

**ORIGINAL**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA



HOWARD BERKSON, et al. )

**#120589**

v. )

Supreme Ct. Case No. \_\_\_\_\_

STATE OF OKLAHOMA ex rel. JARI )  
ASKINS, et al. )

(Tulsa County Case No. CJ-2021-3694)

**PETITION IN ERROR**

- PETITION IN ERROR
- AMENDED OR SUPPLEMENTAL PETITION
- CROSS PETITION
- COUNTER-PETITION
- DATE FIRST PETITION IN ERROR FILED: \_\_\_\_\_

**FILED**  
SUPREME COURT  
STATE OF OKLAHOMA

**JUL 25 2022**

**JOHN D. HADDEN**

**CLERK**  
SUPREME COURT  
STATE OF OKLAHOMA

**JUL 25 2022**

**JOHN D. HADDEN**  
CLERK

**I. TRIAL COURT HISTORY**

COURT/TRIBUNAL: District Court

COUNTY: Tulsa County

CASE NO.: CJ-2021-3694

JUDGE: Judge Clifford J. Smith

NATURE OF CASE: Constitutional Violation – Special Law

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:

Howard Berkson

THE APPEAL IS BROUGHT FROM: (Check one)

- Judgment, Decree or Final order of District Court.
- Appeal from order granting summary judgment or motion to dismiss where motion filed after October 1, 1993 (Accelerated procedure under Rule 1.36).
- Appeal from Revocation of Driver's License (Rule 1.21(b)).
- Final Order of Other Tribunal.  
(Specify Corporation Commission, Insurance Department, Tax Commission, Court of Tax Review, Banking Board or Banking Commissioner, etc. \_\_\_\_\_)
- Interlocutory Order Appealable by Right.
- Other – Order Dismissing ALL of Plaintiffs' Claim for Lack of Standing

**II. TIMELINESS OF APPEAL**

1. Date judgment, decree or order appealed was filed: June 23 and 24, 2022

-----ORIGINAL-----
Received _____
Marshall _____
Reynolds _____
Cert marked _____
Updated _____

2. If decision was taken under advisement, date judgment, decree or order was mailed to parties:

3. Does the judgment or order on appeal dispose of all claims by and against all parties?

X Yes \_\_\_ No.

If not, did district court direct entry of judgment in accordance with 12 O.S. § 994?

\_\_\_ Yes \_\_\_ No.

When was this done? \_\_\_\_\_

4. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right? \_\_\_ Yes \_\_\_ No.

5. If none of the above applies, what is the specific *statutory* basis for determining the judgment or order is appealable? \_\_\_\_\_

6. Were any post-trial motions filed?

<u>Type</u>	<u>Date Filed</u>	<u>Date Disposed</u>
Mot. to Reconsider	July 22, 2022	N/A

7. This Petition is filed by: X Delivery to Clerk, or  
\_\_\_ Mailing to Clerk by U.S. Certified Mail, Return  
Receipt Requested, on \_\_\_\_\_ (date)

### III. RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceeding: N/A

List all related appeals involving same issues: \_\_\_\_\_

(Identify by Style, Appeal Number, Status, and Citation, if any. If none, so state.)

#### IV. SETTLEMENT CONFERENCE

Is appellant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250? \_\_\_\_\_ Yes  X  No

#### V. RECORD ON APPEAL

\_\_\_\_\_ A Transcript will be ordered.

\_\_\_\_\_ No Transcript will be ordered because no record was made and/or no transcript will be necessary for this appeal

X  A Narrative Statement will be filed

\_\_\_\_\_ Record is concurrently filed as required by Rule 1.34 (Driver's License Appeals, etc.) or Rule 1.36 (Summary judgments and motions to dismiss granted).

#### VI. JUDGMENT, DECREE OR ORDER APPEALED -- EXHIBIT "A"

(Attach as Exhibit "A" to the Petition in Error a certified copy of the judgment, decree or order from which the appeal is taken. If a post-trial motion extending appeal time under Rule 1.22 was filed, a certified copy of the order disposing of the motion must be attached also.)

#### VII. SUMMARY OF CASE -- EXHIBIT "B"

Attach as Exhibit "B" a brief summary of the case *not to exceed one 8 1/2"x 11" double spaced page.*

#### VIII. ISSUES TO BE RAISED ON APPEAL -- EXHIBIT "C"

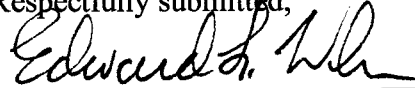
Attach as Exhibit "C" the issues proposed to be raised. Include each point of law alleged as error. Avoid general statements such as "Judgment not supported by law."

