IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

WILLIAM DANIEL d/b/a SUMMIT WEALTH SOLUTIONS,

Plaintiff,

vs.

JOHN V. SKURKEY, individually,

Defendant/Third-Party Plaintiff/ Appellee,

vs.

THE SUMMIT GROUP, INC., an Oklahoma corporation, and SUMMIT PARTNERS, LLC, an Oklahoma limited liability company d/b/a Capital Wealth Management, LLC, d/b/a Summit Wealth Management d/b/a Summit Wealth Solutions, LLC, d/b/a Summit Wealth Concepts,

Third-Party Defendants,

and

PAUL QUIGLEY,

Contempt/Interpleader Defendant/Appellant.

Case No. 121,658

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE CATHERINE BURTON, TRIAL JUDGE

AFFIRMED

Ryan Leonard
Heidi J. Long
EDINGER, LEONARD & BLAKLEY, PLLC
Oklahoma City, Oklahoma For Appellant

Jon E. Brightmire
Sara E. Potts
DOERNER, SAUNDERS, DANIEL
& ANDERSON, L.L.P.
Oklahoma City, Oklahoma For Appellee

OPINION BY DEBORAH B. BARNES, JUDGE:

Paul Quigley seeks review of three orders of the district court entered in favor of John V. Skurkey. Based on our review, we affirm.

BACKGROUND

This case was the subject of a prior appeal, Case No. 118,867, issued in May 2022.[1] In that appeal, we affirmed a jury verdict in favor of Mr. Skurkey and against Plaintiff William Daniel. The present appeal, as summarized by Mr. Quigley – who served as counsel for Mr. Daniel throughout these proceedings – "arises out of an application for contempt citation sought by Skurkey (a judgment

[1] Mandate issued February 16, 2023.

creditor) after the judgment debtor [Mr. Daniel] attempted to pay his attorney, Quigley, for services rendered during [the] trial that resulted in [the] judgment against Daniel."[2]

Mr. Quigley seeks review of the district court's seventy-three page "Court's Findings of Fact, Conclusions of Law, and Entry of Judgment" filed on September 7, 2023, wherein, as summarized by Mr. Quigley, the court "[found] by clear and convincing evidence that Quigley disobeyed a temporary injunction and is in indirect contempt of court, and 2) further [found] against Quigley in an interpleader dispute[.]" Mr. Quigley further seeks review of the "Court's Findings as to Restitution (Indirect Contempt) pursuant to 12 O.S. [§] 1390," filed on June 4, 2024. In this order, the court determined that each "Contempt Defendant" – i.e., Mr. Quigley and Mr. Daniel – shall pay restitution to Mr. Skurkey in the amount of $118,609.20.[3] Finally, Mr. Quigley seeks review of the "Court's Findings as to Attorney Fees and Costs (Interpleader)," filed June 14, 2024. In this order, the court ordered Mr. Quigley to pay Mr. Skurkey $43,699.16 in attorney fees and $2,846.66 in costs arising from a certain interpleader action.

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[2] Br.-in-chief at 1.

[3] The court ordered Mr. Daniel to pay Mr. Skurkey $118,609.21 and ordered Mr. Quigley to pay Mr. Skurkey $118,609.20.

A brief introduction to the ongoing dispute is best supplied by the parties themselves in their opposing articulations at the opening of their appellate briefs. Mr. Quigley[4] summarizes the circumstances as follows:

> Following the entry of judgment against Daniel, Daniel presented a cashier's check comprised of Social Security benefits to Quigley, which was deposited into Quigley's IOLTA account. Daniel had also previously assigned funds to Quigley from the sale of a business. Skurkey believed these two transfers violated the standard injunction preventing transfer of non-exempt assets by a judgment debtor. Ultimately, the assigned funds were interpleaded into the Trial Court.
>
> The evidence at the contempt/interpleader trial (scheduled over five (5) days during a six (6) month period) was scattered and confusing; however, under no circumstances could it be described as "clear and convincing" evidence establishing that Quigley willfully and purposefully disobeyed the temporary injunction. Nonetheless, the Trial Court found Quigley to be in indirect contempt and as a sanction ordered restitution in the form of Quigley paying Skurkey's attorneys fees in the contempt action without any showing that fees were reasonable or incurred in coercing compliance with the temporary injunction Skurkey alleged Quigley violated. Even though Oklahoma law is clear that the purpose of an indirect contempt sanction is to coerce compliance with the violated court order, here the Court's restitution sanction ***punishes*** Quigley for his alleged wrongful conduct. The restitution sanction does nothing to ensure future compliance with the allegedly violated injunction and therefore is not lawful. The Trial Court also ruled against Quigley on the interpleader action and improperly awarded prevailing party attorneys fees to Skurkey in an amount more than sought. In these proceedings, there were many errors by the Trial Court, which mandates reversal of the three (3) separate judgments against Quigley.

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[4] As stated in the September 2023 Judgment, "[Mr. Quigley] appeared for himself on the Contempt and Interpleader action. Mr. Quigley also appeared for [Mr. Daniel] on the Interpleader action. Gary Hammond appeared for [Mr. Daniel] on the Contempt action. Later in the trial, attorney Ryan Leonard appeared on behalf of [Mr. Quigley] on day three (3) of the trial[.]"

Mr. Skurkey summarizes the circumstances as follows:

Skurkey obtained an asset hearing order and injunction enjoining Daniel from transferring or disposing of any of his non-exempt assets, which was immediately served on Daniel and Quigley. That's when Daniel and Quigley embarked on a fraudulent and deceitful scheme to violate the injunction order and shield Daniel's assets from Skurkey's collection efforts. That scheme involved creating a typewritten assignment just days after the injunction order was entered assigning Daniel's primary non-exempt asset to Quigley and backdating the assignment to a date prior to entry of the injunction; then creating stories about a lost handwritten assignment prepared at Quigley's office on January 14, 2020, when metadata of the typewritten document showed Daniel lied about the date he signed it; then creating stories about an even earlier oral assignment when Skurkey subpoenaed Daniel's cell phone providers and would find out Daniel was not at Quigley's office on January 14; Daniel giving Quigley funds from a garnished bank account that Quigley deposited in his IOLTA client trust account and returned a portion of the funds to Daniel when Daniel needed them; multiple instances of perjury by Daniel, Quigley, and Quigley's paralegal; multiple instances of suborning perjury by Quigley; multiple instances of misrepresentations made by Quigley in state and federal court hearings and briefs in an effort to cover up the fraud and perjury and in furtherance of the scheme to violate the injunction order and evade Skurkey's collection efforts; breaches of ethical obligations by Quigley; and other wrongful conduct. So pervasive was the evidence that the District Court in pre-trial proceedings held that Skurkey had made a prima facie showing that the crime/fraud exception applied to negate the attorney client privilege between Quigley and Daniel.

After five days of trial testimony and the introduction of numerous exhibits, and after considering the parties' proposed findings of fact and conclusions of law, the District Court entered judgment finding Daniel and Quigley in contempt of the injunction order in numerous instances. The District Court's detailed findings of fact and conclusions of law span 73 pages. . . . Daniel paid his share of the amount in full and dismissed his appeal.

The District Court also held in favor of Skurkey and against Quigley in the interpleader action concerning entitlement to the

> Retirement, LLC funds, and awarded Skurkey his attorney fees as prevailing party in the interpleader action.

In the September 2023 Judgment, the court stated it "does not take this decision lightly," and that

> [t]here are volumes and volumes of filings, testimony, and evidence in this case, dating back to 2017. This Court has spent well over 130 hours reviewing everything, checking proposed findings and conclusions, researching and writing, and coming to these decisions. Based on the inconsistencies of explanations, the lack of physical evidence to support their claims, and the repeated times both Daniel and Quigley were impeached with concrete evidence, this court cannot accept their explanations of these repeated acts. . . .

