

**2022 COURT OPINIONS
LITTLE RIVER BAND OF OTTAWA INDIANS TRIBAL COURT**

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Willis v. Tribal Council**22-010-GC**

Summary: This case was heard by Judge Angela Sherigan. Plaintiff filed a complaint against Defendant, requesting declaratory judgment on the following issues:

- 1) Whether Defendant violated the Constitution by holding an emergency closed meeting on December 30, 2021 to approve the Amended Fiscal Year 2022 Budget as presented by the Ogema.
- 2) Whether Defendant violated the Constitution by holding an emergency closed session on January 7, 2022 to approve the Amended Fiscal Year 2022 budget as presented by the Ogema.
- 3) Whether Defendant violated the Constitution by repealing Resolution #21-1230-317, approving amended budget, after it had been vetoed by the Ogema.
- 4) Whether Defendant violated the Budget and Appropriations Act of 2013.

Decision and Order: The Court entered an order of Declaratory Judgment on March 25, 2022 and found that:

- 1) Defendant did violate Article IV, Section 4(d) of the LRBOI Constitution by holding closed session meetings regarding approval of the government budget as it is not an item that can be taken into closed session pursuant to the Constitution.
- 2) Defendant did violate the Budget and Appropriations Act of 2013 and that the Little River Casino Resort budget is not subject to approval by the Tribal Council.
- 3) Defendant did violate the Constitution and the Budget and Appropriations Act of 2013 by failing to properly act on a veto of the Ogema.

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT
3031 Domres Road · Manistee, MI 49660
(231) 398-3406**

WILLIAM WILLIS,
Plaintiff,

Case No. 22-010-GC

Hon. Angela Sherigan

v.

LRBOI TRIBAL COUNCIL,
Defendant.

William Willis
Plaintiff
622 Ramsdell Street
Manistee, MI 49660

LRBOI TRIBAL COUNCIL
Defendant
2608 Government Center Drive
Manistee, MI 49660

DECLARATORY JUDGMENT

This matter initially came before the court on a Request for Declaratory Judgment on January 13, 2022, on four issues:

1. Whether or not the Tribal Council violated the Constitution, Article IV, Section 6(d), on December 30, 2021, by holding an emergency closed meeting regarding approving the Amended Fiscal Year 2022 Budget as presented by the Ogema.
2. Whether or not the Tribal Council violated the Constitution, Article IV, Section 6(d), on January 7, 2022, by holding an emergency closed meeting regarding approving the Amended Fiscal Year 2022 Budget as presented by the Ogema.
3. Whether or not the Tribal Council violated the Constitution by repealing the Resolution #21-1230-317, approving amended budget, after it had been vetoed by the Ogema.
4. Whether or not the Tribal Council violated the Budget and Appropriations Act of 2013.

Defendants were properly served and failed to file an answer.

On February 23, 2022, Plaintiff filed a Notice of Default and properly served Defendant.

On March 9, 2022, the Court entered a Default in this matter against the Defendant.

On March 10, 2022, a final hearing was held in which Mr. Willis and the attorney for the Defendant appeared. The attorney for the Defendant objected to the Default stating that they had

appeared in Court previously. The objection was overruled as the Court Rules clearly require an answer to be filed. However, because of the importance of the issues contained in this matter, the Court allowed Defendant's attorney to participate in the hearing.

ISSUES 1 and 2

Plaintiff has asked for a declaratory ruling regarding Tribal Council's emergency closed meeting on December 30, 2021. Plaintiff argues that Defendant has violated the Constitution at Article IV, Section 6(d) as the purpose of the meeting, discussion and approval of the amended annual 2022 government budget is not something that can go into closed session. Defendant argues that it was proper as the casino budget was included.

Article IV, Section 6(d) of the Constitution states, very specifically, what Tribal Council may take into closed session, and reads as follows:

Section 6 – Meetings of the Tribal Council.

(d) *Open Meetings; Closed Sessions.* All meetings of the Tribal Council shall be open to the Tribal Membership. However, the Council may meet in closed session for the following purposes:

1. Personnel Matters, provided the employee in question did not request a public meeting, or
2. Business matters involving consideration of bids or contracts which are privileged or confidential, or
3. Claims by and against the Tribe.

In order to make a declaration on this issue, the Court must look to the Budget and Appropriations Act of 2013 and declare whether or not the casino budget is a budget that is approved by the Tribal Council, which is part of Issue 4.

The Budget and Appropriations Act of 2013, Ordinance #13-100-04, requires a balanced budget for the government operations, meaning that budgeted expenses must be equal to or less than budgeted revenues. Section 4.01. Article 5 is the Budget Formation and Submission, and Section 5.03 specifically addresses gaming revenue, and states:

Estimate of Projected Revenues - Tribal Enterprises . Each enterprise of the Tribe shall, through its Board or General Manager, submit an estimate of projected revenues for the next fiscal year by May 1st of each year to the Ogema, with a copy forwarded to the Tribal Council. The estimate of projected revenues shall include the following minimum information as identified in this section. The submission may include additional information which would be helpful in allowing the Tribal Council and Ogema to interpret and apply the estimated projected revenues to the proposed Tribal budget....

(Emphasis added.)

Additionally, Section 5.04 states:

Executive Summary Required. By May 31st of each year, the Ogema shall provide Tribal Council with an executive summary of *expected* revenues for the current and upcoming fiscal year from each revenue source including but not limited to net *gaming revenue*, grants, rental fees, utility fees, sales or other taxes, and distributions from gaming and non-gaming enterprises or other revenue sources.
(Emphasis added.)

No where in the Constitution, nor the Budget and Appropriations Act does it state that the Casino budget is approved by the Tribal Council. It is the Court's interpretation of the Constitution and the Budget and Appropriations Act, that the Casino budget is NOT subject to approval by the Tribal Council. The information is provided purely for the purpose of application of the expected projected revenue to the proposed government budget.

There was also testimony given that in previous years, the casino budget was discussed in closed session and the government budget was always in open.

THEREFORE, the Court declares that:

1. the Tribal Council violated Article IV, Section 4(d) by holding closed session meetings regarding the approval of the government budget, as it is not an item that can be taken into closed session pursuant to the Constitution.;

2. the Tribal Council violated the Budget and Appropriations Act of 2013, and that the Little River Casino Resort budget is not subject to approval by the Tribal Council.

ISSUES 3 and 4

Plaintiff has asked for a declaratory ruling on whether or not the Tribal Council violated the Constitution by repealing the Resolution #21-1230-317, approving the Amended Budget, after it had been vetoed by the Ogema, and whether or not the Tribal Council violated the Budget and Appropriations Act.

Plaintiff argues that Tribal Council cannot repeal a resolution that deals with the government budget after it was vetoed by the Ogema as the Constitution and Budget and Appropriations Act sets forth the procedure to be followed after a budget is vetoed by the Ogema. The Defendant argues that the veto was not proper as it stated "it violates the Constitution" instead of going line by line.

The Constitution at Article V, Section 5 (c) states:

Every action taken by the Tribal Council, whether by ordinance, resolution or appropriation, which modifies the Tribal Budget submitted for approval by the Tribal Ogema, shall be presented to the Tribal Ogema for his/her

approval and signature before it becomes effective. The Tribal Ogema shall approve or disapprove of the action taken by the Tribal Council within seven (7) days after the item is submitted to the Tribal Ogema by the Tribal Council. If he/she disapproves of the action taken by the Tribal Council, he shall return it to the Tribal Council within seven (7) days provided, specifying his/her objections. If after re-consideration, it again passes the Tribal Council by an affirmative vote of six (6) of the nine {9} Tribal Council members, it shall become law and he/she shall sign it notwithstanding his/her objections.

The Budget and Appropriations Act further clarifies how long Tribal Council has to re-consider after a veto/disapproval of the Ogema. Section 5.13 d states:

d. The Tribal Council shall then meet within *fourteen (14) calendar days* to reconsider the tribal budget and the Ogema's objections. If, after reconsideration, the Tribal Council again approves the tribal budget by an affirmative vote of six (6) of the nine (9) Tribal Council members, the approved tribal budget shall be returned to the Ogema, who shall sign it notwithstanding his/her objections.
(Emphasis added.)

The Ogema submitted a final budget to the Tribal Council on December 3, 2021¹. An Amended budget was passed on December 30, 2021, by Resolution #21-1230-317, which the Ogema vetoed in a timely manner. Then on January 7, 2022, Tribal Council rescinded Resolution #21-1230-317, via Resolution # 22-0107-02. This is a clear attempt to circumvent the Constitution and the law. When processes and procedures are specifically addressed in the Constitution and Ordinances, they must be followed. Defendants' argument that the veto wasn't proper because it did not go line by line, is a red-herring. Additionally, Defendants failed to file an answer, and any affirmative defenses.

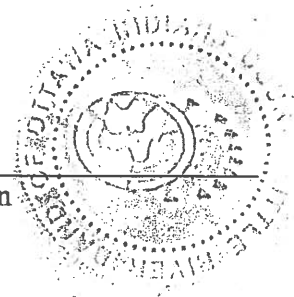
THEREFORE, the Court declares that:

3. the Tribal Council violated the Constitution and the Budget and Appropriations Act of 2013 by failing to properly act on a veto of the Ogema.

