

FILED

SEP 11 1992

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

CLOSED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CHERYL A. ROTTMAYER,)
)
 Defendant.)

Civil Action No. 92-C-552-E

ON DOCKET
SEP 12 1992

DEFAULT JUDGMENT

This matter comes on for consideration this 11th day of Sept., 1992, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, and the Defendant, CHERYL A. ROTTMAYER, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, CHERYL A. ROTTMAYER, was served with Summons and Complaint on July 24, 1992. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

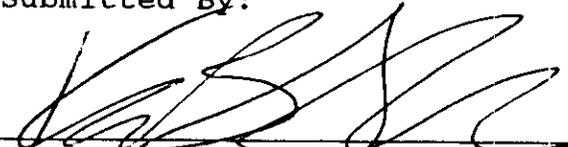
IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, CHERYL A. ROTTMAYER, for the principal amount of \$3,795.73, plus accrued interest of \$68.79 as of January 10, 1992, plus interest thereafter at the rate of 3% percent per annum until judgment, a surcharge of

10% of the amount of the debt in connection with the recovery of the debt to cover the cost of processing and handling the litigation and enforcement of the claim for this debt as provided by 28 U.S.C. § 3011, plus interest thereafter at the current legal rate of 3.41% percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

United States District Judge

Submitted By:



KATHLEEN BLISS ADAMS, OBA# 13625
Assistant United States Attorney
3900 United States Courthouse
333 West 4th Street
Tulsa, Oklahoma 74103
(918) 581-7463

CLOSED

ENTERED ON DOCKET

DATE **SEP 11 1992**

FILED

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

SHARON (HOUTS) BRINLEE,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendants.)

0 1992
 Richard L. [unclear] Clerk
 U. S. DISTRICT COURT
 NORTHERN DISTRICT OF OKLAHOMA

No. 92-C-209-B

O R D E R

Before the Court for consideration is the Defendant's Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff, Sharon (Houts) Brinlee (hereinafter, "Houts"), filed this action March 10, 1992, against the Internal Revenue Service ("IRS") seeking a tax refund of \$3,846.14.¹ Pursuant to an agreement of the parties, the Magistrate Judge substituted the United States for the Internal Revenue Service as the Defendant on July 8, 1992.

In its Motion to Dismiss, the Defendant claims that Houts has failed to satisfy conditions precedent to the filing of a tax refund suit set forth in section 7422 of the Internal Revenue Code. Defendant thus contends that the Court lacks subject matter jurisdiction over the Plaintiff's claim. The Court agrees and therefore need not address the Defendant's alternative argument for dismissal pursuant to Rule 12(b)(6).

¹ It appears that this figure is the result of a calculating error and the correct amount should be \$3,486.14. However, the proper amount is irrelevant to the Court's holding and the Court will use the \$3,846.14 amount in this Order.

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Subject matter jurisdiction of a taxpayer's refund claim is based on 28 U.S.C. § 1346(a)(1), which provides that district courts shall have original jurisdiction of any "civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected" This jurisdiction is explicitly limited, however, by 26 U.S.C. §7422(a), which prohibits any suit or proceeding "for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected ... until a claim for refund or credit has been duly filed with the Secretary" 26 U.S.C. §7422(a)(1989). Thus, filing a proper administrative claim with the IRS is a prerequisite to a taxpayer suit for a refund and failure to file such a claim deprives the court of subject matter jurisdiction. Brown v. United States, 890 F.2d 1329,1346 (5th Cir. 1989); Zernial v. United States, 714 F.2d 431, 434 (5th Cir. 1983).

The filing of a claim is not the only hurdle a taxpayer must cross before a district court will have jurisdiction to hear a refund claim.

No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time

26 U.S.C. §6532 (1989). The Supreme Court has also held that in order for a district court to have jurisdiction, the taxpayer wishing to sue for a refund must have paid the full assessment

prior to bring suit. Flora v. United States, 357 U.S. 63 (1958),
aff'd on reh'g, 362 U.S. 145, 177 (1960).

The instant case implicates all of these jurisdictional requirements. Houts, through her attorney, mailed a letter to the IRS dated November 30, 1990, which stated:

This letter is a claim for refund from Ms. Sharon Houts for \$47.00, the amount offset of her 1989 return refund amount claimed on her 1989 tax return (see enclosed notice). The tax due is from the tax years 1983 and possibly 1984.

...
For these reasons, Ms. Houts requests that the (1) IRS rescind any assessment or notice of deficiency upon which the refund offset was based, and (2) refund the \$47.00 offset from her 1989 return refund.

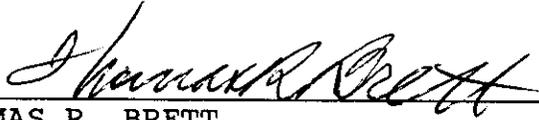
At some point after this refund claim for \$47.00 was filed with the Secretary, Houts made additional payments of \$423.00 and \$3,016.14 as full and final payment of all tax, interest and penalties assessed by the IRS for 1983. Houts then filed this action for a refund of the three payments (\$47.00+\$423.00+\$3,016.14) asserting that she was fraudulently induced by her former husband to sign the joint tax return for 1983.

The United States filed this motion to dismiss on the grounds that the Plaintiff had yet to file a claim with the IRS for the \$423.00 and the \$3,016.14. In her response, Plaintiff first argues that the November 30, 1992, letter was a claim for credit for the full amount and thus satisfies the §7422(a) requirement. The Court concludes that a review of the entire letter clearly shows that it was not a claim for credit and was simply a request for a \$47.00 refund.

Next, the Plaintiff informs the Court that a new "protective claim for refund" was filed with the IRS for the amount of \$3,816.14 just three days before the Plaintiff's response was filed. Plaintiff argues that §7422(a) does not require that the IRS have acted on the claim and that waiting on the IRS to grant the claim would be futile.

The Court concludes that it lacks subject matter jurisdiction over the Plaintiff's claim for \$3,816.14 because a claim for this amount was not duly filed with the IRS prior to the initiation of this suit pursuant to 26 U.S.C. §7422. The claim for \$3,816.14 filed with the IRS after the initiation of this suit does not cure this lack of jurisdiction as 26 U.S.C. §6532 prohibits suit until the IRS renders a decision on the claim or until 6 months after the claim was filed, whichever is earlier. For these reasons, the Defendant's Motion to Dismiss is GRANTED without prejudice.

IT IS SO ORDERED, this th 10 day of September, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

States District Court for the Western District of Oklahoma for all further proceedings.¹

(2) The Clerk of this Court shall mail a copy of this Order to the petitioner.

Dated this 8th day of September, 1992.


JAMES O. ELLISON, CHIEF
UNITED STATES DISTRICT JUDGE

¹ Title 28 U.S.C. § 2241(d) states: "Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such application is filed in the exercise of discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination."

CLOSED

ENTERED ON DOCKET

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

DATE SEP 11 1992

DAN R. MASSEY, et al.,

Plaintiffs,

vs.

ROBERT LEWIS JACKSON,

Defendant.

)
)
)
)
)
)
)
)
)
)

No. 92-C-281-E

FILED

SEP 09 1992

Richard M. Lawless, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is Plaintiffs' Motion to Remand. The dispute arose in Creek County where Plaintiffs filed an eminent domain action to condemn a private way of necessity through Defendant's land. In a separate action, Plaintiffs sought injunctive relief from the state court for purposes of surveying the anticipated easement. It was the latter action that was removed to federal court. Plaintiffs urge the Court to remand. Plaintiffs well-state the law: removal statutes are to be strictly construed in favor of state jurisdiction and that doubtful cases should be resolved in favor of remand. Therefore Plaintiffs' motion should be granted and this case shall be remanded.

ORDERED this 8th day of September, 1992.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
SEP 10 1992
DATE

FILED

SEP - 9 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

FRANK B. ANDREWS, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 THOMAS N. HALL, individually)
 and d/b/a MARKET EXCHANGE)
 INDEX, LTD., et al.,)
)
 Defendants.)

Civil Action
No. 88-C-422-B

**JOURNAL ENTRY OF JUDGMENT
AGAINST THOMAS N. HALL**

This matter comes on for hearing before the undersigned District Court Judge upon the written Stipulation for Entry of Judgment between the Plaintiffs in this case, Gary C. Clark, the Permanent Equity Receiver of Market Exchange Index, Ltd. in Case No. 88-C-422-B (the "Receiver"), Saul Stone & Co. and Thomas N. Hall.

The Court, having considered the evidence presented, including the Stipulation and the statements of Counsel, finds that:

1. The Court finds that the Stipulation of the Parties that the Plaintiffs and Receiver should receive a judgment on Counts I, II, III, IV, V, VI and VII of the First Amended Complaint against the Defendant Thomas N. Hall and the Saul Stone & Co. should receive a judgment on Counts II and III of its Cross Claim against the Defendant Thomas N. Hall in the combined amount of One Million Dollars (\$1,000,000.00), which is fair and reasonable under

the evidence presented and judgment shall be rendered for such amount forthwith.

2. The Court recognizes that the Stipulation of Judgment and Entry of Judgment are the result of the compromise and settlement of very complex and disputed facts and issues, and therefore the parties have stipulated that neither the Stipulation of Judgment, nor the judgment, nor evidence of the judgment may be used or offered into evidence in any other Court proceeding, either civil or criminal, for any purposes. The Court finds that such stipulation is in the best interests of all the parties and tends to eliminate substantial litigation pending in the Courts, and therefore approves such stipulation.

Therefore, judgment in the amount of one million dollars (\$1,000,000.00) is hereby entered against the Defendant, Thomas N. Hall, on Counts I, II, III, IV, V, VI and VII of the Plaintiffs' First Amended Class Action Complaint, and Counts II and III of Saul Stone & Co.'s Cross Claim, said judgment to bear interest from the date thereof, and furthermore that neither the Stipulation of Judgment nor the judgment, nor evidence of the judgment (being the result of a settlement of very complex and disputed facts and issues) may be used or offered into evidence in any other Court proceeding, either civil or criminal, for any purpose.

ENTERED this 24 day of September, 1992.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT COURT JUDGE

ENTERED ON DOCKET
DATE SEP 10 1992

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

STEPHEN WAYNE THOMPSON, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 CHRISTIAN FIDELITY LIFE)
 INSURANCE COMPANY,)
)
 Defendant.)

F I L E D

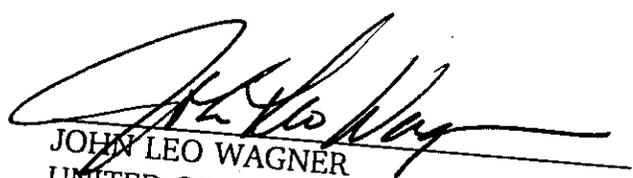
91-C-722-B

SEP - 9 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

ORDER

This order pertains to the parties' Stipulation Regarding Expenses (Docket #41)¹ filed August 31, 1992. Pursuant to the Stipulation, plaintiffs' attorney is hereby ordered to pay defendant \$1,203.75 on or before September 21, 1992.
Dated this 8th day of September, 1992.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

ENTERED ON DOCKET
DATE SEP 10 1992

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

EDITH SHOALS,)
)
 Plaintiff,)
)
 vs.)
)
 ROCKWELL INTERNATIONAL CORPORATION,)
)
 Defendant.)

No. 91-C-95-B

FILED

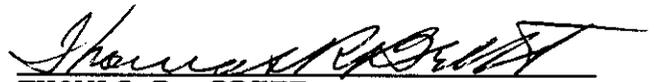
SEP - 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

J U D G M E N T

Pursuant to the order sustaining Defendant's motion for summary judgment filed this date, Judgment is hereby entered in favor of the Defendant, Rockwell International Corporation, and against the Plaintiff, Edith Shoals, and Plaintiff's action is hereby dismissed. Costs are assessed against the Plaintiff if timely applied for pursuant to Local Rule 6.

DATED this 8 day of September, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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CLOSED

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

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its corporate
capacity,

Plaintiff,

vs.

HENDERSON HILLS SHOPS, INC.,
an Oklahoma corporation, C. A.
HENDERSON, an individual,
WALTER TULLOS, an individual,
TILLMAN M. HERSHBERGER, an
individual, RAYMOND DOYAL
HOOVER, an individual, and
ROBERT J. NALE, an individual,

Defendants.

No. 89-C-144-E

FILED

SEP 10 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

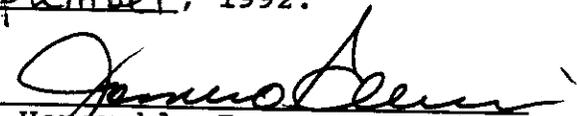
JUDGMENT OF DISMISSAL WITH PREJUDICE

Now before the Court for its consideration is the Application of Federal Deposit Insurance Corporation for a judgment, dismissing Defendant Walter V. Tullos from this action, with prejudice.

For good cause shown, the Court finds the Application should be and hereby is GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant Walter V. Tullos is hereby dismissed from this action with prejudice.

DONE THIS 9th day of September, 1992.


The Honorable James O. Ellison
United States District Judge

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ENTERED ON DOCKET
SEP 10 1992

DATE
FILED
SEP 09 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

ATLANTIC RICHFIELD COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 MANUEL LUJAN, JR., SECRETARY,)
 DEPARTMENT OF THE INTERIOR,)
 et al.,)
 Defendants.)

89-C-892-B ✓

O R D E R

This matter comes on for consideration of Plaintiff's Motion for Summary Judgment and Defendants' Cross-Motion for Summary Judgment. These motions were originally filed January 21, 1992,¹ along with supporting memorandums that addressed a plethora of issues. Reply memorandums were filed April 6, 1992, by both parties. The Court heard oral arguments on the pending motions on June 19, 1992. At that hearing, the Court determined that it should first address the statute of limitations issue, in order to allow the parties to file an interlocutory appeal along with Phillips Petroleum Co. v. Lujan, No. 89-C-914-B (N.D. Okla. October 28, 1991), if they desired.

The Court provided the parties with another opportunity to specifically address the statute of limitations issue. The parties were given until July 6 to file an agreed statement of facts², with

¹ Shortly thereafter, both parties filed a corrected copy of their respective memorandum in support of summary judgment.

² At the June 19 hearing, the parties assured the Court that they could at least agree on the facts so that the statute of limitations question could be addressed.

briefs due July 16 and responses due July 27. The parties failed to submit an agreed statement of facts. Instead, the Defendants submitted their own statement of facts³, which the Plaintiff moved to strike.⁴ The briefs and responses were timely filed. Due to the parties inability to agree on a statement of facts, the Plaintiff's Motion to Strike the Defendants' Statement of Facts will be granted. The Court will address the statute of limitations question based on the uncontroverted facts appearing in the remaining record that are relevant to this issue.

I. Background

Plaintiff, Atlantic Richfield Company ("ARCO"), is the lessee of an Indian lease which produces natural gas upon which ARCO pays a royalty. The Defendants, Secretary of the Department of Interior Manuel Lujan, Director of the Minerals Management Service ("MMS") Barry Williamson and Area Manager of the MMS Dallas Area compliance office Nick Kelly, are sued by ARCO as a result of an Administrative Order (the "Order") issued by the Defendants,⁵ dated

³ Defendants' statement of facts primarily relates to the volume of work the Minerals Management Service ("MMS") handles. Attached to the Statement is a 365 page report which lists all the adjustments made by ARCO since October 1, 1983, to production sales value and royalty value previously reported to MMS for production months before October 1, 1983.

⁴ Plaintiff contends that the facts listed in the Defendants' Statement of Facts are irrelevant to the statute of limitations question. In the alternative, the Plaintiff asks for more time to respond due to the detailed nature of the Defendants' facts.

⁵ The contested Order was issued by the Dallas Area Compliance Office of the Royalty Compliance Division of the Minerals Management Service, United States Department of the Interior.

September 25, 1989.

This Order⁶ notified ARCO that it had deducted an incorrect manufacturing allowance⁷ from past royalty payments on the audited lease. Based on this information, the MMS concluded that a systemic failure existed in ARCO's royalty calculation method. Thus, it ordered ARCO to recalculate royalties on gas produced from all its Indian and Federal onshore oil and gas leases using a cost-based manufacturing allowance for the period October 1, 1980, through February 29, 1988, and pay any resulting deficiencies.

II. Statute of Limitations

ARCO filed this action October 24, 1989, seeking judicial review of the Defendants' Order.⁸ ARCO argues that the Order is barred in part by the statute of limitations, which provides:

Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed

⁶ The Order arose out of an MMS' audit of ARCO's royalty payments on Lease 601-006433-0 for the period October 1, 1980, through September 30, 1983.

⁷ The Order stated that ARCO had deducted an automatic two-thirds manufacturing allowance from its royalty payments rather than a cost-based allowance. The correct method of calculating the manufacturing allowance is in dispute in this case but will not be addressed at this time.

⁸ ARCO also filed an administrative appeal with the MMS Director on the same date. ARCO did not request a stay of its administrative appeal but did request that the MMS "postpone or stay the effective date for compliance with the Order pending judicial review." The MMS granted ARCO's request (Administrative Record, Exhibits 1-3).

within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later (emphasis added).

28 U.S.C. §2415(a).

ARCO reasons that the portion of the MMS Order that requires the payment of additional royalties for the period October 1980, through September 25, 1983, should be vacated as untimely (Supplemental Memorandum of Atlantic Richfield Company Addressing the Statute of Limitations, p. 1) (hereinafter "Plaintiff's Brief"). ARCO argues that §2415 bars these claims because the royalty payments were due more than six years before the MMS order was issued.⁹

According to ARCO, there are only two material facts relating to the statute of limitations issue and they are both undisputed (Plaintiff's Brief, p. 3). The first fact is the date on which the royalties were due, October 1980 through September 25, 1983. The second fact is the date the MMS Order was issued, September 25, 1989. ARCO contends these two facts provide sufficient grounds for granting summary judgment as to the pre-September 25, 1983, claims ("disputed claims")¹⁰.

III. Accrual of Claim

⁹ The parties agree that the statute of limitations does not bar the Defendants' claim for royalties from September 25, 1983 through February 1988.

¹⁰ ARCO is actually disputing all of the Defendants' claims for additional royalties. However, the only claims being addressed today are those disputed on statute of limitations grounds.

The Defendants assert two basis for finding that the disputed claims are not time-barred. First, Defendants argue that their claim for royalties did not accrue, and thus the statute of limitations did not begin running, until after the audit was completed (Defendants' Supplemental Brief on the Statute of Limitations, p. 24) (hereinafter "Defendants' Brief").

The Defendants direct the Court's attention to Medicare Part A payment cases. Under the Medicare Part A program, a provider of services receives payment in the form of interim reimbursements from organizations which serve as fiscal intermediaries between the government agency and the provider. The interim payments are determined on the basis of estimated costs for a given accounting period. The provider later submits reports of the actual costs incurred. The fiscal intermediary must then audit the reports and compare estimated payments to the amounts due on the basis of actual costs, with a final adjustment made based on the audit results. If the provider has been overpaid, the Government has a claim for reimbursement (Defendants' Brief, p. 25).

Some courts have concluded that in such Medicare Part A cases, the statute of limitations did not begin to run until "the rights and liabilities of the parties were determined in the audit." United States v. Withrow, 593 F.2d 802, 805 (7th Cir. 1979); United States v. Gravette Manor Homes, 642 F.2d 231 (1981). The Defendants contend the same approach should be used in royalty payment cases by arguing that the correct amount owed to the Government is unknown in both cases until an audit is completed.

This Court addressed this same argument in Phillips Petroleum Co. v. Lujan, No. 89-C-914-B, (N.D.Okla. Oct. 24, 1991) ("Phillips III"), and rejected the analogy to Medicare cases.

Cases interpreting payments made under Part A of the Medicare Act relate to estimated payments made to medical providers without delay. The Medicare statutory scheme requires these estimated payments to be followed by mandatory audits in order to settle the accounts with the medical providers. United States v. Graham, 471 F.Supp. 123,124 (S.D.Tex. 1979). The right of action in such cases is not known until the audit is completed by a "fiscal intermediary."

Order dated Oct. 24, 1991, at 7.

The Defendants question the significance of the distinction between "estimated payments" subject to audit and payments of an "actual amount due" subject to audit and ask this Court to rethink its ruling in Phillips III. The Defendants stress that in both situations (i.e. Medicare cases and royalty payment cases) the Government is unaware of whether it has a claim until an audit is completed.

The Court is satisfied that the Medicare cases are not analogous to royalty payment claims. The key distinction is the point at which the Government is entitled to its money and can lawfully assert a claim for such money. A cause of action accrues "when the claim first could have been sued upon." United States v. Skidmore, Owings and Merrill, 505 F.Supp. 1101,1104 (S.D.N.Y. 1981). Thus, the accrual date is the date of the breach of the contract. Id.

In the Medicare cases, the interim payments are made to the

provider during the accounting period, based on an estimate of what the provider's actual costs will be for the period.¹¹ The Government is obviously not entitled to a refund for overpayment at the time the interim payment is made because the provider's actual costs are still being incurred. The provider submits reports of his actual costs after the accounting period is over and then an audit is conducted to determine if the Government is entitled to any refund. It is not until this determination is made, that any refund is "due" and the Government is entitled to its money. No duty is owed or can be breached until after the Medicare audit is completed. In the instant case, the royalty payments were "due" at the end of the month following the month of production. 30 C.F.R. §218.50. Presumably, the month is provided to allow the lessee enough time to calculate the correct amount of royalty to be paid. ARCO was required to calculate and pay the amount of royalty actually owed for the previous month by the due date.¹² Although the Government was relying on ARCO to initially calculate the correct amount of royalty, the Government was entitled to the full and correct amount of royalty on the due date. This is evident from

¹¹ The interim payments procedure was established under the terms of 42 U.S.C. §1395f(b) and 20 C.F.R. §405.451(a).

¹² MMS Form 2014, on which ARCO submitted its monthly report of sales and royalty remittance, stressed this fact. It included the following:

WARNING: PUBLIC LAW 97-451 PROVIDES CIVIL AND CRIMINAL PENALTIES FOR FALSE OR INACCURATE REPORTING.

It also required the preparer of the form the sign the document below the following statement:

I have read and examined the statements in this report and agree they are accurate and complete.

the fact that interest can be, and is, charged on royalty underpayments, from the date the payment was due. See 30 U.S.C. §1721(a); See also 30 C.F.R. §218.54.

Defendants argue that the underpayments were not "due" until the audit was completed and the Order was issued.¹³ There is simply no support for this theory. Neither a demand for payment, nor an awareness of any underpayment, is necessary for a cause of action to accrue. The Government has a claim as soon as the lessee breaches its duty to pay the correct royalty.

The Court concludes that the Defendants' claims for underpayment of royalties accrued on the date the payments were originally due and not on some later date when the Defendants' completed the audit or issued the Order. It is quite simple, and well-settled, that a contract action accrues when the payment becomes due. See Generally, 51 Am.Jur.2d *Limitation of Actions* §126 (1970). Thus, the Defendants' claims for royalty payments due before September 25, 1983, are time-barred unless the statute of limitations was tolled for some period of time.

IV. *Tolling of the Statute of Limitations - §2416(c)*

The Defendants next argument is that "[e]ven if the Government's right of action accrued when the royalty payments were originally due, the running of the limitations period should be

¹³ Defendants' contend that the "ultimate rights and liabilities of the parties are determined in the audit ... [and] therefore, the government's right of action in this case did not accrue, and the statute of limitations should not run, until an audit has been completed" (Defendants' Brief, p. 27).

tolled until after the completion of an audit" (Defendants' Brief, p. 8). This argument is based on 28 U.S.C. §2416(c) which provides:

For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which

. . .
(c) facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances
. . . .

The Defendants contend that §2416(c) tolls their claim until an audit is completed because the material facts (i.e. the existence of an underpayment) "are not known and reasonably could not be known" prior to this time.

ARCO does not contest the Defendants' contention that the MMS did not know about the underpayment prior to the completion of the audit. Therefore, the Court's resolution of the tolling issue rests on its interpretation of the phrase "reasonably could not be known" in §2416(c). The Defendants argue that the MMS could not have known about the alleged underpayment until the audit was performed.

The crux of the Defendant's argument is that the immense number of leases and royalty payments handled each month prevent the MMS from knowing if it has a claim for underpayment until an audit is completed (Defendants' Brief, p. 10). The Defendants further suggest that the process of calculating royalties is so complex and time-consuming that even the lessee's do not have the complete information necessary to arrive at the correct royalty

amount by the due date.¹⁴ (Defendants' Brief, p. 12). The Defendants assert that the MMS could not have known if the original payment was correct if ARCO, the lessee, did not know. Defendants thus ask this Court to find that the statute of limitations was tolled until MMS reasonably knew of the underpayment, in September, 1989. (Defendants' Brief p. 17).

The Defendants again direct the Court to Medicare cases as support for the tolling argument. In Medicare Part B cases, reimbursement payments are made to physicians for medical expenses (in contrast to interim estimated payments made to hospitals under Medicare Part A, discussed above). In United States v. Beck, 758 F.2d 1553 (11th Cir. 1985), the court held that the Government's claim accrued on the date the overpayment was made but was tolled until the Government reviewed the reasonableness of the services and learned of the possible overpayment. The Beck court concluded that due to the "incredibly large volume of Medicare Part B Claims," the Government did not know and could not have known of the overpayment until sometime after the payment was made. Id., 758 F.2d at 1558-59. The Defendants contend that a similar approach should be taken in the instant case.

This Court rejects the Beck analysis for royalty underpayment cases. Clearly, the Secretary of the Interior has a continuing right and obligation to audit and reconcile lease accounts. 30 U.S.C. § 1711(c). This "right" allows the Defendants to audit an

¹⁴ Defendants point out that lessees, including ARCO, are regularly making corrections to sales reports and royalty payments months and years after the fact.

account beginning the day a royalty payment is made. Understandably, the MMS initially relies on the good faith of the lessee and only audits at some later time. However, this initial reliance on ARCO's calculations does not toll the statute of limitations. From the moment a claim for underpayment accrues,¹⁵ the Defendants reasonably could know the facts material to the right of action.¹⁶ The Defendants thus have six years from the due date to exercise their right to audit and bring a claim for underpayment.¹⁷

The Court rejects the Defendants' invitation to interpret "reasonably could know" to mean "sufficient staff and resources to get around to it." Bureaucratic delays caused by budgetary constraints should not be a basis for extending the statute of limitations set forth by Congress. Such "political factors" should not provide the basis for evaluating the reasonableness of the government's ability to learn of its cause of action. The congressional purpose behind enactment of § 2415 was to provide private persons with fairness, certainty, and efficiency in their contractual relationships with the government. S.Rep.No. 1328, 89th Cong., 2d Sess., reprinted in 1966 U.S.C.C.A.N. 2502, 2509-2513.

¹⁵ As discussed above, a claim for underpayment accrues on the due date of the payment.

¹⁶ From day one, all of the necessary information and records were available to the MMS for their review.

¹⁷ By exercising their authority to audit, the Defendants acquire "actual" knowledge of their claim. Prior to the audit, the Defendants' have constructive knowledge (i.e. they "could have" known) of any underpayment.

The Court concludes that Congress did not intend for the statute of limitations set forth in § 2415 to be tolled by §2416(c) when the government's workload is the only thing¹⁸ preventing the government from exercising its lawful right to audit and consequently learn of its claim.

Thus, the Court concludes again, as it did in Phillips III, that the statute of limitations is not tolled prior to, or during, an audit of royalty payments conducted by the MMS.¹⁹ The Defendants' claims for royalty underpayments accrued on the due date and ran for six years. Therefore, the Defendants' claim is barred as to royalty payments due prior to Sept. 25, 1983.

The Court also has before it the Defendants' Motion For Leave to File Amended Answer and Omitted Counterclaim Pursuant to Federal Rules of Civil Procedure 13 and 15. The proffered pleading incorporates the Defendants' original answer, sets forth the Defendants basis for issuing the Order and adds an amendment to the Defendant's original prayer. The proposed pleading adds the following new request to the Defendant's original prayer:

2. Affirm the MMS Order dated September 25, 1989 and enforce its terms;

¹⁸ The Defendant's do not claim that fraud or any other wrongful action by ARCO prevented the MMS from learning of the underpayment.

