IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

JAMES ELDON PILKINGTON, a Personal Representative of the Estate of Benny Eldon Pilkington, also known as Ben E. Pilkington, Deceased; JAMES ELDON PILKINGTON, as Trustee of the Ben E. Pilkington Trust Dated December 14, 1994; and JAMES ELDON PILKINGTON, as Personal Representative of the Estate of Bobbye Lee Pilkington, Deceased,

Plaintiff/Appellee,

vs.

SHAWNA C. CONNOR POINTS,

Defendant/Appellant.

Case No. 120,688

APPEAL FROM THE DISTRICT COURT OF MUSKOGEE COUNTY, OKLAHOMA

HONORABLE ORVIL LOGE, TRIAL JUDGE

VACATED AND REMANDED

Dale Warner
DALE WARNER LAW
Tulsa, Oklahoma

For Plaintiff/Appellee

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Muskogee, Oklahoma

For Defendant/Appellant

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Shawna Points appeals a summary judgment the district court entered against her which found that a series of deeds conveying property to Shawna

from her grandmother, the late Bobbye Pilkington, were invalid. Because the record does not support the judgment, we vacate it and remand for proceedings consistent with this opinion.

BACKGROUND

Ben[1] and Bobbye Pilkington were married in 1952. The couple acquired various tracts of land in Sequoyah and Muskogee County, some of which are the subject of this lawsuit. Both are now deceased. They were survived by four adult children: James, Dondra, Margaret, and Stephen. James, in a representative capacity only, is the plaintiff and appellee. Stephen's adult daughter, Shawna Points, is the defendant and appellant.

In 1994, Ben and Bobbye each created living trusts and corresponding pour-over wills. According to James, however, none of the tracts at issue in this suit were ever placed into either trust. In 1999, Ben died. Bobbye became the trustee of Ben's trust and the executor of his estate.[2]

In the first half of 2002, Bobbye executed at least eight relevant deeds—done in three separate batches—with the apparent intent to convey[3] the tracts at issue to Shawna, or, in the case of the Muskogee County tracts, to Shawna and James.

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[1] Also known as Benny, but referred throughout this opinion as Ben.

[2] Ben's estate was opened January 18, 2000, and appears to remain open today. *See* Muskogee County, Case No. PB-2000-9.

[3] Because we are reviewing a grant of summary judgment in favor of the plaintiff, we will recite the facts as they appear in the record in the light most favorable to the defendant. We acknowledge, however, that James contests the validity of Bobbye's signature on several, if not all of the relevant deeds, and, as will be further discussed below, believes all the relevant deeds are legal nullities regardless of the authenticity of the signatures.

The record details of the first batch of three deeds, which will refer to as "the January deeds," are as follows. Each are full warranty deeds. Two conveyed a total of ten tracts of land in Sequoyah County[4] and another conveyed two tracts in Muskogee County. Each was executed January 2, 2002, by Bobbye. Specifically, the grantor of each of the January deeds was listed as "Bobbye Pilkington widow and trustee of the Ben E. Pilkington Estate." Bobbye signed her name only, though the signature block lists "Bobbye Pilkington, Trustee." "Shawna C. Conner Points" is a grantee on each of the three deeds. James is also a grantee as to the Muskogee County deed, but he later quitclaimed his interest back to Ben's trust.

The second batch of three deeds—hereinafter "the April deeds"—had the following characteristics. They are also full warranty deeds, though each is entitled *Correction Warranty Deed* with the word "Correction" handwritten on the deed above the printed title of "Warranty Deed." They were executed April 30, 2002, also by Bobbye. The grantor is listed as "Bobbye L. Pilkington Successor and Trustee of the Ben E. Pilkington Trust dated 12-14-94." The grantees are functionally identical to the January deeds and all the same lands were conveyed.[5]

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[4] For reasons not clear from the record, at least one of these tracts, being the all of the W/2 and the E/2 SW/4 NE/4 in Section 7, Township 13 North, Range 25 East, containing 340 acres, was not referenced in the judgment appealed. Nevertheless, the order granting summary judgment purported to undo the deeds of "all properties purportedly conveyed by Bobbye Pilkington to Shawna Points," ROA, Doc. 15, *Court Ruling*, pg. 2, which would include this property.

