OKLAHOMA STATE COURTS NETWORK

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Butcher Optical, P.C., et al v. Capstone Eyecare Holdings LLC et al

2026 OK CIV APP 32

Case Number: 122509

Decided: 07/02/2026

Mandate Issued: 09/17/2026

COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA DIVISION II

Cite as: 2026 OK CIV APP 32, __ P.3d __

BUTCHER OPTICAL I, P.C., an Oklahoma professional corporation; BUTCHER OPTICAL II, P.C., an Oklahoma professional corporation; BUTCHER OPTICAL III, Inc., an Oklahoma corporation, Petitioners/Appellees, and DR. JEFF BUTCHER, an individual and DR. CHRIS BUTCHER, an individual, Additional Petitioners,

vs.

CAPSTONE EYECARE GROUP OF OKLAHOMA, an Oklahoma limited liability company; CAPSTONE EYECARE HOLDINGS, LLC, an Oklahoma limited liability company; VISION EQUITY PARTNERS, LLC, an Oklahoma limited liability company; PATRICK MURNAN, an individual, and CALE COULTER, an individual, Respondents/Appellants.

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE SHEILA D. STINSON, TRIAL JUDGE

AFFIRMED

David A. Elder Matthew W. Brockman Erin O'Roke Oakley HARTZOG CONGER CASON, LLP Oklahoma City, Oklahoma For Plaintiffs/Appellees

Eric S. Eissenstat Jennifer K. Christian Maxwell G. West PHILLIPS MURRAH, P.C. Oklahoma City, Oklahoma For Defendants/Appellant

JOHN F. FISCHER, JUDGE:

¶1 Capstone Eyecare Group of Oklahoma ("Capstone OK") appeals the district court's agreed order confirming the arbitration award and entering judgment. Because Capstone OK seeks review of the arbitration award in this Court but did not timely preserve this issue before the district court by filing a motion to vacate the arbitration award, we affirm the district court's order and judgment.

BACKGROUND

¶2 This case arises from a dispute between Butcher Optical I, P.C.; Butcher Optical II, P.C.; and Butcher Optical III, Inc. (collectively "Butcher Optical") and Capstone OK, arising from a business management agreement and Butcher Optical's termination thereof. This dispute resulted in two lawsuits. These suits were dismissed after the parties agreed to consolidate the claims, counterclaims, and defenses in those cases and to submit all issues to arbitration before the American Arbitration Association ("AAA").

¶3 A final arbitration hearing was conducted in the fall of 2023 in AAA Case No. 01-22-0005-3658. The arbitrator initially issued an interim award, but then entered a revised and final award, disposing of all issues on May 8, 2024. In this final award, the arbitrator found that Butcher Optical breached its fiduciary duty to Capstone OK by terminating the business management agreement but declined to award Capstone OK damages for this breach. [1] The AAA transmitted a copy of the award to the parties by electronic mail the next day, May 9, 2024. None of the parties filed a motion for the arbitrator to modify or correct the award within 20 days of receiving notice of the award pursuant to 12 O.S.2021 § 1871.

¶4 After the 20-day period ran, Butcher Optical filed an application and motion in the district court, requesting the court confirm the arbitration award. Significantly, Capstone OK did not file a motion to vacate the award in the district court. Thereafter, the parties entered an agreed order on August 13, 2024, confirming the arbitration award and entering final judgment in conformance therewith. [2] Capstone OK appeals from this agreed order.

STANDARD OF REVIEW

¶5 Resolution of this appeal presents legal issues, including those of statutory interpretation, which are questions of law reviewed de novo. *Bailey v. State ex rel. Serv. Oklahoma*, 2025 OK 34, ¶ 10, 572 P.3d 1026, 1030. Pursuant to de novo review, this Court has "plenary, independent, and non-deferential authority to determine whether the trial tribunal erred in its legal rulings." *Id*.

