A Different Spin

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A recent column in this space suggested that the Oklahoma Court of Civil Appeals decision in *Eldridge v. Kavon LLC* would support a call for more tort reform in Oklahoma. The *Eldridge* decision can be viewed through a different lens. Perhaps the *Eldridge* court's decision may be a sign that tort reform enacted in 2009 is having its intended effect.

In 2009, the Oklahoma legislature enacted Section 2056 of the Oklahoma Pleading Code as part of the Comprehensive Lawsuit Reform Act. A revised version of Section 2056 remains in effect after the Oklahoma Supreme Court in *Douglas v. Cox Retirement Properties, Inc.*, 2013 OK 37, held the Comprehensive Lawsuit Reform Act was unconstitutional. Thus, remnants of the 2009 tort reform efforts remain on the books. Some have suggested this statute ushered in a summary judgment standard more like federal court, where summary judgment might be entered in a case where there is no reasonable fact dispute. The *Eldridge* court's decision possibly was influenced by this change in the law.

Ten years ago, the Oklahoma Court of Civil Appeals might have reversed the same summary judgment, requiring a trial on whether the Chick-fil-A franchise owed a contractual duty to the disruptive customer, a fact issue. Instead, the *Eldridge* court concluded the customer's own conduct prevented the franchise from preforming the contract, and the franchise possessed a complete defense. The *Eldridge* court noted, "[a] trial court *should* grant summary judgment where there is no dispute as to a material fact and the moving party is entitled to judgment as a matter of law." (emphasis added). The court went on to explain, "[i]n attempting to show the existence of a question that must be tried, the party may not rely on bald contentions that facts exist to defeat the motion." While this phrasing remains suggestive of the any-evidence and no-evidence standards espoused by the Oklahoma Supreme Court of ten years ago, it is relatively easy to conclude that an Oklahoma appellate court ten years ago would have found reasonable inferences sufficient to require a trial.

Further bolstering the decision to not give the customer another chance, the Court of Civil Appeals also concluded the customer failed to provide any evidence of damages. Conceivably the *Eldridge* decision signals that tort reform in Oklahoma is indeed working. The trial court did not permit the meritless litigation to continue, nor did the Oklahoma Court of Civil Appeals. Both courts dispensed with the baseless case in conformity with the goals of tort reform.