



NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

MAY -9 2019

JOHN D. HADDEN
CLERK

JUDY KNIGHT, an individual, and)
PHOENIX CENTRAL, INC., an)
Oklahoma corporation,)

Plaintiffs/Appellants,)

vs.)

WARD & GLASS, P.C., an Oklahoma)
professional corporation, and)
STANLEY WARD,)

Defendants/Appellees,)

and)

JOHN or JANE DOES 1-10, individuals)
or corporations,)

Defendants.)

Case No. 117,492

APPEAL FROM THE DISTRICT COURT OF
CLEVELAND COUNTY, OKLAHOMA

HONORABLE AARON DUCK, TRIAL JUDGE

AFFIRMED

Judy Knight
Norman, Oklahoma

Pro se

Charles F. Alden, III
Oklahoma City, Oklahoma

For Defendants/Appellees

OPINION BY JERRY L. GOODMAN, JUDGE:

Judy Knight (Client) appeals the trial court's January 4, 2019, order denying her motion to vacate an earlier order granting summary judgment in favor of defendants Ward & Glass, P.C., and Stanley Ward (collectively, Attorneys), on Client's claim of professional negligence.

The appeal was assigned to the accelerated docket pursuant to Oklahoma Supreme Court Rule 1.36(a)(1), 12 O.S.2011 and Supp. 2013, Ch. 15, App. 1, and *In Re Amendments to Oklahoma Supreme Court Rules*, 2013 OK 67. Based on our review of the facts and applicable law, we affirm the trial court's order.

BACKGROUND

This case originated in 2005 when Client was involved in a dispute with Mooring Capital Fund over a mortgage foreclosure suit involving commercial property she owned through her solely-owned corporation, Phoenix Central, Inc. She was represented by two different attorneys during most of this time. The foreclosure was originally filed in Cleveland County, Oklahoma, but was removed to federal court.¹ All but one of Phoenix's counterclaims were later dismissed by the federal court. Mooring was granted summary judgment against Phoenix on all foreclosure-related claims. Phoenix's counterclaim for an alleged breach of the implied duty of good faith and fair dealing was allowed to go to trial. Meanwhile,

¹ R. 39.

Client filed another state court claim against Mooring, involving another of her companies. This too was removed to federal court, where all of Client's claims but one were dismissed. The trial court dismissed all of the claims except Client's personal claim for breach of the duty of good faith and fair dealing against Mooring.

In 2008, the note was paid and the foreclosure action was dismissed. All that remained of the original suits were Client's and Phoenix's claims against Mooring for breach of the duty of good faith and fair dealing.

In January 2008, Client retained Attorneys, her third, who took the matter to trial in 2009, resulting in a verdict for Phoenix on its tort claims, but against Client in favor of Mooring, on her claims. Both sides were awarded an attorney's fee. Mooring was ordered to pay Phoenix's fee and Client was to pay Mooring's. Attorneys refused to continue as appellate counsel, forcing her to retain a fourth attorney. An appeal of the attorney's fee award to the 10th Circuit with new counsel failed in 2010.

I. Client's Malpractice Claim Against Attorneys

On October 11, 2012, Client filed suit against Attorneys. Client alleged that during the 2009 trial, Attorneys did little to prevent Mooring's attorneys from submitting "false and misleading testimony" in furtherance of "evading and

concealing the true and relevant facts.”² Further, Client alleged Attorneys failed to report Mooring’s attorneys to the bar association for punishment.³ Client alleged that Attorneys did not conduct the trial in a professional manner, specifically by not making certain objections, not introducing certain evidence, insufficiently cross-examining certain witnesses, allowing conflicting testimony introduced by Mooring to be admitted without objection, failing to call certain witnesses, failing to make appropriate arguments to the court and, in general, conducting the trial in a way different than the way Client, a former CPA, would have tried the case.⁴

Client set out six “causes of actions” or more properly, theories of recovery,⁵ in her 22-page, 163 paragraph, Petition. In it, Client alleged she suffered damages arising from Attorneys’ acts of: 1. unprofessional conduct; 2. breach of fiduciary duty; 3. wrongful concealment; 4. negligence/negligent omission/neglect/failure to prepare; 5. economic duress and; 6. emotional distress.

II. Client’s Petition was Soon Dismissed, Appealed, and Remanded

This petition was originally dismissed by the trial court on February 7, 2017, based upon 12 O.S.2011, § 19, a statute which had earlier been found constitutionally invalid. On Client’s appeal of the trial court’s dismissal to this

² R. 4.

³ *Id.*

⁴ R. 5-9.

⁵ “Oklahoma jurisprudence utilizes the transactional approach for its definition of a ‘cause of action.’ Although different theories of liability may be pressed in support of each claim, only a single cause of action can ordinarily be predicated upon one occurrence or transaction.” *Rodgers v. Higgins*, 1993 OK 45, ¶ 4, 871 P.2d 398, 402–03 (footnotes omitted).

Court, Attorneys confessed the order should be reversed because of the unconstitutional basis of the order. This Court agreed in an opinion issued January 22, 2018.⁶

Following remand from this Court, Attorneys answered Client's petition on January 22, 2018, denied her allegations and, after discovery had been conducted, filed a motion for summary judgment on August 21, 2018. Client responded on September 20, 2018. Following a hearing at which both parties appeared, the trial court granted Attorneys' motion for summary judgment in an order filed October 1, 2018.

More than ten days later, on October 31, Client filed a "Motion to Vacate, Alter or Amend Judgment Granting Defendants Motion for Summary Judgment and To Allow A Supplement To This Motion." The trial court denied the motion to vacate on January 4, 2019, resulting in this appeal.

STANDARD OF REVIEW

The trial court's original order granting summary judgment was filed October 1, 2018.⁷ More than ten but less than 30 days later, on October 31, Client timely filed her "Motion to Vacate, Alter or Amend Judgment Granting

⁶ See Appeal No. 115,831.

⁷ R. 133.

Defendants Motion for Summary Judgment and To Allow A Supplement To This Motion.”⁸

The trial court’s disposition of a motion to vacate is reviewed for an abuse of discretion. *Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, 987 P.2d 1185. “An abused judicial discretion is manifested when discretion is exercised to an end or purpose not justified by, and clearly against, reason and evidence.” *Id.* at ¶ 20, 987 P.2d at 1194. When review of the district court’s discretion in denying a motion to vacate is determined by the propriety of an order granting summary judgment, the abuse-of-discretion question is determined by *de novo* review of the summary judgment order. *Reeds v. Walker*, 2006 OK 43, ¶ 9, 157 P.3d 100 (applying this standard to review of motions denying a new trial after summary judgment was granted). Cf. *Patel*, 1999 OK 33, ¶ 20, 987 P.2d at 1194 (an order granting or denying a motion for new trial and a motion to vacate are subject to the same abuse of discretion standard of review).

MidFirst Bank v. Wilson, 2013 OK CIV APP 15, ¶ 4, 295 P.3d 1142, 1143–44.

III. Pro se Litigant Standard

Client is representing herself in this appeal, appearing pro se.

We begin this analysis by noting that litigants proceeding pro se in a civil action or a civil appeal are charged with the responsibility of complying with the rules of pleadings, evidence and appellate practice. *Funnell v. Jones*, 1985 OK 73, 737 P.2d 105.

Lowe v. Cantrell, 2000 OK CIV APP 27, ¶ 6, 1 P.3d 438, 439.

ANALYSIS

We first examine *de novo* the underlying order granting summary judgment to determine if it was correct, before reviewing the trial court's disposition of the motion to vacate the order granting summary judgment.

Attorneys' motion for summary judgment argued that Client's first, second, third, and fourth theories of recovery require expert testimony be introduced in order to establish prima facie evidence of her claims of legal malpractice. Client's admitted failure to do so, they contend, requires those theories be dismissed. The remaining two theories of recovery, *i.e.*, emotional and economic distress, do not allege whether those were caused by negligence or were intentionally inflicted. Regardless, according to Attorneys, those theories were not supported by any evidentiary material by Client, and therefore must also be dismissed.

IV. Expert Testimony Necessary to Prove Legal Negligence

Attorneys argue that in order to prevail on her professional negligence theory, Client must establish a prima facie case by providing expert witness testimony that Attorneys' actions deviated from established professional standards of care. This is a correct statement of law and is dispositive of Client's first four theories.

