

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 488

BY: HENDRICK

AS INTRODUCED

AN ACT RELATING TO CIVIL PROCEDURE; AMENDING SECTION 7, CHAPTER 251, O.S.L. 1990 (12 O.S. SUPP. 1990, SECTION 1007), WHICH RELATES TO EXECUTION, ENFORCEMENT AND STAY OF JUDGMENTS; DELETING REQUIREMENT OF TEN-DAY PERIOD PRIOR TO EXECUTION ON JUDGMENT; CONFORMING REFERENCES; MODIFYING LANGUAGE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 7, Chapter 251, O.S.L. 1990 (12 O.S. Supp. 1990, Section 1007), is amended to read as follows:

Section 1007. A. ~~Except as provided in subsection D of this section, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten (10) days after it is filed with the court clerk.~~

~~B.~~ Except as provided in subsection ~~D~~ C of this section, if a motion for a new trial, motion for judgment notwithstanding the verdict, or motion to reconsider, vacate, alter or amend the judgment, other than for the determination or award of costs, attorney's fees, or interest, is filed not later than ten (10) days after the filing of the judgment, the enforcement of the judgment

shall be stayed until ten (10) days after the trial court has disposed of the motion. No bond shall be required during this period, unless the court orders otherwise for good cause shown.

~~C.~~ B. Except as provided in subsection ~~D~~ C of this section, an appellant may obtain a stay of enforcement of a judgment during the pendency of an appeal by filing a written undertaking secured by a supersedeas bond or cash deposit with the court clerk. The written undertaking and supersedeas bond or cash deposit may be given at any time, and the stay is effective when the bond and the sufficiency of the undertaking are approved by the court and any cash security is deposited with the court clerk. If a timely petition in error is not filed, the enforcement of the judgment will no longer be stayed, and the judgment may be enforced against any sureties on the bond or the cash deposit without any stay being allowed. The amount of the bond or other security shall be as follows:

1. When the judgment or final order is for payment of money damages, the bond shall be double the amount of the judgment or order, unless the bond is executed or guaranteed by a surety as hereinafter provided. Where the bond is executed or guaranteed by a corporation incorporated under the laws of the United States or of any state and is authorized to do business in ~~the State of Oklahoma~~ this state and having power under the statutes of this state to execute and guarantee bonds and undertakings in judicial proceedings, the bond shall be for the amount of the judgment or order including costs and interest on appeal. Instead of filing a supersedeas bond, the appellant may obtain a stay by depositing cash with the court clerk in the amount of the judgment or order plus an amount that the court determines will cover costs and interest on appeal. The court shall have discretion to accept United States Treasury notes or general obligation bonds of ~~the State of Oklahoma~~ this state in lieu of cash and to require the appellant to make

appropriate arrangements for maintaining the notes or bonds during the appeal;

2. When the judgment directs the execution of a conveyance or other instrument, the amount of the bond shall be determined by the court. Instead of filing a supersedeas bond, the appellant may execute the conveyance or other instrument and deposit it with the clerk of the court during the pendency of the appeal;

3. When the judgment directs the sale or delivery of possession of real property, the bond shall be in an amount to be determined by the court that will compensate the plaintiff for the value of the use of the property and any waste committed on the property during the pendency of the appeal, and all costs. When the judgment is for the sale of mortgaged premises and the payment of a deficiency arising from the sale, the bond must also provide for the payment of the deficiency; and

4. When the judgment directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment was rendered, or the bond shall be in such sum as may be prescribed by the court.

~~D.~~ C. Neither subsection ~~A~~ nor ~~B~~ ~~nor~~ ~~C~~ of this section shall apply in actions involving temporary or permanent injunctions, actions for divorce, separate maintenance, annulment, paternity, adoption, termination of parental rights, or post decree matrimonial matters, or any other actions besides those enumerated in subsection ~~E~~ B of this section. The trial or appellate court, in its discretion, may modify or stay the enforcement of any provision in a temporary injunction or a judgment in any of the types of actions listed in this subsection during the pendency of the appeal or while any post-trial motion is pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties, except as provided in subsection ~~E~~ D of this section for political subdivisions of ~~the State of Oklahoma~~ this state.

Otherwise, a temporary injunction or a judgment in any of the types of actions listed in this subsection shall not be stayed pending the filing or determination of the appeal or any post-trial motion. If a temporary or permanent injunction is denied or dissolved, the trial or appellate court in its discretion may restore or grant an injunction during the pendency of the appeal and while any post-trial motions are pending upon such terms as to bond or otherwise as it considers proper for the security of the rights of the parties.

~~E.~~ D. Execution of a judgment or final order of any judicial tribunal against any county, municipality, or other political subdivision of ~~the State of Oklahoma~~ this state is automatically stayed during the pendency of an appeal without the execution of a supersedeas bond.

~~F.~~ E. Executors, administrators and guardians who have given bond in this state, with sureties, according to law, are not required to provide a supersedeas bond if they are granted a stay of enforcement of a judgment.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-774

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