1050877961

ORIGINAL

pe

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

STATE OF OKLAHOMA,
JAMES M. BORING, District Attorney,

Plaintiff/Appellant,

vs.

ONE HUNDRED THIRTEEN THOUSAND DOLLARS ($113,000) U.S. CURRENCY,

Respondent,

and

GERARDO DE LA TORRE,

Appellee.

Case No. 118,526

Rec'd (date) 11-19-21
Posted
Mailed
Distrib
Publish ___ yes X no

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

NOV 19 2021

JOHN D. HADDEN
CLERK

APPEAL FROM THE DISTRICT COURT OF
TEXAS COUNTY, OKLAHOMA

HONORABLE JON PARSLEY, TRIAL JUDGE

AFFIRMED

Grant C. Shellenberger
SHELLENBERGER & ASSOCIATES, P.A.
Manhattan, Kansas — For Plaintiff/Appellant

Robert Robles
Oklahoma City, Oklahoma — For Respondent and Appellee

OPINION BY GREGORY C. BLACKWELL, JUDGE:

The State of Oklahoma appeals a decision by the district court returning $93,000 in previously seized cash to the appellee, Gerardo De La Torre. On review, we affirm the judgment of the district court as supported by competent evidence in the record and otherwise free from reversible error.

BACKGROUND

Angel De La Torre's car was stopped by Guymon police on the grounds that one of his three brake lights was inoperative. Angel consented to a search of the car. The officers found a total of $113,000 in cash in a duffle bag during the search. The police deployed a drug dog, and the dog "alerted" to the outside of the passenger door. The officer did not apparently have the dog inspect the duffel bag or anything inside the vehicle at that time. No drugs were found in the vehicle. The dog did later alert on the money after it had been taken to the local headquarters, although the efficacy of this alert was disputed at trial, as was evidence that the money smelled of marijuana. The money was tested for trace amounts of illegal drugs, but none were found. The police seized the $113,000. Angel, who was never charged with any crime related to the stop, never came forward to claim the money.

Angel's cousin, Gerardo De La Torre, did come forward, however, claiming that he was a rightful owner of the seized funds. Gerardo offered the following story as to how the money came into Angel's possession. Gerardo owns a fast-food Mexican restaurant—Pancho's—in Topeka, Kansas. Gerardo claimed that the cash was all proceeds obtained through the operation of the restaurant. He

claimed that he had handed the money over to Angel just hours before it was seized for the purpose of starting, together, a similar restaurant in Arizona.

Gerardo's claim was tried to the bench in October 2019. The district court authored a nine-page order, explaining its decision to return all but $20,000 of the cash to Gerardo. As relevant to this appeal, the court found both that Gerardo had demonstrated standing as an owner of the cash and that the state had failed to prove that the money was properly subject to forfeiture under the applicable law. The court found, however, that $20,000 of the cash had belonged to Angel, and Angel had not contested the seizure. It found that the remaining $93,000 should be returned to Gerardo.[1] The state now appeals this decision.

STANDARD OF REVIEW

Actions for forfeiture of property seized under the Uniform Controlled Dangerous Substances Act are civil in nature and remedial in character. *See State v. 1989 Ford F-150 Pickup,* 1994 OK CIV APP 162, 888 P.2d 1036. In a civil action tried before the bench, the trial court's judgment, absent error of law, will not be disturbed on appeal if there is any competent evidence reasonably tending to support the trial court's judgment. *See Am. Fertilizer Specialists, Inc. v. Wood,* 1981 OK 116, 635 P.2d 592. Although questions of law—including the question of whether a party has standing to bring a claim in the first instance—are properly reviewed *de novo*, a trial court's finding of facts necessary to the determination of the legal question is properly reviewed under the any-competent-

[1] The trial court found that Gerardo was not an owner as to $20,000 of the funds, as those funds were a repayment of a loan Angel had previously made to Gerardo. Gerardo did not appeal this ruling.

evidence standard. *See, e.g., Reeds v. Walker*, 2006 OK 43, ¶ 10, 157 P.3d 100, 107 ("*When there are no contested jurisdictional facts* the question of subject matter jurisdiction is purely one of law which we review de novo." (emphasis supplied, footnote omitted)).

