

APR 14 1997

IN THE  
HO-CHUNK NATION SUPREME COURT

*W. Redmond*  
Chief of Court

IN RE: DIANE LONETREE

SU96-16  
DECISION

INTRODUCTION

This matter came before the full Court on oral argument on Saturday, March 8, 1997 at 10:00 a.m. at the Ho-Chunk Nation Tribal Court Building in Black River Falls, Wisconsin. Justice Pro Tempore William Thorne presiding for Associate Justice Forrest Whiterabbit, who had earlier recused himself from this matter. Associate Justice Debra C. Greengrass and Chief Justice Mary Jo Brooks Hunter presiding. The Appellant, Diane Lonetree, was present and represented by counsel, Mark L. Goodman.

This case is an appeal of the Judgement of the Honorable Joan Greendeer-Lee dated December 18, 1996. The Judgement was stayed by the trial court judge pending this appeal and this Court continued the Stay pending the issuance of this decision.

The Appellant, at oral argument, stated that the findings made by the trial court judge were not disputed. The Appellant argued that the trial court had erroneously exercised its contempt power based upon three reasons. The reasons for the errors by the trial judge were due to jurisdictional problems, procedural problems and a constitutional problem. This Court will address each of those areas.

This case arose from a matter involving an election challenge filed on June 19, 1995. The Appellant herein had been subpoenaed for a hearing on that challenge on July 6, 1995. On November 2, 1995, Ms. Lonetree was served a Summons and Complaint for her failure to obey the subpoena issued on July 3, 1995 and served on her on July 5, 1995. Ms. Lonetree resides in Denver, Colorado and was served there. The hearing was held in Black River Falls, Wisconsin and the subpoena advised her to telephone the tribal court on the date of the hearing. The

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election board challenge case, Gail Funmaker v. Ho-Chunk Election Board, CV 95-10 had been decided on July 7, 1995 without Diane Lonetree.

#### DISCUSSION

First, the Appellant conceded that the trial court does have the power to punish for contempt. This Court accepts Appellant's recognition that tribal courts possess inherent power to order punishment for contempt as an inherent aspect of judicial authority. In addition, the Ho-Chunk Nation Legislature alludes to such power in the Ho-Chunk Nation Judiciary Act of 1995, section 5 (March 22, 1995). The Ho-Chunk Nation Legislature granted the trial court the authority to issue subpoenas and further stated that "[T]he failure to comply with a subpoena shall subject the person not complying to the contempt power of the court." Thus, the Ho-Chunk Nation Legislature also recognized that the tribal court has the inherent power to punish for contempt even in the absence of specific tribal code provisions.<sup>1</sup> Thus, we hold that the Ho-Chunk Nation Trial Court has the power to punish for contempt.

Next, the question becomes one of the application of the contempt power. Did the trial court judge err in the application of the contempt power? The Appellant asserts three reasons for the argument that the trial judge erred in applying the contempt power. Appellant first argues that the trial court no longer had a jurisdictional basis to apply the contempt power.

The Appellant argued that this Court should apply the holding of the U.S. Supreme Court in Gompers v. Buck's Stove & Range Co., 221 U.S. 418 (1911). The U.S. Supreme Court held in Gompers that a civil contempt proceeding becomes moot upon termination of the underlying main cause of action.

In this case, the trial judge found that the subpoena for the Appellant was served on her on July 5, 1995 at 12:47 p.m. in Denver, Colorado to participate in a hearing in Black River Falls, Wisconsin on July 6, 1995.<sup>2</sup> The trial court found that Ms. Lonetree's testimony indicated that

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<sup>1</sup>See also, Clinton, Robert N. and Carter, Amy, "Contempt Powers and Tribal Courts", Speech presented at the National Tribal Judicial Conference, Albuquerque, New Mexico (April 1996).

<sup>2</sup>Although this Court is aware that Ms. Lonetree was not being required to physically appear in

the subpoena did not specify a time for her to testify by telephone.<sup>3</sup> Although Ms. Lonetree did not make direct contact with the trial court during the hearing, a judgement was entered in Gail Funmaker v. Ho-Chunk Nation Election Board, CV-95-10, on July 7, 1995. (Finding number 16, Judgement of Hon. Joan Greendeer-Lee dated December 18, 1996.) Thus, the underlying cause of action was decided by the trial court without Ms. Lonetree. Although the trial court makes reference in a footnote to the prior trial court's reluctance as to a decision, the case was "decided without the respondent's [Appellant's] cooperation." (Judgement, Id. at page 4, line 24 and page 5, line 1 and footnote 2.)

Although the Ho-Chunk Nation Supreme Court is not under an obligation to apply the holdings of other jurisdictions, this Court is adopting the holding of Gompers as to civil contempt proceedings. Therefore, we hold that a civil contempt proceeding in the Ho-Chunk Nation Trial Court becomes moot upon termination of the underlying main cause of action.

