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

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

SEP - 9 2026

SELDEN JONES
CLERK

SUNSTAR, LLC, a domestic limited liability company,

Plaintiff/Appellant,

vs.

MARY KAY NABORS,

Defendant/Appellee,

and

THE BRYAN COUNTY ABSTRACT COMPANY, a domestic not for profit corporation; *et al.*,

Defendants.

Case No. 123,364

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APPEAL FROM THE DISTRICT COURT OF
BRYAN COUNTY, OKLAHOMA

HONORABLE MARK CAMPBELL, DISTRICT JUDGE

AFFIRMED

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OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Sunstar, LLC, appeals the trial court's grant of summary judgment in favor of defendant, Mary Kay Nabors. Upon review, the order granting summary judgment is affirmed because the material facts are undisputed and Sunstar cannot succeed on its theories of negligence and breach of contract against Nabors.

I.

Sunstar is a real estate development company that agreed to purchase 23.7 acres in Bryan County, Oklahoma, from Kent and Brenda Daniel. The Daniels hired The Bryan County Abstract Company (BCAC) to provide abstracting, title, and closing services for the transaction. BCAC then hired Ms. Nabors, an attorney, to examine title and prepare a title examiner's report. The report, dated March 15, 2021,[1] showed title vested in the Daniels. BCAC prepared the warranty deed and other closing documents, including a title insurance policy, that was issued through American Eagle Title Insurance.

After purchasing the property, Sunstar developed eighty lots with concrete streets, curbs, gutters, utilities, and other improvements. Sunstar proceeded to plat the development with the City of Durant, during which it discovered that the Choctaw Nation was the owner of 7.62 acres of the property described as NE/4 SW/4 lying East of the MK&T Railway.

[1] Nabors also examined title to this same property in 2003, when the Daniels purchased the property from other individuals.

Sunstar brought this action against BCAC and Nabors for breach of contract and negligence. Sunstar also brought claims against the Daniels and their predecessors-in-interest for breach of warranty. In its petition, Sunstar alleged that it relied, to its detriment, upon the representations of BCAC and Nabors that the title to the 23.7 acres purchased was marketable, and it is therefore entitled to damages.

The Daniels filed an answer and cross-petition, alleging that Nabors and BCAC erroneously determined that the Daniels received marketable title when they purchased, and, as a result, they were also entitled to damages.

Nabors filed answers to both the petition and cross-petition and also filed a motion for summary judgment shortly thereafter. In her motion for summary judgment, she alleged that she could not be found negligent because BCAC did not provide her with any abstract or supplemental abstract which contained the Choctaw deed, the legal description she was given to examine was not the same one that was used for the Daniels/Sunstar warranty deed and other closing documents, and she complied with the Oklahoma Title Examination Standards. She also argued that she did not enter into any contract with, or make any warranty to, either Sunstar or the Daniels.

Sunstar filed a response and partial motion for summary judgment as to Nabors's liability. Specifically, Sunstar contended that Nabors was negligent because she did not examine title to the Choctaw lands and incorrectly determined that the Daniels held marketable title to the Choctaw lands. As such, it is Sunstar's position that Nabors failed to satisfy the minimum title

examination requirements for issuance of a title insurance policy. Further, Sunstar alleged it was a third-party beneficiary of the contract between BCAC and Nabors and was therefore entitled to recover against her for her negligent breach of contract in addition to its tort claim. The Daniels filed a response to Nabors's motion for summary judgment and requested that it be denied.

On March 4, 2025, the court held a hearing on the parties' summary judgment motions and took all matters under advisement. On April 11, 2025, the court denied Sunstar's motion for summary judgment and granted Nabors's motion for summary judgment "as it relates to Plaintiff Sunstar and as it relates to Defendants Kent and Brenda Daniel." Tab 21, *Court's Order as to Defendant Mary Kay Nabors' Motions for Summary Judgment.*

Sunstar then filed a motion for the court to enter the summary judgment order as a final order allowing immediate appeal pursuant to 12 O.S. § 994, which was ultimately granted over Nabors's objection. It is from this order that Sunstar appeals.[2]

II.

The appellate standard of review of summary judgment is *de novo. Boyle v. ASAP Energy, Inc.*, 2017 OK 82, ¶ 7, 408 P.3d 183, 187. On appeal, 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

[2] The Daniels did not join Sunstar in this appeal.

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.

III.

A.

