



ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

DEC 30 2022

JOHN D. HADDEN
CLERK

CHRIS HOLLAND,)
)
 Plaintiff/Appellee/)
 Counter-Appellant,)
)
 vs.)
)
 VIMALA AGRAWAL,)
)
 Defendant/Appellant/)
 Counter-Appellee,)
)
 and)
)
 AMY AGRAWAL and VANCE 1)
 PROPERTIES, LLC,)
)
 Defendants.)

Case No. 119,793

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APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE CINDY TRUONG, TRIAL JUDGE

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS

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OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

Vimala Agrawal appeals a trial court judgment finding that she fraudulently conveyed a property the court described as the Lincoln Boulevard Property. Chris Holland appeals the same order claiming the trial court erred in finding that Vimala did not fraudulently convey a second property the court described as the Braden Park Property. After review, we conclude that the court did not address the question of whether Holland's claims are barred by the applicable statute of limitations. We must reverse the judgment and remand for further proceedings for the trial court to first determine if the statute of limitations was suspended by a stay of collections efforts or an extinguishment of garnishment and then to determine if the petition was timely filed in light of any applicable stays or suspensions of the running of the statute of limitations.

FACTS AND PROCEDURAL BACKGROUND

On March 15, 2018, Chris Holland filed a petition seeking to set aside certain fraudulent conveyances. He asserts he obtained an Oklahoma Department of Labor award for unpaid wages against Vimala and other defendants and that award remains unpaid. Holland claims that two properties were fraudulently conveyed: 4133 N. Lincoln Boulevard and 7521 NW 130th Street (Braden Park Property). Holland claims Vimala made several transfers of the Lincoln Boulevard Property beginning on February 22, 2010 and continuing through May 2013 and

that she began executing quitclaim deeds on the Braden Park Property on February 22, 2010 and continued until October 1, 2012.

Holland included in attachments to his petition a quitclaim deed for the Braden Park Property dated and notarized on February 22, 2010, stating that it is made “between Vimala Agrawal individually—NOMINEE as party of the first part, and Vimala Agrawal as Trustee as AST dated 3/13/85 . . . as Party of the second part.” On October 1, 2012, Vimala executed another quitclaim deed for the Braden Park Property stating that it is made “between Vimala Agrawal individually—NOMINEE as party of the first part, and Amy Agrawal an individual, . . . as Party of the second part.”

Holland appends a copy of a “Correction to Quit Claim Deed Dated September 30, 2012 and recorded on October 03, 2012, Book RE12048, Page 125” for the Lincoln Boulevard Property which states: “On this 22ND day of May 2013, Vimala Agrawal as Trustee of Agrawal AST Trust dated 3/13/1985 as Party of the First Part” quitclaimed her interest in the Lincoln Boulevard Property to “Amy Agrawal, a single person, as party of the second part.” He attaches a quitclaim deed for the same property dated April 1, 2013, between Amy Agrawal “as party of the first part, and Vance-1 Properties, LLC as Trustee . . . as Party of the second part.”

Holland submits an Oklahoma County District Court order filed on March 25, 2014, lifting a stay of execution as ordered by the Supreme Court. The order, providing no date as to when the stay was entered, states in part:

This matter comes before the Court on March 19, 2014, by an Order filed by the Oklahoma Supreme Court under Case No. 112,462 on March 4, 2014. The Oklahoma Supreme Court having assumed original jurisdiction, issued a writ of mandamus directing the Honorable Judge Barbara G. Swinton to lift the stay of execution of judgment against all judgment debtors in the above styled case.

After the trial court considered and denied Vimala's motion for summary judgment, the case proceeded to trial. In addition to the deeds attached to his petition, Holland introduced at trial as an exhibit a quitclaim deed for the Lincoln Boulevard Property dated September 30, 2012, pursuant to which Vimala, in her individual capacity, transferred her interest in the property to Amy Agrawal.

