

Case No. 20-337

Supreme Court of the United States

ROSEMARY ANN LYNN,  
Petitioner,

v.

ANDREW GEORGE BROWN, III, et al.

On Petition for Writ of Certiorari

BRIEF IN OPPOSITION

On behalf of Andrew George Brown III; Trust Company of  
Oklahoma and its employees Lesa Creveling, Melissa  
Taylor and Emily Crain; Purview Life and its employees  
Mary Jean Bagwell-Hendershott and Susan Boyd;  
Kimberly Biedler Schutz; Randall Allen Gill; and Robyn  
Owens

Randall A. Gill, Oklahoma Bar Assoc. #10309  
2512 East 21st Street  
Tulsa, Oklahoma 74114-1706  
(918) 747-1958  
[randall@gillfirm.law](mailto:randall@gillfirm.law)

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## QUESTIONS PRESENTED

1. Whether an important question of law within the scope of U.S. Supreme Court Rule 10 has been presented by Rosemary Lynn to warrant the granting of petition for writ for certiorari.

2. Whether the U.S. District Court for the Northern District of Oklahoma has subject matter jurisdiction to hear the complaints filed therein by Rosemary Lynn.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT  
RULE 29.6

1. Regarding Trust Company of Oklahoma, there is no parent company or publicly held company owning 10% of or more of the company's stock.
2. Regarding Purview Life, there is no parent company or publicly held company owning 10% of or more of the company's stock.

## OPINIONS ENTERED BY LOWER COURTS

1. June 25, 2019 Dismissal and Opinion and Order entered by the U.S. District Court for the Northern District of Oklahoma in Case No. 4:19-CV-00331-CVE-JFJ;

2. June 26, 2019 Dismissal and Opinion and Order entered by the U.S. District Court for the Northern District of Oklahoma in Case No. 4:19-CV-00332-CVE-JFJ; and

3. February 7, 2020 Order and Judgment entered by the Tenth Circuit Court of Appeals in case No. 19-5062 (D.C. No. 4:19-CV-00331-CVE-JFJ)(N.D. Okla.) and case No. 19-5063 (D.C. No. 4:19-CV-00332-CVE-JFJ)(N.D. Okla.).

## STATEMENT OF BASIS FOR JURISDICTION

1. This Court has jurisdiction to hear the petition for writ seeking appeal of the Tenth Circuit Court of Appeal's order affirming the U.S. District Court for the Northern of Oklahoma's dismissal of Rosemary Lynn's complaints for lack of subject matter jurisdiction, pursuant to 28 U.S.C.A. §1254.

## STATUTES INVOLVED IN THE CASE

1. 28 U.S.C. §1331
2. 28 U.S.C. §1332
3. 28 U.S.C. §1254
4. Title 30 of the Oklahoma Statutes

## STATEMENT OF THE CASE

1. Audrey Brown, the then Ward under guardianship in the case of *In re the Matter of the Guardianship of Audrey Louise Brown*, PG-2017-800, pending in the District Court of Tulsa, State of Oklahoma (the “Guardianship action”), who is now deceased (“Audrey”), suffered a traumatic medical event on August 7, 2017, which resulted in a major break in her arm and a head injury. *See* Respondent’s Appendix at 1, Neuropsychology Assessment Report of Audrey Louise Brown (“Neuropsychology Report”).

2. Audrey was hospitalized at that time and then readmitted on August 11, 2017 for adult failure to thrive, cognitive communication deficits, muscle wasting and atrophy, and systemic inflammatory response syndrome among other things. Neuropsychology Report, App. 1.

3. Audrey suffered from major neurocognitive disorder. She was not able to receive and evaluate information effectively and accurately and make reasonable decisions. She was not able to determine the meaning of a written contract and the consequences of a contract. She was thus subject to manipulation, undue influence, coercion, deception, duress, harassment and false representations. Neuropsychology Report, App. 1. These findings were the result of testing performed by neuropsychologist Faust Bianco in Tulsa, Oklahoma and memorialized in a medical report submitted in the Guardianship action. Any evidence to the contrary regarding Audrey’s capacity was not properly submitted or presented by Petitioner herein



Rosemary Lynn (“Rosemary”) in the Guardianship action and is not a part of the record.

4. Soon after Audrey’s traumatic medical event, Rosemary alleges that Audrey executed a durable power of attorney in favor of Rosemary on September 9, 2017, and then executed a trust naming Rosemary as the trustee and beneficiary on October 18, 2017. *See* Rosemary Lynn’s Judicial Notice to the Court by Affidavit (“Judicial Notice”), at App. 2.

