ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

Russell G. Conlon,

Applicant

v.

State of Oklahoma; Oklahoma Department Of Human Services, Child Support Services; and, Tracy D. Conlon,

Respondents

APPLICATION TO THE HON. JUSTICE NEIL GORSUCH FOR AN EXTENSION OF TIME WITHIN TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE OKLAOMA COURT OF CIVIL APPEALS

Pursuant to Supreme Court Rule 13(5), the above-captioned Applicant hereby moves for an extension of 60 days, up to an including February 25, 2023, for the filing of a petition for a writ of certiorari.

In support of this request, Applicant states as follows:

1. The Oklahoma Court of Civil Appeals issued its opinion on January 6, 2023 (Exhibit 1). Applicant timely petitioned the Supreme Court of Oklahoma for writ of certiorari on January 9, 2023. The Supreme Court of Oklahoma declined discretionary review of Applicant's petition for writ of certiorari on September

25, 2023 (Exhibit 2), and issued mandate on October 26, 2023. Applicant did not move for a rehearing.

2. The due date for Applicant to file petition for writ of certiorari with this Court is December 25, 2023.
3. This Court is the court of last resort and would have jurisdiction to review the decision of the Oklahoma Court of Civil Appeals under 28 U.S.C. 1257.
4. This case concerns multiple constitutional issues, some extraordinary and novel, that require this Court's attention and review. Applicant will summarize these constitutional issues in seven questions presented to this Court in his petition for writ of certiorari.
5. Respondent State of Oklahoma through certain Codes Of Federal Regulation and guidance from the United States Department of Human Services, a federal executive branch agency, apparently levies an additional tax on divorced or paternal parent(s) in dissolution of marriage actions or paternity actions, requiring repayment of such parents for health benefits provided for such parents' children, whereas such divorced or paternal parents already pay federal and state and income taxes for access to such benefits. State medical coverage through the State of Oklahoma is funded by block grants through federally instituted Medicaid in matching percentage combination and subsidizes with appropriated funding from the Oklahoma Legislature. This unconstitutional taxation is contrary to long standing United States Supreme Court decision that Applicant will cite in petition for certiorari and Appellant will demonstrate and

violates the Origination Clause of the Constitution of the United States, Art. 1 §7, cl. 1.

6. Respondent State of Oklahoma also through certain Codes Of Federal Regulation and guidance from the United States Department of Human Services, a federal executive branch agency, and state statute empowers Oklahoma courts of law, to use a "reasonable cost" standard to limit a divorced or paternal parent(s) choices of health insurance providers for such parents' children. This forces divorced and paternal parents into state government health insurance in a substantial number of cases, arguably in most cases, because many private health insurers that may offer better coverage and benefit options, cannot meet this reasonable cost standard. This infringes on the United States Congress' enumerated powers to "to regulate commerce with foreign nations, among states, and with the Indian tribes.", and is thus a violation of the Commerce Clause Of The Constitution Of The United States, Art 1. §8, cl.3. It is also apparent that this reasonable cost standard unconstitutionally empowers Respondent State of Oklahoma, through the Oklahoma judicial branch and the Oklahoma Department Of Human Services, to create a quasi- government monopoly of the Oklahoma health insurance market, stifling free market competition, and possibly violates federal anti-trust law.
7. The State of Oklahoma by state statute Applicant will challenge on constitutional grounds, prevents retroaction of child support computation that outlines child and cash medical support that must be paid by an obligor parent

toward a non-obligor parent. In practical reality, this creates and causes additional, and unconstitutional taxation on an obligor parent responsible for paying child and cash medical support when there is a downturn in an obligor parent's income. Also, unconstitutional taxation can take place on a non-obligor parent if there is an upswing in an obligor parent's income, yet child and cash medical support remains unchanged because retroaction of child support computation is prohibited by state statute.

8. The Oklahoma Court Of Civil Appeals outright rejected Applicant's arguments in opinion, without weighing the merits of the arguments of Applicant and Respondents and supporting law cited by the parties. Aside from Appellant has presented in application to this Court herein, Applicant in appeal had raised and cited numerous events that show denial of constitutional due process and equal protection of the laws to Applicant. There are also numerous oversights and contradictions of law that Appellant raised in petition for certiorari to the Supreme Court of Oklahoma to review the opinion of the Oklahoma Court of Civil Appeals. The Supreme Court of Oklahoma, however, declined as was its lawful discretion, to deny Applicant's petition for certiorari for whatever reasons said court had.
9. Of particular note, Respondent State of Oklahoma objected to practically the entirety of what Applicant had designated for record, including materials that were before the trial court and referenced on the date of decision of ruling of the trial court that was memorialized into final order that Applicant appealed.

Oklahoma Supreme Court rules give a trial court being appealed discretionary power to determine what record of appeal can be submitted to an appellate court. The trial court sustained Respondent's objection, which resulted in the exclusion of nearly all of what Applicant had designated for record of appeal to be submitted to the appellate court, resulting in a very scant record of appeal for the appellant court to reference. Applicant subsequently filed motion with the Supreme Court of Oklahoma to review this ruling of the trial court. The Supreme Court of Oklahoma granted review of the ruling, but denied the relief sought by Appellant and let stand the trial court's ruling. Applicant in petition for certiorari, will be raising the question if an appealing party can truly be given a fair appeal if the trial court excludes materials an appealing party deems important for their appeal.

