JURISDICTION: **OKLAHOMA TAX COMMISSION**
CITE: **2016-05-03-23 / NON-PRECEDENTIAL**
ID: **SJ-15-008-H**
DATE: **MAY 03, 2016**
DISPOSITION: **DENIED**
TAX TYPE: **MOTOR VEHICLE**
APPEAL: **NONE TAKEN**

ORDER

This comes on before the Oklahoma Tax Commission pursuant to regular assignment on the agenda. The Commission, Having reviewed the files and records herein, the Commission hereby adopts the Findings of Fact, Conclusion of Laws and Recommendation made and entered by the Administrative Law Judge on the 28th day of March, 2016. And the same appended hereto together, herewith shall constitute the order of the Commission.

SO ORDERED.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

NOW on this 28TH day of March 2016, the above-styled and numbered cause comes on for consideration pursuant to assignment regularly made by the Oklahoma Tax Commission to ALJ, Administrative Law Judge. PROTESTANT ("Protestant") appears pro se.[1] The Motor Vehicle Division ("Division") of the Oklahoma Tax Commission appears through OTC ATTORNEY 1, Interim General Counsel, and OTC ATTORNEY 2, Assistant General Counsel, Office of General Counsel, Oklahoma Tax Commission.

PROCEDURAL HISTORY

On November 5, 2015, the protest file was received by the Office of Administrative Law Judges for further proceedings consistent with the *Uniform Tax Procedure Code*[2] and the *Rules of Practice and Procedure Before the Office of Administrative Law Judges*.[3] On November 12, 2015, the Court Clerk ("Clerk")[4] mailed the Introductory Letter to the Protestant that ALJ, Administrative Law Judge ("ALJ") had been assigned to this matter, and docketed as Case

[1] "pro se" (proh say or see), adv. & adj. [Latin] For oneself; on one's own behalf; without a lawyer <the defendant proceeded pro se> <a pro se defendant>. -- Also termed pro persona; in propria persona; propria persona; pro per. See PROPRIA PERSONA. BLACK'S LAW DICTIONARY (9th ed. 2009), available at http://web2.westlaw.com.

[2] OKLA. STAT. ANN. tit. 68, § 201 *et seq.* (West 2014).

[3] OKLA. ADMIN. CODE §§ 710:1-5-20 through 710:1-5-47.

[4] OKLA. ADMIN. CODE § 710:1-5-10(c)(2) (August 27, 2015).

Number SJ-15-008-H. Enclosed was a copy of the *Rules of Practice and Procedure Before the Office of Administrative Law Judges.*[5]

On December 1, 2015, OTC ATTORNEY 1 and OTC ATTORNEY 2 filed an Entry of Appearance as Division's Counsel. On December 4, 2015, the Clerk mailed a *Notice to Show Cause Why the Registration and Certificate of Title Should Not Be as a Manufactured Home as Opposed to a Travel Trailer* ("*Notice*") to the Protestant by certified mail, return receipt requested TRACKING NUMBER, setting the hearing for February 4, 2016, at 9:30 a.m.[6] On December 8, 2015, the Protestant signed the "green card" ("*Return of Service*") for the *Notice*.

On February 4, 2016, at 9:30 a.m. the ALJ convened a closed hearing.[7] The Protestant testified on her own behalf about the 2006 Forest River Park Model (VIN# ###), the Division's proposed reclassification of the 2006 Forest River Park Model, and the Division's audit of the title and registration. The Protestant identified and offered Exhibits 1 through 5, and 8, which the ALJ admitted into evidence, with the Division's objections noted for the record. The Protestant identified Exhibits 6 through 7, and 9, which the ALJ did not admit into evidence. The Division called SUPERVISOR, Title Supervisor, Motor Vehicle Division of the Oklahoma Tax Commission, who testified regarding the audit of the title and registration on the 2006 Forest River Park Model (VIN# ###), and as custodian of the Division's records. The Division identified and offered Exhibits 1 through 2, which the undersigned admitted into evidence without objection. At the conclusion of the hearing, the ALJ closed the record and this case submitted for decision on February 4, 2016.