In Oklahoma, the mere allegation of legal negligence is insufficient for recovery. Whether representing themselves pro se or by counsel, a plaintiff must

support those allegations with evidence. In a negligence case such as the one filed by Client, she must prove:

The elements of negligence [which] are (1) the existence of a duty on the part of a defendant to protect the plaintiff from injury; (2) a violation of that duty; and (3) injury proximately resulting from the violation. *Sloan v. Owen*, 579 P.2d 812, 814 (Okla.1977)

Dirickson v. Mings, 1996 OK 2, ¶ 7, 910 P.2d 1015, 1018. In this case, Client has alleged an attorney has committed an act of professional negligence. In Oklahoma,

The elements of a professional negligence claim against an attorney are (1) existence of an attorney-client relation, (2) a breach of duty arising from the relation, and (3) injury proximately caused by the breach. See, e.g., *Myers v. Maxey*, 1995 OK CIV APP 148, 915 P.2d 940; *Erwin v. Frazier*, 1989 OK 95, 786 P.2d 61; *Allred v. Rabon*, 1977 OK 216, 572 P.2d 979. Failure of any one of the elements renders such a claim subject to dismissal.

Whitehead v. Rainey, Ross, Rice & Binns, 2000 OK CIV APP 5, ¶ 6, 997 P.2d 177,

179. More particularly, addressing Client's argument,

We have no doubt that normally in a legal malpractice case . . . to recover damages for the lawyer's acts or omissions in breach of the lawyer's duty to the client, *it must be shown through the presentation of expert witness testimony* that it was more probable than not that some form of . . . relief would have been obtained in a court proceeding, but for the attorney's failings. . . .

Worsham v. Nix, 2006 OK 67, ¶ 34, 145 P.3d 1055, 1066–67 (emphasis added).

This is in accord with the laws of sister states. A Connecticut court, for instance, stated:

This court previously has explained that, as a general matter, expert testimony is necessary in legal malpractice cases in order to establish the standard of care, against which the attorney's conduct should be evaluated by the jury. See, e.g., *Grimm v. Fox*, supra, 303 Conn. at 329–30, 33 A.3d 205. We conclude that, although there will be exceptions in obvious cases, expert testimony also is a general requirement for establishing the element of causation in legal malpractice cases. Because a determination of what result should have occurred if the attorney had not been negligent usually is beyond the field of ordinary knowledge and experience possessed by a juror, expert testimony generally will be necessary to provide the essential nexus between the attorney's error and the plaintiff's damages.

Bozelko v. Papastavros, 323 Conn. 275, 284–85, 147 A.3d 1023, 1029–30 (2016).

The *Bozelko* Court then surveyed decisions from New York, Colorado, Idaho, Missouri, and New Hampshire before concluding that expert witness testimony was required to prove a claim of legal malpractice. *Id.* Further, New Hampshire has addressed this issue and concluded:

We have previously held that, absent exceptional circumstances, expert testimony is necessary to inform the jury regarding the skill and care ordinarily exercised by lawyers and to prove a breach thereof. [*Wong v. Ekberg*, 148 N.H. 369, 373–74, 807 A.2d 1266 (2002)]. 148 N.H. at 374, 807 A.2d 1266. We have also assumed, without deciding, that expert testimony is required to prove proximate cause. *Follender v. Scheidegg*, 142

N.H. 192, 193, 698 A.2d 1237 (1997). Today, we resolve this issue, and conclude that, in most instances, expert testimony is required to prove causation in a legal malpractice action.

In legal malpractice cases, “[e]xpert testimony may be essential for the plaintiff to establish causation. The trier of fact must be able to determine what . . . result should have occurred if the lawyer had not been negligent.” 5 R. Mallen & J. Smith, *Legal Malpractice* § 33.16, at 116 (5th ed. 2000). “[U]nless the causal link is obvious or can be established by other evidence, expert testimony may be essential to prove what the lawyer should have done.” *Id.* We thus hold that expert testimony on proximate cause is required “in cases where determination of that issue is not one that lay people would ordinarily be competent to make.” *Delp v. Douglas*, 948 S.W.2d 483, 495 (Tex.App.1997), rev’d in part and vacated in part on other grounds, 987 S.W.2d 879 (Tex.1999).

Carbone v. Tierney, 151 N.H. 521, 528, 864 A.2d 308, 314–15 (2004). Moreover,

In summary, a legal-malpractice plaintiff who contends that his attorney’s negligence caused him to lose a claim he otherwise would have won and collected on must adduce expert testimony to prove the case-within-a-case aspect of causation if that causal connection is beyond a lay juror’s common understanding. See [*Alexander v. Turtur & Assocs., Inc.*, 146 S.W.3d 113, 117 (Tex.2004)], 146 S.W.3d at 119. If the plaintiff would have needed medical-expert testimony to prevail in the underlying suit, then the same kind of testimony is required to prove the case within a case in the legal-malpractice suit.

Kelley & Witherspoon, LLP v. Hooper, 401 S.W.3d 841, 848–49 (Tex. App. 2013).

Finally, in a case with facts similar to those presented here, New Mexico has held:

Expert testimony in claims of legal malpractice means testimony of lawyers. See *Dorf v. Relles*, 355 F.2d 488, 17 A.L.R.3d 1433 (7th Cir. 1966). The defendant attorney presented affidavits of three lawyers that the preparation, investigation and trial in Federal Court were handled in a professional manner without negligence. These affidavits stand uncontradicted by any expert testimony. [Plaintiffs], except for their own affidavits and attachments, presented no evidence in the trial court by way of affidavits, depositions or testimony of any lawyer to substantiate his claims that the trial attorney in the Federal Court case 'departed from the recognized standards of (legal) practice in the community, or must have neglected to do something required by those standards.' He relies on his own affidavits and attachments. But the facts stated in the affidavits are inadmissible, because departure from or neglect of legal standards lies in the field of knowledge in which only an attorney can give a competent opinion. *Woods v. Brumlop*, 71 N.M. 221, 377 P.2d 520 (1962); U.J.I. 8.1, both applicable to medical malpractice.

Sanders v. Smith, 1972-NMCA-016, ¶ 14, 83 N.M. 706, 708-09, 496 P.2d 1102, 1104-05.

We find these cases persuasive in our analysis.

Client is not alleging Attorneys failed to file a claim in time to prevent the running of a statute of limitation, which could be an act of negligence so obvious to a layman that, in most circumstances, would not require an expert's opinion to prove the failure to file was negligent. Instead, Client is alleging Attorneys failed to conduct the trial in a way to guarantee success. She alleged, among other things, that Attorneys did not adequately conduct re-direct examinations of

witnesses;⁹ failed to return the phone calls of Client's fourth attorney, who had been hired to handle her appeal;¹⁰ "failed and refused" to explain to Client why the trial court entered the judgment it did;¹¹ and failed to call certain witnesses.¹² As we understand her allegations, Client complains Attorneys violated a professional standard of care because she was not adequately kept informed of Attorney's pre- and post-trial decisions regarding her case, failed to apprise her of the status of her case, and did not conduct the trial in a way that was satisfactory to her.

Viewing these allegations in the light most favorable to Client, these allegations, among all the others and if true, may have influenced the outcome of her trial. However, this does not mean Attorneys were negligent. For negligence to be proven in this case, expert testimony is required to establish proof of a breach of professional standards that resulted in damages to Client. As it is undisputed that Client has failed not only to produce an expert witness's testimony, but has not even identified a potential expert witness, her claims of professional malfeasance remain unproven and cannot withstand summary judgment.

Finally,

The mere contention that facts exist or might exist is not sufficient to create a substantial controversy when the party moving for summary judgment has introduced

⁹ R. 10, ¶ 75.

¹⁰ R. 14, ¶ 112.

¹¹ R. 14, ¶ 108.

¹² R. 9, ¶ 70.

evidence showing the existence of facts which would preclude recovery by the party against whom the motion is made.

Mengel v. Rosen, 1987 OK 23, ¶ 9, 735 P.2d 560, 563. Therefore, our *de novo* review leads to the conclusion that summary judgment in favor of Attorneys was correct, because Client has failed to prove an essential element of a negligence-based cause of action.

V. Theory of Emotional Distress

Client claimed she suffered emotional distress as a result of Attorneys' actions. Whether that distress is intentional or negligent, Client must prove the elements of the claim. The Oklahoma Supreme Court has addressed this issue.

The negligent causing of emotional distress is not an independent tort, but is in effect the tort of negligence. *Lockhart v. Loosen*, 1997 OK 103, ¶ 16, 943 P.2d 1074, 1081. Before emotional distress damages can be awarded, a plaintiff must establish: a duty on the part of the defendant to protect the plaintiff from injury, a failure of the defendant to perform the duty, and an injury to the plaintiff resulting from the failure. *Kraszewski v. Baptist Med. Ctr.*, 1996 OK 141, ¶ 1, 916 P.2d 241, 243, fn. 1.

