

IN THE
UNITED STATES SUPREME COURT

ROSEMARY ANN LYNN,

Petitioner,

Against,

ANDREW GEORGE BROWN III, ET AL.,

(U.S. Dist. Ct. Case Nos. 19-CV-331-CVE-JFJ and 19-CV-332-CVE-JFJ, Respectively.)
(USCA10 Cir. Nos. 19-2062 and 19-5063 Respectively.)

Respondents.

**PETITIONERS REPLY BRIEF
TO RESPONDENTS OPPOSITION BRIEF**

INTRODUCTION

In its response to Petitioner's Petition For writ of Certiorari, Respondents alleges erroneously that Petitioner made misrepresentations, and omissions that contributed to her inability to appear, defend and seek redress in the guardianship and conservatorship erroneous proceeding.

Review of the Record will reveal there is absolutely nothing Petitioner could have done to remedy Respondents racketeering activities when not served with notices, i.e.,

summons to appear, time and place, location and in what Court to appear. Rule 4, of Oklahoma Rules of Procedures; Oklahoma Pleading Code, tit. 12 O.S. § 2015(A); Oklahoma's Guardianship and Conservatorship Act (the "Act"), tit. 30, Sections 3-310, 3-115(C), 3-115(F) et seq., mandated notice/service of summons & petition on interested parties to invoke jurisdiction on the court so that it may take action.

Respondents attempt to aver Petitioners affidavit stated her husband received the petition, it was in error and Petitioner corrected it. Respondent Hendershott, a party to the proceeding, handed Petitioner husband the following documents:

(1) Order Approving Initial Plan For Care And Treatment Of The Ward And Initial Plan For Management Of The Property Of The Ward With Court Ordered Directives To Protect The Ward; (2) **Amd. App. 5a-6a**-Letter of Temporary Guardianship Over Person. Respondents admit this fact.

Respondents alleged service of summons and petition, Petitioner appealed the issue to the Oklahoma Supreme Court. Oklahoma Supreme Court Ordered a Spread of Records and thereafter entered an Order that record was negative of certified mail REGISTERED return receipt, it lacked an affidavit, there was no issuance of summons by the court clerk's office at all. Oklahoma Supreme Court entered an Order that Respondents had not served Petitioner.

Respondents directed the Court not to allow Petitioner in the proceedings, and ordered the Court to seal the records so that Rose Lynn (Petitioner) will not know what's going on. The issue of service was raised in the hearing and Judge Bitting instructed Respondents to "*Discuss service of summons and petition among yourselves.*"

Petitioner's attempted to appear and defend, or assert her rights under the estate plans. Lindsey W. Mulinix, and Russell Mulinix ("Mulinix") of the Law Firm of Mulinix, Ogden, Hall & Ludlam, PLLC, Oklahoma City, Ok appeared on behalf of the Petitioner, beneficiary of the Trust, and attempted to asserted Petitioner's standing and rights. Respondents instructed Judge Bitting not to hear

arguments from Mulinix, and not to allow Mulinix access to Court records. Judge Bitting agreed with Respondents and directed Mulinix to leave her Courtroom. Judge Bitting sealed the records as ordered.

Attorney Keith Ward of Ward Law Firm in Tulsa, Oklahoma also attempted to access the records on Petitioner behalf, Judge Bitting denied Wards requests for access.

Respondents erroneously alleged that Audrey suffered a massive event. Audrey did not suffer a massive event.

Respondents filed an manipulated & altered forensic report; Dr. Bianco asked Audrey questions about why she was being evaluated. Audrey answered: "*My piece of dirt brother is trying to take control of me and my money.*"

Respondents omitted that Oklahoma State University Assistant Clinical Professor, Dr. Jason Beaman, Chairman of the Department of Psychiatry and Behavioral Sciences issued his Forensic Evaluation of Audrey on November 26, 2017 four (4) days after Dr. Bianco's report.

Dr. Beaman's psychiatric evaluation of Audrey determined that Dr.'s Bianco & Hall November 10, 2017 psychological evaluation was "invalid" because Audrey suffered Delirium from Psychotropic medications that affected her mind, emotions and behavior administered to her on the morning of Dr.'s Bianco & Hall evaluation. Delirium is treatable.

