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

PUEBLO OF ZUNI,

Plaintiff-Respondent,

v.

CARMICHAEL HALOO,

Defendant-Appellant.

SWITCA No. 09-008-ZTC
Tribal Case No. CR-2008-2426

Appeal filed January 22, 2009

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

Appellate Judges: Jonathan Tsosie,
Georgene Louis and Robert Medina

ORDER DENYING APPEAL

SUMMARY

Appellant appealed the judgment of the lower court. The Appellate Court denied the appeal finding that the Notice of Appeal did not fulfill the minimum requirements of either the tribal Rules of Civil Procedure or SWITCA Rules. The Court also noted that it would not assume what issues are being appealed nor would it consider objections that were raised for the first time on appeal. Appeal denied.

* * *

Upon review of the above entitled matter, the Southwest Intertribal Court of Appeals (SWITCA) denies this matter for appeal for the following reasons: (a) the notice of appeal is insufficient, (b) this Court will not assume what issues are being appealed, and (c) this Court will not consider objections raised for the first time on appeal that were not raised at trial.

Appellant's notice of appeal does not fulfill the minimum requirements of either Rule 38(C) of the Zuni Rules of Civil Procedure[1] or Rule #11(e) of the Southwest Intertribal Court of Appeals. This Court has the discretion to allow some leeway to *pro se* defendants in their notices of appeal if they are reasonably clear and bear some indication of mistake by the trial court, but we cannot justify accepting the notice of appeal in this case. The notice of appeal is poorly written and unclear as to the reasons or grounds for the appeal, which are essential to a well-taken notice of appeal. The notice of appeal also contains inconsistencies with what transpired at trial.

The first paragraph of the notice of appeal states:

> I Carmichael Haloo requesting to appeal judgment. Due to the facts of using a minor in execution of search warrant and using testimony in court and not having her present in court to testify. Names of witnesses by naming my wife as one of there witness, which she was not on prosecution side. Accusation of child abuse with bruises all over body and no pictures presented at trial. [sic]

If we are to infer that appellant is attacking the means by which the search warrant was obtained, *i.e.,* relying on a minor for the basis of the search warrant, then appellant should have made this objection at trial. Furthermore, the trial judge was in the best position to view the facts to either grant or deny the search warrant. Because appellant did not make any objections during the trial regarding the validity or illegality of the search warrant, this Court will not consider this issue for the first time on appeal.

This Court is also unclear as to what "testimony in court" appellant is referring to. If appellant is referring to the minor in question, the prosecution never offered testimony of the minor at any time. This court finds, however, that there was sufficient testimony from other witnesses, such that the minor's testimony was unnecessary to convict.

Neither can this Court understand what appellant means when he states "Names of witnesses by naming my wife as one of there witness, which she was not on prosecution side. [sic]" Whatever appellant may have meant this Court can find no evidence in the record that the prosecution ever named appellant's wife as a witness, much less did appellant's wife ever testify against him.

This court also finds no merit in appellant's objection to the accusation of physical child abuse. Appellant was never charged with child abuse and it was not a formal issue at trial. As far as this Court can tell from the transcript, the trial court judge did not base her guilty verdict on any physical abuse, but rather on the condition of the home, what was found in it, and that the environment posed a danger to the child.

We note that the trial judge explicitly gave appellant numerous opportunities to present his argument, to pose questions and to make objections, but appellant refused to do so throughout the trial, save for some words at the very end that frankly did not address the charges against him. Appellant essentially did not present a case. It would thus

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[1] Rule 28(F) of the Zuni Rules of Criminal Procedure provides that requirements for a notice of appeal are contained in the Zuni Rules of Civil Procedure.

be improper for this Court to consider appellant's objections for the first time on appeal.

For the foregoing reasons, the decision of the Zuni Tribal Court is AFFIRMED.

IT IS SO ORDERED.

February 1, 2011

PUEBLO OF ZUNI,

Plaintiff-Respondent,

v.

ALVIN ETSATE ROMANCITO,

Defendant-Appellant.

