

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

JACKIE EUGENE ELLISON, a/k/a GENE)
ELLISON, individually and as Trustee of the)
Equivalent Exemption Trust Created Pursuant to)
Article V, VII, and VIII of the Last Will and)
Testament of Glen G. Ellison, Deceased;)
MARCIA ELLISON, an individual; RICHARD)
M. HEALY, P.C., an Oklahoma Professional)
Corporation; JAYNE JARNIGAN)
ROBERTSON, P.C., an Oklahoma)
Professional Corporation; and MICHAEL J.)
BLASCHKE, P.C., an Oklahoma Professional)
Corporation,)

Plaintiffs/Appellees,)

No. 108,468

v.)

MICHAEL D. CAMPBELL, an individual and)
M. D. CAMPBELL and ASSOCIATES, L.P. a)
Texas Limited Partnership,)

Defendants/Appellants.)

PETITION FOR RE-HEARING

by

Defendants/Appellants

ELLISON v. CAMPBELL

2014 OK 15

Case Number: [108,468](#)

District Court Case No. CJ-2007-6256

Decided: 03/11/2014

ON THE CERTIORARI TO THE COURT OF CIVIL APPEALS, DIVISION IV

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The Honorable Justice J. Watt presented the prevailing view of the alleged “unique” facts of the case in rendering the Court’s opinion. See Reference indicated below: ⁽⁷⁾ Their view centered around 1) whether Mr. Campbell’s report was defensible, 2) whether Mr. Campbell’s deposition performance was substandard, and most important 3) whether Mr. Campbell quit the case. In presentations by Plaintiff’s attorneys to the Court, they have grossly exaggerated and then taken Mr. Campbell’s testimony out of context in deposition and court documents, ignored other testimony, and emphasized unsubstantiated personal recollections of past conversations to emphasize their claims.

I.

None of the errors in Campbell’s report rose in importance to a level that impacted or eroded Mr. Campbell’s opinions. See Reference indicated below: ⁽¹⁾ Minor incidents of typographical errors in the text, and an error in Figure 21 and Table 1 are present in Mr. Campbell’s report dated September 4, 2006 illustrating the dioxins/furans concentrations in groundwater and surface-water samples of the subject properties.⁽⁵⁾ A correction would not change the order of magnitude of the reported concentrations; hence, the figure and table would have been defensible, especially since the Defendant’s experts of the

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² Ellison v. FPC Disposal, Inc., *et al.*, District Court, Canadian County, OK, Case #: C-J-99-151-01

³ Alexander Consulting, Inc. Corporate Website: <http://aci-us.com/>, particularly <http://aci-us.com/Pages/Services.html>

⁴ Campbell, M. D., 2006, Rebuttal Report of Michael D. Campbell, P.G., P.H. [of 10 Expert Witness Reports regarding the Ellison vs FPC Disposal Matters, dated October 24, 2006 <http://www.mdcampbell.com/CampbellRebuttal102506.pdf>

⁵ Campbell, M. D., 2006, “Expert Report: Gene Ellison Property and Vicinity, near El Reno, Oklahoma,” September 4, <http://www.mdcampbell.com/OKExpertReport090406.pdf>

⁶ Campbell Appeal, Appellant Opening Brief, 2011, <http://www.mdcampbell.com/CampbellAPPEALAppellantOpeningBrief.pdf>

⁷ Certiorari to the Court of Civil Appeals, Division IV, 2014, <http://www.oscn.net/applications/oscn/deliverdocument.asp?citeid=472727#d2ft2>

⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

underlying case had not produced their final expert report until the day before the Campbell deposition.^(2 and 6)

Mr. Campbell assumed that his investigations were still ongoing and that he was to be given the opportunity to review the Defendant's expert report on the dioxins/furans and on other matters and make any indicated changes to his report, as stated in his report.^(5, page 54) Any additional discussions regarding the new data or any typographical or other errors discovered were to be addressed after the deposition. At the end of the deposition transcript, it clearly confirms that the deposition had not been concluded and a continuing deposition would have been required to address Mr. Campbell's final report.

By withdrawing (or firing) Mr. Campbell, Ms. Robertson interfered with and abandoned the underlying case by not permitting Mr. Campbell to complete his investigation and associated report. A continued deposition would have also allowed Ms. Robertson to rehabilitate Mr. Campbell's testimony, where needed, but this never happened because she first physically abandoned Mr. Campbell during the deposition and second withdrew Mr. Campbell from the case after his deposition in December, 2006.