To recover for emotional distress under Oklahoma law, "a plaintiff must . . . be a 'direct victim' rather than a 'bystander.'" *Kraszewski* at ¶ 10. Direct victims are those individuals who are "directly physically involved in the accident," but whose emotional distress results from the suffering of another. *Kraszewski* at ¶ 8. Bystanders, on the other hand, are those individuals who are not directly involved in the accident, but are seeking damages for emotional distress resulting from witnessing the injury of another. *Kraszewski* at ¶ 7. See also *Shull v. Reid*, 2011 OK 72, n. 5, 258 P.3d 521 ("The

plaintiff must be a victim, not a bystander, directly involved in the incident, damaged from directly viewing the incident and a close family relationship must exist between the plaintiff and the party whose injury gave rise to plaintiff's mental anguish.”).

Ridings v. Maze, 2018 OK 18, ¶¶ 6-7, 414 P.3d 835, 837–38. In this regard, Client testified as follows:

Q All Right. Okay. Now, emotional distress. Okay. In connection with that claim, did Stanley Ward cause you some physical injury? Did he hit you? Did he slam you around? Anything like that?

A No.

Q He didn't, did he?

A No.

Q All right. And so did he say or do anything that is, in your view, outrageous in a civilized society?

A No.¹³

Having failed to allege a fundamental element of the theory of emotional distress, the trial court correctly granted Attorneys summary judgment on the issue of emotional distress.

VI. Claim of Economic Duress

Claimant testified she intended to withdraw her economic duress theory.

Q [I want to go to this economic duress claim that you've made on page 16 here. What contract did you enter into with anybody under economic duress as a result of something Stanley Ward did?

A What contract?

Q Yeah. Economic duress claims are limited to contract claims, and so I just want—

¹³ R. 79, Deposition of Judy Knight, May 8, 2018, p. 121, ll. 2-12.

A Well, I may—I may take that one out anyway,
so¹⁴

Summary judgment was properly granted on this theory. We therefore conclude the underlying order granting summary judgment was proper.

VII. Motion to Vacate

Having determined the motion for summary judgment was properly granted, we now turn to the arguments for its vacation raised in Client's motion to vacate. Client argues the trial court's order should be vacated pursuant to 12 O.S.2011, §§1031 and 1031.1.

The trial court considered the motion and held Client failed to meet her burden under 12 O.S.2011, § 651. That section sets out the grounds for new trial. Whether viewed as a motion to vacate or one for new trial, we review the trial court's decision in the same manner.

The standard of review for both denial of a motion for a new trial and denial of a motion to modify or to vacate a final order or judgment is abuse of discretion. *Capshaw v. Gulf Ins. Co.*, 2005 OK 5, ¶ 7, 107 P.3d 595, 600. A trial court abuses its discretion when a decision is based on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling. *Childers v. Childers*, 2016 OK 95, ¶ 28, 382 P.3d 1020, 1027. However, "if the propriety of the trial court's denial of the 'motion for reconsideration' rests on the underlying correctness of its decision to dismiss," then the abuse of discretion question is settled by our de novo review. *Smith [v. City of Stillwater]*, 2014 OK 42, ¶ 11, 328 P.3d

¹⁴ R. 78, Deposition of Judy Knight, May 8, 2018, p: 120, ll. 14-25.

at 1197. “De novo review involves a plenary, independent, and non-deferential examination of the trial court’s legal rulings.” *Sheffer v. Buffalo Run Casino, PTE, Inc.*, 2013 OK 77, ¶ 3, 315 P.3d 359, 361.

Fox v. Mize, 2018 OK 75, ¶ 6, 428 P.3d 314, 319.

Client’s motion is at times disjointed and her arguments hard to follow. Nevertheless, this Court discerns her assignments of error to simply reargue the same issues addressed in the underlying motion for summary judgment. Client has not presented any new evidence, new witnesses, or any new argument that would suggest to this Court that entry of the trial court’s order was an abuse of discretion.

We therefore hold the trial court’s January 4, 2019, order denying Client’s motion to vacate was correct and is affirmed.

AFFIRMED.

FISCHER, P.J., and THORNBRUGH, J., concur.

May 9, 2019

**APPENDIX A – ORDER OF THE COURT OF
CIVIL APPEALS OF THE STATE OF
OKLAHOMA (MAILED FROM CLERK)
STATING JUNE 24th ORDER DENYING
EXTENSION REQUEST “IMPLICITLY”
DENIED JUNE 3rd PETITION FOR
REHEARING ... FILED JAN 15 2020**

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

Wednesday, January 15, 2020

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

117,492 JUDY KNIGHT, individually, and
 PHOENIX CENTRAL INC. V. WARD
 & GLASS, PC, STANLEY WARD, an
 Oklahoma professional corp., and
 STANLEY WARD; ET AL. (Defendants)

Appellants' August 2, 2019 Petition for
Rehearing and Application for
Enlargement of Time to File Petition for
Rehearing is stricken from the Court
docket. A party cannot seek to file a
second petition for rehearing where the
Court of Civil Appeals' opinion remains
unchanged and the initial petition for
rehearing was denied. Okla. Supreme
Court Rule 1.177(b). "The Clerk shall not

Appendix A

file any such motion or application after the denial of a petition for rehearing." The Court of Civil Appeals denied Appellants' request to file a petition for rehearing out of time on June 24, 2019, implicitly denying the petition for rehearing. Appellants cannot challenge this decision by motion or second petition for rehearing as the opinion never changed.

118,481 – KYOTOCOOLING BV v. THE HONORABLE SHAWN TAYLOR, Judge of the District Court of Mayes County; and RAE CORPORATION Real Party in Interest may respond to Petitioner's Motion to Supplement the Record on or before January 17, 2020.

s/Noma D. Gurich
CHIEF JUSTICE

Received 1-15-20
Docketed PE
Mailed PE
Distrib:
Publish _ YES -x-No

**APPENDIX B – ORDER OF THE COURT OF
CIVIL APPEALS OF THE STATE OF OKLAHOMA -
DENYING May 23rd APPLICATION FOR
ENLARGEMENT OF TIME TO FILE PETITION
FOR REHEARING AND May 23rd
APPLICATION TO EXCEED PAGE LIMIT
....Filed July 11, 2019**

**IN THE COURT OF CIVIL APPEALS OF THE
STATE OF OKLAHOMA
DIVISION II**

JUDY KNIGHT, an individual, and
PHOENIX CENTRAL, INC., an
Oklahoma corporation,
Plaintiffs/Appellants,

vs.

Case No. 117,492

WARD AND GLASS, et al an
Oklahoma professional corporation, and
STANLEY WARD, and JOHN or
JANE DOES 1-10, individuals or
corporations
Defendants/Appellees

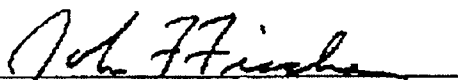
ORDER

Appellant's Application For Enlargement Of
Time To File A Petition For Rehearing, And
Application To Exceed Page Limit is denied.

4a

Appendix B

SO ORDERED this 11TH day of July, 2019.
ALL JUDGES CONCUR.



JOHN F. FISCHER
Presiding Judge, Division II

**APPENDIX C-ORDER OF THE COURT OF CIVIL
APPEALS OF THE STATE OF OKLAHOMA -
APPELLANTS June 3rd MOTION TO
IMMEDIATELY FILE PETITION FOR
REHEARING OUT OF TIME IS DENIED AND
APPELLEES MOTION TO STRIKE IS DENIED
AS MOOT....** Filed Jun 24, 2019 (Postmarked
6/24/19)

**IN THE COURT OF CIVIL APPEALS OF THE
STATE OF OKLAHOMA
DIVISION II**

JUDY KNIGHT, an individual, and
PHOENIX CENTRAL, INC., an
Oklahoma corporation,
Plaintiffs/Appellants,

vs.

Case No. 117,492

WARD AND GLASS, et al an
Oklahoma professional corporation, and
STANLEY WARD, and JOHN or
JANE DOES 1-10, individuals or
corporations
Defendants/Appellees

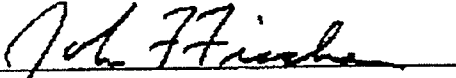
ORDER

Appellants Motion To Immediately File
Petition For Rehearing Out Of Time is hereby
denied. Appellees' Motion To Strike Petition For
Rehearing is denied as moot.

6a

Appendix C

SO ORDERED this 20TH day of June, 2019.
ALL JUDGES CONCUR.



