

**IN THE APPELLATE COURT
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION, PABLO, MONTANA**

TAMARA COUTURE,)	Cause No. AP-06-168-P
)	
Appellant,)	OPINION
)	
vs.)	
)	
WESLEY COUTURE,)	
)	
Appellee.)	

Appearances:
Tamara Couture, Appellant, Pro Se
Wesley Couture, Appellee, Pro Se

Argued February 9, 2009
Appeal from the Trial Court of the Confederated Salish and Kootenai Tribes
Cause No. 06-168-P, Order October 29, 2007, Hon. Winona Tanner presiding,
Decided May 14, 2009

Before WINDHAM*, MATT and DESJARLAIS, Appellate Judges

OPINION OF THE COURT

DESJARLAIS, Chief Justice:

INTRODUCTION

Appellant is appealing an "Order Recognizing Assets of Estate, Determining Heirs, and Distributing Assets" signed by Hon. Winona Tanner, on October 29, 2007. In an effort to initiate an Appeal with the Confederated Salish and Kootenai Tribes' Court of Appeals, the Appellant filed a "Motion to Appeal

* Justice Windham, lead, Acting Chief Justice at initial filing

Judgment” on May 7, 2008, and a “Motion to File Complaint “ on July 1, 2008. Appellee argues that the appeal was untimely filed. Based on the following discussion, we uphold the decision of the Trial Court and dismiss Appellant’s appeal.

DISCUSSION

In Appellant’s “Motion to Appeal Judgment” filed with the Court of Appeals, on May 7, 2008, Appellant states that 1) she was not present at any of the hearings, 2) that she was denied the opportunity to respond to Appellee’s claims, 3) that the trial court’s judgment was “based on inaccurate prejudicial evidence and testimony”, and 4) that she had ineffective assistance of Counsel.

In Appellant’s “Motion to File Complaint” filed with the Court of Appeals on July 1, 2008, Appellant states that she had several different addresses that the Tribe “knew where I was at all times and could have notified me of such hearings” and verified that Appellant received Judge Tanner’s Order “sometime in February of 2008.” See Motion page 2. Appellant stated, “due to several incidents at MWP [Montana Women’s Prison] I was not able to access a computer to prepare the Motion to Appeal Judgment immediately.” Id.

In response to both Motions, Appellee provided to the Court of Appeals: 1) a transcript that demonstrated that Appellant was present at the dispositive hearing, 2) the transcript evidenced that Appellant was provided the opportunity to respond to Appellee’s claims at the hearing, 3) Appellee provided the Trial Court with the accurate address information of the Appellant, and 4) Appellee stated that the Appeal was beyond the 20 day time period to file the appeal.

The record was void of any evidence to support the Appellant's claim of ineffective assistance of legal counsel in this matter.

I. Rule 1--Timeliness of Appeal.

The first issue we must address is whether this Appeal was timely filed.

Rule 1 of the Rules of Appellate Procedure states:

Rule 1. Notice of Appeal. (1) An appeal shall be taken by filing of 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.

The Trial Court's order was signed on October 29, 2007. As per Rule 1, any appeal needed to be filed within 20 business days of the final judgment or order of the trial court. *See also, Monteau v. Monteau, CSKT Court of Appeals, AP-02-002-DV (2004).*

It is the Court of Appeals duty to interpret the laws passed by the Tribal Council of the Confederated Salish and Kootenai Tribes and the duty of the Tribal Council to enact and legislate law. §1-2-801 CSKT Laws Codified (2003). The Appellant filed her appeal, May 7, 2008—over seven (7) months after the Final Order of the Trial Court. Rule 1 provides that an appeal needs to be filed within 20 business days. By providing a 20-day timeframe, the Tribal Council provided everyone with the same standard. If we proceed with this appeal, we would be legislating a new 7 month time period in which to file an appeal, which may cause serious due process issues to arise. Rule 1 requires that "an appeal shall be taken ... within 20 days of the date of the final judgment or order of the trial court." We find that the appeal was untimely filed.

II. Rule 14 and Motions or Orders for Extension of Time

At the time of Appellant's initial filing, our colleague, Justice Windham, was acting Chief Justice. In his capacity as Acting Chief Justice, Justice Windham purportedly relied on Rule 14 to extend the 20 business day time period of Rule 1 to seven (7) months.

Rule 14 provides:

Rule 14. Computation and Extension of Time. In computing any period of time prescribed by these rules, (1) Saturdays, Sundays, and Tribal legal holidays are excluded from the computation, and (2) the day from which the designated period of time begins to run shall not be included, but the last day of the period is included. For good cause shown, the Chief Justice may order an extension of the time prescribed by these rules. All motions or orders for extension of time shall include a date certain on or before which date the act for which an extension of time is requested must be performed.

Rule 14 provides for a process that clearly requires a Motion for Extension of Time that "shall include a date certain on or before which date the act for which an extension of time is requested must be performed." Id. The Appellant's Motion did not make such request. Rule 14 also requires a showing of "good cause." Id. The Appellant indicated in her initial filing and at oral argument that the reason she did not file the Appeal within the 20-day timeframe was that she did not have access to a computer until April of 2008. We do not find Appellant's reason as a basis for good cause to allow the appeal to proceed after missing the 20-day timeframe by 7 months.

