

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

MARILYN MCCLAIN GOFF,)	
)	
Plaintiff,)	Case No. 08-CV-71-TCK-FHM
vs.)	
)	On Removal from Case No.
SHEREE L. HUKILL, individually and)	CJ-2008-31, District Court of
DR. JOE A. WILEY, individually and)	Rogers County, State of Oklahoma
ROGERS STATE UNIVERSITY BOARD)	
OF REGENTS,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO STRIKE

Defendants, the State of Oklahoma, *ex rel.*, the Board of Regents of the University of Oklahoma (hereinafter, the “University”) (incorrectly designated by Plaintiff as “Rogers State University Board of Regents”), Sheree L. Hukill (“Hukill”), individually, and Dr. Joe A. Wiley (“Dr. Wiley”), individually, (collectively “Defendants”), respectfully request the Court strike the exhibits attached to Plaintiff’s Response and Objection to Defendants’ Motion to Dismiss (“Plaintiff’s Response”) pursuant to Fed.R.Civ.P. 12(f). In support of their Motion, Defendants show the Court as follows:

1. On January 14, 2008, Plaintiff filed her original Petition in Rogers County. *See* Petition, attached as Exhibit 2 to Notice of Removal [Doc. No. 2].
2. On January 17, 2008, Plaintiff filed her Amended Petition (hereinafter referred to as the “Complaint”). *See* First Amended Petition, attached as Exhibit 4 to Notice of Removal [Doc. No. 2].
3. On February 12, 2008, Defendants effected removal of this action from the District Court of Rogers County to this Court. *See* Notice of Removal [Doc. No. 2].

4. On February 21, 2008, Defendants filed a Motion to Dismiss, seeking dismissal of Plaintiff's Complaint, in part, for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6). *See* Motion to Dismiss [Doc. No. 13].

5. Plaintiff's Response [Doc. No. 14], filed on March 10, 2007, included two (2) exhibits. Exhibit "1" is a memorandum addressed to a "Billy E. Kumpe" from a "Rev. Tyson Wynn, Special Process Server" regarding "Case No: 05-CV-389" (not the case at issue here) and dated November 14, 2005 (over 2 years prior to the present case). Exhibit "2" consists of two "Return[s] of Service" dated September 9, 2004 (over 3 years prior to the present case), purportedly signed by an individual on behalf of Dr. Wiley and another Rogers State employee in another unrelated matter.

6. Exhibits 1 and 2 to Plaintiff's Response must be stricken because those documents are completely unrelated to the case at bar and are, thus, extraneous to the Complaint.

ARGUMENT AND AUTHORITIES

Fed. R. Civ. P. 12(b) states: "If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment." (Emphasis added). Exhibits 1 and 2 to Plaintiff's Response are "matters outside the pleading," and must, therefore, be excluded by the Court. Plaintiff cannot unilaterally convert Defendants' Motion to Dismiss into a motion for summary judgment by simply attaching exhibits to her Response.

Faced with a similar issue in *Richmond v. Nationwide Cassel L.P.*, 847 F.Supp. 88 (N.D. Ill., 1994), the court held:

To begin with, this Court of course grants defendants' motion to strike the Appendices to (the plaintiff's) responsive memorandum,

which set out a number of items extraneous to the Complaint. Where as here a Fed. R. Civ. P. (“Rule”) 12(b)(6) motion is at issue, the Complaint itself is the only grist for the Court’s mill. . . .

Richmond, 847 F.Supp. at 90. Here, as in *Richmond*, the Court should examine only the pleadings in its consideration of Defendants’ Motion to Dismiss. *See, e.g., Hussein v. Duncan Regional Hosp., Inc.*, 2007 WL 3231693, *2 fn. 2 and *4 fn. 4 (W.D. Okla. 2007)(Honorable Stephen P. Friot)(refusing to take improperly attached and extraneous materials into consideration in ruling on motion to dismiss). In addition to the procedural error created by Plaintiff’s exhibits, they are not used in support of the arguments in her Response other than to demonstrate the difficulty a process server utilized by counsel for Plaintiff in a previous, unrelated case may or may not have experienced in attempting to effect service on Dr. Wiley. Plaintiff’s exhibits have no bearing on *this* Complaint or on *these* Defendants, and are, thus, superfluous and irrelevant.

In the event the Court is inclined to take into consideration Plaintiff’s Response exhibits in ruling on Defendants’ Motion to Dismiss, Defendants respectfully request additional time in which to appropriately respond to the exhibits.

CONCLUSION

There is no reasonable basis in law or fact for Plaintiff to attach these exhibits at any stage and especially in response to this Motion to Dismiss. In light of the foregoing, Defendants respectfully request the Court strike the exhibits attached to Plaintiff’s Response, and grant such other relief as the Court deems appropriate, including but not limited to attorneys’ fees incurred for the preparation and filing of this Motion.

Respectfully submitted,

s/ Shawnae E. Robey

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of March, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrant:

Brendan M. McHugh
317 S. Lynn Riggs Blvd.
Claremore, OK 74017
Attorney for Plaintiff

s/ Shawnae E. Robey
