



**ORIGINAL**

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

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION I

STEPHANIE ELIZABETH LACKEY, )  
 )  
 Plaintiff/Appellee, )  
 )  
 vs. )  
 )  
 GARY WAYNE HINK, )  
 )  
 Defendant/Appellant, )  
 )  
 and )  
 )  
 Sheryl Hink, a/k/a Cheryl Hink, *et al.*, )  
 )  
 Defendants. )

Case No. 123,338

**FILED**  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

JUL - 2 2026

SELDEN JONES  
CLERK

APPEAL FROM THE DISTRICT COURT OF  
COAL COUNTY

HONORABLE PRESTON HARBUCK, JUDGE

**REVERSED**

Rec'd (date)	7-2-26
Posted	<i>JE</i>
Mailed	<i>JE</i>
Distrib	<i>JE</i>
Publish	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

Jack Cadenhead,  
THE CADENHEAD LAW FIRM, P.C.,  
Seminole, Oklahoma,

For Plaintiff/Appellee,

Johnny Sandmann,  
COMPLETE CLOSINGS, LLC,  
Coalgate, Oklahoma,

For Defendant/Appellant.

OPINION BY ROBERT D. BELL, JUDGE:

¶1 Defendant/Appellant, Gary Wayne Hink, appeals from the trial court's order denying his motion to vacate a default judgment entered in favor of Plaintiff/Appellee, Stephanie Elizabeth Lackey, in her suit to quiet title to property she apparently had been renting from Defendant's family. We reverse.

¶2 Because no evidence has ever been presented to the trial court, the following information is gleaned from the pleadings and arguments of counsel. In 1974, Defendant's parents, Garland and Juanita Hink, purchased approximately five acres of land in Coal County. Their joint tenancy warranty deed was filed of record. Garland died in 1987, leaving Juanita as the surviving joint tenant. Juanita died intestate in 2002, leaving behind three children: Defendant, his sister Sheryl, and his brother Rodney. At some point in time around 2017, Plaintiff began occupying and apparently renting the subject property from the Hink family and remitting payments to Sheryl. Rodney died in 2021. When Sheryl subsequently died, Defendant unsuccessfully attempted to arrange rent collection from Plaintiff, who thereafter filed the underlying action on November 19, 2024.

¶3 In her petition, Plaintiff sought to (1) judicially determine Garland's death in order to terminate his joint tenancy interest, (2) judicially determine the deaths and heirs of Juanita and Rodney, and (3) quiet title against Defendant, Sheryl and the unknown heirs of Juanita and Rodney. Plaintiff claimed in her petition that she "is

the owner of and is in actual and peaceable possession of” the subject property. It is undisputed Defendant was properly served with the suit at his Oregon home. Sheryl and any unknown heirs were given publication notice of the action. Defendant maintains he contacted an Ada law firm that agreed to represent him in the action. Notwithstanding, no answer or entry of appearance was filed on behalf of Defendant or any heir. On January 16, 2025, Plaintiff filed a motion for default judgment, which was granted the same day.

¶4 On February 13, 2025, Defendant timely moved to vacate the default judgment. At the subsequent hearing, Plaintiff’s counsel emphasized Defendant was properly served and argued *Plaintiff’s claim to ownership of the property was supported by 12 O.S. 2021 §1141(A) and her possession of the property*. Defendant reiterated that default judgments are disfavored. Defendant also noted that neither Plaintiff’s petition nor the trial court’s judgment contained any legally recognized theory that would entitle Plaintiff to ownership of the subject property. For that reason, Defendant orally amended his motion to include an argument that the default judgment was obtained via an “irregularity” pursuant to 12 O.S. 2012 §1031(3). Following the hearing, the trial court denied Defendant’s motion to vacate the default judgment. From said ruling, Defendant appeals.

¶5 This Court’s standard of review was set forth in *Ferguson Enterprises, Inc. v. H. Webb Enterprises, Inc.*, 2000 OK 78, 13 P.3d 480:

The standard of review of a trial court's ruling either vacating or refusing to vacate a judgment is abuse of discretion. A default judgment is void if the court did not have jurisdiction over the parties. In previous cases reviewing a trial court's ruling either vacating or refusing to vacate a default judgment, we have considered the following: 1) default judgments are not favored; 2) vacation of a default judgment is different from vacation of a judgment where the parties have had at least one opportunity to be heard on the merits; 3) judicial discretion to vacate a default judgment should always be exercised so as to promote the ends of justice; 4) a much stronger showing of abuse of discretion must be made where a judgment has been set aside than where it has not. We also consider whether substantial hardship would result from granting or refusing to grant the motion to vacate.

*Id.*, 2000 OK 78 at ¶5 (citations omitted). "A trial court abuses its discretion when it makes a decision based on an erroneous conclusion of law or when its decision has no rational basis in evidence." *Childers v. Childers*, 2016 OK 95, ¶28, 382 P.3d 1020. Stated otherwise, "An abuse of discretion involves a clearly erroneous conclusion and judgment, and one that is clearly against the logic and effect of the facts presented in support of and against the proposition in issue." *Peters v. American Income Life Ins. Co.*, 2003 OK CIV APP 62, ¶17, 77 P.3d 1090.

