



# 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

**FILED**  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

RICHARD DALE THORNTON, JR., )  
And RICK THORNTON PROPERTIES, )  
LLC, )

JUL 19 2024

JOHN D. HADDEN  
CLERK

Plaintiffs/Appellants, )

vs. )

Case No. 120,899  
(Consolidated with  
Case No. 121,104)

DEPHANIE DAWN THORNTON and )  
BAILEY PAIGE THORNTON, )

Defendants/Appellees. )

APPEAL FROM THE DISTRICT COURT OF  
CLEVELAND COUNTY, OKLAHOMA

HONORABLE JEFF VIRGIN, TRIAL JUDGE

Rec'd (date)	7-19-24
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**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS**

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For Plaintiffs/Appellants

Gregory T. Tontz  
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For Defendants/Appellees

OPINION BY STACIE L. HIXON, JUDGE:

Rick Thornton and Rick Thornton Properties, LLC (“RTP” or collectively, “Plaintiffs”) appeal the trial court’s entry of judgment quieting title to certain real

property in favor of his and Dephanie Thornton's daughter, Bailey Thornton. While the appeal was pending, the trial court granted Plaintiffs' motion to vacate by order entered on January 23, 2023. Bailey and Dephanie ("Defendants") thereafter appealed the trial court's order granting the motion to vacate. The Supreme Court consolidated the appeals for our review.

The primary issue before the Court involves certain real property acquired by Rick and Dephanie during their marriage that was omitted from their Texas divorce decree, which Dephanie later deeded to Bailey. Upon review, we affirm the trial court's order vacating judgment in favor of Bailey on Rick's quiet title claim but reverse the court's vacatur of an injunction in Bailey's favor pending resolution of the underlying action. We remand for further proceedings consistent with this Opinion.

### **BACKGROUND**

Rick and Dephanie were married from 1989 through 2008. Around 1997, Rick and his brother Rodney entered into an informal business relationship in which Rick paid cash for several vacant lots in Norman, Oklahoma, and Rodney built four homes on the lots. Out of the four homes, Rick and/or Dephanie were to maintain ownership of a rental home located at 1003 Rambling Oaks Drive, Norman, Oklahoma (the "Property").

In 2004, Rodney conveyed title to the Property to Dephanie. Rick purportedly intended for the Property to later be conveyed from Dephanie to RTP, an LLC he and Dephanie formed in 2005. However, the subsequent conveyance never occurred, and the Property remained titled in Dephanie's name. When the parties divorced in 2008, the Texas divorce decree did not distribute the Property. However, the decree provided that all property and assets not accounted for would be subject to division under the Texas Family Code ("Code").

In 2020, Dephanie conveyed the Property to Bailey. Bailey contends she contacted Rick to obtain possession. Thereafter, Plaintiffs sued Defendants, alleging the Property was always intended to be transferred to and held by RTP. Plaintiffs alleged they had been in possession of the Property since the divorce, paid taxes on and maintained the Property, and collected rents generated therefrom. They requested a constructive or resulting trust, a declaratory judgment that Plaintiffs were the equitable owners of the Property, and for the court to quiet title in Plaintiffs. Bailey counterclaimed for quiet title, trespass, an injunction and accounting.<sup>1</sup>

The parties tried the case in May 2022. On November 4, 2022, the court entered its findings of fact and conclusions of law, finding the evidence clearly and convincingly established that Rick and Dephanie had owned the Property as part of

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<sup>1</sup> Defendants also requested the court quiet title against tenants of the Property claiming a leasehold interest. The occupants did not appear, and the trial court granted judgment to Bailey on this claim, which is not at issue.

their marital estate. However, the court found that under Texas law and the terms of the divorce decree, Rick's exclusive remedy for claiming an interest in the Property was a post-decree division action in the Texas divorce court pursuant to TEXAS FAM. CODE ANN. § 9.201 (West 1997). Accordingly, the court found Bailey was the current owner of the Property and quieted title in her. The court also granted Bailey an injunction against Rick's interference with her right of possession unless and until the Property was awarded to him in the Texas divorce court.

On December 1, 2022, Plaintiffs filed a motion to vacate or modify the court's judgment, asserting it was contrary to Texas law. Plaintiffs further contended Rick and Dephanie held the Property as tenants in common under Texas law, citing *S.C. v. M.B.*, 650 S.W.3d 428 (Tex. 2022). Thus, Dephanie could not convey his interest in the Property to Bailey.