5. On November 2, 2017, Audrey’s brother, Andrew Brown (“Andrew”), along with the Trust Company of Oklahoma (“TCO”) and Purview Life’s Mary Hendershott (“Mary”), sought an emergency temporary guardianship over Audrey. *See* Petition, App. 3.

6. The emergency guardianship was granted on November 3, 2017, upon evidence and testimony presented by the petitioners of financial fraud committed against Audrey by Rosemary. *See* November 3, 2017 Order for Temporary Guardianship, App. 4.

7. On November 3, 2017, Rosemary and her husband K Lynn were served by hand-delivery with the Order Granting Temporary Guardianship. In her Judicial Notice, filed in the Guardianship action, Rosemary acknowledged service, via hand-delivery, of a copy of the “Order for Temporary and Permanent Guardianship.” *See* Rosemary’s Judicial Notice, App. 2 at page 4.

8. Rosemary was not entitled to advance notice of the hearing on the Petition for Emergency Guardianship as the purpose of an emergency guardianship

is to protect the proposed ward from immediate or foreseeable serious physical harm or serious impairment of financial resources perpetrated by certain persons. *See* Okla. Stat. tit. 30, sec. 3-115(D).

9. Any claim by Rosemary that she was entitled to notice in advance of the hearing on the Petition for Emergency Guardianship is unsupported by Oklahoma statute.

10. On November 8, 2017, Rosemary filed a “Special and Limited Entry of Appearance” in the Guardianship action and had access to the docket. *See* “Special and Limited Entry of Appearance”, App. 5.

11. Any claim by Rosemary that she did not have access to the docket and notice of the hearing on Petition for General Guardianship is false.

12. On November 9, 2017, the Ward’s Court-appointed counsel, Kimberly Schutz, personally served Audrey with the Petition for Temporary and Permanent Guardianship, the Letters of Special Guardianship, Plan of Care and Order Appointing Special Guardians. *See* November 13, 2017 Affidavit of Service, App. 6.

13. Pursuant to Okla. Stat. tit. 30, §3-115(D), notice was not required to be given to Audrey in advance of the hearing on the request for temporary guardianship.

14. Any claim by Rosemary that Audrey did not receive proper notice of the request for temporary and permanent guardianship is false.

15. Any claim by Rosemary that the guardianship petitioners were required to give Audrey notice of the request for emergency guardianship in advance of the

hearing on their request for emergency guardianship is unsupported by Oklahoma statute.

16. On November 27, 2017, a permanent guardianship was entered after hearing.

17. Audrey attended the hearing and agreed to the appointment of co-guardians which included her brother, Andrew. Rosemary did not appear at the hearing. *See* Transcript of the November 27, 2017 hearing, App. 7, at p. 2; p. 24, l. 20 - p. 27, l. 6; and p. 29, l. 2 - p. 31, l. 9.

18. Rosemary's claim in her petition for writ that she was a "defendant" who was entitled to "service of summons and petition" in the Guardianship action is incorrect and unsupported by Oklahoma Statute. *See* Applt.'s Writ for Petition at 2. Rather, a guardianship action has no defendant but only a proposed ward and proposed guardians. The notice of a guardianship action is controlled by Title 30 of the Oklahoma Statutes.

19. Notice of hearing for the appointment of a general or permanent guardian is required only for certain persons; such persons do not include Rosemary. *See* Okla. Stat. tit. 30, §3-110.

20. Any claim by Rosemary that the guardianship petitioners were required to give Rosemary notice of the hearing on the request for permanent guardianship is unsupported by Oklahoma statute.

21. Any claim by Rosemary that she did not have notice of the hearing on appointment of general guardianship is false as Rosemary entered her appearance

prior to the hearing thereby accessing the docket and notices of hearings. Despite this access to the docket, Rosemary failed and refused to appear at the hearing or any other hearing in the Guardianship action.

22. On December 1, 2017, the Order for permanent guardianship was entered. *See* December 1, 2017 Order, App. 8.

23. On February 12, 2018, Audrey's Guardians revoked Rosemary's Power of Attorney. *See* Revocation, App. 9. An Amended and Restated Revocation of Durable Power of Attorney was entered on February 28, 2018. *See* Amended Revocation, App. 10.

24. Any claim by Rosemary that she had control over Audrey's assets by means of Rosemary's purported Power of Attorney is false.

