

FILED
SUPREME COURT
STATE OF OKLAHOMA
Rule 1, 301, Form No. 5
JAN 18 2011

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MOMA S. RICHIE
CLERK OF
THE APPELLATE COURTS

OKLAHOMA DEPARTMENT OF)
SECURITIES *ex rel.* IRVING L.)
FAUGHT, Administrator, et al.,)
)
Plaintiff/Appellee,)

v.)

Case No.: CJ-2005-3796

MARVIN LEE WILCOX, PAMELA)
JEAN WILCOX, et al.,)
)
Defendants/Appellants.)

#109111

PETITION IN ERROR

- PETITION IN ERROR
- AMENDED OR SUPPLEMENTAL PETITION
- CROSS PETITION
- COUNTER-PETITION
- DATE FIRST PETITION IN ERROR FILED: _____.

I. TRIAL COURT HISTORY

COURT/TRIBUNAL: District Court Oklahoma County

COUNTY: Oklahoma

CASE NO: CJ-2005-3796

JUDGE: The Honorable Patricia G. Parrish

NATURE OF CASE: Suit for Restitution
(e.g., Divorce, Personal Injury)

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR: Marvin L. Wilcox and Pamela Jean Wilcox

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: December 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? _____ 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? N/A

<u>Type</u>	<u>Date Filed</u>	<u>Date Disposed</u>
<u>None</u>	_____	_____
_____	_____	_____
_____	_____	_____

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: Oklahoma Department of Securities, et al. v. Robert W. Mathews, et al., No. 104,004; 2010 OK 16

List all related appeals involving same issues: _____
(Identify by Style, Appeal Number, Status, and Citation, if any. If none, so state.)

IV. SETTLEMENT CONFERENCE

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

V. RECORD ON APPEAL

 A Transcript will be ordered.
 x 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
 x 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). Appellate is requesting additional time to file the record.

VI. JUDGMENT, DECREE OR ORDER APPEALED – EXHIBIT “A”

(Attach as Exhibit “A” to the Petition in Error a certified copy of the judgment, decree or order from which the appeal is taken. If a post-trial motion extending appeal time under Rule 1.22 was filed, a certified copy of the order disposing of the motion must be attached also.)

VII. SUMMARY OF CASE -- EXHIBIT “B”

Attach as Exhibit “B” a brief summary of the case *not to exceed one 8 1/2” x 11” double spaced page.*

VIII. ISSUES TO BE RAISED ON APPEAL – EXHIBIT “C”

Attach as Exhibit “C” the issues proposed to be raised. Include each point of law alleged as error. Avoid general statements such as “Judgment not supported by law.”

IX. NAME OF COUNSEL OR PARTY, IF PRO SE

ATTORNEY FOR APPELLANT

ATTORNEYS FOR APPELLEES

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DATE: January 17, 2011.

Verified by: _____
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Telephone: 405-235-4100
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X. 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 this
18 day of January, 2011, to:

Amanda Cornmesser
Gerri Kavanaugh
Oklahoma Department of Securities
120 N. Robinson, Suite 860
Oklahoma City, OK 73120
Attorneys for Plaintiff, Oklahoma Department of Securities

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3030 Chase Tower
100 N. Broadway Ave.
Oklahoma City, OK 73102
Attorney for Plaintiff/Receiver, Douglas L. Jackson

by depositing it in the U.S. Mails, postage prepaid.

I further certify that a copy of the Petition in Error was mailed to, or filed in, the Office of the Court Clerk of the Oklahoma County District Court on the 18 day of January, 2011.



Robert N. Sheets



FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

DEC 17 2010

OKLAHOMA DEPARTMENT OF SECURITIES)
ex rel. IRVING L. FAUGHT, Administrator, et al.,)
)
Plaintiffs,)
v.)
)
ROBERT W. MATHEWS, et al.,)
)
Defendants.)

PATRICIA PRESLEY, COURT CLERK
by _____
BEPHTV

Case No. CJ-2005-3796

JOURNAL ENTRY OF JUDGMENT AND ORDER OF
DISGORGEMENT RELATIVE TO DEFENDANTS MARVIN AND PAMELA WILCOX

On this 17th day of December, 2010, this agreed order between the parties came before the undersigned Judge of the District Court in and for Oklahoma County, State of Oklahoma, for consideration. The Court, finding that it has jurisdiction over the parties and the subject matter of this action, finds the Defendants Marvin and Pam Wilcox (Defendants Wilcox), after having the opportunity to consult legal counsel, consent to the entry of judgment against them in favor of the Plaintiffs in the amount of Five-Hundred and Nine Thousand Five Hundred and Five Dollars (\$509,505).

The Court, having reviewed the evidence presented, and being fully advised in the premises, finds that the undisputed facts in Plaintiffs' *Motion for Summary Judgment* dated November 18, 2010, as to Defendants Wilcox are admitted as set forth therein, and that a basis for the requested equitable relief has been established by Plaintiffs.

