In the Southwest Intertribal Court of Appeals for the Santa Clara Pueblo Tribal Court

LARISSA AGUILAR,

Petitioner-Appellant,

v.

PUEBLO OF SANTA CLARA,

Plaintiff-Appellee.

SWITCA No. 08-009-SCPC
SCPTC No. CR-08-629

Appeal filed on July 15, 2008

Appeal from the Santa Clara Tribal Court,
H. Paul Tsosie, Judge

Appellate Judge: Anthony J. Lee

OPINION AND ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS

SUMMARY

Petitioner filed a petition for a Writ of Habeas Corpus after she was sentenced to a total of 45 days for Aggravated Driving Under the Influence of Intoxicating Liquor or Drugs. The Appellate Court denied the Petition pursuant to SWITCARA #24, which deems a petition denied if it is not acted upon within thirty days after it is filed. The Court noted that the issue was also moot since the Petitioner had already served her sentence. Although the petition was denied, the Court, in the interest of justice, addressed Petitioner's allegations that the lower court denied her due process under Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. The Appellate Court determined the correct law to be applied was not the U.S. Constitution but rather the tribe's laws and the SWITCA appellate rules. The Court found that the Petitioner, having pled No Contest, was fully advised of her rights, waived those rights, and was not denied due process under ICRA. Petitioner's claim that she was unfairly sentenced was found to be procedurally insufficient as there were no facts supporting the claim. Finally, the Court found that the Petitioner failed to prove that the tribal court violated the law in the matter. Petition for Writ of Habeas Corpus denied.

* * *

The Petitioner was sentenced for a total of 45 days on July 14, 2008 by Order of the Pueblo of Santa Clara Tribal Court, for aggravated driving under the influence of intoxicating liquor or drugs. Petitioner filed a petition for writ of habeas corpus on July 15, 2008, alleging the following:

1. The lower court violated her right to due process, thus violating the Fifth, Sixth and Fourteenth Amendments of the United States Constitution because the lower court denied her Request for Continuance for an additional 15 days to seek proper legal counsel.

2. The Petitioner was unfairly sentenced because she was not a tribal member of the Pueblo of Santa Clara.

3. The Petitioner has no adequate or effective remedy to vacate or set aside the judgment and sentence of the lower court.

Petitioner served her prison term and this Court has not acted on the Petition within thirty days after it was filed.

For the following reasons, this Court denies the petition for a writ of habeas corpus:

Discussion

A. SWITCARA # 24 sets forth the procedure this Court must follow when responding to a petition for a writ of habeas corpus. SWITCARA #24(f) states that "[i]f the petition is not acted upon within thirty days after it is filed, it shall be considered denied." The Court finds that the petition substantially complies with the requirements detailed in SWITCARA #24(a), however, since the petition was not acted upon within thirty days after it was filed, it is hereby denied [SWITCARA #24(f)]. Furthermore, since the Petitioner served her sentence, the issue is moot. However, the Court will discuss the Petitioner's allegations in the interests of justice.

B. The Petitioner alleges a violation of her right to due process, thus violating the Fifth, Sixth and Fourteenth amendments to the United States Constitution. These federal rights were established to protect individuals' rights against the state and federal governments–not against tribal governments. The Petitioner here is applying the wrong law in the matter before this Court. The correct law to be applied in this jurisdiction is the Indian Civil Rights Act of 1968 (ICRA) (codified at 25 U.S.C.A. § 1301 *et seq.*) which provides individual Indians with statutory rights against *tribal* governments. Section 1302, amongst other protections, states that "No Indian tribe in exercising powers of self-government shall . . . (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law[.]" "Its laws" refers to the tribe's *own* laws. As this case has been brought before the Southwest Intertribal Court of

Appeals, the tribe's laws and the SWITCA appellate rules are to be applied.
Due to the great importance of striking a just balance between the protection of both the individual liberty of an Indian person and the protection of an Indian tribe's right to self-government, this Court will only issue a writ of habeas corpus where there is a true legal question concerning the Tribe's detention of a person. It is necessary that the equal protection of laws or the due process provision of the ICRA be proven to have been violated by the lower court to necessitate a finding of error.

The Petitioner was fully advised of her rights, under the ICRA, as per the record entitled Advice of Rights and Entry of Plea, which she signed on June 30, 2008. According to this document, **which the Petitioner** (described therein as the "Defendant") **signed**, she was

> provided a copy of the DEFENDANT'S RIGHTS; explanation of pleas; and the following rights were advised to the Defendant:
>
> 1. The right to have legal counsel throughout these proceedings, at the Defendant's own expense.
>
> 2. The right to consult legal counsel prior to entry of plea, on a continuance granted by the court.
>
> 3. The right to have a copy of the criminal complaint filed against the Defendant.
>
> UPON THE ENTRY of a NOT GUILTY PLEA:
>
> 1. The right to be released on bail or under conditions of release determined by the Court prior to trial.
>
> 2. The right to a speedy and public trial.
>
> 3. The right to request a trial by jury within three days of arraignment.
>
> 4. The right to cross-examine and ask questions of any witnesses who are required to appear and testify against the Defendant.
>
> 5. The right to have witnesses subpoenaed in the Defendant's own behalf to appear and testify at trial.
>
> 6. The right to testify at trial or to remain silent, Defendant cannot be compelled to testify under the privileges against self-incrimination.
>
> 7. The right to appeal by filing a request as provided under the appellate procedures, if found GUILTY at trial.
>
> 8. The right to remain free on bail if the appeal is accepted by the Court of Appeals and is pending final decision.
>
> **Once there is an acceptance of a GUILTY/NO CONTEST Plea by the Court, no withdrawal of pleas is permitted, sentencing to be forthwith. The Defendant waives those rights listed under the NOT GUILTY Plea stated above.**

On that same form, the Defendant after being fully advised of her rights, under the ICRA, plead NO CONTEST to the violation of SECTION 59.2.1 – AGGRAVATED DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.

On July 11, 2008, the Petitioner filed a Request for Continuance wherein she asked for an additional 15 days to seek legal counsel. This request was properly denied, because the Petitioner previously pled No Contest on June 30, 2008, and understood that the plea could not be withdrawn.

The Court also has in its custody a written copy of the instructions given to the Petitioner on the day of the arraignment and an audio recording of these instructions. This recording shows that the lower court judge explained to the Petitioner, that the proceeding which she was attending was indeed an arraignment and not a trial. She was asked by the court if she understood and she affirmed that she did understand. The lower court judge further explained to her that if it were a trial, all parties named would have had the opportunity to be heard. The Court finds that the Petitioner was given not only notice, but the opportunity to be heard in a trial and attain legal counsel to represent her at such trial when she was presented with these options at an earlier date, during her arraignment. She pled No Contest and declined these opportunities. The Petitioner chose not to enter a plea of not guilty, but rather chose to enter a plea of No Contest. She was asked again to confirm whether or not she had a clear understanding of what she was doing and she testified that she did understand.

