



**OKLAHOMA  
STATE  
COURTS  
NETWORK**

[Previous Case](#) [Top Of Index](#) [This Point in Index](#) [Citationize](#) [Next Case](#)

**In the Matter of the Estate of Linzy Hill, Deceased, Brightwater Capital, LLC v. Hill**

**2025 OK 81**

**Case Number: 121662**

**Decided: 11/12/2025**

**THE SUPREME COURT OF THE STATE OF OKLAHOMA**

---

Cite as: 2025 OK 81, \_\_ P.3d \_\_

---

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

---

IN THE MATTER OF THE ESTATE OF LINZY HILL, Deceased, BRIGHTWATER CAPITAL LLC, Appellant,  
v.  
LENZY LAMONT HILL, THE PERSONAL REPRESENTATIVE OF THE ESTATE OF LINZY HILL, Deceased, Appellee.

**OPINION**

¶0 The district court dismissed Brightwater's ancillary petition and did not grant leave to amend it. Brightwater filed an amended ancillary petition, which was treated as a motion to reconsider and denied; the petition was dismissed with prejudice. The Court of Civil Appeals, Div. IV, reversed. We reverse the COCA opinion and affirm the district court.

**WRIT OF CERTIORARI GRANTED  
COURT OF CIVIL APPEALS OPINION VACATED  
DISTRICT COURT DECISION AFFIRMED**

Stephen L. Bruce, Everette C. Altdoerffer, Leah K. Clark, Clay P. Booth, Stephen Bruce & Associates, Edmond, Oklahoma for Appellant Brightwater Capital, LLC

Cynthia Rowe D'Antonio, Green Johnson Mumina & D'Antonio, Oklahoma City, Oklahoma, for Appellee Lenzy Lamont Hill

**KUEHN, V.C.J.:**

¶1 Does Oklahoma law allow a party to file an amended petition without leave after a court has dismissed the case? The district court correctly found it does not. We vacate the COCA opinion and affirm the district court.

**Facts and Procedural History**

¶2 Brightwater Capital obtained a judgment against decedent Linzy Hill in October 2012. Brightwater filed and recorded the Journal Entry of Judgment in Oklahoma County in October 2012, and renewed the judgment in August 2017, but did not subsequently renew the judgment. Hill died in Oklahoma County in February 2022, and probate was filed on May 24, 2022. Hill's son Lenzy was appointed as personal representative and given Letters Testamentary on June 29, 2022. On July 22, 2022, Lenzy filed a Notice to Creditors stating that all claims against Hill's estate should be presented no later than September 27, 2022. This was published in The Journal Record of Oklahoma City on July 27 and August 3. <sup>1</sup> \_\_

¶3 Brightwater held a judgment against Hill but failed to timely renew it. <sup>2</sup> Brightwater submitted a Proof of Claim in the probate case on November 7, 2022, more than a month after the cutoff date. Lenzy rejected it, and the District Court filed an Order rejecting the claim on November 30. Brightwater did not attempt to appeal this order. On December 29, Brightwater filed an ancillary petition in the probate case, seeking payment of the underlying judgment it held against Hill. Brightwater claimed it had no notice of the probate proceedings; Lenzy objected on the grounds that Brightwater's judgment had become dormant. On March 7, 2023, the district court sustained Lenzy's motion to dismiss by Court Minute. The Minute was silent on the possibility that Brightwater might amend its ancillary petition, and did not grant leave to amend. On May 15, 2023, after the case was dismissed, Brightwater filed an amended ancillary petition, again seeking payment of the judgment but this time from Lenzy's Personal Representative bond. Lenzy again moved to dismiss. The district court noted it had not given Brightwater permission to amend its filing after the case was dismissed, consequently treated this second filing as a motion to reconsider, and dismissed it with prejudice. <sup>3</sup>

¶4 Final appealable orders memorializing each dismissal were entered on September 12, 2023. Brightwater appealed the order concerning the amended ancillary petition filed without leave. Brightwater did not appeal the final order dismissing the initial ancillary petition, although that, too, was an appealable order.

