

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

KENNETH DEWAYNE SANDERS, )  
)  
Petitioner, )  
vs. )  
)  
UNITED STATES OF AMERICA )  
and S. M. FALLIS, District )  
Attorney of the Fourteenth )  
Judicial District of Oklahoma, )  
)  
Respondents, )

No. 69-C-180

**FILED**

MAR 2 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

This cause comes on for consideration by the Court for disposition. It appears to the Court that the petitioner, Kenneth Dewayne Sanders, heretofore on or about July 25, 1969, filed in this Court a petition for Writ of Habeas Corpus, wherein he requested a fast and speedy trial of a charge against him, pending in the District Court of Tulsa County, Oklahoma. This Court on August 5, 1969 entered an order directed to S. M. Fallis, District Attorney of Tulsa County, Oklahoma, to show cause why said petitioner should not be given a speedy trial, or in alternative why said charges against petitioner should not be dismissed.

S. M. Fallis, Jr., District Attorney for Tulsa County, Oklahoma, responded and prayed an order directing the United States Marshal for the Northern District of Oklahoma, to bring petitioner before the District Court of Tulsa County, Oklahoma, there to be held for trial on the charges pending against him and thereafter to return petitioner to the custody of the United States Marshal.

On the second day of October, 1969, this Court issued a Writ of Habeas Corpus Ad Prosequendum directing the Marshal to deliver the petitioner to the District Court of Tulsa County, Oklahoma, to stand trial in said Court in the case of State of Oklahoma vs. Kenneth Dewayne Sanders, number 153083, and after hearing or trial or other disposition, to return Kenneth Dewayne Sanders to the Warden, United States Penitentiary, Leavenworth, Kansas.

It appearing to the Court that said petitioner was found guilty by the District Court of Tulsa County and a judgment and sentence on a plea of guilty, of six (6) years was entered by said Court on the 12th day of December, 1969, and thereafter petitioner was delivered to the United States penitentiary at McAlester, Oklahoma on the 18th day of December.

The petitioner having obtained the relief he sought, nothing further remains pending in this court and this case is therefore dismissed, and it is so ordered.

Dated this 2<sup>nd</sup> day of March, 1970.

*Luther Bohannon*  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

BARBARA C. HARRIS b/n/f  
WILLIAM E. HARRIS  
Plaintiff

vs.

RONNIE E. SANDERS, a minor,  
576 SE Elmhurst  
Bartlesville, Oklahoma  
Defendant

NO. 69-C-270

FILED

MAR 3 1970

M. M. EWING, CLERK

STIPULATION OF DISMISSAL WITH PREJUDICE

Comes now the plaintiff, through her attorney, Ollie W. Gresham, and the defendant, through his attorney, Joseph F. Glass, and stipulate that the above captioned cause of action be dismissed with prejudice

*Ollie W. Gresham*

\_\_\_\_\_  
Attorney for Plaintiff

*Joseph F. Glass*  
\_\_\_\_\_  
Attorney for Defendant

ORDER

AND now on this 2<sup>nd</sup> day of February, 1970, there came on for consideration before the undersigned Judge of the United States District Court for the Northern District of Oklahoma, stipulation of the parties hereto of dismissal, parties having heretofore advised the court that all disputes between the parties have been settled.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above styled cause be and the same is hereby dismissed with prejudice to the right of the plaintiff to bring any further action arising from said cause of action.

*W. L. ...*  
\_\_\_\_\_  
Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

GEORGE D. MCKEE, JR.,

Petitioner,

vs.

RAY H. PAGE, Warden, Oklahoma  
State Penitentiary, McAlester,  
Oklahoma,

Respondent.

NO. 69-C-298

**FILED**  
MAR 2 1970  
M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER

The Court has before it a petition for Writ of Habeas Corpus filed by George D. McKee, Jr., a prisoner in the Oklahoma State Penitentiary. Petitioner was convicted of murder by jury in the Osage County District Court, Pawhuska, Oklahoma, Case No. 2774, on October 29, 1935; and, he was sentenced to life imprisonment. The petitioner alleges that his rights guaranteed by the Constitution of the United States have been abridged in the State Courts because he was not permitted an appeal from said conviction and sentence through no fault of his own. Petitioner relies, for proof of his claim, on the contention that he had requested Mr. John Tillman (now deceased) to represent him, and that in the pre-trial proceedings Mr. Tillman was permitted to withdraw as attorney for defendant. That Mr. Louis O. Fink (now deceased) announced to the Court that he was defendant's attorney, and the Court appointed Mr. Fink as defense attorney and he was not retained counsel. Based on the record before me, this Court does not agree and finds the Petition for Writ of Habeas Corpus should be denied.

The petitioner filed a petition for post-conviction appeal with the Oklahoma Court of Criminal Appeals, No. A-15,156, and an evidentiary hearing was held on August 21, 1969, with George D. McKee, Jr., present and represented by counsel, and wherein petitioner testified in his own behalf. Based on the evidence obtained at said hearing and the findings of the hearing Court, the Oklahoma Court of Criminal Appeals denied the motion for post-conviction appeal on October 29, 1969; and, thereafter, also denied a motion for rehearing. In effect, petitioner has exhausted his State remedies.

This Court has before it the full and complete transcript of the State evidentiary hearing and finds that the State Courts had evidence upon which they could reliably find that petitioner of his own free choice accepted the services of retained counsel who failed to perfect his appeal under the mandatory requirements of the Oklahoma Statutes therefor, T. 12 O.S.A. § 962 and T. 22 O.S.A. § 1022, et seq., and within the extension of time granted to appeal by the trial Court.

The Court finds that the petitioner failed to encourage, advance or assert his appellate rights during the time and extension of time granted to him therefor by the trial Court. Absent some interference or incapacity, the petitioner cannot fail to assert his rights and then claim that he was denied such rights, especially when the failure to perfect the appeal was by retained counsel accepted by petitioner's own free choice. *Brown v. Allen*, 344 U.S. 443, 73 S.Ct 397, 97 L.Ed. 469 (1953); *U. S. ex rel Brown v. Smith*, C.A. Vt. 1962, 306 F.2d 596, cert. denied 83 S.Ct. 1012, 372 U.S. 959, 10 L.Ed 2d 11; *Buchanan v. State of Oklahoma*, 370 F.2d 199, C.A. 10th Cir. 1966, Cert. denied 389 U.S. 861.

The Court finds upon careful review of the full and complete transcript of the State evidentiary hearing that the judgment of the State Court is upheld by evidence in the record and that the State judgment so supported, absent clear error, should not be disturbed.

IT IS, THEREFORE, ORDERED that the Petition for Writ of Habeas Corpus of George D. McKee, Jr., be and the same is hereby denied and dismissed.

Dated this 2nd day of March, 1970, at Tulsa, Oklahoma.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

CERTAIN-TEED PRODUCTS CORPORATION, )  
 a corporation, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 GENERAL CONSTRUCTION OF TULSA, INC., )  
 a corporation, doing business under the trade )  
 style of FEDERAL CONSTRUCTION COMPANY, )  
 )  
 Defendant. )

Civil Action  
No. 69-C-222 ✓

**FILED**

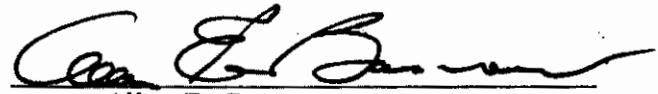
MAR 3 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

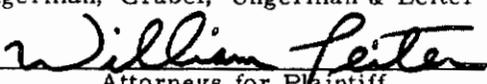
J U D G M E N T

Now, on this 3rd day of March, 1970, pursuant to the Pre-Trial Order entered by the Court on the 3rd day of March, 1970, and the Order of the Court therein for Judgment:

IT IS BY THE COURT ORDERED, ADJUDGED AND DECREED that plaintiff have and is hereby granted Judgment against the defendant for the sum of \$20,522.93, with interest thereon at the rate of 10% per annum from date of judgment until paid, together with an attorney's fee of \$2,000.00, to be taxed as costs, and for all accrued and accruing costs of the action.

  
Allen E. Barrow,  
United States District Judge

APPROVED:

Ungerman, Grabel, Ungerman & Leiter  
By   
Attorneys for Plaintiff

Whitebook & Raskin  
By   
Attorneys for Defendant.

LAW OFFICES  
UNGERMAN,  
GRABEL,  
UNGERMAN  
& LEITER  
  
SIXTH FLOOR  
WRIGHT BUILDING  
TULSA, OKLAHOMA

FILED

JUDGMENT ON DECISION BY THE COURT

CIV 82 (7-63)

MAR 4 1970

United States District Court

M. M. EWING, CLERK  
U. S. DISTRICT COURT.

FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

Lloyd A. Boyer

CIVIL ACTION FILE NO. 69-C-104

vs.

JUDGMENT

Clyde H. Stephens, and  
Colborne Manufacturing  
Company, a corporation

This action came on for trial ~~on~~ before the Court, Honorable Allen E. Barrow, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered, for the plaintiff.

It is Ordered and Adjudged that the plaintiff, Lloyd A Boyer, recover of the defendants, Clyde H. Stephens, and Colborne Manufacturing Company, a corporation, the sum of Thirty Thousand (\$30,000) Dollars, with interest thereon at the rate of 10% per annum from the date hereof until paid, and his cost of action.

Dated at Tulsa, Oklahoma, this 4th day of March, 19 70.

M.M. EWING

Clerk of Court

*By [Signature]*

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FERRO UNION CORPORATION, )  
a corporation, )  
Plaintiff, )  
vs. )  
DAVID I. PLOST and TULSA STEEL )  
DISTRIBUTING COMPANY, )  
a corporation, )  
Defendants. )

No. 69-C-64

**FILED**

MAR 5 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

\*\*\*\*\*

TULSA STEEL DISTRIBUTING )  
COMPANY, INC., a corporation, )  
Plaintiff, )  
vs. )  
GULF STEEL CORPORATION, )  
a corporation, )  
Defendant. )

No. 69-C-66

\*\*\*\*\*

TULSA STEEL DISTRIBUTING )  
COMPANY, INC., a corporation, )  
Plaintiff, )  
vs. )  
FERRO UNION CORPORATION, )  
a foregin corporation, )  
Defendant. )

No. 69-C-67

JUDGMENT

These cases have previously been consolidated under No. 69-C-64, pursuant to an order of this court filed July 10, 1969. The parties have agreed to a judgment in this case as evidenced by their signatures below approving this judgment. Based upon the parties' agreement, the court finds that the allegations contained in the Complaint in case No. 69-C-64 are true and correct and that the plaintiff, Ferro Union Corporation, should have judgment against the defendants, David I. Plost and Tulsa Steel Distributing Company, Inc., in the amount of \$26,627.73, plus interest thereon at the rate of 10% per annum from December 31, 1968, until paid, plus a reasonable attorney fee which the court hereby determines to be \$1,500.00, plus the costs of this action. Based upon the agreement of the parties the court hereby finds against Tulsa Steel Distributing Company, Inc., on its counter-claim in Case No. 69-C-64 and against Tulsa Steel Distributing Company, Inc., upon its complaints in cases Nos. 69-C-66 and 69-C-67.

