

APPENDICES

- A PIE # 1 -Petition in Error – filed on Mar 13, 2023 (from *OK Dist Ct. Ex A Order of default!*)
- B PIE # 2 Petition in Error filed on May 18, 2023 - (*OK Dist Ct. Ex A Order - denial to Mo va*)
- C Dismissal Order for PIE #1 -(Sua Sponte) from Supreme Court on June 12, 2023
 Ca. Sua sponte Order mootng 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

APPENDIX D – DISMISSAL ORDER FOR PIE #2

S. Ct of OK

MARCH 8, 2024



ORIGINAL

NOT FOR OFFICIAL PUBLICATION
See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION I

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

MAR - 8 2024

JOHN D. HADDEN
CLERK

TANYA TYSON,

Plaintiff/Appellant,

vs.

QUIKTRIP CORPORATION,

Defendant/Appellee.

Rec'd (date)	3-8-24
Posted)
Mailed)
Distrib)
Publish	yes <input checked="" type="checkbox"/> no

Case No. 121,145

APPEAL FROM THE DISTRICT COURT OF
TULSA COUNTY, OKLAHOMA

HONORABLE WILLIAM LAFORTUNE, TRIAL JUDGE

AFFIRMED

Tanya Tyson,
Grand Prairie, Texas,

Pro Se,

Nathan E. Clark,
Kerry R. Lewis,
Austin T. Jackson,
RHODES HIERONYMUS,
Tulsa, Oklahoma,

For Defendant/Appellee.

OPINION BY BARBARA G. SWINTON, PRESIDING JUDGE:

APPENDIX D

¶1 Plaintiff/Appellant Tanya Tyson appeals from the trial court's order denying her motion to vacate a default judgment entered in favor of Defendant/Appellee QuikTrip Corporation. Pursuant to District Court Rule 5(J)(4), the trial court entered default after Tyson failed to appear at the scheduling conference. Tyson was given the notice required by statute. Tyson admittedly neglected to inquire about the status of her case for nearly a year and failed to update her mailing address. We find no abuse of discretion and affirm.

¶2 Tyson filed her negligence petition against QuikTrip in January 2021 and QuikTrip answered in July 2021.¹ In January 2022, QuikTrip filed an application for a scheduling conference. Tyson's attorney filed a motion to withdraw a week later, asserting he had been unable to reach Tyson by phone or mail, and Tyson had failed or refused to contact her counsel or participate in the case.² The January 28, 2022 Order Allowing Withdrawal gave notice "that a failure of (Tyson) to prosecute or defend the case may result in dismissal of the case without prejudice or a default judgment against the party." The motion to withdraw and the order allowing withdrawal both included certificates of mailing to Tyson's last known address.

¹ The record indicates Tyson's counsel agreed that QuikTrip could wait to file its answer until settlement negotiations were completed.

² 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.

¶3 The record shows the scheduling conference was reset three times and each notice included a certificate of mailing to Tyson's last known address as provided in her counsel's motion to withdraw. No attorney entered an appearance for Tyson after her original counsel was allowed to withdraw.

¶4 The scheduling conference was held June 21, 2022, and counsel for QuikTrip appeared, but Tyson did not. The trial court entered default judgment against Tyson July 7, 2022, for failure to appear at the scheduling conference, citing Rule 5(J)(4) of the Rules for District Courts. The default judgment order included a certificate of mailing to Tyson's last known address.

¶5 Tyson filed her Motion to Vacate Default Judgment October 11, 2022.³ Tyson alleged she first learned of the default judgment when she called her prior counsel August 30, 2022. Tyson argued she did not receive notice of the motion to withdraw or notice of a motion for default judgment. Tyson acknowledged she did not leave a forwarding address when she closed her post office box, but she contended that her counsel should have tried to reach her by phone. Tyson alleged QuikTrip lied about giving her notice to avoid paying damages to her. Tyson further contended she was

³ Tyson also filed a motion for default judgment, in which she contended that because QuikTrip filed its answer for than 20 days after her petition, and because QuikTrip and Tyson's counsel both mailed notice to her at a closed P.O. Box, then she was entitled to default judgment against QuikTrip for \$500,000. QuikTrip responded, attaching evidentiary materials showing Tyson's former counsel had agreed to allow QuikTrip to file its answer after settlement negotiations. QuikTrip noted the procedural history above and argued Tyson was not entitled to default judgment against QuikTrip.

