



## Nottawaseppi Huron Band of the Potawatomi Tribal Court

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<b>CASE NUMBERS: 12-142CS/PC; 12-143CS/PC; 12-144CS/PC; 12-145CS/PC; 12-146CS/PC</b>		
<b>KENT COUNTY FOC</b>	<b>v.</b>	<b>DARREL D. DAY</b>
<b>Daniel Fojtik (P38995)</b> Attorney for Petitioner 82 Ionia Ave NW Ste 200 PO Box 351 Grand Rapids, MI 49501  <b>Liz Cook (P74014)</b> Attorney for the Nottawaseppi Huron Band of the Potawatomi 2221 1 1/2 Mile Rd Fulton, MI 49052		<b>Elaine M. Barr (P75985)</b> Attorney for the Respondent Michigan Indian Legal Services 814 S. Garfield Avenue, Suite A Traverse City, Michigan 49686-2401

### OPINION AND ORDER

At a session of said Court held in the Courthouse of the  
Nottawaseppi Huron Band of the Potawatomi Tribal Court on  
the Pine Creek Reservation on the 18<sup>th</sup> day of April 2013

Honorable Melissa L. Pope Presiding

### INTRODUCTION

This matter comes before the Court on an Objection to Garnishment and Request for a Hearing in the above referenced cases. All of these cases involve the garnishment of the Respondent's per capita payments for past-due child support.

## JURISDICTION

The NHBP Tribal Court has jurisdiction over this matter pursuant to Article XI of the NHBP

Constitution:

### Article XI, Section 3(a)

The judicial power of the Nottawaseppi Huron Band of the Potawatomi shall be in the Tribal Court system. The judicial power shall extend to all civil and criminal cases arising under this Constitution, all legislative enactments of the Band, including codes, statutes, ordinances, regulations, all resolutions, agreements, and contracts to which the Band or any of its entities is a party, and the judicial decisions of the Tribal Court system.

### Article XI, Section 3(b)

The judicial power of the Tribal Court system may be exercised to the fullest extent consistent with self-determination and the sovereign powers of the Band, and, as exercised, shall govern all persons and entities subject to the jurisdiction of the Band under Article II of this Constitution.

In the present cases, the Respondent, an NHBP Tribal Member, objected to the garnishment of his per capita payments pursuant to the Gaming Revenue Allocation Plan Code, a law properly enacted by the NHBP Tribal Council. As such, this Court has proper jurisdiction in these cases.

## STATEMENT OF FACTS

On, June 20, 2012 the Court received a *Notice to Payer of A One-Time Withholding Order for Lump Sum Payment for Child Support*, dated May 31, 2012, Foreign Court Identification Number 2011-002736, directed toward Respondent in the amount of \$1,900.31. On June 27, 2012, this Court, being required to recognize and enforce valid child support orders pursuant to federal and tribal law (See 28 USC § 1738B, Full Faith and Credit for Child Support Orders Act) recognized this Notice and directed the NHBP Finance Department to stay all distributions of per capita payments to the Respondent up to the amount of the delinquent child support obligation until further order of this Court pursuant to the Gaming Revenue Allocation Plan. This case was assigned Tribal Court Case Number 12-142CS/PC.



On, June 20, 2012, the Court received a *Notice to Payer of A One-Time Withholding Order for Lump Sum Payment for Child Support*, dated May 31, 2012, Foreign Court Identification Number 2010-009564, directed toward Respondent in the amount of \$1,084.89. On June 27, 2012, this Court, being required to recognize and enforce valid child support orders pursuant to federal and tribal law (See 28 USC § 1738B, *Full Faith and Credit for Child Support Orders Act*) recognized this Notice and directed the NHBP Finance Department to stay all distributions of per capita payments to the Respondent up to the amount of the delinquent child support obligation until further order of this Court pursuant to the Gaming Revenue Allocation Plan. This case was assigned Tribal Court Case Number 12-143CS/PC.

On June 20, 2012, the Court received a *Notice to Payer of A One-Time Withholding Order for Lump Sum Payment for Child Support*, dated May 30, 2012, Foreign Court Identification Number 2004-000545 directed toward Respondent in the amount of \$15,469.28. On June 27, 2012, this Court, being required to recognize and enforce valid child support orders pursuant to federal and tribal law (See 28 USC § 1738B, *Full Faith and Credit for Child Support Orders Act*) recognized this Notice and directed the NHBP Finance Department to stay all distributions of per capita payments to the Respondent up to the amount of the delinquent child support obligation until further order of this Court pursuant to the Gaming Revenue Allocation Plan. This case was assigned Tribal Court Identification Number 12-144CS/PC.

