

Oneida Tribal Judicial System

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APPELLATE COURT

**Leah S. Dodge, Michael T. Debraska
and Cathy L. Metoxen,
Appellants**

Docket No. 13-AC-019

vs.

**Oneida Business Committee,
Respondent**

Date: May 19, 2014

DECISION

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

I. Background

This case arises out of Appellants challenge to the employment of Layatalati Hill, an attorney with the Oneida Tribe of Indians of Wisconsin. Appellants asserted because Mr. Hill is not a licensed Wisconsin attorney the Tribe may not employ him. However, Appellants cite no law or rule, tribal or otherwise, in support of their claim. The Trial Court dismissed the claim. We affirm.

A. Jurisdiction

This case comes to us as an appeal of an original hearing body, the Oneida Tribal Judicial System, Trial Court. Any person aggrieved by a final decision in a contested case can seek

Oneida Tribal Judicial System review under Sec. 1.11-1 of the Oneida Administrative Procedures Act.

B. Factual Background

For purposes of evaluating the Respondents' Motion to Dismiss, the Trial Court accepted as true the facts as pleaded in the complaint. On or about September 30, 2013, Lati Hill commenced working for the Tribe under a temporary employment contract. The contract was for a limited term until February 28, 2014. Mr. Hill is not licensed by the State Bar of Wisconsin nor is he admitted to practice before the Courts of the State of Wisconsin. The attachments to the complaint indicate that Mr. Hill received his J.D. degree from the University of Kansas Law School in 2012.

C. Procedural Background

On October 22, 2013, Appellants filed a Request for Injunction with the Oneida Tribal Judicial System, Trial Court, to instruct the Respondent, Oneida Business Committee, to immediately terminate the Emergency Temporary Attorney employment contract of Mr. Layatalati Hill. Appellants asserted that Mr. Hill's lack of a Wisconsin State Bar License required the termination of the contract.

On October 23, 2013, the trial court found the Appellants request for an Injunction failed to meet the terms in Oneida Tribal Judicial System, Rules of Civil Procedure, Rule 31. The case then proceeded as an Original Complaint and a hearing was convened on November 26, 2013 to hear the merits of the case.

At the November 26, 2013 hearing Judicial Officer Jean Webster stated on the record Attorney Rebecca Webster is the spouse to her nephew and at the same time Judicial Officer Sandra Skenadore stated that Layatalati Hill is her sister's nephew through marriage and therefore Judicial Officers Skenadore's nephew-in-law. Both Judicial Officers acknowledged they had taken the oath of office to judge fairly, objectively and independently without prejudice.

Ms. Dodge then motioned to recuse both Judicial Officers Jean Webster and Sandra Skenadore. Appellant cited Chapter Five of the Judicial Code, Article VI, Sec. 6-1(c) asserting both to have close family members as a party or attorney on the case. Ms. Dodge argued Article VII requires both parties to independently agree in writing to continue the hearing in order for both Judicial Officers to continue as hearing officers.

The Trial Court denied the motion for recusal. The Trial Court stated Article VI, Sec. 6-1 is intended to remove a judicial officer in which their impartiality might reasonably be questioned. The Trial Court found removal to be necessary if judges are reasonably close family members of the litigants. Both Attorney Webster and Mr. Hill are members of Judicial Officer Webster's and Judicial Officer Skenadore's extended families. Attorney Webster is a niece-in-law to Judicial Officer Jean Webster and Mr. Hill is a nephew-in-law to Judicial Officer Sandra Skenadore. The Judicial Officers do not have close ties with the individuals listed.

The Trial Court dismissed the Petitioners' complaint on December 13, 2013.

On December 27, 2013, Appellants filed a Notice of Appeal to the Oneida Tribal Judicial System, Appellate Court, but failed to state their reason for appeal. The Initial Review body granted a five day perfection of the Appeal, with a due date of January 18, 2014.

On January 20, 2014, Appellants filed their appeal of the Motion to Dismiss, in Trial Court Docket No. 13-TC-129, alleging the trial level Judicial Officers Jean Webster and Judicial Officer Sandra Skenadore erred in their failure to recuse themselves. "Failure to Recuse Where Conflict of Interest Exists in violation of Judicial Code, Article VI, Sec. 6-1(c) and Chapter 152, Canons of Judicial Conduct."

An exchange of briefs was completed on February 25, 2014. There was no Appellants Brief submitted per Rules of Appellate Procedure, Rule 13(A): *Time: The appellant shall file a brief within thirty days of the filing of the Notice of Appeal.*

The Appellate Review body consisting of Judicial Officer Janice L. McLester, Pro Tem Judicial Officer Carole Liggins, Judicial Officer Jennifer Webster, Judicial Officer Stanley R. Webster and Pro Tem Judicial Officer James Van Stippen deliberated on May 1, 2014. The panel reviewed the merits of the appeal and now files its decision to affirm the decision of the Oneida Tribal Judicial System, Trial Court in Leah S. Dodge, Michael T. Debraska and Cathy L. Metoxen, Docket No. 13-AC-019.

We affirm the decision of the Trial Court granting the Motion to Dismiss entered on December 13, 2013.

II. Issues

Was the decision of the Oneida Tribal Judicial System, Trial Court, clearly erroneous and against the weight of the evidence?

III. Analysis

Was the decision of the Oneida Tribal Judicial System, Trial Court clearly erroneous and against the weight of the evidence?

No. Appellants allege Judicial Officers Jean Webster and Sandra Skenadore's refusal to recuse themselves from the hearing panel resulted in a legal error. Appellants allege the Trial Court denied their right to "due process of law" as required in the Oneida Tribal Constitution; and that this denial prohibited a fair hearing on their original complaint.

