

IN THE COURT OF APPEALS
FOR THE CHOCTAW NATION OF OKLAHOMA

WILLIAM LUTHER HORTON,

APPELLANT,

vs.

DISTRICT COURT NO. CJ-21-6
APPELLATE COURT NO. AC-22-4

THE CHOCTAW NATION d/b/a/
THE CHOCTAW CASINO,

APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE CHOCTAW NATION
OKLAHOMA, THE HONORABLE AMY J. PIERCE OKLAHOMA

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FILED
CHOCTAW NATION OF OKLAHOMA
APPELLATE COURT CLERK

AUG 15 2022

COURT CLERK

BY 

OPINION OF THE COURT

Plaintiff William Luther Horton, while a patron of the Defendant, Choctaw Casino, fell and injured himself. Plaintiff initiated an action for injuries against the Defendant. The Defendant filed a motion for summary judgment for non compliance of the procedures for tort claims pursuant to the Tribal Gaming Compact entered into between the Defendant and the State of Oklahoma. Thereafter the District Court granted the defendant's motion for summary judgement, and the Plaintiff appealed from said judgment pursuant to the accelerated procedure as set forth in the *Appellate Rules for Civil Procedure for the Choctaw Nation, Rule 1.36*. From this appeal we affirm the decision of the District Court.

The accelerated procedure for summary judgement appeals is set out in *Rule 1.36*.

Appellate Rules for Civil Procedure of the Choctaw Nation of Oklahoma. We are limited to consider our review to the record actually presented to the trial court. *Rule 1.36(f)*. Because of the complete record and arguments presented to this court, we decline to order briefs or oral argument to aid in the decision herein. In addressing summary relief issues we review the same de novo. All facts and inferences must be viewed in the light most favorable to the non moving party. Like the trial court, we must equally bear an affirmative duty to test all evidentiary material tendered in summary process for its legal sufficiency to support the relief sought by the movant. Only if we should conclude that there is no substantial controversy over any material fact and the law favors the movant's claim or liability defeating defense is the moving party entitled to summary judgment in its favor. To prevail as a moving party on a motion for summary disposition, one who defends against a claim by another must either (a) establish that there is no genuine issue of fact as to at least one essential component of the plaintiff's theory of recovery or (b) prove each essential element of an affirmative defense, showing in either case that, as a matter of law, the plaintiff has no viable cause of action. In this case, the Defendant has the burden, as movant for summary judgment relying on the issue of non compliance with the Model Tribal Gaming Compact, to prove each essential element of that affirmative defense as a matter of law with no genuine issue of fact.

The Choctaw Nation of Oklahoma is a federally recognized tribal government possessing sovereign powers and rights of self government. The United States Supreme Court has long recognized the right of an Indian Tribe to regulate activity on lands within its jurisdiction. That the Choctaw Casino is a tribal activity on lands within its jurisdiction. That the Choctaw Nation and the State of Oklahoma in order to protect its citizens and to extend benefits for the citizens of both entities have entered into the Model Tribal Gaming Compact, hereinafter called the

compact. That pursuant to the compact, the Defendant in order to ensure that patrons of a facility are afforded due process in seeking and receiving just and reasonable compensation for a tort claim for personal injury or property damage against the tribe, consents on a limited basis to suit with respect to tort claims subject to the limitations set forth in subsection 6A, B and C of the compact. The rules and procedures for tort claims provided all patrons when making a claim for damages against the Defendant Choctaw Nation of Oklahoma provides in express detail, "The Choctaw Nation is a federally recognized Indian Tribal Government. As such, it has sovereign immunity from lawsuits in all court unless it waives such immunity. . . The Choctaw Nation has approved a limited waiver of its immunity AVAILABLE TO THE PATRON . . . AND SUBJECT TO THE STRICT ADHERENCE TO THE FOLLOWING RULES BY THE PATRON." Record on Appeal, page 16.

It is clear from the compact that a claim must be in writing and presented to the Choctaw Nation. Any portion of a tort claim which is unresolved shall be deemed denied if the Choctaw Nation fails to notify the claimant within ninety (90) days of the filing date. Paragraph 12, Page 17, Record on Appeal. The record is clear that the tort claim of Plaintiff was filed on July 23, 2020. By the express provisions of the Compact, Section 6A(8), and the express provision of the Rules and Procedures for Tort Claims provided to the patrons, Paragraph 12, Page 17, Record on Appeal, it was deemed denied on October 21, 2020. Pursuant to the Model Tribal Gaming Compact, Subsection 6A(9), and the Rules and Procedures for Tort Claims, Paragraph 13, Page 17, Record on Appeal, any lawsuit must be filed by April 19, 2021. The instant lawsuit was filed on May 6, 2021, clearly outside the prescribed time limits and was barred by the applicable limitations period.

Since the Choctaw Nation has waived its sovereign immunity subject to STRICT

adherence to the Rules and Procedures for tort Claims and the corresponding Model Tribal Gaming Compact, this should have resolved this matter in judgement for the defendant. However in this case, after the tort claim of the Plaintiff was deemed denied on October 21, 2020, Tribal First, an Insurance company for the Choctaw Nation, sent a letter on December 2, 2020, stating, "While we regret any incident a patron may have and certainly sympathize for any difficulty this incident may have caused you, we must respectfully deny your claim. Should you disagree with our determination you may pursue your claim under the Choctaw Tort Claim Procedures. A judicial proceeding must be filed no later than 180 days after the date of this letter."

The insurance company, Tribal First, issued this letter. The Rules and Procedures for Tort Claims specifically states that parties may by written agreement extend the date by which a denial shall be deemed issued if no other action is taken. The only parties discussed are the Choctaw Nation and the claimant. The Model Tribal Gaming Compact, upon which the Rules and Procedures are based, used the term enterprise rather than the Choctaw Nation as the Rules and Procedures provide. Enterprise is defined as the tribe or the tribal agency or section of the tribal management with direct responsibility for the conduct of the covered games. Paragraph 13, Part Three, Model Tribal Gaming Compact. Nowhere is it contemplated that an insurance company is or is the same as the enterprise or the Choctaw Nation. It is further stated explicitly in the compact that "neither the claimant nor the enterprise may agree to extend the time to commence a judicial proceeding". Model Tribal Gaming Compact, 6A(9)(c). That once the claim was deemed denied the Rule and procedures and the compact provide that the lawsuit must be filed no later than the 180th day after denial. Paragraph 13(c), page 17, Record on Appeal.

¹The lawsuit should have been filed on April 19, 2021. The lawsuit was filed on May 6, 2021, clearly outside the limitations period, and time barred.

The decision of the District Court is affirmed.

ALL JUDGES CONCUR

¹While not necessary for the resolution of this matter, it is noted that any agreement to extend the date for a claim to be deemed denied may be extended but only by written agreement. The Claimant does not sign the letter of Tribal First nor is the letter by Tribal First an agreement in any form. Without an agreement, there is no compliance nor strict adherence to the Rules and Regulations for Tort Claims.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the Opinion of the Court was filed with the Appellate Court Clerk and was emailed on the 15th day of August, 2022 to the following:

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