

APPENDIX

Oneida Judiciary (tribal trial court).
Arletta J. Kurowski (Petitioner) v. The
Estate of Kenneth H. Kurowski,
(Defendant). Case No. 18-TC-004. Date
of Entry, May 30, 2018 for Order
Denying Declaratory Judgment.

A complaint was filed by Petitioner February 6, 2018. A Pre-Trial hearing was held on March 9, 2018. At the hearing, the Petitioner added clarity to the caption: Defendant. On March 5, 2018, Norma Kurowski filed answer to the complaint. The Court entered Norma Kurowski's response on the record. The Petitioner was not provided a copy of the Defendant's answer to the complaint; therefore the court allotted time for both parties to prepare a response. On April 30, 2018, the court held a Jurisdictional hearing.

The Petitioner's son, Daniel Hawk was present at the March 9, 2018 hearing, and requested to assist the Petitioner; she is disabled and hearing impaired. The Court granted Mr. Hawk a one-time waiver to assist and/or represent the Petitioner, in order to continue as an advocate he is required to be approved to practice in the Judiciary prior to any further hearings. Mr. Hawk did not complete the approval to practice process; therefore, he was not allowed to represent the Petitioner at the April 30, 2018 Jurisdictional hearing.

A. Analysis

The Petitioner seeks a Declaratory Judgment; Trial Court Judgment awarding child support arrears for Donna Kurowski-Galvan, Debra Kurowski, and Dani-el Hawk against The Estate-of Kenneth H. Kurowski. In regards to a declaratory judgment, the Petitioner has the burden to meet both declaratory judgment and subject matter jurisdiction requirements identified in Chapter 801.5-2.

A declaratory judgment is sought to determine the validity of a Tribal law. In this case, the Petitioner cites numerous laws or cases outside the Oneida Nation, but fails to identify specific Tribal law or laws that were violated, resulting in interference, impairment or threats of the legal rights and privileges of the Petitioner. Further burden is on the Petitioner to prove any Oneida Nation laws violate a Constitutional provision or that the law was adopted without following law making procedures required under Tribal law. The Petitioner did not prove any Oneida Nation law violates Constitutional provisions or was adopted without compliance with law making procedures required under Tribal law.

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: Where an agency has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person, and the person has exhausted the process provided by law, if any, for review of the action.

The Petitioner has brought this suit forward against The Estate of Kenneth H. Kurowski. In establishing subject matter jurisdiction, 801.5-1 (c) requires that an agency has denied a person a benefit

or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person ... Therefore it requires an agency to take some form of action. Based on the definition of "agency" outlined in 801.3, The Estate of Kenneth H. Kurowski does not meet any of the criteria identified in the definition "agency" outlined in 801.3. Therefore The Estate of Kenneth H. Kurowski is not an agency and subject matter jurisdiction is not established under 801.5-2 (c).

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: Where a disagreement over the terms, interpretation or enforcement of a written contract. The Petitioner has not produced a written contract in regards to fulfilling this requirement; therefore, disagreements over the terms, interpretation or enforcement are moot.

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: Small claims actions where the amount in controversy is five thousand (\$5,000) or less. In the complaint, the Petitioner requests the Trial Court to award \$123,120.58 in monetary damages to the Petitioner for child support arrears. This far exceeds the maximum amount of \$5,000.00 for small claims and must be denied for these reasons.

B. Conclusions of Law

The Petitioner did not meet the Declaratory Judgment requirements, nor did the Petitioner

establish the Trial Court has Subject Matter Jurisdiction to hear this complaint.

ORDER the request for a Declaratory Judgment is denied.

Oneida Judiciary (tribal trial court).
Arletta J. Kurowski (Petitioner) v.
Norma J. Kurowski, (Defendant). Case
No. 18-TC-005. Date of Entry, May 30,
2018 for Order Dismissed with
Prejudice.