FINDINGS OF FACT

Upon review of the file and records, including the record of the proceedings, and the exhibits received into evidence, the undersigned finds:

1. On September 9, 2010, the Division issued a Certificate of Title[8] to DEALERSHIP on a "used" 2006 Forest Park Model (VIN# ###) ("Vehicle"),[9] which had been purchased in the State of Texas. The Division classified the Vehicle as a Travel Trailer ("TV").[10]

2. On September 6, 2014, the Protestant purchased the Vehicle from DEALERSHIP (Agent #8801/License #025TV)[11] for $13,500.00.[12]

---

[5] *Id.* Unless otherwise noted herein, the ALJ notified the parties by letter.

[6] OKLA. STAT. ANN. tit. 68, § 208 (West 2014). The Clerk mailed the Notice to the Protestant at ADDRESS.

[7] The Protestant invoked confidentiality. *See* OKLA. STAT. ANN. tit. 68, § 205 (West Supp. 2016).

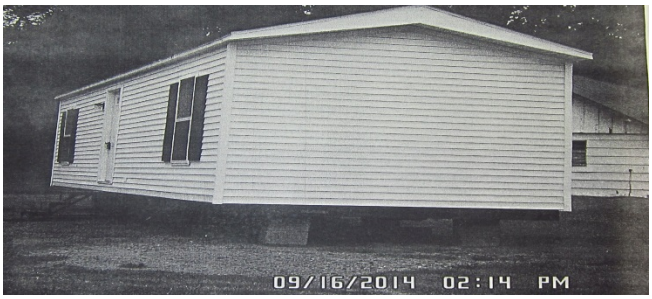
[8] *See* OKLA. STAT. ANN. tit. 47, § 1102 (West 2008). *See also* OKLA. STAT. ANN. tit. 47, § 1105 (West 2008).

[9] *See* Note 26, *infra.*

[10] Title Supervisor testimony. *See* Division Exhibit 1. *See also* Note 25, *infra.*

3. The "Purchase Agreement" reflects the Vehicle is one (1) bedroom, with a Hitch Size of 12´ x 38´ or 456 square feet.[13]

4. The Vehicle appears, as follows,[14] to-wit:



5. On October 23, 2014, the Division issued a Certificate of Title to the Protestant on the Vehicle, which classifies the Vehicle as a TV.[15]

6. On September 15, 2015, the Protestant received a letter from the Division, which in pertinent part, states,[16] as follows, to-wit:

> This letter is to let you know that an administrative flag has been placed on this record. You will need to submit your title for a correction. This record was given the class code of a travel trailer. The correct code is a manufactured home. This will be corrected at no cost to you.

7. On October 27, 2015, the Division received a letter, by e-mail, from the NAME County Assessor, which in pertinent parts, states as follows,[17] to-wit:

---

[11] *Id.* Title Supervisor testified that this license authorized the mobile dealer to sell travel trailers.

[12] *Id.* Protestant testified that the Vehicle, without the Hitch measures 11′3″ x 35′ or approximately 393.75 square feet. There is no explanation in the record for the 9″ discrepancy in the width, as measured by the Protestant.

[13] *Id.*

[14] The court file contains an audit packet, which the Division forwarded as part of the protest file on this matter. The ALJ is taking judicial notice of the materials contained in the court file to complete the factual details and background of this audit. OKLA. ADMIN. CODE § 710:1-5-36 (July 11, 2013). On the manufacturer's plaque, the Vehicle reflects the "TYPE/TYPE" as TRAILER TRA/REM. *See* Protestant's Exhibit 8. The Recreational Park Trailer Industry Association ("RPTIA") sticker/plaque number 0093923 reflects the "Manufacturer certifies compliance with standard for RV Park Trailers – ANSI A119.5. The sticker/plaque covers "Electrical," "Plumbing," "Structural," "Heating," and "Fire Safety."

[15] *Id.*

[16] *Id.* Division Exhibit 2.

[17] *See* Note 14, *supra*.

