

COURT OF APPEALS

Jordan Powless,

Appellant,

v.

Travis Wallenfang, Oneida Indian Preference Department,

Respondent.

Case #: 16-AC-009

October 21, 2016

INITIAL REVIEW DECISION

Reviewing Oneida Judiciary Appellate Judges: Diane House, Chad Hendricks and Jennifer Hill-Kelley.

Background

Appellant Jordan Powless (hereinafter “Powless”) brought an action against Travis Wallenfang and the Oneida Indian Preference Department (collectively, “Wallenfang”) asking that he be included on the Indian Preference List. Powless first filed this same action on May 19, 2016; however, it was dismissed without prejudice because Powless failed to serve the Tribal Secretary. On July 25, 2016, Powless refiled his case and a hearing was scheduled for August 25, 2016. Powless requested an adjournment to a later date and the Trial Court rescheduled a hearing for September 8, 2016. Powless failed to appear at the September 8, 2016 hearing. Wallenfang then requested a dismissal under On.R.Civ.P. §153.21-2 for failure to prosecute. The Trial Court granted Wallenfang’s request to dismiss with prejudice. Powless appeals the Trial Court’s dismissal.

Decision

After reviewing the Notice of Appeal and the decision of the Trial Court, we have determined that Powless has not sufficiently alleged that the Trial Court:

1. Violated applicable provisions of the Constitution;
2. Violated provisions, substantive or procedural, of applicable Tribal law or applicable federal law;

3. Made a decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or
4. Made a decision not supported by the substantial evidence on the record taken as a whole, nor has new evidence been presented that was unavailable at the time of the hearing, which, if available, may have altered the final decision.

Powless thus failed to state the legal grounds for his appeal under On.R.Civ.P. §154.5-2(c)(3), and failed to show a clear and justifiable excuse for his absence at the September 8, 2016 hearing. Therefore, the Trial Court did not abuse its discretion in dismissing Powless' case for failure to prosecute. Based upon the foregoing, the decision of the Trial Court is **AFFIRMED**.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolution 01-07-13-B, this Appeal is hereby **DENIED**.

It is so ordered.