

Motion to Exclude – Willis v Tribal Council – Case #01034MR

Summary: A motion was filed by Petitioner requesting the Court to exclude Helen Ann Yunis as Co-Counsel for the Tribal Council. Ms Yunis is paid through the Prosecutor's Office.

Decision and Order: The Motion to exclude was **granted** on the grounds that there is a clear separation of power between the governmental branches. **(Appealed)**

Court of Appeals – Willis v Tribal Council – Appeal on Case #01034MR

Summary: The appeal is presented to the Court of Appeals of the Tribal Court decision to grant the motion to exclude Ms. Yunis on the grounds that there is an absolute separation of powers between each of the three branches of government.

The Appellant raised four issues on their appeal. 1) Did the Trial Court err by conducting an investigation into a matter before it and relying on evidence not introduced in the proceedings by either party? 2) Did the Trial Court err by disregarding facts presented in reference to the application of LRB Rule 2.306(l)(3)(b) to Ms. Yunis? 3) Did the Trial Court erroneously interpret the Tribal Constitution? 4) Did the Trial Court erroneously interpret prior decisions of the Trial Court and apply that interpretation to this case?

Decision and Order: The Court of Appeals **reverses** the Trial Court's decision and **remands** the matter back to the Trial Court for action consistent with this opinion. They further ordered that Judge Bailey is disqualified from further proceedings in this matter.

Willis v Tribal Council – Remand to Trial Court on Case #01034MR

Summary: On the remand Mr. Willis has moved for dismissal after an answer was filed by Tribal Council, the Appeal in this case has been heard, and an open hearing held on October 8, 2001.

Decision and Order: The Trial Court **grants** the motion to dismiss, the appeal order to remain in effect, and this complete matter is **dismissed** with prejudice, without costs or attorney fees, to either party.

J. Sam v Little River Gaming Commission – Case #01047GP

Summary: The Petitioner filed a request for Ex Parte relief to have certain records held by the Gaming Commission released to the Tribal Council.

Decision and Order: Petitioner's Complaint against the Respondent, LRBOI Gaming Commission be dismissed with prejudice and without costs.

It is so ordered that the Petitioner's request to dismiss applies to the separate requests for information regarding Manistee Gaming (Tom Celani) and Mr. Hill.

In the Matter of T. Shawnoskey – Case#01128GR

Summary: The Court is directed by the LRBOI Constitution and employee Grievance Procedure to review all employee grievances which are not settled at the Tribal Ogema level.

Decision and Order: The earlier Order finding no basis to overturn the Ogema's decision regarding the grievance is affirmed and this matter closed with all administrative remedies being exhausted.

1 Little River Band of Ottawa Indians

2 1762 U S 31 South

3 Manistee, MI 49660 (231) 398-2960

4 William Willis, Petitioner

5 v.

Case # 01034MR

6 Tribal Council, Respondent

7 JoAnne House, Attorney for Council

8
9 ORDER

10 The Motion to Exclude Helen Ann Yunis, as Co-Counsel for the Tribal Council, by William Willis,
11 Petitioner, was heard on May 14, 2001. The Court granted the Motion to Exclude Ms. Yunis,
12 on the grounds that there is a clear separation of power between the governmental branches.

13 The decision was based on the fact that Ms. Yunis is paid through the Prosecutor's office and
14 the Court also cited the decision/opinion in the Waitner v. Guenthardt case.

15 Further, under Court Rules, specifically, Chapter two, Section H (3), (b), : "No Tribal Prosecutor
16 may be concerned as attorney or counsel for either party, other than the Tribe, in any civil
17 action depending upon the same state of facts upon which any prosecution commenced but
18 undetermined depends." While the Council is a body of the Tribe, it is not the wholly the Tribe.

19 Therefore it is the decision and order of this Court that Helen Ann Yunis may not represent the
20 Tribal Council.

21
22
23 SO ORDERED:

24 
25 _____
26 Judge Daniel Bailey

27 
28 _____
29 Date

TRIBAL COURT OF APPEALS
OF THE
LITTLE RIVER BAND OF OTTAWA INDIANS

WILLIAM WILLIS,

Plaintiff-Respondent,

v.

