IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

INTELITY, INC.,

Plaintiff/Appellee,

vs.

RANCHO PURA VERDE, LLC,

Defendant/Appellant.

Case No. 123,116

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE AMY PALUMBO, DISTRICT JUDGE

AFFIRMED

James Vogt
REYNOLDS, RIDING,
VOGT & ROBERTSON, P.L.L.C.
Oklahoma City, Oklahoma

For Plaintiff/Appellee

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HALL BOOTH SMITH, P.C.
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and

Billy Coyle
COYLE LAW FIRM
Oklahoma City, Oklahoma

For Defendant/Appellant

OPINION BY GREGORY C. BLACKWELL, JUDGE:

The trial court granted summary judgment in favor of the plaintiff, Intelity, Inc., confirming an arbitration award in favor of Intelity and against the

defendant, Rancho Pura Verde (RPV). RPV filed a motion to reconsider the trial court's grant of summary judgment, which the court denied. RPV appeals the denial of its motion to reconsider only, which we construe as a motion for new trial. Upon review, we find that the trial court did not abuse its discretion in denying the motion and thereby affirm.

I.

In March of 2019, Intelity and RPV, through its owners Kyle and Rosemary Clary, entered into an agreement for an initial subscription period of thirty-six months at a monthly fee of $2,350.00 plus an additional $150 per month messaging fee.[1] The agreement also contained a provision that any dispute arising under the agreement shall be presented to arbitration. Intelity alleged that RPV had not been making the required payments and, as a result, Intelity submitted a dispute to the American Arbitration Association, Commercial Arbitration Tribunal. On April 1, 2022, arbitration was conducted and the arbitrator found that Intelity had substantially performed under the terms of the agreement and RPV breached the terms of the agreement by failing to make payments in accordance with the terms of the agreement. The arbitrator issued an arbitration award in the amount of $109,335.00 with interest thereon at the statutory rate to begin accruing from the date of the award.

On February 14, 2023, Intelity filed a petition for an order confirming the arbitration award. RPV filed a joint answer and motion to vacate, modify or

[1] Although not clear from the petition, it appears Intelity agreed to provide RPV commercial internet services.

correct the arbitration award. In its motion, RPV alleged that it was purchased in August of 2021 by an entity it referred to as "KMH Bros." Thus, RPV contended that the contract upon which the plaintiff sought to enforce the arbitration award was not entered by the current ownership of RPV. RPV also alleged that its current ownership never received any notice of an arbitration hearing or award.

On March 12, 2024, Intelity filed a motion for summary judgment requesting that the arbitration award be confirmed. RPV filed a response, again alleging that there was no notice of the arbitration proceedings. The court held a summary judgment hearing on May 16, 2024, and orally granted Intelity's motion for summary judgment. Intelity prepared a journal entry and later filed a motion to settle because RPV would not sign and return the order. The order granting summary judgment in favor of Intelity was filed on December 5, 2024. On December 16, 2024, RPV filed a motion to reconsider. The court denied this motion on April 17, 2025. RPV appeals the court's denial of its motion to reconsider only.

II.

Because the defendant's motion to reconsider was filed within ten days of the filing of the journal entry, the order disposing of the motion and the underlying judgment were both reviewable. *See* 12 O.S. § 990.2(A); Okla.Sup.Ct.R. 1.22(c)(2). However, the defendant only appealed the court's denial of the motion to reconsider.

"A 'motion to reconsider' does not technically exist within the statutory nomenclature of Oklahoma practice and procedure." *Smith v. City of Stillwater,*

2014 OK 42, ¶ 10, 328 P.3d 1192. If a motion to reconsider is filed, a court may regard it "as one for new trial under 12 O.S. § 651 (if filed within ten (10) days of the filing of the judgment, decree, or appealable order)," or as "a motion to modify or to vacate a final order or judgment under the terms of 12 O.S. §§ 1031 and 1031.1 (if filed after ten (10) days but within thirty (30) days of the filing of the judgment, decree, or appealable order)." *Fox v. Mize*, 2018 OK 75, ¶ 5, 428 P.3d 314. Additionally, a court always has the power, upon motion or of its own accord, to vacate its own judgements within thirty days of entry. 12 O.S. § 1031.1. As stated above, the defendant filed its motion within ten days of the trial court's order granting summary judgment in the plaintiff's favor *and* it cites 12 O.S. § 651 as its sole authority for seeking reconsideration. As such, we will regard RPV's motion to reconsider as one for new trial.

