

**(REVISED)**  
**UPDATE ON OKLAHOMA REAL PROPERTY TITLE RELATED**  
**CASES:**  
**OKLAHOMA SUPREME COURT CASES**  
**FOR 2014-2015**

**(Covering July 1, 2014 to June 30, 2015)**

Presented For the:  
“Oklahoma Bar Association Real Property Law Section Annual Meeting”

At:  
OKC, OK: November 5, 2015

**COMMENTS BY SUPREME COURT JUSTICE NOMA GURICH**

**PANEL PRESENTATION:**

**DALE ASTLE,**  
**KRAETTLI Q. EPPERSON**  
**And**  
**SCOTT McEACHIN**

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## **THE HONORABLE JUSTICE NOMA GURICH**

Noma D. Gurich has served as a Justice on the Oklahoma Supreme Court since February 15, 2011. She is the third woman in State history to serve on the Supreme Court of Oklahoma.

Justice Gurich was born in South Bend, Indiana. She received a bachelor's degree in political science in 1975 from Indiana State University. She earned her Juris Doctorate from the University Of Oklahoma College Of Law in 1978.

After ten years in the private practice of law in Oklahoma City, she was appointed to the Oklahoma Workers' Compensation Court. She served as a Judge for 10 years (1988-98), including 4 years as Presiding Judge. She was appointed and elected to serve as a District Judge in Oklahoma County from 1998 to 2011. Judge Gurich served as the Presiding Administrative Judge for the 7th Judicial District from January 2003 to December 31, 2004. While serving as a District Judge, she also served as the Presiding Judge of both the 11th and 12th Multi-County Grand Juries (2007–2008 and 2009–2010).

Justice Gurich received awards from the Oklahoma County Bar Association (2002) and the Oklahoma Bar Association Women in Law Section (2003). She was named the 2011 Judge of the Year from the Oklahoma Chapter of the American Board of Trial Advocates. She has been honored by The Journal Record Woman of the Year program ((2005, 2008, & 2011), received a Byliner Award by the Oklahoma City Chapter of the Association of Women in Communications (2013), and the 2013 Valuable Volunteer Award by the Foundation for Oklahoma City Public Schools.

Justice Gurich is past President of the William J. Holloway, Jr. American Inn of Court (2007-2008) and she continues as a Master member of the Inn. She is past President (2006-2007) and member of the Kiwanis Club of Oklahoma City. She is the Kiwanis Advisor for the Southeast High School (OKC) Key Club. She is a volunteer with the El Sistema after school orchestra program. She serves annually on the Application Screening Committee for the Oklahoma School of Science and Mathematics. She is a member of the Salt & Light Leadership Training Class #8. Justice Gurich is an active member of St. Luke's United Methodist Church, and participated in mission trips to Russia in 1993, 1997, 2000, 2002, and 2004. She is also a volunteer Mobile Meals driver and TV camera operator.

## DALE L. ASTLE

Dale L. Astle is Commercial Real Estate Counsel for Bluestem Escrow and Title, LLC, Tulsa, Oklahoma. He received an Associate of Science degree from Northern Oklahoma College, a Bachelor of Science degree from Oklahoma State University and a Juris Doctor degree from University of Oklahoma College of Law.

He is a past president of the Oklahoma Land Title Association and is a member of the Tulsa County Bar Association and Oklahoma Bar Association, and the Tulsa Title and Probate Lawyers Association. He is a fellow in the American College of Real Estate Lawyers and is a past chairman of the Real Property Law Section of the Oklahoma Bar Association. He is also a member of the Title Examination Standards Committee of the Oklahoma Bar Association.

Dale was selected for inclusion in “Oklahoma Super Lawyers”. He has served as a member of the Executive Committee of the Abstractors and Title Insurance Agents Section of the American Land Title Association and as chairman of the ALTA Public Relations Committee.

He has participated as a presenter in more than 100 seminars and educational conferences, has served as an expert witness in real property litigation cases in state and federal court and has taught Real Estate Transactions as an adjunct professor at the University of Tulsa College of Law and has written numerous articles covering various topics related to real estate law and Oklahoma land titles.

