

DIANE M. STUMPH

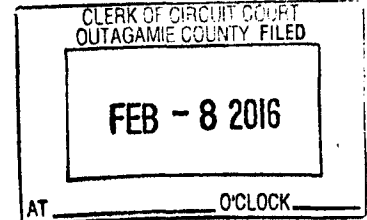
Petitioner

vs.

Case No. : 15CV1036

ONEIDA TRIBE OF INDIANS,  
ONEIDA ZONING DEPARTMENT  
ONEIDA POLICE DEPARTMENT  
TROY PARR, and  
BILL VANDENHEUVAL

Respondents



**DECISION AND ORDER OF THE FAMILY COURT COMMISSIONER**

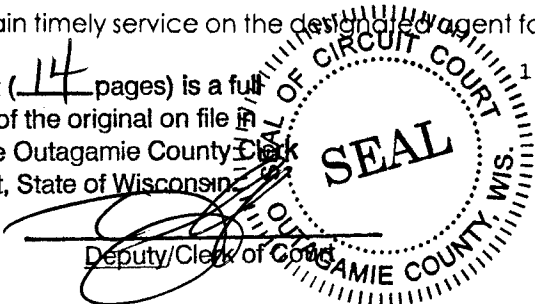
Whereas Petitioner filed a Petition for Harassment Injunction against all of the above named Respondents, and whereas Respondents filed a Motion to Dismiss said action, and whereas the parties appeared for hearings held on November 11<sup>th</sup>, 2015 and December 18<sup>th</sup>, 2015, with the Petitioner appearing with Attorney Shannon McDonald and the Respondents appearing with Attorneys Kelly McAndrews and Rebecca Webster, and whereas after testimony was taken, the parties then submitted written arguments and supplemental affidavits to the Family Court:

**PROCEDURAL HISTORY**

At the initial hearing in this action, held before the Family Court on November 11<sup>th</sup>, 2015, Petitioner provided proof of service on Troy Paar personally, and on the Oneida Zoning Department through service on Respondent Paar in his capacity as Zoning Administrator for the Oneida Tribe of Indians. Petitioner also provided proof of service on Bill Vandenheuval. Finally Petitioner provided proof of service on the Oneida Police Department through service on Asst. Chief Eric Boulanger. Service on all of above parties was timely. Petitioner failed to provide proof of service on Respondent Oneida Tribe of Indians. Counsel for Respondent Oneida Tribe of Indians moved for dismissal for failure to obtain timely service on the designated agent for service of process for the Tribe. That Motion was

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2/11/16  
Date



Deputy/Clerk of Court

*Julia... 2/8/16*

granted and the Oneida Tribe of Indians was dismissed as a party to this action on November 11<sup>th</sup>, 2015.

The remaining Respondents filed Motions to Dismiss on sovereign immunity grounds. Petitioner did not receive said Motions in advance of hearing, and on provision of those Motions, requested an adjournment for the purpose of securing legal representation. Pursuant to that request and the special appearance by the Respondents, the Motions to Dismiss are taken under advisement. This matter was then adjourned to December 18<sup>th</sup>, 2015 at 10:00 AM. At the continued hearing the Family Court took evidence regarding the Respondent's Motion to dismiss from Respondent Troy Parr and heard argument from both parties. The parties subsequently supplemented the record with written argument. Petitioner also submitted an affidavit with her written argument. Respondents supplemented their written argument with affidavits from Melinda Danforth, Vice Chairwoman of the Oneida Tribe of Indians of Wisconsin and Eric Boulanger, Asst. Chief of the Oneida Police Department.

#### **FACTUAL FINDINGS OF THE COURT COMMISSIONER**

The Oneida Tribe of Indians of Wisconsin (hereinafter "Oneida Tribe" or the "Tribe") is a federally recognized Indian Tribe organized under Federal Law. The Oneida Tribe has a reservation created by Treaty in 1838, part of which extends within the boundaries of Outagamie County. The Oneida Tribe has a Constitution and Bylaws which were approved by the United States Department of the Interior in 1936. The Oneida Tribe has not made a generalized waiver of sovereign immunity, nor have they specifically waived sovereign immunity with regards to injunctions brought under Wis. Stat. s. 813.125. The Oneida Tribe passed a Zoning and Shoreland Protection code in Chapter 69 and a Building Code in Chapter 66 of the Tribe's statutory code. Those provisions include permit requirements, enforcement and penalty provisions, and an appeal process for aggrieved parties.

