



**Little River Band of Ottawa Indians
Tribal Court of Appeals**

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STACI CHENEY & SUSAN THULL,
Appellants/Plaintiffs,

CASE NO: 22-014-AP

v.

Hon. Melissa L. Pope, Chief Justice
Hon. Berni Darrow, Associate Justice
Hon. Bernadene Crampton, Associate Justice

**LITTLE RIVER BAND OF OTTAWA
INDIANS ELECTION BOARD,**
Appellee/Defendant.

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OPINION AND ORDER

INTRODUCTION

The Appellants/Plaintiffs in this case, Staci Cheney and Susan Thull (“Appellants/Plaintiffs”), are Tribal Citizens of the Little River Band of Ottawa Indians (“LRBOI”) who filed various actions against the Appellee/Defendant LRBOI Election Board (“LRBOI Election Board” or “Appellee/Defendant”). The Appellants/Plaintiffs appealed the Trial Court’s dismissal of their case that contained multiple allegations against the LRBOI Election Board. The Trial Court indicated that the majority of allegations were dismissed based on being barred pursuant to deadlines established by the LRBOI Election Board. The Appellants/Plaintiffs filed this appeal under the assertion of an appeal by right, arguing that several substantive issues involve the LRBOI Constitution. The LRBOI Election Board filed a Motion to Dismiss Appeal, primarily under the argument that the Appellants/Plaintiffs had

not presented the Constitutional claims to the Trial Court, thus could not be considered on appeal.

This *Opinion and Order* is issued following the timely filing of all Briefs by the parties on the LRBOI Election Board's Motion to Dismiss Appeal, a thorough review of the record, the parties having had the opportunity to be heard at Oral Argument before the LRBOI Court of Appeals, and multiple deliberations by the LRBOI Court of Appeals.

STANDARD OF REVIEW

It is customary to begin with the standard of review, although other Little River Court Rules ("LRCR") play a significant factor in deciding this case. As it relates to the standard of review, the LRCR of Appellate Procedure provide in pertinent part:

5.902 Standard of Review. The following standards apply to the Tribal Court of Appeals when deciding an appeal, unless a clear miscarriage of justice would result:

- (A) **Finding of Fact by a Judge.** A finding of fact by a judge shall be sustained unless clearly erroneous. The trial court's decision will not be changed unless the Appellate Court is definitely and firmly convinced that a mistake has been made. In other words, it is not enough that the Appellate Court may have weighed the evidence differently and/or reached a different conclusion; the trial court's decision will only be reversed if it is implausible in light of all the evidence.
- (E) **Conclusion of Law.** A conclusion of law shall be reviewed by the Tribal Court of Appeals de novo, meaning that the Appellate Court shall review it as though it is the first time a court has ruled on this matter.
- (G) **Mixture of Law and Fact.** A matter which is a mixture of law and fact is reviewed by the standard applicable to each element.

FACTS OF THE CASE

This case actually began prior to the present case that is being appealed. Following the 2021 LRBOI Regular Election, Appellants/Plaintiffs Staci Cheney and Susan Thull each filed three (3) Elections Challenges/ Disputes in relation to the 2021 Regular Election. It appears from the record that the Appellants/Plaintiffs filed these Challenges/ Disputes with the LRBOI Election Board within the timing requirements set by the LRBOI Election Board. The LRBOI Election Board denied all of the Challenges/ Disputes that were filed by the

Appellants/Plaintiffs. The Appellants/Plaintiffs did not appeal these decisions to the LRBOI Election Board.

On or about July 7, 2021, the Appellants/Plaintiffs filed a Motion for Injunction with the Tribal Court requesting that the Tribal Court remove the Members of the Election Board, order that a new Election be held, and order that the Appellants/Plaintiffs be reimbursed for the fees and costs they had paid. On or about July 20, 2021, the Appellants/Plaintiffs dismissed their action.

In September of 2021, the Appellants/Plaintiffs filed a new action with the LRBOI Tribal Court. They did not file a Complaint with the LRBOI Election Board prior to filing their Complaint with the Tribal Court. In their Complaint, the Appellants/Plaintiffs alleged eight (8) issues relating to the 2021 LRBOI Regular Election for which they were seeking Tribal Court review, although it is unclear whether the action included eight (8) allegations to start or if the eighth (8th) allegation was derived by the Trial Court Judge based on the information submitted. The LRBOI Election Board filed a Motion to Dismiss. By all accounts, the Trial Court Judge provided the Appellants/Plaintiffs, as well as the Appellee/Defendant, with significant time to make arguments to the Court at the Hearing.

