

In The Poarch Band of Creek Indians Tribal Supreme Court

**Ricket Carter,
Appellant**

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v.

Case No. SC-16-01 OB

**Creek Casino Montgomery,
The Porch Band of Creek
Indians,
Appellee**

**Appeal from Poarch Creek Indians Tribal Court
(CV-15-92)**

Fletcher, C.J.

Appellant Ricket Carter (“Carter”) appeals the trial court’s decision granting Appellee Creek Casino Montgomery’s (“CCM”) Motion to Dismiss for failure to state a claim against CCM. We **reverse and remand** for additional proceedings consistent with this opinion.

Factual Background and Procedural History

Carter filed a complaint in the Tribal Court of the Poarch Band of Creek Indians against CCM on October 14, 2015. Carter’s complaint named CCM as the defendant and asked for hearing on injuries allegedly suffered on November 11, 2014. Carter then submitted a motion for default judgment on December 29, 2015, which was filed on January 4, 2016. CCM moved to dismiss on January 4, 2016. On January 11, 2016, one calendar week later and before Carter responded to the motion to dismiss, the Tribal Court summarily dismissed Carter’s complaint and denied his motion for default judgment. On January 12, 2016, Carter attempted to add “PCI Gaming Authority” as a defendant.

Carter filed an appeal of the Tribal Court order on February 29, 2016. The appeal is fully briefed and submitted.

Discussion

Fundamental fairness in judicial proceedings is a cornerstone of due process of law. The tribal rules of civil procedure provide that “[a]ll cases before the Tribal Court shall be conducted in such manner as to do substantial justice between the parties and in accordance with Tribal Law.” Poarch Band Code of Ordinances § 13-1-1(b).

Here, the trial court did not do substantial justice in relation to Carter by granting CCM’s motion to dismiss a mere seven calendar days after the motion to dismiss was filed. Section 13-1-9 provides that “[a]ll time periods contained in these rules shall be fourteen (14) days unless otherwise stated.” The tribal code is silent as to time periods for motions for summary disposition of civil suits such as motions to dismiss. By dismissing the matter before Carter could respond to CCM’s motion to dismiss, the trial court violated its duty to do substantial justice to the parties.¹

CCM defends the trial court’s dismissal by pointing to the tribal tort claims act governing claims against tribal gaming enterprises, essentially arguing that Carter’s complaint was futile anyway because he sued the wrong tribal entity. We disagree. Section 29-2-4(a) of the tribal code provides:

The Tribal Council hereby provides a limited waiver for the sole purpose of resolving Claims against the Gaming Authority for potentially Compensable Injuries under this Act for injuries allegedly proximately caused by negligent acts or omissions of the Gaming Authority, subject to the provisions for limitations on awards in § 29-2-8 and the other provisions of this Chapter of the Act.

¹ We further note that the trial court’s order is not accompanied by an opinion or citations to the relevant code provisions that would justify the dismissal. We strongly encourage the trial court to explain its reasons.

Section 29-1-3(i) defines “Gaming Authority” as “any business enterprises operated by the Poarch Band of Creek Indians that offers and conducts gaming activities in any Gaming Facility.” Appellees never deny that the entity named “Casino Creek Montgomery” by Carter is a business entity operated by the Poarch Band that conducts gaming activities; in other words, CCM is within the umbrella of businesses labeled “Gaming Authority” by the tort claims act.

CCM attempts to impose a bright line rule that any similar complaint must be dismissed unless a plaintiff names the “PCI Gaming Authority” as defendant, citing to § 29-2-5(a). That section states, “A Claim under this Act may be filed only against the Gaming Authority, shall name no other respondent or defendant, must be in writing, and must be received by the Claims Administrator within 90 days of the date of an alleged injury.” To say that the named defendant here, CCM, is not an entity under the umbrella of the Gaming Authority smacks of empty formalism. We decline the invitation to adopt this bright-line rule.

The tort claims act further details a process by which claims must first be addressed by a non-judicial entity under the rubric of “Claims Administrator.” § 29-2-5(c). This process could take months – the code contemplates 310 days. § 29-2-5(a) (90 days to file a Claim); § 29-2-5(c) (120 days for Claims Administrator to conclude evaluation of a Claim); § 29-2-6 (120 days for plaintiff to bring suit in tribal court in Claims Administrator rejects Claim). Under this record, which is nearly absent of facts or offers of proof, we have no ability to determine whether Carter (or the Gaming Authority) complied with this process. It may be that Carter could have made an offer of proof that he complied with this process, or that the defendant did not comply with the process, if he had been given a chance to respond to the motion to dismiss.

Given the disposition of this appeal, Carter’s appeal of his motion for default is moot.

TRENT CRABLE and CLINT DAUGHTREY, Associate Justices, concur.

A handwritten signature in blue ink that reads "Matthew Fletcher". The signature is written in a cursive style with a long horizontal flourish at the end.

MATTHEW L.M. FLETCHER, Chief Justice