

FILED

MAR 12 2021

CHOCTAW SUPREME COURT
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IN THE TRIBAL SUPREME COURT OF THE
MISSISSIPPI BAND OF CHOCTAW INDIANS

SHERRIE GALE WALKER

APPELLANT

v.

CAUSE NO. SC 2018-04

MISSISSIPPI BAND OF CHOCTAW INDIANS
D/B/A GOLDEN MOON CASINO RESORT and
JOHN AND JANE DOES 1 Thru 10

APPELLEE

OPINION AND ORDER

Plaintiff/Appellant Sherry Gale Walker filed her suit under the Choctaw Tort Claims Act [CTCA] alleging that on May 12, 2015 she sustained injuries while a business invitee on MBCI's Golden Moon Casino Resort hotel properties.¹ Pursuant to Choctaw Tribal Code (C.T.C.) §§ 25-1-6 and 1-5-10, plaintiff was required to exhaust administrative remedies prior to filing her suit. Plaintiff failed to timely and properly file a Notice of Claim conforming to the requirements of C.T.C. §25-1-6(1) with the Attorney General of the Tribe within one (1) year after the date of the incident. Instead, plaintiff's counsel only first contacted the Tribe's Attorney General's Office by email on June 8, 2016, forwarding a copy of the October 22, 2015 letter previously sent to Ms. Knight of Pearl River Resort's risk management office. Then Plaintiff filed suit in Tribal Court on December 30, 2016. The trial court's dismissal for lack of jurisdiction of Appellant's suit under CCTA §25-1-6(1) for failure to timely file a Notice of Claim with the Tribe's Attorney General was proper.

PROCEDURAL HISTORY

Ms. Walker was injured May 12, 2015, and on October 22, 2015 plaintiff's counsel mailed a demand letter to Dina Knight, general liability manager for Pearl River Resort and an agent of the tribe, notifying Ms. Knight of plaintiff Walker's claim in solicitation of an offer of settlement. Counsel thereafter carried on communications with the general liability manager, but these were not successful. Then, on June 8, 2016, plaintiff's counsel contacted the Tribe's Attorney General's Office by email, forwarding a copy of the letter previously sent to Ms.

¹ Throughout the opinion Plaintiff/Appellant Sherry Gale Walker may be referred to variously as "plaintiff" or "appellant" or "Ms. Walker" and Defendant/Appellee as "MBCI" or "tribe" or "Golden Moon Casino" or derivatives thereof.

Knight of resort's risk management office. On June 10, 2016 and on June 16, 2016 the tribe's acting attorney general sent reply emails to plaintiff's counsel.

Plaintiff on December 30, 2016 filed a complaint in Choctaw Tribal Court, but that complaint was never served. On April 5, 2017, Plaintiff filed an Amended Complaint along with a Motion for Extension of Time to serve process on the tribe which the court granted that same date. On May 16, 2017, a Summons and the First Amended Complaint were served upon the Attorney General's office.

On June 26, 2017, Appellee Tribe filed its Motion to Dismiss for Lack of Jurisdiction, contending that plaintiff failed to fully exhaust administrative remedies as required under the Choctaw Tort Claims Act. Appellant's counsel's response argues that correspondence to the resort's risk management office gave sufficient notice of the facts and circumstances of Ms. Walker's claim and demand for compensation for her injuries so as to trigger the administrative remedy procedure specified in CTC § 1-5-10.² Following briefing by both parties the motion was duly heard and on May 9, 2018 the trial court issued its Memorandum Opinion and Order granting that Motion to Dismiss for Lack of Jurisdiction due to plaintiff's failure to comply with the provisions of CTC §§ 25-1-6 and 1-5-10.

