IN RE PILOT PROGRAM FOR VIDEOCONFERENCING IN DISTRICT COURT

2014 OK 60

Decided: 06/23/2014

THE SUPREME COURT OF THE STATE OF OKLAHOMA

Cite as: 2014 OK 60, __ P.3d __

In re Pilot Program for Videoconferencing in the District Court

ORDER CREATING PILOT PROGRAM FOR VIDEOCONFERENCING IN DISTRICT COURT AND ADOPTION OF RULES FOR VIDEOCONFERENCING PILOT PROGRAM

¶1 THIS COURT DETERMINES:

(1) "Videoconferencing" is an interactive technology that sends video, voice, and data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video monitors.

(2) The Administrative Office of the Courts, Management Information Services Division, currently provides a transmission circuit to each county courthouse in the State of Oklahoma in order to provide case management and other data services to the District Court.

(3) The remoteness of many District Court locations makes it difficult for judges, counsel, litigants, witnesses, and court personnel to be physically present at court proceedings.

(4) A shortage of court reporters and court interpreters currently exists in the courts of Oklahoma, particularly in more remote areas of the state.

(5) Videoconferencing technology could greatly benefit the operation of the District Court in the State of Oklahoma through remote placement of judges, counsel, litigants, witnesses, court reporters, and court interpreters.

(6) In order to assess the benefits of videoconferencing, a pilot project is needed from which to develop the best practices and determine the most appropriate technology and equipment with which to develop a statewide videoconferencing plan.

(7) The counties of Beaver, Le Flore, McCurtain, Texas, and Washington are the appropriate locations in which to conduct a pilot program of videoconferencing in the District Court.

(8) Rules for the pilot program are needed to insure there is no abridgement of fundamental rights of litigants, crime victims, and the public. Further, such rules are needed to insure there is no unfair shifting of costs, nor loss of the fairness, dignity, solemnity, and decorum of court proceedings, which is essential to the proper administration of justice.

¶2 IT IS THEREFORE ORDERED:

(1) A Videoconferencing Pilot Program is hereby established in the District Court in Beaver, Le Flore, McCurtain, Texas, and Washington counties.

(2) One courtroom in each pilot county will be equipped with videoconferencing equipment provided by the Administrative Office of the Courts.

(3) The following rules governing the Videoconferencing Pilot Program are hereby adopted to be codified at Part XIII of the Oklahoma Supreme Court Rules, Okla. Stat. tit. 12, app.1, and are attached as an exhibit to this Order.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 23rd day of June, 2014.

/S/CHIEF JUSTICE

ALL JUSTICES CONCUR

Part XIII. Rules for Videoconferencing Pilot Program

Rule 1.500 - Intent, Purpose, and Definitions

(a) It is the intent of the Supreme Court of the State of Oklahoma that the benefits of videoconferencing technology should be assessed through a pilot program before statewide implementation in the District Court. The use of videoconferencing capability shall be consistent with the limitations of the technology, the rights of litigants and other participants in all matters before the courts. The Court finds the benefits of videoconferencing technology include, but are not limited to, employee placement and management of court resources by allowing court reporter flexibility to all courts of the state, decreased travel and transportation costs, minimizing judicial delay by reason of the unavailability of local court reporters as well as decreased impact on court security. In addition the availability of videoconferencing technology will provide greater access and availability to court approved interpreters, thereby preserving court assets in reducing the costs to the courts and litigants while enhancing access to the courts for the public.

(b) In declaring this intent, the Supreme Court further finds that improper use of videoconferencing technology in situations in which the technical and operational standards set forth in these rules are not met may result in abridgement of fundamental rights of litigants, crime victims and the public and may cause unfair shifting of costs and the loss of the fairness, dignity, solemnity, and decorum of court proceedings, which is essential to the proper administration of justice.

(c) For purposes of these Rules the following definitions shall apply:

(1) "videoconferencing" is defined as an interactive technology that sends video, voice and data signals over a transmission circuit so that two or more individual or groups can communicate with each other simultaneously using video monitors, and

(2) "participants" include litigants, crime victims, counsel, witnesses while on the stand, essential court staff and interpreters, but excludes other interested persons and the public at large.

COMMENTS: This section is intended to provide a clear statement of the Court's intent concerning such use which should be helpful guidance to litigants counsel, interpreters, and district and appellate courts in interpreting and applying these rules.

Rule 1.501 - General Provisions

The Supreme Court hereby authorizes and approves the use of videoconferencing in the pilot counties, as set forth in the following general provisions:

(1) Proceedings conducted by videoconferencing shall be conducted in the same manner as if the parties had appeared in person, and the presiding judicial officer may exercise all powers consistent with the proceeding.

(2) In any proceeding conducted by videoconference, the remote location(s) shall be considered an extension of the courtroom. A proceeding conducted by videoconference shall be deemed to be held before the presiding judicial officer or court reporter that can see and hear the witness and all other participants.

(3) An oath administered by the presiding judicial officer or court reporter to a witness, interpreter, or a party in a proceeding conducted by videoconference shall have the same force and binding effect as if the oath had been administered to a person physically present in the courtroom.

(4) In any proceeding conducted by videoconference, a court reporter who can see and hear the witness and other

participants may administer oaths, record notes and transcribe the proceeding without being physically present in the same locale as the judge or the remote participants.

(5) In any proceeding conducted by videoconference, an interpreter who can see and hear the witness and other participants may provide interpreter services in the proceeding without being physically present in the same locale as the judge or the remote participants.

(6) Any system used for conducting proceedings by videoconferencing shall conform to the following minimum requirements:

a. Participants shall be able to see, hear, and communicate with each other simultaneously;
b. Participants shall be able to see, hear, and otherwise observe any physical evidence or exhibit presented during the proceeding;
c. Video and sound quality shall be adequate to allow participants to observe demeanor and nonverbal communications and to clearly hear what is taking place in the courtroom to the same extent as if they were present in the courtroom;
d. The location from which the trial judge is presiding shall be accessible to the public to the same extent as the proceeding would be if not conducted by videoconference; and
e. A private communication facility (cellphone, landline, facsimile, Skype, etc.) shall be available to allow a party and the party's attorney to communicate privately during the proceeding.

(7) Any pleading or other documents used in a proceeding conducted by videoconferencing may be transmitted between the courts location and any remote site by electronic means, including, but not limited to, facsimile or email. Signatures on any document transmitted by electronic means shall have the same force and effect as an original signature.

(8) Any original exhibit offered and/or admitted into evidence from a remote site shall be transferred by the moving party to the presiding officer of the court proceedings or the court reporter within two business days of the close of the proceedings.

(9) Any stipulation/waiver of any right to be present in the courtroom shall be obtained at the commencement of the proceedings, either on the record or in writing. A written stipulation/waiver shall be filed in the case and made a part of the record.

(10) These Rules authorize the use of videoconferencing in all stages of civil or criminal proceedings.

(11) In all other respects, a proceeding conducted using videoconferencing technology shall be conducted in the same manner as any proceeding conducted in person at one site as presently provided for by existing district court rules.

COMMENTS: This section is intended to establish technical and operational standards for the use of videoconferencing technology within the pilot program.

Rule 1.502 - Court's Discretion

The court may consider one or more of the following criteria in determining whether to permit the use of videoconferencing technology in a particular case:

(1) Whether any undue surprise or prejudice would result;

(2) Whether the proponent of the use of videoconferencing technology has been unable, after diligent effort, to procure the physical presence of a witness;

(3) The convenience of the parties and the proposed witness, and the cost of producing the witness in person in relation to the importance of the offered testimony;

(4) Whether the procedure would allow for full and effective cross-examination, especially where such cross-examination would involve documents or other exhibits;

(5) The importance of the witness being personally present in the courtroom where the dignity, solemnity, and

decorum of the surroundings will impress upon the witness the duty to testify truthfully;

(6) Whether a physical liberty or other fundamental interest is at stake in the proceeding;

(7) Whether the court is satisfied that it can sufficiently know and control the proceedings at the remote location so as to effectively extend the courtroom to such location;

(8) Whether the participation of an individual from a remote location presents such person in a diminished or distorted sense such that it negatively reflects upon such individual to persons present in the courtroom;

(9) Whether the use of videoconferencing diminishes or detracts from the dignity, solemnity, and formality of the proceeding such as to undermine the integrity, fairness, and effectiveness of such proceeding;

(10) Whether the person proposed to appear by videoconferencing presents a significant security risk to transport and present personally in the courtroom;

(11) Waivers and stipulations of the parties offered and agreed upon; and

(12) Such other factors as the court may, in each individual case, determine to be relevant.

COMMENTS: This section is intended to provide the court broad discretion to consider the use of videoconferencing technology when the technical and operational standards are satisfied.

Rule 1.503 - Use in Civil Cases and Special Proceedings

(a) Subject to the provisions and criteria set forth in Rule 1.501, and to the limitations of subsection (b), a court may, on its own motion or at the request of any party, in any civil case or special proceeding permit the use of videoconferencing technology in any pre-trial, trial, or post-trial proceedings, including administrative appeals.

(b) A proponent of a witness via videoconferencing technology at any hearing or trial shall file a notice of intent to present testimony by videoconferencing technology thirty days prior to the scheduled start of such proceeding. Any party may file an objection to the testimony of such witness by videoconferencing technology within ten days of the filing of the notice of intent. If the time limits of the proceeding do not permit such time periods, the court may in its discretion shorten the time to file notice of intent and objection. The court shall determine the objection in the exercise of its discretion considering the criteria set forth in Rule 1.502.

COMMENTS: Civil cases and special proceedings in general pose few problems of constitutional dimension concerning the use of videoconferencing technology and offer litigants the potential of significant savings in trial expenses. Where objections are raised, the rule provides the district court will resolve the issue pursuant to the standards and decisional guidance set out in Rule 1.501 and Rule 1.502.

Rule 1.504 - Use in Criminal Cases and Proceedings

(a) Subject to the standards and criteria set forth in Rule 1.501 and Rule 1.502 and to the limitations of subsection (b) and (c), a court may, on its own motion or at the request of any party, and in any criminal case permit the use of videoconferencing technology in any pre-trial, trial or fact-finding, or post-trial proceeding.

(b) Except as may otherwise be provided by law, a defendant in a criminal case retains the right to be physically present in the courtroom at all critical stages of the proceedings.

(c) A proponent of a witness via videoconferencing technology at any hearing shall file a notice of intent to present testimony by videoconference technology twenty days prior to the scheduled start of such proceeding. Any party may file an objection to the testimony of such witness by videoconference technology within ten days of the filing of the notice of intent. If the time limits of the proceeding do not permit such time periods, the court may in its discretion shorten the time to file a notice of intent or objection.

COMMENTS: It is the intent of this section to protect the rights of criminal defendants while allowing the use of videoconference technology. The section is not intended to create new rights in defendants to be

physically present. It is intended to preserve constitutional rights to confront witness and effectively cross-examine witnesses while providing a cost effective alternative to the physical presence of a witness in the courtroom.

Rule 1.505 - Waivers and Stipulations

Parties to court proceedings may waive any right provided in these rules, or may stipulate to any different or modified procedure as may be approved by the court.

COMMENTS: The intent of this section is to permit litigants to take advantage of videoconferencing technology in a matter before the court regardless of whether the provisions of these rules would otherwise permit such use, as long as the parties are in agreement to do so and the court approves.

Rule 1.506 - Applicability

These rules shall govern the procedure, practice, and use of videoconferencing in the district courts of the pilot counties only. They are not intended to affect the statutory authorization for the limited uses of videoconferencing technology found in the Judge Gary Dean Courtroom Technology Act, Okla. Stat. tit. 20, §§ 3005 & 3006 (2011), or the Uniform Child Witness by Alternative Methods Act, Okla. Stat. tit. 12, §§ 2611.3 through 2615 (2011). These rules do not control the use of videoconferencing in case management, settlement conferences, continuing legal education, or court administration. The use of non-video telephone communications otherwise permitted by specific statute and rule shall not be affected by these rules, and shall remain available as provided in such statute and rule.

Citationizer© Summary of Documents Citing This Document

Cite Name	**Level**	
Title 12. Civil Procedure		
Cite	Name	Level
12 O.S. RULE 1.500,	Intent, Purpose, and Definitions	Cited
12 O.S. RULE 1.501,	General Provisions	Cited
12 O.S. RULE 1.502,	Court's Discretion	Cited
12 O.S. RULE 1.503,	Use in Civil Cases and Special Proceedings	Cited
12 O.S. RULE 1.504,	Use in Criminal Cases and Proceedings	Cited
12 O.S. RULE 1.505,	Waivers and Stipulations	Cited
12 O.S. RULE 1.506,	Applicability	Cited

Citationizer: Table of Authority

Cite	**Name**	**Level**
None Found.		

Oklahoma

Oklahoma Rules for E-Filing in Selected Pilot Courts

Cite as:

NOT RELEASED FOR OFFICIAL PUBLICATION.

RE: RULES FOR ELECTRONIC FILING IN THE OKLAHOMA COURTS SELECTED AS PILOT COURTS

O R D E R

Pursuant to this Court's general superintending control over all inferior courts, Okla. Const., Art. 7, § 4, general administrative authority over state courts, Okla. Const., Art. 7, § 6, and the authority specified in 12 O.S.2011, § 2005(e) and 20 O.S.2011, § 3004, we hereby approve the Rules For Electronic Filing in the Oklahoma Courts as set out in the attachment hereto.

IT IS ORDERED that the Rules For Electronic Filing in the Oklahoma Courts attached hereto are approved and shall be applicable in the courts approved by this Court as pilot courts for the electronic filing project. Thereafter, the rules shall be applicable in the district courts in other Oklahoma counties on a county-by-county basis as approved by this Court. It is also ordered that this order with the attachment shall be available for access via the internet from the Court website at www.oscn.net and included one time in the Oklahoma Bar Association Enews.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE this 21st day of June, 2012.

/S/CHIEF JUSTICE

ALL JUSTICES CONCUR.

ATTACHMENT TO ORDER No. SCAD-2012-36

RULES FOR ELECTRONIC FILING IN THE OKLAHOMA COURTS SELECTED AS PILOT COURTS.

PART I. RULES FOR ELECTRONIC FILING IN THE OKLAHOMA DISTRICT COURTS, COURT OF CIVIL APPEALS, SUPREME COURT, AND COURT OF CRIMINAL APPEALS

Rule 1. Scope of Rules.

a. Pursuant to 12 O.S. 2011, § 2005(e), 20 O.S. 2011, § 3004, and 22 O.S. 2011, § 1051, the Supreme Court of Oklahoma and the Court of Criminal Appeals adopt the following combined rules for the electronic filing of Documents, cases, proceedings, and original actions in the courts of Oklahoma. These Rules recognize that Documents in proceedings in the courts of Oklahoma may be filed, served, and preserved in electronic format. These Rules shall supplement but not replace the existing statutes and court rules regulating the practice and procedure in the courts of Oklahoma. Nonetheless, where these Rules specify a practice or procedure, these Rules shall control with respect to those matters filed using the Oklahoma Unified Case Management System (OUCMS).

b. The implementation of the OUCMS in the district and appellate courts will be a phased implementation. These Rules shall become effective in each district and appellate court at the time the OUCMS is implemented in that court. The Administrative Office of the Courts shall maintain a list of all district and appellate courts using the OUCMS, and the implementation date of each. This list shall be posted on the Supreme Court's website, and shall be available to the public at each court clerk's office.

c. The Supreme Court and the Court of Criminal Appeals may issue additional administrative orders supplementing these Rules, and designating various case types as mandatory E-File case types. Case types so designated shall be filed electronically after the effective date of such supplemental order, and the court clerk shall not accept for filing or file any documents in paper format in mandatory E-File

case types from litigants represented by counsel.

Rule 2. Definitions. As used in these Rules:

a. "Approved Electronic Method" means the Oklahoma Unified Case Management System (OUCMS) including the means approved for electronically transmitting Documents to the courts of Oklahoma for filing in any case or proceeding, and such other electronic methods which may later be designated by statute or court rule. Submitting Documents by email or facsimile to a court or court clerk is not an Approved Electronic Method for E-Filing.

b. "Conventional Means" or "Conventional Manner" means filing with a court clerk in traditional paper form.

c. "Court-Initiated Document" means court Documents entered by a judge, court clerk, court reporter, or other court official into the docket or case file, such as minute entries, notices, financial entries, orders, or opinions.

d. "Document" means a collection of text or other data that is maintained as unique and separate from others, including, but not limited to, any opinion, order, judgment, decree, petition, motion, pleading, form, instrument, record, exhibit, writ, transcript, or other item.

e. "E-Document" means any electronic Document, other than an E-Record, submitted or E-Filed in accordance with these Rules, and includes the electronic version of any paper Document scanned and made part of the court record by a court clerk.

f. "Electronic Filing (E-Filing, E-File, or E-Filed)" means the transmission by an Approved Electronic Method of any Document to or by a court or clerk of a court of this State. This will include notices and orders created by a court as well as pleadings, other Documents and attachments created by practitioners or parties.

g. "Electronic Filing Technical Standards" are those standards, not inconsistent with these rules, adopted by the Administrative Office of the Courts, as authorized by the Supreme Court of Oklahoma, to implement electronic filing. The Electronic Filing Technical Standards will provide additional technical requirements for E-Documents, including, but not limited to, file size, attributes, resolution, embedded files, and other technical requirements, including users' email functionality and users' system capabilities. The Electronic Filing Technical Standards may also provide additional technical requirements for E-Records. As technology evolves, the Electronic Filing Technical Standards may be updated from time to time, and the current Electronic Filing Technical Standards shall be maintained and available to the public on the Supreme Court's website.

h. "E-Record" means a record on appeal that has been prepared, assembled, and filed with the court clerk in an electronic format through the OUCMS.

i. "Electronic seal, stamp, certification, or authentication" means an electronic representation of a stamp, certification, or authentication applied through the OUCMS and executed or adopted by a court clerk, judge, or judicial official with the intent to stamp, certify, or authenticate the Document pursuant to statute or court rule.

j. "Electronic Service" ("E-Service") means the electronic transmission of E-Documents by email to one or more Registered Users in lieu of serving such Documents in traditional paper form.

k. "Electronic Signature" ("E-Signature") means any digital or electronic representation of a person's name logically associated with a Document, and executed or adopted by a person with the intent to sign the Document.

l. Email addresses:

1. "Designated Case-Specific Email Address" is the primary email address provided by the Registered User in a specific case or matter for E-Service in that specific case or matter. A Registered User must provide a Designated Case-Specific Email Address at the time the Registered User files his or her entry of appearance or other initial filing. A Designated Case-Specific Email Address must have the functionality required by the OUCMS, and E-Service shall originate from and be perfected to this email address. Once a Registered User provides a Designated Case-Specific Email Address in a specific case, that address shall serve as the "last known address" for purposes of service in that matter as required by any statute or court rule.

2. "Registration Email Address" means the email address provided by a Registered User during the registration process. The Registration Email Address shall be associated with the user's profile, and OUCMS will use these addresses for notifications related to E-Filing under that user's account regardless of the Designated Case-Specific Email Address on file in a specific case.

3. "Secondary Email Address" means the email address or addresses provided by a Registered User in a particular case or matter, in addition to the Designated Case-Specific Email Address. If a Registered User designates a Secondary Email Address in a case, any E-Filer in that case shall also send electronic copies of Documents filed in that case to the Secondary Email Address.

m. "Filer" means a Registered User whose user ID and password are used to file an E-Document in a district or appellate court proceeding or matter.

n. "Hardcopy" is a paper copy of an E-Document.

o. "Portable Document Format" or "PDF" means a format developed by Adobe Systems for reproducing Documents in a manner independent of the software, hardware, and operating system originally used to create the Document.

p. "Register" or "Registration" means the process as set forth in these Rules for a person to request authority to use the OUCMS.

q. "Registered User" means a person who has applied and been approved to use the OUCMS. The following are authorized to Register (see also Rule 9 and Rule 14 of these Rules):

1. Attorneys licensed to practice law in Oklahoma;

2. Pro hac vice attorneys authorized to practice in a district or appellate court proceeding;

3. Parties in a case who are not represented by legal counsel (an unrepresented person will be authorized to E-File only in the specific case or cases in which the unrepresented person is a party);

4. Any other person authorized by statute or court rule to participate in a case.

r. "Technical Failure" means a malfunction of OUCMS hardware, software, and/or telecommunications facility which results in the inability of a Registered User to E-File a Document. It does not include the failure of a user's equipment, software, and/or telecommunications facility.

