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Volume 91 — No. 1 — 1/3/2020

Court Issue



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THE OKLAHOMA BAR Journal

Volume 91 – No. 1 – January 2020

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Opinions of Supreme Court

Manner and Form of Opinions in the Appellate Courts;

See Rule 1.200, Rules — Okla. Sup. Ct. R., 12 O.S. Supp. 1996 (1997 T. 12 Special Supplement)

2019 OK 79

**IN RE: Rules of the Supreme Court of the
State of Oklahoma on Licensed Legal
Internship (5 O.S. ch. 1 app. 6)**

SCBD No. 2109. December 2, 2019

CORRECTED ORDER

¶1 This matter comes on before this Court upon an Application to Amend Rule 2.1A of the Rules of the Supreme Court of the State of Oklahoma on Licensed Legal Internship (hereinafter “Rules”). This Court finds that it has jurisdiction over this matter and the Rules are hereby amended as set out in Exhibit A attached hereto, effective immediately.

¶2 DONE BY THE SUPREME COURT IN CONFERENCE this 2ND day of DECEMBER, 2019.

/s/ Noma D. Gurich
CHIEF JUSTICE

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

EXHIBIT A

**RULES OF THE SUPREME COURT ON
LICENSED LEGAL INTERNSHIP**

Rule 2.1A Academic Legal Intern License

A law student not otherwise eligible for licensure under Rule 2 and enrolled in a law school academic program that requires the utilization of an intern’s license must meet the following requirements in order to be eligible for a limited license as an Academic Legal Intern (Adopted May 16, 2011):

(1) Requirements

- (a) Be a regularly enrolled student at an accredited law school located in the State of Oklahoma;
- (b) Have successfully completed one-third (1/3) of the number of academic hours in a law school program leading to a Juris Doctor Degree required by the

American Bar Association Accreditation Standards;

- (c) Have a graduating grade point average at his or her law school;
- (d) Have approval of his or her law school dean or the dean’s designate;
- (e) Have either completed or be concurrently enrolled in Professional Responsibility and Evidence Courses;
- (f) ~~Successfully pass the examination required by Rule 5-2; Stricken by Legal Intern Committee June 14, 2019.~~
- (g) Be registered with the Oklahoma Board of Bar Examiners or provide a criminal background report from the State of Oklahoma ~~and the student’s prior state(s) of residence, if different;~~ and
- (h) Be enrolled in a law school course that will provide direct law school faculty supervision for the student’s activities under the Academic Legal Intern License, including physical presence of a supervising faculty member at all court appearances.

(2) Limitations

All limitations and procedures which apply to the regular limited license shall apply to the academic limited license, except the Academic Legal Intern shall make no court appearance without a faculty supervisor present. The Academic Legal Intern’s license may only be used in conjunction with enrollment in a program established pursuant to Rule 4.1(a).

(3) The Academic Intern may be sworn in by any member of the Oklahoma Judiciary, including a judge of the district court.

(34) Expiration of Academic Legal Intern License

Once an Academic Legal Intern is no longer enrolled in a course described in Rule 2.1A(1)(h), the student’s Academic Legal Intern License must be placed on inactive

status. If the student ~~wants~~ desires to ~~use~~ obtain a Limited Legal Intern License thereafter, ~~that the~~ student shall ~~have to~~ meet all qualifications for a Limited Legal Intern License under Rule 2.1 or Rule 2.2, including the submission of a current application, ~~and~~ payment of an application fee, ~~and~~ passing the examination required by Rule 5.2. ~~however, the student shall not have to retake the Legal Internship Examination.~~

EXHIBIT A

RULES OF THE SUPREME COURT ON LICENSED LEGAL INTERNSHIP

Rule 2.1A Academic Legal Intern License

A law student not otherwise eligible for licensure under Rule 2 and enrolled in a law school academic program that requires the utilization of an intern's license must meet the following requirements in order to be eligible for a limited license as an Academic Legal Intern (Adopted May 16, 2011):

(1) Requirements

- (a) Be a regularly enrolled student at an accredited law school located in the State of Oklahoma;
- (b) Have successfully completed one-third (1/3) of the number of academic hours in a law school program leading to a Juris Doctor Degree required by the American Bar Association Accreditation Standards;
- (c) Have a graduating grade point average at his or her law school;
- (d) Have approval of his or her law school dean or the dean's designate;
- (e) Have either completed or be concurrently enrolled in Professional Responsibility and Evidence Courses;
- (f) Stricken by Legal Intern Committee June 14, 2019.
- (g) Be registered with the Oklahoma Board of Bar Examiners or provide a criminal background report from the State of Oklahoma; and
- (h) Be enrolled in a law school course that will provide direct law school faculty supervision for the student's activities under the Academic Legal Intern License, including physical presence of

a supervising faculty member at all court appearances.

(2) Limitations

All limitations and procedures which apply to the regular limited license shall apply to the academic limited license, except the Academic Legal Intern shall make no court appearance without a faculty supervisor present. The Academic Legal Intern's license may only be used in conjunction with enrollment in a program established pursuant to Rule 4.1(a).

(3) The Academic Intern may be sworn in by any member of the Oklahoma Judiciary, including a judge of the district court.

(4) Expiration of Academic Legal Intern License

Once an Academic Legal Intern is no longer enrolled in a course described in Rule 2.1A(1)(h), the student's Academic Legal Intern License must be placed on inactive status. If the student desires to obtain a Limited Legal Intern License thereafter, the student shall meet all qualifications for a Limited Legal Intern License under Rule 2.1 or Rule 2.2, including the submission of a current application, payment of an application fee, and passing the examination required by Rule 5.2.

2019 OK 82

RE: Disposition of Surplus Property, Rules for Management of the Court Fund, 20 O.S., Chap 18, App 1, Rule 10

No. SCAD-2019-97. December 16, 2019

ORDER

The following new Rule 10 of the Rules for Management of the Court Fund, is hereby adopted and codified at Appendix 1 of the Title 20, Chapter 18, and is attached as Exhibit "A" to this order.

Rule 10 shall become effective on January 1, 2020, and shall supersede any Supreme Court Rules or Administrative Directives which were previously issued by this Court related to disposition of surplus property acquired or purchased by the local court fund.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 16th day of DECEMBER, 2019.

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

--- EXHIBIT A ---

Title 20

Chapter 18 – Court Fund

**Appendix 1 - Rules for Management of the
Court Fund**

Rule 10 – Disposition of Surplus Property

As authorized by 20 O.S. §1314, the following provisions shall govern the disposition of surplus property acquired or purchased by the local court fund.

