

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY,
STATE OF OKLAHOMA

APR 14 2015

TIM RHODES
COURT CLERK

Oklahoma Department of Securities)
ex rel. Irving L. Faught, Administrator,)
)
Plaintiff,)
vs.)
Bruce Scambler,)
)
Defendant.)

CJ-2014-1346

**MOTION OF DEFENDANT TO RESUBMIT AND FOR EXTRA TIME AND
REPLY TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S
ADDITIONAL RESPONSES TO MOTION FOR SUMMARY JUDGMENT**

COMES NOW, defendant, and submits this MOTION OF DEFENDANT TO RESUBMIT AND FOR EXTRA TIME AND REPLY TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ADDITIONAL RESPONSES TO MOTION FOR SUMMARY JUDGMENT by and through Defendant, Bruce Scambler pro se.

I INTRODUCTION

- 1 Defendant, greatly appreciated the Courts latitude in the grant of the opportunity to re-submit a reply to plaintiff's Motion For Summary Judgment (MFSJ) at the last motion hearing. Defendant's attorney (who represented defendant through to the close of the last motion hearing) has now submitted his Motion to Withdraw. Defendant, in view of said attorney withdrawal, herein requests more time to get up to speed on the issues of this extremely complex case.

2 Defendant is also now in receipt of plaintiffs Motion to Strike (MTS) regarding the
Motion For Summary Judgment (MFSJ) (Filed April 7th , 2015). Defendant obviously
made a mistake in copying draft response using a format from the District Court in
Chandler, Lincoln County. Over four years of litigation to 2014, that Court accepted 1.5
spacing. While that spacing would appear to be slightly more green, saving a little paper,
2.0 line spacing will be used heretoforth.

3 Defendant also erred in combining two motions in one reply motion document.

4 Defendant requests to be granted a bye, or permission by the court to resubmit and to
correct errors, together with the grant of a little more time and permissions to attach
further affidavits.

II APPLICATION FOR PERMISSION TO RESUBMIT AND CORRECT FILING FORMAT AND NUMBER (#) OF PAGES MOTION LENGTH ERRORS

5 Defendant apologizes profusely that defendant was confused as to the application of the
local district court rules. Plaintiff's staff has had the benefit of the many years of practice
in the law, starting at law college, bar exams and on to legal district court litigation, to be
able to be able hone to write and cite with such skill and brevity in a "Motion" under the
strict guidelines and page limits of the local rules. Defendant is grateful to plaintiff for
citing the Rules so that defendant could download and review them, and get a complete
copy for future use, and digest them to learn their application. *Si lexeros bene doceas,
discant* (if you were to teach lawyers good (well), they would learn good, (in the future)).
Referring specifically to Rule 37(B) of the Rules of the Seventh and Twenty-Sixth Judicial
Districts provides, in pertinent part:

All motions, applications and responses thereto, including briefs...shall not exceed

twenty (20) pages in length, excluding exhibits, without prior permission of the assigned judge.

6 (i) re: *All Motions*: Clearly these rules do say *All motions* plural, which seems to be sensible to allow up to 20 pages per motion. It does not say “A motion” singular shall not exceed 20 pages. It appears to allow a possibility that combining multiple motions in one document might be acceptable. *Quae cum ita sint* (in these circumstances / (literally since these things are so)), why write up to 40 pages when you can save duplicating headers and other documents and get it all on 25. Seemingly for two motions, each of those motions should thus be allowed 20 pages per motion. Defendant filed two (2) motions in one and presumed that filing some twenty five (25) pages as a combined filing saved fifteen (15) pages, and was well under the forty (40) pages two motions each filed separately would appear to be allowed. The Rule 37 B seem a tad unclear, (obviously not to an experienced attorney) but to a layman (a purveyor of the Oklahoma City Metro Bus) as having duplicit possible meanings. Defendant has it appears prima facie made error of numbers of pages in two motions combined (and was not in a position to speak to the judges office to request permission). Defendant has also used formatting on 1.5” line spacing. Defendant must request permission to correct.