25. On February 15, 2018, Audrey's guardians and court-appointed counsel filed a Motion for Order Nunc Pro Tunc to correct the December 1, 2017 Order. On February 20, 2018, an Order Nunc Pro Tunc was entered. *See* Order Nunc Pro Tunc, App. 11.

26. On February 27, 2018, Rosemary filed her Objection to the Order Nunc Pro Tunc (the "Objection"). Rosemary claimed in her Objection that the trial court lacked jurisdiction. *See* Objection to Order Nunc Pro Tunc, App. 12.

27. On April 12, 2018, Trust Company of Oklahoma filed a trust action in the Tulsa County probate court, Case No. PT-2018-020 (the "Trust action"), to terminate the trust purportedly signed by Audrey in favor of Rosemary. *See* Petition to Terminate, Revoke and Cancel Trust Agreement, App. 13.

28. On May 15, 2018, Rosemary entered her appearance in the Trust action. *See* Entry of Appearance, App. 14.

29. On July 19, 2018, Rosemary filed a Petition in Error with the Oklahoma Supreme Court. *See* Petition in Error, Case No. 117,224, App. 15.

30. On November 30, 2018, the Guardianship court held a hearing on Rosemary's Objection. Rosemary did not appear. The Guardianship court denied Rosemary's Objection for failure to present. *See* Guardianship court's November 30, 2018 Order, App. 16.

31. In total, Rosemary filed four (4) appeals to the Oklahoma Supreme Court in relation to the Guardianship action.

32. The Oklahoma Supreme Court ultimately denied Rosemary's appeal of the Guardianship action on September 16, 2019, on the grounds some of the claims raised were made moot by the death of Audrey and as to the rest of the claims, the Oklahoma Supreme Court dismissed the claims as "frivolous." The Oklahoma Supreme Court also ordered that fees be assessed against Rosemary in relation to her appeals of the Guardianship action. *See* September 16, 2019 Oklahoma Court of Appeals Orders, Case No. 117,996 and Case No. 117,224, App. 17.

33. On June 21, 2019, Rosemary filed two (2) actions in the U.S. District Court for the Northern District of Oklahoma (the "District Court"), Case No. 4:19-CV-00331-CVE-JFJ and No. 4:19-CV-00332-CVE-JFJ - one case against Andrew only for defamation and infliction of emotional distress (the "Defamation Complaint"), and the other against twenty-nine (29) defendants for Racketeer Influenced and Corrupt

Organizations Act (RICO) violations (the “RICO Complaint”). *See* June 21, 2019 Defamation Complaint at App. 18 and RICO Complaint at App. 19.

34. In her Defamation Complaint, Rosemary complained that Andrew defamed her and intentionally inflicted emotional distress on her, both state law claims. Both Rosemary and Andrew were Oklahoma residents at the time of the filing.

35. At no time did Andrew defame or intentionally inflict emotional distress against Rosemary. Any claim by Rosemary to the contrary is false.

36. In her RICO Complaint, Rosemary claimed twenty-nine (29) defendants, including two (2) Tulsa County District Judges, acted together to harm her in violation of the RICO Act. Rosemary failed to state the basis for a RICO claim against any of the defendants. Rosemary and most of the defendants were Oklahoma residents at the time of filing.

37. At no time did any of the defendants, appellees herein, conspire with one another against Rosemary or otherwise engage in racketeering activities. Any allegation by Rosemary to the contrary is false.

38. On June 25, 2019 and June 26, 2019, the District Court, *sua sponte*, dismissed both cases for lack of subject matter jurisdiction before service on any alleged Defendant. *See* June 25, 2019 Orders at App. 20 and June 26, 2019 Orders at App. 21.

39. Without notice to Andrew or the other defendants named in the RICO Complaint, Rosemary apparently appealed the District Court's Orders to the Tenth Circuit Court of Appeals (the "Circuit Court") on July 3, 2019.

40. On July 31, 2019, the court in the Trust action confirmed the irrevocable trust created by Audrey's guardians for the defense of Audrey's estate and its agents against Rosemary. *See* July 31, 2019 Minute Order from Trust action, App. 22.

41. On August 1, 2019, at hearing in the Trust action, which Rosemary failed to attend despite being notified, the probate court cancelled and terminated the purported trust in favor of Rosemary. *See* August 1, 2019 Trust action Judgment, App. 23.