ANALYSIS[2]

The state's allegations of error can be fairly restated as follows. *First*, that the trial court erred in finding that Gerardo had standing, as a matter of law, to contest the seizure. *Second*, that the trial court errantly shifted the burden of proof to the state, when it should have rested with Gerardo due to findings made in the default judgment against Angel. And *third*, that the trial court erred in finding that the proceeds were not "drug proceeds" under the applicable law.

---

[2] We note at the outset that both parties cite numerous federal decisions in their briefing. Although many federal seizure cases interpret the question of standing as an "owner" of a property interest to contest a forfeiture, the decisions often appear inconsistent. This is because, as noted in an extensive analysis by the Sixth Circuit, "it is appropriate to refer to state law in determining the nature of the property interest claimed by a third party in forfeiture proceedings." *United States v. Certain Real Prop. Located at 2525 Leroy Lane, W. Bloomfield, Mich.*, 910 F.2d 343, 349 (6th Cir. 1990). Because federal standing as an "owner" depends on the application of each individual state's law of property, a lack of consistency between federal decisions is not surprising.

We are also mindful of the comments of Judge Reif that "the federal forfeiture statutes have been construed by federal courts to be primarily penal in nature based on the historical precedent underlying the federal law." *State v. One Black with Purple Trim Ford Flareside Truck*, 1998 OK CIV APP 57, ¶ 6, 7, 960 P.2d 844. By comparison, Oklahoma's forfeiture statutes view seizure as a form of civil restitution, operating "to abate past offending uses of property and to prevent future offending uses" and utilize funds derived from forfeitures to "make the sovereign whole for the detriment attributable to, or incurred in the abatement of, nuisance-like uses of property that are directly linked to the greater societal problem of drug abuse." *Id.* Accordingly, federal court cases construing federal forfeiture statutes are not controlling and sometimes may not constitute helpful guidance in construing Oklahoma forfeiture statutes. Because of this, Oklahoma case law, even if not precedential, is to be accorded greater weight than federal case law in construing Oklahoma's forfeiture statutes. *Id.* We therefore rely on Oklahoma authority wherever possible in this case.

Gerardo's Standing to Challenge the Forfeiture

The state first argues that Gerardo did not demonstrate legal standing to contest the seizure in this case.[3] Their primary argument is that Gerardo had no standing as an owner because the evidence at trial supported only one conclusion: that Gerardo had fully transferred the money in question to Angel prior to the seizure, and therefore, Gerardo could not later claim that he was an "owner" of the funds. Under this theory, although Gerardo may have retained some interest in *repayment*, he retained no ownership of the specific dollar bills seized.

If the state's characterization of the evidence were correct, we would agree that Gerardo lacked standing to pursue the funds in question.[4] However, the state's theory ignores competent evidence in the record that supports a finding

---

[3] We first note some disagreement in the briefing as to what constitutes the "standing" issue here and when is the appropriate time to litigate the question. "'Standing' is the right to commence litigation, to take the initial step that frames legal issues for ultimate adjudication by a court or jury." *State ex rel. Bd. of Regents for Oklahoma Agr. & Mech. Colleges v. McCloskey Bros., Inc.*, 2009 OK 90, ¶ 18, 227 P.3d 133. "When standing of a party is brought into issue, the focus is on the party seeking to get the complaint before the court, and not on the issues the party wishes to have adjudicated." *Id.* Federal forfeiture cases are in accordance. *United States v. $557,933.89, More or Less, in U.S. Funds*, 287 F.3d 66, 78 (2d Cir. 2002), notes that "[t]he function of standing in a forfeiture action is therefore truly threshold only ...." *Id.* at 79. "Thus, the only question that the courts need assess regarding a claimant's standing is whether he or she has shown the required 'facially colorable interest' ... not whether he ultimately proves the existence of that interest." *Id.* After standing is established, "the issues the party wishes to have adjudicated" become merits issues. Here, the confusion emerges primarily because the question of standing was reserved for trial. During the trial, the state moved to dismiss based on a lack of standing and moved for a directed verdict on the issue. Regardless of when the issue was raised, the legal question and our standard of review remain the same.

