



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

LESSIE BENNINGFIELD RANDLE,)
Tulsa Race Massacre Survivor, et al.,)
)
Plaintiffs,)
)
v.)
)
CITY OF TULSA, a municipal corporation, et al.,)
)
Defendants.)

Case No. CV-2020-1179
Judge Caroline Wall

DISTRICT COURT
FILED

NOV 29 2021

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

**DEFENDANT CITY OF TULSA AND TMAPC'S
RESPONSE TO PLAINTIFFS' SUPPLEMENTAL AUTHORITY**

On November 10, 2021, Plaintiffs filed a Notice of Supplemental Authority advising the Court that on November 9, 2021, the Oklahoma Supreme Court issued its decision in *State of Oklahoma v. Johnson and Johnson, et al*, 2021 OK 54 (hereinafter referred to as the "J&J Decision"). In their Notice, the Plaintiffs also request that this Court "enter a briefing schedule for the parties to fully brief the J&J Decision and schedule a hearing on the matter."

While the City and TMAPC do not agree with the Plaintiffs' interpretation of the applicability of the J&J Decision to the allegations in the case presently before this Court the City and TMAPC do not believe a full briefing schedule and hearing are necessary. The Supreme Court's opinion in the J&J decision is very clear in its pronouncement that "the Court has allowed public nuisance claims to address discrete, localized problems, not policy problems." *Id.* at ¶39. In reversing the District Court in the J&J Decision, the Oklahoma Supreme Court made clear that "the district court's expansion of public nuisance law allows courts to manage public policy matters that should be dealt with by the legislative and executive branches; the branches that are more capable than courts to balance the

competing interests at play in societal problems.” *Id.* The Oklahoma Supreme Court’s reasoning in the J&J Decision for not holding manufacturers perpetually liable for its products is applicable to the case presently before this Court as governmental entities should not be liable for the actions of others more 100 years later as the Plaintiffs claim the public nuisance created is the societal issue of “racial disparities” and “economic inequalities”. [Amended Complaint, paragraph 1] The Court in the J&J Decision further held that the district court “creating and funding government programs designed to address social and health issues goes too far” which is exactly what the Plaintiffs in the present case have asked this Court to award. *Id.* at ¶39 .

Further briefing and argument are also not necessary as Plaintiffs suggest on the issue of whether public nuisance is a tort within the meaning of the Oklahoma Governmental Tort Claims Act (GTCA) as this issue was not addressed in the J&J Decision. In the J&J case, the governmental entity was the Plaintiff, not the entity being sued therefore, the GTCA was not implicated. Plaintiffs claim the language of the J&J Decision regarding whether public nuisance is a tort under the common law has applicability under the GTCA but, as has already been briefed and argued by the parties, that is not the case. The legislature has defined what is a “tort” for purposes of the GTCA. The analysis before this Court is not what is a tort under the common law, but rather, what the legislature has defined as a tort for purposes of the statute’s applicability. As such, additional briefing on common law torts would have no bearing on the issues before this Court in this matter.

The Court’s language and its opinion in the J&J Decision is clear and unequivocal and the City and TMPAC do not believe it requires further briefing or oral argument. However, should this Court grant the Plaintiffs’ request for additional briefing, the City and TMAPC

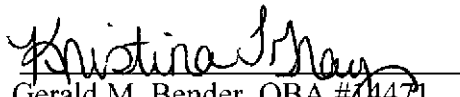
request that any briefing schedule set a date for the Plaintiffs' to submit their briefs first and then a deadline for any additional responsive briefing by the Defendants be set for a subsequent date.

Respectfully submitted,

CITY OF TULSA, OKLAHOMA
A municipal corporation

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CERTIFICATE OF SERVICE

I, Kristina L. Gray, hereby certify that on the 29th day of November, 2021, I mailed a true and correct copy of the above and foregoing document with proper postage thereon applied, to:

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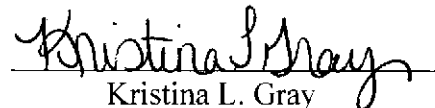
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