

IN THE
HO-CHUNK NATION SUPREME COURT

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

MAY 04 2001

T. Pettibone
~~Clerk of Court/Assistant~~

Chloris Lowe Jr.,
Stewart J. Miller,
Appellees,

ORDER ACKNOWLEDGING
PRESERVATION of APPEAL
RIGHTS

vs

SU01-05

Ho-Chunk Nation Legislative Members, et al;
and the Ho-Chunk Nation Election Board,
Appellants.

This matter came before the Ho-Chunk Nation Supreme Court on Friday April 27, 2001 to address Appellant's *Notice of Appeal* filed on April 4, 2001. The Appellants filed a *Notice of Appeal* to preserve their right to appeal (see Notice of Appeal, April 4, 2001, page 2) the Trial Court's March 30, 2001 Order (Implementation of Appellate Standard) which is interlocutory in nature. The Appellants stated in their *Notice of Appeal* that "It is the Nation's position that the March 30, 2001 Trial Court's *Order* is not a final order. The Nation presently is not seeking a stay of the trial court Order, but rather only to preserve its appellate rights." (see Notice of Appeal, April 4, 2001 page 3). Upon our review of the March 30, 2001 Order the Trial Court has yet to render a final disposition in this matter.

On April 18, 2001, the Appellees Mr. Chloris Lowe and Mr. Stewart J. Miller, filed a Motion to Recuse Justice Cleveland. On April 20, 2001, the Appellants filed a Motion Opposing Recusal of Justice Cleveland. On April 23, 2001, the Appellees filed a Memorandum in Reply to Motion Opposing the Recusal of Justice Cleveland.

To date, neither party has filed an appellate brief on this case. The underlying case is the trial level remand hearing on a prior decision of this Court. See *Chloris Lowe, Jr. and Stewart*

Miller v. Ho-Chunk Nation Legislature Elliot Garvin, et al., SU00-17 (HCN S. Ct., Mar. 13, 2001).

The lower court revisited the cases involving a challenge to an election on a redistricting and reapportionment plan. The instant case involves an appeal of the interlocutory order issued from the hearing held after the matter was remanded to the Trial Court.

By this Order the Court acknowledges the Appellant's *Notice of Appeal* and hereby preserves their right to appeal the March 30, 2001 Order at the time that a final appeal is sought. This Court has reviewed the necessity of filing a notice of appeal solely for the purpose of preserving an appeal right. This Court ascertains that such an action places an undue burden on the parties.

Furthermore, this Court takes judicial notice of Rule 58(B) of the HCN Rules of Civil Procedure. That rule seems to allow for the preservation of an appeal when a Rule 58(B) Motion for Reconsideration is filed at the trial court level.¹ This Court will no longer require that parties file a Notice of Appeal simply to preserve an appeal if they plead the application of Rule 58(B) when filing the final appeal.

Based upon our review of the record, we accept that parties do not intend to complete this appeal and that it was filed solely to preserve the Appellants/Defendants right to appeal from the March 30, 2001 Order at a later date. For the previously stated reasons, this type of appeal will not be necessary.

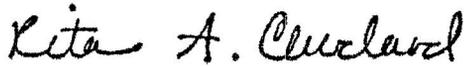
Due to the practical effect of this appeal, this Court deems the Motion to Recuse Justice Cleveland moot. It has been the practice of this Court to determine whether or not to accept an appeal without removing any of the sitting Justices. See *James and Mildred Smith v. Ron Wilbur*, SU99-12 (HCN S. Ct., Nov. 19, 1999); *Chloris Lowe, Jr. and Stewart J. Miller vs. HCN Legislative*

¹ This Court is not necessarily aware of whether a Rule 58(B) Motion for Reconsideration was filed below when an appeal is taken or heard or that the rule is the basis for the preservation of an appeal of an earlier order. Parties should aver that the preservation of the appeal of the prior order is based upon Rule 58(B) so that this Court may rule accordingly.

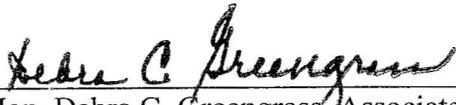
Members, Elliot Garvin, et. Al and HCN Election Board, SU00-15 (HCN S. Ct., Dec. 18, 2000); Chloris Lowe, Jr. and Stewart J. Miller vs. HCN Legislative Members, Elliot Garvin, et al and HCN Election Board, SU00-17 (HCN S. Ct., Jan. 4, 2001). Only after a determination is made by the Court to accept an appeal does the Court address the removal of a Justice. Therefore, the Motion to Recuse Justice Cleveland will not be addressed by the Court at this time.

This appeal is accepted for the sole purpose of preserving the right to an appeal on the March 30, 2001 Order signed by the Honorable Todd Matha.

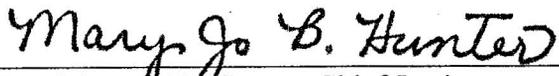
EGI HESKEKJET. Dated this 4th day of May 2001.



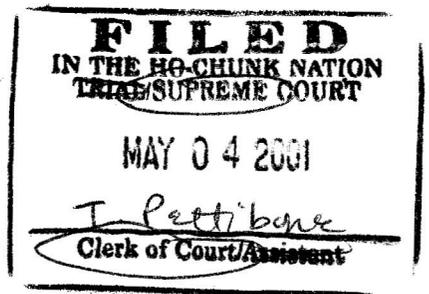
Hon. Rita A. Cleveland, Associate Justice



Hon. Debra C. Greengrass, Associate Justice



Hon. Mary Jo B. Hunter, Chief Justice
Ho-Chunk Nation 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 Order Acknowledging Preservation of Appeal Rights file in Case No. SU- 01-05 By the United States Postal Service, upon all person listed below:

Mr. Gary Montana
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Trial Court (hand delivery)
Hon. Todd Matha
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Hon. Debra Greengrass
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Hon. Mary Jo Brooks Hunter
4 Linder Court N.
St. Paul, MN 55106

Hon. Rita Cleveland
367 River Street
Black River Falls, WI 54615

Date: May 4, 2001

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