

THE OKLAHOMA BAR **Journal**

Volume 91 — No. 16 — 8/21/2020

Court Issue





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THE CRIME, THE TRIAL, THE RESPONSE

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Stephen Beam,
Melissa DeLacerda



MODERATOR:

Bob Burke,
Attorney, Author and Historian

OBA Remembers the Oklahoma City Bombing

Topics and Speakers include:

- The Crime: Jon Hersley and Larry Tongate, Retired FBI
- The Evidence: Bob Burke, Attorney, Author, Historian
- The Trial Proceedings: Brian Hermanson, District Attorney, District #8, Kay & Noble Counties, Defense attorney for Terry Nichols.
- The Trial Reflections: The Honorable Steven W. Taylor, Oklahoma Supreme Court Justice (Ret.) Presided over the Nichols' trial.
- A Unique Moment in History: Charlie Hanger, Sheriff, Noble County, Made historic traffic stop and arrest of Timothy McVeigh.
- The Response: A panel discussion featuring:
Moderators: Bob Burke and Justice Steven W. Taylor
Panel: Frank Keating, former Governor of the State of Oklahoma
David Page, survivor, Special Projects Editor, Journal Record
M. Courtney Briggs, Derrick and Briggs, Oklahoma City
Chief Gary Marrs, former Oklahoma City Fire Chief and incident commander
- The Memorial: Kari Watkins, Executive Director, Oklahoma City National Memorial & Museum

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THE OKLAHOMA BAR Journal

Volume 91 – No. 16 – Aug. 21, 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)

2020 OK 66

ORDER RE SECRETARY-BAILIFF JOB DESCRIPTION

No. SCAD-2020-74. August 13, 2020

ORDER

Pursuant to the administrative authority vested in the Chief Justice by Article 7, Section 6 of the Oklahoma Constitution; Rule 2, Paragraph D of the Rules on Administration of Courts, Title 20, Chapter 1, Appendix 2; and Title 20, Section 125, the attached job description for the position of District Court Secretary-Bailiff is hereby approved for use by the District Courts and the Administrative Office of the Courts.

DONE BY ORDER OF THE SUPREME
COURT THIS 13th DAY OF AUGUST, 2020.

/s/ Noma D. Gurich
CHIEF JUSTICE

Secretary-Bailiff – District Court

Position Description: The Secretary-Bailiff is an officer of the court whose duties include assisting and serving as an administrative assistant to one or more assigned District Court judges, performing office-management duties, assisting with court proceedings, and preparing and monitoring the judge's docket/calendar. The Secretary-Bailiff is an at-will position, generally hired by and reporting to a judge of the District Court, but may also be assigned to assist other judges or other courtrooms. Salary is governed by statute and salary schedule, and pay increases are not tied to length of service.

Responsibilities and Essential Functions. *Specific duties and procedures are determined by the supervising judge, and may vary widely between courts. The items listed here are representative. Responsibilities may include the following:*

Serves as an administrative assistant to the judge; performs office management for the judge's chambers; identifies and addresses needs and performs administrative tasks to ensure the judge's workflow runs smoothly.

Screens and refers callers and visitors; manages and monitors calendaring for the judge; maintains correspondence received and sent; prepares reports, correspondence, and court documents as directed by judge; relays complex and important instructions and messages.

Communicates with attorneys, court reporters, and clerk's office to coordinate proceedings and jury trial requirements; assists with maintenance of petit and grand jury records; assists with managing juries during trial; arranges for accommodations of sequestered jurors.

Manages courtroom for proceedings; inspects courtroom for cleanliness, orderliness and proper set up; assists with maintaining the order, decorum and dignity of the court; opens court by announcing the entrance of the judge; assists judge during proceedings; maintains confidentiality of information obtained in the courtroom, where applicable.

Performs a variety of other tasks as assigned.

Knowledge, Skill and Ability Requirements:

Strong interpersonal skills required. Ability to establish and maintain professional and effective working relationships with judges, court clerks, staff, attorneys and the general public. Ability to assist judge during proceedings and maintain order and decorum in the courtroom.

Excellent oral and written communication skills, including proper grammar, spelling, punctuation and arithmetic. Ability to compose correspondence, relay complex information, and perform office management details.

Knowledge of administrative and office procedures. Strong computer skills and ability to use standard office equipment.

Ability to make moderately complex decisions in accordance with established policies and procedures. Ability to maintain

administrative, fiscal, and general records and to prepare reports and answer questions from records.

Excellent organizational skills with an ability to work independently and schedule time to meet deadlines.

Education and Experience Requirements:

Graduation from High School or the equivalent GED certificate. Legal assistant, paralegal, or law school course work or training is beneficial.

2+ years' experience performing administrative duties in a professional environment (or equivalent combination of training and experience); Prior employment in a law office or court setting is beneficial.

Experience with Microsoft Office applications (MS Word, Outlook, Excel, etc.); Proficient with Outlook scheduling.

Experience operating various types of office equipment; Additional experience setting up and operating audio/visual equipment and videoconferencing (Skype, Teams, Bluejeans, etc.) is beneficial.

Bilingual (Spanish) language skills and ability to obtain credential as Registered or Certified Courtroom Interpreter is beneficial.

Working Conditions and Physical Demands:

Duties are performed in an office /courtroom setting, in an often fast paced and stressful work environment. Regular interaction with members of the public is required. Requirements include ability to sit, operate computer and office equipment, move about courtroom and office area; ability to see, hear, speak and communicate with individuals and groups; ability to interact with court patrons, including emotional and/or hostile situations that arise

when dealing with individuals involved in court cases; ability to comprehend and follow oral and written instructions; ability to remain calm and in control in varied court situations, including exposure to disturbing testimony or exhibits. May require standing for extended periods of time.

FLSA Classification – NON-EXEMPT: The Secretary-Bailiff is a non-exempt position. However, it is the policy of the Supreme Court that overtime is not permitted, and non-exempt personnel shall NOT work in excess of forty (40) hours in a single workweek, unless specifically authorized.

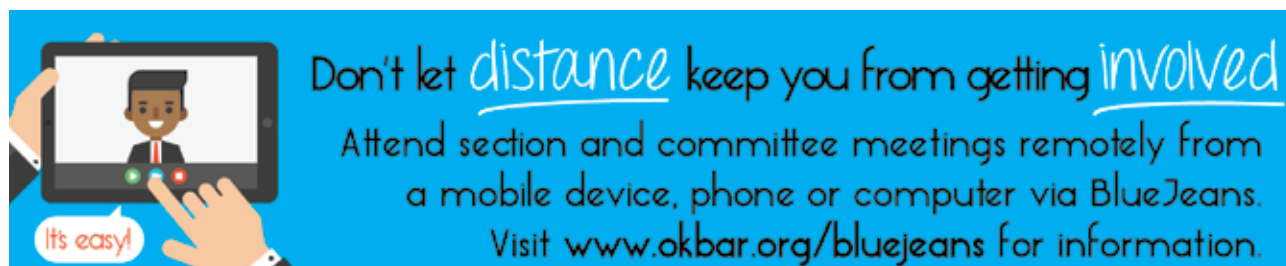
Workweek Adjustment is Preferred: The supervising judge shall adjust the employee's work schedule, during the same work week, to provide the employee time off equal to any extra hours worked, so the total does not exceed 40 hours worked.

Compensatory Time: If workweek adjustment is not possible, compensation for hours worked in excess of 40 shall be comp time in lieu of cash overtime at the rate of one and one-half hours of comp time for each hour of overtime worked.

Eligibility: Eligibility to work in the United States is required. The employer will not sponsor a work visa (H-1B, etc.) to fill this position.

Personal or professional conduct, conflict of interest, or criminal conviction that may negatively impact the employee's ability to perform his/her duties, which may create an appearance of impropriety, or which may negatively impact the mission, dignity and decorum of the Court, may be grounds for disqualification.

The District Court is an Equal Opportunity Employer.



Opinions of Court on the Judiciary

2020 OK JUD 1

COLEMAN v. COURT ON THE JUDICIARY TRIAL DIV.

Case Number: CJAD-2020-1. August 13, 2020

ORDER

¶1 On August 10, 2020, the Petitioner filed a Petition for Rehearing concerning this Court's August 7, 2020, Order granting the Application to Assume Original Jurisdiction and Petition for Writ of Prohibition and/or Mandamus and denying all relief requested. The Petition for Rehearing requests, in the alternative, findings of fact and conclusions of law pursuant to Okla.Sup.Ct.R. 1.201 and 1.202 which concern summary dispositions and summary opinions in appeals. The Appellate Division has not adopted these specific rules of the Oklahoma Supreme Court nor do these rules mandate any action of this Court. However, for purposes of granting the Petitioner an explanation as to why relief was denied, we grant the Petition for Rehearing.

¶2 The Application to Assume Original Jurisdiction; and Petition for Writ of Prohibition and/or Mandamus challenged the Trial Division's jurisdiction. The Petitioner asserted in order to invoke the Trial Division's jurisdiction two things must occur: 1) the allegations must support either removal or compulsory retirement of the judge and 2) the prayer for relief must specifically request removal or compulsory retirement of the judge. Her argument that the prayer for relief must state removal or compulsory retirement is sought is based upon a prior decision of this Court, *Mattingly v. Court on Judiciary, Trial Div.*, 2000 OK JUD 1, 8 P.3d 943. The prayer for relief in the original Petition, filed in the present case, and the one in *Mattingly* both state: "the above enumerated acts by the Respondent warrant discipline by the Court on the Judiciary as authorized by the statutes and the Constitution of the State of Oklahoma." She argues neither the prayer for relief in *Mattingly* nor the original Petition here specifically request removal or compulsory retirement and *Mattingly* held jurisdiction of the Court was not properly invoked. We find the decision in *Mattingly* is distinguishable from the facts of the present case and hold the language in *Mattingly* that suggests a prayer

for relief must include specific language was not necessary to that Court's holding nor is it required under the Oklahoma Constitution and is therefore considered judicial dictum. In so far as *Mattingly* can be interpreted to require any specific language in the prayer for relief, it is overruled.

¶3 Paragraph (a) of Section 4 of Article 7A of the Oklahoma Constitution provides the necessary requirements to invoke the jurisdiction of the Trial Division. These are:

The petition shall state the name of the respondent; **the grounds upon which his removal from office or compulsory retirement from office is sought; and such other matters as may be specified by the rules of the Trial Division.** (emphasis added).

