IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

Case No. 122,011
(Companion with
Case No. 120,940)

VALLIANCE BANK,

Plaintiff/Appellee,

vs.

DEREK R. MASK,

Defendant/Third-Party
Plaintiff/Appellant,

and

ROBERT M. HOLBROOK,

Defendant/Third-Party
Plaintiff,

vs.

ROY OLIVER,

Third-Party Defendant/Appellee,

and

STANTON NELSON,

Third-Party Defendant.

APPEAL FROM THE DISTRICT COURT OF
CLEVELAND COUNTY, OKLAHOMA

HONORABLE JEFF VIRGIN, DISTRICT JUDGE

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS

R. Ryan Deligans Katherine T. Loy DURBIN, LARIMORE & BIALICK Oklahoma City, Oklahoma	For Plaintiff/Appellee Valliance Bank
George S. Corbyn, Jr. CORBYN LAW FIRM, PLLC Oklahoma City, Oklahoma	For Third-Party Defendant/Appellee Roy Oliver
Rodney K. Hunsinger Jared R. Boyer Rachel N. Jordan HB LAW PARTNERS, PLLC Norman, Oklahoma	For Defendant/Third- Party Plaintiff/Appellant Derek R. Mask

OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

Derek Mask appeals various aspects of the trial court's award of fees in favor of Valliance Bank and the court's order awarding attorney fees and costs in his favor, claiming the award was insufficient. After review, we reverse and remand for further proceedings.

BACKGROUND[1]

On July 1, 2013, Mask obtained a loan from Bank and executed a promissory note in the principal amount of $527,645 repayable with interest.

[1] This case has been made a companion case to Case No. 120,940 (*Valliance I*). The following synopsis is taken substantially from that Opinion.

Mask used the loan to invest in a company, referred to by the parties in the present case and in *Valliance I*, as NewCo. In 2016, NewCo purchased a hospital that failed, ultimately leading to NewCo's bankruptcy. When NewCo failed and filed bankruptcy, it stopped making payments to Mask and other investors. In turn, Mask stopped paying on the note and defaulted in 2017, claiming that Bank officials made intentionally misleading statements to induce him and other investors to execute the promissory notes transferring Bank funds to NewCo for the purchase of those securities.

Bank sued on the note, and Mask filed counterclaims against Bank and a third-party petition against Roy Oliver, Stanton Nelson, and other Bank officials. At the conclusion of the jury trial, held from May 25, 2022, to June 8, 2022, the jury found in favor of Bank both on its breach of contract claim and on Mask's counterclaims for fraud, conspiracy, and violations of the Oklahoma Securities Act. It awarded Bank damages of $340,918 on the note for breach of contract. The jury found in favor of Oliver on Mask's conspiracy claim; however, it found in Mask's favor on his Oklahoma Securities Act claim against Oliver. The jury awarded one dollar in nominal damages against Oliver and $100,000 in punitive damages for violations of this Act. The jury's award, excepting the punitive damages assessed against Oliver, was affirmed in *Valliance I*, Case No. 120,940.

Post-verdict, Mask and Bank could not agree on the interest to be applied to Bank's judgment. Bank filed a motion to settle journal entry, arguing that it was entitled to pre- and post-judgment interest. The court ultimately agreed and calculated prejudgment interest at $302,559.85, which is reflected in its journal entry of judgment. We reversed this award of interest in *Valliance I.*

Mask filed a motion to vacate the judgment, asserting the jury's finding that he breached his contract with Bank and was required to repay the loan and the finding that Oliver violated the Oklahoma Securities Act were inconsistent. Mask also argued the court should correct the judgment because, in his view, the jury did not properly assess the damages for Oliver's violation of the Oklahoma Securities Act. The court denied the motion to vacate, a decision we affirmed in *Valliance I.*

Oliver filed a motion for judgment notwithstanding the verdict, claiming that the jury improperly awarded punitive damages against him because punitive damages are not recoverable under the Oklahoma Securities Act. The court agreed and granted the motion. Although initially appealed, Mask's challenge of this order was abandoned in *Valliance I.* This resulted in Mask ultimately recovering a nominal one-dollar damage award against Oliver.

