

COURT OF APPEALS

Pamela Ninham,

Appellant,

v.

Tsyoshaht Delgado,

Respondent.

Case Number: 19-AC-001

Date: February 20, 2019

INITIAL REVIEW DECISION

This case has come before the Oneida Court of Appeals for initial review. Appellate Judges Susan G. Daniels, Chad Hendricks, and Chief Appellate Judge Gerald L. Hill presiding.

BACKGROUND

On December 13, 2018, the Oneida Judiciary's Trial Court (hereinafter "Trial Court") held a Hearing of Record. At the start of the hearing, Respondent Tsyoshaht Delgado (hereinafter "Delgado") was present, however the Appellant, Pamela Ninham (hereinafter "Ninham") was not present. The Trial Court granted Delgado's motion to dismiss for Ninham's non-appearance. Ninham filed a Motion for Reconsideration, which the Trial Court denied on January 2, 2019. On January 21, 2019, Ninham filed a Notice of Appeal with the Court of Appeals, along with a Motion to Stay Trial Court's Order and Relief from Trial Court's Order of Dismissal.

DECISION

After review of the information contained in the Notice of Appeal and the decision of the Trial Court, as the original hearing body, it is determined that Ninham has not sufficiently alleged that the Trial Court's decision:

1. Violates applicable provisions of the Constitution;

2. Violates provisions, substantive or procedural, of applicable Oneida law or applicable federal law.
3. Is an administrative decision that was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or
4. Is not supported by substantial evidence on the record taken as a whole.

In its order, the Trial Court enumerated several occasions wherein notice was given to both parties and their representatives of the 9:00 a.m. starting time for the Hearings held on December 13 and 14, 2018. The first notice about the 9:00 a.m. start time was given to the parties on November 16, 2018, during a hearing before the Trial Court. On November 19, 2018, an Order scheduling the Hearing of Record was both mailed and emailed to all parties reiterating the dates and 9:00 a.m. start time. On November 20, 2018, subpoenas filed by Ninham for witnesses to appear and testify displayed the Hearing dates and 9:00 a.m. start time

This Court has addressed similar situations in previous appeals where the appealing party had failed to appear at a scheduled hearing without good cause. In *Oakley v. Skenandore*, 17-AC-005, the appellant appealed a Family Court decision dismissing her case for failing to appear at a scheduled hearing. This Court affirmed the Family Court's decision for failure to state adequate legal grounds for appeal. The appellant's alleged confusion of the hearing date was not sufficient to grant an appeal. In *Wisneski v. G.B. Radiology*, 17-AC-009, this Court upheld the Trial Court's dismissal as the appellant did not provide sufficient reason for his failure to appear and failed to state any legal grounds for appeal. In both cases citing Rules of Appellate Procedure §805.5-2(c)(3) which sets forth the requirement of a statement of legal grounds and justification for the appeal. Finally, in *Danay v. St. Mary's Hospital*, 17-AC-015, this Court upheld the Trial Court's decision to dismiss the appellant's case for failing to appear at a scheduled hearing. Again, finding that the appellant failed to meet her burden as set forth in §805.5-2(c)(3).

Ninham's alleged confusion on the time of her hearing, which resulted in her failure to appear at her Trial Court hearing, is not a sufficient reason for this Court to grant an appeal of the Order issued by the Trial Court in this matter. Thus, Ninham failed to state adequate legal grounds for her appeal under 801.8-4(a)(b)(c) and (d), and §805.5-2(c)(3). The Trial Court's Order to Dismiss Ninham's case is *AFFIRMED*.

Ninham's Motion to Stay Trial Court's Order and Relief from Trial Court's Order of Dismissal is *DENIED*.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 3-19-17-A, this appeal is hereby DENIED. The Motion to Stay Trial Court's Order and Relief from Trial Court's Order of Dismissal is also DENIED. Dated this 20th day of February 2019, in the matter of Case Number 19-AC-001, *Pamela Ninham v. Tsyoshaat Delgado*.

It is so ordered.