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THOMAS & GOZA v. LIBERTY MUTUAL INSURANCE COMPANY

2026 OK 61

Case Number: 123547

Decided: 09/14/2026

SUPREME COURT OF THE STATE OF OKLAHOMA

Cite as: 2026 OK 61, __ P.3d __

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

MARYANN THOMAS, PLAINTIFF/APPELLEE & WILLIAM CRAG GOZA, PLAINTIFF

V.

LIBERTY MUTUAL INSURANCE COMPANY, DEFENDANT/APPELLANT

ON CERTIORARI TO REVIEW A CERTIFIED INTERLOCUTORY ORDER
FROM THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA
HONORABLE AMY PALUMBO, DISTRICT JUDGE

¶0 This appeal concerns requests for admission and when facts deemed admitted due to a party's failure to answer the requests may be withdrawn.

ORDER OF THE DISTRICT COURT IS REVERSED AND REMANDED WITH INSTRUCTIONS

Tom M. Cummings, T.M. Cummings, Inc., Oklahoma City, Oklahoma, for Appellee.

William W. O'Connor, Kristen P. Evans, Margo E. Shipley, Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., Tulsa, Oklahoma, for Appellant.

KANE, J.:

¶1 After Defendant/Appellant Liberty Mutual Insurance Company failed to answer or object to Plaintiff/Appellee Maryann Thomas's requests for admission, the trial court deemed the matters admitted and granted summary judgment to Thomas. We hold that, on the facts of this case, the trial court abused its discretion by denying Liberty's request to withdraw the admissions and erred in granting summary judgment in favor of Thomas.

FACTS AND PROCEDURAL HISTORY

¶2 Plaintiff/Appellee Maryann Thomas was involved in a motor vehicle accident on October 6, 2020. On March 12, 2021, Thomas filed the underlying lawsuit. She sought uninsured/underinsured motorist (UM/UIM) coverage from Liberty for her injuries.

¶3 Attorney Stephanie K. Corbett of the Law Office of Aimee J. Treece filed an answer on behalf of Liberty on April 27, 2021. On May 14, 2021, Corbett filed her entry of appearance. Soon after, Corbett left Treece's firm. Treece retired in December 2021, and Laurie J. Fong took over the firm. Corbett did not file a motion to withdraw, and no

one else entered an appearance on behalf of Liberty.

¶4 Thomas's attorney sent Corbett discovery, including requests for admission, on June 9, 2022 at what had become Fong's law firm. The responses were due July 9, 2022. On June 13, 2022, a secretary at Fong's law firm notified Thomas's attorney that William W. O'Connor was now representing Liberty. O'Connor and Margo E. Shipley entered appearances on behalf of Liberty on June 29, 2022. Despite having never entered an appearance in the case, Fong filed a motion to withdraw on July 8, 2022, which was granted by the trial court on August 2, 2022. In her motion to withdraw, Fong explained O'Connor was also involved in a related declaratory judgment action in federal court.

¶5 One year later, on June 20, 2023, Thomas filed a motion for summary judgment on the issue of liability for UM/UIM coverage. Thomas argued that, pursuant to 12 O.S. § 3236, the June 9, 2022 requests for admission were deemed admitted because Liberty had failed to answer by July 9, 2022. Thomas contended that because there were no disputed material facts, she was entitled to judgment as a matter of law as to liability.

¶6 Liberty filed its response to Thomas's motion for summary judgment on July 10, 2023. Liberty asserted new counsel had no knowledge of the requests for admission sent to Corbett at Fong's office on June 9, 2022 until Thomas filed her motion for summary judgment one year later. Liberty submitted that Thomas's counsel had been informed that Corbett no longer represented Liberty and that Liberty's current attorneys had entered appearances before the responses were due. Yet, Thomas's attorney did not notify new counsel of the pending requests, serve Liberty's new counsel, meet and confer when Liberty did not respond, or file a motion to compel. Liberty asked the trial court not to deem the requests admitted, and, even if deemed admitted, to allow Liberty to withdraw the admissions.

¶7 Liberty also filed a motion to stay discovery pending resolution of the related federal declaratory judgment action. On August 23, 2023, the trial court deferred ruling on Thomas's motion for summary judgment and stayed discovery, specifically, "Defendant's responses to Plaintiff's June 9, 2022 discovery requests, until such time as the federal court . . . issues a ruling on the issue of whether Defendant's subject insurance Policy provides coverage for any claim by Plaintiff for damages resulting from the automobile accident that occurred on October 6, 2020." The federal court declined jurisdiction on September 5, 2024 and never issued a ruling. Then, on January 30, 2025, Liberty filed its own motion for summary judgment in the underlying state court case.

