

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS APPELLATE COURT

Wade Jensen v. The People of the Sault Tribe of Chippewa Indians
APP-07-03

Decided August 4, 2008

BEFORE: GABLE*, HARPER, KRONK, JUSTIN and NOLAN, Appellate Judges.

OPINION AND ORDER

Kronk, Chief Appellate Judge, who is joined by Appellate Judges Harper, Justin and Nolan.

Appellant failed to submit a brief in this matter or appear for oral argument. Accordingly, there is no issue submitted on appeal, which this Court may evaluate. Tribal Code Section 82.125(2). The trial court's decision is affirmed.

DISCUSSION

I. Factual and Procedural Background

The present matter involves an appeal by Wade Jensen from the trial court's decision. On November 13, 2007, the trial court entered a judgment after a November 9, 2007 bench trial finding the Appellant responsible for engaging in commercial fishing without a valid license in violation of the Chippewa Ottawa Resource Authority Commercial, Subsistence and Recreational Fishing Regulations for the 1836 Treaty Ceded Waters of Lakes Superior, Huron and Michigan (CORA Regulations), Section XX(A). Finding Appellant responsible for violating the CORA Regulations, the tribal court entered an order against the Appellant, which included a 30-day suspension of Appellant's license and a money judgment in the amount of \$67,577.40, which constituted forfeiture of catch, in accordance with Sections XXVI(c) and XXVI(c)(5) of the CORA Regulations.¹ At the time of the trial court's entry of judgment, the illegally caught fish were no longer available for actual forfeiture, as the catch had been sold by Appellant for \$67,577.40. Accordingly, the trial court's fine equals the economic benefit to the Appellant from fish sold in contravention of the CORA Regulations.

Appellant appealed from the trial court's decision. Appellant did not submit a brief in this matter. Oral argument before this Court was scheduled for June 26, 2008. Appellant failed to appear for oral argument, despite receiving adequate notice.

* Although Judge Gable heard oral argument in this matter, she unfortunately passed away on July 18, 2008 before being able to participate in this opinion. Accordingly, only appellate judges Harper, Justin, Kronk and Nolan participated in this opinion.

¹ The trial court made the Appellant jointly and severally liable for the \$67,577.40 fine with his brother, Troy Jensen, as Appellant and Troy Jensen fished and sold their fish together. Transcript from *The People of the Sault Ste. Marie Tribe of Chippewa Indians v. Wade Jensen*, File No. C-06-22, p. 15-16 (November 9, 2007).

II. Issues Preserved on Appeal

Because Appellant neither filed a brief nor appeared for oral argument before this Court, this Court does not have the authority to render a decision in this matter. Tribal Code Section 82.125(2) provides that “[a]n issue raised before the Tribal Court, but not argued either by brief or orally, shall not be reviewed by the Court of Appeals.” As previously mentioned, Appellant failed to submit a brief or appear for oral argument before this Court. Given the Court has received neither a written nor verbal explanation of the basis of Appellant’s appeal, this Court is incapable of rendering a decision, as no issue has been preserved on appeal. Tribal Code Section 82.125(2). The decision of the trial court is therefore upheld.

III. Briefing Requirement

The Court would like to also address the Motion to Dismiss Appeal submitted by Jocelyn Fabry on behalf of the Appellee, Sault Ste. Marie Tribe of Chippewa Indians. Before oral argument, Appellee argued that Appellant’s appeal should be dismissed for failure “to timely file a brief. . .” Appellee, through its representative Mr. James Bias, raised this argument again before this Court at oral argument, stating that the Court is not authorized to consider an appeal if there is no brief or stated basis of appeal. Mr. Bias went on to argue that the Appellee needs a brief submitted in order to have adequate notice of issues raised on appeal and have the ability to respond.

The Court wishes to clarify that parties are not required to submit briefs under Tribal Code Section 82, which governs appeals to this Court. As already explained above, Tribal Code Section 82.125(2) provides that this Court may address issues raised on appeal “either by brief or orally”. (emphasis added) Additionally, Tribal Code Section 82.120 provides that “[p]arties are encouraged, but not required, to file written briefs concerning the issue on appeal, in order to assist the Court of Appeals in its review.” (emphasis added) The Tribal Code is therefore clear on this point – although encouraged to do so, parties to an appeal are not required to submit briefs in an appeal, as this Court may consider issues raised either in a brief or at oral argument. Tribal Code Section 82.125(2). Hence, it was inappropriate for Appellee to argue in its Motion to Dismiss brief and at oral argument for dismissal based on a failure of Appellant to submit a brief, as there is no affirmative duty to do so under the Tribal Code.

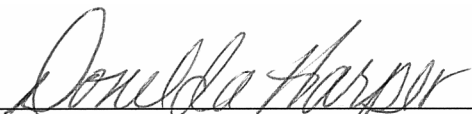
CONCLUSION AND ORDER

Under Tribal Code Section 82.125(2), Appellant must have raised an issue on appeal to this Court either through the submission of a brief or at oral argument. Because Appellant failed to submit a brief or appear for oral argument, there is no issue raised on appeal that this Court may consider. Accordingly, the trial court's November 13, 2007 Order is affirmed, which includes a 30-day suspension and money judgment of \$67,577.40 for forfeiture of catch, of which Appellant is jointly and severally liable with his brother, Troy Jensen.




Hon. Elizabeth A. Kronk, Chief Appellate Judge

08/04/08
Date



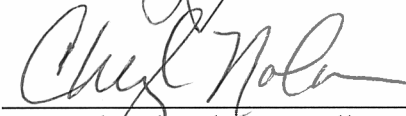
Hon. Donelda Harper, Appellate Judge

08/04/08
Date



Hon. Wm. Dyke Justin, Appellate Judge

08/04/08
Date



Hon. Cheryl Nolan, Appellate Judge

8-4-08
Date