Plaintiff's claimed in the current case that Mr. Campbell testified that Monitoring Well 1B construction would not meet state of federal regulation. This claim is also an exaggeration. He did testify that the Monitoring Well 1B was not constructed according

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to the primary regulation requiring cement grout to be installed in the annular space to prohibit shallow groundwater from migrating downward to contaminate the deeper groundwater sampled by Monitoring Well 1B. However, he also testified that it was constructed according to an alternative method using equally acceptable material, if not better but more expensive than cement, to form a bentonite grout seal. The seal consists of hydrated bentonite mixed at the surface with sand (marked as “alluvial sluff” in the well log by Dr. Tom Alexander, of Alexander Consulting, Inc.⁽³⁾).

Dr. Alexander’s group conducted most of the field work on behalf of Mr. Campbell’s group (M. D. Campbell and Associates, LP) for the underlying case in Oklahoma and managed the installation of the two Monitoring Wells. He refused to make himself available to testify in the current case because of his earlier conflict with Ms. Robertson on another case. According to Dr. Alexander, she did not conduct that case properly when she did not allow him to testify in court on another environmental matter during the 2003 to 2005 period, Mr. Campbell recalls.

Mr. Campbell contends that his report would have been defensible at the 2006 deposition if Ms. Robertson had provided the appropriate support during the deposition and later had not withdrawn Mr. Campbell from the case before the minor errors could be addressed in the report for review at the continuing deposition. His final report and associated testimony would likely have been acceptable for any Daubert hearing and

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subsequent trial. Mr. Campbell learned a few years ago that the subject Monitoring Well 1B was destroyed by Ms. Robertson and Ellison prior to the completion of the current case. Plaintiffs have therefore destroyed evidence in this matter that could have been critical for Mr. Campbell to further demonstrate that the groundwater data obtained from samples from the subject Monitoring Well 1B were nonetheless defensible and could have been useful in trial. Sampling over the previous years indicated no leakage from above, as Mr. Campbell demonstrated to the jury in the trial of 2010. Even without the data generated by sampling MW-1B, Mr. Campbell's opinions would not have changed because MW-1A, located next to MW-1B, produced reliable groundwater data.

II.

The Plaintiffs' attorney's claim that Mr. Campbell's deposition testimony was substandard is a gross exaggeration and self-serving. Although she is serving as the Plaintiff's attorney in the current case, Ms. Robertson was very upset during and after the subject deposition of the underlying case. Mr. Campbell merely indicated to her and her assistants that he could have been a better witness. This should be not taken by the Court as evidence that Campbell admitted to performing in a substandard manner, although the Plaintiff's attorneys took these comments as admissions by Mr. Campbell. Quite the contrary. He has had approximately 40 depositions over the past 20 years and continues to be sought out as an expert and consulting witness. But any respected, forthright expert

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witness would likely say the same to their attorney(s) without any repercussions. But since the attorney-expert witness relationship had been exposed in the underlying and current case, this put the expert witness in an especially vulnerable position and at risk to predatory attorneys such as Ms. Robertson.

Depositions rarely go smoothly for expert witnesses, primarily because opposing counsels are typically adept at asking difficult, compound, or heavily loaded questions. Mr. Campbell did not have an opportunity to assess his performance after the three-day deposition until seven (7) months after he was withdrawn from the case by Robertson in December, 2006. Furthermore, this unapproved Campbell deposition transcript was cited by the Plaintiffs on numerous occasions in the current case although he was never provided the opportunity to review the transcript for errors or omissions and it has never been signed by Mr. Campbell because he had been withdrawn from the case.

It was July of 2007 that Mr. Campbell learned that Ms. Robertson was bringing a suit against their own expert witness. She hired a well-known, local ex-Oklahoma City Prosecuting Attorney to handle the case for the Plaintiffs' during trial. He reportedly took on the case because Ms. Robertson had informed him that Mr. Campbell had errors and omissions insurance and that Mr. Campbell's insurance company would be good for at least a few million dollars should they prevail. During pre-trial hearings, Mr. Tolson (Mr. Campbell's attorney at the time) was asked if Mr. Campbell had such insurance to which

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he replied “No”. Mr. Tolson reported to Mr. Campbell that the attorney was very irritated and departed the meeting in haste, presumably to confront Ms. Robertson with this information. She obviously struck a new deal for fees with him, and, presumably, on the basis of sharing any income of attorney fees received and contingent upon the outcome of the approaching trial of the current case in 2010.