Before the trial court ruled on Plaintiffs' motion to vacate, Plaintiffs appealed the underlying judgment.<sup>2</sup> By order entered on January 23, 2023, the court granted Plaintiffs' motion, vacating the judgment quieting title in Bailey, and granting her an injunction against Rick, citing *S.C.*, 650 S.W.3d 428.

Defendants appeal this order.

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<sup>2</sup> Rick's motion to vacate was filed more than 10 days after the trial court's judgment, and thus his time to appeal was not tolled pending ruling on that motion. 12 O.S.2021, § 990.2(A).

## STANDARD OF REVIEW

While Plaintiffs timely appealed the trial court's judgment of November 4, 2022, the trial court's January 23, 2023 order vacated the judgment against Plaintiffs. Thus, Plaintiffs' appeal of the underlying judgment is moot.<sup>3</sup>

However, Defendants appeal the order vacating judgment in Bailey's favor, which raises the same core legal issues as Plaintiffs' appeal. Therefore, we consider the parties' arguments in determining whether the trial court erred in granting Plaintiffs' motion to vacate. We review the trial court's decision for an abuse of discretion, which "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." *Fargo Bank, N.A. v. Heath*, 2012 OK 54, ¶ 7, 280 P.3d 328.

## ANALYSIS

On appeal, Defendants assert the trial court erroneously granted Plaintiffs' motion to vacate.

First, Defendants argue the parties' divorce decree required the parties to return to a Texas court to address the omitted property. We disagree.

The decree states:

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<sup>3</sup> Rick filed a motion for oral argument. Okla. Sup. Ct. R. 1.9 states that oral argument is not a matter of right and there must be an "exceptional reason oral argument is necessary." Upon review, we find that oral argument would not materially assist this Court in deciding the issues presented and therefore, we deny the motion.

IT IS ORDERED AND DECREED that any assets of the parties not awarded or divided by this Final Decree of Divorce are subject to future division as provided in the Texas Family Code.

Though the decree provides any omitted property was subject to division pursuant to the Code, it does not state a Texas court retained exclusive jurisdiction to decide such issue.

Moreover, Defendants argue the Code vests a Texas court with exclusive jurisdiction to adjudicate who holds title to property located in another state omitted from a Texas decree.

Regarding omitted property, the TEXAS FAM. CODE ANN. § 9.201 (West 1997) provides either spouse “may file suit” as provided by the Code to divide property omitted from a divorce decree. Section 9.203 further provides that if a Texas divorce court has failed to dispose of property subject to division in the decree, “the court shall divide the property in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.”

The Texas Supreme Court recently addressed section 9.203 in deciding an issue of omitted property in *S.C.*, 650 S.W.3d 428, where the wife contended property omitted from her divorce was held post-decree as tenants in common with husband and sought a partition. *Id.* The trial court determined the “just and right determination” codified in section 9.203 was the wife’s sole remedy, and the divorce court had exclusive jurisdiction to consider the issue. *Id.*

The Texas Supreme Court disagreed, finding the statute provided neither an exclusive remedy nor exclusive jurisdiction in the Texas divorce court to consider the omitted property. The court recognized that under Texas law, upon their divorce, spouses become tenants in common or joint owners of community property omitted from a divorce decree. *Id.* at 437-38. Their option was to seek partition of the property or opt to distribute the property pursuant to a “just and right” determination as provided by the Code. *Id.* at 438-39. The court explained:

Subchapter C *allows* a divorced couple to use the “just and right” standard to divide property that went unaddressed by a final divorce decree. Does it also unequivocally disallow access to any Texas court other than the original divorce court and prohibit use of the partition action itself? We conclude that the statutory text, within its larger context, warrants no such findings of exclusivity.

[T]he new cause of action tells the former spouses that they “may file a suit” that asks a court to divide their tenancy in common. § 9.201(a). That new suit is truly a new suit, not a continuation of the divorce. . . . At a minimum, nothing in the text suggests that, even if both parties prefer the Property Code partition, the legislature has forbidden access to that remedy.

