

**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
APPELLATE COURT**

Court Mailing Address:
7500 Odawa Circle
Harbor Springs, MI 49740
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Case No: A-028-0815 (C-185-0713)

Appellant's Name & Address:

S. Garrett Beck, Appellant
224 Michigan Street
Petoskey, MI 49770

Appellee's Name and Address:

**Little Traverse Bay Bands of Odawa
Indians, Appellee**

v.

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OPINION AND ORDER

This is an appeal of three separate orders issued by the Little Traverse Bay Bands of Odawa Indians Tribal Court, Judge Timothy P. Connors presiding as Judge Pro Tempore. The three orders appealed include an Order denying Respondent's Motions for Relief and Reconsideration, dated August 18, 2015; an Opinion and Order Granting LTBB's Request for Relief on S. Garrett Beck's Citation for Contempt, dated December 29, 2014; and an Opinion and Order Finding Respondent Beck in Contempt of Court, dated March 24, 2014.

For the reasons discussed below, the Appellate Court dismisses the appeal of the Orders of March 24, 2014 and December 29, 2014 for untimeliness and affirms the Order of August 18, 2015.

JURISDICTION

Article IX, Section C, paragraph 1 of the Constitution of the Little Traverse Bay Bands of Odawa Indians states that the “[t]he judicial power of the Tribal Court shall extend to all civil and criminal cases arising under this Tribal Constitution, statutes, regulations, or judicial decisions of the Little Traverse Bay Bands of Odawa Indians.” It also states that “[t]his jurisdiction is based on the Tribe’s inherent sovereignty, traditional custom, and Federal law.” LTBB Constitution, Art. IX, Sec. C(1). Furthermore, paragraph 5 of Article IX, Section C states that “[t]he Tribal Appellate Court shall have jurisdiction over any case on appeal from the Tribal Court.”

This case is a civil contempt proceeding brought on behalf of the LTBB Tribal Court against the Appellant, who appeared as an attorney before the court in a separate civil action to collect on a debt claimed by his client. When an attorney appears before the Tribal Court on behalf of a party who submits a case to the Tribal Court for adjudication, the attorney’s actions manifest consent to the norms of professional ethics governing attorneys. If the attorney, in the course of representing a client in a matter before the Court, violates the applicable rules of professional conduct, the Tribal Court may lawfully exercise civil contempt jurisdiction over the attorney in a civil contempt proceeding.

In this case, the Appellant did in fact appear before the Tribal Court on behalf of a client, and the Appellant’s actions are subject to norms of professional ethics governing attorneys. The Appellant’s statements and actions before the Tribal Court led Judge Maldonado to believe that he had violated the norm of candor and was responsible for acting in contempt of court. Consequently, the Tribal Court lawfully exercised jurisdiction over the Appellant in a separate civil contempt proceeding over which Judge Connors presided. Furthermore, under Article IX(C)(5) of the LTBB Constitution, the Appellate Court has jurisdiction to consider an appeal of the Tribal Court’s judgment in that case.

STANDARD OF REVIEW

The standard of review is governed by the LTBB Appellate Procedures. Under Rule 7.501, the Appellate Court sustains a Tribal Court finding of fact unless clearly erroneous, and it reviews the Tribal Court's conclusions of law *de novo*. LTBBRAP 7.501(A) and (E).

FACTS

This case began as a civil contempt proceeding on July 23, 2013, when Chief Judge Allie Maldonado issued an Order to Show Cause re: Civil Contempt of Court, naming S. Garret Beck as the Respondent. The Order stated that the Appellant served as counsel of record in the separate case of *Northern Anesthesia Providers, Inc. v. Welles*, No. FC-233-0812. The Order to Show Cause stated that Judge Maldonado believed that Appellant had violated his duty of candor to the Court and had failed to show respect for the LTBB Court process during the course of his representation of Northern Anesthesia Providers in Tribal Court.

To preside over the civil contempt proceeding, the LTBB Tribal Council appointed State Court Judge Timothy Connors of Washtenaw County, Michigan. Judge Connors accepted the appointment, and on July 23, 2013, the Tribal Court issued a Notice of Hearing for a hearing to be held on August 26, 2013.

On August 12, 2013, the Appellant submitted a Motion to Dismiss the Order to Show Cause, and the Petitioner Little Traverse Bay Bands of Odawa Indians submitted a brief in opposition to the motion. On August 23, 2013, the parties requested that the August 26, 2013 hearing on the Order to Show Cause be rescheduled for October 4, 2013 due to the need for Appellant's new counsel to have time to review the evidence and prepare for the hearing. The Court granted the request and ordered that the hearing would be scheduled for October 4, 2013.

