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See Okla.Sup.Ct.R. 1.200 before citing.

ORIGINAL

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

ANDRANETTE BOYD,

Plaintiff/Appellee,

vs.

JEFFERSON EDWARDS,

Defendant/Appellant.

JUL - 8 2026

SELDEN JONES
CLERK

Case No. 122,257

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APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE SARA MURPHY BONDURANT, TRIAL JUDGE

REVERSED AND VACATED

Richard Parr
TOMERLIN, HIGH, HIGH
Oklahoma City, Oklahoma

For Petitioner/Appellee

Jefferson Edwards
Oklahoma City, Oklahoma

Pro se

OPINION BY JANE P. WISEMAN, PRESIDING JUDGE:

Jefferson Edwards appeals the trial court's denial of both his motion to vacate and his motion for new trial arising out of the issuance of a protective order. After review, we reverse for abuse of discretion and vacate the protective order in question.

FACTS AND PROCEDURAL HISTORY

Edwards and Plaintiff Andranette Boyd were involved in an altercation on December 27, 2020. Both parties called the police after the incident and sought protective orders against one another. In the case under appeal, the court granted Boyd an emergency order of protection on December 31, 2020.¹ The matter was continued until March 29, 2021, when the court granted Boyd a three-year final order of protection and denied Edwards' request for a protective order against Boyd.

More than a year and a half later, on December 22, 2022, Edwards filed a motion to vacate the protective order entered against him. In his "Second Amended Motion to Vacate/Lift Victim Protective Order," filed February 22, 2023, Edwards states that he "Petitions the Court to Vacate/Lift the Victim Protective Order entered March 29th, 2021 in **Boyd v. Edwards PO-2020-3022.**" He comments that he has not yet executed service of his motion. On page 33 of the motion, Edwards states:

Jefferson C. Edwards swear [*sic*] that all statements throughout this **MOTION TO VACATE/LIFT VICTIM PROTECTIVE ORDER** seeking RELIEF from the unjust FINAL VICTIM PROTECTIVE ORDER IN **BOYD V. EDWARDS PO-2020-3022** are true and correct.

¹ Edwards' case was filed as PO-2020-2995. Boyd's case, which is this case, was filed as PO-2020-3022.

Executed on February 17th, 2023 Pursuant to 28
U.S.C. § 1746; 18 U.S.C. § 1621.

Edwards' signature appears just below. Title 28 U.S.C. § 1746 addresses unsworn declarations under penalty of perjury and 18 U.S.C. § 1621 addresses perjury generally.

On March 1, 2023, Edwards filed a "2ND Proof of Service" in which he attached a certified return receipt which evidences that he mailed his "stamped filed Motion(s) . . . to Andranette Boyd's Attorney of Record Richard Parr with the United States Postal Service on February 22nd, 2023," and shows that it was signed and stamped received by Richard Parr on February 23, 2023.

On March 29, 2023, a Sheriff's Return was filed which confirms a summons was personally served on Boyd on March 27, 2023. The attached summons indicates it was received by the Oklahoma County Sheriff on February 22, 2023. The summons, which contains both protective order case numbers, names Andranette Boyd and directs her to file an answer to the attached petition within 20 days.

Edwards filed a motion for default judgment on March 24, 2023, which was before the date of service on Boyd. On April 26, 2023, Edwards filed a second request for default judgment. Attached to his filing is a copy of the Sheriff's return as proof of service on Boyd and his "2ND Proof of Service" for his service by mail of Boyd's attorney Richard Parr.

Boyd filed a response to the second amended motion to vacate objecting that the motion was over thirty pages, it was filed over thirty days after the VPO was entered, and it fails to set forth statutory grounds for vacating the VPO. Boyd's attorney asserted the matter could not be relitigated because Edwards's filings are "procedurally defective" as it has been over 30 days since the VPO was entered and Edwards was required to file a petition instead of a motion to vacate.

From the record, it appears that although Edwards titled his filing as a motion to vacate, he treated at least the second amended motion as a petition. He served the filing on both Boyd and her attorney. At the May 31, 2023 hearing, Boyd's attorney stated that the filing was procedurally defective because 30 days had passed since the filing of the order Edwards was seeking to vacate, and it is beyond the allowed page limit. In addressing Edwards' motion for default judgment, the court stated:

And the second amended Motion to Vacate is proced—procedurally defective. It is limited to 20 pages, and it is a Petition to Vacate, not a Motion to Vacate; however, I'm going to deny your request for default judgment because the higher courts do not—they do not look highly upon motions to—for default judgment.

