

**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
APPELLATE COURT**

Court Mailing Address:
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Case No: A-029-1015 (C-207-0515)

Appellant's Name & Address:

Michael LaVerne Lyons, Appellant
#197289
Pugsley Correctional Facility
7401 East Walton Road
Kingsley, MI 49649

Appellees' Name and Address:

v. Amy Louise Mary Lee, Appellee

OPINION AND ORDER

This matter is an appeal of an Order of Dissolution of Marriage and Judgment of Divorce issued by the Tribal Court, Associate Judge John Lemire presiding, on September 16, 2015. The Appellant filed a timely Notice of Appeal, which the Appellate Court received on October 14, 2015.

In the Notice of Appeal, the Appellant raised issues that can be collectively summarized as two arguments. The first was whether the Tribal Court denied the Appellant due process and violated LTBB statutory law governing the dissolution of marriage and related distribution of property by conducting an *ex parte* dispositional hearing on the merits on a date that was scheduled for a mere pretrial hearing. The second issue raised by the Appellant is whether the Tribal Court failed to divide property and allocate marital debt in an equitable fashion.

The relief requested by the Appellant includes the waiver of all fees and costs related to the appeal due to Appellant's status as an incarcerated individual; production and transmittal of the transcripts of the Tribal Court hearing held September 16, 2015; a remand to the Tribal Court for

additional court process including a trial conducted in the Appellant's presence, and disqualification of Judge Lemire as the presiding trial judge. Based on the Appellate Court's analysis of the facts and law governing this appeal, the Appellate Court finds that the Tribal Court's Order is lawful and therefore affirms the Tribal Court Order for Dissolution of Marriage and Judgment of Divorce dated September 16, 2015.

JURISDICTION

Waganakising Odawa Statute 13.203 provides that "the Court shall have jurisdiction over divorce proceedings for the dissolution of marriage . . . including division of property . . . where at least one (1) party to the proceedings is a Tribal Citizen of the Little Traverse Bay Bands of Odawa Indians and has been a bona fide resident of the Tribal Jurisdiction for a period of at least 180 days prior to the filing of the action." The immediately preceding definitions section in WOS 13.202 contains definitions for three terms, including "Court," "Territorial Jurisdiction of the Little Traverse Bay Bands of the Odawa Indians," and "Tribe." In what appears to be a technical error in the legislation, the term "Tribal Jurisdiction" is used in the statute but is not separately defined in the definitions section, while the term "Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians" is defined in the definitions section but never used in the statute's text. The Appellate Court resolves this discrepancy by noting that "Tribal Jurisdiction" includes the "Territorial Jurisdiction" of the Tribe. In both WOS 13.202(2) and Article V(A)(1)(a) of the Little Traverse Bay Bands Constitution, the "Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians" is defined as "areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs 'third and fourth' of the Treaty of 1855, 11 Stat. 621."

In this case, the requirements of WOS 13.203 are satisfied. The Tribal Court found that the Appellant is an LTBB Tribal Citizen and the parties were residents of the Tribal territorial jurisdiction for 180 days prior to Petitioner's filing of this action.

STANDARD OF REVIEW

In accordance with Rule 7.501 of the Appellate Procedures, the Appellate Court sustains the Tribal Court's factual findings and reasonable factual inferences unless they are clearly erroneous. As required in Rule 7.501(E), the Appellate Court reviews the Tribal Court's conclusions of law *de novo*.

FACTS

This case originated as a Petition for a Dissolution of Marriage filed on May 19, 2015 by Appellee. The Appellant filed a Response to the Petition on June 10, 2015. The Tribal Court scheduled a pretrial hearing for September 16, 2015, and gave notice of the hearing to the parties. The center of the Notice of Hearing stated in bold type that "the Defendant, Michael Laverne Lyons will be appearing via telephone," and it also requested that someone "please contact the court with a telephone number that Mr. Lyons can be reached at for the date and time of the hearing." Because the Appellant was incarcerated at the time, the Tribal Court sent notice to the address it had on file for the Appellant at the Charles Egeler Reception and Guidance Center. The Egeler Reception Center is a quarantine facility responsible for intake processing for all male offenders who are adjudicated adults and sentenced to a term of incarceration with the Michigan Department of Corrections, and it serves as a temporary facility for individuals pending transfer to a facility where sentences are served. The Appellee/Petitioner appeared at the September 16 hearing, but the Appellant did not.

At the hearing on September 16, 2015, the Tribal Court noted that it had received and reviewed the Appellant's Response of June 10, 2015, and it verified that the Appellee/Petitioner had received and reviewed it as well. At the beginning of the hearing, the Tribal Court confirmed with the Appellee/Petitioner that the Appellant's failure to appear was due to his incarceration, which resulted from his sentencing for aggravated domestic violence against the Appellee/Petitioner. Due to the Appellant's absence from the September 16 hearing, the Tribal Court expressed a commitment to considering the Appellant's statements provided in his written Response. Consistent with this intent, the Judge questioned the Appellee/Petitioner about the items of property and debts referred to by the Appellant in his Response throughout the hearing. (Transcript of September 16, 2015 Hearing at 5-13).