The issue to be decided in this appeal is whether the court properly granted summary judgment in favor of Nabors on Sunstar's breach of contract and negligence claims.[3]

First, we will address whether the court properly granted summary judgment in favor of Nabors on Sunstar's negligence theory. There are Oklahoma cases which address an abstractor's liability for the accuracy of the abstracts it prepares. *See, e.g., Leeper v. Patton,* 1923 OK 266, 215 P. 421; *Sackett v. Rose,* 1916 OK 2, 154 P. 1177. However, it appears there are no cases which address the liability of an attorney employed by an abstracting company, who was asked to aid in closing for the sale of property, to the buyers of that property for incorrectly determining title to the property was marketable. Based on the record before us, it does not appear that the material facts are in dispute; therefore, the

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[3] Oklahoma courts have consistently held that an action for breach of contract and an action in tort may arise from the same set of facts. *Leak-Gilbert v. Fahle,* 2002 OK 66, ¶ 20, 55 P.3d 1054, 1059. "At common law, privity of contract was required before a tort action could arise from a breach of duty created by contract—ie. limiting liability to contracting parties. However, liability for negligent breach of a contract with a third party is not necessarily dependent upon a pre-existing privity in legal relationship between the person injured and the person causing the injury." *Id.*

question to be addressed is whether Nabors was entitled to judgment as a matter of law on this theory of recovery.

The relevant undisputed material facts are as follows. Nabors, an Oklahoma attorney who does title examinations, was asked to prepare various title examiner's reports by BCAC. She was not asked to prepare any of her title examiner reports by Sunstar, and the record reflects she was unaware of who would be buying the property she examined. Neither Sunstar nor the Daniels received or reviewed any of Nabors's title examiner's reports prior to closing. Nabors stated in her deposition that she did not prepare the warranty deed used in the Sunstar/Daniels closing. Tab 12, *Appendix to Mary Kay Nabors' Motion for Summary*, Exhibit 1, pgs. 24-25. Nabors also stated that she did not prepare the American Eagle Title insurance policy for the Daniels and Sunstar closing.[4] *Id.* at 25. Nabors maintains that she did not prepare the closing affidavits executed by the Daniels and Sunstar for their closing. *Id.* It is also undisputed that the legal description of the property that Nabors examined was not the legal description used for the Daniels and Sunstar closing. *Id.*, Exhibit 9, pg. 3. It is undisputed that the abstracts and supplemental abstracts provided to Nabors for title examination did not contain the Choctaw deeds. *Id.*, Exhibit 7, pg. 3

Based on the foregoing, Nabors contended that she was entitled to summary judgment on Sunstar's negligence claim. She maintained that there is no authority holding an attorney liable for negligence when that attorney

[4] The insurance policy is not contained in this record.

examined the abstracts that were given to her by the abstract company, did not prepare the closing documents or warranty deed, and the closing documents contained a different legal description of the property than the one used in the abstracts previously examined. Further, she alleged that she followed and prepared her title opinions in accordance with the Oklahoma Title Examination Standards. Specifically, she cited 16 O.S. § 2.1 which provides: "It is unnecessary that attorneys require the entire abstract to be certified every time an extension is made. For the purpose of examination, an abstract should be considered to be sufficiently certified if it is indicated that the abstractors were bonded at the dates of their respective certificates." Thus, according to Nabors, she did not violate the Oklahoma Title Examination Standards because she merely reviewed the certified supplemental abstracts that BCAC provided to her to prepare her 2020 and 2021 title opinions.

In its petition in error, Sunstar alleges that the trial court erred in granting summary judgment in favor of Nabors because it raised issues that should be determined by a jury. For example, Sunstar contends that Nabors's determination that the Daniels held marketable title created an issue for determination by the jury of her negligence. According to Sunstar, Nabors was negligent because the Daniels had not owned the property at issue for the minimum thirty years to create marketable record title pursuant to 16 O.S. § 71 and Oklahoma Title Examination Standard 30.2. Marketable record title is defined as follows:

> A Marketable Record Title under the Marketable Record Title Act exists only where:

> 1. A person has an unbroken chain of title of record extending back at least thirty (30) years; and
> 2. Nothing appears of record purporting to divest such person of title.

