No. 24-

IN THE

Supreme Court of the United States

DENVER WARD,

Petitioner,

v.

DR. LAURA FISHER, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does a guardian *ad litem* violate due process in acting outside the scope of their duties for the child's best interests when acting in contravention of state law?

2. Is a guardian *ad litem* entitled to quasi-judicial immunity when acting outside the scope of their duties by advocating for one parent over the other?

3. Does a court-appointed custody evaluator violate due process in acting outside the scope of their duties for the child's best interests when acting in contravention of state law?

4. Is a custody evaluator entitled to quasi-judicial immunity when acting outside the scope of their duties by advocating for one parent over the other?

5. Are guardian *ad litems* and custody evaluators state actors when their duty is to the Court, not the individual?

6. Does an attorney-client agreement qualify as a written contract for purposes of the five-year statute of limitations?

PARTIES TO THE PROCEEDING

Petitioner Denver Ward was the appellant in the Tenth Circuit Court and the plaintiff in the Northern District of Oklahoma below. Respondents Dr. Laura Fisher, Carol L. Swenson, and Brad Grundy were the appellees in the Tenth Circuit Court below and the defendants in the Northern District of Oklahoma below. All parties are named in the caption.

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STATEMENT OF RELATED CASES

Pursuant to Rule 14(b)(iii) of the Rules of the Supreme Court of the United States, the following is a complete list of related proceedings pending in any state or federal court:

1. *Debra Billingsly v. Denver G. Ward, Jr.*, FP-2016-21, Tulsa County District Court, State of Oklahoma. This is the paternity action where Swenson and Fisher were appointed in their respective roles and Grundy represented Ward for a period of time.

2. *Denver Ward and H.A.B. v. Brad Grundy and Connor Winters LLP*, CJ-2019-1618, Tulsa County District Court, State of Oklahoma. This is a state court lawsuit against Grundy and his employer, at the time, Connor Winters LLP. This lawsuit was voluntarily dismissed without prejudice on February 19, 2020.

3. *Denver Ward, individually and as the parent and next friend of H.A.B., a minor child v. Brad Grundy*, 20-cv-484-GKF-FHM, in the Northern District of Oklahoma. This is the federal lawsuit solely against Grundy. It was dismissed on November 21, 2022, to pursue the instant matter in order to join Swenson and Fisher.

4. *Denver Ward, as parent and next friend of H.A.B., a minor child, v. Laura Fisher and Carol L. Swenson*, 23-cv-00287-CVE-JFJ, Northern District of Oklahoma. This is the first federal lawsuit solely against Swenson and Fisher. It was dismissed on November 21, 2022, to pursue the instant matter in order to join Grundy.

5. *Denver Ward, individually and as the parent and guardian of H.A.B., a minor child, v. Laura Fisher, Carol L. Swenson, and Brad Grundy*, 23-cv-00554-JFH-JFJ, Northern District of Oklahoma.

6. *Denver Ward, individually and as the parent and guardian of H.A.B., a minor child, v. Laura Fisher, Carol L. Swenson, and Brad Grundy*, Case No. 24-5083, United States Court of Appeals for the Tenth Circuit.

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1. *Denver Ward v. Laura Fisher, et al.*, No. 23-CV-00554-JFH-JFJ, 2024 WL 2965640 (N.D. Okla. June 12, 2024), *aff'd sub nom. Denver Ward v. Laura Fisher, et al.*, No. 24-5083, 2025 WL 1012868 (10th Cir. April 1, 2025).

2. *Denver Ward v. Laura Fisher, et al.*, No. 24-5083, 2025 WL 1012868 (10th Cir. April 1, 2025).

PETITIONER'S JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to 28 U.S.C. § 1254. The Northern District of Oklahoma had jurisdiction over this case pursuant to 28 U.S.C. § 1331 because Ward's claims arose out of the laws of the United States, namely 42 U.S.C. § 1983. Venue was proper in the Northern District of Oklahoma under 28 U.S.C. § 1391(b), as a substantial part of the acts, occurrences, and omissions giving rise to Ward's claims occurred within the confines of the Northern District. The District Court issued a final judgment disposing of Ward's claims on June 12, 2024. Appendix B.

Pursuant to 28 U.S.C. § 1291, Ward timely filed the Notice of Appeal to the Tenth Circuit Court of Appeals on July 11, 2024. The Tenth Circuit Court of Appeals issued an order affirming the Northern District's decision on April 1, 2025. Appendix A. This Petition is filed within 90 days of that date as required by 28 U.S.C. § 2101(c). Sup. Ct. R. 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution, which provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction, the equal protection of the laws.

This case also involves 42 U.S.C. § 1983 which states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

> For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

In addition, the case involves mandatory reporting of abuse under OKLA. STAT. tit. 10A, § 1-2-101(B)(1) which states:

> Every person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall report the matter immediately to the Department of Human Services. Reports shall be made to the hotline provided for in subsection A of this section.

STATEMENT OF THE CASE

On November 16, 2023, Ward filed the Petition in *Denver Ward v. Dr. Laura Fisher, et al.*, CJ-2023-4033, Tulsa County, Oklahoma, setting forth federal and state law claims against Swenson, Fisher, and Grundy. Appendix C, pp. 37a-51a. Defendants removed the matter to the Northern District of Oklahoma on December 22, 2023. *Id*. at pp. 24a-27a

On August 8, 2016, the state court appointed Swenson to act as Guardian *Ad Litem* (GAL) for the Ward's minor child in the Tulsa County paternity matter, styled *Debra Billingsly v. Denver G. Ward*, Tulsa County District Court Case No. *FP-2016-21* (the Paternity Action). Appendix C, at p. 40a. In the Paternity Action, Swenson exhibited a pattern of neglect of Ward's child, knowing that the child

was being sexually, physically, medically, and emotionally abused by the mother and taking no action to protect the child. *Id.* at pp. 43a-44a. On June 2, 2017, Swenson described the child's abuse in an affidavit as being tortured from birth; however, Swenson failed to report the child abuse, despite being a mandatory reporter under Oklahoma law. *Id.* at p. 44a. Under Oklahoma law, "[e]very person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall report the matter immediately to the Department of Human Services ["DHS"]." OKLA. STAT. tit. 10A, § 1-2-101(B)(1). Swenson did this to benefit herself financially and, as a result, the minor child was exposed to prolonged physical, sexual, and emotional abuse and neglect. *Id.*

Fisher was appointed as a custody evaluator in the Paternity Action. Appendix C, at p. 39a. Ward reported the abuses by the mother to Fisher as early as June 20, 2016. *Id.* at p. 41a. On November 21, 2016, Fisher noted the abuse in a child custody evaluation, submitted to the court, but stated that she did not have the expertise to evaluate those allegations. *Id.* Even knowing about the extreme child abuse, Fisher recommended, and the court awarded, joint custody. *Id.* On June 14, 2017, the court awarded sole custody to Ward, after Ward's subsequent counsel filed for emergency custody, and specifically excluded Fisher from supervising visitation between mother and child. *Id.* at pp. 41a-42a. Despite this explicit prohibition, Fisher violated the court's order and supervised visitation anyway. *Id.* at p. 42a. Furthermore, despite documenting her knowledge of child abuse, Fisher also did not report the abuse as required by statute. *Id.* at p. 43a. As a result of Fisher's silence, Ward's child suffered additional, and

wholly unnecessary, physical, sexual, and emotional abuse and neglect at the hands of the mother. *Id.*

On February 4, 2016, Ward hired Grundy, through a signed attorney-client agreement, to represent him in the Paternity Action. Appendix D, at pp. 52a-57a. The agreement specifies the "Scope of Engagement," hourly rates, retainer fees, and discusses costs, expenses, termination procedures, etc. *Id.* at pp. 52a-54a, 56a. Despite knowledge that the child was being horrifically abused by the mother, Grundy failed or otherwise refused to pursue any type of emergency custody motion on Ward's behalf or take any action to protect the child. Appendix C, at pp. 45a. On March 31, 2017, Grundy moved to withdraw from the case. On April 13, 2017, the court allowed Grundy to withdraw from the Paternity Action. On June 14, 2017, Ward's subsequent counsel filed the emergency motion that Grundy failed to pursue, which was immediately granted. *Id.* at pp. 41a-42a. The mother has had no unsupervised contact with Ward's child since that date.

On April 18, 2019, Ward filed the Petition in a Tulsa County case styled, *Denver Ward, et al. v. Brad Grundy, et al.*, CJ-2019-1618, asserting negligence and breach of contract against Grundy. On February 19, 2020, Ward dismissed CJ-2019-1618, without prejudice. On September 28, 2020, Ward filed a second lawsuit, styled *Denver Ward v. Brad Grundy*, 20-cv-484, in the Northern District of Oklahoma, asserting causes of action against Grundy for negligence and breach of contact. On November 21, 2022, both Ward's and Grundy's counsel entered a joint Stipulation of Dismissal "without prejudice to its refiling."

On November 16, 2023, Ward filed the Complaint in this action, which gives rise to this appeal, alleging breach of contract and negligence causes of action against all Defendants, as well as actions for violations of the Eighth or Fourteenth Amendments against Swenson and Fisher. Appendix C, pp. 46a-51a. Each Defendant, individually, moved to dismiss under Fed. R. Civ. Pro. 12(B)(6), and the District Court dismissed Ward's claims. Appendix B. The District Court extended the holding from *Vietti v. Welsh & McGough, PLLC*, Case No. 21-CV-00058-WPJ-SH, 2024 WL 870562 (N.D. Okla. Feb. 29, 2024), to Swenson and Fisher, which erroneously dismissed a GAL and court-appointed therapist on identical arguments. *Id.* at p. 19a. The trial court further incorrectly dismissed Grundy, determining that the statute of limitations had run because the attorney-client contract between Ward and Grundy did not trigger the five-year limitation period. *Id.* at pp. 19a-23a. On April 1, 2025, the Tenth Circuit Court of Appeals affirmed the District Court's decision with very little analysis. Appendix A. From this decision, Ward timely files this Petition.

REASON FOR GRANTING THE PETITION

THIS COURT SHOULD GRANT REVIEW TO DECIDE A QUESTION OF NATIONAL IMPORTANCE AND RESOLVE A CONFLICT AMONG THE LOWER COURTS CONCERNING IMMUNITY WHEN A GUARDIAN *AD LITEM* OR CUSTODY EVALUATOR ACTS OUTSIDE THE SCOPE OF THEIR DUTIES

Oklahoma, like every state, allows for the appointment of a GAL to advocate for the best interest of the child:

> The guardian ad litem shall be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:
>
> a. review documents, reports, records, and other information relevant to the case; meet with and observe the child in appropriate settings, including the child's current placement, and interview parents, foster parents, health care providers, child protective services workers, and any other person with knowledge relevant to the case,
>
> b. advocate for the best interests of the child by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,
>
> c. monitor the best interests of the child throughout any judicial proceeding, and
>
> d. present written reports on the best interests of the child that include conclusions and recommendations and the facts upon which they are based.

OKLA. STAT. tit. 10A, § 1-4-306(B)(3). Such laws, written in mandatory language, create both property and liberty

interests for the children and the parents. *Paul v. Davis*, 424 U.S. 693, 709 (1976) (entitlements are "of course, . . . not created by the Constitution. Rather, they are created, and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law") (citations omitted); *see also Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748 (2005) (analyzing whether state law, and restraining order issued pursuant to it, create a property interest).