However, only Mr. Quigley and Mr. Skurkey remain as parties to this appeal. As stated in the Notice of Dismissal filed on October 9, 2024, Mr. Quigley, as "attorney for William Daniel, Defendant/Co-Appellant, [notified] the clerk of dismissal of the [appeal] as to [Daniel] only . . . ." In an Order filed on October 17, 2024, the Oklahoma Supreme Court stated that "Daniel's 'Notice of Dismissal' is treated as a motion to dismiss and is **dismissed**. Okla.S.Ct.R. 1.6(c). This appeal will proceed as to co-appellant Paul Quigley."

STANDARD OF REVIEW

"The standard of review is clear; in a contempt proceeding, questions of fact will not be reviewed." *Kerr v. Clary*, 2001 OK 90, ¶ 18, 37 P.3d 841, 845. "As a result, we review only questions of law." *In re Marriage of Sager*, 2010 OK CIV APP 130, ¶ 2, 249 P.3d 91, 92 (citing *Cowan v. Cowan*, 2001 OK CIV APP 14, 19

P.3d 322; *Torres v. Torres*, 1998 OK CIV APP 18, 956 P.2d 166). *See also Swiney v. Villanueva*, 2021 OK CIV APP 37, ¶ 11, 499 P.3d 1244, 1249 ("Questions of fact in contempt matters are not reviewed on appeal.").

"Whether a party is entitled to an attorney fee pursuant to a statute is a question of law, reviewed de novo." *N. Star Mut. Ins. Co. v. Zielny*, 2024 OK CIV APP 11, ¶ 9, 546 P.3d 899, 903. By contrast, "[w]hen 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, 1210. "Under this standard, a trial court will not be reversed unless it made a clearly erroneous conclusion against reason and evidence." *Id.*

Moreover, "the power to punish for contempt is largely within the discretion of the court." *Mitchell v. Mitchell*, 2021 OK CIV APP 17, ¶ 38, 491 P.3d 759, 767 (citation omitted). *See also Hammonds v. Osteopathic Hosp. Founders Assoc.*, 1996 OK 100, ¶ 6, 934 P.2d 319, 322 ("The correctness of a nisi prius imposition of sanctions is reviewed under an *abuse-of-discretion* standard. If the trial court's decision stands supported by the record and reason, it will not be disturbed on review." (footnotes omitted)).

Finally, "a judgment will not be reversed based on a trial judge's ruling to admit or exclude evidence absent a clear abuse of discretion." *Myers v. Mo. Pac. R.R. Co.*, 2002 OK 60, ¶ 36, 52 P.3d 1014, 1033.

ANALYSIS

I. Funds Placed in Mr. Quigley's Trust Account

Mr. Quigley asserts the district court "erred in refusing to find the funds placed into [his] Trust Account were exempt social security funds" and that the court erred "by concluding the funds lost their exempt status while sitting in the Trust Account."[5] He asserts that "Social Security funds are generally exempt from collection" and that the funds in question consist of "Social Security benefits of Daniel and his granddaughters (adopted daughters)[.]" He states that these benefits "were deposited into an account at Quail Creek Bank" and that "[a] cashier's check was written from this account to Quigley in the amount of $31,593.90 on March 3, 2020" – an amount that "represented a partial payment on the fees owed by Daniel to Quigley[.]" He asserts the "Court order preventing the transfer of nonexempt funds did not apply to the transfer of Social Security funds."

Mr. Quigley acknowledges that he "transferred $10,000.00 back to Daniel several days later," but states "[t]hese funds were fully traceable back to the [original Social Security benefits]." Mr. Quigley states that "Daniel's payment to

[5] Br.-in-chief at 13.

[him] of exempt funds, along with Quigley's return of $10,000.00 in exempt funds, cannot be considered a willful violation of the Order prohibiting the transfer of assets ***not exempt by law***."[6]

In response, Mr. Skurkey states that the district court "recognized that social security funds are exempt from execution under the law, but found on the evidence presented that Quigley did not prove the funds in question were social security funds."[7] Mr. Skurkey asserts that only

> *traceable* social security funds placed into a bank account and comingled with other funds remain exempt. These principles of law were recognized by the District Court but they didn't end the inquiry because the evidence at trial, which Quigley wholly ignores in his Brief in Chief, demonstrated that the social security funds were comingled with other funds *and Quigley made no effort to trace whether any of the funds given to him were social security funds and, if so, how much*.[8]

In the September 2023 Judgment, the district court noted that a prior order – dated February 21, 2020 – "enjoined and prohibited Daniel from transferring, removing, liquidating, or otherwise disposing of his non-exempt assets until further order of the Court." The court stated in the September 2023 Judgment that, "[d]uring trial, Quigley's description as to the purpose and use of the $31,593 check changed more than once." The Judgment states: "Quail Creek Bank records

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[6] Br.-in-chief at 16 (emphasis in original).

[7] Answer Br. at 9.

[8] Answer Br. at 9 (emphasis in original).

show that on March 3, 2020, the same day Skurkey issued his bank garnishments, Daniel withdrew all the available funds in Account [####] at Quail Creek Bank, leaving only one penny ($0.01) in the account for Skurkey's bank garnishment." The Judgment further states that Mr. Daniel and Mr. Quigley testified the funds were all exempt funds, but notes: "Although the Court does acknowledge that social security funds are exempt, there was never a detailed explanation [regarding] how they arrived at this conclusion because there were other funds that had gone in and out of this account."

It is clear that the issues presented, including whether the funds are traceable to Social Security benefits, are fact questions dependent upon the district court's review of testimony and other evidence. The September 2023 Judgment contains observations like the following:

> While Quigley now contends that he verified the funds were exempt by reviewing Daniel's Quail Creek Bank records, he nevertheless admitted that he did not review those records at the time he deposited the cashier's check he received from Daniel in March 2020. Quigley has also testified he reviewed the Quail Creek Bank records before he refunded Daniel the $10,000 from those same funds (also in March 2020). But, if Quigley had the Quail Creek Bank records in March 2020, why didn't he produce them to Skurkey by April 2, 2020, pursuant to the February 21, 2020, Order, and [the trial court's] instructions?

After its comprehensive examination of the evidence, the district court concluded it "cannot find evidence that supports Quigley's verification of exempt funds testimony." The court concluded the temporary injunction, imposed on February

21, 2020, was violated by the clearing out of all but $0.01 from the Quail Creek Bank account and the "converting [of] the majority of those funds into a cashier's check in the amount of $31,593.90," which was conveyed to Mr. Quigley, with $10,000 later conveyed back to Mr. Daniel.

A review of the transcript further confirms that evidence was presented in support of the court's determinations. For example, in Mr. Skurkey's counsel's direct examination of Mr. Quigley, he questioned Mr. Quigley regarding the bank statements for the Quail Creek Bank account predating the transfer of nearly all its contents. Mr. Quigley agreed the account – in addition to Social Security deposits and various withdrawals – contained a variety of substantial deposits of *nonexempt* funds,[9] such as a $1,300 deposit (from Mr. Daniel's operating account), a $2,314.96 deposit (from funds "left over from [another] account"), a $10,000 deposit (from Retirement, LLC), and a $20,000 deposit (from "an earnings check from [Mr. Daniel's] operating account paid to himself").

"The trial court was the trier of the facts. The credibility of the witnesses and the effect and weight to be given to conflicting or inconsistent testimony are questions of fact to be determined by the trier of facts, whether court or jury, and are not questions of law for this Court on appeal." *Kerr*, 2001 OK 90, ¶ 18, 37

[9] Mr. Quigley qualified his testimony by stating he was providing his "best opinion" as to the source of the deposits.

P.3d at 845 (citation omitted). As above stated, in a contempt proceeding, questions of fact are not reviewed on appeal. Therefore, Mr. Quigley's arguments in this regard – including that the district court erred "in refusing to find the funds placed into [his] Trust Account were exempt social security funds" – are rejected.