- A. Any worn out, outmoded, inoperable or obsolete equipment, furniture or other property purchased with local court funds for a district court or court clerk may be declared surplus by the Court Fund Board by written resolution of the Board describing the property and manner of disposal.
- B. Such property may be disposed of by any of the following methods;
 - 1. By trade-in to cover part of the cost of equipment or furniture to be acquired by purchase;
 - 2. By separate cash sale where it appears that a greater amount can be recovered than could be realized by exchange or trade-in;
 - 3. By transfer to another court clerk or district court;
 - 4. By transfer to another county office in the same county; or
 - 5. By junking, if the property has no value.
- C. Except as provided in paragraph D below, before surplus items may be sold, a list of the items must be submitted to the Administrative Office of the Courts for distribution to the other district courts and court clerks. The Court Fund Board of any county may request such surplus property be transferred by a written resolution of the Court Fund Board having the surplus property. If no

request for transfer to another court clerk or district court is received within 30 days from the notification to the Administrative Office of the Courts, the surplus items may be sold in accordance with this rule.

- D. Property with a current value which is less than the amount required for inclusion in the county inventory as set forth in 19 O.S. Supp. 2012 §178.1, or as hereafter may be amended, may be junked or disposed of in any manner deemed appropriate by the Court Fund Board without first being offered to the other district courts and court clerks.
- E. The cash sale of property by the Court Fund Board may be by any of the following methods or combinations of methods:
 - 1. At public auction or internet auction after public advertisement;
 - 2. By inclusion in the sale of surplus county property by county commissioners;or
 - 3. Sale after securing one or more bids in writing.
- F. At any auction, the Court Fund Board shall reserve the right to reject any and all bids and remove the item from sale.
 - 1. All proceeds of a sale of surplus property shall be deposited in the court fund.
 - 2. The records of all sales, including all bids received, shall be retained for a period of not less than three (3) years.
 - 3. All costs incurred in any sale shall be paid from the proceeds of the sale.
- G. Within 30 days after the disposition of any surplus property, the Court Fund Board shall provide documentation of the date and manner of disposal to the Board of County Commissioners. The Board of County Commissioners shall record the disposal information and shall remove the disposed items from any county inventory lists.

**Establishment of the 2020 Uniform Mileage
Reimbursement Rate for Expenses Paid from
the Court Fund**

No. SCAD-2019-101. January 2, 2020

CORRECTED ORDER

Pursuant to the State Travel Reimbursement Act, 74 O.S. Section 500.4, reimbursement for authorized use of privately owned motor vehicles shall not exceed the amount prescribed by the Internal Revenue Code of 1986, as amend-

ed (26 U.S.C.A. section 1 et. seq.) For 2020, the standard business mileage rate prescribed by the Internal Revenue Service is \$.57.5 per mile.

Therefore, the 2020 mileage rate which is reimbursed by the court fund, including, but not limited to jurors, interpreters and witnesses, shall be computed at \$.57.5 cents per mile.

**DONE BY ORDER OF THE SUPREME COURT
THIS 2ND DAY OF JANUARY, 2020.**

/s/ James R. Winchester
ACTING CHIEF JUSTICE

CONSUMER BROCHURES

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NOTICE OF JUDICIAL VACANCY

Pursuant to 85A O.S. §400, the Judicial Nominating Commission seeks applicants to fill the following judicial office for a two-year term: July 1, 2020 through July 1, 2022.

Judge of the Workers' Compensation Court of Existing Claims

Application forms can be obtained on line at www.oscn.net, click on Programs, then Judicial Nominating Commission or by contacting Tammy Reaves at (405) 556-9300. Applications must be submitted to the Chairman of the Commission at the address below **no later than 5:00 p.m., Friday, January 17, 2020. If applications are mailed, they must be postmarked by midnight, January 17, 2020.**

Jim Webb, Chairman
Oklahoma Judicial Nominating Commission
2100 North Lincoln Boulevard, Suite 3
Oklahoma City, OK 73105

CALENDAR OF EVENTS

January

- 3** **OBA Estate Planning, Probate and Trust Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact A. Daniel Woska 405-657-2271
- 7** **OBA Solo and Small Firm Conference Planning Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Charles R. Hogshead 918-708-1746
- OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Richard A. Mildren 405-650-5100
- 10** **OBA Alternative Dispute Resolutions Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Clifford R. Magee 918-747-1747
- OBA Legal Internship Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact H. Terrell Monks 405-733-8686
- OBA Law Day Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with BlueJeans; Contact Ed Wunch 405-548-5087
- 16** **OBA Board of Governors meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000
- 17** **OBA Board of Governors Swearing-In Ceremony;** 10:30 a.m.; Oklahoma Judicial Center; Contact John Morris Williams 405-416-7000
- 20** **OBA Closed** – Martin Luther King Jr. Day
- 21** **OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Judge David B. Lewis 405-556-9611 or David Swank 405-325-5254
- 24** **OBA Professional Responsibility Commission meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Gina Hendryx 405-416-7007



- 27** **OBA Communications Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Dick Pryor 405-740-2944

February

- 4** **OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Richard A. Mildren 405-650-5100
- 6** **OBA Lawyers Helping Lawyers Discussion Group;** 6 p.m.; Office of Tom Cummings, 701 NW 13th St., Oklahoma City, OK 73012; RSVP to Jeanie Jones 405-840-0231
- 7** **OBA Estate Planning, Probate and Trust Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact A. Daniel Woska 405-657-2271
- OBA Alternative Dispute Resolutions Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Clifford R. Magee 918-747-1747
- 17** **OBA Closed** – Presidents Day
- 18** **OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Judge David B. Lewis 405-556-9611 or David Swank 405-325-5254
- 19** **OBA Immigration Law Section meeting;** 11 a.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Lorena Rivas 918-585-1107

Opinions of Court of Civil Appeals

COCA-ADM-2019-1

IN THE COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA
OKLAHOMA CITY AND TULSA
DIVISIONS
JUDICIAL DIVISION ASSIGNMENTS
and
ELECTION OF PRESIDING JUDGES

December 11, 2019

TO THE CLERK OF THE APPELLATE COURTS:

You are hereby requested to cause the following notice to be published twice in the Journal of the Oklahoma Bar Association.

NOTICE

For the calendar year 2020, the Honorable Robert D. Bell has been elected to serve as Presiding Judge for **Division One** of the Court of Civil Appeals, Oklahoma City Division. **Division One** will consist of Robert D. Bell, Presiding Judge; Kenneth L. Buettner, Judge; and Brian Jack Goree, Chief Judge.

For the Calendar year 2020, the Honorable Deborah B. Barnes has been elected to serve as Presiding Judge of **Division Two** of the Court of Civil Appeals, Tulsa Division. **Division Two** will consist of Deborah B. Barnes, Presiding Judge; Keith Rapp, Judge, and John F. Fischer, Judge.

For the Calendar year 2020, the Honorable E. Bay Mitchell, III, has been elected to serve as Presiding Judge of **Division Three** of the Court of Civil Appeals, Oklahoma City Division. **Division Three** will consist of E. Bay Mitchell, III, Presiding Judge; Barbara G. Swinton, Vice-Chief Judge; and a judge to sit by special designation in the absence of retired Judge Larry Joplin.

