

Oneida Appeals Commission

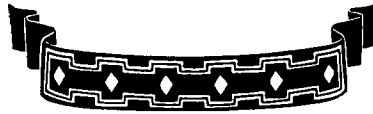
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Trial Court

Amelia Cornelius,

Shirley Hill,

Petitioners

Docket No. 03-TC-337

v.

Oneida Election Board,

Respondent

Date: November 24, 2003

Final Decision

This case has come before the Oneida Appeals Commission Trial Court. Judicial Officers Mary Adams, Janice McLester, and Marjorie Stevens, presiding.

I Background

On July 26, 2003, a Tribal election was held for a variety of positions within the Oneida Tribe including two positions on the Oneida Gaming Commission. The Petitioners, Amelia Cornelius and Shirley Hill, were tentative winners in that election. On July 26, 2003 Gary G. Metoxen notified the Respondent that his name was not included on the July 26, 2003 ballot for the Oneida Gaming Commission. Mr. Metoxen was a candidate for the July 26, 2003 Oneida Gaming Commission election. July 29, 2003 the Respondent, offered an apology to Mr. Metoxen for the error. On August 1, 2003 Mr. Metoxen filed a complaint with the Oneida Appeals Commission requesting an injunction be issued against the Respondent to stay certification of the results of the July 26, 2003 election. August 4, 2003, in the case Gary G. Metoxen vs. Oneida Election Board, 03-TC-326 (8/4/03), a Temporary Restraining Order was

issued by the Oneida Appeals Commission trial court. On August 7, 2003 a decision was issued in that case. The decision states on page 2 that :

“the parties agreed that a new special election for the open positions in the Oneida Gaming Commission would be scheduled...”

The court then ordered a special election. On September 27, 2003 the special election was held with two new winners. The Petitioners did not win in the special election.

Several Motions were filed and will be addressed.

II Issue

Was it proper to hold a special election?

III Analysis

On October 3, 2003 a Motion for an Injunction and Statement of Relief/Order Sought was filed by the Petitioners. The Petitioners request an injunction be placed on the September 27, 2003 elections and that the July 26, 2003 election results be certified. The Motion for an Injunction fails. The petitioners failed to convince this court to declare the election results from September 27, 2003 null and void. The election results from the September 27, 2003 are not certified until this court renders a decision.

The Respondent argues that the Petitioners were not legally elected at the July 26, 2003 election. The Respondent argues the results from the July 26, 2003 are tentative and not final until the Respondent issues a Final Report to the Oneida Business Committee and the Oneida Business Committee declares the results as official. The Respondent agrees with the Petitioner that the Respondent committed an error by omitting Gary G. Metoxen's name from the ballot for the Oneida Gaming Commission. The Respondent argues that Gary G. Metoxen filed an action with the Oneida Appeals Commission preventing the Respondent from certifying the July 26, 2003 Oneida Gaming Commission results. In the Metoxen case, the trial court ordered a special election. The Respondent argues that the Petitioners could have appealed the decision to hold a

special election, but failed to act in a timely manner.

The Petitioners argue that they were denied their due process. This court disagrees. The Petitioners had the right to appeal the Metoxen decision or to attempt intervention as an interested party. The special election included the same eligible candidates, including Gary G. Metoxen and excluding those who decided to withdraw. This provided a fair election.

According to the Rules of Appellate Procedure, Rule 2 (C), the Petitioners had ten business days to file an appeal in the Metoxen case.¹ The time line to file an appeal has lapsed. According to the Rules of Civil Procedure, Rule 10 (C), allows the Petitioners to be joined in the court action.² It was public information that Gary G. Metoxen was petitioning the Respondent for a trial. It is the decision of this court that the Petitioners had their opportunity to be a party to the case cited above. According to the Metoxen case, the parties agreed to a special election because Mr. Metoxen's name was omitted from the ballot. The reason this case was accepted by the Oneida Appeals Commission is because the Oneida Election Board does not have a law or rule governing instances when a candidate's name is omitted from the ballot. Mr. Metoxen had no other alternative but to seek remedy through the Oneida Judicial System. If Mr. Metoxen was not given the opportunity to petition the court, his due process would have been violated. A special election was the only appropriate remedy under certain circumstances so long as the parties agreed to it as in the Metoxen case. The trial court made the decision to order a special election. Therefore, this court agrees that it was proper to hold a special election. The results from the special election are now eligible for certification.

On October 22, 2003 the Petitioners filed an Addendum to Statement of Relief/Order Sought. The Petitioners request the following Judicial Officers be recused: Leland Wigg-Ninham due to

¹. Rule 2, Commencement of Appeal: (C), Time: A party has ten business (10) days from the date of receipt of the final original hearing body decision to file a Notice of Appeal.

