

ENROLLED HOUSE
BILL NO. 2713

By: Toure and Nance of the
House

and

Smith of the Senate

An Act relating to civil procedure; amending 12 O.S. 2001, Sections 696.3 and 696.4, as amended by Section 3, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 696.4), which relate to judgments; modifying required and discretionary contents for judgments, decrees and appealable orders; providing for the recovery of attorney fees in certain circumstances; amending 12 O.S. 2001, Section 721, which relates to foreign judgments; modifying requirements for filing certain judgments for specified purpose; amending 12 O.S. 2001, Section 990.2, which relates to post-trial motions; excluding interest from certain post-trial motions; amending 12 O.S. 2001, Section 2012, as amended by Section 23, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 2012), which relates to defenses and objections; modifying time for presentment of answer; amending 12 O.S. 2001, Section 3232, which relates to depositions; clarifying manner in which testimony is taken; amending 30 O.S. 2001, Sections 4-201 and 4-303, which relate to guardian's bond and settlement of accounts; modifying requirement for certain finding by court; modifying requirements for filing of certain report; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 696.3, is amended to read as follows:

Section 696.3 A. Judgments, decrees and appealable orders that are filed with the clerk of the court shall contain:

1. A caption setting forth the name of the court, the names and designation of the parties, the file number of the case and the title of the instrument;
2. A statement of the disposition of the action, proceeding or motion, including a statement of the relief awarded to a party or parties and the liabilities and obligations imposed on the other party or parties, including the amount of any prejudgment interest;
3. The signature and title of the court; and
4. Any other matter approved by the court.

B. Judgments, decrees and appealable orders that are filed with the clerk of the court may contain a statement of costs, ~~attorney's attorney~~ fees and interest other than prejudgment interest, or any of them, if they have been determined prior to the time the judgment, decree or appealable order is signed by the court in accordance with this section.

C. The clerk shall endorse on the judgment, decree or appealable order the date it was filed and the name and title of the clerk.

D. A file-stamped copy of the judgment, decree, or appealable order shall be mailed to all parties who are not in default for failure to appear in the action as provided in Section 696.2 of this title.

SECTION 2. AMENDATORY 12 O.S. 2001, Section 696.4, as amended by Section 3, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 696.4), is amended to read as follows:

Section 696.4 A. A judgment, decree or appealable order may provide for costs, attorney fees, ~~and interest~~ or any both of these items, but it need not include them. The preparation and filing of the judgment, decree, or appealable order shall not be delayed pending the determination of these items. Such items may be determined by the court if a timely request is made, regardless of whether a petition in error has been filed.

B. If attorney fees, or costs, ~~or interest~~, including the amount of such attorney fees, or costs, ~~and the rate of interest~~, have not been included in the judgment, decree or appealable order, a party seeking any of these items must file an application with the court clerk along with the proof of service of the application on all affected parties in accordance with Section 2005 of this title. The application must set forth the amount requested and include information which supports that amount. The application must be filed within thirty (30) days after the filing of the judgment, decree or appealable order unless a posttrial motion pursuant to subsection A of Section 990.2 of this title has been filed within ten (10) days after the filing of the judgment, decree, or appealable order. If such a motion is filed within that time, the application for attorney fees, costs, or interest shall be filed within thirty (30) days after the date an order disposing of the posttrial motion is filed. If the party filing the application did not prepare the judgment, decree, or appealable order, and Section 696.2 of this title required a copy of the judgment, decree, or appealable order to be mailed to the party filing application, and the court records do not reflect the mailing of a copy of the judgment, decree, or appealable order to the party filing the application within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or appealable order, the application may be filed no later than thirty (30) days after the earliest date on which the court records show that a copy of the judgment, decree, appealable order, or order disposing of the posttrial motion was mailed to the party filing the application. For good cause shown, the court may extend the time for filing the application upon motion filed within the time that the application could be filed. Within fifteen (15) days after the application is filed with the court, any party may file written objections to it, with a copy to the moving party.

