NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

THE CHANDLER FAMILY TRUST DTD NOVEMBER 1991; JOE L. CHANDLER and MARJORIE CHANDLER, husband and wife; INTERVEST DEVELOPMENT LIMITED PARTNERSHIP, an Oklahoma limited partnership; GREEN VALLEY FARMS, LLC, an Oklahoma limited liability company; and WARREN W. THOMAS, individually,

Plaintiffs/Appellees,

vs.

SNOW LAND HOLDINGS, LLC, an Oklahoma limited liability company; SUNDOG TRAILS, INC., an Oklahoma corporation; GREGORY SNOW and JESSICA SNOW, husband and wife; STATE OF OKLAHOMA, ex rel. DEPARTMENT OF TRANSPORATION; LARRY MAHSETKY, individually; JOHN DOES NO. 1 THROUGH 20; and JOHN DOE NOT-FOR-PROFIT COPORATION,

Defendants,

and

GREGORY SNOW, individually and d/b/a DEPOT HILL MOTOR SPORTS PARK; GREGORY SNOW d/b/a SUNDOG TRAILS,

Defendant/Appellant.

Case No. 119,513
(Consolidated with
Case Nos. 119,514
and 119,515)

APPEAL FROM THE DISTRICT COURT OF
McCLAIN COUNTY, OKLAHOMA

HONORABLE CHARLES GRAY, TRIAL JUDGE

AFFIRMED

Tom Q. Ferguson
D. Benham Kirk, Jr.
DOERNER, SAUNDERS,
DANIEL & ANDERSON, L.L.P.
Oklahoma City, Oklahoma — For Plaintiffs/Appellees

Gregory K. Snow
Washington, Oklahoma — *Pro Se*

OPINION BY GREGORY C. BLACKWELL, JUDGE:

The defendant and appellant, Gregory Snow, seeks review of the trial court's denial of his motion to vacate (1) a 2010 agreed preliminary injunction, and (2) two contempt citations entered against Snow related to the violation of that injunction. Other matters have been dismissed by the Oklahoma Supreme Court or abandoned by Snow.[1] Upon review, we find that the trial court did not abuse its discretion in denying the motion to vacate.

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[1] Snow initially brought three separate appeals, being Supreme Court Case Nos. 119,513, 119,514, and 119,515, from several trial court orders. On June 21, 2021, the Supreme Court partially granted the appellees' motions to dismiss cases 119,514 and 119,515 prior to consolidation. Snow abandoned other claims of error in his brief-in-chief. As a result, Snow's only remaining claim of error is the trial court's March 15, 2021 denial of Snow's September 10, 2020 *Motion to Vacate Preliminary Injunction and Related Judgments of Contempt for Lack of Jurisdiction.* Snow first appealed this order in Case No. 119,514, but the three appeals were consolidated into Case No. 119,513 on June 22, 2021.

In its answer brief the appellees argue that this remaining claim should also be dismissed as untimely. Although we confess some fondness for appellee's argument, as it is not immediately clear why "Appellant's recei[pt] [of] actual notice" of the order appealed is relevant to the jurisdictional analysis, we view the Supreme Court's June 21, 2021, order entered in Case No. 119,514 prior to consolidation as having definitively resolved the question in the appellant's favor. The language of that order does not permit our review of the question. *See LCR, Inc. v. Linwood Properties*, 1996 OK 73, 918 P.2d 1388, 1391 ("If the Supreme Court's order denies the motion to dismiss but is silent with respect to its ruling's effect on the challenge's renewability, the ruling—regarded in law as implicitly 'without

BACKGROUND

The underlying case began in 2009, when the plaintiffs/appellees (collectively "Chandler plaintiffs") filed a petition against numerous parties, including Gregory Snow ("Snow") and several others (collectively, the "Snow defendants"). The petition alleged that the Chandler plaintiffs owned a tract of land on the west bank of the South Canadian River and that some combination of the Snow defendants owned land on the east bank of the river. The Chandler plaintiffs alleged that the Snow defendants ran various "off-roading" businesses, which allowed the owners of trucks and four-wheeled recreational vehicles to enter the river area for entertainment and recreation. The Chandler plaintiffs alleged that the Snow defendants' customers frequently crossed over to the west bank, trespassed on and damaged their property, and that someone among the Snow defendants had removed the Chandler plaintiffs' no-trespassing signs and boundary markers. The Chandler plaintiffs sought to quiet title to the disputed tract of land, injunctive and declaratory relief, and a temporary injunction until its claims could be fully heard on the merits.

