

to Dismiss of Defendant Oklahoma Sportsman's Association [Dkt. 29-1]; the Motion to Dismiss of Defendant Harland Stonecipher [Dkt. 30-1]; the Motion to Dismiss of Defendants Michael Turpen and Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc. [Dkt. 31-1]; and Defendant Pawnee County's Rule 11 Motion [Dkt. 62-1].

Standard of Review for Motion To Dismiss

The Defendants' motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) should be granted only if it appears that Plaintiff can prove no set of facts in support of his claims that would entitle him to relief. *Maez v. Mountain States Tel. & Tel. Inc.*, 54 F.3d 1488 (10th Cir. 1995). All well pleaded factual allegations in Plaintiff's complaint must be accepted as true and the Court will indulge all inferences in Plaintiff's favor. *Lafoy v. HMO Colorado*, 988 F.2d 97 (10th Cir. 1993).

Factual Allegations in Plaintiff's Complaint

Plaintiff alleges that on June 26, 1992, while acting in self-defense, he shot and killed Fred Head, Jr. and Tony McCollum. Less than two days after the incident, Defendant Oklahoma Sportman's Association and Defendant Harland Stonecipher published media releases which, among other things, encouraged hunters to raise money for the prosecution of Plaintiff. On June 29, 1992, Defendant Michael Turpen called the Pawnee County District Attorney's office and advised Defendant Larry Stuart that he (Turpen) was representing the victims in the case against Plaintiff and indicated his (Turpen's) desire to be appointed as special prosecutor for the charges against Plaintiff. On June 30, 1992, Plaintiff was formally charged with two counts of first degree murder.

The Oklahoma Sportman's Association raised in excess of \$25,000 to pursue and assist in the prosecution of Plaintiff. The money was given to Turpen at the law firm of Defendant Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc. and was used to provide research assistance and investigators to Defendant Larry Stuart specifically for the prosecution of Plaintiff.

During the state court criminal proceedings the Court found probable cause to be established and held Plaintiff for trial on two counts of first degree murder. At the conclusion of the first trial, Plaintiff was acquitted of all charges concerning the death of Mr. Head and the jury did not reach a decision on the charge against Plaintiff for the death of Mr. McCollum. Plaintiff was tried a second time on criminal charges relating to the death of Mr. McCollum; again the jury failed to reach a verdict. In September 1998, shortly before Plaintiff's third trial for the death of Mr. McCollum, the Court dismissed the case without prejudice.

Pawnee County's Motion To Dismiss

Pawnee County seeks dismissal on the basis that the county is not liable for any actions of the District Attorney and that Plaintiff has not asserted any claims against the county independent of the actions of the District Attorney. *Arnold v. McClain*, 926 F.2d 963 (10th Cir. 1991); *Laidley v. McClain*, 914 F.2d 1386 (10th Cir. 1990).

Plaintiff does not deny that under the law Pawnee County is not responsible for the acts of the District Attorney. However, Plaintiff contends that the county may have had some involvement with the private funds used to assist in Plaintiff's prosecution or otherwise participated in Plaintiff's "wrongful prosecution."

Plaintiff's vague allegations unsupported by any specific factual assertions against Pawnee County are insufficient to defeat the motion to dismiss. In response to a motion to dismiss, Plaintiff must present specific factual allegations. *See Pueblo Neighborhood Health Centers v. Losavio*, 847 F.2d 642, 646 (10th Cir. 1988) (citing *Dominque v. Telb*, 831 F.2d 673, 677 (6th Cir. 1987))(plaintiff is required to "come forward with facts or allegations sufficient to show both that the defendant's alleged conduct violated the law and that the law was clearly established when the alleged violation occurred).

Based upon the above, the undersigned RECOMMENDS that Pawnee County's Motion To Dismiss [Dkt. 9-1] be GRANTED.

Pawnee County's Rule 11 Motion

Defendant Pawnee County requests dismissal of Plaintiff's case against Pawnee County and other appropriate sanctions under Fed. R. Civ. P. 11. In light of the recommendation that the case be dismissed pursuant to Rule 12(b)(6), the undersigned does not recommend dismissal under Rule 11. Further, Pawnee County has not persuaded the undersigned that any sanction is appropriate under Rule 11. Therefore, the undersigned RECOMMENDS that Pawnee County's Rule 11 motion be DENIED.

Larry Stuart's Motion to Dismiss

Defendant Stuart has been sued in his official capacity as District Attorney for Osage and Pawnee Counties. A suit against a state official in his or her official capacity is a suit against the state. *Will v. Michigan Dep't. of State Police, et al.*, 491 U.S. 58, 105 L. Ed. 2d 45 (1989); *Kentucky v. Graham*, 473 U.S. 159, 87 L.Ed. 2d

114 (1985). The State of Oklahoma and its agencies are entitled to Eleventh Amendment immunity in this action. *Florida Dep't. of Health & Rehabilitative Services v. Florida Nursing Home Assn.*, 450 U.S. 147, 67 L. Ed. 2d 132 (1981).

In his response, Plaintiff concedes that Eleventh Amendment immunity shields Defendant Stuart from monetary liability but urges that he may maintain an action against Defendant Stuart in his official capacity for prospective declaratory relief. Plaintiff's complaint does not state a claim for prospective declaratory relief nor does Plaintiff's response to Defendant Stuart's motion set forth a basis for such relief. The undersigned therefore RECOMMENDS that the motion to dismiss of Larry Stuart, in his official capacity as District Attorney for Osage and Pawnee Counties [Dkt. 6-1], be GRANTED.

Plaintiff's Motion to Join Additional Party Defendant

Plaintiff requests that Larry Stuart, individually, be joined as a defendant in this case. In his official capacity Defendant Larry Stuart has lodged an objection, arguing that such an addition would be futile because, even in his individual capacity, Larry Stuart would be entitled to absolute prosecutorial immunity and qualified immunity.

A prosecutor is absolutely immune from damages for his or her actions in initiating or pursuing a criminal prosecution and in presenting the state's case. *Imbler v. Pachtman*, 424 U.S. 409, 47 L. Ed. 2d 128 (1976). This absolute immunity encompasses not only the conduct of the trial but all of the activities that can fairly be characterized as closely associated with the conduct of the litigation.

Although Plaintiff acknowledges the absolute immunity afforded to prosecutors, he argues that not all claims for damages against prosecutors are precluded by absolute immunity. Plaintiff contends that the Court must examine the specific conduct at issue to determine if absolute prosecutorial immunity applies. Plaintiff contends that Defendant Stuart conspired with the Oklahoma Sportman's Association, Harland Stonecipher and Michael Turpen at the law firm of Riggs, Abney, Neal, Turpen, Orbison and Lewis, Inc., to raise private funds to use in his prosecution. Such actions, Plaintiff claims, are not covered by prosecutorial immunity. However, Plaintiff's own description of the alleged wrongdoing indicates that the activities were undertaken specifically for the purpose of prosecuting him. As such, these activities are characterized as being closely associated with the conduct of the litigation and therefore fall within the protection of absolute prosecutorial immunity.

Defendant Stuart further contends that in his individual capacity, he would be protected by qualified immunity. Government officials performing discretionary functions enjoy qualified immunity from civil damages unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 73 L. Ed. 2d 396 (1982). A plaintiff confronted with a defense of qualified immunity bears the burden of establishing that the law was both clearly established and that the defendant's conduct was unreasonable under the applicable standard. *Pueblo Neighborhood Health Centers v. Losavio*, 847 F.2d 642 (10th Cir. 1988). Plaintiff must do more than

identify in the abstract a clearly established right and allege that the defendant violated it.

Although Plaintiff makes vague allegations that he was denied the right to a fair and impartial trial, the only specific factual allegations made by Plaintiff are that Stuart and the other defendants conspired to solicit and accept private monies to assist in his prosecution. Plaintiff does not articulate what constitutional right was allegedly violated by these activities. Plaintiff points to 19 Okla. Stat. §215.4 and claims that the duties of an Oklahoma District Attorney were violated. However, without more this is not actionable under Section 1983. *Davis v. Scherer*, 468 U.S. 183, 194, 104 S.Ct. 3012, 3019, 82 L.Ed.2d139 (1984)(Officials sued for constitutional violations do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision).

Based upon the foregoing analysis, the undersigned RECOMMENDS that Plaintiff's Motion to Join Additional Party Defendant [Dkt. 13-1] be DENIED as Plaintiff would be unable to state a claim upon which relief may be granted against Larry Stuart in his individual capacity.

Motions to Dismiss of Stonecipher, Oklahoma Sportman's Association, Turpen and Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc.

Plaintiff grounds his federal cause of action against these private defendants on an allegation of a conspiracy to violate his civil rights under Section 1983. In turn, Plaintiff grounds his conspiracy claim against each of these defendants on his factual allegation that they participated in a scheme to solicit and accept private monies to aid

the prosecution of Plaintiff. However, as noted above, Plaintiff fails to identify a federal constitutional or federal statutory right which would be violated by Defendants' alleged conduct. See *Jones v. Richards*, 776 F.2d 1244 (4th Cir. 1985)(no constitutional right impaired by involvement of private attorneys as prosecutors in criminal trial).

Further, the state court finding of probable cause sufficient to hold Plaintiff for trial precludes this issue in federal court, *Hubbert v. City of Moore*, 923 F.2d 769 (10th Cir. 1991) and thereby defeats any claim for a Section 1983 violation for malicious prosecution. *Wolford v. Lasater*, 78 F.3d 484 (10th Cir. 1996). And, Plaintiff's allegations of abuse of process do not state a Section 1983 claim. *Spear v. Town of West Hartford*, 954 F.2d 63 (2nd Cir. 1992).

Additionally, these defendants contend that Plaintiff's claims are barred by the Statute of Limitations and First Amendment immunity under the Noerr-Pennington Doctrine. *Eastern R. R. Presidents Conference v. Noerr Motor Freight Inc.*, 365 U.S. 127, 5 L. Ed. 2d 464 (1961) and *United Mine Workers of America v. Pennington*, 381 U.S. 657, 14 L. Ed. 2d 626 (1965). The undersigned has not reached these issues based upon the recommended disposition of the motions on other grounds.

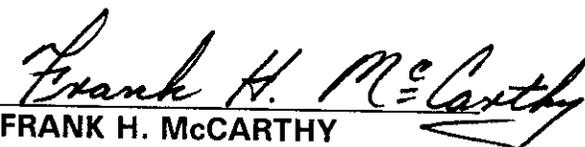
Based upon the above, the undersigned RECOMMENDS that the Motions To Dismiss of Defendants Stonecipher, Oklahoma Sportman's Association, Turpen and Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc., [Dkt. 9-1, 29-1, 30-1, 31-1] be GRANTED.

Conclusion

The undersigned United States Magistrate Judge RECOMMENDS that: the Motion to Dismiss of Defendant Larry Stuart [Dkt. 6-1] be GRANTED; the Motion to Join Additional Party Defendant [Dkt. 13-1] be DENIED; the Motion to Dismiss of Pawnee County [Dkt. 9-1] be GRANTED; the Motion to Dismiss of Defendant Oklahoma Sportsman's Association [Dkt. 29-1] be GRANTED; the Motion to Dismiss of Defendant Harland Stonecipher [Dkt. 30-1] be GRANTED; the Motion to Dismiss of Defendants Michael Turpen and Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc., [Dkt. 31-1] be GRANTED; and Pawnee County's Rule 11 Motion [Dkt. 62-1] be DENIED.

In accordance with 28 U.S.C. §636(b) and Fed. R. Civ. P. 72(b), any objections to this Report and Recommendation must be filed with the Clerk of the District Court for the Northern District of Oklahoma within ten (10) days of being served with a copy of this report. Failure to file objections within the time specified waives the right to appeal from the judgment of the District Court based upon the factual findings and legal questions addressed in the report and recommendation of the Magistrate Judge. *Haney v. Addison*, 175 F.3d 1217, 1219-20 (10th Cir. 1999), *Talley v. Hesse*, 91 F.3d 1411, 1412 (10th Cir. 1996), *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

DATED this 20th day of June, 2000.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE
The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 20 day of June, 2000, FLS

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

EDMUND NOWOSIELSKI,)
)
Petitioner,)
)
vs.)
)
DEBBIE MAHAFFEY, Warden,)
)
Respondent.)

ENTERED ON DOCKET
DATE JUN 19 2000

No. 00-CV-451-BU (M)

FILED

JUN 16 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER OF TRANSFER

On May 30, 2000, Petitioner, a state prisoner appearing *pro se*, submitted for filing a motion for leave to proceed *in forma pauperis* and an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 14, 2000, Petitioner paid the \$5.00 filing fee required to commence this action. Because Petitioner has now paid the required filing fee, his motion to proceed *in forma pauperis* without prepayment of fees has been rendered moot.

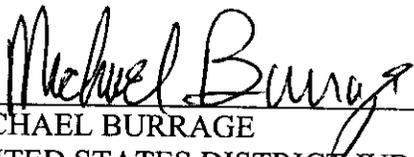
A prisoner in custody pursuant to the judgment and sentence of a State court which has two or more Federal judicial districts may file a petition for writ of habeas corpus in either the district court for the district wherein such person is in custody or in the district court for the district within which the conviction was entered. 28 U.S.C. § 2241(d). Each of such district courts shall have concurrent jurisdiction over the petition and the district court wherein the petition is filed may, in the exercise of its discretion and in furtherance of justice, transfer the petition to the other district court for hearing and determination. Id.

In this case, Petitioner is incarcerated at Dick Conner Correctional Center, located in Osage County, Oklahoma, within the jurisdictional territory of the Northern District of Oklahoma. 28 U.S.C. § 116(a). However, Petitioner was convicted in Oklahoma County, Oklahoma, which is

located within the territorial jurisdiction of the Western District of Oklahoma. 28 U.S.C. § 116(c). The Court finds that the most convenient forum for judicial review of the issues raised in this petition would be the Western District of Oklahoma where any necessary records and witnesses would most likely be available. Therefore, in the furtherance of justice, this matter should be transferred to the United States District Court for the Western District of Oklahoma.

ACCORDINGLY, IT IS HEREBY ORDERED that Petitioner's motion to proceed *in forma pauperis* (Docket #2) is **moot**. Petitioner's application for a writ of habeas corpus is **transferred** to the United States District Court for the Western District of Oklahoma for all further proceedings. See 28 U.S.C. § 2241(d).

IT IS SO ORDERED THIS 16th day of JUNE, 2000.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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

FILED

JUN 16 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CHRISTOPHER L. TAYLOR, suing)
as United States of America)
ex rel. Christopher L. Taylor,)

Plaintiff,)

vs.)

Case No. 98-C-274-B(M)

TRIAD EYE MEDICAL CLINIC AND)
CATARACT INSTITUTE, INC., an)
Oklahoma Professional Corporation, et al.,)

Defendants.)

ENTERED ON DOCKET

DATE JUN 19 2000

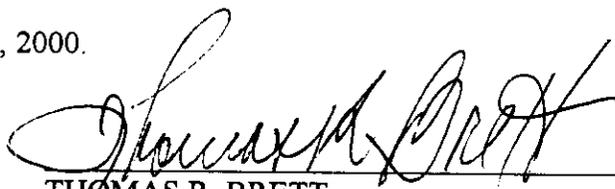
ORDER

Comes on for consideration the above-styled case and the Court finds that on May 24, 2000 the Court held a status conference at which Plaintiff's counsel was given until June 5, 2000 to serve Defendants or dismiss, and if the Plaintiff dismissed, the United States was given until June 20, 2000 to take over the case.

The Court has reviewed the file and determined no action has been taken by Plaintiff to either serve or dismiss and the Clerk's office has been notified telephonically that Plaintiff's counsel does not intend to pursue the action and further, that the United States does not intend to pursue the action.

IT IS THEREFORE ORDERED that, pursuant to advise of counsel, the above-styled action is dismissed without prejudice.

DONE THIS 16th DAY OF JUNE, 2000.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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

FILED

JUN 19 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 ROBERT CHASE,)
)
 Defendant.)

No. 98-CR-90-C

00 CV 262C

ENTERED ON DOCKET

DATE JUN 19 2000

JUDGMENT

This matter came before the Court for consideration of defendant Robert Chase's motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255. The motion having been duly considered and a decision having been rendered in accordance with the Order filed previously,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for plaintiff, the United States of America, and against defendant, Chase, on his challenge to the legality of his conviction and sentence.

IT IS SO ORDERED this ⁸⁸16 day of June, 2000.



H. Dale Cook
Senior United States District Judge

16/13

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

THE HOME-STAKE OIL & GAS COMPANY)
and THE HOME-STAKE ROYALTY)
CORPORATION,)

Plaintiffs,)

vs.)

ENVIROMINT HOLDINGS, INC.,)
a Florida corporation f/k/a TRI TEXAS,)
INC., *et. al*,)

Defendants.)

vs.)

M. TOM CHRISTOPHER, an individual,)

Intervenor.)

ENTERED ON DOCKET

DATE JUN 19 2000

No. 93-C-303-H /

FILED

JUN 16 2000 *al*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER APPROVING SETTLEMENT /

NOW on this 16TH day of June, 2000 there came on for consideration the Joint Application for Order Approving Settlement. The Court find good cause for granting the requested Application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Settlement Agreement reached between The Home-Stake Oil & Gas Company and M. Tom Christopher shall be approved. In this regard, the claims of The Home-Stake Oil & Gas Company in the original Motion for Order in Aid of Execution, the Amended Motion for Order in Aid of Execution and any other claims by The Home-Stake Oil & Gas Company against M. Tom Christopher shall be dismissed with prejudice. Any and all claims by M. Tom Christopher against The Home-Stake

Oil & Gas Company, The Home-Stake Royalty Corporation and any claims related to The Home-Stake Royalty Stock that was at issue in this case, or the sale of such Stock shall be dismissed with prejudice also. This Settlement shall not affect the judgment entered in this case on April 29, 1996. Such judgment shall remain valid and enforceable against any of the judgment debtors and their assets. This Settlement shall not affect the validity of the sale of The Home-Stake Royalty Stock at the execution sale on December 1, 1998. The validity of that sale is affirmed and The Home-Stake Oil & Gas Company shall be entitled to retain The Home-Stake Royalty Stock giving due credit against the judgment in this case. The Home-Stake Oil & Gas Company shall pay \$15,000.00 to M. Tom Christopher within five days of the filing of this Order. The parties shall also exchange mutual releases within five days of the entry of this Order. Each side shall bear their own costs and attorneys fees incurred herein.