There remains no question, therefore, that the Tribal Court afforded every opportunity to the Petitioner – both in a written, legally-binding document which she signed, and in verbal instructions and explanations by the judge – to state her case and seek adequate legal counsel. As the record indicates, she waived these rights and testified to having full

understanding of the plea she was entering. Therefore there was no violation of the Petitioner's due process rights under the ICRA.

C. The Petitioner also alleged that she was unfairly sentenced because she is not a member of the Santa Clara Pueblo. This Court will not entertain this allegation. SWITCARA #24(a)(6) requires that the Petitioner state "a summary of the facts supporting each ground." The Petition only contains this alleged statement, with no summary of facts supporting it. This Court finds that the mere statement of an alleged violation, without more, is procedurally insufficient to be heard by this Court.

D. Lastly, the Petitioner alleged that she has no adequate or effective remedy to vacate or set aside the judgment of the lower court, as afforded by 28 U.S.C. § 2255. This federal law applies to cases involving federal custody. The Petitioner violated the law of the Santa Clara Pueblo and should be punished according to Santa Clara Pueblo law. The Petitioner has rights under the ICRA and the right to file a petition for a writ of habeas corpus, as set forth in SWITCARA #24, if the current incarceration or commitment or future custody of the Petitioner is in violation of the law. The Petitioner has failed to prove that the Santa Clara Pueblo Tribal Court violated the law in this matter.

THEREFORE, IT IS THE ORDER OF THE COURT THAT THE PETITION FOR A WRIT OF HABEAS CORPUS IS HERE BY DENIED.

IT IS SO ORDERED.

January 23, 2009

MATTHEW J. TAFOYA and VANESSA TAFOYA,

Defendants-Appellants,

v.

SANTA CLARA PUEBLO HOUSING AUTHORITY,

Plaintiff-Appellee.

SWITCA No. 08-005-SCPC
SCPTC No. CV-02-311

Appeal filed on April 25, 2008

Appeal from the Santa Clara Tribal Court,
H. Paul Tsosie, Judge

Appellate Judge: Anthony J. Lee

OPINION AND ORDER DISMISSING APPEAL

SUMMARY

Appellants appealed a lower court decision to enforce a Stipulated Judgment that required Appellants to vacate their housing unit, that tribal police department forcibly remove the Appellants in the event they fail to voluntarily vacate, that the Appellants pay court costs and attorney fees and restitution for the reasonable costs of necessary repairs to the housing unit. The Appellate Court denied the appeal finding that the Notice of Appeal was filed clearly beyond the time limitation set by SWITCA Rule 11(a) and thus the Court lacked jurisdiction to hear the matter. Further, the Court noted that the Notice of Appeal failed to meet the substantive requirements of SWITCA Appellate Rule 11(e) and it did not sufficiently state the name of the lower court, any alleged errors of the lower court, nor the type of relief sought. Dismissed.

* * *

This matter comes before the Southwest Intertribal Court of Appeals (SWITCA) from the Santa Clara Pueblo Tribal Court, and arises out of Plaintiff's Motion for Enforcement of Judgment, Forcible Entry, Warrant of Removal, and Restitution ("Motion"). The Santa Clara Pueblo Housing Authority ("SCPHA"), in its Motion, petitioned the lower court to enforce its September 12, 2002 Stipulated Judgment against the Appellants, which arose out of their non-compliance with SCPHA rules and their untimely payment of rent. The lower court found that the Appellants failed to comply with the aforementioned Stipulated Judgment, which ordered the Appellants to abide and honor all the policies and procedures established by the SCPHA, in addition to the terms of their Mutual Help and Occupancy Agreement (MHOA). Consequently, the lower court found in favor of the Appellee and thus, on March 26, 2008, ordered that the Stipulated Judgment be enforced, that the Appellants vacate their housing unit, that the Santa Clara Police forcibly remove the Appellants in the event they do not voluntarily vacate, that the Appellants pay court costs and attorney fees in the amount of $1,000.00 and that the Appellants pay restitution to the SCPHA for the reasonable cost of necessary repairs to the housing unit. Appellants have appealed the lower court's decision.

This Court denies the Appeal and Orders its dismissal for the following reasons:

I. SWITCA Rules of Appellate Procedure 11(a), states that "an appeal shall be taken by filing a notice of Appeal with the lower court within 15 days of entry of judgment by that same court . . .," and Rule 8(a) provides that "the computation of any time period over 11 days shall be by calendar days." Judgment was entered in the lower court on

March 26, 2008. The Appellants filed their Notice of Appeal on April 23, 2008, clearly beyond the time limitation set by law.

Furthermore, after examining the record of the hearing held on March 26, 2008, it is clear to this Court, that the lower court judge informed the Appellants of their right to appeal and the time sensitivity involved (albeit the Judge stated that there were 10 days to file an appeal).

II. According to SWITCA Rules of Appellate Procedure, 11(e):

> The notice of appeal shall, at a minimum, include:
>
> (1) the names, titles, addresses, and telephone numbers of the parties taking the appeal and their counsel unless the lower court determines that including the address or telephone number of any person would place that person in physical jeopardy;
>
> **(2) the name of the court rendering the adverse ruling and the date the ruling was rendered;**
>
> **(3) a concise statement of the adverse ruling or alleged errors made by the lower court;**
>
> **(4) the nature of the relief being sought; and,**
>
> **(5) a concise statement of the reasons for reversal and modification.**

SWITCARA #11(e) (2001) (emphasis added).

On April 25, 2008, the Appellants in this case entered a handwritten Notice of Appeal along with a filing fee with the lower court. In summary, the letter states the Appellants' intent for the future: that their two eldest children will be leaving the premises and that payments in the future will be made in a timely manner. In other words, the Appellants are agreeing to, in the future, abide by the terms of the Stipulated Judgment, which they have already failed to abide by and which consequently the lower court has ordered to be enforced. The Appellants' letter does not state the name of the lower court, any alleged errors of the lower court, nor the type of relief sought. Therefore, the Notice of Appeal fails to meet the substantive requirements of SWITCA Appellate Rule 11(e), specifically requirements (2), (3), (4) and (5). Therefore, this Court is without jurisdiction to hear this case and it must be dismissed. *See Peters v. Ak-Chin Indian Community*, 16 SWITCA 11 (2005), *Bourdon v. Sisneros*, SWITCA No. 08-006-SCPC, SCPC No. CV-08-295, Santa Clara Pueblo (2008).

ACCORDINGLY, IT IS THE ORDER OF THIS COURT THAT THIS MATTER IS HEREBY DISMISSED.

IT IS SO ORDERED.

February 6, 2009

JENELL CHAVARRIA,

Respondent-Appellant,

v.

SANTA CLARA PUEBLO,

Petitioner-Appellee.

