Chapman v LRBOI Tribal Council --- #08034AP

Summary: Hearing was held with the Motion to Remove Justice Champagne. The first issue of appeal was whether the Plaintiff in this case had standing under the Tribal Constitution to bring this action. The second issue is whether the Tribal Council decision to not remove a Tribal Judge was a political question – the Trial Court held a process for removing a Tribal Judge with the recommendation for removal. Third issue – the Appellant contends that tribal Council did not follow the voting procedures.

Decision and Order: The Tribal Appellate Court reversed the decision of the Tribal Court finding that the Appellant had standing according the Tribal Constitution. The Court also ordered the Tribal Council to conduct a public vote regarding the grounds for removal and must be stated on record.

LRBOI v Kelsey--- #08036AP

Summary: Defendant appealed "other acts" and "1st Amendment/prior restraint issues" and that the Trial Court abused its discretion by allowing testimony of a witness. The defendant also submitted a Request for Stay Pending Habeas Review.

Later: The Appellant-Defendant requested a stay as he indicated an intent to file an Appeal in Federal Court.

Decision and Order: The Appellate Court after thoroughly reviewing all the documentation denied the Defendant's appeal.

Note: The Court received notice that an appeal was filed in the United States District Court for the Western District of Michigan on November 2009 and has issued a stay.

Detz v Romanelli, LRBOI --- #08044GR

Summary: The petitioner filed a case after receiving a Disciplinary suspension (Third Notice) The suspension came after an alleged grievance being submitted to the Ogema regarding the employee evaluations.

Decision and Order: The Court doesn't believe it was intentional deceit on the part of the petitioner; but does believe the oversight was her responsibility.

Native Performance Consulting v LRBOI --- #08065GC

Summary: This matter comes before the court on a Complaint and counter-complaint, alleging a breach of contract between the parties.

Decision and Order: The Court finds that the Tribe is in breach of the contract and that Native Performance was not in breach of the contract and is entitled to judgment in the amount of $32,656.00 from LRBOI.

Champagne v Romanelli, LRBOI --- #08087GC

Summary: The Plaintiff made a request for access to Tribal Records under Article III, Section 2 of the constitution. The Defendant denied the request citing Article III, Section 2's right to privacy provision of the Constitution, and the Federal Privacy Act.

Decision and Order: The Plaintiff shall have access to review the travel expenditures and closeouts of Kelly Maser, subject to redaction of personally identifying information. Those travel expenditures and closeouts that are part of any investigation as deemed by the Gaming Commission are not subject to disclosure. Defendant has 45 days to comply.

LRBOI Tribal Council v LRBOI Tribal Ogema --- #08093GC

Summary: This matter having come before the Court on a Request for Declaratory and Injunctive Relief, regarding the contract of Legislative Counsel Joseph Martin.

In July 2009, a meeting was held with the Ogema and Council Speaker and the court to clarify the judgment

Decision and Order: This is a unique case and one of first impression. The Court declares that in this specific case, the Ogema does have the authority to terminate the contract, as the Ogema is the signatory on the contract, thus making him a party to the contract.

For purposes of clarification the Judgment does not give the Ogema the sole authority to terminate the contract on behalf of the Tribe. Both the Ogema and the Council have the authority to terminate the contract, independent of each-other.

LRBOI Tribal Ogema v LRBOI Tribal Council --- #08116CG

Summary: The Gaming Commission delivered the Final Audit Report to Tribal Council that caused the Council's subsequent actions. The Plaintiff file suit against the Tribal Council for Declaratory and Injunctive Relief, asserting Council's actions are violations of the Tribal Constitution and ICRA.

Decision and Order: The "emergency meeting" held by Defendant to amend the resort Board of Directors Ordinance was clearly not an emergency, at least not the type of emergency contemplated by the APA. The defendant did not meet minimum rule-making standards set forth in the Constitution and the APA, therefore the Resolutions enacted at its meeting or any other action taken in reliance upon those amendments, cannot be enforced.

LRBOI v Matthew Stone --- #08189TM and 08303AP

Summary: The defendant entered a plea of guilty to CORA Regulation Section XXVII (a) 1. Impede and interfere with Officer.

Motion for Reconsideration of Sentencing Hearing and Other matters

A Stipulation for Dismissal of Appeal was signed by the parties involved.

Decision and Order: Sentencing held – Ninety days in Jail. 6 months' probation. $1000.00 fine. The Defendant's fishing license and Commercial Fishing Helpers License has been suspended and revoked for one year.

Defendant served 30 days of the ninety day sentence. The 60 days will be held in abeyance. Probation extended for one year. Mr. Stone may be re-issued a commercial fishing license. The defendant will submit paperwork on a weekly basis showing income on fish sales. Defendant will continue with his substance abuse program.

The misdemeanor case was then re-opened with a modification of sentencing. The $200.00 bond posted on the appellate case will be used to make a payment on the restitution owed to the Tribe's NRD.

Knee v LRBOI & Jimmie Mitchell --- #08198GR

Summary: This action is an appeal of Respondents' termination of Petitioner's employment seeking reinstatement of employment, past, future wages and benefits, and other relief under LRBOI Tribal law. Petitioner and Respondent have entered into a Stipulation for entry of Consent Order.

Decision and Order: Respondent LRBOI shall pay to petitioner from the DNR Budget Salary Account. All Petitioners' claims against Respondent shall be extinguished by Petitioners acceptance of payment. Respondent shall remove the July 2008 letter relating to termination of Petitioner's employment file. Respondent shall pay attorney's fee to petitioners' counsel.

Svoboda v LRBOI & Jimmie Mitchell --- #08199GR

Summary: This action is an appeal of Respondents' termination of Petitioner's employment seeking reinstatement of employment, past, future wages and benefits, and other relief under LRBOI Tribal law. Petitioner and Respondent have entered into a Stipulation for entry of Consent Order.

Decision and Order: Respondent LRBOI shall pay to petitioner from the DNR Budget Salary Account. All Petitioners' claims against Respondent shall be extinguished by Petitioners acceptance of payment. Respondent shall remove the July 2008 letter relating to termination of Petitioner's employment file. Respondent shall pay attorney's fee to petitioners' counsel.

LRBOI v Ronald Stone --- #08287TM

Summary: The Defendant was charged with Section 11.02 Count I: fraud

Decision and Order: The parties met in open court and having agreed that Defendant shall pay restitution to LRBOI in the amount $6,236.35 by authorizing it to come from his per-cap payments. The court shall dismiss without prejudice the criminal complaint in this matter.

KASE v LRBOI / Burger --- #08312GR

Summary: The parties to this employment termination appeal have set forth a proposed settlement to be entered as a Consent Order.

Decision and Order: The discipline provision included Performance Improvement Plan (PIP) is modified by agreement of the parties to be suspended without pay returning to work May 2009. Her position changed with no change in compensation benefits to be reinstated. PIP to remain part of her personnel record.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT

CANDACE CHAPMAN,
Plaintiff
v.

LITTLE RIVER BAND OF OTTAWA INDIANS,
LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COUNCIL,
Defendants

Case Number 07-164-CC
Case Number 08-034-AP
OPINION AND ORDER

I. Introduction

On December 1, 2006, Tribal Court Judge Brenda Jones Quick, in a written Opinion and Order, found Little River Band of Ottawa Indians Court of Appeals Justice Ryan L. Champagne guilty of Attempted Fraud in violation of Tribal Ordinance 03-400-03, Article X §11.02, incorporating MCL 750.92 pursuant to Tribal Ordinance 97-300-01, against the People of the Little River Band of Ottawa Indians. This Opinion and Order was affirmed in its entirety by the Tribal Court of Appeals on June 6, 2008.

A public hearing as to whether to refer Justice Champagne for removal to the Little River Band of Ottawa Indians Tribal Council was held on July 30, 2007. Chief Judge D. Bailey presented the complaint and Justice Champagne presented his response via telephone conference. On August 2, 2007, Justice Stella Gibson, upon unanimous agreement by all Tribal Court judges, submitted to Tribal Council an Order after Public Hearing Referral for Removal Appeals Court Judge Ryan Champagne.

On August 8, 2007, Tribal Council unanimously voted to set a special meeting date for a public hearing on the judicial recommendation to remove Appellate Justice Ryan Champagne for

1:00 p.m. on August 30, 2007 in the Three Fires Conference Room at the Little River Casino Resort. The removal hearing was held with the Motion to Remove Justice Champagne failing.

On or about September 4, 2007, Candace Chapman, Plaintiff, filed a *Pro Se* Complaint for Declaratory and Injunctive Relief against the Little River Band of Ottawa Indians Tribal Council, Defendant, alleging procedural and substantive violations of the Tribal Council in the removal action of Court of Appeals Justice Ryan L. Champagne. Oral arguments were held before Special Judge Frank Pommersheim on December 17, 2007. On January 15, 2008, Judge Pommersheim issued a written Memorandum Opinion and Order dismissing Plaintiff's complaint holding that for lack of standing holding that "the issue of removal by the Tribal Council is a political question in which the Tribal Constitution accords finality to the Tribal Council's decisions".