¶8 The trial court granted Thomas's motion for summary judgment and denied Liberty's motion for summary judgment on October 13, 2025. In a disjointed Journal Entry of Judgment, the trial court begins by making pages of findings of fact and conclusions of law as to the terms of the policy. ¹ It goes as far as to find the following facts are not in dispute: "Plaintiff signed a 'Personal Liability Protection Application' for the Personal Liability Policy's original predecessor, which did not include UM/UIM coverage. . . . The Policy's original predecessor excluded UM/UIM coverage. . . . At policy renewals in 2016, 2017, 2018, 2019, and 2020, Plaintiff was advised that the Personal Liability Policy excludes UM/UIM coverage." The trial court then shifts to the deemed admissions, finding Thomas's attorney made no effort to serve or follow-up with Liberty's new counsel; that Liberty's new counsel had no knowledge of the June 9, 2022 discovery requests until Thomas filed her motion for summary judgment one year later; and that they were not responsible for failing to respond to the requests for admission. Then the trial court makes a sharp turn, concluding that, because Liberty failed to timely respond, the deemed admissions conclusively establish that the policy provided UM/UIM coverage and that Liberty had breached its contract by failing to provide such coverage. The trial court granted partial summary judgment to Thomas on the issue of liability "based solely on the deemed factual admissions." The district court certified its order for immediate appeal, see 12 O.S. § 952(b)(3), and this Court granted Liberty's petition for certiorari to review the certified interlocutory order. Briefing was completed on April 13, 2026, and the cause was assigned to this office on May 8, 2026.

STANDARD OF REVIEW

¶9 Summary judgment is reviewed *de novo*. *Rickard v. Coulmore*, 2022 OK 9, ¶ 4, 505 P.3d 920, 922. Summary judgment is appropriate only when there is no genuine controversy as to any material fact, and the moving party is entitled to judgment as a matter of law. *Id.* Appellate courts have plenary, independent and nondeferential authority to determine whether the trial court erred in its legal rulings. See *Fanning v. Brown*, 2004 OK 7, ¶ 8, 85 P.3d 841, 845.

¶10 A trial court's denial of a request to withdraw or amend admissions is reviewed for an abuse of discretion. See *Heath v. Engle*, 2005 OK 68, ¶¶ 1, 10, 123 P.3d 1, 2, 4. "An abuse of discretion occurs 'when the decision is based on an erroneous interpretation of the law, on factual findings that are unsupported by proof, or represents an unreasonable judgment in weighing relevant factors.'" *Bjorkman v. Noble*, 2025 OK 62, ¶ 6, 579 P.3d 602, 606 (quoting *Okla. City Zoological Tr. v. State*, 2007 OK 21, ¶ 5, 158 P.3d 461, 465).

ANALYSIS

¶11 On appeal, Liberty argues the trial court abused its discretion by not permitting it to withdraw the admissions and, therefore, erred by granting summary judgment to Thomas.

¶12 The Oklahoma Discovery Code provides, in part:

REQUEST FOR ADMISSION. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Section 3226 of this title set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. . . . The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.

12 O.S.Supp.2019 § 3236(A). Section 3236 goes on:

EFFECT OF ADMISSION. Any matter admitted under this section is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment of an admission when the presentation of the merits of the action will be subverted thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining his or her action or defense on the merits.

Id. § 3236(B). According to the statute, there are two considerations to be made in determining whether Liberty should be permitted to withdraw the admissions: (1) whether presentation of the merits would be subverted thereby; and (2) whether withdrawal or amendment will prejudice Thomas in maintaining her action on the merits. Additionally,

[i]n deciding whether, on the facts of a particular case, to permit withdrawal or amendment of admissions, courts have considered factors such as whether the facts deemed admitted are dispositive of the issues in the case, whether the admissions were made as a result of counsel's negligence or mistake of law, and whether the requesting party had notice from the pleadings that the subject matter of the requests might be contested at trial. . . . Courts which have refused on the facts of a particular case to permit withdrawal or amendment of admissions . . . have considered factors such as the stage of the litigation at which the motion to withdraw or amend was made and the degree to which withdrawal would have resulted in prejudice to the party who obtained the admission, and whether the party making the admissions could have protected his interests by objecting to the requests for admissions.

64 A.L.R. Fed. 746 (footnotes omitted); see *Heath*, 2005 OK 68, ¶10, 123 P.3d at 4 (considering the number of opportunities counsel had to respond to the requests for admission, hardship and other reasons for failing to answer); *Ross v. Pace*, 2004 OK 13, ¶ 12, 87 P.3d 593, 595 (considering the number of opportunities counsel was afforded to respond to the requests for admission).