Respondents urges that Audrey was incapable of understanding her execution on estate plans due to massive events is false. See chain of event below:

At Page 14 of 16, question 5, of Dr. Bianco's report, he was asked by Respondents, Does Ms. Brown have the capacity to select her own attorney? Answer: Not Likely.... shortly thereafter, Audrey was legally competent to approve financial restitution to Trust Company of Oklahoma ("TCO") in the amount of \$100,000.00 to reimburse TCO monies it borrowed from Andrew.

Respondents caused Audrey's appearance at the November 27, 2017 hearing 14 days after Dr. Bianco's report. At this hearing, Judge Bitting deemed Audrey legally competent to answer medical and

legal questions. Judge Bitting begin asking Audrey a series of legal questions about Respondents Schutz & Hunter being Audrey's private attorneys after having appointed them as Audrey's Guardian Ad Litem on behalf of the court, allegedly Audrey said yes Schutz & Hunter could be her private attorney thereby creating a legal contract by a legally competent person that paid Schutz & Hunter tens of thousands of dollars each from the Trust estate bi-month. Hunter was fired from Doerner, Saunders, Daniel & Anderson Law Firm due to forging Audrey's name on a contract to represent her.

Respondents Brief In Opposition under Statement of the Case, Paragraph ("Para.") 2, erroneously asserts Audrey was readmitted referring to being transported from St. Francis Hospital after routine surgery on her left wrist to Villages at Southern Hills ("VaSH") on August 11, 2017 for "short term rehabilitation" 30-days to be exact to make sure she strengthened her left wrist after surgery. VaSH Patient Care Supervisor ask Audrey a series of questions about her mental competency on September 12, 2017; after being satisfied that Audrey was MENTAL COMPETENT, the supervisor presented a patient medical release form for Audrey sign to release herself. The form was executed and Audrey was released to her home on September 12, 2017.

There exist a stark contrast between Professor. Kelly A. James, Ph.D, Trauma Specialist, Mental Health Competency Clinical Evaluation Report dated October 15, 2017 a month earlier than Dr. Bianco's coached report dated November 10, 2017. Dr. Bianco alleges that Audrey would not make informed financial decisions, medical management and medical decisions and would understand the consequences of those decisions? Answer: No. Respondents omitted that on November 27, 2017 the Court deemed Audrey medically capable of making decisions about her health and residential care, i.e., where to live, vision care, hearing care, medications, and medical care when Judge Bitting ask Audrey a series of questions about her medical management. Audrey agreed to the medical care purportedly.

Questions from the Court regarding Audrey's choice of counsel: The Court ask if Audrey wanted Schutz & Hunter to represent her? (although they had a conflict of interest now) Audrey said

yes according to the transcript. Audrey's agreement and the Court's acceptance, meant Audrey entered into a legally binding contract for both medical care and legal representation including money to be paid from her estate to Schutz & Hunter; thereby a financial decision.

Respondents claim Petitioner was sanctioned: Respondent omitted informing this Court that a monetary sanction is not authorized in a guardianship proceeding, and if so, not in the \$250,000.00 range. Petitioner raised an issue regarding Respondents filing a Probate Petition before Respondent Judge Kurt G. Glassco on April 12, 2018 Case No. PT-2018-020. Respondents alleged in the State Supreme Court that they did not file a petition in the probate court and that Judge Kurt G. Glassco was not the presiding judge. Respondents sought and was granted **\$219,000.00** as sanctions by Judge Bitting from the estate Trust. Financial sanctions are not favored in guardianship courts and was very excessive.

Respondents allege Petitioner did not properly file Audrey's Mental Health-Report and that it is not recorded in the record is false. Petitioner filed the Mental Health Report with her Judicial Notice on 11/08/2017 to Judge Bitting and these Respondents. Respondents Opposition Brief at page 2, para. 7, admit Hendershott a party to the action hand-delivered to K an Order Granting Temporary Guardianship. Not a summons or petition.

