

ORIGINAL



**FILED
SUPREME COURT
STATE OF OKLAHOMA
FEB 27 2018
JOHN D. HADDEN
CLERK**

NO. [REDACTED]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[REDACTED]

Petitioner/Appellant

vs.

[REDACTED]

Respondent/Appellee

BRIEF IN CHIEF

OKLAHOMA COUNTY DISTRICT COURT

CASE NUMBER [REDACTED]

THE HONORABLE BARRY HAFAR

Received: [Signature]
Docketed: [Signature]
Marshal: [Signature]
COA/OKC:
COA/TUL:

HESTER SCHEM HESTER & DIONISIO

SCOTT A. HESTER, OBA #18729
Attorney for Appellant
16311 Sonoma Park Drive
Edmond, OK 73013
Telephone: (405) 705-5900
Facsimile: (405) 705-5906

Date: February 27, 2018

NO. [REDACTED]

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Attorney for Appellant
16311 Sonoma Park Drive
Edmond, OK 73013
Telephone: (405) 705-5900
Facsimile: (405) 705-5906

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

IN RE THE MARRIAGE OF:

██████████,)
)
Petitioner/Appellant,)
)
and,) DC No. ██████████
) SC No. ██████████
██████████,)
)
Respondent/Appellee.)

BRIEF IN CHIEF

COMES NOW the Petitioner/Appellant, ██████████ (hereinafter referred to as "wife"), and submits the following Brief in Chief for this Court's consideration:

SUMMARY OF THE RECORD

This is the second appeal regarding the same divorce action. Wife initially filed her action for dissolution of marriage in the District Court of Oklahoma County on January 18, 2013. The matter ultimately proceeded to trial on November 10, 2014 and was concluded on November 12, 2014. The Respondent/Appellee, ██████████ (hereinafter referred to as "husband"), is a highly compensated executive with Haines Financial Corporation. As an employee of Haines Financial Corporation, husband has been awarded stock options from the "Haines Financial Corp. Phantom Stock Plan".

At trial, husband's expert, Mr. Kenneth Klingenberg, was retained to value the Phantom Stock options. Mr. Klingenberg indicated that the price of the units as of January 15, 2013, the valuation date chosen by him, was \$122.47 per unit. The information provided to Mr. Klingenberg came directly from husband and he was only able to provide

data based on the information husband provided. Mr. Klingenberg assumed that January of 2013 was the theoretical date that husband would exercise the options and he determined that the total marital value of the options was \$76,456.15. He came to that conclusion of value after reducing the gross value of the phantom stock by \$52,080.00 which was a value listed in the parties' antenuptial agreement and which was considered husband's separate property, an additional 47.45% for tax liability he believed husband would have, and an additional amount for the discount rate. Wife was awarded half of that value by the trial court.

The trial court agreed with Mr. Klingenberg's opinion of value and in the decree the phantom stock options were valued at \$76,456.15 as of the date that the Petition for Dissolution of Marriage was filed during January of 2013. (Decree of Dissolution of Marriage filed January 15, 2015 at page 2 paragraph 7(d)(ii) and (iii).) Wife filed her Petition in Error on February 5, 2015 and ultimately argued, among other things, that the reduction in value of the phantom stock by husband's expert by 47.45% for speculative tax liability was contrary to law and should be reversed. (Brief in Chief in Supreme Court Case #113627 at pages 15 – 17.) Husband did not appeal the value of the stock set by the trial court nor did he appeal the date chosen by his expert to value the assets.

On June 10, 2016 the Court of Civil Appeals, Division I, issued an Opinion which reversed the trial court's reduction in value of the phantom stock for speculative tax liability. The Court states in pertinent part that:

“¶6 “[T]he trial court is vested with discretion in determining the cut-off time for the valuation of marital assets, and the date of valuation is to be determined by the trial court after due consideration of all the circumstances of the case.” *Colclasure*, 2012 OK 97, ¶ 18. We have reviewed the parties' arguments and evidence presented to the trial court on this

issue and hold it was within the trial court's discretion to set the valuation date as the date Wife filed the petition for dissolution of marriage." (*Opinion of the Court of Civil Appeals, Division I, Filed June 10, 2016 attached to Mandate filed July 20, 2016.*)

"¶11 In the decree, the trial court awarded Husband 100% interest in the Haines phantom stock awards. The trial court found:

- i. Initially, the Court finds the 2007 phantom stock plan to have no value. In setting the initial \$0.00 value, the Court refers to Respondent's exhibit 18 and the Court's notes indicating that the 2007 phantom stock plan does not currently exist and that it was sold in 2009.
- ii. Initially, the Court finds the 2011 phantom stock plan to be valued at \$76,456.15. In setting 2011 value, the Court credits Respondent with the value of the 2007 phantom stock in the sum indicated on the parties' prenuptial agreement.
- iii. After consideration of further legal argument by counsel, the Court finds that the total value of the 2007 and 2011 phantom stock awards are in the sum of \$76,456.16.

The trial court's finding that the 2007 phantom stock plan was sold and does not currently exist is against the clear weight of the evidence. There is no evidence to support this finding. Husband's expert witness Kenneth W. Klingenberg testified the vested potential gain for the 2007 phantom stock award (2,000 vested units) was \$193,020.00. Klingenberg opined the vested potential gain for the 2011 phantom stock award (1,000 vested units) was \$66,300.00. After reducing the vested potential gain by the \$52,080.00 indicated in the antenuptial agreement, the total net potential gain was 207,240.00. Klingenberg assumed Husband would be taxed at the highest level and reduced the vested potential gain by 47.45% and applied a reasonable discount rate reducing the total marital value of the 2007 and 2011 phantom stock options to \$76,456.15. The trial court relied on Klingenberg's opinion as to the marital value of the phantom stock options." (*Opinion of the Court of Civil Appeals, Division I, Filed June 10, 2016 at pages 7 and 8 paragraph 11.*)

The Court of Civil Appeals agreed that in accordance with the law, it was inappropriate for the trial court to reduce the value of the phantom stock options based on a speculative and non-existent tax liability. (Opinion of the Court of Civil Appeals, Division I, Filed June 10, 2016 at pages 8 – 11 paragraphs 12 - 14.) The Court of Civil Appeals stated that:

“We reverse that part of the decree and remand for the trial court to re-calculate the marital value of the phantom stock options without considering speculative tax impact and to make an equitable division of the marital estate.” (*Opinion of the Court of Civil Appeals, Division I, Filed June 10, 2016 at pages 10 and 11 paragraph 14.*)

At the end of the sentence the Court of Civil Appeals references footnote 8. Footnote 8 states:

