NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

MATTER OF THE APPLICATION OF TROY KENNETH SUTHERLIN TO ISSUE TITLE.

TROY KENNETH SUTHERLIN,

Appellant,

vs.

DATALINE ENERGY SERVICES, LLC,

Appellee.

Case No. 120,293

APPEAL FROM THE DISTRICT COURT OF CLEVELAND COUNTY, OKLAHOMA

HONORABLE SCOTT F. BROCKMAN, TRIAL JUDGE

AFFIRMED UNDER RULE 1.202(b), (d) & (e)

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OPINION BY JOHN F. FISCHER, JUDGE:

This case involves the ownership of two vehicles left on real property acquired by New Hope Equipment Sales, Inc., on June 13, 2016, pursuant to a tax deed issued by the Carter County Treasurer. The Treasurer sold the real property after its owner, Dataline Energy Services, LLC, failed to pay ad valorum taxes for several years. On June 21, 2016, Troy Sutherlin, the owner of New Hope, filed this application asking the district court of Cleveland County to issue him a certificate of title to the two vehicles. The district court granted that application pursuant to an order filed on the same day. On September 9, 2021, Dataline Energy Services, LLC, a new entity, filed a motion to vacate the June 2016 order. This Dataline claims an interest in the vehicles.

Sutherlin appeals the district court's thorough, twelve-page order granting Dataline's motion and vacating the June 2016 order. We find the case appropriate for summary affirmance pursuant to Oklahoma Supreme Court Rule 1.202, 12 O.S.2021, ch. 15, app. 1.

DISCUSSION

"A void judgment, decree or order may be vacated at any time, on motion of a party, or any person affected thereby." 12 O.S.2021 § 1038. The "void judgment" referred to in section 1038, "is one that is void on the face of the judgment roll." *Capitol Fed. Savs. Bank v. Bewley*, 1990 OK 79, ¶ 9, 795 P.2d

1051, 1054. The judgment roll "is generally synonymous with 'common-law record.'" *Booth v. McKnight*, 2003 OK 49, n.21, 70 P.3d 855, 859. It consists of "the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court . . . ." 12 O.S.2021 § 32.1.

The proceedings to vacate the June 2016 order focused on the reasonableness of the efforts Sutherlin employed to notify Dataline of its application for certificates of title to the two vehicles. Notice is "a fundamental element of due process." *Cate v. Archon Oil Co. Inc.*, 1985 OK 15, ¶ 10, 695 P.2d 1352, 1356 (footnote omitted). The judgment roll does not reflect that summons was issued or that any other form of service or notice to Dataline was attempted. The district court examined the judgment roll and found that Sutherlin's efforts failed to satisfy constitutional requirements and vacated the June 21, 2016 order directing the Oklahoma Tax Commission to issue certificates of title to the two vehicles to Sutherlin.

The standard of review for a district court's ruling vacating or refusing to vacate a judgment is abuse of discretion. *Wells Fargo Bank, N.A. v. Heath*, 2012 OK 54, ¶ 7, 280 P.3d 328, 331-32. "An abuse of discretion occurs when a court bases its decision on an erroneous conclusion of law or where there is no rational

basis in evidence for the ruling." *Id.* (citing *Fent v. Okla. Nat. Gas Co.*, 2001 OK 35, ¶ 12, 27 P.3d 477, 481).

The district court's decision in this case is clear, comprehensive, well-reasoned, and fully supported by competent evidence. The district court's findings of fact are not against the clear weight of the evidence, and its conclusions of law are correct and more than adequately explain its decision. The district court did not abuse its discretion in vacating the June 21, 2016 order. Finding no reversible error, we affirm the district court's order pursuant to Oklahoma Supreme Court Rule 1.202(b), (d) & (e), 12 O.S.2021, ch. 15, app. 1.

AFFIRMED.

HUBER, J., concurs, and BLACKWELL, P.J., dissents.