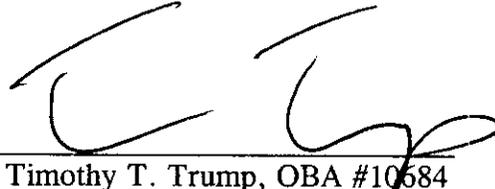
IT IS SO ORDERED.



HONORABLE SVEN ERIK HOLMES,
UNITED STATES DISTRICT JUDGE

Approved as to Form and Content:

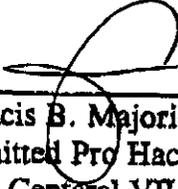
CONNER & WINTERS

By: 

Timothy T. Trump, OBA #10584
3700 First Place Tower
15 East 5th Street
Tulsa, Oklahoma 74103-4344
(918) 586-8513

LEVINE AND MAJORIE, LTD.

By



Francis B. Majorie, P.C.
Admitted Pro Hac Vice
Park Central VII
12750 Merit Drive, Suite 1000
Dallas, Texas 75251
(972) 450-4110
FAX: (972) 450-4115

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE JUN 19 2000

MARY ELLEN KIRKLAND,)
)
 Plaintiff,)
)
 vs.)
)
 BAKER HUGHES OILFIELD OPERATIONS,)
 INC., sued on original petition)
 as: BAKER-HUGHES, Inc., a)
 Delaware corporation d/b/a)
 Centrilift,)
)
 Defendant.)

Case No. 97-C-142-BU

FILED

JUN 16 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

This action came before the Court upon Defendant's Motion for Judgment as a Matter of Law, and the issues having been duly considered and a decision having been duly rendered,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of Defendant, Baker Hughes Oilfield Operations, Inc., and against Plaintiff, Mary Ellen Kirkland.

ENTERED this 16th day of June, 2000.


 MICHAEL BURRAGE
 UNITED STATES DISTRICT JUDGE

sm
6/19/00

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
JUN 19 2000
DATE _____

UNITED STATES OF AMERICA)
Plaintiff,)
)
v.)
)
NANCY C. HOLT-MENSFORTH, aka)
NANCY C. DORY, NANCY C. HOLT,)
N. CELESTE HOLT MENSUTTER,)
NANCY HOLT MENSFORTH,)
NANCY CELESTE HOLT-MENSFORTH,))
and NANCY CELESTE DORY,)
)
Defendant.)

CIVIL NO. 00CV0058BU(J)

FILED

JUN 16 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter came before the Court on Plaintiff's Motion for Summary Judgment. The Court duly considered the issues and rendered a decision in accordance with the order filed on June 9, 2000.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for Plaintiff and against Defendant in the principal amounts of \$34,368.71, \$6,396.36 and \$7,000.00, plus administrative charges in the amounts of \$7.02 and \$27.50, plus accrued interest in the amounts of \$17,247.05, \$3,448.31 and \$2,534.22 as of November 22, 1999, at the rates of

8%, 9.13 % and 5% per annum until judgment, filing fees in the amount of \$150.00, plus interest thereafter at the legal rate of 6.375 until paid.

IT IS SO ORDERED.

This 10th day of JUNE, 2000.


MICHAEL BURRAGE
United States District Judge

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

FILED

JUN 16 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JASON STANFORD,)
)
Plaintiff,)
)
)
)
v.)
)
STANLEY GLANZ, SHERIFF OF THE)
COUNTY OF TULSA; BOARD OF COUNTY)
COMMISSIONERS OF THE COUNTY OF)
TULSA; J.V. CHAMBERS, an individual;)
WARREN COLE CRITTENDEN, an individual;)
BRIAN W. GREER, an individual; and)
TERRY REED, an individual,)
)
Defendants.)

Case No. 98-CV-975-H (J)

ENTERED ON DOCKET
DATE JUN 19 2000

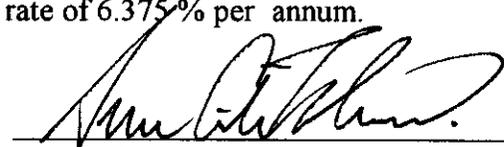
JUDGMENT BY AGREEMENT

This action comes on for hearing on this 16TH day of June, 2000, the Plaintiff, Jason Stanford ("Stanford"), appearing by and through his legal counsel, James W. Tilly and Craig A. Fitzgerald; Defendant, Board of County Commissioners of Tulsa County, Oklahoma ("the Board"), appearing by and through its legal counsel, C.S. Lewis, III; Defendant, Stanley Glanz, Tulsa County Sheriff ("Sheriff Glanz"), appearing by and through his legal counsel, Reuben Davis; and Defendants, J.V. Chambers, Warren Cole Crittenden, Brian W. Greer, and Terry Reed appearing by and through their legal counsel, Assistant District Attorney Gordon Edwards.

The Court finds that on June 5, 2000, the Board, by motion during a regularly scheduled meeting, unanimously agreed to enter into a settlement agreement with Stanford, without admitting any liability as to the Board, Tulsa County, Sheriff Glanz and all of their respective employees in both their individual and official capacities, for the total sum of \$65,000 (sixty-five thousand dollars) which is inclusive of all damages, costs, litigation expenses, prejudgment interest and attorneys' fees. The Court further finds that all parties have entered into a Stipulation of Dismissal with Prejudice as to the individual Defendants, J.V. Chambers, Warren Cole Crittenden, Brian W. Greer and Terry Reed.

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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the individual Defendants, J.V. Chambers, Warren Cole Crittenden, Brian W. Greer and Terry Reed, are dismissed with prejudice from this action and that Plaintiff, Jason Stanford, have and recover judgment by agreement of and from Defendants, the Board and Stanley Glanz in his official capacity as Tulsa County Sheriff, as full and final settlement of all claims for the total sum of \$65,000, inclusive of all damages, costs, litigation expenses, prejudgment interest and attorneys' fees, together with interest from the date of this Judgment by Agreement at the rate of 6.375% per annum.



Sven Erik Holmes
U. S. DISTRICT JUDGE

APPROVED AS TO FORM:

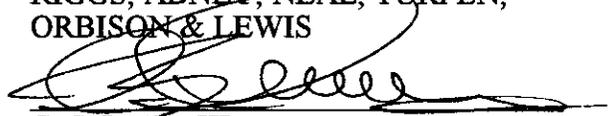
TILLY & FITZGERALD



James W. Tilly
Craig A. Fitzgerald
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P.O. Box 3645
Tulsa, OK 74101-3645

Attorneys for Plaintiff, Jason Stanford

~~RIGGS, ABNEY, NEAL, TURPEN,~~
~~ORBISON & LEWIS~~



C. S. Lewis, III
Gretchen M. Schilling
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Tulsa, OK 74119-1010

Attorneys for Defendant, Board of County
Commissioners of Tulsa County

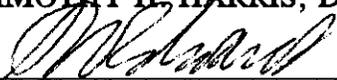
BOONE, SMITH, DAVIS
HURST & DICKMAN



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Donald A. Lepp
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Tulsa, OK 74103

Attorneys for Defendant, Sheriff Stanley Glanz

TIMOTHY H. HARRIS, DISTRICT ATTORNEY



Gordon W. Edwards
Assistant District Attorney
500 South Denver
406 Tulsa County Courthouse
Tulsa, OK 74103-3832

Attorneys for Defendants,
Chambers, Crittenden, Greer and Reed

F I L E D

JUN 16 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

GEORGE REEDY and CAMILLA REEDY,)

Plaintiffs,)

vs)

JOHN MARION BRUCE, JR., and)

B & C TRANSPORTATION,)

Defendants.)

CASE NO. 99CV0708 (M)

ENTERED ON DOCKET

DATE JUN 19 2000

**ORDER GRANTING PETITION FOR VOLUNTARY DISMISSAL WITH PREJUDICE
AS TO CAMILLA REEDY ONLY**

Comes now Plaintiff Camilla Reedy and files here Petition for Voluntary Dismissal With Prejudice as to Camilla Reedy Only, which Petition states she voluntarily dismisses her action against the Defendants herein for the reason that she and the Plaintiff George Reedy were not man and wife at the time of the accident which is the subject matter of this litigation.

And the Court, having examined said Petition and being duly advised, NOW GRANTS the same.

IT IS THEREFORE ORDERED that Plaintiff Camilla Reedy ONLY be, and hereby is, dismissed from the captioned cause of action with prejudice.

Dated 2-16-00

MAGISTRATE

Frank H. McCarthy

JUDGE, United States District Court
Northern District of Oklahoma

Distribution:

John H. Caress
323 North Delaware St.
Indianapolis, IN 46204

Chris Harper
Post Office Box 12908
Oklahoma City, OK 73157

Amy E. Kempfert
Thomas A. LeBlanc
100 W. 5th St., #808
Tulsa, OK 74103-4225

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6-14-00

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

ENTERED ON DOCKET

DATE JUN 19 2000

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

TONYA P. BROWN,)

Defendant.)

CASE NO. 00CV0213H(M)

FILED

JUN 16 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.
2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.
3. The defendant hereby agrees to the entry of Judgment in the principal sum of \$2,625.00, plus accrued interest of \$259.89, plus interest thereafter at the rate of 8.25% per annum until judgment, plus filing fees in the amount of \$150.00, plus interest thereafter at the legal rate 6.375 until paid, plus costs of this action, until paid in full.
4. In addition to the regular monthly payment, the defendant hereby agrees to the submission of this debt to the Department of Treasury for inclusion in the Treasury Offset Program. Under this program, any federal payment the defendant would normally receive may be offset and applied to this debt.

4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay the amount of indebtedness in full and the further representation of the defendant that Tonya P. Brown will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 15th day of July, 2000, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$100.00, and a like sum on or before the 15th day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Financial Litigation Unit, 333 West 4th Street, Suite 3460, Tulsa, Oklahoma 74103-3809.

(c) Each said payment made by defendant shall be applied in accordance with the U.S. Rules, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. § 1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

(d) The defendant shall keep the United States currently informed in writing of any material change in his/her financial situation or ability to pay, and of any change in his/her employment, place of residence or telephone number. Defendant shall provide such information to the United States Attorney at the address set forth above.

(e) The defendant shall provide the United States with current, accurate evidence of his/her assets, income and expenditures (including, but not limited to his/her Federal income tax

returns) within fifteen (15) days for the date of a request for such evidence by the United States Attorney.

5. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

6. The parties further agree that any Order of Payment which may be entered by the Court pursuant hereto may thereafter be modified and amended upon stipulation of the parties; or, should the parties fail to agree upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

7. The defendant has the right of prepayment of this debt without penalty.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Tonya P. Brown, in the principal amount of \$2,625.00, plus accrued interest in the amount of \$259.89, plus interest at the rate of 8.25 until judgment, plus filing fees in the amount of \$150.00, plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus the costs of this action.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Stephen C. Lewis
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney


TONYA P. BROWN

8m

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

BEATRICE REESEY,

Plaintiff,

vs.

KMART CORPORATION, a Michigan
corporation,

Defendant.

FILED

JUN 16 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

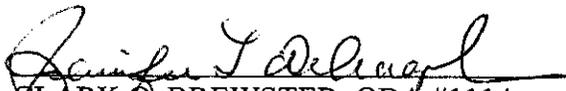
Case No. 99CV0029K(E)

ENTERED ON DOCKET

DATE JUN 17 2000

STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff, Beatrice Reese, by and through her undersigned attorney, with the consent and stipulation of the Defendant, by and through its undersigned attorney, and pursuant to Rule 41(a)(1), Federal Rules of Civil Procedure, hereby dismisses **with prejudice** the above-styled and numbered cause against the Defendant, Kmart Corporation.


CLARK O. BREWSTER, OBA #1114
JENNIFER L. DE ANGELIS, OBA #12416
MONTGOMERY L. LAIR, OBA #17546
BREWSTER & DE ANGELIS, P.L.L.C.
2021 S. Lewis, Suite 675
Tulsa, Oklahoma 74104
(918) 742-2021

ATTORNEYS FOR PLAINTIFF


PATRICK H. KERNAN, OBA #1493
MICHAEL S. LINSKOTT, OBA #17266
McKINNEY & STRINGER, P.C.
401 South Boston, Suite 2100
Tulsa, Oklahoma 74103
918/582-3176

Chuck N. Chionuma, OBA #016790
Chionuma and Associates, P.C.
1800 Mercantile Tower
1101 Walnut Street
Kansas City, MO 64106
816/421-5544

ATTORNEYS FOR DEFENDANT

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

GRAIN DEALERS MUTUAL
INSURANCE COMPANY,
Plaintiff,

v.

ASSOCIATED INTERNATIONAL
MANAGEMENT CONSULTANTS, INC.,
An Oklahoma Corporation, d/b/a AIMC, INC.,
and StaffPro Plus, L.L.C., STAFFPRO
PLUS, L.L.C., an Oklahoma Limited Liability
Company, INTERSTATE TRAVEL
FACILITIES, INC., an Oklahoma Corporation,
the BEARD Company, an Oklahoma
Corporation, PUBLIC SERVICE COMPANY
OF OKLAHOMA, an Oklahoma Utility
Company, TOBY TINDELL, an individual;
CHRISTIE TINDELL, an individual;
J. DENNIS GREEN, an individual; GREEN'S
REMODELING, INC., an Oklahoma
Corporation; and TAMI PRICE, individually
and as administratrix of the Estate of
CHARLES PRICE, Deceased.

Case No.: 00CV0164H(J) ✓

FILED

JUN 15 2000

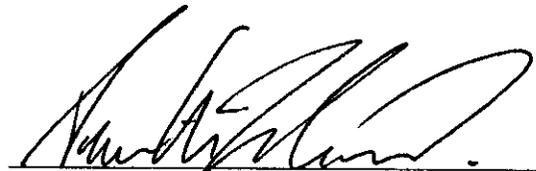
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
JUN 16 2000
DATE _____

ORDER

On this 14TH day of JUNE, 2000, this case comes on for consideration of the Motion for Change of Venue filed herein by Defendants Associated International Management Consultants, Inc., AIMC, Inc., and Staff Pro Plus, L. L. C. After due consideration of the arguments presented, being fully advised in the premises and being aware that none of the parties objects to the requested change of venue, the Court finds that in the interest of justice and the convenience of the parties, that this case should be transferred to the United States District Court for the Western District of Oklahoma.

THEREFORE, IT IS ORDERED that the Motion for Change of Venue is hereby GRANTED and the captioned case will be transferred to the United States District Court for the Western District of Oklahoma.


Sven Erik Holmes, United States District Judge

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

F I L E D

JUN 15 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN RE:)
)
HUTTON, R.E., INC.,)
)
Debtor,)
)
_____)
)
TERRY P. MALLOY,)
)
Appellant,)
)
vs.)
)
LAIRMORE PETROLEUM CORP.,)
)
Appellee.)

No. ⁹⁹~~98~~-CV-282-B (E) ✓

ENTERED ON DOCKET
DATE JUN 16 2000

ORDER

The Court has for de novo review the Appellant's timely-filed Objection to Report and Recommendation of Magistrate filed April 11, 2000, affirming the Bankruptcy Judges' award of sanctions in the amount of \$10,000.00, payable to Lairmore Petroleum Corp. ("LPC") by Appellant for bad faith filing of a bankruptcy petition, in violation of Fed. Bankr. R. 9011.

This Court has jurisdiction over this appeal pursuant to 28 U.S.C. §158. A bankruptcy court's award of sanctions for bad faith filing of a bankruptcy petition is reviewed for abuse of discretion. *Udall v. Federal Deposit Ins. Corp. (In re Nursery Land Development, Inc.)*, 91 F.3d 1414 (10th Cir. 1996); *Findlay v. Banks (In re Cascade*

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Energy & Metals Corp.), 87 F.3d 1146 (10th Cir. 1996). Regarding the standard of review, abuse of discretion is shown if the bankruptcy court “based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S.384, 405, 110 S. Ct. 2447, 2461 (1990).

Following review of Appellant’s Objection and the relevant parts of the transcript of the designated record on appeal as well as Fed. Bankr. R. 9011, the Court concludes the Report and Recommendation of the Magistrate Judge is thorough, well reasoned, and should be adopted in full as submitted. Therefore, the Court concludes the Bankruptcy Court’s award of sanctions in its thorough and well reasoned order dated and filed July 31, 1998, is not an abuse of discretion and is hereby affirmed.

IT IS SO ORDERED THIS 15th DAY OF JUNE, 2000.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Following the jury's verdict, the Court conducted a hearing on Conard's entitlement to back pay and front pay, and finds and concludes as follows:

1. The amount of back pay and front pay awarded is within the sound discretion of the trial court. *Daniel v. Loveridge*, 32 F.3d 1472, 1477 (10th Cir. 1994); *Carter v. Sedgwick County, Kansas*, 36 F.3d 952, 957 (10th Cir. 1994); *Whatley v. Skaggs Cos.*, 707 F. 2d 1129, 1138 (10th Cir.), cert. denied, 464 U.S. 938 (1983).
2. Employees claiming entitlement to back pay and benefits are required to make reasonable efforts to mitigate damages. *Aguinaga v. United Food & Com. Workers Intern.*, 993 F.2d 1463, 1474 (10th Cir.1993), cert. denied, 114 S.Ct. 880 (1994).
3. The employer bears the burden of showing a lack of reasonable diligence and may satisfy that burden by showing " (1) that the damage suffered by plaintiff could have been avoided, i.e. that there were suitable positions available which plaintiff could have discovered and for which [she] was qualified; and (2) that plaintiff failed to use reasonable care and diligence in seeking such a position. " *EEOC v. Sandia Corp.*, 639 F.2d 600, 627 (10th Cir. 1980) (quoting *Sias v. City Demonstration Agency*, 588 F.2d 692, 696 (9th Cir.1978)).

have implicated Fed. R. Evid. 403, i.e., the prejudicial effect outweighed its probative value.