This resolves the last matter, and closes this case.

Date: 3/25/2022

DocuSigned by:
Angela Sherigan
83F0887F17BE48A
Hon. Angela Sherigan



¹ This budget was submitted with an agenda request to be put on Tribal Council's agenda for a vote. It was not placed on the agenda, yet another "amended" version was placed on the agenda for December 30, 2021, which was a modification/amendment made by Tribal Council without the input of the Ogema.

DiPiazza v. Tribal Council and R. Champagne (Intervenor)**22-013-GC**

Summary: This case was heard by Judge Angela Sherigan. Plaintiff filed a request for writ of mandamus, emergency ex parte order and declaratory judgment against Defendant, alleging that a member of Tribal Council, Ryan Champagne, was not a resident of the State of Michigan. Plaintiff asked the Court to declare that Mr. Champagne had automatically forfeited his position as a member of Tribal Council pursuant to Article 4, Section 4(d) of the LRBOI Constitution, that Mr. Champagne may not lawfully continue to participate in and be involved with Tribal Council affairs and declare that a special election must be called by the Election Board.

Decision and Order: A hearing on Plaintiff's request for declaratory judgment and Defendant's Motion to Dismiss was held on April 15, 2022. Defendant's motion to dismiss was based on the fact that Intervenor Ryan Champagne was no longer a member of the Tribal Council and that a special election had been declared to fill the vacant seat. The motion did not address the issue regarding Constitutional interpretation of Article IV, Section 4(d), specifically, who is responsible for enforcing the provision. The Court granted the Motion to Dismiss in part but denied it in full. Plaintiff declined to proceed on the remaining issue, Constitutional interpretation of Article IV, Section 4(d), thus dismissing the final issue.

Intervenor Champagne asked the Court to find the matter frivolous and assess costs and fees. The Court found that the interpretation of the Constitution falls directly in the purview of the Court and therefore, found the matter to not be frivolous.

The matter was dismissed, and the case was closed.

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

3031 Domres Road · Manistee, MI 49660
(231) 398-3406

GARY PAUL DIPIAZZA,
Plaintiff

Case No. 22-013-GC

Honorable Angela Sherigan

v.

LITTLE RIVER BAND OF OTTAWA
INDIANS TRIBAL COUNCIL,
Defendant

and

NITUMIGAABOW RYAN CHAMPAGNE,
Intervenor-Defendant.

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LRBOI Tribal Council
Defendant (in pro per)
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Manistee, MI 49660
juliewolfe@lrboi-nsn.gov

Nitumigaabow Ryan Champagne
Intervenor-Defendant (in pro per)
1080 Red Apple Road
Manistee, MI 49660
judgechampagne@yahoo.com

FINAL ORDER

A Motion and Final Declaratory Hearing was held on April 15, 2022, in which all parties were present.

As a preliminary matter, the Court heard the Tribal Council's Motion to Dismiss. The Motion was based on the fact that Nitumigaabow Ryan Champagne is no longer a member of the Tribal Council. The motion did not address the issue regarding the Constitutional interpretation of Article IV Section 4(d), specifically, who is responsible for enforcing the provision.

The Court granted the motion in part, as to the seat on Council, but denied it in full. The Plaintiff did not wish to proceed on the remaining issue, thus dismissing the final issue.

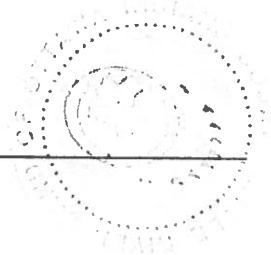
Intervenor Champagne asked the Court to find this matter frivolous and assess costs and fees. To be considered frivolous, the court must make a finding that the case is without legal

merit. Interpretation of the Constitution falls directly in the purview of the Court. This matter, in its complaint/petition, specifically asks the Court to interpret a provision of the Constitution, Article IV, Section 4(d), as well as asks the Court to order elected officials to perform their constitutional duties. The Court does not find this matter to be frivolous.

THEREFORE, this matter is dismissed, and the case is closed.

Dated: April 18, 2022

DocuSigned by:
Angela Sherigan
83F0887F17BE48A
Hon. Angela Sherigan



CERTIFICATION OF SERVICE

I certify that a copy of this order was mailed to all parties and/or their attorneys via email and via USPS on the below date.

4-19-22
Date

Sprung Medaco
Court Clerk/Administrator

Cheney & Thull v. LRBOI Election Board**22-014-AP**

Summary of Trial Court Case: This case was an appeal of Trial Court Case No. 21-582-EB, which was heard by Judge Angela Sherigan. In that case, Plaintiffs alleged that the Election Board had violated Chapter 14, Section 3, Part A of the Election Board Regulations and that it had failed to “maintain and uphold the integrity of this election.” The trial court ruled that Plaintiffs multiple allegations were dismissed due to a failure to state a claim upon which relief can be granted, were time barred and/or a lack of standing. Plaintiffs appealed this decision to the court of appeals.

Court of Appeals Opinion and Order: Appellee Election Board filed a Motion to Dismiss Appeal, primarily under the argument that the Appellants had included Constitutional claims in their Notice of Appeal that had not been presented to the Trial Court and thus could not be considered on appeal. The Court of Appeals stated in its Opinion and Order dated January 10, 2025 that Section 5.903 of the Rules of Appellate Procedure prohibits a party from raising new issues on appeal. It further stated that Appellants made new arguments in its Notice of Appeal that failed to conform to the Rules of Appellate Procedure, and thus Appellee’s motion was granted.



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

3031 Domres Road
Manistee Michigan 49660
231-398-3406 Fax: 231-398-3404

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 LRRCR of Appellate Procedure. While the LRRCR 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 LRRCR 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

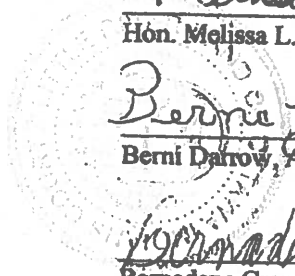
duty to protect the fundamental right to fair elections. Although the Court of Appeals recognizes that the Appellee/Defendant would have had to expend resources to prepare to file an answer in the original action, it also recognizes the reasoning of the Trial Court in denying sanctions and/or attorney 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

Ogema Romanelli v. Tribal Council**22-027-GC**

Summary: This case was heard by Judge Angela Sherigan. Plaintiff filed a complaint against Defendant, alleging that proposed amendments to the ULD Act of 2015, Ordinance No. 15-100-8a, were unconstitutional. Plaintiff filed a request for Ex-Parte Temporary Restraining Order and a preliminary injunction regarding the proposed amendments to the Unified Legal Department.

Decision and Order: The Court ruled that the matter was not ripe, and as such, denied the Plaintiff's request for an Ex-Parte Temporary Restraining Order and Preliminary Injunction. No further action was made in the case and as a result, the case was dismissed by the Court.

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

LARRY ROMANELLI, as
Tribal Ogema, and individually
as a citizen of LRBOI

Plaintiff,

Case No. 22-027-GC
Hon. Angela Sherigan

v.

LRBOI TRIBAL COUNCIL, and
Ryan Champagne, Cynthia Champagne,
Ronald Wittenberg, Sandy Lewis,
Shirley Wever, and Julie Wolfe, individually.
Defendant.

**ORDER REGARDING PLAINTIFFS' REQUEST FOR EX-PARTE
RESTRAINING ORDER**

The Court received a Request for an Ex-Parte Temporary Restraining Order and Preliminary Injunction regarding the proposed Amendments to the Unified Legal Department Act.

The Court can only hear actual cases or controversies. The court finds that this matter is not ripe, and therefore, denies the requests.

Dated: February 16, 2022


Hon. Angela Sherigan



**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

3031 Domres Road · Manistee, MI 49660
(231) 398-3406

LARRY ROMANELLI, as
Tribal Ogema, and individually
as a citizen of LRBOI

Plaintiff,

Case No. 22-027-GC
Hon. Angela Sherigan

v.

LRBOI TRIBAL COUNCIL, and
Ryan Champagne, Cynthia Champagne,
Ronald Wittenberg, Sandy Lewis,
Shirley Wever, and Julie Wolfe, individually.
Defendants.

Craig W. Elhart
Attorney for Plaintiff
329 South Union
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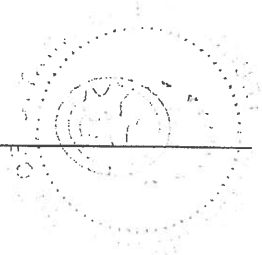
ORDER OF DISMISSAL

On May 18, 2022, the Court sent a Notice of Intent to Dismiss to the parties for Lack of Progress.

In accordance with Rule 4.502, this matter is hereby DISMISSED.

Dated: June 19, 2022

DocuSigned by:
Angela Sherigan
B3F0887F17BE48A
Hon. Angela Sherigan



CERTIFICATION OF MAILING

I certify a copy of this document was sent via USPS mail for mailing to the parties and/or their attorney(s) on this day.

