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ORIGINAL

THIS OPINION HAS BEEN RELEASED
FOR PUBLICATION BY ORDER OF
THE COURT OF CIVIL APPEALS
IN THE COURT OF CIVIL APPEALS
OF THE STATE OF OKLAHOMA

DIVISION IV

ONB BANK AND)
TRUST COMPANY,)
Plaintiff,)
vs.)
JULIA KWOK and) Case No. 114,871
WILLIAM R. SATTERFIELD,) (Consolidated with
Defendants/Appellants,) Case No. 114,875
vs.)
MINGO ENERGY, LLC,)
Intervenor/Appellee.)

APPEAL FROM THE DISTRICT OF
TULSA COUNTY, OKLAHOMA

(Filed Oct. 16, 2017)

HONORABLE DANA LYNN KUEHN, TRIAL JUDGE

AFFIRMED

John W. Moody Tulsa, Oklahoma	For Defendant/Appellant Julia Kwok
E. Diane Hinkle Bartlesville, Oklahoma	For Defendant/Appellant William R. Satterfield

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Michael D. Colvin
Jude T. Barreneche
FIDELITY NATIONAL
LAW GROUP
Dallas, Texas

and

Garry M. Gaskins, II
Logan L. James
DRUMMOND LAW, PLLC
Tulsa, Oklahoma

For Intervenor/Appellee

OPINION BY JANE P. WISEMAN, JUDGE:

¶1 Appellants Julia Kwok and William R. Satterfield appeal from a trial court order quieting title in favor of Intervenor and Appellee Mingo Energy, LLC. After review, we find no error and affirm.

BACKGROUND

¶2 The parties are familiar with the lengthy history, facts, and proceedings of this case, and we will repeat only the pertinent ones here. ONB Bank and Trust Company filed this quiet title action against Appellants claiming fee simple ownership of the surface interest of real property described as “[t]he West Half of the Southeast Quarter of the Southwest Quarter (W/2 SE/4 SW/4) of Section Twelve (12), Township Eighteen (18) North, Range Twelve (12) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof.” ONB alleged it “acquired interest and title in and to” the property and another tract of land through a sheriff’s

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deed in June 2011, but later conveyed the property to Mingo Industries, LLC.

¶3 In response, Satterfield claimed “title to the subject property was not properly foreclosed in the non-judicial sale” because, after he received notice of the sale, he timely mailed his notice to the mortgagee that the property was his homestead and he elected judicial foreclosure. Kwok claims title by virtue of a quitclaim deed from Satterfield.

¶4 After ONB filed a motion for summary judgment, Appellants in a joint objection to the motion argued that the Oklahoma Power of Sale Mortgage Foreclosure Act (OPSMFA) does not support a judgment in ONB’s favor. They claimed the notice of sale from Nationwide Capital Group, Inc., mistakenly directed Satterfield to file his objection in Oklahoma County, rather than Tulsa County where the property is located. Appellants asserted, “Despite the defective notice, the Tulsa County records reflect that on May 16, 2007, [Satterfield] sent notice via certified mail to [Nationwide] objecting to said sale and requesting a judicial foreclosure as required by Title 42 O.S. §45.” They asserted that pursuant to 46 O.S. §43, after Nationwide received the objection, it was required to pursue foreclosure by judicial proceeding. Appellants asserted the sale was null and void because the non-judicial sale failed to comply with the OPSMFA.

¶5 The trial court granted ONB’s motion for summary judgment. A different division of this Court in Case No. 111,584 reversed the trial court’s decision

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and remanded the case for further proceedings. The Court stated it reversed the trial court's decision on the ground that:

the record establishes the presence of contested issues of material fact as to whether (1) Satterfield gave notice of his homestead claim and election for judicial foreclosure, (2) subsequent purchasers were put on inquiry of his claim, and (3) Satterfield had knowledge of the proceedings subsequent to his election for judicial foreclosure.

The Court stated:

ONB moved for summary judgment, asserting the dispute was controlled by 46 O.S. 2011 §47(A), which provides in part,

"The mortgagee's deed shall raise a presumption of compliance with the requirements of this act regarding the exercise of the power of sale and the sale of the property, including the giving of the notice of intention to foreclose and of sale and the conduct of the sale. Such deed shall constitute conclusive evidence of the meeting of such requirements in favor of purchasers for value and without actual notice so long as the failure to meet those requirements would otherwise render the sale only voidable and, even if the sale is void, after the passage of two (2) years from the date of the recording of the deed."

ONB submitted evidence showing the mortgagee's deed, conveying the property from Nationwide as mortgagee to Nationwide as

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buyer, was recorded July 11, 2007, and a deed from Nationwide to 75 Enterprises, L.L.C., with documentary stamps of \$330.00. It submitted evidence that ONB became the owner of the property by sheriff's deed upon foreclosure of a mortgage from 75 Enterprises, L.L.C. ONB argued the mortgagee's deed became conclusive evidence of meeting the Act's requirements after the passage of two years from the date the deed was recorded.

In response, Satterfield argued that the "conclusive evidence" clause did not apply in this case because the grantee in the mortgagee's deed was not a bona fide purchaser for value without actual notice, inasmuch as Nationwide took title from itself. He argues the subsequent purchasers were not without notice, because his notice of homestead claim and election for judicial foreclosure were filed of record.

The trial court granted summary judgment in favor of ONB, making extensive findings of fact, including that over the past five years, the property had been conveyed to a third party who mortgaged it and a judicial foreclosure of that mortgage has been completed, resulting in a Sheriff's Deed to ONB. The trial court concluded that Satterfield and his grantee Kwok were "estopped by laches since the filing of the Sheriff's Deed in 2007 from asserting any claims now." It awarded ONB's attorney an attorney fee of \$3,500.00 plus court costs and statutory post-judgment interest.

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The Court noted that the OPSMFA “sets forth the procedure for foreclosing a mortgage in which the mortgagor has conferred upon the mortgagee the power to sell the mortgaged property. 46 O.S. 2011 §43(A)(2).” The OPSMFA, however, specifically provides that the Act “shall not apply to . . . [a] mortgage on the mortgagor’s homestead if, after the notice of sale is given to the mortgagor pursuant to subsection B of [§45], the mortgagor elects judicial foreclosure in compliance with the provisions of subparagraphs b and c of paragraph 2 of subsection A of [§43]’ [46 O.S.2011 §41(7)].” The Court also cited 46 O.S.2011 §43(A)(2)(b) which provides:

[I]n a mortgage transaction involving the mortgagor’s homestead, if the mortgagor, at least ten (10) days before the property is to be sold under the power of sale, sends written notice by certified mail to the mortgagee stating that the property involved is the mortgagor’s homestead and that judicial foreclosure is elected, and files of record a copy of such notice which contains the legal description of the property in the office of the county clerk of the county where the property is located, the mortgagee must pursue any foreclosure by judicial proceeding in a court of competent jurisdiction; provided, however, the mortgagee may contest the mortgagor’s claim of homestead in the judicial foreclosure action or in another action such as by declaratory judgment. . . .

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¶6 The Court stated: "In the present case, Satterfield put on evidence he complied with the procedure, as set forth in the notice he received, for claiming homestead and electing foreclosure. He put on evidence his failure to timely file the election in the land records was caused by neglect excusable by the mistake in the notice of sale." The Court noted that Satterfield's "election letter to Nationwide's attorney on its face stated it was sent by certified mail and included a tracking number." Satterfield's filings, however, did "not include a green card showing the attorney received the letter." The Court concluded, "This evidence establishes a contested issue of material fact as to whether Satterfield timely elected judicial foreclosure. If he did, the Act no longer applied and Nationwide was required to foreclose judicially."

¶7 The Court stated:

Section 45 of the Act provides that the mortgagee's deed is conclusive evidence of the meeting of the Act's requirements after the passage of two years from the date the deed was recorded, but only "in favor of purchasers for value and without actual notice." However, if the Act no longer applied because Satterfield elected judicial foreclosure, then this section cannot save the sale that took place after the election. On the other hand, if Satterfield did not timely elect judicial foreclosure, purchasers for value and without actual notice were entitled to rely on the Mortgagee's Deed pursuant to §45.

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A purchaser of land takes the property with constructive notice of whatever appears in the conveyances constituting the chain of title. *Creek Land & Imp. Co. v. Davis*, 1911 OK 85, 28 Okla. 579, 115 P. 468. If those documents present sufficient facts to put a prudent person on inquiry, the purchaser will be charged with actual notice of whatever reasonable inquiry would have disclosed. *Id.* Filing instruments of record is constructive notice only to those subsequent in the chain of title, not to those prior in the chain of title. *Straub v. Swaim*, 296 P.2d 147, 148-149 (Okla.1956).

Satterfield filed his election of record in the office of the County Clerk of Oklahoma County after the sale of the property but before the Mortgagee's Deed was filed. This record raises a fact issue regarding whether this filing would put a prudent person on inquiry, so as to charge a subsequent purchaser with actual knowledge of his claim.

