

SUPREME COURT OF OKLAHOMA

Greenwood Centre, Ltd.; John Hope Franklin Center for Reconciliation, Inc.; Shannon Martin; and Bim Stephen Bruner v. Rebecca Brett Nightingale

Greenwood Centre, Ltd. v. Nightingale, 2020 OK 59 · No. 118860 · Decided June 23, 2020

SUMMARY

The Oklahoma Supreme Court denied petitioners' application to assume original jurisdiction and their requested writ of mandamus concerning social-distancing requirements for a presidential campaign rally at Tulsa's BOK Center. The court concluded that petitioners lacked a clear legal right to relief because the applicable state and local guidance was permissive and discretionary rather than mandatory. Separate concurring writings addressed the discretionary nature of the applicable guidance and the court's role in applying, rather than creating, legal requirements.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Chief Justice Gurich; Vice Chief Justice Darby; Justice Kauger; Justice Winchester; Justice Edmondson; Justice Colbert; Justice Combs; Justice Kane; Justice Rowe
JURISDICTION	Oklahoma
DECIDED	June 23, 2020
DOCKET	118860
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petitioners applied for the Oklahoma Supreme Court to assume original jurisdiction and issue a writ of mandamus and injunctive relief concerning social-distancing requirements for a proposed presidential campaign rally at the BOK Center in Tulsa.
STANDARD OF REVIEW	To obtain mandamus relief, petitioners must establish, among other elements, a clear legal right to the relief sought. The concurrence also stated that a temporary injunction requires a likelihood of success on the merits as the first of four criteria.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court decision; the per curiam order states the mandamus disposition, while separate concurrences provide

additional reasoning.

PARTIES

Greenwood Centre, Ltd., John Hope Franklin Center for Reconciliation, Inc., Shannon Martin, Bim Stephen Bruner v. Rebecca Brett Nightingale, Judge of the District Court in and for Tulsa County

TOPICS

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QUESTIONS PRESENTED

1. Whether the Oklahoma Supreme Court should assume original jurisdiction over petitioners' application for extraordinary relief.
2. Whether petitioners established a clear legal right to a writ of mandamus requiring social-distancing protocols for the proposed rally.
3. Whether petitioners demonstrated a likelihood of success on the merits sufficient to support temporary injunctive relief.

HOLDINGS

1. The Court denied petitioners' application to assume original jurisdiction because petitioners failed to establish a clear legal right to the requested relief.

KEY QUOTATIONS

"Petitioners cannot establish the necessary elements for a writ of mandamus, specifically that Petitioners possess a clear legal right to the relief they seek." (order)

"The OURS Plan is permissive, suggestive and discretionary." (Combs, J. concurring, ¶ 1)

FACTUAL BACKGROUND

Petitioners sought to prevent or restrict a June 20, 2020 presidential campaign rally at the BOK Center unless social-distancing protocols were implemented. Oklahoma's Open Up and Recover Safely Plan stated that entertainment venues had discretion to determine whether and when to apply social-distancing measures. The Governor's and Tulsa Mayor's executive orders presented to the Court did not impose a mandatory social-distancing requirement for the event.

PROCEDURAL HISTORY

The petition was presented directly to the Oklahoma Supreme Court. The Court denied the application to assume original jurisdiction because petitioners could not establish a clear legal right to the requested mandamus relief.

A concurring writing explained that the applicable executive orders and the Open Up and Recover Safely Plan made social-distancing measures discretionary rather than mandatory.

DISPOSITION

writ_denied

CASES CITED

- Chandler U.S.A., Inc. v. Tyree, 2004 OK 16, ¶¶ 24-25, 87 P.3d 598, 604-05
- State ex rel. York v. Turpen, 1984 OK 26, ¶ 4, 681 P.2d 763, 766-67
- Zeier v. Zimmer, Inc., 2006 OK 98, ¶ 12, 152 P.3d 861, 866-67

OPINION

PER CURIAM.

GREENWOOD CENTRE, LTD v. NIGHTINGALE Skip to Main Content Accessibility Statement Help Contact Us e-payments Careers Home Courts Decisions Programs News Legal Research Court Records Quick Links OSCN Found Document:GREENWOOD CENTRE, LTD v. NIGHTINGALE Previous Case Top Of Index This Point in Index Citationize Next Case Print Only GREENWOOD CENTRE, LTD v. NIGHTINGALE2020 OK 59Case Number: 118860Decided: 06/23/2020THE SUPREME COURT OF THE STATE OF OKLAHOMA Cite as: 2020 OK 59, __ P.3d __ GREENWOOD CENTRE, LTD., an Oklahoma limited partnership; JOHN HOPE FRANKLIN CENTER FOR RECONCILIATION, INC., a non-profit corporation; SHANNON MARTIN, an individual; and BIM STEPHEN BRUNER, an individual, Petitioners, v. REBECCA BRETT NIGHTINGALE, Judge of the District Court in and for Tulsa County, Respondent.

CORRECTED ORDER Petitioners Greenwood Centre Ltd., John Hope Franklin Center for Reconciliation, Inc., Shannon Martin, and Bim Stephen Bruner's application to assume original jurisdiction is denied. Okla. Const. art. VII, § 4. Petitioners cannot establish the necessary elements for a writ of mandamus, specifically that Petitioners possess a clear legal right to the relief they seek.