III. Rule 1 and Rule 14

Rule 1 needs to be considered in conjunction with Rule 14. Since Rule 1 requires an appeal to be filed within 20 business days, it is reasonable that any Motion to Extend the 20 business days would need to be made within that

timeframe and in accordance with the process set-forth in Rule 14. Appellant did not file a Motion to Extend the timeframe and/or Appeal within the 20-day timeframe as prescribed by Rule 1.


CONCLUSION

We are clear that it is the Court of Appeals duty to interpret the laws passed by the Tribal Council of the Confederated Salish and Kootenai Tribes and to apply the law in a manner that does not violate due process. §1-2-801 CSKT Laws Codified (2003). We are supportive of getting to the merits of an Appeal when an Appeal is properly brought before the Court of Appeals in accordance with the laws of the Confederated Salish and Kootenai Tribes. If the appeal had been timely filed and we had opportunity to get to the merits, the record and arguments on appeal appear to support the Trial Court's Order.

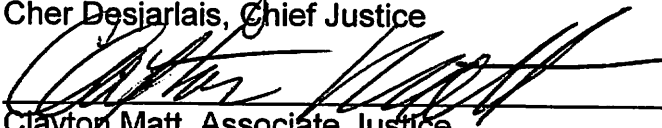
Based on the foregoing, we find that the appeal and any purported Motion for Extension of Time was not filed in a timely manner. After review of the record and oral argument, we find that Appellant did not have a good cause basis for an extension of a 7-month time to proceed with the appeal. In applying Rule 1 and Rule 14, we find that Appellant's appeal should be dismissed.

Therefore, IT IS HEREBY ORDERED that Appellant's appeal shall be **DISMISSED**, with prejudice, and the Trial Court decision is **AFFIRMED**.

DATED this 18th day of May, 2009



Cher Desjarlais, Chief Justice



Clayton Matt, Associate Justice

Concurring Opinion by Associate Justice Wilmer E. Windham:

I concur in the result reached by the majority, however, based on the long standing policy of this Court, my decision is based on the merits.

After a delay of fourteen months after the hearing on the merits, the Tribal Court issued its ruling, dividing the principal asset of the estate consisting of a certain mobile home equally among the four heirs. The Tribal Court also assessed Appellant \$4,200 for rental on the trailer, representing \$300 per month for fourteen months and dividing this sum equally among the heirs.

Appellant's last five filings before the Order appealed from show Appellant's address as "P.O. Box 356, Pablo, MT 59855." The Order dated October 29, 2007 shows service on Appellant at 106 Fourth Street East, Polson, Mt 59860. The origin of this address does not appear in the record. Nonetheless, Appellant admits receiving the Order in February, 2008. Appellant's "Motion to Appeal Judgment" was not filed within the twenty day limit thereafter, but not until May 7, 2008. She offered excuses for this tardiness, and on August 24, 2008, this Court issued its Order effectively relieving her of her default and permitting the appeal to continue. Appellee, however, raised the timeliness issue in his brief, and this Court agreed to revisit the issue and invited the parties to debate it at oral argument.

A Notice of Appeal is a simple document, which does not require any backup documentation. A motion to extend the time to file a Notice of Appeal requires a showing of excuse. If Appellant, being incarcerated, was not allowed

access to the means to file a simple Notice of Appeal, it follows that she was not able to file a motion to extend the time.

The Acting Chief Justice accepted her excuse and permitted the appeal to proceed on its merits. I would not revisit this ruling, which was based on Rule 14 of the Rules of Appellate Procedure and was within the discretion of the Acting Chief Justice. There was no "legislating from the bench," but an effort to give effect to the Rules of Appellate Procedure enacted by the Tribal Council.

Whether the service of the Tribal Court's ruling to an address other than the one shown by Appellant in her five previous filings satisfies the requirements of due process is a moot point in view of the correctness of the Tribal Court's ruling.

Appellant appeared in open court and agreed to the four-way division of the proceeds from the sale of the mobile home. She also agreed to pay her share of the cost of an appraisal and to pay rental of \$300 per month. The record does not support her contention that her consent was conditioned upon receiving a share of her mother's ashes; nor does the record show that any coercion was exerted by the Tribal Court.

Therefore, I would affirm the judgment of the Tribal Court.

Dated this 18th Day of May, 2009



Wilmer E. Windham, Associate Justice

CERTIFICATE OF MAILING

I, D. Renee Pierre, Appellate Court Administrator, do hereby certify that I mailed true and correct copies of the **OPINION** to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, this 19 day of May, 2009.

Tamara Couture
701 7th Street South
Billings, MT 59101

Wesley Couture
5430 Larimer Lane
Billings, MT 59105

A handwritten signature in cursive script that reads "D. Renee Pierre". The signature is written in black ink and is positioned above a horizontal line.

D. Renee Pierre
Appellate Court Administrator