A complaint was filed by Petitioner on February 12, 2018. On March 5, 2018, Norma Kurowski filed an answer to the complaint and Motion to Dismiss. A Pre-Trial hearing was held on March 12, 2018. The Petitioner was not provided a copy of the Defendant's answer to the complaint; therefore the court allotted time for both parties to prepare a response. The Court received the Petitioner's response to Defendant's answer. The Court received the Defendant's reply to the Petitioner's response. A Jurisdictional hearing was scheduled for April 26, 2018 at 1 :30 p.m. CST.

On March 23, 2018, the Defendant filed a motion to change the hearing date and time, due to a scheduling conflict, the court granted the Defendant's administrative request. On April 30, 2018, the court held a Jurisdictional hearing.

The Court granted Daniel Hawk and Attorney Curtis Clark a one-time waiver to represent the Petitioner and the Defendant at the March 12, 2018 Pre-Trail hearing. Neither Mr. Hawk nor Attorney

Clark is approved to practice as an Advocate or Attorney in the Judiciary. In order to continue as Advocate or Attorney, both are required to be approved to practice in the Judiciary prior to any further hearings. Attorney Clark was approved to practice within the Judiciary by the April 30, 2018 Jurisdictional hearing. Mr. Hawk did not complete the approval to practice process; therefore, he was not allowed to represent the Petitioner at the April 30, 2018 Jurisdictional hearing.

A. Analysis

The burden is on the Petitioner to meet subject matter jurisdiction requirements identified in Chapter 801.5-2. The Petitioner seeks a Trial Court ruling, judgment and other corrective actions. The Petitioner identified in her complaint as subject matter jurisdiction: Other Tribal Law - Fraud, but failed to identify a specific Tribal Law with regard to fraud. Therefore, the Court looked at 801.5-2 (c) when evaluating fraud and subject matter jurisdiction.

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: Where an agency has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person, and the person has exhausted the process provided by law, if any, for review of the action.

The Petitioner has brought this suit forward against Norma Kurowski. 801.5-2 (c) requires that an agency has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or

has imposed a fine on a person ... Therefore it requires an agency to take some form of action. Based on the definition of "agency" outlined in 801.3, Norma Kurowski does not meet any of the criteria identified in the definition "agency". Therefore Norma Kurowski is not an agency and subject matter jurisdiction is not established under 801.5-2 (c).

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: where a disagreement over the terms, interpretation or enforcement of a written contract.

The Petitioner has not produced a written contract in regards to fulfilling the requirements in 801.5-2 (d); therefore, disagreements over the terms, interpretation or enforcement are moot.

The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following: Small claims actions where the amount in controversy is five thousand (\$5,000) or less.

In the complaint, the Petitioner requests a monetary judgment of \$100,000.00 to the Petitioner for illegally taking Oneida Nation decedent death precedes that otherwise allegedly legally belong to the Petitioner. This far exceeds the maximum amount of \$5,000.00 for small claims and must be denied for these reasons.

The Defendant is requesting the court to address an alleged improper filing Lis Pendens, "Notice of Lis Pendens and Notice of Action Pending". This Court will not address any filings in another Jurisdiction.

B. Conclusions of Law

The Petitioner did not establish the Trial Court has Subject Matter Jurisdiction to hear this complaint.

ORDER Case no. 18-TC-005 is dismissed with prejudice.

Oneida Judiciary (tribal trial court).
Arletta J. Kurowski (Petitioner) v.
Norma J. Kurowski, (Defendant). Case
No. 18-TC-007. Date of Entry, May 30,
2018 for Order Dismissed with
Prejudice.

A complaint was filed by Petitioner February 28, 2018. On March 23, 2018, Norma Kurowski filed answer to the complaint. A Pre-Trial hearing was held on March 29, 2018. The Court allotted time for both parties to prepare a response. The Court received the Petitioner's response to the Defendant's answer. The Court received the Defendant's reply to the Petitioner's response. On April 30, 2018, the court held a Jurisdictional hearing.

