

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

Case No. 15-cv-324-C

SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, and

THE REGIONAL UNIVERSITY
SYSTEM OF OKLAHOMA,

Defendants.

**DEFENDANTS SOUTHEASTERN
OKLAHOMA STATE UNIVERSITY AND THE REGIONAL
UNIVERSITY SYSTEM OF OKLAHOMA'S SURREPLY
IN OPPOSITION TO PLAINTIFF'S MOTION FOR REINSTATEMENT**

Defendants, Southeastern Oklahoma State University, ("SEOSU"), and The Regional University System of Oklahoma ("RUSO"), (collectively "University Defendants" or "the State"), and pursuant to the Court's Order of January 8, 2018, [Doc. 273], submit the following Surreply in Opposition to Plaintiff's Motion for Reinstatement [Doc. 268] in order to address new material presented by Plaintiff in her Reply brief [Doc. 271].

INTRODUCTION

It is regrettable that Plaintiff, a grown woman in her fifties with a Ph.D. in English cannot find and hold a job, but the students of SEOSU should not be punished for that.

Plaintiff presents in her Reply brief eight (8) new pieces of “evidence” that she chose not to present in her Motion for Reinstatement. Plaintiff presents in her Reply *ad hominem* attacks on both the undersigned counsel for Defendants as well as the current EHL Department Chair, a continuation of Plaintiff’s (or her counsel’s) consistent insistence on infusing the litigation of this matter with personal animus. Plaintiff presents in her Reply two newly-blossoming and self-serving “declarations” of herself and her admitted “close friend,” both of whom testified at trial and presented similar “declarations” with the Motion for Reinstatement [Doc. 268] in the first place. Plaintiff presents in her Reply references and allusions to steps taken as part of settlement negotiations, references which are inappropriate, unethical and irrelevant, but something Plaintiff and her counsel have repeatedly done over the course of this litigation. Mixed in with these pieces of “evidence” are a number of documents which existed well before the litigation of this case began (let alone well before the filing of [Doc. 268]), some positive critiques from students, and a statement from a temporary would-be colleague who never actually worked with or evaluated Dr. Tudor. In total, Plaintiff offers two-hundred and seventy-five (275) pages’ worth of exhibits to her Reply which should have been included in the Motion itself, if in fact they supported Plaintiff’s plea for reinstatement. But, they do not.

ARGUMENT AND AUTHORITY

I. OPINIONS OF TUDOR’S QUALITY AS A PROFESSOR

Defendants’ Response [Doc. No. 270] directed the Court’s attention to evidence of professionals’ and students’ opinions of Dr. Tudor’s quality as a professor. Plaintiff

offered contrary opinions. Professional people in a workplace can hold differences of opinion without it being prejudicial or unlawfully discriminatory. Evidence presented of Plaintiff's self-evaluation, and the evaluation given by her "close friend" who testified under oath that she never actually saw Dr. Tudor's 2009-10 portfolio should be viewed with more than a grain of salt. Materials not included in the original Motion for Reinstatement should be disregarded by this Court. The only professional academic with any credible claim of objectivity about this matter appears to be Dr. Randy Prus, the EHL Department's Chair. He advises against Dr. Tudor's return to SEOSU. Plaintiff seems to argue that because Dr. Prus did not offer the type of multi-page rant or invective submitted by Plaintiff and her cheerleader, Dr. Cotter-Lynch, his opinion or evidence is less important. But as a professional academic who understands poetry (and Dr. Tudor's deficiencies in that regard), classroom instruction duties (as a tenured teaching professor), and administrative responsibilities to his faculty and students (as EHL Department Chair who must maintain the overall discipline, morale, and effectiveness of his department), Dr. Prus' quiet, but direct evidence, offered in a peaceful but unrefuted way, should be given more weight than the self-serving declarations of Dr. Tudor and her "close friend." Reinstatement and tenure at SEOSU should be denied.

Evidence of Plaintiff's inability to keep her job at Collin College stands unrefuted. The fact that Plaintiff disagrees with the criticisms of the Collin College students and Dean, and the decision of the College, is unsurprising and typical of her combative responses she has displayed throughout her entire professional career.