“This Court recognizes that an award of \$100,000.00 in cash to one spouse and an award of a retirement fund with a value of \$100,000.00 to the other are not equal awards. While one spouse will not pay income tax upon receipt of the cash award, the other spouse will likely pay income tax in the future when he or she withdraws funds or receives the benefit from the retirement fund. However, the law calls for an equitable, not equal, distribution of marital property, and we are constrained by Supreme Court precedent that courts should not consider speculative tax liability in determining the value of marital assets.” (*Opinion of the Court of Civil Appeals, Division I, Filed June 10, 2016 at page 11 footnote 8.*)

When discussing how the assets may be divided on remand the Court of Civil Appeals stated that:

“In *Meason*, the Court of Civil Appeals reversed and remanded the case for the trial court to divide the properties in kind with the parties bearing their own tax. See *Meason v. Meason*, 1985 OK CIV APP 34, ¶3, 717 P.2d 1165. We recognize that in this case the phantom stock options cannot be divided between the parties with each bearing their own tax. According to the 2007 and 2011 phantom stock plans, units cannot be assigned to Wife. The trial court should take this into consideration when making an equitable division of the marital estate on remand. The trial court may offset the

value of the phantom stock options awarded to Husband with other marital property awarded to Wife and/or awarding alimony in lieu of property division.” (*Opinion of the Court of Civil Appeals*, Division I, Filed June 10, 2016 at pages 9 and 10 footnote 6.)

After the conclusion of the first appeal, wife filed her Motion to Spread Mandate on December 1, 2016. In the motion wife indicated that, in accordance with the decision of the Court of Civil Appeals, her award for her portion of the value of the phantom stock should be increased by \$65,381.92. In addition, the Court of Civil Appeals determined that a 401k constituted a marital asset and the value of that asset was worth \$16,597.00. Wife asked the trial court to increase her property division award by \$8,298.50 to account for one-half of the value of that asset. Her total request on remand was an increase in the amount of **\$73,680.42**. (Motion to Spread Mandate filed December 1, 2016 at pages 1 and 2.)

Husband responded and filed a counter-motion to spread mandate and asked the trial court to consider “actual tax liability” because during May of 2015, his employer gave him the option to cash in his phantom stock options. (*Respondent’s Combined Response to Petitioner’s Motion to Spread Mandate and Counter-Motion to Enforce Mandate* filed December 22, 2016 at page 3 paragraph 6.) This Court should be reminded of the fact that husband was on the board of directors of the company and wife commenced her appeal during February of 2015, just a few months prior to the time that husband’s “employer gave him the option to cash in his phantom stock options” during May of 2015.

Wife filed her Response to Counter-Motion to Spread Mandate and Motion for Continuance on January 9, 2017 and there was a hearing held on March 24, 2017. At that time wife’s counsel argued that there should be no additional evidence which

contradicts the value of the assets as determined by husband's expert and the Court of Civil Appeals. However, the trial court allowed some evidence to be presented.

The evidence indicated that:

(1) The board of directors decided to get rid of the phantom stock options and husband cashed out his phantom stock for a gross value of \$164,220.00. (Tr. 3/24/17 at page 20.)

(2) Husband is a member of the board of directors and it was the decision of the board of directors which eliminated the phantom stock options. Husband was also the Chief Financial Officer, President of the Bank, and Sr. Executive Vice President. (Tr. 3/24/17 at page 28.)

(3) During the same period of time that the board of directors which husband is a member of decided to eliminate the phantom stock options, husband's income increased, although he did not know how much it increased. (Tr. 3/24/17 at page 30.)

The value of husband's 401(k) also increased substantially from approximately \$16,000.00 at the time of divorce to approximately \$100,000.00 at the time of the hearing during March of 2017. (Tr. 3/24/17 at page 31 and *Opinion of the Court of Civil Appeals* filed June 10, 2016 at page 11 paragraph 15.)

The only asset or measure of income which did not significantly increase during the pendency of the first appeal was the phantom stock options which husband was aware might have to be divided with his ex-wife.

Ultimately the trial court concluded that wife should be awarded \$26,140.50 out of husband's 401(k) so that she will bear any tax liability associated with those funds. (*Order to Spread Mandate*, filed July 27, 2017.) As a result, the trial court reduced the value of

the marital estate, as affirmed on appeal, by approximately \$100,000.00. Wife should have been awarded an additional **\$73,680.42**, not \$26,140.50. Husband did not challenge the value of the estate on appeal and the trial court used his values and valuation date to determine the value of the phantom stock. Although his Counter-Motion to Spread Mandate simply claimed that since his tax liability was known there would now be no speculation, what he accomplished on remand was a substantial reduction in value based on changes in circumstances which he may very well have orchestrated. In any event he was able to convince the trial court to reduce the value of the marital estate by approximately \$100,000.00 even though he never appealed the question of whether or not the valuation date chosen by his own expert at trial was correct and he did not question on appeal the value set by the trial court which followed the testimony of husband's expert. Wife commenced the instant appeal on August 25, 2017.

STANDARD OF REVIEW

This appeal primarily presents an issue of law. Issues of law are reviewed *de novo*. (*Phillips v. Hedges*, 2005 OK 77, ¶8, 124 P.3d 227). A *de novo* standard of review is an independent review of the issues without deference to the lower court's legal rulings. (*Conoco Inc. v. Agrico Chemical Company*, 2004 OK 83, ¶9, 115 P.3d 829.)

In the event that this Court determines that there is an issue of fact involved, then property division awards are subject to the abuse of discretion standard of review. An abuse of discretion occurs when discretion is exercised to an end or purpose not justified by, and clearly against, reason and evidence." (*Patel v. OMH Medical Center, Inc.*, 1999 OK 33, ¶20, 987 P.2d 1185.)

PROPOSITION I

THE TRIAL COURT'S DIVISION OF MARITAL PROPERTY WHICH MODIFIED THE VALUE OF ASSETS MORE THAN THREE YEARS AFTER THE DATE OF VALUATION AFTER REMAND CONSTITUTES ERROR AS A MATTER OF LAW

In *Acott v. Newton*, 2011 OK 56, 260 P.3d 1271, the Supreme Court of Oklahoma

stated that:

"The doctrine of the settled law of the case which we have recognized since 1915, provides that issues which are litigated and settled on appeal, or which could have been settled in that appeal, may not be the subject of further litigation between the parties in that case and are deemed settled." *Miller Dollarhide, P.C. v. Tal*, 2006 OK 27, ¶8 n.11, 174 P.3d 559, 563 n. 11. It "is a rule of judicial economy designed to prevent an appellate court from twice having to deal with the same issue." *Patel v. OMH Med. Ctr., Inc.*, 1999 OK 33, ¶22, 987 P.2d 1185, 1195. "An appellate court's decision settles and determines, not only all questions actually presented, but all questions existing in the record and involved in the decision by implication." *Handy v. City of Lawton*, 1992 OK 111, ¶13, 835 P.2d 870, 873. "Whether the issue was wrongfully or rightfully decided is not to be determined. Once settled on appeal, the appellate court will not review the issue on the second appeal." *Bierman v. Aramark Refreshment Servs.*, 2008 OK 29, ¶12, 198 P.3d 877, 881." (*Acott*, ¶10.)