At the hearing on October 4, 2013, Judge Connors received testimony and reviewed the parties' evidence, and listened to the arguments of counsel. On March 24, 2014, the Tribal Court issued an Opinion and Order Finding Respondent Beck in Contempt of Court. In its Opinion, the Tribal Court stated the following:

[Appellant] Beck failed to uphold his duty of candor to the tribunal by failing to be "frank, open, and sincere" in his representations. At best, his responses were evasive and ambiguous. In effect, they were materially misleading.

Opinion and Order Finding Respondent Beck in Contempt of Court at 4. Following this opinion and order, the Tribe's Special Legal Counsel filed a motion seeking to revoke the Appellant's privilege to practice before the Tribal Court and to recover attorney fees. The Tribal Court, Judge Connors presiding, held a hearing on October 24, 2014 at which counsel for the Appellant and the Tribe appeared. Based on the parties' evidence and arguments, the Tribal Court issued an order on December 29, 2014, granting a partial award of the attorney's fees sought by the Tribe. The Tribal Court's order stated, "Judgment against Mr. Beck and in favor of LTBB is awarded in the amount of \$5,000.00 together with any additional costs, interest, or attorney fees as provided by applicable law." Order of December 29, 2014 at 4.

Following the Order of December 29, 2014, the Appellant failed to pay the attorney's fees awarded to the Tribe. The Appellant also failed to file a Notice of Appeal with the Appellate Court within the twenty-eight calendar days provided for appeals under Rule 7.401(A) of the LTBB Appellate Procedures. LTBBRAP 7.401(A). On March 26, 2015, the Tribe filed a request for recognition and enforcement of the Tribal Court's December 29, 2014 Order in the Emmett County District Court. The Emmett County 90th District Court conducted a hearing on the Tribal Court's request for enforcement on May 28, 2015, and it concluded that the Tribe was entitled to enforcement of its Order in the State of Michigan's courts.

On June 18, 2015, following the state court's determination that the Tribal Court Order of December 29, 2014 warranted recognition and enforcement in the courts of the State of Michigan, the Appellant filed a Motion for Relief from and Motion for Reconsideration of [the] Opinion and Order Finding Respondent Beck in Contempt of Court. In his motion for reconsideration filed with the Tribal Court, the Appellant raised numerous arguments, including that the civil contempt order was actually criminal rather than civil; that Judge Maldonado engaged in improper conduct before issuing her July 23, 2013 Order to Show Cause re: Civil Contempt of Court; that Judge Connors' Order of March 24, 2014 was not supported by evidence; and that the Order was invalid for being issued more than 45 days after the hearing held October 24, 2013, in violation of Rule XXII of the LTBB Rules of Civil Procedure, which requires that the trial judge shall issue a written opinion "within forty-five (45) days" from the conclusion of a trial. LTBBRCP XXII.

Judge Connors reviewed the Appellant's June 18, 2015 Motions to Reconsider and denied them for untimeliness. In its Order of August 24, 2015, the Tribal Court noted that the motions were governed by Rule XXVI of the LTBB Rules of Civil Procedure. Rule XXVI states that a party may petition the court for a new trial or amendment of a judgment within fourteen days after entry of judgment. Applied to the civil contempt case against the Appellant, this meant that the Appellant had until April 7, 2014 to file a motion for reconsideration of the March 24, 2014 Opinion and Order, and until January 12, 2015 to file a motion for reconsideration of the December 29, 2014 Order. Consequently, the Appellant's June 18, 2015 Motions to Reconsider were untimely and warranted dismissal by the Tribal Court.

The Appellant next turned to the Appellate Court to seek relief, filing a Notice of Appeal with the Appellate Court on August 28, 2015. The Appellate Court held a scheduling conference with the parties, issued a scheduling order for briefing of the issues, and held oral arguments on May 13, 2016.

The Notice of Appeal stated that the grounds for the appeal were “procedural irregularities, judicial misconduct, newly discovered evidence, excessive damages, error of law, and denial of [a] motion for reconsideration on August 18, 2015.” The Appellant stated that the legal basis of the appeal included “violations of judicial ethics, violations of defendant’s civil rights, [and] lack of substantive due process.” The Appellant requested that the Appellate Court set aside any previously entered orders, review the record to determine if sanctions for ethical violations might be reasonable, appoint a new judge, and remand the case for new hearings.

In an Amended Petition to Appeal, filed by the Appellant on November 16, 2015, the Appellant expanded the Orders appealed from to include the March 24, 2014 Opinion and Order and the December 29, 2014 Order, as well as the August 24, 2015 Order that denied his motion for reconsideration. In his amended petition to appeal, the Appellant also claims that Orders issued more than 45 days after a hearing are not subject to appellate rules and time limits. The Appellant also claims that the Tribal Court’s Orders violate his civil rights and substantive due process, and that the Appellate Court should review evidence of judicial misconduct that the Appellant had newly discovered.