The standard of review for a trial court's denial of a motion for a new trial 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.

III.

While RPV generally cites 12 O.S. § 651 as the basis for its motion to reconsider, it does not identify which of the nine causes listed in § 651 are relevant to the present case. RPV alleges that the exhibits in the plaintiff's motion for summary judgment should have been stricken because they were not authenticated and they were inadmissible hearsay. RPV claims that it should

have been allowed to conduct limited discovery to be able to dispute these exhibits and contest the plaintiff's allegations. RPV also contends that the court erred in granting summary judgment in favor of the plaintiff because there are disputed facts regarding "the performance of services, the proper parties and whether notice of the arbitration hearing was given." ROA, *Defendant's Motion to Reconsider*, 4.[2] Thus, it appears RPV is arguing that the court's grant of summary judgment was "not sustained by sufficient evidence, or is contrary to law." 12 O.S. § 651. Upon review, we find that the court did not abuse its discretion in denying RPV's motion to reconsider because the court's grant of summary judgment in favor of the plaintiff was supported by sufficient evidence and was not contrary to law.

A.

For its first proposition of error, RPV alleges that the court erred in failing to strike certain exhibits from Intelity's motion for summary judgment. Specifically, RPV contends that the exhibits attached to plaintiff's summary judgment motion "were not admissible as they were neither authenticated in accordance with 12 O.S. § 2901 and they were inadmissible hearsay, contrary to

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[2] In its petition in error, the defendant also asks this Court to determine "whether the failure to certify or mail a copy of the original Judgment on Summary Judgment or the subsequent Judgment on the Motion to Reconsider is error." First, we note that this issue was not raised in motion to reconsider. Because this motion to reconsider is treated here as a motion for new trial, this issue is waived. "If a motion for a new trial be filed and a new trial be denied, the movant may not, on the appeal, raise allegations of error that were available to him at the time of the filing of his motion for a new trial but were not therein asserted." 12 O.S. § 991(b). Regardless, the purported failure to certify or mail orders in this case did not prevent RPV from filing a timely motion to reconsider or this timely appeal. Thus, any error in failing to certify or mail the orders appears to have been harmless.

12 O.S. § 2802." ROA, *Defendant's Motion to Reconsider*, pg. 3. RPV also takes issue with the fact that Intelity did not submit any affidavits, sworn testimony, or witnesses. *Id.* Rather, according to RPV, Intelity "copied a contract and correspondence purporting to prove proper service and notice of an arbitration hearing." *Id.* Notably, RPV does not explain how the parties' arbitration agreement and various emails and letters showing the defendant had notice of the arbitration proceedings constitute inadmissible hearsay or how the exhibits were not authenticated.

Oklahoma District Court Rule 13 governs summary judgment procedure and dictates as follows regarding evidentiary materials on summary judgment:

> The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at trial. The admissibility of other evidentiary material filed by either party shall be governed by the rules of evidence. If there is a dispute regarding the authenticity of a document or admissibility of any submitted evidentiary material, the court may rule on the admissibility of the challenged material before disposing of the motion for summary judgment or summary disposition. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material. Evidentiary material that does not appear to be convertible to admissible evidence at trial shall be challenged by objection or motion to strike, or the objection shall be deemed waived for the purpose of the decision on the motion for summary judgment or summary disposition ....

Okla. Dist. Ct. R. 13. Oklahoma courts have held that "[i]t is clear from the plain language of Rule 13, by the inclusion of the words 'other materials', that attachments to a response in opposition to a motion for summary judgment are *not to be limited* to affidavits, depositions or any such strictly defined sort of

evidentiary document." *Davis v. Leitner*, 1989 OK 146, ¶ 15, 782 P.2d 924, 927 (emphasis supplied). Courts have also clarified that "evidentiary materials attached to a response to a motion for summary judgment are not held to the standard of competent, admissible evidence." *Estate of Crowell v. Bd. of Cnty. Comm'rs*, 2010 OK 5, ¶ 8, n.4, 237 P.3d 134 (citing *Julian v. Secured Invest. Advisors*, 2003 OK CIV APP 81, ¶¶ 17-18, 77 P.3d 604. Rather, supporting materials are sufficient "if they 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." *Davis*, 1989 OK 146 at ¶ 15.