On January 3, 2022, the Trial Court issued the *Order Regarding Defendant's Motion to Dismiss*, dismissing all of the Appellants/Plaintiffs' claims.

The Appellee/Defendant filed a Motion for Clarification, primarily relating to the request for sanctions and/ or attorney fees to which the Appellants/Plaintiffs filed a Response to Motion for Clarification.

On March 7, 2022, the Trial Court issued the *Order Regarding Motion for Clarification* that will be discussed in the Analysis section of this *Opinion and Order*.

ANALYSIS

There is no question that election matters are of critical importance. This Court of Appeals permitted briefs in the present case for several reasons: the likelihood of future challenges due to the actions in this case – along with the very nature of elections; to fully understand the history of the case, the arguments presented, and the actions of the Trial Court; and define the path going forward for future elections.

The LRCCR define what may – and may not – be heard on appeal as follows:

5.903 Issues Preserved on Appeal. The Tribal Court of Appeals shall consider issues pursuant to the following requirements in deciding an appeal:

- (A) **Issues Omitted.** The Tribal Court of Appeals will not consider issues that were not raised before the Trial Court unless a miscarriage of justice would result.
- (B) **Issues Raised.** An issue raised before the Trial Court, but not argued either by brief or orally, shall not be reviewed by the Court of Appeals.

The LRCR of Appellate Procedure, as is true for most tribal, state, and federal jurisdictions, prohibits a party from raising new issues on appeal. This requirement encompasses multiple aspects of trial court proceedings and the appellate process.

First, an issue and all relevant facts must be presented to the Trial Court. If an issue is not presented to and considered by the Trial Court, it cannot be considered by the Court of Appeals. Second, an appellant must explicitly state in the Notice of Appeal the decision or decisions of the Trial Court that are being appealed. Third, the appellant cannot introduce a new fact or consideration in the Notice of Appeal for the Court of Appeals to consider.

Fulfilling these requirements can be challenging when there are often a multitude of facts and issues that are presented to a trial court. However, it is the responsibility of the appellant to properly name the facts and arguments that relate to the reasons for appeal of the Trial Court decision. This may encompass a variety of approaches in making the argument that the Trial Court erred, such as facts the appellant alleges the Trial Court did not properly consider or allegations that the Trial Court misinterpreted various laws. The briefs and oral argument will provide greater detail to assist the Court of Appeals in making the final determinations as the court of last resort.

If the party has not explicitly stated an issue presented in the Trial Court proceedings that they argue the Trial Court erred in deciding, the Court of Appeals cannot consider the issue. Further, the Court of Appeals cannot consider any fact or issue not stated in the Notice of Appeal. The LRCR of Appellate Procedure, written within the requirements of the LRBOI Constitution, LRBOI laws, and LRBOI Court Rules, then provide the standard of review, as noted earlier in this *Opinion and Order*, for the Court of Appeals to utilize in deciding the issues presented.

The Appellants/Plaintiffs state the following in their Notice of Appeal:

The Constitution of the Little River Band of Ottawa Indians (Constitution) discusses the process for removal of elected officials in the Executive, Legislative, and Judicial branches but is mute on the removal of elected members of the Election Board. The regulations of the Election Board introduce a process for the removal of a single Election Board member, but require the Election Board to be self-monitoring. As this case involves the actions and inactions of the Election Board as a body, the only remedy is the Tribal Court and the case should be heard in its entirety.

In the rationale for dismissal, the Court stated that several allegations were time barred. Article IX, Section 4(c) of the Constitution states that “*Allegations of impropriety of the Election Board shall be settled by the Tribal Judiciary*”. The word shall should be understood to be mandatory and not merely advisory as this is the way the word is commonly used in Tribal Ordinances. As neither the Judiciary nor Legislative branches have placed restrictions on timing, the Court used the regulations of the Election Board. However, the Election Board does not have the Constitutional Authority to limit the scope of a duty directly assigned to the Judiciary by the Tribal Constitution. [Italics and bold font in original submission]

In the Notice of Appeal, the Appellants/Plaintiffs propose arguments that are grounded in their interpretation of the LRBOI Constitution. These arguments were not presented to either the opposing party or the Trial Court. The Court of Appeals highlights the reasons for dismissal in the following excerpt from the Trial Court’s March 7, 2022 *Order Regarding Motion for Clarification* as pertinent to the analysis in this *Opinion and Order*:

In this instant case, which was filed in September of 2021, all claims were dismissed; allegations 1 and 6 for failure to state a claim upon which relief can be provided; allegations 2, 3, 4, 7 and 8 time barred; and allegation 5 for lack of standing.

