CASE NUMBER: 24-5769

IN THE UNITED STATES SUPREME COURT

TANYA TYSON,

PETITIONER,

Vs.

QUIKTRIP CORPORATION,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE OKLAHOMA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

Tanya Tyson

Tanya Tyson

9521-B Riverside Pkwy – S 104

Tulsa, OK 74127 214-907-2562

DATE: October 10, 2024

QUESTIONS PRESENTED:

1. Did the Supreme Court err in their (APP C) June 12, 2023 Order dismissing my Motion to Dismiss the Default Order of October 11, 2021, asserted in my first March 13, 2023 Petition of Error (PIE #1) as premature when it had already been certified and docketed on March 17, 2023?

2. Was it err then to further deny and moot my filed (APP Ca) Order on June 14, 2023 for these, as yet at the time, two unruled on Petitions, to be treated as Companion Petitions in Error as one (because no ruling had issued on March 13 PIE #1 and should have been considered first, and would be considered as held in suspense? The second PIE #2 Petition had a different main argument: and that the District Court did not have jurisdiction to have conducted that second PIE #2 hearing because the first docketed Petition PIE #1 was in suspense, and not yet ruled on at the time J. LaFortune conducted this hearing and then issued a new Order of denial to the same October 11, 2022 Mot to Dismiss in his Default Order on April 19, 2023?

3. Did the Sup Ct err when they mooted my request in my Companion Motion where I was requesting consideration of the PIE #1. Should this second PIE #2 (appealing April 19 DC Ord) and all related documents thereto be mooted because the first one was still standing and had not been ruled on when they conducted that hearing and ruling?

APPEN D:

4. Did the Court of Appeals (APP D) err when not reviewing and overlooking my statements and contentions made in my PIE #2 Amended Petition in Error, Exhibit C, supported by the ROA, where I cited crucial statutes, specifically alleging irregularities rulings from the District Court, contradicting the criteria stated in:

a. 2015 OK 20 see Schweigert v. Schweigert – 348 P.3d 696, under "Judgment "Requirement in rule (10) governing notice of taking default judgment of filing a motion and giving notice of default is applicable any time a *party appears before a court whether by filing a document (Petition) or physically participating in a hearing; rule (10) provides that not only that a motion must be filed and notice be given to a party who has appeared, but that the motion must be filed even if no notice was required, and even if the party fails to make an appearance.12 OK St Ann SS 651(1). 1031(3).

5. Was it further err when Judge B. Swinton and the concurring justices did not consider the evidence required in 12 Okla Stat. 2001 SS 1038 (no Motion for Default filed – therefore appellant not properly served.) The judgment roll is absent of any filed or served Motion for Default.

6. Did the Swinton appellate court further err when they overlooked the basic controlling criteria listed in 2014 OK Stat Title 12, 2004 (Chapter 39 – under c –"Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by Defendant –

7. Did the Swinton appellate court further err In the Opinion from Appendix D, COA, J. Swinton stated "Tyson also contends the trial court lacked jurisdiction to rule on her motion to vacate, apparently because she had filed a petition in error appealing the default judgment. The filing of a premature or untimely petition in error does not deprive the trial court of jurisdiction to rule on post-trial motions. Tyson has not shown that the trial court lacked jurisdiction to rule on her motion to vacate." p8 under 13.

when the Supreme Court of Kansas and the statutes differ with the Swinton Opinion language where she said that my docketed Petition "would not deprive the trial court of jurisdiction", but as stated in the Kansas court in State v. Dedman 640 P.2d 1266, 230 Kan 793:

> Their 2: "When an appeal is docketed, the trial court's jurisdiction ends and the sentence may then be modified only after the mandate from the Supreme Court or Court of Appeals is returned....."

8. Did the Swinton appellate court further err In the Opinion from Appendix D, COA, J. Swinton stated in her p4, at 6 where she quoted QuikTrip's statement that "a party has a statutory duty to maintain a current address with the Court..." when at the time the hearing rendering that I was in default on October 11th, I was living out of state, was represented by counsel, had no idea my attorney withdrew and that the hearing was being held and received no notice of any kind and therefore would have no obligation to maintain an address with the court.

Motion for Leave to Proceed In Forma Pauperis

Cover Sheet

Questions Presented

Rule 14 (b)(1) Parties are listed in the caption

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Opinions Below

For cases from State Courts: the Opinions of the highest state court to review the merits appears at **Appendix C and Ca** for PIE #1 (Pet in Error – March 13, 2023) sua sponte dismissal by Supreme Court of Oklahoma on June 12, 2023

Appendix D for affirmation and opinion of Ok Dist Court's denial of Mot to Vacate – on March 8, 2024

JURISDICTION

The date on which the highest state court decided my case was on May 13, 2024.