The trial court based its summary judgment ruling on estoppel by laches, finding Satterfield and Kwok were "estopped by laches since the filing of the Sheriff's Deed in 2007 from asserting any claims now." The doctrine of laches is available only in equitable matters. *Skinner v. Scott*, 1911 OK 282, ¶5, 118 P. 394, 396. The time that will constitute a bar to an action varies and is determined by the circumstances of each case. *Id.* The party invoking the laches defense must show (1) unreasonable delay, (2) coupled with knowledge

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of the relevant facts, (3) resulting in prejudice. *Smith v. Baptist Foundation of Oklahoma*, 2002 OK 57, ¶9, 50 P.3d 1132, 1138.

The record in this case lacks evidence that Satterfield knew about any of the proceedings subsequent to his demand for judicial foreclosure. Satterfield is not charged with constructive knowledge of filings subsequent to his interest. The Affidavit of Compliance with Oklahoma Power of Sale Mortgage Foreclosure Act contains no certificate of mailing, and the record contains no certified mail receipt dated before the affidavit's existence, as the trial court found. The record contains no 2007 Sheriff's Deed as cited by the trial court. If one or more material facts is not supported by admissible evidence, we must determine that judgment for the movant was not proper. *State ex rel. Macy v. Thirty Thousand Seven Hundred Eighty [O]ne Dollars & No/100*, 1993 OK CIV APP 170, ¶4, 865 P.2d 1262.

¶8 The Court of Civil Appeals concluded the trial court erred in granting summary judgment because issues of material fact remained "as to whether (1) Satterfield gave notice of his homestead claim and election for judicial foreclosure, (2) subsequent purchasers were put on inquiry of his claim, and (3) Satterfield had knowledge of the proceedings subsequent to his election for judicial foreclosure."

¶9 After remand, the trial court on July 15, 2014, granted the motion to intervene filed by Mingo Energy, LLC. In its petition to quiet title, Mingo Energy

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asserted it had fee simple ownership and actual possession of the property and asked the trial court to quiet title in its favor against Appellants.

¶10 A non-jury trial was held on January 19, 20, and 21, 2016. The trial court issued its findings of facts and conclusions of law on March 4, 2016, which we summarize in the following paragraphs.

¶11 This case involves two tracts of land – a 20-acre tract and a 9.76-acre tract adjacent to the 20-acre tract. Satterfield obtained a mortgage from Bank of America in September 2001 secured by both tracts of land. He defaulted on the mortgage, and in August 2004, he filed a petition for Chapter 11 Bankruptcy in the Northern District of Oklahoma, in which he claimed a homestead exemption on three properties, including both the 9.76-acre tract and the 20-acre tract.

¶12 Satterfield filed an application for homestead exemption for the 9.76-acre tract with the Tulsa County Assessor on February 27, 2006. After a request from Bank of America, the Bankruptcy Court lifted the bankruptcy stay and authorized sale of the 20-acre property “through litigation or pursuant to Oklahoma’s non-judicial power of sale foreclosure act.” On April 10, 2006, in a pleading in the Bankruptcy Court, Satterfield “specifically repudiate[d] his claim for homestead exemption on the 20 Acre Tract filed in his original bankruptcy schedules.” Satterfield also made “a judicial admission that the 9.76 Acre Tract . . . is his primary residence and is the only property on which

he is claiming a homestead exemption.” He later “judicially admitted he was only entitled to a homestead exemption in one acre of the 9.76 Acre Tract.”¹ The Bankruptcy Court held that he was limited to a homestead exemption of \$5,000 in the 9.76-acre tract. Kevin Blaney, attorney for Bank of America, on June 15, 2006, mailed a “Notice of Intent to Foreclose by Power of Sale” on both tracts to Satterfield and the bankruptcy trustee. Bank of America assigned its interest in the note to Nationwide Capital Group, Inc., and the assignment was recorded in Tulsa County on October 30, 2006. Blaney, again as attorney for Nationwide, filed an amended notice of sale in January 2007, which provided a non-judicial foreclosure for both tracts would occur on March 29, 2007. Blaney issued a notice of postponed sale on May 9, 2007. Satterfield sent a letter to Blaney on May 16, 2007, acknowledging receipt of the notice of postponed sale, claiming a homestead exemption in both tracts, electing judicial foreclosure of the homestead, and electing against a deficiency judgment.

¶13 Satterfield filed an application for stay in the Bankruptcy Court in which he requested a stay of the non-judicial foreclosure of both tracts. The Court noted that Satterfield claimed his primary residence is on the smaller tract adjoining the larger tract and that he

¹ It is not disputed that because the house and the 9.76-acre tract on which it sits are located within the city limits of Tulsa, the homestead exemption, in the absence of other factors, is limited to one acre of the overall 9.76 acres, as we discuss below. 31 O.S.2011 §2(C).

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asked the Bankruptcy Court to stay the non-judicial foreclosure. The Bankruptcy Court denied Satterfield's application.

¶14 On the day listed in the notice of postponed sale, May 31, 2007, "the Mortgagee withdrew the 9.76 Acre Tract from the sale via oral announcement" but the 20-acre tract was sold to Nationwide Capital Group, Inc. Satterfield's letter giving notice that he wanted a judicial foreclosure was misrouted to the Oklahoma County Clerk's office and was not filed in Tulsa County until June 22, 2007. Satterfield was incarcerated from January 2005 until September 1, 2008, after being convicted of odometer tampering and conspiracy.

¶15 Nationwide conveyed the property to 75 Enterprises, LLC, and the deed was recorded on August 7, 2008. In July 2008, 75 Enterprises executed a mortgage in favor of ONB, and granted a security interest in the 20-acre tract to ONB. 75 Enterprises defaulted and ONB foreclosed its interest in the property. The 20-acre tract was sold at sheriff's sale, where ONB reclaimed title to the tract. ONB conveyed the 20-acre tract to Mingo Industries, LLC, in October 2011. Mingo Industries, LLC, in turn conveyed the 20-acre tract to Mingo Energy, LLC, in January 2014.

¶16 Satterfield asked Kwok in December 2010 "to purchase his house and thirty acres (29.76 acres) as he was having financial difficulties." Satterfield represented to "Kwok that he owned the house and the thirty acres and that she would be purchasing all thirty acres." Kwok brought the property taxes up to

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date and “paid Nationwide Capital \$194,000 for what she thought was the house and thirty acres.” On August 3, 2011, “Satterfield signed and filed with the Tulsa County Clerk a Quit Claim Deed for the 20 Acre Tract . . . attempting to convey it to Defendant Kwok.” Kwok became aware she had purchased only 9.76 acres and the house on it, and not the 20-acre tract, only when she received a letter from ONB. As found by the trial court, “Kwok, a real estate investor and accomplished financial professor, never questioned why Defendant Satterfield would need to deed her [the] property she already purchased and closed on with Nationwide Capital.”

¶17 The trial court noted that to decide whether Mingo Energy or Kwok has title to the 20-acre tract, it must determine when Satterfield lost title to the property. As part of this determination, the court was required to “decide when and what of his property was exempted as homestead, and whether or not he timely requested judicial foreclosure proceedings under [46 O.S. §43].”

¶18 The court found that Mingo Energy is the holder of legal title because at the time Satterfield filed Chapter 11 bankruptcy, which was later converted to a Chapter 7 bankruptcy, all of his property, including the 20-acre tract, became property of the bankruptcy estate. All of the bankruptcy estate’s property was transferred to the bankruptcy trustee, Patrick Malloy, upon his appointment, “inuring to him all of Satterfield’s rights and benefits associated in the property.” Malloy did not abandon the 20-acre tract nor was it exempt.

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The court concluded, “As such, at the time of Satterfield’s May 16, 2007 election for judicial sale, all ownership rights to the property had already been vested in the Trustee and divested from Satterfield.” Satterfield did not have standing to make a homestead exemption claim or request a judicial foreclosure because he had no ownership rights in the 20-acre tract. Only Malloy “had standing and could make such demand, which [he] never did.” Because Satterfield had no ownership rights, he could not convey ownership of the 20-acre tract to Kwok in August 2011. The court further found that the Bankruptcy Court had found that the 20-acre tract was not Satterfield’s homestead and had allowed the non-judicial foreclosure of that tract to go forward. The trial court stated it “will honor under *res judicata* all Orders which pertain to this matter and issued by the United States Bankruptcy Court.” Accordingly, the trial court adopted the Bankruptcy Court’s conclusion that the 20-acre tract did not qualify for homestead exemption.

¶19 The court also found that “all notices of the sale were in accordance with Title 46, and the Bank reacted appropriately upon receiving the May 16, 2007 letter from Satterfield which tried to elect judicial foreclosure on both the 9.76 Acre Tract and the 20 Acre Tract.” The court found that Kevin Blaney “made a legally permissible bifurcation under the mortgage agreement to withdraw the 9.76 Acre Tract from the non-judicial foreclosure sale and continue with the Title 46 Power of Sale proceeding as to the 20 Acre Tract.” It concluded the sale of the 20-acre tract was

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appropriate because neither Satterfield nor Kwok had any ownership interest in that tract.

