



# OKLAHOMA STATE COURTS NETWORK

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## WONSCH and VUNCANNON v. BOWMAN

2025 OK CIV APP 22

Case Number: 120956

Decided: 06/06/2025

Mandate Issued: 07/03/2025

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



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Cite as: 2025 OK CIV APP 22, \_\_ P.3d \_\_

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ROBERT V. WONSCH, Individually, Plaintiff/Appellant  
and

BILLY VUNCANNON, Individually, Plaintiff  
vs.

DR. BOWMAN, WARDEN, Individually and in his official capacity, Defendant/Appellee

APPEAL FROM THE DISTRICT COURT OF  
COMANCHE COUNTY, OKLAHOMA

HONORABLE EMMIT TAYLOE, TRIAL JUDGE

### **VACATED AND REMANDED FOR FURTHER PROCEEDINGS**

Robert V. Wonsch, Granite, Oklahoma, For Plaintiff/Appellant

Thomas G. Ferguson, Jr., WALKER, FERGUSON & FERGUSON, Oklahoma City, Oklahoma, For  
Defendant/Appellee

JOHN F. FISCHER, JUDGE:

¶1 Robert V. Wonsch appeals the denial of his motion to vacate the order quashing service of summons on fifteen defendants, including "Dr. Bowman." Bowman is alleged to have been the warden -- and the other defendants employees -- of the Lawton Correctional and Rehabilitation Facility where Wonsch was incarcerated at the time this action was filed. <sup>1</sup> When he filed his Petition, Wonsch also filed a motion for alternative service requesting that the sheriff or court clerk effect service of his Petition and summons on the defendants. Because that motion has not been resolved, we remand this matter to the district court to decide whether alternative service is warranted.

### **BACKGROUND**

¶2 Wonsch filed this case on January 18, 2022, asserting various violations of his constitutional rights while he was incarcerated in the custody of the Oklahoma Department of Corrections. <sup>2</sup> In his Petition, Wonsch named as defendants "Dr. Bowman," and fourteen other "John Doe" defendants purportedly employed at the Lawton facility during the times relevant to his allegations. In substance, he alleges that delayed receipt of his legal mail denied him access to the courts. Specifically, he contends that the defendants interfered with the receipt and mailing of legal correspondence, causing him to miss the deadline for filing a petition for writ of habeas corpus in federal court seeking review of his Oklahoma court conviction. <sup>3</sup>

¶3 At the same time he filed his Petition, Wonsch filed a motion for alternative service on the defendants asserting that he was an indigent inmate. He asked the district court to authorize: (1) personal service by the sheriff's office, (2) service by mail through the court clerk's office, or (3) service by publication. Wonsch filed a motion to proceed in forma pauperis on January 24, 2022, requesting the abatement of all filing fees in the case. There is no disposition of the motion for alternative service in the record on appeal. There is a docket entry on January 24, 2022, indicating: "SUMMONS ISSUED x 15." The record likewise contains a handwritten summons addressed to each of the fifteen defendants with a file-stamp date of January 24, 2022. It appears that these summonses were returned to Wonsch after they were filed. Wonsch's handwritten summonses were not "on forms approved by the court . . . ." 12 O.S.2021 § 2003.1(A).

¶4 On July 11, 2022, Wonsch filed an affidavit of service in which he purported to have served all defendants by certified mail, and the district court docket sheet for that date reflects the following entries: "Summons Returned, Served" followed by the name of each of the fifteen defendants. Attached to Wonsch's affidavit as proof of service is a copy of one certified mail return receipt showing it was addressed to "Lawton Correctional Facility/Wardens Office." The receipt, dated June 29, 2022, bears the signature of "Snead."

¶5 On July 14, 2022, Mark Bowen entered a special appearance and filed a motion to quash service of summons. Bowen argued that Wonsch failed to comply with 12 O.S.2021 §§ 2003.1 and 2004, requiring service by mail to be "restricted to the addressee." <sup>4</sup> Bowen later supplemented his motion, pointing out that he was not the warden at the Lawton Correctional Facility on June 29, 2022, and had been transferred to another facility prior to the date Wonsch's envelope appears to have been delivered to the warden's office. Wonsch filed a response to the motion to quash on July 20, 2022, arguing that because the district court had not ruled on his motion for alternative service, he had served the defendants at the only address available to him after the summonses were returned to him.