Vimala submitted as exhibits deeds for the Lincoln Boulevard Property beginning with a November 15, 1991 quitclaim deed from McDonald's Corporation to Vance Limited Partnership and a quitclaim deed dated February 10, 1999, from General Holding Corporation to "Newton Agrawal and Amy Agrawal, thru Vimala Agrawal-Trustee." The deed is signed by Vimala as follows:

Vimala Agrawal, President
General Holding Corporation, General Partner of
Vance Limited Partnership an Oklahoma Limited
Partnership

In a July 5, 2007 quitclaim deed, Newton Agrawal and Amy Agrawal transferred their interest in the Lincoln Boulevard Property to Vimala in her individual capacity. In a "Quit Claim Deed of Trustee" for the Lincoln Boulevard Property dated July 18, 2007, Vimala Agrawal as Trustee for Newton Agrawal and Amy Agrawal transferred her interest in the property to Newton Agrawal and Amy Agrawal.

In a February 22, 2010 deed, Vimala Agrawal in her individual capacity quitclaimed her interest in the Lincoln Boulevard Property to "Vimala Agrawal, as Trustee of AST dated 3/13/85 as Party of the second part." Another deed mentioned above was executed on the Lincoln Boulevard property on September 30, 2012. On April 1, 2013, Amy Agrawal executed a quitclaim deed for the Lincoln Boulevard Property in favor of "Vance-1 Properties, LLC as Trustee."

Holland presented the Oklahoma Supreme Court mandate in Case No. 111,809 dated January 27, 2017, showing the Supreme Court affirmed the district court's judgment in Oklahoma County Case No. CJ-2010-5887. The Supreme Court in Case No. 111,809 affirmed the judgment of the trial court sustaining the Department of Labor's award in favor of Holland and other claimants in their wage claims against Vimala Agrawal, Kris Agrawal and the businesses affiliated with the couple.

In that Opinion, the Supreme Court stated the following underlying facts:

On November 11, 2008, Appellee/wage claimant Christopher Holland filed a claim for unpaid wages in the Oklahoma Department of Labor (ODOL) against Appellants Kris Agrawal, Vimala Agrawal and the business entities which they allegedly own. Claimant alleged he was owed \$36,750.00 for unpaid wages. He later modified the amount owed to \$34,350.00.

On February 3, 2009, Labor Compliance Officer Debra Metheny issued an Administrative Order of Determination awarding Holland wages of \$34,350.00 and, pursuant to 40 O.S. §165.3(B), also awarded liquidated damages of \$34,350.00, for a total award of \$68,700.00. On February 5, 2009, the appellants, through their attorney, Raymond A. Vincent, requested an administrative hearing.

The ALJ ruled in favor of Holland on his wage claim and affirmed the Administrative Order of Determination. The ALJ's Final Agency Determination, filed March 17, 2010, was appealed to the district court, which affirmed it on September 12, 2012. Petitions for certiorari were timely filed by Vimala Agrawal, (pro se), in Case 111,809; and by Kris Agrawal and the business entities, in Case 111,837. By Supreme Court order dated November 8, 2013, the cases were consolidated under surviving case number 111,809. On the same day, the consolidated cases were made a companion case to case number 112,316.

Agrawal v. Oklahoma Dep't of Labor, 2015 OK 67, ¶¶ 2-4, 364 P.3d 618

(footnotes omitted).

Holland includes as a trial exhibit a court minute filed on October 19, 2012, in Oklahoma County Case No. CV-2010-1171 extinguishing a garnishment because 40 O.S. § 165.7 prohibits all further collection action until any appeals of the ODOL Final Wage Claim have been adjudicated. Holland also includes an order dated March 19, 2014, but filed on March 25, 2014, lifting the stay of execution in Oklahoma County Cases No. CJ-2010-5857, CJ-2010-5858, and CV-2010-1171.

The trial court found that Vimala's conveyance of the Braden Park Property was not fraudulent because she never individually owned that property. The trial court found that Vimala's February 22, 2010, conveyance of the Lincoln Boulevard Property to herself as Trustee of the AST Trust was fraudulent pursuant to 24 O.S. § 116 and the September 30, 2012 conveyance of that property from Vimala to Amy Agrawal was also fraudulent.

Vimala appeals the trial court's decision that the Lincoln Boulevard Property conveyances were fraudulent and Holland appeals the trial court's decision that the Braden Park Property conveyances were not fraudulent.

STANDARD OF REVIEW

"A statute-of-limitation issue ordinarily presents a mixed question of fact and law." *Sneed v. McDonnell Douglas*, 1999 OK 84, ¶ 9, 991 P.2d 1001. We review *de novo* the question of whether a trial court applied the correct legal

standard, but our review is deferential in nature when we review a trial court's determination of the existence of facts supporting its decision. *See, e.g., Booker v. Sumner*, 2001 OK CIV APP 22, ¶ 14, 19 P.3d 904.

ANALYSIS

The trial court determined that some conveyances were fraudulent, but others were not. After review, we conclude that the issue of the statute of limitations, raised as an affirmative defense, should have been resolved before deciding whether the conveyances in question were fraudulent.

At the conclusion of the bench trial, à propos of counsel's argument about the four-year statute of limitations, the trial court states: "I think I already ruled on that issue on the summary judgment." The parties briefed the statute of limitations/tolling issue as part of the proceedings on Vimala's motion for summary judgment which the trial court denied in June 2020. This denial is not an adjudication of this issue on the merits and is not dispositive or binding on the parties—it simply means that, on the record presented, disputed material issues of fact existed precluding the entry of judgment for either party as a matter of law. Rule 13 of the Rules for District Courts, 12 O.S.2021, ch. 2, app. The denial of a Rule 13 motion certainly does not constitute a "judgment," and those disputed fact issues remain to be decided. The parties here then included the limitations question as an unresolved issue in the pretrial order of January 2021, and the

limitations defense remained to be determined at trial by the judge as the trier of fact. If the trial court concluded that it had decided this issue by denying Vimala's motion for summary judgment, this was error.

From the face of the petition, it is clear the limitations period had expired on the issue of fraudulent conveyances by the time the petition was filed, unless the limitations period was somehow tolled or suspended during the period between the conveyances in 2010 through 2013 and the filing of the petition on March 15, 2018.

I. The limitations period was four years.

The trial court concluded the transfers were fraudulent pursuant to 24 O.S.

§ 116 which provides:

A. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

1. With actual intent to hinder, delay, or defraud any creditor of the debtor; or
2. Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - a. was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or
 - b. intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

24 O.S.2021 § 116. The statute of limitations for the Uniform Fraudulent Transfer Act, found at 24 O.S.2021 § 121, states:

A cause of action with respect to a fraudulent transfer or obligation pursuant to the provisions of the Uniform Fraudulent Transfer Act, Section 112 et seq. of this title, is extinguished unless action is brought:

1. Pursuant to the provisions of paragraph 1 of subsection A of Section 116 of this title, within four (4) years after the transfer was made or the obligation was incurred or, if later, within one (1) year after the transfer or obligation was or could reasonably have been discovered by the claimant;

2. Pursuant to the provisions of paragraph 2 of subsection A of Section 116 of this title or subsection A of Section 117 of this title, within four (4) years after the transfer was made or the obligation was incurred;

3. Pursuant to the provisions of subsection B of Section 117 of this title, within one (1) year after the transfer was made or the obligation was incurred; or

4. For the purpose of transfers made or obligations incurred prior to November 1, 1986, the statute of limitations in effect prior to November 1, 1986, shall apply to claims or causes of action based thereon, but in no event shall a claim or cause of action be brought with respect to such transfers or obligations incurred any later than November 1, 1990.

The statute of limitations applicable in this case as stated clearly in § 116 was four years from the date of the conveyance(s) in question.

In her answer, Vimala asserted that Holland's claims for fraudulent conveyance were barred by the statute of limitations. In his petition, Holland challenged conveyances that he alleged began for both properties on February 22,

2010, and continued until October 2012 for the Braden Park Property and through May 2013 for the Lincoln Boulevard Property.

On the face of his petition, Holland filed it more than eight years from the first conveyance and more than four years after the May 2013 conveyance. Unless the statute of limitations was tolled or suspended, Holland's petition was filed after the limitations period had expired on these conveyances.

II. Holland had the burden to show that the statute of limitations period had been tolled or suspended.

The statute of limitations is an affirmative defense and generally the party asserting that defense must prove it. *Whitney v. Doyle*, 1945 OK 160, ¶ 6, 159 P.2d 237. An exception to the general rules exists where a petition shows that a claim is barred by the statute of limitations. *Id.* In that case, "the burden devolves upon the party seeking to avoid its effect to show the facts or acts which operate to either arrest, suspend, toll or waive the limitation period." *Beatty v. Scott*, 1961 OK 140, ¶ 5, 362 P.2d 699. Because Holland's petition was clearly filed outside the four-year period, he shouldered the burden to show that the limitations period had been tolled or suspended.

III. The record is unclear regarding whether this action was stayed, and if it was, for how long.

Holland asserts that because he was stayed from collecting his judgment, his petition was timely filed. "It is a well-settled rule of law that 'whenever a person is

prevented from exercising his legal remedy by some paramount authority, the time during which he is thus prevented is not to be counted against him in determining whether the statute of limitations has barred his right.” *McBee v. Shanahan Home Design, LLC*, 2021 OK 60, ¶ 18, 499 P.3d 1 (quoted citation omitted).

Holland testified that, after he received a final ODOL determination on his wage claim, he “brought [it] to the county and filed [it] here as a judgment.” Holland testified that he filed it as foreign judgment and started collection efforts—he garnished Vimala’s account, but “[t]hey claimed that I didn’t have a final agency determination, that it was automatically stayed during appeals, which they had filed for a review here at the Oklahoma County District Court.” Holland said, “The judge said that they did have a stay, even though later it was determined they didn’t, and [he] had to return the \$40,000” he received through garnishment. Holland said, “Judge Parrish ruled that we didn’t have a final, enforceable final [*sic*] agency determination, which is obviously not the case. So she stayed it.” Holland continued, “And then at the rehearing on it, she agreed, but then said she was going to leave it up to [Judge] Swinton, and [Judge] Swinton didn’t listen at all and so then it was stayed.”

During this testimony, Holland did not state the exact date the stay began, but he did testify that Judge “Swinton signed an order I think in March of 2014 or ’15 that we were no longer stayed, and that’s where I believe that we’re inside the

statute of limitations because that for the first time [is] when I could collect.”

Holland later points to the January 18, 2011 order that stayed the collection efforts as the beginning of the stay. That order directly extinguishes garnishments. He also submits the October 19, 2012 stay order which states that collection efforts are stayed only until disposition of a pending motion to reconsider/new trial.

Holland is claiming that the statute of limitations was tolled during the time he was stayed from collecting the judgment.

“Tolling” is a term of art which refers to the temporary suspension of statutory time bar for bringing a suit because of either some “disability” on the part of the plaintiff which prevents that person from commencing the action or some activity on the part of the defendant forestalling prosecution of the claim against the defendant.

Thompson v. Anchor Glass Container Corp., 2003 OK 39, n. 13, 73 P.3d 836.

It is not clear whether the stay on collection efforts tolled the statute of limitations for his claims of fraudulent conveyances. The burden to show tolling, however, was Holland’s. It is also not clear from the record if there was more than one stay, the exact timing of the stay(s), and whether the stay(s) prevented Holland from pursuing his fraudulent conveyance claim.

The trial court was obliged to decide these issues before reaching the merits. “An appellate court will not make first-instance determinations of disputed *law or fact* issues. That is the trial court’s function *in every case*—whether in law, equity

or on appeal from an administrative body.” *Bivins v. State ex rel. Oklahoma Mem’l Hosp.*, 1996 OK 5, ¶ 19, 917 P.2d 456. We will not determine in the first instance whether the statute of limitations was tolled based on the record before us. “When necessary findings are absent, the case must be remanded with directions that they be made by the trial court.” *Id.* n. 37.

We must remand the case to the trial court to determine if a stay or other order prevented Holland from filing his petition challenging these conveyances as fraudulent. If the trial court finds that Holland was prevented from filing his petition, it must determine the time period during which he was so prevented, and then determine if any remaining time period, both before and after the stay order, resulted in his petition being timely filed within four years from each conveyance at issue.

Although cognizant that Holland has been endeavoring to collect his ODOL award for many years and that the original defendants including Vimala may have acted dilatorily since the award was made to avoid paying it, we cannot disregard the statute of limitations imposed on fraudulent conveyance claims by the Oklahoma Legislature.

CONCLUSION

The timeliness of Holland's petition has not been resolved by the trial court, and we must reverse its order and remand for further proceedings to resolve this threshold question in accordance with this Opinion.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

HIXON, J. (sitting by designation), concurs, and BLACKWELL, J., dissents.

BLACKWELL, J., dissenting:

Because I do not believe the matter should be remanded for any purpose, I respectfully dissent.

The majority bases its decision to not determine whether the statute of limitations applies on the following, oft-quoted citation: "An appellate court will not make first-instance determinations of disputed law or fact issues. That is the trial court's function in every case—whether in law, equity or on appeal from an administrative body." *Bivins v. State ex rel. Oklahoma Memorial Hosp.*, 1996 OK 5, ¶ 19, 917 P.2d 456, 464 (emphasis removed). However, that rule is not properly applied to this case where the very issue the majority remands to determine—the tolling of the statute of limitations—was raised and tried. Such was not the case in *Bivins*. There, the Supreme Court reversed the dismissal of a suit against a hospital, and the hospital asked the Court to direct the entry of summary judgment, on remand, on a legal issue that "had neither been raised nor assessed" in the trial court. *Id.* ¶ 18.

The Supreme Court rightly held that it “cannot craft an initial decision upon an *untried question* and then direct that it be followed on remand.” *Id.* ¶ 19.

In this case, the majority remands for factual findings on a question that was both tried and decided below. Although I agree with the majority that the trial court’s suggestion that it had “already ruled on” the question of the statute of limitations “on summary judgment” at least suggests¹ a misunderstanding of the summary-judgment process, the trial court’s judgment makes no repetition of this dubious statement,² and that judgment is presumed to contain all the findings necessary to support it. *Carpenter v. Carpenter*, 1982 OK 38, 645 P.2d 476, 480 (“The court’s decision is presumed to include a finding favorable to the successful party upon every fact necessary to support it.”). Because a finding that the petition was filed outside the statute of limitations is clearly inconsistent with a judgment for the plaintiff, we can

¹ The majority is certain this statement by the trial court reveals a clear misunderstanding of the law. However, if a party is simply reasserting a legal argument that was rejected in the summary proceeding—a certain interpretation of a statute, for example—the trial court’s statement here is at least defensible. The majority’s analysis implies that the denial of summary judgment *must mean* that “disputed material issues of fact existed . . .” *Majority Opinion*, pg. 8. However, the denial of summary judgment can also be an interlocutory determination that, on undisputed facts, the moving party’s legal theory is simply incorrect. And, even if the trial court did err here, we should endeavor to determine whether the judgment appealed is correct despite the error. *See, e.g., Harvey v. City of Oklahoma City*, 2005 OK 20, ¶12, 111 P.3d 239, 243 (“We will not disturb a correct judgment on review, even when the trial court applied an incorrect theory to arrive at its conclusion, because an unsuccessful party cannot complain of the trial court’s error when he would not have been entitled to succeed anyway.”).

² A trial judge’s oral remarks announcing the judgment cannot be a basis for reversing a judgment where those remarks were not incorporated into the journal entry. *Thompson v. Inman*, 1971 OK 32, ¶ 30, 482 P.2d 927, 937.

safely presume that the trial court found that the statute did not bar the action. In light of this presumption, we should proceed to determine the merits of the appellant's (and the counter-appellant's) claims³ in this appeal.⁴

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³ The majority does not address any of the appellant's other three propositions of error—a statutory interpretation question related to “insolvency,” a *res judicata* defense, and an alleged failure to join necessary parties—or the appellee's counter-petition related to the Braden Park property (see *Response Brief*, pg. 13). All of these questions, to the extent they were presented below, were also finally resolved by the judgment appealed and should be addressed here.

⁴ While not dispositive, I find it noteworthy that the appellant never sought the result it receives here. The only remand the appellant suggests is, upon reversal, to instruct the trial court to enter judgment on the appellant's behalf. Nor does the appellee at any point suggest remand as to the appellant's claims is necessary or advisable. The remedy the majority crafts here is purely of its own creation.