¶20 Finally, the court concluded Satterfield intentionally clouded the title to the 20-acre tract by purporting to convey it to Kwok and that Kwok continued to cloud Mingo Energy's title by refusing to quitclaim the property.

¶21 The court held Mingo Energy is the owner of the 20-acre tract in fee simple and is entitled to possession of the property. The court perpetually enjoined both Kwok and Satterfield from claiming any right, title, or interest in the 20-acre tract and adjudged Mingo Energy to have superior right, title, and interest to the property.

¶22 Kwok and Satterfield appeal.

STANDARD OF REVIEW

¶23 “An action to quiet title is one of equitable cognizance.” *Sullivan v. Buckhorn Ranch P’ship*, 2005 OK 41, n. 30, 119 P.3d 192. “[O]n review we must accord deference to the trial court’s determination of the facts.” *In re Estate of Brown*, 2016 OK 112, ¶ 2, 384 P.3d 496. “The trial judge has the opportunity to observe the conduct and demeanor of the witnesses, and we will not disturb the trial court’s findings of fact unless they are clearly contrary to the weight of the evidence or to some governing principle of law.” *Id.*

ANALYSIS

¶24 We see no error by the trial court in quieting title to the property in favor of Mingo Energy. The trial court correctly concluded that the 20-acre tract became property of the bankruptcy estate after Satterfield filed bankruptcy and that ownership rights to the property became vested in Malloy as the trustee after his appointment. In *Viersen v. Boettcher*, 1963 OK 262, ¶ 0, 387 P.2d 133 (syl. no. 2 by the Court), the Oklahoma Supreme Court explained:

In federal court bankruptcy proceedings, title to the assets of the bankrupt vests in the trustee in bankruptcy on the filing of a petition under the bankruptcy law, and that title is not subject to divestiture by judgment in an action against the bankrupt, commenced after bankruptcy, to which the trustee is not a party.

In *Brumfiel v. U.S. Bank*, 618 F. App'x 933, 937 (10th Cir. 2015), the Tenth Circuit Court of Appeals stated:

Under 11 U.S.C. §541(a)(1), the bankruptcy estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” When a Chapter 7 bankruptcy petition is filed, “[t]he trustee of the bankruptcy estate has the sole capacity to sue and be sued over assets of the estate.” *Mauerhan v. Wagner Corp.*, 649 F.3d 1180, 1184 n. 3 (10th Cir. 2011) (citing 11 U.S.C. §323(b)).

¶25 In *Gunartt v. Fifth Third Bank*, 355 F. App'x 66, 68 (7th Cir. 2009), the Seventh Circuit Court of Appeals held the Bankruptcy Court “correctly concluded, [the debtor] lacked standing to pursue [claims against a bank challenging a foreclosure] because at the commencement of his bankruptcy, all of his property, including the claims against the bank, became part of the bankruptcy estate, giving the trustee exclusive standing to litigate the claims.” In *In re Failla*, 838 F.3d 1170, 1173 (11th Cir. 2016), the Eleventh Circuit Court of Appeals described the issue before the Court as “whether a person who agrees to ‘surrender’ his house in bankruptcy may oppose a foreclosure action in state court.” The Eleventh Circuit agreed “with the bankruptcy court and the district court that ‘surrender’ requires debtors to drop their opposition to a foreclosure action.” *Id.* at 1176. The Court stated, “Debtors who surrender property must get out of the creditor’s way.” *Id.* at 1177.

¶26 Here, the Bankruptcy Court authorized sale of the property “through litigation or pursuant to Oklahoma’s non-judicial power of sale foreclosure act.” The Bankruptcy Court found, through the application of Oklahoma law, specifically 31 O.S. §2, that Satterfield was entitled, not to the property itself, but to the sum of \$5,000 as his homestead exemption in the 9.76-acre tract. Section 2(C) provides:

The homestead of any person within any city or town, owned and occupied as a residence only, or used for both residential and business purposes, shall consist of not

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exceeding one (1) acre of land, to be selected by the owner.

For purposes of this subsection, at least seventy-five percent (75%) of the total square foot area of the improvements for which a homestead exemption is claimed must be used as the principal residence in order to qualify for the exemption. If more than twenty-five percent (25%) of the total square foot area of the improvements for which a homestead exemption is claimed is used for business purposes, the homestead exemption amount shall not exceed Five Thousand Dollars (\$5,000.00).

31 O.S. 2011 §2(C). The Bankruptcy Court found that 57.99 percent, at a minimum, of the house on the 9.76 acres was used for business purposes as an event venue, and therefore Satterfield was entitled to claim as a homestead exemption only the sum of \$5,000. The trial court found Satterfield made “a judicial admission that the 9.76 Acre Tract . . . is his primary residence and is the only property on which he is claiming a homestead exemption.” He later also “judicially admitted he was only entitled to a homestead exemption in one acre of the 9.76 Acre Tract.”

¶27 The trial court adopted the Bankruptcy Court’s conclusion that the 20-acre tract did not qualify for homestead exemption and further found the trustee had not abandoned the property. The trustee had not objected to lifting the automatic stay and, as the trial court found, was directed by the Bankruptcy Court’s order to sell the property within 120 days of

the order or foreclosure would proceed if no sale had been reached. The Bankruptcy Court authorized a non-judicial foreclosure, the mortgagee conducted a non-judicial foreclosure, and Satterfield admittedly had notice of that sale.

¶28 The trial court's decision to quiet title is neither against the clear weight of the evidence nor contrary to law. Satterfield admitted in the bankruptcy proceeding that he was not entitled to a homestead exemption on the 20-acre tract. He then continued to pursue a homestead exemption claim on this property, and thus oppose the foreclosure of the property, after the Bankruptcy Court lifted the automatic stay, allowing the mortgagee to pursue such foreclosure. Appellants do not explain or even address in their appellate briefing how they can have it both ways – confess that the 20-acre tract was not subject to any homestead exemption and simultaneously assert homestead rights to the property entitling Satterfield to certain protections in a non-judicial sale.

¶29 As a final matter, we reject Kwok's and Satterfield's arguments regarding the settled law of the case and the effect of the previous Court of Civil Appeals' opinion. After review of the summary judgment record in the previous appeal, another division of this Court listed three issues of material fact requiring reversal and further proceedings on remand. If the appellate court reverses a judgment and remands the case, "it returns to the trial court as if it had never been decided, save only for the 'settled law' of the case." *Smedsrud v. Powell*, 2002 OK 87, ¶ 13, 61 P.3d 891.

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After the mandate issues, “[t]he parties are relegated to their prejudgment status and are free to re-plead or re-press their claims as well as defenses.” *Id.* (emphasis omitted). Except to the extent that the appellate court ruling becomes the settled-law-of-the-case, “the parties are entitled to introduce additional evidence, supplement the pleadings and expand the issues” on remand. *Parker v. Elam*, 1992 OK 32, ¶ 13, 829 P.2d 677.

¶30 We see nothing in the record to indicate that the issues regarding the Bankruptcy Court’s previous rulings and their effect – and the undisputed fact that the property was part of the bankruptcy estate – were considered by this Court in the previous appeal. Nor is there anything in the Opinion restricting the parties exclusively to those three fact issues. If additional material facts surfaced and were disputed by the parties on remand, there is nothing in the Opinion in Case No. 111,584, or in the settled-law-of-the-case doctrine, to prohibit their consideration. To the contrary, we find nothing in the “settled law” in the Opinion which would control or conflict with the issues raised in this appeal. After reversal of the summary judgment and remand, the case was tried to the court, the trial court considered the evidence presented and the arguments of counsel, and decided the case on the merits as set forth in the court’s extensive, detailed findings of fact and conclusions of law.

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CONCLUSION

¶31 Having examined the record on appeal and finding no error, we affirm the trial court's order.

¶32 **AFFIRMED.**

THORNBRUGH, V.C.J., and BARNES, P.J., concur.

October 16, 2017

ORIGINAL

IN THE COURT OF CIVIL APPEALS
OF THE STATE OF OKLAHOMA

DIVISION IV

ONB BANK AND)
TRUST COMPANY,)
Plaintiff,)
vs.)
JULIA KWOK and) Case No. 114,871
WILLIAM R. SATTERFIELD,) (Consolidated with
Defendants/Appellants,) Case No. 114,875)
vs.)
MINGO ENERGY, LLC,)
Intervenor/Appellee.)

ORDER DENYING
PETITION FOR REHEARING

(Filed Dec. 7, 2017)

Appellant Julia Kwok's Petition for Rehearing is
hereby denied.

SO ORDERED this 30th day of November, 2017. ALL
JUDGES CONCUR.

/s/ Deborah B. Barnes
DEBORAH B. BARNES
Presiding Judge, Division IV

ORIGINAL

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WILLIAM R. SATTERFIELD,) (Consolidated with
Defendants/Appellants,) Case No. 114,875)
vs.)
MINGO ENERGY, LLC,)
Intervenor/Appellee.)

