

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
IN THE TRIBAL COURT OF APPEALS

JAMES T DECKROW,

Plaintiff and Appellant,

v.

Court of Appeals File No. 98 - A-001 0998
Trial Court File No. C 006 03-98

LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS,

Defendant and Appellee.

CHRONOLOGY OF EVENTS

On March 9, 1998, Plaintiff in this matter filed his complaint in the Tribal Court for the Little Traverse Bay Bands of Odawa Indians. A summons was issued on March 30, 1998 by the Court Clerk. In his complaint, the Plaintiff sought to disallow ballot results for the tribal plan known as the "*Judgment Fund Distribution Plan*". In his complaint the Plaintiff alleges the Plan is "*ambiguous*" and "*confusing*" so as to not allow the Plaintiff to make an informed decision with regard to his ballot. On March 26, 1998, Attorney Gregory Justis, on behalf of Defendant, filed with the Court his answer and affirmative defenses proving service upon the Plaintiff by ordinary mail. In the Court's response, it is asserted that the claims of Plaintiff are barred by failure of the Plaintiff to exhaust the administrative remedies provided by Tribal Ordinances and Statutes, and therefore requesting entry of an order dismissing Plaintiff's complaint.

Court log indicates that the Court Clerk attempted to advise Plaintiff of subsequent preliminary court dates by way of leaving messages on Plaintiff's answering machine on May 18, 1998 and again on May 21, 1998. On Friday, May 26, 1998, Plaintiff, through his agent-wife, informed the Court by telephone that travel plans had been made and would have to be changed, but Plaintiff would attend the hearing scheduled for May 27, 1998. By way of a FAX transmittal memo to the Court on May 26, 1998, Plaintiff, through his agent-wife, asked the Court to address Plaintiff's concerns with regard to court procedure and lack of proper notice.

A hearing on a Motion for Summary Disposition or Dismissal brought on by the Defendant-Appellee was held in the Trial Court on May 27, 1998. Upon Plaintiff's failure to appear, an Order of Dismissal was granted and served on the Plaintiff. On June 22, 1998, the

Plaintiff sent a letter to the Trial Judge, protesting the Court's decision and appealing the dismissal of his suit. Again, on September 10, 1998, Plaintiff, through his agent-wife, requested information from the Court regarding his appellate standing.

On September 13, 1998, this appeal was filed in the Tribal Court of Appeals.

OPINION OF THE APPELLATE COURT

Although this appeal was received after considerable delay, and prior to the adoption of Appellate Court Rules, Plaintiff appears to have filed a request for an appeal of the Trial Court's decision approximately 24 days after the Trial Court hearing and within a reasonable time for filing an appeal, and therefore, this appeal is accepted as timely filed. There being a final Trial Court disposition reached in this case, this matter is properly subject to an appeal. Due to the nature of this appeal, it is being handled summarily, and any further action is subject to the temporary Appellate Court Rules adopted on October 22, 1998.

This appeal is based solely on the refusal of the Trial Court to move a hearing date to suit the Plaintiff's schedule. While the Trial Court is not required to adjourn a hearing date except upon a showing of good cause and upon the discretion of the Trial Judge, it appears that there was not a proper written notice of the time and date of the hearing sent to the Plaintiff. Under the Tribal Constitution, it is contemplated that due process and fairness require that all motions and hearings require written notice to all parties, showing time and method of delivery in accordance with Tribal Court Rules with such notice providing reasonable and adequate time for preparation of a defense. It is the opinion of this Court that the Trial Court file must be required to contain a copy of such notice before the Trial Judge hear a matter unless notice is waived by appearance, entry of a default, substituted service, other written court rules, or subject to ex-parte or emergency procedures where notice is not appropriate but protected through a right to a later hearing or other action.

This Opinion does not address the merits of the case as the merits were never argued in the Trial Court and may be decided in a new Motion for Summary Disposition or for Dismissal. This matter is remanded to the Trial Court for a new hearing on its Motion to Dismiss. The Trial Court shall reset the hearing with written notice of the date and time of the hearing to be sent to all parties and the file shall contain proof of service therefor. As this resolves the matter, the appeal is closed with no further involvement by the Court of Appeals. Costs are not awarded to either party and the appellate filing fees are waived for this appeal only.

Opinion by Justice Rita M Brubacker with concurrence by Justice Doris Adams and Acting Justice Ronald G Douglas.

Dated: Oct 22, 1998

Justice Rita M Brubacker

Concurrence:

Dated: Oct 22, 1998

Justice Doris Adams

Dated: Oct 22, 1998

Acting Justice Ronald G Douglas

Accept for filing on this date:

Dated: 10-22-98

Appellate Court Clerk, Bruce Hinmon

Concurrence:

Dated: Oct 22, 1998

Justice Doris Adams

Dated: Oct 22, 1998

Acting Justice Ronald G Douglas

Accept for filing on this date:

Dated: 10-22-98

Appellate Court Clerk, Bruce Hinmon