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THE COURT OF CIVIL APPEALS

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

AUG 20 2025

DWAYNE RAY HORNER,

Plaintiff/Appellee,

vs.

SABRINA DAWN BAYS,

Defendant/Appellant,

and

TIMOTHY LEE HORNER,

Third-Party Defendant.

Case No. 122,015

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APPEAL FROM THE DISTRICT COURT OF
GARFIELD COUNTY, OKLAHOMA

HONORABLE TOM L. NEWBY, TRIAL JUDGE

AFFIRMED

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For Defendant/Appellant

OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

¶1 Appellant Sabrina Dawn Bays appeals the trial court's order quieting title in favor of Appellee Dwayne Ray Horner. Sabrina also appeals the trial court's order granting Dwayne's application for attorney fees and costs. After review, we affirm the trial court's decisions.

FACTS AND PROCEDURAL BACKGROUND

¶2 Sabrina was named the personal representative of her father's estate, Merl Horner, who died intestate on July 24, 2017. The final decree of distribution entered in June 2018 divided Merl Horner's estate equally among his three children, Sabrina, Dwayne, and Tim Horner (now deceased). The dispute involves the disposition of Merl Horner's house.

¶3 In the order being appealed, the siblings stipulated that they "discussed Dwayne buying Sabrina Bays' and Timothy Horner's interest in Merl Dean Horner's house." They further stipulated:

- "[Dwayne] has lived in the home at issue since 2018."
- "Dwayne Horner has paid the tax on the property for the years 2018-2022."
- "[T]he home at issue[] appraised for \$54,000 for the purposes of the Estate of Merl Dean Horner."
- "Sabrina Bays received approximately \$18,000 of Dwayne Horner's share of the Estate of Merl Dean Horner."

They also stipulated that Tim Horner signed a quitclaim deed in 2018 to Dwayne for Tim's portion of their father's house. They further stipulated Sabrina "personally signed for and received the letter from [Dwayne's counsel] dated 5/21/2019 requesting her to sign a quit claim deed of the property to [Dwayne]."

¶4 Dwayne brought the present quiet title and breach of contract action against Sabrina for failing to convey her interest in the property after receiving \$18,000 from Dwayne pursuant to an oral agreement by the three siblings. Dwayne summarizes the oral agreement in his appellate brief:

[Dwayne] alleged the parties had an agreement to pay [Sabrina] and the brother for the value representing their interest in the house. These two were then to convey the house to [Dwayne]. This agreement was not in writing. However, [Dwayne] fully performed his obligations under the agreement. So did the brother—he deeded the house to [Dwayne]. [Dwayne] paid each sibling their share. That was the agreement. At trial [Sabrina] created a story about other strings attached to the agreement. The evidence does not support her story.

¶5 Sabrina filed an answer, asserted the affirmative defense of the statute of frauds, and counterclaimed for partition. Dwayne answered her counterclaim requesting in part that Sabrina "take nothing by way of her counterclaim, adjudge[] that [Dwayne] is owner in fee simple absolute and is in sole and exclusive possession of all of the surface interest in and to the subject property."

¶6 A bench trial took place on November 28, 2023. In an order filed

February 6, 2024, the trial court found in favor of Dwayne and quieted title in his favor. The trial court found in part the following:

- The parties agreed Dwayne would receive the house.
- The parties agreed Dwayne “would receive less cash from the estate in sums sufficient to balance the distribution [of the] house to [Dwayne].”
- “To accomplish the balancing of the estate, [Sabrina] and Timothy Horner each received \$18,000.00 cash from [Dwayne’s] share of the cash in the estate.”
- “The Decree entered in the estate did not specify the distribution and required [Sabrina] and Timothy Horner to deed their interest in the real house to [Dwayne].”
- “[Sabrina] refused to execute a deed to [Dwayne].”

¶7 The trial court found that the oral “agreement was subject to the statute of frauds, but . . . that the exception to the statute of frauds, for substantial performance, applies to this case and [Dwayne] fully performed his obligations under the oral contract with [Sabrina] and Timothy Horner.” The trial court found that Sabrina “breached the contract by failing to perform her obligations under the contract with [Dwayne] and Timothy Horner.” The trial court also denied Sabrina’s counterclaim for partition.