[5] We note "Conner-Points" is hyphenated in the April deeds but not the January deeds. By all accounts, both references are to the defendant and appellant.

Finally, the record contains a third set of deeds—hereinafter "the June deeds"—the details of which are as follows. First, there is a quitclaim deed, executed on June 21, 2002, that purports to convey all Bobbye's right, title, and interest in nine of the Sequoyah County tracts previously conveyed. A second quitclaim deed, also executed on June 21, 2002, was recorded in Muskogee County and conveyed the same two tracts as the two prior Muskogee county deeds. The grantor in each of the June deeds is simply "Bobbye L. Pilkington" and the grantees are as in the prior deeds.

Notably, prior to the execution of the June deeds, James petitioned and was appointed as guardian of Bobbye's person and property. At that same time, James was appointed as personal representative of Ben's estate and as trustee of Ben's trust.

James, now executor and trustee of Ben Pilkington's estate and trust, and guardian of Bobbye, believed that all the above-mentioned deeds were obtained by fraud, without consideration, or were otherwise void. In September 2002, he requested instruments from Shawna reconveying the properties to the estate. Shawna refused.

In 2003, James filed suit against Shawna and others,[6] alleging a "cloud on title by invalid deed" and seeking "treble damages" pursuant to "§ 1141.3. et seq."[7] Shawna answered denying all James's claims. The case then embarked on

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[6] All others have since been voluntarily dismissed.

[7] Presumably this refers to 12 O.S. § 1141.3. No part of this section provides for "treble damages" however. Title 16 O.S. § 79 provides for treble damages when an improper

a fitful course that would take almost twenty years to reach the resolution now under review. In late 2008, Shawna filed a motion to disqualify James's counsel on the grounds that he had represented Shawna at one time and was using confidential information he had obtained during his representation of Shawna to assist James.[8] Shawna also filed a motion to compel discovery. James did not apparently respond to either motion, and in April 2009 the court ordered disqualification.[9] In October 2009, Bobbye died, and James became a plaintiff as executor of her estate, rather than as her guardian.

Nothing of material significance then occurred until June 2014, when Shawna filed a motion for summary judgment. The motion contained documentary evidence and an affidavit stating that Shawna handed over approximately $600,000 in bonds to Bobbye as consideration for the subject property. James failed to answer this motion. In August 2014, the court ordered that this default by James constituted an admission of all material facts supported by admissible evidence but found that those facts did not justify judgment for either party. In March 2020, new counsel made an entry of appearance for James and, in November 2020 James filed a motion for summary judgment.

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deed or other paper is filed *purely for the purpose* of slandering title. See *Oak Tree Partners, LLC v. Williams*, 2020 OK CIV APP 5, ¶¶ 83-84, 458 P.3d 626, 645. The petition alleged no facts to support such a claim, however.

[8] The motion also alleged other instances of unprofessional behavior.

[9] The court also found the following admitted due to failure to answer discovery: (1) The subject deed involved in this action has been on record in the office of the county clerk Muskogee county for more than five years; (2) That, by reason of 16 O.S. § 27A(2), Bobbye Lee Pilkington was authorized to execute deeds as the trustee of the Ben Pilkington Trust.

James's motion raised a new theory of the case[10]—namely, that all the involved property was held by Ben and Bobbye Pilkington as joint tenants with right of survivorship, and therefore vested in Bobbye individually immediately upon Ben's death and never became the property of Ben's trust or estate. James argued that no deed from Bobbye *individually* was made before he obtained the guardianship, and that any deed made after that time was invalid. Hence, as a matter of law, no transfer of property had ever taken place and the ineffective deeds filed by Shawna created a cloud on title, which was properly held by Bobbye's estate. He also moved for summary judgment on his fraud theory, attaching the report of a handwriting expert calling some (though not all) of the relevant deeds into question. Shawna filed a response and a counter-motion for summary judgment.

In August 2022, more than nineteen years after the case was filed, the court entered summary judgment in favor of James. Shawna appeals.

STANDARD OF REVIEW

Summary judgment settles only questions of law and is therefore reviewed *de novo*. *City of Jenks v. Stone*, 2014 OK 11, ¶ 6, 321 P.3d 179, 181. "Summary judgment will be affirmed only if the appellate court determines that there is no dispute as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* It will be reversed if reasonable people might reach different conclusions from the undisputed material facts. *Id.*

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[10] James appears to have previously relied only on theories of fraud, incompetence to contract, and undue influence.