JOHN F. FISCHER
Presiding Judge, Division II

**APPENDIX D- ORDER OF THE COURT OF CIVIL
APPEALS OF THE STATE OF OKLAHOMA
PROMPTING APPELLEE MAY FILE A
RESPONSE TO APPELLANT'S APPLICATION
FOR ENLARGEMENT OF TIME TO FILE A
PETITION FOR REHEARING, AND
APPLICATION TO EXCEED PAGE LIMIT Filed
June 3rd, 2019**

IN THE COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA DIVISION II

JUDY KNIGHT, an individual, and
PHOENIX CENTRAL, INC., an
Oklahoma corporation,
Plaintiffs/Appellants,

vs.

Case No. 117,492

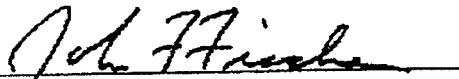
WARD AND GLASS, et al, an
Oklahoma professional corporation, and
STANLEY WARD, and JOHN or
JANE DOES 1-10, individuals or
corporations
Defendants/Appellees

ORDER

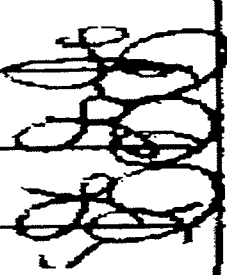
Appendix D

Appellees may file a response to Appellant's Application for Enlargement of Time to File a Petition for Rehearing, and Application to Exceed Page Limit within fifteen (15) days of the date this Order is filed.

SO ORDERED this 30 day of May, 2019.
ALL JUDGES CONCUR.



JOHN F. FISCHER
Presiding Judge, Division II



APPENDIX E- OPINION OF THE COURT OF
CIVIL APPEALS OF THE STATE OF
OKLAHOMA CONFIRMING THE LOWER
COURT -Filed May 9TH , 2019

.....
NOTE: INCLUDED HERE ONLY THE COVER
PAGE — FOR PROOF OF DATE FILED
.....

ORIGINAL

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

JUDY KNIGHT, an individual, and)
PHOENIX CENTRAL, INC., an)
Oklahoma corporation,)
Plaintiffs/Appellants,)
VS.) Case No. 117,492
WARD & GLASS, P.C., an Oklahoma)
professional corporation, and)
STANLEY WARD,)
Defendants/Appellees,)
And JOHN or JANE DOES 1-10,)
individuals or corporation)
Defendants.)

Exhibit E

APPEAL FROM THE DISTRICT COURT OF
CLEVELAND COUNTY, OKLAHOMA
HONORABLE AARON DUCK, TRIAL JUDGE
AFFIRMED

Judy Knight
Norman, Oklahoma Pro se
Charles F. Alden, III
Oklahoma City, Oklahoma

For Defendants/Appellees

OPINION BY JERRY L. GOODMAN, JUDGE

AFFIRMED Fischer, P. J. and THORNBRUGH,
J concur May 9 2019

**APPENDIX F-- APPELLANTS OBJECTION
AND RESPONSE TO APPELLEES MOTION TO
STRIKE PETITION --Filed June 21ST 2019**

ORIGINAL Received 6-21-19stamp

IN THE

**Court of Civil Appeals
of the State Of Oklahoma
Division II**

Judith Knight and
Phoenix Central, Inc,
Plaintiff/Appellants

v Supreme Court No. 117492

Ward & Glass
Stanley Ward, and
John or Jane Does1-10
Individuals or Corps
Defendant/Appellees

**APPELLANTS OBJECTION AND RESPONSE
TO APPELLEES MOTION TO STRIKE**

It is ironic that Appellee asserts Appellant chose to ignore a rule of this Court while themselves filing a Motion to Strike under the same conditions alleged:

Appellee stated:

Appendix F

"Despite the fact that Appellant sought an extension of time and despite the fact that this Court directed Appellee to respond, Appellant chose to ignore the rules and to await the ruling of this Court on her request for extension of time,"

Appellant is unaware any rule that one may wait to file no matter how long until a ruling is made- on a request for an extension of time. If that was true the activities would [not] have been conducted at all since 3 previous requests were never responded to by the trial court.

Appellee continued stating:

"she chose to ignore this requirement and to await the ruling of this Court on her request for extension of time,"

Assumes fact not in existence. Appellant was not aware of this Court's notice to Appellee at the time of filing of the Petition.

Appellee then contended:

"Such wholesale disobedience of the Rules should not be permitted and the Petition for Rehearing should be stricken."

Appendix F

Appellant wonders where is this mystical rule written?

And whether if such rule exists, is not Appellee also bound by it and in violation by filing the Motion to Strike prior to the Court ruling on those requests?

And if so, is Appellee also guilty of disobedience or of misconduct?

Appellee has in fact made the opposite argument when similar requests were ignored in the court below.

It seems to Appellant that the Motion to Strike is inappropriate under the presented argument and should be denied.

Appellant also asks that if requests for additional time and pages are granted the Court instruct Appellant whether to amend or supplement the Petition For Rehearing.

Respectfully, Dated June 21. 2019
s/ Judith Knight

Judith Knight
Appearing Pro Se

Appendix F

1010 N Flood
Norman, Oklahoma 730
1-405-447-1010

CERTIFICATE OF MAILING

I hereby certify that on the 21 day of June,
2019 upon filing, a true and correct copy of the above
and foregoing document will be mailed, postage
prepaid, to:

Charles Alden III s/Judith Knight
309 N.W. 9th Street
Oklahoma City, Oklahoma 73102
Attorney for Appell[ees]

**APPENDIX G--APPELLANTS REPLY TO
APPELLEES OBJECTION TO APPELLANTS
REQUEST FOR EXTENSION -Filed June 17TH
2019**

Judith Knight and)
Phoenix Central, Inc,)
 Plaintiff/Appellants)
v. Supreme Court No 117492)
Ward & Glass)
Stanley Ward, and)
John or Jane Does1-10)
 Individuals or Corps)
 Defendant/Appellees)

**APPELLANTS REPLY TO APPELLEES'
OBJECTION TO APPELLANT'S REQUEST
FOR EXTENSION OF TIME TO FILE
PETITION FOR REHEARING AND FOR
EXCEEDING PAGE LIMITATION**

Appellee has no basis for asserting:
"Moreover, when considered in light of the
concurrent application to exceed page
limit that Appellant intends to inject
factual and/or evidentiary material into
this appeal that is not part of the
record."

Appendix G

There is no indication within Attorneys pleadings that suggest special powers of divination that enables him to know what will be presented in a future document.

On May 23rd Appellant filed for an Extension of time and for additional pages to file a Petition for Rehearing.

These requests were not acknowledged by this Court until a Court Order that was filed on June 3rd (although signed on May 30th) stated Appellee "may file a response...".

Having no acknowledgement of a ruling on those requests Appellant began editing the Petition to reduce the pages.

On June 3rd without knowing of the Order filed the same day, Appellant filed a **Motion To Immediately File Petition For Rehearing Out Of Time** and the pared down **Petition for Rehearing**.

Although Appellees concurrently filed a **Motion to Strike the Petition for Rehearing** Appellees did not file a protest nor even acknowledge the accompanying Motion to file out of time.

Client prays that this court will, in conjunction with this Reply, also consider the information provided in the **Motion To**

Appendix G

**Immediately File Petition For Rehearing
Out Of Time.**

During the pendency of this case, still at beginning stages of discovery (under 3 hours by Appellees), Appellants have requested time (on 4 occasions, 3 below) and space in order to identify and rebuke the **many** incorrect, misrepresented and ignored statements, including background analysis. It was unjust and a denial of Clients rights to ignore those requests.

Appellees state:

"A simple perusal of the opinion immediately reveals that it understood and dealt with all of the issues relevant to the trial court's refusal to vacate the underlying summary judgment..."

Any opinion is naturally going to present a basis in support of the decision. However that will not disclose any misunderstood, misinterpretations or omissions of information in forming the basis. When as here, there is a near total absence of identification or rebuke of Appellants factual assertions. including statutory and common law such opinion is unreliable.

What was needed was a comprehensive, comparative, impartial and thoughtful review of all

Appendix G

the information provided by both sides. There is no indication this was done.

The Opinion also clearly shows reliance on an inappropriate statute which in turn demonstrates the Court's failure to consider Appellants arguments and suggests that none of Appellants arguments were given consideration.

The method to redress these wrongs are through a rehearing.

Appellant can think of no way to correct the misconceptions short of line by line showing of errors.

The volume of misrepresentations by Appellees and ignored proofs by this Court cannot be presented within the page limits which in turn will require an extension of time.

