

**IN THE COURT OF APPEALS
FOR THE STOCKBRIDGE-MUNSEE COMMUNITY BAND
OF MOHICAN INDIANS
AT BOWLER, WISCONSIN**

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STOCKBRIDGE MUNSEE COMMUNITY,)	Appeal No. 2020-AA-0002
Plaintiff/Appellee)	Trial No. 2019-FA-0004
)	Tribal Judge Miller
vs.)	
)	
KRISTA MALONE)	<u>OPINION</u>
Defendant/Appellant)	

Before: Honorable Eric M. Lochen, Chief Justice

Opinion By Lochen, CJ.

I. SUMMARY

Defendant/Appellant Krysta Malone (“Defendant/Appellant”), *pro se*, filed a Notice of Appeal with this Court on December 9, 2019, concerning a Default Judgment ordered by the Stockbridge Munsee Trial Court, Hon. Travis Miller presiding, on November 25, 2019, against Appellant and in favor of Plaintiff/Appellee Stockbridge Munsee Community (“Appellee”).

BACKGROUND

On November 21, 2019, an initial hearing was scheduled and held by the Trial Court regarding the above-captioned case, wherein Defendant/Appellant was charged with the following violations:

1. 21.28(b) Trespass on tribal property
2. 22.25 (B) and 22.9 (B) Party to Harvesting wild ginseng without a permit
3. 22.27 (A) and 22.9 (B) (3) Wild ginseng not reported/verified by the SMC Forestry Department
4. 22.27 (A) and 22.9 (B) Party to selling wild ginseng/not for personal use (October 7, 2019)

5. 22.27 (A) and 22.9 (B) Party to selling wild ginseng/not for personal use (October 1, 2019)

Appellant was provided notice of the hearing and failed to appear.¹ On November 25, 2019, the Trial Court issued an Order for Default Judgment, finding the Defendant/Appellant guilty of the above charges, and imposing penalties.

Defendant/Appellant completed a Notice of Appeal on the Trial Court's Order for Default Judgment on December 9, 2019, which was stamped by the Court and forwarded to the attention of the Justices on February 6, 2020. Thus, it is not clear, and a question remains as to whether proper service was effectuated upon Plaintiff/Appellee, the Notice of Appeal was timely filed with the Court, and whether either party has elected to brief on this Appeal. Given the nature of the Appeal, however, this Court will now render a decision in such a fashion that will resolve the aforementioned questions and the issue at hand in accordance with Tribal law.

II. ISSUE

Where Defendant/Appellant was provided notice of the Trial Court's scheduled initial hearing, and Defendant/Appellant failed to appear, should this Court of Appeals reverse the Trial Court's Order for Default Judgment?

III. SHORT ANSWER

No.

IV. DISCUSSION

This Court reviews this matter *de novo*, and finds that the Trial Court acted within its discretion to issue an Order for Default Judgment. Defendant/Appellant raises no argument to dispute the Trial Court's action. In fact, upon review of the record, this Court notes that a phone

¹ Tribal Court Order for Default Judgment, November 25, 2019.

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call was received by the Clerk's office, whereby Defendant/Appellant stated that neither she nor James Madosh² in this matter would be appearing for the initial hearing due to the fact that they were in Milwaukee at the time.

This Court finds the record sufficient to conclude that Defendant/Appellant made the decision not to appear at the initial hearing and the Trial Court acted within its discretion. The Trial Court could have rescheduled the initial hearing as a one-time gesture of grace or good will, but, not being charged with assessing the full set of circumstances of this matter at the Trial Court level, far be it from this Court to step into the shoes of the Trial Court where the actions of the Trial Court are clearly within its discretion.

Further, Defendant/Appellant fails to provide briefing on the issues and provides no appealable issue in the Notice of Appeal. Therefore, this Court will not assume the posture of the Trial Court and reconsider the Trial Court's decision without grounds to do so.

V. ORDER

The Court ORDERS:

1. The Trial Court's Order for Default Judgment is UPHELD.
2. In accordance with the Stockbridge Munsee Appellate Procedure Ordinance, Chapter 5-A of Stockbridge-Munsee Tribal Law, this Decision is rendered by the Chief Justice and not by way of *en banc* review by the three-member panel of justices of the Stockbridge Munsee Court of Appeals. Any party dissatisfied with the decision of a single justice may petition the Court for *en banc* review.³

² Defendant/Appellant in companion case Appeal No. 2020-AA-0001.

³ 5-A.4(C)

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3. Petitions for *en banc* review may be filed within ten (10) days of a decision by a single justice being rendered.⁴
4. If no petition for *en banc* review is filed within ten (10) days of this Decision, in accordance with Tribal law, the Trial Court's Order for Default Judgment shall resume to the posture as of the moment the Default Judgment was ordered on November 25, 2019.

IT IS SO ORDERED.

Entered this 1 day of MARCH, 2020.


Eric M. Lochen
Chief Justice

cc: All parties via Clerk of Court



⁴ 5-A.B(3)