ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

GREENWAY PARK COMMERCIAL OWNERS ASSOCIATION, INC., an Oklahoma not-for-profit corporation and GREENWAY PARK, LLC, an Oklahoma limited liability company,

Plaintiffs/Counterclaim Defendants,

vs.

R.T. PROPERTIES, LLC, an Oklahoma limited liability company,

Defendant/Counterclaimant/ Appellee,

and

RODNEY D. THORNTON, an individual,

Cross-Claimant/Appellee,

and

OLD WELL, LLC,

Intervenor/Appellant.

Case No. 120,263

APPEAL FROM THE DISTRICT COURT OF
CLEVELAND COUNTY, OKLAHOMA

HONORABLE JEFF VIRGIN, DISTRICT JUDGE

REVERSED

Barrett T. Bowers
THE BOWERS LAW FIRM
Oklahoma City, Oklahoma

For Defendant/Counter-Claimant/Appellee R.T. Properties and Cross-Claimant/Appellee Rodney D. Thornton

Mark S. Cooper
Norman, Oklahoma

For Intervenor/Appellant Old Well, LLC.

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Intervenor/Appellant Old Well, LLC appeals a decision of the district court awarding attorney fees against the Greenway Park Commercial Owners Association, Inc. (Association) and Greenway Park LLC (Greenway Park) in favor of R.T. Properties, LLC and Rodney D. Thornton (RTP/Thornton). On review, we find that RTP/Thornton filed a satisfaction of judgment in favor of the Association some seven years ago, and this satisfaction included any right to attorney fees. As such, we reverse the decision of the trial court as to the Association.[1]

I.

This matter has a prior history as part of Case No. 114,015, which we will summarize as is relevant. This case began with a purchase of property for development in Norman, Oklahoma, the Greenway Park Addition. The property

[1] The court's order awards fees against both the Association and Greenway Park, LLC. The docket sheet for Case No. 114,015 indicates that Greenway Park, LLC filed for Chapter XI bankruptcy in August of 2015. The same docket sheet indicates that the stay was lifted "to allow all claims and other legal issues pending between debtor Greenway Park and R. T. Properties LLC to be litigated to conclusion in the state courts of Oklahoma." Beyond this, we are given no further indication as to the bankruptcy status of Greenway Park, and Greenway Park did not participate in the fee proceeding or this appeal. We make no determination as to the fee award as against Greenway Park, LLC.

was purchased by "Par-Mar LLC," a company formed by two individuals, Dr. Phillip Parker and Robert Marriot.

In June 2012, Parker and Marriot decided to end their joint venture and dissolved Par-Mar LLC. As a result of this dissolution, Marriot became the sole owner of certain lots in the development, and Parker the sole owner of others. It is this split that underlies all issues in the case. A company named R.T. properties, LLC purchased two lots in the development from Marriot.

On November 27, 2012, Dr. Parker transferred Par-Mar's rights to Greenway Park. On April 15, 2013, Greenway Park recorded an *Amended Declaration of Covenants and Restrictions* that made significant changes in the original declaration and essentially rendered the building planned by RTP/Thornton non-compliant. It also stated that Greenway Park owned all the lots in the development, which it did not.

In June 2013, Greenway Park and the later-formed Association filed suit against RTP/Thornton, alleging that the building RTP/Thornton was constructing was not in compliance with the new covenants and restrictions and had not been approved by the Greenway Park architecture committee. Greenway Park/Association sought an injunction and "abatement" of the building. RTP/Thornton counterclaimed against Greenway Park and the Association, including claims for quiet title, slander of title, negligence, and interference with business relations. RTP/Thornton also counterclaimed against Dr. Parker personally for declaratory judgment, quiet title, bad faith breach of contract, fraud, negligence, and negligence *per se*.

Between 2014 and 2016, the various overlapping claims were decided by the district court. The court found that RTP/Thornton's construction was subject to the provisions of the original covenants, not the revised covenants. It further granted summary judgment to Greenway Park against RTP/Thornton's bad faith and tortious interference claims.

