

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

Jean E. Smith,
Petitioner

v.

Case No: 23-TC-012
Date: October 4, 2023

Danielle M. Strese,
Respondent

FINAL ORDER OF DISMISSAL

This case has come before the Oneida Trial Court, Honorable Layatalati Hill presiding.

Appearing telephonically: Jean E. Smith, Petitioner. *Non-appearance:* Danielle M. Strese, Respondent.

BACKGROUND

Petitioner filed a small claims complaint seeking a collection remedy to enforce a money judgment granted by the Jefferson County Circuit Court. A pre-trial hearing was held on October 4, 2023.

ANALYSIS

Non-Oneida judgments filed with the Oneida Trial Court are treated in the same manner as a judgment of the Oneida Judiciary and may be enforced or satisfied in like manner. Here, Petitioner filed a small claims petition seeking to collect payment for a portion of a money judgment totaling \$8,908.61 that was granted by Jefferson County Circuit Court on July 27, 2022. However, Oneida law provides garnishment of wages of persons employed by the Oneida Nation as the only collection remedy available to enforce money judgments unless the debt is owed for child support arrears, to an Oneida entity, or is for a federal tax levy in accordance with the Per Capita Law. Here, Respondent is not employed by the Oneida Nation. Thus, garnishment as a collection remedy is unavailable.

Per capita payments are benefits offered by the Nation to Tribal members. All per capita payments, except distributions to or from a trust account for a beneficiary, may be subject to attachment prior to distribution for certain types of debt. Per capita payments may only be attached for child support arrears, debt owed to an Oneida entity that is past due and for federal tax levies. Here, the debt is not for child support arrears, owed to an Oneida entity nor is it for a federal tax levy. Therefore, the debt is not allowed to be attached to any tribal member per capita payment under the Per Capita Law. Because no other collection remedies are provided under Oneida law, Petitioner's claim is dismissed for lack of subject matter jurisdiction.

FINDING OF FACTS

The Court finds as follows:

1. All entitled to notice received notice.
2. Petitioner filed a small claims complaint on September 1, 2023.
3. A pre-trial hearing was held on October 4, 2023.
4. Respondent did not appear.
5. Petitioner was seeking to collect payment on a money judgment issued in Jefferson County Circuit Court on July 27, 2022.
6. Respondent is not an employee of the Oneida Nation.
7. Garnishment is not an available remedy for Petitioner.
8. The debt is not for child support arrears, owed to an Oneida entity nor is it for a federal tax levy.
9. Per Capita attachment is not an available remedy for Petitioner.
10. At the pre-trial hearing, the Court dismissed the complaint because there is no remedy available to Petitioner under Oneida law and the Court lacks subject matter jurisdiction over this matter.

PRINCIPLES OF LAW

Title 8. Judiciary - Chapter 801

801.5-2. Subject Matter Jurisdiction

- f) small claims actions where the amount in controversy is five thousand (\$5,000) or less.

801.5-6. Non-Oneida Judgments

A certified copy of any non-Oneida judgment may be filed with the Clerk of Court. Except as provided under 801.5-5, the Clerk of Court shall treat the non-Oneida judgment in the same manner as a judgment of the Judiciary. A judgment so filed shall have the same effect and is subject to the same procedures and status as a judgment of the Judiciary, and may be enforced or satisfied in like manner, except that the Judiciary shall reserve the right to review and modify any non-Oneida order for the enforcement of a judgment, including but not limited to garnishment orders.

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

803.9-8. Waiving and Preserving Certain Defenses

(c) Lack of Subject-Matter Jurisdiction. If the Court determines at any time that it lacks subject-matter jurisdiction, the Court shall dismiss the action.

Title 1. Government and Finances – Chapter 123 Per Capita

123.4-9. Attachments. Per capita payments are benefits offered by the Nation to Tribal members. All per capita payments, except distributions to or from a trust account for a beneficiary, may be subject to attachment prior to distribution in accordance with this section. Entities seeking to attach a per capita payment shall follow the timelines identified in this law.

(a) Per capita payments may only be attached for the following purposes, and in the following order:

(1) Child support arrears ordered by a court of competent jurisdiction. After child support arrears are fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payments for the payment of debt owed to an Oneida entity.

(A) If a Tribal member owes arrears in more than one (1) child support order, the Oneida Nation Child Support Agency shall equally divide the per capita payment based on the number of court orders under which arrears are owed.

(2) Debt owed to an Oneida entity that is past due. After child support arrears and debt owed to an Oneida entity have been fully satisfied, the Trust Enrollment Department shall apply any remaining per capita payment for the payment of a federal tax levy.

(A) “Debt owed to an Oneida entity” includes any money owed to an

Oneida entity and any fines that have been issued by an Oneida entity. (B)
If a Tribal member owes debt to more than one (1) Oneida entity, the
Trust Enrollment Department shall equally divide the per capita payment
based on the number of Oneida entities that are owed debt.

(3) A federal tax levy.

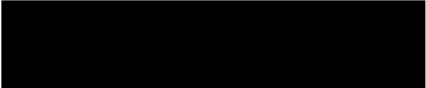
ORDER

This case is dismissed, without 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 October 4, 2023.



Layatalati Hill, Chief Trial Court Judge