

Martin v LRBOI TRIBAL COUNCIL , OGEMA AND JUDGE SHERIGAN --- #10050AP

Summary: Appellant/petitioner is appealing a contempt order issued by Judge Bailey following an emergency hearing.

Decision and Order: Contempt can be viewed as “direct” or “indirect”. There is no question that the circumstances leading to the contempt order occurred during a hearing before this Court involved direct contempt. Judge Bailey, in maintaining control of his courtroom and responding to the behavior of the Appellant/Petitioner, had full authority to issue a contempt order. The Appellate Court upholds the Order.

Wabsis v LRBOI Enrollment Commission --- #10064AP

Summary: The issue on appeal involves a conclusion of law and, therefore, is reviews de novo by the Court of Appeals pursuant to Tribal Court Rule of Appellate Procedure 5.401(E)

Decision and Order: Appellants state in their brief that they seek relief based upon the sympathies of open minds, and big hearts, rooted in true Indian virtue. While the Appellate Court understands the devotion and contribution of the Wabsis family but it also recognizes that it's first and foremost duty is to protect the Tribe's sovereign powers. Therefore, it must uphold the Enrollment Commission's interpretation of the Tribe's Constitution.

Waitner v LRBOI --- #10095GR

Summary: Plaintiff files a Grievance of Termination from her position as grant writer. The plaintiff was on a probationary period.

Decision and Order: The termination is reversed. The tribal court felt the practices during the “Probationary” period, were that of non-compliance and loose enforcement. The Plaintiff shall be reinstated and awarded lost wages.

Martin v Judge Sherigan --- # 10172AP

Summary: Plaintiff/Appellant filed a complaint against the Tribe and its Council and Ogema along with Judge Sherigan alleging that Defendants violated Plaintiff's rights under the Indian Civil Rights Act and LRBOI Constitution. Plaintiff sought declaratory and injunctive relief.

Defendant Judge Sherigan filed a Motion for Summary disposition on all Plaintiff's claims against her based on the doctrine of judicial immunity, among other grounds. Included in the motion was a request for costs.

Decision and Order: At a hearing October 1, 2010, all parties agreed to dismiss the Tribe, Tribal Council and The Ogema. Plaintiff failed to respond to Judge Sherigan's Motion.

Plaintiff appealed Judge Brott's order finding that Plaintiff's claim against Judge Sherigan were frivolous and without merit and the awarding of costs. The Appellate Court upheld the order.

Stone v LRBOI --- #10178AP

Summary: On May 3, 2010 Mr. Stone agreed to surrender to the Tribe the commercial fishing boat, referring to as "the Captain Bill", the skiff, the nets, and any other equipment in exchange for Plaintiff dismissing the criminal charge in this case.

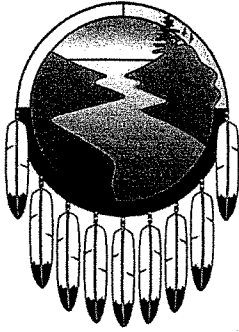
Note: The Trial Court upheld the plea agreement entered into by Stone and the Tribe.

Decision and Order: The Appellate Court upheld the February 25, 2011 Opinion and Order of the Trial Court's July 21, 2010 Order denying the Motion to set Aside Agreement and to stay Enforcement of amended order after Hearing. This matter is now before the Trial Court for any future proceedings.

Walker v LRBOI --- #10277EA

Summary: This is a hearing on an Enrollment Appeal. Mr. Walker submitted exhibits.

Decision and Order: The Criteria for enrollment is outlines in the Constitution. The Court spent time going over the documents submitted by the Plaintiff and does not see proof that he or his ancestors meet the criteria



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

JOSEPH MARTIN,
Appellants,

v.

**LRBOI, LRBOI TRIBAL COUNCIL,
OGEMA LARRY ROMANELLI, HON.
ANGELA SHERIGAN**
Appellees.

Case Number: 10050AP
Chief Justice Melissa L. Pope
Associate Justice Martha Kase
Special Associate Justice Berni Carlson

For Appellant-Petitioner
Joseph Martin
In Pro Per
362 1st Street
Manistee, Michigan 49660

For Respondent
Gene Zeller
Tribal Prosecutor
3031 Domres Road
Manistee, Michigan 49660

OPINION AND ORDER

At a session of said Court held in the Courthouse of the Little River Band of Ottawa Indians on the Little River Band of Ottawa Indians Reservation on the 16th day of July 2010;

Factual Background

This matter comes before the Tribal Court of Appeals as an appeal of the Tribal Court's finding of contempt of court against Joseph Martin, herein after referred to as Appellant/Petitioner. Oral argument on this appeal was conducted before the Court of Appeals on July 16, 2010. The parties submitted briefs on the issues.

