IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

IN RE THE MARRIAGE OF:

WENDY RENEA OGDEN, now BASS,

Petitioner/Appellant,[1]

vs.

CHARLES ALLEN OGDEN,

Respondent/Appellee.

Case No. 120,355

APPEAL FROM THE DISTRICT COURT OF
CANADIAN COUNTY, OKLAHOMA

HONORABLE BARBARA HATFIELD, SPECIAL JUDGE

AFFIRMED

Philip A. Hurtt
BRANCH & HURTT LAW FIRM, P.C.
Oklahoma City, Oklahoma — For Petitioner/Appellant

Scott T. Banks
SWAIN LAW GROUP
Norman, Oklahoma — For Respondent/Appellee

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Wendy Bass appeals a district court order permitting her ex-husband, Charles Ogden, to move forward with his motion to correct the entry of the parties agreed divorce decree. Wendy argues that the trial court was without

[1] The clerk is directed to correct the caption, apparently taken from the petition-in-error, which erroneously labeled Wendy Renea Ogden, now Bass, as the appellee and Charles Allen Ogden, as the appellant. In fact, Wendy is the appellant, and Charles is the appellee.

jurisdiction to hear the motion or to open the parties' decree in order to conform it to their agreement, arrived at via mediation. We affirm, finding that the trial court has the power under 12 O.S. § 1031.1 to consider whether the decree should be corrected as Charles requests.

BACKGROUND

In November 2017, Wendy filed a petition for dissolution of marriage. On March 30, 2021, the parties and counsel mediated their claims, the result being an agreed property distribution. A copy of the mediation memorandum is included in the record. R. at 22-24.[2] The mediation agreement made no disposition of a "chuck wagon,"[3] which is at the heart of this controversy. The settlement was announced to the court, which issued a minute order granting a divorce and set the matter of the entry of a final decree for a later hearing. Although both parties believed they had reached a mediated settlement, there was purportedly an incomplete understanding regarding certain details, most

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[2] The record is properly tabulated with and referenced by "document numbers," as our appellate rules require. See Sup.Ct.R. 1.33(a)(2) ("The instruments, numbered consecutively, indexed and bound, shall be certified under the seal of the clerk.") and 1.11(e)(1) ("Citations to the record shall identify the number of the document in the record, and the page number within the document."). However—conveniently, from this Court's perspective—the record is also numbered with "Bates numbers."** Our references to the record are to the Bates numbers.

** A "Bates-stamp number" is "the identifying number or mark that is affixed to a document or to the individual pages of a document in sequence, usu. by numerals but sometimes by a combination of letters and numerals." Black's Law Dictionary (11th ed. 2019). It is "[o]ften shortened to Bates number [or] Bates stamp." *Id.* (emphasis removed).

[3] Apparently of the variety seen in Westerns and used as part of western-themed reenactments or entertainments. Though we use the phrase "chuck wagon" as shorthand throughout this opinion, we recognize that the property in question includes all of the following: "Chuck Wagon with the chuck box, water barrel, canvas, bows, firebox and volcanos attached." R. at 4.

notably, the distribution of the aforementioned chuck wagon. The purported misunderstanding developed as follows.

In April 2021, Wendy's counsel sent Charles's counsel a proposed decree. Charles's counsel rejected this proposed decree on the grounds that it allocated property—including the chuck wagon—that was not owned by the parties and was not part of the mediation agreement. Charles's counsel responded with his own proposed decree that did not include the chuck wagon. Wendy's counsel rejected this proposed decree and requested the reinsertion of the chuck wagon. Charles's counsel refused and informed Wendy's counsel that he would be filing a "motion to settle journal entry" to have the court decide on a decree that conformed with the mediation agreement.

Charles states in a later "motion to correct" that the parties finally agreed that the decree would not include the chuck wagon:

> [O]n June 14th, 2021, the undersigned office received an e-mail from Vanessa Parent, legal assistant to Mark W. Osby, counsel for [Wendy], that [Wendy] had agreed to the decree presented by [Charles] which is attached hereto as exhibit D, a copy of the e-mail is attached hereto as exhibit F.

R. at 18. Exhibit D does not mention the chuck wagon. Exhibit F is an email from Wendy's counsel's legal assistant stating:

> I spoke with our client, and she is in agreement to sign the decree as you presented it. However ... she is under the impression the chuck wagon is marital property, can you let me know the location of the chuck wagon and who or what entity owns the chuck wagon?

R. at 55. Exhibit G to the motion, a subsequent letter from a paralegal for Charles's counsel sent on behalf of Charles to Wendy's counsel's paralegal, stated that the chuck wagon was owned and possessed by a third party.

