

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

FILED

MAR 6 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

PATRICIA STOVALL, Duly)
Appointed City Clerk/Treasurer,)
)
Plaintiff,)
)
vs.)
)
THE CITY OF PICHER, a municipal)
corporation; HOWARD HUDSON,)
individually and as Mayor;)
RAYMA GRIMES, individually)
and as City Councilor for)
Ward 1; LEE LYLE, individually)
and as City Councilor for)
Ward 2; TED VANN, individually)
and as City Councilor)
for Ward 3; and RICHARD ROGERS,)
individually and as City)
Councilor for Ward 4,)
)
Defendants.)

Case No. 96-CV-906-E

ENTERED
MAR 6 1997

ORDER

On February 12, 1997, there came on for consideration the Motions to Dismiss filed by all Defendants. After reading the motions and briefs, and hearing argument of counsel, the Court finds that the Motions to Dismiss of all Defendants should be granted as to Plaintiff's state tort claims and denied as to Plaintiff's federal claims.

IT IS THEREFORE ORDERED that the Motions to Dismiss of all Defendants are granted as to Plaintiff's state tort claims and Plaintiff's state tort claims are hereby dismissed.

IT IS FURTHER ORDERED that the Defendants' Motions to Dismiss Plaintiff's federal claims are denied.


THE HONORABLE JAMES O. ELLISON

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APPROVED AS TO FORM AND CONTENT

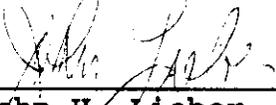
FRASIER, FRASIER & HICKMAN

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ATTORNEY FOR PLAINTIFF

ELLER AND DETRICH
A Professional Corporation

By: 

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(918) 747-8900

ATTORNEY FOR DEFENDANTS

2.jhl\city\2ord

REGISTERED ON DOCKET

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

DATE 3-10-97

PLYMOUTH RESOURCES, et al.,)
)
 Plaintiffs,)
)
 vs.)
)
 APACHE CORPORATION,)
)
 Defendant.)

No. 96-C-1025-K ✓

F I L E D

MAR 06 1997

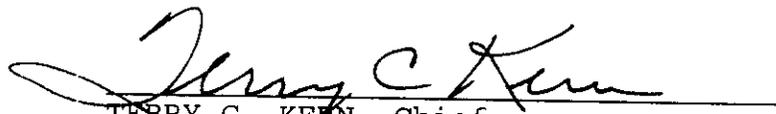
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Court has been advised that this action has settled or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within sixty (60) days that settlement has not been completed and further litigation is necessary.

ORDERED this 5th day of March, 1997.


TERRY C. KERN, Chief
UNITED STATES DISTRICT JUDGE

18

SEARCHED ON DOCKET
DATE 3-10-97

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

FILED
MAR 05 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 95-CV-1058-H

LLOYD SMITH,
Plaintiff,
v.
PACIFIC ASSETS GROUP, et al.,
Defendants.

ORDER

This matter comes before the Court on Defendants' renewed motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

As a result of the previous rulings by the Court in this matter, and the filing of the so-called "Plaintiff's First Amended Petition" on August 26, 1996, Gary Winnick, Hudson-RAM, L.P., and Hudson Partners, L.P. are the sole remaining defendants in this action.

This lawsuit arises out of an alleged written agreement described in Plaintiff's First Amended Petition. At a hearing in this matter on February 16, 1996, Plaintiff represented to the Court that his "copy" of this alleged written agreement was not in good condition. Nevertheless, in the interests of framing the issues in this case, the Court ordered that either his "copy," or another "copy" obtained from a storage facility in Texas, be produced promptly to Defendant and to the Court.¹

It has now been over one year since Plaintiff was ordered to produce a copy of any alleged written agreement. During that period, Plaintiff represented to the Court that his "copy" is no longer readable, and therefore is no longer available for production. Plaintiff further represented to the Court that the documents in the Texas storage facility have been accessible to him for more

¹ For purposes of this motion, the Court accepts as true the representation of Defendants' counsel that Defendants have conducted a search for any such written agreement and that no such document has been located.

than ten (10) months since the Court's order on February 16, 1996, but it has not been convenient for him to schedule a trip to Texas to conduct a personal search for the alleged written agreement.

After setting, and then continuing, a series of dates by which Plaintiff was to produce any alleged written agreement, the Court ordered that Plaintiff submit such document on or before March 3, 1997. Plaintiff again failed to comply with the Court's order.

The record clearly reflects that Plaintiff has failed for over one year to obey an order by this Court to provide discovery. Fed. R. Civ. P. 37(b)(2). As a result, pursuant to Fed. R. Civ. P. 37(b)(2)(c), all claims based on any alleged written agreement are hereby stricken from Plaintiff's pleadings. Absent any claims for breach of an alleged written agreement, Plaintiff's First Amended Petition fails to state a claim upon which relief can be granted. Therefore, Defendants' motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) are hereby granted.

IT IS SO ORDERED.

This 5TH day of March, 1997.



Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCS
MAR 3-10-97

UNITED STATES OF AMERICA,

Plaintiff,

v.

JENNIFER LYNN PARNELL
aka Jennifer Lynn Taylor;
WILLIAM LEE TAYLOR
aka William L. Taylor;
R.L. PARNELL;
BEVERLY PARNELL;
STATE OF OKLAHOMA ex rel.
Oklahoma Tax Commission;
STATE OF OKLAHOMA ex rel.
Department of Human Services;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

F I L E D

MAR 05 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 95-C-0074-K

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Veterans Affairs, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that this action shall be dismissed without prejudice.

Dated this 4th day of March, 1997.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
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(918) 581-7463

PB:css

11

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TEDDY J. INMAN,

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner,
Social Security Administration,

Defendant.

Civil Action No. 95-C-445-W

ENTERED ON DOCKET

DATE

3/6/97

ORDER

On December 16, 1996, this Court reversed the Commissioner's decision denying plaintiff's claim for Social Security disability benefits and remanded to the Commissioner. No appeal was taken from this Judgment and the same is now final.

Pursuant to plaintiff's application for attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. §2412(d), the parties have stipulated that an award in the amount of \$820.00 for attorney fees and \$88.00 for costs, for all work done before the district court, is appropriate.

WHEREFORE, IT IS ORDERED that plaintiff's counsel be awarded attorney's fees in the amount of \$820.00 and costs in the amount of \$88.00, totalling \$908.00, under EAJA. If attorney fees are also awarded under 42 U.S.C. §406(b)(1) of the Social Security Act, plaintiff's counsel shall refund the smaller award to plaintiff pursuant to Weakley v. Bowen, 803 F.2d 575, 580 (10th Cir. 1986). This action is hereby dismissed.

It is so ORDERED THIS 4th day of March, 1997.



JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

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

FILED

MAR 4 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

HOMeward BOUND, INC.,)
et. al.,)
)
Plaintiffs,)
)
vs.)
)
THE HISSOM MEMORIAL CENTER,)
et. al.,)
)
Defendants.)

Case No: 85-C-437-E

MAR 3 5 1997

ORDER & JUDGMENT

Plaintiffs' counsel, Bullock & Bullock, filed an Attorney Fee Application on February 6, 1997, for an award of attorney fees and expenses in accordance with the December 23, 1989 order and stipulation of the parties.

The Court has reviewed the application for fees and the Stipulation of the parties.

The Court hereby awards the firm Bullock & Bullock uncontested attorney fees in the amount of \$58,842.50 and out of pocket expenses in the amount of \$6,409.08.

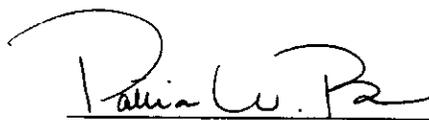
IT IS THEREFORE ORDERED that the Department of Human Services, the Oklahoma Health Care Authority and the Department of Rehabilitation Services are each jointly and severally liable for the payment to Plaintiffs' counsel, Bullock & Bullock, for attorney fees in the amount of \$58,842.50 plus expenses in the amount of \$6,409.08 and a judgment in the amount of \$65,251.58 is hereby entered on this day. The contested time on

690

Michele T. Gehres and Louis W. Bullock will be held in abeyance pending the Court's ruling on the Defendants' Motion to Disqualify.

ORDERED this 4th day of March, 1997.


HONORABLE JAMES O. ELLISON
United States District Court

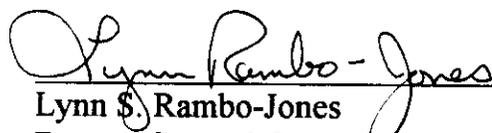

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ATTORNEYS FOR DEFENDANTS

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

F I L E D

MAR - 4 1997



Phil Lombardi, Clerk
U.S. DISTRICT COURT

AMY D. ERWIN,)
)
 Plaintiff,)
)
 vs.)
)
 MARVIN RUNYON, Postmaster General,)
)
 Defendant.)

