpose and therefore a retroactive application of SORA's registration provisions would violate the ex post facto clause in the Oklahoma Constitution." (footnote omitted)).

¶19 Although the *Starkey* Court was concerned with the retroactive application of SORA's registration provisions, pursuant to the analysis in *Starkey* and, in particular, the portions of the *Starkey* Opinion quoted above,

we conclude a retroactive application of § 590 would also violate Oklahoma's ex post facto clause.[5] To conclude otherwise would be inconsistent with the Oklahoma Supreme Court's analysis in *Starkey*. Therefore, even if a retroactive intent is necessarily implied in § 590, we conclude § 590 must be applied prospectively and, thus, the version in effect at the time of Mr. Graham's conviction applies. Therefore, summary judgment must be awarded in favor of the Grahams.

CONCLUSION

¶20 Having concluded the version of § 590 in effect at the time of Mr. Graham's conviction, and not the version in effect at the time of his release, applies to the circumstances of this case, summary judgment must be awarded to the Grahams.[6] We reverse the trial court's order and remand this case to the trial court with instructions to enter a new order consistent with this Opinion.

¶21 REVERSED AND REMANDED WITH INSTRUCTIONS.

RAPP, J., and GOODMAN, J., concur.

DEBORAH B. BARNES, PRESIDING JUDGE:

1. A copy of the form signed by Mr. Graham is in the appellate record – it sets forth the version of SORA in effect at the time of his registration. Thus, among other things, this form notified Mr. Graham that it would be unlawful for him to reside within 2,000 feet of a "park that is established, operated or supported in whole or in part by ***a homeowners' association***[.]" (Emphasis in original.)

2. The *Starkey* Court also stated that, regardless, retroactive application would "violate[] the ex post facto clause of the Oklahoma Constitution." *Id.* ¶ 28 (footnote omitted).

3. The Oklahoma Constitution provides, in pertinent part, as follows: "No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed. No conviction shall work a corruption of blood or forfeiture of estate: Provided, that this provision shall not prohibit the imposition of pecuniary penalties." Okla. Const. art. 2, § 15.

4. In its response and counter motion for summary judgment, Defendant Carrington Place Property Owners Association, Inc., discusses at length a decision of the United States Court of Appeals for the Tenth Circuit – *Shaw v. Patton*, 823 F.3d 556 (10th Cir. 2016) – in support of its assertion that retroactive application of § 590 would not constitute a violation of the ex post facto clause. However, the Shaw Court clearly stated that, in *Starkey*, "the Oklahoma Supreme Court evaluated the statute's constitutionality under the Oklahoma Constitution, not the U.S. Constitution." 823 F.3d at 563. Indeed, in *Starkey*, the Oklahoma Supreme Court explained as follows:

> Although Oklahoma's ex post facto clause is nearly identical to the Federal Constitution's provisions we are not limited in our interpretation of Oklahoma's constitution. How we apply the "intent-effects" test [i.e., a test applied to determine whether retroactive application of a law violates the ex post facto prohibition] is not governed by how the federal courts have independently applied the same test under the United States Constitution as long as our interpretation is at least as protective as the federal interpretation. This Court has previously held:
>
> > The people of this state are governed by the Oklahoma Constitution, and when it grants a right or provides a principle of law or procedure beyond the protections supplied by the federal constitution, it is the final authority. This is so even if the state constitutional provision is similar to the federal constitution. The United States Constitution provides a floor of constitutional rights – state constitutions provide the ceiling.

2013 OK 43, ¶ 45 (footnotes omitted). Thus, the holding in *Shaw* – i.e., that retroactive application of the residential restrictions is not a violation of the ex post facto clause of the U.S. Constitution – is neither controlling nor persuasive, concerned, as we are here, with the Oklahoma Constitution's ex post facto clause.

5. *But see Fry v. State ex rel. Dep't of Corr.*, 2017 OK 77, ¶ 5, 404 P.3d 38 ("The *Starkey* case did not purport to prohibit the retroactive effect of every provision in [SORA]."). In *Fry*, the Supreme Court concluded that a certain "override remedy provided by 582.5(D), did not add or increase sanctions and requirements of registration. In fact, it did just the opposite." *Fry,* ¶ 5. Thus, the *Fry* Court concluded retroactive application of this override remedy in § 582.5 was permissible. However, because § 590, as discussed at length in *Starkey*, *does* add or increase sanctions or requirements of registration, it cannot be applied retroactively.

6. Having reached this determination, we deny the Grahams' motion for leave to submit an appellate brief. In addition, we need not address the Grahams' request, as set forth in their petition, that Defendants "be restrained and enjoined from taking any actions . . . to prevent [Mr. Graham] from residing at the Property . . . ." Such a request is rendered moot by our determination.

2019 OK CIV APP 34

IN THE MATTER OF L.C.P., an alleged deprived child, DEMECOS TIJUAN DORSEY, Appellant, vs. STATE OF OKLAHOMA, Appellee.

Case No. 117,375. May 29, 2019

APPEAL FROM THE DISTRICT COURT OF KAY COUNTY, OKLAHOMA

HONORABLE JENNIFER BROCK, TRIAL JUDGE

REVERSED

C. Scott Loftis, LOFTIS LAW FIRM, Ponca City, Oklahoma, for Appellant

Linque Hilton Gillett, LINQUE HILTON GILLETT, LAW OFFICE, P.L.L.C., Oklahoma City, Oklahoma, for Dierdre Michelle Carter

JERRY L. GOODMAN, JUDGE:

¶1 Demecos Tijuan Dorsey (Father) appeals from an August 22, 2018, order of the trial court denying his motion to vacate a judgment terminating his parental rights entered after he failed to appear at a termination hearing. The issue on appeal is whether the trial court abused its discretion when it refused to vacate the order terminating his parental rights. After review of the record and applicable law, we find the trial court should have granted the motion to vacate the termination order. We therefore reverse the order under review.

BACKGROUND

¶2 On May 23, 2016, the State of Oklahoma filed a petition to adjudicate the minor child, LP, deprived upon allegations of lack of proper parental care or guardianship. The petition

provided LP was not residing with Father and that Father failed to provide LP with appropriate caregivers, in that the caregivers did not provide a safe and sanitary home and were using illegal drugs.[1] In addition, Father had been abusing drugs and had a history of domestic violence. Father stipulated to the deprived petition on June 2, 2016, and an Individualized Service Plan (ISP) was adopted.

¶3 Father made great progress in completing the ISP and trial reunification was implemented. However, on November 10, 2016, the Department of Human Services (DHS) filed a request for termination of trial reunification, asserting Father had been arrested during a drug bust at his home.

¶4 On July 6, 2017, State filed a petition to terminate Father's parental rights pursuant to 10A O.S.2011 and Supp. 2015, § 1-4-904(B)(5) (failure to correct conditions that led to the deprived adjudication). Father was personally served with Summons and Notice on July 7, 2017, while in state custody. The notice advised Father that failure to appear could result in termination of his parental rights. Father and his counsel appeared before the trial court on July 27, 2017, to answer State's petition. Father requested a jury trial. The trial court ordered the parties to mediation, continued the hearing to September 7, 2017, and advised Father that failure to appear could result in termination of his parental rights.

¶5 On September 7, 2017, Father appeared with counsel before the trial court and advised that mediation had not occurred. Father requested a continuance which the court granted until October 26, 2017. Father was again advised that failure to appear could result in termination of his parental rights by default.

¶6 On October 26, 2017, Father's counsel informed the trial judge prior to the hearing that Father was in the Department of Corrections (DOC) custody. At the hearing, a motion to vacate the order for mediation was filed, which the court took under advisement. The hearing was ultimately continued until December 7, 2017. Neither Father nor his attorney appeared at the December 7, 2017, hearing. The trial court deemed the failure to appear to be a waiver of the jury trial and further vacated the order for mediation. The court scheduled a bench trial on the petition to terminate for February 8, 2018. A review hearing was set for February 1, 2018, wherein the parties would exchange witness and exhibit lists. The court directed the court clerk to send a copy of the court minute to Father's counsel. The docket sheet does not indicate that this was done.

¶7 Father did not appear in person or through counsel at the February 1, 2018, hearing. The trial court found Father's failure to provide a list of witnesses and exhibits to be a waiver of presentation of evidence at the previously set bench trial. The court directed the court clerk to mail a copy of the court minute to Father's counsel. The docket sheet provides that on February 6, 2018, the clerk mailed Father's counsel a copy of the court minute and put a copy of the court minute in his court box.

¶8 A bench trial was held on February 8, 2018. Father did not appear in person or through counsel. The trial court proceeded with trial and heard testimony from Karol Daniel with DHS. The court ultimately found it to be in the best interest of the minor child to terminate Father's parental rights.

