



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

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**SARA AGOSA AND,
JOLENE OSSIGINAC (O'SIGNAC)**
Appellants-Plaintiffs,

v.

**OGEMA OF THE LITTLE RIVER BAND OF
OTTAWA INDIANS IN HIS OFFICIAL
CAPACITY (LARRY ROMANELLI)**
Appellee-Defendant.

Case Number: 22-037-AP

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

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ORDER AND OPINION DISMISSING APPEAL

On February 15, 2024, this Court of Appeals issued the *Opinion Denying Stay with Clarification Regarding Standing in Actions by Tribal Citizens that Challenge Performance of Constitutional Positions and Duties*. ("February 15, 2024 Opinion"). This Court provided a detailed explanation for denying the Petition for Temporary Restraining Order (TRO) / Preliminary Injunction ("Stay") in Court of Appeals ("Motion for Stay") that the Appellants-Plaintiffs Sara Agosa and Jolene Ossiginac's (O'Signac) ("Appellants-Plaintiffs") filed with this Court of Appeals. Focusing on denying the stay

of execution, this Court articulated the purpose and requirements for a stay of execution:

The purpose of a stay of execution is to prevent enforcement of an order of the Trial Court that resolves the case in its entirety or, in some instances, an order that decides a specific issue critical to progression of the case. With the finding that the Ogema had not failed to perform a mandated duty, the Appellants-Plaintiffs' Motion to Stay is problematic as it does not focus on staying the *Order After Defendant's Motion to Dismiss for Lack of Standing* in which the Tribal Court dismissed the case for lack of standing, but rather, attempts to impose requirements not included in the Tribal Court *Order After Defendant's Motion to Dismiss for Lack of Standing*. (*February 15, 2024 Opinion* at Page 5)

This Court attempted to provide guidance for meeting the burden for a stay of execution and temporary restraining order / preliminary injunction for future cases. The Court specifically highlighted the reasons that prohibiting the performance of constitutionally mandated duties is problematic with a detailed discussion on the violation of the Separation of Powers that would occur in the present case by prohibiting the Ogema from performing the constitutionally mandated duty of managing the Little River Casino Resort. As it did in the *February 15, 2024 Opinion*, this Court again highlights the findings of the Trial Court in relation to the matter on appeal:

The Court will first look at the first part of the Chapman test, failure to perform a constitutionally mandated duty. The Court finds that the constitutionally mandated duty here is found in Article V, Section 5(a)(8): 'To manage the economic affairs, enterprises, property (both real and personal) and other interests of the Tribe, consistent with ordinances and resolutions enacted by the Tribal Council.'

This enterprise, the Little River Casino Resort, is operating and being managed by the Ogema. There has been no showing that the Little River Casino Resort is not operating, or that the Ogema has failed to manage it.

Without a finding of a failure to perform a constitutionally mandated duty, the Court will not look further. (*Order After Defendant's Motion to Dismiss for Lack of Standing* at Page 2).

This Court stressed that establishing standing was required for this appeal to continue, providing the Appellants-Plaintiffs with the opportunity to decide whether there was any argument within the guidance of the *February 15, 2024 Opinion* to establish standing.

The Court anticipated a pleading or request to dismiss, but did not receive any filings from the Appellants-Plaintiffs. With the *February 15, 2024 Opinion* containing significant detail on factors for meeting the burden for a stay of execution and/ or temporary restraining order / preliminary injunction, the Chief Justice upon approval of the Court of Appeals, issued the *Order for Status After Opinion Denying Stay with Clarification Regarding Standing in Actions by Tribal Citizens that Challenge Performance of Constitutional Positions and Duties* (“*Order for Status*”) on August 12, 2024 that required a filing from the Appellants-Plaintiffs within twenty-eight (28) days for this Court to further consider this appeal.

The Appellants-Plaintiffs filed their Response in Opposition to Order for Status After Opinion Denying With Clarification Regarding Standing in in Actions by Tribal Citizens That Challenge Performance of Constitutional Positions and Duties that included: Motion for Clarification; Request for Relief; Request for Permanent Injunction; and Request for Declaratory Relief.

On September 18, 2024, the Appellee-Defendant filed his Motion to Dismiss.