Plaintiff filed notice to appeal as a matter of right. Plaintiff filed a timely Brief on Appeal. Defendant filed a timely answer. Oral arguments were heard by the Little River Band of Ottawa Indian Tribal Court of Appeals on June 24, 2008.

For the reasons set forth in this Opinion and Order, the Tribal Appellate Court reverses the Trial Court Opinion.

II. Scope of Review

All of the issues on appeal involve conclusions of law and, therefore, are reviewed de novo by the Tribal Court of Appeals pursuant to Tribal Court Rule of Appellate Procedure R. 5401(E).

III. Jurisdiction

The Tribal Court has jurisdiction over this matter pursuant to Article VI, Section 8 of the Tribal Constitution which provides in pertinent part:

> (a) The judicial powers of the Little River Band shall extend to all cases and matters in law and equity arising under this Constitution, the laws and ordinances of or applicable to the Little River Band including but not limited to:
>
> 1. To adjudicate all civil and criminal matters arising within the jurisdiction of the Tribe or to which the Tribe or an enrolled member of the Tribe is a party.
> 2. To review ordinances and resolutions of the Tribal Council or General Membership to ensure they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution.

IV. Standing

The first issue on appeal is whether Appellant has standing under the Little River Band of Ottawa Indians Tribal Constitution to bring this action. In this issue of first impression, the Court holds that Tribal Citizens have standing to bring suit against Tribal Council when Tribal Council fails to fulfill duties mandated by the Tribal Constitution.

Appellant makes a compelling argument that there is a "public harm" when Tribal Council fails to execute duties mandated by the Tribal Constitution. In the present case, Tribal Council's failure to follow procedures required by the Tribal Constitution has threatened the integrity of the Tribal Court, the integrity of the removal process, and the integrity of Tribal Council decisions. We find this to be a "public harm" sufficient to fulfill the requirements for standing. In determining that Appellant has standing in this case, the Court notes that to deny standing to a Tribal Citizen seeking mandamus or declaratory/injunctive relief when Tribal Council fails to perform duties mandated by the Tribal Constitution which result in a public harm would leave Tribal Citizens without any remedy to uphold and enforce the Tribal Constitution which is in effect for their protection and that of the Tribe itself.

The Court finds further support for standing pursuant to Article XI, Section 2 (a) of the Tribal Constitution which states the following:

> (a) The Little River Band, its Tribal Council members, Tribal Ogema, and other Tribal officials, acting in their official capacities, shall be subject to suit for declaratory or injunctive relief in the Tribal Court system for the purpose of enforcing rights and duties established by this Constitution and by the ordinances and resolutions of the Tribe.

This provision clearly provides that suit can be brought against Tribal Council to enforce rights and duties established by the Tribal Constitution. As discussed below, we find that Tribal Council failed to perform duties mandated by the Tribal Constitution.

Because the Court holds that Tribal Citizens have standing under the Tribal Constitution in this case, it does not address whether Tribal Citizens have standing under traditional or common law to bring such an action.

V. Political Question

The Trial Court held that review of a Tribal Council decision to not remove a Tribal Judge was a political question that cannot be reviewed by the Tribal Court, but rather, is to be resolved by the Tribal Council in the adoption of written rules governing removal proceedings. The Trial Court held that the process for removing a Tribal Judge, with the recommendation for removal being made by the entire Tribal judiciary but the removal not taking effect until seven of nine Tribal Council members voted to approve the recommendation for removal, "creates the problem of how the judiciary could review actions of the Tribal Council in the context of removal without avoiding obvious conflicts of interest". The Trial Court points to appointment of a Special Judge to hear this as evidence of this being a political question. We disagree. The fact that a Special Tribal Judge and a Special Tribal Justice were asked to hear this case in order

to avoid any conflict of interest demonstrates that the Tribal Court wanted to guarantee the integrity of the Court and the process, something we see as a focus of the Tribal Constitution. The Trial Court stated that its conclusion was supported by the fact that Article X, Section 3 of the Tribal Constitution states that the removal of the Tribal Ogema or any member of the Tribal Council, "shall be final". In using this Constitutional provision to support its argument, the Trial Court fails to recognize that the provision addressing the removal of a Tribal Judge does not state that Tribal Council's decision "shall be final". The framers of the Tribal Constitution appear to have taken great pains to be explicit throughout the document. This Court finds that the fact that the language "shall be final" is not present in Article VI, Section 6 demonstrates that the framers of the Tribal Constitution purposely did not include this language so that such a Tribal Council decision would be reviewable by Tribal Court. The fact that there are some instances when a Special Judge and/or Special Justice may be called to avoid any conflict of interest is not a persuasive reason to hold this is a political question and we, therefore, reverse the decision of the Tribal Court regarding this matter.

VI. Tribal Council Duties Mandated by the Tribal Constitution in Removing a Tribal Judge

The Tribal Constitution is specific regarding the considerations in removing a Tribal Judge. Article VI, Section 2 states in pertinent part that a Tribal Judge cannot be "convicted of any crime of dishonesty, or moral turpitude, nor been convicted of a felony under Tribal or State law..." This applies under subsection (a) for members of the Tribe and subsection (b) for non-members of the Tribe.

basis for going into closed session. Appellee argues that Tribal Council did not go into a closed session, but rather, recessed in order to confer with legal counsel. The Court does not find Appellee's explanation compelling since Tribal Council voted on whether to remove Justice Champagne after returning from this recess. The Court, therefore, holds that Tribal Council went into a closed session without placing the reasons for the closed session on the record in violation of Article IV, Section 6 of the Tribal Constitution.

Appellant contends that Tribal Council did not follow the voting procedures mandated by the Tribal Constitution in Article VI, Section 6. Specifically, Appellant argues that Tribal Council is required to take a vote on whether the grounds for removal of a Tribal Judge pursuant to the assertions in the recommendation for removal from the Tribal Court exist. This Court agrees. In this case, the Tribal Court stated in its Order after Public Hearing and Referral for Removal of Appeals Court Judge Ryan Champagne that Justice Champagne's conviction of Attempted Fraud against the Little River Band of Ottawa Indians violated 2.102 (Integrity and Independence of the Tribal Judiciary) and 2.103 (Impropriety and the Appearance of Impropriety) of the Michigan Indian Judicial Association Model Code of Tribal Judicial Conduct, as well as Article VI, Section 2 of the Tribal Constitution with the conviction of Attempted Fraud against the Little River Band of Ottawa Indians constituting a crime of dishonesty. Article VI, Section 6 requires that Tribal Council vote as to whether Justice Champagne's conviction violates the provisions of the Michigan Indian Judicial Association Model Code of Tribal Judicial Conduct and/or Article VI, Section 2 of the Tribal Constitution. The Tribal Council violated this constitutional requirement when it only voted on whether to remove Justice Champagne. Tribal Council must, therefore, take a new vote with Tribal Council Members first voting on whether the conditions for removal exist as stated in the Order after

Public Hearing and Referral for Removal of Appeals Court Judge Ryan Champagne. This Court notes that Article VI, Section 6 states that if seven of the nine Tribal Council Members vote that grounds for removal exist, "the Tribal Council shall remove the Judge from office". The use of the word "shall" means that the action is mandatory.

As Tribal Council holds a new Tribal Council vote on the recommendation of the Tribal Judiciary to remove Justice Champagne, we remind Tribal Council that there are specific provisions relating to abstention. Article IV, Section 6 (f) (2) provides in pertinent part as follows:

> (f) Quorum required to conduct business.
>
> 2. When a Council Member has a personal interest in an issue or matter to be voted on by the Council, other than those common to all Tribal Members, which would require balancing personal interest against interests of the Tribe, such member shall abstain from voting on that matter due to conflict of interest and shall disclose the nature of the conflict.

Tribal Council Member Koon abstained during this vote without disclosing the nature of the conflict. Again, the use of the word "shall" makes it mandatory for a Tribal Council Member to state the reasons for the abstention. If there are any abstentions during the new vote of Tribal Council ordered by this Opinion, reasons for the abstention must be stated.

Conclusion

For the reasons set forth in this Opinion, this Tribal Appellate Court hereby reverses the decision of the Trial Court, finding that Appellant has standing under the Tribal Constitution to bring this action. The Court hereby orders that Tribal Council conduct a public vote on whether Justice Champagne's conviction of Attempted Fraud against the Little River Band of Ottawa Indians is grounds for removal pursuant to the Tribal Judiciary's Order after Public Hearing and Referral for Removal of Appeals Court Judge Ryan Champagne. Specifically, each Tribal

Council Member must each vote publically on whether Justice Champagne's conviction for Attempted Fraud against the Little River Band of Ottawa Indians violates 2.102 (Integrity and Independence of the Tribal Judiciary), 2.103 (Impropriety and the Appearance of Impropriety) of the Michigan Indian Judicial Association Model Code of Tribal Judicial Conduct and/or Article VI, Section 2 of the Tribal Constitution with the conviction constituting a crime of dishonesty. They must then vote on whether to remove Justice Champagne in accordance with the requirements of the Tribal Constitution. Any closed sessions held by Tribal Council must be stated on the record with the reasons for the closed session also stated on the record. Any Tribal Council Members that abstain from voting must place the reasons for the abstention on the record.