The remaining matters went to trial in 2016. The jury found against Greenway Park's nuisance claim; found for RTP/Thornton on its claims of negligence, slander of title, and intentional interference with prospective economic advantage, and found RTP/Thornton's damages to be $500,000. These verdicts answered all the jury questions presented, leaving the court to decide the various equitable claims.

On May 7, 2015, the court issued a final judgment as follows:

> The motion for directed verdict of Counterclaim Defendants, Phillip Parker and Greenway Park Commercial Owners Association, is sustained and such parties are dismissed from all counterclaims asserted against them by R.T. Properties and Thornton.
>
> Greenway Park, LLC's motion for directed verdict on R.T. Properties' and Thornton's counterclaims against it for fraud, negligence per se, and their claim for punitive damages is sustained.
>
> Judgment is rendered in favor of Defendant, R.T. Properties, L.L.C. and against Plaintiffs Greenway Park, L.L.C., and Greenway Park Commercial Owners Association, on their claim for nuisance.
>
> Judgment is rendered for R.T. Properties and Thornton, and against Plaintiff Greenway Park L.L.C., on R.T. Properties' and Thornton's counterclaims for slander of title, negligence, and intentional interference with business relations against Greenway Park, L.L.C. in the amount of $500,000.00.

Both parties appealed this judgment as Case No. 114,015.[2] In July 2015, while the appeal was pending, RTP/Thornton filed a fee application, seeking approximately $500,000 in fees and costs from Greenway Park and the Association. That application is the subject of this appeal.

Consideration of Case No. 114,015, and further fee proceedings, were delayed because Greenway Park filed for bankruptcy in August of 2015. In July 2016, RTP/Thornton filed a satisfaction of judgment as follows:

> Defendant Counterclaimant, and Cross-Claimant R. T. Properties, LLC ("RTP") and Cross-Claimant, Rodney D. Thornton ("Thornton") hereby acknowledge receipt of consideration from Plaintiff and Counter-Defendant Greenway Park Commercial Owners Association, Inc. ("Association") to settle and satisfy the quiet title judgment rendered in their favor against Association and said consideration received and accepted in **full payment and satisfaction of said quiet title judgment together with interest, cost, and attorney's fees**, and in full payment and satisfaction of any and all liens and claims in said cause, and RTP and Thornton do hereby release, acquit, and forever discharge the Association of and from all liability to and demand of the undersigned, in respect to said cause and judgment.
>
> This Release shall be filed in the office of the Court Clerk of said Court and the said Clerk is hereby authorized and directed to enter said Release on all appropriate dockets of said Court, and to release the said judgment of record.

R. 291 (emphasis added).[3] The bankruptcy stay was finally lifted in February 2017, and the appeal was assigned to COCA in January 2018.

---

[2] All references to Case No. 114,015 include the consolidated case, No. 114,017.

[3] Precisely which claims constituted the "quiet title action" or whether this satisfaction included all disputes between RTP/Thornton and the Association is unclear. However, RTP did not raise this question on appeal. Issues not raised on appeal are deemed waived. *Carlile v. Carlile*, 1992 OK 57, ¶ 9, 830 P.2d 1369, 1372.

In October 2018, while Case No. 114,015 was under decision, Matthew L. Winton, the counsel for the various Greenway Park defendants, filed a motion to withdraw due to a conflict. The motion noted a surprising fact—that Rodney Thornton had been elected director and president of the Association he had sued and had arranged a settlement between the Association and RTP/Thornton.

Although the briefs in Case No. 114,015 peripherally noted this settlement, and the filing of a satisfaction of judgment, the matter was briefed as if the Association was still a party to the appeal. The Court of Civil Appeals (COCA) therefore ordered the parties to show cause as to what claims remained for decision by the court in consolidated Case No. 114,015. We will discuss their responses later in this opinion.

In April 2019, this Court issued its opinion in Case No. 114,015 finding no error in the district court's decisions, with the exception of the decision that Phillip Parker was entitled to a directed verdict on his personal liability for actions nominally taken as an officer of Greenway Park, which was reversed. This case was mandated in December of 2019. In August 2021, RTP/Thornton dismissed their claims against Phillip Parker with prejudice. As the claims against Parker were the only claims left on remand, the original case was now concluded, leaving only fee issues.