¶8 As the prevailing party, Dwayne filed a motion for attorney fees and costs pursuant to 12 O.S. §§ 1141.5 and 928. Sabrina filed an objection arguing 12 O.S. § 1141.5 is inapplicable and lodging objections to Dwayne’s entitlement to fees

and to the reasonableness of the amount requested. The court granted Dwayne's motion and awarded attorney fees of \$10,320 after disallowing certain items, correcting others, and making deductions from the amount requested based on those findings.

¶9 Sabrina appeals from these orders.

STANDARD OF REVIEW

¶10 "An action to quiet title is of equitable cognizance, and the judgment of the trial court will be affirmed unless found to be against the clear weight of the evidence." *Highpointe Energy, LLC v. Viersen*, 2021 OK 32, ¶ 11, 489 P.3d 28.

"Questions of law are reviewed by a *de novo* standard." *Id.*

¶11 "When, as here, the case is tried to the court, its determination of facts are accorded the same force as those made by a well-instructed jury." *K&H Well Serv., Inc. v. Tcina, Inc.*, 2002 OK 62, ¶ 9, 51 P.3d 1219. "If any competent evidence supports the trial court's findings of fact, the same will be affirmed." *Id.*

¶12 Whether a party is entitled to an attorney's fee pursuant to a statute is "a question of law which we review *de novo*." *Finnell v. Jebco Seismic*, 2003 OK 35, ¶ 7, 67 P.3d 339. "The court has plenary, independent, and non-deferential authority to reexamine a trial court's legal rulings." *Id.* "When a question on appeal presents the issue of reasonableness of attorney fees awarded by the court, abuse of discretion of the trial judge is the standard of review." *Fleig v. Landmark*

Constr. Grp., 2024 OK 25, ¶ 13, 549 P.3d 1208. “Under this standard, a trial court will not be reversed unless it made a clearly erroneous conclusion against reason and evidence.” *Id.*

ANALYSIS

I. Statute of Frauds

¶13 Sabrina first asserts the trial court erred when it applied an exception to the statute of frauds based on substantial performance. She argues the trial court correctly determined that the statute of frauds applies when the sale of real property or an interest therein must be in writing:

The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, by an agent of the party or by a broker of the party pursuant to Sections 858-351 through 858-363 of Title 59 of the Oklahoma Statutes:

...

4. An agreement for the leasing for a longer period than one (1) year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent or a broker of the party sought to be charged, is invalid, unless the authority of the agent or the broker be in writing, subscribed by the party sought to be charged.

15 O.S.2021 § 136(4). It is undisputed that the agreement on dividing the siblings’ interest in the house was not in writing as delineated in the statute. Sabrina disputes the trial court’s application of the substantial performance exception to the statute of frauds. However, Tim and Sabrina each received \$18,000 from

Dwayne's share of the estate money for their interest in the house, and the trial court correctly concluded that Dwayne substantially performed the agreement removing the agreement from the statute of frauds.

¶14 “[P]artial or complete performance of an oral contract removes it from the statute of frauds, rendering the contract enforceable” *Osage Energy Res., LLC v. Pemco, LLC*, 2016 OK CIV APP 70, ¶ 40, 394 P.3d 265 (citing *Gibson v. Dunham*, 1959 OK 182, ¶ 5, 346 P.2d 327). Additionally, “We held in *Adams v. White*, [1913 OK 609], 139 P. 514, that an oral contract of sale of land was not invalid under the statute of frauds where there was part payment and the vendee took possession in good faith.” *Kirby v. Agra Gin Co.*, 1959 OK 217, ¶ 9, 347 P.2d 223.

¶15 We conclude the evidence supports the trial court's decision finding Sabrina “breached the contract by failing to perform her obligations under the contract with [Dwayne] and Timothy Horner” and thus quieting title in favor of Dwayne. Both Dwayne and Tim testified the siblings agreed that Dwayne would pay each of the other two one-third of the property's appraised value to buy their interest in the house. Dwayne and Tim both testified this agreement never included a discussion regarding Dwayne paying any rent. Dwayne testified the agreement never included paying the mortgage or keeping the home in the family. He testified he moved into the house shortly after Sabrina gave him the keys which occurred

before the probate concluded because Sabrina told him “to go ahead and move in because she got everything out except for the trash.” He stated Sabrina entered the house “a couple of days after our parents’ death” and “cleared that house out.”

