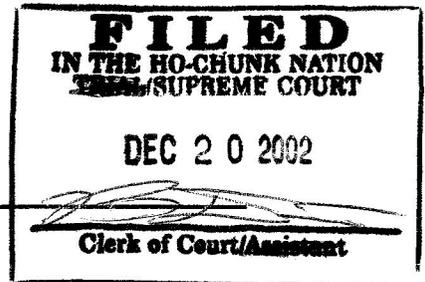


IN THE  
HO-CHUNK NATION SUPREME COURT

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In the Interest of Minor Child:  
P.S., dob 4/10/87  
By Pearl Lightstorming,

Appellant,

v.

**ORDER DENYING APPEAL**  
Case No. SU02-07

HCN Office of Tribal Enrollment,

Appellee.

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**CASE SUMMARY**

On October 16, 2002, Pearl Lightstorming filed a *Notice of Appeal* and an *Affidavit and Order to Waive Fees and Costs*. Ms. Lightstorming indicated that she would need an "extra 2 weeks" to "get this court business done". Two days later, the HCN Supreme Court Clerk resigned her position. Ms. Lightstorming's documents were not provided to the other clerks nor to the HCN Supreme Court. On or about November 26, 2002, Ms. Tari Pettibone was hired as an LTE in the HCN Supreme Court Clerk position. Ms. Pettibone found the documents and notified the Chief Justice. In addition, Ms. Pettibone sent a *Deficiency Notice* to Ms. Lightstorming that informed her that her appeal was not complete as she was missing a copy of the trial court order and a certificate of service. The *Deficiency Notice* informed Ms. Lightstorming that she had until December 4, 2002 to cure the defects.

On or about December 2, 2002, Ms. Lightstorming filed a *More Definite Statement on Notice of Appeal, Notice of Appeal, a Certificate of Service* and a copy of the Trial Court's Order (*Denying Petition*) dated September 20, 2002.

On December 7, 2002, the full Court reviewed the file.<sup>1</sup> The Court addressed the requests of Ms. Lightstorming as follows:

#### **Request for More Time**

Ms. Lightstorming had requested an additional 2 weeks to complete her appeal. She made that request on October 16<sup>th</sup>. Due to the vacancy in the HCN Supreme Court Clerk's position, she inadvertently received more time. Since she was allowed well over a month to proceed, the Court found the request to be moot.

#### **Waiver of Fees**

The Court reviewed Ms. Lightstorming's request for waiver of the filing fee on appeal. Upon review of her *Affidavit*, the Court granted her request for waiver of the filing fee.

#### **Appeal**

The Court reviewed Ms. Lightstorming's *Notice of Appeal* and her *More Definite Statement of Notice of Appeal*. The Court is denying her request. The basis for the decision to deny her 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 Court is considering this appeal to be timely since the tardiness of the deficiency request

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<sup>1</sup> On December 6, 2002, a letter from Leslie Parker Cohan of the HCN Department of Justice was filed along with a Certificate of Service. This Court did not consider a letter to be an appropriate pleading. The letter requested this Court to "not accept the Plaintiff's *Notice of Appeal*." Since the request should have been a formal motion to the Court, this Court will not accept a letter from a practicing attorney. Rather, pleadings should be filed in accordance with the HCN Rules of Civil Procedure.

was not due to actions by the *pro se* petitioner, but rather due to administrative issues within the Court. However, timeliness is not the sole factor that this Court must consider.

The Supreme Court 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. The Clerk also determines if the filing fee has been paid or a *Motion for Fee Waiver* has been filed. In addition, the Clerk ascertains if a *Certificate of Service or Proof of Service* has been filed by the appealing party. If these procedural requirements are not met, the Clerk sends a *Deficiency Notice* to the party that allows for the defects to be cured within a certain period of time.

In this case, a delay occurred which was not the fault of Ms. Lightstorming. The record indicates that she timely responded to the *Deficiency Notice* when she received it. The appeal defects were cured and the Court went on to the second step of the appeal process. The Court reviewed the *Notice of Appeal* and the *More Definite Statement on Notice to Appeal* 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 that would either require an interpretation of the Constitution or laws of the Ho-Chunk Nation, or would require an assessment of law. See HCN CONST., Art. VII, Sec. 7(a).

The record in this matter does not offer the Court a basis to proceed with the appeal. The purpose of an appeal is to provide redress to parties who have demonstrated

a substantive legal basis for their claim. Such a basis does not appear in this instance. The record reflects that the Appellant seeks a review of the same facts presented at the trial court. It would not be sound policy for this Court to permit such an appeal to proceed. Appellate dockets would be overwhelming if the public were permitted to utilize the Supreme Court merely as another forum for review of the same facts presented to the Trial Court.