Paragraph (b) of Section 1 of Article 7A of the Oklahoma Constitution specifies various causes for a judge's removal from office as follows:

Gross neglect of duty; corruption in office; habitual drunkenness; commission while in office of any offense involving moral turpitude; gross partiality in office; oppression in office; or other grounds as may be specified hereafter by the legislature. (emphasis added).

The "other grounds," relevant to this matter, are found in 20 O.S. 2011, §1404 (C) which states:

Violation by a judicial officer of the Code of Judicial Conduct . . . may constitute grounds for the removal

The original Petition clearly states the **constitutionally required grounds for removal**. Out of those enumerated above, it alleges Judge Coleman's various actions constituted oppression in office, gross neglect of duty and violated multiple Canons of the Code of Judicial Conduct. The Petition also states she refused to recuse herself "in certain cases" which raised questions of impartiality. Page 3 of the Petition states specifically "[v]iolation by a judicial officer of these provisions provides grounds for removal from office under Art. 7-A § 1(b) of the Oklahoma Constitution and 20 O.S. 2011, § 1404(C)." In addition, Coleman cites no

rules of the Trial Division specifically requiring a prayer to state that removal or compulsory retirement is sought. The Constitution does not specifically require the prayer to use special language.

¶4 In *Mattingly*, the Attorney General, at the request of the Council on Judicial Complaints, filed a Petition against a judge based upon alleged violations of Rule 27, Rules for the District Courts, for filing late orders. *Mattingly*, ¶¶1,3. The Court noted that under Okla. Const. art. 7A, §§1 and 4, the Court on the Judiciary's jurisdiction is limited to only cases where "removal from office or compulsory retirement" is sought." *Id.*, ¶¶12-13. It found that the prayer in the Attorney General's petition only alleged that Mattingly's actions "warrant discipline" and therefore did not seek removal. *Id.*, ¶13. However, the Court also found that the grounds alleged did not support removal from office. The Court held that "violations" of Rule 27 by Mattingly which caused no complaint until after his decision had been rendered, and then only by the losing party, were not "[c]ontinued wilful [sic] failure . . . to comply with rules and directives." *Mattingly*, ¶22. The Court concluded that to allow the Council on Judicial Complaints to "institute actions against a judge for conduct that obviously falls short of the sort of conduct that would call for removal and where removal is not sought is prohibited by the constitution." *Id.*, ¶24.

¶5 We agree with the *Mattingly* Court that the grounds alleged in a petition must support either removal from office or compulsory retirement. We disagree that the Oklahoma Constitution requires any special language in the

prayer and overrule *Mattingly* as far as it can be interpreted to require such. As long as the prayer for relief can be interpreted to include removal from office or compulsory retirement and does not clearly request relief for something other than removal from office or compulsory retirement, it will suffice. The prayer for relief in the present case, although identical to *Mattingly's* prayer, requests that discipline be imposed based upon the statutes and the Constitution of the State of Oklahoma. This would include removal from office.¹ Unlike *Mattingly*, there is no question here that the grounds alleged in the Petition support removal from office.

¶6 Petition for Rehearing is granted. All relief requested in the Application to Assume Original Jurisdiction; and Petition for Writ of Prohibition and/or Mandamus is denied.

¶7 Any petition for a rehearing in this matter shall be filed no later than noon, Monday, August 17, 2020.

DONE BY ORDER OF THE COURT ON THE JUDICIARY, APPELLATE DIVISION, IN CONFERENCE ON THIS 13th DAY OF AUGUST, 2020.

/s/ MARK R. CAMPBELL
Presiding Judge of the Court on
the Judiciary, Appellate Division

VOTE: ALL JUDGES CONCUR

1. Okla. Const. art. 7A, §1 (a): In addition to other methods and causes prescribed by the Constitution and laws, the judges of any court, exercising judicial power under the provisions of Article VII, or under any other provision, of the Constitution of Oklahoma, shall be subject to removal from office, or to compulsory retirement from office, for causes herein specified, by proceedings in the Court on the Judiciary.



2021 OBA Board of Governors Vacancies

Nominating Petition deadline: 5 p.m. Friday, Sept. 4, 2020

OFFICERS

President-Elect

Current: Michael C. Mordy,
Ardmore

(One-year term: 2021)

Mr. Mordy automatically becomes
OBA president Jan. 1, 2021

Nominee: **James R. Hicks, Tulsa**

Vice President

Current: Brandi N. Nowakowski,
Shawnee

(One-year term: 2021)

Nominee: **Charles E. Geister III,
Oklahoma City**

BOARD OF GOVERNORS

Supreme Court

Judicial District One

Current: Brian T. Hermanson,
Newkirk

Craig, Grant, Kay, Nowata,
Osage, Ottawa, Pawnee, Rogers,
Washington counties

(Three-year term: 2021-2023)

Nominee: **Vacant**

Supreme Court

Judicial District Six

Current: D. Kenyon Williams Jr.,
Tulsa

Tulsa county

(Three-year term: 2021-2023)

Nominee: **Vacant**

Supreme Court

Judicial District Seven

Current: Matthew C. Beese,
Muskogee

Adair, Cherokee, Creek, Delaware,
Mayes, Muskogee, Okmulgee,
Wagoner counties

(Three-year term: 2021-2023)

Nominee: **Vacant**

Member At Large

Current: Brian K. Morton,
Oklahoma City

Statewide

(Three-year term: 2021-2023)

Nominee: **Vacant**

SUMMARY OF

NOMINATIONS RULES

Not less than 60 days prior to the
annual meeting, 25 or more voting
members of the OBA within the
Supreme Court Judicial District
from which the member of the
Board of Governors is to be elected
that year, shall file with the execu-
tive director, a signed petition
(which may be in parts) nominating
a candidate for the office of member
of the Board of Governors for and
from such judicial district, or one or
more county bar associations within
the judicial district may file a nomi-
nating resolution nominating such a
candidate.

Not less than 60 days prior to the
annual meeting, 50 or more voting
members of the OBA from any or all
judicial districts shall file with the
executive director a signed petition
nominating a candidate to the office

of member at large on the Board of
Governors, or three or more county
bars may file appropriate resolu-
tions nominating a candidate for
this office.

Not less than 60 days before the
opening of the annual meeting,
50 or more voting members of
the association may file with the
executive director a signed petition
nominating a candidate for the
office of president-elect or vice
president, or three or more county
bar associations may file appro-
priate resolutions nominating a
candidate for the office.

If no one has filed for one of the
vacancies, nominations to any of the
above offices shall be received from
the House of Delegates on a petition
signed by not less than 30 delegates
certified to and in attendance at the
session at which the election is held.
See Article II and Article III of OBA
Bylaws for complete information
regarding offices, positions, nomi-
nations and election procedure.
Elections for contested positions will
be held at the House of Delegates
meeting Nov. 6, during the Nov. 4-6
OBA Annual Meeting. Terms of the
present OBA officers and governors
will terminate Dec. 31, 2020.

Nomination and resolution forms
can be found at [www.okbar.org/
governance/bog/vacancies](http://www.okbar.org/governance/bog/vacancies).

Oklahoma Bar Association Nominating Petitions

(See Article II and Article III of the OBA Bylaws)

OFFICERS

President-Elect

James R. Hicks, Tulsa

Nominating Petitions have been filed nominating James R. Hicks, Tulsa for President-Elect of the Oklahoma Bar Association Board of Governors for a one-year term beginning January 1, 2021. Fifty of the names thereon are set forth below:

William R. Grimm, Mike Mordy, David A. Poarch Jr., Charles D. "Buddy" Neal, Kimberly Hays, Alan Souter, Jack Brown, Brandi N. Nowakowski, James T. Stuart, Jimmy Goodman, Miles Pringle, Amber Peckio Garrett, Kaleb Hennigh, Tim E. DeClerck, Bryon J. Will, Michael J. Davis, Brian T. Hermanson, Mark Fields, Jimmy Oliver, Gary Rife, Kathy R. Neal, Mary Quinn Cooper, Ron Little, Alissa Hutter, Joseph V. Allen, Zachary W. Allen, Kim Love, Tom Hillis, Faith Orlowski, Patrick O'Conner, James

Robertson, Schaad Titus, Bradley K. Beasley, William Chad McClain, Rachel Gusman, Sean McKelvey, W.G. "Gil" Steidley Jr., David O. Blankenship, David G. Mordy, Richard Propester, Graydon D. Luthey Jr., Richard Noulles, Philip D. Hixon, Sidney Swinson, Deborah Shallcross, John Harper, Timothy Rogers, Christopher A. Barrow, David Sturdivant and Robert Sartin

A total of 175 signatures appear on the petitions.

Vice President

**Charles E. Geister III,
Oklahoma City**

Nominating Petitions have been filed nominating Charles E. Geister III, Oklahoma City for Vice President of the Oklahoma Bar Association Board of Governors for a one-year term beginning January 1, 2021. Fifty of the names thereon are set forth below:

Larry G. Ball, Barrett Bowers, Craig L. Box, Michael Brooks, Allen

Campbell, Catherine L. Campbell, Robert Campbell, Gary Chilton, Rodney L. Cook, Thomas J. Daniel, Matthew Davis, Ryan Duffy, Nikki J. Edwards, Emily Eleftherakis, Woodrow K. Glass, Joe M. Hampton, Sally A. Hasenfratz, John Heatly, Cheryl P. Hunter, Douglas L. Jackson, Jake Jones, Bryan King, Patrick Lane, Fred A. Leibrock, Candace W. Lisle, Robert McCampbell, Laura McConnell-Corbyn, Mark R. McPhail, David G. Mordy, Mike Mordy, Stephanie Moser-Goins, Corey A. Neller, Amy Pierce, Dawn M. Rahme, Bruce Robertson, Erin J. Rooney, Armando Rosell, Patrick M. Ryan, Jerome S. Sepkowitz, Michael E. Smith, Amy Stipe, Mark K. Stonecipher, Kathryn D. Terry, Joseph P. Titterington, Molly E. Tipton, Stanley M. Ward, Audrey Weaver, Dan Webber, Phillip G. Whaley and Jennifer L. Wright

A total of 181 signatures appear on the petitions.