For the Calendar year 2020, the Honorable P. Thomas Thornbrugh has been elected to serve as Presiding Judge of **Division Four** of the Court of Civil Appeals, Tulsa Division. **Division Four** will consist of P. Thomas Thornbrugh, Presiding Judge; Jane P. Wiseman, Chief Judge; and a judge to sit by special designation in the absence of retired Judge Jerry Goodman.

DONE BY ORDER OF THE COURT OF CIVIL APPEALS this 11th day of December, 2019.

/s/ Brian Jack Goree
Chief Judge

COCA-ADM-2019-2

IN THE COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA
OKLAHOMA CITY AND TULSA
DIVISIONS

ORDER

December 11, 2019

The Clerk of the Appellate Courts is directed to cause the following notice to be published twice in the Oklahoma Bar Journal.

NOTICE

Jane P. Wiseman has been elected to serve as Chief Judge of the Court of Civil Appeals of the State of Oklahoma for the year 2020. Judge Barbara G. Swinton has been elected to serve as Vice-Chief Judge of the Court of Civil Appeals of the State of Oklahoma for the year 2020.

Dated this 11th day of December, 2019.

/s/ Brian Jack Goree
Chief Judge

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Disposition of Cases Other Than by Published Opinion

COURT OF CIVIL APPEALS

(Division No. 1)

Thursday, December 26, 2019

115,590 — Dan Simon, Plaintiff/Appellant/Counter-Appellee, v. Hickory Ridge Ranch, L.L.C., Defendant/Appellee/Counter-Appellant. Appeal from the District Court of Hughes County, Oklahoma. Honorable B. Gordon Allen, Judge. This appeal stems from a dispute in which the Plaintiff/Appellant, Dan Simon, sought a prescriptive easement and damages to prevent Defendant/Appellee, Hickory Ridge Ranch, L.L.C., from denying Simon access to his property along what Simon asserted was a public highway. Simon sought a prescriptive easement for use of an approximately two mile road in Hughes County, Oklahoma, which Appellee sought to treat as a private road, not for public use. Appellant/Simon also sought corresponding damages for destruction of his property and the diminution in value of his property. The proceeding was bifurcated wherein the trial court addressed the issue of damages in December 2012 and the issue of Appellant/Simon's claim of highway by prescription in February 2013. In the appealed from order, filed on November 10, 2016, the trial court awarded \$6,000.00 in damages and limited the damages award to examine only those costs related to the destruction of Simon's fence and timber and did not consider damages for the diminution in value of the property itself. Relying primarily on the factors articulated in *Fennell v. Wilson*, 2009 OK CIV APP 24, 285 P.3d 694, the trial court found the evidence presented "fail[ed] to establish a public highway by prescription." AFFIRMED. Opinion by Joplin, P.J.; Goree, C.J., and Buettner, J., concur.

116,523 — William Foley, Plaintiff/Appellant, v. Chad McDonald, d/b/a/ Green Country Truck and Equipment, Jamie Glass d/b/a Green Country Truck and Equipment & Green Country Truck and Equipment, Inc., Defendants/Appellees. Appeal from the District Court of Craig County, Oklahoma. Honorable Terry McBride, Judge. Appellant, William Foley, seeks review of the Craig County District Court's order of October 16, 2017 denying Fo-

ley's Motion for New Trial/Motion to Reconsider the court's order awarding Defendants/Appellees attorney fees and costs. The appellate court will review the denial of a motion for new trial under an abuse of discretion standard. *Head v. McCracken*, 2004 OK 84, ¶2, 102 P.3d 670, 673. For the reasons provided, we affirm the order of the district court denying Appellant's motion for new trial (or motion for reconsideration). The amount of the award of fees and costs in the appealed from order is undisturbed. AFFIRMED. Opinion by Joplin, P.J.; Goree, C.J., and Buettner, J., concur.

116,740 — Ryan G. Keeler and Kyle E. Keeler, Plaintiffs/Appellees, v. Larry G. Keeler, Defendant, Tina Snow, Attempted Intervenor/Appellant. Appeal from the District Court of McClain County, Oklahoma. Honorable Steven Kendall, Judge. Appellant Tina Snow appeals from the trial court's order denying her Motion to Intervene as of Right in this case. Snow failed to timely seek to intervene and she has not shown a protected interest in the litigation. We AFFIRM. Opinion by Buettner, J.; Goree, C.J., and Joplin, P.J., concur.

(Division No. 2)

Wednesday, December 18, 2019

117,842 (Companion with Case No. 117,422) — Michael C. Washington, Plaintiff/Appellant, vs. Anthony R. Douglas, Defendant/Appellee. Appeal from an Order of the District Court of Oklahoma County, Hon. Cindy H. Truong, Trial Judge. Plaintiff/Appellant, Michael C. Washington, seeks review of an interlocutory order refusing to vacate the appointment of a receiver for the Freedom Center, Inc., and a building owned by the corporation, known as the Freedom Center, in Oklahoma City. Although the appeal from the trial court's order refusing to vacate its appointment of a receiver was timely, we find the order is not reviewable because there has never been a determination by the trial court of Plaintiff's standing to object to the appointment. Accordingly, because this Court lacks jurisdiction to review the issues tendered by Plaintiff for appellate review at this time, the appeal is dismissed, and this cause is remanded for further proceedings con-

sistent with the views expressed in our opinion. APPEAL DISMISSED. Opinion from the Court of Civil Appeals, Division II, by Thornbrugh, J.; Reif, S.J. (sitting by designation), and Fischer, P.J., concur.

117,422 (Companion with Case No. 117,842) — Michael C. Washington, Plaintiff/Appellant, vs. Anthony R. Douglas, Defendant/Appellee, and State Office of the NAACP, Defendant. Appeal from an Order of the District Court of Oklahoma County, Hon. Patricia G. Parrish, Trial Judge. Plaintiff/Appellant, Michael C. Washington, seeks review of two interlocutory orders appointing receivers for the Freedom Center, Inc., and a building owned by the corporation, known as the Freedom Center, in Oklahoma City. He also appeals an order denying his motion for default judgment against Defendant Anthony Douglas. We find this appeal as a whole is not reviewable because the trial court has never determined Plaintiff's standing to object to the appointment of a receiver. We also lack jurisdiction to consider Plaintiff's attempted appeal of orders appointing a county commissioner as receiver, refusing to vacate that appointment, and refusing to enter default judgment against Defendant, as all of those appeals were not timely filed. Accordingly, because this Court lacks jurisdiction to review any of the issues tendered by Plaintiff for appellate review, the appeal is dismissed. The cause is remanded for further proceedings consistent with the views expressed in our opinion. APPEAL DISMISSED. Opinion from the Court of Civil Appeals, Division II, by Thornbrugh, J.; Reif S.J. (sitting by designation), and Fischer, P.J., concur.

