



ORIGINAL

STATE COURT
OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

JUN 1 2020

JOHN D. HADDEN
CLERK

LUCAS CALBREATH,
BRAYDEN CALBREATH,
MERCEDES REVELS,
Petitioners,

#118818

v.

No. _____

HONORABLE WILLIAM D.
LAFORTUNE, Judge of the District Court
of Tulsa County, 14th Judicial District,
Respondent,

) Tulsa County Case No. SC-2020-5176

) Tulsa County Case No. SC-2020-5247

PECAN CREEK - GMC LP and
WOODLAND APARTMENTS LLC,
Real Parties in Interest.

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**COMBINED APPLICATION TO ASSUME ORIGINAL JURISDICTION
AND PETITION FOR WRIT OF PROHIBITION**

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ATTORNEYS FOR PETITIONERS

June 1, 2020

This is a petition for a writ of prohibition seeking to enjoin the Presiding District Court Judge of the Tulsa County District Court, William D. LaFortune, from exercising authority prohibited to him by Article VII of the Oklahoma Constitution and that violates Tenants' rights to due process of law and to access to courts under the Oklahoma Constitution.

In support of this request, Petitioners, LUCAS CALBREATH, BRAYDEN CALBREATH and MERCEDES REVELS, allege:

1. Jurisdiction and venue are both proper in this Court in accordance with and pursuant to Article VII, § 1 of the Oklahoma Constitution. This Court has original jurisdiction over petitions for writs of prohibition. Writ of prohibition is proper in this case for the purpose of preventing an official who is exercising judicial or quasi-judicial powers, from exceeding jurisdiction by enacting procedures that deprive litigants of due process and deny them access to courts. *Sterling Refining Co. et al. v. Walker et al.*, 1933 OK 446, 25 P.2d 312.

2. Petitioners, LUCAS CALBREATH, BRAYDEN CALBREATH and MERCEDES REVELS, are residential tenants who live within the jurisdiction of the Tulsa County District Court.

3. Civil actions for forcible entry and detainer have been filed against Petitioners in the Tulsa County District Court and these actions are scheduled for hearing at 2:00 pm on Monday, June 1st, 2020. Copies of the summons and complaints filed against and served on Petitioners in Cases No. SC-2020-5247 and No. SC-2020-5176 are found and incorporated herein at pages 1 and 2 of Petitioner's Appendix.

4. The Honorable William D. LaFortune is the Presiding Judge of the Tulsa County District Court, which hears and adjudicates actions for forcible entry and detainer ("FED") concerning residential rental properties located within the jurisdiction of the district court.

5. The Oklahoma Constitution provides, in pertinent part:

§ 6. Courts of Justice open - Remedies for wrongs - Sale, denial or delay. The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.

§ 7. Due process of law. No person shall be deprived of life, liberty, or property, without due process of law.

6. The District Court abused its discretion by and through the acts described in this petition and the Oklahoma Supreme Court is obligated to “review the discretionary act and, if an abuse is involved, correct the abuse.” *Puckett v. Cook*, 1978 OK 108, ¶17, 586 P.2d. 721, 723, citing *St. Louis-San Francisco Ry. Co. v. Superior Court*, 1955 OK 111, 290 P.2d 118.

7. Section 1 of article IV of the Oklahoma Constitution provides:

The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others.

8. Prohibition is the proper remedy "where an inferior court or officer is acting in a judicial capacity exercising judicial or quasi-judicial power not granted by law or making an unauthorized or excessive application of judicial force." *James v. Rogers*, 1987 OK 20, 734 P.2d 1298; *Sw. Bell Tel. Co. v. Oklahoma Corp. Comm'n*, 1994 OK 38, 873 P.2d 1001, 1007.

9. The access to courts mandate of section 6, art. 2, of the Oklahoma Constitution "operates as a mandate to the judiciary." *Lee v. Bueno*, 2016 OK 97, ¶ 29, 381 P.3d 736, 747 and *Adams v. Iten Biscuit Co.*, 1917 OK 47, 162 P. 938, 942.