¶9 On February 15, 2018, the copy of the February 1, 2018, court minute mailed to Father's counsel was returned to the court clerk as undeliverable.

¶10 On May 25, 2018, the trial court entered a Non-ICWA Journal Entry of Termination of Parental Rights of Demecos Dorsey, terminating Father's parental rights to LP based on 10A O.S.2011 and Supp. 2015, §§ 1-4-904(B)(5) (failure to correct conditions which led to deprived adjudication), 1-4-904(B)(12) (incarceration), and 1-4-904(B)(16) (child has been in foster care 15 of 22 months preceding filing of petition).[2] On May 30, 2018, Father's counsel filed a motion to reconsider/motion for new trial and to vacate order for default judgment, asserting he did not receive notice of any court dates following the October 26, 2017, hearing. A hearing was held on Father's motion on August 17, 2018. Father's counsel stated the last notice he had regarding Father's case was the October 26, 2017, hearing when he spoke to the judge prior to the hearing regarding Father being in DOC custody. Counsel further stated he does not recall actually attending the October 26 hearing and that the court minute does not provide that he did. Finally, counsel noted the docket sheet did not reflect certified mailing of any subsequent hearing date to his office.

¶11 The trial court denied Father's motion by order entered on August 22, 2018. Father appeals.

STANDARD OF REVIEW

¶12 This appeal involves the trial court's denial of Father's motion to vacate. "We review 'a trial court's ruling either vacating or refusing to vacate a judgment [for] abuse of discretion.'" *In re H.R.T.*, 2013 OK CIV APP 114, ¶ 14, 362 P.3d 666, 670 (quoting *Ferguson Enters., Inc. v. H Webb Enters., Inc.*, 2000 OK 78, ¶ 5, 13 P.3d 480, 482). The court's disposition of a motion to vacate "will not be disturbed on appeal unless it clearly appears that the trial court has abused its discretion." *Hassell v. Texaco, Inc.*, 1962 OK 136, ¶ 0, 372 P.2d 233 (Syllabus by the Court). "[A] clear abuse-of-discretion standard includes appellate review of both fact and law issues[.]" *Christian v. Gray*, 2003 OK 10, ¶ 43, 65 P.3d 591, 608. "An abuse of discretion occurs when a court bases its decision on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling." *Fent v. Okla. Natural Gas Co.*, 2001 OK 35, ¶ 12, 27 P.3d 477, 481 (citation omitted).

ANALYSIS

¶13 Title 10A O.S.2011, § 1-4-905 permits a consent judgment to be entered in a termination case for a parent's failure to appear. Section 1-4-905(A) provides, in relevant part:

> 1. Prior to a hearing on the petition or motion for termination of parental rights, notice of the date, time, and place of the hearing and a copy of the petition or motion to terminate parental rights shall be served upon the parent who is the subject of the termination proceeding by personal delivery, by certified mail, or by publication as provided for in Section 1-4-304 of this title.
>
> 2. The notice shall contain the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE TERMINATION OF YOUR PARENTAL RIGHTS TO THIS CHILD OR THESE CHILDREN. IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION OR MOTION ATTACHED TO THIS NOTICE."
>
> 3. Notice shall be served upon the parent not less than fifteen (15) calendar days prior to the hearing.
>
> ***
>
> 5. The failure of a parent who has been served with notice under this section to personally appear at the hearing shall constitute consent to the termination of parental rights by the parent given notice. When a parent who appears voluntarily or pursuant to notice is directed by the court to personally appear for a subsequent hearing on a specified date, time and location, the failure of that parent to personally appear, or to instruct his or her attorney to proceed in absentia at the trial, shall constitute consent by that parent to termination of his or her parental rights. (Emphasis in original).

¶14 Section 1-4-905(B) sets forth the procedure and burden of proof required to vacate an order terminating parental rights based on statutory consent. Section 1-4-905(B) provides, in relevant part:

> 1. The court shall have the power to vacate an order terminating parental rights if the parent whose parental rights were terminated pursuant to subsection A of this section files a motion to vacate the order within thirty (30) days after the order is filed with the court clerk.
>
> ***
>
> 3. The burden of proof is on the defaulting parent to show that he or she had no actual notice of the hearing, or due to unavoidable casualty or misfortune the parent was prevented from either contacting his or her attorney, if any, or from attending the hearing or trial.

¶15 Accordingly, the purpose of the August 17, 2018, hearing on the motion to vacate was for the trial court to evaluate its order under the terms of § 1-4-905(B) allowing Father the opportunity "to show that [he] had no actual notice of the hearing, or due to unavoidable casualty or misfortune [he] was prevented from either contacting [his] attorney, if any, or from attending the hearing or trial."

¶16 On appeal, Father contends the trial court erred by denying his motion to vacate the order terminating his parental rights because he did not have actual notice of the hearings and bench trial. Father claims his right to due process of law was violated. In passing upon a claim that the procedure used in a proceeding to terminate parental rights resulted in a denial of procedural due process, we review the issue *de novo*. *In the Matter of A.M.*, 2000 OK 82, ¶ 6,

13 P.3d 484, 486-87. *De novo* review requires an independent, non-deferential re-examination of another tribunal's legal rulings. *Id.*

¶17 Because "parents have a constitutionally protected liberty interest in the continuity of the legal bond with their children," our courts require that "the full panoply of procedural safeguards" be applied when State seeks to terminate parental rights. *In re T.J.*, 2012 OK CIV APP 86, ¶ 19, 286 P.3d 659, 664 (quoting *In the Matter of A.M.*, 2000 OK 82, at ¶ 8, 13 P.3d at 487). Due process requires notice which reasonably informs a parent such interest may be adversely affected. *Id.* State must also provide the parents with fundamentally fair procedures. *Id.* Appellate courts will determine on a case-by-case basis whether a parent was afforded such safeguards because the due process clause does not by itself mandate any particular form of procedure. *Id.* The degree of notice required is that which would be reasonably calculated to inform the interested party of every critical stage so as to afford them an opportunity to meet the issues at a meaningful time and in a meaningful manner. *McDaneld v. Lynn Hickey Dodge, Inc.*, 1999 OK 30, ¶ 11 fn. 21, 979 P.2d 252, 256 fn. 21 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1190-91 (1965)). *See also Tammie v. Rodriguez*, 1977 OK 182, ¶ 9, 570 P.2d 332, 334 ("Procedural due process mandates that reasonable steps be taken to give a parent prior notice of the proceeding and an opportunity to be heard. If this fundamental requirement is not met, the court lacks jurisdiction and the judgment is void.").

¶18 The Oklahoma Children's Code, 10A O.S.2011, § 1-4-905 sets forth the requirements for notice of a hearing to terminate parental rights. Pursuant to § 1-4-905(A)(1), "[p]rior to a hearing on the petition or motion for termination of parental rights, notice of the date, time, and place of the hearing and a copy of the petition or motion to terminate parental rights shall be served upon the parent who is the subject of the termination proceeding by personal delivery, by certified mail, or by publication." Notice shall be served on the parent at least 15 days prior to the hearing. *Id.* Finally, the following shall be included in the notice:

> The notice shall contain the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THIS HEARING CONSTITUTES CONSENT TO THE TERMINATION OF YOUR PARENTAL RIGHTS TO THIS CHILD OR THESE CHILDREN. IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION OR MOTION ATTACHED TO THIS NOTICE."

Id.

¶19 In the present case, the record provides State filed a petition to terminate Father's parental rights on July 6, 2017. Father was personally served with Summons and Notice on July 7, 2017, which provided that a hearing to answer the petition had been set for July 27, 2017. The Notice specifically advised Father that failure to appear could result in termination of his parental rights.

¶20 Father and his counsel appeared before the trial court on July 27, 2017, to answer State's petition. Continuances were granted until September 7, 2017, and October 26, 2017. Father was again advised that failure to appear could result in termination of his parental rights. On October 26, 2017, Father's counsel informed the trial judge prior to the hearing that Father was in DOC custody. Counsel testified at the hearing on the motion to vacate that he recalls speaking to the judge prior to the hearing but does not recall attending the October 26 hearing. Counsel stated he did not receive notice of any hearing after October 26. The docket sheet does not provide whether counsel attended the hearing or that the court provided notice of the next hearing date to Father or Father's counsel.

¶21 Neither Father nor his counsel appeared at the next hearing on December 7, 2017. The court scheduled a bench trial on the petition to terminate for February 8, 2018, and a review hearing for February 1, 2018. The court directed the court clerk to send a copy of the court minute to Father's counsel. The docket sheet does not indicate that this was done.

