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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 17 2026
SELDEN JONES
CLERK

IN RE THE MARRIAGE OF:

LYLE WILLIAM DORSEY,

Petitioner/Appellee,

vs.

SHANA LORRAINE JOHNSON,

Respondent/Appellant.

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Case No. 122,765

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE SHARON WIGDOR BYERS, TRIAL JUDGE

AFFIRMED IN PART, VACATED IN PART, AND REMANDED WITH INSTRUCTIONS

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For Respondent/Appellant

OPINION BY DEBORAH B. BARNES, JUDGE:

This appeal arises from the post-dissolution proceedings of Shana Lorraine Johnson (Respondent, or Ms. Johnson) and Lyle William Dorsey (Petitioner, or Mr. Dorsey). In the district court's "Journal Entry of October 18, 2023," the court dismissed Ms. Johnson's motion to modify child support "for failure to present[.]" Ms. Johnson seeks review of the "Journal Entry of March 28, 2024," denying her motion to vacate the October 2023 order, and granting in part Mr. Dorsey's application for attorney fees.

Based on our review, we affirm in part, vacate in part, and remand with instructions.

BACKGROUND

The parties' Consent Decree of Dissolution of Marriage was filed on February 7, 2012. The Decree reflects, among other things, that two children were born of the marriage; that Ms. Johnson was granted primary legal and physical custody, subject to Mr. Dorsey's right to visitation according to a "Long Distance Visitation Schedule"; and that Mr. Dorsey was ordered to pay child support to Ms. Johnson in the amount of $613.19 per month.

Ms. Johnson, who resides in Florida,[1] filed a motion to modify child support in July 2021. Ms. Johnson requested that the court modify Mr. Dorsey's child support obligations as a result of an increase in his income.[2]

In Mr. Dorsey's response to the motion to modify, filed in June 2022, he asserted that although Ms. Johnson's motion was filed in July 2021, she did not serve him with the motion until June 2022. He stated that he is "agreeable to a modification as of July 2022 . . . but is not agreeable to a [modification as of] August of 2021," and asserted he "should not be subjected to such a large arrearage."

In a Court Minute filed October 18, 2023, the court stated: "Petitioner appears through counsel. Respondent and counsel fail to appear. Respondent's counsel notified Petitioner's counsel and the court on this date of her unavailability. The court dismisses Respondent's motion on this date for failure to present without prejudice to refile." This decision was not set forth in a final order until almost two years later when, on June 30, 2025, in the district court's "Journal Entry of October 18, 2023," the court dismissed Ms. Johnson's motion to modify child support "for failure to present[.]"

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[1] According to her counsel, Ms. Johnson relocated to Florida "almost right after the divorce decree. The divorce decree allowed for her and the children to relocate to Florida."

[2] She also asserted a "material change in circumstances including but not limited to an increase in [Mr. Dorsey's] monthly income, a change in the needs of the children, etc., that warrant a modification of child support . . . ."

Meanwhile, on November 1, 2023, Mr. Dorsey filed an application for attorney fees and costs related to, among other things, Ms. Johnson's motion to modify.

On December 5, 2023, Ms. Johnson filed a "Motion to Vacate, or Alternatively, Motion to Modify Child Support." Ms. Johnson asserted in this motion:

> The need for a continuance of the October 18, 2023 hearing date[] was precipitated by the fact that Respondent's attorney's office was vandalized in mid-September 2023. This, in turn, led to Respondent's attorney electing to work from home a vast amount of time. Respondent's attorney's home is a two-story residence, and while working at home on October 17, 2023, she exacerbated her shattered ankle injury that occurred the previous year. Respondent's attorney could not walk and put weight on her ankle.

While acknowledging that the Court Minute was not a final order and was "not sufficient to trigger the running of the thirty (30) day deadline to file a timely Motion to Vacate," Ms. Johnson nevertheless requested that the court vacate its order – apparently, the Court Minute – pursuant to the court's term-time authority to vacate "a final order, judgment, or decree" within thirty days of its filing. Ms. Johnson asserted the court could do so pursuant to its term-time authority for any reason, and further asserted that "the issues with her attorney's health and wellbeing constitute[] 'unavoidable casualty or misfortune, preventing the party from prosecuting or defending,'" citing 12 O.S. (no year referenced) § 1031(7). Ms. Johnson requested that, in the alternative – i.e., if her motion to vacate is

denied – that child support be modified "effective as of the date of the filing of this Motion" based on the alleged fact that "[Mr. Dorsey's] income has increased."