Appellant/Petitioner is appealing a contempt order ("Order") issued by Judge Daniel Bailey following an emergency motion hearing set at 9:00 a.m. on December 7, 2009 in the Tribal Court of the Little River Band of Ottawa Indians. The Order was signed on the same day that the hearing was held.

At the December 7, 2009 emergency motion hearing, Appellant/Petitioner, appearing Pro Se, made an oral motion for Judge Daniel Bailey to recuse himself from the case, stating that Judge Bailey had made a prior ruling that supported Judge Angela Sherigan, a Defendant in the aforementioned case. Judge Bailey did not rule on the oral motion and proceeded to set the scheduling order for the case. Appellant/Petitioner left the courtroom after being ordered to sit down by Judge Bailey. On December 7, 2009, Judge Bailey issued an order after the hearing that included finding Appellant/Petitioner in contempt order and imposing a \$200 fine to be paid within fourteen (14) days of the Order. Appellant/Petitioner appeals this Order.

Opinion Reasoning

Appellant/Petitioner argues that Judge Bailey was required to rule on the oral motion to recuse himself or set a date for hearing before ruling on other matters. He further states that Judge Bailey's failure to rule on the motion to recuse means that he had no authority to make subsequent rulings, including the scheduling order and contempt order, and that the order after hearing is, therefore, void. Appellant/Petitioner does not provide any relevant support for his argument. This Court rejects this argument. To adopt this reasoning would render a Judge unable to maintain control of the courtroom.

Appellant/Petitioner then argues that Judge Bailey committed reversible error by failing to provide Appellant/Petitioner with a hearing before ruling him in contempt of court. As noted by Respondent, there are two (2) types of contempt of court: civil and criminal. Civil contempt results in compelling behavior. Criminal contempt, on the other hand, involves the punishment of actions or behavior. In the present case, it is clear that the Court was punishing Appellant/Petitioner for his behavior, not compelling him to take an action. As such, this case involves criminal contempt.

Contempt can be viewed as “direct” or “indirect”. This Court of Appeals addressed this issue in a June 16, 1999 opinion in “*In re Contempt of Martin D. Wabindato*” 99-200-02/012-A1, 1999. In that case, the Court turned to Michigan law for guidance. As noted by Respondent, the Court held: “For our purposes here, we need only to consider ourselves with “direct” and “indirect” contempt. Direct contempt occurs “during its sitting” and in the “immediate view and presence of the court” MCL 600.1701; MSA 27A.1701(1). Direct contempt may be punished summarily by fine or jail time” MCL 600.1711(1); MSA 27A.1711(1).”

There is no question that the circumstances leading to the contempt order occurred during a hearing before the Court. As such, it involves direct contempt. Judge Bailey, in maintaining control of his courtroom and responding to the behavior of Appellant/Petitioner, had full authority to issue such a contempt order.

The Order required that the fine be paid within fourteen (14) days, which Appellant/Petitioner argues was insufficient time. However, as an attorney who has practiced law in this Tribal Court, Appellant/Petitioner is aware of the proper procedures for appealing court orders. Appellant/Petitioner had the ability to request an expedited appeal via Tribal Court Rule 5.301(F). He also could have requested a stay pending appeal. Appellant/Petitioner did neither. Further, the first opportunity for Appellant/Petitioner to be heard on this issue would have been before the Court that day. Instead, he engaged in behavior that he, himself, admits was inappropriate. Appellant/Petitioner failed at every turn to utilize the avenues available to challenge the contempt order. As such, this Court of Appeals finds the contempt order and fine to be appropriate and that Appellant/Petitioner did not follow the procedures available to him to challenge the Order.

Conclusion

For all of the reasons set forth in this Order and Opinion, the Appellate Court unanimously upholds the Order issued on December 7, 2009 Order by Judge Bailey.

IT IS SO ORDERED.

9.23.10
Date

Melissa L. Pope
Chief Justice Melissa L. Pope

9-23-10
Date

Martha Kase
Associate Appellate Justice Martha Kase

9/26/10
Date

Berni Carlson
Special Associate Justice Berni Carlson

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.

9.24.10
Date

Deborah A. Miller
Court Administrator Deborah Miller

RECEIVED
9/23/10
TKlein



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

JOHN WABSIS, et al
Appellants,

v.

LRBOI ENROLLMENT COMMISSION
Appellees.