He is the author of “*Equal Credit Opportunity Act – New Compliance Requirements*”, Volume 48, Oklahoma Bar Journal, Number 3, “*An Analysis of the Evolution of Oklahoma Real Property Law Relating to Lis Pendens and Judgment Liens*”, Volume 32, Oklahoma Law Review, Number 4, “*Homestead Rights Relating To Purchase Money Mortgages*”, Volume 63, Oklahoma Bar Journal, Number 37, “*Title Insurance*”, Vernon’s Oklahoma Forms 2d, Real Estate, “*Official Conveyances and Antecedent Records*,” Patton and Palomar on Land Titles, Third Edition and “*Transfer-on-Death Deeds in Oklahoma*”, Volume 82, Oklahoma Bar Journal, Number 651

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- COURTS:** Okla. Sup. Ct. (May 1979); U.S. Dist. Ct., West. Dist of Okla. (Dec. 1984)
- EDUCATION:** University of Oklahoma [B.A. (PoliSci-Urban Admin.) 1971];  
State Univ. of N.Y. at Stony Brook [M.S. (Urban and Policy Sciences) 1974]; &  
Oklahoma City University [J.D. (Law) 1978].
- PRACTICE:** Oil/Gas & Real Property Title Litigation (Curative; Appeals, Expert Consultant/Witness)  
Oil/Gas & Surface Title Opinions  
Condo/Home Owners Association Creation & Representation  
Commercial Real Estate Acquisition & Development.
- MEMBERSHIPS/POSITIONS:**  
OBA Title Examination Standards Committee (Co- & Chairperson: 1988 Present);  
OBA Nat'l T.E.S. Resource Center (Director: 1989 - Present);  
OBA Real Property Law Section (current member, former Chairperson);  
OKC Real Property Lawyers Assn. (current member, former President);  
OKC Mineral Law Society (current member);  
Kiwanis (Downtown OKC Club--member and former President); and  
*BSA: Vice Chair & Chair, Baden-Powell Dist., Last Frontier Council (2000-2007); former Cubmaster, Pack 5, & Asst SM, Troop 193, All Souls Episcopal Church*
- SPECIAL EXPERIENCE:** Court-appointed Receiver for 5 Abstract Companies in Oklahoma;  
Oklahoma City University School of Law adjunct professor: "Oklahoma Land Titles" (1982 - Present), & "Oil & Gas Title Examination" (2015-Present)  
Vernons 2d: Oklahoma Real Estate Forms and Practice, (2000 - Present) General Editor and Contributing Author;  
Basys on Clearing Land Titles, Author : Pocket Part Update (1998 – 2000);  
Contributing Author: Pocket Part Update (2001-Present)  
Oklahoma Bar Review faculty: "Real Property" (1998 - 2003);  
Chairman: OBA/OLTA Uniform Abstract Certif. Committee (1982);  
In-House Counsel: LTOC & AFLTICO/AGT/Old Republic (1979-1981);  
Urban Planner: OCAP, DECA & ODOT (1974-1979).
- SELECTED PUBLICATIONS:**  
*"Marketable Record Title: A Deed Which Conveys Only the Grantor's 'Right, Title and Interest' Can Be A 'Root of Title'", 85 OBJ 1104 (May 17, 2014)*  
*"The Need for a Federal District Court Certificate in All Title Examinations: A Reconsideration", 83 OBJ 2367 (Nov. 3, 2012)*  
*"The Real Estate Mortgage Follows the Promissory Note Automatically Without an Assignment: The Lesson of BAC Home Loans", 82 OBJ 2938 (Dec.10, 2011)*
- SPECIAL HONORS:** Okla. Bar Assn. 1997 Maurice Merrill *Golden Quill Award*;  
Okla. Bar Assn. 1990 Earl Sneed *Continuing Legal Education Award*;  
Okla. Bar Assn. 1990 Golden Gavel Award: *Title Exam. Standards Committee*

SCOTT WILLIAM McEACHIN

Scott McEachin is a sole practitioner in Tulsa, Oklahoma. His practice is limited, almost exclusively, to oil and gas title examination. He received a Bachelor of Arts degree in History and Political Science from the University of California at Santa Barbara and a Juris Doctor degree from the University of Oklahoma College of Law.

Mr. McEachin has been an attorney with Apco Oil Corporation in Oklahoma City and with Hondo Oil and Gas Company in Roswell, New Mexico. He was affiliated with several law firms before beginning his private practice in 1992.

He is a member of the Real Property Section of the Oklahoma Bar Association, and he served as its Chair in 1989. He is a member of the Title Examination Standards Committee.

