

Oneida Tribal Judicial System

Onλyote ʔ aka Tsiʔ Shakotiyaʔ Tolé hte

APPELLATE COURT

**Vicente Vega,
Appellant**

Docket No. 13-AC-003

vs.

**Nona Danforth,
Respondent**

Date: July 16, 2013

DECISION

This case has come before the Oneida Tribal Judicial System, Appellate Court. Judicial Officers Janice L. McLester, David Webster (Pro Tem), Jennifer Webster, Stanley R. Webster and James Van Stippen (Pro Tem) presiding.

I. Background

March 4, 2013, Vicente Vega, filed an appeal under the Oneida Administrative Procedures Act, of the January 21, 2013, Oneida Tribal Judicial System, Family Court decision in Case No. 10-PA-083, "Order for Attorney Fees & Associated Costs" issued January 21, 2013. Mr. Vega claims that the decision contains procedural irregularities, is arbitrary and capricious and clearly erroneous and against the weight of the evidence. We disagree and affirm the Family Court decision.

A. Jurisdiction

In accordance with Section 1.8-1 of the Oneida Administrative Procedures Act, any person aggrieved by a final decision in a contested case is entitled to seek Appellate Review of that decision. This case comes to us as an appeal of the Oneida Tribal Judicial System, Family Court order.

B. Background

On October 31, 2012, Respondent, Nona Danforth, filed a Motion and Brief for Contempt and Enforcement in accordance with (p. 1 footnote 1 Oneida Tribe's Rules of Civil Procedure, Rule 32 Contempt) Chapter 78.9-3 Enforcement of Order alleging that Mr. Vega was not current with his child support and requesting the following relief:

- (a) Increase in the amount of money contributed to 17% of his annual income to be determined via a later hearing.
- (b) That such amount is intercepted from Mr. Vega's quarterly Ho Chunk distributions.
- (c) Placement on lien docket until he's current on all payment owed.
- (d) Report of the 44 violations of failure to pay child support to the credit bureau.
- (e) Committed to jail until the current allegations are met.
- (f) A charge of contempt.
- (g) Referral for criminal charges if the amount in access (sic) and all attorney fees, costs or other award are not paid within ten days of this Court's order.

On December 19, 2012, the Family Court held a hearing on the motion and to address the following issues:

- Should the Petitioner's (Oneida Child Support Agency and Nona Danforth) motion to exclude documents be granted?
- Should Respondent (Vega) be held in contempt of court for failure to obey a court order and failure to pay child support?
- Should Respondent (Vega) be held liable for Petitioner's Attorney cost and fees?

Appellant Vega asked the Family Court to accept his brief in response to Respondent's motion and brief for contempt and enforcement at the hearing. Mr. Vega's Advocate was not in attendance at this hearing. Mr. Vega argued that the brief would prove that his child support

payments were paid up to date. Respondent moved to exclude Mr. Vega's documents. The Court denied Mr. Vega's request and granted Respondent's motion to exclude the documents, under Rules of Civil Procedure:

Rule 5(c)2 From the date that the motion is filed with the trial court, the opposing party will have fifteen (15) days to file a written response to the motion.

AND

Rule 5(c)6 Motions filed with the trial court which do not grant the non-moving party sufficient time to respond prior to a hearing or trial will not be considered at the hearing unless it is done so with the consent of the non-moving party verbally or in writing to the motion during the hearing.

Saying Mr. Vega failed to file his written response within (15) days of the original filing on October 31, 2012. Respondent's attorney informed the Court that the Respondent was no longer seeking relief for items, a, b, c, d and e.

On January 16, 2013, and January 21, 2013, the Family Court filed their decision in answer to the issues presented.

- *Should the Petitioner's (Oneida Child Support Agency and Nona Danforth) motion to exclude documents be granted.* The Family Court ruled Appellant, Vega "failed to file his written response within fifteen (15) days of the original filing and failed to provide the Court documentation that his answer was filed by certified mail" and granted the motion to exclude the documents in accordance with Rules of Civil Procedure, Rule 5(C)(2)(6) Motions and Orders.
- *Should Respondent (Vega) be held in contempt of court for failure to obey a court order and failure to pay child support.* The Family Court ruled Mr. Vega "in contempt of court for failure to obey a court order and failure to pay child support as ordered by the Court."
- *Should Respondent (Vega) be held liable for Petitioner's Attorney cost and fees?* Rule 18E states "Cost: The trial court may, in its discretion, require the non-prevailing party to pay some or all of the reasonable costs of the prevailing party."

