

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

CINDY UMPHREY,)	Cause No. AP-97-050-CC
Appellant,)	
Vs.)	
)	
GREGORY SOUZA,)	ORDER DISMISSING APPEAL
Appellee.)	
)	
)	

Appellant Cindy Umphrey filed a Notice of Appeal with this Court August 29, 2012 on a final order entered by the Lower Court on August 9, 2012. Several issues in the Appellant's filings require this Court to dismiss her appeal.

The Confederated Salish and Kootenai Law and Order Code, specifically Part 9, Rules of Appellate Procedure, govern how appeals are taken in this Court. Under Rules 1 and 5 of those Rules, an appellant is required to file an appeal within 20 days from the date the final order or judgment is issued. Rule 1 says (emphasis added):

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.

The Appellant filed a Notice of Appeal with the Appellate Administrator but did not file a copy of the notice with the Clerk of the Tribal Court. If she had, her filing fee would have been due to the tribal court as outlined in Rule 5, which demands that at the time of filing the copy with the tribal court, the appellant pay a nominal filing fee:

(1) At the time of filing the notice of appeal, the appellant shall pay to the Clerk of the Tribal Court a fee of \$25 for filing and transmitting the record on appeal, unless the fee is waived by the Chief Justice upon the granting of leave to proceed in forma pauperis or for other good cause shown. Failure to pay the filing fee, unless waived, is ground for dismissal of the appeal.

The Appellant did not file the copy of her Notice of Appeal with the lower court nor did she pay her filing fee which is grounds enough for dismissal.

The Appellant filed a copy of her request for a fee waiver in the lower court and a fee waiver signed by the lower court with this Court. It is unclear to this Court whether or not the Appellant believed that a fee waiver issued by the lower court can be used as a fee waiver in the Appellate Court. It cannot. Secondly, while the fee waiver is signed by the lower court, the form is void of whether or not the waiver was granted or denied. In order to obtain a fee waiver, or in legal terms according to the code, be allowed to proceed in forma pauperis, an appellant must follow Rule 11, which states, in whole:

Rule 11. Appeals in Forma Pauperis. An indigent party who desires to proceed on appeal in forma pauperis shall file with the Appellate Administrator a motion for leave so to proceed together with an affidavit showing the party's inability to pay the fees and costs of the appeal or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to present on appeal. If the motion is granted the Chief Justice may waive the payment of fees or costs or the giving of security therefor.

The Appellant did not request, from this Court, to proceed in forma pauperis which means she had to pay the filing fee and any other fees associated with proceeding with her appeal.

The Appellant has done nothing else to pursue her appeal and is out of time to do so. Rule 3 says that an appellant has five days after filing the Notice of Appeal to order the transcript of the lower court proceedings. No request was made. Without making the request for the lower court transcript and record, the entire appeal process is stalled since the briefing process does not begin until the transcript is transferred from the lower court to the appellate court.

Finally, on November 5, 2012, the Appellee in this matter, Gregory Souza, through counsel, filed a Motion to Dismiss. His reason was that the Appellant had failed to pursue her appeal and was out of time to do so. Once served, the Appellant has seven days in which to respond to this motion. No response was filed and her time to respond has lapsed. Rule 13 of the Rules of Appellate Procedure, specifically, address this motion:

Rule 13. Motions. Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. Counsel shall also note therein that opposing counsel has been contacted concerning the motion and

whether opposing counsel objects to the motion. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. The Court of Appeals may authorize disposition of motions by a single Justice. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the Court may direct.

The Appellant, in this matter, did not pay the filing fee which on its own merits is grounds for dismissal, according to the Code. She did not request to proceed in forma pauperis, which if granted, would have waived that fee. Secondly, the Appellant did not pursue her appeal any further after filing the Notice of Appeal and is out of time to do so. Finally, the Appellee made a motion to dismiss and the Appellant failed to respond to that motion.

ORDER

The reasons cited above make it necessary to dismiss this appeal.

IT IS HEREBY ORDERED that this Appeal is **DISMISSED** with prejudice.

IT IS SO ORDERED THIS 20th **day of November, 2012**



Eldena Bear Don't Walk
Eldena N. Bear Don't Walk
Chief Justice

Cc: Cindy Umphrey, Appellant
Gregory Souza, Appellee

UMPHREY VS SOUZA
ORDER DISMISSING APPEAL

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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, this 26th day of November, 2012.

**Cindy Umphrey
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**Cara Croft
Clerk of the Tribal Court
P.O. Box 278
Pablo, MT 59855**



**Abigail Dupuis
Appellate Court Administrator**