And we have both parties here, so I will entertain your second amended Motion to Vacate/Lift the Victim Protective Order at this time.

The court heard argument of counsel and expressed concern that Edwards' petition was denied due to the lack of a police report, but Boyd's petition was

heard. Boyd's counsel replied, "Because we had a police report, Your Honor." Edwards objected contending Boyd did not present the police report because the police report is "a hundred percent against her; it's not against [him] at all." Later, when the court asked Boyd's attorney directly whether his client provided a police report, he replied, "Yes, Your Honor. That's my recollection." The court asked, "That would have applied to both matters?" Boyd's attorney replied, "Yes, Your Honor." Edwards interjected, "That did not happen." Edwards explained the report was not presented because he tried several times to get it, but it was not released until March 18, 2022.

The trial court denied Edwards' motion to vacate "on several grounds" because "it's not in compliance with local rules and statute." The court stated:

And that there is no new evidence that is presented to cause this Court to vacate the order; however, if this were to be filed in Case Number PO-2020-2995 with the appropriate evidence, testimony, and witnesses that led the Court to believe that it was through no fault of your own that you could not obtain a police report, then I think you are entitled to your hearing if it, in fact, existed and you did file one and you just could not obtain it due to COVID.

And that's what I was reading—when I was reading through your motion here, it alluded a lot that this had to do with COVID and the restrictions and the shutting down of OCPD and their front reception area, and so I know that there was often difficulty in obtaining these police reports.

And so I think this is the wrong matter for this motion, which should be a petition, and so I'm going to

deny this today with that understanding that possibly, this is appropriate for another matter; understood?

Edwards, however, does not appear to have been looking to have the order regarding his petition for protective order against Boyd overturned but to have the protective order issued against him and in favor of Boyd overturned because there was new evidence in the form of a police report.

A written order denying Edwards' motion was filed on April 26, 2024. On May 3, 2024, Edwards filed a motion for new trial which the court denied by a minute entry on May 13, 2024, with a final order denying the motion for new trial entered on May 16, 2024. Edwards timely appealed both the denial of his motion to vacate and his motion for new trial.

STANDARD OF REVIEW

"The trial court's disposition of a motion to vacate is generally reviewed for an abuse of discretion." *Murrow v. Penney*, 2023 OK 91, ¶ 18, 535 P.3d 1275.

We also review the trial court's denial of Edwards' motion for new trial for abuse of discretion. *See Watson v. BNSF Ry. Co.*, 2024 OK 74, ¶ 9, 561 P.3d 67. "An abuse of discretion occurs when a court bases its decision on an erroneous conclusion of law, or where there is no rational basis in evidence for the ruling." *Murrow*, 2023 OK 91, n. 9.

ANALYSIS

Edwards sought to vacate the protective order pursuant to 12 O.S.2021 § 1031 for fraud practiced by Boyd and her attorney, among other grounds. Section 1031 provides a district court has the “power to vacate or modify its own judgments or orders within the times prescribed hereafter: . . . 4. For fraud, practiced by the successful party, in obtaining a judgment or order; . . . 7. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending”

Edwards filed his request to vacate more than a year after the entry of the VPO. Title 12 O.S.2021 § 1033 provides:

If more than thirty (30) days after a judgment, decree, or appealable order has been filed, proceedings to vacate or modify the judgment, decree, or appealable order, on the grounds mentioned in paragraphs 2, 4, 5, 6, 7, 8, and 9 of Section 1031 of this title, shall be by petition, verified by affidavit, setting forth the judgment, decree, or appealable order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On this petition, a summons shall issue and be served as in the commencement of a civil action.

Title 12 O.S.2021 § 1038 provides: “Proceedings to vacate or modify a judgment, decree or order, for the causes mentioned in paragraphs 4, 5 and 7 of Section 1031 of this title must be commenced within two (2) years after the filing of the

judgment, decree or order,” except in special circumstances not applicable here.

Edwards complied with the requirements of § 1038.

