

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

JIM SISNEY, an individual,)
)
Plaintiff,)
)
vs.)
)
INDEPENDENT SCHOOL DISTRICT)
NO. 3 OF TULSA COUNTY, a Political)
Subdivision; and the BROKEN ARROW)
SCHOOL BOARD,)
)
)
Defendants.)

Case Number: 09-CV-253-TCK-PJC

PLAINTIFF’S REPLY TO DEFENDANT’S RESPONSE IN OPPOSITION TO
APPLICATION FOR ORDER OF
DISMISSAL WITHOUT PREJUDICE TO REILING

COMES NOW the Plaintiff, by and through its Attorneys of record, Gary L. Richardson, Charles L. Richardson and David R. Keesling of Richardson Richardson Boudreaux, and hereby Replies to Defendant’s Response in Opposition to Application for Order of Dismissal Without Prejudice to Refiling (“the Application”). The following is submitted in support of this Reply:

1. Although the terms are not understood by Defendant, through “discovery” and “case development”, Counsel has determined the instant Application is necessary in the interests of justice.
2. This Application for Order of Dismissal Without Prejudice under the rule governing voluntary dismissal by order of the Court rests in the sound discretion of the Court. Fed.Rules Civ.Proc. Rule 41(a) (2), 28 U.S.C.A.
3. Under Federal Rule of Civil Procedure 41(a)(2), the critical issue for the Court to consider is whether the Defendant would suffer legal prejudice from voluntary

dismissal. *Ohlander v. Larson*, 114 F.3d 1531, 1537 (10th Cir.1997). To determine whether dismissal would be prejudicial, the Court considers the Defendants' efforts and expense of trial preparation, excessive delay and lack of diligence on the Plaintiff's part, sufficiency of Plaintiff's explanation of the need for dismissal, and the present stage of the litigation. *See id.*

4. To allow dismissal would not delay the prompt and orderly administration of justice since this entire matter can be promptly disposed of in State Court and no substantial delay would be caused. No prejudicial consequences are shown by the Defendants and none can be reasonably enunciated with respect to this matter being disposed of in this Court at this stage. The state court action and the instant action are both in the beginning stages of discovery and no depositions have been taken in either case. To allege that the Defendant has incurred "significant" attorney's fees in the "defense of this matter" and one paragraph later state that Plaintiff has been "less than diligent in prosecuting this case" is contradictory at best. *See Defendant's Response in Opposition to Plaintiff's Application for Order of Dismissal Without Prejudice*, pg. 5.
5. Defendant's allegation that Plaintiff has acted in bad faith, vexatiously or for oppressive reasons entitling Defendant to attorney's fees and costs is ludicrous and has no basis in fact or law. *See Defendant's Response in Opposition to Plaintiff's Application for Order of Dismissal Without Prejudice*, pg. 7. Plaintiff has responded to discovery requests and provided sufficient Initial Disclosures and supplements thereto. In addition, Plaintiff attempted to curtail any further expense on Defendant's part by requesting Defendant agree to a stay on discovery pending a decision by the

Court and Defendant did *not* agree to the request.

6. Therefore, the Court, in its discretion, and in order to insure substantial justice to all parties, should grant the Plaintiff's Application for Order of Dismissal Without Prejudice.

WHEREFORE, Plaintiff moves this Court for an Order of Dismissal Without Prejudice to Refiling.

Respectfully submitted,

/s/ David R. Keesling

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of November, 2009, a true and correct copy of the foregoing instrument was properly transmitted to:

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Attorneys for Defendants

/s/ David R. Keesling

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