ORDER DENYING
PETITION FOR REHEARING

(Filed Dec. 12, 2017)

Appellant William R. Satterfield's Petition for Rehearing is hereby denied.

SO ORDERED this 4th day of December, 2017. ALL JUDGES CONCUR.

/s/ Deborah B. Barnes
DEBORAH B. BARNES
Presiding Judge, Division IV

**IN THE DISTRICT COURT
IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

ONB BANK AND)
TRUST COMPANY,)
Plaintiff,)
v.)
DEFENDANT KWOK AND) Judge Dana Kuehn
WILLIAM SATTERFIELD,) Case No. CV-2012-593
Defendants,)
MINGO ENERGY, LLC.,)
Intervener.)

**FINDINGS OF FACTS AND
CONCLUSIONS OF LAW**

(Filed Mar. 4, 2016)

Now, on this 3rd day of March, 2016, the Court has for consideration the Plaintiff's Proposed Findings of Fact and Conclusions of Law, filed February 8, 2016.

FINDING OF FACTS

1. At issue is a 20 Acre Tract of real property with the legal description as follows: The West Half (W/2) of the Southeast Quarter (SE/4) of the Southwest Quarter (SW/4), Section Twelve (12), Township Eighteen (18) North, Range Twelve (12) East, Tulsa County, Oklahoma. More commonly known as 105 East 81st Street, Tulsa, Oklahoma

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74132 (hereinafter referred to as the "20 Acre Tract"). *Plaintiff's Exhibit 4.*

2. Also at issue is a separate 9.76 Acre Tract of real property adjacent to the 20 Acre Tract. (*Plaintiff's Exhibit 3*). The 9.76 Acre Tract of real property having the legal description as follows: The East Half (E/2) of the East Half (E/2) of the Southwest Quarter (SW/4) of the Southwest Quarter (SW/4), Section Twelve (12), Township Eighteen (18) North, Range Twelve (12) East, Tulsa County Oklahoma. More commonly known as 1 West 81st Street, Tulsa, Oklahoma 74133 (hereinafter referred to as the "9.76 Acre Tract"). *Plaintiff's Exhibit 5.*
3. On February 21, 2001, Satterfield purchased the 20 Acre Tract via a General Warranty Deed from Byron D. Todd and Sally A. Todd, Trustees of the Sally A. Todd Trust. *Defendant's Exhibit 17.*
4. On August 15, 2001, Juanita E. Satterfield, a single person, and Bill Satterfield a/k/a William R. Satterfield transferred their interest in the 20-Acre Tract and the 9.76 Acre Tract to Defendant William R. Satterfield. *Plaintiff's Exhibit 9, Defendant's Exhibits 1 and 17.*
5. On September 12, 2001, Satterfield took out a mortgage through Bank of America for \$775,000.000 and assigned a security interest in the 20 Acre Tract and the 9.76 Acre Tract to Bank of America. *Plaintiff's Exhibit 11 and Defendant's Exhibit 3.*
6. Prior to February 5, 2004, William R. Satterfield defaulted on the mortgage to Bank of America. *Testimony of Kevin Blaney, Trial Transcript Page 30.*

7. On August 16, 2004, William Satterfield filed a Chapter 11 Bankruptcy petition in the Northern District of Oklahoma in Case No. 04-14709-M (hereinafter referred to as “the bankruptcy”). *Testimony of William R. Satterfield, Trial Transcript Page 27.*
8. On September 2, 2004, the attorney representing Satterfield in the bankruptcy, Mr. Scott Kirtley, filed Satterfield’s Summary of Schedules in the bankruptcy court wherein Satterfield claims three properties as his homestead for purposes of obtaining a homestead exemption, including the 20 Acre Tract and the 9.76 Acre Tract. *Plaintiffs Exhibit 41.*
9. On February 27, 2006, an Application for Homestead Exemption was filed with the Tulsa County Tax Assessor wherein only the 9.76 Acre Tract located at 1 W. 81st Street in Tulsa, Oklahoma was being claimed as Satterfield’s homestead. *Plaintiff’s Exhibit 45.*
10. On March 10, 2006, Bank of America, through attorney Kevin Blaney, filed a motion in the Bankruptcy proceeding for an order of abandonment and relief from the automatic stay filed in the Tulsa County Clerk’s office as document number 2008049534. *Plaintiff’s Exhibit 48.*
11. On March 20, 2006, the bankruptcy trustee, Mr. Patrick Malloy (hereinafter “Trustee”), filed Trustee’s Objection to Debtor’s Claim of Homestead Exemption in the bankruptcy court, wherein Mr. Malloy objected to Satterfield’s claim of three different properties, including the 20 Acre Tract and the 9.76 Acre Tract. *Plaintiff’s Exhibit 51.*

12. On April 6, 2006, an agreed Order was entered lifting the stay for *Bank of America* and authorizing the sale of the property, specifically:
 - 1) "BOA shall be provided immediate limited relief from the automatic stay in order to commence foreclosure proceedings against the Subject Property up to the point of foreclosure sale either through litigation or pursuant to Oklahoma's non-judicial power of sale foreclosure act;"
 - 2) "That the Trustee shall have 120 days within which to sell the subject property. In the event the trustee has not entered into a contract to sell the Subject Property within that time frame, BOA shall be free to proceed with a foreclosure sale." *Plaintiff's Exhibit 50.*
13. On April 10, 2006, Satterfield, *pro se*, filed in the bankruptcy court a Debtor's Response to the Trustee's Reply to the Debtor's Answer to Trustee's Objection of Homestead Exemption Pursuant to 31 Oklahoma Statute 1 & 2. *Plaintiff's Exhibit 53.* Within the pleading, Satterfield adopts the Application for Homestead Exemption identified as *Plaintiff's Exhibit 45.* He specifically repudiates his claim for homestead exemption on the 20 Acre Tract filed in his original bankruptcy schedules (*Plaintiff's Exhibit 41*) by attaching an "Amended Scheduling C." *Plaintiff's Exhibit 53.*
14. Satterfield makes a judicial admission that the 9.76 Acre Tract located at 1 West 81st Street in Tulsa, Oklahoma is his primary residence and is

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the only property on which he is claiming a homestead exemption. *Plaintiff's Exhibit 53, Page 4.*

15. On April 20, 2006, Chief Judge Terrence L. Michael of the United States Bankruptcy Court for the Northern District of Oklahoma (hereinafter "Judge Michael") entered an Agreed Order in response to a Motion for Order of Abandonment, Motion for Relief from Automatic Stay filed by Bank of America, N.A. with regard to the 9.76 Acre Tract and the 20 Acre Tract. *Plaintiff's Exhibit 50.* Judge Michael ruled that Bank of America was entitled to immediate limited relief from the automatic stay in order to commence foreclosure proceedings. *Plaintiff's Exhibit 50.*
16. On May 24, 2006 there was an evidentiary hearing in the bankruptcy court regarding Trustee's Objection to Debtor's Claim of Homestead Exemption in which Satterfield judicially admitted he was only entitled to a homestead exemption in one acre of the 9.76 Acre Tract. *Plaintiff's Exhibit 57, Page 6.*
17. As a result of the May 25, 2006 hearing, Chief Judge Michael prepared and filed a Memorandum Opinion on June 6, 2006. *Plaintiff's Exhibit 57 and Defendant's Exhibit 25.*
18. Within the Memorandum Opinion, Judge Michael makes the following Conclusions of Law:

"Satterfield is limited to a homestead exemption claim of \$5,000.00 in the White House." *Plaintiff's Exhibit 57, Page 11.*
19. In the Conclusion section of the Memorandum Opinion, Judge Michael makes the following statements:

"The Trustee's Objection to Debtor's Claim of Homestead Exemption is sustained. Satterfield is limited to a homestead exemption of Five Thousand Dollars (\$5,000) in the White House . . . A separate judgment in accordance with this memorandum Opinion is entered concurrently herewith." *Plaintiff's Exhibit 57, Page 11.*

20. On June 6, 2006, concurrent with the filing of the Memorandum Opinion (*Exhibit 57*), Judge Michael entered a Judgment which read in relevant part:

"[F]or the reasons stated in the memorandum Opinion filed concurrently herewith, 'IT IS HEREBY ORDERED that the Trustee's Objection to Debtor's Claim of Homestead Exemption filed by William R. Satterfield to the real property located at One West 81st Street, Tulsa, Oklahoma . . . is limited to Five Thousand and no/ 100ths Dollars (\$5,000.00).'" *Plaintiff's Exhibit 58.*

21. On June 15, 2006, Kevin Blaney mailed a Notice of Intent to Foreclose by Power of Sale 9.76 Acre Tract and the 20 Acre Tract. *Plaintiff's Exhibit 67.* This Notice was mailed via Certified mail, Return-Receipt Requested to both Malloy as the Trustee and to William R. Satterfield who received it on June 16, 2006. *Plaintiff's Exhibit 67.*
22. On August 30, 2006, Bank of America assigned its interest in the Note and the Mortgage (*Exhibit 11*) to Nationwide Capital Group, Inc. *Plaintiff's Exhibit 13.* This assignment was executed on October 13, 2006 and recorded as Document No.

