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 II

REID FAMILY MANAGEMENT, LLC,

Plaintiff/Appellant,

vs.

SOUTHERN RESOURCES, INC.,

Defendant/Appellee.

Case No. 122,872

APPEAL FROM THE DISTRICT COURT OF
HUGHES COUNTY, OKLAHOMA

HONORABLE TRISHA D. SMITH, TRIAL JUDGE

AFFIRMED

Trevor R. Henson
Kasey K. Fagin
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For Plaintiff/Appellant

L. Matthew Dobson
Jon T. Lee
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Edmond, Oklahoma

For Defendant/Appellee

OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

Plaintiff Reid Family Management, LLC, appeals the trial court's order

granting Defendant Southern Resources, Inc.'s counter-motion for summary judgment. Plaintiff also appeals the order denying its motion for reconsideration. We consider this appeal without appellate briefing pursuant to Supreme Court Rule 1.36, 12 O.S.2021, ch. 15, app. 1. After review, we affirm the trial court's orders.

FACTS AND PROCEDURAL BACKGROUND

The dispute in this case involves determining the rightful owner of certain oil and gas interests in Hughes County, Oklahoma, including what is referred to as Darks #1-27 Well. Plaintiff alleges it received ownership of these certain oil and gas interests through a chain of events described as follows:

> A Quit Claim Deed executed on September 8, 1960, conveyed the Property from William P. Morton to Dorothy Morton, attached hereto as Exhibit 2. *See also* Order Allowing Final Account (the "Decree"), attached hereto as Exhibit 3. *See also* Exhibit 1; *see also* Order Nunc Pro Tunc from Dorothy Morton's Probate, attached hereto as Exhibit 4.

Plaintiff claims that because it is the rightful owner of the property, it is entitled to proceeds from the well, which is operated by Defendant, pursuant to Oklahoma's Production Revenue Standards Act, 52 O.S. §§ 570.1-570.15 (PRSA) and Oklahoma's Oil and Gas Owners' Lien Act of 2010, 52 O.S. § 549.10. Plaintiff contends Defendant failed to pay it these proceeds.

Plaintiff filed a motion for summary judgment asserting that it "owns 70 net mineral acres in the Well" and that Defendant owed it "proceeds from the sale of

oil or gas production from the Well and any other proceeds due to its mineral interests." Plaintiff asked the trial court to grant summary judgment against Defendant "for liability under the Oklahoma Production Revenue Standards Act, the Oklahoma Oil and Gas Owners' Lien Act of 2010, and provide an accounting thereof."

In response, Defendant filed a combined response to Plaintiff's motion for summary judgment and a counter-motion for summary judgment. Defendant argues that Plaintiff failed to show it has marketable title for a number of reasons, including the failure to record in Hughes County the Okmulgee County probate decree of Dorothy Morton's estate from which Plaintiff claims title. According to Defendant, without marketable title, Plaintiff lacks standing to pursue its claim under the PRSA and the Oil and Gas Owners' Lien Act of 2010 for Defendant's alleged failure to pay proceeds connected with the Darks #1-27 Well.

In its reply to Plaintiff's response to its counter-motion for summary judgment,[1] Defendant argues, "The PRSA relies exclusively on the title examination standards of the Oklahoma Bar Association for purposes of determining marketable record title." (Emphasis omitted.) Defendant maintains that the expert affidavit testimony of Kraettli Epperson "is admissible because it is

[1] The appellate record does not contain Plaintiff's response to Defendant's counter-motion for summary judgment.

helpful to the court." Defendant further argued that "[a]ctual notice cannot cure Plaintiff's lack of marketable record title" and "Plaintiff's lack of standing precludes its ability to seek any other relief."

In an order filed January 15, 2025, the trial court denied Plaintiff's motion for summary judgment and granted Defendant's counter-motion for summary judgment.

