

SUPREME COURT OF OKLAHOMA

Christian v. Christian

Christian, 2018 OK 91 (Okla. 2018) · No. 115474 · Decided December 4, 2018

SUMMARY

The Oklahoma Supreme Court held that a wife's motion for a new trial was timely under Oklahoma's statutory time-computation rules. In calculating the ten-day filing period, weekends, the legal holiday, and the filing date were excluded. The court reversed the trial court's order, vacated the Court of Civil Appeals' opinion, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Combs, C.J.; Gurich, V.C.J.; Kauger, J.; Winchester, J.; Edmondson, J.; Colbert, J.; Wyrick, J.; Darby, J.
JURISDICTION	Oklahoma
DECIDED	December 4, 2018
DOCKET	115474
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Certiorari review of the Court of Civil Appeals, Division IV, decision affirming the trial court's denial of Wife's motion for new trial as untimely.
STANDARD OF REVIEW	De novo review applies to questions of statutory interpretation.
PRECEDENTIAL VALUE	unpublished
PARTIES	Daisy Christian v. Jon Christian

TOPICS

- dissolution of marriage
- motion for new trial
- family law procedure
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- family law
- civil procedure
- appellate procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether Wife's July 15, 2016, motion for new trial was timely under 12 O.S. 2011 § 653(A) when the time-computation requirements of 12 O.S. 2011 § 2006(A) are applied.
2. Whether the trial court erred by denying the motion for new trial as untimely without giving Wife a full and fair opportunity to present the issues raised in the motion and attachments.

HOLDINGS

1. The ten-day period for filing a motion for new trial under § 653(A) must be computed consistently with § 2006(A), which excludes the triggering day and, for periods shorter than eleven days, excludes intermediate weekends, legal holidays, and specified days when the court clerk is not open for public business until the regularly scheduled closing time.
2. Wife's motion for new trial was timely because, after applying § 2006(A)'s time-computation rules to the ten-day period in § 653(A), the deadline fell on Friday, July 15, 2016.
3. The order denying Wife's motion for new trial was reversed, the Court of Civil Appeals opinion was vacated, and the matter was remanded for further proceedings consistent with the opinion.

KEY QUOTATIONS

“Because the time limit prescribed by § 653(A) is only ten- days, weekends, legal holidays, and days when the court clerk is either closed or closes early, are required to be omitted from the computation.” (¶ 7)

“Applying this principle to the present case, there is no other conclusion to reach but to find the motion for new trial was timely filed.” (¶ 8)

FACTUAL BACKGROUND

Jon and Daisy Christian were divorced after a four-day trial, and the decree of dissolution was filed on Friday, June 30, 2016. Daisy filed her motion for new trial on July 15, 2016. The trial court treated the motion as untimely, and the Court of Civil Appeals affirmed without accounting for the exclusion of weekends, holidays, and other specified nonbusiness days under the statutory time-computation provision.

PROCEDURAL HISTORY

The Stephens County District Court entered a decree dissolving the parties' marriage on June 30, 2016. Wife filed a motion for new trial or reconsideration on July 15, 2016, which the trial court denied as untimely. The Court of Civil Appeals affirmed, and the Oklahoma Supreme Court granted certiorari, reversed the denial, vacated the Court of Civil Appeals opinion, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must proceed with further proceedings consistent with the opinion and afford Wife a full and fair opportunity to present the issues raised in her timely motion for new trial and its attachments.

CASES CITED

- Legarde--Bober v. Okla. State Univ., 2016 OK 78, ¶ 5, 378 P.3d 562, 564
- In re Protest of Hare, 2017 OK 60, ¶ 10, 398 P.3d 317, 319-20
- Odom v. Penske Truck Leasing Co., 2018 OK 23, ¶ 18, 415 P.3d 521, 528
- Am. Airlines, Inc. v. State ex rel. Okla. Tax Comm'n, 2014 OK 95, ¶ 33, 341 P.3d 56, 64
- Rogers v. Quiktrip Corp., 2010 OK 3, ¶ 11, 230 P.3d 853, 859

OPINION

PER CURIAM.