Case Number: 10064AP
Chief Justice Melissa L. Pope
Associate Justice Martha Kase
Special Associate Justice Berni Carlson

For Appellant-Defendant:
In Pro Per
375 North Hamon Street
Walkerville, Michigan 49459

For Appellee-Plaintiff:
Kimberly McGrath
375 River Street
Manistee, Michigan 49660

ORDER AND OPINION

At a session of said Court held in the Courthouse of the Little River Band of Ottawa Indians on the Little River Band of Ottawa Indians Reservation on the 16th day of July 2010;

FACTUAL BACKGROUND

Appellants-Plaintiffs (hereinafter "Appellants") applied for enrollment into the Little River Band of Ottawa Indians on March 10, 2010. The Little River Band of Ottawa Indians Enrollment Commission denied enrollment on June 8, 2009. Appellants filed an appeal to the Tribal Court on July 6, 2009. A hearing was held before the Honorable Angela Sherigan on November 5, 2009. On February 11, 2010, Judge Sherigan entered an Order and Opinion, dismissing the action.

SCOPE OF REVIEW

The issue on appeal involves a conclusion of law and, therefore, is reviewed de novo by the Court of Appeals pursuant to Tribal Court Rule of Appellate Procedure 5.401(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.
 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.

ANALYSIS

Appellants request that this Appellate Court overturn the Tribal Court's Order dismissing their appeal of the Enrollment Commission's decision to deny their application for enrollment into the Little River Band of Ottawa Indians. Appellants assert that the Enrollment Commission incorrectly interpreted the Constitution in determining enrollment eligibility. Article II of the Constitution states in pertinent part:

Section 1 - *Eligibility for Membership*. An individual is eligible for membership in the Tribe, if he/she possesses at least one-fourth (1/4) degree Indian blood, of which at least one-eighth (1/8) degree must be Grand River Ottawa or Michigan Ottawa blood and:

- (a) Is a lineal descendant of a member of the historic Grand River Bands who resided in Manistee, Mason, Wexford or Lake Counties in the State of Michigan, who was listed on the schedule of Grand River Ottawa in the Durant Roll of 1908 as approved by the Secretary of the Interior on February 18, 1910; or,
- (b) Is a lineal descendant of individuals listed on the 1870 Annuity Payrolls of Chippewas and Ottawas of Michigan listed under the following Ottawa Chiefs: Kewacushkum Pay-quo-tush Me-tay-wis Shaw-be-quo-ung Penayse Kaw-gay-gaw-bowe Maw-gaw-ne-quong Ching-gawa-she Aken Bell; and,
- (c) Is not currently enrolled in any other federally recognized Indian Tribe, band, or group.

The Little River Band of Ottawa Indians has spent considerable time determining the requirements for eligibility into the Tribe, from the original drafting of the Constitution, to Board of Directors meetings, to revising the Constitution prior to the approval by the majority of the members in 1998. Minutes from Board of Directors meetings support Appellee's position that it was the intention of the drafters of the Constitution that individuals be eligible for membership if they can trace their ancestry to an individual listed on the Durant Roll of 1908 who also resided in Manistee, Mason, Wexford or Lake county, among other requirements. The Court held in its Order of February 11, 2010 that, in order to be eligible for enrollment, a person must be able to both trace their ancestry to individuals who were on the Durant Roll of 1908 and who were residents of Manistee, Mason, Wexford or Lake county. It was noted in the Order that this was based on the affidavits submitted to the Court by Appellees, a plain reading of the Constitution, and the fact that "[t]his requirement is listed in one paragraph, paragraph (a) and is not separated into separate paragraphs". We affirm this interpretation.

In support of their application for enrollment, Appellants cite this Court's decision in *Wabsis v. Enrollment Commission*, Case Number 09142AP, arguing that the fact that other members of their family are enrolled in the Tribe is sufficient evidence that they, too, should be enrolled in the Tribe. However, that case differs from the present case. In that case, Plaintiffs were enrolled in the Tribe and then their status was revoked. In the present case, Appellants were never enrolled in the Tribe. For this reason, this argument fails.

Based on a plain reading of the Constitution, this Appellate Court affirms the Enrollment Commission's interpretation of the Constitution, as well as Judge Sherigan's Order dismissing this action.

CONCLUSION

Appellants state in their Brief that "[t]hey seek relief based on the sympathies of open minds and big hearts, rooted in true traditional Indian virtue, from the tribal Appellate Court." While this Appellate Court

understands the devotion and contributions of the Wabsis family to the Little River Band of Ottawa Indians, it also recognizes that its first and foremost duty is to protect the Tribe and its sovereign powers. As such, it must uphold the Enrollment Commission's interpretation and application of Article II, Section 1(a) of the Tribe's Constitution, as well as Judge Sherigan's Order dismissing this action.

IT IS SO ORDERED.

10.29.10
Date


Melissa L. Pope
Chief Appellate Justice Melissa L. Pope

10-25-10
Date

Martha Kase
Associate Appellate Justice Martha Kase

10/21/10
Date

Special Appellate Associate Justice Berni Carlson
Special Appellate Associate Justice Berni Carlson



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.