The Snow defendants answered with general denials and sought original jurisdiction in the Supreme Court on the initial question of whether the disputed land was legally in McClain or Cleveland County. When this was denied, the Snow defendants counterclaimed for trespass, tortious interference with

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prejudice to renewal'—may not be re-examined by the Court of Appeals, a tribunal constitutionally inferior to the Supreme Court." (footnote removed)).

business relations, declaratory judgment to quiet title, and for adverse possession.[2] Both parties made claims for libel and slander against the other.

After an initial hearing, the parties agreed to a preliminary injunction, issued by the trial court in December 2010, prohibiting either party from crossing the boundary between the properties as represented by a 1963 county boundary line, or facilitating or encouraging others to do so. It further required copies of the injunction be provided to the Snow defendants' customers, complete with a map showing the prohibited areas. The parties to the agreed order, which included Snow, also stipulated to the following: "[N]o party shall be required to post a bond or any other undertaking in order for this preliminary injunction to have full force and effect."

The truce was reasonably preserved[3] until September 2018, when the Chandler plaintiffs filed an application for contempt, alleging that Gregory Snow had driven equipment across the disputed area and mined sand on the Chandler property, either on his own behalf or on behalf of a company called "Native Sands LLC." A summary order dated October 3, 2018, states that Gregory Snow denied contempt and demanded a jury trial. On January 2, 2019, the Chandler plaintiffs filed a motion for summary judgment on the question of the act of contempt,

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[2] Snow's counterclaims stated that Snow's grandparents purchased the disputed land in 2001 before conveying a portion of it to Gregory Snow as trustee of the Snow Family Trust. We are directed to no further evidence of the existence or terms of this trust and have found none in the record.

[3] In September 2011, the Chandler plaintiffs moved for a modified injunction, or for enforcement of the existing injunction, arguing that the Snow defendants' recreational business had changed operators, and they were not complying with the injunction. The court found the injunction was by agreement of the parties and could not be modified except by agreement.

arguing that there were no disputed material facts.[4] The summary order at the conclusion of the pretrial conference dated January 10, 2019, notes twice that Snow's counsel waived a jury trial on this issue at the conference.

Snow's counsel withdrew from the case before the hearing on the summary judgment motion took place, and the trial court extended the date of the hearing, allowing Snow time to retain new counsel. Snow did not respond to the summary judgment motion or appear at the hearing, however, and the trial court granted the Chandler plaintiffs' summary judgment motion, citing *Spirgis v. Circle K Stores, Inc.*, 1987 OK CIV APP 45, 743 P.2d 682. The Court set a sentencing hearing for April 29, 2019.

Snow represented himself on the first day of the sentencing hearing.[5] According to the transcript, the court recessed at the end of the day and scheduled the hearing to continue on the following day at 9:30 a.m. Snow did not appear the next morning when the hearing resumed.[6] The trial court ruled against Snow and ordered $10,000 in compensation for the value of the sand

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[4] The claim of "no disputed facts" was premised on Snow's failure to answer requests for admission.

[5] Snow also attempted to appear *pro se* on behalf of defendant Sundog Trails, Inc., arguing that the corporation had dissolved, he was the only remaining member, and it was thus a sole proprietorship. The court rejected this theory and Snow proceeded to represent himself, but none of the other defendants.

[6] Snow argued in his motion to vacate that the parties and the court had agreed, after transcription of the hearing had concluded, not to reconvene until 1 p.m. the next day. However, the transcript of the hearing the following day indicates the proceedings commenced at 9:30 a.m. and concluded without Snow appearing.