A hearing was held on March 28, 2024. At the hearing, the parties' attorneys stated their clients agreed that child support payments should be modified; however, disagreement remained as to "at what point" – i.e., as of what date – the modification should occur. Counsel for Ms. Johnson "urge[d] the Court to grant the motion to vacate and allow child support to be heard by the Court or resolved between the parties for the time period [from] July 2021 so that it's retroactive."

An "Agreed Partial Order of Modification of Child Support" was filed on April 1, 2024. This order provides that child support shall be modified to reflect a higher gross monthly income on the part of Mr. Dorsey – with the modification dating back only to December 1, 2023 – with a concomitant increase in the child support payment to be paid by Mr. Dorsey to Ms. Johnson as set forth in the order. However, this partial agreement was entered into by the parties "pending a ruling on [Ms. Johnson's] Motion to Vacate filed on December 5, 2023," and without waiver of Ms. Johnson's request that modification date back to the filing of her original motion to modify.

In its "Journal Entry of March 28, 2024," filed on April 25, 2024, the court denied Ms. Johnson's motion to vacate and granted in part Mr. Dorsey's

application for attorney fees. The court awarded fees to Mr. Dorsey in the amount of $1,847.50.

On May 1, 2024, Ms. Johnson filed an application for attorney fees and costs. She asserted that because her action for modification was successful and because of the disparity in the means and property of the parties, she should be awarded fees as a result of a judicial balancing of the equities.

On May 9, 2024, Ms. Johnson filed a motion for new trial contesting the court's April 2024 order denying her motion to vacate the court's dismissal of her motion to modify (a dismissal which, as above stated, was not set forth in a final order until June 30, 2025). In this motion for new trial from a denial of a motion to vacate, Ms. Johnson again stated that her attorney, "while working at home on October 17, 2023, . . . exacerbated her shattered ankle injury that occurred the previous year," and the attorney "could not walk and put weight on her ankle." She stated that her attorney "contacted and communicated both with opposing counsel and the Court's staff to advise of her condition, which was ultimately met with Respondent's motion being dismissed by the Court without prejudice." Ms. Johnson complained that the court subsequently denied her motion to vacate "despite the fact that clear case law denoting that it is an abuse of discretion to refuse to vacate a dismissal that resulted from an unavoidable casualty or

misfortune." She further asserted that the award of fees to Mr. Dorsey is unreasonable and not supported by facts in the record.

Mr. Dorsey filed a "Response to Respondent's Motion for New Trial and Motion for Sanctions." Mr. Dorsey asserted that Ms. Johnson was "seeking the same affirmative relief that was previously sought in the Motion to Vacate which has already been heard and ruled on by this Court." Mr. Dorsey stated:

> [I]t is unclear whether Respondent is seeking a New Trial on her underlying Motion to Modify Child Support filed July 29, 2021, or a New Trial on the trial Court's denial of her Motion to Vacate which was ruled upon on March 28, 2024. However, either way, it is seeking the same relief that has already been denied by this Court on March 28, 2024, and should again be denied by this Court.

In the "Journal Entry of August 21, 2024," filed September 19, 2024, the court denied Ms. Johnson's application for attorney fees "in consideration of the burden provided in *Finger*, *Burk* and the litigation history in this case."

In the "Journal Entry of September 19, 2024," filed November 22, 2024, the court denied Ms. Johnson's motion for new trial.[3] Ms. Johnson filed her Petition in Error within thirty days of receipt of this order.

In the "Journal Entry of October 18, 2023," filed during the pendency of this appeal on June 30, 2025, the court's dismissal of Ms. Johnson's motion to modify child support, for failure to present, was set forth in a final order, after which Ms.

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[3] The court also denied Mr. Dorsey's request for sanctions, a ruling that is not contested on appeal.

Johnson filed a "Second Amended Designation of Record for Appeal from District Court," and the appeal proceeded.[4]

STANDARD OF REVIEW

The standard of review employed upon a motion to vacate is whether sound discretion was exercised to vacate or refuse to vacate the earlier decision. *Kordis v. Kordis*, 2001 OK 99, ¶ 6, 37 P.3d 866, 869; *Ferguson Enters., Inc. v. H. Webb Enters., Inc.*, 2000 OK 78, ¶ 5, 13 P.3d 480, 482. Moreover, "[a] trial judge's decision to exclude evidence will not be overturned absent a *clear* abuse of discretion." *Worsham v. Nix*, 2006 OK 67, ¶ 39, 145 P.3d 1055, 1068. As to issues of attorney fees, Ms. Johnson raises issues pertaining to the directives set forth in *State ex rel. Burk v. City of Oklahoma City*, 1979 OK 115, 598 P.2d 659.