16 O.S. § 30.2. Because the Daniels had not owned the property for the minimum thirty years to create marketable record title, Sunstar claims that Nabors's determination that they had marketable title constitutes negligence *per se*.[5]

However, as Nabors correctly stated in her motion for summary judgment, 16 O.S. § 2.1 provides that it is unnecessary that attorneys require the entire abstract to be certified every time an extension is made and, for the purpose of examination, "an abstract should be considered to be sufficiently certified if it is indicated that the abstractors were bonded at the dates of their respective certificates." *Id.* Here, Sunstar does not dispute that the certified supplemental abstracts given to Nabors by BCAC for her examination were bonded at the dates of their respective certificates. Nothing in § 30.2 imposes a requirement on an attorney to review thirty years of previous records when preparing a title opinion. Instead, 16 O.S. § 2.1 explicitly allows for an attorney to review the certified supplemental abstracts provided to her. Even though the Daniels had not owned the property for thirty years, Nabors's determination that title to the property was marketable was based on her review of the abstracts given to her, which was

[5] There are three elements required in order for a violation of a statute to rise to the level of negligence *per se*. *Boyles v. Oklahoma Natural Gas, Co.*, 1980 OK 163, 619 P.2d 613, 618. The party asserting negligence per se must establish that the injury complained of (1) was caused by the ordinance's violation, (2) was of the type intended to be prevented by the ordinance, and (3) the injured party was one of the class meant to be protected by the ordinance. *Id.* Sunstar does not address these elements in its motion and instead just plainly asks this court to find that Nabors's actions constitute negligence *per se*.

permissible under the Oklahoma Title Examination Standards. This proposition of error is rejected.

B.

Sunstar also argues in its petition in error that Nabors's alleged failure to prepare her 2021 report in compliance with the minimum requirements for issuance of a title insurance policy creates an issue for determination by the jury of her negligence. In its summary judgment motion, Sunstar cited 36 O.S. § 5001(C), which is a provision of the insurance code governing title insurers. We note at the outset that Nabors is not a title insurer, and Sunstar does not appear to be arguing that she is. Yet, Sunstar contends that Nabors violated 36 O.S. § 5001(C), which provides in relevant part that no commitment or policy of title insurance shall be issued in the State of Oklahoma except:

> 1. After examination by an attorney licensed to practice in this state of a duly certified abstract extension or supplemental abstract prepared by an abstractor licensed in the county where the property is located, from a certified abstract plant in the county where the property is located or per a temporary certificate of authority as provided in Section 33 of Title 1 of the Oklahoma Statutes, from the effective date of a prior owner's policy of title insurance issued by a title insurer licensed in this state provided by the insured, the prior title insurance producer or the prior title insurer, at the time a valid order is placed pursuant to the provisions of the Oklahoma Abstractors Law brought forward to the effective date of the abstract plant. Subject to the conditions and stipulations, the exclusions from coverage, exceptions from coverage and endorsements to the policy, any policy issued based on a prior owner's policy and a supplemental abstract shall insure the insured against loss or damage sustained or incurred by reason of unmarketability of title from sovereignty to the effective date of the policy, not to exceed the amount of insurance stated in the policy; or
>
> 2. If a prior owner's policy of title insurance is not provided, then a title insurance commitment and policy may be issued after examination by an attorney licensed to practice in this state of a

> duly certified abstract of title prepared by a bonded and licensed abstractor as defined in the Oklahoma Abstractors Law.

Id. § 5001(C)(1)-(2). Sunstar generally contends Nabors knew her 2021 report was intended for title insurance purposes and failed to provide the minimum required examination for issuance of a title insurance policy pursuant to § 5001(C). At her deposition, Nabors stated that she did not know that an examination of title was required to issue a title insurance policy. Tab 12, *Appendix to Mary Kay Nabors' Motion for Summary*, Exhibit 1, pgs. 14-15. According to Sunstar, Nabors's lack of knowledge of these requirements and failure to meet them constitutes negligence *per se*.