6-21-22
Date

Spring Medacco
Court Clerk/Court Administrator

Agosa & Ossiginac v. Ogema Romanelli**22-037-AP**

Summary of Trial Court Case: This case was an appeal of trial court Case No. 21-611-GC, which was heard by Judge Angela Sherigan. In that case, Plaintiffs alleged that Defendant's use of an Executive Order for creation of an Advisory Group for oversight of the casino conflicts with the Tribal constitution, the Administrative Procedures Act Ordinance, and the Tribal-State Gaming Compact. The trial court granted Defendant's Motion to Dismiss for Lack of Standing. Plaintiffs appealed this decision to the Court of Appeals.

Court of Appeals Opinion and Order: Appellants filed a Petition (motion) for Temporary Restraining Order (TRO) and Preliminary Injunction ("Stay") in the Court of Appeals to prevent the Appellee from continuing to make financial decisions regarding operation of the Little River Casino Resort. The Court of Appeals issued "Order and Opinion Denying stay with Clarification Regarding Standing in Actions by Tribal Citizens that Challenge Performance of Constitutional Positions and Duties" on February 15, 2025, which denied Appellants' Motion for stay due to lack of standing and further discussed in detail the requirements for a stay of execution to be issued by the Court of Appeals.

The Court of Appeals issued "Order for Status After Opinion Denying Stay with Clarification Regarding Standing in Actions by Tribal Citizens that Challenge Performance of Constitutional Positions and Duties" on August 12, 2024, which stated that the Appellants did not meet the test for standing within the analysis of their Motion for Stay and that it was unlikely they can fulfill the test for standing for their overall action. However, the Court of Appeals allowed the Appellants the opportunity to file a request for a scheduling conference with clear and concise arguments based on 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." Appellants were also given the opportunity to file a notice of dismissal or decline to file any document which would result in the Chief Justice issuing a dismissal of this case.

Appellants filed "Response in Opposition to Order for Status After Opinion Denying Stay with Clarification Regarding Standing in Actions by Tribal Citizens that Challenge Performance of Constitutional Positions and Duties, Motion for Clarification, Request for Relief, Request for Permanent Injunction and Request for Declaratory Relief" on September 13, 2024. Appellee filed "Motion to Dismiss" on September 18, 2024.

The Court of Appeals issued a final "Order and Opinion Dismissing Appeal" on February 20, 2025, which granted the Appellee's motion to dismiss. The Court of Appeals ruled that Appellants had failed to meet the requirements of standing. It further ruled that Appellants' "Response in Opposition..." presented new arguments which the Court of Appeals was not permitted to use as it had not been presented in the Trial Court case.



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

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Manistee, Michigan 49660
Phone: 231-398-3406 Fax: 231-398-3404

**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





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

3031 Domres Road
Manistee, Michigan 49660
Phone: 231-398-3406 Fax: 231-398-3404

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

Case Number: 22-037-AP

Hon. Melissa L. Pope, Chief Justice

v.

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

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**ORDER FOR STATUS AFTER
OPINION DENYING STAY WITH CLARIFICATION REGARDING STANDING
IN ACTIONS BY TRIBAL CITIZENS THAT CHALLENGE
PERFORMANCE OF CONSTITUTIONAL POSITIONS AND DUTIES**

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").

The purpose of the *February 15, 2024 Opinion* was to deny the Petition for Temporary Restraining Order (TRO) / Preliminary Injunction (“Stay”) in Court of Appeals (“Motion for Stay”) filed by Sara Agosa and Jolene Ossiginac (O’Signac), (“Appellants-Plaintiffs”) that would have prevented the Ogema from continuing to make financial decisions regarding operation of the Little River Band of Ottawa Indians (“LRBOI”) business enterprise of the Little River Casino Resort while attempting to articulate the requirements for a LRBOI Tribal Citizen to bring an action regarding the performance of Constitutionally mandated positions and duties.

The Court did not establish a path for moving forward to enable the parties to determine if further action was appropriate within the context of the *February 15, 2024 Opinion*. The Court has not received any pleadings since the *February 15, 2024 Opinion* was issued. The Chief Justice issues this *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*”) to highlight the requirements for standing with a time-frame for a response from the Appellants-Plaintiffs or the administrative action of dismissal of this appellate case by the Chief Justice.

The Court provided clarification on standing as established in *Candace Chapman v. Little River Band of Ottawa Indians and Little River Band of Ottawa Indians Tribal Council*, Case No. 08-023-AP (Decided August 5, 2008) (“*Chapman*” or “*Opinion in Chapman*”), affirming the Trial Court’s description on page 2 of the *Order After Defendant’s Motion to Dismiss for Lack of Standing*. However, with the clarification regarding standing discussed within the context of the test and illustrations for a motion to stay, the Chief Justice focuses this *Order for Status* on the substantive requirements for standing established by the Court of Appeals in the *February 15, 2024 Opinion*, beginning with the Court of Appeals affirming the test articulated by the Trial Court for standing.

For an LRBOI Tribal Citizen to have standing to challenge Constitutionally mandated positions or duties, they must prove:

1. That there is a failure to perform a duty mandated by the Tribal Constitution; and
2. That there is a public harm.

This Court of Appeals further emphasized that it intended a limited or “narrow application for standing in Chapman”. (*February 15, 2024 Opinion* at page 9). It explained that, “[t]he requirements for a Tribal Citizen to have standing to bring an action against a constitutionally created position that is required to perform specific duties mandated by the Constitution is narrow in application, in part so these individuals may perform their duties without fear of frequent litigation”. (*February 15, 2024 Opinion* at page 11).

In the present case, the Trial Court found that the Appellants-Plaintiffs failed to prove that the Ogema had not performed the duty in “Article V, Section 5(a)(8) ‘[t]o 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’” as “[t]his 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.” (*Order After Defendant’s Motion to Dismiss for Lack of Standing* at Page 2).

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).

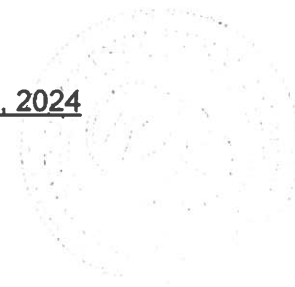
In the alternative, the Appellants-Plaintiffs may either file notice of dismissal of this appellate case or decline to file any document that will result in the Chief Justice issuing a dismissal of this appellate case after the twenty-eight (28) days have passed on behalf of the Court of Appeals.

IT IS HEREBY ORDERED:

Melissa L. Pope

Hon. Melissa L. Pope, Chief Justice

August 12, 2024
Date





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

3031 Domres Road
Manistee, Michigan 49660
Phone: 231-398-3406 Fax: 231-398-3404

**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 Darrow, Associate Justice
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**ORDER AND OPINION DENYING STAY WITH CLARIFICATION REGARDING STANDING
IN ACTIONS BY TRIBAL CITIZENS THAT CHALLENGE
PERFORMANCE OF CONSTITUTIONAL POSITIONS AND DUTIES**

Appellants and Plaintiffs Sara Agosa and Jolene Ossiginac (O'Signac), ("Appellants-Plaintiffs") are Tribal Citizens of the Little River Band of Ottawa Indians ("LRBOI") who filed a Petition for Temporary Restraining Order (TRO) / Preliminary Injunction ("Stay") in Court of Appeals ("Motion for Stay") to prevent the Ogema from continuing to make financial decisions regarding operation of the

LRBOI business enterprise of the Little River Casino Resort with all briefs on the Motion to Stay submitted to and Oral Argument held before this Court of Appeals.

This Court of Appeals de facto denied the Motion for Stay as it did not issue an order that granted the requested stay. After critical review of the precedent of the LRBOI Court of Appeals, as well as multiple *Opinions* issued by the United States Supreme Court addressing the jurisdiction of federally recognized American Indian Tribes (“Tribes”, “Native Nations”, and/ or “Tribal Nations”) and cases filed with the LRBOI Court of Appeals, both prior to, during, and what is considered after the COVID-19 Pandemic, the Court now issues this *Order and Opinion Denying Stay with Clarification Regarding Standing in Actions by Tribal Citizens that Challenge Performance of Constitutional Positions and Duties* (“*Order and Opinion*”). A purpose is to address the significant challenges that have arisen from the misinterpretation of *Candace Chapman v. Little River Band of Ottawa Indians and Little River Band of Ottawa Indians Tribal Council*, Case No. 08-023-AP (Decided August 5, 2008) (“*Chapman*” or “*Opinion in Chapman*”) while addressing the stay requested.