entitled to an order vacating the default judgment because she could not, with reasonable diligence, have discovered the default judgment, because neither her former counsel nor QuikTrip's counsel called to notify her. Tyson asserted the default judgment should be vacated for fraud and for the taking of a judgment for more than was due.⁴

¶6 In response to Tyson's motion to vacate, QuikTrip noted that a party has a statutory duty to maintain a current address with the court, which Tyson admitted she did not do. See 12 O.S. §2005.2. QuikTrip averred it had no duty to track down Tyson and force her to prosecute her case against it. QuikTrip further contended that the record showed Tyson failed to contact her counsel or inquire about her case from at least January 2022 to August 30, 2022, and that she was not entitled to have her case revived by an order vacating the default judgment.

¶7 Tyson also filed an application for original jurisdiction in which she asked the Oklahoma Supreme Court to direct the trial court to rule on her motion to vacate. See Case No. 121,017 (denied March 6, 2023). The record includes court minutes noting Tyson failed to appear at the evidentiary hearing February 9, 10, or 13, 2023, based on Tyson's claim of illness. The trial court continued the hearing to February 16, 2023. Tyson sent the court a letter saying she would let the court know when she was well enough to attend a hearing.

⁴ The default judgment, entered against Plaintiff Tyson, did not award damages.

¶8 In March 2023, the trial court scheduled a hearing on all pending motions for March 28, 2023. The minute entered that day shows Tyson did not appear, despite being given proper notice, and did not contact the court to seek a continuance. The trial court denied all pending motions, including Tyson's motion to vacate default judgment.

¶9 The trial court entered its Order April 19, 2023, reflecting the denial of Tyson's: 1) application for an evidentiary hearing, 2) motion to strike answer, 3) motion for default judgment and request for entry of court judgment, 4) motion to vacate default judgment and request for evidentiary hearing, 5) amended motion to request evidentiary hearing and motion to strike portions of QuikTrip's response, and 6) motion to strike QuikTrip's answer and all responsive pleadings. The court found Tyson's motion to vacate default judgment was untimely and that Tyson had failed to show fraud which would support vacating the default judgment under 12 O.S. §1031(4). The trial court found QuikTrip's service of filings to Tyson's last address of record was valid under 12 O.S. §2005.2(D). The trial court denied all of Tyson's motions for failure to appear, pursuant to District Court Rule 5(J).

¶10 Tyson appeals. The Oklahoma Supreme Court issued orders June 12 and 14, 2023, in which it dismissed Tyson's appeal from the default judgment as being untimely. That order directed that Tyson's appeal from the April 19, 2023 order is

timely and that our “review shall be limited to issues raised in (Tyson’s) motion to vacate and the correctness of the trial court’s order denying the motion.”

¶11 We review an order denying a motion to vacate default judgment for an abuse of discretion. *Ferguson Enterprises, Inc. v. H. Webb Enterprises, Inc.*, 2000 OK 78, ¶5, 13 P.3d 480. In reviewing an order on a motion to vacate default judgment, we consider several principles:

1) default judgments are not favored; 2) vacation of a default judgment is different from vacation of a judgment where the parties have had at least one opportunity to be heard on the merits; 3) judicial discretion to vacate a default judgment should always be exercised so as to promote the ends of justice; 4) a much stronger showing of abuse of discretion must be made where a judgment has been set aside than where it has not. . . . [and] whether substantial hardship would result from granting or refusing to grant the motion to vacate.

Id. at ¶5. We have reviewed the record in its entirety and find no abuse of discretion.

¶12 Tyson’s primary contention is that her prior counsel or counsel for QuikTrip should have phoned her before the trial court entered default judgment and that QuikTrip did not file a motion for default judgment. She has not cited any statute or rule requiring telephone notice. The record shows Tyson was given notice of her counsel’s withdrawal and of the scheduling conferences at her address of record.⁵ Additionally, District Court Rule 5(J) does not require a motion for default

⁵ The record shows counsel for Tyson complied with the statutory procedures for withdrawing from representation set out in 12 O.S. §2005.2(C).

judgment.⁶ The risk of a default judgment for failure to appear was included in the notice of the scheduling conference. Tyson acknowledges she failed to inform her counsel or the trial court of her proper mailing address.⁷ Tyson argues that the mailed notices sent to her closed P.O. Box should have been returned as undeliverable. She has not indicated how her counsel, QuikTrip, or the court would have had any other

⁶ District Court Rule 5(J) Default provides:

Failure to prepare and file a scheduling order or pretrial order, failure to appear at a conference, appearance at a conference substantially unprepared, or failure to participate in good faith may result in any of the following sanctions:

1. the striking of the pleading;
2. a preclusion order;
3. staying the proceeding;
4. default judgment;
5. assessment of expenses and fees (either against a party or the attorney individually);
6. or such other order as the Court may deem just and appropriate.