This Court has long held that, above all, due process requires fundamental fairness. *Quill Corp. v. North Dakota by and through Heitkamp*, 504 U.S. 298, 312 (1992) ("[d]ue process centrally concerns the fundamental fairness of governmental activity"); *see also Richardson v. United States*, 526 U.S. 813, 835 (1999) (describing "due process with its demands for fundamental fairness and for the rationality that is an essential component of that fairness"); *M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996) (declaring that "[t]he due process concern homes in on the essential fairness of the state-ordered proceedings"); *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987) (describing the "fundamental fairness mandated by the Due Process Clause").

This case involves whether GALs and, relatedly, court-appointed custody evaluators are immune from lawsuits alleging violations of due process when those actors act outside of their duties and whether those parties are "state actors" owing due process to the persons for whom they are appointed. The Tenth Circuit's decision cannot be reconciled with the fundamental fairness required by due process. There can be no dispute that neither Swenson nor Fisher reported the child abuse in the Paternity Action,

despite statutory mandates. There is a significant split of authority in the lower courts regarding whether Swenson and Fisher are immune from constitutional due process violations. In South Carolina, for example, the Court held that a GAL is not immune and remains "liable for actions beyond the scope of her duties." *Falk v. Sadler*, 533 S.E.2d 350 (S.C. 2000). Other courts, such as Utah, Kansas, and New Mexico, have determined that immunity applied even if the court-appointed actors went outside the scope of their duties. *Dahl v. Charles F. Dahl, M.D., P.C.*, 744 F.3d 623 (10th Cir. 2014) (applying Utah law); *Shophar v. City of Olathe*, 2017 U.S. Dist. LEXIS 93069, 2017 WL 2618494, at *11 (D. Kan. June 16, 2017); *Walker v. New Mexico*, 2015 U.S. Dist. LEXIS 197638, 2015 WL 13651131, at *5 (D.N.M. Sept. 21, 2015)). Because of this split, this Court should review the courts' decisions in this case.

THIS COURT SHOULD GRANT REVIEW TO DECIDE A QUESTION OF NATIONAL IMPORTANCE CONCERNING ATTORNEY-CLIENT CONTRACTS

The State of Oklahoma contains the following relevant statutes of limitations:

> 1. Within five (5) years: An action upon any contract, agreement, or promise in writing;
>
> 2. Within three (3) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment;

> 3. Within two (2) years: An action for trespass upon real property; an action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud—the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud;

OKLA. STAT. tit. 12, § 95(A)(1-3). "In Oklahoma, an action for malpractice, whether medical or legal, though based on a contract of employment, is an action in tort and is governed by the two-year statute of limitations at 12 O.S.A. 1981, § 95 Third." *Funnell v. Jones*, 737 P.2d 105, 107 (Okla. 1985). However, "[w]e did not decide in *Funnell* a proceeding against a lawyer or law firm is limited *only* to a proceeding based in tort no matter what the allegations of a petition brought against the lawyer or law firm." *Great Plains Fed. Sav. and Loan Ass'n v. Dabney*, 846 P.2d 1088, 1092 (Okla. 1993) (emphasis in original). "Where the parties have spelled out the performance promised by defendant and defendant commits to the performance without reference to and irrespective of any general standard, a contract theory would be viable, regardless of any negligence on the part of a professional defendant." *Id.*

There exists a significant split in authority across the country on this issue. Several jurisdictions hold that the attorney-client engagement letters, such as the one at issue here, qualify as contracts for statute of limitations purposes. *Blanchard and Assoc. v. Lupin*

Pharmaceuticals Inc., 900 F.3d 917, 923 (7th Cir. 2018); *Bernard v. Walkup*, 272 Cal. App. 2d 595, 602-04 (Cal. Ct. App. 1969); *Dickerman v. Jones*, 65 N.E.2d 142 (Ill Ct. App. 1946); *Ferguson v. Parker*, 176 S.W.2d 768, 769-70 (Tex. Ct. App. 1943). Other jurisdictions come to a different conclusion. *Marley Mouldings Inc. v. Suyat*, 970 F. Supp. 496, 499-500 (W.D. Va. 1997); *Bogel & Gates, P.L.L.C. v. Zapel*, 90 P.3d 703, 706 (Wash. Ct. App. 2004); *Bogle & Gates, P.L.L.C. v. Holly Mountain Resources*, 32 P.3d 1002, 1005 (Wash. Ct. App. 2001). This Court should resolve this split of authority once and for all.

ARGUMENT AND AUTHORITY SUPPORTING GRANT OF CERTIORARI

I. Swenson and Fisher

The Tenth Circuit erred in affirming the motions to dismiss and entering judgment in favor of Swenson and Fisher under a multitude of theories. The Tenth Circuit erred in finding both Swenson and Fisher immune as a matter of law, as both exceeded the scope of the quasi-judicial immunity allowed under federal and Oklahoma law. Furthermore, while the Tenth Circuit refused to address the argument, both Swenson and Fisher are state actors under 42 U.S.C. § 1983, and this Court must, by proxy, address this issue, since the District Court erroneously dismissed this action under that theory as well. Appendix B at p. 19a. Finally, Ward adequately alleges both breach of contract and negligence theories against Swenson and Fisher.[1]

1. Again, the Tenth Circuit opinion does not address the failure-to-state-a-claim argument. Appendix A. However, because

A. Quasi-Judicial Immunity should not be extended to Swenson or Fisher.

The Tenth Circuit extended quasi-judicial immunity to both Swenson and Fisher, relying almost exclusively on *Dahl v. Charles F. Dahl, M.D. P.C. Defined Benefit Pension Tr.*, 744 F.3d 623 (10th Cir. 2014). Appendix A at pp. 7a-8a.[2] However, under *Dahl*, "[t]here are limits to the scope of the immunity for a GAL. Not every act performed by a person with that title is immunized. For example, there is no immunity for acts taken in the 'clear absence of all jurisdiction.'" *Dahl*, 744 F.3d at 630 (quoting *Stump v. Sparkman*, 435 U.S. 349, 357 (1978)).

"It is the nature of the acts, not simply the status of the defendant as a guardian ad litem, that determines the availability of immunity for the challenged acts and the extent of protection afforded by that immunity." *Falk v. Sadler*, 533 S.E.2d 350, 353-54 (S.C. 2000). "[T]he guardian remains liable for actions beyond the scope of her duties." *Id.* at 353. Under Oklahoma state law, "[a] court-appointed guardian *ad litem* in a custody matter is immune from suit by the ward or any other party, *for all acts arising out of or relating to the discharge of his duties as guardian ad litem*." *Perigo v. Wiseman*, 11 P.3d 217, 217-18 (Okla. 2000) (emphasis added). All these holdings, essentially, stand for the proposition that a GAL,

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the District Court extended the *Vietti* holding, which does, Ward includes these arguments. Appendix B at p. 19a.

2. The Tenth Circuit does reference *Hughes v. Long*, 242 F.3d 121 (3d Cir. 2001), to show that quasi-judicial immunity exists for custody evaluators; however, the remainder of the opinion relative to Swenson and Fisher is premised under the *Dahl* reasoning.

as well as a custody evaluator, who acts beyond the scope of their appointment, likewise, acts in the "clear absence of all jurisdiction." This is supported by the fact that "[t]he appointment of a guardian ad litem pursuant to 43 O.S. § 107.3 is purely discretionary with the court. The trial court may, on its own motion or that of the parties, appoint a guardian ad litem to assist the court in the best interests determination." *Rowe v. Rowe*, 218 P.3d 887, 890 (Okla. 2009).[3] It is entirely within the trial court's jurisdiction to appoint a GAL or custody evaluator and, thereby, define the scope of that person's duties; therefore, to the extent the court-appointed expert operates beyond the scope of the court's appointment, she is doing so in the "clear absence of all jurisdiction."

In *Falk*, the court denied a motion to dismiss. 533 S.E.2d at 354. The *Falk* Court noted that while mere disagreement with the GAL's recommendations did not defeat quasi-judicial immunity, the plaintiff's complaint sufficiently survived dismissal:

> [Plaintiff] alleges in her complaint that [GAL] exceeded the scope of her [GAL] duties in several ways. In particular, [plaintiff] alleges that [GAL]: (1) "exceed[ed] the scope of her [GAL] duties and responsibilities by advocating,

3. There is no statute comparable to 43 O.S. § 107.3 for custody evaluators; however, Title 43 does treat GALs and custody evaluators similarly as court-appointment experts. 43 O.S. § 120.7(A) ("As used in this section, 'court expert' means a parenting coordinator, guardian ad litem, custody evaluator or any other person appointed by the court in a custody or visitation proceeding involving children."). Thus, the *Rowe* logic extends equally to Swenson and Fisher.

> representing or attempting to represent the interests of [plaintiff] and [husband] in issues involving the legal separation of [plaintiff] and [husband];" (2) "exceed[ed] the scope of her duties and responsibilities by interfering with issues between [plaintiff] and [husband] regarding spousal support;" (3) committed misconduct "[i]n attempting to negotiate spousal support for [plaintiff] without authorization in exchange for physical separation of her minor clients from one another;" (4) committed misconduct "[i]n advocating and acting under an inherent conflict of interest in the performance of legal representation of the best interest of her clients, the minor children;" and (5) committed misconduct "[i]n undertaking the dual role of [GAL] and providing legal advice to or representation of [husband] as to legal matters between [plaintiff] and [husband]."

Id. The *Falk* court found dismissal premature until discovery could be completed. *Id.* This is not the only holding consistent with the notion that there are limitations on GAL immunity. A New Mexico Supreme Court held:

> [T]he guardian's functions embrace primarily the rendition of professional services in the form of vigorous advocacy on behalf of the child, the reason for the protection of immunity—avoiding distortion of the investigative help and other assistance provided to the court—is lacking, and the attorney rendering professional service to the child should be held to the same

> standard as are all other attorneys in their representation of clients.

Collins v. Tabet, 806 P.2d 40, 50 (N.M. 1991). Accordingly, "a limited factual inquiry is necessary to determine the nature of [the guardian's] appointment and the extent to which he functioned within the scope of that appointment." *Id.* at 52.

In Oklahoma, "[e]very person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall report the matter immediately to the Department of Human Services." OKLA. STAT. tit. 10A, § 1-2-101(B)(1). Neither Swenson nor Fisher ever reported the undisputed abuse of Ward's child. Swenson admitted in a sworn affidavit that she had "great concern from the beginning" about the abuse from the inception of the underlying custody action, yet she failed to act. Similarly, Fisher was informed about the abuse from the outset of her court appointment and never reported it. Appendix C, at p. 43a. Furthermore, even after acknowledging the alleged abuse and admitting being unqualified to evaluate child abuse of this nature, Fisher still recommended that the abuser have co-equal legal custody of the victim. *Id.* at p. 41a. Additionally, despite the court order's explicit prohibition of Fisher as a visitation supervisor and Fisher's admission that she lacked qualifications, Fisher supervised visits between Ward's minor child and the abuser mother anyway. *Id.* at p. 42a. Swenson's and Fisher's actions were done in the "clear absence of all jurisdiction," and quasi-judicial immunity should not have been extended to them in this case.

B. Both Swenson and Fisher were state actors in this case.[4]

Because the Tenth Circuit concluded that quasi-judicial immunity applied in this matter, it determined that it "need not address" the state actor arguments. Appendix A at p. 8a, n. 2. The principal issue with this declination is that by extending *Vietti*, the District Court made such a finding; therefore, Ward must incorporate his previously made argument herein.