(ii) re: *prior permission of the assigned judge*. Defendant respectfully submits to never having met the “assigned judge” and for it to be impolite to enter in to communications before introductions. *Coram cum sumus, sermon obis deese non solet*, (usually when we meet face to face, we do not lack conversation). Rule 5 of the Rules of the Seventh and Twenty-Sixth Judicial Districts provides, in pertinent part: **EX PARTE**

COMMUNICATIONS

Communication with the office of the assigned judge regarding scheduling and

procedural matters is permitted. A lawyer shall have no ex parte communication on the substance of a pending case with the assigned judge.

7 Unlike rule 49 there is no mention of “pro se” here, in this rule and given defendants attorney withdrawal is *nullo imperante* (without orders) as yet, defendant would not presume to be making office calls until granted permission to appear pro se and it be clearly ordered so to do. Defendants calling judges while still in effect represented by counsel is looked upon very dimly not usually an acceptable action at all.

8 This matter under these rules is surely in the discretion of the assigned judge the Honorable Judge Roger H. Stuart. If this error in formatting and page numbers is acceptable, defendant would request the Reply to the Motion stand as filed as “two motions in one” to then also with permission include the supplement. If this error in formatting and page numbers is Not acceptable, defendant would request the opportunity to resubmit with MFSJ motion and supplement separated from the Motion to reconsider as in to two separate documents each in compliance as to page #'s and double spaced format. In either situation, defendant has cited relevant case law that says MFSJ is not appropriate as the attorney represented plaintiff failed to include in its MFSJ sworn or certified copies of documents in the MFSJ, citing MIDFIRST BANK v. WILSON 2013 OK CIV APP.

III APPLICATION FOR MORE TIME

9 Defendant had on first submission just lost counsel. Rule 49 of the Rules of the Seventh and Twenty-Sixth Judicial Districts provides, in pertinent part C WITHDRAWAL OF COUNSEL:

“The order allowing withdrawal shall notify the unrepresented party that an entry of appearance must be filed either by the party pro se or by substitute counsel, within

thirty (30) days from the date of the order permitting the withdrawal”.

Defendant is not yet in receipt of the order permitting the withdrawal presuming it has not yet been issued. Defendant would be allowed 30 days to find counsel, or as filed enter pro temp a pro se appearance. To meet reply deadlines defendant has made filings pro se (including supplemental submissions upon completion of a case law review and finding pertinent cases) with errors due to the rush. Defendant would request an additional 30 days *from the date of the order permitting the withdrawal* to get up to speed, and/or find an alternate attorney under Rule 49.

IV RESPONSE TO PLAINTIFFS MOTION TO STRIKE

10 It is in the court’s discretion to strike all of defendants filings. That is entirely understandable, yet, this would not, in the circumstances outlined above, be very fair.

11 Plaintiff claims that “defendant be held to the same standard as an attorney”. Defendant would question this “same standard as an attorney”. The attorney, moreover the state employee attorney, is getting paid for all their time at work. This is their job. This is their profession. These are the day to day standards they work to. Defendant, pro se, is not getting paid for these responses. The legal work is not a job or profession to a pro se litigant. That is a big factor in weighing up as to “fairness to both parties”. Where does the law stand on this point? It is not entirely clear. The case of FUCHS v. FLEETWOOD HOMES OF TEXAS, 2006 OK CIV APP 148, 149 P.3d 1099, Case Number: 101780, Decided: 10/31/2006, THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION IV. (“Fuchs”) appears to say that the Oklahoma law is that “Our courts are committed to the policy that every party be afforded a fair opportunity to present his or her side of a cause”. (cite of Burroughs v. Bob Martin Corp.,