Extraordinary Circumstances

10. Supreme Court Rule 13(5) outlines that an application for extension of time must be made 10 days or more prior to the due date of petition for writ of certiorari to be filed before this Court, unless there are extraordinary circumstances. Applicant now outlines there are indeed extraordinary circumstances that are present and warrant granting application herein.
11. Applicant will raise the question in petition for certiorari whether a party that has been criminally charged within the context of a dissolution of marriage case, the party has plead not guilty and has not entered a plea deal, can be convicted of a crime by a trial court without a trial. Applicant would not raise this

question in petition before this Court unless events the case record reflects shows that this did take place and violated the 5th, 6th, and 14th Amendments of the Constitution Of The United States.

12. There is clear evidence in the case record that incriminates legal professionals that have represented Respondents and certain jurists that have presided over the case in question, through overt predicate acts, that shows a pattern of racketeering activity through from September 2019 to October 2023, violating multiple federal and state criminal statutes. This has created a procedural conundrum that will need resolution by this Court. The question Applicant will raise in petition for certiorari is, what procedures must be followed by a court of law when there is credible evidence that criminal acts have taken place by individuals that are associated with, and within a civil court case.

13. Applicant is not an attorney, and is representing himself pro se. On December 18, 2023, Applicant finished construction of his petition for writ of certiorari according to specifications outlined by this Court's rules and has to his best ability, made certain that his petition conforms with the rules of this Court. On said date, Applicant took the electronic file of his petition to a vendor that provides printer and bindery services. Applicant's petition will be bound with perfect binding. The vendor advised him that in order to print his petition in accordance with this Court's rules, specifically Rule 33, that the paper weight of the pages of the booklet containing petition being 60 pound weight, were card stock. This resulted in a much higher and unexpected cost than what Applicant

expected to pay, to print 40 copies of the petition to be submitted to the Clerk of this Court per Rule 12(1) and sending three copies to each of the attorneys in accordance to Rule 29(3). Considering the imminent Christmas holiday and expenses that come from getting Applicant's children gifts, Applicant at this time cannot pay the vendor for the cost that it will take to print the necessary number of copies. Supreme Court Rule 13(5) allows a Justice of this Court to grant an extension for 60 days to Applicant. This would be sufficient time for Applicant to pay to have his petition printed with the necessary number of copies required, and timely filed with the Clerk of this Court. To eliminate any future confusion to this Court, the cover page of the finished petition for certiorari of Appellant shows to be December 23, 2023. This was the date Appellant expected to mail/ship petition to the Clerk of this Court by postage mail or third party commercial carrier. Appellant will not change this date of the cover page as the vendor notified him that the printing of Applicant's petition had been completed on December 20, 2023. However, the vendor will not release the print job until the vendor is paid in full by Applicant or some sort of agreeable financing is set up.

14. Applicant certifies herein in addition to paper copies of this application herein to be sent to counsel for Respondents: That he will within 3 calendar days of mailing an original and two copies of application herein per Rule 22(2) to the Clerk of this Court, send Respondents by electronic mail concurrently with attached application herein, a courtesy copy of his petition for writ of certiorari

that he will file in the event application herein is granted. This will allow Respondents ample time to prepare their response to Applicant's petition for certiorari.

15. Applicant being a resident of the State of Oklahoma, falls within the 10th Circuit of the United States Court of Appeals. Justice Neil Gorsuch is assigned circuit justice over the 10th Circuit currently. Applicant making application for extension of time to Justice Gorsuch in accordance with Rule 22 is appropriate here.

16. Applicant therefore requests a 60 day extension of time to allow Applicant to pay for the printing cost of copies of petition of certiorari to be submitted to this Court and Respondents, and to address the extraordinary and novel questions Appellant will raise, and issues raised by the decision below of the Oklahoma Court of Civil Appeals.

WHEREFORE for the foregoing reasons, Applicant request that an extension of time up to and including February 25,, 2023, be granted within which Applicant may timely file a petition for writ of certiorari.

DATED this 22nd day of December 2023.

Respectfully submitted,

Russell G. Conlon
4800 N. Henney Rd.
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EXHIBIT 1

1054115987

ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

IN RE THE MARRIAGE OF:)
)
TRACY D. CONLON,)
)
Petitioner/Appellee,)
)
OKLAHOMA DEPARTMENT OF HUMAN SERVICES, CHILD SUPPORT SERVICES,)
)
Intervenor/Appellee,)
)
vs.) Case No. 119,852
)
RUSSELL G. CONLON,)
)
Respondent/Appellant.)

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
JAN - 6 2023
JOHN D. HADDEN
CLERK

Rec'd (date) 1-6-23
Posted
Mailed
Distrib
Publish ___ yes X no

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE MARTHA OAKES, TRIAL JUDGE

AFFIRMED

Brooks T. Ray
BROOKS T. RAY, PLLC
Oklahoma City, Oklahoma

For Petitioner/Appellee

Gigi McCormick
Elizabeth S. Wilson
Andrew W. Washeck
STATE OF OKLAHOMA
DEPARTMENT OF HUMAN SERVICES

CHILD SUPPORT SERVICES
Oklahoma City, Oklahoma — For Intervenor/Appellee

Russell G. Conlon
Choctaw, Oklahoma — *Pro Se*

OPINION BY DEBORAH B. BARNES, VICE-CHIEF JUDGE:

Russell G. Conlon appeals from an order of the district court denying his motion to remove the Oklahoma Department of Human Services Child Support Services (DHS) as a necessary party. Based on our review, we affirm.