Petitioner, Diane Stumph, owns and operates "Diane's Bar", located at W140 Service Road, Oneida WI, 54155. Diane Stumph presented to the Family Court a document entitled "2015

Property Record" associated with W140 Service Rd., Oneida WI that listed the Petitioner, and solely the Petitioner, as the owner of that property as of November 19<sup>th</sup>, 2015. Said property is located within the bounds of the Oneida reservation. Diane Stumph is not a member of the Oneida Tribe. Diane Stumph is married to Terry Jordan, who is a member of the Oneida Tribe. Neither the Petitioner nor the Respondent produced a deed of the property during their presentations to the Family Court, nor did they provide any evidence regarding the title history of that property aside from the Petitioner's assertion by affidavit that she is the sole owner as of the date of the affidavit.<sup>1</sup> To the extent that such a finding is a relevant consideration as to the Motion to Dismiss, the Family Court makes no finding as to who owned the property in question prior to November 19<sup>th</sup>, 2015 as it has no factual basis to make that finding and it declines to draw any inferences from the facts in this record.

Respondent Troy Parr is employed by the Oneida Tribe as Assistant Division Director in the Development Branch of the Oneida Tribe. Respondent Parr's duties include the enforcement of the Oneida building code and Oneida zoning laws under Chapter 69 of the Tribal code. Respondent William (Bill) Vandenhueval is employed as a Building Inspector for the Oneida Tribe. Respondent Vandenhueval's duties include property inspection, investigation and reports of findings pursuant to the enforcement of the Tribe's Zoning and Shoreland Protection code. Both Respondent Parr and Respondent Vandenhueval are enrolled members of the Oneida Tribe. The Oneida Zoning Department and the Oneida Police Department are departments of the Oneida Tribal government.

Respondent Parr testified he was involved with zoning enforcement actions undertaken at W140 Service Rd., Oneida, WI, but that he had never met the Petitioner prior to the initial hearing

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<sup>1</sup> The Family Court notes that the Petitioner's affidavit filed with written argument indicates that she has been the sole owner of the business known as Diane's Bar for the "past two years." No time period is offered by the Petitioner regarding how long she has been the sole owner of the property on which that bar stands. The Family Court notes that distinction with some curiosity given the testimony of Respondent Parr that the Tribe's investigation prior to beginning enforcement in September 2015 led the Tribe to believe that both Petitioner and Terry Jordan were co-owners of the property. The Family Court would also note that the Petitioner's affidavit filed with the Petition on October 29<sup>th</sup>, 2015 makes no mention of whether she was the sole owner of said property or whether it was owned by both herself and Terry Jordan as of that date.

held in this matter on November 11<sup>th</sup>, 2015. Respondent Parr believed that the Petitioner's name was Diane Jordan, rather than Dian Stumph. Respondent Parr testified that the Oneida Zoning Department researches property before they take enforcement actions and that "Outagamie County land records... indicated the owners were Diane and Terry Jordan." Respondent Parr sent enforcement correspondence on Tribal letterhead to Terry Jordan, but said correspondence was returned as undeliverable. A second enforcement letter was then served by officers of the Oneida Police Department. Respondent Parr testified that his understanding was that the Tribe has jurisdiction over the Tribe and tribal members on the Oneida reservation and thus the enforcement correspondence was directed to Terry Jordan as he is a tribal member. The enforcement correspondence notified Terry Jordan of the need to obtain a permit prior to construction, the citation of the building as uninhabitable, and the need to comply with the Oneida Building Code. Respondent Parr has no personal financial interest in the property and does not stand to gain financially by the enforcement in question.

