

Oneida Tribal Judicial System

OnΛyote ʔ a·ka Tsiʔ Shakotiyaʔ Tolé hte

TRIAL COURT

Catherine Bennett,
Petitioner

Docket No. 11-TC-144

v.

Oneida Tribe HRD/Benefits
&
Crawford & Company Insurance,
Respondents

DECISION

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers: Jean M. Webster, Mary Adams, and Sandra Skenadore presiding.

The following matter came before the Oneida Tribal Judicial System for a hearing on the 6th day of June, 2014.

Appearing in person: Petitioner's Attorney Brian Stevens. Respondents: Oneida Tribe HRD/Benefits - Christina Blue Bird; Crawford & Company Insurance – Betty Jaffer; and Attorney Kelly McAndrews, Oneida Law Office and Heidi Wennesheimer, Senior Paralegal Oneida Law Office.

Not appearing: Petitioner, Catherine Bennett.

INTRODUCTION

This case arises out of Ms. Bennett's workers compensation claim after she suffered an injury while at work on March 5, 2011. On June 25, 2012, the court issued a decision in favor of the Petitioner and ruled the benefits shall be extended through May 10, 2012.

Petitioner claims that the Court's June 25, 2012 decision has not been honored by the Tribe and on January 15, 2014, Petitioner filed a Motion for Final Judgment, Enforcement Damages and Interest. Petitioner sought two rulings: 1) A final amount determined by the court as to what is owed to Petitioner; and 2) Attorney fees of \$500 and interest from the time of the June 25, 2012 decision. (At the pre-trial hearing of March 24, 2014, the Petitioner withdrew the claim of medical records expenses of \$250.)

We deny Petitioner's request as Ms. Bennett did not appear for trial on June 6, 2014.

BACKGROUND

On February 12, 2014, Respondents filed their claims/opposition to Petitioner's Motion for Final Judgment, Enforcement Damages and Interest. Respondent requested the court to dismiss the Petitioner's motion on several grounds:

- Petitioner has failed to state a claim;
- Over recovery is barred;
- Res judicata (a final decision was entered and is not subject to re-litigation);
- Find the Final Decision satisfied; and
- Find the Petitioner's motion is without reasonable grounds and assess court cost upon Attorney Stevens.

On March 24, 2014 a hearing was held. Appearing in person was the Petitioner, Catherine Bennett with Attorney Brian Stevens and Respondents were: Christina Blue Bird, HRD-Benefits; Mark McCluskey, Crawford & Company Insurance; and Attorney Kelly McAndrews, Oneida Law Office and Heidi Wennesheimer, Senior Paralegal Oneida Law Office. Both parties had the opportunity to address their motions filed with the court. At the end of the hearing a Scheduling Order was developed with the cooperation of both parties in advance in the event

the court decision was to move the case to trial. No decision was rendered at that time. The Scheduling Order included a June 6, 2014 trial date. That date was selected and agreed upon by all present after input from both parties and attorneys.

On April 21, 2014, the Court rendered a decision to move the case to trial. The Scheduling Order was sent to both parties and the trial was scheduled for June 6, 2014. The Respondent's Motion to Dismiss was held in abeyance.

On June 4, 2014, two days before the scheduled trial, Respondent filed a response objecting to the Petitioner's Motion for Continuance. However, at that time the Court had not received any motion from Petitioner. Respondents claimed the motion was untimely, the motion did not state why Catherine Bennett would not be available on June 6, 2014. Respondents also claim Attorney Stevens was well aware when the status hearing at the Brown County Circuit Court was scheduled he had a hearing scheduled at the Oneida Tribal Judicial System on June 6, 2014 at 9:00 a.m.