ANALYSIS

A. Appeal of the March 24, 2014 and December 29, 2014 Orders

The Appellate Court first notes that the LTBB Appellate Procedures Rule 7.401(A) state that “[a]n appeal to the Tribal Appellate Court in civil cases must be filed no later than twenty-eight (28) calendar days after the entry of the final written Tribal Court judgment, order, or decision.” LTBBRAP 7.401(A). Under Rule 7.401(D), “failure to file an appeal within the time period provided in this Rule deprives the Tribal Appellate Court of subject matter jurisdiction to hear the appeal. Late Appeals shall be dismissed by the Tribal Appellate Court unless leave for late filing has

been granted.” LTBBRAP 7.401(D). Such leave for late filing of an appeal may be permitted by the Tribal Appellate Court in its discretion “upon a showing by the Appellant, supported by affidavit, that there is merit in the reasons for appeal and that the late filing was not due to the Appellant’s or the Appellant’s attorney/advocate’s negligence.” LTBBRAP 7.401(E).

In this case, the Appellant’s appeal of the Orders of March 24, 2014 and December 29, 2014 are untimely. The Appellant first filed his notice of Appeal on August 28, 2015. This date is 522 days after the March 24, 2014 Order and 242 days after the December 29, 2014 Order, well beyond the twenty-eight days allowed by the Appellate Procedures. Furthermore, the Appellant has not made a showing that the lateness of the filing was due to some reason other than his own or his attorney’s negligence. For this reason, the Appellate Court lacks subject matter jurisdiction to hear the appeal of these two orders.

B. Appeal of the August 24, 2015 Order

Unlike the appeals described above, the appeal of the August 24, 2015 Order was filed just four days after the order’s issuance, making it timely. The August 24, 2015 Order concluded that the Appellant’s Motions for Reconsideration were untimely and denied them on that ground.

The Appellate Court determines that the Tribal Court was correct to conclude that the Motions for Reconsideration filed on June 18, 2015 were untimely. The Motions sought relief from three Tribal Court Orders, including the Orders of July 23, 2013, March 24, 2014 and December 29, 2014.

The Tribal Court correctly noted that the LTBB Rules of Civil Procedure provide a means for a party who seeks reconsideration of a Tribal Court judgment by the Tribal Court. Rule XXVI(a) provides that “[a]ny party may petition for a new trial on any or all of the issues presented by filing and serving a motion no later than fourteen (14) days after the entry of judgment” for any of five listed reasons, including error or irregularity that prevents a party from receiving a fair trial, judicial

misconduct, certain instances of newly discovered evidence, excessive damages, or error in law. Also, Rule XXVI(e) provides that “[a] motion to alter or amend a judgment shall be filed and served not later than fourteen (14) days after entry of the judgment.” LTBBRCP XXVI(e). The LTBB Rules of Civil Procedure provided the Appellant with a window within which he could have requested a new trial or moved to amend a judgment, but due to his own inaction, the Appellant waited until that window had long closed before filing his request. Instead of filing within fourteen days as required, the Appellant filed his Motions 171 days after the December 29, 2014 Order, 451 days after the March 24, 2014 Order, and 695 days after the July 23, 2013 Order. These delays are far in excess of the time allowed, and consequently, the Appellate Court finds that the Tribal Court was correct to conclude that the Appellant was far from compliance with the rule, that the motions were untimely as a result, and that the motions warranted a denial.

C. Appellant’s Argument that Tribal Court Opinions Issued More than 45 Days After Trial are Invalid or Exempt from Timeliness Rules Governing Appeals

Finally, the Appellant also urges us to hold that Tribal Court opinions issued more than forty-five days after a hearing or trial are exempt from civil or appellate rules that impose time limits for the filing of appeals, motions for reconsideration, motions for a new trial, or motions to amend a judgment. This argument is utterly baseless. Rule XXII of the LTBB Rules of Civil Procedure states that a trial judge “shall issue a written opinion” within forty-five (45) days from the conclusion of a trial. This rule is intended to promote efficiency and reduce the risk of delay. The rule offers no statement regarding the effect of a failure to issue an opinion within the forty-five day time period. A common sense conclusion is that such delays should result in the Judiciary reviewing its procedures and allocation of resources to determine how it can support trial judges in issuing opinions in a more timely manner. However, the Appellant would like the Appellate Court to read into the Rules of Civil Procedure text that invalidates such opinions or exempts them from the fourteen days allowed

for motions for reconsideration and the twenty-eight days allowed for appeals. Such a reading is not supported by the text of the Rules, any practice in any other jurisdiction, or any sound policy for the administration of justice. If adopted, the Appellant's interpretation would be self-serving, but it would cause grave injustice to parties that invest significant resources in litigating cases before the Tribal Court.

CONCLUSION

For the reasons described above, the Appellate Court **DISMISSES** the appeal of the Orders of March 24, 2014 and December 29, 2014 for untimeliness and **AFFIRMS** the Order of August 18, 2015.

IT IS SO ORDERED.

Date: February 13, 2017

Wenona Singel, Chief Appellate Justice

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