Intelity attached the following exhibits to its motion for summary judgment: the parties' contract, a letter informing RPV that it had defaulted on payment pursuant to the agreement, a demand for arbitration, a notice regarding the arbitration demand that was sent to Kyle Clary and John Krahl,[3] a revised notice of the hearing sent by the American Arbitration Association (AAA) via email and via certified mail to Kyle Clary, another letter sent by the AAA to Kyle Clary via email and certified mail, and the arbitration award. In reviewing these records, we find that the parties' agreement, various notices sent regarding the arbitration proceedings, and the arbitration award itself constitute evidence which would be admissible at trial if properly authenticated and, therefore, is

[3] Intelity sent notice to Mr. Krahl because it believed he was counsel for RPV.

evidentiary material that could be "convertible to admissible evidence at trial." Okla. Dist. Ct. R. 13."[4] Further, we find that the court did not abuse its discretion in not striking the exhibits when the defendant's challenge to these exhibits was limited to general statements that these exhibits were not authenticated or were inadmissible hearsay without specifically identifying which exhibits did not pass muster and which statements were hearsay.

B.

Next, RPV claims that it should have been allowed to conduct limited discovery to be able to dispute the above-referenced exhibits and contest Intelity's allegations. Title 12 O.S. § 3226(F) provides that, "[a]t any time after commencement of an action, the court may direct the attorneys for the parties to appear for a conference on the subject of discovery. The court *shall do so upon motion by the attorney for any party* ...." (emphasis supplied). The record reflects that RPV filed its answer in this case on June 15, 2023. The hearing on the motion for summary judgment took place on May 16, 2024. Thus, RPV had roughly one year to file any discovery requests, but the record reflects that RPV never filed a motion with the court seeking any discovery or requesting a discovery plan. Thus, we find that the court did not abuse its discretion when

[4] While the defendant challenged these exhibits in a written response to the motion for summary judgment, the defendant did not file a motion to strike the exhibits. Rule 13 dictates that the court "may rule on the admissibility of the challenged material before disposing of the motion for summary judgment or summary disposition." While counsel for RPV tried to ask the court to strike the exhibits at the summary judgment hearing, the court had already started questioning the parties about the notice issue. Tr. (May 16, 2024), pg. 4. If RPV had filed a motion to strike the exhibits pursuant to Rule 13, the parties could have set the issue for hearing before the motion for summary judgment hearing.

granting the motion for summary judgment, which effectively barred the parties from conducting discovery, when it appears RPV never sought to conduct discovery in the first instance.

C.

Finally, RPV alleges that the court erred in granting summary judgment in favor of the plaintiff because there are disputed facts[5] regarding "the performance of services,[6] the proper parties and whether notice of the arbitration hearing was given." ROA, *Defendant's Motion to Reconsider*, pg. 4. Oklahoma courts have consistently held that "pursuant to summary judgment procedure, when evidence is presented showing the existence of uncontroverted material facts, the burden shifts to the opposing party to identify those material facts she alleges remain in dispute and provide supportive evidentiary materials justifying trial on the issue." *Ondobo v. Integris Baptist Med. Ctr. Inc.*, 2024 OK CIV APP 5, ¶ 7, 543 P.3d 1229, 1233. Here, Intelity alleged that the following material facts were undisputed: Intelity and RPV entered into an agreement, RPV defaulted on payments pursuant to that agreement, the agreement contained a provision that any dispute arising under the agreement shall be presented to arbitration, Intelity sent various notices via email, U.S. mail, and certified mail of the

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[5] We note that Rule 13 requires the party opposing the motion for summary judgment to "set forth and number each specific material fact which is claimed to be in controversy and reference shall be made to the pages and paragraphs or lines of the evidentiary materials." Okla. Dist. Ct. R. 13. Instead of complying with this rule, the defendant generally stated that it "disputes each and every 'Undisputed Fact'" in Intelity's motion. ROA, *Defendant's Brief in Opposition to Summary Judgment*, pg. 1

[6] Nothing in the defendant's response to the motion for summary judgment could be construed as challenging Intelity's performance of services. Intetlity's performance is not addressed or disputed.

arbitration proceedings, RPV did not attend arbitration, and the arbitrator entered an award in favor of Intelity. In its response to the motion for summary judgment, RPV does not dispute that the parties had an agreement or even that it defaulted on payments. Rather, RPV contends that it did not receive notice of the arbitration hearing because the plaintiff was providing notice to "RPV I" not "RPV II." According to the defendant, an entity referred to as KMH Bros., LLC purchased all of RPV's equipment and RPV I changed service agents to RPV II on April 27, 2022. Thus, the new entity, RPV II, never entered into a contract with Intelity and was served with the petition in the present case through its new service agent, Tom Nguyen.