**OKLAHOMA SUPREME COURT CASES**

(JULY 1, 2014-JUNE 30, 2015)

**LIST OF CASES**

NO.	TOPIC	CASE	OKLAHOMA CITATION	DECIDED	MANDATE
<b><u>OKLAHOMA SUPREME COURT CASES</u></b>					
1	Documentary Stamp Tax on Sheriff's Deed	Murray County v. Homesales, Inc.	2014 OK 52	5/8/2014	8/1/2014
2	Condemnation Valuation of Billboard	State ex rel. Dept. of Transportation v. Lamar Advertising of Oklahoma, Inc.	2014 OK 47	6/3/2014	10/15/2014
3	Ad Valorem Taxation, and Private Attorneys Representing Assessors	Yazel v. William K. Warren Medical Research Center	2014 OK 57	6/24/2014	?
4	Ad Valorem Taxation, and Private Attorneys Representing Assessors	Yazel v. William K. Warren Medical Research Center	2014 OK 58	6/24/2014	?
5	Bondholders are Necessary Parties to Suit	Tulsa Industrial Authority v. City of Tulsa	2014 OK 81	9/30/2014	10/27/2014
6	Documentary Stamp Tax on Sheriff's Deed; Class Certification	Marshall County v. Homesales, Inc.	2014 OK 88	10/28/2014	12/1/2014
7	Notice of Annexation by Certified Mail	In Re: Detachment of Municipal Territory From the City of Ada	2015 OK 18	4/20/2015	8/3/2015
8	Waiver of Appeal Right	Hamm v. Hamm	2015 OK 27	4/28/2015	6/10/2015
9	Notice of Extrinsic Document	Walker v. Builddirect.com Technologies Inc.	2015 OK 30	5/5/2015	5/29/2015

10	Divorce Decree Judgment Lien Foreclosure; Reversionary Clause Enforcement	Benefiel v. Boulton	2015 OK 32	5/12/2015	6/10/2015
11	Advalorem Tax Sale Notice	Crownover v. Keel	2015 OK 35	5/26/2015	10/9/2015
12	Finality of Divorce Decree	Alexander v. Alexander	2015 OK 52	6/30/2015	10/9/2015
13	Jurisdiction of District Courts Over Oil & Gas Torts	Ladra v. New Dominion, LLC	2015 OK 53	6/30/2015	8/3/2015
14	Increasing Real Property Assessment (5% Cap)	Frankenburg v. Strickland	2015 OK 23	4/21/2015	5/20/2015

## **A. OKLAHOMA SUPREME COURT**

### **1. MURRAY COUNTY v. HOMESALES (2014 OK 52)**

**TOPIC:** DOCUMENTARY STAMP TAX ON SHERIFF'S DEED

**RULING:** Only OTC can enforce collection of unpaid documentary stamp tax, but counties can sue to determine tax liability.

**FACTS:** Mortgage lender was the highest bidder at 4 of its own foreclosure sales, but verbally assigned the right to the sheriff's deed at the confirmation hearing to an affiliated entity. The trial court directed the sheriff to show the assignee as the grantee on the deeds, and the sheriff did so. The lender claimed such deeds were exempt from payment of the documentary stamp tax (68 O.S. §§3201 to 3206) and did not pay such taxes. In particular the lender relied on 68 O.S. §3202(13), which exempts the lender at its own foreclosure sale, IF it is the grantee. The county assessor sued to collect the tax on the deeds.



TRIAL COURT RULING: The trial court granted partial summary judgment to the 2 counties determining: (1) the conveyances were not exempt from such tax, and (2) the counties could sue to enforce and collect such tax. The trial court certified the judgment for immediate appeal.

SUPREME COURT RULING: The Supreme Court accepted Certiorari to ensure there was a uniform approach to enforcement of such taxes in every county. The Supreme Court affirmed in part, reversed in part, and remanded. It held the counties did have standing to challenge the claim of exemptions, but could not enforce the tax obligation, because such enforcement power is statutorily given exclusively to the Oklahoma Tax Commission (or the State Attorney General, but not the counties). The OTC receives a portion of such tax revenues. It further held the transfer of real property between affiliated entities is not taxable IF the consideration paid does not exceed \$100.00 (this threshold amount is set forth in 68 O.S.§3201(A)). It also held the counties had failed to establish whether the consideration for the conveyance reached the threshold amount. Consequently, it remanded the proceeding to the trial court for more proceedings on such issue.

[Editor's Note: The \$100.00 statutory threshold amount of consideration is not limited to "affiliated" entities. (68 O.S. §3201(A)). Also, the lender did not raise the consideration issue, but the Supreme Court did.]

2. **STATE EX REL. DEPT. OF TRANSPORTATION v. LAMAR ADVERTISING OF OKLAHOMA, INC. (2014 OK 47)**

**TOPIC:** CONDEMNATION VALUATION OF BILLBOARD

**RULING:** Income from billboard can be included in condemnation valuation.

**FACTS:** ODOT condemned lands for a highway, and also required the removal of an existing billboard on the site. ODOT valued the billboard based on costs to reproduce, which was \$60,000, while Lamar valued it at \$429,000. The three court-appointed Commissioners reached a valuation of \$212,500.

