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MAY 12 2006

IN THE SUPREME COURT
OF THE

MAY 10 2006

CHOCTAW SUPREME COURT
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Attorney General's Office MISSISSIPPI BAND OF CHOCTAW INDIANS
By: _____

No. 2005-4

Jean Johnson,)
Plaintiff-Appellant,)

v.)

OPINION AND ORDER

Mississippi Band of Choctaw Indians)
d/b/a Pearl River Resort and Casino,)
d/b/a Silver Star Resort and Casino,)
Defendant-Appellee.)

Appearances: Jonathan C. Tabor for the Plaintiff-Appellant, Jean Johnson
David Lee Gladden, Jr., for the Defendant-Appellee, Mississippi Band of
Choctaw Indians d/b/a/ Pearl River Resort and Casino, d/b/a Silver Star
Resort and Casino.

Before: Rae Nell Vaughn, Chief Justice, Frank R. Pommersheim, Associate
Justice, and Carey N. Vicenti, Associate Justice.

C. N. Vicenti, A. J., for a unanimous Court.

This matter came before this Court upon a Notice of Appeal seeking a review of a ruling of the trial court wherein the trial court dismissed a civil complaint filed by Jean Johnson (Appellant) against the Mississippi Band of Choctaw Indians, doing business as the Pearl River Resort and Casino, and the Silver Star Resort and Casino, (the Appellee). This Court reviewed the trial court record, and briefs of the parties and heard oral argument. After a full consideration this Court hereby affirms the decision of the trial court and dismisses this appeal.

I. Factual and Procedural History.

The Appellant, Jean Johnson, filed this case against the Mississippi Band of Choctaw Indians, doing business as the Pearl River Resort and Casino, and the Silver Star Resort and Casino, (the Appellee), based upon an incident that occurred on November 1, 2002. On that date the Appellant had entered the Silver Star Casino as an invitee patron. At some point she had approached the cashier's counter to conduct a transaction. Upon

leaving the counter the Appellant alleges that her feet had become entangled in the power cord of a vacuum cleaner causing her to fall and sustain injuries to her right knee and back.

Such claims as the Appellant's can be made against the Mississippi Band of Choctaw Indians as owner of the Silver Star Casino pursuant to the provisions of the Choctaw Tribal Tort Claims Act, M.B.C.I. Code Section 25-1-6 (1). She gave a Notice of Claim to the Office of the Attorney General on July 23, 2003. The statute of limitations for her claim inclusive of statutory tolling periods was set to expire on June 1, 2004. This final date is not disputed by the parties. Appellant asserts that she did file such claim by facsimile transmission on that date, however, the trial court ruled that the claim was not in fact received by the court and, thus, dismissed the claim with prejudice. The actual date of filing was June 9, 2004. This appeal then followed.

II. Discussion.

This case involves a claim against the Mississippi Band of Choctaw Indians acting in the capacity of a governmentally owned business. A suit against the Tribe must, therefore, be limited by the sovereign immunity of the Tribe. But it is a basic tenet of the doctrine of sovereign immunity that apart from a government's right to be protected by the doctrine there also exists the governmental prerogative to waive that right either in total or with limitations upon such waiver.

The Mississippi Band does make such waiver through its Choctaw Tribal Tort Claims Act (the Act), C.T.C. §25-1-6. The trial court accurately noted, citing *Hartley v. Silver Star Casino*, CV 16-2004 (March 10, 2005), that "the notice provisions of the Choctaw Tort Claims Act, and the time limitation for filing a lawsuit against the Tribe, are conditions precedent for invoking the Tribe's limited waiver of sovereign immunity as provided in the Act. Waivers of Tribal sovereign immunity must be strictly construed." We agree.

The Mississippi Band of Choctaw Indians allows the filing of pleadings by electronic means as set forth in Rule 5(e) of the Rules of Civil Procedure:

Filing with the Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court... Filing may be accomplished by delivering the

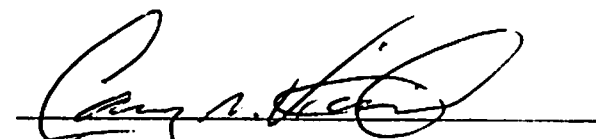
pleadings or other papers to the clerk of the court or to the judge, or by transmitting them by electronic means.

Whether the Appellant filed her complaint in a timely manner is a question of fact for determination by the trial court. However, Rule 5 of the Mississippi Band of Choctaw Indians' Rules of Civil Procedure anticipates the dangers of electronic filing and states "the electronic equipment being used by the attorney or party being served acknowledges receipt of the material," and further that "[i]f the equipment being used by the attorney or party being served does not automatically acknowledge the transmission, service is not complete until the sending party obtains an acknowledgement from the recipient." Nothing within the record indicates that evidence or testimony was tendered to the trial court that would controvert the court's determination that the complaint was *not* filed in a timely manner. An "acknowledgement from the recipient" could have provided the trial court with just such evidence and none was tendered: this Court can only find that the trial court committed no error.

III. Conclusion.

This Court finds that the trial court committed no error either in its findings of fact or rulings of law, and, therefore, affirms its ruling. The appeal is dismissed.

IT IS SO ORDERED this 10th day of May, 2006.


Carey N. Vicenti, Associate Justice