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Opinions of Court of Civil Appeals

2020 OK CIV APP 43

KEVIN DEWAYNE WATERS, Plaintiff/
Appellant, vs. STATE OF OKLAHOMA,
Defendant/Appellee.

Case No. 118,321. July 10, 2020

APPEAL FROM THE DISTRICT COURT OF
COMANCHE COUNTY, OKLAHOMA

HONORABLE IRMA J. NEWBURN, JUDGE

VACATED and REMANDED

Kevin D. Waters, Oklahoma City, Oklahoma,
Pro se,

Jessie K. Heidlage, Assistant General Counsel,
Oklahoma State Bureau of Investigation, Okla-
homa City, Oklahoma, for Defendant/Appel-
lee.

Bay Mitchell, Presiding Judge:

¶1 After securing the reversal and dismissal of a criminal conviction, the appellant requested the expungement of records related to his arrest and overturned conviction. Both the State and the Oklahoma State Bureau of Investigation objected. It was undisputed that the appellant was eligible for expungement under the applicable statute. The trial court, however, found that the State's interest in maintaining the records outweighed any harm to the appellant. It is clear from the order appealed that the trial court analyzed the case under an improper legal framework, particularly, failing to shift the burden of proof to the State after the appellant made out a *prima facie* case for expungement, as precedent demands. Accordingly, we VACATE the order below and REMAND for the trial court's reevaluation under the proper legal standards.

BACKGROUND

¶2 In 1999, the appellant, Kevin Waters, was convicted of and received a one-year sentence for an act or acts in violation of 21 O.S. §1123(A) (3) (Lewd or Indecent Proposal to a Child under Sixteen). He appealed, and the Court of Criminal Appeals reversed with instructions to dismiss. In 2001, on remand, the trial court dismissed the charges and declared Waters "exonerated."

¶3 In 2003, Waters filed a petition to expunge the records related to his arrest and now-overturned conviction based on 22 O.S. §18(2), which has permitted a defendant to request expungement when a conviction is "reversed with instructions to dismiss by an appellate court of competent jurisdiction" since the statute was amended in 1997,¹ and continues to do so under current law. For reasons not clear from the appellate record, the trial court denied this motion. Waters appealed *pro se*, but, again for reasons unknown on this record, the Court of Civil Appeals affirmed.

¶4 In July 2019, Waters filed a second petition to expunge the records related to his reversed conviction. Both the State of Oklahoma, through the local district attorney, and the Oklahoma State Bureau of Investigation, objected to the expungement. A trial was held at which Waters was the only witness. Neither the State nor the Bureau put on any evidence.

¶5 The trial court again denied the Waters' petition. In its written order, the trial court agreed with Waters that the second petition to expunge was based on sufficient proof of change of circumstances, and that Waters had set forth a *prima facie* case for expungement, but found that "[i]n weighing the harm to [Waters] against the interest of the public to maintain the records, this Court is not satisfied that the alleged harm is 'sufficient proof' to overcome the interest to the public in maintaining the records" Waters timely appealed, and the matter was assigned to this Court to review.

STANDARD OF REVIEW

¶6 Where a record is potentially expungeable under 22 O.S. §18, the decision whether to expunge is discretionary. 22 O.S. Supp. 2016 §19 ("Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court *may* order such records, or any part thereof except basic identification information, to be sealed.") (emphasis added). Thus, a trial court's refusal to expunge a potentially expungeable record must be reviewed for an abuse of discretion. *Points v. State*, 2014 OK CIV

APP 27, ¶5, 328 P.3d 1232, 1234. If a decision is “based on an erroneous conclusion of law” or “is employed on untenable grounds,” the decision is an abuse of discretion. *Christian v. Gray*, 2003 OK 10, ¶43, 65 P.3d 591; *Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, ¶20, 987 P.2d 1185, 1194. Additionally, although this order must be reviewed for abuse of discretion, the *de novo* standard applies to the purely legal question of whether the trial court applied the correct legal standard. *Christian*, ¶43; *Scoufos v. State Farm Fire and Cas. Co.*, 2001 OK 113, ¶1, 41 P.3d 366, 367.

ANALYSIS

¶7 The trial court applied incorrect legal standards in denying Waters’ petition by (1) improperly allocating the burden of proof, (2) impermissibly minimizing the harm caused to Waters by the continued existence of the records at issue, and (3) failing to recognize the possibility that it could limit access to the records in lieu of sealing them for all purposes. These errors, each of which are discussed below, are errors of law that necessitate the order denying expungement be vacated and the matter remanded for the trial court’s reconsideration under the appropriate legal framework.

¶8 Both statutes and prior opinions of the Oklahoma Court of Civil Appeals and Oklahoma Court of Criminal Appeals² set forth a clear, step-by-step framework for evaluating a request for expungement. The first step is to determine if the petitioner is one of the persons allowed to request expungement in the first instance. 22 O.S. Supp. 2019 §18. In this case, all parties agree that Waters qualified, as he is a person whose “conviction was reversed with instructions to dismiss by an appellate court of competent jurisdiction.” *Id.*, §18(A)(2).

¶9 Next, the court must weigh “the harm to [the] privacy of the person in interest or dangers of unwarranted adverse consequences” against “the public interest in retaining the records” *Id.*, §19(C). Notably, however, once Waters demonstrated he was a person entitled to request expungement under §18, the burden to prove that the harm to the public is greater than the harm to the would-be expunger *shifts to the State*. *Points v. State*, 2014 OK CIV APP 27, ¶6, 328 P.3d 1232, 1234 (“Once a petitioner has shown that he qualifies for expungement under one of the categories in [Section] 18, the burden shifts to the State to show that keeping the records public does not harm the petitioner’s

privacy interests and would serve the ends of justice.”). *See also Buechler v. State*, 2008 OK CIV APP 1, ¶13, 175 P.3d 966, 971; *State v. McMahon*, 1998 OK CIV APP 103, 959 P.2d 607, 608; *Hoover v. State*, 2001 OK CR 16, ¶6, 29 P.3d 591.

¶10 The trial court’s order does not recognize this shift in burdens, which occurs automatically upon a *prima facie* showing under §18. Rather, the trial court engaged in a burdenless weighing of the rather significant evidence of harm set forth by Waters, against the perceived burdens on State, which the trial court could only glean from Waters’ testimony and the State’s argument, as the State put on *no testimony* of its own that would speak to any specific harm to the public in sealing these particular records.³ Failure to clearly allocate the burden of proof to the State on the dispositive issue in the case was an error of law that, in and of itself, necessitates vacating the order at issue.

¶11 In addition to this error, the trial court significantly minimized the rather significant harm to Waters in maintaining the records. In the final sentence of the court’s order, where the court ultimately denied Waters’ request for expungement, the court spoke of Waters’ “alleged” harm. However, Waters’ harm was not merely “alleged.” On the contrary, Waters was entitled to a presumption of harm based on his status as a person whose conviction has been reversed with instructions to dismiss. Similar to the ultimate burden of proof, as discussed above, it was the State’s burden to rebut this presumption of harm. *State v. McMahon*, 1998 OK CIV APP 103, 959 P.2d 607, 608 (Upon a §18 showing, “[t]he burden then shifts to the agencies opposing expungement to show that keeping such records public does not harm privacy interests and would serve the ends of justice.”). The State offered no evidence whatsoever that the keeping of the records in this case would not continue to harm Waters’ private interests. Against this lack of evidence, Waters’ offered significant evidence, including uncontroverted testimony of multiple denials of employment, that demonstrated significant and ongoing harm.

¶12 Finally, we note for purposes of remand that trial courts have great flexibility in crafting expungement orders that serve the interests of justice. “If the court finds that neither sealing of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to such records.” 22 O.S.

Supp. 2016 §19(C). This statute would allow, contrary to the State’s argument at the hearing, the trial court to enter an order sealing the records at issue to the public but to allow law enforcement agencies access to the records for law enforcement purposes, despite that the fact that 22 O.S. Supp. 2019 §18(D) requires such a limitation for certain categories of expungements that do not include the category at issue here. Thus, to the extent the trial court finds on remand that the harm to Waters’ in maintaining the records outweighs the State’s interest in maintaining the records, but believes law enforcement should be permitted continued access to the records due to unique factors presented in this case, that option is available to the trial court.

¶13 For the reasons set forth above, the trial court’s order denying Waters’ petition for expungement is VACATED and the matter is REMANDED for the entry of a new order consistent with the legal principles set forth in this opinion.

SWINTON, V.C.J., concurs, and BELL, P.J. (sitting by designation), dissents.

Bay Mitchell, Presiding Judge:

1. 1997 Okla. Sess. Law Serv. Ch. 397 (S.B. 440) (West).

2. Jurisdiction to hear appeals from orders granting or denying expungement has been vested in both the Oklahoma Court of Criminal Appeals and Oklahoma Supreme Court over the years. During those times, including the present, where such appeals have been heard by the Supreme Court, the cases have been routinely assigned to the Court of Civil Appeals. Thus, there are precedents related to expungements in all three Oklahoma appellate courts. See *In re Adoption of Supreme Court Rules for Expungement of Records*, 2005 OK 32, 120 P.3d 861.

3. Notably, in its order, the trial court cited as weighing in favor of the State’s interest in maintaining the records the fact that Waters had been arrested for other “similar” charges after his conviction in this case was reversed. However, the trial court appears to misconstrue the evidence as it appears in the record.

The trial court states in its order that Waters “testified that he had been arrested on three separate occasions for *similar incidents* near the time of this incident. It was not established whether these three arrest[s] were] based on the same set of facts for which the petitioner was tried.” *Order Denying Expungement of Records*, pg. 3 (emphasis supplied). However, nothing in Waters’ testimony indicates that the arrests were for *similar conduct*. Rather, the testimony indicates that each of the three additional arrests were “all in reference to the same situation in Oklahoma City.” *Transcript* (August 23, 2019), pg. 25 (emphasis added). Additionally, and notably in this Court’s view, Waters’ testimony on the issue, which the State did not rebut, indicated that he was never convicted on *any* charges stemming from those arrests. All such charges were eventually **dismissed with prejudice** to refile.