The trial court in this case blatantly violated the doctrine of the settled law of the case in this matter when it modified the value of the marital estate by reducing that value by approximately \$100,000.00 after remand when husband did not challenge the value or the valuation date chosen by his own expert. The evidence presented by husband's expert indicated the value of the phantom stock during January of 2013. Wife appealed husband's opinion of value. The Court of Civil Appeals agreed to some extent and indicated that it was inappropriate to reduce the value by a substantial amount for

speculative tax liability, remanded to the trial court to eliminate the speculative tax liability, and allow for an offset with other pretax assets which could be awarded to wife. There was an asset available, husband's 401(k), which could have been divided so that when wife decides to cash out the asset, she will bear the income tax liability. At the same time husband loses nothing because he would not have to pay taxes for the money deposited into the 401(k).

Instead the trial court received evidence that husband, who is the Chief Financial Officer, a member of the board of directors, and President of the bank, cashed out his phantom stock at a reduced value. Husband is not a cashier at Wal-Mart who would have no ability to influence whether or not employee benefits are modified. He certainly had input into this and the timing involved with eliminating the phantom stock, which was a couple of months after wife filed an appeal seeking to challenge the value set by the trial court, is an incredible coincidence. During the same time period the husband's income increased and his 401(k) value increased substantially. In essence, the company eliminated the phantom stock but husband and presumably other executives have received additional compensation in other forms.

In *Thielenhaus v. Thielenhaus*, 1995 OK 5, 890 P.2d 925, the Supreme Court of Oklahoma gives discretion to trial courts when considering a date to value marital assets. The general dates which may be utilized are the date of separation, the date of filing the divorce action, or the date of trial. (*Thielenhaus*, ¶13 - ¶16.) In this matter the value of the stock was set by the trial court and affirmed by the Court of Civil Appeals as of January 2013. That value was increased by the Court of Civil Appeals because of the reduction in excess of 47% by husband's expert for speculative tax liability. Husband never

challenged the valuation date or the value of the stock as stated by his own expert in the first appeal. It was not until a post-Mandate hearing that he presented evidence of a new value which has significantly reduced wife's property division award in this matter. In essence the trial court has granted a post-Mandate motion to vacate its own decree and it has substantially modified a property division award when it had no authority to do so. Oklahoma law has repeatedly and consistently held that "absent fraud, a property settlement award cannot be modified in a post-decree hearing." (*Clifton v. Clifton*, 1990 OK 88, ¶1, 801 P.2d 693; and *Hayes v. Hayes*, 2007 OK CIV APP 58, ¶15, 164 P.3d 1128.) The decision of the trial court constitutes error as a matter of law and should be reversed.

PROPOSITION II

THE TRIAL COURT'S DIVISION OF MARITAL PROPERTY AFTER REMAND CONSTITUTES AN ABUSE OF DISCRETION UNDER THE DOCTRINE OF RES JUDICATA AND SHOULD BE REVERSED

Res judicata also bars husband from attempting to re-litigate the issue of valuation to justify a substantially different result than previously reached with regard to the division of marital property.

In *Read v. Read*, 2001 OK 87, 57 P.3d 561, the Supreme Court of Oklahoma discussed the law of the case doctrine and res judicata. The Court stated that:

"The law affords no more than a single opportunity to litigate a disputed question of a tribunal's jurisdiction....The trial court's order denying Read's petition to vacate now stands as a complete bar to further attack upon the divorce decree under the doctrine of res judicata as well as that of settled law of the case."

"The doctrine of res judicata bars relitigation not only of those issues raised and decided but also of those issues

which could have been raised and were not...Moreover, an appellate court's decision settles not only all questions actually tendered for review but also all questions existing in the record and involved in the decision by implication." (*Read v. Read*, 2001 OK 87, ¶15-16, 57 P.3d 561(emphasis supplied).)

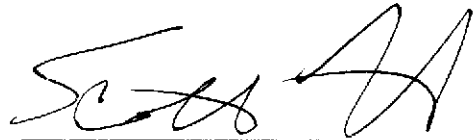
At the remand hearing husband did not only present evidence of what his tax liability was, he presented evidence which contradicted his own expert who valued the marital estate years before the hearing. The trial court accepted that evidence. In essence the trial court in this matter has approved a procedure where, after an appeal is concluded, a party may decide that they did not like the evidence which their own expert previously presented so they can re-litigate the issue. The date of valuation chosen by husband's expert was affirmed by the Court of Civil Appeals and the value itself was not altered by the Court of Civil Appeals, it merely eliminated the estimated tax liability. (*Opinion of the Court of Civil Appeals* filed June 10, 2016 at page 4 paragraph 6 and pages 8 – 11 at paragraphs 13 and 14.) It was clearly error for the trial court to allow re-litigation of value more than three years after the valuation date after the conclusion of the first appeal.

CONCLUSION

A few months after wife filed her first appeal, husband's company eliminated the phantom stock options. As a member of the board of directors, as Chief Financial Officer, and as President of the bank, he is in a position to manipulate benefits offered by the company. During the same time he liquidated his phantom stock, other forms of compensation increased. Even if, for the sake of argument, he had no power to manipulate his forms of compensation, the trial court did not follow the Opinion of the Court of Civil Appeals when it allowed evidence of a change in value of marital assets

years after the date of valuation. The appellate process becomes essentially meaningless if parties are free to ignore valuation dates and values of assets which are set in decrees and allowed to re-litigate those issues after the conclusion of an appeal. The trial court did not follow the Opinion of the Court of Civil Appeals in this matter and clearly violated the settled law of the case doctrine. As a result, the decision should be reversed.

Respectfully submitted by,



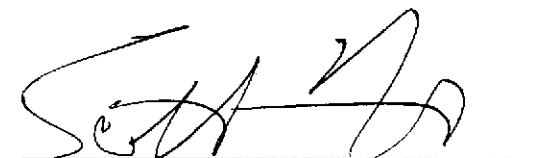
SCOTT A. HESTER, OBA #18729
HESTER SCHEM HESTER & DEASON
16311 Sonoma Park Drive
Edmond, OK 73013
(405) 705-5900/FAX: 705-5906

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the Brief in Chief was mailed this 27th day of February, 2018, by depositing it in the US Mails, postage prepaid, to:

Leanne McGill, OBA #21283
3829 S. Boulevard, Suite #150
Edmond, Oklahoma 73013
Telephone (405) 285-8048
Attorney for Respondent/Appellee

I further certify that a copy of the Brief in Chief was filed in the Office of the Court Clerk of Oklahoma County on the 27th day of February, 2018.



