

COURT OF APPEALS

Arletta J. Kurowski,

Appellant,

v.

Estate of Kenneth H. Kurowski and
Norma Kurowski,

Respondents.

Case Nos. 18-AC-004
18-AC-005
18-AC-006

January 17, 2019

FINAL DECISION

This matter has come before Appellate Judges, Sharon House and Chad Hendricks, and Chief Appellate Judge, Gerald L. Hill.

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.

INTRODUCTION

This matter was accepted by this Court on July 18, 2018 and on its own motion consolidated the three (3) appeals from the Oneida Trial Court (hereinafter “TC”), as 18-AC-004, 18-AC-005 and 18-AC-006. All three (3) cases were decided on the same date, May 30, 2018, and filed here separately.

18-AC-004 involves Arletta Kurowski’s (hereinafter “A. Kurowski”) request that Kenneth Kurowski’s (hereinafter “K. Kurowski”) estate pay for child support arrearages, which the TC denied due to lack of jurisdiction.

In **18-AC-005** A. Kurowski alleged that K. Kurowski’s second wife, Norma Kurowski, fraudulently presented a **death certificate** issued in another jurisdiction and an **invalid marriage license** based upon alleged bigamy which she then used to become the Personal Representative of

K. Kurowski. The TC held that there was a lack of personal and subject matter jurisdiction in its decision to dismiss, with prejudice.

In **18-AC-006** A. Kurowski asserted the American Indian Religious Freedom Act as authority to claim personal effects, service awards, and funerary ashes of K. Kurowski. It was acknowledged that K. Kurowski and A. Kurowski were Oneida Indians, but the TC found that the complaint failed to show how this applied to the case or established jurisdiction. The TC dismissed this case with prejudice for lack of subject matter jurisdiction.

Upon consolidation, A. Kurowski motioned the Court for a refund of two (2) of the appellate filing fees which were denied because filing fees are not refundable. On October 10, 2018, the Court denied A. Kurowski's motion for peacemaking because the TC's decisions being reviewed were for dismissal due to lack of jurisdiction. Peacemaking is based upon the parties' voluntary agreement to the process of negotiating the various issues being litigated. However, jurisdiction is not a negotiable issue.

Dan Hawk (hereinafter "Hawk") has designated himself as an "agent" for A. Kurowski. However, he is not admitted to practice as an advocate for A. Kurowski in this Court. This appellate review is confined to the original three (3) cases which as stated above, the TC dismissed for lack of jurisdiction. The decision of the TC is *affirmed*.

ISSUE

Whether the TC erred in its decision to dismiss each case for lack of appropriate jurisdiction?

ANALYSIS

In all three cases, A. Kurowski claimed she was denied due process and there were errors by the TC. A. Kurowski cited *Burrell v. Armijo*, 456 F.3d 1159 (2006) case several times as authority for establishing personal jurisdiction over Norma Kurowski. However, the TC found that there was no corresponding connection to any Oneida Nation laws that would have made *Burrell* applicable to the cases. Thus, the TC correctly ruled that the authority of the *Burrell* case was without foundation and did not apply to any of these cases.

This Court has reiterated on several occasions that it defers to the findings of the lower court in the absence clear error. Oneida Judiciary Law §801.8-3 – *Scope of Appellate Review*, states that “the Court of Appeals shall not substitute its judgment or wisdom of the credibility of testimony or the weight of evidence for that of the original hearing body.” The right of the appellant to appeal based on §801.8-4(a), (b), (c), and (d) has a low threshold. However, the allegations in the Notice of Appeal must still be substantiated by the parties’ briefs to prevail. The burden of persuasion is on the appellant. Here that burden has not been met.

In all three cases, the TC consistently found that no laws of the Oneida Nation support the notion that the TC has jurisdiction. Further, A. Kurowski failed to provide any legal authority or reasoning upon which to attach Oneida jurisdiction to any of the three (3) cases.

For the reasons set forth here, this Court affirms each of the decisions of the TC appealed in the consolidated cases; 18-AC-004, 18-AC-005, and 18-AC-006. We will not address the two (2) actions in *lis pendens* filed by Hawk in South Carolina which should be addressed there in light of our affirmation of the TC’s findings and orders of dismissal in each of these consolidated appeals for lack of the required jurisdiction.

Pursuant to the authority of §801.8-2(b), this Decision of the Appellate Court is final.

ORDER

Pursuant to the Rules of Appellate Procedure, §801.8-2(b), §805.9-2, §805.9-3, §805.10-4, and §805.13-2(a), this Court hereby affirms the decisions of the Trial Court in dismissing the three (3) actions, which we have consolidated, as identified in the caption.

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, the decisions of the Trial Court are AFFIRMED. Date this 17th day of January 2019, in the matter of Case Numbers. 18-AC-004, 18-AC-005 and 18-AC-006, *Kurowski v. Estate of Kenneth H. Kurowski. Et al.*

It is so ordered.