



ORIGINAL

FE

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

IN THE MATTER OF THE ESTATE)
 OF ROBERT LEE PEARSON, SR.,)
 DECEASED,)
)
 ROBERT LEE PEARSON, JR.,)
)
 Plaintiff/Appellant,)
)
 vs.)
)
 QUENISHA PEARSON, PERSONAL)
 REPRESENTATIVE OF THE ESTATE)
 OF ROBERT LEE PEARSON, SR.,)
 DECEASED,)
)
 Defendant/Appellee.)

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

DEC - 2 2021

JOHN D. HADDEN
CLERK

Case No. 119,258

Rec'd (date)	12-2-21
Posted	<i>[Signature]</i>
Mailed	<i>[Signature]</i>
Distrib	<i>[Signature]</i>
Publish	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE ALLEN WELCH, TRIAL JUDGE

VACATED AND REMANDED

Cynthia Rowe D'Antonio
GREEN JOHNSON MUMINA &
D'ANTONIO
Oklahoma City, Oklahoma

For Plaintiff/Appellant

Jerry Kite
Edmond, Oklahoma

For Defendant/Appellee

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Robert Lee Pearson Jr. appeals the probate court's interlocutory order, appealable by right, which denied his motion to vacate an order setting aside certain real-property conveyances he made during pendency of the above-

captioned estate. Pearson Jr. had sought additional proceedings on the grounds that two of his witnesses were apparently unavailable at the relevant hearing, but were now ready to testify. On review, we find the trial court abused its discretion by failing to consider Pearson Jr.'s motion under 12 O.S. § 1031.1. Accordingly, the order denying the appellant's motion to vacate is itself vacated, and the cause is remanded for further consideration.

BACKGROUND

Quenisha Pearson, the daughter of Robert Pearson Sr., deceased, petitioned for the intestate administration of her father's estate and requested that she be appointed as administrator. After her appointment, Quenisha asked the court to set aside various allegedly fraudulent filings of the appellant, Robert Pearson Jr., who was Pearson Sr.'s son and Quenisha's brother. Quenisha alleged that Pearson Jr. claimed to be the surviving joint tenant of property she claimed was vested in the estate. The court held a hearing at which the only apparent witnesses were Quenisha and Pearson Jr., who appeared *pro se*.

Although there is no transcript of this hearing, we can discern from the record that the issue presented to the court was as follows. Prior to her death, Pearson Sr.'s mother, Gay Pearson, quitclaimed certain property to "Robert Pearson" and herself as joint tenants, and other property to "Robert Pearson, *Jr.*" and herself as joint tenants. Pearson Jr. claimed that *both* such conveyances were intended to be to him and Gay Pearson, and none to his father, Robert Pearson Sr. Quenisha, on the other hand, contended that only those

conveyances that specifically referenced “Jr.” were to Pearson Jr.; all others were intended to be to her father, Pearson Sr.

The court issued an order siding with Quenisha. All conveyances made by Pearson Jr. after Pearson Sr. died were set aside, as the court determined that those properties had passed to Pearson Sr.’s estate upon his death. The order was signed and filed on June 8, 2020; however, the certificate of service, signed by the court clerk and part of the order, notes that the order was mailed to the parties on the following day.

On July 13, 2020, Pearson Jr., now represented by counsel, filed a *Motion to Vacate Order and for New Trial*.¹ The motion, citing “12 O.S. § 1031 *et seq.*,” sought to vacate the trial court’s June order. The motion argued that the order should be vacated and two witnesses should be allowed to testify. One proposed witness was Jennifer Jones, the attorney who drafted and notarized the relevant deeds, and who would purportedly testify that Gay Pearson intended to quitclaim all the properties to Pearson Jr., and the reference to “Jr.” was omitted in error. Ms. Jones had apparently refused to appear without a ruling by the court that she was not prevented from so-testifying by any attorney-client privilege. Another witness, Marva Williams, would also testify that the decedent was adamant that all the properties in both deeds were intended to be conveyed to Pearson Jr. No

¹ Pearson Jr. concedes in his briefing that, as a motion for new trial, his request was untimely. Our discussion is therefore limited to whether the request to vacate was properly denied.

reason was given as to why Ms. Williams was unable to testify at the prior hearing.

No response was filed; however, the court ordered the parties to submit a “joint application” regarding the issue of attorney-client communication and the relevant case law. The parties filed a joint document, though not agreeing on the proper outcome or governing law, and each side simply made their own argument in separate sections of the pleading.² Notably, Pearson Jr. argued that his July motion to vacate was “based on several provision[s]” of Title 12, including “the court’s own term-time authority to modify, amend, or vacate” R. 35 (emphasis supplied). Arguments were heard regarding the motion to vacate, but no transcript was made of this proceeding. The court took the matter “under advisement.”

The court then issued an order denying the motion to vacate. As to the merits of Pearson Jr.’s claim, the court focused solely on whether Pearson Jr. made any claim that fit within the enumerated justifications found in § 1031.³ The court made no ruling on the attorney-client privilege question on which it had requested briefing, nor did it reference in any way its broad discretion under § 1031.1. Pearson Jr. now appeals.

² The filing appears to have no joint content. It contains argument and citation by Pearson Jr. in support of a ruling that any attorney-client privilege between Gay Person and Ms. Jones had been waived, and a separate opposition by Quenisha Pearson arguing the motion to vacate was untimely filed and that it should not be granted in any event.

³ Having analyzed the merits of Pearson Jr.’s claim under § 1031, the court then stated: “The Motion to Vacate was filed out of time.” It appears from the context that this statement was made in error. However, as noted below, it is incorrect. The motion to vacate was timely filed.