*Id.* at 442. Further, the court determined that subchapter C contained no language providing for exclusive jurisdiction in the Texas divorce court, as opposed to numerous other explicit references in the Code, when it had been intended. *Id.* at 443. The court explained:

As to “continuing jurisdiction,” Subchapter C is not even merely silent—it affirmatively points in the other direction. Section 9.201 makes clear that the divorce court’s jurisdiction as to post-decree property division is not “continuing.”

*Id.* at 444.<sup>4</sup> Thus, under Texas law, the Texas court that entered the divorce decree does not hold exclusive jurisdiction to render a “just and right” determination of omitted property.

Nevertheless, Defendants argue Texas, rather than Oklahoma where the Property is located, has exclusive jurisdiction to address the issue. However, in *S.C.*, the court explained that to invoke the remedy of a “just and right” determination, the statute requires a spouse to initiate a new action.<sup>5</sup> It noted there was nothing “inherently problematic in allowing a general district court to divide property solely because that property once was community property.” *Id.* at 445. The court stated

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<sup>4</sup> Dephanie contends that any division of the Property is subject to a “just and right” determination by virtue of the decree. We make no holding requiring the court to do so, because it is premature. The trial court vacated its judgment for Bailey. As such, it remains for the trial court to determine Plaintiffs’ and Defendants’ substantive arguments regarding legal title to the Property, including any argument the parties may raise contending that division of the Property is subject to a “just and right” determination by agreement under the decree, should either party continue to invoke it.

<sup>5</sup> Section 9.203 states that “[i]f a court of this state failed to dispose of property. . . the court shall divide the property in the manner that the court deems just and right. . . .” Defendants seem to suggest such language permits only a Texas court to make the “just and right” determination because it references a “court of this state.” However, under *S.C.*, this same statute does not retain exclusive jurisdiction for the divorce court and envisions an entirely separate action to divide the property. We find no authority that expressly states Texas retains exclusive jurisdiction to adjudicate a claim to omitted property. If the divorce court does *not* retain exclusive action, jurisdiction to administer omitted assets, and the parties must pursue a separate and entirely new there is no clear basis for Texas to retain exclusive jurisdiction over an action regarding property and at least one party now located in Oklahoma. Additionally, section 9.203(b) provides that if a final divorce decree from another state failed to dispose of property subject to division under the law of that state, the Texas court will apply the law of the other state to dispose of the property. Thus, it seems unlikely that the statute intends that a Texas court may adjudicate a claim to property omitted from another state’s decree, but that another state may not adjudicate a claim to omitted property in the reverse circumstance.



subchapter C does not change the parties’ or the property’s legal status, “but simply authorizes dividing that property under a ‘just and right’ standard *that any district court can apply.*” *Id.* (emphasis added).<sup>6</sup>

Further, this action involves the interest in a real property located in Oklahoma. A quiet title action may ordinarily be brought in an Oklahoma court to adjudicate interests therein. *See generally* 12 O.S.2021, § 1141; *Shultz v. Evans*, 1951 OK 61, ¶ 13, 228 P.2d 626; *Paddyaker v. Griffith*, 2011 OK CIV APP 97, ¶ 8, 260 P.3d 1276. For these reasons, we find the trial court properly held the Texas

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<sup>6</sup>Contrary to the dissent’s analysis, the *S.C.* court considered *two* distinct and relevant concepts—whether the statute supplies a spouse’s exclusive remedy under Texas law to distribute omitted property post-decree, *and* whether the Texas divorce court was vested with exclusive jurisdiction to render that remedy. The Texas Supreme Court rejected that the Code established either. Here, the dissent suggests without citation to authority that the issue is not jurisdictional, but a remedy which may be pursued only before a Texas court. Ordinarily, the power of a court to render relief is considered a question of subject matter jurisdiction. *See generally In re A.N.O.*, 2004 OK 33, ¶ 9, 91 P.3d 646. Remedy is the “means of enforcing a right or redressing a wrong,” i.e., the legal or equitable relief available. *Black’s Law Dictionary* (12th ed. 2024). However, whether one considers the issue to be one of jurisdiction or remedy, the *S.C.* court clearly held the remedy may be pursued in any district court.