¶22 Father did not appear in person or through counsel at the February 1, 2018, hearing. The court directed the court clerk to mail a copy of the court minute to Father's counsel. The docket sheet provides on February 6, 2018, the clerk mailed Father's counsel a copy of the court minute and put a copy of the court minute in his court box. The February 6 mailing was returned as undeliverable.

¶23 A bench trial was held on February 8, 2018. Father did not appear in person or

through his counsel. The trial court proceeded with trial and ultimately terminated Father's parental rights based on 10A O.S.2011 and Supp. 2015, §§ 1-4-904(B)(5), 1-4-904(B)(12), and 1-4-904(B)(16).[3]

¶24 Accordingly, pursuant to the record on appeal, the only notice provided to Father after the July 27, 2017, hearing was mailed to his counsel on February 6, 2018, two days before the February 8, 2018, bench trial, and was returned as undeliverable. The record provides the February 6th mailing was addressed to Father's counsel at a previous address. Appellee notes Father's counsel did not file an entry of appearance in the case. Counsel is required to file an entry of appearance, which shall include, *inter alia*, his or her mailing address. *See* 12 O.S.2011, § 2005.2. If counsel's address changes, counsel is required to immediately inform the court of the change in address. *Id.* Service of notice to the address of record of counsel is considered valid service. *Id.* Accordingly, the February 6, 2018, notice to Father's counsel was valid service.

¶25 However, the Court finds the February 6th notice was not timely.[4] At best, Father's counsel could have received the notice one day prior to the February 8, 2018, bench trial. Father could not have realistically attended and defended the termination proceeding upon one day's notice. The notice provided Father must be of such nature as to reasonably convey the required information, and it must afford a reasonable time for those interested to make their appearance. *Cate v. Archon Oil Co.*, 1985 OK 15, ¶ 7, 695 P.2d 1352, 1356 (quoting *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 313-315 (1949)).

> While the core element of due process is the right to be heard, that element would have no value unless advance notice is afforded of the hearing at a meaningful time and in a meaningful manner. The person to be affected must be fairly and timely apprised of what interests are sought to be reached by the triggered process. . . .

Charles Sanders Homes, Inc. v. Cook & Assocs., Eng'g, Inc., 2016 OK CIV APP 45, ¶ 16, 376 P.3d 945, 951 (quoting *Booth v. McKnight*, 2003 OK 49, ¶ 18, 70 P.3d 855, 862). Due process requires adequate notice, a realistic opportunity to appear at a hearing, and the right to participate in a meaningful manner before one's rights are irretrievably altered. *Cate*, 1985 OK 15, at ¶ 10, 695 P.2d at 1356. "In the context of a proceeding to terminate parental rights, the essence of procedural due process is a 'meaningful and fair opportunity to defend.'" *In re A.M.*, 2000 OK 82, ¶ 9, 13 P.3d 484 (quoting *In re Rich*, 1979 OK 173, ¶ 12, 604 P.2d 1248, 1253). Failure to provide adequate notice is fatal to the proceedings. *In re Adoption of Baby Girl B.*, 2003 OK CIV APP 24, ¶ 46, 67 P.3d 359, 368.

¶26 Considering the significant interest Father has in his child, the notice provided to Father does not describe a process that is reasonably calculated, under all the circumstances, to apprise him that a hearing was pending and afford him a meaningful opportunity to present his objections. *Booth*, 2003 OK 49, ¶ 20, fn. 48, at 862 (quoting *Shamblin v. Beasley*, 1998 OK 88, ¶ 12, 967 P.2d 1200, 1209).[5]

¶27 Father established that he had no actual notice of the February 8, 2018, bench trial as required under § 1-4-905(B)(3). Accordingly, the August 22, 2018, order of the trial court denying his motion to vacate the May 25, 2018, journal entry terminating his parental rights to LP is in error and is reversed.

¶28 **REVERSED**.

FISCHER, P.J., and THORNBRUGH, J., concur.

JERRY L. GOODMAN, JUDGE:

1. The biological mother is deceased.

2. Father's counsel learned of the journal entry on May 25, 2018, when the district attorney's office asked him to sign a proposed order memorializing the trial court's order terminating Father's parental rights.

3. The Court notes that neither §§ 1-4-904(B)(12) nor 1-4-904(B)(16) were alleged in State's May 23, 2016, deprived petition or as a ground for termination in State's July 6, 2017, petition to terminate Father's parental rights. The record on appeal does not provide that an amended petition to terminate was filed.

The State may not terminate the rights of a parent based *on other conditions* that did not serve as a basis for the deprived adjudication or for which no notice was given between the initial adjudication and the termination stage. *In re T.J.*, 2012 OK CIV APP 86, ¶ 34, 286 P.3d 659, 668 (citing *Matter of J.N.M.*, 1982 OK 153, ¶ 16--17, 655 P.2d 1032, 1037). *See also In re E.M.*, 1999 OK CIV APP 32, 976 P.2d 1098 (the Court of Civil Appeals reversed the decision to terminate a father's parental rights, noting the petition to terminate did not inform the father of the statutory grounds under which termination of parental rights were sought). Accordingly, Father's due process rights were violated when State did not specify §§ 1-4-904(B)(12) or 1-4-904(B)(16) until trial.

4. In addition, the Court notes Father was not given any notice of the December 7, 2017, and February 1, 2018, hearings.

5. In addition, the informal practice of placing a copy of the court minute in counsel's court box is insufficient to establish notice.

Calendar of Events

July

9

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

11

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

12

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

16

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

17

OBA Appellate Practice Section meeting; 11:30 a.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Cullen D. Sweeney 405-556-9385

OBA Indian Law Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Wilda Wahpepah 405-321-2027

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

18

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

19

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

OBA Lawyers Helping Lawyers Assistance Program Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Hugh E. Hood 918-747-4357 or Jeanne Snider 405-366-5466

OBA Juvenile Law Section meeting; 3:30 p.m.; Oklahoma Bar Center with videoconference; Contact Tsinena Thompson 405-232-4453

23

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

24

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

25

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

26

OBA Awards Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Kara Smith 405-923-8611

OBA Law Day Committee meeting; 12 p.m.; BlueJeans; Contact Kara Pratt 918-599-7755

ADA LOIS SIPUEL FISHER

DIVERSITY AWARDS

Nominations due July 31

Send to diversityawards@okbar.org

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For more details, visit www.okbar.org/diversityawards.

Disposition of Cases Other Than by Published Opinion

COURT OF CRIMINAL APPEALS
Thursday, June 13, 2019

F-2018-375 — Appellant Steven Terrell Jones entered negotiated pleas of guilty on May 15, 2014, in Seminole County District Court Case Nos. CF-2014-6 and CF-2014-100. In CF-2014-6, Appellant pled guilty to Possession with the Intent to Distribute, Possession of a Controlled Dangerous Substance Without a Prescription and Distribution of a Controlled Dangerous Substance. In Case No. CF-2014-100, Appellant entered pleas of guilty to False Personation of Another to Create Liability and Public Intoxication. Appellant was sentenced to the Drug Court program. On August 18, 2016, Appellant entered pleas of guilty to charges brought in Seminole County District Court Case No. CF-2015-453. Appellant pled guilty to Possession of a Controlled Dangerous Substance, Possession of Drug Paraphernalia and Resisting an Officer. On July 26, 2017, the State filed an application to terminate Appellant from the Drug Court program. Following a hearing on January 25, 2018, the Honorable Trisha D. Smith revoked the suspended sentences previously imposed in Case No. CF-2015-453, terminated Appellant's participation in Drug Court and sentenced Appellant to 15 years imprisonment. Jones appeals the revocation of his suspended sentences and his termination from Drug Court. The orders are AFFIRMED. Opinion by: Lewis, P.J.; Kuehn, V.P.J.: Concur; Lumpkin, J.: Concur; Hudson, J.: Concur; Rowland, J.: Concur.

C-2018-1002 — Petitioner Carey James Buxton entered a negotiated plea of no contest in the District Court of Kay County to crimes charged in the following three cases: in Case No. CM-2014-358, Unlawful Possession of Drug Paraphernalia; in Case No. CF-2014-578, Unlawful Possession of Controlled Dangerous Substance with Intent to Distribute (Count 1) and Unlawful Possession of Drug Paraphernalia (Count 2); and in Case No. CF-2017-5, Second Degree Burglary (Count 1) and Knowingly Concealing Stolen Property (Count 2). The Honorable David R. Bandy, Associate District Judge, accepted Buxton's plea, and pursuant to the plea agreement, placed him in the Kay County Adult Drug Court Program. Under the terms of the plea agreement, successful completion of the drug court program would result in the dismissal of Case No. CM-2014-358, a thirty year suspended sentence on Count 1 and dismissal of Count 2 in Case No. CF-2014-578, and a thirty year suspended sentence on each of Counts 1 and 2 in Case No. CF-2017-5. Failure of the program would result in the imposition of thirty years imprisonment, with all but the first twenty-five years suspended in each of the felony counts, and one year on each of the misdemeanor counts. All sentences were ordered to be served concurrently and various costs and fees were assessed. The State filed a motion to terminate Buxton from the drug court program. Judge Bandy sustained the State's termination motion and sentenced Buxton in accordance with his plea agreement. Buxton filed a timely motion to withdraw his plea which was denied. Buxton appeals the denial of that motion. Petition for a Writ of Certiorari is DENIED. The district court's denial of Petitioner's motion to withdraw plea is AFFIRMED. Opinion by: Rowland, J.; Lewis, P.J., concurs; Kuehn, V.P.J., concurs in results; Lumpkin, J., concurs; Hudson, J., concurs.