WHEREAS, Appellees misrepresentations have misled the Court and caused the need for these requests,

WHEREAS, Appellees Objection is unsupported

WHEREAS, Appellees have not contended that approval of Appellants requests will prejudice their case.

Appendix G

WHEREFORE, Appellant pray that the extension of time and additional pages be approved as would be just.

Respectfully submitted
s/ Judy Knight
Appearing Pro Se
1010 N Flood
Norman, Oklahoma 73069
1-405-447-101
Oated June 17 2019

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of June, 2019 upon filing, a true and correct copy of the above and foregoing document will be mailed, postage prepaid, to:

Charles Alden III s/Judith Knight
309 N.W. 9th Street
Oklahoma City, Oklahoma 73102
Attorney for Appell[ees]

**APPENDIX H - APPELLEES MOTION TO
STRIKE PETITION FOR REHEARING-Filed
June 5th 2019**

**IN THE COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA
DIVISION II**

JUDY KNIGHT and PHOENIX CENTRAL,)
INC.,)
Plaintiffs/Appellants,)

)

vs.

Case No. 117,492

)

WARD and GLASS,)
STANLEY WARD and)
JOHN or JANE DOES 1-10,)
Defendants/Appellees.)

Cleveland County Case No. CJ-2012-1540

APPELLEES MOTION TO STRIKE

Appellees above named move the Honorable
Court to strike the Petition for Rehearing filed by
Appellant on June 3, 2019. for the following reason:

1. The Petition for Rehearing was filed out
of time without leave from this Court Rule 1.13(a),
Oklahoma Supreme Court Rules, requires that a
Petition for Rehearing be filed no later than twenty

Appendix H

(20) days after the date on which this case was filed which is May 9, 2019. Despite the fact that Appellant sought an extension of time and despite the fact that this Court directed Appellee to respond, Appellant chose to ignore the rules and to await the ruling of this Court on her request for extension of time, she chose to ignore this requirement. Such wholesale disobedience of the Rules should not be permitted and the Petition for Rehearing should be stricken.

In any event, and should this Court choose to deal with the Petition, the same should be denied because it states no legal basis to either rehear this appeal or to reverse the trial court.

¹ Separately and as directed by this Court, Appellee has objected to the extension of time and Appellant's request to exceed the page limit.

**ONLY PARTIAL – REST NOT ON FILE
and now stricken**

**APPENDIX I-APPELLEES OBJECTION TO
APPELLANTS REQUEST FOR EXTENSION OF
TIME TO FILE PETITION FOR REHEARING
AND FOR EXCEEDING PAGE LIMITATION
Filed Jun 5th 2019.**

**IN THE COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA**

JUDY KNIGHT and PHOENIX

CENTRAL,) INC.,)

Plaintiffs/Appellants,)

)

vs. Case No. 117,492

)

WARD and GLASS,)

STANLEY WARD and)

JOHN or JANE DOES 1-10,)

Defendants/Appellees.)

Cleveland County Case No. CJ-2012-1540

**APPELLEES' OBJECTION TO
APPELLANT'S REQUEST FOR EXTENSION
OF TIME TO FILE PETITION FOR
REHEARING AND FOR EXCEEDING PAGE
LIMITATION**

Appellees above named object to an extension
of time to file Petition for Rehearing on the authority
of Oklahoma Supreme Court Rule 1.13(h) which
provides, in relevant part:

Appendix I

Applications for extension of time to file petitions for rehearing are not favored and are not routinely granted. ... the application will be granted only if the Court determines that extraordinary cause is shown in the application ... (Emphasis added; italics from rule itself).

The application currently before the Court does not make any showing of extraordinary cause to grant the requested extension. The conclusory statement that this Court somehow misunderstood the issues in this appeal is not just insufficient to show extraordinary cause, it is erroneous. A simple perusal of the opinion immediately reveals that it understood and dealt with all of the issues relevant to the trial court's refusal to vacate the underlying summary judgment in considerable detail and the Court's ruling was supported by applicable legal authorities.

In sum, the application for extension of time should be denied. in addition, and given her apparent attempt to inject material into the record, the request to exceed the page limit should also be denied.

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Moreover, when considered in light of the concurrent application to exceed page limit that lant intends to inject factual and/or evidentiary material into this appeal that is not part of the record.

Dated this 5TH day of June, 2019.

Charles Alden III
309 N.W. 9TH Street
Oklahoma City, OK 73102
(405) 235-5255
(405) 235-8130 fax
Lawyer01870 aol.com

Attorney for Appellees

CERTIFICATE OF MAILING

I hereby certify that on the 5TH day of June, 2019, a true and corect copy of the foregoing pleading was mailed, postage prepaid, to:

Judy Knight
1010 North Flood
Norman. OK 73069

**APPENDIX J - PETITION FOR REHEARING -
Filed June 3, 2019**

1043787450

IN THE COURT OF CIVIL APPEALS OF THE
STATE OF OKLAHOMA

Division II

Judith Knight and

Phoenix Central, Inc,

Plaintiff/Appellants

v.) Supreme Court No. 117492

Ward & Glass

Stanley Ward, and

John or Jane Does1-10 Individuals or Corps

Defendant/Appellees)

Defendant/Appellees)

**ON PETITION FOR REHEARING OF APPEAL
OF PLAINTIFFS/APPELLANTS/PETITIONERS**

Appeal from the District Court of Cleveland County

Honorable Aaron Duck Case cj-2012-1540

General Negligence

Judy Knight,
1010 N. Flood
Norman, Oklahoma 73069
(405) 447-1010
Mini1010@AOLCOM
Appearing Pro Se

PETITION FOR REHEARING

*Appendix J*Section RULE and 1.13(h) and 1.177 - PETITION
FOR REHEARING,

Respondent/Appellant, ("Client"), petitions this Court to rehear this appeal and withdraw its opinion affirming the trial court's grant of summary judgment (Judgment) in favor of Defendants\Appellees (Attorney) and its denial of Appellant's Motion to Vacate, Alter or Amend the Judgement ("Appellant's Motion"), and reverse and remand so the parties can proceed to trial on the merits. Appellants petition for rehearing the Opinion filed May 9, 2019, entering judgment in favor of Appellees and affirming the decision of the District Court of Cleveland County. A panel rehearing is appropriate when a material point of law was overlooked in the decision. Fed. R. App. P. 40(a)(2). An en banc rehearing by this Circuit is proper when (1) the panel decision conflicts with a decision of the Supreme Court or a decision of this Circuit so that consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions or (2) the case involves a question of exceptional importance because it conflicts with an opinion of another court of appeals and substantially affects a rule of national application in which there is an overriding need for national uniformity. Fed. R. App. P. 35(b); 9th Cir.

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In the judgment of Client, the panel's decision in this matter overlooks material points of law and does not address a resulting conflict with other decisions of this Court and District Courts.

Also, because of this conflict, consideration by the full court is necessary to secure and maintain uniformity of the Court's decisions. Furthermore, the panel's decision conflicts with the decisions of other courts of appeal.

In addition one decision is based largely on Attorneys misrepresentations and the other on the wrong Statute.

23 Summary relief issues stand before the appellate courts for de novo review, and all facts and inferences must be viewed in the light most favorable to the non-movant. Just as trial courts "are called upon to do in deciding whether summary relief is warranted in the first instance, so also do appellate tribunals bear an affirmative duty to test for its legal sufficiency all evidentiary material received in summary process as support for the relief granted." *Liddell v. Heavner*, 2008 OK 6, ¶ 7, 180 P.3d 1191, 1196. (Citations omitted.) Whether a

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cause presents a case for application of the doctrine of res ipsa loquitur presents a question of law. *Harder v. F.C. Clinton, Inc.*, 1997 OK 137, 948 P.2d 298. Further, when res ipsa loquitur is invoked, the focus on review of the grant of summary judgment is not on the sufficiency of evidence (or evidentiary material), but rather on whether, in light of the applicable pattern of proof which is a plaintiffs due under that doctrine, the record as a whole (a) shows undisputed facts on the material issues and (b) will support a single inference in favor of the movant's request for summary judgment. *Jackson v. Oklahoma Memorial Hospital*, 1995 OK 112, 909 P.2d 765.

**1. STATEMENT REGARDING PRESENTATION
IN THIS PETITION.**

While it is easy to identify injustices, it is another matter to coherently describe them in accordance with procedures, rules and lack of proficiency in "legalese" language.

To properly overcome the many misrepresentations, Client needed both additional

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time and additional pages to properly respond. The lower court ignored such requests and as a consequence the issues were not as could have been. Whereas the last draft was far in excess of the page limit, Appellants deletions to comply have now less the number of pages, at the expense of many important arguments, but has no time to review and correct as necessary for a proper presentation.