Paragraph 8, states: Rosemary was not entitled to advance notice of the hearing on Petition for Emergency Guardianship citing § 3-115(D) in isolation from § 3-110 et seq., required being read together. Respondents omitted § 3-115(D) further states: Whenever a Special Guardian is immediately appointed as provided by this subsection, The Court "**shall**" (**mandated**) cause a copy of the Petition...to be served on ...any other interested person. Schutz was appointed on November 3, 2017 the day after the petition was filed. Petitioner was entitled by statute to be served with summons and petition within 10 days after Schutz's appointment.

Respondents omitted that the 2014 statute, 30-3-110 mandates under Section A, that: The Court

shall cause notice to be served of the time and place of the hearing on the Petition requesting the appointment of a guardian for an incapacitated or partially incapacitated person on: (4) ...PERSON NOMINATED BY WILL OR OTHER WRITING TO SERVE AS GUARDIAN...(4)(a)The person or facility having care or custody of the subject of the proceeding.

Section 3-115(1) states: Notice “shall” be served personally on the individual (Audrey) who is the subject of the proceeding at least (10) days before the time set for hearing. Audrey was not served until November 9, 2017 six (6) days after the fact, at Brookdale Assisted Living 24-hour lock-down Nursing Home with no access to the outside world. Subsection (2) Notice shall be served (10) days on other persons before the hearing, i.e., Lynn.

At Page 8, ('pg'), Paragraph ('Para') 40, of Respondents Opposition Brief, Respondents refer to a July 31 2019 Minute Order from Trust action that has never been provide to Petitioner, as a matter of fact its not provided in the Respondents Appendix as alleged at App. 22. Petitioner object to its admission. Here, Respondents tried to write over the term “rewrite” Audrey's Irrevocable Spendthrift Trust (“Trust”) by wording it as a confirm(ation) the irrevocable trust created by Audrey's guardians for the defense of Audrey's estate (and its agents). Simply put, nine (9) days after Audrey preventable death, Respondents sought to shield themselves from their racketeering activities by rewriting an **“Irrevocable Trust.”** The Trust could not be rewritten after Audrey's death. At Audrey's death, the Trust remained irrevocable.

Respondents fraudulent created trust, transferred trustee of all of the principle of the irrevocable trust (“Distributing Trust”) to another irrevocable trust they created (“Receiving Trust”) sometimes called “decanting” that result in a change in the beneficiaries interests in the trust are not subject to income, gift, estate, or generation-skipping transfer (“GST”) taxes. Oklahoma decanting statute, S. B. 1080 modeled after Texas law, passed on July 28, 2019. It mandated however, that the grantor's “intent” remain intact and executed pursuant to the instruction by the grantor.

“Grantor “intent” was modified, so was the terms and conditions of the irrevocable trust. Audrey died July 22, 2017 six (6) days “before” decanting law was signed by the Governor. It has no retroactive effect clause. Decanting Audrey’s Trust was not available to the Court on July 22, 2019.”[.]

At Page 8, ('pg'), Paragraph ('Para') 42, of Respondents Opposition Brief, Respondents admit Audrey executed her trust instrument in favor Rosemary (Petitioner). Respondents alleges their new irrevocable trust was created “solely” to defend Audrey's estate. Audrey's irrevocable trust did not require termination to achieve an alleged defense of the estate. Respondents tried to remove Lynn because they knew that Audrey's trust was competently and properly executed, and when Audrey died her created Trust named Rosemary Lynn as Trustee and Beneficiary, the Trustee (Lynn) is positioned to take over the management of the trust when Audrey died or became legally incapacitated. (If Audrey became incapacitated, or developed Alzheimer's or Dementia diseases, the trustee manages the trust assets for his or her benefit and that of other named beneficiaries. Respondents intent, Remove Lynn by any means necessary, including, but not limited to fraud and racketeering means.

Upon the grantor's death, the trust became irrevocable, its terms set in stone. Regardless of whether the grantor had been influenced by Respondents to change or even terminate the trust as defined in the trust instrument at the time the grantor's death are what control. Furthermore, there were no revocation, cancellation, modification, nor termination, of powers in Audrey's Irrevocable Spend Thrift Trust Agreement.

