

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

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PRACTICE AREAS

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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

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