Respondent Parr testified that he learned that construction was going on at W140 Service Rd. and he instructed Respondent Vandhueval to visit the property and learn what work was being done. Based on that inspection, and based on concerns the Tribe had after an earlier inspection related to a possible transaction in which the W140 Service Rd. property was nearly purchased by the Tribe, Respondent Parr reported "electrical concerns, concerns with flooring, concerns with structural concerns of damaged structural members." Respondent Parr testified that a fire occurred at the property in December of 2014 and that the building was vacant and exposed to the elements for a number of months thereafter. Respondent Vandenhueval posted orders finding the building "uninhabitable" and then a "stop work" order on the property in question at the direction of Respondent Parr. Respondent Parr testified that no one directed him to have the "stop work" order posted and that he made the decision himself. While Respondent Parr provided no timelines indicating when these events occurred, the Petitioner attached to her Petition what appears to be

the Zoning/Building Code enforcement letter addressed to Terry Jordan that indicated the Tribe first became aware of construction on the property in September 2015. There is no evidence in this record that Respondent Vandenhueval had a personal financial interest in the enforcement actions undertaken by the Oneida Tribe.

The Oneida Police Department's involvement in this matter, on the record before the Family Court for consideration in this Motion to Dismiss, is limited to its service of enforcement letters on Terry Jordan. The letter in question, addressed to Terry Jordan, is attached to the original Petition and is part of the record on which the Family Court relies in making these findings. That letter indicates that the Tribe first learned of the ongoing construction at W140 Service Rd. on September 25<sup>th</sup>, 2015. An attempted site visit was made on two occasions on that date and on the second visit the "uninhabitable" order was placed on the building. The "stop work" Order was then placed on the building on October 7<sup>th</sup>, 2015 when the Tribe was informed that construction was continuing.

The Family Court also finds that attached to Petitioner's Affidavit filed January 4<sup>th</sup>, 2016 is a Prenuptial Agreement between Petitioner and her husband Terry Jordan which, in pertinent part, states that "Terry Jordan agrees to relinquish all properties in his and her names to Diane M. Stumph during marriage." The document is purportedly signed by the Petitioner and Terry Jordan, as well as witnesses, on June 30<sup>th</sup>, 2006.

The Petitioner filed her Petition for Harassment Injunction and Temporary Restraining Order on October 29<sup>th</sup>, 2015.

#### **DISCUSSION**

This matter involves issues of sovereign immunity for entities of Oneida Tribal government, in this instance the Oneida Tribe's Zoning Department and the Oneida Police Department, as well as the issue of whether that sovereign immunity, if it bars suit against the Tribe and/or its governmental agencies itself, extends to the Tribe's purported agents or representatives in Respondent's Parr and Vandenhueval. Finally, and solely for the purposes of evaluating whether sovereign immunity extends to the named individual Respondents, the additional question of whether

the tribe's jurisdictional authority to enforce its Zoning and Building Code laws on W140 Service Rd. was so clearly nonexistent that their attempts to enforce those codes constitute the sort of activity that deprives the Tribe's agents of the protection of sovereign immunity that they might otherwise enjoy. The Family Court will address each of those issues in turn.

**I. SOVEREIGN IMMUNITY OF THE ONEIDA TRIBE'S ZONING DEPARTMENT.**

It is beyond question that, generally speaking, Indian Tribes enjoy sovereign immunity from lawsuits. Landreman v. Martin, 191 Wis.2d 787, 802, 530 N.W.2d 62 (Ct. App. 1995), citing Pueblo v. Martinez, 436 U.S. 49 (1978). Tribes are only subject to lawsuit in circumstances where Congress has authorized the suit or the tribe has waived its sovereign immunity. Kiowa Tribe of Oklahoma v. Manufacturing Technologies, 523 U.S. 751, 754 (1998). Wisconsin courts have recognized that the sovereignty of tribes limits the jurisdiction of state courts. Teague V. Bad River Band of Lake Superior Tribe of Chippewa Indians, 236 Wis.2d 384, 397, 612 N.W.2d 709 (2000). The Oneida Zoning Department and the Oneida Police Department, as part of tribal government, clearly enjoy the same sovereign immunity as the Tribe itself. Hardin v. White Mountain Apache Tribe, 779 F.2d 476 (1985). Both federal and state courts have, in a myriad of cases, acknowledged the sovereignty of various tribes and promoted tribal government. Permitting an action against a department of Tribal government would, by the creation of an exception broad enough to swallow the rule, defeat the entire principle of sovereign immunity and render a significant aspect of common law null and void. Put simply, if a party may, without congressional act or waiver of immunity, sue a department of tribal government, then the tribe itself is effectively stripped of its sovereign immunity rendering nearly two centuries of jurisprudence and the concept of tribal self-governance null and void.