There are four different tests to determine whether a private individual may be subject to liability under § 1983 as a state actor: the nexus test, the symbiotic relationship test, the joint action test, and the public function test. *Gallagher v. Neil Young Freedom Concert*, 49 F.3d 1442, 1447 (10th Cir. 1995). Only the "symbiotic relationship" test and the "public function" test were discussed below. *Vietti*, 2024 WL 870562, at **8-10. The symbiotic relationship test asks whether the state "has so far insinuated itself into a position of interdependence with a private party that it must be recognized as a joint participant in the challenged activity." *Gallagher*, 49 F.3d at 1451 (quotations omitted). The public function test asks whether the challenged action is "a function traditionally exclusively reserved to the State. . . ." *Id.* at 1456 (quotations omitted).

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4. Even though the Tenth Circuit did not address this argument in their opinion, the District Court by its extension of the opinion in *Vietti v. Welsh & McGough, PLLC*, Case No. 21-CV-00058-WPJ-SH, 2024 WL 870562 (N.D. Okla. Feb. 29, 2024), incorporated this argument; therefore, Ward further asserts this argument herein.

The *Vietti* holding merely stated that the pleadings in that case did not specifically raise the issues that were argued in the motion to dismiss relative to the "state actor" question. *Vietti*, 2024 WL 870562, at *10. This presents a quandary for Ward's "state actor" analysis here, as this particular issue was not presented in the dismissal briefings in his case. As previously stated, the District Court "adopts and extends *Vietti's* rationale and therefore will grant the Fisher and Swenson MTDs." Appendix B at p. 19a. Since there is no analysis on the adequacy of the pleadings in this case, it is unclear if the District Court actually considered the "state actor" arguments as equally valid to the immunity arguments.

"Generally, the sufficiency of a complaint must rest on its contents alone." *Francis v. APEX USA, Inc.*, 406 F. Supp. 3d 1206, 1209 (W.D. Okla. 2019) (quoting *Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th Cir. 2010)). "[W]hen a party presents matters outside of the pleadings for consideration . . . 'the court must either exclude the material or treat the motion as one for summary judgment." *Id.* (quoting *Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1103 (10th Cir. 2017)). "Certain exceptions exist, and the court may consider: (1) documents attached to the complaint as exhibits; (2) documents referenced in the complaint that are central to the plaintiff's claims if the parties do not dispute the documents' authenticity; and (3) matters of which the court may take judicial notice." *Id.* The court in reviewing a motion to dismiss "must accept as true all of the factual allegations contained in the complaint." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508 n.1 (2002).

The removed Petition, in this case, provides that Fisher "stated that her opinion is that [Ward's minor child] will be in danger of suffering irreparable harm while in the physical custody of Mother." Appendix C, at p. 41a. Fisher also made other custodial recommendations in the Paternity Action. *Id*. Conversely, Swenson "intentionally delayed acting in order to draw out the Paternity Action so that she could continue to serve as GAL for her own financial benefit." *Id.* at p. 44a. Deciding child custody is the function within the sole jurisdiction of the state trial court; therefore, it is clear, on its face, that the pleadings in this matter raised factual allegations sufficient to show both comingling of these responsibilities, as well as allegations that Swenson and Fisher performed traditional state functions. Despite a lack of clarity in the District Court order, Ward sufficiently raised factual allegations to survive a motion to dismiss on both grounds analyzed in *Vietti*.

C. Ward's claims for breach of contract and negligence against the GAL and custody evaluator should survive dismissal.

While the Tenth Circuit opinion is silent on whether or not Ward has sufficiently stated claims for breach of contract and negligence against Swenson and Fisher, the District Court's *Vietti* extension arguably implicates these arguments as well.[5] In either respect, Ward sufficiently pleaded both causes of action against both Swenson and Fisher.

5. Failure to state a claim arguments are traditionally fact-specific to each case; therefore, taking an apples-to-apples approach, as the District Court does with the blanket *Vietti* extension, is problematic.

i. Breach of Contract

Under Oklahoma law, "for breach of contract, the elements of which are (1) the formation of a contract, (2) breach of the contract, and (3) damages as a result of that breach." *Cates v. Integris Health, Inc.*, 412 P.3d 98, 103 (Okla. 2018). "A contract consists not only of the agreements which the parties have expressed in words, but also of the obligations which are reasonably implied." *Black v. Baker Oil Tools, Inc.*, 107 F.3d 1457, 1461 (10th Cir. 1997) (applying Oklahoma law) (citations omitted). "An implied contract is one, the existence and terms of which are manifested by conduct." *Id.* (citations omitted). "A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it." OKLA. STAT. tit. 15, § 29.

Ward specifically alleged that he contracted with and compensated both Swenson and Fisher in the Paternity Action, constituting a contract expressly made for the benefit of Ward's minor child. "Normally the issue of whether an implied contract exists is factual." *Hayes v. Eateries, Inc.*, 905 P.2d 778, 783 (Okla. 1995). Ward sufficiently alleged the formation of contracts against both Swenson and Fisher in this case and further sufficiently stated a breach of those contracts. Dismissal was improper.

ii. Negligence

All that is required to survive a motion to dismiss in federal court is sufficient factual matter to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 580 (2007). Ward alleged that

both Swenson and Fisher failed to report suspected child abuse, "[d]espite being a mandatory reporter." Appendix B, Exhibit 2, pp. 43a-44a. There is only one mandatory child abuse reporting statute in Oklahoma, OKLA. STAT. tit. 10A, § 1-2-101; therefore, even if *Twombly* required reference to statutory provisions by chapter and verse, which it does not, Ward's allegations were sufficient to meet this standard, by a lack of alternatives. While the statute is silent on a private right of action, the Western District of Oklahoma held that a plaintiff could bring a negligence *per se* action for a defendant's failure to make a mandatory report under the child abuse reporting statute. *T.A. by & through Christensen v. Moore Pub. Sch., I-02*, No. CIV-06-858-C, 2008 WL 11417305, at *7 (W.D. Okla. Apr. 23, 2008). In *T.A.*, the plaintiff brought a negligence claim against certain school employees for failing to report the abuse of a fellow employee under a prior version of the mandatory reporting law. *Id.* at *1. The *T.A.* Court held that a negligence *per se* claim could be maintained for failure to report, stating:

> The Oklahoma Court of Appeals, without further explanation, has held that "the child abuse reporting statutes do not create a private right of action. . . . There is no provision . . . for civil liability." *Paulson v. Sternlof*, 2000 OK CIV APP 128, ¶ 13, 15 P.3d 981, 984. *However, a claim for negligence per se does not necessarily depend on a legislature's grant of a private right of action.* 57A Am. Jur. 2d Negligence § 685. Because § 7103 imposes more than a general duty and specifically requires anyone with reason to believe that a child is a victim of abuse to contact authorities, the Court finds

> that it can support a claim for negligence per se. Therefore, the [Defendant's] request for summary judgment on the negligence per se claim is denied.

T.A., 2008 WL 11417305, at *7 (emphasis added). The *T.A.* holding alone supports negligence *per se* as a cause of action against Swenson and Fisher.

II. Grundy

The Tenth Circuit's affirmance of the District Court's dismissal of Grundy hinges on the position that the attorney-client agreement between Ward and Grundy did not specifically spell out the performance to such a degree that Ward would be entitled to the five-year statute of limitations for breach of a written contract under Oklahoma law.

The Tenth Circuit correctly notes that Oklahoma law allows Ward's claims against Grundy under either tort or contract, under the right circumstances. *Great Plains Fed. Sav. and Loan Ass'n v. Dabney*, 846 P.2d 1088, 1092 (citing *Funnell v. Jones*, 737 P.2d 105 (Okla. 1985)). "Where the *parties have spelled out the performance promised by defendant and defendant commits to the performance* without reference to and irrespective of any general standard, a contract theory would be viable, regardless of any negligence on the part of a professional defendant." *Id.* at 1092 (emphasis added). Unquestionably, attorney-client agreements in Oklahoma can constitute contractual agreements for purposes of a statute of limitations analysis. *Dabney*, 846 P.2d at 1091-92; *see also Bailey v. Green*, Case No. 13-CV-100-FHS, 2014 WL

12539887, at *4 (E.D. Okla. Aug. 20, 2014). The remaining issue is whether the attorney-client agreement at issue here qualifies as a written contract, to which a five-year limitations period attaches.

Grundy and Ward memorialized their understanding of the specific promise at issue in the February 2016 agreement, for which Grundy was "to represent [Ward] in connection with your paternity action with Debra Billingsley," to which Grundy committed. Appendix D at p. 52a. In this instance, the parties "have spelled out the performance" promised by Grundy—representation of Ward in the Paternity Action without references and irrespective of general standards. This meets the *Dabney* rationale, as this performance is not required to be alleged with any further degree of specificity.

"[E]vidence of a writing signed by one party and acceptance of the terms of the writing by the other is sufficient to bring the action within the statute of limitations for written contracts." *Cortwright v. City of Oklahoma City*, 951 P.2d 93, 97 (Okla. 1997). Obviously, the attorney-client contract constitutes a written document, signed by Ward and Grundy. Appendix D at p. 57a. Under the *Cortwright* holding, this alone brings the cause of action within the five-year statute of limitations.

Furthermore, other states have held that similar attorney-client agreements meet the written contract requirement, triggering the longer statute of limitations for written contracts as opposed to their, oftentimes, shorter counterparts for oral contracts. *Blanchard and Assoc. v. Lupin Pharmaceuticals Inc.*, 900 F.3d 917, 923 (7th Cir. 2018) ("[T]he engagement letter identifie[d]

the nature of the transaction," sufficiently identified the parties without the need of extrinsic evidence and "also list[ed] the hourly rates of the firm's attorneys, which establishe[d] the amount in question to the degree necessary for a suit on a written contract."); *Bernard v. Walkup*, 272 Cal. App. 2d 595, 602-04 (Cal. Ct. App. 1969) (attorney-client contingency fee agreement constituted a written agreement, thereby triggering the four-year statute of limitations); *Dickerman v. Jones*, 65 N.E.2d 142 (Ill Ct. App. 1946) (abstract only); *Ferguson v. Parker*, 176 S.W.2d 768, 769-70 (Tex. Ct. App. 1943) (After initial verbal attorney-client agreement, follow up letter to client confirming scope of representation and fee agreement sufficed to trigger longer statute of limitations.). Under any of these courts' analyses, the Grundy-Ward agreement is a written contract. Ward's breach of contract cause of action should be governed by the five-year statute of limitations period, pursuant to OKLA. STAT. tit. 12, § 95(A)(1).[6] Dismissal was error.

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6. The few jurisdictions coming to a different result still support application of the five-year limitation period here, as the pivotal fact forming the basis of each decision is missing in this case. *Marley Mouldings Inc. v. Suyat*, 970 F. Supp. 496, 499-500 (W.D. Va. 1997) (Three separate letters to client would not constitute a written contract, where "[t]he subject matter of the contract is ambiguous. . . . Furthermore, there is no agreement as to what the consideration for the services to be rendered will be; nor, is there an agreement as to the duration of the services."); *Bogel & Gates, P.L.L.C. v. Zapel*, 90 P.3d 703, 706 (Wash. Ct. App. 2004) ("The Zapels neither authored, signed, nor acknowledged the writings authored by Bogle & Gates. Without *agreement* of the client, there is no written instrument or written agreement."); *Bogle & Gates, P.L.L.C. v. Holly Mountain Resources*, 32 P.3d 1002, 1005 (Wash. Ct. App. 2001) ("We are unable to imply an agreement between Bogle & Gates and Holly Mountain without resorting to evidence

CONCLUSION

For the reasons stated herein, this Court should grant certiorari and reverse the District Court's Final Judgment of June 12, 2024.

Respectfully submitted,

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outside of the correspondence."). As previously mentioned, the distinguishing characteristics of these decisions are not present here; thus, the Ward-Grundy agreement qualifies as a written agreement even in these jurisdictions.

APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, FILED APRIL 1, 2025

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 24-5083
(D.C. No. 4:23-CV-00554-JFH-JFJ)
(N.D. Okla.)

DENVER WARD, INDIVIDUALLY
AND AS THE PARENT AND
GUARDIAN OF H.A.B., A MINOR CHILD,

Plaintiff-Appellant,

v.

LAURA FISHER; CAROL L. SWENSON;
BRAD GRUNDY,

Defendants-Appellees.

Before **PHILLIPS, BALDOCK**, and **ROSSMAN**, Circuit Judges.

Filed April 1, 2025

Appendix A

ORDER AND JUDGMENT*

Plaintiff Denver Ward filed this action against defendants Laura Fisher, Carol Swenson, and Brad Grundy arising out of their alleged acts and omissions in connection with an Oklahoma state paternity and custody action in which Mr. Ward was a party. The district court dismissed Mr. Ward's claims. Mr. Ward now appeals. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm.

I. FACTUAL HISTORY

In January 2016, Mr. Ward became involved in an Oklahoma state paternity and custody action (the Paternity Action). Mr. Ward hired Mr. Grundy, a licensed attorney in the State of Oklahoma, to represent him in the Paternity Action. Mr. Ward conceded he was the father of the minor child, H.A.B., but alleged that H.A.B.'s mother, Debra Billingsly, was subjecting H.A.B. to medical abuse (formerly called Munchausen syndrome by proxy).

The state court appointed Ms. Swenson as a guardian ad litem for H.A.B. The state court also appointed Dr. Fisher, a licensed psychologist, as a child custody evaluator.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Dr. Fisher performed a custody evaluation and completed her initial report in November 2016. At that time, Dr. Fisher "had concerns about the medical history of" H.A.B., but "did not have information from a medical professional to substantiate the concern for medical child abuse." Aplt. App. vol. I at 67.

In December 2016, the state court entered an agreed temporary order awarding joint legal custody of H.A.B., with the parties "to share physical custody on a 50/50 basis." *Id.* at 217. Shortly thereafter, in early 2017, Mr. Ward retained new counsel to represent him in the Paternity Action.

Dr. Mary Ellen Stockett, a specialist in pediatric child abuse, reviewed H.A.B.'s medical records and opined that H.A.B. had been subjected to medical child abuse by Ms. Billingsly. Dr. Stockett reported the abuse to the Oklahoma Department of Human Services (ODHS). In April 2017, ODHS issued a finding substantiating Ms. Billingsly's abuse of H.A.B.

Dr. Fisher reviewed Dr. Stockett's written report and also consulted with another expert in medical child abuse. After doing so, Dr. Fisher opined that H.A.B. was "in a situation which potentially place[d] her in danger of irreparable harm while in the physical custody of" Ms. Billingsly. *Id.* at 67.

In June 2017, Mr. Ward filed an application for an ex parte emergency order in the Paternity Action. In support of the application, Mr. Ward submitted an affidavit from

Ms. Swenson in which she concluded, based upon the report of Dr. Stockett, that the only way to ensure H.A.B.'s safety and well-being was "to terminate the temporary joint custody and grant physical custody to" Mr. Ward "subject to supervised visitation with" Ms. Billingsly. *Id.* at 223.

The State Court held an evidentiary hearing in late June 2017 and awarded custody of H.A.B. to Mr. Ward while simultaneously restricting Ms. Billingsly's visitation to professional supervision.

In April 2019, Mr. Ward filed suit against Mr. Grundy and his law firm in Oklahoma state court asserting claims of negligence and breach of contract in connection with Mr. Grundy's representation of Mr. Ward in the Paternity Action. In February 2020, Mr. Ward voluntarily dismissed the lawsuit without having served Mr. Grundy or his law firm.

In September 2020, Mr. Ward refiled his case against Mr. Grundy in federal district court. In November 2022, Mr. Ward voluntarily dismissed the lawsuit without prejudice.

II. PROCEDURAL HISTORY

On November 16, 2023, Mr. Ward filed suit against Dr. Fisher, Ms. Swenson, and Mr. Grundy in Oklahoma state court asserting both federal and state law claims. Count I of the complaint alleged that Dr. Fisher and Ms. Swenson "breached their respective contracts when they became

aware of the abuse being suffered by H.A.B. and failed to act to protect her." *Id.* at 21. Count I further alleged that Mr. Grundy "breached this contract when he chose not to pursue an emergency application" for temporary custody of H.A.B. and "by failing to provide all medical records" to an expert witness, and that his "acts and omissions" resulted in the state court's custody decision being "delayed by more than a year," which in turn "subjected [H.A.B.] to untold atrocities and cost" Mr. Ward "over one hundred thousand dollars . . . in additional attorneys' fees and costs." *Id.* at 22. Count II alleged negligence claims against all three defendants related to their respective roles in the Paternity Action. Count III alleged that Dr. Fisher and Ms. Swenson, "acting under cover of state law, violated the Eighth and/or Fourteenth Amendments of the United States Constitution" by denying, delaying, and obstructing "immediate and emergent intervention to prevent further abuse" of H.A.B. and by "disregard[ing] the known, obvious[,] and substantial risks to [her] health and safety." *Id.* at 24. Count IV of the complaint sought punitive damages against all three defendants.

Dr. Fisher removed the case to federal district court on the basis of federal subject matter jurisdiction and then moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6), arguing that "[c]ourt-appointed child custody evaluators are entitled to quasi-judicial immunity from suit." *Id.* at 30. Ms. Swenson likewise moved to dismiss the claims against her on the basis of quasi-judicial immunity. Mr. Grundy, for his part, moved to dismiss the claims against him as untimely.

The district court granted the motions to dismiss. In doing so, it concluded both Dr. Fisher and Ms. Swenson were entitled to quasi-judicial immunity from Mr. Ward's claims. As for the claims against Mr. Grundy, the district court noted that Mr. Ward "concede[d] the negligence claim [wa]s time-barred." *Id.* at 261. The district court in turn concluded that Mr. Ward's breach of contract claim against Mr. Grundy was also time-barred.

Following the entry of final judgment, Mr. Ward filed a timely notice of appeal.

III. ANALYSIS

We review de novo a district court's "grant of a motion to dismiss pursuant to Rule 12(b)(6), applying the same legal standard applicable in the district court." *Teigen v. Renfrow*, 511 F.3d 1072, 1078 (10th Cir. 2007). Under that standard, "[a]ll well-pleaded facts, as distinguished from conclusory allegations, are accepted as true and viewed in the light most favorable to the nonmoving party." *Id.* If the complaint includes "enough facts to state a claim to relief that is plausible on its face," then dismissal is not warranted. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

Appendix A

A. The claims against Dr. Fisher and Ms. Swenson

Mr. Ward argues the district court erred in concluding Ms. Swenson and Dr. Fisher were entitled to quasi-judicial immunity. For the reasons that follow, we disagree.

Absolute immunity, which "has long been available to protect judges from liability for acts performed in their judicial capacity," "has been extended to 'certain others who perform functions closely associated with the judicial process.'" *Dahl v. Charles F. Dahl, M.D., P.C. Defined Benefit Pension Tr.*, 744 F.3d 623, 630 (10th Cir. 2014) (quoting *Cleavinger v. Saxner*, 474 U.S. 193, 200, 106 S. Ct. 496, 88 L. Ed. 2d 507 (1985)). This includes guardians ad litem, such as Ms. Swenson, and court-appointed child custody evaluators, such as Dr. Fisher. *See Dahl*, 744 F.3d at 630 (guardian ad litems); *Hughes v. Long*, 242 F.3d 121, 128 (3d Cir. 2001) (child custody evaluators). Such immunity "is often called quasi-judicial immunity" because "it is applied to someone other than a judge." *Dahl*, 744 F.3d at 630. The purpose of quasi-judicial immunity is to allow these officers to "exercise their judgment (which on occasion may not be very good) without fear of being sued in tort." *Id.* at 631.

There are, of course, "limits to the scope of th[is] immunity." *Id.* at 630. But those cases are the exception, rather than the rule. As the Supreme Court noted long ago, a party entitled to judicial or quasi-judicial immunity does not lose that immunity simply because "the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only

when he has acted in the clear absence of all jurisdiction." *Stump v. Sparkman*, 435 U.S. 349, 356-57, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978).

After examining the record on appeal, we agree with the district court that Ms. Swenson and Dr. Fisher were entitled to quasi-judicial immunity from Mr. Ward's claims. Notably, the complaint concedes both defendants were appointed by the state court to assist it in the resolution of the Paternity Action. Further, all of the allegations against Ms. Swenson and Dr. Fisher involve acts that can be characterized as "within the core duties" of the respective roles they were appointed to in "assisting the court" in the Paternity Action. *Dahl*, 744 F.3d at 630. Although the complaint alleges that both defendants acted improperly in carrying out their appointments, none of the allegations are sufficient to establish that either defendant acted in the clear absence of all jurisdiction.[1] We therefore conclude the district court did not err in dismissing the claims against Ms. Swenson and Dr. Fisher.[2]

B. The claims against Mr. Grundy

Mr. Ward argues the district court erred in dismissing his breach of contract claim against Mr. Grundy as

1. The complaint alleges, for example, that both defendants at times advocated for Ms. Billingsly and also ignored the abuse allegations and intentionally delayed resolution of the Paternity Action to benefit themselves financially.

2. Because we conclude Dr. Fisher was entitled to quasi-judicial immunity from Mr. Ward's claims, we need not address Mr. Ward's argument that Dr. Fisher was a state actor for purposes of 42 U.S.C. § 1983.

time-barred. "We review de novo a district court's ruling regarding the applicability of a statute of limitations." *Sierra Club v. Okla. Gas & Elec. Co.*, 816 F.3d 666, 671 (10th Cir. 2016) (internal quotation marks omitted). "A statute of limitations defense may be appropriately resolved on a Rule 12(b) motion when the dates given in the complaint make clear that the right sued upon has been extinguished." *Id.* (internal quotation marks and brackets omitted).

In Oklahoma, "a party may bring a claim based in both tort and contract against a professional and . . . such action may arise from the same set of facts." *Great Plains Fed. Sav. & Loan Ass'n v. Dabney*, 1993 OK 4, 846 P.2d 1088, 1092 (Okla. 1993). That said, a breach of contract claim may only be brought "where the parties have spelled out the performance promised by defendant and defendant commits to the performance without reference to and irrespective of any general standard" of skill or care. *Id.* If, however, the underlying contract "merely incorporates by reference or by implication a general standard of skill or care which [the] defendant would be bound [by] independent of the contract," then only a tort claim may be brought and such claim is "governed by the tort limitation period." *Id.* In Oklahoma, legal malpractice claims based in tort are "governed by [a] two-year statute of limitations." *Funnell v. Jones*, 1985 OK 73, 737 P.2d 105, 107 (Okla. 1985).

The district court concluded the written engagement letter between Mr. Ward and Mr. Grundy did not spell out the performance promised by Mr. Grundy and instead

"merely restate[d] [Mr.] Grundy's normal duty of care." Aplt. App. vol. I at 262-63. The district court therefore concluded "[t]he written engagement letter d[id] not provide grounds for a five-year contract-based statute of limitations." *Id.* at 263. As a result, the district court dismissed Mr. Ward's claim as untimely.

Mr. Ward disputes the district court's interpretation of the written engagement letter. He notes the letter stated Mr. Grundy would "represent [him] in connection with [his] paternity action with [Ms.] Billingsly." *Id.* at 192. This language, Mr. Ward argues, spelled out the performance promised by Mr. Grundy "without references and irrespective of general standards" of skill or care. Aplt. Br. at 18. Thus, Mr. Ward argues, he was permitted under *Dabney* to bring a breach-of-contract claim against Mr. Grundy which was governed by a five-year statute of limitations.