BACKGROUND

Mr. Conlon and Tracy D. Conlon were married in 2003. Three children were born of the marriage: in 2005, 2008, and 2011. The couple separated in 2015 and Ms. Conlon subsequently filed a petition for dissolution of marriage. In July 2017, the marriage was dissolved and a Decree of Divorce was issued.

Among other things, Mr. Conlon was ordered in the Decree to pay Ms. Conlon child support for the use and benefit of the children in the monthly sum of $1,153.13, and he was ordered to be responsible for 68% of out-of-pocket medical expenses incurred for the children. Mr. Conlon was also found to be guilty of indirect contempt for willfully failing to pay court-ordered child support pursuant to a temporary order, and a judgment was entered in favor of Ms. Conlon in the amount of $4,198.32 "as arrears . . . plus interest[.]" Judgment was also granted in

favor of DHS against Mr. Conlon in the amount of $1,910.40 "as cash medical arrears accrued under [a temporary order] . . . ."

In August 2017, DHS filed a Notice of Necessary Party in which it stated that, "pursuant to Title 43 O.S. Section 112(F) and Title 56 O.S. Section 237,"

> A. A petition or motion has been filed in the above-captioned cause in which child support may be ordered to be paid for the benefit of the minor children . . . .
>
> B. [DHS] is providing public assistance, medical assistance, daycare assistance and/or child support services for the benefit of the minor children.
>
> C. [DHS] is a necessary party for just adjudication of issues of paternity, medical support, and/or child support owed by the non-custodial parent. Title 43 O.S. Section 112(F).
>
> D. The attorney for [DHS] represents the interests of the State of Oklahoma, and not the interests of any individual party. Title 56 O.S. Section 237.3.

DHS requested the following:

> 1. An order confirming that [DHS] is a necessary party to this action;
>
> 2. An order for ongoing child support of the minor children in this action, including child care and medical support costs;
>
> 3. An order for one or both parties to carry health insurance on the minor child(ren) when available at a reasonable cost, or 5% of their gross monthly income;
>
> 4. An order permitting collection by income assignment of all child support payments;
>
> 5. An order using [DHS] daycare subsidy guidelines for the calculation of child support in the event the children receive [DHS] daycare subsidy.

The next filing contained in the appellate record is Mr. Conlon's "Motion to Terminate [DHS] as Necessary Party," filed in April 2021. Mr. Conlon asserted in

this motion, among other things, that he had "identified incriminated legal professionals" employed by DHS who were involved in "Medicaid fraud," "racketeering" crimes, and "federal mail and wire fraud," and that "investigations [had been] initiated by [his] complaint" into these DHS employees. Mr. Conlon stated that in August 2020 he had "filed a criminal referral with the intent to press charges, citing hard evidence entered on the record with this Court by [Mr. Conlon], to the Oklahoma State Attorney General Medicaid Fraud Unit of said actions of incriminated legal professionals associated with this case." He stated that because of this referral, it is "completely improper . . . for [DHS] to be a necessary party to this case any longer."

A hearing was held in June 2021. At the opening of the hearing, the district court stated that it had

> advised the parties that this Court has no jurisdiction over any request of a citizen's arrest or any type of indictment. That would have to be presented to the criminal judges up on [the] fifth floor, as well as if you're requesting any type of indictment, that should go through the district attorney's office. It is the district attorney's office who review[s] and determine[s] whether or not charges should be filed . . .

Mr. Conlon acknowledged at the hearing that 43 O.S. § 112(F) grants DHS "statutory legal authority as a necessary party assuming," in his view, "that [DHS] was not a corrupt organization." He asserted, however, that "DHS became a corrupt organization . . . through the criminal actions of certain attorneys the State

employs," that "criminal actions should void statutory authority as a necessary party of a case," and "there is credible evidence that criminal acts have taken place. That is the argument that I'm making here . . . ."

At the close of the hearing the court ruled from the bench that Mr. Conlon's motion was denied. Following this hearing, the court entered a "Court Minute" in which it noted that Mr. Conlon's motion was denied, and further noted that after this ruling: "[Mr. Conlon] moved for a Rule 15 Request"; that the court heard the request; and that it "denies request to withdraw as Trial Judge."

These rulings were subsequently set forth in the district court's order, filed in August 2021, from which Mr. Conlon appeals.

STANDARD OF REVIEW

"A divorce suit is one of equitable cognizance," and "[i]n an action of equitable cognizance there is a presumption in favor of the trial court's findings and they will not be set aside unless the trial court abused its discretion or the finding is against the clear weight of the evidence." *Metcalf v. Metcalf*, 2020 OK 20, ¶ 9, 465 P.3d 1187 (footnote omitted). "Questions of law in a dissolution of marriage proceeding are reviewed *de novo*; this involves a plenary, independent and non-deferential examination of a trial court's legal rulings." *In re Marriage of Starcevich*, 2014 OK CIV APP 100, ¶ 7, 352 P.3d 1250 (citing *Jackson v. Jackson*, 2002 OK 25, ¶ 2, 45 P.3d 418). Moreover,

> The admission and exclusion of evidence is within the sound discretion of the trial court. *Jordan v. General Motors Corp.*, 1979 OK 10, 590 P.2d 193. We will not reverse evidentiary decisions of the trial court absent an abuse of discretion which results in prejudice to the proponent. *Mills v. Grotheer*, 1998 OK 33, 957 P.2d 540.