Citing the case of *Hartley v. Silver Star Hotel and Casino*, Choctaw Tribal Court, Cause No. CV 16-2004 (March 10, 2005), the lower court opinion states 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 Tribes limited waiver of sovereign immunity as provided in the Act, and thus giving this Court jurisdiction." [Opinion at p.5] Holding that the Choctaw Tort Claims Act specifically requires filing a Notice of Claim with the Office of the Attorney General of the Mississippi Band of Choctaw Indians within one year after the date of the alleged actionable conduct "is a jurisdictional prerequisite to proceeding with an action against the Tribe. Likewise, the specific incorporation of the requirements of §1-5-10 mandates submission of a written complaint to the Tribal Chief." [*Id.* at p.6]

Emphasizing that "timely written notice to the Attorney General and Tribal Chief are absolute requirements to allow this court jurisdiction under Section 1-5-10," [*Id.*] the court held that the date of the incident was May 12, 2015; that the plaintiff had one year thereafter to file a Notice of Claim with the Attorney General; but, that notice was not submitted until June 8, 2016 and was therefore beyond the one-year period. It noted, too, that no written complaint was filed with the Tribal Chief and, since Plaintiff failed to submit these notices in the required time frames, the court held that it was without jurisdiction to proceed and the claims were therefore barred with prejudice.³ From both bases of ruling, a notice of appeal was duly filed to this Court. The matters were duly briefed and argued, and this ruling ensues.

² See e.g. CTC § 1-5-10 (1) stating *in para materia* that *plaintiff must*: make a good-faith effort to invoke and comply with all then existing, reasonable administrative procedures for handling ...

³ Although §1-5-10(4) provides for dismissal without prejudice, dismissal here *with prejudice* is proper because the plaintiff's claims have been extinguished under an applicable statute of limitation. See C.T.C. §25-1-6(1), (3).

STANDARD OF REVIEW

This Court reviews a trial court's grant or denial of a motion for summary judgment or a motion to dismiss under a de novo standard. *Arceo v. Tolliver*, 949 So.2d 691, 694 (Miss.2006) (citing *Monsanto v. Hall*, 912 So.2d 134, 136 (Miss.2005)). Moreover, this Court reviews the application of the MTCA de novo. *Lee v. Mem'l Hosp.*, 999 So.2d 1263, 1266 (Miss.2008) (citing *City of Jackson v. Brister*, 838 So.2d 274, 278 (Miss.2003)). The appeal of a trial court's dismissal of a plaintiff's claims "for failure to exhaust administrative remedies presents a jurisdictional question." *Town of Bolton v. Chevron Oil Co.*, 919 So.2d 1101, 1104 (Miss. Ct. App. 2005). Jurisdictional issues of this court are reviewed de novo. *Jones v. Billy*, 798 So.2d 1238, 1239 (Miss. 2001). Application of the Choctaw Tort Claims Act, just as the courts of Mississippi with the MCTA, are to be reviewed on appeal *de novo*.

ARGUMENTS AND ANALYSIS

The all-embracing issue is whether tribal court jurisdiction ever lawfully attached to adjudicate this civil tort matter filed on December 30, 2016 against the tribe premised upon the May 12, 2015 date of the alleged injury. Inherent in this question is whether as a prerequisite to any court filing of a CTCA complaint, Plaintiff pursued all required administrative exhaustion procedures of C.T.C. §1-5-10 and CTC § 25-1-6 within the one year immediately following the incident giving rise to Plaintiff's claim.

THE OPINION BELOW

The trial court's opinion addressed both points of governmental tort claim law as follows:

The Choctaw Tort Claims Act specifically requires filing a Notice of Claim with the Office of Attorney General of the Mississippi Band of Choctaw Indians within one year after the date of the alleged actionable conduct.

There is no person or entity that can abrogate this condition precedent to the Tribe's voluntary waiver of immunity. It is a jurisdictional prerequisite to proceeding with an action against the Tribe.

The trial court's opinion having stated its interpretation of the governing law then went on to apply the established facts of the case and its ruling:

The date of the incident was May 12, 2015. Plaintiff had one year to file a Notice of Claim with the Attorney General. That notice was submitted June 10, 2016, beyond the one-year period. There was no written complaint filed with the Tribal Chief. As Plaintiff failed to submit these notices in the required time frame, this Court is without jurisdiction to proceed and the claims are barred.

