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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

APR 08 2026

SELDEN JONES  
CLERK

SCOTT BAKER, )  
 )  
 Plaintiff/Appellant, )  
 )  
 and )  
 )  
 BONNY BAKER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 LAW OFFICES OF C. WAYNE )  
 BAILEY, PLLC, GREEN COUNTRY )  
 LAW GROUP, LLLP, GREEN )  
 COUNTRY LAW GROUP, PLLC, and )  
 CHARLES BAILEY, )  
 )  
 Defendants/Appellees. )

Case No. 122,913

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APPEAL FROM THE DISTRICT COURT OF  
MUSKOGEE COUNTY, OKLAHOMA

HONORABLE LAURA FARRIS, ASSOCIATE DISTRICT JUDGE

**AFFIRMED**

Jonathan Nation  
NATION LAW FIRM LLC  
Tulsa, Oklahoma

For Plaintiff/Appellant

John David Lackey  
LACKEY BENNETT, P.C.  
Tulsa, Oklahoma

For Defendants/Appellees

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Scott Baker appeals both the court's grant of summary judgment in favor of the defendants and the court's denial of his motion to vacate. Upon review, the grant of summary judgment and the denial of the motion to vacate are both hereby affirmed.

**I.**

On July 12, 2023, Mr. Baker filed a petition, based on legal malpractice, alleging that attorney C. Wayne Bailey overcharged him for work done on an appeal for Mr. Baker's divorce case. On January 9, 2024, Mr. Baker filed a revised petition against Mr. Bailey and various law offices,<sup>1</sup> specifically alleging breach of contract. The defendants filed an answer and later, a motion for summary judgment. In the defendants' motion for summary judgment, they alleged that the named defendants were not parties to the contract, the breach of contract claim was time barred by the statute of limitations, and there was no evidence that the contract was breached. No response to the motion for summary judgment was ever filed, and Mr. Baker did not appear at the parties' summary judgment hearing. At the hearing on December 5, 2024, the court orally granted the defendants' motion for summary judgment. The summary judgment order was filed on the following day.

On January 3, 2025, Mr. Baker filed a motion to vacate the summary judgment order, alleging that he did not have notice of the summary judgment

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<sup>1</sup> The petition named the Law Office of C. Wayne Bailey, PLLC, Green Country Law Group, LLP, Green Country Law Group, PLLC, and Charles Bailey as an individual as defendants. ROA, Tab 2, *Revised Petition*, pg. 1.

hearing. The motion to vacate was denied on January 30, 2025, and filed on January 31, 2025. Mr. Baker appealed from both the order granting summary judgment and the denial of his motion to vacate.

## II.

Because Mr. Baker's motion to vacate was filed within ten days of the summary judgment, Mr. Baker is able to appeal from both the denial of the motion to vacate and the court's grant of summary judgment defendants.

We review an order granting summary judgment *de novo*. *Boyle v. ASAP Energy, Inc.*, 2017 OK 82, ¶ 7, 408 P.3d 183, 187. This Court assumes plenary and non-deferential authority to reexamine a district court's legal rulings. *John v. St. Francis Hospital, Inc.*, 2017 OK 81, ¶ 8, 405 P.3d 681, 685. Summary judgment will be affirmed only if the Court determines that there is no dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *Lowery v. Echostar Satellite Corp.*, 2007 OK 38, ¶ 11, 160 P.3d 959, 963-64. All inferences and conclusions to be drawn from the materials must be viewed in a light most favorable to the nonmoving party. *Tiger v. Verdigris Valley Electric Coop.*, 2016 OK 74, ¶ 13, 410 P.3d 1007, 1011.

The standard of review for a trial court's ruling either vacating or refusing to vacate a judgment is abuse of discretion. *Ferguson Enterprises, Inc. v. Webb Enterprises, Inc.*, 2000 OK 78, ¶ 5, 13 P.3d 480, 482; *Hassell v. Texaco, Inc.*, 1962 OK 136, 372 P.2d 233. A clear abuse-of-discretion standard includes appellate review of both fact and law issues. *Christian v. Gray*, 2003 OK 10, ¶ 43, 65 P.3d 591, 608.

### III.

In his petition in error, Mr. Baker only asks this Court to review whether the trial court correctly determined that Mr. Baker's breach of contract claim was barred by the five-year statute of limitations for breach of contract actions.

In their motion for summary judgment, the defendants averred that Mr. Baker and Bailey Law, PLC,<sup>2</sup> entered into a contract and the law firm agreed to represent Mr. Baker "for the limited purpose of bringing an appeal related to property awards made in his divorce case." ROA, Tab 4, *Defendants' Motion for Summary Judgment*, Exhibit 1. Additionally, the contract provides that the law firm cannot and does not guarantee the results desired, and that Mr. Baker would pay the agreed rate regardless of the outcome of the case. *Id.* Mr. Bailey filed a petition in error for Mr. Baker on January 27, 2017. *Id.*, Exhibit 2. The defendants alleged that the final work performed by Bailey Law, PLC, for Mr. Baker on the appeal occurred on February 26, 2018. *Id.*, Exhibit 4. The Court of Civil Appeals affirmed the order of the trial court on October 25, 2018, specifically holding that Mr. Baker failed to provide the trial court with any evidence that would support his claims on appeal.