However, Sunstar does not explain *how* Nabors's actions violate this statute. In its summary judgment motion, Sunstar placed emphasis on the provision in § 5001(C)(1) which provides that title insurance may only be issued after an attorney's examination of a duly certified abstract extension or supplemental abstract prepared by an abstractor "from the effective date of a prior owner's policy of title insurance issued by a title insurer licensed in this state provided by the insurance." Tab 13, *Response to Defendant Nabors' Motion for Summary Judgment*, pg. 7. Sunstar also placed emphasis on part of § 5001(C)(2) which provides that when a title insurance policy is not provided, "then a title insurance commitment and policy may be issued after examination by an attorney licensed to practice in this state of a duly certified abstract of title." *Id.* at 8. Then, Sunstar cites section 365:20-3-2 of the Oklahoma Administrative Code which provides that a title insurer shall not issue a title

insurance policy until the insurance company or its authorized agent provides an opinion of title by an attorney based on an examination of a duly certified abstract of title. *Id.*

While Sunstar emphasized the different provisions of § 5001(C) that are triggered depending on whether a title insurance policy is provided, Sunstar did not explain or provide evidence of whether a prior insurance policy was issued in this case. Indeed, even the current insurance policy issued by American Eagle Title Insurance to Sunstar and the Daniels is not a part of this record on appeal, and American Eagle Title Insurance is not a party to this appeal. Additionally, § 5001(C) and the section of the Administrative Code cited by Sunstar explicitly reference an attorney's obligation to examine duly certified abstracts and supplemental abstracts. Each of Nabors's title opinions list the supplemental abstracts that were provided to her by BCAC, and it is undisputed that none of the abstracts reviewed contained the Choctaw deed. Sunstar does not claim that Nabors misinterpreted one of the abstracts reviewed or failed to look at an abstract that was provided to her by BCAC. Rather, it appears Sunstar reads an obligation into these insurance statutes which requires an attorney to go beyond the examination of duly certified abstracts and supplemental abstracts. We decline to read such an obligation into 36 O.S. § 5001(C), especially when cases interpreting this provision appear to focus on the liability of a title *insurer* to buyers of a title insurance policy, not the attorney conducting the examination. *See, e.g., Am. Title Ins. Co. v. M-H Enterprises*, 1991 OK CIV APP 58, 815 P.2d 1219 (holding that an *insurance company's* failure to obtain a duly certified

abstract of title and have it examined by a duly licensed attorney constituted negligence *per se*). Because we find that this argument, as raised by Sunstar in its motion for summary judgment, fails as a matter of law, it follows that it did not create an issue for determination by the jury of Nabors's alleged negligence.

C.

Next, Sunstar generally alleges that the trial court erred in granting summary judgment in favor of Nabors because the determination on whether she used the proper standard of care in preparing her title reports is a determination normally made by the jury. In support of this contention in its summary judgment motion, Sunstar cited *Malson v. Palmer Broad. Grp.*, 1997 OK 42, 936 P.2d 940, which held that "[i]ssues of negligence are ordinarily not fit subjects for summary adjudication." *Id.* ¶ 12.

The trial court did not explain its reasoning for granting summary judgment in favor of Nabors; however, in her reply in support of summary judgment, Nabors noted that counsel for Sunstar was relying on its own argument that Nabors was negligent and did not support this argument with any testimony. Oklahoma courts have held that the standard of care in negligence cases, and whether its breach caused injury, is not within the common knowledge of the lay juror and is ordinarily established by expert testimony. *Bean v. St. Francis Hosp., Inc.*, 2026 OK 27, ¶ 11, 588 P.3d 894, 898; *see also Cook v. McGraw Davisson Stewart, LLC*, 2021 OK CIV APP 32, ¶ 19, 496 P.3d 1006, 1011. Here, Sunstar acknowledges that "[o]rdinary care in this instance is the care which a reasonably careful attorney practicing in the area of title

examination would have used in examining title and issuing a title report." Tab 13, *Response to Nabors' Motion for Summary Judgment*, pg. 6. What a reasonable title examiner would or would not do will often be outside the knowledge of the lay juror; therefore, it should be established by expert testimony. Sunstar stated in its responses to Nabors's discovery requests that it would call Rick Harbison, an attorney and licensed abstractor, to testify that Nabors failed to meet the requirements set forth in the Oklahoma Title Examination Standards. However, there were no affidavits prepared or attached to any of the summary judgment materials, and there was no other evidence presented by Sunstar that shows Nabors deviated from the requisite standard of care.[6] Accordingly, we find that it was not error for the trial court to grant summary judgment in favor of Nabors on Sunstar's negligence claim.

D.

Regarding its breach of contract claim, Sunstar argued that it is a third-party beneficiary of the contract between BCAC and Nabors and, therefore, is entitled to recover against her for her breach of contract in addition to its tort claim. Although Sunstar was not in privity of contract with Nabors directly, it argues that it is a third-party beneficiary to BCAC and Nabors's agreement.