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[4] As is apparent in this section, this case has an unusual procedural history. Among other things, a motion to vacate and a motion for new trial were filed by the same party prior to the filing of the underlying order (i.e., in appealable form) that is the subject of those motions. However, the Oklahoma Statutes and Oklahoma Supreme Court Rules contemplate such a scenario, providing that "[a] motion for new trial filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree," Okla. Sup. Ct. R. 1.22(c)(1), 12 O.S. 2021 & Supp. 2023, ch. 15, app. 1, and that "[a] motion to correct, open, modify, or vacate a judgment or decree filed after the announcement of the decision on all issues in the case but before the filing of the judgment or decree shall be deemed filed immediately after the filing of the judgment or decree," 12 O.S. 2021 § 1031.1(B). Moreover, Ms. Johnson initiated this appeal prior to the filing (i.e., other than in the form of a court minute) of that underlying order. Nevertheless, any potential procedural deformity in this case was corrected by the filing of that underlying order – the "Journal Entry of October 18, 2023" – during the pendency of this appeal in June 2025. As stated by Ms. Johnson in her Brief-in-chief: "[D]uring the pendency of this appeal, it was discovered that the dismissal without prejudice (Oct. 18, 2023), [a court minute] . . . had never been journalized into an appealable order. [Ms. Johnson] remedied this matter during the pendency of this appeal." Br.-in-chief at 3. Mr. Dorsey does not argue otherwise.

"[F]ailure to follow the *Burk* directives and to award attorney fees consistent with the evidence constitutes an abuse of discretion requiring reversal." *Spencer v. Okla. Gas & Elec. Co.*, 2007 OK 76, ¶ 1, 171 P.3d 890, 892. Moreover, "[w]hat constitutes a reasonable attorney fee is a matter addressed to the sound discretion of the trial court to be decided based on various factors and a judgment awarding attorney fees will not be reversed absent an abuse of discretion." *Tibbetts v. Sight 'n Sound Appliance Centers, Inc.*, 2003 OK 72, ¶ 3, 77 P.3d 1042, 1046.

ANALYSIS

I. Motion to Vacate

Ms. Johnson first asserts that the dismissal of her motion to modify, even though it was couched in terms of being "without prejudice," had the effect of foreclosing an adjustment of child support for the period from August 2021 through November 2023. This argument appears to anticipate any assertion that Ms. Johnson's ability to seek modification going forward, or the entry of the "Agreed Partial Order of Modification of Child Support," filed on April 1, 2024, renders moot any arguments pertaining to the motion to modify – an issue raised at the March 2024 hearing. We agree with Ms. Johnson that her arguments in this regard have not been rendered moot.[5]

[5] "Mootness is a state or condition which prevents the appellate court from rendering relief." *Ford v. Okla. State Dep't of Educ.*, 2026 OK 35, ¶ 9, 590 P.3d 933, 938. Regardless of the ultimate outcome on appeal, we agree that relief is possible, and that antagonistic demands

Ms. Johnson next asserts that the court should have vacated the dismissal of her motion to modify child support – i.e., the "Journal Entry of October 18, 2023," filed on June 30, 2025, in which the district court dismissed Ms. Johnson's motion to modify child support for failure to present. Ms. Johnson asserts that the hearing on her motion to modify "had only been continued once (*sic*) previously time by agreement of the attorneys."[6] She further asserts that "in May or June of 2022 [her attorney] shattered her ankle that is replete with hardware and screws, etc.," and that the attorney's "office was vandalized on September 13, 2023, and this required her to temporarily relocate her office to her home" where she "injured her previously shattered ankle on her stairs at home the evening before" – referring, presumably, to the evening before the October 18, 2023 hearing on the motion to modify. Ms. Johnson asserts that the court should have vacated the dismissal as a result of an "unavoidable casualty," and further asserts that the court should have used its term-time authority to vacate its decision.

