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Court Issue



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table of contents

April 24, 2020 • Vol. 91 • No. 8

page

392 INDEX TO COURT OPINIONS

393 OPINIONS OF SUPREME COURT

403 DISPOSITION OF CASES OTHER THAN BY PUBLICATION

Index to Opinions of Supreme Court

SCAD NO. 2020-29. March 25, 2020 <u>SECOND EMERGENCY JOINT ORDER REGARD- ING THE COVID-19 STATE OF DISASTER</u>	393
2020 OK 17 IN RE: Rules Creating and Controlling the Oklahoma Bar Association [Article IV, Sec. 1(b)] SCBD No. 4483	393
2020 OK 20 LEWIS R. METCALF, Petitioner/Appellee, v. BONNIE L. WATSON MET- CALF, Respondent/Appellant. Case No. 115,743.....	394

LEGAL AID SERVICES OF OKLAHOMA, INC.



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

SCAD NO. 2020-29. March 25, 2020

**SECOND EMERGENCY JOINT ORDER
REGARDING THE COVID-19
STATE OF DISASTER**

1. The First Emergency Joint Order entered on March 16, 2020 remains in effect except as it is modified herein. To the extent the Joint Emergency Orders conflict with local practices, the First and Second Emergency Joint Orders control.
2. On March 24, 2020, Governor J. Kevin Stitt issued the Fourth Amended Executive Order 2020-07 and ordered that additional steps be taken to protect all Oklahomans from the growing threat of COVID-19. This Second Emergency Joint Order joins the Governor in addressing the ever changing situation in the district courts in all 77 counties as well as the appellate courts in Oklahoma and Tulsa Counties. We admonish all Oklahoma judges, court clerks, court employees and staff and the public to follow the guidelines to protect public health set forth in the Governor's Executive Orders, those issued by the Oklahoma Department of Health and the CDC.
3. All district courts in Oklahoma shall immediately cancel all jury terms through May 15, 2020. No additional jurors shall be summoned without approval of the Chief Justice. All civil, criminal and juvenile jury trials shall be continued to the next available jury dockets. If necessary, additional jury terms may be ordered in July and/or August or later in the year.
4. Subject only to constitutional limitations, all deadlines and procedures whether prescribed by statute, rule or order in any civil, juvenile or criminal case, shall be suspended through May 15, 2020. This suspension also applies to appellate rules and procedures for the Supreme Court, the Court of Criminal Appeals, and the Court of Civil Appeals.
5. In any civil case, the statute of limitations shall be extended through May 15, 2020.
6. All courthouses in all 77 counties shall be closed to the public with exceptions for emergencies as permitted by local order. To the extent that emergency dockets are being held, no more than 10 persons including the judge and court personnel shall be in a courtroom at one time. Judges and other courthouse personnel shall use all available means to ensure the health of all participants in any court proceeding. If judges continue to hold hearings, all of the mandated COVID-19 precautions issued by the CDC and all State and local governments shall be followed. Judges shall continue to use remote participation to the extent possible by use of telephone conferencing, video conferencing pursuant to Rule 34 of the Rules for District Courts, or other means.
7. Court clerks and judges shall use email, fax and drop boxes for acceptance of written materials, except for emergencies. All appellate filings shall be made by mail.
8. This order is subject to extension or modification as necessitated by this emergency.

IT IS SO ORDERED.

DONE BY ORDER OF THE SUPREME COURT
IN CONFERENCE THIS 27TH DAY OF
MARCH, 2020.

/s/ NOMA D. GURICH
CHIEF JUSTICE

WITNESS OUR HANDS AND THE SEAL OF
THIS COURT THIS 27TH DAY OF MARCH,
2020.

/s/ DAVID B. LEWIS
PRESIDING JUDGE

2020 OK 17

**IN RE: Rules Creating and Controlling
the Oklahoma Bar Association
[Article IV, Sec. 1(b)]**

SCBD No. 4483. March 23, 2020

ORDER

This matter comes on before this Court upon
an Application to Amend 5 O.S. Ch. 1, App. 1,

Art. IV, Sec.1 (b), Rules Creating and Controlling the Oklahoma Bar Association (hereinafter "Rules") filed on March 6, 2020. 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.

DONE IN CONFERENCE this 23rd day of March, 2020.

/s/ Noma D. Gurich
CHIEF JUSTICE

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

Kane, J., not voting.

EXHIBIT A

Oklahoma Statutes Citationized

Title 5. Attorneys and the State Bar

Chapter 1 - Attorneys and Counselors

Appendix 1 - Rules Creating and Controlling the Oklahoma Bar Association

Article Article IV

Section Art IV Sec 1 - Board of Governors

Cite as: O.S. §, — —

The governing body of this Association shall consist of seventeen (17) active members of this Association, designated as the Board of Governors. The authority of the Board of Governors shall be subordinate to these Rules and direction of the House of Delegates. Said Board shall be selected as follows:

(a) Three (3) members elected At Large, by a majority vote of the House of Delegates or by a plurality of the voting members of the Association, in such manner as may be prescribed by the Bylaws, for a term of three (3) years, one of whom shall be elected annually.

(b) Nine (9) members, one from each Supreme Court Judicial District, as such districts existed prior to January 1, 2020, elected by a majority vote of the House of Delegates or by a plurality of the voting members of the Association in such manner as may be prescribed by the Bylaws, for a term of three (3) years; three (3) of such members shall be elected at the annual election next prior to the expiration of the term of office of the respective predecessor members.

(c) The President and Vice-President of the Association during their terms of office.

(d) The President-Elect of the Association.

(e) The immediate Past-President of the Association during the year immediately following his term as President.

(f) The Chairman of the Young Lawyers Division of the Association duly elected in accordance with the provisions of that organization's Bylaws. The Chairman of the YLD shall serve on the Board of Governors during his term of office as Chairman of the YLD.

(g) A quorum of the Board of Governors shall consist of nine (9) members. A majority of a quorum shall suffice to carry any action of the Board of Governors, unless otherwise provided by the Bylaws of the Association and except that recommendations for any amendment to these rules must receive the affirmative vote of a majority of all members of the Board of Governors.

(h) The President of the Association and the Executive Director of the Association shall act, respectively, as Chairman and Recording Secretary of the Board of Governors.

2020 OK 20

**LEWIS R. METCALF, Petitioner/Appellee, v.
BONNIE L. WATSON METCALF,
Respondent/Appellant.**

Case No. 115,743. April 14, 2020

CERTIORARI TO THE COURT OF CIVIL APPEALS DIVISION II

Honorable John E. Herndon, Trial Judge

¶0 After the petitioner/appellee, Lewis Metcalf, transferred some of his separate, real property into the name of his wife, the respondent/appellant, Bonnie Watson Metcalf, he filed for divorce. When it came time to divide their property, the husband claimed this particular real property as his separate property, even though it was now held only in his wife's name. His explanation for placing the property into his wife's name was that he was trying to avoid creditors potentially collecting on a judgment in a lawsuit to which he was a party. The trial court determined that the property in question was his separate property, and divided the couple's remaining marital property,

and denied support alimony. The wife appealed, and the Court of Civil Appeals affirmed. On certiorari, we hold that: 1) the presumption of an interspousal gift may not be overcome with evidence that the sole purpose for the transfer was to defraud creditors; 2) the trial court did not err in denying the wife support alimony; and 3) each party is responsible for their own appeal related attorney fees and costs.

**CERTIORARI PREVIOUSLY GRANTED;
COURT OF CIVIL APPEALS OPINION
VACATED; TRIAL COURT REVERSED
AND CAUSE REMANDED.**

Scott A. Hester, Edmond, Oklahoma, for the Appellant.

Cindy Allen, Julia Mills Mettry, Joshua Simpson, Norman, Oklahoma, for the Appellee.

KAUGER, J.:

¶1 We granted certiorari to address the first impression question of whether the presumption that the intent of an interspousal transfer of real property constitutes a gift may be rebutted when the admitted purpose of the transfer was to illegally elude any creditor's attempts to collect on a judgment. We hold that it may not be rebutted by such evidence. We also hold that: 1) the trial court did not err in denying the wife support alimony; and 2) each party is also responsible for their own attorney fees.

FACTS

¶2 In the spring of 2001, the petitioner/appellee, Lewis R. Metcalf (Metcalf/husband), married the respondent/appellant, Bonnie L. Watson (Watson/wife). The couple cannot agree as to the actual date of the marriage which occurred in Arkansas.¹ The couple made their rural home together in Grady County, Oklahoma, and did not have any children together.

¶3 At the time of the marriage, the husband owned and operated a carpentry shop business called Woodmaster, LTD. It was established in 1999, but he made the wife 1% owner during the marriage. In 2009, Woodmaster's creditors filed an action in the District Court of Oklahoma County, seeking to collect on debt Woodmaster's owed. Concerned that the creditors would take his real property to collect on a judgment, the husband deeded the Woodmaster property, and others, to his wife, using her maiden name of Bonnie Watson.² He readily

admits, and it is undisputed, that his purpose for deeding the property was purely to prevent creditors from recovering any judgments against the shop business. He even visited a lawyer to seek advice on how to handle the property transfer to avoid a creditor's judgment, should one occur.