42. Contrary to Rosemary's assertion, the irrevocable trust created for the defense of Audrey's estate was not a "rewrite" of the purported trust executed by Audrey in favor of Rosemary. That purported trust was cancelled and terminated. The irrevocable trust was created for the sole purpose of defending Audrey's estate and all of those involved from the very sorts of frivolous filings by Rosemary such as the current petition for writ.

43. On February 7, 2020, the Circuit Court affirmed the District Court's Orders dismissing the Complaints on the grounds subject matter jurisdiction did not exist. *See* Circuit Court's February 7, 2020 Order, App 24.

44. Without notice to Brown or the other defendants, on June 29, 2020, Rosemary filed a Petition for Writ of Certiorari with this Court, appealing the Circuit Court's February 7, 2020 Order affirming the District Court's dismissal Orders.

45. On or about September 4, 2020, counsel for Andrew and some of the defendants named in the RICO Complaint received copies of the Petition for Writ, constituting the first notice of the appeal to the Circuit Court and the filing of the petition for writ.

46. Rosemary did not provide notice to all defendants as required by Supreme Court Rules 18.3 and 29.

47. This Response is submitted on behalf of the following appellees named by petitioner Rosemary: Andrew George Brown III; Trust Company of Oklahoma and its employees Lesa Creveling, Melissa Taylor and Emily Crain; Purview Life and its employees Mary Jean Bagwell-Hendershott and Susan Boyd; Kimberly Biedler Schutz; Randall Allen Gill; and Robyn Owens.

#### ARGUMENT SUPPORTING DENIAL OF PETITION FOR WRIT

##### I. NO BASIS EXISTS FOR GRANTING ROSEMARY'S PETITION FOR WRIT

In her Petition for Writ, Rosemary requests this Court consider the holding by both the District Court and the Circuit Court that no subject matter jurisdiction exists over her Defamation Complaint or her RICO Complaint. The questions raised by Rosemary in her petition for writ do not warrant consideration by this Court.

“Congress has expressly delineated the discretionary nature of petitions for writs of certiorari and mandamus presented to the Supreme Court.” Clements v. Gonzales, 496 F. Supp. 2d 70, 75 (D.C. 2007) (citing 28 U.S.C. §1254 stating “[c]ases in the courts of appeals *may be reviewed* by the Supreme Court by writ of certiorari



granted upon the petition of any party to any civil or criminal case”; and 28 U.S.C. §1651(a) stating “[t]he Supreme Court and all courts established by Act of Congress *may issue* all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law”) (emphasis in original).

The United States Constitution confers upon the Supreme Court “appellate Jurisdiction, both as to law and fact, with such exceptions, and under such Regulations as the Congress shall make.” Clements, 496 F. Supp. 2d at 74 (quoting U.S. Const. art. III, § 2, cl. 2). Pursuant to its power to make regulations under Article III, § 2, Congress granted the Supreme Court the authority to fashion procedural rules for itself. Clements, 496 F. Supp. 2d at 74 (citing 28 U.S.C. § 2071; “the Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business”).

Pursuant to Supreme Court Rule 10, review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons such as: (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power; (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United

States court of appeals; or (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. A petition for a writ of certiorari is “rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”

This Court has conclusively held that “[t]here is, of course, no constitutional right to an appeal.” Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). As this Court observed on another occasion,

[a]n appeal ... is not a matter of absolute right, independently of constitutional or statutory provisions allowing such appeal. A review by an appellate court of the final judgment ... was not at common law and is not now a necessary element of due process of law. It is wholly within the discretion of the State to allow or not to allow such a review. A citation of authorities upon the point is unnecessary.

McKane v. Durston, 153 U.S. 684, 687, 14 S.Ct. 913, 38 L.Ed. 867 (1894). Thus, while Rosemary is entitled to an appeal as a matter of right to the appropriate federal circuit court of appeals, such right does not extend to the United States Supreme Court.

Rosemary has failed to present any issue to the Court which warrants a grant of writ for certiorari. Rosemary presents only the following legal issues in her petition: (1) alleged insufficient service of summons and petition in the underlying Guardianship action; (2) an alleged split among the circuit courts created by the Circuit Court in its alleged misapplication of Fed. R. Civ. P. 8; and (3) an alleged split among appellate courts regarding dismissal for lack of subject matter jurisdiction

under 28 U.S.C. §1367. None of Rosemary's claims warrant consideration; none of the claims present an important or even accurate issue of law for consideration by this Court. As such, Rosemary's petition for writ for certiorari should be denied.