We reject this argument. The contractual language Mr. Ward relies on simply described the general nature of Mr. Grundy's engagement, i.e., Mr. Grundy agreed to represent Mr. Ward in the Paternity Action. It did not, as Mr. Ward suggests, spell out the performance promised by Mr. Grundy. Thus, we agree with the district court that, under *Dabney*, Mr. Ward is not entitled to the benefit of the five-year limitations period applicable to breach-of-contract claims.

IV. CONCLUSION

The judgment of the district court is affirmed.

Entered for the Court

Bobby R. Baldock
Circuit Judge

Appendix A

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
Byron White United States Courthouse
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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

April 01, 2025

Christopher Uric Brecht
Mr. Donald E. Smolen II
Smolen Law
611 South Detroit Avenue
Tulsa, OK 74120

RE: 24-5083, Ward v. Fisher, et al
Dist/Ag docket: 4:23-CV-00554-JFH-JFJ

Dear Counsel:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Pursuant to Fed. R. App. P. Rule 40(d)(1), any petition for rehearing must be filed within 14 days after entry of judgment. Please note, however, that if the appeal is a civil case in which the United States or its officer or agency is a party, any petition for rehearing must be filed within 45

days after entry of judgment. Parties should consult both the Federal Rules and local rules of this court with regard to applicable standards and requirements. In particular, petitions for rehearing may not exceed 3900 words or 15 pages in length, and no answer is permitted unless the court enters an order requiring a response. *See* Fed. R. App. P. Rule 40 and 10th Cir. R. 40 for further information governing petitions for rehearing.

Please contact this office if you have questions.

Sincerely,

/s/ Christopher M. Wolpert
Christopher M. Wolpert
Clerk of Court

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA, FILED JUNE 12, 2024

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

Case No. 23-CV-554-JFH-JFJ

DENVER WARD, INDIVIDUALLY
AND AS THE PARENT AND
GUARDIAN OF H.A.B., A MINOR CHILD,

Plaintiff,

v.

LAURA FISHER, CAROL L. SWENSON,
AND BRAD GRUNDY,

Defendants.

Filed June 12, 2024

OPINION AND ORDER

Before the Court are a motion to stay filed by Plaintiff Denver Ward ("Ward") [Dkt. No. 35] and multiple motions to dismiss filed by Defendants Laura Fisher ("Fisher") [Dkt. No. 7], Carol L. Swenson ("Swenson") [Dkt. No. 31], and Brad Grundy ("Grundy") [Dkt. No. 22] (the motions to dismiss collectively, "MTDs"). For the reasons stated, the motion to stay is DENIED and the motions to dismiss are GRANTED.

Appendix B

BACKGROUND

Taking Ward's allegations as true and construing them in the light most favorable to him, as it must at this stage, the Court briefly recounts the allegations in Ward's complaint. Dkt. No. 2-2. Ward has a minor child ("H.A.B.") with Debra Billingsly ("Billingsly"). Ward retained Grundy, an attorney, to represent him in a paternity action against Billingsly in the Oklahoma state court system. The court in the paternity action appointed Fisher as a child custody evaluator and Swenson as a guardian ad litem for H.A.B.

According to Ward, Billingsly inflicted systematic sexual, physical, emotional, and mental abuse on H.A.B. through Munchausen syndrome by proxy. He alleges all three Defendants "negligently delayed their pursuit of this matter causing further delay and harm to the minor child" and brings claims for breach of contract and negligence against all Defendants, as well as violation of the Eighth and/or Fourteenth Amendment against Fisher and Swenson.[1] Fisher and Swenson filed motions to dismiss on the basis that they are immune from suit in their court-appointed roles. Grundy filed a motion to dismiss on the basis that Ward's claims against him are time-barred.

1. Ward initially filed suit in Oklahoma state court, but the case was removed to federal court based on the constitutional claims. *See* Dkt. No. 2.

Appendix B

AUTHORITY AND ANALYSIS

I. Motion to Stay [Dkt. No. 35]

Ward requests the Court stay decision on Fisher's and Swenson's MTDs pending resolution of post-decisional relief in another case within this district. Dkt. No. 35 (citing *Vietti v. Welsh & McGough, PLLC*, Case No. 21-CV-00058-WPJ-SH, 2024 U.S. Dist. LEXIS 36302, 2024 WL 870562 (N.D. Okla. Feb. 29, 2024)). He asserts that a Memorandum Opinion and Order issued in *Vietti* "handles the identical immunity arguments raised by Dr. Fisher and Defendant Swenson and, if extended, would be outcome-determinative of both Dr. Fisher's and Defendant Swenson's motions." *Id.* at 2.[2] The *Vietti* decision is currently on appeal to the Tenth Circuit. Dkt. No. 45.

Ward claims that a stay would be in the interests of judicial economy because "any appellate decision on [*Vietti*] will likely be binding upon this Court relative to the immunity arguments presented" and "[i]f this Court were to extend the rationale espoused in [*Vietti*] to the facts of this case, prior to Tenth Circuit decision, Mr. Ward would, in all likelihood, appeal that decision as well, resulting in duplicate and unnecessary appeals." Dkt. No. 35 at 2.

Fisher and Swenson oppose a stay. Fisher asserts that a stay would "defer[] recognition of her immunity from

2. Ward does not request a stay of decision on Grundy's MTD because it does not involve immunity arguments. Dkt. No. 35 at 1 n.1.

suit." Dkt. No. 42 at 3. Swenson references an eight-year litigation history in the case and asserts that Defendants would experience "extreme delay . . . [if] forced to wait at least another 18 months for a decision from the Tenth Circuit" in *Vietti*. Dkt. No. 40 at 4. Both argue that the *Vietti* order demonstrates that the applicable substantive law is well-settled. Dkt. No. 40 at 4; Dkt. No. 42 at 2; Dkt. No. 47.

"[A] district court has the power to stay proceedings pending before it and to control its docket for the purpose of economy of time and effort for itself, for counsel, and for litigants." *Pet Milk Co. v. Ritter*, 323 F.2d 586, 588 (10th Cir. 1963) (quotation omitted). However, "[a] stay is an intrusion into the ordinary processes of administration and judicial review." *Nken v. Holder*, 556 U.S. 418, 427, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009). Thus, "where a movant seeks relief that would delay court proceedings by other litigants he must make a strong showing of necessity because the relief would severely affect the rights of others." *Commodity Futures Trading Comm'n v. Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1484 (10th Cir. 1983). Courts consider four factors in deciding whether to exercise their discretion to stay a case: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Nken*, 556 U.S. at 434.

Ward does not make it past the first factor. He makes no argument about the forecasted success of his appeal

in *Vietti* (and by extension the forecasted success of the identical arguments in this case). Dkt. No. 35. It is not enough to rely on the sheer fact that an appeal is pending. The *Vietti* decision rejected Ward's counsel's arguments based on well-settled Oklahoma and Tenth Circuit law. *See, e.g.*, 2024 U.S. Dist. LEXIS 36302, 2024 WL 870562 at *3-4 ("Despite this binding, on-point authority, Plaintiff urges the Court to consider South Carolina law . . . . The Court declines Plaintiff's invitation to apply South Carolina law, especially considering there is controlling Tenth Circuit and Oklahoma caselaw directly on point."). Because Ward has not, and likely cannot, demonstrate a likelihood of success on the merits, the Court progresses no further in the analysis of whether a stay would be appropriate. It clearly would not be.

II. Motions to Dismiss

A. Motion to Dismiss Standard

In considering a motion under Rule 12(b)(6), a court must determine whether the claimant has stated a claim upon which relief may be granted. A motion to dismiss is properly granted when a complaint provides no "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A complaint must contain enough "facts to state a claim to relief that is plausible on its face" and the factual allegations "must be enough to raise a right to relief above the speculative level." *Id.* (citations omitted). Although decided within an antitrust context, *Twombly*

stated the pleadings standard for all civil actions. *See Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

For the purpose of making the dismissal determination, a court must accept all the well-pleaded allegations of the complaint as true, even if doubtful in fact, and must construe the allegations in the light most favorable to the claimant. *Twombly*, 550 U.S. at 555; *Alvarado v. KOB-TV, L.L.C.*, 493 F.3d 1210, 1215 (10th Cir. 2007); *Moffett v. Halliburton Energy Servs., Inc.*, 291 F.3d 1227, 1231 (10th Cir. 2002). However, a court need not accept as true those allegations that are conclusory in nature. *Erikson v. Pawnee Cnty. Bd. of Cnty. Comm'rs*, 263 F.3d 1151, 1154-55 (10th Cir. 2001).

B. Fisher and Swenson Motions [Dkt. No. 7; Dkt. No. 31]

Ward concedes that *Vietti* "handles the identical immunity arguments raised by Fisher and Swenson and, if extended, would be outcome-determinative of both Fisher's and Swenson's motions." Dkt. No. 35 at 2. The Court finds the *Vietti* decision to be well-reasoned, thorough, and solidly based on binding Tenth Circuit and Oklahoma law. The Court adopts and extends *Vietti*'s rationale and therefore will grant the Fisher and Swenson MTDs.

C. Grundy Motion [Dkt. No. 22]

Ward brings negligence and breach of contract claims against Grundy based on Grundy's legal representation of

Ward in the paternity action against Billingsly. Dkt. No. 2-2. Grundy asserts both claims are time-barred. Dkt. No. 22. Ward concedes the negligence claim is time-barred but argues that the breach of contract claim was timely filed within a longer statute of limitations. Dkt. No. 37.

In Oklahoma, actions based on torts such as negligence are subject to a two-year statute of limitations, those based on oral contracts are subject to a three-year statute, and those based on written contracts are subject to a five-year statute. 12 O.S. § 95. Although Ward couches his second cause of action against Grundy as a breach of contract claim, Grundy asserts it is subject to the two-year tort window, or at most the three-year oral contract window, because it is fundamentally a basic legal malpractice claim.

"Oklahoma law has long recognized that an action for breach of contract and an action in tort may arise from the same set of facts." *Flint Ridge Dev. Co. v. Benham-Blair & Affiliates, Inc.*, 1989 OK 48, 775 P.2d 797, 799 (Okla. 1989). In the professional malpractice context, "if the alleged contract of employment merely incorporates by reference or by implication a general standard of skill or care which a defendant would be bound independent of the contract a tort case is presented governed by the tort limitation period." *Great Plains Fed. Sav. & Loan Ass'n v. Dabney*, 1993 OK 4, 846 P.2d 1088, 1092 (Okla. 1993) (emphasis omitted). "However, where the parties have spelled out the performance promised by defendant and defendant commits to the performance without reference to and irrespective of any general standard, a contract theory would be viable, regardless of any negligence on the part of a professional defendant." *Id.*

"The Tenth Circuit and federal district courts in Oklahoma have applied *Dabney* to hold that contracts that merely restate the professional's normal duty of care are sound in tort." *Atkinson v. Oceanus Ins. Co.*, No. 13-CV-762-JED-PJC, 2016 U.S. Dist. LEXIS 135576, 2016 WL 5746210, at *2 (N.D. Okla. Sept. 30, 2016) (collecting cases). Phrased differently, "[a] claim exists solely under tort unless there is shown an express agreement by the defendant to do more than use ordinary care in the treatment or representation of plaintiff." *Tulsa Zoo Mgmt. Inc. v. Peckham Guyton Albers & Viets, Inc.*, No. 17-CV-644-GKF-FHM, 2019 U.S. Dist. LEXIS 33854, 2019 WL 1029544, at *16 (N.D. Okla. Mar. 4, 2019) (quotation omitted).