In re Marriage of Slate & Chadwick, 2010 OK CIV APP 38, ¶ 17, 232 P.3d 916.[1]

ANALYSIS

I. Mr. Conlon's First Proposition

Mr. Conlon first argues in his appellate brief that, during the June 2021 hearing, "the trial court repeatedly sustained procedurally illegal objections from legal counsel for the State," and that this constituted a "campaign to snuff out and preclude" Mr. Conlon's "explosive prepared written argument[.]" However, Mr. Conlon was allowed to present his argument that, as quoted at greater length above, he believed DHS had become "a corrupt organization . . . through the criminal actions of certain attorneys the State employs," and that these "criminal actions should void statutory authority as a necessary party of a case[.]" The court merely sustained objections, raised on the ground of relevancy, to Mr. Conlon's attempts to present exhibits and lengthier allegations pertaining to this same argument. The court allowed Mr. Conlon to make an "offer of proof for the record."

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[1] As stated above, the district court denied Mr. Conlon's motion for a Rule 15 hearing and request that the district court judge withdraw from the case. However, Mr. Conlon does not contest this ruling in his appellate brief or raise it as an issue in his Petition-in-Error.

Not only were the objections not "procedurally illegal,"[2] but the court's determinations with regard to relevancy were justified. Title 43 O.S. 2021 § 112(F) provides as follows:

> In any case in which provision is made for the custody or support of a minor child or enforcement of such order and before hearing the matter or signing any orders, the court shall inquire whether public assistance money or medical support has been provided by [DHS] for the benefit of each child. If public assistance money, medical support, or child support services under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes have been provided for the benefit of the child, [DHS] shall be a necessary party for the adjudication of the debt due to the State of Oklahoma, as defined in Section 238 of Title 56 of the Oklahoma Statutes,[3] and for

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[2] Mr. Conlon's apparent argument that objections were not allowed is also well answered by DHS in its Answer Brief, in which it states that "nothing in [Mr. Conlon's] brief, the Oklahoma Evidence Code, or any case law supports this claim," the "general rule is that a party who may be prejudiced by the improper admission of evidence should object as soon as it becomes apparent the evidence would be relied upon by the opposing party," and "litigants must object to incompetent evidence any time an opposing party presents it and . . . there is no time that the court cannot allow objections." Answer Br. at 8-9.

[3] Title 56 O.S. 2021 § 238 provides:

> Any payment of public assistance money by [DHS] to or for the benefit of any dependent child or children or a child in the custody of [DHS] creates a debt due and owing to the State of Oklahoma by the natural or adoptive parent or parents who are responsible for support of such child or children in an amount equal to the amount of public assistance money so paid.
>
> Provided, that any debt under this section shall not be incurred by nor at any time be collected from a parent or other person who is the recipient of public assistance monies for the benefit of minor dependent children for the period such person or persons are in such status.
>
> Provided further, that where there has been a court order, the debt shall be limited to the amount provided for by said order. [DHS] shall have the right to petition the appropriate court for modification of a court order on the same grounds as a party to said cause. [DHS] shall be subrogated to the right of said child or

> the adjudication of paternity, child support, and medical insurance coverage for the minor children in accordance with federal regulations. When an action is filed, the petitioner shall give [DHS] notice of the action according to Section 2004 of Title 12 of the Oklahoma Statutes. [DHS] shall not be required to intervene in the action to have standing to appear and participate in the action. When [DHS] is a necessary party to the action, any orders concerning paternity, child support, medical support, or the debt due to the State of Oklahoma shall be approved and signed by [DHS].

We agree with the district court that Mr. Conlon's allegations that DHS has become "a corrupt organization," or that individual DHS employees have violated criminal statutes, is irrelevant to the specific issue under review at the time of the hearing: "whether public assistance money or medical support has been provided by [DHS] for the benefit of" the minor children. 43 O.S. § 112(F). As further set forth in § 112(F), "[i]f public assistance money, medical support, or child support services under the state child support plan as provided in Section 237 of Title 56 of the Oklahoma Statutes have been provided for the benefit of the child, [DHS] shall be a necessary party . . . ." Because Mr. Conlon's argument had no bearing on the question of whether public assistance money, medical support, or child support services had been provided to the minor children, we conclude that no procedural error occurred.

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children to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the State of Oklahoma to obtain reimbursement of money thus expended.

Mr. Conlon also argues that his due process right was violated by the court's rulings.[4] In determining whether an individual has been denied procedural due process we engage in a two-step inquiry, asking whether the individual possessed a protected interest to which due process protection applies, and if so, whether the individual was afforded an appropriate level of process. *In re A.M.*, 2000 OK 82, ¶ 7, 13 P.3d 484. *See also id.* ¶ 7 n.6 ("Both the United States Constitution and the Oklahoma Constitution provide that no person shall be deprived of life, liberty or property without due process of law. U.S. Const. amend. XIV, § 1; Okla. Const., art. 2, § 7."). The answer to the second inquiry must be determined on a case-by-case basis because the due process clause does not by itself mandate any particular form of procedure. *In re A.M.*, 2000 OK 82, ¶ 7. Rather, it calls for such procedural protection as the particular situation demands. *Id.* ¶ 9.

It is not clear what protected interest Mr. Conlon might be proposing relevant to a due process analysis.[5] As a private party in a divorce proceeding, Mr.

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[4] Mr. Conlon also states, without explanation, that his right to equal protection of the laws was violated. We address the equal protection clause further below in response to Mr. Conlon actually making an argument under the equal protection clause in a later proposition.

