

Oneida Tribal Judicial System

OnΛyote ʔ a-ka Tsiʔ Shakotiyaʔ Tolé hte

**ONEIDA TRIBAL JUDICIAL SYSTEM
TRIAL COURT**

**Shirley Hill,
Petitioner**

Docket No: 12-TC-072

v.

**Oneida Tribe of Indians:
Community Development Department
Environmental Department,
Department of Transportation,
Rebecca Webster, Attorney, Oneida Law Office
Respondents**

Decision

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

I Background

This case involves a request for an Injunction on a quad ingress/egress which intersects County U, White Eagle parking lot, west frontage road and extension of Elm Street in Site I.

On May 17, 2012 Petitioner, Shirley Hill, filed a complaint against Respondents, Oneida Tribe of Indians of Wisconsin: Community Development Department, Environmental Department, and Department of Transportation. Petitioner asserts the ingress/egress (construction) is dangerous to tenants and businesses of Site I, the path (construction) will be brought through an archeological site, the ingress/egress (construction) is only a recommendation of the DOT, and if the

ingress/egress (construction) moves forward the Oneida Tribe would be in violation of Tribal Law Resolution 10-14-88-A.

On May 18, 2012 a deliberation was held and the Court denied the Respondent's request for a temporary restraining order, but granted the Respondent with an injunction hearing on June 1, 2012.

On May 30, 2012 Petitioner filed a request for the recusal of Judicial Officers Mary Adams and Leland Wigg-Ninham.

- Request for recusal of Judicial Officer Adams and Judicial Officer Wigg-Ninham denied. Judicial Officer Adams and Judicial Officer Wigg-Ninham addressed the court individually stating their reason why they would not recuse themselves. Both Judicial Officers stated their decision is based on the evidence presented. Both Judicial Officers took an oath of office to uphold the laws, look out for the rights of people, and even though both Judicial Officers may have direct relations working within the Oneida Tribe neither Judicial Officer felt those relations are working directly with the issue at hand. In closing both Judicial Officers stated that all decisions are decided by a panel of three Judicial Officers.

On May 31, 2012 Respondent, Wisconsin Department of Transportation (WDOT) filed a Special Appearance and a motion to dismiss WDOT.

- Motion to dismiss the WDOT from this filing is granted.
- Respondent's Attorney requested the WDOT remain in the courtroom in the event there are questions to WDOT relating to their involvement with the construction project. Respondent's request granted for the sole purpose to answer any questions related to WDOT.

On June 1, 2012 Respondent's Attorney filed a Notice of Representation.

II Issue

1. Did the Respondent violate the 1964 Dioceses of Fond du Lac warranty deed and the 1967 Episcopal Diocese warranty deed?
2. Is the Respondent violating Resolution 10-14-88-A by extending Elm Street in Site I?
3. Does this easement need the approval from the Bureau of Indian Affairs?
4. Did the Oneida Tribe consider the safety issues with the extension of Elm Street?

III Analysis

Finding of Facts

1. On July 2, 1964 the Trustees of the Diocese of Fond du Lac signed a warranty deed to the Oneida Tribe of Indians of Wisconsin. This land was transferred for the purpose of creating a housing project.
 - Petitioner testified to a second warranty deed from the Episcopal Diocese of 1967 for the purpose of a ball diamond, however, was unable to produce a copy of the document to the court. Although a copy of the deed was not presented, the court does not doubt the deed does exist and was deeded for the use of recreation purposes, i.e. baseball diamonds.
 - The extension of Elm Street in Site I does not touch the parcel of land, namely the baseball diamond. The extension of Elm Street is entirely within the parcel of land identified in the warranty deed that created the housing project known as Site I.
2. On October 14, 1988 the Oneida Tribe signed a Resolution # 10-14-88-A. In part, the Resolution states, “....*BE IT FURTHER RESOLVED: that such lands will be established and declared as a permanent conservancy area to a total width of 1250' including the creek bed and the east and west sides of Duck Creek, and...*”
3. There are several types of roads on the Reservation: State and local government roads, BIA roads and Tribal roads. With BIA roads, the tribe provides a proposal of easement to the Federal Government and the roads are under the Indian Reservation roads program that generates funding which covers 100% of maintenance and construction. Tribal roads are

roads the Tribe owns and maintains and funding depends on the amount of roads the Tribe owns.

- There is no easement on Elm Street as of this date. This is a tribally owned road which does not require BIA's approval.
 - The Oneida Tribe has submitted paperwork to the BIA proposing a transfer of easement for all the roads in Site I, including the extension of Elm Street, and if approved all roads within Site I will become BIA roads. If the proposal is granted the Oneida Tribe would receive funding for maintenance and construction at 100%.
4. Respondent testified there was no safety survey done because there was no other viable option to consider in regards to entering and exiting Site I. WDOT had a number of requirements such as having the road within a certain distance of a bridge or between one intersection and another, etc. Alternative exits were reviewed. As for safety for the people whom live, work, visit, etc. Site I, safety was an issue of concern and addressed at the community meetings and during the planning phases. In conclusion the Respondent moves the court to dismiss the case as Petitioner has failed to cite what laws have been violated, what laws authorize a person to ask the Tribe to stop construction activities, and failed to state a claim upon which relief could be granted.

IV. Conclusion of Law

Considering the heartfelt concerns of the Petitioner in regards to the safety of those who live, work, visit, etc. Site I, we commend the Petitioner for looking out for the membership. However Petitioner did not provide a legal right to prevent the extension of Elm Street. As a note, Petitioner submitted Resolution 10-14-88-A in relation to conservancy, but this Resolution did not identify how the lands would be established, declared as a conservancy area and how this affects the extension of Elm Street in Site I. Therefore, the court grants the Respondent's motion to dismiss.