1975 OK 80, ¶ 23, 536 P.2d 339). That fair opportunity runs out of steam where in a time deadline laid down by OK statute, if you are time barred, you can not enter an appearance, and claim it's a petition as per Fuchs. Moreover in PRYSE MONUMENT CO. v. DISTRICT COURT, ETC. a worker, injured on the job May 23, 1975, proceeded in the State Industrial Court for an award against his uninsured employer whose business was within the purview of the Workmen's Compensation Act. The claim was held barred by one-year statute of limitations. When you file under one workers comp claim you can not switch claim locations. There is a limit then to the crossing of statutory rules as shown in these cases. That statutory limit aside, Burroughs v. Bob Martin Corp. says a defendant be given a fair opportunity to present his side. This being a matter that does not transgress a filing deadline statute, which facts occurred over five (5) years ago in a now defunct company, there appears little urgency and Defendant requests that it be equitable to grant extra time to re-file; as well as permission to re-file an amended reply to correct defects in the reply to the motion, (that is a single reply per motion, filed under 20 pages double spaced), and that includes a written opinion if obtainable from a qualified expert which supports the claim for dismissal.

12 In filing this reply to the Plaintiff's Motion to Strike, defendant admits that he has been thrown into the deep end in not having ability to support continuous legal representation. With the deadlines as set in this case, defendant has been more immediately concerned with not drowning, than worrying about the chemicals in, and odor of the water. With withdrawal of counsel defendant would look to have more time to take in the water composition and get the filing formats correct.

13 Quite obviously the plaintiff is extremely confident, as experienced employee lawyers for the State, that defendant's less than mediocre first attempts at replies, will not prevail.

Defendant however, is not giving up as yet, and is resigned to this lot. *Hoc fecit, non quo vellet, sed quia coactus est.* (Defendant, he did this, not because he wanted to, but because he had to). Defendant would request, as he has to get all this in compliance with all the rules, more time, primarily due to loss of attorney. Defendant would also claim more time in order to find a knowledgeable friend or qualified expert to make an attestation on the matter. The court has discretion as to the decision whether or not to grant a plaintiff an extension of time to file an affidavit attesting that the plaintiff has obtained a written opinion from a knowledgeable person which supports the reply against MFSJ. (Title 63 O.S. Supp. 2004, § 1-1708 .1E(B)(1))

V CASE LAW AS AN AID TO COURT

14 Defendant would draw the court's attention to relatively recent case law in regards to the facts under review in this matter: In *ROWE v. HCA HEALTH SERVICES OF OKLAHOMA, INC.*(2006 OK CIV APP 17, 130 P.3d 761) where the appeal court held in regards to a pro se litigant: *a trial court is required to grant additional time to permit a litigant to correct any defects.....(12 O.S.2001, § 2012(G)). Dismissing Patient's entire claim because he neglected to attach an expert's affidavit, under the facts before us, fails to address the case on its merits and is contrary to the policies set out in the Oklahoma pleading code.*

15 Contrary to plaintiff's claims that "defendant be held to the same standard as an attorney" here the court is granting a pro se litigant a fair degree of latitude. Attorney filings of petitions are it seems held to a firmer standard, that within the strict time allowed, Attorneys are stuck with what they filed. The committee comment to 12 O.S.2001, § 2012, provides in relevant part:

“The policy of the Oklahoma Pleading Code of deciding cases on the basis of the substantive rights involved rather than technicalities requires a plaintiff (**pro se**) to be given every opportunity to cure a formal defect in his pleading. (**emphasis added**)

16 The trial court, in Rowe, after reviewing Patient's application for additional time to file an affidavit, found Patient showed good cause to support his request and therefore granted the application. In Rowe, the trial court's decision was not only within its statutory discretion, but the trial court's approval also adhered to the requirement, as well as the underlying policy, of the Oklahoma pleading code.