¶16 Dwayne testified the house was in bad shape when he moved in:

I mean, the walls were bad. It was infested with roaches. We had to fumigate it twice. The carpet smelled. I tried to clean it with the carpet cleaner. That didn’t help so I cut a portion of the carpet out. And I still owned the dogs that done the work because I gave my word to my family that I would let them live their full life. So I haven’t changed the carpet yet because she still pees on the carpet.

He further testified he also fenced the back yard and paid for all the upgrades and work on the house as well as the ad valorem taxes. Dwayne stated he and his siblings discussed their father’s personal property and agreed that he would not receive any of it because he was getting the house. He did not know the worth of the personal property because Sabrina never had it appraised. He testified he and his cousin were living in the house.

¶17 During a video deposition, Tim testified that they agreed Dwayne would receive the house and pay each of them for their interest in the property and that this agreement was never in writing. Tim stated he received \$18,000 from Dwayne and then executed a quitclaim deed to him. Tim verified there was never a discussion about Dwayne paying rent. He also stated Sabrina cleaned out the house before either brother had the opportunity to get anything. He stated Sabrina

took what she wanted from the house including gold coins which were supposed to be split among the three of them. He further verified that Dwayne was fixing up the house because it was infested with roaches and the carpet was in bad shape. He denies that Dwayne damaged the house. Tim disagrees that Dwayne inherited appliances in the home and stated Dwayne brought them with him. He also stated he never saw an appraisal but just trusted what Sabrina told him.

¶18 During trial, Sabrina testified in a desultory manner when describing the agreement. She testified that “[i]n the beginning,” she agreed to allow Dwayne to buy them out of the house in exchange for \$18,000. She said they “talked about it” but “never made the agreement.” She admitted Dwayne paid her \$18,000. Then she testified the \$18,000 was based “[o]n certain stipulations” that were part of the \$25,000 she spent paying off the house because he could not get a loan and the person living in the house was not paying rent. But she admitted this just happens to be the same amount for which she agreed to sell her interest in the house.

Sabrina admitted that the final probate decree says nothing about keeping the house in the family and she admitted approving the final decree.

¶19 Dwayne testified that he did not write \$18,000 checks to Sabrina and Tim, but rather Sabrina took it out of estate assets before anyone received anything. The trial court stated during the hearing that the important issue became how the \$18,000 was paid. “It was paid out of the estate. It was paid by balancing what

each would receive out of the remaining funds, which at that time was the conclusion of the effect of the agreement of the parties which results in [Dwayne] receiving title to the property. That's my ruling. That was a completed agreement at that time."

¶20 The record speaks clearly in support of the trial court's decision. Dwayne fully performed his obligation under the oral agreement placing it squarely within the substantial performance exception to the statute of frauds. His siblings received the agreed-upon compensation for their interest in the house and Dwayne took possession of the property. The trial court's decision was not against the clear weight of the evidence, and we affirm its decision. And because this issue is dispositive, we decline to address Sabrina's propositions two and three in her appellate brief as the house was clearly divided equally among the three siblings which complies with the final decree of distribution.

II. Attorney Fees and Costs

¶21 Sabrina also appeals the July 23, 2024 Order granting Dwayne's attorney fees motion and awarding fees in the amount of \$10,320. She argues the trial court erred in finding Dwayne was entitled to attorney fees and in determining the amount of attorney fees he should be awarded.

Entitlement to Fees

¶22 She asserts error in finding that Dwayne was entitled to attorney fees

pursuant to 12 O.S. § 1141.5(A)(4) of the Nonjudicial Marketable Title Procedures

Act. This provision states:

A. If a requestor prepares a notice pursuant to Section 3 of this act, and:

...

4. The respondent receives the notice and refuses to take the action requested in the notice, then in the event that the requestor files an action to quiet title to the subject parcel pursuant to Section 1141 of Title 12 of the Oklahoma Statutes, and the civil action results in a judgment for the plaintiff which could have been accomplished through the execution and delivery of a curative instrument or the taking of corrective action identified in a notice, the plaintiff in the quiet title action, in addition to any other requested relief, shall be entitled to recover damages equal to the actual expenses incurred by the plaintiff in identifying the relevant instrument, preparing the notice to the respondent pursuant to Section 3 of this act, and the expenses of litigation directly related to obtaining judgment quieting title in the plaintiff with respect to the interest or apparent interest forming the basis of the action against the respondent, including costs and reasonable attorney fees.