This Court of Appeals discussed in detail the requirements for a stay of execution to be issued by the Court of Appeals in the *Opinion on Appellate Motions* issued in *Romanelli as Ogema of Little River Band of Ottawa Indians and Stone v. Little River Band of Ottawa Indians Tribal Council*, Case No. 20-051-AP (*Opinion on Appellate Motions* decided on September 1, 2020), that clarified and established the requirements for a stay as follows:

The Court’s discussion of the requirements in § 5.409 (F) of the LRBOI Appellate Court Rules and previous LRBOI caselaw on motions to stay execution of a Trial Court order, including the use of the four-part test for a preliminary injunction, highlights how all of these interrelated factors and considerations are important for the Court to determine whether to grant a stay. The two-part test in § 5.409 (F) of the LRBOI Appellate Court Rules requires that a stay only be granted when justice so requires and that there is good cause, with the moving party required to demonstrate irreversible harm if the stay is not granted under one of the two requirements in the Court Rule or independently pursuant to binding precedent in *Wabsis* and the fundamental necessity of this consideration in granting or denying a stay. Upon review of the applicable Court Rules

and caselaw, it does not appear that an analysis of the case within the context of the four-part test for a preliminary injunction is required other than as it relates to the moving party establishing irreversible harm absent the stay. However, for the reasons discussed in this *Opinion on Appellate Motions*, analysis of these four factors, or three if there is no impact on the public interest, is anticipated as necessary when a party has requested a stay because the information provided through the analysis of this four-part test is fundamental to the overall considerations for deciding whether to grant a stay. It is up to the moving party to determine how they want to frame presentation of the information, including in reference to establishing that there is good cause for and that justice so requires the stay, with the burden on the moving party to meet the requirements of the Court Rules and caselaw. (*Romanelli as Ogema of Little River Band of Ottawa Indians and Stone v. Little River Band of Ottawa Indians Tribal Council*, Case No. 20-051-AP, *Opinion on Appellate Motions* decided on September 1, 2020 at Pages 9 to 10; Bolded language added for this *Order and Opinion*).

This Court of Appeals also noted the following:

It should be noted that this Court found it helpful to change the order of the four-part test for a preliminary injunction when utilizing the considerations for a stay as the discussion of the harm to the parties, weighing that harm, and any harm to the public interest provided insight into the issue of whether the moving party has demonstrated that it is likely to prevail on the merits. The more helpful order of the considerations in establishing irreversible harm, along with additional edits to reflect a request for a stay, whether that showing of irreversible harm is to support the argument for good cause to grant the stay, support the argument that justice requires the stay, or to show irreversible harm as an independent factor required by caselaw is that the Court must evaluate: (1) whether the moving party made the required demonstration of irreparable or irreversible harm, with these terms used interchangeably by this Court of Appeals; (2) whether the harm to the moving party if a stay is not granted outweighs the harm it would cause to the opposing party if the stay were granted, (3) whether there will be harm to the public interest if a stay is or is not issued; and (4) and whether the moving party showed that it is likely to prevail on the merits. (*Romanelli as Ogema of Little River Band of Ottawa Indians and Stone v. Little River Band of Ottawa Indians Tribal Council*, Case No. 20-051-AP, *Opinion on Appellate Motions* decided on September 1, 2020 at Page 18). ("*Romanelli and Stone v. Tribal Council*").

Within the context of the guidance provided in the *Opinion on Appellate Motions in Romanelli and Stone v. Tribal Council*, the Court now turns to the stay requested by the Appellants-Plaintiffs in the present case. The Trial Court issued the *Order After Defendant's Motion to Dismiss for Lack of Standing* that began with Article XI, Section 2(a) of the Constitution as relied upon by the Court of Appeals in its *Opinion in Chapman*:

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. The Trial Court also discussed that Chapman involved a suit against Tribal Council, finding that the provision also applied to the Ogema. (*Order After Defendant's Motion to Dismiss for Lack of Standing* at Page 1).

The Trial Court went on to find that the Appellants-Plaintiffs had not met one of the requirements in the two-part test for an LRBOI Tribal Citizen to have standing to file an action based on the principles of this Court's *Opinion in Chapman*: 1) that there is a failure to perform a duty mandated by the Tribal Constitution; and 2) that there is a public harm. (*Order After Defendant's Motion to Dismiss for Lack of Standing* at Page 2). Specifically, the Trial Court stated that:

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).

The Tribal Court, therefore, found that the Appellants-Plaintiffs lacked standing to file this action as “[t]here was no showing that the Little River Casino Resort is not operating, or the Ogema has failed to manage it”, thus “no finding of a failure to perform a constitutionally mandated duty” as required for an LRBOI Tribal Citizen to have standing to file an action pursuant to the *Opinion in Chapman*.

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*.

The Appellants-Plaintiffs request in their Motion to Stay that the Ogema be prohibited from management of the Little River Casino Resort with their argument grounded in their belief that the Ogema is engaging in “unlawful use of Executive Orders”. (Motion to Stay at page 2). Of critical importance is that the Appellants-Plaintiffs are requesting this sole appellate court to issue an order that would prohibit the Ogema, the head of the Executive Branch, from performing constitutionally mandated duties when there are no findings of fact in the Trial Court proceedings that establish that the Ogema has failed to perform the constitutionally mandated duty of operating and managing the Little River Casino Resort.

Of critical importance is that the Appellants-Plaintiffs are requesting this sole appellate court to issue an order that would prohibit the Ogema, the head of the Executive Branch, from performing the constitutionally mandated duty of operating and managing the Little River Casino Resort when there are no findings of fact in the Trial Court proceedings that establish that the Ogema has failed to perform this constitutionally mandated duty.

The recognition that the Appellants-Plaintiffs are requesting the Court of Appeals to issue an order that would prohibit another branch of government from performing constitutionally mandated duties without a factual basis or Trial Court order relating to the performance of constitutionally mandated duties instead of a stay of the Trial Court's *Order After Defendant's Motion to Dismiss for Lack of Standing* is critical to the analysis for why the stay must be denied. This is highlighted through the four-part test for a preliminary injunction that may be utilized to analyze "[t]he two-part test in § 5.409 (F) of the LRBOI Appellate Court Rules that require that a stay only be granted when justice so requires and that there is good cause with the moving party required to demonstrate irreversible harm if the stay is not granted under one of the two requirements in the Court Rule or independently pursuant to binding precedent in *Wabsis* and the fundamental necessity of this consideration in granting or denying a stay" as established in the *Opinion on Appellate Motions in Romanelli and Stone v. Tribal Council* (Pages 9 to 10). The use of the word "only" communicates that the requirements are both mandatory for a stay with these two requirements being that justice requires the stay and that there is good cause to grant the stay. To prove good cause, the moving party must demonstrate irreversible harm if the stay is not granted. One avenue for achieving this requirement is to provide an analysis of the four-part test for a preliminary injunction with the Appellants-Plaintiffs unable to do so in relation to the Trial Court *Order After Defendant's Motion to Dismiss for Lack of Standing*.

It should be further noted that in any motion for a stay, the moving party must provide clear and concise explanations of their specific allegations that are supported by the evidence presented. In a Tribal Citizen's action against a constitutionally created position, that would require clear and concise arguments based on the evidence presented that show the individual is failing to perform specific constitutionally mandated duties. In an action filed in the Tribal Court or an appeal filed in this Court of Appeals, general 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.

To clarify for future cases, a motion for stay to this Court of Appeals must directly relate to the content of the Trial Court order. Pursuant to § 5.409 (F) of the

LRBOI Appellate Court Rules, the moving party must make clear and concise arguments that demonstrate both that justice requires that a stay be granted and that there is good cause for the stay with good cause requiring that the moving party must show they will suffer irreversible harm if a stay of the Trial Court order is not granted. A moving party may demonstrate irreversible harm through analysis of the four-part test for a preliminary injunction with the clear and concise analysis requiring inclusion of a factual basis in the Trial Court record for the allegations for how justice requires the stay and that irreversible harm will occur absent issuance of a stay. It should also be noted that the analysis of the irreversible harm that the moving party will allegedly experience without a stay must be balanced against the harm that the non-moving party will allegedly suffer if the stay is granted.

The Separation of Powers Doctrine must also be discussed due to the substance of the case. Issuing an order that prohibits a constitutionally created position from performing constitutionally mandated duties is an extremely serious action for the Court to consider. The LRBOI Constitution is the supreme law of this sovereign Native Nation. Infringement on the performance of constitutionally mandated duties must be carefully considered based on thorough, succinct, and well-defined arguments that are rooted in the evidence presented in the Trial Court, as well as the orders of the Trial Court. The failure of the Court to engage in careful analysis that evaluates the requirements for a stay when faced with a request to prohibit performance of constitutionally mandated duties puts the Court at risk for violating the Separation of Powers Doctrine that, in part, ensures the checks-and-balances of this Tribal Government.

In the present case, the risk for violating the Separation of Powers Doctrine is significant for several reasons. To begin, the requested stay does not relate to the content of the *Order After Defendant's Motion to Dismiss for Lack of Standing* with the case dismissed for lack of standing because there was "no showing that the Little River Casino Resort is not operating, or that the Ogema has failed to manage it". Although previously discussed, it is critical to understand that the Appellants-Plaintiffs are requesting this Court to issue an order and not a stay. This would be problematic in any circumstance but is especially problematic here as it relates to the performance of duties mandated by the Constitution, the supreme

law of the land. In the present case, the Appellants-Plaintiffs ask this Court to issue an order, referenced as a stay to reduce confusion unless use of the term “order” is needed, that would prohibit the Ogema from performing duties mandated by the Constitution without presenting clear and concise arguments supported by a factual Trial Court record and order that meet the burden required for a stay. Specifically, the Appellants-Plaintiffs do not establish that justice requires the requested stay or that there is good cause for the stay, including failing to relate the requested stay to the Trial Court to demonstrate that they will experience irreversible harm that is greater than the harm of not granting the stay. There are two harms to balance in the present case. The first is the harm of the constitutionally created position of Ogema being prohibited from performing the duties the Ogema is mandated to perform by the Constitution. The second harm is the Court issuing an order prohibiting the performance of constitutionally mandated duties for the same reasons articulated above of failing to relate the stay to the Trial Court *Order After Defendant’s Motion to Dismiss for Lack of Standing* or provide clear and concise arguments that are supported by the evidence and orders of the Trial Court in potential violation of the Separation of Powers Doctrine as the order would prohibit a position created by the Constitution from performing duties mandated by the Constitution.

