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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

OCT 28 2026

SELDEN JONES
CLERK

Case No. 123,411

ENVIRODISPOSE, LLC, an Oklahoma limited liability company,

Plaintiff/Counter-Defendant/ Appellant,

vs.

BOOMER ENVIRONMENTAL, LLC, an Oklahoma limited liability company, and JASON J. MARTIN, an individual,

Defendants/Counterclaimants/ Third-Party Plaintiffs/ Appellees,

vs.

DUSTIN B. WATSON, an individual,

Third-Party Defendant/Appellant,

and

DBW CONSULTING, INC., an Oklahoma corporation, and DUSTIN B. WATSON, LLC, an Oklahoma limited liability company,

Third-Party Defendants.

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APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE C. BRENT DISHMAN, TRIAL JUDGE

APPEAL RECAST AS REQUEST FOR EXTRAORDINARY RELIEF; WRIT OF MANDAMUS ISSUED; ORDER OF THE DISTRICT COURT VACATED WITH DIRECTIONS

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MEMORANDUM OPINION

DEBORAH B. BARNES, JUDGE:

Pursuant to 20 O.S. 2021 § 30.1, which gives this Court "jurisdiction to issue writs of . . . mandamus . . . or any other process when this may be necessary in any case assigned to it by the Supreme Court," this Cause is hereby recast as a request for extraordinary relief. *See BS&B Safety Sys., L.L.C. v. Edgerton*, 2023 OK 89, ¶ 1, 535 P.3d 1283, 1283. A writ of mandamus is issued directing the

assigned judge in Case No. CJ-2025-723, District Court of Oklahoma County, to, within 30 days after issuance of mandate, conduct a hearing on the motion to dismiss pursuant to the Oklahoma Citizens Participation Act (OCPA), 12 O.S. 2021 §§ 1430-1440, filed by Appellants EnviroDispose, LLC, an Oklahoma limited liability company, and Dustin B. Watson, an individual. We vacate the trial court's Order filed in September 2025, denying the OCPA motion and determining that "[t]he rehearing scheduled on that motion for August 21, 2025 is STRICKEN."

A hearing on the OCPA motion was not held. The motion was set for hearing on July 23, 2025 – a date within the time parameters of the OCPA – and on that date counsel for all parties appeared. However, the trial court did not hear argument or evidence pertaining to the OCPA motion; instead, it *sua sponte* ordered a re-hearing set for August 21, 2025 – a date outside the time parameters of the OCPA. As the trial court later explained at a hearing held on September 4, 2025, on a motion to settle journal entry, "the reason the Court had to reset the [July 23] hearing is because [an attorney for Appellees] didn't provide a hard copy of his brief as required by local rules. So I hadn't read the information that I needed in order to hear the matter that day, and that's why I reset it." On August 20, 2025, the trial court struck the re-hearing and denied the OCPA motion, as set forth in the September 2025 Order.

Appellants contend that the July 23 proceeding was a hearing,[1] and portions of the record describe it that way. The court's August 2025 order recites that the court, "having heard the matter, *sua sponte* orders re-hearing"; Appellants' reply to the motion to dismiss in the trial court stated that "[t]he Court held a hearing on July 23"; and Appellees' notice of mootness reported that the trial court "ruled that it would consider the July 23, 2025 date as the date the OCPA Motion hearing was held." Whether a hearing occurred, however, depends on what took place. A hearing is "[a] formal, scheduled setting in which an affected person presents arguments to a decision-maker." *Rivero v. Stahlheber*, 2026 OK 63, ¶ 26, __ P.3d __.[2] The *Rivero* Court concluded that "[t]he proceeding on February 4, 2019," was a hearing on the OCPA motion because the trial court identified it as the hearing on that motion, received evidence, and heard argument from both sides. *See id.* ¶¶ 25-28. Here, by contrast, although the July 23 proceeding was scheduled and counsel appeared, no argument or evidence on the OCPA motion was heard, and the trial court, by its own account, had not read the information it needed "to hear the matter that day[.]" The August 2025 order's recital that the court had "heard the

[1] Appellants' primary contention is that, on July 23, the trial court held a hearing sufficient under the OCPA, and that this Court can therefore reach Appellants' contention that the conversion and unjust-enrichment claims should be dismissed to the extent they are based on protected petitioning activity. Appellants seek relief under *BS&B* only in the alternative. Appellants' state elsewhere, however, that the July 23 hearing could not proceed because Appellees' counsel failed to comply with Local Rule 37(C).