In *Great Plains Fed. Sav. & Loan Ass'n v. Dabney*, 1993 OK 4, ¶ 9, 846 P.2d 1088, 1093, the Court held that the "primary issue in a case where the

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[6] As mentioned, it is undisputed that the Choctaw deeds were not contained in any abstract reviewed by Nabors. Further, Sunstar presented no evidence that Nabors could or should have learned of the existence of the Choctaw deeds by reviewing the abstracts provided via affidavit of an expert or otherwise. No copy of any abstract is contained in this record.

suing plaintiff claims third-party beneficiary status is whether the direct parties to the contract intended the third party to have such status." *Id.* (citing *Barbero v. Equitable Gen. Ins. Co.*, 1980 OK 23, ¶ 9, 607 P.2d 670, 673). Oklahoma law 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." 15 O.S. § 29. 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*, 156 Cal. App. 2d 87, 92, 319 P.2d 83, 86 (1957)).

In *Great Plains*, a bank alleged that a law firm orally promised to search the records of the county clerk for a nine-year period and report any findings affecting title for loan purposes. 1993 OK 4, ¶ 1. The law firm failed to discover a mortgage of record on the property. *Id.* The bank brought an action against the attorney and the law firm in tort for legal malpractice and breach of an oral contract between the parties or, alternatively, breach of contract between the law firm and another party whereby the bank claimed third-party beneficiary status. *Id.* On appeal, the Oklahoma Supreme Court addressed the bank's third-party beneficiary argument by noting that the primary issue was whether the parties to the contract intended for the third-party to have such status. *Id.* ¶ 9. The Court held that because the attorney's title opinion sent to a third-party contained a statement that it was "written for the use and benefit of [the bank]

only" a factual question was raised as to the bank's status as a third-party beneficiary. *Id.* ¶ 11.

In the present case, however, there is no such factual question raised as to Sunstar's status as a third-party beneficiary. The title opinions rendered by Nabors, upon request of BCAC, contain the following language:

> This examination is made for the sole use and benefit of The Bryan County Abstract Company, and American Eagle Title Insurance Company as a basis for issuance of title guaranty and is not to be construed as an examination for the owner, buyer, or lender.

Tab 12, *Appendix to Mary Kay Nabors' Motion for Summary*, Exhibits 4-5. Further, in her deposition, Nabors stated that she was never provided with the purchase agreement between Sunstar and Daniels, and that when BCAC asked her to prepare a title opinion, she had no idea who the opinion was being prepared for. *Id.* Exhibit 1, pgs. 28-29. She also added that the opinion was not prepared at the request of Sunstar. *Id.* at 29. Prior to closing, neither the Daniels nor anyone from Sunstar contacted Nabors about her title opinions. *Id.* at 30.

Upon review of the record, we find there is no factual dispute regarding whether the parties, BCAC and Nabors, intended that a third-party, Sunstar, should receive a benefit from their agreement. Unlike the letter in *Great Plains* which was addressed to the third party in question, the language used in Nabors's title opinion demonstrates the parties' intent that her opinion be used for the "sole benefit of" BCAC and American Eagle Title Insurance. There is nothing contained in this record which suggests that Nabors prepared her title opinions at the request of either the Daniels or Sunstar. In fact, her opinion

explicitly states that her examination is *not* to be construed as one for the owner, buyer, or lender. Nabors was not involved in preparing the warranty deed that BCAC drafted for the Daniels and Sunstar, and the record reflects she did not otherwise participate in the closing process.

While *Keel v. Titan Const. Corp.*, 1981 OK 148, ¶ 5, 639 P.2d 1228, 1231, informs that "[i]t is not necessary that the party be specifically named as a beneficiary," it also stands for the proposition that the parties' agreement must be made expressly for the benefit of a third person and that expressly in this context means in "unmistakeable terms; explicitly; definitely; directly." *Id.* Here, in light of the explicit and direct language in the title opinion that it was to be used for BCAC and American Eagle Title Insurance Company *only*, we find that Sunstar cannot enjoy third-party beneficiary status on its breach of contract claim against Nabors. Therefore, we affirm the trial court's grant of summary judgment in favor of Nabors on Sunstar's breach of contract theory.

* * *

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. Upon careful review, we find that the material facts in this case are not in dispute, and, for the reasons articulated above, Nabors is entitled to judgment as a matter of law on Sunstar's claims. The summary judgment order is hereby affirmed.

AFFIRMED.

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

September 9, 2026