¶4 During the marriage, their marital home was destroyed by fire, affected by an earthquake, and also destroyed by a tornado. Consequently, various insurance claims were filed, insurance payouts were made, and rebuilding occurred. However, according to the parties, the date of separation impacted who was entitled to various insurance proceeds and lawsuit settlements which occurred during the marriage. Naturally, the date of their separation was also disputed.

¶5 According to the husband, they separated in June of 2011, because they were no longer living together, or even in the same state. According to the wife, they were not separated until December of 2014, when she learned that he no longer wished to be married to her. On December 19, 2014, the husband filed for dissolution of marriage in the District Court of Grady County, Oklahoma. The wife filed a response and cross-petition on December 30, 2014, seeking support alimony.

¶6 The cause proceeded to trial on September 22-30, 2016. At the conclusion of the trial, the trial court issued a Decree of Dissolution of Marriage on January 4, 2017, dividing real and personal property including household items, bank accounts, vehicles, various insurance and lawsuit proceeds and settlements. Among the trial court's findings were the determinations that: 1) the parties' separation date was June 4, 2011; 2) the separate real property, which the husband transferred to the wife during the marriage to elude creditors, was void and thus his separate property; and 3) the wife's request for support alimony should be denied.

¶7 The wife appealed on February 3, 2017, arguing that the husband's transfer of real property to avoid creditors should be considered marital property, because he failed to rebut the presumption of a gift. She also disputed the date of separation, and the denial of support alimony. On July 12, 2019, the Court of Civil Appeals, Division II, affirmed the trial court. On August 1, 2019, the wife filed a Petition for Certiorari in this Court arguing that because the husband transferred the property

he owned prior to marriage to avoid potential creditor judgments against him (a/k/a a fraudulent transfer), he is precluded from using the reason for the transfer to rebut the presumption that the transfer was an interspousal gift. She also contends that the trial court erred in denying her support alimony.³ The husband seeks appeal related attorney fees and costs. We granted certiorari on January 6, 2020, to address these issues.

I.

THE PRESUMPTION OF AN INTERSPOUSAL GIFT MAY NOT BE REBUTTED BY EVIDENCE THAT THE SOLE PURPOSE FOR THE TRANSFER WAS TO DEFRAUD CREDITORS.

¶8 The husband argues that he never intended to share his separate property with the wife. Rather, he only transferred the property to avoid creditors from potentially getting at it. The wife argues that transferring property into her name in order to avoid a judgment was a fraudulent transfer, and that he should not be allowed to rebut that the transfer was a gift with evidence of fraud.

¶9 A divorce suit is one of equitable cognizance in which the trial court has discretionary power to divide the marital estate.⁴ In an action of equitable cognizance there is a presumption in favor of the trial court's findings and they will not be set aside unless the trial court abused its discretion or the finding is against the clear weight of the evidence.⁵

¶10 Title 43 O.S. 2011 §121⁶ requires a fair and equitable division of property acquired during the marriage by the joint industry of a husband and wife. Jointly-acquired property is that which is accumulated by the joint industry of the spouses during the marriage. The determination of the issue concerning separate ownership of property acquired during the marriage is dependent on the original source of the property.⁷

¶11 Interspousal transfers may occur as a result of a sale by one spouse to the other, as settlement of an impending divorce, or as a gift. A transfer by one spouse of separate property to another does not by itself erase the separate character of the asset or real property transferred; rather, the original ownership regime must be respected unless there is proof of an interspousal gift,⁸ i.e. proof of donative intent. The law provides a rebuttable presump-

tion of a gift where title to separately held real estate is placed by one ownership spouse's name to both spouses' names as joint tenants.⁹ This presumption arises even if the property in question was purchased with one spouse's separate funds.¹⁰

¶12 This presumption in favor of a gift can be overcome by clear and convincing evidence of contrary intent including evidence of a purpose for placing the property in joint tenancy that is collateral to making a gift.¹¹ In this cause, the husband transferred the real property into the wife's name only. We have previously addressed this presumption in joint tenancy cases. For example, in Smith v. Villareal, 2012 OK 114, ¶12, 298 P.3d 533, during the marriage, the husband purchased two homes for his daughters from a prior marriage. He paid for these homes with his separate property. This was not disputed by the wife. However, both the husband's and wife's names appeared on the warranty deeds as joint tenants. Because the overwhelming evidence supported that the husband did not possess donative intent when title was conveyed to both spouses in joint tenancy, we held that the properties should not be included in marital property.

¶13 Similarly, in Larman v. Larman, 1999 OK 83, ¶16, 991 P.2d 536, the Court held that the presumption of a gift was overcome where the wife included the husband's name upon the deeds as joint tenant to property she held separately for the sole purpose of refinancing the mortgage loans on both properties. In Larman, the lender required that in order to qualify, both spouses had to be record owners and sign the loan related documents.

¶14 In both Smith, supra, and Larman, supra, there was nothing inherently unlawful about the real property transfers. The presumption of a gift was overcome with evidence because, although a lawful transfer occurred, the purpose was not intended to actually convert the property from separate to marital property.¹²

¶15 In Burrows v. Burrows, 1994 OK 129, ¶17, 886 P.2d 984, the Court addressed whether a father's attempted conveyance of property subject to a homestead exemption to avoid payment of past-due alimony and child support could be nullified as fraudulent. We held so, in part, because parents have a legal duty to support their children, and an ex-spouse and child were not the kind of creditors to which a homestead exemption was meant to apply. The

homestead exemption was intended to be a shield and not a sword.

¶16 Here, the Uniform Fraudulent Transfer Act¹³ (the Act) prohibits precisely the type of transfer, which the husband relies on to explain his donative intent, as fraudulent. Section 116 of the Act provides:

A. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

1. With actual intent to hinder, delay, or defraud any creditor of the debtor; or
2. Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - a. was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or
 - b. intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

The reason that the husband said he made the transfer in real property to his wife falls squarely within the prohibition of the statute.

¶17 The Act was intended to prevent a debtor from shielding property from a creditor by fraudulently transferring it. A debtor should not be able to shield property from creditors and give it to a spouse on one hand to elude creditors and then turn around and use the transfer as a sword to avoid property division. We have no doubt that he intended to "gift" his wife the property. He admits, he "gave" it to her to avoid creditors, he just also intended to get it back. Nevertheless, in an equitable proceeding, it is incongruous to allow evidence of a fraudulent transfer to rebut the presumption of a gift. Consequently, we hold Smith, supra, and Larman, are not controlling of this cause. The husband readily admitted that fraud was the reason for the transfer, and he did not provide any other legitimate reasons for the transfer to his wife.

¶18 The parties could have had the properties deeded back to the husband at any time

before their divorce, but they did not do so. Without evidence to rebut the presumption of gift, the trial court should not have set aside the transfer as his separate property. This is an equitable proceeding, and the wife does not seek to have the real property declared solely hers as the deed reflects. Rather, she asks that it be divided as marital property and we agree with this most equitable result in this cause.¹⁴ Accordingly, we reverse the trial court and remand the matter for an equitable division of the property in question.

II.

THE TRIAL COURT'S DENIAL OF SUPPORT ALIMONY IS SUPPORTED BY THE EVIDENCE.

¶19 The wife argues that the trial court abused its discretion when it neglected to award her support alimony. The husband argues that the wife failed to demonstrate any need for support alimony and there is insufficient evidence of his ability to pay it.

¶20 In a divorce action, the trial court is vested with wide discretion in awarding alimony.¹⁵ On appeal, this Court will not disturb the trial court's judgment regarding alimony absent abuse of discretion or a finding that the decision is clearly contrary to the weight of the evidence.¹⁶ The burden is upon the party appealing from a divorce decree to show that the findings and judgment are against the clear weight of the evidence.¹⁷

¶21 In awarding alimony, each case depends on the facts and circumstances,¹⁸ and alimony must be reasonable.¹⁹ Ability to pay is not the sole criterion for an award of alimony.²⁰ Support alimony is based upon a consideration of appropriate factors which include: demonstrated need during the post-matrimonial economic readjustment period; the parties' station in life; the length of the marriage and the ages of the parties; the earning capacity of each spouse; the parties' physical condition and financial means; the mode of living to which each spouse has become accustomed during the marriage; and evidence of a spouse's own income-producing capacity and the time necessary to make the transition for self-support.²¹

¶22 Here, prior to the marriage, the wife worked steadily in accounts receivable/accounts payable and book keeping in the steel industry. She also had experience working as a dental assistant. She admitted that she had a

lot of experience in the workforce. The husband is a self employed carpenter who makes a relatively meager income which fluctuates at times with the house and building market.

¶23 The parties were married for ten years and neither were raising children during their marriage. For whatever reason, the wife refused to work. The wife testified that she needed cervical spine surgery which would slow her down for up to six months, and that she had other ailments such as high blood pressure, depression, anxiety, hypertension, IBS, diverticulitis, but that none of these would prevent her from working.