Snow took from the river and $34,000 in attorney's fees. The court also ordered a $49,000 fine[7] and a 180-day jail sentence, both suspended.

The Chandler plaintiffs filed a second application for contempt on September 10, 2019, alleging that Snow had failed to produce, on request, the records he was required to keep and produce under the terms of the preliminary injunction verifying that each of his recreational customers was given a map showing the disputed area and a warning not to enter it. The Chandler plaintiffs filed a motion for summary judgment on this second contempt, coupled with a motion to revoke Snow's suspended sentence for the prior contempt judgment. The court set a hearing on this motion, but Snow did not respond or appear. The trial court then granted summary judgment and, in December 2019, revoked its suspension of the 180-day jail sentence, and issued a bench warrant for Snow's arrest. After Snow was brought before the court, however, the court suspended the sentence again.

On September 10, 2020, almost ten years after the original order, Snow filed a motion to vacate the 2010 preliminary injunction and both subsequent contempt findings. Snow requested the court make its ruling without a hearing, and that request was honored. However, the trial court denied the motion as to both the injunction and the contempt orders. Snow appeals.

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[7] This was calculated, per 12 O.S. § 1390, at $200 per day for at least 245 days of continuing violation.

STANDARD OF REVIEW

The correct standard of review employed upon a motion to vacate is whether sound discretion was exercised to vacate the earlier judgment. *Kordis v. Kordis*, 2001 OK 99, ¶ 6, 37 P.3d 866. The reviewing court does not look to the original judgment, but rather the correctness of the trial court's response to the motion to vacate. *Id.*

ANALYSIS

Despite the lengthy history of this case and the numerous appeals, there are only two questions before us. *See* note 1, *supra.* First, did the trial court abuse its discretion in refusing to vacate the 2010 preliminary injunction? And second, did the trial court abuse its discretion in failing to vacate either of the two orders holding Snow in contempt? For the following reasons, we answer each question in the negative.

THE 2010 PRELIMINARY INJUNCTION[8]

Snow's basis for claiming the 2010 injunction should have been vacated is that it was void *ab initio* for want of compliance with the statutory requirements of 12 O.S. § 1392. That section, since statehood, has required as follows:

> Unless otherwise provided by special statute, *no injunction shall operate until the party obtaining the same shall give an undertaking,* with sufficient surety, to be approved by the clerk of the court

[8] It appears from our review of the record that the 2010 preliminary injunction expired upon the entry of the final journal entry of judgment dated June 9, 2020. However, no party claims that Snow's quest to vacate the preliminary injunction, made separate from his argument that the contempt judgments should be set aside, is moot. And the question is live insofar as the injunction was in force at the time Snow was found in contempt. Thus, we undergo a full review of the question of the validity of the injunction.

> granting such injunction, in an amount to be fixed by the court or judge allowing the same, to secure the party injured the damages he may sustain, including reasonable attorney's fees, if it be finally decided that the injunction ought not to have been granted.

12 O.S. § 1392.[9] The argument goes beyond attacking the judgment as voidable[10] or even void.[11] Rather, Snow claims that the order *never actually came into existence.* If the argument is correct, not only should the injunction have been vacated, but it could not have provided a basis for any contempt action.

If the statute applies here, Snow is correct.[12] Under the plain language of § 1392 and § 1388[13] a preliminary injunction becomes operative not at the time

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[9] An "undertaking" in this context means a bond. *Black's Law Dictionary* (11th ed. 2019) (defining "undertaking" as a "promise, pledge, or engagement" or a "bail bond"). *See also Revolution Resources, LLC v. Annecy, LLC*, 2020 OK 97, ¶ 11, 477 P.3d 1133 ("However, the temporary injunction was conditioned upon Annecy posting *a bond* in the amount of $257,190.00 within 30 days of the order pursuant to 12 O.S.2011, § 1392." (emphasis added)).