Rule 3. Signature.

a. Where any statute or court rule requires a person's signature to file, certify, or verify a Document in the courts of this State, an Electronic Signature shall satisfy the signature requirement.

b. By use of an Electronic Signature, the person represents that all requirements of the statute or court rule requiring the person's signature have been satisfied and all duties and obligations imposed by the statute or court rule have been fulfilled.

c. An Electronic Signature placed on a Document is deemed to constitute a signature on the Document for purposes of all signature requirements imposed by Oklahoma court rules and statutes, including, Section 2011 of the Oklahoma Pleading Code, 20 O.S. 2011, § 2011, and/or any other applicable law.

d. An Electronic Signature placed on a Document shall have the same force and effect as a handwritten signature. Unless otherwise ordered by a court, an E-Signature is sufficient on all Hardcopies of E-Documents.

e. Where any statute or court rule requires the signature, verification, or endorsement of a justice, judge, court reporter, court clerk, or other judicial officer on a Document, including a transcript, in the courts of this State, an Electronic Signature shall satisfy that requirement. Where any statute or court rule requires a seal, stamp, authentication, or certification of a justice, judge, court reporter, court clerk, or other judicial officer on a Document, including a transcript, an electronic seal, stamp, authentication, or certification applied through the OUCMS shall satisfy that requirement.

f. All Documents electronically signed, stamped, certified, or authenticated by a justice, judge, court reporter, court clerk, or judicial officer shall have the same force and effect as if the Justice, judge, court reporter, court clerk, or judicial officer had affixed his or her signature, stamp, certification, or other authentication by hand to an original paper Document.

Rule 4. Format of Electronic Signatures.

a. *Court-Initiated Documents*. Electronic Documents may be signed by a judge, court reporter, court clerk, or judicial officer via a digital or Electronic Signature created by the OUCMS.

b. *Documents Filed by Registered Users*.

1. Signature Block. All E-Filed Documents must include a signature block and must set forth the user's name, bar number (where applicable), address, telephone number, and Designated Case-Specific Email Address. The name of the Registered User under whose account the Document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear.

2. Multiple Signatures. The Filer of any Document requiring two or more signatures (e.g., stipulations, joint status reports) must list thereon all the other signatories' names by means of an "/s/" signature block for each signatory. By submitting such

a Document, the Filer certifies that each of the other signatories has expressly agreed to the form and substance of the Document and that the Filer has their actual authority to submit the Document electronically. It shall be the responsibility of the Filer to retain records evidencing this concurrence for future production. Unless a longer time is prescribed by court rule or statute, a non-filing signatory or party who disputes the authenticity of an electronically filed Document containing multiple signatures must file an objection to the Document within ten (10) days of the date the signatory or party knows, or should know, the Document is filed.

c. *Documents signed under penalty of perjury or requiring a notary public's signature*. Documents required by law to include a signature under penalty of perjury, or the signature of a notary public, may be E-Filed in place of the original Document. The declarant and/or notary public must sign the original Document. The original Document shall be converted into an E-Document, if necessary, and E-Filed in a format that accurately reproduces the original signatures and contents of the Document. The Filer shall retain the original Document, or other evidence of the original signature(s), for future production. Certain individuals, entities, and governmental agencies may be allowed to submit sworn or notarized E-Documents in an alternate format, at the discretion of, and in the manner prescribed by the Administrative Office of the Courts (See also Rule 14).

Rule 5. E-Filing of Documents.

a. *E-Filing*. A Registered User shall submit a Document by uploading the Document to the E-Filing system. The court clerk will file the submitted Document.

1. Confirmation of Submission. A Document is submitted to the E-Filing system when the Document, along with any E-Filed attachments, has been successfully transmitted and uploaded through the E-Filing system of the OUCMS, and when the OUCMS has successfully received the entire Document, including any E-Filed attachments. An automatic receipt, verifying the date and time submitted, will be sent to the Registration Email Address informing the Filer of the successful submission. Absent receipt of the confirmation of submission, there is no presumption that the court received the Document.

2. Confirmation of Acceptance. The court clerk will accept for filing the submitted E-Document or E-Record. *See Cotner v. Golden*, 2006 OK 25, 136 P.3d 630; 12 O.S. 2011, § 2005. When accepted for filing in the case, the Document will receive an electronic file stamp. Upon acceptance, a receipt confirming the date and time of acceptance and providing a case number, if applicable, will be sent to the Registration Email Address.

b. *When an E-Filed Document Is Deemed Filed.*

1. *District Courts, Court of Civil Appeals, and Oklahoma Supreme Court*. A Document may be submitted through the OUCMS at any time of day, but any E-Document submitted after 5 p.m. will be deemed submitted the next business day. When the E-Document is accepted by the court clerk, it shall be deemed filed on the date and time the E-Document, along with any E-Filed attachments, was submitted to the OUCMS. The confirmation receipt of submission and the confirmation receipt of acceptance shall serve as proof of the filing. Central Time shall be used to determine the filing date and time for purposes of this Rule.

2. *Court of Criminal Appeals*.

a. E-Documents submitted as a matter of right pursuant to Rule 3.4, *Rules of the Oklahoma Court of Criminal Appeals*, 22 O.S. 2011, Ch. 18, App., shall be deemed filed upon the date the Document is accepted by the Clerk of the Appellate Courts. The confirmation receipt of acceptance shall serve as proof of E-Filing.

b. E-Documents tendered for filing as set forth in Rule 1.13 (K), *Rules of the Oklahoma Court of Criminal Appeals*, 22 O.S.2011, Ch. 18, App., shall be deemed tendered upon submission to the Clerk of the Appellate Courts. Upon submission, the clerk shall E-Serve the Filer a receipt confirming the date and time the E-Document was tendered for filing together with the case number which shall serve as proof of tendering the E-Document for filing.

Rule 6. Filing Fees and Costs Associated with E-Filing.

a. *Filing Fees and Costs*. The same fees and costs prescribed by statute, court rule, or order of the Supreme Court for filing paper Documents shall apply to E-Filed Documents. Such fees, if any, shall be paid by credit card or other online method approved for use with the OUCMS at the time Documents are E-Filed.

b. *Pauper's Affidavit*. Counsel representing a party, or an unrepresented Registered User, may E-File a pauper's affidavit requesting a waiver of the cost or filing fee associated with E-Filing an E-Document in the same manner as prescribed by statute or court rule for waiving the cost or filing fee associated with filing of a paper copy of the same Document.

Rule 7. Production of a Hardcopy of an E-Filed Document.

a. At any time during the pendency of a proceeding, a Court may direct any Filer of an E-Document to file and/or serve a Hardcopy of that

Document.

b. *Supreme Court*.

1. In addition to filing an E-Document, during the interim transition to a fully electronic filing system, and until further order of the Supreme Court, the Filer of any of the following E-Documents shall mail or deliver one (1) Hardcopy of the E-Document, including all attachments thereto, to opposing party, and additional Hardcopies of the E-Document, including all attachments thereto, to the Supreme Court Clerk, in the following quantities:

a. Four (4) copies of a petition in error, petition for certiorari to review a certified interlocutory order, or petition for review, the response to petition in error or petition for review, and any amended or supplemental petitions in error, petition for certiorari to review a certified interlocutory order, or petitions for review.

b. Three (3) copies of the brief in chief, response brief, and reply brief.

c. Ten (10) copies of any motion and any response to a motion or reply to a response with any supporting briefs and attachments.

d. Three (3) copies of any petition for rehearing and any court-ordered response filed in the Court of Civil Appeals,

e. Ten (10) copies of any petition for certiorari, petition for rehearing, and any response or reply filed in the Supreme Court.

f. Ten (10) copies of all applications, responses and briefs, and one (1) copy of all appendices filed in an original action.

2. These additional Hardcopies shall be delivered to the Supreme Court Clerk and opposing party within five (5) days of the date the principal Document is accepted for E-Filing. The Hardcopies of the principal Document that are delivered to the Supreme Court Clerk shall be accompanied by a copy of the confirmation receipt provided pursuant to subsection (a)(2) of Rule 5 of these Rules. Regular mail of the United States Postal Service is a sufficient means for delivering Hardcopies of E-Documents to the Supreme Court and opposing party as provided in this Rule.

c. *Court of Criminal Appeals*.

1. In addition to the E-Document, during the interim transition to a fully electronic filing system, and until further order of the Court of Criminal Appeals, the Filer shall mail or deliver Hardcopies of all E-Documents, including all attachments thereto, to the Clerk of the Appellate Court and opposing party. In this manner, the Filer shall deliver an equal number of Hardcopies of the E-Document as the number of "copies" required for that type of document in the *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2011).

2. These additional Hardcopies shall be delivered to the Appellate Clerk and opposing party within five (5) days of the date the principal Document is accepted for E-Filing. The Hardcopies of the principal Document that are delivered to the Appellate Clerk shall be accompanied by a copy of the confirmation receipt provided pursuant to subsection (a)(2) of Rule 5 of these Rules. Regular mail of the United States Postal Service is a sufficient means for delivering Hardcopies of E-Documents to the Appellate Court and opposing party as provided in this Rule.

Rule 8. Electronic Service (E-Service).

a. *Authorization for Electronic Service.* Where any statute or court rule requires service of a Document on another person, that requirement may be accomplished by Electronic Service. Electronic Service of Documents is limited to those Documents permitted to be served by first-class mail, express mail, overnight delivery, or facsimile transmission. Service of process and service of Documents that require personal service as a matter of law may not be accomplished electronically.

b. *E-Service by Counsel or Registered Pro Se Litigants of E-Filed Documents.* E-Service of Documents as permitted by paragraph (a) of this Rule shall satisfy all statutory requirements for service on Registered Users and court officials, and shall have the same force and legal effect as service of a paper copy pursuant to the applicable statutes and court rules. E-Service is effective upon the transmission of the Document by the Filer to the Designated Case-Specific Email Address of the person being served; provided, however, that if the Filer attempting E-Service is informed that the electronic transmission failed, the Filer attempting E-Service shall ensure that service of the E-Document is completed, either electronically or otherwise. When a Filer E-Serves a Registered User (opposing counsel or party) or a court official, the certificate of service shall list the email address used for such service and include the date and time of the E-Service. Electronic Service is the responsibility of the Filer. **Automatic notices generated by the OUCMS regarding docket activity or case filings shall not constitute Electronic Service upon any party**.

c. *E-Service by Court Clerk's Office.* The district and appellate court clerks may E-Serve all notices, orders, opinions, decisions, correspondence, and Documents as permitted by paragraph (a) of this Rule. Such service on Registered Users and court officials shall be deemed effective and complete upon the transmission of either the Document or a hyperlink to the Document that is being E-Served

pursuant to this Rule. When E-Serving court officials, court clerks shall use the email addresses of court officials maintained by the Administrative Office of the Courts.

d. *Designated Case-Specific Email Address.* The Designated Case-Specific Email Address is case specific, and is the email address provided by the Registered User for Electronic Service in a particular case or matter. The Registered User shall be responsible for maintaining a current Designated Case-Specific Email Address in each case or matter.

e. *Secondary Email Address*. A Secondary Email Address may be provided by a Registered User in a particular case or matter, in addition to the Designated Case-Specific Email Address. If a Registered User designates a Secondary Email Address in a case, any E-Filer in that case shall also send electronic copies of Documents filed in that case to the Secondary Email Address.

Rule 9. Registration.

a. The following persons are authorized to Register to use the OUCMS (See also Rule 2(q) and Rule 14 of these Rules):

1. Attorneys licensed to practice law in Oklahoma;

2. Pro hac vice attorneys authorized to practice in a district or appellate court proceeding;

3. Parties in a case who are not represented by legal counsel (an unrepresented person will be authorized to E-File only in the specific case or cases in which the unrepresented person is a party);

4. Any other person authorized by statute or court rule to participate in a case.

b. Users shall Register in the manner prescribed by the Administrative Office of the Courts. To be Registered, a person must have the capability to produce, file, and receive E-Documents in compliance with all technical requirements of the OUCMS.

1. *Responsibility for Keeping OUCMS ID and Password Secure*. No Registered User shall authorize or permit anyone to use his or her OUCMS ID or password, except for the purpose of E-Filing an E-Document on behalf of the Registered User, in which event the Registered User shall be deemed to be the Filer.

2. *Responsibility for Keeping Information Current*. Registered Users shall be responsible for maintaining the accuracy of the information contained on the OUCMS, including changes in their name, mailing address, telephone number, and all email addresses.

3. *Registration Email Address*. During registration, Registered Users will be required to provide a primary email address and may provide alternate email addresses. These addresses shall be associated with the user's account, and OUCMS will use these addresses for notifications related to E-Filing under that user's account regardless of the Designated Case-Specific Email Address on file in a specific case.

4. *Revocation*. Any Court may revoke a Filer's authority to file Documents electronically via the OUCMS in a particular case for good cause or as provided by court rule.

c. Case-by-Case E-Filing. During the transition to a fully electronic filing system, and until further order or court rule from the Supreme Court, Registered Users may E-File Documents through the OUCMS on a case-by-case basis. By E-Filing any Document in accordance with these rules, including, but not limited to, an Entry of Appearance or other initial pleading, a Registered User agrees to E-File and E-Serve all Documents in that case only, and agrees to accept E-Service of Documents in that case only. An Entry of Appearance or other Document E-Filed in a case shall constitute that Filer's written consent to receive E-Service via email delivered to the Designated Case-Specific Email Address on file in that case, in accordance with 12 O.S. 2011, § 2005.

Rule 10. Requirements for Pro Se Parties.

a. *District Courts, Court of Civil Appeals, and the Oklahoma Supreme Court*. Pro se litigants in proceedings in the district courts, Court of Civil Appeals, and the Oklahoma Supreme Court are not allowed to file Documents electronically via the OUCMS unless they have completed the required Registration process. Parties shall not be allowed to file Documents if they are represented by an attorney in the case. *See Watson v. Gibson Capital LLC*, 2008 OK 56, ¶ 9, 187 P.3d 735, 738-39.

b. *Oklahoma Court of Criminal Appeals*. Pro se parties in proceedings before the Oklahoma Court of Criminal Appeals shall not be allowed to file Documents via the OUCMS unless they have completed the required Registration process and are authorized by court order to proceed as a pro se litigant in the matter. Rule 1.16, *Rules of the Oklahoma Court of Criminal Appeals*, 22 O.S.2011, Ch. 18, App.

Rule 11. Court Record.

a. *Electronic Documents*. For any Document that has been electronically filed, or any Document submitted in paper format that has been scanned and electronically filed or maintained by a court clerk in an Approved Electronic Method , the electronic version of the Document

constitutes the original court record, and the electronic version of the Document shall have the same force and effect as a Document filed by Conventional Means.

b. *Form of record*. The court clerk shall maintain the court record of a case or matter in electronic format or in a combination of electronic and non-electronic formats where necessary. Documents submitted for filing by non-electronic means shall be scanned and made part of the electronic record, if the Document is capable of being scanned and made part of the electronic record. Once scanned, the electronic form of the Document is the court record. If a Document or exhibit is submitted for filing which is not capable of being scanned and made part of the electronic record, the clerk or court reporter shall maintain the Document or exhibit in its original non-electronic form.

c. *Record on Appeal - Supreme Court and Court of Civil Appeals*. Where any statute or court rule requires the district court clerk to prepare, certify, and transmit a record on appeal to the clerk of the appellate court, an E-Record transmitted through the OUCMS shall satisfy that requirement. The district court clerk shall prepare, certify, and transmit an E-Record conforming in all aspects with the *Oklahoma Supreme Court Rules*, 12 O.S. 2011, Ch. 15, App. 1. This rule shall become effective at the time the OUCMS is implemented in the appellate courts and in the district court transmitting the record on appeal.

1. At any time during the pendency of a proceeding before an appellate court, that court may direct the district court clerk to furnish the Appellate Court Clerk with a Hardcopy of all or part of the E-Record.

2. As part of the transition to a fully electronic filing system, it is anticipated that rules applicable to the filing of electronic transcripts by court reporters will be separately promulgated by the Oklahoma Supreme Court. In accordance with such rules, the court reporter shall provide the clerk of the trial court with an electronic copy of the reporter's transcript conforming in all aspects with the *Oklahoma Supreme Court Rules*, 12 O.S.2011, Ch. 15, App. 1. In addition to the electronic version of a court reporter's transcript, and until further order of the Supreme Court, the court reporter shall provide the clerk of the trial court with three (3) certified Hardcopies of the court reporter's transcript.

d. *Record on Appeal- Court of Criminal Appeals*. Where any statute or court rule requires the district court clerk to prepare, certify and transmit a record on appeal to the clerk of the appellate court, an E-Record transmitted through the OUCMS shall satisfy that requirement. The district court clerk shall prepare, certify, and transmit an E-Record conforming in all aspects with the *Rules of the Oklahoma Court of Criminal Appeals*, 22 O.S. 2011, Ch. 18, App. All corrections or supplements to an E-record shall also be electronically transmitted through the OUCMS, unless otherwise directed by the Court. This rule shall become effective at the time the OUCMS is implemented in the appellate courts and in the district court transmitting the record on appeal.

1. Within five (5) days of transmitting the E-record, the trial court clerk shall deliver two (2) Hardcopies of the E-record to the Appellate Clerk and one (1) Hardcopy to Appellant's counsel of record on appeal conforming in all aspects with the *Rules of the Oklahoma Court of Criminal Appeals*, 22 O.S.2011, Ch. 18, App..

2. In accordance with the applicable rules regarding filing of electronic transcripts, the court reporter shall provide the clerk of the trial court with an electronic copy of the reporter's transcript conforming in all aspects with the *Rules of the Oklahoma Court of Criminal Appeals*, 22 O.S.2011, Ch. 18, App. In addition to the electronic copy, court reporters shall provide the clerk of the trial court three (3) certified Hardcopies of the transcript in non-capital cases, and four (4) certified Hardcopies of the transcript in capital cases.

Rule 12. Form of Electronic Documents.

a. *Electronic Document format*. An E-Document shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper pleadings and other Documents, including page limits, except that the first page of an electronic Document shall have a top margin of at least two (2) inches to allow for insertion of an electronic file stamp and/or certification. Failure to allow sufficient space for the electronic file stamp may result in obliteration of the underlying content. E-Documents must be self-contained and must not contain external hyperlinks.

b. *Document File Type, Resolution, Size*.

1. *General Format*. All E-Documents shall be filed in a text-based PDF format in compliance with the Electronic Filing Technical Standards. The Electronic Filing Technical Standards will provide additional technical requirements for E-Filed Documents, including but not limited to file size, attributes, resolution, and embedded file.

2. *Attachments or exhibit format*. Whenever practicable, an attachment or exhibit may be included as part of the principal E-Document. Any attachment or exhibit which is filed as a separate E-Document, and not included in the principal E-Document, shall be submitted in a text-searchable PDF Document format, and clearly named to specify the principal Document to which it is related (e.g., "Exhibit A to Petition" or "Exhibit A to Defendant's Response to Plaintiff's Motion for Summary Judgment"). If the original attachment or Document cannot be converted to a text-searchable PDF, the attachment or Document may be submitted in a non-text-searchable PDF format. A non-text image may also be transmitted using the current JPEG standard format.

3. *Attachments or exhibits that cannot be electronically filed*. Any attachments that cannot be E-Filed in a format authorized by this Rule shall be forwarded to the district or appellate court clerk and served on all the parties in the case in paper form within 24 hours of the date the principal Document is E-Filed, unless the office of the court clerk is closed on the day following the filing date for the principal Document, in which event the attachments shall be forwarded by no later than the end of the next day that the office of the court clerk is open. Service as required by this Rule may be accomplished by mailing the document by regular mail by the United States Postal Service, or a third party carrier, within the required 24 hour period. Attachments forwarded to a court clerk in this manner shall include a cover sheet bearing the case style and number, and specifying the Document to which the attachment shall be affixed.

4. *Notice of attachments not electronically filed*. A notice regarding the inability to E-File any attachments shall be appended to the end of the principal E-Document and a copy of that notice shall also accompany all copies of the principal Document that are served on the parties and any court officials in the case. See Form No. 1.

c. *Filing of Multiple Documents*. Whenever a Registered User E-Files multiple Documents in a case, each Document must be submitted as a separate E-Document bearing its own separate and distinct Document title.

d. *Proposed Orders*.

1. Proposed orders are not permitted in proceedings before the Supreme Court, Court of Criminal Appeals, and the Court of Civil Appeals.

2. In the district courts, proposed orders shall be subject to the following rules:

a. A proposed order will not be made part of the official court record unless the Filer attaches a copy of the proposed order, in non-editable PDF format, to the supporting motion or application which is E-Filed in the case. A separate electronic copy of the proposed order, in editable format, must also be submitted as set forth in paragraph (d)(2)(b) of this Rule.

b. When a proposed order is submitted, the Filer shall electronically submit the proposed order in editable format via the E-Filing system of the OUCMS and shall title the Document as a "proposed" order. "Editable Format" is one that is subject to modification by the court using MS Word, or such other means as may be authorized by the Administrative Office of the Courts. The proposed order in editable format shall not become part of the official court record. If the judge grants an order, the judge will cause a final order to be filed in non-editable PDF format.

Rule 13. Technical Failure.