². Rule 10, Parties: (C), Joinder: To the greatest extent possible, all persons or parties interested in a particular action may be joined in the action.

his participation in the Metoxen case; Stanley Webster due to his participation in the same case cited above, Winnifred Thomas for her dissenting opinion against Amelia Cornelius; Janice McLester because she is related to Ms. Thomas; Mary Adams due to her participation in the Bradley Graham vs. Oneida Election Board, 03-TC-039 and; Kirby Metoxen for his participation in a pending case involving a removal case within the Oneida Gaming Commission. Judicial Officer Wigg-Ninham recused himself from the case on November 6, 2003 and was replaced by Judicial Officer Adams. Judicial Officer Wigg-Ninham served as Lead in the Metoxen case which decided to hold a special election. The case before this court is adjudicating whether it was proper to hold a second election. Judicial Officer McLester's relationship with Judicial Officer Thomas does not prove bias exist. Officers Webster, Thomas and Metoxen were not assigned as Hearing Officers in this case. The Petitioners did not persuade the court to recuse Judicial Officer Adams due to her participation in the Graham case. The Graham case was dismissed due to untimely filing, therefore the merits of the case were not discussed. Furthermore, prior decisions are not evidence of bias to justify recusals.

On October 24, 2003 the Petitioners filed a Motion for Continuance to request a ten (10) day extension. This court granted the extension and rescheduled the hearing on November 13, 2003.

On October 24, 2003 the Respondent filed a Motion to Dismiss. The Respondent based their motion on the following three (3) issues: (1) The Petitioners have failed to state a claim upon which relief can be granted; (2) The Petitioners lack standing because they have suffered no cognizable injury and; (3) The Petitioners are estopped from bringing this complaint because their claims are untimely. In addition, the Respondent reserved the right to plead additional Affirmative Defenses. This court agrees to dismiss this petition. The Petitioners missed their opportunity to prevent a special election. Therefore, the Petitioners failed to state a claim in which relief can be granted. The Petitioners failed to prove they have standing to bring their petition to court. While the Petitioners did not win in the special election they received the same treatment as the other candidates received, a chance to be elected to the Oneida Gaming Commission. The time line to prevent a special election has passed. This court grants the

motion to dismiss.

On October 24, 2003 the Respondent also filed a Motion to Reject Petitioner's Addendum to Statement of Relief/Order Sought. The Respondent claims the Petitioners should have filed any amendments on or before October 14, 2003. The Respondent claims the Petitioner filed their Addendum to Statement of Relief/Order Sought on October 22, 2003, which is not timely. The Respondent request that the Petitioner's Addendum of Statement of Relief/Order Sought be denied by the Oneida Appeals Commission. According to the Rules of Civil Procedure, Rule 9(A) the Petitioner had ten (10) days to amend any pleading of the original filing.³ The Petitioners original filing was October 3, 2003. Therefore, the Petitioners had until October 14, 2003 to file an amendment. This court holds that to amend any pleadings to the original filing, a party must file within ten days of their original filing. This would be October 14, 2003.

On October 27, 2003 the Petitioners filed an Addendum to Statement of Relief/Order Sought. The Petitioners filed this addendum to their original pleadings. The Petitioners allege new information, namely that the official ballot had been received by the Oneida Business Committee and presented to the Oneida Appeals Commission prior to the July 26, 2003 elections. The Petitioners claim the official ballot did not contain Gary G. Metoxen's name on it. The Petitioners claim that at least three (3) official bodies of the Oneida Tribe had access to the ballot and their inaction resulted in harm to the Petitioners. The Petitioners claim that the September 2003 election ballot should have contained only the winners from the July 2003 election and Gary G. Metoxen's name. The Petitioners request that the July 2003 election be certified and approved by the Oneida Business Committee. This motion fails. Again, under the Rules of Civil Procedure, Rule 9(A) does not permit a party to amend its pleadings more than once. In addition Mr. Metoxen's name was not at issue prior to the July election. There was no reason for the Oneida Appeals Commission to note that Mr. Metoxen's name was not on the original ballot.

³. Rule 9(A): Amendment of Pleadings. (A), When Allowed: A party may amend any pleading once within ten (10) days of the original filing, unless a response has already been filed.