The Court specifically finds that:

1. There is no genuine issue of material fact pertaining to Plaintiffs' unjust enrichment cause of action against Defendants Wilcox;

Ex A''

2. By virtue of their participation in the Schubert check kiting scheme, the Defendants Wilcox are not innocent investors and therefore the standard for recovery from investors in Ponzi scheme cases set forth in *Oklahoma Department of Securities, et al. v. Blair, et al.*, 2010 OK 16; does not apply.

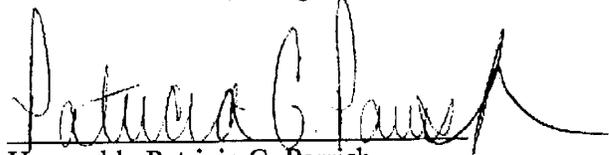
3. Defendants Wilcox were unjustly enriched by all moneys netted from their association with the Marsha Schubert and Schubert and Associates Ponzi scheme and check kiting scheme.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that judgment is **granted** in favor of Plaintiffs and against Defendants Wilcox in the amount of Five-Hundred and Nine Thousand Five Hundred and Five Dollars (\$509,505), prejudgment interest in the amount of One Hundred Eighty-Eight Thousand Six Hundred Ninety-Eight Dollars and Thirty Cents (\$188,698.30), post-judgment interest at the statutory rate, and costs of the action in the amount of Seventy-Five Dollars (\$75.00).

IT IS FURTHER ORDERED that Defendants Wilcox shall disgorge and/or repay the sums of money set forth above, including interest to Plaintiff/Receiver, Douglas L. Jackson.

Date:

12-17-10



Honorable Patricia G. Parrish
Judge of the District Court

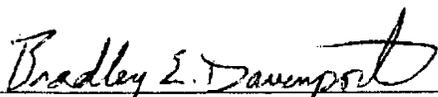
L. PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office of Oklahoma County, Okla.,
this 18 day of JAN, 2011.

By Patricia Presley **PATRICIA PRESLEY, Court Clerk**
Deputy

Approved as to Form:



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Gerri Kavanaugh, OBA #16732
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Attorneys for Defendants, Marvin and Pamela Wilcox

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument was mailed this ____ day of December, 2010, with postage prepaid, to:

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Attorneys for Plaintiff, Oklahoma Dept. of Securities

EXHIBIT "B"

SUMMARY OF CASE

This case was originally filed by the Oklahoma Department of Securities against one hundred fifty-eight (158) defendants who were investors in a Ponzi Scheme which was operated by Marsha Schubert. The original petition was filed on May 11, 2005, seeking restitution on the grounds of unjust enrichment and fraudulent transfer and the theory of equitable lien. Judgment was originally entered against the Appellants on February 5, 2007, on the grounds of unjust enrichment. That judgment was subsequently appealed and the Oklahoma Supreme Court granted *certiorari* in 104004, 104161, 104262 and 104304, vacated the opinion of the Court of Civil Appeals and reversed and remanded to the District Court for further proceeding, consistent with the Court's Opinion of February 23, 2010. In the Supreme Court's Opinion, it was noted that the Department of Securities stated the Department made no allegations that the defendants violated the Securities statutes or materially aided in the violation of those statutes. *See Oklahoma Department of Securities v. Blair*, 2010 OK 16 ¶ 10. The Supreme Court remanded the case for further proceedings in order to determine whether the individual investors' returns were unreasonably excessive. *See Oklahoma Department of Securities v. Blair*, 2010 OK 16 ¶¶ 51-54.

The Appellee, on remand as to the Appellants Wilcox, sought judgment not only on the questions of unreasonable dividends, but also sought to have Wilcox declared not to be innocent investors. This action by the Appellee exceeds the mandate of the Supreme Court and is in direct conflict with the Department of Securities' previous stipulation that all of the 158 investors were innocent investors, and not participants in the scheme of Marsha Schubert. It is from this decision that the Appellants are taking this appeal.

EXHIBIT "C"

ISSUES RAISED ON APPEAL

1. The decisions of the trial court on October 18, 2010 and December 17, 2010 exceed the mandate of the Supreme Court in the Opinion in *Oklahoma Department of Securities v. Blair*, 2010 OK 16.

2. In the decisions of the trial court on both October 18, 2010 and December 17, 2010, the trial court should have taken into account that the Department of Securities was judicially estopped from seeking judgment against the Wilcox' concerning whether or not they were innocent investors, as that issue had been litigated. The Department of Securities has conceded all 158 investors were innocent investors and had not violated securities laws of the State of Oklahoma.

3. The decision of the trial court exceeds the plaintiffs' theory of the case, as set forth in the Pretrial Order filed on October 22, 2010, which shows the grounds of recovery to be unjust enrichment which was the same grounds that they had previously sought judgment against the Wilcox.

4. As to the question of whether the Wilcox were not innocent investors, such an issues should have been subject to a full trial, as there are material issues of fact as to whether the Wilcox were anything other than innocent investors in Marsha Schubert's Ponzi scheme.