

IN THE
HO-CHUNK NATION SUPREME COURT

FILED
IN THE HO-CHUNK NATION
SUPREME COURT

JAN 27 2000

Willa RedCloud
Clerk of Court/Assistant

Ho-Chunk Nation Housing Authority,
Appellee,

vs.

Dan and Beverly Crowe,
Appellants.

SU00-02

ORDER OF REMAND FOR
RECONSIDERATION OF STAY
PURSUANT TO SEC. 5.03 of the
HCN EVICTION ORDINANCE

This matter came before the full Court on the Appellants' Notice of Appeal and Motion for a Stay filed on January 11, 2000. On January 12, 2000, this Court filed an Order Granting Stay to preserve the status quo. On January 14, 2000, the Appellee filed Appellee's Notice and Motion Opposing Appeal. This Court reviewed the above pleadings on Saturday, January 22, 2000. Based upon the review of the pleadings as well as the HCN Eviction Ordinance enacted by the HCN Legislature on March 2, 1999, this Court orders that this matter is REMANDED to the trial court for a determination of whether or not a stay is warranted pursuant to Sec. 5.03 of the HCN Eviction Ordinance.

This Court is constitutionally mandated to decide questions of law and not to make findings of fact. HCN Const., Art. VII, Sec. 7 (a). The Appellants are essentially seeking a stay of the lower court's orders by making arguments which require factual determinations. In this case, the lower court judge advised the parties to seek an appeal without applying the HCN Eviction Ordinance in the context of Sec. 5.03. Upon our review of this case, a Sec. 5.03 hearing before the trial court judge is required by the HCN Eviction Ordinance to allow for the making of a factual record below as to the issues raised by the Appellant.¹

¹One fact to be determined is why they were not at the eviction hearing or why they failed to answer. The Motion for a Stay states that the tenants, Dan and Beverly Crowe, wish to tell their side and that they do not owe a great deal of money. Such facts should be reviewed by the trial court judge for the purpose of ascertaining whether or not a hardship exists to stay the Writ of Restitution within Sec. 5.03 of the HCN Eviction Ordinance. The size of the family, rental prospects and seasonal impacts may all be factors that the lower court will want to consider in determining hardship. The parties are afforded due process rights in the eviction process under the ordinance. The Sec. 5.03 hearing is an important procedural step in that process which

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It is understandable that the Appellant filed an appeal with this court as the Eviction Order (Restitution and Relief) advised the parties of the option of an appeal to this Court. Unfortunately, the availability of the Section 5.03 hearing was not referred to in the order.² It is this Court's opinion that Section 5.03 is the governing procedure for a stay in this situation. Section 5.03 was enacted by the HCN Legislature to apply to orders and judgments of the tribal courts in matters related to tenancy issues. See HCN Legislative Resolution 3-2-99B.

Section 5.03 states as follows:

At the time of the decision order, upon application of the defendant with notice to the plaintiff, the court may, in cases where it determines hardship to exist, stay the issuance of the writ by a period not to exceed thirty (30) days from the date of the decision order.

The section provides for certain conditions to be met in order for the stay to be granted. This determination should be made by the trial court first. Based upon the facts of this case, it is apparent to this Court that this is the appropriate section of the ordinance which should be applied at this juncture.³ An appeal to this Court is premature in light of the circumstances of this case.

Therefore, it is the Order of this Court that this matter is REMANDED to the trial court for a hearing to be held in accordance with Sec. 5.03 of the HCN Eviction Ordinance to determine if a hardship exists which requires a stay of the issuance of the writ. The Stay that this Court has issued will be lifted upon the determination by the trial court as to the hardship

should be afforded to the tenants.

²It is unclear to this Court why the more applicable avenue of redress was not provided as well in the Eviction Order. *Pro Se* parties are most likely to follow the language of an order rather than referring to the applicable law. Such an oversight is more likely where a relatively new and little used statute is suddenly invoked. Therefore, the lower court would have better served the populace by referring to the option under the HCN Eviction Ordinance as an avenue rather than the appeal process.

³This Court is fully aware that this is a recent addition to the Ho-Chunk Nation's laws. Nevertheless, it is important that the judges appointed to provide justice within our tribal court system acquaint themselves fully with any new law. In this instance, it appears that a statutorily enacted procedural step was overlooked in favor of an appellate rule.

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stay allowed by the Sec. 5.03 hearing. The parties are not barred from filing an appeal after the panoply of the lower court decisions of the Eviction Ordinance have been exhausted.

EGI HESHKEKJET. IT IS SO ORDERED.

Dated this 26th day of January 2000. Per Curiam.

Mary Jo B. Hunter

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

CERTIFICATE OF SERVICE

I, Willa RedCloud, Clerk of the Ho-Chunk Nation Supreme Court of the Ho-Chunk Nation, do hereby certify that on the date set forth below I served a true and corrected copy of the attached paper filed in Case No. SU-00-02 (CV-99-95), by the United States Postal Service, upon all persons listed below:

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Date: 01/27/00

Willa RedCloud
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Ho-Chunk Nation Supreme Court