

**STOCKBRIDGE-MUNSEE APPELLATE COURT**

**Mohican Nation**

**Stockbridge-Munsee Community**

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**Lynne I. Miller,**  
**Petitioner Appellant,**

**v.**

**Case No. AP-2010-RO-0008**

**Hon. Robert Miller,**  
**Respondent-Appellee**

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**DECISION AND ORDER**

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Tribal Court of Appeals Panel presiding judges: Judge Stanley R. Webster, Oneida Tribal Judicial System, Marian Higgins, Stockbridge-Munsee Tribal Court, and Janice L. McLester, Oneida Tribal Judicial System.

**Background**

This case originated before the Stockbridge-Munsee Tribal Trial Court with judgment granting divorce to Lynne I. Miller from Charles Loud on September 29, 2000. Post-judgment issues arose requiring further review by Trial Court. In 2010, Petitioner, Lynne I. Miller sought an injunction to restrain Tribal Judge Robert Miller, the judge of record on the case, from presiding over any pending or future litigation, to which she is a party before the Stockbridge-Munsee Tribal Court. Judge Miller, filed a Motion to Dismiss, based on Tribal Judicial Immunity. On December 9, 2010, Judge Candice Des Armo Coury found Judge Miller has Tribal Judicial Immunity and dismissed Lynne I. Miller's petition for injunction. On December 29, 2010, Lynne I. Miller filed a Notice of Intent to appeal the trial court's dismissal of case No. 2010-RO-0008, claiming the court abused its discretion. On or about January 13, 2011, Judge Coury filed a written decision of the December 9, 2010 hearing.

On January 18, 2011, Petitioner-Appellant, Lynne I. Miller, filed the Notice of Appeal of the Tribal Trial Court's December 9, 2010 decision in Case No. 2010-RO-0008, with the Tribal

Court claiming the trial court abused its discretion. Relief Sought: Petitioner/Appellant seeks to have this matter reversed, vacated, and remanded back to Tribal Trial Court.

### **Judges Empanelled to Court of Appeals**

On January 25, 2011, the Stockbridge-Munsee Tribal Court, in accordance with the Tribal Court Code empanelled three Tribal Judges to the Stockbridge-Munsee Tribal Court of Appeals<sup>1</sup>: Judge Marianne Higgins, Stockbridge-Munsee Tribal Court, along with two Tribal Judges provided by the Wisconsin Tribal Judges Association, Janice L. McLester and Stanley R. Webster of the Oneida Tribal Judicial System.

### **Court of Appeals Panel Jurisdiction**

On February 3, 2011, the panel held a phone conference to identify a judge to chair the panel,<sup>2</sup> and determine whether to accept or deny the appeal. The Judges selected Judge Stanley R. Webster to chair the Tribal Court of Appeals panel.

The panel then reviewed the Tribal Court Code to determine jurisdiction, and found that: (1) in accordance with Section 1.6 (L)<sup>3</sup> the Tribal Court of Appeals has jurisdiction to review appeals from the Tribal Trial Court; and (2) according to Section 1.6 (L)(3)<sup>4</sup> Appellant's claim that the Tribal Trial Court abused its discretion, meets the principle grounds for appeal.

The Court notified both parties that the Tribal Court of Appeals accepted Appellant Lynne I. Miller's appeal, including the following briefing schedule: Respondent had 30 days after receipt of Appellant's brief to file a response brief. Appellant had 10 days after receipt of Respondent brief to file a rebuttal brief. However, to date, the only brief filed is the Appellant's brief. Respondent did not file a response brief. The Appellant sent letters addressed to each panel

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<sup>1</sup> **CHAPTER 1-TRIBAL COURT CODE Section 1.6 (L) (1)** The Court of Appeals does not have a standing panel of judges. Instead, a new 3-person panel of judges shall be empanelled for each case heard by the Court of Appeals.

<sup>2</sup> **Section 1.6 (L) (2)** Once the Court of Appeals panel is empanelled, the panel shall identify a judge to serve as the panel chair.

<sup>3</sup> **Section 1.6 (L)** The Stockbridge-Munsee Tribal Court of Appeals shall have jurisdiction over appeals from the Tribal Trial Court.

<sup>4</sup> **Section 1.6 (L) (3)** Parties who have grounds for appeal have the right to file an appeal on judgment or final disposition of the Tribal Trial Court to the Court of Appeals . . . The principal grounds for appeal are that the Trial Court made a serious error of fact or law and/or there was an abuse of discretion.

member of the Tribal Court of Appeals. Nevertheless, Court of Appeals will move forward with Appellant's brief and the Tribal Trial Court decision.

#### **Issue Presented by Appellant**

Appellant claims the Tribal Trial Court abused its discretion, in denying the request for injunction to restrain Judge Miller from presiding over any current or future case, in which she is a party in Tribal Court, and sustained Judge Miller's motion to dismiss based upon Tribal Judicial Immunity.

We affirm the trial court ruling and find that the Tribal Judge has Tribal Judicial Immunity.

