OKLAHOMA
STATE
COURTS
NETWORK
OSCN

Previous Case Top Of Index This Point in Index Citationize Next Case

PARKER, et al., v. VALLIANCE BANK

2026 OK CIV APP 5
Case Number: 121526
Decided: 01/30/2026
Mandate Issued: 02/26/2026
THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION II

Cite as: 2026 OK CIV APP 5, __ P.3d __

PHILLIP R. PARKER, an individual; KI LYNN PARKER, an individual; PHILLIP R. PARKER REVOCABLE TRUST DATED NOVEMBER 11, 2011;

KI LYNN PARKER REVOCABLE TRUST DATED NOVEMBER 11, 2011; PHILLIP R. PARKER, DDS, MS, MS, P.C.; and OLD WELL, LCC, Plaintiffs/Appellants,
vs.
VALLIANCE BANK, Defendant/Appellee.

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE ALETIA HAYNES TIMMONS, TRIAL JUDGE

AFFIRMED

Brad Miller, J. Logan Johnson, Jami Rhoades Antonisse, Shawna L. Landeros, MILLER JOHNSON JONES ANTONISSE & WHITE, PLLC, Oklahoma City, Oklahoma, For Plaintiffs/Appellants

Joshua C. Greenhaw, MEE HOGE PLLP, Oklahoma City, Oklahoma
and
Joe E. White, Jr., Charles C. Weddle III, WHITE & WEDDLE, P.C., Oklahoma City, Oklahoma, For Defendant/Appellee

JOHN F. FISCHER, JUDGE:

¶1 Appellants Phillip R. Parker, the Phillip R. Parker Revocable Trust, Ki Lynn Parker, the Ki Lynn Parker Revocable Trust, Phillip R. Parker, DDS, MS, MS, P.C.; and OLD WELL, LCC (the Parkers unless otherwise stated) appeal the judgment in favor of Valliance Bank. This case arises out of the Bank's disclosure of its customer, Greenway Park, LLC's, financial records pursuant to a subpoena issued in a separate case. The Parkers are related in various ways to Greenway Park and maintain that the Bank's production of Greenway Park's financial records was negligent, violated their rights guaranteed by the Oklahoma Financial Privacy Act, 6 O.S.2021 §§ 2201-2208, and breached a fiduciary duty that the Bank owed to them. The Parkers were customers of the Bank, but they were not the "customer" whose records were subpoenaed. Although we find that the Bank's production of records in the absence of a certificate that the requesting party had complied with the Financial Privacy Act violated a provision of the Act, we affirm the judgment in favor of the Bank.

BACKGROUND

¶2 The facts relevant to the disposition of this appeal are not in dispute and arise from at least three previous legal proceedings, summarized as follows:

¶3 In 2012, Greenway Park, LLC executed a promissory note with Valliance Bank in the principal sum of $386,322. The members of Greenway Park were the Phillip R. Parker Revocable Trust and the Ki Lynn Parker Revocable Trust. The Note was secured by a mortgage on Lots 2 and 7 of Block 1, Greenway Park Addition located in Cleveland County, Oklahoma (the Real Property). Phillip Parker and his trust personally guaranteed the Note. The Note was renewed on April 15, 2015, and was increased to a principal sum of $382,438.80. The Mortgage was likewise modified and recorded on April 27, 2015. On May 15, 2015, a judgment lien in the principal sum of $500,000 was recorded in Cleveland County against Greenway Park and in favor of Rodney Thornton and R.T. Properties, LLC (Thornton). [1] Greenway Park filed a Chapter 11 bankruptcy petition two months later.

¶4 On September 1, 2016, while Greenway Park's bankruptcy case was pending, the Bank sold and assigned the Note and Mortgage to DMWP, LLC. Christopher Parker, Phillip Parker's brother, was DMWP's manager and sole member. DMWP was substituted in the Bank's place as a secured creditor in the bankruptcy case and sought to lift the automatic stay "for the purposes of exercising its rights under state law relating to the [Real Property]." Thornton likewise sought relief from the stay for the same purpose. Although Thornton's judgment lien was inferior to DMWP's mortgage, Thornton also pursued satisfaction of its judgment against other lots in the Greenway Park addition which were unencumbered by DMWP's mortgage. The bankruptcy court entered its order lifting

the stay and noting that the bankruptcy trustee had abandoned the Real Property securing the Bank's Note.