Additionally, due to the Plaintiff's failure to timely list witnesses according to the trial schedule, Plaintiff introduced by way of rebuttal, a witness who should have testified in Plaintiff's case in chief, if timely noticed. Because of the late notification of this witness, Defendant was not given the opportunity to interview or take the witness' deposition in advance of trial. Further confusion on this subject was caused because before trial the Court sustained a motion to disallow the witness' testimony, and then reversed itself at trial.

4. An employer may satisfy the second prong of its burden--i.e., that the employee failed to use reasonable diligence--by showing that the employee was not "ready, willing and available" for employment by withdrawing from the job market and returning to school as a full-time student. See *Taylor v. Safeway Stores, Inc.*, 524 F.2d 263, 268 (10th Cir.1975) (employee who returns to school is no longer available for employment and thus not entitled to backpay), overruled on other grounds by *Ruckelshaus v. Sierra Club*, 463 U.S. 680 (1983); see also *Miller v. Marsh*, 766 F.2d 490, 493 (11th Cir.1985) (employee who withdraws from the job market and attends school full-time fails to exercise diligence in mitigating damages).
5. "Generally, a plaintiff may satisfy the 'reasonable diligence' requirement by demonstrating a continuing commitment to be a member of the work force and by remaining ready, willing, and available to accept employment." *Booker v. Taylor Milk Co., Inc.*, 64 F.3d 860, 864 (3rd Cir. 1995); *Hutchison v. Amateur Elec. Supply, Inc.*, 42 F.3d 1037, 1044 (7th Cir.1994); *Ford v. Nicks*, 866 F.2d 865, 873 (6th Cir.1989).
6. The evidence establishes Conard was employed by Amos Electric as an apprentice electrician from September 1997 until he was laid off in March 1998. He remained unemployed and returned full-time to school in August 1999, sixteen month after his lay-off. Although Conard called Amos Electric twice within four (4) days after he was laid off about another job being available, he did not make inquiry thereafter to

Defendant. The evidence does not establish when any apprentice electrician positions became available in which Conard could have resumed employment at Amos Electric.

It is reasonable to conclude that sometime in the summer of 1998, an apprentice electrician position would have come open at Amos Electric. Defendant's work is both seasonal and sporadic due to lengths of jobs. It is also reasonable to conclude that if Conard had been rehired, his work would have been interrupted by occasional work force reductions for periods of a few weeks or months.

7. The evidence reflects Conard made the following efforts to seek employment during the 16-month period. He applied to a truck driving school and a trucking company for employment but could not get employment because his eyesight disqualified him for truck driving. He also contacted a company named "Work Force" and the unemployment office. Plaintiff's counsel asserts Conard was seeking "comparable employment," but the evidence does not reflect at any time Conard specifically applied for employment as an apprentice electrician. Neither does the evidence indicate at what time Plaintiff actually made the various applications for employment prior to his becoming a full-time student.
8. In awarding back pay to the Plaintiff, the Court concludes Plaintiff did not make reasonable efforts to mitigate his damages over the approximately sixteen-month period from the latter part of March 1998 until August 1999, a period of a robust economy. Further, in August 1999, he returned to school as a full-time college

student, removing himself from the work force. Conard testified he took home \$224.24 per week for the six (6) months he was employed by Amos Electric. Awarding Plaintiff not to exceed approximately two (2) months' back pay [8 x \$224.24 = \$1793.92], is reasonable herein as back pay damages.

9. Regarding front pay, during the June 14, 2000 hearing, Amos Electric offered to rehire Conard as an apprentice electrician. Conard rejected the Defendant's offer, stating the Plaintiff's return to work for Defendant was no longer "plausible." The Court concludes a productive and amicable working relationship between the parties is feasible and Plaintiff's refusal of the reinstatement offer is motivated by his commendable desire to complete his college education. Therefore, the Court awards no front pay.

In keeping with the verdict of the jury and the Court's findings herein, the Court will file a separate judgment simultaneous with the filing of this order.

DATED this 15th day of June, 2000.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

JUN 15 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

MICHAEL CONARD,)
)
Plaintiff,)
)
v.)
)
AMOS ELECTRICAL & MECHANICAL,)
INC., an Oklahoma corporation,)
)
Defendant.)

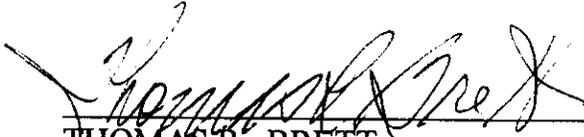
No. 99-C-617-B

ENTERED ON DOCKET
DATE JUN 16 2000

JUDGMENT

Pursuant to the verdict of the jury entered this 15th day of June, 2000, supplemented by the Court's Order and Findings, judgment is hereby entered in favor of the Plaintiff, Michael Conard, and against the Defendant, Amos Electrical & Mechanical, Inc., for back pay in the amount of \$1,793.92, and for punitive damages in the amount of \$12,500.00. Post-judgment interest is to run on said sums in the amount of 6.375% from the date hereon. Plaintiff is also awarded, as the prevailing party, judgment for costs and a reasonable attorney's fee if timely applied for pursuant to Local Rule 54.1 and 54.2.

DATED this 15th day of June, 2000.


 THOMAS R. BRETT
 UNITED STATES DISTRICT JUDGE

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motion to [the Circuit] in the interest of justice pursuant to [28 U.S.C.] § 1631.” Coleman v. U.S.,
106 F.3d 339, 341 (10th Cir.1997). Martinez’s present § 2255 motion is therefore transferred to the
Tenth Circuit for certification.

IT IS SO ORDERED this 13th day of June 2000.



H. Dale Cook
Senior U.S. District Judge

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

F I L E D

JUN 15 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

FARM CO., INC.,
d/b/a FARMER'S MARKET,

Plaintiff,

vs.

THE EMPLOYERS FIRE INSURANCE
COMPANY,

Defendant.

Case No. 99-C-1100E(E)

ENTERED ON DOCKET
DATE JUN 15 2000

ORDER

Upon consideration of the Motion of the Office of Juvenile Affairs and David Durosette to withdraw from the above-referenced action, there appearing to be no just reason why it should not be granted,

IT IS ORDERED, ADJUDGED AND DECREED that the Motion of the Office of Juvenile Affairs and David Durosette to Withdraw should be, and hereby is, granted.


United States District Judge

Date: 6/15/00

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

ALLENE F. DICKERSON and
I.C. DICKERSON

Plaintiff,

v.

JANE PHILLIPS MEDICAL CENTER

Defendant.

ENTERED ON DOCKET

JUN 15 2000

DATE

Case No. 00-CV-279-H ✓

FILE

JUN 15 2000

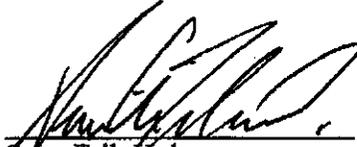
Phil Lombardi, Cler
U.S. DISTRICT COU

ORDER

This matter comes before the Court pursuant to Defendant James W. Zieders' Motion to Strike Non-Existent Entity. Plaintiffs have failed to respond to Defendant's motion in a timely fashion. Failure to timely respond authorizes the Court to deem the matter confessed. Local Rule 7.1 C. Accordingly, Defendant's Motion to Strike Non-Existent Entity is hereby confessed. The Court hereby grants Defendant's motion to strike JAMES W. ZEIDERS & WILLIAM D. SMITH ORTHOPEDICS from the Complaint on the grounds that no such entity exists.

IT IS SO ORDERED.

This 14TH day of June, 2000.


Sven Erik Holmes
United States District Judge

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sm
6/12/00

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 14 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

GERALD B. ELLIS, WILLIAM H. NOBLE,)
MICHAEL ELLIS, ROBERT LUELLEN,)
as Trustees of the OKLAHOMA)
OPERATING ENGINEERS WELFARE)
PLAN; OKLAHOMA OPERATING)
ENGINEERS WELFARE PLAN; DISTRICT 2)
JOINT APPRENTICESHIP & TRAINING)
COMMITTEE OF THE INTERNATIONAL)
UNION OF OPERATING ENGINEERS)
LOCAL 627; CENTRAL PENSION FUND)
OF THE INTERNATIONAL UNION OF)
OPERATING ENGINEERS AND)
PARTICIPATING EMPLOYERS; LOCAL)
UNION NO. 627 OF THE INTERNATIONAL)
UNION OF OPERATING ENGINEERS,)

Plaintiffs,)

v.)

INTERSTATE BUILDERS, INC.,)

Defendant.)

ENTERED ON DOCKET

DATE JUN 15 2000

Case No. 00-CV-0024E (J)

JOURNAL ENTRY OF JUDGMENT

NOW, on this 13TH day of June, 2000, the above-entitled cause comes on before me, the undersigned Judge of the above-entitled Court. The Plaintiffs, Gerald B. Ellis, William H. Noble, Michael Ellis, Robert Luellen, as Trustees of and for Oklahoma Operating Engineers Welfare Plan; the Oklahoma Operating Engineers Welfare Plan; the District 2 Joint Apprenticeship & Training Committee of the International Union of Operating Engineers Local 627 ("Apprenticeship & Training Fund"); the Central Pension Fund of the International Union of Operating Engineers and Participating Employers ("Pension Fund"); and Local Union 627 of the International Union of Operating Engineers ("Local Union 627"), represented and appearing by their

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counsel, Kelly F. Monaghan of Holloway & Monaghan, and Defendant, Interstate Builders, Inc., represented and appearing by its counsel, John W. Gile.

Whereupon, the Court, having examined the court files herein and after due deliberations thereon, finds as follows:

The Court finds that on January 10, 2000, Plaintiffs filed their Complaint in the above-entitled and numbered cause requesting judgment against Defendant, for specific sums set forth therein, plus attorney's fees and court costs.

The Court further finds that on January 16, 2000, Defendant was served with the Summons and Complaint by personally serving Bill Napier, President of Interstate Builders, Inc., as evidenced by the Return of Summons in this cause of action filed with the Court Clerk indicating that proper service had been made on Defendant.

The Court further finds that the parties agree to the entry of judgment as hereinafter set forth.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that Defendant was lawfully served in this cause.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that Plaintiffs be granted judgment against Defendant, Interstate Builders, Inc., as follows:

A. Judgment in favor of Plaintiff Oklahoma Operating Engineers Welfare Plan for delinquent contributions due and owing pursuant to the monthly remittance reports submitted by Defendant for the months of March 1999 through March 2000, in the amount of \$25,367.88, plus liquidated damages of \$2,536.80, interest through June 1, 2000 of \$1,320.62, and interest at the rate of eight percent (8%) per annum until paid.

B. Judgment in favor of Plaintiff Central Pension Fund of the International Union of Operating Engineers and Participating Employers for delinquent contributions due and owing pursuant to the monthly remittance reports submitted by Defendant for the months March 1999 through March 2000, in the amount of \$17,352.65, plus liquidated damages of \$1,735.28, and interest through June 1, 2000 of \$882.77, and interest at the rate of eight percent (8%) per annum until paid.

C. Judgment in favor of Plaintiff District 2 Joint Apprenticeship & Training Committee of the International Union of Operating Engineers Local 627, for delinquent contributions due and owing pursuant to the monthly remittance reports submitted by Defendant for the months of March 1999 through March 2000, in the amount of \$2,631.94, interest at the judgment rate until paid.

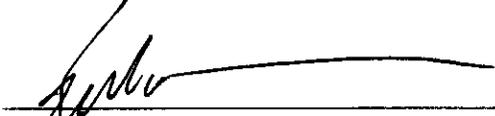
D. Judgment in favor of Plaintiff Local Union 627 for supplemental dues pursuant to the monthly remittance reports submitted by Defendant for the months of March 1999 through March 2000, in the amount of \$5,363.84, plus at the judgment rate until paid.

E. Judgment in favor of Plaintiffs for costs of this action in the amount of \$252.64 and attorney fees of \$1,500.00.

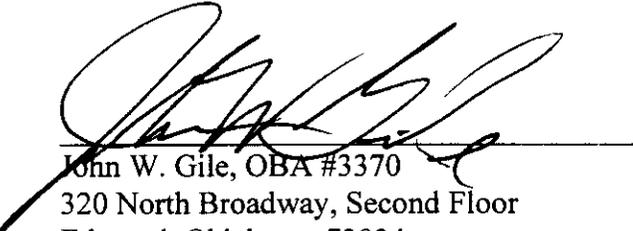
ALL FOR WHICH LET EXECUTION ISSUE.


United States District Court Judge

APPROVED AND CONSENTED:



Kelly F. Monaghan OBA #11681
HOLLOWAY & MONAGHAN
4111 South Darlington, Suite 1100
Tulsa, Oklahoma 74135
(918) 627-6202
ATTORNEY FOR PLAINTIFFS



John W. Gile, OBA #3370
320 North Broadway, Second Floor
Edmond, Oklahoma 73034
(405) 359-3600
ATTORNEY FOR DEFENDANT

J:\oklaoperating\interstatebuilders\2000 Litigation\AGREED.JUDGMENT

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

DOREEN JANICE CURRY,)

Plaintiff,)

v.)

COMMERCIAL FINANCIAL)
SERVICES, INC.,)

Defendant.)

ENTERED ON DOCKET
DATE JUN 15 2000

Case No. 98-CV-580-K (M) ✓

FILED

JUN 15 2000

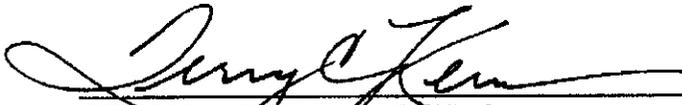
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Court, having been advised by the Settlement Judge Nancy Gourley on June 12, 2000, that the parties to this action have reached an agreement in the above-captioned matter, finds that it is no longer necessary for this action to remain on the calendar of the Court. The Court hereby orders an administrative closing pursuant to N.D. LR 41.0.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records. 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 14 DAY OF JUNE, 2000.


TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

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

FILED
JUN 14 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CAROLYN S. PRICE-BARTON,)
)
Plaintiff,)
vs.)
)
JOE D. PRICE,)
)
Defendant.)

Case No. 00-CV-0258C (E)

DISMISSAL WITHOUT PREJUDICE

ENTERED ON DOCKET
DATE JUN 15 2000

COMES now the Plaintiff in the above captioned action and respectfully dismisses against the Defendant, Joe D. Price, without prejudice.

Dated this 13th day of June, 2000.

Carolyn S. Price-Barton

By:

James W. Connor

James W. Connor, OBA #1850
SELBY, CONNOR, MADDUX & JANER
Attorneys at Law
416 E. 5th St.
P.O. Drawer Z
Bartlesville, OK 74005-5025
(918) 336-8114

CERTIFICATE OF MAILING

I hereby certify a copy of the above and foregoing was served by first class, U.S. Mail, postage prepaid on the 13th day of June, 2000 to the following counsel of record:

Tony W. Haynie, OBA #11097
Attorney at Law
15 East 5th St., Suite 3700
Tulsa, OK 74103-4344

Attorney for Defendant, Joe D. Price.

James W. Connor
James W. Connor

Mail copy / CJ

jm

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 13 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CLARENCE STANLEY,)
)
 Plaintiff,)
)
 v.)
)
 KENNETH S. APFEL,)
 Commissioner, Social)
 Security Administration,)
)
 Defendant.)

Case No. 97-CV-779-J ✓

ENTERED ON DOCKET

DATE JUN 14 2000

ORDER

On March 23, 2000, this Court reversed the Commissioner's decision denying plaintiff's claim for Social Security disability benefits and remanded the case to the Commissioner for further action. No appeal was taken from this Judgment and the same is now final.

Pursuant to plaintiff's application for attorney fees under the EAJA, 28 U.S.C. § 2412(d), filed on April 21, 2000, and the defendant's response filed on March 23, the parties have agreed that an award in the amount of \$2,671.50 for attorney fees for all work done before the district court is appropriate.

WHEREFORE, IT IS ORDERED that plaintiff's counsel be awarded attorney's fees under the Equal Access To Justice Act in the amount of \$2,671.50. 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.*

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Bowen, 803 F.2d 575, 580 (10th Cir. 1986).

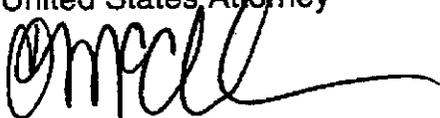
It is so ORDERED this 13 day of June 2000.



Sam A. Joyner
United States Magistrate Judge

SUBMITTED BY:

STEPHEN C. LEWIS
United States Attorney



CATHRYN McCLAHANAN, OBA #14853
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 13 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD M. HARRINGTON,

Defendant.

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No. 00CV0232B(E) ✓

ENTERED ON DOCKET
DATE JUN 14 2000

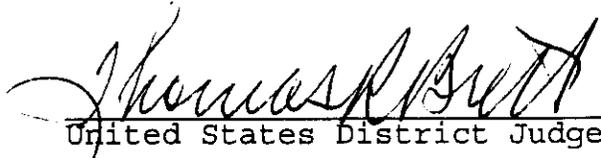
DEFAULT JUDGMENT

This matter comes on for consideration this 13th day of June, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Donald M. Harrington, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Donald M. Harrington, was served with Summons and Complaint on March 15, 2000. 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, Donald M. Harrington, for the principal amounts of \$1,408.33 and

\$1,870.24, plus accrued interest of \$602.53 and \$1,196.64, plus interest thereafter at the rates of 8% and 9.13% per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/llf

sm

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

FILED

JUN 13 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DWIGHT W. BIRDWELL,)
and)
BARBARA STARR SCOTT, ET AL.,)
)
Consolidated Plaintiffs,)
)
v.)
)
CHARLIE ADDINGTON, ET AL.,)
)
Consolidated Defendants.)