In the event the E-Filing of a Document is not accomplished because of a Technical Failure of the OUCMS, the Filer may attempt to accomplish filing through Conventional Means. "Technical Failure" means a malfunction of OUCMS hardware, software, and/or telecommunications facility which results in the inability of a Registered User to E-File a Document. It does not include the failure of a user's equipment, software, and/or telecommunications facility. Upon satisfactory proof that (1) filing of a Document was not completed because of a Technical Failure, and (2) the Filer was unable to accomplish timely filing by Conventional Means, the affected party may seek relief through motion. The court may enter an order permitting the Document to be deemed filed on the date it was first attempted to be submitted electronically. The Administrative Office of the Courts shall maintain a publically available record of any known Technical Failure of the OUCMS.

Rule 14. State Entities and Other Users.

Where the electronic infrastructure and equipment is in place to permit it, certain individuals, entities and governmental agencies (e.g., district attorneys, law enforcement, CASA workers, collection agencies, process servers, bondsmen, jurors, witnesses, etc.) may be allowed to access and use the OUCMS to E-File Documents, submit Documents with E-Signatures, send and receive funds, transfer data, or conduct other business, at the discretion of, and in the manner prescribed by the Administrative Office of the Courts. Any individual or entity authorized to use the OUCMS pursuant to this paragraph is deemed to be a Registered User subject to all requirements set forth in these Rules, if applicable. See Rules 2(q) and 9.

Rule 15. Personal Identifiers.

With regard to Documents which contain personal identifiers, Filers shall follow the guidelines set forth in Rule 31 of the Rules for the District Courts of Oklahoma, 12 O.S.2011, Ch. 2, App., if applicable.

Rule 16. Sealed Documents.

a. *General Rule*. A Registered User may request a court to seal a Document or to issue a protective order in the same manner as prescribed by statute or court rule for sealing or protecting a paper copy of the same Document. Before a Document can be filed under seal, a Registered User must obtain a court order authorizing such filing. The Filer shall not E-File a Document through the OUCMS while a request for an order sealing that Document is pending. E-Filing a Document before a court order sealing it is granted may result in the

Document being viewable as a public record. This rule does not apply to Documents filed in confidential case types which are not publically available (e.g., juvenile, adoption, mental health, etc.).

b. *Process*. Documents which have been withheld, removed, or sealed from the public record pursuant to court order shall be electronically filed as sealed Documents through the OUCMS.

1. If an E-Document has been ordered sealed, the first page or cover page of any Document filed pursuant to that order must contain the style of the case a signature block with E-Signature of the Filer, and must contain the following statement:

"This document is confidential and was sealed by _____ (court filing the order) on _____ (date order was filed). Review of and access to this document is prohibited except by prior court order. If you are not authorized to view or retrieve this document, read no further on this page. You should contact the following person: _____ (filer's name, firm name if applicable, address, telephone number and email address).

2. No other information should appear on the cover page.

PART II. FORMS

Form No. 1. Notice Regarding Attachments/Appendices

[Case Caption]

Notice Regarding Attachments/Appendices

_____ [Describe document, e.g., the map] that is an attachment/appendix _____ to _____, which was e-filed on _____, is of such size, content, or form that it could not be scanned and e-filed and is therefore being filed with the [District Court Clerk] [Clerk of the Appellate Court] in its original form. I certify that a copy of this notice and the attachment/appendix will this date be served on counsel for each party to the case.

Dated this _____ day of _____, 20____.

s/[Name of Filing Party]
Bar Number
Address
City, State, Zip Code
Phone: (xxx) xxx-xxxx
Fax: (xxx) xxx-xxxx
E-mail: xxx@xxx.xxx

Citationizer© Summary of Documents Citing This Document

Cite	Name	Level
None Found.		

Citationizer: Table of Authority

Cite	Name	Level
Oklahoma Supreme Court Cases		
Cite	Name	Level
2006 OK 25, 136 P.3d 630,	COTNER v. GOLDEN	Discussed
2008 OK 56, 187 P.3d 735,	WATSON v. GIBSON CAPITAL, L.L.C.	Discussed
Title 12. Civil Procedure		
Cite	Name	Level
12 O.S. 2005,	Service and Filing of Pleadings and Other Papers	Discussed at Length
Title 20. Courts		
Cite	Name	Level
20 O.S. 3004,	Electronic Filing of Documents	Discussed
Title 22. Criminal Procedure		
Cite	Name	Level
22 O.S. 1051,	Right of Appeal - Review - Corrective Jurisdiction - Procedure - Scope of Review on	Cited

Certiorari

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 15.--Appendix 1. Oklahoma Supreme Court Rules (Refs & Annos)
Part XIII. Rules for Videoconferencing Pilot Program

T. 12, Ch. 15, App. 1, Rule 1.500

Rule 1.500. Intent, purpose, and definitions

Currentness

(a) It is the intent of the Supreme Court of the State of Oklahoma that the benefits of videoconferencing technology should be assessed through a pilot program before statewide implementation in the District Court. The use of videoconferencing capability shall be consistent with the limitations of the technology, the rights of litigants and other participants in all matters before the courts. The Court finds the benefits of videoconferencing technology include, but are not limited to, employee placement and management of court resources by allowing court reporter flexibility to all courts of the state, decreased travel and transportation costs, minimizing judicial delay by reason of the unavailability of local court reporters as well as decreased impact on court security. In addition the availability of videoconferencing technology will provide greater access and availability to court approved interpreters, thereby preserving court assets in reducing the costs to the courts and litigants while enhancing access to the courts for the public.

(b) In declaring this intent, the Supreme Court further finds that improper use of videoconferencing technology in situations in which the technical and operational standards set forth in these rules are not met may result in abridgement of fundamental rights of litigants, crime victims and the public and may cause unfair shifting of costs and the loss of the fairness, dignity, solemnity, and decorum of court proceedings, which is essential to the proper administration of justice.

(c) For purposes of these Rules the following definitions shall apply:

(1) “videoconferencing” is defined as an interactive technology that sends video, voice and data signals over a transmission circuit so that two or more individual or groups can communicate with each other simultaneously using video monitors, and

(2) “participants” include litigants, crime victims, counsel, witnesses while on the stand, essential court staff and interpreters, but excludes other interested persons and the public at large.

Credits
Added by order of June 23, 2014.

<Adopted July 10, 1996>

<Effective January 1, 1997>

Editors' Notes

COMMENTS:

This section is intended to provide a clear statement of the Court's intent concerning such use which should be helpful guidance to litigants counsel, interpreters, and district and appellate courts in interpreting and applying these rules.

Sup. Ct. Rules, Rule 1.500, 12 O. S. A. Ch. 15, App. 1, OK ST S CT Rule 1.500
Current with amendments received through 11/1/15

End of Document

T. 12, Ch. 15, App. 1, Rule 1.501

Rule 1.501. General provisions

Currentness

The Supreme Court hereby authorizes and approves the use of videoconferencing in the pilot counties, as set forth in the following general provisions:

(1) Proceedings conducted by videoconferencing shall be conducted in the same manner as if the parties had appeared in person, and the presiding judicial officer may exercise all powers consistent with the proceeding.

(2) In any proceeding conducted by videoconference, the remote location(s) shall be considered an extension of the courtroom. A proceeding conducted by videoconference shall be deemed to be held before the presiding judicial officer or court reporter that can see and hear the witness and all other participants.

(3) An oath administered by the presiding judicial officer or court reporter to a witness, interpreter, or a party in a proceeding conducted by videoconference shall have the same force and binding effect as if the oath had been administered to a person physically present in the courtroom.

(4) In any proceeding conducted by videoconference, a court reporter who can see and hear the witness and other participants may administer oaths, record notes and transcribe the proceeding without being physically present in the same locale as the judge or the remote participants.

(5) In any proceeding conducted by videoconference, an interpreter who can see and hear the witness and other participants may provide interpreter services in the proceeding without being physically present in the same locale as the judge or the remote participants.

(6) Any system used for conducting proceedings by videoconferencing shall conform to the following minimum requirements:

a. Participants shall be able to see, hear, and communicate with each other simultaneously;

b. Participants shall be able to see, hear, and otherwise observe any physical evidence or exhibit presented during the proceeding;

c. Video and sound quality shall be adequate to allow participants to observe demeanor and nonverbal communications and to clearly hear what is taking place in the courtroom to the same extent as if they were present in the courtroom;

d. The location from which the trial judge is presiding shall be accessible to the public to the same extent as the proceeding would be if not conducted by videoconference; and

e. A private communication facility (cellphone, landline, facsimile, Skype, etc.) shall be available to allow a party and the party's attorney to communicate privately during the proceeding.

(7) Any pleading or other documents used in a proceeding conducted by videoconferencing may be transmitted between the courts location and any remote site by electronic means, including, but not limited to, facsimile or email. Signatures on any document transmitted by electronic means shall have the same force and effect as an original signature.

(8) Any original exhibit offered and/or admitted into evidence from a remote site shall be transferred by the moving party to the presiding officer of the court proceedings or the court reporter within two business days of the close of the proceedings.

(9) Any stipulation/waiver of any right to be present in the courtroom shall be obtained at the commencement of the proceedings, either on the record or in writing. A written stipulation/waiver shall be filed in the case and made a part of the record.

(10) These Rules authorize the use of videoconferencing in all stages of civil or criminal proceedings.

(11) In all other respects, a proceeding conducted using videoconferencing technology shall be conducted in the same manner as any proceeding conducted in person at one site as presently provided for by existing district court rules.

Credits
Added by order of June 23, 2014.

<Adopted July 10, 1996>

<Effective January 1, 1997>

Editors' Notes

COMMENTS:

This section is intended to establish technical and operational standards for the use of videoconferencing technology within the pilot program.

Sup. Ct. Rules, Rule 1.501, 12 O. S. A. Ch. 15, App. 1, OK ST S CT Rule 1.501
Current with amendments received through 11/1/15

End of Document

T. 12, Ch. 15, App. 1, Rule 1.502

Rule 1.502. Court's discretion

Currentness

The court may consider one or more of the following criteria in determining whether to permit the use of videoconferencing technology in a particular case:

(1) Whether any undue surprise or prejudice would result;

(2) Whether the proponent of the use of videoconferencing technology has been unable, after diligent effort, to procure the physical presence of a witness;

(3) The convenience of the parties and the proposed witness, and the cost of producing the witness in person in relation to the importance of the offered testimony;

(4) Whether the procedure would allow for full and effective cross-examination, especially where such cross-examination would involve documents or other exhibits;

(5) The importance of the witness being personally present in the courtroom where the dignity, solemnity, and decorum of the surroundings will impress upon the witness the duty to testify truthfully;

(6) Whether a physical liberty or other fundamental interest is at stake in the proceeding;

(7) Whether the court is satisfied that it can sufficiently know and control the proceedings at the remote location so as to effectively extend the courtroom to such location;

(8) Whether the participation of an individual from a remote location presents such person in a diminished or distorted sense such that it negatively reflects upon such individual to persons present in the courtroom;

(9) Whether the use of videoconferencing diminishes or detracts from the dignity, solemnity, and formality of the proceeding such as to undermine the integrity, fairness, and effectiveness of such proceeding;

(10) Whether the person proposed to appear by videoconferencing presents a significant security risk to transport and present personally in the courtroom;

(11) Waivers and stipulations of the parties offered and agreed upon; and

(12) Such other factors as the court may, in each individual case, determine to be relevant.

Credits
Added by order of June 23, 2014.

<Adopted July 10, 1996>

<Effective January 1, 1997>

Editors' Notes

COMMENTS:

This section is intended to provide the court broad discretion to consider the use of videoconferencing technology when the technical and operational standards are satisfied.

Sup. Ct. Rules, Rule 1.502, 12 O. S. A. Ch. 15, App. 1, OK ST S CT Rule 1.502
Current with amendments received through 11/1/15

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 15.--Appendix 1. Oklahoma Supreme Court Rules (Refs & Annos)
Part XIII. Rules for Videoconferencing Pilot Program

T. 12, Ch. 15, App. 1, Rule 1.503

Rule 1.503. Use in civil cases and special proceedings

Currentness

(a) Subject to the provisions and criteria set forth in Rule 1.501, and to the limitations of subsection (b), a court may, on its own motion or at the request of any party, in any civil case or special proceeding permit the use of videoconferencing technology in any pre-trial, trial, or post-trial proceedings, including administrative appeals.

(b) A proponent of a witness via videoconferencing technology at any hearing or trial shall file a notice of intent to present testimony by videoconferencing technology thirty days prior to the scheduled start of such proceeding. Any party may file an objection to the testimony of such witness by videoconferencing technology within ten days of the filing of the notice of intent. If the time limits of the proceeding do not permit such time periods, the court may in its discretion shorten the time to file notice of intent and objection. The court shall determine the objection in the exercise of its discretion considering the criteria set forth in Rule 1.502.

Credits
Added by order of June 23, 2014.

<Adopted July 10, 1996>

<Effective January 1, 1997>

Editors' Notes

COMMENTS:

Civil cases and special proceedings in general pose few problems of constitutional dimension concerning the use of videoconferencing technology and offer litigants the potential of significant savings in trial expenses. Where objections are raised, the rule provides the district court will resolve the issue pursuant to the standards and decisional guidance set out in Rule 1.501 and Rule 1.502.

Sup. Ct. Rules, Rule 1.503, 12 O. S. A. Ch. 15, App. 1, OK ST S CT Rule 1.503
Current with amendments received through 11/1/15

End of Document

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 15.--Appendix 1. Oklahoma Supreme Court Rules (Refs & Annos)
Part XIII. Rules for Videoconferencing Pilot Program

T. 12, Ch. 15, App. 1, Rule 1.504

Rule 1.504. Use in criminal cases and proceedings

Currentness

(a) Subject to the standards and criteria set forth in Rule 1.501 and Rule 1.502 and to the limitations of subsection (b) and (c), a court may, on its own motion or at the request of any party, and in any criminal case permit the use of videoconferencing technology in any pre-trial, trial or fact-finding, or post-trial proceeding.

(b) Except as may otherwise be provided by law, a defendant in a criminal case retains the right to be physically present in the courtroom at all critical stages of the proceedings.

(c) A proponent of a witness via videoconferencing technology at any hearing shall file a notice of intent to present testimony by videoconference technology twenty days prior to the scheduled start of such proceeding. Any party may file an objection to the testimony of such witness by videoconference technology within ten days of the filing of the notice of intent. If the time limits of the proceeding do not permit such time periods, the court may in its discretion shorten the time to file a notice of intent or objection.

Credits
Added by order of June 23, 2014.

<Adopted July 10, 1996>

<Effective January 1, 1997>

Editors' Notes

COMMENTS:

It is the intent of this section to protect the rights of criminal defendants while allowing the use of videoconference technology. The section is not intended to create new rights in defendants to be physically present. It is intended to preserve constitutional rights to confront witness and effectively cross-examine witnesses while providing a cost effective alternative to the physical presence of a witness in the courtroom.

Sup. Ct. Rules, Rule 1.504, 12 O. S. A. Ch. 15, App. 1, OK ST S CT Rule 1.504
Current with amendments received through 11/1/15

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 15.--Appendix 1. Oklahoma Supreme Court Rules (Refs & Annos)
Part XIII. Rules for Videoconferencing Pilot Program

T. 12, Ch. 15, App. 1, Rule 1.505

Rule 1.505. Waivers and stipulations

Currentness

Parties to court proceedings may waive any right provided in these rules, or may stipulate to any different or modified procedure as may be approved by the court.

Credits
Added by order of June 23, 2014.

<Adopted July 10, 1996>

<Effective January 1, 1997>

Editors' Notes

COMMENTS:

The intent of this section is to permit litigants to take advantage of videoconferencing technology in a matter before the court regardless of whether the provisions of these rules would otherwise permit such use, as long as the parties are in agreement to do so and the court approves.

Sup. Ct. Rules, Rule 1.505, 12 O. S. A. Ch. 15, App. 1, OK ST S CT Rule 1.505
Current with amendments received through 11/1/15

End of Document

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 15.--Appendix 1. Oklahoma Supreme Court Rules (Refs & Annos)
Part XIII. Rules for Videoconferencing Pilot Program

T. 12, Ch. 15, App. 1, Rule 1.506

Rule 1.506. Applicability

Currentness

These rules shall govern the procedure, practice, and use of videoconferencing in the district courts of the pilot counties only. They are not intended to affect the statutory authorization for the limited uses of videoconferencing technology found in the Judge Gary Dean Courtroom Technology Act, Okla. Stat. tit. 20, §§ 3005 & 3006 (2011), or the Uniform Child Witness by Alternative Methods Act, Okla. Stat. tit. 12, §§ 2611.3 through 2615 (2011). These rules do not control the use of videoconferencing in case management, settlement conferences, continuing legal education, or court administration. The use of non-video telephone communications otherwise permitted by specific statute and rule shall not be affected by these rules, and shall remain available as provided in such statute and rule.

Credits
Added by order of June 23, 2014.

<Adopted July 10, 1996>

<Effective January 1, 1997>

Sup. Ct. Rules, Rule 1.506, 12 O. S. A. Ch. 15, App. 1, OK ST S CT Rule 1.506
Current with amendments received through 11/1/15

End of Document

Oklahoma Statutes Annotated
Title 20. Courts (Refs & Annos)
Chapter 40. General Provisions

20 Okl.St.Ann. § 3005

§ 3005. Short title

Currentness

This act shall be known and may be cited as the “Judge Gary Dean Courtroom Technology Act”.

Credits
Laws 2011, c. 258, § 1, eff. Nov. 1, 2011.

20 Okl. St. Ann. § 3005, OK ST T. 20 § 3005
Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

Oklahoma Statutes Annotated
Title 20. Courts (Refs & Annos)
Chapter 40. General Provisions

20 Okl.St.Ann. § 3006

§ 3006. Videoconferencing--Allowable proceedings

Currentness

A. Beginning January 1, 2012, district courts may use videoconferencing, including two-way interactive video technology, between a courtroom and a correctional facility of the Department of Corrections or a juvenile detention facility of the Office of Juvenile Affairs to conduct the following proceedings including, but not limited to:

1. Sentence reviews;

2. Post-conviction relief hearings;

3. Delinquent and deprived actions;

4. Custody and adoption proceedings;

5. Commitment proceedings; and

6. Extradition proceedings.

B. A waiver from the defendant or juvenile of the right to be present in the courtroom for a hearing shall be obtained prior to conducting any proceeding using videoconferencing or two-way interactive video technology. The use of videoconferencing or two-way interactive video technology shall be in accordance with any requirements and guidelines established by the Administrative Office of the Courts and all proceedings at which such technology is utilized shall be recorded verbatim by the district court.

C. The Administrative Office of the Courts shall promulgate rules and procedures to implement the provisions of this section.

Credits
Laws 2011, c. 258, § 2, eff. Nov. 1, 2011.

20 Okl. St. Ann. § 3006, OK ST T. 20 § 3006
Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

12 Okl.St.Ann. Ch. 40, Art. VI, Refs & Annos
Currentness

12 Okl. St. Ann. Ch. 40, Art. VI, Refs & Annos, OK ST T. 12, Ch. 40, Art. VI, Refs & Annos
Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 40. Evidence Code (Refs & Annos)
Article VI. Witnesses
Uniform Child Witness Testimony by Alternative Methods Act (Refs & Annos)

12 Okl.St.Ann. § 2611.3

§ 2611.3. Short title

Currentness

Sections 1 through 9 of this act [1] shall be known and may be cited as the “Uniform Child Witness Testimony by Alternative Methods Act”.

Credits

Laws 2003, c. 405, § 1, eff. Nov. 1, 2003.

Notes of Decisions (10)

Footnotes

1 O.S.L.2003, c. 405, §§ 1 to 9 [Title 12, §§ 2611.3 to 2611.11].

12 Okl. St. Ann. § 2611.3, OK ST T. 12 § 2611.3

Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

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Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 40. Evidence Code (Refs & Annos)
Article VI. Witnesses
Uniform Child Witness Testimony by Alternative Methods Act (Refs & Annos)

12 Okl.St.Ann. § 2611.4

§ 2611.4. Definitions

Currentness

As used in the Uniform Child Witness Testimony by Alternative Methods Act:

1. "Alternative method" means a method by which a child witness testifies which does not include all of the following:

a. having the child testify in person in an open forum,

b. having the child testify in the presence and full view of the finder of fact and presiding officer, and

c. allowing all of the parties to be present, to participate, and to view and be viewed by the child;

2. "Child witness" means an individual under thirteen (13) years of age who has been or will be called to testify in a proceeding;

3. "Criminal proceeding" means a deposition, conditional examination ordered pursuant to Section 765 of Title 22 of the Oklahoma Statutes, trial or hearing before a court in a prosecution of a person charged with violating a criminal law of this state, a juvenile certified to stand trial as an adult pursuant to Section 2-2-403 of Title 10A of the Oklahoma Statutes, a juvenile prosecuted as an adult pursuant to Section 2-5-101 of Title 10A of the Oklahoma Statutes, or a youthful offender prosecuted pursuant to the Youthful Offender Act; [1] and

4. "Noncriminal proceeding" means a deposition, trial or hearing before a court or an administrative agency of this state having judicial or quasi-judicial powers, other than a criminal proceeding.

