APPENDIX A

U.S. District Court

Eastern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered on 12/3/2024 at 10:40 AM CST and filed on 12/3/2024
Case Name: Histories Antiques and Collectables et al v. Parker et al
Case Number: 6:24-cv-00390-JFH
Filer:
WARNING: CASE CLOSED on 11/25/2024
Document Number: 21(No document attached)

Docket Text:
MINUTE ORDER by District Judge John F. Heil, III: No future submissions, whether made electronically to the Courts intake email address, through the mail, in person at the Court Clerks Office, or otherwise, shall be filed in this case, as the case is closed. (tlp, Chambers)

6:24-cv-00390-JFH Notice has been electronically mailed to:

Luke Gaither luke@gaitherlawoffice.com, lisa@gaitherlawoffice.com

6:24-cv-00390-JFH Notice will not be electronically mailed to:

Histories Antiques and Collectables
541 Citylake Rd
Waldron, AR 72958

Brian D. Dubuc
541 Citylake Rd.
Waldron, AR 72958

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

HISTORIES ANTIQUES AND COLLECTABLES et al.,

Plaintiffs,

v.

HORACE SAMUEL PARKER, JR., et al.,

Defendants.

Case No. 24-cv-390-JFH
CJ-21-129

OPINION AND ORDER

This matter is before the Court on the Motion to Remand ("Motion") filed by Defendant David Allen Parker ("Defendant"). Dkt. No. 17. For the reasons set forth, the Motion is GRANTED.

Plaintiff, Histories Antiques and Collectables d/b/a Brian D. Dubuc ("Mr. Dubuc"), initiated this action on October 22, 2021, by filing a Complaint and Petition for Unlawful Eviction, Wrongful Conversion, and Tortious Breach of Contract in the District Court of Okmulgee County, Oklahoma.[1] Case No. CJ-2021-129. On May 28, 2024, Mr. Dubuc amended his Complaint and Petition, adding a cause of action for Quiet Title. On October 17, 2024, Mr. Dubuc filed a Notice of Removal, seeking to remove the action to this Court. Dkt. No. 2. Subsequently, on October 31, 2024, Mr. Dubuc filed an Amended Notice of Removal. Dkt. No. 11.

2

Mr. Dubuc asserts that this Court has jurisdiction to hear the case under 28 U.S.C. § 1332, which provides that the United States district courts "shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs and is between… citizens of different states." *United Financial Casualty Company v. Rasier, LLC*, No. 21-CV-412-GKF-JFJ, 2022 WL 22694995, at *1 (N.D. Okla. June 3, 2022). The

[1] Defendants have not filed a countersuit or counterclaim against Mr. Dubuc.

Court need not decide whether it has jurisdiction based on diversity of citizenship under 28 U.S.C. § 1332 because removal is precluded by 28 U.S.C. §§ 1441 and 1446.

The procedure for removal of civil actions from state courts is governed by §§ 1441 and 1446. Under §§ 1441 and 1446, the right of removal is limited to defendants. *See* § 1441 ("Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." (emphasis added)); § 1446 ("A defendant or defendants desiring to remove any civil action from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action." (emphasis added)); *see also Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 106-09 (1941) (finding that in limiting the class of persons entitled to remove, Congress intended to preclude removal by plaintiffs); *Am. Int'l Underwriters (Philippines), Inc. v. Cont'l Ins. Co.*, 843 F. 2d 1253, 1260 (9th Cir. 1988) ("a] plaintiff who commences his action in a state court cannot effectuate removal to a federal court even if he could have originated the action in federal court." (alteration in original) (internal quotation marks and citation omitted)).

3

The Court concludes that, even if Mr. Dubuc could have originated his action in this Court under 28 U.S.C. § 1332, he is precluded from removing the action after it was filed in state court.

On November 5, 2024, Mr. Dubuc filed a Request for Reconsideration and Consolidation. Dkt. No. 14. Because this Court has determined that removal is precluded by 28 U.S.C. §§ 1441

and 1446, Mr. Duboc's Request for Reconsideration and Consolidation will not be considered by this Court.

IT IS THEREFORE ORDERED that the Motion to Remand [Dkt. No. 17] is GRANTED and this matter is REMANDED to the District Court of Okmulgee County, Oklahoma.

Dated this 25th day of November 2024.

JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE

4

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST: BONNIE HACKLER
Clerk, U.S.District Court
Eastern District of Oklahoma
By N. Davis Deputy Clerk
Dated 12/3/2024

4

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

HISTORIES ANTIQUES AND COLLECTABLES et al.,

Plaintiff,

v.

HORACE SAMUEL PARKER, JR., et al.,

Defendant.

Case No. 24-cv-390-JFH

CJ-21-129

JUDGMENT OF REMAND

Pursuant to the Court's Opinion and Order filed contemporaneously herewith, the Court remands this case to the District Court of Okmulgee County, Oklahoma.

Dated this 25th day of November 2024.

5

JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE

5

U.S. District Court

Eastern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered on 11/13/2024 at 1:38 PM CST and filed on 11/13/2024

Case Name: Histories Antiques and Collectables et al v. Parker et al

Case Number: 6:24-cv-00390-JFH

Filer:

Document Number: 18(No document attached)

6

Docket Text:

MINUTE ORDER by Court Clerk: At the direction of the Court, this case is reassigned to District Judge John F. Heil, III. Magistrate Judge Gerald L. Jackson no longer assigned to case. All documents filed in this case in the future shall reflect the new case number CIV-24-390-JFH. (pmb, Deputy Clerk)

U.S. District Court

Eastern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered on 10/21/2024 at 11:35 AM CDT and filed on 10/21/2024

Case Name: Histories Antiques and Collectables v. Parker et al

Case Number: 6:24-cv-00392-DES

Filer:

Document Number: 6(No document attached)

Docket Text:

MINUTE ORDER by Magistrate Judge D. Edward Snow granting [2] Motion for Leave to Proceed in Forma Pauperis. (tjm, Deputy Clerk)

7

U.S. District Court

Eastern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered on 10/24/2024 at 12:00 PM CDT and filed on 10/24/2024

Case Name: Histories Antiques and Collectables v. Parker et al

Case Number: 6:24-cv-00391-DES

Filer:

WARNING: CASE CLOSED on 10/24/2024

Document Number: 7(No document attached)

8

Docket Text:

MINUTE ORDER by Magistrate Judge D. Edward Snow: Upon review of this case compared to 24-CV-390-DES, the Court notes Plaintiff is asserting duplicative claims against the same parties. Therefore, this matter is DISMISSED as duplicative. A district court, as part of its general power to administer its docket, may stay or dismiss a suit that is duplicative of another federal court suit. Park v. TD Ameritrade Trust Co., 461 F. Appx. 753, 755 (10th Cir. 2012) (quoting Curtis v. Citibank, N.A., 226 F.3d 133, 138 (2d Cir. 2000)). (case terminated) (tjm, Deputy Clerk)

8

10/24/2024	view7	MINUTE ORDER by Magistrate Judge D. Edward Snow: Pursuant to Local Civil Rule 5.3, the Court has sealed the Complaint 1 for failure to redact personally identifiable information. Plaintiff is directed to file on or before Friday, November 1, 2024, a redacted Complaint in compliance with Local Civil Rule 5.3. (tjm, Deputy Clerk) (Entered: 10/24/2024)

9

10/24/2024	view8	MINUTE ORDER by Magistrate Judge D. Edward Snow: Pursuant to Local Civil Rule 5.3, the Court has sealed the Notice of Removal 2 for failure to redact personally identifiable information. Plaintiff is directed to file on or before Friday, November 1, 2024, a redacted Notice of Removal in compliance with Local Civil Rule 5.3. (tjm, Deputy Clerk) (Entered: 10/24/2024)

10

10/24/2024	view8	MINUTE ORDER by Magistrate Judge D. Edward Snow: Pursuant to Local Civil Rule 5.3, the Court has sealed the Notice of Removal 2 for failure to redact personally identifiable information. Plaintiff is directed to file on or before Friday, November 1, 2024, a redacted Notice of Removal in compliance with Local Civil Rule 5.3. (tjm, Deputy Clerk) (Entered: 10/24/2024)

11

11

U.S. District Court

Eastern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered on 10/18/2024 at 10:13 AM CDT and filed on 10/17/2024

Case Name: Histories Antiques and Collectables et al v. Parker et al

Case Number: 6:24-cv-00390-DES

Filer:

Document Number: 4(No document attached)

12

Docket Text:

MINUTE ORDER by Court Clerk The parties are advised that this case has been assigned to a U.S. Magistrate Judge. In accordance with 28 U.S.C., Section 636(c), the Magistrate Judge will exercise complete jurisdiction over all matters in this case including trial should all parties consent to jurisdiction. Consent or election of a District Judge Option may be exercised by completing the Consent Form (Civil Case Originally Assigned to Magistrate Judge) on this Court's website at https://www.oked.uscourts.gov/forms/all-forms/civil in accordance with the procedure outlined therein. If a party does not wish to consent to such jurisdiction, they must complete the Reassignment section. Completed forms should be submitted in PDF format to Consents_OKED@oked.uscourts.gov within twenty-one days. (Miscellaneous Deadline set for 11/7/2024) (jld, Deputy Clerk)

10/24/2024	view7	MINUTE ORDER by Magistrate Judge D. Edward Snow: Pursuant to Local Civil Rule 5.3, the Court has sealed the Complaint 1 for failure to redact personally identifiable information. Plaintiff is directed to file on or before Friday, November 1, 2024, a redacted Complaint in compliance with Local Civil Rule 5.3. (tjm, Deputy Clerk) (Entered: 10/24/2024)

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U.S. District Court

Eastern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered on 10/18/2024 at 9:08 AM CDT and filed on 10/17/2024

14

Case Name: Histories Antiques and Collectables v. Parker et al
Case Number: 6:24-cv-00391-DES
Filer:
Document Number: 4(No document attached)

Docket Text:
MINUTE ORDER by Court Clerk: Applicable parties are directed to file Disclosure Statements per FRCvP 7.1 within seven (7) days of this order, if they have not already done so. The parties shall use the form entitled Disclosure Statement available on the Court's website (please do not refile if already filed on non-court form unless directed to do so). If you have already filed your Disclosure Statement in this case, you are reminded to file a Supplemental Disclosure Statement within a reasonable time of any change in the information that the statement requires. (mdc, Deputy Clerk)

U.S. District Court

Eastern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered on 10/18/2024 at 1:44 PM CDT and filed on 10/17/2024

Case Name: Histories Antiques and Collectables v. Parker et al

Case Number: 6:24-cv-00392-DES

Filer:

Document Number: 3(No document attached)

15

Docket Text:

MINUTE ORDER by Court Clerk: The parties are advised that this case has been assigned to a U.S. Magistrate Judge. In accordance with 28 U.S.C., Section 636(c), the Magistrate Judge will exercise complete jurisdiction over all matters in this case including trial should all parties consent to jurisdiction. Consent or election of a District Judge Option may be exercised by completing the Consent Form (Civil Case Originally Assigned to Magistrate Judge) on this Court's website at https://www.oked.uscourts.gov/forms/all-forms/civil in accordance with the procedure outlined therein. If a party does not wish to consent to such jurisdiction, they must complete the Reassignment section. Completed forms should be submitted in PDF format to Consents_OKED@oked.uscourts.gov within twenty-one days. (rak, Deputy Clerk)

APPENDIX B

IN THE DISTRICT COURT SITTING IN AND FOR OKMULGEE COUNTY
STATE OF OKLAHOMA

FILED
IN DISTRICT COURT
NOV 12 2019
OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By _____ Deputy

David Parker ;	)	
plaintiff;	)	
	)	NO: SC-2019- 609
- VS-	)	
	)	Re-Assigned Before the Honorable
Brian DuBuc ;	)	Cynthia D. Pickering
Defendant;	)	

ORDER SETTING MOTION TO DISMISS FOR HEAREING

Comes on for setting before the undersigned judge of the district court the motion to dismiss filed by the Defendant Brian DuBuc Pro se.