> The agreement between RPV and Intelity provides as follows:
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> > Except as otherwise specified in the Agreement, all notices under the Agreement will be in writing and will be delivered or sent by (a) first class U.S. mail, registered or certified, return receipt requested, postage pre-paid; (b) U.S. express mail, or national express courier (e.g. FedEx) with a tracking system, or (c) by e-mail (provided that to the extent such email is not replied to or otherwise acknowledged by the recipient, the party providing notice shall follow up such e-mail with notice by one of the methods set forth in clauses (a) or (b) above) ....

ROA, *Plaintiff's Motion for Summary Judgment*, Exhibit 1. The agreement between Intelity and RPV states that the legal name of the customer is "Rancho Pura Verde," and that the contact names were "Kyle Clary, Owner & Rosemary Clary, Owner." *Id.* The agreement also lists the contact email addresses as kyle@ranchopuraverde.com / rosemary@ranchopuraverde.com. *Id.* The address for RPV was listed as "P.O. Box 66 Piedmont, OK 73078" and the physical

address for deployment of services was "5414 N. Rockwell Ave, Bethany, OK 73008." *Id.*

The letter first informing RPV of its default on payments indicated that it was sent to Mr. Kyle Clary and Ms. Rosemary Clary and also lists the address for the post office box. *Id.* at Exhibit 2. The notice of arbitration proceedings was first sent to Mr. Clary and attorney John Krahl. Mr. Krahl promptly informed the American Arbitration Association that he no longer represented RPV. ROA, *Defendants Brief in Opposition to Summary Judgment*, Exhibit 2. The revised notice of hearing sent by the American Arbitration Association was sent via email to kyle@ranchopuraverde and a copy was also sent via certified mail and U.S. mail to a Piedmont address, which indicates it was "left with an individual." ROA, *Plaintiff's Motion for Summary Judgment*, Exhibit 5A. Another notice was sent to the same email address and the same physical address via U.S. mail. *Id.* at Exhibit 6.

Importantly, RPV does not claim that the American Arbitration Association or counsel for Intelity used the wrong Piedmont address to serve the Clarys or RPV, nor does it claim that the email address was incorrect or that the RPV email used by Kyle Clary became inoperable after another entity bought RPV's equipment. Rather, RPV contends that after the sale of its equipment it became a new entity, RPV II, which never entered into a contract with the plaintiff and was not involved in the agreement to, or notice of, arbitration. We reject this contention. A review of the purchase agreement shows that RPV, through Kyle Cleary, agreed to sell its equipment to buyer KMH Bros., LLC. ROA, *Answer*,

Exhibit 1. The agreement also provides that RPV "has agreed to grant the option to assign Seller's 100% member interest in Rach Pura Verde, LLC." *Id.* We find that a purchase of equipment and option to assign membership interest is not the same as a change in ownership of RPV. Indeed, the business entity search results attached to the defendant's motion for summary judgment show that RPV's articles of organization were filed in 2018 and, since then, they have been terminated and reinstated several times. ROA, *Defendant's Brief in Opposition to Summary Judgment*, Exhibit 5. Thus, we agree with Intelity and the trial court that there is no distinction between RPV I and RPV II, there is just RPV.

In its summary judgment motion, Intelity stated that it had an agreement with RPV, that they had consented to arbitration, and that it sent notice which was compliant with the parties' agreement to RPV and its owners of the arbitration proceedings. RPV failed to attend arbitration, and an arbitration award was entered against RPV. RPV, in its response to Intelity's summary judgment motion, failed to dispute how the multiple notices and letters that were sent to RPV via email, certified mail, and U.S. mail were defective and did not constitute notice compliant with the parties' agreement. RPV's argument that it never had notice of arbitration because it became a new entity when its equipment was purchased by KMH Bros and it gave an option to purchase membership interest is unavailing. Thus, we find that there were no disputed material facts in the present case and, therefore, the court did not abuse its discretion when denying RPV's motion to reconsider its grant of summary

judgment. RPV had notice of the arbitration proceedings and the arbitration award against RPV was properly confirmed.

AFFIRMED.

BARNES, J., and HUBER, J., concur.

January 14, 2026