This is even more important since under an accelerated appeal no briefs are permitted. This Court has likewise not responded to a request for additional time filed May 23rd to file this Petition, therefore Appellant is not satisfied with the presentation herein and prays for the Court's indulgence with my apologies.

2. ISSUES

1. This Court's summary of the Background is incomplete at the least and inaccurate in relevant details, at the most. The inaccuracies may have improperly influenced the Court.

2. This Petition is made on the grounds that this Court issued a decision holding there was no abuse of discretion by the trial court and no reversible error. See Opinion entered herein May 9th, 2019.

3. At the hearing on the Motion for Summary Judgment the District Court Judge granted Summary Judgment based on misrepresentations by

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Defendant that Plaintiff was refusing to submit testimony from an attorney as expert testimony in support of Plaintiffs complaints and that expert testimony was absolutely required on each and every allegation.

4. In the District Court Appellees sole plea was that Appellants claims required expert testimony, that none could be tried under the doctrine of Res Ipsa Loquitor and since no expert was currently available, summary judgment was required.

5. In addition the ruling on the Motion to Vacate was issued based on an inappropriate and inapplicable Statute.

This Court's Claim Client's Malpractice Claim
Against Attorneys.

Client set out six "causes of actions" or more properly, theories of recovery,⁵

Oklahoma jurisprudence utilizes the transactional approach for its definition of a cause of action.' Although different theories of liability may be pressed in support of each claim, only a single cause of action can ordinarily be predicated upon one occurrence or transaction." *Rodgers v. Higgins*, 1993 OK 45, ¶ 4, 871 P.2d 398, 402-03 (footnotes omitted).

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That case is distinguishable, in that there was one event, a tainted transfusion, from which the patient contracted Hepatitis "C".

Separate Causes of action is appropriate.

As one example, the loss of Ms. Knight's case was caused by the Attorney withdrawing her from the case at a pre-trial hearing the day of the trial without discussing that or even informing her of that action., even after trial when she tried to get an answer to how that could have happened.

Prior to Ward's entry, the court had determined that Mooring had breached the contract by overstating the balance. Since Ms. Knight and Phoenix were both liable on that contract, it is axiomatic that decision would have been the same for both parties but for Ward's concession.

This is not beyond the common sense of the jury. It most certainly should not have been beyond of the understanding of the Defendants or the sitting Judge.

As a result, the court determined that Mooring had prevailed thereby charged her with fees of \$88000 awarded to Mooring instead of winning an award of fees charged to Mooring as was to Phoenix. The Petition provides more detail than required the

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Simple Pleading Code in the hopes of avoiding lengthy litigation. Truthful answers would under have been a good start, but alas that was not to be.

On the other hand, Attorneys blanket denials would seem to furnish the basis of disputed issues necessary to defeat summary judgment.

This Court's Claim II. Client's Petition was Soon Dismissed, Appealed, and Remanded

The date of 2017 is not accurate, deemed dismissed after appeal due to Attorneys failure to properly file the years earlier ruling and presenting indefensible arguments as the constitutionality of his claim causing over 4 years to get to that point.

Appellants pleadings quoted exact statutes in the matter of memorializing the order and also in the Sec 19 debate. Nevertheless Appellee counsel refused to acknowledge facts causing the inordinate delay.

This is seemingly typical tactic of that counsel as in demonstrated in the instant proceedings.
Please take judicial notice of Appeals 115831 and 114172.

This Court's Claim IV. Expert Testimony Necessary to Prove Legal Negligence

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This Court has wholesale adopted attorney arguments. And in fact has seemingly gone to some effort to provide arguments by presenting cases not previously argued in defense of Attorneys argument that expert testimony is required, while ignoring client's citations entirely.

PG 8-12 is taken up of cases this Court found and relied on to arrive at its decision. Only one of those New Mexico case was argued by Plaintiff. None of the cases are Oklahoma cases. The Court fails to note the conditional remarks in those decisions. They include the following:

Bozelko v. Papastavros, Grimm v. Fox, (Conn.) "as a general matter", "although there will be exceptions in obvious cases", "negligent usually is beyond the field of ordinary knowledge and experience" *Wong v. Ekberg*, (N.H.) absent exceptional circumstances: *Follender u. Scheidegg, N.H.* "We have also assumed, without deciding," "in most instances," *Carbone v. Tierney*, N.H. citing *Mallen & J. Smith*, Legal Malpractice "[U]nless the causal link is obvious or can be established by other evidence, expert testimony may be essential" *Delp v. Douglas* ((Tex) in cases where determination of that issue is not one that lay people would ordinarily be

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competent to make." *Alex Turtur* cited in *Kelly Witherspoon (Tex.) Sanders v Smith (N,M)* citing *Dorf u. Relies (N.M.)* (See Clients analysis re this case in the District Court, the only case cited by Attorney

Attorneys listing of 10 other cases with no cites in its Motion is in violation of pleading codes.

This Court's narrative does not acknowledge any of Clients cites nor did the Attorneys. Therefore the conclusion must be that they are not disputed as being inapposite to Attorneys claims.

Attorneys statement "even though Mr. Ward actually prevailed upon a trial of the underlying case" (R46). is simply wrong, The decision that Mooring breached the contract was made before Attorney entrance.

Client argued: Defendants would have the rules before *Zeier and Marouk* and *Davis* reinstated by replacing the terms requiring affidavit of merit with expert testimony the day after filing.

It is not necessary that Client have an attorneys testimony at this stage of the case if ever.
R 127

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**This Court's Claim THIS COURT'S
ANALYSIS p7**

Client's first, second, third, and fourth theories of recovery require expert testimony be introduced in order to establish prima facie evidence of her claims of legal malpractice

**IV. Expert Testimony Necessary to Prove
Legal Negligence**

In Oklahoma, the mere allegation of legal negligence is insufficient for recovery. Whether representing themselves pro se or by counsel, a plaintiff must support those allegations with evidence. "Clients admitted failure requires those theories be dismissed."

The statements "did not conduct the trial in a way that was satisfactory to her" and "than the way Client, a former CPA, would have tried the case" are derogatory suggesting prejudice —

When is the failure to admit information into evidence after testimony allowed a sign of competent conduct. That is what happened- the jury requested the damages schedule and the trial court said since it had not been admitted, they could not have it. It is reasonably inferable that the jury wanted to award

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something, but did not sans such schedule. The trial transcript shows that failure.

Client testified that Dena, her previous appeals attorney from Colorado might testify and that Clients problem was finding an attorney that would testify against another attorney on these matters, perhaps in his/her own self preservation.

Defendant has not provided any facts only ipse dixit.

Client furnished proof shown in the court records of the 10th circuit where they stated Attorney had failed to preserve or present various issues. Those statements would certainly be pronounced by experts. Attorney denied this in spite of that being a matter of record.

This Court's conclusion was:

Therefore, our de novo review leads to the conclusion that summary judgment in favor of Attorneys was correct, because Client has failed to prove an essential element of a negligence-based cause of action.

JOHN v. ST. FRANCIS HOSPITAL, INC.

In ruling on 19.1 ¶ 31 the Court stated it functionally, operates on a subset of

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negligence plaintiffs for different evidentiary treatment based on the type of action the plaintiff pursues.

¶ 32 A prima facie case of medical malpractice, like all negligence claims, contains three elements: (a) a duty owed by the defendant to protect the plaintiff from injury, (b) a failure to properly exercise or perform that duty and (c) plaintiffs injuries proximately caused by the defendant's failure to exercise his duty of care. *Robinson v. Okla. Nephrology Assoc., Inc.*, 2007 OK 2, 9, 154 P.3d 1250, 1253-54. Although all negligence plaintiffs must substantiate all three elements during the course of the litigation, one need not do so to a specifically high level of probability or absolute certainty before entering the courthouse doors. *Id.* 11, 154 P.3d at 1254; see also, *Wall*, ¶ 8, 302 P.3d at 780

Thus, unless we violate Oklahoma Constitution Article II, section 6 and Article 5, section 46, the statute defining qualified expert found at Title 63, 1-1708.1C of the Oklahoma Statutes, and simultaneously overrule *Wall v. Marouk*, 2013 OK 36, 302 P.3d 775, and *Zeier v. Zimmer*, 2006 OK 98, 152 P.3d 861,

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there is but one result this Court can reach. ¶ 34 Section 19.1, found at Title 12 of the Oklahoma Statutes, is an impermissible barrier on a plaintiffs guaranteed right to court access and an unconstitutional special law.