¶13 First, we find allowing Liberty to withdraw the admissions would subserve² the presentation of the merits. Requests for admission are typically used to identify issues that will not be disputed at trial, not to get the defendant to admit liability. See *Meadows v. Wal-Mart Stores, Inc.*, 2001 OK 25, ¶ 6, 21 P.3d 48, 51 ("Unlike other forms of discovery, requests to admit involve primarily the elimination of undisputed matters, rather than the ascertainment of facts or the preservation of testimony for trial."). Permitting a party to withdraw or amend an admission aids in the presentation of the merits when, as here, the admission goes to a material fact. See *id.*; *Raiser v. Utah County*, 409 F.3d 1243, 1246 (10th Cir. 2005) (permitting defendant to withdraw deemed admissions that conceded core elements of the plaintiff's case under Fed.R.Civ.P. 36(d)). The central and dispositive issue in this case is whether the policy provided UM/UIM coverage for Thomas's injuries. Thomas's motion for summary judgment as to liability was predicated entirely on the deemed admissions. Thomas did not even include a copy of the policy with her evidentiary materials supporting her motion. Thomas relied on Liberty's admission that she requested to purchase an umbrella policy which would have provided UM/UIM coverage for her injuries. Liberty, on the other hand, attached a copy of the policy to its response to Thomas's motion for summary judgment. Liberty contended Thomas had a personal excess liability policy that expressly excluded UM/UIM coverage for Thomas's personal injuries. Whether the parties had a contract for UM/UIM coverage is hotly disputed. Finding the material facts were undisputed "based solely on the deemed factual admissions" eliminated the trial court's opportunity to consider other record evidence, including the policy terms, to determine if there was a genuine controversy as to any material fact.

¶14 Next, Thomas has not demonstrated any prejudice in maintaining her action. She had notice from the pleadings that the issue of whether the policy included UM/UIM coverage would be contested at trial. See *Bergemann v. United States*, 820 F.2d 1117, 1121 (10th Cir. 1987) (finding no prejudice when the requesting party knew the other party challenged the issue deemed admitted under Fed.R.Civ.P. 36(d)). This case is in the early stage of litigation. Thomas will still have the opportunity to conduct meaningful discovery and file a second motion for summary judgment.

¶15 In determining whether the trial court abused its discretion by denying a party's request to withdraw or amend an admission, this Court has given weight to the number of opportunities the party had to respond to the requests for admission and whether there was hardship or another reason the party was unable to timely answer the requests. See *Heath*, 2005 OK 68, ¶ 10, 123 P.3d at 4; *Ross*, 2004 OK 13, ¶ 12, 87 P.3d at 595; see also 64 A.L.R. Fed. 746 (noting courts have considered whether "the admission was a result of counsel's negligence or mistake of law").

¶16 Liberty has demonstrated valid reasons for not answering the requests for admission. Primarily, Liberty's counsel did not have knowledge of the pending requests. On June 9, 2022, when Thomas sent Liberty her requests for admission at what had become Fong's firm, Corbett was the attorney of record. Fong's firm immediately advised Thomas's attorney that Liberty's attorney of record was no longer employed with the firm and that O'Connor was now representing Liberty. O'Connor and Shipley entered appearances on behalf of Liberty on June 29, 2022. At the time they filed their appearances, the answers to the requests for admission were not due for ten days. However, Thomas's counsel did not serve the requests for admission on Liberty's new attorneys or contact them to ensure they had received the requests for admission from Fong's office. Counsel for Thomas agreed to Fong's withdrawal without advising Fong, current counsel, or the trial court about the past due requests for admission. Thomas's counsel did not inquire with Liberty's counsel about the lack of response after the deadline passed. Thomas's counsel did nothing for an entire year. As the trial court found, O'Connor and Shipley, at no fault of their own, did not learn of the requests for admission until Thomas filed her motion for summary judgment.

¶17 In *Ross v. Pace*, 2004 OK 13, 87 P.3d 593, and *Heath v. Engle*, 2005 OK 68, 123 P.3d 1, this Court affirmed the trial court's denial of a motion to vacate an order granting summary judgment based on deemed admissions when the party failed to respond. The case before us is readily distinguishable from *Ross* and *Heath*. First and foremost,

it was undisputed that the attorneys in *Ross* and *Heath* had knowledge of the pending requests for admission and failed to timely answer. Here, it is undisputed Liberty's counsel had no knowledge of the requests for admission until Thomas filed her motion for summary judgment one year after the answers were due.

¶18 Second, in *Ross* and *Heath*, the Court emphasized the parties had several opportunities to respond. Liberty did not. In the lead cases, counsel attempted to follow up with opposing counsel soon after the deadline passed. In *Ross*, counsel followed up with a letter, provided a second copy of the requests for admissions to the other attorney, and inquired about when he would respond prior to filing a motion for summary judgment. There was a total lack of responsiveness in *Ross*. The attorney in *Ross* did not file a response to the motion for summary judgment and failed to appear at the hearing on the motion. Only after the trial court granted summary judgment did counsel seek to withdraw or amend the admissions. On the contrary, Liberty did not have such opportunities to respond. Liberty had no knowledge of the initial requests and Thomas's counsel made no attempt to follow up. Liberty sought to protect its interests at the first opportunity. Immediately upon learning of the requests for admissions through Thomas's motion for summary judgment, Liberty implored the trial court not to deem the facts admitted or, alternatively, permit Liberty to withdraw the admissions.