[4] Although Oklahoma does not appear to have commented on the exact situation here, where the cash has left the owner by only a few hours, and has not been converted into lienable goods or otherwise comingled, cases from other states have held that the owner loses that status immediately when the cash is handed over to another as a loan. *See, e.g., People v. $28,500 United States Currency*, 51 Cal. App. 4th 447, 469, 59 Cal. Rptr. 2d 239, 253 (1996).

that Gerardo and Angel were engaged in a *partnership* or *joint venture* to open a new restaurant in Arizona. Although Gerardo and others testified to a number of seemingly conflicting possibilities regarding the business relationship between him and Angel, when pressed on cross-examination, Gerardo testified directly: "We were going to be partners."

Under general partnership law of Oklahoma, if Gerardo and Angel were engaged in a partnership to open a restaurant in Arizona, there is no question that either Gerardo or Angel, or both, were entitled to make a claim for the funds at issue. *See* 54 O.S. § 1-203 ("Property acquired by a partnership is property of the partnership and not of the partners individually."); *Roby v. Day*, 1981 OK 122, 635 P.2d 611. Each partner is entitled to what may remain after payment of the partnership debts by a settlement of accounts between the partners. *Id.* Although the testimony presented to the trial court allows for more than one interpretation, there is competent evidence in the record supporting a finding that Angel and Gerardo were engaged in a partnership. Given the fact of a partnership, there can be no question that Gerardo had standing to claim ownership of the funds.[5]

---

[5] The state also argues that Gerardo did not adequately identify the specific dollar bills that the state seized. However, Gerardo testified that he was able to identify the exact money in question because it was packed in the same manner and material as when it left his possession. In its petition in error, the state contests the sufficiency of this identification to demonstrate that they were the identical dollar bills that had left Gerardo's possession, and hence, that he had any colorable interest in them. The state cites *State v. $407.00 of U.S. Currency*, 1995 OK CIV APP 39, 893 P.2d 1017, for the principle that Gerardo needed to have more explicitly proven that the seized bills were the same bills that had left his hands to have standing. In that case, the state claimed that seized bills had been previously marked and given to an informant to make a "controlled buy" and were subsequently exchanged for illegal drugs. The cash was, therefore, forfeitable as a "thing of value furnished in exchange for a controlled dangerous substance" pursuant to 63 O.S. § 2-503. However, at trial, the

The Burden of Proof

The state next argues that the trial court impermissibly shifted the burden of proof to it at the trial below. Generally, it is the state that carries the initial burden of proof to show that the seized property was in fact forfeitable under law—*i.e.*, that the *res* is connected to criminal activity in some way. *See* 63 O.S. § 2-506(G). If that burden is satisfied, a person claiming innocent ownership has the opportunity to prove that they should nevertheless keep the property, as they were not aware of its connection to the criminal activity. *Id.* at § 2-506(H).

The trial court proceeded in this manner, and the state was the first to present. However, after calling and examining four witnesses, the state's attorney questioned the order of operations, claiming Gerardo held the ultimate burden in the case. Although the state's counsel never made any actual objection to the procedure, he did argue, in effect, that the state should not have *any* burden of proof in this particular case because the trial court's finding in the default order as to Angel had found that "that the money herein is drug proceeds." As such, the argument goes, the state did not need to prove at Gerardo's trial that the *res* was forfeitable as drug proceeds.

---

investigating officer could not identify any marks showing that the seized bills were the same ones given to the informant. The state does not indicate precisely what rule it would have us draw from this case; however, if the state is arguing that marks or serial numbers are the only legitimate way a seizure claimant can identify cash, we reject the argument. Absent the unlikely event that the serial number of each bill is recorded by the owner, proof of ownership of a certain bill is almost always circumstantial. In this case, the trial court found that the stated means of identification showed a colorable interest in the cash. The finding was supported by competent evidence and otherwise not in error.

In the state's estimation, because the money was already established as forfeitable by Angel's default, Gerardo could consequently appear only as an "innocent owner" seeking relief from an otherwise valid forfeiture, as the burden of establishing the "innocent owner" defense rests upon the claimant.[6] *State ex rel. McGehee v. 1987 Oldsmobile Cutlass, VIN: 1G3NF11U9HM234685, Tag: BYX 624*, 1993 OK CIV APP 177, 867 P.2d 1354. The state argues that the court substantially misunderstood the law of the case and improperly shifted the burden by "rehashing" the validity of the initial seizure and forfeiture request and finding no valid seizure.