F-2017-949 — Monotoyia Corbitt, Appellant, was tried by jury for the crime of Manslaughter in the First Degree - Heat of Passion, in Case No. CF-2016-6580, in the District Court of Tulsa County. The jury returned a verdict of guilty and recommended as punishment six years imprisonment. The trial court sentenced accordingly granting credit for time served. From this judgment and sentence Monotoyia Corbitt has perfected her appeal. AFFIRMED Opinion by: Hudson, J.; Lewis, P.J., Concurs; Kuehn, V.P.J., Concurs in Results; Lumpkin, J., Concurs; Rowland, J., Concurs.

Thursday, June 20, 2019

F-2018-158 — Nathan Simmons, Appellant, was tried by jury and found guilty of Count 1, accessory to first degree murder; and Counts 2 & 3, robbery with a dangerous weapon in Case No. CF-2016-3789 in the District Court of Tulsa County. The jury set punishment at 36 years imprisonment in Count 1, 10 years imprison-

ment in Count 2, and 17 years imprisonment in Count 3. The trial court sentenced accordingly and ordered the sentences to be served consecutively. From this judgment and sentence Nathan Simmons 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.

RE-2018-435 — On March 4, 2016, Appellant Jose Figueroa Mesta entered a plea of no contest in Case No. CF-2015-1. Appellant was convicted and sentenced to ten years imprisonment, with all but the first eighty days suspended. On February 27, 2018, the State filed an Amended Application to Revoke Suspended Sentence. Following a hearing on the application, the trial court revoked Appellant's remaining suspended sentence in full. The revocation order is AFFIRMED. Opinion by: Lumpkin, J.; Lewis, P.J.: Concur; Kuehn, V.P.J.: Concur; Hudson, J: Concur; Rowland, J: Concur.

RE-2018-0397 — Appellant, Wesley Scot Kilpatrick, entered a plea of guilty in the District Court of Cherokee County, Case No. CF-2017-177, to Count 2 – Robbery Second Degree. Count 1- Burglary in the First Degree was dismissed. Appellant received a seven year suspended sentence on Count 2, with rules and conditions of probation. Appellant was also fined $100.00 and assessed costs. The State filed a motion to revoke Appellant's suspended sentence on January 8, 2018. Following a revocation hearing on April 11, 2018, before the Honorable Lawrence Langley, Special Judge, Appellant's suspended sentence was revoked in full, seven years. Appellant appeals the revocation of his suspended sentence. The revocation of Appellant's suspended sentence is AFFIRMED. Opinion by: Lumpkin, J.; Lewis, P.J.: Concur; Kuehn, V.P.J.: Concur; Hudson, J.: Concur; Rowland, J.: Concur.

F-2017-1118 — John Joseph Quinter, Jr., Appellant, was tried by jury for the crime of Murder in the First Degree in Case No. CF-2015-755 in the District Court of Pottawatomie County. The jury returned a verdict of guilty and set punishment at life imprisonment without the possibility of parole. The trial court sentenced accordingly. From this judgment and sentence, John Joseph Quinter, Jr., has perfected his appeal. AFFIRMED. Opinion by: Rowland, J.; Lewis, P.J., concurs in results; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs.

J-2018-162 — On November 28, 2016, in Tulsa County District Court Case No. J-2016-28, Appellant B.M.M. entered negotiated guilty pleas to various felony crimes and was sentenced to ten years on each of the eight counts as a Youthful Offender in the custody of the Office of Juvenile Affairs. On February 21, 2019, Ap-pellant was bridged to a seven-year deferred sentence in the custody of the Department of Corrections. The decision to bridge is AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J.: concurs in results Kuehn, V.P.J.: concurs in results; Lumpkin, J.: concurs; Rowland, J.: concurs.

J-2019-2 — B.J.H., Appellant, appealed to this Court from an order entered by the Honorable David A. Stephens, Special Judge, granting the State's Motion to Sentence Youthful Offender as an Adult in Case Nos. YO-2018-1 and YO- 2018-2. AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J.,Dissents; Kuehn, V.P.J., Not Participating; Lumpkin, J., Concurs; Rowland, J., Concurs.

RE-2018-630 — On July 14, 2017, Appellant Christopher Charles Downum, represented by counsel, entered a plea of *nolo contendere* to a charge of Malicious Injury to Property as charged in McIntosh County Case No. CM-2017-317. Downum was sentenced to one (1) year in the McIntosh County jail, all suspended, subject to terms and conditions of probation. On October 18, 2017, the State filed a Motion to Revoke Downum's suspended sentence alleging he committed the new offenses of Public Intoxication and Obstructing An Officer as alleged in McIntosh County Case No. Case No. CM-2017-457. On May 31, 2017, at the conclusion of the revocation hearing, the District Court of McIntosh County, the Honorable James D. Bland, District Judge, revoked ten (10) days of Downum's suspended sentence in Case No. CM-2017-317. The revocation of Downum's suspended sentence in McIntosh County Case No. CM-2017-317 is AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J., Concurs; Kuehn, V.P.J., Concurs; Lumpkin, J., Concurs; Rowland, J., Concurs.

RE-2018-536 — On November 13, 2013, Appellant Christian Emmanuel Reyes entered a blind plea of guilty to Unauthorized Use of a Vehicle, in violation of 47 O.S.2011, § 4-102 (Count 1), and Attempting to Elude a Police Officer, in violation of 21 O.S.Supp.2015, § 540A (Count 3), in Case No. CF-2013-6460. On July 30, 2014, the trial court sentenced Appellant to five years imprisonment for Count 1, with all but the first two years suspended, and

one year imprisonment for Count 3. On July 6, 2017, Appellant pled guilty to Possession of a Controlled Dangerous Substance in the Presence of a Minor under Twelve (12), in violation of 63 O.S.Supp.2016, § 2-402, in Oklahoma County District Court Case No. CF-2017-3715. Following trial court modification, Appellant's sentence in Case No. CF-2017-3715 was five years imprisonment with all but the first thirty days suspended. On April 6, 2018, the State filed a 1st Amended Application to Revoke Suspended Sentence in both cases. Following a revocation hearing the trial court revoked Appellant's remaining suspended sentences in full. The revocation is AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J.: concurs in results; Kuehn, V.P.J.: concurs; Lumpkin, J.: concurs; Rowland, J.: concurs.

F-2018-391 — Zachary Troy King, Appellant, was tried by jury for the crime of Child Abuse by Injury in Case No. CF-16-416 in the District Court of Custer County. The jury returned a verdict of guilty and recommended as punishment 20 years imprisonment, with all but the first 15 suspended. The trial court sentenced accordingly. From this judgment and sentence Zachary Troy King has perfected his appeal. AFFIRMED. Opinion by: Kuehn, V.P.J.; Lewis, P.J., concur; Lumpkin, J., concur; Hudson, J., concur; Rowland, J., concur.

Thursday, June 27, 2019

F-2018-513 — Bobby Lee Ruppel, Jr., Appellant, was tried and convicted in a nonjury trial, in Case No. CF-2016-325A, in the District Court of Lincoln County, of Count 1: Assault with a Dangerous Weapon, After Two or More Felony Convictions and Count 2: Robbery with a Weapon, After Two or More Felony Convictions. The Honorable Cynthia Ferrell Ashwood, District Judge, sentenced Appellant to twenty-five years imprisonment in each of Counts 1 and 2 and ordered the sentences to run consecutively to each other. Judge Ashwood further ordered Appellant to pay restitution in the amount of $9,757.49. From this judgment and sentence, Bobby Lee Ruppel, Jr., has perfected his appeal. The Judgments and Sentences of the District Court are AFFIRMED. The District Court's restitution order is VACATED and the case is REMANDED to the District Court for a proper determination on the issue of loss in accordance with this opinion. Opinion by: Hudson, J.; Lewis, P.J., Concurs; Kuehn, V.P.J., Concurs; Lumpkin, J., Concurs in Results; Rowland, J., Concurs.