SCOTT A. HESTER



ORIGINAL

**FILED
SUPREME COURT
STATE OF OKLAHOMA**

FEB 27 2018

**JOHN D. HADDEN
CLERK**

Case No. 116,244

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

LENA RENEE ROODZANT,
Petitioner/Appellee,

v.

DANIEL CHARLES ROODZANT,
Respondent/Appellant

Received:	2-27-18
Docketed:	
Marshal:	
OGA/OKC:	
OGA/TUL:	

APPELLANT'S REPLY

Appeal From the District Court of Custer County,
Case No. [REDACTED]
The Honorable Donna L. Dirickson

George H. Brown, OBA #18020
BROWN & GOULD, PLLC
136 NW 10th
Oklahoma City, OK 73103
Telephone: (405) 235-4500
Facsimile: (405) 235-4507
gbrown@browngouldlaw.com
ATTORNEY FOR APPELLANT

February 27, 2018

Case No. 116,244

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

LENA RENEE ROODZANT,
Petitioner/Appellee,

v.

DANIEL CHARLES ROODZANT,
Respondent/Appellant

APPELLANT'S REPLY

Appeal From the District Court of Custer County,
Case No. [REDACTED]
The Honorable Donna L. Dirickson

George H. Brown, OBA #18020
BROWN & GOULD, PLLC
136 NW 10th
Oklahoma City, OK 73103
Telephone: (405) 235-4500
Facsimile: (405) 235-4507
gbrown@browngouldlaw.com
ATTORNEY FOR APPELLANT

February 27, 2018

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PRELIMINARY STATEMENT

Respondent/Appellant, Daniel Charles Roodzant ("**Husband**"), hereby replies to Appellee's Answer Brief filed by Petitioner/Appellee, Lena Renee Roodzant ("**Wife**", together with Husband, "**the Parties**").

OPENING REMARKS

Husband has filed his appeal and raised essentially four issues. Those issues include: (1) whether the trial court abused its discretion and entered an order contrary to the weight of the evidence by finding that it had proper venue to hear the instant divorce; (2) whether the trial court abused its discretion by awarding the Colorado property and all of its equity to Wife; (3) whether the trial court abused its discretion by finding that Husband had dissipated and diverted marital assets; and (4) whether the trial court abused its discretion by finding that Wife established a need for support alimony and by awarding Wife the equity in the marital home. Appellant's Brief in Chief ("**Husband's Brief**") succinctly provides this Court with specific citations to the record which point out the facts that are material to the specific issues raised, and also provides this Court with citations to governing legal authorities. When making his arguments, Husband's Brief relies upon Wife's own testimony and exhibits insofar as to Wife's residency, the value of the marital assets and liabilities, and Wife's need for support alimony, to provide proof that the trial court's decisions are contrary even to Wife's version of the facts.

In stark contrast to Husband's Brief, Appellee's Answer Brief ("**Wife's Brief**") includes page-after-page of half-truths and other immaterial facts aimed solely at impugning Husband's character. To the extent Wife fails to specifically cite to the record, her statements should be duly ignored. *See, e.g., Robinson v. Borg-Warner Protective Servs. Corp.*, 2001 OK 59, 31 P.3d

1041, 1043 (citing *Price v. Price*, 1970 OK 116, 471 P.2d 894). To the extent Wife's Brief points to immaterial facts, Husband respectfully submits that even Wife's version of his conduct, which is certainly disputed, is not material to the issues specifically raised in Husband's appeal. Instead, Husband respectfully submits that based on the material facts and governing law, the trial court has erred. Husband therefore requests that this Court reverse the decisions of the trial court as requested in Husband's Brief.

PROPOSITION I

THE UNDISPUTED FACTS PROVE THAT WIFE WAS NOT A RESIDENT OF CUSTER COUNTY FOR THE REQUISITE PERIOD OF TIME AND VENUE WAS NOT PROPER IN CUSTER COUNTY, OKLAHOMA

A. WIFE ADMITTED SHE WAS NOT A RESIDENT THIRTY DAYS PRIOR TO THE FILING OF THE PETITION AND COUNSEL CONCEDED THAT CADDO COUNTY WAS PROPER VENUE

Wife filed her Petition for Dissolution of Marriage in Custer County, Oklahoma on June 30, 2016. [Petition, OR: 1-5] In order for Custer County to be the proper venue for the divorce, one of two (2) elements had to be met including, either: (1) Wife (who was the petitioner) had to be a resident of Custer County for thirty (30) days prior to the filing of the Petition; *or* (2) Husband (who was the respondent) had to be a resident of Custer County at the time of filing. *See* OKLA. STAT. tit. 43, § 103(A)(1).

There was no dispute that Husband was not a resident of Custer County at the time of the filing of the Petition. [Tr. Sept. 9, 2016, at p. 4, lines 20-25; p. 5, lines 1-5] Therefore, in order for Custer County to be the proper venue, Wife had to have been a resident of Custer County thirty (30) days prior to June 30, 2016, which would have been May 31, 2016. *See* OKLA. STAT. tit. 43, § 103(A)(1). The undisputed evidence from Wife's own mouth proved that she was not.

In fact, even assuming Wife was telling the truth about her move, she testified that she had only been a resident of Custer County, Oklahoma since June 1, 2016 or June 2, 2016. [Tr. Sept. 9, 2016, at p. 22, lines 1-9]^{1/} Therefore, based *solely on Wife's testimony*, venue was not proper in Custer County, Oklahoma when Wife filed her Petition for Dissolution of Marriage on June 30, 2016.

In addition, Wife's own counsel stated during the particular hearing that "[q]uite frankly, transfer to Caddo County is fine with me." [*Id.* at p. 44, lines 23-24] In addition, counsel stated that, "[i]f this Court wants to transfer it back to Caddo County, I certainly have no objection." [*Id.* at p. 45, lines 24-25; p. 46, line 1] Of course, this was an admission that Caddo County was indeed the proper venue and that Wife had essentially been caught forum shopping because the case couldn't have been transferred back to Caddo County unless it was the place where Wife was a resident thirty days preceding the filing of the Petition. *See* OKLA. STAT. tit. 43, § 103(B) (allowing transfer back to Caddo County if it was the place where Wife was a resident thirty (30) days immediately preceding the filing of the petition *and* Husband was not a resident of Caddo County *or* Custer County was an inconvenient forum).

B. WIFE'S RELIANCE ON THE *BIXBY* DECISION IS MISPLACED AND THE FACTS PROVE THAT WIFE WASN'T REALLY A RESIDENT UNTIL SOMETIME IN JULY 2016

Wife cites *Bixby v. Bixby*, 1961 OK 100, 361 P.2d 1075 in support of her argument that Wife was a resident of Custer County the third week of May, 2016. According to Wife, the facts in *Bixby* are similar to the case at bar because the husband in *Bixby* moved to dismiss the Tulsa

^{1/} When asked how long Custer County has been her county of residence, Wife specifically answered, "Um, June. The beginning of June. June 1st or 2nd." [Tr. Sept. 9, 2016, at p. 22, lines 1-9]

County case, “citing to the 30-day venue residency requirement” and lost even though the wife in *Bixby* was a resident of Tulsa County only for a single day. Wife’s Brief, p. 18. Wife’s recitation of the holding in *Bixby* is wrong and is also misplaced for two (2) reasons.