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2006125034 with the Tulsa County Clerk on October 30, 2006. *Plaintiff's Exhibit 13.*

23. On January 23, 2007, Kevin Blaney, as the attorney for Nationwide Capital Group, Inc., successor in interest to Bank of America, N.A., prepared and issued an Amended Notice of Sale which was recorded with the Tulsa County Clerk as document No. 2007008646 on January 25, 2007. *Plaintiff's Exhibit 76.* This Notice, which was mailed via Certified mail, Return-Receipt Requested to both the Patrick Malloy as the Trustee and to William R. Satterfield, provided notice that the Mortgagee (which in this case was Nationwide Capital Group, Inc. as a successor in interest to Bank of America, N.A.) would conduct a non-judicial sale of both the 9.76 Acre Tract and the 20 Acre Tract for 10:00 a.m. on March 29, 2007. *Plaintiff's Exhibit 76.*
24. On May 9, 2007, Kevin Blaney, as the attorney for Nationwide Capital Group, Inc., successor in interest to Bank of America, N.A., prepared and issued a Notice of Postponed Sale Pursuant to Oklahoma Power of Sale Mortgage Foreclosure Act which was filed with the Tulsa County Clerk as Document No. 2007052966 on May 16, 2007. *Plaintiff's Exhibit 78.*
25. On May 16, 2007, Satterfield Prepared and sent a letter to Kevin Blaney wherein he acknowledges receipt of the May 9, 2007 Notice of Postponed Sale Pursuant to Oklahoma Power of Sale Mortgage Foreclosure Act, identified above. *Plaintiff's Exhibit 82.* Within the letter, Satterfield claimed as his homestead the 9.76 Acre Tract and the 20 Acre Tract, elected judicial foreclosure of his homestead,

and elected against a deficiency judgment. *Plaintiff's Exhibit 82 and Defendant's Exhibit 8.*

26. On May 24, 2007, a judicial action was initiated in which Satterfield's claim of homestead was placed at issue when Satterfield filed an Application for Stay in the Bankruptcy Court. *Plaintiff's Exhibit 80.* Within his pleading, he asks Judge Michael to issue an order staying the non-judicial foreclosure of the 9.76 Acre Tract and the 20 Acre Tract which he claimed as his homestead in his May 16, 2007 letter (*Plaintiff's Exhibit 82*). Satterfield states that his primary residence is located at 1 West 81st Street, Tulsa, Oklahoma, and is situated on a ten-acre tract, which is adjoined by a twenty-acre tract, which parcels are the subject of the aforesaid non-judicial foreclosure. *Plaintiff's Exhibit 80.* He prays that the bankruptcy court stay the non-judicial foreclosure of the property. *Plaintiff's Exhibit 80.*
27. On May 24, 2007, Judge Michael denied Satterfield's Application to Stay (*Plaintiff's Exhibit 80*) when he issued an Order Denying Application for Stay. *Plaintiff's Exhibit 81.*
28. On May 31, 2007, at the site and time provided in the Notice of Postponed Sale Pursuant to Oklahoma Power of Sale Mortgage foreclosure Act (*Plaintiff's Exhibit 78*), the Mortgagee withdrew the 9.76 Acre Tract from the sale via oral announcement. *Testimony of Kevin Blaney, Trial Transcript Page 142 and Page 189.* On this date, the 20 Acre Tract was sold to Nationwide Capital Group, Inc. *Plaintiff's Exhibit 14.*

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29. On May 31, 2007, the 20 Acre Tract was purchased by Nationwide Capital Group, Inc. as evidenced by the mortgagee's Deed dated June 11, 2007 and recorded in the real property records of the Tulsa County Clerk as Document No. 2007077050 on July 11, 2007. *Plaintiff's Exhibit 15.*
30. On June 14, 2007, an Affidavit of Compliance with the Oklahoma Power of Sale Mortgage Foreclosure Act was recorded as document No. 2007065607 with the Tulsa County Clerk which included publication for sale of the property on May 31, 2007 and verified that William R. Satterfield received the certified mail on January 24, 2007. *Plaintiff's Exhibit 84.*
31. On June 22, 2007, William Satterfield's May 15, 2007, letter giving notice of election for judicial foreclosure was filed in Tulsa County Clerk's office as document No. 2007069519 after being misrouted through the Oklahoma County Clerk's office based on the erroneous directions in Bank of America's Notice. *Defendant's 8.*
32. On July 7, 2008, Nationwide Capital Group, Inc. conveyed the subject property to 75 Enterprises, LLC, which deed was recorded August 7, 2008 as Document No. 2008082265 in the records of the Tulsa County Clerk. Further, the deed reflects documentary stamps of \$330.00, indicating a purchase for value. *Plaintiff's Exhibit 20.*
33. On July 11, 2007, Nationwide Capitol Group, Inc., in furtherance of the non-judicial sale, issued a mortgagee's deed to Nationwide Capital Group, Inc., for the 20 Acre Tract which is filed in Tulsa

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County Clerk's office as Document No. 2007077050.
Defendant's Exhibit 14.

34. William Satterfield was incarcerated at Camp El Reno, on or about January 2005 until September 1, 2008. He was incarcerated after being convicted of conspiracy and odometer tampering. *Plaintiff's 37 and 38.*
35. On July 31, 2008, 75 Enterprises, LLC executed a mortgage in favor of ONB Bank & Trust Company granting a security interest in the 20 Acre Tract which was then filed with the Tulsa County Clerk as document No. 2008082277 on August 7, 2008. *Plaintiff's Exhibit 21.*
36. On June 3, 2011, ONB foreclosed its interest in the property as a result of the default by 75 Enterprises on its obligations under the mortgage, and the property was sold at a Sheriff's Sale in which ONB reclaimed title to the property. *Plaintiff's Exhibit 22.* The Sheriff's Deed was recorded with the Tulsa County Clerk as Document No. 2011047941 on June 6, 2011. *Plaintiff's Exhibit 22.*
37. On October 5, 2011, ONB conveyed the 20 Acre Tract to Mingo Industries, LLC via Special Warranty Deed which was then recorded with the Tulsa County Clerk. *Testimony of Terry Ingle, Trial Transcript Page 8.*
38. On January 31, 2014, Mingo Industries, LLC conveyed the 20 Acre Tract to Mingo Energy, LLC via Quit Claim Deed which was then recorded with the Tulsa County Clerk. *Testimony of Terry Ingle, Trial Transcript Page 8.*

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39. In December 2010, William Satterfield asked Defendant Kwok to purchase his house and thirty acres (29.76 acres) as he was having financial difficulties. *Testimony of Defendant Kwok, Page 50, lines 21-23; Page 51, line 2; Page 9, lines 11-18.*
40. As part of the transaction, Defendant Kwok brought the property taxes up to date. *Testimony of Defendant Satterfield, Page 70, lines 1-25, Page 71, lines 1-25, Page 72, lines 1-25, Page 73, lines 1-10, Page 78, lines 10-25, Page 79, lines 1-14 and 24-25.*
41. William Satterfield represented to Defendant Kwok that he owned the house and the thirty acres and that she would be purchasing all thirty acres. *Testimony of Defendant Kwok, Page 50, lines 21-23 and Page 51, line 2.*
42. Defendant Kwok paid Nationwide Capital \$194,000 for what she thought was the house and thirty acres. *Testimony of Defendant Kwok, Page 96, lines 19-21 and Page 102, lines 15-21.*
43. Defendant Satterfield signed and filed with the Tulsa County Clerk a Quit Claim Deed for the 20 Acre Tract on August 3, 2011 attempting to convey it to Defendant Kwok. *Defendant's Exhibit 2 and Plaintiff's Exhibit 23.*
44. Defendant Kwok became aware that she only purchased the house and 9.76 acres from Nationwide Capital when she received a letter from the Plaintiff. *Defendant's 2 and Transcript of Defendant Kwok, Page 101, lines 12-2.*
45. Defendant Kwok, a real estate investor and an accomplished financial professor, never questioned

why Defendant Satterfield would need to deed her property she already purchased and closed on with Nationwide Capital. *Transcript of Defendant Kwok, Page 104, lines 1-8, 25; Page 105, lines 1-25; Page 106, lines 1-25; Page 107, lines 1-7.*

CONCLUSIONS OF LAW

“Quiet title action” means a civil action filed pursuant to the authority of Section 1141 of Title 12 of the Oklahoma Statutes and in which the plaintiff requests a determination or judgment from the court regarding the title to a parcel of real property. Okla. Stat. Ann. tit. 12, § 1141.2 (West)¹

In order to decide if Defendant Kwok or Plaintiff/Intervenor Mingo Energy, LLC have title, the Court must decide when the previous owner, Defendant Satterfield, lost ownership to the 20 Acre Tract. In making that determination, the Court must decide when and what of his property was exempted as homestead, and whether or not he timely requested judicial foreclosure proceedings under Okla. Stat. tit. 46, §43(2)(b)(West).

