

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

DR. RACHEL TUDOR,)
Plaintiff,)

v.)

Case No. 5:22-cv-00480-G

1. MARIE GALINDO,)
2. BRITTANY STEWART,)
3. LAW OFFICE OF)
JILLIAN WEISS,)
4. EZRA YOUNG,)
5. TRANSGENDER LEGAL)
DEFENSE AND EDUCATION)
FUND)
Defendants.)

1. EZRA YOUNG,)
2. BRITTANY STEWART,)
Counterclaim Plaintiffs,)

v.)

1. DR. RACHEL TUDOR,)
2. JILLIAN WEISS,)
Counterclaim Defendants.)

1. EZRA YOUNG,)
2. BRITTANY STEWART,)
Third-Party Plaintiffs,)

v.)

1. SOUTHEASTERN OKLAHOMA)
STATE UNIVERSITY,)
2. REGIONAL UNIVERSITY)
SYSTEM OF OKLAHOMA,)
Counterclaim Defendants.)

**EZRA YOUNG AND BRITTANY STEWART'S
JOINT OPPOSITION TO TUDOR'S
REQUEST TO BE EXCUSED OR FOR RULING (ECF No. 46)**

We respectfully ask that the Court deny Dr. Tudor's motion (ECF No. 46) requesting that she be excused from the January 9, 2024, settlement conference. Dr. Tudor's request is fatally flawed for three reasons.

First, Tudor's motion simply recapitulates arguments from her earlier opposition (compare ECF No. 29 with ECF No. 46) to our motion (ECF No. 20), which Judge Dishman considered and rejected (Order, ECF No. 43 at 1). Under Rule 16(b)(4), modification of a settlement conference order is only available where good cause is demonstrated. Tudor cites no authorities, and there appear to be none, that support her skipping a settlement conference simply because she thinks she will ultimately prevail in this litigation. Relatedly, Dr. Tudor gives no good cause to excuse her attendance at a settlement conference that she already, via counsel, agreed to attend.

Second, Tudor's request to be excused is also improper because it violates local rules. Under Local Rule 16.2(g) and Magistrate Judge Shon T. Erwin's order setting the conference, relief must be sought by reaching out to his chambers (ECF No. 44 at 3–4). Presuming no ex parte contacts, Dr. Tudor's only outreach to Judge Erwin's chambers was to assent to the mutually agreeable date and time set for the settlement conference.

Third, the premise of Dr. Tudor’s latest motion—that her attendance is unnecessary because this matter is ultimately resolved if her motion to dismiss our counterclaims is granted—bespeaks a fundamental misunderstanding of how interpleader works. Tudor must do far more than prevail on her motion to dismiss and deposit the so-called “fund” with this Court. Wright & Miller’s treatise, which Tudor submits is authoritative (ECF No. 46 at 5), explains in section 1714 that she as plaintiff bears the burden of demonstrating that interpleader requirements are satisfied, and all parties must be given notice and opportunity to be heard on the question before deposit and dismissal is appropriate. Wright & Miller, 7 Fed. Prac. & Proc. Civ. § 1714 (3d ed.). The merits of Tudor’s interpleader case have not yet been briefed, let alone proved. (And there are a host of reasons why even at this juncture it is unlikely she will prevail.*)

* Tudor bears the burden of establishing jurisdiction. *Thompson v. Grissom*, 21-cv-01048, 2022 WL 1530458 at *2 (W.D. Okla. Feb. 15, 2022) (Dishman, J.) (citing *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974)). She must also demonstrate that her interpleader action was not brought in bad faith (*id.* at *4). And if interpleader is deemed proper, Tudor must deposit the whole of the “fund” at issue, which she has already admitted she has spent down during this litigation. *Compare* Interpleader Complaint, ECF No. 1 at 2–3 (alleging a disputed “fund” of “\$574,425 for attorneys’ fees) *with* Motion to Deposit Funds, ECF No. 24 at 2 (admitting to having spent down \$33,529 in “litigation reimbursements” and seeking leave to deposit only “\$563,823.10”). Thereafter, Tudor must then separately move to be discharged. *See State Farm Ins. Co. v. Honomichl*, 22-cv-228, 2022 WL 5245290, at *1 (W.D. Okla. July 6, 2022) (outlining steps).

Dated: October 23, 2023

Respectfully Submitted,

/s/ Ezra Young

Ezra Young (NY Bar No. 5283114)

LAW OFFICE OF EZRA YOUNG

210 North Sunset Drive

Ithaca, NY 14850

P: (949) 291-3185

ezra@ezrayoung.com

/s/ Brittany M. Stewart

Brittany M. Stewart (OK Bar No. 20796)

4543 Kady Avenue NE

St. Michael, MN 55376

P: 405-420-5890

brittany.novotny@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2023, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record and unrepresented parties.

/s/ Ezra Young

Ezra Young (NY Bar No. 5283114)