**TRIAL COURT RULING:** ODOT demanded a jury trial. The jury awarded \$206,000. ODOT wanted the billboard to be classified as personal property, and the valuation to be limited to the cost to rebuild the sign, or to the cost to relocate the sign. The trial court ruled that it was real property, that there was not a possible relocation site, and that the rental income was a proper component of the valuation.

The trial court also held that it was proper for the burden of proof to reside with the billboard owner, even though ODOT demanded the jury trial. Both sides appealed.

SUPREME COURT RULING: The Oklahoma Supreme Court retained the case.

The trial court decision was affirmed. The Supreme Court ruled that the billboard was a fixture and was real property, but that such classification was not relevant

because the income from the billboard was a proper part of the valuation process.

The court also held that once ODOT established the need to condemn the property, the burden of proof as to valuation properly shifted to the property owner.

**3. YAZEL v. WILLIAM K. WARREN MEDICAL RESEARCH CENTER**  
**(2014 OK 57)**

**TOPIC:** AD VALOREM TAXATION, AND PRIVATE ATTORNEYS  
REPRESENTING ASSESSORS

**RULING:** County assessors can hire outside attorneys to represent them in proceedings before the County Board for Equalization and the Courts.

**FACTS:** Two non-profit entities had received tax exempt status for their large medical facilities for over ten years, due to their facilities status as a "continuum of care retirement community". The Tulsa County Assessor placed the properties on the tax rolls, at about \$178 million and \$1.6 million, respectively. The non-profit entities appealed to the County Board of Adjustment and the Board restored their tax exempt status. The county sued in District Court.

**TRIAL COURT RULING:** The trial court granted the tax payers' motions for summary judgment restoring the tax exempt status. The county assessor appealed.

**COURT OF CIVIL APPEALS RULING:** The court of civil appeals dismissed the case because the County Assessor was represented by an outside counsel hired to represent the assessor as its general counsel, instead of using the District Attorney or the State Attorney General. The assessor sought Certiorari, which was granted.

**SUPREME COURT RULING:** Amicus briefs were filed by the County Assessors Association of Oklahoma, and the County Officers and Deputies Association of Oklahoma, in support of the county assessor. The Supreme Court ruled that the statutes expressly allow the assessor to either ask for assistance from its district

attorney or the state attorney general, or hire its own counsel directly to advise it and to pursue legal action. The case was remanded to the court of civil appeals for consideration of the tax exemption issue.

**4. YAZEL v. WILLIAM K. WARREN MEDICAL RESEARCH CENTER  
(2014 OK 58)**

TOPIC: AD VALOREM TAXATION, AND PRIVATE ATTORNEYS

REPRESENTING ASSESSORS

RULING: County assessors can hire outside attorneys to represent them in proceedings before the County Board for Equalization and the Court.

FACTS: [THIS IS A COMPANION CASE TO: **YAZEL v. WILLIAM K. WARREN MEDICAL RESEARCH CENTER (2014 OK 57)**--SEE ABOVE]

TRIAL COURT RULING:

COURT OF CIVIL APPEALS RULING:

SUPREME COURT RULING:

5. **TULSA INDUSTRIAL AUTHORITY v. CITY OF TULSA (2014 OK 81)**

**TOPIC:** BONDHOLDERS ARE NECESSARY PARTIES TO SUIT

**RULING:** Taxpayer's repeated refusal to join bondholders justified dismissal with prejudice.

**FACTS:** Taxpayer sought to intervene in a pending suit to assert that there had been illegal public expenditures and industrial bond financing (qui tam and equitable relief). This matter was appealed initially, and it was determined that, while a qui tam action would not be permitted, the taxpayer could seek equitable relief. The matter was remanded to the trial court to proceed.

**TRIAL COURT RULING:** The trial court then ordered the industrial bond holders to be joined as necessary parties to avoid multiple or inconsistent rulings in additional suits by the bondholders. The taxpayer was given multiple extensions of time to file an amended petition and to join the bondholders, but he failed to do so. While the last deadline was pending, the taxpayer filed an Application to Assume Original Jurisdiction and Petition for Writ of Prohibition and Mandamus asking the Supreme Court to become involved. Then, when the deadline passed to join the bondholders, as necessary parties, the trial court dismissed the taxpayer's suit, with prejudice.

**SUPREME COURT RULING:** The Supreme Court retained jurisdiction. The appellate court held that it was proper for the trial court to require the joinder of the bondholders as necessary parties, to avoid multiple and inconsistent rulings. The argument of the taxpayers that it did not have access to the names and contact information for the bondholders was rejected because the taxpayer failed to show any

attempt to request such information. The trial court's dismissal with prejudice was affirmed.