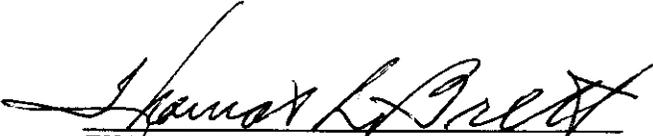
¹⁹ Through this ruling, the Court reaches the issue the Circuit Court did not reach in Phillips Petroleum Co. v. Lujan, 951 F.2d 257,259 (10th Cir. 1991), when it stated:

Defendants are not asserting a claim for underpayment of royalties. Had they been, plaintiff might have very well been able to assert a statute of limitations defense.

The Court concludes that the proffered pleading, although titled "Counterclaim", is in reality a defense to the Plaintiff's claim and is arguably a claim seeking declaratory judgment and/or specific performance of the Order. The Defendants pleading does not state a claim for money damages as required by §2415. Although the Defendants' motion to file its proffered pleading will be granted, the pleading will not be treated as a counterclaim for money damages and will not relate back to the date of the Defendants' answer.

The Plaintiff's Motion to strike the Defendant's Statement of Facts is hereby GRANTED. The Defendants' Motion for Leave to File Amended Answer is GRANTED to the extent set forth above. The Plaintiff's Motion for Summary Judgment as to the pre-Sept. 25, 1983, royalty payments is also hereby GRANTED. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court determines that there is no just reason for delay and therefore judgment is hereby entered on the statute of limitations issue in favor of ARCO and against the Defendants so that an interlocutory appeal may proceed along with Phillips Petroleum Co. v. Lujan, No. 89-C-914-B. Further proceedings in this case will be stayed pending an interlocutory appeal of this order.

IT IS SO ORDERED, this 9th day of September, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

SEP 09 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

VOICE SYSTEMS AND SERVICES,
INC.,

Debtor,

VMX,

Movant,

vs.

VOICE SYSTEMS AND SERVICES,
INC.

Bankruptcy #92-00923-W
(Chapter 11)

ENTERED ON DOCKET

DATE SEP 10 1992

No. 92-C-389-E

O R D E R

Before the Court is the unopposed Motion of Creditor VMX for Withdrawal of reference herein. The Court has reviewed the record in light of the relevant law and finds that, pursuant to 28 U.S.C. §157(d), the motion should be granted.

ORDERED this 8th day of September, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

CLOSED

ENTERED ON DOCKET

DATE SEP 10 1992

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

FILED

SEP - 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
91-C-95-B

EDITH SHOALS,

Plaintiff,

v.

ROCKWELL INTERNATIONAL CORPORATION,

Defendant.

ORDER

This order pertains to Defendant's Motion to Dismiss, or, in the Alternative, for Summary Judgment as to Plaintiff's Third and Fourth Causes of Action (Docket #6)¹, Defendant's Motion for Summary Judgment on Plaintiff's First and Second Causes of Action (#14), Plaintiff's Response to Defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment on Plaintiff's Third and Fourth Causes of Action (#19), and Plaintiff's Brief in Opposition to Defendant's Motion for Summary Judgment on Plaintiff's First and Second Causes of Action (#22).

Plaintiff was formerly a mechanic employed by Defendant in Tulsa, Oklahoma from August 17, 1981 to May 25, 1990. Plaintiff claims that Defendant discriminated against her on the basis of her race during the course of her employment and that she was discharged by Defendant in violation of Title VII of the Civil Rights Act of 1964, U.S.C. § 2000(e), et seq. ("Title VII"). She seeks reinstatement and actual and punitive damages. She also has filed state tort claims for discharge in violation of public policy and intentional infliction of emotional distress.

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

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Defendant argues that Plaintiff's state law tort claims are preempted by federal labor law and are subject to mandatory grievance procedures and arbitration, as provided in the collective bargaining agreement between Plaintiff's labor union and Defendant. Defendant also contends that Oklahoma's anti-discrimination statutes do not form the basis of a public policy discharge claim and that the facts surrounding Plaintiff's discharge were not sufficiently egregious to support a claim for intentional infliction of emotional distress. Defendant claims that Plaintiff's retaliatory discharge claim cannot be proven, because Defendant did not learn that Plaintiff had filed an EEOC charge until days after Plaintiff was discharged and the asserted reason for the discharge, excessive absenteeism, was documented. Defendant also argues that there were legitimate business reasons for Plaintiff's discharge, so summary judgment should be granted on the Title VII wrongful discharge claim.

To determine this matter, the court must examine materials outside the original pleadings, so defendant's alternative motion for summary judgment as to plaintiff's third and fourth causes of action will be the subject of this order.

"[T]he plain language of Rule 56(c) [Fed.R.Civ.P.] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp v. Catrett, 477 U.S. 317, 322 (1986). If there is a complete failure of proof concerning an essential element of the non-movant's case, there can be no genuine issue of material fact because all other facts are necessarily rendered immaterial. Id. at 323.

A party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must affirmatively prove specific facts showing that there is a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The Court stated that "the mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Id. at 252.

The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts". Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The record must be construed liberally in favor of the party opposing the summary judgment, but "conclusory allegations by the party opposing . . . are not sufficient to establish an issue of fact and defeat the motion." McKibben v. Chubb, 840 F.2d 1525, 1528 (10th Cir. 1988). The Tenth Circuit requires "more than pure speculation to defeat a motion for summary judgment" under the standards set by Celotex and Anderson. Setliff v. Memorial Hosp. of Sheridan County, 850 F.2d 1384 (10th Cir. 1988).

In her third claim, Plaintiff states that Defendant violated the Oklahoma anti-discrimination statute, 25 O.S. § 1101 et seq., and thus violated the public policy of Oklahoma represented in that statute. Plaintiff was a member of the collective bargaining unit represented by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"). The terms of her employment were governed by the terms of the collective bargaining agreement between Defendant and the UAW. Under the Master Agreement, Defendant recognized the UAW as the sole bargaining

representative of Defendant's employees with respect to wages, hours, and other conditions of employment, and retained the prerogative to hire, promote, assign, discharge and discipline employees for a justifiable reason. (Docket #8, Ex. 2, pgs. 1 and 41). Plaintiff was thus not an employee-at-will.

A state law tort claim for wrongful discharge is preempted by Section 301² of the Labor Management Relations Act, 29 U.S.C. § 185, et seq. ("the Act"), if the claim could not be properly adjudicated without an analysis or interpretation of an applicable collective bargaining agreement. Johnson v. Beatrice Foods Co., 921 F.2d 1015 (10th Cir. 1990). See also, Allis Chalmers Corp. v. Lueck, 471 U.S. 202 (1985) (state law claims dependent on a collective bargaining agreement preempted by federal labor law). In Viestenz v. Fleming Companies, Inc., 681 F.2d 699, 704 (10th Cir.) cert. denied, 459 U.S. 972 (1982), the court held that claims for wrongful discharge and intentional infliction of emotional distress were governed exclusively by the collective bargaining agreement and thus should be dismissed as preempted.

In addition, Plaintiff's state tort claim based on the ruling in Burk v. K-Mart, 770 P.2d 24 (Okla. 1989), fails, because Plaintiff was an employee who could only be terminated for good cause under Article VII of the collective bargaining agreement and the Burk decision only applied to employees who are terminable-at-will. Id. at 552. The

² Title 29 of the U.S. Code, § 185(a), reads in part as follows:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

public policy tort created in Burk did not include an independent method of measuring when an employer breaches public policy. This court will look to Defendant's right to set and apply policies for conditions of employment and to discipline rule violations by examining the collective bargaining agreement to determine if Plaintiff was treated unfairly.

Plaintiff's state law claim for intentional infliction of emotional distress resulting from her working conditions³ is also preempted by federal law. See Viestenz, 681 F.2d at 704. The court in Olguin v. Inspiration Consolidated Copper Company, 740 F.2d 1468, 1474-75 (9th Cir. 1984), found that emotional distress claims concerning working conditions were inextricably intertwined with a collective bargaining agreement and thus preempted by federal labor law. The Olguin court concluded that the collective bargaining agreement "explicitly provides for dismissal on just cause The agreement provides the same or greater protection of job security that state tort law seeks to provide for non-unionized employees; accordingly, federal law preempts state law." Id. As in Olguin, the agreement in the case at bar established the terms and conditions of employment, limited employee discipline and discharge only for just cause, and provided grievance and arbitration procedures to resolve disputes. (See Master Agreement attached to Authentication Affidavit submitted by Defendant, Docket #8).

³ Paragraph 26 of Plaintiff's Complaint states:

Agents, servants or employees of the defendant corporation intentionally acted to subject the plaintiff to unreasonable emotional distress during her employment with the defendant. Defendant deliberately acted to prevent plaintiff from receiving emergency telephone calls, to prevent her from attending to compelling personal business, to deprive her of gloves and other protective clothing required for her physical comfort and well being on her job and consistently and systematically denied the plaintiff access to more favorable working conditions such as those enjoyed by others similarly situated within the plaintiff's work unit. Defendant's actions toward the plaintiff were harse [sic], oppressive and deliberately done with the intent of causing the plaintiff emotional distress.

The only exception to federal preemption of a state tort emotional distress claim occurs when Plaintiff can show that the state tort is unrelated to employment discrimination or a function of "the particularly abusive manner in which the discrimination is accomplished." Farmer v. United Brotherhood of Carpenters, Local 25, 430 U.S. 290, 305 (1977). In Eddy v. Brown, 715 P.2d 74 (Okla. 1986), the court established the test that conduct must be outrageous, extreme, and utterly intolerable in a civilized community to constitute the tort of outrage or intentional infliction of emotional distress.

The behavior complained of by Plaintiff is not sufficiently egregious to disallow preemption. Plaintiff claims her extreme emotional distress arose "from the particularly abusive manner in which the discrimination complained of was carried out." (Brief in Support of Plaintiff's Response to Defendant's Motion to Dismiss Plaintiff's Third and Fourth Causes of Action ("Brief"), pg. 14). However, she offers only broad conclusory allegations of Defendant's "particularly abusive" actions. She contends that she was "harshly penalized" by Defendant for taking time off for necessary personal business when "similarly situated white employees were not subjected to any penalties for the same kinds of actions." (Brief, pg. 3).

Plaintiff claims she "was deprived of necessary protective clothing such as leather gloves which were routinely issued to white employees" and "was routinely required to perform heavy manual labor while being denied the use of labor saving devices such as carts, hand trucks, and other such equipment" (Brief, pg. 3). She argues that Defendant "deliberately acted to prevent [her] from receiving emergency telephone calls, to prevent her from attending to compelling personal business . . ." and "consistently and

systematically denied [her] access to more favorable working conditions such as those enjoyed by others" (Complaint, pgs. 7-8). However, she offers no evidence to support her claims except her own self-serving affidavit attached to her Brief. She claims there are co-workers who will confirm her claims, but does not offer deposition testimony or affidavits from them.

Defendant offers evidence that Plaintiff had eleven unexcused absences from her job from January 1987 through May 1989 and each of these violated a plant rule of her employer. Plaintiff admits being absent on six of the dates. In addition, defendant claims she was either tardy or left work early forty-nine times from November 1986 to May 1990, further violating a plant rule. Plaintiff admits thirty-one of the violations. She was given five written warnings as a result of these rule violations and received personal counseling on more than one occasion regarding her poor attendance. It is undisputed that on March 6, 1990 she was discharged after being late to work, but she was reinstated under a Last Chance Agreement following union grievance procedures on March 8, 1990. It is also undisputed that on May 23, 1990 she failed to complete her eight hour shift in violation of the Last Chance Agreement and was terminated two days later. Defendant also offers the names of two white employees who were terminated for excessive absences in 1989 and 1990 and provides statistics showing that 78% of the 152 employees disciplined for excessive absences from January 1989 through August 1990 were white.

The Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981), determined the burden of proof in a Title VII racial discrimination case. First, a plaintiff must establish by a

preponderance of the evidence a prima facie case of discrimination. This requires a showing that (1) plaintiff belongs to a racial minority, (2) that he was qualified for the job from which he was terminated, (3) that he was terminated, and (4) that the job was filled by someone of a different race. Second, if Plaintiff shows a prima facie case, the burden shifts to defendant to articulate a legitimate, non-discriminatory reason for the action taken. If defendant succeeds in this, plaintiff must prove by a preponderance of evidence that the reason offered by defendant is merely a pretext for discrimination.

The court in Burrus v. United Telephone Co. of Kansas, Inc., 683 F.2d 339, 343 (10th Cir.) cert. denied, 459 U.S. 1071 (1982), discussed the general approach laid out in McDonnell Douglas Corp. and Texas Dept. of Community Affairs and determined that plaintiff has the burden of showing in a retaliation claim that (1) he engaged in protected opposition to Title VII discrimination, (2) that he was subsequently disadvantaged by an action of his employer, and (3) that there was a causal connection between the activity and the adverse employment action.

The Tenth Circuit held in Anderson v. Phillips Petroleum Co., 861 F.2d 631, 635 (10th Cir. 1988), that a plaintiff must show "that the individual who took the adverse action against him knew of the employee's protected activity." Plaintiff claims she was terminated in retaliation for filing complaints of discrimination against Defendant with the Oklahoma Human Rights Commission ("OHRC"). However, Defendant has shown that Plaintiff was terminated on May 6, 1990, reinstated on May 8, 1990, filed her first complaint with the OHRC on May 21, 1990, and was terminated permanently on May 25, 1990, and Defendant did not receive official notice of the complaint to the OHRC until May

30, 1990. Plaintiff does not dispute this chronology of events, but claims she personally told the Labor Relations Manager for Defendant corporation at least one week prior to her final termination "of her intent to file such a charge of discrimination." (Brief, pg. 10). Plaintiff has failed to establish that Defendant knew that she had filed charges with the OHRC prior to her final termination - at most, she had made a threat to do so to a sole employee of the corporation. Plaintiff has therefore failed to show that there was a causal connection between her filing of a complaint with the OHRC and Defendant's action in terminating her.

Plaintiff has failed to show that she met the qualifications of her job with Defendant corporation. Rather, the evidence is that she continually violated attendance policies in spite of warnings and counseling. Also, Defendant has stated that Plaintiff's department contained black and white employees from the time she was there until the present, and Plaintiff does not deny this. She has therefore not shown that her job was filled by someone of a different race. Plaintiff has not met her burden to show a prima facie case of racial discrimination relating to her discharge.

The court notes that on June 14, 1990, Plaintiff signed the Negotiated Settlement Agreement which disposed of her claim to the OHRC which alleged the same disparate treatment and discriminatory discharge claims raised in this case. Paragraph One of the Agreement states that she will not bring suit against Defendant on those claims in exchange for her reinstatement under the Last Chance Agreement. Thus, her first and second causes of action are barred by the Agreement.

Defendant's Motion to Dismiss or in the Alternative, for Summary Judgment as to Plaintiff's Third and Fourth Causes of Action (#6) and Defendant's Motion for Summary Judgment on Plaintiff's First and Second Causes of Action (#14) are granted.

Dated this 8 day of Sept., 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

SEP - 9 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CLOSED

DATE 9-10-92

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

WAYNETTA MARSHALL, as mother)
and next friend of VALIN T.)
MARSHALL, a minor child,)
)
Plaintiff,)
)
vs.)
)
FSA SUPER SAVER NO. 1, LTD.,)
a Texas limited partnership,)
)
Defendant.)

Case No. 91-C-899-C

NOTICE OF DISMISSAL

TO: Mr. James K. Secrest, II
Mr. Edward J. Main
Attorneys for Defendant
7134 South Yale, Suite 900
Tulsa, OK 74136

Please take notice that the Plaintiff, Waynetta Marshall, as mother and next friend of Valin T. Marshall, a minor child, by and through her attorney dismisses without prejudice the above entitled action pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.



Curtis J. Biram, OBA #801
BIRAM & KAISER
6th Floor, Pratt Tower
125 West 15th Street
Tulsa, OK 74119
918/584-0719
Attorneys for Plaintiff

CLOSED

ENTERED ON DOCKET

DATE SEP 10 1992

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

BLUE CROSS/BLUE SHIELD OF
OKLAHOMA,

Plaintiff,

vs.

PAULA ELICK,

Defendant,

and

MARK ELICK,

Third-Party Petitioner.

No. 92-C-312-E

FILED

SEP 09 1992

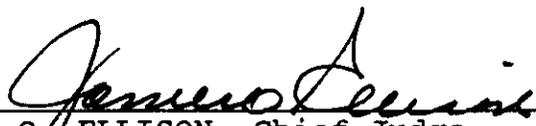
Richard M. [Signature] Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This is an action to recover payment of medical expenses. Plaintiff sought removal on the basis that the case is governed by The Employee Retirement Income Security Act of 1974 (ERISA) the preemptive force of which is legion. Defendant and Third-Party Petitioner object to removal and move for remand because the federal removal statute provides merely that cases "may be removed by the defendant or the defendants." 28 U.S.C. §1441(a) and cases clearly hold that the section does not contemplate removal by Plaintiff. The Court finds that removal pursuant to §1441 was therefore improper in this case. 29 U.S.C. §1132(e)(1) provides that "except for action under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction ... in ERISA cases. Subsection (a)(1)(B) need not detain our analysis because it is inapplicable to the case at bar.

Therefore, it appears that the federal courts have exclusive jurisdiction over the instant cause of action. But it also appears to a legal certainty that Congress did not provide a procedural vehicle of removal for the unfortunate plaintiff who selects the wrong forum. The Court's sole recourse therefore is to dismiss the action.

ORDERED this 8th day of September, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

CLOSED

FILED

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

SEP 08 1992

Richard M. Lowmings, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

EUGENE M. HENDERSON, et al.,)
)
Plaintiffs,)
)
vs.)
)
CITY OF TULSA, et al.,)
)
Defendants.)

No. 91-C-903-E

ENTERED ON DOCKET
SEP 9 1992
DATE _____

O R D E R

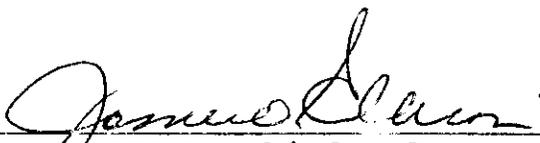
Before the Court is the Defendants' Motion for Judgment on the Pleadings or, in the Alternative, for Dismissal. The Court has considered the arguments of the parties and has determined the Motion should be viewed as one for summary judgment pursuant to Rule 56, Fed.R.Civ.P. The Court has reviewed the record in light of the relevant law and finds the Defendants' motion should be granted. Plaintiffs cite Whitley v. Oologah S.D. I-4 of Rogers City, 741 P.2d 455 (Okl. 1987) in support of their position that they were "equitably lulled ... into a false sense of security ..." Id. at 457. However, Plaintiffs' own evidence belies that position because it reveals that no settlement was ever reached. Thus, the instant case is clearly distinguishable from Whitley. The Court finds that the Trent and Lasiter cases, cited by Defendants state the law applicable to the instant case. Trent v. Board of County Commissioners, 755 P.2d 615 (Okl. 1988); Lasiter v. City of Moore, 802 P.2d 1292 (Okl. App. 1990). See also, Doe v. Independent School District #I-89, 780 P.2d 659 (Okl. 1988). Where, as here, the dispositive facts establish that no settlement or partial

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approval of the claim had been reached so as to trigger equitable considerations then Plaintiffs are bound by the requirements of Oklahoma's Political Subdivision Tort Claims Act. 51 O.S. 1981 §§151 et seq. As the Oklahoma Court of Appeals stated in Lasiter Where there is "a failure of compliance" with the relevant notice and filing provisions of that Act, then the claim is barred and the Complaint must be dismissed. Id. at 1293. The undisputed material facts, then, compel a finding that the claim of Eugene Henderson is barred and should be dismissed. And, assuming arguendo, that Lynette Henderson's claim is somehow subsumed within Eugene Henderson's claim, her claim is barred as well.

IT IS THEREFORE ORDERED that Defendants' Motion is granted. This case is dismissed.

ORDERED this 4TH day of September, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

CLOSED

ENTERED ON DOCKET

DATE 9/9/92

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

GARY BEWLEY,

Plaintiff,

vs.

No. 91-C-346-B

BRUCE HOWELL, SUPERINTENDENT;
INDEPENDENT SCHOOL DISTRICT
No. 1 OF TULSA COUNTY, OKLAHOMA;
BOARD OF EDUCATION OF INDEPENDENT
SCHOOL DISTRICT NO. 1 OF TULSA
COUNTY, OKLAHOMA; JAMES REEDER;
DOUG DODD; JIM PAYNE; VERNON
HOBBS; JUDY McINTYRE; WALTER
HUSHBECK; individually and as
members of the Board of Education
of Independent School District
No. 1 of Tulsa County, Oklahoma;
and CATHY RODGERS, an individual,

Defendants.

FILED

SEP 04 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER SUSTAINING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

This litigation arises from the alleged wrongful termination of Plaintiff, Gary Bewley ("Bewley"), on June 20, 1990, by the Board of Education of Independent School District No. 1 of Tulsa County, Oklahoma ("the Board"). Bewley's termination was based on a majority of the Board (5 to 1) finding that Bewley, an employee of the staff of Will Rogers High School, had engaged in sexual relations with a minor female student, Cathy Rodgers, in the bathroom adjoining Bewley's office on May 3, 1988.

Bewley alleges herein various United States constitutional violations and state causes of action. Specifically, Bewley asserts he was denied his lawful property and liberty interest without due process of law in that his hearing was substantially prejudiced by the delay between May 1988 and June 1990. He further alleges there

was not an impartial tribunal, certain potentially exculpatory documents were destroyed, documents which would have aided his defense were withheld and a timely witness and exhibit list was not produced. Bewley also seeks relief for a violation of his First Amendment constitutional right for whistle blowing and seeks relief for age discrimination. Further, Bewley seeks relief under state causes of action for violation of public policy by wrongful termination, breach of contract, and violation of the Open Meeting Act. He seeks in excess of \$50,000 damages and other proper equitable relief. In response, the Defendants assert that Plaintiff was given fundamental procedural due process and specifically deny any federal and state violations urged by Plaintiff.

Before the Court for decision is Defendants' Motion for Summary Judgment Pursuant to Fed.R.Civ.P. 56, now at issue.

The Standard of Fed.R.Civ.P. 56
Motion for Summary Judgment

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Winton Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986). The evidence and inferences therefrom must be viewed in a light most favorable to the nonmoving party. Conaway v. Smith, 853 F.2d 789, 792 n. 4 (10th Cir. 1988). Unless the Defendants can demonstrate their entitlement beyond a reasonable doubt, summary judgment must be denied. Norton v. Liddel, 620 F.2d 1375, 1381 (10th Cir. 1980).

A recent Tenth Circuit Court of Appeals decision in Committee for the First Amendment v. Campbell, 962 F.2d 1517 (10th Cir. 1992), concerning summary judgment states:

"Summary judgment is appropriate if 'there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.' . . . Factual disputes about immaterial matters are irrelevant to a summary judgment determination. . . We view the evidence in a light most favorable to the nonmovant; however, it is not enough that the nonmovant's evidence be 'merely colorable' or anything short of 'significantly probative.' . . .

"A movant is not required to provide evidence negating an opponent's claim. . . . Rather, the burden is on the nonmovant, who 'must present affirmative evidence in order to defeat a properly supported motion for summary judgment.' . . . After the nonmovant has had a full opportunity to conduct discovery, this burden falls on the nonmovant even though the evidence probably is in possession of the movant. (citations omitted). *Id.* at 1521."

**Uncontroverted Material Facts Revealed
by the Record**

Local Rule 15B in pertinent part states as follows:

"15B. Summary Judgment Motions. A brief in support of a motion for summary judgment (or partial summary judgment) shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be numbered and shall refer with particularity to those portions of the record upon which movant relies. The brief in opposition to a motion for summary judgment (or partial summary judgment) shall begin with a section which contains a concise statement of material facts as to which the party contends a genuine issue exists. Each fact in dispute shall be numbered, shall refer with particularity to those portions of the record upon which the opposing party relies, and, if applicable, shall state the number of the movant's fact that is disputed. All material facts set forth in the statement of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of the opposing party...."

Pursuant to Local Rule 15B in their brief in support of the motion for summary judgment, Defendants set out fifty-nine "undisputed material facts." In the Plaintiff's brief in opposition to the Defendants' motion for summary judgment, Plaintiff mentions thirteen of the school district Defendants' fifty-nine numbered undisputed facts. Thus, the fifty-nine uncontroverted material facts set forth in the Defendants' brief are admitted with the exception of Undisputed Facts Nos. 4, 5, 6, 9, 10, 11, 25, 26, 33, 35, 41, 50, and 52.

The fifty-nine uncontroverted material facts set forth by the Defendants, which the Court finds are supported by the record, are as follows (The Court added a sentence to fact #25 and #35):

1. Before the beginning of the 1987-88 school year, Bewley was employed by the Tulsa School District as a social studies teacher at Will Rogers High School. (Deposition of Gary Bewley, Volume I, pp. 73, 85, attached as Exhibit A (hereafter referred to as Bewley I)).

2. As a tenured teacher, Bewley was evaluated annually by his principal. The evaluation form used by the principal was titled "Teacher's Confidential Evaluation," and Bewley signed the form in the space designated for "signature of teacher." (Bewley I, pp. 75-85; Exhibits A-1 and A-2.¹)

3. In the summer of 1987, Bewley was promoted to acting guidance dean at Will Rogers. (Bewley I, pp. 85-86).

4. During the 1987-88 school year, the regular school day at Will Rogers included hours one through six, and ran from 8:00 a.m. to 2:45 p.m. (Deposition of Richard Cox, p. 181, attached as Exhibit B (hereafter Cox)).

5. During the 1987-88 school year, Bewley was given an extra-duty assignment to teach the behind-the-wheel component of driver's education. (Cox, pp. 172-180; Exhibit B-1.) Bewley performed the assignment before and after regular school hours, during zero hour and seventh hour. (Bewley I, p. 90; Cox, p. 181).

6. An extra-duty assignment is a duty assigned to an employee that is not included within that employee's regular assignment. In most cases, employees are paid additional

¹The letter prefix indicates that these documents are deposition exhibits from Bewley I and Bewley II.

compensation for extra-duty assignments. (Cox, p. 174).

7. Bewley was paid additional compensation of \$8 per hour over and above his regular contract salary for each hour of behind-the-wheel driver's education. (Bewley I, pp. 89-92).

8. Bewley doesn't know what assignments are or are not extra-duty assignments. (Bewley I, pp. 67-69).

9. In January of 1988, Bewley was promoted to the position of acting assistant principal at Will Rogers. (Bewley I, p. 92).

10. At the time Bewley was made acting assistant principal, the Tulsa School District was faced with a shortage of funds. As a result promotions were made without increasing compensation, and that fact was reflected by designating the position as "acting." When Bewley became acting assistant principal, he assumed all duties and responsibilities of an assistant principal. (Cox, pp. 149-150).

11. Bewley was formally evaluated by his principal as an administrator during the 1987-88 school year, and Bewley signed his evaluation as an administrator. (Bewley I, pp. 93-94; Exhibit A-3).

12. On May 31, 1988, Cathy Rodgers ("Cathy") reported to a teacher at Will Rogers that Bewley had engaged in an act of sexual intercourse with her earlier that month. The teacher advised Cathy to report the incident to a counselor. Cathy then went to Jody Stinnett ("Stinnett"), a female counselor, and told her what had happened. (Transcript of Hearing before Board of Education held

June 20, 1990,² pp. 42-43; (hereafter Hearing Transcript); Cox, pp. 41-42).

13. Cathy believed that the incident with Bewley had occurred on May 3. Cathy was seventeen years old and a junior at Will Rogers High School at the time. (Hearing Transcript, pp. 26-27, 31-32, 44).

14. Cathy told Stinnett that she had been tardy for her sixth hour class on the day in question and had asked Bewley to write her an excused pass. She had gone with Bewley to his office, which had a bathroom attached to it. She told Stinnett that Bewley had showed her a condom and that she and Bewley had engaged in sexual intercourse on a mat in the bathroom. (Deposition of Jodie Stinnett, pp. 27-30, attached as Exhibit C (hereafter Stinnett)).

15. After talking with Cathy, Stinnett went to Richard Cox ("Cox"), the principal of Will Rogers High School, and reported Cathy's account. Cox instructed Stinnett to take a written statement from Cathy and from the three girls who had come with Cathy when Cathy reported the incident. (Cox, pp. 41-42; Stinnett, pp. 30-34).