ANALYSIS

¶6 Capstone OK alleges the arbitrator erred by declining to award it damages for Butcher Optical's breach of fiduciary duty. As Butcher Optical's answer brief states, Capstone OK did not raise this issue before the district court.

¶7 The Oklahoma Uniform Arbitration Act sets forth the proper procedure for a party seeking to vacate an arbitration award. These issues are properly raised to the district court "[u]pon an application and motion to the court by a party to an arbitration proceeding . . . ." 12 O.S.2021 § 1874(A). As pertinent to this case, the application and motion to vacate "must be filed within ninety (90) days after the movant receives notice of the award . . . ." *Id*. at § 1874(B). The record reflects that Capstone OK received notice of the arbitration award on May 9, 2024. Accordingly, the 90-day period during which it was required to file a motion to vacate ran on August 7, 2024. [3] Capstone OK did not file a motion to vacate during this time. In fact, it acquiesced in the filing of the now complained-of "agreed" order entered in August 2024 confirming the arbitration award and entering judgment.

¶8 Capstone OK argues that its argument on appeal was preserved because it was allowed to appeal from the August 2024 order and judgment pursuant to 12 O.S.2021 §§ 1879(3) and (6). It is correct that section 1879(3) allows an appeal to be taken from an order confirming an arbitration award, and section 1879(6) allows an appeal to be taken from a final judgment entered pursuant to the Oklahoma Uniform Arbitration Act.

¶9 However, the right to appeal granted in section 1879 does not negate basic appellate procedure. It is axiomatic that appellate courts "do not make first-instance determinations of issues of law or fact which were neither raised nor assessed below." *Mahmoodjanloo v. Mahmoodjanloo*, 2007 OK 32, ¶ 12, 160 P.3d 951, 955. That is the district court's function "in every case." *Bivins v. State ex rel. Oklahoma Mem'l Hosp.*, 1996 OK 5, ¶ 19, 917 P.2d 456, 464 (emphasis omitted). And the statute does not state that a party may appeal an arbitration award without ever having raised a timely objection before the district court. Rather, sections 1874 and 1879 must be read together to "give the intended effect to each related provision" and to afford the statutes "a reasonable construction that will avoid absurd consequences." *Matter of Protest of Raytheon Co. & Subsidiaries*, 2022 OK 32, ¶ 10, 512 P.3d 333, 337.

¶10 When read together, these statutes require a party to file a motion to vacate the arbitrator's award in the district court before appealing from the district court's order confirming an arbitration award or a judgment entered in accordance therewith. *Accord, e.g.*, *Pfannenstiel v. Merrill Lynch, Pierce, Fenner & Smith*, 477 F.3d 1155, 1158 (10th Cir. 2007) (finding a party who fails to provide timely notice of a motion to vacate an arbitration award "forfeits the right to judicial review of the award[,]" pursuant to the Federal Arbitration Act).

¶11 The fact that Capstone OK has misunderstood appellate procedure is further demonstrated by how the appellate record was compiled. Capstone OK filed its petition in error with the Oklahoma Supreme Court on September 12, 2024, and it properly filed a copy of the same with the district court that same day. *See* Okla. Sup. Ct. R. 1.23. Capstone OK was required to file its designation of record in the district court and file a copy of the same in the Oklahoma Supreme Court that same day. *See* Okla. Sup. Ct. R. 1.23, 1.28. It did not do so.

¶12 Instead, the same day as Capstone OK filed the petition in error, it filed a motion in the district court asking the court to allow it to supplement the district court record to include the record of the arbitration proceeding and transcript of the arbitration hearing. Alternatively, Capstone OK requested that the court vacate the August 2024 order and judgment pursuant to 12 O.S.2021 § 1031.1, so that it could file an "Answer" to Butcher Optical's motion to confirm the arbitration award to include the evidentiary record and transcript from the arbitration proceeding in the district court record. Over Butcher Optical's objection, the district court entered an order in October 2024 allowing supplementation of the district court record and denying Capstone OK's request to vacate the August 2024 order and judgment as moot. Tellingly, Capstone OK's designation of record was not filed either in the district court or the Supreme Court until November 6, 2024-- well after it filed its petition in error.