¶5 In July 2017, DMWP filed suit in Cleveland County District Court to foreclose on the Mortgage. DMWP named Greenway Park and Thornton as defendants in this Foreclosure Suit. [2] In a January 16, 2018 letter, Thornton's counsel, Stanley Ward, notified DMWP's counsel, Patrick Lane, that he intended to take the depositions of Phillip and Ki Lynn Parker, as well as Matthew Clouse, a representative of the Bank. In response, DMWP filed a motion for a protective order to prevent the depositions from being taken.

¶6 On February 19, 2018, attorney Ward issued a subpoena to the Bank (the Thornton subpoena). Ward did not serve a copy of the Thornton subpoena on the bankruptcy trustee or the Parkers. The Thornton subpoena requested that the Bank representative appear for deposition and produce various documents relating to Greenway Park's banking relationship with the Bank, including (1) documents related to the Note and Mortgage, personal guarantees of the Note, and the sale and assignment of the Note and Mortgage to DMWP; (2) documents exchanged with any person concerning DMWP's investment in the Note, any discussions regarding the value of the purchase, and the original source of funds used to pay the Bank for the Note and Mortgage; (3) documents concerning anyone else's interest in the purchase of the Note or the assignment of the Mortgage, and any documents evaluating the fair market value of the Note and Mortgage and the collateral securing the Note and Mortgage; and (4) any other documents concerning Greenway Park. Ward also issued subpoenas to Phillip and Ki Lynn Parker requesting their depositions and the production of some of the same documents requested in the Thornton subpoena.

¶7 On February 23, 2018, the Bank moved to quash the Thornton subpoena. On the same day, Phillip and Ki Lynn Parker also filed motions to quash the subpoenas issued to them. Thornton filed an objection to DMWP's previously filed motion for protective order as well as a response to the Parkers' motions to quash the subpoenas issued to them. Included in Thornton's response to the Parkers' motions to quash was a copy of the Thornton subpoena. The Parkers' attorney at the time, Joe Hampton, confirmed that he received Thornton's response to all three motions on the afternoon of March 5, 2018. He testified at trial that although he read the body of the responses, he did not review the exhibits attached thereto, including the Thornton subpoena for the Greenway Park records.

¶8 DMWP's motion for protective order and the Parkers' motions to quash were heard on March 5, 2018. The following minute was entered in the district court docket on March 6, 2018:

> Matter comes on for continuation of [DMWP's] MSJ & motion for PO & non-party Parker motion to quash. Parties present arguments. Based upon the same, the court denies [DMWP's] motion for PO & motion to quash as to Philip Parker & [Valliance Bank representative] Matt Clouse. Matter set for further MSJ hearing on May 14, 2018 at 9:00 a.m.

The minute reflects that separate counsel on behalf of DMWP, Thornton, and the Parkers appeared at the March 5, 2018 hearing.

¶9 There is no indication in the record that counsel for the Bank was present at this hearing or that there was a formal disposition of the Bank's motion to quash the Thornton subpoena. Nonetheless, DMWP's motion for a protective order to prevent the deposition of Bank representative Clouse was denied. Joe Hampton, as counsel for Phillip and Ki Lynn Parker, was a party to correspondence scheduling the Bank's deposition. In preparation for that deposition and the accompanying document production, Clouse compiled the documents he believed were responsive to the Thornton subpoena (the Documents). Clouse brought the Documents to the deposition, and they were provided to counsel for DMWP and Thornton, who were present at the deposition along with counsel for the Bank.

¶10 On the day following Clouse's deposition, attorneys Miller and Johnson, the Parkers' new counsel, sent a letter to the Foreclosure Suit parties, stating that they had been retained by the

Parkers and demanding that any recipients of the Documents cease and desist from any review of the Documents. According to the Parkers, Thornton refused to return the Documents and instead later filed a counterclaim in the Foreclosure Suit against DMWP, and third-party claims against Phillip and Ki Lynn Parker, their revocable trusts, and Christopher Parker. That pleading alleged a conspiracy between the Parkers and their revocable trusts, DMWP and Christopher Parker. Thornton asserted that these parties conspired to foreclose on the Real Property despite the absence of any then-existing default, for less than a fair market price and without resort to enforcement of the personal guarantees of Phillip Parker and his trust. According to Thornton, Greenway Park's bankruptcy filing, the assignment of the Note and Mortgage to DMWP, and DMWP's foreclosure on the Real Property constituted a fraudulent attempt to deprive Thornton of any payment toward the judgment lien.

