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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

JUN 18 2026

SELDEN JONES
CLERK

Case No. 122,458

HARRISON BUSINESS PARK, LLC,)
an Oklahoma limited liability company,)

Plaintiff/Appellant,)

vs.)

MJ INNOVATIONS LLC, an Oklahoma)
limited liability company; SHAWN)
MATHEWS, an individual; PAUL)
JAMES, an individual,)

Defendants/
Third-Party Plaintiffs/Appellees,)

vs.)

SOUTHSTAR PM, INC., an Oregon)
corporation; ANDREW SOUTH, as an)
officer of Southstar PM, Inc., and as a)
member of Harrison Business Park,)
LLC, and PETER L. DWARES, as)
member of Harrison Business Park,)
LLC,)

Third-Party Defendants/
Appellants.)

Received:	6-18-26
Docketed:	
Marshal:	
COA/OKC:	
COA/TUL:	

APPEAL FROM THE DISTRICT COURT OF
POTTAWATOMIE COUNTY, OKLAHOMA

HONORABLE JOHN G. CANAVAN, JR., DISTRICT JUDGE

AFFIRMED

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Defendants/Appellants

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For Defendants/Third-Party
Plaintiffs/Appellees

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Appellants, Harrison Business Park (HBP) and Southstar P.M., Inc., Andrew South, and Peter Dwares (collectively “Southstar”), appeal the court’s order awarding HBP attorney fees and denying the same to Southstar. The appellants contend that the court should have awarded HBP more fees, and that it erred in determining that Southstar was not entitled to recover any fees. Upon review, the fee award is affirmed.

I.

HBP owns real property in Shawnee, Oklahoma, and leased 1,600 square feet of retail space to MJ Innovations LLC, Shawn Mathews, and Paul Jones (collectively “MJ Innovations”). On June 20, 2019, HBP filed a petition for forcible entry and detainer and collection of rent and damages against MJ Innovations in small claims court. HBP alleged that MJ Innovations was in violation of the parties’ lease agreement because it was impermissibly selling cannabis. HBP sought termination of the lease and right to possession.

The district court ordered the transfer of the case to the civil docket, finding that the amount in controversy exceeded the jurisdictional limit for small claims court. HBP then filed another petition against MJ Innovations for ejectment, collection of rent and damages, and declaratory and injunctive relief. MJ Innovations filed an answer and a third-party petition against Southstar,

alleging that as officers and members of HBP, Southstar made fraudulent representations to MJ Innovations regarding the terms of the lease.

On February 27, 2020, HBP filed a motion for summary judgment. In its motion, HBP claimed that the tenants agreed to use the premises for “medicinal products and oils.” Four months after the parties executed the lease, Oklahoma voters approved State Question 788, legalizing medical marijuana. HBP contended that at some point the tenants began operating a medical marijuana dispensary on the premises under a different trade name than the one listed in the lease. Further, HBP alleged that because cannabis and its derivatives were illegal at the time the lease was executed and are still illegal under federal law, MJ Innovations was in violation of their lease agreement.¹ The court denied HBP’s motion for summary judgment on July 9, 2020.

Roughly one year later, HBP filed a motion for partial summary judgment on its claim for collection of rent and damages. HBP alleged that it was entitled to \$2,055.00 because MJ Innovations did not pay rent for the months of March, April, and May in 2021.² A court minute reflects that the court held a hearing on the partial summary judgment motion on September 20, 2021, and the court ultimately granted HBP’s motion. A transcript of this hearing does not appear in the record.

¹ HBP also contended that MJ Innovations, in apparent violation of the parties’ lease agreement, was soliciting business and putting up advertising materials on the premises.

² According to the partial summary judgment motion, tenants owed \$4,050 in rent (3 months at \$1,350 per month), plus \$405.00 in late fees, less their deposit credit of \$2,400, totaling \$2,055.00.

Southstar also filed a motion for summary judgment on MJ Innovations' claims. Southstar argued that it was entitled to summary judgment because MJ Innovations failed to plead fraud with particularity and failed to state a quantum meruit claim. The court held a hearing on Southstar's motion for summary judgment on November 22, 2022. After the hearing, the court found that the motion for summary judgment was deemed confessed pursuant to Okla. Dist. Ct. Rule 4(e) because MJ Innovations did not file a response or objection to the motion. The court also agreed with Southstar that MJ Innovations had failed to state a fraud claim and a claim for quantum meruit.