Case No. 96-C-177-B

ENTERED ON THE CLERK'S OFFICE
DATE: MAR 04 1997

ORDER

Before the Court is the Motion for New Trial and Amendment of Judgment or, in the Alternative, Relief from Judgment or Order filed by plaintiff, Amy R. Erwin ("Erwin") (Docket No. 24). Erwin requests the Court to strike its January 31, 1997 Order ("Order") and Judgment granting summary judgment to defendant, Marvin Runyon, Postmaster General (hereinafter referred to as "USPS") on Erwin's pregnancy discrimination claim. In the contested Order, the Court held as a matter of law that Erwin had failed to establish that (1) the USPS discriminated against her based on her pregnancy and (2) the USPS's proffered reason for denying her "light duty" was pretextual. Specifically, the Court found that the alleged discrimination was based on employment classification, *i.e.*, transitional v. career employees, and not pregnancy, and thus was not actionable. Further, the Court found that the USPS's interpretation of Article XIII of the collective bargaining agreement ("CBA") to prohibit it from granting "light duty" to transitional employees, while in error, did not evidence discriminatory intent so as to raise a factual question of pretext.

In support of her motion for new trial, Erwin supplements the record with the affidavit of Oscar Groom. Erwin contends that Mr. Groom's affidavit is newly discovered evidence which

places into controversy the formerly undisputed fact that no transitional employee has received “light duty” from the USPS. Mr. Groom attests that he was a transitional employee for the USPS from June 1995 to June 1996, and that in late 1995/early 1996 he injured his back “while in the performance of [his] duties.” *Affidavit of Oscar Groom, Exhibit B to Plaintiff’s Motion for New Trial*. When Mr. Groom’s doctor restricted his job performance to lifting no more than five (5) pounds, the USPS placed Mr. Groom on “light duty for a period of approximately four weeks,” guaranteeing him four hours of work per day. *Id.*

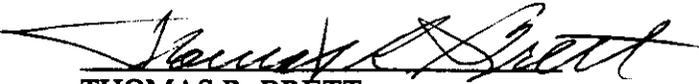
The USPS responds that Mr. Groom’s case does not create a genuine issue of material fact as to discrimination or discriminatory intent in this case because Mr. Groom was not granted “light duty” for **off the job** injury or illness, but rather “limited duty” as required under the Federal Employees Compensation Act (“FECA”) for an **on the job** injury. The USPS distinguishes the “limited duty” granted Mr. Groom from the “light duty” denied Erwin (and all transitional USPS workers), because the right to “limited duty” arises under FECA for **all** USPS workers, career and transitional employee alike, if they are injured on the job. The only right to “light duty,” however, is that which is provided under Article XIII of the CBA to **career** employees, whether pregnant or suffering from an off-the-job injury or illness. Neither Erwin nor any transitional employee, the USPS argues, has a right to “light duty” under the CBA or under any statutory authority. Article XIII of the CBA does not apply to transitional employees, and unlike FECA, Title VII does not provide a statutory right to special accommodation or compensation for pregnancy. Rather, Title VII prohibits employment discrimination based on pregnancy, and there is no evidence in the record that the USPS treats pregnant transitional employees any differently than nonpregnant transitional employees with temporary disabilities incurred **off the job**. And finally, there is no evidence that supports Erwin’s

allegation that the USPS's proffered reason for denying light duty to Erwin and all transitional employees, *i.e.*, the CBA prohibits it, was pretextual.

The Court sympathizes with Erwin's frustration that the comparative group in this case shrinks with each argument made by the USPS - first, transitional employees, and now, transitional employees except for those injured on the job. There is, however, no evidence to support a finding that the USPS intentionally discriminated against Erwin on the basis of her pregnancy. *White v. Frank*, 1993 WL 411742 (4th Cir. 1993) (the denial of "light duty" to rural carriers based on the Postmaster's incorrect interpretation of the CBA does not support a finding of intent to discriminate). As the Court noted in its Order, while Erwin might have establish a disparate impact claim in which "clearly identifiable employment requirements or criteria, regardless of whether there was intent to discriminate, resulted in a less favorable impact on a favorable group," *Hawkins v. Bounds*, 752 F.2d 500, 503 (10th Cir. 1985), she has not done so here.

Accordingly, Erwin's motion for new trial is denied (Docket No. 24).

IT IS SO ORDERED THIS 3rd DAY OF MARCH, 1997.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

BOBBY J. GILES,
SS# 447-54-2802

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner
Social Security Administration,

Defendant.

NO. 95-C-340-M

FILED

MAR 04 1997 SAC

Phil Lumbard, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE 3/5/97

ORDER

On August 14, 1996, the Court reversed and remanded this case for further proceedings. [Dkt. 13]. On December 17, 1996, the Court granted Plaintiff's application for attorney's fees pursuant to the Equal Access to Justice Act ("EAJA") 28 U.S.C. § 2412(d), the amount to be determined based upon specific calculations Plaintiff was ordered to submit to the Court. [Dkt. 17].

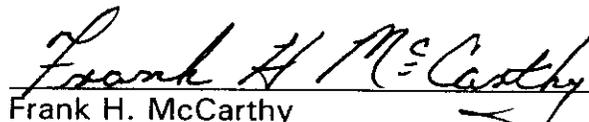
Plaintiff has submitted calculations in conformity with the Court's order. Those calculations reflect that Plaintiff is entitled to an award of attorney's fees in the amount of \$2,671.31 pursuant to the EAJA. The Court finds that amount to be reasonable.

Therefore, Plaintiff is granted attorneys fees pursuant to 28 U.S.C. § 2412(d) in the total amount of \$2,671.31. In the event attorney fees and costs are also awarded under 42 U.S.C. § 406(b)(1), Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

KA

In accordance with Fed.R.Civ.P. Rule 58, the Court Clerk is directed to forthwith prepare, sign and enter judgement in conformity with this order.

SO ORDERED this 4th day of March, 1997.


Frank H. McCarthy
UNITED STATES MAGISTRATE JUDGE

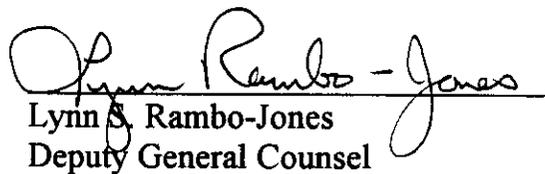


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ATTORNEYS FOR DEFENDANTS

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

F I L E D

MAR - 3 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JOSEPH E. DEYONGHE,)
)
 Petitioner,)
)
 vs.)
)
 H.N. "SONNY" SCOTT,)
)
 Respondent.)

Case No. 96-CV-1018-B

RECEIVED
MAR 04 1997

ORDER

Before the Court for consideration is Joseph E. DeYonghe's ("Petitioner") petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket # 1). H.N. Scott ("Respondent") has responded and Petitioner's reply puts the petition at issue. By combining the relevant supporting facts of each assignment of error with the generalized assignment of error, the Court considers the following issues to be raised by the instant petition for writ of habeas corpus:

1. The examination of the trial record requires reversal of the convictions for the reason that prosecutrix' testimony required corroboration and the corroboration presented was insufficient in light of the evidence which the trial court should have admitted on behalf of the defense.
2. Statutory provisions and recent case law supports Petitioner's proposition that reversible error occurred when questioning and direct testimony of victim's sexual conduct with other individuals were excluded as evidence by the trial court.
3. The admission of certain evidence by means of exhibits and cross-examination was an abuse of discretion, highly prejudicial, and therefore reversible error.
4. Improper impeachment of a primary witness was reversible error.
5. The trial court abused its discretion by disallowing the expert testimony of a licensed psychologist on behalf of the Petitioner.
6. Prosecutorial misconduct during closing arguments resulted in fundamental error.

7. The cumulation of error denied Petitioner his right to a fair trial.
8. Erroneous jury instructions were given which were contrary to statutory law thereby denying Petitioner his right to a fair trial.
9. The failure to object to violations of Petitioner's rights to due process constituted ineffective assistance of trial counsel.
10. The failure to request a copy of the jury instructions, which prevented appellate counsel from discovering the erroneous jury instruction, constituted ineffective assistance of appellate counsel.
11. The Oklahoma Court of Criminal Appeals failed to consistently apply established case law, thereby denying Petitioner of due process, a fair trial, and equal protection.

Background

On February 15, 1991, Petitioner was convicted of two counts of Sodomy, one count of First Degree Rape, and one count of Exhibiting Obscene Video to a Minor, in the District Court of Tulsa County, following a jury trial before the Honorable Clifford Hopper. Before the jury began its deliberations on Petitioner's innocence or guilt, Judge Hopper instructed the jury Petitioner was "presumed not guilty" instead of the standard "presumed innocent" instruction. The jury found Petitioner guilty on all counts. Based on the jury's recommendation of twenty (20) years imprisonment for each count of Sodomy, one hundred (100) years imprisonment for First Degree Rape, and ten (10) years imprisonment for Exhibiting Obscene Video to a Minor, Judge Hopper so sentenced Petitioner. The sentences were ordered to run consecutively.

A review of the record reveals there is evidence to support the jury's verdict by the "beyond a reasonable doubt" standard.

On September 21, 1991, Petitioner was granted leave to appeal out of time. Petitioner raised seven (7) assignments of error on direct appeal, the first six (6) being identical to assignments of error 1, 3-7 of the instant motion. The seventh was a claim of cumulative error the effect of which requires

modification of the sentence. In a summary opinion, the Oklahoma Court of Criminal Appeals denied relief on all issues raised by Petitioner's direct appeal and affirmed the trial court. Petitioner's petition for rehearing was denied.