¶19 Unsurprisingly, when a lawsuit results in summary judgment based on deemed admissions, the admissions go to material facts. It is self-evident that the presentation of the merits would be subserved by allowing the other party to withdraw or amend such admissions. Summary judgment granted early in the litigation will generally not be prejudicial. It is when a party has multiple opportunities to respond and cannot demonstrate hardship or acceptable reasons for failing to respond that this Court has affirmed the trial court's refusal to allow withdrawal or amendment of deemed admissions. Unlike the attorneys in *Heath* and *Ross*, who had multiple opportunities to respond and "made no showing of hardship or other reason that she was unable to timely answer the requests for admission," counsel in this case had compelling reasons for not responding. *Heath*, 2005 OK 69, ¶ 10, 123 P.3d at 4; see *Ross*, 2004 OK 13, ¶ 12, 87 P.3d at 595. Considering the specific facts of this case, we hold the trial court exercised unreasonable judgment in weighing the relevant factors and, thereby, abused its discretion by denying Liberty's request to withdraw the admissions. Thus, the trial court erred in granting summary judgment to Thomas based solely on the deemed admissions. ³

CONCLUSION

¶20 Requests for admissions are a legitimate tool in our quest for the truth. Failure to timely respond to such requests is worthy of judicial oversight. However, the facts of this case do not nearly warrant a death penalty sanction for not answering. The order of the district court granting partial summary judgment to Thomas is reversed, and, on remand, the district court is instructed to permit Liberty to withdraw the admissions.

ORDER OF THE DISTRICT COURT IS REVERSED

AND REMANDED WITH INSTRUCTIONS

CONCUR: KUEHN, V.C.J., WINCHESTER, EDMONDSON, DARBY and KANE, JJ.

CONCUR IN PART, DISSENT IN PART: JETT, J. (by separate writing)

DISSENT: GURICH (by separate writing), COMBS, JJ. and ROWE, C.J.

GURICH, J., with whom COMBS, J. joins, dissenting:

¶1 I write to elaborate on and emphasize the procedural history that underscores Plaintiff Maryann Thomas' Motion for Summary Judgment Against Defendant Liberty Mutual Company and the trial court's order granting the same. On March 12, 2021, Thomas filed suit in Oklahoma County against Markie Len Gray, Progressive Direct Insurance Company, and Liberty Mutual Insurance Company to recover damages incurred when Thomas was injured in a motor vehicle accident on October 6, 2020. With respect to Liberty Mutual, Thomas alleged that

Defendant Gray's liability insurance was insufficient to pay for the damage she incurred and that she was entitled to recover the policy limits of a policy she held with Liberty Mutual (Policy). Liberty Mutual filed an Answer denying all relevant allegations on April 27, 2021.

¶2 On May 14, 2021, Attorney Stephanie Corbett of the Law Office of Aimee J. Treece entered an appearance on behalf of Liberty Mutual. Corbett left the firm in May or June of 2021 but did not withdraw from the case. Subsequently, the named partner of the firm retired, Attorney Laurie Fong took over the firm, and the firm was renamed to the Law Offices of Laurie Fong. The following mailing address was consistently used in filings for this firm: P.O. Box 7218, London, KY 40742. The Law Offices of Laurie Fong is "an office in the Liberty Mutual Staff Counsel organization, which is part of the Liberty Mutual Corporate Legal Department." Declaration of Laurie A. Fong at ¶ 1, Exhibit 4 to Liberty Mutual's Response in Opposition to Thomas' Motion for Summary Judgment.

¶3 Roughly eight months after the filing of the state court action, on November 11, 2021, Liberty Mutual filed a declaratory judgment action in the United States District Court for the Western District of Oklahoma seeking a legal determination that Thomas' Policy provides no underinsured motorist coverage or other coverage for any claim by Thomas for damages resulting from the accident. Liberty Mutual was represented by Attorneys William O'Connor and Margo Shipley in this federal action. Neither O'Connor nor Shipley entered an appearance in the state court action. Thomas moved to dismiss the federal action in February of 2022.

¶4 On June 9, 2022, Plaintiff sent a set of discovery requests, containing eight requests for admission (RFAs), to Liberty Mutual. The RFAs sought to have Liberty Mutual admit the following facts:

- (1) the insurance agent who sold the Policy to Thomas was acting as Liberty Mutual's agent;
- (2) prior to the accident, Thomas requested a \$1,000,000 umbrella policy with coverage which would have provided uninsured/underinsured motorist (UM/UIM) coverage for the negligence of Defendant Gray;
- (3) Thomas requested Liberty Mutual sell her a \$1,000,000 umbrella policy which would have covered the injuries she sustained in the accident;
- (4) Liberty Mutual never provided Thomas with the Policy she purchased prior to the accident;
- (5) prior to the accident, Liberty Mutual offered policies of umbrella insurance to the public in the amount of \$1,000,000 which policies provided its insureds UM/UIM coverage in addition to its insureds' automobile UM/UIM coverage;
- (6) Liberty Mutual owed a duty of good faith and fair dealing to Thomas to provide her with the umbrella insurance which she requested to purchase;
- (7) Liberty Mutual did not advise Thomas of the kind of insurance it now says it sold her, until after she made a claim with Liberty Mutual for the injuries suffered in the accident; and
- (8) Liberty Mutual did not send Thomas a copy of her Policy of umbrella insurance after she purchased the Policy.