On January 27, 2025, Plaintiff filed a motion for reconsideration and vacation of the order granting summary judgment to Defendant and denying Plaintiff's motion for summary judgment "or for clarification of the same." Plaintiff asserted that (1) "Marketable Title is not a prerequisite to a claim under the Oil and Gas Owner's Lien Act of 2010," (2) "The Final Decree of Dorothy Morton is filed in the records of the Hughes County Clerk, thereby creating Marketable Title in Favor of Plaintiff," and (3) "Defendant's payment of royalties to Plaintiff is a fact question which preempts summary judgment and supports the arguments set out above."

In response, Defendant argued the motion to reconsider is untimely pursuant to 12 O.S. § 653, Plaintiff failed to state whether it is seeking reconsideration pursuant to 12 O.S. § 651 or 12 O.S. § 1031, and Plaintiff still lacks marketable title even with the copy of the Okmulgee County probate decree newly recorded in Hughes County by Plaintiff *after* the trial court's summary judgment ruling.

Defendant continued to assert Plaintiff "is not entitled to maintain a PRSA claim and likewise is not an 'interest owner' entitled to enforce a statutory lien pursuant to the Oil and Gas Owner's Lien Act of 2010." Finally, Defendant states that its "payment to Plaintiff based upon a false and fraudulent affidavit of death and heirship does not alter the outcome on summary judgment."

In an order filed March 5, 2025, the trial court denied Plaintiff's motion for reconsideration of the summary judgment order.

Plaintiff appeals both the order granting Defendant summary judgment and the order denying its post-trial motion.

STANDARD OF REVIEW

"Summary judgment is appropriate only when there is no genuine controversy as to any material fact, and the moving party is entitled to judgment as a matter of law." *Johnson v. Snow*, 2022 OK 86, ¶ 8, 521 P.3d 1272. "Summary judgment is reviewed *de novo*." *Id.* "Appellate courts have plenary, independent and nondeferential authority to determine whether the trial court erred in its legal rulings." *Id.*

"In reviewing a trial court's decision denying a motion for new trial, the appellate court employs an abuse of discretion standard of review." *Dopp v. Kirkendall*, 2021 OK 52, ¶ 11, 498 P.3d 287. "An abuse of discretion 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." *Ullman v. Oklahoma Highway Patrol*, 2023 OK 100, ¶ 15, 538 P.3d 138. "Where, as here, our assessment of the trial court's exercise of discretion in denying defendants a new trial rests on the propriety of the underlying grant of summary judgment, the abuse-of-discretion question is settled by our *de novo* review of the summary adjudication's correctness." *Reeds v. Walker*, 2006 OK 43, ¶ 9, 157 P.3d 100.

As to Plaintiff's motion to reconsider, "A motion to reconsider may be treated as a 12 O.S. § 651 motion for new trial when the motion to reconsider is filed within a ten-day period after the filing of a judgment, decree or appealable order." *Andrew v. Depani-Sparkes*, 2017 OK 42, ¶ 15, 396 P.3d 210. "A motion to reconsider may [be] treated as a 12 O.S. § 1031 or § 1031.1 motion 'to modify or to vacate a final order or judgment . . . if filed after ten (10) days but within thirty (30) days of the filing of the judgment, decree, or appealable order.'" *Id.* (emphasis omitted).

PROCEDURAL ISSUE

Plaintiff's motion to reconsider filed on January 27, 2025, was timely filed within ten business days of the trial court's January 15, 2025 order granting Defendant's counter-motion for summary judgment. "[T]he temporal constraints in § 653(A) must be read in harmony with 12 O.S.[2021] § 2006(A)." *Christian v. Christian*, 2018 OK 91, ¶ 6, 434 P.3d 941. Section 2006(A)(1) provides:

> *In computing any period of time prescribed or allowed by this title*, by the rules of any court of this state, or by order of a court of this state, *the day of the act, event, or default from which the designated period of time begins to run shall not be included.* The last day of the period so computed shall be included, unless it is a legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time, in which event the period runs until the end of the next day which is not a legal holiday or a day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time. Except for the times provided in Sections 765, 990.3, 1148.4, 1148.5, 1148.5A, and 1756 of this title, *when the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time, shall be excluded from the computation.*