¶24 She moved out of the marital home in June of 2011. Instead of seeking employment, she rented a two bedroom apartment in Ohio, bought new furniture, shopped, went on trips with her friend and boyfriend, and gave money to a prior ex-husband and adult children. She had, by the time the final divorce decree had been entered, nearly five and a half years (now over eight years), to seek any needed training or education and/or employment.

¶25 While there have been cases in which the facts and evidence disclosed that the trial court's award of support alimony was insufficient, and in need of adjustment, this does not appear to be one of those cases.²² We cannot say that the trial court abused its discretion in denying the wife's request for support alimony under these facts.

III.

EACH PARTY IS RESPONSIBLE FOR THEIR OWN ATTORNEY FEES.

¶26 On July 30, 2019, the husband filed a separate motion in this Court requesting we award him appeal related fees and costs pursuant to 12 O.S. 2011 App. 1, Rule 1.14;²³ 20 O.S. 2011 §15.1;²⁴ 12 O.S. 2011 §696.4 (as a prevailing party),²⁵ and 43 O.S. 2011 §110(D) and (E).²⁶ The wife argues that her appeal is not frivolous or without merit because she is entitled to claim an interest in property titled in her name; and request support alimony. She also argues that there are no overriding equitable considerations which favor an award of fees to the husband.

¶27 Each litigant ordinarily bears the cost of his/her legal representation and our courts are without authority to assess and award attorney fees in the absence of a specific statute or specific between the parties.²⁷ Appeal-related attor-

ney fees are recoverable if statutory authority exists for their award in the trial court.²⁸ Title 43 O.S. 2011 §110 provides for the award of counsel fees in divorce and subsequent related actions.²⁹ The husband has not prevailed in this appeal and neither the non-prevailing party in a matrimonial case, nor the principal spouse provider is under a duty to pay counsel fees.³⁰

¶28 Counsel fees claimed pursuant to §110 do not depend on a prevailing party status.³¹ Rather, in matrimonial litigation, a party should be awarded attorney fees only if they qualify for the benefit through a judicial balancing of the equities considering the means and property of each party,³² or when the appeal is frivolous or lacks merit.³³

¶29 Based on our review of the record, no compelling or overriding equitable considerations exist to support the wife's payment of the husband's attorney fees or costs incurred in this appeal. Clearly, this appeal was not frivolous or without merit because the trial court is reversed. Nor is there any compelling or overriding equitable consideration which would support the husband's payment of the wife's attorney fees and costs incurred in this appeal. Therefore, we hold that each party is responsible for their appeal-related attorney fees and costs.

CONCLUSION

¶30 A divorce proceeding is one of equitable cognizance in which the trial court has discretionary power to divide the marital estate.³⁴ Interspousal transfers may occur as a result of a sale by one spouse to the other, as settlement of an impending divorce or as a gift. A transfer by one spouse of separate property to another does not by itself erase the separate character of the asset or real property transferred. Rather, the original ownership regime must be respected unless there is proof of an interspousal gift,³⁵ i.e. proof of donative intent. In this equitable proceeding, we determine that an illicit transfer of separate property, such as a fraudulent transfer to avoid creditors, is not sufficient evidence to rebut a presumption of a gift.

¶31 Because the husband presented no other evidence to rebut that the real property transfer was a gift, the trial court should have divided the real property equitably. However, we cannot say that the trial court abused its discretion in denying the wife's request for support alimony under the facts of this cause. Nor is there any compelling or overriding equitable consid-

eration which would support the husband's payment of the wife's attorney fees and costs incurred in this appeal. Each party is responsible for their appeal-related attorney fees and costs.

**CERTIORARI PREVIOUSLY GRANTED;
COURT OF CIVIL APPEALS OPINION
VACATED; TRIAL COURT REVERSED
AND CAUSE REMANDED.**

GURICH, C.J., KAUGER, EDMONDSON, COMBS, KANE and ROWE, JJ., concur;

DARBY, V.C.J., WINCHESTER, J., (by separate writing), and COLBERT, JJ., dissent.

WINCHESTER, J., with whom Darby, V.C.J. and Colbert, J. join, dissenting:

¶1 I concur in part; dissent in part to the majority decision. While I agree with the majority that the trial court properly denied support alimony herein, I cannot agree with the majority's position that the trial court erroneously awarded the husband his separate property previously transferred to the wife.

¶2 The majority readily recognizes that in divorce proceedings the trial court is afforded wide discretion to divide the marital estate. *Teel v. Teel*, 1988 OK 151, ¶ 7, 766 P.2d 994, 998 (trial court has wide latitude in determining what property shall be awarded to each party). Nonetheless, the majority ignores this discretion to find abuse where none exists, instead invading the trial court's province by reversing the trial court's ruling on the division of property.

¶3 An appellate court should not disturb the trial court's property division absent a finding of abuse of discretion or a finding that the decision is clearly contrary to the weight of the evidence. *Hough v. Hough*, 2004 OK 45, ¶ 9, 92 P.3d 695, 700. Our cases demonstrate considerable deference to the trial court's division of marital assets in a divorce proceeding. *Childers v. Childers*, 2016 OK 95, ¶ 12, 382 P.3d 1020, 1023. "An abuse of discretion occurs when a court bases its decision on an erroneous conclusion of law, when there is no rational basis in evidence for the ruling, or if it acts arbitrarily." *Colclasure v. Colclasure*, 2012 OK 97, ¶ 4, 295 P.3d 1123, 1132 (Watt, J. with whom Winchester, J. and Combs, J. join dissenting). None of these circumstances exist herein.

¶4 Here, the husband transferred separate business and personal property, all owned before the marriage, to the wife as a shelter when

he feared his assets could become subject to a potential lawsuit judgment against him. As recognized by the majority, the husband testified he never intended the property to be a gift nor did the wife believe it to be such. The lawsuit against the husband was later dismissed, resulting in no judgment against him.

¶5 The trial court found there was sufficient evidence presented to support the finding that the husband's separate property was not intended to be a gift to the wife. *Larman v. Larman*, 1999 OK 83, ¶ 22, 991 P.2d 536, 543 (where evidence reflects conclusion that title to one spouse's separate real estate was placed in both names as joint tenants solely to achieve a purpose collateral to making a gift, the presumption of an interspousal gift is deemed rebutted). The husband made the requisite showing and the majority should not be allowed to substitute its judgment for that of the trial court under the guise of an abuse of discretion that does not exist.

¶6 The burden is on the party claiming error to show that the findings and judgment of the trial court are against the clear weight of the evidence. *Manhart v. Manhart*, 1986 OK 12, ¶ 5, 725 P.2d 1234, 1236. There being no evidence sufficient to show the trial court abused its discretion as to the property division, the ruling of the trial court should be affirmed.

KAUGER, J.:

1. According to the husband they were married on February 17, 2001. According to the wife, it was March 26, 2001. Apparently the marriage license was lost in a tornado. Nevertheless, it is undisputed that the couple did marry in 2001.

2. The husband contends that at the time of marriage, his separate property included: 1) Lots 4-12, inclusive, Block Forty-Five in the town of Blanchard; 2) the Woodmaster Shop, East 2 acres of the North 3 acres of the NW 1/4 of the NE 1/4 Section Thirty-one, Township Eight, North Range Four West, McClain County, Oklahoma; and 3) 20 acres adjacent to the marital interests, the North Half of the Southeast Quarter of the Southeast Quarter of Section Fifteen, Township Eight North, Range Five West of the Indian Meridian, Grady County, Oklahoma. The husband sought to void deeds transferring all of these properties to the wife during the marriage.

3. In the Petition for Certiorari, the wife does not dispute the trial court's determination as to the date of separation or the Court of Appeals affirmation regarding that date. She does state in the facts, that the evidence indicated that they lived apart, but never intended to divorce until the husband refused marriage counseling and filed for divorce. Nevertheless, her arguments, and the reasons for granting certiorari do not address this issue whatsoever. Accordingly, we do not address whether the determination as to the actual date of separation was in error. *Hough v. Leonard*, 1993 OK 112, ¶¶14-16, 867 P.2d 438; Oklahoma Supreme Court Rules, Rule 1.180, 12 O.S. 2011 App. 1.

4. *Smith v. Villareal*, 2012 OK 114, ¶7, 298 P.3d 533; *Jackson v. Jackson*, 1999 OK 99, ¶7, 995 P.2d 1109; *Larman v. Larman*, 1999 OK 83, ¶17, 991 P.2d 536; *Teel v. Teel*, 988 OK 151, ¶7, 766 P.2d 994.

5. *Smith v. Villareal*, see note 4, supra; *Francis v. Rogers*, 2001 OK 111, ¶24, n. 22, 40 P.3d 481; *Groseclose v. City of Tulsa*, 1998 OK 112, ¶18, 990 P.2d 828; *Krosmico v. Pettit*, 1998 OK 90, ¶23, 968 P.2d 345.