Ward's complaint alleges he "contracted with and retained Defendant Grundy, an attorney, to both file and represent him in the Paternity Action." Dkt. No. 2-2 at 2. The complaint goes on to say that Grundy "was specifically contracted with by Plaintiff to diligently pursue custody of Plaintiff's daughter, H.A.B." *Id.* at 6. However, the written engagement letter between Ward and Grundy has no specificity beyond that Ward "select[ed] this firm to represent [him] in connection with [his] paternity action with Debra Billingsly." Dkt. No. 37-1 at 1.[3] This merely

3. Ward asserts that the Court must convert Grundy's motion to dismiss into a motion for summary judgment to examine the engagement letter between the parties. Dkt. No. 37 at 6. However, it is well established that a court may consider "documents referred to in the complaint if the documents are central to the plaintiff's claim and the parties do not dispute the documents' authenticity" without such conversion. *Gee v. Pacheco*, 627 F.3d 1178, 1186 (10th

restates Grundy's normal duty of care. Although courts "accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the plaintiff, if there is a conflict between the allegations in the complaint and the content of the attached exhibit, the exhibit controls." *Brokers' Choice of Am., Inc. v. NBC Universal, Inc.*, 861 F.3d 1081, 1105 (10th Cir. 2017). The written engagement letter does not provide grounds for a five-year contract-based statute of limitations.

The longest possible statute of limitations is the three-year oral contract window.[4] Ward does not assert that his claim would be timely if a three-year statute were applied. Dkt. No. 37. "Courts routinely deem an issue 'waived' when a party fails to respond to a movant's substantive argument." *Northcutt v. Fulton*, No. CIV-20-885-R, 2020

Cir. 2010). The engagement letter is clearly central to Ward's claim and neither Ward nor Grundy disputes its authenticity. Conversion is not necessary. *See Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 941 (10th Cir. 2002) (district court properly considered documents that were referred to in the complaint which "the parties invited" the court to consider in ruling on motion to dismiss); *GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1385 (10th Cir. 1997) (district court properly considered an indisputably authentic document attached to the motion to dismiss where the document was central to plaintiff's claim and plaintiff referred to it in both the complaint and the opposition to the motion to dismiss).

4. The Court does not—and cannot on the record before it—decide that Ward and Grundy *had* an oral contract for something beyond the general standard of care for an attorney. It simply references the longer of the two potential statutes of limitations due to the standard of decision for a motion to dismiss.

U.S. Dist. LEXIS 235325, 2020 WL 7380967, at *2 (W.D. Okla. Dec. 15, 2020) (collecting cases). *See also Cole v. New Mexico*, 58 F. App'x 825, 829 (10th Cir. 2003)[5] (argument waived when not raised in initial response to motion to dismiss); *Hinsdale v. City of Liberal, Kan.*, 19 F. App'x 749, 768 (10th Cir. 2001) (plaintiff abandoned claim by failing to respond to arguments made in support of summary judgment). Ward makes no defensible argument that his suit against Grundy is timely under a three-year statute and the Court sees none.

CONCLUSION

IT IS THEREFORE ORDERED that the motion to stay [Dkt. No. 35] is DENIED.

IT IS FURTHER ORDERED that the motions to dismiss [Dkt. No. 7; Dkt. No. 22; Dkt. No. 35] are GRANTED. A separate judgment dismissing the case with prejudice will be entered contemporaneously.

DATED this 12th day of June 2024.

/s/ John F. Heil, III
JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE

5. Unpublished opinions are not precedential but may be cited for persuasive value. Fed. R. App. P. 32.1.

APPENDIX C — NOTICE OF REMOVAL OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA, FILED DECEMBER 22, 2023

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

Case No. 23-cv-00554-JFJ
State Court Case No.: CJ-2023-4033
District Court of Tulsa County
State of Oklahoma

DENVER WARD, AS PARENT AND NEXT FRIEND OF H.A.B., A MINOR CHILD,

Plaintiff,

vs.

DR. LAURA FISHER, AN INDIVIDUAL, AND CAROL L. SWENSON, AN INDIVIDUAL, BRAD GRUNDY, AN INDIVIDUAL,

Defendants.

NOTICE OF REMOVAL

COMES NOW Defendant Dr. Laura Fisher ("Dr. Fisher"), and pursuant to 28 U.S.C. §§ 1441 and 1446 (a) and (b), hereby gives notice of removal of this action from the District Court of Tulsa County, State of Oklahoma, to the United States District Court for the Northern District of Oklahoma based upon the following:

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JURISDICTION

This removal is based upon federal question jurisdiction, as follows:

1. This lawsuit is a civil action within the meaning of the Acts of Congress relating to removal of cases.

2. The case styled *Denver Ward, as parent and next friend of H.A.B., a minor child v. Dr. Laura Fisher, an individual, and Carol L. Swenson, and individual*, was filed on November 16, 2023, in in the District Court in and for Tulsa County, State of Oklahoma, bearing case number CJ-2023-04033.

3. On December 6, 2023, counsel for Dr. Fisher agreed to accept to service of the Petition, and service of the Petition upon Dr. Fisher was thereby effected.

4. Accordingly, this removal is timely pursuant to Title 28 U.S.C. 1446(b).

5. In the Petition, plaintiff maintains a cause of action for "Violation of the Eighth and/or Fourteenth Amendments to the Constitution of the United States[.]" Petition, p. 9.

6. Title 28 U.S.C. § 1331 confers original jurisdiction to the U.S. District Courts "for all civil actions arising under the Constitution[.]"

7. Accordingly, this Court has original jurisdiction over the constitutional claims which present a question a federal law.

8. In addition to the constitutional claims in the Petition, plaintiff maintains causes of action for breach of contract and for negligence which form part of the same case or controversy.

9. Title 28 U.S.C. § 1367 provides that the 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 . . . "

10. Accordingly, this Court has jurisdiction over all claims in plaintiff's Petition.

11. Attached hereto and marked as Exhibits 1-2 is the Tulsa County Court Docket and a true and correct copy of all pleadings filed and served in the underlying civil action pending in the District Court for Tulsa County, Oklahoma.

12. The federal question cause of action is asserted only against defendants Dr. Laura Fisher and Carol Swenson. Counsel for defendant Carol Swenson has been contacted and Carol Swenson has not yet been served with plaintiff's Petition.

WHEREFORE, removal of this action to the United States District Court for the Northern District of

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Oklahoma is proper under 28 U.S.C. § 1441(a), as plaintiff's Petition presents questions of federal law.

Respectfully submitted,

SECREST, HILL, BUTLER & SECREST

BY: s/ James K. Secrest, II
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ATTORNEYS FOR DEFENDANT,
DR. LAURA FISHER

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OKLAHOMA
State Courts Network

The information on this page is NOT an official record. Do not rely on the correctness or completeness of this information. Verify all information with the official record keeper. The information contained in this report is provided in compliance with the Oklahoma Open Records Act, 51 O.S. 24A.1. Use of this information is governed by this act, as well as other applicable state and federal laws.

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

No. CJ-2023-4033
(Civil relief more than $10,000:
BREACH OF AGREEMENT - CONTRACT)

DENVER WARD,

Plaintiff,

v.

DR LAURA FISHER,

Defendant, and

CAROL L SWENSON,

Defendant, and

BRAD GRUNDY,

Defendant.

Appendix C

Filed: 11/16/2023

Judge: Civil Docket C

PARTIES

B, H A, Minor
FISHER, DR LAURA, Defendant
GRUNDY, BRAD, Defendant
SWENSON, CAROL L, Defendant
WARD, DENVER, Plaintiff

ATTORNEYS

Attorney	Represented Parties
SMOLEN, DONALD E II (Bar #19944) SMOLEN LAW PLLC 611 S DETROIT AVE TULSA, OK 74120	WARD, DENVER

EVENTS

None

ISSUES

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

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Issue # 1. Issue: BREACH OF AGREEMENT - CONTRACT (CONTRACT)
Filed By: WARD, DENVER
Filed Date: 11/16/2023

Party Name **Disposition Information**

Defendant:
FISHER, DR LAURA

Defendant:
SWENSON, CAROL L

Defendant:
GRUNDY, BRAD

Issue # 2. Issue: NEGLIGENCE (GENERAL) (NEGL)
Filed By: WARD, DENVER
Filed Date: 11/16/2023

Party Name **Disposition Information**

Defendant:
FISHER, DR LAURA

Defendant:
SWENSON, CAROL L

Defendant:
GRUNDY, BRAD

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Issue # 3. Issue: VIOLATION TO 8TH AND/OR 14TH AMENDMENT TO THE CONSTITUTION OF UNITED STATES (OTHER)
Filed By: WARD, DENVER
Filed Date: 11/16/2023

Party Name **Disposition Information**

Defendant:
FISHER, DR LAURA

Defendant:
SWENSON, CAROL L

Issue # 4. Issue: DAMAGE/PUNITIVE (DAMAGE)
Filed By: WARD, DENVER
Filed Date: 11/16/2023

Party Name **Disposition Information**

Defendant:
FISHER, DR LAURA

Defendant:
SWENSON, CAROL L

Defendant:
GRUNDY, BRAD

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DOCKET

Date	Code	Description	
11-16-2023	**[TEXT]**	**#1**	
	CIVIL RELIEF MORE THAN $10,000 INITIAL FILING.		
11-16-2023	**[CONTRACT]**		
	BREACH OF AGREEMENT - CONTRACT		
11-16-2023	**[DMFE]**		$ 7.00
	DISPUTE MEDIATION FEE		
11-16-2023	**[PFE1]**		$ 163.00
	PETITION Document Available (#1056901926) TIFF PDF		
11-16-2023	**[PFE7]**		$ 6.00
	LAW LIBRARY FEE		
11-16-2023	**[OCISR]**		$ 25.00
	OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND		

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11-16-2023	**[OCJC]**	$1.55
	OKLAHOMA COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND	
11-16-2023	**[OCASA]**	$5.00
	OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES	
11-16-2023	**[SSFCHSCPC]**	$10.00
	SHERIFF'S SERVICE FEE FOR COURTHOUSE SECURITY PER BOARD OF COUNTY COMMISSIONER	
11-16-2023	**[CCADMINCSF]**	$1.00
	COURT CLERK ADMINISTRATIVE FEE ON COURTHOUSE SECURITY PER BOARD OF COUNTY COMMISSIONER	
11-16-2023	**[CCADMIN0155]**	$0.16
	COURT CLERK ADMINISTRATIVE FEE ON $1.55 COLLECTION	
11-16-2023	**[SJFTS]**	$0.45
	STATE JUDICIAL REVOLVING FUND - INTERPRETER AND TRANSLATOR SERVICES	

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11-16-2023	**[DCADMIN155]**	$ 0.23
	DISTRICT COURT ADMINISTRATIVE FEE ON $1.55 COLLECTIONS	
11-16-2023	**[DCADMIN05]**	$ 0.75
	DISTRICT COURT ADMINISTRATIVE FEE ON $5 COLLECTIONS	
11-16-2023	**[DCADMINCSF]**	$ 1.50
	DISTRICT COURT ADMINISTRATIVE FEE ON COURTHOUSE SECURITY PER BOARD OF COUNTY COMMISSIONER	
11-16-2023	**[CCRMPF]**	$ 10.00
	COURT CLERK'S RECORDS MANAGEMENT AND PRESERVATION FEE	
11-16-2023	**[CCADMIN04]**	$ 0.50
	COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS	
11-16-2023	**[LTF]**	$ 10.00
	LENGTHY TRIAL FUND	

11-16-2023 **[SMF]** $ 30.00

SUMMONS FEE (CLERKS FEE)-3

11-16-2023 **[SMIMA]**

SUMMONS ISSUED - MAILED BY ATTORNEY-3

11-16-2023 **[TEXT]**

OCIS HAS AUTOMATICALLY ASSIGNED JUDGE CIVIL DOCKET C TO THIS CASE.