SWITCA No. 08-007-SCPC
SCPTC No. TR-08-410

Appeal filed on June 9, 2008

Appeal from the Santa Clara Tribal Court,
H. Paul Tsosie, Judge

Appellate Judge: Anthony J. Lee

OPINION AND ORDER DISMISSING APPEAL

SUMMARY

Appellant filed a letter with the Appellate Court after she was found guilty for a traffic violation. The Appellate Court treated the letter as a Notice of Appeal but denied the appeal finding that the Notice failed to meet the substantive requirements of SWITCA Appellate Rule 11(e) and it did not sufficiently state a reason for reversal. Dismissed.

* * *

The Appellant was issued a Traffic Citation for driving 55 mph in a 40 mph zone on May 10, 2008. She appeared in the Santa Clara Pueblo Tribal Court on May 29, 2008 before the Honorable H. Paul Tsosie, where she was found guilty as charged. Appellant filed a letter, on June 9, 2008, with the lower court notifying the court that she was appealing the lower court decision. In the interests of justice, this Court will treat this letter as a formal Notice of Appeal.

This Court denies the Appeal and Orders its dismissal for the following reasons:

According to SWITCA Rules of Appellate Procedure, 11(e):

The notice of appeal shall, at a minimum, include:

(1) the names, titles, addresses, and telephone numbers of the parties taking the appeal and their counsel unless the lower court determines that including the address or telephone number of any person would place that person in physical jeopardy;

(2) the name of the court rendering the adverse ruling and the date the ruling was rendered;

(3) a concise statement of the adverse ruling or alleged errors made by the lower court;

(4) the nature of the relief being sought; and,

(5) a concise statement of the reasons for reversal and modification.

SWITCARA 11(e) (2001) (emphasis added).

Appellant's Notice of Appeal is not sufficient. It does not contain the name of the lower court rendering the ruling and it does not state the nature of the relief being sought. The Appellant states that she is appealing the decision because she feels that she is not guilty of speeding. This statement does not notify this Court of the Appellant's relief being sought. This Court is not in any position to guess the Appellant's specific relief when it is not clearly requested. *See Peters v. Ak-Chin Indian Community*, 16 SWITCA 11 (2005).

While Appellant's Notice of Appeal does set forth concise statements of her reasons why the lower court should be reversed, they are not sufficient. They do not present any reasoned argument or legal grounds for reversing the lower court's decision. It is the duty of the Appellant to show specific errors and explain why, as a matter of law, the lower court made a mistake. *See Southern Ute Indian Tribe v. In the Interest of Baby Boy Weaver*, 16 SWITCA 10 (2005). It is worth noting that this Court reviewed the transcript recorded by the lower court, wherein the Appellant admitted she was going 5 or 6 mph over the speed limit.

This Court finds that the Notice of Appeal fails to meet the substantive requirements of SWITCA Appellate Rule 11(e) and it does not sufficiently state a reason for reversal.

ACCORDINGLY, IT IS THE ORDER OF THIS COURT THAT THIS MATTER IS HEREBY DISMISSED.

IT IS SO ORDERED.

February 9, 2009

RENEE TREE,

Defendant-Appellant,

v.

MAXCO,

Plaintiff-Appellee.

SWITCA No. 08-011-SUTC
Tribal Case No. 08CV79

Appeal filed September 15, 2008

Appeal from the Southern Ute Tribal Court
Suzanne F. Carlson, Judge

Appellate Judge: Steffani Cochran

ORDER

SUMMARY

This matter having come before the Southwest Intertribal Court of Appeals ("SWITCA") upon an appeal taken by defendant-appellant in the above-styled cause, and this court having thoroughly considered the appeal based upon the record of the lower court, this court finds that there is no error in the lower court's judgment in favor of plaintiff-appellee in the amount of $7,261.00 plus interest.

* * *

The Defendant-Appellant challenges the lower court's denial of her request for a continuance made by Defendant-Appellant during a July 2, 2008 hearing on the merits. The Plaintiff-Appellee filed suit in the lower court for the payment of repair work completed on Defendant-Appellant's mobile home. During the course of the hearing, the Defendant-Appellant responded that she should not be responsible for payment as the repairs were of poor quality and workmanship, and resulted in the need for additional work to the home. After the Plaintiff-Appellee put on testimony, the Defendant-Appellant requested a continuance in order to have an insurance adjuster examine the home. The lower court denied her request. Failure of the trial court

to grant a continuance when a party knows of a scheduled hearing date for months and only requests a continuance during the hearing is not an abuse of discretion.

FACTS AND PROCEEDINGS BELOW

The relevant facts, as found by the lower court, are as follows. The Defendant-Appellant ("Ms. Tree") purchased a used mobile home and placed it on property located within the exterior boundaries of the Southern Ute Indian Reservation. The mobile home needed extensive repairs. She entered into an agreement with Plaintiff-Appellee ("Maxco") to perform repairs in the mobile home between October 9, 2007 and January 10, 2008. Work orders submitted to the lower court indicated that Maxco performed repairs to the floorboards; patched floors and walls; prepared and textured drywall; installed a kitchen window, hot water heating and skirting; repaired a heater; and installed electric wires, phone wires and sink hookups. A punch list inspection was completed, with Ms. Tree present, on February 28, 2008.

Ms. Tree paid Maxco two separate deposits in the total sum of $7,000. When she failed to pay the final invoice in the amount of $7,261.78, Maxco filed a claim in the Southern Ute Tribal Court ("Lower Court") on June 6, 2008. Ms. Tree was served a Notice and Summons to Appear on June 10, 2008 and Maxco was served the same Summons on June 16, 2008.

The lower court held a hearing on July 28, 2008 (48 days after being served the Summons to Appear). Both John Hunt, Maxco Owner, and Renee Tree appeared for the hearing. During the hearing, Ms. Tree objected to paying the outstanding balance because of damages she alleged were the result of alleged faulty or poor workmanship. Ms. Tree advised the court that her insurance provider would be sending out an adjuster, sometime in the unspecified future, to appraise the damages to the flooring, kitchen window, sky lights, roof, and electrical outlets. During the hearing, Ms. Tree made a request to the court to "hear out" her adjuster. The judge responded by stating that "[t]oday is the hearing" when the parties needed to bring witnesses or documentation. Further, according to the lower court, Ms. Tree should have asked for a continuance at the beginning of the hearing.

In its August 1, 2008 order, the lower court entered a Judgment in Favor of Maxco in the amount of $7,261.00 plus interest. In the Judgment, the lower court determined that Maxco had completed the work and was not responsible for the alleged repairs/damages resulting from water leaks that occurred in April 2008, that some of the repairs/damages were not noted in the punch list, and that Ms. Tree had failed to notify Maxco of some of these additional repairs/damages until the hearing.