The RFAs were sent to Corbett--the only attorney of record for Liberty Mutual in the state case--by certified mail to the firm's address and by email to OKCeservice@LibertyMutual.com. ¹ The email was received by the Law Offices of Laurie Fong, as evidenced by the fact that a legal secretary at firm emailed Thomas' counsel on June 13, 2022, to advise that the case had been transferred to Attorney William O'Connor. In his email response, Thomas' counsel pointed out that there had been no other entries of appearance for Liberty Mutual in the state case. Fong's legal secretary responded simply: "You will need to contact their office. The file was transferred and closed in our office." On June 23, 2022, Fong sent Thomas' counsel a letter telling him to "address any further

pleadings to Bill O'Connor in this matter. He will be handling this matter henceforth." O'Connor and Shipley entered appearances in the state case on June 29, 2022. ² Despite representation of Liberty Mutual transferring from the Law Offices of Laurie A. Fong to O'Connor and Shipley, ³ Shipley has alleged Fong never provided O'Connor or Shipley with a copy of the discovery requests. ⁴ Responses to the discovery requests were nevertheless due July 12, 2022. ⁵ Liberty Mutual did not respond to the discovery requests.

¶5 On June 20, 2023, Thomas filed a motion for summary judgment against Liberty Mutual on the issue of liability. The motion relied heavily on the fact that Liberty Mutual had failed to timely respond to the RFAs, and they were statutorily deemed admitted. Specifically, Thomas argued that she requested and was told by a Liberty Mutual agent that her umbrella policy would include UM/UIM motorist coverage up to \$1,000,000. Thomas therefore argued that Liberty Mutual should be bound by its agent's representations, and that Liberty Mutual is liable to Thomas for the Policy not being procured as requested or as promised.

¶6 In response to the motion for summary judgment, Liberty Mutual argued the RFAs should not be deemed admitted and the Policy coverage was disputed. In the event the RFAs were deemed admitted, Liberty Mutual asked the Court to stay discovery "pending the resolution" of the related federal declaratory judgment action filed by Liberty Mutual. But, if the Court declined to stay discovery, Liberty Mutual requested thirty days to respond to the June 9, 2022 discovery requests (including the RFAs). Liberty Mutual did not file a formal motion to withdraw or amend the admissions. On the same day it filed its response to Thomas' motion for summary judgment, Liberty Mutual filed a separate Motion to Stay Proceedings Pending Federal Declaratory Judgment Action. Specifically, Liberty Mutual sought a stay "pending the outcome" of the federal action.

¶7 On August 23, 2023, the trial court entered an order deferring ruling on Plaintiff's motion for summary judgment and staying discovery in the case (including Liberty Mutual's responses to Plaintiff's June 9, 2022 discovery requests) "until such time as the federal court" issued "a ruling" on the issue of whether the Policy provides coverage "for any claim by Plaintiff for damages resulting from the automobile accident that occurred on October 6, 2020." The Court also deferred ruling on Liberty Mutual's request to withdraw the admissions.

¶8 The Western District of Oklahoma dismissed the federal action approximately one year later on September 5, 2024. On January 30, 2025, Liberty Mutual filed a short "Notice of Federal Court Decision" and its own Motion for Summary Judgment. Thomas responded and requested her own motion for summary judgment be set for hearing. The assigned judge retired, and the case was reassigned on March 6, 2025.

¶9 Both Thomas' and Liberty Mutual's motions for summary judgment were heard on April 17, 2025. At the hearing, the trial court judge denied Liberty Mutual's motion for summary judgment and granted Thomas' motion for summary judgment. ⁶ In order for the trial court to sustain Thomas' motion for summary judgment, the trial court had to have denied Liberty Mutual's request to withdraw the admissions. The Court asked Thomas' counsel to prepare a journal entry of judgment reflecting its decision. Thomas' counsel prepared and provided draft journal entries to Liberty Mutual's counsel, but Liberty Mutual rejected the drafts and so, on August 18, 2025, the matter came before the court again on a motion to settle journal entry. This time the trial court ordered Liberty Mutual's counsel to prepare the journal entry.