¶5 The Court of Civil Appeals, Div. IV, reversed, finding that the district court should have allowed Brightwater to file an amended ancillary petition. We now reverse and affirm the district court's decision.

### **Standard of Review**

¶6 COCA treated this as an appeal from either a motion to reconsider or a motion to amend the pleadings, and reviewed the district court's decision for abuse of discretion. However, as the district court dismissed Brightwater's claims, the correct standard of review is *de novo*. *Guilbeau v. Durant H.M.A.*, 2023 OK 80, ¶ 7, 533 P.3d 764, 767. Taking the allegations in the pleadings as true, we will independently review them and only affirm the dismissal if there is no cognizable legal theory to support the claim. *Randle v. City of Tulsa*, 2024 OK 40, ¶ 11, 556 P.3d 612, 616-17.

### **Analysis**

#### **The District Court Did Not Err in Granting the Motion to Dismiss**

¶7 Brightwater did not submit a timely claim. It is undisputed that the probate claim deadline was September 27, 2022; Brightwater didn't submit its claim to Lenzy until November 7. It is also undisputed that Brightwater's claim was based on the judgment it received against Hill in 2012, and that Brightwater failed to timely renew that judgment. Brightwater did not appeal the order rejecting its claim. Instead, it brought an ancillary claim seeking to enforce the dormant judgment. As the judgment was dormant, there was no cognizable theory of law which would support Brightwater's claim. The trial court did not err in granting the motion to dismiss.

#### **Brightwater Could Not File an Amended Ancillary Petition as of Right**

¶8 COCA found that Brightwater did not need leave of the court before filing an amended petition. Title 12, Section 2012(G) provides:

FINAL DISMISSAL ON FAILURE TO AMEND. On granting a motion to dismiss a claim for relief, the court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the court for filing an amended pleading. Within the time allowed by the court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

12 O.S. § 2012(G). That is, when a court dismisses a pleading, an amended petition may only be filed with leave of the court; the court may grant permission to amend at the time the original petition is dismissed, but in no case may a dismissed petition be amended without leave. See, e.g., *Fanning v. Brown*, 2004 OK 7, ¶ 23, 85 P.3d 841, 848 (district court should have granted leave to amend where party pled a cognizable legal theory and judgment did not say defects in the petition could not be cured); *Gallagher v. Enid Regional Hosp.*, 1995 OK 137, ¶ 14, 910 P.2d 984, 986 (district court not required to grant leave to amend where defect in petition could not be cured). Neither the court minute nor the eventual journal entry dismissing the ancillary petition granted Brightwater leave to amend, and Brightwater admitted it had failed to renew its judgment against Hill.

¶9 Despite this, Brightwater sought to file an amended ancillary petition. Brightwater claimed, and COCA found, that this was proper under Title 12, Section 2015(A):

AMENDMENTS. A party may amend his or her pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he or she may so amend it at any time within twenty (20) days after it is served. Amendments to add omitted counterclaims or to add or drop parties may be made as a matter of course within the time specified above. Otherwise a party may amend the pleading only by leave of court by submitting the proposed amendment with the motion for leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. . . .

12 O.S. § 2015(A). This section explains how and when a party may amend a pleading while a case is pending in the district court. It does not specifically explain what may happen after a case has been dismissed--but, to the extent that this provision would apply at all under those circumstances, it clearly requires a party to seek leave of the court, or consent of the opposing party, before amending a petition. Brightwater did neither.

¶10 COCA focused on *what the parties filed*. However, our proper focus is on *what the district court did*. Looking only at what the parties filed, COCA correctly noted that Lenzy had filed a motion to dismiss, but had not filed an Answer to Brightwater's amended ancillary petition. COCA reasoned that, since a motion to dismiss is not a responsive pleading, Brightwater could amend its ancillary petition as a matter of right under Section 2015(A). COCA also found that the amended ancillary petition should have been treated as a pleading, not a motion to reconsider, since it set forth allegations and claims. All this assumes that these filings occurred while the case was pending before the district court, allowing the more flexible provisions of Section 2015(A) to apply.