The jurisdiction of this court is invoked under 28 U.S.C. SS 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amendment XIV

The Fourteenth Amendment states:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Petitioner cited the violation of this 14th Amendment in Table of Authorities –

PIE #1 - p1 EX C, issues Raised, p1 and P2 (March 13, 2023) and also

PIE #2, p2 and Ex C, p2

In my Dist Ct. Mot to Vac Judgment on November 9, 2022 Reply to Quiktrips' Response in Opposition to Plaintiff's Application for Evidentiary Hearing, Motion to Strike Answer – Motion for Default and Motion to Vacate Default Judgment – I stated on p5 in 1st paragraph: "My due process rights have been violated against the 14th amendment. These were allegedly 'sewer filings' which were the basis of preventing me from having a fair trial and receiving just recompense.

STATEMENT OF CASE

I cited the issues in my Brief in Chief: On January 29, 2021, a Petition (ROA 2) was filed by my former attorney Mark Stanley on behalf of Plaintiff (Petitioner here) Tanya Tyson's behalf against QuikTrip for negligence resulting in my physical injury, emotional pain and suffering and medical bills, and lost income. The Honorable Judge LaFortune, Tulsa District Court judge was assigned.

Judge LaFortune rendered an ex parte Default Judgment Order against me (Tanya Tyson) initially and it was entered on July 7, 2022 (ROA Doc 13)which I challenge as being void because of lack of service.

In J. LaFortune's April 19th Order of Denial (Exhibit A-PIE #2), he stated that 'Plaintiff's Motion to Vacate was untimely as it was filed more than 30 days after the entry of default judgment." However, I discerned this March 28th hearing to be untimely and irregular because this case was still in the authority of the Supreme court at the time it was held on March 28, 2023.

Some of the background of events after learning my attorney withdrew and the court entered a default judgment against me are that I filed a Motion to vacate Default Judgment on October 11, 2022 (ROA 16 P1) and argued below as a basis for this Motion:

(a) I did not receive a copy of the withdrawal order (ROA Doc 16, p1,2). On (ROA Doc 16, p2) I alleged that both my former (Plaintiff's) attorney and Defendant QT attorney (ROA Doc 16, p2, par2) that both were deficient in their mailing service to me, and therefore that the court did not have personal jurisdiction to enter a default judgment against me," and I cited (ROA Doc 16, "c" on p2) process rule violations and specifically Quik Trip's documents, not reflected on the judgment roll, not having received their mailings (scheduling conferences, default order, etc.), as these deficiencies. In (ROA 16, p3, par 2 and 3). I alleged these as fraudulent based on my arguments there and summarized this argument on p11, par3.

(b) In my Oct 11, 2022 Mot to Vac, which the court must have reviewed according to his Order where he said I "failed to show any fraud upon which this court could vacate its entry of

default", on p2 par2, in response I once again, cited the rules governing process of service requirements under 2014 OK Stat 12, 2004 (Chapter 39) that I alleged were violated on (ROA Doc 16, "c"). It is on these deficiencies and other listed in my Motion to Vacate that I alleged fraud, and state, and even that statement "failed to show any fraud upon which this court could vacate its entry of default" is a "fraudulent." Statement.

(c) I continued on p3-I elaborated these alleged infractions on (ROA 16, par 2,3,4) and in particular in par 4 that the back of the Order to Withdrawal (ROA Doc 7, p2) for attorney was not signed or dated as mailed (ROA Doc 16 p3, par4) and that the address reflected as to having been sent (4 Scheduling Conference notices and the Default Order supposedly sent by Quik Trip were sent to a closed post office box (no forwarding addresses left)

These issues tie into the Motion to Vacate Default Judgment because J. LaFortune states that (his p2 par 2-"Prior to entry of default was valid pursuant to 12 O.S. SS 2005.2 D. Accordingly, Plaintiff's Motion to Vacate is DENIED." The address they said they thought was valid was an address the former attorney had.

I was being represented then and had no need to present my address to the court until I filed my Mot to Vacate after learning the case was dismissed, which I did.

My arguments regarding 2014 OK Stat 112, SS12-1031.1 B - above are valid, and the contentions I made in Mot to Vac (Doc 16, p4, par3) under 2014 OKLAHOMA STATUTES TITLE 12 – CIVIL PROCEDURE SS 12-1031 Fraud – are valid, contrary to J. LaFortune's statement in par 2...Plaintiff failed to show any fraud upon which this Court could vacate its entry of default judgment under 12 O.S. SS 1031(4)."