M-2018-259 — Following a consolidated jury trial ending on February 27, 2018, Appellant Apollo Gabriel Gonzalez was found guilty of two counts of Domestic Abuse - Assault and Battery in Oklahoma County District Court Case Nos. CM-2016-1848 (Count 1) and CM-2016-2515 (Count 2). Appellant was convicted and sentenced to a $1,000 fine and a $500.00 fine, respectively. Appellant appeals from the Judgment and Sentence imposed. AFFIRMED. Opinion by: Kuehn, V.P.J. Lewis, P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs; Rowland, J., concurs.

COURT OF CIVIL APPEALS
(Division No. 1)
Friday, June 14, 2019

115,734 — (Comp. 117, 183) WCI L.L.C., Plaintiff/Appellee, v. Majid Iranpour, d/b/a Shepel L.L.C., and MIM Enterprise L.L.C., Defendants/Appellants, v. Ali Mehdipour, Third-party Defendant. Appellant, Majid Iranpour Mobarekeh, seeks review of a January 3, 2017 order awarding Plaintiff/Appellee, WCI, L.L.C., punitive damages in the amount of $75,000.00, attorney fees of $12,000.00 and costs in the amount of $482.40, in a case involving a commercial lease contract dispute. WCI alleged Mobarekeh subleased the commercial property at issue to a food service business, violating the terms of the lease, and did not properly pay the rental income to WCI. For the reasons provided, we affirm the district court's order awarding punitive damages, attorney fees and costs. The appellate review standard for an attorney fee award is abuse of discretion, wherein the appellate court will not disturb the trial court's decision unless it is without rational basis in evidence or based upon erroneous legal conclusions. *Vance v. Enogex Gas Gathering, L.L.C.*, 2017 OK CIV APP 14, ¶21, 393 P.3d 718, 724. Whether the jury or trial court acting as fact finder is permitted to consider punitive damages is a question of law to be determined by the trial judge. *Id*. at 722. Appellant/Mobarekeh has not provided a record sufficient for the appellate court to properly review the appealed from order. Supreme Court Rule 1.34 provides for the appellant to monitor and secure the timely preparation of the record. Supreme Court Rule 1.33(c) also places the burden of monitoring preparation of the appellate record, particularly with reference to the transcripts, on the appellant seeking relief from the trial court decision. 12 O.S. Supp.2013 Ch. 15, App.1, Rule 1.33(c). None of the designations of record

purport to include a transcript or narrative statement of the hearing on punitive damages from which the appealed from order originated. The appellate court must indulge in the presumption that the ruling of the trial court is correct. *Chandler v. Denton*, 1987 OK 38, 741 P.2d 855, 862. The record Appellant has provided in this case is not sufficient to overcome the presumptions in favor of the trial court's decision. The order of the district court is AFFIRMED. Opinion by JOPLIN, P.J.; GOREE, C.J., and BUETTNER, J., concur.

116,075 — WFD Oil Corporation, Plaintiff/Appellee, v. Williford Energy Company, Warren American Oil Company, SNS Oil & Gas Properties, Inc., R.B. Holton, Inc., NI&GN Resources, Inc., Douglass K. Norton, Artemis Ventures, LLC, Cobalt Energy Corporation, Veddycruz, LLC, Thomas J. Turmelle, Cherry Partners, LLC, J-V Resources LLC, David Roberts and Debbie Roberts, Trustees of the David and Debbie Roberts Living Trust Dated March 16, 2015, Turmelle Oil and Gas, LLC, P.B.K. Royalty & Investments, LLC, Defendants/Appellants, Lonny Wedgeworth, A/K/A Lonnie Wedgeworth. Defendant. Appeal from the District Court of Okmulgee County, Oklahoma. Honorable Joe Sam Vassar, Trial Judge. Plaintiff filed an action to cancel an oil and gas lease for failure to obtain production in paying quantities and to quiet title in the leasehold. The trial court cancelled the lease, determining that Defendant failed to obtain production in paying quantities; it further quieted title in the leasehold in Plaintiff's favor. We find the weight of the evidence supports the findings that the costs of repair and the depreciation expenses should be deducted as lifting expenses. As such, the Williford Lease was not extended past its primary term by production in paying quantities. Moreover, Defendant did not establish sufficient equities that would justify extending the Williford Lease into a secondary term. The trial court's judgment cancelling the Williford Lease and quieting title to the WFD Lease in WFD is AFFIRMED. Opinion by Goree, C.J., Joplin, P.J., and Buettner, J., concur.

116,905 — In The Matter of D.S.H. an alleged deprived child under the age of 18 years, Karena Gilbreath-Hancock, Appellant, v. State of Oklahoma, Appellee. Appeal from the District Court of Bryan County, Oklahoma. Honorable Rocky L. Powers, Judge. Appellant, the biological mother of D.S.H., Karena Gilbreath-Hancock, seeks review of the trial court's February 28, 2018 order terminating Appellant's parental rights upon the jury's verdict recommending such termination of parental rights based on Appellant's failure to provide proof of a stable home, failure to follow recommendations regarding substance abuse treatment, failure to complete parental education, failure to participate in parent/child counseling, failure to obtain a psychological evaluation and failure to provide required information to D.H.S. (Department of Human Services). Appellant asserts three propositions of error on appeal. First, she alleges the trial court erred when it did not require the disqualification of the Bryan County District Attorney's Office after Appellant's attorney represented Appellant at the February 2014 trial and later went to work for the D.A.'s office which represented the State of Oklahoma in this deprived action. The appellate court will examine *de novo* the trial court's application of ethical standards and review its findings of fact for clear error. *Atkinson v. Rucker*, 2009 OK CIV APP 30, ¶8, 209 P.3d 796, 798. The trial court found Appellant's previous attorney was screened from this case, with the exception of an August 2014 after hours call during which no confidential information was at issue, and there was no basis to disqualify the Bryan County District Attorney's Office from prosecuting its application to terminate Appellant's parental rights. There was no evidence of harm or the leaking of confidential information to the district attorney at any time during the course of the second trial. Second, the trial court erred when it failed to grant Appellant a requested continuance when her new attorney asked for additional time to prepare for the second trial in February 2018. Refusal to grant a continuance is not reversible error on appeal unless it is shown to be an abuse of discretion. *Bookout v. Great Plains Reg'l Med. Ctr.*, 1997 OK 38, 939 P.2d 1131, 1134. "Whether the ruling of a court on a motion for continuance is within the proper exercise of its sound discretion usually depends on the facts of the particular case, the chief test being whether the grant or denial of the motion operates in the furtherance of justice." *Bookout*, 939 P.2d at 1135, quoting *State v. Duerkson*, 1943 OK 6, 132 P.2d 649, 650. Appellant's counsel was not able to articulate anything she would have done differently at trial or any witnesses or evidence she was unable to prepare due to her inability to secure a continuance. The trial court did not find a continuance to be in the child's best interests and the record does not demonstrate the trial

court abused its discretion in making this finding. Third, Appellant asserts the trial court erred when it permitted the minor child to testify outside the presence of the jury and Appellant and did not outline the findings of fact for the testimony accommodation under 12 O.S. Supp.2008 §2611.7. "A trial court has wide discretion in conducting a jury trial and its conduct will not be a basis for reversal unless an abuse of discretion is shown." *Kerlin v. Hunt*, 2013 OK CIV APP 83, ¶25, 310 P.3d 1114, 1122. We disagree with Appellant's assertion that the trial court must make specific findings of fact, absent a definitive request for findings of fact, which Appellant did not make in this case. The record supports the State's assertion that Appellant's presence could have caused the child emotional distress and made it difficult for her to communicate her testimony. We find no basis on which to disturb the trial court's decision in this regard. The decision of the trial court is AFFIRMED. Opinion by Joplin, P.J.; Goree, C.J., and Buettner, J., concur.