With the Appellants-Plaintiffs Motion for Stay not a request to prohibit enforcement of the Tribal Court’s *Order After Defendant’s Motion to Dismiss for Lack of Standing*, the requested order not based on the factual record of the Tribal Court proceedings, and granting the order requested in their Motion to Stay a potential violation of the Separation of Powers Doctrine, the Appellants-Plaintiffs cannot establish that the harm to the moving party if a stay is not granted outweighs the harm it would cause to the opposing party if the stay were granted or whether there will be harm to the public interest if a stay is or is not issued.

With regard to the final consideration of the moving party showing that it is likely to prevail on the merits, we turn to the issue of standing for LRBOI Tribal Citizens to file actions under the *Opinion in Chapman*. The present case, as well as cases filed with the Tribal Court and this Court of Appeals prior to and during the Pandemic, involve the analysis by individual LRBOI Tribal Citizens of how

individuals and bodies perform duties they are constitutionally mandated to perform. This was not the intent of the *Opinion in Chapman*.

The *Opinion in Chapman* was not intended to authorize LRBOI Tribal Citizens to file suit against government officials under Article XI, Section 2(a) of the Constitution because they disagree with actions these officials have taken. The issue in *Chapman* was both narrow and specific. Chapman filed suit because Tribal Council was constitutionally mandated to take a two-step vote when the LRBOI Judiciary refers a Member of the Judiciary to Tribal Council for removal. This Court permitted standing solely to require Tribal Council to take the two votes they were mandated to take with the content of those votes not a consideration for this Court. Put another way, the Court had the authority to order that Tribal Council take the two votes mandated by the Constitution but not the outcome of those votes as to whether those votes resulted in the removal of that Member of the Judiciary.

It should be noted that this Court's interpretation of limited circumstances where Article XI, Section 2(a) of the Constitution authorizes LRBOI Tribal Citizens to file suit is supported by this constitutional provision as it only permits suits involving declaratory and injunctive relief.

In issuing this *Order and Opinion Regarding Standing*, this Court stresses the narrow application for standing in *Chapman*. In contemplating filing suit, appealing the denial of standing, or continuing an appeal, LRBOI Tribal Citizens should critically analyze the facts of their case to determine if they have standing to file suit. The specific requirement for a Tribal Citizen to file a case pursuant to Article XI, Section 2(a) of the Constitution is that a constitutionally created position is not performing duties mandated by the Constitution and that the request for relief involves declaratory or injunctive relief. *Chapman* provides a meaningful example of the failure to perform a constitutionally mandated duty with Tribal Council failing to take the two votes required when considering removal of a Member of the Judiciary pursuant to the recommendation of the LRBOI Judiciary. *Chapman* also illustrates the requirements for declaratory or injunctive relief with the Court having the authority to issue an order requiring Tribal Council to take the two mandated votes, but not the content of Tribal Council's decision of those two votes declining

to remove the Member of the Judiciary in question, despite the Tribal Citizen's sincere and genuine belief that Tribal Council was required to remove the Member of the Judiciary.

The above considerations provide guidance for a deeper understanding and analysis of the two-part test for LRBOI Tribal Citizens to have standing to file an action pursuant to the interpretation of the constitutional requirements in *Chapman* of 1) a failure to perform a duty mandated by the Tribal Constitution; and 2) that there is a public harm.

During Oral Argument, the Appellants-Plaintiffs expressed concern about their arguments being categorized as their beliefs or opinions. However, the performance of actions by individuals working within any government – here “[t]he Little River Band, its Tribal Council members, Tribal Ogema, and other Tribal Officials, acting in their official capacities” – involves actions based in the beliefs and opinions of the individual performing their constitutionally mandated duties. The beliefs and opinions of these individuals who hold governmental positions created by the Constitution provide the foundation for the daily actions they take to fulfill the mandates of the Constitution. In the Tribal Justice System, the Court of Appeals, the sole appellate body, interprets the Constitution, LRBOI laws, LRBOI precedent, and federal law where applicable to decide the questions presented through the appeals filed, ultimately issuing an “order and opinion”. The Court, therefore, does not intend to diminish the opinions of any person in explaining the standards that must be met for a Tribal Citizen to bring an action against a constitutionally created position with constitutionally mandated duties.

Although a well-known principle, especially among the parties in this case, the Court notes for all those who read this *Order and Opinion* that Citizens of any democratic nation have the ability to highlight their concerns, question government officials, and otherwise engage in the political process with one of the most important rights and responsibilities being that of the right to vote. In addition, there are multiple avenues within the processes established by the LRBOI Constitution, and LRBOI laws, policies, and procedures that provide LRBOI Tribal Citizens with the opportunity to be heard and influence the outcomes of their government with

the opinions of LRBOI Tribal Citizens crucial to this Native Nation flourishing for the next Seven Generations.

CONCLUSION

A motion for stay to this Court of Appeals must directly relate to the content of the Trial Court order. The moving party must make clear and concise arguments that demonstrate both that justice requires that a stay be granted and that there is good cause for the stay with good cause requiring that the moving party must show they will suffer irreversible harm if a stay of the Trial Court order is not granted. A moving party may demonstrate irreversible harm through analysis of the four-part test for a preliminary injunction with the clear and concise analysis requiring inclusion of a factual basis in the Trial Court record for the allegations for how justice requires the stay and that irreversible harm will occur absent issuance of a stay. Analysis of the irreversible harm that the moving party will allegedly experience without a stay must be balanced against the harm that the non-moving party will allegedly suffer if the stay is granted.

The Separation of Powers Doctrine is a consideration in motions for a stay in actions filed by Tribal Citizens pursuant to Article XI, Section 2(a) of the Constitution. Issuing an order that prohibits a constitutionally created position from performing constitutionally mandated duties is an extremely serious action for the Court to consider. The LRBOI Constitution is the supreme law of this sovereign Native Nation. Infringement on the performance of constitutionally mandated duties must be carefully considered based on thorough, succinct, and well-defined arguments that are rooted in the evidence presented in the Trial Court, as well as the orders of the Trial Court. The failure of the Court to engage in careful analysis that evaluates the requirements for a stay when faced with a request to prohibit performance of constitutionally mandated duties puts the Court at risk for violating the Separation of Powers Doctrine that, in part, ensures the checks-and-balances of this Tribal Government.

The requirements for a Tribal Citizen to have standing to bring an action against a constitutionally created position that is required to perform specific duties mandated by the Constitution is narrow in application, in part so these individuals

may perform their duties without fear of frequent litigation. For a Tribal Citizen to have standing pursuant to Article XI, Section 2(a) of the Constitution and as relied upon by the Court of Appeals in its *Opinion in Chapman* and further explained in this *Order and Opinion Denying Stay with Clarification Regarding Standing in Actions by Tribal Citizens that Challenge Performance of Constitutional Positions and Duties*, there must be a failure to perform a duty mandated by the Tribal Constitution and there must be a public harm with the relief sought either declaratory or injunctive relief. In a Tribal Citizen's action against a constitutionally created position, clear and concise arguments based on the evidence presented that show the individual is failing to perform specific constitutionally mandated duties is required. Whether an action filed in the Tribal Court or an appeal of a Tribal Court order, general 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 Separation of Powers Doctrine should be a consideration in cases before the Trial Court, as well as in an appeal, including if a request for stay is requested as discussed above, in cases filed by Tribal Citizens pursuant to Article XI, Section 2(a) of the Constitution.

IT IS HEREBY ORDERED:



Hon. Melissa L. Pope, Chief Justice

2.15.2024
Date



Hon. Berni Darrow, Associate Justice

2-15-2024
Date



Hon. Bernadene Crampton, Associate Justice

2-15-2024
Date

Diane Lonn v. Tribal Council

22-057-GC

Summary: This case was heard by Judge Angela Sherigan. Plaintiff filed a complaint against Defendant in the form of a request for a stay of the 100% Enrollment Audit, alleging that multiple audits have been completed in the past, and a complete enrollment audit is a waste of money. Plaintiff also alleged that a complete audit would be an unlawful search and would deprive persons of liberty or property without due process.

Decision and Order: The Court found that the Plaintiff did not make specific allegations that she, or anyone else, had been deprived of liberty or property without due process. The Court further ruled that, absent an allegation of a violation of the Constitution, meaning that the ordinance violated the Constitution, the Court cannot hear the case. The Plaintiff's request for a stay was denied, and the case was dismissed.

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

3031 Domres Road · Manistee, MI 49660
(231) 398-3406

DIANE LONN,
Plaintiff,

Case No. 22-057-GC

v.

Hon. Angela Sherigan

LRBOI TRIBAL COUNCIL,
Defendant.

