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NOT FOR OFFICIAL PUBLICATION
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

OCT 16 2026

SELDEN JONES
CLERK

LAWRENCE E. WOLF and RUTH M. WOLF,

Plaintiffs/Appellants,

vs.

DUSTIN PETERSON and ANDRA ERBAR,

Defendants/Appellees.

Case No. 123,734

Rec'd (date) 10-16-26
Posted
Mailed
Distrib
Publish ___ yes X no

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE NATALIE MAI, DISTRICT JUDGE

AFFIRMED

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PEMBERTON LAW GROUP
Oklahoma City, Oklahoma — For Defendants/Appellees

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

Lawrence and Ruth Wolf appeal from the court's order granting Dustin Peterson and Andra Erbar's motion to reconsider its prior award of attorney fees in favor of the Wolfs. Upon review of the record and the applicable law, the court's grant of the defendants' motion to reconsider is affirmed.

I.

The Wolfs previously agreed to purchase the defendants' home for $319,000. They paid an earnest money deposit of $3,200, delivered to a title company with their contract. However, the sale was not completed because the parties were unable to reach an agreement regarding treatments, repairs, and replacements (TRRs), as the contract required. The Wolfs filed suit seeking the return of $3,200 in earnest money based on their real estate contract. The defendants counterclaimed for anticipatory repudiation, breach of contract, and tortious breach of contract, specifically seeking specific performance, among other remedies.

The Wolfs filed a motion for summary judgment, which was granted by the trial court. The defendants appealed, and this court ultimately affirmed the decision of the trial court finding that the parties' contract perished by its own terms for failure to agree to a TRR within seven days. *See* Supreme Court Case No. 121,625 (*Opinion* filed May 28, 2024) (unpublished). The defendants petitioned for certiorari, and the Wolfs asked for appeal-related attorney fees. Our Supreme Court denied certiorari and, importantly, denied the Wolfs' fee application. Mandate issued on February 6, 2025.

While the summary judgment appeal was pending, the Wolfs filed an application for attorney fees in the trial court. The Wolfs sought a fee award of $31,762.50 pursuant to 42 O.S. § 176, which concerns attorney fee awards "[i]n

an action brought to enforce any lien ...."[1] The Wolfs contended that their payment of earnest money created a special lien as defined in 42 O.S. § 30 and § 176 provides for an award of attorney fees for the prevailing party in such an action. The defendants responded, arguing, among other things, that the Wolfs were not entitled to fees because they did not follow lien enforcement procedure.

The parties appeared before the trial court on January 18, 2024, for a hearing on fees.[2] The court took the matter under advisement and stated that the parties could address the reasonableness of fees at a later date.

The parties subsequently engaged in various discovery and sanction-related disputes, and the fee issue was not addressed again until another hearing was held on October 29, 2024. On November 19, 2024, the court issued an order finding that the Wolfs were entitled to fees pursuant to 42 O.S. § 176. This decision was made prior to the Supreme Court's denial of appellate fees, as discussed above.

The defendants filed a motion to reconsider on December 2, 2024, pursuant to 12 O.S. § 651, alleging that there was no statutory basis for the Wolfs' award of attorney fees and that the fee order itself was insufficiently detailed. The trial court held a hearing on the motion to reconsider on December

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[1] The Wolfs also sought prejudgment interest in the amount of $171.55, and costs in the amount of $1,149.64. The defendants did not object to these items, which are not at issue in this appeal.

[2] Also in January 2024, the defendants filed a quiet title action related to the same property as a new case, CJ-2024-114. In that case, the Erbars sought removal of a lis pendens, while their petition for certiorari was still pending. The court dismissed this separate action, and we affirmed. *See Peterson v. Wolf*, 2025 OK CIV APP 39, 584 P.3d 205 (cert. denied).

12, 2025. The court orally granted the defendants' motion to reconsider, primarily on the basis that the Wolfs had filed an application for appellate fees with the Supreme Court in Case No. 121,625 raising identical arguments, and the Court had denied the motion. The court then issued an order on December 15, 2025, vacating the portion of its order awarding fees and leaving the awards of costs and prejudgment interest intact. The Wolfs appeal.

II.

A motion to reconsider may be regarded as one for new trial under 12 O.S. § 651, if filed within ten (10) days of the filing of the judgment, decree, or appealable order, or it may be treated as a motion to modify or to vacate a final order or judgment under the terms of 12 O.S. §§ 1031 and 1031.1, if filed after ten (10) days but within thirty (30) days of the filing of the judgment, decree, or appealable order. *Smith v. City of Stillwater*, 2014 OK 42, ¶ 10, 328 P.3d 1192, 1196. Whether treated as a motion for new trial or as one to vacate, our review is the same: we must determine whether the trial court abused its discretion in granting the motion.[3] *See Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, ¶ 20, 987 P.2d 1185, 1194. A trial court abuses its discretion when a decision is based on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling. *Childers v. Childers*, 2016 OK 95, ¶ 28, 382 P.3d 1020, 1027.

[3] Although the defendants cited 12 O.S. § 651 as the basis for their motion to reconsider and filed the motion within ten days of the filing of the judgment, the trial court did not actually order a new trial. The trial court vacated the portion of its order awarding fees and kept its award of costs and prejudgment interest the same.

III.

A.