[10] The injunction was clearly not voidable pursuant to either 12 O.S. § 1031 or § 1031.1, as the judgment attacked was made some ten years before Snow's motion to vacate.

[11] A void judgment has long been described as a "dead limb upon the judicial tree, which may be lopped off at any time." *Nicholson v. Stitt*, 2022 OK 35, ¶ 9, 508 P.3d 442, 446 (citing *Pettis v. Johnston*, 1920 OK 224, ¶ 0, 190 P. 681, 682, 78 Okla. 277, 190 P. 681 (syllabus of the Court)). However, as appellee correctly notes, the violation of even a void order may provide a basis for contempt. *See generally, United States v. United Mine Workers of Am.*, 330 U.S. 258, 293–94, 67 S. Ct. 677, 696, 91 L. Ed. 884 (1947) ("An injunction duly issuing out of a court of general jurisdiction with equity powers, upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them, however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming, but void law going to the merits of the case.").

[12] Oklahoma courts have consistently held that § 1392 is unambiguous and that a temporary injunction issued under the authority of § 1392 is of no legal force or effect on the parties until the bond is posted. See, e.g., *Morse v. Earnest, Inc.*, 1976 OK 31, ¶ 15, 547 P.2d 955; *Neil v. Pennsylvania Life Ins. Co.*, 1970 OK 172, 474 P.2d 961, 965; *Walbridge-Aldinger Co. v. City of Tulsa*, 1924 OK 1141, 233 P. 171; *Offutt v. Wagoner*, 1911 OK 512, 120 P. 1018, 1018.

[13] That section states: "An injunction binds the party from the time he has notice thereof, *and the undertaking required by the applicant therefor is executed.*" 12 O.S. § 1388 (emphasis added).

the order is made or filed, but at the time a sufficient surety for the bond is given to and approved by the clerk of the court. However, we hold this requirement may be waived in an agreed order.

This holding is consistent with the text and history of § 1392. As to the text, there are several clues that indicate it was never meant to apply to a situation such as we have here. First, the text applies to "the party obtaining" the injunction, not to both parties simultaneously. Agreed orders operate to the benefit of both parties, not just in favor of the party obtaining the injunction. Second, the statute, and several statutes in the same chapter, reference the "granting" of an injunction. An agreed injunction is not so much granted in favor of one party or the other but approved and entered by the court. Finally, a review of Ch. 60, Art. X of the Revised Laws of 1910, entitled "Injunction," reveals that the entire apparatus was designed to shepherd a claimant's[14] request for an injunction, either *ex parte* or as the product of an adversarial process. The idea of an agreed order is simply not considered. In short, we read the section as having nothing to do with injunctions contained in an agreed order.

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[14] The section Snow relies on, read strictly as enacted in 1910, applied only to a "plaintiff." R.L. 1910 § 4877 (title of the statute is "**Plaintiff to give bond**") (emphasis in original). We do not read the modern statute (which has modified that title to "Plaintiff to Give Bond—Amount—Attorney's Fees," by what legislative means is not clear, *see* 12 O.S. § 1392 (official version, viewed at https://govt.westlaw.com/okjc)) so literally, nor does it appear such reading was intended. Section 4880 (now 12 O.S. § 1396) permitted a defendant to "obtain an injunction upon an answer, in the nature of a counterclaim." That same statute indicates the defendant "shall proceed in the manner hereinbefore prescribed," but does not specifically state a defendant ever need provide an undertaking.

As to the history, Snow points to no case—published or otherwise—that contemplates invalidating an agreed injunction for want of posting of an undertaking, and we have found none.

