

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

RACHEL TUDOR,

Plaintiff,

v.

SOUTHEASTERN OKLAHOMA STATE
UNIVERSITY, and THE REGIONAL
UNIVERSITY SYSTEM OF
OKLAHOMA,

Defendants.

Case No. 15-cv-324-C

**DEFENDANTS' RESPONSE IN OBJECTION
TO PLAINTIFF'S MOTION TO STRIKE**

Defendants, Southeastern Oklahoma State University (“SEOSU”) and the Regional University System of Oklahoma (“RUSO”), (collectively “Defendants”), and provide their Response in Objection to [Doc. 318], Plaintiff’s Motion to Strike, (“Motion to Strike”). As a preliminary matter, Plaintiff cites to no Federal or Local Rule for the authority to wholesale strike Defendant’s motion for judgement notwithstanding the verdict or in the alternative for new trial. Federal Rule of Civil Procedure 12(f) authorizes a district court to “strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 7 defines what constitutes a “pleading,” and none of the seven (7) items listed therein are a motion for judgment notwithstanding the verdict or for a new trial. Regardless, in case the Court is inclined to entertain Plaintiff’s Motion to Strike, and classify Defendants’ motion as a pleading subject to striking, then Defendants submit the following for the Court’s consideration:

FUNDAMENTAL FACTS

1. Judgment in this case was not final until the Court entered it on June 6, 2018. *See* [Doc. 293], and Fed. R. Civ. P. 58.

2. According to Fed. R. Civ. P. 50(b), Defendants could “file a renewed motion for judgment as a matter of law” addressing “a jury issue not decided by the verdict, no later than 28 days after the jury was discharged.”

3. Fed. R. Civ. P. 50(b) further provides that “[n]o later than 28 days after the entry of judgment . . . [Defendants] may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59.” (Emphasis added).

2. According to Fed. R. Civ. P. 59(e), Defendants could file a motion to alter or amend judgment no later than 28 days after the entry of judgment.

3. According to Fed. R. Civ. P. 59(b), Defendants could file a motion for new trial no later than 28 days after the entry of judgment.

4. Given that the Court entered judgment on June 6, 2018, Defendants had until Wednesday, July 4, 2018 to file motions under Fed. R. Civ. P. 59. However, since July 4 was the Federal Independence Day holiday, Defendants’ motion to alter or amend was due on or before July 5, 2018. *See* LCvR 6.1.

5. On July 5, 2018, Defendants timely filed their Motion for judgment notwithstanding the verdict and in the alternative for new trial. [Doc. 316]

6. Despite the somewhat casual colloquy now pointed to by Plaintiff, which took place very briefly at the very end of a long morning of awaiting a jury’s verdict,

which itself followed after a week-long trial, the Federal Rules of Civil Procedure make clear that motions for judgment notwithstanding the verdict and motions for new trial may be filed within twenty-eight (28) days of the entry of judgment. Fed. R. Civ. P. 58(a) also makes clear that a written judgment “must” be entered “in a separate document,” and the Court made very clear that it was not entering judgment that day in December 2017.¹

ARGUMENT AND AUTHORITY

“A cat can have kittens in the oven but that don’t make ‘em biscuits.” Dr. Frasier Crane, *Frasier*. Similarly, just because Plaintiff cries that something is late does not mean that it is. Plaintiff’s coupled misreading of the law and the Court’s isolated statement near the end of the proceedings after the jury’s verdict was read, is either disingenuous, or simply craven in the face of Defendant’s Motion for Judgment Notwithstanding the Verdict or Alternatively for New Trial. The brief verbal exchange pointed to by Plaintiff between The Court and Mrs. Coffey at the end of the last day of trial proceedings can only have been referring to a Rule 50(b) motion addressing a “jury issue *not* decided by a verdict,” Fed. R. Civ. P. 50(b), (emphasis added), because the deadline for such motion is not contingent on judgment being entered, but rather runs from the date the jury is discharged.

In addition, as a precautionary measure, Mrs. Coffey contacted Judge Cauthron’s courtroom deputy, Linda Goode, for clarification of the application of the

¹ “Okay. Well, I’ll just not enter judgment then.” The Honorable Robin Cauthron, Trial Transcript Vol. 6, p. 873, ln. 20-21.

December 11, 2017 deadline. Specifically, counsel indicated Fed. R. Civ. P. 50(b) and 59(e) set certain deadlines based upon the entry of judgment, which, of course, had not yet occurred, and thus, wanted to be certain it was not Judge Cauthron's intent to set a deadline to apply to those motions. After consulting with Judge Cauthron, Ms. Goode relayed to Mrs. Coffey the deadlines set forth in the federal rules were applicable. And, as noted above in the "Fundamental Facts" section, *supra*, the Court "must" enter the judgment as a separate document, and that event then begins the period of twenty-eight (28) days within which parties may file motions for judgment notwithstanding the verdict or motions for new trial under Fed. R. Civ. P. 50(b) and 59. As all parties are aware, Defendants' Motion was timely filed within the twenty-eight (28) days afforded them (and all parties) by the Federal Rules of Civil Procedure.

CONCLUSION

The Federal Rules of Civil Procedure are clear. The date judgment was entered in this case is undisputedly June 6, 2018. The fact that Fed. R. Civ. P. 50(b) affords Defendants twenty-eight (28) days from the date the Court enters judgment to file a renewed motion for judgment as a matter of law that may include an alternative or joint request for a new trial is undisputed. The fact that Defendants filed their Motion within twenty-eight (28) days of the Court's entry of judgment is undisputed. The fact that those kittens born in the oven are still kittens, (and not biscuits), is manifest. Plaintiff's Motion to Strike should be denied.

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 8th day of August 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