Although it may not seem that the following is relevant to the ruling I am challenging, because the Court and QT Clark state they relied on former attorney Stanley for an address, I share the following:

I argued at length regarding the fact that former attorney Stanley and I spoke and he agreed to wait until further medical treatment would take place, but this is not the subject here. Mr. Stanley filed a Motion to Withdraw (ROA 6), which I never received, and further the

Order Allowing Withdrawal (ROA, Doc. 7) was not mailed to me and the back of this Order (p2) after reviewing Court records shows no Certificate of Mailing or any signature as having been sent to me – see ROA Doc 16 -p3, par4...

"when a default judgement sought in any action against a party defendant {here Plaintiff Pro Se after Plaintiff attorney withdrew without notice effectuated, as well Order to Withdraw – the back of this (J. LaF's) Order –{certificate of mailing not signed or dated} (see Exhibit 6 there) as well as four different purported Notices and Order for Default Judgment from defendant Clark for Quik Trip, all sent to a closed post office box}"

I had no idea my attorney dropped my case, based on previous conversations with him, so to infer that I had not left a change of address with the court is ridiculous. In that I pointed out in the above referenced language, that this Order of Withdrawal had no date or signature in the certificate of mailing would show allegedly that the judge had full knowledge I had not been informed. THIS IS FURTHER FRAUD.

I incorporate by reference the issues and arguments in my two Pet in Error – PIE #1 and PIE #2 that are the subject of this appeal.

BACKGROUND OF THE PETITIONS AND APPEALS AT BAR:

There are two Petition in Error- first one docketed and certified in the Supreme Court)– 1.- March 13, 2023 docketed, and Certificate of Appeal - March 17, 2023, appealing the July 7, 2022 Order, of entering a Default Judgment by my Motion to Vacate Default Judgment that I identify here are PIE #1; and PIE #2.– May 18, 2023 Pet appealing the denial of the Motion to Vacate the same Default Judgment of October 11, 2022) of D. Ct April 18, 2023 Order. I entitled the PIE #2 May 18, 2023 Petition in Error as "Amended Petition of Error" because I was ordered by Sup Court's May 11, 2023 Order to appeal the April 18th Order of denial of my motion to vacate October 11, 2022 as Exhibit A. But if you look at that Petition in Error from my PIE#2 - May 18, 2023 it clearly specifies that the date of judgment order was July 7, 2022 and the second line was Order of Motion to Vacate denied April 18, 2023. The two appeals would be challenging the same Default Order filed July 7, 2022. Both contain all of the relevant issues and statutory grounds for appeal.

I refer to the relevant Orders at bar and a part of this discussion as Appendices A-E:

A PIE # 1 -Petition in Error – filed on March 13, 2023

B PIE # 2 Petition in Error filed on May 18, 2023

C Dismissal Order for PIE #1 -(Sua Sponte) from Supreme Court on June 12, 2023

Ca. Order mooting Companion Motion - June 14, 2023

D Dismissal Order OF PIE #2 – Court of Appeals – March 8, 2024

E Denial of Pet for Certiorari – Supreme Court - May 13, 2024

I contend that the Sup Court of OK allegedly did not have the authority to dismiss the PIE #1 Appeal in its June 12, 2023 Appendix C Order. Time was up on April 3, 2023 for the Defendants to respond to the PIE #1 Petition, which was twenty days after the filing of the March PIE#1 Petition. (this should have occurred before the Sup Court's sua sponte's (App C) order dismissing this case issued on June 12, 2023. The defendants could have filed a motion to dismiss regarding untimeliness, etc. or whatever, that was their option, but the petition had been filed and was a certified copy entered case (certified on March 17, 2023, and a sua sponte dismissal response from the court three months **after** the petition was filed (appen C), is irregular, prejudical and an abuse of discretion and process).

Again, the Defendants could have objected and deemed untimeliness or any other argument in the time allotted, but they did not do so. They waived their arguments to this then pending Petition.

"Attorneys – not the Court – are responsible for making their own arguments. Furthermore, if attorneys raise an argument, the Court expects that they will do their own research and develop that argument. If the parties do not care about an argument, or a claim, enough to spend time litigating that argument, then the Court should not be expected to shoulder the responsibility for them. Additionally, if after reviewing an opponent's motion, a party wishes to abandon a claim, that party should affirmatively stipulate to that concession on the record."

"If a party fails to respond to an opponent's argument, the Court will find that the argument is waived for the purpose of the pending motion.

"if the court is presented with a colorable argument in a motion to dismiss, and the plaintiff fails to respond to that Motion, ...Indeed, failing to make an argument before the

district court would, in the end, amount to a waiver of the argument on appeal. Soo Line R.R. Co. v. Conrail, 965 F.3d 596, 601 (7th circuit) (see comments at ilnd.us courts.gov/judge)

My encrypted motion in this Petition (PIE #1) requesting the court's ruling on the bottom of page 1 of the SUMMARY VII, EX B is:

"I ask this court to rule that the Def Judgment against me as void on its face, and be vacated and that QT's late Answer to struck and Default rendered against the Defendants and that because there was no timely Entry of Appearance all pleadings by them, be struck." By their lack of response to the Appen PIE #1, this request should be granted as they have waived their defenses.