¶11 The Parkers contend that disclosure of the Documents during Clouse's deposition resulted in Thornton's ultimate pursuit of the claims against them in the Foreclosure Suit, causing them to incur in excess of $500,000 in damages. [3] They filed this case as Bank customers alleging the Bank was negligent, violated their rights protected by the Oklahoma Financial Privacy Act, and that the Bank breached a duty of care to protect their private and confidential financial information. The parties waived their right to a jury trial and the matter was tried in July of 2023. The Parkers rested their case at the end of day two and the Bank moved for a directed verdict. The following morning, the district court granted that motion and entered judgment for the Bank. That judgment is the subject of the Parkers' appeal.

¶12 The Parkers assert several grounds for error, four of which have been preserved for appellate review: (1) the trial court abdicated its role to interpret the Oklahoma Financial Privacy Act as a matter of law, or alternatively, applied the Act in ways contrary to its plain language and necessary application; (2) the trial court's findings of fact were beyond the scope of admissible and considerable evidence or were otherwise speculative, leading it to conclude in error that either the Documents were properly produced, or that their production was harmless; (3) the trial court erred in finding the Bank owed no duty of confidentiality to the Parkers under the factual circumstances of the case, and owed no duty to notify the Parkers about the Thornton subpoena; and (4) the trial court misconstrued and/or ignored the extent and nature of their damages, and erred in finding they failed to mitigate their damages.

STANDARD OF REVIEW

¶13 This appeal requires the construction and interpretation of the Oklahoma Financial Privacy Act, 6 O.S.2021 § 2201 *et seq*. Statutory interpretation presents a question of law. *McIntosh v. Watkins*, 2019 OK 6, ¶ 4, 441 P.3d 1094, 1096. Legal questions involving statutory interpretation are subject to de novo review. *Heffron v. Dist. Ct. of Oklahoma Cnty.*, 2003 OK 75, ¶ 15, 77 P.3d 1069, 1076. De novo review is non-deferential, plenary and independent. *Lee v. Bueno*, 2016 OK 97, ¶ 6, 381 P.3d 736, 740. The Parkers' breach of fiduciary duty claim also requires the construction of a statute, raises a question of law, and is subject to the same de novo review.

¶14 The parties cite *Margaret Blair Trust v. Blair*, 2016 OK CIV APP 47, 378 P.3d 65, arguing that the abuse of discretion standard is required for the district court's factual determinations. *Blair* was an equitable case in which the standard of review required the appellate court to review all of the evidence and affirm the district court's findings of fact unless against the clear weight of the evidence. *Story v. Hefner*, 1975 OK 115, ¶ 12, 540 P.2d 562, 566. That standard of review is inapplicable in this action at law where the district court's findings of fact "must be affirmed if supported by any competent evidence." *Bradley v. Clark*, 1990 OK 73, ¶ 3, 804 P.2d 425, 427.

ANALYSIS

I. The Greenway Park Documents

¶15 Testimonial and documentary evidence established that in June of 2012, the Bank entered into a business loan agreement with Greenway Park, a real estate holding company. Because Greenway Park did not have any income, and as part of the underwriting process for its loan, the Bank

collected asset information on Greenway Park's members, the Phillip R. Parker Revocable Trust and the Ki Lynn Parker Revocable Trust, and collected asset information on Phillip Parker as personal guarantor of the Greenway Park loan. The Bank also analyzed the financial statements and income and assets of Ki Lynn Parker. The underwriting process also included a financial analysis of Phillip R. Parker, DDS, MS, MS, P.C. and Old Well, LLC. The dental practice was Phillip Parker's primary source of personal income, but it was also a borrower at the Bank on other loans. Old Well owned the real property on which Phillip Parker conducted his dental practice and had a separate construction loan with the Bank. From this information, Bank employees generated internal credit memos and annual reviews discussing the creditworthiness of its borrower and guarantors, their sources of income and revenue, and the value of their assets. These credit memos and annual reviews summarized the Parkers' financial statements to determine their "global cash flow to show that they could repay the debt."

