**IN THE UNITED STATES COURTS OF APPEALS**
**FOR THE TENTH CIRCUIT**

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| RACHEL TUDOR,<br><br>Plaintiff/Appellant,<br>v.<br><br>SOUTHEASTERN OKLAHOMA STATE UNIVERSITY, and<br><br>THE REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA,<br><br>Defendants/Appellees. | **Case No. 18-6102** |

**DEFENDANTS' RESPONSE IN OBJECTION TO APPELLANT/ PLAINTIFF'S MOTION TO VACATE ABATEMENT ORDER**

Defendants, Southeastern Oklahoma State University, ("SEOSU"), and The Regional University System of Oklahoma ("RUSO"), ("Defendants"), present this response, (pursuant to the Court's Order of July 19, 2018), to Plaintiff/Appellant's Motion to Vacate ("Motion") the Court's July 18, 2018 Order of Abatement. [Doc. 010110025621]. For the following reasons, Appellant's Motion should be denied.

## I. MOOTNESS

Appellant's request appears to be, at least partially, moot. Appellant's "request[] that the July 18 Order be vacated and the original deadline for her opening brief and appendix be reinstated as July 30, 2018" became moot

on July 31, 2018, at least as to the timing of the requested resetting of deadlines.

## II. APPELLANT'S MISAPPREHENSION OF THE FEDERAL RULES OF CIVIL PROCEDURE

Appellant's misunderstanding of some of the Federal Rules of Civil Procedure has created something of a procedural mess, including the present issue of abatement in this Court and Appellant's motion that the abatement be lifted. Appellant's Motion perpetuates the same misconceptions and misapplications cobbled together by Appellant in the court below, as evinced by the "Motion to Strike Defendants' Renewed Motion for Judgment as a Matter of Law and, in the Alternative, for New Trial." *Plaintiff's Mot. to Strike,* filed July 18, 2018, document number 318. In a nutshell, Appellant conflates the concepts of "jury verdict," and "judgment," leading her to the misbegotten conclusion that anything filed by Appellees after mid-December 2017 is tardy.

It is anticipated that Appellees' "Response in Objection to Plaintiff's Motion to Strike," (to be filed in the District Court on or before August 8, 2018), will clearly show that the Federal Rules of Civil Procedure, coupled with the events in this litigation, make clear that Defendants/Appellees' requests under Fed. R. Civ. P. 50 and 59 were timely, particularly in light of Fed. R. Civ. P. 58. In short, Appellant volunteers that it was not until

June 6, 2018 that, "[t]he District Court entered final judgment in this matter." [Doc. 010110025621]. Appellant states, below, in her motion to strike, that it was "[a]t the request of Tudor's counsel" that the District Court delayed entry of judgment until *after* resolution of post-verdict briefing on reinstatement. (*Plaintiff's Mot. to Strike,* filed July 18, 2018, document number 318, p. 2). Appellant's counsel made that request in open court on November 20, 2017. According to Fed. R. Civ. P. 59(b), Defendants below could file a motion for new trial no later than 28 days after the District Court's entry of judgment. According to Fed. R. Civ. P. 59(e), Defendants below could file a motion to alter or amend judgment within 28 days after the District Court's entry of judgment. As this Court itself noted in its Order of July 18, 2018, Defendants/Appellees' motion for judgment as a matter of law or a new trial was, "filed by Appellees within the 28-day period set forth in Rule 59" (*Defs' Renewed Mot. for Judgment as a Matter of Law,* filed July 5, 2018, document number 316). The District Court below must still rule on Defendants' motions, regardless of whether or not the District Court grants or denies Plaintiff/Appellee's motion for post-judgment interest and tax offset.

According to Fed. R. App. P. 4(a)(1)(A), "the notice of appeal . . . must be filed with the district clerk within 30 days after the entry of judgment or

order appealed from." As noted above, Plaintiff below asked the District Court to refrain from entering judgment in November 2017. Judgement was entered by the District Court on June 6, 2018. Plaintiff/Appellant's Notice of Appeal was filed in the District Court later that day, also on June 6, 2018. *Plaintiff's Notice of Appeal,* filed June 6, 2018, document number 294. Although Plaintiff/Appellant's Notice of Appeal states unambiguously that she is appealing several "orders," (*Order Denying Reinstatement,* filed Jan. 29, 2018, document number 275; *Order Denying Plaintiff's Motion to Reconsider,* filed Feb. 12, 2018, document number 278; *Order regarding Front Pay,* filed April 13, 2018, document number 286; *Memorandum and Opinion,* filed June 6, 2018, document number 292; and *Judgment for Plaintiff,* filed June 6, 2018, document number 293), none of them *except* for the orders entering judgment (*Memorandum and Opinion,* document number 292 and *Judgment,* document 293) were entered within the 30 days prior her appeal. Viewed in this light, Plaintiff/Appellant's current arguments about timeliness (or untimeliness) of Defendants/Appellees' motions for judgment notwithstanding the verdict or for new trial are nonsensical at best.

## III. ALL DELIBERATE SPEED

To paraphrase Plaintiff/Appellant, Defendants/Appellees "emphasize[] to this Court that [they] sincerely desire[s]" to be done with this litigation, with Plaintiff/Appellant, and with all of the costs and headaches attendant thereto. However, Defendants/Appellees know that speed is not everything, and it is more important to get this correct than it is to get finished quickly. In fact, with all due respect, it has been repeatedly observed in thoughtful circles that "haste makes waste," and Benjamin Franklin's sentiment in that regard was even noted in the United States Supreme Court case of *Oklahoma v. New Mexico*, 501 U.S. 221, 233, 111 S.Ct. 2281, 2288 (1991) (fn. 4, citing the special master's report).

## CONCLUSION

Plaintiff/Appellant's requested relief is moot based on the relevant chronology. Plaintiff/Appellant's requested relief as to lifting the present Court's abatement is misplaced, and if granted will only further muddy the waters in which we are all wading. This Court's initial abatement of the appellate proceedings was based on practical, thoughtful considerations to the effective administration of justice. That abatement should not yet be

disturbed. Plaintiff/Appellant's misguided or mischievous attempt to do so is, itself, disturbing, and it should be denied.

Respectfully submitted,

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## CERTIFICATE OF DIGITAL SUBMISSION

Pursuant to the Tenth Circuit Court of Appeals' General Order on Electronic Submission of Documents (March 18, 2009), I hereby certify that:

1. There are no required privacy redactions (Fed. R. App. P. 25(a)(5)) to be made to the attached ECF pleading; and

2. This ECF submission is an exact copy of the additional hard copies of Appellee's Response; and

3. This ECF submission was scanned for viruses with Sophos Endpoint Security and Control, version 9.7, a commercial virus scanning program that is updated hourly, and, according to the program is free of viruses.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd 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:

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