

FILED
SUPREME COURT
STATE OF OKLAHOMA

APR 29 2015

MICHAEL S. RICHIE
CLERK

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

MARY FALLIN, in her official capacity as)
GOVERNOR OF THE STATE OF)
OKLAHOMA)

Petitioner,)

v.)

THE HONORABLE G. PATRICIA)
PARRISH, Judge of the District Court,)
Oklahoma County, State of Oklahoma)

Respondent.)

) Supreme Ct. Case No. _____
) Oklahoma County Case No. CV-14-2372
)

#113884

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

APR 29 2015

TIM RHODES
COURT CLERK

APPLICATION TO ASSUME ORIGINAL JURISDICTION
AND PETITION FOR WRIT OF PROHIBITION

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Applicant and Petitioner ("Petitioner") Mary Fallin, in her official capacity as Governor of the State of Oklahoma ("Governor"), pursuant to Part VI of the Rules of the Supreme Court, presents her Application to Assume Original Jurisdiction and Petition for Writ of Prohibition, prohibiting the Honorable Patricia G. Parrish, Judge of the District Court, Oklahoma County, State of Oklahoma, from proceeding in an Open Records Act case, Case No. CV-14-2372, styled *Ziva Branstetter and BH Media Group, Inc., d/b/a Tulsa World, Plaintiffs v. Mary Fallin, in her official capacity as Governor of the State of Oklahoma; Michael C. Thompson, in his official capacity as Commissioner of the Oklahoma Department of Public Safety, Defendants*, ("Oklahoma County Case") and directing the District Court to enter an order dismissing the action in the Oklahoma County Case. The District Court lacks jurisdiction to proceed in the Oklahoma County Case. The Petition for Relief filed in the District Court did not present a

justiciable controversy, because the Petition for Relief itself alleged that statutory prerequisites for an action under the Open Records Act have not been met.

1. Reasons why this action is brought in the Supreme Court and why original jurisdiction should be assumed.

Only this Court has the authority to issue to issue a writ of prohibition to prevent enforcement of a District Court's order and to prohibit a District Court from proceeding in the absence of authority or jurisdiction. Original jurisdiction should be granted because controversies under the Open Records Act are *publici juris*, because the controversy at issue in the case at bar is subject to repetition, and because judicial economy will be served by addressing the issue now. *Shadid v. Hammond*, 2013 OK 103, ¶ 4, 315 P.3d 1008, 1009 (Edmondson, J., concurring in part, dissenting in part). Further, original jurisdiction should be granted because the District Court has sought to exercise jurisdiction when no justiciable controversy was presented because the prerequisites for invoking district court jurisdiction have not been met. The District Court denied a motion to dismiss filed below by the Petitioner, even though the Respondents Ziva Branstetter ("Branstetter") and BH Media Group, Inc. d/b/a/ Tulsa World ("World") specifically alleged in their Petition in the Oklahoma County Case that the Petitioner had not advised Branstetter and World that Petitioner was denying access to open records, instead alleging that Petitioner had advised that open records which are not subject to privilege will be made available. Okla. Stat., tit. 51, § 24A.17 specifies that "Any person denied access to records of a public body or public official...May bring a civil suit for declarative or injunctive relief, or both, but such civil suit shall be limited to records requested and denied prior to filing of the civil suit." Civil suit may only be filed when records are requested and denied prior to filing of the civil suit and, in the Oklahoma County Case, the pre-requisite of denial has not been met.

2. Nature of the remedy or relief sought.

Petitioner seeks a writ of prohibition prohibiting the District Court from proceeding in the Oklahoma County Case.

3. Facts entitling Petitioners to remedy or relief sought.

On December 22, 2014, Branstetter and World filed an action alleging that the Petitioner had violated the Open Records Act, 51 O.S. § 24A.1 et seq. In the Petition itself, Branstetter and World affirmatively stated that Petitioner had acknowledged receipt of the open records request and had advised that Petitioner plans to provide those documents which are not privileged. Plaintiffs concede that the Governor's office has promised to produce the requested documents after reviewing them and possibly redacting them for privilege.

On February 9, 2015, Petitioner filed a Motion to Dismiss the Oklahoma County Case, due to the lack of jurisdiction of the District Court of Oklahoma County to proceed in the absence of a denial of access to the open records sought by Branstetter and World. On April 10, 2015, the District Court denied the Motions to Dismiss filed by Petitioners.

4. Necessity for a stay.

It is necessary that a stay be entered pending the resolution of this Petition to Assume Original Jurisdiction and Application for Writ of Prohibition/Mandamus. The Petitioner has a high likelihood of success in her Petition, based upon the District Court's exercise of jurisdiction in the absence of a jurisdictional prerequisite, and the Petitioner, Branstetter, the World, and the public will be harmed if there is not a stay of discovery in the Oklahoma County Case, because members of the Governor's staff will be diverted from both their essential functions and the process of preparing the records for disclosure by depositions and responding to discovery requests. Such diversion will only cause the delay to increase.

The Petitioner sought a stay in the District Court; however, the District Court declined to enter a stay until the resolution of this action, instead entering a stay only until May 28, 2015.

WHEREFORE, Petitioner prays that this Honorable Court assume original jurisdiction and enter a writ of prohibition, prohibiting District from proceeding in Oklahoma County Case, Case No. CV-14-2372, styled *Ziva Branstetter and BH Media Group, Inc., d/b/a Tulsa World, Plaintiffs v. Mary Fallin, in her official capacity as Governor of the State of Oklahoma; Michael C. Thompson, in his official capacity as Commissioner of the Oklahoma Department of Public Safety, Defendants*. Petitioner further prays that this Court enter a stay of discovery pending the resolution of this Petition and Application.

Respectfully submitted,



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