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Opinions of the Supreme Court of the Sac and Fox Nation

IN THE SUPREME COURT OF THE SAC AND FOX NATION
SAC AND FOX NATION RESERVATION
356159 E. 926 Rd., Stroud, Oklahoma 74079

SAC AND FOX NATION, *ex rel.*,)
BUSINESS COMMITTEE OF THE SAC)
AND FOX NATION,)
Respondent-Appellant,)
v.)
NIABI TAVI HART)
Petitioner-Appellee)

Case No. APL-19-01

ORDER AND OPINION

District Court Affirmed.

DAKIN, Justice, delivered the order and opinion of the Court, in which all Justices joined. WILLIAMS, Chief Justice, concurs (writing separately).

Now on this 26th day of May 2020, the above identified case comes for decision before this Court. Having heard the oral arguments of the parties, SAC AND FOX NATION, et rel., BUSINESS COMMITTEE OF THE SAC AND FOX NATION, Respondent-Appellant (hereinafter referred to as SAC AND FOX NATION), and NIABI TAVI HART, Petitioner-Respondent (hereinafter referred to as HART), and considered the record herein, this Court makes the following ORDER.

HART was born on April 4, 1977, and her biological parents were not enrolled as members of the SAC AND FOX NATION. Her mother abandoned her, so from the time of her birth in 1977 she resided with and was raised by her maternal grandmother, Edith Casteel Hart, who was an enrolled member of the Nation. It is not known whether HART’S biological father had any Sac and Fox blood, but since HART’S biological mother was one-quarter Sac and Fox,

HART is one-eighth Sac and Fox. Although HART’S biological mother was not enrolled, HART is a direct descendant by blood of an enrolled member through her maternal grandmother.

The original Constitution for the SAC AND FOX NATION was enacted in 1937, titled “Constitution and By-laws of the Sac and Fox Tribe of Indians of Oklahoma” (the “1937 Constitution”) and included, among other things, provisions in Article II regarding eligibility for membership. The article on membership in the 1937 Constitution was amended in 1962 and 1967. The 1967 amendment was written as follows:

Section 1(e). Persons born after date of October 16, 1954, who possess one-fourth or more Sac and Fox Indian blood, and at least one of whose parents is a member of the Sac and Fox Tribe of Oklahoma, shall be entitled to membership with the Sac and Fox Tribe of Oklahoma, provided an application is submitted in writing to the Sac and Fox Tribe of Oklahoma and provided that such person has not been enrolled with another tribe.

A whole new Constitution and By-laws for the Nation was approved on June 19, 1987, (the “Constitution”) where the membership requirements were outlined in Article I, in pertinent part, as follows:

ARTICLE I – MEMBERSHIP OF TRIBE

The membership of the Sac and Fox Nation shall consist of the following:

SECTION 3. All person [sic] now living and eligible for membership under Article II of the Constitution and By-laws of the Sac and Fox Tribe of Indians of Oklahoma as amended August 26, 1967.

. . .

- e. Persons born after date of October 16, 1954, who possess one-fourth or more Sac and Fox Tribe of Oklahoma, shall be entitled to membership with the Sac and Fox Tribe of Oklahoma, provided an application is submitted in writing to the Sac and Fox Tribe of Oklahoma and provided that such person has not been enrolled with another tribe.

Section 3(e) of Article I of the Constitution was amended in 1995 and 2002. The 2002 amendment to Section 3(e) provides as follows:

Section 3. All persons now living and eligible for membership under Article I of the Constitution of the Sac and Fox Nation, amended August 26, 1967.

- e. Persons born after date of October 16, 1954, who possess one-eighth (1/8) or more Sac and Fox Indian blood, shall be entitled to membership with the Sac and Fox Nation, provided an application is submitted in writing to the Sac and Fox Nation and provided that such person, if enrolled with another tribe, shall first file a conditional relinquishment with the other tribe.

HART applied for enrollment with the SAC AND FOX NATION and was approved for membership by Business Committee Resolution on August 27, 2003. The District Court determined that HART was eligible for membership and properly enrolled in 2003 under Section 3(e) of Article I of the Constitution since she was born after October 16, 1954, possessed 1/8 Sac and Fox Indian blood, submitted an application in writing, and was not a member of any other tribe.

This Court FINDS that at the time HART made application for membership in the SAC AND FOX NATION, she complied with the membership requirements of SAC AND FOX NATION and was approved for membership under the 1987 Constitutional provisions, as amended in 2002, of the SAC AND FOX NATION. Article 1, Section 3(e) of the SAC AND FOX NATION 1987 Constitution, as amended in 2002, did not require HART to have a parent on the roll in order to be eligible for membership.

This Court FINDS that the January 4, 2020, Constitutional amendment made by the SAC AND FOX NATION amending Article I, Section 3(e) of the Constitution to add that a person is required to have a parent on the roll in order to be eligible for membership does not contain any

provision to apply retroactively, and therefore will not be applied retroactively. If applied retroactively, this new requirement could have an ex post facto effect and deny equal protection of its laws and/or deprive any person of liberty and/or property without due process of law. Furthermore, SAC AND FOX NATION chose not to amend the Constitution on any earlier date to include the requirement to have a parent on the roll in order to eligible for membership, although having made an amendment in 1995 to change the percentage of required blood quantum required for membership and dual enrollment in another tribe.

This Court FINDS that the omission of any requirement to have a parent on the roll in order to be eligible for membership under Article 1, Section 3(e) of the Sac and Fox Nation 1987 Constitution, as amended in 2002, is not based upon a typographical error, but a substantive in nature decision by SAC AND FOX NATION.

This Court FINDS that having complied with the requirements of membership, HART is entitled to membership in the SAC AND FOX NATION.

This Court FINDS that the District Court's Order of June 14, 2019, will be **AFFIRMED**.

It is so ORDERED, ADJUDGED AND DECREED that the June 14, 2019, Order of the District Court, is **AFFIRMED**. Accordingly, HART'S membership in the SAC AND FOX NATION shall be reinstated, and all her rights and privileges as a member shall be fully restored.

/s/ Barbara A. Dakin
Barbara A. Dakin
JUSTICE

CONCUR:

CHIEF JUSTICE O. Joseph Williams
VICE-CHIEF JUSTICE Tim Posey
JUSTICE Larry Lenora
JUSTICE Joe Taylor.

WILLIAMS, Chief Justice, joins concurring:

I concur with the Court’s order and opinion, but I write separately to add some additional points.

I believe in and stand by the principle of law that the Sac and Fox Nation, like all Indian tribes and nations, has the inherent right to determine its own membership. We believe that principle was applied in this case by interpreting the membership provisions of the Constitution based on a straightforward reading of the specific language included within the four corners of the Constitution as it existed when Hart applied for membership. And, besides the clear language of the Constitution, the Court relied on other evidence of intent that supports the final decision in this case.

The Nation alleges that when the new Constitution was enacted in 1987, it was the Bureau of Indian Affairs (“BIA”) that made a scrivener’s error when transcribing the membership requirements in Section 3(e) of Article I by omitting the words “Indian blood, and at least one of whose parents is a member of the Sac and Fox.” However, even assuming *arguendo* the BIA made a “typographical” or “scrivener’s” error with the language in Section 3(e), the Nation fails to adequately explain why this error in 1987 (a very substantive error) was not corrected until January 2020. A tribe’s membership requirement in its constitution is probably the most important provision; yet, here, the Nation did not act for thirty-three years to correct and make clear in Section 3(e) that at least one parent of an applicant for membership must be an enrolled member.

Also, there is other evidence that the intent in 1987 was to intentionally omit in Section 3(e) the requirement that at least one parent of an applicant for membership be an enrolled member. First, it was the Sac and Fox people, not the BIA, that voted and approved the 1987

Constitution. The vote of the Sac and Fox people in 1987 resulted in approval of the new constitution, including the language in Section 3(e) that did not include a requirement for at least one parent being enrolled. Despite the alleged error of the BIA, there is a presumption that the voting members knew what they were voting for when they read the ballot and nevertheless voted to approve the explicit language in the proposed constitution (not to mention the 1995 and 2002 amendments to the Constitution). Second, even if the BIA made the error *prior* to the vote in 1987, the Nation could have rectified that error by holding another Secretarial election soon after the vote or engaged in some other legal maneuver to prevent the ratification of the vote results since the ballot was supposedly inaccurate. There could have been formal protests filed before the vote results were approved by the Secretary of the Interior. None of those things happened. In fact, the Nation had the opportunity in 1995 and 2002 to correct the 1987 “scrivener’s error” when amendments were being made to Section 3(e). That did not happen. The Court can only interpret this to mean the intent was to leave in place the language in Section 3(e) that did not require an applicant for membership to have at least one parent as an enrolled member.

Finally, the Sac and Fox Nation Enrollment Packet requires applicants to complete, among other things, a document titled, “Sac and Fox Nation Membership Criteria,” where the applicant must check the box identifying the membership section of the Constitution that applies to the applicant. Notably, at the time Hart applied for membership, Section 3(e) of the membership criteria document mirrored the language of Section 3(e) of the Constitution, which does not require an applicant to have at least one parent on the membership roll. Even if the Constitution contained a “scrivener’s error”, there is a serious question why the Nation’s own internal

enrollment packet document would include this same error without a correction. That did not happen. So this is just another example of intent supporting this Court's decision.

On January 4, 2020, the Sac and Fox people voted to approve an amendment in Section 3(e) requiring an applicant for membership to have at least one parent as an enrolled member. However, at the time Hart applied for membership, the Constitution did not require that. So, I must concur with the Court's order and opinion affirming the District Court's decision.

/s/ O. Joseph Williams

O. JOSEPH WILLIAMS
Chief Justice

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IN THE SUPREME COURT OF THE SAC AND FOX NATION

JOHN NELSON,

Appellant,

No.: APL-18-001

vs.

PRINCIPAL CHIEF OF THE SAC AND
FOX NATION, KAY RHOADS,

ORDER

Appellee.

District Court Affirmed.

WILLIAMS, Chief Justice, delivered the ruling of the Court, in which all Justices joined.