Mr. Campbell reviewed the deposition transcript and determined that his testimony was sound except for a few areas related to his report that could have been rehabilitated prior to a likely Daubert hearing or subsequent trial. This happened because Ms. Robertson lost confidence in her case on the basis that their only hydrogeological expert had not met her unreasonable expectations. This claim is based on her behavior before and during the subject deposition of Mr. Campbell. Based on his previous experiences as an expert witness, it was immediately apparent to Mr. Campbell that Ms. Robertson did not know how to properly prepare an expert witness for deposition or how to assist the expert to rehabilitate his testimony during the deposition. For example, when Mr. Campbell arrived in Oklahoma City prior to the deposition, she advised him to memorize the files. She did not sit down with him to go over the numerous points of importance in his testimony. In the past, previous attorneys spent days stressing Mr. Campbell with likely questions and discussing his potential responses. She apparently did not know of this procedure.

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III.

Ms. Robertson's behavior during the first day of the deposition was more like those of the opposing counsels, hostile and tense. She offered no assistance in rehabilitating any of Mr. Campbell's testimony of which she did not approve or understand, and became increasingly agitated during the day. She abandoned the deposition the second day. Mr. Campbell was told that Ms. Robertson had a near nervous breakdown concerning his testimony and could not continue to support Mr. Campbell. Her excitable condition explained her reprehensible behavior during and after the Campbell deposition, when she fired or otherwise withdrew Mr. Campbell from the case as he understood the situation at the time. Then, a few weeks later, Mr. Balaske (Ms. Robertson's assistant attorney) telephoned Mr. Campbell to discuss the case but indicated that Mr. Campbell's testimony during the deposition was of no help, which Campbell interpreted to mean that this confirmed that he had been withdrawn from the case. Therefore, Mr. Campbell did not quit the case as claimed by Mr. Balaske. Although Mr. Campbell's testimony at trial was represented to be contradictory in part on this subject, he testified clearly near the end of the trial that he understood that he had been fired or withdrawn from the case in December, 2006 and did not quit in January, 2007.

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IV.

On the Relationship of the Attorney and Expert Witness

It would seem to a layman that vindictive attorneys should be prohibited from bringing lawsuits against their own expert witness, except where criminal issues are involved, on the basis that the expert did not meet their expectations. Such lawsuits take unfair advantage of the unique relationship between the attorney and his or her expert witness by undermining and violating that relationship, even though all materials passing between them are generally subject to discovery. This bestows a certain responsibility on the attorney to evaluate in detail his expert report for errors and omissions and to appropriately prepare the expert witness for deposition and trial in sufficient time to complete all necessary preparations.

In the trial of the current case, Ms. Robertson called on an opposing attorney involved in the underlying case to testify against Mr. Campbell. He was to provide expert witness testimony to opine on Mr. Campbell's testimony, which included geological and hydrogeological matters. This is a prime example of an attorney testifying on technical subjects that he is clearly not qualified to present to the jury. This action should have been prohibited by the Court because it was clearly prejudicial, based on the fact that the underlying case has been settled, the testimony is biased (because he was part of the

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opposing side of the underlying case), and is irrelevant (because of the bias he would be expected to be opposed to Mr. Campbell's testimony in any event).

V.

Introduction of Prejudice to the Jury

An unique feature in this case is that the jury of the current case was clearly prejudiced against Mr. Campbell by the Plaintiff's trial attorney. In his closing statement, he said: "...let's send this rich expert witness back to Texas" with a favorable verdict for the Plaintiff. That characterization and others prejudiced the jury against Mr. Campbell and was grossly unfair to the Defendants.⁽⁶⁾ This also likely played a role in the jury's outrageous award to the Plaintiffs of the entire cost of Mr. Campbell's investigations since 2001.⁽⁸⁾

VI.

On the Need to Require Parallel Expert Witnesses

As indicated in the Defendant's appeal, many of the issues discussed above are clearly beyond the understanding and experience of the typical juror and hence, as in the current case, should have required an expert to testify on his or her evaluation of Mr. Campbell's testimony. Ms. Robertson was asked by Mr. Campbell in 2001 or 2002 why she engaged

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him to serve as her expert witness and not someone in Oklahoma. There were many such expert witnesses available in Oklahoma.⁽⁴⁾ She responded by stating: “All the expert witnesses in Oklahoma are a bunch of crooks”. Her arrogant attitude toward Oklahoma expert witnesses also extended to at least one in Texas as well, Mr. Campbell.

