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Janice A. Stark
ASSISTANT

IN THE
HO-CHUNK NATION TRIAL COURT

Rita A. Gardner,
Plaintiff,

v.

Case No.: CV 10-47

Tracy Littlejohn, Ronald Anwash, Jeremy
P. Rockman, Nettie J. Kingsley,
Defendants.

ORDER
(Dismissal for Lack of Subject Matter Jurisdiction)

INTRODUCTION

The Court must determine whether to proceed to the merits of the instant case. The plaintiff alleges that she was defamed by the defendants. The Court, through consultation with the Traditional Court, previously recognized this cause of action as an aspect of Ho-Chunk tradition and culture. *Order (Ruling on Dispositive Motions)*, CV 10-47 (HCN Tr. Ct., Feb. 2, 2011) at 11. However, the Ho-Chunk Nation Supreme Court subsequently struck down the process by which the Court consulted the Traditional Court as inconsistent with the requirements of due process. Accordingly, this jurisdiction lacks any source of law providing a cause of action for defamation, and must therefore dismiss the plaintiff's complaint for lack of subject matter jurisdiction.

PROCEDURAL HISTORY

The Court recounts the procedural history of the instant case in detail in a previous judgment. *Order (Determination on Remand)*, CV 10-17 (HCN Tr. Ct., Mar. 27, 2012) at 1-2. The Court subsequently then scheduled a *Traditional Court Inquiry*, wherein both parties could

1 submit certified questions and appear before the Traditional Court in the manner prescribed by
2 the Supreme Court. *Amended Scheduling Order*, CV 10-47 (HCN Tr. Ct., Nov. 5, 2012). The
3 Court then issued a series of orders respectfully requesting that the Traditional Court deliver
4 provide a declaration of custom and tradition or otherwise answer the questions posed to it. *See*
5 *Order (Requesting Traditional Court Decision)*, CV 10-47 (HCN Tr. Ct., Apr. 29, 2013); *Order*
6 *(Requesting Traditional Court Decision)*, CV 10-47 (HCN Tr. Ct., Sept. 12, 2013); and *Order*
7 *(Requesting Traditional Court Decision)*, CV 10-47 (HCN Tr. Ct., Sept. 5, 2014).
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10 **APPLICABLE LAW**

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12 **CONSTITUTION OF THE HO-CHUNK NATION**

13 **ARTICLE VII – JUDICIARY**

14 **Section 1. Composition of the Judiciary.**

15 There shall be a Supreme Court of the Ho-Chunk Nation, a Trial Court of the Ho-Chunk Nation,
16 such other lower courts of special jurisdiction as deemed necessary by the Legislature, and other
17 forums of special jurisdiction for traditional dispute resolution as deemed necessary by the
18 Legislature.

19 **Section 4. Powers of the Judiciary.**

20 The judicial power of the Ho-Chunk Nation shall be vested in the Judiciary. The Judiciary shall
21 have the power to interpret and apply the Constitution and laws of the Ho-Chunk Nation.

22 **Section 5. Jurisdiction of the Judiciary.**

23 (a) The Trial Court shall have original jurisdiction over all cases and controversies, both
24 criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and
25 traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its
26 officials and employees, shall be a party. Any such case or controversy arising within the
jurisdiction of the Ho-Chunk Nation shall be filed in Trial Court before it is filed in any
other court. This grant of jurisdiction by the General Council shall not be construed to be
a waiver of the Nation's sovereign immunity.

27 **HO-CHUNK NATION RULES OF CIVIL PROCEDURE**

28 **Rule 5. Notice of Service of Process.**

1
2 (A) Definitions.

3 2. Summons - The official notice to the party informing him/her that he/she is identified
4 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (*See*
5 *HCN R. Civ. P. 6*) and that a *Default Judgment* may be entered against them if they do not file an
6 *Answer* in the prescribed time. It shall also include the name and location of the Court, the case
number, and the names of the parties. The *Summons* shall be issued by the Clerk of Court and
shall be served with a copy of the filed *Complaint* attached.

7 (C) Methods of Service of Process.

