

ORIGINAL



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

OCT 16 2017

_____)
)
Petitioner/Appellee,)
v.)
)
_____)
)
Respondent/Appellant.)

NO. _____

TULSA COUNTY DISTRICT
COURT CASE NUMBER

APPELLANT'S SHOW CAUSE BRIEF

Respondent/Appellant's Petition in Error
For the Tulsa County Case No. _____
Fourteenth Judicial District, Tulsa County, Oklahoma
Honorable Tammy Bruce

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QUESTION PRESENTED

- I. Why should Appellant's Appendix be allowed to remain?

SUMMARY OF FACTS

The Respondent/Appellant (hereinafter “Appellant”) submitted his Brief in Support of his Appeal on October 2, 2017, as ordered by the Court. As an aid to the Court, Appellant also submitted an Appellant’s Appendix. Shortly thereafter, Appellant received an order directing him to show cause why the Court should not strike the appendix pursuant to Rule 1.11(i).

ARGUMENT

Rule 1.11(i)(1) states: “An appendix to a brief shall not be filed except as permitted by this Rule. *An appendix to a brief may be filed as an attachment to the brief as or as a separate attachment.* Rule 1.11(i) further states: “An Appendix to a brief on appeal may include only . . . (4) Attachments provided by Rule 1.11(e)(1) relating to complaints about admission or exclusion *or insufficiency of evidence.*” (emphasis added).

Appellant’s first Question Presented in the Brief in Support inquires of the Court whether the trial court abused its discretion due to insufficient, or as phrased by Appellant - “deficient” evidence, presented by Appellee as proof of Appellant’s contempt of court which was, Appellant argues contrary to the weight of the evidence. The synonym of word choice of Appellant’s determination of rule should not be the reason for the appeal to be essentially dismissed with the striking of his appendix. If the appendix is stricken, Appellant’s cites and therefore his Brief in Support will make no sense and will be rendered totally ineffective.

Appellant argues that he was wrongly found guilty of indirect contempt of court and sentenced to an arbitrary purge fee of \$2,600.00 dollars, fined \$500, and *sentenced*

to 6 months in the Tulsa County Jail based on an abuse of discretion by the trial court and its decision which was contrary to the weight of the evidence presented at trial. Appellant should have his appeal heard; to render his appellate argument completely ineffective and effectively dismissing it is putting procedure over substance which would be an incorrect decision at this juncture of the appeal. The Court should not bind itself to the procedural rule of 1.11(i) in lieu of hearing and deciding Appellant's argument.

The Court has reviewed similar matters before involving procedure over substantive argument of a party's case in pursuit of their respective rights. The Oklahoma Supreme Court, citing *Yost v. Alderson*, 50 Miss 40, stated:

“***[W]hen the neglect is in the mere conduct of a suit, and its consequences do not operate injuriously, its condonation by the judge can do no harm except to deprive the adverse party of an advantage which he has secured in virtue of such neglect, and in that case the party guilty of the neglect should not on that account alone be deprived of the means and opportunity of maintaining or defending his rights. The object of the institution of courts is to administer justice according to law, and lawsuits are allowed for that purpose alone. Rules of procedure regulating the conducting of business in courts are instituted solely to facilitate these ends. They are necessary, and their due observance should be enforced by the courts. But it should not be forgotten that they are aids to secure the administering of justice, not shackles to bind courts to the perpetration of wrong. * * *” (emphasis added).

Hamburger v. Fry, 1958 OK 287 ¶ 10, at 1092, 338 P.2d 1088, 1092. Appellant requests the Court to let Appellant's Appendix stand as a needed completion of the entire designated record, further explained *infra.*, as well as a needed aid to the Court. Do not bind the fate of Appellant's appeal to Rule 1.11(i) in lieu of answering a question of law which comes up repetitively across Oklahoma Family and Domestic courts.

I. The Record Certified and Submitted by the Trial Court to the Court as the “Index of Designation and Counter Designation of Record on Appeal” is Incomplete, Vague, and Requires an Appendix by both Parties to Make Sense of the Evidence Submitted.

The submitted record did not appear to contain the Narrative Statements of the parties as there is no index listing for either parties’ Narrative Statement in the “Index of Designation and Counter Designation of record of Appeal.” Although, both parties did submit Narrative Statements which were heard by the trial court and subsequently signed by both party attorneys and the trial court judge. However, the only evidence of their respective existence in the record thus far is the Certified Docket Sheet and “Appellant’s Appendix 2a and 2b.” Appellant’s Petition in Error also indicated that a narrative statement or statements would be part of the appeal record as no transcript was available. *Petition in Error* ¶ “V,” at 3.