Ms. Tree filed her Notice of Appeal and Motion for Stay of Judgment on August 15, 2008. She also filed a copy of an envelope addressed to Maxco, with an August 15, 2008 postal stamp, as proof of mailing. A Certificate of Service by the Tribal Court Clerk indicates that Notice of the Appeal was sent certified mail, restricted delivery, return receipt requested, to John Hunt, on behalf of Maxco, that same day. Mr. Hunt signed for the Notice on August 26, 2008 and filed an Answer to Notice of Appeal on September 8, 2008.

ARGUMENTS OF THE PARTIES ON APPEAL

Whether the Defendant-Appellant failed to give proper notice of the appeal.

Whether the failure by the lower court to grant a continuance requested by the Defendant-Appellant constitutes an abuse of discretion.

OPINION

COCHRAN, Judge.

This case is on appeal from a judgment issued by the Southern Ute Tribal Court on August 1, 2008. The judgment appealed from awarded judgment in favor of the Plaintiff-Appellee ("Appellee") and ordered that the Defendant-Appellant ("Appellant") pay $7,261.00, plus interest, for work completed on the Appellant's mobile home.

The general rule is that trial courts resolve issues of fact and appellate courts give those factual findings a great deal of deference. *See, e.g.*, *Cloud v. Southern Ute Indian Tribe*, 13 SWITCA Rep. 1 (2000); *Archuleta v. Archuleta*, 9 SWITCA Rep. 28 (1998); *Burch v. Southern Ute Indian Tribe*, 5 SWITCA Rep. 2, 3 (1994) ("The appellate court shall review the evidence in the light most favorable to the trial court's findings.") An appellate court will reverse a lower court's decision only where it is not supported by substantial evidence in the record or where "there is a strong showing that the court abused its discretion, acted arbitrarily or capriciously, made a clearly erroneous decision, or made an illegal decision." *Hualapai Nation v. D.N.*, 9 SWITCA Rep. 1, at 3-4 (1997).

After carefully reviewing the entire record of the lower court and reviewing all of the arguments presented on appeal, this Court concludes that the Appellant did give proper notice of this appeal to the Appellee, and that the lower court did not abuse its discretion as argued by Appellant. Accordingly, this Court affirms the decision of the lower court.

I

The Appellee asserts that the Appellant failed to give proper notice of the appeal. The SWITCA Rules of Appellate

Procedure provides, in relevant part, that "[u]nless otherwise ordered by the appellate court, a copy of each pleading filed in either the lower or appellate court shall be served on every party in the manner required by the lower court . . .." SWITCARA #9(d) (2001). The Appellate Code for the Southern Ute Indian Tribal Code provides that,

> Within three (3) days after the filing of notice of appeal, the clerk of the court shall send a signed and sealed copy of the notice of appeal to the opposition party by certified mail, return receipt requested, to be signed by addressee only at the address supplied or designated by the appellant. SUITC § 3-1-105(1).

The trial court record indicates that the Appellant filed her Notice of Appeal and Motion for Stay of Judgment on August 15, 2008. She also filed a copy of an envelope addressed to Appellee, with an August 15, 2008 postal stamp, as proof of mailing. A Certificate of Service by the Tribal Court Clerk indicates that Notice of the Appeal was sent certified mail, restricted delivery, return receipt requested, to John Hunt that same day. Mr. Hunt signed for the Notice on August 26, 2008. Therefore, the Notice of Appeal was sent to the opposition party, in the manner specified by the trial court, on the same day as it was filed. Nothing in the record supports a conclusion that the Appellant failed to properly serve the Appellee the Notice of Appeal.

II

The Appellant's issue on appeal relates to the determination of whether the failure to grant a continuance, requested by her during the hearing, constitutes an abuse of discretion. In her Notice of Appeal, Appellant's first two statements of error provide that she requested a continuance in order to have an insurance adjuster and an independent contractor inspect the home for damages and faulty workmanship. According to the Appellant, her insurance company would not be able to send an adjustment out until late August.

Generally speaking and upon proper request or motion, a civil case may be continued due to a lack of evidence. Also, in general, any review of a motion for continuance is for abuse of discretion. In order to justify a continuance due to the absence of evidence, the missing evidence must be shown to have relevance to or be material to some issue in the case. The Tribe's Civil Code provides, in relevant part, that "unless for good cause shown the court grants a continuance, the trial shall be held on the appearance date [as set forth in the Notice of Claim]." SUITC § 2-1-108. Thus, if a party shows "good cause" to support a request for a continuance, and it is not being done for purposes of delay only, it may be an abuse of discretion to deny a continuance.

The Appellant argues in her appeal that she needed more time to allow the adjuster to make a thorough investigation, and that although she had contacted another contractor to provide an estimate to complete the work and repair the damages, neither the contractor nor the adjuster could come out until late August. The Appellant states in her appeal that the adjuster could not come out as "American Family Mutual Insurance was over loaded with all the housing insurance claims from the snow damage done . . . throughout the County."

The lower court made no specific finding in the judgment regarding denial of the Appellant's request for a continuance. During the hearing, however, Judge Carlson responded to the Appellant's request by stating that "[t]oday is the hearing" when the parties needed to bring witnesses or documentation. Further, according to the court, Ms. Tree should have asked for a continuance at the beginning of the hearing.

The judge simply was not persuaded by Ms. Tree's delay or failure to have the adjuster come out sometime after April (when the water leak occurred) but prior to the scheduled hearing date (July 28th). Moreover, the court did not find good cause to continue when the request was made in the middle of the hearing. Thus, the court allowed the hearing to continue, concluding that the Appellant had not shown good cause to support her request for a continuance. Based on the entire record, we agree. The refusal of the lower court to grant a continuance under these circumstances does not constitute an abuse of discretion.

CONCLUSION

For the foregoing reasons, this Court finds no error in the Lower Court's August 1, 2008 Judgment in Favor of Plaintiff nor in the Notice of Appeal. The decision of the Lower Court is affirmed.

IT IS SO ORDERED.

March 12, 2009

In the Southwest Intertribal Court of Appeals for the Santa Clara Pueblo Tribal Court

GEORGETTE VIGIL,

Defendant-Appellant,

v.

SANTA CLARA PUEBLO HOUSING AUTHORITY,

Plaintiff-Appellee.

SWITCA No. 07-006-SCPC
SCPTC No. CV-05-528

Appeal filed on December 17, 2007

Appeal from the Santa Clara Tribal Court,
H. Paul Tsosie, Judge

Appellate Judge: Anthony J. Lee

OPINION AND ORDER DISMISSING APPEAL

SUMMARY

Appellant appealed a lower court decision to enforce a Stipulated Judgment that Appellant vacate her housing unit, that tribal police department forcibly remove the Appellant in the event she did not voluntarily vacate, that the Appellant pay court costs and attorney fees, and that the Appellant pay restitution for past rent due and restitution for the reasonable costs of necessary repairs to the housing unit. The Appellate Court denied the appeal for lack of jurisdiction as the Notice of Appeal was filed after the fifteen day time limit set by law. Dismissed.