IT IS SO ORDERED.

_____ _____

Justice Anna Jean Guenthardt Date

Melissa L. Pope 8-5-08

Justice Melissa L. Pope Date

_____ _____

Justice Jonnie J. Sam Date

Council Member must each vote publically on whether Justice Champagne's conviction for Attempted Fraud against the Little River Band of Ottawa Indians violates 2.102 (Integrity and Independence of the Tribal Judiciary), 2.103 (Impropriety and the Appearance of Impropriety) of the Michigan Indian Judicial Association Model Code of Tribal Judicial Conduct and/or Article VI, Section 2 of the Tribal Constitution with the conviction constituting a crime of dishonesty. They must then vote on whether to remove Justice Champagne in accordance with the requirements of the Tribal Constitution. Any closed sessions held by Tribal Council must be stated on the record with the reasons for the closed session also stated on the record. Any Tribal Council Members that abstain from voting must place the reasons for the abstention on the record.

IT IS SO ORDERED.

_____ _____

Justice Anna Jean Guenthardt Date

_____ _____

Justice Melissa L. Pope Date

Justice Jonnie J. Sam August 4, 2008 Date

Council Member must each vote publically on whether Justice Champagne's conviction for Attempted Fraud against the Little River Band of Ottawa Indians violates 2.102 (Integrity and Independence of the Tribal Judiciary), 2.103 (Impropriety and the Appearance of Impropriety) of the Michigan Indian Judicial Association Model Code of Tribal Judicial Conduct and/or Article VI, Section 2 of the Tribal Constitution with the conviction constituting a crime of dishonesty. They must then vote on whether to remove Justice Champagne in accordance with the requirements of the Tribal Constitution. Any closed sessions held by Tribal Council must be stated on the record with the reasons for the closed session also stated on the record. Any Tribal Council Members that abstain from voting must place the reasons for the abstention on the record.

IT IS SO ORDERED.

Anna Jean Guenthardt — 8/5/08

Justice Anna Jean Guenthardt — Date

_____ — _____

Justice Melissa L. Pope — Date

_____ — _____

Justice Jonnie J. Sam — Date

LITTLE RIVER BAND OF OTTAWA INDIANS COURT

Little River Band of Ottawa Indians
Tribal Court of Appeals
3031 Domres Road
Manistee Michigan 49660
231-398-3406
Fax: 231-398-3404

PEOPLE OF THE LITTLE RIVER BAND OF OTTAWA INDIANS,
Appellee-Plaintiff,

v.

NORBERT KELSEY,
Appellant-Defendant.

CASE NO. 08-036-AP

Chief Appellate Justice Melissa L. Pope
Associate Justice Martha Kase
Special Associate Justice Ronald Douglas

Eugene C. Zeller (P29339)
Tribal Prosecutor/Attorney for Appellee
3031 Domres Road
Manistee, Michigan 49660

John Kelsey (WI No. 1057098)
Attorney for Defendant/Appellant
P.O. Box 163
Manistee, Michigan 49660

ORDER AND OPINION

INTRODUCTION

On June 8, 2007, a Complaint was filed against the Appellant-Defendant (hereinafter "Defendant), Norbert Kelsey, alleging that the Defendant engaged in the crimes of Sexual Assault in violation of Tribal Ordinance 03-400-03, Section 19.02, and Harassment under the same Ordinance, Section 8.06. Chief Judge Daniel Bailey presided over a bench trial, held on January 7, 2008 and January 8, 2008. Defendant was found guilty of Sexual Assault and not guilty of Harassment in the Order of Judgment entered on January 21, 2008. Defendant was sentenced on February 4, 2008. Defendant, by and through his attorney, filed a Notice of Appeal on February 18, 2008. Chief Judge Bailey entered an Order Granting Partial Stay Pending Appeal on February 19, 2008. The Order provided that the jail sentence (held in abeyance), the probation reporting requirements, and the payments from fines would be stayed pending appeal. The Order modified, but did not stay, the requirement regarding communication with female employees as follows: "The Defendant shall not INITIATE any conversation with any female employees of the Tribe. He may provide an answer to any questions regarding Tribal or Council business and nothing more."

The Court of Appeals received briefs and heard oral arguments on May 22, 2008 regarding Appellant's Motion for Peremptory Reversal and Motion for Remand and Disqualification. The Court requested from the parties copies of cited materials not included with the briefs. The materials were received on June 6, 2008 and the Court continued its deliberation on June 13, 2008. In its June 21, 2008, Order After Hearing on Motions, the Court denied the Motion for Peremptory Reversal, denied the Motion for Disqualification, and granted the Motion to Remand on the issue of jurisdiction. On August 21, 2008, Chief Judge Bailey held that the Tribal Court properly had jurisdiction.

On January 20, 2009, Defendant submitted his Emergency Motion to Stay and Emergency Request for a Direct Expedited Appeal.

Defendant submitted his Request for Reconsideration of Opinion and Order Regarding Jurisdiction on February 17, 2009.

The Court of Appeals received briefs regarding Defendant's Second Motion for Peremptory Dismissal and Extraterritorial Jurisdiction. The Court of Appeals denied Defendant's Motion for Reconsideration and Alternative Request for Stay Pending Appeal in a written opinion on March 18, 2009.

On April 17, 2009, the Court of Appeals held a hearing to establish the Scheduling Order for remaining issues on Appeal. The Court of Appeals set a schedule on "other acts" and "1st Amendment/prior restraint issues" to be heard before the Court of Appeals on June 19, 2009.

Two new Appellate Justices were sworn in on June 10, 2009. A new Scheduling Order was entered on June 30, 2009 with the oral arguments scheduled for and heard at 3:30 p.m. on July 16, 2009.

Defendant's Appeal regarding "other acts" and "1st Amendment/prior restraint issues" is hereby **DENIED.**

SCOPE OF REVIEW

All of the issues on appeal involve conclusions of law and, therefore, are reviewed de novo by the Tribal Court of Appeals pursuant to Tribal Court Rule of Appellate Procedure R. 5401(E).

JURISDICTION

The Tribal Court has jurisdiction over this matter pursuant to Article VI, Section 8 of the Tribal Constitution which provides in pertinent part:

(a) The judicial powers of the Little River Band shall extend to all cases and matters in law and equity arising under this Constitution, the laws and ordinances of or applicable to the Little River Band including but not limited to:

1. To adjudicate all civil and criminal matters arising within the jurisdiction of the Tribe or to which the Tribe or an enrolled member of the Tribe is a party.

SENTENCE OF DEFENDANT

On February 4, 2008, Defendant was ordered to: pay a $5,000 fine; report to the Probation Department by phone each week on Monday between the hours of 1:00 p.m. and 5:00 p.m.; perform community service for four (4) hours per week for one (1) year; and was prohibited from speaking with "any female employees of the Tribe (excluding female Tribal Council Members, since they are not employees and the Tribal employee who the Defendant resides with)." The Trial Court entered the Order Granting Partial Stay Pending Appeal on February 4, 2008 which stayed the entire sentence with the one exception being Defendant's conduct with female employees of the Tribe which was modified as follows: "The Defendant shall not INITIATE any conversation with any female employees of the Tribe. He may provide an answer to any questions regarding Tribal or Council business and nothing more." (Emphasis in Opinion). While the sentence was silent as to the length of the prohibition of this conduct, it can be surmised that the prohibition on conduct was to last the length of the probationary period. As such, the expiration of this prohibition was February 4, 2009, making the issue moot. The Court notes, however, that this prohibition was on Defendant's conduct. Plaintiff correctly notes the court has the authority to restrict the conduct of those who are convicted of crimes. As noted by Plaintiff, Personal Protection Orders are an example of such restrictions. A person can be restricted from a variety of protected conduct such as being prohibited from being within a certain distance of the victim, calling the victim, or even having unsupervised parenting time with his or her children. Personal Protection Orders are often granted ex-parte with the accused having a hearing after the allegations are made to the Court and the restrictions imposed. In the present case, we have an individual who has been convicted of sexual assault. The purpose of the provision prohibiting Defendant from initiating conversations with female employees of the Tribe was to protect these women from unwanted sexual conduct, a reasonable restriction considering the conviction.

ADMISSION OF TESTIMONY

Defendant asserts that the Trial Court abused its discretion by allowing the testimony of Darlene Snyder and Tina Vaquera, arguing that their testimony was used to demonstrate "other acts".

Plaintiff asserts that the reason for allowing the testimony of Darlene Snyder was to demonstrate the perceived authority of Tribal Council Members over employees of the Tribe. Plaintiff further argues that, even if the Trial Court did err in admitting this witness' testimony, the testimony provided cumulative evidence as there was another witness who testified as to the authority of Tribal Council Members. The Court agrees with this analysis.