_____/

Diane Lonn
Plaintiff, In Pro Per
1207 Merkey W. Rd.
Manistee, MI 49660

Michael L. Roy (MA 547396)
Attorney for Defendant
1899 L Street NW, Suite 1200
Washington, DC 20036

_____/

ORDER AFTER HEARING ON REQUEST FOR STAY

A hearing on Plaintiff's Request for Stay was held in which all parties and their attorneys appeared. Plaintiff was permitted to make a written response to the Defendant's Answer to Request for Stay and Dismissal, as she did not have the pleading at the time of the hearing.

Plaintiff requested that the Court stay the enactment of Resolution #21-1215-300 "One-hundred Percent Enrollment Audit of Membership Files."

Defendant requested the matter be dismissed stating that there is no case or controversy and that there was no allegation of any violation of the Constitution.

In Plaintiff's response, she stated that the Resolution violates the Constitution in that it is an unlawful search and deprives persons of liberty or property without due process.

It is clear that the Plaintiff has spent a great deal of time in preparing her Request for Stay, citing the history of resolutions related to the Enrollment Department and the base rolls, and is concerned about causing strife within and among the members of the Tribe. However, the Court can only hear actual cases or controversies. Absent an allegation of a violation of the Constitution, meaning that the ordinance violated the Constitution, the Court cannot hear the case. Plaintiff's allegation of deprivation of liberty or property without due process is a general

statement rather than an allegation. There are no specific allegations that she, or anyone else, has been deprived of this right.

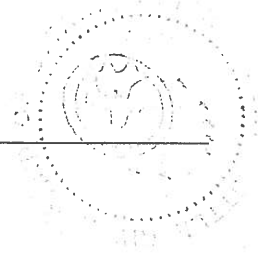
As no violation of law has been alleged, there is no case or controversy. Therefore, the Request fails as it is not likely to prevail on the merits.

THEREFORE, Plaintiff's Request for Stay is denied, and this matter is dismissed. This closes the case.

6/21/2022

Date

DocuSigned by:
Angela Sherigan
83F0867F17BE48A
Hon. Angela Sherigan



CERTIFICATION OF SERVICE

I certify a copy of this document was served via USPS mail to the parties and/or their attorneys on this day.

6-21-22
Date

Spring Medacco
Court Clerk/Administrator

Shannon Crampton v. Ogema Romanelli**22-060-GC**

Summary: This case was heard by Judge Angela Sherigan. Plaintiff filed a complaint against Defendant, alleging violations of the Protection Against Libel and Slander Act of 2006. Plaintiff alleged that Defendant made defamatory statements about Plaintiff at a meeting held at the Little River Casino Resort and had circulated emails and Facebook posts defaming Plaintiff during the 2021 election cycle. Plaintiff asked for \$250,000 in damages and \$1,000 per statement in the future.

Decision and Order: A bench trial was held in this matter on August 25, 2022. At trial, Plaintiff presented evidence that Defendant made a statement at the spring 2021 membership meeting that Plaintiff accused the Defendant of Election fraud. Testimony was taken that Plaintiff did make the statement, and testimony was taken that he did not directly say it was the Defendant but that it was implied. Testimony was also taken that the Defendant never heard the Plaintiff make the statement himself.

The Court ruled that Plaintiff did not provide evidence that proved malice on the part of the Defendant (as evidence presented to show malice was a finding by the Ethics Board regarding a false statement made by the Plaintiff regarding the Defendant about a gaming license, not election fraud), and therefore it did not need to make any further legal analysis. The case was dismissed.

**This has been appealed by Plaintiff and is currently pending in the Court of Appeals.
(Case No. 23-168-AP)*

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

SHANNON PAUL CRAMPTON,
Plaintiff

Case No. 22-060-GC

Honorable Angela Sherigan

v.

OGEMA LARRY ROMANELLI,
In his official capacity,
Defendant

SHANNON PAUL CRAMPTON
Plaintiff, In Pro Per
6735 E. M-72
Williamsburg, MI 49690

DENNS SWAIN
Attorney for Defendant
2608 Government Center
Manistee, MI 49660

JUDGMENT

This matter was brought by Plaintiff, Shannon Paul Crampton, against Larry Romanelli, in his official capacity as Ogema for an alleged violation of the Protection Against Libel and Slander Act of 2006, seeking \$250,000.00 in damages, and \$1000.00 per statement in the future.

This is a case of first impression, and unfortunately, the facts are convoluted, and the allegations and defenses presented were not fully developed.

In the complaint, specifically, the plaintiff is alleging that the defendant said that Mr. Crampton accused him of election fraud and that this has caused him (Plaintiff) harm.

To prevail in an action under the Protection Against Libel and Slander Act of 2006 the Plaintiff must show that the Defendant made or published an untrue statement in front of third parties that diminished the reputation of the Plaintiff. If the Defendant is a public official, then the Plaintiff must also show that the statement was made with malice.

To recover for damages, the Plaintiff must show actual damages suffered in respect to his or her property, business, trade, profession, occupation, or feelings. Exemplary/punitive damages cannot be recovered unless there is a showing that prior to instituting legal action, the Plaintiff gives notice to the defendant to publish a retraction and allow a reasonable time to do so.

The first thing the Court will look at is if a statement was made by the Plaintiff, and then if the statement was false. Here, the Plaintiff alleged that the Defendant stated that the Plaintiff accused the Defendant of election fraud.

A full trial was held in this matter on August 25, 2022¹, which resulted in the following;

Plaintiff presented evidence that at a membership meeting on March 20, 2021, the Defendant made a statement that Plaintiff accused the Defendant of election fraud. There was testimony that Plaintiff did make the statement, and there was testimony that he did not directly say it was the Defendant, but it was implied. The legal argument of implication was never developed. Testimony was also given that the Defendant never heard the Plaintiff make the statement himself. Because the Defendant is a public official, the Plaintiff must also show malice. The evidence presented to show malice was a finding by the Ethics Board regarding a false statement made by the Plaintiff regarding the Defendant dated July 30, 2019, however, this statement dealt with a statement regarding a gaming license and not election fraud.

Without a showing a malice, the Court does not need to make any further legal analysis. This case is dismissed.

Dated: June 29, 2023


Hon. Angela Sherigan



CERTIFICATION OF SERVICE

I certify a copy of this document was served via USPS mail and via email for service to the parties and/or their attorneys of record on this day.

6/30/23
Date


Court Clerk/Court Administrator

¹ The Court intentionally delayed the issuance of this order until the after the swearing in of the Ogema. This case was filed in 2022 regarding a statement that was made in 2021, which per the evidence and testimony presented was a continuation of statements stemming back to at least 2019. In this last election the parties were currently running against each-other for the office of Ogema and the Court did not want this order in any way have an affect on the outcome of the election.

Agosa, Cheney, & Thull v. Chief Judge Angela Sherigan**22-061-GC**

Summary: This case was heard by Judge Caroline LaPorte. Plaintiffs filed a complaint and request for injunctive and declaratory relief against Defendant. Plaintiffs alleged that Defendant's granting of a stay in Case No. 21-639-GC did not meet the required 4-part test, interfered in the lawful operations of another branch of government without just case, forced the Legislative Branch of LRBOI to cease its willful course, and threatened the integrity of the LRBOI processes established by the Fair Employment Practices Code.

Decision and Order: An Injunction Hearing was held on April 5, 2022, where Defense Counsel made three motions on record. The Court entered an Order after Injunction Hearing on April 12, 2022 and ruled as follows:

- 1) Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction on the grounds of Judicial Immunity – Granted. The Court found that the Defendant was immune from suit with regards to the Plaintiffs' complaint.
- 2) Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction, alleging that the relief Plaintiffs sought is super-appellate – Granted. The Court found that a request to overturn a sitting Tribal Court judge's order falls under the exclusive jurisdiction of the Court of Appeals.
- 3) Defendant's Motion alleging a Frivolous Suit under Section 4.625 of the LRBOI Tribal Court Rules of Civil Procedure – Granted. The Court found that the legal position of the Plaintiffs as devoid of arguable legal merit, that the suit was barred for judicial immunity and was a request for super-appellate review.

The Plaintiffs' complaint was dismissed with prejudice and Defendant was awarded reasonable costs and fees.

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

3031 Domres Road · Manistee, MI 49660
(231) 398-3406

SARA AGOSA, STACI CHENEY,
and SUSAN THULL,
Plaintiffs

Case No. 22-061-GC

Honorable Caroline LaPorte

v.

ANGELA SHERIGAN, Chief Judge acting
in her official capacity,
Defendant

Sara Agosa
Plaintiff, In Pro Per
755 Alfa Court, Apt. 1-D
Portage, MI 49002
saraagosa@gmail.com

Leslie Van Alstine II (P52802)
Attorney for Defendant
255 River Street
Manistee, MI 49660

Staci Cheney
Plaintiff, In Pro Per
7350 Warwick Drive
Ypsilanti, MI 48197
cheneys82@gmail.com

Susan Thull
Plaintiff, In Pro Per
7170 Cattail Drive
Byron Center, MI 49315
susan.thull@gmail.com

ORDER AFTER INJUNCTION HEARING

PROCEDURAL OVERVIEW

The Plaintiff's filed this action on March 18, 2022. On March 21, 2022, the Plaintiffs filed an amended complaint ("Complaint" herein). On April 5, 2022, the Court held a hearing on the requested injunctive relief at the request of the Plaintiffs, who are pro se, in the above captioned suit. The Defendant, Chief Judge Angela Sherigan, also appeared and was represented by counsel, Mr. Van Alstine.