On April 25, 1995, Petitioner filed an Application for post-conviction relief in the District Court of Tulsa County. Therein, Petitioner alleged erroneous jury instructions, ineffective assistance of trial counsel, and ineffective assistance of appellate counsel (claims 8, 9, and 10 herein). Relief was denied by Judge Hopper on June 16, 1995.

On September 1, 1995, the Oklahoma Court of Criminal Appeals declined jurisdiction to hear Petitioner's appeal of the denial of his Application for post-conviction relief as being untimely. Petitioner's motion for reconsideration was also denied.

On February 21, 1996, Judge Hopper denied Petitioner's Second Application for post-conviction relief. On appeal of this denial, the Oklahoma Court of Criminal Appeals affirmed the trial court finding the issues raised in the Second Application were procedurally barred.

Petitioner next filed the instant petition for writ of habeas corpus.

Analysis

As a preliminary matter, the Court determines that Petitioner meets the exhaustion requirements of 28 U.S.C. § 2254(b) and (c), save assignment of error 11. See Rose v. Lundy, 455 U.S. 509, 510 (1982). The Court also finds that an evidentiary hearing is not necessary as the issues can be resolved on the basis of the record. See Townsend v. Sain, 372 U.S. 293, 318 (1963), overruled in part by Keeney v. Tamayo-Reyes, 504 U.S. 1 (1992). The Court elects to consider assignment of error 11 on the merits pursuant to 28 U.S.C. § 2254(b)(2).

The Court finds Petitioner's first through sixth assignments of error deal with evidentiary

rulings and state procedural matters. As such, these claims are claims of error under state law. State procedural or trial errors do not present federal questions cognizable in a federal habeas corpus suit unless the petitioner can demonstrate state court errors which deprived him of fundamental rights guaranteed by the Constitution of the United States. See Brinlee v. Crisp, 608 F.2d 839, 843 (10th Cir. 1979).

After separately considering the effect of each claim of error in light of the entire record, the Court is of the opinion no single alleged instance of error violates an established legal standard defining the particular error. See United States v. Rivera, 900 F.2d 1462 (10th Cir. 1990). In other words, this Court finds the alleged instances of error to be non-errors. Therefore, habeas corpus relief is not available to Petitioner on claims 1-6.

In his seventh assignment of error, Petitioner alleges the cumulation of error denied him a fair trial. The Tenth Circuit Court of Appeals has held that “ a cumulative-error analysis should evaluate only the effect of matters determined to be error, not the cumulative effect of non-errors.” Rivera at 1471 (citing United States v. Smith, 776 F.2d at 899, United States v. Barshov, 733 F.2d 842, 852 (11th Cir. 1984), cert. denied, 469 U.S. 1158, 105 S.Ct. 904, 83 L.Ed.2d 919 (1985)). To determine whether the complained of matters are error or non-error, the Court must consider the effects of that particular error in light of the entire record. See United States v. Hasting, 461 U.S. 499, 509, 103 S.Ct. 1974, 1980, 76 L.Ed.2d 96 (1983); Coleman v. Saffle, 869 F.2d 1377, 1389 (10th Cir. 1989). Before this Court may conclude that an impropriety amounts to a reversible error, a determination must be made that there was a violation of an established legal standard defining a particular error. See Rivera, 900 F.2d 1462. A cumulative-error analysis will be performed only if the Court finds one or more of the matters complained of amount to error.

In accordance with the Court's previous finding the alleged errors set forth as claims 1-6 to be non-errors, the Court need not embark on a cumulative-error analysis. As a result, Petitioner's seventh assignment of error alleging cumulative error does not provide a basis for habeas corpus relief.

The Court turns next to Respondent's argument that Petitioner is procedurally barred from asserting claims 8, 9, and 11 (erroneous jury instruction, ineffective assistance of trial counsel, and inconsistent application of law by the Oklahoma Court of Criminal Appeals, respectively) in the present petition for a writ of habeas corpus because he failed to preserve the issues by timely filing an appeal of the denial of his first Application for post-conviction relief.¹ Response at 11. Claim 10 (ineffective assistance of appellate counsel) is also procedurally barred, as it was waived when Petitioner failed to timely appeal the denial of his first Application for post-conviction relief. The Court notes the issues raised in Petitioner's Second Application for post-conviction relief are identical to those raised in Petitioner's first Application for post-conviction relief. Claim 11 warrants individual analysis, as set forth below.

The doctrine of procedural default prohibits a federal court from considering a specific habeas claim where the state's highest court declined to reach the merits of that claim on independent and adequate state procedural grounds, unless a petitioner "demonstrate[s] cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate[s] that failure to consider the claim[] will result in a fundamental miscarriage of justice." Coleman v. Thompson, 501 U.S. 722, 724 (1991), reh'g denied 501 U.S. 1277 (1991); See also Maes v. Thomas, 46 F.3d 979, 985 (10th Cir. 1995), cert. denied, 115 S.Ct. 1972 (1995); Gilbert v. Scott, 941 F.2d 1065, 1067-68

¹Respondent also contends claim 2(A) is procedurally barred. However, due to the way the Court has combined the supporting facts of each assignment of error with the generalized assignment of error, the Court has previously addressed claim 2 in its entirety.

(10th Cir. 1991). "A state court finding of procedural default is independent if it is separate and distinct from federal law." Maes, 46 F.3d at 985. Additionally, a finding of procedural default is an adequate state ground if it has been applied evenhandedly "in the vast majority of cases." Id. at 986 (quoting Andrews v. Deland, 943 F.2d 1162, 1190 (10th Cir. 1991), cert. denied, 502 U.S. 1110 (1992)).

Applying these principles to the instant case, the Court concludes claims 8, 9, and 10 (erroneous jury instruction, ineffective assistance of trial counsel, and ineffective assistance of appellate counsel, respectively) are barred by the procedural default doctrine, as they were not preserved by a timely appeal from the state court's denial of Petitioner's first Application for post-conviction relief. The Oklahoma Court of Criminal Appeals so found by holding the issues raised by Petitioner's Second Application for post-conviction relief were barred by *res judicata*. In its holding, the Oklahoma Court of Criminal Appeals relied on Okla.Stat. tit 22, §1086 (1991) and Webb v. State, 835 P.2d 115 (Okla.Crim.App. 1992) to procedurally bar consideration of Petitioner's erroneous jury instruction and ineffective assistance of counsel claims. See Response, Ex. G. The state court's procedural bar as applied to Petitioner's claims was an "independent" state ground because "it was the exclusive basis for the state court's holding." Maes, 46 F.3d at 985. Additionally, the procedural bar was an "adequate" state ground because the Oklahoma Court of Criminal Appeals has consistently declined to review claims which were barred by *res judicata* for failure to timely appeal the denial of a first application for post-conviction relief. See Webb, 835 P.2d 115; see also Banks v. State, 810 P.2d 1286 (Okla.Crim.App. 1991), cert. denied, 502 U.S. 1036, 112 S.Ct. 883, 116 L.Ed.2d 787 (1992). The Tenth Circuit Court of Appeals has also recognized that ineffective assistance of counsel claims are procedurally barred unless raised on direct appeal or on a first

application for post-conviction relief. Breechen v. Reynolds, 41 F.3d 1343, 1363-64 (10th Cir. 1994).

Because of his procedural default, this Court may not consider Petitioner's erroneous jury instruction and ineffective assistance of counsel claims unless he is able to show cause and prejudice for the default, or demonstrate that a fundamental miscarriage of justice would result if his claims are not considered. See Coleman, 510 U.S. at 750. The cause standard requires a petitioner to "show that some objective factor external to the defense impeded . . . efforts to comply with the state procedural rules." Murray v. Carrier, 477 U.S. 478, 488 (1986). Examples of such external factors include the discovery of new evidence, a change in the law, and interference by state officials. Id. As for prejudice, a petitioner must show "'actual prejudice' resulting from the errors of which he complains." United States v. Frady, 456 U.S. 152, 168 (1982), reh'g denied, 456 U.S. 1001 (1982). A "fundamental miscarriage of justice" instead requires a petitioner to demonstrate that he is "actually innocent" of the crime of which he was convicted. McCleskey v. Zant, 499 U.S. 467, 494 (1991), reh'g denied, 501 U.S. 1224 (1991).

Petitioner attempts to show cause by alleging (1) "the factual and legal basis were not available to Petitioner's Counsel because the Federal Court had not ruled, and the trial judge interfered by failure to use the O.U.J.I. Standard" and (2) an envelope containing a pauper's affidavit intended for the Oklahoma Court of Criminal Appeals was inadvertently addressed to the Tulsa County District Court and by the time Petitioner realized the mistake, his appeal time had elapsed. Reply at 6.

The Court finds these arguments unpersuasive. As to the first allegation of cause, the Court does not comprehend the rationale for "the factual and legal basis were not available to Petitioner's

Counsel because the Federal Court had not ruled.” The Federal Court was not called upon to rule on Petitioner's claims until the instant motion was filed, November 4, 1996. If Petitioner is mistakenly referring to the Oklahoma Court of Criminal Appeals ruling in Flores v. State, 896 P.2d 558 (Okla.Crim.App. 1995), reh'g denied, 899 P.2d 1162 (Okla.Crim.App.1995), cert. denied, 116 S.Ct. 548 (1995), obviously not decided as of the time Petitioner's direct appeal, such argument lacks merit. The factual and legal basis to challenge the subject erroneous jury instruction was available to Petitioner and his counsel at trial. Simply because Petitioner or counsel failed to recognize and/or assert the issue prior to Flores does not constitute cause. See Murray, 477 U.S. 478. Thus, this contention fails to show cause for the procedural default.