DATED this 5th day of March, 1970.

  
\_\_\_\_\_  
Judge of the United States District Court  
for the Northern District of Oklahoma

Approved and Agreed to:

  
\_\_\_\_\_  
CHARLES A. WHITEBOOK  
WHITEBOOK & RASKIN  
Attorneys for Tulsa Steel Distributing  
Company, Inc., and David I. Plost

  
\_\_\_\_\_  
RICHARD W. GABLE  
GABLE, GOTWALS, HAYS, RUBIN & FOX  
Attorneys for Ferro Union Corporation  
and Gulf Steel Corporation

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JESS J. SCHAMBERS and )  
HAROLENE SCHAMBERS, )  
husband and wife, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
 )  
ROLLING HOMES INDUSTRIES, )  
INC., a Texas corporation, )  
and AAA ENTERPRISES, INC., )  
a Georgia corporation, )  
 )  
Defendants. )

No. 70-C-44.

**FILED**

MAR 6 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER REMANDING TO STATE COURT

NOW, on this 5<sup>th</sup> day of March, 1970, there came on for consideration the plaintiffs' Motion to Remand. The Court considered the brief in support thereof, and the attorney for AAA Enterprises, Inc., being in accord, the said Motion to Remand should be granted for the reason that the co-defendant, Rolling Homes Industries, Inc., did not join in said removal from the District Court of Tulsa County, Oklahoma, to the United States District Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiffs' Motion to Remand is sustained and this case remanded to the District Court of Tulsa County, State of Oklahoma.

Luther Bohanon  
Judge Luther Bohanon

APPROVED:  
David H. Sanders  
David H. Sanders,

Attorney for Plaintiffs.

Ray H. Wilburn  
Ray H. Wilburn,  
Attorney for AAA Enterprises, Inc.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARY LUE HOLCOMB, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RICHARD A. PRICHARD, )  
 )  
 Defendant. )

NO. 68-C-170

**FILED**

MAR 9 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER OF DISMISSAL

On this 9 day of March, 1970, upon the written application of the parties for a dismissal with prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that the cause of action of the plaintiff filed herein against the defendant be and same is hereby dismissed with prejudice to any future action.

(s) Fred Laugherty  
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:

Thomas A. Wallace  
Thomas A. Wallace,  
Attorney for the Plaintiff,

Alfred B. Knight  
Alfred B. Knight  
Attorney for the Defendant.

C  
O  
P  
Y

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JACK W. KELLEY, ET AL., )  
 )  
 Plaintiffs, )  
 vs. )  
 )  
 BANK BUILDING AND EQUIPMENT )  
 CORPORATION OF AMERICA, )  
 )  
 Defendant and )  
 Third Party Plaintiff, )  
 and )  
 )  
 COMMERCIAL UNION INSURANCE COMPANY, )  
 )  
 Defendant, )  
 vs. )  
 )  
 ADVANCE GLASS COMPANY, )  
 a corporation, )  
 )  
 Third Party Defendant. )

No. 68-C-189

**FILED**

MAR 9 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

J U D G M E N T

Based upon, and in accordance with the Findings of Fact and Conclusions of Law as between the plaintiffs and the defendant, and the defendant and third party plaintiff and third party defendant, Advance Glass Company, a corporation, it is,

The Judgment of this Court that third party defendant, Advance Glass Company, a corporation, have judgment against the defendant, Bank Building and Equipment Corporation of America, and the plaintiffs, Jack W. Kelley, Alfred R. Tandy, and William H. Morris, doing business as a joint venture under the name Bank Building Joint Venture, in the sum of \$13,846.87.

It is the further Judgment of this Court that third party defendant, Advance Glass Company, a corporation, have a lien upon the sum of \$13,846.87 on deposit in the registry of the Clerk of the District Court of Tulsa County, State of Oklahoma, in cause No. 11,673 styled Advance Glass Company, a corporation, plaintiff v. Bank Building and Equipment Corporation of America, Inc., et al., defendants, pending in said Court, said sum having been deposited by the defendant Bank Building and Equipment Corporation.

It is the further Judgment of this Court that upon this Judgment becoming final, the Clerk of said District Court in the above styled cause pending in the District Court of Tulsa County, Oklahoma, pay to said third party defendant, Advance Glass Company, a corporation, from the fund on deposit in the registry of the Clerk of the District Court in and for Tulsa County, Oklahoma, the sum of \$13,846.87.

It is the further Judgment of this Court that the Judgment shall earn interest at the rate of ten percent (10%) per annum from this date forward, the same to be paid out of and from the deposit made with the Clerk of the District Court of Tulsa County, Oklahoma, until paid.

Dated this 6 day of March, 1970.

*Arthur Robinson*  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JACK W. KELLEY, ET AL., )  
 )  
 Plaintiffs, )  
 vs. )  
 )  
 BANK BUILDING AND EQUIPMENT )  
 CORPORATION OF AMERICA, )  
 )  
 Defendant and )  
 Third Party Plaintiff, ) No. 68-C-189  
 and )  
 )  
 COMMERCIAL UNION INSURANCE COMPANY, )  
 )  
 Defendant, )  
 vs. )  
 )  
 ADVANCE GLASS COMPANY, )  
 a corporation, )  
 )  
 Third Party Defendant. )

FILED

MAR 10 1970

M. M. EARL, CLERK  
U. S. DISTRICT COURT

J U D G M E N T

Based upon, and in accordance with the Findings of Fact and Conclusions of Law as between the plaintiffs and the defendant, Bank Building and Equipment Corporation of America it is,

The Judgment of the Court that plaintiffs take nothing and Judgment is hereby rendered in favor of the defendant, Bank Building and Equipment Corporation of America together with its costs.

Dated this 6<sup>th</sup> day of March, 1970.

*Luther Bohannon*  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JEWEL C. LOWE, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 AETNA LIFE INSURANCE COMPANY, )  
 )  
 Defendant. )

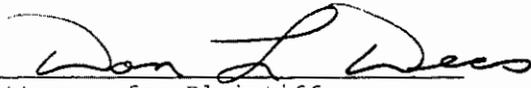
MAR 9 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

No. 69-C-231

DISMISSAL WITH PREJUDICE

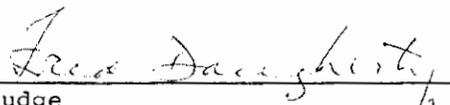
COMES NOW the plaintiff and dismisses his cause of  
action with prejudice against the defendant Aetna Life  
Insurance Company, having settled and compromised his claim  
for the sum of \$500.00

  
Attorney for Plaintiff

ORDER OF DISMISSAL

NOW on this 9 day of March, 1970, it appearing to  
the court that plaintiff and defendant have settled the  
above captioned cause by defendant paying plaintiff \$500.00  
in full settlement of any and all claims in said cause.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED  
that said cause be dismissed with prejudice.

  
Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JOHN S. HUDGENS and )  
ERNEST H. RIDDLE, Co- )  
Guardians of the person and )  
estate of MIKE DAVIS, a minor, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
COOK INDUSTRIES, INC., )  
a Foreign Corporation, )  
 )  
Defendant. )

No. 69-C-306

FILED

MAR 9 1970

ORDER REMANDING CASE

M. M. EWING, CLERK  
U. S. DISTRICT COURT

Upon consideration of Plaintiffs' Motion to Remand in the above case and the briefs in support of and in opposition to the Motion, the Court finds that the said Motion should be sustained and the case remanded to the state court from which it was removed.

The case removed to this Court involves non-diverse parties in that Defendant and the Plaintiff, John S. Hudgens, are both residents and citizens of the State of Tennessee. The Petition for Removal and the allegation of the existence of federal diversity jurisdiction are based upon a collateral attack upon the validity of the appointment of John S. Hudgens as co-guardian of Mike Davis, a minor of the age of 17 years.

In Corpus Juris Secundum the following general rule is stated with respect to collateral attack upon a decree appointing a guardian:

"Collateral attack. Where the court has jurisdiction in the premises, its judgment, order, or decree appointing a guardian and adjudicating any other questions involved cannot be collaterally attacked. The only question that is raised by a collateral attack is whether, on the face of the application and the order, the proceeding was void;

• • •  
Against a collateral attack all presumptions are in

favor of the regularity of the proceedings; and it will be presumed that all the facts necessary to vest the court with jurisdiction to make such appointment had been found to exist before it was made . . ."

Defendant's attack on the appointment of John S. Hudgens consists of the following elements: First. That no notice of the hearing was given to the ward. Second. That the ward is above the age of 14 and was not given the right to nominate his own guardian. Third. That the oath of John S. Hudgens to the Letters of Guardianship was taken before a Notary Public whose commission had previously expired, thus, making the Letters of Guardianship invalid.

First, as to notice, 58 Okl.St. Ann. §761 requires that before the making of the appointment the judge must cause,

" . . . such notice as he deems reasonable to be given to the relatives of the minor residing in the county, to any person having care of such minor and, if he is above the age of fourteen years, to the minor himself."

By Order Nunc Pro Tunc of March 4, 1970, it is stated that "all necessary persons have been given reasonable notice of this hearing," thus satisfying the requirements of 58 Okl.St. Ann. §761.

