

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

FILED

JUL 23 2021

CHOCTAW SUPREME COURT
BY *[Signature]*
COURT CLERK
4:00pm

CONNIE RICHARDSON

APPELLANT

VS.

SC 2019-01

**MISSISSIPPI BAND OF CHOCTAW INDIANS
d/b/a CHOCTAW RESORT DEVELOPMENT
ENTERPRISE, JOHN AND JANE DOES 1-10**

APPELLEE

OPINION AND ORDER

Plaintiff/Appellant Connie Richardson alleges that on or about August 2, 2015 she sustained injuries while a business invitee on MBCI's Bok Homa Casino properties operated by Choctaw Resort Development Enterprise. The Plaintiff, pursuant to Choctaw Tribal Code §§ 25-1-6 and 1-5-10, was required to exhaust administrative remedies prior to filing her suit. The lower court found that Plaintiff initiated this process by submitting her notice of claim letter to the office of the Atty. General on or about July 12, 2016. Plaintiff then on January 18, 2017 filed her Choctaw Tort Claims Act [CTCA] lawsuit in Tribal Court. Defendant was duly served, answered, and reciprocal discovery was conducted before Defendant on September 1, 2017 filed its Motion to Dismiss and supporting Memorandum. The Motion claimed that Plaintiff failed to fully exhaust her administrative remedies prior to filing her lawsuit in tribal court in that she did not provide sufficient notice to the Tribal Chief as required by CTC §§ 25-1-6 and 1-5-10.

Although Defendant Tribe filed its Motion to Dismiss on September 1, 2017, it was not noticed for hearing until more than a year later on September 21, 2018. The hearing on the motion was then held on November 27, 2018, and the trial court issued its Memorandum Opinion and Order January 2, 2019. The court granted defendant's Motion to Dismiss without Prejudice, holding that Plaintiff had failed to meet the administrative remedy exhaustion requirements by her failure to fully comply with Section 1-5-10's requirements for Notice to the Tribal Chief.

THE OPINION BELOW

The trial court's January 2, 2021 opinion ordered dismissal without prejudice of Plaintiff's claims. It ruled that she had not met the pre-suit administrative exhaustion requirements of the Choctaw Tribal Code under the controlling statutory provisions pertaining to CTCA actions of this nature. More exactly, the court opinion reasoned, "[t]he Choctaw Claims Act specifically incorporates the administrative exhaustion requirements of Section 1-5-10, which include notice to the Chief. *See* Section 25-1-6(2)." [Opinion at p. 2]

The lower court opinion then at page 6 explains the basis for its conclusion:

As noted, Paragraph 2 of Section 25-1-6 of the Choctaw Tort Claims Act specifically incorporates the administrative exhaustion requirements of Section 1-5-10. ***Section 1-5-10 provides that, as a prerequisite to jurisdiction, the Plaintiff must "file a written complaint with the Tribal Chief setting out the basis for the complaint and the administrative remedies pursued to correct the matter complained of. . ."***¹ Section 1-5-10(4) mandates that any complaint against the Tribe which "which fails to demonstrate on its face that the filing party has complied with the requirements of this section shall be dismissed by the court without prejudice." [Italics and emphasis added. See also footnote 1 below.]

The paragraph immediately following concludes at page 7:

The requirement to file a Notice with the Tribal Chief in Section 1-5-10 is incorporated in the Choctaw Tort Claims Act by virtue of Section 25-1-6(2). It is an administrative remedy exhaustion requirement."

The opinion holds that the administrative remedy exhaustion requirements of the Choctaw Tribal Code were not fully met since, by the trial court's reading of both statutes, the Plaintiff had failed to properly provide that notice to the Tribal Chief,

¹ The bold italicized quote is more specifically from Section 1-5-10(2) which more completely reads, "file a written complaint with the Tribal Chief setting out the basis of the complaint and the administrative remedies pursued to correct the matter complained of, **with the exception of complaints concerning the decisions of independent agencies, in which case a complaint need not be filed with the Chief.**" The ellipses in the opinion's quote of that first portion of Section 1-5-10(2) indicate that the emboldened portion was left out. Furthermore, that latter portion is decisive to the case's o

and the claims of the Plaintiff in this case should therefore be dismissed without prejudice.

We disagree with this selective reading and interpretation of both pertinent statutes for the reasons set forth below: instead, we reverse and remand for further proceedings consistent with our following analysis and conclusion.

STANDARD OF REVIEW

The Tribal Supreme Court reviews questions of law *de novo*. *Walker v. MBCI*, SC 2018-04 (March 12, 2021). We review the application of the MTCA *de novo*. *Id.*; *MBCI v. Shaddox*, SC 2017-06 (June 8, 2020); *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." *Walker, supra.*; *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 MTCA, are to be reviewed on appeal *de novo*. *Walker, supra*.

ARGUMENTS AND ANALYSIS

There are two titles of the Choctaw Tribal Code with statutory requirements that must be met as a precondition to filing a civil complaint in Tribal Court under the Choctaw Tort Claims Act.

