

SUPREME COURT OF OKLAHOMA

Jacquelyn Tess Murlin v. Jimmy Lee Dial Pearman, Jr.

Murlin, 2016 OK 47 (Okla. 2016) · No. 113193 · Decided April 26, 2016

SUMMARY

The Oklahoma Supreme Court held that a petition for a victim protection order was filed frivolously and that no victim existed under 22 O.S. § 60.2. The court vacated the Court of Civil Appeals' opinion, reversed the trial court, and remanded with instructions to award attorney fees and costs to the defendant.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Kauger, J.; Reif, C.J.; Combs, V.C.J.; Watt, J.; Colbert, J.; Gurich, J.; Taylor, J.; Winchester, J.; Edmondson, J.
JURISDICTION	Oklahoma
DECIDED	April 26, 2016
DOCKET	113193
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Pearman sought attorney fees and costs after Murlin withdrew a petition for a victim protection order. The trial court declined to find the petition frivolous and victimless, and the Court of Civil Appeals affirmed. The Oklahoma Supreme Court granted certiorari.
STANDARD OF REVIEW	Abuse of discretion. An appellate court examines the record and reverses when the trial court's decision is clearly against the evidence or contrary to a governing principle of law.
PRECEDENTIAL VALUE	published state supreme court opinion; the header states that it had not yet been released for publication and was subject to revision or withdrawal
PARTIES	Jimmy Lee Dial Pearman, Jr. v. Jacquelyn Tess Murlin

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QUESTIONS PRESENTED

1. Whether Murlin's petition for a victim protection order was frivolously filed under 22 O.S. Supp. 2013 § 60.2.
2. Whether the withdrawn petition was victimless under 22 O.S. Supp. 2013 § 60.2.
3. Whether Pearman was entitled to an award of attorney fees and costs.

HOLDINGS

1. The petition was frivolously filed because the evidence showed that it was knowingly used to assist Pearman's former wife's custody litigation rather than to seek protection from domestic abuse or other qualifying harm.
2. Because Murlin withdrew the petition and no court legally determined that she was Pearman's victim, the matter was victimless as a matter of law under 22 O.S. Supp. 2013 § 60.2.
3. Pearman was entitled to attorney fees and costs because the petition was both frivolous and victimless.

KEY QUOTATIONS

“Because Tess was not legally determined to be Pearman's victim, and she withdrew her petition for protective order under the factual circumstances in this cause, the trial court could not have reached any other conclusion but to determine the cause victimless.” (§ 23)

“Because this cause was both frivolous and victimless, the trial court should have awarded attorney fees and costs against Tess.” (§ 26)

FACTUAL BACKGROUND

Murlin filed a victim protection order petition alleging that Pearman had assaulted her at his home. Text messages between Murlin and Pearman's former wife showed that the petition was intended primarily to help the former wife's ongoing child-custody litigation, and Murlin's attorney acknowledged that she would not have pursued the petition but for that custody case. Murlin withdrew the petition before any protective order issued, and no criminal charges were pursued against Pearman or anyone else for the incident.

PROCEDURAL HISTORY

Murlin filed a petition for a victim protection order against Pearman in the District Court of Cleveland County. She withdrew the petition after text messages revealed that the filing had been coordinated with Pearman's former wife to assist the former wife's child-custody litigation. The trial court denied Pearman's request for attorney fees and costs, including after granting a new trial and conducting a further hearing. The Court of Civil Appeals affirmed, and the Supreme Court vacated that opinion, reversed the trial court, and remanded with instructions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the Court of Civil Appeals' opinion, reverse the trial court, and remand for the trial court to award Pearman attorney fees and costs and determine the appropriate amount of attorney fees, court costs, and filing fees.

CASES CITED

- Curry v. Streater, 2009 OK 5, 213 P.3d 550
- Scott v. Oklahoma Secondary School Activities Ass'n, 2013 OK 84, 313 P.3d 891
- Johnson v. Ward, 1975 OK 129, 541 P.2d 182
- State ex rel. Tal v. Oklahoma City, 2002 OK 97, 61 P.3d 234
- Abel v. Tisdale, 1980 OK 161, 619 P.2d 608
- Parsons v. Volkswagen of America, Inc., 2014 OK 111, 341 P.3d 662
- Oklahoma Turnpike Authority v. Little, 1993 OK 116, 860 P.2d 226
- American First Abstract Co. v. Western Information Systems, Inc., 1987 OK 24, 735 P.2d 1187
- Loffland Bros. Equipment v. White, 1984 OK 69, 689 P.2d 311
- Oliver v. City of Tulsa, 1982 OK 121, 654 P.2d 607

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