Second, as to nomination, the record discloses that the minor-ward is 17 years old. This fact entitles him, under 58 Okl.St. Ann. §762, to nominate his own guardian. The Defendant contends that the record of the guardianship proceedings fails to disclose the existence of two necessary elements in this regard: (1) Notice to the ward of the hearing. (2) No waiver of nomination appears of record. As to (1), supra, "all necessary persons have been given reasonable notice" according to the Order Nunc Pro Tunc above referred to and the ward is a necessary person. In addition, both of the above two grounds are insufficient grounds for a collateral attack on the appointment. In the case of Powers v. Brown, 252 Pac. 27 (1926), where the minor was also over 14, the

following language is found:

"In *Hathaway et al. v. Hoffman et al.*, 53 Okl. 72, 153 P. 184, it is said:

'The appointment of a guardian for minors by a county court imports jurisdiction in the court so to do, and it will be inferred from the fact that such an appointment was made that all the facts necessary to vest the court with jurisdiction to make the appointment had been found to exist before the same was made.'

The records of the county court being silent as to notice to the minor over 14 years of age, and silent as to said minor's nomination of her guardian, or an actual waiver of that right, it is to be presumed, in aid of the jurisdiction to make the appointment, that the court before making the appointment found the fact of a nomination by said minor or a waiver of that right in person." 252 Pac. 27 at p. 29.

And in the case of *Greer et al. v. McNeal et al.*, 69 Pac. 891 (1901),

it was held:

"It is not necessary that in proceedings properly before the probate court and within its jurisdiction its judgments shall contain a recitation of the facts upon which the jurisdiction of the court depends." 69 Pac. 891.

Moreover, the Order Nunc Pro Tunc above referred to recited the mental and physical condition of the minor at the time and now which rendered him incapable of making a nomination.

Third, as to the guardian's oath, the aforementioned Order Nunc Pro Tunc states that the oath of John S. Hudgens to the Letters of Guardianship was taken before a Notary Public whose commission had not in fact expired. The original county court proceedings show the oath to have been taken on April 22, 1969 before a Notary whose commission is stated to have expired April 8, 1968. However, the Order Nunc Pro Tunc recites that what actually occurred was a clerical error in stating the date of expiration of the commission and said Order corrected said error nunc pro tunc to show that the said commission expires April 8, 1972 instead of April 8, 1968,

"the date of 8 April 1972 being the correct expiration date of the commission of the Notary Public at the time said oath was executed." Order No. PG 69-99, District Court of Kay County, State of Oklahoma, p. 4. The error in the expiration date of the commission being clerical in nature and misleading no one, cannot be a basis for invalidating the proceedings. Jones v. Prairie Oil & Gas Co., (Okla.) 273 U.S. 195 at p. 198, 71 L.Ed. 602 at p. 608, 47 S.Ct. 338 (1927).

For the foregoing reasons, the appointment of John S. Hudgens as co-guardian of the estate of Mike Davis is not subject to collateral attack in this Court.

The remaining issue presented in the instant case is whether an action may be removed to Federal Court on the ground that a non-resident co-guardian has been appointed for the purpose of defeating federal diversity jurisdiction. It has been held that if the fiduciary is appointed solely to create diversity, federal jurisdiction cannot be sustained, McSparran v. Weist, 402 F.2d 867 (Third Cir. 1968); Ferrara v. Philadelphia Laboratories, Inc., 393 F.2d 934 (Second Cir. 1968); Gilchrist v. Strong, 299 F.Supp. 804 (W.D. Okl. 1969). However, this rule is confined to situations where the appointment is made to invoke federal jurisdiction and does not apply where the purpose for the appointment is to avoid such jurisdiction. A lack of diversity of citizenship may be obtained or "manufactured" to defeat federal jurisdiction. Mecom v. Fitzsimmons Drilling Company, 47 F.2d 28 (Tenth Cir. 1931), reversed 284 U.S. 183, 76 L.Ed. 233, 52 S.Ct. 84 (1931). In the Mecom case the Court said:

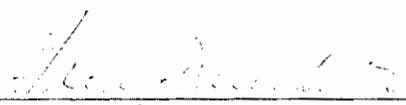
"The case comes to no more than this: There being, under Oklahoma law, a right to have a non-resident appointed administrator, the parties in interest lawfully applied to an Oklahoma court, and petitioner was appointed administrator, with the result that the cause of action for the wrongful death of decedent vested in him. His citizenship being the same as that of one of the defendants there was no right of removal to the federal court; and it is immaterial that the motive for obtaining his appointment and qualification was that he might thus be clothed with a right to institute an action which could not be so removed on the ground of diversity of citizenship." 76 L.Ed. 233 at p. 239.

58 Okl.St. Ann. § 772 provides that more than one guardian may be appointed. 58 Okl.St. Ann. § 775 permits the appointment of a non-resident as guardian upon written request of the father and mother, as was done in this case in the county court proceedings. Where both guardians have qualified, as herein, "the authority vested in them is joint and must be exercised by both together." Sargent v. Shaver, 172 Pac. 445 at p. 446 (Okl. 1918). Therefore, the Tennessee co-guardian is a necessary party plaintiff in the litigation of the minor Plaintiff's cause of action against the Defendant, also a Tennessee resident.

For the foregoing reasons it is concluded that the diverse citizenship necessary for federal jurisdiction under 28 U.S.C.A. 1332(a)(1) is lacking in this case.

Accordingly, it is ordered that this case be remanded to the District Court for Creek County, Oklahoma, Drumright Division, and the Clerk of this Court is directed to take the necessary action to so remand the same.

Dated this 7 day of March, 1970.

  
 Fred Daugherty  
 United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

EMMETT R. DANIELS,

Petitioner,

vs.

TULSA COUNTY DISTRICT COURT and  
STATE OF OKLAHOMA,

Respondents.

No. 70-C-50 Civil

FILED

MAR 9 1970

O R D E R

M. M. EWING, CLERK  
U. S. DISTRICT COURT

Petitioner, an Oklahoma prisoner, presents two grounds for his application for a writ of habeas corpus pursuant to 28 U.S.C.A. § 2254: (1) The state has denied him a casemade of his trial and (2) From the time of his arrest on July 1, 1949 to his arraignment on July 20, 1949, he was not represented by counsel and was interrogated during that time "day and night."

The precise issues set out above were raised by Petitioner before another Judge of this Court in Daniels v. Page, No. 69-C-105 Civil, United States District Court, Northern District of Oklahoma. They were there correctly determined adversely to him, and no appeal from the dismissal of his petition was taken. In these circumstances, the Court finds 28 U.S.C.A. § 2244 to be applicable. This statute reads:

"(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus and the petition presents no new ground not theretofore presented and determined, and the judge of court is satisfied that the ends of justice will not be served by such inquiry."

The issues raised by Petitioner here have been previously determined by another Judge of this Court, the petition presents no new ground, and the Court is satisfied that the ends of justice will not be served by inquiry herein.

Petitioner's Petition for a Writ of Habeas Corpus is dismissed.

It is so ordered this 5 day of March, 1970.

  
\_\_\_\_\_  
Fred Daugherty  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

THOMAS NEELEY, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 PHILLIPS INDUSTRIES, INC., )  
 )  
 Defendant. )

No. C-69-79

**FILED**

MAR 10 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

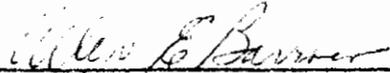
JUDGMENT

This matter came for trial on the 11th day of March, 1970, and after a jury of twelve people was selected, the parties arrived at a proposition of settlement subject to the approval of the court, and after each of the parties, plaintiff and defenanat, had waived jury for the balance of the proceedings, and after the court had examined the settlement proposition and had heard the statements of counsel, and being advised in the premises, the court finds as follows:

1. Upon request of the plaintiff and consent of the defendant, the court finds that judgment of plaintiff and against the defendant should be entered in the sum of \$6,000.00.

2. The court further finds that according to stipulation between the parties, certain monies are owed from any amount awarded the plaintiff to the State Insurance Fund of the State of Oklahoma for Workmen's Compensation benefits heretofore paid to plaintiff and that any payment by defendant of such money to the State Insurance Fund shall constitute a credit to the defendant on the judgment herein entered for the plaintiff.

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff,  
Thomas Neeley, have and recover judgment of and from the defendant  
herein for and in the sum of \$6,000.00.

  
\_\_\_\_\_  
JUDGE OF THE UNITED STATES  
DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF  
OKLAHOMA.

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

DONALD PLASKETT,

Petitioner,

vs.

RAY H. PAGE, Warden, Oklahoma  
State Penitentiary, McAlester,  
Oklahoma,

Respondent.

NO. 70-C-16

**FILED**

MAR 10 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

O R D E R

The Court has before it a petition for writ of habeas corpus wherein petitioner states he was convicted for attempted second degree burglary (after former conviction of a felony) in Tulsa County District Court, Case No. 22071. The appearance docket and Judgment and Sentence in said case show that the trial was conducted on November 17, 1966, and the accused sentenced on November 29, 1966, to a term of five years imprisonment in the State Penitentiary at McAlester, Oklahoma.

Petitioner alleges a deprivation of his constitutional rights in the following particulars, to-wit:

1. That the denial of a post-conviction appeal by the Oklahoma Court of Criminal Appeals deprived petitioner of his right to appeal, and that said denial constituted a breach of his constitutionally guaranteed rights to due process of law and equal protection of the law. Petitioner bases this claimed constitutional breach on his allegation that the Oklahoma Court of Criminal Appeals should have granted him an appeal out of time pursuant to 22 O.S.A. § 1073(c) (Supp. 1969); especially, petitioner alleges, when his failure to exercise his right to appeal within the time provided in 22 O.S.A. § 1054 (Supp. 1969) resulted from the arbitrary actions of his retained counsel who petitioner understood would perfect an appeal.
2. That petitioner was not provided assistance of counsel to assist him with his petition for appeal out of time, although petitioner had shown the Oklahoma Court of Criminal Appeals that he was an indigent without funds to obtain counsel.

Based on a careful review of the petition, response and supporting records, this Court finds that the Oklahoma Court of Criminal Appeals denied petitioner's petition for appeal out of time on March 26, 1969, and denied his petition for writ of habeas corpus on October 15, 1969; and thus, petitioner has exhausted his state remedies. The Court further finds that petitioner knew of his right to appeal, and that petitioner was released from confinement from December 2, 1966, to June 29, 1967, on appeal bond which covers the time for perfecting an appeal.

