

COURT OF APPEALS

Fern Danay,
Appellant,

Case No.: 17-AC-015

v.

Date: November 27, 2017

St. Mary's Hospital of Green Bay,
Respondent.

INITIAL REVIEW DECISION

This matter has come before Oneida Judiciary Appellate Pro Tempore Judges Diane House and Chad Hendricks; and Appellate Judge Sharon House.

BACKGROUND

On September 27, 2017, the Oneida Judiciary's Trial Court (hereinafter "Trial Court") held a garnishment hearing. Respondent, St. Mary's Hospital Medical Center of Green Bay (hereinafter "Respondent"), appeared as the creditor, and Appellant, Fern Danay (hereinafter "Danay"), was the debtor in Trial Court Case No. 14-GRN-142. Danay failed to make an appearance; therefore, the Trial Court found her to be in default.

The Trial Court issued its garnishment decision on September 27, 2017 and ordered Danay to pay \$93.83 per week until the total debt of \$1158.39 is paid in full. Danay appealed the Trial Court's Order with the Oneida Judiciary's Court of Appeals on October 25, 2017. Danay also filed a Request for Waiver of the Filing Fee in accordance with Oneida Rules of Appellate Procedure §805.5-2(b)(1).

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 Danay 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.

Danay failed to appear at her 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. Danay has not provided a sufficient reason for her failure to appear and as a result, has failed to state the legal grounds for her appeal under Oneida Rule of Appellate Procedure §805.5-2(c)(3). Therefore, the Trial Court's Garnishment Order signed on September 27, 2017, in the matter of St. Mary's Hospital Medical Center of Green Bay v. Fern Danay, Case No. 14-GRN-142, is hereby AFFIRMED.

It is unclear why Danay submitted an Oneida Judiciary Earnings Garnishment Debtor's Answer with her filings to the Court of Appeals. This document was attached to the Notice of Appeal, with no supporting documents. The Debtor's Answer document is meant to assist Danay in presenting her position at the Trial Court level for what she considers to be a fair garnishment against her wages.

Since Danay's appeal has been denied, her request for a Waiver of the Filing Fee in accordance with Oneida Rules of Appellate Procedure §805.5-2(b)(1) 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 27th day of November, 2017 in the matter of Case No. 17-AC-015, *Fern Danay v. St. Mary's Hospital Medical Center of Green Bay*.

It is so ordered.