The first, Title 1's statutory provision, is jurisdictional: that is CTC §1-5-10 captioned Exhaustion of Administrative Remedies. It broadly provides that before a tribal court is even empowered to exercise jurisdiction over a CTCA lawsuit, there first of all are applicable administrative steps and requirements that must have been taken prior to filing the complaint.

Then there is Title XXV, the Tort Claims Act, and most notably §25-1-6 headed "Statute of Limitations; Notice of Claim Requirements and Administrative Exhaustion." It sets out those procedural steps and requirements that must be taken in conformity with CTC §1-5-10's jurisdictional preconditions and in pursuance of filing the court action itself.

Within both CTC §1-5-10 and CTCA §25-1-6 there are two separate sub-sets of measures that must also be adhered to, and whichever sub-set of requirements is to be applied to any given CTCA tort complaint is dependent on the type or nature of the party or entity to be sued. Each of them, CTC §1-5-10 and CTCA §25-1-6, both parallel and complement the other.

The first sub-set relates to Title XXV claims for injuries arising in relation to tribal governance actions or tribal employees acting within the course and scope of tribal employment. Most

governmental tort lawsuits must follow the procedures as set out in the main, initial clause of both pertinent statutes.

But, in those places where that clause is followed by a secondary clause that begins with the language “; provided, however,” there is a secondary, separate set of required pre-filing steps that are instead to be adhered to. These second conditions apply only to suits, actions or complaints deriving from a decision of an independent agency of the Tribe created by the Tribal Council through provisions of the Tribal Code, such as the Choctaw Gaming Commission created under Title XXV. The procedural difference is that these such suits, actions or complaints may “proceed directly from the independent agency to the Tribal Court without a written complaint having to be filed with the Chief.” CTC §1-5-10.

The crux of this appeal turns on which set of requirements are applicable to Ms Richardson’s lawsuit for injuries incurred as a business invitee at the Bok Homa casino.

Both Title I’s jurisdiction vesting statute, CTC §1-5-10, and Title XXV’s controlling Choctaw Tort Claims Act statute, §25-1-6, are set forth immediately below.²

TITLE I

(THE JURISDICTIONAL STATUTE)

The Title I jurisdictional statute, CTC §1-5-10, states in its most relevant part:³

§1-5-10 Exhaustion of Administrative Remedies

No Court of the Mississippi Band of Choctaw Indians shall have jurisdiction to entertain any civil suit or action, or any privately initiated criminal complaint, against the Mississippi Band of Choctaw Indians, the Tribal Council, a Tribal government agency or instrumentality, or any Tribal official or employee complaining of the official conduct thereof unless the plaintiff in such action has first exhausted Tribal administrative remedies in an effort to correct the matter complained of; *provided, however, that suits, actions or complaints deriving from a decision of an independent agency of the Tribe created by the Tribal Council through provisions of the Tribal Code, such*

² The bold, italicized clauses designate clauses or special provisions that apply only to “suits, actions or complaints deriving from a decision of an independent agency of the Tribe created by the Tribal Council through provisions of the Tribal Code, such as the Choctaw Gaming Commission created under Title XV, [that] may proceed from the independent agency to the Tribal Court without a written complaint having to be filed with the Chief.”

³ The second paragraph of this jurisdictional statute has six enumerated subsections, all addressing applicable administrative exhaustion procedures and requirements. We quote only subsections (1) – (3) as they are the ones pertaining most to our analysis.

as the Choctaw Gaming Commission created under Title XV, may proceed directly from the independent agency to the Tribal Court without a written complaint having to be filed with the Chief.

To exhaust administrative remedies under this section, a petitioner, plaintiff or complaining witness must:

(1) make a good faith effort to invoke and comply with all then existing, reasonable administrative procedures for handling disputes, grievances or complaints applicable to the office or department in which the matter arose; and

(2) upon compliance with subsection (1) file a written complaint with the Tribal Chief setting out the basis for the complaint and the administrative remedies pursued to correct the matter complained of, ***with the exception of complaints concerning the decisions of independent agencies, in which case a complaint need not be filed with the Chief.***

(3) If the Tribal Chief's final action on the complaint does not satisfy the complaining party, or if the Tribal Chief has taken no action on the complaint within twenty (20) days of the date it was filed, the complaining party shall be deemed to have exhausted administrative remedies for purposes of this section.

A plain reading of this statute makes it clear in its introductory paragraph that in order to trigger the jurisdiction of the tribal court for purposes of entertaining a Choctaw Tort Claims Act lawsuit, any claimant must first exhaust all administrative exhaustion steps that are required by the classification of their particular legal action. If the fundamental nature of the action is complaining of the official conduct of the tribal government or any of its governmental components, or of their employees, then the administrative exhaustion steps that are required do in fact include the filing of a complaint with the Tribal Chief and a twenty-day waiting period for any outcome as a final-step requirement to acquiring Tribal Court jurisdiction.

