

• Case number

UNITED STATES SUPREME COURT

BRIAN D. DUBUC,

VS

FIRST NATIONAL BANK & TRUST et al

APPENDIX TO

PETITION FOR CERTORARI

**TO THE SUPREME COURT OF OKLAHOMA,
DISTRICT COURT OF OKMULGEE COUNTY OKLAHOMA WITHIN THE
CREEK-CHEROKEE NATION RESERVATION IN CAUSE NUMBERS**

CV-19-34 SC-14-597

OKLAHOMA SUPREME COURT NUMBER 121331

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NOTICE THAT UNITED STATES INTREST MAY APPLY

(i)

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Respectfully Submitted

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VERIFICATION AND MAILING

I **Brian D Dubuc Applicant herein for Certiorari** and do declare certify, verify, and state ,under penalty of perjury that the foregoing Documents are true Exact Copies as those found in there respective courts and is true and correct. First Executed on May 19th ,2025 . Further that service by first class postage prepaid to each party or attorney who has appeared for said party pro bono officially or unofficially with regard to all matter before the courts Below as now This 27th day of August 2025 submitted in each said court in CV-19-347 SC-14-597 who have been advised not to add to there

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Respondents



ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA

FEB 24 2025

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

JOHN D. HADDEN

MONDAY, FEBRUARY 24, 2025

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

- 121,331 Brian Dale Dubuc v. First National Bank of Okmulgee, Nevyle R. Cable, Kyle Powell, William C. Mabrey, Linda Prichard and Joseph Gallagher
Petition for certiorari is denied.
CONCUR: Rowe, C.J., Kuehn, V.C.J., Winchester, Edmondson, Combs, Gurich, Darby and Kane, JJ.
- 121,488 Afefa Wilcots v. Tracy Calamaio, D.C., P.C. d/b/a TL Chiropractic
Petition for certiorari is denied.
CONCUR: Rowe, C.J., Kuehn, V.C.J., Winchester, Edmondson, Combs, Gurich, Darby and Kane, JJ.
- 122,791 Werner Enterprises, Inc. v. The Hon. Kory Kirkland; and Jodi Cross, as Personal Rep. Of the Estate of Rae Anne Darrow, deceased.
Application to assume original jurisdiction is denied.
CONCUR: Rowe, C.J., Kuehn, V.C.J., Winchester, Edmondson, Combs, Gurich, Darby and Kane, JJ.

CHIEF JUSTICE

Rec'd (date)	2-24-25
Posted	JM
Mailed	JM
Distrib	JM
Publish	yes <input checked="" type="checkbox"/> no



ORIGINAL

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

SEP 10 2024

JOHN D. HADDEN
CLERK

BRIAN DALE DUBUC,

Plaintiff/Appellant,

vs.

Case No. 121,331

FIRST NATIONAL BANK OF OKMULGEE,
NEVYLE R. CABLE, KYLE POWELL,
WILLIAM C. MABREY, LINDA PRICHARD,
JOSEPH GALLAGHER,

Respondents/Appellees,

and

BRIAN DALE DUBUC, KAREN TOWNSEND
and DONNA SHATTO,

Plaintiffs,

vs.

LINDA PRICHARD, APRIL WHITAKER,
GENE WHITAKER, CHARLIE ARNOLD
and ALL OTHER PETS,

Respondents/Appellees.

Rec'd (date)	9-10-24
Posted	PC
Mailed	PC
Distrib	PC
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ORDER

Appellant, Brian Dale Dubuc's Petition for Rehearing and Request to Stay both filed September 5th, 2024, are DENIED.

DONE BY ORDER OF THE COURT OF CIVIL APPEALS this 9th day of September, 2024.

E. BAY MITCHELL, III
Presiding Judge

ORIGINAL



FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

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

AUG 16 2024
JOHN D. HADDEN
CLERK

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

BRIAN DALE DUBUC,)

Plaintiff/Appellant,)

vs.)

Case No. 121,331

FIRST NATIONAL BANK OF)

OKMULGEE, NEVYLE R. CABLE,)

KYLE POWELL, WILLIAM C.)

MABREY, LINDA PRICHARD,)

JOSEPH GALLAGHER,)

Respondents/Appellees,)

and)

BRIAN DALE DUBUC, KAREN)

TOWNSEND and DONNA SHATTO,)

Plaintiffs,)

vs.)

LINDA PRICHARD, APRIL)

WHITAKER, GENE WHITAKER,)

CHARLIE ARNOLD and ALL OTHER)

PETS,)

Respondents/Appellees.)