Critically, we have no record whatsoever that Gerardo was given notice of the hearing of February 13, 2019, or any opportunity to appear to contest the state's claim that the property in which he alleged an interest was properly seized and subject to forfeiture. The state was aware at this time that Gerardo was claiming to be the owner of the seized cash, as Gerardo had filed a verified answer nearly four years earlier. The state appears to have decided that, in *its own estimation*, Gerardo could not prove he was a "party in interest," and it was not necessary to give him notice of the February 13th proceeding.

---

[6] The distinction between the position of an "owner" and the position of an "innocent owner" is this: An owner has standing to litigate the initial question of whether the state has *met its burden* to show that the property in question is legally subject to forfeiture. *See United States v. $121,100 .00 in United States Currency*, 999 F.2d 1503, 1505 (11th Cir.1993). If standing is established, the government, as the party seeking affirmative relief is charged with the preliminary burden of proof. An innocent owner litigates the *affirmative defense* of whether property that is otherwise subject to forfeiture should, nonetheless, be returned because the innocent owner had no knowledge or reason to believe that the property was being, or was to be, used for the purpose charged. *See* 63 O.S. § 2-506(H).

Had Gerardo been given notice and opportunity to contest the seizure of his claimed portion of the cash but failed to appear, the state may be correct as to the effect of the subsequent finding that the money was "drug proceeds." We find no record to that effect, however. The basic and well-established principles of civil law are clear: absent notice and an opportunity to appear, any finding made on February 19, 2019, is not binding as to Gerardo's interest in the cash at issue. *See Durham v. McDonald's Restaurants of Oklahoma, Inc.*, 2011 OK 45, ¶ 5, 256 P.3d 64 (the party against whom preclusion is interposed must have previously had a full and fair opportunity to litigate the claim or critical issue). The trial court so found, and we affirm its ruling. It was the state, therefore, that held the initial burden to prove a valid forfeiture.

The Validity of the Forfeiture

The state also argues that the trial court's failure to find that the proceeds in question were, in fact, drug proceeds "was obvious error based on the evidence." We disagree.

The state first argues that because the seized currency was "found in close proximity to any amount of forfeitable substances" pursuant to § 2-503(A)(7), proper forfeiture was thereby established. Although no forfeitable substance was seized during the stop, the state argues either that a drug-dog alert on the outside door of the vehicle indicated the presence of an "amount of forfeitable substances" that was "in proximity" to the cash, or that the dog's later alert on the

cash itself coupled with the testimony of an officer that he could "smell marijuana" on the cash, established that it was found "in proximity" to forfeitable substances.

The provision allowing seizure of property purely because it is found in "close proximity to any amount of forfeitable substances" appears to be peculiar to Oklahoma law. This "proximity forfeiture" is found neither in federal law, nor in the law of another state, as far as our research has indicated. Federal and most state laws base forfeiture on a "nexus to illegal activity" rather than "proximity to illegal substances," although proximity may constitute evidence of the required nexus under some circumstances.[7]

The state cites a trial court memorandum opinion from a federal district court in New Mexico, *United States v. $65,020 United States Currency*, CIV 17-0894 KBM/LF, 2018 WL 5635109, at *1 (D.N.M. Oct. 31, 2018) for the principle that a dog alert constitutes evidence that currency was in "recent proximity" to "more than trace amounts" of illegal substances. As we noted above, however, federal law does not provide for forfeiture based on simple proximity at all.[8] Further, the Oklahoma law requires that the forfeited cash be *found* in proximity to

[7] *See, e.g., United States v. Guzman-Cordoba*, 988 F.3d 391, 403 (7th Cir. 2010) (finding that a nexus existed between cash seized and drug trafficking activities when roughly $10,000 in cash was discovered in a known "stash house," along with a "veritable arsenal" of weapons, drugs, and other items related to the drug trade).

[8] The New Mexico court considered this scent alert as simply one item of evidence of the required nexus to illegal activity that forms the basis of federal forfeiture law, rather than an independent ground for forfeiture.

forfeitable substances, not simply that the cash had *been* in proximity of forfeitable substances at some time before its discovery. It was uncontradicted below that no forfeitable substances were discovered here. The state argues that if cash, or the outside of a vehicle transporting cash, *smells* like an illegal substance, this is sufficient to establish as a matter of law that that cash was "found in close proximity to any amount of forfeitable substances." We cannot agree.