Both rulings are now before this Court on appeal. Having reviewed councils' briefs, heard oral arguments, and duly read and considered applicable tribal statutory law, we now uphold that portion of the lower court ordered dismissal on the ground that plaintiff failed to submit the Notice of Claim to the Office of the Attorney General within one year after the date of the tortious, wrongful or otherwise actionable conduct giving rise to the claim.

PART I

One-Year Filing Requirement

The Tribal Code's Title I, §1-5-6 captioned "Limitations in Civil Actions" and Title XXV of the Choctaw Tort Claims Act's § 25-1-6 set out the statutory time limitations of actions claimants must meet when filing their lawsuit in Tribal Court seeking compensation for tort damage claims arising in relation to the tribe or its independent agencies. Unless claimants meet the time requirements set for both duly *submitting their Notice of Claim with the Office of the Attorney General* and for filing their lawsuit in Tribal Court, they are time-barred from filing their complaint and, reciprocally, the court itself will lack the power to exercise jurisdiction.

Requirement for Filing a Complaint under the CTCA in Tribal Court

Choctaw Tribal Code Title I, §1-5-6 captioned "Limitations in Civil Actions" in relevant part states: "Unless otherwise specifically provided in the Tribal Code, the following limitations on the bringing of civil actions will apply: (1) Any action against the Tribe or its officers or employees arising from the performance of their official duties must be commenced within one year of the date the cause of action occurred." CTCA § 25-1-6(3) provides in relevant part: "(3) Within one (1) year next after the date of the tortious, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after, any person having a claim for injury arising under the provisions of this chapter against the Tribe, or employees of the Tribe acting within the course and scope of their employment, may commence an action at law or in equity in the Choctaw Tribal Court; provided however, that this limitation period shall be tolled for thirty (30) days upon the filing of the Notice of Claim as required in §25-1-6(1)."

One year requirement for filing Notice of Claim with Attorney General

Title XXV's Choctaw Tort Claims Act § 25-1-6(1) next provides that "[a]ny person having a claim for injury arising under the provision of this Title against the Tribe or an employee of the Tribe acting within the course and scope of his employment shall be required, and hereby is required, to first make such claim with the Tribe by filing a Notice of Claim with the Attorney General of the Tribe within one (1) year after the date of the tortuous, wrongful, or otherwise actionable conduct on which the liability phase of the action is based."

Six (6) months hiatus to review and evaluate claims and make recommendation to Tribal Chief

There is also in CTCA § 25-1-6(1) an interim timeframe provision saying that once the Notice of Claim is duly filed within the aforementioned timeframe, "[t]he Choctaw Attorney General shall have six (6) months to review and evaluate any such claims and make a recommendation to the Tribal Chief as to whether and on what terms settlement may be advisable." CTCA § 25-1-6(2) next mandates that "[n]o lawsuit shall be filed upon any such claim until and unless the six (6) month administrative review period created by §25-1-6(1) shall have expired and the other administrative exhaustion requirements of §1-5-10, Choctaw Tribal Code, have been satisfied."

Lastly, there is CTCA § 25-1-6(3) attendant to the filing of the lawsuit's complaint in Tribal Court. Its full wording is next as set forth herebelow:

(3) Within one (1) year next after the date of the tortuous, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after, any person having a claim for injury arising under the provisions of this chapter against the Tribe, or employees of the Tribe acting within the course and scope of their employment, may commence an action at law or in equity in the Choctaw Tribal Court; provided however, that this limitation period shall be tolled for thirty (30) days upon the filing of the Notice of Claim as required in §25-1-6(1). The limitations period provided herein shall control and shall be exclusive in all actions subject to and brought under the provisions of this Title, notwithstanding the nature of the claim, the label or other characterization the claimant may use to describe it, or the provisions of any statute of limitations which would otherwise govern the type of claim or legal theory if it were subject to or brought under the provisions of this Chapter.