Credits

Laws 2003, c. 405, § 2, eff. Nov. 1, 2003; Laws 2004, c. 445, § 1, emerg. eff. June 4, 2004; Laws 2009, c. 234, § 112, emerg. eff. May 21, 2009.

Footnotes

1 Title 10A, § 2-5-201 et seq.

12 Okl. St. Ann. § 2611.4, OK ST T. 12 § 2611.4

Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

12 Okl.St.Ann. § 2611.5

§ 2611.5. Testimony to which act applies--Other procedures not precluded

Currentness

The Uniform Child Witness Testimony by Alternative Methods Act applies to the testimony of a child witness in a criminal or noncriminal proceeding. However, the Uniform Child Witness Testimony by Alternative Methods Act does not preclude, in a noncriminal proceeding, any other procedure permitted by law for a child witness to testify in a proceeding conducted pursuant to the Oklahoma Children's Code or the Oklahoma Juvenile Code.

Credits

Laws 2003, c. 405, § 3, eff. Nov. 1, 2003.

12 Okl. St. Ann. § 2611.5, OK ST T. 12 § 2611.5
Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 40. Evidence Code (Refs & Annos)
Article VI. Witnesses
Uniform Child Witness Testimony by Alternative Methods Act (Refs & Annos)

12 Okl.St.Ann. § 2611.6

§ 2611.6. Hearing--Determination of whether to use alternative method testimony

Currentness

A. The judge or presiding officer in a criminal or noncriminal proceeding may order a hearing to determine whether to allow a child witness to testify by an alternative method. The judge or presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the judge or presiding officer to have sufficient standing to act on behalf of the child.

B. A hearing to determine whether to allow a child witness to testify by an alternative method shall be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the presiding officer specifies. The presence of the child is not required at the hearing unless ordered by the judge or presiding officer. In conducting the hearing, the judge or presiding officer shall not be bound by rules of evidence except the rules of privilege.

Credits

Laws 2003, c. 405, § 4, eff. Nov. 1, 2003.

12 Okl. St. Ann. § 2611.6, OK ST T. 12 § 2611.6
Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

12 Okl.St.Ann. § 2611.7

§ 2611.7. Situations where alternative method testimony permitted

Currentness

A. In a criminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method only in the following situations:

1. The child may testify otherwise than in an open forum in the presence and full view of the finder of fact if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to testify in the open forum; and

2. The child may testify other than face-to-face with the defendant if the judge or presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

B. In a criminal proceeding, the child may have an advocate appointed by the court to monitor the potential for emotional trauma. The advocate shall be a registered professional social worker, psychologist, or psychiatrist.

C. In a noncriminal proceeding, the judge or presiding officer may allow a child witness to testify by an alternative method if the judge or presiding officer finds by a preponderance of the evidence that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making the finding, the judge or presiding officer shall consider:

1. The nature of the proceeding;

2. The age and maturity of the child;

3. The relationship of the child to the parties in the proceeding;

4. The nature and degree of emotional trauma that the child may suffer in testifying; and

5. Any other relevant factor.

Credits

Laws 2003, c. 405, § 5, eff. Nov. 1, 2003; Laws 2008, c. 111, § 2, eff. Nov. 1, 2008.

12 Okl. St. Ann. § 2611.7, OK ST T. 12 § 2611.7
Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

12 Okl.St.Ann. § 2611.8

§ 2611.8. Determination of whether to allow child witness to testify by an alternative method

Currentness

If the judge or presiding officer determines that a standard under Section 5 of this act [1] has been met, the judge or presiding officer shall determine whether to allow a child witness to testify by an alternative method and in doing so shall consider:

1. Alternative methods reasonably available;

2. Available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method;

3. The nature of the case;

4. The relative rights of the parties;

5. The importance of the proposed testimony of the child;

6. The nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and

7. Any other relevant factor.

Credits
Laws 2003, c. 405, § 6, eff. Nov. 1, 2003.

Notes of Decisions (1)

Footnotes
1 O.S.L.2003, c. 405, § 5 [Title 12, § 2611.7].
12 Okl. St. Ann. § 2611.8, OK ST T. 12 § 2611.8
Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 40. Evidence Code (Refs & Annos)
Article VI. Witnesses
Uniform Child Witness Testimony by Alternative Methods Act (Refs & Annos)

12 Okl.St.Ann. § 2611.9

§ 2611.9. Order--Required contents

Currentness

A. An order allowing or disallowing a child witness to testify by an alternative method shall state the findings of fact and conclusions of law that support the determination of the judge or presiding officer.

B. An order allowing a child witness to testify by an alternative method shall:

1. State the method by which the child is to testify;

2. List any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;

3. State any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

4. State any condition or limitation upon the participation of individuals present during the testimony of the child; and

5. State any other condition necessary for taking or presenting the testimony.

C. The alternative method ordered by the judge or presiding officer shall not be more restrictive of the rights of the parties than is necessary under the circumstance to serve the purposes of the order.

Credits
Laws 2003, c. 405, § 7, eff. Nov. 1, 2003.

12 Okl. St. Ann. § 2611.9, OK ST T. 12 § 2611.9
Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 40. Evidence Code (Refs & Annos)
Article VI. Witnesses
Uniform Child Witness Testimony by Alternative Methods Act (Refs & Annos)

12 Okl.St.Ann. § 2611.10

§ 2611.10. Opportunity for examination and cross-examination

Currentness

An alternative method ordered by the judge or presiding officer shall permit a full and fair opportunity for examination or cross-examination of the child witness by each party.

Credits

Laws 2003, c. 405, § 8, eff. Nov. 1, 2003.

12 Okl. St. Ann. § 2611.10, OK ST T. 12 § 2611.10
Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 40. Evidence Code (Refs & Annos)
Article VI. Witnesses
Uniform Child Witness Testimony by Alternative Methods Act (Refs & Annos)

12 Okl.St.Ann. § 2611.11

§ 2611.11. Construction and application of act

Currentness

In applying and construing the Uniform Child Witness Testimony by Alternative Methods Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Credits

Laws 2003, c. 405, § 9, eff. Nov. 1, 2003.

12 Okl. St. Ann. § 2611.11, OK ST T. 12 § 2611.11
Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

Oklahoma Statutes Annotated
Title 12. Civil Procedure (Refs & Annos)
Chapter 40. Evidence Code (Refs & Annos)
Article VI. Witnesses
Uniform Child Witness Testimony by Alternative Methods Act (Refs & Annos)

12 Okl.St.Ann. § 2611.12

§ 2611.12. Support person or therapeutic dog

Currentness

A. It is the intent of the Oklahoma Legislature in enacting this section to recognize the special circumstances and needs of a child witness during criminal court proceedings, and to protect the child witness from any unnecessary emotional discomfort or anguish.

B. In any criminal proceeding, a child witness shall have the right to be accompanied by a support person while giving testimony in the proceeding, but the support person shall not discuss the testimony of the child witness with any other witnesses or attempt to prompt or influence the testimony of the child witness.

C. The child witness shall be afforded the opportunity, if available, to have a certified therapeutic dog accompanied by the handler of the certified therapeutic dog in lieu of a support person.

D. As used in this section:

1. “Certified therapeutic dog” means a dog which has received the requisite training or certification from the American Kennel Club, Therapy Dogs Incorporated, or an equivalent organization to perform the duties associated with therapy dogs in places such as hospitals, nursing homes, and other facilities where the emotional benefits of therapy dogs are recognized. Prior to the use of a certified therapeutic dog the court shall conduct a hearing to verify:

a. the credentials of the certified therapeutic dog,

b. the certified therapeutic dog is appropriately insured, and

c. a relationship has been established between the child witness and the certified therapeutic dog in anticipation of testimony;

2. “Child witness” means an individual younger than thirteen (13) years of age who has been or will be called to testify in a criminal proceeding; and

3. “Support person” means a parent, other relative or a next friend chosen by the witness to accompany the witness to criminal proceedings.

Credits

Laws 2014, c. 81, § 1, eff. Nov. 1, 2014.

12 Okl. St. Ann. § 2611.12, OK ST T. 12 § 2611.12
Current through Chapter 399 (End) of the First Session of the 55th Legislature (2015)

End of Document

Bar Journal March 2013

E-Filing in Oklahoma

By *Brant M. Elmore*

Soon a new tool will be available to Oklahoma legal practitioners. The Oklahoma Supreme Court is in the process of implementing electronic filing (e-filing) and a unified case management system in the state courts. Collectively, this tool will be known as the Oklahoma Unified Case Management System (OUCMS).[1]

The task of implementing the OUCMS is monumental. The process has been ongoing for several years. However, e-filing in the state courts is now imminent. The Administrative Office of the Courts has promulgated and the Oklahoma Supreme Court has approved Rules for E-filing in Selected Pilot Courts.[2]

American Cadastre LLC (AMCAD) is developing the state's e-filing system. AMCAD is customizing their electronic filing software to Oklahoma's legal system. Once the software passes formalized testing, it will be put into use in selected pilot courts. The Administrative Office of the Courts will post on the Supreme Court's website when each of the district and appellate courts implement the system.[3] The first pilot court will likely begin using the OUCMS in July. Over the next few years, efiling will become commonplace in the state's courts.

Once fully implemented, Oklahoma's e-filing system will provide registered users with the ability to e-file in any district court or appellate court within the state. At the same time, the OUCMS will permit viewing of cases and the documents therein through a public access portal.

The state will no longer be divided by two separate case management systems. The Oklahoma Court Information System (OCIS) and the On Demand Court Records system (ODCR) operated by KellPro Inc., are both presently in operation within the state.[4] These two systems are not integrated and rely on aged technology. The OUCMS will replace both the OCIS and the ODCR networks.

The OUCMS will consolidate court data throughout the state. It is anticipated that

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all of the data from the OCIS and ODCR systems will be integrated into the OUCMS. After the OUCMS is implemented in a county, the court clerk will maintain the court record in an electronic format.[5] Records and documents in each and every court clerk's office will be maintained in the same electronic format and will be easily accessible by the parties, attorneys, judges and the public. As the court record will be maintained in an electronic format, the district courts will submit an electronic record (e-record) to the appellate courts.[6]

Oklahoma's e-filing system will be unified. As opposed to the federal system, where a user is required to register with each of the separate federal courts, maintain multiple user accounts and attain knowledge of the multiple operating systems, Oklahoma's e-filing system will operate throughout the state. An attorney licensed to practice in Oklahoma will only need to register once with the Administrative Office of the Courts.[7] Through this one user account, the attorney will be able to e-file in all of the district courts and appellate courts in the state. The operating system will be identical in each of the district courts. The documents viewed on the public access portal will be the same as the official court record.

Certain legal practitioners are accustomed to e-filing. The Oklahoma Attorney General's Office and other federal court practitioners were required years ago to become e-filers. These practitioners will likely transition seamlessly to the OUCMS. Those unaccustomed to e-filing should make every effort to adopt this useful tool. The OUCMS will provide many advantages to state court practitioners.

A registered user will be able to e-file from the convenience of their office to any of the district courts and appellate courts across the state. Although the rules as to when a document is deemed filed will remain unchanged, the system will generally be accessible 24 hours per day, seven days per week.[8] Registered users will be able to circumnavigate long distances, weather conditions and traffic to easily file documents.

The OUCMS will permit electronic service (e-service) of documents that do not require personal service as a matter of law.[9] The court clerk's office may also e-serve notices, orders, opinions, decisions, correspondence and other documents.[10] E-service will be accomplished by emailing a copy of the electronic document (e-document) to the registered user's designated case-specific email address as well as any designated secondary email address.[11] In addition to the requirement of e-service, the OUCMS will generate notices to registered users regarding docket activity in cases in which the user has made an entry of appearance.[12]

State court legal practitioners will be able to effectively operate a "paperless office" or "digital law practice" if they desire.[13] Registered users will be able to create an e-document on their computing device and file that document with the court clerk without the need of creating a paper document. The court clerks within the state will maintain the court record in an electronic format.[14] The shift to electronic filing and a unified case management system will permit parties to have immediate access to documents filed in a case.[15] A "digital law practice" can improve efficiency and productivity both inside and outside the office.[16]

Although a "paperless office" carries with it the potential to use less paper, it does not mean having no paper in the office.[17] For this reason, attorneys, parties and judges will have the option of paper on demand. Paper will continue to be a part of our lives but effective lawyers will find ways to make their law practice more efficient by using the OUCMS.

Although in a digital format, the form of documents will be relatively unchanged. E-documents, will to the extent practicable, be formatted in accordance with the applicable court rules governing formatting of conventional paper documents.[18] The sole exception is that the first page of an e-filed document will have a top margin of at least two inches to allow for the insertion of an electronic file stamp.[19] All e-documents will be filed in a textbased PDF format (i.e., the document will be converted from a Word or WordPerfect document into a PDF file on the user's computer).[20] Because text-based PDF documents are text searchable, a user will be able to use optical character recognition (OCR) software to perform high-volume searches of documents and records.[21] This feature is particularly advantageous in cases involving numerous volumes of transcripts, records or documents.

Generally, attachments and exhibits will also be filed in a text-searchable PDF format.[22] Where an attachment or document cannot be converted to a text-searchable PDF, then the attachment or exhibit will be submitted in a non-text

searchable PDF format (e.g., scan the attachment or exhibit with a scanner). Non-text images (i.e., photographs) may be submitted in a JPEG standard format.[23] Special provisions are made for attachments or exhibits which cannot be e-filed. In that circumstance, the filer will be required to append a notice of attachment not electronically filed to the principal e-document and forward a copy of that notice and the attachment under cover sheet to the clerk and other parties within 24 hours of the e-filing of the principal document.[24]

Parties will continue to pay filing fees and costs as before implementation of e-filing. However, the OUCMS will permit the payment of fees and costs to occur by credit card or other online method approved for use with the OUCMS.[25] Where appropriate, parties will be able to e-file a pauper's affidavit requesting a waiver of costs or filing fees in the same manner as prescribed by statute.[26] No longer will valuable time be spent standing in line to pay fees or costs.

A registered user will be able to submit proposed orders to the district court. The filer will submit the proposed order in an editable format via the OUCMS e-filing system. The proposed order will not become part of the court record. Once the judge finalizes the order, the order will be converted to a non-editable PDF document and filed in the official court record.[27]

The OUCMS may permit certain individuals and agencies associated with the courts to e-file. Bondsmen, jurors, process serves and CASA workers may be permitted to e-file.[28] Quick and easy access to these documents could benefit the parties and the court in certain actions.

Because information placed on the Internet is accessible by people across the globe, certain practices must be changed. Attorneys or parties that e-file have the same duty to review their documents for personal identifier information as set forth in Rule 31 of the Rules for the District Courts of Oklahoma.[29] Pleadings, papers, exhibits or other documents should not contain Social Security numbers, taxpayer identification numbers, financial account numbers or driver's license numbers.[30] However, this rule does not apply in felony cases, misdemeanor cases, traffic ticket cases or any other cases where statutory law or rules and forms promulgated by the Court of Criminal Appeals require the inclusion of the complete personal identifier number.[31]

Extra care will have to be taken in the filing of sealed documents. Before a document can be filed under seal, a registered user will be required to first obtain a court order authorizing such filing.[32] A filer will not e-file the document while a request for an order sealing is pending.[33] If the document or paper sought to be sealed is attached to the motion or application, then the purpose of sealing will be defeated as the document or paper will be viewable by the public.[34]

Certain case types (e.g., juvenile, adoption, mental health, etc.) will remain confidential.[35] The procedure for sealing documents will not be applicable to filings in these case types as any and all filings in the case will not be available for public viewing.[36]

It is likely that both the Oklahoma Supreme Court and the Oklahoma Court of Criminal Appeals will amend or implement additional rules governing e-filing.[37] State court practitioners will want to be attentive to such enactments in addition to familiarizing themselves with the Rules for E-filing in Selected Pilot Courts.

As with any other tool, determine how efiling will best benefit your practice and make a plan for its implementation into your office. The OUCMS will be here for many years to come and you will want to make effective use of this tool in both operating your practice and serving your clients. The frontier is wide and open in e-Oklahoma.

Author's note: The views expressed herein are those of the author, and do not necessarily reflect those of the Oklahoma Supreme Court, the Oklahoma Court of Criminal Appeals, the Administrative Office of the Courts, the E-Courts Committee or Judge Gary L. Lumpkin

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Declined to Follow by Baidoo v. Blood-Dzraku, N.Y.Sup., March 27, 2015

341 P.3d 38
Supreme Court of Oklahoma.

In re ADOPTION OF K.P.M.A.
Marshall Lee Andrews and Toni Michelle Andrews, Petitioners/Appellees,
v.
Billy McCall, Respondent/Appellant.

No. 111,905.
|
Oct. 14, 2014.
|
Rehearing Denied Nov. 16, 2014.

Synopsis
Background: Prospective adoptive parents filed a petition for termination of parental rights and a petition for adoption. The District Court, Rogers County, Erin L. Oquin, J., terminated father's parental rights. Father appealed. The Court of Civil Appeals affirmed. Father filed a petition for certiorari, which the Supreme Court granted.

Holdings: The Supreme Court, Combs, J., held that:

[1] father had a due process right to notice of child's existence;

[2] as a matter of first impression, a message sent by mother to putative father via a social-networking website did not satisfy the due process requirement that father receive notice of child's existence; and

[3] termination of father's parental rights was not supported by clear and convincing evidence.

Opinion of Court of Civil Appeals vacated, judgment of District Court reversed, and cause remanded.

Winchester, J., dissented and filed opinion in which Taylor and Gurich, JJ., joined.

West Headnotes (16)

[1] Appeal and Error
Cases Triable in Appellate Court

Whether an individual's procedural due process rights have been violated is a question of constitutional fact which the Supreme Court reviews de novo. U.S.C.A. Const.Amend. 14; Const. Art. 2, § 7.

Cases that cite this headnote

[2] Appeal and Error
Cases Triable in Appellate Court

De novo review requires an independent, non-deferential reexamination of another tribunal's legal rulings.

Cases that cite this headnote

[3] Infants
Dependency, Permanency, and Rights Termination

In examining whether there is sufficient evidence to support an order terminating parental rights, the Supreme Court will review the record for clear and convincing evidence to support the decision.

Cases that cite this headnote

[4] Infants
Dependency, Permanency, and Rights Termination

In examining whether there is sufficient evidence to support an order terminating parental rights, the Supreme Court must canvass the record to determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction that the grounds for termination were proven.

Cases that cite this headnote

[5] Adoption

Presumptions and burden of proof

When a party seeks adoption without parental consent, the burden rests on the party to show why consent may be dispensed with. 10 Okl.St.Ann. § 7505–4.2(C, D).

Cases that cite this headnote

[6] Adoption

Necessity of consent in general

Standard of proof necessary to establish any of the grounds to permit adoption without parental consent or for termination of parental rights is clear and convincing evidence. 10 Okl.St.Ann. § 7505–4.2(C, D).

Cases that cite this headnote

[7] Constitutional Law

Procedural due process in general

In determining whether an individual has been denied procedural due process, the Supreme Court engages in a two-step inquiry, asking (1) whether the individual possessed a protected interest to which due process protection applies and, if so, (2) whether the individual was afforded an appropriate level of process. U.S.C.A. Const.Amend. 14; Const. Art. 2, § 7.

Cases that cite this headnote

[8] Constitutional Law

Relationship to other constitutions

Oklahoma's due process clause has a definitional sweep that is coextensive with its federal counterpart. U.S.C.A. Const.Amend. 14; Const. Art. 2, § 7.

2 Cases that cite this headnote

[9] Constitutional Law

Relation to Constitutions of Other Jurisdictions

The states in exercise of their sovereign power may afford more expansive individual rights and liberties than those conferred by the United States Constitution.

Cases that cite this headnote

[10] Constitutional Law

Children out-of-wedlock; paternity

Parent and Child

Paternity in general

Putative father of child born out of wedlock had a due process right to notice of child's existence so as to allow father a chance to exercise his opportunity interest in developing a relationship with child. U.S.C.A. Const.Amend. 14; Const. Art. 2, § 7.

Cases that cite this headnote

[11] Parent and Child

Care, Custody, and Control of Child; Child Raising

Generally, parents have a fundamental right to raise their own children, and this right is protected by the United States and Oklahoma Constitutions.

Cases that cite this headnote

[12] Adoption

Natural Parents, Necessity of Consent in General

Adoption

Presumptions and burden of proof

Law presumes that consent of a child's natural parents is necessary before an adoption may be effected; in certain situations, however, the consent of only one natural parent and not the other is acceptable. 10 Okl.St.Ann. § 7501–1.1 et seq.