12 O.S.2021 § 2006(A)(emphasis added). "Because the time limit prescribed in § 653(A) is only ten-days, weekends, legal holidays, and days when the court clerk is either closed or closes early, are required to be omitted when computing the statutory deadline for filing a motion for new trial." *Christian*, 2018 OK 91, ¶ 7. The order in question was filed on January 15th and Plaintiff's motion on January 27th. We must exclude the first day of filing—*i.e.*, the 15th, as well as January 18th-20th, which represented Saturday, Sunday, and the Martin Luther King, Jr. holiday, and January 25th-26th (Saturday and Sunday). When these days are

excluded from the calculation, Plaintiff's deadline for filing a motion for new trial under § 653(A) was January 30, 2025. Plaintiff's motion was timely filed.

ANALYSIS

Of principal concern to Plaintiff is whether the trial court properly determined (1) that it lacks marketable title and (2) how the lack of marketable title affects its claims.

I. Counter-motion for Summary Judgment

In its counter-motion for summary judgment, Defendant states only one undisputed material fact:

> Plaintiff, Reid Family Management, LLC lacks marketable title in and to the "certain oil and gas interest in Hughes County" which it identifies through its Petition and Motion for Summary Judgment as "Well Number 063-23887, commonly referred to as Darks #1-27 ("Well"), located in the NE/4 of Section 27, Township 8 North, Range 11 E, in Hughes County, State of Oklahoma". *See Attached*, Defendant's Exhibit "A", Affidavit of K. Epperson.

"When, on summary judgment, the defendant contends that the facts and circumstances are undisputed and submits evidentiary material supporting the contention, the plaintiff must respond with some evidentiary material that would demonstrate a need for a trial on the issue." *Lowery v. Echostar Satellite Corp.*, 2007 OK 38, ¶ 16, 160 P.3d 959. "In attempting to show the existence of a question that must be tried, the party may not rely on bald contentions that facts

exist to defeat the motion." *Oklahoma Dep't of Sec. ex rel. Faught v. Wilcox*, 2011 OK 82, ¶ 19, 267 P.3d 106. "A party opposing a motion for summary judgment must show 'the reasonable probability, *something beyond a mere contention,* that the opposing party will be able to produce competent, admissible evidence at the time of trial which might reasonably persuade the trier of fact in his favor on the issue in dispute.'" *Keeler v. GMAC Glob. Relocation Servs.*, 2009 OK CIV APP 88, ¶ 11, 223 P.3d 1024 (quoting *Davis v. Leitner*, 1989 OK 146, ¶ 15, 782 P.2d 924). Pursuant to Rule 13(b):

> All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary judgment or summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.

Okla. Dist. Ct. Rule 13(b), 12 O.S.2021, ch. 2, app.

Plaintiff failed to include in the appellate record its response to Defendant's counter-motion for summary judgment, a filing described in the case docket sheet as: "Plaintiff's combined response and objection to Defendant's counter-motion for summary judgment and motion to strike Exhibit A attached to Defendant's combined response." Because Plaintiff's response was not included in the appellate record, Defendant's statement of undisputed material fact recited above remains unrefuted pursuant to Rule 13(b). Because no disputed material facts

exist, we must next determine whether Plaintiff has marketable title authorizing its receipt of royalty payments from oil and gas production.