10. While District Courts have the “power to make, and enforce, reasonable rules for orderly procedure before courts”, in this case, the District Court abused its judicial discretion and exceeded its Constitutional authority by imposing local rules that unconstitutionally impair

Petitioners' right to due process and access to court. *Bank IV Oklahoma, N.A. v. Southwestern Bank & Trust Co.*, 1997 OK 31, 935 P.2d 323, 326, citing *Texas Oklahoma Express v. Sorenson*, 652 P.2d 285, 287 (Okla.1982) and *Oklahoma County Sheriff v. Hunter*, 615 P.2d 1007, 1008 (Okla.1980); *Puckett v. Cook*, 1978 OK 108, 586 P.2d 721.

11. Declaring that because of “COVID-19 concerns” and “to ensure adequate social distancing for judges, staff, and the public”, the Tulsa County District Court announced on Wednesday, May 27, 2020, in a posting on the District Court’s website that forcible entry and detainer (“FED”) actions are being relocated on a temporary basis on Monday, June 1, 2020 to the Tulsa County Family Juvenile Justice Center, which is 0.6 miles distance from the Tulsa County District Court. A copy of the Press Release is incorporated herein and found at Page 3 of the Petitioner’s Appendix.

12. On Friday, May 29, 2020, Respondent entered ADMINISTRATIVE ORDER PHASE TWO in AO-2020-5 (PHASE TWO) filed in the matter captioned IN RE: PHASE TWO OF REOPENING PLAN FOR TULSA COUNTY DISTRICT COURT OPERATIONS, which order includes information about the relocation of court for FED and other actions and provides, in pertinent part that:

- a. FEDs “shall be filed and notice served in the manner provided by law”;
- b. Plaintiffs in FED actions “shall comply with the filing of the Verification as to the status of property under the CARES Act...in all cases filed on 3/27/20 and thereafter”;
- c. Plaintiffs in FED actions “shall be required to issue notice of hearing as provided by law”;
- d. “Hearings stricken due to the SCADs and the AOs ...shall be Reset at Plaintiff’s request for Alias notice of hearing; and that
- e. “Plaintiff shall serve notice of hearing as provided by law.”

A copy of this May 29, 2020, Administrative Order is incorporated herein and found at page 4 of Petitioner’s Appendix.

13. Except for a docket entry in the OSCN case records, the Respondent has not taken any action since the May 27, 2020, announcement or the May 29, 2020, Administrative Order to provide any notice to litigants, including Petitioners, who are Defendants in FED actions, about the change in location of the District Court proceedings.

14. On March 27, 2020, the federal Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”, Public Law 116-136) was signed into law.

15. Section 4024 of the CARES Act imposes a 120-day moratorium on the filing of evictions from tenants living in enumerated covered properties, including properties that have a federally backed mortgage loan or a federally backed multifamily mortgage loan.

16. Petitioners all reside in properties declared to be covered property under the CARES Act because the properties are part of or participate in a federal housing program or the properties have a federally backed mortgage loan.

17. The Tulsa County District Court has not taken appropriate or adequate action to ensure that FED cases, including the FED actions filed against Petitioners that are filed without the required CARES Act verification, are not set for hearing and are dismissed.

18. Notice of the correct place and time of the FED hearing is fundamental and necessary to fulfill Petitioners’ right to due process and access to courts.

19. Petitioners all reside in properties declared to be covered property under the CARES Act because the properties are part of or participate in a federal housing program or the properties have a federally backed mortgage loan.

20. Notice that Section 4024 of the CARES Act imposes a 120-day moratorium on the filing of evictions from tenants living in covered properties is also critical to fulfill Petitioners’ right to due process and access to courts.

21. Petitioners have a due process right during the CARES Act moratorium to not be required to defend a FED eviction action and be at risk of being deprived of possession of their covered properties in the hearings set for 2:00 pm on Monday, June 1, 2020.