This Court finds petitioner's claims to be wholly without merit, and that the petition for writ of habeas corpus of Donald Plaskett should be denied. A state's refusal to grant an appeal out of time, where an appeal was not perfected within the mandatory time provided by state law, does not violate the constitution, unless an appeal was not perfected because of some incapacity or interference of state officials, or lack of assistance of counsel. *Brown v. Allen*, 344 U.S. 443, 485-86 (1953). It has repeatedly been held that the time for perfecting an appeal under 22 O.S.A. § 1054 (Supp. 1969) is mandatory. *Walker v. State*, 386 P.2d 643 (Okla. Crim. App. 1963); *Houston v. State*, 409 P.2d 377 (Okla. Crim. App. 1965). Petitioner waived his right to appeal when he did nothing while free on bail to assure that his retained counsel was taking appropriate action to perfect such appeal.

Petitioner's claimed denial of counsel on his petition for post-conviction appeal is also without merit. The courts are not obligated to appoint counsel for prisoners seeking post conviction relief. *Johnson v. Avery*, 393 U.S. 483, 488 (1969); *Retley v. Crouse*, 365 F.2d 320 (10th Cir. 1966).

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus of Donald Plaskett be and the same is hereby denied.

Dated this 10th day of March, 1970, at Tulsa, Oklahoma.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

United States of America,

Petitioner,

vs.

Leonard Cecil Jones,

Patient.

Civil No. 70-C-58

**FILED**

MAR 11 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

On this date, it appearing from the reports received by this Court (which are filed coincident herewith) that both of the examining physicians at the National Institute Mental Health Clinical Research Center, Fort Worth, Texas, have determined that the above named patient is not one who is likely to be rehabilitated through treatment, it is hereby ORDERED that these proceedings be dismissed and that said patient be discharged immediately from the care and custody of the Surgeon General.

Entered this 11th day of March, 19 70.

  
United States District Judge

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
PUBLIC HEALTH SERVICE  
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

Date: March 5, 1970  
Reply to  
Attn of:

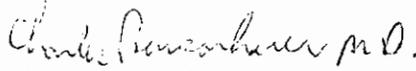
Subject: Examination of JONES, Leonard Cecil, 399 09-FTW-NARA-III-S  
NARA No. 02698, Civil No. 70 C 58

To: Mr. Lawrence A. McSoud  
United States Attorney  
460 U. S. Courthouse  
3d and Boulder Streets  
Tulsa, Oklahoma 74103

THRU: Warren P. Jurgensen, M.D.  
Chief, NIMH Clinical Research Center

I have completed my examination of Mr. Leonard Cecil Jones. In my opinion he is a narcotic addict as defined by law, but he is not likely to be rehabilitated through treatment at this time.

I do not recommend commitment for treatment.

  
Charles Bensonhaver, M.D.  
Staff Psychiatrist  
NIMH Clinical Research Center  
3150 Horton Road  
Fort Worth, Texas 76119



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
PUBLIC HEALTH SERVICE  
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

Date: March 6, 1970  
Reply to  
Attn of:

Subject: Examination of JONES, Leonard Cecil, 3 99 09-FTW-NARA-III-S  
NARA No. Q2698, Civil No. 70 C 58

To: Mr. Lawrence A. McSoud  
United States Attorney  
Northern District of Oklahoma  
460 United States Court House  
Third and Boulder Streets  
Tulsa, Oklahoma 74103

Thru: Warren P. Jurgensen, M. D.  
Chief, NIMH Clinical Research Center

I have completed my examination of Mr. Leonard Cecil Jones. In my opinion he is a narcotic addict as defined by law, but he is not likely to be rehabilitated through treatment at the present time. I do not recommend commitment for treatment.

*Mona Finley, M.D.*  
Mona Finley, M. D.  
Senior Physician  
NIMH Clinical Research Center  
3150 Horton Road  
Fort Worth, Texas 76119



# United States District Court

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 69-C-211

Christine Baker and  
A. L. Baker

vs.

Norman A. Cotner, M.D., and  
B. F. Hutchins, M.D.

JUDGMENT  
FILED

MAR 13 1970

M. M. EWING, CLERK

This action came on for trial before the Court and a jury, Honorable Fred Daugherty

, United States District Judge, presiding, and the issues having been duly tried and

the jury having duly rendered its verdict,

It is Ordered and Adjudged that the plaintiff, A. L. Baker, recover judgment against Norman A. Cotner, M.D., and B. F. Hutchins, M.D., defendants, in the amount of \$3,580.74, together with interest and costs.

Dated at Tulsa, Oklahoma, this 13th day  
of March, 19 70.

M. M. EWING

Clerk of Court

*By M. M. Ewing*  
*Deputy Clerk*

United States District Court

FOR FILE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 69-C-211

Christine Baker and  
A. L. Baker

vs.

Norman A. Cotner, M.D., and  
B. F. Hutchins, M.D.

JUDGMENT  
1970

MAR 13 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

This action came on for trial before the Court and a jury, Honorable Fred Daugherty

, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that the plaintiff, Christine Baker, recover judgment against Norman A. Cotner, M.D., and B. F. Hutchins, M.D., defendants, in the amount of \$3,919.26, together with interest and costs.

Dated at Tulsa, Oklahoma, this 13th day  
of March, 19 70.

M. M. EWING

Clerk of Court

By *William J. ...*  
*...*

**United States District Court**

FOR THE

NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 69-C-246

**William Gaines**

vs.

**Milex, Inc., a corporation**

JUDGMENT

This action came on for trial before the Court and a jury, Honorable **Fred Daugherty**, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged **that the plaintiff, William Gaines, recover judgment against the defendant, Milex, Inc., a corporation, in the amount of \$16,000.00, together with interest and costs.**

Dated at **Tulsa, Oklahoma**, this **13th** day  
of **March**, 19 **70**.

MILAM M. EWING  
Clerk of Court  
By *Ben B. Ballenger*  
**Ben B. Ballenger, Deputy**

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RHODA M. HUNTER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 EMMET HOLLY BURKE; and BYRON )  
 JACKSON PUMP, Division of )  
 BORG-WARNER CORPORATION, )  
 )  
 Defendant, )  
 )  
 and )  
 )  
 FARMERS INSURANCE GROUP, )  
 a Foreign Corporation, )  
 )  
 Garnishee. )

FILED  
MAR 13 1970

H. M. EWING, CLERK  
U.S. DISTRICT COURT

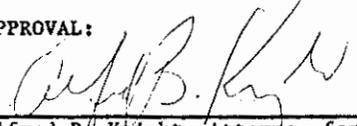
NO. 69-C-274 ✓

ORDER OF DISMISSAL

ON this 13th day of March, 1970, upon the written application of the parties for a dismissal with prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDRED, ADJUDGED AND DECREED BY THE COURT that the cause of action of the plaintiff filed herein against the defendants be and the same is hereby dismissed with prejudice to any future action.

  
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVAL:  
  
Alfred B. Knight, Attorney for Defendant, Farmers Insurance Exchange

  
Richard McGee, Attorney for the plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

WILBERT MONTELL BROWN, )

Plaintiff, )

vs. )

S. M. FALLIS, etc., et al., )

Defendants. )

70-C-54

**FILED**

MAR 13 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER DISMISSING ACTION

Upon consideration by the three Judge Court convened herein and the hearing of this cause on the application for preliminary injunction and on the merits, by agreement, on consideration of all the evidence, arguments and briefs,

IT IS ORDERED, ADJUDGED AND DECREED that this action should be and is hereby dismissed as to all defendants.

The findings of fact, conclusions of law and the reasoning of the Court for this judgment will be filed by the Court promptly hereafter.

ENTERED this 13th day of March, 1970.

*William J. Holloway, Jr.*

WILLIAM J. HOLLOWAY, JR.  
Circuit Judge

*Luther Bohanon*

LUTHER BOHANON  
United States District Judge

*Allen E. Barrow*

ALLEN E. BARROW  
United States District Judge

UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF OKLAHOMA.

FRANCIS WALKER . . . . Plaintiff, )  
vs. )  
BILLY W. LOOPER and GEORGE'S )  
LIVE POULTRY, INC., a corporation, . . . . Defendants.)

No. 69 C 245

**FILED**

MAR 17 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

DISMISSAL WITH PREJUDICE

Comes now the plaintiff, FRANCIS WALKER, and dismisses the  
above styled and numbered cause of action with prejudice to the bringing  
of a future action.

Dated this 9<sup>th</sup> day of March, 1970.

Francis Walker  
Plaintiff

TODD & ASTON

By: Rayson D. Todd  
Attorneys for Plaintiff

Come now the defendants, by and through their counsel of record,  
and consent and agree to the dismissal of the above styled and numbered cause  
of action with prejudice to the bringing of any future action.

HUDSON, WHEATON & BRETT

By: Harriet B. Brett  
Attorneys for Defendants.

IT IS HEREBY ORDERED that the above styled and numbered cause  
be dismissed with prejudice.

Luther Bohannon  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JESSE LEE DEHANAS, MARY LOU DEHANAS  
WORKS, and JOSEPH E. MOUNTFORD,  
Plaintiffs,

vs.

WILLIAM EMMETT RODGERS, JR.,  
FAY THERAN RODGERS LLOYD, and  
VIRGIL N. HARRINGTON, Area Director,  
Bureau of Indian Affairs, United  
States of America,  
Defendants.

CIVIL NO. 69-C-241

FILED *js*

MAR 19 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

NOTICE OF DISMISSAL

Come now the plaintiffs, Jesse Lee DeHanas, Mary Lou DeHanas Works, and Joseph E. Mountford, and hereby give notice to each one of the defendants named herein of its dismissal without prejudice of the above and foregoing cause.

*Jesse Lee DeHanas*  
Jesse Lee DeHanas  
*By Grant E. Mountford*  
his attorney  
*Mary Lou DeHanas Works*  
Mary Lou DeHanas Works  
*Joseph E. Mountford*  
Joseph E. Mountford

PLAINTIFFS

IEU:1g  
2/19/70

**FILED**

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAR 20 1970

EARL MONROE STEPHEN, )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 ARCADE LAUNDRY AND DRY CLEANING )  
 COMPANY, an Oklahoma Corporation, )  
 )  
 Defendant )

M. M. EWING, CLERK  
U. S. DISTRICT COURT

Civil Action

No. 69-C-268

ORDER DISMISSING ACTION WITH PREJUDICE

Now on this 20 day of March, 1970, there having been presented to the undersigned United States District Judge the joint motion filed herein seeking an order of this Court dismissing this action with prejudice and at the cost of the plaintiff, and there being no objection interposed to the entry of such an order:

IT IS HEREBY ORDERED BY THIS COURT that the cause of action contained in the Complaint filed herein in the above styled and numbered matter be and the same is hereby dismissed with prejudice and at the cost of the plaintiff.



