

## COURT OF APPEALS

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Deborah Thundercloud and  
Jacqueline Smith,  
Appellants,

Case Number: 22-AC-006

v.

Date: August 31, 2022

Melissa Skenandore,  
Respondent.

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### INITIAL REVIEW DECISION

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This matter has come before Appellate Judges, Leland Wigg-Ninham, Diane House, and Michele Doxtator.

#### BACKGROUND

On July 28, 2022, Deborah Thundercloud and Jacqueline Smith (hereinafter “Appellants”) filed a Notice of Appeal of the Oneida Judiciary Trial Court’s (hereinafter “Trial Court”) decision issued on June 28, 2022, in case number 20-EMP-009, along with a request to stay the Trial Court’s order pending appeal. On August 2, 2022, the Appellants perfected their filing. Appellants allege that the Trial Court decision issued on June 28, 2022, ordering back pay and reinstatement is arbitrary and capricious and not in accordance with applicable law. On August 10, 2022, Skenandore filed an objection to the appeal.

On June 20, 2022, the Trial Court held a hearing to determine whether to grant Melissa Skenandore’s (hereinafter “Skenandore”) Motion for Contempt and Motion for Enforcement of the Trial Court’s decision issued on June 21, 2021, which was upheld by the Court of Appeals on April 11, 2022. The Appellants refused to reinstate or provide back pay to Skenandore as ordered in the decision(s) which granted Skenandore reinstatement with full back pay in accordance with the Oneida Back Pay Law.

On June 28, 2022, the Trial Court denied Skenandore's Motion for Contempt, but granted her Motion for Enforcement, along with instructions to make a reasonable effort to complete the back pay agreement within thirty (30) calendars days of issuing that order.

### ANALYSIS

After conducting the June 20, 2022, hearing on Skenandore's Motion for Contempt and Motion for Enforcement, the Trial Court determined it was reasonable for the Oneida Law Office to interpret the Back Pay Law as being inapplicable due to Skenandore's lay off status at the time she was terminated. As a result, the Trial Court denied Skenandore's Motion for Contempt. This was a reasonable interpretation of what actions rise to the level of contempt. However, this denial of Skenandore's Motion for Contempt is not at issue.

Appellants do take issue with the calculation of back pay and the order reinstating Skenandore to the same or similar position she held before she was wrongfully terminated. In the decision, the Trial Court made it clear on several occasions that *but for* the wrongful actions of the Appellants in terminating Skenandore (emphasis added), Skenandore would still be employed by the Oneida Nation and would have started a new position as Child Care Services Manager on November 25, 2019. The Trial Court, finding that the Back Pay Law, when strictly interpreted, does not seem to apply in this circumstance, provided an interpretation of what would constitute back pay in equity in this case.

Under the Arbitrary and Capricious standard of review, the reviewing court:

*[M]ust consider whether an original hearing body's decision was based on consideration of relevant facts and evidence and whether there had been a clear error of judgment. The court may reverse only when the original hearing body offers a decision so implausible that it could not be attributed to evidence and facts presented. Thus, the scope of review under the standard is narrow, and a court may not substitute its judgment for that of the original hearing body.*

*0-Tech Solutions v. Oneida Bingo & Casino*, Docket No. 10-AC-017, December 10, 2010. What this means is that the Appellate Court must determine whether there is evidence that supports the

Trial Court's findings and should overturn only if the decision is contrary to the evidence and facts presented.

The Trial Court in its decision, described in great detail how it came to the conclusion that but for the actions of the Appellants, Skenandore would be employed in the Child Care Services Manager position as of November 25, 2019. The Trial Court then made an interpretation of how back pay would be calculated in this circumstance, clearly addressing all of Appellants' arguments of Skenandore's alleged ineligibility and the inapplicability of the Back Pay Law. It is also clear from the number of diverse positions that Appellants have put forth in the Trial Court and in this Notice of Appeal that they are not satisfied with the Trial Court's decision. However, Skenandore was wrongfully terminated, and she did lose out on another employment opportunity due to this wrongful termination. Due to the Appellants' action, more is owed to Skenandore other than putting her back on layoff status without any backpay as the Appellants would have the courts do.

Recognizing the inapplicability of the Back Pay Law in addressing this situation where an employee was in layoff status and set but not allowed to undertake a new position because of her wrongful termination, the Trial Court utilized its discretion in §803.28-2, *Types of Relief in Oneida Rules of Civil Procedure*, to interpret what would be a fair and equitable remedy in this situation. It is clear that the Trial Court strived to find a fair and equitable remedy that would restore Skenandore to the "circumstances she was in before her employment was terminated. Restoring Petitioner [Skenandore] back in the position she was before her employment was terminated, would be to restore her status quo to where she would start in a new position, as she was set to do." *Melissa Skenandore v. Jacqueline Smith et.al.*, 20-EMP-009, Order, June 28, 2022, p. 7. Recognizing that the same or similar position may no longer be available, the Trial Court also correctly determined that any offer of a comparable available position would be acceptable to satisfy the reinstatement directive contained in the original (June 21, 2021) order. Based upon the foregoing, we find that the determination by the Trial Court to grant Skenandore's Motion for Enforcement was not arbitrary and capricious, but plausible given the circumstances and evidence presented in this case. We concur with the Trial Court's decision that Skenandore should be restored to the same or similar status she was before she was wrongfully terminated, along with the back pay as awarded.

## DECISION

After review of the information contained in Notice of Appeal and the decision of the Trial Court, it is determined that the Appellants have not sufficiently alleged the decision:

- 1) Violates applicable provisions of the Oneida Constitution;
- 2) Violates provisions, substantive or procedural, of applicable Oneida law or applicable federal law;
- 3) Is an administrative decision that is arbitrary and capricious, an abuse of discretion, or, otherwise not in accordance with applicable law; or
- 4) Is not supported by the substantial evidence on the record taken as a whole.

For the reasons set forth above, this appeal is DENIED for appellate review. The request to stay enforcement of the June 28, 2022, Trial Court Order is also denied. In accordance with the timeline given in the Order issued on June 28, 2022, Appellants shall make reasonable efforts to comply with said Order within thirty (30) calendar days of receipt of this decision.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, this appeal is DENIED. Dated this 31st day of August 2022, in the matter of Case Number 22-AC-006, *Deborah Thundercloud and Jacqueline Smith v. Melissa Skenandore*.

***It is so ordered.***