¶11 But our appellate review looks not only at the pleadings but at the district court's orders. What happened? Brightwater filed an ancillary petition, Lenzy moved to dismiss, and *the district court dismissed the case*. At that point, Section 2012(G), the statute which specifically applies to dismissals, controlled any future proceedings. *Stitt v. Treat*, 2024 OK 21, ¶ 30, 546 P.3d 882, 893. As the district court noted, Brightwater could only amend its ancillary petition with leave of the court. The district court did not grant Brightwater leave to amend in its initial order granting Lenzy's motion to dismiss. The record shows that this was because the defect in Brightwater's petition could not be remedied by amendment. And insofar as Brightwater relied on the provisions of Section 2015(A), Brightwater failed to follow those requirements: Brightwater neither sought the district court's permission to amend its pleading, nor offered Lenzy's written consent to such an amendment. Under either the general provisions of Section 2015(A), or the specific provision of Section 2012(G), Brightwater had no path to amend its ancillary petition. The district court correctly treated that filing as a motion to reconsider and denied it, and sustained Lenzy's motion to dismiss the amended ancillary petition with prejudice.

### Conclusion

¶12 Brightwater failed to timely file a claim on a dormant judgment and its claim was rejected. It filed an ancillary petition on the same judgment, which was dismissed without leave to amend. Brightwater filed an amended ancillary petition without leave. The district court correctly treated that filing as a motion to reconsider and dismissed it with prejudice. We vacate the opinion of the Court of Civil Appeals and affirm the district court.

**WRIT OF CERTIORARI GRANTED  
COURT OF CIVIL APPEALS OPINION VACATED  
DISTRICT COURT DECISION AFFIRMED**

CONCUR: ROWE, C.J., KUEHN, V.C.J., and WINCHESTER, COMBS, GURICH,  
KANE (by separate opinion), and JETT, JJ.

DISSENT: EDMONDSON and DARBY (by separate opinion), JJ.

---

**KANE, J., with whom COMBS, J. joins, concurring specially:**

¶1 While I concur with the reasoning of the majority, I write separately to emphasize that there was no way forward in this action even if leave of the court had been sought by the creditor.

¶2 Title 12 O.S. § 2012(G) provides that the court shall grant leave to amend a dismissed claim for relief "... if the defect can be remedied." The proposed amended petition is premised upon the authority of two probate statutes: 58 O.S. § 598 (Rights of Creditors) and 58 O.S. § 491 (Sales and Conveyances - Neglect or Misconduct). While a probate sale was contemplated in the subject probate, it is not availing to the problem faced by the creditor in this case. More apt is the creditors' rights statute, which provides relief to a disappointed creditor against the personal representative's bond in the event of irregularity or misconduct in the notice to creditors process. The statute provides:

"... such creditor may recover on the bond of the personal representative the amount of his claim, or such part thereof as he would have been entitled to had it been allowed."

58 O.S. § 598 (*emphasis added*).

¶3 Unfortunately for the creditor here, we had an ancillary amended petition premised upon a judgment which became dormant prior to rejection by the personal representative. Under Oklahoma law, when a judgment becomes dormant, it becomes unenforceable. See 12 O.S. § 735. The claim could not be properly approved, as payment of same would be a violation of the representative's duty to the estate. The creditor has no right to recovery at this point, hence any pleading defect cannot be remedied by amendment to the petition. 1

---

**DARBY, J., with whom EDMONDSON, J., joins, DISSENTING:**

¶1 To begin, I believe there are some important dates at play in this case that must be at the forefront of the analysis. Appellant obtained a judgment against Decedent on October 15, 2012. On August 2, 2017, Appellant filed its Notice of Renewal of Judgment with the Court Clerk and had it recorded August 7, 2017. Appellant failed to file a subsequent renewal of judgment, meaning Appellant's judgment against Decedent expired on August 2, 2022 (although Appellant misunderstood the filing deadline and believed the date to renew was five years from the original judgment, thus October 15, 2022). See 12 O.S.2022, § 735. Decedent died on February 11, 2022 and probate was filed on May 24, 2022.