Case No. 99-CV-156 (B)

(CONSOLIDATED CASE)

ENTERED ON DOCKET
DATE JUN 14 2000

STIPULATION OF DISMISSAL

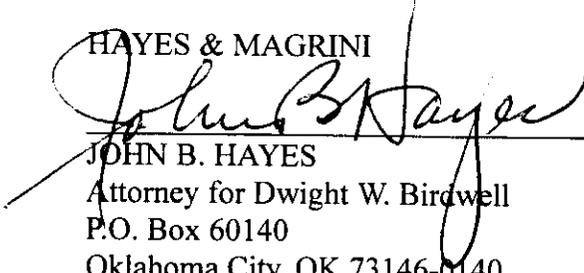
Come now the parties, Plaintiff Dwight W. Birdwell by and through his attorney, John B. Hayes and the Defendants Charlie Addington, and Bob Lewandowski, by and through their attorney, Jason Wagner; Joel Thompson by and through his attorney, Stephen Gruebel; Housing Authority of the Cherokee Nation, and Housing Authority of the Cherokee Nation Board of Commissioners in their Official and Representative Capacities composed of Sam Ed Bush, Stanley Joe Crittenden, Aleyene Hogner, Nick Lay, and Melvina Shotpouch, by and through their attorney, Betty Outhier Williams, and stipulate and agree to dismiss the above-captioned action and all causes of action within the suit as to the Defendants Charlie Addington, Joel Thompson, Bob Lewandowski, Housing Authority of the Cherokee Nation, and Housing Authority of the Cherokee Nation Board of Commissioners in their Official and Representative Capacities composed of Sam Ed Bush, Stanley Joe Crittenden, Aleyene Hogner, Nick Lay, and Melvina Shotpouch, with prejudice to any re-filing as to Charlie Addington, Bob Lewandowski, Joel Thompson, Housing Authority of the Cherokee Nation, Housing Authority of the Cherokee Nation Board of Commissioners in their Official and Representative Capacities composed of Sam Ed Bush, Stanley Joe Crittenden, Aleyene Hogner, Nick

287

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Lay, and Melvina Shotpouch with each party to bear its own expense. The Plaintiff Dwight W. Birdwell retains all claims against the Defendant Mark McCullough.

HAYES & MAGRINI


JOHN B. HAYES

Attorney for Dwight W. Birdwell
P.O. Box 60140
Oklahoma City, OK 73146-0140

GAGE & WILLIAMS LAW FIRM


BETTY OLLMIER WILLIAMS, OBA #9637

Attorney for Housing Authority of the Cherokee Nation,
and Housing Authority of the Cherokee Nation
Board of Commissioners in their Official and
Representative Capacities composed of Sam Ed
Bush, Stanley Joe Crittenden, Aleyene Hogner,
Nick Lay, and Melvina Shotpouch

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429 NE 50th Street, 2nd Floor
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STEVE GREUBEL

Attorney for Joel Thompson
Riverbridge Office Park, Ste. 300
1323 East 71st Street
Tulsa, OK 74136

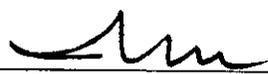
HAYES & MAGRINI

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Oklahoma City, OK 73146-0140

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Board of Commissioners in their Official and
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WILLIAMS
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ATTORNEYS AT LAW
P.O. BOX 87
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HAYES & MAGRINI

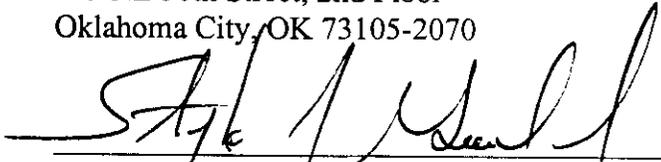
JOHN B. HAYES
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Tulsa, OK 74136

**GAGE
&
WILLIAMS
LAW FIRM**
ATTORNEYS AT LAW
P.O. BOX 87
MUSKOGEE, OK 74402-0087

CERTIFICATE OF MAILING

I, Betty Outhier Williams, hereby certify that on the 12th day of June, 2000, I mailed a true and correct copy of the above and foregoing Stipulation of Dismissal to the following with proper postage thereon fully prepaid:

Mr. D. Michael McBride, III
Sneed Lang, P.C.
Williams Center Tower II, Ste. 2300
Two West Second Street
Tulsa, OK 74103-3136

Mr. Clark O. Brewster, Esq.
Brewster, Shallcross & De Angelis
2021 S. Lewis Ave., Ste. 675
Tulsa, OK 74104

Mr. Donn F. Baker, Esq.
239 W. Keetoowah
Tahlequah, OK 74464

Mr. Jim Wilcoxon
P.O. Box 357
Muskogee, OK 74402

Mr. Steven Novick
1717 S. Cheyenne Ave.
Tulsa, OK 74119

Mr. Lee I. Levinson, Esq.
Mr. Ronald C. Kaufman, Esq.
Bodenhamer & Levinson
5310 E. 31st St., Suite 110
Tulsa, OK 74135

Mr. Frank Sullivan, Jr., Esq.
P.O. Box 768
Sallisaw, OK 74955-0768


BETTY OUTHIER WILLIAMS

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

FILED

JUN 13 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

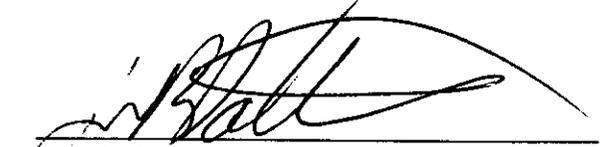
CARTER R. HARGRAVE,)
)
Plaintiff,)
)
vs.)
)
COMMERCIAL FINANCIAL SERVICES,)
INC., an Oklahoma corporation, and)
WILLIAM R. BARTMANN, individually and)
as an officer, director, agent and representative)
of Commercial Financial Services, Inc.,)
)
Defendants.)

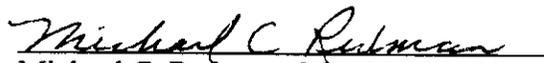
Case No. 98CV-0924BU(J)

ENTERED ON DOCKET
DATE JUN 14 2000

DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(ii), Federal Rules of Civil Procedure, and pursuant to the order of the United States Bankruptcy Court for the Northern District of Oklahoma, Case No. 98-05162-R, modifying the Automatic Stay of 11 U.S.C. § 362(a) dated May 31, 2000, Plaintiff, by and through his counsel, Jon R. Patton, and Defendants, Commercial Financial Services, Inc. and William R. Bartmann, by and through their counsel, Michael C. Redman, hereby dismiss the above lawsuit with prejudice.


Jon R. Patton
Patton Law Office
406 South Boulder, Suite 400
Tulsa, OK 74103
Attorneys for Carter Hargrave


Michael C. Redman, OBA No. 13340
Shelly L. Dalrymple, OBA No. 15212
Doerner, Saunders, Daniel & Anderson, L.L.P.
320 South Boston, Suite 500
Tulsa, Oklahoma 74103-3725
(918) 582-1211
Attorneys for Commercial Financial Services, Inc.
and William R. Bartmann

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 13 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

No. 99CV1078C(E) /

EDWARD M. HILL,)

Defendant.)

ENTERED ON DOCKET
DATE JUN 14 2000

DEFAULT JUDGMENT

This matter comes on for consideration this 13th day of June, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Edward M. Hill, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Edward M. Hill, was served with Summons and Complaint on April 25, 2000. 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, Edward M. Hill, for the principal amount of \$2,665.00, plus accrued

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interest of \$2,617.42, plus interest thereafter at the rate of 8 percent per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/11f

FILED

JUN 13 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

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

PAR III., an Oklahoma)
corporation,)
)
Plaintiff,)
)
vs.)
)
AQ TECHNOLOGIES, INC., a)
Georgia corporation,)
)
Defendant.)

Case No. 99-CV-1014-B

ENTERED ON DOCKET
DATE JUN 14 2000

ORDER

Counsel for Plaintiff appeared before the Court for Case Management Conference on the 8th day of June, 2000 and announced, on behalf of all parties, that the above-styled case has been resolved by agreement and should be stricken from the Court's docket.

IT IS THEREFORE ORDERED that the above-styled case is dismissed with prejudice.

DONE THIS 13th DAY OF JUNE, 2000.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

13

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

FILED
JUN 13 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DWIGHT W. BIRDWELL,)
and)
BARBARA STARR SCOTT, ET AL.,)
)
Consolidated Plaintiffs,)
)
v.)
)
CHARLIE ADDINGTON, ET AL.,)
)
Consolidated Defendants.)

Case No. 99-CV-156 (B)

ENTERED ON DOCKET

DATE JUN 14 2000

(CONSOLIDATED CASE)

STIPULATION OF DISMISSAL

Come now the parties, Plaintiff Barbara Starr Scott by and through her attorneys, Sneed Lang P.C. and the Defendants Charlie Addington, and Bob Lewandowski, by and through their attorney, Jason Wagner; Joel Thompson by and through his attorney, Stephen Gruebel; and The Housing Authority of the Cherokee Nation by and through the Board of Commissioners in their Official Capacities composed of Sam Ed Bush, Stanley Joe Crittenden, Aleyene Hogner, Nick Lay, and Melvina Shotpouch, and in their personal capacities composed of Sam Ed Bush, Stanley Joe Crittenden and Aleyene Hogner, by and through their attorney, Betty Outhier Williams; in his personal capacity Nick Lay, by and through his attorney, Jim Wilcoxon; and in her personal capacity Melvina Shotpouch, by and through her attorney, Frank Sullivan, Jr., and stipulate and agree to dismiss the above-captioned action and all causes of action within the suit as to the Defendants Charlie Addington, Joel Thompson, Bob Lewandowski, and The Housing Authority of the Cherokee Nation by and through the Board of Commissioners in their personal and Official Capacities Composed of Sam Ed Bush, Stanley Joe Crittenden, Aleyene Hogner, Nick Lay, and Melvina Shotpouch, with prejudice to any re-filing as to Charlie Addington, Bob Lewandowski, Joel Thompson, and The Housing Authority of the Cherokee Nation by and through the Board of

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LAW FIRM**
ATTORNEYS AT LAW
P.O. BOX 87
MUSKOGEE, OK 74408-0087

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Commissioners in their personal and Official Capacities composed of Sam Ed Bush, Stanley Joe Crittenden, Aleyene Hogner, Nick Lay, and Melvina Shotpouch with each party to bear its own expense. This dismissal does not affect the Counterclaims and/or Third Party Claims of Defendants Nick Lay and Melvina Shotpouch.

SNEED LANG, P.C.



D. MICHAEL McBRIDE, III #15431
Attorney for Barbara Starr Scott
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Two West Second Street
Tulsa, OK 74103-3136

GAGE & WILLIAMS LAW FIRM



BETTY OUTHIER WILLIAMS, OBA #9637
Attorney for Housing Authority of the Cherokee Nation
by and through the Housing Authority of the
Cherokee Nation Board of Commissioners in
their Official Capacities composed of Sam Ed
Bush, Stanley Joe Crittenden, Aleyene Hogner
Nick Lay, and Melvina Shotpouch; and Sam Ed
Bush, Stanley Joe Crittenden, and Aleyene
Hogner, in their personal capacities

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JASON WAGNER
Attorney for Bob Lewandowski and Charlie Addington
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Oklahoma City, OK 73105-2070

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LAW FIRM**
ATTORNEYS AT LAW
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MUSKOGEE, OK 74402-0087

Commissioners in their personal and Official Capacities composed of Sam Ed Bush, Stanley Joe Crittenden, Aleyene Hogner, Nick Lay, and Melvina Shotpouch with each party to bear its own expense. This dismissal does not affect the Counterclaims and/or Third Party Claims of Defendants Nick Lay and Melvina Shotpouch.

SNEED LANG, P.C.

MICHAEL McBRIDE, III
Attorney for Barbara Starr Scott
Williams Center Tower II, Ste. 2300
Two West Second Street
Tulsa, OK 74103-3136

GAGE & WILLIAMS LAW FIRM

BETTY OUTHIER WILLIAMS, OBA #9637
Attorney for Housing Authority of the Cherokee Nation
by and through the Housing Authority of the
Cherokee Nation Board of Commissioners in
their Official Capacities composed of Sam Ed
Bush, Stanley Joe Crittenden, Aleyene Hogner
Nick Lay, and Melvina Shotpouch; and Sam Ed
Bush, Stanley Joe Crittenden, and Aleyene
Hogner, in their personal capacities

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COLLINS, ZORN, JONES & WAGNER, P.C.

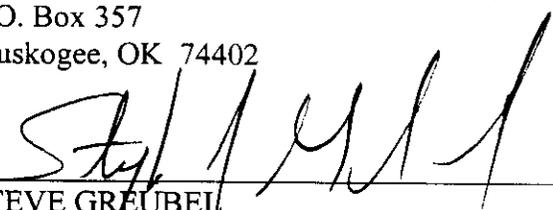


JASON WAGNER
Attorney for Bob Lewandowski and Charlie Addington
429 NE 50th Street, 2nd Floor
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JIM WILCOXEN

Attorney for Nick Lay, in his personal capacity
P.O. Box 357
Muskogee, OK 74402



STEVE GREUBEL

Attorney for Joel Thompson
Riverbridge Office Park, Ste. 300
1323 East 71st Street
Tulsa, OK 74136

FRANK SULLIVAN, JR.

Attorney for Melvina Shotpoutch, in her personal
capacity
P.O. Box 768
Sallisaw, OK 74955-0768

CERTIFICATE OF MAILING

I, Betty Outhier Williams, hereby certify that on the _____ day of _____, 2000, I mailed a true and correct copy of the above and foregoing Stipulation of Dismissal to the following with proper postage thereon fully prepaid:

Mr. John B. Hayes, Esq.
Hayes & Magrini
P.O. Box 60140
Oklahoma City, OK 73146-0140

Mr. Clark O. Brewster, Esq.
Brewster, Shallcross & De Angelis
2021 S. Lewis Ave., Ste. 675
Tulsa, OK 74104

Mr. Donn F. Baker, Esq.
239 W. Keetoowah
Tahlequah, OK 74464

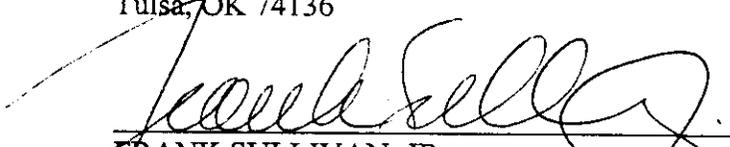
**GAGE
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JIM WILCOXEN

Attorney for Nick Lay, in his personal capacity
P.O. Box 357
Muskogee, OK 74402

STEVE GREUBEL

Attorney for Joel Thompson
Riverbridge Office Park, Ste. 300
1323 East 71st Street
Tulsa, OK 74136


FRANK SULLIVAN, JR.

Attorney for Melvina Shotpouch, in her personal
capacity *and only as a defendant*
P.O. Box 768
Sallisaw, OK 74955-0768

*This stipulation in no way
operates to dismiss any
claims of Melvina Shotpouch.
She stipulates only to the
claims made against her, either
individually, or in her official
capacity.*

Frank Sullivan, Jr.
CERTIFICATE OF MAILING

I, Betty Outhier Williams, hereby certify that on the _____ day of _____, 2000, I mailed a true and correct copy of the above and foregoing Stipulation of Dismissal to the following with proper postage thereon fully prepaid:

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239 W. Keetoowah
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Mr. Steven Novick
1717 S. Cheyenne Ave.
Tulsa, OK 74119

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**ATTORNEYS AT LAW
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Attorney for Nick Lay, in his personal capacity
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Attorney for Joel Thompson
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Tulsa, OK 74136

FRANK SULLIVAN, JR.
Attorney for Melvina Shotpouch, in her personal
capacity
P.O. Box 768
Sallisaw, OK 74955-0768

CERTIFICATE OF MAILING

I, Betty Outhier Williams, hereby certify that on the 12th day of June, 2000, I mailed a true and correct copy of the above and foregoing Stipulation of Dismissal to the following with proper postage thereon fully prepaid:

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Hayes & Magrini
P.O. Box 60140
Oklahoma City, OK 73146-0140

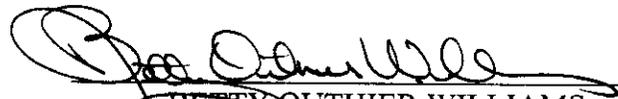
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Brewster, Shallcross & De Angelis
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Mr. Lee I. Levinson, Esq.
Mr. Ronald C. Kaufman, Esq.
Bodenhamer & Levinson
5310 E. 31st St., Suite 110
Tulsa, OK 74135


~~BETTY~~ OUTHIER WILLIAMS

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LAW FIRM**
ATTORNEYS AT LAW
P.O. BOX 57
TULSA, OK 74103-0057

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 13 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 99CV1076B(J)
)
BRAD R. GRINDSTAFF,)
)
Defendant.)

ENTERED ON DOCKET
DATE JUN 14 2000

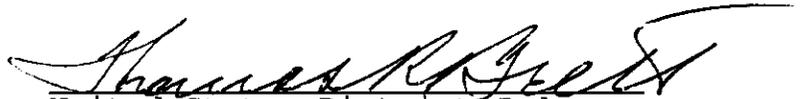
DEFAULT JUDGMENT

This matter comes on for consideration this 13th day of June, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Brad R. Grindstaff, appearing not.

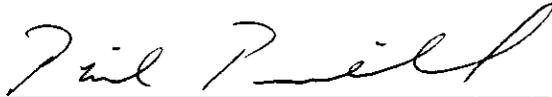
The Court being fully advised and having examined the court file finds that Defendant, Brad R. Grindstaff, was served with Summons and Complaint on April 18, 2000. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The 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, Brad R. Grindstaff, for the principal amount of \$19,455.83, plus accrued

interest of \$8,700.38, plus interest thereafter at the rate of 9 percent per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:



PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918)581-7463

PEP/llf

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

ACCOUNTABILITY BURNS,)
)
 Plaintiff,)
)
 vs.)
)
 VETERANS ADMINISTRATION,)
)
 Defendant.)

ENTERED ON DOCKET
DATE JUN 13 2000

No. 98-CV-249-K ✓

F I L E D

JUN 12 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

This Court entered an order on April 15, 1998, which denied plaintiff's motion for leave to file action under Title VII without payment of fees. By order of October 5, 1998, the Tenth Circuit Court of Appeals denied plaintiff's motion for writ of mandamus. Well over one year later, plaintiff has never paid his filing fee.

It is the Order of the Court that this action is dismissed without prejudice.

ORDERED this 12 day of June, 2000.



TERRY C. KEEN, CHIEF
UNITED STATES DISTRICT JUDGE

6

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

BEATRICE REESEY,)
)
 Plaintiff,)
)
 vs.)
)
 KMART CORPORATION,)
)
 Defendant.)