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exist, regarding modifications of child support payments for the period from August 2021 through November 2023. *See id.* ("A state or condition which prevents an appellate court from rendering relief for the purpose of mootness *may* include when the controversy is no longer justiciable because the cause of action no longer exists, *e.g.*, a cause of action consists of an antagonistic demand and when this demand is no longer present the appeal is moot.").

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

An appellate court "assess[es] whether unavoidable casualty or misfortune occurred by considering all the facts and circumstances of each case." *Bjorkman v. Noble*, 2025 OK 62, ¶ 10, 579 P.3d 602, 607. Moreover,

> Under 12 O.S. 2001 [now 2021] § 1031.1, a trial court retains plenary control over its terminal decision for a thirty-day period after the decision is filed with the court clerk. During this thirty-day period, a trial court enjoys the unfettered common-law term-time authority to control a judgment or decree with very broad and almost unlimited discretion. The trial court's exercise of its term-time authority over its judgment or decree is not limited to specific grounds and once invoked during the thirty-day period, the trial court may exercise authority over its judgment or decree after the thirty-day period expires.

In re Est. of Hughes, 2004 OK 20, ¶ 12, 90 P.3d 1000, 1004 (citations omitted).

Here, the trial court concluded that unavoidable casualty or misfortune did not occur,[7] and the court declined to exercise its term-time authority to vacate its dismissal of the motion to modify. For the following reasons, we conclude the court did not abuse its discretion in either regard.

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[7] Ms. Johnson cites to *Tedford v. Divine*, 1987 OK 18, 734 P.2d 283, which she describes as holding "that an attorney's illness and office[] procedure breakdown that failed to alert the attorney of the due date for his responsive pleading constituted 'unavoidable casualty,' and under the facts presented, the trial court's vacatur of the default judgment in that case was not an abuse of discretion." Br.-in-chief at 6. However, the *Tedford* Court affirmed a trial court's decision *to* vacate, and the case illustrates the breadth of discretion granted to trial courts – the Court emphasized that a request to vacate "is addressed to the legal discretion of the trial court and an order to vacate will not be disturbed on appeal unless the trial court abused its discretion," *id.* ¶ 5, 734 P.2d at 285 – not a rule compelling vacatur or converting claimed attorney illness into unavoidable casualty as a matter of law.

Regarding the vandalism of Ms. Johnson's attorney's office, Ms. Johnson's attorney attempted to present the trial court with pictures of the vandalism at the hearing on the motion to vacate held on March 28, 2024. The court stated: "[T]he pictures that you've shown me [are of] a broken window and some dirt on the street outside the broken window. I don't understand how a broken window and dirt on the street outside with no . . . indication that anything happened on the inside, is the basis to not appear for a hearing . . . [o]n your motion." Moreover Ms. Johnson's attorney stated at the hearing that the vandalism occurred "[o]n September the 13th," and thus occurred over a month before the October hearing. Indeed, it appears that Ms. Johnson's attorney ultimately did not propose that the vandalism was relevant to her failure to appear other than that it allegedly caused her to be at home (rather than, presumably, at her office, or somewhere else) the evening before the hearing where she re-injured her ankle on her stairs. Ms. Johnson's attorney stated at the hearing on the motion to vacate: "The vandalism at my office in mid-September then caused me to have to start working from home. I . . . have a two-story house. The stairs have been a major impact, and I had hurt my ankle the – the evening before."

Turning to the more relevant assertion of an ankle re-injury, the court did not abuse its discretion to the extent it concluded that the injury, as alleged by the attorney, did not by itself prevent her appearance in court the following morning at

9:30 a.m. Ms. Johnson's attorney stated at the hearing on the motion to vacate that her ankle injury was not new – it originated in May or June of 2022, well over a year before the hearing on the motion to modify. As to the re-injury itself, no medical documentation was offered, and no explanation was provided as to why the attorney was unable to secure alternative means of transportation to the courthouse, why no one could appear on her behalf, or why a motion to continue was not filed.

We recognize that this result may appear harsh. But it was Ms. Johnson's burden to demonstrate a basis for vacating the dismissal, and the showing made to the trial court was directed largely at the condition of her attorney's office rather than at the reasons her attorney could not appear on the morning of October 18, 2023. On this record, we cannot say the trial court's assessment was clearly against reason and the evidence.