6. Title 43 O.S. 2011 §121 provides in pertinent part:

...B. The court shall enter its decree confirming in each spouse the property owned by him or her before marriage and the

undisposed-of property acquired after marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the court shall think reasonable, having due regard to the value of such property at the time of the dissolution of marriage. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the court shall, subject to a valid antenuptial contract in writing, make such division between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to be paid such sum as may be just and proper to effect a fair and just division thereof. The court may set apart a portion of the separate estate of a spouse to the other spouse for the support of the children of the marriage where custody resides with that spouse. . .

7. Smith v. Villareal, see note 4, supra at ¶8; Longmire v. Longmire, 1962 OK 29, ¶9, 376 P.2d 273; Spencer v. Spencer, 1947 OK 243, ¶8, 184 P.2d 761.

8. Smith v. Villareal, see note 4, supra at ¶9; Larman v. Larman, see note 4, supra at ¶8.

9. Smith v. Villareal, see note 4, supra at ¶9; Larman v. Larman, see note 4, supra at ¶9; Chastin v. Posey, 1983 OK ¶8, 665 P.2d 1179; Fletcher v. Fletcher, 1952 OK 28, ¶14-15, 244 P.2d 827.

10. Smith v. Villareal, see note 4, supra at ¶9; Larman v. Larman, see note 4, supra at ¶9; Chastin v. Posey, see note 9, supra; Mendenhall v. Walters, 1916 OK 524, ¶10, 157 P.732.

11. Smith v. Villareal, see note 4, supra at ¶10; Larman v. Larman, see note 4, supra at ¶¶9-10.

12. The issue of transferring property such as this has come up several times in the Court of Civil Appeals. For example, see, Beene v. Beene, 2014 OK CIV APP 32, 324 P.3d 1264 (Husband rebutted presumption of donative intent when he added wife's name to separate property five months into the marriage.); Bartlett v. Bartlett, 2006 OK CIV APP 112, 114 P.3d 173 (Separate property transferred to avoid some estate taxes); King v. King, 2009 OK CIV. APP. 49, 212 P.3d 1232 (Separate property transferred to avoid child support lawsuit).

13. Title 21 O.S. 2011 §§121 et seq.

14. Title 43 O.S. 2011 §121, see note 6, supra.

15. Hutchings v. Hutchings, 2011 OK 17, ¶14, 250 P.3d 324; Peyravy v. Peyravy, 2003 OK 92, ¶13, 84 P.3d 720; McLaughlin v. McLaughlin, 1999 OK 34, ¶12, 979 P.2d 257.

16. Hutchings v. Hutchings, see note 15, supra; Peyravy v. Peyravy, see note 15, supra; McLaughlin v. McLaughlin, see note 15, supra.

17. Peyravy v. Peyravy, see note 15, supra; ; McLaughlin v. McLaughlin, see note 15, supra; See, Traczyk v. Traczyk, 1995 OK 22, ¶22, 891 P.2d 1277.

18. Hutchings v. Hutchings, see note 15, supra; Peyravy v. Peyravy, see note 15, supra; McLaughlin v. McLaughlin, see note 15, at ¶13, supra; Durland v. Durland, 1976 OK 102, ¶5, 552 P.2d 1148.

19. Hutchings v. Hutchings, see note 15, supra; Peyravy v. Peyravy, see note 15, supra; McLaughlin v. McLaughlin, see note 15, supra; Whitehead v. Whitehead, 1999 OK 91, ¶5, 995 P.2d 529.

20. Peyravy v. Peyravy, see note 15, supra; McLaughlin v. McLaughlin, see note 15, at ¶13, supra.

21. Hutchings v. Hutchings, see note 15, supra; Peyravy v. Peyravy, see note 15, at ¶14, supra; Younge v. Younge, 2002 OK 12, ¶14, n.21, 41 P.3d 966; McLaughlin, see note 15, supra.

22. For example: in Hutchings v. Hutchings, see note 15, supra, the Court increased support alimony from \$9,000.00 to \$54,000.00 where the parties had been married for twenty-two years, the husband's income was three times the wife's and she needed additional education and training to increase her income potential; in Peyravy v. Peyravy, 2003 OK 92, 84 P.3d 720, support alimony of \$24,000.00 was insufficient where the parties had been married for twenty-two years, the husband supported the family and made \$9,100.00 a month and the wife's health inhibited her ability to work full time outside the home; in Mocnbik v. Mocnbik, 1992 OK 99, 838 P.2d 500 the Court increased

alimony from \$60,000 to \$120,000 where the parties had been married eighteen years, the husband earned \$215,000 a year and the wife had an earning capacity of \$20,000; in Durland v. Durland, 1976 OK 102, 552 P.2d 1148 the Court increased alimony from \$36,000 to \$48,000 where the parties had been married nineteen years, the wife earned a minimal income and was not trained for any particular employment and one of their children required special care; in Aronson v. Aronson, 1970 OK 74, 468 P.2d 493, the court increased alimony by \$30,000.00 where the parties had been married for fifteen years, the husband was a doctor and the wife worked as a substitute elementary teacher.

23. Title 12 O.S. 2011 App. 1, Rule 1.14 provides in pertinent part:

(A) Costs.

(1.) Costs must be sought by a separately filed and labeled motion in the appellate court prior to mandate being issued. The Clerk shall not tax as costs any expense unless the person claiming the same, prior to the issuance of a mandate in the cause, shall file with the Clerk a verified statement of taxable cost items showing that person has paid the same. . . .

(B) Attorney's Fee.

A motion for an appeal related attorney's fee must be made by a separately filed and labeled motion in the appellate court prior to issuance of mandate. The motion must state the statutory and decisional authority allowing the fee. See 12 O.S. § 696.4(C).

24. Title 20 O.S. 2011 §15.1 provides:

On any appeal to the Supreme Court, the prevailing party may petition the court for an additional attorney fee for the cost of the appeal. In the event the Supreme Court or its designee finds that the appeal is without merit, any additional fee may be taxed as costs.

25. Title 12 O.S. 2011 §696.4 provides in pertinent part:

C. Except as provided in Subsection D of this section, an application for attorney fees for services performed on appeal shall be made to the appellate court by separate motion filed any time before issuance of mandate. The application shall cite authority for awarding attorney fees but shall not include evidentiary material concerning their amount. The appellate court shall decide whether to award attorney fees for services on appeal, and if fees are awarded, it shall remand the case to the trial court for a determination of their amount. The trial court's order determining the amount of fees is an appealable order.

26. Title 43 O.S. 2011 §110(D) and (E) which provides:

D. Upon granting a decree of dissolution of marriage, annulment of a marriage, or legal separation, the court may require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances.

E. The court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to writs of habeas corpus, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the dissolution of marriage action made for the benefit of either party or their respective attorneys.

27. Boatman v. Boatman, 2017 OK 27, ¶16, 404 P.3d 822; Eagle Bluff, L.L.C. v. Taylor, 2010 OK 47, ¶16, 237 P.3d 173.

28. Casey v. Casey, 2002 OK 70, ¶26, 58 P.3d 763; Daniel v. Daniel, 2001 OK 117, ¶24, 42 P.3d 863; First Community Bank of Blanchard v. Hodges, 1995 OK 124, ¶13, 907 P.2d 1047.

29. Title 43 O.S. 2011 §110, see note 26, supra.

30. Foshee v. Foshee, 2010 OK 85, ¶22, 247 P.3d 1162; King v. King, 2005 OK 4, ¶30, 107 P.3d 570; Casey v. Casey, see note 28, supra.

31. Casey v. Casey, see note 28, supra

32. Boatman v. Boatman, see note 27, supra; Childers v. Childers, 2016 OK 95, ¶29, 382 P.3d 1020.

33. Title 20 O. S. 2011 §15.1, see note 24, supra; Casey v. Casey, see note 28, supra; TRW/Reda Pump v. Brewington, 1992 OK 31, ¶13, 829 P.2d 15.

34. Smith v. Villareal, see note 4, supra; Jackson v. Jackson, see note 4, supra; Larman v. Larman, see note 4, supra; Teel v. Teel, see note 4, supra.

35. Smith v. Villareal, see note 4, supra at ¶9; Larman v. Larman, see note 4, supra at ¶8.

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Disposition of Cases Other Than by Published Opinion

COURT OF CRIMINAL APPEALS Thursday, April 9, 2020

F-2018-1189 — Bryan Douglas Nicholson, Appellant, was tried by jury and convicted of Count 1, child sexual abuse; Count 2, lewd or indecent acts to child under 16; Counts 6 and 7, possession of child pornography in Case No. CF-2017-318 in the District Court of McCurtain County. The jury set punishment at life imprisonment on each of Counts 1 and 2, and twenty (20) years imprisonment on each of Counts 6 and 7. The trial court sentenced accordingly and ordered the sentences on Counts 1 and 2 to run concurrently with each other but consecutively to the sentences for Counts 6 and 7, which were to be served concurrently with each other. From this judgment and sentence Bryan Douglas Nicholson has perfected his appeal. The judgment and sentence is AFFIRMED. Opinion by: Lewis, P.J.; Kuehn, V.P.J., concurs in results; Lumpkin, J., concurs; Hudson, J., concurs; Rowland, J., concurs.

