



**ORIGINAL**

**IN THE SUPREME COURT OF THE STATE OF OKLAHOMA**

**FILED  
SUPREME COURT  
STATE OF OKLAHOMA**

**NANCY CAROL MEGEE, as Personal  
Representative of and on behalf of  
Estate of David Anthony McGee,**

**Plaintiff/Appellant,**

**vs.**

**EL PATIO, LLC, an Oklahoma Limited  
Liability Company; and DYLAN SCOTT  
WELCH, an Individual,**

**Defendants/Appellees.**

**APR 20 2021**

**JOHN D. HADDEN  
CLERK**

**Case No. 119,449**

Received:	4-20-21
Docketed:	
Marshaled:	
COA/DKG:	
COA/TUL:	

**RESPONSE TO PETITION IN ERROR**

Is appellee willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250?

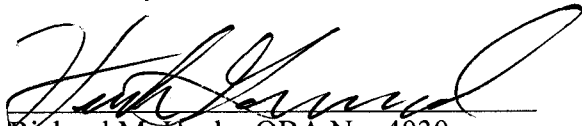
     YES   X   NO

Attach as Exhibit "A," Appellee's Statement of the Case not to exceed one 8 1/2" x 11" double spaced page if not clearly set out by Appellant in Petition in Error.

In accelerated appeals from orders granting motion for summary judgment or motion to dismiss **only** appellee shall either file the counter-designation of record, if any, with the response to the petition in error, or shall also file concurrently with response any supplement to record on accelerated appeal. See Rule 1.36(e)(1) and (2).

**DATE:** April 20, 2021

Verified By:



Richard M. Healy, OBA No. 4030

Heath W. Garwood, OBA No. 34266

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**ATTORNEYS FOR DEFENDANTS/  
APPELLEES EL PATIO, LLC AND  
DYLAN SCOTT WELCH**

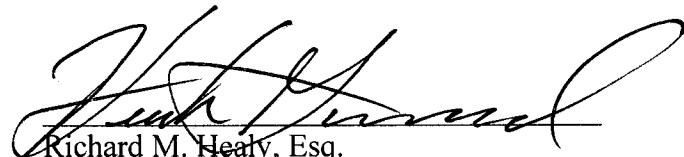
**CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK**

I hereby certify that a true and correct copy of the Response to Petition in Error was mailed  
this 20th day of April, 2021 by depositing it in the U.S. Mail, postage prepaid to:

Clayton B. Bruner  
CLAYTON B. BRUNER, P.L.L.C.  
222 W. Tom Stafford  
Weatherford, Oklahoma 73096  
Telephone: (580) 772-7721  
Facsimile: (580) 772-1116

*Attorney for Plaintiffs*

I further certify that a copy of the Response to Petition in Error was mailed to, or filed in,  
the Office of Custer County, Court Clerk Staci Hunter, P.O. Box D, Arapaho, Oklahoma, 73620  
on the 20th day of April, 2021.

  
Richard M. Healy, Esq.  
Heath W. Garwood, Esq.

**EXHIBIT A –**  
**APPELLEE’S STATEMENT OF THE CASE**

This case stems from David Anthony Megee's tragic decision to drink and drive. After consuming alcohol throughout the course of January 19, 2019, Mr. Megee chose to drive from El Patio's Weatherford, OK restaurant to OKC, traveling at speeds reaching 97 mph, and eventually colliding with the rear of a semi-truck.

Mr. Megee's Estate ("Appellant") now seeks to recover from Appellees, using theories of liability that are unrecognized in Oklahoma. Specifically, Appellant seeks the creation of a claim for "negligent betting." Appellant supports this argument by alleging that certain El Patio servers "bet" Mr. Megee \$200.00 that he would not meet them at an OKC bar later that night. From there, Appellant suggests that this \$200.00 bet compelled Mr. Megee to engage in criminal conduct, resulting in the fatal accident, in order to collect on the bet. The creation of such a claim would thereafter extend liability to parties who make bets, effectively creating a civil doctrine that shifts the responsibility for criminal activity similar to the doctrine of duress. Such a cause of action does not exist in any jurisdiction and no public policy supports its creation in Oklahoma.

Appellant additionally seeks the abrogation of this Court's holding in *Ohio Casualty Company v. Todd*, 1991 OK 54, 813 P.2d 508, and the extension of dram shop liability, to allow drunk drivers to recover for personal injuries or death suffered as a result of their own voluntary intoxication. Since this Court first recognized dram shop liability in Oklahoma, it has repeatedly made clear that the creation of such liability was for the benefit of innocent third-parties. *Ohio Casualty* emphasizes the public policy concerns underlying this Court's refusal to extend dram shop to allow drunk drivers like Appellant to recover. Oklahoma's public policy concerns have not changed since *Ohio Casualty*. Even if the Court finds to the contrary, any creation of the civil causes of action proposed by Appellants should be prospective, and not retroactive. The causes of action proposed do not exist in Oklahoma, and Appellees should – at a minimum – be protected from legal action that at one point carried no penalty, but retrospectively carries a penalty.