United States District Judge

APPROVED:

EDGAR, EAST, MANIPELLA & WILLIAMS

By Samuel P. Manipella  
Attorneys for plaintiff

UNGERMAN, GRABEL, UNGERMAN & LEITER

By Paul Weinstein  
Attorneys for defendant

LAW OFFICES  
UNGERMAN,  
GRABEL,  
UNGERMAN  
& LEITER  
  
SIXTH FLOOR  
WRIGHT BUILDING  
TULSA, OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

MORTIMER SINGER,  
Plaintiff,

vs.

SMITH ENGINEERING COMPANY,  
INC.,  
Defendant.

)  
)  
) 70-C-33  
)  
)  
)  
)  
)  
)  
)

**FILED**

MAR 20 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER SUSTAINING DEFENDANT'S  
MOTION TO TRANSFER

The Court has for consideration the Motion to Transfer pursuant to 28 U.S.C.A. §1404(a), the briefs in support and opposition thereto, and having carefully perused the entire file, being fully advised in the premises, finds:

Title 28 U.S.C.A. §1404(a) provides:

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

The alleged accident in the instant case took place in the State of Kansas; the defendant corporation's principal place of business is in the State of Kansas; the substantive law to be applied in this case is the law of the State of Kansas; the plaintiff is a citizen of the State of California; there is no allegation in the complaint, answer, motions or briefs that the contract entered into between plaintiff and defendant was made in the State of Oklahoma.

The Court further finds that plaintiff's theory relative to defendant bringing Zimmerman in as a third-party defendant is not well taken. Third-party proceedings are ancillary in nature. If the Court has jurisdiction of the principal action,

it need not determine the existence of independent jurisdictional grounds. Thus, the federal court would not be ousted of jurisdiction by the institution of a third-party action.

The Court further finds the plaintiff's choice of forum assumes lesser importance when none of the conduct complained of occurred in the forum plaintiff has selected.

A transfer may be ordered under §1404(a) upon a lesser showing of inconvenience than would be required to warrant a dismissal under the doctrine of forum non conveniens.

The Court, therefore, finds, for the convenience of witnesses and parties, in the interest of justice, this cause of action should be transferred to the United States District Court for the District of Kansas.

IT IS, THEREFORE, ORDERED that the defendant's motion to transfer pursuant to §1404(a) be and the same is hereby sustained and this cause of action is hereby transferred to the United States District Court for the District of Kansas.

ENTERED this 30<sup>th</sup> day of March, 1970.



---

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HARTFORD ACCIDENT AND INDEMNITY COMPANY, )  
a corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WINDFIELD F. IMEL and DOROTHY L. IMEL, )  
 )  
Defendants. )

NO. 70-C-48

**FILED**

MAR 20 1970

JOURNAL ENTRY OF JUDGMENT

M. M. EWING, CLERK  
U. S. DISTRICT COURT

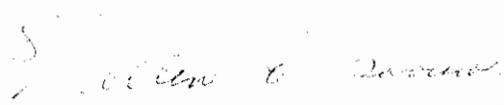
Now, on this the 20<sup>th</sup> day of March, 1970, the above entitled action comes on before the Honorable Allen E. Barrow, Chief Judge of the United States District Court for the Northern District of Oklahoma, in its regular order, pursuant to assignment, and that when the same was called, plaintiff appeared by its personal representative and by its attorneys Fenton, Fenton, Smith, Reneau & Moon, by Robert J. Petrick, and that the defendants, Windfield F. Imel and Dorothy L. Imel, appeared not.

That the Court, having heard the statements of counsel for the plaintiff, having heard the oral testimony, the witnesses sworn and examined in open Court and having reviewed the evidence introduced on behalf of the plaintiff and having reviewed the Court file in this matter and being well advised in the premises finds that the defendants Windfield F. Imel and Dorothy L. Imel were each duly served with a copy of the summons in this action and a copy of the plaintiff's complaint on February 11, 1970; that on the 17<sup>th</sup> day of March, 1970, at the request of the plaintiff herein properly made, the Clerk of the United States District Court for the Northern District of Oklahoma certified the entry of default of Windfield F. Imel and Dorothy L. Imel, defendants herein; that Windfield F. Imel and Dorothy L. Imel, have always failed to file an answer or otherwise plead to the complaint of the plaintiff; that said Windfield F. Imel and Dorothy L.

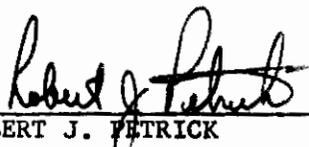
Imel are not infants, incompetent persons nor in the Military Service of the United States.

The Court further finds that the allegations contained in the complaint of the plaintiff are true and correct and that the judgment in the Superior Court of the State of California in and for the County of San Diego has not been satisfied or set aside and is final, conclusive and enforceable in the State of California. That the plaintiff is entitled to a judgment against the defendants, Windfield F. Imel and Dorothy L. Imel, jointly and severally in the total sum of \$242,037.64 with interest thereon at the rate of 10% per annum from the date of this judgment plus the costs incurred in this action by the plaintiff in the sum of \$22.92.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff have and recover of and from the defendants, Windfield F. Imel and Dorothy L. Imel, jointly and severally, the sum of \$242,037.64, with interest thereon at the rate of 10% per annum from the date of this judgment, together with the costs in the sum of \$22.92 for which let execution issue.

  
\_\_\_\_\_  
JUDGE OF THE UNITED STATES DISTRICT COURT

APPROVED:

  
\_\_\_\_\_  
ROBERT J. PETRICK OF

FENTON, FENTON, SMITH, RENEAU & MOON  
405 Investors Capital Building  
Oklahoma City, Oklahoma 73102

Attorneys for Plaintiff



Plaintiff, in her motion to remand, alleges the following grounds:

1. Defendant Ford Motor Company did not remove within 20 days, pursuant to 28 U.S.C.A. §1446;
2. There is not separate independent claim;
3. There is no fraudulent joinder.

Ab initio, the Court will direct its attention to the contention that the petition for removal was not timely filed. The Court finds that 28 U.S.C.A. §1446 has been amended to provide removal time of 30 days instead of 20 days, and thus the petition for removal was timely filed.

The Court further finds that every doubt as to the right of removal under Section 1441 (c) should be resolved in favor of remand. In this connection, the Court feels that the facts in this case should be briefly summarized. Plaintiff brings this action to recover for wrongful death of her decedent as a result of injuries he allegedly sustained on November 17, 1968, when he hit his head on the tailgate of a 1968 Ford pickup truck and that such injuries were caused by the defect in the manufacture of said truck. The action is based on breach of an express and implied warranty. Plaintiff further alleges that on December 24, 1968, the decedent was looking under the hood of another pick-up truck owned by the defendant, Le Roy Brown, when brown allegedly negligently and carelessly blew the horn, frightening plaintiff's decedent, causing him to strike his head once or twice on parts of the truck. Plaintiff further alleges that Thomas J. Brown departed this life on the 6th day of March, 1969, as a result of said injuries. Plaintiff alleges that the combining and concurring negligence of each defendant was the proximate cause of the death of her decedent.

The Court finds that absent separate and independent claims the case is not removable. In *American Fire & Casualty Co. v.*

Finn, 341 U.S. 6, the Supreme Court of the United States aid, in reviewing §1441(c):

\*\*\*where there is a single wrong to plaintiff, for which relief is sought, arising from an interlocked series of transactions, there is no separate or independent claim or cause of action under §1441(c)."

The Court finds that plaintiff alleges in her complaint only a single claim, namely the wrongful death of the decedent. The wrong for which plaintiff seeks relief arises from an interlocked series of transactions which are alleged with some particularity. Plaintiff alleges one claim for damages and does not seek to recover a money award from each defendant separately. This Court does detect several controversies but can only envision one possible recovery.

The decisive question then is whether a claim against one defendant who has inflicted personal injury upon the plaintiff's decedent and a claim against a different defendant who, through subsequent conduct, has re-injured or aggravated the original injuries constitute "separate and independent claims\*\*\*." The decisions reflect that in both successive and concurrent negligence situations, the claims for relief are not "separate and independent". Gordon v. Manzella (USDC WE Mo., 1967) 270 F.Supp. 40.

Turning to the alleged fraudulent joinder, the Court finds that in LA Moore's Federal Practice ¶0.161[2] it is stated:

"The joinder may be fraudulent if the plaintiff fails to state a cause of action against the resident defendant, and the failure is obvious according to the settled rules of the state. If there is a possibility that the plaintiff has stated a cause of action, the joinder is not fraudulent and the cause should be remanded.

The Court finds, that under the allegations of the complaint, taken in the light most favorable to the plaintiff, plaintiff has stated a cause of action against both defendants as joint tort feasons for the reasons hereinabove set forth. This court will not pre-try, as a matter of course, doubtful issues of fact

to determine removability; the issue must be capable of summary determination and be proven with complete certainty. *Dodd v. Fawcett Pub., Inc.* (10th Cir. 1964) 329 F.2d 82.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Motion to Remand of the plaintiff be and the same is hereby sustained for the reasons hereinabove stated.

IT IS FURTHER ORDERED that this cause of action be and the same is hereby remanded to the District Court of Creek County, Oklahoma.

ENTERED this 20<sup>th</sup> day of March, 1970.



---

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF OKLAHOMA

United States of America,

Plaintiff,

vs.

Victor G. Franklin and Elizabeth E.  
Franklin, Tommy J. Korman and Norma L.  
Korman, Consolidated Finance Corporation,  
Billie Joe Sloan and Linda L. Sloan, and  
Roger Hardesty,

Defendants.

Civil No. 69-C-273

FILED

MAR 23 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

THIS MATTER COMES on for consideration this 20<sup>th</sup> day of March, 1970. The defendants, Victor G. Franklin and Elizabeth E. Franklin, Tommy J. Korman and Norma L. Korman, Consolidated Finance Corporation, Billie Joe Sloan and Linda L. Sloan, and Roger Hardesty appearing not.

