

SUPREME COURT OF OKLAHOMA

Carrigan-St. Clair v. Wildwood Preserve Farms, Inc., 2009 OK 89

228 P.3d 1198 (Okla. 2009) · No. No. 106,454 · Decided November 30, 2009

SUMMARY

The Oklahoma Supreme Court denied the appellant's application for appointment of a different district judge on remand, without prejudice to seeking relief in the district court under Rule 15. A concurring opinion explains that disqualification under 20 O.S. Supp. 2008 § 95.10 requires allegations and proof in the appellate record demonstrating the trial judge's lack of neutrality and detachment.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	All justices
JURISDICTION	Oklahoma
DECIDED	November 30, 2009
DOCKET	No. 106,454
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Oklahoma considered the appellant's application under 20 O.S. Supp. 2008 § 95.10 for appointment of a different district court judge after reversal and remand.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; the operative disposition is an order, with a separate concurrence explaining the statutory and procedural basis.
PARTIES	Gina Jo Carrigan-St. Clair, Executrix of the Estate of James Francis Carrigan, deceased v. Wildwood Preserve Farms, Inc., Paul Eckstein, Christine Rollins, Hidden Valley Timber Company, Inc., Love Box Company, Inc.

TOPICS

[appellate procedure](#) [civil procedure](#) [writ of certiorari](#) [preservation of error](#)

PRACTICE AREAS

[civil procedure](#) [appellate procedure](#) [judicial disqualification](#)

QUESTIONS PRESENTED

1. Whether the Oklahoma Supreme Court should grant the appellant's application under 20 O.S. Supp. 2008 § 95.10 for appointment of a different judge on remand.
2. Whether the application should be initiated in the Supreme Court or before the district judge whose disqualification is sought.

HOLDINGS

1. The Supreme Court denied the application without prejudice to the appellant seeking relief upon remand in the district court pursuant to Rule 15 of the Rules for District Courts.
2. Under the concurrence's explanation, § 95.10 may be invoked only when the appellate record itself contains sufficient allegation and proof that the judge whose decision was reversed acted without neutrality and detachment; an appellate court may not give first-instance consideration to a motion to disqualify a trial judge.

KEY QUOTATIONS

“In sum, the statute invoked by movant in this case may not be pressed for use in the absence of both allegation and proof that the record for appeal submitted with the quest for review will alone support the factum of the judge's demonstrated lack of detachment and neutrality in the litigated case.” (¶ 4)

FACTUAL BACKGROUND

The underlying civil case had been reversed and remanded by a final order of an Oklahoma appellate court. The appellant sought appointment of a different district court judge on remand under 20 O.S. Supp. 2008 § 95.10. The opinion does not provide additional facts about the underlying dispute or identify record evidence demonstrating that the prior judge lacked neutrality or detachment.

PROCEDURAL HISTORY

After an appellate reversal and remand, the appellant applied directly to the Oklahoma Supreme Court for appointment of a different judge on remand. The Supreme Court denied the application without prejudice, permitting the appellant to seek relief in the district court under Rule 15 of the Rules for District Courts.

DISPOSITION

other

REMAND INSTRUCTIONS

The application was denied without prejudice to the appellant seeking relief upon remand in the district court pursuant to Rule 15 of the Rules for District Courts.

CASES CITED

- Board of Law Library Trustees of Oklahoma County v. State ex rel. Petuskey, 1991 OK 122, 825 P.2d 1285, 1289
- Clark v. Board of Educ. of Independent School District No. 89 of Oklahoma County, 2001 OK 56, 32 P.3d 851, 855-56

OPINION

PER CURIAM.

228 P.3d 1198 (2009) 2009 OK 89 Gina Jo CARRIGAN-ST. CLAIR, Executrix of the Estate of James Francis Carrigan, deceased, Plaintiff/Appellant, v. WILDWOOD PRESERVE FARMS, INC., an Oklahoman Corporation, Paul Eckstein, individually and as officer and shareholder of Wildwood Preserve Farms, Inc., Christine Rollins, individually and as officer and shareholder of Wildwood Preserve Farms, Inc., Hidden Valley Timber Company, Inc., and Love Box Company, Inc., Defendants/Appellees.