[2] Mandate issued October 15, 2026.

matter" does not change what occurred, particularly where the same order set the motion for "re-hearing." And although a trial court's failure to rule from the bench does not take a proceeding "out of the hearing rubric," *id.* ¶ 29, the deficiency here is not the absence of a ruling but the absence of any presentation of the OCPA motion. The July 23 proceeding therefore was not a "hearing on the motion" sufficient to "trigger[] 12 O.S. § 1434(A)'s 30-day deadline for the district court to rule . . . ." *Rivero*, ¶ 25. Accordingly, we reject Appellants' propositions which contend that the trial court held the hearing the OCPA requires.

Because no hearing was held, the OCPA motion was neither denied by operation of law nor rendered moot. Although the OCPA provides that a failure to rule on an OCPA motion "within 30 days of a hearing results in the denial of the motion by operation of law, nothing in the Act states that the failure to set a hearing results in a denial of the motion by operation of law." *BS&B*, ¶ 6, 535 P.3d at 1284. Nor does the Act provide that an OCPA motion becomes moot when a hearing is not held within § 1433's deadlines. As the Supreme Court has explained,

> *BS&B* teaches that (1) a litigant should seek mandamus relief if a trial court fails to hear a motion to dismiss within the 60 to 120-day period mandated by § 1433; but (2) an OCPA motion to dismiss is not deemed denied based on the failure to set a hearing within § 1433's deadline.

Rivero, ¶ 21.

The September 2025 Order must be vacated. The order does not state whether the trial court denied the OCPA motion on its merits or because it considered the motion moot, a point the parties disputed below. Either way, the order cannot stand. A denial based on the expiration of § 1433's deadlines is foreclosed by *BS&B* and *Rivero*, and a denial on the merits without the hearing § 1433 requires disregards the mandatory nature of that requirement. *See BS&B*, ¶¶ 3-5, 535 P.3d at 1284.

In *BS&B*, the Supreme Court recast the appeal because it presented an issue of first impression. *See id.* ¶ 1, 535 P.3d at 1283. Recasting is appropriate here as well. The trial court entered an express order denying the OCPA motion, which gave Appellants an apparently appealable order; whether the July 23 proceeding was a hearing was disputed; and Appellants request this relief in the alternative, asking this Court to "do as [the Supreme Court] did in *BS&B Safety*, by recasting this appeal as an application to assume original jurisdiction and request for extraordinary relief, and to grant such relief."[3] Based on the foregoing, Appellees' Motion to Dismiss Appeal on Jurisdictional Grounds, which the Supreme Court deferred to the decisional stage of this appeal, is moot. *See BS&B*, ¶ 7, 535 P.3d at 1284. Because we grant extraordinary relief, we need not address Appellants'

[3] Br.-in-chief at 23-24.

remaining propositions, including those addressing the merits of the OCPA motion.

APPEAL RECAST AS REQUEST FOR EXTRAORDINARY RELIEF; WRIT OF MANDAMUS ISSUED; ORDER OF THE DISTRICT COURT VACATED WITH DIRECTIONS.

BLACKWELL, P.J., and HUBER, J., concur.

BLACKWELL, P.J., concurring:

I agree with the Court's opinion in full, as extant law requires this unfortunate result. However, I note that I have reviewed the underlying OCPA motion and, as the trial court no doubt did the day before the rescheduled hearing, find it meritless.

This case is a prime example of how the OCPA has gone wrong. It was "designed"[4] to make short work of frivolous lawsuits based on protected expressive activity but has devolved into a procedural weapon that is too often

[4] Scare quotes are necessary here as the law was copied nearly verbatim from Texas's act, which this court has acknowledged "has required an extraordinary number of appellate decisions to define the exact requirements and processes for defending against a dismissal motion under the act." *Sw. Orthopaedic Specialists, P.L.L.C. v. Allison*, 2018 OK CIV APP 69, ¶ 24, 439 P.3d 430, 437. Rather than wait for courts to apply "uniform standards and procedures" to the "procedural minefield" the act creates, *id.*, ¶ 36, the legislature should revisit the act's procedural requirements to avoid results such as this.

used to freeze potentially meritorious lawsuits at the starting line. This is clearly contrary to the declared twin purposes of the act. 12 O.S. § 1430 ("The purpose of the Oklahoma Citizens Participation Act is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely and otherwise participate in government to the maximum extent permitted by law *and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury*." (emphasis supplied)).

We must send this case back, for example, for the trial court to hold a brief hearing again denying appellant's OCPA motion. Inevitably, this will lead to another appeal, which will be decided sometime next year (if things go quickly). Yet, a brief perusal of the pleadings reveals that this lawsuit—filed nearly twenty-one months ago—concerns a business deal gone wrong, not any "party's exercise of the right of free speech, right to petition or right of association," as the act requires. 12 O.S. § 1432. While I concur in the Court's opinion based on existing law, I would strongly encourage our legislature to revisit the procedural anomalies that require this result.

October 28, 2026