It was at this point that Charles's counsel alleges a crucial error occurred, in that he then signed and returned, and had his client sign and return, the *wrong version* of the decree—namely, the earlier version that purported to distribute the chuck wagon to Wendy. Wendy and Wendy's counsel also signed this version of the decree. It was this version that was submitted to the court, which was accepted, and filed as an order of the court on June 22, 2021.

On July 9, 2021, Charles, having noticed the error, filed a motion entitled "Respondent's Motion to Correct Incorrect Entry of Decree of Dissolution of Marriage and Motion for Order Allowing Amended Decree of Dissolution of Marriage" ("motion to correct"). The motion to correct recounted the aforementioned details but cited no particular authority allowing the court to correct the decree that had been previously entered. Wendy's response included a motion to dismiss, in which she argued that the motion to correct was in fact a motion for new trial and was therefore untimely, as it was not filed within ten days after the entry of the decree. The response further argued that, as a consent decree, the decree was not alterable without Wendy's permission. On August 19, Charles filed an application for *nunc pro tunc* order arguing that the submission of the incorrect decree constituted a "scrivener's error" which the court could correct anytime.

Hearing on these motions was held on September 9, 2021. At the hearing the positions of the parties were refined considerably. Charles characterized his motion as a term-time motion pursuant to 12 O.S. § 1031.1, which may be brought within in thirty days of the entry of judgment, a deadline that was

satisfied. The matter was also first characterized as a "jurisdictional question"—that is, whether the court had jurisdiction to even consider either of Charles's motions.

As relevant here, the trial court (1) denied Wendy's motion to dismiss, (2) viewed Charles's motion to correct as proper under 12 O.S. 1031.1;[4] and (3) held it had jurisdiction to hear Charles's motions. Wendy now appeals these decisions.[5]

STANDARD OF REVIEW

The standard of review for an order granting a timely motion to vacate under 12 O.S. 2001 §1031.1 is whether the trial court abused its discretion. *Matter of Estate of Hughes*, 2004 OK 20, ¶ 8, 90 P.3d 1000, 1003.[6]

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[4] In its order, the court found "that 12 O.S. 1030-1.1, B & C apply to this action." R. at 88. We can only view this as a statement referencing § 1031.1. Title 12 contains no § 1030 and the transcript is clear the trial court considered Charles's motion to correct as under §1031.1. Tr. (9/9/2021) at 12 ("I have jurisdiction over this and I'm entertaining it as a motion to—to vacate, and we'll set it down for hearing."). Somewhat ironically, this is precisely the type of error that is properly remedied by an order *nunc pro tunc*. *Stork v. Stork*, 1995 OK 61, ¶ 7, 898 P.2d 732, 736.

[5] The court also agreed to modify the effective date of the decree and that the court "will only hear the matter of the 'Chuck Wagon.'" R. at 88-89. Neither of these orders are questioned in this appeal and are not addressed.

[6] Of course, here, the trial court did not vacate or refuse to vacate the agreed decree, but just decided it had the authority to hear the matter. At first blush, this caused us some consternation as to our appellate jurisdiction. The trial court's order is clearly interlocutory and all that's been decided is that the trial court *may* decide to correct the agreed decree *or not*. However, 12 O.S. § 993(A)(8) provides that we have jurisdiction to review any order that "opens ... a judgment." Oklahoma law does not clearly define what constitutes an appealable "opening" of a judgment. Title 12 O.S. § 1031.1 speaks of correcting, opening, modifying, or vacating a judgment as if each is a definably different act. The phrase "opening a judgment" appears most associated in Oklahoma law with judgments obtained by default through service by publication, probably because 12 O.S. § 2004(C)(3)(f), and its predecessor 12 O.S. § 176 (repealed Nov. 1, 1984), reference "open[ing] a judgment" in this context. The phrase is not in any way limited to such judgments, however. We find that the trial court's order setting the questions related to entry of the final decree for hearing effectively "opened the

ANALYSIS

Wendy's primary argument is that the court lacked "jurisdiction" to consider a § 1031.1 motion to change the provisions regarding the chuck wagon because a consent decree is immune from any change without the permission of both parties. No Oklahoma statute or common law declares the modification of a consent decree to be outside the *jurisdiction* of the courts of Oklahoma, however. The law merely sets limitations on such modification.

As *State ex rel. Bd. of Regents of Univ. of Oklahoma v. Lucas*, 2013 OK 14, ¶ 10, 297 P.3d 378, 384 notes, when a motion purportedly seeking dismissal on jurisdictional grounds is intertwined with arguments on the merits of the claims, then the motion to dismiss should be deemed to be a motion for summary judgment. That is exactly what we have here. The court's decision is essentially one denying summary judgment against Wendy's argument that, as a matter of law, it could not "open" the decree.