II. Communications Between Mr. Quigley and Mr. Daniel

Mr. Quigley asserts the district court erred in admitting evidence of communications between himself and his client – Mr. Daniel – over the assertion of attorney-client privilege. Mr. Quigley argues as follows:

> At trial, there was a general objection to any question that attempted to elicit attorney-client communications . . . . Quigley further specifically objected to questions attempting to elicit the following communications:
>
> - the content of Quigley's and Daniel's discussions after the hearing on assets regarding metadata of the typewritten assignment . . . and
> - the content of legal advice Quigley provided to Daniel regarding the assignment . . . .
>
> In each instance, the Trial Court summarily overruled Quigley's objections . . . .
>
> Whether a communication is protected by attorney-client privilege is for the trial court to consider in light of a preliminary inquiry into the existence and validity of the privilege. *Chandler v. Denton*, 1987 OK 38, ¶ 20, 741 P.2d 855, 865. Here, the Trial Court erred in not conducting the requisite preliminary inquiry.
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> In each instance, the subject of the testimony allowed into evidence concerned the assignment of the Retirement LLC Proceeds, and the Trial Court found Quigley to be guilty of indirect contempt with respect to his actions involving these assignments. In other words, the privileged communications directly address the alleged contemptuous conduct. The Trial Court abused its discretion and

should not have allowed the privileged communications to be admitted into evidence.[10]

In response, Mr. Skurkey asserts, inter alia, that the attorney-client privilege "belongs to Daniel and must be invoked by him[.]" He asserts that because Mr. Daniel "did not appeal the orders and findings concerning application of the attorney-client privilege, Quigley is bound by those orders and findings and has no standing to appeal them and this proposition of error should be dismissed."

It is true that, on appeal, Mr. Quigley appears to be invoking the attorney-client privilege on behalf of himself rather than on behalf of his client. "The attorney client privilege belongs to the client and must be invoked by the client." *Ellison v. Gray*, 1985 OK 35, ¶ 8, 702 P.2d 360, 363. *See also Girl Scouts-W. Okla., Inc. v. Barringer-Thomson*, 2011 OK 21, ¶ 15, 252 P.3d 844, 847 ("The attorney-client privilege belongs to the client *and not to the lawyer*, and it may be waived only by the client." (emphasis added)); *Chandler*, ¶ 19, 741 P.2d at 865 ("The privilege belongs to the client and not to the lawyer.").[11] Title 12 O.S. 2021 § 2502(C) provides:

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[10] Br.-in-chief at 16-17.

[11] The *Ellison* Court explained:

> Although the two are closely related, an attorney's work product is not synonymous with the attorney-client privilege. The work product rule remains closely identified with the attorney-client privilege because work product represents efforts expended by the attorney during the course of the professional relationship. The attorney client privilege belongs to the client and must be

> The [attorney-client] privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the attorney or the attorney's representative at the time of the communication *is presumed to have authority to claim the privilege but only on behalf of the client.*

(Emphasis added.) Even assuming Mr. Daniel attempted to invoke the privilege below, under § 2502(C) Mr. Quigley has the "authority to claim the privilege but only on behalf of the client." However, he is not doing so on appeal.[12]

In addition, the court found there was no privilege as to certain communications between Mr. Daniel and Mr. Quigley.

> Whether a communication is privileged from disclosure is for the trial judge to decide in light of a preliminary inquiry into the existence and validity of the privilege. The burden to establish the privileged status of testimony sought to be excluded rests on the party asserting it. The trial judge's ruling is conclusive in the absence of an abused discretion.

Chandler, ¶ 20, 741 P.2d at 865 (footnotes omitted). As stated by the district court, the communications concerned "the creation and execution of a General Assignment from Daniel to Quigley for a right to receive future payments owed to

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> invoked by the client. The attorney's work product exemption may be claimed by the attorney and not by the client; information which is not protected from discovery by the attorney-client privilege may nonetheless be exempt as work product.

1985 OK 35, ¶ 8, 702 P.2d at 363.

[12] Mr. Quigley, on appeal, continues to challenge the court's ruling even though his client, Mr. Daniel, has dismissed his appeal and it is only Mr. Quigley pursuing the challenge on his own behalf.

Daniel from Retirement LLC, arising from the sale of Daniel's fifty percent (50%) equity ownership."[13] Much of the evidence presented at the contempt hearing concerned whether this assignment occurred before or after the injunction enjoining Mr. Daniel from transferring any of his nonexempt assets, and whether Mr. Daniel and Mr. Quigley had fraudulently attempted to make it appear as if the assignment occurred before the injunction.[14]

In ruling on the attorney-client privilege issue in advance of the contempt hearing, the district court stated:

> It is incongruous to shield the communications regarding the creation and execution of an assignment of rights with a third party, where the attorney is the beneficiary of the assignment, particularly when that assignment arises under circumstances where the testimony and the record creates a question as to the legitimacy of the assignment itself. It is this question surrounding the legitimacy of the assignment which raised the specter of the application of the crime-fraud exception leading the Court to its *in camera* review initially. The Court's *in camera* review of the communications regarding the creation and execution of the assignment further convinced this Court that the communications are not covered by the attorney-client privilege and as such are discoverable and should be produced. These communications do not reveal discussions regarding[] factual or opinion work product, or strategy, nor do they reveal the substance and billing statements.[15]

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[13] R. 803.

[14] As explained by the district court in its June 14, 2024 Order, it ultimately "found that the 'Assignment' did not happen prior to trial, but that it happened post-injunction. This Interpleader action was intertwined with the Indirect Contempt behavior."

[15] R. 807.

The district court further stated:

> The attorney client privilege is not intended to shield criminal or fraudulent conduct. At bar there has been a prima facie showing that there is evidence, which if believed by the trier of fact, could support a conclusion that the creation and execution of the assignment was in violation of the Court's order restraining a transfer of assets and exacted a fraud on a creditor. The attorney-client privilege does not protect those types of communications and therefore disclosure is not prohibited. 12 O.S. § 2502(D)(1) . . . .[16]

Section 2502(D) provides: "There is no privilege under this section: 1. If the services of the attorney were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud[.]" Plainly integral to the district court's determination that the communications in question would be admitted is that those communications allegedly concerned fraudulent backdating of an assignment to evade an injunction.[17] Mr. Quigley does not attempt to demonstrate any error in this regard, and our review of the record reveals that the court did not abuse its discretion in ruling that the privilege did not apply to the communications in question.

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[16] R. 809.

[17] Mr. Daniel testified at the contempt hearing that his interest in Retirement LLC, from which he received a regular quarterly payment of cash, was not only his largest nonexempt asset but was "probably [his] only nonexempt asset." He testified that well before the injunction he "had told [Mr. Quigley] that that's all the asset I had, and that that money would be his." He testified, "it was my only asset," and it was "[c]ertainly" of great importance to him because, "I mean, it's income I need."

III. Testimony Regarding AT&T Mapping

Mr. Quigley asserts the district court erred "in allowing inadmissible expert testimony [of an AT&T employee] regarding AT&T mapping without a proper foundation and without proper veracity."[18] His argument consists of two parts. First, he complains that "[t]he maps were produced as exhibits 10 days before trial," which left him with "no time to acquire his own expert witness or prepare evidence to rebut the maps." Second, he asserts that, although the AT&T employee was not tendered as an expert witness, the testimony sought to be elicited from the AT&T employee required specialized knowledge and the employee lacked such knowledge. Based on these arguments, Mr. Quigley asserts that the court erred in admitting the mapping records and testimony.

Regarding the first part of Mr. Quigley's argument, the Scheduling Order for Citations in Contempt, filed on October 14, 2020, provides that "[e]xhibits, including demonstrative exhibits, must be exchanged 10 days prior to trial." Because Mr. Quigley, in his appellate argument, concedes the maps were produced as exhibits 10 days before trial, Mr. Skurkey complied with this obligation. Moreover, Mr. Skurkey correctly asserts that "the documents from AT&T were available to *both* parties for over a year before trial[.]"[19] For example, Mr. Quigley

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[18] Br.-in-chief at 17.