It Appears mailing has occurred to opposing pros e counsel David Parker at his addresse of record and is filed with sufficient time for response by opposing counsel parker.

31

Now therfore the motion shall be set for hearing together with the petition Before the court already set for November 19 , 2019 @ 9:00 Am

It is so ordered

Cynthia D Pickering

Associate Judge of the district court
Cynthia D. Pickering

~~clerk shall mail copies of order to all parties or counsels of record if one appears~~

IN THE DISTRICT COURT OF OKMULGEE COUNTY, STATE OF OKLAHOMA

DAVID PARKER — Plaintiff(s)

LUKE GAITHER — Attorney(s) for Plaintiff(s)

-vs-

Case No. SC-2019-00609

BRIAN DUBUC — Defendant(s)

Pro Se — Attorney(s) for Defendant(s)

FILED
IN DISTRICT COURT
NOV 19 2019
OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By _____ Deputy

SUMMARY ORDER

Date: 11/19/2019 Judge: CYNTHIA PICKERING

Court Reporter: Terri Wrigley

Court swore two witnesses and heard sworn testimony
Court denies Motion To Dismiss With Prejudice:
Court advised Defendant of his right to appeal.

32

Cynthia D Pickering
JUDGE

32

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IN THE DISTRICT COURT OF OKMULGEE COUNTY
STATE OF OKLAHOMA

FILED
IN DISTRICT COURT
DEC 13 2019
OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By _____ Deputy

DAVID PARKER,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	
BRIAN DUBUC,	)	**Case No. SC 2019-609**
	)	
Defendant.	)	

ORDER

NOW ON THIS 28th day of October, 2019, the above cause of action comes on for hearing on the Plaintiff's Affidavit for Entry and Detainer. The case was set for October 28, 2019 at 2:00 p.m. The Plaintiff appeared in person and with his attorney of record, Mr. Luke Gaither. The Defendant failed to appear after having received proper notice by process server, Mr. Ronnie Duke. The Court issued a Court Minute at 2:30 p.m. reflecting that the Plaintiff was granted immediate possession of the building and set the matter to November 19, 2019 for further hearing.

33

On November 19, 2019 at 9:00 a.m. Mr. Luke Gaither appears for the Plaintiff and the Defendant appears *pro se*. The Court took sworn testimony. Based upon the testimony given and the evidence received the court ***FINDS, ORDERS, ADJUDGES and DECREES*** as follows:

1. This Court has jurisdiction over the parties and subject matter herein.
2. The Court denies the Defendant's request that the Court recuse from the matter based on the fact that the Defendant failed to follow statutory requirements for seeking recusal of the Court.
3. The Court further denies the Defendant's Motion to Dismiss with Prejudice.
4. This is a final Order from which an appeal may be taken.

Cynthia D. Pickering
CYNTHIA D. PICKERING
Judge of the District Court

cc: Mr. Luke Gaither
Attorney for Plaintiff
P.O. Box 1090
Henryetta, Oklahoma 74437

Mr. Brian Dubuc
541 City Lake Road
Waldron, Arkansas 72958

IN THE DISTRICT COURT OF OKMULGEE COUNTY
STATE OF OKLAHOMA

FILED
IN DISTRICT COURT
DEC 18 2019
OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By_____Deputy

DAVID PARKER,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	
BRIAN DUBUC,	)	**Case No. SC 2019-609**
	)	
Defendant.	)	

ORDER DENYING REASONABLE TIME FOR REMITTANCE OF APPEAL COSTS

NOW ON THIS 18th day of December, 2019, the above cause of action comes before this Court on the Defendant's "Request For Order Allowing Reasonable Time For Remittance Of Appeal Costs The Total Unknown Presently". The Court ***FINDS, ORDERS, ADJUDGES and DECREES*** as follows:

34

1. Brian D. DuBuc, a/k/a/ Dubuc, ("DuBuc") filed his Petition in Error on November 26, 2019.
2. On November 27, 2019, DuBuc filed a "Motion To Compel Counsel For Plaintiff To Prepare And File A Proper Journal Entry Of Judgment and to Properly Title The Action Defendant Historiesantiques d/b/a Bria D. Dubuc".
3. DuBuc subsequently filed the present Request on December 2, 2019 stating, among other things, that "This Matter is Believed to Be being Ushered off Prematurely."
4. DuBuc ends his "Request For Order Allowing Reasonable Time For Remittance Of Appeal Costs The Total Unknown Presently" stating: "DuBuc Can Pay in Installments on the record and the transcripts in Advance once the actual cost is Known But This Forced Proceeding to the Oklahoma Supreme Court is Premature and ill advised."
5. The Court denies the Defendant's oral request for waiver of filing fees for Designation of Record because DuBuc has not filed a Pauper's Affidavit seeking a waiver.
6. In addition, DuBuc is the owner of a profitable business and as such should have the financial ability to pay any and all costs related to his Appeal.

Cynthia D Pickering
CYNTHIA D. PICKERING
Judge of the District Court

cc: Brian DuBuc
541 City Lake Road
Waldron, Arkansas 72958

Luke Gaither
P.O. Box 1090
Henryetta, Oklahoma 74437

35

APPENDIX C

1052221231

ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAY 16 2022

JOHN D. HADDEN
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MONDAY, MAY 16, 2022

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

118,448 David Allen Parker v. Brian Dale Dubuc
Petition for certiorari is denied.
ALL JUSTICES CONCUR.

118,991 William J. Nedbale, Jr., and Patricia Nedbalek;a nd William J. Nedbalek III and Carolyn A. Nedbalek v. Bryan D. Raymer and BDR Ranch, LLC; and Covel 100, LLC
Petition for certiorari is denied.
ALL JUSTICES CONCUR.

119,063 The Key Finance, Inc. v. DJ Koon
Petition for certiorari is denied.
ALL JUSTICES CONCUR.

119,108 Bill Satterfield v. City of Tulsa, Tulsa Airport Authority; Tulsa Airports Improvement Trust; and Richard Lloyd Jones, Jr. Airport
Petition for certiorari is denied.
CONCUR: Darby, C.J., Kane, V.C.J., Kauger, Winchester, Edmondson, Combs, Gurich and Rowe, JJ.
RECUSED: Kuehn, J.

CHIEF JUSTICE

Rec'd (date)	5-16-22
Posted	CD
Mailed	CD
Distrub	CD
Publish ___ yes	X no

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C5e

1050261811

ORIGINAL

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

SEP 24 2021

JOHN D. HADDEN
CLERK

Case No. 118,448

DAVID ALLEN PARKER,)

Plaintiff/Appellee,)

vs.)

BRIAN DALE DUBUC,)

Defendant/Appellant.)

Rec'd (date) 9-24-21
Posted
Mailed
Distrib
Publish OD yes ___ no

ORDER DENYING PETITION FOR REHEARING

Appellant's Petition for Rehearing is hereby denied.

SO ORDERED this 21st day of September, 2021. ALL JUDGES CONCUR.

Jane P. Wiseman
JANE P. WISEMAN
Presiding Judge, Division II

17

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C4d

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SC-19-609

David Parker,
Plaintiff/Appellee,

v.

Brian Dubuc,
Defendant/Appellant.

No. 118,448

ORDER

The following items were designated but were not included in the Record on Appeal in contravention of Okla.Sup.Ct.R. 1.33 (a):

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1. Transcript of hearing held on Oct. 28, 2019 if made or Narrative Statement of Counsel/Court or Both if no transcript made of 10-28-2019;

2. All Plaintiff's Exhibits offered/Reviewed by Court Oct. 28, 2019.

The Okmulgee County District Court Clerk shall supplement the Record on Appeal or advise this Court why this cannot be accomplished no later than July 29, 2020 or this matter may proceed without these items.

DONE BY ORDER OF THE SUPREME COURT THIS 1st DAY OF JULY, 2020.

Noma D. Gurich
CHIEF JUSTICE

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

David Parker, Plaintiff/Appellee,	)) Supreme Court Case Number: 118448
vs	)) Lower Court Case Number: SC-2019-609
Brian Dubuc, Defendant/Appellant.	)) Lower Court: Okmulgee County District Court)

MANDATE

On the 8th day of June , 2022 , the Honorable Chief Justice Richard Darby of the Oklahoma Supreme Court ordered the Clerk of the Supreme Court to issue mandate, pursuant to the rules of the Oklahoma Supreme Court, in the above-styled appeal from the Okmulgee County District Court.

On appeal, the following judgment was entered on August 6th, 2021:

REVERSED AND REMANDED

19

Costs of $180.00 are taxed and allowed pursuant to Section 978 of Title 12 of the Oklahoma Statutes and the rules of the Oklahoma Supreme Court.

Therefore, the Okmulgee County District Court is directed to enter of record the above judgment and to issue process or take further action as required by the order or opinion issued in this appeal.

JOHN D. HADDEN
Clerk of the Appellate Courts

By Polly Engelbert, Deputy

FILED
IN DISTRICT COURT
JUN 10 2022
OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By_____Deputy

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1049898589

PE

ORIGINAL

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

AUG - 6 2021

JOHN D. HADDEN
CLERK

DAVID ALLEN PARKER,

Plaintiff/Appellee,

vs.

BRIAN DALE DUBUC,

Defendant/Appellant.

Case No. 118,448

Rec'd (date) 8-6-21
Posted
Mailed
Distrib
Publish ____ yes ___X___ no

APPEAL FROM THE DISTRICT COURT OF
OKMULGEE COUNTY, OKLAHOMA

HONORABLE CYNTHIA D. PICKERING, TRIAL JUDGE

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS

Luke Gaither
LUKE GAITHER,
ATTORNEY AT LAW, P.C.
Henryetta, Oklahoma — For Plaintiff/Appellee

Brian Dubuc
Waldron, Arkansas — *Pro se*

OPINION BY P. THOMAS THORNBRUGH, JUDGE:

Brian DuBuc appeals the district court's denial of his post-trial "motion to dismiss with prejudice" (which we will characterize as a motion to vacate) after he defaulted in a small claims forcible entry and detainer action. We find that the

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record in this case clearly shows a dispute as to title or right in the subject property. "Disputed title raised in a forcible entry and detainer action requires the action to be moved from the Small Claims Docket and the action proceed as one in ejectment." *Rogers v. Bailey*, 2011 OK 69, ¶ 14, 261 P.3d 1150. As such, we reverse the trial court's grant of forcible entry and detainer and remand for further proceedings.

BACKGROUND

The official record here is somewhat limited, although some background facts can be filled in from the substantial number of statements by Appellant DuBuc in various submissions on appeal. DuBuc occupied premises at 124 E. Main Street in Henryetta, Oklahoma, for approximately 10 years, from which he intermittently operated an antiques business. In 2015 the owner, Horace Samuel Parker, Jr. (Sam Parker), created a Trust and deeded the property to it. In November 2019, Sam Parker died and Appellee David Parker became successor trustee. On October 16, 2019, shortly before Sam Parker's death, DuBuc filed a "notice of a private money mortgage sale" with the Okmulgee County Clerk, and on October 21 he filed an "amended notice of a private money mortgage sale." Neither document is in the official record, but DuBuc attached copies of them to

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C3C

his voluminous appellate filings.[1] These "notices" state (capitalization and grammar as in original):

CONTRACT FOR DEED
Title 16 O.S.A section 11A

This Notice of Private sale Between Horace Samuel Parker (seller) And Brian D. DuBuc (Buyer) is Recorded in Accordance with title 16 osa section 11A of the Oklahoma statues Regarding the premises located at 124 E. Main street Henryetta Oklahoma 7443 county of Okmulgee State of Oklahoma.

