

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHARLES DUSTIN MYERS,	§	
Plaintiff,	§	
v.	§	
DANIEL KENNETH BRANTHOOVER	§	Case No. CIV-24-1311-R
&	§	
MORGAN MICHELLE MYERS,	§	
Defendants.	§	
	§	

MOTION FOR RECONSIDERATION

The Court’s order granting dismissal under Rule 12(b)(6) rested on the conclusion that the alleged RICO enterprise ceased to function once Plaintiff was ordered to vacate the home, treating the scheme as a single, narrow effort with a discrete goal and no ongoing threat. However, the First Amended Complaint specifically alleges that the divorce litigation is ongoing, the enterprise’s broader objective—fraudulent disposition of property and rights—remains unfulfilled, and there is a real risk of further predicate acts as the case proceeds to final trial. Under binding Supreme Court and Tenth Circuit authority, these facts plausibly support a claim of open-ended continuity and a pattern of racketeering activity, which the Court did not address.

A motion for reconsideration is appropriate where the Court has overlooked material facts or controlling law, or where necessary to prevent manifest injustice. Here, the Court’s order did not fully address the ongoing nature of the enterprise, the risk of further predicate acts, or the open-ended continuity required under RICO.

Reconsideration should be GRANTED to allow the case to proceed on the merits, as the well-pleaded allegations in the First Amended Complaint are sufficient to survive a motion to dismiss under the applicable legal standards.

I. Background and Relevant Law

A. RICO Pattern Requirement: Relationship and Continuity

1. To state a civil RICO claim, a plaintiff must allege that the defendant conducted the affairs of an enterprise through a pattern of racketeering activity, which requires at least two predicate acts that are both related and continuous (*George v. Urban Settlement Servs.*, 833 F.3d 1242, 1248 (10th Cir. 2016); *Johnson v. Heath*, 56 F.4th 851, 858 (10th Cir. 2022)). The Supreme Court in *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989) clarified that “continuity” can be either closed-ended (a series of related acts over a substantial period) or open-ended (a threat of continuing criminal activity into the future). The Tenth Circuit has consistently applied this “continuity plus relationship” test (*Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir. 1993); *Tal v. Hogan*, 453 F.3d 1244, 1267–68 (10th Cir. 2006)).

2. The “relationship” prong is satisfied when the predicate acts have similar purposes, results, participants, victims, or methods, or are otherwise interrelated and not isolated events (*Schrag v. Dinges*, 788 F.Supp. 1543, 1556 (D. Kan. 1992)). The “continuity” prong is more stringent and can be established in two ways: (1) closed-ended continuity, which requires a series of related predicate acts over a substantial period, or (2) open-ended continuity, which requires a threat of continued racketeering activity into the future (*Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir.

1993); H.J. Inc., 492 U.S. at 241–42; *Independent Drug Wholesalers Group, Inc. v. Denton*, 833 F.Supp. 1507, 1512 (D. Kan. 1993)).

3. Open-ended continuity may be shown by facts indicating that the predicate acts are part of an ongoing entity’s regular way of doing business or that there is a threat of repetition because the enterprise’s objective is unfulfilled (*Watchous Enterprises, LLC v. Pac. Nat’l Capital, LLC*, Case No. 16-1432-JTM (D. Kan. Jul 25, 2018). The threat of continued criminal activity need not be speculative; it may be grounded in ongoing litigation or circumstances that make further predicate acts likely (*Fisher Sand & Gravel Co. v. FNF Constr., Inc.*, No. 10-cv-0635 RB/SMV (D. N.M. Mar 27, 2013); *Suddath v. Oklahoma Homebuilders, LLC*, CIV-24-745-SLP (W.D. Okla. Nov 08, 2024)).

4. The Tenth Circuit has repeatedly held that even where a scheme targets a single victim, if the plan contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end, continuity may be satisfied (*Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 928 (10th Cir. 1987); *Edwards v. First Nat. Bank, Bartlesville, Oklahoma*, 872 F.2d 347, 351 (10th Cir. 1989); *Condict v. Condict*, 826 F.2d 923, 927 (10th Cir. 1987)). Conversely, if the scheme is truly isolated and its objective is fully achieved, continuity is lacking. *Id.*, 815 F.2d 579, 581 (10th Cir. 1987).