8 1. Personal Service. The required papers are delivered to the party in person by the
9 bailiff, or when authorized by the Court, a law enforcement officer from any jurisdiction, or any
10 other person not a party to the action who is eighteen (18) years of age or older and of suitable
discretion.

11 3. After the first successful service of process, the Court and the parties will then perform
12 all written communications through regular mail at that address. Therefore, each party to an
13 action has an affirmative duty to notify the Court.

14 Rule 17. Computation of Time.

15 (A) When counting days to meet time limits under these Rules, computation begins on the day
16 after the filing. For example, if a *Complaint* is filed on the first day of a month and the *Answer* is
17 due in twenty (20) calendar days, then the date the *Answer* is due will be the twenty-first day of
the month. If the time limit identified in these rules is less than 15 HCN Rules of Civil Procedure
18 (12/17/11 revised) seven (7) calendar days, then Saturdays, Sundays and legal holidays are not
counted in the time limit. Legal Holidays are defined as those organized by the Ho-Chunk
19 Nation.

20 (B) If a time limit concludes on a weekend, legal holiday, or day when the Court is closed due to
inclement weather or other unforeseen circumstances, then the time limit falls on the next
21 working day. Computation of time originates with the actual Court filing date or Court file
stamped date of the document and not the date the notice or the document is received by the
22 party.

23 Rule 56. Dismissal of Action

24 (A) Voluntary Dismissal. A plaintiff may file a *Notice of Dismissal* any time prior to the filing of
25 an *Answer*. The *Complaint* will be dismissed without prejudice.

26 (B) Involuntary Dismissal. After an *Answer* has been filed, a party must file a *Motion to Dismiss*.
27 A *Motion to Dismiss* will be granted at the discretion of the Court. A *Motion to Dismiss* may be
28 granted for lack of jurisdiction; if there has been no order or other action in a case for six (6)
months; if a party substantially fails to comply with these rules; if a party substantially fails to

1 comply with an order of the Court; if a party fails to establish the right to relief following
2 presentation of all evidence up to and including trial; or, if the plaintiff so requests

3 (C) *Sua Sponte* Dismissal. The Court, on its own motion, may move to dismiss an action if there
4 has been no filing or other activity on the record for six (6) months, if a party substantially fails
5 to comply with these rules, or if a party substantially fails to comply with an order of the Court.
6 The Court shall give written *Notice* to all parties that the action will be dismissed after thirty (30)
calendar days unless good cause is shown in writing prior to the end of the thirty (30) day period.
No further notice is necessary for the Court to enter a dismissal.

7 Rule 57. Entry and Filing of Judgment.

8 All judgments must be signed by the presiding Judge. All signed judgments shall be deemed
9 complete and entered for all purposes after the signed judgment is filed with the Clerk. A copy of
10 the entered judgment shall be mailed to each party within two (2) calendar days of filing. The
11 time for taking an appeal shall begin running from the date the judgment is filed with the Clerk.
Interest on a money judgment shall accrue from the date the judgment is filed with the Clerk at a
12 set rate by the Legislature or at five percent (5%) per year if no rate is set.

13 Rule 58. Amendment to or Relief from Judgment or Order.

14 (A) Relief from Judgment. A *Motion to Amend* or for relief from judgment, including a request
15 for a new trial shall be made within ten (10) calendar days of the filing of judgment. The *Motion*
16 must be based on an error or irregularity that prevented a party from receiving a fair trial or a
substantial legal error that affected the outcome of the action.

17 (B) Motion for Reconsideration. Upon motion of the Court or by motion of a party made not
18 later than ten (10) calendar days after entry of judgment, the Court may amend its findings or
19 conclusions or make additional findings or conclusions, amending the judgment accordingly.
20 The motion may be made with a motion for a new trial. If the Court amends the judgment, the
21 time for initiating an appeal commences upon entry of the amended judgment. If the Court
22 denies a motion filed under this Rule, the time for initiating appeal from the judgment
23 commences when the Court denies the motion on the record or when an order denying the
motion is entered, whichever occurs first. If within thirty (30) days after the filing of such
motion, and the Court does not decide a motion under this Rule or the judge does not sign an
order denying the motion, the motion is considered denied. The time for initiating the appeal
from judgment commences in accordance with the *Rules of Appellate Procedure*.