¶16 The Bank's representative testified at trial that these documents were included in the Documents produced at deposition in the Foreclosure Suit because they were contained in the Bank's Greenway Park loan file and were requested by the Thornton subpoena. Based on this evidence, the district court found that the Documents were contained in the Bank's Greenway Park loan file and that those Documents were produced in response to the Thornton subpoena. This factual conclusion is undisputed and provides the context for proper analysis of the Parkers' arguments in this appeal.

II. Negligence and the Duty of the Bank

¶17 The Parkers' tort claim against the Bank is founded on production of the Documents at the deposition in the Foreclosure Suit. "In tort jurisprudence, liability is based upon the existence of a legal duty attached to a particular relationship between the parties." *Hensley v. State Farm Fire and Cas. Co.*, 2017 OK 57, ¶ 16, 398 P.3d 11, 17. To establish negligence, the Parkers must show that they had an interest that was entitled to protection from the Bank's conduct and that the Bank invaded that interest by engaging in conduct that failed to conform to the applicable standard of care. *Brewer v. Murray*, 2012 OK CIV APP 109, ¶ 16, 292 P.3d 41, 48-49 (approved for publ'n by Okla. Sup. Ct.). The Parkers argue that they had a privacy interest in the financial documents they provided to the Bank during their lending relationship with the Bank and that the Bank had a duty to protect that interest, which it failed to do when it produced the Documents in the Foreclosure Suit. They argue that the Bank was negligent when it failed to comply with the Financial Privacy Act and that the Bank's failure constituted negligence per se.

¶18 Where the courts recognize a legal duty, the duty owed is "that of a reasonably prudent person under the same or similar circumstances." *Mansfield v. Circle K. Corp.*, 1994 OK 80, ¶ 6, 877 P.2d 1130, 1132. Where a regulatory statute "delineate[s] the defendant's conduct, courts may adopt the conduct required by the statute[] as that which would be expected of a reasonably prudent person--providing courts believe the statutorily required conduct is appropriate for establishing civil liability." *Id.* We adopt that standard here because failure to comply with the Oklahoma Financial Privacy Act is the essence of the Parkers' tort claim. "When courts adopt the statutory standard for a cause of action for negligence, the violation of the statute is said to be negligence *per se*." [4] *Id.*

¶19 The Financial Privacy Act "sets out the exclusive lawful means" of obtaining a customer's financial record. *Alva State Bank and Tr. Co. v. Dayton*, 1988 OK 44, ¶ 11, 755 P.2d 635, 636. As defined in the Act, "customer" is "any person . . . or other legal entity . . . who utilized or is utilizing a service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the customer's name." 6 O.S.2021 § 2202(d). "Financial record" is defined as "any original of, or any copy of, any record held by a financial institution, or any information derived therefrom, pertaining to a customer's relationship with the financial institution." (b). It is undisputed that the Parkers were customers of the Bank and that the Documents produced in the Foreclosure Suit were financial records as defined in the Act.

¶20 When applicable, the Act prohibits a financial institution "from giving, releasing, or disclosing any financial record to any government authority unless . . . (b) it has been served with a subpoena issued pursuant to [section 2204] for the specific record requested." 6 O.S.2021 § 2203. Where a

district court compels a financial institution's production of such records, it is a "government authority" acting pursuant to the Act. *Alva State Bank and Tr. Co. v. Dayton*, 1988 OK 44, ¶¶ 8-11, 755 P.2d 635, 636, and 6 O.S.2021 § 2202(c). [5] Section 2204 of the Act provides:

> A court of competent jurisdiction . . . may issue a subpoena for a customer's financial record only if such subpoena is authorized by law. Said subpoena shall specify what financial record is sought.