12 O.S.2021 § 1141.5(A)(4) (footnote omitted). NMTPA's purpose is "to preserve judicial resources by encouraging resolution of title disputes through curative instruments rather than through quiet title actions." *Stump v. Cheek*, 2007 OK 97, ¶ 10, 179 P.3d 606. This Act "accomplishes this purpose by requiring a trial court to award attorney fees, costs, and expenses to a prevailing party in a quiet title action who attempted to first resolve the matter through a curative instrument in accordance with the Act." *Id.*

¶23 Before filing this quiet title action, Dwayne's counsel submitted a letter to Sabrina dated May 21, 2019, titled "Notice of Request to Remove Cloud on Title (12 O.S. § 1141.3)." It is comprised of five numbered paragraphs corresponding to the categories identified in 12 O.S.2021 § 1141.3(C)(1-4). Dwayne listed this letter as Exhibit D to his trial brief. Exhibit D also attached the decree of settlement of final account and a quitclaim deed for Sabrina to execute and notarize. Sabrina also stipulated to receiving this letter asking her to execute the attached quitclaim deed to convey the house to Dwayne. The cloud on the property's title resulted from filing the final decree which identified the property and stated that all property was to be divided into thirds and by Sabrina's refusal to quitclaim her interest in the property to Dwayne pursuant to an oral agreement enforcing the final probate decree's mandate.

¶24 Keeping in mind the purpose of the NMTPA, we agree that "this case presents the precise set of facts and circumstances in which the NMTPA authorizes an award of attorney fees and costs" in favor of Dwayne. *Tucker v. Special Energy Corp.*, 2013 OK CIV APP 56, ¶ 20, 308 P.3d 169. The trial court properly found Dwayne is entitled to attorney fees and costs pursuant to the NMTPA, 12 O.S. § 1141.5(A)(4).

Amount of Fees

¶25 To determine the amount of the attorney fees award, the trial court held an

evidentiary hearing on April 25, 2024, at which counsel for the parties examined Dwayne's expert witness. The court issued its order on attorney fees and costs on July 23, 2024.

¶26 In addition to entitlement, Sabrina also complains about the amount of attorney fees awarded to Dwayne "based on the lack of documentation of reconstructed time records." She claims the trial court erred in awarding fees to Dwayne for (1) reconstructing approximately six of his time entries which in his first application stated, "add subject" in the description column in order to add the actual description to these same time entries in his amended application; (2) approving a time entry for researching a contingency fee issue; and (3) approving a 2.5 hour time entry for preparing and attending mediation without "sufficient proof or documentation."

¶27 The Oklahoma Supreme Court in *Fleig v. Landmark Construction Group*, 2024 OK 25, ¶ 14, 549 P.3d 1208, recently held "that a trial court order awarding attorney fees must, with specificity of facts and computations to support an award, include findings of fact regarding hours spent, reasonable hourly rates and the value placed on additional factors in each case." We apply this procedure in this equitable proceeding as well. We view *State ex rel. Burk v. Oklahoma City*, 1979 OK 115, 598 P.2d 659, and *Fleig* as providing helpful guidance in cases in equity when the question of setting reasonable attorney fees arises, guidance the district

courts should follow in the absence of compelling counter-factors disclosed in the record.

¶28 In the order on appeal, the trial court complied with these requirements. The court addressed the issues raised by Dwayne's amended fee application and Sabrina's objections in its detailed, comprehensive, ten-page Order containing very specific findings of fact, conclusions of law, and an explication of the factors in *Burk*, as applied to this particular action. It should be noted that the court disallowed certain items, corrected others and made appropriate deductions from the amount requested related to those findings.