6. **MARSHALL COUNTY v. HOMESALES, INC. (2014 OK 88)**

**TOPIC:** DOCUMENTARY STAMP TAX ON SHERIFF'S DEED; CLASS CERTIFICATION

**RULING:** Only OTC can enforce collection of unpaid documentary stamp tax, but counties can sue to determine tax liability; absent proof of the minimum of \$100.00 in consideration, class standing cannot be approved.

**FACTS:** Mortgage lender was the highest bidder at 138 of its own foreclosure sales, but verbally assigned the right to the sheriff's deed at the confirmation hearing to an affiliated entity. The trial court directed the sheriff to show the assignee as the grantee on the deeds, and the sheriff did so. The lender claimed such deeds were exempt from payment of the documentary stamp tax (68 O.S. §§3201 to 3206) and did not pay such taxes. In particular the lender relied on 68 O.S. §3202(13), which exempts the lender at its own foreclosure sale, IF it is the grantee. The county sued to collect the tax, and sought certification of all 77 counties due to the lost revenue.

**TRIAL COURT RULING:** The trial court certified the class. The lender appealed and the Supreme Court retained the case.

**SUPREME COURT RULING:** The Supreme County held that the order certifying the class order was not a final order, and was not certified for immediate appeal. Such portion of the appeal was dismissed as premature. Following the holding in the recent decision in MURRAY COUNTY v. HOMESALES (2014 OK 52) (see above) the Supreme Court then held that the County did have standing to seek declaratory ruling and injunctive relief as to whether taxes were due, but could not pursue

enforcement and collection activities. Only the Oklahoma Tax Commission or the Attorney General could do so. However, in regard to class certification, the Supreme Court also held that since the County cannot seek to collect such taxes, it failed to establish the class status requirement that it must be seeking monetary damages. The county could have established an alternative ground for class certification if it could show it was likely the County would prevail on showing that the deeds were not exempt from taxation. The proof offered by the County was 138 deeds filed by the lender, where the grantee was not the lender, but was an affiliated entity. Such proof failed to show whether the threshold amount of \$100.00 in consideration was paid to the lender by the assignee/grantee for the deed. Therefore, the trial court must consider this threshold issue before it can grant the certification. The Supreme Court ruled that the County had standing to seek declaratory and injunctive relief, but only if the Court first established the threshold amount of consideration was paid. The case was remanded to the trial court for a determination of the consideration question.

**7. IN RE: DETACHMENT OF MUNICIPAL TERRITORY FROM THE CITY OF ADA (2015 OK 18)**

**TOPIC:** NOTICE OF ANNEXATION BY CERTIFIED MAIL

**RULING:** Failure to use certified/return requested mail to give notice to interested persons meant the city did not have jurisdiction to annex lands.

**FACTS:** City of Ada passed a city ordinance annexing certain lands into the city limits. The applicable statute called for notice to be given both to owners in the affected area and those abutting the roadways surrounding the annexed land. Only regular first class U.S. mail was used to send notice of the new ordinance to owners of lands in the annexed territory. The landowner protested the ordinance but the City refused to withdraw the ordinance. The landowner filed a Petition for Declaratory Judgment and, in the alternative, for Detachment of Municipal Territory.

**TRIAL COURT RULING:** The trial court denied the landowner's request for relief, but certified the Order for immediate appeal.

**SUPREME COURT RULING:** The Supreme Court retained the matter. The court held that substantial compliance--giving notice by regular rather than certified/return receipt mail--was not acceptable. It ruled that by failing to give the statutory notice, the city failed to acquire jurisdiction to pass the ordinance. The case was remanded for further proceedings to overturn the ordinance.

8. **HAMM v. HAMM (2015 OK 27)**

**TOPIC:** WAIVER OF APPEAL RIGHT

**RULING:** Wife's acceptance of transfer of real property and payment of property division alimony (\$1billion) in satisfaction of a divorce decree judgment waives wife's right to continue her appeal of the division of marital assets. Husband's appeal of the same issue was allowed to continue.

**FACTS:** The parties went through a divorce.

**TRIAL COURT RULING:** The trial court awarded certain real property to the wife, along with a judgment (\$1 billion) for property division settlement, with such money to be paid over time. The husband immediately transferred the real property and also paid the money judgment immediately. The wife accepted the real property and cashed the check.

**SUPREME COURT RULING:** Both parties appealed the trial court's decision. The Supreme Court retained the case. The husband moved to dismiss the wife's appeal as being waived because she accepted the benefits of the judgment. The Supreme Court dismissed the wife's appeal as being waived by her acceptance of the benefits of the judgment. There were several concurring opinions and dissents.