After being moribund for some five years, the fee litigation recommenced in the trial court in April of 2020. In December 2020, the Philadelphia Insurance Company, which apparently insured the Association, moved to intervene in the

fee debate. The court allowed intervention.[4] The central point of Philadelphia Insurance's intervention was that the original fee application of July 2015 sought approximately $500,000 in fees and costs from Greenway Park *and* the Association. In July 2016, however, RTP/Thornton and Rodney Thornton had filed a satisfaction of judgment releasing the Association from all liability, including fees.

A hearing on fees was held by video conference on March 1, 2021. In February 2022, the court made a fee order finding that "Plaintiffs have abandoned this litigation and are hereby deemed to have confessed the Thornton Parties motions for fees." The court found no apportionment necessary because the work required for fee bearing and non-fee bearing claims was "inextricably intertwined." The court found the hourly rates for all counsel to be reasonable and the total hours spent by counsel for the Thornton parties to be reasonable. The court found a twenty-five percent enhancement to be equitable under *Burk*, awarding a total of $609,871.94 in attorney's fees and $36,694.46 in costs against Greenway Park and the Association.

A new party, Old Well LLC, then filed a motion to intervene. Old Well argued that it owned property in Greenway Park and was a member of the Association. Hence, it was liable for part of the fees and costs imposed by the court's decision and had standing to seek to vacate it. The court allowed

[4] Neither Greenway Park nor the Association filed a response to the fee request, hence Philadelphia Insurance's intervention. We can only speculate that this is likely because of the Greenway Park bankruptcy, and the Association now being chaired by Rodney Thornton.

intervention but denied Old Well's motion to vacate. Old Well appeals from the order allowing fees.[5]

II.

"The standard of review for considering the trial court's award of an attorney fee is abuse of discretion. Reversal for an abuse of discretion occurs where the lower court ruling is without rational basis in the evidence or where it is based upon erroneous legal conclusions." *Parsons v. Volkswagen of Am., Inc.*, 2014 OK 111, ¶ 9, 341 P.3d 662, 666–67.

III.

A.

We must first address our jurisdiction to hear this appeal. RTP/Thornton argue in their response to Old Well's petition in error that the grant of fees is not a final order subject to appeal because Old Well filed a cross-claim against Philadelphia Indemnity Insurance Company. If this is correct, we are without jurisdiction to hear the appeal. For the following reasons, this is not correct.

RTP/Thornton argues that, having been granted permission to intervene on April 27, 2022, Old Well filed an *Answer and Cross-Claim for Declaratory Judgment.* The desired declaratory judgment was that Old Well was a third-party beneficiary of the Association's insurance policy. The court denied Old Well's motion to vacate the fee award from the bench on May 2, 2022.[6] The next day,

---

[5] Although both parties occasionally reference the order denying the motion to vacate as if it was appealed, it was not. Our review is limited to the only order appealed: the fee order itself.

[6] Old Well was first granted intervention on March 8, 2023, and it immediately filed an appeal of the court's February 9, 2022, fee order, even though its motion to vacate was

Old Well filed an *Amended Answer and Cross-claim Against Philadelphia Indemnity Insurance Company.* This "amended answer" raised a claim of "bad faith breach of contract" against the insurer. This dispute between Old Well and Philadelphia Indemnity is apparently still ongoing in the district court. RTP/Thornton argue that the grant of fees and subsequent denial of Old Well's motion to vacate the fee judgment are therefore not final orders.

The adjudication of a petition to vacate is appealable pursuant to 12 O.S.1991 § 952(b)(2) provided that memorialization of that ruling satisfies the requirements of 12 O.S. § 696.3. *Peoria Corp. v. Lemay*, 1994 OK 106, ¶ 7, 895 P.2d 1340, 1341. Further, none of the post-judgment issues that have arisen between Old Well and Philadelphia Indemnity were under decision at the time the underlying fee judgement was made. We find the grant of fees is a final order for the purposes of this appeal.[7]

B.