24 (C) Motion to Modify. After the time period in which to file a *Motion to Amend* or a *Motion for*
25 *Reconsideration* has elapsed, a party may file a *Motion to Modify* with the Court. The *Motion*
26 must be based upon new information that has come to the party's attention that, if true, could
27 have the effect of altering or modifying the judgment. Upon such motion, the Court may modify
28 the judgment accordingly. If the Court modifies the judgment, the time for initiating an appeal
commences upon entry of the modified judgment. If the Court denies a motion filed under this
Rule, the time for initiating an appeal from the judgment commences when the Court denies the
motion on the record or when an order denying the motion is entered, whichever occurs first. If

1 within thirty (30) calendar days after the filing of such motion, and the Court does not decide the
2 motion or the judge does not sign an order denying the motion, the motion is considered denied.
3 The time for initiating an appeal from judgment commences in accordance with the *Rules of*
Appellate Procedure.

4 (D) Erratum Order or Re-issuance of Judgment. Clerical errors in a Court record, including the
5 *Judgment* or *Order*, may be corrected by the Court at any time.

6 (E) Grounds for Relief. The Court may grant relief from judgments or orders on motion of a
7 party made within a reasonable time for the following reasons: (1) newly discovered evidence
8 which could not reasonably have been discovered in time to request a new trial; (2) fraud,
9 misrepresentation or serious misconduct of another party to the action; (3) good cause if the
10 requesting party was not personally served in accordance with Rule 5(c)(1)(a)(i) or (ii), did not
11 have proper service and did not appear in the action; or (4) the judgment has been satisfied,
12 released, discharged or is without effect due to a judgment earlier in time.

11 Rule 61. Appeals.

12 Any final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme Court. The
13 *Appeal* must comply with the *Rules of Appellate Procedure*, specifically *Rules of Appellate*
14 *Procedure*, Rule 7, Right of Appeal. All subsequent actions of a final *Judgment* or Trial Court
15 *Order* must follow the *Rules of Appellate Procedure*.

16 **FINDINGS OF FACT**

17 1. The Court incorporates by reference *Findings of Fact 1-6* as enumerated in a previous
18 decision. *Order (Determination on Remand)*, CV 10-17 (HCN Tr. Ct., Mar. 27, 2012) at 3-4

19 2. The Court informed both the Traditional Court and the parties of its intent to dismiss this
20 case for lack of subject matter jurisdiction if the Traditional Court did not supply an answer to
21 the questions submitted by the parties on or before October 6, 2014. *Order (Requesting*
22 *Traditional Court Decision)*, CV 10-47 (HCN Tr. Ct., Sept. 5, 2014) at 2.

24 3. The Court has received no declarations or other correspondences from the Traditional
25 Court as of November 24, 2014.

1 **DECISION**

2 The Court discussed its lack of subject matter jurisdiction over defamation claims in a
3 previous judgment. *Order (Determination on Remand)*, CV 10-17 (HCN Tr. Ct., Mar. 27, 2012).

4 Specifically, the Court stated:
5

6 The Court relied on the existence of defamation under Ho-Chunk tradition and
7 custom as its source of subject matter jurisdiction. However, the procedures the
8 Court used to establish this subject matter jurisdiction clearly violate the parties'
9 due process rights under the rationale articulated by the Supreme Court.
10 Although the Supreme Court never addressed the issue of defamation, its mandate
11 on how the Court must certify questions of tradition and custom to the Traditional
12 Court is binding.

13 *Id.* at 6 (internal citations omitted).

14 The Supreme Court has determined that consultation with the Traditional Court “must be
15 done in open court on the record.” *Rita A. Gardner v. Tracy Littlejohn, et al.*, SU 11-02 (HCN S.
16 Ct., Oct. 5, 2011) at 5. Accordingly, to accept a finding of custom and tradition from the
17 Traditional Court, the Court requires a written decision, sworn testimony, or, at a minimum, an
18 uncontested oral pronouncement. Without such an evidentiary basis, the Court is not able to
19 recognize a cause of action based on custom and tradition.