One of the central issues in the Defendant’s appeal is whether an expert witness should have been called for testifying against Mr. Campbell on subjects historically related to hydrogeology and associates matters. The Plaintiff’s called on an attorney from the opposing side of the overlying case but his testimony was incorrect and inappropriate. Almost all of the technical details that were presented by the Plaintiff’s regarding the hydrogeological aspects of the case were either misleading, out of context, or incorrect. Keeping it simple in this case by not presenting an expert witness clearly was beneficial to the Plaintiffs, especially before a jury, and clearly prejudicial to the Defendants’ case. This highlights one of the unique features of this case. Mr. Campbell’s performance in the underlying case was judged by inferences, misinterpretation of common knowledge, and by biased and inappropriate witnesses presented by the Plaintiff’s having ulterior motives in bringing this case.

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VII.

Response to Justice J. Watt Characterizations:

In rendering the Court's opinion ⁽⁷⁾, Justice Watt presented the following introduction summarizing the central features to the case, all of which were taken at face value by the Court as presented by the Plaintiffs' without the knowledge of the facts in both this case and in the underlying case.

“We emphasize that this matter is grounded on a claim for breach of contract. In so doing, we also stress that this opinion does not stand for the proposition that a losing party may recover monies paid to an expert witness for the formulation and presentation of a professional opinion in the context of litigation merely because the party requesting such opinion did not prevail or recover to the extent anticipated. Nevertheless, we determine that, under the **unique** facts of this cause, expert testimony demonstrating that Campbell's performance in the underlying litigation was substandard was unnecessary. Campbell's own admissions were sufficient to infer negligence. Furthermore, there was additional, supporting testimony indicating that Campbell did not present an accurate document which could be empirically supported or shown to comply with governmental standards. The testimony presented was most certainly such that a lay person, through common knowledge or experience, could determine that Campbell did not produce the very thing for which the Ellisons' contracted, a supportable expert opinion concerning the state of the groundwater underlying the Ellisons' property and the source of its pollution.⁽²⁾ Finally, Campbell's contradictory statements made at the time of his deposition and at trial were sufficient that a reasonable juror might well question his veracity.”

The Justice Watt comments in the introduction above in the Certiorari to the Court of Civil Appeals, Division IV are addressed in the paragraphs below. Mr. Campbell assumed that there was no need to respond to the Certiorari appeal by Ms. Robertson and

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⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

other Plaintiffs since the information presented to the Court of Civil Appeals should have been sufficient to render a favorable opinion to Mr. Campbell and the Defendants, as rendered by the Court of Civil Appeals.⁽⁶⁾ Furthermore, since then, not only has Mr. Campbell lost his original attorney for these and previous proceedings (Mr. Tolson was appointed to a judgeship in Oklahoma City), but Mr. Campbell has also undergone attorney fees approaching \$200,000.00 to date, while Ms. Robertson continues to press this case forward at little cost to herself or presumably to the Plaintiffs. This provides the latter with an undue advantage and an undue burden on the former to defend this case.

The absence of Mr. Tolson to represent Mr. Campbell's interests in this and previous matters of the case has severely compromised Mr. Campbell's defense by having to engage a new attorney to handle *Certiorari* matters. Mr. Andrew E. Karim, of Oklahoma City, Oklahoma, was engaged a few weeks ago as the Attorney for the Defendants. Even so, there was not sufficient time for Mr. Karim to get up to speed in such a complex case having lasted for about seven years, so Mr. Campbell released Mr. Karim as the Defendants' Attorney as of March 26, 2014 in order to prepare a *Pro Se* Petition for Re-Hearing by March 31, 2014 on specific issues of the current and underlying cases.