* * *

This matter comes before the Southwest Intertribal Court of Appeals (SWITCA) from the Santa Clara Pueblo Tribal Court, and arises out of Plaintiff's Motion for Enforcement of Judgment, Forcible Entry, Warrant of Removal, and Restitution ("Motion"). The Santa Clara Pueblo Housing Authority ("SCPHA"), in its Motion, petitioned the lower court to enforce its October 15, 2007 Stipulated Judgment against the Appellant, Georgette Vigil, which arose out of her non-compliance with SCPHA rules. The lower court found that the Appellant failed to comply with the aforementioned Stipulated Judgment, which ordered the Appellant to abide and honor all the policies and procedures established by the SCPHA, in addition to the terms of her Mutual Help and Occupancy Agreement (MHOA). Consequently, the lower court found in favor of the Appellee and thus, on November 13, 2007 ordered that the Stipulated Judgment be enforced, that the Appellant vacate her housing unit (SPCHA housing unit #40) by December 13, 2007, and that the Santa Clara Police forcibly remove the Appellant in the event she did not voluntarily vacate, that the Appellants pay court costs and attorney fees in the amount of $500.00, that the Appellant pay restitution to SCPHA for past due rent owed in the amount of $4,799.00, and that the Appellant pay restitution to the SCPHA for the reasonable cost of necessary repairs to the housing unit. Appellants have appealed the lower court's decision.

This Court denies the Appeal and Orders its dismissal for the following reasons:

The Southwest Intertribal Court of Appeals has no jurisdiction over this case, as the Notice of Appeal was not filed in a timely manner. Timeliness is a jurisdictional issue. SWITCARA #11(a), #8(g) and #11(c) are to be applied in this case. The lower court judgment was entered by Judge Tsosie on November 13, 2007 and the Notice of Appeal was not filed until December 15, 2008. According to SWITCARA #11(a) an appeal shall be taken by filing a Notice of Appeal with the lower court within 15 days of entry of judgment by that same court, unless appellate provisions of a tribe or pueblo specify otherwise. Pursuant to SWITCARA #8, "The computation of any time period over 11 days shall be by calendar days." According to SWITCARA #11(c), failure to file a timely notice of appeal is jurisdictional and the appellate court shall dismiss the appeal if the notice is filed after the date set by law. Because the Notice of Appeal was filed after 15 days, this court is without jurisdiction to hear this appeal.

ACCORDINGLY, IT IS THE ORDER OF THIS COURT THAT THIS MATTER IS HEREBY DENIED AND DISMISSED.

IT IS SO ORDERED.

March 16, 2009

In the Southwest Intertribal Court of Appeals for the Ak-Chin Indian Community Court

RAUL BELTRAN, SR. and ANN BELTRAN,

Plaintiffs-Appellants,

v.

HARRAH'S PHOENIX AK-CHIN CASINO; HARRAH'S AK-CHIN CASINO; HARRAH'S PHOENIX AK-CHIN CASINO RESORT; AK-CHIN INDIAN COMMUNITY DEVELOPMENT CORPORATION; HARRAH'S ENTERTAINMENT, INC., HARRAH'S OPERATING COMPANY, INC. and JANE DOE,

Defendants-Appellees.

SWITCA Case No. 07-003-ACTC
Tribal Case No. CV06-029

Appeal filed July 3, 2007

Appeal from Ak-Chin Indian Community Tribal Court
Ida B. Wilber, Judge

Appellate Judge: Anthony J. Lee

OPINION AND ORDER DISMISSING APPEAL

SUMMARY

Appellant filed a Motion to Vacate the Order of Dismissal by the Appellate Court. The Order stemmed from Appellant's appeal from an earlier Order by the lower court granting Defendant-Appellees' Motion to Dismiss. The Appellate Court found that the Appellant improperly relied on SWITCA Rule 25(a) in filing the Motion to Vacate and should have filed a written request for the Appellate Court to reconsider its decision to dismiss the appeal under Rule 22(a). Despite the error, the Court, in the interest of justice, treated Appellant's Motion to Vacate as a Written Request to Reconsider the Decision to dismiss the Appeal. Nonetheless, the Appellate Court affirmed the Order of Dismissal determining Appellant's application of the trial court's Rules of Civil Procedure to the Appellate Court, which has its own rules, was in error. The Court also found that Appellant's Notice of Appeal was filed in an untimely manner and thus the Court lacked jurisdiction over the case. Finally, the Court found that Rule 12(b) does not provide a time restraint on the Court to issue a written order denying the appeal. Thus Appellant's argument that the Court failed to find that it was without jurisdiction within 30 days was without merit. Order of Dismissal affirmed.

* * *

PROCEDURAL HISTORY

This matter comes before the Southwest Intertribal Court of Appeals (SWITCA) from the Ak-Chin Indian Community Court. Appellants filed a Notice of Appeal with SWITCA on July 3, 2007, appealing the Order of the lower court dated June 19, 2007 and filed June 21, 1007, which had granted Defendants' Motion to Dismiss. Appellants filed an Amended Notice of Appeal on July 5, 2007. Appellants then filed a Second Amended Notice of Appeal on July 17, 2007. Appellants also filed Exhibit #1 to Plaintiffs' Second Amended Notice of Appeal on July 19, 2007. In response, the Appellees filed an Objection to Appellants' "Second Amended Notice of Appeal" on July 31, 2007. Finally, on August 1, 2007, the Appellants filed their response to the Appellees' Objection.

The Southwest Intertribal Court of Appeals filed its opinion on November 20, 2007, in which it found that it was without jurisdiction to take the appeal and stated that:

> the remaining filings for Plaintiffs' Second Amended Notice of Appeal (July 17, 2007) and Exhibit #1 to Plaintiff's Second Amended Notice of Appeal (July 19, 2007) are untimely filed and not considered by this Court based on jurisdictional grounds pursuant to Rule 11(c). In calculating the time requirements for the filing of this appeal, pursuant to Rule 8(a) and (b), Appellants' had till July 9, 2007 to perfect their appeal. Furthermore this Court is without authority to extend the time period for filing of an appeal pursuant to SWITCARA Rule 7(b).

In the same opinion, the Court also found that while the Appellants met requirements #1, #2 and #3 of SWITCA Rule 11(e), requirements #4 and #5 were not met and the Court was without jurisdiction or authority to hear the appeal. "SWITCARA Rule 11(a) is very clear in that an appeal shall be taken within 15 days of judgment of the same court and must meet the minimum requirements as found under Rule 11(e)." *See Beltran v. Harrah's Phoenix Ak-Chin Casino* (SWITCA No. 07-003-ACTC, ACTC No. CV-06-029, Ak-Chin Indian Community, 2007).

