

IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION

IN THE MATTER OF THE)	CAUSE NO. AP 10-0126-P
ESTATE OF:)	
)	
ALPHONSE HENRY CLAIRMONT,)	ORDER DISMISSING APPEAL
)	
Deceased,)	
)	

On November 22, 2011, the Honorable Winona Tanner issued a Decision and Order in this matter. The Decision and Order: 1) recognized and adopted the Mediated Settlement Agreement (“MSA”)¹ as the stipulated plan of distribution of the Estate; 2) denied Sherry Clairmont’s Motion to Dismiss the MSA on the ground that her arguments were unavailing and without legal basis; and 3) ordered the Personal Representative “to file a report to the Court once the ordered distribution is complete so that probate may be concluded.” (See Decision and Order at Para. 6.) It is from this Decision and Order that Sherry Clairmont appeals.

Appeals of Tribal Court decisions are governed by the Confederated Salish and Kootenai Law and Order Code (2003).

¹ The MSA was executed by all heirs to the Estate on September 28, 2011. Judge Tanner found in her Decision and Order that the MSA was “properly filed in this probate”, “express[ed] the wishes of all of the heirs on September 28, 2011”, and “by its terms was binding upon all of the heirs.” (See Decision and Order at Para. 1.)

Rule 1 of the CSKT Rules of Appellate Procedure allows for appeals of a "final judgment or order of the trial court."

Rule 1. Notice of Appeal. (1) An appeal shall be taken by filing a notice of appeal with the Appellate Administrator, with a copy to the Clerk of the Tribal Court within 20 days of the date of the *final judgment or order* of the trial court. Failure of an appellant to timely file a notice of appeal is ground for dismissal of the appeal. (emphasis supplied.)

Under CSKT code section 4-3-101, the term "judgment" includes "a final trial court ruling on the merits, a decree, and any order from which an appeal lies. Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings."

In addition, and importantly, a "final judgment or order" must end the legal proceedings on the merits for all claims and all parties. Yet here, Judge Tanner ordered the Personal Representative to file a report once the distribution is complete "so that probate may be concluded." (Decision and Order at Para. 6.) The inescapable conclusion from this part of Judge Tanner's Decision and Order is that the probate matter is ongoing, and will remain so until, at the earliest, the date that the aforementioned report is filed.

On February 24, 2012, Personal Representative Dennis Clairmont filed an Updated Accounting with the Tribal Court reflecting bills paid and other actions taken by the Personal Representative relative to the Estate. The Updated Accounting provides a status update through January, 2012, but is by no means final.

Moreover, on March 12, 2012, Roger Clairmont, another of the heirs to the Estate, filed with the Tribal Court a Request for Ruling on Pending Motion. This document requests that Judge Tanner take further action on various requests made by Roger

Clairmont relative to his disapproval of various actions taken by Personal Representative Dennis Clairmont. This Request for Ruling on Pending Motion, as well as the underlying motions and related requests, remains undecided.

It is clear that the lower court has not reached a final order since pending motions have not been ruled on.

As further evidence that Judge Tanner's Decision and Order is not a "final judgment or order", this Court observes that no separate judgment has been entered. The Clerk of Court shall enter a final judgment – *as a separate document* – which must be signed by the court, as follows:

Upon a verdict by a jury or a decision by the court granting any relief or denying all relief, the Clerk shall prepare a form of judgment for the prompt approval and signature of the court. Each judgment shall be set forth on a separate document. Upon approval, the Clerk shall enter the judgment by placing it in its chronological order in the judgment book. Parties or their attorneys or representatives shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.

CSKT code section 4-3-109.

Upon the conclusion of the hearing, the judge shall make his or her findings and enter judgment. The entry of judgment shall be prepared by the Clerk of Court, and a copy of the same shall be mailed, first class postage prepaid, by the Clerk to the parties within 5 days of the conclusion of the hearing. The form of the judgment shall substantially conform to the appropriate sample form included at the end of this Chapter.

CSKT code section 4-4-401.

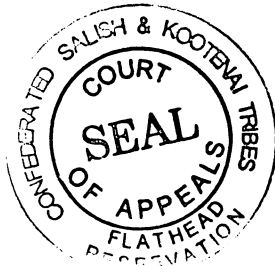
Here, there is no separately entered "judgment" supporting the existence of a "final judgment or order."

For all of the foregoing reasons, there is no valid appeal here. Tribal Court proceedings are still pending. This Court must, therefore, dismiss the appeal for lack of a “final judgment or order.”

ORDER

IT IS HEREBY ORDERED that the appeal before this Court is DISMISSED without prejudice. Associate Justices Joey Jayne and Greg Dupuis concur with this Order.

IT IS SO ORDERED THIS 28th DAY OF MARCH, 2012.



A handwritten signature in black ink, appearing to read "D. D. Belcourt", written over a horizontal line.

Daniel D. Belcourt
Associate Justice

Cc: Sherry A. Clairmont, Appellant
CSKT Tribal Court, Appellees
Estate of Henry Alphonse Clairmont, Appellees

Certificate of Mailing

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the ***Order Dismissing Appeal*** to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, or hand-delivered this 29th day of March, 2012.

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