¶6 Warden Bowen's motion to quash was set for hearing on August 11, 2022. On August 5, 2022, Wonsch signed a Comanche County Court form acknowledging receipt of the notice of hearing. The district court granted the motion to quash in a "Court Order" filed on August 11, 2022, finding that Wonsch had "failed to obtain proper service on any of the named defendants in this matter as required by 12 O.S. § 2004." The court also found that Wonsch's "multiple filings" on July 11, 2022, of the returns of service did not satisfy the requirements of § 2004 for proper service.

¶7 Court records do not reflect when a copy of the August 11 order quashing service of summons was mailed to Wonsch. However, at some point Wonsch had received a copy of that order and filed Petitioner's Motion to Vacate Impermissible Order: Pursuant to "Ex Parte" Communication and Hearing in Violation(s) of 14th Amendment. Wonsch's motion sought to vacate the district court's August 11 order quashing service of summons on the grounds that the district court conducted an "impermissible and/or unauthorized '**EX PARTE**' hearing" on that date. He also asserted that counsel for Warden Bowen violated the Rules of Professional Conduct governing attorneys by attending the hearing without Wonsch being there. As a result, Wonsch argued that the district court lacked jurisdiction to enter the August 11 order quashing summons. He also asked the court to issue a writ of mandamus directing the sheriff to serve summonses on the defendants. Wonsch's motion was file-stamped by the Comanche County Court Clerk on August 26, 2022.

¶8 On September 26, 2022, Wonsch filed a motion to be present at all proceedings, which was set for hearing on October 27, 2022. Wonsch's motion to vacate the order quashing summons and several other pending motions were also set for hearing on October 27, 2022. The record contains a document signed by Wonsch acknowledging receipt of the district court's notice setting those matters for hearing on that date.

¶9 In an order filed on November 7, 2022, the district court denied Wonsch's motion to vacate the August 11 order and granted the defendants' motion to dismiss this case. <sup>5</sup> A copy of those orders was mailed to Wonsch on November 10, 2022, as required by 12 O.S.2021 § 696.2(B). In a subsequent filing, Wonsch acknowledged that he received the November 7 order denying his motion to vacate on November 18, 2022.

¶10 On November 28, 2022, Wonsch's second motion to vacate was filed. This motion sought to vacate all five orders issued on November 7, 2022, including the denial of his motion to vacate the August 11 order quashing service of summons. According to the affidavit of mailing attached to this motion, Wonsch delivered the motion to the appropriate prison staff for mailing on November 21, 2022.

¶11 Wonsch filed his petition in error on December 30, 2022, while his November motion to vacate was pending. He seeks review of all five November 7, 2022 orders. However, for the reasons stated in this Opinion, our disposition of the November 7 order denying his August 26, 2022 motion to vacate the August 11 order quashing service of summons is dispositive of this appeal.

## **ISSUES PRESERVED ON APPEAL**

### **I. Wonsch's First Motion to Vacate**

¶12 The August 11, 2022 order quashing service of summons contains no certificate of mailing to Wonsch. Nevertheless, Wonsch filed his first motion to vacate that order on August 26, 2022. Where an appellant is not the party who has prepared the judgment, decree, or final order, where § 696.2 of Title 12 requires that a copy of same be mailed to appellant, and where the court records do not reflect mailing within three days, all deadlines imposed for filing post-trial motions (such as Wonsch's motion to vacate) run from "the earliest date on which the court records show that a file-stamped copy of the judgment, decree, or final order was mailed . . . rather than from the date of filing." 12 O.S.2021 § 990.2(C). Thus, Wonsch's motion to vacate was timely filed within ten days of actual notice of the August 11 order quashing service. <sup>6</sup>