The Production Revenue Standards Act (PRSA) requires that all "[p]roceeds from the sale of oil or gas production from an oil or gas well shall be paid to persons legally entitled thereto." 52 O.S.2021 § 570.10(B)(1). It further explains what occurs when proceeds are not paid:

> 2. a. Where such proceeds are not paid because the title thereto is not marketable, such proceeds shall earn interest at the rate of (i) six percent (6%) per annum to be compounded annually for time periods prior to November 1, 2018, and (ii) the prime interest rate as reported in the Wall Street Journal for time periods on or after November 1, 2018, calculated from the end of the month in which such production was sold until such time as the title to such interest becomes marketable or the holder has received an acceptable affidavit of death and heirship in conformity with Section 67 of Title 16 of the Oklahoma Statutes, or as set forth in subparagraph b of this paragraph. *Marketability of title shall be determined in accordance with the then current title examination standards of the Oklahoma Bar Association.*

52 O.S.2021 § 570.10(D)(2)(a)(emphasis added).

The Oklahoma Supreme Court has reiterated this requirement by stating: "Marketable title is determined under § 540 pursuant to the Oklahoma Bar Association's title examination standards." *Hull v. Sun Refining and Marketing Co.*, 1989 OK 168, ¶ 9, 789 P.2d 1272 (addressing 52 O.S. § 540 which is now codified at 52 O.S. § 570.10). According to the Oklahoma Bar Association's Title

Examination Standards: "A marketable title is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title *fairly deducible of record.*" 16 O.S.2021 ch. 1, app., 1.1 (emphasis added).[2] For example, marketability may be accomplished "by looking at title abstracts, deeds, trust agreements, and death certificates." *Base v. Devon Energy Prod. Co., L.P.*, 2024 OK 3, ¶ 38, 563 P.3d 934.

"By using marketable title as a standard for payment under [§ 570.10], the Legislature expressed its intent that suspense of royalty payments was proper only when a legitimate question as to marketability of title existed." *Hull*, 1989 OK 168, ¶ 9. This provision "was enacted for a purpose—to ensure that those entitled to royalty payments would receive proceeds in a timely fashion." *Id.* ¶ 14. In passing this provision, "the Legislature has expressed its intent that it shall be the public policy in Oklahoma for royalty owners to receive prompt payment from the sale of oil and gas products." *Id.* "The right to payment rests upon a showing of marketable title." *Id.* It is therefore "the interest owner's responsibility to establish marketable title so that he can receive proceeds." *In re Tulsa Energy, Inc. v. KPL Production Co.*, 111 F.3d 88, 90 (10th Cir. 1997). "Public policy requiring

[2] The Oklahoma Supreme Court has "unanimously held that because the Title Examination Standards were adopted by the Oklahoma Bar Association and accepted by practitioners in the State, they are a persuasive authority." *Blair v. Richardson*, 2016 OK 96, n.24, 381 P.3d 717 (citing *Knowles v. Freeman*, 1982 OK 89, ¶ 16, 649 P.2d 532).

prompt payment of proceeds cannot spur on the party responsible for payment, because he cannot be, and is not, required to pay until the other party has cleared up his title." *Id.*

The record reflects that although the April 11, 1963 Okmulgee County probate decree in the property's chain of title was filed with the Okmulgee County District Court on April 15, 1963, it was not recorded in the office of the County Clerk of Hughes County as required by 58 O.S. §§ 703 and 711.[3] That is, a review of the decree reveals no county clerk stamp showing the book and page number where the decree was recorded. Section 703 states: "When it is provided in this chapter that any order or decree of a district court or judge, or a copy thereof, must be *recorded* in the office of the county register of deeds, notice is imparted to all persons of the contents thereof, from the time of filing the same for record." 58 O.S.2021 § 703 (emphasis added). Section 711 provides:

> When a judgment or decree is made, setting apart and defining the homestead, confirming a sale, making distribution of real property, or determining any other matter affecting the title to real property, *a certified copy of the same must be recorded in the office of the county*

[3] *See also* 12 O.S.2021 § 181:

> When any part of real property, the subject matter of an action, is situated in any other county or counties than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the office of the county clerk of such other county or counties, before it shall operate therein as notice. It shall operate as such notice, when recorded in the office of the county clerk, in the county where it is rendered.