COMPLAINT

At issue before the Court is the Plaintiffs' Complaint, which is a request for injunctive relief regarding an order that Chief Judge Angela Sherigan entered on December 31, 2021 granting a stay in *Stone et al.* (21-639-GC). In the Complaint, the Plaintiffs allege that the stay did not meet the four-part test the Court has established for granting injunctive relief. Further, the Plaintiffs contend that the Chief Judge interfered with another branch of government without just cause,

that she forced the legislative branch to cease its willful course in violation of the Separation of Powers Doctrine and legal precedent established by the Little River Band of Ottawa Indians Tribal Court, and that she threatened the integrity of the Little River Band of Ottawa Indians processes established by ordinance (and here, the Plaintiffs make a reference to the LRBOI Fair Employment Practices Code, Ordinance number 05-600-003). In sum, the Plaintiffs disagreed with Chief Judge Sherigan's ruling.

ANALYSIS

On the Morning of April 5, 2022, the Court received a Motion to Dismiss from the Plaintiffs, which was withdrawn by the Plaintiffs on the record after the Defendant's counsel made three oral motions at the hearing for injunctive relief.

The Defendant's counsel made the following motions:

1. A Motion to Dismiss for Lack of Subject Matter Jurisdiction on the Grounds of Judicial Immunity;
2. A Motion to Dismiss for Lack of Subject Matter Jurisdiction, alleging that the Relief the Plaintiffs seek is super-appellate; and
3. A Motion alleging a Frivolous Suit under § 4.625 of the Little River Band of Ottawa Indians Tribal Court Rules of Civil Procedure.

Prior to hearing the request for injunctive relief, and because the motions made by the Defendant as to subject matter jurisdiction are completely dispositive to this matter, the Defendant's counsel's motions were heard first.

A. Law and Analysis Regarding the Motions to Dismiss for Lack of Subject Matter Jurisdiction

i. *Motion to Dismiss for Lack of Subject Matter Jurisdiction on the Grounds of Judicial Immunity*

It is a well settled principle of law that judges have judicial immunity. *Stump v. Sparkman*, 435 U.S. 349 (1978). This legal doctrine, enshrined in United States Supreme Court precedent, establishes that judges are immune from suit for their judicial acts. *Id.* Judicial acts are defined as acts that are undertaken by a judge in their official capacity, and as acts that are normally performed by the judiciary. *Id.* The expectation of the parties is also relevant; meaning the Court will look at whether or not the parties dealt with the judge in their judicial capacity. *Id.* at 363. In making its ruling in *Stump*, the United States Supreme Court relied on prior precedent established by *Bradley v. Fisher*, 80 U.S. 335 (1871). In *Bradley*, the Court held that judges of courts of record of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. *Id.* at 336. The "distinction as to their liability made between acts done by them in excess of their jurisdiction and acts done by them in the clear absence of all jurisdiction over the subject matter." *Id.*

Angela Sherigan serves the Little River Band of Ottawa Indians as its Chief Judge, having been duly elected and sworn in. The Plaintiffs have brought suit against Chief Judge Angela Sherigan

in her official capacity. The Plaintiffs' Complaint centers on an Order that Chief Judge Angela Sherigan entered on December 31, 2021, in which she granted a stay. A stay, which is a type of injunction, is an act that a judge would normally perform. Having clearly met the standard outlined in *Stump*, it is clear that Chief Judge Sherigan possesses judicial immunity from this suit. It should also be noted that the majority of precedent on the issue of judicial immunity involves judges being sued for the judicial acts under a theory of civil liability. Here, the Plaintiffs are requesting injunctive relief. Regardless, Judge Sherigan is immune from suit with regards to the Plaintiffs' Complaint.

ii. *Motion to Dismiss for Lack of Subject Matter Jurisdiction Regarding a Complaint that is Super-Appellate*

The Plaintiffs' Complaint clearly asks this Court to invalidate another trial court level judge's ruling.

§5.021 of the Little River Band of Ottawa Indians Rules of Appellate Procedure clearly states, "[t]he Court of Appeals shall have *exclusive* jurisdiction to review the decisions of the Tribal Court according to these Rules." (Emphasis added). Without addressing whether or not the Plaintiffs have standing to file an appeal regarding the matter raised in the Complaint, it is clear that a request to overturn a sitting tribal court judge's order falls under the exclusive jurisdiction of the Little River Band of Ottawa Indians Appellate Court. Plaintiffs are aware of the appellate forum, as each of them currently have or have previously brought actions for appellate review.

As stated on the record on April 5, 2022, this Court simply lacks the subject matter jurisdiction to hear this Complaint.

B. Law and Analysis Regarding the Motion alleging a Frivolous Suit under Section 4.625 of the Little River Band of Ottawa Indians Tribal Court Rules of Civil Procedure

Though the Court ruled from the bench regarding the Defendant's first two motions, the Court needed more time to reach a decision regarding the Motion under LR CR §4.625. To meet the requirement of showing that a frivolous lawsuit or action has been filed, the movant (here, the Defendant) must show one of the following:

1. That the primary purpose of bringing the suit was to harass, embarrass or injure;
2. That it was based on untrue facts; *or*
3. The legal position was devoid of arguable legal merit. LR CR §4.625 (Emphasis added).

Having considered the Motion, the Complaint and the allegations contained therein, and the Plaintiffs' requested relief, this Court finds that the third prong of the requirement, that the legal position was devoid of arguable legal merit, is met. It is important to state that the Court is making this finding for the same reasons that this suit is barred for lack of subject matter jurisdiction: that this suit is barred by judicial immunity and was a request for super-appellate review via another trial court judge.

Further, as a matter of public policy, the Court calls attention to a point made by Mr. Van Alstine during the hearing. As he aptly pointed out, it is possible that this lawsuit might conflict the

sitting Judge out of her open cases where the Plaintiffs are parties and/or possibly out of future lawsuits where the Plaintiffs are involved. This maneuver is not without consequence to the Plaintiffs. And while it undermines their credibility before this Court, it also threatens to undermine the judicial process in general.

Accordingly, the Motion under LRCR §4.625 is **GRANTED**.

CONCLUSION

Respectfully, this matter should not be in this Court.

Accordingly, the Plaintiffs' Complaint is **DISMISSED WITH PREJUDICE** for lack of subject matter jurisdiction as outlined above. Having granted the Defendant's Motion under LRCR §4.625, the Court is *required* to award the Defendant the reasonable costs and fees, including attorneys fees, she incurred in connection with this action pursuant to LRCRC §4.625(A)(2). The amount to be assessed shall be apportioned equally amongst the Plaintiffs. The Defendant, as the party entitled to costs and reasonably attorney fees, must prove up their costs and fees in accordance with the Rules of Civil Procedure.

4/12/2022

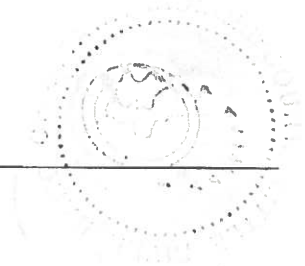
Date

DocuSigned by:

Caroline LaPorte

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Caroline LaPorte
Associate Judge



CERTIFICATION OF SERVICE

I certify that a copy of this order was mailed to all parties and/or their attorneys via email on the below date.

4-12-22

Date

Spring Medacco

Court Clerk/Administrator

Shannon Crampton v. Little River Casino Resort**22-062-GC**

Summary: This case was heard by Judge Angela Sherigan. Plaintiff filed a complaint against Defendant, alleging that the Little River Casino Resort facilitated and/or aided and abetted Ogema Larry Romanelli in defaming Plaintiff at a meeting held by the Ogema at the Resort by not denouncing or correcting alleged defamatory statements made by the Ogema.

Decision and Order: A hearing on Defendant's Motion for Summary Disposition was held. The motion was made under Court Rule 4.116(c)(8), failure to state a claim upon which relief can be granted. Defendant alleged that Plaintiff failed to identify specific untrue statements that are harmful to his esteem, respect, or goodwill and that Plaintiff failed to identify the speaker of any defamatory statements and any connection to the Defendant. Defendant further alleged that Plaintiff failed to allege malice or any suffering and that the pleading failed to state a claim upon which relief can be granted. Furthermore, the Defendant argued that the Little River Casino Resort is not a person and therefore cannot be sued under the Protection Against Defamation Act.

The Court ruled that the Casino was simply the forum/property that the meeting was held at and that statements made by any person, group, association, or otherwise that holds an event at the Casino cannot be attributed to the Casino. The Court further ruled that the Plaintiff failed to make prima facie showing of the elements to continue with the case. The Defendant's motion for Summary Disposition was granted and the case was dismissed.

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

3031 Domres Road · Manistee, MI 49660
(231) 398-3406

SHANNON PAUL CRAMPTON,
Plaintiff

Case No. 22-062-GC

Honorable Angela Sherigan

v.