117,183 — Majid Iranpour Mobarekeh, Plaintiff/Appellant, v. Ali Mehdipour and Meagan Mehdipour, Defendants/Appellees. Appeal from the District Court of Oklahoma County, Oklahoma. Honorable Patricia Parrish, Judge. The Appellant, Mobarekeh, filed a petition in the underlying cause on March 22, 2017 in the Oklahoma County District Court asserting violations of his statutory and civil rights, contract claims relating to a commercial lease dispute which was also at issue in the companion case No. 115,734, and asserted claims for fraud and damages exceeding $538,500.00. Defendants/Appellees, Ali Mehdipour and Meagan Mehdipour, filed a motion to dismiss Appellant's cause on May 11, 2017. The trial court granted Defendants' motion to dismiss on December 1, 2017. This second cause of action, filed on March 22, 2017, involves the same events and claims as the third party petition Appellant filed against Appellee, Ali Mehdipour, in the companion case also on appeal, Case No. 115,743. Both cases involve the same lease and the same lease dispute, as well as the same conflict time frame between Appellant (Mobarekeh) and Appellee (Ali Mehdipour and also WCI, L.L.C. in the first cause of action). The appellate court was faced with a similar situation in *Patel v. Tulsa Pain Consultant, Inc.*, PC, 2015 OK CIV APP 45, 348 P.3d 1117, in which the plaintiff filed a second action involving the same transactions as his first cause of action during the time the first action was pending on appeal. The *Patel* court found the plaintiff's actions violated the prohibition against claim splitting. Based on the rationale of *Patel* and 12 O.S. 2012§(B)(8), we do not find error in the trial court's decision to dismiss Appellant/Mobarekeh's second action, as it relates directly to the same lease dispute and the same parties at issue in the first action which was pending on appeal at the time the second action was filed. The order of the district court regarding the dismissal of the second cause of action and the striking of Appellant's motion to take judicial notice is AFFIRMED. Opinion by Joplin, P.J.; Goree, C.J., and Buettner, J., concur.

117,196 — Sharla Downing, Petitioner/Appellant, v. Greg Towe, Respondent/Appellee. Appeal from the District Court of Muskogee County, Oklahoma. Honorable Norman Thygesen, Judge. Petitioner/Appellant Sharla Downing appeals from the trial court's order dismissing her petition for dissolution, which was based on the trial court's finding Downing had not proved she and Respondent/Appellee Greg Towe were married. The evidence was disputed; however, Downing failed to present evidence that the parties ever made a present agreement to be married. The trial court's decision is not clearly against the weight of the evidence and we AFFIRM. Opinion by Buettner, J.; Goree, C.J., and Joplin, P.J., concur.

Thursday, June 20, 2019

117,459 — (Comp w/117,326) In Re A.S., A.S., and J.S., minor children: The State of Oklahoma, ex rel., Department of Human Services, Petitioner, v. Amber Smith, Respondent/Appellant, Jarod Smith, Respondent/Appellee, and Marc Smith, Respondent. Appeal from the District Court of Oklahoma County, Honorable Susan K. Johnson, Judge. Amber Smith (Mother) appeals from a trial court order dismissing a deprived child action brought against her and her ex-husband, Jarod Smith (Father), by the Oklahoma Department of Human Services (DHS) regarding the well-being of their three minor children. The trial court's order awarded Father full custody of the children and permitted Mother supervised visitation. On appeal, Mother alleges misconduct by DHS and the trial court, as well as ineffective assistance of counsel for both her and her children. Finding no basis in fact for these allegations, we AFFIRM the trial court's ruling. Opinion by Buettner, J.; Goree, C.J., and Joplin, P.J., concur.

(Division No. 2)
Wednesday, June 12, 2019

115,969 — In the Matter of the Protest to the Denial of the Sales Tax Claim for Refund of PetroQuest Energy, LLC. PetroQuest Energy, LLC, Appellant, vs. Oklahoma Tax Commission, Appellee. Appeal from the Oklahoma Tax Commission. Appellant PetroQuest Energy, LLC appeals the final order of the Oklahoma Tax Commission denying its protest of taxes paid pursuant to a contract with service companies for hydraulic fracturing services. We find that there is substantial evidence in the record to support the Commission's determination that the service companies were not providing fixtures or permanent improvements to real property and that they were not Contractors for purposes of the Oklahoma Sales Tax Code. The Commission's determination that the service companies sold tangible personal property to PetroQuest in the course of providing hydraulic fracturing services is supported by substantial evidence in the record and is otherwise free of error. For these reasons, we affirm the Commission's order denying PetroQuest's protest. AFFIRMED. Opinion from the Court of Civil Appeals, Division II, by Fischer, P.J.; Goodman, J., and Thornbrugh, J., concur.

Friday, June 14, 2019

117,373 — Wendye L. San Antonio, Plaintiff/Appellant, vs. 1st Capital Mortgage, LLC and Redbud Mortgage Group, Defendants/Appellants. Proceeding to review a judgment of the District Court of Oklahoma County, Hon. Thomas E. Prince, Trial Judge. 1st Capital Mortgage, LLC and Redbud Mortgage Group appeal the summary judgment of the district court holding that Appellee Wendye L. San Antonio was entitled to commissions on loans originated while she was employed by Appellant, but not closed until after her employment was terminated by Appellant. Appellant argues that the court found the Employment Agreement was ambiguous as to whether Appellee had become entitled to commissions, and this ambiguity therefore mandates that the issue be submitted to a jury trial. We find it clear that it is material extrinsic evidence which is disputed or susceptible to more than one reasonable factual interpretation that raises disputed questions of fact or credibility, not simply ambiguity in the contract itself. If the extrinsic evidence is insufficient to allow resolution of an ambiguity, a district court is left with two options. If the contract cannot be rationally reconciled in any way, the court may declare it void for vagueness, and move on to decide the case on *quantum meruit* principles. If it can be rationally reconciled, the court may resort to the option of interrupting the contract against the drafter who was responsible for creating the ambiguity. *Dismuke v. Cseh*, 1992 OK 50, 830 P.2d 188; *Wilson v. Travelers Insurance Company,* 1980 OK 9, ¶ 8, 605 P.2d 1327. The district court did the latter, and we find no error in its decision to do so. AFFIRMED. Opinion from Court of Civil Appeals, Division II, by Thornbrugh, J.; Fischer, P.J., and Goodman, J., concur.

116,855 — Kirk D. Elliott and Donna M. Burrell-Elliot, husband and wife, Plaintiffs/Appellants, vs. Donald M. Fonzi and Linda K. Fonzi, husband and wife, Defendants/Appellees. Proceeding to review a judgment of the District Court of Major County, Hon. Justin P. Eilers, Trial Judge. Kirk D. Elliott and Donna M. Burrell-Elliott (Elliotts), and Donald Fonzi and Linda K. Fonzi (Fonzis), both appeal aspects of the decision of the district court in a trespass case. On review, we find the following: 1) The trial court did not err in finding that the Elliotts traversed the Fonzis' property without permission; 2) the claim for damages for trespass in the form of building debris left on the Fonzi property accrued more than two years before suit was brought, and is time-barred; 3) we find no legal basis for the award of trespass damages in the form of money expended in pre-suit attempts to block disputed ingress and egress to the property; 4) no basis to support a claim that the Fonzis were entitled to rent of $25/day each day the Elliotts traversed the property, and 5) no error in the court's refusal to grant a permanent injunction. AFFIRMED IN PART, REVERSED IN PART, AND REMANDED. Opinion from Court of Civil Appeals, Division II, by Thornbrugh, J.; Fischer, P.J., and Goodman, J., concur.

(Division No. 3)
Friday, June 14, 2019

116,459 — (Comp. w/117,717) Cole Yarborough, Petitioner/Appellant, vs. Meghan Yarborough, Respondent/Appellee. In this post-dissolution of marriage proceeding, Petitioner/Appellant, Cole Yarborough (Father), appeals from the trial court's order granting the motion to modify visitation filed by Respondent/Appellee, Meghan Frizzell, formerly Yarborough (Mother). The trial court lifted the supervision restrictions on Mother's visitation with the par-

ties' minor son, B.Y. Father also appeals from the trial court's order modifying the parties' child support obligations and reversing an earlier award of Father's attorney fees and costs incurred in defense of Mother's motion to enforce non-custodial parent's visitation rights. Mother counter-appeals from the trial court's temporary order suspending her visitation rights until the conclusion of a Department of Human Services (DHS)/law enforcement investigation. After reviewing the record, we cannot find the trial court's ruling allowing Mother's unsupervised visitation was an abuse of discretion or contrary to the evidence. That ruling is affirmed. We also affirm the trial court's ruling denying Father's motion for attorney fees and costs. The trial court's order determining the parties' income for child support purposes is affirmed; however, the order is remanded with instructions to enter a child support computation form. The trial court's order temporarily suspending Mother's visitation rights pending the outcome of a DHS/law enforcement investigation is affirmed. AFFIRMED AND REMANDED. Opinion by Bell, J.; Mitchell, P.J., and Swinton, J., concur.