The basic concept of a "forfeitable substance" implies a substance that is of such a mass that it is capable of being physically seized and forfeited. The Oklahoma caselaw we find discussing a "proximity forfeiture" involves proximity to *visible and quantifiable* amounts of illegal drugs that were actually seized and assayed.[9] We find no precedent that a quantity of molecules so minuscule that it is neither visible nor quantifiable can constitute a basis for a "proximity" seizure. In this case, no drugs were found in the vehicle or on Angel's person. The record indicates that the money was later "combed" and the results sent for forensic examination, but no amount of "forfeitable substances" was detected, and the cash itself was not apparently subject to any further analysis. We find no Oklahoma precedent for a rule that a scent, standing alone, establishes the presence of an "amount of forfeitable substances" for the purposes of 63 O.S.

[9] *See, e.g., State v. One Thousand Two Hundred Sixty-Seven Dollars,* 2006 OK 15 131 P.3d 116 (31.85 grams of crack cocaine base); *State Ex Rel. Harris v. Three Hundred Twenty Five Thousand And Eighty Dollars,* 2021 OK 16 485 P.3d 242 (large bag of marijuana weighing over twenty pounds); *State Ex Rel. Campbell v. Eighteen Thousand Two Hundred Thirty-Five Dollars,* 2008 OK 32, 184 P.3d 1078 (2.86 grams of mariuana); *State Ex Rel. Lane v. Seven Hundred Twenty Five Dollars,* 2006 OK CIV APP 74, 136 P.3d 1076 (nine pounds of marijuana).

§ 2-503(A)(7), or that cash may be forfeited purely for bearing the *scent* of a forfeitable substance.[10]

The state also makes the more conventional argument, namely, that it established that the cash was properly seized because it was acquired during a period of violation of the Uniform Controlled Dangerous Substances Act pursuant to 63 O.S. § 2-503(B). The trial court found that the state had not met its burden, and we are limited on appeal to evaluating whether there is any competent evidence in the record reasonably tending to support the trial court's conclusion.

At trial, the state identified its general basis for forfeiture as "the smell of marijuana and [Angel's lack of] explanation for where it came from." As previously noted, we find no precedent or basis in Oklahoma law that the property may be forfeited solely because it smells of marijuana, or because a police dog "alerts" as to an unknown substance on the outside of the car in which the alleged contraband was found.[11] The state was therefore required to produce additional evidence to satisfy their burden of proof. As evidence of these other factors, the state refers to circumstantial evidence consisting of peculiar text messages on Angel's phone referring to the importation of "vitamins," "cheeses," and

---

[10] Further, since it is now possible in Oklahoma (and a growing majority of states) for currency to smell of marijuana because of legally permissible activities, the evidentiary value of an alert by a dog that has been trained to hit on four different substances, one of which is no longer illegal in many cases, is of questionable value.

[11] This theory presents a particular problem now that Oklahoma hosts a substantial number of legal marijuana businesses that find difficulty in obtaining normal banking services because of federal law, and handle large amounts of cash.

"parrots;"[12] Angel's frequent cross-border travel; the fact that a large amount of cash was seized; and that the state found Gerardo's business accounts incomprehensible as to the source of the money.

As to each of these matters, the court found a plausible counter-narrative to that of criminal drug activity. The court noted that the various "smell tests" on the money were conducted near the Drug Task Force property room where large amounts of marijuana were stored. The court also noted that, although Gerardo's bank accounts "did not add up," they were consistent with legally questionable, though common, accounting practices of many "mom-and-pop" restaurants.

As to the lack of explanation for cash, the state cites *United States v. $149,442.43 in U.S. Currency*, 965 F.2d 868, 876 (10th Cir. 1992), for a rule that finding a large quantity of cash is "strong evidence" of probable cause to seize the cash, and that "[o]nce probable cause has been established, the claimant bears the burden of proving that the requested forfeiture does not fall within the four corners of the statute." The case also states that "[i]f no such rebuttal is made, a showing of probable cause alone will support a judgment of forfeiture." *Id.*

We reject the applicability of *United States v. $149,442.43* here. First, there was no question of "probable cause" to be determined in this case. Title 63 O.S. § 2-503(B) requires that, to establish forfeiture, the State has the burden to show

[12] A narcotics task force officer testified that these are common slang terms for illegal drugs.