HBP filed an application for costs and attorney fees in the amount of \$69,825.06, alleging that pursuant to the parties' lease agreement it was entitled to fees as a prevailing party. On December 13, 2021, HBP filed a motion to supplement its application for costs and attorney fees. In the motion, HBP sought recovery of costs and attorney fees "in the amount of \$16,299.95 incurred in relation to the Defendants' Third-Party Petition and the related grant of summary judgment in favor in favor of each of the Third-Party Defendants." ROA 248.

On the same day, the court issued its journal entry of judgment granting partial summary judgment in favor of HBP on its claim for unpaid rent and damages in the amount of \$2,055.00.

On March 3, 2022, counsel for MJ Innovations filed a motion to withdraw. Specifically, in the motion counsel asked that "Nicholas S. Paynter and Scissortail Legal Group, PLLC" be allowed to withdraw due to a breakdown in

communication with MJ Innovations. ROA 273. The court granted the order the same day.

On April 21, 2022, the court granted HBP's application for costs and attorney fees, finding that MJ Innovations failed to appear and that HBP and Southstar were entitled to fees in costs in the aggregate sum of \$86,125.01. However, on May 19, 2022, attorney Julie M. Ezell of Scissortail Legal Group, PLLC, filed a motion to vacate the default judgment on HBP's application for fees on behalf of MJ Innovations. In the motion to vacate, she alleged that a clerical error in 2021 caused mail for MJ Innovations to be sent to an incorrect address and that MJ Innovations was unaware of counsel's new telephone number which further prevented communication. MJ Innovations asked that the court vacate its journal entry on fees to allow it to offer defenses to the application for fees and costs. The court ultimately granted the motion to vacate after a hearing on July 7, 2022.

On August 11, 2022, HBP filed a second supplement to its application for fees and costs. In this motion, HBP requested that it be entitled to recover additional fees and costs in the amount of \$23,673.76, incurred from December 1, 2021, through July 31, 2022. MJ Innovations filed an objection. The court held a hearing on November 9, 2022, addressing all three fee applications previously filed by HBP. A transcript of this hearing also does not appear in the record. After the hearing, the parties submitted proposed findings of fact and conclusions of law to the court.

On February 3, 2023, the court issued an order finding that there had been no adjudication on HBP's remaining claims against MJ Innovations and, accordingly, an award of attorney fees to HBP and Southstar was premature.

On May 11, 2023, MJ Innovations filed a motion to dismiss HBP's remaining causes of action as moot because it had vacated the premises and HBP was in possession of the property at issue. However, before the court could rule on the motion to dismiss, HBP dismissed its remaining claims of declaratory and injunctive relief and ejectment without prejudice.

Then, on August 23, 2023, HBP filed a motion to set a hearing for its application for costs and attorney fees. A hearing was set for October 16, 2023; however, it ultimately was not held due to scheduling conflicts. HBP filed another motion to set a hearing on fees on December 28, 2023. The record reflects that the hearing was set for January 4, 2024, and then continued to February 29, 2024. It appears that a hearing was held that day due to a court minute stating that the court took the fee issues under advisement; however, no transcript of this hearing is contained in this record. The parties again submitted proposed findings of fact and conclusions of law to the court.

After taking the matter under advisement, the court adopted MJ Innovations' findings of fact and conclusions of law and issued an order finding that Southstar was not entitled to attorney fees because it was not a party to the lease agreement. Additionally, the court awarded HBP attorney fees and costs directly attributable to the preparation and filing of the partial motion for

summary judgment, which the court found to be \$2,000 in fees and the \$50.00 court cost to file the motion. ROA 490. It is from this order that HBP appeals.

II.

Whether a party is entitled to an award of attorney fees and costs presents a question of law subject to review *de novo*. *State ex rel. Dep't of Transp. v. Cedars Grp., L.L.C.*, 2017 OK 12, ¶ 10, 393 P.3d 1095, 1100. The reasonableness of attorney fees depends on the facts and circumstances of each individual case and is a question for the trier of fact. *Parsons v. Volkswagen of Am., Inc.*, 2014 OK 111, ¶ 9, 341 P.3d 662, 666–67. The standard of review for considering the trial court's award of an attorney fee is abuse of discretion. *Id.* Reversal for an abuse of discretion occurs where the lower court ruling is without rational basis in the evidence or where it is based upon erroneous legal conclusions. *Id.*

III.