LITTLE RIVER CASINO RESORT,
Defendant

_____/

SHANNON PAUL CRAMPTON
Plaintiff, In Pro Per
6735 E. M-72
Williamsburg, MI 49690

CRAIG W. ELHART (P26369)
Attorney for Defendant
329 South Union
Traverse City, MI 49684

_____ /

**ORDER AFTER HEARING ON DEFENDANT'S
MOTION FOR SUMMARY DISPOSITION**

A hearing was held on May 26, 2022, on Defendant's Motion for Summary Disposition, in which all parties and/or their attorneys were present.

The Motion was made under LRCR 4.116(c)(8), for failure to state a claim upon which relief can be granted. Defendant argues that:

1. Plaintiff failed to specifically identify any untrue statements that are harmful to his esteem, respect, or goodwill.
2. That he failed to identify the speaker of any defamatory statements and any potential connection to the defendant.
3. That Plaintiff failed to allege malice or any suffering as to any statements made.
4. On its face, the pleading has failed to state a claim upon which relief can be granted.
5. Additionally, at the hearing, Defendant argued that the Little River Casino Resort is not a person and therefore cannot be sued under the Protection Against Defamation Act.

The Plaintiff did not file a written response, but did argue at the hearing that the pleadings are sufficient and that the Casino is a person for purposes of the Act, and provided case law to the court.¹ He also argued that Defendant could not bring this motion as it was in default and orally moved for an entry of default, arguing that the defendant's Answer was filed late and that the timing of this Motion hearing was improper. The Court ruled in the hearing that the motion was properly before it and continued with the hearing.

A Motion for Summary Disposition based on failure to state a claim upon which relief can be granted, which tests the legal sufficiency of the pleadings. In ruling on a motion for summary disposition under Rule 4.116(c)(8) the Court considers only the pleadings.

However, before that Court addresses the sufficiency of the pleadings, it will first deal with the procedural matters.

1. Default.

LRCR 4.603(b) states as follows:

(B) Default Judgment.

(1) Notice of Request for Judgment.

(a) A party seeking a default judgment must give notice of the request for judgment to the defaulted party

(i) if the party against whom the judgment is sought has appeared in the action;

(ii) if the request for entry of judgment seeks relief different in kind from, or greater in amount than, that stated in the pleadings; or

(iii) if the pleadings do not state a specific amount demanded.

(b) The notice required by this subrule must be served at least 7 days before entry of the requested judgment.

(c) If the defaulted party has appeared, the notice may be given in the manner provided by Rule 4.107. If the defaulted party has not appeared, the notice may be served by personal service, by ordinary first-class mail at the defaulted party's last known address or the place of service, or as otherwise directed by the court.

...

At (B)(2), (2) Default Judgment Entered by Clerk. On request of the plaintiff supported by an affidavit as to the amount due...

At (B)(3) Default Judgment Entered by Court. In all other cases the party entitled to a judgment by default must apply to the court for the judgment.

¹ As this defense was not in written form in the Motion for Summary Disposition, the Plaintiff was given additional time to provide the case law to the Court.

- (a) A judgment by default may not be entered against a minor or an incompetent person unless the person is represented in the action by a conservator, guardian ad litem, or other representative.
- (b) If, in order for the court to enter judgment or to carry it into effect, it is necessary to
 - (i) take an account,
 - (ii) determine the amount of damages,
 - (iii) establish the truth of an allegation by evidence, or
 - (iv) investigate any other matter,the court may conduct hearings or order references it deems necessary and proper.

This must be done in writing. The Court does not have a written request for entry of default, and thus proceeded with the Motion for Summary Disposition, finding it is properly before the Court.

2. Timing.

The Court has reviewed the Register of Actions and the Court Rules regarding timing of hearings on Motions for Summary Disposition. The Court Rules state that a hearing on a Motion for Summary Disposition cannot be heard until 28 days after service.

Defendant filed a Motion for Summary Disposition on April 8, 2022, and the Court set the hearing date for May 13, 2022.

The Defendant filed an Amended Motion for Summary Disposition, which the Court received via US Mail on April 28, 2022. The Proof of Service indicated that it was mailed to the Court and to Mr. Crampton on April 26, 2022.

A scheduling conference was held on April 28, 2022, in which the Motion for Summary Disposition hearing was rescheduled to May 26, 2022. All parties attended the scheduling conference.

A Scheduling Order was issued on April 29, 2022 and sent via email to the parties along with a notice of the amended Motion hearing date for the Motion for Summary Disposition.

At the hearing held May 26, Plaintiff claims that he did not receive the Amended Motion for Summary Disposition until May 3, 2022. Plaintiff also argues that, because he and the Defendant's attorney signed the electronic service consent forms, that is the only way that he should be served. He did not mention how he received the Amended Motion.

The Service Consent Form does not mandate that this is the only acceptable form of service. LRCR 4.107 (C)(3) states that service by mail is complete at the time of mailing, which was April 26, 2022. The Motion hearing was held 30 days later on May

26, 2022. Additionally, Plaintiff had plenty of time to object to the hearing date, as it was discussed on April 28, 2022 at the Scheduling Conference and notice of the hearing date was sent on April 29, 2022. Responses to Motions for Summary Disposition are due 21 days after service, LRCR 4.107 (3). The Plaintiff did not file an answer, nor did he file an objection to the hearing date within the 21 days, counting either from April 26, 2022, or May 3, 2022. The Court finds that the matter is properly in front of the court.

The Motion for Summary Disposition proceeded. In reviewing the pleadings, there is nothing in the written pleadings that addresses whether or not the Casino is a person for purposes of liability under this act. While the parties did argue their positions at the hearing, the Court will not address this at this time as 4.116(G)(5) states that the Court may only look at the pleadings in analyzing a motion brought under 4.116(C)(8).

Turning to the arguments in the pleadings, the Defendant argues that Plaintiff failed to specifically identify any untrue statements that are harmful to his esteem, respect, or goodwill, and that Plaintiff has failed to identify the speaker of any defamatory statements and any potential connection to the Defendant. The Plaintiff's Amended Complaint states that Ogema Romanelli accused Plaintiff of election fraud, and that the Casino "in associating with or participating in the defamatory statements made on its property and not denouncing or correcting the statements it possessed constructive knowledge were untrue, has added weight by endorsing those statements that would not exist otherwise." The Defendant argues that the Casino was simply the forum/property that the meeting was held at. The Court agrees with the Defendant. Statements made by any person, group, association, or otherwise that holds an event at the Casino cannot be attributed to the Casino. Additionally, the Casino is under no obligation to fact check every statement made to ensure its accuracy.

This issue of malice is not an element when a public official is not a party to the case.

Plaintiff has failed to make a prima facie showing of the elements to continue with the case.

THEREFORE, Defendant's Motion for Summary Disposition is GRANTED. This case is dismissed.

Dated: June 6, 2022


Hon. Angela Sherigan



CERTIFICATION OF SERVICE

I certify a copy of this document was served via USPS mail and via email for service to the parties and/or their attorneys of record on this day.

6-6-22
Date

Spring Medacco
Court Clerk/Court Administrator

Johnson v. LRBOI Election Board & V. McDonnell

22-093-GC

Summary: This case was heard by Judge Angela Sherigan. Plaintiff had withdrawn his candidacy from the special election for outlying representative prior to the deadline to withdraw but was informed that the ballots had already been printed with his name on them. Plaintiff then filed a complaint against Defendants, alleging that there would be harm to the special election and other candidates because the Election Board had printed the ballots for the election prior to the deadline to withdraw as a candidate from the election.

Decision and Order: A hearing on the matter was held on May 12, 2022 in which the parties came to a resolution, which included the ballots being reprinted and sent out one business day later. A copy of the reprinted ballot was presented to the Court and the Court, being satisfied that the terms of the resolution had been met, dismissed the case.

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

3031 Domres Road · Manistee, MI 49660
(231) 398-3406

VIRGIL J. JOHNSON,

Plaintiff,

Case Number: 22-093-GC

Hon. Angela Sherigan

v.

LRBOI ELECTION BOARD and
VALERIE MCDONNELL, in her official capacity
as LRBOI Election Board Chair,

Defendants.

VIRGIL J. JOHNSON
Plaintiff
5146 River Road
Manistee, MI 49660

LRBOI ELECTION BOARD
Defendant
2608 Government Center Drive
Manistee, MI 49660

VALERIE MCDONNELL
Defendant
2608 Government Center Drive
Manistee, MI 49660

ORDER AFTER HEARING ON REQUEST FOR STAY

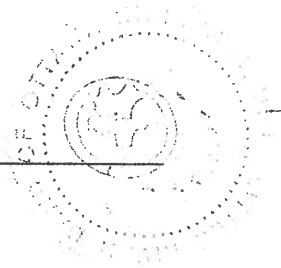
A hearing was held in this matter in which all parties and/or their attorneys were present. The parties came to a resolution, and the Court being satisfied that the terms have been met, this matter is hereby DISMISSED.

This resolves all pending claims, and the file is closed.

5/24/2022

Date

DocuSigned by:
Angela Sherigan
B3F0887F77BE48A...
Honorable Angela Sherigan



CERTIFICATION OF SERVICE

I certify that a copy of this order was mailed to all parties and/or their attorneys via email on the below date.

5-24-22

Date

Spring Medacco
Court Clerk/Administrator