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Case No. AP 2012-RO-0006

2. Respondent-Appellant Menchaca refrain from having any other person contact the Petitioner, except the party's attorney;

3. Respondent-Appellant refrain from any contact through email, or any other electronic means;

4. A copy of this Injunction is provided to the Stockbridge-Munsee Police Department and Shawano County Sheriff's Department; and finally that the Injunction shall be effective until June 25, 2014.

On July 5, 2012, Attorney Gary Dodge representing Respondent-Appellant Menchaca, filed a Notice of Intent to Appeal and a Motion to Stay the Trial Court's decision pending final outcome of the appeal, citing Rule 23(C) of the Stockbridge-Munsee Tribal Court Rules of Procedure. Respondent-Appellant's Notice of Intent to Appeal asserts the following:

1) That at the June 15, 2012 hearing, Plaintiff-Appellee Holsey was allowed to state her case without being sworn-in and therefore the defendant was unable to cross-examine Plaintiff-Appellee Holsey, which Attorney Dodge stated was a due process error;

2) That the Court ordered the parties into peacemaking while informing the parties if peacemaking did not occur, an injunction would be ordered on June 29, 2012. Attorney Dodge contends that by informing the parties of the Court's intent if peacemaking failed that Plaintiff-Appellee Holsey had no incentive to attempt peacemaking in good faith, which is a violation of Respondent-Appellant's due process;

3) That Jeff Vele, appointed Peacemaker, spoke with Plaintiff-Appellee and decided peacemaking would not work and cancelled peacemaking;

4) That on June 15, 2012, while the hearing was winding down, it became clear to Attorney Dodge for the Respondent-Appellee that the Plaintiff-Appellant is a Stockbridge-Munsee Tribal Council member allegedly having authority over judges, and thus a conflict of interest exists; and

5) That during the June 15, 2012 hearing, Attorney Dodge for the Respondent-Appellant moved to dismiss the action pursuant to Section 1.13(G)(5)(c) which states that "A judge shall hold a hearing regarding issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended by the Court upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence in attempting to serve the respondent."

Respondent-Appellant asserts that since the Tribal Court issued the TRO on June 7, 2012, the June 15, 2012 injunction hearing is one day late and as a result, the Court lost its jurisdiction. The Respondent-Appellant asserts the ordinance was clearly violated and the case should be dismissed. Respondent-Appellant Menchaca furthermore asserts that she did not consent to an extension of time and therefore, Attorney Dodge moved the Tribal Court to dismiss the action. The Court denied the motion.

The Respondent-Appellant sought the following relief:

- 1) Motion to stay the Court's decision pending outcome of appeal; made pursuant to Rule 23(H) of the Stockbridge-Munsee Tribal Court Rules of Procedure;
- 2) Reverse the Trial Court's decision and remand with an Order to Dismiss based upon errors listed above and incorporated for reference herein;
- 3) Dismiss the action based upon a violation of the statute of limitations;
- 4) Or alternatively, reverse the Trial Court decision and remand with an Order to Appoint a judge from outside of the Stockbridge-Munsee Community to hear the case; and
- 5) To award the Respondent-Appellant attorney's fees and other costs for having to defend this action.

The Stockbridge-Munsee Court of Appeals denies Respondent-Appellant's request for appeal.

ANALYSIS

The primary issue before the Court of Appeals goes to the question of lost jurisdiction.

The Respondent-Appellant claims that due to the Tribal Court's due process and conflict of interest errors and, specifically according to Section 1.13(G)(5)(c) that because the hearing was held one day late that this matter should be dismissed since there has been a clear violation of the statute of limitations. It is asserted that the Trial Court decision should be reversed and remanded with an Order to appoint an outside judge, and award attorney fees and other costs for this action.

The Respondent-Appellant claims that a conflict of interest exists because Plaintiff-Appellee Holsey is a member of the Stockbridge-Munsee Tribal Council, which has authority over judges and/or the ability to remove judges. However, the Respondent-Appellant fails to cite which part of the Stockbridge-Munsee Community Law supports the claim that a conflict of interest exists whenever a member of the Stockbridge-Munsee Tribal Council appears before the Stockbridge-Munsee Tribal Court.

The Respondent-Appellant claims that her due process rights were violated when the Plaintiff-Appellee was allowed to state her case in Tribal Court without first being sworn-in and claims that that error prevented the Respondent-Appellant from cross-examination of Plaintiff-Appellee Holsey. However, the Respondent-Appellant fails to specifically cite, which part of Stockbridge-Munsee Community Law requires a Plaintiff appearing before the Tribal Court to be sworn-in.

The Respondent-Appellant claims that her due process rights were violated when the Tribal Court informed the parties that an injunction would be issued, if peacemaking did not occur, and as such, there was no longer an incentive for the Plaintiff-Appellee to

attempt peacemaking. Attorney Dodge asserts that the Tribal Court should have but did not indicate peacemaking would be taken under advisement. However, the Respondent-Appellant fails to show how Respondent-Appellant's due process rights were violated because of the Court's offer to settle in peacemaking, and that if peacemaking did not occur that the Court would then issue an injunction.

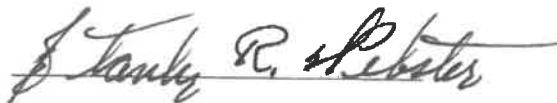
The Respondent-Appellant claims that a violation of the statute of limitations occurred because the Tribal Court held the injunction hearing one day late according to Section 1.13(G)(5)(c) "A judge shall hold a hearing regarding issuance of an injunction within 7 days after the temporary restraining order is issued." Therefore, it asserts that the Tribal Court lost its jurisdiction because the hearing was held on the eighth day. However, the Respondent-Appellant fails to cite the Stockbridge-Munsee Community Law showing that the Tribal Court actually loses jurisdiction because a hearing is held one day late.

DECISION

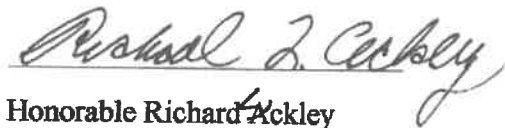
The Stockbridge-Munsee Tribal Court of Appeals finds that the Respondent-Appellant's Notice of (Intent to) Appeal does not allege with sufficient clarity any basis for appeal. Therefore, the Court of Appeals denies the Respondent-Appellant's request for appeal in accordance with Chapter 1, Section 1.6 (L) (4).

IT IS SO ORDERED. Dated this 15th day of August, 2012.

BY THE COURT,



Honorable Stanley R. Webster, Chair



Honorable Richard Ackley



Honorable Candace Des Armo Court