> According to the Oklahoma Tax Commission position on the "park home" issue our office believes this home belonging to [Protestant] to be manufactured. Our stance is based on the size of this home and the statutes explaining the differences between manufactured home and travel trailer.
>
> The definition of Travel Trailer contained in 47 O.S. § 1102 states in part:
>
> > "*…shall have a body width not exceeding eight (8) feet, and an overall length not exceeding forty (40) feet, including hitch or coupling.*"
>
> The definition of Manufactured Home contained in 42 U.S.C. § 5402 states, in part:
>
> > *"…is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square…"*

8. The Protestant received a Manufactured Home Rendition Form (OTC 935-MH) from the NAME County Assessor for the 2015 and 2016 Tax Years for the Vehicle, which reflects the Vehicle, as being twelve feet (12´) wide and thirty-five feet (35´) in length or 420 square feet.[18]

9. On October 27, 2015, Deputy Director, Motor Vehicle Division sent an e-mail to the Protestant, explaining the Division's position, as reflected by the letter from the NAME County Assessor.[19]

10. On October 29, 2015, the Deputy Director, Motor Vehicle Division received an e-mail from DIRECTOR, Director of State Relations and Program Advocacy, National Association of RV Parks & Campgrounds ("arvc"), which in pertinent part, states as follows,[20] to-wit:

> It has been brought to my attention by arvc member [Protestant] at the [RV Park], OK that your office has placed an administrative hold on her license renewal for her Park Recreational Vehicle (PMRV). In a communication to [Protestant] on 10/27/15 you stated, 'There is no 'Park Home' title/registration designation in Oklahoma.' A PMRV is not a 'home' nor is it a manufactured home.

[18] Protestant Exhibit 1.

[19] Protestant Exhibit 4. *See* Note 14, *supra*.

[20] *Id.* *See* Protestant Exhibit 3.

11. On December 4, 2015, the Clerk mailed the *Notice* to the Protestant by certified mail return receipt requested (TRACKING NUMBER).[21]

12. On December 8, 2015, the Protestant signed the *Return of Service* for the *Notice*.[22]

CONCLUSIONS OF LAW

1. The Legislature vested the Oklahoma Tax Commission with jurisdiction over the parties and subject matter of this proceeding.[23]

2. "Manufactured Home" means a residential dwelling built in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C., Section 5401 *et seq.*, and rules promulgated pursuant thereto and the rules promulgated by the Oklahoma Used Motor Vehicle and Parts Commission pursuant to Section 582 of Title 47.[24]

3. "Travel Trailer" ("TV") means any vehicular portable structure built on a chassis, used as a temporary dwelling for travel, recreational or vacational use, and, when factory-equipped for the road, *it shall have a body width not exceeding eight (8) feet and an overall length not exceeding forty (40) feet* [or 320 square feet], *including the hitch or coupling.*[25] (Emphasis added.)

4. "Vehicle" means any type of conveyance or device in, upon or by which a person or property is or may be transported from one location to another upon the avenues of public access

---

[21] *See* Note 6, *supra.*

[22] *See* Procedural History at 2.

[23] *See* OKLA. STAT. ANN. tit. 68, § 207 (West 2014). *See also* OKLA. STAT. ANN. tit. 47, § 1106 (West 2008):

> A. 1. If the Oklahoma Tax Commission shall determine at any time that an applicant for a certificate of title of a vehicle is not entitled thereto, it may refuse to issue such certificate or to register such vehicle.
> 2. The Commission may for a similar reason, after ten (10) days' notice and a hearing, revoke the registration and the certificate of title already acquired on any outstanding certificate of title. Said notice may be served in person or by registered mail.
> B. 1. The Oklahoma Tax Commission may refuse registration and issuance of a certificate of title of a commercial motor vehicle, or any transfer of title and registration of a commercial motor vehicle, to a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.
> 2. The Commission may revoke the registration, certificate of title, and license plate of a commercial motor vehicle if the vehicle has been assigned to be operated by a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.
> C. The Corporation Commission may revoke, suspend or deny registration of a commercial motor vehicle licensed pursuant to the jurisdiction of the Corporation Commission and whose ability to operate has been terminated or denied by a state or federal agency.