> *clerk of the county in which the real property is situated.* A certified copy of any such judgment or decree may be made by the court clerk as to real property in any one county without including therein the description of lands located in any other county, such certificate reciting that the same is a true copy of such instrument insofar as the same relates to real property in such county. Instead of filing the judgment or decree in the office of the county clerk where the real property described in the judgment or decree is located, a notice of the judgment or decree may be filed in the office of the county clerk of any county where the real property described in the judgment or decree is located. The notice shall provide the name of the decedent in the probate proceeding, the court, case number, the date that the judgment or decree was entered, a legal description of the real property located in the county where the notice is to be filed without including the description of real property located in any other county, and the name and address of the party or parties holding title to such real property as set forth in the judgment or decree.

58 O.S.2021 § 711 (emphasis added). The Okmulgee County decree was not filed of record in Hughes County where the property in question is located.

The affidavit of Defendant's expert, Kraettli Q. Epperson, confirms Plaintiff's lack of marketability. Epperson, an established Oklahoma attorney specializing in title examination and "litigation concerning real property titles and oil and gas titles," testified:

> 6. That for the purpose of my review I was provided with a Chain of Title Report provided by a landman engaged by the Defendant. Such Title Report included an in-person examination of the Hughes County, Oklahoma, Land Records Index for the Disputed Mineral Interest from the date of Reid, LLC's (alleged) Root

> Instrument on September 21, 1960 (discussed below), whereby the Plaintiff's chain of title leading to its ownership allegedly began, to April 11, 2022, plus a copy of all recorded instruments (without leases) shown in the Title Report for that period of time, covering the Disputed Mineral Interest which are identified in the Exhibit attached hereto as Exhibit "A" (with all of such instruments attached to such Exhibit "A"). I also reviewed the documents attached to Plaintiff's Motion for Summary Judgment which it relies upon in support of its argument that it is legally entitled to the proceeds from the Disputed Mineral Interest.

Epperson also testified that, in order to receive proceeds from production pursuant to the PRSA and the Title Examination Standards, Plaintiff must show "that is has an unbroken series of 'conveyances' transferring the Disputed Mineral Interest through such chain ending with it, before the Plaintiff can claim to hold marketable title as of the date that the Plaintiff filed its Petition in this case on March 21, 2022."

Based on these legal requirements and a review of the Title Report and Plaintiff's documents attached and discussed in its motion for summary judgment regarding marketability, Epperson concluded that "Plaintiff, Reid Family Management, LLC did not have marketable title as of the date it filed its Petition in this matter on March 21, 2022." He explained that Plaintiff "is not the person legally entitled to the proceeds from production related to the Disputed Mineral Interest, because between the date of such 1960 Morton Deed and the present time Dorothy Morton never conveyed away her interest of record." He testified that

"even if this fatal gap is ignored, the multiple deeds that are in the Plaintiff's alleged Chain of Title arising after the 1960 Morton Deed all contain fatal defects including errors in the names of the grantors, making them void." He described these defects in detail in his affidavit and expressed the opinion that "based on the aforementioned issues several probate proceedings and/or curative deeds and/or clarifying affidavits and/or quiet title proceedings are needed to cure the title defects identified" in his affidavit. For these reasons, he concludes, Plaintiff does not hold marketable title to the Disputed Mineral Interest and is not legally entitled to the production proceeds from that interest.

Plaintiff failed to dispute Epperson's affidavit outlining the title defects giving rise to the lack of marketable title. As a result, Plaintiff cannot establish marketable title that is "fairly deducible of record" as required by 16 O.S.2021 ch. 1, app., 1.1. Without following the requirements in §§ 703 and 711, Plaintiff cannot use the Okmulgee County probate decree that has not been filed in the land records to establish marketable title because this failure provided no notice of record showing Plaintiff owned the Hughes County property in question. Because Plaintiff lacks marketable title and has not cured all the defects, it cannot pursue a PRSA claim and/or a statutory lien against Defendant for the recovery of proceeds. We affirm the trial court's order granting summary judgment to Defendant on this issue.