C. ~~An~~ Except as provided in Subsection D of this section, an application for attorney fees for services performed on appeal shall be made to the appellate court either in the applicant's brief on appeal or by separate motion filed any time before issuance of mandate. If in the brief, the application shall be made in a separate portion that is specifically identified. The application shall cite authority for awarding attorney fees but shall not include evidentiary material concerning their amount. The appellate court shall decide whether to award attorney fees for services on appeal, and if fees are awarded, it shall remand the case to the trial court for a determination of their amount. The trial court's order determining the amount of fees is an appealable order.

D. If the right of a party to recover attorney fees depends upon a determination that the party has prevailed in an action, and if the prevailing party in the action cannot be determined from the decision of the appellate court, an application for attorney fees for services performed on appeal shall be made to the trial court in the manner and within the time provided in subsection B of this section.

SECTION 3. AMENDATORY 12 O.S. 2001, Section 721, is amended to read as follows:

Section 721. A copy of any foreign judgment authenticated in accordance with the applicable Act of Congress or of the statutes of this state may be filed in the office of the court clerk of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the district court of any county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner. Provided, however, that no such filed foreign judgment shall be a lien on real estate of the judgment debtor until ~~a certified copy of the judgment so filed is also filed in the office of the county clerk in the county where the real estate is located~~ the judgment creditor complies with the requirements of subsection B of Section 706 of this title.

SECTION 4. AMENDATORY 12 O.S. 2001, Section 990.2, is amended to read as follows:

Section 990.2 A. Post-Trial Motions Filed Within Ten (10) Days. When a post-trial motion for a new trial, for judgment notwithstanding the verdict, or to correct, open, modify, vacate or reconsider a judgment, decree or final order, other than a motion only involving costs, attorney's or attorney fees or interest, is filed within ten (10) days after the judgment, decree or final order is filed with the court clerk, an appeal shall not be commenced until an order disposing of the motion is filed with the court clerk. The unsuccessful party may then appeal from the order disposing of the motion within thirty (30) days after the date such order was filed. If the decision on the motion was against the moving party, the moving party may appeal from the judgment, decree or final order, from the ruling on the motion, or from both, in one appeal, within thirty (30) days after the filing of the order disposing of the motion. Successive appeals from the original judgment, decree or final order and the order disposing of the motion shall not be allowed.

B. Post-Trial Motions Filed After Ten (10) Days. The time to appeal from a judgment, decree or final order is not extended or affected by the filing of a motion to correct, open, modify, vacate or reconsider the judgment, decree or final order that is filed more than ten (10) days after the judgment, decree or final order is filed with the clerk of the trial court, and an appeal that is commenced before such a motion is filed is not premature. If the motion is filed after a petition in error is filed, the moving party shall advise the Supreme Court the motion was filed. If a petition in error is filed after such a motion is filed, the appellant shall advise the Supreme Court in the petition in error that the motion is pending. When the trial court disposes of the motion where a petition in error has been filed, the successful party shall advise the Supreme Court of the action taken on the motion.

C. If the appellant did not prepare the judgment, decree, or final order, and Section 696.2 of this title required a copy of the judgment, decree, or final order to be mailed to the appellant, and the court records do not reflect the mailing of a copy of the judgment, decree, or final order to the appellant within three (3) days, exclusive of weekends and holidays, after the filing of the judgment, decree, or final order, all times referred to in this section shall run from the earliest date on which the court records show that a file-stamped copy of the judgment, decree, or final order was mailed to the appealing party, rather than from the date of filing.

D. Costs, ~~Attorney's~~ and Attorney Fees ~~and Interest~~. The filing of a motion for costs, ~~attorney's~~ or attorney fees ~~or interest~~ shall not extend or affect the time to appeal.

SECTION 5. AMENDATORY 12 O.S. 2001, Section 2012, as amended by Section 23, Chapter 468, O.S.L. 2002 (12 O.S. Supp. 2003, Section 2012), is amended to read as follows:

Section 2012.

