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NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

JUN 14 2023

JOHN D. HADDEN
CLERK

THE BENJAMIN M. BARRESI)
SEPARATE PROPERTY TRUST,)
an Oklahoma trust; COSMO ENERGY,)
LLC, an Oklahoma limited liability)
company and NTH, LLC, an Oklahoma)
limited liability company,)

Plaintiffs/Appellees,)

vs.)

MERIT PETROLEUM, LLC, an)
Oklahoma limited liability company and)
JOHN SWEEDEN, IV, an individual,)

Defendants/Appellants,)

and)

JCW ENERGY, LLC; SYNTAX, LLC;)
ALLSQUARE, LLC; ALLSQUARE)
HOLDINGS, LLC; FOSBURY, LLC)
and PUBLICDATAOK, LLC,)

Defendants.)

Case No. 119,911

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APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE SHEILA STINSON, TRIAL JUDGE

VACATED AND REMANDED FOR FURTHER PROCEEDINGS

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OPINION BY JOHN F. FISCHER, JUDGE:

Merit Petroleum, LLC, and its owner John Sweeden, IV (collectively Merit) appeal the denial of their motion to disqualify counsel for Plaintiffs, The Benjamin M. Barresi Separate Property Trust, Cosmo Energy, LLC, (collectively the Trust) and NTH LLC in this business dispute litigation.¹ After the required evidentiary hearing, a journal entry was filed denying the motion to disqualify. Because that order lacks the necessary findings of fact and conclusions of law, we vacate and remand for further proceedings.

¹ The motion to disqualify counsel was filed by Sweeden and Merit. In addition, the motion was joined by Syntax, LLC, Allsquare, LLC, Allsquare Holdings, LLC, Headwaters, LLC, Fosbury, LLC, and Publicdataok, LLC (the Sweeden Entities). Sweeden, Merit and all of the Sweeden Entities are defendants in this case and represented by the same counsel. It appears that all of these business entities are owned or controlled by Sweeden and all joined the Answer filed by Merit. However, only Sweeden and Merit are parties to this appeal.

BACKGROUND

NTH and the Trust filed this action on August 25, 2020, alleging that Merit breached the terms of a Memorandum of Understanding governing the terms of a new business venture formed by the parties. The Petition asserts claims for breach of contract, fraud, conversion and unjust enrichment, among others and sought monetary damages and injunctive relief. Merit filed its Answer on October 22, 2020, in which it asserted various affirmative defenses. On July 15, 2021, Merit filed its motion to disqualify counsel representing NTH and the Trust. Merit appeals the denial of its motion to disqualify.

ANALYSIS

Merit's motion to disqualify asserted that opposing counsel's representation of NTH and the Trust was prohibited by Rule 1.7 of the Oklahoma Rules of Professional Conduct, 5 O.S.2021, ch. 1, app. 3-A, because the interests of those two entities in this litigation are adverse. The district court conducted an evidentiary hearing as required by *Miami Business Services, LLC v. Davis*, 2013 OK 20, ¶¶ 24-25, 299 P.3d 477, 488 ("Before ruling whether an attorney should be disqualified based on conflict of interest or improper possession of confidential information, it must hold an evidentiary hearing."). At the conclusion of that hearing, the court announced that the motion to disqualify was denied. Merit's counsel did not ask the district court to make findings of fact and conclusions of

law and only requested that a journal entry be prepared memorializing the court's ruling. And, the journal entry prepared to reflect this ruling did not contain any findings of fact or conclusions of law but only states that "Defendants' Motion to Disqualify is denied."

Findings of fact and conclusions of law are essential to appellate review of a motion to disqualify counsel even when the alleged possession of confidential information is not the basis for seeking disqualification. *McGee v. Amoco Prod. Co.*, 2019 OK 7, ¶ 3, 438 P.3d 355, 356.

CONCLUSION

The order denying Merit's motion to disqualify is vacated and this case is remanded for further proceedings as required by *McGee v. Amoco Production Co.*, and the cases cited therein.

VACATED AND REMANDED FOR FURTHER PROCEEDINGS.

BLACKWELL, P.J., and HUBER, J., concur.

BLACKWELL, P.J., concurring:

I agree that the Court's resolution of this case—vacating the order under review and remanding for detailed findings of fact and conclusions of law—is compelled by *McGee v. Amoco Prod. Co.*, 2019 OK 7, 438 P.3d 355 and *Miami Bus. Servs., LLC v. Davis*, 2013 OK 20, 299 P.3d 477. I therefore join the Court's Opinion in full. I write separately to note that, in my view, those cases—to the

extent they require vacatur of simple orders denying disqualification in every case where disqualification is sought but not obtained—should be reconsidered.

The rule requiring such detailed findings is not statutory but was borne out of a litigant’s “fundamental right to employ and be heard by counsel of his or her own choosing,” “[t]he right to select counsel without state interference,” and “the due process right of an individual to make decisions affecting litigation placing his or her property at risk.” *Arkansas Valley State Bank v. Phillips*, 2007 OK 78, ¶ 12, 171 P.3d 899, 904 (emphasis removed). No such rights are implicated in a denial of disqualification. And, an aggrieved party *always* maintains a right to request detailed findings of facts and conclusions of law, *see* 12 O.S. § 611, which did not happen in this case. A court-made rule that requires further delay in a case such as this (where the motion to disqualify was filed nearly two years ago) should be reconsidered, and the default rule that an appellate court should decide an appeal on the appellant-provided record should be reinstated.

June 14, 2023