



**HICKMAN v. STATE ex rel. SERVICE OKLAHOMA**

2023 OK CIV APP 17

Case Number: 120906

Decided: 04/14/2023

Mandate Issued: 05/11/2023

DIVISION III



THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION III

Cite as: 2023 OK CIV APP 17, \_\_ P.3d \_\_

STEVE R. HICKMAN, Plaintiff/Appellee, Plaintiff/Appellee/Counter-Cross Appellant,

v.

STATE OF OKLAHOMA *ex rel.* SERVICE OKLAHOMA, Defendant/Appellant/Counter Appellee, and  
GEICO CASUALTY COMPANY, Defendant/Cross-Appellee.

APPEAL FROM THE DISTRICT COURT OF  
TULSA COUNTY, OKLAHOMA

REBECCA B. NIGHTINGALE, TRIAL JUDGE

**AFFIRMED**

Steven R. Hickman, FRASIER, FRASIER & HICKMAN, LLP, Tulsa, Oklahoma, for Plaintiff/Appellee/Counter-Cross Appellant,

Kyla K. Williams, Assistant General Counsel, OKLAHOMA TAX COMMISSION, Oklahoma City, Oklahoma, for  
Defendant/Appellant/Counter Appellee,

Gerard F. Pignato, Matthew C. Kane, RYAN WHALEY, Oklahoma City, Oklahoma, for Defendant/Cross-Appellee.

THOMAS E. PRINCE, PRESIDING JUDGE:

¶1 This appeal stems from an Order by the trial court that granted summary judgment and directed the Oklahoma Tax Commission<sup>1</sup> to issue an original title (versus a salvage title) for a 2017 Lincoln automobile following an accident concerning which the owner's insurance carrier had reported that, because of its evaluation, the cost of safely repairing the vehicle exceeded 60% of its fair market value at the time of the loss. The Appellee, Steven R. Hickman, brought this action to challenge the determination by Cross-Appellee, GEICO Casualty Company, of the costs of repairing the vehicle for safe operation on the highway and the type of certificate of title that should be issued by the Defendant/Appellant, Counter-Appellee, OTC. We hold that 47 O.S. §§ 1105 & 1111, allow an owner of a vehicle in Hickman's posture to pursue a civil action against the OTC and the insurer, as alleged herein. In light of the summary judgment record, we affirm the trial court's January 3, 2023, Journal Entry of Judgment.

BACKGROUND

¶2 Hickman purchased the vehicle at the center of this case on April 13, 2021, for \$28,888.00. Just 3 days later, on April 16, 2021, the vehicle was involved in an accident. Plaintiff submitted a claim to his insurance carrier, GEICO Casualty Company. GEICO estimated the damages to Hickman's vehicle at \$17,761.34. On May 10, 2021, GEICO paid Hickman \$18,951.57, which reflected the total value of the vehicle less the salvage value of the vehicle retained by Plaintiff. Hickman maintained possession of the vehicle and paid to have the vehicle repaired, which totaled \$9,585.51.

¶3 GEICO notified the Oklahoma Tax Commission of the total loss on May 11, 2021. Notification to the OTC was required by statute because the vehicle was involved in a collision resulting in a loss greater than 60%, but less than 80% of the vehicle's fair market value prior to the accident. The OTC notified Hickman that he was required to surrender the original certificate of title to any Oklahoma tag agency, whereupon he would be issued a salvage title. When the vehicle's tag came up for its next annual renewal, the OTC refused to issue an annual certification of registration, again advised Hickman that a salvage title was required and further advised Hickman that, in order to obtain a standard title on the vehicle, he would need a certification by GEICO reporting an amount of damage less than 60% of the fair market value of the vehicle.