In this case, we are asked to decide the issue of whether the doctrine of tribal sovereign immunity applies to bar Plaintiff/ Appellant John Nelson from pursuing his civil lawsuit seeking injunctive relief in the Sac and Fox Nation (the “Nation”) District Court against Defendant/ Appellee then-Principal Chief Kay Rhoads. The District Court granted Appellee’s motion to dismiss the case based on tribal sovereign immunity. Appellant seeks a reversal of that ruling, arguing that Appellee was not acting within the scope of her authority as Principal Chief when she allegedly took action that is the subject of Appellant’s lawsuit. Finding no legal error by the District Court, we AFFIRM the ruling of the District Court dismissing the case.

¹ Kay Rhoads was the Principal Chief at the time Nelson filed his lawsuit, but she is no longer the Principal Chief; however, for convenience, she will be referred to in this Order as “Appellee” or “Chief Rhoads.”

I.

Nelson was a member of the Sauk Business Enterprise Board of Directors (“SBEB”). He received a letter, dated January 19, 2018, from Chief Rhoads advising that the Business Committee had been made aware that the Nation’s Gaming Commission had revoked his gaming license, and, as a result, he was no longer eligible to serve on the SBEB. Chief Rhoads’ letter cites to Section 204 of the Sac and Fox Nation Business Enterprise Act of 2010 describing one of the board director qualifications as being “duly licensed by the Sac and Fox Nation Gaming Commission.” The letter concludes by advising Nelson that “[a]s a result of your gaming licenses being revoked, you are no longer eligible to hold a position with the SBEB and may no longer conduct business as a member or representative of the SBEB.”

On July 12, 2018, Nelson (acting *pro se*) filed in the Sac and Fox Nation District Court the “Petitioners Motion for a Preliminary Injunction” seeking “a preliminary injunction compelling the Principal Chief of the Sac and [sic] Nation to comply with the Sac and Fox Nations Enterprise Act of 2003 in the replacement of Sac and Fox Nation Business Enterprise Board members.” Appellant filed the motion to initiate the case in the District Court but did not file a Complaint in accordance with Sac and Fox Nation Code of Laws, Title 6, Sec. 107(a); however, the District Court allowed the motion to essentially be the “pleading” to initiate the action².

Nelson named as the sole defendant former Principal Chief Rhoads. In his motion, Nelson claims that Chief Rhoads replaced members of the SBEB in violation of the Sac and Fox Nation Business Enterprise Act of 2003, so he seeks an injunction to compel her to comply with that law. He did not make any other affirmative request for relief in his lawsuit.

² We do not find error in this since Nelson was acting *pro se* and since Chief Rhoads, in response, treated the allegations in Nelson’s motion as if they were set forth in a normal Complaint. See *Motion of the Defendant, Kay Rhoads, to Dismiss for Lack of Subject Matter Jurisdiction and Brief in Support*, at fn. 1. Nevertheless, this does not mean parties are generally free to avoid compliance with the rules of civil procedure outlined in the Nation’s Code of Laws.

Chief Rhoads moved to dismiss the action for lack of subject matter jurisdiction in the District Court on the basis that the Nation, its subdivisions, and its officers acting in their official capacities are immune from unconsented lawsuits, and that there was no waiver of that immunity for this case to proceed.

A hearing was held before the District Court on November 21, 2018, and, on November 26, 2018, the District Court issued an Order granting the motion to dismiss on the basis that Chief Rhoads, acting in her official capacity, was immune from suit, and that no valid waiver of tribal sovereign immunity exists for Nelson's claim to proceed to the merits.

This appeal followed.

II.

Indian tribes are "domestic dependent nations that exercise inherent sovereign authority." *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 788 (2014). Tribes enjoy the same immunity from suit enjoyed by sovereign powers and are "subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). "To abrogate tribal immunity, Congress must 'unequivocally' express that purpose," and "to relinquish its immunity, a tribe's waiver must be 'clear.'" *C&L Enters., Inc. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 418, 149 L. Ed. 2d 623, 121 S. Ct. 1589 (2001) (citations omitted). Further, tribal sovereign immunity extends to tribal corporate and economic entities created by the tribal government to further governmental objectives. *See Kiowa Tribe*, 523 U.S. at 757-58; *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 134 L.Ed.2d 252, 116 S.Ct. 1114 (1996). Tribal sovereign immunity from suit applies to Tribal officers and employees acting in their official capacities and within the scope of their authority. *Fletcher v. United States*, 116 F.3d 1315, 1324 (10th Cir. 1997) (citing *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148 (1982)).

In its Order, the District Court determined there was no waiver of tribal sovereign immunity for the lawsuit to proceed. We agree. When an action is brought against the Nation, a tribal entity, or a Nation official or employee, the initial question is whether subject matter jurisdiction exists for the Nation's courts to adjudicate the dispute. Nelson has not cited to any valid waiver of sovereign immunity that would authorize the Tribal Courts to adjudicate his lawsuit seeking injunctive relief against Chief Rhoads.

In his appellate brief, Nelson argues that sovereign immunity is not applicable here since Chief Rhoads was not acting within the scope of her authority. He references Chief Rhoads' letter of January 19, 2018, arguing that she acted without formal Business Committee action to unlawfully remove him from the SBEB. But we find that Chief Rhoads' letter to Nelson was a notification to Nelson, not an "act" or "action."

Chief Rhoads' letter to Nelson refers to the actions of the Nation's Gaming Commission revoking his gaming license after a hearing before that Commission on November 14, 2017. Nelson does not dispute that his gaming license has been revoked, and Nelson does not allege that Chief Rhoads had any part of the decision to revoke his gaming license. Further, the letter to Nelson was on official letterhead for the Nation, is signed by Chief Rhoads under her official title, and contains language in the first paragraph that the letter is on behalf of the Business Committee. This is consistent with Section 1(a) of Article III of the Nation's Constitution designating the Principal Chief with authority to, among other things, supervise the affairs of the Business Committee. Thus, we find nothing in the letter or in the appellate record to suggest that Chief Rhoads was not acting in her official capacity as Principal Chief notifying Nelson that the loss of his gaming license meant he could not serve on the SBEB.

In his lawsuit, Nelson named as the sole defendant Chief Rhoads in her official capacity as Principal Chief, and the Summons was issued to her as the Principal Chief. And nothing in the record supports Nelson's allegation that Chief Rhoads took any action, with or without the Business Committee, that would be

reviewable by the Tribal Courts.³ Thus, without an explicit waiver of tribal sovereign immunity, the Tribal Courts are without subject matter jurisdiction to adjudicate the merits of Nelson’s lawsuit.

III.

Based on the foregoing, we AFFIRM the Order of the District Court dismissing this action for lack of subject matter jurisdiction.

Dated this 12th day of May 2020.

/s/ O. Joseph Williams

O. JOSEPH WILLIAMS
Chief Justice

ALL JUSTICES CONCUR.

³ Moreover, since we do not find that Chief Rhoads, as a Tribal officer, committed an “action” we do not decide at this time whether Section 6 of Article V of the Nation’s Constitution grants the Nation’s Tribal Courts with subject matter jurisdiction to review the merits of Nelson’s claim.

Disposition of Cases Other Than by Published Opinion

COURT OF CRIMINAL APPEALS Thursday, July 30, 2020

F-2019-395 — On November 20, 2014, Appellant Lionel Anthony Berryman entered guilty pleas in Carter County District Court Case No. CF-2013-645. Appellant was sentenced to drug court. On June 14, 2017, the State filed a motion to remove Appellant from the drug court program. Appellant stipulated to the allegations contained in the applications. Following a hearing held December 14, 2017, the Honorable Thomas K. Baldwin, Associate District Judge, terminated Appellant from the drug court program and sentenced him pursuant to the terms of the plea agreement. The district court's order is **AFFIRMED**. Opinion by: Rowland, J.; Lewis, P.J., concurs; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs.

F-2018-1130 — Curtis Lamont Lowe, Appellant, was tried by jury for two counts of sexual battery (Counts 3 and 4) in Case No. CF-2016-7091 in the District Court of Oklahoma County. The jury returned a verdict of guilty and recommended as punishment six months imprisonment on each count. The trial court sentenced accordingly and ordered the sentences served consecutively, with credit for time served, and various fees and costs. From this judgment and sentence Curtis Lamont Lowe has perfected his appeal. The Judgment and Sentence is **AFFIRMED**. Opinion by: Lewis, P.J.; Kuehn, V.P.J., concurs; Lumpkin, J., concurs in results; Hudson, J., concurs in results; Rowland, J., concurs.

S-2019-684 — Jonathan Sie Wilson, Appellant, was charged with Count 1, unlawful possession of a firearm after former felony conviction, and Count 2, obstructing an officer, a misdemeanor in Case No. CF-2019-2623 in the District Court of Tulsa County. The trial court sustained Appellee's motion to quash Count 1 for insufficient evidence after preliminary hearing. The State has perfected its appeal. The order and judgment of the District Court of Tulsa County is **REVERSED**. Opinion by: Lewis, P.J.; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs; Rowland, J., concurs.

RE-2019-19 — On December 15, 2009, Appellant Daniel Lee Hart entered a guilty plea to a charge of endeavoring to manufacture a controlled dangerous substance after former conviction of felonies in Ottawa County District Court Case No. CF-2009-80. Appellant was sentenced to twenty (20) years imprisonment with twelve (12) years suspended. On August 21, 2017, the State filed a motion to revoke the suspended sentence. Appellant stipulated to the allegations contained in the motion and on September 19, 2018, his suspended sentence was revoked in full. The revocation of Appellant's suspended sentence is **REVERSED** and **REMANDED** to the district court for a proper hearing. Opinion by: Rowland, J.; Lewis, P.J., concurs; Kuehn, V.P.J., concurs in results; Lumpkin, J., dissents; Hudson, J., concurs.

J-2020-87 — C.L.P., Appellant, was adjudicated a delinquent child following a jury trial in the District Court of Greer County, Case No. JDL-2018-7. Appellant appeals from the order adjudicating him as a delinquent child. The order of the District Court of Greer County adjudicating Appellant as a Delinquent Child in Case No. JDL-2018-7 is **AFFIRMED**, **AS MODIFIED**, and the matter is **REMANDED** to the District Court for further proceedings consistent with this Opinion. Opinion by: Rowland, J.; Lewis, P.J., concurs; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs.