Our holding is also consistent with the long-standing principle that parties may make agreed orders enforceable by a court, even if those orders go beyond what a court may do absent agreement. *See, e.g., Ettinger v. Ettinger*, 1981 OK 130, ¶ 7, 637 P.2d 63 (an agreement made into an order of the court "which seeks to avoid the strictures of a statute" is enforceable); *Perry v. Perry*, 1976 OK 57, ¶ 5, 551 P.2d 256, 257 (statutory requirement imposed on the trial court as to the manner in which the property of the parties to a divorce will be divided may be waived); *Archer v. Wedderien*, 1968 OK 186, ¶ 15, 446 P.2d 43, 45 (statutory right may be voluntarily waived). Statutory rights can be waived unless the waiver would thwart public policy. *Clark v. Edens*, 2011 OK 28, ¶ 11, 254 P.3d 672, 676. In short, we find no case law indicating that parties are prohibited from agreeing to an injunction without bond, as they did here.

For these reasons, the trial court did not abuse its discretion in refusing to vacate the 2010 injunction.

THE CONTEMPT JUDGMENTS

Separate from the question of the continued viability of the 2010 injunction is Snow's attack on the two contempt judgments he received for violating that agreed order. In addition to arguing the contempt orders were tainted because the injunction itself was void—an argument that is no longer available in light of our prior holding—Snow argues that the contempt judgments

were marred by several procedural and constitutional irregularities. His arguments are fairly compartmentalized as follows:

1) The court denied Snow's right to a jury trial on the contempt charges.

2) Snow had a right to a court-appointed attorney because the proceedings were criminal in nature.

3) The state was the only party with the power to prosecute Snow for contempt.

4) The summary judgments on contempt were improper because they were not "proven through the testimony of third parties."

The central basis of these theories is that the contempt proceeding here was a *criminal* proceeding that resulted in penal imprisonment. However, because the proceedings were civil in nature and the punishments were all coercive, we find no error in the trial court's refusal to vacate the judgments.

The Right to Jury Trial

The record reflects that Snow initially demanded a jury trial on October 3, 2018, in response to his contempt citation. However, the summary order at the conclusion of the pretrial conference dated January 10, 2019, notes twice that Snow, through his then counsel, waived a jury trial. Jury trial waiver in Oklahoma generally requires only the consent of the party appearing, the party's failure to appear at the trial, or written or oral consent of the party and the court. 12 O.S. § 591. The record reflects that there was a jury trial waiver as to the first contempt proceeding and that Snow did not appear at all on the second contempt proceeding.

Snow argues, however, that any waiver of jury trial by his attorney is invalid because the proceeding was criminal and punitive in nature, and hence

criminal protections apply. He argues that these protections include a mandatory *written* waiver of jury trial by the alleged contemnor and that he made no such waiver.

The nature of contempt under Oklahoma's statutory scheme is neither civil nor criminal, but *sui generis*. *Henry v. Schmidt*, 2004 OK 34, ¶ 11, 91 P.3d 651, 656. The most important distinction in Oklahoma's jurisprudence is that when *penal sanctions* are imposed, state and federal constitutional protections attached to criminal proceedings apply, including the right to a jury trial and proof of the offense beyond a reasonable doubt. *Id.* ¶ 18. In such a proceeding, a defendant may waive the constitutional right to a jury trial only upon a record showing of an intelligent, competent, and knowing waiver of that right. *Id.* ¶ 19.

Because we agree with Snow that no such waiver appears in the record, the dispositive question is whether the proceedings and sentence were penal, which would require criminal protections, or remedial/coercive in nature, which would not. As *Henry* explains, if the imprisonment is for a fixed term, and the contemnor cannot change that term by complying with the court's orders and purging the contempt, the sentence is penal rather than remedial, and the criminal protections apply.[15] If the imposition or continuation of imprisonment

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[15] *Ex Parte Hibler*, 1929 OK 401, ¶ 8, 281 P. 144, differentiates between contempt citations that "enforce obedience to the order; the other, to vindicate the honor and dignity of the court and to compel respect for its authority." *Id.* (quoting *Hutchison v. Canon*, 1898 OK 14, ¶ 6, 55 P. 1077). The *Hibler* court found that the violation of an order constituted criminal contempt because "[t]here is nothing in the order of the trial court under consideration herein that can be construed as an attempt to prevent further violations or require future compliance with the order of the court." *Id.* ¶ 10. The opposite appears true here.