Though *S.C.* did not consider an out-of-state action, the *S.C.* court offered a detailed analysis of the statutes’ references to “the court” that could render a “just and right” determination and held the statutes could not be read to restrict consideration to a particular court, i.e., the Texas divorce court. Apart from considering the statute’s plain language, the court also noted the conflict that would arise if interpreted differently. In a case where one spouse pursues a partition action and the other invokes the statutory “just and right” determination, the court would lack jurisdiction to resolve the latter claim, leading to conflicting judgments or judgments subject to collateral attack. Something similar could occur here under the dissent’s theory of a remedy available only in Texas court. Though an Oklahoma trial court would have jurisdiction to consider claims to omitted property located in this state, any party claiming the remedy of a “just and right” determination would either be barred from asserting it, as the dissent would hold here, or must file a competing action in Texas, leading to a potential conflict, inconsistent judgments, a waste of judicial resources, or the *de facto* retention of exclusive jurisdiction by one court over post-decree proceedings that *S.C.* rejected in view of the text of the Code.

court did not have exclusive jurisdiction over the omitted Property, and thus, we affirm that portion of the trial court's January 23, 2023 order vacating its prior judgment quieting title to the Property in Bailey.<sup>7</sup>

With respect to the injunction, its purpose is to preserve the status quo. *Okla. Call for Reprod. Justice v. Drummond*, 2023 OK 24, ¶ 2, 526 P.3d 1123. The trial court has yet to determine whether Plaintiffs hold any interest in the Property. Thus, the current status quo is that Bailey is the Property's sole record owner. As such, the trial court abused its discretion in vacating the injunction. This portion of the January 23, 2023 order is reversed. The matter is remanded to the trial court for further proceedings consistent with this Opinion.

Finally, we note the trial court's initial order failed to address Plaintiffs' equitable remedies for constructive or resulting trust, finding it lacked jurisdiction.<sup>8</sup> As previously discussed, the trial court did not abuse its discretion in vacating this

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<sup>7</sup> The dissent expresses concern for the statute of limitations set forth in the Code. However, a statute of limitation is an affirmative defense which must be pled, proven, and ruled upon by the trial court. *See generally City of Broken Arrow v. Bass Pro Outdoor World, L.L.C.*, 2011 OK 1, ¶ 38, 250 P.3d 305. Here, the statute of limitations has not been raised. Thus, the trial court has clearly not ruled on the defense. This Court does not make first instance determinations, nor does it offer advisory opinions on matters not before it. *See Bivins v. State ex rel. Okla. Memorial Hosp.*, 1996 OK 5, ¶ 26; 917 P.2d 456; *Scott v. Peterson*, 2005 OK 84, ¶ 27, 126 P.3d 1232.

<sup>8</sup> The trial court's judgment states that Rick's exclusive *remedy* was to pursue a just and right determination in Texas court, but the court's conclusion that this action could only be pursued in the Texas divorce court clearly speaks to a determination of exclusive *jurisdiction*. Meanwhile, Defendants specifically argued that Defendants' equitable remedies were barred because the Texas court had exclusive *jurisdiction* to resolve any claim to property omitted from the divorce. We reject this proposition.

order, and these issues are properly before the court on remand. Accordingly, upon remand the trial court shall address these issues.

### **CONCLUSION**

For the foregoing reasons, we affirm the trial court's January 23, 2023 order vacating judgment quieting title to the Property in Bailey but reverse that portion of the trial court's order vacating a temporary injunction in her favor pending resolution of Plaintiffs' claims to the property. We remand this matter to the trial court to consider Plaintiffs' claims to the Property and Defendants' counterclaims thereto, consistent with this Opinion.

### **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.**

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

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

I respectfully concur in part and dissent in part. I would vacate the order appealed in Case No. 120,899 (which would moot Case No. 121,104) and remand for additional proceedings consistent with the following analysis.

I would begin and end my review with trial court's conclusion in the order appealed in Case No. 120,899, that the plaintiffs' exclusive remedy regarding the property was for a Texas divorce court to make a division of the property under

Section 9.201 of the Texas Family Code. That section provides that either former spouse may file a suit to divide property not awarded to a spouse in a final divorce decree. Section 9.203 provides that if a Texas court had jurisdiction over the parties and failed to dispose of property subject to division in a final divorce decree, then the court “shall divide the property in a manner the court deems just and right.”