Despite the actual *Orders* of the Trial Court, the Appellants/Plaintiffs make new arguments as to why they disagree with the decisions that fail to conform to the LRCCR of Appellate Procedure. While the LRCCR of Appellate Procedure are easily accessible, the Little River Tribal Justice System recognizes that many parties cannot afford attorneys, thus attempt to make the justice system accessible as the LRCCR permit. The fundamental requirements for appeal of Trial Court decisions that do not include arguments not presented to the Trial Court, however, cannot be ignored.

The Court notes that the record shows that the Trial Court provided latitude for the Appellants/Plaintiffs as parties not represented by counsel. Denial of the Appellee/Defendant Motion for Clarification provides one such example.

The Appellee/Defendant filed a Motion for Clarification, primarily to seek attorney fees under LRCR 4.505(D), stating:

Costs of Previously Dismissed Action. If a plaintiff has once dismissed an action in any court commences an action based on or including the same claim against the same defendant, the court may order the payment of such costs of the action previously dismissed as it deems proper and may stay proceedings until the plaintiff has complied with the order.

The Trial Court's March 7, 2022 *Order Regarding Motion for Clarification* stated:

In this instant case, which was filed in September of 2021, all claims were dismissed; allegations 1 and 6 for failure to state a claim upon which relief can be provided; allegations 2, 3, 4, 7 and 8 time barred; and allegation 5 for lack of standing.

The Court takes election matters extremely serious as the right to vote and the right to a fair election is of the utmost importance to the Citizens of the Tribe, and the integrity of an election is essential to the government. While the Court understands that the Election Board is inundated with challenges and complaints during election seasons, the fact that many of those challenges and complaints may be filed by the same [C]itizens, and then appealed to the Court, rather timely or not, does not automatically initiate sanctions. [Footnote 2: This statement should not be construed to imply that sanctions and/or attorney fees are never appropriate as an award.] The Court will entertain all allegations of impropriety on part of the Election Board to ensure fairness and justice as it so requires.

The Court went on to deny any sanctions or attorney fees because “no action was taken in the case filed in July of 2021”. In this decision and the excerpts above, the Trial Court recognizes the challenges to parties who are not represented by counsel. It also recognizes the intensive work of the LRBOI Election Board in addressing the many challenges it often must address in fulfillment of its constitutional duties for fair elections, as well as that individual Citizens may file multiple complaints and challenges with the LRBOI Election Board and then in the Tribal Court. Of great importance is that the Court commits to the constitutional

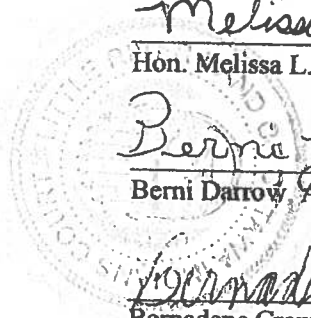
duty to protect the fundamental right to fair elections. Although the Court of Appeals recognizes that the Appellee/Defendant would have had to expend resources to prepare to file an answer in the original action, it also recognizes the reasoning of the Trial Court in denying sanctions and/or attorney fees. However, this Court includes the Footnote of the Trial Court in the above excerpt to ensure that Tribal Citizens know that sanctions and/ or attorney fees are possible in some circumstances. The Court of Appeals provides this notice solely to ensure there is no unfair surprise in the future if any person or persons engage in the problematic conduct this Court Rule is attempting to avoid.

For the reasons set forth in this *Opinion and Order*, the Court of Appeals must dismiss this appeal due to the fundamental deficiency of the Notice of Appeal.

CONCLUSION

Only issues presented to the Trial Court may be appealed to the LRBOI Court of Appeals. The Notice of Appeal must contain all issues being appealed in order for the Court of Appeals to consider the issue. Any fact or legal argument not presented in the Notice of Appeal is waived. Facts and legal arguments not presented to the Trial Court and/ or that are new on appeal shall not be considered by the Court of Appeals.

IT IS HEREBY ORDERED:

 Melissa L. Pope
Hon. Melissa L. Pope, Chief Justice

1-10-2025
Date

Berni Darrow
Berni Darrow, Associate Justice

1-10-2025
Date

Bernadene Crampton
Bernadene Crampton, Associate Justice

1-10-2025
Date