

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

COURT OF APPEALS

Robert Peterson v. People of the Sault Ste. Marie Tribe of Chippewa Indians

APP-14-05

Decided April 28, 2015

BEFORE: FINCH, JUMP, LEHMAN, NERTOLI, and WARNER Appellate Judges.

Order and Discussion

Warner, Appellate Judge, who is joined by Appellate Judges Finch, Jump, Lehman and Nertoli.

Procedural History

Appellant filed a motion to dismiss the complaint against him in tribal court, arguing that the tribal court lacked jurisdiction because sovereign immunity applied as he was acting in his capacity as a tribal employee at the time the citation was issued. During a pre-trial hearing on November 18, 2014, the tribal court denied the motion to dismiss, finding that the tribal court had jurisdiction over appellant by virtue of his membership in the Sault Ste. Marie Tribe of Chippewa Indians. Appellant therefore timely filed an appeal to this Court, requesting that this Court overturn the tribal court's denial.

Appeals Properly Before the Court of Appeals

This Court, however, declines to intervene in the present matter, as the appeal is not properly before this Court. The present matter constitutes an interlocutory appeal, as the tribal court has not yet reached a final decision on the merits of the case. Under Sault Ste. Marie Tribe of Chippewa Indians Tribal Code Section 82.111, “[a]n appeal is properly before the Court of Appeals if it concerns: (1) a final judgment or order of the Tribal Court; or (2) an order denying appellant's request for refusal; or (3) an order affecting a substantial right and which determines the action and prevents a judgment from which an appeal might be made.”

As previously mentioned, this is not an appeal of a final order. Further, there is not “an order denying appellant's request for refusal.” Accordingly, the appeal would only be properly before this Court if it constitutes “an order affecting a substantial right and which determines the action and prevents a judgment from which an appeal might be made.” Neither party to this appeal, however, provided insight into whether an appeal of a denial of a motion to dismiss fits into this third category, and, as a result, there is some uncertainty. However, because Tribal Code Section 82.111 does not explicitly include interlocutory appeals, there is no argument that appellant would be disadvantaged, and this Court would benefit from the tribal court's decision on the merits, this Court determines that the present appeal is not properly before the Court under Tribal Code Section 82.111. If a future party, however, raised an argument that such an interlocutory appeal meets this third category under Tribal Code Section 82.111, today's decision would not preclude this Court from considering such an argument.

ORDER

For the reasons stated above, the present appeal is not properly before this Court.

It is SO ORDERED.