No. 99-CV-29-K

ENTERED ON DOCKET
DATE JUN 13 2000

FILED

JUN 12 2000

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 12 day of June, 2000.


TERRY C. KERN, Chief
UNITED STATES DISTRICT JUDGE

118

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 12 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

BETTIE L. NEELY,)
)
Plaintiff,)
)
v.)
)
KENNETH S. APFEL,)
Commissioner, Social)
Security Administration,)
)
Defendant.)

Case No. 99-CV-242-M

ENTERED ON DOCKET
DATE JUN 13 2000

ORDER

On February 8, 2000, this Court reversed the Commissioner's decision denying plaintiff's claim for Social Security disability benefits and remanded the case to the Commissioner for further action. No appeal was taken from this Judgment and the same is now final.

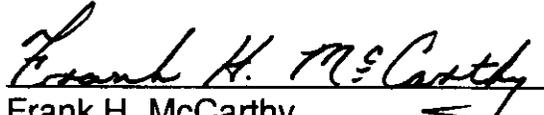
Pursuant to plaintiff's application for attorney fees under the EAJA, 28 U.S.C. § 2412(d), filed on May 10, 2000, and the defendant's response filed on June 9, 2000, the parties have agreed that an award in the amount of \$3,057.20 for attorney fees for all work done before the district court is appropriate.

WHEREFORE, IT IS ORDERED that plaintiff's counsel be awarded attorney's fees under the Equal Access To Justice Act in the amount of \$3,057.20. 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.*

19

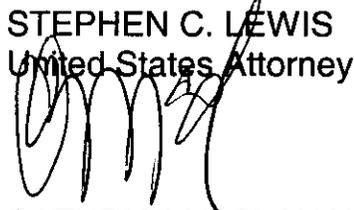
Bowen, 803 F.2d 575, 580 (10th Cir. 1986). This action is hereby dismissed.

It is so ORDERED this 12th day of June 2000.


Frank H. McCarthy
United States Magistrate Judge

SUBMITTED BY:

STEPHEN C. LEWIS
United States Attorney


CATHRYN McGLANAHAN OBA #14853
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809

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

ENTERED ON DOCKET
DATE JUN 13 2000

REVEREND MELVIN EASILEY,)
et al.,)
)
Plaintiffs,)
)
vs.)
)
NORRIS, a Dover Resources)
Company,)
)
)
Defendant.)

No. 99-CV-318-K ✓

F I L E D

JUN 12 2000 *PL*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

O R D E R

By order of July 9, 1999, the Court gave plaintiff thirty days in which to obtain local counsel as required by Local Rule 83.3(K). Almost one year has passed, and local counsel has not entered an appearance, nor has any further action been taken in the case.

It is the Order of the Court that this action is dismissed without prejudice.

ORDERED this 12 day of June, 2000.

Terry C. Kern
TERRY C. KERN, Chief
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 12 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CYNTHIA A. LEONE,)
)
Plaintiff,)
)
v.)
)
KENNETH S. APFEL,)
Commissioner, Social)
Security Administration,)
)
Defendant.)

Case No. 99-CV-403-M /

ENTERED ON DOCKET
DATE JUN 13 2000

ORDER

On February 17, 2000, this Court reversed the Commissioner's decision denying plaintiff's claim for Social Security disability benefits and remanded the case to the Commissioner for further action. No appeal was taken from this Judgment and the same is now final.

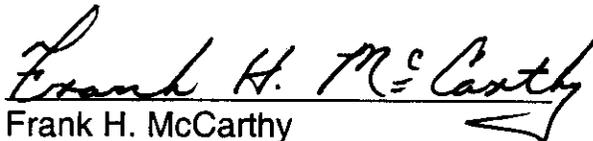
Pursuant to plaintiff's application for attorney fees under the EAJA, 28 U.S.C. § 2412(d), filed on May 17, 2000, and the defendant's response filed on June 9, 2000, the parties have agreed that an award in the amount of \$3,124.20 for attorney fees for all work done before the district court is appropriate.

WHEREFORE, IT IS ORDERED that plaintiff's counsel be awarded attorney's fees under the Equal Access To Justice Act in the amount of \$3,124.20. 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.*

19

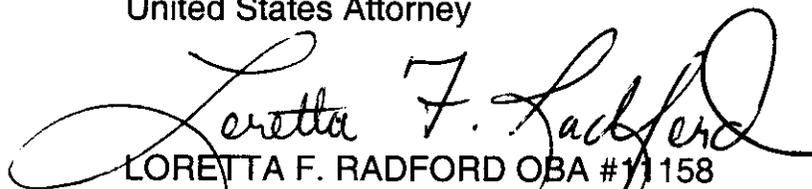
Bowen, 803 F.2d 575, 580 (10th Cir. 1986). This action is hereby dismissed.

It is so ORDERED this 12th day of June 2000.


Frank H. McCarthy
United States Magistrate Judge

SUBMITTED BY:

STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD OBA #11158
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809

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

MARIA FITZPATRICK, as parent)
and next friend of TIMOTHY)
FITZPATRICK, a minor)

Plaintiff,)

v.)

TULSA PUBLIC SCHOOLS, an)
Oklahoma political subdivision, and)
ANDREW WILSON, both in his)
individual capacity and as Dean of)
Students at Rogers High School,)

Defendants.)

ENTERED ON DOCKET
DATE JUN 13 2000

Case No. 99-CV-782-K (E)

FILED

JUN 12 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

By Order, filed May 24, 2000, the Court gave Plaintiff eleven days to show good cause for her failure to serve Defendant Andrew Wilson or face the dismissal of her claims against him. Plaintiff has failed to respond.

IT IS THEREFORE ORDERED that the above-captioned case is DISMISSED WITHOUT PREJUDICE.

ORDERED this 12 day of JUNE, 2000.


TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

individual liability.

Plaintiff concedes that he has failed to state a claim for which relief can be granted with respect to the ADA claim against Defendant John Gimpert. Accordingly, the Court grants Defendant Gimpert's motion to dismiss and dismisses the ADA claim against him.

With respect to the ADA claim against Defendant Deloitte & Touche, the Court finds that it has subject matter jurisdiction to hear the claim. Defendants correctly note that the filing and exhaustion of an administrative complaint is a jurisdictional requirement for the initiation of a discrimination suit. See, e.g., Robbins v. Jefferson County Sch. Dist. R-1, 186 F.3d 1253, 1257 (10th Cir. 1999); Seymore v. Shawver & Sons, Inc., 111 F.3d 794, 799 (10th Cir. 1997). However, the Supreme Court in Zipes v. Trans World Airlines, Inc., 455 U.S. 385 (1982), held "that filing a *timely* charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling." Id. at 393 (emphasis added). Thus, the Tenth Circuit has drawn a distinction between a timely filing, which is in the nature of a condition precedent, and a filing with the EEOC in the first instance, which is a jurisdictional threshold. See Jones v. Runyon, 91 F.3d 1398, 1400 n.1 (10th Cir. 1996) ("Nevertheless, even after Zipes our court has referred to the requirement of an EEOC filing (as opposed to a mere requirement of a timely filing) as a jurisdictional requirement."). Moreover, administrative exhaustion can be achieved even by the filing of an untimely EEOC complaint and the issuance of a right to sue letter. See id.¹ Thus, this Court has jurisdiction to hear Plaintiff's ADA

¹The cases cited by Defendants are not to the contrary. For example, in Barzellone v. City of Tulsa, 2000 WL 339213 (10th Cir. 2000) (unpublished), the Tenth Circuit affirmed the district court's grant of summary judgment to defendants based on the plaintiff's failure to meet the 300 day statute of limitations. The court did not base its ruling on a lack of subject matter jurisdiction. In Robbins v. Jefferson County Sch. Dist. R-1, 186 F.3d 1253, 1257 (10th Cir.

claim. Accordingly, Defendant Deloitte & Touche's motion to dismiss for lack of subject matter jurisdiction is hereby denied.²

In sum, the Court grants the motion to dismiss with respect to Defendant Gimpert and denies it with respect to Defendant Deloitte & Touche.

In addition, Plaintiff filed a Motion to Amend Complaint which seeks to add a claim for intentional infliction of emotional distress. Plaintiff did not properly sign his motion pursuant to Fed. R. Civ. P. 11(a). Upon being notified of this error, Plaintiff informed the Court that he no longer wished to pursue this motion. Therefore, the motion to amend is hereby stricken.

IT IS SO ORDERED.

This 9TH day of June, 2000.


Sven Erik Holmes
United States District Judge

1999), the court found that it had no subject matter jurisdiction because the plaintiff had abandoned her EEOC complaint and therefore had failed to exhaust her administrative remedies. In contrast to the plaintiff in Robbins, who abandoned her EEOC complaint, Plaintiff here filed a complaint and received a right to sue letter. Similarly, Seymore v. Shawver & Sons, Inc., 111 F.3d 794, 799 (10th Cir. 1997) involved the question of whether incidents not listed on the EEOC charge were properly before the court. An unrelated incident that was not included in an EEOC charge is an unexhausted claim, and a court has no jurisdiction to hear it. See id. at 800.

²The Court observes that this matter may well be subject to a motion for summary judgment if the procedural infirmities asserted by Defendants are incontrovertible.

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

RANDY D. GRIFFIN,)
)
 Plaintiff,)
)
 v.)
)
 STEELTEK, INC.,)
)
 Defendant.)

Case No. 97-CV-136-K (M)

ENTERED ON DOCKET
DATE JUN 13 2000

FILED

JUN 12 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

This action came on for consideration before the Court and jury, the Honorable Terry C. Kern, Chief District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered.

IT IS THEREFORE ORDERED that judgment be entered in favor of the Defendant, Steeltek, Inc., and against the Plaintiff, Randy D. Griffin.

ORDERED THIS 12 DAY OF JUNE, 2000.


TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

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

UNITED STATES OF AMERICA,)
on behalf of the Secretary of Veterans)
Affairs)
Plaintiff,)
vs.)
OLIVER J. BARKUS, a single person;)
COUNTY TREASURER, Tulsa County,)
Oklahoma;)
BOARD OF COUNTY COMMISSIONERS)
Tulsa County, Oklahoma,)
Defendants.)

ENTERED ON DOCKET
DATE JUN 13 2000

No. 99-CV-1007-B(M)

FILED
JUN 13 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Before the Court is the Motion for Summary Judgment filed by Defendants Oliver J. Barkus ("Barkus"); County Treasurer, Tulsa County, Oklahoma; and Board of County Commissioners, Tulsa County, Oklahoma (Docket #7). The Plaintiff, United States of America, on behalf of the Secretary of Veterans Affairs ("VA"), brings this action for an in rem judgment and foreclosure of a mortgage of certain real property located in the Northern District of Oklahoma. Defendant Board of County Commissioners for Tulsa County claims no right, title or interest to property. Defendant County Treasurer for Tulsa County asserts a first, prior and superior lien for unpaid, property tax for the tax year 1999 in the amount of \$340.00.

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); *Windon Third Oil & Gas v. FDIC*, 805 F.2d 342, 345 (10th Cir. 1986). In

Celotex, the Supreme Court stated:

[t]he 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.

477 U.S. at 322.

A party opposing a properly supported motion for summary judgment must offer evidence, in admissible form, of specific facts sufficient to raise a "genuine issue of material fact." *Anderson*, 477 U.S. at 247-48.

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. Thus, to defeat a summary judgment motion, the 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).

In essence, the inquiry for the Court is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 250. In its review, the Court must construe the evidence and inferences therefrom in a light most favorable to the nonmoving party. *Committee for the First Amendment v. Campbell*, 962 F.2d 1517, 1521 (10th Cir. 1992).

The following facts are undisputed.

1. Barkus, a veteran of the United States Army, purchased a home at 3206 North Garrison Avenue, Tulsa, Oklahoma in November 1996. The home was financed through Countrywide Home Loans ("Countrywide") with a mortgage note ("Note"). As security for the payment of the loan, Barkus executed and delivered a mortgage to Countrywide as a security interest in the

property. The Note was in the amount of \$42,840.00 payable in monthly installments, with interest at 8.750 percent per annum.

2. Both the Mortgage and Note were guaranteed by the VA under the loan guaranty program.
3. On April 28, 1998 the VA notified Countrywide that it was exercising its option to refund the loan under VA regulation 38 C.F.R. §36.4318 and instructed Countrywide to provide the VA with the Loan Guaranty Certificate marked "Canceled."
4. On July 28, 1998, Countrywide assigned the Mortgage and Note to the VA. Barkus and the VA entered into a Modification and Reamortization Agreement ("Agreement") which Barkus executed on August 17, 1998.
5. The applicable provision of the Agreement reads as follows:

It is further mutually agreed that the terms and conditions of said Mortgage Note and Mortgage other than as set out above and in this instrument shall be and remain in full force and effect and said Mortgage above described shall continue to secure the payment of said Mortgage Note as herein modified.

6. Seasons Mortgage ("Seasons") is the mortgage servicer for this Mortgage.
7. Since November 1998, Barkus has failed to make payments on his loan and therefore is in default under the Note.

The VA seeks summary judgment that Barkus has failed to comply with the terms and conditions of the Note, Mortgage, and Agreement, and thus the VA is entitled to immediate payment in full of the principal sum of \$48,722.36, plus administrative charges in the amount of \$696.45, penalty charges of \$350.24, accrued interest \$5,302.73 (as of April 1, 2000), and interest thereafter at a rate of 7.0 percent per annum until judgment, plus interest thereafter at legal rate until paid, and cost of this action accrued and accruing, and any other advances until judgment.

Barkus asserts the VA's failure to comply with the mortgage servicing requirements under 38 C.F.R. Part 36, which provide the mortgagor notice and opportunity to correct delinquencies in payment and avoid foreclosure, prevents the VA from foreclosing on the mortgage. He argues these procedural requirements were expressly incorporated in his original mortgage note with Countrywide in the following provision:

Regulations (38 C.F.R. Part 36) issued under the Department of Veterans Affairs ("V.A.") guaranteed Loan Authority (38 U.S.C. Chapter 37) and in effect on the date of loan closing shall govern the rights, duties, and liabilities of the parties to this loan and any provisions of the Note which are inconsistent with such regulations are hereby amended and supplemented to conform thereto.

This provision was not modified by the Agreement. These procedural protections, therefore, remain applicable to the assigned Note as the Agreement states "the terms and conditions of said Mortgage Note and Mortgage other than as set out above and in this instrument shall be and remain in full force and effect."

The VA asserts the mortgage servicing requirements of 38 C.F.R. Part 36 apply only to guaranteed loans and therefore are not applicable to the subject loan. Although the subject loan was originally guaranteed by the VA, when Countrywide initiated a foreclosure action due to Barkus's failure to make mortgage payments, the VA exercised its option to refund the loan and paid the guaranty to Countrywide. Thus, when Countrywide assigned the mortgage to the VA, the VA became the holder of a non-guaranteed mortgage. Accordingly, the alleged failure of Seasons, the VA's mortgage servicer, to comply with the cited regulations occurred after the loan had been refunded and was no longer guaranteed.

The Court concludes any alleged failure of the VA to comply with 38 C.F.R. Part 36 does not constitute an equitable defense to foreclosure which precludes summary judgment in this case. First, the subject loan was not guaranteed. Once the VA exercised its option to refund

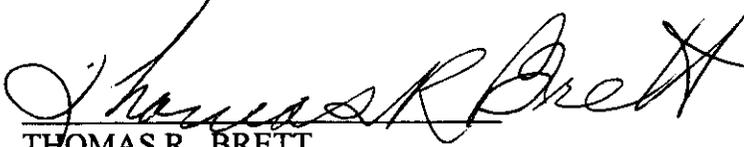
Defendant's mortgage, the loan was no longer guaranteed by the VA as it then became a direct loan. The subject guaranty ran only to the private lender, Countrywide. When the VA acted on its guaranty, it fulfilled its obligation through the guaranty provision of the loan. Accordingly, the VA instructed Countrywide to mark the loan guaranty certificate "canceled" when assigning the mortgage. Because 38 C.F.R. Part 36 applies only to guaranteed loans, it does not apply to the subject loan. Second, even if the loan been guaranteed, the regulations do not create an equitable defense to foreclosure actions. As Defendant correctly states, "there are several court of appeals decisions from other circuits denying relief to veteran borrowers who have raised the holder's failure to follow mortgage servicing requirements as an equitable defense to foreclosure." These courts have found there is no substantive right to avoid foreclosure based on the VA Act, handbook, or regulations. *See e.g., Rank v. Nimmo*, 677 F.2d 692 (9th Cir. 1982), *cert. denied*, 459 U.S. 907, 103 S.Ct. 210 (1982), *Bright v. Nimmo*, 756 F.2d 1513, 1515 (11th Cir. 1985), *First Family Mortgage Corp. of Fla. v. Earnest*, 851 F.2d 843, 845-846 (6th Cir.1988), *Simpson v. Cleland*, 640 F. 2d 1354, 1358-1359 (D.C. Cir. 1981), *United States v. Harvey*, 659 F.2d 62, 63 (5th Cir. 1981).

Barkus attempts to distinguish these cases, arguing the VA's duty to provide the servicing procedures of 38 C.F.R. Part 36 in this case arises out of contract, rather than the Act and its promulgated regulations. This argument, however, relies on a meaningless distinction. If the VA Act and regulations do not impose a duty on the VA to avoid foreclosure, a contract which simply incorporates the applicable regulations cannot. Absent a statutory or regulatory right to avoid foreclosure, failure to follow the servicing regulations is not a defense to this foreclosure action.

As Barkus has failed to raise a viable defense to the foreclosure, the Court grants the

motion for summary judgment. (Docket #7). The VA is to provide the Court with an appropriate judgment on or before June 16, 2000.

IT IS SO ORDERED, this 17th day of JUNE, 2000.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 12 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

SUN COMPANY, INC., (R & M), a
a Delaware corporation,

Plaintiffs,

vs.

Case No. 94-C-820-K

BROWNING-FERRIS, INC., a Delaware
corporation, successor in interest to Tulsa
Container Services, Inc.; et al.

Defendants.

ENTERED ON DOCKET

DATE JUN 13 2000

ORDER

NOW on this 12th day of June, 2000, comes on for hearing the Application for Attorney Fees for Group II Counsel which was filed by Terence P. Brennan, Liaison Counsel for the Group II Defendants¹ on March 22, 2000.