With regard to Tina Vaquera, Plaintiff states that the testimony was offered within the scope of Rule of Evidence 4.205 and that proper procedure was followed, including advance notice of the intent to call the witness and for what purpose. A hearing on the matter was held on the matter and the Trial Court heard arguments on the matter. Further, there is no record of Defendant objecting when the witness was called or before cross-examination. Upon review of the briefs and the transcript, there is no evidence that the Trial Court abused its discretion. Defendant's Appeal on this matter is **DENIED**.

APPELLANT'S REQUEST FOR STAY PENDING HABEAS REVIEW

On June 12, 2009, Defendant submitted Appellant's Request for Stay Pending Habeas Review. This Request is **DENIED**.

CONCLUSION

The Appellate Court has thoroughly reviewed all documents filed to date, as well as the Trial Court transcript. The extensive, detailed briefs filed by the parties have resulted in this Court being well versed about the issues presented in Defendant's Notice of Appeal. In the interest of bringing closure to this matter and giving the victim the justice promised over a year ago, this Appeal must be resolved. While Tribal Court rules do not prohibit the Court from issuing an Opinion on all remaining issues, the Court will allow the submission of a final brief by Defendant to raise any issues enumerated in his Notice of Appeal that he does not feel have been fully considered. Defendant has twenty-one (21) days to submit a brief on any other issues raised in the Notice of Appeal. If no brief is submitted within twenty-one (21) days, the conviction will stand and the sentence will immediately commence less the restriction on initiating conversations with female employees of the Tribe as that restriction on conduct has already expired.

IT IS SO ORDERED.

Date: 9-14-09

Melissa L. Pope

Melissa L. Pope, Chief Justice

Date: 9-14-09

Ronald Douglas. Special Associate Justice

Date: 9-15-09

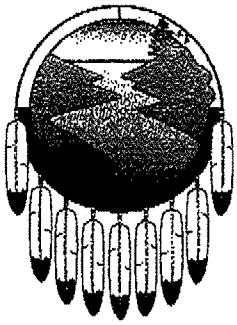
Martha Kase, Associate Justice

CERTIFICATION OF SERVICE

I certify that I placed a copy of this order in the Tribal mail system to have adequate postage attached and taken to the Manistee Post Office on this date for mailing to the parties and/or the attorneys for the parties as listed.

9.18.09

Date



Little River Band of Ottawa Indians
Tribal Court of Appeals
3031 Domres Road
Manistee Michigan 49660
231-398-3406
Fax: 231-398-3404

PEOPLE OF THE LITTLE RIVER BAND OF OTTAWA INDIANS,
Appellee-Plaintiff,

v.

NORBERT KELSEY,
Appellant-Defendant.

CASE NO. 08-036-AP

Chief Appellate Justice Melissa L. Pope
Associate Justice Martha Kase
Special Associate Justice Ronald Douglas

Eugene C. Zeller (P29339)
Tribal Prosecutor/Attorney for Appellee
3031 Domres Road
Manistee, Michigan 49660

John Kelsey (WI No. 1057098)
Attorney for Defendant/Appellant
P.O. Box 163
Manistee, Michigan 49660

ORDER FOR STAY

There was a hearing in the above referenced matter on December 3, 2009. All parties were present. Defendant, by and through his attorney, requested a stay as he indicated an intent to file an appeal in federal court. The Court denied this motion as there had been no notice of an appeal being filed in federal court. The Defendant, neither individually or by and through his attorney, stated at this hearing that an appeal had been filed.

The Court has now received notice that an appeal was filed in the United States District Court for the Western District of Michigan on November 5, 2009, Case Number

1:09-cv-1015. The Honorable Gordon J. Quist dismissed the Little River Band of Ottawa Indians Appellate Justices as defendants on December 3, 2009.

It is unclear as to why the Defendant, on his own accord or by and through his attorney, did not notify the Court that an appeal had been filed in the federal court. This issue may be addressed in future hearings. However, as the appeal has been filed, the Court is issuing a stay in the above referenced, pending the outcome of those proceedings.

Therefore, the Oral Arguments scheduled for 10:00 a.m. on Thursday, March 11, 2010 are hereby ADJOURNED until further order of the Court.

IT IS SO ORDERED.

Date: 3-2-2010

Melissa L. Pope

Melissa L. Pope, Chief Justice

CERTIFICATION OF SERVICE

I certify that I placed a copy of this order in the Tribal mail system to have adequate postage attached and taken to the Manistee Post Office on this date for mailing to the parties and/or the attorneys for the parties as listed.

3-2-2010

Date

Deborah C. Miller

Deborah Miller, Court Administrator

Little River Band of Ottawa Indians
Tribal Court
3031 Domres Road
Manistee, Michigan 49660
231-398-3406

Sharron Detz
Petitioner

Case Number: 08044GR
Honorable Daniel Bailey

v.

Larry Romanelli – Ogema
Little River Band of Ottawa Indians,
Respondents

Sharron Detz
In Pro Per
194 Quincy Street
Manistee MI 49660

Matthew Leskey
Attorney for Respondents
375 River Street
Manistee MI 49660

ORDER AFTER EMPLOYEE GRIEVANCE HEARING

The petitioner filed a case with the Tribal Court after receiving a *Disciplinary Suspension (third notice.)* This suspension came after an alleged grievance being submitted to the Ogema regarding the employee evaluations. These evaluations were performed by the Executive Branch supervisors and directors on all employees. The petitioner was the only employee to receive a five-percent (5%) raise after the total figures were analyzed and assessed.

Ms. Detz was charged under the Personal Policies, Section 9.1, § (i.) "Employees shall not neglect their duties or responsibilities or refuse to perform assigned work." and (l.) ""No employee will use his or her position with the Tribe for personal gain. This restriction includes the use of Tribal authority, information gained through official duties, records, access to Tribal equipment, etc."

On November 9, 2007, an interview was held regarding the process and outcome of the salary increase for Ms. Detz. This was attended by the petitioner, the Ogema, the Assistant Tribal Manager, and John Brakora, attorney at law.

Sharron Detz
Petitioner

Case Number: 08044GR
Honorable Daniel Bailey

v.

Larry Romanelli – Ogema
Little River Band of Ottawa Indians,
Respondents

This interview was encapsulated in a document entitled: Investigative Interview submitted by the respondent. If the contents are accurate, the petitioner stated that her assistant, Kim Montney was the person responsible for entering the data into the matrix, establishing the percentages for wage increases. Ms. Detz said she was aware that she was the only employee who received a 5% increase and that she brought it up to the Ogema, saying she felt uncomfortable with it.

The petitioner would have the Court believe that it was the responsibility of her assistant and then of Steve Wheeler in the accounting department to catch the mistake that was made in the matrix. The mistake was in reference to the numbers entered into the matrix that were inadvertently transposed.

In the "Government Operations Personnel Manual," the job of Human Resource Director carries a great deal of weight. The Director has the responsibility for all processes in the hiring and firing of each employee in the Executive Branch.

Having heard the oral testimony as the parties chose to introduce; and considering the written submissions, I make the following findings, based on credible evidence and the reasonable inferences to be drawn from them.

As the Human Resource Director, Ms. Detz should have checked all the entries that her assistant imputed on the matrix. It is only good policy as a supervisor or director, to make sure the finished product is error free. It is especially surprising to the Court, that if the petitioner felt as uncomfortable as she said she was; that she wouldn't have checked her own entry for accuracy. The Court believes that this type of supervision and responsibility is paramount at the level of employment that Ms. Detz enjoys.

The Court doesn't believe it was an intentional deceit on the part of the petitioner; but does believe the oversight was her responsibility.

IT IS ORDERED that the Personnel Improvement Plan remain in the petitioners file.

Judge Daniel Bailey

3/24/08
Date

Sharron Detz
Petitioner

Case Number: 08044GR
Honorable Daniel Bailey

v.

Larry Romanelli – Ogema
Little River Band of Ottawa Indians,
Respondents

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for sufficient postage to be attached and mailed to the plaintiff and the defendants (or their attorneys) at the addresses on file with the court.

Deborah A. Miller – Court Administrator

3-24-08
Date

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT

Native Performance Consulting, LLC,
Plaintiff/Counter Defendant

Case Number: 08065GC
v. Honorable Angela Sherigan

Little River Band of Ottawa Indians,
Defendant /Counter Plaintiff

George V. Saylor, III
Attorney for Plaintiff
414 Water Street
Manistee, MI 49660

Matthew Lesky
Attorney for Defendant
375 River Street
Manistee, MI 49660

JUDGMENT

This matter having come before the court on a Complaint and a counter-complaint, alleging that there was a breach of contract between the parties, a bench trial was held in which both parties were represented, the Court hereby makes the following findings:

BACKGROUND:

On January 11, 2006 the Tribal Council awarded a small business incentive grant to Native Performance Consulting LLC, in the amount of $114,730.00, through Resolution #06-0111-25.

The Resolution called for an initial disbursement of $67,053.00 with subsequent distributions conditioned upon achievements of certain benchmarks contained within the Agreement and submission of period reports. Eligibility for the second installment of $32,656.00, was conditioned upon Native Performance having gross profits in excess of $30,000.00 but less than $62,646.00 after the first year of operation. If they were less than $30,000.00 a revised business plan and additional information was to be provided for the installment. Eligibility for the final installment of $15,031.00, was conditioned upon achievement of gross profits in excess of $50,000.00 but less than $65,031.00 after the second year of operation.