There is no evidence in this record that the Oneida Tribe has waived its sovereign immunity regarding this specific action, nor in a general sense subjecting itself to petitions for harassment injunctions for the actions of its Zoning Department, employees or representatives. In

response to the Motion to Dismiss on sovereign immunity grounds, Petitioner provides the legislative history of Public Law 280 and various sections of 18, 25 and 28 U.S.C. but makes no clear assertion as to how those specific or other acts of Congress provide a basis for this action against the Oneida Tribe or its government. In the absence of any legal authority provided by the Petitioner to overcome the Tribe's clear immunity from suit, the Family Court must conclude that the Oneida Tribe Zoning Department enjoys the same sovereign immunity that would prevent this action against the tribe itself.

**II. THE MOTION TO DISMISS REGARDING RESPONDENTS TROY PARR AND WILLIAM VANDENHUEVAL**

Respondents Parr and Vandenhueval also move the Family Court to dismiss this action on sovereign immunity grounds. While tribes such as the Oneida enjoy sovereign immunity from lawsuits similar to the immunity enjoyed by the United States government, their immunity does not generally extend to individual members of the tribe. *Puyallup Tribe v. Department of Game*, 433 U.S. 165, 171-72 (1977). Tribal officers do, however, have immunity if their actions are within the scope of their representative capacity since permitting legal action against tribal officers in those circumstances would render tribal sovereign immunity a nullity. *Dauids v. Coyhis*, 869 F.Supp. 1401, 1409 (E.D. Wis. 1994) (citing *Burlington Northern R.R. v. Blackfeet Tribe*, 924 F.2d 899, 901 (9<sup>th</sup> Cir. 1991)). The Wisconsin Court of Appeals in *Landreman* addressed the issue of whether immunity extends to tribal officers acting in their representative capacity, and in doing so, noted the "long standing policy promoting tribal self-determination and government" and the United States Supreme Court's recognition of the "deeply rooted policy of allowing Indians to be free from state jurisdiction and control." *Landreman*, 191 Wis.2d 787, 803, 530 N.W.2d 62 (Ct. App. 1995) (citing *Three Affiliated Tribes v. Wold Engineering*, 476 U.S. 877, 890 (1986); and *McClanahan v. State Tax Commission*, 411 U.S. 164, 168 (1973)). In *Landreman*, the Court of Appeals concluded that the individual respondents in that action were tribal officers and that the actions undertaken by them were committed for the benefit of the tribe, rather than for their personal gain. *Id.* at 802-803. The Court determined that "the dispositive

element in our analysis is that their actions were not for their own personal interest or economic gain, but for the tribe's benefit." *Id.*

Because facts outside the pleadings were considered on the issue of Respondents Parr and Vandenhueval's scope of authority and status as officers of the Oneida Tribe, the Family Court treats the Motion to Dismiss on Sovereign Immunity grounds regarding those Respondents as a motion for summary judgment. See Wis. Stat. s. 802.06(2)(b). Any material disputed fact is therefore resolved against the moving party. *Heck & Paetow Claim Serv. vs. Heck*, 93 Wis.2d 349, 356, 286 N.W.2d 831, 834(1980). It is undisputed that Respondent Parr was employed by the Oneida Tribe and that his duties included the enforcement of Tribal zoning, shoreland protection, and building codes. It is also undisputed that Respondent Vandenhueval was also employed by the Oneida Tribe and that his duties included building inspections done for the purposes of enforcement of the above mentioned codes. Nothing in this record suggests that Respondents Parr and Vandenhueval lacked the authority to enforce those codes, nor that, in a general sense at least, they lacked the authority to issue orders finding a building to be uninhabitable or requiring a property owner to stop work that was being done without a properly issued permit.