¶13 Consequently, when that motion was denied on November 7, 2022, Wonsch could have appealed "from the [August 11 order quashing service of summons], from the ruling on the motion [to vacate], or from both, in one appeal . . . ." 12 O.S.2021 § 990.2(A). Wonsch chose to appeal only the November 7, 2022 order denying his August 26, 2022 motion to vacate. His petition in error only identifies the "five (5) JOURNAL ENTRIES on November 7, 2022" as orders for which he seeks appellate review. Wonsch did not attach the August 11 order quashing summons to his petition in error, nor did he otherwise designate any assignment of error related to that order. Consequently, Wonsch's appeal is limited to review of the November 7, 2022 order denying his August 26, 2022 motion to vacate. *Berkson v. State ex rel. Askins as Admin. Dir. of the Cts.*, 2023 OK 70, ¶ 17, 532 P.3d 36, 45 (a petition in error, including assignments of error, is examined using substantial compliance analysis to determine if notice to opposing parties is sufficient).

### **II. Wonsch's Second Motion to Vacate**

¶14 Wonsch's second motion to vacate, filed on November 28, 2022, sought to vacate the November 7 orders, including the denial of his motion to vacate the August 11 order quashing service of summons. Although the motion was file-stamped by the Comanche County Court Clerk on November 28, 2022, for purposes of 12 O.S.2021 § 990.2, we treat the motion as having been filed on November 21, 2022. Pursuant to 12 O.S.2021 § 2006, it was therefore filed within ten days (exclusive of weekends) of the November 7 orders. See *Woody v. State ex rel. Dep't of Corr.*, 1992 OK 45, 833 P.2d 257 (holding that constitutional principles require using the date a prisoner places a petition in error in the "prison mailbox" as the date an appeal is commenced regardless of the date it is file-stamped by the court clerk) and *Halladay v. Bd. of Cnty. Comm'rs*, 2004 OK CIV APP 37, 90 P.3d 578 (extending the prison mailbox rule to the filing of a prisoner's initial petition). The constitutional analysis in these cases supports applying the prison mailbox rule to Wonsch's second motion to vacate.

¶15 Although deemed filed within ten days of the November 7 order, Wonsch's second motion to vacate the August 11 order quashing service of summons did not preserve any issue for appellate review. *Joe Walsh Adver., Inc. v. Phillips Tire & Supply Co.*, 1972 OK 90, 498 P.2d 1391 (holding that a petition to vacate default judgment, relying on the same grounds as a previous motion to vacate, was barred by doctrine of res judicata); accord *Salyer v. Nat'l Trailer Convoy, Inc.*, 1986 OK 70, 727 P.2d 1361. Wonsch's second motion to vacate was denied on January 12, 2023. Wonsch did not file a supplemental petition in error appealing the January 12, 2023 order.

## **STANDARD OF REVIEW**

¶16 A district court's decision refusing to vacate a judgment, decree or final order is reviewed for abuse of discretion. *Hammer v. State*, 2022 OK 80, ¶ 8, 519 P.3d 91, 94 (citing *Ferguson Enters., Inc. v. H. Webb Enters., Inc.*, 2000 OK 78, ¶ 5, 13 P.3d 480, 482). An abuse of discretion occurs "when a court bases its decision on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling." *Christian v. Gray*, 2003 OK 10, ¶ 43, 65 P.3d 591, 608.

## ANALYSIS

### I. The Timeliness of Wonsch's Appeal

¶17 By Order filed January 17, 2023, the Supreme Court directed Wonsch to show cause why his appeal should not be dismissed as untimely for failure to submit a pauper's affidavit and, if "the order appealed does not have a certificate of service showing the date it was mailed, [Wonsch] shall also advise the date on which [he] received the November 7, 2022 orders." Wonsch responded by filing an affidavit on February 2, 2023, in which he stated under oath that the November 7, 2022 "ORDER was received on January 20, 2023 during 9:00 pm mail call." Based on this representation, and prior to receipt of the record on appeal, the Supreme Court entered an order on January 17, 2023, directing the appeal to proceed.

¶18 Now having the benefit of the record on appeal to review, we conclude that Wonsch's response to the Supreme Court was not truthful or, at best, was materially misleading. It is only true that Wonsch first received a *certified copy* of the November 7 Journal Entries on January 20, 2023, after he filed his appeal. However, in his November 28, 2022 Notice of Intent to Appeal the November 7 Journal Entries, Wonsch acknowledged that he received *file-stamped* copies of the district court's Journal Entries during the prison's November 18, 2022 mail call. Wonsch admitted that he received copies of the November 7, 2022 Journal Entries on November 18, and by November 28, 2022, Wonsch had filed a motion to vacate the November 7 Journal Entries.