On June 20, 2012, the Court received a *Notice to Payer of A One-Time Withholding Order for Lump Sum Payment for Child Support*, dated May 30, 2012, Foreign Court Identification Number 2011-011561, directed toward Respondent in the amount of \$419.30. On June 27, 2012, this Court, being required to recognize and enforce valid child support orders pursuant to federal and tribal law (See 28 USC § 1738B, *Full Faith and Credit for Child Support Orders Act*) recognized this Notice and directed the NHBP Finance Department to stay all distributions of per capita payments to the Respondent up to the amount of the delinquent child support obligation until further order of this Court pursuant to the Gaming Revenue Allocation Plan. This case was assigned Tribal Court Identification Number 12-145CS/PC.

On June 20, 2012, the Court received a *Notice to Payer of A One-Time Withholding Order for Lump Sum Payment for Child Support*, dated May 30, 2012, Foreign Court Identification Number 2006-

001082, directed toward Respondent in the amount of \$11,751.96. On June 27, 2012, this Court, being required to recognize and enforce valid child support orders pursuant to federal and tribal law (See 28 USC § 1738B, Full Faith and Credit for Child Support Orders Act) recognized this Notice and directed the NHBP Finance Department to stay all distributions of per capita payments to the Respondent up to the amount of the delinquent child support obligation until further order of this Court pursuant to the Gaming Revenue Allocation Plan. This case was assigned Tribal Court Identification Number 12-146CS/PC.

On or about March 26, 2013, Elaine M. Barr with Michigan Indian Legal Services, filed a Notice of Appearance and an Objection to Garnishment and Request for a Hearing in all of the above referenced cases.

The Hearing was held on April 18, 2013. The Respondent, the Respondent's Attorney and Liz Cook, the Staff Attorney for the NHBP, appeared in person. Daniel Fojtik, Attorney for the Petitioner, and Judge Pope appeared by phone. All made Oral Arguments before the Court.

At the Hearing, Attorney Barr and Attorney Cook referenced cases from other courts as persuasive authority. The Court requested submission of these cases. Attorney Cook submitted to the Tribal Court Administrator her arguments and copies of the cases referenced following the Hearing. On May 17, 2013, Judge Pope sent a request via email to all of the attorneys that they submit to the Court any materials they wanted the Court to consider by May 24, 2013. Attorney Cook responded and referenced the materials submitted on April 18, 2013. Attorney Barr submitted a cover letter and Notice of Objection Rehearing from the Pokagon Band of Potawatomi Tribal Court on May 24, 2013.

## ANALYSIS

These cases involve the Respondent's challenge to the garnishment of his per capita distributions for delinquent child support, a matter of first impression for this Court. "With cases of first impression, the NHBP Tribal Court looks to other courts for guidance to determine what the law shall be at NHBP. All other court opinions whether from a tribal court, state court or federal court are persuasive authority,



meaning that the NHBP Tribal Court does not have to follow them, unless required by federal law.

(*Chivis et al v. NHBP et al*, No. 12-068-CV, September 26, 2012)

As stated in the Facts section of this Opinion and Order, the NHBP Tribal Court received five separate Notices from the Kent County Friend of the Court with each Notice requesting the garnishment of the Respondent's per capita distribution for past-due child support. Each Notice is for a different case involving different children with the total past-due amount at the time the Notice was issued provided in the facts. With there being five cases where the Respondent owes past-due child support and those amounts ranging from \$419.30 to \$15,469.28, the Respondent has not received any of his per capita distributions since the NHBP Tribal Court entered the Orders recognizing and enforcing the Notices.

The Respondent objects to the garnishment of the per capita payment on the grounds that the enforcement of the foreign court action in the NHBP Court pursuant to Chapter 8 of NHBPI Code § 4(E)(2)(d), is repugnant to the public policy or laws of the tribe. The Court does not find merit in this argument.