that the forfeited property was acquired during a period of the violation of the Uniform Controlled Dangerous Substances Act by the *preponderance of the evidence,* not by *probable cause.* The standards are not the same. "[P]robable cause is a lower standard than the preponderance of the evidence." *United States v. Juwa*, 508 F.3d 694, 701 (2d Cir.2007).[13]

Second, this Tenth Circuit panel's view is inconsistent with a number of other federal circuits, and with this Court's view, which is that the discovery of *any* sum of cash, standing alone, is not enough to establish even probable cause to believe the money is forfeitable.[14] We find no applicability of the rule of *United States v. $149,442.43* here, and reject any argument that the discovery of a large amount of cash is, alone, sufficient under Oklahoma law to establish forfeiture by a preponderance of the evidence.

A decision whether property was or was not acquired during a period of violation of the Uniform Controlled Dangerous Substances Act must often be based on cumulative and circumstantial evidence that is properly open to more

---

[13] Further, the federal Civil Asset Forfeiture Reform Act of 2000 changed the federal burden of proof cited by *United States v. $149,442.43.* Similar to Oklahoma law, federal law is now that the "burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture." 18 U.S.C. § 983(c)(1). All federal forfeiture cases decided before 2000 must be carefully examined as they use a standard of proof that is no longer be applicable.

[14] *See, e.g., United States v. $191,910.00 in United States Currency,* 16 F.3d 1051, 1072 (9th Cir.1994) (stating that no court has held that the presence of a large sum of cash is sufficient, standing alone, to establish probable cause for forfeiture); *United States v. Baro, 15 F.3d 563,* 568 (6th Cir. 1994) ("To date, this Court has not held that currency is contraband."); *United States v. $506,231 in U.S. Currency,* 125 F.3d 442, 452 (7th Cir. 1997) ("[N]one of the factors cited by the district court or the government concerning the amount of currency or the method of storing it have any bearing on the probable cause determination.")

than one interpretation. In this case, we find the evidence to be so. The state was required to prove this foundational element by a preponderance of the evidence. The preponderance standard requires proof that a claimed act was "more probable than not." *Badillo v. Mid Century Ins. Co.*, 2005 OK 48, ¶ 39, 121 P.3d 1080. The trial court found plausible alternative explanations for much of the evidence raised by the state, and found that this burden was not met. The matter turned on questions of credibility and interpretation. Where there is competent evidence to support a trial court's finding of fact, an appellate court cannot alter that finding nor substitute its judgment for that of the trial court. *Anglo-Am. Clothing Corp. v. Marjorie's of Tiburon, Inc.*, 1977 OK 165, 571 P.2d 427. The district court found that the evidence was insufficient to support a valid seizure based on § 2-503(A)(7). The trial court's finding is supported by competent evidence and cannot be reversed on appeal.[15]

CONCLUSION

The seizure of property associated with the manufacture and sale of illegal drugs has long been an important tool used to suppress this harmful trade, and the public harm it causes. This important purpose must sometimes yield, how-

[15] Finally, we note that the state argues that "[t]he district court erred in finding the Appellee an innocent owner." However, as previously noted, the trial court's decision holds that the cash in question was not subject to forfeiture. As such, any owner would be "innocent," as the state failed to prove that the property had any connection to criminal activity. The state's opposition to the claim of innocence was essentially the same § 2-503(B) factors—that the cash "was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation"—as argued as to the forfeiture. The district court found that this was not proved as to the seizure; the finding is also operative as to the innocent-owner defense.

ever, to the greater principle that a citizen's property should be free from unreasonable or arbitrary seizure and forfeiture, and that citizens should be free to engage in entirely legal activities, such as carrying cash on their persons, without being under a cloud of presumed criminal activity. After all, "the law abhors forfeitures and statutes authorizing forfeiture of private property are to be strictly construed." *State ex rel. Redman v. $122.44*, 2010 OK 19, 231 P.3d 1150.

In a civil action tried before the bench, the trial court's judgment, absent pure error of law, will not be disturbed on appeal if there is any competent evidence reasonably tending to support the trial court's judgment. Having reviewed the record in full, we find that the trial court's decision rests on such evidence.

AFFIRMED.

WISEMAN, P.J., and BARNES, J., concur.

November 19, 2021