[19] Answer Br. at 16 (emphasis in original).

responded in the affirmative when questioned at the contempt hearing whether he has "had those AT&T documents the same amount of time as [Mr. Skurkey and his counsel] have, and that's been over a year. Correct?" For these reasons, we conclude the first part of Mr. Quigley's argument is unpersuasive.

As to the second part of Mr. Quigley's argument, the AT&T employee testified that the mapping records constituted "mainly a mobility report which does have ingoing and outgoing calls." He testified that the documents were produced by AT&T pursuant to the subpoenas that Mr. Skurkey issued in this case. He testified that the records relate to Mr. Daniel's cell phone number and that the data provide "the location or the best estimate of the location of the [cell phone] that was used." He responded in the affirmative when questioned on direct examination whether "the best estimate of where that mobile phone is when it's doing that" – e.g., "connecting to WiFi or downloading a photo or sending a text message" – "is shown on this page in GPS form."

The AT&T employee testified that he has testified in "[o]ver 50" trials as a trial analyst testifying primarily about AT&T phone records and data. On cross-examination, he testified he has never been certified by a court as an expert. He testified in the negative when questioned whether he was "familiar with any of the criticisms of cell phone reliability when it comes to data mapping, the location mapping[.]" He stated: "I explain the records and verify, confirm that they are,

you know, valid or correct. As far as going into the technical aspects of the mapping and things of that nature, that's more or less maybe our engineering group."

On cross-examination, Mr. Quigley attempted to elicit such information from the AT&T employee, but the employee stated he lacked such knowledge. Of course, if a witness provides scientific, technical, or other specialized knowledge, that witness cannot testify as a lay witness but must be found "qualified as an expert by knowledge, skill, experience, training, or education[.]" 12 O.S. 2021 § 2702. Here, however, the witness's testimony was not based on scientific, technical or other specialized knowledge. As to the witness's statement that the data provide "the best estimate of where that mobile phone is" when it sends a signal, the witness made clear he was not providing his own technical opinion on the matter; rather, he was authenticating AT&T's report. As stated in the AT&T mapping data: "The results provided are AT&T's best estimate of the location of the target number. Please exercise caution in using these records for investigative purposes as location data is sourced from various databases which may cause location results to be less than exact."[20] In essence, the witness's testimony, as he asserted, did not go beyond verifying that the documents were authentic and

[20] Judgment Creditor Trial Exhibit 24F.

explaining their contents. For these reasons, we conclude the court did not abuse its discretion in admitting the mapping records and testimony.[21]

IV. Restitution as a Remedy

Mr. Quigley argues the court erred in determining that restitution is an appropriate remedy for indirect contempt of court. He asserts that "punishment for indirect contempt may be remedial to coerce compliance with the court order or it may be penal to punish the disobedience," citing *Henry v. Schmidt*, 2004 OK 34, 91 P.3d 651. He states:

> If the punishment is remedial, then the burden of proof is clear and convincing. If the punishment is penal, then the burden of proof is beyond a reasonable doubt.
>
> Here, all parties agreed prior to and at the trial, and it is reiterated in the Trial Court's judgment, that the burden of proof was clear and convincing . . . . When the Trial Court conducted these proceedings utilizing a clear and convincing standard, the Trial Court was authorized to impose remedial or coercive sanctions. Since the

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[21] In a footnote, Mr. Quigley asserts:

> Additionally, the mapping records were inappropriately admitted into evidence, as they violated Daniel's legitimate expectation of privacy and violated his rights under the Fourth Amendment. *See Carpenter v. U.S.*, 585 U.S. 296 (2018) (requiring warrant supported by probable cause to obtain cell-site location information). The Trial Court overruled Daniel's objection and then relied on Daniel's cell-site information to find Quigley guilty of indirect contempt.

Even assuming Mr. Quigley has the standing to make this argument on behalf of Mr. Daniel, the security afforded by the Fourth Amendment against unreasonable search and seizure was intended to restrain the activities of governmental agencies, not private conduct. *See United States v. Dahlstrom*, 180 F.3d 677, 682 (5th Cir. 1999) ("The Fourth Amendment applies only to government action."). Because there is no assertion or evidence that AT&T was "act[ing] on behalf of the state or as an agent or instrument of the state," *id.*, the Fourth Amendment does not apply.

punishment awarded by the Trial Court is penal and without authority under Oklahoma law, it should be reversed by this Court.[22]

Mr. Quigley nevertheless acknowledges that "[t]he Trial Court did have authority pursuant to [12 O.S.] § 1390 to award attorneys fees as restitution; however, any attorneys fee award must be for the purpose of ***coercing compliance with the Order***."[23] Mr. Quigley asserts that he was, instead, punished for alleged disobedience of the order. He asserts the court "meted out a penal punishment to [him] – for his actions and not for the purpose of coercing future compliance with the Order."

Title 12 O.S. 2021 § 1390 provides as follows:

> An injunction granted by a judge may be enforced as the act of the court. Disobedience of any injunction may be punished as a contempt, by the court or any judge who might have granted it in vacation. An attachment may be issued by the court or judge, upon being satisfied, by affidavit, of the breach of the injunction, against the party guilty of the same, who may be required to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirements, or be otherwise legally discharged, or be punished by fine not exceeding Two Hundred Dollars ($200.00) for each day of contempt, to be paid into the court fund, or by confinement in the county jail for not longer than six (6) months, or by both such fine and imprisonment. This act shall in no way alter the right to trial by jury.

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[22] Br.-in-chief at 20. The September 2023 Judgment notes "that all parties agreed that the burden of proof for the Interpleader case is Preponderance of the Evidence and the burden of proof for the contempt cases is Clear and Convincing."

[23] Br.-in-chief at 20-21 (emphasis in original).

In *State ex rel. Oklahoma Accountancy Board v. Townshend*, 2003 OK CIV APP 101, 81 P.3d 75, the Court explained that "Section 1390 provides for [an] exception [to the American Rule[24]] by permitting restitution when a party has accumulated attorney fees while attempting to enforce an injunction by contempt proceedings." *Townshend*, ¶ 4, 81 P.3d at 76. Citing *City of Lawton v. Barbee*, 1989 OK 147, 782 P.2d 927, the *Townshend* Court explained:

> § 1390 grants the trial court the authority to do two things. First, it may require immediate restitution to the injured party; and second, it may require further security to obey the injunction. Here, the trial court did both. For restitution, the court ordered Townshend to pay Board an amount [of attorney fees and costs] that would reimburse it for the out-of-pocket costs it incurred as the result of Townshend's violation of the injunction. For further security to obey the injunction, the court sentenced Townshend to 45 days in jail, with execution of the sentence suspended so long as Townshend obeyed the injunction.

Townshend, ¶ 5, 81 P.3d at 76-77.

The *Townshend* Court also observed that "[b]oth Kansas and Ohio have statutes authorizing restitution in contempt proceedings almost identical to § 1390," and that the courts in those states have held that restitution for expenses in pursuing the contempt, including for attorney fees, was appropriate under the statutes. *Townshend*, ¶¶ 6-7, 81 P.3d at 77. The *Townshend* Court further stated:

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[24] Pursuant to the American Rule, "each litigant bears the cost of his/her legal representation and our courts are without authority to assess and award attorney fees in the absence of a specific statute or a specific contract therefor between the parties." *Eagle Bluff, L.L.C. v. Taylor*, 2010 OK 47, ¶ 16, 237 P.3d 173, 179.

> In the context of sanctions for contempt in federal courts, *U.S. v. Dinwiddie*, 885 F. Supp. 1299 (W.D. Mo. 1995), the court ordered defendant to pay damages equal to the costs, expenses, and attorney fees incurred by the plaintiffs in any activity related to the civil contempt phase of the case. It stated "one genre of exceptions to the American rule is that a court may assess attorney's fees for the willful disobedience of a court order." It explained that a court's discretion to determine the degree of punishment for contempt permits the court to impose as part of the fine, attorney's fees representing the entire cost of litigation.