The Agreement also contained a provision which states "[a] change in the nature of the business plan may represent the obligation from Native Performance Consulting to reimburse the funds granted."

Plaintiff received the initial distribution in January 2006 and filed quarterly reports as required, and the final quarter report of 2006 reported gross receipts in the amount of $30,100.00. The Tribe then asked for additional information which Native Performance

supplied. The second installment was not provided to Native Performance. There were no reports filed for the last three quarters of the 2007 year.

Native Performance then filed suit against the Tribe claiming $47,977.00 representing the final two installments, plus costs, interest and attorney fees. The first installment as due and owing, thus breaching the contract, and the final installment as consequential damages. The Tribe then filed a counter-claim for the initial payment of $67,053.00, stating that there was a change in the nature of business plan, thus breaching the contract.

The facts in this case are not in dispute and the Tribe acknowledged that the fact that $30,000.00 of the profits came from a company owned by Mrs. Piwonski's husband, (Mrs. Piwonski is the sole owner of Native Performance LLC) was not prohibited.

OPINION and FINDINGS:

It is the position of Native Performance that it complied with the requirements and that the Tribe breached the contract by not providing the second installment due and owing under the terms of the contract.

The Tribe's position is that Native Performance did not comply with the contract, as Native Performance did not have at least $30,000.00 in gross profit, thus the second installment was not due and that there was a change in the business plan in violation of the contract, and that there were no reports submitted in the last three quarter of 2007, thus breaching the contract and that Native Performance and Lynn Piwonski must return the first installment.

There was testimony given as to what is and what is not gross profit, and as to what "performance consulting" means, more specifically, does it include accounting activities.

Testimony was given by Mrs. Piwonski that performance consulting includes assessing organizations systematically, to find out what the goals are, what the employees are doing and go look at all systems in place and what are the barriers, then to initiate an action plan. When asked if she would look at the accounting system, she stated, she looks at all of the systems. She also testified that some the kinds of things Native Performance did for ERP, is development of a business plan, setting up an accounting system and QuickBooks, and that she had no influence over business decisions.

Mr. Spratto, CPA, was admitted as an expert witness, without objection, to testify to what gross profit means. The testimony given was that Native Performance had $30,100.00 in gross profit for the 2006 year.

The Tribe called Jason Verheek[1], who testified that if Mr. Spratto says there was $30,100.00 in gross profits, he agrees, but added that an owner can forego wage reporting and if it is directly related it should be under cost. Verheek does not agree that the gross profit was actually $30100.00 but he does agree that it is correct for I.R.S purposes.

---

[1] Jason Verheek was not admitted as an expert witness.

There was no evidence presented by the Tribe that performance consulting does not include accounting. There was also testimony from the Tribes Commerce Director that he never asked Mrs. Piwonski what accounting means nor what performance consulting is.

The Court gives more weight to the testimony of the expert witness that gross profits were $30,100.00.

The Court finds that Native Performance had $30,100.00 in gross profits for the 2006 year, as required under the Agreement, and that the Tribe is in breach of the contract for not providing the second installment due under the contract.

The breach occurred before the 2007 second quarter report was due from Native Performance relieving Native Performance from further compliance.

The Court finds that Native Performance was not in breach of the contract, thus an analysis of piercing the corporate veil is not necessary.

THEREFORE, IT IS HEREBY ORDERED:

Plaintiff/Counter Defendant, Native Performance is entitled to judgment in the amount of $32,656.00 from the Little River Band of Ottawa Indians.

Dated: 7-17-09

Angela Sherigan
Honorable Angela Sherigan

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for sufficient postage to be attached and mailed to the plaintiff and the defendants (or their attorneys) at the addresses on file with the court.

Deborah A Mills
Court Administrator

7.20.09
Date

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT

RYAN CHAMPAGNE,
Plaintiff,

Case No. 08-087 CG
Hon. Angela Sherigan

v.

LARRY ROMANELLI, TRIBAL OGEMA
Defendant.
/

Ryan Champagne Plaintiff in Pro-per 1080 Red Apple Rd. Manistee, MI 49660	Daniel Green General Counsel for Defendant 375 River St. Manistee, MI 49660

/

JUDGMENT

The Court being advised in the premises, after a bench trial on September 4, 2008, in which for both parties were present/represented,

THE COURT FINDS AS FOLLOWS:

The Plaintiff made a request for access to Tribal records under Article III, Section 2 of the Constitution. More specifically: "All 1) travel expenditures, 2) closeouts, 3) requests 4) payments 5) itineraries 6) flight options 7) car rental that deal with the travel of Kelly Maser since employment w/LRCR." The Court notes that Kelly Maser is a Tribal Government employee, not an employee of Little River Casino Resort.

The Defendant denied the request citing Article III, Section 2's right to privacy provision of the Constitution, and the Federal Privacy Act as reasons for the denial.

The Federal Privacy Act is applicable only to U.S. federal agencies. The Little River Band of Ottawa Indians is not a federal agency, but rather a sovereign nation. However, if the Tribe should happen to enter into a contract with the U.S. federal government, and the contract incorporates the Federal Privacy Act into the contract, then the Tribe is bound by that contract. There was no proof presented here that the Gaming Commission, is under a specific contract with the U.S. government that would trigger the Federal Privacy Act, or that federal funds are being used to fund the work or position of Ms. Maser. Therefore, the Federal Privacy Act is not applicable in this case.

Article III, Constitutional Rights, Section 2 of the Constitution states as follows:

> Section 2 – *Access to Tribal Records.* Subject to any express limitation contained in this Constitution, the laws of the United

> States, and individual Tribal members' and Tribal employees' right to privacy, members of the Tribe shall be provided access to review the records of the Tribe including, but not limited to: . . . Tribal budgets and financial reports of Tribal expenditures; provided that such review shall be conducted during normal office hours.

Thus, Article III, Section 2 gives Tribal members the right to access certain records of the Tribal government. One of those records is budgets and financial reports. A financial report is just that, a report, and may or may not include specific details. As applied to this case, travel expenditures and closeouts are reports. Requests, itineraries, and flight options are not reports. Car rentals and payments will be reported in the closeout.

The Plaintiff is therefore entitled to have access to the travel expenditure/closeout report, subject to the right to privacy limitation in Section 2. Those privacy limitations include any personally identifying information, such a social security number, employee's bank account number, and medical information. The Court notes that this is not an inclusive list of privacy rights, but rather the list is intended for this case only.

The Gaming Commission performs certain investigatory, and background investigations that are also not subject to disclosure, by the nature of its regulatory and enforcement functions.

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

The Plaintiff shall have access to review the travel expenditures and closeouts of Kelly Maser, subject to redaction of personally identifying information. Those travel expenditures and closeouts that are part of any investigation as deemed by the Gaming Commission are not subject to disclosure.

Since Plaintiff has asked for records since employment, and there being no evidence by either side on what time frame this may be, Defendant has forty-five (45) days to comply. If more time is necessary, the Defendant must seek an extension from the Court, or by stipulation of the parties.

SO ORDERED.

Dated: October 21, 2008

Angela Sherigan

JUDGE ANGELA SHERIGAN

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COUNCIL
Petitioner,

Case No. 08-093 GC
Hon. Angela Sherigan

v.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL OGEMA
Respondent.

Kimberly McGrath
Attorney for Council

Daniel Green
Attorney for Ogema

DECLARATORY JUDGMENT
OPINION AFTER HEARING

This matter having come before the Court on a Request for Declaratory and Injunctive Relief, regarding the contract of Legislative Counsel Joseph Martin.

BACKGROUND:

On September 10, 2007 the Ogema and Joe Martin entered into a contract for legal services between the Little River Band of Ottawa Indians and Joseph Martin., and was signed by Ogema Romanelli and Joseph Martin, and ratified by the Council.

On April 14, 2008, the Ogema issued and served a letter of termination of contract upon Joseph Martin. On April 15, 2008 Mr. Martin was escorted out of the government building.

On April 16, 2008, Council filed a request for an Ex-Parte Temporary Restraining Order, which the Court granted and noticed a hearing for May 1, 2008.

On May 1, 2008, a hearing was held which resulted in the Temporary Restraining Order being continued and the parties requested additional time for filing of pleadings, which the Court granted.

On May 15, 2008, an Amended Verified Complaint for Declaratory and Injunctive Relief was filed. On June 5, 2008 the Answer to Complaint was filed. The final hearing was held on June 5, 2008.

OPINION

This Court has authority regarding declaratory and injunctive matters pursuant to Article XI, Section 2(a) to enforce rights and duties established by the Constitution and by the ordinances and resolutions of the Tribe.

This matter involves the attorney contract of Joseph Martin, Chief Legislative Counsel; specifically, does the Ogema have the authority to terminate the contract. The contract was signed on September 10, 2007, by Joseph Martin, and Ogema Romanelli, and was ratified by the Council. The terms of that contract, amongst other provisions, required Mr. Martin to maintain his license to practice law in the State of Illinois at all times, and to acquire a license to practice law in the State of Michigan within six months from the date of the contract, which would have been March 10, 2008.

