

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

**Oneida Nation / Oneida Police Department,
PLAINTIFFS;**

v.

CASE NO: 22-CT-030

**Nancy E. Barton,
DEFENDANT.**

DATE: December 12, 2022

DISMISSED

This case came before the Oneida Trial Court, Honorable Patricia Ninham Hoeft presiding.

Appearing in-person: Attorney Kelly McAndrews, representing Plaintiffs; and Nancy E. Barton, Defendant.

BACKGROUND

Defendant was issued a citation on August 15, 2022 for an alleged violation of disorderly conduct under O.C. 309.6-1, Title 8. Judiciary, Chapter 309, Public Peace. On August 9, 2022, the alleged violation took place inside the Oneida Food Distribution Warehouse, N7360 Water Circle Place, Oneida, WI. On November 17, 2022 at a citation pre-hearing, the Nation's authorized attorney motioned the Court to dismiss the citation.

FINDINGS

The Court finds as follows:

1. The Court has subject matter, personal, and territorial jurisdiction over this matter.
2. On November 17, 2022, a citation pre-hearing was held.
3. Defendant received proper notice.
4. On August 9, 2022, Oneida Police Department (OPD) officer responded to a call to intervene and resolve a situation between two volunteers at the Oneida Food Distribution

Warehouse at N7360 Water Circle Place, Oneida, WI.

5. The OPD officer issued citations for disorderly conduct to each of the two volunteers involved in the incident; Ms. Barton received her citation on August 15, 2022.
6. On November 17, 2022, during the citation pre-hearing, the Nation's authorized attorney motioned the Court to dismiss the citation because she would be unable to prove the elements of disorderly conduct. Additionally, the Nation's attorney testified that she reviewed the OPD report and spoke with the Defendant and believes disorderly conduct was not committed.

PRINCIPLES OF LAW

O.C. Title 3. Health & Public Safety – Chapter 309 Public Peace

309.6. Civil Infractions Against the Peace

309.6-1. *Disorderly Conduct*. A person commits the civil infraction of disorderly conduct if he or she engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance. A civil infraction of disorderly conduct may include, but is not limited to, the following behaviors:

(c) makes or causes to be made any loud, disturbing or unnecessary sounds or noises which may annoy or disturb a person of ordinary sensibilities;

(1) Between the hours of 10:00 p.m. and 6:00 a.m. any excessive noise shall be prohibited.

O.C. Title 8. Judiciary – Chapter 803 Oneida Judiciary Rules of Civil Procedure

803.21. Dismissal of Action

803.21-1. *Voluntary Dismissal*.

(a) *By the Plaintiff*.

(1) *Without a Court Order*. The plaintiff may dismiss an action without a Court order by filing:

(A) A notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(B) A stipulation of dismissal signed by all parties who have appeared.

(2) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any action based on or including the same claim, a notice of dismissal operates as adjudication on the merits.

(b) *By Court Order; Effect.* Except as required in Rule 803.21-1(a)(1), an action may be dismissed at the plaintiff's request only by Court order, on terms that the Court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (b) is without prejudice.

ANALYSIS

The Defendant is one of two volunteers who each received a citation for alleged disorderly conduct. On August 9, 2022, an Oneida Police Department (OPD) officer responded to a call to intervene and resolve a situation between two volunteers at the Oneida Food Distribution Warehouse. The Officer investigated the incident by interviewing each of the two volunteers, and their supervisor who did not witness the incident. On August 15, 2022, the officer issued a citation for disorderly conduct to the Defendant. On November 17, 2022 during the citation pre-hearing, the Oneida Nation's attorney representing the Oneida Police Department reported that after she interviewed the Defendant and reviewed the police report, she found that she would be unable to prove the elements for disorderly conduct. As a result, the Nation's attorney motioned the Court to dismiss the citation issued against the Defendant. Because the Court finds the request reasonable, the motion to dismiss is granted.

ORDER

The Plaintiffs' motion to dismiss is granted, with prejudice.

The parties have the right to appeal within 30 calendar days in accordance with the Nation's laws.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council, this Order was signed on December 12, 2022.



Patricia Ninham Hoelt, Trial Court Judge