As to the merits, Old Well argues that, in July 2016, RTP/Thornton filed a satisfaction of judgment stating that it had received and accepted consideration from the Association "in full payment and satisfaction" of their quiet title judgment "together with interest, cost, and attorney's fees" and that RTP/Thornton did "hereby release, acquit, and forever discharge the Association

---

still pending in the trial court. The Supreme Court stayed this appeal until the written order denying the motion to vacate fees was made on May 9, 2022.

[7] The parties do not raise, and we do address, the legitimacy of Old Well using its intervenor status to file new claims after it sought permission to intervene for the purposes of attempting to vacate a fee award. Although the briefing below does raise the legitimacy of a settlement made with Rodney Thornton apparently acting as a principal on both sides, the question is not relevant to the result here, and we do not address it.

of and from all liability to and demand of the undersigned, in respect to said cause and judgment." R. 291. Old Well argues that this filing both divested the court of further jurisdiction over any fee claim involving the Association, and further explicitly constitutes an admitted satisfaction of any fees owed by the Association. This argument was apparently first raised by Philadelphia Mutual as intervener in the fee preceding and raised again by Old Well in its motion to vacate. We find no indication that, despite the significance of the argument, the district court ever directly ruled or even commented upon it in its orders. We therefore begin our analysis with a blank slate as to the court's reasoning.

The relevant background to this question is as follows. Despite the satisfaction of judgment being filed almost a year before the briefs in Case No. 114,015 were submitted, the parties briefed the matter as if the Association was still a party (although RTP/Thornton did object in a footnote to the Association participating in the appeal). This Court therefore issued a show cause order requiring the parties to state what claims remained in Case No. 114,015.

RTP/Thornton responded that:

> Appellees settled their claims, causes of action, and judgment with Appellant and Cross-Appellee Greenway Park Commercial Owner's Association, Inc. as noted on page 1 of their Combined Brief In Chief On Counter-Appeal and Cross-Appeal And Answer Brief filed September 18, 2017. Accordingly, Appellees' brief only addressed Cross-Appeal Greenway Park, LLC and Phillip R. Parker.
>
> Appellees do not seek any determination from this honorable court related to Greenway Park Commercial Owners' Association, Inc. because they have settled all their claims and cause of action and judgment with that party. . .

R. 300-01.[8]

Dr. Phillip Parker responded, stating that "[t]he satisfaction of Judgment made no mention of any settlement regarding Thornton's claims against Doctor Parker or Greenway Park." Phillip Parker then stated, however, "that all affirmative claims briefed on appeal by the *GW Appellants*" were still at issue. R. 323. Matthew Winton also filed a one paragraph response stating that "Winton believes the eight (8) issues set out within [Association] and [Greenway Park]'s Brief in Chief filed on July 17, 2017, remain for adjudication in the appeal."[9] R. 320.

Having received these inconclusive answers, the Court decided Case No. 114,015 as discussed above. RTP/Thornton argue in this appeal that, by continuing to collectively denote co-parties Greenway Park and the Association as "GWP" in its opinion in Case No. 114,015, this Court inherently (but tacitly) decided that the Association was still a party to the appeal and ruled that the satisfaction of judgment was invalid. Hence, RTP/Thornton was entitled to later seek fees against the Association. We disagree.

---

[8] RTP/Thornton stated that the following claims remained: 1) Arguments that the trial court erred in directing a verdict in favor of Philip Parker personally; 2) arguments that the trial court erred in refusing to submit the issue of punitive damages to the jury; 3) arguments as to the denial of Greenway Park's claim for breach of covenant and nuisance; 4) arguments regarding the imposition of a permanent injunction; 5) arguments regarding the exclusion of evidence; 6) arguments regarding the judgment against Greenway Park for slander of title intentional interference and negligence; 7) arguments regarding the sufficiency of evidence to support damages; 8) arguments regarding a denied motion for a continuance; and 9) arguments regarding the jury instructions. R. 300-301.

[9] By this time, Greenway Park's counsel had withdrawn, and Winton had assumed this role.

Examining these answers to the show cause order, we may remove Parker's response from consideration. While these statements may have represented Dr. Parker's view of the settlement, they cannot be interpreted as representations by either RTP/Thornton or the Association.