9. **WALKER v. BUILDDIRECT.COM TECHNOLOGIES INC. (2015 OK 30)**

**TOPIC:** NOTICE OF EXTRINSIC DOCUMENT

**RULING:** Buyer of home supplies (wood flooring) had no notice of the "Terms of Service" found on the vendor's website. Such "Terms of Service" were only mentioned in passing on the contract without describing the content of such Terms and without any guidance on how to locate such Terms. Such Terms required arbitration over any contract dispute.

**FACTS:** Buyer of \$8 thousand worth of wooden flooring through the Chinese vendor's website installed the flooring and then discovered "nonindigenous wood-boring inserts". The house was severely damaged and was quarantined for possible destruction by the US Department of Agriculture. The buyer sued in federal district court for damages. The contract between the seller and buyer expressly made the contract subject to "Terms of Service", but did not expressly indicate where to find the Terms and did not hint what the Terms covered. The Terms were to be found on the website of the seller under the button labeled "Customer Service", and then at the link labeled "Terms of Service". Such Terms required arbitration in the event of any dispute, rather than litigation.

**FEDERAL DISTRICT COURT RULING:** The seller moved to compel arbitration. The federal district court denied the seller's motion to compel arbitration. The seller appealed by statutory right to the Tenth Circuit since the issue regarded the obligation to arbitrate the dispute.

**FEDERAL COURT OF APPEALS RULING:** The Tenth Circuit certified the following question to the Oklahoma Supreme Court: "Does a written consumer

contract for sale of goods incorporate by reference a separate document entitled 'Terms of Sales' available on the seller's website, when the contract states that it is 'subject to' the seller's 'Terms of Sale' but does not specifically reference the website?"

(¶1)

SUPREME COURT RULING: (¶1)"In response, this [Oklahoma Supreme] Court holds that a contract must make clear reference to the extrinsic document to be incorporated, describe it in such terms that its identity and location may be ascertained beyond doubt, and the parties to the agreement had knowledge of and assented to the incorporated provisions. Therefore, this Court answers the certified question in the negative." (¶16)"For the reasons stated herein, Oklahoma law does not recognize a vague attempt at incorporation by reference as demonstrated in this action. Under the Oklahoma law of contracts, parties may incorporate by reference separate writings, or portions thereof, together into one agreement where (1) the underlying contract makes clear reference to the extrinsic document, (2) the identity and location of the extrinsic document may be ascertained beyond doubt, and (3) the parties to the agreement had knowledge of and assented to its incorporation."

[Author's comment: This case provides hints as to when documents that are referred to in recorded instruments (such as deeds or oil and gas leases) will be effectively incorporated into the first instrument.]

10. **BENEFIEL v. BOULTON (2015 OK 32)**

**TOPIC:** DIVORCE DECREE JUDGMENT LIEN FORECLOSURE;

**REVERSIONARY CLAUSE ENFORCEMENT**

**RULING:** Divorce decree awarding judgment lien to enforce property settlement payments was a "perfected" lien on the land without recording, and "actual" notice of such lien (not constructive notice) was given by inclusion of the unrecorded decree in the buyer's abstract, which was overlooked by the title insurance company's title examiner.

**FACTS:** Divorce decree granted title to home to wife (and husband gave wife a quit claim deed), and the decree required wife to make periodic payments as property settlement to husband. Decree gave husband a judicial lien on the house to secure such payments, as well as an automatic reversionary right whereby he would receive title if the wife missed a payment. Wife made all but last payment and sold house to third party. Buyer from wife had title insurance and the abstract included the unrecorded decree. The title examiner failed to reveal the judge-made lien to the title company. The husband sued to foreclose his judgment lien and to quiet title to the property under the reversionary provision. Three years after the lawsuit was filed the buyer tendered the remaining amount due (without interest on it), and then after judgment on the lien was granted to the husband (but before the Sheriff's sale), the buyer tendered the interest on the debt as well, thus redeeming the property from the lien.

TRIAL COURT RULING: The trial court's initial ruling was issued in favor of the husband on all issues: "(1) the divorce decree created a valid 'mortgage lien' against the property; (2) [wife] Christa Benefiel defaulted on the property division obligation; and (3) in accordance with the divorce decree, Christa Benefiel's default resulted in the automatic reversion of title to Plaintiff [husband]." The buyer appealed.

COURT OF CIVIL APPEALS RULING: COCA affirmed the trial court by declaring: (1) the unrecorded decree was "properly perfected", (2) the third party buyer had "actual" notice of the unrecorded decree because it was in the abstract, and (3) the judgment lien was "analogous to a real estate mortgage lien". But the COCA found that "the reversionary clause was void because it deprived Boulton [third party buyer] of the right to redeem the property." The case was remanded to the trial court.

