

Oneida Tribal Judicial System

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ONEIDA TRIBAL JUDICIAL SYSTEM TRIAL COURT

**Barbara J. Silva,
Petitioner**

Docket No: 13-TC-125

v.

**Oneida Trust Committee,
Respondent**

DECISION

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

This case involves a request for the early release of a Trust Fund account. Petitioner requests a Temporary Restraining Order/Injunction against the Oneida Trust Committee.

Procedural history

- On August 16, 2013, Petitioner, Barbara Silva, filed a motion requesting the release of her son's trust funds, and a request for an Injunction/Temporary Restraining Order against the Respondent, Oneida Trust Committee.
- A pre-trial hearing was held on August 29, 2013. Petitioner alleges she needs a letter from the Trust Committee denying withdraws from her son's Trust Funds. Petitioner withdraws her request for an Injunction/Temporary Restraining Order against the Respondent, Oneida Trust Committee.
- A second pre-trial is scheduled for September 18, 2013 at 9:00 a.m.
- On September 5, 2013 Petitioner filed a motion to expedite this matter by holding an earlier pre-trial hearing because a preliminary hearing concerning charges against her son is scheduled for September 16, 2013.

- On September 10, 2013 the Court denied Petitioner's request (see Rules of Civil Procedure, Rule 5(C)2) because the opposing party has fifteen days to file their response.

At the September 18, 2013 hearing, Petitioner submitted her Power of Attorney signed by her son Alejandro E. Silva. Petitioner asserts her son has not graduated from high school, but he will obtain his GED March 2014. Petitioner claims while her son has a court appointed attorney the attorney is not experienced enough to properly defend her son. Petitioner alleges this is his second court appointed attorney. Petitioner points out according to Per Capita Trust Agreement Article III (C):

Upon the petition of the parent or legal guardian of a beneficiary, and upon a showing of financial hardship, the OAC or its designated agent may order distribution of trust proceeds prior to the beneficiary's attainment of the age of eighteen. Any petition for such distribution shall include a detailed budget of monies necessary for essential living expenses, including any health, safety, welfare, or education costs, a detailed justification for such essential living expenses, and a showing that all other resources, including federal, state, local and tribal assistance, have been exhausted.

Petitioner explained that the Trust Funds are his, he is entitled to early release of the funds and that there are no restrictions, and he can use the funds anyway he chooses. Furthermore, Petitioner claims the Trust Funds are for Alejandro's safety and welfare; therefore, should meet the early release requirement.

Facts and conclusions of law

- Barbara Silva has Power of Attorney for her son Alejandro Silva.
- Alejandro Silva is over the age of eighteen.
- Alejandro did not graduate from high school and has not obtained a GED.
- Alejandro is charged with a criminal offense and is currently represented by a court appointed attorney.

Respondent takes no position on the matter. Respondent offers that the Per Capita Trust Agreement Article III (C) applies to minors and is very specific. Respondent claims the Revenue Allocation Plan FY 2013 Section VIII C-3:

"...for that particular minor qualified tribal member upon reaching the age of eighteen (18) if the minor qualified tribal member provides the Enrollment Department with proof

he or she has obtained a high school diploma, a high school equivalency diploma or a general equivalency diploma. If such proof is not provided by the qualified tribal member, his or her trust funds shall not be disbursed until his or her twenty-first (21st) birthday.”

This language is specific to tribal members who have not graduated from high school and more applicable to her son's situation.

The Court found that even if a qualified tribal member graduates from high school or obtains a GED, the tribal member shall not receive his or her Trust Fund distribution unless they provide proof to the Enrollment Department. The Court denies early release of Alejandro Silva's Trust Funds. After much discussion, Petitioner motioned the Court to dismiss her claim.

Decision

The Court accepts Petitioner's motion to dismiss her claim for the early release of Alejandro Silva, Petitioner's son, Trust Funds. This case is dismissed without prejudice.

IT IS SO ORDERED.