It was an abuse of discretion for the entire Supreme Court (not just the COA panel assigned on September 28, 2023 but their own court sua sponte -in App C) to step in and dismiss the PIE #1 on June 12, 2023.

The first Petition allegedly would be the only one that should have a standing because it had been docketed and certified by the Clerk of the Court on March 17, 2023 and:

(a) The Defendants have twenty days to respond and answer a Petition. They did not respond timely within the 20 days allowed by law, nor did they respond at all to this Petition, as it is clear from the absence on the judgment roll of the Supreme Court docket sheet and the district court docket sheet. Their time was up on April 4, 2023. (see S. Ct Rule 1.301 (c) designating a 2 day response time as well as Rule 1.152 – par 3 "must be filed within 20 days after receipt of Petition of Error."

(b) Under 2014 Oklahoma Statutes Title 12 – Civil Procedure under Statute 12-2008 states under General Rules of Pleading under

"C : Affirmative Defenses it states: in pleading to a preceding pleading, a party shall set forth affirmatively.. and it lists 20 various reasons that would be allowed in a defense.

"Effect of failure to deny, D says: averments in a pleading to which a responsive pleading is required, other than those to the amount of damage are admitted, when not denied in a responsive pleading..."

This would mean that all of my averments made in the March 13, 2023 Petition of Error, which included everything stated in the Summary VII – Ex B and in C VIII Issues Raised claiming no personal jurisdiction, and abuse of process by entering default judgment St Ann SS 651(1) – 1031(3) and 2014 OK Stat 12 2004 – Ch 39 would be deemed "admitted" because not responded to by April 4, 2023 and any defenses are "waived".

The SC OK in their initial (ORD) March 20, 2023 Order required me to furnish my Response to this Order to Show Cause and provide documentation and verification relevant to

my Petition in Error – I did so on March 21, 2023, with five pages of verification that I had not received any notices and 9 exhibits establishing this.

In this same March 20th Order they directed me to file a bound 3 ring binder of O/4 copies of ROA (Record on Appeal certified by Dist Court Clerk) to be done 15 days from the disposition of the show cause order.

On May 11, 2023 Order, the Court acknowledged my Response to the Order to Show cause regarding my (PIE #1) March 13, 2023 Petition, which I discerned then to be the disposition of the show cause order. They did not dismiss the (PIE #1) March 13, 2023 Petition there ON May 11, 2023, which I interpreted as having accepted it. They also noted (APP C) that a new Order from the District Court from April 18, 2023 denying once again my October 11, 2022 Mot to Vacate, and instructed me to file an Amended Petition in Error on or before May 30, 2023 via court Rules 1.26 and 1.30l Form 5, attaching the April 19th Order as Ex A. This Amended Petition PIE #2 would differ from the first Petition as in this Amended Petition because I was challenging the District Court's authority to conduct another hearing at all, because the first Petition was in suspense when he held that hearing on March 28, 2023 and then his Order to the March hearing, issuing on April 18, 2023. My understanding of the law is that when a document is amended it still retains the original filing date, in this case March 13, 2023.

After this acknowledgment of receipt of the show cause order on May 11, 2023, I then went ahead and furnished my Record on Appeal for the PIE #1 March 13, 2023 Petition, as instructed in their March 20, 2023 Order on May 18, 2023, to furnish this within the 15 day period from the disposition of their March 20t order to show cause. My May 18th ROA did not include the April 18, 2023 Order or related documents because the ROA was only prepared for the first March 13 Petition according to the March 20, 2023 Order of the Supreme Court, as I began its assembly shortly thereafter.

On June 12, 2023 I filed a Motion to Consider according to S Ct rules, what I considered as the two appeals as Companion appeals, because both of the PIE 1 and PIE 2 were in suspense. (I incorporate by reference all of the exact language and arguments in my Companion

Mot) Without using the exact language, in summary, I stated this court's May 11, 2023 Order noted that it received my Response to their Order to Show Cause; they offered no ruling or decision regarding my Response to their Order to Show Cause filed on March 21, 2023 as to the contents; and that this court directed me to entitle the second denial of my Motion to Vacate Dismissal Order from the District Court to be an Amended Petition in Error. I further noted in my Companion Motion because there had been no ruling to the March Petition in Error, nor had the Defendants responded to it, I assumed that this March Petition had been accepted, and there were now two Petitions and it was on that basis that I motioned this Court that these two Petitions be consolidated under Rule 1.27 (d) par 2 – as companion appeals. Now, suddenly, five weeks later on June 14, 2023 after it recognized in this Court's May 11, 2023 Order, my Response to Order to Show Cause, they now said they were sua sponte denying the March 13, 2023 Petition on the basis of untimeliness in their Appen C dismissal Order, even after it had been docketed and certified on March 17, 2023, three months earlier.