Examining this Court's prior opinion, it mentions the satisfaction of judgment only once, and only as part of the background facts: "in July 2016, RTP filed a 'satisfaction of judgment' regarding the claims of the Association." R. 224. This statement does not, in any way, rule on the validity of the satisfaction. The satisfaction is never mentioned again in the opinion.

The satisfaction of judgment was filed before Case No. 114,015 was decided. Oklahoma's jurisprudence holds that a voluntarily satisfied judgment *moots* an appeal that is lodged against it. *Stites v. DUIT Const. Co.*, Inc., 1995 OK 69, ¶ 15, 903 P.2d 293, 299. Within the meaning of this rule, loss of jurisdiction takes place because nothing else remains to be done in the cause before the court. *Id.* An exception to this rule occurs when a dispute arises as the "legitimacy of the satisfaction." The court's jurisdiction continues only over post-satisfaction disputes about the legitimacy of satisfaction. *Id.*

The record does indicate a side dispute as to the Association's *insurers' duty to pay* the settlement between RTP/Thornton that was litigated in Cleveland County case CJ-2016-56. In that case, RTP/Thornton (as Association members) sued a total of fourteen named insurers, the Association's insurance brokers, and twenty "John Doe" insurers, alleging that some combination of these defendants had a duty to indemnify the Association for the cost of the settlement

negotiated between RTP/Thornton and the Thornton-led Association.[10] The question is whether this peripherally-related suit constitutes a dispute as to the "legitimacy of the satisfaction."[11]

Examining the context of *Stites* and two later cases citing it, the question of the "legitimacy of satisfaction" examines whether the satisfaction was truly *voluntary,* (*i.e.*, not coerced by collection actions) and whether the filing was legitimate or *fraudulent.*[12] *See Hamm v. Hamm*, 2015 OK 27, ¶ 3, 350 P.3d 124, 126; *Conterez v. O'Donnell*, 2002 OK 67, 58 P.3d 759, 763. *Conterez* explains this principle at n. 15:

> A voluntarily released and satisfied judgment moots both an appeal that is lodged against it and against all nisi prius vacation process. *Mitchell v. Lindly*, 1960 OK 115, ¶ 12, 351 P.2d 1063, 1067. This is so because any errors in its entry become abstract, hypothetical or academic and hence no longer available for the exercise of judicial cognizance. *Hart v. Jett Enterprises, Inc.*, 1985 OK 24, ¶ 3, 744 P.2d 561, 563 (Opala, J., concurring); *Stites v. DUIT Const. Co., Inc.*, 1995 OK 69, 903 P.2d 293, 299. This is not to say that the trial court loses cognizance at once after a judgment's release and satisfaction is entered. Its jurisdiction will continue over fraudulent releases of judgment or over post-satisfaction disputes about the legitimacy of satisfaction. *Hart, supra,* at 563. In *Napier v. Dilday,* 1913 OK 388, ¶ 1, 132 P. 1085, the appeal was dismissed because the judgment rested upon a finding consented to by the parties. The court held that "[c]onsent ends all contention between the parties, and there is nothing to review on appeal." In dismissing the appeal in *Wray v. Ferris*, 1938 OK 649, 85 P.2d 402, 403, the court noted that one

---

[10] Remarkably, since 2016, three other parties RTP, Philadelphia Insurance, and Old Well have all instigated litigation based on some right or liability of the Association, but the Association itself has taken no evident part in any litigation since 2018.

[11] This suit against the insurers implies the RTP/Thornton *did not* receive payment from the settlement, despite its filing of a satisfaction of judgment stating that it had received consideration and accepted it in full payment of the judgment.

[12] Given that RTP/Thornton drafted and filed the satisfaction of judgment and was apparently both plaintiff and Chairman of the Association, we see no means by which he could subsequently claim that the filing was fraudulent.

> cannot be heard to urge error in a proceeding leading to judgment or order which was entered by consent.