As to Petitioner's claim “the trial judge interfered by failure to use the O.U.J.I. Standard,” the Court is of the opinion such does not show cause for Petitioner's untimely filing of his first Application for post-conviction relief. Judge Hopper's jury instructions were given some four and one-half years before Petitioner's first Application for post-conviction relief was filed. Further, this Court is of the opinion this is not the type of “interference” contemplated by existing case law. See, e.g., United States ex rel. Bongiorno v. Ragen, 54 F.Supp. 973 (N.D.Ill. 1944). Likewise, Petitioner's second allegation of cause, his own failure to properly address an envelope, is not cause which will excuse a procedural default. See Coleman, 501 U.S. 722. Moreover, Petitioner's *pro se* status and lack of awareness and training of legal issues do not constitute sufficient cause under the cause and prejudice standard. Rodriguez v. Maynard, 948 F.2d 684, 688 (10th Cir. 1991).

Petitioner's only other means of gaining federal habeas review is a claim of actual innocence. Sawyer v. Whitley, 503 U.S. 333, 112 S. Ct. 2514, 120 L.Ed.2d 269 (1992); see also McCleskey, 499 U.S. 467. The standard used to determine whether Petitioner is “actually innocent” requires

Petitioner to show that no reasonable juror would have found him guilty under applicable state law on the elements of the crimes with which he was charged. See Sawyer, 503 U.S. 333. In his reply brief, Petitioner makes a claim of actual innocence. Reply at 7. In support of his claim of actual innocence, Petitioner directs the Court's attention to Tr. Vol. 1 at 560 where he, at sentencing, persisted in his claim of innocence.

Unfortunately for Petitioner, the "argument" advanced in support of actual innocence falls woefully short of the required showing no reasonable juror would have convicted Petitioner under applicable state law of the charged crimes. The record is replete with evidence to support Petitioner's convictions. Accordingly, this Court concludes Petitioner's erroneous jury instruction and ineffective assistance of counsel claims are procedurally barred.

Finally, the Court turns to claim 11 which reads:

Ground Eleven: Petitioner denied his Constitutional and Statutory Rights of Equal Protection of the Law under the Fourteenth Amendment, by Court of Criminal Appeals.

Supporting facts: ONCE AGAIN THE COURT OF CRIMINAL APPEALS SHOWED INCONSISTANCY [sic], BY REFUSING TO APPLY WELL ESTABLISHED CASE LAW THAT REVERSED OVER 40 CASES ON DIRECT APPEAL AND JUST RECENTLY REVERSED ANOTHER ON POST CONVICTION RELIEF, DENYING THE PETITIONER DUE PROCESS, AND FAIR TRIAL WITH EQUAL PROTECTION UNDER THE LAW.

Respondent contends this claim is procedurally barred. While it is true Petitioner has not alleged this specific ground of error in the state courts, it is apparent why. Until the Oklahoma Court of Criminal Appeals declined to address Petitioner's claim his rights were violated by the giving of an erroneous jury instruction on grounds the claim was barred by *res judicata*, Petitioner did not have this claim available to him. Unsatisfied with the Oklahoma Court of Criminal Appeals disposition of his Second

Application for post-conviction relief, Petitioner included this claim in the instant motion.

The Court exercises its discretion pursuant to 28 U.S.C. § 2254(b)(2) and denies Petitioner's unexhausted claim as it lacks merit. The Oklahoma Court of Criminal Appeals has not shown inconsistency in its application of the law as far as Petitioner is concerned. The precise issue of whether relief would be afforded Petitioner based on the giving of the erroneous jury instruction by the trial judge has never been properly before the Oklahoma Court of Criminal Appeals, nor will it be as Petitioner has waived his opportunity to have the issue considered. This Court believes it unlikely Petitioner would have received relief from the Oklahoma Court of Criminal Appeals on the erroneous jury instruction issue as his case became final prior to the decision in Flores. The Oklahoma Court of Criminal Appeals has not applied the holding in Flores retroactively and has expressly stated the case did not create new law. See Flores, 899 P.2d 1162.² Thus, claim 11 does not afford Petitioner habeas corpus relief.

Conclusion

After carefully reviewing the record in this case, the Court finds claims 1-6 to be state court rulings on state law matters and, therefore, do not provide a basis for federal habeas corpus relief. Claim 7 (cumulative error) does not provide habeas corpus relief as the Court finds the alleged predicate errors to be non-errors. As Petitioner has failed to show cause and prejudice or a fundamental miscarriage of justice to excuse his procedural default of claims 8, 9, and 10, such claims

²This conclusion is further supported by a recent Oklahoma Court of Criminal Appeals decision, Walker v. State, No. PC-96-1003, 1997 WL 34440 (Okla.Crim.App. Jan. 23, 1997), which has yet to be released for publication as of this date. Since the opinion in Walker is subject to revision or withdrawal, this Court does not use it as authority, only to gain insight into how the Oklahoma Court of Criminal Appeals might handle Flores-type claims wherein the defendant was convicted prior to Flores.

are procedurally barred. Claim 11 lacks merit. The petition for a writ of habeas corpus (Docket #1) is therefore DENIED.

SO ORDERED THIS 30th day of Mar., 1997.



THOMAS R. BRET
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

ROBIN A. BROWN,)
)
 Plaintiff,)
)
 v.)
)
 SHIRLEY S. CHATER, Commissioner,)
 Social Security Administration,)
)
 Defendant.)

MAR 03 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SA

Case No. 96-C-1101-M ✓

ORDER

ENTERED ON BOOKS
DATE 3/4/97

Upon the motion of the defendant, Commissioner of the Social Security Administration, by Stephen C. Lewis, United States Attorney of the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that this case be remanded to the Commissioner for further administrative action.

DATED this 3rd day of MARCH 1997.

Frank H. McCarthy
FRANK H. McCARTHY
United States Magistrate Judge

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

INTERNATIONAL TOWER ASSOCIATES,)
LTD., an Oklahoma limited partnership,)
)
Plaintiff,)

vs.)

COASTAL MART, INC., a Delaware)
corporation;)

COASTAL REFINING & MARKETING, INC.,)
a Delaware corporation, successor to)
Derby Realty Corporation, a Delaware)
corporation; and also successor to Coastal)
Derby Refining Company, a Delaware)
corporation (formerly known as Derby)
Refining Company, a Delaware corporation,)
formerly known as Colorado Oil and Gas)
Corporation, a Delaware corporation),)

Defendants.)

FILED
MAR 3 1997

Case No. 95-C-840-H

FILED

MAR 3 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Federal Rule of Civil Procedure 41 and a Confidential Settlement Agreement, the Plaintiff International Tower Associates, Ltd., ("ITA"), by its counsel and Defendants Coastal Mart, Inc., and Coastal Refining & Marketing, Inc., (hereinafter collectively referred to as "Coastal"), by their counsel, hereby stipulate to the dismissal with prejudice as to all the claims and causes of action asserted by ITA against Coastal in this matter, with each party to bear its own costs and attorneys' fees.

A related case styled *Barcelona Partners v. Coastal Mart, Inc., et al.*, Case No. 95-C-522-B was consolidated with the *International Tower Associates, Ltd. v. Coastal Mart, Inc.*, Case No.

30

95-C-840-H. Only the *International Tower* case (Case No. 95-C-840-H) has settled. The *Barcelona Partners v. Coastal Mart, Inc., et al.*, case (No. 95-C-522-B) has not settled and is not being dismissed by the parties.

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ATTORNEYS FOR DEFENDANTS
COASTAL MART, INC. AND
COASTAL REFINING & MARKETING,
INC.

F I L E D

FEB 28 1997



Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

INDEPENDENT SCHOOL DISTRICT)
NO. 6 OF CRAIG COUNTY,)
OKLAHOMA and TRACY AUTRY,)

Plaintiffs,)

vs.)

No. 97-C-97-B ✓

OKLAHOMA SECONDARY SCHOOL)
ACTIVITIES ASSOCIATION,)

Defendant.)

ENTERED ON DOCKET

DATE MAR 03 1997

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

This case came on for hearing on Thursday, February 27, 1997, on Plaintiffs' Application for Preliminary Injunctive Relief, pursuant to Fed.R.Civ.P. 65(a). Plaintiff, Independent School District No. 6 of Craig County, Oklahoma ("Ketchum Public School District"), and Plaintiff, Tracy Autry ("Autry") seek both a preliminary and permanent injunction to enjoin the Defendant, Oklahoma Secondary School Activities Association, from prohibiting Autry from competing in secondary school boys' basketball activities beyond March 4, 1997, his twentieth birthday. They appeared through authorized representatives, in person and counsel of record. The Defendant, Oklahoma Secondary School Activities Association ("OSSAA"), appeared through its authorized representatives and counsel of record. The parties entered into stipulations concerning various documentary exhibits, introduced the testimony of various witnesses, and rested their respective cases on the issue of the requested preliminary injunction.