Petitioner alleges and argues that Respondents Parr and Vandenhueval were acting outside of their authority because the property and building located thereon was owned solely by the Petitioner and that the Petitioner, as a non-tribal member owning land and improvements thereon, was not subject to the Oneida Tribe's zoning and building codes. Thus, Petitioner reasons, Respondents Parr and Vandenhueval "violated the law" in issuing the orders in question and were therefore acting outside the scope of their representative capacity. Petitioner relies on various cases for this proposition, but most heavily on the "Montana Rule" derived from *Montana v. United States*, 450 U.S. 544 (1981), which lays out a two part rule to determine whether a tribe can exert its authority over non-tribal members. Under *Montana*, a tribe may exercise authority over non-tribal members to 1) regulate through taxation, licensing or other means the activities of nonmembers who enter



consensual relationships with the tribe or its members through contracts or other arrangements; and 2) to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens the political integrity, economic security or the health and welfare of the tribe. *Id.* at 565-566. Petitioner argues that neither exception to the Montana rule apply to her, and that therefore Respondents Parr and Vandenhueval acted outside their legal authority and representative capacity, and that therefore the Tribe's sovereign immunity does not extend to them.

Petitioner's reliance on Montana for that assertion is misplaced. Even presuming that all of the facts alleged in the Petition and asserted in the Petitioner's supplemental affidavit were true and even if this court were to conclude that the Tribe lacked the authority to enforce its Zoning and Building codes against a property that would otherwise be the marital property of a tribal member, neither Montana, nor its progeny cited by the Petitioner stand for the proposition that a tribal officer, acting for the benefit of the tribe, lacks the protection of the tribe's sovereign immunity if the Tribe itself has overreached its authority and erroneously concluded that an exception to the Montana rule applied when it undertook actions in the tribe's interest. In this matter, there is no evidence to suggest that Respondent's Parr and Vandenhueval formed the individual intent to utilize their offices for personal gain or to harass the Petitioner at all, let alone for their own benefit, when they took enforcement actions within their authority against the Petitioner's property. Petitioner alleges that the Oneida Tribe, motivated by her refusal to sell the property to the Tribe at a price she found unacceptable, is pursuing enforcement of Tribal zoning and building codes in retaliation. There is little evidence in this record supporting that allegation, and even if that were true, such actions would not deprive the Tribe of its sovereign immunity from suit in state court, nor would they deprive the Respondents Parr and Vandenhueval of the benefits of sovereign immunity so long as the actions they undertake are undertaken for the benefit of the Tribe rather than themselves. Landreman at 802-803.

That may well leave the Petitioner feeling aggrieved, but that too has been addressed by the courts in the long history of cases that establish that tribal sovereign immunity extends to tribal

officers acting in the interest of the tribe. "Better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation." Barr v. Matteo, 360 U.S. 564, 572 (1959). While further analysis of the facts appears to be unnecessary in this instance, the Family Court finds that there simply is no evidence in this record suggesting that Respondents Parr and Vandenhueval engaged in any dishonesty at all. Respondent Parr testified that the Tribe researched the property in advance of any enforcement action and believed that the owners of the property included a member of the Tribe, i.e. Terry Jordan, the Petitioner's husband. As noted above, the first enforcement action undertaken by the Respondent Parr occurred in September 2015. Petitioner's offers of proof clearly assert that she was the sole owner of the property by November 19<sup>th</sup>, 2015, but they are silent as to who the owner(s) of the property might have been when Respondent's enforcement actions were undertaken. Perhaps that is merely oversight on her part. Perhaps the Respondents were merely mistaken in their belief that a tribal member was one of the owners of the property in question. Neither of those possibilities change the fact that there is no evidence in this record that Respondents Parr and Vandenhueval were acting for personal gain, and in the absence of such evidence, permitting suit against tribal agents or employees is equivalent to permitting suit against the tribe. It is the conclusion of the Family Court that such an action is barred under the Oneida Tribe's sovereign immunity.<sup>2</sup>