If, on the other hand, the claimant's steps required to be taken in order to trigger the jurisdiction of the tribal court for purposes of entertaining a Choctaw Tort Claims Act lawsuit are on "suits, actions, or complaints deriving from a decision of an independent agency of the Tribe created by the Tribal Council through provisions of the Tribal Code, such as the Choctaw Gaming Commission created under Title XV, then the complainant may proceed directly from the decision of the independent agency to the Tribal Court," [CTC §1-5-10] "...in which case a complaint need not be filed with the Chief." [CTC §1-5-10 (2).]

TITLE XXV

(THE CHOCTAW TORT CLAIMS STATUTE)

We previously stated that both CTC §1-5-10 and CTCA §25-1-6 parallel and complement each other. Looking, then, to Title XXV's governmental tort claims procedural statute, CTC § 25-10-6, its subsections (1) and (2) relate to the implementation of the administration administrative exhaustion step requirements. CTCA §25-1-6(1) & (2) read in material part as follows:

§25-1-6 Statute of Limitations; Notice of Claim Requirements and Administrative Exhaustion

(1) Any 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. The Notice of Claim shall be in writing, delivered in person or by registered or certified United States Mail. Every Notice of Claim shall contain a short and plain statement of the facts upon which the claim is based, including the circumstances which brought about the injury, the extent of the injury, the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought, and the residence of the person making the claim at the time of the injury and at the time of the filing of the Notice. The 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.**

(2) No 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.** (Emphasis added)

It is most notable that there is absolutely no requirement whatsoever in CTCA §25-1-6(1) as a prerequisite to full compliance with CTC §1-5-10's administrative exhaustion procedures that a claimant file a written complaint with the Tribal Chief.

CTCA §25-1-6(2) does require satisfaction of the other administrative requirements of CTC §1-5-10: however, once again, CTC §1-5-10(2) expressly states that complaints of the nature of MS Richardson “need not be filed with the Chief,” and the reasoning is thus brought full circle.

In short, CTC §1-5-10(1)’s mandate that a claimant “make a good faith effort to invoke and comply with all then existing, reasonable administrative procedures for handling disputes, grievances or complaints applicable to the office or department in which the matter arose” satisfactorily triggers jurisdiction and CTCA §25-1-6(1) sets out those particulars that Ms Richardson is to comply with in order to meet that “good faith effort” mandate. It was simply not an administrative exhaustion requirement of either CTC Title I’s nor of CTCA §25-1-6 for her to file a written complaint with the Tribal Chief.

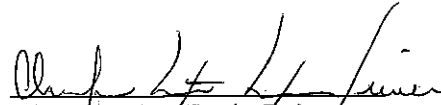
CONCLUSION


Accordingly, we find that a proper reading and application of CTC §1-5-10 and CTCA §25-1-6 can only lead to one conclusion: namely, that neither Title I’s jurisdiction provision set out in CTC §1-5-10 nor Title XXV’s Choctaw Tort Claims Act Section 25-1-6 mandate the filing of a Notice with the Tribal Chief as a final-step prerequisite to Tribal Court jurisdiction over lawsuits of the nature of MS Richardson’s particular action against the Bok Homa Casino. The statement in CTCA §25-1-6(2): “... and the other administrative exhaustion requirements of §1-5-10, Choctaw Tribal Code, have been satisfied” simply does not serve as any form of “tack-on” procedural step requirement making the filing of a written complaint with the Tribal Chief mandatory in lawsuits of this nature.

This is particularly true since both Title I’s §1-5-10 introductory paragraph, and its second subsection (CTC §1-5-10(2)), explicitly except the filing of a Notice with the Tribal Chief as a final-step administrative exhaustion requirement for lawsuits deriving from a decision of an independent agency of the Tribe created by the Tribal Council through provisions of the Tribal Code, such as the Choctaw Gaming Commission created under the CTC Title XV. The trial court erred in its holding that the Plaintiff/Appellant must file a written complaint with the Tribal Chief before the administrative exhaustion requirements are fully met. Therefore, Ms. Richardson’s lawsuit against the Bok Homa Casino should be reinstated and may proceed directly from the independent agency to the Tribal Court without a written complaint having to be filed with the Chief.

Premises considered, it is hereby Ordered, Adjudged, and Decreed that the ruling of the lower court granting Defendant’s Motion to Dismiss is hereby Ordered Reversed and the matter remanded for further proceedings not inconsistent with this Opinion.

SO ORDERED, this the 23rd day of July, 2021.


Chief Justice Kevin Briscoe


Associate Justice Edwin R. Smith

Unavailable for Signature
Associate Justice Brenda T. Pipestem

CERTIFICATE OF SERVICE

I, do hereby certify that I have this, the 23rd day of July, 2021 cause to be forward by electronic mail, United States mail and/or hand delivered, a true and correct copy of the above and foregoing document to the below listed counsel of record.


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