16. Cox reviewed the girls' written statements and met with Bewley. Bewley denied that the incident had occurred. Bewley told Cox an Army recruiter had been in Bewley's office all day on May 3. (Cox, pp. 43-46).

17. Cox met with Sgt. Jimmy Joe Cady ("Sgt. Cady") of the

²The entire transcript of this hearing is included as the second bound volume of the School District's exhibits.

Army National Guard that afternoon or the next day. Sgt. Cady told Cox that he had been at Will Rogers High School on May 3. Sgt. Cady brought his Mandex calendar (an appointment book), which had a vertical line from 9:00 a.m. through 3:15 p.m. for that date. Sgt. Cady told Cox he had left at 2:30 P.M. that day. Cox made a copy of the page from Sgt. Cady's Mandex. (Cox, pp. 48-50).

18. Cox told Bewley that because of Sgt. Cady's presence in Bewley's office on May 3, Cox believed Cathy's statement was untrue. (Cox, p. 51).

19. Cox also questioned Betty Arney and Trudy Lewis, who worked in the attendance office across the hall from Bewley's office. Neither had seen Cathy with Bewley that afternoon. Cathy had not requested a pass from either of them on May 3. (Cox, pp. 52-53, 60-62).

20. Cox also conferred with Peggy Wolfe ("Wolfe"), Cathy's sixth hour teacher. Wolfe told Cox that Cathy had reported to class near the end of sixth hour on May 3 and that Cathy had given her a pass. Wolfe did not keep the pass. (Cox, pp. 62-64; Hearing Transcript, pp. 153-155).

21. Because Sgt. Cady provided Bewley with an alibi witness, Cox concluded that Bewley was innocent of the charge against him. Sgt. Cady's statement was the key to Cox's decision. (Cox, p. 100; Hearing Transcript, p. 118).

22. In October of 1988, Cathy's mother contacted Don Hoopert, the director of secondary education for the Tulsa School District, about the incident with Bewley. Cox and Stinnett then met with

Cathy's mother, and Cox explained his decision. Cox sent a memorandum to Hoopert and Roy J. Lewis, assistant superintendent for instruction for the Tulsa School District, regarding his meeting with Cathy's mother. (Cox, pp. 101-103; 108-109).

23. Dr. Bruce Howell ("Dr. Howell") became superintendent of the Tulsa School District on February 3, 1990. (Deposition of Bruce Howell, p. 5, attached as Exhibit D (hereafter Howell)).

24. In the spring of 1990, Cathy filed a notice of tort claim against the Tulsa School District. (Hearing Transcript, pp. 234-235, 239-241). Cathy's tort claim alleged that she had been seduced by Bewley in her junior year and by another teacher at Will Rogers, Craig LaGrone ("LaGrone") in her senior year. (Letter dated April 2, 1990, attached as Exhibit E).

25. Upon learning of Cathy's allegations against Bewley and LaGrone, Dr. Howell called Bewley and LaGrone to his office to obtain their sides of the story. (Hearing Transcript, pp. 240-241). Dr. Howell then suspended Bewley and LaGrone with full pay pending an investigation into the allegations against them. (*Id.* at 242; letter dated April 11, 1990, attached as Exhibit A-4). LaGrone subsequently resigned from the Tulsa School District. (Hearing Transcript, pp. 53-54). Dr. Howell advised Bewley he could resign his position with a good recommendation or obtain a lawyer and contest the matter. (Hearing Transcript, pp. 279, 292).

26. Pursuant to the standard procedure in matters involving the possible dismissal of certified employees for improper sexual involvement with students, Dr. Howell and the administration of the

Tulsa School District requested the law firm of Rosenstein, Fist & Ringold to investigate the allegations against Bewley and make a recommendation as to whether there was sufficient evidence to go forward with a dismissal. Rosenstein, Fist & Ringold conducted an investigation, gathered evidence and ultimately presented the administration's case against Bewley to the Board of Education at Bewley's pre-termination due process hearing. (Hearing Transcript, pp. 6-7, 246-247). Rosenstein, Fist & Ringold is the regular legal counsel to the Tulsa School District and has provided legal services to the Tulsa School District for many years.

27. By letter dated April 17, 1990, Dr. Howell advised Bewley that he would recommend Bewley's dismissal and that Bewley had the right to a due process hearing before the Board of Education of the Tulsa School District. (Letter dated April 17, 1990, attached as Exhibit A-5).

28. Linda Burkett ("Burkett"), an attorney from Oklahoma City, represented Bewley in connection with his dismissal from the Tulsa School District. Burkett is Bewley's sister. (Bewley I, pp. 103-104).

29. By letter dated April 16, 1990, Burkett requested a copy of Bewley's complete personnel file, a copy of all rules and regulations governing employment contracts, grievances or arbitration procedures, and a hearing on the decision to suspend Bewley. (Letter dated April 16, 1990, attached as Exhibit A-6). All these items were provided to Bewley's lawyer prior to Bewley's dismissal hearing. (Bewley I, pp. 104-106; letter dated April 17,

1990, attached as Exhibit A-7).

30. By letter dated April 20, 1990, Burkett again requested a due process hearing for Bewley. Burkett also requested the following:

- a. [Bewley's] complete personnel file;
- b. The exact dates of the alleged wrongful acts;
- c. The exact places and times of the alleged wrongful acts;
- d. The full names, addresses and telephone numbers of all of those having knowledge of any of the wrongful acts alleged;
- e. All written statements of Mr. Bewley's accusers;
- f. The expected testimony of all witnesses who have been contacted regarding the alleged wrongful acts;
- g. Any and all exculpatory evidence uncovered by his employer or agents of his employer;
- h. All recorded evidence (photocopies, tape recordings, videotapes) in whatsoever form, in the possession or knowledge of his employer's agents.

(Letter dated April 20, 1990, attached as Exhibit A-8).

31. On April 23, 1990, Dr. Howell advised Bewley by letter that Bewley's due process hearing would be held on May 17, 1990. He also advised Bewley of his right to be present in person at the hearing, his right to be represented by the attorney or counsel of his choice, his right to present any witnesses or evidence on his behalf, and his right to question witnesses appearing on behalf of the administration. (Letter dated April 23, 1990, attached as Exhibit A-9).

32. By letter dated April 27, 1990, Burkett requested that Bewley's hearing be continued from May 17, 1990, because Sgt. Cady

was not available on that date. (Letter dated April 27, 1990, attached as Exhibit A-10). The hearing was rescheduled for and ultimately held on June 20, 1990. Bewley and his attorney had two months to prepare for the hearing. (Bewley I, pp. 122-123).

33. By letter dated May 1, 1990, David Fist of Rosenstein, Fist & Ringold responded to Burkett's letter of April 20, 1990. Fist's letter was sent by certified mail, and Burkett signed the return receipt card acknowledging that she received it. (Letter dated May 1, 1990, attached as Exhibit A-11). Each of Burkett's eight specific requests was addressed in Fist's letter. (*Id.*; Bewley I, pp. 129-134).

34. Burkett interviewed members of the staff at Will Rogers in preparation for the hearing. (Hearing Transcript, pp. 105-106; Bewley I, pp. 234-238). In addition, Burkett requested, and was allowed, to interview Cox prior to Bewley's hearing. (Letter dated May 25, 1990, attached as Exhibit A-12).

35. The day before Bewley's hearing, Fist had a letter delivered to Burkett's office listing the administration's witnesses and providing a synopsis of their proposed testimony. (Letter dated June 19, 1990, attached as Exhibit A-13). Burkett reviewed the list before the hearing commenced.

36. The Tulsa Tribune published a lengthy article about Cathy's allegations against Bewley and LaGrone on June 19, 1990, the day before Bewley's hearing. All of the members of the Board were contacted by the Clerk of the Board of Education and instructed not to read the article. None of the members of the

Board read the article. (Deposition of Judy Eason-McIntyre, pp. 64-65, attached as Exhibit F (hereafter, Eason-McIntyre); Deposition of Walter Hushbeck, pp. 95-96, attached as Exhibit G (hereafter Hushbeck); Deposition of Jim Payne, pp. 13-14, attached as Exhibit H (hereafter, Payne); Deposition of Doug Dodd, pp. 76-77, attached as Exhibit I (hereafter, Dodd); Deposition of Vernon Hobbs, pp. 33-34, attached as Exhibit J (hereafter Hobbs)).

37. The Board of Education of the Tulsa School District convened in open session at 8:00 a.m. on Wednesday, June 20, 1990. The agenda for the meeting specified the procedure that would be followed for Bewley's pre-termination hearing. (Agenda, dated June 18, 1990, attached as Exhibit A-14).

38. The attorneys for the administration and Bewley each made opening statements to the Board. (Hearing Transcript, pp. 5-17; Bewley I, pp. 170-171). The administration then presented its case against Bewley. The administration called five witnesses. (Hearing Transcript, pp. 2-3, 17-101, 112-174).

39. Cathy Rodgers testified that she had sexual intercourse with Bewley in the bathroom adjoining his office during sixth hour on May 3, 1988, between approximately 2:00 p.m. and 2:30 p.m. She drew a diagram of the office and bathroom and told the Board how the rooms were furnished. (Hearing Transcript, pp. 29-31). She testified that she and Bewley went to Bewley's office, and that Bewley locked the door to his office, took an unwrapped condom from a drawer, took her to the bathroom and told her to get undressed. Cathy testified that she undressed except for her shirt, that

Bewley undressed, lay on top of her, penetrated her and ejaculated. She testified that the condom tore, that Bewley insisted that they shower together, and that Bewley gave her \$5 to buy spermicide. Cathy testified that Bewley then wrote her a pass to allow her to get into her sixth hour class, and that she went to her sixth hour class when there were about ten minutes remaining in the hour. (Hearing Transcript, pp. 33-41; Bewley I, pp. 175-178).

40. Richard Cox testified as to his investigation of the incident in 1988. He told the Board that Sgt. Cady's alibi for Bewley was the key to his decision not to take the matter further. (Hearing Transcript, pp. 112-120).

41. Sgt. Cady testified that he had no recollection of May 3, 1988, and that all he could base his testimony on was his schedule as recorded in his Mandex. He testified that his Mandex showed that he was at Will Rogers recruiting on May 3, 1988. Sgt. Cady also testified that he had written the name "Orange" beside the 2:00 p.m. time slot in his Mandex, and the names "Ogden" and "McClellan" beside the 2:30 p.m. time slot in his Mandex. He explained that Orange, Ogden and McClellan were individuals who had desired to transfer into the Oklahoma National Guard from the Army Reserve, and that he would not have met with them at Will Rogers. He testified that he knew he had met with them because they had transferred into the Oklahoma National Guard. Sgt. Cady testified that based on these facts, it was more probable than not that he left Will Rogers before 2:00 p.m. on May 3, 1988. (Hearing Transcript, pp. 129-152).

42. Margaret Wolfe testified that she was Cathy's sixth hour teacher in May of 1988. She told the Board that sixth hour lasted from 1:55 to 2:45 p.m. She testified that she recorded absences in her grade book, and that she had marked Cathy "absent" on May 3, 1988. She testified that she would not have changed the mark in her book to reflect that Cathy was present for the last ten minutes of class. (Hearing Transcript, pp. 153-158).

43. Jodie Stinnett testified that Cathy reported the incident with Bewley to her in the last week of May, 1988. She testified that she believed Cathy was telling the truth. (Hearing Transcript, pp. 158-174).

44. Bewley's attorney, Burkett, had the opportunity to cross-examine each of the witnesses called by the administration. (Hearing Transcript, pp. 49-101, 120-122, 140-148, 155-158, 163-166; Bewley I, p. 174). The Board also had the opportunity to ask questions of each witness. (Hearing Transcript).

45. Bewley called twelve witnesses to testify before the Board. (Hearing Transcript; Bewley I, pp. 173-174).

46. One of Bewley's witnesses, Trudy Lewis, was working at Will Rogers on the day of the hearing. Bewley's attorney believed she was unavailable to testify. The Board instructed Cox to have her brought to the hearing so she could testify for Bewley. (Hearing Transcript, pp. 66-71; 102-112).

47. Bewley also sought to introduce evidence concerning Cathy's relationship with Craig LaGrone and other teachers at Will Rogers. In her notice of tort claim, Cathy had asserted that she

had become pregnant with LaGrone's child. J. Douglas Mann of Rosenstein, Fist & Ringold objected to the introduction of such evidence and urged the Board to focus solely on the allegations against Bewley. The Board overruled this objection and decided to hear all the evidence that Bewley wanted to present. (Hearing Transcript, pp. 52-63).

48. After Bewley had rested his defense, the administration called Cathy again as a rebuttal witness to testify as to comments written by various teachers in her "Autographs," a booklet students at Will Rogers could purchase and have their friends and teachers sign near the end of the school year. (Hearing Transcript, pp. 251-263. Comments written by teachers included "Mr. Bewley gets all the luck" and "You are a good student and Mr. Bewley's right arm." (Hearing Transcript, pp. 254-255; Board Exhibit 5 to Hearing Transcript).

49. Bewley then called three rebuttal witnesses, Wendell Wilkinson, Rita Bewley Lewis and Bewley himself. Only Wilkinson testified in rebuttal to Cathy's testimony regarding "Autographs." Mann argued that the testimony of Rita Bewley Lewis and Bewley was not proper rebuttal. The Board allowed Rita Bewley Lewis and Bewley to testify. (Hearing Transcript, pp. 269-334).

50. When he testified before the Board, Bewley had the opportunity to tell the Board everything he wanted to tell them. (Bewley I, pp. 162-163).

51. Bewley asserts that it was his practice to pull students who had been threatened with violence out of class and keep them in

his office sixth hour. Bewley did not tell the Board about this practice. (Bewley I, pp. 196-199).

52. After Bewley was terminated, he found at his mother's house certain documents concerning students who were involved in fights the week of May 2, 1988. These documents purport to be statements written by students and are dated May 3, May 4 and May 5. (Exhibits A-15, A-16, A-17 and A-18, attached). These documents do not state that anyone was in Bewley's office sixth hour on May 3, 1988. (Bewley I, pp. 194-198). Bewley did not tell the Board about these documents during his hearing. (Bewley I, pp. 140-149).

53. Bewley did not tell the Board at his hearing that he believed he was being dismissed because of his age. (Bewley I, pp. 163-164).

54. Bewley did not tell the Board at his hearing that he believed he was being dismissed because he had uncovered a plot to falsify average daily attendance figures at Will Rogers. (Bewley II, pp. 40-42).

55. Bewley's hearing lasted approximately thirteen hours, from 9:00 a.m. until after 10:00 p.m. (Bewley I, p. 181). Bewley believes Burkett did her job in representing him at the board hearing. (Bewley I, pp. 174-175).

56. The Board deliberated in executive session from 7:48 p.m. until 10:17 p.m. before announcing its decision. (Hearing Transcript, p. 355). At the conclusion of the hearing the Board voted, 5-1, to adopt the following findings of fact:

[O]n or about May 3rd, 1988, Gary W. Bewley participated in an act of sexual intercourse at Will Rogers High School with Cathy Rodgers who was then a student at Will Rogers High School under the age of 18. Mr. Bewley's conduct constitutes a proper basis for the termination of his employment from the Tulsa Public Schools.

The Board then voted, 5-1,³ to terminate Bewley. (Hearing Transcript, pp. 355-357).

57. Bewley was an administrator on June 20, 1990. He was terminated from his job as an administrator. (Bewley I, p. 251).

58. Bewley was paid his salary and benefits through June 20, 1990. He was paid approximately \$1,700 for accrued but unused sick leave. (Bewley I, p. 183).

59. Tom McGuire replaced Bewley as assistant principal at Will Rogers following Bewley's termination. Tom McGuire is older than Bewley. (Affidavit of Dr. Blaine Smith, attached as Exhibit K).

The Plaintiff, Bewley, lists 49 numbered paragraphs at pages 2-17 of his Brief in Opposition to Defendants' Motion for Summary Judgment. In order to determine if material disputed factual issues remain, the Court has made a thorough review of the record which includes a transcript of the thirteen-hour evidentiary hearing before the Board on June 20, 1990. A review and analysis of the Plaintiff's asserted disputed material issues of fact follows:

Plaintiff's facts in paragraphs 1, 2 and 3 are not in dispute.

³McIntyre, Hushbeck, Hobbs, Dodd and Reeder for termination; Payne against termination. (Transcript of Proceedings had on 6-20-90, p. 357).

Plaintiff's purported material undisputed facts 4 through 11 have some relevance only if Bewley is legally correct in asserting that in June 1990 when he was terminated he was entitled to the statutory termination procedures available to teachers and not administrators. Bewley argues his extra duty assignment as a driver education teacher in the 1987-88 school year qualified him as a teacher. However, Defendants' admitted fact No. 57 states:

Bewley was an administrator on June 20, 1990.
He was terminated from his job as an
administrator. (Bewley I, p. 251).

The evidence establishes at the time of termination Bewley was an administrator and the hearing provided on June 20, 1990, comported with his administrator status. Okla.Stat. tit. 70, §6-102.4 (1989 Supp.) (renumbered as 6-101.13).

Plaintiff's paragraph 12 does not controvert Defendants' uncontroverted material fact No. 41 which states Sgt. Jimmy Joe Cady ("Sgt. Cady") testified before the Board that his personal Mandex calendar reflected that he probably left Mr. Bewley's office on May 3, 1988, before 2 p.m. because he had appointments with three individuals at a location away from Will Rogers High School commencing at 2 p.m. on May 3, 1988.

Concerning Plaintiff's facts 13 and 14, there is a dispute whether such written statements of Cox and Sgt. Cady existed. In any event, Bewley, and witnesses Sgt. Cady and Cox each testified before the Board and the Plaintiff was given reasonable latitude in cross examining Cox and Sgt. Cady concerning their involvement and overall testimony.

Plaintiff's fact in paragraph 15 concerns a handwritten statement of a student named Shaunielle McCoy. The McCoy statement is dated May 3, 1988, and does not specify a time period. The Shaunielle McCoy statement was not presented at the time of the hearing on June 20, 1990, because its existence was unknown to both the school Board and Bewley. A copy of the Shaunielle McCoy statement was found by Bewley in his mother's garage after the hearing among papers he had stored there before the hearing. Bewley states now that this statement refreshes his memory that McCoy was in his office during sixth hour on May 3, 1990 in the 2:30 p.m. time frame. At the time of the hearing Bewley testified he could not recall who specifically was in his office on May 3, 1988, during the sixth hour time frame. (Bewley, p. 298-301, Volume II, Defendants' Exhibits).

The Court has examined the Hearing Transcript, p. 299, and does not conclude, as asserted by Plaintiff, that Board member Ms. Eason-McIntyre cut off the Plaintiff in his explanation of his sixth hour "safe keeping" practice.

Plaintiff's fact 16 states that Plaintiff's exhibit No. 39 establishes that a student named Marc Fisher was in Mr. Bewley's office during sixth hour on May 3, 1988. (Plaintiff's brief states 1998). Exhibit 39, the suspension record, reflects that the disciplinary incident occurred during sixth hour on May 2, 1988, and the student, Marc O. Fisher, was suspended for five days from May 3 to May 9, 1988. Thus, Marc O. Fisher was not in attendance at Will Rogers High School on May 3, 1988. Further, Exhibit 39 was

another document that was in storage at the Plaintiff's mother's garage prior to the hearing but was not presented to the Board at the time of the hearing.

Plaintiff's factual paragraphs 17 and 18 indicate that the documentation referred to in Plaintiff's paragraphs 15 and 16 was stored by Bewley in his mother's garage and he did not learn of their availability until a considerable time after the June 20, 1990 hearing and his termination.

Plaintiff's factual paragraphs 19 through 23 provide Bewley's statement concerning his "whistle blowing" claim and being retaliated against in violation of his First Amendment rights. The record reveals that there was no significant law violation concerning Will Rogers High School's method and way of recording student attendance for funding purposes, although it was within the Plaintiff's right to speak up on the subject. However, a significant point in this regard is that none of Bewley's "whistle blowing" allegations ever came to the attention of the Board before the hearing or before Bewley's termination. No evidence was offered on this subject at the day long due process hearing. Thus, the Board's decision and action was not based upon such "whistle blowing" activity.

Plaintiff's paragraphs 24-26 are not specifically material to the issues presented. It is Plaintiff's effort to establish that Superintendent Howell personally knew of Cathy Rodgers' sexual intercourse charge against Bewley prior to April of 1990, when she filed her tort claim notice. The facts in the record do not

reasonably permit a conclusion that Howell was aware of Bewley's involvement in the incident prior to April of 1990 when the tort claim notice was filed. In any event, such facts are not material because it is undisputed that the Board of Education was never presented with any evidence of "whistle blowing" by Bewley.

Plaintiff's fact 28 is neither material nor correct because on April 11, 1990, Cathy Rodgers had not filed suit against Tulsa Public School system but had filed the notice of a tort claim in early April 1990 with the clerk of the Board for the Tulsa Public Schools in accordance with the provisions of Okla. Stat. tit. 51, §151 *et seq.*

The Plaintiff's facts in paragraphs 29-31 refer to Bewley's efforts to obtain documents that were not furnished at the time. The record reveals that previous to the due process hearing Plaintiff's counsel made written requests for various numerous specified and types of documents. The record indicates that the school board, through its counsel, provided all such documentation specifically requested that was in custody of the school Board in April, May and June, 1990, previous to the hearing. The record does not reveal that either Bewley or his counsel ever complained to the Board of Education of a denial of any documents nor did they object to going forward with the hearing on June 20, 1990, because of a failure to provide certain documentation.

Plaintiff's paragraph 32 does not differ materially from the Defendants' undisputed material fact 26.

Plaintiff's paragraphs 33-35 are not material in view of the

fact the record reflects the Board members considered the evidence offered at the due process hearing and exercised their own independent judgment in voting on Plaintiff's termination by a vote of five to one.

Concerning Plaintiff's factual paragraph 36, there is nothing in the record to support that the Tulsa Board of Education or school district failed to produce any documentation prior to the hearing that had been properly requested in writing by Plaintiff's counsel.

Plaintiff's paragraph 37 is a misstatement of the documents requested by her letter of April 20, 1990 (Exhibit A-8 to the school district's opening brief). The record reflects that any documents specifically requested by Plaintiff were furnished which were in the custody of the school Board.

Plaintiff's paragraph 38 is not material to the dispute because the subject matter of the memo was covered in the evidence before the Board.

Plaintiff's paragraphs 39 and 40 refer to the fact that Cathy Rodgers had sought psychiatric therapy while in high school and had seen a psychological counselor. Bewley testified before the Board at the due process hearing that Cathy Rodgers had talked to him about her problems and about seeing a psychological counselor. (Bewley, Tr. 281-283). Bewley's lawyer could have inquired of Cathy Rodgers' attorney about information concerning her psychological treatment.

The record reveals the school Board at the time of the hearing

on June 20, 1990, was not in possession of any psychiatric or psychological reports concerning Cathy Rodgers. Bewley's lawyer did not pursue the subject until after the hearing and termination. The school board lawyer states that had Bewley's counsel requested a copy of the Notice of Tort Claim in writing he would have readily furnished it because it is a public document. The record does not reveal any request was made by Plaintiff for the Notice of Tort Claim at the hearing of June 20, 1990.

Concerning Plaintiff's factual paragraphs 41-43 about removal of documents from Bewley's office, Exhibits L and M to the Defendants' opening brief are relevant excerpts from the depositions of custodians Jerry Bowman and Claude Long. There is no evidence in the record that material documentation was wrongfully or improperly removed from Bewley's office.

Plaintiff's paragraph 44 is not material because the Plaintiff could have attempted to contact the potential witnesses Orange, Odgen or McClellan, but did not do so.

Concerning Plaintiff's factual paragraph 45, there is no due process requirement of the furnishing of a witness list any specific time prior to the hearing. The school Board's attorney sent a witness and exhibit list by courier the day before the hearing to attorney Linda Burkett's office in Oklahoma City. She was already in Tulsa preparing for the hearing and apparently did not receive the list until just before the actual hearing. Same could have been communicated to her by telephone upon receipt had her office chosen to do so. The witnesses called on behalf of the

school Board were persons known and revealed to Plaintiff and his counsel during their investigation before the hearing.

Concerning Plaintiff's factual paragraph 46 the record reveals there was no law violation of any kind, state or federal, relative to Dr. Howell's purported private conversation in Paragraph 46. Such is not a material fact.

Plaintiff's fact No. 47 is not supported by the record because each school board member testified that he or she understood the burden of proof was on the school administration. Eason-McIntyre, pp. 68-69; Hushbeck, pp. 34-36; Payne, pp. 16-20; Dodd, pp. 74-75; Reeder, pp. 67-68; Hobbs, pp. 77-78.

Plaintiff's facts No. 48 and 49 are not material because the documents which Bewley claims to have sought were either not in the custody of the school Board or were available from other sources or from the Plaintiff's mother's garage where Plaintiff previously stored them. The documents were accessible from third-party sources but simply not obtained or requested by the Plaintiff.

Legal Authorities and Analysis

The gravamen of the matter centers in the procedural due process issue. The fundamental right of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Matthews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 901, 47 L.Ed.2d 18 (1976); Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965); Corstvet v. Boger, 757 F.2d 223 (1985); and Walker v. United States, 744 F.2d 67 (10th Cir. 1984). Due process includes an impartial tribunal, notice of

the charges and that the notice be given a reasonable time before the hearing is to take place, and, except in emergency situations, the hearing be held before termination becomes effective. Walker v. United States, 744 F.2d 67, 70 (10th Cir. 1984).

Bewley's liberty interest claim is also premised on the contention that he was denied procedural due process. The Supreme Court noted in Baker v. McCollan, 443 U.S. 137, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979), "the Fourteenth Amendment does not protect against all deprivations of liberty. It protects only against deprivation of liberty accomplished 'without due process of law.'" *Id.* at 145, 99 S.Ct. at 2695, 61 L.Ed.2d at 442.

The truthfulness or falsity of Cathy Rodgers' testimony is not an issue before this court. It is stated in Bishop v. Wood, 426 U.S. 341, 48 L.Ed.2d 684 96 S.Ct. 2074 (1976):

"The federal court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies. (footnote omitted). We must accept the harsh fact that numerous individual mistakes are inevitable in the day-to-day administration of our affairs. The United States Constitution cannot feasibly be construed to require federal judicial review for every such error. In the absence of any claim that the public employer was motivated by a desire to curtail or to penalize the exercise of an employee's constitutionally protected rights, we must presume that official action was regular and, if erroneous, can best be corrected in other ways. The Due Process Clause of the Fourteenth Amendment is not a guarantee against incorrect or ill-advised personnel decisions."

It is not this Court's purview to judge the credibility of the witnesses in what each party has characterized as a "swearing

contest." The credibility of witnesses was for the school Board at the June 20, 1990, hearing.

Bewley asserts that re-opening the investigation twenty-three months following the incident violates due process. The undisputed facts reveal that the investigation was re-opened after the complainant, Cathy Rodgers, filed a notice of tort claim with the school district pursuant to Oklahoma law which alleged a pattern of sexual abuse against her at Will Rogers High School. The new school superintendent, Dr. Howell, had the authority to direct the investigation concerning the charges to proceed. The record reflects that school principal Cox's initial conclusions in June 1988, favorable to Bewley, were based upon an erroneous interpretation of alibi information from Sgt. Cady.

Bewley's position that any reason to further investigate the matter or preserve evidence ceased with Mr. Cox's initial decision to not pursue the matter is somewhat disingenuous. In this day and time, the continuing potential for criminal or civil litigation from such charged conduct is very real, at least so long as there is not a legal bar by limitations.

The school Board was alerted to the Cathy Rodgers claim against Bewley for the first time when she filed her notice of tort claim with the clerk of the Board on April 2, 1990. A prompt investigation was directed by Superintendent Howell upon receipt of the notice of tort claim and then the full hearing proceeded on June 20, 1990, approximately two months later.

Bewley claims that he was denied access to certain documents,

some of them exculpatory. The record reveals that prior to the due process hearing Bewley's counsel was provided all documents requested in writing that were within the custody of the school district. Copies of some documents that had been discarded in the normal course of the school year had been placed in storage by Bewley in his mother's garage. Bewley had forgotten they existed at the time of the hearing on June 20, 1990. Once copies of these documents came to Bewley's attention after the hearing and termination, he did not petition the school Board for a rehearing or new trial. These documents have been previously discussed herein in the factual section of this order.

