



ENTERED
10/14/2022 ts
Sault Ste. Marie
Chippewa Tribal Court Appeals

**SAULT STE. MARIE CHIPPEWA TRIBAL
COURT OF APPEALS**

GREGORY TYLER NELSON,
Appellant,

-v-

GEORGE W. HART, IV,
Appellee.

**Case Nos. APP-2022-04
Lower Court: PPO-2022-005**

ORDER GRANTING MOTION TO DISMISS

On July 25, 2022, the Appellant filed a Notice of Appeal claiming “an error of law substantially prejudicial to the rights of the Appellant wherein” the Appellant claims that the Tribal Court erred in its denial of a personal protection order pursuant to STC Chapter 34 when it determined that the Tribal Court lacked personal jurisdiction over the Appellee.

On August 1, 2022, this Court issued an Order on Briefing Schedule (“Scheduling Order”) establishing the following:

Appellant’s Brief Due: August 31, 2022
Appellee’s Brief Due: September 15, 2022
Appellant’s Reply Due: September 30, 2022

On August 30, 2022, a Motion to Dismiss (“Motion”) was filed by Appellant citing as the reason for the dismissal mootness stating that the circumstances have changes such that a personal protection order is no longer appropriate. The Appellee did not respond to the Motion. The Appellant did not file a brief in response to the Scheduling Order.

Motion practice in this Court is allowable pursuant to §82.123. The Appellant cites no authority in his Motion but rather declare the appeal as moot due to a change in circumstances. This is a matter of first impression for this Court and while the Court is inclined to dismiss, application of some standard is necessary. Mootness not being one of them given the law has not changed (an error of which is the basis for the Appellant's appeal) but rather the parties circumstances which no longer require the original relief requested. This Court notes that voluntary dismissal is not addressed in §82.123, the rules of procedure adopted by the Tribal Court, or STC Ch.81 entitled Civil Jurisdiction and Procedure. §82.108 (1).

In the absence of substantive law of the Tribe, this Court is instructed by §82.108 (4) to look to applicable federal law. It follows then, that in the absence of Tribal rules of procedure, federal rules of procedure may be reviewed and applied so long as such rule is compatible with traditional and cultural practices of the Tribe. In this instance, F. Rule Civ. P 42(b) addresses dismissal of an appeal as follows:

(b) Dismissal in the Court of Appeals. The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. but no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

However, F. Rule Civ. P. 42(b) still leaves this Court wanting as the Motion contained no such "terms agreed to by the parties" and this Court has "fixed" no such terms as to when such a dismissal would be proper. Under such circumstances, this Court has looked to sister tribes for guidance in formulating a standard that is fair and equitable. (See *McKechnie v. The Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians*, APP-16-05, July 12, 2016). While not binding on this Court, both the White Earth Band of Ojibway and the Little Traverse Bay Bands of Odawa Indians adopted Rules of Civil Procedure which provide the following related to voluntary dismissal of an action:

RULE XVI DISMISSAL OF ACTIONS

- (a) Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment of such claim, the party making the claim may file a notice of dismissal and his or her claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss his or her own claim and the Court shall do so either with or without prejudice as is just and proper given the stage of the proceedings, provided, however, if a cross claim or counterclaim has been filed against the moving party, the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute his or her claim independently without undue additional hardship.

White Earth Band of Ojibway, Rules of Civil Procedure, Rule XVI, Dismissal of Actions.

RULE XVI DISMISSAL
OF ACTIONS

- (a) Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment of such claim, the party making the claim may file a notice of dismissal and his or her claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss his or her own claim and the Court shall do so either with or without prejudice as is just and proper given the stage of the proceedings, provided, however, if a cross claim or counterclaim has been filed against the moving party, the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute his or her claim independently without undue additional hardship.

Little Traverse Bay Bands of Odawa Indians, Ch. 3., Rules of Civil Procedure, Rule XVI, Dismissal of Actions.

The second sentence of both tribes' rule serve as instructive in the adoption and application F. Rule. Civ. P. 42(b) as terms "fixed by the court" to determine when voluntary dismissal may be proper in an appeal. The rules call for (1) consideration of the stage of the proceeding and filings of each party in the matter; (2) whether the other party consents to the dismissal; (2) whether the non-dismissing party will be prejudiced by such a dismissal. Applying the aforementioned factors as instructive here as terms "fixed by the court", this Court finds that:

1. The Appeal is still in its infancy as the Scheduling Order has run its course and no other filings have been made but the Motion.
2. The timeframe for a response to the Motion has lapsed without response.
3. While there is no indication that the Appellee consents to the dismissal, there is no reason for this Court to believe that the Appellee would be prejudiced if a dismissal was entered.

IT IS HEREBY ORDERED the Motion is GRANTED. The above-captioned matter is DISMISSED.

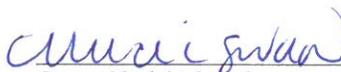
Issued: October 14, 2022

By: BIRON, FELEPPA, JUMP, DIETZ and CORBIERE, Appellate Judges.

CERTIFICATE OF MAILING

I certify that on this date a copy of this order was served on the attorneys of record by U.S. first class mail and electronic mail on 10.14.2022.

Dated: 10/14/2022



Court Clerk/Administrator