

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

No. AP-CV-074-90

RIO LIBERTY,

Plaintiff-Appellee,

v.

AARON JONES,

Defendant-Appellant.

Appeal from the Trial Court
of the Confederated Salish and Kootenai Tribes
No. CV-074-90--Louise C. Burke, Tribal Court Judge.

Decided March 28, 1994

Before GAUTHIER, HALL and PEREGOY, Civil Appellate Judges.

DISMISSAL OF APPEAL

PEREGOY, Chair, Civil Appellate Panel:

This appeal arises out of a dispute between Rio Liberty and Aaron Jones concerning certain employment matters associated with the Flathead Post and Pole Yard. Liberty's claims included tortious interference with contractual relations, intentional or reckless infliction of emotional distress, and outrageous tortious conduct. Following a jury trial, judgment was entered in favor of Liberty in the amount of \$15,000 for compensatory damages, \$5,000 for punitive damages, and \$1,947.60 for costs, for a total of \$21,947.60. The

court further ordered that interest would accrue on the total award at the legal rate of ten percent (10%) per annum on all amounts unpaid.

On July 15, 1993, Jones filed a notice of appeal. The case was transferred to the Civil Court of Appeals on August 26, 1993. Pursuant to Rule 10(b) of the Tribal Court Appellate Procedures, Jones' appellate brief was to have been filed on or about September 26, 1993. To date, no brief has been filed, nor has appellant moved this court for an extension of time.

While appellee Liberty has not moved for dismissal, Chapter II, §3 of the Tribal Law and Order Code authorizes this court to apply federal law in appropriate circumstances. Rule 3(a) of the Federal Rules of Appellate Procedure provides in relevant part that "[f]ailure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal." Rule 3(a) explicitly authorizes the appellate court to dismiss an appeal for the failure of the appellant to comply with the requirements of the rules, including the timely filing of briefs. See 9 Moore's Federal Practice, ¶ 203.12, "Effect of Failure to Take Further Steps After Filing Notice of Appeal," (1993). Further, it is usually held that an issue not briefed is waived. Therefore, if no brief is filed, there are no issues before the court unless, perhaps, the court of appeals chooses to inquire into issues sua sponte. See Id. 3-58, n. 19. This court will not do so here.

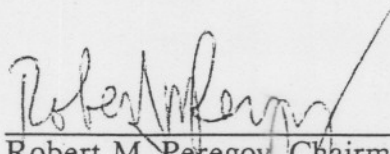
Failure to file a timely brief is culpable and will not be excused. See Stotler and Co. v. Able, 837 F.2d 1425, 1427 (7th Cir. 1988). Failure of an appellant to comply with appeal

requirements by filing briefs in the appellate court is a sufficient ground to warrant dismissal of the appeal. See Stevens v. Security Pacific National Bank, 538 F.2d 1387, 1389 (9th Cir. 1976).

The ultimate sanction of dismissal rests in the sound discretion of the court in light of all of the circumstances. Moore, supra, at 3-60. In this case, appellant is represented by counsel. His opening brief was due over six months ago, and he has not filed for an extension of time. In view of these considerations, this court considers Jones' appeal to have been abandoned. See Moore, supra, at 3-58, n. 19; see also, Couture v. Confederated Salish and Kootenai Tribes, AP-CV-004-93 (App. Ct. Confederated Salish and Kootenai Tribes, 1993).

Accordingly, in the interests of the sound and orderly administration of justice, the
APPEAL IS DISMISSED.

SO ORDERED this 28th of March, 1994.


Robert M. Peregoy, Chairman
Civil Appellate Panel