The Ogema, issued a Notice of Termination of the contract to Mr. Martin for the reasons that upon information and belief, Mr. Martin's license to practice law in the State of Illinois lapsed and that Mr. Martin had not obtained his license to practice law in the State of Michigan within the time frame as provided in the contact, six months, which is a breach of the contract. Council has admitted that the license in Illinois did lapse, but was corrected, and the Mr. Martin does not have a license to practice law in the State of Michigan.

When a contract is breached, either party to the contract may terminate the contract for the breach, if the breach is a material breach.[1]

The signatories to this contract were Ogema Romanelli, who executed the contract on behalf of the Tribe, and Joseph Martin.

Council argues that they are the intended beneficiary of the contract, and that because the contract states that Mr. Martin would be under the control and supervision of the Council, it is the only one who can terminate the contract.

The Constitution states at Article IV, Section 7(e) as follows:

> "*Powers of the Tribal Council.* The legislative powers of the Little River Band of Ottawa Indians shall be vested in the Tribal Council, subject to any express limitations contained in this Constitution. The Tribal Council shall have the power, including by way of illustration, but not be limitation:
>
> * * *
>
> (e) To employ legal counsel, subject to the approval of the secretary of the Interior so long as such approval is required by federal law."

[1] The question of if there was a breach and if that breach was a material breach, is not before the court in this case, and thus will not be decided. The only issue before the Court in this case is whether or not the Ogema has the authority to terminate this contract.

Council argues that the above-cited provision vests Council with the sole and exclusive authority to hire legal counsel, and that the fact that the Ogema signed this contract was an anomaly. It is this Court's opinion that Council overstates the meaning of this section of the Constitution. In fact, the language simply reflects the fact that at one time, all attorney contracts entered into by Indian Tribes were required to be submitted to the Secretary of Interior pursuant to 25 U.S.C 81 and the Secretary of Interior always required those submissions to be supported by resolutions from the applicable Tribe's Council. This section, which was no doubt adapted from "boilerplate" language found in many Tribes' Constitutions, simply reflects this prior requirement under federal law. The Court does not believe that contracts with legal counsel should be treated any differently from any other contract the Tribe may enter into. The Constitution vests the Ogema with the authority to execute contracts on behalf of the Tribe subject to ratification by the Council.

Evidence was presented that at least some contracts with prior legislative legal counsel were signed by the Council Speaker; however, those contracts are not in front of the Court in this case. In fact, the Council (or Mr. Martin, who is after all, an attorney), could have requested that the form of the contract with Mr. Martin be counter-signed by the Council Speaker and could have included terms that gave the Council the sole authority to terminate that contract. In absence of such language, the executive powers the Constitution vests in the Ogema would include the power to oversee the enforcement of contracts that are entered into on behalf of the Tribe. In this instance, the contract was executed by the Ogema on behalf of the Tribe and subsequently ratified by the Council.

DECLARATION:
This a unique case and one of first impression. The Court declares that in this specific case, the Ogema does have the authority to terminate the contract, as the Ogema is the signatory on the contract, thus making him a party to the contract, and for the reasons stated above.

The Court warns that this declaration is specific only to this contract and should not be interpreted as giving the Ogema the authority to terminate Legislative attorney contracts.

Dated: 1-22-09

Angela Sherigan
Hon. Angela Sherigan

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for sufficient postage to be attached and mailed to the plaintiff and the defendants (or their attorneys) at the addresses on file with the court.

Deborah Miller
Deborah Miller – Court Administator

1·26·09
Date

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

Little River Band of Ottawa Indians
Tribal Council

Petitioner

v.

Case Number: 08093GC
Honorable Angela Sherigan

Little River Band of Ottawa Indians
Tribal Ogema

Respondent

Kimberly McGrath Legislative Counsel 375 River Street Manistee, MI 49660	Daniel Green General Counsel 375 River Street Manistee, MI 49660

ORDER CLARIFYING DECLARATORY JUDGMENT

The Court entered a Declaratory Judgment in this matter on January 26, 2009.

On July 16, 2009, a meeting was held with the Ogema and the Council Speaker and the Court, at the request of the Ogema and the Speaker to clarify the Judgment.

For purposes of clarification:

The Judgment does not give the Ogema the sole authority to terminate the contract on behalf of the Tribe. Both the Ogema and the Council have the authority to terminate the contract, independent of each-other.

The Court again warns that this clarification is specific to the contract which is the subject of this case only.

Angela Sherigan
Judge

7-16-09
Date

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for sufficient postage to be attached and mailed to the plaintiff and the defendants (or their attorneys) at the addresses on file with the court.

Janeen Codden
Janeen Codden – Court Clerk

7-16-09
Date

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL OGEMA
PLAINTIFF

v.

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COUNCIL

Case Number: 08116GC
Honorable Daniel Bailey

Daniel Green
General Counsel
375 River Street
Manistee, MI 49660

Joseph Martin
Chief Legislative Counsel
375 River Street
Manistee, MI 49660

ORDER AFTER HEARING

FINDINGS OF FACT

On February 1, 2008, the Little River Band of Ottawa Indians Gaming Commission delivered a report entitled TRIBAL MINIMUM INTERNAL CONTROL STANDARDS FINAL AUDIT REPORT, SECTION 16 – ACCOUNTING to Gaming Commission members, the casino Board of Directors, the IA/Accountant and Comptroller. Subsequent actions by the Tribal Council, presumably based upon the Report, caused the Tribal Ogema to file this suit against Tribal Council for Declaratory and Injunctive Relief, asserting Council's actions are violations of the Tribal Constitution and the Indian Civil Rights Act. Defendant Tribal Council has answered the Complaint and asserted standard affirmative defenses in addition to a defense of lack on standing by Plaintiff. Hearing was held June 16, 2008 on Plaintiff's Motion for Entry of Temporary Restraining Order and Preliminary Injunction. Since no factual argument was made to the Court by Defendant's counsel, the Court will use the Complaint of Plaintiff and the attached exhibits for its Finding of Facts.

The Audit Report was primarily critical of the use of credit cards by certain board members to supposedly cover expenses relating to their work as board members and the alleged lack of documentation supporting that use. (The Court is taking no position on any statement or conclusion found in the Report, or upon any alleged act of any particular board member(s)). Based on the report, the Tribal Council must have concluded its intervention was necessary. On March 12, 2008, Council met and passed Resolution #08-0321-61 as an amendment to the Resort Board of Directors Ordinance. The Tribal Council then passed two resolutions, #08-0321-62 and #08-0321-63, to remove Directors Mike Moore and Ron Spoerl from the Board of Directors, pursuant to the newly amended Ordinance. The Court has found no mention in the Audit Report of specific directors who were allegedly responsible for abusive use of credit cards, nor

were any Board members allowed the opportunity to respo. to the Council's allegations and actions.

According to Resolution #08-0321-61, the Tribal Council relies upon Art. IV, Sections 7(a) and (f) of the Tribal Constitution, and Sections 5.01 and 5.02 of the tribal Administrative Procedures Act (hereafter "APA") to justify the "emergency" meeting at which it amended the Resort Board of Directors Act and then terminated Directors Moore and Spoerle. These actions were taken even though the Ogema reported to the Council on March 12, 2008 that the Audit dealt with events which happened in 2007 and that the credit cards at issue were no longer in existence. Tribal Council chose to proceed with its resolutions even though Section 5.01 of the APA states, "An emergency must be imminent and not allow the normal rule-making processes to be conducted without causing or resulting in danger to health, safety, or welfare of the Tribe."

CONCLUSIONS OF LAW

Plaintiff has specifically requested the Court grant relief in at least twelve (12) ways. Defendant has provided no factual statement to justify its actions other than to tell the Court it was wasting Council's time by holding a hearing, and that Plaintiff had no standing to bring this suit. Clearly, the Court believes Plaintiff has standing to raise the important issues set forth in his Complaint. This belief is based upon various constitutional provisions which address the powers of different branches of Tribal government. Further, this Court has jurisdiction in matter based upon its reading of Art. VI, Section 6 or 7 of the Constitution. Based upon its reading of the Complaint and attached exhibits, and the Tribal Constitution:

IT IS ORDERED:

I. The "emergency meeting" held by Defendant on March 12, 2008 to amend the Resort Board of Directors Ordinance was clearly not an emergency, at least not the type of emergency contemplated by the APA. We conclude that because Defendant did not meet minimum rule-making standards set forth in the Constitution and the APA, the Resolutions enacted at its meeting March 12, 2008, or any other action taken thereafter in reliance upon those amendments, cannot be enforced.

II. We conclude the Resort Board of Directors Ordinance has not been amended; therefore, Tribal Council's actions based on an amended ordinance are void.

III. We conclude Directors Moore and Spoerl should be reinstated to the Board of Directors, under terms and conditions set by the Ogema.