11-16-2023 **[ACCOUNT]**

RECEIPT # 2023-4558641 ON 11/16/2023.

PAYOR: SMOLEN LAW TOTAL AMOUNT PAID: $ 272.14.

LINE ITEMS:

CJ-2023-4033: $193.00 ON AC01 CLERK FEES.

CJ-2023-4033: $6.00 ON AC23 LAW LIBRARY FEE CIVIL AND CRIMINAL.

CJ-2023-4033: $1.66 ON AC31 COURT CLERK REVOLVING FUND.

CJ-2023-4033: $5.00 ON AC58 OKLAHOMA COURT APPOINTED SPECIAL ADVOCATES.

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CJ-2023-4033: $1.55 ON AC59 COUNCIL ON JUDICIAL COMPLAINTS REVOLVING FUND.

CJ-2023-4033: $7.00 ON AC64 DISPUTE MEDIATION FEES CIVIL ONLY.

CJ-2023-4033: $0.45 ON AC65 STATE JUDICIAL REVOLVING FUND, INTERPRETER SVCS.

CJ-2023-4033: $2.48 ON AC67 DISTRICT COURT REVOLVING FUND.

CJ-2023-4033: $25.00 ON AC79 OCIS REVOLVING FUND.

CJ-2023-4033: $10.00 ON AC81 LENGTHY TRIAL FUND.

CJ-2023-4033: $10.00 ON AC88 SHERIFF'S SERVICE FEE FOR COURT HOUSE SECURITY.

CJ-2023-4033: $10.00 ON AC89 COURT CLERK'S RECORDS MANAGEMENT AND PRESERVATION FEE.

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IN THE DISTRICT COURT
IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

Case No. CJ-2023-04033

DENVER WARD, INDIVIDUALLY
AND AS THE PARENT AND GUARDIAN
OF H.A.B., A MINOR CHILD,

Plaintiff,

v.

DR. LAURA FISHER, AN INDIVIDUAL;
CAROL L. SWENSON, AN INDIVIDUAL;
BRAD GRUNDY, AN INDIVIDUAL,

Defendants.

ATTORNEY LIEN CLAIMED

Filed November 16, 2023

PETITION

COMES NOW the Plaintiff, Denver Ward, individually, and as parent and guardian of H.A.B., a minor child, by and through his attorneys of record, Donald E. Smolen, II, of SMOLEN | LAW, PLLC, and for his cause of action against the Defendants, Dr. Laura Fisher, Carol L. Swenson, and Brad Grundy, submits and states as follows:

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PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is, and was at all times relevant hereto, a resident of Fort Bend County, Texas.

2. Defendant Dr. Laura Fisher is, and was at all times relevant hereto, a resident of Tulsa County, Oklahoma.

3. Defendant Carol Swenson is, and was at all times relevant hereto, a resident of Tulsa County, Oklahoma.

4. Defendant Brad Grundy is, and was at all times relevant hereto, a resident of Tulsa County, Oklahoma.

5. The acts, occurrences, and omissions complained of herein occurred in Tulsa County, State of Oklahoma.

6. This Court has jurisdiction and venue is proper in Tulsa County, State of Oklahoma.

7. This case was originally filed in United States District Court for the Northern District of Oklahoma against Defendants Fisher and Swenson as 4:20-cv-00287-CVE-JFJ on June 16, 2020, and against Defendant Grundy as 4:20-cv-00484-GKF-FHM on September 28, 2020.

8. Plaintiff subsequently dismissed both of these actions without prejudice on November 21, 2022.

9. Plaintiff files this action within one-year of the previous dismissal pursuant to by 12 O.S. § 100.

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FACTUAL ALLEGATIONS

10. Paragraphs 1 through 9 are incorporated herein by reference.

11. Plaintiff has one minor child, H.A.B., with Debra Billingsly (Ms. Billingsly is hereinafter referred to as "Mother").

12. Plaintiff and Mother are not, and have never been, married.

13. After H.A.B.'s birth in 2014, Mother began systematically sexually, physically, emotionally, and mentally abusing H.A.B. The specific type of abuse by Mother was medical abuse of a child, also referred to as factitious disorder imposed on another or Munchausen syndrome by proxy.

14. When Plaintiff discovered the abuse, he filed a paternity action in Tulsa County, Case No. FP-2016-21 (the "Paternity Action") on or about January 3, 2016.

15. Plaintiff contracted with and retained Defendant Grundy, an attorney, to both file and represent him in the Paternity Action.

16. On or about April 14, 2016, the court in the Paternity Action appointed Defendant Fisher to act as a licensed therapist in the role of a child custody evaluator to protect the best interests of the child, H.A.B., in the Paternity Action. Defendant Fisher was contracted and compensated by the Plaintiff.

17. On or about April 19, 2016, the court in the Paternity Action appointed Donna Boswell, LCSW, to provide oversight, review the case, and consult with the court.

18. On or about August 8, 2016, the court in the Paternity Action appointed Defendant Swenson to act as a Guardian *Ad Litem* for H.A.B., to act in her best interest. Defendant Swenson was contracted and compensated by Plaintiff for such work.

19. On or about April 25, 2017, Oklahoma Department of Human Services ("DHS") issued a finding substantiating Mother's abuse of H.A.B.

20. Defendants knew, or should have known, that Plaintiff's young daughter, H.A.B., was being sexually, physically, medically, and emotionally abused by her mother, making this an emergency situation.

21. Defendants negligently delayed their pursuit of this matter causing further delay and harm to the minor child.

22. As a result of the conduct of Defendants, Plaintiff and H.A.B. sustained significant damages.

I. Facts Specific to Defendant Fisher

23. Paragraphs 1 through 22 are incorporated herein by reference.

24. On or about June 20, 2016, during Plaintiff's first interview with Defendant Fisher, Plaintiff reported his concerns regarding Mother's abuse of H.A.B.

25. On or about November 21, 2016, Defendant Fisher issued a Child Custody Evaluation to the court in the Paternity Action. In the Child Custody Evaluation, Defendant Fisher acknowledged the abuse allegations, and stated that she does not have the expertise to evaluate the abuse allegations.

26. After ignoring the abuse allegations, Defendant Fisher recommended joint custody of H.A.B. between Plaintiff and Mother. On or about December 5, 2016, based on Defendant Fisher's recommendation, the court in the Paternity Action ordered joint custody, which allowed the abuse of H.A.B. by Mother to continue.

27. Defendant Fisher's deliberate delay and/or ignoring of the abuse allegations caused financial benefit to her at the expense of Plaintiff and H.A.B.

28. On June 14, 2017, Plaintiff, through his then attorney N. Scott Johnson, filed an Application for Ex Parte Emergency Order requesting sole custody of H.A.B.[1] That application was supported by an affidavit from Defendant Fisher, which acknowledged her concerns with the abuse of H.A.B., and stated that her opinion is that H.A.B. will be in danger of suffering irreparable harm while in the physical custody of Mother.

---

1. At that time, Plaintiff had fired Defendant Grundy due to his neglect and delay to advocate for Plaintiff, set forth *infra*.

29. On June 14, 2017, the court in the Paternity Action awarded temporary physical custody to Plaintiff. The court ordered that any visitation by Mother must be professionally supervised, and specifically excluded Defendant Fisher from supervising the visitation.

30. Despite the court in the Paternity Action specifically excluding Defendant Fisher from supervising the visits between Mother and H.A.B., Defendant Fisher attempted to have ex parte communications with the court on at least two occasions, offering to be in charge of supervising the visits between Mother and H.A.B.

31. By Defendant Fisher's own admission, she was not qualified to supervise the visits between Mother and H.A.B. because she was not knowledgeable on medical child abuse.

32. Upon information and belief that will be confirmed in discovery, Defendant Fisher conducted supervised visits of Mother with H.A.B. in violation of court order and outside the scope of her appointment.

33. Upon information and belief that will be confirmed in discovery, during the pendency of the Paternity Action, Defendant Fisher began advocating for the interests of Mother as opposed to advocating for the best interests of H.A.B.

34. Upon information and belief that will be confirmed in discovery, Defendant Fisher's reporting to the court in the Paternity Action was influenced by her bias to Mother.

35. Despite being a mandatory reporter, Defendant Fisher intentionally failed to report the abuse of H.A.B. by Mother to Oklahoma DHS, as is required by law.

36. Upon information and belief that will be confirmed in discovery, Defendant Fisher ignored the abuse of H.A.B. to financially benefit herself.

37. Defendant Fisher's actions in ignoring the abuse of H.A.B. and acting outside the scope of her appointment in the Paternity Action, caused Plaintiff and H.A.B. to sustain substantial, unnecessary expenses as well as significant personal injuries.

II. Facts Specific to Defendant Swenson

38. Paragraphs 1 through 37 are incorporated herein by reference.

39. Defendant Swenson knew of the abuse of H.A.B. by Mother and maked note of the allegations in her first Guardian Ad Litem ("GAL") Report dated October 9, 2016.

40. Defendant Swenson intentionally ignored the abuse allegations to delay resolution of the Paternity Action which caused financial benefit to her at the expense of Plaintiff and H.A.B.

41. In an affidavit from Defendant Swenson dated June 2, 2017, Defendant Swenson acknowledged that she has had great concern from the beginning of her appointment about the abuse of H.A.B.

42. Also in her June 2, 2017 affidavit, Defendant Swenson described the abuse of H.A.B. as being tortured from birth.

43. Yet, upon information and belief, despite Defendant Swenson's knowledge of the abuse, she intentionally delayed acting in order to draw out the Paternity Action so that she could continue to serve as GAL for her own financial benefit.

44. Through Defendant Swenson's intentional delay in addressing the abuse H.A.B., she became a de facto advocate for Mother in the Paternity Action.

45. Despite being a mandatory reporter, Defendant Swenson intentionally failed to report the abuse of H.A.B. by Mother to Oklahoma DHS, as is required by law.

46. Defendant Swenson's actions in ignoring the abuse of H.A.B. and acting outside the scope of her appointment in the Paternity Action, caused Plaintiff and H.A.B. to sustain substantial, unnecessary expenses as well as significant personal injuries.

III. Facts Specific to Defendant Grundy

47. Paragraphs 1 through 46 are incorporated herein by reference.

48. Defendant Grundy was specifically contracted with by Plaintiff to diligently pursue custody of Plaintiff's daughter, H.A.B.

49. From the outset of Plaintiff and Defendant Grundy's attorney-client relationship, Defendant Grundy was acutely aware that H.A.B. was actively being sexually, physically, mentally, and emotionally abused by Mother, making this a very time sensitive matter.

50. Despite Defendant Grundy's knowledge of the abuse, Defendant Grundy intentionally resisted or refused to address the abuse with the court in the Paternity Action.

51. Defendant Grundy even advised Plaintiff to allow H.A.B. to be subjected to continued abuse by Mother in order to further substantiate the abuse claim.

52. Defendant Grundy willfully delayed resolution of the Paternity Action and withheld critical information from the expert, Dr. Mary Ellen Stockett, causing further delay and thus furthering the harm to H.A.B.