Plaintiff's assertion that the Board was biased is not supported by the record. Plaintiff's various arguments in this regard do not establish a factual issue. Mangels v. Pena, 789 F.2d 836, 838 (10th Cir. 1986), and Evers v. Pender County Board of Education, 407 S.E.2d 879 (N.C.App. 1991). The law presumes the Board members act with honesty and integrity when discharging their official duties. Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482, 497, 96 S.Ct. 2308, 2316, 49 L.Ed.2d 1, 11-12 (1976).

Bewley further argues that he was denied due process because the school Board's longtime regularly retained law firm presented the administration's case on behalf of the superintendent to the Board at the due process hearing. Bewley asserts the Board was predisposed to believe the administration's case. The law firm, Rosenstein, Fist & Ringold, served as an advocate for the

administration and did not meet with the Board while the Board deliberated or advise the Board in any improper manner. Bewley at pages 31 and 36 of his response brief acknowledged this was a "pure swearing match." Defendants' lawyer Mann so advised the Board at the commencement of the hearing in opening statement. (Tr. p. 12).

Numerous decisions have held that absent a showing of actual bias, a school district's attorney may play more than one role in a teacher termination proceeding. Withrow v. Larkin, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975); Holley v. Seminole County School District, 755 F.2d 1492 (11th Cir. 1985); Breitling v. Solenberger, 585 F.Supp. 289 (W.D. Va. 1984), *aff'd*, 749 F.2d 30 (4th Cir. 1984); and Cochran v. Board of Education of Mexico School District No. 59, 815 S.W.2d 55 (Mo.App. 1991).

The Board understood the burden of proof was on the administration. (Depo. Eason-McIntyre, pp. 68-69; Hushbeck, pp. 34-36; Payne, pp. 16-20; Dodd, pp. 74-75; Reeder, pp. 67-68; Hobbs, pp. 77-78).

Bewley asserts a First Amendment Claim contending that the allegations made by Cathy Rodgers were merely a pretext to allow the Board to terminate him. Bewley urges that the real reason for his termination was that he uncovered some wrongdoing on the part of the Tulsa School District to falsify average daily attendance figures which would increase school district funding. (Bewley II, pp. 23-25). Bewley was entitled to raise this concern in the winter of 1990, although it turned out there was probably nothing improper about the complained of method of reporting. The case of Mt.

Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 97 S.Ct. 568, 40 L.Ed.2d 471 (1977), sets forth a three-prong test to determine whether a public employee's First Amendment right to free speech has been infringed: (1) the public employee has the burden of establishing as a matter of law that his speech was protected; (2) the employee must demonstrate that the protected speech was a substantial or motivating factor in the action taken against him; and (3) the burden then shifts to the employer to show by a preponderance of the evidence⁴ that the employer would have made the same decision even in the absence of protected speech. *Id.* at 284-287, 97 S.Ct. at 574-576, 50 L.Ed.2d at 481-484. The evidence is undisputed that Bewley did not communicate this allegation to the school Board previous to or during the hearing of June 20, 1990. There is no evidence in the record that the school Board had any knowledge of Bewley's prior "whistle blowing" concerning the average daily pupil attendance funding matter. Bewley bears the burden of showing that his speech was the motivating factor behind the Board's decision, and mere conjecture about the motive behind the official decision is not sufficient to carry the Plaintiff's burden. Prebble v. Brodrick, 535 F.2d 605 (10th Cir. 1976), and Setliff v. Memorial Hospital of Sheridan County, 850 F.2d 1384 (10th Cir. 1988). The record before the

⁴The Ninth Circuit has suggested that Congress has changed this burden of proof to a "clear and convincing" standard. Rivera v. United States, 924 F.2d 948, 954 n. 7 (9th Cir. 1991). This Court does not reach that question.

Court clearly indicates the Board terminated Bewley based upon Cathy Rodgers' allegations against him. Other than Bewley's conjecture, there is no evidence suggesting a causal link between Bewley's First Amendment "whistle blowing" claim and the sexual intercourse investigation.

The Oklahoma legislature has spelled out the procedures concerning termination of a full-time administrator in Okla.Stat. tit. 70, §6-102.4 (1989 Supplement) (renumbered as 6-101.13). Undisputed fact No. 57, as well as the record before the Court, establishes that Bewley was an administrator on June 20, 1990, and on that date was terminated from his job as an administrator. Bewley's assertion that he is entitled to the Oklahoma statutory termination procedures available to tenured teachers because of his extra duty assignment in driver's education is without merit. Maupin v. Independent School District No. 26 of Ottawa County, Oklahoma, 632 P.2d 396 (Okl. 1981).

Bewley's breach of contract claim is also without merit. Bewley's termination was for cause pursuant to appropriate statutory procedures, including procedural due process. Other jurisdictions have upheld terminations of school employees in similar situations. Board of Directors of Fairfield Community School District v. Justmann, 476 N.W.2d 335 (Iowa 1991); Evers v. Pender County Board of Education, 407 S.E.2d 879 (N.C.App. 1991); and Fisher v. Independent School District No. 622, 357 N.W.2d 152 (Minn.App. 1984). Bewley has not established a *prima facie* case of age discrimination. MacDonald v. Eastern Wyoming Mental Health Center,

941 F.2d 1115 (10th Cir. 1991), and Merrick v. Northern Natural Gas Co., Div. of Enron Corp., 911 F.2d 426 (10th Cir. 1990). After being terminated Bewley was replaced by an older assistant principal at Will Rogers High School. In his opposition brief to Defendant's Motion for Summary Judgment, Bewley presented no argument to controvert the school district defendants' evidence regarding age discrimination. This failure to respond is due either to the absence of evidence regarding age discrimination in the record or perhaps Bewley has abandoned his age discrimination claim.

Likewise, Bewley did not discuss in his opposition response brief the Defendants' alleged violation of the Open Meeting Act at the June 20, 1990 due process hearing. The record does not support violations of Oklahoma's Open Meeting Act, Okla.Stat. tit. 25, § 301 *et seq.*

Finally, for the reasons stated above, the record indicates that the individual Board members and Superintendent Howell are entitled to qualified immunity. Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 72 L.Ed.2d 396, 410 (1982). Qualified immunity, unlike other defenses, "not only shields a defendant from liability, but is also intended to protect the defendant from the burdens associated with trial." Pueblo Neighborhood Health Centers, Inc. v. Losavio, 847 F.2d 642, 645 (10th Cir. 1988). To overcome the qualified immunity defense, a plaintiff "must do more than identify a clearly established legal test and then allege that the defendant has violated it." Hannula

v. City of Lakewood, 907 F.2d 129, 131 (10th Cir. 1990). The plaintiff must demonstrate "a substantial correspondence between the conduct in question and prior law allegedly establishing that the defendant's actions were clearly prohibited." *Id.* In Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987), the Supreme Court pointed out that a general allegation plaintiff's due process rights have been violated bears no relationship to the inquiry under Harlow of whether the specific action at issue was objectively legally reasonable at the time it was taken. The record before the Court demonstrates the procedural due process granted Plaintiff was objectively and legally reasonable, free of constitutional infirmity.

For the reasons stated herein, Defendants' Motion for Summary Judgment Pursuant to Fed.R.Civ.P. 56 is hereby SUSTAINED.

DATED this 4th day of September, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

X

CLOSED
FILED

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

SEP 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

MOUNTAIN STATES FINANCIAL)
RESOURCES, CORP.,)
)
Plaintiff,)
)
v.)
)
GENE P. DENNISON,)
)
Defendant.)

Case No. 91-C-439-E

ENTERED ON DOCKET
DATE SEP 9 1992

J U D G E M E N T

NOW On this 4th day of September, 1992, the above styled matter comes on before the undersigned Judge. The Plaintiff appears by and through its attorney of record, Bruce F. Klein, and the Defendant appears by and through his attorney of record, Michael Jordan Fairchild. The Court, having reviewed the court file, having heard the arguments of counsel, and having been advised in all of the particulars, finds as follows:

1. That the Defendant shall permit the Plaintiff to repossess the 1984 Dynasty Boat No. WBB03282M83H-20-1, 453 Inboard Outboard Motor 158 HP and Trailer, office equipment - 3 Lenier Word Processor #3365, #4428 and #3889 immediately;
2. That the Defendant, Gene P. Dennison, shall sign a waiver of notice of sale;
3. Plaintiff shall be granted judgment in the principal amount of \$50,000.00, and accrued interest through August 31, 1992 in the sum of \$16,087.97, and further interest accruing from September 1, 1992, at the rate of 10% per annum until paid;
4. The Plaintiff has, by agreeing to said judgment amount of \$50,000.00, already provided credit against the principal amount due for the boat, trailer and office equipment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff shall be permitted to repossess instanter the 1984 Dynasty Boat No. WBB03282M83H-20-1, 453 Inboard Outboard Motor 158 HP and Trailer and office equipment-3 Lenier Word Processor #3365, #4428 and #3889, and the Defendant shall execute a waiver of notice of sale.

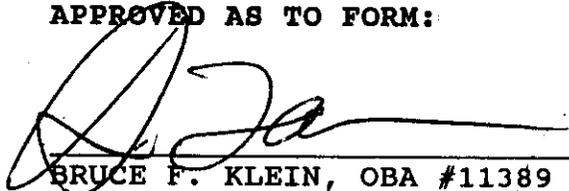
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff shall be granted judgment in the principal amount of \$50,000.00, and accrued interest in the sum of \$16,087.97 through

August 31, 1992, and further interest accruing from September 1, 1992, at the rate of 10% per annum, until paid for all of which let Execution and/or Garnishment issue.

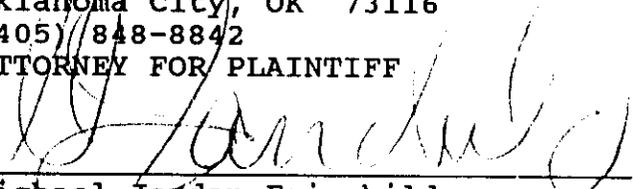
S/ JAMES O. ELLISON

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:



BRUCE F. KLEIN, OBA #11389
205 N.W. 63rd, Suite 160
Oklahoma City, OK 73116
(405) 848-8842
ATTORNEY FOR PLAINTIFF



Michael Jordan Fairchild
The Downing Mansion
232 North Santa Fe
Tulsa, Oklahoma 74127-6921
ATTORNEY FOR DEFENDANT

(abc:Dennison.ord)

CLOSED

FILED

SEP 9 8 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

WAYNE TAYLOR,)
)
) Petitioner,)
)
 vs.)
)
) RON CHAMPION, et al.,)
)
) Respondents.)

No. 91-C-765-E

ENTERED ON DOCKET

DATE SEP 9 1992

ORDER

Before the Court is the Magistrate's Report and Recommendation that Respondent's Motion to Dismiss be granted. Petitioner objects based upon Collins v. Hesse, 957 F.2d 746 (10th Cir. 1992) and Gamble v. Parsons, 898 F.2d 117 (10th Cir. 1990). It will suffice to say that the issue in those cases was how to apply the "in custody" requirement articulated in Maleng v. Cook, 490 U.S. 488 (1989). The issue in the instant case is whether the procedural bar enunciated by the Magistrate works to preclude Petitioner's claim. The Court has reviewed the record and finds that it does. Therefore, the Magistrate's Report and Recommendation will be granted.

ORDERED this 8th day of September, 1992.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

10

CLOSED

ENTERED ON DOCKET
DATE SEP 9 1992

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 WILLARD E. DAVIS a/k/a)
 WILLIARD E. DAVIS; KATHY A.)
 DAVIS; COUNTY TREASURER,)
 Tulsa County, Oklahoma; and)
 BOARD OF COUNTY COMMISSIONERS,)
 Tulsa County, Oklahoma,)
)
 Defendants.)

FILE 1

SEP 08 1992

Richard M. LAWRENCE, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-674-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 4th day of September, 1992. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear not, having previously disclaimed any right, title or interest in the subject property; and the Defendants, Willard E. Davis a/k/a Williard E. Davis and Kathy A. Davis, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Willard E. Davis a/k/a Williard E. Davis, acknowledged receipt of Summons and Complaint on October 10, 1992; that the Defendant, Kathy A. Davis, acknowledged receipt of Summons and Complaint on October 10, 1992; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 3, 1992;

and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on August 3, 1992.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed his Answer on August 24, 1992; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on August 24, 1992; and that the Defendants, Willard E. Davis a/k/a Williard E. Davis and Kathy A. Davis, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lot One (1), Block Two (2), PRATTWOOD ESTATES 3RD, an Addition to the City of Sand Springs, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on December 5, 1986, the Defendants, Willard E. Davis a/k/a Williard E. Davis and Kathy A. Davis, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$84,600.00, payable in monthly installments, with interest thereon at the rate of 9 percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Willard E.

Davis and Kathy A. Davis, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated December 5, 1986, covering the above-described property. Said mortgage was recorded on March 19, 1987, in Book 5009, Page 247, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Willard E. Davis a/k/a Williard E. Davis and Kathy A. Davis, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Williard E. Davis a/k/a Williard E. Davis and Kathy A. Davis, are indebted to the Plaintiff in the principal sum of \$81,809.19, plus interest at the rate of 9 percent per annum from March 1, 1991 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendants, Willard E. Davis a/k/a Williard E. Davis and Kathy A. Davis, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Willard E. Davis a/k/a Williard E. Davis and Kathy A. Davis, in

the principal sum of \$81,809.19, plus interest at the rate of 9 percent per annum from March 1, 1991 until judgment, plus interest thereafter at the current legal rate of 3.42 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Willard E. Davis a/k/a Williard E. Davis, Kathy A. Davis, and the County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Willard E. Davis a/k/a Williard E. Davis and Kathy A. Davis, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisal, the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein
in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

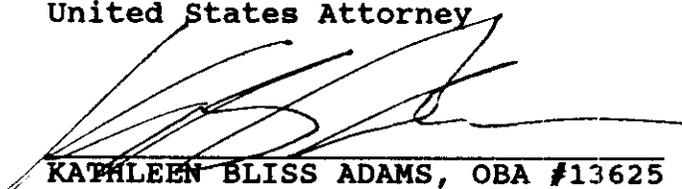
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
Civil Action No. 92-C-674-E

KBA/esr

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

ENTERED ON DOCKET

UNISYS FINANCE CORPORATION)
a Michigan Corporation,)
)
Plaintiff,)
)
vs.)
)
RMP SERVICE GROUP, INC., a)
Missouri Corporation, and)
RMP CONSULTING GROUP, INC.,)
a Missouri Corporation,)
)
Defendants.)

Case No. 92-C-250 E

DATE SEP 9 1992

FILED

SEP 08 1992

Richard M. Lawless, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER GRANTING DEFAULT JUDGMENT ON PLAINTIFF'S
THIRD CLAIM FOR RELIEF

Upon consideration of the Motions for Default Judgment filed by Unisys Finance Corporation herein, and the hearing thereon, whereat Wm. Eric Culver represented Plaintiff, and John R. Long represented the Defendants, the Court finds that the Defendants, RMP Service Group, Inc. and RMP Consulting Group, Inc., are in default, and judgment is hereby granted to Unisys Finance Corporation against RMP Service Group, Inc. and RMP Consulting Group, Inc. on its Third Claim for Relief, as prayed for in its Complaint, including accrued and accruing costs of this action, and a reasonable attorney's fee.

In accordance with the Third Claim for Relief, the Defendants are hereby ordered to deliver the Equipment to Plaintiff in Tulsa, Oklahoma, without the necessity of posting of a bond, as agreed to by the Defendants.

The Motions for Default Judgment on the First and Second Claims of Plaintiff are overruled.

AND IT IS SO ORDERED.

DATED this 4th day of September, 1992.

S/ JAMES O. ELLISON
JAMES O. ELLISON
Judge of the United States
District Court

Wm. ERIC CULVER, OBA #2082
20 East Fifth Street, Suite 1402
Tulsa, Oklahoma 74103-4463
(918) 587-6171

Attorney for Plaintiff

JOHN R. LONG, OBA #12379
Menzer, Entz, Loftis & Long, P.C.
Center 3000, Suite 248
3000 United Founders Boulevard
Oklahoma City, Oklahoma, 73112-4279
(405) 848-8886

Attorney for Defendants

ENTERED ON DOCKET

DATE 9/9/92

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

FILED

SEP 04 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

PHILIP C. BARR, individually,)
and BARR ENTERPRISES, INC.,)
an Oklahoma corporation,)

Plaintiffs,)

v.)

KENNETH SASSER, BERDINA SASSER,)
and KEN SASSER ENTERPRISES, INC.,)
an Oklahoma corporation,)

Defendants.)

No. 91-C-197-B

J U D G M E N T

On August 28, 1992, a hearing was held before the Court on Defendants' Motion to Reconsider the Award of Attorney Fees and on Plaintiffs' Application for Attorney Fees.

After due consideration by the Court, Defendants' Motion to Reconsider was denied.

After due consideration of Plaintiffs' Application for Attorney Fees as prevailing party filed July 14, 1992, and Plaintiffs' Supplemental Application filed August 26, 1992, Plaintiffs' Application for attorney fees to the firm of Head & Johnson is granted as reasonable in the amount of \$19,465, plus court costs assessed by the Clerk in the amount of \$587.95, and judgment against the Defendants and in favor of Plaintiffs in said amount is hereby ordered.

The hearing was continued until September 4, 1992, for consideration of application for attorney fees of the firm of Frazier, Smith & Phillips. After consideration, IT IS ORDERED judgment in the amount of \$6,660.00 is entered in favor of

Plaintiffs and against the Defendants for said amount as a reasonable attorney fee. Authorities supporting said sums as reasonable are: Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983); Hensley v. Eckerhart, 461 U.S. 424 (1983); State ex rel Burk v. City of Oklahoma City, 598 P.2d 659 (Okla. 1979); and Oliver's Sport Center v. National Standard Insurance Company, 615 P.2d 291 (Okla. 1980).

DATED this 4th day of September, 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 9/9/92

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

MARY K. HENSHAW & ORVILLE M.)
 HENSHAW, Husband and Wife,)
)
 Plaintiffs,)
)
 vs.)
)
 LARRY FUGATE, a Creek County)
 Deputy Sheriff, BRUCE DUNCAN,)
 City of Sapulpa Police Officer,)
 3 UNKNOWN Creek County Deputy)
 Sheriffs, 3 UNKNOWN City of)
 Sapulpa Police Officers,)
)
 Defendants.)

Case No. 92-C-204-B ✓

FILED

SEP - 4 1992 *PK*

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

ORDER

Before the Court is a Motion to Dismiss for failure to state a claim upon which relief can be granted, pursuant to Fed.R.Civ.P. 12(b)(6), filed on behalf of Defendant, Bruce Duncan, to dismiss Plaintiff Orville Henshaw's consortium claim. Duncan asks that Plaintiff's claim be dismissed because the law does not recognize a loss of consortium claim arising out of the alleged Constitutional right violation as provided by 42 U.S.C.A. §1983.

Plaintiffs filed a claim in federal court pursuant to Title 42 U.S.C.A. §§ 1983 and 1988 and under jurisdictional statutes Title 28 U.S.C.A. §§1331 and 1343(a)(3). Plaintiff Mary Henshaw alleges that the defendants, each acting under color of law, maliciously seized her vehicle and used unreasonable, excessive and disproportionate force, depriving her of a right secured by the Constitution and the Amendments thereto. Plaintiff

Orville Henshaw alleges a state spousal derivative claim for loss of consortium.

To dismiss a complaint and action for failure to state a claim upon which relief can be granted it must appear beyond doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41 (1957). Motions to Dismiss under Fed.R.Civ.P. 12(b) admit all well-pleaded facts. Jones v. Hopper, 410 F.2d 1323 (10th Cir. 1969), *cert. denied*, 397 U.S. 991 (1970). The allegations of the Complaint must be taken as true and all reasonable inferences from them must be indulged in favor of complainant. Olpin v. Ideal National Ins. Co., 419 F.2d 1250 (10th Cir. 1969), *cert. denied*, 397 U.S. 1074 (1970).

In order to state a claim under 42 U.S.C. §1983 a Plaintiff must state facts sufficient to show that he or she has been deprived "of any rights, privileges or immunities secured by the Constitution and laws" by a person acting under color of law.

Loss of Consortium

The right of consortium has never been identified as a substantive federal right. Courts have continually recognized that loss of consortium is a state cause of action without constitutional implications. Walters v. Village of Oak Lawn, 548 F.Supp. 417 (N.D.Ill., 1982); Niehus v. Liberio, 1989 W.L. 26831 N.D.Ill); Stanley v. City of New York, 587 F.Supp. 393 (E.D.N.Y., 1984); Fritts v. Niehouse, 604 F. Supp. 823 (W.D.Mo. 1984). The consortium claim is not directly cognizable under the federal question jurisdictional statute nor under the civil rights

jurisdictional statute since Plaintiff Orville Henshaw does not allege deprivation of any federal right. Fritts, Id.

The Tenth Circuit Court of Appeals has held that a Plaintiff can only recover for deprivations of their own Constitutional rights, not the rights of someone else. Archuleta V. McShan, 897 F.2d 495 (10th Cir. 1990). That case held that a child, who brought a federal civil rights action against police officers based on an alleged violation to his father's Constitutional rights, did not have a protected interest to be free of emotional trauma suffered as a result of observing allegedly excessive police force which was directed entirely at his father. Archuleta, Id.

In cases with facts similar to those before this Court, spousal derivative claims for loss of consortium based solely on violations of the other spouse's civil rights have also been dismissed. Jenkins. v. Carruth, 583 F.Supp. 613 (E.D.Tenn. 1982), Touchstone v. Upper Gwynedd Township, No. 78-2112, slip op. at 4 (E.D.Pa. July 29, 1980), aff'd without opinion, 691 F.2d 491 (3rd. Cir.1982); Niehus, supra.

These cases hold that a §1983 cause of action must allege the deprivation of a right, privilege or immunity secured by the Constitution or federal law, consistent with Parratt v. Taylor, 451 U.S. 527 (1981). Furthermore, a reading of the statute makes it clear that Congress intended to create a civil action in favor of the party suffering a Constitutional deprivation by stating, that "[e]very person who, acting under color of [law]...shall be liable to the party injured in an action at law, suit in equity, or other

proper proceeding for redress." 42 U.S.C.A. §1983 (Emphasis supplied).

Supplemental Jurisdiction

Plaintiff Orville Henshaw, in an attempt to invoke the prior common law pendent jurisdiction of this Court, argues that his claim is pendent and ancillary to his wife's §1983 cause of action.

Congress recently codified pendent and ancillary jurisdiction when adopting a supplement jurisdiction statute in 1990, 28 U.S.C. §1367, which provides as follows:

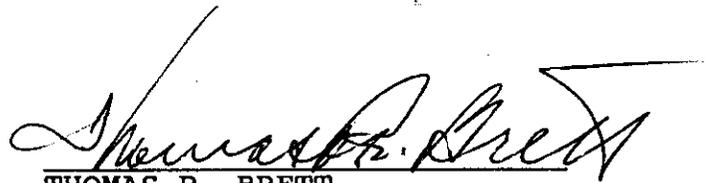
Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

The Court has examined this new statute and reads supplemental jurisdiction to include only valid claims. The Court concludes there is no valid claim for loss of consortium under §1983. However, under the supplemental jurisdiction statute the Court would have the discretion to hear consortium claims along with §1983 claims if the claimant's spouse pleads, in addition, a valid state claim through which the derivative consortium cause of action could attach. Such was not done here.

The case herein involves a derivative consortium claim as attached solely to a §1983 claim, in the Court's view, not

permitted by law. Therefore, Plaintiff's attempt to invoke supplemental jurisdiction for such claim is without merit. The Court concludes that Defendant Duncan's motion to dismiss should be and the same is hereby GRANTED. The Court sua sponte DISMISSES Plaintiff Orville Henshaw's consortium claim as to all defendants for the reasons stated above.

IT IS SO ORDERED THIS 4th DAY OF SEPTEMBER, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

SEP 9 1992

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

CLOSED

RALPH L. LEADERBRAND, GLENNA F.)
 LEADERBRAND, ROBERT GIBSON and)
 PATRICIA GIBSON,)
)
 Plaintiffs,)
)
 vs.)
)
 BOARD OF COUNTY COMMISSIONERS)
 OF THE COUNTY OF TULSA, OKLAHOMA;)
 CITY OF TULSA, OKLAHOMA; et. al.)
)
 Defendants.)

FILED
 SEP 8 1992
 Richard M. Lawrence, Clerk
 U.S. DISTRICT COURT

CASE NO. 92-C-583-E

ORDER

NOW on this 4/17 day of Sept, 1992, this cause comes to be heard upon the Motion of the Plaintiffs, RALPH L. LEADER BRAND, GLENNA F. LEADERBRAND, ROBERT GIBSON and PATRICIA GIBSON, to remand the same to the District Court in and for Tulsa County, State of Oklahoma, and the Court, having read the pleading of Plaintiffs, and the Notice of Removal of Defendant, BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF TULSA, OKLAHOMA, and having further read said Defendant's Response to Plaintiffs' Motion to Remand in which Defendant confesses Plaintiffs' Motion to Remand, does hereby order Plaintiffs' Motion be, and the same is hereby sustained.

20

IT IS THEREFORE ORDERED that this cause be remanded to the District Court in and for Tulsa County, State of Oklahoma.


JUDGE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF OKLAHOMA

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

GARY BEWLEY,

Plaintiff,

vs.

No. 91-C-346-B ✓

BRUCE HOWELL, SUPERINTENDENT;
INDEPENDENT SCHOOL DISTRICT
No. 1 OF TULSA COUNTY, OKLAHOMA;
BOARD OF EDUCATION OF INDEPENDENT
SCHOOL DISTRICT NO. 1 OF TULSA
COUNTY, OKLAHOMA; JAMES REEDER;
DOUG DODD; JIM PAYNE; VERNON
HOBBS; JUDY McINTYRE; WALTER
HUSHBECK; individually and as
members of the Board of Education
of Independent School District
No. 1 of Tulsa County, Oklahoma;
and CATHY RODGERS, an individual,

Defendants.

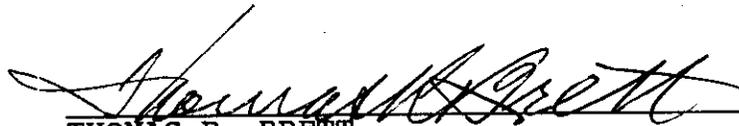
FILED
SEP 04 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

J U D G M E N T

In keeping with the Court's Order Sustaining Defendants' Motion for Summary Judgment filed contemporaneously herewith, Judgment is hereby entered in favor of the Defendants, Bruce Howell, Superintendent; Independent School District No. 1 of Tulsa County, Oklahoma; Board of Education of Independent School District No. 1 of Tulsa County, Oklahoma; James Reeder; Doug Dodd; Jim Payne; Vernon Hobbs; Judy McIntyre; Walter Hushbeck; individually and as members of the Board of Education of Independent School District No. 1 of Tulsa County, Oklahoma, and against the Plaintiff, Gary Bewley, and Plaintiff's action is hereby dismissed. Costs are assessed against the Plaintiff if timely applied for pursuant to Local Rule 6, and each party is to pay their own respective attorney's fees.

64

DATED this 4th day of September, 1992.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

CLOSED

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

PUBLIC SERVICE COMPANY
OF OKLAHOMA,

Plaintiff,

v.

NATIONAL TREE EXPERT
COMPANY, INC.,

Defendant.

Case No. 91-C-627-E

FILED

SEP - 9 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

The matters in controversy in the above-entitled action having been compromised and settled, Plaintiff Public Service Company of Oklahoma and Defendant National Tree Expert Company, Inc., hereby stipulate and agree, by and through their respective attorneys, that the above-entitled action be, and is, dismissed with prejudice and that Defendant's counterclaim against Plaintiff be, and is, dismissed with prejudice, each party to bear its own costs and attorneys' fees.

DOERNER, STUART, SAUNDERS,
DANIEL & ANDERSON

By: *G. Michael Lewis*
G. Michael Lewis (OBA No. 5404)
Albert J. Givray (OBA No. 3397)
Suite 500
320 South Boston Avenue
Tulsa, Oklahoma 74103-3725
(918) 582-1211

Attorneys for Plaintiff Public
Service Company of Oklahoma

MCKINNEY, STRINGER & WEBSTER, P.C.