Friday, December 20, 2019

117,693 — In the matter of R.M.B., deprived child. Lamiaa Hamad, Appellant, vs. State of Oklahoma, Appellee. Appeal from Order of the District Court of Tulsa County, Hon. Doris Fransein, Trial Judge. Appellant Lamiaa Hamad (Mother) appeals the district court's order sustaining the jury's verdict terminating her parental rights to RMB. After review of the record and applicable law, we find that the State met its burden of proof with respect to all elements necessary to terminate Mother's parental rights on the grounds of abandonment and substantial erosion of the parent-child relationship. We further find that Mother had effective assistance of counsel, the State did not engage in prosecutorial misconduct and the jury was properly instructed on the

relevance of intent on the ground of abandonment. Consequently, the district court's order terminating Mother's parental rights to RMB is affirmed. AFFIRMED. Opinion from the Court of Civil Appeals, Division II, by Fischer, P.J., Reif, S.J. (sitting by designation), and Thornbrugh, J., concur.

117,873 — Dell Marketing, L.P., Donna Rogers, and Fab Seal Industrial Liners, Inc., Plaintiffs/Appellees, vs. Oklahoma Tax Commission, Defendant/Appellant. Appeal from an Order of the District Court of Pottawatomie County, Hon. John G. Canavan, Trial Judge. Oklahoma Tax Commission appeals the district court's grant of summary judgment to Plaintiffs Dell Marketing, L.P., Donna Rogers, and Fab Seal Industrial Liners, Inc., in a declaratory judgment action. Plaintiffs sought declaratory judgment pursuant to 75 O.S. § 306 as to the legal scope and interpretation of an administrative regulation and its interaction with a statute. This case involves a long-running dispute regarding the tax status of optional service warranties. The Commission has previously interpreted its rules to require that any optional warranty purchased at the same time as a product must be "separately stated" in the customer invoice, or sales tax must be paid on the optional warranty, even though such service contracts are not generally taxable. The district court found that this rule violated the legislative intent expressed in 68 O.S. §§ 1352-1354 regarding taxation of "bundled transactions." Examining the Plaintiffs' petition, it is clear that it seeks a declaration regarding the taxation of *optional* warranties, not initial warranties bundled with a machine at the time of sale. The district court's order also *expressly states* that it deals with *optional* warranties. The Plaintiff did not *seek* a declaration regarding mandatory or bundled warranties, and the district court did not *render* any judgment on this issue. We find no error by the district court in this matter, and affirm its judgment. AFFIRMED. Opinion from the Court of Civil Appeals, Division II, by Thornbrugh J.; Reif, S.J. (sitting by designation), and Fischer, P.J., concur.

115,949 — Carl Fleig, Plaintiff/Appellee, vs. Landmark Construction Group, Inc., Defendant/Appellant. Appeal from Order of the District Court of Oklahoma County, Hon. Donald L. Easter, Trial Judge. Landmark Construction Group, Inc., appeals the Judgment in favor of Carl Fleig in this contract dispute over roof-

ing work done in conjunction with Fleig's purchase of a house. This is the second appeal involving this claim and these parties. Based on the evidence produced during the second trial, and considering the evidence from the first trial, it is clear that Landmark did not contract to do the work on Fleig's roof that the district court found to be the proximate cause of Fleig's damages. Likewise, a "Roofing Certification" provided by Landmark at the time Fleig purchased the house was not shown to be misleading or the cause of any damage suffered by Fleig. Fleig did not appeal the judgment in favor of Landmark that excluded the damage to the interior of his house or certain work outside the scope of the Landmark contract. That part of the judgment is affirmed. The remaining portion of the judgment is reversed, and the case is remanded with instructions to enter judgment for Landmark. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH INSTRUCTIONS.** Opinion from the Court of Civil Appeals, Division II, by Fischer, P.J., Reif S.J. (sitting by designation), and Thornbrugh, J., concur.

(Division No. 3)

Friday, December 20, 2019

116,480 — Vitaly Kolosha, Plaintiff/Appellant, vs. State of Oklahoma and The Tulsa District Attorney's Office, Defendants/Appellees. Appeal from the District Court of Tulsa County, Oklahoma. Honorable James Caputo, Judge. Plaintiff/Appellant Vitaly Kolosha (Kolosha) appeals from an order of the trial court, which was entered on remand in Kolosha's action seeking to recover property seized in connection with Kolosha's criminal case. The court determined the property Kolosha was seeking to recover was in the custody of the Tulsa County Sheriff's Office. The court also found that, because Kolosha is presently incarcerated, he is unable to reclaim the property. However, the court authorized Kolosha to designate a representative to retain the property upon satisfactory proof of ownership. Kolosha contends the court erred by not allowing him to attend the hearing on remand so that he could examine the property for damage and verify its contents and ownership. He also contends the property proves his innocence and claims Defendants/Appellees the State of Oklahoma and the Tulsa County District Attorney's Office conspired with the trial court to impede his ability to get his property back to avoid giving

Kolosha a new trial. We **AFFIRM**. Opinion by Mitchell, P.J.; Bell, J., and Swinton, J., concur.

117,132 — In Re the Marriage of Thomas: Joni Thomas, Petitioner/Appellant, vs. Ronnie L. Thomas, Respondent/Appellee. Appeal from the District Court of Tulsa County, Oklahoma. Honorable Stephen R. Clarke, Judge. Petitioner/Appellant Joni Thomas (Mother) appeals multiple rulings made by the trial court in her divorce proceeding against Respondent/Appellee Ronnie L. Thomas (Father). Specifically, Mother challenges the court's award of joint custody; the amount of Father's income used for child support; the support alimony award; and the division of marital assets. Mother also alleges the court erred by not finding Father in contempt for failure to comply with the temporary order and by taking too long to resolve the divorce proceeding. We find no abuses of discretion or errors of law. We **AFFIRM** the trial court. Opinion by Mitchell, P.J. Bell, J., concurs and Swinton, J., dissents.

Monday, December 23, 2019

116,789 — (Comp. w/116,790, 117,085, 117,231, and 117,246) Danny's Muffler & Tire, and Accident Fund Insurance Company, Petitioners, vs. Larry James Deckard and The Workers' Compensation Court of Existing Claims, Respondents. Proceeding to Review an Order of a Three-Judge Panel of the Workers' Compensation Court of Existing Claims. Petitioners Danny's Muffler & Tire, and Accident Fund Insurance Company (collectively, Employer) seek review of an order of a three-judge panel of the Workers' Compensation Court of Existing Claims which affirmed the trial court's award of benefits for permanent partial disability to Respondent Larry James Deckard (Claimant) on a finding of binaural hearing loss arising out of and in the course of the employment. In this proceeding, Employer complains the lower court's order is not supported by any competent evidence. The law in effect on the June 2012 date of awareness dictates we affirm if the order is supported by competent evidence. Employer's examining physician attributed all of Claimant's hearing loss to the 2003 tire explosion. Claimant's examining physician attributed Claimant's hearing loss to the cumulative trauma of exposures during Claimant's 20-year employment. In our view, Dr. Trinidad's opinion, without consideration of the 2003 tire explosion, affects only the probative value of his report, not its competency. The report of Claimant's examin-

ing physician report is competent and supportive of the lower court's order. The order of the three-judge panel is SUSTAINED. Opinion by Joplin, P.J.; Buettner, J., and Goree, C.J., concur.

