

ORIGINAL



FILED
SUPREME COURT
STATE OF OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA APR 24 2017

IN RE THE MARRIAGE OF:)
)
 [REDACTED])
)
) Petitioner/Appellee,)
 and)
 [REDACTED])
)
) Respondent/Appellant.)

MICHAEL S. RICHIE
CLERK OF
THE APPELLATE COURTS

Case No. [REDACTED]

Tulsa County District Court

Case No. [REDACTED]

Received: 4-24-17
Docketed: [initials]
Marshal: [initials]
COA/OKC
COA/TUL

MOTION TO DISMISS APPEAL

COMES NOW, the Petitioner/Appellee, [REDACTED] by and through her attorney of record, Patrick H. McCord of N. SCOTT JOHNSON & ASSOCIATES, P.L.L.C., and pursuant to Rules 1.6, 1.28, and 1.30 of the Oklahoma Supreme Court Rules, hereby moves for dismissal of the above-styled and numbered cause. In support thereof, Appellee hereby alleges and states as follows:

I.

Appellant appeals the trial court's *Order on Contempt Citation and Order Reducing Child Support Arrearage to Judgment*, which found Appellant guilty of indirect contempt of Court for his willful failure to pay child support. The trial of that issue occurred on December 16, 2016. Importantly, no stenographic reporting of that proceeding was made. Prior to the trial, both parties waived such reporting.

II.

Pursuant to Rule 1.30 of the Oklahoma Supreme Court Rules,

If no stenographic report of the evidence or proceedings at a hearing on appeal or trial was made . . . the party desiring to take the appeal under these rules (or any other party) may prepare a statement of the evidence or proceedings in the narrative form from the best available means including the party's recollection for use in lieu of a stenographic transcript.

RECEIVED
APR 24 2017
CLERK'S OFFICE

Where no stenographic report was made, **this statement shall be filed with the court clerk and submitted to the opposite parties within ten (10) days after the filing of the petition in error . . .** The statement that is filed shall contain a certificate that copies have been submitted to the opposite parties. The narrative shall (1) be sworn to before an officer authorized by law to administer oaths (2) set forth that Rule 1.30 is relied on (3) inform the opposing party of the time and method for objections or amendments, and (4) advise the opposing party of the consequences of failure to object or move for proposed amendments. The opposite parties may object or propose amendments to the statement within ten (10) days after receipt. Thereupon, the statement, and any objections thereto, or proposed amendments shall be submitted, upon due and advance notice to all parties, to the trial judge for settlement and approval and as settled and approved shall be included by the clerk in the record on appeal. All narrative statements must be signed by the trial judge prior to submission to the Supreme Court, regardless of whether an objection or amendment was filed in the trial court.

Use of the narrative statement must be noted on the designation of record

OKLA. SUP. CT. R. 1.30 (emphasis supplied).

III.

Here, Appellant has wholly failed to follow the procedure dictated by Rule 1.30. Appellant's *Petition in Error* was filed on March 9, 2017. To date, Appellant has not filed a proposed narrative statement, nor has he requested any extension of time from the trial court. *See, Exhibit A*, relevant pages of the appearance docket in Tulsa County District Court Case No. FD-2015-2075. Although he requested an extension of time from this Court, by way of this Court's *Order* of March 20, 2017, Appellant was directed to address the issue of an extension to the trial court. Despite that directive, Appellant has not requested any extension of time from the trial court.

IV.

Beyond being a clear violation of this Court's Rules, Appellant's omissions have resulted in a total lack of a record from which this Court can review Appellant's assignments of error.

There are no transcripts, no exhibits, and no narrative statements. Essentially, this Court would be bound to review the four corners of the *Order on Contempt Citation and Order Reducing Child Support Arrearage to Judgment*, and the pleadings/motions that preceded it, and nothing more. There is essentially no record to review. If there is nothing to review, this appeal is effectively moot. On appeal, “the procedural burden to produce a record sufficient to review assigned error is on the party assigning the error.” *Powers v. District Court of Tulsa County*, 2009 OK 91, ¶ 10, 227 P.3d 1060. Whether a lower court has erred “may not be presumed in an appellate court from a silent record. The opposite is true. Absent a record showing otherwise, this court presumes that the trial court did not err.” *Hamid v. Sew Original*, 1982 OK 46, ¶ 6, 645 P.2d 496.