53. Upon information and belief to be confirmed through discovery, Defendant Grundy willfully delayed resolution of the Paternity Action to perform unnecessary work and increase his financial benefit to Plaintiff's detriment.

54. As a result of Defendants' negligence and breach of contract, Plaintiff and H.A.B. sustained substantial, unnecessary legal expenses as well as significant personal injuries.

Appendix C

CAUSES OF ACTION

Count I: Breach of Contract (As to All Defendants)

55. Paragraphs 1 through 54 are incorporated herein by reference.

56. Defendants Swenson and Fisher were contractually obligated to diligently represent the best interest of the minor child, H.A.B., in the Paternity Action.

57. Defendants Swenson and Fisher breached their respective contracts when they became aware of the abuse being suffered by H.A.B. and failed to act to protect her.

58. As result of Defendants Swenson's and Fisher's acts and omissions, the Court's final decision to award custody to Plaintiff was delayed by more than a year. This delay subjected the minor child to prolonged physical, sexual, emotional, and medical atrocities.

59. The breach by Defendants Swenson and Fisher was the actual and proximate cause of H.A.B.'s injuries.

60. Defendant Grundy was contracted to diligently pursue Plaintiff's custodial rights and represent Plaintiff's interest in the Paternity Action.

61. Defendant Grundy breached this contract when he chose not to pursue an emergency application prepared by Defendant Grundy's co-counsel and requested by

therapist Donna Boswell and by failing to provide all medical records in his possession to the expert, Dr. Stockett.

62. As result of Defendant Grundy's acts and omissions, the Court's final decision to award custody to Plaintiff was delayed by more than a year. This delay subjected the minor child to untold atrocities and cost the Plaintiff over one hundred thousand dollars ($100,000.00) in additional attorneys' fees and costs.

63. Defendant Grundy's breach was the actual and proximate cause of Plaintiff's injuries.

Count II: Negligence
(As to All Defendants)

64. Paragraphs 1 through 63 are incorporated herein by reference.

65. Defendants Swenson and Fisher owed a duty to H.A.B. to protect her and actively pursue the most prudent and swift remedies available to save her from being exposed to irreparable harm. Instead, Defendants Swenson and Fisher inexplicably delayed said intervention, thus delaying the Court's ability to protect the minor child and expose her to continued abuse.

66. Defendants Swenson and Fisher breached their duty by failing to protect the minor child, and by acting recklessly with complete disregard for her health and well-being.

67. In breaching their duty to protect H.A.B., Defendants Swenson and Fisher acted outside the

jurisdiction, scope, and nature of their respective appointments.

68. Defendants Swenson's and Fisher's breach of their duties was the actual and proximate cause of Plaintiff's injuries.

69. Defendant Grundy owed a duty to Plaintiff and H.A.B. to actively pursue the most prudent and quickest remedies available to them to extricate the minor child from her situation. Instead, Defendant Grundy delayed the filing of emergency hearing documents and limited the information provided to experts, delaying the experts' ability to properly assess the situation, and thereby delaying the ability to act to protect H.A.B.

70. Defendant Grundy owed a duty to Plaintiff to expedite the litigation consistent with Plaintiff's interests of obtaining custody of H.A.B.

71. Defendant Grundy owed a duty to Plaintiff to refrain from realizing a financial benefit from his own improper delay in pursuing the Paternity Action.

72. By failing to pursue custody H.A.B. in a diligent manner, and by acting recklessly with complete disregard for the health and well-being of the minor child and Plaintiff's case, Defendant Grundy breached the duties owed to Plaintiff and H.A.B.

73. Defendant Grundy's breach was the actual and proximate cause of Plaintiff's injuries.

Appendix C

COUNT III. VIOLATION OF THE EIGHTH AND/OR FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES (AS TO DEFENDANTS SWENSON AND FISHER)

74. Paraphs 1 though 73 are incorporated herein by reference.

75. In the alternative, Plaintiff asserts that Defendants Swenson and Fisher, acting under cover of state law, violated the Eighth and/or Fourteenth Amendments of the United States Constitution.

76. At all times pertinent hereto, Defendants Swenson and Fisher were acting under color of state law. Defendants Swenson and Fisher were endowed by the Tulsa County Court with powers or functions that were governmental in nature, such that Defendants Swenson and Fisher became instrumentalities of the State and subject to its constitutional limitations.

77. Defendants Swenson and Fisher, as described *supra*, knew Plaintiff's minor child, H.A.B., was suffering irreparable harm from Mother's abuse.

78. As described *supra*, the abuse of H.A.B. by Mother was known and obvious to Defendants Swenson and Fisher. It was obvious that Plaintiff's minor child needed immediate and emergent intervention to prevent further abuse, but any such intervention was denied, delayed, and obstructed by Defendants Swenson and Fisher.

79. Defendants Swenson and Fisher disregarded the known, obvious and substantial risks to the Plaintiff's minor child's health and safety.

80. As a direct and proximate result of this deliberate indifference, as described above, H.A.B. experienced unnecessary physical pain, severe emotional distress, mental anguish, a loss of quality and enjoyment of life, terror, degradation, oppression, humiliation, embarrassment, and medical expenses.

81. As a direct and proximate result of this deliberate indifference, as described above, Plaintiff experienced unnecessary physical pain, severe emotional distress, mental anguish, lost wages, a loss of quality and enjoyment of life, terror, degradation, oppression, humiliation, and embarrassment.

82. As a direct and proximate result of Defendants Swenson's and Fisher's conduct, Plaintiff is entitled to pecuniary and compensatory damages. Plaintiff is entitled to damages due to the deprivation of his rights and the rights of his minor child secured by the U.S. Constitution, including punitive damages.

Count IV. Punitive Damages
(As to All Defendants)

83. Paragraphs 1 through 82 are incorporated herein by reference.

84. The willful, wanton, and reckless conduct of Defendants in complete disregard for the safety, health,

and well-being of the minor child, H.A.B., entitles Plaintiff to an award of exemplary damages under Oklahoma law.

85. The acts of Defendants were wrongful, culpable, and so egregious that punitive damages in a sum that exceeds Seventy-Five Thousand Dollars ($75,000.00) should be awarded against them to set an example to others similarly situated that such conduct will not be tolerated in our community.

WHEREFORE, based on the foregoing, Plaintiff demands a jury trial on all issues and causes and prays that this Court grant him the relief sought including, but not limited to, actual damages in excess of Seventy-Five Thousand Dollars ($75,000.00), with interest accruing from the date of filing this suit, punitive damages in excess of Seventy-Five Thousand Dollars ($75,000.00), reasonable attorney's fees, and all other relief deemed appropriate by the Court.

Respectfully submitted,

SMOLEN | LAW, PLLC

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Attorneys for Plaintiff

APPENDIX D — LETTER FROM BRADLEY GRUNDY TO DENVER G. WARD, JR., DATED FEBRUARY 4, 2016

CONNER WINTERS
Attorneys and Counselors at Law

Bradley Grundy | Attorney at Law
p 918.586.8568 | f 918.586.8982 | bgrundy@cwlaw.com

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February 4, 2016

Denver G. Ward, Jr.
22902 Deforest Ridge Lane
Katy, Texas 77494

Re: Legal Representation

Dear Denver:

Thank you for selecting this firm to represent you in connection with your paternity action with Debra Billingsly.

Scope of Engagement. We have agreed that our engagement is limited to performance of services related to this action. Because we are not your general counsel, our acceptance of this engagement does not involve an undertaking to represent you or your interests in any

other matter. In particular, our present engagement does not include responsibility for review of your insurance policies to determine the possibility of coverage for the claim asserted in this matter, for notification of your insurance carriers about the matter, or for advice to you about your disclosure obligations concerning the matter under the federal securities laws or any other applicable law.

Staffing. I will have primary responsibility for your representation and will utilize other firm lawyers and legal assistants as I believe appropriate in the circumstances. We will provide legal counsel to you in accordance with this letter and in reliance upon information and guidance provided by you, to keep you reasonably informed of progress and developments, and to respond to your inquiries.

Cooperation. To enable us to represent you effectively, you agree to cooperate fully with us in all matters relating to your case, and to fully and accurately disclose to us all facts and documents that may be relevant to the matter or that we may otherwise request. You also will make yourself reasonably available to attend meetings, discovery proceedings and conferences, hearings and other proceedings. You also agree to pay our statements for services and other charges as stated below.

Advice About Possible Outcomes. Either at the commencement or during the course of our representation, we may express opinions or beliefs concerning the litigation or various courses of action and the results that might be anticipated. Any such statement made by

any partner or employee of our firm is intended to be an expression of opinion only, based on information available to us at the time, and should not be construed by you as a promise or guarantee.

Fees. Our fees will be based primarily on the amount of time spent on your behalf. Each lawyer and legal assistant has an hourly billing rate based generally on experience and special knowledge. The rate multiplied by the time expended on your behalf, measured in tenths of an hour, will be the initial basis for determining the fee. My time is billed at $425.00 an hour. Time devoted by legal assistants is charged at rates currently ranging from $135.00 to $165.00 an hour. Our billing rates are adjusted from time to time. Before we commence representation we will require a $5,000.00 retainer.

Costs and Expenses. The firm typically incurs costs in connection with legal representation. These costs may include such matters as long distance telephone charges, special postage, delivery charges, telecopy and photocopy charges and related expenses, travel expenses, meals and use of other service providers, such as printers or experts. In litigation matters, such expenses may also include filing fees, deposition costs, process servers, court reporters and witness fees. We separately bill for computerized legal research and related expenses. You also agree to pay the charges for copying documents for retention in our files. Except for specialized word processing services, we normally do not make a separate charge for secretarial work unless there is a situation that requires overtime staff work.

You authorize us to retain any investigators, consultants or experts necessary in our judgment to represent your interests in the litigation. At our option, we may forward third-party charges in excess of $500.00 directly to you for payment.

Payment of Statements. Statements normally will be rendered monthly for work performed and expenses recorded on our books during the previous month. Payment is due promptly upon receipt of our statement. If any statement remains unpaid for more than sixty (60) days, we may suspend performing services for you [until arrangements satisfactory to us have been made for payment of outstanding statements and the payment of future fees and expenses].

Once a trial or hearing date is set, we will require you to pay all amounts then owing to us and to deposit with us the fees we estimate will be incurred in preparing for and completing the trial or arbitration, as well as jury fees and arbitration fees likely to be assessed. If you fail to timely pay any additional deposit requested, we will have the right to withdraw from the representation and to cease performing further work, and you agree not to oppose any motion to withdraw.

As we have discussed, the fees and costs relating to this matter are not predictable Accordingly, we have made no commitment to you concerning the maximum fees and costs that will be necessary to resolve or complete this matter. Any estimate of fees and costs that we may have discussed represents only an estimate of such fees and costs. It is also expressly understood that payment of the

firm's fees and costs is in no way contingent on the ultimate outcome of the matter.

Termination of Representation. You may terminate our representation at any time by notifying us. Your termination of our services will not affect your responsibility for payment of outstanding statements and accrued fees and expenses incurred before termination or incurred thereafter in connection with an orderly transition of the matter. If such termination occurs, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers.

We may withdraw from representation if you fail to fulfill your obligations under this agreement, including your obligation to pay our fees and expenses, or as permitted or required under any applicable standards of professional conduct or rules of court, or upon our reasonable notice to you.

Please review this letter carefully and, if it meets with your approval, please sign the enclosed copy of this letter and return it to me [with retainer or fee advance] so that we may begin work. Please call me if you have any questions.

Sincerely yours,

/s/ Bradley Grundy
Bradley Grundy

Agreed and accepted:
Denver Ward

By: /s/ Denver Ward

Date: 2-4-2016