SWITCA No. 09-007-ZTC
Tribal Case No. CR-2007-1901

Appeal filed January 23, 2009

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

Appellate Judges: Jonathan Tsosie,
Delilah Choneska and Melanie Fritzsche

ORDER DISMISSING APPEAL

SUMMARY

Appellee filed a Motion for Dismissal. The Appellate Court found that the Appellant failed to file a brief as ordered by the Court within the required time frame and thus granted the dismissal.

* * *

Upon review of "Appellee's Motion for Dismissal," dated January 25, 2011, this Court finds that Appellant did not file a brief, as ordered by this Court, within thirty (30) days of receipt of this Court's "Order Accepting Appeal" in the above-entitled matter. This Court signed its Order on December 9, 2010, and notice of the Order was received by Appellant's counsel on December 20, 2010. More than thirty (30) days had passed when Appellee submitted its motion for dismissal.

For the foregoing reasons, "Appellee's Motion for Dismissal" is well-taken and, pursuant to Rule 26(f) of the Southwest Intertribal Court of Appeals, this Court hereby DISMISSES the above-entitled matter.

IT IS SO ORDERED.

February 7, 2011

BUSTER WEAHKEE,

Defendant-Appellant,

v.

FRANCISCO AND PAULA MONTOYA,

Plaintiffs-Appellees.

SWITCA No. 10-007-SUTC
Tribal Case No. 06-RO-71; 10-AP-107

Appeal filed May 28, 2010

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

Appellate Judge: Anthony J. Lee

OPINION AND ORDER REVERSING AND REVOKING THE TRIBAL COURT'S MINUTE ORDER AND PERMANENT RESTRAINING ORDER

SUMMARY

Appellant appealed a Minute Order and a Permanent Restraining Order issued by the tribal court. The Appellate Court found that the tribal court abused its discretion in issuing the Minute Order and Permanent Restraining Order when the evidence was insufficient to warrant an extension of the prior restraining order. The Court noted that Appellees did not meet their burden of proof and failed to show by a preponderance of evidence that a threat existed to their life or health. Appellant's request for full recovery of costs was denied. The Court denied Appellant's request for a revocation of the Amended Permanent Restraining Orders issued in 2007, 2008, and 2009, as well as an order requiring the suppression of these Orders at any future proceeding, deeming the request as unnecessary. Appellant's request for attorney's fees was also denied. Reversed and Revoked.

* * *

This matter comes before the Southwest Intertribal Court of Appeals (SWITCA) from the Southern Ute Tribal Court, and arises out of Appellant's Notice of Appeal.

After a hearing on May 10, 2010, the Southern Ute Tribal Court, on May 13, 2010, issued a Minute Order and a

Permanent Restraining Order. The Appellant, Buster Weahkee, through his attorney, Keith C. Smith, filed a timely Notice of Appeal on May 28, 2010, and a subsequent Supplemental Memorandum of Legal Authority on July 20, 2010 (hereinafter referred to as "Appellant's Memorandum"). The Appellees did not file a response to the Appellant's Memorandum, pursuant to the Southern Ute Tribal Code. SWITCA issued an Order Accepting the Appeal on October 29, 2010, and as a means of supplementing the Southern Ute Tribal Code, asked the parties to file briefs in accordance with the SWITCA rules. In this case, the only brief that was filed was the Appellant's Memorandum filed under the Southern Ute Tribal Code. After reviewing the Tribal Court record, including the transcript of the May 10, 2010 hearing, and the Appellant's Memorandum, this Court concludes that the Minute Order and Permanent Restraining Order should be reversed and revoked.

I. Background

In April of 2006, the Appellees applied for a Restraining Order against the Appellant and his brother, in the Southern Ute Tribal Court, alleging that the Appellant threatened to cause them bodily harm. After a hearing on April 26, 2006, the Court issued a Permanent Restraining Order prohibiting the Appellant and his brother from contacting the Appellees and their properties. The Order had a duration of one year, unless extended by court order.

Appellees then requested, by letters sent to the Tribal Court and addressed to the Judge, a "continuance" of the Permanent Restraining Order in 2007, 2008 and 2009. Each of these requests, made without the initiation of a new application or action despite the one-year term of the 2006 Permanent Restraining Order and without notice or hearing to the Appellant, was granted by the Tribal Court. This is contrary to the Order issued by the Court each year stating that the Court had a hearing in which all of the parties were present.