As Seller wishes From Attachment "A' During his Lifetime Regarding Said private sale Before Four (4) Witnesses, Mr. and Mrs. David Parker Husband and wife and Brian D. DuBuc an unmarried individual, and Laura Mason a Married UN-Divorced Individual as a Result of his Rapidly deteriorating Health with respect to and more particularly described as follows:

22

[24 East main street, Henryetta]

wherein, The Licensed Business Began Operation October 3, 2008. Relocating from 110 - 114 N. 4Th Street Henryetta Oklahoma, 74437 Following the prepaid Advance against the renovation of the then Public Nuisance Location above and ongoing Maintenance At Sellers request:

That One (1) Buyer Would Renovate the premises eliminating the public Nuisances Therein from Vandalizes and unlawful dumping which prevented any ongoing maintenance at that time and prevent its return.

That Two (2) Buyer Would then lease the premises for a period of Years at 500.00 Month determined by the Seller and then and such time as seller determined would provide in writing a Final payoff Number

[1] These items are not part of the official record, and we detail them here only as an aid to understanding the underlying situation that was before the district court.

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> Three (3) which has occurred As Evidenced By Exhibit 'A' Hereto Of $140,000 (one hundred forty thousand). With no other special conditions provided.
>
> Said totals to October 3, 2019 from October 3, 2008 being as follows-: Total sweat equity's and out of pocket investment UN-Reimbursed by seller $37,701.49 including a $2500.00 voluntary extra payment with regular payment on or around October 3, 2008. Followed by and with $ 66,000.00 paid owner carry lease payments and Continuing till $140,000.00 is completed from and after October 3, 2019 280 months or until paid in full.
>
> Total purchase price $237,709.49 Balance $140,000 @ 500.00 X 280 Months or payment in full with no Pre-payment penalty.

The referenced Exhibit A was a handwritten note dated September 12 bearing the purported signature of Sam Parker, stating that Parker "had the property . . . up for sale to Brian Dubuc for . . . $140,000." 23

This filed 2019 "notice" appears to allege that Parker and DuBuc had entered into a 2008 contract for DuBuc to purchase the property and that DuBuc had provided consideration in the form of payments and sweat equity between 2008 and 2009, and agreed that DuBuc's lease payments thereafter were toward the purchase of the property rather than rent.

Upon discovering this document had been filed, Trust gave DuBuc notice to quit a month-to-month tenancy and filed a forcible entry and detainer action, stating that DuBuc "filed a false deed" on the property as the basis for forcible entry and detainer. DuBuc was served, but failed to appear for the scheduled

23 C3C

hearing. On October 29, 2019, the district court granted Trust immediate possession.

On November 4, 2019, DuBuc filed a post-trial *pro se* "motion to dismiss with prejudice." The actual legal theories contained therein are somewhat obscure, but we will attempt to parse them here:

1. The court lacked jurisdiction pursuant to *Ferguson v. Dist. Court of Oklahoma Cty.*, 1975 OK 167, 544 P.2d 498 (tenant in possession under a purported lease, who is not holding over, may not be deprived of possession of the premises through an action in forcible entry and detainer—action must be tried in ejectment).
2. David Parker as trustee lacked standing because (a) he was not a party to the alleged contractual agreement between DuBuc and Sam Parker and (b) he had engaged in the unauthorized practice of law.
3. The action was "premature" because of the alleged contract for deed.
4. That DuBuc's "outstanding leasehold" in the property was equivalent to "absolute ownership" citing *Sublett v. City of Tulsa,* 1965 OK 78, 405 P.2d 185.
5. The remaining allegations appear to be ones of "malicious behavior ill will and threats" by various individuals, and claims of tortious interference with DuBuc's business, resulting in irreparable harm.

24

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On November 18, 2019, Dubuc filed a second motion seeking "disqualification" of the judge who had granted default judgment on the grounds that she had "participated in sham legal process" by "failing to provide a minimum of five days' notice;" "secretly changing dates on documents;" engaging in ex parte meetings with Trust's counsel; and making "secret transfers" of the case from another judge "to benefit a single party." The motion included five pages of general accusations regarding law enforcement and the judicial system in Okmulgee County, bar complaints against opposing counsel and complaints to the Oklahoma Attorney General's office and various consumer agencies. The motion also contained copies of two cancelled checks to Sam Parker, one for $500, and one for $2,600.

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The district court held an in-person hearing on the motion on November 19, 2019, which was transcribed by a court reporter. After hearing, the court denied the "motion to dismiss with prejudice." DuBuc appealed *pro se*, attaching many pages of material to his appeal that were not part of the trial court record. He also asked the Supreme Court at various times to take original jurisdiction, to strike Estate's reply, to stay the lower court decision without bond and engaged in a series of disputes over the content of the record. The appeal required nine rulings by the Supreme Court before it was ready for transmission to this Court.

On March 16, 2021, Appellant DuBuc filed for Chapter 13 bankruptcy protection, staying this case. On April 5, 2021, the Bankruptcy Court for the Western District of Arkansas granted a voluntary dismissal of this bankruptcy case, thereby lifting the stay.

STANDARD OF REVIEW

As discussed below, we will treat DuBuc's "motion to dismiss with prejudice" as a motion to vacate filed within 10 days of the underlying decision. A motion to vacate a judgment "is addressed to the sound legal discretion of the trial court and the order made thereon will not be disturbed on appeal unless it clearly appears that the trial court has abused its discretion." *Hassell v. Texaco, Inc.*, 1962 OK 136, ¶ 14, 372 P.2d 233. An abuse of discretion standard of review includes examination of both fact and law issues and an "abuse occurs when the ruling being reviewed is based on an erroneous legal conclusion or there is no rational basis in the evidence for the decision." *Tibbetts v. Sight 'n Sound Appliance Ctrs., Inc.*, 2003 OK 72, ¶ 3, 77 P.3d 1042.

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ANALYSIS

The first question is how we are to categorize a "motion to dismiss with prejudice" filed six days after a default judgment. As the post-trial motions were filed within 10 days of the trial court's final order, this Court may treat them as a motion to vacate under 12 O.S. § 1031.1, or a timely motion for new trial under 12

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O.S. § 651. *See McMillian v. Holcomb*, 1995 OK 117, n.3, 907 P.2d 1034. DuBuc did not appear to state grounds for a new trial, but did argue jurisdictional grounds, including lack of proper notice, and that the matter was outside the jurisdiction of the small claims court because he claimed a legal right in the property.

The court found that DuBuc was given the required timely notice for a small claims procedure, and we agree. DuBuc's only cognizable argument was that this matter was outside the jurisdiction of the small claims court because it involved a claim of title or right in the subject property. "Disputed title raised in a forcible entry and detainer action requires the action to be moved from the Small Claims Docket and the action proceed as one in ejectment." *Rogers v. Bailey*, 2011 OK 69, ¶ 14, 261 P.3d 1150.

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Craig v. Cabelka, 1992 OK CIV APP 98, 838 P.2d 532, is almost identical to the case here. In *Craig*, the plaintiffs initiated a forcible entry and detainer action alleging that the defendant was wrongfully in possession of land. The district court entered default judgment against the defendant for failure to appear. The defendant filed a motion to vacate judgment which was denied after hearing. The defendant appealed, arguing that it is error to enter judgment in a forcible entry and detainer action when he (the occupier of the property) claimed to occupy under color of title.

Craig v. Cabelka held that the trial court erred in issuing a judgment in forcible entry and detainer after the defendant had asserted title to a disputed tract of land. The court further ruled that the trial court's failure to vacate the default judgment was an abuse of discretion because the legal sufficiency of a claim of title "cannot be determined in a forcible entry and detainer action." *Id.*, citing *Ferguson v. District Court of Oklahoma County*, 1975 OK 167, 544 P.2d 498; *Dix v. Burkhard*, 1942 OK 110, 130 P.2d 837; *Lyons v. Lyons*, 1939 OK 164, 90 P.2d 391. "'An action for Forcible Entry and Detainer may be brought only where the tenant is holding over and is a settler or occupier of lands and tenements without color of title.' *See* 12 O.S.Supp.1990 § 1148.3.'" *Id.*, ¶ 13. An action in ejectment is not adjudicated in a small claims proceeding. *White v. Rakestraw*, 1977 OK 76, 563 P.2d 644.

28

We find it clear that an allegation of right or title pre-hearing or at hearing removes the jurisdiction of the court to proceed in forcible entry and detainer under the small claims procedure. In *Craig v. Cabelka*, this allegation was raised for the first time after hearing, as it was here. Further, in this case, the nature of the claim was *clear from the face* of the forcible entry and detainer petition. The petition did not allege the usual claims of failure to pay rent or continued occupation without a lease. It specifically alleged the forcible entry and detainer petition was filed because DuBuc had "**filed a false deed on property at 124 East Main St.,**

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Henryetta. OK, 74437." This may indicate a quiet title action, a slander of title action, a claim in ejectment or other claims. It does not constitute an action in forcible entry and detainer, however.

CONCLUSION

We make no decision regarding the viability of DuBuc's claim of title or interest in the subject property. We find it clear, however, that this case involved a claim of title or interest in real property and was outside of the limited range of cases that may be tried as a forcible entry and detainer action under the small claims procedure. The court's grant of forcible entry and detainer is therefore reversed and the case remanded for further proceedings.

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REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

WISEMAN, P.J., and BARNES, J., concur.

August 6, 2021

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APPENDIX D

IN THE DISTRICT COURT SITTING IN AND FOR OKMULGEE COUNTY
STATE OF OKLAHOMA

FILED
IN DISTRICT COURT
NOV 22 2022
OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By _____ Deputy

Histories Antiques & Collectables Brian D.DuBuc ; plaintiff;	**D.C. NO: ~~CJ-2021-00129~~ NO: SC-2019- 609**
- VS-	**Unlawful Eviction**
Horace Samuel Parker Jr. Revocable Trust ,	**Wrongful Conversion**
David Allen Parker Individually And Officially as Trustee of the Horace Samuel Parker Jr. Revocable Trust , Crosby Real-Estate Inc. Sherri Crosby Individually and officially	**Torturous Breach of Contract**
Luke Gaither , Individually,	**Malicious Injury to Property**
Defendant' s ;	

36

ORDER SETTING INITIAL PRE TRIAL CONFERENCE

Now on this 22 Day of November, 2022. Comes on for Consideration setting of a **Request of Plaintiff Counsel Pro se Initial pretrial conference**, and a **Motion to Merge Cases Reversed and Remanded by the Oklahoma Supreme Court ,** Suggested by Plaintiff to the court The Crux of **CJ-2021-00129** Arise one from Another out of **SC-2019- 609.**

A review of the Docket shows the matter is at Issue Before the Court and That There is Good Cause to Believe That the Matter will Best Be Benefited By Setting an Initial Pre trial Conference and Enter a decision following presentation by counsels of the Reasons for or Against Merger of the Supreme Court Remanded Cause above Ordered further Proceedings, Involving the Same and other Parties In the New Action.

