

IN THE
HO-CHUNK NATION SUPREME COURT

FILED
IN THE HO-CHUNK NATION
TRIAL/SUPREME COURT
DEC 20 2004
JTE
Clerk of Court/Assistant

KENNETH LEE TWIN,

Appellant,

v.

ORDER DENYING APPEAL

DOUGLAS GREENGRASS,
TONI MCDONALD,
FRANCES DECORAH,
GEORGE LEWIS,
Ho-Chunk Nation, and
Ho-Chunk Nation Department of Personnel,

Case No. SU04-08

Appellees.

CASE SUMMARY

On November 19, 2004, Kenneth Twin, by his legal counsel Mark Goodman, filed a *Notice of Appeal* from the decision of the Trial Court entered October 22, 2004. Counsel provided the following as the statement of the grounds for appeal: "Plaintiff-Appellant asserts the Trial Court erred in its application of the Constitution of the Ho-Chunk Nation in failing to grant a *Writ of Mandamus* to enforce a duly and properly adopted Resolution of the 2003 General Council." Mr. Goodman failed to include a copy of the *Order or Judgment* being appealed, and on November 23, 2004 the Supreme Court Clerk sent a *Notice of Deficiency* to Attorney Goodman. On November 29, 2004, the Supreme Court received four copies of the *Final Judgment* rendered by the Honorable William Bossman in CV 04-24. The Court had not yet determined whether the Appeal would be accepted, but noted that the November 29, 2004 materials also included the

Brief & Addendum of Appellant from Appellant's attorney. Likewise, prior to making a decision as to whether the appeal would be accepted, this Court received the *Appellee's Response Brief* on December 08, 2004. This matter came on for review by the full Court on December 13, 2004.

APPEAL

The Court reviewed the *Notice of Appeal*. The Court is denying the Appellant's request for appeal. The basis for the decision to deny this appeal is based upon this Court's review process for appeals. First, the Court looks to whether all of the procedural steps have been addressed. The Supreme Court Clerk has a checklist to determine if the appeal was timely filed. In this case, the matter was timely. The Trial Court decision was rendered on October 22, 2004 and the Notice of Appeal, was filed on November 19, 2004.

Next, the Clerk determines if a *Notice of Appeal* has been filed as required by *HCN Rules of Appellate Procedure, Rule 10 (a)*. In addition, a party filing an appeal is requested to provide a copy of the *Order or Judgment* being appealed to insure that the correct dates are used. In this case, that requirement was not met. The Clerk also determines if the filing fee has been paid or a Motion for Fee Waiver has been filed. Here, the filing fee had been submitted with the *Notice of Appeal*. Additionally, the Clerk ascertains if a *Certificate of Service or Proof of Service* has been filed by the appealing party. Here that requirement was met. If any of these procedural requirements are not met, the Clerk sends a *Deficiency Notice* to the party that allows for the defects to be cured.

In this case, the Appellant failed to provide the copy of the *Order* of the Trial Court. The appeal defects were cured by the Appellant on November 29, 2004. The Supreme Court then proceeded to the second step of the appeal process. The Court looked at the content of the appeal request to determine if substantive legal issues had been raised by the appealing party. In this portion of the Court's review, the "short statement of the reason or grounds for the appeal" is reviewed. *See HCN Rules of Appellate Procedure, Rule 10 (b)*. Since the Court is not able to make findings of fact, the Court reviews the statement for issues which would either require an interpretation of the Constitution or laws of the Ho-Chunk Nation, or would require an assessment of law. *See HO-CHUNK NATION CONSTITUTION, Art. VII, Sec. 7(A)*.

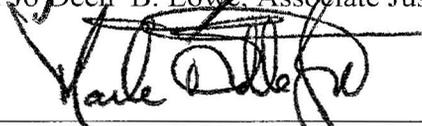
The Court reviewed the statement of appeal provided by Mr. Goodman. His statement is vague and fails to state a claim upon which relief can be granted. It is not enough to merely allege that the Trial Court has erred in its application of the HCN Constitution. Parties are advised that a well drafted statement of the grounds for an appeal should reference the applicable specific sections of the laws, and the specific manner in which those laws are alleged to have been improperly applied to the facts. The brevity of the statement included implies that there is a question as to the facts and asserts additional facts. Unfortunately, this Court is not allowed to make findings of fact. The Trial Court is the arena for the determination of factual issues. Nor, does the Appellant assert with any meaningful specificity that the Trial Court judge committed any errors in finding the facts. This Court is not able to accept the appeal based upon the statement of appeal.

The appeal is denied. Egi Heskekjet.

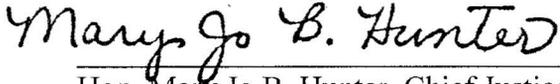
Dated this 22nd day of December 2004.



Hon. Jo Deen B. Lowe, Associate Justice



Hon. Mark Butterfield, Associate Justice



Hon. Mary Jo B. Hunter, Chief Justice

CERTIFICATE OF SERVICE

I, Mary K. Endthoff, Clerk of the Ho-Chunk Nation Supreme Court, do hereby certify that on the date set forth below, I served a true and correct copy of the Order Denying Appeal in Case No. SU04-08, upon all persons listed below:

By United States Postal Service:

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Attorney Wendi A. Huling
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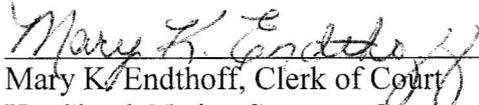
Kenneth Lee Twin
N7015 Iron Road
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Hon. Mary Jo B. Hunter
HCN Supreme Court Chief Justice
4 Linder Court
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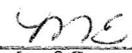
Hon. Jo Deen B. Lowe
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N5710 Hwy 12-16
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Hon. Mark Butterfield
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Date: December 29, 2004



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

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