6 O.S.2021 § 2204(A).

¶21 In this case, the Thornton subpoena was issued by counsel for a party in the Foreclosure Suit on behalf of the district court. *See* 12 O.S.2021 § 2004.1(A)(4) ("[A]n attorney authorized to practice law in this state may also issue and sign a subpoena on behalf of a court of this state.)" Attorney Ward was acting as an officer of the court when he signed the subpoena issued to the Bank. *See* 5 O.S. appx. 1, Art I, § 2. Consequently, the Thornton subpoena was issued by a "government authority or any officer . . . thereof" as required by section 2203(b).

¶22 Nonetheless, the Bank was prohibited from releasing its customer's financial records "until the government authority seeking the records certifies in writing that it has complied with the applicable provisions of the Financial Privacy Act." 6 O.S.2021 § 2208(A). It is undisputed that no certificate of compliance with the Act was attached to the Thornton subpoena or served on the Bank.

¶23 Section 2204(B) of the Act also provides: "A copy of the subpoena shall be served on the customer or mailed to his last-known address on or before the date the subpoena is served on the financial institution." Subsections (B) through (E) of Section 2204 set forth the Act's notice and challenge procedures. These procedures grant the customer fourteen days from service to file a motion to quash premised upon any of the grounds set forth in the statute. The failure of the customer to file a motion to quash within the fourteen-day period constitutes a waiver of any right to object to the release of the financial information sought in the subpoena. 6 O.S.2021 § 2204(E). Greenway Park did not file a motion to quash or otherwise challenge the Thornton subpoena. However, the Thornton subpoena was not served on Greenway Park or the Trustee in Greenway Park's bankruptcy.

¶24 The district court determined that the Thornton subpoena was not required to be served on Greenway Park because it was a party to the Foreclosure Suit. The district court relied on section 2204(G) of the Act: "The notice and challenge procedures provided for in this section shall not apply when the financial records of the customer: 1. Are sought pursuant to a subpoena in connection with litigation to which the customer is a party . . . ." [6] We need not decide whether the Thornton subpoena was required to be served on Greenway Park because the Parkers did establish a separate violation of the Act. The Bank produced the Documents in response to the Thornton subpoena without the certificate of compliance required by section 2208(A) of the Act: "A financial institution shall not release the records of a customer until the government authority seeking the records certifies in writing that it has complied with the applicable provisions of the Financial Privacy Act."

¶25 The purpose of Oklahoma's Financial Privacy Act is to "maintain the privacy and confidentiality of the records of customers of financial institutions." 6 O.S.2021 § 2201. Although it is the responsibility of the issuer of the subpoena to provide notice to the customer, it is the financial institution's receipt of the written certification of compliance with the Act which authorizes the financial institution to produce the subpoenaed documents. 6 O.S.2021 § 2208(A).

¶26 But proving that the Bank violated the Financial Privacy Act does not establish the Parkers' tort claim. "A particular tort action is based upon whether the particular defendant owes a legal duty to the particular plaintiff." *Hensley v. State Farm Fire and Cas. Co.*, 2017 OK 57, ¶ 16, 398 P.3d 11, 17. The Thornton subpoena was issued for the financial records of Greenway Park. On receipt of that subpoena, the Bank owed a duty to Greenway Park to comply with the Act. The only duty that the Bank owed to all of its other customers, including the Parkers, was to take "reasonably prudent"

measures to prevent another customer's financial records from being inadvertently included in the documents produced in response to that subpoena. *Mansfield v. Circle K Corp.*, 1994 OK 80, ¶ 6, 877 P.2d 1130, 1132.

¶27 But that is not the duty the Parkers allege that the Bank breached. The Documents produced included only documents from Greenway Park's loan file. The Parkers have not argued that any of those Documents were unlawfully obtained by, or not properly in the possession, of the Bank. To the extent that some of the Documents in the Greenway Park loan file included personal financial records of the Parkers, their Trusts, Phillip Parker's dental practice, or Old Well, those documents were voluntarily provided by those Bank "customers" to obtain financing for another Bank "customer," Greenway Park. Although the Act required the Bank to obtain a certificate of compliance from the issuer of the Thornton subpoena before producing Greenway Park's documents, the Act did not require the Bank to segregate and withhold from production documents lawfully in its possession because they happened to have also related to or been provided by another customer whose records were not the subject of the subpoena.