After having considered the evidence presented, stipulations, arguments of counsel, and the applicable legal authority, the Court enters the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Plaintiff, Tracy Autry ("Autry"), is a nineteen-year-old high school senior at Ketchum High School (Craig County, Oklahoma), who is provided public education under an Individual Education Program ("IEP") pursuant to the *Individuals With Disabilities Education Act*, 20 U.S.C. § 1400 *et seq.* due to a learning disability. Autry is a nineteen year old senior by reason of having twice been retained in the third grade due to lack of appropriate special education services provided earlier in his educational career. Autry will be twenty years of age on March 4, 1997.

2. Autry is the starting center and leading rebounder for the Ketchum High School boys' basketball team. Ketchum High School is a member of the Defendant OSSAA.

3. Plaintiff seeks a preliminary injunction and permanent injunction, to enjoin the Defendant OSSAA from prohibiting Plaintiff Autry from competing in secondary boys' basketball activities for the complete 1996-97 season by reason of his becoming twenty years of age on March 4, 1997. The state Class A basketball tournament play-off is March 6 through 8, 1997.

4. Under the rules approved by the membership of OSSAA, a student who reaches his nineteenth birthday before September 1 of the upcoming school year is ineligible to participate in interscholastic athletic activities regulated by OSSAA, including high school boys' basketball. In the spring of 1996, because he had already turned nineteen years of age, Autry requested a hardship exception to the age eligibility rule that would permit him to participate in athletics during his senior year.

5. Pertinent OSSAA criteria for considering a hardship exception and pertinent herein are as follows:

Rule 1 - Age, Physician and Parents' Certificate, Section 1. Any student who reaches his/her nineteenth birthday before September 1 will not be eligible for athletic competition.

* * *

Criteria that will be used to consider a hardship case for overage students in grades 7-12.

If substantial evidence shows that a student was required to repeat a grade due to a school's failure to provide special education classes, or the school's failure to properly place the student in special education classes.

* * *

Students will not be considered for age hardship if one or more of the following circumstances prevail:

(4) A high school student will not be eligible after reaching his twentieth birthday.

* * *

The following criteria will be used in considering and granting of hardship eligibility cases:

(13) An exception may be made to any rule in the OSSAA yearbook. However, exceptions to many rules, such as the age, semester, seasons of opportunity, attendance, scholarship and end of season, and so forth will be a rarity.

6. Based on Autry's request, OSSAA staff granted a hardship exception extending his eligibility to participate in athletics until his twentieth birthday, March 4, 1997, provided he remain eligible under all other OSSAA rules.

7. Because the state boys' basketball tournament for the 1996-97 school year was

scheduled to begin after Autry's twentieth birthday, Plaintiff, on October 10, 1996, appealed OSSAA's decision to the OSSAA's Board of Directors. On October 31, 1996, a review was undertaken of Plaintiff Autry's Individual Education Program ("IEP), which had been instituted in April of that year pursuant to the *Individuals with Disabilities Education Act*, 20 U.S.C. § 1400 *et seq.*, and in the written review report the "IEP team concluded that playing basketball was an important motivation for Autry to continue to succeed in his regular classroom work. A copy of this written review, as well as other pertinent documentation, was provided to OSSAA board members in advance of the hearing on Autry's appeal. Plaintiff's appeal was heard at the board's regular monthly meeting on November 13, 1996. After hearing the Plaintiff's appeal, the board voted unanimously to deny the appeal, holding that Autry could not play basketball for Ketchum High School as of March 4, 1997, his twentieth birthday.

8. OSSAA's age eligibility rule, and the criteria for evaluating exceptions to that rule, are essential to the purposes of the Association, including the need to protect equitable competition among participants and member schools, to allow participation by younger and less experienced students, to inhibit the practice of red shirting and avoid overemphasis on athletics, and to diminish the inherent risk of injury associated with participation in interscholastic athletics.

9. Autry's appeal to OSSAA was denied because he would reach the age of twenty on March 4, 1997, and not because of any recognized disability in his "IEP".

10. Plaintiffs seek a reversal of this decision and seek eligibility for Tracy Autry to participate in OSSAA-sponsored basketball through March 8, 1997, four days beyond his twentieth birthday. March 8, 1997 is the final day of basketball season through the state tournament for Class A schools, of which Ketchum High School is a member.

11. The OSSAA is a voluntary association whose members consist of all secondary public schools in the state of Oklahoma. Plaintiff, Ketchum Public School District, is a member of the OSSAA. The OSSAA has exclusive control of sponsoring, administering, regulating and supervising designated secondary athletic competition, including basketball, for all public schools in Oklahoma.

12. The OSSAA has never granted athletic eligibility to a student upon the student becoming twenty years of age.

13. Autry was not retained in a grade for purposes of "red shirting."

14. Autry's Individual Education Program ("IEP") team has found that his participation in basketball is important to him, and serves as a motivational objective to achieve the goals of the "IEP." The "IEP" was not coupled with the emphasis on basketball (sports) until October 19, 1996, just before the commencement of the state high school 1996-97 basketball season.

15. With the exception of the twenty year old prohibition as of March 4, 1997, Tracy Autry is otherwise, in all respects, a student at Ketchum High School qualified to be a member of the Ketchum High School basketball team.

II. CONCLUSIONS OF LAW

Any finding of fact above which might be considered a conclusion of law is incorporated herein.

A. Jurisdiction and Venue

1. This case was removed from District Court in and for Craig County, Oklahoma on January 31, 1997 based on federal question jurisdiction, 28 U.S. C. §§1331 and 1441(b). At the hearing before the Court on February 27, 1997, the parties agreed that the Court has jurisdiction

under the American with Disabilities Act, 42 U.S.C. §12132 and Section 504 of the Rehabilitation Act of 1973 (as amended 1992), 29 U.S.C. §794. The Court so finds.

2. The Court has venue by virtue of the facts giving rise to the dispute occurred in the Northern District of Oklahoma.

B. Standing

1. Autry has standing to sue herein.

2. Ketchum Public School District has standing to sue herein by reason of sanctions that could or may be imposed by OSSAA in the event the Plaintiffs did not comply with OSSAA's order prohibiting Autry from competing in sports after his 20th birthday. In addition, Ketchum Public School District is a party to Autry's Individual Education Plan (IEP).

C. Preliminary Injunction Standard

1. To issue a preliminary injunction, plaintiffs must show the following four factors:

(1) substantial likelihood that the movant will eventually prevail of the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) a showing that the injunction, if issued, would not be adverse to the public interest.

Otero Savings and Loan Ass'n, 665 F.2d 275, 278 (10th Cir. 1981).

2. In addition, "a preliminary injunction that affords the movant substantially all the relief he may recover at the conclusion of a full trial of the merits" "must satisfy an even heavier burden of showing that the four factors listed above weigh heavily and compellingly in movant's favor before such an injunction may be issued." *SCFC ILC, Inc. v. VISA USA, Inc.*, 936 F.2d 1096, 1098-99 (10th Cir. 1991). In view of the fact that plaintiff's application was filed on February 24, 1997 seeking injunctive relief to allow Autry to compete in the Class A Oklahoma Boys' State

Basketball Tournament which concludes on March 8, 1997, four days after Autry's 20th birthday, and that such is substantially all of the relief that Autry desires, this heavier burden is probably applicable.

D. Substantial Likelihood of Success on the Merits

1. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a) (as amended 1992) provides in pertinent part:

No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .

2. A cause of action under section 504 comprises four elements:

(1) The plaintiff is a disabled person under the Act; (2) The plaintiff is "otherwise qualified" for participation in the program; (3) The plaintiff is being excluded from participation in, being denied the benefits of, or being subjected to discrimination under the program solely by reason of his disability; and (4) The relevant program or activity is receiving Federal financial assistance.

Sandison v. Michigan High School Athletic Association, Inc., 64 F.3d 1026, 1030 (6th Cir. 1995).

3. Title II of the American with Disabilities Act ("ADA"), 42 U.S.C. §12132 provides:

Subject to the provision of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

"Qualified individual with a disability" under Title II, 42 U.S.C. §12131(2), is defined as follows:

an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

5. The OSSAA is a federal financial recipient for purposes of Section 504 of the

Rehabilitation Act of 1974, 29 U.S.C. §794. It is a voluntary, unincorporated association whose membership is comprised of all of Oklahoma's public secondary schools. The OSSAA receives federal financial assistance indirectly through dues paid by its member schools. *Dennin v. Connecticut Interscholastic Athletic Conference, Inc.*, 913 F. Supp. 663 (D. Conn. 1996); *Mahan v. Agee*, 625 P.2d 765, 766 (Okla. 1982)

6. A "public entity" is defined under the ADA as any "other instrumentality of the state ... or local government." 42 U.S.C. §23242(1)(B). As the regulatory arm of interscholastic activities for Oklahoma secondary schools, the OSSAA is an "instrumentality of the state" and thus a "public entity." *Johnson v. Florida High School Activities Ass'n, Inc.*, 899 F. Supp. 579 (M.D. Fla. 1995).