First, the Plaintiff must prove that it is “holder of the legal or the complete equitable title to the land involved to maintain an action to quiet title, or to remove a cloud therefrom.” *Elliott v. Englebrecht*, 1937 OK 492, 181 Okla. 41, 72 P.2d 352, 354. The Court finds that Plaintiff has proven it is the holder of legal title to the 20 Acre Tract for the following reasons:

¹ Each of the parties waived their right to a jury trial in this matter, and the Court took evidence by exhibits and testimony.

Defendant Satterfield filed for Chapter 11 bankruptcy on August 16, 2004 which was converted to a Chapter 7 bankruptcy. At the time of the filing of the bankruptcy, all property, including the 20 Acre Tract belonging to Defendant Satterfield became the property of the bankruptcy estate. When Patrick Malloy was appointed as the bankruptcy trustee, all property of the bankruptcy estate, including the 20 Acre Tract, was transferred to the Trustee inuring to him all of Satterfield's rights and benefits associated in the property.²

During the bankruptcy, the 20 Acre Tract was neither exempted, nor was it ever abandoned by the Trustee. As such, at the time of Satterfield's May 16, 2007 election for judicial sale, all ownership rights to the property had already been vested in the Trustee and

² Upon the filing of a bankruptcy petition, an estate is created consisting of the entire debtor's property. *In re Weeks*, 106 B.R. 257, 259 (1989). The determination of what property is exempt is made as of the date of filing and there can be only one homestead insofar as the bankrupt is concerned. *Mansel v. Carroll*, 10th Cir., 379 F.2d 682, 684 (1967) (applying Oklahoma law). A Trustee is appointed to whom all the property is transferred, and the Trustee becomes the custodian of the property and representative of the estate, inuring to all the debtor's rights and benefits associated with the property. *In re Weeks*, 106 B.R. at 259. The property is only returned to the debtor upon a valid claim of exemption. Id. at 259. See also 11 U.S.C. § 541 and § 522. It is the duty of the trustee to set apart the bankrupt's legal exemptions, if claimed. *Mansel*, 279 F.2d at 684. The bankrupt must claim those exemptions and affirmative steps must be taken, both by the bankrupt and by the Trustee before exempt property can be returned to the bankrupt *Mansel*, 279 F.2d at 684; citing *Gardner v. Johnson*, 9 Cir., 195 F.2d 717, 720.

divested from Satterfield. Having no ownership rights in the 20 Acre Tract on the date of election, Satterfield had no standing to make a claim of homestead on the property nor to demand the property be foreclosed judicially. Only the bankruptcy trustee had standing and could make such demand, which the Trustee never did. Having no ownership rights in the 20 Acre Tract, Satterfield could not and did not convey any ownership rights in the 20 Acre Tract to Kwok via the Quit Claim Deed executed on August 3, 2011.

Second, throughout the bankruptcy proceedings, the United States Bankruptcy Court for the Northern District of Oklahoma found and determined that the 20 Acre Tract was not the homestead of Satterfield in the course of Case No. 04-14709-M and allowed the non-judicial foreclosure of the 20 Acre Tract to go forward. This Court will honor under *res judicata* all Orders which pertain to this matter and issued by the United States Bankruptcy Court.³ This Court adopts

³ An order of the bankruptcy court setting aside property as exempt is *res judicata* in the state courts. *McCurry v. Sledge*, 1915 OK 386, 149 P. 1124,1125, citing *Smalley v. Langenour*, 196 U.S. 93, 25 Sup. Ct. 216, 49 L.Ed. 400, 13 Am. Banta. Rep. 692. United States bankruptcy courts evaluating the existence and extent of a homestead as to property located in Oklahoma utilize the laws of the State of Oklahoma. See, *In re Klaus*, 228 B.R. 475 (1999) (US Bankruptcy Court ND of Oklahoma utilizes Oklahoma law to evaluate the existence and extent of a homestead), citing *In re Kretzinger*, 103 F.3d 943, 946 (10th Cir.1996). The Oklahoma Supreme Court mandates that state courts recognize the decisions of bankruptcy courts with deference and authority. Specifically, the Oklahoma Supreme Court has stated:

the conclusion that the 20 Acre Tract does not qualify as a homestead exemption.

Third, all notices of the sale were in accordance with Title 46, and the Bank reacted appropriately upon receiving the May 16, 2007 letter from Satterfield which tried to elect judicial foreclosure on both the 9.76 Acre Tract and the 20 Acre Tract. The Court finds Kevin Blaney, attorney for the mortgagee, made a legally permissible bifurcation under the mortgage agreement to withdraw the 9.76 Acre Tract from the non-judicial foreclosure sale and continue with the Title 46 Power of Sale proceeding as to the 20 Acre Tract. The sale of the 20 Acre Tract was appropriately completed, as neither Defendant Satterfield nor Defendant Kwok own an interest in the 20 Acre Tract.

Further, Defendant Satterfield has intentionally clouded the Plaintiff's title by purporting to convey the subject property to Defendant Kwok. Defendant Kwok has continued to cloud the title of Mingo Energy, LLC by her refusal to execute a Quit Claim Deed to Plaintiff. Mingo Energy, LLC is the owner in fee simple to

"Bankruptcy courts are on the same footing as courts of general jurisdiction, respecting the finality and conclusiveness of their records and judgments; and, when judgments are rendered by them upon questions arising in bankruptcy proceedings, they possess all the incidents of finality and conclusiveness appertaining to courts of general jurisdiction. Their judgments, unless reversed on appeal or writ of error, import absolute verity."

McCurry v. Sledge, 149 P. at 1125, citing *First Nat. Bk. of Anadarko v. Masterson*, 29 Okla. 76, 116 Pac. 162.

and entitled to possession of the following described real property, with the legal description of the West Half of the Southeast Quarter of the Southwest Quarter (W/2 SE/4 SW/4) of Section Twelve (12), Township Eighteen (18) North, Range Twelve (12) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof.

IT IS ORDERED that Defendants Satterfield and Kwok, and those claiming through, by or under them, are hereby perpetually enjoined and forbidden to claim any right, title, interest or estate in or to the above said premises. Plaintiff is adjudged to possess superior right title and interest in and to the subject real property, referred to above as the 20 Acre Tract, to that of Defendants Kwok and Satterfield.

As the prevailing party, Plaintiff is entitled to apply for a reasonable attorney fee which this Court will consider upon application. Okla. Stat. Ann. tit. 12, § 1141.5 (West).

ORDERED this 4th day of March, 2016.

/s/ Dana L. Kuehn
Dana L. Kuehn
Associate District Judge

[Certificate Of Mailing Omitted]

**IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA**

ONB Bank and) Supreme Court Case
Trust Company,) Number: 111584
Plaintiff/Appellee,) Lower Court Case
vs) Number: CV-2012-593
Julia Kwok and) Lower Court: Tulsa
William Satterfield,) County District Court
Defendants/Appellants.)

MANDATE

(Filed Jan. 14, 2014)

On the 3rd day of January, 2014, the Honorable Chief Justice Tom Colbert of the Oklahoma Supreme Court ordered the Clerk of the Supreme Court to issue mandate, pursuant to the rules of the Oklahoma Supreme Court, in the above-styled appeal from the Tulsa County District Court.

On appeal, the following judgment was entered on December 5th, 2013:

REVERSED AND REMANDED

Costs of \$0.00 are taxed and allowed pursuant to Section 978 of Title 12 of the Oklahoma Statutes and the rules of the Oklahoma Supreme Court.

Therefore, the Tulsa County District Court is directed to enter of record the above judgment and to issue

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process or take further action as required by the order
or opinion issued in this appeal.

MICHAEL S. RICHIE
Clerk of the Appellate Courts
By Polly Engelbert, Deputy

NOT FOR OFFICIAL PUBLICATION
IN THE COURT OF CIVIL APPEALS OF THE
STATE OF OKLAHOMA
DIVISION III

ONB BANK AND)
TRUST COMPANY)
Plaintiff/Appellee,)
vs.) Case No. 111,584
JULIA KWOK AND)
WILLIAM SATTERFIELD,)
Defendants/Appellants.)

APPEAL FROM THE DISTRICT COURT
OF TULSA COUNTY, OKLAHOMA

HONORABLE DANA KUEHN, TRIAL JUDGE

REVERSED AND REMANDED

(Filed Dec. 5, 2013)

Gentner F. Drummond,
Garry M. Gaskins,
Bryan M. Harrington,
DRUMMOND LAW, P.L.L.C.,
Tulsa, Oklahoma,
and
Susan V. Atherton,
Tulsa, Oklahoma, For Plaintiff/Appellee,
Gina Carrigan-St.Clair,
Gene P. Dennison,
CARRIGAN LAW OFFICE,
Tulsa, Oklahoma, For Defendants/Appellants.

