

OCT 15 1996

Lucie Kuimaki
Clerk of Court/Assistant

IN THE
HO-CHUNK NATION SUPREME COURT

DONALDSON A. JUNE,
Plaintiff/Appellee,

vs.

KATE DOORNBOS,
HO-CHUNK NATION DEPT. OF ADMINISTRATION,
Defendant/Appellant.

DECISION

Case No. SU96-03

(Trial CV-96-19)

This matter came before this Court on July 12, 1996 on the Defendant's Notice of Appeal dated July 3, 1996 and filed on July 5, 1996. This Court reviewed the matter based upon the record and brief filed by the Appellant. The full Court decided the matter by conducting a telephone discussion on October 11, 1996. Based upon the record before the Court, the Reply Brief filed by the Appellee was not considered as it had not been properly served. Appellee did not respond to the Deficiency Notice provided to him by the Clerk of Court, Marcella Cloud.

Upon review of the record, this Court did not reach the merits of the appeal. The Court reviewed the procedural posture of the case in accordance with the Court's function under the Ho-Chunk Constitution, Article VII. Upon the review of the legal posture of the matter, the Court is **REVERSING** the decision of the

trial court and REMANDING the matter to the trial court for further findings.

The threshold question for this Court to review was the underlying Default Judgment dated May 24, 1996. The June 24 Judgement (Re: Motion for Reconsideration) is based upon that initial order of the trial court. The Default Judgement was based upon the HCN Interim Rules of Civil Procedure, Rules 19A and 54. (Judgement CV-96-19, page 4.) Rule 19 is titled "Filing and Responding to Motions" which provides direction to parties as to how a motion may be filed with the court. It is not the applicable provision as to summons. The correct provision relating to the issuance of summons is at Rule 5, B which states that "an answer is due in a limited time and that a default judgement may be entered against them if they do not answer in the limited time." (emphasis added.)

The trial court is given the discretion to enter a default judgement if an answer is not timely filed. The trial court in this instance went on to utilize Rule 54 as to the basis for an issuance of a default judgement. Rule 54 states that such an order may be entered "against a party who fails to answer if the party was personally served or if a party fails to appear at a hearing, conference or trial for which he/she was given proper notice." (emphasis added.) In this instance, it is unclear to this Court as

to which of the two situations gave rise to the issuance of the Default Judgement. Based upon the record, the Appellant was not personally served as is required by Rule 54 nor did the Appellant fail to appear for a hearing as is also required by Rule 54.

The Judgement discusses the issuance of the Summons; however, the trial court record does not indicate that the Summons was personally served as is required by the rule. Based upon the record, the Summons was sent by certified mail to the Appellant.

Since this is a serious threshold question, the Court is inclined to have the trial court revisit the basis for the issuance of a default judgement and to make the appropriate findings for that legal conclusion. As the trial court states, "[The entry of [sic] default judgement...is an extreme measure" and requires the trial court to strictly adhere to the rules which allow for such drastic measures. Therefore, this Court **REVERSES** as to the issuance of the Default Judgement pursuant to Rule 54 and **REMANDS** the matter to the trial court for further findings as to that issue.

IT IS SO ORDERED. EGI BESHKEJENET.

Dated this 14th day of October 1996.

By the Court:

Debra C. Greengrass
Debra C. Greengrass
Associate Justice

Forrest Whiterabbit
Forrest Whiterabbit
Associate Justice

Mary Jo Brooks Hunter

Mary Jo Brooks Hunter
Chief Justice
Ho-Chunk Nation Supreme Court

A true and correct copy of the foregoing was
sent to the following parties of record this

16th day of October, 1996.

Donaldson J. J. Michael Murphy

Asst. Clerk Wendie Kilimaki