

Oneida Tribal Judicial System

Onayote 7 a-ka Tsi7 Shakotiya7 Tolé hte

Trial Court

Kenneth B. Metoxen,

Petitioner

Docket No. 12-TC-071

vs.

Gerald Hill,

Respondent

Date: May 18, 2012

DECISION

This case has come before the Oneida Judicial System Trial Court, Judicial Officers, Mary Adams, Jean Webster, and Leland Wigg-Ninham presiding.

I Background

The Petitioner, Kenneth Metoxen, is requesting the Oneida Judicial System to issue a Temporary Restraining Order against the Respondent, Gerald Hill, and requests an order of protection.

Petitioner alleges that Respondent publicly in a threatening manner shook him emotionally when he was at the Oneida Fitness Center. Petitioner claims he can no longer relax at the Oneida Fitness Center or whenever he sees Respondent and therefore, requests a Restraining Order to keep Respondent at a distant of 1000 feet from him at all times.

II Analysis

Does the Oneida Judicial System have jurisdiction in this matter?

No, the Oneida Tribal Judicial System does not have jurisdiction in this matter. On occasion where there is not a specific grant of jurisdiction to the Oneida Tribal Judicial System, we have asserted jurisdiction under Sec. I.C. of Resolution 8-19-91-A which states:

A subcommittee of the Oneida Appeals Commission shall have authority to hear

and attempt to resolve actions that are subject to ordinance or rules that have no specified hearing forum within the Oneida Tribe.

See e.g., *Cathy L. Metoxen v Pete King III*, 09-TC-141 (12/3/2009). In the *Metoxen* matter, the case was dismissed because the Oneida Tribe does not have the laws which permit us to exercise our jurisdiction over these types of cases, where a protective order is sought.

Like the *Metoxen* case, here, there are no existing Oneida laws which discuss the issuance of protective orders based on the type of allegations made by Petitioner, Mr. Metoxen. Although we are disappointed to have to do so, in the absence of some Oneida law, we do not have authority to act.

In addition, Rules of Civil Procedure, Rule (31) addresses temporary restraining orders and does not permit us to go forward in this type of case. Rule (31) is a procedural rule and does not grant substantive rights. Furthermore, it is meant to address restraining orders in the context of equitable relief. It does not authorize the court to issue a protective order in favor of one person against other in harassment or abuse situations.

This case is frustrating for the Court and illustrates the need for the Oneida legislative branch to act and enhance the sovereignty of the Tribe. We have before us two tribal members in a dispute. One is seeking a protective order, fearful for his safety. We do not know the actual facts, we have not heard any evidence and are not taking one side or the other. However, we are on the side of tribal sovereignty and tribal self-determination. Mr. Metoxen's only recourse now is to seek a protective order in state court.

The Oneida Nation is proud and progressive in many ways. By filing this action, it is clear that the Oneida people expect the OTJS to be available to settle this type of dispute. We think it will enhance sovereignty, our community and ultimately the well-being of the Oneida people to have more laws on the books so that these types of disputes can be settled within the Tribe itself.

III Decision

This case is dismissed because the Oneida Tribe does not have the laws which permit us to exercise our jurisdiction over these types of cases, where a protective order is sought.

This decision may be appealed in accordance the Administrative Procedures Act and the Addendum to Resolution 8-19-91-A.