DEFENSES AND OBJECTIONS; WHEN AND HOW PRESENTED;
BY PLEADING OR MOTION

A. WHEN PRESENTED. ~~A~~ 1. Unless a different time is prescribed by law, a defendant shall serve an answer:

- a. within twenty (20) days after the service of the summons and petition upon the defendant, ~~except as otherwise provided by Oklahoma law. Within~~
- b. within twenty (20) days, or thirty-five (35) days, when applicable, after the service of the summons and petition upon the defendant, or within the last day for answering if applicable; provided, a defendant may file a reservation of time which shall extend the time to respond twenty (20) days from the last date for answering. The filing of such a reservation of time waives defenses of paragraphs 2, 3, 4, 5, 6, and 9 of subsection B of this section.

2. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within twenty (20) days after the service upon the party.

3. The plaintiff shall serve a reply to a counterclaim in the answer within twenty (20) days after service of the answer or, if a reply is ordered by the court, within twenty (20) days after service of the order, unless the order otherwise directs.

4. The party requesting a summons to be issued or filing a counter-claim or cross-claim may elect to have the answer served within thirty-five (35) days in lieu of the twenty (20) days set forth in this section.

5. The service of a motion permitted under this section or a motion for summary judgment alters these periods of time as follows, ~~unless a different time is fixed by order of the court:~~ if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within twenty (20) days after notice of the court's action, unless a different time is fixed by order of the court.

B. HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

1. Lack of jurisdiction over the subject matter;
2. Lack of jurisdiction over the person;
3. Improper venue;
4. Insufficiency of process;
5. Insufficiency of service of process;
6. Failure to state a claim upon which relief can be granted;
7. Failure to join a party under Section 2019 of this title;
8. Another action pending between the same parties for the same claim;
9. Lack of capacity of a party to be sued; and
10. Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered 6 of this subsection to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and all parties shall be given reasonable opportunity to present all material made pertinent to the motion by the rules for summary judgment. A motion to dismiss for failure to

state a claim upon which relief can be granted shall separately state each omission or defect in the petition, and a motion that does not specify such defects or omissions shall be denied without a hearing and the defendant shall answer within twenty (20) days after notice of the court's action.

C. PRELIMINARY HEARINGS. The defenses specifically enumerated in paragraphs 1 through 10 of subsection B of this section, whether made in a pleading or by motion, and the motion to strike mentioned in subsection D of this section shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial. If the court determines that venue is proper, the action shall not be dismissed for improper venue as a result of the jury's verdict or the subsequent ruling of the court on a demurrer to the evidence or a motion for a directed verdict.

D. MOTION TO STRIKE. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this act, upon motion made by a party within twenty (20) days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all materials made pertinent to the motion by the rules for summary judgment.

E. CONSOLIDATION OF DEFENSES IN MOTION. A party who makes a motion under this section may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this section but omits therefrom any defense or objection then available to the party which this section permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in paragraph 2 of subsection F of this section on the grounds there stated. The court in its discretion may permit a party to amend a motion by stating additional defenses or objections if an amendment is sought at least five (5) days before the hearing on the motion.

F. WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

1. A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, or lack of capacity of a party to be sued is waived:

- a. if omitted from a motion that raises any of the defenses or objections which this section permits to be raised by motion, or
- b. if it is not made by motion and it is not included in a responsive pleading or an amendment thereof permitted by subsection A of Section 2015 of this title to be made as a matter of course. A motion to strike an insufficient defense is waived if not raised as in subsection D of this section.

2. A defense of failure to join a party indispensable under Section 2019 of this title may be made in any pleading permitted or ordered under subsection A of Section 2007 of this title or at the trial on the merits. A defense of another action pending between the same parties for the same claim or a defense of lack of capacity of a party to sue may be made in any pleading permitted or ordered pursuant to the provisions of subsection A of Section 2007 of this title or at the pretrial conference.

3. Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

4. A waiver of the defense in paragraph 6 of subsection B of this section does not preclude a later contention that a party is not entitled to any relief as a matter of law, either by motion for summary judgment, or by demurrer or motion at or after trial.