¶2 On July 22, 2022, while Appellant's judgment was still in force, Appellee filed a notice to creditors stating claims should be presented no later than September 27, 2022. Appellee had the notice to creditors published on July 27, 2022 and August 3, 2022. But Appellee did not mail the notice to creditors directly to Appellant at any

time as required by title 58, section 331 for any known creditors. One day after the probate claim deadline, Appellee's attorney called Appellant requesting a release of the now-expired judgment which was also now untimely, and this was when Appellant learned of the probate.

¶3 This all relates to Appellee's second argument, that COCA erred on the merits of the Motion to Dismiss and both Ancillary Petitions regarding Appellant's Creditor's Claim. By the time Appellant knew to file its claim against the estate, or against the Appellee as personal representative of the estate, Appellant's Judgment against decedent had expired and become unenforceable. But when Appellee published the notice to creditors Appellant's judgment was not expired and was enforceable. This issue is the crux of the matter. The question that must first be resolved is therefore whether Appellant was a known creditor who required notice to be mailed to them.

¶4 Title 58, section 331.1 provides that "known creditors" shall mean those creditors the personal representative actually knows to be a creditor and those creditors reasonably ascertainable by the personal representative. "Reasonably ascertainable creditors" shall be those whose identities, last-known addresses and claims can be determined by reasonably diligent efforts of the personal representative." *Id.* I find persuasive the opinion by COCA in *In re Estate of Vann*, 1996 OK CIV APP 82, ¶¶ 2, 925 P.2d 80, 81--82, which stated:

We hold that a reasonable search by any personal representative to ascertain creditors must necessarily extend to the public records where claims or interests that affect the liability or property of the estate are commonly filed.

As a reasonably ascertainable creditor who was not given notice by the personal representative, Mr. Vann should have been allowed to present his publicly-recorded, judgment-based claim out of time.

We recognized this proposition, "that a reasonable search by a personal representative to ascertain creditors must necessarily extend to the public records where claims or interests that affect the liability or property of the estate are commonly filed" in a footnote in *In re Estate of Villines*, 2005 OK 63, ¶ 5 n.10, 122 P.3d 466n. 10. Previously, in *In re Estate of Pope*, the United States Supreme Court had remanded the case for "a factual inquiry into the publication service's sufficiency as notice to the [creditor]--conformable to the minimum standards of due process--of the time after which the [creditor's] claim against the estate would be barred." *In re Estate of Pope*, 1990 OK 125, ¶ 2, 808 P.2d 640, 642. As we discussed therein, constitutionally infirm notice (by publication alone) violates a creditor's due process rights when such creditor's whereabouts are reasonably ascertainable. 1990 OK 125, ¶¶ 3, 11, 16, 808 P.2d 640, 642, 646--47 (applying *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S.306, 70 S.Ct.652, 94 L.E.d 865 (1950)). We said that the "estate representative must use due diligence to identify the decedent's potential creditors from all available sources at hand." *Id.*, ¶ 10, 808 P.2d 640, 645--46. That includes filed public records.

¶5 When Appellee published notice to creditors, Appellant's judgment against Decedent was of record in the Oklahoma County Clerk's Office and was not expired. Appellee was charged with knowledge of the judgment and required by statute to mail notice to creditors directly to Appellant. The district court erred in dismissing the claim due to timeliness or being unenforceable at the time it was filed.

¶6 Appellee's Petition for Certiorari first argues that COCA was incorrect in ruling that Oklahoma statutes permitted Appellant to file an *Amended* Ancillary Petition after the district court had granted Appellee's Motion to Dismiss Appellant's *initial* Ancillary Petition. Title 12, section 2012(G) only applies provided the district court in fact entered an order granting Appellee's Motion to Dismiss the initial Ancillary Petition. The district court, however, entered a Court Minute on March 7, 2023, not a final, appealable order.