The Court being fully advised and having examined the file herein finds that legal service by publication was made upon the defendants, Victor G. Franklin and Elizabeth E. Franklin, Tommy J. Korman and Norma L. Korman, Consolidated Finance Corporation, Billie Joe Sloan and Linda L. Sloan, as appears by Proof of Publication filed herein on March 18, 1970, and personal service was made on the defendant, Roger Hardesty, in this state, on December 9, 1969, requiring him to answer the complaint filed herein not more than (20) twenty days after service of summons, and it appearing that said defendants have failed to file an answer herein and their default has been entered by the Clerk of this Court; and

The Court further finds that this is a suit based upon a mortgage note and foreclosure on a real property mortgage securing said mortgage note on the following described real property located in Tulsa, Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Sixteen (16), Block Six (6), Suburban Acres  
Fourth Addition to the City of Tulsa, Tulsa County,  
Oklahoma, according to the recorded plat thereof;

The Court further finds that the material allegations of Plaintiff's Complaint are true and correct;

That the defendants, Victor G. Franklin and Elizabeth E. Franklin, did, on November 3, 1959, execute and deliver to the Administrator of Veterans Affairs, their mortgage and mortgage note for the sum of \$9,050.00, with interest thereon at the rate of 5 $\frac{1}{4}$ % per annum and further providing for the payment of monthly installments of principal and interest; and

It further appears that the defendants, Tommy J. Korman and Norma L. Korman, have or claim some right, title, or interest in and to the premises herein being foreclosed by reason of a General Warranty Deed #148279, dated April 25, 1963, and filed of record in the Office of the County Clerk, Tulsa County, Oklahoma, on April 26, 1963, at Book 3335, Page 568, but in this regard, plaintiff states that whatever right, title, or interest the defendants, Tommy J. Korman and Norma L. Korman, have in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendant, Consolidated Finance Corporation, has or claims some right, title, or interest in and to the premises herein being foreclosed by reason of a Second Real Estate Mortgage #252295, dated March 12, 1965, and filed of record in the Office of the County Clerk, Tulsa County, Oklahoma, on March 31, 1965, in Book 3559, Page 284, but in this regard, plaintiff states that whatever right, title, or interest the defendant, Consolidated Finance Corporation, has in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendants, Billie Joe Sloan and Linda L. Sloan, have or claim some right, title, or interest in and to the premises herein being foreclosed by reason of a General Warranty Deed #453366, dated August 20, 1968, and filed of record in the Office of the County Clerk of Tulsa County, Oklahoma, on August 23, 1968, in Book 3859, Page 2110, but in this regard, plaintiff states that whatever right, title, or interest the defendants, Billie Joe Sloan and Linda L. Sloan, have in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendant, Roger Hardesty, has or claims some right, title, or interest in and to the premises herein being foreclosed by reason of a Second Real Estate Mortgage #454906, dated August 20, 1968, and filed of record in the Office of the County Clerk for Tulsa County, Oklahoma, on September 3, 1968, in Book 3860, Page 2170, but in this regard, plaintiff states that whatever right, title, or interest the defendant, Roger Hardesty, has in and to said property being foreclosed herein is junior and inferior to the first mortgage lien of this plaintiff; and

It further appears that the defendants, Victor G. Franklin and Elizabeth E. Franklin, Tommy J. Korman and Norma L. Korman, Billie Joe Sloan and Linda L. Sloan, made default under the terms of the aforesaid mortgage

note and mortgage by reason of their failure to make monthly installments due thereon on April 1, 1969, which default has continued and that by reason thereof the defendants are now indebted to the Plaintiff in the sum of \$6,972.04, as unpaid principal, with interest thereon at the rate of 5 $\frac{1}{4}$ % per annum from April 1, 1969, until paid, plus the cost of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the plaintiff, United States of America, have and recover judgment against the defendants, Victor G. Franklin and Elizabeth E. Franklin, Tommy J. Korman and Norma L. Korman, Billie Joe Sloan and Linda L. Sloan, for the sum of \$6,972.04, with interest thereon at the rate of 5 $\frac{1}{4}$ % per annum from April 1, 1969, until paid, plus the cost of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that upon failure of the defendants to satisfy Plaintiff's money judgment herein, an Order of Sale shall issue to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, with appraisement, the above-described real property and apply the proceeds thereof in satisfaction of Plaintiff's judgment. The residue, if any, to be deposited with the Clerk of the Court to await further order of the Court.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that from and after the sale of said property, under and by virtue of this judgment and decree, the defendants and each of them and all persons claiming under them since the filing of the complaint herein be and they are forever barred and foreclosed of any right, title, interest or claim in or to the real property or any part thereof.

*William E. Benson*  
UNITED STATES DISTRICT JUDGE

APPROVED:

*S/ Robert F. Santee*  
ROBERT F. SANTEE  
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

MAR 25 1970

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ROBERT LOUIS EASTHAM, )  
 )  
 Defendant. )

M. M. EWING, CLERK  
U. S. DISTRICT COURT  
MISC. NO. 270  
Commissioner's Docket No. 1  
Case No. 86

ORDER AND COMMITMENT

This cause comes on for hearing this 25th day of March, 1970, on the motion of the defendant, Robert Louis Eastham, to determine his mental competency to understand the criminal proceedings against him and to properly assist in his own defense and further to determine whether he could aid and assist his counsel in that defense. Defendant Robert Louis Eastham, appears in person and by his court-appointed counsel, Kenneth Stainer, and appearing for the United States Nathan G. Graham, United States Attorney for the Northern District of Oklahoma, and both sides announcing ready, the court proceeded to hear the evidence on behalf of the movant and on behalf of the government including psychiatric reports and at the conclusion of all the evidence and arguments held and upon due consideration thereof, the court finds as follows:

That the defendant, Robert Louis Eastham, is presently mentally incompetent to understand the proceedings against him and to aid and assist in his own defense to the government's charge against him in this cause.

The court further finds that the defendant is presently mentally incompetent to aid and assist his counsel in his defense and that it would be inappropriate at this time to require the defendant to go forward with trial.

The court further finds that the defendant is presently mentally incompetent within the meaning of Section 4244, Title 18, U.S.C.

The court further finds that if released the defendant, Robert Louis Eastham, would endanger the safety of other members of society and the public generally including the safety of officers, the property, or other interests of the United States and that the said Robert Louis Eastham should be committed pursuant to law to the custody of the Attorney General of the United States until he shall be mentally competent to stand trial or until the pending charges against him are disposed of according to law.

THEREFORE, IT IS ORDERED that the defendant, Robert Louis Eastham, is hereby determined to be presently mentally incompetent to understand the proceedings against him and to aid and assist his counsel in defending the charges against him.

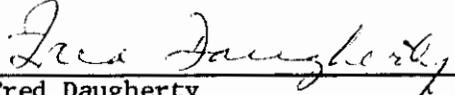
IT IS FURTHER ORDERED that the defendant poses a danger to society and the public generally including the officers, the property or other interests of the United States.

IT IS FURTHER ORDERED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative until he shall be mentally competent to stand trial, or until the pending charges against him are disposed of according to law or the condition of the said Robert Louis Eastham is so improved that if he be released he will not endanger the safety of members of society and the public generally including the officers, property or other interests of the United States.

IT IS FURTHER ORDERED that the defendant may upon his own motion apply to this court for further hearings to determine his mental competency in the future or his danger to society and the public generally including the officers, property or other interests of the United States.

IT IS FURTHER ORDERED that the custodian of the said Robert Louis Eastham make periodic reports to this court on a six months basis from date hereof on the mental status and danger to society and the public generally including the officers, property or other interests of the United States of the said defendant while said defendant is in custody as heretofore ordered.

It is so ordered this 25 day of March, 1970.

  
\_\_\_\_\_  
Fred Daugherty  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

Clyde W. Jenkins,

Plaintiff,

vs.

United States of America,

Defendant.

Civil No. 68-C-165 ✓

RECEIVED  
MAR 25 1970

O R D E R

M. M. EWING, CLERK  
U. S. DISTRICT COURT

NOW, on this 25th day of March, 1970, this cause comes on for hearing on Plaintiff's motion to vacate convictions and sentences under 28 U.S.C. 2255, said hearing being heretofore ordered by the United States Court of Appeals for the Tenth Circuit in Cause No. 101-68. Plaintiff appears in person, and by his Attorney of record, Mr. William W. Bailey, and Defendant appears by Mr. Ben Baker, Assistant United States Attorney for the Northern District of Oklahoma.

The Court, having examined the pleadings on file herein, and having heard the testimony of witnesses sworn and examined in open Court, and having heard the argument of counsel, finds that the relief sought by Plaintiff should be granted, and that the pleas of guilty entered by Plaintiff in Criminal No. 13626 and the sentences imposed upon Plaintiff by the Court on February 17, 1961, should be vacated, and Plaintiff should be re-arraigned upon the indictment in said Criminal No. 13626.

IT IS THEREFORE ORDERED BY THE COURT that the sentences imposed on Plaintiff herein, Defendant in Criminal No. 13626, on February 17, 1961, be, and the same are hereby vacated, set aside and held for naught, and that the Defendant is herewith permitted to withdraw his pleas of guilty entered on said date to each of the four counts of the indictment in said No. 13626.

IT IS THE FURTHER ORDER OF THE COURT that the Plaintiff herein, as Defendant in Criminal No. 13626 be held in the custody of the United States Marshal in lieu of an appearance bond in the sum of \$10,000, cash or surety, pending re-arraignment on the indictment in Criminal No. 13626.

*Lee Douglas*  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

STEPHEN BERNAT, )  
 )  
 Plaintiff, )  
 )  
 vs. ) Civil Action No. 69-C-109  
 )  
 JACK KLEIN, d/b/a Town and )  
 Country Dance Studio and Club, )  
 )  
 Defendant. )

**FILED**

JOURNAL ENTRY OF JUDGMENT

NOW on this 4th day of March, 1970, the parties having appeared in person and by their attorneys of record, have consented to the entry of this decree without contest.

WHEREFORE, it is Ordered, Adjudged and Decreed as follows:

That the Court has jurisdiction of the subject matter and of all persons and parties hereto and that the complaint states a cause of action against the defendant under the trademark laws of the United States.

That the trademark issued by the United States Patent Office as Registration No. 862,543 on December 24, 1968 is valid and that the plaintiff is sole owner thereof.

That the defendant, JACK KLEIN, his agents and employees and any other person authorized to act or acting for or in behalf or under the said defendant be, and they are hereby, jointly and severally permanently enjoined from using the designation "Town and Country" or any other similar designation in connection with the operation of dance studios or dancing clubs wherever they may be, provided; that the defendant shall have a period of eighteen (18) months within which to phase out the use of the designation "Town and Country".

