



ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

IN THE MATTER OF THE)
GUARDIANSHIP OF O.M.B. and)
E.R.B., minor children:)
MICHAEL B. BROOMFIELD, Natural)
Father,)

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

NOV - 8 2023

JOHN D. HADDEN
CLERK

Appellant,

vs.

MARSHA GREER, Guardian,

Appellee.

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Case No. 120,186.

APPEAL FROM THE DISTRICT COURT OF
LOGAN COUNTY, OKLAHOMA

HONORABLE SUSAN C. WORTHINGTON, TRIAL JUDGE

DISMISSED

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BLAIR LAW OKC
Oklahoma City, Oklahoma

For Appellant

LeAnne Z. McGill
MCGILL AND RODGERS
Edmond, Oklahoma

For Appellee

OPINION BY JOHN F. FISCHER, JUDGE:

Appellant Michael Broomfield, natural father of the minor children OMB and ERB, appeals from the district court's order continuing maternal grandmother Marsha Greer's (Grandmother), custody and guardianship of the children. Because Broomfield has failed to obtain and file the district court's order in appealable form, as directed by the Oklahoma Supreme Court, we dismiss the appeal.

BACKGROUND FACTS AND PROCEDURAL HISTORY

We find it appropriate in the context of this case to recount certain proceedings in the Broomfield divorce (Logan County District Court Case No. FD-2015-18). Natural mother, Jenny Broomfield, was granted a divorce from Michael Broomfield in February of 2016. Pursuant to the terms of the divorce decree entered by Judge Worthington in November 2016, Jenny was awarded sole custody of OMB and ERB, and Michael was allowed visitation.¹

Several years later, on April 27, 2021, Jenny applied for and received an emergency temporary restraining order against Michael in the divorce case. The basis for Jenny's application was concern for the children's overall safety and welfare due to the lifestyle choices of Michael and his new wife – she provided explicit examples that we will not recount.

¹ Judge Worthington presided over the divorce case and all post-decree proceedings in that case.

Judge Worthington ordered that Michael was to have “no contact with the minor children until further order of this Court,” and set the matter for hearing on June 21. The court was later informed that Jenny and Michael had reached an agreement for Michael to have limited contact with the children through telephone call or text only. The prohibition against in-person visitation remained in effect. The June hearing date was continued, and on November 23, 2021, a guardian ad litem (GAL) was appointed for the children.

Jenny Broomfield died on December 11, 2021, due to complications from COVID-19. The children were in Grandmother’s care at the time. On December 16, Michael filed an Application for Emergency Temporary Orders in the divorce case; he informed the court of Jenny’s death and sought sole custody of the children. Judge Worthington granted Michael’s application that same day, giving him “temporary sole custody of [the children] until further order of this Court.” The judge set the matter for a review hearing on January 4, 2022.

On December 17, 2021, the day after Michael Broomfield obtained the emergency order for temporary custody, Grandmother filed a verified petition seeking custody and emergency guardianship of OMB and ERB (Logan County District Court Case No. PG-2021-36). Grandmother’s petition provided the case number for the divorce action, and she attached copies of Jenny’s application for emergency temporary orders and Judge Worthington’s resulting “no contact” order

in support of her petition. The docket sheet in the guardianship case shows that the case was “automatically assigned” to Judge Worthington on the December 17 filing date, but apparently Judge Worthington was not available on that day and Judge Duel entered an ex parte Order of Emergency Guardianship to Grandmother and Writ of Habeas Corpus and Sheriff Pick Up Order, through which the children were delivered to Grandmother.

Approximately two weeks before the January 4, 2022 hearing to review Broomfield’s “temporary sole custody” granted in the divorce case, Grandmother’s counsel and Jenny Broomfield’s divorce/custody counsel filed joint motions in the divorce and guardianship cases requesting the court to continue the Broomfield review hearing in the divorce case due to a scheduling conflict. On the day before the January 4 hearing, Broomfield filed “Respondent’s Response to Motion to Continue and Motion to Vacate Guardianship” in the divorce case. He claimed in his supporting brief that, as sole surviving parent, custody of the children automatically vested in him as a matter of law. His concluding prayer for relief asked the court to “Vacate the order establishing an improper and illegal guardianship that violates Oklahoma law for deceased parents.”

The appellate record reveals that Judge Worthington joined matters in the guardianship case with Broomfield’s competing custody proceeding in the divorce case for purposes of the January 4, 2022 hearing. Judge Worthington did not enter

an order consolidating the two cases. The hearing was not transcribed. At the hearing's conclusion, Judge Worthington entered and filed a single-page form with the printed title "Minute Orders." The entire contents of the form, including a case caption identifying the guardianship proceeding, were handwritten.