¶7 We have ruled repeatedly that a Court Minute is not an order. *Laubach v. Laubach*, 2022 OK 78, ¶ 15, 561 P.3d 54, 59 ("Written instruments titled "court minute," "minute order," "minute," or "summary order" cannot meet the definition of an order which triggers the procedural time limits for appeal, regardless of their substance, content, or length."); *Mansell v. City of Lawton*, 1994 OK 75, ¶ 3, 877 P.2d 1120, 1121; *Corbit v. Williams*, 1995 OK 53, ¶ 9,

897 P.2d 1129, 1131; *Moore v. Haley*, 2021 OK 37, ¶ 4, 505 P.3d 918, 919, *as corrected* (June 22, 2021); *Scott v. Foster*, 2023 OK 112, ¶ 13 n. 9, 538 P.3d 1180, 1186 n. 9; *see also* 12 O.S.2023, §696.2(D) <sup>1</sup>; *see also* Okla. Sup. Ct. R. 1.21(a). Even if the Court Minute provides, "IT IS SO ORDERED," the Court Minute is not an order. Although section 696.2(E) provides that "adjudication of any issue shall be enforceable when pronounced by the court" in probate proceedings, it goes on to say that the time to appeal "shall not begin to run until a written judgment, decree or appealable order, prepared in conformance with Section 696.3 of this title, is filed with the court clerk, regardless of whether the judgment, decree, or appealable order is effective when pronounced or when it is filed." The Court Minute triggered no time period restricting subsequent filings and was not an appealable order. To whatever extent the court minute was an order for purposes of section 2012(G), the district court erred in failing to specify a time during which Appellant could file an amended pleading.

¶8 On May 15, 2023, Appellant filed an Amended Ancillary Petition seeking to also sue the personal representative for failure to provide notice. The Appellee filed a motion to dismiss the Amended Ancillary Petition arguing that not only was Appellant "not a 'known' creditor, it was not a creditor at all due to its expired Judgment." After entering the Order Approving Distribution of Estate, Determination of Heirs, and Discharge of Personal Representative on September 5, 2023, the district court filed two Journal Entries of Judgment on September 12, 2023. One filing stated the Personal Representative's Motion to Dismiss Appellant's Ancillary Petition is Sustained -- IT IS SO ORDERED. This Journal Entry regarded the events of March 7, 2023, when the district court entered the Court Minute. The second Journal Entry provided that the district court would consider Appellant's Amended Ancillary Petition as a Motion to Reconsider because Appellant failed to obtain permission or consent prior to its filing. The entry further stated that Appellant's Motion to Reconsider is denied, then for good measure, the entry also stated that Appellee's Motion to Dismiss Ancillary Petition is Sustained. I would allow the Appellant to file the Amended Ancillary Petition and deny both motions to dismiss. If we were to instead review the Amended Ancillary Petition as a section 1031 motion to modify, I would also find the district court erred in not granting the motion.

¶9 I would remand this case to the district court to allow Appellant to file its claim against the estate and the personal representative because Appellant was a known creditor with a valid, enforceable claim who did not receive proper notice.

## FOOTNOTES

### KUEHN, V.C.J.:

<sup>1</sup> Lenzy relied on the notice by publication and did not mail a copy of the Notice to creditors, including Brightwater.

<sup>2</sup> Brightwater was awarded a judgment against Hill which was recorded on December 10, 2012. A notice of renewal of that judgment was filed on August 2, 2017. To avoid becoming dormant, the claim had to be renewed every five years from the date the last notice of renewal of judgment was filed with the court clerk. 12 O.S. § 735(B)(2). Brightwater admitted it did not file a renewal of judgment by the renewal deadline of August 2, 2022.