¶10 The resulting journal entry was entered on October 13, 2025. ⁷ The ultimate holding was that, due to Liberty Mutual's failure to timely respond, the RFAs were deemed admitted. Based on these admissions, the court granted Thomas' motion for summary judgment and denied Liberty Mutual's motion for summary judgment. But the order also relied on Liberty Mutual's statements for the majority of the facts, including facts directly disputed, and contained self-serving statements for Liberty Mutual. ⁸

The Trial Court Did Not Abuse Its Discretion

¶11 As an initial matter, the RFAs were properly served on Liberty Mutual by mailing them to the last-known address of an attorney of record (Corbett). 12 O.S. § 2005(B). As a result, the RFAs were statutorily deemed admitted. 12 O.S. § 3236(A) ("The request may, without leave of court, be served upon any party after the filing of a petition....**The matter is admitted** unless, within thirty (30) days after service of the request,... the party to whom

the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.") This statute is unqualified. Requests for Admissions are unique in that they have a built-in sanction for failing to cooperate in discovery. *Compare* 12 O.S. § 3236 with 12 O.S. § 3237. They do not require a meet and confer or any other action by the requesting party.

¶12 To the contrary, such admissions are "conclusively established **unless** the court **on motion** permits withdrawal or amendment of the admission." 12 O.S. § 3236(B) (emphasis added). The burden was therefore on Liberty Mutual to seek to withdraw or amend the admissions. Liberty Mutual did not file an independent motion to withdraw or amend the admissions, but its Response in Opposition to Thomas' Motion for Summary Judgment did request such a withdrawal and, absent a stay, sought thirty days to respond to Plaintiff's discovery requests. At Liberty Mutual's request, the trial court stayed discovery--including Liberty Mutual's "responses Plaintiff's June 9, 2022 discovery requests"--and deferred ruling on Liberty Mutal's request to withdraw. But the stay necessarily expired when the federal case was dismissed on September 5, 2024. ⁹ Aside from a passing statement that it "does not admit any of Plaintiff's RFAs," ¹⁰ Liberty Mutual never submitted formal responses to the discovery requests.

¶13 Moreover, it is entirely within the trial judge's discretion whether or not to permit a withdrawal or amendment of an admission. *Id.* ("The court **may** permit withdrawal or amendment of an admission when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining his or her action or defense on the merits." (emphasis added)). We are not privy to the trial court's analysis of the statutory factors permitting withdrawal because Liberty Mutual, who drafted the court's order, did not include it in the order. Nevertheless, withdrawal is entirely discretionary.

¶14 The majority opinion acknowledges that the trial court's decision to refuse withdrawal of the admissions is reviewed for an abuse of discretion. But the majority rewards Liberty Mutual for all of its mistakes and the confusion it caused, to the detriment of Thomas, by weighing the withdrawal factors itself. The majority ultimately gives Liberty Mutual the benefit of its blunders by determining the merits will be served by permitting withdrawal of the admissions and that Thomas will not be prejudiced by having to pursue her lawsuit on the merits. Our review for an abuse of discretion does not allow this Court to substitute its judgment for that of the trial court. "An abuse of discretion occurs when the decision is based on an erroneous interpretation of the law, on factual findings that are unsupported by proof, or represents an unreasonable judgment in weighing relevant factors." *Bjorkman v. Noble*, 2025 OK 62, ¶ 6, 579 P.3d 602, 606 (internal quotation marks omitted). There is nothing in the record to indicate the trial court exercised unreasonable judgment in weighing the relevant factors.

¶15 Here, Thomas properly served the requests. The only breakdown of communication was between Liberty Mutual's Corporate Legal Department, its Oklahoma City counsel, and its Tulsa counsel. There is no basis for imposing a burden on Thomas to **re-serve** discovery requests on new counsel when Liberty Mutual was already properly served. Nor is there a duty to send a letter or meet and confer prior to the RFAs being deemed admitted. It was the obligation of Liberty Mutual's counsel to transmit the entire case file, including pending discovery request, to new counsel in the course of a change in representation. Upon realizing it had failed to respond to Plaintiff's RFAs, Liberty Mutual unreasonably delayed in submitting responses to Plaintiff or filing a motion to withdraw or amend. Instead, it submitted a response to Plaintiff's Motion for Summary Judgment which sought withdrawal as an *alternative* means of relief. And Liberty Mutual *still* has not provided formal responses. In short, due to Liberty Mutual's failures and delay, Plaintiff Thomas' case has been unreasonably delayed for years.

¶16 With the requests for admission being properly deemed admitted, I would deny Liberty Mutual's Petition for Certiorari. This is an interlocutory order, and the trial court still maintains discretion to modify or vacate this order.

¶1 I agree that partial summary judgment in MaryAnn Thomas' favor should be reversed because the trial court did not consider and rule on Defendant's request to withdraw its admission. 12 O.S. § 3236(B). However, I disagree that the Supreme Court should decide the admission withdrawal issue in the first instance. I would remand this case for the trial court to decide this issue on a developed record.

I.

¶2 Parties may serve "written request for the admission . . . of the truth of any matters within the scope of [12 O.S. § 3226] set forth in the request that relate to statements or opinions of fact or of the application of law to fact" 12 O.S. § 3236(A). The matter is admitted unless the party to whom the request is directed answers or objects to the request within 30 days or an alternate deadline set by the district court. *Id.* "Any matter admitted under this section is conclusively established unless the court on motion permits withdrawal or amendment of the admission." *Id.* § 3226(B). A trial court has discretion to allow the withdrawal of an admission (1) if withdrawal will subserve (or promote) "the presentation of the merits of the action" and (2) "the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him or her in maintaining his or her action or defense on the merits." *Id.*

¶3 The Majority recognizes that a trial court's decision whether to allow the withdrawal of admissions is reviewed under the abuse of discretion standard. Appellate review to determine if the trial court abused its discretion requires "an actual antecedent exercise of that judicial discretion by the trial court." *State ex rel. Okla. State Bd. of Med. Licensure v. Rivero*, 2021 OK 31, ¶ 92, 489 P.3d 36, 69. "This Court does not make first-instance determinations of disputed issues of either law or fact in the exercise of its appellate jurisdiction." *In re Guardianship of Stanfield*, 2012 OK 8, ¶ 27, 276 P.3d 989, 1001.

II.

¶4 In this case, it does not appear that the trial court applied the factors set forth in 12 O.S. § 3226(B) and decided whether to grant Defendant Liberty Mutual Insurance Company's (Liberty Mutual) motion to withdraw its admissions. Liberty Mutual did not file a separate motion seeking permission to withdraw its admissions. Instead, on page 17 of its Response to Plaintiff's Motion for Summary Judgment, Defendant wrote "should the Court find the Requests for Admission are deemed admitted, Liberty Mutual respectfully moves the Court to allow Liberty Mutual to withdraw the admissions." Defendant's Response was not denominated as a Combined Response and Motion to Withdraw Admissions, and the withdrawal request was made within an argument about the proper remedy for Defendant's failure to respond to discovery. ¹

¶5 It does not seem that the trial court ruled on Liberty Mutual's motion to withdraw its admissions, which is unsurprising considering the form of Liberty Mutual's request. There is nothing in the trial court's order granting summary judgment indicating that it considered Liberty Mutual's withdrawal request as permitted by 12 O.S. § 3226(B), and no stenographic record was made of the motion hearing. Since 12 O.S. § 3226(B) gives the trial court discretion to allow the withdrawal of admissions but there is no antecedent exercise of that judicial discretion, this Court's review should conclude. There is nothing to measure under the abuse of discretion standard, and the case should be remanded to the district court.

¶6 Allowing the trial court to consider the admission withdrawal issue conforms with the text of 12 O.S. § 3236(B) and will allow for proper factual development. Because of the abnormal procedural track in this case, I am unconvinced that Plaintiff had an adequate opportunity to demonstrate any prejudice she may face in maintaining her action. 12 O.S. § 3236(B). For instance, we do not know whether Plaintiff would still have access to relevant evidence if Defendant's admissions are withdrawn. This case is now more than five and a half years old.

III.

¶7 The Discovery Code is employed "to secure the just, speedy and inexpensive determination of every action." 12 O.S. § 3225. Requests for admission are an important tool to narrow issues in dispute. While the facts of this case may ultimately dictate that Liberty Mutual be allowed to withdraw all or some of its admissions, § 3236 vests discretion in the trial court to make this determination in the first instance.

¶8 I respectfully dissent from the Majority's conclusion that Liberty Mutual should have been allowed to withdraw its admission. I would remand this case to the trial court to decide the admission withdrawal issue.

FOOTNOTES

KANE, J.:

¹ The trial court granted Thomas's motion to settle but ordered Liberty's counsel to prepare the journal entry signed by the court and appealed here.

² "Subserve" is a transitive verb meaning: "1: to promote the welfare or purposes of 2: to serve as an instrument or means in carrying out." "Subserve," *Merriam-Webster*, merriam-webster.com (last visited Sept. 14, 2026).

³ We offer no opinion as to whether the policy provides UM/UIM coverage for Thomas's injuries.

GURICH, J., with whom COMBS, J. joins, dissenting:

¹ In its May 2, 2025 Procedural Submission, Liberty Mutual indicated that it had not consented to email service as required by 12 O.S. § 2005(b) for the email to OKCeservice@LibertyMutual.com to be considered a valid means of service. Liberty Mutual was nevertheless properly served via certified mail to the last known address of their attorney of record. 12 O.S. § 2005(b).

² Between Corbett's Entry of Appearance for Liberty Mutual on May 14, 2021 and O'Connor and Shipley's Entries of Appearance for Liberty Mutual on June 29, 2022 there are only three docket entries in the case: (1) a summons fee paid on September 2, 2021, (2) a return of summons for Defendant Markie Len Gray on September 13, 2021, and (3) a dismissal with prejudice of Progressive Direct Insurance Company on January 11, 2022. Plaintiffs settled their claims against Gray and Progressive.

³ Despite never entering an appearance in the case, Fong sought to withdraw from the case on July 8, 2022, and was permitted to do so on August 2, 2022. The trial court's October 13, 2025 Journal Entry indicates that Fong's motion to withdraw was "on behalf of her office, of which Corbett was previously employed," Order at ¶ 23, but Fong's Motion to Withdraw makes absolutely no mention of Corbett, the Law Office of Aimee J. Treece, or her current law firm. It simply indicates that she was filing the motion to withdraw "as an attorney of record" for Liberty Mutual.

⁴ See Declaration of Margo E. Shipley at ¶¶ 11, 17, Exhibit 1 to Liberty Mutual's Response in Opposition to Thomas' Motion for Summary Judgment.

⁵ The record reflects that the Requests for Admissions were sent via certified mail on June 9, 2022. Responses are due thirty days after service of the requests. 12 O.S. § 3236. But, "[w]hen a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail... three (3) days shall be added to the prescribed period." 12 O.S. § 2006. As such, Liberty Mutual's responses were due thirty-three days after Plaintiff sent the discovery requests via certified mail.

⁶ The docket entry on April 18, 2025 indicates: "Parties appear through counsel. Court advises that it has reviewed the motions and responsive pleadings, and is prepared to rule. Court finds Defendant Liberty Mutual Insurance Company's Motion for Summary Judgment is denied. Court advises that it is also prepared to rule on Plaintiff Maryann Thomas' Motion for Summary Judgment, Court offers counsel an option to argue motions at 1:30 PM, or take more time to discuss/explore resolution. Both parties' counsel waives these options, and asks the Court render judgment now. Court finds Plaintiff Maryann Thomas' Motion for Summary Judgment against Defendant Liberty Mutual Company is granted as per journal entry. Prevailing party to prepare JE."

⁷ The October 13, 2025 Order was signed by the district court judge and Liberty Mutual's counsel but not by Thomas' counsel.

⁸ *E.g.*: "The stay of discovery, 'including Defendant's responses to Plaintiff's June 9, 2022 discovery requests,' has never been lifted and remains in effect"; and "Liberty Mutual's current counsel is not responsible for Liberty Mutual's failure to timely respond to the RFAs."

⁹ Liberty Mutual's self-serving statement that the stay has never been lifted and remains in effect defies logic.

¹⁰ This is a statutorily inadequate denial. See 12 O.S. § 3236(A).

JETT, J., concurring in part and dissenting in part:

¹ No procedural rules in Oklahoma prohibit parties from consolidating motions into a single document or from combining a motion and response. This commonly occurs in district courts. However, best practice is to clearly denominate combined filings to avoid stealthy motions that are neither responded to nor ruled on.

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Oklahoma Supreme Court Cases

Cite	Name	Level
<u>2001 OK 25</u> , <u>21 P.3d 48</u> , <u>72 OBJ 827</u> ,	<u>MEADOWS v. WAL-MART STORES, INC.</u>	Discussed
<u>2004 OK 7</u> , <u>85 P.3d 841</u> ,	<u>FANNING v. BROWN</u>	Discussed
<u>2004 OK 13</u> , <u>87 P.3d 593</u> ,	<u>ROSS v. PACE</u>	Discussed at Length
<u>2005 OK 68</u> , <u>123 P.3d 1</u> ,	<u>HEATH v. ENGLE</u>	Discussed at Length
<u>2005 OK 69</u> , <u>125 P.3d 1183</u> ,	<u>STATE ex rel. DEPT. OF TRANSPORTATION v. POST</u>	Cited
<u>2007 OK 21</u> , <u>158 P.3d 461</u> ,	<u>OKLAHOMA CITY ZOOLOGICAL TRUST v. STATE ex rel. PUBLIC EMPLOYEES RELATIONS BD.</u>	Discussed
<u>2012 OK 8</u> , <u>276 P.3d 989</u> ,	<u>IN THE MATTER OF THE GUARDIANSHIP OF STANFIELD</u>	Discussed
<u>2021 OK 31</u> , <u>489 P.3d 36</u> ,	<u>STATE ex rel. OKLA. STATE BD. OF MEDICAL LICENSURE AND SUPERVISION v. RIVERO</u>	Discussed
<u>2022 OK 9</u> , <u>505 P.3d 920</u> ,	<u>RICKARD v. COULIMORE</u>	Discussed
<u>2025 OK 62</u> , <u>579 P.3d 602</u> ,	<u>BJORKMAN, ET AL. v. NOBLE</u>	Discussed

Title 12. Civil Procedure

Cite	Name	Level
<u>12 O.S. 3226</u> ,	<u>General Provisions Governing Discovery</u>	Discussed at Length
<u>12 O.S. 952</u> ,	<u>Jurisdiction of Supreme Court</u>	Cited
<u>12 O.S. 3225</u> ,	<u>Construction</u>	Cited
<u>12 O.S. 3236</u> , <u>12 O.S. 3236</u> ,	<u>Requests for Admission</u>	Discussed at Length