¶29 On Sabrina's first issue, the trial court concluded: "Multiple time entries with 'add subject' as description. [Dwayne's] reply corrected these entries with proper time activities and are allowed. Those not corrected are disallowed as stated above." On the second issue, the trial court concluded: "12-5-23 research contingency fees. Based on the expert testimony, [Dwayne's] counsel is allowed to research legal issues in the case, including issues involving the award of attorney's fees. This objection is disallowed. The time entry is approved." On the third issue, the trial court concluded:

d. 8-29-23 Settlement Conference billing.
[Dwayne] provided proof the mediation lasted 22 minutes in the form of the call transcript. In spite of this proof, [Sabrina's] counsel repeatedly told the Court the time was 5 minutes. Moreover, based on [Dwayne's] Reply and the expert testimony offered by [Dwayne], the

Court finds the 2.5 hours billed included [Dwayne's] counsel preparing [Dwayne] for mediation, and attending mediation. [Dwayne] is allowed to fully prepare even if mediation was not successful. This objection is disallowed. The time entry is approved.

e. 8-29-23 Preparation for mediation. [Dwayne's] counsel is allowed to prepare for a mediation, even if the mediation is not successful. This objection is disallowed. The time entry is approved.

¶30 Attached to the amended motion for attorney fees and costs is the Affidavit of Dwayne's counsel attesting to the requested attorney fees being "reasonable under the circumstances of this case." Dwayne's counsel states in the appellate brief that he did not reconstruct the time records, and even if he did, "[t]hey are detailed and supported by [his] affidavit regarding the correctness and reasonableness of all entries."

¶31 The trial court fully complied with both the letter and the spirit of *Fleig* making appellate review of this issue considerably easier. The trial court also considered and reviewed the *Burk* factors pertaining to the circumstances of this case in its Order. The record is clear that the trial court properly rejected the objections Sabrina raises in this appeal, and we see no abuse of discretion in the amount of attorney fees awarded.

CONCLUSION

¶32 For the reasons set forth in this Opinion, we affirm the trial court's order finding Sabrina breached the contract and quieting title in favor of Dwayne. The

record further clearly supports the order awarding Dwayne attorney fees and costs which we also affirm.

¶33 **AFFIRMED.**

FISCHER, J., concurs, and BLACKWELL, J., dissents.

BLACKWELL, J., dissenting:

¶1 This was never a quiet title action. The record is clear that the final decree entered distributing the parties' father's intestate estate into thirds was consistent with Oklahoma law. All parties testified that there was no family settlement agreement in place. The decree was entered without objection or appeal, and no party below or in this appeal is really arguing that the final probate decree was errant in any way. And to the extent the plaintiff is making that claim, he brought it to the wrong court, at the wrong time, and with the wrong arguments.¹

¶2 The record is equally clear that this was always a classic claim for breach of contract. The plaintiff maintained that his sister promised she would quitclaim the

¹ See *Chandler v. Denton*, 1987 OK 109, ¶ 10, 747 P.2d 938, 941–42 (“A Decree of Distribution, as any other final judgment, is conclusive in the absence of fraud, mistake or collusion as to the rights of the parties interested in the estate. Such a conclusive judgment is final as to all portions of the estate distributed under the will, unless reversed or modified on appeal, *and the decree is not subject to collateral attack*. A judgment of a court of competent jurisdiction may not be impeached collaterally for mere errors or irregularities committed by the court in the exercise of its jurisdiction or in the course of the proceedings, even though the error is one of law and even though the error or irregularity appears on the face of the record.” (internal quotations marks and footnotes omitted, emphasis supplied)).

real estate at issue in exchange for \$18,000. The plaintiff paid the \$18,000, but the sister never conveyed the property. It is difficult to envision a more textbook claim for breach of contract. While I would not disturb the trial court's finding that the sister did not hold up her end of the bargain, the proper remedy for breach of contract is generally damages, not a quiet title decree that has the same effect as ordering specific performance of the contract. The plaintiff very well may be entitled to specific performance, but I would not consider the question for the first time on appeal. I would vacate the appealed decree and remand to the trial court to determine the proper remedy for the plaintiff's breach.

¶3 Consistent with this analysis, I would find the award of attorney's fees is contrary to law. There was never a cloud on the plaintiff's record title. A promised deed that does not exist and has not been recorded is not a cloud on title. An unappealable final decree that all parties agree distributed a decedent's estate in accordance with law is not a cloud on title. Because there was never any basis for a quiet title action, much less an award, 12 O.S. § 1141.5 cannot support an award of fees. If such were the case, every simple breach of contract case involving real estate would become fee-bearing.

¶4 For these reasons, I respectfully dissent.

August 20, 2025