¹ Campbell, M.D., Bost, R.C., and M. David Campbell, 2004, "Flawed Geoscience in Forensic Environmental Investigations Part I: The Effect of Daubert Challenges on Improving Investigations <http://mdcampbell.com/Baltimore/index.htm#Chicago>

² Ellison v. FPC Disposal, Inc., *et al.*, District Court, Canadian County, OK, Case #: C-J-99-151-01

³ Alexander Consulting, Inc. Corporate Website: <http://aci-us.com/>, particularly <http://aci-us.com/Pages/Services.html>

⁴ Campbell, M. D., 2006, Rebuttal Report of Michael D. Campbell, P.G., P.H. [of 10 Expert Witness Reports regarding the Ellison vs FPC Disposal Matters, dated October 24, 2006 <http://www.mdcampbell.com/CampbellRebuttal102506.pdf>

⁵ Campbell, M. D., 2006, "Expert Report: Gene Ellison Property and Vicinity, near El Reno, Oklahoma," September 4, <http://www.mdcampbell.com/OKExpertReport090406.pdf>

⁶ Campbell Appeal, Appellant Opening Brief, 2011, <http://www.mdcampbell.com/CampbellAPPEALAppellantOpeningBrief.pdf>

⁷ *Certiorari* to the Court of Civil Appeals, Division IV, 2014, <http://www.oscn.net/applications/oscn/deliverdocument.asp?citeid=472727#d2ft2>

⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

VIII.

The Justice Watt Footnotes

Many of Justice Watt's footnotes/comments are without foundation of the actual facts of the case as opposed to those presented in testimony by Ms. Robertson and Mr. Balaski. Mr. Campbell lists below his responses to each of Justice Watt's comments in the opinion that are identified by the number of his footnote that follows each comment from the opinion, and respectfully challenges those that require additional responses (a copy of the opinion is attached as Appendix A for reference to the numbers of Justice Watt's comments in the opinion).⁽⁷⁾

1a. "Non-Experts" do not have sufficient knowledge on environmental matters to assess many of the actual technical issues that were involved in the current or underlying case, not those perpetuated by Ms. Robertson and Mr. Balaski.

1b. Justice Watts shows the Court's sensitivity to prejudicing the jury at the expense of Campbell's allegations that Ms. Robertson's goal was in part or in whole focused on scoring big for her retirement via the *de minimus* contributions from companies wishing to opt out of the underlying case with very little, if any, going to the Ellisons'.

¹ Campbell, M.D., Bost, R.C., and M. David Campbell, 2004, "Flawed Geoscience in Forensic Environmental Investigations Part I: The Effect of Daubert Challenges on Improving Investigations <http://mdcampbell.com/Baltimore/index.htm#Chicago>

² Ellison v. FPC Disposal, Inc., *et al.*, District Court, Canadian County, OK, Case #: C-J-99-151-01

³ Alexander Consulting, Inc. Corporate Website: <http://aci-us.com/>, particularly <http://aci-us.com/Pages/Services.html>

⁴ Campbell, M. D., 2006, Rebuttal Report of Michael D. Campbell, P.G., P.H. [of 10 Expert Witness Reports regarding the Ellison vs FPC Disposal Matters, dated October 24, 2006 <http://www.mdcampbell.com/CampbellRebuttal102506.pdf>

⁵ Campbell, M. D., 2006, "Expert Report: Gene Ellison Property and Vicinity, near El Reno, Oklahoma," September 4, <http://www.mdcampbell.com/OKExpertReport090406.pdf>

⁶ Campbell Appeal, Appellant Opening Brief, 2011, <http://www.mdcampbell.com/CampbellAPPEALAppellantOpeningBrief.pdf>

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⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

1c. Ms. Robertson controlled all aspects of the case and was certainly involved in the subject trial.

1d. The value is unclear why Justice Watts commented on the exclusion of a witness that wasn't allowed to testify also should have been applied to the other Attorney (Mr. Gungoll) who did testify at the trial on hydrogeological and other technical matters. (See Notes 25 to 29 below).

2. Justice Watt's comment re his interpretation of the information presented and emphasized by Ms. Robertson and Mr. Balaski concerning Mr. Campbell's veracity was uncalled for regarding what a reasonable juror might conclude.

4. Mr. Cottingham's question is illogical. The Hach tests were conducted by others to estimate the chloride content of the fluids accepted by the FPC Disposal site many months and years before Mr. Campbell was engaged so he could not have known if the Hach Kit protocols were followed.

5. Mr. Campbell was setting the record straight, not admitting to an error. He was correcting a typographical error or correcting information that was supplied by Ms. Robertson. Cottingham's question asking what the total volume of fly ash was on the FPC site was overarching and unknowable. Mr. Campbell's responses were appropriate.

