

Cherokee women win round two in marriage dispute

Special to the Observer

Dawn McKinley and Kathy Reynolds only wanted to memorialize their love, but instead they started a nearly two-year-long journey into Cherokee politics, legal battles and hate directed toward gays.

The women were married in a spiritual ceremony in 2004 and were immediately sued by the attorney for the Tribal Council, Todd Hembree.

Hembree's case went before the Cherokee Nation District Court where Kathy and Dawn appeared unrepresented. They eventually lost and filed an appeal to the tribe's supreme court, known as the Judicial Appeals Tribunal or JAT.

Initially, the women were represented in the JAT by a tribal lay advocate, but soon found themselves with an attorney sponsored by the Center for Lesbian Rights. The attorney filed a motion to dismiss the case on the grounds that Hembree had no standing to sue because he could not show he had been harmed.

Tribal law requires that anyone filing suit for any reason must show they have been harmed in some tangible way.

The JAT agreed with the CLR attorney and dismissed the case. Within nine days of losing, Hembree brought nine Cherokee Nation Council members to court to file suit against the women.

The CLR attorney once again filed a motion to dismiss based on the fact that not only could the council members not show they had been harmed, but they had no special status as council members above anyone else.

And once again, the JAT agreed, and in a two-page opinion, dismissed the councilor's petition.

At press time Ms. McKinley and Ms. Reynolds were unavailable for comment and their attorney was on a vacation and could not be reached.



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Judge to Review CNO Motion in Federal Freedmen suit

sovereign immunity could be used to avoid court jurisdiction for violations of the 13th Amendment to the U.S. Constitution.

The 13th Amendment forever abolished slavery in the United States and any badges of slavery that existed or might exist in the United States and all of its territories. The Federal Courts have consistently held that limitations on voting rights, particularly in the southern states of the old Confederacy, were in fact, badges of slavery and were unconstitutional. The plaintiff's filing cites federal Indian law in which the courts have held that badges of slavery are not

permitted by Indian tribes and the 13th Amendment applies, notwithstanding sovereign immunity.

Freedmen have long contended that the limitation on their voting rights in the Cherokee Nation was nothing more than an outgrowth of the slave status of their ancestors and is therefore, a badge of slavery imposed upon them by the leadership of the Cherokee Nation of Oklahoma.

No timeline for a determination on whether the court will accept the Freedmen's response to the CNO motion to dismiss or when the motion to dismiss might be decided.

Car tag dispute awaits sovereign immunity decision

A Cherokee man named Jon Carrico filed suit against the Tax Commission in the Judicial Appeals Tribunal, but must now wait for a hearing on a motion to dismiss filed by CNO attorney Sarah Hill.

Hill's motion claims that the Tax Commission is an extension of the chief's office and thereby enjoys the same immunity from suit as the Cherokee Nation.

Carrico sought to purchase a car tag from the Cherokee Nation Tax Commission, but was turned down because he lives a few miles outside a boundary imposed by a legislative act of the Council. Carrico's suit contends that the boundary is a legal fiction not supported by the CNO constitution and is therefore

invalid. The Tax Commission has not answered the allegation, but has instead filed a motion to dismiss claiming the Commission is immune from suit.

Carrico responded to the motion by claiming that the constitution waives sovereign immunity, if in fact, any exists. Carrico also alleged that the Cherokee Nation laws did not originate in the tradition of English Common Law and since sovereign immunity is a doctrine of English Common Law, it does not exist in Cherokee law.

At press time, the court had not set a hearing date on the motion to dismiss. However a status conference has been set in the case for February 17th.

Cherokee name: Ski-osdi, formally A-sga-ya O-sda (good man)

English name: Ginseng or Sing or Sang or five fingers

Scientific name: *Panax quinquefolius*

Family: Araliaceae

Uses: Medicine

Ginseng is one of those plants that was important in the Eastern Cherokee Nation, but due to its limited availability in the west, faded from traditional medicinal practices among the western Cherokees. The traditional uses of this plant are virtually unknown among Western Cherokee healers.

Known in Cherokee as "Ski-osdi" which literally means "good man" this plant was collected in great abundance prior to the 1920s throughout the mountainous regions of the Southeastern United States, especially in the Great Smokey Mountains of Western North Carolina and Eastern Tennessee.

Following greater contact and trade between the United States and China, wild ginseng was collected nearly to extinction. The U.S. Department of the Interior moved to protect wild populations of ginseng in 1975 and the plant now enjoys full protection by the U.S.

Endangered Species Act.

Ginseng farms have sprung up in areas capable of sustaining this difficult and time consuming herb. Most of the ginseng produced commercially in the United States is exported to Hong Kong.

Ginseng is a perennial herb not more than a foot tall when left alone and may live for more than a century. Its root is fleshy, often bifurcate and aromatic. The stem is simple, erect and deep red. Ginseng's flowers, on the other hand, are pink and its fruit, a small berry, is red. The leaves are compound, digitate, oval and thin. There are a total of five leaflets, the three terminal leaflets are larger than the two lateral ones. Some say the leaf resembles the human hand, thus the common name five fingers. Ginseng's roots are 3 to 5 inches long, grayish white to amber yellow. The surface is wrinkled and furrowed. The taste is sweetish at first, with a somewhat bitter aftertaste.

Because the root of this plant resembles the human body, thus the Cherokee name, it is believed to be one of only a few plants with wide general application to cure human ailments. The plant is generally used to cure rheumatism, insomnia and anemia.

ATTENTION TRIBAL MEMBERS

Qualified Native American home owners (new and existing) in north and east of the Neosho River in Ottawa County may apply to the Indian Health Service office for water and sewer facilities. The facilities include the following: rural water connections, new wells, full and partial plumbing, new sewer service lines, septic tank and drainfield installations.

For more information call Marvin Summerfield in the office of the Environmental Health Office located in the Seneca/Cayuga Tribal headquarters in Miami, OK.

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Cherokee Observer is an independent newspaper for Cherokees and others interested in the news about Cherokee people, history, culture and language. CO is dedicated to providing Cherokees the news they need to make decisions regarding their government and who will serve as their leaders; as well as preserving and promoting the Cherokee language, culture and history.

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