The Court granted Daniel Hawk and Attorney Curtis Clark a one-time waiver to represent the Petitioner and the Defendant at the March 29, 2018 Pre-Trial hearing. Neither Mr. Hawk nor Attorney Clark is approved to practice as an Advocate or Attorney in the Judiciary. In order to continue as Advocate or Attorney, both are required to be approved to practice in the Judiciary prior to any further hearings. Attorney Clark was approved to practice within the Judiciary by the April 30, 2018

Jurisdictional hearing. Daniel Hawk did not complete the approval to practice process; therefore, he was not allowed to represent the Petitioner at the April 30, 2018 Jurisdictional hearing.

A. Analysis

The Petitioner seeks a Trial Court ruling for the following corrective actions:

1. Return possession of husband's remains to Petitioner,
2. Return possession of military articles such as medals, flag, commendations, clothing and weapons to Petitioner,
3. Return possession of hunting and fishing articles such as commemorative rifles, hand guns, shot guns, and fishing rods and reels to Petitioner.

In summary, the Petitioner is seeking the return of human remains, military, hunting and fishing articles. However, personal jurisdiction over the Defendant must be established in order for the Court to go forward with this case. The burden is on the Petitioner to prove jurisdiction, specifically, the personal and territorial jurisdiction requirements identified in Chapter 801.5-3 and 801.5-4. As a basis for jurisdiction, the Petitioner has claimed in her complaint that:

1. The filing of the Death Certificate of Kenneth H. Kurowski created a consensual

relationship with the Oneida Nation because Kenneth H. Kurowski was an enrolled Oneida Nation member.

2. The Defendant entered into illegal funeral arrangements for Kenneth H. Kurowski creating a consensual relationship with the Oneida Nation and depriving the Petitioner of Native American funerary rites in accordance with: Other Tribal Law - American Indian Religious Freedom Act, 42 U.S.C. §1996 Pub. L. 95-341; and

3. The Defendant entered into a legal executorship of the Oneida Nation citizen's estate through probate, thereby, creating a consensual relationship with the Oneida Nation.

The basis for jurisdiction is addressed below.

B. Certificate of Death

The Petitioner failed to show how the filing of the Death Certificate of Kenneth H. Kurowski by the Defendant would create a consensual relationship under 801.5-4 (b)(1). The decedent was domiciled in Abbeville County, in the State of South Carolina. The Certificate of Death for Kenneth H. Kurowski was filed with the Department of Health and Environmental Control in the State of South Carolina. Furthermore, the Trial Court lacks Territorial Jurisdiction under 801.5-3 which states:

The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin.

In order for the Trial Court to have territorial jurisdiction, the complaint regarding a fraudulent death certificate requires the matter to geographically fall within the exterior boundaries of the Oneida Nation or within land held in trust by the United States for the benefit of the Tribe within the State of Wisconsin. In this case, neither exists. Here, the death certificate was filed in the State of South Carolina where the decedent was domiciled. The Oneida Judiciary's Trial Court does not possess Personal or Territorial Jurisdiction to hear this complaint.

C. Funerary Rites & Arrangements

The Petitioner asserts the Defendant entered into illegal funeral arrangements for Kenneth H. Kurowski, depriving the Petitioner of Native American funerary rites in accordance to the American Indian Religious Freedom Act, 42 U.S.C. § 1996 Pub. L. 95-341. Further, the asserted illegal actions of the Defendant translate into a consensual relationship with the Oneida Nation. This act states:

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and

exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

The Petitioner has not identified how AIRFA, 42 U.S.C. §1996 Pub. L. 95-341 support the claim the Defendant entered into illegal funeral arrangements for Kenneth H. Kurowski, violating said funerary rites. Nor did the Petitioner identify how the Act would give this Court personal jurisdiction over the Defendant. But, what is clear, the Defendant is the appointed Personal Representative for the Estate of Kenneth H. Kurowski. As the Personal Representative or Executor, Norma Kurowski has the authority to make decisions on behalf of the decedent in all specified matters.