After trial, Bank moved for attorney fees and costs, as did Mask. Bank's motion did not include billing records but instead argued entitlement and sought only a determination of entitlement. On December 28, 2022, the court found that

Mask was entitled to attorney fees and costs against Nelson and Oliver pursuant to 71 O.S. § 1-509(B). The court also granted Bank's application for attorney fees and costs against Mask. The amount of the award in both instances was reserved. The billing records were apparently later provided to and reviewed by the court *in camera*. Those records were not made a part of the appellate record.

In an order dated February 5, 2024, the court ultimately awarded Bank $667,285.52 in attorney's fees and $139,310.89 in legal expenses. Later, the court on April 12, 2024, awarded Mask $8,029.86 in attorney fees and $8,864.01 in costs. Mask appeals both orders.

STANDARD OF REVIEW

Whether a party is entitled to an award of attorney fees and costs presents a question of law subject to review *de novo*. *State ex rel. Dep't of Transp. v. Cedars Grp., L.L.C.*, 2017 OK 12, ¶ 10, 393 P.3d 1095. "The reasonableness of attorney fees depends on the facts and circumstances of each individual case and is a question for the trier of fact." *Hess v. Volkswagen of Am., Inc.*, 2014 OK 111, ¶ 9, 341 P.3d 662. The standard of review for considering the amount of the trial court's attorney fee award is abuse of discretion. *Id.* "Reversal for an abuse of discretion occurs where the lower court ruling is without rational basis in the evidence or where it is based upon erroneous legal conclusions." *Id.*

ANALYSIS

Mask raises three issues on appeal: (1) the court incorrectly granted Bank's motion for attorney fees, or alternatively awarded an improper amount of fees; (2) the court improperly awarded Bank $139,310.89 in costs; and (3) the court erred in reducing Mask's award of fees and costs.

A. Bank's Fees

Mask first argues that the trial court incorrectly granted Bank's application for attorney fees. He begins this section of his brief by arguing about the merits of the jury verdicts and the motion to vacate raised in *Valliance I*. Mask suggests that this Court should have reversed the jury's finding that he breached his agreement with Bank because the jury's verdict that Oliver violated the Oklahoma Securities Act shows Mask was defrauded into making the agreement with Bank in the first instance. Thus, by reversing that portion of the jury verdict, Bank would not be considered a prevailing party and would not be entitled to fees pursuant to 12 O.S. § 936.[2] However, this Court in *Valliance I* affirmed the trial court's judgment

[2] Title 12 O.S.2021 § 936(A) provides:

> In any civil action to recover for labor or services rendered, or on an open account, a statement of account, account stated, note, bill, negotiable instrument, or contract relating to the purchase or sale of goods, wares, or merchandise, unless otherwise provided by law or the contract which is the subject of the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs.

based on the jury's verdict that Mask breached his contract with Bank. Bank is therefore a prevailing party and Mask's argument fails as to entitlement.

Mask also argues that the trial court erred in failing to state with specificity or on the record the computation on which it based its fee award. We agree. He cites *Morgan v. Galilean Health Enterprises, Inc.*, 1998 OK 130, 977 P.2d 357, for the contention that "permissible recovery must be set upon and supported by evidence presented in an adversary proceeding in which the facts and computation upon which the trial court rests its determination are set forth *in the record* with a high degree of specificity." *Id.* ¶ 15 (footnotes omitted, emphasis modified).