On appeal, the Wolfs contend that the court erred in vacating its prior award of attorney fees because they are entitled to fees pursuant to 42 O.S. § 176. "Oklahoma follows the American Rule as to the recovery of attorney fees. The Rule is generally that each litigant pays for their own legal representation and our courts are without authority to assess attorney fees in the absence of a specific statute or contract allowing for their recovery." *State ex rel. Tal v. City of Oklahoma City*, 2002 OK 97, ¶ 16, 61 P.3d 234. "Oklahoma jurisprudence, thus, recognizes that attorney fee statutes are strictly applied because to do otherwise holds out the real possibility of chilling access to the courts." *Fulsom v. Fulsom,* 2003 OK 96, ¶ 8, 81 P.3d 652. "For an award of attorney fees to be authorized under a particular statute the authorization must be found within the strict confines of the involved statute." *Id.*

Per the transcript of the hearing, it appears that the trial court based its vacatur of its fee award on the fact that the Wolfs filed a similar fee application with the Supreme Court after this court issued its prior opinion, and the Court denied their motion. *See* ROA, Tab 31, Tr. (Dec. 12, 2025). In both fee applications, the Wolfs contended that the earnest money paid to the title company created a special lien on the property. The Wolfs cited 42 O.S. § 30 which provides: "One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be

entitled to recover back in case of a failure of consideration." The Wolfs further alleged that because the earnest money is security for the performance of purchasing the property, it created a lien. And, because the earnest money can only be released by agreement of the parties, both sides have a lien against the earnest money to enforce their rights under the contract. Section 176 states that "[i]n an action brought to enforce any lien the party for whom judgment is rendered shall be entitled to recover a reasonable attorney's fee, to be fixed by the court, which shall be taxed as costs in the action." Because this court in its prior opinion affirmed the court's order requiring the return of the earnest money, the Wolfs argued that they successfully sought and obtained a judgment on a lien, entitling them to fees pursuant to 42 O.S. § 176.

Our Supreme Court has held that when a statute mandates an award of attorney fees in the trial court, the prevailing party is also entitled to recover appellate attorney fees. *Friend v. Friend*, 2022 OK 29, ¶ 5, 506 P.3d 1092, 1094. Given the mandatory language used in 42 O.S. § 176 that a party who enforces a lien and subsequently obtains judgment on that lien "shall" be entitled to a reasonable attorney's fee, *Friend* dictates that the party is also entitled to their appellate attorney fees. The decision to award appellate fees in such an instance is not discretionary. *Id.* (citing *Ellis v. Lebowitz*, 1990 OK 107, ¶ 4, 799 P.2d 620, 621). Title 12 O.S. § 696.4 provides that when an appellate court awards fees for services on appeal, it shall remand the case to the trial court for a determination of their amount.

Here, if the Supreme Court believed the Wolfs were entitled to fees pursuant to § 176, *Friend* and 12 O.S. § 696.4 would have required the Court to grant the fee application and remand for computation of a reasonable fee. Instead, the Court denied the motion, and that disposition reflects the Court's determination that the buyers were not entitled to fees under the statutes they cited. We cannot find the trial court abused its discretion in vacating its award of fees where such an award would have squarely contradicted the clear implication of an order of the Oklahoma Supreme Court in the same case, on the same question.

B.

Additionally, although the Supreme Court's order denying the fee application does not provide an explanation for its denial, we note that the Wolfs were very unlikely to ultimately prevail on their fee application under the plain language of the relevant statutes.

Title 42 O.S. § 172 requires that "[a]ny lien provided for by this chapter may be enforced by civil action in the district court of the county in which the land is situated, and such action shall be brought within one (1) year from the time of the filing of said lien with the county clerk." The Wolfs admit they did not follow this procedure, and neither the Wolfs' petition, their motion for summary judgment, nor any document or pleading filed before seeking attorney fees reference a lien, state they seek enforcement of a lien, or cite to any statute related to lien enforcement. It would seem the Wolfs' reliance on their lien theory was developed post-judgment. However, we think it likely that the completion of

the lien enforcement procedures of § 172, and other procedures provided for by law, must precede receipt of the benefit that § 176 allows. While the Wolfs may very well be correct that the payment of earnest money fits within the definition of 42 O.S. § 30 and constitutes a vendee's lien under Oklahoma law, they never sought to enforce that lien using the statutory procedures of § 172, and thus were not likely to obtain fees under § 176.[4]

* * *

For the reasons set forth above, the trial court's order granting the defendants' motion to reconsider and denying the Wolfs' request for fees is affirmed.

AFFIRMED.

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

October 16, 2026

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[4] We note the Wolfs' argument that the phrase "in this chapter" in § 172 (which is in chapter 5 of title 42) means that section cannot apply to them because the lien they sought to enforce was created pursuant to § 30 (which is in chapter 1 of that same title) is fundamentally flawed. The "in this chapter" language of § 172 has been carried forward from the 1910 version of the statute. R.L.1910, § 3873. At that time, and up until 1941, Oklahoma's statutes were organized first by chapter and then by article, not as they are now, first by title and then by chapter. When the reorganization occurred, what were "chapters" became "titles" and what were "articles" became "chapters." Obviously, this can be a source of confusion, but the official statutes clarify § 172, appending a footnote to the word "chapter," which notes the reference is to "R.L.1910, c. 44 ...." Okla. Stat. tit. 42, § 172 (West). In 1910, Chapter 44 of the revised laws contained all statutes related to liens. *See* R.L.1910, Vol. I, pg. 933. Thus, it is clear that the use of the phrase "in this chapter" in § 172 was meant to encompass all liens created in what is now title 42, including 42 O.S. § 30.