> The court then responded to my Motion...for companion appeals, on June 14, 2023 and said in part "that...and appellant's June 12, 2023 motion to consider two appeals as companion appeals . Appellant's two petitions in error are one appeal so the motion to consider them as companion appeals is moot." (APP Ca) (par 1)
>
> "The Court entered an Order on its own motion on *June 12, 2023 (right after I filed my Motion to consider the two appeals as one) dismissing appellant's appeal of the July 7, 2022 default judgment as untimely and beyond appellate review." (par 2)

But the second Amended Petition also included my objection to the July 7, 2022 default judgment and the authority to have this hearing/Order at all. Why was there was no mention their intention to dismiss in their May 11, 2023 Order, after acknowledging receipt of the Response to Order to Show Cause?

In reviewing their (Appen C) June 12, 2023 Order, (12 O.S. 2021 SS 990.2b) language stated:

> "When a post trial motion is filed more than ten days (10) days after the filing of judgment and more than 10 days after court records show Appellant received actual notice of the judgment."

There is no timing to file a Motion to Vacate involved when a default motion is void because there is no record on the judgment roll of any receipt.

Besides that, I challenge and object to the language in the June 12, 2023 Court's Order where it falsely stated in par "after the Court records show Appellant received actual notice of the judgment..." The court records do not show I **received** actual notice. If this Order was the notice, it had just been framed on the 12th and there would be no way I would know, much less have an opportunity to appeal this then.

There had not been any findings or specific responses to my (Appen PIE #1) Mar 13, 2023 Petition of Error arguments in this Court's May 11, 2023 Order regarding the fact that I had not received any of the notices or orders or motions as established on the record, and alleged as a void judgment,

> I quote Pettis v. Johnson, 78 OK 277 (OK 1920) "a judgment which is void upon its face and requires only an inspection of the judgment roll to demonstrate its want of validity and is a "dead limb upon the judicial tree may be lopped off at any time"

so this was clearly established my Response to the Order to Show Cause exhibits to their March 20, 2023 Order, and also on May 18, 2023 in my APPEN B – PIE #2, I stated:

> 'I read the OK rules after learning on August 31, 2022, of this Judgment, filed an Entry of Appearance, and Mot to Vacate Default Judgment and Request for Evidentiary Hearing wanting to prove QuikTrip had not sent me any Notices or Orders – 5 total) on October 11, 2022, which at the time, I thought fell into the timeline, excluding weekends and holidays (Aug 31st to Oct 11, 2022), of 30 days, thinking that the court should hear this Motion within 30 days after I learned the judgment was entered, excluding weekends and holidays.
>
> But despite that, this would be irrelevant because I now realize that according to this same statute (1031.1) under B, in actuality, that, according to the language there that a "...vacation of judgment...may be filed no later than 30 days after the earliest date on which the court records show that a copy of the judgment was mailed." QuikTrip may have said they mailed a copy of the judgment but there is no proof on the record of the judgment roll this judgment was ever received by me or that it was ever mailed, which I could have never received, because mailed to a closed post office box, with no forwarding address."

The Sup Ct. was, in my opinion, allegedly erroneous and prejudiced in this sua sponte June 12, 2023 dismissal Order (Appen C) of same ignoring the criteria of:

2014 OK Stat Title 12, 2004 (Chapter 39 – –"Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the Defendant

The Sup Court (Appen C), before issuing their Order of denial of my Pet in Error of March 13, 2023, should have considered the evidence furnished and the absence of any return receipts on the judgment roll, for Motions for Default Hearing, Scheduling Conferences, Default Judgment Order, and the judgment roll being absent of a required return of service by mail record.

In the Opinion (Appen D) at bar, J. Swinton stated "Tyson also contends the trial court lacked jurisdiction to rule on her motion to vacate, apparently because she had filed a petition in error appealing the default judgment. The filing of a premature or untimely petition in error does not deprive the trial court of jurisdiction to rule on post-trial motions. Tyson has not shown that the trial court lacked jurisdiction to rule on her motion to vacate." p8 under 13.

That first Petition was neither premature or untimely. This was not a post trial motion, but a docketed Petition of Error. And the Supreme Court of Kansas and the statutes differ with the Swinton Opinion language that my docketed Petition

"would not deprive the trial court of jurisdiction", but as stated in the Kansas court in State v. Dedman 640 P.2d 1266, 230 Kan 793:

Their 2: "When an appeal is docketed, the trial court's jurisdiction ends and the sentence may then be modified only after the mandate from the Supreme Court or Court of Appeals is returned....."