[5] Indeed, Mr. Conlon, at times, appears to make the argument that he was afforded too much process. He complains that the trial court conducted a trial instead of a hearing, Reply at 5, and states at one point that the trial court committed an "unconscionable abuse of [Mr. Conlon's] constitutional rights" by "conduct[ing] . . . a trial on [his] motion" instead of holding a hearing, Br.-in-chief at 6. Of course, Mr. Conlon's argument is that he should have been allowed to introduce argument and evidence seamlessly and without any objection (which Mr. Conlon describes as "procedurally illegal objections," Br.-in-chief at 7). For the reasons set forth in this section of our Analysis, we conclude this argument lacks merit.

Conlon does not possess a protected interest in undertaking a criminal investigation or prosecution in that proceeding.[6] Thus, due process does not apply to protect Mr. Conlon's attempts to demonstrate the violation of criminal statutes at the hearing on his "Motion to Terminate [DHS] as Necessary Party." Moreover, even if we were to assume that at least some of the conduct about which Mr. Conlon complains might directly bear on the post-divorce proceeding, because the conduct nevertheless has no relevance to the specific issue described above – of whether public assistance money, medical support, or child support services had been provided – Mr. Conlon was afforded an appropriate level of process at the hearing.

We, therefore, reject any constitutional argument raised as part of this first proposition.

II. Mr. Conlon's Second Proposition

Mr. Conlon asserts the district court "unlawfully abdicated its duty to execute citizen's arrest initiated by [him]." Mr. Conlon points out that, as quoted above, the district court stated at the hearing that it had

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[6] While the district court, in all its divisions, "constitutes an omnicompetent, single-level, first-instance tribunal with unlimited original jurisdiction of all justiciable matters," "the court's day-to-day exercise of authority stands carved into several separate divisional compartments." *Matter of Fourteen Exotic Parrot-like Birds*, 2022 OK CIV APP 17, ¶ 27, 512 P.3d 392 (internal quotation marks omitted) (citation omitted). More importantly, "[a] criminal action is prosecuted in the name of the State of Oklahoma as a party, against the person charged with the offense." 22 O.S. 2021 § 11. Mr. Conlon's attempt to make criminal allegations against DHS, or against certain DHS employees, in this divorce proceeding is therefore not a protected interest to which due process protection applies.

> advised the parties that this Court has no jurisdiction over any request of a citizen's arrest or any type of indictment. That would have to be presented to the criminal judges up on [the] fifth floor, as well as if you're requesting any type of indictment, that should go through the district attorney's office. It is the district attorney's office who review[s] and determine[s] whether or not charges should be filed . . .

Mr. Conlon asserts these statements are false because "[s]pecial judges issue summons, convene arraignments and have criminal trials all the time . . . ." He states he "has every right to initiate citizen's arrest per 22 O.S. § 202(2), (3) and 22 O.S. § 205." He states he "filed notice with the trial court, noticed and designated the trial court to execute citizen's arrest upon identified counsel for The State and [Ms. Conlon]," and that the district court erred in failing to do so.

The provisions cited by Mr. Conlon provide authority, under certain circumstances, for a private person to arrest another, but this did not occur here. The provisions do not provide authority for a private person to require a judge to execute a citizen's arrest for that private person. *See* 22 O.S. 2021 § 202.[7] Moreover, Mr. Conlon did not contest the district court's statements, quoted above, or make an argument on the record in this regard at the hearing. *Jernigan v. Jernigan*, 2006 OK 22, ¶ 26, 138 P.3d 539 ("Nothing tendered here warrants a

[7] Regardless, Mr. Conlon acknowledges in this proposition that, ultimately, "the district attorney of appropriate jurisdiction decides whether to file charges . . . ." Br.-in-chief at 10.

deviation from the general rule that bars from review issues raised for the first time by appeal."). For these reasons, we reject Mr. Conlon's second proposition.

III. Mr. Conlon's Third Proposition

Mr. Conlon asserts "the trial court permitted participation of incriminated legal counsel representing The State and [Ms. Conlon], who had been identified by [Mr. Conlon] in initiated citizen's arrest." He asserts the court therefore erred in allowing these attorneys to participate at the hearing.

As set forth above, a citizen's arrest did not occur. Moreover, Mr. Conlon raises this argument for the first time on appeal. *See State ex rel. Okla. State Bd. of Med. Licensure & Supervision v. Rivero*, 2021 OK 31, ¶ 33, 489 P.3d 36 ("[P]arties must preserve error in the lower tribunal with proper argument and authority, or the error is waived when raised for the first time on appeal." (footnote omitted)). For these reasons, we reject Mr. Conlon's third proposition.

IV. Mr. Conlon's Fourth Proposition

In his fourth proposition, Mr. Conlon challenges the district court's determination, made in 2017, finding him in contempt for failure to pay child support. He asserts he was not paying child support because his mortgage business "was going under . . . ." However, the determination in question was set forth in the 2017 Decree, described above, the time to appeal that decision has passed, and Mr. Conlon's challenge constitutes a collateral attack of a final order in an

incidental proceeding. *See Farley v. City of Claremore*, 2020 OK 30, ¶ 25 n.57, 465 P.3d 1213 ("A collateral attack is an attempt to avoid, defeat, evade or deny the force and effect of a final order or judgment in an incidental proceeding other than by appeal, writ of error, certiorari, or motion for new trial." (citation omitted)).

