

IN THE
HO-CHUNK NATION SUPREME COURT

FILED
IN THE HO-CHUNK NATION
TRIAL/SUPREME COURT

JAN 31 2005


Clerk of Court/Assistant

DANIEL M. BROWN,

Appellant,

v.

DENIAL ORDER

Case No. SU 04-09

JIM WEBSTER, Ho-Chunk Nation
Executive Director of Business,

Appellee.

This interlocutory appeal filed on December 7, 2004 is of a Trial Court *Decision* of November 8, 2004 in case CV 04-38, 39, 40, which denied a *Motion for Leave to Amend Complaint* as well as the defendant's *Motion to Dismiss*. The Appellee had filed a *Motion to Dismiss* on October 4, 2004. However, on the date the response to the *Motion to Dismiss* was due the Appellant filed a *Motion for Leave to Amend Complaint*, (based on the attempt to add the Ho-Chunk Nation as a party defendant) which was on the eve of trial scheduled for November 9, 2004.

The Trial Court denied the *Motion to Amend the Complaint*, but also denied the Defendant's *Motion to Dismiss*. The denial of the *Motion to Amend the Complaint* was on the basis that the Appellant failed to timely file a pleading on October 10, 2004. The Appellant actually filed his pleading on October 14, 2004. The appeal is an interlocutory appeal because the denial of the *Motion to Amend the Complaint* does not end the case. The appeal has actually delayed the proceeding in the case.

The HCN Supreme Court has previously stated that it disfavors piecemeal appeals in preference to hearing the entire case with a full record of the case. *Lowe and Miller v.*

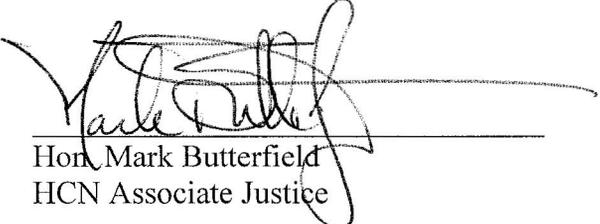
HCN Legislature Members, et. Al. (HCN S. Ct. Dec. 18, 2000). This case is one in which the Trial Court was properly managing the trial. This Court will not disturb the discretionary management of the conduct of a proceeding absent some manifest showing of prejudice to the appealing party.

Therefore, the Supreme Court finds that the denial of the *Motion to Amend the Complaint* is within the sound discretion of the Trial Court and is hereby affirmed. The Trial Court will rarely be reversed for adhering to sound principles of managing the trial process including setting deadlines, which all the parties are made aware of. The Trial Court is well within its right to deny an untimely motion, which is filed past the deadline for filing such motions.

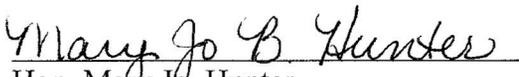
The decision of the Trial Court is hereby affirmed and the case is remanded to the Trial Court to reschedule the Trial and take this Case to its full conclusion.

IT IS SO ORDERED this 29th day of January 2005.

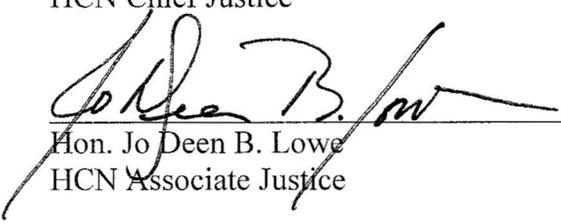
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Hon. Mark Butterfield
HCN Associate Justice



Hon. Mary Jo B. Hunter
HCN Chief Justice



Hon. Jo Deen B. Lowe
HCN Associate Justice

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CERTIFICATE OF SERVICE

I, Mary K. Endthoff, Clerk of the Ho-Chunk Nation Supreme Court, do ME
hereby certify that on the date set forth below, I served a true and correct copy of Clerk of Court/Assistant
the Denial Order in Case No. SU04-09, upon all persons listed below:

By United States Postal Service:

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HCN Supreme Court Associate Justice
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Hon. Mark Butterfield
HCN Supreme Court Associate Justice
1021 Ellen Drive
Tomah, WI 54660

Date: January 31, 2005

Mary K. Endthoff
Mary K. Endthoff, Clerk of Court
Ho-Chunk Nation Supreme Court