Plaintiff's inability to find a job after losing her job at the Community College is her own failure; it is not the fault of SEOSU, its employees, or its students. Whether other colleges and universities find Dr. Tudor's poor interview skills, her lack of scholarly development, or her lack of service to the community to be fatal to her applications for employment is a matter between Dr. Tudor and those institutions. Dr. Tudor's inability to impress people in charge of the retention or hiring at places like Collin College and Seminole State College is Dr. Tudor's alone. Reinstatement and tenure at SEOSU should be denied.

II. REINSTATEMENT IS NOT FEASIBLE

Plaintiff's Reply argues (based on the declaration of Plaintiff's "close friend" Dr. Meg Cotter-Lynch) that reinstatement is feasible because the Department Chair, Dr. Randy Prus and the University President, Dr. Sean Burrage, were discussing how they might deal with either a settlement agreement allowing some form of Plaintiff's limited return to SEOSU. However, the fact that they could not in good conscience find a way to make such an arrangement should tell Dr. Tudor and this Court that the feasibility of such a plan is not present. Further, the wisdom of such a plan is not present. While it is unfortunate that SEOSU staff were not more careful with their handling of settlement discussion material, their casual use of electronic mail does not create budget lines and the sort of academic openings needed for the insinuation of Dr. Tudor back in to the EHL Department or the educational lives of its students.

Sadly, this is not the first time, or even the second time Plaintiff and her counsel have injected settlement discussion materials into their pleadings. Not to

belabor the point, but in “Intervenor’s Response to Amended Motion to Dismiss” [Doc. 31, p. 24, fn. 17]. Plaintiff published otherwise confidential discussions in her pleadings. Plaintiff then indicated the intention to do so again in Plaintiff/Intervenor’s Response to Defendants’ Motion in Limine [Doc. 217]¹. No court should reward that type of cavalier or feckless conduct regarding the respect for settlement discussions between parties in active litigation. Reinstatement and tenure at SEOSU should be denied.

Finally in this area, Dr. Tudor produces new evidence in terms of positive student evaluations and recommendations. Again, this is evidence which was available to Dr. Tudor and her counsel years before the trial of this matter, and it should have been included in her Motion for Reinstatement to be considered at this point by the Court. Nevertheless, the negative student evaluations presented by Defendants’ Response brief were merely illustrative – not exhaustive – of the types of negative opinions held by a number of Dr. Tudor’s former students. Defendants did not believe it was necessary to dump all of the negative statements on the Court, however if the Court is inclined to consider all such evidence at this point, Defendants can provide additional documentation for the Court’s review, as well as testimony in further support.

¹ Plaintiff’s conduct reveals a complete lack of knowledge and respect for the Federal Rules of Civil Procedure. Plaintiff’s providing the trial transcript to a nonparty for online publication during trial is further evidence of Plaintiff’s improper conduct.

III. DR. TUDOR'S CONTINUED AND DEMONSTRATED LACK OF SCHOLARSHIP AND SERVICE

In response to Defendants' argument about Dr. Tudor's demonstrated lack of scholarship and service since departing SEOSU, Plaintiff (or her counsel) devolves into *ad hominem* attacks on one of the counsel for Defendants. See [Doc. 271, pp. 8-9]. Setting aside Mr. Joseph's experience as a classroom teacher, (including, but not limited to, time spent teaching in K-12 schools, and multiple semesters teaching at the graduate level at the University of Oklahoma), Mr. Joseph (a) has never offered evidence in this litigation, (b) has never been identified as a witness in this litigation, and (c) made no "declarations" as part of Defendants' Response to the motion for reinstatement. And yet, consistent with Plaintiff's ongoing and repeated attempts to make this litigation personal in nature, Dr. Tudor sees fit to attack Defendants' counsel directly by name.