OPINION BY BRIAN JACK GOREE, Judge:

¶1 Defendant/Appellants, William Satterfield and Julia Kwok, seek review of the trial court's order granting summary judgment in favor of Plaintiff/Appellee, ONB Bank and Trust Company (ONB), in ONB's action to quiet title to a tract of land in Tulsa County, Oklahoma. We reverse because the record establishes the presence of contested issues of material fact as to whether (1) Satterfield gave notice of his homestead claim and election for judicial foreclosure, (2) subsequent purchasers were put on inquiry of his claim, and (3) Satterfield had knowledge of the proceedings subsequent to his election for judicial foreclosure.

¶2 ONB sued Satterfield and Kwok on behalf of ONB's grantee, Mingo Industries, L.L.C., alleging Satterfield and Kwok had no right, title, or interest in the subject property although they might claim an interest. Satterfield answered, asserting the foreclosure of his interest in 2007 by Nationwide Capital Group Inc. (Nationwide) by power of sale was flawed because, upon receiving the notice of sale, he sent notice by certified mail to Nationwide's attorney that the property was his homestead, and he elected to have a judicial foreclosure pursuant to the Oklahoma Power of Sale Mortgage Foreclosure Act (Act), 46 O.S. 2011 §§43(A)(2)(b) and (45(A)). Satterfield asserted the notice of sale directed him to file his election with the County Clerk of Oklahoma County. When he did so, that clerk forwarded the filing to the County Clerk of Tulsa County, causing the filing to take place after the sale but before recording of the mortgagee's deed.

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Satterfield asserted that ONB failed to foreclose judicially after receiving his notice, and Nationwide, as ONB's predecessor in title, therefore lacked marketable title.

¶3 Kwok answered and counterclaimed for quiet title. ONB answered and denied Kwok was entitled to relief.

¶4 ONB moved for summary judgment, asserting the dispute was controlled by 46 O.S. 2011 §47(A), which provides in part,

The mortgagee's deed shall raise a presumption of compliance with the requirements of this act regarding the exercise of the power of sale and the sale of the property, including the giving of the notice of intention to foreclose and of sale and the conduct of the sale. Such deed shall constitute conclusive evidence of the meeting of such requirements in favor of purchasers for value and without actual notice so long as the failure to meet those requirements would otherwise render the sale only voidable and, even if the sale is void, after the passage of two (2) years from the date of the recording of the deed.

ONB submitted evidence showing the mortgagee's deed, conveying the property from Nationwide as mortgagee to Nationwide as buyer, was recorded July 11, 2007, and a deed from Nationwide to 75 Enterprises, L.L.C., with documentary stamps of \$330.00. It submitted evidence that ONB became the owner of the property by sheriff's deed upon foreclosure of a

mortgage from 75 Enterprises, L.L.C. ONB argued the mortgagee's deed became conclusive evidence of meeting the Act's requirements after the passage of two years from the date the deed was recorded.

¶5 In response, Satterfield argued that the "conclusive evidence" clause did not apply in this case because the grantee in the mortgagee's deed was not a bona fide purchaser for value without actual notice, inasmuch as Nationwide took title from itself. He argues the subsequent purchasers were not without notice, because his notice of homestead claim and election for judicial foreclosure were filed of record.

¶6 The trial court granted summary judgment in favor of ONB, making extensive findings of fact, including that over the past five years, the property had been conveyed to a third party who mortgaged it and a judicial foreclosure of that mortgage has been completed, resulting in a Sheriff's Deed to ONB. The trial court concluded that Satterfield and his grantee Kwok were "estopped by laches since the filing of the Sheriff's Deed in 2007 from asserting any claims now." It awarded ONB's attorney an attorney fee of \$3,500.00 plus court costs and statutory post-judgment interest.

¶7 Satterfield and Kwok appeal without appellate briefs in conformance with the procedures for the appellate accelerated docket, Okla. Sup. Ct. R. 1.36, 12 O.S. Supp. 2013, Ch. 15, App. 1. They contend the trial court erred in (1) ruling that the title-remedying provisions of 46 O.S. 2011 §47 cured the unlawful, non-judicial foreclosure of Satterfield's interest after he

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gave notice of his homestead interest and elected judicial foreclosure, (2) finding that ONB and its predecessors in title were purchasers for value with no actual notice of the defective, non-judicial sale of Satterfield's interest, (3) finding that Satterfield received a copy of the Affidavit of Compliance with the Oklahoma Power of Sale Mortgage Foreclosure Act via certified mail on January 24, 2007 even though the affidavit was not executed until June 14, 2007, or otherwise that Satterfield had actual notice of the defective sale, (4) finding that Satterfield and Kwok were estopped by laches from claiming any interest "since the filing of the Sheriff's deed in 2007," and (5) granting attorney fees of \$3,500.00 without supporting authority or proper application.

¶8 We will review the trial court's summary judgment under a *de novo* standard. *Carmichael v. Beller*, 1996 OK 48, 914 P.2d 1051, 1053. Summary judgment is appropriate only when there is no substantial controversy as to any material fact and one of the parties is entitled to judgment as a matter of law. 12 O.S. 2011, Ch. 2, App. 1, Rule 13. The trial court may not weigh the evidence on a motion for summary judgment. *Stuckey v. Young Exploration Co.*, 1978 OK 128, 586 P.2d 726, 730. Rather, it must view all inferences and conclusions to be drawn from the evidentiary materials in the light most favorable to the party opposing the motion. *Northrip v. Montgomery Ward & Co.*, 1974 OK 142, 529 P.2d 489, 497. The focus in summary process is on whether the evidentiary materials as a whole show undisputed material facts that will support but a

single inference in favor of the movant's quest for relief. It is a method for identifying and isolating non-triable fact issues, not for defeating the opponent's right to trial by jury. *Gray v. Holman*, 1995 OK 118, 909 P.2d 776, 781.

¶9 The Act sets forth the procedure for foreclosing a mortgage in which the mortgagor has conferred upon the mortgagee the power to sell the mortgaged property. 46 O.S. 2011 §43(A)(2). However, the Act provides it "shall not apply to . . . [a] mortgage on the mortgagor's homestead if, after the notice of sale is given to the mortgagor pursuant to subsection B of [§45], the mortgagor elects judicial foreclosure in compliance with the provisions of subparagraphs b and c of paragraph 2 of subsection A of [§43]." §41(7). Subsection b of §43 provides,

[I]n a mortgage transaction involving the mortgagor's homestead, if the mortgagor, at least ten (10) days before the property is to be sold under the power of sale, sends written notice by certified mail to the mortgagee stating that the property involved is the mortgagor's homestead and that judicial foreclosure is elected, and files of record a copy of such notice which contains the legal description of the property in the office of the county clerk of the county where the property is located, the mortgagee must pursue any foreclosure by judicial proceeding in a court of competent jurisdiction; provided, however, the mortgagee may contest the mortgagor's claim of homestead in the judicial foreclosure action or in

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another action such as by declaratory judgment . . .

¶10 In the present case, Satterfield put on evidence he complied with the procedure, as set forth in the notice he received, for claiming homestead and electing foreclosure. He put on evidence his failure to timely file the election in the land records was caused by neglect excusable by the mistake in the notice of sale. His election letter to Nationwide's attorney on its face stated it was sent by certified mail and included a tracking number. However, his filings do not include a green card showing the attorney received the letter. This evidence establishes a contested issue of material fact as to whether Satterfield timely elected judicial foreclosure. If he did, the Act no longer applied and Nationwide was required to foreclose judicially.

¶11 Section 45 of the Act provides that the mortgagee's deed is conclusive evidence of the meeting of the Act's requirements after the passage of two years from the date the deed was recorded, but only "in favor of purchasers for value and without actual notice." However, if the Act no longer applied because Satterfield elected judicial foreclosure, then this section cannot save the sale that took place after the election. On the other hand, if Satterfield did not timely elect judicial foreclosure, purchasers for value and without actual notice were entitled to rely on the Mortgagee's Deed pursuant to §45.

¶12 A purchaser of land takes the property with constructive notice of whatever appears in the

conveyances constituting the chain of title. *Creek Land & Imp. Co. v. Davis*, 1911 OK 85, 28 Okla. 579, 115 P. 468. If those documents present sufficient facts to put a prudent person on inquiry, the purchaser will be charged with actual notice of whatever reasonable inquiry would have disclosed. *Id.* Filing instruments of record is constructive notice only to those subsequent in the chain of title, not to those prior in the chain of title. *Straub v. Swaim*, 296 P.2d 147, 148-149 (Okla.1956).

¶13 Satterfield filed his election of record in the office of the County Clerk of Oklahoma County after the sale of the property but before the Mortgagee's Deed was filed. This record raises a fact issue regarding whether this filing would put a prudent person on inquiry, so as to charge a subsequent purchaser with actual knowledge of his claim.

¶14 The trial court based its summary judgment ruling on estoppel by laches, finding Satterfield and Kwok were "estopped by laches since the filing of the Sheriff's Deed in 2007 from asserting any claims now." The doctrine of laches is available only in equitable matters. *Skinner v. Scott*, 1911 OK 282, ¶5, 118 P. 394, 396. The time that will constitute a bar to an action varies and is determined by the circumstances of each case. *Id.* The party invoking the laches defense must show (1) unreasonable delay, (2) coupled with knowledge of the relevant facts, (3) resulting in prejudice. *Smith v. Baptist Foundation of Oklahoma*, 2002 OK 57, ¶9, 50 P.3d 1132, 1138.