### **III. THE SOVEREIGN IMMUNITY OF THE ONEIDA POLICE DEPARTMENT**

Like the Oneida Zoning Department, Respondent Oneida Police Department is an arm of Oneida Tribe itself. The analysis of whether the Oneida Police Department is immune from suit in the same fashion as the Oneida Zoning Department differs, however, because of provisions of Wisconsin

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<sup>2</sup> The Family Court makes no determination as to whether the Oneida Tribe has actual authority to enforce its zoning and building code on the property located at W140 Service Rd. The Family Court's analysis ends with the determination that the Oneida Tribe enjoys sovereign immunity and that the agents of the tribe were not acting in their own interest, but in the interest of the Tribe itself regardless of any dispute over whether the property is subject to Oneida's Zoning and Building codes.

law. Unlike the tribal governmental agencies such as the Oneida Zoning Department that enforce only tribal law, tribal law enforcement agencies can and frequently do enforce State laws and county ordinances. Wisconsin Statute, s. 165.92(2) confers that authority on tribal police officers given certain prerequisites. The same statute holds a tribe that employs such an officer to enforce state laws must accept liability for the actions of that officer and it requires that the tribe either then waive sovereign immunity for the actions of said officer(s) or secure an insurance policy which meets certain coverage minimums and which bars the carrier from raising sovereign immunity as a defense to any suit brought as a result of the actions of said officer(s). See Wis. Stat. s. 165.92(3) & (3m)(a)-(b). The Family Court finds, by the submissions of the parties and by judicial notice, that the Oneida Police Department enforces both tribal and state law and that its officers are deputized by the Outagamie County Sheriff's Department. The Department provides and accepts mutual aid to and from other departments and in all pertinent ways functions as any other municipal law enforcement agency under the auspices of Wis. Stat. s. 165.92.

Respondent Oneida Police Department asserts by counsel and by affidavit of Asst. Chief Boulanger that the Tribe has accepted liability for the actions of its officers and obtained and registered a liability insurance policy for its officers which prohibits the invocation of sovereign immunity as a defense. Respondent Oneida Police Department asserts that this limited waiver, while compliant with Wis. Stat. s. 165.92, does not subject the department itself to suit in the absence of an officer being named as a respondent/defendant. The Family Court finds that there is no named individual officer of the Oneida Police Department listed among the Respondents in this matter.

The plain language of Wis. Stat. s. 165.92(3)&(3m)(a) suggests that the statutory requirement is that the Tribe agree to waive sovereign immunity as a defense against liability for the acts and omissions of an officer the Tribe employs. The statute does not require a blanket waiver of sovereign immunity for the department as a whole. The resolution addressing the Tribe's waiver of sovereign immunity for liability for the acts and omissions of its officers adapts the language of

165.92(3) verbatim, in pertinent part. That resolution does not, on its face, waive the Tribe's sovereign immunity protections against an action seeking an injunction against the Oneida Police Department as a whole. In this action Petitioner seeks an Harassment Injunction against the department as a whole. The Family Court finds that absent specific allegations of harassing acts or omissions by an officer of the Oneida Police Department, the Department itself retains the same sovereign immunity enjoyed by any arm of Tribal government.

Once again because fact outside the pleadings were considered on the issue of whether any, even unnamed, officer engaged in acts or omissions that might subject the Oneida Tribe to liability, the Family Court treats the Motion to Dismiss on Sovereign Immunity grounds regarding those Respondents as a motion for summary judgment. See Wis. Stat. s. 802.06(2)(b). Any material disputed fact is therefore resolved against the moving party. *Heck & Paetow Claim Serv. vs. Heck*, 93 Wis.2d 349, 356, 286 N.W.2d 831, 834(1980). There is scant information provided by the Petitioner against the Oneida Police Department. The original Petition itself, with regards to the Oneida Police Dept., states that ""Oneida Police Dept. officers arrived on taxable land at W127 Service Rd. and threw into Diane's vehicle an envelope containing a letter from Oneida Zoning Administrator Troy Parr." The Amended Complaint, filed by Petitioner on January 11<sup>th</sup>, 2016, restates those allegations and again describes them as harassment. Finally the supplemental affidavit from the Petitioner makes no reference to the Oneida Police Department at all. Taking those allegations in the light most favorable to the Petitioner, the Family Court finds that an unknown officer of the Oneida Police Department entered on to private property at W127 Service Rd., Oneida, WI and affected service of zoning enforcement letters on the Petitioner. Even ignoring the fact that there is no named officer in this action, there is nothing in those allegations that suggest that the unnamed officer was engaged in an attempt to harass the Petitioner, rather than simply carrying out the duties the officer in question was assigned to do. There is no evidence in this record that officers of the Oneida Police Department lack the authority to enter on to privately owned property within the bounds of their geographic