[24] OKLA. STAT. ANN. tit. 47, § 1102(17) (West 2008). *See* Notes 28-29, *infra.*

[25] OKLA. STAT. ANN. tit. 47, § 1102(34) (West 2008).

within the state. "Vehicle" does not include bicycles, trailers *except travel trailers* and rental trailers, or implements of husbandry as defined in Section 1-125 of Title 47. All implements of husbandry used as conveyances shall be required to display the owner's driver license number or license plate number of any vehicle owned by the owner of the implement of husbandry on the rear of the implement in numbers not less than two (2) inches in height. The use of the owner's social security number on the rear of the implement of husbandry shall not be required.[26] (Emphasis added.)

5. "Recreational Vehicle" ("RV") means every vehicle which is built on or permanently attached to a self-propelled motor chassis or chassis cab which becomes an integral part of the completed vehicle and is capable of being operated on the highways. In order to qualify as a recreational vehicle pursuant to this paragraph such vehicle shall be permanently constructed and equipped for human habitation, having its own sleeping and kitchen facilities, including permanently affixed cooking facilities, water tanks and holding tank with permanent toilet facilities. Recreational vehicle shall not include manufactured homes or any vehicle with portable sleeping, toilet and kitchen facilities, which are designed to be removed from such vehicle.[27]

6. "Manufactured Home" means a residential dwelling in one or more sections built in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C., Section 5401, *et seq.* and rules promulgated pursuant thereto.[28]

7. "Manufactured Home" means a structure, transportable in one or more sections, which, in the traveling mode, is *eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet*, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle.[29] (Emphasis added.)

8. "Mobile Home" means a residential dwelling fabricated in an off-site manufacturing facility, designed to be a permanent residence, but which is still transportable, that was built prior to the enacting of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C., Section 5401 *et seq.*[30]

---

[26] OKLA. STAT. ANN. tit. 47, § 1102(39) (West 2008).

[27] OKLA. STAT. ANN. tit. 47, § 1102(28) (West 2008).

[28] OKLA. STAT. ANN. tit. 47, § 581(5) (West 2008).

[29] 42 U.S.C.A. § 5402(6).

[30] OKLA. STAT. ANN. tit. 47, § 581(10) (West 2008).

9. Courts cannot enlarge taxing act's ambit to make its provision applicable to cases not clearly within legislature's contemplation or to fill lacunae in revenue law in manner that would distort enactment's plain language.[31]

10. Great weight is accorded an agency's construction of a statute when the administrative interpretation is made contemporaneously with the enactment of the statute and the construction is longstanding and continuous by the agency charged with its execution.[32] Where the Legislature is made repeatedly aware of the operation of the statute according to the construction placed upon it by an agency and the Legislature has not expressed its disapproval with the agency's construction, the Legislature's silence may be regarded as acquiescence in the agency's construction[33]; and the agency's construction is given controlling weight and will not be disregarded except in cases of serious doubt.[34]

11. It is not the place of any court to concern itself with a statute's propriety, desirability, wisdom, or its practicality as a working proposition; such questions are plainly and definitely established by fundamental law as functions of the legislative branch of government.[35]

12. The statutory mandate of the Tax Commission and the Administrative Law Judges is to determine the facts[36] and the correctness or incorrectness under the law of the Tax Commission's prior action, and to affirm, modify, or vacate that action.[37]

13. In all proceedings before the Tax Commission, the taxpayer has the burden of proof.[38] The Division's action is presumed correct and the taxpayer bears the burden of showing that it is incorrect and in what respects.[39]

---

[31] *Globe Life and Acc. Ins. Co. v. Oklahoma Tax Com'n*, 1996 OK 39, 913 P.2d 1322.

[32] *Schulte Oil Co., Inc. v. Oklahoma Tax Commission*, 1994 OK 103, 882 P.2d 65.

[33] *R.R. Tway, Inc. v. Oklahoma Tax Commission*, 1995 OK 129, 910 P.2d 972.

[34] *Cox v. Dawson*, 1996 OK 11, 911 P.2d 272.

[35] In re Assessments for Year 2005 of Certain Real Property Owned by Askins Properties, L.L.C., 2007 OK 25, 161 P.3d 303.