10.29.10
Date

Deborah Miller
Court Administrator Deborah Miller

LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT

MELISSA WAITNER,
Plaintiff,

Case No. 10-095 GR
Hon. Angela Sherigan

v.

LRBOI, Larry Romanelli, Ogema,
Defendant.

Mark Quinn
Attorney for Plaintiff
402 Maple
Manistee MI 49660

Daniel T. Green
Attorney for Defendants
375 River
Manistee MI 49660

Dustin Tobin
Co-Council for Defendants
5090 State Street, Bldg. A, Suite One
Saginaw, MI 48603

ORDER AND OPINION

This matter having been brought to the Court as an Appeal of a Grievance/Termination Determination. A hearing was held in which all parties were present, and the Court finds as follows:

Plaintiff was terminated from her position as a grant writer on March 15, 2010.

On March 24, 2010 she filed a grievance with the Ogema, which was decided and denied on April 5, 2010. Plaintiff now appeals to the Tribal Court.

Plaintiff was on a probation period from a January 30, 2010 disciplinary action, which required her to fully comply with Chapter V, Section 5.1 of the Employee Personnel manual, Chapter IX, Section 9.1(d), and not to deviate from work hour without having an alternate work schedule which has to be pre-approved in writing, and there will be no working remotely unless advance approval is received. Any further violations of the attendance policy, by failing to report to/for work on time or demonstrate insubordinate behavior, employment would be terminated. The probationary period was to end on March 30, 2010. At the time of the termination, Mark Dougher was her supervisor.

During this probationary period there were several variances in Plaintiff's attendance, and what appears to be violations of the January 30, 2010 disciplinary action probationary requirements.

However, she was never told that these were violations and that she could/would be terminated for any future violations.

Testimony was given that Plaintiff's duties required her to be away from her desk during the day, and she was often off-site from the government building. Testimony was also given, by her supervisor, that often times he did not ask her where she was going, and when asked "why not" regarding a specific instance with Lee Ivanson, he responded, "it wasn't any of my business".

On March 9, 2010, Ms. Waitner was at work, and was feeling ill, her supervisor told her to go home. She went home and later that day called the supervisor to request she use vacation days while she was out sick for March 10, and possibly March 11. Mr. Dougher testified that on March 9, 2010, Plaintiff looked pale, and went home, and that the flu was going around at this time. She was approved for annual leave that day, and that she might be out on March 10, 2010, but there was not mention of the 11th. On March 11, 2010, Plaintiff called at 9:15a.m. to state that she would be out all day due to illness.

The practices during this "probationary" period, where that of non-compliance and loose enforcement.

This matter pursuant to the Government Relations Act of 2005, and the Employment Division of the Tribal Court Code, is hereby REMANDED, to the office of the Ogema with the following conditions/corrective actions:

1. The termination is reversed. Ms. Waitner shall be reinstated at the same position and with all of the same benefits she received on March 15, 2010.
2. Ms. Waitner's probationary status shall continue for fifteen days from the date of actual return to work.
3. Plaintiff must strictly adhere to the January 30, 2010 disciplinary action plan.
4. Defendant should strictly enforce the provisions of the January 30, 2010 disciplinary action plan.
5. Plaintiff is awarded lost wages.

SO ORDERED.

Dated: September 28, 2010

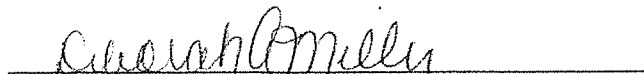


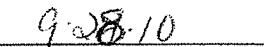
Hon. Angela Sherigan

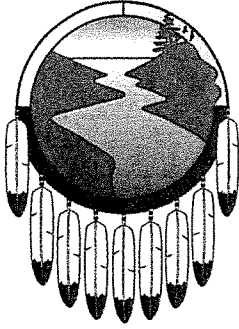


CERTIFICATION OF SERVICE

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


Court Clerk


Date



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

JOSEPH HENRY MARTIN
Plaintiff-Appellant,

v.

HON. ANGELA SHERIGAN
Defendant-Appellee.

Case Number: 10172AP
Chief Justice Melissa L. Pope
Associate Justice Martha Kase
Special Associate Justice Berni Carlson

For the Plaintiff-Appellant:
Joseph H. Martin
Plaintiff-Appellant, *Pro Se*
524 Mosher, Suite 400
Mt. Pleasant, Michigan 48858
989-600-5607

William Rastetter (P26170)
Of Counsel, Olso, n Bzddok & Howard, P.C.
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Traverse City, Michigan 49686
231-946-0044

Attorneys for Defendants Not A Party
to this Appeal
David A. Giampetroni (P69066)
Kanji & Katzen, PLLC
Attorneys for LRBOI, Council & Ogema
101 North Main Street, Suite 555
Ann Arbor, Michigan 48104
734-769-5400