General Commentary

The combined reading, understanding, and interpretation of these Title I and Title XXV portions of the Tribal Code pose a most difficult calculus for many practitioners. We therefor draw heavily on interpretative reported case opinions by Mississippi courts on their own Mississippi Tort Claims Act for guidance. This is particularly so in connection with computing time and tolling periods.⁴

Application of Case Facts to Law

Limitations of Actions

The threshold issue to be taken up is whether the December 30, 2016 time of the filing the lawsuit against the tribe, since it was beyond the one-year timeframe of the May 12, 2015 date of the alleged injury, precludes Tribal Court jurisdiction attaching over this matter. In short, whether the Tribal Court was even empowered with jurisdiction to take up Ms. Walker's claim in the first instance, whether by Title I's C.T.C. §1-5-6(1) Limitations in Civil Actions provision or the Title XXV CTCA's § 25-1-6(3) Notice of Claim requirements.

The incident giving rise to Plaintiff's claim under the CTCA took place on May 12, 2015. On or about October 22, 2015, counsel for Plaintiff mailed a demand letter to the Resort's risk management office concerning the matter. Discussions and other communications were thereafter only carried out between the Resort's risk manager and Plaintiff's counsel until June 8, 2016. It was only on that date, however, that Plaintiff first made direct contact with the Tribe's Attorney General's Office. This took place in the form of an email forwarding a copy of that October 22, 2015 demand letter previously sent to the Resort's risk management office. By June 8, 2016, however, the one-year Statutes of Limitations on the CTCA § 25-1-6(1) filing of a Notice of Claim with the Attorney General had already run.⁵ Reply emails were nevertheless thereafter sent June 10, 2015 and June 16, 2016 by the Tribe's Acting Attorney General.

On December 30, 2016, Plaintiff filed a Complaint in Choctaw Tribal Court, but this Complaint was not served. An Amended Complaint along with a Motion for Extension of Time to Serve Process on the Tribe were then filed, and granted, on April 5, 2017. The Attorney General's office received service on May 16, 2017.

This chronology is not in dispute. Title I sets forth the administrative exhaustion steps and timeframes that are required in general before Tribal Court jurisdiction can attach over any civil action against Tribal governmental entities or its independent agencies. The introductory

⁴ This court strongly recommends the careful reading and following of the Mississippi Supreme Court's most instructive opinion in the case captioned *Page v. Univ. of S. Mississippi*, 878 So.2d 1003 (Miss. 2004).

⁵ The §25-1-6(1) Notice of Claim Requirements specify *inter alia* that "The Notice of Claim shall be in writing, delivered in person or by registered or certified United States Mail." The trial court opinion, however, on this and other argued deficiencies stated simply that "[a]s to good faith effort to comply with any reasonable administrative procedures which may be in effect as referenced in Section 1-5-10(1), this Court can review those on a case by case basis." [Opinion p. 6.]

paragraph to CTC § 1-5-10 states in pertinent part that “[n]o Court of the Mississippi Band of Choctaw Indians shall have jurisdiction to entertain any civil suit or action * * * unless the plaintiff in such action has first exhausted Tribal administrative remedies.” Then CTCA §25-1-6(1) in implementation of this administrative exhaustion process says: “[a]ny person having a claim for injury arising under the provision of this Title against the Tribe or an employee of the Tribe acting within the course and scope of his employment shall be required, and hereby is required, to first make such claim with the Tribe by filing a Notice of Claim with the Attorney General of the Tribe within one (1) year after the date of the tortious, wrongful, or otherwise actionable conduct on which the liability phase of the action is based.” Once the Notice of Claim is filed, CTCA §25-1-6(2) says of the next step, “[t]he Choctaw Attorney General shall have six (6) months to review and evaluate any such claims and make a recommendation to the Tribal Chief as to whether and on what terms settlement may be advisable. This administrative review period constitutes an administrative exhaustion procedure respecting tort claims within the meaning of §1-5-10(2)(a), Choctaw Tribal Code.”