¶13 Regarding the post-appeal supplementation of the district court record, this Court is duty bound to inquire into the jurisdiction of the district court even though the parties do not raise the issue. *See Hall v. GEO Grp., Inc.*, 2014 OK 22, ¶ 12, 324 P.3d 399, 404. The longstanding rule is that while an appeal is pending "the district court is without jurisdiction to make any order materially affecting the rights of the parties to that appeal." *Cathey v. Bd. of Cnty. Commissioners for McCurtain Cnty.*, 2023 OK 108, ¶ 21, 553 P.3d 22, 26. Any order entered in contradiction to this rule is void. *Id*. Capstone OK's motion cites 12 O.S.2021 § 1, which provides a limited exception for when a district court may exercise its jurisdiction to "correct, open, modify or vacate a judgment, decree, or appealable order on its own initiative" within 30 days of the entry of judgment. Because the district court did not modify or vacate its August 2024 order and judgment in response to Capstone OK's motion, it lacked jurisdiction to enter the October 2024 order supplementing the record. [4]

¶14 For these reasons, Capstone OK did not properly preserve the sole issue raised in this appeal. Even if it had, it would be improper for this Court to consider the record and transcript from the arbitration proceeding because these materials were not before the district court when it entered its August 2024 order and judgment. Rather, the district court retroactively made these materials part of its record at a time it lacked jurisdiction to do so.

¶15 In any event, 12 O.S.2021 § 1874 limits the reasons for which the district court may vacate an arbitration award. The award shall be vacated if the district court finds: 1) the award was procured by corruption, fraud, or other undue means; 2) there was evident partiality by the arbitrator, corruption by the arbitrator, or prejudicial misconduct by the arbitrator; 3) the arbitrator refused to postpone the hearing upon a sufficient showing; 4) the arbitrator exceeded his or her power; 5) there was no agreement to arbitrate; or 6) the arbitration was conducted absent proper notice. *Id*. at § 1874(A).

¶16 Capstone OK does not rely on any of these reasons on appeal but asks this Court to address the arbitrator's alleged legal error regarding damages. However, "we will not review the factual or legal findings of the arbitrator nor consider the merits of the award." *City of Yukon v. Int'l Ass'n of Firefighters, Loc. 2055*, 1990 OK 48, ¶ 8, 792 P.2d 1176, 1179. *See also House v. Vance Ford-Lincoln-Mercury Inc.*, 2014 OK CIV APP 36, ¶ 21, 328 P.3d 1239, 1246 (explaining that the district court must give the arbitrator great deference and cannot review the merits of the award, including factual or legal findings). Thus, even if this issue was properly preserved for appellate review and the evidence and transcript from the arbitration proceeding properly contained in the appellate record, Capstone OK would still be unable to prevail in this appeal. [5]

CONCLUSION

¶17 For all the above reasons, the district court's August 2024 order confirming the arbitrator's award and entering judgment in conformance therewith is affirmed.

¶18 AFFIRMED.

HIXON, C.J., and WISEMAN, P.J., concur.

FOOTNOTES

JOHN F. FISCHER, JUDGE:

[1] The arbitrator also found that Capstone OK had breached the business management agreement by diverting funds from Butcher Optical and awarded Butcher Optical approximately $567,338 for this breach. Butcher Optical's attempt to garnish this amount from Capstone OK's parent company, Capstone Eyecare Holdings, LLC, is the subject of the Opinion in Companion Case No. 122,875, also issued today. Additional facts relevant to that Opinion are contained therein.

[2] The case style on the district court's August 2024 order and judgment includes Chris Butcher and Jeff Butcher, the owners of Butcher Optical, as additional parties. However, the arbitration award shows that they did not appear in their individual capacity in the arbitration.