According to Defendant's reply brief, Plaintiff also appears to challenge the admissibility of Epperson's affidavit arguing it should be stricken because it is based on legal opinions/conclusions as to the marketability issue. We note first that affidavits are a well-established means to present evidentiary material to the trial court in the process of deciding summary judgment issues. Rule 13(c) of the Rules for District Courts, 12 O.S.2021, ch. 2, app.

"In Oklahoma the testimony of an expert is controlled by the applicable statutes found in the Oklahoma Evidence Code, 12 O.S.2001 § 2702 (Testimony by Experts); § 2703 (Bases of Opinion Testimony by Expert); § 2704 (Opinion on Ultimate Issue); and § 2705 (Disclosure of Facts or Data Underlying Expert Opinion)." *Christian v. Gray*, 2003 OK 10, ¶ 5, 65 P.3d 591 (footnotes omitted). Section 2702 provides:

> If scientific, technical or other specialized knowledge *will assist the trier of fact to understand the evidence* or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education *may testify in the form of an opinion or otherwise*, if:
>
> 1. The testimony is based upon sufficient facts or data;
>
> 2. The testimony is the product of reliable principles and methods; and
>
> 3. The witness has applied the principles and methods reliably to the facts of the case.

12 O.S.2021 § 2702 (emphasis added).[4] Further to the point, 12 O.S.2021 § 2704 provides that "[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Thus, pursuant to "both federal law and Oklahoma law, expert witnesses in civil cases may testify in the form of an opinion or inference as to ultimate issues to be decided by the trier of fact if the testimony is not otherwise objectionable." *Okland Oil Co. v. Conoco Inc.*, 144 F.3d 1308, 1328 (10th Cir. 1998).

As a title examination expert, Epperson is authorized pursuant to § 2702 to offer his opinion as it applies to this very technical and somewhat Byzantine area of law because it clearly assists the trier of fact and is based on sufficient facts in the record which Plaintiff primarily provides. As discussed earlier, Epperson provided a detailed and clear explanation underlying his conclusions based on the record. *U.S. v. Dazey*, 403 F.3d 1147, 1171 (10th Cir. 2005)("[A]n expert may not simply tell the jury what result it should reach without providing any explanation of the criteria on which that opinion is based or any means by which the jury can exercise independent judgment."). After review of the record on this proposition, we see no basis for reversal.

[4] Title 12 O.S. § 2702 was amended effective September 1, 2025, but the amendment does not apply here.

According to Defendant's reply brief, Plaintiff also appears to assert that "Defendant had actual notice of [Plaintiff's] alleged ownership sufficient to overcome its lack of marketable record title." To reiterate, "A marketable title is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title *fairly deducible of record*." 16 O.S.2021 ch. 1, app., 1.1 (emphasis added). To impart notice for purposes of marketability of title, it must be "fairly deducible of record." This can be accomplished pursuant to the statutes set forth above—*i.e.*, 58 O.S.2021 §§ 703, 711 and 12 O.S.2021 § 181. Based on the record submitted, we do not see error in granting summary judgment to Defendant on marketability of title or denying Plaintiff's request for recovery of proceeds.

II. Motion to Reconsider

As to its motion for reconsideration and vacation of the summary judgment, Plaintiff asserted that (1) "Marketable Title is not a prerequisite to a claim under the Oil and Gas Owner's Lien Act of 2010," (2) "The Final Decree of Dorothy Morton is filed in the records of the Hughes County Clerk, thereby creating Marketable Title in favor of Plaintiff," and (3) "Defendant's Payment of Royalties to Plaintiff is a fact question which preempts summary judgment and supports the arguments set out above."