117,215 — James Patrick Lesley, Jr., Plaintiff/Appellant, vs. Oklahoma Pardon and Parole Board, Defendants/Appellees. Plaintiff/Appellant, James Patrick Lesley, Jr., appeals from the trial court's order dismissing his petition against Defendant/Appellee, the Oklahoma Pardon and Parole Board (Board). Appellant's petition asserted the Board improperly declined to recommend him for parole. Appellant is an inmate in the custody of the Oklahoma Department of Corrections serving a life sentence with the possibility of parole for a 2002 conviction for First Degree Felony Murder. He appeared before the Board in January 2018 for parole consideration. The Board's review consisted of reviewing an Investigative Report that included the district attorney's crime narrative, as well as facts of the underlying case and Appellant's activities while incarcerated. After consideration, the Board denied Appellant's request for parole recommendation. Appellant sued the Board alleging it acted improperly and violated 57 O.S. Supp. 2013 §332.7 when it considered the district attorney's version of the crime, and failed to follow §332.8 when it voted to deny parole recommendation to the Governor. The trial court dismissed the petition for failure to state a claim pursuant to 12 O.S. 2011 §2012(B)(6). We hold §332.7(I) is sufficiently broad enough to encompass a district attorney's narrative of the criminal acts leading to the conviction of an inmate seeking parole. Second, where the Board votes not to consider an inmate for parole at the first hearing required by §332.7(C), a second hearing is neither necessary nor statutorily mandated. Finally, §332.8 does not require the Board to recommend parole when certain factors are present. The Pardon and Parole statutes simply require the Board to consider every appropriately submitted parole request. In this case, the Board properly considered Appellant's request. AFFIRMED PER CURIAM.

Friday, June 21, 2019

116,402 — Randall White and Jamie White, Plaintiffs/Appellants, vs. Roos Cattle Company, Inc., Defendant/Appellee. White Rock Holdings, LLC, an Oklahoma Limited Liability Company, Plaintiff/Appellee, vs. Randall Cletus White and Jamie A. White; and Trans Ova Genetics, L.C., Defendants/Appellants, and Randall Cletus White and Jamie A. White, Third-Party Plaintiffs/Appellants, vs. Robert Charles Roos, IV; Frances M. Roos; Robert Charles Roos, V.; and Roos Cattle Company, Inc., a domestic for profit corporation farm/ranch, Third-Party Defendants/Appellees. Appeal from the District Court of Comanche County, Oklahoma. Honorable Emmit Tayloe, Trial Judge. Defendants/Appellants Randall Cletus White and Jamie A. White (the Whites) appeal from an order denying their motion for new trial in an action filed by Plaintiff/Appellee White Rock Holdings, LLC (White Rock). The Whites filed a motion for new trial after the trial court granted White Rock's motion for summary judgment on its foreclosure claim against the Whites. The Whites argue that there was sufficient evidence to establish that there was a genuine issue of material fact on their defenses of fraudulent inducement, failure of consideration, and redemption, precluding summary judgment. Because the order on appeal left issues pending which were so interrelated and intertwined with the adjudicated claim, the trial court prematurely advanced the order. We therefore dismiss the appeal. DISMISSED. Opinion by Swinton, J.; Mitchell, P.J., and Bell, J., concur.

116,671 — In Re the Marriage of Pruett: Jay A. Pruett, Petitioner/Appellee, vs. Janis A. Pruett, Respondent/Appellant. Appeal from the District Court of Tulsa County, Oklahoma. Honorable Stephen R. Clark, Judge. Respondent/Appellant Janis A. Pruett (Wife) appeals

from the Decree of Dissolution of Marriage. We find Louisiana law governs Wife and Petitioner/Appellee Jay A. Pruett's (Husband) antenuptial agreement and such agreement does not violate Oklahoma public policy. The trial court did not err by denying Wife's request for a trial *de novo* based on the substitution of a new judge midway through the proceedings. We will not review errors Wife invited with respect to the misapplication of Oklahoma law to her equitable defenses to enforcement of the agreement. We find the trial court erred by failing to award a joint savings account to the parties as part of its division of the marital estate and modify the Decree to award one-half to Husband and one-half to Wife. We AFFIRM AS MODIFIED. Opinion by Mitchell, P.J.; Bell, J., and Swinton, J., concur.

117,802 — Larry Parks, Plaintiff/Appellant, vs. Timothy Pressley, Defendant/Appellee. Appeal from the District Court of Cleveland County, Oklahoma. Honorable Thad Balkman, Judge. In this negligence action for damages sustained from an automobile collision, Plaintiff/Appellant, Larry Parks, appeals from the trial court's grant of summary judgment in favor of Defendant/Appellee, Timothy Pressley, on the basis that Plaintiff's action was barred by the applicable two-year statute of limitations. The trial court rejected Plaintiff's claim that the two-year statute of limitations was tolled until Plaintiff had actual knowledge of Defendant's identity and culpability. The trial court held the two-year statute of limitations to bring this negligence suit began to run from the date of the injury on May 11, 2013, and Plaintiff's action brought on March 17, 2017 was out of time. We cannot find the trial court's holding was contrary to law and AFFIRM. Opinion by Bell, J.; Mitchell, P.J., and Swinton, J., concur.

(Division No. 4)
Thursday, June 13, 2019

117,068 — Mineralmen Land Co., L.L.C., Plaintiff/Appellee, v. John W. Doolin and Katherine E. Doolin, Co-Trustees of the John B. Doolin Trust, Defendants/Appellants. Appeal from an Order of the District Court of Woods County, Hon. Justin P. Eilers, Trial Judge. The Defendants, John W. Doolin and Katherine Doolin, Co-Trustees (Trustees) of the John B. Doolin Trust (Doolin Trust), appeal an Order granting summary judgment to the Plaintiff, Mineralmen Land Co., LLC (Mineralmen). An oil and gas lessee has the obligation to develop the property and has the primary term of the oil and gas lease to accomplish this obligation. On occasion, circumstances arise where the lessee, or authorized driller, begins a well but does not complete it during the primary term. Clauses have been added to oil and gas leases that contractually permit the lessee to complete the operation on the well, so long as the work is prosecuted continuously. In their narrowest form, such clauses apply only to the well that was started, but not completed, during the primary term. Disputes occur over whether a rig movement results in a "new" well or a continuous operation of the original well. This case deals with a Chesapeake Lease which has a much broader and liberal continuous operations clause. Among the broader provisions is the contractual agreement that eliminates the rule that the lessee is confined to the single well started, but unfinished, during the primary term. The undisputed facts of this case show that Sandridge, the authorized driller, conducted continuous operations as provided by the broad provisions of the Chesapeake Lease. The resulting production holds the lease. Therefore, under the clear terms of the Mineralmen's Lease, Mineralmen is entitled to reimbursement. The trial court Order granting summary judgment is affirmed. AFFIRMED. Opinion from Court of Civil Appeals, Division IV, by Rapp, J.; Barnes, P.J., and Wiseman, V.C.J., concur.

Wednesday, June 19, 2019

117,446 — Terry Bennett, Petitioner, v. Multiple Injury Trust Fund and The Oklahoma Workers' Compensation Commission, Respondents. Proceeding to review an Order of the Workers' Compensation Commission, Tara A. Inhofe, Administrative Law Judge. Petitioner (Claimant) appeals from an order of the Workers' Compensation Commission En Banc affirming an order of an Administrative Law Judge (ALJ) denying Claimant's request for permanent total disability (PTD) benefits from the Multiple Injury Trust Fund (the Fund) on the basis that Claimant is not a "physically impaired person" under 85A O.S. Supp. 2014 § 30(A)(3). We conclude the ALJ's determination, affirmed by the Commission, is "[c]learly erroneous in view of the reliable, material, probative and substantial competent evidence[.]" 85A O.S. § 78(C)(5). In the absence of contrary evidence, the credible testimony presented of, among other things, daily observations of Claimant having difficulty standing and walking for long periods, and of Claimant having a lack of balance, an altered

gait, and an inability to bend or squat, lead to the conclusion that the ALJ erred in rejecting Claimant's assertion that she constitutes a physically impaired person on the basis of a partial loss of use of her legs such as is obvious and apparent from observation or examination by a person who is not skilled in the medical profession. Consequently, we vacate the Commission's order affirming the order of the ALJ, and remand this case to the ALJ for further proceedings. VACATED AND REMANDED FOR FURTHER PROCEEDINGS. Opinion from Court of Civil Appeals, Division IV, by Barnes, P.J.; Wiseman, V.C.J., and Rapp, J., concur.

117,162 — In re the Matter of: Y.R., A Deprived Child, John Cato and Marlene Cato, Appellants, vs. State of Oklahoma, ex rel. Department of Human Services, Appellee. Appeal from an order of the District Court of Tulsa County, Hon. Doris L. Fransein, Trial Judge, denying John and Marlene Cato's (Grandparents) motion for change of placement of minor child, YR, to their home from the home of her current foster parents. Grandparents argue that the trial court's denial of their motion for change in placement was improper and must be reversed. After review of the record on appeal, we conclude the denial of their motion for change in placement was not clearly against the weight of the evidence and is not an abuse of discretion. The trial court's order is affirmed. AFFIRMED. Opinion from the Court of Civil Appeals, Division IV, by Wiseman, V.C.J.; Barnes, P.J., and Rapp, J., concur.