**A. ROSEMARY'S CLAIM REGARDING LACK OF DUE PROCESS HAS BEEN CONSIDERED BY BOTH THE GUARDIANSHIP COURT AND THE OKLAHOMA SUPREME COURT AND DENIED; NO IMPORTANT ISSUE OF LAW EXISTS FOR CONSIDERATION BY THIS COURT**

The Oklahoma Supreme Court ultimately denied Rosemary's appeals of the Guardianship court's grant of a guardianship over Audrey on the basis the issues raised by Rosemary were either moot or frivolous. Though the issue of due process in the Guardianship action does not present a proper question for consideration by this Court, the appellees herein address the issue of due process in the Guardianship action.

Rosemary was not entitled to notice of the emergency guardianship hearing in the Guardianship action. Further, Rosemary was not entitled to notice of the hearing on the request for permanent guardianship. Nonetheless, Rosemary was given notice of the emergency guardianship after it was granted. Rosemary then filed her entry of appearance and a "Judicial Notice" thereby accessing the court docket and the notice of the hearing on the permanent guardianship. Rosemary, however, failed to appear at the hearing on permanent guardianship thereby waiving any right or standing she had in the Guardianship action. Rosemary failed to appear at a single hearing in the Guardianship action despite notice of all the hearings. Rosemary was not denied notice or due process.

Likewise, Audrey, the Ward, was not denied due process as claimed by Rosemary. The petitioning guardians were not required to provide advance notice of their petition for emergency guardianship to Audrey but did so immediately following the hearing on the emergency guardianship. Audrey then appeared at the hearing on the permanent guardianship and consented thereto. Oklahoma statute supports the Guardianship court's finding that due process was not denied and the Oklahoma Supreme Court's denial of claims of violations of due process.

The guardians in the Guardianship action requested an emergency guardianship pursuant to the Oklahoma Guardianship and Conservator Act, Title 30 (the "Guardianship Act"), §3-115(D). Pursuant to §3-115(D), the court may, "without notice", appoint a special or emergency guardian upon a showing of immediate or reasonably foreseeable serious physical harm to a ward or serious impairment of the financial resources of a ward will result from delay. Pursuant to §3-115(D), "*after* a special guardian is immediately appointed," the court shall cause a copy of the petition, order and letters of special guardianship upon the "ward, the ward's spouse, if any, and one other relative of the ward."

Rosemary, therefore, was never entitled to notice of the emergency guardianship, before or after it was granted. The ward in that action, Audrey, was entitled to notice, and was provided with notice and the requisite pleadings on November 9, 2017, by her court-appointed attorney.

The Guardianship Act provides a person concerned with the safety and welfare of a minor or incapacitated person with a vehicle to safely obtain protection for that

minor or incapacitated person. The guardians utilized the protections of the Act to obtain a guardianship over Audrey to protect her from Rosemary's overreaching, undue influence, and manipulation which was readily apparent from the record. Section 3-115(D) provides that a court may "without notice" appoint a special guardian upon the filing of a petition, presentation of evidence showing that an "immediate or reasonably foreseeable serious physical harm to the subject of the proceeding or serious impairment of the financial resources of said person will result from a delay" and upon presentation of a proposed emergency plan of care for the subject of the proceeding.

The guardians were not required to give Rosemary notice of their request for special guardianship. Rosemary was never entitled to notice but had notice all the same. She failed to appear at a single hearing in the Guardianship court. She then attempted to circumvent the Guardianship court by filing four (4) appeals to the Oklahoma Supreme Court. The Oklahoma Supreme Court ultimately denied her claims as either moot or "frivolous."

Only after running out of options in the Oklahoma state court system, after one nonappearance after another, did Rosemary seek relief in the federal court system with her outlandish claims against not only the guardians in the Guardianship action, but their attorneys, the court-appointed attorney, the Judges and anyone who might have been affiliated or employed by any of the guardians or their attorneys or the Tulsa County courthouse. No important issue of law exists for this Court's consideration. Rosemary's petition for writ is simply one more attempt

to undo a guardianship which was properly granted, and which took away Rosemary's unlawful power over an elderly woman's extensive wealth. These are state law issues which have been decided by a state court and its appellate court and which present no conflict with any federal law. Rosemary's petition for writ should be denied.