ORDER AND OPINION

At a session of said Court held in the Courthouse of the Little River Band of Ottawa Indians on the Little River Band of Ottawa Indians Reservation on the 1st day of October of 2010;

PRESENT: Honorable Melissa L. Pope, Honorable Martha Kase,
and Honorable Berni Carlson

FACTUAL BACKGROUND

Plaintiff-Appellant (“Plaintiff”) filed a complaint on November 6, 2009 against the Little River Band of Ottawa Indians (“LRBOI”), the LRBOI Tribal Council, the LRBOI Ogema, Larry Romanelli, and the Honorable Angela Sherigan alleging that Defendants violated Plaintiff’s rights under the Indian Civil Rights Act, 25 U.S.C. §§ 1301, et seq. (“ICRA”), the LRBOI Constitution, and LRBOI Ordinance #97-300-01. Plaintiff sought declaratory and injunctive relief.

On January 7, 2010, Defendants LRBOI, LRBOI Tribal Council and LRBOI Ogema Larry Romanelli filed a motion for summary disposition.

On January 28, 2010, Defendant Judge Sherigan filed a motion for summary disposition of all Plaintiff’s claims against her based on the doctrine of judicial immunity, among other grounds. Included in this motion was a request for costs.

On March 29, 2010, Defendant Judge Sherigan filed a renewed motion for summary disposition.

On July 7, 2010, the Honorable Wilson D. Brott issued the Order Regarding Motions to Dismiss and/or for Summary Disposition and Motion for Award of Costs Including Attorneys’ Fees (Corrected). Judge Brott dismissed the case with prejudice, finding that the case had no merit. Judge Brott also held that Plaintiff’s claims against Judge Sherigan were “frivolous and without arguable merit” and ordered Plaintiff to “pay Judge Sherigan’s costs, including reasonable attorney fees, pursuant to Little River Band Civil Procedure Rule 5.3.” The Order required Judge Sherigan to submit a Bill of Costs within twenty-one (21) days of the date of the Order. Judge Sherigan submitted the Bill of Costs in the amount of \$13,996.66.

Plaintiff filed a Notice of Appeal on August 4, 2010.

Defendants LRBOI, LRBOI Tribal Council and LRBOI Ogema, by and through their attorneys, submitted Tribe’s Motion to Deny Leave to Appeal as Against Tribe, or, Alternatively, to Dismiss Tribe as Party to Appeal on August 25, 2010.

Defendant Judge Sherigan, by and through her attorneys, submitted a Motion of Defendant-Appellee Judge Sherigan to Dismiss Appeal, Alternatively, Response to Application for Leave to Appeal on August 25, 2010.

Plaintiff submitted Plaintiff's Reply Brief to Defendants' Brief in Support of the Motion to Dismiss Appeal on September 27, 2010.

All parties appeared before the LRBOI Appellate Court on October 1, 2010. The parties argued the above referenced Motions. In the event that the Appellate Court did allow the case to go forward, a Scheduling Order was entered.

ORDER AND OPINION

At the Hearing on October 1, 2010, all parties agreed on the record to dismiss LRBOI, LRBOI Tribal Council and LRBOI Ogema Larry Romanelli, as parties to this Appeal as the issues raised by Plaintiff in his Notice of Appeal involve the trial court's findings solely with regard to Plaintiff's claims against Judge Sherigan.

Plaintiff appeals Judge Brott's Order finding that Plaintiff's claims against Judge Sherigan were frivolous and without merit and the awarding of costs.

The Appellate Court is not persuaded by Plaintiff's assertions that this is an Appeal as of Right. As such, the applicable court rule to determine whether the Court of Appeals will grant leave to appeal is LRBOI Tribal Court Rule 5.204(A)(2):

The Tribal Court of Appeals shall have the discretion to grant leave to appeal in all other civil cases. The content of the "Notice of Appeal" and the standards of review, Rule 5.401 of this Chapter, shall be the basis of the Court of Appeals exercise of discretion.

Pursuant to this LRBOI Court Rule, this Court has previously held that “the Tribal Court of Appeals shall have the discretion to grant leave to appeal” in civil cases that do not involve a constitutional issue. *Crampton v. LRBOI Election Bd., et al.*, Case No. 09-115-AP, LRBOI Tribal Court of Appeals (September 15, 2009).

To determine whether the Appellate Court should grant leave to appeal in this case, we turn to LRBOI Court Rule 5.401(H) which provides the standard for determining whether a Court properly exercised its discretionary authority:

A matter which is determined to be within the Tribal Court’s discretion shall be sustained if it is apparent from the record that the Tribal Court exercised its discretionary authority and applied the appropriate legal standard to the facts.