V.

A party may request dismissal of an appeal at any stage of the proceedings. OKLA. SUP. CT. R. 1.6(c)(1). Grounds for dismissal include “absence of an appealable order, mootness . . . failure to comply with these rules or order of the Court, or other grounds deemed appropriate by the Court.” *Id.* Here, without a record, the *Order on Contempt Citation and Order Reducing Child Support Arrearage to Judgment* is not appealable and Appellant’s challenges are, effectively, moot due to the total lack of a record to review. Moreover, Appellant has wholly failed to comply with the Rules of this Court. The appeal should be dismissed.

WHEREFORE, premises considered, Appellee prays for an Order dismissing Appellant's *Petition in Error* upon the grounds set forth hereinabove; for all other relief requested herein; and for all further relief the Court deems just and equitable

A handwritten signature in black ink, appearing to read 'Patrick H. McCord', is written over a horizontal line. The signature is stylized and cursive.

Patrick H. McCord, OBA #21747
N. SCOTT JOHNSON & ASSOCIATES, P.L.L.C.
302 East 10th Street
Tulsa, Oklahoma 74120
Telephone: (918) 794-3333
Facsimile: (918) 794-3336
Attorney for Petitioner/Appellee

CERTIFICATE OF MAILING TO PARTIES

I certify that a true and correct copy of the foregoing *Motion to Dismiss Appeal* was mailed this 21st day of April, 2017, to:

Brian R. Swenson, Esq.
SWENSON & SWENSON, PLLC
1719 East 71st Street
Tulsa, OK 74136
Attorney for Respondent/Appellant

by depositing same in the U.S. Mail, postage prepaid.


Patrick H. McCord



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IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

No. [REDACTED]
(Family and Domestic: DIVORCE WITH MINOR CHILDREN)

In re the Marriage of: [REDACTED] and [REDACTED]
[REDACTED]

Filed: 08/05/2015

Judge: [REDACTED]

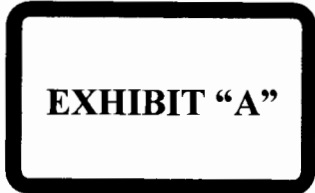
PARTIES

[REDACTED], Respondent
[REDACTED], Petitioner

ATTORNEYS

Attorney
SAGELY, DENNIS A (Bar #18459)
800 A SOUTH 9TH STREET
BROKEN ARROW, OK 74012

Represented Parties
[REDACTED] [REDACTED]



EVENTS

Event	Party	Docket	Reporter
Tuesday, August 18, 2015 at 9:00 AM Parenting Plan Conference		FD Docket C	
Tuesday, July 19, 2016 at 9:00 AM INITIAL SCHEDULING CONFERENCE & ARRAIGNMENT OF RESPONDENT (x 3)...PET SCOTT JOHNSON...RESP BRIAN SWENSON		FD Docket E	
Friday, September 9, 2016 at 9:01 AM PRIV ARR OF [REDACTED]..PET N. SCOTT JOHNSON...RESP CAROL SWENSON...		FD Docket C	

