



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

BANK OF COMMERCE, an Oklahoma)
banking corporation,)

Plaintiff/Appellee,)

vs.)

CHRISTOPHER E. POINDEXTER,)

Defendant/Appellant,)

and)

PRIDEX PROPERTIES, LLC, an)
Oklahoma limited liability company,)

Defendant.)

AUG 28 2024

JOHN D. HADDEN
CLERK

Case No. 121,184

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APPEAL FROM THE DISTRICT COURT OF
KIOWA COUNTY, OKLAHOMA

HONORABLE EMMIT TAYLOE, DISTRICT JUDGE

AFFIRMED

William A. Gossett
Duncan, Oklahoma

For Plaintiff/Appellee

Christopher Poindexter
Lone Wolf, Oklahoma

For Defendant/Appellant

OPINION BY GREGORY C. BLACKWELL, JUDGE:

The appellant and defendant, Christopher Poindexter, appeals the trial court's decision to deny his motion to vacate the court's order requiring him to pay the plaintiff and appellee, Bank of Commerce (BOC), attorney's fees. Upon

review, we find that the trial court's denial was not an abuse of discretion and thereby affirm.

BACKGROUND

In 2018, BOC brought suit against Mr. Poindexter seeking a deficiency judgment because Mr. Poindexter's company, Pridex Properties, LLC,¹ defaulted on its loan, which was guaranteed by Mr. Poindexter. BOC sought and obtained a deficiency judgment because the proceeds from the sheriff's sales of the mortgaged properties were insufficient to satisfy the judgment. In 2019, the trial court in Kiowa county granted the deficiency judgment in favor of BOC. Mr. Poindexter appealed the judgment; however, this Court affirmed that decision in 2021. *See* Case No. 118,324.

Prior to the issuance of mandate in the prior appeal, BOC filed a motion for appeal-related attorney's fees on August 1, 2021. The motion was granted, and the matter was remanded to the trial court for the purpose of conducting an evidentiary hearing to determine the amount of attorney's fees. Mandate issued in the prior appeal on April 20, 2022.

A full evidentiary hearing was conducted regarding attorney's fees, including appellate attorney fees for the prior appeal, on December 9, 2022. Mr. Poindexter was not present at the hearing. After hearing testimony and evidence, the trial court entered and filed an order granting BOC's motion for appeal-related fees on December 27, 2022. As a result of this order, BOC was granted

¹ While Pridex was a party to the prior appeal, we note here that it is not an appellant in the present case.

judgment against Mr. Poindexter for \$42,900.00, plus post-judgment interest accruing thereon according to law.

On January 30, 2023, Mr. Poindexter filed a petition to vacate the court's order granting appeal-related fees, arguing he did not have notice of the prior hearing. The court conducted an evidentiary hearing on the petition to vacate and ultimately "denied, dismissed, and/or overruled" the petition to vacate in a court order filed on March 3, 2023. Mr. Poindexter appeals.

STANDARD OF REVIEW

The proper standard of review employed upon a motion to vacate is whether sound discretion was exercised to vacate the earlier decision. *See Schepp v. Hess*, 1989 OK 28, 770 P.2d 34. The reviewing court does not look to the original judgment, but rather the correctness of the trial court's response to the motion to vacate. *Yery v. Yery*, 1981 OK 46, 629 P.2d 357. As a result, we review the trial court's order for an abuse of discretion. *Kordis v. Kordis*, 2001 OK 99, ¶ 6, 37 P.3d 866, 869.

ANALYSIS

Title 12 O.S. § 1031 lists various instances in which a trial court may vacate or modify its own judgments. In his brief, Mr. Poindexter does not specifically identify which of these grounds is appropriate in this case to seek a vacatur of the fee order. However, his petition in error states that the question to address on review is whether the court erred in denying the petition to vacate when he did not have notice of the hearing on plaintiff's motion for appeal-related attorney's fees. Under 12 O.S. §1031(2), a court has the power to vacate its

judgment where the defendant had no actual notice of the pendency of the action at the time of the filing of the judgment or order. However, instead of developing the argument that he did not receive notice or providing evidence of a lack of notice, Mr. Poindexter's brief focuses almost entirely on matters that were not before the trial court and are also not in the record on appeal.²