That the defendant, at any time during the eighteen months (18) "phase out period" shall change the designation on the signs being used by the defendant in the operation of his business, and at plaintiff's expense; that the defendant shall receive bids from not less than two established sign companies in the cities wherein the defendant maintains his operations and the plaintiff shall be obligated to the defendant for the amount of the lowest bid received.

That plaintiff shall pay the defendant's attorney, WILLIAM S. DORMAN, the sum of Twenty-Two Hundred and Fifty Dollars (\$2250.00) on his attorney fee in this case.

*William S. Dorman*  
UNITED STATES DISTRICT JUDGE

Approved by:

*John Connolly*  
JOHN CONNOLLY  
Attorney for Plaintiff

*William S. Dorman*  
WILLIAM S. DORMAN,  
Attorney for Defendant

UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF OKLAHOMA

CANDACE CONLEY, a minor under )  
the age of 18 years who sues by )  
Marjorie Bailey Conley as next )  
friend, and MARJORIE BAILEY CONLEY, )  
pro se, )

Plaintiffs, )

vs. )

GULF-MART, INC., a corporation, )  
LACHMAN-ROSE COMPANY, a corporation, )  
GLOBE RUBBER PRODUCTS CORPORATION, )  
a corporation, and PRECISION PLASTICS )  
COMPANY, a corporation, )

Defendants. )

No. 67-C-121 ✓

**FILED**

MAR 27 1970 *m*

M. M. EWING, CLERK  
U. S. DISTRICT COURT.

JOURNAL ENTRY OF JUDGMENT

NOW, on this 26<sup>th</sup> day of MARCH, 1970, the above  
cause coming on regularly for hearing, the Plaintiff being  
present in open Court and represented by her next friend,  
Marjorie Bailey Conley, and by their attorneys, Crawford,  
Rizley & Prichard; and the defendants, Gulf-Mart, Inc., a  
corporation, Lachman-Rose Company, a corporation, and Globe  
Rubber Products Corporation, a corporation, being represented  
in open court by their attorney Thomas R. Brett of the law  
firm Hudson, Wheaton & Brett; and the defendant, Precision  
Plastics Company, a corporation, appearing by its attorney,  
John H. Tucker of the law firm of Rhodes, Hieronymus, Holloway  
& Wilson, and all parties having announced ready for trial  
and having waived a jury and having agreed that this cause  
be tried by the Court, the same proceeded and after the intro-  
duction of evidence and testimony of witnesses, and being fully  
advised in the premises, the Court finds as follows:

That this action has been regularly and properly brought on behalf of the plaintiff, Candace Conley, a minor under the age of 18 years, by Marjorie Bailey Conley as next friend, and Marjorie Bailey Conley, pro se, and that this Court has jurisdiction of the parties and of the subject matter herein involved.

The Court further finds that the allegations contained in Plaintiffs' Petition are true; that said minor plaintiff was injured on the 24th day of June, 1965, as a result of the negligence of the defendants, and each of them, and that as a result thereof said minor plaintiff sustained painful, serious, permanent injuries, and this Court finds for the plaintiffs, Candace Conley, a minor under the age of 18 years, who sues by Marjorie Bailey Conley as next friend, and Marjorie Bailey Conley, individually, on their separate causes of action, in the total sum of \$15,000.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiffs, Candace Conley, a minor under the age of 18 years, who sues by Marjorie Bailey Conley as next friend, and Marjorie Bailey Conley, pro se, have and recover from and against the defendants, and each of them, judgment in the total sum of Fifteen Thousand and No/100 (\$15,000.00) Dollars and the costs of this action, for all of which let execution issue.



JUDGE

APPROVED:

CRAWFORD, RIZLEY & PRICHARD

By *Robert R. H.*  
Attorneys for Plaintiff

*Marjorie Bailey Conley*  
MARJORIE BAILEY CONLEY

*Thomas R. Brett*  
THOMAS R. BRETT  
Attorney for defendants,  
Gulk-Mart, Inc.,  
Globe Rubber Products Corporation  
and Lachman-Rose Company

*John H. Tucker*  
JOHN H. TUCKER  
Attorney for defendant,  
Precision Plastics Company

IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

FERNON D. MARSHALL )

Plaintiff, )

-vs- )

FORD MOTOR COMPANY, a foreign )  
corporation; LEONA R. HAMILTON, )  
WILLIAM R. FOREMAN, JUNE G. )  
MILES, Administratrix of the )  
Estate of Lauren R. Griggs, )  
Deceased, and JIM DON CHANEY, )

Defendants. )

No. 69-C-57

**FILED**

MAR 27 1970

M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER DISMISSING DEFENDANTS, LEONA R. HAMILTON,  
WILLIAM R. FOREMAN, JUNE G. MILES, ADMINISTRATRIX  
OF THE ESTATE OF LAUREN R. GRIGGS, DECEASED, AND  
JIM DON CHANEY

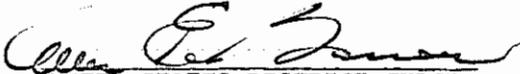
This cause came on for hearing on this ~~27th~~ <sup>27th</sup> day of March, 1970, upon the STIPULATION between the plaintiff and the defendants, Hamilton, Foreman, Miles and Chaney. The Court after being advised in the premises, finds that the dismissal of said defendants without prejudice will simplify the trial of this cause and it is for the best interest of justice that such STIPULATION be approved and the said defendants be dismissed without prejudice.

The Court further finds that the plaintiff should be granted leave to file an Amended Complaint instanter and the defendant, Ford Motor Company, be granted leave ~~of 10 days~~ to file an amended answer without prejudice to trial.

NOW, THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED by the Court that the STIPULATION between the plaintiff and

defendants, Hamilton, Foreman, Miles and Chaney, be and the same is hereby approved and said defendants be and they are hereby and by these presents dismissed as parties to this action without prejudice and without the assessment of any costs or conditions whatsoever.

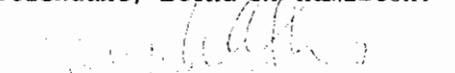
BE IT FURTHER ORDERED, ADJUDGED AND DECREED by the Court that plaintiff be given leave to file an Amended Complaint instanter and that the defendant, Ford Motor Company, be granted leave ~~to file~~ to file an amended answer without prejudice to trial.

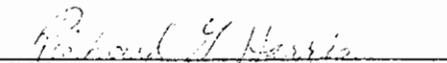
  
UNITED STATES DISTRICT JUDGE

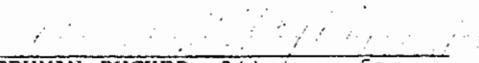
APPROVED:

  
\_\_\_\_\_  
DAVID H. SANDERS,  
Attorney for Plaintiff.

  
\_\_\_\_\_  
DON CHURCH, Attorney for  
Defendant, Leona R. Hamilton.

  
\_\_\_\_\_  
JACK M. THOMAS, Attorney for  
Defendant, William R. Foreman.

  
\_\_\_\_\_  
RICHARD G. HARRIS, Attorney  
for Defendant, June G. Miles,  
Administratrix of the Estate  
of Lauren R. Griggs, Deceased.

  
\_\_\_\_\_  
TRUMAN RUCKER, Attorney for  
Defendant, Jim Don Chaney.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
DISTRICT OF OKLAHOMA

JIMMY T. SMITH, an individual, and )  
SMITH SALES CO., a corporation, )  
 )  
Plaintiffs, )  
 )  
vs. ) No. 67-C-153  
 )  
SCRIVNER-BOOGAART, INC., )  
a corporation, )  
 )  
Defendant. )

---

FILED

MAR 31 1970

M. J. JEWELL, CLERK  
U. S. DISTRICT COURT

JOURNAL ENTRY OF JUDGMENT

This cause coming on before the undersigned Judge the 9th day of March, 1970, for trial on the merits and the Plaintiffs appearing in person and by their attorneys, Stan P. Doyle and Richard E. Hancock, and the Defendant appearing in person and by its attorney, Jack R. Givens, and both parties having announced ready and a jury having been selected and sworn to well and truly try the case, and both parties having presented evidence in support of their respective pleadings herein; and the case having been concluded and submitted to the jury for final deliberation on the 12th day of March, 1970, and the jury having returned a verdict in favor of the Defendant as more fully appears from the files, papers and records connected with the case; and the Court thereupon having concluded that the injunction sought by the Plaintiffs herein against the Defendant should likewise be denied and having entered a minute order denying the same on the 13th day of March, 1970, and the Defendant having thereafter filed suggested findings of fact and conclusions of law and praying that the minute order and judgment of the Court with respect to such injunctive relief be amplified and amended to include findings of fact and conclusions of law; and the Court having determined that findings of fact and conclusions of law should be so made and having made and entered the same on the \_\_\_\_ day of March, 1969, which findings of fact and conclusions of law are hereby incorporated by reference the same as though again set forth at length:

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED that the Plaintiffs take nothing by their complaint by way of damages and that the Defendant have and recover from the Plaintiffs due and proper court costs expended by it in this action.

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED AND DECREED that the Plaintiffs be and they are hereby denied injunctive relief as against the Defendant as prayed in their complaint and other relief therein sought, to all of which rulings and orders of the Court the Plaintiffs have objected and exceptions are noted and allowed.

---

United States District Judge

APPROVED AS TO FORM ONLY:

  
\_\_\_\_\_  
STAN P. DOYLE, Attorney for Plaintiffs

JONES, GIVENS, BRETT, GOTCHER & DOYLE

By   
\_\_\_\_\_  
Jack R. Givens  
Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

ELMER W. ANDERSON and )  
MARGARET P. ANDERSON, )  
 )  
Plaintiffs )  
 )  
v. )  
 )  
UNITED STATES OF AMERICA, )  
 )  
Defendant )

CIVIL ACTION NO. 68-C-213

FILED

JUDGMENT

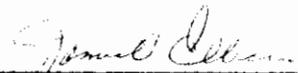
This matter having been submitted on an agreed stipulation of facts and briefs of the parties, and the Court, in its order entered February 24, 1970, having duly made its findings of fact and conclusions of law, it is, in conformity therewith,

ORDERED, ADJUDGED AND DECREED that plaintiffs' complaint be, and the same is hereby dismissed with prejudice.

Entered this \_\_\_\_\_ day of March, 1970.

