



ORIGINAL

NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

IN RE THE MARRIAGE OF:

DAVID LYNN PITTMAN,

Petitioner/Appellant,

vs.

DAWN MARIE PITTMAN,

Respondent/Appellee.

Rec'd (date) 7-9-24
Posted
Mailed
Distrib
Publish yes X no

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

JUL - 9 2024

JOHN D. HADDEN
CLERK

Case No. 120,950

APPEAL FROM THE DISTRICT COURT OF
MAJOR COUNTY, OKLAHOMA

HONORABLE TIMOTHY D. HAWORTH, TRIAL JUDGE

AFFIRMED IN PART, REVERSED AND REMANDED FOR FURTHER
PROCEEDINGS

Craig L. Box
GUNGOLL, JACKSON,
BOX & DEVOLL, P.C.
Enid, Oklahoma

For Petitioner/Appellant

Katresa J. Riffel
Jonathan F. Benham
RIFFEL, RIFFEL &
BENHAM, PLLC
Enid, Oklahoma

For Respondent/Appellee

OPINION BY STACIE L. HIXON, JUDGE:

David Lynn Pittman (Husband) appeals the trial court's Amended Order Pursuant to Mandate filed April 2, 2024. The primary issue is whether the trial court erred on remand by not holding an evidentiary hearing on the issues of post-divorce mineral proceeds Wife allegedly received from third parties and Husband's alleged overpayment of child support during the pendency of the first appeal in this case. Based on our review of the record and applicable law, we reverse the provisions in the order related to such issues and other certain issues with the order specifically addressed below. We affirm the order in all other respects. Accordingly, we remand this case for further proceedings consistent with this Opinion.

BACKGROUND

This is the second appeal concerning the divorce of Husband and Dawn Marie Pittman (Wife). Husband commenced the divorce proceeding in August 2017. A six-day trial was held over the course of several months, which concluded in July 2020. Husband appealed from the divorce decree filed in December 2020. On March 24, 2022, this Court issued an Opinion in Case No. 119,321 (*Pittman I*) affirming the decree in part, reversing in part, and remanding the case for further proceedings.

As relevant to this appeal, *Pittman I* affirmed the trial court's certain valuations of marital property but found the trial court erroneously valued other

marital assets and failed to consider and allocate certain uncontroverted marital debts when dividing the marital estate. Given these errors, we found we were unable to determine whether the court had equitably divided the marital estate. Accordingly, on remand, *Pittman I* required the trial court to set the value of certain marital assets as specified in the Opinion and to consider and allocate certain marital debts when effectuating an equitable distribution of the marital estate. *Pittman I* also explicitly gave the trial court leeway to revisit certain prior decisions regarding property division and payments Husband made to or on behalf of Wife from the time of the filing of the petition until trial, if necessary to equitably divide the marital estate. Regarding child support, *Pittman I* affirmed the trial court's decision to impute Wife's income at minimum wage but reversed the court's determination of Husband's gross monthly income. On remand, *Pittman I* ordered the trial court to arrive at Husband's monthly child support obligation after imputing Wife's income at minimum wage and recalculating Husband's gross monthly income in a manner consistent with the Opinion.

As detailed below, after mandate was issued, Husband filed a motion seeking an evidentiary hearing before the trial court to address issues in the case on remand. A day later, without a hearing, the trial court entered an order pursuant to mandate in attempt to carry out the remand instructions contained in *Pittman I*. Husband attempted to appeal from this order; however, we determined it was not a final order.

In response to our show cause order, Husband filed an amended petition in error attaching the court's amended order pursuant to mandate ("the order"), which we have determined was a final order from which Husband has now appealed.

STANDARD OF REVIEW

The issue of whether the trial court properly declined to hold an evidentiary hearing upon remand presents a question of law, reviewed *de novo*. See *Western Heights Indep. Sch. Dist. No. 1-41 v. State ex rel. Okla. State Dep't of Educ.*, 2007 OK CIV APP 92, ¶ 8, 169 P.3d 417. *De novo* review involves a plenary, independent, and non-deferential examination of the issues presented. *TIB-The Indep. Bankers Bank v. Goerke*, 2023 OK 61, ¶ 7, 531 P.3d 114.

ANALYSIS

Husband argues the trial court erred by entering the order on remand without holding an evidentiary hearing on the alleged post-decree mineral proceeds Wife received from third parties and Husband's alleged overpayment of child support during the pendency of the first appeal. We agree.

As introduction, during marriage the parties owned certain mineral interests titled in the names of Husband, Wife, and Wife's Trust. In the decree, the trial court awarded Husband *all* the minerals at a value of \$1.279 million but ordered him to pay the outstanding debt on the minerals of \$570,750.00. The trial court also ordered Husband to pay Wife half the equity in the minerals, or \$354,125.00. In *Pittman I*,

we affirmed the trial court's valuation of the minerals at \$1.279 million but allowed the court to reallocate its division of the equity in the minerals and/or the accompanying debt when equitably dividing the marital estate.