SUPREME COURT RULING: The Oklahoma Supreme Court vacated the award of appeal-related attorney fees by the COCA, and the matter went back to the trial court. The trial court granted the plaintiff husband foreclosure of the judgment lien, although, once Boulton (really the title insurance company) paid both the remaining property division payment (\$5,000) plus the interest accruing since default, the property was deemed redeemed from the lien. The trial court treated the plaintiff husband as the prevailing party who was entitled to attorney fees. On a second appeal, the COCA held that the buyer successfully defended against the foreclosure action by redeeming the debt. The Oklahoma Supreme Court held that while the buyer successfully redeemed the property from the debt by paying the past due payment and the accrued interest, the plaintiff husband was the prevailing party on the foreclosure, because the redemption did not occur until after a foreclosure



judgment was granted to the plaintiff husband. Therefore, the plaintiff husband was entitled to attorney fees on that action. However, because the defendant buyer defeated the attempt by the plaintiff husband to quiet title in his own name through the enforcement of the reversionary clause in the decree, the defendant buyer was the prevailing party on that issue, and was entitled to attorney fees. The matter was remanded to the trial court "to release the lien attached to Boulton's real property, to enter judgment on both of the aforementioned claims as outlined herein, and to award attorney fees, if allowable, consistent with this opinion."

[Author's comment: It is implied that the abstract company is required or otherwise justified in including this unrecorded decree in their abstract. This matter is not explained. The decree may be a judge-made lien on real property that is enforceable between the parties, but the court fails to explain how the decree can be "valid" against third parties (meaning "perfected") in the absence of the proper recording of the decree in the county clerk's land records. Also, the court's declaration that the knowledge of the title attorney, who examined an abstract for a title insurance company as the company's employee or independent contractor (and not for the buyer), was somehow imputed to a third party buyer is left unexplained. This is significant development.]

11. **CROWNOVER v. KEEL (2015 OK 35)**

**TOPIC:** ADVALOREM TAX SALE NOTICE

**RULING:** After county's notice of impending tax resale was returned unclaimed ("not deliverable as addressed unable to forward"), the county's failure to make additional efforts to locate and give notice to the land owner fell short of the required constitutional due process requirements.

**FACTS:** Land owner moved from the taxed real property and failed to provide an updated mailing address to the county. The landowner failed to pay advalorem taxes for several years. The county sent certified (not return receipt requested) to the last mailing address of the landowner. The notice was returned with the notation, "not deliverable as addressed unable to forward". The county failed to take any further steps to locate the landowner, and relied upon publication notice to support its subsequent tax sale and issuance of a tax deed to a third party. The former landowner realized there had been a tax sale when the new owner contacted the former landowner (which the county claimed it could not do) and asked how to handle some personal property left on the land. The former landowner sued to extinguish the tax deed based on lack of due process notice.

**TRIAL COURT RULING:** The landowner argued that the address on the last check which was sent to the county to pay taxes had the correct current address and should have been used to contact him. The trial court denied the former landowner's motion for summary judgment on the inadequacy of notice issue, and granted the county's motion for summary judgment concluding that the notice was adequate, under the

statute, which called for notice by certified mail and publication notice. The landowner, Crownover, appealed.

COURT OF CIVIL APPEALS RULING: The court of civil appeals affirmed the decision of the trial court. The COCA primarily simply relied upon the fact that the county complied with the literal requirements of (1) mailing notice by certified mail, and (2) giving publication notice. It also relied upon the statute that provides that "failure to receive this notice did not invalidate the sale." The former landowner, Crownover, sought Certiorari.

SUPREME COURT RULING: The Oklahoma Supreme Court vacated the COCA opinion and reversed the trial court. The Oklahoma Supreme Court gave a detailed history of the decisions by both the US Supreme Court and the Oklahoma Supreme Court regarding what constitutes adequate due process in an advalorem tax sale notice. It (1) emphasized that literal compliance with the state statutes is not sufficient, and (2) especially relied on one fairly recent US Supreme Court case, *Jones v. Flowers*, 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415 (2006). In *Jones* the notice of a tax sale was deemed inadequate when it consisted solely of two attempts to mail notice by certified mail, plus publication notice. The Oklahoma Supreme Court quoted *Jones*, "when mailed notice of a tax sale is returned unclaimed, the State must take additional steps to attempt to provide notice to the property owner before selling his property, if it is practical to do so." The Oklahoma Supreme Court noted that "The *Jones* court also stated succinctly that the property owner's failure to keep his address updated, which was required by statute, did not result in the owner somehow forfeiting his right to constitutionally sufficient notice."

The case was remanded to the trial court for further proceedings consistent with the opinion of the Oklahoma Supreme Court.