116,790 — (Comp. w/116,789, 117,085, 117,231, and 117,246) Danny's Muffler & Tire, and Accident Fund Insurance Company, Petitioners, vs. Larry James Deckard and The Workers' Compensation Court of Existing Claims, Respondents. Proceeding to Review an Order of a Three-Judge Panel of the Workers' Compensation Court of Existing Claims. Petitioners Danny's Muffler & Tire, and Accident Fund Insurance Company (collectively, Employer) seek review of an order of a three-judge panel of the Workers' Compensation Court of Existing Claims which affirmed the trial court's award of benefits for medical treatment to Respondent Larry James Deckard (Claimant) for a cumulative trauma injury to his right shoulder arising out of and in the course of the employment. In this proceeding, Employer complains the lower court's order is not supported by any competent, probative evidence. In this appeal, Employer challenges the opinion of Claimant's examining physician as lacking probative value for omission in the history of examination any mention of the Claimant's 2016 fall from a pickup. However, Claimant's evidence arguably showed that Claimant sustained a back injury, not a shoulder injury, in that fall. Under these circumstances, we cannot say the report of Claimant's examining physician lacks all probative value whatsoever. SUSTAINED. Opinion by Joplin, P.J.; Goree, C.J., and Buettner, J., concur.

116,822 — FNM, L.L.C., Plaintiff/Appellant, v. Brown Realty Investments, L.L.C., Defendant/Appellee. Appeal from the District Court of Oklahoma. Honorable Patricia Parrish, Judge. FNMC, L.L.C., Appellant, seeks review of the district court's order of February 2, 2018 denying Appellant's Motion to Vacate the December 4, 2017 Journal Entry of Judgment. The December 4, 2017 order granted Brown Realty Investments, L.L.C., Appellee's, Motion for Summary Judgment. We AFFIRM the decision of the trial court denying FNMC's Motion to Vacate. Opinion by Joplin, P.J.; Goree, C.J., and Buettner, J., concur.

117,085 — (Comp. w/116,789, 116,790, 117,246 and 117,231) Larry James Deckard v. Danny's Muffler & Tire, Accident Fund Insurance Company and The Workers' Compensation Court, Respondents. Proceeding to Review an

Order of a Three-Judge Panel of the Workers' Compensation Court of Existing Claims. Petitioner Larry James Deckard (Claimant) seeks review of an order of the Workers' Compensation Commission en banc which affirmed the trial court's denial of his claim for benefits for an injury to his back and left hip which allegedly occurred in the course and scope of his employment with Respondent Danny's Muffler & Tire, and insured by Accident Fund Insurance Company (collectively, Employer). In this proceeding, Claimant asserts (1) the judgment is contrary to the clear weight of the evidence, and (2) the definition of "compensable injury" contained in 85A O.S. §2(9)(b)(6), excluding from coverage "any preexisting condition except when the treating physician clearly confirms an identifiable and significant aggravation incurred in the course and scope of the employment," unconstitutionally denies a claimant due process under Okl. Const. art. 2, §7, unconstitutionally denies a claimant an adequate remedy at law under Okl. Const. Art. 2, §6, and amounts to an unconstitutional special law in violation of Okl. Const. art. 5, §46. Claimant's medical evidence arguably established that Claimant's back injury was the product of a job-related aggravation of a pre-existing condition. Employer's medical evidence attributed the back injury to aggravation from the non-job-related fall from a pickup truck the day previous to the reported on-the-job event, and the testimony of Claimant's wife corroborates such a conclusion. Under these circumstances, and unless the underlying order is affect by some constitutional infirmity, we hold the lower court's order is not contrary to the clear weight of the evidence. By the "identifiable and significant aggravation" standard of 85A O.S. §2(9)(b)(6), it appears reasonably clear the legislature intended that, in cases of aggravation of a pre-existing condition, it must be shown there exists a demonstrable, and not merely tangential, relationship between the pre-existing condition and the aggravation thereof by on-the-job events. We view such a legislatively mandated relationship to be reasonably related to a valid public interest to insure an identifiable and definite causal nexus between a pre-existing condition and a job-related aggravation thereof. We discern no due process violation of Okl. Const., art. 2, §7. Section 2(9)(b)(6) places no remedial bar proscribed by Okl. Const., art. 2, §6. And, we hold §2(9)(b)(6) creates no impermissible subclass of claimants for special treatment in violation of

art. 5, §46. SUSTAINED. Opinion by Joplin, P.J.; Goree, C.J., and Buettner, J., concur.

117,231 — (Comp. w/116,789, 116,790, 117, 085 and 117,246) Larry James Deckard v. Danny's Muffler & Tire, Accident Fund Insurance Company and The Workers' Compensation Court, Respondents. Proceeding to Review an Order of a Three-Judge Panel of the Workers' Compensation Court of Existing Claims. Petitioners Danny's Muffler and Accident Fund Insurance Company (collectively, Employer), seek review of an order of a three judge panel of the Workers' Compensation Court which affirmed that part of the trial court's order finding that Respondent Larry James Deckard (Claimant) sustained a job-related injury to his low back, of which he became aware November 1, 2013, with date of last injurious exposure November 23, 2016. Employer complains the determination lacks sufficient evidentiary support in several particulars. On the determination by the Workers' Compensation Court of Existing Claims concerning the existence of a compensable injury, Employer challenges the trial court's order as without sufficient evidentiary support. However, absent the award or denial of benefits, the lower court's order lacks appellate finality. The lower court in this case did not award or deny benefits, rather leaving the question undecided. This appeal should therefore be dismissed for lack of final appealable order. APPEAL DISMISSED. Opinion by Joplin, P.J.; Buettner, J., concurs and Goree, C.J., dissents.

