

MAR 23 1999

Willa RedCloud
Clerk of Court/Assistant

IN THE
HO-CHUNK NATION SUPREME COURT

LEIGH STEPHEN, ET AL.,
Plaintiffs/Appellants,

vs.

ORDER DENYING APPEAL
Case No. SU 99-01

HO-CHUNK NATION,
Defendant/Appellee.

On January 28, 1999, the Honorable Joan Greendeer-Lee rendered a Judgment dismissing the Appellants' action with prejudice. On February 25, 1999, the Appellants attempted to file a Notice of Appeal with the Ho-Chunk Nation Supreme Court's Clerk of Court. On February 26, 1999, the Clerk of Court, Willa RedCloud, sent a Notice of Deficiency to the attorney for the Appellants, Mr. Michael T. Fitzpatrick. The notice informed Mr. Fitzpatrick that he had failed to enclose the \$35.00 filing fee as required by the Ho-Chunk Nation Rules of Appellate Procedure. In addition, Mr. Fitzpatrick had failed to register for membership in the Ho-Chunk Nation Bar Association as had been previously requested of him.¹

On March 3, 1999, the Defendant/Appellee filed a Notice of Opposition to Notice of Appeal and Defendant's Memorandum in Opposition to the Appeal. On March 11, 1999, the Appellants attempted to cure the deficiency by submitting the filing fee. Mr. Fitzpatrick enclosed a letter dated March 3, 1999 which stated that since he had been allowed to appear in the trial court matter *pro hac vice*, that he was under the belief that he would be allowed to appear as such on appeal.

On March 17, 1999, this Court considered the matter by telephonic hearing. Based upon the Notice of Appeal, the Notice of Opposition to Notice of Appeal, Defendant's Memorandum in Opposition to the Appeal, the Clerk of Court's records and the file on this matter, the full Court DENYS the Notice of Appeal of Leigh Stephen, et. al. for the foregoing reasons.

¹On August 7, 1998, Ms. RedCloud had sent Mr. Fitzpatrick an HCN Bar Admissions packet which included the HCN Rules of Admission to Practice, the HCN Rule of Appellate Procedure and other applicable rules and information.

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DECISION

The Ho-Chunk Nation Supreme Court is a relatively young Court in that it has been in existence for less than 4 years.² During that time, this Court has adopted rules for the Ho-Chunk Nation's court system pursuant to the Supreme Court's authority from the Ho-Chunk Nation Constitution, Article VII, Section 7, subsection (b), adopted in 1994. The Ho-Chunk Nation Supreme Court requires that attorneys and lay advocates who regularly appear in the court system become members of the HCN Bar Association.

To assist the practitioners, the Clerk of Court for the Supreme Court notifies those who have made an appearance *pro hac vice* of the need to join the HCN Bar Association. Ms. RedCloud sent Mr. Fitzpatrick that information on August 7, 1998. As stated above, the packet includes the requisite forms for application as well as the rules that this Court has promulgated for practice in the HCN Court System. Among those rules, the Ho-Chunk Nation Rules of Appellate Procedure are routinely included. Thus, Mr. Fitzpatrick had been provided the application for bar admission and the necessary rules of this court system.

The Ho-Chunk Nation Rules of Appellate Procedure requires that a filing fee is to be paid with the Notice of Appeal. Rule 7, Section b(1) states the Notice of Appeal shall be filed within thirty calendar days after the judgment or order was rendered "together with a filing fee of thirty-five (\$35. U.S.)" Clearly, the filing fee must be paid with the filing of the Notice of Appeal.

In creating the rules, this Court was aware that in some instances it may not be possible to include the filing fee with the Notice of Appeal. However, in such instances, Rule 8, Section b allows for a *Motion for a Fee Waiver* to be filed with the Chief Justice of the Supreme Court. The Motion must also include an affidavit explaining the need for the waiver. The rule states that they "must accompany the Notice of Appeal." In this instance, neither the filing fee or the

²The Justices of the HCN Supreme Court are one-quarter time positions. The HCN Supreme Court's Clerk of Court is a full-time employee who is available during the work hours for providing assistance to parties.

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fee waiver request was filed with the Notice of Appeal. The Plaintiffs/Appellants have not adhered to nor followed the Ho-Chunk Nation Rules of Appellate Procedure in seeking this appeal. This Court, despite its infancy, must require those who come into our court system to follow our rules and requirements. Therefore, the Notice of Appeal is **DENIED**. The filing fee enclosed with a letter dated March 3, 1999 shall be returned to the attorney for the Plaintiffs/Appellants.³

EGI HESHKEKJENET. IT IS SO ORDERED.

Per Curiam. Dated this 23rd day of March 1999.

Mary Jo B. Hunter
Hon. Mary Jo B. Hunter, Chief Justice
Ho-Chunk Nation Supreme Court

³The check for the \$35.00 filing fee was dated March 9, 1999 and was date stamped as received on March 11, 1999. All of these dates were after the final date for proper filing within the HCN Rules of Appellate Procedure.