Townshend, ¶ 8, 81 P.3d at 77. The Court concluded:

> We are persuaded by the rationale in *Dinwiddie* and in the Kansas and Ohio decisions. Here, as in *Dinwiddie*, we hold there is more than ample justification in the case law for the trial court to order Defendant to pay restitution equal to the costs, expenses, and attorney fees incurred by Plaintiff in the contempt phase of this case as restitution in accordance with § 1390. Contempt proceedings are means through which the courts enforce their lawful orders. It is doubtful that the power of a court to punish for contempt may be arbitrarily limited. Thus great reliance is placed upon a trial court's discretion to punish for contempt. The trial court did not err in awarding attorney fees as restitution under § 1390.

Townshend, ¶ 9, 81 P.3d at 77.

The *Townshend* Court's analysis is not inconsistent with the Supreme Court's analysis in *Henry v. Schmidt*, 2004 OK 34, 91 P.3d 651. In *Henry*, the appellant was found guilty of two counts of contempt. The appellant did not seek review of that portion of a contempt order requiring her to reimburse the opposing party $3,000 in attorney fees; instead, she appealed (i.e., sought certiorari review) only from that portion of the contempt order requiring her to pay a $500 fine for each count of indirect contempt and requiring her to serve a 15-day jail sentence.

The Court found those portions of the contempt order were penal in nature. The Court noted that the appellant's "petition for certiorari did not raise the issue of whether attorney fees should have been awarded." *Henry*, ¶ 17 n.23, 91 P.3d at 655 n.23. Nevertheless, the Court categorized the attorney fee awarded to the opposing party as an equitable sanction distinguishable from the penal sentence and fine. *See id.* ¶ 17, 91 P.3d at 655 ("[T]he legislature has authorized the court to impose a fine and term of imprisonment for indirect contempt for wilfully disobeying a court's orders," but "[t]his punitive measure is not compromised by an award of attorney fees or other sanctions," citing to *Gibbs v. Easa*, 1998 OK 55, ¶¶ 12-13, 998 P.2d 583, 586, which explains that attorney fees may be awarded as a matter of the equitable power of the court.).

In ordering Mr. Quigley to reimburse Mr. Skurkey for attorney fees accumulated in the process of attempting to enforce an injunction by contempt proceedings, the court did not "mete[] out a penal punishment" as asserted by Mr. Quigley. A court may order a defendant to pay restitution equal to the costs, expenses, and attorney fees incurred by a plaintiff in the contempt phase of a case – as "immediate restitution" in accordance with § 1390. *Townshend*, ¶ 9, 81 P.3d at 77. Here, the district court found "that Judgment Creditor Skurkey is entitled to restitution in the form of his attorney's fees and costs actually expended in these contempt proceedings and the enforcement of the Court's injunction, to be paid

equally by Daniel and Quigley for their respective actions constituting violations of the temporary injunction . . . ."[25] The Oklahoma Supreme Court has explained that it "has looked to whether the intent and purpose of damages are punitive or to compensate an individual plaintiff." *Progressive Direct Ins. Co. v. Pope*, 2022 OK 4, ¶ 20, 507 P.3d 688, 695-96. The purpose of the district court's contempt sanction of restitutionary attorney fees is remedial and compensatory, limited to the attorney fees "actually expended [by Mr. Skurkey] in these contempt proceedings and the enforcement of the Court's injunction[.]"[26] Therefore, we conclude the district court was not required, prior to awarding the restitutionary attorney fees, to apply the standard of proof of beyond a reasonable doubt.

V. Attorney Fees in the Interpleader Action

Mr. Quigley argues the court erred in awarding prevailing party attorney fees in the interpleader action. He asserts there is no contractual or statutory basis to support an award of a prevailing party attorney fee in the interpleader case. He acknowledges that the court cited "[42 O.S.] § 176 as the basis for its award of attorneys fees in the interpleader action," but asserts this statute "is a general lien

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[25] September 7, 2023 Judgment at 72.

[26] The district court also stated that "Mr. Skurkey should not have to foot the bill for the conduct of both Defendants in the Contempt action in violating the court's Injunction. These Defendants are responsible for the hours and hours it took to uncover the violations of the Injunction and to prosecute the Contempt action." June 4, 2024 Order at 11. The court also stated the award was compensation for "the money and time . . . spent – well, obviously trying to find monies that were, for lack of a better word hidden[.]" Jan. 19, 2024 Tr. at 26.

enforcement statute, which does not apply to this case."[27] Section 176 provides: "In an action brought to enforce any lien the party for whom judgment is rendered shall be entitled to recover a reasonable attorney's fee, to be fixed by the court, which shall be taxed as costs in the action." Mr. Quigley states that the action "did not involve the enforcement of a general lien, but more specifically it involved the enforcement of a garnishment."

In response to Mr. Quigley's argument that § 176 does not apply because the interpleader action did not involve the enforcement of a lien but instead involved the enforcement of a garnishment, Mr. Skurkey states: "Quigley ignores the multiple times he claimed he was entitled to the interpleader funds *pursuant to a contractual lien and under the attorney lien statute*."[28] Mr. Skurkey states: "The District Court correctly rejected Quigley's claim to an attorney lien" and "correctly held that Skurkey was entitled to recover his attorney fees under [§ 176] as the prevailing party in the interpleader action."

In the September 2023 Judgment, the district court determined it is "authorized 'to award attorney fees' to Skurkey as the prevailing lien claimant," citing to *Winkler v. Solutions Group, Inc.*, 1995 OK CIV APP 134, 915 P.2d 386, and 42 O.S. § 176. The district court explained that Mr. Skurkey "issued . . .

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[27] Br.-in-chief at 22.

[28] Answer Br. at 21 (emphasis in original).

Garnishment Affidavits with Summons on March 5, 2020, for . . . Retirement LLC." The court noted this was a wage garnishment, and further noted that this garnishment, and the interpleader action, relate "to $90,000 that Retirement, LLC., is asking the Court to determine to whom they should pay this $90,000 that was originally to be paid to [Mr.] Daniel." Of course, the interpleader action did not solely involve Mr. Skurkey's claim to the $90,000 – it also involved Mr. Quigley's claim to the interpleader funds, a claim based on an alleged assignment. As above quoted, the alleged assignment in question was "the creation and execution of a General Assignment from Daniel to Quigley for a right to receive future payments owed to Daniel from Retirement LLC, arising from the sale of Daniel's fifty percent (50%) equity ownership."

At first glance, the competing claims in the interpleader action might be summarized as involving a wage garnishment and a claim based on an assignment. However, as stated in the September 2023 Judgment, "Skurkey and Quigley claimed competing ownership of the Retirement LLC funds – Skurkey by virtue of his garnishment lien and judgment lien; Quigley claimed his by virtue of the 'assignment(s)' he claims Daniel gave him before Skurkey's garnishment pursuant to a purported attorney's lien." As stated by counsel for Mr. Skurkey at the January 19, 2024 hearing:

> [I]nterpleader is the mechanism by which the dispute between the priority of interests is being determined by the Court. And . . .

> substantively, the issues were about who had lien priority, . . . so was it either Mr. Skurkey's garnishment lien and judgment lien entered, or was it Mr. Quigley's asserted attorney's lien. So to call this a simple garnishment action I think vastly understates what this actually was.

The court determined that the interpleader action "involves the 'determinat[ion] [of] priority between competing lien claimants,'" quoting *Winkler*. We conclude the court properly found that it is authorized to award attorney fees to Mr. Skurkey under § 176 as the prevailing lien claimant.