In applying that ruling to the case at hand, we hold that the civil contempt proceeding against Ms. Lonetree became moot upon the entry of judgement in Gail Funmaker on July 7, 1995. For that reason, we **REVERSE** the Judgement of the Honorable Joan Greendeer-Lee dated December 18, 1996.

Since this matter is one of first impression for this Court, we will address the two remaining arguments of the Appellant. The second argument advanced by the Appellant was that Judge Greendeer-Lee went beyond what is legally allowed in the remedial sanctions that she ordered. This Court does not find any merit in the argument advanced by the Appellant as to the sanctions

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Black River Falls, Wisconsin, we are concerned that measures be taken in issuing subpoenas to parties located at great distances from the Tribal Court Building. This is especially of concern where our tribal membership resides in a 14 county area in Wisconsin alone as well as consisting of an At-Large membership residing nationwide (meaning the United States).

<sup>3</sup>Again, this Court has concerns about the lack of specificity in the subpoena. We are aware that we have not developed rules as to how the subpoenas are to be prepared; however, it seems that a good procedure to be followed would be to be as specific as possible if contempt is a consequence of failure to obey the subpoena. In this instance, the subpoenaed party lived in a different time zone than the tribal court so it would have been advisable to state a specific time and to state the specific time zone.

imposed by the trial judge. First, we are aware that we have not yet provided specific rules for enforcing the judicial power of contempt. However, as we stated above, the trial court does have that power. Civil contempt is imposed as a coercive sanction which usually terminates if the party is no longer in contempt. If the contemptable action is not cleared, the trial court may order a party imprisoned until the party performs the order of the court or pay a fine to the other party or pay a fine to the court unless the party complies with the court's order. (See Clinton article cited above.) In this instance, the trial judge fashioned a sanction which would educate the party about her responsibilities to the court's order as well as educate the Ho-Chunk Nation membership.<sup>4</sup> Therefore, we hold that the remedial sanction imposed by the trial court was not an error of law.

The third argument advanced by the Appellant was that the trial court violated the separation of functions doctrine of the Ho-Chunk Nation Constitution by prosecuting sua sponte a civil contempt action against a witness. Since we did not have a record on appeal of any requests to the Executive Branch, this Court is unwilling to make a ruling as to this argument. However, we have reviewed all of the records provided to this Court by the trial court including the tape of November 26, 1996. Although the Ho-Chunk Nation Rules of Appellate Procedure require that "[T]he papers filed in the Trial Court, the exhibits and the transcript of the proceedings shall constitute the entire record on appeal in all cases", this Court will review the tape recording of a hearing in lieu of a written transcript. Since a written transcript was not provided on the November 26, 1996 hearing, the full Court reviewed the taped record.<sup>5</sup> Since this Court was

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<sup>4</sup>In reviewing the tape of the November 26, 1996, the Appellant did make clear that she did recognize the authority of the trial court to subpoena her. Since she did "learn her lesson", this Court is not sure that an educational sanction would have been applicable to her if the contempt had survived the Gompers test.

<sup>5</sup>The Court notes that the Stay issued by the trial court was inadvertently left out of the appellate file which resulted in the Supreme Court continuing the Stay.

unable to discern the exact nature of the absence of the Department of Justice on the record, we do not wish to make a ruling on this matter.<sup>6</sup>

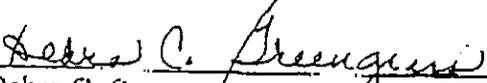
#### CONCLUSION

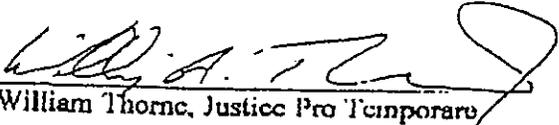
For the reason stated above, we hold that the civil contempt proceeding against Ms. Lonetree became moot upon the entry of judgement in Gail Funmaker on July 7, 1995. Therefore, we **REVERSE** the Judgement of the Honorable Joan Greendeer-Lee dated Decembar 18, 1996.

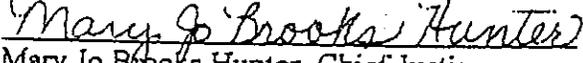
Dated this 31st day of March 1997.

IT IS SO ORDERED. EGI HESHKEKJENET.

By the Court:

  
Debra C. Greengrass, Associate Justice

  
William Thorne, Justice Pro Tempore

  
Mary Jo Brooks Hunter, Chief Justice

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<sup>6</sup>This Court is hopeful that the Ho-Chunk Nation Legislature will draft a provision for "special prosecutors" to be appointed in instances such as this one where it may have been appropriate.