At the Trial Court hearing, the judicial officers made numerous attempts to have the Petitioners proceed with the merits of their complaint, informing the Petitioners their recusal concerns could be brought up in appeal after the final decision of the case was decided should they choose to

proceed. Appellants then refused to address their complaint.

Respondent, through Attorney Webster, presented its argument that the Petitioners failed to present any law that was violated with the hiring of Mr. Hill. Mr. Hill was hired by the Tribe by contract to provide legal services to the Legislative Operating Committee. The contract was from September 30, 2013 to February 28, 2014 and was approved by the Oneida Business Committee. Mr. Hill received his J.D. degree from University of Kansas Law School in 2012, but is not licensed by the State Bar of Wisconsin nor admitted to practice before the Courts of the State of Wisconsin at the time of this appeal.

Respondent argued the Petitioners failed to demonstrate that any law had been violated. We agree. Respondents correctly assert “neither Wisconsin nor Oneida tribal law requires an attorney to be licensed at the time of being hired as an attorney.” Wisconsin Statute Section 757.30 refers to practicing before State courts, which Mr. Hill is not. Petitioners have not provided the Court with any evidence or valid argument as to what laws have been violated.

At the hearing before the Trial Court, Petitioners failed to respond to Respondents arguments, or address their own complaint.

The Appellants presented to this Appellate body their “Arguments Regarding Respondents’ Wrongful Hiring Decision.” The Appellate Court is limited to evidence in the record to support or overrule the Trial Court. It does not hear factual issues or makes an original record. The Petitioners essentially refused to make a record. Therefore, there is no support for their arguments and no legal basis for the relief requested.

The Constitution and By-Laws of the Oneida Tribe of Indians of Wisconsin, Article VI-Bill of Rights guarantees all members the right to due process of law. It states:

All members of the Tribe shall be accorded equal opportunities to participate in the economic resources and activities of the tribe. All members of the tribe may

enjoy, without hindrance, freedom of worship, conscience, speech, press, assembly, association and due process of law, as guaranteed by the Constitution of the United States.

The definition of Due Process of Law states:

Due Process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved.” (Black’s Law Dictionary, Sixth Edition).

The right to be heard before a fair and just tribunal.

We find the Appellants were provided due process. The Trial Court provided them with an opportunity to present their arguments. They had the right to be heard. Numerous opportunities were provided to Appellants during the hearing to present their complaint; they repeatedly refused. Clarification was provided numerous times throughout the hearing that the Appellants had the opportunity to appeal the refusal to recuse. Petitioners refused to move past the denial of their motion for recusal and refused to proceed.

Judicial Officers Webster and Skenadore both acknowledged their family relationships with Attorney Webster and Respondent Hill and felt they could proceed fairly and justly. The Appellants assert the “reasonably close family member” verbiage in the Oneida Tribal Judicial Code of Conduct, Article VI would include a niece-in-law and nephews-in-law as in this case and would be just cause for recusal. However, there is no definition of what constitutes reasonably close. Petitioners point to no source of law or other support for their position.

In fact, under Chapter 152, the Judiciary Canons of Judicial Conduct which will apply to the Judicial Branch as of November 1, 2014, the definition of “immediate family” does not include niece-in-law or nephew-in-law.

We agree with the Respondent in “the absence of authority mandating that nephews-in-law and nieces-in-law be included, the Tribal Court was within its authority to determine that such relationship were not considered ‘reasonably close.’”

We note for the record the Appellant failed to file a completed Notice of Appeal in Accordance with Oneida Tribal Judicial System, Rules of Appellate Procedure, Rule (D) and was given the opportunity to perfect for review. The due date on the perfection was January 18, 2014 and the perfection was filed on January 20, 2014, two days beyond the due date for acceptance. The Appellate Court accepted this appeal pursuant to Rule 5(A) Appeal – How Granted:

As a Matter of Right: A final judgment or final order of any original hearing body or the trial court of the OTJS may be appealed to the OTJS appellate court in accordance with the APA, unless otherwise expressly provided by Oneida law. The Oneida Tribal Judicial System retains the discretion to deny acceptance of an appeal where it fails to comply with these Rules of Appellate Procedure.

The perfected Appellants brief was due on January 18, 2014 and was received on January 20, 2014, two (2) days beyond the due date. In the interest in fairness and justice, the Appellate Court accepted for review in accordance with Rule 21(D) Penalties:

Substantial Compliance: The appellate court may, in its discretion and when in the interest of justice, find that any motion or brief filed in substantial compliance with these rules is sufficient to proceed with the completion of the case of resolution of the motion in question.

This case also borders on a frivolous filing in accordance with Rules of Appellate Procedure, Rule 21(A)(2)(a)(b) Penalties:

Frivolous Claims: If an appeal or cross-appeal is found by the appellate court to be frivolous, the court may award to the successful party costs and attorney’s fees.

(2) A finding of a frivolous appeal or cross-appeal will be made if one or more of the following elements are found by the appellate court:

(a) The appeal or cross-appeal was filed, used or continued in bad faith, solely for the purposes of delay, harassment or injuring the

- opposing/party; or*
- (b) *The party or party's advocate knew, or should have known, that the appeal or cross-appeal was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.*

Mr. Hill was hired under a limited term contract which ended on February 28, 2014. This matter is arguably moot. However, we decide the issue on the merits as it is subject to repetition but could evade review. See e.g., *Davis v. Ball Memorial Hospital Ass'n Inc.*, 753 F.2d 1410, 1416 (7th Cir. 1985).

IV. Decision

The decision of the Oneida Tribal Judicial System Trial Court is affirmed. It is so ordered.