**B. THE CIRCUIT COURT CREATED NO SPLIT AMONG THE CIRCUITS IN AFFIRMING THE DISMISSAL OF THE COMPLAINTS FOR LACK OF SUBJECT MATTER JURISDICTION**

Rosemary alleges the Circuit Court created a "split" among circuit courts when it affirmed the District Court's dismissal for lack of subject matter jurisdiction on the basis the Circuit Court improperly applied Fed. R. Civ. P. 8. Rosemary cites one case for this proposition- "Tracy L. Johnson v. City of Shelby, Mississippi, 135 S. Ct. 346 (2014)"- but fails to explain how it applies or to cite any circuit court cases which would prove a "split" in the circuits was created by the Circuit Court. *See* Applt. Petition for Writ at 11. Without something more, pursuant to Rule 10, Rosemary has provided no basis for this Court to grant her petition for writ.

Rosemary's RICO Complaint simply did not meet the requirements of Fed. R. Civ. P. 8. In her RICO Complaint, Rosemary cited RICO violations against twenty-nine (29) defendants, including two (2) Oklahoma state court judges. To plead a civil RICO claim, a plaintiff must make plausible allegations that the defendants "(1) conducted the affairs (2) of an enterprise (3) through a pattern (4) of racketeering activity." George v. Urban Settlement Servs., 833 F.3d 1242, 1248 (10<sup>th</sup> Cir. 2016). While claims asserted under the RICO Act ordinarily qualify for federal-question jurisdiction, "jurisdiction under §1331 exists only where there is a colorable claim

arising under federal law.” McKenzie v. U.S. Citizenship & Immigration Servs., 761 F.3d 1149, 1156 (10<sup>th</sup> Cir. 2014). “[A] court may dismiss for lack of subject-matter jurisdiction when the [purported federal] claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy.” McKenzie, 761 F.3d at 1156-57.

Under this standard, the Circuit Court found that Rosemary’s “complaint did not state a colorable RICO claim against any of the defendants for a variety of reasons.” Circuit Court Order, at 9. Rosemary provides nothing new or different to prove that her Complaint met the required standards and further, she provides nothing to show that a “split” was created among the circuit courts.

Generally, the “well-pleaded complaint” rule requires that the federal question appear on the face of the plaintiff’s properly pleaded complaint. Garley v. Sandia Corp., 236 F.3d 1200, 1207 (10<sup>th</sup> Cir. 2001). Rosemary argues that the Circuit Court created a “split among the circuits” by violating Fed. R. Civ. P. 8 and its requirement that a pleading state a claim for relief which contains a “short and plain statement of the grounds for the court’s jurisdiction...[and] a short and plain statement of the claim showing that the pleader is entitled to relief... “. However, Rosemary provides no basis for this claim that a “split” was created and cites no authority. Rosemary provides this Court with no cause to grant her petition for writ under Rule 10 or on any other basis.

C. NO BASIS EXISTS FOR NOW APPLYING THE PRINCIPALS OF SUPPLEMENTAL JURISDICTION TO SALVAGE ROSEMARY'S CLAIMS OF DEFAMATION AND RICO VIOLATIONS; WHETHER A SPLIT IN THE CIRCUITS EXISTS REGARDING SUPPLEMENTAL JURISDICTION IS IRRELEVANT TO ROSEMARY'S PETITION FOR WRIT

Nowhere in either of her Complaints did Rosemary request the District Court exercise “ancillary or pendent jurisdiction” over her claims asserted in the Guardianship action. Rosemary raises the issue of “pendent jurisdiction” for the first time in this petition for writ and claims a “split” in the circuits exists regarding the same. Rosemary has failed to establish original jurisdiction in the federal courts which would allow the federal courts to consider her state claims in the Guardianship action. Further, Rosemary cites no cases to prove that a “split” exists regarding supplemental jurisdiction or that such alleged split is somehow relevant to Rosemary’s petition for writ.

A district court’s exercise of supplemental jurisdiction is governed by 28 U.S.C. §1367. Pursuant to §1367, in any civil action of which the district court has *original jurisdiction*, the district court shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. “Section 1367 allows federal courts to hear state claims that travel with federal claims in the same lawsuit.” Halmekangas v. State Farm Fire and Cas. Co., 603 F.3d 290, 293 (5<sup>th</sup> Cir. 2010). “It grants supplemental jurisdiction over [state] claims that do not independently come within the jurisdiction of the district court but form part of the same Article III ‘case or controversy’.” Halmekangas, 603 F.3d at



293 (citing State Nat'l Ins. Co. v. Yates, 391 F.3d 577, 579 (5<sup>th</sup> Cir. 2004)). The question under Section 1367 is whether the supplemental claims are so related to the original claims that they “derive from a common nucleus of operative fact.” Halmekangas, 603 F.3d at 293 (citing Mendoza v. Murphy, 532 F.3d 342, 346 (5<sup>th</sup> Cir. 2008)).

