

SUPREME COURT OF OKLAHOMA

Cornett v. Carr

2013 OK 30, 302 P.3d 769 · Decided April 23, 2013

SUMMARY

The Oklahoma Supreme Court held that Rule 9(a) of the Rules for the District Courts conflicted with 12 O.S. Supp. 2002 § 2004(I) to the extent the rule shortened the statutory 180-day period for service of summons. The court reversed the dismissal of Cornett's action, vacated the Court of Civil Appeals' opinion, and remanded for completion of service within the remaining statutory period. The court also struck Rule 9(a) and made its decision prospective, applying it to pending cases and cases filed after the opinion.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Gurich, J.; Colbert, C.J.; Reif, V.C.J.; Watt, J.; Edmondson, J.; Kauger, J.; Winchester, J.; Taylor, J.; Combs, J.
JURISDICTION	Oklahoma
DECIDED	April 23, 2013
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Cornett sought review of the Court of Civil Appeals' affirmance of the Oklahoma County District Court's sua sponte dismissal without prejudice for failure to issue summons within the period prescribed by Rule 9(a), Rules for the District Courts.
STANDARD OF REVIEW	De novo review applies to whether a district court rule conflicts with a statute; the review is non-deferential, plenary, and independent.
PRECEDENTIAL VALUE	Published, precedential Oklahoma Supreme Court opinion; the decision states that it applies prospectively to pending cases and cases filed after issuance.
PARTIES	Robert Cornett v. Rhonda Carr

TOPICS

- service of process
- statutory interpretation
- appellate procedure
- civil procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Rule 9(a), Rules for the District Courts, conflicts with 12 O.S. Supp. 2002 § 2004(I) by permitting dismissal before the expiration of the statute's 180-day period for service of process.
2. Whether the district court properly dismissed Cornett's action before the statutory 180-day service period expired.
3. Whether Rule 9(a) should remain in force to the extent it shortens the statutory time for issuing and serving summons.

HOLDINGS

1. Rule 9(a) directly conflicts with § 2004(I) to the extent that it shortens the plaintiff's statutory 180-day period for service of summons. Because the statute prevails over the conflicting court rule, the statutory period is controlling.
2. The 180-day period in § 2004(I) is an outer limit that cannot be judicially reduced; service completed within that period is timely.
3. The district court's dismissal was premature because Cornett still had time remaining under § 2004(I) to issue summons and complete service.
4. Rule 9(a) was stricken from the Rules for the District Courts of Oklahoma, and the decision applies prospectively to cases pending or filed after issuance; it does not affect cases dismissed under Rule 9(a) that became final judgments.

KEY QUOTATIONS

"To the extent the two conflict, the statute must prevail." (302 P.3d at 772)

"Accordingly, we conclude Rule 9(a) directly conflicts with 12 O.S.Supp. 2002 § 2004(I) to the extent it shortens a plaintiff's allocated time for service of summons." (302 P.3d at 773)

"Today's decision renders Rule 9 unnecessary, and it is hereby stricken from the Rules for the District Courts of Oklahoma." (302 P.3d at 773)

FACTUAL BACKGROUND

A divorce judgment directed Rhonda Carr to sell real property and divide the net proceeds equally with Robert Cornett. Cornett alleged that Carr conspired with Glen and Dena Davis to defraud him through an undisclosed \$8,000 payment and sought rescission of the alleged agreement. After Cornett refiled the action, his attorney failed to issue summonses, and the district court dismissed the case ninety-six days after filing under Rule 9(a).

PROCEDURAL HISTORY

Cornett filed an action challenging the sale of real property associated with his divorce proceeding. After the original action was dismissed without prejudice, he refiled in Oklahoma County, but his attorney failed to issue

summonses. The district court dismissed the refiled action ninety-six days after filing under Rule 9(a). The Court of Civil Appeals affirmed, and the Oklahoma Supreme Court granted certiorari.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was directed to allow Cornett the remaining time authorized by 12 O.S. Supp. 2002 § 2004(I) to issue summons and complete service on the defendants. The Court of Civil Appeals opinion was vacated, and the trial court's dismissal order was reversed.

CASES CITED

- Duncan v. Oklahoma Department of Corrections, 2004 OK 58, ¶ 3, 95 P.3d 1076, 1078
- In re Estate of Bell-Levine, 2012 OK 112, ¶ 5, 293 P.3d 964, 966
- Martin v. Aramark Services, Inc., 2004 OK 38, ¶ 4, 92 P.3d 96, 97
- State ex rel. Oklahoma Board of Medical Licensure and Supervision v. Pinaroc, 2002 OK 20, ¶ 12, 46 P.3d 114, 119
- Vannoy v. Earth Biofuels, Inc., 2009 OK CIV APP 22, ¶ 5, 278 P.3d 1052, 1053
- Gugello v. Select Specialty Hospital-Tulsa, 2006 OK CIV APP 102, ¶ 8, 143 P.3d 519, 522
- Fischer v. Baptist Health Care of Oklahoma, 2000 OK 91, ¶ 6, 14 P.3d 1292, 1293
- Mott v. Carlson, 1990 OK 10, ¶ 8, 786 P.2d 1247, 1250
- Fanning v. Brown, 2004 OK 7, ¶ 20 n. 9, 85 P.3d 841, 847
- Graff v. Kelly, 1991 OK 71, ¶ 14, 814 P.2d 489, 493-494
- Henderson v. United States, 517 U.S. 654, 116 S. Ct. 1638, 134 L. Ed. 2d 880 (1996)
- State Farm Fire & Casualty Co. v. Smith, 39 So. 3d 1172, 1176 (Ala. Ct. App. 2009)
- Boston v. Buchanan, 2008 OK 114, ¶¶ 17-19, 89 P.3d 1034, 1040-1041
- Hull v. Rich, 1993 OK 81, ¶ 6, 854 P.2d 903, 904
- Gay v. Akin, 1988 OK 150, ¶ 8, 766 P.2d 985, 990
- Depuy v. Hoeme, 1989 OK 42, ¶ 10, 775 P.2d 1339, 1343-1344
- Dear v. Rathje, 485 F.2d 558, 560 (7th Cir. 1973)