7. To succeed on their ADA and §504 claims, plaintiffs must show that the exclusion from participation in competitive sports past Autry's 20th birthday was "solely by reason of his disability." *Sandison v. Michigan High School Athletic Association, Inc.*, 64 F.3d 1026, 1036 (6th Cir. 1995). The Court concludes that the OSSAA excluded Autry from participation in competitive sports commencing March 4, 1997, solely by reason of his age, *i.e.*, he turns 20 years old on that day, and not due to his learning disability. This age-eligibility rule applies to every Oklahoma secondary school student. *Mahan v. Agee*, 625 P.2d 765, 768 (Okla. 1982)

8. Under §504, a disabled individual is "otherwise qualified" to participate in a program if with "reasonable accommodation," the individual can meet the "necessary" requirements of the program. *Sandison*, 64 F.3d at 1034-35. The Court concludes that Autry is not "otherwise qualified" for the reasons set forth in the following paragraphs 9 and 10.

9. The first inquiry to determine whether Autry is "otherwise qualified" is whether Autry

meets all of the “necessary” or essential eligibility requirements in spite of his disability. *Pottgen v. Missouri State High School Activities Assoc.*, 40 F.3d 926 (8th Cir. 1994). The Court concludes that when Autry turns 20 years old, he will no longer meet OSSAA’s age-eligibility requirement to compete in interscholastic sports. The Court also finds that OSSAA’s applicable age limit is a “necessary” and “essential” requirement for high school sports as it is reasonable and fair and obviously related to the legitimate purposes it was intended to serve. *Mahan*, 625 P.2d at 767; *see Albach v. Odle*, 531 F.2d 983 (10th Cir. 1976).

10. Because Autry cannot meet all the essential eligibility requirements, the second inquiry under §504 is whether “reasonable accommodations” can be made, thereby entitling Autry to become “otherwise qualified.” Accommodations are not reasonable if they impose “undue financial and administrative burdens” or require a “fundamental alteration in the nature of [the] program.” *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 287 n.17 (1987). As applied to Autry, the only reasonable accommodation would be for the OSSAA to waive its age requirement. The Court concludes that waiving its 20 year old age limit would constitute a fundamental alteration in the nature of Oklahoma secondary schools’ interscholastic sports program.

11. For the reasons the Court concludes that the age restriction is a “necessary” requirement and waiver of this rule is not a “reasonable accommodation” under §504 of the Rehabilitation Act of 1973, the Court also finds that plaintiffs are not likely to succeed on their ADA claim. 42 U.S.C. §§12132(2), 12132. The Court also finds that requiring waiver of this restriction would fundamentally change the bright-line age restriction uniformly imposed by the OSSAA and thereby does not constitute a “reasonable modification” under Title II of the ADA, 42 U.S.C.

§12131(2). *Sandison*, 64 F.2d at 1036-37.

12. Based on paragraphs 1-11, the Court determines that plaintiffs do not have a substantial likelihood of prevailing on either their Rehabilitation Act or ADA claim.¹

13. The Court also concludes that plaintiffs cannot establish a denial of procedural due process. "Participation in interscholastic athletic is not a constitutionally protected civil right." *Albach*, 531 F.2d at 985. Furthermore, plaintiffs were provided a hearing by the OSSAA Board of Directors on their appeal of November 13, 1996. Accordingly, plaintiffs do not have a substantial likelihood of prevailing on that claim.

E. Irreparable Injury

1. Autry was granted a waiver by the OSSAA to play only until March 4, 1997, his 20th birthday. Undoubtedly, if Autry is not permitted to play basketball at the state tournament on March 6-8, 1997 he will suffer irreparable harm in this regard.

F. Threatened Injury v. Harm of Injunction

1. Although the Court recognizes that Autry will suffer tremendous disappointment if not permitted to play basketball at the state tournament, the Court concludes that the threatened harm to Autry does not outweigh the concerns of the OSSAA to uniformly and effectively enforce and administer its legitimate age cut-off rule. Again the Court notes that all secondary school students in Oklahoma are prohibited from playing interscholastic sports when they turn 20 years old. This bright line rule allows the OSSAA to effectively administer Oklahoma's athletic program and

¹ The Court recognizes there is authority to the contrary. See *Dennin v. Connecticut Interscholastic Athletic Conference, Inc.*, 913 F.Supp. 663 (D.Conn. 1996); *Johnson v. Florida High School Activities Assoc., Inc.*, 899 F. Supp. 579 (M.D.Fla. 1995); *University Interscholastic League v. Buchanan*, 848 S.W.2d 298 (Tex.App.-Austin 1993); *Tiffany v. Arizona Interscholastic Assoc., Inc.*, 726 P.2d 231 (Ariz.App. 1986). These cited cases, however, involve nineteen year old student athletes, not a twenty year old student athlete. The Court concludes the better reason rule is as expressed above.

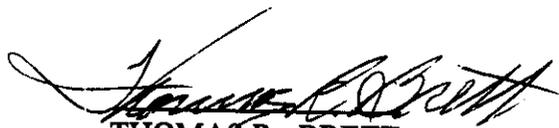
further the legitimate purposes of the age-eligibility rule.

G. Public Interest

1. The Court concludes that an injunction in this case would be adverse to the public interest. The 20 year-old age cut-off rule, which is uniformly enforced by the OSSAA, ensures equality of competition and opportunity for all Oklahoma secondary school athletes. These are legitimate and worthy goals and their enforcement is in the public's interest.

THEREFORE, for the reasons set forth above, plaintiff's application for a preliminary injunction is DENIED (Docket No. 3).

IT IS SO ORDERED this th~~28~~ day of February, 1997.



THOMAS R. BRETT
UNITED STATES DISTRICT COURT

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

FILED

FEB 28 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

RMP SERVICE GROUP, INC.,

Plaintiff,

v.

BS&B SAFETY SYSTEMS, INC.,

Defendant/Third Party
Plaintiff

v.

UNITED STATES OF AMERICA,

Third Party Defendant

v.

JAMES L. MENZER, P.C. and
JIM D. LOFTIS, P.C.,

Intervenors

Case No. 96-CV-450E ✓

RECEIVED
DATE MAR 03 1997

AGREED ORDER ESTABLISHING PRIORITIES
AND DIRECTING DISBURSEMENT

NOW ON THIS 28th DAY OF February, 1997, this matter comes on before the undersigned United States District Judge by agreement of the parties. Upon agreement of the parties the Court finds and orders as follows:

1. That James L. Menzer, P.C. and Jim D. Loftis, P.C. have priority, and are entitled to the funds made the basis of the interpleader action filed by BS&B Safety Systems, Inc. herein, and the same is hereby ordered.

2. That RMP Service Group, Inc., BS&B Safety Systems, Inc., and the United States of America claim no interest in the funds

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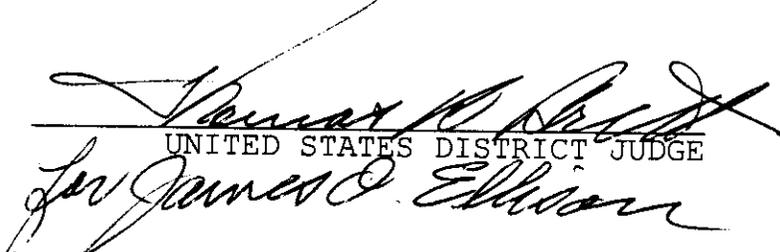
made the basis of the interpleader action filed by BS&B Safety Systems, Inc., and the same should be disbursed to James L. Menzer, P.C. Trust Account for the benefit of James L. Menzer, P.C. and Jim D. Loftis, P.C. in accordance with the terms of the Settlement Agreement made the basis of the parties claims herein, and the same is hereby ordered.

3. The parties hereto should all be released from liability to the other parties herein for the funds made the basis of this action, and the same is hereby ordered.

4. The District Court Clerk of Tulsa County is hereby ordered to disburse the sum of \$45,000.00 in that certain litigation styled *RMP Service Group, Inc. v. BS&B Safety Systems, Inc. v. United States of America*, Case #CJ-92-4815, In the District Court of Tulsa County, State of Oklahoma, to James L. Menzer, P.C. Trust Account.

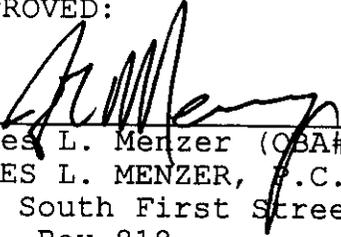
IT IS SO ORDERED.

DATE: Feb. 28, 1997


UNITED STATES DISTRICT JUDGE
for James O. Ellison

AGREED ORDER ESTABLISHING PRIORITIES
AND DIRECTING DISBURSEMENT

APPROVED:



James L. Menzer (OBA# 12406)
JAMES L. MENZER, P.C.
118 South First Street
P.O. Box 818
Blackwell, OK 74631-0818
(405) 363-0800

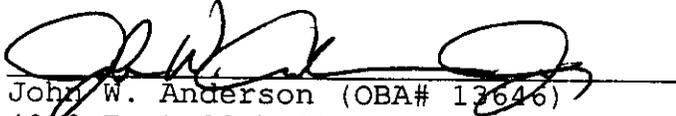
and

Jim D. Loftis (OBA# 13997)
JIM D. LOFTIS, P.C.
225 North Peters
Suite 2
Norman, OK 73069
(405) 366-1400

ATTORNEYS FOR RMP SERVICE GROUP, INC., JAMES L. MENZER, P.C. and
JIM D. LOFTIS, P.C.