F-2018-222 — O'Neal Smith, III, Appellant, was tried by jury in Case No. CF-2016-7144, in the District Court of Oklahoma County, for the crimes of Count 1: Robbery with a Dangerous Weapon, After Former Conviction of Two or More Felonies; and Count 2: Assault and Battery with a Dangerous Weapon, After Former Conviction of Two or More Felonies. The jury returned a verdict of guilty and recommended as punishment forty years imprisonment on each count. The Honorable Timothy R. Henderson, District Judge, sentenced accordingly ordering both sentences to run consecutively, imposed various costs and fees and gave credit for time served. Appellant was further ordered to serve a term of post-imprisonment supervision upon his release. From this judgment and sentence O'Neal Smith, III has

perfected his appeal. The Judgment and Sentence of the District Court is AFFIRMED. Appellant's motion to supplement the record or for an evidentiary hearing is DENIED. Opinion by: Hudson, J.; Lewis, P.J., Specially Concur; Kuehn, V.P.J., Concur; Lumpkin, J., Concur; Rowland, J., Concur.

PCD-2015-419 — Petitioner Donnie Lee Harris was convicted by a jury of the crime of Felony Murder in the First Degree in LeFlore County District Court Case No. CF-2012-113. At formal sentencing held February 12, 2014, a sentence of death was imposed. He timely lodged a direct appeal which this court denied September 26, 2019. Petitioner subsequently filed an Application for Post-Conviction Relief. Petitioner's Application for Post-Conviction Relief DENIED; Petitioner's motion for discovery and evidentiary hearing DENIED. Opinion by: Kuehn, V.P.J.: Lewis, P.J.: concur; Lumpkin, J.: concur; Hudson, J.: concur; Rowland, J.: concur.

Thursday, August 6, 2020

F-2019-407 — On July 31, 2012 Appellant Billy Jack Hager entered a guilty plea to charges of Possession of Controlled Dangerous Substance (Marijuana) with Intent to Distribute and Knowingly Concealing Stolen Property in Woodward County Case No. CF-2012-142. On April 17, 2015, Hager's sentencing was deferred pending his completion of the Woodward County Drug Court Program. On March 18, 2019, the State filed an amended application to terminate Hager from Drug Court, alleging he had absconded from the program and neither initiated contact with nor participated in Drug Court since April 19, 2016. On May 22, 2019, at the conclusion of the termination hearing, the District Court of Dewey County, the Honorable Celo J. Harrel, Associate District Judge, terminated Hager's drug court participation and sentenced him as specified in his Drug Court agreement. The termination of Hager's drug court participation is AFFIRMED. Opinion by: Lewis, P.J.; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs; Rowland, J., concurs.

F-2018-1125 — Alphonso Phillip Proa-Rios, Appellant, was tried by jury in Case No. CF-2017-416, in the District Court of Custer County, of Count 1: Assault and Battery with a Deadly Weapon, After Former Conviction of Two or More Felonies; Count 2: Possession of a Firearm After Conviction or During Probation, After Former Conviction of Two or More Felonies;

Count 3: Possession of a Controlled Dangerous Substance, a misdemeanor; and Count 4: Unlawful Possession of Drug Paraphernalia, a misdemeanor. The jury returned a verdict of guilty and recommended as punishment life imprisonment each on Counts 1 and 2; and one year imprisonment in the county jail each on Counts 3 and 4. The Honorable F. Douglas Haight, District Judge, sentenced accordingly ordering sentences to be served concurrently. From this judgment and sentence Alphonso Phillip Proa-Rios has perfected his appeal. AFFIRMED. Opinion by: Hudson, J.; Lewis, P.J., Concur; Kuehn, V.P.J., Concur in Results; Lumpkin, J., Concur; Rowland, J., Concur.

F-2018-1138 — Gary Dewayne Boggs, Appellant, was tried by jury for the crime of Second Degree Murder in Case No. CF-2016-4740 in the District Court of Tulsa County. The jury returned a verdict of guilty and recommended as punishment Life in prison. The trial court sentenced accordingly. From this judgment and sentence Gary Dewayne Boggs has perfected his appeal. The Judgment and Sentence is AFFIRMED. Opinion by: Lumpkin, J.; Lewis, P.J., concurs in result; Kuehn, V.P.J., concurs in part/dissent in part; Hudson, J., concurs; Rowland, J., concurs.

F-2019-245 — Daniel Floyd James, Appellant, was tried by jury for the crime of Sexual Battery in Case No. CF-2016-289 in the District Court of Murray County. The jury returned a verdict of guilty and recommended as punishment Two years imprisonment. The trial court sentenced accordingly. From this judgment and sentence Daniel Floyd James has perfected his appeal. The Judgment and Sentence are AFFIRMED. Opinion by: Lumpkin, J.; Lewis, P.J., Concur; Kuehn, V.P.J., Concur; Hudson, J., Concur; Rowland, J., Concur.

F-2019-442 — Appellant Adam Chase Stephenson was tried by jury for the crime of First Degree Rape by Instrumentation and Lewd Acts with a Child under Sixteen in Oklahoma County District Court Case No. CF-2017-6196. In accordance with the jury's recommendation the trial court sentenced Appellant to life imprisonment on both counts and ordered the sentences to be served consecutively. From this judgment and sentence Adam Chase Stephenson has perfected his appeal. AFFIRMED. Opinion by: Kuehn, V.P.J.: Lewis, P.J.: concur; Lumpkin, J.: concur; Hudson, J.:concur; Rowland, J.: concur.

RE-2019-561 — Appellant Willie James McCullough entered a guilty plea in Oklahoma County District Court Case No. CF-2016-3167 to two criminal counts. Sentencing was deferred. The State filed an application to accelerate Appellant's deferred sentence, based on new crimes charged in Case No. 2016-4428. Appellant pled guilty to the State's application to accelerate his deferred sentence in Case No. CF-2016-3167. He was sentenced to 10 years, all suspended with rules and conditions of probation, except for the first year to serve in the County Jail on Count 1 and one year in the County Jail on Count 2. Appellant also pled guilty on December 20, 2016 in Case No. CF-2016-4428. Appellant was sentenced to 20 years, all suspended, with rules and conditions of probation, except for the first year to serve in the county Jail on Count 1 and one year in the County Jail on Count 2. The sentences were all ordered to run concurrently, with credit for 211 days served. The State filed an application to revoke Appellant's suspended sentence in each case, alleging new crimes in Case No. CF-2018-5804. After a revocation hearing, Appellant's suspended sentences were revoked in full, nine years to serve for each case. The sentences were ordered to run concurrently with credit for time served. Appellant appeals the revocation of his suspended sentences. **AFFIRMED.** Opinion by: Kuehn, V.P.J.; Lewis, P.J.: concur; Lumpkin, J.: concur; Hudson, J.: concur; Rowland, J.: concur.

Thursday, August 13, 2020

F-2018-1054 — Appellant Robert Harold Harper, Jr., was tried by jury for the crimes of Counts 1-3 – Assault and Battery on a Police Officer, After Conviction of Two or More Felonies, Count 4 – Resisting an Officer and Count 5 – Obstructing an Officer in Beckham County District Court Case No. CF-2017-344. In accordance with the jury's recommendation the trial court sentenced Appellant to 15 years each on Counts 1, 2 and 3 and one year in the county jail on Counts 4 and 5. From this judgment and sentence Robert Harold Harper, Jr., has perfected his appeal. **AFFIRMED.** Opinion by: Kuehn, V.P.J.; Lewis, P.J.: concur; Lumpkin, J.: concur; Hudson, J.: concur; Rowland, J.: concur.

F-2018-1295 — Michael Lee Munday, II, Appellant, was tried by jury for the crimes of Count 1, murder in the first degree, and Count 2, shooting with intent to kill, in Case No. CF-2017-82 in the District Court of Rogers County. The jury returned a verdict of guilty

and set punishment at life imprisonment in Count 1 and fifteen years imprisonment in Count 2. The trial court sentenced accordingly and ordered the sentences served concurrently. From this judgment and sentence Michael Lee Munday, II has perfected his appeal. The judgment and sentence is **AFFIRMED.** The application for evidentiary hearing is **DENIED.** Opinion by: Lewis, P.J.; Kuehn, V.P.J., concurs in results; Lumpkin, J., concurs in results; Hudson, J., concurs; Rowland, J., concurs.

RE-2019-522 — On September 23, 2015, Appellant Leslie Ford entered a guilty plea to a charge of stalking in Garfield County District Court Case No. CF-2014-193. Appellant was sentenced to five (5) years imprisonment, all suspended. On February 4, 2016, Appellant entered a guilty plea to a charge of stalking in Garfield County District Court Case No. CF-2015-537. Appellant was sentenced to five (5) years imprisonment, all suspended. On April 4, 2019, the State filed a motion to revoke the suspended sentences. Following a hearing held May 20, 2019, Appellant's suspended sentences were revoked. The revocation of Appellant's suspended sentences is **AFFIRMED.** Opinion by: Lewis, P.J.; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs; Rowland, J., concurs.

F-2019-266 — Javarus Marter Ward, Appellant, was tried by jury for the crime of Assault with a Dangerous Weapon, After Former Conviction of Two Felonies in Case No. CF-2017-5370 in the District Court of Tulsa County. The jury returned a verdict of guilty and set as punishment twenty-two years imprisonment. The trial court sentenced accordingly. From this judgment and sentence Javarus Marter Ward has perfected his appeal. **AFFIRMED.** Opinion by: Rowland, J.; Lewis, P.J., concurs in results; Kuehn, V.P.J., concurs; Lumpkin, J., concurs; Hudson, J., concurs.

COURT OF CIVIL APPEALS
(Division No. 1)
Tuesday, July 28, 2020

117,378 — Greg A. Burns, Plaintiff/Appellee/Counter-Appellant, vs. Sonic Automotive, Inc.; Sonic-Riverside, Inc., db/a Riverside Chevrolet; and SAI Riverside C., LLC, Defendants/Appellants/Counter-Appellees. Appeal from the District Court of Tulsa County, Oklahoma. Honorable Caroline Wall, Trial Judge. This is an appeal and counter-appeal arising out of the trial court's journal entry of judgment award-

ing Greg Burns, Plaintiff/Appellee/Counter-Appellant damages on his breach of contract claim and denying liquidated damages for a violation of the Protection of Labor Act, 40 O.S. §165.1 *et seq.* Sonic Automotive, Inc., Sonic-Riverside, Inc., d/b/a Riverside Chevrolet, and SAI Riverside C, LLC, Defendants/Appellants/Counter-Appellees, appeal citing four propositions of error. Burns counter-appeals arguing the trial court erred in denying liquidated damages. Opinion by Goree, J.; Bell, P.J., and Swinton, V.C.J. (sitting by designation), concur.