12. **ALEXANDER v. ALEXANDER (2015 OK 52)**

**TOPIC:** FINALITY OF DIVORCE DECREE

**RULING:** The issuance of a minute order dissolving a marriage is effective immediately to sever the relationship, even if other issues, such as property division has not been resolved.

**FACTS:** Wife and husband were married for 40 years and accumulated millions of dollars of real property held by corporations in the wife's name. The wife filed for divorce on October 23, 2012. The wife announced she had stage 4 lung cancer and would die soon; she died on October 10, 2013. The wife desired to leave her part of the estate to her daughters.

**TRIAL COURT RULING:** The trial court issued a handwritten court minute on August 20, 2013, granting the wife's Motion for a Grant of Divorce. The judge, as well as both parties' attorneys, signed the minute order, and it was filed. The minute order directed the parties to participate in mediation within 5 days to resolve the property issues and to submit a journal entry to the judge in 10 days. Neither party presented such journal entry. The wife died two months later on October 10, 2013. Eight days later the husband filed a motion to dismiss the action, asserting that the death of the wife ended the court's jurisdiction. The wife's daughters objected. The trial court granted the motion to dismiss.

**COURT OF CIVIL APPEALS RULING:** The COCA affirmed.

**SUPREME COURT RULING:** The Oklahoma Supreme Court accepted Certiorari. The court vacated the COCA decision and reversed the trial court. The court reasoned that divorce proceedings operate under certain separate statutes, which make

any pronouncement effective immediately, even if a final journal entry is not presented and filed. Also, it was noted, "It is common for district courts to grant a divorce at one point in time but then reserve jurisdiction to address other pending issues--such as division of property or determinations as to custody or child support--to a later date." The matter was remanded to the trial court to divide the property.

13. **LADRA v. NEW DOMINION, LLC (2015 OK 53)**

**TOPIC:** JURISDICTION OF DISTRICT COURTS OVER OIL & GAS TORTS

**RULING:** District courts have jurisdiction over tort claims arising from oil and gas operations, so long as no effort to challenge or modify Oklahoma Corporation Commission orders is involved.

**FACTS:** Several oil operations companies disposed of saltwater underground around Prague, Oklahoma. During an earthquake in Prague a homeowner's home was shaken by an earthquake resulting in fireplace rocks falling and injuring the homeowner. She went to the hospital and suffered personal injury damages, allegedly in excess of \$75,000. She sued the saltwater disposal companies for damages.

**TRIAL COURT RULING:** The companies moved to dismiss the action, asserting that only the Oklahoma Corporation Commission had jurisdiction to regulate oil and gas operations. The trial court granted the motion to dismiss.

**SUPREME COURT RULING:** On appeal the Oklahoma Supreme Court retained the case. The trial court's decision was reversed. The Supreme Court held that the OCC only held exclusive jurisdiction over regulatory matters, and not torts. It stated, "Allowing district courts to have jurisdiction in these types of private matters does not exert inappropriate 'oversight and control' over the OCC, as argued by the Appellees. Rather, it conforms to the long-held rule that district courts have exclusive jurisdiction over private torts when regulated oil and gas operations are at issue." The case was remanded to the trial court for further proceedings.

**14. FRANKENBURG v. STRICKLAND (2015 OK 23)**

**TOPIC:** INCREASING REAL PROPERTY ASSESSMENT (5% CAP)

**RULING:** The county assessor can increase real property assessment by only 5% per year, except that in the year that improvements are **made** the full value of the improvements can be reflected in an increase in valuation only if a new **assessment** is also made in that same year.

**FACTS:** House was constructed in 1990. The property was assessed in 1999 at about \$70,000. After a fire damaged the house in 2000, they repaired the house and made improvements in 2001. No improvements were made thereafter. In 2011 (ten years later) the assessor made a new assessment and gave notice of a valuation of \$219,284, and announced that the taxable value was also increased to that amount, despite the Constitutional cap of 5% per year. The taxpayer protested both informally to the assessor and formally to the County Board of Equalization, without success, except that the valuation was lowered to \$149,877. The taxpayer filed suit.

**TRIAL COURT RULING:** On cross motions for summary judgment, the trial court granted the taxpayer's motion, and denied the assessor's, ordering the assessor to limit the increase to a single 5% increase, increasing the taxable value to \$73,076. The county appealed.

**SUPREME COURT RULING:** The Oklahoma Supreme Court retained the case, and affirmed the trial court. The Supreme Court held that the Constitutional provision was unambiguous, and that the lifting of the 5% cap only occurred in the year of the making of improvements, but only if the new assessment occurs that same year. Otherwise, whenever the improvements are discovered the county can make



only a 5% per year increase in such future years. The assessor cannot avoid the lost opportunity to jump the value beyond the 5% cap.