First, despite Wife’s direct statements to the contrary, at the time *Bixby* was decided, there was no thirty (30) day residency requirement before a petition for divorce could be filed. Instead, in approximately 1960 when *Bixby* was decided, the applicable statute only required that the filing party be a resident of the particular county on the day of the filing of the petition. *Bixby v. Bixby*, 1961 OK 100, 361 P.2d 1075, 1076; Title 12 O.S. 1951 § 1272, as amended in 1957. As such, the *Bixby* decision did not hold that the wife’s one-day residency in Tulsa County somehow overcame a thirty-day residency requirement because no such requirement existed at the time. As such, Wife’s recitation of the holding in *Bixby* is wrong.

Secondly, although Wife correctly cites *Bixby*’s holding that a person’s intent as to his domicile may be shown by acts and conduct, after, as well as before, the date in question, or by his omissions, this holding is inapplicable to the case at bar. This is so, because unlike the situation in *Bixby* where the Court examined the wife’s actions to confirm her stated intent, the Wife here has specifically admitted, under oath, that she did not become a resident of Custer County, Oklahoma until June 1st or 2nd, 2016. Given this admission by Wife, there is no reason to examine Wife’s conduct to confirm her testimony because based on her testimony, she did not meet the thirty-day statutory requirement. For these reasons, Wife’s request that this Court

examine her actions to find that she was a resident the third week of May of 2016, despite her stated intent to be a resident on June 1st or June 2nd, 2016, is nonsensical.^{2/}

Importantly, *Bixby* is informative here for other reasons wherein it describes what is required to effect a change in domicile. Specifically, *Bixby* states that to effect such a change in domicile, there must be an actual abandonment of the first domicile, coupled with an intention not to return to it, and there must be a new domicile established by actual residence in another place with an intention of making it a permanent home. *See Bixby v. Bixby*, 1961 OK 100, 361 P.2d 1075, 1076. In the present case, Wife admitted that she and the minor children did not move to Custer County, Oklahoma until July 18, 2016. [*Id.* at pp. 29-31]. Further, Wife's friend, Ms. Burch, admitted that she was not sure when Wife stayed with her for the brief period of time, that Wife had only brought her necessities, and that Wife was looking for a residence in Weatherford at the time. [*Id.* at p. 39, lines 3-25, p. 40] This testimony proved that Wife's actions did not support her alleged intent to become a resident on June 1, 2016 or June 2, 2016, because she had not met the elements for a change in domicile.

C. WIFE'S RELIANCE ON THE *POWERS* DECISION IS MISPLACED

Faced with her own testimony wherein she admits that she was not a resident of Custer County until after May 31, 2016, Wife argues that Custer County was the proper venue because Husband somehow purposely availed himself of the Custer County venue based on Wife's allegations of domestic violence. In support for this position, Wife cites *Powers v. District Court of Tulsa County*, 2009 OK 91, 227 P.3 1060.

^{2/} Taken literally, Wife's argument would mean that a person could *unintentionally* become a resident of a new county merely by taking certain actions. This is contrary to the requirement that a party have the intent to create a new domicile.

In *Powers*, the Oklahoma Supreme Court found that under certain *specific* circumstances, a spouse from another state may purposely avail himself or herself of the jurisdiction of the State of Oklahoma by directing and controlling where an abused spouse and child reside. *Powers v. Dist. Court of Tulsa Cty.*, 2009 OK 91, ¶ 32, 227 P.3d 1060, 1080, as corrected (Dec. 29, 2009). Importantly, the Court required that many different factors be met before its holding would be applied and specifically summarized its holding as follows:

In summary, we conclude that allegations of spousal/child physical abuse and intentional spousal failure of economic support combined with allegations of a non-resident's spouse's agreement and purposeful conduct for the location of the residence of the other spouse and their child may be used pursuant to 43 O.S.Supp. 2004 § 601–201 to show *in personam* jurisdiction over a non-resident spouse/parent that is consistent with due process of law.

Powers, 2009 OK 91, 227 P.3d 1060 at 1081.

The *Powers* decision is not applicable. This is so because *Powers* dealt with the jurisdiction of an Oklahoma court over an out-of-state resident and did not apply to venue from one Oklahoma County to another. In addition, the *Powers* Court made clear that allegations of spousal/child physical abuse and intentional spousal failure of economic support were not enough to confer jurisdiction. Instead, the *Powers* Court also required the non-resident spouse's agreement and purposeful conduct for the location, both of which are missing here. *Id.*

In short, the *Powers* decision dealt with a completely different set of facts and issues, neither of which are found in the case at bar. As such, *Powers* does not support Wife's position. Moreover, Wife's suggestion that she was somehow financially abandoned by Father is simply not supported by the record. *See arguments, infra.*

PROPOSITION II

THE TRIAL COURT'S DIVISION OF THE MARITAL ESTATE WAS AN ABUSE OF DISCRETION

A. WIFE CONCEDES THAT THE TRIAL COURT GRANTED WIFE ALL OF THE EQUITY IN THE MARITAL HOME TO PUNISH HUSBAND WHICH WAS AN ABUSE OF DISCRETION

Husband's Brief provides this Court with citation to governing law which holds that misconduct is not relevant to either the allocation of property or the granting of alimony except as the misconduct may have affected the accumulation of assets or the financial need of the parties. *See, e.g., Smith v. Smith*, 1993 OK CIV APP 17, 847 P.2d 827 (affirming trial judge's refusal to hear Wife's proffered evidence of Husband's repeated affairs during marriage because it had no "relevancy" to property or alimony, as it did not "dissipate marital assets," nor did she offer any "link" between Husband's "misconduct and her 'need' for alimony"). *See also, Bouma v. Bouma*, 1968 OK 35, 439 P.2d 198,200 (courts are precluded from fixing alimony as a penalty). Husband asserts that the trial court erred when it awarded Wife the lion's share of the marital estate to punish Husband for conduct that did not affect the accumulation of assets or the financial needs of the parties.

Wife's Brief concedes Husband's position. Specifically, Wife's Brief alleges that, "Husband omits that part of the trial court's reasoning in awarding Wife all of the equity in the marital home was due to Husband's ongoing refusal to honor the trial court's Temporary Orders to pay child support and timely return Wife's vehicle to her." Wife's Brief, at p. 22. Importantly, Husband agrees with Wife's position that the trial court's lop-sided division of the marital assets was to punish him. The trial court's decision, however, was contrary to governing law because Husband's misconduct did not dissipate the marital estate or increase Wife's need for alimony.