Here, the trial court treated Edwards’ filing as a motion instead of a petition but upon closer inspection it is clear that Edwards substantially complied with the requirements for filing a petition. In *Yeagley v. Brewer*, 1976 OK CIV APP 30, ¶ 7, 551 P.2d 312, this Court concluded that a motion to vacate that is filed out of time “substantially complies with the statute if it contains all of the averments prescribed by the statute for a petition.” *Id.* (citing *Joe Walsh Advert., Inc. v. Phillips Tire & Supply Co.*, 1972 OK 90, ¶ 6, 498 P.2d 1391 (stating that substantial compliance with § 1033 is sufficient). In *Hawkins v. Hurst*, 1970 OK 56, ¶ 19, 467 P.2d 159, the Court stated:

A district court has full control of judgments rendered by it, during the term in which they are rendered, but, after that term has expired, is without jurisdiction to vacate or modify a judgment (which is not void on the face of the judgment roll) unless there is a substantial compliance with the provisions of the statutes which appeared as 12 O.S. 1961, § 1031 and following [(Fowler v. Goldfeder (1966), Okl., 418 P.2d 317)].

Although Edwards titled his filings as motions, even his original motion to vacate states that he is petitioning the court to vacate or lift the protective order pursuant to 12 O.S. § 1033 and 12 O.S § 1031(4). A review of the record on appeal reveals that Edwards provided proof of service by mail for Boyd’s attorney of a file

stamped copy of the motion to vacate and summons and a sheriff's return for personal service of summons on Boyd.

In *Horizons, Inc. v. Keo Leasing Co.*, 1984 OK 24, ¶ 4, 681 P.2d 757, the Supreme Court instructed: "The meaning and effect of an instrument filed in court depends on its contents and substance rather than on form or title given it by the author." In *Kennedy v. Chadwell*, 1943 OK 351, ¶ 28, 142 P.2d 979, the Supreme Court held:

Usually under our code an application for a new trial on the grounds of newly discovered evidence filed after the expiration of the term in which a judgment is rendered is drafted in the form of a petition under 12 O.S.1941 § 655. However, under our liberal rules of practice the fact that defendant styled his application an "amended motion for a new trial" is not of vital importance, since we classify a pleading by its contents rather than the name given it.

Although labeled a motion to vacate, Edwards clearly tried to follow the requirements to file a petition to vacate by completing service on Boyd and her attorney.

Edwards signed the motion swearing all statements in his filing were true and correct and he referenced two federal perjury statutes just above his signature. Even if his verification was lacking, a "[w]ant of verification constitutes a non-jurisdictional defect reachable by motion to strike" *In re Delaney*, 1980 OK 140, n. 3, 617 P.2d 886. In *Cedarbaum v. State ex rel. Adams*, 1951 OK 369, 240

P.2d 796, the Supreme Court held that the failure to verify a petition by county attorney was not fatally defective. It noted:

In *Texas Title Guaranty Co. v. Shepherd*, 184 Okla. 599, 89 P.2d 337, we held that the defects in a verification would be treated as waived where it was not challenged in the trial court by a motion to strike. In *First State Bank v. Carr*, 72 Okla. 262, 180 P. 856, we stated that failure to verify did not render a petition fatally defective and that such defect was waived by failing to call the court's attention thereto by a proper motion.

Id. ¶ 3.

We conclude the trial court erred in failing to treat Edwards' filing as a petition and consider his petition to vacate the protective order pursuant to § 1031(4).

In Boyd's petition for protective order filed on December 30, 2020, she alleges that she and Edwards were dating or had dated each other and that she and Edwards were or previously had been engaged in a sexual relationship. Edwards cites 12 O.S. § 1031(4) for this proposition, arguing that the court should have granted his motion to vacate due to the alleged fraud practiced by the successful party—in this case Boyd—in obtaining a judgment. Edwards asserts that Boyd and her attorney acted improperly by fraudulently alleging that she and Edwards were in a dating relationship and that he assaulted her on December 27, 2020.

Additionally, Edwards argues that the protective order was fraudulently procured because Boyd's attorney testified at the hearing on the motion to vacate

that he believed that a police report was presented to the court at the March 29 hearing, which Edwards contends is not true.

Edwards also alleges that the final protective order is voidable on the grounds that the judgment would not have been issued against him had it not been for unavoidable misfortune as contemplated by § 1031(7). Edwards claims that at the final protective order hearing he introduced email evidence that he sought a copy of the police incident report, which would have helped him in his own protective order case against Boyd as well as defend against Boyd's petition for protective order against him.

