

COURT OF APPEALS

Bradley W. Graham,
Petitioner,

Case No. 17-AC-010

v.

July 27, 2017

Oneida Election Board,
Respondent.

FINAL DECISION

This appeal has come before the Oneida Court of Appeals; Chief Judge Gerald L. Hill, Appellate Judge Sharon House, and Appellate Judge Pro Tem, Carole Liggins.

Motions for a Court Order and Appeal were filed on July 24, 2017 at 4:30 p.m. with the Judiciary, however, neither were signed nor properly served by the Appellant, Bradley Graham, pursuant to Rules of Civil Procedure, §§803.5 and 803.8-1. On July 25, 2017, the Appellant was notified by telephone by the Clerk of the Appellate Court of the deficiencies of his documents and service. Citing Rules of Appellate Procedure, §805.4-1, the Chief Judge of the Appellate Court, determined that due to the importance of this challenge to the validity of the election held on July 8, 2017, to the Oneida Nation, the Appellant be granted until noon on July 25, 2017 to perfect and cure these defects, which he did. The appellate review panel accepted the documents filed as an Appeal under the Oneida Election Law.

INTRODUCTION

The Oneida Trial Court, after a hearing held on July 20, 2017, issued an Order that same day which denied Bradley W. Graham's request for a Temporary Restraining Order and preliminary injunction, and request for a new hearing. The Appellant received the decision of the Trial Court on July 21, 2017. The decision of the Oneida Trial Court is *affirmed*.

JURISDICTION

The Court of Appeals has jurisdiction over this matter per §801.8-2(a)(2) of the Oneida Judiciary Law which gives this Court exclusive jurisdiction to review appeals of agency and administrative decisions, and the Oneida Election Law, Chapter 102, §102.11-11

BACKGROUND

This is an appeal from the Oneida Trial Court Order, dated July 20, 2017.

On July 17, 2017, the Appellant, Bradley W. Graham (hereinafter referred to as “Graham”) filed pleading by which he sought a Temporary Restraining Order (hereinafter referred to as “TRO”) and Preliminary Injunction challenging the Oneida Election held on July 8, 2017. Attorney Michelle Gordon, on behalf of the Respondent, Oneida Election Board (hereinafter referred to as “OEB”), filed a Motion to Dismiss. The hearing was held on July 20, 2017 at 3:30 p.m. The Trial Court ruled that it had no authority under the Oneida Election Law to grant either a TRO or Preliminary Injunction. The remedy under a challenge based on §§102.11-11.(a) and (b) is to order a Special Election, if the Judiciary invalidates the election results.

On July 20, 2017, the Trial Court’s Order was to: 1) Deny the Respondent’s Motion to Dismiss, 2) Deny the requests of Graham for a TRO and preliminary injunction, and 3) to Deny Graham’s request for a new election.

In his appeal, Graham also added two (2) issues of recusal. The first was against the Judge of the Trial Court, alleging that because his brother, Ronald W. (Tehassi) Hill was the Chairman-elect, and his grandmother was elected to the ONCOA Board, the judge was in violation of Chapter 802, Canons of Judicial Behavior, Canon #1. This Canon states that a Judge shall uphold and promote the independence, integrity and impartiality of the Judiciary: and shall avoid impropriety and the appearance of impropriety. The second was against the attorney for the Respondent, because she was alleged to have wrongfully participated in the recount.

On July 25, 2017, the Respondent filed a Brief in opposition to Graham’s appeal. However, the document was not served until July 26, 2017. The Court accepted the brief to insure that both parties were heard on this appeal.

ISSUES

1. Was the process regarding “spoiled” ballots followed?
2. Was the process for processing “rejected” ballots followed?
3. Was the Oneida Election Law violated or processed unfairly as to require a new election?

At the Trial, Graham alleged that the Oneida Election Law had been violated in three (3) respects: 1), that “spoiled” ballots were improperly handled, 2), that “rejected” ballots were improperly handled, and 3), that the voting machine was in disrepair and not functioning properly as required by the Election Law. The Trial Court considered and addressed each of these issues were and found that Graham’s arguments to be unconvincing in each instance. Although there appeared to be some deviations from procedures set forth in the code, there were no facts adduced by evidence at the trial to support, by clear and convincing evidence, that the election was tainted and that a new or special election should be ordered.