¶28 To the extent that the Parkers proved the Documents were produced in violation of the Act, that claim belongs to Greenway Park, or more specifically, pursuit of that claim belongs to the Trustee in Greenway Park's bankruptcy. The Trustee can enforce that violation of the Act. The Parkers cannot.

III. Breach of Fiduciary Duty

¶29 Independent of its duty in responding to a subpoena pursuant to the Financial Privacy Act, the Parkers also argue that the Bank owed them, as customers, "special duties" which are fiduciary in nature, the breach of which is also a tort. The relationship between the Bank and the Parkers was contractual. *Rodgers v. Tecumseh Bank*, 1988 OK 36, 756 P.2d 1223. Absent a special relationship derived from that contract, the Bank's failure to perform an alleged contractual duty to protect the privacy of its customers' financial records may constitute a breach of contract. *Embry v. Innovative Aftermarket Sys. L.P.*, 2010 OK 82, ¶ 6, 247 P.3d 1158, 1160. That breach of contract does not constitute a tort. *Wathor v. Mut. Assurance Adm'rs, Inc.*, 2004 OK 2, ¶ 15, n.5, 87 P.3d 559, 563, n.5.

¶30 Not only is the relationship between the Parkers and the Bank determined by their contract, but also it is defined by statute.

> Unless a state or national bank shall have expressly agreed in writing to assume special or fiduciary duties or obligations, no such duties or obligations will be imposed on the bank with respect to a depositor of the bank or a borrower, guarantor, or surety, and no special or fiduciary relationship shall be deemed to exist.

6 O.S.2021 § 425. The Parkers produced no document by which the Bank agreed "in writing to assume special or fiduciary duties or obligations . . . ." Consequently, "no special or fiduciary relationship shall be deemed to exist" and the Parkers' breach of fiduciary duty claim fails as a matter of law. *Id.*

¶31 Nonetheless, the Parkers cite *Djowharzadeh v. City National Bank and Trust Co. of Norman*, 1982 OK CIV APP 3, 646 P.2d 616andOklahoma Uniform Jury Instructions (OUJI) -- Civil No. 26.2 in support of their breach of fiduciary duty theory of recovery. In *Djowharzadeh*, the bank's loan officer passed along a prospective borrower's confidential information to the wives of the bank's president and senior vice-president. The two wives, who were also shareholders of the bank, usurped the potential borrower's economic opportunity (the purchase of a duplex at below fair market value) after the bank denied the loan. Finding that the "relationship created when a prospective borrower applies for a loan from a bank is a very special one," and that banks should not be in the business of competing financially with their customers, the Oklahoma Court of Civil Appeals reversed summary judgment for the bank and held that the bank owed the potential borrower a duty of confidentiality, and that the potential borrower had alleged a valid cause of action against the bank. *Id.* ¶¶ 18, 22, 27, 646 P.2d at 619-20.

¶32 The Court did not identify the plaintiff's precise theory of recovery surviving summary judgment other than to note it was not "fiducial" but "properly framed in terms of tortious conduct." *Id.* ¶¶ 18, 30, 646 P.2d at 619, 620. Oklahoma recognizes several such tortious interference with business relations claims separate from a breach of fiduciary duty claim. *See, e.g. Wilspec Techs., Inc. v. DunAn Holding Grp. Co*., 2009 OK 12, 204 P.3d 69.

¶33 Nonetheless, to the extent that *Djowharzadeh,* decided prior to the enactment of 6 O.S.2021 § 425, holds that a bank owes its customers a fiduciary duty in the absence of a written agreement creating that duty, it has been abrogated by that statute. *Samman v. Multiple Injury Tr. Fund*, 2001 OK 71, ¶ 13, 33 P.3d 302, 307 (recognizing that legislative action may have intended to change existing law or clarify ambiguous law).

¶34 The Parkers' reliance on OUJI-- Civil No. 26.2 in support of their claim for breach of fiduciary duty is likewise unavailing. The instruction reads, in pertinent part:

> . . . . You are instructed that if you determine that [Specify Grounds for Fiduciary Relationship, *e.g.*, [Defendant] was the [guardian, employee, partner, attorney, accountant, **banker**, physician, etc.] of [Plaintiff]], then a fiduciary relationship existed in this case between [Plaintiff] and [Defendant] . . . .