In fact, the Decree of Dissolution of Marriage already took care of the child support issue when it found that Husband owed a child support arrearage in the amount of \$10,806.04. [Decree, OR: 364-385, at 368]^{3/} Moreover, the trial court found Husband guilty of contempt for the violations of the Temporary Order and set a sentencing review. [Decree, OR: 364-385, at 374] Thereafter, the trial court sentenced Husband to a six-month deferred sentence and entered fines against Husband which totaled \$8,016.00 (which included the payment of attorney's fees to Wife). These decisions by the trial court show that the court already took care of the issues wherein Husband failed to pay child support and/or failed to follow the terms of the Temporary Order such that the trial court erred when it also relied upon the same conduct to award Wife one-hundred percent of the equity in the marital home. Simply stated, Wife's Brief concedes Husband's position and Husband respectfully requests that this Court overturn the trial court's decision which was an abuse of discretion.

B. WIFE'S ALLEGATIONS OF HUNDREDS OF THOUSANDS OF DOLLARS OF UNDISCLOSED SAVINGS AND DIVERTED MONIES IS BASED ON PURE CONJECTURE AND IS NOT OTHERWISE SUPPORTED BY THE RECORD

One of Husband's main contentions in this appeal is that the trial court erred when it found that Husband had dissipated marital assets and funds in the complete absence of any reliable proof other than Wife's counsel's unsupported argument that "the numbers did not add up." Wife's Brief is a perfect example of what Husband is talking about insofar as the level of "proof" offered by Wife and accepted by the trial court.

^{3/} Importantly, Husband paid this arrearage on June 13, 2017, even before the Decree was filed. As such, this arrearage does not support the court's award of all of the equity in the marital home to Wife.

Wife's Brief alleges that the trial court "found that Husband intentionally diverted approximately \$370,000.00 in liquid marital assets to an undisclosed financial account over a thirty-month period when he worked outside of the United States during the marriage." Wife's Brief, at p. 1. In another portion of the brief, Wife alleges that Husband had "undisclosed savings" in the amount of \$344,000.00. Wife's Brief, at p. 23. In addition, Wife alleges that somehow the trial court's order favored Husband and not Wife because the trial court "treated Husband's diversion of almost \$370,000.00 of his marital earnings into an unknown financial account as approximately equal to the equity in the marital home." Wife's Brief, p. 27. Wife also alleges that Husband admitted to having approximately \$600,000.00 based on an email wherein Husband talked generally about wanting to build a half million dollar home with a \$100,000.00 back yard.^{4/} Wife's Brief at p. 25. Finally, Wife alleges that Husband diverted "well over \$350,000.00 in a little over two years." Wife's Brief, p. 29. Wife's allegations are completely unsupported by the record but are examples of the type of "proof" that the trial court relied upon to find that Husband had somehow diverted money when no such diversion was ever shown.

Although the trial court did not find that any specific amount had been diverted or dissipated by Husband, it did find that Husband "earned over \$387,000.00 from April 2014 until September of 2016" and that the debt payments made during the same period of time did not reflect a realistic distribution of income such that it believed that Husband had diverted or dissipated assets. [Order, OR: 339-345, at pp. 2-3]. Without question, the trial court was swayed

^{4/} In the particular text message, Husband was making general comments to Wife about the future. Wife omits the complete text where Husband says, ". . . And I'll pay for it with my own money that I earned myself. Not money I reappropriated. LOL. My pay will be 93K a year." [P. Ex. 55, p. 63 of 90]

by Wife's lofty arguments and fuzzy math which were contrary to the record. In fact, in her closing arguments to the court, Wife's counsel argued that she had "calculated the math" and that Husband had grossed over \$400,000.00 by himself between 2014, 2015, and 2016. [Tr. Vol. II, p. 530, lines 19-25; p. 531, lines 1-7]

Despite Wife's allegations, the record did not reflect any such diversion or dissipation and did not reflect that the numbers did not add up. In fact, the true facts showed that the parties' total combined wages, salaries and tips in 2014 was \$104,234.00 according to line 7 of their joint income tax return, with their adjusted gross income being \$76,317.00 according to line 37 of that same return. [Tr. Vol. II, p. 410, lines 7-17, R. Ex. 4B] Of that amount, Wife earned gross wages from Widefield School in Colorado of \$25,009.22. [*Id.*] In addition, the parties took early distributions from a retirement that same year in the amount of \$28,507.00. [*Id.*] Giving Husband credit for the early retirement distribution, Husband earned gross wages of \$79,224.78 for 2014, plus \$28,507.00, for total income of \$107,731.78. [*Id.*] The total tax owed by the parties on their combined income was \$11,815.00 according to line 63 of that same return. [*Id.*]

In 2015, the parties' total combined wages, salaries and tips was \$164,839.00 according to line 7 of their joint income tax return, with their adjusted gross income being \$111,391.00 according to line 37 of that same return. [Tr. Vol. II, p. 410, lines 7-17, R. Ex. 4C] Of that amount, Wife earned gross wages from Hydro-Eakly Schools in Hydro, Oklahoma of \$14,676.76. [*Id.*] Therefore, Husband earned total wages of \$150,162.24 in 2015. [*Id.*] The total tax owed by the parties on their combined income was \$13,832.00 according to line 63 of that same return. [*Id.*]

At the time of trial, the parties had not filed their 2016 income tax return. [Tr. Vol. I, p. 45, lines 6-7] However, in the Journal Entry for the Temporary Order filed December 20, 2016, the court found Husband's gross monthly income to be \$12,110.00 per month and ordered Husband to pay Wife \$1,543.72 per month in child support retroactive back to July 1, 2016. [Journal Entry, OR: 194-208, p. 195] Using the court's figure for the six months of 2016 until the Petition for Dissolution of Marriage was filed on June 30, 2016, this meant that the court found Husband's gross income to be \$72,660.00 for the first six months of 2016 (\$12,110.00 times 6).