Plaintiff first asserts it does not appear the trial court addressed its Oil and Gas Owners' Lien Act of 2010 claim. Plaintiff complains the trial court only considered its PRSA claim. We note the trial court's January 15, 2025 order does not state the basis for granting Defendant's motion for summary judgment. Defendant argues in its motion for summary judgment that because Plaintiff has no marketable title pursuant to the PRSA, it cannot maintain a "lien pursuant to Oklahoma's Oil and Gas Owners Lien Act, 52 O.S. § 549.10 due to the alleged non-payment of proceeds associated with the Darks #1-27 well." As earlier noted, we do not have the benefit of any potential argument on this issue from Plaintiff's response to Defendant's motion for summary judgment as it is not in the appellate record. "Generally, error assigned on appeal must be shown by the appellate record." *Andrew v. Depani-Sparkes*, 2017 OK 42, ¶ 10, 396 P.3d 210. "Legal error may not be presumed from a silent appellate record, and absent a record affirmatively showing error this Court presumes that the trial court did not err." *Id.* n.7. According to Defendant's response to this argument, Plaintiff "could have certainly responded to [Defendant's] arguments on summary judgment but elected not to do so." The record before us will not permit reversal for abuse of discretion on this issue.

Next, Plaintiff asserts it has cured the lack of marketability issue by filing a copy of the Decree in the Hughes County land records on January 27, 2025, *after*

the trial court's order granting Defendant's motion for summary judgment. Plaintiff asserts the trial court should thus "reconsider its decision to grant summary judgment since title is now marketable." In other words, Plaintiff seeks to revive its claims by a post-judgment attempt to make its title marketable. As Defendant points out, Plaintiff had sufficient opportunity before the trial court entered summary judgment to make its title marketable so it could recover royalties, but it did not do so. And this filing does not rectify the other title defects enumerated in Epperson's affidavit referring to documents in the chain of title and included in the appellate record.

"The function of a motion for new trial is to open judicial inquiry into errors occurring *during* the conduct of trial proceedings; its office is to invoke the power of the trial court to correct and cure its own errors." *Dodson v. Henderson Props., Inc.*, 1985 OK 71, ¶ 5, 708 P.2d 1064 (emphasis added). Plaintiff's post-judgment attempt to revive its claims by filing the decree in Hughes County does not meet the function of a motion for new trial and does not constitute "newly discovered evidence" warranting a modification or reversal of summary judgment. *See U.S. Mortgage v. Laubach*, 2003 OK 67, ¶¶ 38-39, 73 P.3d 887 (concluding that the creditors' "belated attempt to file the new documents [filed after the summary judgment hearing] does not constitute newly discovered evidence warranting new trial or modification of summary judgment," and the creditors' "postjudgment

attempt to revive their judgment lien comes too late for consideration in this litigation"). "Newly discovered evidence" is that "which could not, with reasonable diligence, have been discovered and produced at the trial." 12 O.S.2021 § 651(7). We conclude Plaintiff's attempt to cure its title defects by filing the decree in Hughes County after the entry of summary judgment does not constitute new evidence and simply comes too late for consideration.

Finally, Plaintiff argues Defendant's "payment of royalties to [it] is a fact question which preempts summary judgment." Defendant responds that this argument contains "nothing here in the way of 'new' evidence which would materially alter the Court's previous (and correct) analysis of the issues at hand." We are unable to address this argument because without Plaintiff's response to Defendant's motion for summary judgment, we cannot determine whether Plaintiff raised this issue during the summary judgment process. "Generally, error assigned on appeal must be shown by the appellate record." *Andrew*, 2017 OK 42, ¶ 10. "Legal error may not be presumed from a silent appellate record, and absent a record affirmatively showing error this Court presumes that the trial court did not err." *Id.* n.7. On this record, we see no abuse of discretion in denying Plaintiff's motion to reconsider.

CONCLUSION

The decisions of the trial court are affirmed.

AFFIRMED.

FISCHER, J., concurs, and BLACKWELL, J., concurs specially.

BLACKWELL, J., concurring specially:

I do not read the Court's opinion to foreclose the plaintiff from making a claim to proceeds under the PRSA after it cures the defects in its title. With that understanding, I concur.

September 30, 2025