Not content to personally impugn counsel, Dr. Tudor also attacks her would-be Chair, Dr. Randy Prus, (whom Dr. Tudor first called as a supposedly favorable witness in her own case at trial.) For example, in her Reply brief, Dr. Tudor calls Dr. Prus "curmudgeonly," [Doc. 271, p. 3], and suggests that his opposition to her return to campus is based on his own anticipated personal anxiety rather than his professional determination. *Id.*, p. 4. This type of character-assassination is consistent with Dr. Tudor's inability to allow for the possibility that people might have unfavorable views of her that are not based on pernicious discrimination. For the record, Merriam-Webster's online dictionary defines "curmudgeon" as one who is "a crusty, ill-tempered, and usually old man." This is the color with which Dr. Tudor

paints her former colleague and would-be future Chair. While she thinks highly of her colleague one moment, she casts them as a bigot or unprofessional the next moment. Whether it be Dr. Lisa Coleman, Dr. Randy Prus, or Dr. Don Weasenforth, Dr. Tudor's pattern is the same. It is precisely this kind of simmering animosity by Dr. Tudor, (as experienced by her coworkers and supervisors), and the distrust it generates, that precludes the reinstatement of Dr. Rachel Tudor as a professor – tenured or otherwise – at SEOSU.

Despite the fallacy of Dr. Tudor's *ad hominem* attacks offered in place of actual evidence, the fact remains that since departing SEOSU Dr. Tudor has consistently failed to publish, produce any scholarship, or serve her academic or subject area communities. Dr. Tudor's lack of any evidence presented in either (a) her motion for reinstatement, or (b) her reply brief, is telling. As the old saying goes in this regard, the silence is deafening. Similarly, Dr. Tudor's reply brief fails to refute the bizarrely out-of-date and deficient submissions she has made in recent job applications to places like Rogers State University and Seminole State College. Reinstatement and tenure at SEOSU should be denied.

CONCLUSION

The salient facts are clear. Dr. Tudor did not get tenure at SEOSU and as a result was non-renewed there. In her subsequent employment with Collin Community College, her performance was not good enough for her to hold onto her job. In her subsequent attempts to find employment at places like Rogers State University and Seminole State College her efforts were deficient to the point of

negligent. Since leaving SEOSU Dr. Tudor has produced zero published articles, books, or other scholarly works. Since leaving SEOSU Dr. Tudor has no documented (or even alleged) service to her academic, tribal, or local communities. Since leaving Collin College Dr. Tudor has apparently done nothing to exercise her classroom teaching skills. In short, Dr. Randy Prus' professional estimation of Dr. Tudor's lack of promise in 2010 has been borne out by Dr. Tudor's own conduct since she left SEOSU. While attorneys for the United States of America and Dr. Tudor may have put together a transgender discrimination case sensationalistic enough to make a jury ignore the fact that Title VII does not actually protect people based on their transgender status *per se*, that does not make Dr. Tudor fit to teach in a classroom. Attorneys for Dr. Tudor and the Department of Justice cannot teach Dr. Tudor's classes for her. The willingness of Dr. Cotter-Lynch to organize online petitions will not improve Dr. Tudor's respect for her colleagues with whom she may disagree. Courts have historically tended to tread lightly in the areas of academic determinations and higher education methodology, and courts should continue to do so today. Monetary compensation is how our justice system works best to make parties whole. The Court should deny Plaintiff's Motion for Reinstatement and Tenure.

Respectfully submitted,

/s/ Jeb E. Joseph

DIXIE L. COFFEY, OBA #11876

JEB E. JOSEPH, OBA #19137

KINDANNE JONES, OBA #11374

TIMOTHY M. BUNSON, OBA#31004

Assistant Attorneys General Oklahoma

Attorney General's Office

Litigation Division

313 NE 21st Street

Oklahoma City, OK 73105

Telephone: 405.521.3921

Facsimile: 405.521.4518

Email: dixie.coffey@oag.ok.gov

Email: jeb.joseph@oag.ok.gov

Email: kindanne.jones@oag.ok.gov

Email: tim.bunson@oag.ok.gov

Attorneys for Defendants Southeastern

Oklahoma State University and The Regional

University System of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Ezra Young
Law Office of Ezra Young
30 Devoe, 1a
Brooklyn, NY 11211-6997
Email: ezraiyoung@gmail.com
Attorney for Plaintiff

Brittany Novotny
NATIONAL LITIGATION LAW GROUP, PLLC
42 Shepherd Center
2401 NW 23rd Street
Oklahoma City, OK 73107
Email: bnovotny@nationlit.com
Attorney for Plaintiff

Marie E. Galindo
1500 Broadway, Ste. 1120
Lubbock, TX 79401
Email: megalindo@thegalindolawfirm.com
Attorney for Plaintiff

/s/Jeb E. Joseph

Jeb E. Joseph