According to the transcript of the May 31, 2023 hearing on Edwards' motion to vacate, Boyd's attorney represents to the court that emergency protective orders were granted to both parties by the initial judge and both parties were also given a continuance to provide a police report of the incident.² At the next hearing where Judge Truong presided,³ Boyd's counsel moved to dismiss Edwards' petition for his failure to provide the police report, but according to what counsel recalls, Boyd provided one.

² May 31, 2023 Tr., p. 25, lines 5-13.

³ Edwards filed his case first, Case No. PO-2020-2995, and Boyd later filed hers, PO-2020-3022, but the docket sheets reflect that both petitions were heard by Judge Truong on March 29, 2021.

There can be no question that only one police report was made and filed arising from the December 27, 2020 incident. Judge Truong was admittedly unfamiliar with the protective order docket and was expecting the judge regularly assigned to this docket to handle the case at the final hearing, but this did not happen. At the conclusion of the second hearing on March 29, 2021, when both parties' respective petitions for protective order were heard, Judge Truong in the Final Order of Protection incorrectly recites on page 1 that the parties are in a "dating" relationship, that it is unknown whether a weapon was present, and that "a Final Order of Protection is necessary to protect [Boyd] pursuant to the Protection from Domestic Abuse Act" Then on page 2, paragraph 1, she finds no "domestic abuse and/or stalking of intimate partner" and the federal firearms prohibition does not apply. The initial judge who entered the emergency protective order on December 31, 2020, did not require Edwards to surrender any weapons in his possession, but in the March 2021 Final Order of Protection on page 5, paragraph 16, the court orders Edwards to "surrender all firearms and other dangerous weapons" to local law enforcement.

Boyd's counsel believes he recalls Boyd introducing a police report at the final hearing before Judge Truong. Edwards vigorously disputes this. Although we do not have a transcript of the March 2021 hearing, Judge Truong could not have reviewed and considered the police report of the incident and concluded that

it was “Unknown if Weapon Present” because the police report states that Boyd had firearms and pointed one at Edwards. According to the only police report of record in this case,⁴ there were two weapons present, both of which were handguns owned by Boyd and found in her vehicle—a loaded Smith & Wesson semi-automatic on the front seat and an unloaded revolver on the front floorboard in close proximity to its shells on the front seat of her car.

The officer reported that both Boyd and Edwards told him that “they are business partners and made no mention of any kind of dating or sexual relationship between the two of them.” After investigation at the scene, which is fully detailed in the report, the officer concluded that Boyd was the assailant and had unlawfully pointed a firearm at Edwards who was the victim. Based on the officer’s probable cause affidavit, Boyd was arrested at the scene and booked into the Oklahoma County jail for assault with a deadly weapon.

It defies credulity to believe Judge Truong reviewed the detailed report of a disinterested investigating officer and concluded that all of the officer’s findings

⁴ Although not initially available, according to Edwards and not disputed by Boyd, due to police COVID protocol and the Oklahoma City Police Department’s refusal to release the document for a substantial time period, Edwards ultimately submitted this report to the court numerous times, including as Exhibit C to his original December 22, 2022 Motion to Vacate Protective Order; as Exhibit C to his February 6, 2023 Amended Motion to Vacate Protective Order; as his “Amended Exhibit C” filed as part of “Amended Exhibit A” to his February 22, 2023 Second Amended Motion to Vacate Protective Order; and finally as Exhibit B to his November 20, 2023 “Motion to Introduce into [the] Record” which the court granted on January 26, 2024.

were not only unsubstantiated but 180 degrees incorrect. Despite her counsel's belief that Boyd presented a police report, based on the court's finding that the presence of a weapon was unknown and Edwards was not the victim but the assailant, the court could not have had the police report but entered the Final Protective Order based on erroneous findings of a dating relationship and "harassment" as stated in the court's minute entry on the docket sheet on March 29, 2021.⁵

When Edwards sought to vacate this Final Order and pressed the arguments summarized above, the reviewing judge is tasked with reexamining the basis for its entry and considering the validity of the movant's arguments, including those documents it accepted as "introduced into [the] record" as per its court minute of January 26, 2024. The court assumed that Boyd's counsel was correct that a police report had been submitted when Boyd was granted a protective order, but the court

⁵ It is not clear upon review how this conclusion of harassment can be supported without something more than the December 27, 2020 incident which does not constitute, as the statute requires:

a knowing and willful course or pattern of conduct by . . . an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer severe emotional distress and must actually cause substantial distress to the person.