The Supreme Court recently ingeminated this specificity requirement in *Fleig v. Landmark Construction Group*, 2024 OK 25, ¶ 23, 549 P.3d 1208:

> A trial court order awarding attorney fees must set forth with specificity the facts and computation to support the award. The trial court must make findings of fact incorporated into the record regarding the hours spent, reasonable hourly rates, and the value placed on additional factors.[3]

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[3] The additional factors can be traced to those set out in *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 582 P.2d 659, and expanded on by *Fleig v. Landmark Construction Group*, 2024 OK 25, ¶ 16, 549 P.3d 1208:

> 1) the time and labor required; 2) the novelty and difficulty of questions; 3) the skill required to perform the legal service properly; 4) the preclusion of other employment by the attorney; 5) the customary fee; 6) whether the fee was fixed or contingent; 7) time limitations imposed by the client or circumstances; 8) the amount involved and results obtained; 9) the experience, reputation and ability of the attorneys; 10) the undesirability of the case; 11)

The trial court's order fails to meet this specificity requirement as it does not list either the facts or the computation used to determine the fee award. The trial court also made no findings of fact regarding the hours spent, the hourly rates, or any value placed on additional factors. Because the trial court's order does not meet the *Fleig* requirements, we must reverse the trial court's order awarding attorney fees to Bank as to the amount.

B. Costs and Legal Expenses Awarded to Bank

Mask also contends that the court's award of legal expenses in the amount of $139,310.89 was plain legal error. Specifically, he argues that "the trial court awarded (1) $90,045.40 in expert witness fees . . . (2) $8,996.43 in travel costs . . . (3) $26,554.75 in 'litigation support vendors' . . . and (4) a wide variety of costs not recoverable under Oklahoma law." *Brief-in-Chief* 10. Bank, in its application for fees and costs, claimed entitlement to costs for transcripts, witness fees, expert fees, clerk fees, and the cost of exhibits and enlargements for trial. ROA 2073. However, Bank did not assign specific amounts to any of these costs in its application. Later, in its application to determine the amount of fees and costs, Bank merely states, "The note specifically provided for the recovery of all incurred

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the nature and length of the relationship with the client; 12) the type of work involved; 13) the number of hours expended; 14) the contingent nature of the litigation; 15) the benefits conferred on plaintiff; 16) services rendered to the public; and 17) difficulty of issues and skill involved.

in collection expenses [and] Valliance incurred $139,310.89 in expenses with an amount to be supported by itemizations and with invoices which can be presented *in camera*." ROA, 2212.

Examining the current record, it is entirely unclear what costs were presented to the trial court and what amount was requested for each cost item. The only record we have of Bank's requested costs was for categories like transcripts, witness fees, expert fees, etc. There is no record of how much Bank claimed it was entitled to for its expert witness fee, for example. Without these particulars, we have no way to determine how Bank, and subsequently the court, arrived at a total of $139,310.89 for recoverable costs, nor can we properly review the award for recoverability or reasonableness.

We further conclude that the Supreme Court's holding in *Fleig v. Landmark Construction Group.*, 2024 OK 25, ¶ 21, 549 P.3d 1208, requiring the trial court to "set forth with specificity the facts and computation to support the award" is equally applicable to the cost award. Although the court had the opportunity to view Bank's requested costs *in camera*, there is no basis in the record to support an award of $139,310.89 in costs. We reverse the award of costs and remand for a new order consistent with the Court's pronouncement in *Fleig*, 2024 OK 25.[4]

[4] We also question whether Bank is entitled to a substantial part of the costs it requested, such as expert witness fees. The note provides Bank is entitled to "all other sums provided by

C. Mask's Fees and Costs

Mask next argues that the trial court abused its discretion in awarding him only $8,029.86 in attorney fees and $8,864.01 in costs against Oliver. He asserts that he was awarded only one percent of his requested fees of $722,687 and 44 percent of his requested costs of $20,120.

The trial court's order awarding attorney fees and costs to Mask suffers from the same deficiencies as the order awarding Bank attorney fees and costs. It does not meet the *Fleig* specificity requirements because it does not list the facts and computation the court used to support the attorney fees or costs award. We reverse the trial court's order awarding attorney fees and costs to Mask as to the amount and remand for a new order consistent with the *Fleig* requirements. The costs award must also be limited to those allowed by 12 O.S.2021 § 942.