A.

The appellants first argue that the district court erred in finding that HBP's attorney fees were limited to those directly attributable to the preparation and filing of the partial motion for summary judgment and erred in finding that HBP's attorney fees were unreasonable and excessive. Oklahoma follows the American rule as to the recovery of attorney fees. The rule is generally that each litigant pays for their own legal representation, and our courts are without authority to assess attorney fees in the absence of a specific statute or contract allowing for their recovery. *State ex rel. Tal v. City of Okla. City*, 2002 OK 97, ¶ 16, 61 P.3d

234, 243. Here, the parties' lease agreement addresses attorney fees and costs as follows:

16.03 Legal Expenses: If suit shall be brought or claim shall be made by either party hereto (whether or not suit is commenced or judgment entered) for recovery of possession of the Leased Premises, recovery of rent or any other amount due under the provisions hereof, enforcement of any covenants or conditions contained herein, because of the breach of any such covenants or conditions, or on account of any other matter or issue arising from entering into of this Lease and the occupancy by Tenant of the Leased Premises, in addition to all other sums and relief then available, the prevailing party shall be entitled to receive from the other party or, if action has been commenced, the court or arbitrator shall enter judgment for the prevailing party and against the other party for, all expenses incurred by the prevailing party, including, without limitation, expert witness fees, court costs and reasonable attorney fees.

ROA 136. Thus, pursuant to the parties' lease agreement, to recover the costs and attorney fees in this matter HBP must establish that it was the prevailing party.

The trial court found that HBP was only a prevailing party on its partial motion for summary judgment for collection of rent. Because HBP voluntarily dismissed its other claims, the court limited HBP's recovery of fees to what it incurred in drafting and filing that motion. However, on appeal, HBP alleges that it is entitled to recover the full amount of fees requested for work done on all of its claims because it ejected MJ Innovations from the premises, stopped its non-conforming business activity and non-conforming signage activity, obtained a money judgment against MJ Innovations, and effectively mooted the controversy. In support of this argument, HBP cites federal cases which have held that a party may prevail and be entitled to attorney fees when remedial action by the defendant effectively moots the controversy. *See Brief-in-Chief*, pg. 8. Essentially,

HBP contends that it engaged its attorney to acquire an ejectment and injunctive relief. Because MJ Innovations left the premises, although it appears MJ Innovations only left due to its mistaken belief that the lease term had expired³ and not because of any action taken by HBP or Southstar, HBP contends that it received the relief sought and is therefore a prevailing party pursuant to the lease agreement.

However, Oklahoma caselaw does not support this contention. Although most of our cases involve “prevailing party” status pursuant to statute, as opposed to contract, the analysis is still pertinent to help us determine whether HBP is a prevailing party on claims it voluntarily dismissed without prejudice. Recently, our Supreme Court reiterated that the definition of “prevailing party” is the party who prevails on the merits as determined by the final judgment. *Comanche Nation of Oklahoma ex rel. Comanche Nation Tourism Ctr. v. Coffey*, 2020 OK 90, ¶ 11, 480 P.3d 271, 275. In other words, “the prevailing party is the one in whose favor the decision or verdict is rendered and the judgment entered.” *Hastings v. Kelley*, 2008 OK CIV APP 36, ¶ 10, 181 P.3d 750. “Coinciding with its ordinary meaning, ‘prevailing party,’ as a legal term of art, means the successful party who has been awarded some relief on the merits of his or her claim.” *Sooner Builders & Inv., Inc. v. Nolan Hatcher Constr. Serv., L.L.C.*, 2007 OK 50, ¶ 17, 164 P.3d 1063.

³ “[MJ Innovations] missed the last 3 monthly payments under the Lease Agreement by mistakenly believing their lease obligation terminated at the end of February 2021 instead of May 30, 2021. The 3 missed payments resulted in [HBP] filing is MPSJ and obtaining judgment against [MJ Innovations] in the amount of \$2,055.00 relating to unpaid rent for March, April, and May 2021.” *Answer Brief*, pgs. 8-9.