Case # 01034MR/01034APP

TRIBAL COUNCIL,

Defendant-Appellant.

Interlocutory Appeal Opinion

OPINION

This Interlocutory Appeal comes before the Tribal Court of Appeals as an appeal of the Tribal Court decision to grant Plaintiff-Respondents' *Motion to Exclude Ms. Yunis* on the grounds that there is an absolute separation of powers between each of the three (3) branches of government. Defendant-Appellant seeks to overturn the trial court's decision on this matter. In addition, Defendant-Appellant seeks the following: (1) an opinion regarding the interpretation of the Tribal Constitution provisions relating to the separation of powers between the executive and legislative branches of government; (2) clarification of judicial power to conduct investigations on any matter before it; and (3) an order disqualifying Judge Bailey from hearing this case.

Appellant-Respondent raises four (4) issues on appeal. This Court will address each of the four (4) issues separately:

- 1. Did the Tribal Court err by conducting an investigation into a matter before it and relying on evidence not introduced into the proceedings by either party?**

The Tribal Court of Appeals has decided to address this issue first in this Opinion because of its importance to the Tribal Judiciary. Defendant-Appellant argues that the trial court went beyond the scope of its authority by conducting an investigation on its own into the facts and merits of a pending matter. Appellant-Respondent further argues that by conducting the investigation the trial court judge failed to maintain judicial impartiality and failed to rely on the adversarial system of justice to produce evidence and argument for an impartial court's consideration. Plaintiff-Respondent chose not to address this issue in his reply to this appeal.

REASONING AND ANALYSIS:

Judicial impartiality is a cornerstone of justice. Impartiality means that judges are free from pre-conceived judgments and prejudice or bias from any source. A tribal court judge is required to act in a manner which promotes judicial impartiality. See LRB Court Rules, Sec. 2.103(A).

Judges should never conduct investigations on their own into any matter pending before them. To do so is to taint their ability to remain objective and to maintain the impartiality of the Court. Judicial institutions are designed to be reactive in nature as opposed to being pro-active. The Judiciary must involve itself only in community concerns and disputes which are appropriately raised before it. It can not police the community for issues to bring to itself. Likewise, it can not compromise its impartially by conducting its own investigations. The only exception to this hard and fast rule is to allow for an investigation of an ethics charge by the Judicial Commission Chairperson. See LRB Court Rules, Sec. 2.403.

It is clear that Judge Bailey violated these judicial principles by conducting an investigation. Failure to maintain judicial impartiality by itself is enough for the Tribal Court of Appeals to: (1) vacate his decision to grant the *Motion to Exclude Ms. Yunis*, (2) order his disqualification of hearing further proceedings in this matter, and (3) remand this matter back to the Tribal Court for action consistent with this Opinion.

2. Did the Tribal Court err by disregarding facts presented in reference to the application of LRB Rule 2.306(I)(3)(b) to Ms. Yunis?

Defendant-Appellant argues on appeal that the Tribal Court ignored evidence appropriately presented during the hearing on the *Motion to Exclude Ms. Yunis*. Plaintiff-Respondent chose not to address this issue in his reply to the appeal.

REASONING AND ANALYSIS:

Plaintiff-Respondent stated during the oral argument held before this Tribal Court of Appeals that he, as a ordinary tribal member, not being an attorney, was not all that familiar with judicial processes and procedures. He stated that he was not familiar with how the motion hearing are conducted. After the hearing had ended, he was not sure what had just happened or why it had happened. Defendant-Appellant argues that Judge Bailey began the hearing by directing questions toward Ms. Yunis about how she is paid. Plaintiff-Respondent directly confirmed this assertion in response to a question asked of him by this Court. Both parties confirmed that by conducting the hearing in this manner, the party that made the *Motion* was not required to persuade the Court that the *Motion* should be granted. Instead, Judge Bailey

appeared to have come to the hearing with pre-conceived preliminary conclusions based upon “an investigation” that he had conducted on his own before the hearing. He compounded the unfairness of the matter by not making “his” information available to the parties and by not providing them prior notice.