AGREED ORDER ESTABLISHING PRIORITIES
AND DIRECTING DISBURSEMENT

APPROVED:

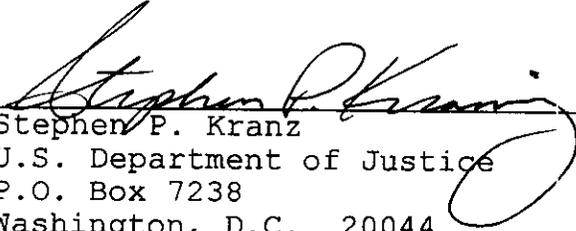


John W. Anderson (OBA# 13646)
4018 East 88th Street
Tulsa, Ok 74137-2667
(918) 488-9643

ATTORNEY FOR BS&B SAFETY SYSTEMS, INC.

AGREED ORDER ESTABLISHING PRIORITIES
AND DIRECTING DISBURSEMENT

APPROVED:



Stephen P. Kranz
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044
(202) 514-0079

ATTORNEY FOR UNITED STATES OF AMERICA

FILED

FEB 28 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

FERN FRIEND and LOREN FRIEND,

Plaintiffs,

vs.

No. 95-C-774 B

ARROWHEAD STATOR & ROTOR, INC.,
a Minnesota corporation; FORD MOTOR
COMPANY, a Delaware corporation;
CURRENCE DISTRIBUTING, INC., a
Missouri corporation; TRU-PART
MANUFACTURING CORPORATION, a Minnesota
corporation; AUTO ELECTRIC SERVICE
AND SUPPLIES, INC., a Florida cor-
poration; AUTO IGNITION PVT., LTD.,
a foreign corporation UNIPOINT
ELECTRIC MANUFACTURING CO., LTD.,
a foreign corporation,

Defendants,

and

TRU-PART MANUFACTURING CORPORATION,
a Minnesota corporation

Third Party Plaintiff,

vs.

AUTO IGNITION PVT., LTD.,
a foreign corporation UNIPOINT
ELECTRIC MANUFACTURING CO., LTD.,
a foreign corporation,

Third Party Defendants.

ENTERED FOR RECORDE
MAR 03 1997

JUDGMENT

NOW on this 20th day of February, 1997, this matter came on for evidentiary hearing, the Court having previously granted default judgment regarding liability. The Defendant and movant, Tru-Part Manufacturing Corporation, appeared by its attorney, Stephen C. Wilkerson. The Defendant, Tru-Part Manufacturing Corporation, made an oral motion to amend its Third Party Complaint

to include its insurance carrier, Fireman's Fund Insurance Company, as a party Plaintiff since Fireman's Fund had a subrogation interest in this matter. Further, the Defendant, Tru-Part, and Fireman's Fund Insurance Company, through their attorney, moved to dismiss Unipoint Electric Manufacturing Company, Ltd., without prejudice, same being granted by the Court.

The attorney for these Defendants was sworn upon oath and did give testimony and presented evidence to the Court in support of the damages claimed by Tru-Part Manufacturing Corporation and Fireman's Fund Insurance Company in the total amount of \$135,435.89.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Third Party Plaintiffs, Tru-Part Manufacturing Corporation and Fireman's Fund Insurance Company, have judgment on their Third Party Complaint against the Defendant, Auto Ignition PVT, Ltd., only, the sum of \$135,435.89, with post judgment interest accruing at the rate of 5.⁶⁷~~54~~% until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that if timely applied for pursuant to the local rule, costs will be assessed against the Defendant, Auto Ignition PVT, Ltd. and in favor of Tru-Part Manufacturing Corporation and Fireman's Fund Insurance Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Third Party Complaint filed by Tru-Part Manufacturing Corporation and Fireman's Fund Insurance Company against the Defendant, Unipoint Electric Manufacturing Company, Ltd., be and same is hereby dismissed without prejudice.

Theresa M. Brett

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

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA,

FILED

FEB 28 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ELLEN L. CAMPBELL,
SSN: 447-36-4902

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner of
Social Security Administration,

Defendant.

No. 95-C-705-E

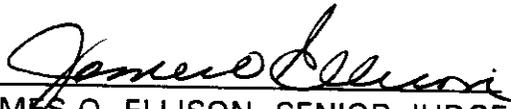
ENTERED ON DOCKET

MAR 03 1997

JUDGMENT

In accord with the Order filed affirming the decision of the Administrative Law Judge, the Court hereby enters judgment in favor of the Defendant, Shirley S. Chater, and against the Plaintiff, Ellen Campbell. Plaintiff shall take nothing of her claim.

Dated this 28th day of February, 1997.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

FEB 28 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CHESTER F. YOUNG,
SS# : 441-34-3444

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner of
Social Security Administration,

Defendant.

No. 95-C-1115-E ✓

ENTERED ON CLERK'S
MAR 03 1997

J U D G M E N T

In accord with the Order filed affirming the decision of the Administrative Law Judge, the Court hereby enters judgment in favor of the Defendant, Shirley S. Chater, and against the Plaintiff, Chester F. Young. Plaintiff shall take nothing of his claim.

Dated this 28th day of February 1997.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

FILED

FEB 28 1997

Paul Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

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

RMP SERVICE GROUP, INC.,

Plaintiff,

v.

BS&B SAFETY SYSTEMS, INC.,

Defendant/Third Party
Plaintiff

v.

UNITED STATES OF AMERICA,

Third Party Defendant

v.

JAMES L. MENZER, P.C. and
JIM D. LOFTIS, P.C.,

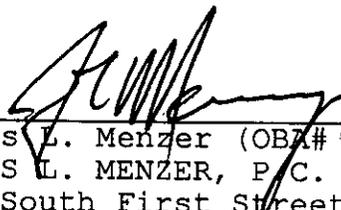
Intervenors

Case No. 96-CV-450E

ENTERED ON DOCKET
MAR. 03 1997

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW RMP SERVICE GROUP, INC., BS&B SAFETY SYSTEMS, INC., UNITED STATES OF AMERICA, JAMES L. MENZER, P.C., and JIM D. LOFTIS, P.C., pursuant to Rule 41 of the Federal Rules of Civil Procedure, and jointly dismiss the above entitled action with prejudice to the refiling thereof, with all parties to bear their own attorneys fees and costs.



James L. Menzer (OBA# 12406)
JAMES L. MENZER, P.C.
118 South First Street
P.O. Box 818
Blackwell, OK 74631-0818
(405) 363-0800

and

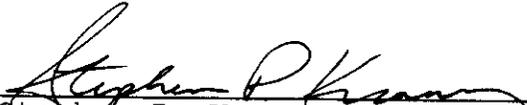
Jim D. Loftis (OBA# 13997)
JIM D. LOFTIS, P.C.
225 North Peters
Suite 2
Norman, OK 73069
(405) 366-1400

ATTORNEYS FOR RMP SERVICE GROUP, INC., JAMES L. MENZER, P.C. and
JIM D. LOFTIS, P.C.



John W. Anderson (OBA# 13646)
4018 East 88th Street
Tulsa, Ok 74137-2667
(918) 488-9643

ATTORNEY FOR BS&B SAFETY SYSTEMS, INC.


Stephen P. Kranz
U.S. Department of Justice
P.O. Box 7238
Washington, D.C. 20044
(202) 514-0079

ATTORNEY FOR UNITED STATES OF AMERICA

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

CLIMATE CONTROL INSTITUTE OF)
OKLAHOMA, INC., an Oklahoma)
corporation, and ENGARD, INC.,)
d/b/a PLATT COLLEGE, an Oklahoma)
corporation,)

Plaintiff,)

vs.)

RICHARD W. RILEY, Secretary of)
the UNITED STATES DEPARTMENT)
OF EDUCATION, in his official)
capacity,)

Defendant.)

Case No. 93-C-55 *EH*

FILED
FEB 27 1997
Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE **MAR 3 1997**

**ORDER GRANTING JOINT MOTION TO DISMISS ACTION
AND TO DISSOLVE PRELIMINARY INJUNCTION**

On the joint motion of plaintiff Engard, Inc., d/b/a Platt College ("Platt") and defendant Richard W. Riley, the Secretary of the United States Department of Education (the "Secretary") to dismiss action and to dissolve preliminary injunction, pursuant to FED.R.Civ.P. 41, and good cause having been shown:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that all claims of Platt herein are dismissed with prejudiced.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the preliminary injunction previously granted in favor of Platt only, as against the Secretary is dissolved.

DATED this 27TH day of February, 1997.



HONORABLE SVEN ERIK HOLMES
UNITED STATES DISTRICT COURT JUDGE

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

SCT PARTNERS, LTD.)
)
Plaintiff,)
)
vs.)
)
FOUNDATION TO SAVE OUR)
CHILDREN'S ENVIRONMENT,)
)
Defendant.)

Case No. 96-C-515-H

FILED
FEB 27 1997
Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
MAR 3 1997

FINAL JOURNAL ENTRY OF JUDGMENT

Now on this 27th day of February, 1997, the above entitled cause comes before the Court by agreement of the parties. Plaintiff, SCT Partners, Ltd. ("SCT"), appears by and through its counsel of record, Stephen R. McNamara of Sneed Lang, P.C. Defendant, Foundation to Save Our Children's Environment ("SOCE"), appears by and through its duly appointed Receiver, Neal Tomlins, Esq.

