

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
COURT OF APPEALS

IN THE MATTER OF,
ASG and EG, *two minor children*

ENTERED
1-23-2018 *MS*
Sault Ste. Marie
Chippewa Tribal Court of Appeals

Decided January 19, 2018

BEFORE: DIETZ, FINCH, HAUTAMAKI, WARNER, AND WICHTMAN Appellate Judges.

ORDER

Wichtman, Karrie, Chief Appellate Judge, who is joined by Appellate Judges Dietz, Hautamki, Finch and Warner.

Appellant's Motion for Reconsideration is denied.

Background

On October 27, 2017, the Court issued its *Opinion & Order Affirming September 1, 2016 Tribal Court Order & Opinion (Terminating Respondent Father's Parental Rights)* (hereinafter *October 27, 2017 Order*). On November 8, 2017, the Court received *Appellant's Request for Reconsideration* (hereinafter *Request*). In his *Request*, the Appellant reiterates his argument already addressed on appeal claiming that termination of the Appellant's parental rights was not in the best interest of the children, and not the last resort, and also argues that a guardianship for the children with the maternal grandmother is more in line with the laws of the Tribe. On November 20, 2017, Appellee filed Appellee's Response to Request for Reconsideration citing STC § 82.128 which states "request must identify the exact element of the decision, which is to be reconsidered, the reasons for the request, and any authority upon which the party relies." Appellee also offers U.S. District Court for the Western District of Michigan Local Rule of Civil Practice and Procedure 7.4(a) for the Court's consideration arguing that Appellant's *Request* does not satisfy the standard set forth in either STC § 82.128 or W.D.Mich. LCivR 7.4(a). Neither party addressed the standard set forth in *Michael Jay Lumsden v. Sault Ste. Marie Tribe of Chippewa Indians Election Committee*, APP-16-03 at 3 (March 22, 2016) where this Court looked to Fed. R. Civ. P. 60(b) for guidance when considering a request for relief from a judgment or order.¹

¹ Fed. R. Civ. P. 60(b) provides that "a court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons" (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial

Standard of Review

Under STC § 82.109, this Court possesses exclusive jurisdiction to review the decisions of the Tribal Court. An appeal is properly before the Court if it is a final decision of the Tribal Court. STC § 82.111 (1). Under STC § 82.128, this Court may consider requests for reconsideration when certain criteria have been met. Additionally, this Court has previously addressed the standard required when making a request for consideration under STC § 82.128. *Lumsden*, APP-16-03 at 3. This Court in *Lumsden* articulated that a request for reconsideration must be supported by: (1) newly discovered evidence not available at trial; (2) a clear judicial error or evidence that the decision of the court was manifestly unjust; or (3) an intervening change in controlling law. *Id.* In concert with the standard adopted in *Lumsden* and STC § 82.128 is the notion that “motions for reconsideration which merely present the same issue ruled upon by the Court shall not be granted.” W.D.Mich. LCivR 7.4(a).

The Tribal Code requires the application of the “clearly erroneous” standard when reviewing findings related to decisions concerning the termination of parental rights. STC § 30.512 (“The clearly erroneous standard shall be used in reviewing the findings of the Tribal Court on appeal from an order terminating parental rights.”). *In the Matter of A.S.F/E.G.*, APP-14-03/04. “In applying the clearly erroneous standard of review, the Court will determine whether it is left with a ‘definite and firm’ conviction that the trial court made an error in its findings of fact.” *Rex Smith v. Sault Ste. Marie Tribe of Chippewa Indians*, APP-08-02.3 (August 4, 2008).

Discussion

In his *Request*, the Appellant raises issues related to the best interest of the children; the possibility of guardianship; and the facts and circumstances related to Appellant’s minimal progress toward reunification with his minor children. Each issue raised in the 12-paragraph, single sentence *Request* was considered by this Court and rejected. To be sure, Appellant’s *Request* sets forth no newly discovered evidence not previously available at trial, makes no argument regarding clear error or manifest injustice, and cites to no intervening change in controlling law. What is more, notwithstanding citation to STC §§ 30.501 and 30.102(2), Appellant’s *Request* is almost void of citation and contains no legal argument. The application of both STC §§ 30.501 and 30.102(2) to the present matter were considered by both the Tribal Court and this Court.² Mere disagreement with the Court’s *October 27, 2017 Order* is an insufficient basis for reconsideration. Thus, Appellant has not presented a proper basis for this Court to reconsider its *October 27, 2017 Order*.

under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

²See Tribal Court *Opinion & Order Affirming September 1, 2016 Tribal Court Order & Opinion (Terminating Respondent Father’s Parental Rights)* and this Court’s *October 27, 2017 Order*.

Accordingly, this Court denies Appellant's Request.

ORDER

The Appellant's November 8, 2017 *Request for Reconsideration* of this Court's *Opinion & Order Affirming September 1, 2016 Tribal Court Order & Opinion (Terminating Respondent Father's Parental Rights)* is DENIED.

IT IS SO ORDERED.



SAULT STE. MARIE CHIPPEWA TRIBAL COURT OF APPEALS

IN THE MATTER OF:

**Alexys Stallard-Goetz
Emily Goetz**

**D.O.B. 04/02/2010
09/30/2011**

**APP 17-01
17-02**

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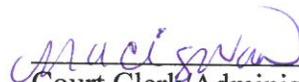
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PROOF OF SERVICE

The undersigned certifies that a copy of each of the following documents were served upon the Attorney for ACFS & ACFS by inter-office mail, upon the remaining attorneys of record by electronic mail and the remaining parties of record via U.S. first class mail, to their last known addresses, on 1.23.18: Order denying Request for Reconsideration

I declare under penalty of perjury that the statement above is true to the best of my knowledge, information and belief.

Date: 1/23/2018



Court Clerk/Administrator