



NOT FOR OFFICIAL PUBLICATION

ORIGINAL

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION I

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

AUG 25 2022

JOHN D. HADDEN
CLERK

TYLER SCOTT PAULSEN,)

Plaintiff/Appellant,)

vs.)

Case No. 120,068

WAGONER COUNTY SHERIFF'S)

OFFICE; WAGONER COUNTY)

E911; CHRIS ELLIOTT; and)

JUDY ELLIOTT,)

Defendants/Appellees.)

Rec'd (date)	8-25-22
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APPEAL FROM THE DISTRICT COURT OF
ROGERS COUNTY, OKLAHOMA

HONORABLE DOUGLAS KIRKLEY, TRIAL JUDGE

AFFIRMED

Brendan M. McHugh,
Dana Jim,
Claremore, Oklahoma,

For Plaintiff/Appellant,

Kim Hall,
Assistant District Attorney,
Wagoner, Oklahoma,

For Defendants/Appellees.

OPINION BY ROBERT D. BELL, PRESIDING JUDGE:

¶1 Plaintiff/Appellant, Tyler Scott Paulsen, appeals from the trial court's order dismissing his open records action against Defendants/Appellees, the Wagoner County Sheriff's Office, Wagoner County E911, Chris Elliott and Judy Elliott. For the reasons set forth below, we affirm.

¶2 This case emanates from Plaintiff's arrest on July 25, 2018, by Eufaula Police on a warrant issued by the Wagoner County District Court two days earlier. On May 1, 2019, Plaintiff filed a request under the Oklahoma Open Records Act, 51 O.S. 2021 §24A.1, *et seq.*, for Defendants to produce, in essence, any communications among Defendants regarding Plaintiff's arrest. In response, Defendants produced two audio recordings and one document on May 28, 2019. Plaintiff filed the instant action three days later, alleging Defendants were wrongfully withholding at least one more audio recording relevant to his Open Records request.¹ Plaintiff also asked for injunctive relief. On July 3, 2019, Defendants turned over an audio recording they asserted was inadvertently omitted in their previous response. Defendants then filed a motion to dismiss Plaintiff's petition.

¶3 Plaintiff filed an amended petition in early 2020. Defendants moved to dismiss the amended petition in May 2020 on the ground the petition failed to state a claim upon which relief can be granted. Plaintiff timely filed a response. The

¹ Plaintiff's petition also complained about Open Records violations allegedly committed by the Eufaula Police Department and its chief, who are not parties to this proceeding.

matter was set for a status conference on April 26, 2021. On that day, an attorney appeared on behalf of Plaintiff and his counsel, and the matter was passed to May 17, 2021. On May 17, 2021, neither Plaintiff nor his counsel appeared. A hearing on the dismissal motion was then scheduled for late June, but was rescheduled twice (once at Defendants' request and once at Plaintiff's). The hearing was finally set for August 23, 2021. The trial court's docket sheet indicates Plaintiff's attorney was advised via telephone of the new hearing date. Neither Plaintiff nor his counsel appeared at the August 23, 2021, hearing. Plaintiff apparently did not provide any notice or explanation for his lack of appearance at the scheduled hearing.

¶4 Although the trial court's order recites it "granted" Defendants' motion to dismiss, we discern the court dismissed the case because of Plaintiff's failure to appear. The order details all of the hearings scheduled in this case and specifically notes Plaintiff's and his counsel's failure to appear at the status conference and at the hearing on the motion to dismiss. The order does not specify whether the dismissal was with or without prejudice. Plaintiff did not file a motion to reconsider or petition to vacate the trial court's ruling, nor did he seek leave to file an amended petition. Plaintiff now appeals.

¶5 This matter stands submitted for accelerated appellate review without appellate briefs on the trial court record pursuant to Rule 4(m), *Rules for District Courts*, 12 O.S. 2021, Ch. 2, App. 1, and Rule 1.36, *Oklahoma Supreme Court Rules*,

12 O.S. 2021, Ch. 15, App. 1. As his sole proposition of error, Plaintiff contends the trial court erred in dismissing his case because, he insists, his amended petition states a claim for relief under the Open Records Act. He does not challenge the sufficiency of the notice of the hearings he failed to attend or attempt to explain his and/or his counsel's failure to attend those hearings.²

¶6 “A court has discretionary power to dismiss without prejudice a lawsuit for want of prosecution, or where a plaintiff fails to appear at a hearing or refuses to comply with an order concerning the proceeding.” *Kinter v. Baskin*, 1974 OK 36, ¶4, 520 P.2d 679. *See also* 12 O.S. 2021 §§682 and 683. We note “[a] dismissal for failure to appear is not a decision on the merits.” *Winterhalder v. Burggraf Restoration, Inc.*, 2011 OK CIV APP 38, ¶13, 256 P.3d 84.

¶7 “Granting or denying a motion to dismiss based on failure to comply with a procedural rule or for failure to prosecute involves the exercise of discretion.” *Garcia v. Lane*, 2017 OK CIV APP 21, ¶11, 394 P.3d 987. Dismissal for failure to appear involves the same exercise of discretion. We will affirm the trial court's dismissal of the action unless there was an abuse of discretion. *Id.* “An abuse of

² A footnote in Plaintiff's petition in error claims “the hearing on August 23, 2021 was set for 1:30 p.m. not 9:00 a.m.” However, the trial court's docket sheet clearly indicates the hearing was scheduled for “8-23-21 @ 9AM.” Plaintiff does not assert that he or his attorney appeared in court that day at 1:30 p.m.

discretion occurs if a decision is based on an erroneous conclusion of law or where there is no rational basis in evidence for the ruling.” *Id.*

¶8 In the present case, Plaintiff and his counsel failed to appear at the status conference and at the hearing on the motion to dismiss. Plaintiff has not challenged the sufficiency of the notice of those hearings or attempted to justify his and/or his counsel’s absence from those hearings. On this basis, we cannot say the trial court abused its discretion in dismissing Plaintiff’s amended petition. Accordingly, the judgment of the trial court is affirmed.

¶9 AFFIRMED.

GOREE, J., and DOWNING, J., concur.