IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

THE MATTINGLY LAW FIRM, P.C.,

Plaintiff,

vs.

MELVIN D. HENSON, JR. aka Dee Henson,

Defendant,

SECURITY STATE BANK OF WEWOKA, an Oklahoma Banking Institution,

Plaintiff/Appellee,

vs.

MELVIN DON HENSON s/p/a Melvin Don Henson, Jr. s/p/a Dee Henson, ANNETTE DENISE HENSON, ESTATE OF MILDRED MAE HENSON s/p/a Mildred M. Henson, deceased and HENSON INSURANCE GROUP, LLC,

Defendants/Appellants,

and

LISA TURPIN; SEMINOLE COUNTY TREASURER; THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY; FIRST NATIONAL BANK AND TRUST COMPANY OF OKLAHOMA, individually and as successor in interest of First National Bank of Wewoka; THE UNITED STATES OF AMERICA ex rel. Internal Revenue Service; THE STATE OF

Case No. 122,801

OKLAHOMA ex rel. The Oklahoma Tax Commission; THE STATE OF OKLAHOMA ex rel. Oklahoma Employment Security Commission; THE MATTINGLY LAW FIRM, P.C.; GREENER PASTURES ENTERPRISES, LLC; AMERICAN COLLECTIONS SERVICES, INC.; and SWEARINGEN FUNERAL HOME,

Defendants,

and

MAVERICK ENERGY SERVICES, LLC,

Third Party Intervenor.[1]

APPEAL FROM THE DISTRICT COURT OF
SEMINOLE COUNTY, OKLAHOMA

HONORABLE C. STEVEN KESSINGER, DISTRICT JUDGE

AFFIRMED

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Edmond, Oklahoma — For Plaintiff/Appellee

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BRALY, BRALY,
SPEED & MORRIS, PLLC
Ada, Oklahoma — For Defendants/Appellants

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Defendants Melvin Don Henson, Annette Denise Henson, the Estate of Mildred Mae Henson, and the Henson Insurance Group (collectively, the

[1] The lengthy and somewhat peculiar style of this case—with the Mattingly Law Firm listed as both a plaintiff and a defendant, for example—is the result of the consolidation of two separate civil actions, below.

Hensons) appeal the court's grant of summary judgment in favor of plaintiff, Security State Bank of Wewoka (SSB) in this foreclosure action, as well as the denial of the Hensons' motion for new trial. Upon review, we find that the court properly granted summary judgment in the bank's favor and rejected the Hensons' motion for new trial.

BACKGROUND

SSB, along with another bank, First National Bank of Oklahoma (FNB), and various other entities, owns and holds notes, security agreements, and mortgages executed by the Hensons. SSB brought this foreclosure action against the Hensons, alleging they were in default on several secured notes. Because the Hensons had defaulted on payment, and because of acceleration clauses in the notes, SSB alleged that it was entitled to foreclosure of the mortgages and security agreements and sale of the property. On August 30, 2019, SSB filed its motion for summary judgment. No response to this summary judgment motion has ever been filed. According to the Hensons, this was because the parties had engaged in settlement negotiations which ultimately resulted in no action taken in the case for several years.[2]

However, on January 2, 2024, SSB filed a motion to set a hearing on its summary judgment motion. In response, the Hensons requested the motion to set be denied, that the cases be set for a scheduling conference where a new

[2] Notably, the Hensons and FNB had also filed motions for summary judgment or partial summary judgment on August 30, 2019. No responses were ever filed to those motions, either. However, in contrast to the SSB motion, no motion to set for hearing was ever filed as to the Hensons' or FNB's motions for summary judgment.

scheduling order could be entered, and that an entity named Marshall County Enterprises, Inc., be allowed to intervene because it had purchased the FNB promissory notes, mortgages, and debt. The Hensons never sought to file a response to SSB's motion for summary judgment out-of-time.

The court held the summary judgment hearing on September 9, 2024, at which counsel for the Hensons and SSB appeared.[3] The court granted summary judgment in favor of SSB, effectively finding that the bank's interest in the notes, agreements, and loans was superior to all other defendants, except non-parties to this appeal, Seminole County Treasurer and the Board of County Commissioners of Seminole County. Additionally, the court found that the foreclosure of certain mortgages presented by FNB but now owned by Marshall County Enterprises was barred by 46 O.S. § 301 and 12A O.S. § 3-118.