can be avoided by the contemnor, the contemnor "holds the keys to the jail cell,"[16] because imprisonment may be avoided or alleviated by compliance, and the sanction is intended to coerce conduct, not to punish.[17]

Upon review, we find the punishments issued by the court here to be coercive, not penal in nature. Notably, at no point in the proceedings below was Snow actually imprisoned. Although he was arrested, he was immediately brought before the trial court, and the court suspended both his sentence and monetary fine with the intent that they be imposed only if Snow continued to violate the temporary injunction.[18] This is a milder variation of a coercive sentence to enforce compliance where the contemnor is not imprisoned, and can avoid imprisonment altogether by continuing compliance. The other sanctions—payment for the conversion of sand and attorney's fees for bringing the contempt for instance—are properly categorized as compensatory damages, rather than fines. The only "fine"—which was specifically authorized by 12 O.S. § 1390[19]—was also suspended by the court. In each case, it is clear that the purpose of the

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[16] *See Maddux v. Maddux*, 239 Neb. 239, 241, 475 N.W.2d 524, 528 (1991) for one of many formulations of this principle.

[17] A common example of this practice is found in the domestic courts, where failure to pay child support can result in imprisonment, subject to release on payment of arrears. *See, e.g., In re Marriage of Sager*, 2010 OK CIV APP 130, ¶ 5, 249 P.3d 91, 93 (trial court sentenced ex-husband to six months in the Tulsa County jail and set a purge fee total in the amount of $20,171.36).

[18] The situation is not dissimilar to *In re Wallace Revocable Tr.*, 2009 OK 16, ¶ 16, 204 P.3d 80, 84, where the Court considered contempt against Stephen Wallace for making multiple frivolous filings. Wallace argued that his mental condition made it difficult for him to comply with the court's prior order not to do so. The court sentenced Wallace to 39 days in jail for contempt, but suspended the sentence if Wallace would undertake a psychiatric examination, cooperate with the examiner, and make a report to the district court concerning the examination.

[19] Notably, a part of Title 12 on *Civil* Procedure.

sentence was to enforce the preliminary injunction, which Snow was, apparently, flagrantly violating. Because the proceedings here were clearly remedial and coercive in nature, we find no violation of the right to jury trial.[20]

The Right to a Court-Appointed Attorney

Arguing again that the contempt procedure was criminal in nature, Snow argues that the court was required to appoint counsel to assist him in his defense. Snow relies on *Johnson v. Zerbst*, 304 U.S. 458, 465, 58 S. Ct. 1019 (1938), as holding that the Sixth Amendment stripped the trial court of jurisdiction because Snow never waived his right to counsel. However, the Sixth Amendment right to counsel is triggered in criminal and criminal contempt proceedings, but specifically *not* in civil contempt cases. *See Turner v. Rogers*, 564 U.S. 431, 441, 131 S. Ct. 2507 (2011) ("[T]he Sixth Amendment does not govern civil cases. Civil contempt differs from criminal contempt in that it seeks only to 'coerc[e] the defendant to do' what a court had previously ordered him to do."). Because, as we have noted above, the case against Snow was for indirect civil contempt, the district court was not required to appoint counsel for his defense and was within its discretion to deny Gregory Snow's motion to vacate on these grounds.

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[20] Further, even if it were not, Snow bases his argument on a requirement of a *written waiver* of his right to jury trial, citing *Henry* as recognizing this requirement. However, *Henry* does not mention a written waiver. The West headnotes and case synopsis mention a written waiver, but the case does not. The opinions and analysis of the Thomson Reuters corporation are not part of the opinion of the Court. *U.S. v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337 (1906) ("In the first place, the headnote is not the work of the court, nor does it state its decision .... It is simply the work of the reporter, gives his understanding of the decision, and is prepared for the convenience of the profession in the examination of the reports."). Interestingly, this rule of law does not appear in the headnotes of this case.