Moreover, her alleged injury is not supported by any contemporaneous evidence that is in writing. Ms. Johnson's attorney points to an email communication sent from another attorney to counsel for Mr. Dorsey at 6:00 p.m. on October 17, 2023 – the day before the hearing on the motion to modify. However, it merely states: "I'm sorry to bother you after hours but an attorney friend of mine ([i.e., referring to Ms. Johnson's attorney]) would like to speak to you about the hearing set for tomorrow . . . . Do you have a cell I can give her to

text/call you? . . ." This email does not state that Ms. Johnson's attorney had suffered an injury that would prevent her from appearing at the hearing. Rather, this October 17 email was from a third party and said nothing about unavailability. Ms. Johnson also did not communicate in writing anything regarding an injury to the court prior to the hearing on the motion to modify. The trial court described at the hearing an email that Ms. Johnson's attorney sent "from [Ms. Johnson's attorney] to my bailiff on October 18 at 9:17 a.m., which was 12 minutes before the docket call." The court stated: "That e-mail says, and I quote, 'I am unable to be present for the hearing that is set this morning. I have tried to find someone to take my place, but have been unsuccessful so far.' That is the entirety – end quote." The court observed at the hearing: "There is nothing in that e-mail that says anything about an ankle problem or anything of that nature. It just says you're not able to be present."

The trial court further observed that this was not the first time that delay had been caused by Ms. Johnson or her attorney in the proceeding. The court stated: "The review of the docket shows it was set multiple times with only the petitioner showing up. A motion to compel discovery had to be filed. All kinds of issues." The court also observed that no motion to continue had been filed, nor was a continuance even requested in the email sent to the court thirteen minutes before the hearing. Finally, counsel for Mr. Dorsey asserted that she "[could not] agree to

[a further continuance] to continue [the hearing] when that affects [her client]"; that this was "one of way too many instances with a lot of grace given," including a failure to provide Mr. Dorsey with service of her July 2021 motion to modify until June 2022; and that as a result of Ms. Johnson's actions, the modification request had ballooned to a period stretching back several years, to August 2021, despite Mr. Dorsey immediately expressing agreement in his response to the motion to modify, filed in June 2022, to a modification as of July 2022.

Considering all the facts and circumstances of this case, we conclude the court did not abuse its discretion in determining that unavoidable casualty or misfortune did not occur, and in declining to exercise its term-time authority to vacate its dismissal of Ms. Johnson's motion to modify.[8] The arguments presented by Ms. Johnson on appeal fail to support a reversal of the trial court's ruling.

II. Exclusion of Exhibits

In her second proposition of error, Ms. Johnson asserts the trial court abused its discretion in excluding her "Exhibit 1" and "Exhibit 2" during the March 2024 hearing on the motion to vacate. As described above, Ms. Johnson's attorney attempted to present the trial court with pictures of the alleged vandalism to her

[8] To the extent Ms. Johnson's argument pertains to the best interests of the children, we note that her entitlement to child support, and child support modifications, were not extinguished by the court's ruling, and modification was in fact obtained effective December 1, 2023. The only period foreclosed is one attributable to an almost year-long delay in service and to a series of actions by her.

office at that hearing. As above quoted, the trial court accurately described the pictures at the hearing as follows: "[T]he pictures that you've shown me [are of] a broken window and some dirt on the street outside the broken window." The court excluded the evidence.

The Oklahoma Supreme Court has explained:

> All relevant evidence is admissible, unless the trial court determines that "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, . . . undue delay, needless presentation of cumulative evidence, or unfair and harmful surprise." A trial court has discretion in deciding whether proffered evidence is relevant and, if so, whether it should be admitted, and a judgment will not be reversed based on a trial judge's ruling to admit or exclude evidence absent a clear abuse of discretion.

Myers v. Mo. Pac. R.R. Co., 2002 OK 60, ¶ 36, 52 P.3d 1014, 1033 (footnotes omitted). "It is incumbent upon a trial judge in his/her role as the 'gatekeeper' of the evidentiary process to screen evidence, i.e., to determine its relevance and reliability." *Worsham*, ¶ 39, 145 P.3d at 1068.

The proposed evidence lacks relevance for the following reasons. First, the pictures fail to show significant vandalism to the attorney's office – particularly to the interior of the office – proximate in time to the hearing. As quoted above, the trial court commented regarding the pictures: "I don't understand how a broken window and dirt on the street outside with no . . . indication that anything happened on the inside, is the basis to not appear for a hearing . . . [o]n your motion." Ms. Johnson's attorney also informed the court, as above stated, that the

vandalism occurred over a month before the October hearing. As presented, the evidence simply fails to show any plausible causal effect on the issues.