117,116 — In the Matter of the Adoption of: L.F. and B.F., minor children, Matthew David Seay and Farrah Evening Seay, Appellants, vs. State of Oklahoma ex rel. Department of Human Services, Appellee. Appeal from an order of the District Court of Tulsa County, Hon. Doris L. Fransein, Trial Judge, dismissing Appellants' application to set the matter for a best interests hearing and dismissing their petition for adoption of minor children. Although Appellants had certain contractual and statutory rights, we agree with the deprived court's determination that Appellants could not pursue adoption of the children in a separate proceeding. Appellants objected to the children's removal from their home and participated in a hearing, but did not intervene in the deprived action to assert their right to adopt as foster parents. We agree with the deprived court that because the adoption court lacked jurisdiction and Appellants lacked standing to initiate a separate adoption proceeding, Appellants' application to set the matter for a best interests hearing and their petition for adoption were correctly dismissed. Appellants pursued the "wrong process" for adopting the minor children, and the adoption proceeding was not proper from the outset. And, the deprived court properly refused to consider the parents' consent in the adoption proceeding in making its determination. The order of the deprived court is affirmed. AFFIRMED. Opinion from the Court of Civil Appeals, Division IV, by Wiseman, V.C.J.; Barnes, P.J., and Rapp, J., concur.

116,884 — In the Matter of: N.L. and J.L., Deprived Children, Carminda Lara, Appellant, vs. State of Oklahoma, Appellee. Appeal from an order of the District Court of Tulsa County, Hon. Rodney Sparkman, Trial Judge, terminating Carminda Lara's parental rights to her minor children, NL and JL. We do not address the merits of Lara's principal contention on appeal because we conclude the trial court's order terminating Lara's parental rights failed to make statutorily-required findings pursuant to 10A O.S. Supp. 2015 § 1-4-904. We therefore reverse the order and remand with instructions to the trial court to enter a new order that makes the required findings for each ground for termination and whether termination is in the children's best interest. REVERSED AND REMANDED WITH INSTRUCTIONS. Opinion from the Court of Civil Appeals, Division IV, by Wiseman, V.C.J.; Barnes, P.J., and Rapp, J., concur.

ORDERS DENYING REHEARING
(Division No. 3)
Wednesday, June 26, 2019

116,423 — Leta Hicks, as Personal Representative of the Estates of William Hicks and Virginia Hicks, Plaintiff/Appellee, vs. Central Oklahoma United Methodist Retirement Facility, Inc., d/b/a Epworth Villa Health Services, an Oklahoma Corporation, Defendant/Appellant. The Petition for Rehearing of Appellant Epworth Villa Health Services, filed May 30, 2019, is *DENIED*.

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POSITIONS AVAILABLE

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.

HOUSE COUNCIL FOR INVESTMENT FIRM. We are seeking a mature experienced house council for an Oklahoma City firm. This is an excellent opportunity for long range employment. Send resume and salary history to "Box L," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

ESTABLISHED, AV-RATED TULSA INSURANCE DEFENSE FIRM WHICH REGULARLY TAKES CASES TO TRIAL seeks motivated associate attorney to perform all aspects of litigation including motion practice, discovery and trial. Two to 5 years of experience preferred. Candidate will immediately begin taking depositions and serving as second chair at jury trials and can expect to handle cases as first chair after establishing ability to do so. Great opportunity to gain litigation experience in a firm that delivers consistent, positive results for clients. Submit CV and cover letter to "Box CC," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

THE CITY OF OKLAHOMA CITY IS CURRENTLY ACCEPTING APPLICATIONS for a paralegal I. Qualified applicants will possess a Paralegal Certificate or Associate Degree from an ABA approved paralegal program. his position is located in the Labor/Employment Division of the Office of the Municipal Counselor. Job duties include legal assistance to the staff attorneys in all aspects of litigation, legal research and preparation of civil cases for trial and arbitration. Minimum 2 years of law office experience is required with a preference of at least 1 year of labor/employment law experience. Applications will be accepted through July 22, 2019. For additional information and to apply online, go to http://www.okc.gov/jobs or call the city's jobline at 405-297-2419 or TDD (Hearing Impaired) 405-297-2549. EEO.

POSITIONS AVAILABLE

JUDGE ADVOCATE GENERAL'S (JAG) CORPS for Oklahoma Army National Guard is seeking qualified licensed attorneys to commission as judge advocates. Selected candidates will complete a six-week course at Fort Benning, Georgia, followed by a 10 ½ week military law course at the Judge Advocate General's Legal Center on the University of Virginia campus in Charlottesville, Virginia. Judge advocates in the Oklahoma National Guard will ordinarily drill one weekend a month and complete a two-week annual training each year. Benefits include low-cost health, dental and life insurance, PX and commissary privileges, 401(k) type savings plan, free CLE and more! For additional information contact 1LT Rebecca Rudisill, email Rebecca.l.rudisill2.mil@mail.mil.

THE OKLAHOMA INDIGENT DEFENSE SYSTEM (OIDS) CURRENTLY HAS OPENINGS FOR THE FOLLOWING POSITIONS: appellate defense counsel in General Appeals Division, Norman office; appellate defense counsel in Homicide Direct Appeals Division, Norman office; defense counsel in Non-Capital Trial Division, Clinton office; defense counsel in Non-Capital Trial Division, Guymon office; and defense counsel in Non-Capital Trial Division, Mangum office. For more details and how to apply, visit us at http://www.ok.gov/OIDS/. Deadline is July 15, 2019.

SEEKING EXPERIENCED WORKERS' COMPENSATION CLAIMS ADJUSTER for large self-insured employer. Send resume to mclark@saintfrancis.com or complete application online at https://www.saintfrancis.com/careers/.

FOR SALE

SPECTACULAR 1930'S VINTAGE LAWYER'S SOLID OAK ROLL TOP DESK. Refinished. Near-perfect condition. 6 feet wide. Perfect as a conversation piece in a law firm library or reception area. Photos available. $1,500. 405-740-1261.

Notice of Judicial Vacancy

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

Associate District Judge
Twenty-fourth Judicial District • Creek County, Oklahoma

This vacancy is due to the retirement of the Honorable Mark Ihrig effective August 1, 2019.

To be appointed an Associate District Judge, an individual must be a registered voter of the applicable judicial district at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, the appointee must have had a minimum of two years experience as a licensed practicing attorney, or as a judge of a court of record, or combination thereof, within the State of Oklahoma.

Application forms can be obtained on line at www.oscn.net by following the link tothe Oklahoma Judicial Nominating Commission or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 North Lincoln, Suite 3, Oklahoma City, OK 73105, (405) 556-9300, and should be submitted to the Chairman of the Commission at the same address **no later than 5:00 p.m., Friday, July 12, 2019. If applications are mailed, they must be postmarked by midnight, July 12, 2019.**

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

oba cle
continuing legal education

BUSINESS GROWTH
COLLABORATIVE CLINIC

A Workshop about law firm business development: The good, the bad, and the dangerous

This is a no-credit educational course.

It's not about CLE compliance…it's about learning ideas that will help lawyers improve their business

PROGRAM DESCRIPTION:

Every lawyer wants to hear new ideas for developing and growing their business. This unique, limited attendance program led by Stuart Teicher will not only give you the opportunity to hear new ideas on law firm business development. Besides leading the workshop discussions, Stuart will bring his own law practice experience, as well as his entertaining teaching style, to bear on solutions to common and not-so-common dilemmas in law firm marketing, advertising and business development. You will get concrete ideas to implement in your own practice to improve business, including: using social media and YouTube to grow your practice and developing a business plan that makes a difference. Plus, Stuart will provide powerful insights on the kinds of communications skills that lawyers need to connect with clients. After all, a strong attorney-client relationship based on solid communication is the best referral tool.

So, if you want to grow your business by hearing from and sharing with your peers, the "best practices" that can bring you success, don't miss this opportunity.

TUITION: Early registration by September 12, 2019 is $229 for the program. Registration received after September 12, 2019 will be $254 and $279 for walk-ins. Registration includes breakfast.

THURSDAY, SEPTEMBER 19, 2019
8:30 A.M. - 12:30 P.M.

Oklahoma Bar Center
1901 N. Lincoln Blvd.
Oklahoma City, OK 73106

FEATURED INSTRUCTOR:
Stuart I. Teicher

Stuart I. Teicher has been a practicing attorney for over two decades. His career is now dedicated to helping fellow attorneys survive the practice of law and thrive in the profession. Stuart helps attorneys get better at what they do (and enjoy the process) through his entertaining and educational CLE Performances.

Stay up-to-date and follow us on

TO REGISTER GO TO WWW.OKBAR.ORG/CLE