My March 13, 2023 Petition had been filed, accepted and docketed by the Supreme Court on March 17, 2023. This issue was raised in my May 18, 2023 Amended Petition in Error on p.2, par 3, citing Dedman id. that I did not attend because I believed the first Petition had not been ruled on by this Court and was in suspense. I also cited this as an irregularity and abuse in my Brief in Chief and my Reply in Brief in Chief on p 9,10.

Again, at the risk of redundancy, by not responding to the March 13, 2023 Petition in Error, the Defendant waived their rights to do so and my assertions and requests for vacating the default judgment and my motion for default judgment because not answered and was 4 ½ months late be granted.

J. LaFortune had no personal jurisdiction to enter a default judgment or to conduct that second hearing on April 18, 2023 denying my Motion to Vacate Default Judgment, when he had entered a Default Judgment on July 7, 2022. The March Pet in Error and was still under the jurisdiction of the Sup Court at that time to determine my Oct 11, 2002 Motion arguments.

I contend that the entire April 19, 2023 Order from J. LaFortune and all appeal and responses should be considered moot because it is an unauthorized by law, Order of denial of my Mot to Vacate to conduct a new hearing when the March 13, 2023 appeal Order in suspense had not been ruled on.

In the case at bar, even though I did not receive any notices of any kind of the default judgment being filed, scheduling conferences held, or that my attorney did not notify me that he withdrew, verified by the absence of filing on the judgment roll.., Also see Asset Acceptance v. Ho, Defendants/Appellants – 415 P 3d 47 – Mot for Default not filed and therefore the judgments vacated..

Furthermore, I pointed out in my Mot to Vac ROA 16, P8 under SIT below, to counter the contentions that mail sent by regular service is not acceptable. Disputing the overlooking of this criteria in Swinton Opinion in her p2, 2 and p3, under 3,4. And also the App Court – Div 2, there agreed in their statement:

> "Attempting to satisfy fundamental due process requirements by regular mail without any reasonable steps to obtain service by basic statutorily authorized means is not sufficient." SIT, SL v. Tulsa Turbine Engines and Aircraft, LLC. Okla Civ. App. Div. 2, 313 P.3d 1035 (2013) Constitutional Law 3881; Process 73 Process 82.
>
> I supported my arguments by citing the proper statutes:
>
> Pettis v. Johnston 78 OK 277 (OK 1920) under Syllabus by the Court – 10. Same – Void Judgment – Attack – Limitations – "a judgment which is void upon its face and requires only an inspection of the judgment roll to demonstrate its want of validity is a "dead limb upon the judicial tree may be lopped off at any time"; it can bear no fruit to the plaintiff, but is a constant menace to the defendant, and may be vacated by the court rendering it "at any time on motion of a party or any person affected thereby,"
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> And Bristow First Assembly of God v. BP p.l.c., N.D.Okla.. Bristow First Ass of God v.BP p.l.c., N.D.Okla..

And Ferguson Enterprises, Inc. v. H. Webb Enterprises, Inc. 2000 OK 78, P 11, 19 P.3 d at 483 – "If the record does not reflect that personal service has been made on the defendant, the court lacks in personam jurisdiction over the defendant and any default judgment rendered thereon is void and subject to vacation.

Elliot v. City of Guthries, 1986 OK 59 P7 n. 8, 725 P. 2d 861, 863 n.8 where the return of process reveals the appellant was not properly served; the trial court lacked in personam jurisdiction and the judgment is void on its face.

I sufficiently raised these arguments in my Petition in Error, Amended Petition of Error, my Brief in Chief and my Reply that because all of the Notices of scheduling conferences and default judgment of July 7, 2022 purported to be sent, as well as the Notice of Withdrawal and Order of Withdrawal were purported to be mailed to closed post office address, but the judgment roll absent of any receipt or proof of any of these mailings makes the District Court's July 7, 2022 default judgment to have been an abuse of discretion and then should be VOID ON ITS FACE. I offered the Exhibits and my Affidavits regarding the closed post office box when the supervisor of that site testified that all mail sent would have been returned in 7 to 10 days, as well as my proof of when I closed that box. All a part of the ROA 16 doc. I also offered the proof that when I sent an envelope to that closed box in Texas from Oklahoma, that it was sent back to me within 10 days, with "Return to Sender, undeliverable" stamp, to verify the supervisor's statement. This makes all of their false claims to be extrinsic fraud, I believe sewer filings, of having mailed me withdrawals, scheduling conference notices, and orders a nullity.