This Matter is Set for Initial Pre-trial Conference 1/12/2023 **at the Okmulgee County Courthouse at** 10:00 AM

Judge District Court Okmulgee County

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APPENDIX E

IN THE DISTRICT COURT OF OKMULGEE COUNTY
STATE OF OKLAHOMA

HISTORIES ANTIQUES & COLLECTIBLES BRIAN D. DUBUC, Plaintiff, vs. HORACE SAMUEL PARKER JR. REVOCABLE TRUST, et al. Defendants.	))))))))))	Case No. CJ-21-129

FILED
IN DISTRICT COURT
MAY 23 2023
OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By _____ Deputy

ORDER ALLOWING WITHDRAWAL OF COUNSEL

NOW on this 23 day of May, 2023, this matter comes before the Court pursuant to an Application to Withdraw as Counsel filed by Luke Gaither as attorney for Defendants, DAVID ALLEN PARKER, Individually and as Trustee of the HORACE SAMUEL PARKER JR. REVOCABLE TRUST.

37

JUDGE OF THE DISTRICT COURT

Certificate of Mailing

The undersigned certifies that on the date of filing above, a true and correct copy of the above and foregoing Application to Withdraw as Counsel was mailed, with correct postage thereon, to:

Mr. Brian D. DuBuc
541 Citylake Rd.
Waldron, Ar 72958

SHERRI CROSBY
Crosby Real Estate Inc.
107 N. 8th Street
Henryetta, OK 74437

LUKE GAITHER

APPENDIX G

IN THE DISTRICT COURT SITTING IN AND FOR OKMULGEE COUNTY
STATE OF OKLAHOMA

David Parker ; plaintiff;	)	
- VS-	)	NO: SC-2019- 609
Brian DuBuc ; Defendant;	)	Re-Assigned Before the Honorable Cynthia D. Pickering

ORDER VACATING ENTRY AND DETAINER ISSUEING WRIT OF EXCUTION FOR POSSESION

Before the court is The Mandate Spread of Record By the Oklahoma Supreme Court and Defendant Histories Antiques & Collectables dba Brian D. DuBuc DuBuc's Request for Enforcement of Process for Possession. Vacating The Entry and Detainer for want of Jurisdiction Void Abinittio.

A) THE COURT FINDS AS FOLLOWS

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1) This Entry and Detainer was issued and Appealed upon which Defendant Prevailed reversing the Entry and Detainer and Remanding with direction to Issue process.

2) **Mandate on this** court Issued **August 6th, 2021 Okla. S. Ct. # 118.448 (filed herein June 10th, 2022)**

3) **Such** ***order of restoration has { NOT } issued in execution upon plaintiff Parker et. al. Now Defendants et al to surrender possession to histories antiques & Collectables dba Brian D. Dubuc.***

B) Therefor Request for Enforcement having been made the court finds :

1) The Courts order is setaside and the matters involving title to the District Court as law of the case now pending under CJ-21-129 Okmulgee County District Court.
2) Pursuant to The mandate Issued by the Oklahoma Supreme Court #118,448 filed herein :

IT IS FURTHER ORDERED AND DIRECTED Upon the Sheriff of Okmulgee County Oklahoma by or through his deputies to:

Escort dba Brian D. DuBuc Histories Antiques & Collectables to 124 East Main Street Henryetta Oklahoma 74437. His Place of Business for which Entry and Detainer was

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Previously Granted and Upon SC-19-609 Was Vacated and Remanded for Execution of Process by the Oklahoma Supreme Court Number 118,448 Therefore :

1) **Locate David A. Parker or his Agent Shari Crosby Crosby Realestate 107 N 8th street Henryetta Oklahoma 74437 Oklahoma and Order the premises Opened for Inspection videoing inside and out and Order the premises restored to Brian D. DuBuc to be Secured and in peaceable enjoyment from all parties during the remainder of this court proceedings.**

2) **Order Parker et al to Immediately cease and desist all unlawful possession and detention of the realestate business and asset's of dba histories antiques .**

3) **Surrender possession and control to the rightful position of owner manger pursuant to any mortgage, contract for sale , lease, option to purchase or purchase money agreement that intended to exist in continuing possession as mandated.**

4) **The Mandate and Order found that there was no Evictable offense existed upon which Entry and Detainer could have rested and is void Abinittio.**

5) **Leave with David A Parker or his Agent Shari Crosby Crosby Realestate *a Certified Copy of this Order together with a Certified Copy of the Mandate and decision of the Oklahoma Supreme Court #118,448 and***

6) **make return of exaction to this court.**

IT IS SO ORDERED AS DATE ABOVE SET FORTH I HAVE SET MY HAND THIS DAY ____ , May 2024.

41

JUDGE OF OKMULGEE
County Okla. District Court

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CTS

IN THE DISTRICT COURT SITTING IN AND FOR OKMULGEE COUNTY
STATE OF OKLAHOMA

David Allen Parker;	)	
Plaintiff;	)	
	)	**NO: SC-19-609**
- VS -	)	**OK. S. CT. No: 118,448**
	)	
Brian D.DuBuc;	)	
Defendant' s ;	)	**Reversed Remanded**
	)	

ORDER AND FINDINGS ON REMAND

This natter comes before the court upon an order reverseing and remanding from the Oklahoma Supreme Court This Courts Grant of Entry and Detainer on behalf of the Plaintiff David Parker as an Individual in Okmulgee County District Court No SC-19-609.

The Oklahoma Supreme Court in Decission NO: 118,448 Reversed this Courts Grant of Entry and Detainer of possesion Against Brian D. DuBuc dba Histories Antiques & Collectables location of Buisnesse 124 East Main Street , Henryetta ,Okla. 74437.

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Which Resulted in David Parker Taking Possesion without Bond or Sheriff Exacution as shown upon the Record Silent hereinAgainst the Moving Party David A. Parker.

The Oklahoma Supreme Court Found that there were no traditional grounds upon which detainer could have laid in favor of plaintiff Parker and Against Defendant DuBuc et al.

The Claims of Plaintiff David A. Parker presented were a challenge to title not lawful peaceable possesion in the defendant and is governed by the princpals of **LYONS v. LYONS** 1939 OK 164 90 P.2d 391 185 Okla. 70 Case Number: 28614 Decided: 03/21/1939 Supreme Court of Oklahoma

The Oklahoma Supreme Court has issued mandate that process be issued By ths court in further proceedings and the Court therefore finds that Title **12 OK Stat § 1148.2** Provides : **The court shall have power to inquire, in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who, having a lawful and peaceable entry into land or tenements, unlawfully and by force hold the same, and if it be found, upon such inquiry, that an**

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unlawful and forcible entry has been made, and that the same lands and tenements are held unlawfully, then the court shall cause the party complaining to have restitution thereof.

Plaintiff David A. Parker has been determined by the Oklahoma Supreme Court to have had no lawful and or authorized grounds upon which to Rest dispossesion of the defendant by this Courts Findings and Lacked Subject Matter Jurisdiction to Award judgement of possesion. The Action having one sole ground title to Commercial land and Buildings .

The Court Further Found That the Small Claims Procedure Act Cannot Be used to Establish or to Question title to lands or real property and was the sole issue presented in the petition filed before the court was rightful possesion under which it is undisputed was in Defendant Dubuc at the time of filing in this action and is held to Plaintiff Parker by virtue of this courts grant of entry and detainer.

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The action in the district court relates only to the title and damages Okmulgee County District Court No CJ-21-129 . The instant action relates only to possession. The issues are different, and the pendency of the first is not ground for abatement of the second. **Oklahoma Press Pub. Co. v. Gulager** (1934) 168 Okla. 245, 32 P.2d 723. **See, also, Weisman Holding Co. v. Miller** (1922, Minn.) 188 N.W. 732.

This Court lacks Jurisdiction under the facts presented to transfere the case to the District court **Wagoner v. Bennett** 1991 OK 70, 814 P.2d 476 Supreme Court of Oklahoma , Likewise to Certify the Action to the District Court.

Wherefore Premises Considered the Court Finds that the Plaintiff David Allen Parker Individualy as Plaintiff herein failed to File A petition on its Face to confer jurisdiction upon this court and fails to state grounds upon which forceable entry and detainer herein granted is primised and is void the Judgement of Possesion is Vacated and Defendant is restored pursuant to any lease grant authority mortgage or other insturement under which Possesion Existed.

The Court Further Finds That Plaintiff is Not Entitled to Rents Due from day of Taking wrongful possesion under the order of this court herein recended vacated and held un enforceable as a matter of Law. Only to Such

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as may come due from and After restoration of possesion.

Dismissing the Case with prejidice costs to Defendant for all proceedings related to SC-19-609 and Appeal # 118,448 to The Time of restitution to be set on Application Not more than ten days from filing and service by mail of this Order.

Writ of Exacution for Restoration of posession to Issue .

It IS SO ORDERED ADJUDGED AND DECREED THIS _____day of _____2024.

_____

Judge of the District Court In and For
Okmulgee County Oklahoma.

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CERTIFICATE OF MAILING

I ,_____, Clerk Depuety Clerk or Officer of the Court does hereby Certify a trueCertified Copy of this Order and decission on Remand was mailed to Counsel of Record Listed Below this ____Day _____,2024.in accordance with 12 osa § 696.2 to 696.4, 990A

_____

Brian D. DuBuc Pro se 541 Citylake Rd Waldron ,AR. 72958
Gaither Law **Attn: Luke Gaither** P.O. Box 1090 Henryetta ,Okla. 74437

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APPENDIX H

1048392165

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
JAN 25 2021
JOHN D. HADDEN
CLERK

BRIAN D. DUBUC, Petitioner, v. HONORABLE DOUGLAS A. KIRKLEY, JUDGE, and HONORABLE PANDEE RAMIREZ, SPECIAL JUDGE, OKMULGEE COUNTY, Respondents.	)	No. 119,254

Rec'd (date) 1-25-21
Posted
Mailed
Distrib
Publish ___ yes ___ no

45

ORDER

Original jurisdiction is assumed in the cause now pending before the Okmulgee County District Court, Case No. CV-2019-34. *Price v. Board of Co. Comm'rs of Pawnee Co.*, 2016 OK 16, ¶ 6, 371 P.3d 1089. The Petition for Writ of Mandamus is granted.

The Respondent Assigned District Judge is hereby directed to, within thirty (30) days of the date of this Order, enter an order in conformance with 12 O.S. 2011, § 696.2 & 696.3 memorializing its ruling on Petitioner's request for recusal of the assigned Judge. *Clark v. Board of Education of Ind. Sch. Dist. No. 89*, 2001 OK 56, ¶ 7, 32 P.3d 851.

The Respondent Judge, or other assigned judge, is further directed to, within thirty (30) days of the date of this Order, either set Petitioner's pending motions for a hearing or enter rulings on same, as applicable. *Harris v. State* ex rel. *Macy*, 1992

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OK 6, ¶ 2, 825 P.2d 1320.

The Court notes there is a pending appeal in Case No. 118,772 arising from a related but separate district court case, therefore nothing requires that the proceedings in Case No. CV-2019-34, Okmulgee County District Court, be stayed pending the outcome of that appeal.

All other requests for relief are denied.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 25TH DAY OF JANUARY, 2021.

CHIEF JUSTICE

46

CONCUR: Darby, C.J., Kane, V.C.J., Kauger, Winchester, Edmondson, Combs, Gurich, and Rowe, JJ.

NOT PARTICIPATING: Colbert, J.