Event	Party	Docket	Reporter
Tuesday, September 20, 2016 at 10:30 AM ARRAIGNMENT OF PETITIONER...PETITIONER SCOTT JOHNSON...RESPONDENT CAROL SWENSON.		FD Docket E	
Tuesday, November 1, 2016 at 10:30 AM ARRAIGNMENT OF PETITIONER: PETITIONER SCOTT JOHNSON...RESPONDENT CAROL SENSON		FD Docket E	
Friday, November 18, 2016 at 9:03 AM PRIV NJT OF [REDACTED]...PET N. SCOTT JOHNSON...RESP CAROL/BRIAN SWENSON....		FD Docket C	
Tuesday, December 6, 2016 at 10:30 AM STATUS CONFERENCE (2ND PASS): PETITIONER JOHN WATSON...RESPONDENT CAROL SWENSON		FD Docket E	
Friday, December 16, 2016 at 9:03 AM PRIV NJT OF [REDACTED] PET N. SCOTT JOHNSON...RESP CAROL SWENSON....		FD Docket C	
Friday, January 6, 2017 at 9:00 AM DECISION...PET N. SCOTT JOHNSON...RESP BRIAN SWENSON....		FD Docket C	
Thursday, January 12, 2017 at 2:45 PM PRETRIAL CONFERENCE ON MOTION TO MODIFY CHILD SUPPORT: PETITIONER JOHN WATSON...RESPONDENT CAROL SWENSON		FD Docket E	
Tuesday, February 14, 2017 at 10:30 AM REVIEW OF MEDIATION: PETITIONER PATRICK MCCORD...RESPONDENT BRIAN SWENSON		FD Docket E	
Thursday, March 9, 2017 at 2:30 PM PRETRIAL CONFERENCE: PETITIONER SCOTT JOHNSON...RESPONDENT BRIAN SWENSON		FD Docket E	
Monday, March 20, 2017 at 11:00 AM PET'S ATTORNEY FEES AND COSTS...PET PATRICK MCCORD...		FD Docket C	
Monday, April 3, 2017 at 10:30 AM PETITIONER'S ATTORNEY FEES AND COSTS...PET PATRICK MCCORD...RESP BRIAN SWENSON....		FD Docket C	
Tuesday, April 25, 2017 at 9:30 AM RESPONDENT'S MOTION TO SETTLE NARRATIVE STATEMENT..RESP BRIAN SWENSON		FD Docket C	
Friday, June 23, 2017 at 9:00 AM TRIAL(FULL DAY): PETITIONER SCOTT JOHNSON...RESPONDENT BRIAN SWENSON		FD Docket E	

ISSUES

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket

Date	Code	Description	Count	Party	Amount
02-22-2017	APLI	APPLICATION FOR ATTORNEY FEES AND COSTS Document Available (#1036109671) TIFF PDF			
03-01-2017	O	ORDER ON CONTEMPT CITATION AND ORDER REDUCING CHILD SUPPORT ARREARAGE TO JUDGMENT Document Available (#1036108390) TIFF PDF			
03-02-2017	CTFREE	JUDGE TAMMY BRUCE: ORDER SETTING HEARING ON PETITIONER'S APPLICATION FOR ATTORNEY FEES AND COSTS SET FOR MARCH 20, 2017 AT 11:00 AM BEFORE JUDGE TAMMY BRUCE IN COURTROOM 605, ENTERED.			
03-03-2017	OSH	ORDER SETTING HEARING Document Available (#1036371283) TIFF PDF			
03-09-2017	CTFREE	EVANS, OWEN: PETITIONER NOT PRESENT, REPRESENTED Y JOHN WATSON PRESENT. RESPONDENT NOT PRESENT, REPRESENTED BY LUKE BARTEAUX PRESENT. PRETRIAL CONFERENCE HELD. PRETRIAL CONFERENCE ORDER SIGNED. FULL DAY TRIAL SET 6-23-17 AT 9AM IN ROOM 378.			
03-09-2017	DORNJT	DESIGNATION OF RECORD FOR APPEAL FROM DISTRICT COURT NON-JURY TRIAL Document Available (#1035854385) TIFF PDF			\$ 200.00
03-09-2017	PIE	PETITION IN ERROR Document Available (#1035854389) TIFF PDF			
03-09-2017	EAA	ENTRY OF APPEARANCE Document Available (#1035854393) TIFF PDF			
03-09-2017	O	PRE-TRIAL CONFERENCE ORDER Document Available (#1036373790) TIFF PDF			
03-09-2017	NO	NOTICE OF SUBPOENA DUCES TECUM Document Available (#1036373816) TIFF PDF			
03-09-2017	ADJUST	ADJUSTING ENTRY: MONIES DUE TO AC09-CARD ALLOCATION			\$ 5.00
03-09-2017	ACCOUNT	ADJUSTING ENTRY: MONIES DUE TO THE FOLLOWING AGENCIES REDUCED BY THE FOLLOWING AMOUNTS: FD-2015-2075: AC01 CLERK FEES -\$5.00			
03-09-2017	ACCOUNT	RECEIPT # 2017-3519859 ON 03/09/2017. PAYOR: BRIAN R SWENSON TOTAL AMOUNT PAID: \$ 200.00. LINE ITEMS: FD-2015-2075: \$195.00 ON AC01 CLERK FEES. FD-2015-2075: \$5.00 ON AC09 CARD ALLOCATIONS.			
03-13-2017	APLI	RESPONDENT'S RESPONSE TO PETITIONER'S APPLICATION FOR ATTORNEY FEES AND COSTS AND REQUEST FOR STAY OF FURTHER PROCEEDINGS PENDING THE OUTCOME OF APPEAL ON SAME Document Available (#1036374231) TIFF PDF			