Because Rosemary’s Defamation Complaint and RICO Complaint failed to establish “original jurisdiction” in the District Court, no supplemental jurisdiction can be exercised over her state claims from the Guardianship action. 28 U.S.C. §1367. As stated supra, Rosemary’s Defamation Complaint asserted only state law claims against a nondiverse defendant. As such, no diversity jurisdiction existed and thus no subject matter existed in the District Court. In her RICO Complaint, while she attempted to allege a federal question of law, Rosemary failed to plead a “colorable claim” under the RICO Act against any of the defendants. As such, no federal question jurisdiction existed over Rosemary’s RICO Complaint. Further, Rosemary and the defendants were not completely diverse and as such no diversity jurisdiction could have existed over her RICO Complaint.

Rosemary asserts that the Circuit Court “supported...dismissal of all the state court supplemental claims without a review on the claims.” Applt. Petition for Writ at 12. Nothing in the Circuit Court’s opinion supports this allegation. The Circuit did not address the state court “supplemental” claims, or any other state claim asserted in the Guardianship action.

Rosemary also asserts the District Court had “ancillary jurisdiction over [her] state law claims.” Applt. Petition for Writ at 13. However, Rosemary provides no basis for these statements and fails to plead supplemental jurisdiction exists.<sup>1</sup>

Rosemary seems to assert that the District Court should have sue sponte applied the doctrine of supplemental jurisdiction to either of her Complaints. Rosemary not only misapplies the doctrine of supplemental jurisdiction, she misstates a court’s duty in so applying it.

Although federal courts may exercise supplemental jurisdiction over related state-law claims where an independent basis of subject matter jurisdiction exists, such a court may, for various reasons, nonetheless decline to exercise supplemental jurisdiction over a claim. Oneida Indian Nation of New York v. Madison County, 665 F.3d 408, 436 (2<sup>nd</sup> Cir. 2011); 28 U.S.C.A. § 1367(a, c). As such, even if Rosemary could prove subject matter jurisdiction existed, the District Court had the right to decline supplemental jurisdiction over her claims from the Guardianship action, had Rosemary even properly alleged these state claims in either of her Complaints. Rosemary again fails to provide any important issue of law for this Court’s consideration on writ and her petition for writ should be denied.

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<sup>1</sup> Rather, she claims that “the district court was acting as an advocate for the defendants[] and refused to adjudicate on the merits.” Further, she claims that the Circuit Court “avoided the lack of adjudication issue on appeal [where] any other circuit would have addressed the error.” Applt. Petition for Writ at 13.

## II. NO SUBJECT MATTER JURISDICTION EXISTS OVER ROSEMARY'S DEFAMATION COMPLAINT OR RICO COMPLAINT

This Court has repeatedly observed that “courts...have an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from a party.” Arbaugh v. Y & H Corp., 546 U.S. 500, 509, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006). Because federal courts have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from a party, a court may sua sponte raise the question of whether there is subject matter jurisdiction at any stage in the litigation. Image Software, Inc. v. Reynolds & Reynolds Co., 459 F.3d 1044, 1048 (10<sup>th</sup> Cir. 2006). The party invoking federal jurisdiction has the burden to allege jurisdictional facts demonstrating the presence of federal subject matter jurisdiction. McNutt v. General Motors Acceptance Corp. of Indiana, Inc., 298 U.S. 178, 182 (1936) (“It is incumbent upon the plaintiff properly to allege the jurisdictional facts, according to the nature of the cases.”).

A “plaintiff’s obligation to provide the grounds of his entitlement to relief [in his complaint] requires more than labels and conclusions, and a formulaic recitation of the elements of a case of action will not do.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929 (2007). Moreover, the Court need not accept inferences that are unsupported by the facts set forth in the complaint or “legal conclusion[s] couched as...factual allegation[s].” Trudeau v. FTC, 456 F.3d 178, 193 (D.C. Cir. 2006).

“Although a court will read a pro se plaintiff’s complaint liberally, a pro se complaint, [no less than any other complaint], must present a claim on which the Court can grant relief.” Chandler v. Roche, 215 F. Supp. 2d 166, 168 (D.D.C. 2002)(citing Crisafi v. Holland, 655 F.2d 1305, 1308 (D.C. Cir. 1981); see McNeil v. United States, 508 U.S. 106, 113, S. Ct. 1980, 124 L.Ed.2d 21 (1993)(stating that the Supreme Court “[has] never suggested that procedural rules in ordinary civil litigation should be interpreted as to [wholly] excuse mistakes by those who proceed without counsel”).