Moreover, under the particular circumstances presented – circumstances involving an attempt, as determined by the district court, to essentially backdate an assignment of the Retirement LLC proceeds to a date before the court's injunction – an alternative exception to the American Rule further supports the district court's decision. The Supreme Court has "approved [of] an award of attorney fees against a party that 'has acted in bad faith, vexatiously, wantonly, or for oppressive reason.'" *Whittington v. Durant H.M.A., LLC*, 2022 OK 97, ¶ 15, 521 P.3d 1281, 1287 (citation omitted). Although this "exception to the American Rule . . . (1) is a narrow one; (2) should be applied with a degree of caution and restraint; and (3) was not intended to grant trial courts some broad, all-encompassing equitable authority to award attorney fees," *id.* ¶ 15, 521 P.3d at 1287-88, we conclude this additional exception to the American Rule applies based on the findings of the district court. Therefore, Mr. Quigley's argument is rejected.

VI. Amount of Fees

Regarding the amount of attorney fees awarded as restitution, Mr. Quigley asserts the court

> did not perform the proper analysis to determine the reasonableness of the fees sought by Skurkey, and Skurkey did not meet his burden to establish the reasonableness of the fees. . . . Oklahoma law [requires] a showing of reasonableness when attorneys fees are awarded as restitution, and Skurkey did not make this showing.[29]

Mr. Quigley also argues that Skurkey failed to "show that the requested fees are related to the Court's Order."[30] Mr. Quigley asserts, for example, that he "identified an additional $40,663.48 in vague time entries," and states that Mr. Skurkey "made no showing to establish the reasonableness of these billings (or their connectedness to the contempt proceedings)." Mr. Quigley acknowledges that the court "did deduct $17,659.87," but asserts:

> However, the Trial Court's analysis is backward. The Trial Court only deducted a portion of the amount shown by *Quigley's* analysis. Although, it is Skurkey that carried the burden of proof and needed to make a showing to entitlement of the entire amount of fees sought as reasonable. The Court abused its discretion by not requiring Skurkey to meet his burden of proof so a proper analysis into the reasonableness of the fees could be performed.[31]

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[29] Br.-in-chief at 24.

[30] Br.-in-chief at 26.

[31] Br.-in-chief at 26-27.

Once again, the analysis in *Townshend* is illuminating. That Court explained:

> As an additional proposition of error Townshend argues the amount awarded was excessive and unreasonable given the nature of the claim. The trial court found the hourly rates Board paid its counsel to be reasonable for the services rendered. Over Board's objection, the trial court conducted a *Burk* hearing and based its restitutionary award of attorney fees on the standards set out therein. The amount awarded covered only the costs incurred in prosecuting the contempt citation, none before. Board's attorney testified, stating, in order to make it whole, Board had to file the contempt proceedings. The attorney charged $150.00 an hour and his associate $90.00 an hour. He provided extensive documentation of his time spent as well as the time spent by Board's previous attorney and what he charged Board to act as its counsel.
>
> As emphasized by Board, the award is entirely different from an attorney fee award as a prevailing party. These charges would be paid to Board as restitution for the money it had expended in enforcing the order of the court, not as a prevailing party. The attorney fees actually paid by Board are probably not subject to modification by the court.[32]

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[32] In *Hetronic International, Inc. v. Rempe*, 697 F. App'x 589 (10th Cir. 2017), the court stated:

> Under Oklahoma law, "where the wrongful acts of the defendant have involved the plaintiff in litigation with others, or have placed him in such relation with others as to make it necessary for him to incur attorney fees to protect his interests, attorney fees [are] recoverable in such cases as one of the elements of damages flowing from the original wrongful act of the defendant." *Barnes v. Oklahoma Farm Bureau Mut. Ins. Co.*, 11 P.3d 162, 181 (Okla. 2000) (citing *Griffin v. Bredouw*, 420 P.2d 546, 547 (Okla. 1966)); *see also Sec. State Bank of Comanche v. W.R. Johnston & Co.*, 204 Okla. 160, 228 P.2d 169, 173 (1951) ("Where the natural and proximate consequence of a wrongful act has been to involve plaintiff in litigation with others, there may, as a general rule, be a recovery in damages against the author of such act of the reasonable expenses incurred in such litigation, together with compensation for attorneys' fees.") Attorneys' fees are recoverable "in such cases as one of the elements of damages flowing from the original wrongful act of the defendant." *Barnes*, 11 P.3d at 181.

> In a different context, the Supreme Court has upheld the power of the government to seek restitution and the lower court's power to grant restitution as an ancillary remedy in the exercise of its general equity powers to afford complete relief. *State ex rel. Day v. Southwest Mineral Energy, Inc.*, 1980 OK 118, 617 P.2d 1334 (citations omitted). Under the facts presented here, the trial court had the inherent equitable power to award attorney fees to compensate Board for necessary expenditures expended because of the noncompliance of Townshend with the court's order. *See City National Bank & Trust Co. of Oklahoma City v. Owens*, 1977 OK 86, 565 P.2d 4, 5. Accordingly, we hold the court did not exceed its jurisdiction, powers, or discretion in awarding the amount of attorney fees it gave to Board. . . .

Townshend, ¶¶ 10-12, 81 P.3d at 77-78.

Here, in the proceedings below, counsel for Mr. Quigley stipulated that the hourly rates sought by Mr. Skurkey are reasonable.[33] Therefore, counsel for Mr. Quigley contested essentially "the overall amount of time that they are seeking with respect to the contempt[.]"

As stated in the June 4, 2024 Order, counsel for Mr. Skurkey "supplied the Court with time records, expense records, and an affidavit from attorney Sara Potts in support of the attorney fees and costs sought as Restitution of $228,563.50[.]" The court also held a hearing on January 19, 2024, at which further exhibits were submitted for additional hours, resulting in a total request of $238,694.50 for

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> In this context, attorneys' fees are thus recoverable as damages in the same way that medical costs would be in a personal injury action.

Hetronic, 697 F. App'x at 590.

[33] Jan. 19, 2024 Tr. at 42.

restitution related to the contempt. The transcript of that hearing spans more than 120 pages and includes the testimony of one witness – called by Mr. Quigley primarily to address the reasonableness of the amount of time spent by counsel for Mr. Skurkey.

As stated in the June 4, 2024 Order, the district court reviewed "all materials filed and presented . . . and . . . conducted a line-by-line analysis of every minute sought by Skurkey and . . . reviewed all evidence and testimony from the January 19, 2024, hearing." The court stated: "These two trials, although consolidated, required major investment of time and costs on behalf of every firm involved. Very few, if any, issues in this litigation have been without contest or argument or challenge." The court stated: "The main source for Skurkey's restitution was billing and costs outlined in over [150] pages of billing statements spent during the relevant time period of March 3, 2020, through the hearing held on January 19, 2024." The court also stated that Skurkey provided an affidavit from counsel Sara Potts, one of two lead counsel representing Skurkey, and that Ms. Potts "attests that the amounts asked for were billed to and paid by [Mr. Skurkey] . . . . Ms. Potts also highlighted what they were seeking as restitution for the Contempt action in [one color] and for the Interpleader action in [another]."[34]

[34] Counsel for Mr. Skurkey stated at the hearing: "when we took a stab at apportioning things between the interpleader and the contempt we did the best job we could."

Although the court emphasized that "[t]his is a restitution issue, and the restitution is based on the hours of legal time and the expenses it took to uncover the contempt, find the money, and prosecute the contempt action," the court nevertheless also addressed the *Burk* factors.[35] In *Fleig v. Landmark Construction Group*, 2024 OK 25, 549 P.3d 1208, the Supreme Court discussed a previous case – *Spencer v. Oklahoma Gas & Electric Company*, 2007 OK 76, 171 P.3d 890 – in which reversal of the district court was required because "there was no evidence that the [*Burk*] guidelines, other than the comparison of the fee to the amount recovered, played any real role in setting the attorney fee award." *Fleig*, ¶¶ 19-20, 549 P.3d at 1212. That is not the case here.