Second, vandalism itself was not shown to be relevant to the attorney's failure to appear, a failure that was based on an alleged ankle re-injury purportedly caused by the stairs at the attorney's home. Indeed, as we also explained above, Ms. Johnson's attorney ultimately did not propose that the vandalism was relevant to her failure to appear, other than that it allegedly caused her to be at home the evening before the hearing where she allegedly re-injured her ankle on her stairs. The relevance of the vandalism, even if assumed to be severe, was not shown to be of any significance to the asserted reason the attorney failed to appear.[9]

For all these reasons, we conclude the trial court's exclusion of the evidence in question did not constitute an abuse of discretion.[10]

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[9] Finally, even assuming some relevance, that relevance is connected only to the issue of where Ms. Johnson's attorney was on the afternoon or evening of October 17, 2023 – and, perhaps, to the question of why she was where she was on October 17. These issues are themselves not relevant to the material issues – i.e., Ms. Johnson's argument is beside the point because the issues confronting the trial court were whether that alleged ankle re-injury prevented her attorney from appearing, and, secondarily, whether the attorney actually re-injured her ankle on October 17. But, to the extent that they are, because Ms. Johnson's attorney's presence at her home on October 17th was never controverted, the court did not err to the extent it determined the probative value of this evidence amounted to "needless presentation of cumulative evidence[.]" *Myers*, ¶ 36, 52 P.3d at 1033 (quoting 12 O.S. § 2403).

[10] Ms. Johnson seeks to shift focus to what she asserts "[t]he trial court and Appellee's counsel both seemed to rely on" in excluding the evidence: "what they construed as [Ms. Johnson's attorney's] attempt to be a witness and an attorney in the same case as something preventing the introduction of her pictures of her office being vandalized." Br.-in-chief at 11. We need not address this issue. The trial court did reference the advocate-witness concern at the hearing, but then made observations at the hearing plainly calling into question the relevance of

III. Fee Challenge

Ms. Johnson contends on appeal that the award of fees to Mr. Dorsey "is not justified by the record or applicable law." Ms. Johnson asserts as follows:

> In the instant matter, the trial court did not make any specific findings on the record justifying the award of attorney fees. Instead, the lower court merely made summary conclusions and did not include on-the-record findings how the fee awarded to Appellee minus fees subtracted for an original proceeding to the Supreme Court, translated into $1,847.50 in attorney fees for Appellee. The trial court made no finding how and what constituted additional litigation expenses of $700.00. In order to determine the number of hours spent and if those hours were reasonable, the trial court should have made on-the-record findings how the number of hours spent came to total $1,847.50 and how the tasks performed, and the time spent on them bore a reasonable relationship to the total amount of fees awarded. Appellant contends the trial court failed to follow the specificity requirements of *Burk* and *Fleig* and must be reversed.
>
> It is true that the Oklahoma Supreme Court has remarked that application of the Burk criteria to attorney fees in adoption proceedings is discretionary,[11] non-precedential appellate opinions have expanded this to mean "in equity proceedings," to include consideration of attorney fees in domestic relations cases.[12] However, attorney fees in this case were awarded for discovery issues, which implicates . . . 12 [O.S.] [§] 3237, which would mandate Burk in every other type of case. The trial court did not mention which statute she awarded the $700.00 in additional litigation expenses under.[13]

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the evidence. However, a correct judgment will be affirmed regardless of the reasons given for its rendition because the appellate court is not bound by the trial court's legal reasoning. *See Duke v. Duke*, 2020 OK 6, ¶ 10, 457 P.3d 1073, 1077-78. We must instead apply the standard of review and, here, given the circumstances presented in the record, the court's exclusion of the evidence in question does not constitute a clear abuse of discretion.

[11] Citing *In re Adoption of Baby Boy A*, 2010 OK 39, ¶ 32 n.13, 236 P.3d 116, 126 n.13.

[12] Citing *Walters v. Walters*, 2024 OK CIV APP 3, 564 P.3d 914, and *Briscoe v. Briscoe*, 2019 OK CIV APP 6, 438 P.3d 824.

[13] Br.-in-chief at 13-14.