22. Pursuant to 12 O. S. §§ 1148.4 and 1148.5, a summons shall be issued and served in a specified time and manner commanding a defendant to appear for trial at the time and place specified in the summons and shall apprise the defendant of the nature of the claim that is being asserted against him, the relief sought and the amount for which the plaintiff will take judgment if the defendant fails to appear.

23. A summons that conforms to the statutes cited herein meets the demands of due process and access to court required by the Oklahoma Constitution.

24. A summons that notifies FED defendants, including Petitioners, of the correct time and place of the trial and that appraises them of the nature of a claim not subject to the CARES Act moratorium that is being asserted against them is essential to avoid an impermissible burden being placed on the tenant's right to due process and to access to court.

25. Without fair and lawful notice of the change of the location of the District Court, Petitioners and other tenants served with summons with incorrect court information and lacking CARES Act disclosures, who are facing eviction at FED hearings in the Tulsa County District Court beginning Monday, June 1, 2020, may be deprived of the opportunity to be heard by the Court given that the time and place identified on the summons that was served on them is inaccurate and incomplete.

26. Without fair and lawful notice of the new location of court and the time their appearance is required at that new location, Petitioners and other tenants facing eviction may be untimely in making their appearance at the new location on the date of the hearing contained in

the summons and may suffer prejudice as a result, including the loss of any opportunity to appear and defend against the eviction before being deprived of their right to possession through the entry of a default FED judgment against them.

27. Without reasonable notice of the new location, Petitioners and other tenants who have been served a summons with the incorrect court location may also be confused about how to comply with the time listed in the summons for their appearance.

28. Many tenants summoned to appear at a hearing to defend FED eviction actions filed against them in the Tulsa County District Court lack private or reliable transportation, are disabled, have children or other complex life circumstances, mobility or other difficulties. This impromptu May 27, 2020, change of the location of courthouse, from the location contained in the summons, to one over half a mile away, down a busy and dangerous roadway, creates a constitutionally impermissible barrier to Petitioners' and other tenants' rights to due process and to access to the courts.

29. Should the FED hearings be held on June 1, 2020, and on the days following, none of the tenants whose FED actions are scheduled will have been served with summons that give them accurate information about the true location for their hearing. This cannot be a reasonable notice of or the opportunity to be heard or to defend because all the summons still have the incorrect Tulsa County District Court address identified as the location where their court hearing will be conducted and because the summons does not notify Petitioners of their federal moratorium rights under the CARES Act.

30. Given that none of the tenants with FED hearings set June 1, 2020, or after will have been given proper notice, the Tulsa County District Court will be acting without authority or jurisdiction at the hearings.

31. The harm and prejudice to Petitioners and to the other tenants whose constitutional rights to due process and to access to court are at issue in this case is not hypothetical.

32. The constitutional rights of Petitioners and the other tenants who are defendants facing eviction in FED actions with hearing scheduled June 1, 2020, and into the future are being violated as a result of receiving a notice that does not contain information about the CARES Act moratorium and that gives an incorrect court location.

33. The Tulsa County District Court summons with the incorrect address for the FED hearings does not meet the demands of the due process or the access to courts prescribed in the Oklahoma Constitution.

34. The summons is constitutionally infirm and defective and Petitioners and the other affected tenants have the right to a summons that provides fair and lawful notice and the opportunity to defend the FED actions filed against them. Because the summons fails to notify the tenants of the correct location of the hearing, the District Court cannot legally exercise its authority at said hearings to deprive the tenants of their possessory interest in the property.

35. The summons are not the reasonable notice that meets the demands of the Oklahoma Constitution and the incorrect court location places an impermissible burden on Petitioners' and other tenants' right to a reasonable notice and access to court to defend the FED action.

36. Stated another way, the incorrect location for the court hearing in the summons and the lack of CARES Act moratorium information renders the summons void, of no effect and the equivalent to no summons being served at all.