Id. (emphasis added). The Oklahoma Uniform Jury Instructions "shall be used unless the court determines that it does not accurately state the law." 12 O.S.2021 § 577.2. To the extent this instruction misstates the law applicable to banks and their customers, it is the duty of the court to provide instructions that "accurately state the law." *Sellars v. McCullough*, 1989 OK 155, ¶ 9, 784 P.2d 1060, 1063. Or, in this case, it is the duty of the district court presiding over a bench trial to reject its requested application.

CONCLUSION

¶35 The Parkers asserted two theories of recovery in the district court, violation of the Oklahoma Financial Privacy Act and breach of fiduciary duty. Neither theory requires reversal of the district court's judgment.

¶36 The Parkers proved that Valliance Bank failed to comply with the Act when it produced financial records of Greenway Park in response to the Thornton subpoena. An attorney issuing a subpoena to a financial institution is acting on behalf of the district court, a "government authority," as that term is defined in the Act. A financial institution responding to a subpoena for its customer's records issued by a government authority is prohibited from releasing the records until the government authority certifies that it has complied with the notice provisions of the Act. Because no certification accompanied the subpoena for Greenway Park's records, the Bank produced those records in violation of the Act. However, the Parkers have failed to establish their right to recover on behalf of Greenway Park even though they were also customers of the Bank. The Bank's duty to comply with the Act is owed to the customer whose records were subpoenaed, Greenway Park, not to other customers, like the Parkers, whose financial records were properly contained within the subpoenaed customer's file.

¶37 Any of the Parkers' financial records produced by the Bank were voluntarily provided by the Parkers to secure financing for Greenway Park. Those records were lawfully in the Bank's possession and legitimately included in the Greenway Park loan file. As the district court correctly found, the Bank's production of documents from Greenway Park's loan file, even though it failed to comply with the Act, did not violate the Parkers' rights guaranteed by the Act even though they were also customers of the Bank. They were not the customer whose records were subpoenaed.

¶38 The Parkers' breach of fiduciary duty claim also fails as a matter of law. By statute, the Bank did not owe the Parkers a fiduciary duty to protect the privacy of their financial records absent an agreement in writing to do so. No such agreement is contained in this record.

¶39 The district court's judgment in favor of Valliance Bank is affirmed.

¶40 AFFIRMED.

HIXON, C.J., and, WISEMAN, P.J., concur.

FOOTNOTES

[1] The Thornton judgment against Greenway Park arose out of facts set forth in *Greenway Park Commercial Owners Ass'n, Inc. v. R.T. Props., LLC*, No. 114,015, slip op. (COCA Div. II, Feb. 4, 2019) (unpublished). In that case, this Court reversed the district court's directed verdict in favor of Phillip Parker but otherwise affirmed the judgment for the Defendants.

[2] Although DMWP named Greenway Park as a defendant in the Foreclosure Suit, it does not appear that summons was issued to or served on the Greenway Park bankruptcy Trustee, and no one entered an appearance on behalf of Greenway Park in this litigation.

[3] After this Court reversed the directed verdict entered for Philip Parker in *Greenway Park Commercial Owners Ass'n, Inc. v. R.T. Properties, LLC*, No. 114,015 (*see* footnote 1), the Parkers paid $500,000 to settle Thornton's remaining claims in the Foreclosure Suit.

[4] Negligence per se requires proof that:

> (1) the injury [was] caused by the statutory violation, (2) the injury was of a type intended to be prevented by the statute, and (3) the injured party was one of the class intended to be protected by the statute.

Ohio Cas. Ins. Co. v. Todd, 1991 OK 54, ¶ 9, 813 P.2d 508, 510 (citation omitted).

[5] In *Alva State Bank*, private parties sought to obtain proof of a common scheme or design to support their fraud claim against the bank by compelling the bank to produce financial records of non-party customers. The district court ordered production of the documents for an in camera inspection. 1988 OK 44, ¶¶ 3-4, 755 P.2d at 636. The Oklahoma Supreme Court granted the bank's request for a writ of prohibition: "[i]n ordering the production of records in a manner other than that provided by statute, the trial court acted in a manner not authorized by, and contrary to, law." *Id*. ¶ 12, 755 P.2d at 636.

