

SUPREME COURT OF OKLAHOMA

Dowling v. Prado Verde Ranch, Inc.

47 P.3d 458 (Okla. 2001) · Decided February 13, 2001

SUMMARY

The Oklahoma Supreme Court held that defendants did not waive appellate review of requested statute-of-frauds jury instructions merely because they failed to reproduce the instructions verbatim in their brief. Because the instructions were included in the appellate record and the brief cited the specific record pages, the court distinguished its prior decision in *Avard v. Leming*. The court amended Oklahoma Supreme Court Rule 1.11(e)(1) to permit citation to the record instead of verbatim inclusion, vacated the Court of Civil Appeals’ opinion, and remanded for further consideration.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Watt, V.C.J.; Hargrave, C.J.; Hodges, J.; Lavender, J.; Opala, J.; Kauger, J.; Boudreau, J.; Winchester, J.
JURISDICTION	Oklahoma
DECIDED	February 13, 2001
DISPOSITION	remanded
PROCEDURAL POSTURE	After the trial court refused three requested jury instructions concerning the statute of frauds, the Court of Civil Appeals held sua sponte that the defendants waived appellate review by failing to set out the instructions in totidem verbis in their brief. The Oklahoma Supreme Court granted certiorari to review the waiver ruling.
STANDARD OF REVIEW	The Supreme Court reviewed the Court of Civil Appeals' application of the appellate briefing and error-preservation rule de novo.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential.
PARTIES	Prado Verde Ranch entities, Jerome Willis v. Elaine M. Dowling

TOPICS

- appellate procedure
- preservation of error
- jury instructions
- contracts
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether defendants waived appellate review of refused jury instructions by failing to reproduce the instructions in totidem verbis in their brief when the instructions were included in the appellate record and identified by specific record-page citations.
2. Whether Oklahoma Supreme Court Rule 1.11(e)(1) should be amended to replace the verbatim-reproduction requirement with a requirement that the appellant cite the location of the instruction and the related objection in the appellate record.

HOLDINGS

1. Defendants did not waive appellate review merely because they failed to reproduce the requested instructions verbatim in their brief, where the instructions were included in the appellate record and the brief identified the specific pages where they could be found.
2. When a party challenges a jury instruction, the party must cite the place in the appellate record where the instruction may be found and identify the related objection; the party may reproduce the instruction in the brief's summary of the record or in an appendix, but verbatim reproduction is not mandatory.

KEY QUOTATIONS

"We hold that defendants did not waive appellate review of those instructions under the circumstances presented by this appeal." (47 P.3d at 460)

"Thus, the record on appeal is as available to the judge or justice to whom a case is assigned for the purpose of preparing an opinion as are the briefs of the parties." (47 P.3d at 461)

"CERTIORARI GRANTED, COURT OF CIVIL APPEALS' OPINION VACATED, AND APPEAL REMANDED TO THE COURT OF CIVIL APPEALS FOR FURTHER CONSIDERATION." (47 P.3d at 462)

FACTUAL BACKGROUND

The trial court refused to give three jury instructions requested by the defendants concerning Oklahoma's statute of frauds. The defendants included the requested instructions in their designation of the appellate record and, in their brief, cited the specific record pages where the instructions appeared rather than reproducing them verbatim. The instructions were therefore available in the record on appeal.

PROCEDURAL HISTORY

The defendants designated the requested instructions as part of the appellate record and cited the specific record pages containing them in their brief. The Court of Civil Appeals nevertheless held that Rule 1.11(e)(1) barred review because the instructions were not reproduced verbatim in the brief. The Oklahoma Supreme Court vacated the Court of Civil Appeals' opinion and remanded for reconsideration under the amended rule, without deciding whether the refusal to give the instructions was reversible error.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The Court of Civil Appeals was directed to reconsider the appeal in light of the Oklahoma Supreme Court's opinion and amended Rule 1.11(e)(1). The Supreme Court granted certiorari and vacated the Court of Civil Appeals' opinion.

CASES CITED

- Avard v. Leming, 1994 OK 121, 889 P.2d 262, 266