[3] The 90-day period set forth in this statute is tolled if a movant of a motion to vacate alleges the arbitration award was procured by corruption, fraud, or other undue means. *See id*. Capstone OK does not make these allegations.

[4] It is also unclear whether Capstone OK's requested supplementation of the district court's record could have been properly achieved by the district court vacating its August 2024 order pursuant to section 1031.1. But we need not decide this issue given the district court's decision.

[5] In addition to the statutory grounds contained in section 1874(A), some jurisdictions applying the Federal Arbitration Act have recognized that an arbitrator's award is subject to vacatur if a movant establishes a "manifest disregard of the law," though this is a non-statutory ground. The Oklahoma Supreme Court has not decided whether this non-statutory ground may serve as a basis for vacating the arbitrator's award in Oklahoma. *Sooner Builders & Invs., Inc. v. Nolan Hatcher Const. Servs., L.L.C.*, 2007 OK 50, ¶ 28, 164 P.3d 1063, 1072 (declining to decide this issue because there was an applicable statutory ground for the vacatur). Moreover, as this Court noted in *House*, 2014 OK CIV APP 36, ¶ 28 n.10, it is unclear whether this judicially-created ground survived the United States Supreme Court's decision in *Hall Street Associates LLC v. Mattel, Inc.*, 552 U.S. 576, 583, 128 S. Ct. 1396, 1403 (2008) (finding the statutory grounds contained in the Federal Arbitration Act are the exclusive grounds for vacating an arbitrator's award). Even if this non-statutory ground applies, "manifest disregard of the law" requires establishing more than an error or misunderstanding of the law. Rather, it means that '"the record will show the arbitrators knew the law and explicitly disregarded it . . . ."' *House*, 2014 OK CIV APP 36, ¶ 27 (quoting *Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 932 (10th Cir. 2001)). Capstone OK fails to make this showing.

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Oklahoma Court of Civil Appeals Cases

Cite	Name	Level
2014 OK CIV APP 36, 328 P.3d 1239,	HOUSE v. VANCE FORD-LINCOLN-MERCURY, INC.	Discussed at Length

Oklahoma Supreme Court Cases

Cite	Name	Level

Cite	Name	Level
1990 OK 48, 792 P.2d 1176, 61 OBJ 1473,	City of Yukon v. International Ass'n of Firefighters, Local 2055	Discussed
1996 OK 5, 917 P.2d 456, 67 OBJ 206,	Bivins v. State ex rel. Okl. Mem. Hosp.	Discussed
2007 OK 32, 160 P.3d 951,	MAHMOODJANLOO v. MAHMOODJANLOO	Discussed
2007 OK 50, 164 P.3d 1063,	SOONER BUILDERS & INVESTMENTS, INC. v. NOLAN HATCHER CONSTRUCTION SERVICES, L.L.C.	Discussed
2014 OK 22, 324 P.3d 399,	HALL v. THE GEO GROUP, INC	Discussed
2022 OK 32, 512 P.3d 333,	IN THE MATTER OF THE INCOME TAX PROTEST OF RAYTHEON COMPANY	Discussed
2023 OK 108,	CATHEY v. BOARD OF COUNTY COMMISSIONERS FOR MCCURTAIN COUNTY	Cited
2025 OK 34, 572 P.3d 1026,	Bailey v State of Oklahoma ex rel. Service Oklahoma	Discussed

Title 12. Civil Procedure

Cite	Name	Level
12 O.S. 1871,	Motion to Modify or Correct Award - Notice	Cited
12 O.S. 1874,	Motion to Vacate Award - Timing - Rehearing	Discussed
12 O.S. 1879,	Appeals	Cited
12 O.S. 1,	Title	Cited
12 O.S. 1031.1,	Authorization to Correct, Open, Modify or Vacate Judgments - Time - Notice - Costs	Cited