The matter at hand now arises out of the Appellants' Motion to Vacate the Southwest Intertribal Court of Appeals' aforementioned Order of Dismissal. The Appellant filed this motion on December 4, 2007. The Appellant erroneously cites Rule 25 as a basis for filing the Motion to Vacate the Order Dismissing the Appeal. Rule 25(a) states that "[A] party may file a motion *not otherwise specified* in these rules with the clerk of the lower court." A Motion to Vacate the Order Dismissing the Appeal is not specified in the rules. However, this rule does not apply because there *is* in existence an application clearly specified in the rules which

the Appellant could have submitted to the court instead. Rule 22(a) clearly sets forth the rule for Reconsideration of Decision to Dismiss Appeal, under which "within 15 days of service of the order dismissing an appeal . . . a party may file with the pueblo or tribal court a written request for the appellate court to reconsider the decision to dismiss the appeal." The Appellant should have filed a written request for the appellate court to reconsider the decision to dismiss the appeal. This would have been the proper avenue in which to address the court. Notwithstanding the error on the part of the Appellant, in the interest of justice, this Court will treat the Plaintiff's Order to Vacate the Order Dismissing the Appeal as a Written Request to Reconsider the Decision to Dismiss the appeal (under Rule 22(a)).

Given this liberal treatment of the Appellants' motion, in the interest of justice, this Court, nonetheless, affirms the Order of Dismissal for the following reasons:

1. The Appellant cites Rule 15 of the Ak-Chin Indian Community Rules of Civil Procedure, which relates any amendments back to the date of the original filing. The application of this rule is in error because it is a Trial Court rule and cannot apply to this Appellate Court which has its own appellate rules (SWITCARA). This Court serves as the Appellate Court for the Ak-Chin Indian Community Court, and the Ak-Chin Indian Community has adopted the Southwest Intertribal Court of Appeals Appellate Rules to govern its Appellate Court pursuant to Tribal Resolution Number A-74-99 of the Ak-Chin Indian Community Council, dated November 1999.

2. This Court finds that the Notice of Appeal was filed in an untimely manner according to SWITCA Rules 11(a) and 11(e). Rule 11(a) states that "an appeal shall be taken by filing a notice of appeal with the lower court within 15 days of entry of judgment by that same court, unless appellate provisions of a tribe or pueblo specify otherwise." Both the Plaintiffs' Second Amended Notice of Appeal and Exhibit #1 to Plaintiff's Second Amended Notice of Appeal were filed after the time allotted under Rule 11(a). In calculating the time requirements for the filing of this appeal, pursuant to Rule 8(a) and (b), the Appellants had until July 9, 2007 to Amend and perfect their Notice of Appeal to comply with the requirements of Rule 11(e)(4-5), but they failed to do so. Without these substantive requirements, this Court sitting as an independent appellate body cannot render a decision. *See Bourdon v. Sisneros* (Not yet published, SWITCA No. 08-006-SCPC, SCPTC No. CV-08-295, Santa Clara Pueblo, 2008). Furthermore, this Court is without authority to extend the time period for filing an appeal pursuant to SWITCARA #7(b). Therefore, upon finding that this request was not filed in a timely manner and did not satisfy the requirements of SWITCARA #11(e), this Court affirms that it has no jurisdiction over this case.

In the interests of justice, this Court will also address the Appellants' SWITCARA #12(b) argument.

3. The Appellants erroneously apply SWITCARA 12(b). The Appellants argue that this Court failed to find that it was without jurisdiction within the 30 days as required by Rule 12(b) which required issuance of a written order denying the appeal.

This Court finds that Rule 12(b) does not provide a time restraint on the Court of Appeals to issue a written order denying the appeal. Rule 12(a), states that "Upon a preliminary finding of jurisdiction and within 30 days of the filing of any statement as provided by Rule 11(k) of these rules, the Court shall issue a written order **accepting the appeal** (emphasis added)." However, Rule 11(k) refers to the Appellee's filing "of a written statement challenging the jurisdiction of the Court of Appeals." In order for this rule to apply, the Appellee would have to be the one contesting the jurisdiction of the Court, and this is simply not the case. The Appellee's objection to the Plaintiffs' Second Notice of Appeal rested on the Appellees' belief that "the briefing and legal analysis of the issues and claimed errors should be reserved to the briefs,"and it is not an objection to this Court's jurisdiction. In addition, this Court finds that the Appellees incorrectly imply that the time restraint set forth Rule 12(a) also applies to Rule 12(b). Rule 12(b) does not mention a time restraint. Therefore, because Rule 11(k) is not applicable in this case and there is no time constraint on denying an appeal, this Court finds that the Appellants' argument is without merit.

ACCORDINGLY, IT IS THE ORDER OF THIS COURT TO AFFIRM THE ORDER OF DISMISSAL.

IT IS SO ORDERED.

April 8, 2009

In the Southwest Intertribal Court of Appeals for the Zuni Pueblo Tribal Court

KEITH MUTTE,

Appellant,

v.

PUEBLO OF ZUNI,

Appellee.

SWITCA No. 08-003-ZTC

Tribal Case No. CR-2007-1781
Appeal filed March 21, 2008

Appeal from the Zuni Pueblo Tribal Court
Sharon Begay-McCabe, Judge

Appellate Judges: Stephen Wall,
Georgene Louis and Mekko Miller

ORDER

SUMMARY

Appellant filed an appeal from a jury verdict finding Appellant guilty of Aggravated Assault and Domestic Violence. The Appellee filed a Notice of Cross Appeal challenging the release of the Appellant on bond pending the outcome of his appeal. Appellant's request that the "plain error" rule be applied to the issues raised in the appeal was granted in accordance with Rule 41 of the tribal Rules of Criminal Procedure. The Appellate Court found that although tribal code was silent on the issue of mistrial, the presence of a relative of the victim on the jury panel can be regarded as undue influence on the jury panel, justifying the need for a new trial. Additionally, the Court noted that on remand the lower court should consider and address the issues of the proper presentation of jury instructions and written requests for specific jury instructions. On the cross appeal, the Court found that the tribal Rules of Criminal Procedure and Tribal Code required the judge to determine the nature and extent of necessary conditions to be placed on a person who has been found guilty of a crime involving domestic violence, and that the only way to make this determination would be through a hearing on the motion. The Court found that the judge abused her discretion in releasing the Appellant without a hearing on his Motion for Stay of Execution. Remanded for a new trial.

* * *

Presiding Judge Stephen Wall, writing for the Southwest Intertribal Court of Appeals:

This matter came before the Southwest Intertribal Court of Appeals by way of appeal from a jury trial conducted by Judge Begay-McCabe of the Zuni Tribal Court. The appeal was filed on March 12, 2008 at the time of an entry of appearance by Appellant's counsel, Peter Tasso.