G. FINAL DISMISSAL ON FAILURE TO AMEND. On granting a motion to dismiss a claim for relief, the court shall grant leave to amend if the defect can be remedied and shall specify the time within which an amended pleading shall be filed. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered on motion except in cases of excusable neglect. In such cases amendment shall be made by the party in default within a time specified by the court for filing an amended pleading. Within the time allowed by the court for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

SECTION 6. AMENDATORY 12 O.S. 2001, Section 3232, is amended to read as follows:

Section 3232. A. USE OF DEPOSITIONS. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Oklahoma Evidence Code applied as though the witness were then present and testifying, may be used against any party who was present or who was represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

1. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Oklahoma Evidence Code;

2. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent, or a person designated under paragraph 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used for any purpose;

3. The deposition of a witness, whether or not a party may be used for any purpose if the court finds:

a. That the witness is dead, or

b. That the witness does not reside in the county where the action or proceeding is pending or is sent for

trial by a change of venue or the witness is absent therefrom, unless it appears that the absence of the witness was procured by the party offering the deposition, or

- c. That the witness is unable to attend or testify because of age, illness, infirmity or imprisonment, or
- d. That the party offering the deposition has been unable to procure the attendance of the witness by subpoena, or
- e. That the witness is an expert witness, who for purposes of this section is a person educated in a special art or profession or a person possessing special or peculiar knowledge acquired from practical experience, or
- f. Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance ~~of~~ of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

Nothing in this paragraph shall be construed to limit the authority of the appropriate office to issue a subpoena to compel an expert witness to appear in the same manner as any other witness;

4. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Section 1081, 1082, 1083 or 2025 of this title does not affect the right to use depositions previously taken. When an action has been brought in this state or in any court of the United States or of any other state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

A deposition previously taken may also be used as permitted by the Oklahoma Evidence Code.

B. OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of subsection B of Section 3228 of this title and paragraph 3 of subsection C of this section, objection may be made, at the trial or hearing, to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

C. FORM OF PRESENTATION. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this section may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered.

D. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS.

1. AS TO NOTICE. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

2. AS TO DISQUALIFICATION OF OFFICER. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

3. AS TO TAKING OF DEPOSITION.

- a. Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.
- b. Errors and irregularities occurring in the manner of the oral examination in the taking of the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.
- c. Objections to the form of written questions submitted under Section 3231 of this title are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions or within five (5) days after service of the last questions authorized.

4. AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities:

- a. in the manner in which the testimony is transcribed or recorded, or
- b. in the manner in which the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Sections 3230 and 3231 of this title

are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

SECTION 7. AMENDATORY 30 O.S. 2001, Section 4-201, is amended to read as follows:

Section 4-201. A. Before the entry of an order appointing a person or organization as a guardian of the person and before the letters issue, the court may require the person or organization to be appointed to provide a bond to this state, with sufficient sureties, to be approved by the court, and in such penal sum as the

court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

B. 1. Before the entry of an order appointing a person or organization as the guardian of a minor or as the guardian or limited guardian of the property of an incapacitated or partially incapacitated person takes effect, and before the letters issue, the court shall require the person or organization to be appointed to provide a bond, in an amount not less than the value of intangible personal property as alleged in the petition or otherwise determined by the court at the hearing on the petition, to this state, with sufficient sureties, to be approved by the court, and in such penal sum as the court shall order, conditioned that the guardian will faithfully execute the duties of the trust according to law.

2. Except as otherwise provided by paragraph 3 of this subsection, upon a finding by the court that~~+~~

- ~~a.~~ the anticipated annual income to a ward for one (1) year plus the value of the personal property of the ward is less than Forty Thousand Dollars (\$40,000.00)~~+~~
~~and~~
- ~~b.~~ ~~the guardian of the ward is either a parent, spouse, brother, sister, grandparent, child, or grandchild of the ward,~~

the court may order that a bond is not necessary. For purposes of this paragraph, personal property shall not include property owned with a joint tenant.