[6] It is not clear from the record whether Greenway Park could be or was made a party to the Foreclosure Suit because of its pending bankruptcy. The bankruptcy Trustee did abandon the Real Property which became the subject of the Foreclosure Suit, but there is nothing in the record showing that the Bankruptcy Court's order lifting the automatic stay permitted DMWP or Thornton to do anything more than pursue state court remedies as to that property. It also does not appear that the bankruptcy Trustee was served with summons or entered an appearance in the Foreclosure Suit.

Citationizer© Summary of Documents Citing This Document

Cite	Name	Level
None Found.		

Citationizer: Table of Authority

Cite	Name	Level
Oklahoma Court of Civil Appeals Cases		
2012 OK CIV APP 109, 292 P.3d 41,	BREWER v. MURRAY	Discussed
2016 OK CIV APP 47, 378 P.3d 65,	THE MARGARET BLAIR TRUST v. BLAIR	Discussed
1982 OK CIV APP 3, 646 P.2d 616,	Djowharzadeh v. City Nat. Bank and Trust Co. of Norman	Discussed
Oklahoma Supreme Court Cases		
Cite	Name	Level

Cite	Name	Level
1988 OK 36, 756 P.2d 1223, 59 OBJ 956,	Rodgers v. Tecumseh Bank	Discussed
1988 OK 44, 755 P.2d 635, 59 OBJ 1159,	Alva State Bank and Trust Co. v. Dayton	Discussed at Length
1989 OK 155, 784 P.2d 1060, 60 OBJ 3052,	Sellars v. McCullough	Discussed
1990 OK 73, 804 P.2d 425, 61 OBJ 1924,	Bradley v. Clark	Discussed
1991 OK 54, 813 P.2d 508, 62 OBJ 1867,	Ohio Cas. Ins. Co. v. Todd	Discussed
1994 OK 80, 877 P.2d 1130, 65 OBJ 2334,	Mansfield v. Circle K. Corp.	Discussed at Length
2001 OK 71, 33 P.3d 302, 72 OBJ 2703,	SAMMAN v. MULTIPLE INJURY TRUST FUND	Discussed
2003 OK 75, 77 P.3d 1069,	HEFFRON v. DISTRICT COURT OF OKLAHOMA COUNTY	Discussed
2004 OK 2, 87 P.3d 559,	WATHOR v. MUTUAL ASSURANCE ADMINISTRATORS, INC.	Discussed
2009 OK 12, 204 P.3d 69,	WILSPEC TECHNOLOGIES, INC. v. DUNAN HOLDING GROUP, CO. LTD.	Discussed
2010 OK 82, 247 P.3d 1158,	EMBRY v. INNOVATIVE AFTERMARKET SYSTEMS L.P.	Discussed
1975 OK 115, 540 P.2d 562,	STORY v. HEFNER	Discussed
2016 OK 97, 381 P.3d 736,	LEE v. BUENO	Discussed
2017 OK 57, 398 P.3d 11,	HENSLEY v. STATE FARM FIRE AND CASUALTY CO.	Discussed at Length
2019 OK 6, 441 P.3d 1094,	MCINTOSH v. WATKINS	Discussed

Title 6. Banks and Trust Companies

Cite	Name	Level
6 O.S. 425,	Special or Fiduciary Duties or Obligations	Discussed
6 O.S. 2201,	Short Title	Discussed at Length
6 O.S. 2202,	Definitions	Discussed
6 O.S. 2203,	Financial Institutions Prohibited from Disclosing Financial Records Unless	Cited
6 O.S. 2204,	Subpoena of Financial Records	Discussed
6 O.S. 2208,	Release of Records - Disclosure of Financial Records	Discussed

Title 12. Civil Procedure

Cite	Name	Level
12 O.S. 577.2,	Use of Instructions - Requests - Copies	Cited
12 O.S. 2004.1,	Subpoena	Cited



OKLAHOMA
STATE
COURTS
NETWORK
OSCN

The Oklahoma Supreme Court
2100 N. Lincoln Blvd., Suite 1
Oklahoma City, OK 73105