The Appellant requested and was granted a jury trial after he pled not guilty to two offenses: Section 4-4-5 Aggravated Assault and Section 11.2-2-1 Domestic Violence of the Zuni Tribal Code. A jury trial was held on March 4, 2008. The jury found the Appellant guilty of both offenses. Judge Begay-McCabe entered a final disposition and judgment order based on the jury verdict on March 4, 2008. The Appellant had retained a lay counsel for the jury trial and after the jury verdict, Peter Tasso, a professional attorney, filed an entry of appearance and the lay counsel, Clybert Zunie, withdrew as counsel. On March 12, 2008, the Appellant filed an appeal from the jury verdict.

The Appellant identified six issues as the basis for appeal and requests that the tribal court decision be reversed. In addition the Appellant requests that the standard for review for this appeal be one of "plain error." The issues raised on appeal are:

1. Whether jury deliberations were tainted by the inclusion in the jury of the alleged victim's first cousin, who failed to disclose the relationship.

2. Whether the court should have declared a mistrial due to prejudicial statements by the Pueblo's witness about the FBI's investigation of this matter, subsequent uncharged conduct and about prior victims.

3. Whether the selection of jury instructions should have been conducted in an open, adversarial manner, with both parties having a chance to argue for their requested instructions.

4. Whether the Court allowed the admission of prejudicial hearsay utterances that materially affected the outcome of the case.

5. Whether the Appellant's double jeopardy rights are violated by conviction twice for the same act or transaction.

6. Whether counsel for the defendant failed to provide effective representation.

After the Appellant's appeal was filed, the Appellee filed a notice of cross appeal. The cross appeal was filed to challenge the release of the Appellant on bond, pending the outcome of his appeal. In the Notice of Cross Appeal, Appellee indicated that the presiding Judge had released the Appellant upon receipt of the Appellant's motion for a stay in execution and prior to a response to the motion by the Appellee thus depriving the Appellee the right to a hearing on the matter.

I

The first issue to be addressed is the cross appeal filed by the Appellee, the Pueblo of Zuni challenging the Trial Judge's decision to release the Appellant simply upon the motion of the Appellant and without a hearing on such motion. Rule 29 of the Zuni Rules of Criminal Procedure controls this issue, but is not the only source of law to address the issue. Rule 29 states that "a sentence of imprisonment *may* be stayed if an appeal is taken and the defendant *may* be given the opportunity to make bail" (emphasis added). This indicates that there is no right to a stay of execution and that the judge has the discretion to make the decision as to whether the sentence will be stayed. However, the judge's discretion is not absolute. The exercise of the judge's discretionary powers must be done in light of the policies of the Pueblo of Zuni. Section 11.2-1-2 of the Zuni Tribal Code states:

> Pueblo of Zuni's response to domestic violence will be that such violent and damaging behavior will not be tolerated or ignored. The establishment of this Code recognizes the obligation of the Zuni community, as a whole and through its various agencies and departments, to assist and protect individuals and families affected by domestic violence. To this end, the Domestic Violence Code seeks to guarantee to victims of domestic violence the maximum protection from abuse that the law can provide.

In addition, Section 11.2.2-10 of the Zuni Tribal Code establishes a number of conditions necessary for the release of a person accused of domestic violence. It only stands to reason that if there are extensive conditions placed on the release of a person accused of Domestic Violence, similar conditions would be placed on a person who has been found guilty of the crime. The only way to determine the nature and extent of the necessary conditions would be through a hearing on the motion for stay of execution. Therefore, the SWITCA finds that the tribal judge abused her discretion in releasing the Appellant without a hearing on his motion for a stay of execution.

II

The Appellant requests that the SWITCA apply the "plain error" rule to issues raised in this appeal. According to Rule 41 of the Zuni Rules of Criminal Procedure, plain error is defined as:

> B. Errors or defects affecting substantial rights [that] may be recognized and acted upon by the Court even though they were not brought to the attention of the Court by counsel.

The SWITCA will apply Rule 41 of the Z.R. Cr. P. which means that issues raised on appeal need not have been objected to or raised by the Appellant or Appellee during the course of the trial as long as the issues affect substantial rights.

III

The appeal can be disposed of through the Appellant's first issue. The Appellant claims and the record indicates that the jury panel included the victim's cousin. Regardless of how the victim's cousin gained access to the jury, the presence of a relative of a party in the jury creates a question of substantial unfairness. The record indicates that when it was discovered that the victim's first cousin was on the jury panel, an order was issued to remove juror 6 and replace with the alternate juror (Item 14, Appellate Court Documents). While this order was issued, it was issued after the jurors retired to deliberate and we can only speculate on the degree of influence that the victim's cousin had on the panel and whether she advocated for a guilty verdict while with the other panel members.

The Zuni Tribal Code is silent on the issue of mistrial. Through its silence, the Zuni Tribal Code apparently does not grant the judge the authority to declare a mistrial, which would have been the proper course of action in this instance. However, the absence of the authority to declare a mistrial does not mitigate the need for a new trial in this matter. Simply because of the victim's first cousin presence on the jury panel, it is assumed that there has been undue influence on the jury panel. For this reason, this case is remanded back to the Zuni Tribal Court for a new trial.

IV

The Appellant raises a number of other issues, most of which are moot considering the order to remand the case for a new trial. However, there are some issues that need to be considered and addressed on remand. Two closely related issues in the Appellant's Notice of Appeal are:

3. Whether the selection of jury instructions should have been conducted in an open, adversarial manner, with both parties having a chance to argue for their requested instructions.

5. Whether the Appellant's double jeopardy rights are violated by conviction twice for the same act or transaction.

The issue of jury instructions is controlled by Rule 21 of the Z.R. Cr. P. First and foremost, Rule 21 requires that parties submit written jury instructions. It is through the submission of written requests for jury instructions that the parties have the chance to argue for the inclusion of specific instructions. Rule 21 does not provide for the acknowledgment of oral

requests for jury instruction and does not require the judge to act on any request not submitted in writing. Without a written submission of proposed jury instructions, the judge has a great deal of discretion to instruct the jury on the law. Thus, the Appellant's assertion in the Notice of Appeal is baseless.

The issue of lesser included offense is addressed in Section 4-1-6 Prosecution for Multiple Offenses and Section 4-1-9 Double Jeopardy of the Zuni Criminal Code. While these two sections provide definitive guidelines for addressing lesser included offenses, issues related to lesser included offenses must be raised by the defense, either at the time of arraignment, by a motion during the proceedings or through jury instruction.

These issues are related in that it is through the jury instructions that the jury becomes aware of the law related to lesser included offenses and its applicability in the case before them. If the issue of lesser included offenses is not raised by the defense prior to submitting jury instruction, it can only be raised through written requests for a specific jury instruction related to lesser included offenses. If the jury instructions are improperly presented, the jury cannot apply the law as it applies in lesser included offenses.

IT IS SO ORDERED.

May 21, 2009

MARIO LUZ,

Appellant,

v.

EVELYN JUSTIN,

Appellee.

