



IN THE DISTRICT COURT OF OKLAHOMA COUNTY MAR 31 2022
STATE OF OKLAHOMA

RICK WARREN
COURT CLERK

109

CHRISTOPHER AVELLONE,

Plaintiff,

v.

KELLY RAE BRISTOL

Defendant.

Case No. CJ-2021-4340
The Honorable Anthony L. Bonner

DEFENDANT'S UNOPPOSED MOTION FOR LEAVE TO FILE MOTION TO DISMISS

Defendant, Kelly Rae Bristol ("Defendant"), requests leave of Court to file a Motion to Dismiss Plaintiff's Petition. In support, Defendant states as follows:

1. Plaintiff filed its Petition on October 13, 2021 in this Court. Defendant was personally served on November 3, 2021.
2. On November 23, 2021, Defendant removed this action to the District Court for the Western District of Oklahoma.
3. On December 10, 2021, Defendant filed its original motion to dismiss in federal court.
4. On January 13, 2022, this action was remanded by the federal court to this Court.
5. Following remand, Defendant contended that the motion to dismiss in federal court was part of the record in the state court proceedings, pursuant to *Pellebon v. State ex. rel Bd. of Regents of Univ. of Oklahoma*, 2015 OK CIV APP 70, ¶ 19. Counsel for Plaintiff indicated that Plaintiff disagreed that the motion to dismiss was part of the record in the state court proceedings.

6. On February 9, 2022, out of an abundance of caution, Defendant re-filed its Motion to Dismiss in this Court.

7. Thereafter, Plaintiff subsequently filed its Motion to Strike Defendant's Motion to Dismiss. Plaintiff contended that the Motion to Dismiss was untimely. Defendant disagreed and filed her Opposition to the Motion to Strike. Plaintiff did not file a separate response to the Motion to Dismiss.

8. Defendant's Motion to Dismiss was scheduled for hearing in this Court on March 24, 2022. However, as of that date, the issue of whether Defendant's Motion to Dismiss should be stricken as untimely had not yet been determined. Nor had Plaintiff filed a response to the Motion to Dismiss.

9. Therefore, in order to ensure that this Court has the opportunity to consider the pleadings in an orderly manner, the parties conferred and agreed as follows:

- a. The hearing on the original Motion to Dismiss, previously scheduled for March 24, 2022, was stricken and taken off calendar;
- b. Plaintiff agreed that Defendant could file another Motion to Dismiss, without any dispute that such a renewed motion was untimely; and
- c. Plaintiff agreed not to oppose this Motion granting Defendant leave to file her Motion to Dismiss.

See Ex. A - Communication between counsel.

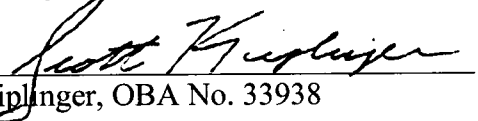
10. This case is not yet at issue, and the relief requested will have no impact on any schedule trial or other deadlines. This Motion is not intended to delay or hinder any proceedings in the underlying case, but will instead ensure an orderly review of the pleadings.

For the foregoing reasons, Defendant respectfully requests that it be granted leave to file

its Motion to Dismiss within 14 days of the date the Court enters the proposed Order submitted herewith.

Dated: March 31, 2022.

Respectfully submitted,



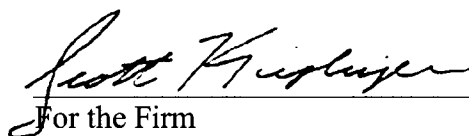
Scott Kiplinger, OBA No. 33938
GABLEGOTWALS
499 W. Sheridan Ave.
BOK Park Plaza, Suite 2200
Oklahoma City, OK 73102-7255
Telephone: 405.235.5500
Fax: 405.235.2875

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2022, a true and correct copy of the foregoing was sent via U.S. Mail, postage prepaid, to the following counsel of record:

Eric D. Wade
ROSENSTEIN FIST & RINGOLD
525 South Main, Suite 700
Tulsa, Oklahoma 74103-4508



For the Firm

From: Eric Wade
To: Scott Kiplinger
Cc: Allender, Daniel L.
Subject: RE: Avellone v. Bristol - Motion to Dismiss / Strike
Date: Wednesday, March 30, 2022 3:38:00 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

External email – beware of links and attachments

Scott,

My client has no objection to the motion for leave. Thanks.