Therefore, the distinct deficiency fatal to the attachment of Tribal Court jurisdiction over this cause of action is the lapse of time between the May 12, 2015 incident and the Plaintiff’s email of June 8, 2016 to the Choctaw Attorney General. The period of time prior to notice to the Attorney General exceeded the one-year time limitation of CTCA § 25-1-6(1). This late notice to the Attorney General negated any tolling of the time provided under § 25-1-6 to file a complaint in the Tribal Court. Consequently, under CTC §1-5-6(1) and § 25-1-6 Tribal Court jurisdiction never attached over this action in the first instance.⁶

Accordingly, we affirm the lower court dismissal for want of jurisdiction on that basis.

PART II

Notice to Tribal Chief

Further as to the second issue of whether the lower court erred when it ruled that as a jurisdictional prerequisite to filing an action “the specific incorporation of the requirements of §1-5-10 mandate submission of a written complaint to the Tribal Chief,” [Opinion at p. 6.] the

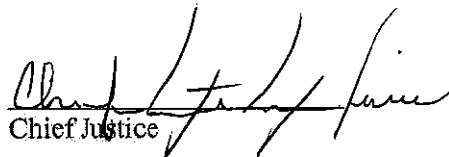
⁶ CTC §1-5-6(1) is the jurisdiction conferral statute over various types of civil actions, including Choctaw Tort Claims actions. It says: “§1-5-6 Limitations in Civil Actions -- Unless otherwise specifically provided in the Tribal Code, the following limitations on the bringing of civil actions will apply: (1) Any action against the Tribe or its officers or employees arising from the performance of their official duties must be commenced within one year of the date the cause of action occurred.” The corresponding Choctaw tort claims statutory provision is § 25-1-6(3). Section 25-1-6(3) in like manner reads in pertinent part: “Within one (1) year next after the date of the tortious, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after, any person having a claim for injury arising under the provisions of this chapter against the Tribe, or employees of the Tribe acting within the course and scope of their employment, may commence an action at law or in equity in the Choctaw Tribal Court....”

Court disagrees. Title XXV CTCA § 25-1-6(1) provides for six months for the Attorney General to review and evaluate tort claims and to “make a recommendation to the Tribal Chief” thereby shifting the mandatory notice to the Tribal Chief from the plaintiff as shown by the following statutory language: “This administrative review period constitutes an administrative exhaustion procedure respecting tort claims within the meaning of §1-5-10(2)(a), Choctaw Tribal Code.” C.T.C. §1-5-10(2) required the plaintiff to “file a written complaint with the Tribal Chief” in order to exhaust administrative remedies. Our review finds that Title XV’s Choctaw Tort Claims Act excludes as a jurisdictional matter any final-step requirement in the administrative exhaustion procedure of submission of a written complaint to the Tribal Chief by any party other than the Attorney General.


CONCLUSION

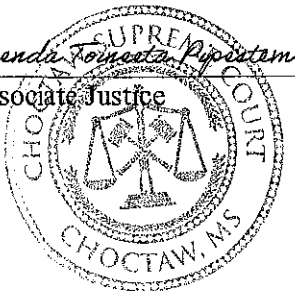
Premises considered, we hold that to the extent that the lower court granting of the Motion to Dismiss on the second ground that as a jurisdictional prerequisite to filing an action, “the specific incorporation of the requirements of §1-5-10 mandate submission of a written complaint to the Tribal Chief,” that portion of the ruling should be reversed. Given, however, that we earlier upheld the dismissal on the ground that “plaintiff failed to submit these notices in the required time frame” and therefore jurisdiction to entertain Plaintiff-Appellant’s claim never attached, we now hold that the lower court’s dismissal should be and hereby is affirmed.

SO ORDERED, this the 12th day of March, 2021.


Chief Justice


Associate Justice


Associate Justice



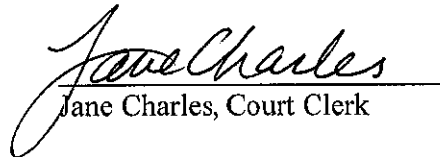
CERTIFICATE OF SERVICE

I, do hereby certify that I have this, the 12th day of March, 2021 cause to be forward by electronic mail, a true and correct copy of the above and foregoing document to the below listed counsel of record.

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