STOCKBRIDGE-MUNSEE TRIBAL COURT

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STOCKBRIDGE-MUNSEE COMMUNITY, ON BEHALF OF THE DIVISION OF COMMUNITY HOUSING,

Appellant

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BEVERLY JACOBS,

Respondent

Case No. 2008-CV-033

DECISION ON RESPONDENT'S MOTION FOR SUMMARY DISMISSAL OF APPEAL

This is an appeal of an eviction trial that concluded on April 23, 2009. On July 22, 2009, the Honorable Robert Miller Jr. dismissed the eviction action against Beverly Jacobs.

History

On August 10, 2009, Plaintiff/Petitioner, the Division of Community Housing, appealed that decision alleging the Trial Court committed an error of law in interpreting Section 21(I) as applying to the actions of Tribal Police in seeking a search warrant from the Shawano County Court.

On September 1, 2009, Respondent, Beverly Jacobs, filed a Motion for Summary Dismissal of Petitioner's Appeal, asserting Appellant failed to comply with the five (5) day requirement for filing the Notice of Appeal as is mandated by Section 46.6-12 of the Stockbridge-Munsee Housing Code.

Issue

Is Appellant's Appeal timely?

Analysis

The Honorable Robert Miller, Jr., Chief Judge of the Stockbridge-Munsee Tribal Court published case 2008-CV-033 on July 22, 2009 and wrote, "...it is apparent that Tribal Law was disregarded summarily" and ordered the case dismissed with prejudice.

Appellant appealed that decision on August 10, 2009, even if weekends or holidays were not included, appellant's appeal should have been submitted by July 29, 2009.

Appellant's appeal was seventeen (17) calendar days later. According to Stockbridge-Munsee Housing Code, Section 46.6-12, Appellant's appeal is untimely. Section 46.6-12,

Appeals taken under this Ordinance shall be handled according to the general tribal appellate provisions with the exception that the party filing the appeal shall have only five (5) days from the entry of the order of judgment to file a notice of appeal. All orders from the court will remain in effect during the pendency of an appeal under this Ordinance unless other wise ordered by the court. If applicable, a party may utilize appeal procedures of 25.C.F.R. Part 2.

Court procedures are written to ensure fairness. The Court found Respondent's appeal is untimely. 'Therefore, the Court dismisses Appellant's appeal due to untimely filing.

Decision

The Court dismisses Appellant's appeal.

Dated this 19th day of January 2010

Pro tempore, Honorable Mary Adams

Pro tempore, Honorable Robert Christjohn DP 3210W

Honorable Many Higgins

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TRIBAL COURT OF

CONCURRENT OPINION

The following does not disagree with the majority. The concurrent statement just expands the Appellate Record. Case Number 2009-AP 2008-CV-0033

HISTORICAL BACKGROUND

On or about July 24, 2007 the good citizen, William Terrio, reported suspicious activities at Beverly Jacobs home, N8698 Popular to Officer Hoffman. Officer Hoffman investigated via surveillance of the residence in question. After observing traffic flow, the Officer concluded the house likely was a "drug house" trafficking and/or selling drugs. On two occasions garbage was collected and trace amounts of THC was found. Likewise Officer Hoffman's supervisors and Shawano Circuit Court concluded the warrant less garbage search and related traffic supported the need for a search warrant. After a search using multiple Officers and a K-9 unit, the warrant produced a pipe, various eigarette wrappers and some roaches. The total amount of marijuana (THC) was less than one gram. Of which the total amount Contraband (THC) consisted of some seeds and stem material found in garbage bags. In addition, there was material scrapped from an alleged forty (40) year old pipe and some material were found that was used for medical purposes. This Court will neither support nor condemn medical use of marijuana. The fact is after months of investigation, the final amount of contraband totaled less than three (3) grams. The inventory found it would be hard pressed to conclude there was any drug trafficking taking place. The Lower Court held a trial April 23, 2009 and offered a final ruling July 22, 2009. The Lower Court and this Appellate Court both concur this case is troubling and difficult case. The issue of Mohican Nation's Sovereignty is an issue this Court does not take lightly. The search warrant matter will be addressed later in this concurrent ruling. As stated above, Robert Miller, Jr., Chief Judge, Stockbridge-Munsee Tribal Court, ruled, "As a

result of the Stockbridge-Munsee Public Service Officers failure to comply with Stockbridge-

Munsee Tribal Rules of Procedure and Law, The Court orders this case be dismissed with prejudice." The Order was signed and dated July 22, 2009.

The Order was appealed via letter August 27, 2009 and hand delivered to the Tribal Court

Clerk, Wayne Malone, on August 28, 2009. The above mentioned letter was signed by Howard J.

Bichler, Attorney for Stockbridge-Munsec. It is Brian R. Johnson, Attorney for the Respondent and

Interested party, argue the appeal failed to meet time lines and should be dismissed.

JURISDICTION

The matter in question is clearly a civil matter and there is no dispute on eviction matters related to the Tribe's Housing Department. However, there is a dispute over criminal and tribal procedures related to a search warrant.

FINDING

On or about July 24, 2007, a citizen reported as many as thirty (30) cars drive up to Beverly Jacobs home on a regular basis. Officer James Hoffman would testify he also observed similar traffic patterns and concluded drug trafficking was taking place. He also enlisted garbage men to collect evidence for activities his training indicated was drug traffic. Testimony in the trial would conclude there was no sinister activity taking place. On the contrary, the traffic was that of community members coming and going to cultural activities such as drumming, community counseling, caring for hungry children, educating community visitors, and feeding tribal elders. Testimony was provided that approximately 400 Mohican people live on the Reservation. It is a mystery to this Court how Peace Officer Hoffman, and his entire chain of command were not aware of the good deeds Mr. Tousey and Ms. Jacobs performed. The Stockbridge community is not that large and the services they provided should have been common knowledge of the entire Police Department. Attorney Johnson did not seem to have trouble finding numerous

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character witnesses for Mr. Tousey and Ms. Jacobs. In particular, Mr. Coys (Uncle) requested, "the Court rule on the good side for these two good people".

The underlying issue is what Court should authorize search warrants in or on Mohican Territory? Judge Miller was clear and sound. The Stockbridge-Munsee Court procedure allows for civil and Criminal search warrants. As Public Law 280 should the fruit of such warrants indicate civil or Criminal evidence such matters can be turned over to proper authority.

However, Howard J. Biehler, Attorney for Stockbridge-Munsee demanding the Appellate Court Assume Jurisdiction and reverse Case #1008-CV-0033. It is the position of Petitioner that the following took place:

The Court errored determining that the Stockbridge-Munsee Police sought a search warrant from Shawano County instead of the Tribal Court.

The Court errored by asserting Criminal Law ie search warrant over a non-Indian in violation of Oliphant v Sequamish Tribe vs. Supreme Court, 435 vs. 191(1978).

The Court errored by asserting criminal law on the Reservation contrary to P.L. 280.

The Court errored by asserting contempt sanction of Section 21(1) of the RCP apply to the police who chose to seek a search warrant from Shawano Court instead of the Stockbridge-Munsee Court.

The Court errored the search warrant issue was part of the eviction action.

The Court errored by allowing testimony over the objection of Petitioner as to basis and evidence produced via the warrant.

The Respondent has requested the Appellate Court dismiss the appeal based on timeliness or failure to meet established time frames outlined in 46. 6-12. of the Stockbridge-Munsee Housing Ordinance.

The portion of ordinance reads as follows:

Appeals under the Ordinance shall be handled according to the general tribal Appealate provisions, with the exception that the party filing the appeal shall