Eric



Eric D. Wade | Shareholder/Director
Rosenstein, Fist & Ringold

525 S. Main, Suite 700
Tulsa, OK 74103

T: 918.585.9211 | **F:** 918.583.5617

www.rfrlaw.com | [my bio](#) | [vcard](#)

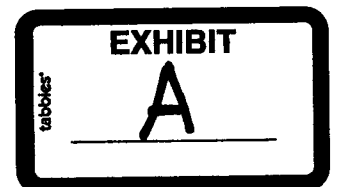
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From: Scott Kiplinger <skiplinger@gablelaw.com>
Sent: Wednesday, March 30, 2022 10:25 AM
To: Eric Wade <ericw@rfrlaw.com>
Cc: Allender, Daniel L. <DAllender@RobinsKaplan.com>
Subject: RE: Avellone v. Bristol - Motion to Dismiss / Strike

Eric, attached is the motion that we intend to file this week.

Scott Kiplinger | [405-568-3317](tel:405-568-3317) | **GableGotwals**



From: Eric Wade <ericw@rfrlaw.com>
Sent: Wednesday, March 23, 2022 3:14 PM
To: Scott Kiplinger <skiplinger@gablelaw.com>
Cc: Allender, Daniel L. <DAllender@RobinsKaplan.com>
Subject: RE: Avellone v. Bristol - Motion to Dismiss / Strike

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Thanks, Scott.



Eric D. Wade | Shareholder/Director
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From: Scott Kiplinger <skiplinger@gablelaw.com>
Sent: Wednesday, March 23, 2022 3:10 PM
To: Eric Wade <ericw@rfrlaw.com>
Cc: Allender, Daniel L. <DAllender@RobinsKaplan.com>
Subject: RE: Avellone v. Bristol - Motion to Dismiss / Strike

Eric, the hearing tomorrow is stricken. We will send you our motion for leave in the next few days.

Scott Kiplinger | [405-568-3317](tel:405-568-3317) | [GableGotwals](#)

From: Eric Wade <ericw@rfrlaw.com>
Sent: Wednesday, March 23, 2022 1:38 PM
To: Scott Kiplinger <skiplinger@gablelaw.com>
Cc: Allender, Daniel L. <DAllender@RobinsKaplan.com>
Subject: RE: Avellone v. Bristol - Motion to Dismiss / Strike

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Scott,

I have talked with my client. We do not intend to oppose a request for leave to file a motion to dismiss out of time, but we would like to see the motion for leave before we firmly commit to that position. I envision something short and straightforward that does not include any gratuitous statements that would be objectionable to us, and I think that is what you have in mind. Are you agreeable to sending the motion to me via e-mail, and I will review and get right back to you with confirmation that that we do not object to it? Thanks.



Eric D. Wade | Shareholder/Director
Rosenstein, Fist & Ringold

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From: Scott Kiplinger <skiplinger@gablelaw.com>

Sent: Wednesday, March 23, 2022 12:27 PM

To: Eric Wade <ericw@rfrlaw.com>

Cc: Allender, Daniel L. <DAllender@RobinsKaplan.com>

Subject: Avellone v. Bristol - Motion to Dismiss / Strike

Eric, thanks for your time today discussing the pending motions to strike and dismiss in this case.

Rather than attending the hearing on the motion to strike tomorrow, I will call Judge Bonner's chambers and strike the hearing. Afterwards, we will move to file our motion to dismiss out of time, due to the complicated procedural posture of this case, to which you indicated you would not object. We will then file our Motion to Dismiss, allow you the requisite to respond, and set a hearing date.

After you've had the chance to discuss with you client, please let me know whether this works for you so that I can call Judge Bonner's chambers.

Best,



Scott Kiplinger | Attorney | GableGotwals

(w) 405-568-3317 | (f) 405-235-2875 | skiplinger@gablelaw.com

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