There is no indication from the record that the Trial Court did not apply the correct legal standard. As such, we will examine Judge Brott’s finding of facts to determine whether he abused his discretionary authority in his findings in relation to Plaintiff’s claims against Judge Sherigan.

Judge Brott provided in his Order a detailed accounting of the factors that were the basis for finding that Plaintiff’s claims against Judge Sherigan were “frivolous and without arguable merit”. Among the many factors noted was the following:

There is no precedent in federal, state or tribal law which establishes a claim against a sitting judge under the circumstances which were pled by the Plaintiff. Plaintiff did not file a brief in response to the motion for summary disposition filed by Judge Sherigan, nor did he cite any legal authority in his oral argument for the proposition that a sitting judge should be held personally liable.

Judge Brott went on to state:

Furthermore, it is this Court's belief that Plaintiff filed the instant action against Judge Sherigan (and a separate action against Chief Judge Daniel Bailey, *Martin v. Bailey*, Case No. 10016GC) specifically to harass each respective Judge, and to force them to have to recuse or remove themselves from hearing the other pending cases involving Plaintiff to which they had been assigned. The filing of these lawsuits has also cost the judges time and money, as well as the Tribal Court which was then required to locate and hire a judge pro tem to hear Plaintiff's case. The record before the Court, and the lack of effort made by Plaintiff to defend against motions for summary disposition, lead this Court to believe that Plaintiff intentionally filed his claim against Judge Sherigan for this purpose.

As the above excerpts demonstrate, Judge Brott articulated with specificity the numerous reasons for finding that Plaintiff's claims against Judge Sherigan were "frivolous and without arguable merit" and the justification for awarding attorney fees in this case. LRBOI Tribal Court Rule 5.401(A) provides that "[a] finding of fact by a judge shall be sustained unless clearly erroneous". There is nothing in the record or the Notice of Appeal that supports the contention that Judge Brott's findings were "clearly erroneous". This Appellate Court is therefore, exercising its discretion under LRBOI Tribal Court Rule 5.204(A)(2) and denying leave to appeal in this case.

The Court further notes that it has provided in this Order and Opinion an analysis for denying leave to appeal, despite the fact that Plaintiff did not properly file for Leave to Appeal.

CONCLUSION

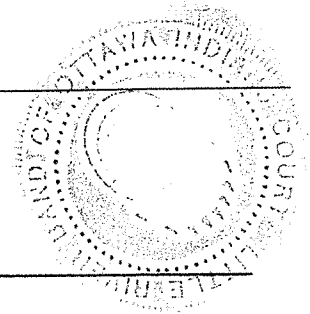
Based upon the record, Judge Brott's detailed Order, and Plaintiff's failure to respond to Judge Sherigan's Motion, this Appellate Court, in exercising its discretion under LRBOI Tribal Court Rule

5.204(A)(2) and in response to Defendant Judge Sherigan's Motion of Defendant-Appellee Judge Sherigan o Dismiss Appeal; Alternatively, Response to Application for Leave to Appeal, hereby DENIES Leave to Appeal.

IT IS SO ORDERED.

11.12.10
Date

Melissa L. Pope
Honorable Melissa L. Pope



11-10-10
Date

Martha Kase
Associate Appellate Justice Martha Kase

11/10/10
Date

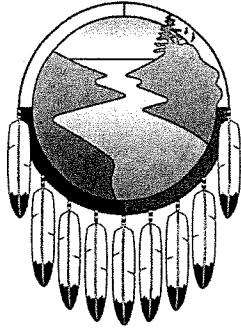
Special Associate Justice Berni Carlson
Special Associate Justice Berni Carlson

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.

11.12.10
Date

Deborah A. Miller
Court Administrator Deborah Miller



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

MATTHEW STONE,
Defendant-Appellant,
v.

Case Number: 10178AP
Chief Justice Melissa L. Pope
Associate Justice Martha Kase
Special Associate Justice Emerson Dame

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

For the Defendant-Appellant:
Matthew Stone
Defendant-Appellant, *Pro Se*
17270 Nine Mile Road
Kaleva, Michigan 49645

For the Plaintiff-Appellee/Prosecutor:
Eugene Zeller (P29339)
3031 Domres Road
Manistee, Michigan 49660

ORDER AND OPINION

At a session of said Court held in the Courthouse of the Little River Band of Ottawa Indians on the Little River Band of Ottawa Indians Reservation on the 7th day of January of 2011;

PRESENT: Honorable Melissa L. Pope, Honorable Martha Kase,
and Honorable Emerson Dame

FACTUAL BACKGROUND

On August 1, 2008, Judge Angela Sherigan authorized a warrant charging Defendant-Appellant ("Defendant") with impeding and interfering with an officer engaged in enforcing CORA regulations (CORA Fishing Reg. Section XXVII (a) 1).