However, since both parties waived having a court reporter present for the contempt trial, it was necessary for the appeal for a Narrative Statement or statements to be presented pursuant to Rule 1.30 to recreate portions of the trial court contempt record. In this case *both parties* submitted more than one draft of their purported narrative statement to the trial court for review and subsequently the trial court signed two (2) Narrative Statements after having held three (3) hearings, April 25, 2017, May 15, 2017, and June 9, 2017, to settle said statements, one for each party. *Court Docket*, Jun. 9, 2017 and Jun. 13, 2017. The Narrative Statements are essential parts of the appeal for *both parties* and should be included as such in Appellant’s Appendix for purposes to aid in the clarity of the evidence entered by the parties at trial.

II. The Vagueness of the Record Submitted Demanded an Appendix to Avoid Confusion of Exhibits Entered as Evidence in the Trial Court Contempt Trial.

One of the most illustrative examples for the Court to consider for allowing Appellant's submission of an appendix is the evidence-intensive nature of this case and the need for clarity of the evidence entered. Case in point, a key piece of Appellant's argued evidence in dispute for purposes of this appeal was labeled as "Petitioner's Exhibit 7" at the contempt trial but is *currently still labeled as "Petitioner's Exhibit 2"* in the "Plaintiff's And Defendant's Exhibits – Envelope." Petitioner's Exhibit 7 was actually originally intended to be used by the Appellee, "Petitioner" in the trial court, as proof of contempt *at the original trial setting of November 18, 2016*. Petitioner's Exhibit 7 was a "summary spreadsheet" taken from Appellee's "handwritten log on child support payments received and owed" which is also labeled "Petitioner's Exhibit 2" in the envelope of "Plaintiff's and Defendant's Exhibits." *Plaintiff's and Defendant's Exhibits – Envelope*.

The summary spreadsheet intended to be offered by Appellee did *not record verifiable child support payments made by Appellant via "PayPal" and money orders*. The trial was continued to December 16, 2016, wherein Appellee submitted a revised summary spreadsheet crediting the disputed payments labeled "Petitioner's Exhibit 1." However, Appellee also submitted her "handwritten log" from which the "summary spreadsheet" was taken that still did not credit the verifiable payments made by Appellant thereby putting Appellee's two pieces of evidence as proof of contempt in conflict with one another. Appellant's then "Exhibit 7" was entered to demonstrate Appellee's disparity of evidence which would sharply weaken Appellee's ability to prove *by clear and convincing evidence that Appellant was actually in contempt*.

Now, with the immediate two paragraphs hereinabove above in mind, what does this have to do with Appellant's submission of an appendix? Appellant's "Exhibit 7"

which was originally Appellee's "Exhibit 2," *is still labeled as "Petitioner's Exhibit 2."* The exhibit was part of Appellant's Exhibit Notebook for the contempt trial in "Tab No. 7." Appellant did not change the label at the bottom left as emphasis to the trial court of its weight, or lack thereof, for Appellee's evidence of contempt. The same exhibit is still listed in the "Plaintiff's And Defendant's Exhibits – Envelope" as "Petitioner's Exhibit 2" despite being Appellant's exhibit at trial.

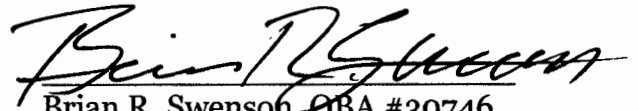
Additionally, Appellee did submit a revised "Petitioner's Exhibit 2" at the contempt trial. Without the use of an appendix to explain the difference of the two exhibits which are labeled the same yet were submitted by the parties for completely different purposes, citation to the record by either party would also become confusing and nonsensical for both parties' respective appellate arguments. The Court would not be able to delineate between the two "Petitioner's Exhibit(s) 2" when both parties cited to same for diametrically opposed arguments for purposes of this appeal. As such, Appellant's Appendix should not be stricken but should remain as an aid to the Court for purposes of clarifying the record of evidence before it.

CONCLUSION

The Designation of record submitted by the trial court is incomplete. It does not contain both parties' Narrative Statements and the only reference to same is the Certified Docket Sheet which does not provide the necessary context of each statement. Also, currently in the record submitted, there has been no delineation of certain exhibits still labeled as "Petitioner's Exhibit 2" but entered in as evidence for completely different reasons by the parties at the contempt trial. Without the aid of an appendix, any citations by either party to said "Petitioner's Exhibit(s) 2" would only serve to confuse the parties' respective arguments, the Court, and the record as a whole. For

these reasons, Appellant requests the Court to not strike Appellant's Appendix as it is an essential aid to the Court for purposes of a cogent appeal for *both parties*.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Brian R. Swenson". The signature is written in a cursive style with a horizontal line underneath the name.

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CERTIFICATE OF SERVICE

I, hereby certify that on this 17rd day of October 2017, a true and correct copy of the above and foregoing document was mailed by U.S. Mail, with proper postage thereon fully paid to:

N. Scott Johnson
Patrick H. McCord
N. Scott Johnson & Assoc.
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Brian R. Swenson