⁷ 12 O.S. §2005.2 requires parties to maintain a correct address on file:

D. ADDRESS OF RECORD. The address of record for any attorney or party appearing in a case pending in any district court shall be the last address provided to the court. The attorney or unrepresented party must, in all cases pending before the court involving the attorney or party, file with the court and serve upon all counsel and unrepresented parties a notice of a change of address. Any attorney or unrepresented party has the duty of maintaining a current address with the court. Service of notice to the address of record of counsel or an unrepresented party shall be considered valid service for all purposes, including dismissal of cases for failure to appear.

E. NOTICE OF CHANGE OF ADDRESS. All attorneys and unrepresented parties shall give immediate notice to the court of a change of address by filing notice with the court clerk. If the attorney or unrepresented party has provided written consent to receive service by electronic means pursuant to subsection A of this section, or in another pleading, the attorney or party shall include a change of electronic mailing address as part of the notice required in this subsection. The notice of the change of address shall contain the same information required in the entry of appearance, shall be served on all parties, and a copy shall be provided to the assigned judge. If an attorney or an unrepresented party files an entry of appearance, the court will assume the correctness of the last address of record until a notice of change of address is received. Attorneys of record who change law firms shall notify the court clerk and the assigned judge of the status of representation of their clients, and shall immediately withdraw, when appropriate.

address to send notices given her acknowledged failure to provide a correct address or to contact her counsel. In any event, the record shows that after Tyson learned of the default judgment, her motion to vacate was untimely and she failed to appear for the hearing on her motion to vacate, of which she undisputedly had notice.

¶13 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.

¶14 Tyson has offered no explanation for her lack of diligence in inquiring about her case or consulting with her counsel before he withdrew. Tyson's neglect of her case extended even to her decision not to appear at the hearing on her motion to vacate default judgment. It is unclear from this record that Tyson would appear or diligently pursue her case if we were to reverse and remand. Tyson has not presented authority supporting reversing the order denying her motion to vacate on similar facts. Because we find no abuse of discretion, the order on appeal is AFFIRMED.

BELL, V.C.J., and PRINCE, J., concur.

APPENDIX E – DENIAL OF PET FOR CERTIORARI
S. Ct of OK MAY 13, 2024

ORIGINAL



FILED
SUPREME COURT
STATE OF OKLAHOMA

MAY 13 2024

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

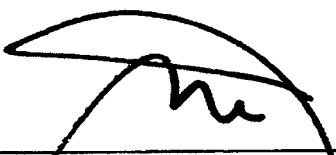
JOHN D. HADDEN
CLERK

MONDAY, MAY 13, 2024

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

- 120,282 Kevin Jackson v. Quiktrip Corporation
Petition for certiorari is denied.
ALL JUSTICES CONCUR.
- 120,500 In re Guardianship of L.A.C.: Amy Meyer v. Allison White and W. Scott White
Petition for rehearing is denied.
CONCUR: Rowe, V.C.J., Kauger (**by separate writing**), Winchester, Edmondson, Combs, Gurich, Darby and Kuehn (**by separate writing**), JJ.
DISSENT: Kane, C.J.
Kane, C.J., dissenting
"Although I continue to strongly dissent from the original opinion, I agree with Justice Kauger that on remand the trial court should conduct a hearing to determine status of the ward prior to proceeding."
- 120,531 Lana M. Ash v. David Stanley Chevrolet, Inc. And Santander Consumer USA, Inc.
Petition for certiorari is denied.
ALL JUSTICES CONCUR.
- 121,145 Tanya Tyson v. Quiktrip Corporation
Petition for certiorari is denied.
ALL JUSTICES CONCUR.

Rec'd (date)	5/13/24
Posted	<i>JE</i>
Mailed	<i>JE</i>
Distrib	<i>JE</i>
Publish	yes <input checked="" type="checkbox"/> no <input type="checkbox"/>



CHIEF JUSTICE

APPENDIX E

**Additional material
from this filing is
available in the
Clerk's Office.**