On April 5, 2010, the Appellant filed a Motion to Terminate the Restraining Order. On April 9, 2010, the Appellees filed a letter requesting that the Court again extend the Permanent Restraining Order. After a hearing held on May 10, 2010, the Court granted Appellees' request and issued another Permanent Restraining Order against the Appellant.

II. Appellant's Argument

The Appellant makes the following arguments: (1) that the Appellees failed to prove by a preponderance of the evidence that an extension of the Restraining Order was warranted; (2) that the trial court erred by shifting the burden of proof from Appellees to the Appellant; (3) that the trial court erred by continuing to exercise jurisdiction indefinitely over a matter that should have terminated upon its original expiration date in 2007; (4) that the trial court improperly issued the May 13, 2010 Restraining Order on the basis of prior restraining orders which themselves were issued solely on the grounds of ex parte communications; and (5) that the issuance and extension of the Restraining Order violates the Appellant's rights to due process under the Indian Civil Rights Act.

III. Legal Analysis

The standard of proof set forth by the lower court in the Permanent Restraining Order, dated May 13, 2010, is a "preponderance of the evidence." In fact, the Southern Ute Tribe recently enacted its Protection Order Code that clarifies that before any permanent protection order can be issued, a preponderance of the evidence must support the allegations that a threat exists to the life or health of one or more persons. *See* S. Ute Ind. Tribal Code § 2-2-104(1). Proof by a preponderance of evidence means enough evidence to show that the facts alleged are more likely than not to be true.

This Appellate Court will not reverse a lower court's decision unless it is not supported by substantial evidence in the record or unless "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." *See Hualapai Nation v. D.N.*, 9 SWITCA Rep. 2, 3 (1997).

After reviewing the record of the lower court, this Court concludes that the lower court abused its discretion in issuing its May 13, 2010 Minute Order and Permanent Restraining Order. It is this Court's opinion that not enough evidence was presented by the Appellees to warrant an extension of the prior restraining order. While the Appellees claimed, at the May 10, 2010 hearing, that several police reports were filed against the Appellant that showed that the Appellant was still a threat, none of the police reports resulted in any action being taken against the Appellant. Thus, the Appellees did not meet their burden of proof, as they did not show by a preponderance of evidence, that a threat exists to their life or health.

It is not necessary for this Court to opine on other arguments raised by the Appellant, as the rationale mentioned herein is a firm basis for ordering the reversal and revocation of the Minute Order and Permanent Restraining Order, dated May 13, 2010. Oral argument is hereby denied, as it is not needed to assist the Court in making its determination. *See* SWITCA #29(b) (2001).

The Appellant has requested a revocation of the Amended Permanent Restraining Orders issued in 2007, 2008, and 2009 as well as an order requiring the suppression of these Orders at any future proceedings. This request is denied as this Court deems this request as unnecessary.

The Appellant's request for a stay of the Permanent Restraining Order is also denied as this request is moot and unnecessary, given the Court's revocation of the Order.

The Appellant has also made a request for attorney's fees. Under established SWITCA rules, this Court has discretion to award costs, but denies this request. *See* SWITCA Rule 34 (2001).

ACCORDINGLY, IT IS THE ORDER OF THIS COURT THAT THE LOWER COURT'S MINUTE ORDER AND PERMANENT RESTRAINING ORDER, DATED MAY 13, 2010 IS HEREBY REVERSED AND REVOKED.

IT IS SO ORDERED.

March 5, 2011

RICARDO WEAHKEE,

Defendant-Appellant,

v.

FRANCISCO AND PAULA MONTOYA,

Plaintiff-Appellees.

SWITCA No. 10-009-SUTC
Tribal Case No. 06-RO-71; 10-AP-107

Appeal filed June 1, 2010

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

Appellate Judge: Anthony J. Lee

OPINION AND ORDER REVERSING AND REVOKING THE TRIBAL COURT'S MINUTE ORDER AND PERMANENT RESTRAINING ORDER

SUMMARY

Appellant appealed the tribal court's Minute Order and Permanent Restraining Order. The Appellate Court rejected Appellant's jurisdictional argument finding that the tribal court may exercise jurisdiction over non-member Indians that enter the reservation, and that Appellant's alleged actions occurred on the reservation. However, the Court found that the tribal court abused its discretion in issuing the Minute Order and Permanent Restraining Order when the evidence was insufficient to warrant an extension of the prior restraining order. The Court noted that Appellees did not meet their burden of proof and failed to show by a preponderance of evidence that a threat existed to their life or health. Appellant's request for full recovery of costs was denied. The Court advised Appellant to inquire with the tribal court on his request for an apology from the tribal court and an injunction against the Appellees and the Tribe. Reversed and Revoked.