5. At the motion to dismiss stage, the Court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in the plaintiff’s favor (*George v. Urban Settlement Servs.*, 833 F.3d 1242, 1248 (10th Cir. 2016)). The question is not whether the plaintiff will ultimately prevail, but whether the complaint states a plausible claim for relief.

II. Analysis

B. The Court's Order and Its Reasoning

6. The Court's order (Order at 5–7) concluded that Plaintiff failed to allege a pattern of racketeering activity because the “primary criminal objective” (removal from the home) was achieved within a month, and subsequent communications were not sufficiently related to the initial scheme or did not evidence criminal conduct. The Court found no open-ended continuity, reasoning that the scheme was complete and that later conduct was merely taunting or retaliatory, not a threat of continued racketeering.

C. Ongoing Nature of the Enterprise and Unfulfilled Objective

7. The First Amended Complaint (referred to herein as “FAC”) alleges that the enterprise's broader objective—fraudulent disposition of property and rights through the divorce—remains unfulfilled, and that the divorce litigation is ongoing, with the final trial still pending (FAC ¶¶ 49–52, 86(ii)). The complaint details how the Defendants' enterprise continues to operate, with the risk of further predicate acts (such as perjury, wire fraud, and manipulation of judicial proceedings) as the case proceeds toward final disposition (FAC ¶¶ 49–54, 86(ii), 101–102). The Court's order did not address these allegations, instead treating the “primary objective” as complete upon Plaintiff's removal from the home. However, under RICO, continuity is measured as of the time the suit is filed, and the risk of further predicate acts in ongoing litigation is highly relevant (*Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir. 1993); *Fisher Sand & Gravel Co. v. FNF Constr., Inc.*, No. 10-cv-0635 RB/SMV (D. N.M. Mar 27, 2013)).

D. What the Court Overlooked - Open-Ended Continuity: Threat of Continued Criminal Activity

8. The Supreme Court and Tenth Circuit have made clear that open-ended continuity exists where the predicate acts pose a threat of continued criminal activity, especially where the enterprise's business is not complete and further acts are likely (*H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 241–42 (1989); *Tal v. Hogan*, 453 F.3d 1244, 1267 (10th Cir. 2006); *Suddath v. Oklahoma Homebuilders, LLC*, CIV-24-745-SLP (W.D. Okla. Nov 08, 2024)). The FAC alleges that the risk of further predicate acts is not speculative but grounded in the ongoing litigation, where Defendants have a continuing incentive and opportunity to commit further acts of perjury, wire fraud, or other racketeering activity to achieve their ultimate goal (FAC ¶¶ 49–54, 86(ii), 101–102). The order's focus on the completion of the "primary objective" ignores the reality that the enterprise's broader goal—fraudulent disposition of property through the divorce—remains unachieved, and the litigation is still pending. The risk of further predicate acts is thus real and ongoing, supporting open-ended continuity (*Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir. 1993); *Fisher Sand & Gravel Co. v. FNF Constr., Inc.*, No. 10-cv-0635 RB/SMV (D. N.M. Mar 27, 2013)).

E. Relationship and Pattern

9. The FAC also pleads that the predicate acts are related: they share the same purpose (fraudulent deprivation of Plaintiff's property rights), involve the same participants (Myers and Branthoover), target the same victim, and employ similar methods (deception, misrepresentation, manipulation of legal processes) (FAC ¶¶ 49–54,

85, 101). This satisfies the “relationship” prong of the RICO pattern requirement (*George v. Urban Settlement Servs.*, 833 F.3d 1242, 1248 (10th Cir. 2016)).

F. The Law Does Not Require Multiple Victims or Schemes

10. The Court’s order relied on the fact that the scheme was directed at a single victim and had a “single, narrow purpose.” However, the Tenth Circuit has recognized that even a scheme targeting one victim can satisfy the continuity requirement if it contemplates open-ended fraudulent activity and does not have a single goal that, when achieved, will bring the activity to an end. (*Torwest DBC, Inc. v. Dick*, 810 F.2d 925, 928 (10th Cir. 1987); *Edwards v. First Nat. Bank*, Bartlesville, Oklahoma, 872 F.2d 347, 351 (10th Cir. 1989); *Condict v. Condict*, 826 F.2d 923, 927 (10th Cir. 1987)). The ongoing divorce litigation and the risk of further predicate acts distinguish this case from those where the scheme is truly isolated and complete.

