

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Arletta J. Kurowski,
PETITIONER,

v.

CASE NO: 18-TC-004

The Estate of Kenneth H. Kurowski,
DEFENDANT

ORDER

This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding.

Appearing in Person:	Petitioner, Arletta J. Kurowski and Daniel Hawk.
Appearance by Phone:	Respondent, The Estate of Kenneth H. Kurowski, Personal Representative of the Estate of Kenneth H. Kurowski, Norma Kurowski and Attorney Curtis Clark.

STATEMENT OF THE CASE

A complaint was filed by Petitioner February 6, 2018. A Pre-Trial hearing was held on March 9, 2018. At the hearing, the Petitioner added clarity to the caption: Defendant. On March 5, 2018, Norma Kurowski filed answer to the complaint. The Court entered Norma Kurowski's response on the record. The Petitioner was not provided a copy of the Defendant's answer to the complaint; therefore the court allotted time for both parties to prepare a response. On April 30, 2018, the court held a Jurisdictional hearing.

The Petitioner's son, Daniel Hawk was present at the March 9, 2018 hearing, and requested to assist the Petitioner; she is disabled and hearing impaired. The Court granted Mr. Hawk a one-time waiver to assist and/or represent the Petitioner, in order to continue as an advocate he is required to be approved to practice in the Judiciary prior to any further hearings. Mr. Hawk did not complete the approval to practice process; therefore, he was not allowed to represent the Petitioner at the April 30, 2018 Jurisdictional hearing.

ISSUE

Does the Oneida Judiciary Trial Court possess Subject Matter Jurisdiction to hear this complaint?

FINDING OF FACTS

1. Notice was given to all parties entitled to notice.
2. Upon filing the complaint, Petitioner checked box: Declaratory Judgement.
3. On its own motion, the Court amended the Defendant caption of this case to: **The Estate of Kenneth H. Kurowski.**

PRINCIPLES OF LAW

1. **801.3 Definitions**

(a) "Agency" means any Tribal board, committee, commission, department, or officer acting on behalf of such an entity and where relevant, a hearing body of such an entity.

2. **801.5-2 Subject Matter Jurisdiction.**

The Tribe is a sovereign nation and reserves all sovereign rights, authority and jurisdiction consistent with being a sovereign nation. The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following:

(a) Tribal laws which specifically authorize the Trial Court to exercise jurisdiction.

(b) the Constitution.

(c) where an agency has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person, and the person has exhausted the process provided by law, if any, for review of the action, and

(1) a hearing body has not been designated by law for the purpose of an appeal; or

(2) there is no law providing that the agency's decision is final and/or not appealable.

(d) where a disagreement over the terms, interpretation or enforcement of a written contract, where at least one (1) of the parties is an agency or where both parties meet the personal jurisdiction requirements listed in 801.5-4.

(1) *Statute of Limitations.* In all cases requiring interpretation or enforcement of a contract, the suit must be filed within twenty-four (24) months of either:

(A) the date a party breaches the terms of the contract; or

(B) in actions for declaratory relief, the date a dispute arises as to the interpretation of the contract.

(e) where a declaratory judgment is sought to determine the validity of a Tribal law. The Trial Court shall render a declaratory judgment in such action only when it appears from the petition and the supporting evidence that the law or its

threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the petitioner. The Trial Court shall declare the law invalid if it finds that:

- (1) the law violates Constitutional provisions; or
- (2) the law was adopted without compliance with law making procedures required under Tribal law.

(f) small claims actions where the amount in controversy is five thousand (\$5,000) or less.

ANALYSIS

The Petitioner seeks a Declaratory Judgment; Trial Court Judgment awarding child support arrears for Donna Kurowski-Galvan, Debra Kurowski, and Daniel Hawk against The Estate of Kenneth H. Kurowski. In regards to a declaratory judgment, the Petitioner has the burden to meet both declaratory judgment and subject matter jurisdiction requirements identified in Chapter 801.5-2.

A declaratory judgment is sought to determine the validity of a Tribal law. In this case, the Petitioner cites numerous laws or cases outside the Oneida Nation, but fails to identify specific Tribal law or laws that were violated, resulting in interference, impairment or threats of the legal rights and privileges of the Petitioner. Further burden is on the Petitioner to prove any Oneida Nation laws violate a Constitutional provision or that the law was adopted without following law making procedures required under Tribal law. The Petitioner did not prove any Oneida Nation law violates Constitutional provisions or was adopted without compliance with law making procedures required under Tribal law.

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: Where an agency has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person, and the person has exhausted the process provided by law, if any, for review of the action.

The Petitioner has brought this suit forward against The Estate of Kenneth H. Kurowski. In establishing subject matter jurisdiction, 801.5-1 (c) requires that an *agency* has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person... Therefore it requires an agency to take some form of action. Based on the definition of “agency” outlined in 801.3, The Estate of Kenneth H. Kurowski does not meet any of the criteria identified in the definition “agency” outlined in 801.3. Therefore The Estate of Kenneth H. Kurowski is not an agency and subject matter jurisdiction is not established under 801.5-2 (c).

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: Where a disagreement over the terms, interpretation or enforcement of a written contract.

The Petitioner has not produced a written contract in regards to fulfilling this requirement; therefore, disagreements over the terms, interpretation or enforcement are moot.

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: Small claims actions where the amount in controversy is five thousand (\$5,000) or less.

In the complaint, the Petitioner requests the Trial Court to award \$123,120.58 in monetary damages to the Petitioner for child support arrears. This far exceeds the maximum amount of \$5,000.00 for small claims and must be denied for these reasons.

CONCLUSIONS OF LAW

The Petitioner did not meet the Declaratory Judgment requirements, nor did the Petitioner establish the Trial Court has Subject Matter Jurisdiction to hear this complaint.

ORDER

1. On its own motion, the Court amends the caption of this case to *Arletta J. Kurowski v. The Estate of Kenneth H. Kurowski*.
2. The request for a Declaratory Judgment is denied.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council and Order signed on 5/30/2018 in the matter of *Arletta J. Kurowski v. The Estate of Kenneth H. Kurowski* Case #18-TC-004.

The parties have the right to appeal within thirty (30) calendar days after the date this order or judgment is signed.