On October 28, 2003 the Respondent filed a Motion to Strike Petitioner's Second Addendum to Statement of Relief/Order Sought. The Respondent argues several issues: Rule 9(A) of the Rules of Civil Procedure does not permit a party to amend its pleadings more than once; The Respondent claims that the Petitioners filed their second Addendum to Statement of Relief/Order Sought October 27, 2003 and; the Respondent claims that the proposed amendments to the Petitioner's complaint are irrelevant and do not provide any facts to the original complaint. This court agrees, even if three (3) bodies of the Oneida Tribe's government failed to validate the omission of Mr. Metoxen's name on the ballot does not constitute that the July 2003 election should be certified. The issue of Mr. Metoxen's name was not publically raised until the day of the election, July 26, 2003. Furthermore, the Petitioners failed to justify why the special election should have contained only the names of Gary G. Metoxen and the tentative winners of the July 2003 election.

On October 31, 2003 the Petitioners filed a Motion to Request Declaratory Ruling. The Petitioners request that this court grant a declaratory ruling instructing the Oneida Election Board to validate and certify the July 26, 2003 election for the Oneida Gaming Commission position and prohibiting any action to recognize or certify the September 27, 2003 election results. Furthermore, the Petitioners request a new special election or second election for the very same election which already occurred and was decided on July 26, 2003. The Petitioners also request those Judicial Officers who presided in the Metoxen case recuse themselves. This court is bound by the same rules and laws that govern both parties. A candidate noticed his name omitted from an election ballot. The candidate could have accepted the error, but instead he addressed the error to the Oneida Election Board. The Oneida Election Board had no authority to stop the election without providing a 24-hour advance notice. Without a law or rule providing some direction for the Oneida Election Board, the only alternative for the candidate was to petition the court. The Kalihwisaks provided notice to the voting members that the results of the July 26, 2003 election has been contested at the Oneida Appeals Commission. A trial was scheduled, and as a result, the court ordered a special election. The special election contained all the candidates that were included in the first election, with the exception of those who requested to be omitted

from the ballot. The election results were tallied and two new winners were announced. The Petitioners failed to provide legal reasoning to either validate the July 26, 2003 election or prohibit the certification of the September 27, 2003 election.

On November 5, 2003 the Respondent filed a Motion to Strike Petitioners' Motion to Request Declaratory Ruling. The Respondent argues that Rule 33(A)(3) of the Rules of Appellate Procedure precludes the Petitioners from requesting a Declaratory Ruling while this case is currently pending before the trial court. According to Rules of Civil Procedure, Rule 33 (3) Declaratory Rulings are hypothetical in nature.⁴ Declaratory rulings are not included in pending cases. This case is pending before the court, therefore the Petitioner's request for a declaratory ruling is denied.

The Petitioners argue that the Metoxen case should have included them as they were the tentative winners of the July 26, 2003 election. The Petitioners argue that there is no law or authority cited by the Oneida Appeals Commission to hold a second election and therefore, the September 2003 election should be null and void. The Petitioners argue that the Respondent's decision to hold a second election was illegal and has caused irreparable harm as they lost the election. The Petitioners further argue that the September 2003 election violated their rights as they were the rightful winners of the July 2003 election. This court disagrees, the Petitioners were well aware that Mr. Metoxen was petitioning the court for a special election. The Petitioners had the opportunity to intervene in the Metoxen case. Their inaction caused them to be excluded. The Petitioners are correct, there is no law or authority cited by the Oneida Appeals Commission to hold a special election. When a party petitions a court for a viable relief and; when both parties are in agreement with the resolution that is fair and equitable; the court has the legal authority to uphold the agreement. The Petitioners failed to prove the special election was illegal, simply

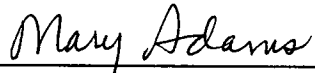
⁴. Rule 33, Declaratory Ruling and Declaratory Judgement: (3), Both Declaratory Rulings and Judgements are made outside the context of a pending case. Issues of the application of a law or the validity of a law raised in a pending litigation shall be settled by the trial court or appellate court assigned to resolve that pending dispute.

because they lost in the special election does not constitute an illegal election. The Petitioners failed to prove that their rights were violated. Their names were included on the ballot and the voting members had a chance to vote for them. The Motion to Dismiss is granted.


IV Decision

The Motion for an Injunction fails. The request for a Declaratory Ruling fails. The court grants the Motion to Dismiss with prejudice.

By the authority vested in the Oneida Appeals Commission pursuant to Resolution 8-19-91-A of the General Tribal Council it is so held on this 24th day of November 2003, in the matter of Amelia Cornelius and Shirley Hill vs. Oneida Election Board. Docket No. 03-TC-337.



Mary Adams, Lead Judicial Officer



Janice McLester, Judicial Officer



Marjorie Stevens, Judicial Officer