Here, the district court stated:

> Skurkey's counsel provided detailed time records of their work completed in their attempt to collect this judgment, uncover violations, and prosecute the contempt and interpleader actions. They also performed their work at a lower rate than they normally charge. There was no dispute about the hourly fee charged by [Mr. Skurkey's two attorneys]. . . . [I]t took hours to uncover inconsistencies and violations of the original injunction. No violations were admitted by Daniel or Quigley, so more time was required to uncover and prove the violations and collect based on violations.
>
> The experience and abilities of both counsel [for Mr. Skurkey] was unchallenged; both specialize in civil business litigation. This case fell directly in their area of experience. A great number of hours were spent in uncovering the violations of the original order, in obtaining certain evidence of the violations, and in proving those violations in trial. This court does not see fault in the hours Skurkey's counsel spent on those issues; rather, the fault lies in the ones who

[35] *See State ex rel. Burk v. City of Okla. City*, 1979 OK 115, 598 P.2d 659.

> violated the injunction. This case started back in 2017. The relationship that Skurkey's counsel had with him has existed for almost seven (7) years in relation to all of the issues that have come from the original filing of this case. They prevailed on most issues at trial, and then set out in their collection efforts, which has taken several years and which were fought at every turn.
>
> At the June 19, 2024, hearing, Daniel and Quigley challenged the reasonableness of the restitution sought by calling attorney Daniel Gamino, who, based on his experience and knowledge, testified that the fees sought were unreasonable. . . . The court is unconvinced by attorney Gamino's testimony that the fees sought are unreasonable.
>
> The final requirement in the *Burk* factors is that any fee so calculated is subject to the rule that it must be reasonable and bear some reasonable relationship to the amount in controversy. The jury verdicts amounted to $630,120.00. Most, if not all, of the fees sought as restitution, would not exist but for the actions of Daniel and Quigley. All one has to do is look at the docket sheet from February 18, 2020 (when the Journal Entry of Judgment was filed), forward, look at all of the filings, review the transcripts from the days of Contempt and Interpreter trials, review the Findings of Fact and Conclusions of Law filed on September 7, 2023 (along with every other hearing had concerning the Contempt) to see that most of the restitution sought relates directly to the Contempt issue. This Court does not see unreasonableness of the time spent.

The court further stated: "Nothing has been simple in this litigation. Many issues had to be litigated including an Application for Writ of Prohibition to the Supreme Court of Oklahoma with respect to issues in the Contempt trial."

Regarding Mr. Quigley's allegation of "vague time entries," he does not cite any examples in his appellate briefing and instead cites to his brief in the proceedings below. In his "Response in Opposition to Judgment Creditor's Brief in Support of Setting Restitution in the Amount of $245,060.19," Mr. Quigley set

forth the following as examples "of entries that are not specific enough to establish their relationship to either the enforcement of the injunction or the Contempt trial":

- 03/23/2020 ESL Work on collection issues; telephone conference with John and Jacqueline with update. 0.8 $268.00
- 04/06/2020 JEB Email to Paul Quigley inquiring about Bill Daniel's financial documents. 0.2 $67.00
- 04/08/2020 JEB Emails to Paul Quigley regarding document production
- 04/09/2020 SEP Revising statutes on garnishments and attachments and working on garnishment summons for Quigley and CFCU. 0.4 $90.00
- 04/16/2020 SEP Phone conference with J. Brightmire to discuss responses necessary for filing and issues pertaining to possible new motions. 0.7 $157.50
- 05/01/2020 JEB Work on garnishment issues. 0.4 $134.00
- 06/04/2020 JEB Receive and review additional documents from Quigley and discuss with Sara Potts. 0.4 $134.00
- 06/29/2020 Discuss collection issues with Sara Potts. 0.4 $134.00
- 08/10/2020 JEB Phone conference with Sara Potts to discuss outstanding matters and hearing for Thursday. 0.5 $167.50
- 08/11/2020 JEB Review various emails between Judge Stallings, Quigley, and Sara Potts regarding matters set for hearing. 0.3 $100.50

These time records do not fail to provide the requisite level of detail to permit the court to meaningfully review the records and determine whether the time spent was reasonable. *See Folsom v. Century Life Assurance Co.*, 2021 OK CIV APP 50, ¶ 12 & n.5, 502 P.3d 1121, 1125 & n.5. The *Folsom* Court set forth the following authorities:

> *E.g., Robinson v. City of Edmond*, 160 F.3d 1275, 1281 (10th Cir. 1998) (holding that where block billing makes it difficult or impossible for the court to determine the amount of time spent on specific tasks, a general reduction in fees is permissible, but not

> required); *Catholic Benefits Association LCA v. Azar*, CIV-14-240-R, 2018 WL 3876615, at *10 (W.D. Okla. Aug. 15, 2018) (imposing a 20% reduction on "the most egregiously block billed time entries"); *McCrary v. Country Mutual Insurance Co.*, 13-CV-507-JED-PJC, 2016 WL 8118183, at *3 (N.D. Okla. June 22, 2016) (holding that "an overall 15% reduction in fees is warranted because block billing and vague time entries render meaningful review of the time spent on specific tasks impossible") . . . .

Folsom, ¶ 12, 502 P.3d at 1125. The *Folsom* Court explained:

> Even though this Court holds that a reduction in the lodestar attorney fee was justified in *this* case, we also hold that issues with an attorney's time-keeping methods – including block billing – do not alone justify a reduction in the lodestar attorney fee in every case. In other words, as shown by the authorities cited above, whether to reduce the lodestar attorney fee because of an attorney's time-keeping methods is discretionary.

Id., 502 P.3d at 1126.

We conclude the specific examples set forth in Mr. Quigley's brief do not fail to provide the requisite level of detail.[36] We conclude Mr. Quigley has failed to demonstrate on appeal that the district court erred in this regard.

Regarding the allocation of fees, the court stated it

> has reviewed the restitution application several times, trying to assess which amounts should be transferred to the attorney fee application on the Interpleader case, which amounts should be disallowed, and which amounts should be allowed. The difficulty here is that the actions encompassing the Contempt are so intertwined with so much of the necessary actions that Skurkey's counsel had to take to uncover the contemptuous behavior.

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[36] It is noteworthy that the district court nevertheless determined that other time entries were overly vague, and it reduced or disallowed certain fees on this basis.

As indicated above, counsel for Mr. Skurkey assisted the court by, inter alia, highlighting what they were seeking as restitution for the contempt action in one color, and for the interpleader action in another. The court reviewed each time entry and arrived at its own, independent conclusion regarding the proper apportionment after a thorough review. As accurately summarized by Mr. Skurkey:

> As the District Court noted, it "disallowed several entries in the restitution application where the entries appeared to go toward the interpleader. In addition, some fees sought were disallowed all together." The District Court then set forth seven pages of time entries that it modified or disallowed, indicating the Court meticulously went through the entirety of the time records submitted by Skurkey.[37]

In the absence of argument and record citations by Mr. Quigleyrevealing one or more specific erroneous allocations of time entries, he has failed to show that an abuse of discretion occurred.[38]

Mr. Quigley also asserts the district court erred "in determining Skurkey met his burden of establishing that the prevailing party fees sought in the interpleader action were reasonable."[39] As above stated, counsel for Mr. Quigley stipulated that

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[37] Answer Br. at 24.

[38] Of course, this Court will not undertake a de novo review of the district court's determination as to the allocation of fees, but it is worth noting that such a review would be particularly unwarranted under the present circumstances in which we have concluded a sound legal basis supports the court's award of fees in both the interpleader action and contempt action.

[39] Br.-in-chief at 27.

the hourly rates sought by Mr. Skurkey are reasonable. We have also reached the conclusion that Mr. Quigley has failed to demonstrate an abuse of discretion occurred regarding the apportionment of fees between the interpleader and contempt actions. Because the court's award is not clearly erroneous, against reason and evidence, it is affirmed.