No objections have been filed with respect to said Application.

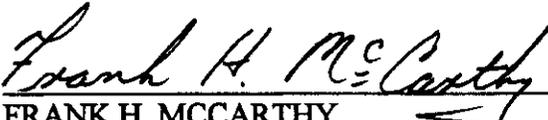
The Court finds that said Application is in compliance with the rules of this Court, that the fees and costs totaling \$2,560.18 set forth are reasonable and proper in all respects; and that said Application should be approved.

IT IS THEREFORE ORDERED that the above-referenced Application be and the same is

¹ Defendant Group II members include: Ark Wrecking Company of Oklahoma, Atlantic Richfield Company, Bankoff Oil Co., Inc., Beverage Products Corp., Borg Industrials Group, Inc. d/b/a American Container Services, Browning-Ferris, Inc., Consolidated Cleaning Service Co., Cowen Construction, Charles Forhan, d/b/a/ D & W Exterminating, Housing Authority of the City of Tulsa, National Tank Co., Oil Capital Trash Services, Inc., Ozark Mahoning Co., Pedrick Labs, John Doe d/b/a Pedrick Labs, Peevy Construction Co., Inc., Public Service Co. of Oklahoma, Steve Richey d/b/a Richey Refuse Service, City of Sand Springs, John D. Shipley, Monte Shipley, Shipley Refuse, Robert E. Sparks d/b/a Tulsa Industrial Service, Sun Chemical Corporation, Union Carbide Corp., and Waste Management of Oklahoma, Inc., successor to Tulsa Industrial Disposal Services, Weedin, Arthur (collectively referred to herein as "Defendants").

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hereby approved, and Liaison Counsel is hereby authorized and ordered to pay the same forthwith from the Group II Defendants' Liaison Counsel Trust Account.


FRANK H. MCCARTHY
UNITED STATES MAGISTRATE JUDGE

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

FILED
JUN 13 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUNE DICKENS)
)
 Plaintiff,)
)
 vs.)
)
 TARGET STORES INC.,)
)
 Defendant)

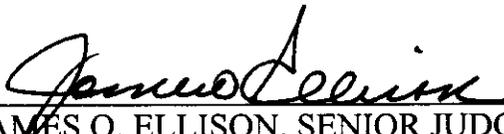
Case No. 99-CV-0563-E(J)

ENTERED ON DOCKET
DATE JUN 13 2000

JUDGMENT

In accord with the Order filed this date sustaining the Defendant's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendant, Target Stores, Inc. and against the Plaintiff, June Dickens.

IT IS SO ORDERED THIS 12th DAY OF June, 2000.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA **F I L E D**

MICHAEL D. CHAMPLAIN,)
)
 Plaintiff,)
)
 vs.)
)
 GLASS, MOLDERS, POTTERY,)
 PLASTICS & ALLIED WORKERS,)
 INTERNATIONAL UNION,)
)
 Defendant.)

JUN 13 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 99-CV-0385-E (E)

ENTERED ON DOCKET
DATE JUN 13 2000

ORDER

Now on this 12th day of June, 2000, upon application of counsel,
and for good cause shown, the above styled cause is hereby dismissed..

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

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

F I L E D

JUN 13 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUNE DICKENS)
)
 Plaintiff,)
)
 vs.)
)
 TARGET STORES INC.,)
)
 Defendant)

Case No. 99-CV-0563-E(J) /

ENTERED ON DOCKET
JUN 13 2000
DATE _____

ORDER

Now before the Court is the Motion for Summary Judgment (Docket #13) of the Defendant, Target Stores Inc., ("Target"). This dispute involves the question of whether Target violated the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.* when it terminated the employment of the Plaintiff, June Dickens ("Dickens").

BACKGROUND

Plaintiff is a former employee of Target who has narcolepsy, a sleep disorder. Plaintiff alleges that she is a person with a disability under the ADA, that Target failed to grant her request for a reasonable accommodation, and that Target terminated her employment because of her narcolepsy. Defendant asserts that the Plaintiff's ADA claim fails as a matter of law for the following reasons:

1. Plaintiff failed to timely file her Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"), a prerequisite

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for subject matter jurisdiction;¹

2. Plaintiff cannot establish that she has a disability under the ADA, a prerequisite for standing under the ADA;
3. Plaintiff admits that Target granted her request for an accommodation for her narcolepsy and thus, she cannot establish a denial of accommodation; and
4. Plaintiff presents no evidence supporting her assertion that Target's reason for her employment termination was a pretext for intentional discrimination based upon her narcolepsy.

DISCUSSION

A. Facts

The Court finds that the following material facts are not in dispute. Plaintiff began work at Target in 1985 as a part-time employee. In August 1987, Plaintiff became a full-time employee and became the Cashier Supervisor. In April 1989, Plaintiff was promoted to Human Resources Manager and remained in that position until the termination of her employment. Plaintiff worked at the Target store located on South Yale in Tulsa, Oklahoma.

Plaintiff suffers from narcolepsy, for which she has been treated, with the knowledge of the Defendant. Defendant's employee medical insurance program paid for portions of said treatment since 1994.

As Human Resources Manager, Plaintiff's core duties were to screen job applicants for subsequent interviews by department heads, hire employees with the approval of the department heads, conduct employee orientation, and to supervise the store's payroll,

¹The Defendant has presented to the Court a document titled "Charge of Discrimination" that is dated November 22, 1998 and would have been filed out of time. In response, the Plaintiff has submitted to the Court a document titled "Mail in information sheet for filing a charge of discrimination" which is dated March 1, 1998. While the Court notes that these are different document forms, the Plaintiff's document does raise an issue as to when the discrimination charge was filed. Therefore, this order resolves the case on its merits and does not decide whether the discrimination claim was filed within the proper time limits.

personnel, benefits, and training record keeping function.

All store executives, including the Plaintiff, were required to serve a regular rotation as the Leader on Duty and the Manager on Duty. The Leader on Duty had the responsibility for closing the store one night a week and the Manager on Duty worked a weekend rotation.

As Human Resources Manager, Plaintiff had three supervisors, Shirley Kongs, Ann Russo, and Sherri Phipps. Plaintiff's first supervisor was Store Manager, Shirley Kongs ("Kongs"). Under Kongs' supervision, the following areas of deficiencies in the Plaintiff's work were identified:

- a) In August 1990, Plaintiff completed a Pre-Review² wherein she listed the following as areas for improvement: 1) Follow-up on review timeliness; 2) Meeting deadlines; and 3) Dealing with conflict.
- b) In September 1990, Kongs listed the following areas as either not being attained by the Plaintiff or where improvement was needed: 1) Expense control; 2) Accident reduction; 3) Timeliness of paperwork; 4) Newsletter quality; 5) Follow-up; 6) Conflict Management; and 7) Organization habits.
- c) In March 1991, Plaintiff completed a Pre-Review wherein she listed the following as goals not attained or areas to improve: 1) Late reviews; 2) Improvement in follow-up; and 3) Conflict situations. Kongs listed the following areas as either not being attained by the Plaintiff or where improvement was needed: 1) Training administration; 2) Benefits administration; 3) Timeliness; 4) Skill Pay Participation; 5) Planning and organization; 6) Time management; 7) Conflict management; and 8) Assertiveness
- d) In Plaintiff's 1993 Performance Pre-Review, Plaintiff listed the following as areas where improvement was needed: 1) Housekeeping; and 2) Confidence. Kongs listed the following as areas where Plaintiff needed to improve: 1) Self-Confidence; 2) Planning and Organization; 3) Housekeeping Standards; 4) Guest Culture Support; and 5) Hiring Standards.
- e) In June 1993, Kongs documented a verbal warning given to the Plaintiff regarding the lack of timeliness in completing and filing a workers' compensation report.
- f) In the September 1993 Performance Review, Kongs listed the

² The "Pre-Review" is a section of the performance review form on which the executive details his or her own assessment of strengths and weaknesses .

following as opportunities missed or areas where improvement was needed: 1) Administrative control; 2) Timely completion of all paperwork; 3) Planning and organizational; 4) Leadership skills and visibility.

- g) In Plaintiff's 1994 Performance Review, the Plaintiff listed the following as opportunities missed or areas where she needed to improve: 1) Housekeeping; 2) Timeliness; 3) Paperwork Completion; 4) Enforcing Team Colors; and 5) Planning. Kongs listed the following as opportunities missed or areas where improvement was needed: 1) Team Color Enforcement; 2) Timeliness of paperwork; 3) Administrative excellence; 4) Office Organization; 5) Self-confidence; 6) Time Management and 7) Delegation and Follow-up.

While Kongs was Plaintiff's supervisor, she discussed with Plaintiff whether she was suited for the Human Resources Manager position due to the demands of the job. In that conversation, Kongs told the Plaintiff that she would be better off looking for another line of work, one with fewer deadlines and pressure. Plaintiff does not contend that Kongs had anything to do with her termination of employment from Target or that Kongs based any performance reviews on any medical problem Plaintiff may have had.

Kongs resigned her employment at Target in 1994. Plaintiff's next supervisor was Store Manager, Anne Russo ("Russo"). Under Russo's supervision, the following areas of deficiencies were identified:

- a) In Spring 1995, Plaintiff listed the following as opportunities missed or areas where she needed to improve: 1) Aggressiveness; and 2) Organization. Russo listed the following as opportunities missed or where improvement was needed: 1) Administration of reviews; 2) Communication with executive staff; 3) Planning strategically; 4) Store involvement with newsletter; 5) Being proactive; and 6) Developing people.

Plaintiff does not contend that any of Russo's criticisms of her performance were based on her medical problems.

After Ms. Russo transferred from the Yale Avenue Target store, Plaintiff reported to Store Manager, Sherri Phipps ("Phipps"). When Phipps took over as Store Manager, Russo informed her of the poor work performance of the Plaintiff and that Russo was preparing to

start the progressive disciplinary procedures on the Plaintiff. Phipps observed Plaintiff's work performance and concurred with Russo that her work performance warranted the implementation of the progressive disciplinary procedures.

Phipps, became aware of Plaintiff's narcolepsy when she became manager of the store in August, 1995. Plaintiff discussed her medical condition with Ms. Phipps from time to time, between fall of 1995 and the time of Plaintiff's request for a reasonable accommodation in October, 1997. Under Phipps' supervision, the following areas of deficiencies were identified:

- a) In Plaintiff's October 1995 Review, Phipps listed the following as opportunities missed or developmental needs: 1) Timely/Consistent hiring; 2) Timely training checklist; 3) Exit interview consistency; 4) Planning strategically; 5) Being proactive; and 6) Openness to learning. Plaintiff does not contend that this Review had anything to do with her narcolepsy.
- b) In December 1995, Plaintiff received a Phase I Warning Notice, the first step in a formal disciplinary procedure. The Warning Notice listed unsatisfactory job performance in the following areas: 1) Inaccuracy of wages; 2) Untimely benefit processing; 3) Incomplete, incorrect I-9s; 4) Untimely termination processing; 5) Non-involvement in training; 6) Untimely Good Neighbor reporting; 7) No ownership shown of clerical team
Plaintiff does not disagree with the suggested improvements that Phipps listed and does not contend that the Warning was motivated by her narcolepsy.
- c) In Spring of 1996, Phipps noted the following areas were either opportunities missed or developmental needs: 1) Organization skills; 2) Timely team member reviews; 3) Being proactive; 4) Planning strategically; 5) Communication
- d) In September 1996, Plaintiff received a Counseling Notice, the first step of a newly revised progressive disciplinary procedure. The Counseling Notice identified the following areas of unsatisfactory job performance: 1) Team member training; 2) Administrative functions; 3) Organization; 4) Good Neighbor Committee execution; 5) Newsletter execution.
- e) In the September 1996 Performance Review, Phipps noted the following areas as developmental needs: 1) Planning strategically; 2) Being proactive; 3) Openness to learning; 4) Developing people

- f) In March 1997, Phipps noted the same areas needed improvement: 1) Developing People; 2) Planning Strategically; 3) Being Proactive; 4) Organizational Skills.
- g) In March 1997, Plaintiff received a Written Warning, the second step of the revised progressive disciplinary procedure. The Written Warning listed the following as areas of unsatisfactory job performance: 1) Team member LPC training; 2) Administrative functions, (timeliness, follow-up); 3) Meeting store staffing needs in a timely manner; 4) Good Neighbor Committee execution; and 5) Newsletter execution and team recognition program.
- h) In August 1997, Plaintiff received a Final Warning, the last step in the progressive discipline procedure. The Final Warning listed the following as areas of unsatisfactory job performance: 1) Administrative functions; 2) Meeting store staffing needs in a timely manner; 3) Good Neighbor Committee; 4) Team members recognition/newsletter.

Phipps did not say anything to the Plaintiff to indicate that she was motivated by any disability of the Plaintiff and the Final Warning was given to the Plaintiff before the Plaintiff asked for an accommodation.

In September 1997, before Plaintiff asked for an accommodation, she talked to her family about leaving Target and getting another job. By letter dated October 1, 1997 to Store Manager Phipps, Plaintiff made a request for an accommodation for her narcolepsy. In the letter, Plaintiff requested a regular standard work schedule, with the same starting time each day, the same ending time each day, and the same work days of the week, Monday through Friday. Phipps' response to Plaintiff's request for an accommodation was to grant it, stating: "If that's what you need." Plaintiff was placed on a regular daytime schedule, Monday through Friday. This schedule remained in effect until Plaintiff's termination from employment.

Plaintiff's employment with Target was terminated effective December 5, 1997 and was due to her poor work performance.

Plaintiff's suffers from narcolepsy. Since her diagnosis in 1993, Plaintiff has been on medication and has had no side effects. Plaintiff admits that she is able to work. She does not know of any jobs for which she is trained and qualified that she cannot do because

motion, that narcolepsy would fall into one of those two categories.

The Court must now determine whether Dickens' impairment, narcolepsy, "substantially limit[ed] one or more of [her] major life activities." See 42 U.S.C. § 12102(2)(A); *Pack* at 1304. A "major life activity" is a basic activity that the average person in the general population can perform with little or no difficulty. Major life activities include, but are not limited to, "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i); Whether an activity is included under the category of "major life activity" depends on the significance of the activity. *Bragdon v. Abbott*, 524 U.S. 624, 638, 118 S.Ct. 2196, 2205, 141 L.Ed.2d 540 (1998) See also *Reeves v. Johnson Controls World Servs., Inc.*, 140 F.3d 144, 151 (2d Cir.1998) ("The term 'major life activit[y],' by its ordinary and natural meaning, directs us to distinguish between life activities of greater and lesser significance."). In deciding whether a particular activity is a "major life activity," the Court must determine whether that activity is significant within the meaning of the ADA, rather than whether that activity is important to the particular individual. *Colwell v. Suffolk County Police Dep't*, 158 F.3d 635, 642 (2d Cir.1998) See also *Bragdon*, 118 S.Ct. at 2204-05.

Dickens contends that her impairment substantially limits major life activities, but she never identifies which major life activities are limited. The only attempt to identify a major life activity is the following argument from Dickens' brief:

Plaintiff has trouble, in that she will suddenly fall asleep. Maybe working, maybe watching T.V., maybe driving, maybe while eating. (Plaintiff's Exhibit 15, Plaintiff depo., pp. 26, 27). Are these activities "major life activities"? Well, if you are walking and fall asleep, you are certainly affected, because you will fall down. Breathing is not affected, but if you fall asleep eating or dressing, you are certainly affected by the condition, so it does, *in Plaintiff's case* affect a major life activity. Several of them.

Dickens has failed to identify any major life activity that is limited by her narcolepsy. The 10th Circuit and other courts have determined that sleep is a major life activity. *Pack*, *supra* at 1305. Sleeping is a basic activity that the average person in the general population

of the narcolepsy. In fact, she began other employment approximately 10 days after her termination from Target and within a week or two, she was working full-time as well as overtime hours and continues to do so.

B. Summary Judgment Standard

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); *Windsor Third Oil & Gas v. FDIC*, 805 F.2d 342 (10th Cir. 1986). In *Celotex*, the court stated:

The plain language of Rule 56(c) mandates the entry of summary judgment... 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.

477 U.S. at 317 (1986). To survive a motion for summary judgment, the nonmovant "must establish that there is a genuine issue of material facts..." 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 moving party can demonstrate its entitlement beyond a reasonable doubt, summary judgment must be denied. *Norton v. Liddel*, 620 F.2d 1375, 1381 (10th Cir. 1980).

C. Requirements of the ADA

The ADA prohibits discrimination against a qualified individual with a disability, where such discrimination is because of the disability and it relates to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment. 42 U.S.C. §12112(a). Discrimination under the ADA includes "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified

individual with a disability who is an applicant or employee, unless ... the accommodation would impose an undue hardship...." 42 U.S.C. § 12112(b)(5)(A). A "qualified individual with a disability" is "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8).

To establish a claim under the ADA, the Plaintiff must show that: (1) she is a disabled person within the meaning of the ADA; (2) she is qualified, i.e., able to perform the essential functions of the job, with or without reasonable accommodation (which she must describe); and (3) Target discriminated against her in its employment decision (termination) because of her alleged disability. See *Doyal v. Oklahoma Heart, Inc.* 2000 WL 633239 (10th Cir. 2000), *Pack v. Kmart* 166 F.3d 1300, 1304, (10th Cir. 1999), *Siemon v. AT & T Corp.*, 117 F.3d 1173, 1175 (10th Cir.1997)

The ADA defines a "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment." 42 U.S.C. §12102(2). The requirement that a disability determination be made "with respect to the individual," commands that an individualized, case-by-case determination be made of whether a given impairment substantially limits a major life activity of the individual. *Pack, supra.*; *Sutton v. United Airlines*, 130 F.3d 893, 897 (10th Cir. 1997), cert granted 525 U.S. 1063 119 S.Ct 790, 142 L.Ed.2d 653 (1999).