The Minute Orders form recites that the case "comes on for review of Father's Emergency Application & [Grandmother] Marsha Greer's Petition for Guardianship & joint motions to continue filed [by Grandmother and Jenny Broomfield's divorce counsel] in PG-2021-36 & FD-2015-18." The Minute Orders reflect that parties appeared through their attorneys, each attorney made an offer of proof, and the court made several rulings regarding the pending matters and issues related thereto, such as extending the GAL's authority to the guardianship case. Judge Worthington ruled that "Guardianship remains w/ [Grandmother] Marsha Greer who has custody by order of this Court of the [two] minor children."² The guardianship case was set for review/status conference on April 26, 2022, and trial was scheduled to begin on June 2, 2022.

² The guardianship Minute Orders do not include a specific ruling denying the motion to vacate the December 17, 2021 emergency order of guardianship that Broomfield filed in the divorce case. However, the denial is inherent in the Minute Orders: "Guardianship remains w/ [Grandmother] Marsha Greer who has custody by order of this Court of the [two] minor children."

BROOMFIELD'S APPEAL

On February 1, 2022, Broomfield filed his initial petition in error in the Supreme Court, indicating he was appealing an order entered in divorce Case No. FD-2015-18. The case caption was “Jenny M. Broomfield, Petitioner/Appellee, vs. Michael B. Broomfield, Respondent/Appellant.” However, he attached the “Minute Orders” filed in the guardianship case, as “Exhibit A,” identifying that document as the “Order Appealed.” The required form for petitions in error asks the question: “Were any post-trial motions filed?” Okla. Sup. Ct. R. 1.300 “Required Forms,” and R. 1.301(5) (“Petition in Error”). Broomfield responded “N/A.”

I. Pre-Assignment Proceedings in the Supreme Court

In a pre-assignment order in this appeal the Supreme Court pointed out jurisdictional deficiencies in Broomfield’s petition in error and provided him with clear, specific instructions on how to remedy those deficiencies.³ The Supreme Court’s Order provides, in pertinent part:

The Court notes that appellant Michael Broomfield [sic] has filed a petition in error listing the divorce case FD-2015-18 in part I [the trial court history] and using the caption of the divorce case on the petition in error. The appellant attached, as the order appealed, a minute Order with the style and case number of guardianship case PG-2021-36. It appears that the trial court joined for purposes of hearing the

³ See *LCR, Inc. v. Linwood Props.*, 1996 OK 73, n.3, 918 P.2d 1388, 1391 (“[A] pre-assignment ruling is . . . a ruling made by the Supreme Court before the appeal’s assignment to a division of the Court of [Civil] Appeals.”).

father's application for orders regarding custody from the divorce case with the petitioner's [grandmother's] petition for guardianship from the guardianship case, along with joint motions to continue.

This appeal shall proceed as an interlocutory appeal from the guardianship proceeding. Appellant is directed to file an amended petition in error, no later than **March 2, 2022**, attaching as Exhibit A a certified copy of an order memorializing the trial court's decision. The order must be in proper appealable form in conformance with 12 O.S. §§ 696.3 and 696.2; *Mansell v. City of Lawton*, 1994 OK 75, 877 P.2d 1120; *Corbit v. Williams*, 1995 OK 53, ¶ 9, 897 P.2d 1129, 1131. **A minute order is not an appealable order.** [Oklahoma Supreme Court] Rule 1.21(a). . . . (Emphasis added to last sentence).

Leave is granted for the parties to proceed in the trial court to seek appropriate orders for the inclusion of particular documents from the divorce case FD-2015-18 in the record on appeal. . . .

Broomfield filed an amended petition in error before the imposed deadline.

He corrected the caption to reflect he was appealing from the guardianship case PG-2021-36. He identified Case No. FD-2015-18 as a "companion." However, contrary to the specific directions from the Supreme Court, Broomfield did not attach a certified copy of an order that properly memorialized Judge Worthington's January 4, 2022 "Minute Orders" in the guardianship case. He attached an entirely different order, Judge Duel's December 17, 2021 ex parte Order of Emergency Guardianship.

Broomfield amended his designation of record twice, and the Supreme Court granted his application for an extension of time in which to file the notice of completion of the record. He filed his brief in chief, indicating on the cover page

that he appealed an “Order of Emergency Guardianship.” He claimed that order was erroneous because custody of the children automatically vested in him on their mother’s death.