On June 5, 2014, the day before trial, the Court received Petitioner's Motion for Continuance and an Answer to Respondents' Motion to Exclude Evidence and Witness. Attorney Stevens cited there was a scheduling conflict as he had a status hearing scheduled in the Brown County Circuit Court on June 6, 2014 at 9:00 a.m., so he would not be available and Catherine Bennett was unavailable. The Trial Court held a deliberation and denied the Petitioner's Motion for Continuance. The motion failed to identify why Catherine Bennett was unavailable or what did she learn on June 2, 2014 that caused her to be unavailable. The Court also notes the June 6, 2014 hearing was scheduled prior to Attorney Stevens status hearing in the Brown County Circuit Court. The Trial date of June 6, 2014 remained as scheduled.

On June 13, 2014 the Trial Court received the requested transcripts of the June 6, 2014 hearing. On June 24, 2014 an Extension of Written Decision was issued to both parties. The Court held

their final deliberation on July 9, 2014.

Arguments:

On June 6, 2014, both parties had the opportunity to address the court. A second Motion to Dismiss was filed by the Respondents and in accordance with the Rules of Civil Procedure, Rule 24 Hearing Procedures, specifically Rule 24 (B) states,

- *“Pending Motions: All pending motions are resolved prior to the commencement of the full hearing.”*

Therefore, the Court addressed the Respondent’s motion first.

Respondent’s arguments

1. On February 11, 2014, Respondents filed a Motion to Dismiss. Respondent claims:
 - Petitioner has failed to state a claim;
 - Over recovery is barred;
 - Res judicata (a final decision was entered and is not subject to re-litigation);
 - Find the Final Decision satisfied; and
 - Find the Petitioner’s motion is without reasonable grounds and assess court cost upon Attorney Stevens.
2. On May 30, 2014, Respondent filed a second Motion to Dismiss Petitioner’s Action. Respondent claims:
 - A. The Petitioner failed to follow the pre-trial scheduling order of April 21, 2014 which informed both parties of the deadlines to submit items such as:
 - i) Discovery requests;
 - ii) Witness list; and
 - iii) Exhibits/evidence list
 - B. On May 14, 2014, Respondents filed their first Request for Interrogatories and Request for Production of Documents with the Court. On May 21, 2014 Respondent received the Interrogatories, but it was signed only by the Petitioner’s Attorney.

Respondent argued that only the Petitioner can sign the Interrogatories and the Interrogatories were to be signed under oath.

- C. The Petitioner failed to pursue prosecution of said claim; therefore, the Respondent motioned the Court to find Attorney Stevens in contempt of court.
- D. Attorney Stevens be assessed court costs because this case was filed in bad faith, with no evidence, no witnesses and no exhibits. In addition, travel expenses are incurred by the Respondents for every hearing Crawford & Company Insurance must attend.

Petitioner's arguments

- 1. On June 25, 2012, the Court rendered a decision in favor of the Petitioner and ruled the Petitioner's benefits shall be extended through May 10, 2012.
- 2. Attorney Stevens stated Catherine Bennett was not available for the June 6, 2014 hearing due to "family matters". At the time the Motion for Continuance was filed, Catherine Bennett claimed she did not believe she had to identify why she was unavailable for the June 6, 2014 hearing.
- 3. Attorney Stevens stated he would not be calling any witnesses. Attorney Stevens argued the Respondent had the opportunity at the March 24, 2014 pre-trial to call the Petitioner to the witness stand. Attorney Stevens further argued all the exhibits were given out to the Respondent and the Court during the pre-trial on March 24, 2014.
 - Exhibit #1: Petitioner's "Call In and Late In requests from March 2011 to April 2012"
 - Exhibit #2: Spreadsheet referencing: "Time Lost, Base Salary Lost, at 60%, Medical Leave at 60% and Owed Total – time & opp"

4. Attorney Stevens argued prior to submitting the Motion for Final Judgment, Enforcement Damages and Interest, the Petitioner had been working with Attorney Orcutt, former Attorney for the Oneida Law Office as to the amount of money owed to the Petitioner.