The Proper Prosecutor

Snow cites to *Ex Parte Hibler*, 1929 OK 401, ¶ 8, 281 P. 144, as requiring that *any* contempt proceeding here should have been commenced by the State of Oklahoma, not the parties, holding that "the procedure ... was criminal in its nature ... and must have been prosecuted in the name of the State of Oklahoma." *Id.* ¶ 26. As we have noted previously, however, it is clear that the contempt proceedings against Snow were civil, rather than criminal, in nature.

The Summary Judgment on Contempt and the Necessity of Third Parties' Testimony

Finally, Snow argues that the initial summary judgment as to the contempt, with the reservation of a trial as to sentencing, was improper because "indirect contempt ... may not be punished summarily." *Brief-in-chief*, pg. 14.

Snow did not respond to the appellees' summary judgment motions on contempt and the court decided these pursuant to the *Spirgis* rule regarding unopposed summary judgment motions. *See Spirgis v. Circle K Stores, Inc.*, 1987 OK CIV APP 45, ¶ 10, 743 P.2d 682 ("The trial court must examine the evidentiary materials supporting the motion and if all the material facts are addressed and are supported by admissible evidence, those facts are admitted and judgment for the movant is proper.") Snow argues that this is inappropriate because "contempt must be proven by the testimony of third parties." Snow cites to an unpublished Tenth Circuit opinion for the proposition that the testimony of a third party or a contemnor is mandatory to find indirect contempt. *See Parkhurst v. U.S. Dep't of Educ.*, 9 Fed. Appx. 900 (10th Cir. 2001). The *Parkhurst* decision states that "indirect criminal contempt may not be punished

summarily" because it did not occur in the presence of the judge, and goes on to state that "indirect contempt must be proved through the testimony of third parties or a contemnor." *Id.* at 904.

As we have previously held, however, the contempt proceedings here were civil and coercive, not criminal and punitive. Snow argues, however, that *Parkhurst* also applies in civil contempt cases and the requirement of "the testimony of third parties or a contemnor" inherently prohibits summary judgment on indirect civil contempt claims because this constitutes prohibited "summary punishment" pursuant to *Parkhurst.*

Snow misinterprets *Parkhurst* and misunderstands the nature of proceedings on summary judgment. *Parkhurst* states only the long-established common-law dichotomy that direct contempt may be established by the acts that a judge personally witnesses, and the judge may therefore summarily declare contempt and punishment without the need for further evidence or testimony, while indirect contempt must be proven by an evidentiary inquiry.[21] It does not mandate how that evidentiary inquiry is to be conducted, however. We find no authority for the proposition that summary judgment on the motion of a party equates to "summary punishment," or is a prohibited process in determining if indirect contempt occurred.

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[21] The *Parkhurst* court found that an immediate finding of contempt was appropriate because Parkhurst refused to stand to address the bench and had responded "to hell with you," when questioned by the judge. *Id.* at 903.

Snow finally argues that summary judgment was inappropriate under *Spirgis* because the court speculated as to what it "thought a jury might decide." This allegation cites to that portion of the court's order which states that the undisputed evidence was such that it would "only allow a reasonable jury" to find that Snow had violated the court's order. [Record 627] Snow argues that this shows the court granted judgment based only on its estimation of how a jury a might rule on questions before it.

In fact, the court simply restated an axiomatic general rule: "Summary judgment is not appropriate where reasonable persons might reach different conclusions based upon the undisputed evidence." *Wood v. Mercedes-Benz of Okla. City,* 2014 OK 68, ¶ 4, 336 P.3d 457. The converse is equally true: summary judgment *is* appropriate where reasonable jurors could not reach different conclusions based upon the undisputed evidence. We find no error here.

For these reasons, we find the trial court acted within its discretion in denying Snow's motion to vacate the 2010 preliminary injunction and the contempt judgments based thereon. Accordingly, the judgment of the district court is AFFIRMED.

BARNES, J., concurs, and WISEMAN, P.J., concurs in result.

October 12, 2022