D. Probate

The Petitioner asserts the Defendant entered into a legal executorship of the Oneida Nation citizen's estate through probate. However, the duties of an executor do not amount to a consensual relationship as required in 801.5-4 (b)(1), when the probate is not administered by an Oneida Nation court or other entity and that occurs within the exterior boundaries of the Oneida Nation reservation. The decedent was domiciled in Abbeville County, in the State of South Carolina. The Defendant filed and opened the Estate of Kenneth H. Kurowski in Abbeville County, in the

State of South Carolina. The Defendant has been appointed by the State of South Carolina, Abbeville County Probate Court as Personal Representative to the Estate of Kenneth H. Kurowski. Therefore the Petitioner has not identified how this Court would have personal jurisdiction based on probate being executed in another State. Furthermore, 801.5-3 requires the following in order for the Trial Court to have Territorial Jurisdiction to hear this complaint:

The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Tribe within the State of Wisconsin.

The Petitioner is required to prove this alleged illegal action geographically falls within the exterior boundaries of the Oneida Nation or on land held into trust by the United States for the benefit of the tribe within the State of Wisconsin. Neither exists, the Trial Court does not have Territorial Jurisdiction to hear this complaint.

E. Conclusions of Law

The Petitioner did not establish the Trial Court has Personal or Territorial Jurisdiction to hear this complaint.

ORDER 1. Case no. 18-TC-007 is dismissed with prejudice.

Oneida Judiciary (tribal appellate court). Arletta J. Kurowski (Appellant) v. The Estate of Kenneth H. Kurowski and Norma Kurowski, (Respondents). Case Nos. 18-AC-004, 18-AC-005, and 18-AC-006. Date of Entry, January 17, 2019 for Order, Decisions of the Trial Court are Affirmed.

Arletta This matter has come before Appellate Judges, Sharon House and Chad Hendricks, and Chief Appellate Judge, Gerald L. Hill.

A. Jurisdiction

The Court of Appeals has jurisdiction over this matter per §801.8-2(a)(2) of the Oneida Judiciary Law which gives this Court exclusive jurisdiction to review appeals of agency and administrative decisions.

B. Introduction

This matter was accepted by this Court on July 18, 2018 and on its own motion consolidated the three (3) appeals from the Oneida Trial Court (hereinafter "TC"), as 18-AC-004, 18-AC-005 and 18-AC-006. All three (3) cases were decided on the same date, May 30, 2018, and filed here separately.

18-AC-004 involves Arletta Kurowski's (hereinafter "A. Kurowski") request that Kenneth

Kurowski's (hereinafter "K. Kurowski") estate pay for child support arrearages, which the TC denied due to lack of jurisdiction.

In 18-AC-005 A. Kurowski alleged that K. Kurowski's second wife, Norma Kurowski, fraudulently presented a death certificate issued in another jurisdiction and an invalid marriage license based upon alleged bigamy which she then used to become the Personal Representative of K. Kurowski. The TC held that there was a lack of personal and subject matter jurisdiction in its decision to dismiss, with prejudice.

In 18-AC-006 A. Kurowski asserted the American Indian Religious Freedom Act as authority to claim personal effects, service awards, and funerary ashes of K. Kurowski. It was acknowledged that K. Kurowski and A. Kurowski were Oneida Indians, but the TC found that the complaint failed to show how this applied to the case or established jurisdiction. The TC dismissed this case with prejudice for lack of subject matter jurisdiction.

Upon consolidation, A. Kurowski motioned the Court for a refund of two (2) of the appellate filing fees which were denied because filing fees are not refundable. On October 10, 2018, the Court denied A. Kurowski's motion for peacemaking because the TC's decisions being reviewed were for dismissal due to lack of jurisdiction. Peacemaking is based upon the parties' voluntary agreement to the process of negotiating the various issues being litigated. However, jurisdiction is not a negotiable issue.

Dan Hawk (hereinafter "Hawk") has designated himself as an "agent" for A. Kurowski.