VII. Costs

Mr. Quigley argues the court erred in awarding costs not permitted by statute – i.e., 12 O.S. 2021 § 942. Section 942 provides as follows:

> A judge of any court of this state may award the following as costs:
>
> 1. Any fees assessed by the court clerk or the clerk of the appellate court;
>
> 2. Reasonable expenses for the giving of notice, including expenses for service of summons and other judicial process and expenses for publication;
>
> 3. Statutory witness fees and reasonable expenses for service of subpoenas;
>
> 4. Costs of copying papers necessarily used at trial, limited to the amount authorized by law. If no amount is specified, costs of copying papers shall be limited to ten cents ($0.10) per page;
>
> 5. Transcripts of the trial or another proceeding that the court determines are necessary to resolve the case;
>
> 6. Reasonable expenses for taking and transcribing deposition testimony, for furnishing copies to the witness and opposing counsel, and for recording deposition testimony on videotape, but not to exceed One Hundred Dollars ($100.00) per two-hour videotape, unless the court determines that a particular deposition was neither reasonable nor necessary; and
>
> 7. Any other expenses authorized by law to be collected as costs.

Mr. Quigley asserts:

> Here, Skurkey sought and recovered costs for records requests, document production/printing, meals, mileage, phone charges for a conference call, parking, research fees, hotel expenses, Federal Express charges, and postage . . . . These categories of costs are not categories that are recoverable by statute. The Trial Court deducted $168.00 of research fees, but then awarded all other costs sought for phone charges for a conference call, parking, hotel fees, meals, photocopies (with no showing the copies were used at trial), postage, and mileage. The Trial Court's award of these costs in this action was an abuse of discretion.

In support, Mr. Quigley cites to Mr. Skurkey's "Brief in Support of Attorneys Fees and Costs," a reference to Mr. Skurkey's brief submitted in the interpleader action.[40] Mr. Skurkey responds as follows:

> In the brief submitted with respect to the interpleader costs, Skurkey sought costs in the amount of $1,970.77 for legal research, processor fees, court fees and filing fees, document production/printing, and postage. In his response to Skurkey's brief in support of recovering costs in the interpleader Quigley raised issues only with respect to $944.64 of costs for certain limited categories . . . which were addressed by Skurkey in his reply.
>
> The District Court went through all the costs requested by Skurkey. The District Court allocated some of the costs for document copies requested in the contempt action to the interpleader action ($1,043.92). The District Court denied costs in the amount of $168.03 for legal research. The District Court arrived at a total of $2,846.66 in costs for the interpleader action.
>
> In his brief Quigley takes issues with such things as mileage, phone charges, parking, and hotel expenses. These costs were sought in the contempt action, not the interpleader action. In the contempt

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[40] The record citations provided by Mr. Quigley – e.g., ROA, p. 518 – do not correlate to a brief in support of attorney fees or costs. A review of the docket supports Mr. Skurkey's assertion that the brief "cited by Quigley is the brief submitted by Skurkey in the interpleader action. Thus, although Quigley doesn't say so, it is clear that his appeal on costs concerns the costs awarded in the interpleader." Answer Br. at 29.

> action the Court was awarding restitution for Quigley's violation of the injunction order; the expenses listed in . . . § 942 did not apply.
>
> Moreover, Quigley does not state what amount he is complaining about. He does not identify the amount he believes should not have been assessed as costs.

In his Reply Brief, Mr. Quigley states that he

> demonstrated through briefing and at the hearing many of the entries were mis-apportioned (and the Trial Court agreed). This left the Trial Court to sift through the entries and determine on its own whether entries feel (*sic*) within its order on restitution or its order on the interpleader. But this was not the Trial Court's job. The burden of proof was on Skurkey at all times to demonstrate he was entitled to these costs (and fees) and that they were sought in accordance with Oklahoma law. He did not do this, and now the Trial Court's ruling should be reversed.[41]

However, on appeal, error is never presumed but must be affirmatively demonstrated by the appellant. *Pracht v. Okla. State Bank*, 1979 OK 43, ¶ 5, 592 P.2d 976, 978. Mr. Quigley has failed to satisfy this burden regarding the court's award of costs.

> [W]hen an offered error is not made to affirmatively appear, this Court will not disturb the judgment and verdict of the lower court. The appellant bears the burden of demonstrating a sufficient record and applicable law to demonstrate in this Court that the trial court committed error since error in the lower court is not presumed.

Pracht, ¶ 5, 592 P.2d at 978 (citations omitted). We conclude no error has been demonstrated in this regard.

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[41] Reply Br. at 15-16.

CONCLUSION

Based on our review, we affirm the district court's Judgment filed on September 7, 2023, its Order filed on June 4, 2024, and its Order filed June 14, 2024.

AFFIRMED.

BLACKWELL, P.J., and HUBER, J., concur.

BLACKWELL, P.J., concurring:

While I agree in full with the court's thoughtful and detailed opinion, I write separately to observe that, while the court's formulation of the standard of review as to findings of fact in contempt actions faithfully follows applicable Supreme Court precedent, I join at least one source in finding the formulation "troubling" and ripe for "revisit[ation]." HARVEY D. ELLIS JR. AND CLYDE A. MUCHMORE, OKLAHOMA APPELLATE PRACTICE, Vol. V, § 15:104 (Contempt) (2026 ed.).

Numerous appellate cases state there is "no review" of factual findings in indirect contempt actions. *See, e.g.*, *Kerr v. Clary*, 2001 OK 90, ¶ 18, 37 P.3d 841, 845 ("The standard of review is clear; in a contempt proceeding, questions of fact will not be reviewed."). I do not see how this can be the case.[1] Rather, the cited standard appears to be a hyperbolic reformulation of the usual, highly deferential

[1] If a trial court finds that there were thirty-two days in January of this year, for example, can this court not overcome that finding?

standard of review we employ when a trial court (as opposed to a jury) has acted as the trier of any given fact. Indeed, in the first sentence of the same paragraph of *Kerr* cited above, the Court alludes to this standard, *id.*, which demands adherence to such findings if there is any competent evidence in the record supporting them, *Gowens v. Barstow*, 2015 OK 85, ¶ 26, 364 P.3d 644, 653. Because I have reviewed the facts of this case with this standard in mind, I concur in full, as it is clear that the trial court's factual findings are sufficiently supported.[2]

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[2] The Oklahoma Court of Criminal Appeals has applied a similarly worded standard in cases of *direct* contempt. *See, e.g., Autry v. State*, 2007 OK CR 41, ¶ 14, 172 P.3d 212, 215 ("[I]n cases of direct contempt … 'on appeal the facts w[ill] not be reviewed.'" (quoting *Young v. State*, 1954 OK CR 105, ¶ 43, 275 P.2d 358, 369–70 (overruled on other grounds by *Gilbert v. State*, 1982 OK CR 100, ¶¶ 18–19, 648 P.2d 1226, 1230–31))). I have no quarrel with the application of such a standard in cases of direct contempt. However, civil appellate courts have routinely used this language in cases of *indirect* contempt. *See, e.g., Kerr*, 2001 OK 90, ¶ 18; *Seifried v. State ex rel. Bash*, 1939 OK 28, ¶ 20, 86 P.2d 1008, 1011; *Burke v. Territory*, 1894 OK 13, ¶ 16, 37 P. 829, 834; *Swiney v. Villanueva*, 2021 OK CIV APP 37, ¶ 6, 499 P.3d 1244, 1247; *Mitchell v. Mitchell*, 2021 OK CIV APP 17, ¶ 14, 491 P.3d 759, 763; *Caber v. Dahle*, 2012 OK CIV APP 19, ¶ 33, 272 P.3d 733, 740; *In re Marriage of Sager*, 2010 OK CIV APP 130, ¶ 2, 249 P.3d 91, 92; *Cowan v. Cowan*, 2001 OK CIV APP 14, ¶ 16, 19 P.3d 322, 327; *Torres v. Torres*, 1998 OK CIV APP 18, ¶ 13 956 P.2d 166, 168. Because this is not the review we are actually employing, we should stop reciting such a standard in cases of indirect contempt.