**IX. NAME OF COUNSEL OR PARTY, IF PRO SE**

<p><b>ATTORNEY FOR APPELLANT:</b></p> <p>James W. Dunham, Jr., OBA #2532 2800 Bank of America Center 15 West 6<sup>th</sup> Street Tulsa, OK. 74119 Voice: (918) 592-1144 Fax: (918) 592-1149 Email: <a href="mailto:elawyer@swbell.net">elawyer@swbell.net</a></p> <p>-And-</p> <p>Edward L. White, OBA 16549 829 E. 33rd St. Edmond, OK 73013 Phone: (405) 833-8188 Fax: (405) 608-0971 Email: <a href="mailto:ed@edwhitelaw.com">ed@edwhitelaw.com</a></p> <p><i>Attorneys for Plaintiff/Appellants</i></p>	<p><b>ATTORNEY FOR APPELLEES:</b></p> <p>Douglas A Wilson Assistant District Attorney Chief of the Civil Division Tulsa County District Attorney's Office 218 W. Sixth Street, Suite 933 Tulsa, OK 74119 <b>Attorney for Defendant Newberry</b></p> <p>-And-</p> <p>KEVIN MCCLURE JESSICA WILKES Oklahoma Attorney General's Office Litigation Division 313 NE 21st Street Oklahoma City, Oklahoma 73105 <b>Attorneys for Defendant State of Okla.</b></p>
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DATE: July 25, 2022

Respectfully submitted,



Edward L. White, OBA # 16549  
EDWARD L. WHITE, PC  
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- And -

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Fax: (918) 592-1149  
Email: [elawyer@swbell.net](mailto:elawyer@swbell.net)

Counsel to Plaintiffs / Appellants

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

I hereby certify that a true and correct copy of the Petition in Error was mailed July 25, 2022 by depositing it in the U.S. Mail, postage prepaid to the attorneys listed above.

I further certify that a copy of the Petition in Error was mailed to the Office of the Tulsa County District Court Clerk that same day.

A handwritten signature in cursive script, appearing to read "Edward H. White".

**EXHIBIT A – ORDERS ON APPEAL**



**IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA**

HOWARD BERKSON, in his capacity )  
as a licensed attorney and all similarly )  
situated attorneys; and )  
RUSSELL WEIDNER, in his capacity as )  
a tax-payer and all similarly situated people, )  
Plaintiffs, )

vs. )

THE STATE OF OKLAHOMA, *ex rel.*, )  
JARI ASKINS, in her official capacity as )  
Administrative Director of the Courts; and )  
*ex rel.*, DON NEWBERRY, in his official )  
capacity as Tulsa County District Court )  
Clerk, and *ex rel.*, all other 76 District Court )  
Clerks of the State of Oklahoma, )  
Defendants. )

CASE NO. CJ-2021-3694

**DISTRICT COURT  
FILED**

**JUN 23 2022**

DON NEWBERRY, Court Clerk  
STATE OF OKLA. TULSA COUNTY

**ORDER**

On June 23, 2022, this matter came before the Court upon Defendant State of Oklahoma, *ex rel.*, Jari Askins's Motion to Dismiss Plaintiffs' Petition.

After considering the petition, the motion, the responses, and the arguments of counsel, the Court is of the opinion that Defendant State of Oklahoma, *ex rel.*, Jari Askins' Motion to Dismiss should be:

  X   GRANTED

\_\_\_\_\_ DENIED

\_\_\_\_\_ MODIFIED AS PROVIDED: \_\_\_\_\_

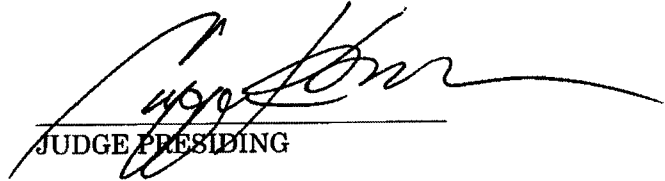
\_\_\_\_\_

\_\_\_\_\_

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All relief not expressly granted is denied.