On November 1, 2023, Mr. Dorsey filed his application for attorney fees and costs. Mr. Dorsey sought fees and costs pursuant to 43 O.S. § 110, based on a judicial balancing of the equities. Mr. Dorsey quoted the following from this Court's opinion in *Briscoe v. Briscoe*: "Under such circumstances, a 'judicial balancing of the equities' has consistently controlled both the initial determination as to whether one party is entitled to attorney fees under § 110, and the ultimate determination of what is 'just and proper under the circumstances.'" 2019 OK CIV APP 6, ¶ 8, 438 P.3d 824, 827. Mr. Dorsey cited the factors set forth in *Finger v. Finger*, 1996 OK CIV APP 91, ¶ 14, 923 P.2d 1195, 1198, stating the *Finger* factors support his request for attorney fees. Mr. Dorsey analyzed the following *Finger* factors in his motion: the outcome of the litigation; the health, safety and welfare of the children; whether one party demonstrated a priority of self-interest over the best interests of the children; whether either party unnecessarily complicated or delayed the proceedings or made the subsequent litigation more vexatious than it needed to be; and the respective incomes of the parties. Mr. Dorsey also provided an extensive analysis and calculation under the factors set forth in *Burk*, 1979 OK 115, 598 P.2d 659. He provided an affidavit from his attorney signed under penalty of perjury and copies of the attorney's contemporaneous billing records. Mr. Dorsey sought an award of "his attorney fees and related costs in this matter in the amount of $4,060.00, plus fees in the

total of $50.00, plus an additional two hours to prosecute this Application in the amount of $500.00 for a total of $4,610.00, to be paid by [Ms. Johnson], according to Title 43, *Finger* and *Burk* . . . ."

In Ms. Johnson's response to Mr. Dorsey's application, Ms. Johnson addressed the *Finger* factors, stating, among other things, that she disagrees with Mr. Dorsey's claim that she made the litigation more vexatious than it needed to be; that the motion to modify was merely dismissed and Mr. Dorsey was not awarded affirmative relief and, thus, his "palaver about 'the outcome of the litigation' is inapposite"; and that consideration of the assets and incomes of the parties weighs in her favor. Regarding fees related to the motion to compel discovery, Ms. Johnson asserted only that the order compelling discovery "should not have been granted in the first instance . . . ." Ms. Johnson did not cite *Burk* or otherwise raise any issue regarding the amount of time expended or the hourly rate sought in Mr. Dorsey's application.

Mr. Dorsey's motion was heard at the March 2024 hearing. Mr. Dorsey restated his request for an award of fees as a result of "a judicial balancing of equities pursuant to the *Finger* factors and *Burk*." Mr. Dorsey summarized his position regarding the factors pertaining to a judicial balancing of the equities. Counsel for Mr. Dorsey "concede[d] that [his] client does make more than Ms. Johnson," but asserted that "the law is clear that that factor alone should not be the

basis of denying fees." He explained he was "requesting the full fees relevant to the litigation, which is [$]4,560" – a slightly lower amount than is set forth in his application – "but broken in that [total amount] is [$]1147.50 that was spent on discovery alone, relevant to following up on discovery, appearing on the motion to compel, and having the motion to compel sustained." As to the motion to compel discovery, however, counsel for Mr. Dorsey stated he "believe[d] as a matter of law, [Mr. Dorsey] is entitled to those fees pursuant to [12 O.S. § 3237(A)(4)] because the motion to compel was granted."

Counsel for Ms. Johnson "point[ed] out a few things" related to "looking at the balancing of the equities[.]" She asserted: "There is a great disparity in the parties' incomes," and focused her argument at the hearing on that factor.

The court stated at the hearing that having reviewed the application and response,

> and hearing arguments of counsel, this Court is going to award [Mr. Dorsey] attorney fees on the discovery issues in the amount of $1,147.50 and award [Mr. Dorsey] $700 in attorney fees for the other litigation, which does take into consideration the respective incomes of the parties. That is a total attorney fee award of $1,847.50.

The trial court's findings are set forth in its "Journal Entry of March 28, 2024," filed on April 25, 2024, in which it granted in part Mr. Dorsey's application for attorney fees, and "awarded fees in the amount of $1,847.50," specifying that

"$1,147.50 is associated with the discovery issues and $700.00 is for additional litigation expenses."