Mr. Conlon also takes issue with the following language in the August 2021 order: that the court considered, among other things, "sworn testimony from witnesses[.]" Mr. Conlon asserts that no sworn witness testimony was taken and that what Mr. Conlon was "trying to present to the trial court [was] illegally hacked to shreds by counsel for [Ms. Conlon and DHS] and a prejudicially permissive trial court." However, as already explained above, not only were the objections not "procedurally illegal," but the court's determinations with regard to relevancy were justified. Moreover, even if the court misstated in its order that it considered sworn testimony from witnesses, "[i]f the result is correct, [a] judgment is not vulnerable to reversal because the wrong reason was ascribed as a basis for the decision or because the trial court considered an immaterial issue or made an erroneous finding of fact." *In re Estate of Bartlett*, 1984 OK 9, ¶ 4, 680 P.2d 369 (footnote omitted).

We reject Mr. Conlon's fourth proposition.

V. Mr. Conlon's Fifth Proposition

In his fifth proposition, Mr. Conlon argues that the district court's order from which he appeals was "meant to bury clear and convincing evidence that racketeering and fraud crimes had been committed by counsel for the state and [Ms. Conlon]." As explained above, Mr. Conlon's allegations that DHS has become "a corrupt organization," or that individual DHS employees have violated criminal statutes, is irrelevant to the specific issue under review at the time of the hearing: whether DHS is a necessary party under 43 O.S. § 112(F). Because Mr. Conlon's argument had no bearing on this issue (which, as set forth above, hinges on whether public assistance money, medical support, or child support services had been provided), Mr. Conlon's argument lacks merit.[8]

VI. Mr. Conlon's Sixth Proposition

In his sixth proposition, Mr. Conlon attacks 43 O.S. § 112(F) on the following basis:

> [I]f a child in a divorce or paternity case is provided public assistance that is funded by Oklahoma taxpayers, in this case by [Mr. Conlon] as the obligor parent paying annual taxes to the federal and state government, then charging an obligor parent for debt as defined by Oklahoma statute and Oklahoma Administrative law . . . , for public assistance benefits such as Soonercare by means of charging insurance premiums to an obligor parent, or child support services

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[8] Mr. Conlon also appears to argue in this proposition against a certain civil docket transfer order. We agree with DHS that this issue was waived because it was not raised below. *See Rivero*, 2021 OK 31, ¶ 33.

> provided by the Child Support Enforcement Division, is not valid debt as defined by 56 OS § 238 and OAC 340:25-1-1.1[.]

Of course, 43 O.S. § 112(F) merely provides that DHS

> shall be a necessary party for the adjudication of the debt due to the State of Oklahoma, as defined in Section 238 of Title 56 of the Oklahoma Statutes, and for the adjudication of paternity, child support, and medical insurance coverage for the minor children in accordance with federal regulations.

The district court's denial, under § 112(F), of Mr. Conlon's motion to remove DHS as a necessary party did not constitute an adjudication of debt due to the State of Oklahoma, and the issue of whether a debt is a "valid debt as defined by 56 OS § 238 and OAC 340:25-1-1.1" is not before us.

Moreover, Mr. Conlon's argument overlooks that fact that, as stated by DHS, "In this case, [DHS][9] was providing [Mr. Conlon's] children with public assistance money in the form of state health insurance and [Mr. Conlon] owed $4198.32 in child support arrears." Indeed, Mr. Conlon appears, in this proposition, to be attacking determinations in the Decree. In the Decree, Ms. Conlon was ordered to "apply to [DHS] and make application for services to receive child support," and DHS was ordered to receive "a portion of the monies, income or periodic earnings due and owing [Mr. Conlon], currently self-employed, or from his employer, future employer, and/or any other person, department of

[9] DHS refers in particular to the Child Support Services Division of DHS.

state or political subdivision thereof, . . . *in an amount sufficient to meet [Mr. Conlon's] current base child support and any past due child support obligation, created by this Order.*" (Emphasis added.) The Decree provides that "[a]ll payments made pursuant to this Order by [Mr. Conlon] shall be made payable to [DHS] . . . ." Not only has Mr. Conlon failed to allege any injury caused by DHS becoming a necessary party to this case, but also the amounts payable to DHS equal only those amounts sufficient to satisfy the provisions of the Decree.

Nevertheless, Mr. Conlon asserts that under 43 O.S. § 112(F), DHS acts, in this case, as an "unlawful taxing authority, usurping the Oklahoma Legislature's delegated constitutional authorities to tax, in violation of the Origination Clause as defined in Art. 1 § 7 Clause 1 of the Constitution of the United States." However, the Executive branch, not the Legislative branch, is charged with "faithfully execut[ing]" the laws.[10] Moreover, the Legislature, not DHS, enacted 43 O.S. §

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[10] "The Legislative authority of the State shall be vested in a Legislature," Okla. Const. art. 5, § 1, but "[t]he Governor shall cause the laws of the State to be faithfully executed," Okla. Const. art. 6, § 8.

> The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others.

Okla. Const. art. 4, § 1.

112(F).[11] Mr. Conlon has failed to demonstrate a violation of the Origination Clause.

Mr. Conlon also asserts the "Equal Protection Clause of the 14th Amendment" is violated by the

> State charging as debt via cash medical support to obligor . . . because such action of [t]he State results in discrimination against a group of individuals, that being divorced or paternal obligor parents, because said groups of people must pay cash medical support to the State, whereas the rest of the taxpayers who are eligible for Soonercare, are not obligated to pay anything back to [t]he State when the State pays an eligible taxpayer's medical expenses.