F-2018-933 — Ronald Floyd Manners, Appellant, was tried by jury for the crime of child sexual abuse in Case No. CF-2015-157 in the District Court of Craig County. The jury returned a verdict of guilty and set punishment at twenty-five (25) years imprisonment, including one year of post-imprisonment community supervision. The trial court sentenced accordingly. From this judgment and sentence Ronald Floyd Manners has perfected his appeal. The judgment and sentence is MODIFIED to include a three (3) year term of post-imprisonment community supervision and is otherwise AFFIRMED. Opinion by: Lewis, P.J.; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs; Rowland, J., concurs.

Tuesday, April 14, 2020

F-2019-150 — Appellant, Jaime Garcia, was tried by jury and convicted of the following: Count 1, First Degree Rape, in violation of 21 O.S.Supp.2017, § 1114(A); Count 2, Forcible Sodomy, in violation of 21 O.S.Supp.2017, § 888(A); Count 4, Kidnapping, in violation of 21 O.S.Supp.2012, § 741; Count 5, Domestic Assault and Battery by Strangulation, in vio-

lation of 21 O.S.Supp.2014, § 644(J); Count 7, Domestic Assault and Battery Resulting in Great Bodily Injury, in violation of 21 O.S.Supp.2014, § 644(F); and Count 8, Assault and Battery by Means Likely to Cause Death, in violation of 21 O.S.2011, § 652(C), all After Two or More Felony convictions, in Tulsa County District Court, Case No. CF-2018-1163. The trial court sentenced Appellant in accordance with the jury's recommendation to life imprisonment on Count 1, twenty years imprisonment on Count 2, twenty years imprisonment on Count 4, ten years imprisonment on Count 5, ten years imprisonment on Count 7, and twenty-five years imprisonment on Count 8. The court ordered the sentences for Counts 1 and 2 to run consecutively to one another, Count 4 to run concurrently with Count 1, Count 5 to run consecutively to Count 2, Count 7 to run consecutively to Count 5, and Count 8 to run consecutively to Count 7. From this judgment and sentence Appellant appeals. Appellant raises the following propositions of error in this appeal:

I. The trial court's refusal to grant a motion for continuance based on defense counsel's receipt of discovery the morning of trial denied the Appellant a fair trial.

II. The trial court's ruling excluding certain evidence regarding the victim constituted an abuse of discretion and prevented Mr. Garcia from presenting a defense.

III. The trial court improperly admitted aggravating evidence of "prior bad acts" in violation of *Burks*.

IV. The trial court improperly admitted aggravating evidence of "prior bad acts" as *res gestae* evidence.

V. The jury was improperly encouraged to give weight to the testimony of Lori Gonzales.

VI. The testimony of "blind expert" Lori Gonzales should have been excluded as unnecessary and prejudicial.

VII. The trial court erred in denying defense counsel's request for a self-defense instruction.

VIII. The evidence was insufficient to prove beyond a reasonable doubt that the Appellant committed the acts alleged in Counts 4, 5, 7 and 8.

IX. The trial court erred in refusing to instruct the jury on mandatory sex registration requirements. The failure to so instruct denied Appellant a reliable sentencing proceeding in violation of the Fourteenth Amendment to the United States Constitution.

X. Mr. Garcia received ineffective assistance of counsel as required by the Sixth Amendment.

XI. Prosecutorial misconduct deprived Mr. Garcia of a fair trial.

XII. The accumulation of error in this case deprived Appellant of a fair trial and due process of law in violation of the Fourteenth Amendment to the United States Constitution.

A cumulative error argument has no merit when this Court fails to sustain any of the other errors raised by Appellant. *Baird v. State*, 2017 OK CR 16, ¶ 42, 400 P.3d 875, 886. The record shows we found no error occurred during the course of the trial in the present case. Therefore, no new trial or modification of sentence is warranted. Proposition XII is denied.

DECISION

The **JUDGMENT** and **SENTENCE** is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2020), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

Opinion by: Lumpkin, J.; Lewis, P.J.: Concur; Kuehn, V.P.J.: Concur in Results; Hudson, J.: Concur; Rowland, J.: Concur.

ACCELERATED DOCKET

Thursday, April 9, 2020

JS-2019-876 — B.T.H. was charged on August 28, 2019, as a youthful offender with Assault and Battery on an Employee of a Juvenile Detention Facility in Pottawatomie County District Case No. YO-2019-12. B.T.H. filed a motion for certification as a juvenile. The trial court granted B.T.H.'s motion. The State appeals. The order of the trial court is **REVERSED** and this case is **REMANDED** to the District Court of Pottawatomie County. Opinion by: Rowland, J.; Lewis, P.J., concurs in results; Kuehn, V.P.J., concurs in results; Lumpkin, J., concurs; Hudson, J., concurs.

COURT OF CIVIL APPEALS

(Division No. 1)

Tuesday, March 31, 2020

117,188 — Chesapeake Operating, LLC., Plaintiff/Appellee, v. American Energy Non-Op, L.L.C., Defendant/Appellant. Appeal from

the District Court of Oklahoma County, Oklahoma. Honorable Patricia G. Parrish. Judge. Defendant/Appellant American Energy Non-Op, L.L.C. (American) appeals the trial court's denial of its Motion to Reconsider a grant of summary judgment in favor of Plaintiff/Appellee Chesapeake Operation, L.L.C. (Chesapeake). Chesapeake brought suit against American for breach of contract and fraud for the nonpayment of joint interest billings associated with an alleged 25% interest in the Goeringer Well (the Well). The trial court granted Chesapeake's motion for partial summary judgment December 13, 2017 (the Order). The trial court denied as untimely American's motion to reconsider the Order. American appeals, alleging the Order was not a "judgment" such that the ten-day limitation on motions for new trial applied. Because the trial court's December 13, 2017 Order did not resolve Chesapeake's request for punitive damages and American's counterclaim for revenues from the Goeringer Well, we hold the Order was not a "judgment" or "final appealable order." We reverse the trial court's denial of American's motion to reconsider and remand for the resolution of the remaining claims. Opinion by Buettner, J.; Bell, P.J., and Goree, J., concur.

Thursday, April 2, 2020

116,944 — (cons. w/117,449) Boomer State Outdoors, LLC, a Domestic Limited Liability Company, Plaintiff/Appellee/Counter-Appellant. V. Canadian River Ranch, LLC, a Domestic Limited Liability Company, Defendant/Appellant/Counter-Appellee. Appeal from the District Court of McIntosh County, Oklahoma. Honorable Douglas Kirkley, Trial Judge. Boomer State Outdoors, LLC, Plaintiff/Appellant, and Canadian River Ranch, LLC, Defendant/Appellee, brought claims for breach of a commercial lease agreement. Canadian failed to deliver exclusive use of the leased premises. Boomer remained in possession and paid diminished rent. The trial court's decision that Boomer did not breach the contract, having paid the value of the benefit received, was supported by competent evidence. Boomer was not entitled to an attorney fee for prevailing on a claim or an open account per 12 O.S. § 936(A). **AFFIRMED IN PART, REVERSED IN PART**. Opinion by Goree, J.; Bell, P.J., concurs and Buettner, J., concurs in result.

117,158 — James Patrick Lesley, Jr., Plaintiff/Appellant, v. David Prater, District Attorney of Oklahoma County, Defendant/Appellee. Ap-

peal from the District Court of Oklahoma County, Oklahoma. Honorable Patricia G. Parrish, Trial Judge. The Appellant, James Patrick Lesley, Jr., is an inmate at the Davis Correctional Facility in Holdenville, Oklahoma. He sued Appellee, District Attorney of Oklahoma County, David Prater, to recover damages for libel. The trial court granted the District Attorney's motion to dismiss Lesley's petition on grounds of *res judicata*, We AFFIRM. Opinion by Goree, J.; Bell, P.J., and Buettner, J., concur.