Grandmother’s answer brief pointed out that Broomfield still had not complied with the Supreme Court’s order. In his reply brief, Broomfield argued that Grandmother’s procedural complaints were “meritless.” He characterized the Supreme Court’s order as a ruling that the case “‘shall proceed as an interlocutory appeal’ once Appellant filed his Amended Petition in Error.” That characterization is inaccurate. The Supreme Court required more from Broomfield. The Court ordered him to amend his petition in error **and** attach to it a certified copy of an order memorializing the rulings in the Minute Orders into an appealable form.

RULINGS BY MINUTE ORDERS ARE NOT APPEALABLE

Custody and guardianship orders fall within the class of orders that “shall be enforceable when pronounced by the court,” but those orders are not “**appealable**” when pronounced. 12 O.S.2021 § 696.2(E) (emphasis added). “Appealable Orders” must satisfy all requirements of section 696.3 (“Judgments, Decrees and Appealable Orders That are Filed Should Contain the Following: . . .”).

The filing with the court clerk of a written judgment, decree or appealable order, prepared in conformance with Section 696.3 of this title and signed by the court, shall be a jurisdictional prerequisite to the commencement of an appeal. The following shall not constitute a judgment, decree or appealable order: A minute entry; verdict; informal statement of the proceedings and relief awarded, including,

but not limited to, a letter to a party or parties indicating the ruling or instructions for preparing the judgment, decree or appealable order.

12 O.S.2021 § 696.2(D).

Although the “Minute Orders” exhibit attached to Broomfield’s petition in error contains a comprehensive statement of the district court’s various rulings, it is not in a form that qualifies as an appealable order. *See Laubach v. Laubach*, 2022 OK 78, ¶ 14, ___ P.3d ___, 2022 WL 4477857, *5. “[W]e again definitively pronounce that written instruments titled ‘court minute,’ ‘minute order,’ ‘minute,’ or ‘summary order’ cannot meet the definition of an [appealable] order . . . regardless of their substance, content, or length.” *Id.* ¶ 15, 2022 WL 4477857, at *5 (vacating the Court of Civil Appeals’ determination that a district court minute order was an appealable order for purposes of triggering procedural time limits for appeals and remanding to that court for consideration of the merits).

“An appellate court has a duty to inquire into its own jurisdiction” *Johnson v. Snow*, 2022 OK 86, n.9, 521 P.3d 1272, 1278. In a pre-assignment procedural order, the Supreme Court determined that the appeal shall proceed as an interlocutory appeal from orders entered at the hearing on the guardianship proceeding, but identified, and directed Broomfield to correct, an unsatisfied “jurisdictional prerequisite.” 12 O.S.2021 § 696.2(D). The Supreme Court’s pre-assignment order informs our inquiry into whether we may consider the merits of

Broomfield's appeal. *See LCR, Inc. v. Linwood Props.*, 1996 OK 73, ¶¶ 6-7, 918 P.2d 1388, 1391-92.

We have reviewed the record transmitted by the Logan County district court clerk and the dockets in both the guardianship and divorce cases. We are satisfied that there is no order in appealable form which properly memorializes Judge Worthington's rulings at the January 4, 2022 hearing. *See Okla. Sup. Ct. R. 1.1(d)* (OSCN 2023) (providing that an appellate court may view information found on Oklahoma district court appearance dockets posted on www.oscn.net "in order to enhance the court's ability to inquire into and protect its jurisdiction").

**THE IDENTIFIED JURISDICTIONAL PREREQUISITE
REMAINS UNSATISFIED**

The Supreme Court informed Broomfield that a minute order is not an appealable order. The Court provided citations to applicable statutes and longstanding precedent dealing with court minutes and appellate jurisdiction. The Court ordered Broomfield to cure the jurisdictional defect by providing an order that memorializes Judge Worthington's minute-order rulings into an appealable form. He did not do so.

Broomfield has failed to obtain an order that satisfies the "bright line rule" that distinguishes appealable orders from non-appealable orders. *Laubach v. Laubach*, 2022 OK 78, ¶ 11, 2022 WL 4477857, *4. Because Broomfield has failed to comply with the Supreme Court's direct order, we have no jurisdiction to

proceed and, therefore, have not considered and express no opinion on the merits of this appeal. The appeal is dismissed.

DISMISSED.

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

BLACKWELL, P.J., concurring specially:

I concur in full in the Court's opinion dismissing this case for want of an appealable order. I write separately to note that any relief from the emergency guardianship orders attached to the appellant's amended petition in error must come from the Oklahoma Supreme Court in an original action for writ of mandamus or prohibition, not from this Court. *See S.W. v. Duncan*, 2001 OK 39, ¶ 11-13, 24 P.3d 846, 849–50 (denying appellate jurisdiction as to a temporary custody order and recasting the appeal as an original action).

November 8, 2023