

**IN THE
HO-CHUNK NATION SUPREME COURT**

Dennis M. Funmaker, Sr.,

Appellee,

v.

DECISION

SU05-06 and SU05-07

Ho-Chunk Nation Election Board and
Mary Ellen Dumas,

Appellants,

and

Jo Deen B. Lowe,

Appellee.

This case came before John Wabaunsee, Kim Vele and Gerald Hill Justices *Pro Tempore* in this matter. Chief Justice Hunter, Associate Justice Butterfield and Associate Justice Lowe have recused themselves. The Justices *Pro Tempore* met by teleconference on June 6, 2005 and reviewed the briefs of the Appelles. The Appellant did not file a brief in accordance with the scheduling order of May 27, 2005.

STATEMENT OF THE CASE

This case is a challenge to the Trial Court's decision to reverse the decision of the HCN Election Board to certify Dennis Funmaker and JoDeen Lowe as candidates for the Associate Justice of the HCN Supreme Court in the June 7, 2005 General Election.

STANDARD OF REVIEW

Inasmuch the Supreme Court in this case is reviewing the trial court's interpretation of HCN Constitutional law, we review this case *de novo*. See, Hope Smith v. HCN, SU 03 -10 (December 8, 2003)

OPINION

Article VIII, Section 1 provides that General Elections shall be held on the first Tuesday in June of odd numbered years and that offices of the judiciary shall be filled at General Elections. The requirement that vacancies in the Supreme Court be filled at a

General Election is mandatory. Article VII, Section 10 of the HCN Constitution provides that Supreme Court Justices shall be selected by majority vote at a General Election "unless otherwise provided". To implement these constitutional provisions, the HCN Legislature has created an Election Code. According to HCN Election Ordinance §2.3 (c) there is provision for a primary and general elections. Primaries shall be held whenever there are three or more candidates. In this case the Election Board certified only two candidates for the Associate Justice position and still scheduled a primary election.

We find that the Election Board erred in holding a primary election. According to §2.3 (c) a Primary Election shall be held prior to a General Election where there is three or more candidates. The Election Board scheduled an unnecessary primary election, inasmuch as there were only two certified candidates. We decline to address the issue of a candidate receiving more than 50% of the votes case under Section 2.3 (2) because that section relates to a primary or run-off election which we find inapplicable.

The HCN Constitution is clear. Justices to the Supreme Court must be elected at a General Election. Despite an unnecessary primary election, the actions of the Election Board to certify Mr. Funmaker and Justice Lowe as candidates in the General Election was proper. We reverse the decision of the trial court, lift the stay of the trial court decision in the May 27, 2005 scheduling order of Justice Hunter and order the general election for the Associate Justice seat to proceed on June 7, 2005

EGI HESKEKJET.

Dated this 6th Day of June 2005.

Hon. John Wabaunsee, Justice *Pro Tempore*

HCN Supreme Court

FILED
IN THE HO-CHUNK NATION
~~TRIAL~~/SUPREME COURT

JUN 06 2005

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 Decision in Case No. SU05-06 and SU05-07, upon all persons listed below:

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Date: June 6, 2005


Mary K. Endthoff
HCN Supreme Court Clerk