No. 106,454. Supreme Court of Oklahoma. November 30, 2009. ORDER ¶ 1 The Court notes Appellant's application for appointment of a different judge on remand pursuant to 20 O.S.Supp.2008 § 95.10. Appellant's application for appointment of a district court judge on remand is hereby denied without prejudice to Appellant seeking relief upon remand in the District Court pursuant to Rule 15 of the Rules for District Courts, 12 O.S.2001 Ch. 2, App. ¶ 2 DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE. /s/ James E. Edmondson CHIEF JUSTICE ¶ 3 VOTE ON APPELLANT'S APPLICATION ALL JUSTICES CONCUR. *1199 ¶ 4 VOTE FOR OFFICIAL PUBLICATION ALL JUSTICES CONCUR.

OPALA, J., with whom TAYLOR, V.C.J., joins, concurring. ¶ 1 I write separately to explain my support for the court's order. ¶ 2 When sitting alone and acting without power expressly conferred by a published court rule, the chief justice is unable to exercise any of the court's adjudicative authority.[1] A request made before the Supreme Court to disqualify a judge of another court calls for the court's exercise of an adjudicative function.[2] The invoked statute, 20 O.S.Supp.2008 § 95.10,[3] is so narrowly drawn that its use could be justified only in those rare instances in which the record for appeal contains sufficient evidence to support the allegation that the judge whose decision was reversed upon review did not act in the case as a neutral and detached arbiter of the controversy. ¶ 3 If the Supreme Court movant cannot draw the needed proof from the appellate record, the effort to disqualify a judge by invoking § 95.10 would fail.

Appellate courts are unable to give first-instance consideration to a motion for disqualification of a trial judge. That process must commence before the judge sought to be removed.[4] ¶ 4 In sum, the statute invoked by movant in this case may not be pressed for use in the absence of both allegation and proof that the record for appeal submitted with the quest for review will alone support the factum of the judge's demonstrated lack of detachment and neutrality in the litigated case.

NOTES [1] The chief justice is one of nine justices and cannot claim any adjudicative power when acting alone. Art. 7, § 2, Okl. Const. [2] A motion to disqualify calls for the performance of an adjudicative act as distinguished from one made in the exercise of a managerial function.

For a discussion of the judiciary's adjudicative and managerial powers see Board of Law Library Trustees of Oklahoma County v. State ex rel. Petuskey, 1991 OK 122, 825 P.2d 1285, 1289. [3] The terms of 20 O.S.Supp.2008 § 95.10 provide: A. Except as provided in subsection B of this section, in the event a civil case brought in a district court of the State of Oklahoma is appealed, and is subsequently reversed and remanded, in whole or in part, by final order of an appellate court of this state, the Chief Justice of the Supreme Court of Oklahoma may appoint a different district court judge or associate district court judge upon application to the Supreme Court pursuant to rules promulgated by the Court.

B. If all parties are in agreement, the same district court judge or associate district court judge presiding in the case prior to appeal may preside over all proceedings in the case remanded to the district court. [4] The process for the disqualification of a judge begins before the trial judge. Rule 15 (Disqualification of Judges in Civil and Criminal Cases), Rules for District Courts of Oklahoma, 12 Ohio St. 2001, Ch. 2, App.

Rule 15 provides a three-step process for challenging the assigned judge's neutrality and detachment. Without the assigned judge's critical on-the-record ruling, the movant cannot seek relief in this court in a proceeding for a writ of mandamus. Clark v. Board of Educ. of Independent School District No. 89 of Oklahoma County. 2001 OK 56, ¶¶ 9, 11, 32 P.3d 851, 855-56.