  
UNITED STATES DISTRICT JUDGE

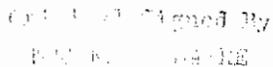
APPROVED AS TO FORM:

  
JAMES O. ELLISON  
Boone, Ellison & Smith  
914 World Building  
Tulsa, Oklahoma 74103

  
PAUL R. HODGSON  
420 Harvard Tower  
5815 South Harvard Avenue  
Tulsa, Oklahoma 74135

ATTORNEYS FOR PLAINTIFFS

NATHAN G. GRAHAM  
United States Attorney

By:   
EUGENE G. SAYRE

EUGENE G. SAYRE  
Attorney, Tax Division  
Department of Justice  
7A06 Federal Building  
Fort Worth, Texas 76102

ATTORNEY FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

KENNETH EUGENE SUTTON,

Plaintiff,

vs.

TOM YEARDEN (YENTON), an Officer,  
and J. R. LITTLESCOW (LILLESKAU),  
an Officer,

Defendants.

NO. 70-C-17 ✓

FILED

MAR 31 1970 *m*

M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER

The Court has before it the petition of Kenneth Eugene Sutton wherein jurisdiction is asserted pursuant to 42 U.S.C.A. § 1983. Petitioner alleges that his rights guaranteed by Amendments IV, VI and XIV of the United States Constitution have been abridged. Petitioner brings his action against the defendants, police officers of the City of Tulsa, Oklahoma; and, he alleges that said officers under color of State authority and without a search warrant or probable cause on January 14, 1969, searched petitioner's home, damaged furniture therein, and took personal property therefrom which they converted to their own use. He further alleges that the police officers searched the person of the petitioner and took \$475 which they converted to their own use. The petitioner alleges that he has been damaged by such police action in the total sum of \$17,905.

The Court has given a liberal reading to the complaint, has carefully read the answer and all instruments herein, and the Court finds as follows, to-wit:

1. That the petitioner was arrested on January 14, 1969, and that same date was charged by information with the crime of second degree burglary. That a search of the person of one being arrested to assure the safety of the arresting officer is a proper search. That a proper and valid warrant, upon affidavit, was issued the date of the arrest, January 14, 1969, to search the petitioner's residence for specific stolen articles. The accused was tried by jury in the Tulsa County District Court, Tulsa, Oklahoma, CRF 69027, on May 15, 1969, while represented by an attorney of his own choosing; and is

the fact of ability of access degree burglary after former conviction of a felony. The petitioner was sentenced on May 16, 1969, to 12 years imprisonment in the Oklahoma State Penitentiary at McAlester, Oklahoma, which sentence the petitioner is presently serving. That as appears from the pleadings herein, the petitioner's constitutional rights were fully protected in the State proceedings.

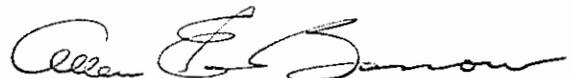
2. That the petitioner's deprivation of personal property in the custody of police authorities from and since his arrest are "property rights" not "rights of personal freedom", and property rights are not protected by the civil rights statute. *Howard v. Higgins*, 379 F.2d 227 (10th Cir. 1967). The allegation of a violation of constitutional rights alone is not sufficient to gain access to the federal courts, and Title 42 U.S.C.A. § 1983 cannot be used to redress the infringement of property rights.

3. That petitioner's claim of \$17,905 damages is obviously untenable from the pleadings; and, that whenever it appears as a "legal certainty" that less than \$10,000 is at issue in the controversy, Federal jurisdiction based on the \$10,000 amount-in-controversy requirement of Title 28 U.S.C.A. § 1331 is improperly founded, and such case should be dismissed. *City of Boulder v. Snyder*, 396 F.2d 353 (10th Cir. 1968).

4. That the cause of action herein should be dismissed because the Court lacks jurisdiction of the claim.

IT IS, THEREFORE, ORDERED that this cause of action be and it is hereby dismissed.

Dated this 30th day of March, 1970, at Tulsa, Oklahoma.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

WILSON J. HARRP,

Petitioner,

vs.

RAY H. PAGE, Warden, and  
The State of Oklahoma,

Respondent.

NO. 70-C-77  
FILED  
MAR 31 1970

O R D E R

M. M. EWING, CLERK  
U. S. DISTRICT COURT

The Court has before it a petition for writ of habeas corpus wherein petitioner alleges that he has been denied his constitutional right to appeal through the arbitrary acts of his retained trial attorney, who failed to properly advise him of the far reaching effects of the waiver of the right to appeal. The petitioner was sentenced by the Tulsa County District Court in Case No. CRF 69-169, on March 4, 1969, upon petitioner's plea of guilty to the crime of robbery with firearms. The Order of the Oklahoma Court of Criminal Appeals denying petitioner's appeal out of time, Case No. A-15,401, was entered November 26, 1969. Although the petitioner has in effect exhausted his state remedies as to his contention that he was denied a right to appeal through the arbitrary acts of his trial attorney, on a liberal reading of his petition, he further contends that his constitutional rights of appeal have been abridged by the Oklahoma Court of Criminal Appeals when the accused's petition for post-conviction appeal was denied and he was not provided with counsel to assist him in such appeal, even though he had informed the said Court of his indigence by paupers affidavit.

The Court has carefully read and considered the petition and finds:

1. That the petitioner has not raised in the State Courts the question that he was not provided with counsel to assist him in his post conviction appeal, although the State of Oklahoma provides a suitable procedure for considering the issue presented, i.e., Okl. Stat. Ann. Const. Art. XX § 10, and 12 O.S.A. § 1331 et seq.

2. That although the doctrine of exhaustion of state remedies is a prerequisite to Federal habeas Corpus jurisdiction under

Page 1102, 372 U. S. 531, 63 S.Ct. 929, 9 L. Ed. 837, that case also holds that where the state provides a suitable procedure for adjudicating the issues presented, the petitioner cannot deliberately choose to by-pass them and seek relief in the Federal Courts. Boyd v. State of Oklahoma, 375 F.2d 451 (10th Cir. 1967). When a suitable state remedy is available, the Federal Courts should defer ruling on habeas corpus petitions filed by state prisoners until the state courts have had an opportunity to pass upon the claims. Love v. Page, 551 F.2d 308 (10th Cir. 1965); Barber v. Page, 355 F.2d 171 (10th Cir. 1966); Cardinale v. Louisiana, 394 U. S. 437 (1969).

3. That the Writ of Habeas Corpus of Billy Joe Harp should be denied as it is premature in the Federal Court since petitioner has failed to exhaust and is attempting to by-pass suitable and available state remedies.

IT IS, THEREFORE, ORDERED that the petition for writ of habeas corpus be and the same is hereby denied without prejudice to its being renewed if necessary after the state remedies have been exhausted.

Dated this 30th day of March, 1970, at Tulsa, Oklahoma.

  
ROBERT E. BARROW  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

LEROY TENNISON,

Plaintiff,

vs.

NO. 70-C-47 ✓

JAMES HEWGLEY, Mayor of the City of  
Tulsa, Oklahoma, A Municipal Corpor-  
ation; BRAD SCHEER, Police and Fire  
Commissioner, City of Tulsa; JACK  
PURDIE, Chief of Policy City of Tulsa;  
OFFICER E. COMPOS, Tulsa Police Depart-  
ment; OFFICER C. WOOD, Tulsa Police De-  
partment; OFFICER J. FELTS, Tulsa Police  
Department; OFFICER JOHN DOE, Tulsa Pol-  
ice Department; OFFICER JOHN ROE, Tulsa  
Police Department; OFFICER JOHN DOE,  
Tulsa City Jail; OFFICER JOHN ROE, Tulsa  
City Jail; INDIVIDUALLY AND IN THEIR PRO-  
FESSIONAL CAPACITIES, and THE CITY OF  
TULSA, a Municipal Corporation,

Defendants,

**FILED**  
MAR 31 1970  
M. M. EWING, CLERK  
U. S. DISTRICT COURT

ORDER SUSTAINING IN PART AND OVERRULING IN PART  
DEFENDANTS' MOTION TO DISMISS

The Court has for consideration the Defendants' Motion to Dismiss and supporting brief and the Plaintiff's opposing brief, and, being fully advised in the premises, the Court finds as follows, to-wit:

1. That the Motion to Dismiss should be sustained as to the City of Tulsa because a Municipal Corporation is not a "person" within the meaning of 42 U.S.C. § 1983, and the cause of action should be dismissed as to the City of Tulsa and said City dropped as a party defendant.

2. That the Motion to Dismiss should be sustained as to the defendants James Hewgley, Mayor of the City of Tulsa, Oklahoma; Brad Scheer, Police and Fire Commissioner, City of Tulsa; Jack Purdie, Chief of Police, City of Tulsa, and the cause of action should be dismissed as to said defendants and said parties dropped as defendants because the complaint does not allege acts to impose liability on said supervisory officials. These parties are not alleged to have personally participated in the acts of the defendant police officers and jailers or to have personally directed that the acts be done by the police officers and jailers under their supervision; and, mere allegations of negligent supervision by supervisory officials in that the officials knew of the vicious propensities of officers and allowed them to continue without disciplinary action is not sufficient under 42 U.S.C.

§ 1983 to state a claim for relief against the supervisory officials. Further, the doctrine of respondeat superior does not impose liability under § 1983 absent personal participation by the supervisory officials.

3. That the Motion to Dismiss should be overruled as to the defendants, Tulsa Police Department Officers E. Compos, C. Wood, J. Felts, John Doe, and John Roe, and Tulsa City Jailers John Doe and John Roe, because the allegations in the petition sufficiently set forth a claim as to them.

IT IS, THEREFORE, ORDERED that the Motion to Dismiss for failure to state a claim is sustained and this cause of action is dismissed against the City of Tulsa; James Hewgley, Mayor of the City of Tulsa; Brad Scheer, Police and Fire Commissioner, City of Tulsa; Jack Purdie, Chief of Police, City of Tulsa; and said parties are dropped as defendants.

IT IS FURTHER ORDERED that the Motion to Dismiss for failure to state a claim is overruled as to the defendants, Tulsa Police Department Officers E. Compos, C. Wood, J. Felts, John Doe, and John Roe, and Tulsa City Jailers John Doe and John Roe, and said defendants may have 15 days from this date in which to answer or further plead.

Entered this 30th day of March, 1970, at Tulsa, Oklahoma.

  
UNITED STATES DISTRICT JUDGE