Footnote 2. ¶ 6 The district court certified its ruling pursuant to Okla. Stat. tit. 12, 952(b)(3) ,2 In pertinent part, that section reads •.....

(b) The Supreme Court may reverse, vacate or modify any of the following orders of the district court, or a judge thereof: . . .2. An order that discharges, vacates or modifies or refuses to vacate or modify a provisional remedy which affects the substantial rights of a party; or grants, refuses, vacates, modifies or refuses to vacate or modify an injunction; grants or refuses a new trial; or vacates or refuses to vacate a final judgment;. . . The failure of a party to appeal from an order that is appealable under either subdivision 2 or 3 of subsection (b) of this section shall not preclude him from asserting error in the order after the judgment or final order is rendered. Okla. Stat. tit. 12, 952(3)(3)

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This Court has previously noted that one of the inquiries regarding whether a law is a general law, as opposed to a local or special law, "concerns whether there is a proper and legitimate classification, whether the classification is arbitrary or capricious, or whether it bears a reasonable relationship to the object to be accomplished." *City of Enid v. Public Employees Relations Bd.*, 2006 OK 16, ¶13, 133 P.3d 281; *Sanchez v. Melvin*, 1966 OK 116, 114, 18 OK 116. See *Wall*, 2013 OK 36, 15 ("A law is special if it confers particular privileges or imposes peculiar disabilities or burdensome conditions in the exercise of a common right on a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law.").

STANDARD OF REVIEW

However, an order disposing of a term-time motion to vacate, filed under 12 O.S. 1991 § 1031.1, is a separately appealable, post-judgment event. The correct standard of review employed upon a motion to vacate is whether sound discretion was exercised to vacate the earlier decision. See *Schepp v. Hess*, 1989 OK 28, 770 P.2d 34. The reviewing court does not look to the original judgment, but rather the correctness of the trial court's response to the motion

to vacate. *Yery v. Yery*, 1981 OK 46, 629 P.2d 357; *Schepp*, 770 P.2d at 42. As a result, we apply the abuse of discretion standard.

¶12 We generally review a trial court's decision to vacate or refuse to vacate a judgment under an abuse of discretion standard. *Farm Credit Bank of Wichita v. Trent*, 1997 OK 70, ¶ 21, 943 P.2d 588. However, in *Schweigert v. Schweigert*, 2015 OK 20, ¶ 7, 348 P.3d 696, the Supreme Court instructed:

Although this Court reviews a district court's denial of a motion to vacate for abuse of discretion, the order denying a motion to vacate, like a motion for a new trial, will be reversed if the district court erred with respect to an unmixed question of law. *Jones, Givens, Gotcher & Bogan, P.C. v. Berger*, 2002 OK 31, ¶ 5, 46 P.3d 698, 701. The district court's construction and application of § 651(7) to the undisputed facts before it presents a pure question of law subject to de novo review. *Id.*

6. Appellant filed both a Motion to Vacate in the District Court and a Petition in Error with the Supreme Court on October 31, 2018.

7. As to the Motion, Attorneys Objection was filed November 28th and Clients Reply was filed December 18th. And the lower court's ruling signed December 31 and filed January 4th, 2019.

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8. There was no hearing on Clients Motion in spite of the fact a hearing was scheduled for January 25, 2019 and no notice was provided that it was cancelled. Court ruled that § 651 had not been met.

9. Plaintiff appeared at the scheduled time and was permitted to talk with the Judge in spite of another case being heard at that time.

10. The Judge said he didn't know there was supposed to be a hearing and that he had ruled on the Motion without reviewing Defendant's response or Plaintiffs reply to the Response and that he would not expand on his ruling of dismissal which only stated "Clients failure to comply with § 651"

11. After Plaintiff produced copies of the responsive filings that predated his ruling, he noticed he had in fact signed the notice of hearing but would not discuss the ruling further "just wait to see if the Appeals Court sends it back."

12. The District Court then issued an order which in essence he dismissed the Motion "because he could".

Where a judgment is rendered against defendants and they file a motion to vacate within

the term, the ruling thereon should be based upon judicial discretion in the interest of substantial justice and if the motion is overruled and all of the circumstances demonstrate that it could well have been sustained without serious injustice, and that its denial results in serious injustice, and constitutes an abuse of judicial discretion, this court on appeal will reverse.

If this Court considers the motion to be one for a new trial, it is ineffective, because it was filed more than ten days after the final Decree was filed

A motion for new trial, however styled, which is filed after the expiration of ten days following the decision, is treated as ineffective. *Timeplan Corporation v. O'Connor*, Okl., 461 P.2d 935 (1969), *Sellers v. Oklahoma Pub. Co.*, 1984 OK 11, ¶ 13, 687 P.2d 116, 119. A motion for reconsideration does not exist in Oklahoma practice and procedure. A "motion to reconsider" does not technically exist within the statutory nomenclature of Oklahoma practice and procedure. *Pierson v. Canupp*, 1988 OK 47, ¶ 3 n. 1, 754 P.2d 548; *Sellers v. Oklahoma Pub. Co.*, 1984 OK 11, ¶ 11, 687 P.2d 116. However, if timely filed, a "motion to reconsider" may be treated as

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a motion for new trial under 12 O.S. § 651 (if filed within ten (10) days of the filing of the judgment, decree, or appealable order), or it may be treated as a motion to modify or to vacate a final order or judgment under the terms of 12 O.S. §§ 1031 and 1031.1 (if filed after ten (10) days but within thirty (30) days of the filing of the judgment, decree, or appealable order). *Pierson*, 1988 OK 47, ¶ 3 n. 1, 754 P.2d 548; *Schepp v. Hess*, 1989 OK 28, ¶ 1 n. 2, 770 P.2d 34. *Smith v. City of Stillwater*, 2014 OK 42, ¶ 10, 328 P.3d 1192, 1196-97. Therefore, we consider Clients motion to be one to modify or vacate the Decree, pursuant to 12 O.S. 2011, §§1031 and 1031.1

It is clear that this Court has erroneously considered Clients Motion under § 651, with the following statements:

Client's motion is at times disjointed and her arguments hard to follow. Nevertheless, this Court discerns her assignments of error to simply reargue the same issues addressed in the underlying motion for summary judgment. Client has not presented any new evidence, new witnesses, or any new argument that would suggest to this Court that entry of the trial court's order was an abuse of discretion.

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This Court arrived at this erroneous decision because they bought into the lower court's error. Those being requirements under §651 not under §§1031, 1031.1 or §655.

The language of the Motion itself brought to light the gross inequity and lack of evidence to support the trial court's award.. Further, there were two (2) exhibits attached to Appellant's Motion and references to Attorney Exhibit C (10th circuit opinion) which supported her position and provided specific examples of why the gross inequity existed.

That is what is in dispute-the motion attempts to show the discrepancies that demonstrate why the decisions are wrong. are/or will be available, some of which are also attached along with deposition testimony. indexed to the specific allegations in the Petition.

Clients additionally identified misrepresentations proffered by Attorney, cited cases that dispute Attorneys unsupported contentions, included points in record in dispute properly preserved the issue regarding the validity of the trial court's refusal to withdraw the order such that this issue is not beyond the review of this Court and was specifically preserved.

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In addition, Appellant's Motion raised issues regarding disadvantages Appellant experienced with regard to obtaining and presenting evidence.

FED. R. CD/. P. 56(f) ("Should it appear from the affidavits of a party opposing the motion [for summary judgment] that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.").

After the ruling denying Appellant's Motion the Appeal was ripe for review. As an appeal under 1.36 no briefs are allowed. Appellant timely appealed the underlying order including notice of the post trial motion. Client, in the interest of judicial economy, chose to consolidate the two appealable events.

Appellant submits that by failing to consider Appellant's evidence throughout the proceedings every issue presented and decided was decided improperly.

RELIEF REQUESTED

Appellant petitions this Court to rehear the appeal and withdraw its Opinion and answer the

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issues presented in the Petition in error that have been ignored thus far.

Reverse and remand with instructions so as to allow the discovery to be undertaken and the case to be heard on the merits.