Among other items of personal property, the Judge questioned Petitioner about the parties' interest in a 2015 Subaru Forester. The Petitioner explained that the car had been purchased in January 2015 using a car loan just one month before the couple separated in February 2015 due to the Appellant's arrest and prosecution. The Petitioner explained that she intended to make the payments for the balance of the car loan, and she wanted to be listed as the sole owner of the car as a result. The Judge also inquired about the clothing, a television, and other items of personal property claimed by the Appellant in his Response. The Petitioner explained that she was not in possession of any of the Appellant's property, since she sold some of his belongings to raise money to pay bills, and she gave law enforcement a bag of Appellant's clothing and remaining personal items. In addition, she explained that she paid the full amount of rent due for the past five months, which was difficult for her because she received SSI on a fixed income and did not receive the Appellant's share of his half of the rent for this time period. She explained in court that she would assume sole responsibility for her housing costs going forward, but she requested that the Tribal Court order that Appellant pay his share of the rent for the past five months.

The Tribal Court also received testimony from the Appellee/Petitioner affirming that there had been a breakdown in the marital relationship to the point that the objects of matrimony had been destroyed, and that there was no reasonable likelihood that the marriage could be preserved.

Following the hearing, the Tribal Court issued its Order of Dissolution of Marriage and Judgment of Divorce. The Order stated the Tribal Court had jurisdiction pursuant to WOS 13.201 of the Little Traverse Bay Bands of Odawa Indians Tribal Code, which is the first section of Title XIII, Chapter 2 of the Tribal Code, relating to "Marriage and Probate - Dissolution of Marriage."

After describing the testimony received at the hearing, the Trial Court's Order stated that the Petitioner met the requirements for dissolution of marriage set forth in WOS 13.205. In addition, it noted that WOS 13.206, pertaining to "Division of Property," required that the Court order an equitable distribution of all real and personal property and an allocation of the marital financial obligations of the parties. The Tribal Court Order recognized the following difficult situation:

The Petitioner is in the unenviable circumstance of being a victim of Respondent's violence, and, in some sense, a victim again because of his incarceration and inability to meet financial obligations that might otherwise be shared. The Court can do little to alleviate this situation except to grant the Petition to dissolve the marriage. A judgment in a nominal amount can be awarded representing [the Appellant's] share of joint debt from separation to incarceration.

In accordance with WOS 13.206, the Order granted Petitioner's request to remove the Appellant's name from the automobile title, and directed the Appellant to execute any documents necessary with the State and any financial institution involved to facilitate the transfer. The Tribal Court also awarded Petitioner a judgment of \$2,000 representing the Appellant's share of the rental obligation for the preceding months since the Appellant's arrest and departure from the shared home.

On September 22, 2015, six days after the Tribal Court issued its Order of Dissolution of Marriage and Judgment of Divorce, the court administrator received a Motion for Adjournment from the Appellant, along with his request to participate in the September 16, 2015 hearing by conference

call. The Appellant had delivered the motion on September 10, 2015 after receiving notice of the hearing, but the security protocol used by his incarceration facility most likely delayed the actual mailing of the motion. Because the motion was received after the Tribal Court had held the hearing and issued its judgment, the motion was not accepted.

On October 14, 2015, the Appellant filed this appeal. The Appellate Court ordered a Scheduling Conference for December 18, 2015, and submitted a Writ of Habeas Corpus to the Puglsey Correctional Facility requesting that the facility allow the Appellant to participate telephonically. The correctional facility granted the request, and the Scheduling Conference was held with the Appellant appearing by phone. The Petitioner/Appellee did not appear and chose not to participate in the briefing before the Appellate Court. The Appellant filed a brief in support of his notice of appeal.

ANALYSIS

The Appellate Court begins by considering the Appellant's argument on appeal that the Tribal Court improperly conducted an *ad hoc* dispositive hearing in place of the scheduled pretrial hearing on September 16, 2015, resulting in an unjust *ex parte* hearing on the merits that excluded the Appellant and deprived him of adequate notice.

The sources of law applicable to Appellant's first issue include WOS 13.205(6) and (10).

Waganakising Odawa Statute 13.205(6) provides:

[f]ollowing a petition for divorce, and after the opportunity for the non-petitioning party to respond, the Tribal Court shall hold a hearing unless the parties have stipulated to all matters and issues pending.

WOS 13.205(10) provides that "[a]t the hearing, both parties shall have the opportunity to testify, call witnesses, present evidence and cross-examine their spouse and any other witnesses."