¹ Campbell, M.D., Bost, R.C., and M. David Campbell, 2004, "Flawed Geoscience in Forensic Environmental Investigations Part I: The Effect of Daubert Challenges on Improving Investigations <http://mdcampbell.com/Baltimore/index.htm#Chicago>

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⁴ Campbell, M. D., 2006, Rebuttal Report of Michael D. Campbell, P.G., P.H. [of 10 Expert Witness Reports regarding the Ellison vs FPC Disposal Matters, dated October 24, 2006 <http://www.mdcampbell.com/CampbellRebuttal102506.pdf>

⁵ Campbell, M. D., 2006, "Expert Report: Gene Ellison Property and Vicinity, near El Reno, Oklahoma," September 4, <http://www.mdcampbell.com/OKExpertReport090406.pdf>

⁶ Campbell Appeal, Appellant Opening Brief, 2011, <http://www.mdcampbell.com/CampbellAPPEALAppellantOpeningBrief.pdf>

⁷ Certiorari to the Court of Civil Appeals, Division IV, 2014, <http://www.oscn.net/applications/oscn/deliverdocument.asp?citeid=472727#d2ft2>

⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

6. Mr. Campbell's response was appropriate.

7. Mr. Campbell was asked in the middle of the first day of his Deposition to verify some of his calculations and to check for any errors in his report by the next day of deposition, which would have been burdensome requiring extensive time and effort that evening to comply. This was a typical ploy by opposing counsels to further stress witnesses in depositions. Ms. Robertson should have objected vehemently but said nothing of substance when he was asked, nor did she advise opposing counsel the next morning that such a request was unacceptable.

8. In response to Justice Watt's statement in the opinion,⁽⁷⁾ and attached Mr. Campbell was referring to the primary regulation of the state and EPA, although he was relying on Tom Alexander's knowledge of the local state regulations that required the use of cement grout for sealing the annular seal, not in using the alternative method involving hydrated bentonite and sand for added strength, discussed previously.

9. As discussed previously, Mr. Campbell was under the impression that he had been withdrawn from the case and that Mr. Balaski indicated that Mr. Campbell had not been much help in the deposition, but Mr. Campbell recalled that he was sympathetic but nothing more of any substance. He wasn't able to determine the nature of his performance until he received the transcript seven (7) months later, at which time he

¹ Campbell, M.D., Bost, R.C., and M. David Campbell, 2004, "Flawed Geoscience in Forensic Environmental Investigations Part I: The Effect of Daubert Challenges on Improving Investigations <http://mdcampbell.com/Baltimore/index.htm#Chicago>

² Ellison v. FPC Disposal, Inc., et al., District Court, Canadian County, OK, Case #: C-J-99-151-01

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⁴ Campbell, M. D., 2006, Rebuttal Report of Michael D. Campbell, P.G., P.H. [of 10 Expert Witness Reports regarding the Ellison vs FPC Disposal Matters, dated October 24, 2006 <http://www.mdcampbell.com/CampbellRebuttal102506.pdf>

⁵ Campbell, M. D., 2006, "Expert Report: Gene Ellison Property and Vicinity, near El Reno, Oklahoma," September 4, <http://www.mdcampbell.com/OKExpertReport090406.pdf>

⁶ Campbell Appeal, Appellant Opening Brief, 2011, <http://www.mdcampbell.com/CampbellAPPEALAppellantOpeningBrief.pdf>

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⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

found that it was, on the whole, acceptable, although as in most expert witness testimony there were sections in the testimony needing rehabilitation by the supporting attorney and witness working together to clarify matters.

15. There is no evidence that reasonably supports this aside from gross exaggerations of Mr. Campbell's testimony by Ms. Robertson by taking statements out of context and through fabricating the intensions and alternative meanings of his testimony.

16. There is an absence of proof, but many innuendos, fabrications, and exaggerations of Mr. Campbell's testimony and associated work product.

17. The jury would be the exclusive arbiter of the credibility of the witness, unless, that is, the jury had been prejudiced by an opposing counsel against the witness, as discussed previously (see Notes 1d, 26 and 27).

18 and 19. The elements of damage do not lie within the common knowledge of lay persons. The characterization of Campbell's performance was incorrectly alleged, exaggerated, with statements repeatedly taken out of context by Ms. Robertson, *et al.* The Campbell report was scientifically supportable and was of continuing benefit to the underlying suit, although Ms. Robertson had lost confidence in her case.

However, although she could have rehabilitated Mr. Campbell's testimony by, for one

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⁶ Campbell Appeal, Appellant Opening Brief, 2011, <http://www.mdcampbell.com/CampbellAPPEALAppellantOpeningBrief.pdf>

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⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

example, examining in detail the Oklahoma regulations regarding monitoring well construction to confirm that MW-1B had been constructed in accordance with the Oklahoma regulations via the alternative method of using bentonite and sand (aka "alluvial sluff") to form the annular seal of the well. She chose not to look into Campbell's initial concerns about the subject monitoring well's construction.