117,246 — (Comp. w/116,789, 116,790, 117, 085 and 117,231) Larry James Deckard v. Danny's Muffler & Tire, Accident Fund Insurance Company and The Workers' Compensation Court, Respondents. Proceeding to Review an Order of a Three-Judge Panel of the Workers' Compensation Court of Existing Claims. Petitioner Larry James Deckard (Claimant) seeks review of an order of the Workers' Compensation Court which affirmed that part of the trial court's order holding that the question of major cause for the need for medical care and temporary total disability was outside the jurisdiction of the Workers' Compensation Court and should be decided by the Workers' Compensation Commission. Claimant asserts the Workers' Compensation Court of Existing Claims possesses the exclusive jurisdiction to adjudicate his claim. On the question of jurisdiction, Claimant asserts that, inasmuch as the date of his cumulative trauma injury is the date

of his awareness, and he became aware of the injury in 2013, the law in effect at that time governs his claim. So, says Claimant, the Workers' Compensation Court of Existing Claims possesses the exclusive jurisdiction to determine this matter, and the Workers' Compensation Commission is without jurisdiction to adjudicate any part of his claim. We agree. It is clear the Workers' Compensation Commission has no jurisdiction to review an order or award made by the Court of Existing Claims for an injury occurring prior to February 1, 2014. That being so, the Workers' Compensation Commission has no jurisdiction to determine the question of major cause of Claimant's injury in November 2013, i.e., occurring prior to February 1, 2014, the effective date of the Administrative Workers' Compensation Act. The order of the Workers' Compensation Court is REVERSED and the cause REMANDED to the Workers' Compensation Court of Existing Claims to fully adjudicate the claim. Opinion by Joplin, P.J.; Buettner, J., and Goree, C.J., concur.

(Division No. 4)

Tuesday, December 17, 2019

118,316 — Deidra Myles, Plaintiff/Appellant, v. Woodward Premier Hospitality LLC d/b/a Candlewood Suites Woodward, Defendant/Appellee, and Intercontinental Hotels Group Resources, Inc., Defendant. Appeal from the District Court of Oklahoma County, Hon. Thomas E. Prince, Trial Judge. In this premises liability action, Deidra Myles appeals from the trial court's order granting the motion to dismiss with prejudice of Woodward Premier Hospitality LLC d/b/a Candlewood Suites Woodward (Defendant) "for the reason that under settled Oklahoma law and the facts alleged by [Ms. Myles] in the Petition, Defendant has no liability for mere slipperiness of snow or ice in its natural state and accumulations." With regard to the specific hazard at issue in this case, naturally accumulated ice or snow, Ms. Myles readily concedes long-standing Oklahoma jurisprudence dictates a landowner has no liability to an invitee who is injured by falling on naturally accumulated ice or snow under circumstances pled in this case. Given controlling Oklahoma law, Ms. Myles has failed to state any cognizable legal theory consistent with the factual allegations of her petition. Consequently, the trial court properly granted Defendant's motion to dismiss. Accordingly, we affirm. AFFIRMED. Opinion from Court of Civil

Appeals, Division IV, by Barnes, P.J.; Wiseman, V.C.J., and Rapp, J., concur.

117,244 (companion with 117,541) — Billy Winrow, Petitioner/Appellant, v. State of Oklahoma, Respondent/Appellee. Appeal from the District Court of Oklahoma County, Hon. Ray C. Elliott, Trial Judge. Petitioner (Mr. Winrow) appeals from the trial court's order dismissing his "Petition for Expungement." The trial court dismissed the Petition on the basis that Mr. Winrow's filing does not comply with a local court rule requiring that an expungement request made in Oklahoma County be filed as a civil action. Mr. Winrow's failure described in the order presents a matter of internal allocation of caseload, but does not present an appropriate procedural basis for dismissing his Petition. "All judges of the district court have a constitutionally invested power to transfer cases to another division of the district court on any tenable legal or equitable ground shown at any point in litigation." *Jernigan v. Jernigan*, 2006 OK 22, ¶ 18, 138 P.3d 539. See also *Broadway Clinic v. Liberty Mut. Ins. Co.*, 2006 OK 29, ¶ 25, 139 P.3d 873. We conclude error occurred in dismissing Mr. Winrow's Petition rather than transferring the cause to the proper division. Therefore, we reverse the trial court's order dismissing Mr. Winrow's Petition, and we remand this case to the trial court with directions that this cause proceed in a manner consistent with this Court's Opinion. REVERSED AND REMANDED WITH DIRECTIONS. Opinion from Court of Civil Appeals, Division IV, by Barnes, P.J.; Wiseman, V.C.J., and Rapp, J., concur.

Wednesday, December 18, 2019

117,541 (companion with 117,244) — Billy Joe Winrow, Plaintiff/Appellant, v. State of Oklahoma and Oklahoma State Bureau of Investigations, Defendants/Appellees. Appeal from the District Court of Pottawatomie County, Hon. John G. Canavan Jr., Trial Judge. Plaintiff (Mr. Winrow) appeals from the trial court's orders denying his "Motion for Expungement." In Mr. Winrow's motion, he sought the expungement of certain of his criminal records in Pottawatomie County. We conclude the trial court did not err in determining Mr. Winrow does not qualify to have these criminal records expunged. Therefore, we affirm the trial court's orders denying Mr. Winrow's Motion for Expungement. AFFIRMED. Opinion from Court of Civil Appeals, Division IV, by Barnes, P.J.; Wiseman, V.C.J., concurs, and Rapp, J., specially concurs.

Thursday, December 19, 2019

117,614 — Tracy Tarrant, d/b/a Trace Oil, Appellant, vs. Hux Oil Company, LLC, Appellee. Appeal from a final order of the Oklahoma Corporation Commission, Hon. Keith T. Thomas, Administrative Law Judge, denying Appellant Tracy Tarrant doing business as Trace Oil's applications to rescind OCC's approval of two OCC Forms 1073, which transferred operations of two wells from Appellee Hux Oil Company, LLC, to Tarrant. Tracy Tarrant d/b/a Trace Oil raises four issues on appeal: (1) "The Commission erred by failing to follow its own rules when ordering the transfer of operator status, and thus well plugging liability, from Appellee to Appellant"; (2) "The Commission erred in relying on a forged 1073 on the Unwin Well as a basis for imposing operations, and thus well plugging liability, on Appellant"; (3) "The Commission erred in denying Appellant relief on the basis of 'apparent authority' in Tom Tarrant to sign off on the Yenzer 1073"; and (4) "Appellee is to be denied the equitable defense of laches because Appellant acted promptly in pursuing its claim, and Appellee comes to the Court with unclean hands." The OCC's final order affirming the Referee's recommendation to uphold the ALJ's recommendation to deny Tracy Tarrant d/b/a Trace Oil's applications incorporates by reference the ALJ's 32-page report and the Referee's 19-page report. These reports, incorporated by reference in the OCC's final order, set forth findings of fact and conclusions of law with specificity, and our examination of the record supports these findings and conclusions. For this reason, we summarily affirm the OCC's final order pursuant to Oklahoma Supreme Court Rule 1.202(d), 12 O.S. Supp. 2019, ch. 15, app. 1. SUMMARILY AFFIRMED UNDER RULE 1.202(d). Opinion from the Court of Civil Appeals, Division IV, by Wiseman, V.C.J.; Barnes, P.J., and Rapp, J., concur.

