

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

MONSTER TECHNOLOGY GROUP, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-21-879-J
)	
GARRETT A. ELLER,)	
)	
Defendant.)	

ORDER

On September 15, 2021, the Court dismissed Plaintiff’s cause of action for failure to exhaust tribal court remedies (Order). [Doc. No. 5]. Before the Court is Plaintiff’s motion for reconsideration of that Order (Motion). [Doc. No. 7]. Asserting the Order was clearly erroneous, Plaintiff’s primary argument is that it filed its appeal with the Supreme Court of the Iowa Tribe “nearly six months ago” and anticipates additional delay because that court now consists of only one judge and will not be able to “entertain[] the matter any time soon.” Motion at 2; Brief in Support of Plaintiff’s Motion for Reconsideration (Brief) [Doc. No. 7-1] at 3, 4.

As discussed in the Order, however, a delay in the pending appeal does not negate the requirement that “absent exceptional circumstances, federal courts typically should abstain from hearing cases that challenge tribal court jurisdiction until tribal court remedies, including tribal appellate review, are exhausted.” *Becker v. Ute Indian Tribe of Uintah & Ouray Reservation*, 11 F.4th 1140, 1149 (10th Cir. 2021) (internal quotation marks omitted). And because the Tribal Supreme Court’s review is not complete, Plaintiff has not exhausted its tribal court remedies. *See Thlopthlocco Tribal Town v. Stidham*, 762 F.3d 1226, 1237 (10th Cir. 2014) (“Until the tribal court’s appellate review of the question presented in federal court is complete, the complaining party has not exhausted its tribal court remedies.”); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9,

16-17 (1987) (“[R]espect for tribal legal institutions requires that they be given a full opportunity to consider the issues before them and to rectify any errors. The federal policy of promoting tribal self-government encompasses the development of the entire tribal court system, including appellate courts.” (internal quotation marks omitted)).

A delay of less than six months coupled with some indefinite amount of anticipated additional delay does not qualify as “exceptional circumstances.” *See Becker*, 11 F.4th at 1149. Nor does it equate to a “denial of justice.” Brief at 4, 5 (internal quotation marks omitted). And recognizing the Iowa Tribe’s inherent sovereignty and right to self-governance, the Court strongly disagrees with Plaintiff’s assertion that the Court’s Order creates disincentive for the Iowa Tribe to fill the vacant seats on its Supreme Court. Brief at 4, 5.

Plaintiff’s action has been dismissed without prejudice, which permits Plaintiff to reassert its claims in the future should the delay of appellate review extend for such time that Plaintiff could then argue the existence of extraordinary circumstances.¹ But that is certainly not where we are now and nothing in Plaintiff’s Motion or Brief convinces the Court that adherence to the requirement of exhaustion of tribal court remedies is clearly erroneous. As such, Plaintiff’s Motion [Doc. No. 7] is DENIED. Plaintiff is ordered to immediately provide Defendant with a copy of this Order in the same manner in which it served Defendant with its Motion and Brief.

IT IS SO ORDERED this 14th day of October, 2021.


BERNARD M. JONES
UNITED STATES DISTRICT JUDGE

¹ The Court is not suggesting that it would necessarily find that an extended delay would, in fact, qualify as “the most extraordinary circumstances.” *See Iowa Mut. Ins. Co.*, 480 U.S. at 21; *see also* Order at 2 (listing situations in which exhaustion is not required).