118,222 — In the Matter of C.C., Alleged Deprived Child: Jaisa Jackson, Appellant, vs. State of Oklahoma, Appellee. Appeal from the District Court of Garfield County, Oklahoma. Honorable Tom Newby, Trial Judge. Jaisa Jackson appeals an order terminating her parental rights to C.C. after a jury trial. Considering only Jackson's brief we nevertheless affirm because the order is supported by clear and convincing evidence and she was not deprived of due process of law or equal protection under the law. **AFFIRMED.** Opinion by Goree, J.; Bell, P.J., and Buettner, J., concur.

Thursday, August 13, 2020

118,325 — William D. French, Petitioner/Appellant, V. City of Tulsa, Own Risk #10435, and The Workers' Compensation Commission, Respondent/Appellee. Petitioner/Appellant, William D. French, seeks review of an order of the Workers' Compensation Commission awarding him Permanent Partial Disability (PPD) benefits. Petitioner asserts the Commission erred in (1) rating his PPD pursuant to the wrong American Medical Association (AMA) Guidelines and (2) determining his employer, Respondent/Appellee City of Tulsa, was entitled to reimbursement of wages paid to Petitioner during the period of his temporary total disability (TTD) that were in excess of the statutory TTD limit. In 2016, Petitioner suffered a work-related injury while employed by the Tulsa Fire Department and received, pursuant to 11 O.S. Supp. 2012 §49-111, full wages while he was off work. Petitioner thereafter sought PPD benefits. The ALJ ruled the appropriate guideline for determining Petitioner's PPD was the AMA Guides 6th Edition, rather than the 5th Edition as urged by Petitioner. Pursuant to 85A O.S. Supp. 2013 §89, the ALJ also awarded City a credit against the PPD award in the amount of salary paid to Petitioner during the TTD period that exceeded the

statutory maximum TTD rate. The Commission affirmed. *Hill v. American Med. Response*, 2018 OK 57, 423 P.3d 1119, held the "current edition" of the AMA Guides are the 6th Edition. With respect to §89, we hold the statute applies to this case; there is no conflict between §89 and §49-111; and Petitioner's collective bargaining agreement was not considered by the Commission, nor does it conflict with §89. **SUSTAINED.** Opinion by Bell, P.J.; Buettner, J., and Goree, J., concur.

(Division No. 2)

Tuesday, July 28, 2020

117,409 — In re: the marriage of Avis Dale, Petitioner/Appellant, vs. Tommy Dale, Respondent/Appellee. Appeal from Order of the District Court of Creek County, Hon. Lawrence W. Parish, Trial Judge. Appellant Avis Dale appeals the Decree of Dissolution of Marriage Reserving Property Division and the district court's subsequent order resolving remaining issues. We find no abuse of discretion in the district court's disposition of marital and separate property in this divorce case, except for 7.5 acres which was held by the parties in joint tenancy and should be considered marital property. That portion of the district court's order is reversed and remanded for proceedings to determine the value of Avis's interest in the property. All other aspects of the district court's order are affirmed. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.** Opinion from Court of Civil Appeals, Division II, by Fischer, J.; Barnes, P.J., and Rapp, J., concur.

118,311 — Airport Express, Inc., Petitioner/Appellee, vs. Oklahoma Tax Commission, Respondent/Appellant. Appeal from the District Court of Oklahoma County, Oklahoma, Honorable Richard Ogden, Trial Judge. The Oklahoma Tax Commission (OTC) appeals the summary judgment of the district court holding that Airport Express, Inc., is not required to collect and remit sales taxes on taxable airport transportation services, and by implication, that individual driver is required to collect and remit sales tax. On review, we vacate the summary judgment and remand this matter for further consideration because the question of when a person directly "performing" a taxable service is required to withhold and remit sales tax appears largely dependent on whether the person performing the taxable service is truly an independent contractor, or is simply facilitating the business of another. This question

was not considered as part of the summary judgment inquiry, and we have no further information as to how the trial court reached its decision. REVERSED AND REMANDED WITH INSTRUCTIONS. Opinion from the Court of Civil Appeals, Division IV, by Thornbrugh, P.J.; Hixon, J., concurs, and Wiseman, C.J., dissents.

Thursday, August 6, 2020

117,805 — Dennis Anglen, Plaintiff/Appellant, vs. Stanley Dow Anglen, Defendant/Appellee. Appeal from Order of the District Court of LeFlore County, Hon. Jonathan Sullivan, Trial Judge. Appellant Dennis Anglen appeals the district court's order determining that the Dow G. Anglen and Charlene Anglen Trust was revocable by the surviving trustee. We find that the Dow G. Anglen and Charlene Anglen Revocable Trust was appropriately modified by Charlene Anglen in her capacity as trustee and pursuant to her authority under Article III of the trust. As such, the order of the district court is affirmed. AFFIRMED. Opinion from Court of Civil Appeals, Division II, by Fischer, J.; Barnes, P.J., and Rapp, J., concur.

Monday, August 10, 2020

117,510 — Melina Whitenack, Petitioner/Appellant, vs. Clint Whitenack, Respondent/Appellee. Appeal from an Order of the District Court of Mayes County, Hon. Terrell S. Crosson, Trial Judge. Melina Whitenack (Mother) and Clint Whitenack (Father) married in 2011 and divorced in 2017. Mother now appeals from that portion of the trial court's Journal Entry of Judgment granting Father's request to modify the legal custody arrangement set forth in the Decree of Dissolution of Marriage by terminating sole legal custody and awarding joint legal custody. Based on our review, we conclude the trial court abused its discretion. Although the record supports Father's assertion that the sole legal custody arrangement is working well and that, under that arrangement, both parties are, for the most part, acting in a mature and communicative manner relative to their behavior while married and living with one other, Father has failed to demonstrate the existence of a material change in circumstances adversely affecting the children and he has also failed to demonstrate that the temporal, moral and mental welfare of the children would be better off if custody is changed. Therefore, we vacate the portion of the Judgment appealed by Mother. VACATED IN PART.

Opinion from Court of Civil Appeals, Division II, by Barnes, P.J.; Rapp, J., and Fischer, J., concur.

Tuesday, August 11, 2020

117,353 — Donald Johnson, Deceased. DeWayne Johnson, Personal Representative of the Estate of Donald Johnson, Plaintiff/Appellee, vs. Thomas DeShun Walton, Individually and as Trustee of the T' DeShun Walton Living Trust, Defendant/Appellant. Appeal from an Order of the District Court of Oklahoma County, Hon. Lisa T. Davis, Trial Judge. The defendants, Thomas DeShun Walton (Walton), individually, and as trustee of the T' DeShun Walton Living Trust (Trust) appeal a judgment entered in a nonjury trial in favor of the substituted plaintiff, DeWayne Johnson (Personal Representative) of the Estate of Donald Johnson (Johnson), deceased. This is an equitable action to rescind two quitclaim deeds executed by Johnson during his lifetime. The grantee, Trust, along with Walton claim that Walton assisted Johnson in a time of need, but on condition that he be repaid for money expended in Johnson's behalf. Walton's actions show that he treated the quitclaim deeds as security for a loan and that when the loan was paid the property was to be re-conveyed. However, due to a summary judgment final ruling, no money is owed by Johnson to Walton, but Walton and Trust did not re-convey the property and, instead Trust mortgaged it and retained the proceeds for Walton's account. The trial court awarded a money judgment in the amount of the balance of his mortgage. Additional actions by Walton support the trial court's decision to rescind the deeds. The judgment of the trial court is not against the clear weight of the evidence nor is it contrary to law. Therefore, the judgment, including the post-judgment judgment for attorney fees and costs, is affirmed. AFFIRMED. Opinion from Court of Civil Appeals, Division II, by Rapp, J.; Barnes, P.J., and Fischer, J., concur.

Monday, August 17, 2020

115,445 — David Shawn Fritz, Plaintiff/Appellant, vs. The Estate of Billy Pat Eberhart (substituted for Billy Pat Eberhart) and the Estates of Dallas Taliaferro, Jr., and Alma Maxine Taliaferro, Defendants/Appellees. Appeal from Order of the District Court of Love County, Hon. Wallace Coppedge, Trial Judge. David Fritz appeals the district court's judgment quieting title to certain real property in the Estate of Billy Pat Eberhart, as well as the court's judgment in favor of Eberhart on Fritz's claim

for unpaid rent and ejectment. Fritz also appeals the order granting Eberhart's motion for attorney fees. The Estates of Dallas Taliaferro, Jr., and Alma Maxine Taliaferro were also joined in this litigation and Fritz appeals the judgment in their favor on his claim for breach of warranty of title. After examination of the evidence in the appellate record, we find that the weight of the evidence clearly supports the district court's judgment quieting title to the disputed property in Eberhart by virtue of adverse possession, and the judgment in favor of the Taliaferro estates. Likewise, we find that the weight of the evidence supports the district court's judgment in favor of Eberhart with respect to Fritz's claim for unpaid rent pursuant to the lease agreement. The order granting Eberhart's motion for costs is affirmed. However, the attorney fee award is vacated and that matter is remanded to the district court for further proceedings consistent with this Opinion. **AFFIRMED IN PART, REVERSED IN PART, VACATED IN PART AND REMANDED FOR FURTHER PROCEEDINGS.** Opinion from the Court of Civil Appeals, Division II by FISCHER, J.; THORNBRUGH, C.J., concurs, and WISEMAN, P.J., concurs in part and dissents in part.

(Division No. 3)

Tuesday, August 4, 2020

117,259 — Richard J. Colvin, Petitioner/Appellant, vs. Robert Bosch LLC, Travelers Indemnity Co. of America, and The Workers' Compensation Court of Existing Claims, Respondents/Appellees. Proceeding to Review an Order of a Three-Judge Panel of The Workers' Compensation Court of Existing Claims. Petitioner/Appellant Richard J. Colvin seeks review of the three judge panel's order that vacated a trial judge's order denying the motion to dismiss by Respondent Robert Bosch LLC "for want of prosecution pursuant to 85 O.S. § 43(B)." We vacate the three judge panel's order because it is too indefinite for our review, and remand it to the three judge panel with directions to make specific findings. **VACATED AND REMANDED.** Opinion by Swinton, J.; Mitchell, P.J., and Bell, J., concur.