116,737 — Randy & Rhonda Holt, Plaintiffs/Appellees/Counter-Appellants, vs. Steve Carlson and Steve & Sons, Inc., Defendants/Appellants/Counter-Appellees. Appeal from an order of the District Court of Seminole County, Hon. Timothy Olsen, Trial Judge, awarding attorney fees to Plaintiffs Randy and Rhonda Holt. Plaintiffs filed a counter-appeal stating the trial court erred in calculating the amount awarded to them. We conclude Plaintiffs are entitled to attorney fees as the prevailing party pursuant to 12 O.S.2011 § 1141(B) and 16 O.S.2011 § 79.

We see no basis on the record before us to say the trial court failed to consider and award fees pursuant to 12 O.S. Supp. 2019 § 3237(D). We affirm on these issues. We must reverse, however, the trial court's assessment of the amount of attorney fees awarded because the trial court in its determination misapplied the *Burk* contingent fee factor. We remand this issue to the trial court for further proceedings consistent with this Opinion. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.** Opinion from the Court of Civil Appeals, Division IV, by Wiseman, V.C.J.; Rapp, J., and Fischer, P.J. (sitting by designation), concur.

117,726 — In the Matter of: S.B., Alleged Deprived Child, State of Oklahoma, Appellee, vs. Gregory Ferguson, Appellant. Appeal from an order of the District Court of Oklahoma County, Hon. Susan Johnson, Trial Judge, terminating Gregory Ferguson's parental rights to SB. We review whether (1) there was trial court error in Ferguson's waiver of his right to a jury trial, (2) the State of Oklahoma proved by clear and convincing evidence that Ferguson's parental rights should be terminated for failure to correct the conditions which led to SB being adjudicated deprived, (3) the second amended petition failed to set forth with specificity the conditions Ferguson needed to correct, and (4) termination of his parental rights was in SB's best interests. After review, we conclude the trial court did not abuse its discretion by allowing Ferguson to waive his right to jury trial, the petition adequately set forth the conditions Ferguson needed to correct, State proved its case of failure to correct conditions by clear and convincing evidence, and it showed termination of Ferguson's parental rights was in SB's best interests. Because State presented clear and convincing evidence to support the termination of Ferguson's parental rights to SB pursuant to 10A O.S. Supp. 2019 § 1-4-904(B) (5), we affirm the trial court's decision. **AFFIRMED.** Opinion from the Court of Civil Appeals, Division IV, by Wiseman, V.C.J.; Barnes, P.J., and Rapp, J., concur.

Friday, December 20, 2019

117,950 — In re Adoption of R.A.B.W.: Elizabeth Whitaker, Appellant, v. Kyle Bouldin & Nicholle Bouldin, Appellees. Appeal from the District Court of Tulsa County, Hon. Kurt G. Glassco, Trial Judge. This appeal concerns the trial court's order determining that the minor child, R.A.B.W., is eligible for adoption without

the consent of RABW's natural mother, Elizabeth Whitaker (Mother), as requested in a petition for adoption filed by the child's natural father, Kyle Bouldin (Father), and his wife, Nicholle Bouldin (Stepmother). Mother asserts the trial court abused its discretion in finding that Father and Stepmother had shown by clear and convincing evidence that Mother failed to substantially comply with court-ordered child support and erred as a matter of law in equating the effects of her poverty with willfulness. She also argues Oklahoma's adoption statutes encourage what she terms "unjust retaliatory adoptions" as substitutes for regular custody determinations and requests this Court harmonize various Oklahoma statutes to prevent such a result. From our review of the record in this proceeding as well as the record in a separate paternity proceeding of which the trial court took judicial notice, we conclude the evidence of Mother's willful failure to pay court-ordered child support was proved by clear and convincing evidence and that the court did not, as matter of law, equate Mother's poverty with a willful failure to pay child support. Mother also concedes no direct or circumstantial evidence of an intention on the part of Father and Stepmother to "retaliate" against Mother is shown in this record and we, thus, decline Mother's invitation to offer an advisory or hypothetical opinion. For these reasons, we affirm the trial court's determination that R.A.B.W. is eligible for adoption without Mother's consent and remand for further proceedings. **AFFIRMED 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.

Thursday, December 23, 2019

116,961 — Pamela Burns, an individual, Plaintiff/Appellant v. Maureen Marks Combites, an individual, Defendant/Appellee. Appeal from an Order of the District Court of Cleveland County, Hon. Scott F. Brockman, Trial Judge. Trial court plaintiff, Pamela Burns, appeals the trial court's denial of her motion for new trial after the trial court entered judgment on a jury verdict in favor of Defendant, Maureen Marks Combites, and against Plaintiff. This Court finds the trial court erred in its giving of instructions to the jury. The only issues that needed to be presented to the jury were whether Plaintiff sustained injury caused by the collision and, if so, the amount of damages for injuries the Plaintiff sustained as a

result of the collision. The jury instructions regarding negligence correctly stated the law, but as written were inapplicable to the facts in this case because Defendant had admitted liability for the collision. The instructions given by the trial court gave rise to a probability that the jury was misled. Thus, this Court finds the trial court erred in denying Plaintiff's Motion for New Trial. The trial court's Order on Plaintiff's Motion for New Trial denying Plaintiff's motion for new trial is reversed and this matter is remanded for further proceedings consistent with this Opinion. REVERSED AND REMANDED FOR FURTHER PROCEEDINGS. Opinion from Court of Civil Appeals, Division IV, by Rapp, J.; Barnes, P.J., and Wiseman, V.C.J., concur.

118,297 — Melissa Duncan, as Personal Representative of the Estate of Danny Leo Stills, deceased, Plaintiff/Appellant, v. Scott G. Lilly, M.D., an individual, Cardiology Clinic of Muskogee, Inc., an Oklahoma Corporation, Defendants/Appellees. Appeal from an Order of the District Court of Muskogee County, Hon. Norman D. Thygesen, Trial Judge. The plaintiff, Melissa Duncan (Duncan), as personal representative of the Estate of Danny Leo Stills, deceased (Stills), appeals an Order dismissing her action against the defendants, Scott G. Lilly, M.D. (Lilly) and Cardiology Clinic of Muskogee, Inc. (Clinic). The appeal was assigned to the accelerated docket pursuant to Okla.Sup.Ct.R.1.36, 12 O.S. Supp. 2018, Ch. 15, App. 1. The undisputed, and pled, facts show that Duncan was aware of the basis for Stills' death more than two years prior to the date this action was filed. The awareness of the death here was coupled with concurrent knowledge of acute drug toxicity as the agent resulting in death. The sum of knowledge triggered inquiry, but no inquiry was undertaken. Duncan's reliance on the Licensure Board's subsequent action against Lilly based upon his prescriptions of narcotics and dangerous substances is misplaced because the Licensure Board action involved Lilly's unprofessional acts in general, rather than providing Duncan knowledge of Lilly's negligent act, or acts, as the cause of Stills' death. The two-year statute of limitations in 76 O.S.2011, § 18, bars the action. Therefore, the Order of dismissal is affirmed. AFFIRMED. Opinion from Court of Civil Appeals, Division IV, by Rapp, J.; Barnes, P.J., and Wiseman, V.C.J., concur.