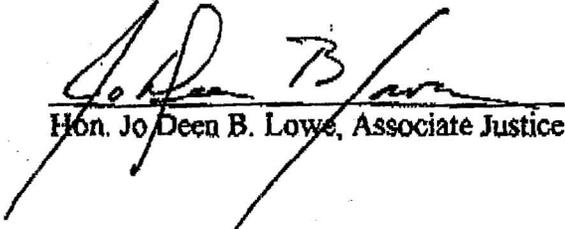
In the Ho-Chunk culture, it is important for each member of our community to be heard. This Court recognizes the importance of providing access to all members of the Ho-Chunk community. Likewise, persons with varying degrees of experience with the legal system will have occasion to conduct business with the Court. However, this Court must be mindful of its responsibilities.

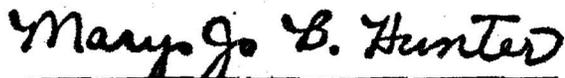
It is the responsibility of this Court to interpret the Constitution and laws of the Ho-Chunk Nation. All litigants, including those who choose to proceed with their own litigation, have the duty to determine that there is truly a justiciable issue to present to the Court on appeal.

The Court reviewed the statement provided by Ms. Lightstorming. Her statement asserts several questions 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 Ms. Lightstorming assert that the trial court judge committed any errors in finding the facts. The Appellant has not presented this Court with issues of a substantive legal nature; therefore, an appellate review is not proper for this Court's review. The appeal is denied.

Egi Heskekjet.

Dated this 19<sup>th</sup> day of December 2002.

  
Hon. Jo Deen B. Lowe, Associate Justice

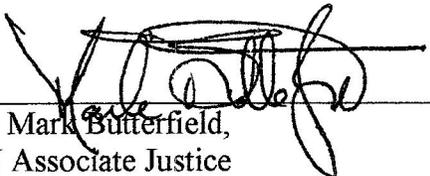
  
Hon. Mary Jo B. Hunter, Chief Justice

**Concurrence:**

I write separately to emphasize my reasons for not hearing this appeal. As the majority has stated, the Supreme Court does not have the ability to make findings of fact. When a person appealing a Trial Court *Judgment* or *Order* wants to appeal a decision against them, they have two basic ways. The first is to claim that the Trial Court made an error in the findings of fact, failed to include critical facts, ignored important facts or otherwise committed an error that the Supreme Court can correct. The second is to claim that the Trial Court misinterpreted the law, Constitution or the application of a certain custom or tradition.

In the case of claimed errors of fact, this Court can examine the record for the claim of errors of fact and reverse and remand if the findings of fact were clearly erroneous. In the case of an error of law, this Court exercises *de novo* review of the Trial Court's interpretation of law. Looking at these basic functions in this case leads me to the conclusion that while the appellant disagrees with the conclusion of the Trial Court, she failed to clearly explain how the Trial Court committed any error, either factual or

legal that this Court is capable of recognizing and correcting. It is not the function of the Supreme Court to revisit cases decided by the Trial Court just because one of the litigants does not like the outcome. The dissatisfied litigant must at least claim that the Trial Court committed a recognizable legal factual or legal error. Once the litigant has made that claim in its *Notice of Appeal*, they are then given the opportunity to demonstrate that error in a more complete *Memorandum* or *Brief* in support of their appeal in accordance with *HCN R. of App. P. 11*. That was not done in this case and therefore I concur that this appeal must be denied.



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Hon. Mark Butterfield,  
HCN Associate Justice

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

DEC 20 2002

  
Clerk of Court/Assistant

CERTIFICATE OF SERVICE

I, Bryan Dietzler, 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 file in Case No. SU- 02-07 (CV 02-44) By the United States Postal Service, upon all person listed below:

Pearl Lightstorming  
N974 C Dyer St.  
Wisconsin Dells, WI 53965

Indian Law Reporter  
319 McArthur Blvd.  
Oakland, CA 94610

Ms. Leslie Parker Cohan  
Department of Justice  
P.O. Box 667  
Black River Falls, WI 54615

Ms. Rebecca Tavares  
HCN Trial Court Law Clerk  
(Hand Delivery)  
P.O. Box 70  
Black River Falls, WI 54615

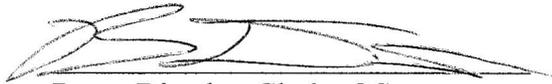
HCN Trial Court (Hand Delivery)  
Hon. William Bossman  
P.O. Box 70  
Black River Falls, WI 54615

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

Hon. Mary Jo Brooks Hunter  
HCN Supreme Court Chief Justice  
4 Linder Court N.  
St. Paul, MN 55106

Hon. JoDeen B. Lowe  
HCN Supreme Court Justice  
N5710 Hwy 12-16  
New Lisbon, WI 53950

Date: December 20, 2002

  
Bryan Dietzler, Clerk of Court  
Ho-Chunk Nation Supreme Court