Parties are entitled to have the court rely on their evidence and arguments. Otherwise, courts might choose to rely on almost anything. How fair would that be? The adversarial nature of the trial court proceedings means the hearings are supposed to be conducted in a manner which allows the parties to produce their own evidence and to make their own arguments. Fact-finders, whether they be judges or juries, must not consider personal or prior knowledge of facts that are in dispute, other than knowledge held in common by other tribal members.

Judge Bailey erred by conducting a motion hearing in a manner that did not require the party filing the motion to carry their burden of persuasion and by ignoring facts presented by the parties.

3. Did the Tribal Court erroneously interpret the Tribal Constitution?

Defendant-Appellant argues that the Tribal Court has erroneously interpreted the Tribal Constitution by agreeing with Plaintiff-Respondent’s argument that the Constitution mandates a complete and absolute separation between each of the three (3) branches of government. Defendant-Appellant argues that the Tribal Court mistakenly interprets the separation of powers doctrine and erroneously applies the provisions of the Constitution that ensure judicial independence to require complete and absolute separation between the three (3) branches of

government. Defendant-Appellant further argues that the needs of good government and the Tribal Constitution both require that the executive and legislative branches work together.

REASONING AND ANALYSIS:

Many of the powers vested in the Tribal Council by the Tribal Constitution include cooperative efforts between the Tribal Ogema and the Tribal Council. *See Tribal Constitution, Article IV, Section 1.* Likewise, the powers vested in the Tribal Ogema presume communication, cooperation and interaction between the Tribal Council and Tribal Ogema. *See Tribal Constitution, Article V, Section 5.* Numerous examples are provided in the written brief filed by the Defendant-Appellant.

It is clear that the Tribal Constitution only mandates judicial independence. That mandate wisely ensures independent decision-making free from political interference. The other two (2) branches of government are not required to operate with the same independence required of the Tribal Judiciary. In fact, those two (2) branches must interact in order to fully implement governmental objectives and to effectively serve tribal members.

4. Did the Tribal Court erroneously interpret prior decisions of the Tribal Court and apply that interpretation to this case?

Defendant-Appellant argues that the Tribal Court erred by applying the two (2) *Waitner v. Guenthardt* decisions to this case. Plaintiff-Respondent responds that the Tribal Court interpretation and application are correct.

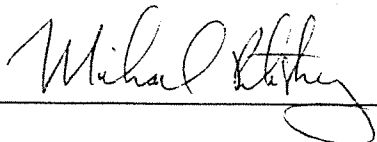
REASONING AND ANALYSIS:

Both of the *Waitner v. Guenthardt* decisions involve the independence of the judicial branch only. Neither case stands for the proposition that the three (3) branches are completely and absolutely separated each from the other two (2) branches. Thus, applying them as precedent for this matter, which involves separation between the executive and legislative branches, is in error. The separation of powers doctrine only prescribes that various functions of government be assigned to the different branches of government to implement a system of checks and balances, so that no single person or government entity has complete and absolute power. As discussed above, good government requires communication between the three (3) branches. They exist together for the common good. Although the Tribal Constitution mandates judicial independence, it does not require that the Judiciary be isolated, but that the Judiciary be insulated from political influences.

FOR ALL OF THE FOREGOING, the Tribal Court of Appeals **REVERSES** the trial court's decision in this matter; **REMANDS** this matter back to the trial court for action consistent with this **OPINION**; and **ENTERS this ORDER** that Judge Bailey is hereby disqualified from further proceedings in this matter.

8/27/01

DATE



Michael Petoskey, Chief Justice
Tribal Court of Appeals
for the entire Court of Appeals
in this unanimous **OPINION**

TRIBAL COURT OF THE LITTLE RIVER BAND OF OTTAWA INDIANS

William Willis
Plaintiff,

FILE NUMBER 01034MR

v.