117,829 — Michael Whitmore, Plaintiff/Appellant, v. Jason Hicks, District Attorney within and for the Sixth Judicial District, State of Oklahoma, and The Oklahoma Department of Corrections, Defendants/Appellees. Appeal from the District Court of Oklahoma County, Hon. Trevor Pemberton, Trial Judge. In this action for a writ of mandamus, Plaintiff/Appellant Michael Whitmore appeals from the trial court's grant of summary judgment to Defendants/Appellees Jason Hicks, District Attorney within and for the Sixth Judicial District, State of Oklahoma (the District Attorney), and The Oklahoma Department of Corrections (DOC) (collectively, Defendants), and the trial court's denial of his motions for default judgment and summary judgment. Upon his release from prison, Mr. Whitmore contends his probation officer erroneously categorized him as a person required to register as a sex offender under the Sex Offenders Registration Act (SORA), 57 O.S. 2011 §§ 581-590.2. Mr. Whitmore alleges DOC incorrectly classified him as a person required to register under SORA based on erroneous information given to it by the District Attorney. He further claimed the District Attorney wrongfully threatened to charge him with a new crime for failure to register as a sex offender if he did not register. Mr. Whitmore sought an order of the court that he does not have to register as a sex offender and an order prohibiting the District Attorney from filing charges against him pursuant to SORA for his plea and conviction for kidnapping. Mr. Whitmore argues on appeal that the trial court abused its discretion in denying his motion for default judgment, in denying his motion for summary judgment on his assertion that he is not subject to SORA's registration requirements, and denying his application for a writ of mandamus to require the District Attorney to correct his records and prohibit the District Attorney from filing criminal charges against him for his failure to register, and to require the DOC to correct its records. Among other arguments, Mr. Whitmore argues the crime for which he was arrested (attempted rape) is not relevant to the crime for which he was convicted (kidnapping) unless facts pertaining to sexual abuse or sexual exploitation are part of the plea he actually entered and the court's sentence and judgment. Defendants, among other arguments, contend the Information charging Mr. Whitmore with attempted rape was merely "amended" and thus the alleged

facts of attempted rape are part of the offense for which Mr. Whitmore was convicted and thus bring him within SORA registration requirements. Based on our review of the uncontroverted material facts in this case, the Information was substantively amended to a charge of kidnapping, Mr. Whitmore's plea contains no facts involving sexual abuse or exploitation, and no language in the judgment and sentence or the exhibits attached thereto, including the terms of probation, state the kidnapping charge involved sexual abuse or exploitation; therefore, Mr. Whitmore is not subject to the registration requirements of SORA. We conclude the trial court did not abuse its discretion in denying Mr. Whitmore's motion for default judgment, but did abuse its discretion in granting Defendants' motion for summary judgment and in denying Mr. Whitmore's motion for summary judgment. We further conclude the trial court did not abuse its discretion in denying Mr. Whitmore's application for writ of mandamus. Accordingly, we reverse that part of the judgment denying Mr. Whitmore's motion for summary judgment and granting Defendants' motion for summary judgment, affirm that part of the judgment denying Mr. Whitmore's motion for default judgment and application for writ of mandamus, and remand the cause to the trial court to enter an order against Defendants and in favor of Mr. Whitmore consistent with this Court's Opinion. REVERSED IN PART, AFFIRMED IN PART, AND REMANDED WITH DIRECTIONS. Opinion from Court of Civil Appeals, Division IV, by Barnes, P.J.; Wiseman, V.C.J., concurs, and Rapp, J., specially concurs.

ORDERS DENYING REHEARING (Division No. 1)

Thursday, December 26, 2019

116,858 — In Re the Declaration of Trust Creating the Avery Family Trust as amended: John Neel Zink, Successor Co-Trustee, Petitioner/Appellant, vs. Etta May Avery, Original Co-Trustee; Nancy Ann McGill, Successor Co-Trustee; Mickey G. Shackelford, Successor Co-Trustee, and Henry G. Will, Successor Co-Trustee, Respondents/Appellants. Petitioner/Appellant John Neel Zink's Petition for Rehearing, filed December 5th, 2019, is *DENIED*.

Tuesday, December 31, 2019

117,529 — Central Bank of Oklahoma, Plaintiff/Appellant, vs. SNS Oil and Gas Properties, Inc.; Wagner Oil Co.; Campeche Petro, L.P.; Fifth Third Bank; Trena Blackstock; and Frank Dale, Defendant/Appellees, and Maxwell Resources Corporation; H. Thomas Moran II; and Wagner & Brown, Ltd., Defendants. Appellant's Petition for Rehearing with Brief in Support, filed November 21, 2019, is *DENIED*.

116,817 — Rodney Payne and Julie Payne, d/b/a Arrow P Equine Sales, Plaintiffs/Appellees, vs. Vernon Dale Ellis, Jr., a/k/a Dale Ellis, Defendant/Appellant. Appellant's Petition for Rehearing with Brief in Support, filed December 23, 2019, is *DENIED*.

(Division No. 3)

Friday, December 20, 2019

117,281 — Jennifer Lin Cooper, on behalf of herself and all other residents of central Oklahoma similarly situated, Plaintiff/Appellee, vs. New Dominion, LLC, Defendant/Appellant, and Spess Oil Company, and John Does 1-25, Defendants. Defendant/Appellant's Petition for Rehearing, filed December 5, 2019, is *DENIED*.

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REPRESENTATION WANTED

REQUEST FOR PROPOSAL FOR LEGAL SERVICES. This is a request for sealed proposal for the Housing Authority of the Sac and Fox Nation. HASFN is seeking detailed information from qualified non-native and Native American concerning the qualifications of law firms or attorneys willing to provide legal services to the HASFN. These law firms or attorneys will work closely with the HASFN Board of Commissioners and HASFN executive director to provide legal representation. An attorney will be selected to provide legal services on an as-needed, case-by-case or matter-by-matter basis. The proposal will be for the remaining FY 2020 with ending on Sept. 30, 2020, with an option to renew the annual contract per our request for up to four consecutive years. If you are interested in representing the HASFN, please submit a request for the scope of work and parameters needed. Proposals must be in a sealed envelope and marked "Legal Representation Services Proposal – DO NOT OPEN." Proposals will need to be received by our office on Jan. 30, 2019, at 4:30 p.m. (CST). Proposals received after Jan. 30, 2019, will not be accepted. Proposals and all inquiries will be addressed at the meeting on Jan. 31, 2019, at 10 a.m. (CST). Please direct any inquiries concerning the request for qualifications (RFQ) to Elsie Little, Executive Director, Housing Authority of the Sac and Fox Nation, 201 N. Harrison, Shawnee, OK 74801; Business Phone: 405-275-8200; Email: elittle@hasfn.net.

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