On March 4, 2013, Mr. Vega appealed the January 21, 2013 decision of the Oneida Tribal Judicial System, Family Court alleging the decision to contain procedural irregularities, is arbitrary and capricious and clearly erroneous and against the weight of the evidence.

On March 8, 2013 the Oneida Tribal Judicial System, Appellate Initial Review panel of Judicial Officer Janice L. McLester, Judicial Officer Jennifer Webster and Judicial Officer Stanley R. Webster met to answer the threshold questions regarding the jurisdiction of the case and the procedural and material sufficiency of the Notice of Appeal.

In accordance with the Oneida Nation Administrative Procedures Act Section 1.8-1 and the Oneida Tribal Judicial System, Rules of Appellate Procedure, Rule 9, the Initial Review body shall accept an appeal when an Appellant alleges with sufficient clarity that the original hearing body decision contains one or more of the following element:

5. There is exhibited a procedural irregularity which would be considered a harmful error that may have contributed to the final decision, which if the error had not occurred, would have altered the final decision.

The Appellate Initial Review panel accepted this case for review under (5) procedural irregularity. An exchange of briefs was completed for review on April 4, 2013 with receipt of Respondent Danforth's Rebuttal Brief. Appellant Vega failed to file a Rebuttal Brief with a due date of April 25, 2013.

The Appellate Review body consisting of Judicial Officer Janice L. McLester, Judicial Officer David Webster (Pro Tem), Judicial Officer Jennifer Webster, Judicial Officer Stanley R. Webster and Judicial Officer James Van Stippen (Pro Tem) deliberated on May 16, 2013 and on June 18, 2013 to review the merits of the appeal.

The Appellate Review body determined Appellant Vega failed to provide sufficient argument to support his allegations of procedural irregularity, arbitrary and capricious and clearly erroneous and against the weight of the evidence and affirms the orders of the Oneida Tribal Judicial System, Family Court of January 16, 2013 and January 21, 2013.

II. Issues

Did the decision of the Oneida Tribal Judicial System, Family Court contain a procedural irregularity which if the error had not occurred, would have altered the final decision?

Was the decision of the Oneida Tribal Judicial System, Family Court arbitrary and/or capricious?

Was the decision of the Oneida Tribal Judicial System, Family Court clearly erroneous and against the weight of the evidence presented at the hearing level?

III. Analysis

Did the decision of the Oneida Tribal Judicial System, Family Court contain a procedural irregularity which if the error had not occurred, would have altered the final decision?

Appellant asserts that the Family Court (January 21, 2013) decision contains procedural irregularities.

While Appellant makes the assertion that procedural irregularities exist in the Court's decision, the Appellant fails to provide an argument in support of this assertion. Therefore, Appellant's assertion that the Court's decision contains procedural irregularities fails.

Was the decision of the Oneida Tribal Judicial System, Family Court, arbitrary and/or capricious?

Appellant asserts that the Family Court's decision is arbitrary and/or capricious. Appellant asserts that this element exists in the court's decision, but fails to present any argument to support this assertion. Appellant's assertion that the court's decision is arbitrary and/or capricious fails.

Was the decision of the Oneida Tribal Judicial System, Family Court clearly erroneous and against the weight of the evidence presented at the hearing level?

Appellant asserts that the Court's decision is clearly erroneous and is against the weight of the evidence presented at the hearing level. On December 19, 2012, the Family Court held a hearing on a motion filed by the Respondent for Contempt and Enforcement. Appellant contends that the Court's decision is erroneous, due to the Court's denial of Appellant's attempt to introduce into evidence a brief, including attachments, showing that all arrears were up to date.

According to the record, Respondent on October 31, 2012, filed a Motion for Contempt and Enforcement of the Family Court Child Support Order issued August 4, 2011, citing 44 weeks of child support payment violations by the Appellant, between the months of January 2, 2012 and October 28, 2012.