As soon as I filed my Motion to Vacate on October 11, 2002, based on the fact that I had not received any notice of conferences for this case being held; had alleged the authorities of deficiencies, and that I had not received any orders or other notices, the district court (and the appellate court) should have reviewed the judgment roll and that fact that it was absent of these filings and dismissed this default judgment immediately.

The appellate court erred in their (APPEN D) p3 under 3, there is no record that a Motion for Default was ever filed in the Court. Not only is there no record on the judgment roll, but this absence requires vacation of a default order and is supported by:

See 2015 – Schweigert v. Schweigert – 348 P.3d 696, under "Judgment Requirement in rule 10 governing notice of taking default judgment of filing a motion and giving notice is applicable any time a party appears before a court whether by filing a document

(Petition) or physically participating in a hearing; rule (10) provides that not only that a motion must be filed and notice be given to a party who has no appeared, but that motion must be filed even if no notice was required and even if the party fails to make an appearance 12 OK St Ann SS 651(1). 1031(3).

I repeat Pettis v. Johnson id –

"a judgment which is void upon its face and requires only an inspection of the judgment roll to demonstrate its want of validity is a "dead limb upon the judicial tree may be lopped off at any time"; it can bear no fruit to the plaintiff, but is a constant menace to the defendant, and may be vacated by the court rendering it "at any time on motion of a party or any person affected thereby,"

I should have not been subjected to the continual litigation in this case by the District Court or the appellate courts. When I filed the original Petition of Error on March 13, 2023 (PIE 1) Under "II Timeliness of Appeal, No. 2, it was stated that

"No record it (Order of July 7, 2022) was ever mailed because not received." Under my VII, Ex B there I detailed all of the events and the time I learned of the Default Judgment against me.

As stated in my Am Petition under EXHIBIT Summary Vii B p2:

"I intentionally did not attend or respond in any way to his Notice of Hearing or the hearing itself based on what I perceived, according to appellate procedure, that when an appeal is docketed, (here on March 23, 2023) the trial court's jurisdiction ends. see State v. Smith 278 Kan. 45, 51,92 and State v. Dedman 230 Kan. 793, par 2. The issues in those Motions that Judge LaFortune denied in his April 19th Order are the same ones before this court. Although I could have appeared, if I discern the law correctly, to plead in person that he had no personal jurisdiction, because of the other motions he would hear at that same hearing, I believe I would have waived my rights to plead a lack of personal jurisdiction to rule by submitting myself to that court then."

I also asserted on p3 of my Brief in Chief:

A judgment is void on its face when the judgment roll affirmatively shows that the trial court lacked either (1) jurisdiction of the person (2) jurisdiction over the subject matter, or (3) judicial power to render the particular judgment. Morgan v. Karcher 81, Okl. 210, 197 P.433."and "Town of Watonga v. Crane Co. 189 Okla 184, 114 P2d 941, 942 (1941)

I herein incorporate all the arguments raised on the deficiencies I claimed in the Brief in Chief, Reply in Brief in Chief and ROA 16, 20, 21 AND 24.

If the Court or QT would have sent any notices or orders out then they would have been returned because the box was closed. See attached Ex 14 and 14AAA filed in Reply to

QuikTrip filed 11-9-2022." This would make the mailings in total of 8 unreceived by me, between Mr. Stanley and Mr. Clark where they contend they mailed me the various documents previously alleged in my Motion to vacate judgment." In the ROA 16, Exhibit 13, Nate Clark also contends he sent me a copy of the Default Judgment on July 8, 2022.

The appellate judge here stated more than once, contrary to the ROAs and Brief in Chief, I furnished with backed evidence, regarding attorney Mark Stanley's lies that:

(Appen D) J. Swinton, appellate captain of the tribunal, intimated I received notice in 1 "I (Tyson) neglected to inquire about the status of my case" that I had received notice, that under footnote 2 that Stanley left numerous messages.

All of these are lies. I have phone records and affiavits that I furnished as evidence for **the entire period involving transactions and there is no indication** on these phone records that he even tried to call once.

(Appen D) J. Swinton said in her footnote on p2 "Attached to the motion was a December 7, 2021 letter from counsel to Tyson indicating counsel had left numerous messages over several months with no response from Tyson and warning her that if she failed to respond her counsel would be forced to withdraw.

I herein incorporate by reference all of my Mot to Vac ROA 16 and 21 contentions. Her No. 4 regarding the certificate of mailing is totally bogus. There is no record on the judgment roll. These type of records are to be sent certified, return mail with green cards. All of the alleged mailings are fabricated.

This is my **recorded** partial conversation with former attorney Stanley (ROA Doc 21, Ex AF-3): Tanya: Well, I'm trying to get into a Texas doctor here now and I have to send x-rays and everything and then they'll give me an appointment after they look at it, they got to see if they are going to be able to help, or whatever, so I don't know that answer yet, but I will let you know after I ...