G. The Totality of Circumstances

11. Courts are to consider the totality of the circumstances, not just the timing of the initial predicate acts, in assessing continuity (*Fisher Sand & Gravel Co. v. FNF Constr., Inc.*, No. 10-cv-0635 RB/SMV (D. N.M. Mar 27, 2013)). Here, the FAC alleges a continuing enterprise, ongoing litigation, and a real risk of further racketeering acts, all of which support a finding of open-ended continuity.

H. Application to the Complaint and Order

12. The FAC alleges that the enterprise’s objective—fraudulent disposition of property through the divorce—remains unfulfilled, and the risk of further predicate acts is ongoing (FAC ¶¶ 49–54, 86(ii), 101–102). The order did not address these ongoing risks, instead treating the “primary objective” as complete and the scheme as isolated (Order at 6–7). Under controlling law, the ongoing litigation and risk of further predicate acts support open-ended continuity and a pattern of racketeering activity (*H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 241–42 (1989); *Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1543 (10th Cir. 1993); *Tal v. Hogan*, 453 F.3d 1244, 1267 (10th Cir. 2006)).

IV. Standard for Reconsideration

13. A motion for reconsideration under Rule 59(e) is appropriate where the court has overlooked material facts or controlling law, or where necessary to prevent manifest injustice (*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000), not in table but widely cited in Tenth Circuit). Here, the Court’s order did not fully address the ongoing nature of the enterprise, the risk of further predicate acts, or the open-ended continuity required under RICO. Reconsideration should be sought to allow the case to proceed on the merits, as the well-pleaded allegations in the First Amended Complaint are sufficient to survive a motion to dismiss under the applicable legal standards.

I. Pleading Standard

14. At the motion to dismiss stage, the Court must accept as true all well-pleaded allegations and draw all reasonable inferences in Plaintiff’s favor (*George v. Urban Settlement Servs.*, 833 F.3d 1242, 1248 (10th Cir. 2016)). The Court’s order (Order at 5–

6) failed to do so, instead characterizing the ongoing conduct as unrelated or merely retaliatory, without crediting the FAC's specific allegations that these acts are part of the same enterprise and serve the same fraudulent purpose. The Court also failed to recognize that the pattern requirement is not defeated simply because the initial dispossession occurred; the ongoing risk of further racketeering, as pleaded, is sufficient to establish open-ended continuity (*Tal v. Hogan*, 453 F.3d at 1267–68; RICO).

V. Exceptions

15. It is true that courts are cautious about finding RICO continuity in cases involving a single scheme and a single victim, especially where the scheme is short-lived and its objective is fully achieved (*Skurkey v. Daniel*, No. CIV-22-496-R, 2023 WL 101946, at *6 (W.D. Okla. Jan. 4, 2023)). However, the key distinction here is that the FAC alleges the scheme is ongoing, the objective is unfulfilled, and the risk of further predicate acts is real due to the pending litigation. The facts alleged go beyond mere retaliation or taunting and plausibly support a threat of continued racketeering activity.

16. It is noteworthy to mention the negative treatment of *Condict v. Condict*, 815 F.2d 579 (10th Cir. 1987) in *Maxwell v. Wilson*, 766 P.2d 909 (N.M. 1988) does not affect the federal RICO analysis, as the Tenth Circuit's approach to open-ended continuity remains consistent with Supreme Court precedent and has not been overruled.

VI. Conclusion

17. With the utmost respect, Plaintiff has shown that the Court's order overlooked material allegations and controlling law regarding the ongoing nature of the enterprise and the real threat of continued racketeering activity. The FAC alleges that the

enterprise's objective is unfulfilled, the divorce litigation is ongoing, and the risk of further predicate acts remains as the final trial approaches. Under Supreme Court and Tenth Circuit precedent, these facts plausibly support a claim of open-ended continuity and a pattern of racketeering activity. Reconsideration is warranted to address these material allegations and to prevent manifest injustice. Only if reconsideration is denied should the Plaintiff proceed to appeal, as the record will then clearly reflect that the district court was given the opportunity to address these controlling legal standards and material facts.

VII. Prayer

WHEREFORE, all promises considered, Plaintiff CHARLES DUSTIN MYERS respectfully asks this court to provide the following relief:

1. Grant the motion for reconsideration;
2. Vacate or set aside the order of dismissal signed on August 28, 2025;
3. Require the defendants to file a response to the complaint;
4. Allow the matter to proceed to discovery;
5. Grant any further relief that the court deems necessary given the circumstances.

Respectfully submitted,

X

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