HBP contends that the lease agreement provides for the prevailing parties' attorney fees "whether or not suit is commenced or judgment entered." ROA 136. However, reading the provision in its entirety, we note that "if any action has been commenced, the court or arbitrator shall enter judgment for the prevailing party and against the other party." *Id.* Thus, consistent with the parties' lease agreement and the above-cited cases, we find that the prevailing party is the one in whose favor the decision or verdict is rendered and the judgment entered. The court did not render judgment in favor of HBP on its claims for ejectment and injunctive/declaratory relief. Indeed, because MJ Innovations voluntarily vacated the premises and, in turn, stopped the allegedly impermissible action complained of in requests for injunctive relief, HBP could not have maintained those causes of action to a successful and meritorious conclusion.⁴ Accordingly, we find that the trial court did not abuse its discretion in limiting HBP's fees to the amount incurred for working on and filing the partial motion for summary judgment for collection of past-due rent, on which HBP was the prevailing party.

HBP does not contend that the court's award of \$2,050.00 for the work done was insufficient. Rather, it generally argues that trial courts must consider

⁴ In its petition, HBP states that it is entitled to declaratory relief under 12 O.S. § 1651, specifically asking the court to determine that MJ Innovations' use of the premises was unlawful and in violation of the lease agreement. ROA 32. Additionally, for its ejectment claim, HBP argued that MJ Innovations was wrongfully in possession of the premises based on its breach of the covenants, conditions, and agreements in the lease and it refused to surrender possession of the premises to HBP. ROA 33. However, as discussed throughout this opinion, HBP is now in possession of the premises because MJ Innovations voluntarily vacated the premises. Thus, even if the claims had not been voluntarily dismissed by HBP, it is unclear how it could have pursued these remaining claims to a successful conclusion because MJ Innovations was no longer occupying the premises and therefore no longer engaging in any allegedly unlawful behavior.

the factors outlined in *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659, and the Court's pronouncement in *Fleig v. Landmark Constr. Grp.*, 2024 OK 25, 549 P.3d 1208, that a fee order must "set forth with specificity the facts and computation to support the award." *Id.* ¶ 11. HBP contends that in the present case "the trial court identified no hours it deemed excessive or unreasonable and offered no explanation for its drastic reduction." *Reply Brief*, pg. 6.

We disagree with this characterization of the trial court's order and note that the trial court adopted MJ Innovations findings of fact and conclusions of law and issued a journal entry ordering fees. The court's fee order specifically found that HBP was awarded fees and costs "directly attributable to the preparation and filing of the Partial Motion for Summary Judgement, which appear to be \$2,000 and the \$50.00 court cost to file the same." ROA 490. Meanwhile, in its findings of fact and conclusions of law, the court details several Oklahoma cases discussing the amount involved and results obtained are guiding factors to be considered by the trial court in determining the amount of attorney fees to award. ROA 482. Further, the court held as follows:

An award of attorney's fees of \$104,666.26 for a \$2,055.00 judgment is excessive, unjust, and unfair. This case is not complex or novel. There has been no jury trial. There is no reasonable relationship to the amount of fees requested and the amount of the judgment obtained. Fees are being sought by parties that are not entitled to the same. The vast majority of fees sought are for claims on which [HBP] has not prevailed, or fees that were expended for [Southstar], which are not awardable. [HBP's] success has been minimal. It wasn't [HBP's] Motion that made [MJ Innovations] vacate the property. It was the expiration of the Lease Agreement. [HBP's] sole Judgment in almost three years of litigation is \$2,055.00 [HBP] dismissed all claims in their original Petition after [MJ Innovations]

filed a Motion to Dismiss the same. Under the case law presented above, the Court exercises its equitable powers and limits the award to those time entries and fees directly attributable to the preparation and filing of the Partial Motion for Summary Judgment, which appear to be about \$2,000.00 and the \$50.00 court cost to file the same.

Accordingly, we cannot agree with HBP that the court “offered no explanation” for its reduction. Additionally, a review of the record reveals that the court set forth with specificity the facts and computation to support the award, as contemplated by *Fleig*. The trial court’s fee award in this case was reasonable and there was no abuse of discretion.