Tuesday, April 7, 2020

117,041 — (comp w/ 117,098, 117,499, 118,498) Dr. Joseph Blough, individual, Applicant/Appellee, v. Interventional Spine Services II, LLC, an Oklahoma Company; Sean Jones, individual; Innate Chiropractic, PLLC, an Oklahoma Company; Todd Farris, individual, Don Adams, individual; Gerald Burnstein, Jr., individual; Kory Reed, individual; Ron Brown, individual; TBCPM, LLC, an Oklahoma company; TBC Weight and Wellness, LLC, an Oklahoma company; Fedcare, LLC, an Oklahoma company; Mariposa Medspa, LLC, an Oklahoma company; Midtown Imaging, LLC, an Oklahoma company; Steelman Clinic, LLC, an Oklahoma company; Heathcare Investment Properties, LLC, an Oklahoma Company; Properties for Fitness, LLC, an Oklahoma company; Optima Health Properties, an Oklahoma company; BJFB Properties, LLC, an Oklahoma company; and Interventional Spine Services III, LLC, an Oklahoma company, Respondents/Appellants. Appeal from the District Court of Oklahoma County, Oklahoma. Honorable Aleitia Haynes Timmons, Judge. Respondents/Appellants appeal from the trial court's order granting a temporary injunction to preserve the status quo between Appellants and Applicant/Appellee, Dr. Joseph Blough, pending arbitration to determine the value of Blough's ownership interests in certain medical clinics. During his buyout negotiations with his partners, Blough became concerned they were dissipating the assets of the businesses. At the time Blough filed his Application for injunctive relief, no district court petition or arbitration proceeding had been filed concerning the buyout dispute. Following a hearing, the trial court *inter alia* granted a temporary injunction against Appellants. We hold: Blough's Application sufficiently apprised the trial court of his claims and satisfied Pleading Code requirements; the trial court did not err by failing to make specific findings regarding the factors required for the

issuance of the injunction; the order was not too vague; the trial court did not err in fixing the injunction bond at \$0; the court's order enjoining all fifteen (15) LLCs is overly broad because Blough's Application implicated only six (6) of the entity Appellants. AFFIRMED IN PART AND REVERSED IN PART. Opinion by Bell, P.J.; Buettner, J., and Goree, J., concur.

117,098 — (comp w/ 117,041, 117,499, 118,498) Dr. Joseph Blough, individual, Applicant/Appellee, v. Interventional Spine Services II, LLC, an Oklahoma Company; Sean Jones, individual; Innate Chiropractic, PLLC, an Oklahoma Company; Todd Farris, individual, Don Adams, individual; Gerald Burnstein, Jr., individual; Kory Reed, individual; Ron Brown, individual; TBCPM, LLC, an Oklahoma company; TBC Weight and Wellness, LLC, an Oklahoma company; Fedcare, LLC, an Oklahoma company; Mariposa Medspa, LLC, an Oklahoma company; Midtown Imaging, LLC, an Oklahoma company; Steelman Clinic, LLC, an Oklahoma company; Heathcare Investment Properties, LLC, an Oklahoma Company; Properties for Fitness, LLC, an Oklahoma company; Optima Health Properties, an Oklahoma company; BJFB Properties, LLC, an Oklahoma company; and Interventional Spine Services III, LLC, an Oklahoma company, Respondents/Appellants. Appeal from the District Court of Oklahoma County, Oklahoma. Honorable Aleitia Haynes Timmons, Judge. Respondents/Appellants appeal from the trial court's order appointing a receiver in a temporary injunction proceeding involving Appellants and Applicant/Appellee, Dr. Joseph Blough. Companion Case No. 117,041 details the underlying facts. We hold: the trial court's inclusion of all fifteen (15) LLCs in the receivership order was overly broad; Blough's Application satisfied Pleading Code requirements; the trial court did not abuse its discretion in appointing a receiver over six (6) LLCs; and the trial court did not abuse its discretion by failing to conduct a hearing or in setting the receiver's bond at \$0. AFFIRMED IN PART AND REVERSED IN PART. Opinion by Bell, P.J.; Buettner, J., and Goree, J., concur.

117,445 — Chesapeake Operating, LLC., Plaintiff/Appellee, v. American Energy Non-Op, L.L.C., Defendant/Appellant. Appeal from the District Court of Oklahoma County, Oklahoma. Honorable Patricia G. Parrish, Judge. Defendant/Appellant American Energy-Non-op, L.L.C., appeals the award of attorney fees

to Plaintiff/Appellee Chesapeake Operating, L.L.C. in a breach of contract action in which Chesapeake sought unpaid joint interest billings (JIBs) pertaining to a well operated by Chesapeake. Because we held in a companion to this appeal – Supreme Court No. 117,188 – that the December 13, 2018 “Final Judgment” after which Chesapeake sought attorney fees was not a final, appealable order, we vacate the award here and remand for further proceedings. Opinion by Buettner, J.; Bell, P.J., and Goree, J., concur.

117,499 — (comp w/ 117,041, 117,098, 118,498) Dr. Joseph Blough, individual, Applicant/Appellee, v. Interventional Spine Services II, LLC, an Oklahoma Company; Sean Jones, individual; Innate Chiropractic, PLLC, an Oklahoma Company; Todd Farris, individual, Don Adams, individual; Gerald Burnstein, Jr., individual; Kory Reed, individual; Ron Brown, individual; TBCPM, LLC, an Oklahoma company; TBC Weight and Wellness, LLC, an Oklahoma company; Fedcare, LLC, an Oklahoma company; Mariposa Medspa, LLC, an Oklahoma company; Midtown Imaging, LLC, an Oklahoma company; Steelman Clinic, LLC, an Oklahoma company; Heathcare Investment Properties, LLC, an Oklahoma Company; Properties for Fitness, LLC, an Oklahoma company; Optima Health Properties, an Oklahoma company; BJFB Properties, LLC, an Oklahoma company; and Interventional Spine Services III, LLC, an Oklahoma company, Respondents/Appellants. Appeal from the District Court of Oklahoma County, Oklahoma. Honorable Aletha Haynes Timmons, Judge. Respondents/Appellants appeal from the trial court’s order enforcing a temporary injunction and reappointing a receiver in this dispute between owners of certain medical clinics. In companion Case Nos. 117,041 and 117,098, we hold, respectively, the trial court’s original temporary injunction order and its order appointing a receiver were overly broad because Blough’s Application implicated only six (6) of the fifteen (15) entity Appellants. For the same reasons, the instant order is overly broad. For reasons set forth in the companion opinions, we hold the trial court had authority to issue the injunction, it did not err in setting the injunction bond at \$0, the court did conduct an evidentiary hearing before issuing the injunction, and Blough demonstrated entitlement to injunctive relief. We also hold, pursuant to 12 O.S. Supp. 2013 §993(C), the trial court lacked authority to reappoint the receiver because the

original appointment was on appeal in Case No. 117,098. Finally, the instant order did not effectively hold Appellants in contempt nor punish them for the same. **AFFIRMED IN PART AND REVERSED IN PART.** Opinion by Bell, P.J.; Buettner, J. and Goree, J., concur.

(Division No. 2)

Thursday, April 9, 2020

118,242 — Keith Geary, individually, and The Geary Companies, Inc., an Oklahoma corporation, Plaintiffs/Appellants, v. John Shelley, individually and as President of the Bank of Union; Timothy Headington, individually; Zeitgeist Capital, LLC, a Texas corporation; and Union City Corporation, El Reno, Oklahoma, an Oklahoma corporation, Defendants/Appellees. Appeal from the District Court of Canadian County, Hon. Paul Hesse, Trial Judge. Plaintiffs, who have asserted the common law action of abuse of process against Defendants, appeal the trial court’s orders granting summary judgment in favor of Defendants. The statute of limitations for an abuse of process claim is two years, and it is undisputed that three of the four underlying proceedings in which, Plaintiffs assert, an abuse of process occurred terminated more than two years prior to the filing of the present action. Consequently, any potential abuse of process claim that may have accrued in those proceedings necessarily did so more than two years prior to the filing of the present case. Moreover, while a portion of the fourth and most recent underlying proceeding occurred within two years of the filing of the present action, “[i]f the action is confined to its regular and legitimate function in relation to the cause of action stated in the [petition] there is no abuse, even if the plaintiff had an ulterior motive in bringing the action or if he knowingly brought suit upon an unfounded claim.” *McGinnity v. Kirk*, 2015 OK 73, ¶ 64, 362 P.3d 186 (emphasis omitted) (footnote omitted). Plaintiffs, who explicitly state they are not pursuing a malicious prosecution claim, do not assert that any process (broadly defined) in the fourth proceeding was directed toward an illegitimate objective or ulterior purpose relative to the most recent underlying proceeding; that is, Plaintiffs fail to identify or present any evidence of an illegitimate end or ulterior purpose other than the pursuance of the claim asserted in that proceeding. Consequently, we conclude there is no substantial controversy as to the material facts and that the trial court properly awarded summary judgment.

ment to Defendants. We affirm the trial court's orders granting summary judgment to Defendants. **AFFIRMED.** Opinion from Court of Civil Appeals, Division II, by Barnes, P.J.; Rapp J., and Fischer, J., concur.

117,828 — In the Matter of The Estate of John Starr, Deceased, Carlie R. Weston, Heir, Appellant, vs. Brenda M. Lawless, Oscar J. Lawless and Deborah A. Reed, Appellees. Appeal from an Order of the District Court of Delaware County, Hon. Barry V. Denney, Trial Judge. The trial court respondent, Carlie R. Weston (Weston) appeals from an Order Allowing Final Report and Final Account, Determination of Heirs, Final Decree of Distribution and Discharge entered in a probate action where Oscar Jerry Lawless (Lawless) was the appointed administrator of the Estate of John Starr (Starr), deceased. Weston has appealed and counsel for the administrator of Starr's Estate did not file a Brief. Reversal is not automatic for default of briefing. The appellant's Brief must reasonably support a claim of error. Here, Weston's Brief does not reasonably support any claim of error, and there is no error apparent from the District Court Record. Therefore, the Order Allowing Final Report and Final Account, Determination of Heirs, Final Decree of Distribution and Discharge is affirmed. **AFFIRMED.** Opinion from Court of Civil Appeals, Division II, by Rapp, J.; Barnes, P.J., and Fischer, J., concur.