The NHBP Tribal Council, through its constitutionally mandated authority, passed Resolution Number 11-06-07-02, enacting the Recognition and Enforcement of Foreign Judgments Ordinance. The Tribal Council also passed Resolution Number 05-01-08-05 which enacted the Recognition and Enforcement of Foreign Judgments Ordinance – Implementing Procedures. To implement these Ordinances within the NHBP Judicial Branch, the NHBP Tribal Court adopted Chapter Eight – Court Rules for Recognition and Enforcement of Foreign Court Actions, Warrants and Subpoenas. A foreign court is defined as “any court other than the Tribal Court of the Nottawaseppi Huron Band of Potawatomi Indians, including state, or tribal courts or courts of any foreign country.” (NHBPCR Chapter 8(3)(E) A foreign judgment, also referred to as a foreign court order or action, “means any final judgment, decree or order from any foreign court regardless of whether the judgment is for money, injunctive relief, declaratory or any other relief.” (NHBPCR Chapter 8(3)(F))

Chapter Eight of the NHBP Court Rules includes a presumption that foreign court orders are valid:

Section 4: Recognition of Foreign Court Actions

A. Validity of Court Actions.

The judgments, orders, warrants, decrees, subpoenas, records of a foreign court, and other judicial actions are presumed to be valid and will have the same effect as Tribal Court orders, judgments, decrees, warrants, subpoenas, records, and actions. All foreign court orders, judgments, decrees, warrants, subpoenas, records and actions shall be subject to the same procedures, defenses, and proceedings as those of the Tribal Court, subject to the provisions of this Chapter.

Of particular importance to these cases is that the garnishments are for past-due child support as the federal government and the NHBP have enacted legislation that prioritizes the payment of past-due child support.

The Full Faith and Credit for Child Support Orders Act, 28 USC § 1738B, provides in pertinent part:

§ 1738B(b) DEFINITIONS. – In this section:

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in Section 1151 of title 18).

§ 1738B(f) RECOGNITION OF CHILD SUPPORT ORDERS. – If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement;

- (1) If only 1 court has issued a child support order, the order of that court must be recognized

For clarification purposes, the reference above to one (1) child support order means one order for the same obligor and child. In there is one obligor and multiple children with the same parents, there is usually one order. If there is one obligor but multiple children with different partners, there are separate orders for each couple with all of these two parties' children on the same order. Each individual order must be recognized. In the present case, there are five (5) valid child support Orders as the Respondent had one or more children with five different individuals. Pursuant to 28 USC § 1738B, this Court must recognize all five Orders.



Of equal importance, especially to the Respondent's argument that recognition of these foreign court orders is repugnant to the public policy or laws of the tribe, is that the NHBP has prioritized the care of children, including with regard to the payment of past-due child support.

The care of its members, including within the context of Bode'wadmi values, traditions and beliefs, is established throughout the NHBP Constitution:

Preamble

We, the members of the Nottawaseppi Huron Band of the Potawatomi Tribe of Michigan, in order to establish a recognized and approved tribal government to provide a means for the orderly transaction of community business, consistent with our Bode'wadmi traditions and cultural values, and as the free expression of the community will; to insure treaty rights and establish an affable relationship with the Federal Government via the Bureau of Indian Affairs and other agencies; to promote the betterment of the socio-economic welfare and best interests of our community, and to implement any corporate mechanism to achieve these goals, do establish and adopt the following Constitution for the government, protection, and common welfare of the Nottawaseppi Huron Band of the Potawatomi.

Article II – Territory; Jurisdiction, Section 2. Jurisdiction; Guiding Principles  
b) Guiding Principles. In exercising the jurisdiction and sovereign powers of the Band, the Tribal Council and other institutions of the Band's government shall be guided by the following principles:

1. Promote the preservation and revitalization of Bode'wadmimen and Bode'wadmi culture;
2. Promote sustainable development strategies and practices to ensure the health and balance of the next seven generations of Tribal Members;
3. Promote the health, educational and economic interests of all Tribal Members, especially our elders and children

In the drafting of the NHBP Tribal Constitution, the people of this Nation vested the NHBP Tribal Council with various powers. One of those powers was to "adopt statutes, which are consistent with this Constitution, which shall be necessary and proper to carry out the sovereign powers of the Band and to promote the health, safety, education, and general welfare of the Band and its members." (Article VI, §1(a)) While this provision encompasses the care of children, the people of this Nation specifically

empowered the NHBP Tribal Council to “protect the interests of minors, the incompetent and the elderly members of the Band.” (Article VI, §1(g))

The NHBP Tribal Council exercised this power in the Nottawaseppi Huron Band of the Potawatomi Indians Gaming Revenue Allocation Plan, adopted by Resolution Number 03-15-12-01. It states in pertinent part:

Section 11. Child Support Obligations

Upon presentation to the Band of an order from a state or tribal court of competent jurisdiction stating that an eligible member is delinquent with regard to a court ordered obligation of child support, all or an appropriate portion of the per capita payment of any eligible member shall be directed so as to satisfy such obligation.