B.

Next, HBP and Southstar allege that the court erred in finding that Southstar was not entitled to attorney fees because it was a third-party beneficiary to the lease agreement. In support of this contention, the appellants cite 15 O.S. § 29 which dictates that “[a] contract, made expressly for the benefit of a third person may be enforced by him at any time before the parties thereto rescind it.” In *Great Plains Fed. Sav. & Loan Ass’n v. Dabney*, 1993 OK 4, 846 P.2d 1088, the Court held that the “primary issue in a case where the suing plaintiff claims third-party beneficiary status is whether the direct parties to the contract intended the third party to have such status.” *Id.* ¶ 9, 1093 (citing *Barbero v. Equitable Gen. Ins. Co.*, 1980 OK 23, ¶ 9, 607 P.2d 670, 673). Further, “[i]t is not necessary that the party be specifically named as a beneficiary but only that the contract be made ‘expressly for the benefit of a third person’ and ‘expressly’ simply means ‘in an express manner; in direct or

unmistakeable terms; explicitly; definitely; directly.” *Keel v. Titan Const. Corp.*, 1981 OK 148, ¶ 5, 639 P.2d 1228, 1231 (quoting *Watson v. Aced*, 319 P.2d 83, 86 (Cal. 1957)).

Southstar contends that it is a third-party beneficiary to HBP and MJ Innovations’ lease agreement because under Article I of the lease, which details its basic terms and definitions, the term “landlord” is defined as “Harrison Business Park, L.L.C.” with “C/O Southstar P.M., Inc.” listed directly below. ROA 128. Additionally, the signature block for “landlord” on the lease reflects that it was signed by Southstar P.M., Inc. ROA 139. The appellants contend that Southstar signing the lease agreement demonstrates Southstar’s status as a primary beneficiary. However, as noted above, whether a third-party beneficiary is named in any given contract is not the primary concern in third-party beneficiary analysis; rather, we must consider whether the lease agreement was made *expressly* for the benefit of Southstar.

First, we reject Southstar’s contention that its signature on the lease automatically demonstrates that the lease was made to benefit Southstar. The lease reflects that HBP was the landlord and that Southstar was merely signing on HBP’s behalf. We find it clear in reading the agreement that HBP benefits by receiving rent for leasing the premises and that MJ Innovations also benefits because it can use the leased space for its business endeavors. As the Court explained in *Keel*, in order for a party to successfully claim third-party beneficiary status to a contract that contract must be made expressly for the benefit of that third party. We find that in this case, a lease agreement between

landlord and tenant is not made for the express benefit of a property manager of the leased premises. This is true especially when the appellants' only argument regarding Southstar's third-party beneficiary status is that it signed the agreement on behalf of HBP, which is not relevant to the third-party beneficiary analysis under *Keel v. Titan Const. Corp.*, 1981 OK 148, ¶ 5, 639 P.2d 1228, 123. Accordingly, the trial court did not err in finding that Southstar was not entitled to recover its attorney fees in this case.

C.

Lastly, the appellants argue in the alternative that district court erred in finding that the third-party defendants are not entitled to attorney fees because they are parties to the lease agreement. As stated above, a party's entitlement to attorney fees is governed by either contract or statute. *Kay v. Venezuelan Sun Oil Co.*, 1991 OK 16, 806 P.2d 648, 650. In support of this argument, the appellants allege that Southstar is a party to the lease agreement because it signed the agreement. Therefore, because Southstar prevailed on its summary judgment motion on MJ Innovations claims for fraud and quantum meruit, the appellants maintain that it achieved prevailing party status pursuant to the lease agreement and are entitled to attorney fees. However, as discussed above, Southstar did not sign the agreement as a party; rather, it signed the agreement *on behalf of* HBP. This argument is rejected.

* * *

Upon careful review, we find that the trial court did not abuse its discretion by awarding HBP \$2,050.00 in attorney fees and costs. Additionally, the court

correctly determined that Southstar was not a party to the lease agreement between HBP and MJ Innovations and did not achieve third-party beneficiary status. As such, Southstar was not entitled to recover attorney fees and costs. The court's order awarding fees to HBP and denying Southstar's fees is hereby affirmed.

AFFIRMED.

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

June 18, 2026