37. Through this petition, Petitioners present a real controversy for which relief can be granted by the Supreme Court. The immediacy requirement for the Supreme Court assuming original jurisdiction is present in this case because the lack of proper notice of the changed court

location results in Petitioners and other affected tenants being unconstitutionally denied the right to reasonable notice and being denied access to court to be heard and to defend their interests in the FED action.

38. As of May 29, 2020, 223 FED actions are set for hearing Monday through Friday, June 1 - 5, 2020, against tenants, including Petitioners, who have been served with a summons that identifies an incorrect location and time for court and that does not contain CARES Act moratorium information.

39. The number of FED actions that are set during June 2020 pursuant to summons issues and served on tenants containing notice of an incorrect court location for their FED hearing, are identified below:

<u>DATE</u>	<u>NUMBER OF FED ACTIONS SET</u>
Monday, June 1, 2020	47
Tuesday, June 2, 2020	58
Wednesday, June 3, 2020	19
Thursday, June 4, 2020	45
Friday, June 5, 2020	54

40. The Supreme Court's original jurisdiction allows a Writ of Prohibition to be granted against The Presiding Judge of the Tulsa District Court under the Oklahoma Constitution.

41. Petitioners are left without remedy except in the Supreme Court. The Oklahoma legislature intended for the Supreme Court to become involved in this challenge and this Petition should be considered and resolved on an expedited basis. The greater the delay in obtaining a final pronouncement from the Supreme Court on the constitutional deprivation claims raised herein, the greater the number of tenants will be deprived of their constitutional rights.

42. Filing this action as a declaratory judgment action in a district court would add to substantial delay. Declaratory relief is properly sought in this action and the issues presented in this Petition involve the public interests which urgently require the attention of the Supreme Court. *Oklahoma State Chiropractic Indep. Physicians Ass'n v. Fallin*, 2011 OK 102, 290 P.3d 1; *Fent v. State ex rel. Department of Human Services*, 2010 OK 2, 236 P.3d 61.

NATURE OF RELIEF SOUGHT

43. Petitioners request this Honorable Court review de novo and declare that the May 27, 2020 announcement and the May 29, 2020, Administrative Order – Phase Two of the Tulsa County District Court to be unconstitutional for placing an impermissible burden on the rights of Petitioners and other affected tenants to reasonable notice and to access to court to appear at the hearing or to create a record sufficient to permit meaningful appellate review of the proceedings in the FED action before being deprived of their possessory property interests. *Arrow Tool & Gauge v. Mead*, 2000 OK 86, 16 P.3d 1120; *Cotner v. Golden*, 2006 OK 25, 136 P.3d 630.

49. Petitioners further request the Supreme Court issue a Writ of Prohibition to the Presiding Judge of the Tulsa County District Court to prohibit the District Court from relocating court hearings in FED actions pursuant to the May 27, 2020, announcement and the May 29, 2020, Administrative Order until the constitutionality of the Announcement and the Order is determined.

WHEREFORE, Petitioners respectfully request that this Honorable Court issue a writ of prohibition as described herein to prevent Respondent from acting outside the scope of the authority of the Court and to prevent the violation of Petitioners' rights to due process of law and to access to court. Petitioners also request an evidentiary hearing and the allowance of discovery, should Respondent contest any of the factual allegations contained in this Petition.

Respectfully submitted,



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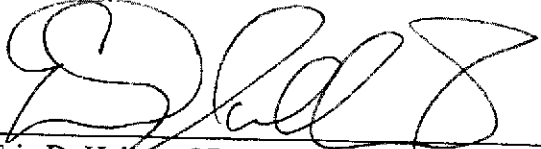
CERTIFICATE OF MAILING

I certify that a true and correct copy of the COMBINED APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR WRIT OF PROHIBITION was mailed this 1st day of June, 2020, by depositing it in the U.S. Mail, postage prepaid to:

Honorable William LaFortune
Tulsa County District Courthouse
500 S. Denver Ave, # 508
Tulsa, OK 74103

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