jurisdiction. Nor is there any evidence in this record that they lack the authority to serve zoning enforcement papers within that jurisdiction. As with the allegations against the Respondents Parr and Vandenhueval, Petitioner's allegations of harassment appear to be dependent on her assertion that the Tribe lacks authority to enforce its zoning or building codes on W140 Service Rd., Oneida, WI. But the issue before the Family Court is whether the Respondents engaged in harassment of the Petitioner and whether the Oneida Police Department is immune from this suit. Based on the factual findings noted above regarding the Respondents Parr and Vandenhueval, the Family Court once again finds that the unnamed Oneida Police Dept. officer was acting within the scope of their authority. The Family Court finds, therefore, that there is no basis in this Petition to conclude that the Oneida Tribe could be liable for the actions of the unnamed officer. Regardless of that fact, the Tribe has not waived sovereign immunity regarding the Oneida Police Department, and such an action cannot be maintained without a waiver of sovereign immunity that permits suit against an arm of Tribal government. No such waiver or other legal basis for this action exists. Moreover, in light of the Petitioner's failure to name an officer or adequately plead the acts or omissions of an officer that might result in a judgment in her favor, Petitioner cannot maintain this action based on the Oneida Tribe's waiver of sovereign immunity regarding its liability for the actions of one of its officer pursuant to Wis. Stat. s. 165.92.

### **CONCLUSION**

For all of the above reasons, the Family Court finds that the governmental arms of the Oneida Tribe, including the Oneida Zoning Department and the Oneida Police Department, are immune from this sort of civil action. The Family Court further finds that Respondent's Troy Parr and William (Bill) Vandenhueval were acting as agents or officers of the Tribe when they engaged in the conduct Petitioner alleges to be harassment, and as such the Oneida Tribe's sovereign immunity extends to them as well, and they are immune from this action as well.<sup>3</sup>

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<sup>3</sup> Petitioner filed a First Amended Complaint eight days after it submitted written argument

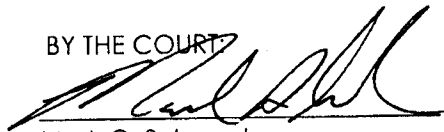
**IT IS THEREFORE ORDERED:**

The Oneida Tribe of Indians having already been dismissed from this action by previous Order, the Family Court hereby Orders this action dismissed on the Family Court's conclusion that the remaining Respondents, The Oneida Zoning Department that the Respondents Troy Parr and William (Bill) Vandenhueval and the Oneida Police Department are immune from suit in this action on sovereign immunity grounds.

Either party may, no later than thirty (30) days after service of this ORDER, move for a de novo review of this matter. If no motion for a de novo hearing before Circuit Court is made, this order shall become the order of the Court.

Dated February 8, 2016.

BY THE COURT



Mark G. Schroeder  
Family Court Commissioner

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regarding the Motion to Dismiss, seeking Declaratory Judgment regarding the Oneida Tribe's authority to enforce its zoning and building codes on W140 service Rd., Oneida WI. The Petitioner provided no argument addressing itself to an action for Declaratory Judgment either at hearing or by written submission. There is no proof of service in the file as of the issuance of this Order. The Family Court's dismissal of this action is based on the evidence, argument at hearing and written arguments submitted by the parties, as the First Amended Complaint was untimely filed and is not properly before the Family Court.