STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE FOR
ENGROSSED HOUSE
BILL NO. 1771

By: Graves of the House

and

Smith of the Senate

COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 1991, Sections 1755, 1757 and 1772, which relate to small claims procedure; clarifying procedure for service by mail; modifying certain court cost; requiring certain transfer order to be prepared on certain form and filed; providing procedure for collection of certain judgment; and declaring an emergency.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 1755, is amended to read as follows:

Section 1755. Unless service by the sheriff or other authorized person is requested by the plaintiff, the defendant shall be served by mail. The clerk shall enclose a copy of the affidavit and the order in an envelope addressed to the defendant at the address stated in said affidavit, prepay the postage, and mail said envelope to said defendant by certified mail and request a return receipt from addressee only. The clerk shall attach to the original affidavit the receipt for the certified letter and the return card thereon or other evidence of service of said affidavit and order. If the envelope is returned undelivered and sufficient time remains for making service, the clerk shall deliver a copy of the affidavit and order to the sheriff who shall serve the defendant in the time set in Section 1756 <u>of this title, or at the election of the plaintiff service shall be governed by the provisions of subsection C of Section 2004 of this title</u>.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 1757, is amended to read as follows:

Section 1757. A. On motion of the defendant, a small claims ~~the~~ action may, in the discretion of the court, be transferred from the small claims docket to another docket of the court~~,~~; provided, ~~said~~ that the motion is filed and notice is given by the defendant to the opposing party or parties by mailing a copy of the motion at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer; and~~,~~ provided further, that the defendant ~~deposit the sum of Fifty Dollars ($50.00) as the court cost~~ pay court costs in the amount required for filing an original civil action in the district court.

B. The motion shall be heard at the time fixed in the order and consideration shall be given to ~~the~~ any hardship on the plaintiff, complexity of the case, reason for transfer, and other relevant matters. If the motion is denied, the action shall remain on the small claims docket. If the motion is granted, the court shall ~~file~~ cause to be filed an order on a form prepared by the Administrative Office of the Courts transferring the action from the small claims docket to another docket, and thereafter ~~the procedure prescribed by Title 28 of the Oklahoma Statutes, Sections 151 to 157, shall prevail as to other costs,~~ the action shall proceed and be subject to the same costs as other civil actions and shall not proceed under the small claims procedure.

C. Within twenty (20) days of the date the transfer order is signed, the plaintiff shall file a petition that conforms to the standards of pleadings prescribed by the Oklahoma Pleading Code. The answer of the defendant shall be due within twenty (20) days after the filing of the petition and the reply of the plaintiff in ten (10) days after the answer is filed. If the plaintiff ultimately prevails in the action so transferred by the defendant, a reasonable attorney's fee shall be allowed to plaintiff's attorney to be taxed as costs in the case.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 1772, is amended to read as follows:

Section 1772. Judgments for the payment of money shall be processed and collected as follows:

1. Incident to the entering of the judgment and while the parties are still under oath:

a. the court may arrange a judgment satisfaction plan and enter a writ of execution, and

b. the court may secure a listing and description of the judgment debtor's assets from the judgment debtor in case subsequent attachment of property becomes necessary to collect an unsatisfied judgment. Forms for an application and order to appear and answer as to assets and interrogatories to be answered by the debtor shall be supplied by the court clerk on forms promulgated by the Director of the Administrative Office of the Courts.

2. If the judgment debtor fails to satisfy the judgment in accordance with the judgment satisfaction plan, the judgment creditor shall attempt to contact the judgment debtor and collect the same.

3. If the judgment debtor still fails to satisfy the judgment, the judgment creditor may:

a. require the debtor to appear and answer interrogatories regarding assets, or

b. request the issuance of a writ of execution or a garnishment summons on forms provided by the court clerk.

4. ~~No~~ Except as provided in this section, proceedings hereunder to collect the judgment shall be ~~initiated until after the time to appeal has expired. If the case is appealed, the judgment shall be stayed pending the final mandate~~ conducted pursuant to the provisions of this title.

SECTION 4. 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.