Dickens alleged she was "disabled" within the meaning of subparagraph (A) because her narcolepsy is an impairment that substantially limits her major life activities. Therefore, Dickens is required to establish (1) that her narcolepsy is a "physical or mental impairment;" and (2) if her narcolepsy is an impairment, that it "substantially limits one or more of [her] major life activities." See 42 U.S.C. §12102(2)(A). The Court can find nothing in Target's briefs where it challenges the idea that narcolepsy is an "impairment". While the Court has been presented with no evidence as to whether narcolepsy would fall into the category of "physical impairment" or "mental impairment", the Court will assume, for the sake of this

can perform with little or no difficulty, similar to the major life activities of walking, seeing, hearing, speaking, breathing, learning, working, sitting, standing, lifting, and reaching. *Id.* See also *Colwell*, 158 F.3d at 643 The only evidence presently before the Court on this issue is that Dickens would have trouble staying awake and if she fell asleep, it could be for a minute or it could be for an hour. The evidence also shows that her Doctor had prescribed several medications over the years that have help her excessive daytime sleepiness. Dickens does not claim that her impairment limits her ability to sleep, but instead that it causes her to sleep too much. However, Dickens never presents the Court with any evidence about how her excessive sleepiness "substantially limits" an identified major life activity.

The Court must determine whether Dickens's impairment, narcolepsy "substantially limits" her in a major life activity. In order for a physical or mental impairment to be "substantially limiting," the individual must be:

- (i) Unable to perform a major life activity that the average person in the general population can perform; or
- (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

29 C.F.R. § 1630.2(j)(1).

In determining whether an individual is substantially limited in a major life activity, three factors should be considered: (1) the nature and severity of the impairment; (2) the duration or expected duration of the impairment; and (3) the permanent long term impact, or the expected permanent or long term impact of, or resulting from the impairment. 29 C.F.R. § 1630.2(j)(2); In addition, the Court must evaluate whether a physical or mental impairment is substantially limiting in a major life activity while taking into consideration any mitigating or corrective measures utilized by the individual, such as medications. *Sutton*, 130 F.3d at 902. Thus, in order to establish that she was substantially limited in the major life activity (which has not been identified), Dickens was required to establish that she was unable to perform the activity or was significantly restricted as to the condition, manner,

or duration of her ability to perform the activity as compared to the average person in the general population, taking into consideration the three factors and any mitigating or corrective measures. See 29 C.F.R. § 1630.2(j)(1)(i) and (ii); *Sutton*, 130 F.3d at 900-02. Dickens has not presented any evidence to the Court which would allow the court to make this determination in Dickens' favor.

While the evidence showed that Dickens had "excessive daytime sleepiness" there is no indication that her sleep problems were severe, long term, or had a permanent impact. Additionally, Dickens' doctor was able to lessen Dickens' excessive daytime sleepiness with medication which is a mitigating or corrective measure. Dickens testified that she is able to work and that there were no jobs for which she is trained and qualified that she could not do. Dickens failed to satisfy her burden to present evidence of her impairment and the extent to which the impairment limited her in some identified major life activity. Therefore, Target is entitled to summary judgment as a matter of law.³

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment is hereby granted.

Dated this 9th day of June, 2000.


JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

³Two other issues were raised in the Defendants Motion for Summary Judgment, i.e. (1) that Target had granted Dickens the accommodation that was requested and (2) that there was no evidence that the stated grounds for termination were a pretext for discrimination. The evidence clearly shows that when Dickens asked Target for a reasonable accommodation, it was granted. The evidence further shows that after granting the accommodation, Dickens work performance did not improve and Dickens was terminated on the same grounds for which she had been criticized on many annual performance reviews. Dickens argues that the grounds for termination were only a pretext, but Dickens does not submit any evidence to support her argument.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN 12 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

MARTIN J. DAVIS,

Plaintiff,

v.

KANSAS CITY FIRE & MARINE
INS. CO.,

Defendant.

Case No. 98-CV-0982-H

ENTERED ON DOCKET
DATE JUN 13 2000

CORRECTED REPORT AND RECOMMENDATION

The Court has referred to the undersigned for report and recommendation the notification of possible violation of Local Rule 16.3(E). Specifically, the undersigned was asked to conduct such proceedings as were necessary to determine if there has been a violation of the Local Rules and, if so, to recommend an appropriate course of conduct by the Court. (See Dkt. # 23.)

BACKGROUND

1. Plaintiff, Martin J. Davis ("Davis"), filed a Chapter 13 bankruptcy proceeding in United States Bankruptcy Court for the Northern District of Oklahoma. In re Davis, Case No. 97-02774-R (the "Bankruptcy Case").

2. Intervenors, Clesta and Jeff Darnaby ("Intervenors") were plaintiffs in a civil action filed in Tulsa County District Court, Case No. CJ-97-2997 (the "State Court Case"), wherein Intervenors claimed that Davis harmed the Intervenors during the course of attempting to provide psychological treatment to Clesta Darnaby.

3. Intervenors were unsecured creditors in the Bankruptcy Case. In an order entered in the Bankruptcy Case, the automatic bankruptcy stay was lifted to allow Intervenors to pursue the State Court Case to determine the amount, if any, of any liability Davis might have to Clesta

Darnaby.¹ It was further ordered that if, in the State Court Case, it was decided that Davis has a liability to Clesta Darnaby, she would be allowed to proceed to collect that amount only to the extent of any insurance coverage which Davis might have for such liability. (See Dkt. # 3, Ex. B.)

4. Davis filed this case seeking a declaration that the professional liability policy issued by Defendant, Kansas City Fire & Marine Insurance Company, provided coverage for the claims in the State Court Case.

5. This Court stayed this case pending disposition of the State Court Case. However, a settlement conference was ordered to be held, with notification to Davis' attorney in the State Court Case.

6. On December 30, 1999, a settlement conference was held under the auspices of this Court's settlement program, with the goal of attempting to resolve both the tort claims pending in the State Court Case and the coverage claims in this case. As part of the settlement process, the parties submitted settlement conference statements pursuant to the Settlement Conference Order. The settlement conference was conducted but settlement was not achieved.

7. On January 28, 2000, Davis filed a Motion to Reconsider or, In the Alternative, Vacate Order to Abstain [sic].² The Motion was filed not by Davis' counsel of record, but by his attorneys in the State Court Case. (See Dkt. # 15.) Appended to the motion was a copy of Intervenors' settlement conference statement.

¹ Although Intervenors were both named plaintiffs in the State Court Case, the order lifting the automatic stay related to Clesta Darnaby only.

² This Court never abstained. A stay of proceedings is not equivalent to abstention.

8. The settlement conference statement was also appended to motions filed in the Bankruptcy Case and the State Court Case.

9. Intervenors filed a motion to strike the motion to reconsider (Dkt. # 17) and a motion for sanctions (Dkt. # 18).

10. On February 8, 2000, Davis filed a notice of withdrawal of the motion to reconsider (Dkt. # 19). Based on the notice of withdrawal, this Court denied intervenors' motions as moot. (Dkt. # 20).

11. As a result of a jury verdict favorable to Davis in the State Court Case, a Stipulation of Dismissal was filed in this case on March 14, 2000 (Dkt. # 22).

12. In April 2000, this Court received notification that Local Rule 16.3(E) may have been violated.

REVIEW

The Settlement Conference Order entered in this case provides that settlement conference statements are to be submitted to the Adjunct Settlement Judge, to the undersigned, and to all counsel of record, and cautions:

They must not be filed.

* * *

Neither the settlement conference statements nor communications of any kind occurring during the settlement conference can be used by any party with regard to any aspect of the litigation or trial of the case. Strict confidentiality shall be maintained with regard to such communications by both the settlement judge and the parties.

* * *

Upon certification by the Settlement Judge or Adjunct Settlement Judge of circumstances showing non-compliance with this order, the assigned trial judge may take any corrective action permitted by law. Such action may include contempt proceedings and/or assessment of costs, expenses and attorney fees, together with any additional measures deemed by the court to be appropriate under the circumstances.

(See Dkt. # 12, ¶¶ 8, 9, 13) (emphasis in original).

The Local Rules of this District relating to confidentiality of the settlement process are statutory in origin:

Until such time as rules are adopted under chapter 131 of this title [28 U.S.C.A. § 2071 et seq.] providing for the confidentiality of alternative dispute resolution processes under this chapter [28 U.S.C.A. § 651 et seq.], each district court shall, by local rule adopted under section 2071(a), provide for the confidentiality of the alternative dispute resolution processes and to prohibit disclosure of confidential dispute resolution communications.

28 U.S.C. § 652(d). The Local Rules governing the settlement process include:

To encourage candor, the confidential nature of settlement discussions conducted under the auspices of a court-sponsored settlement conference will be absolutely respected by all participants, and strictly enforced by the court. . . . Any statement made in the context of the settlement conference will not constitute an admission and will not be used in any form in the litigation or trial of the case.

N.D. LR 16.3(E).

In the event a party, attorney, insurer, or indemnitor fails to comply with the settlement conference order or participate in good faith in any court-sponsored alternative dispute resolution proceeding, the settlement judge may certify such circumstances in writing to the assigned district court judge and recommend appropriate action. All parties shall be served with copies of the certification and be afforded an opportunity to respond. The court may then impose any remedial, compensatory, disciplinary, contempt or sanction measures it deems appropriate under the circumstances certified.

N.D. LR 16.3(J).

The undersigned set for hearing the issue of possible violation of the Local Rules. Steven E. Holden and Bruce A. McKenna were directed to attend (see Dkt. # 24) because, although they

have not entered an appearance in this case, they were Davis' counsel in the State Court Case, and they filed the offending pleadings.

Prior to the hearing, Davis' counsel filed a pleading entitled "Brief In Opposition to Intervenor's Motion for Sanctions" (Dkt. # 28). Although the motion for sanctions had already been denied as moot and the hearing was set on possible violation of Local Rules, the pleading was Bruce McKenna's explanation and purported justification for his conduct. In essence, he argues that: it was proper to attach the settlement conference statements to a motion filed of record because the settlement conference statement itself expressed an intent contrary to the bankruptcy order lifting the automatic stay; he "withdrew" the offending motion (although he acknowledges that it and the settlement conference statement are still of record in the public file and he has taken no steps to have it placed under seal);³ and he conferred with other members of the Bar known for extensive experience or for expertise in ethics, who unanimously concurred that the settlement conference statement itself expressed an improper intent.

The hearing on possible violation of the Local Rules was held on May 30, 2000, and a transcript is filed of record. Bruce McKenna appeared; Steven Holden did not.⁴ The filing of the settlement conference statement is a clear violation of Local Rule 16.3(E), which is absolute and

³ The motion and attachments (Dkt. # 15) are hereby ordered sua sponte to be placed under seal. The undersigned recommends that counsel request similar action in the Bankruptcy Case and the State Court Case.

⁴ Mr. Holden called the undersigned's chambers requesting that he not be required to appear, and stating that Mr. McKenna "wrote the motion and will be appearing." Mr. Holden's non-appearance is a side issue that would merely distract from the seriousness of the violation of the Local Rules. Suffice it to say Mr. Holden has since advised the undersigned that he believed he had permission not to appear. The point here is that the mere writing of the motion does not determine ultimate responsibility for violation of the Local Rules.

contemplates no exceptions.⁵ During the hearing, Mr. McKenna acknowledged that he was aware of Local Rule 16.3 when he attached the settlement conference statement to his motion. (Trans. at 7.) Mr. McKenna admitted that he did not file the motion without Mr. Holden's knowledge and approval. (Id. at 3.) The motion was filed by the firm Holden, Glendening & McKenna and appeared to be signed by Mr. McKenna. (See Dkt. # 15.) The brief in support of the motion was filed by the same firm and signed by Mr. McKenna. (See Dkt. # 16.) The notice of withdrawal of the motion was filed by the same firm and signed by Mr. McKenna. (See Dkt. # 19.)⁶ The undersigned proposes a finding that the filing of the settlement conference statement is a violation of Local Rule 16.3(E) by Steven E. Holden, Bruce A. McKenna, and the firm Holden, Glendening & McKenna.

The guarantee of confidentiality is essential to the proper functioning of a settlement conference program. See Clark v. Stapleton Corporation, 957 F.2d 745, (10th Cir. 1992); Lake Utopia Paper, Ltd. v. Connelly Containers, Inc., 608 F.2d 928, 930 (2d Cir. 1979). The filing of record of settlement conference statements is the ultimate breach of confidentiality. It is a further violation to use confidential settlement conference statements to gain an advantage in the litigation. Clearly, the motion to reconsider and appended settlement conference statement were utilized in an

⁵ There are ways to bring issues to the Court's attention without violating the Local Rules. Mr. McKenna acknowledged one such alternative at the hearing. (See Trans. at 12.)

⁶ The original Report and Recommendation filed June 9, 2000 may have incorrectly identified the signators to these pleadings because it appears that someone other than Mr. McKenna signed Mr. McKenna's name to the motion to reconsider, which caused confusion as to which signature was his. The signator to the motion to reconsider remains a mystery.

attempt to persuade this Court to lift its stay in this case and proceed to determine the coverage issues in the event of an adverse jury verdict in the State Court Case.⁷

If participants in the settlement process cannot rely on the confidentiality of what occurs in the process, and must wonder when their statements will be used for an litigation advantage,

counsel of necessity will feel constrained to conduct themselves in a cautious, tight-lipped, non-committal manner more suitable to poker players in a high-stakes game than to adversaries attempting to arrive at a just resolution of a civil dispute. This atmosphere if allowed to exist would surely destroy the effectiveness of a program which has led to settlements . . . and the simplification of issues

Lake Utopia, 608 F.2d at 930. By divulging and using confidential information obtained as a result of this Court's settlement process, counsel have undermined the willingness of future participants to speak candidly. The undersigned proposes a finding that the confidentiality of the settlement process has been compromised.

It is not only the filing and use of the settlement conference statement in this case which leads to this conclusion; the filing of the statement in two related cases, the Bankruptcy Case and the State Court Case, are violations of the prohibition against use of confidential statements "in the litigation." N.D. LR 16.3(E). Those two cases are so closely related to this case as to be part of "the litigation." The undersigned proposes a finding that all three public filings constitute a violation of Local Rule 16.3(E).

The Court requested the undersigned to recommend an appropriate course of conduct by the Court. Federal Rule of Civil Procedure 16(a) and (f) authorizes the district court to impose just sanctions "if a party or party's attorney fails to participate [in a settlement conference] in good faith."

⁷ The undersigned notes that the motion to reconsider was filed January 28, 2000; the jury in the State Court Case returned its verdict on February 11, 2000.

Fed. R. Civ. P. 16(f). This Court is authorized by Local Rule 16.3(J) and the Settlement Conference Order (Dkt. # 12, ¶ 13) to impose sanctions or other measures it deems appropriate under the circumstances. See Smith v. Northwest Financial Acceptance, Inc., 129 F.3d 1408, 1419 (10th Cir. 1997).

A well-functioning settlement program is essential to the efficient administration of justice in the federal court system. This District has dedicated a considerable amount of its judicial resources to developing an effective and efficient settlement program. The confidentiality requirements of the Local Rules and the Settlement Conference Order are absolutely necessary to ensure the effectiveness of the program. Violations of those requirements will not be condoned. The undersigned recommends that any course of conduct be designed to deter similar conduct in the future, restore respect for this Court's orders, and repair the damage caused to the integrity of the Court settlement program caused by counsel's action.

Mindful of these goals, the undersigned hereby recommends that the Court impose the following as sanctions for violation of the confidentiality requirements in the Local Rules and the Settlement Conference Order:

1. Steven E. Holden, Bruce A. McKenna, and the firm Holden, Glendening & McKenna be found to have engaged in sanctionable conduct;
2. This Report and Recommendation be published as public notice that this conduct is unacceptable and to further serve as a readily accessible public record should such conduct be repeated;
3. This Report and Recommendation be circulated to all judges of this Court to put them on notice of the conduct of counsel; and

4. Steven E. Holden, Bruce A. McKenna, and the firm Holden, Glendening & McKenna, be required to make a contribution to the Tulsa County Bar Association in the aggregate amount of \$1500 (\$500 per filing) to be used in connection with a Continuing Legal Education Program.

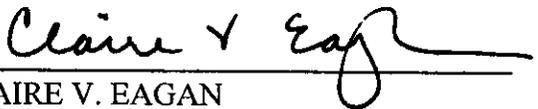
CONCLUSION

Based on the foregoing, the undersigned proposes findings that Local Rule 16.3(E) was violated by Steven E. Holden, Bruce A. McKenna, and the firm Holden, Glendening & McKenna, that the confidentiality of the settlement process has been compromised, and that all three public filings violate Local Rule 16.3(E). The undersigned recommends a course of action as outlined above. The undersigned orders that the motion to reconsider and attachments (Dkt. # 15) be placed under seal by the Clerk of this Court.

OBJECTIONS

The District Judge assigned to this case will conduct a *de novo* review of the record and determine whether to adopt or revise this Report and Recommendation or whether to recommit the matter to the undersigned. As part of the *de novo* review, the District Judge will consider the parties' written objections to the Report and Recommendation. A party wishing to file objections must file them with the Clerk of the District Court within ten days after being served with a copy of the Report and Recommendation. See 28 U.S.C. § 636(b)(1); see also Fed. R. Civ. P. 72(b). **The failure to file written objections may bar the party failing to object from appealing any of the factual or legal findings in this Report and Recommendation that are accepted or adopted by the District Court.** See *Thomas v. Arn*, 474 U.S. 140 (1985); *Haney v. Addison*, 175 F.3d 1217 (10th Cir. 1999).

Dated this 12th day of June, 2000.



CLAIRE V. EAGAN
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

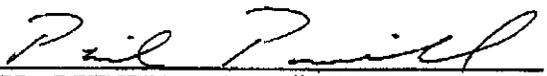
The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the

13th Day of June, 2000.
C. Patel, Deputy Clerk

interest of \$20,741.62, plus interest thereafter at the rate of 11 percent per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/llf

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS C. JEFFERY,

Defendant.

