



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

MAY 19 2022

RICK WARREN
COURT CLERK

125

CHRISTOPHER AVELLONE,

Plaintiff,

v.

KELLY RAE BRISTOL

Defendant.

Case No. CJ-2021-4340

The Honorable Anthony L. Bonner

DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S AMENDED PETITION

Defendant, Kelly Rae Bristol ("Defendant"), respectfully submits this Motion to Strike Plaintiff's Amended Petition and in support thereof shows the Court 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. On February 9, 2022, out of an abundance of caution, Defendant re-filed its Motion to Dismiss in this Court.
6. 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.

7. 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.

8. On March 31, 2022, Defendant filed its Unopposed Motion for Leave to File Its Motion to Dismiss, which was granted by this Court.

9. Defendant subsequently filed its Motion to Dismiss on April 18, 2022. It should be noted that this is the **third separate occasion** on which Defendant has filed what is essentially the same Motion to Dismiss.

10. Plaintiff has still not responded to Plaintiff's Motion to Dismiss, which, again, was originally filed in this Court on February 9, 2022. Plaintiff's Response was due on May 8, 2022.

11. The Hearing on Defendant's Motion to Dismiss is scheduled to be heard by this Court on May 31, 2022.

12. Rather than respond to Defendant's Motion to Dismiss, Plaintiff filed its Amended Petition on May 6, 2022, which was received by Defendant on May 9, 2022.

13. Upon review, it appears that Plaintiff's Amended Petition is effectively identical to the original Petition, with the addition of a single paragraph to the original 15-page filing. *See* Plaintiff's Amended Petition at ¶ 30, wherein Plaintiff alleges Defendant deleted certain social media posts about Plaintiff.

14. To date, Plaintiff has **still not responded to the Motion to Dismiss.**

15. A party's right to amend its pleadings is controlled by 12 Okla. Stat. § 12-

2015(A):

A party may amend his or her pleading once as a matter of course at any time before a responsive pleadings is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he or she may amend it at any time within twenty (20) days after it is served. . . . **Otherwise a party may amend the pleading only be leave of court or by written consent of the adverse party;** and leave shall be freely given when justice so requires. (emphasis added).

16. As discussed above, Plaintiff's original Petition was filed in this Court on October 13, 2021. Plaintiff's inherent right to amend therefore expired on November 2, 2021, after which Plaintiff was required to seek either leave from this Court or consent from Defendant's counsel in order to amend the Petition.

17. Plaintiff's counsel never mentioned amending the Petition with Defendant's counsel. Defendant was unaware of the Amended Petition until it was served on Defendant.

18. Similarly, Defendant is unaware of any attempt by Plaintiff to request leave from this Court in order to amend the Petition.

19. Absent any explanation or justification by Plaintiff, Defendant can only surmise that the Amended Petition is an attempt by Plaintiff to erect another roadblock to Defendant's pending Motion to Dismiss, which is set for hearing before this Court in less than two weeks and to which Plaintiff has still not responded.

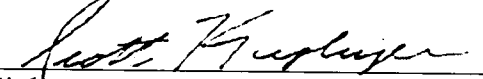
20. Defendant anticipates an argument by Plaintiff that the looming Amended Petition and any response (or lack thereof beyond this Motion to Strike) somehow warrants yet another delay on the hearing on Defendant's Motion to Dismiss. Such an argument should be rejected by this Court.

WHEREFORE, for the reasons stated above, Defendant prays the Court strike Plaintiff's Amended Petition against Defendant, along with any other relief this Court deems

just and proper.

Dated: May 19, 2022.

Respectfully submitted,



Scott Kiplinger, OBA No. 33938

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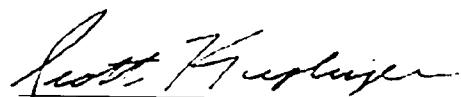
Fax: 405.235.2875

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2022, a true and correct copy of the foregoing was sent via U.S. Mail, postage prepaid, to the following counsel of record:

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For the Firm