46

D19

IN THE DISTRICT COURT OF OKMULGEE COUNTY
STATE OF OKLAHOMA

FILED
IN DISTRICT COURT
FEB - 9 2021
OKMULGEE COUNTY, OKLAHOMA
CHARLY ORINER, Court Clerk
By _____ Deputy

BRIAN D. DUBUC,	)	
Petitioner,	)	
-vs-	)	
FIRST NATIONAL BANK & TRUST, DBA NEVYLE R. CABLE SUCCESSOR IN FACT, KYLE POWELL, ESTES OFFICIALLY IN THE INDIVIDUAL CAPACITY ALSO,	)	**Case No.: CV 2019-34**
Respondent,	)	
MABREY BANK DBA MABREY BANCCORPORATION INC. WILLIAM CARLISLE MABREY III OFFICIALLY AND IN THE INDIVIDUAL CAPACITY,	)	
Respondent,	)	
LINDA PRICHARD,	)	
Respondent,	)	
JOSEPH GALLAGHER,	)	
Respondent;	)	
Et.al.	)	

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ORDER OF RECUSAL/DISQUALIFICATION

NOW ON THIS 9th day of February, 2021, the above-styled cause of action comes on for consideration of Plaintiff's filing Objection to Special Judge Remeriz (sic) Conducting Trial and Request for Recusal of Remeriz (sic) this Court hereby formally recuses/ disqualifies herself from the above entitled actions.

Further, notice of this recusal is being immediately forwarded to the Honorable Douglas Kirkley, for re-assignment of this case.

IT IS SO ORDERED.

PANDER RAMIREZ
DISTRICT JUDGE

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ORIGINAL

FILED
IN DISTRICT COURT
JAN - 5 2021
OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By_____Deputy

IN THE DISTRICT COURT OF OKMULGEE COUNTY
STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
JAN - 7 2021
JOHN D. HADDEN
CLERK

BRIAN D. DUBUC,	)	
PETITIONER,	)	**CASE NO: MA-119254**
	)	
VS.	)	
	)	
HONORABLE DOUGLAS A. KIRKLEY JUDGE,	)	**DC NO: CV-2019-34**
	)	
HONORABLE PANDEE RAMIREZ SPECIAL JUDGE	)	
OKMULGEE COUNTY		
RESPONDENTS.		

Received: 1-7-21
Docketed: 2
Marshal:
COA/OKC:
COA/TUL:

48

RESPONSE TO PETITIONER'S "PEREMPTORY APPLICATION TO ASSUME ORIGINAL JURISDICTION ([WRIT OF] MANDAMUS)"

COMES NOW Pandee Ramirez, District Judge, and responds to the Peremptory Application to Assume Original Jurisdiction filed the 14th day of December 2020 with the Supreme Court of the State of Oklahoma.

Respondent Ramirez requests that the Supreme Court deny Petitioner's Peremptory Application to Assume Original Jurisdiction. Respondent Ramirez limits her response to the case assigned to her CV- 2019-34 and states the facts as follows:

1. That Petitioner filed CV 2019-34 on the 24th day of April 2019 and issued summons to the District Court Respondents First National Bank & Trust, dba Nevyle R. Cable, Successor in fact, Kyle Powell, Estes Officially in the Individual Capacity also, Mabrey Bank dba Mabrey Banccorporation INC. William Carlisle III officially and in the individual capacity, Linda Prichard, Joseph Gallagher, et al (sic).
2. That Petitioner filed an amended petition on the 26th day of April 2019 with no change made to the aforementioned District Court Respondents.
3. That Petitioner filed a Dismissal with Prejudice on the 7th day of May 2019 dismissing First National Bank & Trust, Nevyle R. Cable, Kyle Powell and Keith Estes.
4. That Petitioner filed a Dismissal with Prejudice on the 17th day of May 2019 dismissing William Carlisle, III and Patty Lloyd.
5. That Petitioner filed a Dismissal with Prejudice on the 22nd day of May 2019 dismissing Mabrey Bank dba Mabrey Banccorporation, INC. William Carlisle, III and Patty Lloyd.
6. That District Court Respondent Joseph Gallagher filed a Motion for Scheduling Conference Hearing on the 6th day of September 2019 that was set for hearing before Judge Kenneth E. Adair on the 15th day of January 2020.

RECEIVED
JAN - 7 2021
CLERK'S OFFICE

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7. That Respondent Ramirez was assigned all civil cases previously assigned to Judge Adair on the 2nd day of December 2019 by the Honorable Douglas Kirkley, Presiding Judge of the East Central Judicial Administrative District, pursuant to the Rule on Administration of Courts, 20 O.S., Ch. 1 App. 2, Rule 2.
8. That the Petitioner filed a Motion to Strike Scheduling Order and Motion to Dismiss 12 OSA 2012 (B)(6) and a Motion to Continue Scheduling Hearing if not Striken (sic) on the 23rd day of December 2019.
9. That Petitioner mailed to the Okmulgee County District Court Clerk with a check dated the 23rd day of December 2019 an Application and Affidavit for Service by Publication, a proposed Order for Publication, and various other documents Petitioner felt necessary for the Publisher.
10. That all Court Cost fees were paid on the 24th day of April 2019 and no Order for Publication has been issued.
11. That the Application and Affidavit for Service by Publication only listed one District Court Respondent, Linda Pritchard, in CV-2019-34 who had been previously served in person and by certified mail as alleged in Petitioner's Affidavit.
12. That District Court Respondent Joseph Gallagher filed separate objections to both of Petitioner's Motions pertaining to the Scheduling Conference Hearing on the 13th day of January 2020.
13. That Petitioner failed to appear on the 15th day of January 2020 and a Scheduling Order was issued, to which no objection has been filed.
14. That Petitioner filed Peremptory Prohibition and Mandamus on the 12th day of February 2020.
15. That SC 2014-597 was dismissed on the 25th day of February 2020.
16. That Petitioner filed Objection to Special Judge Remeriz (sic) Conducting Trial and Request for Recusal of Remeriz on the 30th day of March 2020.
17. That Petitioner failed to follow the Rules for District Courts in Oklahoma Rule 15 in Title 12 of the Oklahoma Statutes, by failing to make his recusal request in camera. In fact, the Petitioner has not appeared before this Court, in person or virtually, the entire time this case has been assigned to this Respondent.
18. That Petitioner's Pro Se Letter to Judge Kirkley and Answer from Judge Kirkley were filed on the 9th day of April 2020.
19. That this case has been before the Supreme Court of Oklahoma since the 12th day of February 2020 and has been subject to SCAD Orders and Administrative Orders due to the ongoing COVID-19 Pandemic.
20. That Governor J. Kevin Stitt issued an Order of Appointment on the 17th day of September 2020 appointing this Respondent, Pandee Ramirez, as District Judge for the 24th Judicial District.

That Respondent Ramirez submits she lawfully assumed the Civil Docket for Okmulgee County, originally, as the Special District Judge as assigned by the Presiding Judge of the Administrative Zone, and most recently, as District Judge for Okmulgee County by formal appointment of the Governor. Further, that Respondent Ramirez has fully reviewed the Court File in CV-19-34 and has not denied Petitioner his day in court.

Premises considered, Respondent Ramirez prays that the Petitioner's Peremptory Application to Assume Original Jurisdiction is denied.

RESPONDENT RANDEE RAMIREZ
DISTRICT JUDGE
OKMULGEE, OKFUSKEE AND CREEK COUNTIES

CERTIFICATE OF SERVICE

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I certify that a true and correct copy of this document was sent via U.S. Mail, postage prepaid to the Clerk of the Appellate Courts, Oklahoma Judicial Center, 2100 North Lincoln Blvd., Ste. 4, Oklahoma City, Ok. 73105-4907 on the 5th day of February, 2021 and Mr. Brian D. Dubac, 541 City Lake Road, Waldron, Ar. 72958.

Allison Harding
Bailiff

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D26

Dy

FILED
IN DISTRICT COURT
FEB 25 2020
OKMULGEE COUNTY, OKLAHOMA
CHARLY CRINER, Court Clerk
By_____Deputy

IN THE DISTRICT COURT OF OKMULGEE COUNTY
STATE OF OKLAHOMA

IN THE MATTER OF PROHIBITAION AND MANDAMUS OF:	)	
BRIAN D. DUBUC, Petitioner,	)	
	)	
-v-	)	**NO:** _____
	)	
District Court of Okmulgee County, Respondent,	)	**DC NO: CV 2019-34**
	)	
Honorable Cynthia D. Pickering, Respondent,	)	**DC NO: SC 2014-597**
	)	
Honorable Pandee Ramirez, Respondent.	)	**DC NO: SC 2019-609**

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HONORABLE CYNTHIA D. PICKERING'S RESPONSE TO PEREMTORY PROHIBITION AND MANDAMUS

COMES NOW Cynthia D. Pickering, Associate District Judge of Okmulgee County, State of Oklahoma, and responds to the Peremtory (sic) Prohibition and Mandamus filed of record on February 12, 2020. For her response she would allege and state as follows:

The undersigned begins by stating that the Peremptory Prohibition and Mandamus is difficult to follow as it is not laid out with designate paragraphs making it hard to respond to a specific allegation. In addition, the plaintiff did not add pagination to which a response can be linked. In addition, the plaintiff does not address his complaint against a specific person or entity, individually; but jumbles them together in this instrument. This Court will attempt to address those allegations pertaining to her involvement.

1. The Respondent Pickering (herein after referred to as "Pickering") denies that A) Appellant Jurisdiction is being obstructed by practice custom and usage of the District Court of Okmulgee County contrary to statute. The Plaintiff DuBuc (hereinafter referred to as "DuBuc"), does not address what the obstructions are specifically, but randomly spews assertions of obstructions.

2. DuBuc alleges: "B) Prohibiting The Judicial Body Below From Directing Clerks to forgo there (sic) Statutory duty to File All Documents upon Receipt not **only upon Authorization By a judge of the court.**" Pickering does not dictate to the Court Clerk's Office which documents they shall file. Pickering notes that to her knowledge the Court Clerk's Office does not file unsigned Orders unless that Order is attached as an exhibit.

3. Pickering has received mail from Dubuc in which he is requesting certain Orders to be signed. Pickering has reviewed those Orders and have found them deficient for a number of reasons, i.e. Failure to provide notice to opposing parties, failure to set hearings on some of the applications, etc.

4. DuBuc's assertion mentioned on page 1 at C) "Directing Honorable Pickering and Ramirez to Enter proper **Orders Documenting Transferring from one Docket to Another and from docket's Assigned to Others to there** (sic) **Docket's in instances regarding certain parties to litigation to the court.**"

5. Pickering assumes that Dubuc's complaint is that SC 2014-597 was not transferred from the Small Claims Docket to the Civil Docket. At the original hearing, Pickering, found that the subject matter of DuBuc's Affidavit was outside the scope of that which is allowed under the Small Claims statutes. While the Court Minutes say "transfer", the fact of the matter is that the Small Claims Act does not grant jurisdiction under the Act for Contract for Deed issues. Pickering relied on 12 O.S. §1751. This is discussed more specifically below. His Amended Petition for Ejectment Foreclosure and Damages, on its face, indicates that it is not a case allowed under the Small Claims Act.

6. SC 2014-597 was not summarily dismissed in an effort to afford DuBuc the remedy of removing the case from Small Claims to Civil Court and only pay the difference between the cost of Small Claims and that of Civil filing.

7. DuBuc's paragraph D) is addressed below.

8. A transfer from one judge's docket to another is done between the judges and does not require notice of same to the parties. On page two of Dubuc's Request he correctly notes that a case is assigned to be heard before a court to which "it is assigned unless transferred by a written order of the court to some other court or judge within the court for some specified reason or conflict as the case may be."

9. The Plaintiff correctly recites that Honorable Kenneth Adair resigned his office. He mistakenly asserts that Pickering "inherited" CV 2019-34.

10. Following Judge Adair's departure, the Administrative Presiding Judge Douglas Kirkley sent Order of Assignment, assigning Judge Adair's dockets either to Judge Pickering or Judge Ramirez. Judge Pandee Ramirez was assigned all civil cases in which the parties agreed that as Special District Judge, she could assume jurisdiction over the civil case.