The Hensons filed a motion for new trial and reconsideration on October 10, 2024. Marshall County Enterprises filed an instrument dismissing and withdrawing all its prior motions, including its motions seeking to intervene, on December 12, 2024. On December 18, 2024, the court denied the Hensons' motion for new trial. The Hensons now appeal both the court's grant of summary judgment in favor of SSB and the denial of the motion for new trial.[4]

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[3] Later in the same hearing, after the summary judgment motion had been granted, the court granted the Mattingly Law Firm's motion to disqualify the Hensons' counsel, Mr. Little. The Hensons have not presented any allegation of error in this appeal related to Mr. Little's disqualification. *See Petition in Error*, Exhibit C.

[4] We note that it is not entirely clear if the Hensons are attempting to appeal from both orders. In Part II.1 of their *Petition in Error*, which is the "[d]ate judgment, decree or order appealed was filed," they list only the date of the order granting summary judgment as the order appealed. However, both orders are attached as exhibits. No proposition of error references the denial of the motion for new trial and reconsideration. However, in an effort

STANDARD OF REVIEW

The appellate standard of review of summary judgment is *de novo*. *Boyle v. ASAP Energy, Inc.*, 2017 OK 82, ¶ 7, 408 P.3d 183, 187. On appeal, this Court assumes plenary and non-deferential authority to reexamine a district court's legal rulings. *John v. St. Francis Hospital, Inc.*, 2017 OK 81, ¶ 8, 405 P.3d 681, 685. Summary judgment will be affirmed only if the Court determines that there is no dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *Lowery v. Echostar Satellite Corp.*, 2007 OK 38, ¶ 11, 160 P.3d 959, 963-64. All inferences and conclusions to be drawn from the materials must be viewed in a light most favorable to the nonmoving party. *Tiger v. Verdigris Valley Electric Coop.*, 2016 OK 74, ¶ 13, 410 P.3d 1007, 1011.

The standard of review for a trial court's denial of a motion for a new trial or motion to reconsider is abuse of discretion. *Evers v. FSF Overlake Associates*, 2003 OK 53, ¶ 6, 77 P.3d 581, 584. An abuse of discretion occurs when a decision is based on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling. *Smith v. City of Stillwater*, 2014 OK 42, ¶ 11, 328 P.3d 1192, 1197.

ANALYSIS

The first issue raised on appeal suggests that the court erred in finding that the Hensons were in "default" for failure to respond to the bank's motion for summary judgment and granting default judgment against them. In support of

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to give the appellants the benefit of the doubt, we presume they sought to appeal from both orders. The question is somewhat academic, as the errors alleged in the petition in error appear to be copied and pasted from the motion for new trial.

this proposition, the Hensons cite Rule 10 of the Rules for District Courts of Oklahoma, which is titled "Notice of Taking Default Judgment." We note that this rule is inapplicable as the Hensons had filed an answer to the pleadings, had appeared throughout the case, and had otherwise participated in various legal proceedings. Thus, they were not "in default" pursuant to Rule 10, but simply failed to answer SSB's summary judgment motion. Indeed, counsel for the Henson defendants even appeared at the summary judgment hearing on September 9, 2024. It was after that hearing that the court granted summary judgment in favor of SSB on September 25, 2024. Thus, we find that the applicable rule here is Rule 13 of the Rules for District Courts of Oklahoma, which provides that any party opposing summary judgment shall file a response within fifteen days after service of the motion.[5]

SSB filed its motion for summary judgment on August 30, 2019. It later filed a motion to set a hearing on its motion for summary judgment on January 2, 2024. Instead of responding to the motion for summary judgment, the Hensons filed a response to SSB's motion to set which requested a scheduling conference and requested that Marshall County Enterprises be able to intervene and be substituted as a defendant for FNB. On August 15, 2024, the court set a

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[5] Further, according to section (b) of Rule 13, if a party fails to respond to a motion for summary judgment, that failure results in an admission, for purposes of summary judgment of all material facts set forth in the movant's statement which are supported by admissible evidence. *Spirgis v. Circle K Stores, Inc.,* 1987 OK CIV APP 45, 743 P.2d 682 (approved for publication by the Oklahoma Supreme Court). Thus, by failing to respond to the motion for summary judgment, the material facts in the bank's motion were deemed admitted. The Hensons appear to consider this admission a "default." It is not. Pursuant to *Spirgis,* the court must still determine if summary relief is warranted on the merits.

hearing on the motion for summary judgment and on August 30, 2024, notice of the hearing was filed and sent to all parties. The Hensons never filed a response to the motion for summary judgment. The Hensons contend that their attorney "Dan Little at the age of 81 did not remember that the Henson defendants ... had not responded to the motion for summary judgment." ROA Tab 17, *Motion for New Trial*, 4. The Hensons also contend that their attorney believed that there was an agreement among the defendants not to respond, otherwise they would have responded. *Id.* at 4-5. However, no evidence of such an agreement was presented or is otherwise contained in the record. Regardless, we find that the court did not make a finding that the defendants were in default; rather, it noted that the Hensons, among other parties, did not respond to the motion for summary judgment and decided to grant summary judgment in favor of SSB.