By:


Robert D. Tomlinson
Dixie L. Coffey
101 North Broadway
Oklahoma City, Oklahoma 73102
(405) 239-6444

Attorneys for Defendant National
Tree Expert Company, Inc.

ENTERED ON DOCKET

DATE 9/8/92

CLOSED

FILED

SEP 04 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

SCOTT P. KIRTLEY,)
)
 Plaintiff,)
)
 v.)
)
 OWENS & MCGILL, INC.)
)
 Defendant.)

91-C-769-B ✓

ORDER

Now before this Court is an appeal by Owens & McGill ("Owens"). Two issues are raised. First, did the Bankruptcy Court properly follow Fed.R.Civ.P. 52(a) when making its decision? Second, did the Bankruptcy Court err by holding that Owens had no claim to the \$25,189.04 turned over by Matthew A. Brainerd to the Trustee. For the reasons discussed below, the case will be remanded to the Bankruptcy Court.

I. Summary of Facts/Procedural History

Owens, a Tulsa law firm, began representing Matthew E. Brainerd ("Brainerd") in 1979. The facts pertinent to this appeal, however, begin on May 21, 1989, when Brainerd executed a \$25,000 note to Owens for legal fees. Brainerd secured the note with a second mortgage on his house.

On June 15, 1989, Brainerd sold his residence. Owens then released its mortgage on the house, and was paid \$25,189.04 (the "Fund"). Owens placed this money in its trust account.¹ The Fund was still in Owens' trust account when Brainerd voluntarily filed

¹ Brainerd says he planned to use the money to buy another residence. However, evidence also suggests that Brainerd placed the money with Owens to avoid IRS claims.

Chapter 11 bankruptcy on August 24, 1989.

Brainerd then filed an adversary proceeding against Owens in an attempt to get the money back from the law firm in December of 1989. However, before the Bankruptcy Court reached a decision, Brainerd's bankruptcy case was converted to a Chapter 7. Scott Kirtley, a Tulsa attorney, was appointed trustee ("Trustee").

On March 29, 1991, the Trustee filed a Motion for Authority to Settle Controversy with Owens. The settlement provided Owens would pay the Trustee the sum of \$9,840.30 and that Owens would keep the balance of the funds. About a week later, Brainerd filed an amendment to his bankruptcy schedule, claiming the \$25,189.04 was exempt as proceeds from the sale of his homestead.

In April of 1991, the Bankruptcy Court conducted hearings on the dispute. Then, on May 20, 1991, the Bankruptcy Court filed an Order Requiring Turnover Of Funds, which required Owens to give the \$25,189.04 to the Trustee pursuant to 11 U.S.C. §542.

On June 26, 1991, the Bankruptcy Court denied Brainerd's claim of homestead exemption because he voluntarily transferred the proceeds of the Fund from the sale of his house to Owens with "the intent to conceal them from the IRS." *Memorandum Opinion, page 5*. Owens, however, never received a copy of that order.

On September 12, 1991, Owens filed a Motion To Enforce Compromise earlier offered by the Trustee. Five days later, the Trustee withdrew the offer. On September 20, 1991, a hearing was held. The following minute discussing that hearing appears on the docket sheet:

Denied. Defendant given 26 days to file mtn stating claim to the \$25,000 previously ordered turned over to Trustee; Trustee to respond 5 days

thereafter; Defendant given 5 days after Trustee's Response to Answer; Matter taken under advisement. All pleadings to be filed by 10/26/91; Court to decide [sic] whether Owens & McGill have legal or equitable lien for security interest in money; No further evidence presented; The Order entered in case on 5/20/91 directing turnover does not preclude Owens & McGill from filing referenced motion...

Then, on September 27, 1991, a minute on the docket sheet "vacated" the "Order entered that related to the Compromise" and also stated the "ruling on exemption issue" was vacated. It ordered Owens to file legal arguments within 21 days "regarding the compromise of 89-0341-C and the debtor's claim of homestead in the case within 30 days."

However, the Bankruptcy Court did not wait for Owens' briefs; it, instead, issued an opinion on October 3, 1991. The Bankruptcy Court held that the \$25,189.04 was part of Brainerd's estate, free of any claim by Owens or Brainerd. The opinion, which incorporated the May 20, 1991 Order and the June 26, 1991 Order, reiterated the above facts and then offered the following "Conclusions of Law":

The Court finds, based upon the complex procedural background of this case, that the orders of May 20, 1991 and June 26, 1991 should be held to be interlocutory. One order decided Owens had no claim to the Fund and the other order denied Debtor's claim of exemption. A final order should be entered declaring the Fund part of the Debtor's estate, free and clear of any claim of Owens or the Debtor...A separate order will be entered expressing all views herein.²

Owens later appealed that decision to this Court. The law firm raises three issues on appeal:

1. Whether Owens was denied a fair trial when the Court established a briefing schedule, but entered a Final Order denying the Appellant's claim before the briefs were due.

² No citations of legal authority appeared in the October 3, 1991 opinion.

2. Whether the Bankruptcy Court properly applied Oklahoma homestead law and 11 U.S.C. §522(3) in denying Owens' claim.

3. Whether the application of the doctrines of setoff or recoupment require reversal of the Bankruptcy Court's decision and entry of judgment in favor of the Appellant.

II. Standard of Review

The Bankruptcy Court's legal determinations are reviewed *de novo*. *Heins v. Ruti-Sweetwater, Inc.*, 836 F.2d 1263 (10th Cir. 1988). Factual findings are not to be disturbed unless clearly erroneous. A finding of fact is clearly erroneous, if after reviewing all of the evidence we are left with a definite conviction that a mistake has been made. *LeMaire v. United States*, 826 F.2d 949, 953 (10th Cir. 1987). *Also, see Davidovich v. Welton*, 901 F.2d 1533, 1536 (10th Cir. 1990).

III. Legal Analysis

The first issue is whether the Bankruptcy Court adequately followed Rule 52(a) of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052. Rule 52(a) states:

In all actions tried upon the facts..., the court shall find the facts specially and state separately its conclusions of law...Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses...It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of evidence or memorandum of decision filed by the court.

Rule 52(a) serves several objectives. First, it aids the trial court's adjudication proceeding by engendering care by the court in determining the facts. Second, it promotes the operations of *res judicata* and estoppel by judgment, and, lastly, it provides findings explicit enough to enable appellate courts to carry out a meaningful review. *Chandler v.*

City of Dallas, 958 F.2d 85, 88 (5th Cir. 1992).

A meaningful review includes not only specific findings of fact but Rule 52(a) also "obligates the district court to state separately its conclusions of law. *Id.* at 89. The Fifth Circuit court explains:

The preparation of sufficiently complete conclusions of law augments our comprehension of the legal issues on appeal. We must understand not only the factual, but also the legal reasoning of the district court to enable us to conduct a "just orderly review of the rights of the parties before us."...The touchstone of our Rule 52(a) analysis has remained the same over the years: Whether we, as an appellate court, can obtain a "full understanding of the issues on appeal." *Id.* at 89-90. 1991.³ (Emphasis added.)

The undersigned believes the court cannot yet conduct a meaningful review in this case. In part, this is attributable to what appears to be a complex procedural maze. The orders of May 20, 1991 and June 26, 1991 were filed; then apparently vacated, and then re-instated as interlocutory orders by an October 3, 1991 "final" order. As a result, this Court is unclear as to what constitutes the final findings of fact and conclusions of law.⁴ Therefore, the case should be remanded for a *de novo* review to clarify the record and thus enable careful and complete review on appeal.

Another reason to remand -- which is unrelated to Rule 52(a) -- is Owens' argument that it should have had an opportunity to brief the issue prior to the Bankruptcy Court's

³ One of the chief purposes of Rule 52(a) is "to aid the appellate court by affording it a clear understanding of the ground or basis of the decision of the trial court." See *Lyles v. United States*, 759 F.2d 941, 943 (D.C. Cir.1985).

⁴ An example of what appears to be a factual inconsistency is the explanation given for Brainerd's payment to Owens of the \$25,189.04. On page 156 of the April 2 Transcript, the Bankruptcy Court states that Brainerd "intended to use it [the money] to buy a new house." On page 5 of the June 26 Memorandum Opinion, the Bankruptcy Court stated that Brainerd transferred the money to Owens for protection from the IRS. Another area that is fuzzy is the legal rationale used by the Bankruptcy Court in deciding that Owens had no claim to the money now in the Trustee's possession. The October 3, 1991 Memorandum Opinion found that Owens had no claim to the money. But the opinion needs to expand on the Bankruptcy Court's legal analysis of the issue. Given the circumstances, the undersigned believes a remand would be more appropriate than attempting to conduct a meaningful review on the basis of guesswork.

October 3, 1991 decision. This, in itself, is not a violation of due process. *See, In the Matter of United States Financial Inc., v. Pacific Telephone and Telegraph Co.*, 594 F.2d 1275, 1280-1281 (9th Cir.1979)(Only when the retroactive effects are so wholly unexpected and disruptive that harsh and oppressive consequences follow is the constitutional limitation of due process exceeded).

But the docket sheet minutes of September 20 and 27 of 1991 raise questions. The minutes show that the Bankruptcy Court gave Owens time to file a brief on the issue. However, before the court-imposed deadline, the Bankruptcy Court issued its decision. Exactly why the Bankruptcy Court disregarded its own deadline is not addressed. The record is unclear as to whether Owens had an opportunity to submit legal arguments on the issue prior to the Bankruptcy Court's decision.⁵

III. Conclusion

A clear objective of Rule 52(a) is to provide a meaningful appellate review. A failure to meet the technical requirements of the rule does not merit remand or reversal "so long as the purposes behind the rule are effectuated." *See Ramirez v. Homheinz*, 619 F.2d 442, 445 (5th Cir.1980). Yet, a purpose of the rule is to provide findings explicit enough to carry out a meaningful review. This has not been done.

A second concern is whether Owens was given an opportunity to present a legal argument to the Bankruptcy Court prior to the October 3, 1991 decision. Given the hearings, summary judgment motions and other documents, the record suggests that Owens did get that opportunity. But, the minutes of September 20 and 27 muddle the issue.

⁵ In addition, the undersigned is unsure whether the issues raised on appeal were first raised to the Bankruptcy Court. Again, the record requires clarification.

Because of the state of the record below, the issues on appeal are ill-defined.

Given the above reasoning, this Court orders the case REMANDED. The Bankruptcy Court should allow Owens the opportunity to submit a brief on the issue of its claim to the Fund, and following same, enter a final order setting forth findings of fact and conclusions of law, addressing the issues, as more particularly set forth above.

SO ORDERED THIS 4th day of Sept., 1992.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE: 9/8/92

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

CLOSED
FILED
SEP 08 1992

WENDY L. PAPKE,)
)
Plaintiff,)
)
-vs-)
)
GREAT OAK PRODUCTS, INC.,)
an Oklahoma Corporation,)
)
Defendant.)

Case No. 91-C-819-B

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

This matter comes on before the undersigned United States District Court Judge on the 4th day of Sept. ~~August~~, 1992, pursuant to the Joint Stipulation/Application of the parties for order dismissing the case. After consideration of the Joint Application, and for good cause shown, the Court finds that an Order of Dismissal should be entered.

IT IS THEREFORE ORDERED that the above styled and numbered case is hereby dismissed with prejudice to the refiling thereof.

S/ THOMAS R. BRETT

Judge Thomas Brett

ENTERED ON DOCKET
DATE 9-8-92
CLOSED

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

rm

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 JERRY STEVEN THURMAN,)
)
 Defendant.)

90-CR-74-C
92-C-153-C

ORDER

Pending before the Court is a motion filed by petitioner, Jerry Steven Thurman, seeking relief under 28 U.S.C. §2255 requesting the Court to vacate, set aside, or correct the sentence imposed on December 20, 1990. Although Thurman raises several grounds in support of his motion, his underlying claim is that 21 U.S.C. §812 et. seq. and 21 C.F.R. §1308.22 specifically exclude methamphetamine from the schedule of controlled substances, and therefore, he did not violate the Controlled Substance Act. The Court has reviewed the record and concludes that Thurman's motion is without merit.

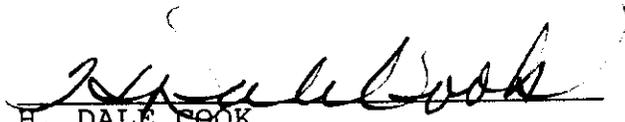
On July 12, 1990 Thurman, along with five other individuals, were indicted and charged in Count I with violation of 21 U.S.C. §846, conspiracy to knowingly and intentionally manufacture and distribute 100 grams or more of methamphetamine, a Schedule II controlled substance. Thurman, in consideration of his willingness

to cooperate with the government, was offered the opportunity to plead guilty to a two count information charging him with violation of 18 U.S.C. §1952(a), interstate travel in aid of racketeering. Thurman accepted this plea agreement and on October 22, 1990 pleaded guilty to the information which had been filed on that same date. The information, in both counts, charges Thurman with interstate travel in violation of §1952 for an unlawful purpose, to wit: "the manufacture and distribution of controlled substances as defined in Section 802(6) of Title 21, United States Code, (Controlled Substances Act)." The information did not identify any particular controlled substance or quantity.

In his motion, Thurman argues that his judgment and conviction are void in that "criminal offenses involving Methamphetamine do not state an offense against the United States and the court was therefore without jurisdiction to hear, try, accept a plea or to pass sentence upon such an indictment." Thurman's argument must fail for two primary reasons. First, Thurman's plea of guilty involved trafficking offense which did not specify or limit methamphetamine as the subject controlled substance. Second, the Tenth Circuit Court of Appeals in United States v. Youngblood, 949 F.2d 1065 (10th Cir. 1991) has specifically rejected Thurman's direct allegations and has held that methamphetamine is properly classified as a Schedule II controlled substance pursuant to 21 C.F.R. 1308.12(d).

Accordingly Thurman's motion for relief under 28 U.S.C. §2255 is denied. Petitioner's companion motion for appointment of counsel is also denied.

IT IS SO ORDERED this 3rd day of September, 1992.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

DATE 9/8/92

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

ATLANTIC RICHFIELD COMPANY,
Plaintiff,
vs.
AMERICAN AIRLINES, INC., et al.,
Defendants.

Case Nos. 89-C-868 B;
89-C-869 B;
90-C-859 B
(Consolidated)

AND CONSOLIDATED ACTIONS

AMERICAN AIRLINES, INC., et al.
Third-Party Plaintiffs,
vs.
AMF; et al.
Third-Party Defendants.

FILED

SEP 14 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

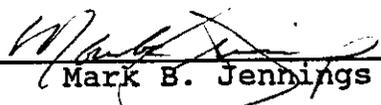
NOTICE OF DISMISSAL

The Group I Defendants/Third-Party Plaintiffs American Airlines, Inc., et al., pursuant to and in accordance with Fed. R. Civ. P. 41(a)(1), hereby dismiss their Third-Party Complaint, with prejudice, against each of the Third-Party Defendants listed below, with these Third-Party Plaintiffs and the Third-Party Defendants listed below each to bear their own costs, expenses, and attorney fees with regard to this resolution of these respective third-party claims:

1. Carco Rentals, Inc. and Carco International, Inc.
2. Charles D. Matthews

CHARLES W. SHIPLEY, OBA No. 8182
DOUGLAS L. INHOFE, OBA No. 4550
MARK B. JENNINGS, OBA No. 10082
MARK A. WALLER, OBA No. 14831

SHIPLEY, INHOFE & STRECKER
3600 First National Tower
15 East Fifth Street
Tulsa, Oklahoma 74103
(918) 582-1720

By 
Mark B. Jennings

Attorneys for Third-Party
Plaintiffs (GROUP 1)

CERTIFICATE OF MAILING

I do hereby certify that on the 4th day of September, 1992, I deposited the above and foregoing instrument in the United States mail, first class, postage pre-paid to the following:

Professor Martin A. Frey
Tulsa University College of Law
3120 E. 4th Place
Tulsa, Oklahoma 74104

Larry G. Gutteridge, Esq.
Sidley & Austin
633 W. 5th Street, Suite 3500
Los Angeles, CA 90071

Michael D. Graves, Esq.
Hall, Estill, Hardwick, Gable, Golden & Nelson
4100 Bank of Oklahoma Tower
Tulsa, Oklahoma 74172

William C. Anderson, Esq.
Doerner, Stuart, Saunders, Daniel & Anderson
320 South Boston, Suite 500
Tulsa, Oklahoma 74103

Steve Harris, Esq.
Doyle & Harris
P. O. Box 1679
Tulsa, Oklahoma 74101

John H. Tucker, Esq.
Rhodes, Hieronymus, Jones, Tucker & Gable
2800 Fourth National Bank Building
Tulsa, Oklahoma 74119

Bradley Bridgewater, Esq.
U. S. DOJ-Environmental &
Natural Resources Division
999 18th Street, Suite 501
North Tower
Denver, Colorado 80202



ENTERED ON DOCKET
DATE 9/8/92

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT F. JACKSON, et al.,)
)
 Defendants.)

SEP 14 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

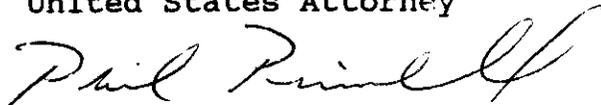
CIVIL ACTION NO. 91-C-665-B ✓

NOTICE OF DISMISSAL WITHOUT PREJUDICE

The Plaintiff, United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and hereby gives notice that the Defendant, Lesa R. Ward f/k/a Lesa R. Jackson, is hereby dismissed from this foreclosure proceeding pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. The Plaintiff would further advise the Court that the Defendant, Lesa R. Ward f/k/a Lesa R. Jackson, conveyed her interest in the subject real property described in the Complaint to Robert F. Jackson. On July 30, 1992, the Farmers Home Administration released the Defendant, Lesa R. Ward f/k/a Lesa R. Jackson, from personal liability to the Government for the indebtedness and obligation of the note and mortgage which is the subject of this foreclosure action.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3900 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

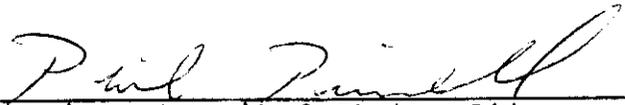
CERTIFICATE OF SERVICE

This is to certify that on the 4th day of September, 1992, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

Lesa R. Ward f/k/a Lesa R. Jackson
7649 Macon Drive
Biloxi, MS 39532

County Treasurer
Washington County Courthouse
Bartlesville, OK 74003

Board of County Commissioners
Washington County Courthouse
Bartlesville, OK 74003


Assistant United States Attorney

ENTERED ON DOCKET

DATE 9/8/92

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

FILED

SEP -4 1992

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 91-C-915-B

SCOTT O'DELL HINDS,)
 an individual,)
)
 Plaintiff,)
)
 v.)
)
 PEACHTREE PATIENT CENTER, INC., a)
 Georgia corporation; PEACHTREE)
 PATIENT CENTER CORPORATION, a)
 Georgia corporation; INVACARE)
 CORPORATION, an Ohio corporation;)
 WHEELCHAIR HOUSE, LTD., a Colorado)
 corporation; BILL TUTTLE, an)
 individual; and CRAIG HOSPITAL, a)
 Colorado corporation,)
)
 Defendants.)

O R D E R

Before the Court for decision is Defendant Bill Tuttle's ("Tuttle") Motion to Dismiss under Fed.R.Civ.P. 12(b)(2), asserting that the Court is without personal jurisdiction over Tuttle.

The events giving rise to this suit occurred in Oklahoma. Plaintiff, Scott Hinds, was injured while operating his wheelchair, manufactured by Defendant Invacare Corporation ("Invacare"), an Ohio corporation doing business in the state of Oklahoma. The Head Control Unit, attached to the wheelchair, was manufactured by Defendant Peachtree Patient Center, Inc. ("Peachtree"), a Georgia corporation doing business in the state of Oklahoma. Tuttle, an individual and resident of the state of Georgia, invented the Head Control Unit while an employee of Peachtree. Tuttle alleges his only contacts with Oklahoma occurred through his position as an employee of Peachtree and inventor of the Head Control Unit.

The principles governing the disposition of jurisdictional motions to dismiss under Rule 12(b)(2) are well settled. "Whether a federal court has personal jurisdiction over a nonresident defendant in a diversity action is determined by the law of the forum state." Yarbrough v. Elmer Bunker & Assocs., 669 F.2d 614, 616 (10th Cir. 1982). Oklahoma's law, 12 O.S. § 2004(F) provides:

"A court of this state may exercise jurisdiction on any basis consistent with the Constitution of the United States."

This law grants Oklahoma courts personal jurisdiction over nonresidents, limited only by the minimum requirements of due process. Due process requires that the nonresident defendant have certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. International Shoe Co. v. State of Washington, 326 U.S. 310, 315 (1945). It is critical to due process that "defendant's conduct and connection with the forum state are such that he would reasonably anticipate being haled into court there." Burger King v. Rudzewicz, 471 U.S. 462, 474 (1985); World-Wide Volkswagen v. Woodson, 444 U.S. 286, 295 (1980). In relation to Plaintiff's claim, Tuttle must have purposefully availed himself of the privilege of conducting activities in Oklahoma, thereby invoking the benefits and protection of Oklahoma law. Hanson v. Denckla, 357 U.S. 235, 253 (1958); Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 414 (1984). A minimum contacts inquiry must focus on the totality of the

relationship between the Defendant and the forum state. All American Car Wash v. NPE, 550 F.Supp. 166, 169 (W.D. Okla. 1981).

Under the fiduciary shield doctrine, jurisdiction over corporate officers or agents must ordinarily be based on their personal, rather than corporate, contacts with the forum. Ten Mile Indus. Park v. W. Plains Serv. Corp., 810 F.2d at 1518, 1527 (10th Cir. 1987). The rationale of the fiduciary shield doctrine is that it is unfair to force an individual to defend a suit brought against him personally in a forum with which his only relevant contacts are acts performed not for his own benefit but for the benefit of his employer. McClelland v. Watling Ladder Co., 729 F.Supp. 1316, 1319 (W.D. Okla. 1990).

According to his affidavit, Tuttle has been a resident of the state of Georgia since May, 1987. He was employed by Peachtree from May, 1987 to October, 1991, during which time he was never an officer, shareholder, stockholder or participating owner of Peachtree. During his employment at Peachtree, he invented the Head Control Unit, the patent of which was assigned to Peachtree. Tuttle's contacts with the state of Oklahoma were limited to the invention and design of the Head Control Unit, which was on behalf of Peachtree and not for his own benefit.

The Court finds no acts by Tuttle that can be construed as purposeful contacts with the state of Oklahoma. There is no evidence that Tuttle's contacts included any travel to Oklahoma or correspondence by mail or telephone with Oklahoma citizens or companies. The Court further finds that Tuttle's only contacts

with Oklahoma were in his capacity as corporate employee, not as an individual. Because of this, the Court holds that Tuttle has not purposefully availed himself of the privilege of conducting activities in Oklahoma and lacks sufficient minimum contacts with Oklahoma to support the Court's exercise of jurisdiction over him. Therefore, the Court concludes Defendant's Motion to Dismiss, upon the ground of lack of personal jurisdiction, should be and the same is hereby GRANTED.

IT IS SO ORDERED, this 4th day of September, 1992.

A handwritten signature in cursive script, reading "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE SEP 04 1992

FILED
CLOSED

SEP 02 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

EDDIE OWENS, JR.,)
)
Petitioner,)
)
v.)
)
RON CHAMPION, et al.,)
)
Respondents.)

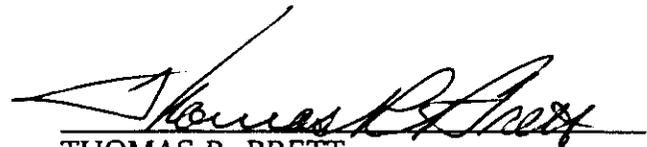
92-C-392-B

ORDER

This order pertains to Petitioner's Motion to Dismiss (Docket #8)¹ his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner asks that the court dismiss the petition because the conviction he is challenging has expired, and he therefore cannot meet the requirement of being "in custody" for the court to have jurisdiction to consider his petition under 28 U.S.C. § 2254. The Motion to Dismiss is granted.

Petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (#1) is dismissed without prejudice.

Dated this 2nd day of September, 1992.


 THOMAS R. BRETT
 UNITED STATES DISTRICT JUDGE

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

CLOSED

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

FLOYD R. HARDESTY,)
)
 Plaintiff,)
)
 vs.)
)
 KARRIE DULIN,)
)
 Defendant.)
)
 KARRIE DULIN,)
)
 Plaintiff,)
)
 vs.)
)
 FLOYD ROGER HARDESTY, et al.,)
)
 Defendants.)
)
 KARRIE DULIN,)
)
 Plaintiff,)
)
 vs.)
)
 ROGER HARDESTY,)
)
 Defendant.)

No. 89-C-810-E ✓

FILED

SEP -4 1991

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

No. 90-C-1042-E

No. 91-C-11-E

(CONSOLIDATED)

ORDER

This matter is before the Court upon the summary judgment motion of Defendants Hardesty, et al. Plaintiff has asserted two causes of action: a federal claim under Title VII and a state tort claim for intentional infliction of emotional distress. Defendants Hardesty argue that Plaintiff's claims are time-barred by the applicable statutes of limitation.

Title VII Claim. The filing requirements under the Equal

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Employment Opportunity Act (Act) are in the nature of a statute of limitations. Zipes v. Trans World Airlines, 455 U.S. 385 (1982) reh'g denied, 456 U.S. 940 (1982). Under the EEOC, Oklahoma is a "deferral state" because it has a designated agency to process EEOC complaints initially. The filing provisions for a deferral state are found at 42 U.S.C. §2000e-5. That section provides that no charge by a person claiming to be aggrieved by an unlawful employment practice may be filed with the EEOC until sixty days after proceedings at the State agency have commenced (unless those proceedings were terminated prior to the expiration of the sixty-day period). It further provides that, while the limitations period is generally 180 days, where proceedings are initially instituted with a designated State agency the limitations period is extended to 300 days after the unlawful act occurred "or within thirty days after receiving notice that the State or local agency has terminated the proceedings ... whichever is earlier. ..." 42 U.S.C. §2000e-5(e). Where a party claiming to be aggrieved does not file with a designated state agency initially but files with the EEOC within 240 days of the last discriminatory act then the complaint will be deemed to be timely filed because the additional 60-day period allotted to the state agency will not cause the complaint to run afoul of the 300-day statute of limitations. Mohasco Corp. v. Silver, 100 S.Ct. 2486 (1980). In this circuit Mohasco has been interpreted to stand for the proposition that a complaint filed with the EEOC after the 240-day period may be timely, if the state terminates its proceedings prior to the expiration of the 300-day period. Smith v. Oral Roberts

Evangelistic Association, Inc., 731 F.2d 684 (1984).

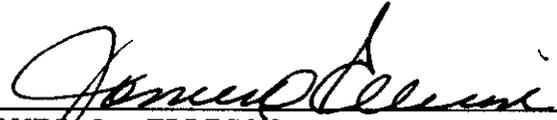
In the instant case, Plaintiff alleges that during her employment with Defendants Hardesty, Floyd Roger Hardesty made "unwelcome sexual advances toward the Plaintiff which amounted to harassment." Complaint, Case #90-C-1042 at ¶10. While Plaintiff's allegation states a valid claim of an unlawful employment practice, the Court finds that the only evidence submitted by Plaintiff which can be deemed to substantiate her claim is her assertion that from 1983-1985 she felt compelled to have sexual relations with Floyd Roger Hardesty. Plaintiff asserts that she last had a sexual relationship with Mr. Hardesty at the end of 1985. The Defendants' subsequent acts or omissions identified by Plaintiff as unlawful practices, culminating in what she asserts was a constructive discharge in 1988 simply are not evidence of separate unlawful practices nor of a continuing discriminatory practice. At best they may be characterized as effects of past discrimination. However, subsequent effects of past discrimination cannot be used to show continuing discrimination for purposes of the limitations period. United Air Lines v. Evans, 431 U.S. 553, 97 S.Ct. 1885, 52 L.Ed.2d 571 (1977); Delaware State College v. Ricks, 449 U.S. 250, 101 S.Ct. 498, 66 L.Ed.2d 431 (1980). Therefore, the Court finds that the last discriminatory act occurred at the end of 1985. And it was at that point that the statutory period began to run. See Shah v. Halliburton Co., 627 F.2d 1057 (10th Cir 1980). It is undisputed that Plaintiff filed her claim with the EEOC on September 28, 1989, well beyond the 300-day limitations period and

certainly beyond the 240-day limitations period which the Court holds is applicable to the instant case. Under Rule 56(c), summary judgment is appropriate where, after sufficient time for discovery, the non-moving party fails to offer adequate evidence "to establish the existence of an element essential to that party's case ... " Colotex Corp. v. Catrett, 477 U.S. 317 (1986). Plaintiff, here, has failed to demonstrate continuing discrimination after 1985 and has therefore failed to establish timely filing of her EEOC charge. Accordingly, the Court finds that summary judgment is appropriate as to Plaintiff's federal claim.