In his motion for a hearing on remand, Husband alleged that despite being awarded all the parties' minerals in the decree, during the pendency of the appeal Wife received payments of the mineral proceeds held in her name directly from the third-party oil and gas entities. He also alleged that given *Pittman I*'s finding that the trial court erred in over-calculating his gross income, he overpaid child support during the pendency of the appeal. Accordingly, Husband requested a hearing to present evidence on the amount of mineral proceeds Wife received and the amount of his overpayment of child support, so the trial court could consider such amounts when equitably dividing the marital estate on remand. Without holding a hearing and without the parties entering any stipulations on the amount of any post-decree payments Wife received, the court entered orders assigning values to marital assets and debts as provided in *Pittman I* and dividing the marital estate. The court again awarded Husband all the minerals but decreased Wife's award of the equity by \$65,867.00, resulting in him owing her \$288,258.00.¹ Despite not having heard any evidence on remand, the order curiously states "[a]ll other payments made to or

¹ The amount of \$65,867.00 represented payments Husband made to/on Wife's behalf from the time of filing the petition until the time of trial. These payments were different from those at issue in this appeal.

received by [Wife] since the filing of the appeal and/or mandate have been considered when equitably dividing the estate.”²

On remand from a reversed judgment, the parties are entitled to introduce additional evidence, supplement the pleadings, and expand the issues, unless specifically limited by the proceedings in error. *Parker v. Elam*, 1992 OK 32, ¶ 13, 829 P.2d 677. As far as being limited by the proceedings in error, the settled-law-of-the-case doctrine is a rule of judicial economy designed to prevent an appellate court from having to deal with the same issue twice. *Acott v. Newton & O'Connor*, 2011 OK 56, ¶ 10, 260 P.3d 1271. An appellate court’s decision settles and determines, “not only all questions actually presented, but all questions existing in the record and involved in the decision by implication.” *Id.* (quoting *Handy v. City of Lawton*, 1992 OK 111, ¶ 13, 835 P.2d 870). *Id.* Under the doctrine, an issue may not be asserted on remand if the issue: (1) was addressed in the first appeal, (2) could have been raised in the first appeal, or (3) the issue asserted was determined by implication in the first appeal. *Id.* at ¶ 11.

Pittman I did not address or determine by implication the issue of what, if any, amount of mineral proceeds Wife received from third parties during the pendency of the first appeal that should have been credited to Husband when determining the

² We are at a loss as to how the trial court could have considered such alleged payments when the record shows no evidentiary hearing was held and no stipulations as to such alleged payments were entered by the parties.

amount representing her share of the equity in the minerals he owed her. *Pittman I* also did not address or determine by implication whether Husband had overpaid child support during the pendency of the appeal. Moreover, such issues could not have been raised in Husband's first appeal. Thus, we find Husband was entitled to an evidentiary hearing on those issues upon remand.

Regarding the mineral proceeds, given the record before us does not prove the existence of payments Wife allegedly received from third parties nor does it reflect the amount of any such payments, we are unable to determine if the trial court's order on remand effectuated an equitable division of the equity in the parties' mineral interests. Thus, we reverse the provisions of the order regarding the division of the equity in the mineral interests and declining to give Husband credit against the amount owed to Wife for the equity in the minerals. On remand, the trial court shall conduct an evidentiary hearing on the issue of the mineral proceeds Wife received from third parties during the pendency of *Pittman I* and the present appeal. The trial court shall reduce the amount of equity in the minerals Husband owes Wife pursuant to the order (i.e., \$288,258.00) by any amount of mineral proceeds Wife has already received from third parties. Regarding Husband's alleged overpayment of child support, the court shall also allow presentation of evidence on this issue at the

hearing and credit any amount of overpayment to Husband against the amount of equity in the minerals he owes Wife.³

Furthermore, both parties acknowledge the order contains a clerical error regarding the value of the marital interest in cattle. On remand, the court's order shall reflect the correct value of the marital interest in the cattle, which the parties acknowledge is \$145,738.25. However, we have reviewed the trial court's division of the marital estate pursuant to the applicable provisions of the decree and the order and find this clerical error does not render the division of the marital estate inequitable.

Additionally, both parties are unclear about the trial court's order pertaining to the allocation of the debt on the Major County property, which the parties acknowledge at the time of trial was approximately \$111,372.55. In the order, Husband was awarded part of the property valued at \$304,206.70, and Wife was awarded part of the property valued at \$634,050.00. The order stated that each party shall be responsible "for the debt owed on their respective properties." However, both parties acknowledge there is a single note and mortgage on the properties.