[36] *See R.K. Black, Inc. v. Oklahoma Tax Com'n*, 2002 OK CIV APP 8, 39 P.3d 814.

[37] OKLA. STAT. ANN. tit. 68, § 221(D) (West Supp. 2008).

[38] OKLA. ADMIN. CODE § 710:1-5-47 (June 25, 1999):

> In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the protestant to show in what respect the action or proposed action of the Tax Commission is incorrect. If, upon hearing, the protestant fails to prove a prima facie case, the Administrative Law Judge may recommend that the Commission deny the protest solely upon the grounds of failure to prove sufficient facts which would entitle the protestant to the requested relief.

OKLA. ADMIN. CODE § 710:1-5-77(b) (June 25, 1999), provides in pertinent part:

"preponderance of the evidence" means the evidence which is of greater weight or more

14. Federal preemption generally applies in four instances: when express statutory language so provides, when pervasive regulatory scheme infers by its presence that Congress felt federal regulation did not need supplemental state law provisions, when there exists actual conflict between state and federal laws making physically impossible to comply with both, or where objectives and purpose of Congress are thwarted by state law. Presumption of federal preemption arises only where there is conspicuous federal intent to exclude a questioned state law.[40]

ISSUE

Whether the Division should reclassify the Vehicle's Certificate of Title as a "Manufactured Home," as contended by the Division or remain classified as a "TV," as asserted by the Protestant?

DISCUSSION

This matter is a case of first impression on the Administrative Level, and presents novel facts and questions of law concerning the correct titling of the Vehicle, pursuant to the *Oklahoma Vehicle License and Registration Act* ("*Vehicle Registration Act*"),[41] *and Oklahoma Vehicle Excise Tax Code* ("*Vehicle Excise Code*").[42]

In 2010, the Division issued a Certificate of Title to DEALERSHIP classifying the Vehicle as a TV, and when the Protestant purchased the Vehicle from DEALERSHIP in 2014, the Division issued a Certificate of Title classifying the Vehicle as a TV.[43]

On September 15, 2015, the Protestant received a letter from the Division that the Protestant should submit the Certificate of Title to the Division for correction, that the Division had incorrectly classified the Vehicle as a TV instead of a "Manufactured Home."[44] From the record, it appears the Payne County Assessor prompted the Division's action.[45]

---

convincing than the evidence which is offered in opposition to it; evidence which as a whole shows that the fact sought to be proved is more probable than not.

[39] *See Enterprise Management Consultants, Inc. v. State ex rel. Oklahoma Tax Com'n*, 1988 OK 91, 768 P.2d 359.

[40] *Attocknie v. Carpenter Mfg., Inc.*, 1995 OK CIV APP 54, 901 P.2d 221.

[41] OKLA. STAT. ANN. tit. 47, § 1102 *et seq.* (West 2008). *See* Notes 28-29, *supra.*

[42] OKLA. STAT. ANN. tit. 47, § 2101 *et seq.* (West 2008).

[43] *See* Notes 10, 12, and 15, *supra*.

[44] *See* Note 16, *supra*.

[45] *See* Note 17, *supra*.

The parties agree that the problem stems from the fact that *Vehicle Registration Act and Vehicle Excise Code*[46] do not contain a definition for a "Park Model" TV.[47] The definition of TV in pertinent parts states: "…it should have a body width not exceeding eight (8) feet and an overall length not exceeding forth (40), including the hitch or coupling."[48] The *Vehicle Registration Act* defers to the federal definition of a "Manufactured Home," which states in pertinent part, "…is eight body feet or more in width or forty body feet or more in length, or, when erected on site is three hundred twenty or more square feet, …."[49]

The Protestant does not dispute that the Vehicle exceeds the Oklahoma statutory definition of a TV or that the measurements of the Vehicle fall with the Federal Definition of a Manufactured Home. The Protestant requested relief from the ALJ, as follows, to-wit:

- ALJ to redefine the square footage of an Oklahoma Manufactured Home.
- Place the captioned matter on hold pending a bill designed to address the problem by the Oklahoma Legislature during the current session.