Date	Code	Description	Count	Party	Amount
03-14-2017	CER	CERTIFICATE OF APPEAL - DF-115847 Document Available (#1036372019) TIFF PDF			
03-17-2017	MO	MOTION TO SETTLE NARRATIVE STATEMENT Document Available (#1036376362) TIFF PDF			
03-20-2017	CTFREE	JUDGE TAMMY BRUCE: HEARING ON PETITIONER'S REQUEST FOR ATTORNEY FEES AND COSTS CONTINUED AT THE COURT'S REQUEST TO APRIL 3, 2017 AT 10:30 AM BEFORE JUDGE TAMMY BRUCE IN COURTROOM 605.			
03-23-2017	OBJ	OBJECTION TO REQUEST FOR STAY Document Available (#1035843996) TIFF PDF			
03-23-2017	RESP	RESPONSE TO PETITION IN ERROR Document Available (#1035844153) TIFF PDF			
03-23-2017	TEXT	VCOUNTER-DESIGNATION OF RECORD FOR APPEAL FROM DISTRICT COURT Document Available (#1035844000) TIFF PDF			
03-24-2017	O	ORDER FROM SUPREME COURT Document Available (#1036376941) TIFF PDF			
04-03-2017	CRF	COURT REPORTER FEE-TRIAL ON MERITS			\$ 20.00
04-03-2017	RESP	RESPONSE TO MOTION TO SETTLE NARRATIVE STATEMENT Document Available (#1036547492) TIFF PDF			
04-03-2017	CTFREE	JUDGE TAMMY BRUCE: ORDER SETTING HEARING ON RESPONDENT'S MOTION TO SETTLE NARRATIVE STATEMENT SET FOR APRIL 25, 2017 AT 9:30 AM BEFORE JUDGE TAMMY BRUCE IN COURTROOM 605, ENTERED.			
04-03-2017	CTFREE	JUDGE TAMMY BRUCE: PETITIONER REPRESENTED BY PATRICK MCCORD, PRESENT. RESPONDENT REPRESENTED BY BRIAN SWENSON, PRESENT. HEARING ON PETITIONER'S REQUEST FOR ATTORNEY FEES AND COSTS HELD ON RECORD WITH CHRISTY SMITH, CSR. DECISION TAKEN UNDER ADVISEMENT.			
04-03-2017	ACCOUNT	RECEIPT # 2017-3534012 ON 04/03/2017. PAYOR: SWENSON AND SWENSON TOTAL AMOUNT PAID: \$ 20.00. LINE ITEMS: FD-2015-2075: \$20.00 ON AC01 CLERK FEES.			
04-05-2017	CTFREE	JUDGE TAMMY BRUCE: COURT'S DECISION, ENTERED.			
04-05-2017	TEXT	COURT'S DECISION Document Available (#1036549582) TIFF PDF			