

COURT OF APPEALS

Kyle Wisneski,

Appellant,

Case No.: 17-AC-009

v.

August 15, 2017

Green Bay Radiology, S.C.,

Respondent.

INITIAL REVIEW DECISION

Reviewing Oneida Judiciary Appellate Judges: Diane House, Chad Hendricks, and Sharon House.

BACKGROUND

On June 27, 2017, the Oneida Judiciary's Trial Court (hereinafter "Trial Court") held a garnishment hearing. Respondent, Green Bay Radiology, S.C. (hereinafter "Respondent"), appeared as the creditor, and Appellant, Kyle Wisneski (hereinafter "Wisneski"), was the debtor in Trial Court Case No. 17-GRN-048. Wisneski failed to make an appearance, therefore the Trial Court found him to be in default.

The Trial Court issued its garnishment decision on June 30, 2017 and ordered Wisneski to pay \$88.96 per week until the debt is paid in full. Wisneski appealed the Trial Court's Order on July 17, 2017 with the Oneida Judiciary's Court of Appeals. Wisneski also filed a Request for Waiver of the Filing Fee and a Request for Waiver of the Deposit/Bond in accordance with Oneida Rules of Appellate Procedure §805.5-2(b)(1) and §805.5-2(d), respectively.

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 Wisneski 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 Tribal law or applicable federal law;
3. Is an administrative decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or
4. Is 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.

Wisneski failed to appear at his garnishment hearing held in the Trial Court. Without a legitimate excuse, i.e. medical/family emergency, a party loses their right to appeal if they fail to make an appearance at the Trial Court level. Wisneski has not provided a sufficient reason for his failure to appear and has failed to state the legal grounds for his appeal under Oneida Rule of Appellate Procedure §805.5-2(c)(3). Therefore, the Trial Court's Garnishment Order signed on June 30, 2017, in the matter of *Green Bay Radiology, S.C., creditor, v. Kyle Wisneski, debtor*, Case No. 17-GRN-048, is hereby **AFFIRMED**.

Since Wisneski's appeal has been denied, his requests for a Waiver of the Filing Fee and for a Waiver of the Deposit/Bond in accordance with Oneida Rules of Appellate Procedure §805.5-2(b)(1) and §805.5-2(d), is moot.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, this appeal is hereby **DENIED**, this 15th day of August 2017, in the matter of Case No. 17-AC-009, *Kyle Wisneski v. Green Bay Radiology, S.C.*

It is so ordered.