

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

MARILYN MCCLAIN GOFF,)

Plaintiff,)

v.)

Case No. 4:08-CV-71-TCK-FHM

SHEREE L. HUKILL, individually and)

DR. JOE A. WILEY, individually and)

ROGERS STATE UNIVERSITY)

BOARD OF REGENTS,)

Defendants.)

ORDER

Before the Court is Defendant’s Motion to Strike brought pursuant to Fed.R.Civ. P. 12(f) (Doc. 16), wherein Defendant seeks to strike Exhibits 1 and 2 to Plaintiff’s Response and Objection (Doc. 14) to Defendants’ Motion to Dismiss (Doc. 13). For the reasons stated below, the Court GRANTS Defendants’ Motion to Strike.

Defendants filed their Motion to Dismiss on February 21, 2008, alleging as one reason for dismissal that Plaintiff’s service upon Defendants was improper. In her Response brief, Plaintiff asserted that service was properly obtained as to all Defendants. Plaintiff attached as “Exhibit 1” to her Response and Objection a “Memorandum” of a process server who attempted to serve Defendant Wylie in an earlier, unrelated case. Plaintiff’s “Exhibit 2” consists of two return of service forms from September 2004 by a different process server on Defendant Wiley and another person not named as a defendant in this case, which are dated September 9, 2004.

Defendants contend Plaintiff’s Exhibits 1 and 2 are unrelated to this case, are extraneous to Plaintiff’s Amended Complaint, and should be stricken. Plaintiff responds that those two exhibits

“demonstrate the difficulties in obtaining service in the past and thus are pertinent.” (Pl.’s Resp. 2.) Plaintiff relies on an Oklahoma Supreme Court case as requiring the Court to consider the “totality of the circumstances” in determining whether service upon Defendants in this case was proper.¹ However, Plaintiff’s Exhibits 1 and 2 are not part of the “totality of circumstances” of Plaintiff’s attempts to serve Defendants in this action. Those previous attempts of service on Defendant Wylie in unrelated cases occurring several years before this action have no relevance to whether Plaintiff properly served Defendants.

The Court may strike any “impertinent” matter pursuant to Fed. R. Civ. P. 12(f). The Court finds that Plaintiff’s Exhibits 1 and 2 are “impertinent” as they are “neither responsive nor relevant to the issues involved in the action.” *Fantasy, Inc. v. Fogarty*, 984 F.2d 1524, 1527 (9th Cir. 1993). A motion to strike may be granted if “it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation.” *Wilkerson v. Butler*, 229 F.R.D. 166, 170 (E.D. Cal. 2005). From its review of Plaintiff’s Exhibits 1 and 2 to her Response to Defendant’s Motion to Dismiss, the Court concludes those Exhibits are impertinent and lack any relevance to the issues between these parties in this action.

¹In *Shamblin v. Beasley*, 967 P.2d 1200 (Okla. 1998), the Oklahoma Supreme Court stated that “[i]t is the totality of circumstances - not the particular norms of statutory requirements - that dictate the quality of service necessary to safeguard an individual’s property interest at stake.” *Id.* at 1210. In that decision, however, the Court applied the “totality-of-circumstances test” to the facts involving only the parties in the action. The Court did not extend that “test” to consider facts from previous, unrelated actions.

It is therefore the ORDER of the Court that Defendants' Motion to Strike (Doc. 16) is **GRANTED**. Exhibits 1 and 2 to Plaintiff's Response and Objection, Doc. 14, are stricken, and the Clerk is directed to remove Exhibits 1 and 2 from the Court's database.

ORDERED this 23rd day of April, 2008.

A handwritten signature in black ink, appearing to read "Terence Kern", written in a cursive style.

TERENCE KERN
UNITED STATES DISTRICT JUDGE