

AUG 20 2004

NR

IN THE  
HO-CHUNK NATION SUPREME COURT

Aleksandra Cichowski,  
Appellant,

v.

Four Winds Insurance Agency, LLC,  
Appellee.

DECISION  
Case No. SU04-01

This matter came before the full Court for oral argument on June 12, 2004, with Associate Justice Jo Deen Lowe, Justice *Pro Tempore* John Wabaunsee and Chief Justice Mary Jo B. Hunter, presiding. The Appellant, Aleksandra Cichowski, appeared *pro se*. The Appellee, Four Winds Insurance Agency, LLC, was represented by Michael Murphy, Ho-Chunk Nation Department of Justice.

Oral Argument had previously been scheduled for May 8, 2004. Although an April 30, 2004 Order for Oral Argument had been sent to the HCN Department of Justice by interdepartmental mail, counsel for the Appellee did not appear. This Court issued a second Order for Oral Argument on May 8, 2004 that ordered the argument to be heard on June 12, 2004 and ordered that the costs of Appellant's mileage was to be paid by the Appellee.

The record on appeal consisted of the Appellant's *Notice of Appeal*, Appellant's *Petition to Supreme Court to Exercise for Original Jurisdiction*, Appellant's *Request for Original Jurisdiction* and a *Motion to Consolidate*. The Appellant also filed a *Motion for Substitution of Judge* as to Associate Justice Mark Butterfield. The Appellee's *Response Brief* was also before this Court. The Appellee also filed a *Notice and Motion to Strike Assessment of Mileage Costs*.

CASE SUMMARY

Appellant Cichowski appealed an HCN Trial Court *Order (Granting Summary Judgment)* dated December 15, 2003 on Case CV01-90.<sup>1</sup> The Trial Court had granted the Appellee's *Motion for Summary Judgment* pursuant to the HCN Rules of Civil Procedure. The lower court ruled that there was no genuine issue as to the material facts. The Trial Court held that Four Winds was entitled to judgment as a matter of law. The

<sup>1</sup> This Court notes that the Trial Court's ruling occurred on December 15, 2003 for a matter that was heard on December 3, 2001. The parties waited for over two years for a ruling on the matter. There is no explanation in the record why the trial court delayed in making a decision. This Court understands the frustration of the Appellant and is concerned about the delay in making a decision. In the future if the Trial Court is taking an unreasonable length of time to make a decision, a party may have to apply to this court for a supervisory writ.

matter was based upon the Appellant's Complaint alleging that she was improperly denied Worker's Compensation benefits stemming from an injury that she sustained during her employment at the Ho-Chunk Casino. Ms. Cichowski was appealing from the HCN Insurance Review Commission's denying her appeal.

While the matter as to her Worker's Compensation was pending, Ms. Cichowski also had an employment lawsuit pending before the Trial Court. That matter, *Cichowski v. Ho-Chunk Hotel and Convention Center*, CV 01-25 (HCN Tr. Ct.) was filed on February 23, 2001. On the date of this oral argument, CV 01-25 was still pending before the Trial Court despite the best efforts of the parties to have the matter completed. This is the action that Ms. Cichowski sought to consolidate with the present matter. Based on reasons stated below, the Court denied the *Motion to Consolidate* at oral argument.

## DECISION

### I. Motion to Strike Assessment of Mileage Costs.

The Court first addressed the Appellee's motion as to the assessment of the mileage costs based upon counsel's failure to appear on May 8, 2004. This Court granted the motion due to the service of the order being made by interdepartmental mail. This Court requires that our orders are to be served by either U.S. mail or personal service. Due to the turnover in the position of the HCN Supreme Court Clerk, service was made in an unacceptable manner. Therefore, the Court will pay for the costs of mileage of the Appellant on May 8, 2004.

### II. Motion to Consolidate and Petition to Supreme Court to Exercise Original Jurisdiction.

At oral argument, this Court denied the Appellant's *Motion to Consolidate* this matter and the pending matter in CV 01-25. This Court denied the motion for two reasons. First, the matter in CV 01-25 is not ripe for appeal as the matter has not been finally decided by the Trial Court.<sup>2</sup> This Court accepts matters for appeal after a final decision has been made on the matter. HCN Rules of Appellate Procedure, Rule 7, a. In the case of CV 01-25, a final judgment has not been entered from which an appeal may be taken.

Second, the facts and issues in CV 01-25 involve an employment dispute. Although the case arose from the same incident, the issues are of a different nature than the instant case. The two disputes are distinctly different in nature and parties and would not be amenable to consolidation if both matters were ripe for appeal.

Although the HCN Supreme Court would have original jurisdiction as the appellate court in both matters, this Court will not exercise jurisdiction in CV 01-25 until a final judgment has been entered and the matter is ripe for appeal.

---

<sup>2</sup> The parties indicated that they have been waiting for a decision in CV 01-25 since the end of 2003. Delay in making a decision denies the parties their right to due process under the HCN Constitution. While we decline to consolidate, we ask the Trial Court to decide CV 01-25 as quickly as possible. Since the matter is not final, this Court declined to assume jurisdiction over the case.

III. Whether the Trial Court erred in granting the summary judgment motion of Four Winds Insurance Agency, LLC.

This Court has reviewed the full record on appeal and heard the arguments of the parties. Based on the record before this Court, the lower court's decision is hereby affirmed.

Summary judgment is appropriate when there are no genuine issues of material facts, the matter can be resolved as a matter of law. This court must review the trial court record to determine if there are material issues of fact. If this Court determines there are no material issues of fact, then it will review the decision of the trial court as to whether the moving party is entitled to judgment as a matter of law.

The standard of review for this Court is based upon reviewing a question of law. Here, the question of law is whether or not the Trial Court ruled correctly when it granted the summary judgment motion in favor of the defendant below, Four Winds Insurance Agency, LLC. Questions of law are reviewed on a *de novo* basis. *Louella Kelty v. Jonette Pettibone, et al.*, SU99-02 (HCN Sup. Ct., Sept. 24, 1999) and *Robert A. Mudd v. Ho-Chunk Nation Legislature*, SU03-02 (HCN Sup. Ct., April 8, 2003).

This Court has reviewed the full record of the proceedings below. Upon a careful review of the record, this Court was unable to discern that there had been any genuine issue as to any material facts as required by the Ho-Chunk Nation Rules of Civil Procedure, Rule 55.

Nothing in the trial record, nor at oral argument was presented which permits this Court to reach any determination other than that the Trial Court correctly held that Ms. Cichowski's anxiety attacks as a matter of law did not meet the definition of a bodily injury as defined by the requirements for worker's compensation. Although the medical record produced by Ms. Cichowski indicates that she may have suffered anxiety due to the environment at work, this Court cannot overturn the Trial Court's Finding. The fact remains that worker's compensation benefits are not available for such a condition. The anxiety attacks that she complained of simply do not meet the definition that is necessary to obtain worker's compensation benefits. The Trial Court did not err in granting summary judgment. The order is affirmed.

EGI HESKEKJET. Dated this 20<sup>th</sup> day of August 2004.

Per Curiam.

*Mary Jo B. Hunter*

---

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