ANALYSIS

Although Shawna raises twelve allegations of error,[11] we find the dispositive question to be whether, when the facts are viewed in the light most favorable to Shawna, any of the deeds outlined above conveyed or could have conveyed any interest owned by Bobbye, individually or in her representative capacity, at the time of execution. Because we find that the deeds unambiguously conveyed all of Ben's trust present (if any) and *possible future interests*, and because they *may have* conveyed Bobbye's individual interest, summary judgment was inappropriate. We will discuss each set of deeds in turn.

James contends that January deeds were of no legal effect because the trust did not own the property it was purporting to convey, and the trial court appears to have granted summary judgment on the basis. We disagree with that contention and further find that January deeds ambiguous as to whether Bobbye intended to convey her individual interest (if any).

First, as to the ambiguity. As noted, in the first set of deeds, Bobbye conveyed "*as widow* and trustee of the Ben E. Pilkington Estate." We find that

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[11] The judgment appealed states no grounds for its decision, though the order granting summary judgment states that "[t]he Court finds sufficient evidence to grant Summary Judgment to the Plaintiff ...." ROA, Doc. 15, *Court Ruling*, pg. 2. Several of Shawna's allegations of error concern the possibility that the court could have granted summary judgment on James's theories of fraud or undue influence. There are clearly disputed facts that render these theories unviable as a basis for summary judgment. Shawna's response to James' 2020 motion contains sworn affidavits as to the execution of the signature on the deeds that contradict the evidence of James's document examiner claiming that the signatures are forged. To the extent the trial court granted summary judgment related to James's claims of fraud, undue influence, or duress, or relied on James's contradicted evidence related to the authenticity of Bobbye's signatures, the trial court erred. The foregoing discussion of the effectiveness of the deeds under review does not consider this issue, which remains to be determined.

the inclusion of the word "widow" in these circumstances creates an ambiguity as to whether the grantor intended to convey her individual interest. Typically, the recitation of marital status is included in a deed so that it is clear that no signature of any spouse is required to release any potential homestead rights. 16 O.S. § 4 ("No deed ... affecting the homestead exempt by law ... shall be valid unless in writing and subscribed by both husband and wife, if both are living and not divorced, or legally separated, except as otherwise provided for by law."). While it is possible the word widow was included for another purpose, as means of further identification, for example, (or perhaps for no particular reason at all) the most natural reason would be to ensure later examiners of the document that there is no potentially lingering homestead right of a spouse. *See generally*, Standard 7.2 of the Oklahoma Title Examination Standards, Title 16, Ch. 1, App. (2023) ("There is no question that an instrument relating to the homestead is void unless both spouses subscribe it. *Grenard v. McMahan*, 1968 OK 75, 441 P.2d 950, *Atkinson v. Barr*, 1967 OK 103, 428 P.2d 316 ...."). Although we cannot find that January deeds conveyed Bobbye's individual interest as a matter of law, we do find that the January deeds are ambiguous as whether the grantor intended to convey her individual interest, if any, or not. As such, summary judgment was inappropriate and the matter must be remanded for trial on this question, where both parties must be permitted to introduce parol evidence as to intent.

A second issue concerns the potential application of the doctrine of after-acquired title. Although the relevant grantor in this context is listed as "Bobbye

Pilkington ... *trustee* of the Ben E. Pilkington Estate," we will presume for purposes of this discussion that Bobbye intended to convey either as executor of the estate or trustee of Ben's trust, or both.[12] As further discussed below, James contends that this conveyance was a legal nullity because the property in question was not held by Ben's estate or the trust at the time of the conveyance. However, this narrow view does not consider the possibility of the application the doctrine of after-acquired title.