Mr. Poindexter's brief thereby fails to comply with several Oklahoma Supreme Court rules. For example, Supreme Court Rule 1.1(f) requires that the main contentions of the parties be set forth in separate propositions. Mr. Poindexter's brief is devoid of any contentions or propositions, as his section of the statement of facts devolves into random quotation of the February 2023 evidentiary hearing. Further, Rule 1.1(e)(1) requires the moving party's brief to contain a summary of the record that sets forth "the material parts of the pleadings, proceedings, facts and documents upon which the party relies," and must be supported by citation to the record where such facts occur. Mr. Poindexter's summary of the record reads as follows, "I exposed a criminal enterprise on behalf of the bank and its officers and their attorneys ... as stated on page 5 lines 9 through 111." *Brief-in-chief*, pg. 1. Additionally, he adds that he does not want to get a contempt citation, as stated during the hearing. *Id.* While both statements contain citations to the record, it in no way summarizes the record, fails to set forth any material parts of the pleadings or facts of the

² For example, in his statement of fact he notes that he was charged with civil contempt in an entirely different case than the prior appeal or the present case. *Brief-in-Chief*, pg. 1. He also states that he was arrested for home repair fraud and that a prior unanimous jury verdict of his, again, in an entirely different case, was overturned three times by a district judge. *Id.*

case, and appears to be arguing the merits of the prior appeal which was already decided by this Court.

Most importantly, Mr. Poindexter's brief is also devoid of the legal authority required by Supreme Court Rule 1.1(k). Rule 1.1(k) states that issues raised in the petition in error but omitted from the brief may be deemed waived. "Argument without supporting authority will not be considered." *Id.* Here, aside from quoting testimony in which Mr. Poindexter claims to not have had notice of the hearing, he cites no supporting authority. The brief contains no evidence to support his lack of notice and no caselaw or statutory authority in support of this argument.³ Additionally, he does not mention that he never had notice of the December 2022 hearing in his introduction, the summary of the record, the statement of facts, the conclusion, or anywhere in the brief. As held in *Funnell v. Jones*, 1985 OK 73, ¶4, 737 P.2d 105, *pro se* litigants are held to the same standards as attorneys in adhering to the rules of appellate practice. Thus, Mr. Poindexter was clearly required to abide by the above-referenced rules when drafting his brief and making his case for appeal and did not.

Even though this Court could deem Mr. Poindexter's argument waived as the notice argument was referenced in the petition in error but wholly unsupported in briefing, Supreme Court Rule 1.1(k), for the following reasons,

³ When asked by the trial court if he was aware of the grounds under 12 O.S. § 1031 in which a court can vacate or modify its judgment, Mr. Poindexter replied that he was unaware of what the statute provided. Tr. (Feb. 28, 2023), pg. 9.

we find that he did have adequate notice of the December 2022 fee hearing at issue here.

At the February 2023 hearing, Mr. Poindexter admitted that the address that BOC's counsel used to mail him notice of the hearing has been his correct mailing address since before 2018 and remained so through the date of the February 28, 2023, hearing. Tr. (February 28, 2023) pg. 13. Additionally, Mr. Gosset, attorney for BOC, testified at trial that "Exhibit B" that was attached to Mr. Poindexter's petition to vacate, shows that he mailed, by first-class mail, postage prepaid, a copy of the order setting the hearing on the plaintiff's motion for appeal-related attorney's fees to Mr. Poindexter. *Id.* at 20. Mr. Gosset also testified that he mailed copies of an order of assignment, the motion for fees, and the order setting the hearing to Mr. Poindexter on July 27, 2022. *Id.* As evidence, he provided the court with an exhibit, which was a copy of a United States Postal Service Stamps Print Receipt dated July 27, 2022, and addressed to Mr. Poindexter. *Id.* at 21. The address listed in the exhibit was the same one that Mr. Poindexter testified had been his since 2018 when litigation began. *Plaintiff's Exhibit 5*. Finally, BOC introduced exhibits 8 and 9 at the hearing. *Id.* at 22. Exhibit 8 is a copy of the cover letter sent by Mr. Gosset to Mr. Poindexter when he also mailed file-stamped copies of the order of assignment, the motion for fees, and the order setting the hearing on August 11, 2022. *Id.* Exhibit 9 is another receipt from USPS reflecting that Mr. Gosset did indeed send mail to Mr. Poindexter on that date. *Id.*, *Plaintiff's Exhibit 9*.

Thus, it is clear, despite his testimony that he never received such notice, that Mr. Poindexter was sent legally sufficient notice of the December 2022 hearing based on the evidence presented by BOC at the hearing on February 28, 2023. The relevant question is not whether Mr. Poindexter ever received or recalled receiving notice of the hearing. Rather, the question is whether notice was sent as provided by law. There is ample evidence in this record for the trial court to have determined that BOC sent such notice to Mr. Poindexter according to law. Accordingly, it was not an abuse of discretion for the trial court to deny the petition to vacate.

AFFIRMED.

HUBER, P.J., and HIXON, J., concur.

August 28, 2024