ANALYSIS

New Election

Oneida Election Law, §102.11-11, requires that “The person challenging the election results shall prove by clear and convincing evidence that the Election Law was violated or an unfair election was conducted, and that the outcome of the election would have been different but for the violation.” While we may draw different inferences about the facts or laws applied in the Trial Court, we must give deference to the finder of facts who is able to observe the demeanor of witnesses and consider the legal arguments of the parties. In this case, the Trial Court heard witnesses for both sides and concluded that Graham had not met his burden of persuasion by clear and convincing evidence that the deficiencies in recounts or processing ballots supported his request for a new election.

The appeal provides no new facts or argument that would render the election tainted that would support overturning the Trial Court’s Order. Thus, there is no basis for issuing an order for a new or special election. The issues of recusal were not raised at the trial, however, the argument of Graham on these points is misleading in that he has not made a credible connection of conflict; that though the judge is the brother of the Chairman-elect, and the grandson of another winning candidate for the ONCOA Board, the Trial Court judge is not alleged to have been biased in his decision here being contested ruling on other issues, nor has Graham established any benefit he or they would have accrued in his decision being the subject of the instant appeals. Moreover, the record shows this was not introduced at the trial, so it is not considered here as part of the appellate decision.

Standard of Review

Oneida Judiciary Law, §801.8-3, Scope of Appellate Review, (a) Scope of Review.

In hearing an appeal, the Court of Appeals shall not substitute its judgment or wisdom of the credibility of testimony or weight of the evidence for that of the original hearing body. (1) The Court of Appeals' review shall be limited to matters of record in the case and may reject a finding only where it determines that the finding is clearly erroneous. (2) Except as otherwise provided by law or rule, the Court of Appeals shall not hear new or additional facts, and issues not raised in the proceedings from which the appeal is taken shall be deemed waived and shall not be considered on appeal. Elsewhere in the Code as stated above, the appellant shall have the burden of persuasion, §801.8-3 (b). The court concludes that Graham not met his burden.

Election Law, §102.11-11, provides that any qualified voter may challenge the results of an election within 10 days after the date of the election. The Trial Court is required to hear and decide a challenge within 2 days after the challenge has been filed. Any challenge to the decision of the Trial Court must be filed within one (1) day after the Trial Court's decision. The Appellate Court must review and issue its decision within 2 days after it is filed.

The challenger to the election must prove by clear and convincing evidence that the election law was violated or unfair. Pursuant to §102.11-11 (a), Graham has the burden of proving that the Election Law was violated or that it was conducted unfairly to the extent of requiring a new election.

Conflicts of Interest

Conflicts and Appearances of conflicts for judges are set forth in Chapter 802, Canons of Judicial Conduct. This challenge was not raised at the hearing and so is improper to raise on appeal here. Nevertheless, the facts alleged by Graham are not applicable. Graham has not connected the family relationships he asserts to the issues on appeal. Nor has he shown how or why the presiding judge was or could be biased. Graham cites Canon #1 as his authority for alleging that the Trial Judge violated his duty to avoid impropriety or the appearance of impropriety, however, he asserts no facts to support that the Judge was either in actual conflict or his presiding over the trial gave any appearance of conflict. It is an unsupported allegation, and thus without merit.

As to the Respondent's attorney, the allegation of participating in or influencing the recount is not supported by any facts in the record that would, might or could be found inappropriate in any way.

The allegations in both instances are without merit and not considered in this decision.

CONCLUSION

Graham is qualified within the definition of the Oneida Election to challenge the outcome of the Oneida election held on July 8, 2017. His motions for a Temporary Restraining Order and a preliminary injunction were properly denied by the Trial Court. His request for a new election was properly denied by the Trial Court. The Respondent's Motion to Dismiss was properly denied by the Trial Court.

DECISION

Based upon the foregoing, the Order of the Trial Court, 17-TC-045, dated July 20, 2017 is hereby *affirmed*.

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 decision is issued the 27th day of July, 2017, in the matter of Case No. 17-AC-010, *Bradley W. Graham vs. Oneida Election Board*.

It is so ordered.