Tribal Council - Constitutional Complaint,
Defendants.

Tribal Judge, Ronald G. Douglas

ORDER OF DISMISSAL

William Willis, In Pro Per
285 Tenth Street
Manistee, MI 49660

JoAnne House and Helen Ann Yunis,
Attorneys for Tribal Council, Defendants
375 River Street
Manistee, MI 49660

Whereas: the Plaintiff has moved for Dismissal after an Answer and Response being filed by the Defendant, along with an Interlocutory Appeal being heard, and after an open hearing held in the Tribal Court on this date:

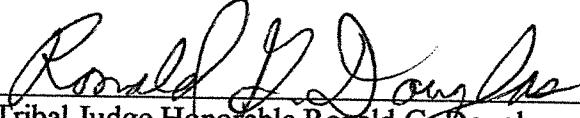
THE FOLLOWING FINDINGS ARE MADE:

1. That this matter involves a petition to oppose action taken by the Defendants as being against the Tribal Constitution.
2. That the Plaintiff's request appears to be based upon a disagreement with the Appellate Court's Opinion of August 27, 2001, in this matter.
3. The Motion to Dismiss filed on October 4, 2001, does not state any issue of duress, fraud, or coercion, but appears to be based upon an acceptance of the ruling rather than being intended as a further appeal in light of the lapse of more than 21 days since its entry.
4. There has not been any objection to an Order of Dismissal by the Defendants who could request to continue the matter under Tribal Court rules.

NOW THEREFORE, IT IS ORDERED:

- A. That there is no reason to deny the Motion to Dismiss.
- B. That the Appeal Order remains uncontested by the Plaintiff.
- C. That this matter is dismissed with prejudice, without costs or attorney fees, to either party.

Dated: October 08, 2001


Tribal Judge Honorable Ronald G. Douglas

Filed: 10-08-01

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT

JANINE M. SAM

Petitioner

LITTLE RIVER GAMING COMMISSION

Respondent

Case No. #01047GP

In the Matter of
Complaint:
Release of
Information/Exparte Relief

STIPULATED ORDER OF DISMISSAL

On April 23, 2001, the Petitioner filed a request for Ex Parte Relief to have certain records held by the Gaming Commission released to the Tribal Council.

The filing was made as there were certain Tribal business matters pending that could have been potentially influenced by the content of the information requested, and at the time, as of April 19, 2001, there were not valid Gaming Commissioners due to the expiration of appointments to reconsider a subsequent request of the Council, or take any other formal action on behalf of the Commission. The extension of "hold over" appointments by the Council was limited in application, and did not apply to all Commissioners in office that expired on April 19, 2001. There was a previous court decision (*Case #00079GR: Motion to dismiss-opinion and decision, March 9, 2001*) that determined the question regarding the validity of the Gaming Commission when appointments expire. Hence, in the absence of a Gaming Commission to approve a subsequent request, petitioner's only other option was to request the information in accordance with the Gaming Commission Rules #1.4.8 A(2)

Subsequently, there have been motions to Stay, as well as motions to adjourn hearing dates repeatedly by the attorneys for both the Gaming Commission and Manistee Gaming (as an interested party.)

Petitioner refutes the assertion by the attorney for the Gaming Commission in its filing dated April 24, 2001 to the Tribal Court of Appeals in that to my personal knowledge, no member of Council has ever attempted to access Confidential or Protected information of the Gaming Commission, and certainly specifically not

myself, as any requests that I have are put to a vote of the entire Council prior to any requests being made, either to the Gaming Commission or any other body.

Following the subsequent filings for Stay and adjournment of hearings, Manistee Gaming (Tom Celani) has provided full disclosure to the Tribal Council regarding all business relationships with the shareholders of Cunningham Limp, to the satisfaction and acceptance of Council formally on record.