Mark: well, we'll do it your way, against my advice, and maybe it turns out in your favor okay? Tanya: okay, okay... Mark: Sounds good, I'll talk to you, keep me posted."

When I did call him to "keep him posted" that I was ready to proceed, I learned from his partner that my case had been dismissed and vacated. I was shocked to learn this and immediately set out to check the court records and figure out what to do. Mr. Stanley had my phone number at all times and chose not to call me. I asked his partner why he did not call me and he had no answer.

"That conversation took place two days **after** they filed their Answer. There was no "breakdown of negotiations". They had not even begun (see ROA 19, QuikTrip's No. 3 and 4 under his "Relevant Facts, p2."

The Appellate Court judge (APPEN D) carefully worded in their footnote on 2, p3:

"Tyson also filed a motion for default judgment, in which she contended that because QuikTrip filed its answer for more than 20 days (emph mine)after her petition...Quik Trip responded, attaching evidentiary materials showing Tyson's former counsel had agreed to allow QuikTrip to file its answer after settlement." QuikTrip noted the procedural history above and argued Tyson was not entitled to default judgment against QuikTrip."

Their Answer to the Petition was for "more than 20 days and was in actuality **4 months and 11 days late**. I asked QT attorney for evidence of this "agreement." Attorney Stanley offered an Email *that he created* to substantiate the deal, and when I cited the Federal Rules of evidence requirements and an Affidavit from Stanley and the "unnamed counsel" he cut the deal with, I was given the excuse that they were "officers of the court" that was all that was necessary.

I incorporate those arguments on p15, par 7 and 8 in Br in Chief.

In summary I had requested, on appeal, that based on the above cited violations and the Defendants' failure to respond to the March 13, 2023 Petition in Error, that they have waived their rights of defense and have by law then "admitted" my averments,

according to 2014 OK Stat 12 – 2008 under D. and also in their violation of 2022 OK Stat Tit 12, SS 12-1031 under 3 "irregularities in obtaining a judgment, 4." Fraud ..in obtaining a judgment, order." (9) for taking judgments when the defendant ...not legally notified of the time and place of taking such judgment." warrant that the case should be reversed, sanctions ensue, that Quik Trip be held to have violated the law in responding to their Answer 4 mo 11 days late - and that a just recompense be awarded as well as punitive damages for the egregious conduct in this case. in both of my PIE#1 and PIE#2 I alleged my due process rights under the 14th amendment were violated.

Respectfully submitted on this 8th day of August, 2024,

Tanya Tyson

REASONS FOR GRANTING THE WRIT

Because the District Court has abused its discretion in not vacating the default judgment against me when I never received notice of this default hearing, by mail, by phone and there is nothing on the record showing this took place the default judgment should be reversed.

Because the Supreme court of Oklahoma also allegedly abused their discretion by dismissing my PIE #1 case when unauthorized to do so and ignoring the authorities and issues and further in compliance, the COA ignored the statutes and evidence presented also abusing their discretion, all of their rulings should be vacated and considered moot.

Because the Defendants have failed to respond to the March 13, 2023 Petition in Error that they have waived their rights of defense and have by law then "admitted" my averments, and aaccording to 2014 OK Stat 12 – 2008 under D. are also in violation of 2022 OK Stat Tit 12, SS 12-1031 under 3 "irregularities in obtaining a judgment, 4." Fraud ..in obtaining a judgment, order." (9) for taking judgments when the defendant ...not legally notified of the time and place of taking such judgment." warrant that the case should be reversed, sanctions ensue, that Quik Trip be held to have violated the law in responding to their Answer 4 mo 11 days late and default held against them, and that a just recompense be awarded as well as punitive damages for the egregious conduct in this case.

CONCLUSION

Martin Luther King Jr. made a speech in 1963 while being imprisoned in jail and said:

"One may well ask: "How can you advocate breaking some laws and obeying others?" ""the answer lies in the fact that there are two types of laws: just and unjust. I would be the first to advocate obeying just laws. One had not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that an unjust law is no law at all.""

Now, what is the difference between the two? How does one determine whether a law is just or unjust? A just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust.""

IN MY APPEAL TO THE SUPREME COURT OF OK AND TO THE COA – the denial and dismissal of same and the rulings therein are not only UNJUST – but illegal, intending to deprive a citizen of their rightful claims. This conduct has denied me my due process rights to be heard under the 14th Amendment of the Constitution. THIS COURT SHOULD BRING JUSTICE TO ME AND AS AN EXAMPLE TO OTHER SUFFERING THE SAME PLIGHT IN THE COURTS.

Respectfully submitted,

Tanya Tyson

Tanya Tyson

Date: August 8, 2024