However; he is not admitted to practice as an advocate for A. Kurowski in this Court. This appellate review is confined to the original three (3) cases which as stated above, the TC dismissed for lack of jurisdiction. The decision of the TC is affirmed.

C. Issue

Whether the TC erred in its decision to dismiss each case for lack of appropriate jurisdiction?

D. Analysis

In all three cases, A. Kurowski claimed she was denied due process and there were errors by the TC. A. Kurowski cited *Burrell v. Armijo*, 456 F.3d 1159 (2006) case several times as authority for establishing personal jurisdiction over Norma Kurowski. However, the TC found that there was no corresponding connection to any Oneida Nation laws that would have made *Burrell* applicable to the cases. Thus, the TC correctly ruled that the authority of the *Burrell* case was without foundation and did not apply to any of these cases.

This Court has reiterated on several occasions that it defers to the findings of the lower court in the absence clear error. Oneida Judiciary Law §801.8-3 - Scope of Appellate Review, states that "the Court of Appeals shall not substitute its judgment or wisdom of the credibility of testimony or the weight of evidence for that of the original hearing body." The right of the appellant to appeal based on §801.8-4(a), (b), (c), and (d) has a low threshold. However, the allegations in

the Notice of Appeal must still be substantiated by the parties' briefs to prevail. The burden of persuasion is on the appellant. Here that burden has not been met.

In all three cases, the TC consistently found that no laws of the Oneida Nation support the notion that the TC has jurisdiction. Further, A. Kurowski failed to provide any legal authority or reasoning upon which to attach Oneida jurisdiction to any of the three (3) cases.

For the reasons set forth here, this Court affirms each of the decisions of the TC appealed in the consolidated cases; 18-AC-004, 18-AC-005, and 18-AC-006. We will not address the two (2) actions in lis pendens filed by Hawk in South Carolina which should be addressed there in light of our affirmation of the TC's findings and orders of dismissal in each of these consolidated appeals for lack of the required jurisdiction.

Pursuant to the authority of §801.8-2(6), this Decision of the Appellate Court is final.

E. Order

Pursuant to the Rules of Appellate Procedure, §801.8-2(b), §805.9-2, §805.9-3, §805.10-4, and §805.13-2(a), this Court hereby affirms the decisions of the Trial Court in dismissing the three (3) actions, which we have consolidated, as identified in the caption.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 3-19-17-A, the decisions of the Trial Court are AFFIRMED. Date this 17th day of January, 2019, in the matter of Case

Numbers. 18-AC-004, 1 8-AC-005 and 18-AC-006,
Kurowski v. Estate of Kenneth H Kurowski. Et al.

Eastern District Wisconsin (federal
court). Arletta J. Kurowski
(Plaintiff/Appellant) v. Estate of
Kenneth H Kurowski and Norma
Kurowski Schoonober
(Defendants/Appellees). Case No. 1:19-
cv-00274-WCG. Date of Entry, February
25, 2019 for Lack of Jurisdiction to
review a decision of the Oneida Court of
Appeals and Dismissal.

Arletta Kurowski has filed a Notice of Appeal
from a decision of the Court of Appeals of the Oneida
Judiciary affirming a trial court's judgment
dismissing her actions. This court lacks jurisdiction
over the Oneida judiciary. Accordingly, this court
cannot review a decision of the Oneida Court of
Appeals. This action is, therefore, dismissed.

SO ORDERED this 22nd day of February 2019.

United States Court of Appeals for the Seventh Circuit (federal court). Arletta J. Kurowski (Plaintiff-Appellant) v. Estate of Kenneth H Kurowski, et al., (Defendants/Appellees). Case Nos. 19-1391 & 19-1982. Date of Entry, June 3, 2019 for Final Judgment.

We conclude that the district court had no jurisdiction to rule on the May 14 motion to substitute parties, because by that time the case was lodged in this court. We therefore resolve appeal No. 19-1982 by **VACATING** the May 16 order of the district court. As we indicated earlier, we **AFFIRM** the district court's judgment in No. 19-1391.

The above is in accordance with the decision of this court entered on this date.