This Court grants the Appellee-Defendant's Motion to Dismiss. It should be noted that this Court did not take into consideration when dismissing this appeal that it granted the Appellants-Plaintiffs the courtesy of a four-day extension due to it taking four (4) days for the Appellants-Plaintiffs to receive the *Order for Status* by U.S. mail. **It is crucial for all parties to understand that the counting of days begins with the date of service, including when service is conducted by U.S. mail, with no additional days given for the period it takes for the mail to be received.**

This Court of Appeals instructed the Appellants-Plaintiffs to do the following in the *Order for Status* with the provisions in bold and underlined reflecting the provisions cited by the Appellee-Defendant in his Motion to Dismiss:

This Court held that the Appellants-Plaintiffs did not meet the test for standing within the analysis of the Motion for Stay. For the reasons provided in the *February 15, 2024 Opinion*, it is unlikely that the Appellants-Plaintiffs can fulfill the test for standing for their overall

action. However, this Court of Appeals did not dismiss the case in the event that the Appellants-Plaintiffs could prove from the evidence and arguments presented to the Trial Court “that the Little River Casino Resort is not operating, or that the Ogema has failed to manage it”.

If the Appellants-Plaintiffs determine that they believe they can meet the requirements for standing as stated in this *Order for Status* and pursuant to the applicable provisions in the *February 15, 2024 Opinion*, they must file a request for an Appellate Scheduling Conference within 28 days of the date of service of this *Order for Status*. If filed, the Appellants-Plaintiffs **must include clear and concise arguments based on the evidence presented to the Trial Court “that the Little River Casino Resort is not operating, or that the Ogema has failed to manage it”, the evidence of the public harm presented to the Trial Court, and the declaratory or injunctive relief sought.** “[G]eneral allegations or allegations that are grounded in the argument that different decisions or approaches would be better or better align with policies or procedures are not sufficient.” The Appellants-Plaintiffs should also address whether review of the Ogema’s mandated duties and/ or relief sought violates the Separation of Powers Doctrine. (*February 15, 2024 Opinion* quotation at pages 6 and 12; See generally pages 9 – 12).

The pleadings filed by the Appellants-Plaintiffs made numerous requests and presented new arguments. However, as noted by the Appellee-Defendant’s Motion to Dismiss, “No evidence was presented to the Trial Court that the Little River Casino Resort (LRCR) was not operating, and no evidence was presented to the Trial Court that the Ogema failed to manage the LRCR”. (Appellee-Defendant Motion to Dismiss at Page 2). Further, this Appellate Court is not permitted to use new information that was not part of the original brief to the lower court for its consideration in the court case as was presented in the documents filed by the Appellants-Plaintiffs.

It is crucial to understand that opinions issued by the U.S. Supreme Court that involve challenges to Tribal Sovereignty, individual and collective Indigenous Rights, and federal laws that support Tribal Self-Determination may have a direct impact on the decisions of the LRBOI Court of Appeals. With this in mind, the LRBOI Court of Appeals was awaiting decisions from the U.S. Supreme Court prior to issuance of the *February 15, 2024 Opinion*, in *McGirt v. Oklahoma* (*McGirt v. Oklahoma*, No. 18–9526. Decided July 9, 2020), and *Haaland, Secretary of the Interior et al. v. Brackeen et al.* (No. 21–376, Decided June 15, 2023, Together with No. 21–377, *Cherokee*

Nation et al. v. Brackeen et al., No. 21–378, *Texas v. Haaland, Secretary of the Interior, et al.*, and No. 21–380, *Brackeen et al. v. Haaland, Secretary of the Interior, et al.*, also on certiorari to the same court.).

CONCLUSION

In the February 15, 2024 *Order and Opinion Denying Stay with Clarification Regarding Standing in Actions by Tribal Citizens that Challenge Performance of Constitutional Positions and Duties* and this *Order and Opinion Dismissing Appeal*, **this Court of Appeals, the sole appellate court of last resort, affirms that the Little River Band of Ottawa Indians Tribal Court and Tribal Court of Appeals is the proper forum for a Citizen of the Little River Band of Ottawa Indians to file an action challenging the performance of Constitutional positions and duties pursuant to Article XI, Section 2(a) of the Constitution with the case progressing only when the party has fulfilled the requirements for standing by proving that 1) there must be a failure to perform a duty mandated by the Tribal Constitution, and 2) there must be a public harm pursuant to *Candace Chapman v. Little River Band of Ottawa Indians and Little River Band of Ottawa Indians Tribal Council* (No. 08-023-AP, Decided August 5, 2008).** It is also important to note that **this Court of Appeals is not permitted to use new information that was not part of the original brief to the lower court for its consideration in deciding the case on appeal.**

IT IS HEREBY ORDERED:

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

2-20-2025
Date

Berni L. Darrow
Hon. Berni L. Darrow, Associate Justice

2-20-2025
Date

Bernadene Crampton
Hon. Bernadene Crampton, Associate Justice

2-20-2025
Date

