



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

HOWARD BERKSON, et al.)
)
 Plaintiffs/Appellants,)
)
 v.)
)
 STATE OF OKLAHOMA ex rel. JARI)
 ASKINS, et al.)
)
 Defendants/Appellees.)

No. 120589

FILED
 SUPREME COURT
 STATE OF OKLAHOMA
 AUG 12 2022
 JOHN D. HADDEN
 CLERK

Received:	8-12-22
Docketed:	
Marshal:	
COA/OKC:	
COA/TUL:	

RESPONSE TO PETITION IN ERROR


Is appellee willing to participate in an attempted settlement of the appeal by pre-decisional 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), (2).

August 12, 2022

Respectfully submitted,


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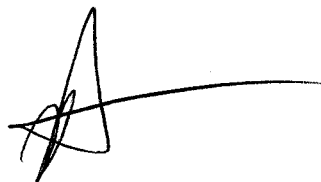
CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of August 2022, a true and correct copy of the foregoing document was mailed, postage prepaid to:

James W. Dunham, Jr.
2800 Bank of America Center
15 West 6th Street
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Attorney for Plaintiff

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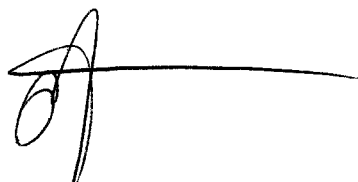
Tulsa County Court Clerk
Don Newberry
500 S. Denver Ave
Tulsa, OK 74103



Jessica A. Wilkes

I further certify that a copy of the Response to Petition in Error was filed with the:

Clerk of the Supreme Court
Oklahoma Judicial Center
2100 N. Lincoln Blvd.
Oklahoma City, OK 73105



Jessica A. Wilkes

EXHIBIT A – DEFENDANTS/APPELLEES’ STATEMENT OF THE CASE

This Court should affirm the district court’s ruling as the district court properly dismissed Plaintiff’s claims. During oral arguments, the district court appropriately found, as a matter of law, that 28 O.S. § 86(D) is not an unconstitutional special law, but rather a general law. While the district court’s Orders do not elaborate such, the Orders complied with 12 O.S. § 696.3. Further, this Court may affirm the district court’s ruling for any reason. *Wright v. Grove Sun Newspaper Co. Inc.*, 1994 OK 37, 873 P.2d 983. Plaintiff “John Doe” lacked standing to bring this suit because he is a fictitious person and not a real party in interest as required under 12 O.S. § 2017(a). Plaintiff Howard Berkson also lacked standing to bring this suit because it is the obligation of his clients, not his own, to bear any costs associated with filing suits. 5A O.S. § 1.8(e) & cmt. 10. Insofar as Berkson complains that he has standing because he contracted with his clients an agreement to forgive or otherwise discharge his client’s obligation to repay him any debt owed for fronting the cost of litigation, that is of Mr. Berkson’s own accord and does not render him standing. Even so, 28 O.S. § 86(D) is not an unconstitutional special law. It is a general law, applying to all persons filing suit in Oklahoma County Courts, with few exceptions such as government attorneys and *pro se* litigants. 28 O.S. § 86(D)(6). The language in part (2) directing that lengthy trial fund fees be collected from attorneys is simply meant to clarify that *pro se* litigants are an exception to the general fee requirement. 28 O.S. § 86(D)(2). Even if 28 O.S. § 86(D) was a special law, a general law would not be sufficient to carry out the legislative intent. The legislature enacted this law to collect money from litigants who have a higher probability of initiating and engaging in a lengthy ten (10) day trial. *Pro se* litigants are not likely to need a juror’s services for such an amount of time. Moreover, such a special law would be permissible because the statute is reasonably and sustainably related to such a valid legislative objective. Finally, the Oklahoma Supreme Court has

already considered the lawfulness of 28 O.S. § 86 when it reviewed the statute and issued an order implementing it. *In re Implementation of the Lengthy Trial Fund*, 2005 OK 21, 114 P.3d 441 (Mem).