¶6 The above principles overwhelmingly support reversal of the trial court's decision to deny Defendant's motion to vacate the default judgment. "Because litigants are entitled to a fair day in court, policy encourages actions being tried on the merits. Default judgments are not favored." *Nelson v. Nelson*, 1998 OK 10, ¶23, 954 P.2d 1219. Every party to an action should be afforded "a fair opportunity to present his side of a cause [and] discretion should always be exercised so as to

promote the ends of justice, . . .” *Burroughs v. Bob Martin Corp.*, 1975 OK 80, ¶23, 536 P.2d 339. “The courts should always be loath to deny a determination of a case upon its merits by reason of the actual or supposed fault of an attorney and one of the parties litigant.” *Beck v. Jarrett*, 1961 OK 162, ¶14, 363 P.2d 215. Defendant in this case believed, mistakenly or otherwise, that he had timely secured counsel to represent him in this matter. He had no opportunity to be heard on the merits of the case and Plaintiff presented no evidence demonstrating entitlement to judgment. Indeed, as discussed more fully below, Plaintiff has advanced no substantive legal theory upon which an Oklahoma court could rely in quieting title to the subject property in her name.

¶7 There has also been no showing “that vacating the judgment will result in any substantial delay or injustice to the non-moving party [Plaintiff]; . . .” *SIT, SL v. Tulsa Turbine Engines & Aircraft, LLC*, 2013 OK CIV APP 97, ¶26, 313 P.3d 1035. The case was less than three months old when Defendant filed his motion to vacate. *See id.* (where the case “was not quite five months old when the motion to vacate was filed.”). Plaintiff has neither alleged nor proven a substantive right to ownership of the subject property, so a slight delay in these proceedings will not work an injustice upon her.

¶8 Further, a reduced showing of abuse of discretion is required where a default judgment has not been set aside. *Ferguson*, 2000 OK 78 at ¶5. “The trial court’s

'almost unlimited' discretion to vacate a judgment was [timely] invoked pursuant to 12 O.S. 2011 §1031.1." *SIT, SL* at §26, quoting *Neumann v. Arrowsmith*, 2007 OK 10, ¶9, 164 P.3d 116. Finally, it appears that "allowing the default judgment to stand would work a serious injustice." *St. John Med. Ctr. v. Brown*, 2005 OK CIV APP 101, ¶10, 125 P.3d 700, citing *Burroughs*, 1975 OK 80 at ¶15. For these reasons, we conclude the trial court abused its discretion in denying Defendant's motion to vacate the default judgment. As another panel of this Court has echoed, "We note that the Supreme Court on more than one occasion has 'been more impressed with the need to grant relief to a defaulting litigant than the lower court believed the party deserved.'" *SIT*, 2013 OK CIV APP 97 at ¶26, n.9, quoting *Burroughs*, 1975 OK 80 at ¶13 and *State ex rel. Oklahoma Bar Ass'n v. Lobaugh*, 1988 OK 144, ¶13, 781 P.2d 806. Unquestionably, the ends of justice will be promoted by vacating the default judgment.

¶9 In reaching the above conclusion, it is imperative to note 12 O.S. 2021 §1141(A) does not support Plaintiff's claim of ownership of the subject property. Plaintiff maintains her mere "possession" of the land under §1141(A) is sufficient to support the underlying quiet title judgment. We strongly disagree. Section 1141 of the Oklahoma Code of Civil Procedure, 12 O.S. 2021 §1, *et seq.*, addresses quiet title actions. Subsection 1141(A) states in full:

An action may be brought by any person in possession, by himself or tenant, of real property against any person who claims an estate or any

interest therein adverse to the person bringing the action for the purpose of determining such adverse estate or interest, and such action may be joined with an action to recover possession of such real property by any person not in possession. The person or persons bringing such action shall not be required to allege the particular estate or interest claimed adversely by the person or persons against whom the action is brought, but may allege that the defendants' claim is adverse to that of the plaintiffs.

¶10 This statutory provision merely supports Plaintiff's right to bring a quiet title action because she was, by all accounts, in possession of the subject property when she filed suit. The statute is procedural in nature; her possession validates Plaintiff's standing. However, §1141 in no way provides Plaintiff with a substantive remedy. Title to land can be acquired and lost only in the manner prescribed by law. *Mashunkashey v. Mashunkashey*, 1942 OK 314, ¶22, 134 P.2d 976. *See also* 73 C.J.S. *Property* §62 (2004). With respect to Plaintiff's "possession" argument, Oklahoma law is clear that "[p]ossession of property alone is not sufficient to give title." *Amoorpour v. Kirkham*, 2023 OK 120, ¶23, 543 P.3d 677. *See also* 73 C.J.S. *Property* §62: "[G]enerally, legal estates in land cannot be transferred by the mere act of taking possession, whether with or without the consent of the owner, unless the possession be held adversely for a sufficient time to ripen into a legal title." Plaintiff has neither alleged nor proven adverse possession of the Hink's property. Indeed, Plaintiff has asserted no legally cognizable theory as to how she became the owner of the subject property under Oklahoma law. The judgment of the trial court is therefore reversed.

¶11 REVERSED.

SWINTON, P.J., and GOREE, J., concur.