SIGNED on 6/23/22



JUDGE PRESIDING

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

DISTRICT COURT  
**FILED**

JUN 24 2022

DON NEWBERRY, Court Clerk  
STATE OF OKLA. TULSA COUNTY

HOWARD BERKSON ("Attorney"), in his )  
capacity as a duly licensed and practicing attorney )  
routinely filing, on behalf of himself and his )  
clients, new civil actions in which he and/or his )  
client(s) have been compelled to pay a \$10.00 )  
"Lengthy Trial Fund Fee" and all similarly situated )  
people; and JOHN DOE, in his capacity as a )  
non-attorney legal entity able to sue and be sued )  
who, by and through one or more attorneys, has )  
filed new civil litigation in any of the 77 District )  
Courts of Oklahoma and, because said new )  
litigation was filed for him by a lawyer, has been )  
compelled to pay a \$10.00 "Lengthy Trial Fund )  
Fee", and all similarly situated legal entities, )

Case No. CJ-2021-3694

Judge Clifford J. Smith

Plaintiffs, )

v. )

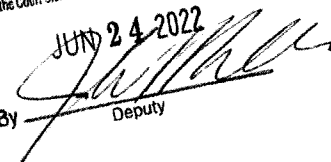
THE STATE OF OKLAHOMA, ex rel., JARI )  
ASKINS, in her official capacity as Administrative )  
Director of the Courts for the State of Oklahoma, )  
and ex. rel. DON NEWBERRY in his official )  
capacity as Tulsa County District Court Clerk, and )  
ex. rel. all other 76 District Court Clerks of the )  
State of Oklahoma, )

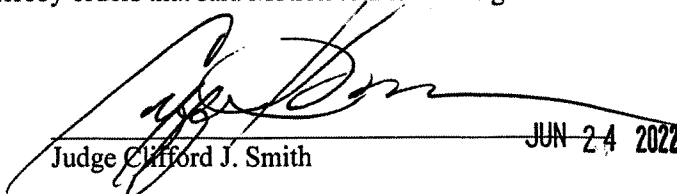
Defendants. )

ORDER GRANTING DEFENDANT DON NEWBERRY'S MOTION TO DISMISS

On this 23<sup>rd</sup> day of June, 2022, Defendant Don Newberry's Motion to Dismiss comes before this Court. After reading the parties' briefs and upon hearing argument from counsel of record this afternoon in open court, this Court finds that Defendant Don Newberry's Motion to Dismiss should be granted, and hereby orders that said Motion to Dismiss is granted.

I, Don Newberry, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on record in the Court Clerk's Office of Tulsa County, Oklahoma, this

JUN 24 2022  
By  Deputy

  
Judge Clifford J. Smith

JUN 24 2022



## EXHIBIT B - SUMMARY OF THE CASE

Plaintiff asserted that as an attorney who regularly files cases in Tulsa County he is being charged unconstitutional fees under the statute creating the Lengthy Trial Fund, 28 O.S. § 86(D)(2) (“LTF”), because the LTF fee is only assessed against “each attorney who files a civil case.” Pro se litigants and certain other parties and matters are exempted from collection of the LTF. Assessing the fee only in cases filed by attorneys renders it an unconstitutional special law.

Defendants separately moved to dismiss arguing, among other things, that Plaintiff lacked standing to challenge the law since he is an attorney, and his clients ultimately remain liable for paying the fee. Plaintiff responded that he has filed a large number of cases, and until contingent cases are favorably resolved, he is deprived of the fee, often for years. This long-term deprivation of money repeats numerous times each year and is ongoing. In conversion cases, deprivation of property for an indefinite period provides standing. Further, if a client is unsuccessful in a contingency case, Plaintiff rarely pursues reimbursement of the filing fees since seeking those fees may lead to malpractice counterclaims. Finally, since Plaintiff alleges a constitutional violation, only nominal harm is required to provide a plaintiff with standing. But, finding that the ultimate burden of the LTF fell not on attorneys but on their clients, the Court dismissed ALL claims.

Tulsa County Rule CV 29 requires that every order “presented to the Court for signature shall contain approval as to form by the attorneys for each of the parties, unless waived by the judge.” The purpose for this rule is to force counsel to try to work out an agreed form and, if they cannot, they are to “give notice to opposing counsel of the time of presentation of...order for signature by the judge. Yet Defendants did not present the orders appealed to Plaintiff for review prior to obtaining a signature. This is problematic because these orders do not state whether they are with or without prejudice, for example, leading Plaintiff to file this appeal.

### **EXHIBIT C – ISSUES ON APPEAL**

1. Whether wrongfully depriving an attorney of their funds for as much as several years is a sufficient injury to give the attorney standing even if the client ultimately remains liable for paying such expenses.
2. Whether nominal damages associated with unconstitutional deprivation of funds is sufficient to give an attorney standing to challenge the deprivation.
3. Whether an attorney regularly deprived of funds on a temporary basis has suffered sufficient injury to challenge the unconstitutional deprivation.
4. Whether the District Court erred by failing to require submission of Defendants' proposed orders for review by Plaintiff in violation of Tulsa Local Civil Rule 29.
5. Whether the District Court erred by failing to give Plaintiff leave to amend its petition.
6. Whether a finding that the lead plaintiff in a class action lacks standing warrants dismissing the action against ALL plaintiffs.