A. THE DISTRICT COURT HAS NO DIVERSITY JURISDICTION OVER THE DEFAMATION COMPLAINT

In her Defamation Complaint, Rosemary presented state law claims of defamation and infliction of emotional distress. Neither of these claims present a federal law question. As such, Rosemary was obligated to show that there was diversity of citizenship and the amount in controversy exceeds \$75,000.00, pursuant to 28 U.S.C. §1332. No diversity of citizenship existed between Rosemary and Andrew as both parties were residents of Oklahoma at the time of filing the Defamation Complaint. On this basis, the District Court dismissed Rosemary’s Defamation Complaint and the Circuit Court agreed despite Rosemary’s assertion that her state law defamation claim “echoed in federal law under the First Amendment.” No. 19-5062 Aplt. Br. at 13.

## B. THE DISTRICT COURT HAS NO FEDERAL QUESTION JURISDICTION OVER THE RICO COMPLAINT

Rosemary failed to state a claim over which the District Court has jurisdiction. As such the District Court dismissed her RICO Complaint for lack of subject matter jurisdiction, and the Circuit Court affirmed on the same grounds. *See* 28 U.S.C. §1331.

In her RICO Complaint, while she attempted to allege a federal question of law, Rosemary failed to plead a “colorable claim” under the RICO Act against any of the defendants. Rather, Rosemary claimed she was denied due process and removed from Audrey’s inheritance, and that several attorneys and state court judges and employees were in on it. She briefly mentioned the RICO Act when decrying the “sham legal process” but provided none of the elements of a RICO Act violation.

As such, no federal question jurisdiction existed over Rosemary’s RICO Complaint. Further, Rosemary and the defendants were not completely diverse and as such no diversity jurisdiction could have existed over her RICO Complaint.

The present matter is similar to the Clements case, where the Court found, notwithstanding the plaintiff’s “nebulous and unsubstantiated allegations of fraud and conspiracy by various state and federal courts,” the facts asserted in the complaint itself demonstrated that the plaintiff had extensive opportunities to seek appellate relief on numerous occasions from other courts. Thus, because the plaintiff provided no factual support for his improbable and wholly conclusory allegations that four state and federal trial and appellate courts “intentionally deprived [him] of his [c]onstitutionally guaranteed rights by entering decisions said federal and state

courts knew to be erroneous,” and because the Clements Court could envision no set of facts that the plaintiff could realistically prove that would corroborate his claim of pervasive “judicial tyranny,” and “judicial fraud,” directed against him, the Court concluded that the plaintiff's complaint had clearly failed to state a claim upon which relief can be granted. Clements, 496 F. Supp. 2d at 74.

Similarly, Rosemary has accused various members of the Oklahoma Bar as well as members of the Oklahoma Judicial Bench of various bad acts with no supportive evidence and all of these claims have been considered and denied by the Oklahoma District Court, the Oklahoma Supreme Court, the Northern District of Oklahoma and the Tenth Circuit Court of Appeals. Rosemary's petition for writ should be denied.

### III. ROSEMARY FAILED TO GIVE TIMELY NOTICE OF HER PETITION FOR WRIT TO NAMED DEFENDANT-APPELLEES

Supreme Court Rule 29 required that Rosemary serve Brown and the other defendants within three (3) days of filing her petition for writ. Rosemary provided no timely notice of the petition for writ. Rosemary did not send the petition to all of the defendants and she sent the petition only to some of the defendants very late- not until September 4, 2020, several months after the filing of the petition for writ.

### CONCLUSION- REQUEST FOR RELIEF

Appellees request the Court deny Rosemary's petition for writ.

Respectfully submitted,

s/Randall A. Gill

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Randall A. Gill, Oklahoma Bar Assoc. #10309

2512 East 21st Street

Tulsa, Oklahoma 74114-1706

Phone: (918) 747-1958

Email: [randall@gillfirm.law](mailto:randall@gillfirm.law)

*Attorney for Andrew George Brown III; Trust  
Company of Oklahoma and its employees Lesa  
Creveling, Melissa Taylor and Emily Crain;  
Purview Life and its employees Mary Jean  
Bagwell-Hendershott and Susan Boyd; Kimberly  
Biedler Schutz; Randall Allen Gill; and Robyn  
Owens*