Courts cannot enlarge taxing act's ambit to make its provision applicable to cases not clearly within legislature's contemplation or to fill lacunae in revenue law in manner that would distort enactment's plain language.[50] It is not the place of any court to concern itself with a statute's propriety, desirability, wisdom, or its practicality as a working proposition; such questions are plainly and definitely established by fundamental law as functions of the legislative branch of government.[51] The relief the Protestant requests is solely with the authority of the Oklahoma Legislature, not the ALJ.

As to the stay, although this is a case of first impression on the Administrative Level, the Division and the Legislature appear to have been aware of the problem as early as 2006.[52] The

---

[46] *See* Notes 41 and 42, *supra.*

[47] According to The Recreation Vehicle Industry Association ("RVIA") website at http://www.rvia.org, a "Park Model" is "…a trailer-type RV that is designed to provide temporary accommodation for recreation, camping or seasonal use. [Park Models] are built on a single chassis, mounted on wheels and have a gross trailer area not exceeding 400 square feet in the set-up mode. [Park Models] are certified by their manufacturers as complying with the ANSI A119.5 standard for recreational park trailers. …Two different types of park model RV's are offered. One type is less than 8′6″ in width and is designed for frequent travel on the highways while the other and more popular type is wider than 8′6″ (usually 12′ in width), and must be transported with special movement permit. The 8′6″ unit typically is expandable when it reaches its destination…" The Vehicle is not an RV, pursuant to statute. *See* Note 14, *supra. See also* Note 27, *supra.*

[48] *See* Note 25, *supra*.

[49] *See* Note 29, *supra*.

[50] *Globe Life and Acc. Ins. Co. v. Oklahoma Tax Com'n*, 1996 OK 39, 913 P.2d 1322.

[51] *See* Note 35, *supra*.

[52] The court file contains a copy of a letter from the Assistant Deputy Director, Motor Vehicle Division to a

Protestant requests a stay of this matter because of her confidence that Oklahoma Legislature will pass a bill during the current Legislative Session, which will resolve this matter. Unfortunately, the record does not support the Protestant's certainty. Further, the Legislature writes legislation, so that it applies prospectively, not retroactively, unless the Legislature specifically provides otherwise.[53]

CONCLUSION

The Protestant has not proved by a preponderance of the evidence that the Division should reclassify the Vehicle as a "Manufactured Home," based upon the current statutory provisions cited herein.

member of the Oklahoma House of Representatives dated December 20, 2006, in response to a constitute inquiry, which sets out the Division's position, as asserted in this matter. *See* Note 14, *supra.*

[53] The Protestant did not reference any bill pending during the current Legislative Session. Statutes and statutory amendments are presumed to operate prospectively, and presumption is rebutted only where intention of the Legislature to give statutes retrospective effect is expressly declared or necessarily implied from the language of the statute. Department of Human Services ex rel. Pavlovich v. Pavlovich, 1996 OK 71, 932 P.2d 1080. (Citations omitted).

RECOMMENDATIONS

The ALJ recommends denial of the protest, as more fully set forth herein.

The ALJ recommends that the Protestant present the Certificate of Title to the Vehicle for reclassification as a "Manufactured Home," as more fully set forth herein. In the alternative, that the Certificate of Title is revoked, pursuant to Section 1106 of Title 47,[54] allowing the Division to issue a new Certificate of Title classifying the Vehicle as a "Manufactured Home."

The ALJ recommends denial of the Protestant's request to place this matter on hold pending the passing of a bill during the current Legislative Session, as more fully set forth herein.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was NOT deemed precedential by the Commission. This means that the legal conclusions are generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.

NOTE: The distinction between a Commission Order designated as "Precedential" or "Non-Precedential" has been blurred because all OTC Orders resulting from cases heard by the Office of Administrative Law Judges are now published, not just "Precedential" Orders. *See* OKLA. STAT. ANN. tit.68, § 221(G) (West Supp. 2009) and OKLA. STAT. ANN. tit. 75, § 302 (West 2002).

[54] *See* Note 23, *supra*.