Appellant argues that all arrears were current before the December 19, 2012 hearing on Contempt and Enforcement, and the Court should have dismissed the case in Appellant's favor. The Appellant contends the Family Court is erroneous in their January 21, 2013 award of a contempt fine for failure to pay child support as stipulated by both parties on August 3, 2011, resulting in an order issued by the Family Court on August 4, 2011.

The hearing held by the Family Court on December 19, 2012 was to hear arguments on the Motion for Contempt and Enforcement.

Appellant's Advocate, testified to a conversation held with Respondent's Attorney, indicating Appellant would bring any outstanding child support arrearage up to date after Appellant received per capita payment in early November, 2012. On November 6, 2012, Appellant made payment of all arrears and paid child support through the end of December 2012.

Appellant asserts that at the time of the December 19, 2012 hearing, Appellant was current on responsibilities and had only withheld payments of child support obligations as a result of

Respondent withholding visitation of Appellant's son, this in itself is a violation of Court ordered visitation. Appellant's statement supports rather than detracts from the Trial Court's finding: Appellant admitted that his conduct was willful disobedience of a court order.

The question before the Family Court was not whether Appellant was current on child support obligations at the time of the hearing held on December 19, 2012. The issue was whether Appellant was in continuous contempt of not adhering to orders of the Family Court of August 4, 2011, August 16, 2012 and the September 4, 2012. Even though Appellant took appropriate action to catch up on child support payments before the hearing, it should not take a filing of contempt in a court of law to spur Appellant into action.

The justice system relies on the laws and on obedience of these laws by the people to abide with orders of the Court. Obligators are still in contempt if they willfully refuse or hold back child support payments, then bring their child support payments up to date only when the matter is brought to the Court's attention. Custodial parents rely on timely payments for support of the child. The Respondent's failure to adhere to the visitation, does not give Appellant the right to disregard a Court order, which in this case is child support. The Court bases its opinion on the Child Support law, Chapter 78 Child Support, Rule CS2, Enforcement Tools, Section 2.8 Commission Enforcement Action, 2.8-2 states:

(d) Contempt: An obligor who disobeys a lawful child support order shall be subject to punishment for contempt of court. An obligor found in contempt of court may be fined in an amount not to exceed one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute a separate act of contempt.

Again, the issue before the Family Court was not whether Appellant was or was not current with financial obligations of child support payments, but whether Appellant complied with the Family Court Child Support Order of August 4, 2011. Appellant withheld the Court ordered child support payments, for which the Court found Appellant in Contempt of Court. The Family Court's ruling is not clearly erroneous. Appellant admitted to not paying child support because

Respondent had withheld placement of their child.

Appellant argues there should not have been an award to Respondent for attorney's fees because at the time of the hearing he was not in arrears of past child support. In the January 16, 2013 decision, the Family Court cited the Oneida Tribal Judicial System, Rules of Civil Procedure, Rule 18(e) "*Cost: The trial court may, in its discretion, require the non-prevailing party to pay some or all of the reasonable costs of the prevailing party.*" Since the Advocate, failed to appear for this hearing a clear determination could not be made to the court as to why this issue had not previously been resolved. The Court granted the request for court cost and attorney fees, and requested Respondent's Attorney, to file an invoice to the Oneida Tribal Judicial system for review.

On January 2, 2013, Respondent's Attorney submitted an invoice for \$2,495.00 to the Court for review. On January 11, 2013 the Court deliberated and concurred with the invoice in part and ordered Appellant, to pay attorney's fees and cost in the amount of \$2,062.50 for fees and cost of September 13, 2012 through December 19, 2012. The Court denied charges for September 12, 2012, ruling that the charges were not in relation to the contempt issue.

The Family Court sufficiently considered the relevant factors and did not make a clear error or judgment in deciding this matter. Appellant admitted to not paying child support in retaliation to Respondent's refusal to permit him to see their child. The court concluded that this is willful disobedience of a court order, and is sufficient for finding the Appellant in of contempt of the Family Court Child Support Order issued August 4, 2011.

IV. Decision

The Appellate Court affirms the Oneida Tribal Judicial System, Family Court's decision of January 21, 2013.