



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

DEC 21 2018

RICK WARREN
COURT CLERK

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OKLAHOMA EDUCATIONAL TELEVISION)
AUTHORITY FOUNDATION, INC.,)

Plaintiff,)

v.)

Case No.: CJ-2018-6717

OKLAHOMA EDUCATIONAL TELEVISION)
AUTHORITY,)

Defendant.)

**DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S PETITION
FOR DECLARATORY JUDGMENT**

Defendant Oklahoma Educational Television Authority ("OETA") moves the Court for an order dismissing Plaintiff Oklahoma Educational Television Authority Foundation's ("Foundation") Petition for failure to state a claim.

INTRODUCTION

The pleading filed by the Foundation does not contain a short and plain statement of the claim showing it is entitled to relief as required by 12 O.S. § 2008 A.

Although Oklahoma's pleading standard is liberal, a petition must include a claim which allows for relief. In its Petition the Foundation is audaciously requesting the right to monitor and approve the administrative and operational prerogatives granted to OETA and its Board of Directors by state and federal law prior to the Foundation's execution of the only task assigned OETA's chosen charitable auxiliary by the Oklahoma Legislature: to receive, invest and expend funds in support of OETA. There is no legal basis included in the Petition which establishes a claim of any kind, much less a claim that would envision expanding an institutionally-related foundation's role to include knowledge and approval of administrative and operational functions

as a precursor to performance of their legal and tax-exempt purpose as included in their Articles of Incorporation. Rather than making a legal claim of any sort the allegations contained in the Foundation's Petition are simply one-sided assertions which are at best, a misunderstanding or at worst, maliciously manipulated to damage the reputation of a well-respected organization with a long history of service to all Oklahomans.

Currently, OETA and the Foundation are operating under an agreement entered into in 1992 (the "Agreement"). The Agreement establishes the intent of the parties and lays out their respective obligations and responsibilities. Without its inclusion in the Foundation's Petition the Court has only allegations and does not have sufficient facts to make a determination regarding the contractual relationship the Foundation is asking the Court to address. Generally, OETA—being a longtime Public Broadcasting Service (PBS) member station and holder of appropriate licenses from the Federal Communications Commission (FCC)—is responsible for programming and broadcasting and the Foundation, as OETA's current chosen charitable auxiliary, is responsible for receiving, investing and expending non-state appropriated funds in support of OETA. Unfortunately, the Foundation is attempting a coup to expand their role to unauthorized and duplicative content production and distribution far beyond their fundraising mission. However, because the Agreement does not grant the Foundation any authority over OETA's content, the Foundation has chosen to craft a fictitious legal argument designed to deceive this Court into granting it authority not envisioned by the Oklahoma Legislature when it extended authorization for OETA to cooperate with a charitable organization to raise private support or by the Foundation's own Incorporators when they established it exclusively for OETA's benefit as a fundraising auxiliary.

Accordingly, this Court does not have jurisdiction over the Foundation's declaratory judgement claim because: (a) the Petition does not state a claim for which relief can be granted; (b) there is no actual controversy; and (c) if the Court were to find an actual controversy the relief requested by the Foundation would not terminate the controversy.

AUTHORITIES AND ARGUMENTS

The Foundation's frivolous and malicious claims lack a cognizable legal theory and is designed to damage OETA's reputation and public support.

A dismissal is appropriate when the claim lacks "any cognizable legal theory to support the claim or for insufficient facts under a cognizable legal theory" *Gens v. Casady School*, 177 P .3d 565, 569 (Okla. 2008) (emphasis added).

The Foundation's Petition lays out multiple allegations, supported by one-sided descriptions, related to the administration and operations of OETA. It is telling that although the Petition included fifty-two (52) exhibits, conspicuously absent is the Agreement, which is the only legal document governing the relationship between the parties. The Petition does not state a legal theory which supports the relief requested by the Foundation. The Foundation was created to receive, invest and expend non-appropriated state funds, and it is in no way entitled it to base performance of its duties upon receipt of information related to the management and operation of OETA.

The Prayer for relief exemplifies the Petition's failure to state as claim. In a pertinent section, the Prayer states as follows:

The Foundation seeks a declaratory judgment, "that the Foundation may consider all facts, including but not limited to the facts alleged in this Petition, in determining the amount and timing of distributions to be made by the Foundation by OETA, or by the Foundation for the benefit of OETA."