On the question of merits, we agree that this matter is not one that may be corrected by a *nunc pro tunc* order. Orders *nunc pro tunc* cannot be used to "bring into the record what a court might or should have done ...." *Stork v. Stork*, 1995 OK 61, ¶ 7, 898 P.2d 732, 736.

> *Nunc pro tunc* relief is limited to supplying inadvertent clerical omission and correcting facial mistakes in recording judicial acts that actually took place. In short, a *nunc pro tunc* order can and will place of record what was actually decided by the court but was incorrectly recorded. The device may neither be invoked as a vehicle to review a judgment (or to excise legal errors found in it) nor as a means to enter a different judgment.

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judgment" such that we have jurisdiction via 12 O.S. § 993(A)(8). We further find that our standard of review as to such a question is whether the trial court abused its discretion.

Id.

The rule of *Stork* is clear. A *nunc pro tunc* order corrects errors in the *recording* of a *court's* decision—*i.e.*, when the decision does not accurately reflect the court's actual ruling. In this case, the court reviewed the submitted consent decree, approved it as equitable, and made it an order of the court. The court could not have actually intended to approve a different distribution because no other decree was before it. Hence, the matter cannot be corrected by a *nunc pro tunc* order.

This does not immediately equate to Charles being without a remedy, however. A consent judgment is not a judicial determination of the rights of the parties. It acquires the status of a judgment through the judge's approval of a preexisting agreement. *Whitehorse v. Johnson,* 2007 OK 11, ¶ 10, 156 P.3d 41, 46. A consent judgment is in the nature of a contract and construed the same as any other contract. *Id.* When considering a consent decree, "[w]e use principles of contract law" and interpret "a consent judgment 'as other contracts' and ascertain the intent of the parties." *Holleyman v. Holleyman,* 2003 OK 48, ¶ 11, 78 P.3d 921, (quoting, in part, *Greeson v. Greeson,* 1953 OK 111, ¶ 12, P.2d 276, 278.

In contract terms, Wendy argues that the decree submitted to and signed by the court unambiguously awards her the chuck wagon, and hence neither the intent of the parties, nor any prior version of the contract, is relevant under the parole evidence rule, and the contract is not subject to any revision. *See e.g., Hodge v. Hodge,* 2008 OK CIV APP 96, ¶¶ 16–17, 197 P.3d 511 (finding an abuse

of discretion where a trial court modified provisions of a consent decree that were clear and unambiguous).

Wendy's analysis would be persuasive if Charles's argument was only that the decree is ambiguous as to the disposition of the chuck wagon. Charles's case is more fundamental, however. Charles brought evidence that the only contract agreed to by the parties did not include the chuck wagon, and that the version accidently submitted to the court did not reflect any actual agreement by the parties. He further brought evidence that the chuck wagon was neither marital property nor the separate property of the parties, and a domestic court was hence without the legal power to distribute it. Wendy did not deny either the agreement for a different decree, the history of communication between the attorneys, or the statement that a third party was the owner of the chuck wagon.[7]

An enforceable contract requires the parties' "mutual consent, or a meeting of the minds" on all the essential terms of the contract. *Beck v. Reynolds*, 1995 OK 83, ¶ 11, 903 P.2d 317, 319; 15 O.S. §§ 2 and 66. A court may reform a contract entered into by mutual mistake upon the production of clear and convincing evidence to that effect. *Cox v. Kaiser-Francis Oil Co.*, 2007 OK CIV

[7] In response to Charles's motion to correct and exhibits showing that both counsels agreed not to include the chuck wagon, Wendy stated that she "could not admit or deny" the agreement, presumably alleging that *she did not personally know* of the conversations and correspondence exchanged between counsel. R. at 79. No contrary evidence regarding the agreement between Wendy's and Charles's counsel, or the ownership of the chuck wagon, was introduced by Wendy at hearing, however. A party may not simply stand on a general denial in pleadings as evidence. *Culpepper v. Lloyd*, 1978 OK 90, ¶ 7, 583 P.2d 500, 502. Nevertheless, Wendy remains free to bring such evidence to bear on remand.

APP 10, ¶ 8, 152 P.3d 274, 277, citing *Thompson v. Estate of Coffield*, 1995 OK 16, 894 P.2d 1065, 1067–1068.

A consent decree is not as immune from challenge under § 1031.1 as Wendy proposes. The Oklahoma Supreme Court has held that a trial court is free to use § 1031.1 to correct a consent decree "to more accurately reflect what was always the agreement of the parties ...." *Stepp v. Stepp*, 1998 OK 18, ¶ 12, 955 P.2d 722, 725. The trial court's decision to consider doing so here, where a serious question as to whether the order entered by the court was the one the parties agreed to, was not an abuse of discretion.

AFFIRMED.

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

October 20, 2023