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law" and relies on 12 O.S. § 942 as the basis for all its costs as prevailing party. However, the general rule in Oklahoma is "that expert witness fees 'are only recoverable when specifically made so by statute.'" *Dyer v. Emergency Care, Inc.*, 2004 OK CIV APP 51, ¶ 6, 91 P.3d 683 (quoting *Andress v. Bowlby*, 1989 OK 78, ¶ 12, 773 P.2d 1265). Indeed, even the cases Bank cites in support of its entitlement to expert witness fees demonstrate that the parties relied on § 942 in addition to other statutory authority to show entitlement to such fees. *See Atchley v. Hewes*, 1998 OK CIV APP 143, 965 P.2d 1012 (holding that § 942(3) mandates the allowance of statutory witness fees and because fees paid to expert witnesses under 12 O.S. § 3226 are required by statute to be paid, those fees are recoverable as costs). Meanwhile, Bank relies only on § 942 in its application for costs. This issue remains open on remand—the trial court must limit its award of costs to both parties to those allowed by § 942, as the parties recognized.

CONCLUSION

The trial court's orders on attorney fees and costs do not comply with the requirements mandated in *Fleig v. Landmark Construction Group*, 2024 OK 25, ¶ 21, 549 P.3d 1208, requiring us to reverse the orders of the trial court as to the amount of attorney fees and costs and remand for further proceedings.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

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

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

I respectfully dissent from the majority's opinion as it relates to the reversal of the attorney fee award in favor of Valliance. I cannot agree with the majority that the trial court's order is deficient under *Fleig v. Landmark Constr. Grp.*, 2024 OK 25, 549 P.3d 1208.[1] The bank's motion for fees and the testimony by its expert witness at the December 12 fee hearing, both of which are in the current record and were before the trial court, demonstrate the method of calculation and propriety of the bank's fee award. Valliance set forth its hourly rates, the hours it billed, and addressed all *Burk* factors in its motion and at the hearing, which is part of the record. Mask conceded that the bank's hourly rate was reasonable. *See Tr.*

[1] No party argued *Fleig* below, as the orders under review were each entered prior to that opinion. Although the opinion was issued prior to the briefing in this case, no party cites to it.

(Dec. 11, 2023), pg. 9. *The trial court did not reduce the amount of fees requested but accepted the bank's application in full, awarding the bank the full amount of fees it requested.*

The facts of *Fleig* were much different. In that case, the parties colluded in an effort to absolve the trial court of its duty to determine a reasonable fee and explain its reasoning on the record. *Fleig*, 2024 OK 25, ¶ 19 ("The problem in this cause is that the parties appeared to lessen the trial court's duties by stating that 'they were not requesting a detailed analysis and order, but rather just wanted a "number."'"). There was no way to determine from the combination of the order and the record how the trial court arrived at its fee. The case stands for the proposition that the parties do not have the authority to relieve the trial court of this duty by agreement. *Id.* ¶ 23 ("The trial court must make findings of fact *incorporated into the record* regarding the hours spent, reasonable hourly rates, and the value placed on additional factors. The parties' request to just 'give them a number' does not alleviate the trial court of this duty." (emphasis added)). Where a trial court grants the amount of requested fees to the penny, it is clear that the court has accepted the applicant's reasoning. I would decline to extend *Fleig* to a matter such as this, where the trial court's reasoning is implicit in its order and

entirely clear from the record.[2] In all other respects, I concur with the Court's opinion.

December 30, 2025

[2] The same cannot be said of Mask's award of fees, which was significantly reduced from his request of $722,687.00. *See Tr.* (April 1, 2024), pg. 29. Mask asserted nine counterclaims against the bank, Oliver, and Nelson; however, he was only successful on his Oklahoma Securities Act claim against Oliver. *Id.* at 30-31. Oliver was one of the five original defendants sued by Mask and Mask's co-plaintiff dismissed his claims. *Id.* at 31. Thus, Oliver argued at the fee hearing that the $722,687.00 that Mask requested in fees should be divided by nine, then five, then two, leaving a quotient of $8,029.86. Although it would appear that the trial court accepted this reasoning, as it entered and award of precisely this amount, such cannot be definitively determined from either the record, the order, or any combination thereof. As such, I concur in vacating this order and remanding for the entry of a *Fleig*-compliant order. As the majority, I offer no opinion here as to the validity of this method of calculating a reasonable fee.