SWITCA No. 08-008-ACICC
Tribal Case No. CV-08-027

Appeal filed August 7, 2008

Appeal from the Ak-Chin Indian Community Court
Scott Sulley, Judge

Appellate Judge: Marilynn J. Crelier

ORDER DISMISSING THE APPEAL AND REMAND FOR A NEW HEARING

SUMMARY

Respondent/Appellant filed an appeal to a case before the lower court captioned as a "Contested Injunction Against Harassment" hearing. The form used by the lower court applies when the defendant is an intimate partner. The Appellate Court determined that the original complaint filed by the Petitioner/Appellee in the lower court lacked factual specificity as to documented events and as to the relationship of the Petitioner/Appellant to the Respondent/Appellant. The Court also questioned why the Petitioner/Appellee filed the complaint when she did not appear to be the alleged victim. The appeal was denied and the case was remanded to the lower court with specific instructions to the lower court to ensure that proper facts be established and verified prior to issuing orders.

* * *

THIS MATTER having come before the Southwest Intertribal Court of Appeals [SWITCA] pursuant to the Ak-Chin Tribal Resolution A-74-99 of the Ak-Chin Indian Community Tribal Council on November 3, 1999 and pursuant to the SWITCA Rules governing appeal cases. This Court having reviewed all written documents, the Ak-Chin Tribal Law and Order Code, carefully considered the file, and having otherwise fully informed in the premises, FINDS THAT:

1. The case before the lower court, which "triggered" this Appeal, is captioned as a "Contested Injunction Against Harassment" Hearing.

2. The form used by the lower court clearly contains the following warning: **"JUDICIAL OFFICER: DO NOT USE UNLESS DEFENDANT IS AN INTIMATE PARTNER. . ."**

3. However, the original written complaint filed by the Original Petitioner/Current Appellee, Evelyn Justin does not establish any type of a former/present intimate relationship between herself and the Original Respondent/Current Appellant, Mario Luz.

4. The letter from SWITCA on August 14, 2008 to Deanna Rascon, Ak-Chin Court Clerk, identifies Duane Justin on the appeal; however, he is not listed, except as a witness, on the documents from the lower court.

5. The original Petition filed by Evelyn Justin on July 22, 2008 comes almost seven [7] weeks after the alleged incident of June 3, 2008 and alleges a shooting at Renalda Pete's [identified as Ms. Justin's daughter] vehicle by Richard deLeon; identified as brother to Mario Luz.

6. **The Petition is unclear in two major areas:**

a) Why Mario Luz is included on the Petition where no specific behavior/action is alleged to have been committed by him; and

b) If Ms. Pete is the alleged victim, why didn't she file against the alleged perpetrator to protect herself when visiting her mother.

7. Based on a clear interpretation of Mario Luz's response, it appears that he is an adult in need of care since he stated that he relies on his mother for his financial and medical care and has no other place to reside.

CONCLUSIONS OF LAW AND IT IS HEREBY ORDERED:

1. The Appeal is hereby denied and the case is remanded to the lower court for a rehearing and a strong admonition to ensure that all written documents; specifically the original complaint from Evelyn Justin should be on behalf of herself and all her minor children in the household and should be factually specific as to documented events and relationship to the Respondent.

2. If Ms. Pete is the alleged victim, then she should file separately and have her own hearing on the events that are alleged to have occurred on June 3, 2008.

3. All documents should be clear and consistent as to are the actual protected parties and their relationship to one another, specific to including/not including Duane Justin.

4. All future Orders, if the proper facts are established and verified, should specifically ensure protection of all minor children in the household and include this protection at their school, after-school/recreation sites, clinic and all other public and private places and should be in effect both on and off the reservation.

5. The lower court should carefully ensure that proper orders are issued and should not use/issue documents that are specifically designed for past/present intimate partner relationships.

6. The lower court should also address the apparent medical/financial needs of Mario Luz and determine if he is a special needs adult in need of protected status.

7. In order to ensure protection of the mother and her children, the Injunction Against Harassment remains valid and in full effect until a re-hearing can be held.

SO ORDERED, ADJUDGED, AND DECREED.

May 11, 2009

RICARDO DeLEON,

Appellant,

v.

EVELYN JUSTIN,

Appellee.

SWITCA No. 08-014-ACICC
Tribal Case No. CV08-029

Appeal filed October 30, 2008

Appeal from the Ak-Chin Indian Community Court
Scott Sulley, Judge

Appellate Judge: Marilynn Crelier

ORDER DISMISSING THE APPEAL AND REMAND FOR A NEW HEARING

SUMMARY

Respondent/Appellant filed an appeal to a case before the lower court captioned as a "Contested Injunction Against Harassment" hearing. The form used by the lower court applies when the defendant is an intimate partner. The Appellate Court determined that the original complaint filed by the Petitioner/Appellee in the lower court lacked factual specificity as to documented events and as to the relationship of the Petitioner/Appellant to the Respondent/Appellant. The appeal was denied and the case was remanded to the lower court with specific instructions to ensure that proper facts be established and verified prior to issuing orders.

* * *

THIS MATTER having come before the Southwest Intertribal Court of Appeals [SWITCA] pursuant to the Ak-Chin Tribal Resolution A-74-99 of the Ak-Chin Indian Community Tribal Council on November 3, 1999 and pursuant to the SWITCA Rules governing appeal cases. This Court having reviewed all **written** documents, the Ak-Chin Tribal Law and Order Code, carefully considered the file, and being otherwise fully informed in the premises, **FINDS THAT:**

1. The case before the lower court, which "triggered" this Appeal, is captioned as a "Contested Injunction Against Harassment" Hearing.

2. The form used by the lower court clearly contains the following warning: **"JUDICIAL OFFICER: DO NOT USE UNLESS DEFENDANT IS AN INTIMATE PARTNER. . ."**

3. However, the original written complaint filed by the Original Petitioner/Current Appellee, Evelyn Justin does not establish any type of a former/present intimate relationship between herself and the Original Respondent/Current Appellant, Ricardo de Leon.

CONCLUSIONS OF LAW AND IT IS HEREBY ORDERED:

1. The Appeal is hereby denied and the case is remanded to the lower court for a rehearing and a strong admonition to ensure that all written documents, specifically the original complaint from Evelyn Justin, should be on behalf of herself and all her minor children in the household and should be factually specific as to documented events and relationship to the Respondent.

2. All future Orders, if the proper facts are established and verified, should specifically ensure protection of all minor children in the household and include this protection at their school, after-school/recreation sites, clinic and all other public and private places and should be in effect both on and off the reservation.

3. The lower court should carefully ensure that proper orders are issued and should not use/issue documents that are specific to past/present intimate partner relationships.

4. In order to ensure protection of the mother and her children, the Injunction Against Harassment remains valid and in full effect until a re-hearing can be held.

SO ORDERED, ADJUDGED, AND DECREED.

May 11, 2009