17 Defendant further draws the Court's attention to Title 12. Civil Procedure: Chapter 39 - Oklahoma Pleading Code Section 2056 - Motion for Summary Judgment (E). The standard for MFSJ, whether pro se or a qualified attorney, as set out in the recent case MIDFIRST BANK v. WILSON 2013 OK CIV APP is of compliance with statute Section 2056 (E). The plaintiff's attorney's did not attach "sworn or certified copies" to the affidavits referencing extremely important and critical documents as to the facts in support of their claims. Plaintiff argues defendant has to include evidence to dispute each and every material fact. Plaintiff states *"Response to Plaintiff's Statement of Material Facts for which Genuine Issue Exists."* In Section II, Defendant sets forth and numbers each specific material fact that Defendant claims to be in controversy. However, Defendant failed to reference any evidentiary materials that support such claims of controversy. As a result, the MFSJ Response does not comply with Rule 13(b) of the Rules for District Courts of Oklahoma. Neither Plaintiff nor the Court should be required to search through the 14 exhibits. Defendant counters that defendant did include relevant material facts, however including relevant material facts is not the only way to defeat a MFSJ. Clearly MIDFIRST BANK v. WILSON 2013 OK CIV APP. would as cited show that a MFSJ is

not ripe or in compliance with statute Section 2056 (E) if the affidavits attached do not include sworn or certified copies of the relevant mentioned documents. Plaintiff's MFSJ motion should be dismissed, and it matters not what defendant filed, other than a timely response and filing was made.

18 Defendant would request, if defendants filings are in any way inadequate as to format, that the court grant latitude on these facts for resubmission, so defendant can get to argue this application of case law.

VI REQUEST OF PERMISSION TO INCLUDE CONTENT OF SUPPLEMENTAL FILING IN REPLY

19 Defendant would request the court to allow the amended reply to the MFSJ, to include the content of the supplemental filing together with attachments of any affidavits defendant can collect in the added time.

VII CONCLUSION

20 The court has discretion as to the decisions at this time. The court can look kindly on Defendants two motions in one with supplement, and grant permission for the filings to stand on this occasion, on the basis that MIDFIRST BANK v. WILSON 2013 OK CIV APP. would apply, as cited, and that that a MFSJ is not ripe or in compliance with statute Section 2056 (E) based on plaintiff's filings. It really does not matter what defendant filed, the errors are in fact in the plaintiff's filings and they do not get to qualifying status.

21 The court can alternatively look kindly on Defendants two motions in one with supplement, and grant permission for the filings to be refiled in accordance with Rules of the Seventh and Twenty-Sixth Judicial Districts. Defendant would thereupon refile and

still stand argument on the basis that MIDFIRST BANK v. WILSON 2013 OK CIV APP. would apply, as cited, and that that a MFSJ is not ripe or in compliance with statute Section 2056 (E) based on plaintiff's filings. Again it really does not matter what defendant re-files, the errors are in fact in the plaintiff's MFSJ filings and they do not get to qualifying status.

- 22 In event of being required to refile defendant would request the court grant a defendant an extension of time to re-file, to make corrections as ordered and to enable defendant time to collect and obtain information so as to include affidavits which supports the reply against MFSJ. (Title 63 O.S. Supp. 2004, § 1-1708 .1E(B)(1))

VIII PRAYER

- 23 Defendant prays the court grant defendant a little leniency in first attempt filings, or alternatively permission to re-file with an extension of time to re-file, to make corrections as ordered, and to enable defendant time to include such affidavits as he can obtain. Defendant prays the court save all of this filing review and resubmission and just look at the lack of sworn or certified copies on the plaintiffs affidavits and dismiss the MFSJ and let defendant move on to commence discovery.

respectfully submitted,



Bruce Seambler, pro se Defendant
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File Note: Defendants time: defendant had expended fifty three (53) hours on MFSJ legal responses, with a further six (6) hours to compile this response to MTS for a total of fifty nine (59) hours. The equivalent cost using counsel would have been over \$10,000 in legal fees.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 1⁴th day of April 2015, a true and correct copy of the above and foregoing MOTION OF DEFENDANT TO RESUBMIT AND FOR EXTRA TIME AND REPLY TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S ADDITIONAL RESPONSES TO MOTION FOR SUMMARY JUDGMENT was mailed with postage prepaid thereon, addressed to

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