State Tort Claim. Regarding Plaintiff's claim for intentional infliction of emotional distress the Court finds that two years from the date upon which Plaintiff could have initially established her claim is the applicable statute of limitations. Chandler v. Denton, 741 P.2d 855 (Okla. 1987). The Court further finds that the statute was not tolled by Floyd Roger Hardesty's denial of paternity. See Depo. of Floyd Roger Hardesty, p. 53, lines 4-8. The Court finds that the denial cannot be characterized as a fraudulent concealment of a cause of action as required by Moore. Moore v. Delivery Services, Inc., 618 P.2d 408 (Okla.App. 1980). Plaintiff filed her tort action in state court in September, 1989. Her asserted claim arose at the end of 1985. Therefore the applicable statute of limitations bars her state tort claim.

IT IS THEREFORE ORDERED that the summary judgment motion of Defendants Hardesty et al. is hereby granted.

ORDERED this 5th day of September, 1991.

A handwritten signature in cursive script, appearing to read "James O. Ellison", written over a horizontal line.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

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

CLOSED
FILED

LEWIS AARON COOK,)
)
Petitioner,)
)
v.)
)
T. R. KINDT and THE)
ATTORNEY GENERAL OF THE)
STATE OF OKLAHOMA,)
)
Respondents.)

92-C-598-B

SEP 04 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This order pertains to petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Docket #2)¹, the Motion to Dismiss the Attorney General of the State of Oklahoma as a Party Respondent (#4), and the Reply Brief of Petitioner Pro, Se, to State of Oklahoma's, Motion to Dis-Miss [sic] (#6).

Petitioner is a federal prisoner who appears pro se seeking habeas corpus relief pursuant to 28 U.S.C. § 2254, alleging that his present sentence was improperly enhanced by invalid earlier state convictions. The sentences on all of the earlier convictions have been fully discharged. Both parties cite the case of Maleng v. Cook, 490 U.S. 488 (1989), in which the Supreme Court held that, when a sentence is fully expired, the collateral consequences of the conviction upon which the expired sentence was based are not sufficient to render a petitioner "in custody" for purposes of a habeas petition attacking that conviction, even though such prior conviction may be used to enhance punishment for a later conviction under which the petitioner is presently incarcerated.

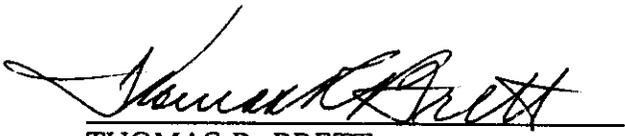
¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

However, in Gamble v. Parsons, 898 F.2d 117 (10th Cir.), cert. denied, 111 S.Ct. 212 (1990), the Tenth Circuit read Maleng as precluding a defendant from challenging a fully-expired conviction in isolation even though it may have potential collateral consequences in some future case. Rather, the attack must be directed toward the enhanced sentence under which the defendant is in custody and argue that his present sentence is improper because it has been enhanced by a prior, unconstitutional conviction. The Gamble court found that, although the prisoner did not explicitly list in his petition his present sentence as the one under attack, in his "Traverse to Motion to Dismiss" he cited Maleng and made clear that his current sentence had been enhanced by the expired conviction that he sought to challenge. The court concluded that the habeas petition, when construed with the deference to which he was entitled as a pro se litigant, should be read as asserting a challenge to the present sentence to the extent that it had been enhanced by the allegedly invalid prior conviction, thus satisfying the "in custody" requirement of 28 U.S.C. § 2254.

The facts in the case at bar are similar to those in Gamble. Petitioner is a pro se litigant whose petition can be read as asserting a challenge to his present federal sentence to the extent it was enhanced by allegedly invalid prior state conviction. Petitioner's petition should be directed toward his enhanced federal sentence which he is presently serving and should be brought under 28 U.S.C. § 2255. The Motion to Dismiss the Attorney General of the State of Oklahoma as a Party Respondent (#4) is granted. The Attorney General of the State of Oklahoma is dismissed as a Party Respondent from this case.

The rule for reviewing the sufficiency of any complaint is that the "complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief". Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). A court may dismiss an action for failure to state a cause of action "only if it is clear that no relief could be granted under any set of facts which could be proved". Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). Petitioner is not a person in custody pursuant to the judgment of a state court. Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (#2) is dismissed.

Dated this 2nd day of Sept., 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE SEP 04 1992

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CAROL A. HOPKINS; SPOUSE OF)
 CAROL A. HOPKINS; COUNTY)
 TREASURER, Washington County,)
 Oklahoma; BOARD OF COUNTY)
 COMMISSIONERS, Washington)
 County, Oklahoma,)
)
 Defendants.)

FILED

SEP 02 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 92-C-403-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 2nd day
of Sept., 1992. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendant, Spouse of Carol A. Hopkins, does not
exist and should be dismissed from this action; and the
Defendants, Carol A. Hopkins, and the County Treasurer and Board
of County Commissioners, Washington County, Oklahoma appear not,
but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Carol A. Hopkins,
acknowledged receipt of Summons and Complaint on May 29, 1992;
that the Defendant, County Treasurer, Washington County,
Oklahoma, acknowledged receipt of Summons and Complaint on
May 27, 1992; and that Defendant, Board of County Commissioners,
Washington County, Oklahoma, acknowledged receipt of Summons and
Complaint on May 12, 1992.

The Court further finds that Defendant, Spouse of Carol A. Hopkins, has not been served herein, as such person does not exist, and should therefore be dismissed as a Defendant herein.

It appears that the Defendants, Carol A. Hopkins, and the County Treasurer and Board of County Commissioners, Washington County, Oklahoma, have failed to answer and their default has therefore been entered by the Clerk of this Court.

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

Lots 9 and 10, Block 10, Rogers Addition,
Dewey, Oklahoma.

The Court further finds that on July 25, 1978, the Defendant, Carol A. Hopkins, executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of \$22,200.00, payable in monthly installments, with interest thereon at the rate of 8.5 percent (8.5%) per annum.

The Court further finds that on September 7, 1979, the Defendant, Carol A. Hopkins, executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of \$6,200.00, payable in monthly installments, with interest thereon at the rate of 9 percent (9%) per annum.

The Court further finds that as security for the promissory note of July 25, 1978, the Defendant, Carol A. Hopkins, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated July 25, 1978, covering the above-described property. Said mortgage was recorded on July 26, 1978, in Book 711, Page 271, in the records of Washington County, Oklahoma.

The Court further finds that as security for the payment of both promissory notes described above, the Defendant, Carol A. Hopkins, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated September 7, 1979, covering the above-described property. Said mortgage was recorded on September 7, 1979, in Book 728, Page 492, in the records of Washington County, Oklahoma.

The Court further finds that on September 15, 1989, the Defendant, Carol A. Hopkins, executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date on the promissory note of July 25, 1978 was made principal.

The Court further finds that on September 15, 1989, the Defendant, Carol A. Hopkins, executed and delivered to the United States of America, acting through the Farmers Home Administration, a Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date on the promissory note of September 7, 1979 was made principal.

The Court further finds that the Defendant, Carol A. Hopkins, made default under the terms of the aforesaid notes, mortgages and reamortization and/or deferral agreements by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Carol A. Hopkins, is indebted to the Plaintiff in the principal sum of \$26,057.98, plus accrued interest in the amount of \$1,334.62 as of August 1, 1991, plus interest accruing thereafter at the rate of \$6.15 per day until judgment, plus interest at the legal rate until fully paid, and the costs of this action in the amount of \$22.16 (\$14.16 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, Carol A. Hopkins, and the County Treasurer and Board of County Commissioners, Washington County, Oklahoma, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Carol A. Hopkins, in the principal sum of \$26,057.98, plus accrued interest in the amount of \$1,334.62 as of August 1, 1991, plus interest accruing thereafter at the rate of \$6.15 per day until judgment, plus interest thereafter at the current legal rate of 3.41 percent per annum until paid, plus the costs of this action in the amount of \$22.16 (\$14.16 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced

or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Carol A. Hopkins, and the County Treasurer and Board of County Commissioners, Washington County, Oklahoma, have no right, title, or interest in the subject real property, and the Defendant, Spouse of Carol A. Hopkins, does not exist and is hereby dismissed as a Defendant herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Carol A. Hopkins, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisal, the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

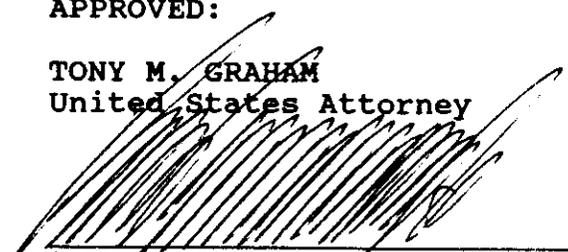
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
Civil Action No. 92-C-403-B

PB/esr

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

RCB BANK successor by merger to)
 Bank of Oklahoma-Claremore,)
)
 Plaintiff,)
)
 vs.)
)
 R.B. MANTON, INC.)
 d/b/a Precision Tubulars;)
 R.B. MANTON a/k/a)
 Robert B. Manton, individually;)
 VERDIGRIS VALLEY ECONOMIC)
 DEVELOPMENT CORPORATION;)
 WASHINGTON COUNTY TRUST AUTHORITY;)
 STIFFLEMIER PIPE COMPANY;)
 REDWING SERVICE & SUPPLY COMPANY;)
 HAMILTON METALS, INC.;)
 BBL CO.; FIRST METALS, INC. and)
 FEDERAL DEPOSIT INSURANCE)
 CORPORATION,)
)
 Defendants.)

Case No. 92-C-191 B

FILED
 SEP 05 1992
 Richard M. Lawrence, Clerk
 U. S. DISTRICT COURT
 NORTHERN DISTRICT OF OKLAHOMA

ORDER

This Court, having reviewed the Stipulation of Dismissal filed herein by Defendant Federal Deposit Insurance Corporation, in its corporate capacity ("FDIC"), and Defendant Hamilton Metals, Inc., finds that the Answer, Counterclaim and Cross-claim of Federal Deposit Insurance Corporation (the "Cross-claim") filed herein by the FDIC should be dismissed with prejudice to the refiling of the same insofar and only insofar as it relates to Defendant Hamilton Metals, Inc.

IT IS THEREFORE ORDERED that the Cross-claim filed herein by the FDIC is dismissed with prejudice to the refiling of the same insofar and only insofar as it relates to Defendant Hamilton Metals, Inc. The Cross-claim is not hereby dismissed as against the Plaintiff RCB Bank or any defendants other than Hamilton Metals, Inc.

IT IS FURTHER ORDERED that the parties shall bear their respective costs, expenses and attorneys' fees.

IT IS SO ORDERED this 2nd day of Sept., 1992.

OKLAHOMA

UNITED STATES DISTRICT JUDGE

Approved:

James Vogt

James Vogt, OBA #9243
2808 First National Center
Oklahoma City, OK 73102
(405) 232-8131
Attorney for Federal Deposit Insurance Corporation

Dominic Sorklosky

~~James E. Carrington, OBA #11249~~
BAKER & HOSTER *DOMINIC SORKLOSKY, OBA # 10475*
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555
Attorney for Hamilton Metals, Inc.

ENTERED ON DOCKET
DATE SEP 4 1992

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

FILED

SEP 08 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JIM T. SPEARS,

Plaintiff.

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 91-C-007-B

SECOND AMENDED JUDGMENT

NOW, on this 2nd day of Sept, 1992, pursuant to previous judgments of this Court, the Court has reviewed the Application of the attorney for the Plaintiff for allowance of attorney's fees, and the Response of the United States to that Application. Judgment is hereby entered in favor of the Plaintiff and against the Defendant for attorney fees in the amount of \$4,275.00.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE 9-4-92

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

F I L E D

SEP 3 -- 1992 *fw*

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

WINEY BEAVER, STEPHANIE)
TAYLOR, and JENNAFER LEONE,)
)
Plaintiffs,)

vs.)

No. 92-C-109-C

DOUG NICHOLS, individually)
and as Sheriff of Creek)
County, and the Board of)
County Commissioners of)
Creek County, Oklahoma,)
)
Defendants.)

J U D G M E N T

This matter came before the Court regarding plaintiffs' motions for partial summary judgment. The issues having been duly considered and a decision having been duly rendered in accordance with the Order filed contemporaneously herewith,

IT IS SO ORDERED AND ADJUDGED that the Court grants the plaintiffs' three motions for partial summary judgment as to liability.

IT IS SO ORDERED this 3rd day of September, 1992.

H. Dale Cook

H. DALE COOK
UNITED STATES DISTRICT JUDGE

53

FILED ON DOCKET

DATE 9-4-92

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

WINEY BEAVER, STEPHANIE)
TAYLOR, and JENNAFER LEONE,)
)
Plaintiffs,)
)
vs.)
)
DOUG NICHOLS, individually)
and as Sheriff of Creek)
County, and the Board of)
County Commissioners of)
Creek County, Oklahoma,)
)
Defendants.)

No. 92-C-109-C

FILED

SEP 3 -- 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

O R D E R

Before the Court are the individual plaintiffs' motions for partial summary judgment and the motion of defendant Nichols for summary judgment. Essentially, the same fact pattern and arguments are presented as in Chapman v. Nichols, No. 91-C-539-C, in which this Court denied similar motions by Orders entered on June 1, 1992. These two Orders are attached to this Order to avoid repetition.

Plaintiffs were each arrested for minor traffic violations and were subjected to "strip searches" pursuant to jail policy.

Defendant again urges the Court to grant him judgment based upon qualified immunity, arguing that the nature of this search (private, visual only, no body cavity search)¹ protects him from liability. The Court rejected this argument in Chapman and does so

¹ Plaintiff Taylor contends that she was in fact subjected to a body cavity search.

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again. A brief comment is in order regarding the Chapman order which denied plaintiff's motion for partial summary judgment, finding it arguable that an issue of fact existed, as suggested in Sanchez v. Sanchez, 777 F. Supp. 906, 911 n.2 (D. N.M. 1991). Defendants vehemently protest this ruling of the Court and insist that no factual issues exist.

Of course, in determining whether any genuine issues of material fact exist, the record must be construed liberally in favor of the nonmoving party. McKibben v. Chubb, 840 F.2d 1525, 1528 (10th Cir. 1988). It was therefore to defendant Nichols' benefit that the Court found a possible factual issue as to the objective reasonableness of his conduct. In the present moving papers, Nichols expressly states that no factual issues exist. Accordingly, proper disposition of the present motions following Chapman is clear: partial summary judgment as to liability in plaintiffs' favor. Cf. Draper v. Walsh, 790 F. Supp. 1553 (W.D. Okla. 1991).

Defendant also takes issue with the Court's statement that Bledsoe v. Garcia, 742 F.2d 1237 (10th Cir. 1984) must be reconciled with other decisions, including Mitchell v. Forsyth, 472 U.S. 511 (1985). Defendant in effect argues that Mitchell has overruled Bledsoe. However, Bledsoe has been cited in a post-Mitchell decision as representing one view regarding the submission of qualified immunity in some instances to a jury. See Ansley v. Heinrich, 925 F.2d 1339, 1346 (11th Cir. 1991). In any event, the Court has already stated in its Chapman Orders that, to the extent

the issue is one of law, the Court finds in favor of plaintiffs and against defendant Nichols.

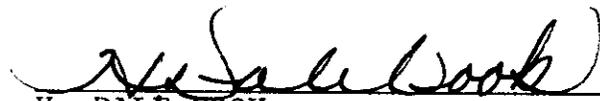
Plaintiffs also seek to impose liability on Creek County, asserting that Nichols is the final policy-maker as regards jail searches. Evidence has been presented in support of this position, and it has not been contradicted by Nichols. Therefore, partial summary judgment as to liability will be granted against Nichols in his official capacity as well.

Finally, plaintiffs seek an injunction prohibiting the "strip search" policy of the Creek County Jail. Defendant Nichols advises that the jail has ceased incarcerating minor traffic offenders, which is the group within which plaintiffs are members. Accordingly, the request for injunctive relief is moot. Plaintiffs have no standing to enjoin the policy as to other arrestees.

It is the Order of the Court that the motion of defendant Doug Nichols for summary judgment is hereby denied.

It is the further Order of the Court that the motions for partial summary judgment of plaintiffs Winey Beaver, Stephanie Taylor and Jennafer Leone are hereby granted as detailed above.

IT IS SO ORDERED this 3rd day of September, 1992.



H. DALE COOK
UNITED STATES DISTRICT JUDGE

CLOSED

FILED

SEP 02 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

JESSIE AYALA VALDEZ,)
)
 Plaintiff,)
)
 v.)
)
 DR. A. M. LIZARRAGA, et al.,)
)
 Defendants.)

92-C-217-E ✓

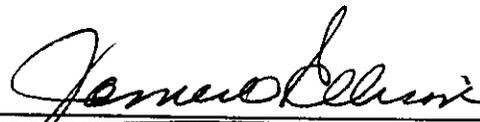
ENTERED ON DOCKET
DATE SEP 4 1992

ORDER

This order pertains to plaintiff's Civil rights Complaint pursuant to 42 U.S.C. § 1983 (Docket #2)¹. On May 5, 1992, the court issued its Order Facilitating § 1915(d) (Frivolity) Review (#5) and copies were mailed to all parties. Plaintiff's copy was returned to the court marked "Return to Sender - No Such Person". On August 12, 1992, the court issued an order (#8) granting plaintiff thirty (30) additional days to respond to defendants' Motion to Dismiss (#6). Plaintiff's copy was returned to the court marked "Return to Sender". The plaintiff has not been in contact with the court since the initiation of his complaint in March and has not informed the court of his current whereabouts.

It is therefore ordered that plaintiff's Civil rights Complaint pursuant to 42 U.S.C. § 1983 is dismissed for failure of plaintiff to prosecute.

Dated this 2^d day of September, 1992.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

9

DATE SEP 04 1992

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CLOSED
FILED

SEP 03 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 92-C-007 B

ADVANTAGE MEDIA GROUP,
INC., an Oklahoma corporation,

Plaintiff,

vs.

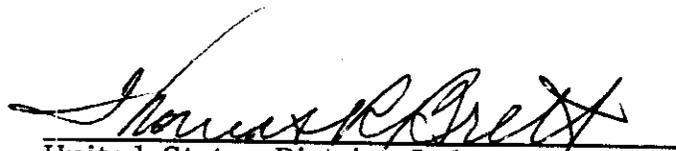
JOE DICKERMAN and
KAPCAN MARKETING, INC.,
a Canadian corporation,

Defendants.

DEFAULT JUDGMENT

There comes before the Court on this 2nd day of Sept, 1992, the Motion for Default Judgment filed herein by ADDvantage Media Group, Inc. ("ADDvantage"). Having reviewed the Motion, together with ADDvantage's Brief in Support of Motion for Default Judgment, and having verified that Kapcan Marketing, Inc. ("Kapcan") is in default, the Court finds that the Motion is made upon good cause shown, and the same should be, and is, hereby sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that ADDvantage is granted Judgment against Kapcan on its third claim for relief, and that Kapcan is herewith enjoined from infringing ADDvantage's "Shoppers Calculator" trademark. Specifically, Kapcan is hereby enjoined from marketing its "Shopcal" calculator, which consists of a solar powered calculator containing a display area for advertising, for use with a shopping cart.


United States District Judge

2043 a

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

RCB BANK successor by merger to)
Bank of Oklahoma-Clairemore,)

Plaintiff,)

vs.)

Case No. 92-C-191 B

R.B. MANTON, INC.)
d/b/a Precision Tubulars;)
R.B. MANTON a/k/a)
Robert B. Manton, individually;)
VERDIGRIS VALLEY ECONOMIC)
DEVELOPMENT CORPORATION;)
WASHINGTON COUNTY TRUST AUTHORITY;)
STIFFLEMIER PIPE COMPANY;)
REDWING SERVICE & SUPPLY COMPANY;)
HAMILTON METALS, INC.;)
BBL CO.; FIRST METALS, INC. and)
FEDERAL DEPOSIT INSURANCE)
CORPORATION,)

Defendants.)

FILED

SEP 07 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

This Court, having reviewed the Stipulation of Dismissal filed herein by Plaintiff RCB Bank ("Plaintiff") and Defendant Hamilton Metals, Inc., finds that the Petition for Replevin (the "Petition") filed herein by Plaintiff should be dismissed with prejudice to the refileing of the same insofar and only insofar as it relates to Defendant Hamilton Metals, Inc.

IT IS THEREFORE ORDERED that the Petition filed herein by Plaintiff is dismissed with prejudice to the refileing of the same insofar and only insofar as it relates to Defendant Hamilton Metals, Inc. The Petition is not hereby dismissed as against any defendants other than Hamilton Metals, Inc.

IT IS FURTHER ORDERED that the parties shall bear their respective costs, expenses and attorneys' fees.

IT IS SO ORDERED this 2nd day of September, 1992.

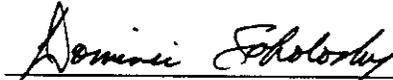
S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Approved:



Richard D. Mosier, OBA #10414
P. O. Box 1267
Claremore, OK 74018
(918) 341-2131
Attorney for RCB Bank



~~James E. Carrington, OBA #11249~~
BAKER & HOSTER
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555
Attorney for Hamilton Metals, Inc.

DOMINIC SAKOLOVSKY, OBA # 10475

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

SEP - 2 1992

Richard M. Lawrence, Cler
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SHERRIE R. KAPLAN,)
)
Plaintiff,)
)
vs.)
)
GEORGE RENBERG, DONALD RENBERG,)
ROBERT RENBERG and DEAN WITTER)
REYNOLDS, INC.,)
)
Defendants.)

Case No. 92-C-210-E

ENTERED ON DOCKET
DATE SEP 4 1992

STIPULATION OF PARTIAL DISMISSAL WITH PREJUDICE

Sherrie Renberg Kaplan, George Renberg, Donald Renberg, Robert Renberg and Dean Witter Reynolds, Inc., pursuant to F.R.C.P. 41(a)(1), hereby stipulate for the dismissal with prejudice of all claims by all parties in the above-captioned matter, with the exception of the following:

1. Plaintiff Sherrie Kaplan's claim for an accounting as to the Dorothy Zarrow Renberg Family Trust and First Share Trust; and
2. Defendant Dean Witter Reynolds, Inc.'s claim for attorneys' fees and costs.

The reason for this Stipulation of Partial Dismissal with Prejudice is that Plaintiff and Defendants George Renberg, Donald Renberg and Robert Renberg have reached a settlement which provides for the dismissal with prejudice of all claims pending between them, except as noted above. Plaintiff and George, Donald and Robert Renberg agree that they shall each bear their own respective attorneys' fees and costs incurred in connection with this action. The issues relative to Plaintiff's remaining claim should be resolved within the next 20 to 40 days. With respect to Dean Witter Reynolds, Inc. and for purposes of paragraph 4 of this Court's Order of June 17, 1992 only, this Stipulation shall be deemed to be a "final stipulation of dismissal." The parties anticipate that a proposed journal entry of judgment will be presented to the Court to reduce to judgment certain matters relating to the Plaintiff's remaining claims. If a dispute arises, Plaintiff and Defendants, George Renberg, Donald Renberg and Robert

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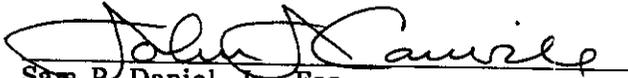
Renberg have agreed that it shall be determined by the Honorable Magistrate Judge John Leo Wagner, whose decision shall be final and binding without appeal.

Dated this ~~24th~~ day of ~~July~~^{August}, 1992.



James M. Sturdivant, Esq.
Timothy A. Carney, Esq.

ATTORNEYS FOR PLAINTIFF



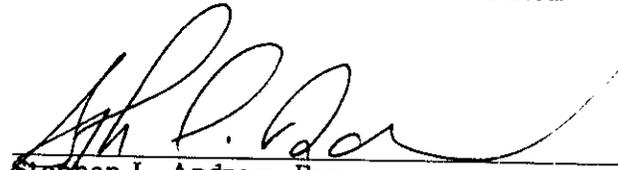
Sam P. Daniel, Jr., Esq.
John J. Carwile, Esq.

ATTORNEYS FOR DONALD RENBERG



Ted M. Riseling, Esq.
Eugene P. de Verges, Esq.

ATTORNEYS FOR GEORGE RENBERG



Stephen L. Andrew, Esq.
D. Kevin Ikenberry, Esq.

ATTORNEYS FOR ROBERT RENBERG



J. David Jorgenson, Esq.
John A. Bugg, Esq.

ATTORNEYS FOR DEAN WITTER REYNOLDS, INC.

CLOSED

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

FLOYD R. HARDESTY,)
)
 Plaintiff,)
)
 vs.)
)
 KARRIE DULIN,)
)
 Defendant.)
)
 KARRIE DULIN,)
)
 Plaintiff,)
)
 vs.)
)
 FLOYD ROGER HARDESTY, et al.,)
)
 Defendants.)
)
 KARRIE DULIN,)
)
 Plaintiff,)
)
 vs.)
)
 ROGER HARDESTY,)
)
 Defendant.)

No. 89-C-810-E ✓

FILED

SEP -4 1991 *ds*

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

No. 90-C-1042-E

No. 91-C-11-E

(CONSOLIDATED)

ORDER

This matter is before the Court upon the summary judgment motion of Defendants Hardesty, et al. Plaintiff has asserted two causes of action: a federal claim under Title VII and a state tort claim for intentional infliction of emotional distress. Defendants Hardesty argue that Plaintiff's claims are time-barred by the applicable statutes of limitation.

Title VII Claim. The filing requirements under the Equal

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Employment Opportunity Act (Act) are in the nature of a statute of limitations. Zipes v. Trans World Airlines, 455 U.S. 385 (1982) reh'g denied, 456 U.S. 940 (1982). Under the EEOC, Oklahoma is a "deferral state" because it has a designated agency to process EEOC complaints initially. The filing provisions for a deferral state are found at 42 U.S.C. §2000e-5. That section provides that no charge by a person claiming to be aggrieved by an unlawful employment practice may be filed with the EEOC until sixty days after proceedings at the State agency have commenced (unless those proceedings were terminated prior to the expiration of the sixty-day period). It further provides that, while the limitations period is generally 180 days, where proceedings are initially instituted with a designated State agency the limitations period is extended to 300 days after the unlawful act occurred "or within thirty days after receiving notice that the State or local agency has terminated the proceedings ... whichever is earlier. ..." 42 U.S.C. §2000e-5(e). Where a party claiming to be aggrieved does not file with a designated state agency initially but files with the EEOC within 240 days of the last discriminatory act then the complaint will be deemed to be timely filed because the additional 60-day period allotted to the state agency will not cause the complaint to run afoul of the 300-day statute of limitations. Mohasco Corp. v. Silver, 100 S.Ct. 2486 (1980). In this circuit Mohasco has been interpreted to stand for the proposition that a complaint filed with the EEOC after the 240-day period may be timely, if the state terminates its proceedings prior to the expiration of the 300-day period. Smith v. Oral Roberts

Evangelistic Association, Inc., 731 F.2d 684 (1984).