In this case, the satisfaction was voluntary, and was clearly "consented to by the parties." We find no indication that the filing was fraudulent. As such, the law is clear that, as the record stands, this Court had *no appellate jurisdiction* in Case No. 114,015 over any claim released by the satisfaction of judgment.[13]

Although attorney Winton may have represented to this court in Case No. 114,015 that such jurisdiction existed,[14] "appeals are triggered neither by reviewable errors nor by an agreement of the litigants but solely by orders defined by statute to be subject to immediate appellate scrutiny." *Conterez*, ¶ 11. This Court had no jurisdiction over the released actions related to the Association, and the parties could not confer it by their stipulations or submissions. As such, this Court could not have tacitly made any decision that the satisfaction was invalid, because we conclude it had no jurisdiction to do so.

C.

The next argument presented is that, even if the claims regarding the Association were not properly before this Court in the prior appeal, the responses

---

[13] Further, even if peripheral disputes as to insurance coverage for a settlement could constitute a dispute as to the "legitimacy of the satisfaction," the docket sheet for Cleveland County Case No. CJ-2016-56 shows that the main insurers, Western Heritage Insurance Company and Philadelphia Indemnity Insurance Company, were dismissed over a year ago, and no litigation has taken place since then. Only the claims against the Association's insurance brokers, and "John Doe Insurers 1-20" remain. A dispute as to whether the brokers improperly procured coverage obviously does not go to the "legitimacy of the satisfaction."

[14] Some question may exist as to Winton's authority to speak for the Association at that time. Although we had not yet granted his withdrawal, it appears that he had already ceased to represent the Association when Rodney Thornton, a party he was previously litigating against, became the Association's president.

to the show cause order still form a basis for estoppel. In fact, RTP/Thornton and the Association filed a satisfaction of judgment, both parties have known it was on file for some seven years, and neither party has repudiated it. As the record stands, if estoppel comes into play at all here, equity requires that *all parties* be estopped from denying either the settlement or the filed satisfaction.

D.

Finally, RTP/Thornton argues that the satisfaction of judgment is inherently ineffective because "the Thornton parties did not ever persuade any court that the settlement and release were effective." *Brief-in-chief*, 7. The question of the validity of settlement is not a first impression question for this Court. If either of the parties repudiated the terms of settlement or refused to perform, this would be a matter for a *motion to enforce* in the district court, not a question of first impression in this Court. No such motion appears in the record or the associated docket sheets.

Further, although parts of the record make reference to a later dispute concerning "settlement," the dispute appears to have been a coverage dispute between the Association and the Association's insurers.[15] We have no record that the insurers were parties to the settlement, or that the *settlement was in any*

[15] It was *not actually the Association* that filed suit arguing that the insurer had a duty to pay the settled claims against the Association. RTP/Thornton filed the suit claiming it had standing to enforce the policy as a *member* of the association. We make no comment on whether this claimed standing was valid.

way conditional upon prior payment of insurance coverage. If it was, both parties have had ample opportunity to show this Court so.[16]

In a case where very little is clear, it appears that RTP/Thornton may have filed the satisfaction of judgment in *anticipation* of the Association's insurers paying the settlement.[17] If this is so, why RTP/Thornton intentionally filed a satisfaction of judgment stating that it had received consideration "in full payment and satisfaction" when the settlement had not been paid, remains unexplained.

IV.

RTP/Thornton and the Association signed a settlement agreement. Neither party has repudiated that settlement or filed a motion to enforce it. RTP/Thornton filed a resulting satisfaction of judgment stating that it had received and accepted consideration from the Association in full payment and satisfaction of their judgment together with interest, cost, and attorney's fees, and that RTP/Thornton discharged the Association from all liability to and demand of the undersigned in respect to this judgment. Neither party has repudiated the filing of the satisfaction. As such, RTP/Thornton released the Association over seven years ago, and fees against the Association were

---

[16] In fact, despite repeated references to the significance of the settlement agreement, neither party provided a copy of it in the designated record.

[17] As we previously noted, RTP/Thornton's suit against the insurers in Cleveland County Case No. CJ-2016-56 alleging that the insurers had a duty to pay the settlement appears to have ended over a year ago. Despite apparently relying on a theory that the filed satisfaction of judgment should be ignored because of problems with getting the insurer to pay the settlement, RTP/Thornton chose not to update the record to reflect this or mention it in its briefing.

improperly granted. The decision of the district court granting fees to RTP/Thornton against the Association is therefore reversed.

REVERSED.

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

January 30, 2024