Cases that cite this headnote

[13] Adoption

Abandonment, Desertion, Neglect, or Nonsupport Forfeiting Parent's Rights

Constitutional Law

Removal or termination of parental rights

Message sent by mother to putative father via a social-networking website that mother

was pregnant and planned to give up child for adoption did not satisfy the due process requirement that father receive notice of child's existence so as to allow father to exercise his opportunity interest in developing a relationship with child, for the purpose of determining whether father's parental rights could be terminated incident to adoption for failure to exercise that interest; nothing indicated that more direct contact with father was impossible, and notice via the website was not reasonably certain to inform those affected but, rather, was mere gesture. U.S.C.A. Const.Amend. 14; Const. Art. 2, § 7; 10 Okl.St.Ann. § 7505–2.1(D).

Cases that cite this headnote

[14] Constitutional Law

Notice and Hearing

Notice and opportunity lie at the heart of due process. U.S.C.A. Const.Amend. 14; Const. Art. 2, § 7.

Cases that cite this headnote

[15] Courts

Decisions of United States Courts as Authority in State Courts

Although pronouncement of a federal law question by an inferior federal court is not binding on the Oklahoma Supreme Court, it is persuasive; it is also instructive in providing guidance on similar state law questions.

Cases that cite this headnote

[16] Adoption

Necessity of consent in general

Termination of father's parental rights incident to adoption was not supported by clear and convincing evidence; nothing in the record indicated that trial court ever made a determination that termination of father's parental rights was in child's best interest, and the record had essentially no information about father's attempts to exercise parental rights and duties towards child after father received the due process-required notice of child's existence. U.S.C.A. Const.Amend. 14; Const. Art. 2, § 7; 10 Okl.St.Ann. §§ 7505–2.1(D), 7505–4.2(C).

Cases that cite this headnote

***39 CERTIORARI TO THE COURT OF CIVIL APPEALS, DIVISION 3, ON APPEAL FROM THE DISTRICT COURT OF ROGERS COUNTY, STATE OF OKLAHOMA, HONORABLE ERIN L. OQUIN**

¶ 0 Natural father of minor child K.P.M.A. sought review of the trial court's termination of his parental rights on the grounds provided within 10 O.S.2011 § 7505–4.2. The Court of Civil Appeals, Division III, affirmed. This Court granted certiorari and determines that termination of the natural father's parental rights was improper because the natural father's due process rights were violated and the termination of the natural father's parental rights was not supported by clear and convincing evidence.

COURT OF CIVIL APPEALS OPINION VACATED; JUDGMENT OF THE TRIAL COURT IS REVERSED; CAUSE REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION

Attorneys and Law Firms

Rebecca A. Murphy and David G. Francy, Patterson Law Firm, Tulsa, OK, for Petitioners/Appellees.

***40** Gregory J. Denney, Gregory J. Denney & Associates, P.C., Tulsa, OK, for Respondent/Appellant.

Opinion

COMBS, J:

¶ 1 This cause concerns the termination of parental rights of Respondent/Appellant Billy McCall (Father) to the minor child K.P.M.A. (Child). Child was born out-of-wedlock to T.Z. (Mother) on June 21, 2012. Prospective adoptive parents, Petitioners/Appellees Marshall Lee Andrews and Toni Michelle Andrews (Appellees), have had physical custody of the child since she was released from the hospital after birth. The questions presented are: 1) whether Father's due process rights were violated; 2) whether Father received ineffective assistance of counsel during the termination proceedings; and 3) whether the trial court's determination was supported by clear and convincing evidence.

I.

FACTS AND PROCEDURAL HISTORY

¶ 2 Appellees filed a Petition for Termination of Parental Rights of Natural Parents on June 27, 2012, and a Petition for Adoption on August 14, 2012. Mother voluntarily relinquished her parental rights on August 14, 2012, and is not a party to this appeal. Mother named Father as the putative father [1] of the child, and notice was sent to Father pursuant to 10 O.S.2011 § 7505–4.1(C). Father filed a Response to Petition for Adoption and Petition for Termination of Natural Father in which he: 1) claimed paternity of the child; 2) stated he first learned of Mother's pregnancy and the birth of the child when he was served a summons in a guardianship proceeding for the child in Rogers County, Oklahoma (PG–2012–51); and 3) claimed he visited the child for several months after birth and also contributed support money for the child to Appellants in the amount of $250.00 per month after the child's birth.

¶ 3 The trial court held a hearing on the motion to terminate Father's parental rights on May 22, 2013. The record indicates that Mother and Father met on July 4, 2011, and engaged in sexual intercourse several times over the following months, beginning in August of 2011. Father testified that though they were friends, they were never in a romantic relationship. The record indicates that the last sexual encounter between Father and Mother occurred sometime in either September or October of 2011, and Father testified that he made no attempt to contact mother after that event.

¶ 4 The only apparent meeting between Father and Mother between their last sexual encounter and the birth of the child occurred in December of 2011, when Mother allegedly came to Father's workplace to see him. Mother did not mention pregnancy or the possibility of pregnancy and Father also did not enquire as to whether Mother was or might be pregnant.

¶ 5 It is evident from the record that at some point prior to the birth of the child Mother sent Father a message via Facebook informing him that she was pregnant and planning to give the child up for adoption. What is not clear from the record is exactly when Father received this message. Father testified that at some point in July of 2012 he attempted to contact Mother by Facebook, and in the process of doing so noticed for the first time the message Mother sent informing him of her pregnancy. Father testified he did not know how old the message was when he read it. Father later testified during cross examination that he first found out about the child's existence seven days after birth, June 21, 2012.

¶ 6 The trial court refused to allow any testimony from Father concerning his participation in guardianship proceedings concerning ***41** the child. Relying in part on this Court's decision in *Steltzlen v. Fritz,* 2006 OK 20, 134 P.3d 141, the trial court determined that when Father actually found out about the pregnancy and birth of the child was irrelevant, as the burden was on Father to determine if he might have fathered a child and to exercise his parental rights pursuant to 10 O.S.2011 § 7505–4.2(C). At the conclusion of Father's testimony, Mother moved for a directed verdict to terminate Father's parental rights. Father did not object or respond to the motion. The trial court sustained the motion for a directed verdict.

¶ 7 Father retained new appellate counsel and filed a Petition in Error on June 24, 2013. Father included with his Petition in Error a signed and certified order of the trial court terminating his parental rights that was filed on June 21, 2013. This order does not appear elsewhere in the record and Appellees assert the order was never sent to the parties and that proof of service was requested but never provided. Appellees assert that because Father's order was never provided to the other parties, a second order was drafted and circulated among the parties that attended the termination hearing, was signed and then filed on August 5, 2013. This order is also not included anywhere in the record on appeal. Appellees further claim they received no notice of the appeal until January 13, 2014, after this Court issued an order determining that Appellees' answer brief had not been timely filed pursuant to Oklahoma Supreme Court Rule 1.10(c)(3). Appellees filed their answer brief on January 21, 2014, but objected to their lack of notice. [2]

***42** ¶ 8 On appeal, Father asserted several errors including improper notice and ineffective assistance of counsel. Father also challenged the trial court's decision to limit his testimony concerning his attempts to exercise parental rights prior to service of the adoption proceedings. In an unpublished opinion filed on April 11, 2014, the Court of Civil Appeals affirmed the trial court's termination of Father's parental rights. The Court of Civil Appeals determined that Father waived his right to challenge the validity of service of process by reserving an additional twenty (20) days in which to answer pursuant to 12 O.S.2011 § 2012(A)(1)(b). The Court

also determined that the application to terminate Father's parental rights was sufficient to put Father on notice of the grounds for termination.

¶ 9 The Court of Civil Appeals agreed with the trial court's reasoning that Father's actions after the birth of the child were irrelevant, as Father's testimony showed that mother informed him of the pregnancy and plans for adoption while she was still pregnant and Father did nothing. The Court of Civil Appeals apparently took for granted that Mother's attempt to contact Father via Facebook constituted informing Father, and appears to ignore the fact that Father had asserted since the start of these proceedings that he did not see the message and did not know he had fathered a child until after the birth. The Court of Civil Appeals determined:

> Mother specifically informed Father she was pregnant at some point later during the course of her pregnancy, clearly triggering Father's obligation to provide support. Father simply failed to act on that information as the statute requires of a putative father intent on protecting his parental rights.

Unpublished Opinion of the Oklahoma Court of Civil Appeals, Division III, ¶ 14 (April 11, 2014).

¶ 10 The Court of Civil Appeals also rejected Father's ineffective assistance of counsel argument. The Court of Civil Appeals determined that Father was required to show both the attorney's performance was deficient and that it prejudiced his case, and at the very least Father failed to meet the latter requirement, as Father's own testimony was that Mother informed him of the pregnancy while she was pregnant and his own testimony confirmed he failed to assert his parental rights by contributing to Mother's support as required by 10 O.S.2011 § 7505–4.2(C)(1).

¶ 11 Father filed a Petition for Certiorari on May 1, 2014, asserting that the Court of Civil Appeals erred by wrongly construing the evidence to read that Father knew of the pregnancy before birth, simply because Mother allegedly notified him of it by Facebook. Further, father also argues his procedural due process rights protected by U.S. Const. amend. XIV, § 1; Okla. Const., art. 2, § 7 have been violated because the statutes place the burden of discovering the pregnancy on Father, and he was not allowed the opportunity to present evidence regarding steps he took to protect his parental rights after he learned of the child's existence. Finally, Father reasserts that he received ineffective assistance of counsel. This Court granted Father's Petition for Certiorari on June 30, 2014, and the cause was assigned to this office on July 1, 2014.

II.

STANDARDS OF REVIEW

[1] **[2]** ¶ 12 Whether an individual's procedural due process rights have been violated is a question of constitutional fact which this Court reviews *de novo*. *Pierce v. State ex* ***43** *rel. Dept. of Public Safety*, 2014 OK 37, ¶ 7, 327 P.3d 530; *In re A.M. & R.W.*, 2000 OK 82, ¶ 6, 13 P.3d 484. *De novo* review requires an independent, non-deferential re-examination of another tribunal's legal rulings. *Pierce*, 2014 OK 37, ¶ 7, 327 P.3d 530; *In re A.M.*, 2000 OK 82, ¶ 6, 13 P.3d 484; *Neil Acquisition, L.L.C. v. Wingrod Inv. Corp.*, 1996 OK 125, n. 1, 932 P.2d 1100.

[3] **[4]** ¶ 13 In examining whether there is sufficient evidence to support an order terminating parental rights, this Court will review the record for clear and convincing evidence in support of the decision to terminate. *In re C.D.P.F.*, 2010 OK 81, ¶ 6, 243 P.3d 21; *In re S.B.C.*, 2002 OK 83, ¶¶ 5–7, 64 P.3d 1080. This Court must canvass the record to determine whether the evidence is such that a factfinder could reasonably form a firm belief or conviction that the grounds for termination were proven. *In re C.D.P.F.*, 2010 OK 81, ¶ 6, 243 P.3d 21; *In re S.B.C.*, 2002 OK 83, ¶ 6, 64 P.3d 1080. Our appellate review does not require a re-weighing of the evidence presented at trial. *In re C.D.P.F.*, 2010 OK 81, ¶ 6, 243 P.3d 21.

III.

ANALYSIS

¶ 14 Proceedings to terminate parental rights incident to adoption are governed by the Oklahoma Adoption Code, found within 10 O.S. § 7501–1.1 *et seq.* Title 10 O.S.2011 § 7503–2.1 governs who may consent to the adoption of a minor child and provides in pertinent part:

A. A minor may be adopted when there has been filed written consent to adoption or a permanent relinquishment for adoption executed by:

1. Both parents of the minor;

2. One parent of the minor, alone, if:

a. the other parent is dead,

b. the parental rights of the other parent have been terminated, or

c. the consent of the other parent is otherwise not required pursuant to Section 7505–4.2 of this title;

The requirements for preadoption termination of the parental rights of a putative father or parent of a child are set out within 10 O.S.2011 § 7505–2.1. Title 10 O.S.2011 § 7505–2.1(A)(1) provides in pertinent part:

> [p]rior to the filing of a petition for adoption, a child-placing agency, attorney, or prospective adoptive parent to whom a parent having legal custody has executed a consent to adoption or has permanently relinquished a minor born out of wedlock may file a petition for the termination of the parental rights of a putative father or a parent of the child.

Title 10 O.S.2011 § 7505–2.1(D) further provides, in pertinent part:

D. At the hearing on the petition to terminate parental rights brought pursuant to this section, the court may, if it is in the best interest of the minor:

1. Accept a permanent relinquishment or consent to adoption executed by the putative father or parent of the minor pursuant to Sections 7503–2.1, 7503–2.3 and 7503–2.4 of this title; or

2. Terminate any parental rights which the putative father or parent may have upon any of the grounds provided in Section 7505–4.2 of this title for declaring a consent unnecessary.

¶ 15 Title 10 O.S.2011 § 7505–4.2 sets out the possible exceptions to the requirement for parental consent. Specifically, 10 O.S.2011 § 7505–4.2(C) & (D) provide:

C. Consent to adoption is not required from a father or putative father of a minor born out of wedlock if:

1. The minor is placed for adoption within ninety (90) days of birth, and the father or putative father fails to show he has exercised parental rights or duties towards the minor, including, but not limited to, failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy; or

2. The minor is placed for adoption within fourteen (14) months of birth, and the father or putative father fails to show that he has exercised parental rights or duties towards the minor, including, but not limited to, failure to contribute to the support of the minor to ***44** the extent of his financial ability, which may include consideration of his failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy. Failure to contribute to the support of the mother during her term of pregnancy shall not in and of itself be grounds for finding the minor eligible for adoption without such father's consent.

The incarceration of a parent in and of itself shall not prevent the adoption of a minor without consent.

D. In any case where a father or putative father of a minor born out of wedlock claims that, prior to the receipt of notice of the hearing provided for in Sections 7505–2.1 and 7505–4.1 of this title, he had been specifically denied knowledge of the minor or denied the opportunity to exercise parental rights and duties toward the minor, such father or putative father must prove to the satisfaction of the court that he made sufficient attempts to discover if he had fathered a minor or made sufficient attempts to exercise parental rights and duties toward the minor prior to the receipt of notice. (Emphasis Added).

[5] **[6]** ¶ 16 The burden rests on the party who seeks adoption without parental consent to show why consent may be dispensed with. *Steltzlen v. Fritz,* 2006 OK 20, ¶ 12, 134 P.3d 141; *In re Adoption of C.M.G.,* 1982 OK 156, 656 P.2d 262. The standard of proof necessary to establish any of the grounds to permit adoption without consent, or for termination of parental rights is clear and convincing evidence. *Steltzlen,* 2006 OK 20, ¶ 12, 134 P.3d 141; *In re Darren Todd. H.,* 1980 OK 119, ¶ 10, 615 P.2d 287.

A. Pursuant to U.S. Const. amend. XIV, § 1; Okla. Const., art. 2, § 7, Father possessed a constitutionally-protected opportunity interest in his ability to develop a relationship with his child that incorporated a right to notice of the child's existence.

[7] [8] [9] ¶ 17 Both the United States Constitution and the Oklahoma Constitution provide that no person shall be deprived of life, liberty or property without due process of law. U.S. Const. amend. XIV, § 1; Okla. Const., art. 2, § 7.[3] In determining whether an individual has been denied procedural due process this Court engages in a two-step inquiry. First, this Court asks whether the individual possessed a protected interest to which due process protection applies and if so, whether the individual was afforded an appropriate level of process. *Thompson v. State ex rel. Bd. of Trustees of Oklahoma Public Employees Retirement System,* 2011 OK 89, ¶ 16, 264 P.3d 1251; *In re A.M.,* 2000 OK 82, ¶ 7, 13 P.3d 484.

[10] [11] [12] ¶ 18 The first prong of this Court's inquiry must focus on the nature of Father's protected interest. Generally, parents have a fundamental right to raise their own children, and this right is protected by the United States and Oklahoma Constitutions. *In re Adoption of Baby Boy K.B.,* 2011 OK 94, ¶ 8, 264 P.3d 1258; *Kelley v.* ***45** *Kelley,* 2007 OK 100, ¶ 8, 175 P.3d 400. If, for whatever reason, a child's parents are unable to care for the child, adoption is a viable alternative. *In re Adoption of Baby Boy K.B.,* 2011 OK 94, ¶ 8, 264 P.3d 1258. The importance of the right to consent to an adoption has been recognized as an important right in and of itself. *In re Adoption of Baby Boy K.B.,* 2011 OK 94, ¶ 8, 264 P.3d 1258; *Steltzlen v. Fritz,* 2006 OK 20, ¶ 12, 134 P.3d 141; *Merrell v. Merrell,* 1985 OK 107, ¶ 7, 712 P.2d 35. The law presumes that consent of a child's natural parents is necessary before an adoption may be effected. *In re Adoption of Baby Boy K.B.,* 2011 OK 94, ¶ 8, 264 P.3d 1258; *Steltzlen,* 2006 OK 20, ¶ 12, 134 P.3d 141; *In re Adoption of C.D.M.,* 2001 OK 103, ¶ 13, 39 P.3d 802, *cert. denied* 535 U.S. 1054, 122 S.Ct. 1911, 152 L.Ed.2d 821 (2002). However, the consent of only one natural parent and not the other is acceptable in certain situations. *In re Adoption of Baby Boy K.B.,* 2011 OK 94, ¶ 8, 264 P.3d 1258.

¶ 19 In the seminal case of *Lehr v. Robertson,* 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983), the United States Supreme Court considered the floor of due process protection afforded by the United States Constitution to natural fathers seeking to exercise or protect their parental rights. The Court noted that there is a significant difference between a developed parent-child relationship, and a potential relationship such as the one a natural father might develop with a child born out of wedlock. *Lehr,* 463 U.S. at 261, 103 S.Ct. 2985. The Court stated:

> [w]hen an unwed father demonstrates a full commitment to the responsibilities of parenthood by "com[ing] forward to participate in the rearing of his child," *Caban* [*v. Mohammed*], 441 U.S. [380], at 392, 99 S.Ct. [1760], at 1768 [60 L.Ed.2d 297 (1979)], his interest in personal contact with his child acquires substantial protection under the due process clause. At that point it may be said that he "act[s] as a father toward his children." *Id.,* at 389, n. 7, 99 S.Ct., at 1766, n. 7. But the mere existence of a biological link does not merit equivalent constitutional protection.

Lehr, 463 U.S. at 261, 103 S.Ct. 2985.
The Court went on to characterize the nature of the natural father's interest as an opportunity interest:

> The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. If he fails to do so, the Federal Constitution will not automatically compel a state to listen to his opinion of where the child's best interests lie.

Lehr, 463 U.S. at 261, 103 S.Ct. 2985 (footnote omitted).
The Court in *Lehr* was therefore concerned with whether the statutory scheme at issue in that cause, New York's, adequately protected the father's opportunity to form such a relationship.

¶ 20 This Court's decision *In re Termination of Parental Rights of Biological Parents of Baby Boy W.,* 1999 OK 74, 988 P.2d 1270, applied the logic of *Lehr* to a cause involving the termination of a natural father's parental rights under Oklahoma's statutory scheme. In *Baby Boy W.,* the natural

father and mother went their separate ways after a relationship they had as university students. The natural father never inquired as to whether he had fathered a child, and neither party contacted the other despite knowledge of how to do so and knowledge of each other's whereabouts. *Baby Boy W.*, 1999 OK 74, ¶ 4, 988 P.2d 1270. When the mother found out she was pregnant she contacted an adoption agency and told them natural father was someone she met at a college party and she did not know his last name. *Baby Boy W.*, 1999 OK 74, ¶ 5, 988 P.2d 1270. A few days before the child's birth, the mother informed the agency of the natural father's full name and the agency advised the natural father of the hearing to terminate his parental rights. *Baby Boy W.*, 1999 OK 74, ¶ 7, 988 P.2d 1270. This was the first time the natural father knew he had fathered a child. The trial court granted the natural father's ***46** request for summary judgment and determined his consent was required for the adoption, and the agency appealed. *Baby Boy W.*, 1999 OK 74, ¶ 8, 988 P.2d 1270.

¶ 21 This Court agreed, holding that the natural father was denied the chance to grasp his paternal opportunity interest in contravention of due process. *Baby Boy W.*, 1999 OK 74, ¶ 2, 988 P.2d 1270. This Court stated:

> [father's] conduct was sufficient considering that Natural Mother failed to provide any information to him concerning her pregnancy. After Natural Mother ended the relationship with Natural Father in January, 1997, she knew how to make contact with him, but she never informed him that he was a father.

Baby Boy W., 1999 OK 74, ¶ 15, 988 P.2d 1270.

