FILED
IN THE HO-CHUNK NATION
TRIAL/SUPREME COURT
APR 01 2004
AMT
Clerk of Court/Assistant

IN THE

HO-CHUNK NATION SUPREME COURT

WAYNE S. HANRAHAN,

Appellant,

vs.

Rep. **SHARYN WHITEBABBIT** and **KATHYLEEN WHITERABBIT**,

Appellees,

ORDER
SU 04-03

Case No. CV 03-54

WAYNE S. HANRAHAN,

Appellant,

v.

RON ANWASH and **LARRY GARVIN**,

Appellees,

Case No. CV 03-57

Ho-Chunk Nation Supreme Court
P.O. Box 70
Black River Falls, 54615

This case comes before the Ho-Chunk Nation Supreme Court on appeal of the Trial Court's *Order (Regarding Motions of Defendants)*[1] in CV 03-54 and CV 03-57 dated February 12, 2004. The request for an interlocutory appeal is an extraordinary case in which the appellant is faced with the burden of showing this higher court that it has been somehow materially prejudiced and only the immediate remedy of an immediate appeal will prevent further harm. As such the case was viewed preliminarily by conference call by the full court on March 11, 2004, to decide in light of the filings whether an immediate appeal should be allowed. This case was

[1] It would have been useful to have the *Motion of the Defendants* separately set out so that this Court would have a better idea of what Motions were considered in the *Order*, however, that is not required.

heard by Chief Justice Mary Jo Hunter, Associate Justice Mark Butterfield and Associate Justice JoDeen B. Lowe, Chief Justice Hunter presiding.

STATEMENT OF THE CASE

This matter came before the Supreme Court via a *Notice of Appeal* filed February 23, 2004 seeking permission to file an appeal for a non-final *Order* of the Trial Court rendered February 12, 2004. Pursuant to the terms of *HCN R. App. P. 7.5* an appellant seeking an interlocutory appeal has ten days in which to file. The appellant in this case is the plaintiff, Wayne S. Hanrahan in both cases. No filing was made in opposition to the appeal though that is permissive and not required.

The *Order* appealed from consolidates two cases into one for ease of administration, a *Motion for Sanctions* was denied, a *Motion extending discovery* and a *Motion Requiring Plaintiff to Submit to a Deposition* were both granted. Thus, based solely on the slim filings by the appellant, this case appears to be in a post *Scheduling Order* but pre-Trial posture.

APPLICABLE LAW

HCN Rules of Appellate Procedure

Rule 7.5 Appeal by Permission

> An appeal from an interlocutory order may be sought by filing a petition for permission to appeal with the clerk of court within ten (10) calendar days after the entry of such order with proof of service on all other parties to the action. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the trial court; a statement of the question itself; and a statement of the reasons why substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance

> the termination of the litigation. The petition shall include or have annexed a copy of the order from which appeal is sought and of any findings of fact, conclusions of law and opinion relating thereto. Within ten (10) calendar days after service of the petition an adverse party may file an answer to opposition.

DECISION

In considering this case, this Court must consider if it was timely filed. The matter of timing in interlocutory appeals is governed by *HCN R. App. P. 7.5.* All such appeals must be filed within ten days. This is shorter than the time period allowed for appeals of right governed by *HCN R. App. P. 7* because of the need not to slow down the order procedure in the Trial Court. Here the *Order* below in the Trial Court was rendered February 12, 2004. The appeal was filed February 23, 2004, which not counting the day of issue makes it filed on the tenth day. The appeal is therefore timely filed.

As to substance, this Court prefers to review cases after the Trial Court fully considered and deliberated on the facts after due process of notice and the opportunity for a hearing. *See Ho-Chunk Nation v. Bank of America*, SU 03-06 (HCN S. Ct. July 10, 2003) *citing with approval Margaret G. Garvin v. Donald Greengrass and Margaret G. Garvin v. Ho-Chunk Nation, and Donald Greengrass in his official and individual capacity, and Evans Littlegeorge in his individual capacity*, SU 01-04 (HCN S. Ct., April 05, 2001), for the proposition that it prefers to accept appeals after the Trial Court has successfully considered and disposed of all of the issues based on the facts of the case. Like the Court in the *Garvin* case, this Court favors the complete development of the record rather than dealing with a case on a piecemeal basis.[1]

Interlocutory appeals are unusual cases by their very nature. The case has not been heard in its entirety and the Trial Court has not rendered full judgment after consideration of all the

facts. As such, a reviewing Court such as ourselves is ordinarily not willing to step in and consider claims of error by the Trial Court prior to giving the lower court the full amount of time and consideration to correct any errors perceived by the parties. This allows the Trial Court to justify its holdings by the deliberate and careful consideration of the law to the facts of the case. Here, it is clear that discovery had not even been completed and therefore most of the facts are not even known to the parties.

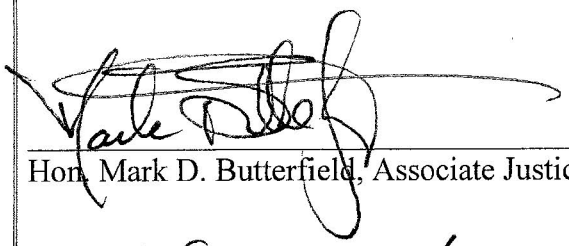
In fact, the Trial Court by its *Order*, which is appealed from, extended discovery in this matter. The appellant, Mr. Hanrahan failed to explain how that materially prejudiced the presentation of his case prior to Trial. Indeed, it hardly seems likely that he would want this Court to consider overturning the denial of requested sanctions as that was in his favor. In general, the burden of persuading this Court to consider that an error occurred in the Trial Court below is upon the appellant. The applicable rule requires that a petition seeking review "contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the trial court; a statement of the question itself; and a statement of the reasons why substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation." *HCN R. App. P.* 7.5.

A brief review of the filings of the appellant demonstrates that the appellant did not meet this portion of *HCN R. App. P.* 7.5. The facts of the case as to how the ruling of the Trial Court materially harmed the appellant is completely absent. Nor is there any statement why there exists a substantial basis for a difference of opinion on the question of controlling law or more importantly why an immediate appeal may materially advance the termination of the underlying litigation.

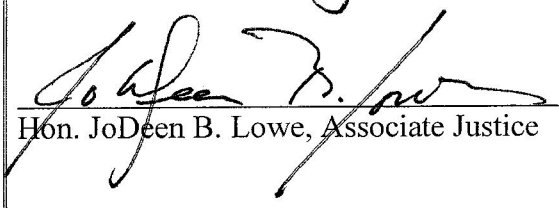
CONCLUSION

Having failed to meet the basic requirements of *HCN R. App. P. 7.5*, this Court hereby dismisses this case as failing to meet the minimal requirements for an interlocutory appeal. This case must be and hereby is dismissed without prejudice for the appellant to raise any issue in an appeal as of right pursuant to *HCN R. App. P. 7(a).*

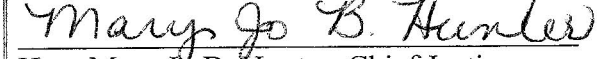
EGI HESKEJE´ Dated this 1st day of April 2004.



Hon. Mark D. Butterfield, Associate Justice



Hon. JoDeen B. Lowe, Associate Justice



Hon. Mary Jo B. Hunter, Chief Justice
Ho-Chunk Nation Supreme Court