

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

MAY 1 1 2001

J. Patterson
Clerk of Court/Assistant

IN THE
HO-CHUNK NATION SUPREME COURT

Bonnie Smith,
Appellee,

Vs

Ho-Chunk Nation Gaming Commission,
Appellant.

Decision

SU01-02

This matter came before the full Court on April 27, 2001 to address Appellant's Petition for Permission to Appeal pursuant to Rule 7.5 of the Ho-Chunk Nation Rules of Appellate Procedure filed February 26, 2001. The Appellant filed this interlocutory appeal challenging the Trial Court's February 14, 2001 Order (Determination of Prevailing Procedures). The Appellee did not file an answer in opposition within the prescribed ten (10) days.

On March 12, 2001 the Court issued an Scheduling Order accepting the matter for appeal, setting a date for oral arguments, setting another briefing schedule and requiring that appellate briefs are to be filed in accordance with Rule 11 of the Ho-Chunk Nation (HCN) Rules of Appellate Procedure. The Appellant's Brief in Support of Appeal was filed on March 19, 2001 seeking a reversal of Judge Matha's Order. On March 20, 2001 Appellant's file a Motion to Reschedule Oral Arguments. On March 28, 2001 the Appellee filed her Response Brief. A letter dated March 27, 2001 from her attorney, James Ritland states that his client "cannot afford to vigorously oppose the Appeal" also was filed.

On April 3, 2001, the Court issued another Order canceling oral arguments due to the unavailability of both litigants' counsel to attend. The Court reserved review of Appellee's Motion to Dismiss within Appellee's Response Brief. The Appellants filed a Reply Brief on April 9, 2001. Upon review of the above-mentioned pleadings this Court hereby affirms the February 14, 2001 Order.

The Appellee filed her complaint with the HCN Trial Court to appeal a HCN Gaming Commission decision in accordance with the Amended and Restated Gaming Ordinance (Ordinance). The Ordinance, Chapter 11, promulgates the Powers and Duties of the HCN Trial Court in the appeal process. This Court acknowledges that the HCN Rules of Civil Procedure conflicts with the Ordinance timeline in which to file a response.

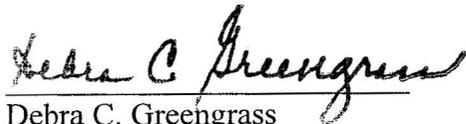
The Trial Court ruled that the matter will proceed under the HCN Rules of Civil Procedure. The Trial Court further “requires the parties to consult the *HCN R. Civ. P.* and jointly suggest an acceptable procedural framework for the instant case within ten (10) days of the entry of this *Order*”. See *Order* p. 8.

Since the matter has gone beyond the contested length of time in either method of procedure, the question appears moot in this context. Rather than rule on the substantive nature of the question, a party may raise that issue if an appeal is sought from the final order. However, the Court notes that the HCN Constitution states at Art. VII, Section 7 (B) that “the Supreme Court shall have the power to establish written rules for the Judiciary The HCN ...” Constitution is the final word on who has the authority to establish the rules for the Judiciary.

Therefore, the Court affirms the February 14, 2001 Order as to form. The Court hereby remands the matter to the Trial Court for final disposition. That the *Stay* issued on March 12, 2001 is hereby lifted.

EGI HESKEKJET.

Per Curiam. Dated this 11th day of May 2001.



Debra C. Greengrass
Associate Justice
HCN Supreme Court

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MAY 11 2001

T. Pettibone
Clerk of Court/Assistant

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 filed in Case No. SU 01-02 By the United States Postal Service, upon all person listed below:

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Indian Law Reporter
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Date: May 11, 2001

Tari Pettibone

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

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The Trial Court ruled that the matter will proceed under the HCN Rules of Civil Procedure. The Trial Court further “requires the parties to consult the *HCN R. Civ. P.* and jointly suggest an acceptable procedural framework for the instant case within ten (10) days of the entry of this *Order*”. See *Order* p. 8.

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