³ Additionally, in the present appeal Husband alleges the trial court failed to calculate his monthly child support obligation in accordance with the remand instructions in *Pittman I*. Given the entry of the trial court's subsequent order, including a monthly child support obligation and calculation, this issue is moot. To the extent Husband alleges in passing that the trial court on remand improperly calculated his gross monthly income, we find he failed to support this claim with sufficient argument and authority to meet his burden on appeal of proving error and find he is entitled to no relief in this regard.

While the parties disagree about whether the trial court intended for the debt to be divided equally or in proportion to the value of their respective properties, neither interpretation renders the court's division of the marital estate in the order inequitable given the amount of the debt and the over \$2 million value of the marital estate, which has otherwise been divided equitably. On remand, the trial court shall enter an order clarifying what portion of the debt each party is responsible for paying.

CONCLUSION

We therefore reverse the provisions of the trial court's April 2, 2024 order regarding the division of the equity in the minerals, declining to award Husband credit for any third-party payments of mineral proceeds Wife received during the pendency of the first appeal, and declining to award Husband credit for any overpayment of child support to Wife during the pendency of the first appeal. Any other provisions in the order of which Husband complains on appeal are affirmed.

We remand for further proceedings consistent with this Opinion, including holding an evidentiary hearing on the limited issues specified herein, correcting the clerical error regarding the valuation of the marital cattle interest, and clarifying the order about the allocation and payment of the debt on the Major County properties. We emphasize the proceedings on remand are limited to the issues specifically addressed in this Opinion or to any issues that may arise, which are not precluded from the trial court's consideration under the settled-law-of-the-case doctrine,

detailed above. This Opinion and proceedings on remand are not intended for the parties to relitigate issues previously addressed or implicitly decided, or issues that could have been raised in the current or prior appellate proceedings but were not.

AFFIRMED IN PART, REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

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

BLACKWELL, J., concurring in part and dissenting in part:

I concur in the majority's opinion but for its decision to remand for additional proceedings. In my view, the appellate record is sufficient for this Court to render the judgment the trial court should have. We should do so. *Carpenter v. Carpenter*, 1982 OK 38, ¶ 10, 645 P.2d 476, 480 ("Whenever possible, an appellate court must render, or cause to be rendered, that judgment which in its opinion the trial court should have rendered.").

The majority primarily remands because it determines the trial court abused its discretion in not holding an evidentiary hearing as to mineral payments allegedly received by the wife post-decree. In my view, it was not an abuse of discretion for the trial court to have refused such a hearing for two reasons. First, nothing in *Pittman I* requires (or so much as suggests) that a hearing would be required on

remand. The prior panel gave specific instructions on remand but never mentioned that the trial court would need to take in new evidence.

Second, and more fundamentally, the mineral proceeds the wife is alleged to wrongfully have in her possession would have all been received *post-decree*. After the parties were divorced—a determination not challenged in the first appeal—these post-decree mineral proceeds could not have been marital property. See, e.g., *Fletcher v. Fletcher*, 1952 OK 28, ¶ 11, 244 P.2d 827, 830 (“It appears clearly established that after the divorce between the parties the defendant, if he has any interest in this property, must establish such interest under the provisions of the divorce decree or some valid contract between the parties.”). And because the post-decree proceeds were separate assets, it was not an abuse of the trial court’s discretion to not hold a hearing to determine them for purposes of settling an equitable decree of the marital assets.

Put differently, we should not remand to determine the equitable division of what are now separate assets, even if they are in the hands of the “wrong person.” The husband was free during the pendency of the first appeal to enforce the decree and attempt to recover the payments that he believes should have come his way post-decree via a motion to enforce the decree or some other post-decree remedy. Although the appeal delayed the *finality* of the decree as to the property division, it was enforceable because neither party sought a stay. See *Wilks v. Wilks*, 1981 OK

91, ¶ 14, 632 P.2d 759, 763 (no automatic stay in divorce appeals, other than an appeal from the dissolution itself). We should not award the husband for his own failure to enforce the decree while the appeal was pending.¹

July 9, 2024

¹ I agree with the majority that the statement the trial court made that is referenced in note 2 of the majority's opinion is puzzling. Nevertheless, we must affirm a trial court's order if it is correct, even if the offered reasoning is faulty. "It is well settled that a correct judgment will not be disturbed on review, even when the trial court applied an incorrect theory or reasoning in arriving at its conclusion; an unsuccessful party cannot complain of trial court's error when he would not have been entitled to succeed anyway." *Harvey v. City of Oklahoma City*, 2005 OK 20, ¶ 12, 111 P.3d 239, 243.