¶19 Based on these facts, the following statements in Wonsch's February 2023 affidavit are not true, or are misleading to the point of being untrue:

1. "Mr. Wonsch was never provided a copy of the [November 7, 2022] 'order'(s)' issued by the Comanche County Courthouse until after he filed his appeal . . ." on December 30, 2022. (emphasis in original, footnote omitted).
2. "Mr. Wonsch received a courtesy copy of those 'orders' from [defense counsel] on the 8<sup>th</sup> day of December, 2023." (emphasis in original).
3. "January 5, 2023, was the ***first and only*** mailing received by Mr. Wonsch containing the appealed order(s)." (emphasis in original).

Consequently, it is clear Wonsch filed his petition in error more than thirty days after November 18, 2022, the date he admits that he first received a copy of the November 7 Journal Entries he seeks to have reviewed in this appeal. Whether the Supreme Court would have permitted Wonsch's appeal to proceed if he had been truthful in his affidavit, that pre-assignment ruling is binding on this Court. *LCR, Inc. v. Linwood Props.*, 1996 OK 73, 918 P.2d 1388.

### II. Denial of Wonsch's August 26, 2022, Motion to Vacate

¶20 Wonsch's August 26, 2022 motion to vacate was authorized by 12 O.S.2021 § 1031.1(B). Because Wonsch chose not to appeal the August 11, 2022 order granting the motion to quash, appellate review is limited to the November 7, 2022 Journal Entry denying Wonsch's motion to vacate the order quashing service of summons. "Orders denying either a modification or vacating a judgment, or refusing to modify or vacate a final order, are themselves final orders, and are appealed separate and independent from an appeal challenging an antecedent judgment or final order." *Berkson v. State ex rel. Askins as Admin. Dir. of the Cts.*, 2023 OK 70, ¶ 15, 532 P.3d 36, 44 (footnotes omitted). Further, "in an appeal from an order denying [section 1031.1] relief 'this court may not look

to the original judgment but stands confined in its review to the correctness of the trial court's action' deciding the motion . . . ." *Id.* ¶ 16, 532 P.3d at 44 (footnote omitted) (quoting *Salyer v. Nat'l Trailer Convoy, Inc.*, 1986 OK 70, ¶ 3, 727 P.2d 1361, 1363). The "correctness" of the trial court's denial of Wonsch's motion is determined by whether the November 7 Journal Entry was based on an erroneous conclusion of law or lacked any rational basis in the evidence. *Christian v. Gray*, 2003 OK 10, ¶ 43, 65 P.3d 591, 608.

¶21 The November 7, 2022 Journal Entry does not state the basis on which the district court denied Wonsch's August 26 motion to vacate. That Journal Entry merely records the district court's action. However, Wonsch raised four issues in his motion to vacate: (1) he stated that he had filed a motion for alternative service at the same time he filed his petition, but that the court issued all fifteen summonses and returned them to Wonsch without ruling on his motion for alternative service; (2) he argued that the August 11 hearing on the motion to quash summons was conducted ex parte and in violation of his constitutional right to due process of law; (3) he contended that the district court never ordered the motion to quash to be set for hearing and that the court, therefore, lacked jurisdiction to enter the August 11, 2022 order quashing summons; and (4) he renewed his request to have the sheriff effect service of process on the defendants. Only the issues regarding the motion for alternative service required the district court's further deliberation.

#### A. Alleged Procedural Errors Regarding the August 11 Hearing

¶22 It is undisputed that the motion to quash was set for hearing on August 11, 2022, and that Wonsch was notified of that hearing. He also signed and returned the court's notice acknowledging that he had been notified of the hearing date for that motion. An impermissible ex parte hearing is one conducted in the absence of one party who was not notified of the proceeding. Black's Law Dictionary, 5th Ed. (West Pub. Co., 1979). A hearing conducted in open court after notice to the parties does not become an ex parte proceeding because one of the parties does not attend. <sup>7</sup>

¶23 Further, the district court has "unlimited original jurisdiction of all justiciable matters," including the jurisdiction to decide the motion to quash. See Okla. Const. art. 7, § 7. The district court is expressly authorized to quash service if it "holds that the summons or its service was invalid." 12 O.S.2021 § 2004(l). Consequently, with respect to these issues, Wonsch has failed to show that the district court erred in denying his August 26, 2022 motion to vacate.