In addition, at the time of trial, Wife presented an exhibit that showed Husband's total gross income, through September of 2016, was \$136,640.35. [Tr. Vol. II, at p. 354, lines 21-25; p. 355, lines 1-4; P. Ex. 32] That same exhibit showed Husband's income through June 30, 2016 to be \$72,996.92. [*Id.*] This meant that the court's figure and Wife's figure for Husband's income for the first six months of 2016 were close to the same. [*Id.*]

Using the income stated in the joint income tax returns for 2014 and 2015, which were signed by both parties, Husband earned *gross* income of \$257,894.02 for those two (2) years (which included the early distribution from a retirement of \$28,507.00).^{5/} [*Id.*] Adopting Wife's exhibit for Husband's income through June 30, 2016, which was the date of the filing of the Petition, Husband's total gross wages were \$72,996.92 for the first half of 2016. [*Id.*] This means from 2014 through June 30, 2016, the record reflected that Husband had gross earnings,

^{5/} Of course, the notion that the parties took an early distribution from their retirement account and then Husband hid that money in some "undisclosed savings" defies common sense and is certainly not supported by the record. Nonetheless, for argument's sake, the number is added to Husband's income here.

including the early withdrawal from a retirement account, of \$330,890.94. [*Id.*] The court found that Wife's gross wages for 2016 were \$2,966.00 per month or \$35,592.00 for the year. [Decree, OR: 364-385, at 367] This would mean that Wife's gross wages through June 30, 2016 would have been \$17,796.00. [*Id.*] Therefore, the record reflected that Wife's total gross wages from January 1, 2014 until June 30, 2016 were only \$57,481.98, for all the years combined. [*Id.*]

Although Husband's total gross wages from January 2014 until the date of the filing of the Petition on June 30, 2016, were \$330,890.94 (including a cashed-in retirement), Wife alleged, and continues to allege, that Husband somehow amassed "undisclosed savings" during the marriage of \$344,00.00 and Husband somehow diverted "almost \$370,000.00" during the marriage. Of course, the very suggestion that Husband could divert more income than he even earned *on a gross income basis* defies logic.

Moreover, the evidence showed that these parties had expenses during the marriage and that Husband paid the majority of those expenses. In fact, the evidence showed that the Parties remodeled their home in Colorado. [Tr. Vol. I, p. 215, lines 9-25; p. 216, lines 1-2] They paid off their home in Colorado. [Tr. Vol. II, p. 442, lines 8-19] Husband paid off Wife's premarital debts and aggressively paid down the home mortgage during the marriage. [Tr. Vol. II, p. 439, lines 13-19] Wife's premarital student loans were paid off during the marriage. [Tr. Vol. II, p. 414, lines 1-6] The Parties had two vehicles, one of which was debt free at the time of the divorce. [Tr. Vol. I, p. 200, lines 4-12; P. Ex. Summary C] The Parties had retirements funds of nearly \$70,000.00 at the time of the divorce even after cashing in \$28,507.00 in 2014. [*Id.*] In fact, during this short, four-year marriage, according to *Wife's* marital balance sheet, these Parties

amassed a *net* marital estate of \$308,201.00. [Tr. Vol. I, p. 200, lines 4-10, Petitioner's Exhibit 1 C; Tr. Vol. II, p. 442, lines 8-19]

These undisputed facts show that Wife's suggestion that Husband diverted and dissipated funds was simply fiction. In fact, she had no proof of it whatsoever other than pure conjecture. Moreover, Wife's suggestion that Husband only had \$36,000.00 worth of expenses during the applicable time period was absurd. After all, for Wife's allegations to be true, then Wife would have had to have paid all of the other marital obligations for the same period of time. Yet, Wife only earned *gross* income of \$57,481.98 from January 1, 2014 through the date the Petition for Dissolution of Marriage was filed. As such, the record shows that Wife could not have paid those expenses based on her level of income. Therefore, Wife's allegations that Husband abusively abandoned her financially, paid only \$36,000.00 in marital expenses, and walked away with \$344,000.00 is plain fiction.^{6/}

Simply stated, there was no evidence of diversion or hidden funds whatsoever. Instead, the record established that Husband paid substantially all of the marital expenses and, as a result, a large net marital estate existed at the time of divorce. As such, Wife's suggestion that she paid all of the expenses while Husband paid only \$36,000.00 of marital expenses and amassed a hidden treasure was a work of fiction.

^{6/} To add insult to injury, Wife's Exhibit 32 included as income to Husband, expense reimbursement Husband received from his employer while overseas. [Tr. Vol. II, at p. 354, lines 21-25; p. 355, lines 1-4; P. Ex. 32] However, when Wife estimated Husband's expenses for the same period of time, Wife did not include these particular expenses. [P. Summary Ex. E] This resulted in a "double-dip" which understated Husband's expenses. Simply stated, if Wife was going to ignore these expenses when she calculated Husband's expenses, then she should not have also considered reimbursements for those same expenses to be income to Husband.

Therefore, because there was no “undisclosed savings” of \$344,000.00, and because the trial court’s award of all of the equity in the marital home to Wife to punish Husband was contrary to governing law, Husband respectfully submits that the trial’s court’s division of the marital estate was an abuse of discretion. Husband therefore requests that this Court overturn the decision of the trial court.

PROPOSITION III

THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THAT HUSBAND DISSIPATED AND DIVERTED MARITAL ASSETS AND THE COURT’S RELIANCE ON THE CREDIT CARD ADVANCES AND REPAYMENTS TO ESTABLISH DIVERSION WAS ERROR

As stated above, the record before the trial court did not support its finding that Husband diverted or dissipated assets or funds. Instead, the record reflected that Husband’s income was used to pay the substantial marital expenses and to create the net marital estate that Wife estimated to be worth \$308,201.00. Meanwhile, Wife earned very little income and, despite her arguments to the contrary, was not even capable of paying all of the expenses she alleged to have paid because she earned so little income.

As additional support for her arguments of diversion, Wife alleged that Husband failed to produce all of his financial records. The record before the trial court, however, established that Wife had acquired from Husband, and/or directly from third parties, numerous financial documents which established the income, expenses, assets and liabilities of the Parties. By way of example, Wife subpoenaed Husband’s complete income and employment records directly from his employer, Raytheon Company, and used them as exhibits. [Subpoena, OR: 336-338]

Wife also subpoenaed records directly from Coinbase, Inc., to obtain records regarding Roodzant Holdings, Inc., which was an entity Husband used to purchase some bitcoin during the marriage. [Subpoena, OR: 331-333] The evidence was undisputed that Roodzant Holdings was not deriving income from any source at the time of trial. [Tr. Vol II, p. 338, lines 14-20]

Wife used the documents produced by Husband directly and from the third parties to present and admit sixty-three (63) exhibits at the time of trial. [Tr. Vol. I, pp. 4-5] As such, while Husband admitted that there were some records which were apparently not received by Wife, the record reflected that Wife had more than a sufficient amount of records to present the issues to the trial court. [Tr. Vol. I, pp. 4-5]

In addition, Wife presented evidence of various credit card advances which she used to substantiate her claims of diversion.^{7/} While Husband agreed that he had taken certain advances and repaid them, these transactions did not create income which could have been diverted.^{8/} Moreover, there was no need to create expenses because the record already reflected the

^{7/} Wife's Brief continues to argue that Husband took a cash advance on her credit card in the amount of \$5,516.00. *See, e.g.*, Wife's Brief, p. 14. The plain evidence established this to be completely untrue. At trial, Wife testified that she did not know where the transfer came from. In truth, the correct amount, \$5,566.16, was a balance transfer from Wife's old credit card to her new one. Husband's Brief, pp. 10-11. Husband clearly testified to this at trial and the credit card statements prove it. [Tr. Vol 2, p. 490, lines 9-24; Petitioner's Ex.18] Yet, Wife continues to pretend otherwise in support of the trial court's order.