This Court unambiguously determined that the initial duty to inform the natural father of the pregnancy rested with the mother:

> **[u]nder the Due Process Clause, Natural Father had a right to notice of the fact that Natural Mother was pregnant and had given birth to his child. The duty to inform him rested initially with Natural Mother and later with the Agency.** Both failed to inform him despite the relative ease with which this could have been accomplished. In this regard, the Agency was no less to blame than Natural Mother in denying Natural Father notice of the child's existence.

Baby Boy W., 1999 OK 74, ¶ 16, 988 P.2d 1270 (emphasis added).

Finally, this Court declared:

> [n]otice and opportunity lie at the heart of due process. Natural Father was deprived of notice of the pregnancy and the birth of his child and thus the chance to grasp his parental opportunity interest in his child. Under these circumstances, his parental rights cannot be terminated and his consent is necessary for adoption.

Baby Boy W., 1999 OK 74, ¶ 19, 988 P.2d 1270.

¶ 22 The action in *Baby Boy W.* was brought a few days before significant changes made by the Legislature to the Oklahoma Adoption Code became effective. *Baby Boy W.*, 1999 OK 74, n. 2, 988 P.2d 1270. [4] Appellees assert that these changes collectively emphasize the duty of any natural father to attempt to discover if he has fathered a child. Amongst these changes, specific purposes for the Oklahoma Adoption Code were added and codified at 10 O.S. Supp.1998 § 7501–1.2. In pertinent part, 10 O.S.2011 § 7501–1.2(A) provides:

> [t]he purpose of the Oklahoma Adoption Code is to:
>
> ..
>
> 5. Affirm the duty of a male person who has sexual relations with a female person outside of marriage to be aware that a pregnancy might occur;
>
> 6. Affirm the duty of the biological father of a child who is to be born or who is born outside of marriage to exercise his parental responsibilities for the child. This includes the duty to inform himself about the existence and needs of any such child and to exercise parental responsibilities toward that child even before birth;

¶ 23 Since *Baby Boy W.* was decided, the Legislature has also changed the statutory requirements for determining whether a natural father's consent is required for adoption of a child born out of wedlock. At the time the underlying action of *Baby Boy W.* was commenced, the relevant provision was 10 O.S. Supp.1996 § 60.6 which provided in pertinent part:

[a] child under eighteen (18) years of age cannot be adopted without the consent of its parents, if living, except that consent is not required from:

..

3. The father or putative father of a child born out of wedlock if:

a. prior to the hearing provided for in Section 29.1 of this title, and having actual knowledge of the birth or impending ***47** birth of the child believed to be his child, he fails to acknowledge paternity of the child or to take any action to legally establish his claim to paternity of the child or to exercise parental rights or duties over the child, including failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy, or

b. at the hearing provided for in Section 29.1 of this title:

(1) he fails to prove that he is the father of the child, or

(2) having established paternity, he fails to prove that he has exercised parental rights and duties toward the child unless he proves that prior to the receipt of notice he had been specifically denied knowledge of the child or denied the opportunity to exercise parental rights and duties toward the child. As used in this subparagraph, specific denial of knowledge of the child or denial of the opportunity to exercise parental rights and duties toward the child shall not include those instances where the father or putative father fails to prove to the satisfaction of the court that he made a sufficient attempt to discover if he had fathered the child or to exercise parental rights and duties toward the child prior to the receipt of notice, or

c. he waives in writing his right to notice of the hearing provided for in Section 29.1 of this title, or

d. he fails to appear at the hearing provided for in Section 29.1 of this title if all notice requirements continued in or pursuant to Section 1131 of this title have been met.

The current relevant provision, found at 10 O.S.2011 § 7505–4.2, provides in pertinent part:

C. Consent to adoption is not required from a father or putative father of a minor born out of wedlock if:

1. The minor is placed for adoption within ninety (90) days of birth, and the father or putative father fails to show he has exercised parental rights or duties towards the minor, including, but not limited to, failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy; or

2. The minor is placed for adoption within fourteen (14) months of birth, and the father or putative father fails to show that he has exercised parental rights or duties towards the minor, including, but not limited to, failure to contribute to the support of the minor to the extent of his financial ability, which may include consideration of his failure to contribute to the support of the mother of the child to the extent of his financial ability during her term of pregnancy. Failure to contribute to the support of the mother during her term of pregnancy shall not in and of itself be grounds for finding the minor eligible for adoption without such father's consent.

The incarceration of a parent in and of itself shall not prevent the adoption of a minor without consent.

¶ 24 Importantly, however, the defense Father asserted at the hearing to terminate his parental rights, based on specific denial of knowledge of the child and currently located at 10 O.S.2011 § 7505–4.2(D), already existed in the statutes when *Baby Boy W.* was decided. At the time the cause of action in *Baby Boy W.* was commenced, the relevant provision was 10 O.S. Supp.1996 § 60.6(3)(b)(2). This provision provided that consent to adoption from the father of a child born out of wedlock was not needed if, at the hearing:

> having established paternity, he fails to prove that he has exercised parental rights and duties toward the child unless he proves that prior to the receipt of notice he had been specifically denied knowledge of the child or denied the opportunity to exercise parental rights and duties toward the child. As used in this subparagraph, specific denial of knowledge of the child or denial of the opportunity to exercise parental rights and duties toward the child shall

> not include those instances where the father or putative father fails to prove to the satisfaction of the court that he made a ***48** sufficient attempt to discover if he had fathered the child or to exercise parental rights and duties toward the child prior to the receipt of notice.

10 O.S. Supp.1996 § 60.6(3)(b)(2); *Baby Boy W.*, 1999 OK 74, ¶ 14, 988 P.2d 1270.

¶ 25 In *Baby Boy W.*, this Court noted that when the Oklahoma Adoption Code was created, this provision was recodified in 10 O.S. § 7505–4.2. *Baby Boy W.*, 1999 OK 74, ¶ 14, 988 P.2d 1270. In its current incarnation, 10 O.S.2011 § 7505–4.2(D) provides:

> [i]n any case where a father or putative father of a minor born out of wedlock claims that, prior to the receipt of notice of the hearing provided for in Sections 7505–2.1 and 7505–4.1 of this title, he had been specifically denied knowledge of the minor or denied the opportunity to exercise parental rights and duties toward the minor, such father or putative father must prove to the satisfaction of the court that he made sufficient attempts to discover if he had fathered a minor or made sufficient attempts to exercise parental rights and duties toward the minor prior to the receipt of notice.

An examination of the language of this provision indicates that it has remained substantially the same.

¶ 26 This Court's holding in *Baby Boy W.* indicates that because of due process concerns and the importance of Father being given a chance to exercise his opportunity interest, the requirements of 10 O.S.2011 § 7505–4.2(D) are met if the mother fails to inform a natural father of her pregnancy. That duty initially rests on her shoulders. This Court stated of the defense now found at 10 O.S. § 7505–4.2(D):

> This is the standard by which Natural Father's actions must be measured and that standard has been met ... His conduct was sufficient considering that Natural Mother failed to provide any information to him concerning her pregnancy.

Baby Boy W., 1999 OK 74, ¶ 15, 988 P.2d 1270.

¶ 27 In *Steltzlen v. Fritz*, 2006 OK 20, 134 P.3d 141, this Court revisited whether a natural father's consent was necessary for a child's adoption. In *Steltzlen*, this Court determined that the trial court did not abuse its discretion when it ruled that a child born out of wedlock was not eligible for adoption without the natural father's consent. 2006 OK 20, ¶ 1, 134 P.3d 141. The natural father and mother in *Steltzlen* had a brief sexual relationship while they worked together. 2006 OK 20, ¶ 3, 134 P.3d 141. Shortly after their last sexual contact, they ceased working together, and the natural father's next contact with the mother was when they ran into each other by chance when she was seven months pregnant. *Steltzlen*, 2006 OK 20, ¶ 4, 134 P.3d 141. The mother indicated it was possible that he might be the father, and the natural father offered to take a DNA test, which the mother declined. *Steltzlen*, 2006 OK 20, ¶ 4, 134 P.3d 141. Because of this and because he had no further contact from mother, the natural father believed he was not the father of the child. *Steltzlen*, 2006 OK 20, ¶ 4, 134 P.3d 141.

¶ 28 The natural father in *Steltzlen* only discovered he was the father a couple of years after the birth, when, similar to this cause, he received notice of guardianship proceedings. 2006 OK 20, ¶ 7, 134 P.3d 141. The natural father immediately became involved, paternity was established by DNA testing, and he contested the petition for adoption of the child without his consent. *Steltzlen*, 2006 OK 20, ¶ 10, 134 P.3d 141. The trial court denied the adoption petition and the prospective adoptive parents appealed.

¶ 29 This Court reiterated its decision in *Baby Boy W.*, and stressed the importance of the natural father receiving notification. *Steltzlen*, 2006 OK 20, ¶ 10, 134 P.3d 141. Specifically, this Court stated:

> [i]t is not disputed that after the chance meeting at the thrift store, mother did nothing further to contact the father, to let him know that the child had been born or that he was the father of the child. Mother essentially turned the custody and care of [the child] over to the petitioner and her daughter. It is not disputed that neither the petitioner nor

> [mother's roommate], though they had assumed the care and responsibility for raising the child, attempted ***49** to contact the father until they sought to become [the child's] guardians. In *In re Biological Parents of Baby Boy W,* 1999 OK 74, 988 P.2d 1270, we said that under the due process clause, the father had a right to notice of the fact that the mother was pregnant and had given birth to his child. The duty to inform the father rests initially with the mother, and later with the adoption agency, but both failed to inform him, despite the relative ease with which this could have been accomplished. 988 P.2d at 1274. We said that the adoption agency in that case was no less to blame than the mother in denying the father notice of the child's existence. *Id.* We affirmed the trial court's determination that the natural father did everything he reasonably could have done under the circumstances and that his conduct was sufficient considering that the natural mother failed to provide any information to him concerning her pregnancy. We held that the natural Mother's actions constituted specific denial of knowledge of the child and offered a complete defense to the termination of father's parental rights.

Steltzlen, 2006 OK 20, ¶ 16, 134 P.3d 141.

¶ 30 A core element to this Court's decisions in both *Steltzlen* and *Baby Boy W.* is that a distinction exists between: 1) causes where the natural fathers of children born out of wedlock failed to seize their parental opportunity interest when the opportunity was presented to do so [5]; and 2) causes involving a father's allegation that he was denied the chance to seize that opportunity interest because he never knew about the child. *Steltzlen,* 2006 OK 20, ¶ 17, 134 P.3d 141. Stated another way, *Lehr* held that natural fathers possess a constitutionally-protected opportunity interest in the ability to develop a relationship with their children born out of wedlock that they must choose to pursue if they desire legal protection of that interest. *Lehr,* 463 U.S. at 262, 103 S.Ct. 2985. Pursuant to *Baby Boy W.* and *Steltzlen,* this Court has determined that natural fathers in Oklahoma are denied due process when their parental rights are terminated despite them never being given a chance to pursue their opportunity interest because they were never given notice of the child's existence. *See Steltzlen,* 2006 OK 20, ¶ 16–17, 134 P.3d 141; *Baby Boy W.,* 1999 OK 74, ¶ 2, 988 P.2d 1270.

¶ 31 Though in *Steltzlen* this Court noted the purposes added to the Oklahoma Adoption Code at 10 O.S.2011 § 7501–1.2, this Court did not deviate from its determination in *Baby Boy W.* that the initial burden to notify the natural father rested with the mother because of due process concerns. Under the specific facts of *Steltzlen,* the natural father discovered the pregnancy when he ran into the mother at a thrift store while she was seven months pregnant. She told him at that time the child might be the product of their sexual relationship, and he offered to take a DNA test, which she refused. *Steltzlen,* 2006 OK 20, ¶ 4, 134 P.3d 141. The Court reiterated its holding in *Baby Boy W.,* that under the due process clause, father had a right to notice of the fact that the mother was pregnant and had given birth to his child. *Steltzlen,* 2006 OK 20, ¶ 16, 134 P.3d 141 (citing *Baby Boy W.,* 1999 OK 74, 988 P.2d 1270).

¶ 32 More recently, in *In re Adoption of Baby Boy K.B.,* 2011 OK 94, 264 P.3d 1258, this Court once again referenced its decision in *Baby Boy W.* and specifically stressed the importance of a natural father being given the chance to seize his opportunity interest by being notified of the existence of the child. *Baby Boy K.B.,* 2011 OK 94, ¶ 8, 264 P.3d 1258. These decisions are all in accord that, in Oklahoma, the natural father of a child born out of wedlock is entitled to notice of the existence of the child so that the natural father has a chance to exercise his opportunity interest in developing a relationship with the child. [6]

*50 B. Notice provided only via Facebook does not satisfy the notice requirements of U.S. Const. amend. XIV, § 1 and Okla. Const., art. 2, § 7.

[13] **[14]** ¶ 33 Having established that Father was constitutionally entitled to notice of the existence of the child before his rights could be terminated for failure to exercise his opportunity interest, this Court must now determine whether Father received that notice. In other words, was Father afforded appropriate due process. *In re A.M. & R.W.,* 2000 OK 82, ¶ 7, 13 P.3d 484. [7] Notice and opportunity lie at the heart of due process. *Baby Boy W.,* 1999 OK 74, ¶

19, 988 P.2d 1270. *See Shamblin v. Beasley,* 1998 OK 88, n. 32, 967 P.2d 1200; *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Appellees assert that Father was provided notice of the pregnancy by Mother via Facebook, though Father claims he did not see the message until after the child's birth.

¶ 34 The classic statement of constitutionally adequate notice is that which is reasonably calculated, under the circumstances, to inform interested persons of the pending litigation and to afford them an opportunity to advocate their interest in the cause. *Booth v. McKnight,* 2003 OK 49, ¶ 20, 70 P.3d 855. This statement has its origin in the United States Supreme Court Case *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). In *Mullane,* the Court determined that when notice is a person's due, process which is a mere gesture is not due process. 339 U.S. at 315, 70 S.Ct. 652. The Court further stated:

> The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, compare *Hess v. Pawloski,* 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091 [(1927)], with *Wuchter v. Pizzutti,* 276 U.S. 13, 48 S.Ct. 259, 72 L.Ed. 446, 57 A.L.R. 1230 [(1928)], or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.

Mullane, 339 U.S. at 315, 70 S.Ct. 652.

[15] ¶ 35 This Court does not believe that attempts to provide notice via Facebook comport with the requirements of due process. While the adequacy of Facebook as a means of providing notice in a due process context is an issue of first impression in Oklahoma, to date only one federal court—of at least three that have considered the issue—has allowed service of process via Facebook and even then **only** as a supplementary means of providing notice. [8]

***51** ¶ 36 Nothing in the record of this cause indicates that more direct contact with Father was impossible so that Mother was required to rely upon an indirect method such as Facebook to notify him of her pregnancy. Indeed, the record indicates she came to Father's workplace to see him roughly six weeks after their last sexual encounter. There is no indication in the record she knew she was pregnant at the time, and it is quite possible that she did not know, however it does demonstrate she knew where to find Father to talk to him in person and had no qualms about doing so. The record does not indicate she made any effort to visit Father again after this date, while he was still employed, to tell him of the pregnancy. The record also does not indicate Mother made any other reasonable effort to contact Father directly and notify him. Mother was present at the hearing due to Father's subpoena, and might have been able to provide further detail regarding her efforts to contact father, were it not for the trial court's erroneous decision to grant Appellees' motion for a directed verdict.

¶ 37 Instead of contacting Father directly, Mother left him a message on Facebook, which is an unreliable method of communication if the accountholder does not check it regularly or have it configured in such a way as to provide notification of unread messages by some other means. This Court is unwilling to declare notice via Facebook alone sufficient to meet the requirements of the due process clauses of the United States and Oklahoma Constitutions because it is not reasonably certain to inform those affected. *Booth,* 2003 OK 49, ¶ 20, 70 P.3d 855; *Mullane,* 339 U.S. at 315, 70 S.Ct. 652. It is, rather, a mere gesture. *Mullane,* 339 U.S. at 315, 70 S.Ct. 652.

C. Termination of Father's parental rights was not supported by clear and convincing evidence.

[16] ¶ 38 Because of the truncated hearing on Appellee's petition to terminate Father's parental rights, there is a dearth of evidence in the record. It cannot be ascertained with certainty when Father actually learned he had fathered a child. It cannot be fully ascertained what actions Father may have taken to exercise his opportunity interest to develop a relationship with the child and exercise his parental rights after he knew of the child's existence. Pursuant to 10 O.S.2011 § 7505–2.1(D), in order to terminate Father's parental rights the trial court was required to determine that clear and convincing evidence indicated: 1) that termination of Father's parental rights was in the best interests of the child; and 2)

termination under one of the grounds provided in 10 O.S.2011 § 7505–4.2 was appropriate.

¶ 39 There is nothing in the record before this Court to indicate the trial court ever made a determination that termination of Father's parental rights was in the best interest of the child, pursuant to 10 O.S.2011 § 7505–2.1(D). Further, the record contains essentially no information concerning Father's ***52** attempts to exercise parental rights and duties towards the child after he received the constitutionally-required notice of the child's existence. The grounds for termination provided for in 10 O.S.2011 § 7505–4.2(C) require consideration of more factors than just the extent of Father's support of the mother during pregnancy. *See In re Adoption of Baby Boy K.B.*, 2011 OK 94, ¶ 13, 264 P.3d 1258. Because of the dearth of evidence in the record, this Court cannot say that clear and convincing evidence is present in the record such that a trier of fact could reasonably form a firm belief or conviction that the grounds for termination were proven. *In re C.D.P.F.*, 2010 OK 81, ¶ 6, 243 P.3d 21; *In re S.B.C.*, 2002 OK 83, ¶ 6, 64 P.3d 1080. Rather, because it made an erroneous legal conclusion regarding Father's due process rights, the trial court prematurely cut off the gathering of evidence.

IV.

CONCLUSION

¶ 40 Pursuant to this Court's decision in *Baby Boy W.* and its progeny, Father had a right, under the Due Process Clause, to notice of the fact that Mother was pregnant with his child. 1999 OK 74, ¶ 16 & ¶ 19, 988 P.2d 1270. *See Steltzlen*, 2006 OK 20, ¶ 16, 134 P.3d 141; *Baby Boy K.B.*, 2011 OK 94, ¶ 8, 264 P.3d 1258. Mother allegedly informing Father of her pregnancy via a Facebook message was insufficient to satisfy the notice requirement of due process. *Booth*, 2003 OK 49, ¶ 20, 70 P.3d 855; *Mullane*, 339 U.S. at 315, 70 S.Ct. 652.

¶ 41 The trial court erred as a matter of law by incorrectly determining that it made no difference when and if Father received notice of the pregnancy because the obligation to discover if he fathered a child was placed squarely on his shoulders. That determination was not in keeping with prior controlling decisions of this Court. Mother's failure to properly notify father of the pregnancy at any point constituted specific denial of knowledge of the child within the meaning of the language of 10 O.S.2011 § 7505–4.2(D). Father was deprived of notice of the pregnancy and the birth of his child and thus the chance to grasp his parental opportunity interest in his child. *Baby Boy W.*, 1999 OK 74, ¶ 19, 988 P.2d 1270. Under these circumstances, the termination of Father's parental rights pursuant to 10 O.S.2011 § 7505–4.2(C), based on his conduct when there is no clear and convincing evidence he had knowledge of the pregnancy or birth of the child, violated Father's right to due process under the Oklahoma and United States Constitutions.

¶ 42 Given the state of the record, there is not clear and convincing evidence to support a determination that termination of Father's parental rights was in the best interests of the child and that termination of those rights was appropriate pursuant to 10 O.S.2011 § 7505–4.2, in light of actions taken by Father after he learned of Mother's pregnancy and the child's existence. The trial court ruled on the termination of Father's parental rights prematurely by granting Appellees' Motion for a Directed Verdict, a ruling which was based upon an erroneous legal conclusion regarding Father's due process rights and the nature of his opportunity interest. This cause is hereby remanded to the trial court for proceedings consistent with this opinion. Given the state of the record and the fact that this cause is being remanded to the trial court, the Court does not address Father's claim of ineffective assistance of counsel.

COURT OF CIVIL APPEALS OPINION VACATED; JUDGMENT OF THE TRIAL COURT IS REVERSED; CAUSE REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION.

COLBERT, C.J., REIF, V.C.J., KAUGER, WATT, EDMONDSON, and COMBS, JJ., concur.

WINCHESTER (by separate writing), TAYLOR, and GURICH, JJ., dissent.

WINCHESTER, J., dissenting, with whom TAYLOR and GURICH, JJ. join:

¶ 1 Two conclusions by this Court appear to be unsupported and unsupportable by the record before this Court. I do not agree that the Father's due process rights were violated by the Mother's attempt to provide notice via Facebook. Nor do I agree that ***53** the judgment of the court was erroneous, given the facts that were uncontested and the statutes the trial court was obligated to follow.