provided the terms of that agreement. Judge Bailey, in keeping in accord with the standards of ensuring that a Defendant fully understands a plea agreement and is entering into it willfully and without coercion or under duress, asked Attorney Zeller to question Defendant accordingly. Defendant stated on the record on May 3, 2010, as well as before the Appellate Court during Oral Arguments on January 7, 2011, that he understood that he was agreeing to relinquishing any rights he may have to the commercial fishing boat, known as “the Captain Bill,” with its nets and equipment in exchange for the dismissal of the underlying criminal case and the civil fines ordered on the two civil cases leaving the Defendant with only the restitution ordered on the civil matters. Defendant affirmed before the Appellate Court on January 7, 2011 that he understood that these were the terms at the time he entered the plea. Defendant argued before the Appellate Court that he thought the plea should be dismissed because he was under duress. Defendant’s own testimony, however, is in opposition to this assertion. Prosecuting Attorney Zeller asked a variety of questions as to whether anyone had “twisted his arm”, promised him anything, or threatened him. Defendant answered “no” to every question. Defendant answered “yes” when asked if he was entering into this plea agreement of his own free will. In support of his claim of duress, Defendant stated that he always feels duress when coming into Court. Defendant’s actions and words, however, do not reflect actual duress. Black’s Law Dictionary defines duress as “(c)ompulsion by physical force or threat of physical force.” Defendant’s admits that there was no actual physical force and no threat of physical force. Duress cannot be claimed simply because a Defendant feels nervous when entering Court or because he regrets a plea agreement. As there is no evidence of actual duress, the Court rejects this claim.

Finally, the Court holds that this plea agreement does not violate the Indian Civil Rights Act or the Little River Band of Ottawa Indians Tribal Constitution by levying a fine greater than \$5,000. This was a plea agreement that Defendant willingly entered before the Court, not a fine imposed by the Court. Defendant’s argument that “the Captain Bill” has a higher value than the loan received from the Tribe when Defendant

was an enrolled member of the Little River Band of Ottawa Indians is, as stated in Judge Bailey's Order, "another matter between the Tribe and the Defendant."

CONCLUSION

For the reasons set forth in this Order and Opinion, the Order of the Trial Court is AFFIRMED.

Defendant is hereby ordered to return the commercial fishing boat, the skiff, the nets, and any other equipment he agreed to turn over to the Tribe within ten (10) days of this Order.

IT IS SO ORDERED.

2-25-2011

Date

Melissa L. Pope (DM)

Honorable Melissa L. Pope

2-23-11

Date

Martha Kase

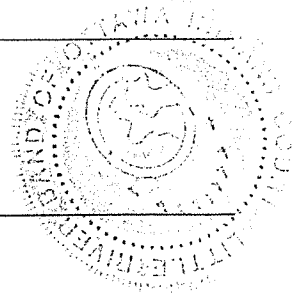
Associate Appellate Justice Martha Kase

2-20-11

Date

Emerson Dame

Special Associate Emerson Dame



CERTIFICATION OF SERVICE

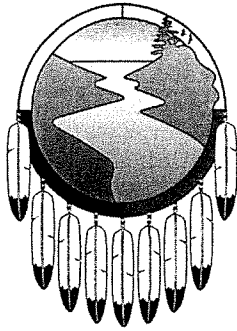
I certify that I placed a copy of this order in the Tribal mail system to have adequate postage attached and taken to the Manistee Post Office on this date for mailing to the parties and/or the attorneys for the parties as listed.

2/25/2011

Date

Deborah Miller

Court Administrator Deborah Miller



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

MATTHEW STONE,
Defendant-Appellant,
v.

Case Number: 10178AP
Chief Justice Melissa L. Pope
Associate Justice Martha Kase
Special Associate Justice Emerson Dame

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

For the Defendant-Appellant:
Matthew Stone
Defendant-Appellant, *Pro Se*
17270 Nine Mile Road
Kaleva, Michigan 49645

For the Plaintiff-Appellee/Prosecutor:
Eugene Zeller (P29339)
3031 Domres Road
Manistee, Michigan 49660

ORDER REGARDING APPELLANT REQUEST FOR STAY

FACTUAL BACKGROUND

On January 7, 2011, the Appellate Court heard Oral Arguments in the above referenced case. On February 25, 2011 the Appellate Court, in a unanimous Order and Opinion, upheld the Tribal Court's July 21, 2010 Order denying the Motion to Set Aside Agreement and to Stay Enforcement of Amended Order after Hearing or in the Alternative, Motion for Reconsideration. This Tribal Court Order upheld the plea agreement entered into by Appellant Matthew Stone on May 3, 2010 in which Appellant agreed to surrender to the Tribe the commercial fishing boat, referred to as "the Captain Bill", the skiff, the nets, and any other equipment in exchange for Plaintiff dismissing the criminal charge in this case. In upholding the Tribal Court

Order, the Appellate Court ordered Appellant Stone to return the commercial fishing boat, the skiff, the nets, and any other equipment to the Tribe within ten (10) days of the Appellate Order.