The Court, having examined the pleadings, files, and records in this case, having fully considered the evidence, and being fully advised in the premises, finds:

1. SCT filed its Complaint on June 6, 1996.
2. SCT filed its First Amended Complaint on August 26, 1996.
3. After conducting discovery as to each of the statements and allegations made by SCT in its Complaint and First Amended Complaint, Receiver for Defendant SOCE has agreed to consent to judgment in favor of SCT, provided, however, that no interest would be awarded on the principal indebtedness prior to the date hereof.

15

The Court, being fully advised, finds that the Plaintiff, SCT Partners, Ltd., is entitled to judgment against Defendant, Foundation to Save Our Children's Environment, in the principal amount of \$75,000.00; Plaintiff's attorney fees in the amount of \$2,838.00, costs in the amount of \$435.96 and post judgment interest on the judgment herein at the rate of 8% per annum until paid.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff, SCT Partners, Ltd., have and recover judgment from Defendant, Foundation to Save Our Children's Environment, for the sum of \$75,000.00, and for attorney's fees, taxed at \$2,838.00, costs in the amount of \$435.96, for the total sum of \$3,272.96, and post judgment interest on said amount at the rate of 8% per annum, all for which let execution issue.

DATED this 27th day of February, 1997.



HONORABLE SVEN ERIK HOLMES
UNITED STATES DISTRICT JUDGE

AGREED TO AS TO FORM:

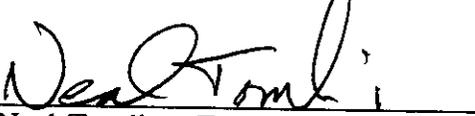
SNEED LANG, P.C.



Stephen R. McNamara, OBA #6071
2300 Williams Center Tower II
Two West 2nd Street
Tulsa, Oklahoma 74103-3136

Attorneys for Plaintiff,
SCT Partners, Ltd.

TOMLINS & GOINS, P.C.



Neal Tomlins, Esq.
Tomlins & Goins, P.C.
Utica Plaza Building
2100 South Utica, Suite 300
Tulsa, Oklahoma 74114

Attorneys for Defendant,
Foundation to Save Our Children's Environment

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

ENTERED ON DOCKET
DATE MAR 13 1997

MICHAEL MEURE)
)
)
Plaintiff,)
)
vs.)
)
DOUGLAS BATTERY, INC.,)
a foreign corporation,)
SHOEMAKER BATTERY)
WAREHOUSE, a foreign)
corporation, and ABC COMPANY,)
)
Defendants.)

FILED

FEB 27 1997

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 95-C-341-H

ORDER ALLOWING LEAVE TO DISMISS WITHOUT PREJUDICE

THIS MATTER comes before the undersigned Federal District Court Judge on this 27TH day of FEBRUARY, 1997, on Plaintiffs' Application for Leave to Dismiss Without Prejudice. For good cause shown the Application is granted.

IT IS FURTHER ORDERED that Plaintiff is allowed to Dismiss this cause Without Prejudice and reserve the right to refile said cause within one year from the filing of this Order.


Honorable Sven Erik Holmes

Dated this 27TH day of FEBRUARY, 1997.

24

C. Rabon Martin, OBA 5718
John J. Bowling, OBA 16811
Martin & Associates
Attorneys for Plaintiff
403 S. Cheyenne
The Martindale Penthouse
Tulsa, Oklahoma 74103
(918) 587-9000
(918) 587-8711 facsimile

Scott Wood, OBA 12536
Doerner, Saunders, Daniel & Anderson
Attorney for Defendants
320 S. Boston, Suite 500
Tulsa, Oklahoma 74103-3725
(918) 582-1211
(918) 591-5360 facsimile

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

FILED
FEB 2 1997
Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STATE BANK & TRUST, N.A.,
a national banking association,

Plaintiff,

vs.

Case No. 96-C-414H

JOHN CHRIST; CREW RESOURCES, a
trust; DENNIS DAZEY, individually and
as trustee of CREW RESOURCES, a
trust; MARCUS CRAIG OSWALT; and
JIM LAMBERT,

Defendants.

ENTERED FOR THE COURT
DATE MAR 3 1997

ORDER FOR DISMISSAL WITH PREJUDICE OF DEFENDANT JIM LAMBERT

UPON the Joint Motion for Dismissal with Prejudice of Defendant Jim Lambert (the "Motion") filed by STATE BANK & TRUST, N.A. ("State Bank"), Plaintiff herein, and Defendant JIM LAMBERT, good cause appearing,

IT IS ORDERED that the Complaint is dismissed with prejudice solely as to Defendant JIM LAMBERT. This leaves the Complaint pending against Defendant Marcus Craig Oswald, judgment having been previously entered against Defendant Crew Resources, and John Christ and Dennis D. Dazey having previously been dismissed with prejudice from the case.

DATED this 27th day of February, 1997.



Hon. Sven Erik Holmes
U.S. District Judge

Submitted by:



ANDREW R. TURNER (OBA No. 9125)
DAVID H. HERROLD (OBA No. 17053)

of

CONNER & WINTERS,
A Professional Corporation
2400 First Place Tower
15 East Fifth Street
Tulsa, Oklahoma 74103-4391
(918) 586-5711

Attorney for Plaintiff STATE BANK & TRUST, N.A.



JIM LAMBERT, *Pro Se* Defendant
c/o Route 1, Box 63-1
Coweta, Oklahoma 74429
(918) 486-3336

Pro Se Defendant

Roebuck and Company, was served with Summons and Amended Complaint by certified mail, return receipt requested, delivery restricted to the addressee on November 18, 1996.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on May 21, 1996; that the Defendant, Laurene Falegi aka Laurene Felegi aka Laurene Sue Green, filed her Disclaimer, Objection to In Personam Judgment and Notice of Pending Bankruptcy on May 22, 1996; and that the Defendants, Victor L. Green aka Victor Green and Sears, Roebuck and Company, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on February 27, 1996, Laurene Sue Felegi pka Laurene Green filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court for the Northern District of Oklahoma, Case No. 96-00632-C. On July 8, 1996, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action described below.

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 Two (2), of the Resubdivision of Tract 22, OZARK GARDEN FARMS ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on July 2, 1987, Victor L. Green and Laurene Falegi 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 \$26,000.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent per annum.

The Court further finds that as security for the payment of the above-described note, Victor L. Green and Laurene Falegi, two single people, 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 real estate mortgage dated July 2, 1987, covering the above-described property, situated in the State of Oklahoma, Tulsa County. This mortgage was recorded on July 8, 1987, in Book 5037, Page 2502, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Victor L. Green aka Victor Green and Laurene Falegi aka Laurene Felegi aka Laurene Sue Green, 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, Victor L. Green aka Victor Green and Laurene Falegi aka Laurene Felegi aka Laurene Sue Green, are indebted to the Plaintiff in the principal sum of \$24,252.27, plus administrative charges in the amount of \$466.00, plus penalty charges in the amount of \$100.44, plus accrued interest in the amount of \$1,994.20 as of February 9, 1996, plus interest accruing thereafter at the rate of 9.5 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$260.00 (\$252.00 fee for abstracting, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, Victor L. Green aka Victor Green and Sears, Roebuck and Company, are in default and therefore have no right, title or interest in the subject real property.

The Court further finds that the Defendant, Laurene Falegi aka Laurene Felegi aka Laurene Sue Green, disclaims any right, title or interest in the subject real property.

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.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Veterans Affairs, have and recover judgment *in rem* against the Defendants, Victor L. Green aka Victor Green and Laurene Falegi aka Laurene Felegi aka Laurene Sue Green, in the principal sum of \$24,252.27, plus administrative charges in the amount of \$466.00, plus penalty charges in the amount of \$100.44, plus accrued interest in the amount of \$1,994.20 as of February 9, 1996, plus interest accruing thereafter at the rate of 9.5 percent per annum until judgment, plus interest thereafter at the current legal rate of 5.67 percent per annum until paid, plus the costs of this action in the amount of \$260.00 (\$252.00 fee for abstracting, \$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 and any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Victor L. Green aka Victor Green; Laurene Falegi aka Laurene Felegi aka Laurene Sue Green; County Treasurer and Board of County Commissioners, Tulsa County,

Oklahoma; and Sears, Roebuck and Company, 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, Victor L. Green aka Victor Green and Laurene Falegi aka Laurene Felegi aka Laurene Sue Green, to satisfy the in rem 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.

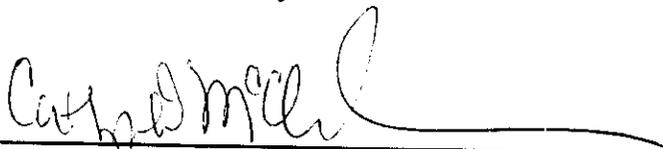
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

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.

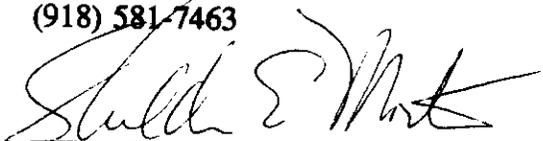

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



CATHRYN D. MCCLANAHAN, OBA #014853
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103
(918) 581-7463



SHELDON E. MORTON, OBA #12187
Professional Bankruptcy Center
10338 East 21st Street
Tulsa, Oklahoma 74129
(918) 622-0030

Attorney for Defendant,
Laurene Falegi aka Laurene Felegi aka Laurene Sue Green



DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841

Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Case No. 96-C-373-H (Green)

CDM:cm