That doctrine, which has been codified at 16 O.S. § 17 since statehood, was succinctly explained by the Oklahoma Supreme Court as follows:

> The doctrine precludes one party to a deed and his privies from asserting against the other party and his privies any right or title in derogation of the deed or from denying the truth of material facts asserted in the deed. Where a grantor conveys by warranty deed an interest he does not then own, but thereafter acquires, the reacquired interest inures to the benefit of the grantee. The vesting of title in the grantee, upon his grantor's reentry into the chain of title, passes by operation of law without any intervention of any court. The initial conveyance from a grantor who does not then own an interest in the property vests in the grantee equitable title to the interest purportedly conveyed in the warranty deed, so that when the grantor later acquires legal title it will instantly and immediately pass to the grantee. The purpose of the doctrine is to assure a grantor's or encumbrancer's warranty is effectuated.

Wood v. Sympson, 1992 OK 90, 833 P.2d 1239, 1243 (citations omitted). Under this doctrine, which does not appear to have been considered by the trial court,

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[12] The recitation of the grantor here creates an a second, though perhaps less troublesome, ambiguity in the January deeds. Of course, in Oklahoma, estates generally have executors or administrators, not trustees. Did Bobbye, presuming competence, intend to convey in her capacity of trustee of Ben's trust or executor of his estate, or both? While (perhaps) academically interesting, the resolution of this question is unnecessary given the April correction deeds, which will be discussed below. For purposes of the discussion of the application of the after-acquired title doctrine, we will presume that Bobbye intended to convey in either capacity.

Bobbye's conveyance as trustee or executor, even if she owned no interest in a representative capacity at the time of the conveyance, would be effective to convey any interest the entity (in this case, most likely Ben's trust *via* Ben's estate after probate) might come to own in the future. Thus, even ignoring the multiple ambiguities created by the recitation of the grantor, the trial court's apparent ruling that the January conveyances were a legal nullity was in error.[13]

Finally, in relation to the January conveyances, we note that James's claims that Ben and Bobbye held all the involved property as joint tenants, with full rights of survivorship, prior to Ben's death such that it passed to Bobbye individually upon Ben's death and, thus, could not have been part of Ben's estate or trust. First, we note that this theory cannot meet the contention that the January deeds may have been effective in conveying Bobbye's individual interest, a possibility not capable of resolution on summary judgment for the reasons discussed above.

Second, the party seeking summary judgment on this theory, James had the initial burden of showing the status of the property prior to Ben's death and, presumably, could have done so by providing copies of the claimed deeds. Instead, James relied on an affidavit by another attorney, Jim McGinnis, who offered the following, which is taken verbatim from his affidavit:

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[13] Although this appears to be the court's rationale based on the pleadings, its decision ordered Shawna to "execute by deed of conveyance title to the 10 parcels of real estate set forth herein before and deliver such instruments of conveyance to the clerk of the District Court of Muskogee County Oklahoma for deposit and safekeeping pending resolution of the appeal." This order is difficult to reconcile with the James's theory that no property was ever transferred to Shawna in the first instance.

> Apparently there was no property that passed to [Ben's] Revocable Trust as all properties were in his and his wife's name with Right of Survivorship therefore all property passed to Bobbye Pilkington upon his passing. Ben Pilkington revocable Trust was never funded unless Ben Pilkington had separate property in his name only.

ROA, Doc. 10, Exhibit 24. Mr. McGinnis' assessment of what facts are shown by "the case file," or his opinion as to the proper legal interpretation of these facts, is not evidence, and is entirely insufficient to establish as a matter of law that any piece of property at issue was originally held in joint tenancy with right of survivorship.[14] We do not find anywhere in the record the clear and presumably available proof of ownership that the prior deeds[15] to the subject properties would establish.[16]

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[14] This affidavit is a curious attempt to create evidence. It consists largely of recapitulations of the record evidence, coupled with the legal conclusions that Mr. McGinnis opines should be drawn from them. By example, Mr. McGinnis states that "it is clear from a timeline of all the documents reviewed that Shawna Points tried to embezzle her grandmother's property on at least four separate occasions." We fail to see how any of Mr. McGinnis's opinions as to what facts are shown by "the case file," or the proper legal interpretation of these facts, constitute either factual evidence or admissible expert testimony. The trial court was in possession of the record the parties submitted and was the proper party to draw legal conclusions from that record.

[15] Such deeds, should they exist, should have been provided with the petition. It seems that Shawna was in possession of the property, thus this action, though denominated as one to quiet title, was in fact for the recovery of real property. (We note, for example, that the initial petition sought recovery of any rents and income Shawna had collected from the properties.) Pursuant to 12 O.S. § 1142, "[i]n actions for the recovery of real property, it shall be necessary for the plaintiff to set forth in detail the facts relied upon to establish his claim, *and to attach to his petition copies of all deeds or other evidences of title*, as in actions upon written contracts; and he must establish the allegations of his petition, whether answer be filed or not." *Id.* (emphasis added). No such deeds are attached to the petition or amended petition, and no joint tenancy warranty deeds into Ben and Bobbye of any kind appear in the record.

[16] To the contrary, the trial court record *does* contain documentary evidence that indicates that several, if not all, of the property transferred by the deeds in question was held in Ben Pilkington's name only, or in Ben and Bobbye's name, but not necessarily as joint tenants. Shawna's counter motion for summary judgment included a report by three disinterested appraisers, evidently prepared for Ben's estate, in which the appraisers list

Having determined both that the January deeds could have been effective to convey all of Bobbye's individual interest and the interest she owned as trustee of Ben's trust or executor of his estate, including any equitable title to future interests obtained by those entities via doctrine of after-acquired title, we need not linger long on the legal effect of the April correction deeds. As noted above, the primary difference between the January deeds and April deeds was the name of the grantor, which was "corrected." The January deeds recited the grantor as "Bobbye Pilkington widow and trustee of the Ben E. Pilkington Estate." In the April deeds, the grantor is "Bobbye L. Pilkington Successor and Trustee of the Ben E. Pilkington Trust dated 12-14-94." There is no ambiguity in the grantor of the April deeds. Presuming competence, the April deeds are effective to convey the interest of Ben's trust to Shawna, including both present interests, if any, and later acquired interests. It is further clear and unambiguous that the April deeds do not convey any of Bobbye's individual interest, if any, although, as discussed above, those may have been conveyed by the January deeds.

Discussion need be equally brief regarding the final set of deeds—the June deeds that Bobbye signed in her individual capacity. Presuming Bobbye was under a valid general guardianship[17] at the time they were made, they are invalid

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many (if not all) of the same tracts at issue in this case as held Ben's name only and others "in the Name of Ben E. & Bobby L. Pilkington" with no reference to joint tenancy or the right of survivorship. As noted above, however, Ben's estate appears to remain open, so it cannot be said with any certainty how those properties were held or distributed. Certainly, the record does not contain evidence by which it could be determined as a matter of law that the property was held in joint tenancy at the date of Ben's death.

[17] Questions could (though have not, as far as this Court is aware), arise as the validity and extent of the guardianship. The guardianship statutes in effect in 2002 required

because she inherently lacked the capacity to sell or make gifts of her property, and any transfer of her property was required to have been made by her guardian, with court approval. *See generally*, 30 O.S.2001 §§ 4-751 – 4-770. We note, however, that even if the June deeds have no legal effect, they may be used as evidence by either party on remand as relevant to the question of Bobbye's intent in executing the prior deeds. *See Lanford v. Cornett*, 1966 OK 112, ¶ 0 415 P.2d 984 ("A cardinal rule in construing a deed is the true intent of the makers, as that intent may be discerned from the instrument itself, taking it all together, considering every part of it, and viewing it in the light of the circumstances surrounding the makers at the time of its execution; and their later acts in connection therewith may be considered in arriving at their intention.").[18]

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factual findings, including whether the guardianship was general or limited, and, if a general guardianship was ordered, an "explanation on record" of why a less restrictive limited guardianship or other option was not viable was required. 30 O.S.2001 § 3-111(B). The order in the record does not state whether the guardianship is limited or general and makes no finding on why a general guardianship is necessary. Further, six months later, the same court was "wholly satisfied" that Bobbye was competent make gifts of property through a new will. This appears inconsistent with a guardianship finding that Bobbye was fully incapacitated at the time of the general guardianship order. This issue remains on remand.

[18] Shawna argues that June deeds are valid under *Matter of Conservatorship of Spindle*, 1986 OK 65, 733 P.2d 388, 390 as authority. Her reliance on the case is misplaced, as it holds that the appointment of a *conservator* does not change the fact that "a person of adequate mentality has the right to give away his property to whomsoever he wishes." *Id.* ¶ 11. This rule was based, however, on the fact that a conservatorship finds only that the ward "'is unable to manage his property' by reason of advanced age or physical disability" and does not carry a finding the ward is not "mentally competent concerning the management of the ward's estate." *Id.* ¶ 10 (quoting, in part, 58 O.S.1981 § 890.1). Title 58 O.S. § 890.1 was renumbered in 1988 as 30 O.S. § 3-201, which was then repealed in 1989 and replaced by 30 O.S. § 3-211. The current § 3-211 is clear that a conservatorship is appropriate only when "such person is, by reason of *physical disability only*, unable to manage his property" and then only when "such person voluntarily consents to the establishment of a conservatorship and the appointment of a conservator." 30 O.S. § 3-211 (emphasis supplied). Bobbye was not subject to a conservatorship by the court's order of May 23, 2002, however, but was subject to a guardianship. Guardianship relies on a finding of incapacity. As such *Conservatorship of Spindle* does not apply, and Bobbye could not, presuming the validity of the guardianship order, transfer her property after May 2002.

Another of Shawna's allegations of error raises concerns that must be addressed on remand, however. Shawna's 2014 motion for summary judgment included sworn testimony, supported by evidence, that Shawna had handed over some $600,000 in bonds and certificates as consideration to an agreement that Bobbye would provide deeds to the subject property. James failed to answer this motion, and the court subsequently found, in an order of August 11, 2014, that these facts were deemed admitted, presumably pursuant to District Court Rule 13. The court found that, even with this admission, it could not grant summary judgment on the facts presented.[19]

Shawna appears to argue that, by reason of this admission, the fixed law of the case is now that she gave consideration for a transfer of the subject properties, and the matter cannot be subsequently reconsidered. Rule 13 is structured somewhat differently, however. It provides:

> All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary judgment or summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.

Okla. Dist. Ct. R. 13.

We find no indication that these admissions remain unalterable if the court did not render a final judgment based upon them. Rather, the same rule that applies to other default admissions appears applicable here. The discovery

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[19] We have no record why the court so found. Title 12 O.S. § 2056 required the court to "issue an order specifying what facts, including items of damages or other relief, are not genuinely at issue." The court found only that "the facts set forth in Defendants' motion, now deemed admitted, do not support a judgment for or against any party to this litigation."

statue, 12 O.S. § 3236 (B), is clear that matters deemed admitted by a failure to respond are "conclusively established unless the court on motion permits withdrawal or amendment of the admission." We see no reason to treat admissions made by default on summary judgment differently from admissions made by default on discovery, which may be withdrawn on order of the court. *See also*, 12 O.S. § 994(A) ("[A]ny order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights *and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order* or other form of decision is subject to revision at any time before the final judgment, decree, or final order adjudicating all the claims and the rights and liabilities of all the parties is filed with the court clerk.") (emphasis supplied).

Nonetheless, the record contains no motion to withdraw or amend these admissions, and no order of the court to that effect.[20] Further, even if the admission is deemed withdrawn, this still leaves a question of fact whether Shawna gave consideration to Bobbye for various property that she owned individually and, in return, received the deeds under review, and on which the trial court granted summary judgment to James. If Shawna indeed gave Bobbye consideration for property that was not then transferred, this represents a

[20] Nor is the court required to grant such an order but has discretion in the matter. Case law on the standards a court should apply in determining if a party should be allowed to withdraw admissions is sparce, but *Ross v. Pace*, 2004 OK 13, 87 P.3d 593, indicates that that nature and duration of the opportunity a party was afforded to respond to requests for admissions, alongside valid reasons for the failure to respond, are factors.

current claim against Bobbye's estate that should be resolved on remand before any final resolution can be made.

CONCLUSION

The record here cannot support a summary judgment on the grounds of fraud or undue influence. It further cannot support summary judgment on the grounds that all the involved property was the individual property of Bobbye Pilkington as a surviving joint tenant. It also shows a questions of material fact as to whether the deeds in question were in fact effective to convey Shawna the subject property and whether Shawna gave consideration for that property. The summary judgment of the district court is therefore vacated, and the matter is remanded for proceedings consistent with this opinion.

VACATED AND REMANDED.

FISCHER, J., and HUBER, J., concur.

June 16, 2023