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2 Mohican Nation
3 Stockbridge-Munsee Band
4 State of Wisconsin Tribal Court of Appeals
County of Shawano

5 LILLIAN WHEELOCK
6 Appellant,
7 vs.

8 STOCKBRIDGE-MUNSEE COMMUNITY,
9 Appellee.

) Case No.: No. 01-AA-001

) Memorandum Opinion

) STOCKBRIDGE - MUNSEE
TRIAL COURT

) AUG 27 2002

)
COURT CLERK

11 **Jurisdictional Statement**

12 Appellant, appeals from a Mohican Nation, Stockbridge-
13 Munsee Band Tribal Court decision which upheld her termination
14 from employment with the Stockbridge-Munsee Band of Mohicans
15 Indian Tribe (hereafter called Tribe).

16 The Mohican Nation, Stockbridge-Munsee Band, Court of
17 Appeals has jurisdiction over this appeal pursuant to Section
18 1.6(L) of the Mohican Judiciary Act, which states that "The
19 Stockbridge-Munsee Court of Appeals shall have jurisdiction over
20 appeals from the Tribal Court."

21 **Background**

22 After a trial before the Honorable Kimberly Vele, a
23 decision was entered denying relief for the Appellant in the
24 termination of her employment with the Tribe as a Mental Health
25 Counselor with the Stockbridge-Munsee Behavioral Health

1 Department. The *Decision* was entered August 13, 2001 but filed
2 *Nunc Pro Tunc* with the Court on January 25, 2002.

3 The Appellant filed written notice of appeal with the Court
4 on March 07, 2002. Written grounds for the appeal were filed on
5 May 06, 2002.

6 On June 28, 2002, the Mohican Nation, Stockbridge-Munsee
7 Band of Indians, Court of Appeals reviewed the filings in this
8 case and conferred, via telephone conference, on the issues as
9 set forth below.

10 Issues

11 The central issue being considered is the timeliness of the
12 filing of the notice of appeal. Section 23(C) of The
13 Stockbridge-Munsee Tribal Court Rules of Procedure (hereafter
14 called SMB CRT Rules) states: "Written notice of appeal from a
15 decision of the trial Court **must** be filed within 20 days of the
16 announcement of the decision in open Court, or within 20 days of
17 receiving notice of the decision".
18

19 Further, §23(J) of the SMB CRT Rules, states: "An Appellant
20 shall submit a written statement of the grounds for his or her
21 appeal within twenty (20) days of filing the notice of appeal,
22 unless the Court below or the appellate Court shall deem an
23 expedited appeal to be advisable and shall notify the appellant
24 promptly of the reduced time limit".
25

1 The Decision in this case was filed, *nunc pro tunc*, with
2 the Court on January 25, 2002. The Appellee states that it
3 received a copy of the Decision on January 25, 2002. Therefore,
4 the Appellant would have received her copy of the Decision
5 within a few days of January 25, 2002, as her copy was mailed to
6 her. However, the Appellant did not file her **written notice** of
7 appeal with the Court until 42 days later.

8
9 In the Appellant's written notice of appeal, filed March
10 07, 2002, she states "I have made numerous attempts to reach the
11 Tribal Court in the past three weeks, without any results". She
12 further states "After talking to David Raasch this morning, he
13 informed me of the fact that the Court clerk has been out of the
14 office on medical leave. Therefore, Tribal Court telephone
15 calls aren't being returned."

16 The issue then is, even though the written notice of appeal
17 was filed well beyond the 20 day time limit for filing, do the
18 attempted phone calls meet the requirements for the filing of a
19 notice of appeal.

20 21 Analysis

22 The obvious test to be applied in this matter is whether,
23 or not, the Appellant file written notice of appeal within the
24 20 day limit established by §23 of SMB CRT Rules. It is
25 unreasonable to conclude that the Appellant did not receive her
copy of the Decision within a few days of January 25, 2002.

1 Even considering it may have taken one week for the Appellant to
2 receive the *Decision* through the mail, her filing of the written
3 notice of appeal still exceeds the 20 day time frame.
4 Therefore, applying this test, the Appellant has failed to
5 protect her appellate rights, and this Appellate Court lacks
6 jurisdiction to hear her appeal.