On March 8, 2011, Appellant Stone submitted a handwritten document requesting a stay. He stated in pertinent part that "it is winter time and the moving of the boat and gear is almost impossible task this time of year and costly (sic) I am asking for a Stay on this matter pending the outcome of Federal Court (sic) My attorney or myself will fax verification of filing in Federal Court pending your decision."

Appellant Stone has not submitted any additional documents or proof that a case has been filed in federal court. As such, there is no basis for a stay.

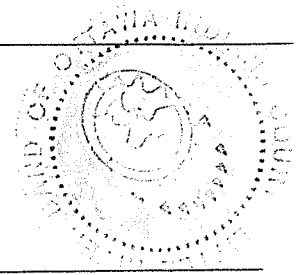
CONCLUSION

For the reasons set forth in this Order, the February 25, 2011 Opinion and Order of the Appellate Court upholding the Tribal Court's July 21, 2010 Order denying the Motion to Set Aside Agreement and to Stay Enforcement of Amended Order after Hearing or in the Alternative, Motion for Reconsideration remains in place. This matter is now before the Trial Court for any future proceedings, including enforcement of the terms of the plea agreement.

IT IS SO ORDERED.

4.26.11
Date

Melissa L. Pope (Qu)
Honorable Melissa L. Pope



4-12-11
Date

Martha Kase
Associate Appellate Justice Martha Kase

8
Date 4/21/11

Emerson Dame
Special Associate Emerson Dame

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.

8
Date 4.26.11

Deborah Miller
Court Administrator Deborah Miller

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

LEE WALKER,
PLAINTIFF

V.

CASE NUMBER: 10277EA
HONORABLE DANIEL BAILEY

LRBOI ENROLLMENT COMMISSION,
DEFENDANT

Lee Walker
In Pro Per
1824 E. Parkdale Avenue
Manistee, MI 49660

Attorney for Enrollment Department
Damian Fisher
375 River Street
Manistee MI 49660

ORDER AFTER HEARING

Lee Walker, Plaintiff/Petitioner in this matter and Damian Fisher, Attorney for Defendant Enrollment Commission were present at the hearing held on March 7, 2011.

This hearing was a continuance of an Enrollment Appeal from a January 31st hearing, where the Petitioner requested more time to prepare to argue his case before the court.

Mr. Walker submitted exhibits from the Michigan State Census of 1894; Land Records of Mason County Michigan showing that Riverton was a part of Mason County; Ancestry.com records for an Indian by the name of John Greenbird from Bay City, MI; and other extraneous documents. There was no written explanation of the relevance of the documents, nor did Mr. Walker testify to their relevance.

In the Tribe's Constitution, Article II B, Membership, Section 1. *Eligibility for Membership*. It says: "An individual is eligible for membership in the Tribe, if he/she possesses at least one-fourth (1/4) degree Indian blood, of which at least one-eighth (1/8) degree must be Grand River Ottawa or Michigan Ottawa blood **and**: [*emphasis added*]

- (a) Is the lineal descendant of a member of the historic Grand River Bands who resided in Manistee, Mason, Wexford or Lake Counties in the State of Michigan, who was listed on the schedule of Grand River Ottawa in the Durant Roll of 1908 as approved by the Secretary of the Interior on February 18, 1910; **or** [*emphasis added*]

(b) Is a lineal descendant of individuals listed on the 1870 Annuity Payrolls of Chippewas and Ottawas of Michigan listed under the following Ottawa Chiefs:

Kewacushkum	Pay-quo-tush
Me-tay-wis	Shaw-be-quo-ung
Penayse	Kaw-gay-gaw-bowe
Maw-gaw-ne-quong	Ching-gawa-she

Aken Bell; and,

(c) Is not currently enrolled in any other federally recognized Indian Tribe, band, or group."

The Petitioner has failed to meet the criteria outlined in the Constitution for enrollment as determined by the Enrollment Commission. The Court has spent time going over the documents submitted by Mr. Walker and does not see any proof that he or his ancestors meet the criteria set forth by the Tribe to become a member of this Band.

Because one is not enrolled in a federally recognized Tribe, does not mean that one is not Native American. Mr. Walker has some idea of who his ancestors are and they appear to be (at least part) Indian. One does not need a "card" to be Indian or to believe in the importance of the culture and traditions.

SO ORDERED:




Judge Daniel Bailey

3/10/11

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/petitioner and the defendant/respondent (or their attorneys) at the addresses on file with the court.



Court Clerk/Administrator

3/11/11

Date