Respectfully submitted,
s/Judy Knight Dated June 3 2019

Judy Knight, Pro Se
1010 N Flood
Norman, Oklahoma 730
1-405-447-1010

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of June 2019 upon filing, a true and correct copy of the above and foregoing document will be mailed, postage prepaid, to:

Charles Alden III
309 N.W. 9th Street
Oklahoma City, Oklahoma 73102
Attorney for Appellants
s/Judith Knight

**APPENDIX K-MOTION TO IMMEDIATELY
FILE PETITION FOR REHEARING OUT OF
TIME- Filed Monday June 3, 2019**

1043787446

ORIGINAL

**IN THE COURT OF CIVIL APPEALS OF THE
STATE OF OKLAHOMA**

Division II

Judith Knight and
Phoenix Central, Inc,
Plaintiff/Appellants

v.) Supreme Court No. 117492

Ward & Glass

Stanley Ward, and

John or Jane Does1-10 Individuals or Corps

Defendant/Appellees)

**ON PETITION FOR REHEARING OF APPEAL
OF PLAINTIFFS/APPELLANTS/PETITIONERS**

Appeal from the District Court of Cleveland County

Honorable Aaron Duck Case cj-2012-1540

General Negligence

**MOTION TO IMMEDIATELY FILE
PETITION FOR REHEARING OUT OF TIME**

Judy Knight,
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Appearing Pro Se

Appendix K

**MOTION TO IMMEDIATELY FILE
PETITION FOR REHEARING OUT OF TIME**

Appellant hereby implores this Court to allow the immediate filing of the attached Petition for Rehearing and Combined Brief out of time. In support Appellant presents the following:

Background.

1. The filed and mailing date of the Order was May 9th Received on May 11th.
2. A request for Extension of time was filed on May 23rd
3. At the time of filing that Request, Appellant believed the due date was June 1st which is a Saturday
4. No answer to that request has been received.
5. Appellant has since found that the Petition actually was due on May 30th.

Reasons.

a. The Appellees misrepresentations and this Court's apparent adoption of them are such that demand counter responses.

- a. Appellant believes the responses in Petition for Rehearing will greatly assist the Court in determining and locating those inaccuracies.

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b. The issues presented are important especially since they concern her constitutional right to access to the courts.

c. Issues presented are important to the consistent interpretation and application of law.

d. The additional time of two days does not prejudice the Appellee's ability to defend the lawsuit, defendants' course of conduct or compromise their ability to defend against the claims.

e. Grant of the filing out of time would be consistent with considerations of equity.

Therefore, for the reasons stated above, Appellant implores this Court to permit the immediate filing of the Petition for Rehearing.

Respectfully

s/Judith Knight'

Dated June 3 , 2019

Judy Knight, Pro Se

1010 N Flood

Norman, Oklahoma 730

1-405-447-1010

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of June 2019 upon filing, a true and correct copy of the above

Appendix K

and foregoing document will be mailed, postage prepaid, to:

Charles Alden III
309 N.W. 9th Street
Oklahoma City, Oklahoma 73102
Attorney for Appellants

AFFIDAVIT OF APPELLANT (Exhibit A)

I, Judy Knight, being of lawful age and first duly sworn, hereby depose and states as follows:

Appellees contentions also include information that is just plain wrong and accordingly has led this Court to misunderstand.

There are simply too many items to counter or support within this case to do so within the page limits. The lower court never responded to my requests for additional time or permission to exceed word limits.

My attempts to provide a chart detailing where proofs would be found apparently confused this Court.

I had trouble trying to fit all my counters to their contentions within the word limit also due to my lack of skill that Attorneys generally possess in legalese writing.

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Elimination takes inherently longer than insertion.

I couldn't satisfy myself that I was writing a "professional" document. I read all the case opinions to be sure they are relevant.

In addition, I am working on a laptop with a 14" screen. Trying to display multiple documents for reference or copy and paste is not easily workable so then I have to switch from one document to another and back. That is a slow process.

Microsoft Word has a bad habit of changing formats on its own.

I have been diligent in trying to prepare a cogent brief. Amazing myself as to the number of hours to reach the result.

Please take note the difference in Attorneys filing and pro se: While attorneys:

1. know what margins to use, limit on pages, etc details as to format, procedures, etc. I have to look it up.
2. have resources to look up laws and cases, secretaries to do the typing and other duties.
3. Know or believe they know the statutes and can quickly answer whereas I have to research with limited resources

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4. Are getting paid so this is what they do with their days, whereas for pro se this process is like a second and third full time job.

I am fully aware of both the requirements that pro se meet the obligations as well as the requirement that Courts obligation for leniency in consideration.

No-one can be more relieved my OCD like actions are over for a little while and I can return to remedy my normal life actions ignored during this process.

Please consider this unorthodox response. I have too much invested to let this important case go.
Time to prepare this document 31 minutes.

Further affiant sayeth not.
s/Judy Knight

Subscribed and sworn to before me this 3rd day of
June, 2019
s/ Jamie Shults
Notary Public
My Commission expires on 4/11/22

**APPENDIX L- APPLICATION TO EXCEED
PAGE LIMIT Filed May 23rd, 2019 -**

**IN THE COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA**

Division II

Judith Knight and)
Phoenix Central, Inc)
Plaintiff/Appellant

v.) Supreme Court No. 117492

Ward & Glass)
Stanley Ward, and)
John or Jane Does1-10)

Individuals or Corps Defendant/Appellees

APPLICATION TO EXCEED PAGE LIMIT

Judy Knight,
1010 N. Flood
Norman, Oklahoma 73069
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Appearing Pro Se

Appendix L

APPLICATION TO EXCEED PAGE LIMIT

Applicant hereby requests that the Court permit the page count to be expanded for the above named:

That efforts to comply with the page limit is likely to deprive Petitioner of an opportunity to be heard on the merits of this proceeding thus violating Petitioners right to due process by taking from the court's purview arguments which might alter the outcome of the proceeding

While recognizing that the clarity and cogency of the arguments presented does not necessarily depend on a lengthy discussion, Petitioner remains convinced that an overzealous reduction of pages, as insisted upon by her prior counsels, while reducing the court's burden, has not and does not lend favorably to proper interpretation and a just result.

That the Motion, as now drafted is over limit and does not yet include all issues and other required headings and references as Petitioner understands them, when included, will add more pages.

That Petitioner has found in the past that her attempts to reduce initial drafts into the word or

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page limits imposed take as much or more time as preparing the original drafts. Therefore an expansion of the page limits will greatly assist in her ability to comply with time limits.

That these items show exceptional circumstances that would warrant an expansion of the page limit.

Therefore this request is for an expansion not to exceed 30 pages, in addition to the statutory 15 pages. Appellant understands contents and table of authorities, not included in the page count, will be required if approved.

That if granted, every effort will still be made to reduce the count.

Respectfully submitted,
s/ Judy Knight

CERTIFICATE OF MAILING

I hereby certify that on the 11 day of February 2020 upon filing, a true and correct copy of the above and foregoing document will be mailed, postage prepaid, to:

Charles Alden III
309 N.W. 9th Street
Oklahoma City, Oklahoma 73102
Attorney for Appell[ees]

**APPENDIX M- APPLICATION FOR
ENLARGEMENT OF TIME TO FILE A
PETITION FOR REHEARING -
Filed May 23rd, 2019**

**IN THE COURT OF CIVIL APPEALS OF
THE STATE OF OKLAHOMA**

Division II

Judith Knight and)
Phoenix Central, Inc)
Plaintiff/Appellants

v.) Supreme Court No. 117492

Ward & Glass)
Stanley Ward, and)
John or Jane Does1-10)
Individuals or Corps Defendant/Appellees

**APPLICATION FOR ENLARGEMENT OF TIME
TO FILE A PETITION FOR REHEARING**

In support of this application for enlargement of time, not to exceed 20 days, beyond the proclaimed due date of June 1st', Appellant presents the following:

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No previous requests have been made for an enlargement of time.

It appears to Appellant that this Court did not have a clear understanding of the issues on which it ruled.

That the Petition for Rehearing requires detailed information to overcome the misinterpretations and errors in the proceedings.

' (20 days after May 9 plus 3 days mailbox rule)

That the Petition for Rehearing requires presentment of facts for multiple important issues.

That appearing pro se, Applicant is not trained in the art of legal writing, and therefore is not proficient in presenting concise statements without losing the essence of the argument.

This shortcoming therefore requires significant time to reduce wording to fit within the page limits established in the rules.

That applicant knows of no harm that will be caused by the granting of such extension.

That it would be just and proper to order that the time for filing be extended to June 21, 2019 and

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applicant respectfully prays for an order to that effect.

Respectfully,
s/ Judy Knight Dated May 23, 2019
Judy Knight, Pro Se
1010 North Flood
Norman, Oklahoma 73069
405-447-1010

CERTIFICATE OF MAILING

I hereby certify that on the -23rd day of May 2019 upon filing, a true and correct copy of the above and foregoing document will be mailed, postage prepaid, to:

Charles Alden III
309 N.W. 9th Street
Oklahoma City, Oklahoma 73102
Attorney for Appellants