11. DuBuc alleges that Case SC 2019-609 was assigned by the clerk and OSCN to Judge Pandee Ramirez. This is not true, as Presiding Judge, Adair, assigned the Small Claims docket to Pickering after she was elected Associate District Judge and she continues to preside over that docket.

12. DuBuc complains that there has not been a final disposition in CV 2019-34 and SC 2014-597 as it is still pending after five (5) years. This complaint is disingenuous because DuBuc was made aware that SC 2014-597 was improperly filed as a Small Claims action when in fact it involved a Contract for Sale in real estate. DuBuc's decision to wait five (5) years before he filed a new petition in CV 2019-34 was a choice he made. For him to assert at this juncture that it is somehow the Courts' fault for refusing finalization for five years flies in the face of common sense.

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13. DuBuc argues that Pickering defended and argued defendant's case against there (sic) wishes. This is blatantly untrue. Pickering was attempting to explain that the Small Claims Act did not allow an action for Foreclosure.

14. DuBuc brings up SC 2019-609 claiming that Pickering "**granted small claims upon perjury of pro se plaintiff of a *title dispute* under guise of a Small Claims entry and detainer**."

15. SC 2019-609 was filed on the 21st day of October, 2019 and the defendant DuBuc was given proper notice on October 22, 2019 by process server.

16. The case was set on Judge Pickering's docket for October 28, 2019 at 2:00 p.m.

17. On the 28th day of October, 2019, the case was heard by Judge Pickering and a default judgment was granted due to the defendant DuBuc failing to appear at the time specified. The defendant Dubuc appeared at 2:31 p.m. after court had recessed.

18. A second hearing was scheduled for November 19, 2019 in which DuBuc attended. The Court heard arguments from DuBuc and from Mr. Luke Gaither, attorney of record for the

plaintiff. Following arguments, the Court issued a Summary Order denying DuBuc's Motion to Dismiss With Prejudice and advising DuBuc of his right to appeal.

19. 12 O.S. §1757 states, in part: 1. On motion of the defendant, a small claims action may, in the discretion of the court, be transferred from the small claims docket to another docket of the court; provided, that the motion is filed and notice is given by the defendant to the opposing party or parties by mailing a copy of the motion at least forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer; and provided, further, that the defendant deposit the sum of Fifty Dollars ($50.00) as the court cost; and 2. The motion to transfer shall be heard at the time fixed in the order and consideration shall be given to any hardship on the plaintiff, complexity of the case, reason for transfer, and other relevant matters. If the motion is denied, the action shall remain on the small claims docket.

20. Under this statute, it was the responsibility of the defendant, DuBuc, to properly make a motion to transfer the matter from Small Claims to the Civil Docket. A review of the docket sheets fails to show that DuBuc followed this procedure.

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21. At no time has DuBuc moved the Court for a new trial or for the matter to be transferred to the Civil Docket as prescribed in 12 O.S. §1757. (See paragraph 20 above)

22. DuBuc chooses to complain that Pickering "**granted small claims upon perjury of *pro se* plaintiff of a title dispute under guise of a Small claims entry and detainer.**" DuBuc conveniently omits the fact that he failed to appear at the initial hearing until after court had recesssed. At the second hearing, DuBuc failed to request a transfer, nor at any time has he requested the case be transferred to the Civil Division other than to request that it be consolidated with CV 2019-34.

23. It is this Court's opinion that SC 2019-609 should not be consolidated with CV 2019-34 for the following reasons:

    a. The subject matter properties are not the same. Each case involves separate parcels of land;
    b. The plaintiff in SC 2019-609 has no relationship to the defendants in CV 2019-34;
    c. The only connection between the cases is DuBuc, which is not sufficient cause to consolidate the cases.

24. Pickering denied DuBuc's request to waive filing fees based on several factors:

    a. DuBuc did not file a Pauper's Affidavit and request relief in a proper form;

b. DuBuc states in the Request for Mandamus that: "The case involves the seizure of a **licensed state business** ... that in the 80's **he was truly a business owner, painter, and craftsman but is now disabled**. At no time has he produced evidence of his disability. (Emphasis added)

c. DuBuc mentions "**his Real estate and investments** being permitted damaged without remedy ..." (Emphasis added)

d. DuBuc's own admission that **the case involves seizure of a licensed state business**, to-wit: Histories Antiques, d/b/a Brian D. DuBuc (See SC 2019-609 "Motion To Compel Counsel For Plaintiff To Prepare And File A Proper Journal Entry Of Judgment and To Properly Title The Action Defendant Historiesantiques d/b/a Bria D. DuBuc" indicates that he has the ability to generate income through his various enterprises. (Emphasis added)

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25. DuBuc complains that no court will accept or complete the case now for five years. DuBuc wholly failed to file his Petition in Civil Court until 2019 even though he was advised that the matter could not be heard in Small Claims Court. A Court can not "accept or complete a case" unless there is a case before it.

In closing, Pickering respectfully requests that this Court make its rulings as it deems appropriate and grant any relief that the Court deems reasonable and proper.

Cynthia D. Pickering
CYNTHIA D. PICKERING
Judge of the District Court

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was sent via U.S. Mail, postage prepaid to Clerk of the Appellate Courts, Oklahoma Judicial Center, 2100 North Lincoln Blvd., Ste. 4, Oklahoma City, OK 73105-4907 on the 24th day of February, 2020 and Mr. Brian D. DuBuc, 541 City Lake Road, Waldron, AR 72958 and hand-delivered to: The Honorable Judge Pandee Ramirez, 314 West 7th Street, Okmulgee, Oklahoma 74447 on the 24th day of February, 2020.

Carla Grease
Court Clerk/Bailiff/Judge

EXHIBIT I

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   John Frederick Heil III

2. **Position**: State the position for which you have been nominated.

   United States District Judge for the Northern, Eastern and Western Districts of Oklahoma

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   320 South Boston Avenue, Suite 200
   Tulsa, Oklahoma 74103

4. **Birthplace**: State year and place of birth.

   1968; Lima, Ohio

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1991 – 1994, The University of Tulsa College of Law; J.D., 1994

   1986 – 1990, Oklahoma State University; B.S., 1990

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

   2000 – present
   Hall, Estill Hardwick, Gable, Golden and Nelson, P.C.
   320 South Boston Avenue, Suite 200
   Tulsa, Oklahoma 74103
   Shareholder Attorney (2000 – present)
   Executive Committee Member (2018 – present)
   Board of Directors Member (2015 – present)

2016 – present
Toledo Properties, LLC
11716 South Canton Avenue
Tulsa, Oklahoma 74137
Sole Member (real estate investment property)

1997 – 2000
Tulsa County District Attorney's Office
500 South Denver Avenue, # 900
Tulsa, Oklahoma 74103
Assistant District Attorney

1993 – 1997
Ronald D. Wood & Associates
No current address
Associate Attorney (1994 – 1997)
Legal Intern (1993 – 1994)

1986 – 1991
Holiday Inn
2515 West 6th Avenue
Stillwater, Oklahoma 74074
Guest Services Representative

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Other Affiliations (Uncompensated)

2013 – 2018
Leadership Tulsa (non-profit)
1717 South Boulder Avenue W, # 104
Tulsa, Oklahoma 74119
Board of Directors Member

2014 – 2017
Crosstown Learning Center (non-profit)
2501 East Archer Street
Tulsa, Oklahoma 74110
Board of Directors Member

2013 – 2016
Cedar Ridge Country Club
10302 South Garnett Road
Broken Arrow, Oklahoma 74011
President (2015 – 2016)
Board of Directors Member (2013 – 2016)

2007 – 2009

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including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

From 1997 to 2000, I served as an Assistant District Attorney in the Tulsa County District Attorney's Office. I was appointed by District Attorney William LaFortune.

I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Member of Campaign Committee for Doug Drummond for District Court Judge, State of Oklahoma, 14th Judicial District (2014)

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16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have not served as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1994 – 1997
Ronald D. Wood & Associates
No current address
Associate Attorney

1997 – 2000
Tulsa County District Attorney's Office
500 South Denver Avenue, # 900
Tulsa, Oklahoma 74103

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Assistant District Attorney

2000 – present
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.
320 South Boston Avenue, Suite 200
Tulsa, Oklahoma 74103
Shareholder Attorney (2000 – present)
Executive Committee Member (2018 – present)
Board of Directors Member (2015 – present)

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as an arbitrator or mediator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

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As a young associate with Ronald D. Woods & Associates, I was responsible for research and writing, preparing motions and briefs and conducting discovery. I also took primary responsibility for developing cases for trial. My caseload primarily consisted of insurance defense work, including general liability, excess liability, premises liability and medical malpractice issues. I successfully defended clients in a number of negligence claims resulting from motor vehicle accidents throughout Oklahoma, including a tragic accident which involved a wrongful death claim in McCurtain County. Another notable trial in Creek County presented much like a criminal case wherein I successfully defended a convenience store franchise from a negligence claim brought by a plaintiff who was shot by the store clerk in an effort to thwart the plaintiff's robbery. My workload continued to expand into federal court and I became panel counsel for the Oklahoma Municipal Assurance Group which provided me the ability to represent various towns and municipalities throughout the State.

In early 1997, I was offered an opportunity to become one of two prosecutors on a drug task force being created to take primary responsibility for the prosecution of major drug crimes in Tulsa County. For nearly nine months, I served on the District Attorney's Drug Task Force. I successfully prosecuted countless major drug crimes, including drug trafficking and manufacturing of dangerous controlled substance charges to conviction. I had the opportunity, on nearly a daily basis, to study the Fourth Amendment to the Constitution and the various Supreme Court decisions surrounding the acceptable bounds of search and seizure

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and its significant relationship to the admissibility of evidence thereby obtained. I conducted numerous hearings in response to defendants' motions to suppress evidence. I provided guidance, teaching and instruction on the application of search and seizure law at the Tulsa Police Department Academy and to other law enforcement officials with the Tulsa County Sheriff's Office and the Oklahoma Bureau of Narcotics. I also had the opportunity to guide and instruct the Tulsa Police Department Special Investigations Division and Street Crimes Unit on the use of confidential informants and in procedures to implement controlled drug buys.

As I transitioned to a violent/felony crime team in 1998, I acted as lead attorney responsible for prosecuting major felony crimes, which included supervising and mentoring staff attorneys in initiating charging information, evaluating and making recommendations, coordinating plea negotiations and conducting jury trials. Through my service into 2000, I successfully prosecuted countless major felony crimes, including rape, child abuse and murder charges to conviction. I conducted hundreds of preliminary (probable cause) hearings on felony charges. I trained many junior prosecutors in the initial development of a case through jury trial.

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Throughout my tenure in the District Attorney's Office, I served in various leadership positions, including: Liaison to the Tulsa Police Department and Tulsa County Sheriff's Office Joint Gang Task Force; Liaison to the Tulsa Police Department, Special Investigation Division, Street Crimes Unit and Drug Task Force; Liaison to the Oklahoma Attorney General's Office, Consumer Fraud Division; Liaison to the Tulsa Police Department, Fraud & Forgery Division; Liaison to the Tulsa Fire Marshal's Office; and Liaison to the Tulsa Police Department, Homicide Division.

In 2000, I was offered the opportunity to join Hall Estill and develop a civil litigation practice. At the firm, I serve as litigation counsel for a broad range of clients from individuals and small businesses to multi-national corporations. My practice has provided me the opportunity to gain substantial trial experience, prosecuting and defending litigation matters in state, federal and appellate courts throughout the United States, including Arkansas, California, Colorado, Delaware, Florida, Idaho, Kansas, Kentucky, New Jersey, Oklahoma, Pennsylvania, South Dakota, Tennessee and Texas.