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¶15 The record in this case lacks evidence that Satterfield knew about any of the proceedings subsequent to his demand for judicial foreclosure. Satterfield is not charged with constructive knowledge of filings subsequent to his interest. The Affidavit of Compliance with Oklahoma Power of Sale Mortgage Foreclosure Act contains no certificate of mailing, and the record contains no certified mail receipt dated before the affidavit's existence, as the trial court found. The record contains no 2007 Sheriff's Deed as cited by the trial court. If one or more material facts is not supported by admissible evidence, we must determine that judgment for the movant was not proper. *State ex rel. Macy v. Thirty Thousand Seven Hundred Eighty one Dollars & No/100*, 1993 OK CIV APP 170, ¶4, 865 P.2d 1262.

¶16 The trial court in this case erred in granting summary judgment to ONB because the record establishes issues of material fact as to whether (1) Satterfield gave notice of his homestead claim and election for judicial foreclosure, (2) subsequent purchasers were put on inquiry of his claim, and (3) Satterfield had knowledge of the proceedings subsequent to his election for judicial foreclosure.

¶17 An attorney fee award based upon prevailing party status necessarily fails when the judgment is reversed. *Thompson v. Independent School Dist. No. 94 of Garfield Co.*, 1994 OK 139, 886 P.2d 996, 998.

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¶18 We REVERSE the order in its entirety and RE-
MAND for further proceedings.

HETHERINGTON, P.J., and MITCHELL, J., concur.

**IN THE DISTRICT COURT IN AND FOR TULSA
STATE OF OKLAHOMA**

ONB BANK AND TRUST COMPANY,)
Plaintiff,) Case No. CV-2012-
vs.) 00593
JULIA KWOK AND WILLIAM SATTERFIELD,)
Defendants.)

FINAL JOURNAL ENTRY
OF SUMMARY JUDGMENT

(Filed Feb. 12, 2013)

NOW on this 20th day of November, 2012, Plaintiff's Motion for Summary Judgment filed in the above referenced cause on August 13, 2012 came on for consideration before the undersigned Judge. The Plaintiff, ONB Bank and Trust Company is represented by its attorney, Susan V. Atherton; Defendant Kwok by her attorney, Gina Carrigan-St. Clair; and Defendant Satterfield by his attorney, Gene P. Dennison.

The Court finds that on or about September 12, 2001 William R. Satterfield, an unmarried person, (the then record title owner of the subject property) executed a mortgage in favor of Bank of America, N.A., recorded September 12, 2001 in Book 6596 Page 18; Bank of America, N.A. assigned this mortgage to Nationwide Capital Group, Inc., on October 13, 2006,

which assignment was recorded October 30, 2006 as Document No. 2006125034, all in the records of the Tulsa County Clerk.

The Court further finds that the mortgage provided for a Power of Sale, and that Defendant Satterfield defaulted; That a Notice of Sale Pursuant to Oklahoma Power of Sale Mortgage Foreclosure Act was recorded January 8, 2007 as Document No. 2007002898, and that Defendant Satterfield was given Notice of Intent to Foreclose by Power of Sale by U.S. Mail, and Certified Mail signed for on June 16, 2006.

The Court finds that an Amended Notice of Sale was recorded January 25, 2007 as Document No. 2007008646, and that a Notice of Postponed Sale pursuant to Oklahoma Power of Sale Mortgage Foreclosure Act was recorded May 16, 2007 as Document No. 2007052966 in the records of the Tulsa County Clerk; That an Affidavit of Compliance with Oklahoma Power of Sale Mortgage Foreclosure Act was recorded June 14, 2007 as Document No. 2007065607 in the records of the Tulsa County Clerk, which included publication for sale of the property on May 31, 2007, and that Defendant Satterfield received certified mail for same on January 24, 2007.

The Court further finds that Defendant Satterfield sent letters dated May 16, 2007 and June 12, 2007 respectively to the lender and county clerk alleging homestead interest; that these letters were recorded June 22, 2007 as Document No. 2007069519 in the records of the Tulsa County Clerk. A Mortgagee's Deed

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from Nationwide Capital Group, Inc., successor in interest to Bank of America, N.A., in favor of Nationwide Capital Group, Inc. for the subject property dated June 11, 2007 was dated June 11, 2007 and recorded July 11, 2007 as Document No. 2007077050 in the records of the Tulsa County Clerk.

The Court further finds that on July 7, 2008, Nationwide Capital Group, Inc. conveyed the subject property to 75 Enterprises, LLC, which deed was recorded August 7, 2008 as Document No. 2008082265 in the records of the Tulsa County Clerk, which deed reflects documentary stamps of \$330.00, indicating a purchase for value; and that on July 31, 2008, 75 Enterprises, LLC. executed a mortgage in favor of the Plaintiff herein, ONB Bank and Trust Company, but defaulted and Plaintiff became the record title owner of the subject property by virtue of Sheriff's Deed dated June 3, 2011, which was recorded June 6, 2011 as Document No. 2011047941 in the records of the Tulsa County Clerk.

The Court also finds that a Quit Claim Deed dated August 3, 2011 from William R. Satterfield, a single person, in favor of Dr. Julia Kwok, a single person, regarding the subject property was recorded August 3, 2011 as Document No. 2011065400, resulting in this action being filed.

The Court finds that the Oklahoma Power of Sale Mortgage Foreclosure Act, specifically Title 46 O.S. Section 4647 provides in part as follows: "The Mortgagor's deed shall raise a presumption of compliance

with the requirements of this act regarding the exercise of the power of sale and the sale of the property, including the giving of notice of intention to foreclose and of sale and the conduct of the sale. Such deed shall constitute conclusive evidence of the meeting of such requirements in favor of purchasers for value and without actual notice so long as the failure to meet these requirements would otherwise render the sale only voidable and, **even if the sale is void, after the passage of two (2) years from the date of the recording of the deed;**" and that over the past five (5) years, the subject property has been conveyed to a third party for value, a mortgage by the said third party recorded as Document No. 2008082277 and incorporated herein by reference, the completion of a judicial foreclosure of that mortgage, the sale and conveyance of the property by Sheriff's Deed to Plaintiff, and Special Warranty Deed from Plaintiff to Mingo Industries, L.L.C., an Oklahoma limited liability company, has occurred, such that the Defendant Satterfield and his purported grantee, Defendant Kwok, are estopped by laches since the filing of the Sheriff's Deed in 2007 from asserting any claims now. Accordingly, the Defendant Satterfield has intentionally clouded the Plaintiff's title by purporting to convey the subject property to the Defendant, Julia Kwok, and she has continued to cloud the Plaintiff's title by refusing to execute a Quit Claim Deed to Plaintiff. The undisputed evidence indicates that the Plaintiff has proven their case, entitling them to a summary judgment in this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff's grantee, **MINGO INDUSTRIES, L.L.C, an Oklahoma limited liability company**, is the owner in fee simple to and entitled to possession of the following described real property, to-wit:

The West Half of the Southeast Quarter of the Southwest Quarter (W/2 SE/4 SW/4) of Section Twelve (12), Township Eighteen (18) North, Range Twelve (12) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof,

and that the said Defendants, and those claiming through, by or under them, are hereby perpetually joined and forbidden to claim any right, title, interest or estate in or to the above said premises.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff's attorney be awarded an attorney fee in the amount of \$3,500.00 plus court costs with a statutory interest rate from time of Judgment.

Dated this 4 day of February, 2013.

/s/ Dana L. Kuehn
Judge of the District Court

APPROVED AS TO FORM:

/s/ Susan V. Atherton
Susan V. Atherton, OBA#000367
Attorney for Plaintiff
4739 E. 91st Street, Suite 200
Tulsa, OK 74137
Attorney for Plaintiff

APPROVED AS TO FORM:

/s/ * Gina Carrigan-St.Clair,
OBA #15979
1437 South Boulder Avenue,
Ste. 170 Tulsa, OK 74119
Attorney for Defendant
Julia Kwok

APPROVED AS TO FORM:

/s/ * Gene P. Dennison, OBA #2308
1437 South Boulder Avenue,
Suite 170 Tulsa, OK 74119
Attorney for Defendant
William Satterfield

[Certificate Of Mailing Omitted]

* Over the objection to form of both counsel per the request
to settle Journal Entry filed 12/21/12 [DJR]

**IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA**

MONDAY, MARCH 26, 2018

**THE CLERK IS DIRECTED TO ENTER THE
FOLLOWING ORDERS OF THE COURT:**

* * *

114,871 (cons.w/114,875)

ONB Bank and Trust Company v. Julia Kwok and
William R. Satterfield v. Mingo Energy, LLC

Both petitions for certiorari are denied.

CONCUR: Combs, C.J., Gurich, V.C.J., Kauger,
Winchester, Edmondson, Colbert, Reif
and Wyrick, JJ.

/s/ Douglas Combs
CHIEF JUSTICE