#### B. The Motion for Alternative Service

¶24 Wonsch's alleged error regarding his motion for alternative service cannot be resolved from this record. And although the district court quashed service of the summonses, it does not appear that the district court addressed Wonsch's motion for alternative service prior to granting the defendants' subsequent motions to dismiss this case. Section 2004(l) provides, in part, that: "The action shall not be dismissed if a summons was served on the defendant within one hundred eighty (180) days after the filing of the petition and a court later holds that the summons or its service was invalid." Although service was later determined to be defective, defendants were served prior to the expiration of 180 days after Wonsch filed this case.

¶25 Nonetheless, we agree with the district court that Wonsch's attempted service of summons on June 29, 2022, did not satisfy the requirements of 12 O.S.2021 § 2004(C)(2) for service by mail. That statute only authorizes certain individuals to perfect service by mail, i.e., "the plaintiff's attorney, any person authorized to serve process pursuant to subparagraph a of paragraph 1 of this subsection or by the court clerk." *Id.* Consequently, unless Wonsch was a "person authorized to serve process pursuant to subparagraph a of paragraph 1" of section 2004, his attempted service by mail was ineffective.

¶26 Section 2004(C)(1)(a) provides that a summons and petition: "shall be served by a sheriff or deputy sheriff, a person licensed to make service of process in civil cases or a person specially appointed for that purpose." Absent being "appointed" to serve summons, Wonsch does not meet any of these designations. In fact, section

2004(C)(7) explicitly precludes Wonsch from such a special appointment: "No prisoner in any jail, Department of Corrections facility, private prison, or parolee or probationer under supervision of the Department of Corrections shall be appointed by any court to serve process on any defendant, party or witness."

¶27 As a result, and as relevant to this case, only the Comanche County Sheriff or the Comanche County Court Clerk would have been authorized to serve Wonsch's petition and summonses. Therefore, the district court was correct in quashing the service attempted by Wonsch on June 29, 2022. However, that ruling did not terminate the case. "After a court quashes a summons or its service, a new summons may be served on the defendant within a time specified by the judge." 12 O.S.2021 § 2004(l). And, in his January 18, 2022 motion for alternative service filed simultaneously with his Petition, Wonsch asked the district court to authorize service by the Sheriff or the Court Clerk. He renewed that request in his November 28, 2022 motion to vacate the order quashing service of summons. We remand this case for a determination of Wonsch's motion for alternative service. <sup>8</sup>           

## CONCLUSION

¶28 As the district court found, Wonsch's attempted service of summons failed to satisfy the requirements for personal service in 12 O.S.2021 § 2004. Because Wonsch could only perfect service through the Sheriff or Court Clerk, the district court must resolve his January 18, 2022 motion for alternative service. The November 7, 2022 order denying Wonsch's November 28, 2022 motion to vacate the August 11, 2022 order quashing summons is vacated. This case is remanded for a determination, consistent with this Opinion, of that motion and any related issues.

## ¶29 VACATED AND REMANDED FOR FURTHER PROCEEDINGS.

WISEMAN, P.J., and BLACKWELL, J., concur.

## FOOTNOTES

JOHN F. FISCHER, JUDGE:

<sup>1</sup> It does not appear from this record that a "Dr. Bowman" was ever warden of the Lawton facility and that Wonsch was attempting to name as a defendant Mark Bowen, who was, at one time, the warden of that facility. Further, although Wonsch claims to have served all fifteen defendants, "Dr. Bowman" is the only defendant named as a party to this appeal in Wonsch's petition in error. See Okla. Sup. Ct. R. 1.25(b): "Designations such as 'et al.' shall not be used."