In the instant case, Plaintiff alleges that during her employment with Defendants Hardesty, Floyd Roger Hardesty made "unwelcome sexual advances toward the Plaintiff which amounted to harassment." Complaint, Case #90-C-1042 at ¶10. While Plaintiff's allegation states a valid claim of an unlawful employment practice, the Court finds that the only evidence submitted by Plaintiff which can be deemed to substantiate her claim is her assertion that from 1983-1985 she felt compelled to have sexual relations with Floyd Roger Hardesty. Plaintiff asserts that she last had a sexual relationship with Mr. Hardesty at the end of 1985. The Defendants' subsequent acts or omissions identified by Plaintiff as unlawful practices, culminating in what she asserts was a constructive discharge in 1988 simply are not evidence of separate unlawful practices nor of a continuing discriminatory practice. At best they may be characterized as effects of past discrimination. However, subsequent effects of past discrimination cannot be used to show continuing discrimination for purposes of the limitations period. United Air Lines v. Evans, 431 U.S. 553, 97 S.Ct. 1885, 52 L.Ed.2d 571 (1977); Delaware State College v. Ricks, 449 U.S. 250, 101 S.Ct. 498, 66 L.Ed.2d 431 (1980). Therefore, the Court finds that the last discriminatory act occurred at the end of 1985. And it was at that point that the statutory period began to run. See Shah v. Halliburton Co., 627 F.2d 1057 (10th Cir 1980). It is undisputed that Plaintiff filed her claim with the EEOC on September 28, 1989, well beyond the 300-day limitations period and

certainly beyond the 240-day limitations period which the Court holds is applicable to the instant case. Under Rule 56(c), summary judgment is appropriate where, after sufficient time for discovery, the non-moving party fails to offer adequate evidence "to establish the existence of an element essential to that party's case ... " Colotex Corp. v. Catrett, 477 U.S. 317 (1986). Plaintiff, here, has failed to demonstrate continuing discrimination after 1985 and has therefore failed to establish timely filing of her EEOC charge. Accordingly, the Court finds that summary judgment is appropriate as to Plaintiff's federal claim.

State Tort Claim. Regarding Plaintiff's claim for intentional infliction of emotional distress the Court finds that two years from the date upon which Plaintiff could have initially established her claim is the applicable statute of limitations. Chandler v. Denton, 741 P.2d 855 (Okla. 1987). The Court further finds that the statute was not tolled by Floyd Roger Hardesty's denial of paternity. See Depo. of Floyd Roger Hardesty, p. 53, lines 4-8. The Court finds that the denial cannot be characterized as a fraudulent concealment of a cause of action as required by Moore. Moore v. Delivery Services, Inc., 618 P.2d 408 (Okla.App. 1980). Plaintiff filed her tort action in state court in September, 1989. Her asserted claim arose at the end of 1985. Therefore the applicable statute of limitations bars her state tort claim.

IT IS THEREFORE ORDERED that the summary judgment motion of Defendants Hardesty et al. is hereby granted.

ORDERED this 5th day of September, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

NORTHERN DISTRICT
UNITED STATES DISTRICT COURT

FILED

SEP 4 1992

Richard M. ... Clerk
U.S. DISTRICT COURT

BRENTLEY ROBERTS ET. AL.

Plaintiff,

vs.

JESS ROBERTS ET. AL

Defendant.

Case No.: 91-C-492-E

ENTERED ON DOCKET
DATE **SEP 4 1992**

DISMISSAL WITHOUT PREJUDICE

COMES NOW the Plaintiff, Brentley Roberts, and hereby dismisses the above entitled cause without prejudice to the refileing thereof. Further that the undersigned, releases the lien heretofore claimed by him.

DATED this 31st day of August, 1992.

**BRENTLEY ROBERTS,
PLAINTIFF**

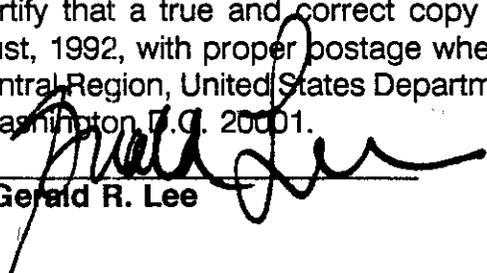
GERALD R. LEE, P.C.



**GERALD R. LEE
Attorney at Law
#20 Court Place
Post Office Box 1101
Pryor, OK 74362
(918) 825-2233
OBA #5335**

CERTIFICATE OF MAILING

I hereby state and certify that a true and correct copy of the foregoing was mailed on the 31st day of August, 1992, with proper postage whereon fully prepaid to :
Chris Grigorian, Tax Division Central Region, United States Department of Justice, 555 4th
Street, NW Judiciary Square Washington, D.C. 20001.



Gerald R. Lee

02rob001

ENTERED ON DOCKET
SEP 04 1992

DATE _____

FILED
CLOSED

SEP 04 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

X

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

BILLY LOGUE,)
)
Plaintiff,)
)
v.)
)
RON CHAMPION,)
)
Defendants.)

91-C-602-B

✓

ORDER TO TRANSFER CAUSE

The Court having examined the Petition for Writ of Habeas Corpus which the
Petitioner has filed finds as follows:

(1) That the Petitioner was convicted in Garvin County, Oklahoma, which is
located within the territorial jurisdiction of the Western District of Oklahoma.

(2) That the Petitioner demands release from such custody and as grounds
therefore alleges he is being deprived of his liberty in violation of rights under the
Constitution of the United States.

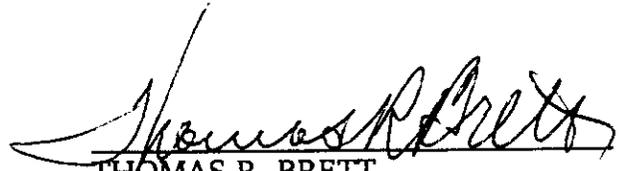
(3) In the furtherance of justice this case should be transferred to the United
States District Court for the Western District of Oklahoma.

IT IS THEREFORE ORDERED:

(1) Pursuant to the authority contained in 28 U.S.C. §2241(d) and in the exercise
of discretion allocated to the Court, this cause is hereby transferred to the United States
District Court for the Western District of Oklahoma for all further proceedings.

(2) The Clerk of this Court shall mail a copy of this Order to the Petitioner.

SO ORDERED THIS 2nd day of Sept., 1992.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

RESOLUTION TRUST CORPORATION, as
CONSERVATOR for CIMARRON FEDERAL
SAVINGS ASSOCIATION,

Plaintiff,

vs.

Case No. 91-C-0609-B

JIMMY M. SMITH; ROBERT D.
MARSTERS; LONNIE E. SILER;
LENA M. SILER; DONALD H.
DINWIDDIE and MARY ANN DINWIDDIE,
husband and wife; LAKELAND REAL
ESTATE DEVELOPMENT, INC.;
JAMES M. HENRY and KAREIN
HENRY a/k/a KAREIN L. HENRY,
husband and wife; QUINTON R. DODD
and VICKIE E. DODD, husband and
wife; UNITED STATES OF AMERICA,
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,

Defendants.

FILED
SEP 02 1992
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

**JOURNAL ENTRY OF JUDGMENT
AND DECREE OF FORECLOSURE**

Now on this 2nd day of Sept, 1992, this matter comes on before the undersigned United States District Judge, upon the Renewed Motion for Summary Judgment and Decree of Foreclosure filed herein on May 5, 1992 by Plaintiff Resolution Trust Corporation, as Conservator for Cimarron Federal Savings Association (the "RTC/Conservator"), and upon the Application for Default Judgment filed herein on August 10, 1992 by the RTC/Conservator. The Court has jurisdiction over all parties and the subject matter of this action. The Court has reviewed the RTC/Conservator's Renewed Motion for Summary Judgment and Decree of Foreclosure filed herein, as well as the evidentiary materials filed in support thereof.

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Defendants have not controverted the material facts contained in the Brief in Support of Plaintiff's Renewed Motion for Summary Judgment and Decree of Foreclosure. The Court therefore finds that there is no controversy as to any material fact and that the RTC/Conservator is entitled to judgment as a matter of law as hereinafter set forth.

The Court further finds that:

1. Defendants Jimmy M. Smith, a single person, Robert D. Marsters, a single person, and Donald H. Dinwiddie and Mary Ann Dinwiddie, husband and wife, and the United States of America, Department of the Treasury, Internal Revenue Service, have entered their appearances herein.

2. Default has been entered against Defendants Lonnie E. Siler and Lena M. Siler, husband and wife, for failure to plead or otherwise defend in this action.

3. Claims against Defendants Lakeland Real Estate Development, Inc., James M. Henry, Karein Henry a/k/a Karein L. Henry, Quinton R. Dodd and Vickie E. Dodd have been dismissed without prejudice.

4. The Court has acquired jurisdiction over the parties. The Court has subject matter jurisdiction over this action by virtue of 28 U.S.C. § 1331 and 12 U.S.C. § 1441a(1)(1).

5. Defendants Jimmy M. Smith, Robert D. Marsters, Donald H. Dinwiddie and Mary Ann Dinwiddie, and Lonnie E. Siler and Lena M. Siler executed four separate promissory notes which are the subject of this action in favor of Phoenix Federal Savings and

Loan, a federally chartered savings and loan association ("Phoenix"), and each executed a mortgage to Phoenix securing the payment of such notes.

6. On August 31, 1988, the Federal Home Loan Bank Board ("FHLBB") declared Phoenix insolvent, and pursuant to 12 U.S.C. § 1464(d)(6)(A), the Federal Savings and Loan Insurance Corporation ("FSLIC") was appointed Receiver of the insolvent savings and loan association's assets and its liabilities. As Receiver of Phoenix, the FSLIC became the holder in due course of the insolvent association's assets, including the items which are the subject matter of this case. The FSLIC, in its capacity as Receiver of Phoenix, had the duty to realize the assets of said closed insolvent savings and loan association. As part of realizing said assets, the FSLIC assigned all right, title and interest in and to the instruments and related documents which are the subject matter of this case, to Cimarron Federal Savings and Loan Association on August 31, 1988, as more particularly set forth in resolutions of the Federal Home Loan Bank Board.

7. On April 19, 1991, pursuant to § 5(d)(2) of the Home Owners Loan Act of 1933 [as amended by § 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), as enacted on August 9, 1989], the Director of the Office of Thrift Supervision (the "Director") issued Order No. 91-212 (the "Order") and placed Cimarron Federal Savings and Loan Association (the "Association") in receivership and assumed exclusive custody and control of the property and affairs of the

Association. The Director, pursuant to the Order, appointed the RTC as Receiver of the Association, to have "all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law."

8. The Director, through the Order, also organized Cimarron Federal Savings Association ("New Cimarron"), a new federally chartered mutual savings association. The Director, pursuant to the Order, appointed the RTC as conservator of New Cimarron, to have "all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law."

9. Subsequently, certain assets of the Association were sold and transferred by the RTC as the Receiver of the Association to New Cimarron, by and through its Conservator, the RTC.

10. New Cimarron, by and through its Conservator, the RTC, purchased those certain assets that are involved in this cause of action.

11. New Cimarron, by and through its Conservator, the RTC, has succeeded to certain rights and interests of the Associa-

tion and is accordingly the proper party to bring this action as a matter of law.

12. The RTC/Conservator should be granted a judgment in rem in its favor against Jimmy M. Smith in the amount of \$71,262.66 as of March 10, 1992, together with interest thereafter at a per diem rate of \$12.65 until the date of this judgment and thereafter at the annual rate of 3.71% until paid, and such other continuing expenses of suit as have been alleged in this action, including reasonable attorneys' fees (all such fees and costs to be determined upon application by the RTC/Conservator).

13. The RTC/Conservator should be granted a judgment in its favor against Robert D. Marsters in the amount of \$36,423.78 as of March 10, 1992, together with interest thereafter at a per diem rate of \$6.32 until the date of this judgment and thereafter at the annual rate of 3.71% until paid, and such other continuing expenses of suit as have been alleged in this action, including reasonable attorneys' fees (all such fees and costs to be determined upon application by the RTC/Conservator).

14. The RTC/Conservator should be granted a judgment in rem in its favor against Lonnie E. Siler and Lena M. Siler, and each of them, in the amount of \$38,255.91 as of March 10, 1992, together with interest thereafter at a per diem rate of \$6.35 until the date of this judgment and thereafter at the annual rate of 3.71% until paid, and such other continuing expenses of suit as have been alleged in this action, including reasonable attorneys'

fees (all such fees and costs to be determined upon application by the RTC/Conservator).

15. The RTC/Conservator should be granted a judgment in its favor against Donald H. Dinwiddie and Mary Ann Dinwiddie, and each of them, in the amount of \$36,368.72 as of March 10, 1992, together with interest thereafter at a per diem rate of \$6.32 until the date of this judgment and thereafter at the annual rate of 3.~~8~~⁴1% until paid, and such other continuing expenses of suit as have been alleged in this action, including reasonable attorneys' fees (all such fees and costs to be determined upon application by the RTC/Conservator).

16. The RTC/Conservator holds a valid mortgage lien in the aggregate amount of the judgments granted herein on the following described real property and all improvements thereon situated in Mayes County, Oklahoma:

LOT NUMBERED TWO (2), IN BLOCK NUMBERED SIX (6), OF THE VILLAS OF LAKE LAND, A SUBDIVISION IN MAYES COUNTY, STATE OF OKLAHOMA ACCORDING TO THE OFFICIAL SURVEY AND PLAT FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY AND STATE (the "Mortgaged Property"),

which is a prior and superior lien in, to and against the Mortgaged Property, prior and superior to any claim, right, title, interest, lien or right or equity of redemption of all Defendants herein, and each of them, and of all persons claiming by, through or under any of the Defendants since the recording of the Notice of Lis Pendens filed herein, and all parties should be, from and after the date of the confirmation of the marshal's sale or sheriff's sale herein-after ordered by the Court, barred, restrained and enjoined from

ever having or asserting any claim, right, title, interest, lien or right or equity of redemption in, to or against the Mortgaged Property, adverse to the right and title of the purchaser at said sale, subject to the right of redemption of the United States of America pursuant to 28 U.S.C. § 2410(c).

17. The counterclaims alleged by certain Defendants are barred as against the RTC/Conservator and judgment should be entered in favor of the RTC/Conservator and against the counterclaimants as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that judgment be entered in rem in favor of the RTC/Conservator against Jimmy M. Smith in the amount of \$71,262.66 as of March 10, 1992,

together with interest thereafter at the rate of \$12.65 per diem until the date of this judgment, and thereafter at the annual rate of 3.⁴1% until paid, the RTC/Conservator's reasonable attorneys' fees and all costs incurred herein and accruing hereafter (all such fees and costs to be determined upon application by the RTC/Conservator), for all of which let execution issue forthwith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that judgment be entered in favor of the RTC/Conservator against Robert D. Marsters in the amount of \$36,423.78 as of March 10, 1992, together with interest thereafter at the rate of \$6.32 per diem until the date of this judgment, and thereafter at the annual rate of 3.⁴1% until paid, the RTC/Conservator's reasonable attorneys' fees and all costs incurred herein and accruing hereafter

(all such fees and costs to be determined upon application by the RTC/Conservator), for all of which let execution issue forthwith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that judgment in rem be entered in favor of the RTC/Conservator against Lonnie E. Siler and Lena M. Siler, and each of them, in the amount of \$38,255.91 as of March 10, 1992, together with interest thereafter at the rate of \$6.35 per diem until the date of this judgment, and thereafter at the annual rate of 3.71% until paid, the RTC/Conservator's reasonable attorneys' fees and all costs incurred herein and accruing hereafter (all such fees and costs to be determined upon application by the RTC/Conservator), for all of which let execution issue forthwith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that judgment be entered in favor of the RTC/Conservator against Donald H. Dinwiddie and Mary Ann Dinwiddie, and each of them, in the amount of \$36,368.72 as of March 10, 1992, together with interest thereafter at the rate of \$6.32 per diem until the date of this judgment, and thereafter at the annual rate of 3.71% until paid, the RTC/Conservator's reasonable attorneys' fees and all costs incurred herein and accruing hereafter (all such fees and costs to be determined upon application by the RTC/Conservator), for all of which let execution issue forthwith.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the RTC/Conservator's Mortgage, recorded in Book 649 at Pages 639-642 of the records of the Mayes County Clerk, is a valid, prior and superior lien upon the Mortgaged Property in the aggregate

amount of the judgments granted herein, prior and superior to any claim, right, title, interest, lien or right or equity of redemption of all Defendants herein and each of them, and of all persons claiming by, through or under any of such Defendants since the recording of the Notice of Lis Pendens in this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that in the event the judgments herein granted to the RTC/Conservator, with interest, attorneys' fees and costs not be satisfied in full, a special execution and order of sale shall issue out of the office of the Court Clerk of the United States District Court for the Northern District of Oklahoma (the "Northern District Court Clerk"), directed, at the option of the RTC/Conservator, to either the United States marshal or to the sheriff of Mayes County, Oklahoma, commanding the marshal or the sheriff to advertise for sale, according to law, as upon special execution, with appraisal, the Mortgaged Property free, clear and discharged of and from any and all rights, titles, interests, liens, claims and rights of redemption of all Defendants herein, and all persons claiming by, through or under them since the filing of the Notice of Lis Pendens herein; and that the Mortgaged Property be sold at a marshal's sale or sheriff's sale accordingly; and further that the proceeds of such sale be immediately transmitted to the Northern District Court Clerk, and that said clerk be, and is hereby ordered and directed to pay: first, the costs of this action, including marshal's or sheriff's costs and other costs of sale; second, the aggregate amount of the judgments granted to the RTC/Conservator herein,

including interest, attorneys' fees and other costs or advances; and third, that the balance, if any, be retained by the Northern District Court Clerk pending further order of the Court; that from and after the confirmation of the marshal's or sheriff's sale of the Mortgaged Property, all Defendants herein and all persons claiming by, through or under them since the recording of the Notice of Lis Pendens in this case, be and they are hereby barred, restrained and enjoined from having or asserting any right, title, interest, claim or lien or right or equity of redemption in, to or against the Mortgaged Property or any part thereof, adverse to the right and title of the purchaser at said sale, subject only to the right of redemption of the United States of America as provided under 28 U.S.C. § 2410(c).

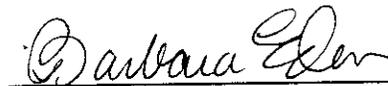
IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that upon confirmation of said sale, the marshal or the sheriff who conducted the sale should execute and deliver a good and sufficient deed to the Mortgaged Property to the purchaser thereof, which deed shall convey all the right, title, interest, equity and right of redemption of any and all parties herein, and each of them, in and to the Mortgaged Property, and that upon application of the purchaser, the Northern District Court Clerk shall issue a writ of assistance to the marshal or sheriff who conducted the sale, who shall forthwith place the Mortgaged Property in the full and complete possession and enjoyment of such purchaser.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the counterclaims asserted in this action may not be main-

tained against the RTC/Conservator and judgment is therefore entered in favor of the RTC/Conservator and against the Defendants, on all counterclaims asserted by any Defendant.


UNITED STATES DISTRICT JUDGE

APPROVED:



Gary R. McSpadden, OBA # 6093
Dana L. Rasure, OBA # 7421
Barbara J. Eden, OBA # 14220
BAKER & HOSTER
800 Kennedy Building
321 South Boston
Tulsa, Oklahoma 74103
(918) 592-5555

Attorneys for Resolution Trust
Corporation, as Conservator for
Cimarron Federal Savings Association

ENTERED ON DOCKET
DATE **SEP 3 1992**
FILED

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

SEP 02 1992
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff/Respondent,)
)
v.)
)
PETER J. McMAHON,)
)
Defendant/Petitioner.)

No. 90-CR-19-E
No. 92-C-020-E

O R D E R

NOW before the Court for consideration are the motions of Petitioner to correct sentence pursuant to Rule 35, to vacate sentence pursuant to 28 U.S.C. § 2255, and to reconsider his denied motion for relief. After perusal of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that all Petitioner's Motions should be denied.

IT IS THEREFORE ORDERED that the Petitioner's Motions to correct, vacate or reconsider his sentence be denied. Consequently, Petitioner's application for leave to file a reply brief and leave to amend his motion to vacate sentence are also denied.

IT IS FURTHER ORDERED that the Petitioner apply for the Court's permission prior to filing any additional pleadings in the future.

SO ORDERED this 2nd day of September 1992.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

CLOSED

ENTERED ON DOCKET

SEP 3 1992

DATE _____

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

THOMAS ANDREW BIAS,)
)
 Petitioner,)
)
 vs.)
)
 R. MICHAEL CODY, et al.,)
)
 Respondents.)

No. 91-C-601-E

FILED

SEP 02 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is the Magistrate's Report and Recommendation that the Petition herein for Writ of Habeas Corpus should be denied. The Court has reviewed the record and considered the arguments of the parties and finds that the Magistrate's Report and Recommendation must be affirmed in all respects.

ORDERED this 29 day of September, 1992.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

12

CLOSED

FILED

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

SEP 02 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

TOMMY DALE OWENS,
Petitioner,
vs.
EARL ALLEN, et al.,
Respondents.

No. 91-C-443-E

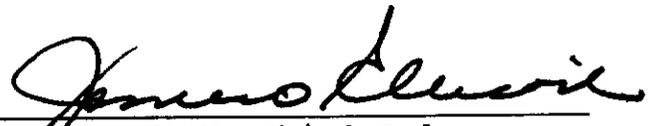
ENTERED ON DOCKET

DATE SEP 3 1992

ORDER

The Court has for consideration the Magistrate's Report and Recommendation that the Respondent's Motion to Dismiss the Petition for Writ of Habeas Corpus be granted. The Court has reviewed the record in light of the relevant law. The Court finds that the Petitioner's claims are procedurally barred pursuant to Gilbert and Coleman; therefore the Magistrate's Report and Recommendation should be affirmed. Gilbert v. Scott, 941 F.2d 1065 (10th Cir. 1991); Coleman v. Thompson, 111 S.Ct. 2546 (1991).

ORDERED this 2^d day of September, 1992.



JAMES C. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET
DATE **SEP 3 1992**

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

FILED
SEP 02 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff/Respondent,)
)
v.)
)
PETER J. McMAHON,)
)
Defendant/Petitioner.)

No. 90-CR-19-E
No. 92-C-020-E

ORDER

NOW before the Court for consideration are the motions of Petitioner to correct sentence pursuant to Rule 35, to vacate sentence pursuant to 28 U.S.C. § 2255, and to reconsider his denied motion for relief. After perusal of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that all Petitioner's Motions should be denied.

IT IS THEREFORE ORDERED that the Petitioner's Motions to correct, vacate or reconsider his sentence be denied. Consequently, Petitioner's application for leave to file a reply brief and leave to amend his motion to vacate sentence are also denied.

IT IS FURTHER ORDERED that the Petitioner apply for the Court's permission prior to filing any additional pleadings in the future.

SO ORDERED this 2nd day of September 1992.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

**CLOSED
FILED**

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

SEP 01 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BILL A. CLAWSON,
Plaintiff,

vs.

No. 90-C-206-E

LOUIS W. SULLIVAN, M.D.,
SECRETARY OF HEALTH
AND HUMAN SERVICES,

Defendant.

ENTERED ON DOCKET
SEP 2 1992
DATE _____

ORDER

The Court has for consideration the Report and Recommendations of the Magistrate filed on June 30, 1992. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendations of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that the Secretary's decision be reversed and Clawson's application for disability be granted.

ORDERED this 1st day of September 1992.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

X

18

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CLOSED

FILED

SEP 01 1992

RICHARD M. LAWRENCE, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 LLOYD M. SPYRES a/k/a LLOYD)
 MITCHELL SPYRES; LINDA L.)
 SPYRES a/k/a LINDA LOU SPYRES;)
 STATE OF OKLAHOMA ex rel.)
 COMMISSIONERS OF THE LAND OFFICE;)
 TULSA FEDERAL EMPLOYEES CREDIT)
 UNION; CENTURY NATIONAL BANK OF)
 OKLAHOMA; CORNELIA J. HARDY;)
 COUNTY TREASURER, Mayes County,)
 Oklahoma; and BOARD OF COUNTY)
 COMMISSIONERS, Mayes County,)
 Oklahoma,)
)
 Defendants.)

CIVIL ACTION NO. 91-C-746-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 31 day
of August, 1992. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; the Defendants, County Treasurer, Mayes County,
Oklahoma, and Board of County Commissioners, Mayes County,
Oklahoma, appear by Wm. H. Castor, Assistant District Attorney,
Mayes County, Oklahoma; the Defendant, State of Oklahoma ex rel.
Commissioners of the Land Office, appears by its attorney Nancy
Holsted; the Defendant, Tulsa Federal Employees Credit Union,
appears by its attorney James M. Hinds; the Defendant, Century
National Bank of Oklahoma, appears not, having previously filed
its Disclaimer; the Defendant, Cornelia J. Hardy, appears by her
attorney Fred H. Sordahl; and the Defendants, Lloyd M. Spyres

a/k/a Lloyd Mitchell Spyres and Linda L. Spyres a/k/a Linda Lou Spyres, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Lloyd M. Spyres a/k/a Lloyd Mitchell Spyres, acknowledged receipt of Summons and Complaint on or about October 16, 1991; that the Defendant, Linda L. Spyres a/k/a Linda Lou Spyres, acknowledged receipt of Summons and Complaint on October 14, 1991; that the Defendant, State of Oklahoma ex rel. Commissioners of the Land Office, acknowledged receipt of Summons and Complaint on October 3, 1991; that Defendant, Century National Bank of Oklahoma, acknowledged receipt of Summons and Complaint on September 26, 1991; that Defendant, Cornelia J. Hardy, acknowledged receipt of Summons and Complaint on October 3, 1991; that Defendant, Board of County Commissioners, Mayes County, Oklahoma, acknowledged receipt of Summons and Complaint on September 27, 1991.

It appears that the Defendants, County Treasurer, Mayes County, Oklahoma, and Board of County Commissioners, Mayes County, Oklahoma, filed their Answer and Cross-Petition on January 2, 1992; that the Defendant, State of Oklahoma ex rel. Commissioners of the Land Office, filed its Answer, Affirmative Defense, and Cross-Complaint on October 23, 1991; that the Defendant, Tulsa Federal Employees Credit Union, filed its Answer on October 10, 1991; that the Defendant, Century National Bank of Oklahoma, filed its Disclaimer on October 18, 1991; that the Defendant, Cornelia J. Hardy, filed her Answer on October 7, 1991; and that the Defendants, Lloyd M. Spyres a/k/a Lloyd

Mitchell Spyres and Linda L. Spyres a/k/a Linda Lou Spyres, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on November 15, 1989, Lloyd Mitchell Spyres and Linda Lou Summers Spyres filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 89-03479-C. On April 9, 1990, a Discharge of Debtor was entered in this case in the United States Bankruptcy Court for the Northern District of Oklahoma. On June 29, 1990, this bankruptcy case was closed.

The Court further finds that on February 6, 1978, Lloyd M. Spyres and Linda L. Spyres executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$100,000.00, payable in yearly installments, with interest thereon at the rate of 5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Lloyd M. Spyres and Linda L. Spyres executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated February 6, 1978, covering the following described property, situated in the State of Oklahoma, Mayes County:

The Southwest Quarter of Northeast Quarter of Northeast Quarter (SW/4 NE/4 NE/4); and,
The East Half of Northwest Quarter of Northeast Quarter (E/2 NW/4 NE/4); and,
The Northeast Quarter of Southwest Quarter of Northeast Quarter (NE/4 SW/4 NE/4); and

The South Half of Southwest Quarter of Northeast Quarter (S/2 SW/4 NE/4); and,
The Southeast Quarter of Northeast Quarter (SE/4 NE/4); and,
The North Half of Southeast Quarter (N/2 SE/4); and,
The Southwest Quarter of Southeast Quarter (SW/4 SE/4); and,
The South Half of Southeast Quarter of Southeast Quarter (S/2 SE/4 SE/4),
ALL in Section 19, Township 19 North, Range 20 East, Mayes County, Oklahoma;

AND

The West Half of Southwest Quarter of Northeast Quarter (W/2 SW/4 NE/4); and,
The South Half of Northwest Quarter (S/2 NW/4); and,
The Northwest Quarter of Northwest Quarter of Southeast Quarter (NW/4 NW/4 SE/4); and,
The Southwest Quarter (SW/4),
ALL in Section 20, Township 19 North, Range 20 East, Mayes County, Oklahoma;

AND

The North Half of Northeast Quarter (N/2 NE/4) of Section 30, Township 19 North, Range 20 East, Mayes County, Oklahoma;

AND

The Northwest Quarter of Northeast Quarter of Northwest Quarter (NW/4 NE/4 NW/4), and the Northwest Quarter of Northwest Quarter (NW/4 NW/4) of Section 29, Township 19 North, Range 20 East, Mayes County, Oklahoma; and,

That part of the South Half of Northeast Quarter of Northwest Quarter (S/2 NE/4 NW/4) and the Northwest Quarter of Southeast Quarter of Northwest Quarter (NW/4 SE/4 NW/4) Section 29, Township 19 North, Range 20 East, Mayes County, Oklahoma, LYING NORTH of the northerly right of way line of a county road, the center line of which is more particularly described as follows, to-wit: BEGINNING 53.4 feet West of the Northeast corner of the SE/4 NE/4 NW/4 of said Section 29; thence South 52°06' West a distance of 240 feet; thence on a curve left, whose radius is 2831.8 feet, a distance of 210.45 feet; thence South 47°51' West a

distance of 474 feet; thence on a curve right, whose radius is 1399.4 feet a distance of 324 feet; thence South 61°07' West a distance of 326 feet, more or less, to the West boundary of the NW/4 SE/4 NW/4;

TOGETHER WITH all rights of Grantors in that certain private roadway easement dated June 12, 1956, recorded in Book 290 at page 42, over and across a portion of the East Half of Northeast Quarter of Northwest Quarter (E/2 NE/4 NW/4) of Section 29, Township 19 North, Range 20 East, Mayes County, Oklahoma.