¶4 Hickman filed this action on March 18, 2022, naming the OTC as the sole Defendant, seeking injunctive relief for the issuance of a standard title for the vehicle, an annual certification of registration and decal, together with a purging of the OTC's files with reference to any "salvage" mention on the title. Hickman filed a Motion for Summary Judgment on April 21, 2022, which was granted on May 25, 2022, without a response having been filed by the OTC. On August 16, 2022, upon timely request by the OTC, the trial court vacated its Order of April 21, 2022. That day (i.e., August 16, 2022), Hickman filed an Amended Petition that added GEICO as a Co-Defendant and claiming that GEICO was "responsible for the problem". Hickman also made a claim therein of "unconstitutional" conduct by the OTC. Hickman filed a Supplemental Motion for Summary Judgment on August 24, 2022. Hickman specifically argued in the Supplemental Motion for Summary Judgment that "[t]o the extent that the statute makes an interested party the arbiter and does not give process rights, we have a taking without due process."<sup>2</sup> While GEICO responded to the Supplemental Motion for Summary Judgment October 7, 2022, the OTC did not respond to said motion.<sup>3</sup> The trial court sustained the Supplemental Motion for Summary Judgment on October 11, 2022. Subsequently, on October 25, 2022, the OTC filed a motion entitled, in part, as a "Motion to Set Aside Order Granting Plaintiff's Summary Judgment and Supplement to Motion for Summary Judgment".<sup>4</sup> On November 9, 2022, the trial court denied the "Motion to Set Aside". On January 3, 2023, a Journal Entry of Judgment was entered, which is the final appealable order from which this appeal originates.<sup>5</sup> Hickman filed a Cross/Counter Petition in Error on January 23, 2023.

#### STANDARD OF REVIEW

¶5 The Exhibit "C" to the OTC's Petition in Error states three issues to be raised on appeal. We have reformulated the Service Oklahoma's claimed three errors to just one central issue: i.e., whether 47 O.S. §§ 1105 & 1111, allow an owner of a vehicle to pursue a civil action against the OTC and the insurer to challenge an insurer's determination of the costs of repairing a vehicle for safe operation on the highway and the type of certificate of title that should be issued by the OTC.<sup>6</sup> Hickman's Exhibit "C" to his Cross/Counter Petition in Error states five issues to be raised on appeal. We also have reformulated Hickman's claimed errors, adjusting his issues from five issues to three central issues: whether the failure of the OTC to respond to Hickman's Supplemental Motion for Summary Judgment constituted a waiver; whether judicial review is permitted under the relevant statutes; and, alternatively, if judicial review is not permitted under the relevant statutes, whether the principles of due process are violated by the relevant statutory scheme concerning the issuance of salvage titles in the State of Oklahoma. A trial court's award of summary judgment is reviewed *de novo*. *Wood v. Mercedes-Benz of Oklahoma City*, 2014 OK 68, ¶ 4, 336 P.3d 457, 459 (citation omitted). Under this standard, appellate courts are "afforded 'plenary, independent, and non-deferential authority to examine the issues presented.'" *Id.* (citation omitted). Examination of a grant of summary judgment requires appellate courts to determine whether the record actually presented reveals disputed material facts. *Id.*; see also Okla. D. Ct. R. 13(a) (explaining that "[a] party may move for [] summary judgment . . . on the merits on the ground that the evidentiary material filed with the motion or subsequently filed with leave of court show that there is no substantial controversy as to any material fact"). Grants of summary judgment are proper, and will be affirmed, when the evidentiary materials show that "there is no substantial controversy as to any material fact and that the moving party is entitled to judgment as a matter of law." *Lowery v. Echostar Satellite Corp.*, 2007 OK 38, ¶ 11, 160 P.3d 959, 963--64 (citation omitted).

#### ANALYSIS

##### *Summary Judgement Process*

¶6 Hickman asserts in his Cross/Counter-Petition that a waiver occurred because the OTC never responded to his Supplemental Motion for Summary Judgment. The Summary Judgment record shows that, in Hickman's October 4, 2022, "Application for Ruling on Motion", he argued that the failure of the OTC to respond invoked the "criteria set for [sic] in *Spurgis v. Circle K Stores, Inc.*, 1987 OK CIV APP 45, 743 P.2d 682, . . .", which addressed the duty of the trial court to canvass the record in a summary judgment process to determine the legal sufficiency of the evidentiary materials to support the requested

relief. *Id.*, at ¶ 9 ("if the motion for summary judgment is not well-taken, the failure of the opposing party to respond does not mean that the motion must be granted by the court."). In light of the holding in *Spirgis* and other applicable authority, no waiver occurred here and this Court, like the trial court, is duty bound to search the evidentiary record and determine whether the evidentiary materials support the entry of summary judgment. See e.g., *Kohler v. Kline & Kline, Inc.*, 2002 OK CIV APP 4, ¶ 13, 38 P.3d 257, 261 ("[t]here can be no summary judgment by default.").

### *Statutory Interpretation*

¶7 The single (reformulated) issue raised by the OTC in this appeal is whether 47 O.S. §§ 1105 & 1111, allow an owner of a vehicle to pursue a civil action against the OTC and the insurer to challenge an insurer's determination of the costs of repairing a vehicle for safe operation on the highway and the type of certificate of title that should be issued by the OTC. The resolution of this issue requires an examination of the text of the relevant salvage title statutes under the established principles of statutory interpretation. The salvage title laws serve the protection of consumers with regard to the purchase of a vehicle that has placed back in the stream of commerce a "total loss". See *Brannon v. Munn*, 2003 OK CIV APP 33, ¶ 2, 68 P.3d 224 (a consumer protection action against a prior seller and an insurer of a vehicle allegedly because the buyer had learned, following the purchase of the vehicle, that it "had been involved in a collision while leased from Ford and, as a result of the collision, declared a total loss.").

¶8 The language of § 1105A(1), defines a "salvage vehicle" as follows:

1. 'Salvage vehicle' means any vehicle which is within the last ten (10) model years and which has been damaged by collision or other occurrence to the extent that **the cost of repairing** the vehicle for safe operation on the highway **exceeds sixty percent (60%) of its fair market value**, as defined by Section 1111 of this title, immediately prior to the damage. For purposes of this section, **actual repair costs shall only include labor and parts for actual damage to the suspension, motor, transmission, frame or unibody and designated structural components**;

(emphasis added).

¶9 The process or procedural requirements for the issuance of the appropriate title following an event that causes a "total loss" of a vehicle are set out in § 1111. The cornerstone of Oklahoma's salvage title law is the duty of an insurer to report its determination to the OTC that the damage to a vehicle meets the statutory definition for a "total loss". 47 O.S. § 1111B. The definitions of a "loss", "total loss" and "fair market" value are set out in § 1111A(1), (2) & (4), in part, as follows:

1. 'Loss' means the cost, in dollars, to repair or replace a vehicle which has been damaged by collision or other occurrence. **The amount paid by an insurer to a holder of the certificate of title for repair of a damaged vehicle shall be prima facie evidence of the amount of the loss.** The amount paid by an insurer to a holder of the certificate of title **for replacement of a damaged vehicle** less the resale value of the damaged vehicle **shall be prima facie evidence of the amount of the loss**;

2. 'Fair market value' means the value of a vehicle as listed in the current National Auto Dealers Association guidebook or other similar guidebook or the actual cash value, whichever is greater;

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4. 'Total loss' means a loss which is equal to the fair market value of the vehicle immediately prior to the damage to or theft of the vehicle; . . . .

(emphasis added). The reporting duties imposed on an insurer and the guidelines to be followed by the OTC for the issuance of the appropriate title upon receipt of such a notice are set out in § 1111C & L, in part, as follows:

C 1. **If an insurance company pays a claim for a loss which is less than a total loss but the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of the fair market value of the vehicle, or if any vehicle not insured is damaged to the extent that the cost of repair for safe operation on the highway exceeds sixty percent (60%) of the fair market value of the vehicle, any holder of the certificate of title for the vehicle shall return the certificate of title to Service Oklahoma or a licensed operator within thirty (30) days from receipt of payment for the loss.**

2. Upon receipt of the certificate, **Service Oklahoma or the licensed operator shall issue a salvage title for the vehicle.**

3. **If the actual documented cost of repairing the vehicle for safe operation on the highway does not exceed sixty percent (60%) of the fair market value of the vehicle as defined in this section, the certificate of title shall be reissued to the holder and the vehicle shall not be subject to inspection as required under this section.** The actual documented cost of repairing the vehicle pursuant to this paragraph shall be certified by the insurance company paying the loss.

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L. **Any insurance company that pays a claim for a loss where the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of the market value of the vehicle or pays a claim for a flood-damaged vehicle as defined in Section 1105 of this title shall notify, in writing, the holder of the certificate of title of the requirements of this section and shall notify Service Oklahoma of the payment of such claim.** The notice shall include the estimated total damage percentage determination of the actual cash value made by the insurance company to repair the vehicle for safe operation on the highway. The insurance company shall also send a copy of the notification to the holder of the title. **Service Oklahoma shall provide notice to the owner of the vehicle in writing requiring the owner to surrender the title along with the fee to Service Oklahoma or one of its licensed operators within thirty (30) days from the receipt of notice for the issuance of the appropriate title based on the amount of loss.** Service Oklahoma shall reissue the appropriate title with the words 'Flood Damaged' on the face of the title in the case of a flood-damaged vehicle; provided, no insurance company shall pay a claim for less than the amount to which the holder of the certificate of title is rightfully entitled in order to avoid compliance with this section.

¶10 It is our duty to give meaning and effect to the words chosen by the Legislature, unless to do so would result in an absurdity. See *Tate v. Browning-Ferris, Inc.*, 1992 OK 72, ¶ 15, 833 P.2d 1218, 1228 ("[t]o ascertain legislative intent we look to the language of the pertinent statute. Statutory words are to be given their ordinary sense except when a contrary intention plainly appears.") (citations omitted); *Hill v. Board of Education, District I-009, Jones, Oklahoma*, 1997 OK 10711, ¶ 5, 944 P.2d 930, 931 ("[t]he fundamental rule of statutory construction is to ascertain and, if possible, give effect to the Legislature's intention and purpose as expressed in a statute.") (citations omitted). We begin our analysis by looking to the language of the pertinent statutes because "it is our duty to apply the law as written." *Greenwood Centre, Ltd. v. Nightingale*, 2020 OK 59, ¶ 3, 465 P.3d 1269, 1270 (Rowe, J., concurring) (citations omitted). Consequently, in the absence of an ambiguity, the text of a statute is the sole legitimate expression of legislative intent.

¶11 The phrase "prima facie evidence", as used in the definition of "total loss" in § 1111A(1), provides legislative direction that an insurer's determination of "total loss", including the cost of repairing the vehicle for safe operation on the highway and the fair market value of the vehicle in question is to represent a rule of procedure for the establishment of a basic fact that may be challenged or rebutted in a civil action. See 12 O.S. § 2002 (providing that "[t]here shall be one form of action to be known as 'civil action'"). The phrase "prima facie evidence" has been defined as follows:

It simply means that, in considering the testimony, and the record upon which the order was based, **the presumption arises in the Supreme Court that the order thereon made is to be regarded as prima facie just, reasonable, and correct, such presumption subject to be overcome by evidence that may be in the record that clearly rebuts same. Such presumption arising in favor of the order, while a strong one, is not one of a conclusive character. It will give way to a fair exhibition of the contravailing evidence in the record . . . .**

*City of Pawhuska v. Pawhuska Oil & Gas Co.*, 1917 OK 397, 166 P. 1058, 1064 (emphasis added). Cf. 12 O.S. § 2303 (establishing the effect of a presumption to be, in part, that when the basic fact of a presumption has been established . . . [,] if the basic fact has any probative value of the existence of the presumed fact, the presumed fact shall be assumed to exist and the burden of persuading the trier of fact of the nonexistence of the presumed fact rests on the party against whom the presumption operates; . . ."). Thus, as used in the context of § 1111A, the phrase "prima facie evidence" and an insurer's determination of the cost of repairing the vehicle for safe operation on the highway (together with the fair market value of the vehicle in question) compel the creation of a legal presumption that the insurer's determination is legally correct and will stand if not rebuffed or contradicted in a civil action (i.e., that the insurer's report, unless rebuffed or contradicted in a civil action, must be accepted by the OTC as a matter of law). Otherwise, the phrase "prima facie evidence", as used in the definition of "total loss" in § 1111A(1), would be rendered superfluous. See *Farris v. Cannon*, 1982 OK 88, 649 P.2d 529, 531 ("[w]henever an act of the legislature creates a remedy but does not prescribe the procedure for its pursuit, the court is duty-bound to fashion that procedure which will best effectuate the intent of the enactment. The legislature is never presumed to have done a vain thing.").

¶12 Consequently, the trial court properly sustained Hickman's Supplemental Motion for Summary Judgment because 1105 & 1111, allowing Hickman to pursue this civil action to challenge GEICO's determination of the costs of repairing the vehicle for safe operation on the highway. Moreover, the undisputed facts in the summary judgment record show that Hickman was entitled to relief, as a matter of law.<sup>7</sup> Thus, the trial court did not err in granting Hickman's Supplemental Motion for Summary Judgment.

#### *Due Process*

¶13 In light of our holding concerning the proper statutory interpretation of §§ 1105 & 1111, that an owner of a vehicle may pursue a civil action to challenge an insurer's determination of the costs of repairing a vehicle for safe operation on the highway, it is not necessary that we address Hickman's due process argument with respect to the relevant statutory scheme concerning the issuance of salvage titles. See *Dablemont v. State, Dep't of Pub. Safety*, 1975 OK 162, ¶ 9, 543 P.2d 563, 564 ("[c]onstitutional judgments are justified only out of necessity of adjudicating rights in particular cases between litigants brought before the court.").

#### CONCLUSION

¶14 For the reasons and upon the grounds outlined herein, we affirm the trial court's January 3, 2023, Journal Entry of Judgment.

MITCHELL, C.J., and BELL, J., concur.

#### FOOTNOTES

THOMAS E. PRINCE, PRESIDING JUDGE:

<sup>1</sup> Effective May 22, 2022, the Motor Vehicle Division of the OTC and all the duties assigned to that Division were transferred to "Service Oklahoma", a division of the Office of Management and Enterprise Services. As of January 1, 2023, the authority to issue or transfer motor vehicle certificates of title lies with Service Oklahoma, not the OTC. In response to a motion of the OTC, the Supreme Court entered an Order on February 15, 2023, substituting Service Oklahoma "as an appellant for OTC in this matter". We utilize the phrase "OTC" to refer to the Appellant, Service Oklahoma.

<sup>2</sup> The Court notes that the requirement of 12 O.S. § 2024D, for notice to the State Attorney General is not required in order for the Court to address the constitutionality claims asserted herein concerning the relevant statutory scheme at issue here because Service Oklahoma, a state agency, is a party to this case. See 12 O.S. § 2024D (providing, in part, that "[i]n any action, suit, or proceeding to which the State of Oklahoma or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of this state affecting the public interest is drawn into question, the court shall certify such fact to the Attorney General, and shall permit the State of Oklahoma to intervene . . .").

<sup>3</sup> GEICO stated in its response, in part, that it had fulfilled its statutory reporting obligation with respect to notify the OTC of "any vehicle . . . the repairs of which exceed 60% of the total value . . . [and that it] takes no position in responding to the instant Motion as to whether the Oklahoma Tax Commission should or should not issue any particular title based on the information GEICO is required to provide."

<sup>4</sup> GEICO filed a response to the Motion to Set Aside on November 9, 2022, and stated therein, in part, that it was "not joining in the Commission's request to set aside . . ." the Order.

<sup>5</sup> The Petition in Error was filed by the OTC on December 5, 2022. An Amended Petition in Error was filed on January 11, 2023, following the entry of the Journal Entry of Judgment on January 3, 2023.

<sup>6</sup> In accelerated appeals, like this one, this Court considers Exhibit "C"--i.e., Appellant's statement of "Issues to be Raised on Appeal"--to be of crucial importance because it alone "defines the issues raised on appeal." 5 Clyde A. Muchmore & Harvey D. Ellis, Oklahoma Appellate Practice § 19.2 (2022 ed.); cf. *Dani v. Miller*, 2016 OK 35, ¶ 8 n.1, 374 P.3d 779, 785.

<sup>7</sup> The summary judgment record includes argument by GEICO (in its filing in the trial court on November 9, 2022), that the factual basis upon which Hickman was able to repair the vehicle for less than the sum estimated by GEICO stems from the fact that Hickman did not have the airbags reset -- a step that GEICO argues is essential to make a vehicle highway safe. This issue was only argued by GEICO and was not established by either GEICO or the OTC as a disputed material fact. Consequently, the Court takes no position in this case with respect to whether the repair or reset of a vehicle's airbags is required by law, including pursuant to the language of 47 O.S. § 1105A(1).

## Citationizer<sup>®</sup> Summary of Documents Citing This Document

### Cite Name Level

None Found.

## Citationizer: Table of Authority

### Cite Name

### Level

#### Oklahoma Court of Civil Appeals Cases

Cite	Name	Level
<u>1987 OK CIV APP 45</u> , <u>743 P.2d 682</u> , <u>58 OBJ 1702</u> ,	<u>Spirgjis v. Circle K Stores, Inc.</u>	Discussed
<u>2002 OK CIV APP 4</u> , <u>38 P.3d 257</u> , <u>73 OBJ 402</u> ,	<u>KOHLER v. KLINE AND KLINE, INC.</u>	Discussed
<u>2003 OK CIV APP 33</u> , <u>68 P.3d 224</u> ,	<u>BRANNON v. MUNN</u>	Discussed

#### Oklahoma Supreme Court Cases

Cite	Name	Level
<u>1992 OK 72</u> , <u>833 P.2d 1218</u> , <u>63 OBJ 1507</u> ,	<u>Tate v. Browning-Ferris, Inc.</u>	Discussed
<u>1997 OK 107</u> , <u>944 P.2d 930</u> , <u>68 OBJ 2775</u> ,	<u>HILL v. BOARD OF EDUCATION</u>	Cited
<u>1917 OK 397</u> , <u>166 P. 1058</u> , <u>64 Okla. 214</u> ,	<u>CITY OF PAWHUSKA v. PAWHUSKA OIL &amp; GAS CO.</u>	Discussed
<u>2007 OK 38</u> , <u>160 P.3d 959</u> ,	<u>LOWERY v. ECHOSTAR SATELLITE CORP.</u>	Discussed
<u>1975 OK 162</u> , <u>543 P.2d 563</u> ,	<u>DABLEMONT v. STATE, DEPARTMENT OF PUBLIC SAFETY</u>	Discussed
<u>2014 OK 68</u> , <u>336 P.3d 457</u> ,	<u>WOOD v. MERCEDES-BENZ OF OKLAHOMA CITY</u>	Discussed
<u>2016 OK 35</u> , <u>374 P.3d 779</u> ,	<u>DANI v. MILLER</u>	Discussed
<u>2020 OK 59</u> , <u>465 P.3d 1269</u> ,	<u>GREENWOOD CENTRE, LTD v. NIGHTINGALE</u>	Discussed

**Cite Name****Level**

1982 OK 88, 649 P.2d 529,

Farris v. Cannon

Discussed

**Title 12. Civil Procedure**

Cite

Name

Level

12 O.S. 2002,

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12 O.S. 2303,

Effect of Presumptions in Civil Cases

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**Title 47. Motor Vehicles**

Cite

Name

Level

47 O.S. 1105A,

Electronic Filing, Storage and Delivery of Motor Vehicle Certificates of Title -  
Procedures

Cited

47 O.S. 1105,

Definitions

Discussed at Length