

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

FEB 06 2001

T. Peetibone
Clerk of Court/Assistant

IN THE
HO-CHUNK NATION SUPREME COURT

Joelene Smith,
Appellee,

v.

Scott Beard, Department of Education,
and the Ho-Chunk Nation,
Appellants.

DECISION
Case No. SU00-14

Heard before Associate Justice Debra C. Greengrass, Associate Justice Rita A. Cleveland and Chief Justice Mary Jo B. Hunter, presiding.

This matter involves an employment dispute between Ms. Smith and the Ho-Chunk Nation Department of Education. The case has been before the HCN Supreme Court previously.¹ The cases had been remanded to the HCN Trial Court for decisions on factual issues. The HCN Trial Court had issued a Judgment on August 10, 2000 on the issue of whether or not the Appellant Smith was entitled to Administrative Leave with Pay.² The Appellant disagreed with the ruling of the Trial Court and sought a Motion for Reconsideration at the trial court level. On September 6, 2000, the Trial Judge issued an order titled Motion for Reconsideration (Denied) which is the basis for this appeal.

On October 6, 2000, the Appellant Smith filed her Notice of Appeal on both the August 10, 2000 and September 6, 2000 Trial Court Orders. On October 16, 2000, this Court issued a Scheduling Order without having any response from the Appellees. On October 16, 2000, the Appellant filed her Brief in Support of Appellant's Petition for Appeal. On the same day, the Appellees filed their Notice and Motion Opposing Appeal.³ On October 20, 2000, the Appellees' Motion to Extend Filing Deadline was filed with the HCN Supreme Court. On October 23, 2000, the Court issued its Order Granting Extension of Filing Deadline. On October 26, 2000, the Appellees' Notice and Motion for Reconsideration was filed.

On November 6, 2000, the Appellees' Brief was filed. On November 13, 2000, this Court issued an Order for Oral Argument for Saturday, December 2, 2000. On November 16, 2000, the Appellant's

¹ See SU98-03 and SU98-04 (June 7, 1999) and SU99-09 (February 8, 2000).

² See CV96-94.

³ The documents were received in the afternoon of October 16th by the HCN Supreme Court Clerk. The Court's Scheduling Order had been served that same morning.

Reply Brief was filed. Oral Argument was heard on December 2, 2000.⁴ On December 29, 2000, this Court issued a Notice of Extension.

ARGUMENTS

I. WHETHER OR NOT THE TRIAL COURT JUDGE ERRED IN DENYING THE APPELLANT'S MOTION FOR RECONSIDERATION IN THE ORDER, MOTION FOR RECONSIDERATION (DENIED) DATED SEPTEMBER 6, 2000?

This Court has reviewed the trial court records and files. Upon review of the record, trial court's order is affirmed. The Order titled, Motion for Reconsideration (Denied), filed on September 6, 2000 did not constitute an error.

The Trial Judge was deciding whether or not the Appellant's (Plaintiff below) Motion for Reconsideration should be granted. To make the determination the trial court applied a test that had been previously adopted. That test was enunciated in Babcock v. Ho-Chunk Gaming Commission, CV95-08 (HCN Tr. Ct. March 14, 1996)

The test provides that the court will grant a timely motion for reconsideration if one or more of the following criteria is met. The Court had to have done one of the following in issuing the order: (1) overlooked, misapplied or failed to consider a statute; or (2) overlooked or misconceived some material fact or proposition of law; or (3) overlooked or misconceived some material question in the case; or (4) the law applied in the filing has been subsequently changed by court decision or statute.

The Appellant argues that the trial court erred in applying the test because the trial judge misinterpreted the intent of a decision issued by this Court on June 7, 1999. However, the record is clear that the trial court did not err in interpreting the Supreme Court decision but declined to issue an Order adverse to the Supreme Court's June 7, 1999 decision.

⁴ At Oral Argument, the Court addressed the Appellees' Motion Opposing Appeal and the Appellees' Motion for Reconsideration. Since the Appellees filed their Motion after the Court had accepted the case for appeal, the motion was moot. However, the parties agreed that the motions would be heard prior to the arguments on the merits as a Motion to Dismiss as to certain aspects of the case. The Court ruled from the bench that the Appellees' Motion for Reconsideration filed on October 26, which requested the court to deny a review of the August 10, 2000 matter, was granted. Thus, the Court ruled that it would only hear arguments on the merits of an appeal of the September 6, 2000 Motion for Reconsideration (Denied) order.

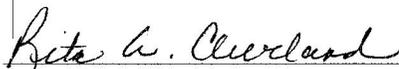
The Appellant also alleges that the trial court erred on the matter of lay advocate fees and costs. This Court is unable to discern the Appellant's argument on this issue. Rather than stating a legal basis for how the trial court erred, the Appellant seeks to restate her claim for fees and costs.

This Court has reviewed the record. This Court is unable to find an error by the trial court in applying the test stated above as to Appellant's Motion for Reconsideration.

This Court hereby affirms the trial court's ruling.

EGI HESKEKJET

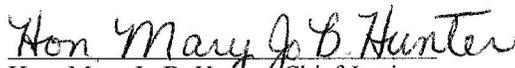
Date this 6th day of February 2001.



Hon. Rita A. Cleveland, Associate Justice



Hon. Debra C. Greengrass, Associate Justice



Hon. Mary Jo B. Hunter, Chief Justice
HCN Supreme Court

CERTIFICATE OF SERVICE

I, Tari Pettibone, 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 Decision file in Case No. SU-00-14 (CV-96-94) By the United States Postal Service, upon all person listed below:

John Swimmer (Interoffice Mail)
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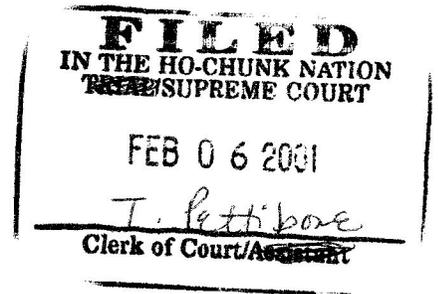
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Date: February 6, 2001

Tari Pettibone
Tari Pettibone, Clerk of Court
Ho-Chunk Nation Supreme Court