^{8/} Husband testified that the 2015 advance was to purchase a vehicle while Husband was in Turkey. The money was not going anywhere and there was no cash withdrawal. [Tr. Vol. II, p. 377, lines 12-25; p. 378; 379; p. 384, lines 16-24; 385, lines 2-25; p. 386, lines 1-9] Husband also testified about another cash advance on March 5th that was repaid. [Tr. Vol. II, p. 387, lines 14-23] Husband testified that he took an advance in November of 2016 which he also paid back. [Tr. Vol. II, p. 391, lines 8-23]

substantial, marital expenses paid by Husband.^{9/} *See supra*. As such, Wife's reliance on the various credit card advances and repayments was a red herring that did not establish diversion or dissipation. Therefore, the trial court's reliance on these transactions as "proof" of diversion was plain error.

In the end, there was no real proof of diversion or dissipation. In fact, the evidence proved that Husband's income was used to pay marital debts and to amass a sizeable marital estate during the Parties' short marriage while Wife earned very little income. Moreover, the credit card advances did not create income or debts for the marriage and were repaid. As such, the trial court abused its discretion when it found that Husband dissipated and diverted funds.

PROPOSITION IV

THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THAT WIFE ESTABLISHED A NEED FOR SUPPORT ALIMONY WHICH THE COURT USED, IN PART, TO JUSTIFY ITS AWARD OF THE EQUITY IN THE MARITAL HOME TO WIFE

Wife continues to suggest that the record supports the trial court's finding that Wife proved that she had a need for support alimony. Wife's Brief, p. 26. Wife is mistaken.

The record reflected that Wife received net monthly income of \$2,362.07 per month, plus a monthly flex benefit of \$571.04. Husband's Brief at pp. 11-13. In addition, Husband paid Wife \$1,588.82 per month in child support. This meant that Wife received net funds each month of \$4,521.93. *Id.* Wife's own exhibit reflected that she had monthly expenses of \$4,450.00 per

^{9/} Wife refers to these as "artificial debt." Wife's Brief, at p. 25. However, the advancement of funds from credit cards did not create marital income or marital debts so long as the amounts advanced were repaid.

month. *Id.* As such, after deducting her income from her expenses, Wife had a monthly *surplus* of \$71.93 per month. *Id.*

The seeker of support alimony carries the burden of affirmatively demonstrating the need for excess funds to cushion the economic transition from marital dependency to employment. *Ray v. Ray*, 2006 OK 30, 136 P.3d 634, 637. One such factor for a court to consider is the length of the marriage and the spouse's ability to self-support. *McLaughlin v. McLaughlin*, 1999 OK 34, 979 P.2d 257, 261.

In the present case, the Parties were married for just over four (4) years. Wife submitted proof of her expenses and income. Based on Wife's numbers, Wife had a monthly surplus and not a demonstrated need. As such, based on the facts and governing law, Wife did not establish a need for support alimony and the trial court's finding otherwise as an abuse of discretion. Moreover, the trial court's order giving Wife 100% of the equity in the marital home, the greatest valued asset of the marriage, in lieu of support alimony, was an abuse of discretion.

PROPOSITION V

HUSBAND'S APPEAL DOES NOT REQUEST THAT THIS COURT ADOPT HUSBAND'S VERSION OF EVENTS AS TRUE TO THE EXCLUSION OF WIFE

Wife's Brief argues that Husband's appeal asks this Court to accept Husband's testimony as true in all of the areas where the Parties presented conflicting testimony. Wife's suggestion is false.

In truth, Husband has used Wife's own testimony and exhibits to establish that the trial court abused its discretion. Simply stated, even assuming that Wife was telling the truth, and

even adopting her own exhibits, Husband respectfully submits that the record reflects that the trial court abused its discretion.

CONCLUSION

The undisputed facts, including Wife's direct testimony, establish that Custer County did not have venue to hear this divorce. Yet, Wife talked the court into doing so because she was forum shopping. Wife now presents crafty arguments and misquotes case law in hopes that this Court will look the other way. Based on governing law, this Court should reverse the trial court's decision and order this case to be tried in Caddo County, Oklahoma.

Wife's Brief concedes that the trial court awarded Wife 100% of the equity in the marital home to punish Husband for falling behind on his child support and retrieving a vehicle during the Temporary Order period. Based on Oklahoma law, this decision by the trial court was an abuse of discretion.

Wife continues to argue that the record supports the trial court's findings of dissipation and diversion. The record is devoid of any such evidence which leaves Husband in the untenable position of trying to prove a negative. The record clearly establishes the income and expenses of the Parties and establishes that Husband could not have diverted and dissipated hundreds of thousands of dollars as Wife convinced the trial court. In fact, the record establishes no diversion or dissipation whatsoever. Based on the record, Husband requests that this Court find that the trial court abused its discretion by accepting Wife's "the numbers just don't add up" logic. Simply stated, there was no real proof of diversion or dissipation whatsoever.

The trial court found that Wife had a need for support alimony. The court used that need as part of its justification for awarding Wife all of the equity of the marital home which was the

largest asset of this short, four-year marriage. Wife's own testimony and exhibits established that she did not have a need for support alimony such that Wife did not meet her "heavy burden" as required by applicable law. Therefore, Husband requests that this Court overturn the trial court's decision finding that Wife had a need for support alimony.

Wife's final argument is that Husband is somehow asking this Court to adopt only his evidence and testimony. Wife's suggestion is false. In fact, Husband has used Wife's own testimony and exhibits, for the sake of argument, to prove that the trial court abused its discretion. As such, Wife's arguments otherwise are plainly wrong and should be ignored.

For the reasons stated herein, Husband respectfully requests that this Court reverse the decision of the trial court and/or enter the orders which should have been entered based on the evidence presented.

Respectfully submitted,




George H. Brown, OBA #18020
BROWN & GOULD, PLLC
136 NW 10th Street, Suite 200
Oklahoma City, OK 73103
Telephone: (405) 235-4500
Facsimile: (405) 235-4507
Email: gbrown@browngouldlaw.com
ATTORNEY FOR APPELLANT
DANIEL C. ROODZANT

CERTIFICATE OF MAILING

I certify that a true and correct copy of the above and foregoing Appellant's Brief in Chief was mailed, U.S. Mail, postage prepaid, this 27th day of February, 2018, to:

Donelle H. Ratheal
RATHEAL, MAGGARD & FORTUNE, PLLC
4045 NW 64th Street, Ste. 210
Oklahoma City, OK 73116
Telephone: (405) 842-6342
Facsimile: (405) 842-6708



George H. Brown