I. THE BALANCING OF RESPONSIBILITY

¶ 2 The majority opinion cites the specific changes to the Oklahoma Adoption Code, and quotes 10 O.S.2011, § 7501–1.2(A), which provides:

> "A. The Legislature of this state believes that every child should be raised in a secure, loving home and finds that adoption is the best way to provide a permanent family for a child whose biological parents are not able or willing to provide for the child's care or whose parents believe the child's best interest will be best served through adoption. The purpose of the Oklahoma Adoption Code is to:
>
> ....
>
> "5. Affirm the duty of a male person who has sexual relations with a female person outside of marriage to be aware that a pregnancy might occur;
>
> "6. Affirm the duty of the biological father of a child who is to be born or who is born outside of marriage to exercise his parental responsibilities for the child. This includes the duty to inform himself about the existence and needs of any such child and to exercise parental responsibilities toward that child even before birth...."

¶ 3 The legislature has clearly pronounced its intent. The duty of the male who has sexual relations with a female is (1) to be aware that a pregnancy might occur and (2) to inform himself. He cannot complacently wait for the female to find him in the event of a pregnancy. In this case the Mother tried to inform the father. There was no evidence that he attempted to learn anything. After the legislature had made its intent known, the majority opinion still maintains that the responsibility of informing a father lies fully with the female.

¶ 4 The Father's testimony reveals that during the times they were having intercourse, the Mother was seventeen years old and he was twenty to twenty-one years old. He testified that he knew where she lived, knew her full name and had her telephone number. When asked, "What steps did you take to determine that she wasn't pregnant after you had intercourse the last time?" His answer was "None." He was also asked, "[D]id you ever attempt to contact her and she denied contact with you?" He answered, "No." He was asked how long it took for her to respond to him when he finally tried to contact her, he answered "within a day, maybe longer." No testimony indicates that knowledge about the Mother's pregnancy was kept from him.

¶ 5 At the conclusion of the testimony of the father, who was the only witness called to testify, the biological Mother's attorney moved for a directed verdict, which motion was joined by the petitioners. The court asked for a response from the other parties present, and received no objections. The court granted the motion, finding in support that the Father's own testimony proved he had failed prior to the child's birth to determine if a child was going to be born, and failed to support, according to his means, the Mother of the child through her living expenses, medical expenses, and maternity expenses. The court further found that the Father did not do anything to assert his rights as a father other than showing up for the guardianship. At that point the court found that the adoption should proceed without the consent of the Father and terminated his parental rights.

¶ 6 The transcript reveals that the trial court concluded the applicable law required the Father to inquire about whether the Mother had become pregnant. The judge and attorneys discussed 10 O.S.2011, § 7505–4.2(D), which provides:

> D. In any case where a father or putative father of a minor born out of wedlock claims that, prior to the receipt of notice of the hearing provided for in Sections 7505–2.1 and 7505–4.1 of this title, he had been specifically denied knowledge of the minor or denied the opportunity to exercise parental rights and duties toward the minor, such father or putative father must prove to the satisfaction of the court that he ***54** made sufficient attempts to discover if he had fathered a minor or made sufficient attempts to exercise parental rights and duties toward the minor prior to the receipt of notice.

No one argued that the Father was denied knowledge of the minor or denied an opportunity to exercise parental rights or duties.

¶ 7 Although the Father admits he had received notice of the child's birth on Facebook, he claims he did not see the notice until he tried to contact the Mother, on Facebook, regarding guardianship of the child. He testified he did not

know how old the message was. Facebook has two methods of sending information. A message may be posted to an area that all "friends" on Facebook may view it, or it may be posted to a private area that is more like an email. Either way, all messages are dated. The transcript does not identify which method the Mother used. The Father admitted they were Facebook "friends" and that he used that method to contact her when he found out about the guardianship. He acknowledged that Facebook contained a message to him from the Mother that she was pregnant and that she wanted to place the baby for adoption. The text of the message as the Father recalls was "something about I'm pregnant, little girl, I'm putting her up for adoption."

¶ 8 Admitting the message was there, the Father either saw it and ignored it, or did not see it and wishes the trial court to conclude that the pregnancy was kept from the father. The majority opinion concludes that the "Mother allegedly informing Father of her pregnancy via a Facebook message was insufficient to satisfy the notice requirement of due process." There is no "allegation" of a Facebook message as the majority opinion states. The Father admits there was a message. Either he had actual notice or he had constructive notice.

¶ 9 If this Court wishes to hold, as a matter of law, that notice was withheld from him, then 10 O.S.2011, § 7505–4.2(D) applies and the Father should have attempted to discover if he had fathered a child. If he had notice, then the Father should have taken action then to support the Mother during the process of her pregnancy. Either way, the Father's action or inaction supports the trial court's decision to terminate the Father's parental rights. Whether or not he actually viewed that message is not a question of law, it is a question of fact. Because the trial court was the fact finder, the court had the authority to decide whether the Father viewed that notice before the baby was born. Further, we are required to give deference to the trial court's view of the evidence and the assessment of the veracity of the witnesses.

¶ 10 The trial court recognized the Father's duty, pursuant to statute, (1) to be aware that a pregnancy might occur and (2) to inform himself. By his own testimony, he could have informed himself by contacting the Mother, and did not even attempt to. The majority opinion does not declare unconstitutional the obligation placed by the legislature on the Father, yet the majority opinion returns the full burden to the Mother regarding notice.

II. THE NOTICE REQUIREMENT

¶ 11 The majority opinion does not inform the biological mother precisely what notice is needed to satisfy this Court. The rule has been long accepted that, "Actual notice is the preferred method of satisfying due process requirements...." *In re Dana P.*, 1982 OK 140, ¶ 9, 656 P.2d 253, 255. The Facebook message was actual notice. The Father testified that Facebook was his method to contact the Mother after he learned of the guardianship and that he reached her within twenty-four hours. Why would Facebook be any less reliable than other forms of electronic communication? Does the Court require a face-to-face confrontation with witnesses? Face-to-face discussions can be denied; letters can remain unopened; and faxes can be lost.

¶ 12 *Osprey L.L.C. v. Kelly–Moore Paint Co.*, 1999 OK 50, ¶ 15, 984 P.2d 194, 199, held, "The purpose of providing notice by personal delivery or registered mail is to insure the delivery of the notice, and to settle any dispute which might arise between the parties concerning whether the notice was received. A substituted method of notice which performs the same function and serves the same ***55** purpose as an authorized method of notice is not defective." In the *Osprey* case, a lessee sent a fax to confirm a desire to continue a lease for another five years. The renewal terms stated that notice may be delivered either personally or by depositing the same in United States mail, first class postage prepaid, registered or certified mail, return receipt requested. The lessor even denied receiving the fax, but this Court recognized an electronic record showing that the fax activity report and telephone company records confirmed that the fax was transmitted successfully and that it was sent to Osprey's correct facsimile number. *Osprey*, 1999 OK 50, ¶ 6, 984 P.2d at 196. Actual notice satisfies due process just as formally approved methods do. The record contains an admission from the Father that his Facebook account contained notice. He just claims he did not read it.

¶ 13 Oklahoma law recognizes the efficacy of electronic transactions where parties to electronic transactions have agreed to transact business through that method. Forty-seven states, the District of Columbia, Puerto Rico, and the Virgin Islands have adopted the Uniform Electronic Transactions Act (UETA). Oklahoma has codified this act as 12A O.S.2011, §§ 15–101 through 15–121. Three states, Illinois, New York and Washington, which have not adopted the UETA have statutes pertaining to electronic transactions.

The UETA is found within the Uniform Commercial Code and applies to transactions. A transaction is defined as "an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs." The point is not whether the UETA applies to the case before the court; the relevance is that electronic transactions are deemed by all states to be dependable enough to bind parties in business, commercial and governmental affairs.

¶ 14 In addition, Facebook is a dependable method for communication, enough so that the Father admits that the mother and the Father chose to communicate through that method. What happened when he received service about the guardianship? The transcript says that when he initiated contact with the mother he did it through Facebook. There is no support for an argument that Facebook is less dependable as an actual notice than a fax, a letter or some form of email other than Facebook. Neither is there a sound argument that actual notice does not satisfy due process.

¶ 15 The trial court did not err as a matter of law by determining it made no difference when and if the Father received notice of the pregnancy if 10 O.S.2011, § 7505–4.2(D) means what it says, "such father or putative father must prove to the satisfaction of the court that he made sufficient attempts to discover if he had fathered a minor...." The requirement certainly is placed squarely on his shoulders, and this Court has cited no authority to show why such a statute would be unconstitutional. As I have previously said, either the Father was told and failed to act or was intentionally not told and failed to show any attempt to learn of a pregnancy. The majority view states that "Mother's failure to properly notify father of the pregnancy at any point constituted specific denial of knowledge of the child within the meaning of 10 O.S.2011, § 7505–4.2(D)." If that is so, then the father had a duty to find out pursuant to the very statute cited. Leaving all the responsibility to the mother is an archaic view of parenthood. The Father does not claim he did not know that his actions could produce a child. He testified to more than one occasion of sexual intercourse. The fact that he did nothing to find out shows a lack of responsibility.

¶ 16 The Court of Civil Appeals properly affirmed the judgment of the trial court.

All Citations

341 P.3d 38, 2014 OK 85

Footnotes

1 Title 10 O.S.2011 § 7501–1.3(12) provides:

> "Putative father" means the father of a minor born out of wedlock or a minor whose mother was married to another person at the time of the birth of the minor or within the ten (10) months prior to the birth of the minor and includes, but is not limited to, a man who has acknowledged or claims paternity of a minor, a man named by the mother of the minor to be the father of the minor, or any man who is alleged to have engaged in sexual intercourse with a woman during a possible time of conception.

2 A review of the record and filings reveals that Appellees' failure to receive notice of the appeal and appropriate documents is likely the result of an address change on the part of counsel for Appellees sometime prior to commencement of the appeal. Pursuant to 12 O.S.2011 § 2005.2(E), counsel for Appellees had a duty to notify the district court and other parties of any address change. Title 12 O.S.2011 § 2005.2 provides in pertinent part:

> D. ADDRESS OF RECORD. The address of record for any attorney or party appearing in a case pending in any district court shall be the last address provided to the court. The attorney or unrepresented party must, in all cases pending before the court involving the attorney or party, file with the court and serve upon all counsel and unrepresented parties a notice of a change of address. Any attorney or unrepresented party has the duty of maintaining a current address with the court. Service of notice to the address of record of counsel or an unrepresented party shall be considered valid service for all purposes, including dismissal of cases for failure to appear.
>
> E. NOTICE OF CHANGE OF ADDRESS. All attorneys and unrepresented parties shall give immediate notice to the court of a change of address by filing notice with the court clerk. If the attorney or unrepresented party has provided written consent to receive service by electronic means pursuant to subsection A of this section, or in another pleading, the attorney or party shall include a change of electronic mailing address as part of the notice required in this subsection. The notice of the change of address shall contain the same information required in the entry of appearance, shall be served on all parties, and a copy shall be provided to the assigned judge. If an attorney or an unrepresented party files an entry of appearance, the court will assume the correctness of the last address of

record until a notice of change of address is received. Attorneys of record who change law firms shall notify the court clerk and the assigned judge of the status of representation of their clients, and shall immediately withdraw, when appropriate.

On appeal, this same requirement is governed by Oklahoma Supreme Court Rule 1.5, 12 O.S. Supp.2013, Ch. 15, App. 1, which provides in pertinent part:

(c) Notice of Change of Address. All attorneys and parties representing themselves shall give immediate notice to the Clerk of the Supreme Court of a change of address, including email address, if applicable, using the form prescribed by Rule 1.301 Form No. 3. The notice of change of address shall be served on all parties. If an attorney or a party representing himself or herself files an entry of appearance, the Court will assume the correctness of the last address of record, as defined in section (d), or in the absence of such address change, the address stated in the entry of appearance until a notice of change of address is received.

(d) Address of Record. The address of record, including email address, if applicable, for any attorney or party appearing in a case pending before the Supreme Court, Court of Civil Appeals, or Court of Tax Review, shall be the last address provided to the court. The attorney or party representing himself or herself must, in all cases pending before the court involving the attorney or party, file with the court and serve upon all counsel and parties representing themselves a notice of a change of address. An address change made pursuant to this rule shall apply to all cases pending before the Supreme Court, Court of Civil Appeals, and the Court of Tax Review. The attorney or party representing himself or herself has the duty of maintaining a current address with the courts.

The original Petition for Termination of Parental Rights of Natural Parents filed by Appellees, and multiple subsequent filings, show an address for counsel of 1112 S. Boston Ave., Rogers, OK 74119. The first indication in the record that counsel for Appellees address was no longer this location is Appellees' Answer Brief to Appellant's Petition in Error, where Appellees first complained they were not notified of the appeal. No actual attempt to note a change of address appears in the filings until Appellees filed a Motion for Extension of Time to respond to Appellant's Petition for Certiorari because it was sent to the incorrect prior address. The Court would like to take this opportunity to stress that it is counsel's obligation to notify the courts and other parties of any change of address in order to prevent this sort of confusion from occurring.

3 Oklahoma's due process clause has a definitional sweep that is coextensive with its federal counterpart. *Gladstone v. Bartlesville Indep. School Dist. No. 30,* 2003 OK 30, n. 16, 66 P.3d 442; *Fair School Finance Council of Oklahoma, Inc. v. State,* 1987 OK 114, n. 48, 746 P.2d 1135. However, the States, in exercise of their sovereign power, may afford more expansive individual rights and liberties than those conferred by the United States Constitution. *Turner v. City of Lawton,* 1986 OK 51, ¶ 10, 733 P.2d 375. This Court stated in *Daffin v. State ex rel. Oklahoma Dept. of Mines,* 2011 OK 22, n. 20, 251 P.3d 741 (quoting *Alva State Bank and Trust Co. v. Dayton,* 1988 OK 44, ¶ 7, 755 P.2d 635 (Kauger, J., concurring specially)):

> "[T]he people of this state are governed by the Oklahoma Constitution, and when it grants a right or provides a principle of law or procedure beyond the protections supplied by the federal constitution, it is the final authority. **This is so even if the state constitutional provision is similar to the federal constitution.** [emphasis added]. The United States Constitution provides a **floor of constitutional rights**-state constitutions provide the ceiling. [emphasis in original].

This Court's holdings with regard to state constitutional questions are based on Oklahoma law, which provides *bona fide,* separate, adequate and independent grounds for our decision. *Daffin,* 2011 OK 22, n. 21, 251 P.3d 741; *Gaylord Entertainment Co. v. Thompson,* 1998 OK 30, ¶ 51, 958 P.2d 128; *Michigan v. Long,* 463 U.S. 1032, 1040–41, 103 S.Ct. 3469, 77 L.Ed.2d 1201 (1983).

4 1997 Okla. Sess. Laws Ch. 366 (H.B.1241) renamed the Oklahoma Adoption Act to the Oklahoma Adoption Code, renumbered the Code, and added or modified many provisions. The effective date for most of those changes was November 1, 1997.

5 *See, e.g., White v. Adoption of Baby Boy D.,* 2000 OK 44, 10 P.3d 212 (Petitioner was aware of pregnancy and birth of his child but "wholly failed to grasp even one of the many opportunities he had to establish [the] parental relationship.").

6 One jurist on the New York Court of Appeals explained the logic inherent in this approach:

> The man who has not been told of the pregnancy has few, if any, avenues of recourse.
>
> Indeed, although the majority has not hesitated to assign blame to petitioner because of what it terms his "inaction," it has not even begun to identify just what it is that petitioner might have done to fulfill his responsibilities in these circumstances. Does the majority mean to suggest that all men who engage in sexual intercourse with women to whom they are not married must remain in regular contact with them even after their relationships have terminated

> in order to ascertain whether there has been a pregnancy? Must they also make inquiries in the community or pursue alternative sources of information in order to definitively rule out the possibility that the relationship may have produced a child? ...
>
> Moreover, a rule that requires men to foist continued contact on women with whom they are no longer involved overlooks women's interest in preserving their own privacy after the relationship has been terminated.

Robert O. v. Russell K., 80 N.Y.2d 254, 590 N.Y.S.2d 37, 604 N.E.2d 99, 106 (1992) (TITONE, J., concurring).

7 It is necessary to point out that Father is not, on appeal, making a due process challenge in connection to the termination hearing itself. He was properly served and given the opportunity to appear at the hearing. Rather, he is asserting that his procedural due process rights were violated because the state stripped him of a protected opportunity interest that he never had the opportunity to exercise, because he did not have notice of it. In *Baby Boy W.,* 1999 OK 74, ¶ 19, 988 P.2d 1270, this Court determined that notice of the pregnancy was an inherent part of this protected opportunity interest.

8 In *F.T.C. v. PCCare247 Inc.,* No. 12 Civ. 7189(PAE), 2013 WL 841037 (S.D.N.Y. Mar. 7, 2013), the United States District Court for the Southern District of New York authorized, for the sake of thoroughness, service of process via Facebook in addition to email when all attempts to accomplish traditional service of process had failed. *PCCare247 Inc.,* 2013 WL 841037, at *5. The unreliability of this method is easily evident from the court's description:

> [t]he FTC would send a Facebook message, which is not unlike an email, to the Facebook account of each individual defendant, attaching the relevant documents. Defendants would be able to view these messages when they next log on to their Facebook accounts (and, depending on their settings, might even receive email alerts upon receipt of such messages)....
>
> To be sure, if the FTC were proposing to serve defendants *only* by means of Facebook, as opposed to using Facebook as a supplemental means of service, a substantial question would arise whether that service comports with due process.

PCCare247 Inc., 2013 WL 841037, at *5.

The Court readily acknowledged that service of Facebook was a relatively novel concept and that it was conceivable that the defendants would not in fact receive notice by that means, which is why it determined Facebook was only suitable as a supplementary form of service. *PCCare247 Inc.,* 2013 WL 841037, at *5.

Other federal courts have refused to go even so far as to allow Facebook as a supplementary means of satisfying the notice requirement of due process. *See Joe Hand Promotions, Inc. v. Carrette,* No. 12–2633–CM (D.Kan. July 9, 2013); *Joe Hand Promotions, Inc. v. Stephen Shepard,* No. 4:12cv1728 SNLJ (E.D.Mo. Aug. 12, 2013).

While pronouncement of a federal law question by an inferior federal court is not binding on this Court, it is persuasive. *Mehdipour v. State ex rel. Dept. of Corrections,* 2004 OK 19, ¶ 18, 90 P.3d 546; *Akin v. Missouri Pacific R. Co.,* 1998 OK 102, ¶ 30, 977 P.2d 1040. It is also instructive in providing guidance on similar state law questions. *Mehdipour,* 2004 OK 19, ¶ 18, 90 P.3d 546. *See Payne v. Dewitt,* 1999 OK 93, n. 6, 995 P.2d 1088.

355 P.3d 863
Court of Civil Appeals of Oklahoma,
Division No. 1.

Zachary Conan WILSON, Plaintiff/Appellee,
v.
Valerie Jo FRANEK, Defendant/Appellant,
and
State of Oklahoma ex rel., Department of Human Services, Third–Party Defendant.

No. 112,722.
Released for Publication by Order of the Court of Civil Appeals of Oklahoma, Division No. 1.
|
July 31, 2015.

Synopsis

Background: Custody of child was awarded to father by the District Court, Garfield County, Dennis Hladik, J., and mother appealed.

[Holding:] The Court of Civil Appeals, Robert D. Bell, J., held that evidence supported award of sole custody to father with expanded visitation for mother.

Affirmed.

West Headnotes (4)

[1] Child Custody
Welfare and best interest of child

In an initial custody determination, the trial court's paramount consideration is the child's best interests. 43 Okl.St.Ann. § 109.1.

Cases that cite this headnote

[2] Child Custody
Discretion

Child Custody
Questions of Fact and Findings of Court

An appellate court will not disturb the trial court's judgment regarding custody absent an abuse of discretion or a finding that the decision is clearly contrary to the weight of the evidence.

Cases that cite this headnote

[3] Child Custody
Burden of proof

In a custody dispute, the appealing party has the burden to show the trial court's decision is erroneous and contrary to the child's best interests.

Cases that cite this headnote

[4] Child Custody
Relative fitness

Evidence supported award of sole custody of child to father with expanded visitation for mother, even though mother had been child's primary caretaker since birth; father exhibited an enhanced interest in child's welfare and demonstrated his willingness to cooperate with any visitation order entered by court, and father appeared to be the best custodial parent to foster and encourage visitation with non-custodial parent.

Cases that cite this headnote

***863** Appeal from the District Court of Garfield County, Oklahoma; Honorable Dennis Hladik, Judge.
AFFIRMED.

Attorneys and Law Firms

Zachary Conan Wilson, Enid, Oklahoma, Pro se Plaintiff/Appellee.