Wednesday, August 12, 2020

117,971 — In Re The Marriage Of: Jill Marie Valgora, Petitioner/Appellee, V. Charles Raymond Valgora, Respondent/Appellant. Appeal from the District Court of Kay County, Oklahoma. Honorable Jennifer Brock, Trial Judge.

In the post-divorce domestic proceedings below, the appellant/father moved to enforce his visitation rights against the appellee/mother as to the parties' two minor children. The father lost, and the mother moved for prevailing-party attorney fees pursuant to 43 O.S. Supp. 2014 §111.3(E). The trial court granted the mother's request for fees, and the father appeals. Finding no error with the trial court's order, we **AFFIRM.** Opinion by Mitchell, P.J.; Swinton, V.C.J., and Goree, J. (sitting by designation), concur.

(Division No. 4)

Tuesday, August 4, 2020

118,197 — Joel Rabin, Petitioner/Appellant, vs. The Oklahoma Housing Finance Agency, an Agency of the State of Oklahoma, Respondent/Appellee, and Arcadian Housing, Intervenor/Appellee. Appeal from an order of the District Court of Washington County, Hon. Russell Vaclaw, Trial Judge, granting summary judgment to Respondent Oklahoma Housing Finance Agency (OHFA) and Intervenor Arcadian Housing and denying Petitioner's motion to reconsider these summary judgments. OHFA and Arcadian say that Petitioner fails to show "his substantial rights were concretely and actually threatened" and thus lacks standing to pursue this action. The record shows Petitioner owned property in the Oak Wood Addition adjacent to the proposed housing project. However, Petitioner purchased this property of his own volition with full knowledge of the proposed housing project. Petitioner may not argue his property interests will sustain damage based on circumstances he helped create. We conclude Petitioner failed to meet the burden of showing that OHFA's decision would result in "residential over-crowding, inadequate public infrastructure and resources, and storm water management," or "subject[] the Oak Park community to unduly and oppressively high residential density," or cause a "severe, adverse, and long-lasting impact[] on the Oak Park community." Although Petitioner envisages these possibilities, the summary judgment process in this case fails to reveal any disputed facts or evidentiary support for these claims. Because Petitioner failed to meet the first requirement of standing, this appeal must be dismissed for lack of standing, and we will not address its merits. **APPEAL DISMISSED.** Opinion from the Court of Civil Appeals, Division IV, by Wiseman, C.J.; Thornbrugh, P.J., and Hixon, J., concur.

117,806 — Gary Richardson, an Individual, Plaintiff/Appellant, vs. Tribune Media Company; Tribune Broadcasting Oklahoma City, LLC d/b/a KFOR-TV; and Wesley Lee Milbourn, Defendants/Appellees. Appeal from an order of the District Court of Oklahoma County, Hon. Trevor S. Pemberton, Trial Judge, dismissing Plaintiff Gary Richardson's defamation and false light invasion of privacy claims. After *de novo* review of the record and applicable law, we conclude the dismissal pursuant to the Oklahoma Citizens' Participation Act was proper as to Richardson's defamation claim and affirm the trial court's decision on this issue. Richardson met the elements of a *prima facie* case of false light invasion of privacy and the dismissal of this claim must be reversed and the case remanded for further proceedings. **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 Hixon, J., concur.

Wednesday, August 5, 2020

118,104 — In the Matter of the Protest to the Denial of the Gross Production Tax Claim for Refund of Joe B. Clifton Exploration, Inc.: Joe B. Clifton Exploration, Inc., Appellant, vs. Oklahoma Tax Commission, Appellee. Proceeding to Review an Order of the Oklahoma Tax Commission. Joe B. Clifton Exploration, Inc. seeks review of an order of the Oklahoma Tax Commission which denied its protest and upheld the recommendation of an Administrative Law Judge denying a refund of gross production tax paid. Taxpayer asserts the OTC erred by failing to equitably toll the three-year statute of limitations set forth in 68 O.S.2011, § 227. There is no indication Taxpayer was prevented in some extraordinary way from exercising its rights or that it acted with due diligence to file the Refund Application within the limitations period. Finding no reason to toll the statute of limitations contained in § 227, we affirm the OTC's order. **AFFIRMED.** Opinion from Court of Civil Appeals, Division IV, by Hixon, J.; Wiseman, C.J., and Thornbrugh, P.J., concur.

Friday, August 7, 2020

118,336 — In the Matter of: DLC and BGT, Alleged Deprived Children, State of Oklahoma, Petitioner/Appellee, vs. Summer Turner, Respondent/Appellant. Appeal from an order of the District Court of Bryan County, Hon. Trace Sherrill, Trial Judge, terminating Mother's

parental rights to her minor children, DLC and BGT. We are asked to review whether the State of Oklahoma proved by clear and convincing evidence that Mother's parental rights should be terminated because it is in the children's best interests. Mother stipulated to the deprived petition and DLC and BGT were adjudicated deprived. Mother admits that she was convicted of child abuse by injury. The only issue remaining is whether State proved by clear and convincing evidence that termination of Mother's parental rights is in the children's best interests. We conclude that it did. After careful review of the record and applicable law, we conclude the decision of the trial court is supported by clear and convincing evidence that Mother's parental rights should be terminated. Finding no other error, we affirm. **AFFIRMED.** Opinion from the Court of Civil Appeals, Division IV, by Wiseman, C.J.; Thornbrugh, P.J., and Hixon, J., concur.

Monday, August 10, 2020

118,530 — In the Matter of A.P., M.P., I.P., S.P., S.P., Alleged Deprived Children, Shashana Wapskineh, Appellant, vs. State of Oklahoma, Appellee. Appeal from an order of the district court of Oklahoma County, Oklahoma, Honorable Lydia Green, Trial Judge, denying Mother's motion to vacate a judgment terminating Mother's parental rights to her five children, A.P., M.P., I.P., S.P., and S.P (Children), pursuant to Oklahoma's statutory consent statute after she failed to appear for trial. We conclude the trial court did not abuse its discretion in refusing to vacate the consent judgment terminating Mother's parental rights to Children pursuant to 10A O.S.2011 § 1-4-905. The evidence taken by the court at the termination trial and the record as a whole demonstrate that State proved by clear and convincing evidence that Mother failed to correct the conditions leading to Children's adjudication as deprived, that termination is in Children's best interests, and that State engaged in active efforts to provide rehabilitation and remedial services to prevent the breakup of the Indian family. The evidence also supports, beyond a reasonable doubt, the finding that continuing custody in Mother would result in serious emotional and/or physical harm to Children. Accordingly, the trial court's judgment and order are affirmed in all respects. **AFFIRMED.** Opinion from the Court of Civil Appeals, Division IV, by Thornbrugh, P.J.; Wiseman, C.J., and Hixon, J., concur.

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CONSUMER BROCHURES

The OBA has brochures to help nonlawyers navigate legal issues. Topics include landlord and tenant rights, employer and employee rights, small claims court, divorce, information for jurors and more! Only \$4 for a bundle of 25. To order, visit www.okbar.org/freelegalinfo.



FRIDAY, SEPT. 24, 2020

9 - 11:40 A.M. MORNING PROGRAM

12:10 - 2:50 P.M. AFTERNOON PROGRAM



MCLE 3/3 MORNING PROGRAM

MCLE 3/0 AFTERNOON PROGRAM



FEATURED PRESENTER:

Roy Ginsburg,
*Strategic Advisor to Lawyers
and Law Firms*

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A close-up photograph of a person in a dark suit writing in a large, open notebook with a pen. A gavel and a pair of scales are visible in the background.

Back by Popular Demand!

MORNING PROGRAM

BUILD YOUR PRACTICE

Attracting new clients and producing additional revenue is more important — and more difficult — than ever. That's why it's essential to ramp up your business development efforts to gain every possible advantage. This practical multi-media seminar delivers proven methods to build your practice within professional and ethical parameters while you earn ethics credits. Get new clients and ethics credits!

AFTERNOON PROGRAM

EXIT STRATEGIES FOR RETIRING LAWYERS

You've invested a lot of time and effort to build your successful practice. Do you know what you are going to do with it and your clients? Do you have a vision of what you want your retirement to look like? You may be able to now strategically sell your practice—a valuable asset in and of itself—to enhance your retirement portfolio. It is critical that you know what your practice is worth, who your optimal buyers are and how to find them, as well as how to structure a fair and balanced deal. Don't simply plan to retire. Plan your retirement.

A LITTLE ABOUT OUR FEATURED SPEAKER:

Roy Ginsburg, a practicing lawyer for more than 35 years, is an attorney coach and law firm consultant. He works with individual lawyers and law firms nationwide in the areas of business development, practice management, career development, and strategic and succession planning. For more than a decade, he has successfully helped lawyers and law firms with their exit strategies. www.sellyourlawpractice.com.

TUITION:

Registration for the live webcast is \$150 each or \$250 for both.

WEDNESDAY,
SEPTEMBER 30, 2020
NOON - 1 P.M.



MCLE 1/0



FEATURED PRESENTER:
Amy Wood, Psy.D.

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LAWYER LIKE AN ATHLETE

A UNIQUE CLE OPPORTUNITY TO UP YOUR GAME

PROGRAM DESCRIPTION:

Based on the facilitator's own research, this practical seminar addresses stressors distinct to lawyering with elite approaches used by sports champions and other world-class achievers. The emphasis is on high performance practices for building endurance, outsmarting burnout, and bringing your best self to work.

By participating in this customized professional development program, you will:

- Clarify what's vital for you to be more productive, effective, and happier.
- Learn the latest peak performance psychology tactics to enhance resilience.
- Galvanize your strengths to solve problems faster.
- Elevate your mindset with cognitive-behavioral science.
- Boost your stamina and channel energy into your top priorities.
- Maintain your focus – no matter what is happening around you.
- Feel more motivated, engaged, and in command.
- Develop an actionable plan for turning new learning into the results you want.

TUITION: \$85.00. No discounts.