



**ORIGINAL**

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

**FILED**  
**COURT OF CIVIL APPEALS**  
**STATE OF OKLAHOMA**

DIVISION II

MAY 19 2022/

**JOHN D. HADDEN**  
**CLERK**

ZANA WILLIAMS, )

Plaintiff/Appellee, )

vs. )

DONALD ALBERT WILLIAMS, )

individually; DONALD ALBERT )

WILLIAMS, TRUSTEE OF THE )

DURHAM LIVING TRUST; )

LAFAYETTE DURHAM, individually; )

and LAFAYETTE DURHAM, TRUSTEE )

OF THE DURHAM LIVING TRUST, )

Defendants/Appellants. )

Case No. 119,733

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APPEAL FROM THE DISTRICT COURT OF  
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE CINDY H. TRUONG, TRIAL JUDGE

**VACATED AND REMANDED**

Zana Williams  
Oklahoma City, Oklahoma

*Pro Se*

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

For Defendants/Appellants

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Donald Williams and Lafayette Durham, individually and as trustees (hereinafter, "defendants"), appeal the district court's grant of summary judgment in favor of the plaintiff, Zana Williams, which ordered the defendants

to pay \$13,094.42 to Zana to satisfy the remaining distribution from a trust account of which Donald and Lafayette served as co-trustees. On appeal, we vacate the district court's summary judgment because material questions of fact exist as to how much the trust still owes Zana, if anything.

### **BACKGROUND**

In 2006, Alma Durham executed the Durham Living Trust, naming herself as its initial trustee and beneficiary with her twin sons, Ronald and Donald, as beneficiaries upon her death. Alma also appointed both twins and Lloyd Durham, her brother, as successor co-trustees. After Lloyd died, the defendant Lafayette Durham<sup>1</sup> replaced Lloyd as a successor co-trustee. Donald Williams II (Donald's son) and Zana Williams (Ronald's daughter), were designated as beneficiaries in the event that Ronald or Donald died prior to complete disposition of the trust. Alma passed away in 2013, whereby Donald, Ronald, and Lafayette became co-trustees. Within a year, Ronald also passed and was survived by Zana. Zana is a 50% beneficiary of the remaining trust assets.

In 2015, shortly after her father's death, Zana filed a petition to compel accounting, to compel distributions of the trust share, and to surcharge the trusts. Zana claimed that she had requested an accounting from her uncle Donald and that he did not respond or submit the requested accounting, nor did the defendants distribute the funds from the trust. The defendants answered, claiming that an accounting and distribution were impracticable because an

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<sup>1</sup> Lafayette's relation to Alma is not apparent from the record.

accurate accounting could only be made with certain information available only to Zana. The defendants also argued that Zana had already received substantial funds through manipulating records and accessing funds through her father when he was co-trustee. After an additional petition to distribute assets, the district court entered a journal entry finding that the defendants failed to appear or answer the petition, and then granted Zana's petition (the "2015 judgment").<sup>2</sup> In January 2016, the defendants filed a motion to vacate the 2015 judgment and continue discovery. Zana responded, but the motion was never set for hearing and remained pending at the time of the subsequent proceedings.

In August 2018, Zana filed a motion for summary judgment arguing that she was entitled to half the value of the assets remaining in the trust account. Zana served the motion on the defendants' counsel, and the defendants failed to respond to the motion. A journal entry granting summary judgment was filed on October 5, 2018, but this was later vacated on Zana's own motion after Zana's counsel discovered that the defendants' counsel had been in poor health and had in fact been suspended from the practice of law. On January 29, 2019, the defendants, through new counsel, filed another request to set aside the 2015 judgment, this time in the form of a petition. The petition was also pending at the time of judgment.

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<sup>2</sup> The 2015 judgment was not a final judgment or order. It specifically states that "all issues not herein addressed or can not [sic] be completed at this time, include but not limited to receiving an accounting for advances paid by Co-Trustee Donald Albert Williams, individually ... and all other issues except distribution to Zana Lynn Williams are reserved for future hearings and rulings by the court upon proper application by either party."

In April 2021, Zana filed a renewed motion for summary judgment. She argued that her share of the trust assets was \$63,326.95, but she had only ever received \$50,232.53 as a result of the 2015 judgment. She sought another judgment for the remaining \$13,094.42. The defendants responded, offering the affidavits of two witness. However, after a hearing on the matter in May 2021, the district court granted Zana's renewed motion for summary judgment, and entered a judgment in her favor for \$13,094.42. The defendants appeal.

### **STANDARD OF REVIEW**

A summary judgment is reviewed *de novo*. *HSBC Bank USA, Nat. Ass'n v. Lyon*, 2012 OK 10, ¶ 2, 276 P.3d 1002. All inferences and conclusions are to be drawn from the underlying facts contained in the record and are to be considered in the light most favorable to the party opposing summary judgment. *Id.* Summary judgment is improper if, under the evidentiary materials, reasonable individuals could reach different factual conclusions. *Id.*

### **ANALYSIS**

On appeal, the defendants argue that (1) genuine issues of material fact exist as to whether Zana had received funds from the trust account before and after the death of her father, Ronald, (2) the defendants were denied a meaningful opportunity to defend themselves due to their counsel's illness at the initial stages of litigation, and (3) summary judgment could not be granted while defendants' petition to set aside the 2015 judgment was pending before the court.

The defendants' first point of error is that a genuine factual dispute exists as to whether Zana has already received more than her 50% interest in the trust's assets through prior distributions. The defendants allege that Zana received funds through the manipulation of records and from her father, acting as co-trustee, before his death. In their January 2016 motion to vacate, the defendants reiterated their complaints and included an exhibit purportedly to be a list of deposits and withdrawals ranging from September 2013 until August 2014 and the death of Ronald Williams. The defendants also included a list of amounts missing from the trust account, as well as a list of the trust account's outstanding bills.

At the May 2021 hearing, the defendants argued that although Zana never had official access to the trust account, she received money from her father who was co-trustee. The defendants produced two supporting affidavits. The first was Donald's, where he states that Zana received trust money from her father that has not been accounted for. The defendants also produced an affidavit of Lloyd Durham, Jr., Alma's nephew and a National Bank Examiner and Bank Secrecy Act/Anti-Money Laundering Specialist with the United States Department of the Treasury, alleging the same. Lloyd opined that, based on his information, he was reasonably certain that Zana had received funds from the trust before 2017.

A material fact exists when its proof establishes or refutes an essential element of a cause of action. *Tortorelli v. Mercy Health Center, Inc.*, 2010 OK CIV APP 105, ¶ 24, 242 P.3d 549. In Zana's petition and subsequent motions for distribution of trust assets, her argument was straightforward: she is the named

beneficiary for 50% of the trust and is legally entitled to a distribution of 50% of the account's remaining assets. The defendants' response has been from the beginning that Zana is not, or at least may not be, entitled to 50% of the remaining trust assets because she has received unaccounted for funds through her father while he was alive. The defendants offered evidence of their theory in their response to Zana's renewed motion for summary judgment in the form of the affidavits, as discussed above. As such, the district court erred in granting summary judgment.

The defendants raise several other issues on appeal, which include their opportunity for a fair hearing, as well as whether the trial court erred by granting summary judgment while their petition to vacate the 2015 judgment was pending. Because we determine that the trial court erred in granting summary judgment, we need not address these additional points of error. The pending petition to vacate the 2015 judgment, and any other outstanding motions, are to be addressed on remand.

**VACATED AND REMANDED.**

WISEMAN, P.J., and RAPP, J., concur.

May 19, 2022