20. The reliability of the results discussed relate to some unspecified standard of "soil testing" so Mr. Campbell had to respond that he did not know.

21. Mr. Campbell recalls that Ms. Robertson had brought up the topic as to whether Mr. Campbell could pass a Daubert challenge. If Mr. Campbell had been afforded the opportunity to complete his investigation by reviewing the late data production by an opposing expert and by conducting the final editing of his report as planned prior to the subject deposition, he concluded that he likely could have passed any challenge.

22. Here again Ms. Robertson is casting aspersions regarding what Mr. Campbell was alleged to have stated, especially regarding the Balaski conversations where they claim that Mr. Campbell had quit. In reality, Mr. Campbell had already assumed that he had been fired or otherwise withdrawn from the subject case by Ms. Robertson just after the deposition (late 2006).

¹ Campbell, M.D., Bost, R.C., and M. David Campbell, 2004, "Flawed Geoscience in Forensic Environmental Investigations Part I: The Effect of Daubert Challenges on Improving Investigations <http://mdcampbell.com/Baltimore/index.htm#Chicago>

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⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

23. This relates to whether Mr. Campbell had quit, not whether he had been withdrawn from the case by Ms. Robertson.

24. This assumes that Mr. Campbell had quit, but as stated previously, he was under the impression that he had been fired and otherwise withdrawn from the case. Mr. Campbell did not see a copy of his deposition transcript until seven months later.

25. This is a gross exaggeration of the report's content by an opposing attorney during the trial. The use of the term "riddled with typographical errors" is another gross exaggeration, especially since any such defects would have been corrected in Mr. Campbell's final report, as discussed previously.

26-27. This is clear testimony by an attorney who is not qualified to opine or address such topics relating to the monitoring wells, or other technical aspects. For example, Mr. Gungoll presented personal opinions to the jury about technical subjects that were clearly incorrect. He opined about delineating a plume. With only one well site, one can never delineate a plume without having numerous monitoring wells, which Ms. Robertson refused to fund early in the investigations. Furthermore, in order to "find background" many more samples were needed, which Ms. Robertson also refused to fund. Mr. Gungoll's testimony was without merit and should have been fully discredited during cross examination on the basis that he was not qualified to

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⁵ Campbell, M. D., 2006, "Expert Report: Gene Ellison Property and Vicinity, near El Reno, Oklahoma," September 4, <http://www.mdcampbell.com/OKExpertReport090406.pdf>

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⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

opine on most of the subjects he addressed. Since he was an opposing counsel in the underlying case, he would be expected to be critical of Mr. Campbell's report and testimony, although he clearly did not have the credentials to serve as an expert on such subjects.

28-29. Although ill-equipped to address technical issues, Mr. Gungoll must have witnessed Ms. Robertson's behavior during the period she was present at the deposition, which would have indicated to the opposing side that she was losing confidence in her case, primarily because she did not appropriately prepare her expert witness for deposition. It was obvious to Mr. Campbell, and likely to others as well, that she was in over her head and that she didn't know how to project calmness to the opposing side. She made no effort to rehabilitate her expert witness (Mr. Campbell), but most likely she didn't know how.

30. Mr. Balaski, during the subject telephone conversation, informed Mr. Campbell that he could not support his report or testimony. Mr. Campbell indicated that there were a few items that needed to be revised and corrected but that was a moot point because Mr. Campbell assumed that he had been fired/withdrawn from the case by Ms. Robertson after the deposition in December, 2006.

¹ Campbell, M.D., Bost, R.C., and M. David Campbell, 2004, "Flawed Geoscience in Forensic Environmental Investigations Part I: The Effect of Daubert Challenges on Improving Investigations <http://mdcampbell.com/Baltimore/index.htm#Chicago>

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⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

31-32-33. This section of Justice Watt’s opinion accepts exaggerated testimony by Mr. Balaske and Ms. Robertson. The opposing attorney’s question assumed that the well was “fouled up” when in reality it was assumed at the time that the well did not have a cement grout in the annulus of the subject well and that it did not meet the state regulation, when in fact it did, albeit via an alternative, equally acceptable method using hydrated bentonite and sand. The hydrochemical data obtained over the years of sampling the two monitoring wells showed no discrepancy. The data from the lower interval of MW1B were distinctly different from that of the shallow interval of MW-1A. If MW-1B had been constructed improperly, especially as represented by Ms. Robertson, the hydrochemistry would have been similar to that of MW-1A. It was not because there had been no transfer of groundwater (as indicated by hydrochemistry) from the upper zone to the lower zone and because of other hydrogeologic factors too technical to discuss in this Petition.

