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IN THE QUINAULT TRIBAL COURT OF APPEALS
QUINAULT INDIAN NATION

DELBERT L. BOYER, JR., AND)
ALISON BOYER, HUSBAND AND WIFE,)

PLAINTIFFS/APPELLANTS.)

v.)

QUINAULT INDIAN NATION, QUINAULT)
BEACH RESORT & CASINO, QUINAULT)
TRIBAL GAMING COMMISSION,)
QUINAULT TRIBAL GAMING AGENCY,)
QUINAULT NATION ENTERPRISES)
BOARD, AND JOHN AND JANE DOES 1-20)

DEFENDANTS/RESPONDENTS.)

CASE No. CVAP09-066

ORDER ON APPEAL

Before: Randal Steckel, Chief Justice; Richard Okrent, Justice; Cindy Smith, Justice.

Appearances: Delbert Boyer, Appellant; Richard Armstrong Attorney for Appellee.

FACTUAL BACKGROUND¹

Appellant, Delbert Boyer, was employed by the Quinault Beach Resort and Casino in May, 2000, as a full time table games dealer. Over the course of his employment, he was promoted to a number of different positions with increasing supervisory duties and responsibilities. Each promotion was based upon his job performance.

On or about March 16, 2005, Boyer was suspended from employment for three days for reasons that are not clear from the record. This suspension was investigated by the

¹ The factual statement is taken from the pleadings and briefs filed in the trial court. This Court notes that there has been no evidentiary hearing or trial. However, the underlying factual dispute is not determinative to the resolution of this case. The only facts needed to resolve this case are the dates of the suspension, the exclusion from the casino, and the filing of the complaint. The pertinent dates do not appear to be disputed.

Quinault Indian Tribal Employment Rights Office (TERO). TERO determined Boyer had been subjected to harassment and that the suspension was inappropriate and informed the casino of its findings in a written memorandum dated May 2, 2005.

Also on March 16, 2005, The Quinault Indian Nation Tribal Gaming Agency (TGA) completed Incident Report #05-0007. This incident report was part of an investigation undertaken to determine if Boyer was involved in collusion relating to compensation of a patron. On June 30, 2005, Boyer was excluded from the casino property and required to surrender his gaming license. The exclusion was based upon TGA's incident report and a Washington State Gaming Commission investigation. As a result, Boyer's gaming license was also suspended. On March 7, 2007, Boyer's gaming license was reinstated. He was rehired at the Quinault Beach Resort and Casino in May, 2007.

PROCEDURAL HISTORY

On April 28, 2008, Boyer filed suit in the Quinault Tribal Court against the Quinault Tribe and various tribal agencies alleging a violation of the Indian Civil Rights Act due to a denial of a pre-suspension hearing, and alleging unlawful discrimination and harassment in violation of Title VII of the Civil Rights Act of 1964 and of the Quinault Beach Resort and Casino Team Member Guide Book. On February 10, 2009, the defendant filed a motion to dismiss for failure to serve defendants, failure to file a claim before the expiration of the statute of limitations, and failure to state a claim for which relief may be granted and lack of standing to prosecute claim. On March 9, 2009, the trial court partially granted the motion and dismissed all claims based upon the gaming license suspension without a hearing and enforcement of a TERO Commission.

On April 8, 2009, the defendant filed a motion for a judgment on the pleadings, arguing, among other issues, that the plaintiff's claim was barred by the statute of limitations. On May 20, 2009, the trial court issued a memorandum opinion concluding that the incident that gave rise to any cause of action was the suspension or exclusion from the casino in 2005. The trial court found that there was no allegation of a continuing course of conduct between 2005 and 2007 for which there was an available remedy. Therefore, the trial court concluded the statute of limitations ran sometime in 2006. On May 28, 2009, the trial court granted the defendant's motion to dismiss. This appeal timely followed.²

ANALYSIS

The Quinault Tribal Code sets forth a statute of limitations regarding the time for filing civil actions against the Tribe. Q.T.C. §99.01.010 states, "All civil actions shall be started and prosecuted within 1 year after the cause of action accrues and not afterward . . ." QTC §99.01.020 states, "A cause of action accrues when a party has a right to apply to a court for relief or discovers or through reasonable diligence should have discovered the facts giving rise to the cause of action."

On March 16, 2005, Boyer was suspended from his employment. On June 30, 2005, he was excluded from the casino and his gaming license was suspended. Based upon these facts, Boyer filed suit alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 and denial of a pre-suspension hearing in violation of the Indian Civil Rights Act. The complaint does not allege any facts that support a claim for continued discrimination past the date Boyer was excluded from the casino.

² Appellee has raised the issue of the timeliness of the appeal. There are contradictory time limits for filing an appeal in the Quinault Tribal Code. This court previously ruled that the appeal was timely filed.

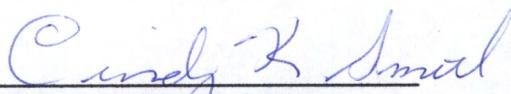
Under the Quinault Tribal Code, the one year statute of limitations begins to run when, “a party has a right to apply to a court for relief or discovers or through reasonable diligence should have discovered the facts giving rise to the cause of action.” Q.T.C. §99.01.020. Similarly under federal law, “[i]n employment discrimination cases involving wrongful discharges, the statute of limitations begins to run when the plaintiff learns of the decision to terminate his employment . . . (citation omitted).” Rivera-Muriente v Agosto-Alicea, 959 F.2d 349 (1st Cir. Puerto Rico) 1992.

In this instance, the cause of action either accrued on March 16, 2005, when Boyer was suspended from employment, or at the latest on June 30, 2005, when he was excluded from the premises of the casino and his gaming license was suspended. Giving the appellant the benefit of the doubt, the statute of limitations began running, at the latest, on June 30, 2005. Boyer had one year from that date to initiate a lawsuit. Boyer did not file a lawsuit by June 30, 2006. The complaint in this case was filed in the Quinault Tribal Court on April 28, 2008. The complaint was not timely filed. The trial court’s order of dismissal is affirmed.

IT IS SO ORDERED THIS 9th DAY OF December, 2009

FOR THE PANEL:

**RANDAL STECKEL, CHIEF JUSTICE
RICHARD OKRENT, JUSTICE**



CINDY K. SMITH, JUSTICE