STANDARD OF REVIEW

We will review an order granting or denying a request to vacate a judgment or appealable order for abuse of discretion. *Patel v. OMH Medical Center, Inc.*, 1999 OK 33, ¶ 20, 987 P.2d 1185, 1194. An abuse of discretion occurs when discretion is “exercised to an end or purpose not justified by, and clearly against, reason and evidence, or when a trial court errs with respect to a pure, unmixed question of law” *In re Estate of Hughes*, 2004 OK 20, ¶ 8, 90 P.3d 1000, 1003 (internal citation omitted).

ANALYSIS

The Timeliness of the Motion

We first address the question of the timeliness of Pearson Jr.’s request to vacate. Although we are unsure if the court intended to rule the motion to vacate was filed out of time, we will address the question because it is unclear from the order the extent to which the court relied on the purported lack of timeliness.

There’s no question that, as a matter of law, Pearson Jr.’s request to vacate, under either § 1031 or § 1031.1, was timely filed. Pursuant to 12 O.S. § 1031.1, a litigant may seek to vacate an order any time within thirty days after an appealable order has been filed with the court clerk. 12 O.S. § 1031.1. Here, the filing date of the order was June 8, 2020. The thirty-day period, therefore, began to run on June 9th, and, absent any other provision of law, would have expired on July 8th. However, because the order in question notes that service was by mail, three days must be added to the prescribed period. *Id.* § 2006(D). Adding three days moves the terminal date to Saturday, July 11th. As § 2006

extends any due date that falls on a Saturday, Sunday, or legal holiday to the next business day of the court, *id.* § 2006(A), the motion was due no later than Monday, July 13th. The motion to vacate was filed on that date and was, therefore, timely.⁴

The Grounds for Vacation

The court limited its discussion of the possible grounds for vacation to those enumerated in 12 O.S. § 1031. Under the circumstances, we find that the trial court's failure to consider the request to vacate under its inherent term-time power, as codified in § 1031.1, to be an abuse of discretion.

We find no fault with the trial court's order as far as it rejects the request to vacate under any ground enumerated in § 1031. Section 1031 offers a relatively narrow set of grounds for vacation, and we agree with the district court that § 1031, standing alone, did not provide grounds to vacate on the basis of the testimony Pearson Jr. wished to present.

However, § 1031.1 provides the trial court with a tool that is far more flexible than § 1031. Under § 1031.1, a trial court's discretion to vacate has been called "almost unlimited," "very wide and extended," "unfettered by statutory grounds," and "plenary." *See, e.g., Neumann v. Arrowsmith*, 2007 OK 10, ¶ 9, 164 P.3d 116, 119; *Schepp v. Hess*, 1989 OK 28, 770 P.2d 34, 38; *Clark v.*

⁴ The analysis under 12 O.S. § 1031 is identical, with the only question being whether the claims were properly raised by motion as opposed to petition, as provided for in 12 O.S. § 1033, as § 1031 provides for periods of one, two, or three years, to seek vacation of a judgment, depending on the reason for the request. 12 O.S. § 1038. That question is not presented here, where the request to vacate was raised within thirty days of the appealable order.

McConnell, 2014 OK CIV APP 64, ¶ 7, 330 P.3d 1226, 1228; *Nguyen v. Kuzmicki*, 2000 OK CIV APP 105, ¶ 7, 12 P.3d 489, 490. There is also no question that the court's power under § 1031.1 extends to probate proceedings. *In re Estate of Hughes*, 2004 OK 20, 90 P.3d 1000.

Nevertheless, despite the fact that the request came within thirty days, and that there appear to be equitable considerations that would counsel granting the motion,⁵ the trial court failed to consider the appellant's motion under § 1031.1. For that reason, in addition to the trial court's clearly erroneous statement that the motion to vacate was untimely, we find the trial court's failure to consider its broad discretionary powers under § 1031.1 was an abuse of discretion.⁶ We therefore vacate the trial court's order denying the motion to

⁵ For example, we note that Pearson Jr. was without counsel up until the filing of the motion to vacate. Although the trial court correctly noted that *pro se* litigants are generally to be held to the same standard as attorneys with regard to compliance with legal rules, the trial court's broad discretion under § 1031.1 does not prevent a court from considering any relevant factor, including the quality of a litigant's counsel, whether *pro se* or otherwise, when determining whether an order should be vacated.

Further, in this case, we have an allegation that potentially significant evidence was unavailable at the time of trial because of a claim of privilege. We do not comment on the substance of Ms. Jones's potential testimony or whether the privilege does or does not apply. We simply note that, if it is as alleged, Ms. Jones's testimony would be material and probative on a critical issue on which the evidence otherwise appears to be very thin.

On remand, the trial court should consider both of these factors, as well as any other factor the trial court deems relevant. A court sitting in probate sits as a court of equity, and "[a] court of equity, looking beyond the mere form of things to their substance, has power to decree such relief to the parties as appears just and right, and as best calculated to protect their rights under the situation presented by the record." *Foster v. Huff*, 1913 OK 216, ¶ 0, 131 P. 531 (syllabus of the Court).

⁶ While we stop short of saying that a trial court's failure to consider a request to vacate that is made within thirty days of the order sought to be vacated under § 1031.1 is *always* an abuse of discretion, certainly, the better practice for courts is to consider *any* request to vacate made within thirty days in light of the court's very broad powers under that section.

vacate and remand so that the trial court can consider the motion in light of its broad powers under § 1031.1 and all the attendant circumstances.

VACATED and REMANDED.

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

December 2, 2021