IX.

This case and resulting trial created a jury so prejudiced by the Plaintiffs’ attorneys in using exaggeration, falsehood, and by taking Mr. Campbell’s testimony out of context, as reported above, that this encouraged the jury to find for the Plaintiffs’ and to make an outrageous award of the total cost of Mr. Campbell’s previous investigations on behalf of the Ellison’s since 2001 even though data from the uncontested shallow well (MW-1A)

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would have met the needs of the underlying case. The case is an example of an egregious violation of the attorney-expert witness relationship, which is protected to a degree and similar to the attorney-client privilege regarding the use of information developed by the attorney during the case against the expert witness.

This has to be one of the greatest mockeries of justice waged against an environmental expert witness in many years in Oklahoma, perhaps in the United States. Mr. Campbell has concluded that this has happened because the attorney-expert witness relationship has been broken in this case by attorneys suing their own expert witness for purposes of revenge and self-enrichment during the years up to prosecuting this case, both before, and during the underlying case, during trial, and continuing after the trial.

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⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

Based on the above, I respectfully request the Court to re-consider the Court's position in this case. Unless rectified, the Court's decision could have far reaching impact on the relationship of expert witnesses to their attorneys, both Defendant and Plaintiff, and would likely escalate the cost of all such litigation substantially.

Respectfully submitted, this 27th day of March, 2014.



Michael D. Campbell, P.G., P.H.
and M. D. Campbell and Associates, L.P., Defendants/Appellants
Pro Se
1810 Elmen Street
Houston, Texas 77019
Telephone: 713-807-0021
E-mail: mdc@mdcampbell.com

¹ Campbell, M.D., Bost, R.C., and M. David Campbell, 2004, "Flawed Geoscience in Forensic Environmental Investigations Part I: The Effect of Daubert Challenges on Improving Investigations <http://mdcampbell.com/Baltimore/index.htm#Chicago>

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⁸ Oklahoma Ry. Co. v. Wilson, 227 P.2d 392 (Okla. 1951). See also Tway v. Hartman, 75 P.2d 893 (Okla. 1937).

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

JACKIE EUGENE ELLISON, a/k/a GENE)
ELLISON, individually and as Trustee of)
the Equivalent Exemption Trust Created)
Pursuant to Article V, VII, and VIII of the)
Testament of Glen G. Ellison, Deceased;)
MARCIA ELLISON, an individual; RICHARD)
M. HEALY, P.C., an Oklahoma Professional)
Corporation; JAYNE JARNIGAN)
ROBERTSON, P.C., an Oklahoma)
Professional Corporation; and MICHAEL J.)
BLASCHKE, P.C. an Oklahoma Professional)
Corporation,)

Plaintiffs/Appellees,)

v.)

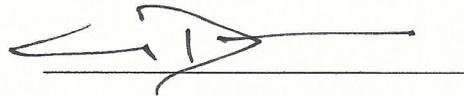
No. 108,468)

MICHAEL D. CAMPBELL, an individual and)
M. D. CAMPBELL and ASSOCIATES, L.P.)
Texas Limited Partnership,)

Defendants/Appellants.)

ENTRY OF APPEARANCE

Michael D. Campbell hereby enters his appearance in this case on behalf of himself, an individual and M. D. Campbell and Associates, L.P., a Texas Limited Partnership, Defendants/Appellants.



Michael D. Campbell
1810 Elmen Street
Houston, Texas 77019
Telephone: 713-807-0021
E-mail: mdc@mdcampbell.com

CERTIFICATE OF SERVICE

The undersigned certifies that on this 3rd day of March, 2014, service of a true and accurate copy of the foregoing Entry of Appearance was made via U.S. first-class mail, postage pre-paid on:

Jayne Jarnigan Robertson
Jayne Jarnigan Robertson, P.C.
777 Robinson Renaissance
119 North Robinson Avenue
Oklahoma City, Oklahoma 73102
ATTORNEY *PRO SE*
AND FOR PLAINTIFFS/APPELLEES



Michael D. Campbell