ANALYSIS AND CONCLUSIONS OF LAW

We are dismissing Petitioner's claim because she failed to appear without adequate explanation on June 6, 2014 for the hearing. The date for trial was set two and a half months ahead of time. It is insufficient to offer a generic explanation that "family matters" kept Petitioner away. Petitioner brought a claim to which Respondent was obligated to respond. The date for the matter to be litigated was June 6, 2014. It is not fair to the Respondents to receive a Motion for Continuance, based on "family matters" two days before the scheduled hearing. Without more explanation, that term encompasses a wide range of possibilities from babysitting to a death in the family. The Court may have been willing to grant a delay for a family emergency or serious issue. If the reason was sensitive or confidential, there are ways to protect a person's privacy. But the Court was left with little choice as no reason was given beyond a very generic phrase.

Without the testimony of the Petitioner at trial and no other witnesses, it is impossible for the Court to rule in Petitioner's favor. Testimony at a pre-trial hearing is not trial testimony. The parties at a pre-trial hearing are not necessarily prepared for a contested hearing where all issues can be addressed and litigated. Respondents were not obligated to be prepared for cross-examination of Petitioner at the pre-trial hearing.

Attorney Stevens' request for a delay is even weaker. Attorney Stevens claimed he had a scheduling conflict within the Brown County Circuit Court. However, according to the Respondents, the state court matter was placed on the calendar on or about May 12, 2014. Attorney Stevens had agreed at the March 24, 2014 pre-trial to the June 6, 2014 trial date.

Even this calendaring mistake could be forgiven if addressed appropriately and timely. That did not occur here.

The Court also agrees with Respondents that, pursuant to Rule 10, interrogatories must be signed by the party who is giving the answers under oath and swearing to their truth.

Petitioner's non-compliance with the Scheduling Order also supports our decision to dismiss. Petitioner's counsel stated at trial he was not calling any witnesses nor entering any new exhibits. All exhibits were submitted during the pre-trial. Attorney Stevens further argued the Respondents had an opportunity during the pre-trial to call Catherine Bennett to the stand. Both of these arguments are inadequate. With respect to Ms. Bennett's testimony, the Respondents was entitled to question her at trial. She was unavailable. It is not fair to the Respondents to disallow scrutiny of her claims through cross examination. A pre-trial hearing is not a trial. Likewise sharing exhibits at the pre-trial hearing is not the same as providing them to the other side in anticipation of trial. The Respondents has the right to be on notice which exhibits may be introduced at trial. Furthermore, at trial the Respondents would have the chance to challenge the exhibits on any number of grounds.

The Respondent further asked the Court to find the Petitioner's Attorney, Brian Stevens, in contempt of court for failure to pursue prosecution and that Attorney Brian Stevens be held liable for court costs.

In accordance with the Rules of Civil Procedure, Rule 32 Contempt, specifically Rule 32(A) and Rule 32(A)(3) states that refusal to obey any order or judgment of the trial court is grounds for contempt.

The Court does not find Attorney Stevens in contempt of court, however, the Court does find Attorney Stevens and Petitioner failed to adequately prosecute this case. Catherine Bennett's absence from the trial meant there was no reasonable way the case could go forward and no compelling excuse was given for her failure to appear.

In accordance with the Rules of Civil Procedure, Rule 18, specifically Rule 18(G) it states:

“If the Court finds by clear and convincing evidence that the matter before the Court was frivolous or has been prosecuted in bad faith, the Court may assess against the Petitioner, some or all of the Court’s costs in the matter.”

The Court assesses court costs to Attorney Brian Stevens in the amount of \$692.80 for the hearings held on March 24, 2014 and June 6, 2014. Attorney Stevens shall have 60 days from the signing of this decision to pay the court costs to the Oneida Tribal Judicial System.

The Court grants the Respondent’s Motion to Dismiss.

DECISION

The decision of the Court is as follows:

1. The Court grants the Respondent’s Motion to Dismiss with prejudice.
2. Attorney Brian Stevens is order to pay court cost in the amount of \$692.80 to the Oneida Tribal Judicial System within 60 days.