Mr. Conlon's argument is flawed because his payment to DHS is based on final determinations set forth in a divorce decree. Indeed, his argument constitutes an apparent attempt to collaterally attack the findings of the district court in the Decree. "A collateral attack is an attempt to avoid, defeat, evade or deny the force and effect of a final order or judgment in an incidental proceeding other than by appeal, writ of error, certiorari, or motion for new trial." *Farley*, 2020 OK 30, ¶ 25 n.57 (citation omitted).

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[11] Mr. Conlon's argument is inapposite. The Origination Clause provides: "All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills." U.S. Const. Art. I, § 7. DHS has not "usurp[ed] the Oklahoma Legislature's delegated constitutional authorities to tax, in violation of The Origination Clause[.]"

Regardless, Mr. Conlon has failed to assert he is part of an inherently suspect class,[12] and we must uphold 43 O.S. § 112(F) against his equal protection challenge so long as "the legislative means are rationally related to a legitimate governmental purpose." *Gladstone v. Bartlesville Indep. Sch. Dist. No. 30 (I-30)*, 2003 OK 30, ¶ 9, 66 P.3d 442 (emphasis omitted) (footnote omitted). DHS points out that the child support statutes have a "broad remedial purpose . . . to provide support for children according to parents' ability to pay." *In re M.B.*, 1998 OK CIV APP 35, ¶ 7, 956 P.2d 171. DHS states that "Oklahoma law does treat non-custodial obligors differently by being obligated to pay child support," but that "§ 112(F) does rationally relate to the purpose of child support, which is to support children based on a parent's ability to pay." We agree that § 112(F) is rationally related to the legitimate governmental purpose of providing support for children of divorced parents according to the parents' ability to pay and according to final determinations in a divorce decree, and to obviate children becoming public charges because a non-custodial parent refuses to shoulder his/her responsibility to support his/her children financially. Therefore, we reject Mr. Conlon's equal protection argument.

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[12] Nor do "divorced or paternal obligor parents," the class described by Mr. Conlon, constitute a class subjected to such a history of purposeful unequal treatment as to require extraordinary protection. *See* Answer Br. of DHS at 25. DHS describes the proposed class as "[n]on-[c]ustodial parents who have to pay child support to support their own children[.]" We agree with DHS that this class is also not a suspect class deserving of strict scrutiny.

VII. Mr. Conlon's Seventh Proposition

Mr. Conlon asserts that 43 O.S. § 118F is unconstitutional because it "usurps the United States Congress' enumerated authority to regulate commerce among the states."[13] More particularly, Mr. Conlon's argument is that § 118F "corners and

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[13] Mr. Conlon quotes the following from § 118F, with his emphasis supplied:

> F. Cash medical support.
>
> 1. The responsible parent shall be ordered to pay cash medical support when:
>
> a. **there is no health care plan available for the child,**
>
> b. **the only health care plan available for the child is a governmental medical assistance program or health plan**, or
>
> c. a party shows reasonable evidence of domestic violence or child abuse, such that an order for health care coverage is inappropriate and the disclosure of information could be harmful to a party, custodian, or child.
>
> 2. **The cash medical support order shall not exceed the pro rata share of the actual monthly medical expenses paid for the child, or five percent (5%) of the gross monthly income of the obligor, whichever is less.**
>
> 3. a. In determining the actual monthly medical costs for the child, the court shall determine:
>
> (1) for children who are participating in a government medical assistance program or health plan, an amount consistent with rules promulgated by the Oklahoma Health Care Authority determining the rates established for the cost of providing medical care through a government medical assistance program or health plan, or
>
> (2) for children who are not participating in a government medical assistance program or health plan, an amount consistent with rules promulgated by the Department of Human Services determining the average monthly cost of health care for uninsured children.
>
> b. The court may also consider:
>
> (1) proof of past medical expenses incurred by either parent for the child,

eliminates free market private health insurance competitors that offer health insurance products" because "Soonercare is the only health insurance product that can meet the reasonable cost requirements set forth in [§ 118F(F) & (G)]."

Mr. Conlon failed to raise this argument below, an argument which relies upon factual assertions and speculation regarding the effects of the statute. "[G]enerally, issues raised for the first time on appeal are not subject to review." *Nichols v. State ex rel. Dep't of Pub. Safety*, 2017 OK 20, ¶ 17, 392 P.3d 692 (footnote omitted). Because Mr. Conlon failed to raise this argument, we conclude it is not subject to review for the first time on appeal.

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(2) the current state of the health of the child, and

(3) any medical conditions of the child that would result in an increased monthly medical cost.

G. An order requiring the payment of cash medical support under subsection F of this section shall allow the obligor to terminate payment of the cash medical support if:

1. **Accessible health care coverage for the child becomes available to the obligor at a reasonable cost; and**

2. **The obligor:**

a. **enrolls the child in the insurance plan, and**

b. **provides the obligee and, in a Title IV-D case, the Title IV-D agency, the information required under paragraph 2 of subsection C of this section.**

In Title IV-D cases, termination and reinstatement of cash medical support shall be according to rules promulgated by the Department of Human Services.

VIII. Mr. Conlon's Eighth Proposition

Mr. Conlon challenges 43 O.S. 2021 § 118I(B)(1), which provides: "A child support order shall not be modified retroactively regardless of whether support was ordered in a temporary order, a decree of divorce, an order establishing paternity, modification of an order of support, or other action to establish or to enforce support." Mr. Conlon asserts that the "barring of retroaction of income imputation by [§ 118I(B)(1)]," even "[w]hen an obligor parent has any downturn [in] income during any given year," creates an "oppressive financial burden," creates "a tax that discriminates against . . . obligor parents in a divorce or paternity proceeding," and "makes a court of law an unlawful taxing authority[.]"[14] He asserted below in his motion to terminate that the "imputed computation [of income] . . . can become outdated and obsolete" and disconnected from what the "obligor truly earned post decree[.]"

