

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
OF OKLAHOMA

MAR 29 2010

MICHAEL S. RICHIE
CLERK

Jeff Burke,)
)
 Plaintiff/Appellant)
)
 vs.)
)
 Oklahoma Department of Securities)
 ex rel. Irving L. Faught, Administrator,)
)
 Defendant/Appellee)

No. 108101

Oklahoma County No. CJ-2009-2773

PETITION IN ERROR

- PETITION IN ERROR
- AMENDED OR SUPPLEMENTAL PETITION
- CROSS PETITION
- COUNTER-PETITION

DATE FIRST PETITION IN ERROR FILED: March 12, 2010.

I. TRIAL COURT HISTORY

COURT/TRIBUNAL: Oklahoma County District Court
CASE NO.: CJ-2009-2773
JUDGE: Noma D. Gurich
NATURE OF CASE: Injunction and Equitable Relief

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:

Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator

THE APPEAL IS BROUGHT FROM: (Check one)

- Judgment, Decree or Final order of District Court.
- Appeal from order granting summary judgment or motion to dismiss where motion filed after October 1, 1993 (Accelerated procedure under Rule 1.36).
- Appeal from Revocation of Driver's License (Rule 1.21(b)).
- Final Order of Other Tribunal.
(Specify Corporation Commission, Insurance Department, Tax Commission, Court of Tax Review, Banking Board or Banking Commissioner, etc. _____)
- Interlocutory Order Appealable by Right.
- Other _____

II. TIMELINESS OF APPEAL

1. Date judgment, decree or order appealed was filed: February 17, 2010.
2. *If decision was taken under advisement*, date judgment, decree or order was mailed to parties: _____
3. Does the judgment or order on appeal dispose of *all* claims by and against *all* parties?
 Yes No.
If not, did district court direct entry of judgment in accordance with 12 O.S. Supp.1995, 994? Yes No.
When was this done? _____
4. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right? Yes No.
5. If none of the above applies, what is the *specific* statutory basis for determining the judgment or order is appealable? _____
6. Were any post-trial motions filed? No
7. This Petition is filed by: Delivery to Clerk, or
 Mailing to Clerk by U.S. Certified Mail, Return Receipt Requested, on _____
(Date)

III. RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceeding: None
List all related appeals involving same issues: None

IV. SETTLEMENT CONFERENCE

Is appellant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250? Yes No

V. RECORD ON APPEAL

- A transcript will be ordered.
 No transcript will be ordered because no record was made and/or no transcript will be necessary for this appeal
 A narrative statement will be filed
 Record is concurrently filed as required by Rule 1.34 (Driver's License Appeals, etc.) or Rule 1.36 (Summary judgments and motions to dismiss granted).

VI. JUDGMENT, DECREE OR ORDER APPEALED -- EXHIBIT A

VII. SUMMARY OF CASE -- EXHIBIT B

VIII. ISSUES TO BE RAISED ON APPEAL -- EXHIBIT C

IX. NAME OF COUNSEL OR PARTY, IF PRO SE

APPELLANT

Jeff Burke, Pro Se
2512 Covell Lane
Edmond, OK 73034

ATTORNEYS FOR APPELLEE

Patricia A. Labarthe, #10391
Jennifer Shaw, #20839
Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Telephone: (405) 280-7700
Facsimile: (405) 280-7742

DATE: March 29, 2010

Verified by:



Patricia A. Labarthe, OBA # 10391
Jennifer Shaw, OBA #20839
Oklahoma Department of Securities
First National Center, Suite 860
120 N. Robinson
Oklahoma City, OK 73102
Telephone: (405) 280-7700
Facsimile: (405) 280-7742
Attorneys for Oklahoma Department of Securities

CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK

I hereby certify that a true and correct copy of the Petition in Error was mailed by U.S. Mail, with postage prepaid thereon, this 29th day of March, 2010, to the following:

The Honorable Noma D. Gurich
Judge of the District Court of Oklahoma County
304 Courthouse
321 Park Avenue
Oklahoma City, OK 73102

Jeff Burke
2512 Covell Lane
Edmond, OK 73034

Stephen J. Moriarty
Fellers, Snider, Blankenship, Bailey and Tippens, PC
100 N. Broadway, Ste. 1700
Oklahoma City, OK 73102

I further certify that a copy of the Petition in Error was mailed to, or filed in, the office of the Oklahoma County Court Clerk this 29th day of March, 2010.