Mr. Baker filed his first petition against the defendants on July 12, 2023, raising claims related to legal malpractice.<sup>3</sup> Mr. Baker filed an amended petition

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<sup>2</sup> Bailey Law, PLC, was never made a party. The contract was signed by Wayne Bailey, as manager of Bailey Law, PLC.

<sup>3</sup> Notably, "[a]n action for legal malpractice is an action for tort and is governed by the two-year statute of limitation found in 12 O.S. § 95. A cause of action for legal malpractice accrues when a litigant can maintain an action to a successful conclusion."

on August 21, 2023, which dropped the legal malpractice claim but added claims for breach of contract and unjust enrichment. In their summary judgment motion, the defendants state that the statute of limitations for written contracts is five years pursuant to 12 O.S. § 95(A)(1). The Oklahoma Supreme Court, in *Morgan v. State Farm Mut. Auto. Ins. Co.*, 2021 OK 27, ¶ 23, 488 P.3d 743, 749, held that a breach of contract action accrues when the contract is breached even if the plaintiff does not sustain damages resulting from the breach until later. *See also U.S. Fid. & Guar. Co. v. Fid. Trust Co.*, 1915 OK 946, ¶ 3, 153 P. 195, 198 (“Whenever one person may sue another, a cause of action has accrued, and the statute begins to run. In the law of contracts, the statute of limitations begins to run against a party to the contract, himself not in default, when the contract is broken by the other party, but not before that time.”). Because Mr. Baker’s breach of contract claim exclusively relates to the work done by Bailey Law, PLC and attorney Wayne Bailey on his appeal from his divorce case, it follows then that any alleged breach had occurred by the time the work on that appeal was complete. The defendants provided the trial court with invoices demonstrating that the final work on the appeal was completed on February 26, 2018. Accordingly, Mr. Baker’s petition filed on July 12, 2023, was untimely, as it was filed more than four months after the statute of limitations expired in February 2023.

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*Marshall v. Fenton, Fenton, Smith, Reneau & Moon, P.C.*, 1995 OK 66, ¶ 8, 899 P.2d 621, 623.

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 the party alleges remain in dispute and provide supportive evidentiary materials justifying trial on the issue. *Dept. of Securities ex rel. Faught v. Wilcox*, 2011 OK 82, ¶ 18, 267 P.3d 106. Thus, in light of the defendants showing that the final work on the appeal was completed in February 2018, the burden shifted to Mr. Baker to show that the statute of limitations should have run from a later date, which in turn would render his petition timely. However, as explained above, Mr. Baker did not file a response to the defendants' motion for summary judgment, and neither he, nor counsel, attended the summary judgment hearing.

At the hearing, the court first orally granted summary judgment in favor of the defendants, finding, among other things, that Mr. Baker could not "survive the challenge regarding the statute of limitations." ROA, Tab 5, Tr. (Dec. 5, 2024), pg. 8. In his motion to vacate, Mr. Baker argued that the trial court's order granting summary judgment should be vacated because he was not aware of the hearing on the defendants' summary judgment motion and, thus, the case was not heard on the merits.<sup>4</sup> He does not argue that any of the causes listed in 12

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<sup>4</sup> The record reflects that Mr. Baker was indeed aware of both the summary judgment motion and the hearing. The certificate of service attached the defendants' summary judgment motion reflects that the motion was sent via U.S. mail to Mr. Baker's attorney at the time, Jason Lile, and to Scott and Bonny Baker. ROA, Tab 4, *Defendants' Motion for Summary Judgment*, pg. 9. On October 24, 2024, the court granted Mr. Lile's request to withdraw from the case. Supplemental ROA, Tab 2, *Order Allowing Withdrawal*, pg. 1. The court also ordered that a hearing on any and all pending motions was set for December 5, 2024. *Id.* On December 3, 2024, Mr. Baker filed an objection to the court's order allowing withdrawal. Supplemental ROA, Tab 3, *Objection to Order Allowing Withdrawal*. Mr. Baker

O.S. § 1031 warrant vacatur of the order granting summary judgment; rather, he generally states that because the motion to vacate was filed within thirty days of the final order, as required in 1031.1(B), “this Court enjoys the authority to vacate this order for any reason or no reason at all.” ROA, Tab 6, *Motion to Vacate*, pg. 2. Mr. Baker’s position is that the court should have vacated the summary judgment order because “Oklahoma law provides that courts should disfavor decisions not on the merits and that decisions on the merits should be accomplished whenever possible.” *Id.* However, as described above, a review of the court’s order and transcript of the summary judgment hearing show that judgment was rendered in favor of the defendants on the merits as it was not a default order. Therefore, the court did not abuse its discretion in denying the motion to vacate.