Consequently, of the total fees requested by Mr. Dorsey under § 110 and pursuant to a judicial balancing of the equities, and not related to the motion to compel discovery – i.e., $3,412.50 ($4,560.00 - $1,147.50) – the court awarded only $700.00 following a judicial balancing of the equities. This amounts to approximately twenty percent of Mr. Dorsey's requested expenses (i.e., of those not related to the motion to compel). At no point in either her response or at the hearing did counsel for Ms. Johnson contest the reasonableness of the total amount requested. As we explained in *Briscoe*,

> the *Burk* factors persist under § 110, but only in a circumscribed intermediate role between [the] two [equitable] determinations [of whether one party is entitled to attorney fees under § 110, and the ultimate determination of what is just and proper under the circumstances]; that is, the factors set forth in *Burk* become relevant and should be applied in the context of a § 110 attorney fee request when a party specifically challenges the reasonableness of the total fee sought by the party entitled to fees. *See Smith v. Smith*, 2013 OK CIV APP 54, ¶ 9, 305 P.3d 1054 (*Burk* must be applied in the context of a § 110 attorney fee request "[w]hen . . . issues *are raised* as to amount of time spent and complexity of the case[.]" (emphasis added)).

Briscoe, ¶ 8, 438 P.3d at 827 (footnotes omitted). Ms. Johnson made no such specific challenge to reasonableness, and her argument on appeal, as it pertains to the $700.00 awarded pursuant to a judicial balancing of the equities, is therefore rejected.

We arrive at this conclusion because "the *Burk* factors play a somewhat different role in . . . cases [involving a judicial balancing of the equities] than they play in the context of determining an appropriate fee award under mandatory prevailing party fee statutes." *Briscoe*, ¶ 6, 438 P.3d at 826. Under a mandatory fee-shifting statute, the *Burk* findings are a condition of the award itself and are required whether or not reasonableness is specifically contested,[14] whereas under § 110 they are triggered only by a specific challenge.

Mr. Dorsey's request for $1,147.50 in fees related to the motion to compel were requested pursuant to 12 O.S. § 3237(A)(4), which provides, in part, as follows:

> If the motion [for order compelling discovery] is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

In this regard, the fee request, and the court's award, were plainly outside the context of a § 110 attorney fee request, and the trial court awarded 100% of the

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[14] Outside the context of a judicial balancing of the equities, the findings are part of the trial court's nonwaivable duty. *See Fleig v. Landmark Const. Grp.*, 2024 OK 25, ¶ 23, 549 P.3d 1208, 1212 ("The trial court must make findings of fact incorporated into the record regarding the hours spent, reasonable hourly rates, and the value placed on additional factors," and even "[t]he parties' request to just 'give them a number' does not alleviate the trial court of this duty.").

fees requested. We agree with Ms. Johnson that the order before us, as it pertains to the fees awarded pursuant to § 3237(A)(4), lacks the findings required by *Burk* and *Fleig*. *See also Payne v. Dewitt*, 1999 OK 93, ¶ 18, 995 P.2d 1088, 1096 (the teachings of *Burk* apply in the context of an award under § 3237). As to the $1,147.50 award, the trial court is instructed to set forth with specificity the facts and computation to support the award of fees, including the value placed on additional *Burk* criteria. *See Fleig*, ¶¶ 14 & 23, 549 P.3d at 1211 & 1212. Therefore, we vacate that portion of the order awarding "$1,147.50 . . . associated with the discovery issues," and remand for the district court to enter a new award with the findings and computation *Fleig* requires.

CONCLUSION

We vacate that portion of the "Journal Entry of March 28, 2024," awarding $1,147.50 "associated with the discovery issues," and remand for the district court to enter a new award with the findings and computation *Burk* and *Fleig* require. However, we affirm the trial court's award of $700.00 in favor of Mr. Dorsey following a judicial balancing of the equities, and we affirm the trial court's denial of Ms. Johnson's motion to vacate.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED WITH INSTRUCTIONS.

HUBER, J., concurs, and BLACKWELL, P.J., concurs in part and dissents in part.

BLACKWELL, J., dissenting in part:

As to the discovery-related fees, the majority acknowledges that "the trial court awarded 100% of the fees requested." *Opinion*, *supra*, pg. 25. In such an instance, the rule of *Fleig* is not implicated, as it is abundantly clear how the trial court calculated its award. There is no need to remand for additional findings of fact. Accordingly, I have reviewed the fee award on its merits and would find no abuse of discretion under the circumstances. Indeed, the relevant statute—12 O.S. § 3237(A)(4)—mandates fee-shifting in this instance. Because I would affirm the trial court's fee award in full, I respectfully dissent in part. In all other respects, I concur in the court's opinion.

September 17, 2026