These provisions establish that Rick at one time may have had *an available remedy* in the form of the Texas divorce court making a belated distribution of the property. To the extent plaintiffs sought to have an Oklahoma trial court distribute the property pursuant to the divorce decree under Texas law, I agree with the trial court: Rick is required to have raised that issue in Texas and the trial court was correct in declining to award Rick the property on that basis.<sup>1</sup> I would affirm that portion of the order appealed in Case No. 120,899 declining to apply Texas law.<sup>2</sup>

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<sup>1</sup> I reject any suggestion that the portion of the decree stating that “any assets of the parties not awarded or divided by this Final Decree of Divorce are subject to future division as provided in the Texas Family Code” is a “choice of law” provision requiring out-of-jurisdiction courts to apply Texas law and make a “just and right” distribution of the omitted asset. I view this provision as referencing an available remedy *in Texas*, one which was never employed by either party. Even if the trial court was required to apply the Texas Family Code in this matter, the statute of limitations for any such suit is two years. Tex. Fam. Code Ann. § 9.202 (West). The decree was entered in 2008. The plaintiffs brought this action in 2020.

<sup>2</sup> The majority’s application of *S.C. v. M.B.*, 650 S.W.3d 428 (Tex. 2022) to this case is fundamentally flawed. In that case, the Texas Supreme Court faced the question of whether the post-decree remedy found in § 9.201 of the Texas Family Code provided the *exclusive* remedy when property is omitted from a divorce decree or if the traditional remedy of partition remained available. *Id.* at 436. After an exhaustive analysis, it held that partition remained an available remedy. *Id.* at 452. That holding has nothing to do with this case and nothing to do with Oklahoma law. And, notably, a suit in partition based on Oklahoma law has always remained available to

However, as noted above, the trial court went much further, apparently finding that the Texas divorce court had *exclusive* jurisdiction over all of the plaintiffs' claims, and thereby "decline[d] to enter any orders regarding the Property." For the following reasons, I agree with the majority that this was in error.

The plaintiffs, in addition to their claims based on the Texas decree, claim ownership of the property under the equitable doctrines of resulting or constructive trust. Under well-settled Oklahoma law,

[i]f a person obtains the legal title to property by such arts or acts or circumstances that he ought not, according to the rules of equity and good conscience as administered in chancery, to hold and enjoy the beneficial interest of the property, courts of equity, in order to administer complete justice between the parties, will raise a trust by construction out of such circumstances or relations.

*Bryant v. Mahan*, 1927 OK 486, ¶ 15, 264 P. 811, 813 (quoting *Perry on Trusts*, vol. 1, § 24). These claims are entirely distinct from Rick's claim that he received or should have received the property at the conclusion of the divorce, based on Texas law. These claims require the application of Oklahoma law to Oklahoma property. Because Oklahoma has exclusive jurisdiction to hear these equitable claims, the plaintiffs must have an available forum in Oklahoma to be heard. *See In re Estate of Boyd*, 2014 OK CIV APP 20, ¶ 16, 321 P.3d 1001, 1006 ("The decree of another state attempting to settle equitable rights to lands in Oklahoma, in so far as such

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the plaintiffs, if they thought they had a valid claim. *See* 12 O.S. § 1501.1 *et seq.* Neither plaintiff has ever made such a claim.

decree relates to the lands in Oklahoma is *coram nonjudice* and void because “[j]urisdiction to render a judgment *in rem* inheres only in the courts of the state which is the situs of the res.” (quoting *Sharp v. Sharp*, 1916 OK 736, ¶ 6, 166 P. 175, 177)).

For this reason, I would vacate the trial court’s November 4, 2022, order and remand for additional proceedings. Because the defendants’ appeal is based entirely on the order I would vacate, I would not address their claims of error. It is the trial court that must make the first instance determination as to ownership.

I would note the following, however, for purposes of remand. Although I would not address the propriety the order appealed in Case No. 121,104, the plaintiffs’ argued, and majority would apparently allow further such argument on remand, that the prior operation of Texas law made the property the “joint property” of Rick and Dephanie. Consistent with my view above, I would find that this argument, which is entirely based on Texas law, may only be made in the Texas divorce court. The only claims I would allow for the plaintiffs on remand are their equitable claims based solely on Oklahoma law. Likewise, I would make clear that the trial court could not on remand decline to rule on Bailey’s counterclaims, as Oklahoma is the only jurisdiction that can resolve those claims. *Sharp v. Sharp*, 1916 OK 736, ¶ 6, 166 P. 175, 177.

July 19, 2024