Even though Mr. Baker did not sufficiently dispute, either by motion or at the summary judgment hearing, the defendant’s argument that the plaintiff’s breach of contract claim was time barred, this court has previously held:

The granting of summary judgment ultimately depends upon a determination by the trial court of whether there is a substantial controversy as to any material fact. Even when no counterstatement has been filed, it is still incumbent upon the trial court to insure that the motion is meritorious. The trial court must examine the evidentiary materials supporting the motion and if all the material

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objected to Mr. Liles’s withdrawal in part due to the fact that the defendants’ motion for summary judgment was “nearing.” *Id.* at pg. 2. Additionally, Mr. Baker alleged that he was not notified of the court’s order allowing Mr. Liles to withdraw until November 16, 2024. *Id.* Therefore, the record reflects that Mr. Baker received the summary judgment motion, was made aware of the court’s order allowing withdrawal and setting hearing for December 5, 2024, and still did not file a response to the motion for summary judgment or attend the hearing. We also note that court rules permit the trial court to rule on a summary judgment motion without *any* hearing. Okla. Dist. Ct. R. 13(f) (emphasis supplied).

facts are addressed and are supported by admissible evidence, those facts are admitted and judgment for the movant is proper.

*Spirgis v. Circle K Stores, Inc.*, 1987 OK CIV APP 45, ¶ 10, 743 P.2d 682, 685.

*Spirgis* makes clear that even when a party does not file a response to summary judgment or attend a summary judgment hearing, the court is not relieved of its obligation to ensure the summary judgment motion is meritorious.

Recognizing this obligation, the trial court, at the hearing on Mr. Baker's motion to vacate, directly asked counsel for Mr. Baker, "Do you believe that there is evidence to be presented that would somehow overcome the Court's ruling regarding what is a very technical issue regarding the statute of limitations?" ROA, Tab 5, Tr. (Dec. 5, 2024), pg. 8. Counsel for Mr. Baker responded that the date of *discovery* of the breach of contract was relevant and made the following confusing statement, "some of the work that plaintiff—that defendant did was within the five years of the contract, that his performance was ongoing, and that the breach was actually later than the SOL." *Id.* at 9. To the extent that Mr. Baker is alleging that the law firm performed more work on his case after February 26, 2018, thereby extending the statute of limitations, we find that Mr. Baker must provide more than bald contentions or statements in order to show that a question of fact still exists regarding the last date of work performed. *Dept. of Securities ex rel. Faught v. Wilcox*, 2011 OK 82, ¶ 19, 267 P.3d 106, ("In attempting to show the existence of a question that must be tried, the party may not rely on bald contentions that facts exist to defeat the motion."). Mr. Baker could have provided the court with an alternative date or presented the court

with another invoice showing that more work had been done on the appeal after February 26, 2018, but failed to do so.

Additionally, regarding Mr. Baker's discovery rule argument, our Supreme Court has held as follows: "The discovery rule does not apply to an action for breach of contract under Oklahoma law. The claim accrues when the contract is breached, regardless of whether the plaintiff knows, or in the exercise of reasonable diligence, should have known of the breach." *Morgan v. State Farm Mut. Auto. Ins. Co.*, 2021 OK 27, ¶ 31, 488 P.3d 743, 753. Additionally, the Court held that a plaintiff "acquires the legal right to sue when the first two elements are present: formation of a contract and breach of the contract. At that point, the cause is actionable and the plaintiff is entitled to nominal damages." *Id.* ¶ 24. After reviewing Mr. Baker's revised petition, we find that his breach of contract claim against the defendants is based on their purported failure to provide adequate briefing in violation of their contract which provided that the law firm would provide "services necessary to preserve the appellate issue related to the inappropriate award of such Property to the Petitioner in that divorce case in order to protect the interests of Bonny Baker." ROA, Tab 2, *Revised Petition*, pg. 4. Specifically, Mr. Baker contends that the brief was inadequate based on its brevity, its lack of citation to legal authority, its cost, and the time it took to file the brief.

Accordingly, although we have doubts about whether those purported deficiencies constitute a breach of contract, Mr. Baker acquired the legal right to sue when the first two elements of contract formation were present: formation of

a contract and breach of that contract. According to Mr. Baker's revised petition, the breach occurred when Mr. Bailey and the law firm drafted his appellate brief and were otherwise handling his appeal. Even though Mr. Baker did not sustain damages until the Court of Civil Appeals decision affirmed the trial court, thereby rejecting his appellate arguments, our caselaw is clear that a breach of contract claim "accrues when the contract is breached, regardless of whether the plaintiff knows, or in the exercise of reasonable diligence, should have known of the breach." *Morgan v. State Farm Mut. Auto. Ins. Co.*, 2021 OK 27, ¶ 23, 488 P.3d 743, 749. Therefore, because the defendants provided evidence that the last date the law firm worked on the appeal was February 26, 2018, and Mr. Baker did not sufficiently dispute that fact during the summary judgment stage, in the motion to vacate, or during the hearing on the motion to vacate, we find that the trial court correctly determined that Mr. Baker's breach of contract claim was time barred and that the defendants were entitled to judgment as a matter of law. The order granting summary judgment in favor of the defendants is hereby affirmed.

**AFFIRMED.**

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

April 8, 2026