The Guiding Principles in the NHBP Constitution, the empowerment of the NHBP Tribal Council to adopt laws to “promote the health, safety, education, and general welfare of the Band and its members,” the empowerment of the NHBP Tribal Council to “protect the interests of minors” and the exercise of that authority in the adoption of the Gaming Revenue Allocation Plan that includes a specific provision that per capita payments “shall be directed” to satisfy delinquent child support obligations unequivocally demonstrate that the garnishment of per capita payments for past-due child support is not “repugnant to the public policy or laws of the tribe.”

As this is a case of first impression, the Court notes that other Tribal Courts also garnish per capita distributions to satisfy delinquent child support. The NHBP, by and through their attorney, submitted three cases for this Court to consideration: *Cramer v. Greene*, No. CV-05-0135, November 1, 2005 (Mohegan Tribal Trial Court); *Cutting v. Quidgeon*, No. CV-05-0112, June 21, 2005; (Mohegan Tribal Trial Court); *Maney v. Maney*, 2005 WL 6438072, May 10, 2005 (Eastern Cherokee Supreme Court) In *Cramer v. Greene*, the Mohegan Tribal Trial Court recognized the foreign Court child support order, found that the Respondent’s failure to pay child support violated the law of the Mohegan Nation, and ordered that the Respondent’s per capita payments be garnished for the past-due child support. In *Cutting v. Quidgeon*, the Mohegan Tribal Court held that foreign court orders for past-due child support for



children who are not enrolled members of the Tribe shall be recognized and the Respondent's per capita payments be garnished. In *Maney v. Maney*, the Eastern Cherokee Supreme Court held that the Tribe's law garnishing per capita distributions for child support when the Respondent is incarcerated for more than one year did not violate the Indian Civil Rights Act.

The Respondent supplemented his argument at Oral Arguments, stating that the garnishment of his entire per capita payments created a financial hardship. In acknowledgement of the obligation, the Respondent requested that the Court garnish fifty percent (50%) of his per capita distributions for the delinquent child support and pay the other fifty percent (50%) to him. He went on to state that he was not receiving the benefit of the per capita distributions. In submitting the case referenced at the Hearing where the Pokagon Band of Potawatomi Tribal Court considered the Respondent's financial situation in the garnishment of per capita payments (*Van Buren County Friend of the Court v. Sturgeon*, No. 13-2129-PCDCS), the Respondent stated in the cover letter that "[i]t is in the interest of the tribe for the individual tribal citizen to have a means to support themselves, in this case employment supplemented by per capita payment, and their children while they are in the non-custodial parent's care."

The Respondent failed to meet his burden of proof in presenting clear and convincing evidence that such a financial hardship exists. In addition, as stated by the Court at the Hearing, the Respondent is receiving a financial benefit from his per capita distributions in that the amount of past-due child support owed in these five cases is being reduced with every distribution. Further, the Respondent is not only responsible for supporting himself, but also his children. This support requires providing these children with all of the basic necessities, including food, clothing, medical care and more. The arrearages in these cases demonstrate that the custodial parents have carried this responsibility by themselves at times and, in some cases, for a significant period of time. The Respondent will receive the direct allocation of his per capita distributions once his past-due child support has been paid in full.

## CONCLUSION

The Guiding Principles in the NHBP Constitution, the empowerment of the NHBP Tribal Council to adopt laws to “promote the health, safety, education, and general welfare of the Band and its members,” the empowerment of the NHBP Tribal Council to “protect the interests of minors” and the exercise of that authority in the adoption of the Gaming Revenue Allocation Plan that includes a specific provision that per capita payments “shall be directed” to satisfy delinquent child support obligations unequivocally demonstrate that the garnishment of per capita payments for past-due child support is not “repugnant to the public policy or laws of the tribe.”

The Respondent failed to meet the clear and convincing burden of proof in demonstrating that the garnishment of his per capita payments for past-due child support created a financial hardship. Further, he is receiving the benefit of these distributions by providing for the care of his children and in the reduction of his past-due child support obligations.

## ORDER

For the reasons set forth in this Opinion and Order, the Respondent’s request to stop or reduce the garnishment of his per capita distributions for delinquent child support as specified in his Objection to Garnishment is DENIED and the case is DISMISSED.

6-26-2013  
Date

Melissa L. Pope  
Melissa L. Pope, Chief Judge

## CERTIFICATE OF MAILING

I certify that on this day I mailed a copy of the *Opinion and Order* by first-class mail to the parties, or their attorneys, at the addresses listed above with proper postage affixed.

6/26/2013  
Date

R. Scott Ryder  
R. Scott Ryder, Tribal Court Administrator