117,631 — Sherilyn Jolly, Petitioner/Appellee, vs. Richard Jolly, Respondent/Appellant. Appeal from an Order of the District Court of Garvin County, Hon. Steven Kendall, Trial Judge. The respondent, Richard Jolly (Husband), appeals the Decree of Dissolution of Marriage entered in an action brought by the petitioner, Sherilyn Jolly (Wife). Husband also appeals the trial court's denial of his post-Decree motion in its Order on Respondent's Amended Motion to Correct, Open, Modify or Vacate the Decree. In this appeal, Husband challenges the division of his retirement account. He maintains that almost one-half of its value was established pre-marriage and is his separate property. Husband argues that the trial court erred by failing to make findings of fact and conclusions of law as requested. However, there is no trial record and the Decree contains findings and conclusions relative to the retirement account issue. In the absence of a trial Record, the Decree is presumed to be correct. Moreover, the Decree does sufficiently respond to the request for findings and conclu-

sions regarding the retirement account. Husband's post-Decree motion clearly is an attempt to re-litigate the retirement account issue. The absence of a trial Record makes the Decree presumptively correct. In addition, Husband has not asserted that his post-Decree motion is based upon newly discovered evidence. The trial court has wide discretion regarding disposition of this Title 12 O.S.2011, § 1031.1 motion and Husband has not demonstrated an abuse of discretion. The Decree of Dissolution of Marriage is affirmed. **AFFIRMED.** Opinion from Court of Civil Appeals, Division II, by Rapp, J.; Barnes, P.J., and Fischer, J., concur.

116,573 — Fay Thomas Millison, an individual, Plaintiff/Appellant, vs. Nita Marilyn Benson, an individual, Defendant/Appellee. Appeal from an Order of the District Court of Woodward County, Hon. Justin P. Eilers, Trial Judge. Plaintiff, Fay Thomas Millison, appeals the trial court's Order denying Plaintiff's Motion for New Trial after the trial court entered judgment on a jury verdict finding Millison thirty percent (30%) negligent and defendant, Nita Marilyn Benson, seventy percent (70%) negligent in this negligence action involving a motor vehicle accident. This Court finds the trial court did not err in refusing to give Plaintiff's proposed jury instruction concerning liability insurance or in not allowing Millison to present evidence of Medicare payments. This Court also finds there was sufficient evidence for the jury to reasonably infer that Millison was not keeping a proper lookout and negligence existed on his part. Thus, this Court finds the trial court did not err in instructing the jury on contributory negligence. Based on the foregoing, this Court affirms the trial court's denial of Plaintiff's Motion for New Trial. **AFFIRMED.** Opinion from Court of Civil Appeals, Division II, by Rapp, J.; Barnes, P.J., and Fischer, J., concur.

Tuesday, April 14, 2020

117,982 (Companion with Case No. 117,983) — Patal B. Smith, Petitioner/Appellee, v. Robert A. Spencer, Defendant/Appellant. Appeal from an Order of the District Court of Oklahoma County, Hon. Martha Oakes, Trial Judge. The trial court defendant, Robert A. Spencer (Spencer), appeals an Order denying his motion to vacate a Protective Order entered on behalf of the plaintiff, Patal B. Smith (Smith). The Oklahoma Supreme Court entered an Order which limited the scope of this appeal to the trial court's denial of his motion to vacate the

Protective Order. In the motion to vacate, Spencer raised *res judicata* as the ground to vacate. The trial court denied the motion to vacate stating Spencer did not raise the issue of *res judicata* at the Protective Order hearing. On appeal, Spencer has failed to demonstrate that the issue of *res judicata*, now called claim preclusion, was presented at the hearing on the Protective Order. In the absence of a Record to the contrary, the Protective Order judgment is presumed to be correct. *Hamid v. Sew Original*, 1982 OK 46, 645 P.2d 496. This is Spencer's sole ground for his motion to vacate and the trial court did not abuse its discretion by denying the motion. The denial of the motion to vacate is affirmed. AFFIRMED. Opinion from Court of Civil Appeals, Division II, by Rapp, J.; Barnes, P.J., and Fischer, J., concur.

117,983 (Companion with Case No. 117,982) — Robert Spencer, Plaintiff/ Appellant, v. Patal B. Smith, Defendant/Appellee. Appeal from an Order of the District Court of Oklahoma County, Hon. Martha Oakes, Trial Judge. The trial court plaintiff, Robert A. Spencer (Spencer), appeals an Order Denying Plaintiff's Motion to Enter, Motion to Compel Guardian *Ad Litem* to Deliver Report to Petitioner and Motion for New Trial. Spencer brought this paternity action against the defendant, Patal B. Smith (Smith). This appeal is a companion appeal to the appeal by Spencer in the case of *Smith v. Spencer*, Case No. 117,982. All of Spencer's issues in this appeal suffer the same deficiency. There is no Appellate Record showing error. In the absence of such record, the judgment of the trial court is presumed correct. *Hamid v. Sew Original*, 1982 OK 46, 645 P.2d 496. Therefore, the trial court's denial of Spencer's post-trial motions and the paternity decree are affirmed. AFFIRMED. Opinion from Court of Civil Appeals, Division II, by Rapp, J.; Barnes, P.J., and Fischer, J., concur.

(Division No. 3)

Tuesday, March 31, 2020

117,354 — Advanced Urology & Wellness Center Muskogee, LLC, an Oklahoma Limited Liability Company, Plaintiff/Appellant, vs. Newground Resources, Inc., a Delaware Corporation and Newground International, Inc., an Illinois Corporation, Defendants/Appellees. Appeal from the District Court of Muskogee County, Oklahoma. Honorable Norman D. Thygesen, Trial Judge. Plaintiff/Appellant Advanced Urology & Wellness Center Muskogee, L.L.C. (AUWC) appeals from an order

granting summary judgment in favor of Defendants/Appellees NewGround International, Inc. and NewGround Resources, Inc. AUWC argues that there were disputes of material fact which should have precluded judgment on its claims of professional negligence, agency, breach of contract, negligent and detrimental reliance. We agree and reverse and remand for proceedings consistent with this opinion. Opinion by Swinton, V.C.J.; Mitchell, P.J., and Bell, J.(sitting by designation).

Thursday, April 9, 2020

117,979 — Jerry L. Miller, Plaintiff/Appellant, v. Michael S. Nagel, Trustee of the Rasmus Nagel Trust F/B/O/ Grandchildren; GLB Exploration Inc., an Oklahoma Corporation, Defendants/Appellants. Appeal from the District Court of McClain County, Oklahoma. Honorable Charles Gray, Judge. This is the second appeal from the underlying action brought by Plaintiffs/Appellees, Jerry L. Miller and Bonnie Miller (Grantors), against Defendants/Appellants, Michael S. Nagel, Trustee of the Rasmus Nagel Trust f/b/o Grandchildren (Trustee), and GLB Exploration Inc., an Oklahoma corporation (GLB). In the proceeding below, the district court quieted Grantors' title in and to certain minerals in McClain County and held in favor of Grantors on their claim to recover royalties under the Oklahoma Production Revenue Standards Act, 52 O.S. 2011 §570.1 et seq. (the Act). In Appellate Case No. 115,655 (mandated December 19, 2018)(*Miller I*), the appellate court held Grantors' quiet title action was barred by the five (5) year statute of limitations at 12 O.S. 2011 §95(A)(12) and reversed the district court's judgment quieting Grantors' title to the subject minerals and awarding damages under the Act. *Miller I* also affirmed the district court's judgment denying Grantors' request for attorney fees. Thereafter, Trustee and GLB applied for appeal-related attorney fees in *Miller I*. On November 19, 2018, the Supreme Court found Trustee and GLB were the prevailing parties and the Court awarded them costs and the quantum of their appeal-related attorney fees expended in appealing Grantors' claim under §570.14(C)(2) of the Act. The Supreme Court ordered, "After mandate issues, the district court is directed to hold an adversarial hearing . . . to determine the quantum of [Trustee's and GLB's] attorney fees expended in appealing" Grantors' claim under the Act. The Supreme Court authorized the district court to award Trustee and GLB the

appropriate quantum of their attorney fees determined in an adversarial hearing. On remand, the district court awarded Trustee attorney fees in the amount of \$7,638.70, and GLB attorney fees in the amount of \$6,885.00. Grantors now appeal from this order. After reviewing the record, this Court cannot find the district court abused its discretion in apportioning and awarding Trustee and GLB their attorney fees and affirm. Opinion by Bell, P.J.; Buettner, J., and Goree, J., concur.