Julia C. Rieman, Gungoll, Jackson, Box & Devoll, P.C., Enid, Oklahoma, for Defendant/Appellant.

Opinion

ROBERT D. BELL, Judge.

¶ 1 In this child custody matter, Defendant/Appellant, Valerie Jo Franek (Mother), appeals from the trial court's order awarding sole custody of the parties' minor child to Plaintiff/Appellee, Zachary Conan Wilson (Father), and granting expanded visitation to Mother. Mother contends the custody determination was a clear abuse of discretion and not in the minor child's best interests. We affirm the trial court's custody and visitation order.

¶ 2 The minor child was born September 27, 2012, and has resided with Mother since her birth. Father filed a paternity action requesting the determination of his paternity. Once his paternity was determined, Father requested that he be awarded joint custody of the child and visitation. Mother's response requested sole custody of the child and that Father be granted reasonable visitation. Mother also sought child support from Father. The State of Oklahoma, *ex rel.* the Department of Human Services (DHS) filed a cross-petition requesting an income assignment against Father for past and future child support because Mother received state aid to help support the child.

¶ 3 During a hearing on August 26, 2013, Mother was granted temporary custody of the child. Father was granted visitation two ***864** (2) hours of his choosing every Tuesday and Thursday. In November 2013, Mother filed a notice of proposed change of the child's residence from Enid, Oklahoma, to Prescott, Wisconsin. Father objected to the relocation of the minor child's residence.

¶ 4 The custody trial was held March 13, 2014. Mother testified she moved to Enid, Oklahoma, to live with her mother and step-father. She testified that she was attending college when she became pregnant. She finished one semester and then began working full time. After the child was born, Mother stated she desired to move back to Wisconsin where she would have family support and could pursue her education. While working in Oklahoma, Mother relied upon her mother for child care. Mother admitted she did not ask Father or the paternal grandmother to provide daycare or to babysit the child when Mother or maternal grandmother were unavailable. Instead, Mother relied on friends to babysit the child. Mother's evidence showed Father passed the hair follicle test, but failed the UA test for marijuana. Father testified that the UA was a false positive reading and that he was not currently using marijuana.

¶ 5 The evidence demonstrated that Father held five different jobs since the child's birth, but remained continuously employed. Father admitted he successfully completed probation on a 2010 criminal charge for knowingly concealing stolen property, but that he had no legal problems that would impact his ability to properly care for the child. He explained his mother and many aunts would assist him with the care of the child.

¶ 6 The primary issue of contention between these parties was Father's two-hour court-ordered visitation on Tuesdays and Thursdays. Father expressed his desire to cooperate with court ordered visitation. He testified Mother and the maternal grandmother denied him his court ordered visitation on several occasions. Mother testified that Father changed the times of his visitation at will, without any accommodation for Mother's work schedule or family plans. Father testified he sometimes changed the times of visitation due to work obligations. Father produced Facebook postings showing that Mother maintained a very active social schedule and often went out drinking and partying with friends. We understand that having a contentious relationship is difficult but a child is now involved. The parties need to “grow up” and focus on the best interest of the child.

¶ 7 At trial, the maternal grandmother testified both parties were good parents. She also described an altercation between her and Father which involved the police. The maternal grandmother stated she denied Father visitation with the child because he attempted to exercise visitation earlier than planned. Maternal grandmother admitted the altercation probably would not have occurred if she had allowed Father to see the child.

¶ 8 The evidence presented at trial included text messages between the parties which demonstrated their immaturity and bitterness towards each other. These texts also showed some attempts by the parties to reasonably communicate with regard to visitation exchanges of the child.

¶ 9 At the conclusion of trial, the trial court made numerous findings, including the finding that Mother “did not attach importance to” the court's temporary visitation order awarding Father two (2) hours every Tuesday and Thursday. The court found:

> On one occasion, [Mother] demanded that [Father] meet her in Stillwater, on another in OKC, on a third she refused because her family was in town, and on a fourth she and her mother refused. When he objected

> and arrived anyway at his requested time, police were called, and he was reported as a trespasser. Based on these incidents, this court doubts that she would have any respect for an order from an Oklahoma court once she relocates to Wisconsin.

Based on these findings, the court concluded:

> Given that each parent's ability to nurture and provide a stable home for [the child] appear to be equal, this court has an obligation to place custody in the parent demonstrating the most stability, the willingness to comply with this court's orders, ***865** and the willingness to make the child available to the noncustodial parent. It is clear that mother attaches no importance to this court's orders and will not make [the child] more available to Zachary than necessary. It is in the best interest of [the child] that legal custody be granted to Zachary.

¶ 10 To the extent Mother remained in Oklahoma, the court granted her generous visitation on alternating weeks, from 6 p.m. Sunday until the following Sunday at 6 p.m. The court further ordered that the other parent will be the first choice for daycare. In the event Mother moved to Wisconsin, Mother was granted expanded month long visitations. When the child begins kindergarten, the court granted Father custody during the school year, and granted Mother custody during the summer months. Mother now appeals from the trial court's custody determination.

[1] **[2]** **[3]** ¶ 11 In this action concerning the custody of a minor child of unmarried parties, the trial court is vested with the discretion to determine which parent should have custody of the child. 43 O.S.2011 § 109.2. In an initial custody determination, the trial court's paramount consideration is the child's best interests. *Daniel v. Daniel*, 2001 OK 117, ¶ 21, 42 P.3d 863, 871; 43 O.S.2011 § 109.1. "On appeal, this Court will not disturb the trial court's judgment regarding custody absent an abuse of discretion or a finding that the decision is clearly contrary to the weight of the evidence." *Daniel* at ¶ 21. As the appealing party, Mother has the burden to show the trial court's decision is erroneous and contrary to the child's best interests. *Id.*

[4] ¶ 12 On appeal, Mother contends the trial court abused its discretion in awarding Father sole custody of the minor child. She asserts this award was contrary to the clear weight of the evidence of the minor child's best interests. Specifically, Mother argues Father should not have sole custody of the child due to his past criminal behavior, angry outburst towards maternal grandmother and his prior drug use.

¶ 13 We will give deference to the trial court's determination of controversial evidence because the trial court had the opportunity to observe the demeanor and hear the witnesses' testimony and determine the credibility of the testimony. *Manhart v. Manhart*, 1986 OK 12, ¶ 9, 725 P.2d 1234. After reviewing the trial transcript, the pleadings in the record, the documentary evidence, and the trial court's specific findings in its order, we find the weight of the evidence supports the trial court's conclusion that it was in the child's best interest to award Father primary physical custody and to grant Mother expanded visitation.

¶ 14 Although Mother was the primary caretaker of the child since birth, Father exhibited an enhanced interest in the child's welfare and demonstrated his willingness to cooperate with any visitation order entered by the court. Father also appeared to be the best custodial parent to foster and encourage visitation with Mother, as the non-custodial parent. We are not saying Mother may not move out of state for any type of permanent status. She may, just without the child. Moving out of state with the child would place an undue hardship on the child's relationship with Father. Based on this record, we find Mother failed to sustain her burden of proving that Father was unable to care and provide for his child or that his behavior was in any way detrimental to his child's health, welfare and best interests. Accordingly, we hold the trial court's custody and visitation order is supported by the clear weight of the evidence and is not an abuse of discretion. The trial court's custody order is therefore affirmed.

¶ 15 AFFIRMED.

GOREE, P.J., and BUETTNER, J., concur.

All Citations

355 P.3d 863, 2015 OK CIV APP 67

End of Document

LAWSITES
BY ROBERT AMBROGI
TRACKING NEW AND INTRIGUING WEBSITES AND PRODUCTS FOR THE LEGAL PROFESSION

MARCH 16, 2015

~~13~~ ~~15~~ ~~17~~ ~~18~~ 20 States Have Adopted Ethical Duty of Technology Competence

by Robert Ambrogi

*[Update: As of Dec. 23, 2015, it is 20 states, with the **addition of Iowa and Utah**.]*

*[Update: As of Dec. 17, 2015, it is 18 states, with the **addition of Virginia**.]*

[Update: As of Nov. 11, 2015, it is 17 states, with

ROBERT J. AMBROGI
Is a Massachusetts lawyer,

*the **addition of two more**.]*

*[Update: As of Oct. 15, 2015, it is 15 states, with the **adoption of the rule** in Illinois.]*

*[Update: It is now 14 states. See my **3/27/15 post** on the rule's adoption in Massachusetts.]*

In 2012, something happened that **I called** a sea change in the legal profession: The American Bar Association formally approved a change to the **Model Rules of Professional Conduct** to make clear that lawyers have a duty to be competent not only in the law and its practice, but also in technology.

More specifically, the ABA's House of Delegates voted to amend Comment 8 to Model Rule 1.1, which pertains to competence, to read as follows:

> Maintaining Competence
>
> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. (Emphasis added.)

Of course, the Model Rules are just that — a model. They provide guidance to the states in formulating their own rules of professional conduct. But each state is free to adopt, reject, ignore or modify the Model Rules. For the duty of technology competence to apply to the lawyers in any given state, that state's high court (or rule-

setting body) would first have to adopt it.

So, roughly 30 months after the ABA approved this amendment, how many states have adopted the duty of technology competence? By my count, ~~13~~ 15 states have so far formally adopted the revised comment to Rule 1.1. They are:

- Arizona, **effective Jan. 1, 2015**.
- Arkansas, **approved June 26, 2014**, effective immediately.
- Connecticut, **approved June 14, 2013**, effective Jan. 1, 2014.
- Delaware, **approved Jan. 15, 2013**, effective March 1, 2013.
- Idaho, **approved March 17, 2014**, effective July 1, 2014.
- Illinois, **approved Oct. 15, 2015**, effective Jan. 1, 2016.
- Iowa, **approved Oct. 15, 2015**, effective Oct. 15, 2015.
- Kansas, **approved Jan. 29, 2014**, effective March 1, 2014.
- Massachusetts, **approved March 27, 2015**, effective July 1, 2015.
- Minnesota, **approved Feb. 24, 2015**.
- New Hampshire, **approved Nov. 10, 2015**, effective Jan. 1, 2016.
- New Mexico, **approved Nov. 1, 2013** (**text of approved rules**), effective Dec. 31, 2013.
- New York, **adopted on March 28, 2015**, by the New York State Bar Association.
- North Carolina, **approved July 25, 2014**. Note that the phrase adopted by N.C. varies slightly from the Model Rule: "… including the benefits and risks associated with the technology relevant to the lawyer's practice."

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My Review of Cheetah, Wolters Kluwer's New Legal Research Platform

- Ohio, **approved Feb. 14, 2015**, effective April 1, 2015.
- Pennsylvania, **approved Oct. 22, 2013** (**text of approved rules**), effective 30 days later.
- Utah, **adopted March 3, 2015**, effective May 1, 2015.
- Virginia, **approved Dec. 17, 2015**, effective March 1, 2016.
- West Virginia, **approved Sept. 29, 2014**, effective Jan. 1, 2015.
- Wyoming, **approved Aug. 5, 2014**, effective Oct. 6, 2014.

On Feb. 28, 2015, the Virginia State Bar Council **voted to adopt** the Rule 1.1 change. However, the change does not take effect unless and until it is approved by the Virginia Supreme Court.

~~In Massachusetts, where I am located, the Supreme Judicial Court has **issued a notice** stating that it will adopt a package of proposed rule changes that includes Comment 8. However, the SJC said that it will not issue a formal order adopting the rules or set an effective date until it announces its decision on other proposed changes for which it has scheduled oral arguments. More information on the proposed changes and their status **can be found here**.~~

Some other states, while not having formally adopted the change to their rules of professional conduct, have nonetheless acknowledged a duty of lawyers to be competent in technology. For example, the New Hampshire Bar Association, in **Advisory Opinion #2012-13/4** concerning cloud computing, **said**:

> Competent lawyers must have a basic understanding of the technologies they

Microsoft Open Sources Its Legal Practice Management Platform

Virginia Becomes 18th State to Adopt Duty of Technology Competence

Select Month

> use. Furthermore, as technology, the regulatory framework, and privacy laws keep changing, lawyers should keep abreast of these changes.

And in California, a proposed ethics opinion of the State Bar of California (**Proposed Formal Opinion Interim No. 11-0004**) would require attorneys who represent clients in litigation either to be competent in e-discovery or associate with others who are competent. The opinion expressly cites the ABA's Comment 8 and states:

> Maintaining learning and skill consistent with an attorney's duty of competence includes "keeping abreast of changes in the law and its practice, including the benefits and risks associated with technology."

If you know of other states I have missed, please let me know.

What does all this mean to you? It is simple. You cannot assess the benefits and risks associated with various kinds of technology if you know nothing about the technology. Even if your state has yet to adopt this change, it is only a matter of time before it does. Don't be a Luddite who fears or resists technology. Neither do you have to become a geek. Make an effort to understand the basics of the technology you use. Get on social media, if you're not already. Ask questions. Learn. When it comes to technology, there is no more burying your head in the sand.

Posted in: General
Tagged: legal ethics

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Join the discussion…

Chere Estrin • 9 months ago

It's good to see at least 13 states participating. What do we need to do now to get lawyers to participate? As a continuing legal educator provider and co-founding member of an organization that provides eDiscovery certifications, here's the most common answers we get regarding lawyers and eDiscovery training:

a) We don't do that kind of thing in my firm

b) My first years/paralegal/IT/LitSupport/department takes care of that

c) Can you enroll me in the eDiscovery Project Management course? But don't let anyone know I'm there. I don't want my competitors to know I don't know anything about it.....

Well, at least it's movement....lol

Reply • Share ›

carole levitt • 9 months ago

Minnesota adopted the ABA Model Rules, but NOT the comments...so they didn't actually approve "including the benefits and risks associated with relevant technology."

Reply • Share ›

Robert Ambrogi > carole levitt • 9 months ago

I find the Minnesota order confusing. It said that the bar's petition "asked the court to approve the proposed rule amendments and acknowledge the proposed amendments to the comments." Later, after approving the rule amendments, the order said, "The comments

to the rules are included for convenience and do not reflect court approval or adoption." So was that an acknowledgement, even if not an express approval?

Reply • Share ›

Paul Spitz • 9 months ago

Responding to Sam Glover's comment about knowing the difference between file encryption and SSL, I guess the issue is, how much do we have to know about any individual technology? Some of these can get pretty complex, pretty fast. Do we need to know exactly how SSL works, or do we just need to know that it is X amount better than not having SSL? And then, if I understand this article correct, it's still in our judgment to decide whether we need it or not.

My frustration as a solo comes from seeing these data breaches at Target, JP Morgan, Home Depot, Sony Pictures, etc. These are huge corporations with millions of dollars to spend on technology and security every year, and with probably dozens if not hundreds of tech people on staff, and yet they still suffered a security breach. If a $100 billion multi-national corporation can't defend itself, what is a solo practitioner with revenues of say, $600,000 or less, supposed to do? As a practical matter. It's not like I can call up Dropbox or Box and negotiate the terms of cloud storage with them. (and if the NSA has a view on this, and I know you are reading this, please chime in). Data security is just too much of a moving target for a significant part of the profession to do anything about.

Reply • Share ›

Michelle • 9 months ago

I applaud the ABA for doing something as a starting point. However, as a longtime law firm trainer, it annoys me how little the bars seem to understand the technology needs and concerns of their members. Also, when I continually see "apps for iPads" as the technology offerings at attorney-

focused conferences, it frightens me for those who do not have good IT resources at their beck and call. Perhaps, more attorneys need to join the Intl. Legal Technology Assn. instead.

Reply • Share ›

Will • 9 months ago

Brian, Sam, Bob:

I look at it as a "gateway drug": failure to understand the tech leads to risky behavior re other rules (like 4.4(b) - not really knowing what compromises ESI leads to claimed ignorance why one didn't give notice, etc)

Reply • Share ›

Craig • 9 months ago

I was thinking of an example where Lawyer sues on an unpaid bill, and Client defends the refusal to pay on the grounds that the lawyer breached this emerging "duty of technical competence" by not leveraging available technologies to reduce the bill.

It's very different from a sanction by the bar for a breach of an ethical duty; but, I was thinking the existence of this language might embolden disgruntled clients wanting to make such an argument.

Reply • Share ›

Brian Tannebaum • 9 months ago

Craig,

I'm not sure I understand your question. Fee disputes are only governed by 1.5 where a lawyer cannot charge a clearly excessive or illegal fee. This usually comes up where a lawyer charges $100,000 and the case is dismissed in one day with no work, or a lawyer charges a higher contingency percentage than allowed for and there is no court approval. I can't see how competence in technology would relate

to a fee dispute.

Reply • Share ›

Bradey Miller • 9 months ago

Ohio has recently amended its Rule 1.1 to include comment 8. The amendment goes into effect April 1, 2015. The language of the amendment can be found here on page 3: http://www.supremecourtofohio.....

Reply • Share ›

Robert Ambrogi > Bradey Miller
• 9 months ago

Thanks! I've added Ohio to the post.

Reply • Share ›

Craig Newton • 9 months ago

Brian,
Honest question here: bar discipline notwithstanding, in your opinion would the existence of an express duty impact, for example, a fee dispute where the client says counsel failed to use technology competently?

Reply • Share ›

Sam Glover • 9 months ago

Okay, while I agree that basic technological competence is intertwined with professional competence, let's be clear about what the ABA did. It added a comment; it did not change Rule 1.1. And that comment says "should," not "must." In the report,

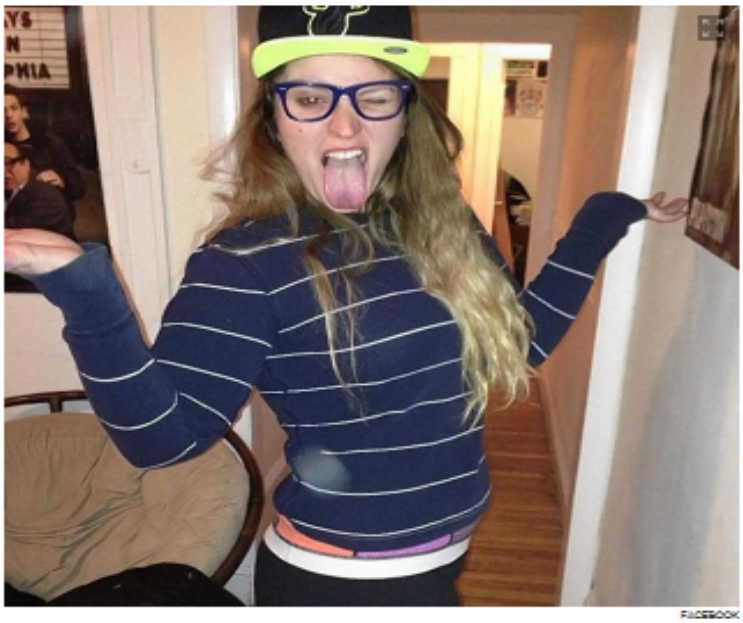
« Previous | Home | Next »

Daughter's Facebook post botches dad's $80,000 settlement deal

A former Florida prep school headmaster was set to receive an $80,000 settlement after suing his former school, but his daughter ruined the deal by blabbing it about on Facebook.

BY PHILIP CAULFIELD / NEW YORK DAILY NEWS / Monday, March 3, 2014, 12:26 PM

A A A



FACEBOOK

Dana Snay, above, made a comment on Facebook that caused her father's $80,000 discrimination settlement to get tossed out.

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Oops!

A Florida headmaster's daughter cost her family $80,000 when she bragged about their hefty lawsuit win in a dopey Facebook post.

Patrick Snay, 69, had a fat check coming his way after settling a 2011 age discrimination suit with the school he once headed up, Miami's Gulliver Prepatory School, the Miami Herald reported.

Snay sued the school after it declined to renew his contract and won a settlement that included $10,000 in back pay, another $60,000 to his attorney and $80,000 for him to keep.

But his daughter, Dana, nuked the deal when she posted a bratty message about the settlement on Facebook, the Herald reported.

"Mama and Papa Snay won the case against Gulliver," she wrote. "Gulliver is now officially paying for my vacation to Europe this summer. SUCK IT."

The message circulated among the former Gulliver student's 1,200 Facebook friends and eventually made its way back to the school, who claimed it violated the settlement's confidentiality agreement.

The state's Third District Court of Appeal agreed and threw out the discrimination ruling last week.

In her ruling, Judge Linda Ann Wells said Snay violated the settlement's terms by gabbing to his daughter about it.

"His daughter then did precisely what the confidentiality agreement was designed to prevent," she wrote, according to the Herald.

Snay argued in court documents that he and his wife agreed to tell Dana about the settlement because she was "an intricate part" of the case and had suffered "psychological scars" as a student at Gulliver.

Dana Snay, who, according to Yahoo News, is currently a student at Boston College, was reportedly joking about traveling to Europe. Her Facebook page has been taken down.

Patrick Snay, who is now the headmaster at a different school in Coral Gables, can still appeal the ruling, the Herald reported.