CHRISTIAN v. CHRISTIAN Skip to Main Content Accessibility Statement Help Contact Us e-payments Careers Home Courts Decisions Programs News Legal Research Court Records Quick Links OSCN Found Document:CHRISTIAN v. CHRISTIAN Previous Case Top Of Index This Point in Index Citationize Next Case Print Only CHRISTIAN v. CHRISTIAN2018 OK 91Case Number: 115474Decided: 12/04/2018THE SUPREME COURT OF THE STATE OF OKLAHOMA Cite as: 2018 OK 91, ___ P.3d ___ NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION.

UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL. JON CHRISTIAN, Petitioner-Appellee, v. DAISY CHRISTIAN, Respondent-Appellant. CERTIORARI TO COURT OF CIVIL APPEALS, DIVISION IV, HONORABLE DENNIS L. GAY, TRIAL JUDGE ¶0 Husband and Wife were divorced following a four-day trial.

On June 30, 2016, a Decree of Dissolution of Marriage, memorializing the trial court's rulings, was filed in the proceeding. On July 15, 2016, Husband and Wife both filed motions seeking reconsideration of certain aspects of the Decree. Husband subsequently filed a response to Wife's motion, arguing it had not been filed within ten days; and therefore, was not timely under 12 Ohio St. 2011 § 653.

Following a hearing, the trial court denied Wife's motion, concluding it had been filed out of time. On appeal, the Court of Civil Appeals, Division IV, affirmed the trial court's denial of Wife's motion to reconsider, also concluding Wife's motion was not timely filed.

The Oklahoma Supreme Court granted Wife's petition for certiorari, and determined both tribunals erred by miscalculating the ten-day deadline in § 653 in light of the time computation requirements in 12 Ohio St. 2011 § 2006(A). TRIAL COURT'S ORDER DENYING MOTION FOR NEW TRIAL IS REVERSED; COCA OPINION VACATED; MATTER REMANDED TO THE TRIAL COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION

George H. Brown, Brown & Gould PLLC, Oklahoma City, OK, for Daisy Christian, Appellant MaryGaye LeBoeuf, Oklahoma City, OK, for Jon Christian, Appellee -and- E.J.

Buckholts II and Carl Buckholts, Ellis & Buckholts, Duncan, OK, for Jon Christian, Appellee GURICH, V.C.J. Facts & Procedural History ¶1 Jon Christian (Husband) and Daisy Christian (Wife) were divorced following a four-day trial in the Stephens County District Court. A Decree of Dissolution of Marriage memorializing the trial court's findings was filed on June 30, 2016.

Both parties filed motions on July 15, 2016, requesting clarification and/or modification of the Decree. Husband also filed a post-judgment motion requesting an award of attorney fees and costs. ¶2 On September 29, 2016, the trial court held a hearing on the parties' respective motions.

Although the trial judge sustained Husband's motion to clarify the decree by entering an order nunc pro tunc, he further determined Wife's motion was "not timely filed."¹ Separate journal entries were entered for each motion and filed of record on October 3, 2016. ¶3 Wife commenced the present appeal on October 27, 2016.

The sole order attached to the petition in error was the Decree of Dissolution of Marriage. An order was issued by the Court of Civil Appeals following case assignment directing Wife to "file an amended petition in error, containing the trial court's October 3, 2016, order denying the motion for new trial, no later than November 15, 2017." Wife timely complied with COCA's directive. ¶4 On January 22, 2018, COCA issued its opinion affirming the trial court's denial of Wife's motion for new trial.

Specifically, the appellate court concluded: Wife filed a "Motion for New Trial/Motion to Reconsider" on July 15, 2016, more than ten, but less than thirty, days following the entry of the Decree. The trial court denied the motion in an order filed October 3, 2016, finding it without merit and untimely filed. Wife filed a Petition in Error on October 27, 2016, seeking review.