<sup>2</sup> Throughout these proceedings, Wonsch purports to represent specific additional prisoners by virtue of a "Statutory Power of Attorney." He also asserts that he is bringing this case as a class action on behalf of other prisoners. Nothing in the record shows that Wonsch is licensed to practice law or that he has the legal authority to represent anyone other than himself in this litigation. Further, his petition does not contain the allegations necessary to determine whether the requirements of 12 O.S.2021 § 2023 can be satisfied for a class action to proceed. Finally, although Billy VunCannon signed the original petition as an additional pro se litigant, he did not sign the petition in error and does not appear as a party in this appeal. Consequently, this appeal will proceed with respect to Wonsch's individual claims alone.

<sup>3</sup> Wonsch attached various federal court documents to his appellate court filings, including an order from the United States Court of Appeals for the Tenth Circuit. In that order, the Tenth Circuit reversed the denial of a certificate of appealability which had dismissed Wonsch's petition for writ of habeas corpus and reinstated his appeal of the denial of that writ. The Tenth Circuit did so after being notified by the Oklahoma Attorney General's Office that the timing of Wonsch's appeal had been miscalculated, and the appeal was timely filed despite a previous representation to the contrary. Wonsch recites these facts in his appellate briefing as well.

<sup>4</sup> The other defendants filed similar motions.

<sup>5</sup> On November 7, 2022, the district court also issued three additional orders disposing of other pending motions: (1) granting Wonsch's September 26, 2022 motion to be present at all proceedings but denying his request for the court to provide transportation, (2) denying Wonsch's motion for criminal contempt and sanctions against all defendants, and (3) denying Wonsch's petition for writ of mandamus.

<sup>6</sup> The Oklahoma Supreme Court's holding in *Owens v. Owens*, 2023 OK 12, 529 P.3d 905, disposes of an "actual notice" analysis, and requires that timeliness of an appeal be determined from the materials filed with the Oklahoma Supreme Court and on file in the trial court record. *Id.* ¶¶ 30-31, 529 P.3d at 915. Although *Owens* was interpreting language found in 12 O.S.2021 § 990A(A), concerning the time within which to commence an appeal, the language found at 12 O.S.2021 § 990.2(C), concerning the time limits within which to file a post-trial motion, is substantially similar. Nevertheless, if we were to conclude that the *Owens* rationale applied to post-trial motions filed pursuant to 12 O.S.2021 § 990.2, the Supreme Court gave *Owens* prospective effect only from February 14, 2023.

<sup>7</sup> One issue Wonsch raises in his appellate briefing is that it was error for the district court to grant his October 11, 2022 motion to be present at all hearings and proceedings but deny his request to be transported at the government's expense. Wonsch did not file his motion to attend all hearings until two months after the August 11, 2022 hearing on the motion to quash. And it is questionable whether that motion was sufficient to invoke any right Wonsch may have had to be present at the August 11 hearing. See 12 O.S.2021 § 397 ("Any . . . prisoner . . . who is the complaining party . . . in any form of a civil action may apply for a Writ of Habeas Corpus for the purpose of having the prisoner appear before the court for an evidentiary hearing in which the court shall take testimony from the prisoner."). Failure to comply with the requirements of section 397 renders the request void. *State ex rel. Okla. Dep't of Corr. v. Powers*, 2005 OK 72, ¶ 6, 125 P.3d 1189, 1190. Further, there is no absolute right of a prisoner to appear as a party in a civil trial. *Kordis v. Kordis*, 2001 OK 99, ¶ 7, 37 P.3d 866, 870 (citations omitted).

<sup>8</sup> The district court's five orders filed on November 7, 2022, are vacated, without prejudice to reconsideration of the issues decided in those motions on remand subject to the issues decided in this Opinion. Because those orders are vacated, the January 12, 2023 order denying Wonsch's November 28, 2022 motion to vacate those November 7 orders is also vacated.

## Citationizer® Summary of Documents Citing This Document

### Cite Name Level

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### Citationizer: Table of Authority

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<u>2001 OK 99, 37 P.3d 866, 72 OBJ 3420,</u>	<u>KORDIS v. KORDIS</u> Discussed

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#### Title 12. Civil Procedure

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<u>12 O.S. 696.2,</u>	<u>Judgment, Decree or Appealable Order to be Written - Preparation of Written</u> <u>Documents - Filing - Mailing - Effect</u>	Cited
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