<sup>3</sup> As this Court has said before, a motion to reconsider is not a thing. *Smith v. City of Stillwater*, 2014 OK 42, ¶ 10, 328 P.3d 1192, 1196. A pleading so titled, if filed within ten days of the filing of a judgment, may be treated as a motion for new trial; otherwise, it may be treated as a motion to vacate a final order. *Id.*; Rule 17, *Rules for District Court of Oklahoma*, 12 O.S. Ch. 2 App. The district court here correctly refused to consider the substantive claims raised in the amended ancillary petition. However, rather than treating that second filing as a motion to reconsider, it would more properly have been considered as a motion to vacate.

### KANE, J., with whom COMBS, J. joins, concurring specially:

<sup>1</sup> Were the claim still viable, there may be a question to resolve as to the propriety of the conduct of the personal representative in the process of notifying known creditors, but this issue is moot under the facts presented.

**DARBY, J., with whom EDMONDSON, J., joins, DISSENTING:**

<sup>1</sup> "The following shall not constitute a judgment, decree or appealable order: A minute entry; verdict; informal statement of the proceedings and relief awarded, including, but not limited to, a letter to a party or parties indicating the ruling or instructions for preparing the judgment, decree or appealable order." 12 O.S.2023, § 696.2(D).

**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>1996 OK CIV APP 82, 925 P.2d 80, 67 OBJ 3053,</u>	<u>Matter of Estate of Vann,</u>	Discussed

**Oklahoma Supreme Court Cases**

Cite	Name	Level
<u>1990 OK 125, 808 P.2d 640, 61 OBJ 3191,</u>	<u>Estate of Pope, Matter of</u>	Discussed at Length
<u>1994 OK 75, 877 P.2d 1120, 65 OBJ 2233,</u>	<u>Mansell v. City of Lawton</u>	Discussed
<u>1995 OK 53, 897 P.2d 1129, 66 OBJ 1829,</u>	<u>Corbit v. Williams</u>	Discussed
<u>1995 OK 137, 910 P.2d 984, 66 OBJ 3904,</u>	<u>Gallagher v. Enid Regional Hospital</u>	Discussed
<u>2004 OK 7, 85 P.3d 841,</u>	<u>FANNING v. BROWN</u>	Discussed
<u>2005 OK 63, 122 P.3d 466,</u>	<u>IN THE MATTER OF THE ESTATE OF VILLINES</u>	Discussed
<u>2014 OK 42, 328 P.3d 1192,</u>	<u>SMITH v. CITY OF STILLWATER</u>	Discussed
<u>2021 OK 37, 505 P.3d 918,</u>	<u>MOORE v. HALEY</u>	Discussed
<u>2022 OK 78,</u>	<u>LAUBACH v. LAUBACH</u>	Cited
<u>2023 OK 80, 533 P.3d 764,</u>	<u>GUILBEAU v. DURANT H.M.A.</u>	Discussed
<u>2023 OK 112, 538 P.3d 1180,</u>	<u>SCOTT v. FOSTER</u>	Discussed
<u>2024 OK 21, 546 P.3d 882,</u>	<u>STITT v. TREAT</u>	Discussed
<u>2024 OK 40, 556 P.3d 612,</u>	<u>RANDLE v. CITY OF TULSA</u>	Discussed

**Title 12. Civil Procedure**

Cite	Name	Level
<u>12 O.S. 696.2,</u>	<u>Judgment, Decree or Appealable Order to be Written - Preparation of Written Documents - Filing - Mailing - Effect</u>	Discussed
<u>12 O.S. 735,</u>	<u>Must Be Issued within Five Years or Judgment Becomes Dormant - Inapplicable to Municipalities</u>	Discussed at Length

**Cite Name****Level**

12 O.S. 2012,

Defenses and Objections - When and How Presented - By Pleading or  
Motion

Discussed

12 O.S. 2015,

Amended and Supplemental Pleadings

Cited

**Title 58. Probate Procedure**

Cite

Name

Level

58 O.S. 491,

Neglect or Misconduct

Cited

58 O.S. 598,

Rights of Creditors not Included in Order for Payment

Discussed