If this Court considers Wife's motion to be one for a new trial, it is ineffective, because it was filed more than ten days after the final Decree was filed.... Therefore, we consider Wife's motion to be one to modify or vacate the Decree, pursuant to 12 O.S.2011, §§ 1031 and 1031.1. Further, such filing, made more than ten days following the Decree, does not operate to extend the time to appeal the Decree....

Consequently, the June 30, 2016, Decree dividing the marital assets is beyond appellate review.² Wife filed a petition for rehearing, urging the appellate court to reconsider its finding that her appeal of the Decree had been filed out of time. Wife's petition informed COCA that it had failed to consider 12 Ohio St. 2011 § 2006(A) when calculating the ten-day time limit for filing a motion for new trial under 12 Ohio St. 2011 § 653(A).

On March 28, 2018, COCA unanimously denied Wife's request for reconsideration of the opinion. Wife filed a petition requesting certiorari review, which we granted. After reviewing the record and relevant statutes, we hold the trial judge erroneously concluded Wife's motion for new trial was untimely by failing to account for the statutory time computation requirements in 12 Ohio St. 2011 § 2006(A).

Standard of Review ¶5 When this Court is faced with a question of statutory interpretation, we apply a de novo standard of review. *Legarde--Bober v. Okla. State Univ.*, 2016 OK 78, ¶ 5, 378 P.3d 562, 564. When reviewing a statute, the Court's primary goal is to determine the legislative intent through the "plain and ordinary meaning" of the statutory language.

In *re* Protest of Hare, 2017 OK 60, ¶ 10, 398 P.3d 317, 319-20. We will only employ rules of statutory construction when legislative intent cannot be ascertained (e.g., in cases of ambiguity). *Odom v. Penske Truck Leasing Co*, 2018 OK 23, ¶ 18, 415 P.3d 521, 528. Our test for determining if a statute contains an ambiguity is whether its language is susceptible to more than one meaning.

Am. Airlines, Inc. v. State ex rel. Okla. Tax Comm'n, 2014 OK 95, ¶ 33, 341 P.3d 56, 64. Applying these principles to the present case, we find no ambiguity in the plain words of the statutes. Analysis ¶6 The Oklahoma Legislature has vested litigants with the right to pursue relief from a final civil judgment by filing a motion within the specified period of time.

Title 12 Ohio St. 2011 § 653 sets out the time limitations for bringing a motion seeking a new trial: A. Unless unavoidably prevented, an application for a new trial by motion, if made, must be filed not later than ten (10) days after the judgment, decree or appealable order prepared in conformance with Section 696.3 of this title has been filed. More than ten (10) days after the judgment, decree, or appealable order which conforms with Section 696.3 of this title has been filed, an application for a new trial by petition may be filed in conformance with the provisions of Section 655 of this title.

B. If the moving party did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the moving party, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the moving party within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the motion for new trial may be filed no later than ten (10) days after the earliest date on which the court records show that a copy of the judgment, decree, or appealable order was mailed to the moving party.

C. 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.

The Decree of Dissolution reflected service on both parties the same day it was filed. Thus, under § 653(A), Wife had ten (10) days from June 30, 2016, to file a motion seeking a new trial. Reading this provision alone would establish a deadline of July 10, 2016; however, the temporal constraints in § 653(A) must be read in harmony with 12 Ohio St. 2011 § 2006(A).

See *Rogers v. Quiktrip Corp.*, 2010 OK 3, ¶ 11, 230 P.3d 853, 859 (noting "different provisions must be construed together to effect a harmonious whole and give intelligent effect to each"). ¶7 Section 2006(A)(1) reads as follows: In computing any period of time prescribed or allowed by this title, by the rules of any court of this state, or by order of a court of this state, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

The last day of the period so computed shall be included, unless it is a legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes or any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time, in which event the period runs until the end of the next day which is not a legal holiday or a day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time.