7
8 However, this Appellate Court agrees to apply another test
9 that was established by the Stockbridge-Munsee Court of Appeals
10 in Stockbridge-Munsee Community v. Joseph Miller, Case No. 97-
11 AA-004. In this case the Stockbridge-Munsee Community appealed
12 the Trial Court's decision to dismiss the appeal as untimely.
13 The Trial Court had denied the appeal of an Employment Mediation
14 Panel's (EMP) decision in an employment rights case involving
15 Mr. Miller. The Director of Tribal Services issued an Inter-
16 Office Memorandum to the Interim Manager of Human Resources
17 requesting an appeal of the EMP's decision. Specifically, the
18 memo referred to the subject as an "Appeal to Tribal Court for
19 Joe Miller Grievance" and further stated "I do not agree with
20 the panels (sic) response. Please foreward (sic) this to the
21 Tribal Court per section V. Panel hearing Process #3, of the
22 *Employee Rights Ordinance*. Thank you".¹

23 This memo was filed with the Tribal Court. The Trial Court
24 determined that the filing of an "inter-office memo" did not
25

¹ SMC v. Joseph Miller, Case No. 97-AA-004 Page 2

1 constitute a request for an appeal even though it was filed on
2 time. The Appellate Court in that case set a *bare requirements*
3 standard by concluding that the memo did constitute a Notice of
4 Appeal. The Court, in that case, further stated: "Finally, we
5 note that all petitions for review should include a specific
6 statement of what administrative decision is being appealed and
7 on what grounds it is being appealed. This makes the notice of
8 appeal more detailed and therefore, more meaningful to all
9 interested parties, particularly the Court".²

10
11 In applying this test to the case now before this Appellate
12 Court, this Appellant also fails to provide adequate notice of
13 appeal. The *bare requirements* standard established in
14 *Stockbridge-Munsee Community v. Joseph Miller*, would not allow
15 Notice of Appeal to be filed by a phone call, much less
16 attempted phone calls. Even though the Tribal Court Clerk was
17 on medical leave, had the Appellant provided a written notice of
18 appeal in person, like Sunday Warrington³, or had mailed it to
19 the Court within the 20 day limit, this would be a different
20 case. However, the Appellant, here, has not met the *bare*
21 *requirements* standard, and this Court lacks jurisdiction to
22 review any further issues in this case.

23
24 ² SMC -v- Joseph Miller 97-AA-004 at page 6

25 ³ Sunday R. Warrington -v- Stockbridge-Munsee Tribe, Mohican North Star Casino
and Bingo, and Tammy R. Pecore, Assistant General Manager in her official
capacity Case No. 2002-AA-001

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By the
Mohican Nation
Stockbridge-Munsee Band of Indians
Tribal Court of Appeals

David D. Kaasch

Honorable David D. Raasch

DECISION

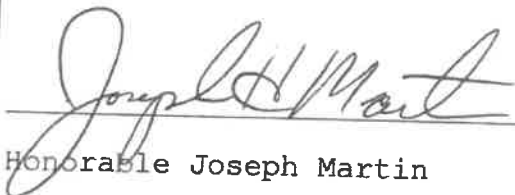
Accordingly, the Appellant's appeal is dismissed under SMB CRT Rules §23(B). The *Decision* of this Court of Appeals is final as to all such review as provided under SMB CRT Rules §24(A).

By the
Mohican Nation
Stockbridge-Munsee Band of Indians
Tribal Court of Appeals

STOCKBRIDGE - MUNSEE
TRIBAL COURT
SEP 04 2002
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COURT CLERK

This 23rd day of August 2002

Concurring


Honorable Joseph Martin

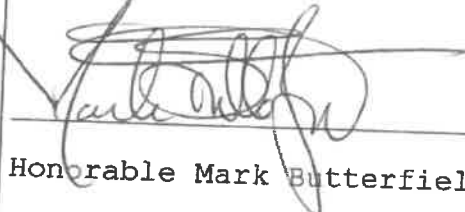
DECISION

Accordingly, the Appellant's appeal is dismissed under SMB CRT Rules §23(B). The *Decision* of this Court of Appeals is final as to all such review as provided under SMB CRT Rules §24(A).

By the
Mohican Nation
Stockbridge-Munsee Band of Indians
Tribal Court of Appeals

This 23rd day of August 2002

Concurring


Honorable Mark Butterfield

STOCKBRIDGE - MUNSEE
TRIBAL COURT

SEP 05 2002


COURT CLERK