

OCT 16 2009

Margaret Falcon
Clerk of Court/Assistant

IN THE HO-CHUNK NATION SUPREME COURT

Joyce Warner

STATEMENT OF
AFFIRMATIVE DECISION

Appellant,

v.

**Ho-Chunk Nation; Ona Garvin, Director of
Gaming; James Webster, Department of
Business, individually and in the their
Official capacity**

Case No.: SU 09-02

Trial Ct.: CV 04-72

Appellee.

This case comes before the Ho-Chunk Nation Supreme Court on appeal of the Trial Court's *Order (Final Judgment)* in CV 04-72, dated January 26, 2009. Oral arguments were heard on June 20, 2009, by Chief Justice Mary Jo Hunter, Associate Justice Dennis Funmaker, and Associate Justice Joan Greendeer-Lee. The appellant appeared through her attorney, Timothy Harjo; appellee was represented by Attorney Alysia LaCounte of the HCN Department of Justice.

FACTS AND PROCEDURAL HISTORY

The appellant, Joyce Warner, is an enrolled member of the Ho-Chunk Nation. Ms Warner was formerly employed as the DeJope Bingo Executive Manager. *Order (Denying Plaintiff's Motion for Summary Judgment)*, CV 04-72 (Tr.Ct. Sept. 11, 2006) ("Trial Court Order"), p. 11, ¶ 2. Defendant Ona Garvin was formerly the Interim Director of Gaming within the Business Department, and Ms. Warnere's supervisor. *Id.* at 12, ¶ 3. Defendant James Webster was formerly the Executive Director of the Business Department. *Id.*

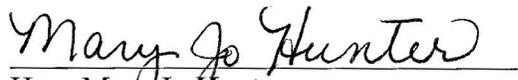
Ms. Warner was demoted from her position on May 23, 2004, in what her employer labeled a “non-disciplinary demotion”. *Id.* at 12, ¶ 4. She did not receive advance notice of her demotion. *Id.* Ms. Warner submitted a timely Level 1 grievance to her supervisor and to the Personnel Department on May 25, 2004. *Id.* at 12-13, ¶¶ 5-6. There was no response to Ms. Warner’s Level 1 grievance. *Id.* at 13, ¶ 7. Ms. Warner submitted a timely Level 2 grievance to Executive Director Webster on June 9, 2004. *Id.* at 13, ¶¶ 9-11. Mr. Webster provided an untimely response to this grievance. *Id.* at 14, ¶¶ 12-13.

Ms. Warner timely filed suit in the Trial Court on July 20, 2004. *Id.* at 14, ¶¶ 14-15. Ms. Warner and the defendants /appellees each filed motions for summary judgment with the Trial Court. *Defendants’ Motion for Summary Judgment*, CV 04-72 (Tr. Ct., Dec. 20, 2004); *Plaintiff’s Motion for Summary Judgment*, CV 04-72 (Tr. Ct., Nov. 23, 2005). The Trial Court granted the defendants’ motion for summary judgment, and denied Ms. Warner’s motion. *Trial Court Order (Denying Plaintiff’s Motion for Summary Judgment)* (Tr. Ct. Sept. 11, 2006).

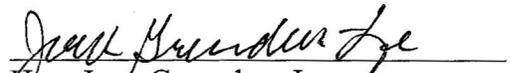
Ms. Warner timely filed a *Notice of Appeal* with this Court on November 13, 2006. This Court remanded to the Trail Court for further review. *Decision*, SU 06-05 (S. Ct. June 19, 2007). On remand the Trial Court attempted to address the issues as directed by this Court. *Order (Determination upon Remand)*, CV 04-72 (Tr. Ct., Aug. 15, 2008). The Trial Court then allowed the parties to submit briefs on several additional issues, and again dismissed Ms. Warner’s claims. *Order (Final Judgment)*, CV 04-72 (Tr. Ct., Jan. 26, 2009).

Ms. Warner filed a timely appeal to this Court on March 27, 2009. *Notice of Appeal from Final Judgment of Trial Court*, SU 09-02 (S. Ct., March 27, 2009). Ms. Warner timely filed an *Appellant's Brief in Support of Appeal* on April 27, 2009. The Appellees timely filed their *Response Brief* on May 27, 2009. *Oral Argument* was heard on June 20, 2009. For various reasons, the Court has not been able to issue a written *Decision* on this matter. However, the Court AFFIRMS the Trial Court's *Order (Final Judgment)* dated January 26, 2009. A full written *Decision* will be issued in the near future.

EGI HESKEKJENET. Dated this 16th day of October 2009.



Hon. Mary Jo Hunter
HCN Supreme Court Chief Justice



Hon. Joan Greendeer-Lee
HCN Supreme Court Associate Justice

Certificate of Service

I, Margaret A. Falcon, Assistant Clerk of Court of the Ho-Chunk Nation Tribal Court, do hereby certify that on the date set forth below, I served a true and correct copy of the Statement of Affirmative Decision in Case No. SU 09-02, upon all persons listed below:

By United States Postal Service:

**Attorney Tim Harjo, Esq.
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Los Angeles, CA 90025**

**Attorney Alysia LaCounte
HCN Dept. of Justice
W9814 Airport Road
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Dated: October 16, 2009



**Margaret A. Falcon, Assistant Clerk of Court
Ho-Chunk Nation Tribal Court**