Except for the times provided in Sections 765, 990.3, 1148.4, 1148.5, 1148.5A, and 1756 of this title, when the period of time prescribed or allowed is less than eleven (11) days, intermediate legal holidays and any other day when the office of the court clerk does not remain open for public business until the regularly scheduled closing time, shall be excluded from the computation. (emphasis added).

Because the time limit prescribed by § 653(A) is only ten- days, weekends, legal holidays, and days when the court clerk is either closed or closes early, are required to be omitted when computing the statutory deadline for filing a motion for new trial. ¶8 The Christian Decree was filed on Friday, June 30, 2016.

Under § 2006(A) the date of filing is excluded when establishing Wife's deadline. In addition, a total of five (5) days must be excluded from the computation--July 2--3, 2016 (Saturday and Sunday), the Fourth of July holiday, and July 9--10, 2016 (Saturday and Sunday). When these days are omitted from the calculation, Wife's deadline for filing a motion for new trial under § 653(A) was Friday July 15, 2016, the date Wife filed her motion.

Applying this principle to the present case, there is no other conclusion to reach but to find the motion for new trial was timely filed. The trial judge should have afforded Wife a full and fair opportunity to present the issues raised in her motion and its attachments. Conclusion ¶9 Because the trial court concluded Wife's motion was untimely, we reverse the order denying her motion for new trial and vacate the opinion of COCA.

The matter is remanded to the trial court to proceed in a manner consistent with this opinion. TRIAL COURT'S ORDER DENYING MOTION FOR NEW TRIAL IS REVERSED; COCA OPINION VACATED; MATTER REMANDED TO THE TRIAL COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION ¶10 Combs, C.J., Gurich, V.C.J., Kauger, Winchester, Edmondson, Colbert, Wyrick, Darby, JJ., concur; ¶11 Reif, J., not participating.

FOOTNOTES 1 Order Denying Motion for New Trial, Orig. Rec., at 1159. The trial court also summarily ruled Wife's motion lacked merit, without affording a full and fair opportunity to address the issues raised in the motion and its attachments. 2 Opinion, at 2--4 (COCA Div. IV, Jan. 22, 2018). Citationizer© Summary of Documents Citing This Document Cite Name Level None Found.

Citationizer: Table of Authority Cite Name Level Oklahoma Supreme Court Cases CiteNameLevel 2010 OK 3, 230 P.3d 853, ROGERS v. QUIKTRIP CORP.Discussed 2014 OK 95, 341 P.3d 56, AMERICAN AIRLINES, INC. v. STATE ex rel. OKLAHOMA TAX COMMISSIONDiscussed 2016 OK 78, 378 P.3d 562, BOBER v. OKLAHOMA STATE UNIVERSITYDiscussed 2017 OK 60, 398 P.3d 317, IN THE MATTER OF THE INCOME TAX PROTEST OF HAREDiscussed 2018 OK 23, 415 P.3d 521, ODOM v. PENSKE TRUCK LEASING CO.Discussed Title 12.

Civil Procedure CiteNameLevel 12 Ohio St. 653, Time for Filing Application for New TrialDiscussed at Length 12 Ohio St. 1031, District Court, Power to Vacate or Modify its Judgments, WhenCited 12 Ohio St. 2006, TimeDiscussed at Length oscn EMAIL: webmaster@oscn.net Oklahoma Judicial Center 2100 N Lincoln Blvd. Oklahoma City, OK 73105 courts Supreme Court of Oklahoma Court of Criminal Appeals Court of Civil Appeals District Courts decisions New Decisions Supreme Court of Oklahoma Court of Criminal Appeals Court of Civil Appeals programs The Sovereignty Symposium Alternative Dispute Resolution Early Settlement Mediation Children's Court Improvement Program (CIP) Judicial Nominating Commission Certified Courtroom Interpreters Certified Shorthand Reporters Accessibility ADA Contact Us Careers Accessibility ADA