22 O.S.2021 § 60.1(5). There is only one incident in the police report, and it cannot constitute a "course or pattern of conduct."

was understandably puzzled by the presence of a police report in Boyd's case but the denial of Edwards' request for a protective order for lack of that same police report. May 31, 2023 Tr., p. 13, l. 24 – p. 25, l. 1 and p. 24, lines 19-22.

The judge presiding over the May 2023 hearing on Edwards' motion to vacate entered an order on January 26, 2024, granting Edwards' motion to introduce evidence into the record, including the elusive police report, which is Exhibit B. The record contains no denial by Boyd of any of the matters contained in the police report. There being only one police report of this incident, which finds Boyd to be the assailant and resulted in her arrest for assault with a deadly weapon, casts doubt on the trial court's reliance on this police report for the entry of a protective order against not the assailant, but the victim of the assault, Edwards.

Based on the record before us, Boyd cannot have it both ways—she cannot on one hand represent that the police report was presented at the March 29 hearing (which she felt she needed to proceed with her petition) while on the other hand support her request with that police report which shows Edwards was the victim, not the perpetrator. Either no report was submitted, requiring dismissal or denial of her petition, or it was submitted, showing Edwards, not Boyd, was entitled to the protective order.

CONCLUSION

The protective order was granted without support in the record and against the clear weight of the evidence. For this reason, we conclude the trial court's denial of Edwards' petition to vacate and motion for new trial was an abuse of discretion, requiring reversal.

REVERSED AND VACATED.

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

BLACKWELL, J., dissenting:

The majority makes a valiant argument on the appellant's behalf that the protective order under review was erroneously entered. Perhaps so. But that is not the relevant question in this appeal from the denial of motions to vacate and for new trial filed more than a year and a half after the judgment was entered. While it is possible the protective order was erroneously entered, neither this court nor the trial court "is tasked with reexamining the basis for its entry," *Majority Opinion*, *supra*, pg. 14, unless and until the petitioner first proves a ground listed in our vacatur or new trial statutes. Because Edwards did not make the requisite showing, I respectfully dissent.

Edwards primarily argues, both below and on appeal, that the protective order was erroneous, spending little time on allegations of fraud or the like. One

such argument, however, was that it was fraud to have alleged in the initial petition for protective order that Boyd and Edwards were in a dating relationship because, according to Edwards, they weren't. But this is not the type of "fraud" contemplated by 12 O.S. 1031(4). Whether Boyd and Edwards were involved in a dating relationship is a question relevant to the protective order hearing, which was not appealed, and a transcript of which was not included in this record. Cases are legion noting that such an argument cannot be made in collateral proceedings. *See, e.g., Render v. Capitol Hill Undertaking Co.*, 1936 OK 66, ¶ 0, 56 P.2d 829 ("False evidence or perjury alone, relative to an issue tried, is not sufficient ground for vacating or setting aside a judgment; the fraud which will authorize the court to vacate a judgment must be extrinsic or collateral to the issues tried in the cause wherein the judgment was rendered; *it must be such fraud as to prevent the other from having a trial of the issues.*" (emphasis supplied) (syllabus of the Court)).

Edwards is also insistent that there was no police report at the protective order hearing and that Boyd's attorney's claim to the contrary at the vacatur hearing was fraudulent. But this is again a run-of-the-mill argument that the trial court simply erred in entering the protective order and that a new trial should have been granted. However, because Edwards' motion for a new trial was filed well after the ten-day deadline of 12 O.S. § 653, in order to get to any ground listed in § 651, Edwards was required to show either that he was "unavoidably prevented"

from filing his motion, or that he could not have timely discovered those grounds “with reasonable diligence.” 12 O.S. § 653, 655. While the majority makes much hay of this police report, what it demonstrates, and whether it was presented to the trial court at the protective order hearing, it is clear that if no police report was presented at the hearing, Edwards would have known as much *on the date of the hearing*. Thus, the trial court did not err in failing to grant a new trial on that basis, either.

In short, the majority puts the cart well before the horse. Because Edwards failed to prove the existence of any applicable ground for attacking a year-and-half-old judgment, the question of the correctness of that judgment was never before the trial court. It should not, therefore, be adjudicated in this court.

July 8, 2026