3. The provisions of this section shall not apply to cases subject to the Uniform Veterans Guardianship Act.

C. In the event the intangible personal property of the ward, as determined by the inventory, is in a greater amount than as alleged in the petition or determined by the court at the hearing on the petition, the guardian shall file at the time the inventory is filed a bond sufficient for the full amount of the intangible personal property, which bond will be in substitution for the bond originally filed on the appointment of the guardian. The amount of the bond in the future may be adjusted up or down in amount based upon the intangible personal property shown in future annual accountings; provided, however, no bond shall be reduced except upon order of the court.

SECTION 8. AMENDATORY 30 O.S. 2001, Section 4-303, is amended to read as follows:

Section 4-303. A. Except as otherwise provided by subsection B of this section, a guardian or limited guardian of the property shall, upon the expiration of a year from the time of appointment, and at least annually thereafter, present accounts to the court for settlement and allowance as part of the guardianship report as required by Section 4-306 of this title.

B. 1. In addition, a guardian or limited guardian of the property shall:

- a. present accounts whenever the court requires that such report or accounts be presented, and
- b. with the annual report of accounts, report any changes of property listed on the inventory required by Section 4-301 of this title. The report shall state the compensation requested by the guardian and for the attorneys.

2. If there has been a significant change in the physical or mental condition of the ward, or the ward's financial resources, the details thereof shall be set forth in the annual report required by subsection A of this section.

3. Except as otherwise directed by the court or required by the Uniform Veteran's Guardianship Act (72 U.S.C. 126.1, et seq.), the provisions of this subsection regarding the filing of an annual accounting and annual plan shall not apply to any guardianship of the property of a ward if the ward's financial resources or assets, other than a homestead, are worth less than Forty Thousand Dollars (\$40,000.00) if a bond has been posted, or are worth less than Ten Thousand Dollars (\$10,000.00) regardless of whether or not a bond has been posted, and if the guardian or limited guardian of the property is the spouse or a relative of the ward within the fourth degree of consanguinity.

C. In addition to the reports required by subsections A and B of this section, a guardian or limited guardian shall submit a report:

1. If the ward is an incapacitated or partially incapacitated person, when there is a significant change in the capacity of the ward to meet the essential requirements for the physical health or safety of the ward or to manage the financial resources of the ward;

2. If the ward is a minor, any significant change in the condition of the minor or in the condition of the estate of the minor;

3. When the guardian or limited guardian resigns or is removed; and

4. When the guardianship is terminated.

D. 1. Unless waived at the discretion of the court, a guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall file a report on the guardianship of the person pursuant to Section 4-305 of this title.

2. ~~Unless waived at the discretion of the court, or not required by Section 21.5 of Title 10 of the Oklahoma Statutes, a~~ A guardian of the person of a minor ward shall not be required to file such annual reports of the guardianship of the person of the ward as required unless ordered by the court in such form as the court may require.

3. A guardian or limited guardian of the property of a ward shall file a report on the guardianship of the property pursuant to Section 4-306 of this title.

E. The court shall not waive the filing of any report for a period in excess of five (5) years.

F. If the same person or organization is required to file reports as to both the person and the property of a ward, the reports may be consolidated.

G. An accounting information submitted by a guardian or limited guardian of the property of a ward shall be verified and shall be rendered in the same manner as required by Title 58 of the Oklahoma Statutes with respect to an information of an estate of a decedent. Such information shall also set forth any charges to the property of the ward which have accrued since the previous accounting or, in the case of an initial accounting, since the filing of an inventory of the property of the ward placed under the control of the guardian or limited guardian.

H. In addition to other specified information any order of the court approving an annual guardianship plan and report shall include the date certain by which the guardian shall file the next annual report.

SECTION 9. This act shall become effective November 1, 2004.

Passed the House of Representatives the 26th day of April, 2004.

Presiding Officer of the House of
Representatives

Passed the Senate the 7th day of April, 2004.

Presiding Officer of the Senate