The above-described property containing in all 654 acres more or less.

This mortgage was recorded on February 6, 1978, in Book 554, Page 110, in the records of Mayes County, Oklahoma.

The Court further finds that on February 20, 1985, the United States of America, acting through the Farmers Home Administration, released from the lien of the above-described mortgage the following-described property:

The North 66 feet of the Northeast Quarter of the Southwest Quarter of the Southwest Quarter,
AND

The Southeast Quarter of the Northwest Quarter of the Southwest Quarter LESS the North 66 feet thereof, in Section 20, Township 19 North, Range 20 East of the Indian Base and Meridian, Mayes County, Oklahoma, containing 10.02 acres more or less and subject to easements of record.

This corrected partial release was recorded on February 21, 1985, in Book 640, Page 27, in the records of Mayes County, Oklahoma.

The Court further finds that on May 31, 1989, Lloyd M. Spyres and Linda L. Spyres executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of

\$103,014.42, payable in yearly installments, with interest thereon at the rate of 5 percent per annum and \$1,840.86 of noncapitalized interest. It was expressly agreed by and between the parties that this promissory note was a reamortization of installments of a loan, which debt is evidenced by a promissory note dated February 6, 1978, in the original principal sum of \$100,000.00, plus interest at the rate of 5 percent per annum. It was the intent of the parties that this note evidenced the same debt as evidenced by the former promissory note and does not discharge such debt or the lien of any instrument securing its payment.

The Court further finds that as security for the payment of the above-described note, Lloyd M. Spyres and Linda L. Spyres executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated May 31, 1989, covering the following described property, situated in the State of Oklahoma, Mayes County:

The Southwest Quarter of Northeast Quarter of Northeast Quarter (SW/4 NE/4 NE/4); and,
The East Half of Northwest Quarter of Northeast Quarter (E/2 NW/4 NE/4); and,
The Northeast Quarter of Southwest Quarter of Northeast Quarter (NE/4 SW/4 NE/4); and
The South Half of Southwest Quarter of Northeast Quarter (S/2 SW/4 NE/4); and,
The Southeast Quarter of Northeast Quarter (SE/4 NE/4); and,
The North Half of Southeast Quarter (N/2 SE/4); and,
The Southwest Quarter of Southeast Quarter (SW/4 SE/4); and,
The South Half of Southeast Quarter of Southeast Quarter (S/2 SE/4 SE/4),
ALL in Section 19, Township 19 North, Range 20 East, Mayes County, Oklahoma;

AND

The West Half of Southwest Quarter of Northeast Quarter (W/2 SW/4 NE/4); and,
The South Half of Northwest Quarter (S/2 NW/4); and,
The Northwest Quarter of Northwest Quarter of Southeast Quarter (NW/4 NW/4 SE/4); and,
The Southwest Quarter (SW/4), Less the North 66 feet of the Northeast Quarter of the Southwest Quarter of the Southwest Quarter, AND The Southeast Quarter of the Northwest Quarter of the Southwest Quarter LESS the North 66 feet thereof, in Section 20, Township 19 North, Range 20 East of the Indian Base and Meridian, Mayes County, Oklahoma, containing 10.02 acres more or less and subject to easements of record,
ALL in Section 20, Township 19 North, Range 20 East, Mayes County, Oklahoma;

AND

The North Half of Northeast Quarter (N/2 NE/4) of Section 30, Township 19 North, Range 20 East, Mayes County, Oklahoma;

AND

The Northwest Quarter of Northeast Quarter of Northwest Quarter (NW/4 NE/4 NW/4), and the Northwest Quarter of Northwest Quarter (NW/4 NW/4) of Section 29, Township 19 North, Range 20 East, Mayes County, Oklahoma; and,

That part of the South Half of Northeast Quarter of Northwest Quarter (S/2 NE/4 NW/4) and the Northwest Quarter of Southeast Quarter of Northwest Quarter (NW/4 SE/4 NW/4) Section 29, Township 19 North, Range 20 East, Mayes County, Oklahoma, LYING NORTH of the Northerly right of way line of a county road, the center line of which is more particularly described as follows, to-wit: BEGINNING 53.4 feet West of the Northeast corner of the SE/4 NE/4 NW/4 of said Section 29; thence South 52°06' West a distance of 240 feet; thence on a curve left, whose radius is 2831.8 feet, a distance of 210.45 feet; thence South 47°51' West a distance of 474 feet; thence on a curve right, whose radius is 1399.4 feet a distance of 324 feet; thence South 61°07' West a distance of 326 feet, more or less, to the West boundary of the NW/4 SE/4 NW/4;

TOGETHER WITH all rights of Grantors in that certain private roadway easement dated June 12, 1956, recorded in Book 290 at page 42, over and across a portion of the East Half of Northeast Quarter of Northwest Quarter (E/2 NE/4 NW/4) of Section 29, Township 19 North, Range 20 East, Mayes County, Oklahoma.

The above-described property containing in all 643.8 acres more or less.

This mortgage was recorded on June 2, 1989, in Book 701, Page 651, in the records of Mayes County, Oklahoma.

The Court further finds that the Defendants, Lloyd M. Spyres a/k/a Lloyd Mitchell Spyres and Linda L. Spyres a/k/a Linda Lou Spyres, made default under the terms of the aforesaid notes and mortgages by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Lloyd M. Spyres a/k/a Lloyd Mitchell Spyres and Linda L. Spyres a/k/a Linda Lou Spyres, are indebted to the Plaintiff in the principal sum of \$106,711.28, plus accrued interest in the amount of \$6,464.18 as of August 23, 1990, plus interest accruing thereafter at the rate of 5 percent per annum or \$14.6180 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$32.00 (\$20.00 docket fees, \$12.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Mayes County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$617.16, plus penalties and interest, for the year 1990. Said

lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, State of Oklahoma ex rel. Commissioners of the Land Office, has a lien on the property which is the subject matter of this action in the amount of \$70,962.80 as of October 15, 1991 with maturity interest at the rate of 10 percent per annum together with administrative costs and attorney fees by virtue of a note in the original amount of \$51,000.00 dated February 6, 1978, secured by a mortgage on the above property of same date, filed of record with the County Clerk of Mayes County, State of Oklahoma, on February 6, 1978, in Book 554, Page 85. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Tulsa Federal Employees Credit Union, has a lien on the property which is the subject matter of this action in the amount of \$16,530⁰⁴, plus interest at the rate of 15 percent per annum by virtue of a mortgage, recorded on December 8, 1979, in Book 574, Page 540 in the records of Mayes County, Oklahoma; and by virtue of a supplemental agreement filed February 27, 1981, in Book 586, Page 748 in the records of Mayes County, Oklahoma.

The Court further finds that the Defendant, Cornelia J. Hardy, has a lien on the property which is the subject matter of this action by virtue of a judgment in the sum of \$40,114.06, in Case No. C-89-244 filed in the District Court of Mayes County, Oklahoma.

The Court further finds that the Defendant, Century National Bank of Oklahoma, disclaims any right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Lloyd M. Spyres a/k/a Lloyd Mitchell Spyres and Linda L. Spyres a/k/a Linda Lou Spyres, in the principal sum of \$106,711.28, plus accrued interest in the amount of \$6,464.18 as of August 23, 1990, plus interest accruing thereafter at the rate of 5 percent per annum or \$14.6180 per day until judgment, plus interest thereafter at the current legal rate of 3.41 percent per annum until paid, plus the costs of this action in the amount of \$32.00 (\$20.00 docket fees, \$12.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Mayes County, Oklahoma, have and recover judgment in the amount of \$617.16, plus penalties and interest, for ad valorem taxes for the year 1990, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Commissioners of the Land Office, have and recover judgment in the amount of \$70,962.80 as of October 15, 1991 with maturity interest at the rate of 10 percent per annum together with administrative costs and

attorney fees by virtue of a note in the original amount of \$51,000.00 dated February 6, 1978, secured by a mortgage on the above property of same date, filed of record with the County Clerk of Mayes County, State of Oklahoma, on February 6, 1978, in Book 554, Page 85.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Tulsa Federal Employees Credit Union, have and recover judgment in the amount of \$ 16,530.04, plus interest at the rate of 15⁰⁰ percent per annum, by virtue of a mortgage, recorded on December 8, 1979, in Book 574, Page 540 in the records of Mayes County, Oklahoma; and by virtue of a supplemental agreement filed February 27, 1981, in Book 586, Page 748 in the records of Mayes County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Cornelia J. Hardy, have and recover judgment in the amount of \$40,114.06, by virtue of a judgment in Case No. C-89-244 filed in the District Court of Mayes County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Century National Bank of Oklahoma, has no right, title or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Lloyd M. Spyres a/k/a Lloyd Mitchell Spyres and Linda L. Spyres a/k/a Linda Lou Spyres, to satisfy the in rem judgment of the Plaintiff herein, this case shall be removed to the District Court of Mayes County, State of Oklahoma for execution, the proceeds of the sale to be applied as follows:

First:

In payment of the judgment rendered herein in favor of the Defendant, State of Oklahoma ex rel. Commissioners of the Land Office;

Second:

In payment of the costs of this action incurred by the Plaintiff;

Third:

In payment of the costs of this action incurred by the Defendant, State of Oklahoma ex rel. Commissioners of the Land Office, including the costs of sale of said real property;

Fourth:

In payment of Defendants, County Treasurer and Board of County Commissioners, Mayes County, Oklahoma, in the amount of \$617.16, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Fifth:

In payment of the judgment rendered herein in favor of the Plaintiff, United States of America;

Sixth:

In payment of the judgment rendered herein in favor of the Defendant, Tulsa Federal Employees Credit Union;

Seventh:

In payment of the judgment rendered herein
in favor of the Defendant, Cornelia J. Hardy.
The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

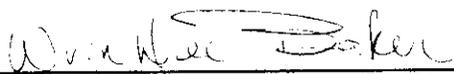
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.

S/ JAMES O. ELLISON

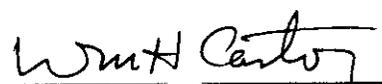
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



WYN DEE BAKER, OBA #465
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



WM. H. Castor OBA #1560
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Mayes County, Oklahoma


NANCY HOLSTED, OBA #11868
Attorney for Defendant,
State of Oklahoma ex rel.
Commissioners of the Land Office


JAMES M. HINDS, OBA #4221
Attorney for Defendant,
Tulsa Federal Employees Credit Union


FRED H. SORDAHL, OBA #883
Attorney for Defendant,
Cornelia J. Hardy

Judgment of Foreclosure
Civil Action No. 91-C-746-E

WDB:css

CLOSED

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

THRIFTY RENT-A-CAR SYSTEM, INC.,)
an Oklahoma corporation,)
)
Plaintiff,)
)
vs.)
)
INTERMOUNTAIN RENTALS, INC.,)
a foreign corporation,)
CRAIG S. RIDINGS, an)
individual, and CHARLENE H.)
RIDINGS, an individual,)
)
Defendants.)

Case No.91-C-838-B

FILED

SEP 01 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ADMINISTRATIVE CLOSING ORDER

Thrifty Rent-A-Car System, Inc. ("Thrifty") and the Defendants, Intermountain Rentals, Inc., Craig S. Ridings, and Charlene H. Ridings, have settled this action pursuant to the terms of a Settlement and Release Agreement dated August 11, 1992. Under the terms of that Agreement, the Defendants have agreed to pay Thrifty a sum of money by a date certain. The Agreement gives Thrifty the right to move the Court for the entry of a Judgment in the future, if certain circumstances exist.

It is hereby Ordered that the Clerk administratively terminate this action in his records, without prejudice to the right of Thrifty to reopen this action for the purpose of enforcing its rights under the terms of the Settlement and Release Agreement.

IT IS SO ORDERED this 1st day of Sept., 1992.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

**CLOSED
FILED**

SEP 01 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

STACY A. ANDREWS,
Plaintiff,

vs.

LOUIS W. SULLIVAN, M.D.,
SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

No. 91-C-200-E

ENTERED ON DOCKET
DATE SEP 2 1992

O R D E R

The Court has for consideration the Report and Recommendations of the Magistrate filed on February 11, 1992. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendations of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that the decision of the Administrative Law Judge be affirmed.

ORDERED this 31st day of August 1992.


CHIEF JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT

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SEP 01 1992

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

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JESSEE LEE HOWELL AND)
DORIS K. HOWELL, PLAINTIFFS)
VS.)
COMMISSIONER OF THE INTERNAL)
REVENUE SERVICE, DEFENDANT)

DOCKET NO. 92-C-081 E

ENTERED ON DOCKET

DATE SEP 2 1992

ORDER GRANTING LEAVE TO FILE AMENDED PETITION AND
DISMISS DORIS K. HOWELL AS A PARTY

Now on this 21st day of August, 1992, comes before the Court the Motion filed herein by the plaintiffs and the Court finds:

1. That Doris K. Howell be and she is hereby dismissed from this case without prejudice.
2. That Jessie K. Howell be and he is hereby granted leave to file an amended petition which will indicate Doris K. Howell is no longer a party.
3. That the style of the case be and is hereby amended to reflect that Doris K. Howell is no longer a plaintiff.

IT IS SO ORDERED.

United States District Judge

ENTERED ON DOCKET
DATE SEP 2 1992

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

F I L E D

SEP 01 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

HOMeward BOUND, INC.
et al.,

Plaintiffs,

v.

THE HISSOM MEMORIAL CENTER,
et. al.,

Defendants.

Case No. 85-C-437-E

JUDGMENT

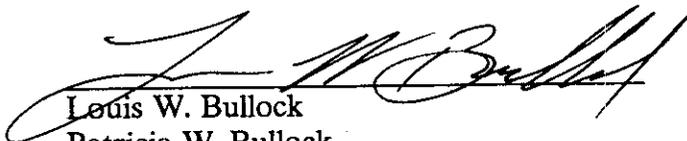
In accordance with the Stipulation as to the August 14, 1992 Application for attorney fees, and the Order entered on this 1st day of Sept, 1992, awarding Plaintiffs' counsel, Bullock & Bullock, interim attorney fees and expenses, the Court hereby enters judgment in favor of Plaintiffs' counsel, Bullock & Bullock, in the amount of \$ 75,746.25 for uncontested fees and \$ 4,282.96 for expenses.

ORDERED this 1st day of Sept, 1992.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Court

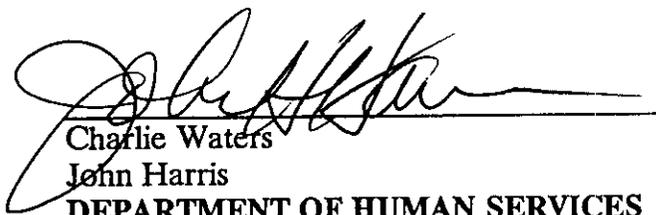
NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.



Louis W. Bullock
Patricia W. Bullock
BULLOCK & BULLOCK
320 South Boston
Suite 718
Tulsa, Oklahoma 74103-3708
(918) 584-2001

Frank Laski
Judith Gran
**PUBLIC INTEREST LAW CENTER OF
PHILADELPHIA**
125 South Ninth Street
Suite 700
Philadelphia, Pennsylvania 19107
(215) 627-7000

ATTORNEYS FOR PLAINTIFFS



Charlie Waters
John Harris
DEPARTMENT OF HUMAN SERVICES
P. O. Box 53025
Oklahoma City, Oklahoma 73152
(405) 521-3638

ATTORNEY FOR DEFENDANTS

CLOSED

ENTERED ON DOCKET

DATE SEP 01 1992

SEP - 1 1992

RECEIVED
CLERK OF COURT
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

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

KEVIN LEE CRAWFORD,

Plaintiff,

vs.

FORD MOTOR COMPANY,

Defendant.

)
)
)
)
)
)
)
)
)
)
)

Case No. 91-C-969-~~E~~^B

ORDER GRANTING APPLICATION FOR A
DISMISSAL WITH PREJUDICE

Upon written application of the parties for an order of dismissal with prejudice of the complaint and all causes of action, the Court, having examined said application, finds that said parties have requested the Court to dismiss the complaint with prejudice to any future action, and the Court having been fully advised in the premises, finds that said complaint should be dismissed. It is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the complaint and all causes of action of the Plaintiff filed herein against the Defendant be and the same are hereby dismissed with prejudice to any further action.

DATED this 1st day of September, 1992.

S/ THOMAS R. BRETT

JUDGE, UNITED STATES DISTRICT COURT

CLOSED

9-1-92

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

FLOYD R. HARDESTY,)
)
 Plaintiff,)

vs.)

KARRIE DULIN,)
)
 Defendant.)

No. 89-C-810-E ✓

FILED

SEP -4 1991

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

KARRIE DULIN,)
)
 Plaintiff,)

vs.)

FLOYD ROGER HARDESTY, et al.,)
)
 Defendants.)

No. 90-C-1042-E

KARRIE DULIN,)
)
 Plaintiff,)

vs.)

ROGER HARDESTY,)
)
 Defendant.)

No. 91-C-11-E

(CONSOLIDATED)

ORDER

This matter is before the Court upon the summary judgment motion of Defendants Hardesty, et al. Plaintiff has asserted two causes of action: a federal claim under Title VII and a state tort claim for intentional infliction of emotional distress. Defendants Hardesty argue that Plaintiff's claims are time-barred by the applicable statutes of limitation.

Title VII Claim. The filing requirements under the Equal

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Employment Opportunity Act (Act) are in the nature of a statute of limitations. Zipes v. Trans World Airlines, 455 U.S. 385 (1982) reh'g denied, 456 U.S. 940 (1982). Under the EEOC, Oklahoma is a "deferral state" because it has a designated agency to process EEOC complaints initially. The filing provisions for a deferral state are found at 42 U.S.C. §2000e-5. That section provides that no charge by a person claiming to be aggrieved by an unlawful employment practice may be filed with the EEOC until sixty days after proceedings at the State agency have commenced (unless those proceedings were terminated prior to the expiration of the sixty-day period). It further provides that, while the limitations period is generally 180 days, where proceedings are initially instituted with a designated State agency the limitations period is extended to 300 days after the unlawful act occurred "or within thirty days after receiving notice that the State or local agency has terminated the proceedings ... whichever is earlier. ..." 42 U.S.C. §2000e-5(e). Where a party claiming to be aggrieved does not file with a designated state agency initially but files with the EEOC within 240 days of the last discriminatory act then the complaint will be deemed to be timely filed because the additional 60-day period allotted to the state agency will not cause the complaint to run afoul of the 300-day statute of limitations. Mohasco Corp. v. Silver, 100 S.Ct. 2486 (1980). In this circuit Mohasco has been interpreted to stand for the proposition that a complaint filed with the EEOC after the 240-day period may be timely, if the state terminates its proceedings prior to the expiration of the 300-day period. Smith v. Oral Roberts

Evangelistic Association, Inc., 731 F.2d 684 (1984).

In the instant case, Plaintiff alleges that during her employment with Defendants Hardesty, Floyd Roger Hardesty made "unwelcome sexual advances toward the Plaintiff which amounted to harassment." Complaint, Case #90-C-1042 at ¶10. While Plaintiff's allegation states a valid claim of an unlawful employment practice, the Court finds that the only evidence submitted by Plaintiff which can be deemed to substantiate her claim is her assertion that from 1983-1985 she felt compelled to have sexual relations with Floyd Roger Hardesty. Plaintiff asserts that she last had a sexual relationship with Mr. Hardesty at the end of 1985. The Defendants' subsequent acts or omissions identified by Plaintiff as unlawful practices, culminating in what she asserts was a constructive discharge in 1988 simply are not evidence of separate unlawful practices nor of a continuing discriminatory practice. At best they may be characterized as effects of past discrimination. However, subsequent effects of past discrimination cannot be used to show continuing discrimination for purposes of the limitations period. United Air Lines v. Evans, 431 U.S. 553, 97 S.Ct. 1885, 52 L.Ed.2d 571 (1977); Delaware State College v. Ricks, 449 U.S. 250, 101 S.Ct. 498, 66 L.Ed.2d 431 (1980). Therefore, the Court finds that the last discriminatory act occurred at the end of 1985. And it was at that point that the statutory period began to run. See Shah v. Halliburton Co., 627 F.2d 1057 (10th Cir 1980). It is undisputed that Plaintiff filed her claim with the EEOC on September 28, 1989, well beyond the 300-day limitations period and

certainly beyond the 240-day limitations period which the Court holds is applicable to the instant case. Under Rule 56(c), summary judgment is appropriate where, after sufficient time for discovery, the non-moving party fails to offer adequate evidence "to establish the existence of an element essential to that party's case ... " Colotex Corp. v. Catrett, 477 U.S. 317 (1986). Plaintiff, here, has failed to demonstrate continuing discrimination after 1985 and has therefore failed to establish timely filing of her EEOC charge. Accordingly, the Court finds that summary judgment is appropriate as to Plaintiff's federal claim.

State Tort Claim. Regarding Plaintiff's claim for intentional infliction of emotional distress the Court finds that two years from the date upon which Plaintiff could have initially established her claim is the applicable statute of limitations. Chandler v. Denton, 741 P.2d 855 (Okla. 1987). The Court further finds that the statute was not tolled by Floyd Roger Hardesty's denial of paternity. See Depo. of Floyd Roger Hardesty, p. 53, lines 4-8. The Court finds that the denial cannot be characterized as a fraudulent concealment of a cause of action as required by Moore. Moore v. Delivery Services, Inc., 618 P.2d 408 (Okla.App. 1980). Plaintiff filed her tort action in state court in September, 1989. Her asserted claim arose at the end of 1985. Therefore the applicable statute of limitations bars her state tort claim.

IT IS THEREFORE ORDERED that the summary judgment motion of Defendants Hardesty et al. is hereby granted.

ORDERED this 5th day of September, 1991.



JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

DATE SEP 1 1992

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

HULEX MUSIC, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 PERRCORP, INC. d/b/a TULSA)
 ATHLETIC CLUB, et al.,)
)
 Defendants.)

No. 91-C-891-E

F I L E D

AUG 31 1992

**Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

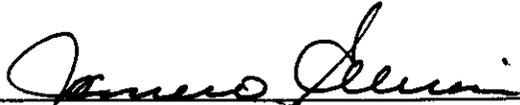
ORDER

NOW on this 31st day of August, 1992 comes on for consideration the above-styled case and the Court, being fully advised in the premises finds:

Before the Court for consideration is the application of Plaintiffs for award of attorney's fees. The Court finds that Plaintiffs' affidavit in support of the application for award of attorney's fees is sufficient to satisfy the standards set forth in Ramos v. Lamm, 713 F.2d 546 (10th Cir. 1983), and that a hearing on the award of attorney's fees is not necessary. The Court finds that Plaintiffs' application for award of attorney's fees should be and the same is hereby granted.

IT IS THEREFORE ORDERED that Plaintiffs be awarded attorney's fees in the amount of \$6,549.00.

ORDERED this 31st day of August, 1992.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

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

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

THOMAS N. HALL, individually and
d/b/a MARKET EXCHANGE INDEX, LTD.,

THD, INCORPORATED,
an Oklahoma corporation,

NOEL L. WELSH, individually and
d/b/a WELSH ENTERPRISES,

and

MARKET EXCHANGE INDEX, a partnership,

Defendants.

Civil Action
No. 88-C-318B

FILED

AUG 31 1992

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER APPROVING PARTIAL SETTLEMENT

NOW on this 21st day of August, 1992, this matter comes on for hearing upon that certain Stipulation for Entry of Judgment against Thomas N. Hall entered into June 18, 1992 (the "Stipulation"), by and among Gary C. Clark as Equity Receiver (the "Receiver"), appointed by the United States District Court for the Northern District of Oklahoma in Case No. 88-C-318-B, styled Commodity Futures Trading Commission v. Hall, et al. (the "Receivership Action"), the MEI Plaintiffs Litigation Committee, on their own behalf and on behalf of all class members of the Andrews Settlement Class (the "Andrews Plaintiffs") in Andrews, et al. v. Hall, et al., Case No. 88-C-422-B, filed in the United States

District Court for the Northern District of Oklahoma (the "Andrews Action"), Saul Stone & Co. and Thomas N. Hall ("Hall"). The Court, upon consideration of the pleadings herein and the statements of counsel, finds as follows:

1. That due and proper notice of this hearing was given to all interested parties.

2. That no objections, either written or oral, have been made to the proposed settlement.

3. That the proposed settlement is in the best interests of the receivership estate and those persons who may have an interest in the receivership estate.

4. That the settlement should be approved.

5. Pursuant to the Stipulation, this Court should enter judgment against Hall and in favor of the Andrews plaintiffs, the Equity Receiver and Saul Stone & Co. in the amount of \$1,000,000 in Andrews, et al. v. Hall, et al., Case No. 88-C-422-B (the "Judgment").

IT IS THEREFORE ORDERED that:

1. The Stipulation is hereby approved and confirmed.

2. Except for actions to enforce the Judgment, the Equity Receiver is hereby forever barred and enjoined from instituting or prosecuting any action, causes of action, or claims of any kind or nature whatsoever, whether known, unknown, suspected or unsuspected, against Hall, arising out of the subject of this litigation or which could have been asserted in this action by the Equity Receiver.

3. All claims of the Equity Receiver against Hall in this action shall be merged in the judgment rendered pursuant to the Stipulation in Case No. 88-C-422-B, and this order shall be a final judgment as to Hall in this case.

ENTERED this 31st day of August, 1992.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE SEP 01 1992
FILED

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

AUG 28 1992

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

ATLANTIC RICHFIELD COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 AMERICAN AIRLINES, INC., et al,)
)
 Defendants.)

Case Nos. 89-C-868-B
89-C-869-B
90-C-859-B

ORDER

This Order pertains to Plaintiff's Motion for Leave to File a Second Consolidated Amended Complaint (Docket #323)¹. Previously, Plaintiff's Motion for Leave to File a Second Consolidated Amended Complaint was granted (Docket #396). However, due to pending "deem-filed" cross-claims, Defendants Aamco Transmissions, Fina Oil & Chemical Co., Nissan Trading Corp., U.S.A., Total Petroleum, Inc., Toyota Motor Sales, Inc., Unocal Corp., and White GMC Trucks of Houston, Inc. were not dismissed, but were retained as Defendants in the case.

At the hearing held August 25, 1992, Defendant Group I withdrew its objection to dismissal of these seven defendants. No other Defendant Group stated they objected to dismissal of these seven Defendants.

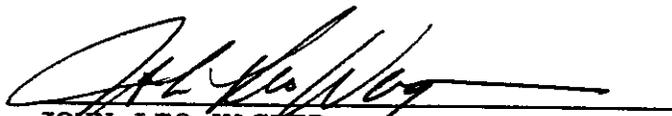
Accordingly, Defendants Aamco Transmissions, Fina Oil & Chemical Co., Nissan Trading Corp., U.S.A., Total Petroleum, Inc.,

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

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Toyota Motor Sales, Inc., Unocal Corp., and White GMC Trucks of Houston, Inc. are hereby dismissed without prejudice from this action.

Dated this 28th day of August, 1992.



JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE