

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION I

FILED  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

JUN 8 2020

ROBERT TODD STEWART, )  
 )  
 Plaintiff/Appellee, )  
 )  
 vs. )  
 )  
 GIOVANNI GONZALEZ and )  
 KAYLEE SMEDLEY, )  
 )  
 Defendants/Appellants. )

JOHN D. HADDEN  
CLERK

Case No. 117,460

APPEAL FROM THE DISTRICT COURT OF  
TULSA COUNTY, OKLAHOMA

HONORABLE DAMON H. CANTRELL, JUDGE

REVERSED

Thomas E. Baker,  
THE BAKER LAW FIRM, PLLC,  
Owasso, Oklahoma,

For Plaintiff/Appellee,

Paul M. Kolker,  
Brad L. Roberson,  
Lauren N. Watson,  
PIGNATO, COOPER, KOLKER,  
& ROBERSON, P.C.,  
Oklahoma City, Oklahoma,

For Defendants/Appellants.

OPINION BY BRIAN JACK GOREE, JUDGE:

¶1 Robert Todd Stewart, Plaintiff/Appellee, filed a negligence action against Giovanni Gonzalez and Kaylee Smedley, Defendants/Appellants, for injuries arising from a motor vehicle accident in Tulsa. Gonzalez was driving Smedley's vehicle when he rear-ended Plaintiff's vehicle. Defendants made an offer to confess judgment pursuant to 12 O.S. §1101 in the amount of \$5,000. Plaintiff did not accept the Defendants' offer and proceeded to trial wherein the jury awarded Plaintiff \$3,180.28 in damages for medical bills. Defendants moved for the court to tax Plaintiff the costs incurred after the Defendants' offer to confess judgment per §1101. The court denied Defendants' motion and instead awarded Plaintiff \$1,169.66 for costs. Defendants appeal this award of costs to Plaintiff.

¶2 The sole issue on review is whether §1101 authorizes multiple defendants to jointly file an offer to confess judgment to a singular plaintiff.<sup>1</sup> Construction of a statute is a question of law reviewed *de novo*. *Fulsom v. Fulsom*, 2003 OK 96, ¶2, 81 P.3d 652. The primary goal of statutory

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<sup>1</sup> We reject Appellee's reliance on *Haddock v. Woodland Park Home, Inc.*, 2004 OK CIV APP 42, because it is distinguishable as that case involved a single offer from one defendant to multiple plaintiffs. A single offer of settlement to multiple plaintiffs precludes either plaintiff from knowing the amount of the offer to him or her individually. See *Haddock*, ¶15.

construction is to ascertain and apply the legislative intent. *Samman v. Multiple Injury Trust Fund*, 2001 OK 71, ¶13, 33 P.3d 302.

¶3 First, we review the language of the statute. Section 1101 provides:

The *defendant*, in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff or his attorney an offer, in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer and give notice thereof to the *defendant* or his attorney, within five days after the offer was served, the offer, and an affidavit that the notice of acceptance was delivered within the time limited, may be filed by the plaintiff, or the *defendant* may file the acceptance, with a copy of the offer, verified by affidavit; and in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the *defendant*, he shall pay the *defendant's* costs from the time of the offer.

(Emphasis added).

¶4 The dispute is whether "defendant" as used in §1101 may encompass multiple defendants. Title 25, Chapter 1 of the Oklahoma Statutes provides definitions for words used in the State's statutes and construction of those terms. 25 O.S. §1 *et seq.* Notably, "[w]ords used in the singular number include the plural . . . except where a contrary intention plainly appears." 12

O.S. §25. In this case, Appellee urges a very strict construction of §1101 – that an offer from *defendants* is invalid. We disagree with such construction and find pursuant to §25 that "defendant" can mean "defendants" to promote the purpose of §1101. See *Rupp v. City of Tulsa*, 1950 OK 28, ¶8, 214 P.2d 913, 915 ("In order to avoid the plural sense accorded by [§25] a contrary intention must plainly appear, and it cannot be made to so appear merely by the repeated use of the singular."). Neither the language of §1101 nor the purpose of the statute indicate an exception to §25's directive that the singular form "defendant" includes the plural form "defendants." See, e.g., *Denil v. Integrity Mut. Ins. Co.*, 135 Wis.2d 373, 401 N.W.2d 13 (Wis. Ct. App. 1986).

¶5 The legislative purpose of §1101 is "to encourage judgments without protracted litigation, the recovery of costs will provide additional incentives to encourage a plaintiff to accept a defendant's offer to confess judgment, even if the offer is made shortly before trial . . . . A defendant . . . is encouraged by the statute to offer an early confession of judgment and avoid further increases in costs which may be incurred to trial preparation." *Dulan v. Johnston*, 1984 OK 44, ¶10, 687 P.2d 1045, 1047. "The purpose . . . is to encourage pre-trial settlement. Unlike a private settlement offer, an offer made under this statute can have the effect of shifting costs to a plaintiff. This

cost-shifting provision provides an impetus for a plaintiff to consider seriously a defendant's offer, because a plaintiff cannot refuse the offer without risking responsibility for a defendant's costs." *Hernandez v. United Supermarkets of Okla., Inc.*, 1994 OK CIV APP 122, ¶6, 882 P.2d 84, 87.

¶6 Indeed, other jurisdictions interpreting similar statutes have held a joint offer of judgment by multiple defendants to an individual plaintiff is permissible under the rationale that the similar statutes are intended to encourage judgments and avoid costly litigation. See, e.g., *Denil v. Integrity Mut. Ins. Co.*, 135 Wis.2d 373, 382-83, 401 N.W.2d 13, 16-17 (Wis. Ct. App. 1986).

For offers by multiple defendants,

[t]he plaintiff is concerned with the value of his or her claim without regard to the source of the settlement proceeds. The evaluation of an offer of judgment fairly representing the total value of the plaintiff's claim is not affected by the fact that the offer is made jointly by more than one defendant. The plaintiff's claim has no more or less value whether the offer is submitted by the defendants separately or jointly. . .

[A] plaintiff is fully able to evaluate his or her claim when multiple defendants submit a joint offer of judgment. On the basis of this evaluation, a plaintiff is free to reject a joint offer of judgment if the plaintiff believes that a more favorable judgment will be gained through trial. . . .

¶7 "Defendant" in §1101 must be read in the context of §25 so as to

achieve the Legislature's intent in enacting the statute. For multiple defendants, a joint offer to confess judgment to an individual plaintiff is permissible pursuant to §1101. Section 1101 provides that defendants may recover costs from a plaintiff who rejects a joint offer of defendants and subsequently recovers a judgment smaller than the offer. See *Dulan v. Johnston*, 1984 OK 44, ¶13, 687 P.2d 1045, 1047.

¶8 Defendants filed their offer to confess judgment in the amount of \$5,000 on December 5, 2016. Plaintiff did not respond to Defendants' offer and opted to continue to trial. There, the jury found against both Defendants and fixed damages at \$3,180.28. Plaintiff failed to obtain a judgment for more than was offered by Defendants, as such, he is required to pay Defendants' costs from the time of the offer per §1101. The trial court's denial of Defendants' motion to award costs was erroneous. The final order memorializing the disposition of this motion is reversed and remanded with instructions to enter an order consistent with this opinion.

BUETTNER, J., concurs.

BELL, P.J., dissents.