Patricia A. Blantz

1. Heritage Est Services entered into a certain contract with the State of Oklahoma (the "Heritage Contract").

2. Pursuant to the Heritage Contract, the State of Oklahoma issued a check in the amount of \$34,065.00 to Heritage Est Services as the initial payment on the Heritage Contract (the "Initial Payment").

3. Jeff Burke ("Burke") received the Initial Payment. Burke personally provided goods and services for the Heritage Contract.

4. Pursuant to the Heritage Contract, the State of Oklahoma issued a check in the amount of \$7,150.00 to Heritage Est Services as the final payment on the Heritage Contract (the "Final Payment").

5. During the period September, 2006 through October, 2008, payments totaling \$7,220.00 were made by Defendant, Heritage Estate Services, LLC to Jeff Burke (the "Burke Payments"). Burke claims the payments were for work done by Burke for Defendant, Joe Don Johnson. There is no evidence in the record to support a finding that Defendant, Heritage Estate Services LLC received consideration or anything of value in exchange for the Burke Payments.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion is denied and Special Master is entitled to receive the Final Payment.

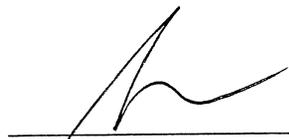
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Special Master has no claim to the Initial Payment and that the Initial Payment was earned by Burke.

Dated this 12th day of February, 2010.

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerks Office of Oklahoma County, Okla., this 26 day of March, 2010
By [Signature] PATRICIA PRESLEY, Court Clerk
[Signature] Deputy

[Signature]
DISTRICT JUDGE

APPROVED FOR ENTRY:



STEPHEN J. MORIARTY (OBA #6410)
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, P.C.

100 North Broadway, Suite 1700

Oklahoma City, OK 73102

Phone: 405-232-0621

Fax: 405-232-9659

E-mail: smoriarty@fellerssnider.com

SPECIAL MASTER

SUMMARY OF CASE

In March, 2009, the Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator (ODS), filed a civil injunctive action against Joe Don Johnson and James Farnham and against Heritage Estate Service LLC (Heritage). Jeff Burke, a non-party to this case, was the registered agent for Heritage. The Oklahoma County District Court (Court) issued a *Temporary Restraining Order, Order Freezing Assets and Order for Accounting* against Johnson and Farnham. On April 23, 2009, the Court appointed a Special Master over the assets of Heritage and gave the Special Master the authority to take possession of Heritage assets, including the collection of all money due, owed or to become due to Heritage, for payment of restitution to investors. The Court entered restitution orders against Johnson, Farnham and Heritage.

In January, 2009, Burke contracted with the Oklahoma Department of Corrections, and presented the Department of Corrections with a signed affidavit, notarized by Joe Don Johnson, stating that Burke was an agent of Heritage. Burke signed and submitted an Oklahoma Office of State Finance (OSF) Vendor/Payee Form as President of Heritage, under penalty of perjury, that named Heritage as the Vendor/Payee. A Purchase Order was issued on February 24, 2009, between the Department of Corrections and Heritage. As a result of this contract, Burke received a State of Oklahoma check dated July 24, 2009, payable to Heritage, in the amount of \$34,065.00, which was cashed. ODS later learned of the payment and notified OSF of the Court's orders. OSF confirmed that one additional payment was to be made to Heritage. On January 13, 2010, OSF mailed the additional payment of \$7,150.00, to the Special Master in compliance with the Court's order. Burke filed a motion for release of the \$7,150.00 which the Court denied. The Court also denied the request of the ODS that Burke return the initial payment of \$34,065.00.

EXHIBIT

B

ISSUE

Whether the payment of \$34,065.00, pursuant to a contract between the State of Oklahoma and Heritage Estate Service, is an asset of Heritage Estate Service subject to the provisions of the Oklahoma County District Court's April 23, 2009 Order Modifying, In Part, Temporary Restraining Order, Order Freezing Assets and Order for Accounting and Appointing Special Master.

EXHIBIT

C