ENTERED ON DOCKET

DATE JUN 12 2000

No. 99CV0957K(M)

FILED

JUN 09 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

DEFAULT JUDGMENT

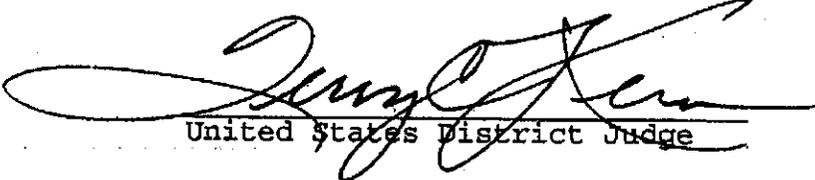
This matter comes on for consideration this 9 day of June, 2000, the Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Thomas C. Jeffery, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Thomas C. Jeffery, was served with Summons and Complaint on February 9, 2000. 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, Thomas C. Jeffery, for the principal amount of \$4,029.15, plus accrued

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interest of \$2,448.66, plus administrative charges in the amount of \$10.42, plus interest thereafter at the rate of 8 percent per annum until judgment, plus filing fees in the amount of \$150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.


United States District Judge

Submitted By:


PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

PEP/llf

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

JAMES MONFORT,
Plaintiff,
vs.
OMNICARE, INC.,
Defendant.

ENTERED ON DOCKET
DATE JUN 12 2000

No. 99-CV-413-K ✓

FILED
JUN 09 2000

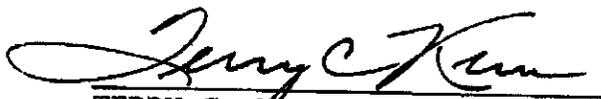
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

On May 1, 2000, Magistrate Judge Joyner entered his Report and Recommendation, The Magistrate Judge recommended that the motion of the defendants to dismiss its counterclaim without prejudice be granted and that plaintiff's motion for fees and costs be denied. No objection has been filed to the Report and Recommendation and the ten-day time limit of Federal Rule of Civil Procedure 72(b) has passed. The Court has also independently reviewed the Report and Recommendation and sees no reason to modify it.

It is the Order of the Court that the Report and Recommendation of the Magistrate Judge (#32) is hereby AFFIRMED and adopted as the Order of the Court.

ORDERED this 9 day of June, 2000.



TERRY C. VERN, Chief
UNITED STATES DISTRICT JUDGE

45

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN -9 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

PAULETTE STRAND o/b/o)
WILLIAM STRAND, deceased,)
)
Plaintiff,)
)
v.)
)
KENNETH S. APFEL,)
Commissioner, Social)
Security Administration,)
)
Defendant.)

Case No. 98-CV-394-EA ✓

ENTERED ON DOCKET

DATE JUN 12 2000

ORDER

On March 7, 2000, this Court reversed the Commissioner's decision denying plaintiff's claim for Social Security disability benefits and remanded the case to the Commissioner for further action. No appeal was taken from this Judgment and the same is now final.

Pursuant to plaintiff's application for attorney fees under the EAJA, 28 U.S.C. § 2412(d), filed on May 23, 2000, and the defendant's response filed on June 7, 2000, the parties have agreed that an award in the amount of \$3,131.25 for attorney fees and \$167.60 as costs for all work done before the district court is appropriate.

WHEREFORE, IT IS ORDERED that plaintiff's counsel be awarded attorney's fees under the Equal Access To Justice Act in the amount of \$3,131.25 for attorney fees and \$167.70 as costs. 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

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to plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986). This action is hereby dismissed.

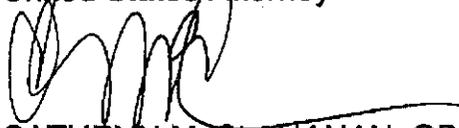
It is so ORDERED this 9th day of June 2000.

Claire V Eagan

CLAIRE V. EAGAN
United States Magistrate Judge

SUBMITTED BY:

STEPHEN C. LEWIS
United States Attorney



CATHRYN McCLAHANAN, OBA #14853
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809

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

MICHELLE MAJORS,)
)
Plaintiff,)
)
v.)
)
ARTHUR KNOCHE, and)
GRAPHIC ELECTRONICS, INC.,)
)
Defendants.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 99 CV0603E(J)

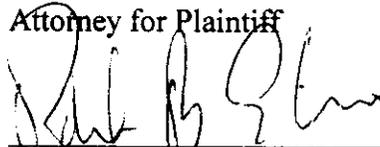
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JOINT STIPULATION FOR DISMISSAL WITH PREJUDICE

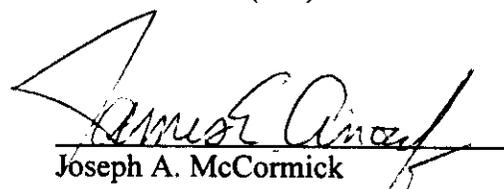
The Plaintiff, Michelle Majors, and the Defendants, Arthur Knoche and Graphic Electronics, Inc., jointly stipulate and agree that this case be dismissed with prejudice, each party to bear their own costs, expenses and attorneys' fees.

Attorney for Plaintiff


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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

JUN - 9 2000

MARTIN J. DAVIS,

Plaintiff,

v.

KANSAS CITY FIRE & MARINE
INS. CO.,

Defendant.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Case No. 98-CV-0982-H

ENTERED ON DOCKET

DATE JUN 12 2000

REPORT AND RECOMMENDATION

The Court has referred to the undersigned for report and recommendation the notification of possible violation of Local Rule 16.3(E). Specifically, the undersigned was asked to conduct such proceedings as were necessary to determine if there has been a violation of the Local Rules and, if so, to recommend an appropriate course of conduct by the Court. (See Dkt. # 23.)

BACKGROUND

1. Plaintiff, Martin J. Davis ("Davis"), filed a Chapter 13 bankruptcy proceeding in United States Bankruptcy Court for the Northern District of Oklahoma. In re Davis, Case No. 97-02774-R (the "Bankruptcy Case").

2. Intervenors, Clesta and Jeff Darnaby ("Intervenors") were plaintiffs in a civil action filed in Tulsa County District Court, Case No. CJ-97-2997 (the "State Court Case"), wherein Intervenors claimed that Davis harmed the Intervenors during the course of attempting to provide psychological treatment to Clesta Darnaby.

3. Intervenors were unsecured creditors in the Bankruptcy Case. In an order entered in the Bankruptcy Case, the automatic bankruptcy stay was lifted to allow Intervenors to pursue the State Court Case to determine the amount, if any, of any liability Davis might have to Clesta

Darnaby.¹ It was further ordered that if, in the State Court Case, it was decided that Davis has a liability to Clesta Darnaby, she would be allowed to proceed to collect that amount only to the extent of any insurance coverage which Davis might have for such liability. (See Dkt. # 3, Ex. B.)

4. Davis filed this case seeking a declaration that the professional liability policy issued by Defendant, Kansas City Fire & Marine Insurance Company, provided coverage for the claims in the State Court Case.

5. This Court stayed this case pending disposition of the State Court Case. However, a settlement conference was ordered to be held, with notification to Davis' attorney in the State Court Case.

6. On December 30, 1999, a settlement conference was held under the auspices of this Court's settlement program, with the goal of attempting to resolve both the tort claims pending in the State Court Case and the coverage claims in this case. As part of the settlement process, the parties submitted settlement conference statements pursuant to the Settlement Conference Order. The settlement conference was conducted but settlement was not achieved.

7. On January 28, 2000, Davis filed a Motion to Reconsider or, In the Alternative, Vacate Order to Abstain [sic].² The Motion was filed not by Davis' counsel of record, but by his attorneys in the State Court Case. (See Dkt. # 15.) Appended to the motion was a copy of Intervenors' settlement conference statement.

¹ Although Intervenors were both named plaintiffs in the State Court Case, the order lifting the automatic stay related to Clesta Darnaby only.

² This Court never abstained. A stay of proceedings is not equivalent to abstention.

8. The settlement conference statement was also appended to motions filed in the Bankruptcy Case and the State Court Case.

9. Intervenors filed a motion to strike the motion to reconsider (Dkt. # 17) and a motion for sanctions (Dkt. # 18).

10. On February 8, 2000, Davis filed a notice of withdrawal of the motion to reconsider (Dkt. # 19). Based on the notice of withdrawal, this Court denied intervenors' motions as moot. (Dkt. # 20).

11. As a result of a jury verdict favorable to Davis in the State Court Case, a Stipulation of Dismissal was filed in this case on March 14, 2000 (Dkt. # 22).

12. In April 2000, this Court received notification that Local Rule 16.3(E) may have been violated.

REVIEW

The Settlement Conference Order entered in this case provides that settlement conference statements are to be submitted to the Adjunct Settlement Judge, to the undersigned, and to all counsel of record, and cautions:

They must not be filed.

* * *

Neither the settlement conference statements nor communications of any kind occurring during the settlement conference can be used by any party with regard to any aspect of the litigation or trial of the case. Strict confidentiality shall be maintained with regard to such communications by both the settlement judge and the parties.

* * *

Upon certification by the Settlement Judge or Adjunct Settlement Judge of circumstances showing non-compliance with this order, the assigned trial judge may take any corrective action permitted by law. Such action may include contempt proceedings and/or assessment of costs, expenses and attorney fees, together with any additional measures deemed by the court to be appropriate under the circumstances.

(See Dkt. # 12, ¶¶ 8, 9, 13) (emphasis in original).

The Local Rules of this District relating to confidentiality of the settlement process are statutory in origin:

Until such time as rules are adopted under chapter 131 of this title [28 U.S.C.A. § 2071 et seq.] providing for the confidentiality of alternative dispute resolution processes under this chapter [28 U.S.C.A. § 651 et seq.], each district court shall, by local rule adopted under section 2071(a), provide for the confidentiality of the alternative dispute resolution processes and to prohibit disclosure of confidential dispute resolution communications.

28 U.S.C. § 652(d). The Local Rules governing the settlement process include:

To encourage candor, the confidential nature of settlement discussions conducted under the auspices of a court-sponsored settlement conference will be absolutely respected by all participants, and strictly enforced by the court. . . . Any statement made in the context of the settlement conference will not constitute an admission and will not be used in any form in the litigation or trial of the case.

N.D. LR 16.3(E).

In the event a party, attorney, insurer, or indemnitor fails to comply with the settlement conference order or participate in good faith in any court-sponsored alternative dispute resolution proceeding, the settlement judge may certify such circumstances in writing to the assigned district court judge and recommend appropriate action. All parties shall be served with copies of the certification and be afforded an opportunity to respond. The court may then impose any remedial, compensatory, disciplinary, contempt or sanction measures it deems appropriate under the circumstances certified.

N.D. LR 16.3(J).

The undersigned set for hearing the issue of possible violation of the Local Rules. Steven E. Holden and Bruce A. McKenna were directed to attend (see Dkt. # 24) because, although they

have not entered an appearance in this case, they were Davis' counsel in the State Court Case, and they filed the offending pleadings.

Prior to the hearing, Davis' counsel filed a pleading entitled "Brief In Opposition to Intervenor's Motion for Sanctions" (Dkt. # 28). Although the motion for sanctions had already been denied as moot and the hearing was set on possible violation of Local Rules, the pleading was Bruce McKenna's explanation and purported justification for his conduct. In essence, he argues that: it was proper to attach the settlement conference statements to a motion filed of record because the settlement conference statement itself expressed an intent contrary to the bankruptcy order lifting the automatic stay; he "withdrew" the offending motion (although he acknowledges that it and the settlement conference statement are still of record in the public file and he has taken no steps to have it placed under seal);³ and he conferred with other members of the Bar known for extensive experience or for expertise in ethics, who unanimously concurred that the settlement conference statement itself expressed an improper intent.

The hearing on possible violation of the Local Rules was held on May 30, 2000, and a transcript is filed of record. Bruce McKenna appeared; Steven Holden did not.⁴ The filing of the settlement conference statement is a clear violation of Local Rule 16.3(E), which is absolute and

³ The motion and attachments (Dkt. # 15) are hereby ordered sua sponte to be placed under seal. The undersigned recommends that counsel request similar action in the Bankruptcy Case and the State Court Case.

⁴ Mr. Holden called the undersigned's chambers requesting that he not be required to appear, and stating that Mr. McKenna "wrote the motion and will be appearing." Mr. Holden's non-appearance is a side issue that would merely distract from the seriousness of the violation of the Local Rules. Suffice it to say Mr. Holden has since advised the undersigned that he believed he had permission not to appear. The point here is that the mere writing of the motion does not determine ultimate responsibility for violation of the Local Rules.

contemplates no exceptions.⁵ During the hearing, Mr. McKenna acknowledged that he was aware of Local Rule 16.3 when he attached the settlement conference statement to his motion. (Trans. at 7.) Mr. McKenna admitted that he did not file the motion without Mr. Holden's knowledge and approval. (Id. at 3.) The motion was filed by the firm Holden, Glendening & McKenna and signed by Mr. McKenna. (See Dkt. # 15.) The brief in support of the motion was filed by the same firm and signed by Mr. Holden. (See Dkt. # 16.) The notice of withdrawal of the motion was filed by the same firm and signed by Mr. Holden. (See Dkt. # 19.) The undersigned proposes a finding that the filing of the settlement conference statement is a violation of Local Rule 16.3(E) by Steven E. Holden, Bruce A. McKenna, and the firm Holden, Glendening & McKenna.

The guarantee of confidentiality is essential to the proper functioning of a settlement conference program. See Clark v. Stapleton Corporation, 957 F.2d 745, (10th Cir. 1992); Lake Utopia Paper, Ltd. v. Connelly Containers, Inc., 608 F.2d 928, 930 (2d Cir. 1979). The filing of record of settlement conference statements is the ultimate breach of confidentiality. It is a further violation to use confidential settlement conference statements to gain an advantage in the litigation. Clearly, the motion to reconsider and appended settlement conference statement were utilized in an attempt to persuade this Court to lift its stay in this case and proceed to determine the coverage issues in the event of an adverse jury verdict in the State Court Case.⁶

If participants in the settlement process cannot rely on the confidentiality of what occurs in the process, and must wonder when their statements will be used for an litigation advantage,

⁵ There are ways to bring issues to the Court's attention without violating the Local Rules. Mr. McKenna acknowledged one such alternative at the hearing. (See Trans. at 12.)

⁶ The undersigned notes that the motion to reconsider was filed January 28, 2000; the jury in the State Court Case returned its verdict on February 11, 2000.

counsel of necessity will feel constrained to conduct themselves in a cautious, tight-lipped, non-committal manner more suitable to poker players in a high-stakes game than to adversaries attempting to arrive at a just resolution of a civil dispute. This atmosphere if allowed to exist would surely destroy the effectiveness of a program which has led to settlements . . . and the simplification of issues

Lake Utopia, 608 F.2d at 930. By divulging and using confidential information obtained as a result of this Court's settlement process, counsel have undermined the willingness of future participants to speak candidly. The undersigned proposes a finding that the confidentiality of the settlement process has been compromised.

It is not only the filing and use of the settlement conference statement in this case which leads to this conclusion; the filing of the statement in two related cases, the Bankruptcy Case and the State Court Case, are violations of the prohibition against use of confidential statements "in the litigation." N.D. LR 16.3(E). Those two cases are so closely related to this case as to be part of "the litigation." The undersigned proposes a finding that all three public filings constitute a violation of Local Rule 16.3(E).

The Court requested the undersigned to recommend an appropriate course of conduct by the Court. Federal Rule of Civil Procedure 16(a) and (f) authorizes the district court to impose just sanctions "if a party or party's attorney fails to participate [in a settlement conference] in good faith." Fed. R. Civ. P. 16(f). This Court is authorized by Local Rule 16.3(J) and the Settlement Conference Order (Dkt. # 12, ¶ 13) to impose sanctions or other measures it deems appropriate under the circumstances. See Smith v. Northwest Financial Acceptance, Inc., 129 F.3d 1408, 1419 (10th Cir. 1997).

A well-functioning settlement program is essential to the efficient administration of justice in the federal court system. This District has dedicated a considerable amount of its judicial

resources to developing an effective and efficient settlement program. The confidentiality requirements of the Local Rules and the Settlement Conference Order are absolutely necessary to ensure the effectiveness of the program. Violations of those requirements will not be condoned. The undersigned recommends that any course of conduct be designed to deter similar conduct in the future, restore respect for this Court's orders, and repair the damage caused to the integrity of the Court settlement program caused by counsel's action.

Mindful of these goals, the undersigned hereby recommends that the Court impose the following as sanctions for violation of the confidentiality requirements in the Local Rules and the Settlement Conference Order:

1. Steven E. Holden, Bruce A. McKenna, and the firm Holden, Glendening & McKenna be found to have engaged in sanctionable conduct;
2. This Report and Recommendation be published as public notice that this conduct is unacceptable and to further serve as a readily accessible public record should such conduct be repeated;
3. This Report and Recommendation be circulated to all judges of this Court to put them on notice of the conduct of counsel; and
4. Steven E. Holden, Bruce A. McKenna, and the firm Holden, Glendening & McKenna, be required to make a contribution to the Tulsa County Bar Association in the aggregate amount of \$1500 (\$500 per filing) to be used in connection with a Continuing Legal Education Program.

CONCLUSION

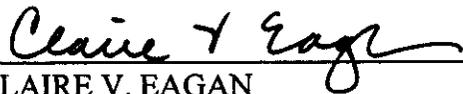
Based on the foregoing, the undersigned proposes findings that Local Rule 16.3(E) was violated by Steven E. Holden, Bruce A. McKenna, and the firm Holden, Glendening & McKenna, that the confidentiality of the settlement process has been compromised, and that all three public filings violate Local Rule 16.3(E). The undersigned recommends a course of action as outlined

above. The undersigned orders that the motion to reconsider and attachments (Dkt. # 15) be placed under seal by the Clerk of this Court.

OBJECTIONS

The District Judge assigned to this case will conduct a *de novo* review of the record and determine whether to adopt or revise this Report and Recommendation or whether to recommit the matter to the undersigned. As part of the *de novo* review, the District Judge will consider the parties' written objections to the Report and Recommendation. A party wishing to file objections must file them with the Clerk of the District Court within ten days after being served with a copy of the Report and Recommendation. See 28 U.S.C. § 636(b)(1); see also Fed. R. Civ. P. 72(b). **The failure to file written objections may bar the party failing to object from appealing any of the factual or legal findings in this Report and Recommendation that are accepted or adopted by the District Court.** See Thomas v. Arn, 474 U.S. 140 (1985); Haney v. Addison, 175 F.3d 1217 (10th Cir. 1999).

Dated this 9th day of June, 2000.



CLAIRE V. EAGAN
UNITED STATES MAGISTRATE JUDGE