PETITIONER LEGAL ARGUMENT FOR GRANTING PETITION FOR WRIT OF CERTIORARI

As pointed out by Respondents, a Writ of Certiorari will be granted only for compelling reasons. Pg. 10, subpara. 3, line 3, of their Opposition Brief. Petitioner argues, stealing \$20 plus million dollars through Racketeering means i.e., extortion, mail and wire fraud, fraudulent conveyance, extrinsic and intrinsic frauds on the Court and interested indispensable parties, false impersonators

representing themselves as City and State Officials under color of State law, their criminal activities firmly embrace State and Federal RICO Statutes, certainly are compelling reason.

Petitioner claimed RICO violations and tortious interference with her expected inheritance. In *Marshall v. Marshall (In re Marshall)*, 547 U. S. 293 (2006), this Court decided Marshall. This Court held that a federal district court had equal or concurrent jurisdiction with state probate Courts over tort claims under common law. And that among longstanding limitations on federal court jurisdiction otherwise properly exercised are the so-called “domestic relations” and “probate” exceptions. Both are judicially created doctrines stemming from in large measures from court under misty understanding of English legal history.

In *Ankenbrandt v. Richards*, 504 U.S. 689 and *Markham v. Allen*, 326 U.S. 490, this Court delineated the exceptions under federal law. In Marshall, Vickie Marshall filed a tort action alleging that Howard Marshall (her deceased husband) intended to provide for her through a gift in the form of a trust. Howard's son, Pierce Marshall tortuously interfered with a gift expected from J. Howard. Vickie's tortious interference claim turned into an adversary proceeding in court. Fed. R. Bkrtcy. Proc. 3007, in which the federal court assumed jurisdiction and entered judgment for Vickie Marshall holding her counter claim was “core proceedings” under 28 U.S.C § 157, which meant that the Court had authority to enter a final judgment disposing of those claims.

Relying on *Markham*, the Bankruptcy Court observed that a federal court has jurisdiction to adjudicate rights in probate property, so long as its final judgment does not interfere with the state court's possession of the property. Subsequently, Texas Probate Court declared that J. Howard's estate plan was valid. The U.S. District Court had jurisdiction over Petitioner's Complaints' and committed errors in dismissing them under Rules 12(b)(1) and 12(b)(6) respectively, and prays this Court agrees.

Technically, a Rule 12(B)(6) motion does not attack the merits of the case; it merely challenges

the pleader's failure to state a claim 'properly' not that the claim is dismissed for failure to state a claim. 5 C. Wright, A. Miller & M. Kane, Federal Practice and Procedures, § 1364 at 340 (Supp. 1987).

**ROSEMARY LYNN'S CLAIMS OF LACK OF DUE PROCESS WAS NOT
CONSIDERED BY OKLAHOMA SUPREME COURT**

Respondents attempt to have it both ways, on the one hand they vehemently allege Petitioner was not entitled to notice and in the same breath, frivolously alleges that they served Petitioner. Respondent Kimberly Biedler Schutz filed a Motion before Judge Bitting asking the Court not to allow Petitioner access to the docket *after* Oklahoma Supreme Court directed Judge Bitting to allow Lynn access to the docket. Judge Bitting signed Schutz's Order denying Lynn access.

Respondents misstates the filing and service under Oklahoma Law. "Judicial Notice" is not a "substitute" for service from the plaintiffs. Pursuant to title 12, § 2004(C)(2)(b), Respondents were mandated to serve Petitioner with a copy of the summons and petition by certified mail, return receipt requested and delivery restricted addressee. Respondents admit they failed to comply with the basic tenets of Due Process of service.

Respondents knew Petitioner whereabouts at all material times, and could have served Petitioner summons and petition. In this case, Oklahoma substantial compliance law apply. In *Graff v. Kelly*, 814 P.2d 489, 495 (Okla. 1991), Oklahoma Supreme Court held that the Oklahoma Pleading Code "requires substantial compliance in order for the trial court to have jurisdiction over the person of the Defendant (Lynn). Oklahoma Supreme Court held that service was invalid based on the statutory requirements for service by personal delivery. Because the service in this case, was never attempted by the Respondents under Oklahoma law, the guardianship & conservatorship court did not have personal jurisdiction over Rosemary Ann Lynn or her estate plans.