IV. Plaintiff's request for a temporary restraining order and preliminary injunction is granted.

The Court believes it is not necessary to rule on each item of relief requested by Plaintiff, but that the above Conclusions of Law and Orders return the situation to its pre-March 12, 2008 status. The Court would further urge the parties to work cooperatively to resolve any problems or issues raised by the Gaming Commission Report which are still outstanding.

SO ORDERED:

Judge

8/4/08
Date

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for sufficient postage to be attached and mailed to the plaintiff and the defendants (or their attorneys) at the addresses on file with the court.

Janeen Codden
Janeen Codden-Court Clerk

8-5-08
Date

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

LITTLE RIVER BAND OF OTTAWA INDIANS
PLAINTIFF

V.

CASE NUMBER: 08189TM
HONORABLE DANIEL BAILEY

MATTHEW STONE
DEFENDANT
938 EMERSON
MUSKEGON MI 49442

Noah Joseph
Attorney at Law
414 Water Street
Manistee MI 49660

JUDGMENT OF SENTENCE – COMMITMENT TO JAIL

On September 18, 2008, the defendant entered a plea of guilty to CORA Regulation Section XXVII (a) 1. Impede and interfere with officer.

Sentencing was held on: November 17, 2008. The defendant's attorney presented a motion to withdraw sentencing, but it was denied.

The defendant is sentenced as follows:

- Ninety (90) days in the Manistee County jail to run concurrently with the ten (10) days he was given for contempt on case number: 07209TM (He may serve some of the sentence in an inpatient substance abuse treatment center; with the outstanding number of days left in the sentence to be served in jail.)
- Six (6) months probation. Defendant must contact probation department within one week of release from jail.
- $1000.00 fine. Defendant must contact the court within one week of release from jail to set up a payment schedule.
- The Defendant's Commercial Fishing License and Commercial Fishing Helpers License has been suspended and revoked for one (1) year from the date of this order.

He was ordered to report to the Justice Center for processing on November 24, 2008, at 1:00 p.m. The Department of Public Safety will transport him to the county jail.

SO ORDERED: Daniel Bailey (by) _____ November 18, 2008
Judge Daniel Bailey Date

LITTLE RIVER BAND OF OTTAWA INDIANS
PLAINTIFF

V.

CASE NUMBER: 08189TM
HONORABLE DANIEL BAILEY

MATTHEW STONE
DEFENDANT
938 EMERSON
MUSKEGON MI 49442

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the outgoing mail to the defendant, defendant's attorney, and in the inter-office mail to the Prosecutor, today.

Deborah A. Miller
Clerk

11-18-08
Date

TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

LITTLE RIVER BAND OF OTTAWA INDIANS,
PLAINTIFF

CASE NUMBER: 08189TM
CASE NUMBER: 07209CO
HONORABLE DANIEL BAILEY

V.

MATTHEW STONE
17270 NINE MILE ROAD
KALEVA MI 49645

ORDER AFTER RECONSIDERATION OF SENTENCING HEARING AND OTHER MATTERS

On May 4, 2009, a hearing was held
in the Tribal Court of the Little River Band
of Ottawa Indians Justice Center.

On April 27, 2009, Mr. Stone petitioned the court to grant a reconsideration of the Judgment of Sentence on case number:08189TM, and consideration of restitution on case number: 07209CO. This request came after discussions with his probation officer and after many weeks of outpatient treatment for some issues he was having. He asked the Appellate Court (Case Number: 08303AP) on April 7, 2009, for a *"Leave to Petition Trial Court for Modification of Sentence"* on the above case(s).

A hearing on his motion for reconsideration was held on May 4, 2009. After testimony from Mr. Stone, Austin Brauker-Probation, Eugene Zeller-Prosecutor, and Joseph LaPorte-Director of DPS, the sentencing order will be modified. It appears that Mr. Stone has made a good faith effort to take responsibility for his actions; not only professionally, but also personally.

He was granted a modification of sentence and he asked that the Appellate Court action be dismissed. He also requested the court staff combine all open cases where fines and restitution are owed and he would begin to pay on the balance as soon as he receives his first paycheck.

MODIFIED SENTENCING ORDER

1. Defendant served thirty (30) days of a ninety (90) day sentence. He was released on December 22, 2009, after the Appellate Court for the Little River Band issued *"Order Granting Stay of Sentence Pending Appeal."* The sixty (60) days will be held in abeyance, but the court has added another ninety (90) days to be served if Mr. Stone violates this sentencing order or probation requirements.
2. Defendant's probation is extended for one year beginning May 4, 2009. He must report to the probation department according to their schedule.

PLAINTIFF

CASE NUMBER: 08189TM
CASE NUMBER: 07209CO
HONORABLE DANIEL BAILEY

V.

MATTHEW STONE
17270 NINE MILE ROAD
KALEVA MI 49645

3. Defendant's fishing license was initially revoked for one year. The defendant has argued that he cannot pay his fines or restitution without the license to provide a livelihood.
4. Mr. Stone may be re-issued a commercial fishing license. Listed below are a reiteration of rules from the greatest areas of concern based on the defendants past performances:
   - *All previous net(s) need to be indentified and removed prior to any other nets being placed.*
   - *All net(s) to be set in the future need to have a permanent identifier in place and verified by law enforcement prior to being set.*
   - *CORA permitted consultant and/or LRBOI approved Tribal consultant needs to be present on board and at all times setting or lifting activity is being conducted. Unauthorized persons cannot be on board at any time.*
   - *Nets cannot be "unattended" or "abandoned" as being deemed such by LRBOI/CORA.*
   - *Nets cannot be left out during the winter months, i.e.; during closed seasons.*
   - *Any hazard to navigation; i.e., excess floating line, missing markers, buoys, must be treated as a priority.*
   - *Must not commit any criminal violations, any CORA major violations, or any actions which result in the want or waste of fish.*
   - *Locations of all nets placed (in lat/long) need to be given to Law Enforcement immediatelyafter they are set.*
5. Mr. Stone will submit his paperwork on a weekly basis, showing income from fish sales and pay 10% of that amount to the court, until his financial obligations are complete. [07209CO, restitution: $7500, 08189TM, fines: $1000, 08254CO, fines: $500 and 08301CO, fines: $900 for a total of: $9,900.00]
6. Defendant will continue with his substance abuse program recommendations as indicated through professional substance abuse assessment.

SO ORDERED:

Judge Daniel Bailey

5/6/09
Date

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for sufficient postage to be attached. It will then be taken to the Manistee Branch of the United States Post Office and mailed to the plaintiff and the defendants (or their attorneys) at the addresses on file with the court.

Deborah A Miller
Court Clerk

5-7-09
Date

Little River Band of Ottawa Indians
TRIBAL COURT
3031 Domres Road
Manistee Michigan 49660
(231) 398-3406
Fax: (231) 398-3404

PEOPLE OF THE LITTLE RIVER BAND
OF OTTAWA INDIANS,
Appellee

V.

MATTHEW STONE,
Appellant

CASE NUMBER: 08303AP
Trial Level: 08189TM
HON. MICHAEL PETOSKEY
HON. STELLA GIBSON
HON. ANNA GUENTHARDT

ORDER AFTER DISMISSAL OF APPEAL

On May 19, 2009, a *Stipulation for Dismissal* of Appeal was signed by the Appellant, the Prosecutor, and the Chief Appellate Justice.

The misdemeanor case, 08189TM, was then re-opened with a modification of sentencing.

The $200 bond posted on the appellate case will be used to make a payment on the restitution amount still owed to the Tribe's Natural Resource Department.

The Accounting Department shall move the $200 from the bond account to the line item that was created for restitution for the Natural Resource Department. (The balance of the restitution owed will then be: $6,333.00)

SO ORDERED:

Judge Daniel Bailey — Date 3/2/10

CERTIFICATION OF SERVICE

I certify that a copy of this order was placed in the Tribal mail system for sufficient postage to be attached. It will then be taken to the Manistee Branch of the United States Post Office and mailed to the plaintiff and the defendants (or their attorneys) at the addresses on file with the court.

Court Clerk — Date 3/3/10

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
EMPLOYMENT DIVISION
3031 Domres road
Manistee, MI 49660

Mark Knee
Petitioner,

vs.

Case No. 08-198 GR
Hon. Daniel Bailey

Little River Band of Ottawa Indians, and
Jimmie Mitchell
Respondents.

William J. Brooks
Attorney at Law
359 River Street #206
Manistee, MI 49660
231-723-1101

Attorney for Petitioner

Daniel T. Green (P25548)
General Counsel
Little River Band of Ottawa Indians
375 River Street
Manistee, MI 49660
231-398-6802
Attorney for Respondents

CONSENT ORDER

This action is an appeal of Respondents' termination of Petitioner's employment, seeking reinstatement of employment, past and future wages and benefits, and other relief under provisions of the Little River Band of Ottawa Indians tribal law.

Petitioner and Respondents have entered into a Stipulation for Entry of Consent Order (the " Stipulation") for the purpose of resolving this matter and all other outstanding issues between them arising on or before the date of this Consent Order. These include, without limitation, any and all matters and obligations arising out of Petitioner's employment with Respondents and the termination of that employment relationship and all matters which have been, or could have been raised by Petitioner in this action or in another action at this time, and any claims which Respondent Little River Band of Ottawa Indians has or could have asserted against Petitioner in this action or another action at this time.