Generally, my practice includes commercial litigation which has often focused on business torts, unlawful business practices and unfair competition, restrictive employment covenants, intellectual property law, including trade secret, patent, copyright and trademark litigation, and construction and general contract law.

appropriate time period for such recusals into the future, making sure to comply with all applicable Canons of the Code of Judicial Conduct. My initial thought is that such recusals would be appropriate for at least two years.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

Compliance with the Canons of the Code of Judicial Conduct at all times is essential. Should a conflict exist or appear to exist, recusal would be warranted and exercised without reservation to maintain the integrity of the Court. Should I perceive a potential conflict in any case, and after consideration become convinced that no conflict exists, I would be sure that, at a minimum, counsel and the parties were in agreement that no conflict exists before proceeding with the matter.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I represented one client through Legal Aid Services of Oklahoma in a foreclosure action. I have also mentored associates in working for clients through the Legal Aid program. However, the most significant responsibility I have felt compelled to fulfill is that of providing a long-standing legal counseling and mentorship role for a victim's family who I came to know as a result of the prosecution of a sexual abuse of a minor child case in 1999. Since leaving the District Attorney's Office to develop a civil practice, I have spent countless hours with this victim's family helping them deal with a multitude of legal issues, such as bankruptcy, landlord issues, child support issues, employment related issues, vehicle accidents, as well assisting the children in the family deal with domestic abuse issues and drug related problems (with one child successfully completing the Tulsa County Drug Court Program). This has involved ongoing assistance periodically over the past 19 years, which continues to this day. Additionally, I have represented Crosstown Learning Center, a non-profit organization that provides education and care for children in working poor families, without charge on various legal matters, including the investigation and prosecution of an employee embezzlement matter which resulted in the return of all funds to this non-profit organization.

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26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department

John Frederick Heil III (born 1968)[1] is an American lawyer from Oklahoma who is the chief United States district judge of the United States District Court for the Northern District of Oklahoma. In addition to his appointment to the Northern District, he is also a judge in the United States District Court for the Western District of Oklahoma and United States District Court for the Eastern District of Oklahoma.

Heil earned his Bachelor of Science from Oklahoma State University and his Juris Doctor, with honors, from the University of Tulsa College of Law, where he served as an Editor for the *Tulsa Law Journal*.[2]

Before joining Hall Estill, Heil served the State of Oklahoma as Assistant District Attorney in the Tulsa County District Attorney's Office. From 2000 to 2020, he was a shareholder and director at Hall, Estill, Hardwick, Gable, Golden & Nelson in Tulsa, Oklahoma, where his practice focused on complex commercial litigation.[2

On November 6, 2019, President Donald Trump announced his intent to nominate Heil to serve as a United States district judge for the United States District Court for the Northern District of Oklahoma, United States District Court for the Western District of Oklahoma and United States District Court for the Eastern District of Oklahoma. On December 2, 2019, his nomination was sent to the Senate. President Trump nominated Heil to the seat vacated by Judge James H. Payne, who assumed senior status on August 1, 2017.[3] On January 3, 2020, his nomination was returned to the President under Rule XXXI, Paragraph 6 of the United States Senate.[4] On January 6, 2020, his renomination was sent to the Senate.[5] A hearing on his nomination before the Senate Judiciary Committee was held on January 8, 2020.[6] On March 12, 2020, his nomination was reported out of committee by a 16–5 vote.[7] On May 20, 2020, the Senate invoked cloture on his nomination by a 76–16 vote.[8] Later that same day, his nomination was confirmed by a 75–17 vote.[9] He received his judicial commission on May 27, 2020. He has served as the chief judge of the Northern District of Oklahoma since 2021.[10]

Congressional Research Service

SUMMARY

Return of Nominations to the President under
Senate Rule XXXI

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Nominations that have been neither confirmed nor rejected by the Senate at the time the Senate adjourns sine die or for a period of more than 30 days are returned to the President pursuant to Senate Rule XXXI, clause 6. Pro forma sessions held during a recess of the Senate count as days in session and can prevent what would otherwise be a greater than 30-day recess that would trigger the return of nominations under the rule. The use of pro forma sessions in modern Senate practice means that the need to suspend Rule XXXI usually only occurs at the end of the 1st session of a Congress.

The Senate routinely holds over at least some nominations between sessions of Congress or recesses lasting more than 30
days. Nominations can be held over if the Senate agrees, by unanimous consent, to suspend the rule. Unanimous consent
agreements to waive the rule might be applied to some or all nominations pending before the Senate and its committees.

Nominations chosen to be held over are typically negotiated by party and committee leaders, though individual Senators have
leverage in negotiations as any objection to a unanimous consent request would kill it. Nominations for which the rule has
been suspended remain in status quo, meaning they continue to be pending on the Executive Calendar instead of being
returned to the President as required under Senate rules. The Senate returns all nominations at the end of a Congress.

EXHIBIT J

OKLAHOMA
State Courts Network

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA

STATE OF OKLAHOMA, Plaintiff, v. BRIAN DALE DUBUC, Defendant, and PATRICK LEMON WALKER, Defendant.	**No. CF-1991-3581** **(Criminal Felony)** Filed: 08/27/1991 Closed: 05/12/1997 Judge: Beasley, B. R.

PARTIES

DUBUC, BRIAN DALE, Defendant
STATE OF OKLAHOMA, Plaintiff
Tulsa Police Department, ARRESTING AGENCY
WALKER, PATRICK LEMON, Defendant

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ATTORNEYS

Attorney	Represented Parties
KRAMER, DAN	DUBUC, BRIAN DALE

EVENTS

Event	Party	Docket	Reporter
Wednesday, September 4, 1991 at 2:00 PM ARRAIGNMENT	WALKER, PATRICK LEMON	Arraignment Docket	
Tuesday, September 17, 1991 at 9:00 AM PRELIMINARY HEARING - ISSUE	DUBUC, BRIAN DALE	Preliminary Hearing Docket	
Tuesday, September 17, 1991 at 9:00 AM PRELIMINARY HEARING - ISSUE	WALKER, PATRICK LEMON	Preliminary Hearing Docket	
Tuesday, October 8, 1991 at 9:00 AM PRELIMINARY HEARING - ISSUE	WALKER, PATRICK LEMON	Preliminary Hearing Docket	
Tuesday, October 8, 1991 at 9:00 AM PRELIMINARY HEARING - ISSUE	DUBUC, BRIAN DALE	Preliminary Hearing Docket	

12-28-1995 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: CASE SET ON DKT. FOR RETRIAL DATE TO BE DETERMINED. DEFENDANT IN CUSTODY, NOT PRESENT (DEFENDANT REFUSED TO APPEAR INCOURT). CASE RESET 1-3-96 9:30 A.M.

01-03-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: JURY TRIAL (ISSUE) RESET 6-18-96 9:30 A.M. DEFENDANT PRESENT, IN CUSTODY & REPRESENTED BY PUBLIC DEFENDER. JUDITH HARMON'S NAME TO BE TAKEN OFF RECORD AS ATTY. OF RECORD. STATE BY TODD SINGER.

04-25-1996 [DEFT] DUBUC, BRIAN DALE

DEFENDANT'S FORMAL MOTION TO DISMISS FOR DENIAL OF SPEEDY, AND IMPARITALTRIAL UNDER AND AS GARANTEED FAIR AND WITHOUT LENGTHY AND UNREASONABLE INNORDIANATE EXCESSIVE PRETRIAL DELAYS CONTRARY TO CONSITUTION

06-18-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: JURY TRIAL (ISSUE) RETRIAL RESET 6-19-96 9:30 A.M.

06-19-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: JURY TRIAL (RETRIAL) RESET 11-4-96 9:30 A.M. P.D. REPRESENTS DEFENDANT.

06-26-1996 [MO] DUBUC, BRIAN DALE

MOTION TO PROCEED IN FORMA PAUPERIS

06-26-1996 [PWM] DUBUC, BRIAN DALE

PETITION FOR WRIT OF MANDAMUS

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08-07-1996 [TEXT] DUBUC, BRIAN DALE

SELLERS J.D.: CASE TRANSFERRED BY ORDER TO JUDGE TURNBULL FROM JUDGE HOPPER BY AGREEMENT, ENTERED FOR SETTLEMENT CONFERENCE ONLY.

08-07-1996 [TEXT] WALKER, PATRICK LEMON

SELLERS J.D.: CASE REASSIGNED BY ORDER TO JUDGE TURNBULL FROM JUDGE HOPPER BY AGREEMENT, ENTERED FOR SETTLEMENT CONFERENCE ONLY.

08-08-1996 [TEXT] DUBUC, BRIAN DALE

ORDER OF TRANSFER OR REASSIGNMENT TRANSFERED FROM JUDGE HOPPER TO JUDGE TURNBULL

08-12-1996 [AWDA] DUBUC, BRIAN DALE

APPLICATION TO WITHDRAW (AS ATTORNEY OF RECORD) AND ORDER

08-17-1996 [TEXT] DUBUC, BRIAN DALE

TURNBULL NED: CONFERENCE HELD-UNABLE TO NEGOTIATE; CASE REMANDED TO JUDGE HOPPER. DEFENDANT PRESENT, IN CUSTODY, REPRESENTED BY SEANMC KEE. STATE REPRESENTED BY A. J. SCHULTZ.

08-30-1996 [O] DUBUC, BRIAN DALE

ORDER DENYING PETITION FOR WRIT OF MANDAMUS(COPY TO DA AND JUDGE HOPPER)

09-18-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: HEARING TO APPOINT COUNSEL SET ON DOCKET 9-20-96 9:30 A.M. AT REQUEST OF SEAN MC KEE, COURT APPOINTED ATTORNEY.

09-20-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD:AMENDED TO REFLECT COURT REPORTER SALLY SELF

09-20-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: HEARING TO APPOINT DEFENDANT NEW COUNSEL HELD & RESET SEPTEMBER 23, 1996 9:30 A.M. COURT ALLOWS SEAN MC GEE TO WITH- DRAW AS ATTY. OF RECORD. DEFENDANT PRESENT IN CUSTODY. STATE BYED SNOW.

09-23-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: HEARING TO APPOINT COUNSEL RESET 9-24-96 9:30 A.M. DEFENDANT PRESENT & IN CUSTODY.

09-24-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: HEARING TO APPOINT AN ATTORNEY FOR DEFENDANT--DEFT. PRESENT IN CUSTODY. COURT HEREBY APPOINTS DAVID ROBERTSON TO REPRESENT DEFENDANT.

10-09-1996 [MOLIM] DUBUC, BRIAN DALE

MOTION IN LIMINE AND MOTION TO DISMISS

10-21-1996 [RTSUB$] DUBUC, BRIAN DALE

RETURN SUBPOENA [20.00]

10-21-1996 [RTSDT] DUBUC, BRIAN DALE

RETURN SUBPOENA DUCES TECUM [20.00]

10-25-1996 [APLI] DUBUC, BRIAN DALE

APPLICATION FOR ORDER ALLOWING ATTORNEY FEES

10-28-1996 [MO] DUBUC, BRIAN DALE 65

MOTION TO WITHDRAW

10-30-1996 [DEFT] DUBUC, BRIAN DALE

DEFENDANT'S OBJECTION, DEMAND FOR TRIAL OR DISMISSAL

11-01-1996 [RTSBN] DUBUC, BRIAN DALE

RETURN SUBPOENA (NO CHARGE)

11-04-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: JURY TRIAL (RETRIAL) RESET 11-5-96 9:30 A.M. FOR THE APPOINTMENT OF NEW ATTY. DAVID ROBERTSON ALLOWED TO WITHDRAW, ASPRESENTLY EMPLOYED IN THE D.A.'S OFFICE. DEFENDANT PRESENT IN CUSTODY. STATE BY STEVEN SEWELL. REPORTER: SALLY SELF.