Chandler U.S.A., Inc. v. Tyree, 2004 OK 16, ¶¶ 24-25, 87 P.3d 598, 604-05. DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 19th DAY OF JUNE, 2020. /s/CHIEF JUSTICE Gurich C.J., Darby, V.C.J., Kauger, Winchester, Edmondson, Colbert, Combs (by separate writing), Kane and Rowe (by separate writing), JJ., concur. COMBS, J., with whom, Kauger, J., joins, concurring ¶1 I concur in this order for the following reasons.

Oklahoma Governor Stitt's executive order no. 2020-20, filed June 12, 2020, paragraph 15 provides: All businesses should adhere to the statewide Open Up and Recover Safely (OURS) Plan

as provided on the Oklahoma Department of Commerce website. (emphasis added) The OURS Plan on the Oklahoma Department of Commerce's website has a specific provision for entertainment venues.¹ It notes, entertainment venues, such as the BOK Center, reopened on May 1, 2020.

It also provides the following social distancing guidelines: Social Distancing Guidelines It is at the discretion of business owners or local officials to determine when and if social distancing measures should be applied. Business owners and event organizers should use their best judgment taking into account factors such as location and size of venue when determining the appropriate levels of social distancing and group size. (emphasis added).

The Petitioners included in their appendix the Tulsa Mayor's executive order no. 2020-10, signed June 8, 2020. This executive order provides: 2. Special Event Permits may be issued to organizers following CDC and OURS Plan guidelines for social distancing and sanitation guidelines effective June 1, 2020. 3. All businesses within the City of Tulsa, including bars, shall follow the guidance in the Governor of the State of Oklahoma's OURS Plan. (emphasis added).

There is no indication that the BOK Center needed to apply or applied for a special event permit for the subject event. There is no other local official executive order presented to this Court which provides restrictions on social distancing.

Therefore, the only social distancing requirement is to follow the OURS Plan. In the context of an entertainment venue, the OURS Plan only requires a business owner to use discretion and its best judgment. The OURS Plan is permissive, suggestive and discretionary.

Therefore, for a lack of any mandatory language in the OURS Plan, we are compelled to deny the relief requested. FOOTNOTES 1 This information can be found at <https://www.okcommerce.gov/wp-content/uploads/Entertainment-and-Sporting-Venue-Guidance.pdf>. Rowe, J. concurring: ¶1 Petitioners ask this Court to enjoin Real Parties in Interest, SMG and ASM Global Parent, Inc., which manage the BOK Center, from permitting President Trump's campaign to host a rally at the venue in Tulsa, Oklahoma, on June 20, 2020, unless the campaign institutes social distancing protocols.

Nearly three weeks ago, on June 1, 2020, Oklahoma entered into Phase 3 of the Open Up and Recover Safely (OURS) Plan. In Phase 3 of the plan, business owners or local officials became vested with the discretion to determine when and if social distancing measures should be applied.

Thus, social distancing measures as of the date of the President's rally are not mandatory in Oklahoma as Petitioners claim. ¶2 Governor Stitt and Mayor Bynum have indicated that the proposed presidential rally will be operated consistent with the guidance contained in the OURS plan. Neither the governor nor the mayor have sought to reinstate, by executive order, social

distancing measures in anticipation of the President's rally. ¶3 It is not the duty of this Court to fashion rules or regulations where none exist, simply to achieve a desired outcome.

Okla. Const. art. 4, § 1 ("[T]he Legislative, Executive, and Judicial departments shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others."); State ex rel. York v. Turpen, 1984 OK 26, ¶4, 681 P.2d 763, 766-67. Rather, it is our duty to apply the law as written. Zeier v. Zimmer, Inc., 2006 OK 98, ¶ 12, 152 P.3d 861, 866-67 ("[J]ust as it is the responsibility of the Legislature to make law and the Executive to carry those laws into effect, it is for the judiciary to interpret the same..."). ¶4 Based on the foregoing, Petitioners have not shown a likelihood of success on the merits, which is the first of four requirements in order for a temporary injunction to issue.

12 O.S. § 1382. As such, we need not address the three remaining criteria. ¶5 Accordingly, I concur in the Court's decision to deny the Petition for Writ of Mandamus and to allow the President's rally to proceed as planned. Citationizer© Summary of Documents Citing This Document Cite Name Level None Found. Citationizer: Table of Authority Cite Name Level Oklahoma Supreme Court Cases CiteNameLevel 2004 OK 16, 87 P.3d 598, CHANDLER (U.S.A.), INC. v. TYREEDiscussed 2006 OK 98, 152 P.3d 861, ZEIER v. ZIMMER, INC.Discussed 1984 OK 26, 681 P.2d 763, 55 OBJ 1013, State ex rel.

York v. TurpenDiscussed Title 12. Civil Procedure CiteNameLevel 12 Ohio St. 1382, Cause for Temporary InjunctionCited oscn EMAIL: webmaster@oscn.net Oklahoma Judicial Center 2100 N Lincoln Blvd. Oklahoma City, OK 73105 courts Supreme Court of Oklahoma Court of Criminal Appeals Court of Civil Appeals District Courts decisions New Decisions Supreme Court of Oklahoma Court of Criminal Appeals Court of Civil Appeals programs The Sovereignty Symposium Alternative Dispute Resolution Early Settlement Mediation Children's Court Improvement Program (CIP) Judicial Nominating Commission Certified Courtroom Interpreters Certified Shorthand Reporters Accessibility ADA Contact Us Careers Accessibility ADA