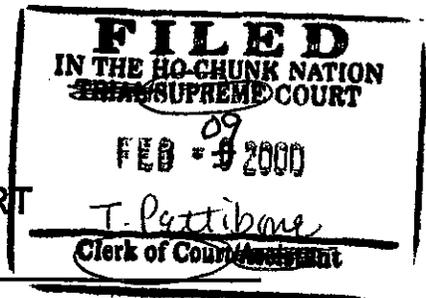


IN THE  
HO-CHUNK NATION SUPREME COURT



James and Mildred Smith,  
Appellants,

vs

DECISION AND ORDER DISMISSING  
APPEAL

Ron Wilbur,

SU-99-12

Appellee.

James and Mildred Smith (the Smiths) brought a civil action against Ron Wilbur in the Circuit Court for Wood County, State of Wisconsin.<sup>1</sup> They obtained a judgment in the Wisconsin Court on July 12, 1999 and then sought to enforce the judgment in the Ho-Chunk Nation Trial Court. On September 27, 1999 after Mr. Wilbur was served with a copy of the petition and notice of the fact finding hearing. Mr. Wilbur failed to appear, and in accordance with Rules 44 (C) and 54 of the HCN Rules of Civil Procedure, the Trial Court entered a default judgment.

Rule 54 provides in part:

*A Default Judgment* may be entered against a party who fails to answer...  
*A Default Judgment* shall not award relief different in kind from,  
or exceed the amount stated in the request for relief.

The Smiths in their complaint sought a judgment for \$601 and nothing more. Nothing in the complaint indicates that they seek to enforce the judgment against the defendant's per capita payment. Nevertheless, the trial court went on to say that any enforcement of the Smith's judgment would be barred by the Claims Against Per Capita Ordinance (hereinafter Ordinance). There is nothing in the record that has been provided to this court that indicates that the plaintiffs sought to enforce the judgment against the per

<sup>1</sup> In the Wood County action the defendant-appellees family name is spelled Wilber, while in the Ho-Chunk Nation action the defendants-appellees family name is spelled Wilbur. Since the defendant has not appeared in either Wood Court or Ho-Chunk Nation Courts, this decision will assume that the same individual has been sued in both courts.

capita or amended their complaint. There may have been some discussion between the Smith's counsel and the Trial Court, but there is nothing in the record to show an amendment.

It appears that the trial court took it upon itself to rule that it could not assess the defendants per capita distributions because of the Ordinance. In American and British Courts, the trial court's ruling about the Ordinance could be described as *dicta*. According to BLACK'S LAW DICTIONARY (5<sup>TH</sup> ED.) *dicta* is described as "opinions of a judge which do not embody to resolution or determination of court". The Trial Court granted the only relief that it could grant, judgement for \$601. It did not have to address the Ordinance, but chose to do so. It is the *dicta* that appellants are seeking review. In order to adequately address that claims of the plaintiffs, someone must be in a position to defend the Ordinance. In the current posture to the case, no party is before this Court to defend the Ordinance. Rule 54 of the Ho-Chunk Nation Rules of Civil Procedure seeks to avoid the problems created by dicta. The Trial Court when entering judgment cannot go beyond relief sought.

The Smith's do not appeal the entry of the default judgment or its amount: rather they appeal that portion of the judgment, which the trial court should have not entered. Therefore, the appeal must be dismissed on the grounds that the Trial Court's language about the Ordinance was not a final order or judgment which could be appealed under the Ho-Chunk Rules of Appellate Procedure.

#### ORDER

Based on the forgoing decision it is hereby ordered that the appeal in this matter shall be **DISMISSED**.

IT IS SO ORDERED. This 8th day of February, 2000 at the Ho-Chunk Nation Supreme Court in Black River Falls, Wisconsin from within the sovereign land of the Ho-Chunk Nation.

Rita A. Cleveland  
Rita Cleveland, Associate Justice

Debra C. Greengrass  
Debra Greengrass, Associate Justice

John Wabaunsee  
John Wabaunsee, Justice *Pro Tempore*