The Court has reviewed the Stipulation entered into by the parties and finds that it is a fair and equitable resolution of the present dispute. The Court further finds that the Stipulation and the expenditures agreed to by the Respondent Tribe are lawful and appropriate under Tribal law and are within the authority of the Executive branch. The Court therefore grants the Parties' request for entry of a consent order consistent with the provisions of the Stipulation.

IT IS THEREFORE ORDERED:

1. Respondent Little River Band of Ottawa Indians shall pay to Petitioner Mark Knee from the Department of Natural Resources Budget Salary Account the sum of $19,386, as past and present salary, (subject only to withholding for FICA/Medicare) in full settlement of all claims within the scope of the Stipulation and order.

2. All of Petitioner's claims against Respondents, within the scope described above, shall be extinguished by the payment referred to in Paragraph 1 of this order.

3. All of Respondents' claims against Petitioner, within the scope described above, shall be extinguished by Petitioner's acceptance of the payment described in Paragraph 1 of this order.

4. Respondents shall remove the July 25, 2008 letter relating to the termination of Petitioner's employment with Little River Band of Ottawa Indians from Petitioner's personnel file. The Personnel Action Form describing Petitioner's change in employment status shall contain no indication of cause regarding Petitioner's separation from Respondents' employment.

5. Respondent Little River Band of Ottawa Indians shall pay attorney's fees in the sum of $1,250 to Petitioner's counsel from the General Counsel Budget Professional Fees Account.

SO ORDERED:

Hon. Daniel Bailey, Judge — Date: 10/13/08

CERTIFICATION OF SERVICE

I certify that a copy of this Consent Order was placed in the Tribal mail system for sufficient postage to be attached and mailed to the Petitioner and the Respondents (or their Attorneys) at the address on file with the Court.

Janeen Codden, Court Clerk — Date: 10·13·08

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LITTLE RIVER BAND OF OTTEWA INDIANS
~~TRIBAL COURT~~
EMPLOYMENT DIVISION
3031 Domres road
Manistee, MI 49660

Nathan Svoboda
Petitioner,

vs.

Case No. 08-199 GR
Hon. Daniel Bailey

Little River Band of Ottawa Indians, and
Jimmie Mitchell
Respondents.

Leslie Van Alstine II, PLLC
By: Leslie Van Alstine (P52802)
255 River Street
Manistee, MI 49660
231- 398- 3250

Attorney for Petitioner

Daniel T. Green (P25548)
General Counsel
Little River Band of Ottawa Indians
375 River Street
Manistee, MI 49660
231-398-6802
Attorney for Respondents

CONSENT ORDER

This action is an appeal of Respondents' termination of Petitioner's employment, seeking reinstatement of employment, past and future wages and benefits, and other relief under provisions of the Little River Band of Ottawa Indians tribal law.

Petitioner and Respondents have entered into a Stipulation for Entry of Consent Order (the " Stipulation") for the purpose of resolving this matter and all other outstanding issues between them arising on or before the date of this Consent Order. These include, without limitation, any and all matters and obligations arising out of Petitioner's employment with Respondents and the termination of that employment relationship and all matters which have been, or could have been raised by Petitioner in this action or in another action at this time, and any claims which Respondent Little River Band of Ottawa Indians has or could have asserted against Petitioner in this action or another action at this time.

The Court has reviewed the Stipulation entered into by the parties and finds that it is a fair and equitable resolution of the present dispute. The Court further finds that the Stipulation and the expenditures agreed to by the Respondent Tribe are lawful and appropriate under Tribal law and are within the authority of the Executive branch. The Court therefore grants the Parties' request for entry of a consent order consistent with the provisions of the Stipulation.

IT IS THEREFORE ORDERED:

1. Respondent Little River Band of Ottawa Indians shall pay to Petitioner Nathan Svoboda from the Department of Natural Resources Budget Salary Account the sum of $14,750, as past and present salary, (subject only to withholding for FICA/Medicare) in full settlement of all claims within the scope of the Stipulation and order.

2. All of Petitioner's claims against Respondents, within the scope described above, shall be extinguished by the payment referred to in Paragraph 1 of this order.

3. All of Respondents' claims against Petitioner, within the scope described above, shall be extinguished by Petitioner's acceptance of the payment described in Paragraph 1 of this order.

4. Respondents shall remove the July 25, 2008 letter relating to the termination of Petitioner's employment with Little River Band of Ottawa Indians from Petitioner's personnel file. The Personnel Action Form describing Petitioner's change in employment status shall contain no indication of cause regarding Petitioner's separation from Respondents' employment.

5. Respondent Little River Band of Ottawa Indians shall pay attorney's fees in the sum of $2,000 to Petitioner's counsel from the General Counsel Budget Professional Fees Account.

SO ORDERED:

Daniel Bailey (By Permission DM) 10·10·08

Hon. Daniel Bailey, Judge Date

CERTIFICATION OF SERVICE

I certify that a copy of this Consent Order was placed in the Tribal mail system for sufficient postage to be attached and mailed to the Petitioner and the Respondents (or their Attorneys) at the address on file with the Court.

Janeen Codden 10·10·08

Janeen Codden, Court Clerk Date

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road
Manistee, Michigan 49660

PEOPLE OF THE LITTLE RIVER BAND OF OTTAWA INDIANS,

v.

RONALD STONE

Case No. 08-287TM

Honorable Daniel Bailey

EUGENE C. ZELLER (P29339)
Tribal Prosecutor
3031 Domres Road
Manistee, Michigan 49660

RONALD STONE
Defendant, In Pro Per
90 Park Avenue, Apt. #405
Manistee, Michigan 49660

STIPULATION FOR PAYMENT OF RESTITUTION AND DISMISSAL

Whereas, the parties having met in open court this 20th day of April, 2009 and having agreed that:

1. Defendant Ronald Stone shall pay restitution to the Little River Band of Ottawa Indians in the amount of $6,236.35 by authorizing the Tribal Government to apply any per-capita payments approved from this date forward against the restitution amount until satisfied. It is agreed that there shall be no interest charged by the Tribe and that the Defendant is responsible for any taxes during the period of repayment.
2. Upon filing an order with the Court, the Court shall dismiss without prejudice the criminal complaint filed in this matter.

Little River Band of Ottawa Indians
Tribal Court
3031 Domres Road
Manistee, Michigan 49660
(231) 398-3406

MARTHA KASE,
Plaintiff/Appellant

V. CASE NUMBER: 08-312 GR

THE LITTLE RIVER BAND OF OTTAWA INDIANS
JESSICA BURGER
375 River Street
Manistee, MI 49660
Defendants/Appellees
_____/

John Gregory Kelsey
P.O. Box 163
Manistee, MI 49660
216-509-3642
Attorney for Plaintiff

Daniel T. Green
LRBOI General Counsel
375 River Street
Manistee, MI 49660
Attorney for Defendants

CONSENT ORDER

The parties to this employment termination appeal appeared before the court at the time set for hearing in this matter, and set forth on the record a proposed settlement to be entered by the Court as a Consent Order. The terms of the proposed settlement were presented by counsel for the Tribal defendants, and the Plaintiff's counsel indicated his concurrence with them as stated. The court specifically questioned appellant Kase as to whether she had consulted with her attorney regarding the proposed settlement, understood it and understood that, if entered, it would be the court's final resolution of her case, and if she agreed with the settlement . Appellant Kase affirmed on the record that she did consult and understand and did agree with the settlement. Accordingly, the court finds that this Consent Order has been properly agreed to by the parties. Consistent with the proposed settlement as presented on the record,

It Is Therefore Ordered:

The discipline provision included in the Performance Improvement Plan (PIP) relating to Appellant Martha Kase dated October 22, 2008, is modified by agreement of the parties to be suspension without pay for the period from the date of the PIP through May 1, 2009. Kase will return to work on May 3, 2009. Her position will be changed to Substance Abuse Counselor, with no change in compensation. Her health insurance

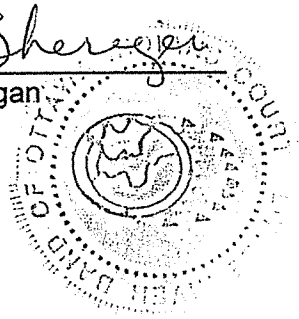
and other employee benefits will be reinstated as of the date of this order. The PIP, as modified by this Consent Order, will remain a part of her employment record for all purposes. Defendants will initiate no licensure complaint or other action with regard to plaintiss's Michigan licensure with regard to this matter

No cost or fees are assessed or awarded in this matter.

The appeal is dismissed.

Dated: 4-30-09

Hon. Angela Sherigan
Tribal Judge



Approved as to form and content:

John Gregory Kelsey
P.O. Box 163
Manistee, MI 49660
216-509-3642
Attorney for Plaintiff

Daniel T. Green
LRBOI General Counsel
375 River Street
Manistee, MI 49660
Attorney for Defendant