BLACKWELL, P.J., dissenting:

To show a judgment to be void for lack for proper notice—an element of personal jurisdiction—there are at least two possible standards. The person seeking vacatur must show either (1) that the judgment roll does not contain proper notice, or (2) that the judgment roll affirmatively shows a *lack* of proper notice. The correct standard, as enunciated in numerous cases, is the latter. *See, e.g., Graff v. Kelly*, 1991 OK 71, ¶ 6, 814 P.2d 489, 492 ("A judgment is void on its face when the judgment roll *affirmatively shows* that the trial court lacked either (1) jurisdiction over the person; (2) jurisdiction over the subject matter; or, (3) judicial

power to render the particular judgment. *Morgan v. Karcher*, [1921 OK 136,] 81 Okl. 210, 197 P. 433." (emphasis added) (quoting *Town of Watonga v. Crane Co.*, 1941 OK 39, ¶ 12, 114 P.2d 941, 942). Although the trial judge cited to the second, correct standard, *see Order* at 4 ("This invalidity must appear 'on the face of the judgment roll, *i.e.*, when the record affirmatively shows the trial court lacked jurisdiction.'")(quoting *Matter of Estate of Davis*, 2006 OK CIV APP 31, ¶ 21, 132 P.3d 609, 613)), he clearly applied first, incorrect standard. *Id.* at 10 ("[T]here is nothing in the 'judgment roll' to indicate that a reasonable process was followed to provide adequate notice to Dataline, a known, interested party."). This is an error of law necessitating reversal.

At the time of the motion to vacate was filed, the judgment roll consisted solely of two pieces of paper: the 2016 application for title and the order granting the application the same day. All agree that *no information* regarding notice provided to Dataline, if any, is contained in the judgment roll. Indeed, the *existence* of Dataline as a potentially interested party cannot be determined *in any way* from these two pieces of paper. However, the trial court draws in pertinent part on the Mr. Sutherlin's testimony, obtained from the pleadings on the petition to vacate and clearly outside the judgment roll, to determine that notice to Dataline was both required and constitutionally inadequate. *See, e.g., id.* at 9 ("Sutherlin indicates that he made some informal attempts at notice … [but] these efforts did not reach the

level of reasonableness required by longstanding law.") and 10 ("This was not an occasion in which ... [Sutherlin] had no idea who the owner is or how to even notify him or her."). All this evidence was obtained outside the judgment roll, and thus, cannot be used to find the judgment *void*. *Stork v. Stork*, 1995 OK 61, ¶ 12, 898 P.2d 732, 738 ("If extrinsic evidence is needed to show the jurisdiction's absence, the judgment is not facially invalid, although it may be declared voidable.").[1]

It cannot be affirmatively determined from that judgment roll that adequate notice to Dataline was not provided or was even required.[2] Thus, the order sought to be vacated is not void, and the trial court erred in vacating it.[3] On this basis, I would reverse the order appealed and therefore respectfully dissent from the majority's summary affirmance.[4]

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[1] Of course, the court could have considered all of this evidence in a proceeding to vacate the judgment if the proceeding had been instigated under 12 O.S. § 1031. Here, however, the petition to vacate was brought more than five years after the judgment was entered and no such avenue was available.

[2] It would seem in all cases where a VIN is known that notice *should* be required to be provided to the last known title holder. No party points to any statute or rule requiring this, however. In this case, Sutherlin testified—again, outside the judgment roll—that he attempted to locate Dataline but was unable to do so. The court in 2016 apparently found Sutherlin's actions adequate. Absent constitutional infirmity in such proceedings as a whole—*i.e.*, without finding that the trial court lacked the power to enter the *in rem* judgment at issue here—respect for the finality of judgments requires that we defer the trial court's 2016 resolution of this question.

[3] This says nothing of the propriety or merits of the ongoing Carter County litigation. If successful there, Dataline can surely obtain an order for new titles, which would supersede the titles Mr. Sutherland obtained in this action.

[4] I note that, though we settle but one case here, the implication for similar orders is concerning. From this record it appears the process used here, at least in Cleveland County, is rote. The application and order that make up the judgment roll appear to be court provided. Mr. Sutherlin testified that he simply "filled out the form." R. 48. It is unlikely, then, that evidence of notice to any party will ever appear the judgment roll of a

similar *in rem* action. If this order is void for want of notice in the court file, many similar orders are also likely also void.