In *Markham*, the Court construed the probate exception to mean that "federal courts have jurisdiction to entertain suits to determine the rights of creditors, legatees, heirs, and other claimants

against a decedent's estate, so long as the federal court does not interfere with the probate proceedings.” *Id.* At 311. Applying the probate exception to the present case, the exception is not implicated by Rosemary Ann Lynn's tortuous interference claims. It is irrefutable, Lynn's claims does not involve the administration of the estate, or probate of a will, or any other pure probate matter.” Petitioner seeks an *in personam* judgment against Respondents, not the probate matters.

The probate exception did not divest the federal court of jurisdiction over Lynn's claims. Federal courts have subject-matter jurisdiction over RICO claims pursuant to 28 U.S.C. § 1331 and 18 U.S.C.A. § 1964(c). Respondents asserts erroneously that the Court found Petitioner claims did not state a colorable RICO claim against the defendants. Page 16, subpara. 2, line 2, of the Respondents Opposition Brief. The Court did not reach the merits of the claims at all. Respondents apparently omitted to review the civil RICO complaint and the Petition For Writ of Certiorari. They both Joined with the same nucleus of facts in the state ancillary and federal court claims. Article III was met.

At page 21, Bullet Point A. The District Court Has No Diversity Jurisdiction Over The Defamation Complaint. Under Jurisdiction and Venue, paragraph 4, Petitioner put the federal court on notice that her claim of damages “***exceeded the minimum jurisdiction limits of Tulsa County District Courts.***” Defamation Complaint-Damages, page 11, para. 40, petitioner sought \$1,000,000.00. Clearly, Petitioner set forth an amount in controversy exceeding \$75,000.00 pursuant to 28 U.S.C. § 1332.

At Page 22, subpara. 3, line 2. Respondents erroneously alleges that Rosemary and Defendants were not completely diverse. First, RICO claims do not fall under common law. Petitioner was not required to have complete diversity of citizenship, nor does the RICO statute require diversity. In *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 86 S. Ct. 1130, 16 L. Ed.2d 218, 1966, this Court held where a Plaintiff has both federal and state claims against a Defendant although there may be *no diversity jurisdiction*, the federal court has discretion to exercise pendent jurisdiction over the state law claims as long as they are based on a common nucleus of operating facts.

CONCLUSION

A close review of Respondents Opposition Brief, they admit not serving Petitioner as mandated under Oklahoma's substantial compliance standards. 12 O.S. § 2004(C)(2)(b). Respondents wholly failed to serve Petitioner at all, requiring vacation and dismissal of the probate case since it was raised by Respondents due to lack of personal jurisdiction. Respondents cited case law is inappropriate and distinguishable from the issues and claims surrounding Petitioner civil RICO claims of mail & wire fraud, extortion, fraud, racketeering, false pretense, false impersonators, conversions of assets, fraudulent conveyance, theft of property, extrinsic and intrinsic fraud, causation, injury to property, and forgery to name a few.

Petitioner sufficiently replied to Respondents redundant Opposition Brief, and suspect that the brief served on Petitioner differ from the Opposition Brief presented to this Court. Petitioner knows that the Appendix differ and other material was presented but not provided to Petitioner.

Dated: October 28, 2020

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that on October 28, 2020, I mailed the foregoing document-Petitioner Reply Brief To Respondents Opposition Brief and Appendix with proper address and proper per-paid postage thereon, and placed the same in the United States Postal Service for delivery to this Court and the below named attorneys for their respective "Clients".

- (1) United States Supreme Court, 1 First St. NE, Washington, DC 20543;
- (2) Randall Allen Gill-per Andrew G. Brown III, and Lisa Creveling, et al., 2512 E. 21st St., Ste.. 100, Tulsa, Ok 74114;

- (3) Robyn Owens-per Mary Bagwell-Hendershott & Susan Boyd et al., 234 W. 13th. St. Tulsa, Ok 74119; and,
- (4) Kimberly B. Schutz et al., 7134 S. Yale Ave. Ste. 300, Tulsa, Ok 74136



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