There is no legal authority which would grant the Foundation, with its limited supporting role, to expand its function to include directing or unduly influencing the operations of OETA in order to fulfill its legal obligation to provide financial support to OETA.

To reiterate: the Foundation does not include the only legal document between the parties which outlines the respective obligations of the parties. Without the Agreement, the Court is without sufficient facts or the knowledge of the intent or obligations of the respective parties necessary to support a cognizable legal claim.

For over thirty (30) years the parties to the Agreement have worked well together. Unfortunately, shortly after the arrival of the current Foundation Chief Executive Officer almost five years ago it became clear the Agreement did not provide the necessary structure to guide the parties and clearly delineate specific roles and prerogatives. OETA has reached out and met with the Foundation numerous times to try and negotiate a new agreement that would address the difficulties which have arisen. However, the Foundation has not entered into good faith discussions to draft a new agreement. Instead, the Foundation took unprovoked legal action in an attempt to posit its position and telegraph its desire for unprecedented programming access, operational control, and content creation in any new agreement with OETA.

If the parties are at an impasse regarding the negotiation of a new memorandum of understanding, the remedy is termination by either party pursuant to the terms of the Agreement.

The Court lacks jurisdiction over the Foundation's request for declaratory judgment. The purpose of a declaratory judgment is to declare rights. *Hyman-Michaels Co. v. Hampton*, 471 P.2d 463, 465 (citing 26 C.J.S. Declaratory Judgments § 1). Although there is a disagreement between OETA and the Foundation, the facts set forth in the Petition do not set forth the legal

dispute which necessitates a declaration of rights by this Court. Oklahoma's declaratory judgement statute provides, in pertinent part:

District courts may, in cases of actual controversy, determine rights, status, or other legal relations, including but not limited to a determination of the construction or validity of any foreign judgment or decree, deed, contract, trust, or other instrument or agreement or any statute, municipal ordinance, or other governmental regulation, whether or not other relief is or could be claimed..."

12 O.S. § 1651 (emphasis added).

Notwithstanding the Foundation's creative attempts to frame this as a legal dispute it is not. Factually, OETA is not satisfied and cannot responsibly tolerate the Foundation's overreaching and detrimental activities which include but are not limited to: unauthorized generation and distribution of content in violation of the Agreement; failed staff leadership and behavior including attacks on OETA personnel and Directors; ineffective oversight from the Foundation's sitting Board of Trustees; and the utter failure of the Foundation to negotiate a modernized operating Agreement with OETA despite OETA's good faith efforts over an extended period of time.

Accordingly, there are two methods available to remedy this impasse and neither require this Court to make a legal determination. The parties may either negotiate a new agreement or terminate the agreement by providing written notice of termination as provided in Provision 12 of the Agreement.

Granting the Foundation's relief would exacerbate, rather than resolve, the dispute between the Foundation and OETA.

12 O.S. § 1651 provides "...a court may refuse to make a determination where the judgment, if rendered, would not terminate the controversy, or some part thereof giving rise to the proceeding."

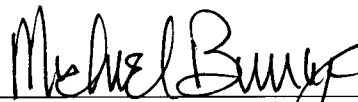
Whether the parties negotiate a new agreement or terminate the existing Agreement, granting the Foundation's request to interfere in administration and operational details before

deciding if, when, or how to distribute funds to OETA would exacerbate rather than resolve the dispute. It is unheard of for an institutionally-related foundation, established to support its benefitting institution's mission, to interfere in or unduly influence the operating and managerial affairs of the institution before providing support. In the case of OETA and the Foundation historically, prior to the harmful approach taken by the Foundation's current leadership, an annual budget support request was submitted to the Foundation by OETA and funding was provided to OETA by the Foundation as required by the approved budget. Taking advantage of its chaotic and unprecedented governing Board resignations in 2018 the Foundation has failed to uphold this crucial precedent and meet the commitment of budgetary support to OETA it has made each year, most recently in July of 2018.

CONCLUSION

For the reasons set forth above, Defendant OETA respectfully requests the Court dismiss Plaintiff Foundation's claim for declaratory judgment and for such further relief the Court deems proper.

Respectfully submitted,



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CERTIFICATE OF MAILING

This is to certify that on this 21st day of December, 2018, a true and correct copy of the above and foregoing was sent via certified mail to the following counsel of record:

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