Mr. Conlon's argument is far afield from the order from which he appeals and the issues presented at the hearing. Regardless, Mr. Conlon's argument lacks merit because, pursuant to § 118I(A)(1), "[c]hild support orders may be modified upon a material change in circumstances," including, among other things, "an increase or decrease in the income of the parents[.]" Section 118I(A)(3) provides:

> An order of modification shall be effective on the first day of the month following the date the motion to modify was filed, unless the

[14] Mr. Conlon raised this argument in his Motion to Terminate DHS as Necessary Party.

> parties agree to another date or the court makes a specific finding of fact that the material change of circumstance did not occur until a later date.

Thus, although § 118I prohibits retroactive modification, it does not prohibit a parent from immediately filing a motion to modify upon a change of circumstances, and it does not prohibit a court from modifying child support "on the first day of the month following the date the motion to modify was filed[.]" Indeed, Mr. Conlon acknowledged in his motion to terminate that the filing of a motion to modify constitutes a "remedy" to the issue he has articulated; however, he complains that a party would have "to frequently motion courts to modify anytime there is a change in income, thus unnecessarily overburdening the courts concurrently overburdening the litigants in a divorce or paternity case with additional legal cost and time." This complaint is unpersuasive.

The Legislature, in formulating and enacting § 118I, was not concerned solely with the interests of the divorced parties, but was also taking into consideration the interests of minor children affected by a divorce. *See, e.g.,* § 118I(A)(1) ("The court shall apply the principles of equity in modifying any child support order due to changes in the circumstances of either party *as it relates to the best interests of the children.*" (emphasis added)); *In re M.B.*, 1998 OK CIV APP 35, ¶ 7 (Child support statutes have a "broad remedial purpose . . . *to provide support for children* according to parents' ability to pay." (emphasis added)). The

balance struck by the Legislature with regard to the requirements necessary for a parent to modify a child support order constitutes a legislative decision, and it is "firmly recognized that it is not the place of this Court, or any court, to concern itself with a statute's propriety, desirability, wisdom, or its practicality as a working proposition." *Fent v. Okla. Capitol Imp. Auth.*, 1999 OK 64, ¶ 4, 984 P.2d 200 (citations omitted). Although Mr. Conlon has attempted to put the constitutionality of the statute at issue, because, as stated above, he is not a member of a suspect class, we must uphold § 118I so long as "the legislative means are rationally related to a legitimate governmental purpose." *Gladstone*, 2003 OK 30, ¶ 9. We conclude the requirement that a party must file a motion to modify in order to modify a child support order, and the prohibition of modifications of child support orders preceding the filing of such motions, is rationally related to the legitimate governmental purpose of providing support for children of divorced parents according to the parents' ability to pay. Indeed, because of the "remedy" acknowledged by Mr. Conlon – the ability to file a motion to modify immediately upon a change of circumstances – the assertion that § 118I creates an unconstitutional "oppressive financial burden" and "tax" disconnected from a parent's actual income, lacks merit.

CONCLUSION

We affirm the order of the district court denying the motion to remove DHS as a necessary party.

AFFIRMED.

WISEMAN, P.J., and HIXON, J., concur.

January 6, 2023

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ORIGINAL

EXHIBIT 2

FILED
SUPREME COURT
STATE OF OKLAHOMA

SEP 25 2023

JOHN D. HADDEN
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MONDAY, SEPTEMBER 25, 2023

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

117,997 Trela Wishon v. James Hammond and Rita Hammond
Petition for certiorari is denied.
CONCUR: Kauger, Winchester, Edmondson, Combs, Gurich, Darby, JJ.
DISSENT: Kane, C.J., Rowe, V.C.J. and Kuehn, J.

119,704 Kchao & Kchao Hospitality, LLC d/b/a Whispering Pines Inn Bed & Breakfast, Rany Kchao and Thavory Kchao v. Beverly Renee Marlow, at Toem and Paula Sullivan
Petition for certiorari is denied.
ALL JUSTICES CONCUR.

119,781 In the Interest of the child of: Luke Anthony Moorman v. Sonya Mae Roberts
Petition for certiorari is denied.
ALL JUSTICES CONCUR.

119,852 In re the Marriage of: Tracy D. Conlon; OK Dept. Of Human Services, Child Support Services v. Russell F. Conlon
Petition for certiorari is denied.
ALL JUSTICES CONCUR.

120,214 Specialized Loan Servicing, LLC v. Jana Leigh Galpin, as Pers. Rep; and The Estate of Harold Dean Johnson
Petition for certiorari is denied.
ALL JUSTICES CONCUR.

Rec'd (date) 9-25-23
Posted
Mailed
Distrib
Publish ____ yes X no

CHIEF JUSTICE

No. _____

In the

Supreme Court of the United States

Russell G. Conlon,

Applicant

v.

State Of Oklahoma; Department Of Human Services, Child Support Services, and Tracy D. Conlon

Respondents

PROOF OF SERVICE

I, Russell G. Conlon, do swear or declare that on this date, December 22ND, 2023, as required by Supreme Court Rule 29 I have served the enclosed **APPLICATION TO THE HON. JUSTICE NEIL GORSUCH FOR AN EXTENSION OF TIME WITHIN TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CIVIL APPEALS** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 22ND, 2023

Russell G. Conlon