In this case, the Tribal Court held a dispositive hearing that resolved the Petition for Dissolution of the Marriage, the division of property, and the allocation of marital debt on a date that was scheduled as a pretrial hearing. Both of the parties were served with notice of the pretrial hearing date. The Appellant argues that this action deprived him of the right to a full hearing with the opportunity to testify, call witnesses, present evidence, and cross-examine the Petitioner and any other witnesses. However, the Tribal Court's factual findings and the hearing transcript both establish that the Tribal Court made a valid factual finding that the Appellant's incarceration explained his absence at the hearing. The transcript also establishes that the Tribal Court appeared to conclude that the Appellant's physical appearance in a future hearing was impracticable, so it was appropriate to conduct a dispositive hearing immediately and rely on the Appellant's written Response as a substitute for a personal appearance. Furthermore, the Tribal Court recognized a need to prevent further victimization of the Petitioner by the Appellant, who was incarcerated due to a sentence stemming from a criminal prosecution for aggravated domestic violence against her.

Once the Tribal Court made the factual finding that the Appellant was incarcerated, it was reasonable for the Tribal Court to conclude that the Appellant's incarceration made a future hearing with personal appearances by both parties and the process set out in WOS 13.205(10) impossible or highly impractical. The Appellate Court finds that the Tribal Court's factual finding regarding Appellant's incarceration is supported by the record and not clearly erroneous, and its factual inference regarding the impracticability and potential harm of a later hearing was reasonable.

Because a future hearing with appearances by both parties was rendered impracticable and potentially capable of causing further victimization of the Petitioner, the Tribal Court did not err by relying on the Appellant's written response in lieu of a personal appearance. Due process requires that a party receive notice of the claims made against him and have an opportunity to be heard. The Appellant was served with notice of the hearing scheduled for September 16, 2015. The fact that the

hearing on that date became one that fully addressed the merits of the case and resulted in an order did not prevent the Appellant from being heard, because the Tribal Court and the Petitioner both received and considered his written Response in which he detailed his claims regarding the division of property and the allocation of the marital debt.

The Appellant interprets WOS 13.205(10) within the Tribal Code's section on Dissolution of Marriage as vesting an absolute right to a full hearing with an opportunity to offer testimony in person, call witnesses, and cross-examine the other party and any other witnesses. The statute's language is not absolute, however. It states that "both parties shall have the opportunity" to participate in the process described in the statute. Where a party is incarcerated and sentenced to prison, he or she faces an impediment to full participation in Tribal Court process that results from his or her own uniquely restrictive circumstances. Similarly, if a party to a divorce must travel for work repeatedly and is therefore unable to appear at a hearing with the full attributes described in the statute, the Tribal Court is not obligated to remain open on a holiday or at night or take other unusual actions to afford a full hearing with the direct and cross-examination of the other party and witnesses.

The Appellant also argues that the Tribal Court should have arranged for his participation in the hearing by telephone conference. In support of this argument, he notes that the Appellate Court made arrangements for the Appellant to participate in a status conference by conference call. Such participation can be arranged if the Tribal Court prepares a writ of habeas corpus requesting that the correctional facility with custody of a party allow that party to appear telephonically for a court scheduling conference or hearing at a specified time and date. The Appellate Court also notes, however, that while such steps should normally be arranged for an incarcerated party to facilitate his or her participation, use of this procedure in a civil action may be denied at the Judge's discretion. In the case of the September 16 hearing, the Appellate Court finds that the Tribal Court is entitled to

deference in its determination that such steps were not necessary, given the history of the parties' relationship and the availability of the Appellant's written Response.

The second issue that the Appellate Court must evaluate is whether the Tribal Court Order provided an equitable division of property and allocation of the marital debt. The law that governs this process is found in WOS 13.206. That statute states that upon the granting of a divorce, the Court must distribute all real and personal property "in an equitable fashion" and must allocate the marital financial obligations of the parties. (Source: WOS 2008-007, May 31, 2008, Section VI). The term "equitable" is not assigned a special legal definition in the Chapter on the Dissolution of Marriage or elsewhere in the Tribal Code, but we understand it to mean "just" and "based in fairness rather than legal technicalities." The Appellant argues that the Tribal Court Order does not reflect fairness or justice, and he cites several sources of law from other jurisdictions regarding the division of property in connection with divorce proceedings. While it is true that other jurisdictions may apply different legal standards to the division of property or require that the Court employ particular methods and legal classifications for property, the Appellate Court finds that such rules are not incorporated in the law of the Little Traverse Bay Bands of Odawa Indians, and they are inapplicable. In this case, the Tribal Court demonstrated a desire to be fair and just to both the Petitioner and the Appellant. The Tribal Court gave full consideration to the statements made in the Appellant's Response, and did not engage in a purely one-sided consideration of how to divide and allocate the parties' property and financial obligations. For this reason, the Appellate Court upholds the Tribal Court's Order, including without limitation the award of \$2000 to the Petitioner.

Finally, the Appellate Court also notes that the Appellant requested a waiver of the fees and costs associated with the appeal, and he requested a copy of the transcript as part of the complete record on appeal. The transcript was delivered to the Appellant as part of the preparation of the record on

appeal. In addition, the Appellate Court orders that any remaining fees and costs be waived due to his incarceration.

Based on the foregoing, the Tribal Court's Order of Dissolution of Marriage and Judgment of Divorce is affirmed in full.

IT IS SO ORDERED.

Date: February 16, 2017

Wenona Singel, Chief Appellate Justice