117,153 — Erin Rubin, Petitioner/Appellee, v. Michael Ramon Ochoa, Defendant/Appellant. Appeal from the District Court of Oklahoma County, Oklahoma. Honorable Larry Shaw, Trial Judge. Defendant/Appellant Michael Ramon Ochoa (Defendant) appeals from an order granting a protective order against him in favor of Petitioner/Appellee Dr. Erin Rubin (Petitioner). Defendant argues that service was not properly obtained; that he was not provided proper notice of the hearing; and that there was insufficient evidence to sustain Petitioner's request for a protective order. In response, Petitioner argues that Defendant was properly served with the petition and a notice of the hearing; and that the district court did not abuse its discretion in granting the protective order. We agree with Petitioner, and affirm the trial court's order. Opinion by SWINTON, V.C.J., MITCHELL, P.J., and BELL, J., (sitting by designation) concur.

117,381 — Catherine Groves, Plaintiff/Appellant, v. Nathan Cody and David Lindsey, Defendant/Appellee. Appeal from the District Court of Oklahoma County, Oklahoma. Honorable Richard Ogden, Judge. This case arises from a motor vehicle accident between plaintiff/appellant, Catherine Groves, and defendant/appellee, David Lindsey. The plaintiff claimed both property and personal injury damages stemming from the accident. Prior to trial, defendant offered a judgment pursuant to 12 O.S. 2011 §940(B), which was expressly limited to plaintiff's property-damage claim. Plaintiff timely accepted the offer. After a dispute arose as to the scope of the judgment to be entered, the trial court declined to enter any judgment on the accepted offer, finding that both the offer and its acceptance were void because there was no "meeting of the minds" between the parties. Because the trial court had a statutory duty to enter judgment for the plaintiff on the accepted offer, we reverse. REVERSED AND REMAND-

ED. Opinion by Mitchell, P.J., Swinton, V.C.J., and Bell, J. (sitting by designation) concur.

117,385 — Carl P. Bright and Iball Instruments, LLC, Plaintiffs/Appellees, v. Myron Butler Mark Davis, and TOC Solutions, Inc, an Oklahoma Corporation, Defendants/Appellants. Appeal From the District Court of Pottawatomie County, Oklahoma. Honorable John G. Canavan, Jr., Trial Judge. In this action for misappropriation of trade secrets, breach of contract, and injunctive relief filed by Plaintiffs Carl Bright and iBall Instruments, LLC (collectively, Appellees), Defendant TOC Solutions, Inc. (Appellant) seeks review of an interlocutory order appointing a receiver. After review of the record, we affirm. Opinion by Swinton, V.J.C.; Mitchell, P.J., and Bell, J., (sitting by designation) concur.

117,439 — Robert Kirk Watts, Plaintiff/Appellant/Counter-Appellee, v. Viersen Oil & Gas Co., an Oklahoma Corporation, Defendant/Appellee/Counter-Appellant. Appeal from the District Court of Tulsa County, Oklahoma. Honorable Daman H. Cantrell, Judge. Plaintiff/Appellant/Counter-Appellee, Robert Kirk Watts, appeals the trial court's dismissal of his breach of contract case against his former employer, Defendant/Appellee/Counter-Appellant, Viersen Oil & Gas Co. The defendant appeals from the same order because it denied the defendant's request for an award of the costs of a previously dismissed suit pursuant to 12 O.S. Supp. 2013 §684(D). The trial court's dismissal was appropriate because, at the time of the filing of this case, there were two other pending suits between the parties regarding the same subject matter. The trial court's denial of an award of costs to the defendant, however, was error as is discussed below. AFFIRMED IN PART; VACATED IN PART and REMANDED. Opinion by Mitchell, P.J., Swinton, V.C.J., and Bell, J., (sitting by designation) concur.

(Division No. 4)

Tuesday, April 7, 2020

118,067 — Greenway Park, LLC, Plaintiff/Appellant, vs. Nautilus Insurance Company and Alexander & Strunk, Inc., Defendants/Appellees. Appeal from an order of the District Court of Cleveland County, Hon. Lori M. Walkley, Trial Judge, granting summary judgment in favor of Defendants Nautilus Insurance Company and Alexander & Strunk, Inc. (A&S), and the trial court's order denying Greenway's motion to reconsider. After review,

we conclude the trial court properly granted summary judgment in favor of Nautilus and therefore also properly denied Greenway's motion to reconsider as to Nautilus, and those decisions are affirmed. However, contested material questions of fact remain as to Greenway's claims against A&S, thus precluding summary judgment. Because the correctness of the denial of Greenway's motion to reconsider rests on the correctness of granting summary judgment, this reversal also necessitates reversing the denial of Greenway's motion to reconsider as to A&S and remanding the case for further proceedings on Greenway's claims against A&S. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.** Opinion from the Court of Civil Appeals, Division IV, by Wiseman, C.J.; Thornbrugh, P.J., and Barnes, J. (sitting by designation), concur.

Thursday, April 9, 2020

118,069 — CTC Properties, LLC, an Oklahoma limited liability company, Plaintiff/Appellant, vs. Toi Huynh and Anh Huynh, Defendants/Appellees, and In Su Bates, Plaintiff/Appellant, vs. Toi Huynh and Anh Huynh, Defendants/Appellees. Appeal from an Order of the District Court of Oklahoma County, Hon. Susan Stallings, Trial Judge, setting a default rate of interest on a deficiency judgment at a rate less than requested by Plaintiffs, to commence on a date later than requested by Plaintiffs. Title 12 O.S.2011 § 994(A) provides that an order adjudicating fewer than all the claims within a lawsuit is not appealable until the entry of judgment on all the claims. Here, the judgment entered by the trial court makes no reference to Defendants' counterclaims, nor does the order or record otherwise indicate that the counterclaims have been resolved, waived, abandoned, or eliminated by pretrial order. At 46 O.S.2011 § 43(A)(2)(d), the Act does allow a trial court to alter certain amounts fixed by a note and mortgage transaction if the court finds such amounts to be "unconscionable." Whether the trial court intended to use the latter provision to justify its changes to the terms of the note and mortgage in this case and to thereby resolve issues raised by Defendants' counterclaims is not at all clear from the order that it entered granting summary judgment, however. This Court cannot reasonably conclude that such was the trial court's intent, nor can we speculate whether attempting to resolve outstanding counterclaims in such a manner

would be legally effective. We are presented with a record that leaves pending two unresolved counterclaims and no appealable trial court order. We find that this Court lacks appellate jurisdiction, and dismiss the appeal. **APPEAL DISMISSED.** Opinion from the Court of Civil Appeals, Division IV, by Thornbrugh, P.J.; Wiseman, C.J., and Fischer, J. (sitting by designation), concur.

ORDERS DENYING REHEARING

(Division No. 2)

Thursday, April 9, 2020

117,973 — Tonkawa Hotel and Casino &/or Hudson Insurance Company, Petitioner, vs. Reanna N. Rogers and the Workers' Compensation Commission, Respondents, Hudson Insurance Company, Insurance Carrier. Petitioner's Petition for Rehearing is hereby **DENIED**.

(Division No. 3)

Thursday, April 9, 2020

117,591 — Tracy-Herald Corp., d/b/a Sunwood Apartments, Plaintiff/Appellee, vs. Sabrina D. Jones, Defendant/Appellant. Appellant's Petition for Rehearing, filed March 4, 2020, is **DENIED**.



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TIPS AND TOOLS

YOU NEED TO RUN AN EFFICIENT AND PRODUCTIVE LAW PRACTICE FROM HOME

As the COVID-19 pandemic has illustrated, the ability to operate a law practice without everyone being together in an office can be critically important. Going forward, practice mobility and efficient remote access are likely to be keys for an effective disaster avoidance strategy. In this seminar, we'll provide many recommendations for improving your ability to practice law, communicate, and take care of clients from anywhere.

IT COVERS:

- How to build an electronic filing system for client/internal files you can rely upon; paper reduction (not elimination) and not being reliant upon paper files; the hardware, software and protocols necessary for living with less paper and an electronic filing system; the various methods for remote access to electronic files
- Mobile hardware with very specific recommendations (laptop, tablet, etc.); how to determine if you need a file server; what to look for in laptop configurations (a lot has changed in the last 5 years); portable printers, scanners, multifunction options
- Mobile communications – how hosted VoIP works and options available; recommended web meeting platforms; superior webcam options; portable (yet complete) video conferencing systems; secure instant messaging; and virtual receptionist services designed for legal
- Billing & accounting remote access – programs and options
- Methods by which lawyers can become more self-reliant with drafting (to the extent support staff is presently required to finalize documents) – we cover templates, using Word's built-in automation functionality, document assembly platforms, and speech recognition options
- How to acquire a centralized, sharable client database (case management system) – this technology vertical is explained
- Get documents signed remotely – options and recommendations
- Security and protecting client data when working remotely – device encryption, WiFi encryption, home router encryption, password managers, encrypted flash drives and external hard drives, 2FA, required security policies, backup, and privacy issues
- Cloud concepts in general - we explain in plain English the differences between software-as-a-service and hosted servers (pros and cons of each); how to keep traditional server-based software but have it optionally delivered to you via the web; how to address the ethical and security issues
- Home workspace – elements for building it out