11-05-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: JURY TRIAL (RETRIAL) RESET 11-6-96 9:30 A.M. DEFT. PRESENT IN CUSTODY & WITHOUT COUNSEL.

11-06-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: JURY TRIAL (RETRIAL) RESET 11-7-96 9:30 A.M. DAN KRAMER APPOINTED BY COURT TO REPRESENT DEFENDANT. DEFENDANT PRESENT IN CUSTODY. STATE BY DAVID ROBERTSON.

11-07-1996 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: JURY TRIAL (RETRIAL) RESET 1-13-97 9:30 A.M.

01-13-1997 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: JURY TRIAL (ISSUE) RESET 1-14-97 9:30 A.M.

01-14-1997 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: JURY TRIAL (ISSUE) RESET 1-15-97 9:30 A.M.

01-15-1997 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD:AMENDED TO REFLECT COURT REPORTER SALLY SELF 65

01-15-1997 [TEXT] DUBUC, BRIAN DALE

HOPPER CLIFFORD: JURY TRIAL (ISSUE)--RETRIAL--DEFENDANT PRESENT, IN CUSTODY & REPRESENTED BY DAN KRAMER. STATE BY ED SNOW. REPORTERSALLY SELF. BOTH PARTIES ANNOUNCE READY FOR TRIAL. STATE MADE RECORD IN REGARDS TO SPEEDY TRIAL. COURT RECUSES & TRANSFERS CASE TO PRESIDING JUDGE TO BE REASSIGNED TO ANOTHER COURT.

01-22-1997 [ORC] DUBUC, BRIAN DALE

ORDER FOR REASSIGNMENT OF CRIMINAL DISTRICT JUDGE FROM JUDGE HOPPER TO JUDGE BEASLEY

01-23-1997 [TEXT] DUBUC, BRIAN DALE

BEASLEY B.R.: CASE SET FOR 1-31-97 AT 10:30 A.M. REPRESENTED BY DAN KRAMER.

01-31-1997 [TEXT] DUBUC, BRIAN DALE

BEASLEY B.R.: JURY TRIAL (ISSUE) SET FOR 5-12-97 AT 1:30 P.M. DEFENDANT PRESENT IN CUSTODY, REPRESENTED BY DAN KRAMER. STATE BY PAUL WILKENING. DEFENDANT ENTERS PLEA OF NOT GUILTY, JURY TRIAL SET FOR 5-12-97 AT 1:30 P.M. MUTUAL DISCOVERY 3-26-97 MOTIONS TO BE FILE BY 4-1-97. DEFENDANT RECOGNIZED BACK WITH BONDTO REMAIN.

05-07-1997 [TEXT] DUBUC, BRIAN DALE

BEASLEY B .R.: HEARING ON MOTIONS SET FOR 5-9-97 AT 11:00 A.M.

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05-07-1997 [MO] DUBUC, BRIAN DALE

MOTION & BRIEF TO DISMISS FOR VIOLATION OF RIGHT TO DUE PROCESS & RIGHT TO A SPEEDY TRIAL

05-09-1997 [TEXT] DUBUC, BRIAN DALE

BEASLEY B.R.: MOTION HEARING HELD. DEFENDANT NOT PRESENT, REPRESENTED BY DAN KRAMER. STATE BY ED SNOW. DEFENDANTS MOTION GRANTED AS TO TRANSACTIONAL AND OVERRULED AS TO SPEEDY TRIAL. JURY TRIAL SET FOR 5-12-97 AT 1:30 P.M.

05-12-1997 [IDS] DUBUC, BRIAN DALE #3

INDIGENT DEFENSE SYSTEM [13.00]

05-12-1997 [CLEET] DUBUC, BRIAN DALE #3

C.L.E.E.T. PENALTY ASSESSMENT [4.00]

05-12-1997 [IDS] DUBUC, BRIAN DALE #2

INDIGENT DEFENSE SYSTEM [13.00]

05-12-1997 [AFIS] DUBUC, BRIAN DALE #2

C.L.E.E.T. PENALTY ASSESSMENT FOR AFIS [3.00]

05-12-1997 [SSF] DUBUC, BRIAN DALE #2

SHERIFF'S SERVICE FEE ON ARRESTS [5.00]

05-12-1997 [IDS] DUBUC, BRIAN DALE #1

INDIGENT DEFENSE SYSTEM [13.00]

05-12-1997 [AFIS] DUBUC, BRIAN DALE #1

C.L.E.E.T. PENALTY ASSESSMENT FOR AFIS [3.00]

05-12-1997 [SSF] DUBUC, BRIAN DALE #1

SHERIFF'S SERVICE FEE ON ARRESTS [5.00]

05-12-1997 [COSTF] DUBUC, BRIAN DALE #1

COURT COSTS ON FELONY [69.00]

05-12-1997 [SSF] DUBUC, BRIAN DALE #3

SHERIFF'S SERVICE FEE ON ARRESTS [5.00]

66

• Case number

UNITED STATES SUPREME COURT

IN RE: BRIAN D. DUBUC, dba Histories Antiques & Collectables

VS

David A. Parker et al

APPENDIX II TO

PETITION FOR MANDAMUS

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OKLAHOMA DISTRICT COURT OF OKMULGEE COUNTY OKLAHOMA WITHIN THE CREEK-CHEROKEE NATION RESERVATION IN CAUSE NUMBERS

SC-19-609 CJ-21-129

OKLAHOMA SUPREME COURT NUMBER 118,448

6:24-CV-390-391-392 JFH/GLJ/DES

Brian D, DuBuc Pro se
541 Citylake Rd
Waldron Ark. 72958
(918) 319-8392
antiquesandcollectablesitis@outlook.com
PETITIONER

Courtney L. Eagan, OBA# 22553
South County Law Firm
311 West 7th Street
Okmulgee. OK 74447
(918) 528-6655
Attorney for the Respondent

Luke Gaither Attorney
Gaither Law
P.O. BOX 1090
Henryetta Oklahoma 74437
luke@gaitherlawoffice.com
Attorney For FNB &Trust Prichards et al

Governor State of Oklahoma
Oklahoma Attorney general 313 NE 21st Street Oklahoma City, OK 73105
contact@oag.ok.gov
Respondents

NOTICE THAT UNITED STATES INTREST MAY APPLY

APPENDIX II TABLE OF CONTENTS

INDEX TO
APPENDIX - II-ORDERS-US COURTS

Appendix Two Contains pleadings Submitted and ordered Refused by Minute of the Court refusing Notice of Appeal , Request to Stay Remand And FRCP Rule 60 (b) Relief .

Respectfully Submitted

8-30-2025

Brian D Dubuc Pro se
541 Citylake rd
Waldron , Arkansas 72958
(918) 319-8392
antiquesandcollectablesitis@outlook.com

VERIFICATION AND MAILING

"I Brian D Dubuc Applicant herein for mandamus do declare certify, verify, and state ,under penalty of perjury that the foregoing Documents are true Exact Copies as those found in there respective courts and is true and correct copy of same. First Executed on July 9th ,2025 . that service by first class postage prepaid was made to each party or attorney who has appeared for said party pro bono officially or unofficially with regard to all matter before the courts Below as now This 9th , day of July 2025 and filed of record in each said court #118,448 ,SC-19-609. Following Corrections of August 22nd,2025 Clerks Instructions Re-Mailed September 2nd,2025 with re service on all counsel.

8-30-2025

Brian D Dubuc Pro se
541 Citylake rd
Waldron , Arkansas 72958
(918) 319-8392
antiquesandcollectablesitis@outlook.com

Luke Gaither Attorney
Gaither Law
P.O. BOX 1090
Henryetta Oklahoma 74437
luke@gaitherlawoffice.com
Attorney for the Respondent

Governor State of Oklahoma
Oklahoma Attorney general
313 NE 21st Street
Oklahoma City, OK 73105

EXHIBIT K

• Case number

UNITED STATES SUPREME COURT

IN RE :BRIAN D. DUBUC,
dba Histories Antiques & Collectables [redacted]

ON
PETITION for MANDAMUS

TO United States Court Of Appeals FOR THE Tenth Circuit

RE:

US District Court Northern Eastern District Oklahoma

6:24-CV-390-391-392 JFH/GLJ/DES

OKLAHOMA SUPREME COURT MANDATE #118,448

DISTRICT COURT OF OKMULGEE COUNTY OKLAHOMA WITHIN THE CREEK-CHEROKEE NATION RESERVATIONIN CAUSE NUMBERS

SC-19-609 CJ-21-129

Brian D, DuBuc Pro se
541 Citylake Rd
Waldron Ark. 72958
(918) 319-8392
antiquesandcollectablesitis@outlook.com
PETITIONER

Luke Gaither Attorney
Gaither Law
P.O. BOX 1090
Henryetta Oklahoma 74437
luke@gaitherlawoffice.com
Attorney of record
interested parties

Governor
State of Oklahoma
Oklahoma Attorney general
313 NE 21st Street
Oklahoma City, OK 73105
contact@oag.ok.gov

Respondents

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• Case number

UNITED STATES SUPREME COURT

IN RE: BRIAN D. DUBUC, dba Histories Antiques & Collectables

VS

David A. Parker et al

APPENDIX III TO

PETITION FOR MANDAMUS

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OKLAHOMA DISTRICT COURT OF OKMULGEE COUNTY OKLAHOMA WITHIN THE CREEK-CHEROKEE NATION RESERVATION IN CAUSE NUMBERS

SC-19-609 CJ-21-129

OKLAHOMA SUPREME COURT NUMBER 118,448

6:24-CV-390-391-392 JFH/GLJ/DES

Brian D, DuBuc Pro se
541 Citylake Rd
Waldron Ark. 72958
(918) 319-8392
antiquesandcollectablesitis@outlook.com
PETITIONER

Courtney L. Eagan, OBA# 22553
South County Law Firm
311 West 7th Street
Okmulgee. OK 74447
(918) 528-6655
Attorney for the Respondent

Luke Gaither Attorney
Gaither Law
P.O. BOX 1090
Henryetta Oklahoma 74437
luke@gaitherlawoffice.com
Attorney For FNB &Trust Prichards et al

Governor State of Oklahoma
Oklahoma Attorney general 313 NE 21st Street Oklahoma City, OK 73105
contact@oag.ok.gov
Respondents

NOTICE THAT UNITED STATES INTREST MAY APPLY

U.S. District Court

Eastern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered on 10/24/2024 at 12:00 PM CDT and filed on 10/24/2024
Case Name: Histories Antiques and Collectables v. Parker et al
Case Number: 6:24-cv-00391-DES
Filer:
WARNING: CASE CLOSED on 10/24/2024
Document Number: 7(No document attached)

Docket Text:
MINUTE ORDER by Magistrate Judge D. Edward Snow: Upon review of this case compared to 24-CV-390-DES, the Court notes Plaintiff is asserting duplicative claims against the same parties. Therefore, this matter is DISMISSED as duplicative. A district court, as part of its general power to administer its docket, may stay or dismiss a suit that is duplicative of another federal court suit. Park v. TD Ameritrade Trust Co., 461 F. Appx. 753, 755 (10th Cir. 2012) (quoting Curtis v. Citibank, N.A., 226 F.3d 133, 138 (2d Cir. 2000)). (case terminated) (tjm, Deputy Clerk)

U.S. District Court

Eastern District of Oklahoma

Notice of Electronic Filing

The following transaction was entered on 10/24/2024 at 12:01 PM CDT and filed on 10/24/2024
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