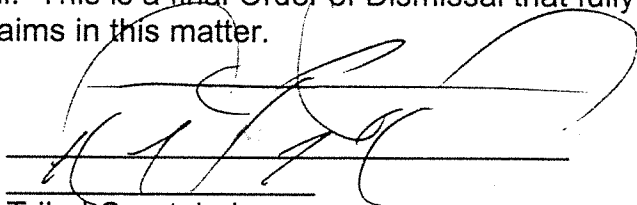
Following the subsequent filings for Stay and adjournment of hearings, the Tribal Council has approved new appointments to the Gaming Commission, as well as taken specific legislative matters under consideration which will address accountability of all Commissions, and will apply to the Gaming Commission as well. In addition to these legislative matters, Council is also considering establishing new criteria for employment eligibility requirements of Gaming Commission employees, which will effectively address any concerns about the background information regarding Mr. Cy J. M. Hill.

Finding no further cause to continue this matter, the Petitioner respectfully requests that the Tribal Court dismiss the action filed on April 23, 2001, and provides notice of the same to the parties involved.

IT IS HEREBY STIPULATED AND AGREED that, pursuant to Tribal Court Rule of Civil Procedure 4.3, Petitioner's Complaint against the Respondent, Little River Band of Ottawa Indians Gaming Commission be dismissed with prejudice and without costs.

IT IS SO ORDERED that Petitioner's Complaint is hereby dismissed with prejudice and without costs. Further, that the Petitioner's request to dismiss applies to the separate requests for information regarding Manistee Gaming (Tom Celani) and Mr. Cy J. M. Hill. This is a final Order of Dismissal that fully and finally resolves all pending claims in this matter.

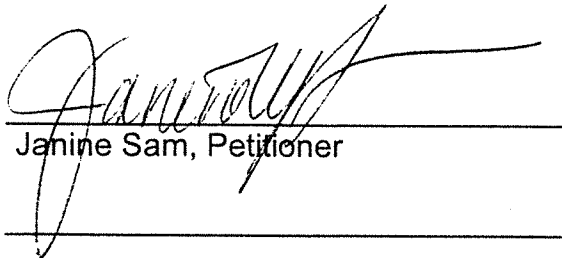
Date: 6/1/01



Tribal Court Judge

Approved as to form and content:

Date: 6-1-01



Janine Sam, Petitioner

Date: _____

Date: _____

RECEIVED

W. M. Miller 6-1-01

TRIBAL COURT OF THE LITTLE RIVER BAND OF OTTAWA INDIANS

In the Matter of Tresa Shawnoskey,
Employee Grievance Review

FILE NUMBER 011286R

Tribal Judge, Ronald G. Douglas

GRIEVANCE REVIEW DECISION

Tresa Shawnoskey,
P.O. Box 72
Brethren, MI 49619

WHEREAS: this court is directed by the Little River Constitution and the Employee Grievance Procedures to review all employee grievances which are not settled at the Tribal Ogema level and continue to be contested. A written order as required was entered within three days of receipt of the filing in Tribal Court.

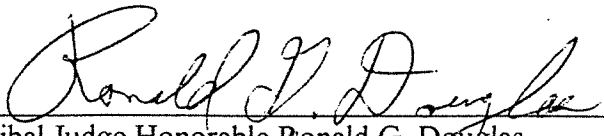
WHEREAS: the tribal grievance procedures also require an evidentiary hearing in employment disputes and such hearing was held with notice to all concerned parties on November 6, 2001 in order to review the evidence submitted on the record to allow the complainant to explain, clarify or to refute the interpretation of evidence submitted and reviewed by the court.

NOW THEREFORE: this court determines on a preponderance of the evidence that its earlier order correctly interpreted the evidence and that no basis has been shown to find that the Ogema's decision was based upon bias, a total lack of evidence or being arbitrary and capricious

ORDER

The earlier Order finding no basis to overturn the Ogema's decision regarding the grievance is affirmed and this matter closed with all administrative remedies being exhausted.

Dated: November 7, 2001


Tribal Judge Honorable Ronald G. Douglas

Date Filed: 11/15/01

Deborah A. Miller