Rec'd (date)	8-16-24
Posted	<input checked="" type="checkbox"/>
Mailed	<input checked="" type="checkbox"/>
Distrib	<input checked="" type="checkbox"/>
Publish	yes <input checked="" type="checkbox"/> no <input type="checkbox"/>

APPEAL FROM THE DISTRICT COURT OF
OKMULGEE COUNTY, OKLAHOMA

6

A6f

HONORABLE DOUGLAS KIRKLEY, TRIAL JUDGE

AFFIRMED

Brian D. DuBuc,
Waldron, Arkansas,

Pro Se,

Courtney L. Eagan,
EAGAN LAW OFFICE, PLLC,
Eufaula, Oklahoma,

For Respondent/Appellee,
Joseph Gallagher.

OPINION BY TIMOTHY J. DOWNING, JUDGE:

¶1 Appellant, Brian Dubuc (Dubuc) appeals from an Order entered on May 8, 2023 in Okmulgee County District Court Case Nos. SC-2014-597 and CV-2019-34. In SC-2014-597, the trial court granted judgment in favor of Dubuc in the amount of \$4,650. In CV-2019-34, the trial court ruled in favor of Joseph Gallagher (Gallagher) and ordered Dubuc to deliver marketable title pursuant to the rent-to-own contract (contract) between the parties. Pursuant to the contract, the trial court ordered Gallagher to reimburse Dubuc for the property taxes paid on the property during the pendency of the litigation. Based on our review of the record and applicable law, we affirm.

BACKGROUND

¶2 In 2014, Dubuc filed a forcible entry and detainer action against Linda Prichard, April Whitaker, Gene Whitaker, Charlie Arnold, and all other pets from

Dubuc's property in Henryetta, Oklahoma. At the conclusion of a hearing, the small claims court determined the case could not proceed as a forcible entry and detainer action and ordered the case to be transferred to district court. Another division of this Court affirmed the small claims court decision in *Townsend, et al. v. Linda Prichard, et al.*, No. 118,772, slip op. at 6 (COCA Div. II Dec. 2, 2021) (unpublished) cert. denied (Okla. Sup. Ct. June 27, 2022).¹

¶3 Subsequent to the small claims order in the above-mentioned case, Dubuc entered into a rent-to-own contract with Gallagher on July 12, 2016 for the purchase of the home located at 103 South Seventh Street in Henryetta, Oklahoma. The purchase price of the home was \$17,127.16. Gallagher was required to make a \$5,000.00 down payment and then pay \$550.00 per month for twenty-three months. At the end of the twenty-three months, Gallagher was to pay the balance of \$127.16 and the property taxes for 2019. Upon Gallagher's fulfillment of his duties under the contract, Dubuc was to obtain and deliver clear title to Gallagher.

¶4 Gallagher made all the required payments and paid the 2019 property taxes. However, Dubuc refused to provide clear title to the property and filed this quiet title action alleging Gallagher did not comply with the requirements of the contract, was

¹ The facts related to the allegations in the small claims case are fully set out in the 2021 opinion and will not be recited here.

required to pay property taxes for 2016-2018, and was required to carry homeowner's insurance on the property.

¶5 At the conclusion of the nonjury trial, the trial court issued an Order finding, *inter alia*, that Gallagher fulfilled his duties under the contract and granted Gallagher specific performance. The trial court ordered Gallagher to reimburse Dubuc for the property taxes paid in 2020-2023 during the pendency of the case. From this Order, Dubuc appeals.

STANDARD OF REVIEW

¶6 Actions to quiet title are matters of equitable cognizance. *Tres C, LLC v. Raker Resources, LLC*, 2023 OK 13, ¶ 22, 532 P.3d 1, 14. In equitable cases, "issues of fact are reviewable under the clearly-against-the-weight-of-the-evidence standard, but issues of law are reviewable under the *de novo* standard." *Id.* Where the evidence is in conflict, the findings of the trial court will not be set aside unless a review of the record shows such findings are clearly against the weight of the evidence. *Hall v. Galmor*, 2018 OK 59, ¶ 12, 427 P.3d 1052, 1061. "It is for the trial court in a case of equitable cognizance to determine the credibility of the witnesses and the weight and value to be given to the testimony." *Id.* This Court possesses "plenary, independent, and non-deferential authority to reexamine a trial court's legal rulings." *Tres C, LLC*, 2023 OK 13, at ¶ 22 (quoting *Hall*, 2018 OK 59, at ¶ 13).

ANALYSIS

¶7 Dubuc raises five propositions of error, many of which are difficult to decipher, including multiple claims within a single proposition of error, and, in many instances, do not include citations to the record in support of the claims. Thus, Dubuc's Brief in Chief is not compliant with Oklahoma Supreme Court Rules. *See* Okla. Sup. Ct. R. 1.11, 12 O.S.2021, Ch. 15, App. 1.² However, to the extent this Court can discern Dubuc's arguments, those are without merit.³

¶8 In the second part of proposition one and the second part of proposition two, Dubuc appears to challenge the impartiality of the trial judge. Dubuc filed two recusal requests in the instant case. Contrary to Gallagher's claim, Rule 15 was followed in each instance. *See* R. for Dist. Cts. of Okla. 15, 12 O.S.2021, Ch. 2, App. In both instances, Judge Kirkley denied Dubuc's request to recuse, which was affirmed by the Chief Judge of the district.