#### **Analysis**

The litigation involving Ms. Miller originated as a divorce action with the Tribal Trial Court granting Appellant a divorce from her husband Charles Loud on September 29, 2000. On October 5, 2001, Judge Miller held a hearing on Lynne Miller's petition to evict ex-husband Charles Loud. The written decision filed on February 11, 2002 denied eviction. On January 19, 2007, Judge Miller summoned everyone back into court because of confusion in original September 29, 2000 divorce judgment and competing liabilities citing the "duty of the court to dispose of this case finally." According to Appellant Lynne I. Miller, she received notice to appear in court on October 14, 2010 and Show Cause why she should not be held in contempt of Court. On October 14, 2010, Appellant failed to appear for a scheduled hearing claiming her advocate withdrew from her case. Appellant, believing the Tribal Trial Court would reschedule the hearing because her advocate withdrew, did not appear for the October 14, 2010 hearing. Appellant instead filed a petition starting the case before us and sought to restrain Tribal Judge Robert Miller from presiding over any current or future cases to which Ms. Miller is a party before the Tribal Court. On December 7, 2010, Respondent Tribal Judge Robert Miller filed a motion to dismiss Appellant's petition based on Tribal Judicial Immunity. On December 9, 2010, Tribal Judge Candice Des Armo Coury held a hearing on Appellant's petition for injunction against Judge Miller and granted Judge Miller's motion to dismiss.

On January 13, 2011, Judge Coury filed a written decision of the December 9, 2010 hearing before Stockbridge-Munsee Tribal Court on Case No. 2010-RO-0008. Judge Coury refused to re-litigate or re-hear issues from the divorce action since Judge Miller is the Judge of record and is familiar with the facts of the case, and should maintain the file for any post-judgment relief that might be sought. Tribal Judge Coury sustained Tribal Judge Miller's motion to dismiss

Appellant's petition based upon Tribal Judicial Immunity. Appellant appeals the Tribal Court's decision claiming abuse of discretion.

Appellant claims that according to the Indian Civil Rights Act her civil rights were violated. Appellant claims the Tribal Court did not hold a hearing on December 9, 2010. Appellant further claims that, "In the case at bar, Lynne I. Miller claimed a violation of due process law in that the tribal judge did not follow proper procedure in administering justice in her divorce case. He deliberately disregarded material facts in her case. He did not have jurisdiction over the divorce matter because the hearings were not supported by a written motion. A lawful conclusion of the divorce action is being blocked. The judge has displayed partiality. These are violations of due process of law which strip him of immunity." Appellant also claims that the standard of review for summary judgment should be reviewed de novo citing a case decided in the State of Wisconsin and Wisconsin State Statute: *Hocking V. City of Dodgeville*, 2009 WI 70, 318 Wis 2<sup>nd</sup> 681, 768 N.W. 2<sup>nd</sup> 552 and Wisconsin State Statute Section 802.08.

We find that the Stockbridge-Munsee Community Band of Mohican Indians established the Stockbridge-Munsee Court of Appeals<sup>5</sup>, not the State of Wisconsin. The Stockbridge-Munsee Community Tribal Council established the Tribal Court for the Stockbridge-Munsee Community and this matter will be reviewed under Stockbridge-Munsee Community Law<sup>6</sup>.

Whether judicial immunity applies is a question of law, not a question of discretion therefore reviewing for an abuse of discretion is not applicable. Discretion arises when the trial court has a range of options such as sentencing a criminal defendant or sharing children's time between their parents. The question is a legal one: Does judicial immunity apply? Because the question is one of law, we will review it de novo, meaning without deference to the conclusion of the trial court.

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<sup>5</sup> Section 1.1 Council Findings (A) Recognizing that tribal self-sufficiency cannot be fully realized without first exerting control over such matters as may be vital to tribal interests, the Stockbridge-Munsee Tribal Council finds: (1) That Article VII, Section 1 (f) of the Stockbridge-Munsee Community Constitution and By-Laws (approved November 18, 1937) that states in part: "To promulgate and enforce ordinances, subject to the approval of the Secretary of the Interior, governing the conduct of members of the Community....and establishing proper agencies for law enforcement of the Community," authorizes the creation of a tribal court system and adoption of a comprehensive code of law;

<sup>6</sup> Section 1.3 Purpose and Construction (A) DECLARATION OF PURPOSE. This Code shall be interpreted and understood to accomplish the following tribal objectives: (3) To establish a court system for the interpretation of Stockbridge-Munsee Tribal Law and such other law as may properly come before the Court;

Tribal Judge Robert Miller as a member of the Stockbridge-Munsee Tribal Court is a Tribal official. We find that according to the Stockbridge-Munsee Tribal Law, Chapter 1, a Tribal Judge is an official of the Stockbridge-Munsee Community. Stockbridge-Munsee officials acting within the scope of their authority are immune from suit under Sec. 1.11 of the Stockbridge-Munsee Ordinances.<sup>7</sup>

### **Decision**

We affirm the Tribal Trial Court ruling. A Tribal Judge has Tribal Judicial Immunity.

Judicial Officers benefit from judicial immunity, which means that they cannot be held liable for decisions rendered in the course of their duties as a Judicial Officer. This is a broad immunity and may only be disturbed in limited circumstances, such as when an abuse of authority is alleged and substantiated. No such allegation is present. Suit against a judge is only permitted in the extreme circumstance where a court has gone completely outside the law. Appellate review is always available when a party disagrees with the ruling of the Court.

The Appellant merely addresses the content of the decision, arguing that it was improper and contrary to law. An alleged error of judgment is not an abuse of discretion or authority.

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<sup>7</sup> Section 1.11 Sovereign Immunity (B) Any official or employee of the Stockbridge-Munsee Community acting within the scope of their duties shall be immune from suit.

So ordered on this 13th day of May, 2011.

*Stanley R. Webster*

Judge Stanley R. Webster, panel Chair, Court of Appeals

*Marianne Higgins*

Judge Marianne Higgins, Stockbridge-Munsee Tribal Court

*Janice L. McLester*

Judge Janice L. McLester, Pro Tem

Oneida Tribal Judicial System