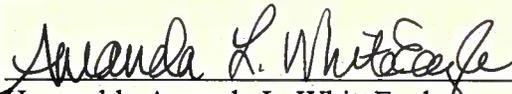
20 The Court notes that the parties agreed that no oral determination was made at the
21 November 13, 2012 *Traditional Court Inquiry. Status Hearing* (LPER, Feb. 7, 2013, 09:04:30
22 a.m., CST). The Court subsequently requested that the Traditional Court provide such a
23 determination. *See, e.g., Order (Requesting Traditional Court Decision)*, CV 10-47 (HCN Tr.
24 Ct., Apr. 29, 2013). However, the Traditional Court did not provide a written or otherwise on-
25 the-record decision as to the questions posed to it by the parties.

26 A cause of action for defamation is not established by statute or by the CONSTITUTION OF
27 THE HO-CHUNK NATION, and the previously established cause of action under Ho-Chunk custom
28

1 and tradition was extinguished by the Supreme Court's decision. Despite its repeated efforts, the
2 Court was not able to re-establish subject matter jurisdiction through the procedures required by
3 the Supreme Court. Accordingly, the Court has no source of subject matter jurisdiction in this
4 case. Without appropriate subject matter jurisdiction, the Court is unable to proceed. **BASED**
5 **UPON THE FOREGOING**, the Court hereby dismisses the *Complaint*.

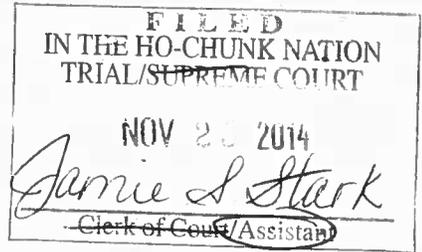
7 The parties retain the right to file a timely post judgment motion with this Court in
8 accordance with *HCN R. Civ. P. 58, Amendment to or Relief from Judgment or Order*.
9 Otherwise, "[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme
10 Court. The *Appeal* must comply with the *Rules of Appellate Procedure* [hereinafter *HCN R.*
11 *App. P.*], specifically *Rules of Appellate Procedure, Rule 7, Right of Appeal.*" *HCN R. Civ. P.*
12 *61.* The appellant "shall within sixty (60) calendar days after the day such judgment or order
13 was rendered, file with the Supreme Court Clerk, a *Notice of Appeal* from such judgment or
14 order, together with a filing fee as stated in the appendix or schedule of fees." *HCN R. App. P.*
15 *7(b)(1).* "All subsequent actions of a final *Judgment* or *Trial Court Order* must follow the [*HCN*
16 *R. App. P.*]." *HCN R. Civ. P. 61.*

19 **IT IS SO ORDERED** this 25th day of November 2014, by the Ho-Chunk Nation Trial
20 Court located in Black River Falls, Wisconsin within the sovereign lands of the Ho-Chunk
21 Nation.

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24 
25 Honorable Amanda L. WhiteEagle
26 Associate Trial Court Judge
27
28

Ho-Chunk Nation Court System
P.O. Box 70
Black River Falls, WI 54615
(715) 284-2722 or 800-434-4070





CERTIFICATE OF SERVICE

I, Jamie S. Stark, Assistant Clerk of the Ho-Chunk Nation Trial Court, do hereby certify that on the date set forth below, I served a true and correct copy of the **ORDER (Dismissal for Lack of Subject Matter Jurisdiction) in Case No. CV 10-47** upon all persons listed below:

By United States Postal Service:

William Gardner
P.O. Box 837
Black River Falls, WI 54615

Tracy L. Littlejohn
2741 Grand St.
La Crosse, WI 54603

Ronald Anwash
703 Monroe St.
Black River Falls, WI 54615

Jeremy P. Rockman
W10127 Levis Creek Rd.
Black River Falls, WI 54615

Nettie J. Kingsley
3240 Hemlock Trail C
Wisconsin Rapids, WI 54495

Rita Gardner
367 River St.
Black River Falls, WI 54615

By Personal Service:

Traditional Court

Dated: November 25, 2014

Jamie S. Stark
Jamie S. Stark, Assistant Clerk
Ho-Chunk Nation Trial Court

Cc: Staff Attorney