¶9 "Absent a showing of bias, prejudice, conflict of interest, lack of objectivity, an appearance of impropriety, a manifest disregard for the law, or some other evidence the assigned judge is not a fair and objective jurist, any request for

² To the extent Dubuc raises new claims in his Reply Brief, these claims will not be considered by this Court. *See Fansler v. Fansler*, 2012 OK CIV APP 95, ¶ 12, 287 P.3d 1028, 1033 ("[N]ew arguments presented by an appellant for the first time in a reply brief will not be considered on appeal.")

³ Many of these propositions contain repetitive arguments that are raised in various other propositions. This Court will only address the main claims in each proposition of error.

disqualification must be denied.” *Tigges v. Andrews*, 2017 OK 9, ¶ 10, 390 P.3d 251, 254. Dubuc’s allegations are insufficient to support disqualification of Judge Kirkley. These portions of propositions one and two are denied.

¶10 In proposition two part one, Dubuc appears to allege that Luke Gaither and First National Bank and Trust caused harm to Dubuc in this quiet title action. Luke Gaither was never a party to the action below and Dubuc filed a dismissal with prejudice against First National Bank and Trust prior to trial. Many of these claims appear to relate to actions taken during the small claims case and were not raised below during the nonjury trial. As this Court does not consider claims raised for the first time on appeal, this portion of proposition two is denied. *Matter of Estate of Foresee*, 2020 OK 88, ¶ 19, 475 P.3d 862, 868-869 (“Issues not presented by the parties below, may not be raised for the first time on appeal.”).

¶11 Dubuc raises multiple claims in proposition three which appear to relate to his contention that the evidence was insufficient to support the trial court’s ruling in the quiet title action. As noted above, where the evidence is in conflict, the findings of the trial court will not be set aside unless a review of the record shows such findings are clearly against the weight of the evidence. *Hall*, 2018 OK 59, at ¶ 12. The evidence demonstrated that Gallagher complied with the requirements in the contract by making all the required payments, including the 2019 property tax payment. After

a thorough review of the record, this Court finds the trial court's decision was not against the clear weight of the evidence. Proposition three is denied.⁴

¶12 In proposition four Dubuc argues he was entitled to a jury trial in the quiet title action.⁵ It is well settled that "where the equitable issues are paramount or the legal issues incidental to or dependent upon the equitable issues, then the issues are treated as equitable for purposes of the trial, and the parties are not entitled to a jury trial." *I.C. Gas Amcana, Inc., v. J.R. Hood*, 1992 OK 119, ¶ 9, 855 P.2d 597, 599. To determine which issue is paramount, the trial court must look to the character of the issues in the pleadings, including the issues raised in a counter-claim. *Id.* at ¶ 10.

¶13 Dubuc filed the 2019 case as a quiet title, foreclosure, and ejectment action. The paramount issue was quiet title as the action for ejectment was incidental and dependent upon the quiet title cause of action. Accordingly, the trial court's denial of Dubuc's request for a jury trial was not error. *See Bader v. Bader*, 1953 OK 8, ¶ 20, 252 P.2d 427, 430. Proposition four is denied.

¶14 Dubuc's final proposition of error is indecipherable. Although it appears by the proposition heading that Dubuc is challenging the trial court's denial of the

⁴ We also reject Dubuc's claim that the subpoena for banking records was improper pursuant to 6 O.S.2021, §§ 2201-2206. The law cited by Dubuc in support of his claim is not persuasive and the trial court's denial of the Motion to Quash was not error.

⁵ In the first part of proposition one, Dubuc also claims he was entitled to a jury trial in the 2014 small claims ejectment action. However, as Dubuc prevailed in the 2014 ejectment action, any request for relief is moot.

admission of evidence, Dubuc spends the majority of his argument challenging the trial court's denial of his motion to quash. The trial court's denial of the motion to quash is affirmed herein. To the extent Dubuc claims the trial court should have admitted alleged negotiation documents, the trial court's refusal to admit these documents was not an abuse of discretion as the language of the contract was unambiguous. *See Lewis v. Sac & Fox Tribe of Oklahoma Housing Authority*, 1994 OK 20, ¶ 27, 896 P.2d 503, 514 ("Where . . . a contract is complete in itself and, when viewed as a totality, is unambiguous, its language is the only legitimate evidence of what the parties intended. That intention cannot be determined from the surrounding circumstances, but must be gathered from a four-corners examination of the instrument.") Proposition five is denied.

CONCLUSION

¶15 After review of the record on appeal, we find the trial court's award of damages in SC-2014-597 and quiet title in favor of Gallagher in CV-2019-34 was not against the clear weight of the evidence. The trial court's Order is affirmed.

¶16 AFFIRMED.

MITCHELL, P.J., and GOREE, J., concur.

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