Next, the Hensons generally argue that the court erred in not "considering and not granting" their motion for scheduling conference[6] and Marshall County Enterprises' motion to intervene. However, we note that the Hensons cannot raise this argument on behalf of another party. Marshall County Enterprises is the only party who can raise its right to intervene in the present case. However, they are not parties to this appeal and in fact, withdrew from the present case entirely on December 12, 2024.

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[6] The court granted summary judgment in favor of the bank, effectively ending this case. Thus, there was no need to set a scheduling conference. Further, we note that nothing in the record suggests the Hensons sought to actually set a hearing date for their own motion, as SSB had apparently done as to its motion. *See, e.g.*, Doc. 26 (Supp. Rec.), *Notice of Hearing*, 1 (wherein counsel for SSB filed notice of the setting of the hearing on SSB's motion for summary judgment); and Doc. 30 (Supp. Rec.) (same).

Next, the defendants allege that the court erred in determining that "the First National Bank mortgages now held by Marshall County Enterprises were invalid when Marshall County Enterprises had filed its motion to intervene." The Hensons contend that the court should have allowed Marshall County Enterprises' motion to intervene and because it did not grant the motion, the result was an order determining that the FNB mortgages were "invalid." As noted above, Marshall County Enterprises is the only party who could assert its right to intervene. However, Marshall County Enterprises dismissed and withdrew all of its prior motions, namely, its motion to intervene. Because the motion was withdrawn, we find that the court did not ever grant or deny its motion to intervene.[7] Even if it had, the proper party to challenge that decision is Marshall County Enterprises, not the Hensons. Further, we find nothing in the record indicating that the court erred in finding the mortgages held by Marshall County Enterprises were unenforceable pursuant to 46 O.S. § 301 and 12A O.S. § 3-118.

Finally, the Hensons contend that the court's order granting summary judgment was improper because it allegedly contained matters which went beyond the motion for summary judgment and was not supported by the evidence presented at the September 9, 2024, hearing. The Hensons do not articulate or identify what was improper in the court's order. We note that the

[7] The issue was raised at the hearing for summary judgment; however, the court only heard the summary judgment issue and another defendant's—Mattingly Law Firm's—motion to disqualify the Hensons' attorney from representing the Hensons in this case. Both motions were granted. The Hensons raised the issue of intervention in their motion for new trial and reconsideration; however, before the court could rule on the motion to reconsider, Marshall County Enterprises had withdrawn.

Hensons could have identified their issues with the order in their motion to reconsider or in their petition in error and failed to do so. The motion for summary filed in this case was some 100 pages and provided extensive documentation of the mortgages, notes, and priorities in the present case. Generally, "[t]his court will not search the record for some error on which to reverse the trial court, the rule being that even where plausible argument is submitted in the brief if unsupported by citation of authorities it will not overcome the presumption indulged in favor of the judgment." *Gaines Bros. Co. v. Phillips*, 1944 OK 254, ¶ 11, 151 P.2d 933, 935. Nevertheless, we have reviewed the motion for summary judgment and the order granting the same and find the Hensons' contention to be without merit. The relief granted in the order flows directly from that requested in the motion. Thus, in the absence of any indication of what the court improperly added to its order, we reject this contention in error.

While the length of time between the request for summary judgment and the grant of the same was unusual, the appellants offer no authority for why the procedure used here was contrary to statute or court rule. The Hensons had a significant amount of time to respond to SSB's well-pled motion for summary judgment but never so much as asked for more time. Because the motion demonstrated that there were no disputes as to any material fact and that SSB was entitled to judgment as a matter of law, the motion was properly granted and must be affirmed. Additionally, because the Hensons' motion for new trial

raised the same issues and allegations of error as discussed and rejected above, it was properly denied.

AFFIRMED.

WISEMAN, P.J., and FISCHER, J., concur.

July 14, 2025