

**NON-REMOVABLE MILLE LACS BAND OF OJIBWE INDIANS  
COURT OF APPEALS**

MLB Court of  
Central Jurisdiction

MP

2015 JUL -6 PM 2: 28

District of Nay-Ah-Shing

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**IN THE COURT OF APPEALS**

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**No. 2015-APP-0001**

Lorelei Benjamin,  
Plaintiff-Appellee  
vs.

**ORDER**

Irene Benjamin,  
Defendant-Appellant

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Ms. Irene Benjamin appealed to this Court from the April 1, 2015 one-year harassment restraining order issued by Judge Christensen. The Court reviewed the matter and scheduled hearing on April 17, 2015 at 3:30. Justice Brenda Moose recused herself due to knowing the parties involved and Justice Boyd was unable to attend. After conferencing the Chief Justice decided that in light of the circumstances and considering the nature of the case that referral for mediation by a panel of elders would be appropriate. The Court then advised the Parties of this.

This Court reconsidered that order on May 6, 2015 and rescheduled the oral argument for June 25, 2015 at 3 PM with the Chief Justice presiding along with Justice Boyd and Special Magistrate Jones. Both parties appeared at hearing without counsel and the Court allowed each to be heard. The Court also received into the record a May 29, 2015 letter from the Mille Lacs Band Commissioner of Health and Human Services, Samuel Moose, to the Appellant in which she was advised that she was being directed not to come about the Assisted Living Unit in District 1 due to alleged violations of the rules of the ALU. This letter was reviewed by the Court because it is relevant to the issues involved in this appeal because Judge Christensen entered a harassment restraining order against Ms. Benjamin in which she was ordered not to come about the ALU during the work hours for Ms. Lorelei Benjamin.

This Court has reviewed the record, listened to the trial proceedings and considered the new evidence offered. Based upon this review this Court concludes that there are no grounds to reverse the lower court's decision granting a harassment restraining order.

Ms. Irene Benjamin makes several arguments in support of her contention that Judge Christensen erred in granting the restraining order. First, she contends that Judge Christensen erred in refusing to receive into evidence documentation demonstrating her belief that she still is married to the Appellee's father, Perry Benjamin, according to culture and tradition of the Band. This issue, she contends, would have lent credence to her assertion that Ms. Lorelei Benjamin started the conflict between the two of them by denying this relationship and demeaning the cultural significance of it. It is this reason, she contends, that she came up to the Appellee on March 17, 2015 at the Grand Casino Convention Center when she was staffing a booth at the Elder Abuse Prevention Conference to discuss the matter with her and to clear the air.

This Court finds no error in this decision by the lower court. The issue before the Judge was whether the Appellant's actions on the day in question rose to the level of harassment. Whether the Appellant has a genuine culturally-based belief that she may still be married to the Appellee's father is not relevant to the actions she took after confronting the Appellee. It is those actions, and not the rationale for her taking the actions she did, that was the relevant issue before the Judge.

Ms. Irene Benjamin also contended at hearing that the presiding Judge should have recused himself because she allegedly had a conflict with him many years ago when she and other elders of the Band were seeking per capita payments from the Band's gaming operations and the Judge was employed by the Band Solicitor's office, which allegedly opposed the idea of per capita payments. The Appellant acknowledged that she did not raise this issue with the presiding Judge before the harassment restraining order hearing and this Court is left with no record to review this issue.

It is incumbent upon any party who feels that a Judge assigned to her case may be biased against her to raise that issue with the Trial Judge to permit the Judge to assess the claim. Failing to seek recusal before a proceeding begins is generally a waiver of the issue. Ms. Benjamin claims that she did not realize the Judge was the same individual formerly employed by the Band in the Solicitor's office until after the proceeding concluded, but believes that this alleged bias was why he found her testimony less credible than the Appellee.

This Court notes that under the Judicial Canon of Ethics adopted by the Band by Court Order #51, Canon 2, a Judge has a duty to recuse himself in any case where his impartiality may reasonably be questioned and that in this case Judge Christensen did not feel he had an ethical duty to recuse because he also did not raise the alleged conflict. There is nothing before this Court that demonstrates that Judge Christensen was biased against the Appellant because of work he performed while in the Solicitor's office so it would be pure speculation for this Court to even entertain this argument that has been put forward by Ms. Benjamin. The Court therefore finds that this issue was waived by the Appellant by her failure to raise it below.

The Appellant claims that the presiding Judge showed bias against her by asserting that her testimony was not credible. She claims that this demonstrates that the

Judge was unfair to her and biased toward her. The presiding Judge actually found that the testimony of Ms. Lorelei Benjamin was more credible than the Appellant and was partially corroborated by the Appellant's own testimony. In this case the testimony established that the Appellant was upset with comments allegedly made by the Appellee about her relationship with Perry Benjamin so she confronted the Appellee at an Elder Abuse Conference, got into her face using some choice language, and when things got heated she invited the Appellee "outside" to resolve it. A witness, Denise Sargeant, had to intervene to prevent the situation from escalating. The Appellant contended at hearing that her suggestion that the matter be taken "outside" was merely a suggestion that other people should not have to observe the conflict between the two.

In any case where there is conflicting testimony the presiding Judge must decide which witness is more credible. Making that finding does not intimate that the Judge is biased against a party, but instead is a required element in any civil proceeding. Had the Judge stated that he presupposed that the testimony of Ms. Irene Benjamin was not going to be credible because of some bias against her, this would be error. However, this is not what happened. Instead, the Judge, after listening to both Parties testify and observing the demeanor of each, found that the Appellee was more credible. The Judge noted that the Appellant's behavior in Court detracted from her testimony and made the Court believe the testimony of the Appellee over her's. Again, there is no error for a Judge to observe the demeanor of parties in assessing witness credibility.

This Court notes that the harassment restraining order included a provision that the Appellant was not to come to the Assisted Living Unit in District 1 during the work hours of the Appellee, based upon the testimony of the Appellee that she observed the Appellant at the ALU two days after the confrontation at the Casino and that this caused her further emotional distress. This Court had concerns about the breadth of the restraining order- essentially preventing the Appellant from coming to a public building where many services for the elderly are provided- and was inclined to address this issue on this appeal. However, intervening circumstances have occurred, which renders this issue largely moot. Ms. Benjamin has been prohibited from the ALU for her conduct during hours when the Appellee was not working. This Court has no authority to second-guess this trespass order by the Commissioner of Health and Human Services and the existence of this order renders moot that part of the appeal alleging that the order was too broad a moot point.

The last argument presented by the Appellant is that there was insufficient evidence presented to justify a harassment restraining order and that her comment to the Appellee to the effect "let's take this outside" was not a veiled threat but instead an attempt to avoid a public spectacle. The Court finds no error in the trial Judge relying upon common sense in concluding that this statement is oftentimes used by persons seeking to fight. Considering the circumstances immediately preceding this comment being made- the Appellant being in the face of the Appellee using profane language towards her- it was reasonable for the Judge to conclude that this was a threat towards the Appellee's personal safety. Even the Appellant acknowledged making this statement.

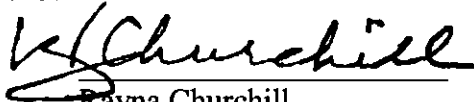
The Appellant stated that the Court violated the traditional concept of seeking truth and justice in the manner by which he handled the case. There is no support for this in the record. The Judge allowed each party to be heard and gave the parties the chance to call witnesses. The fact that the Judge permitted the Appellee to prompt her father to testify was the result of his hearing problem and not an example of her coaching the witness. The procedure utilized was fair.

Because this Court does not find error in the lower court proceedings there is no basis for reversing the decision.

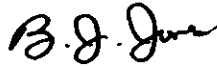
WHEREFORE IT IS HEREBY

ORDERED, ADJUDGED, AND DECREED that the Court's one-year harassment restraining order entered on April 1, 2015 is hereby AFFIRMED.

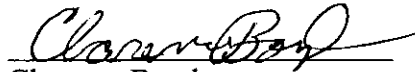
So ordered this 1<sup>st</sup> day of July 2015.



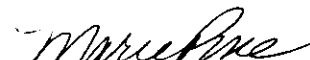
Rayna Churchill  
Chief Justice



Special Magistrate



Clarence Boyd  
Associate Justice

ATTEST:   
Clerk of Courts