* * *

This matter comes before the Southwest Intertribal Court of Appeals (SWITCA) from the Southern Ute Tribal Court, and arises out of Appellant's Notice of Appeal.

After a hearing on May 10, 2010, the Southern Ute Tribal Court, on May 13, 2010, issued a Minute Order and a Permanent Restraining Order. The Appellant, Ricardo Weahkee, filed a timely Notice of Appeal on June 1, 2010. SWITCA issued an Order Accepting the Appeal on October 29, 2010 and as a means of supplementing the Southern Ute Tribal Code, asked the parties to file briefs in accordance with the SWITCA rules. The Appellant filed his Brief on December 3, 2010. The Appellees did not file a Reply Brief. After reviewing the Tribal Court record, including the transcript of the May 10, 2010 hearing, and the Appellant's Brief, this Court concludes that the Minute Order and Permanent Restraining Order should be reversed and revoked.

I. Background

In April of 2006, the Appellees applied for a Restraining order against the Appellant and his brother, in the Southern Ute Tribal Court, alleging that the Appellants threatened to cause them bodily harm. After a hearing on April 26, 2006, the Court issued a Permanent Restraining Order prohibiting the Appellant and his brother from contacting the Appellees and their properties. The Order had a duration of one year, unless extended by court order.

Appellees then requested, by letters sent to the Tribal Court and addressed to the Judge, a "continuance" of the Permanent Restraining Order in 2007, 2008 and 2009. Each of these requests, made without the initiation of a new application or action despite the one-year term of the 2006 Permanent Restraining Order and without notice or hearing to the Appellant, was granted by the Tribal Court. This is contrary to the Order issued by the Court each year stating that the Court had a hearing in which all the parties were present.

On April 5, 2010, the Appellant's brother, Buster Weahkee, filed a Motion to Terminate the Restraining Order. On April 9, 2010, the Appellees filed a letter requesting that the Court again extend the Permanent Restraining Order. After a hearing held on May 10, 2010, wherein the Appellant and his brother were present, the Court granted Appellees'

request and issued another Permanent Restraining Order against the Appellant.

II. Appellant's Argument

The Appellant makes the following arguments: (1) that the tribal court erred when it extended jurisdiction to Appellant, who does not reside within the exterior boundaries of the Southern Ute Indian Reservation; (2) that the tribal court erred when it extended jurisdiction indefinitely for a 2006 matter; (3) that the tribal court erred in 2007, 2008, and 2009 by issuing new restraining orders and sending them in the mail with no proper service, with no statement of facts that might justify any new restraining order, and with no opportunity for the Appellant to be heard; (4) that the tribal court erred when it ordered a Permanent Restraining Order on May 13, 2010 for no reason; (5) that the tribal court erred when it ignored evidence presented at the May 10, 2010 hearing that proved beyond any shadow of doubt that Appellees are making untrue statements; and (6) that the tribal court erred by claiming to have no jurisdiction or authority over the Appellees in this case.

III. Legal Analysis

Appellant's first argument is without merit. While this Court takes judicial notice that the Appellant does not currently reside within the exterior boundaries of the Southern Ute Indian Reservation, the Southern Ute Tribal Court may still exercise jurisdiction over non-member Indians that enter the reservation. *See* S. Ute Ind. Tribal Code §§ 1-1-107, 1-1-108(2)(a) and 1-1-110. In fact, jurisdiction originally vested in 2006 for Appellant's alleged actions that occurred on the reservation at that time.

The standard of proof set forth by the lower court in the Permanent Restraining Order, dated May 13, 2010, is a "preponderance of the evidence." In fact, the Southern Ute Tribe recently enacted it's Protection Order Code that clarifies that before any permanent protection order can be issued, a preponderance of the evidence must support the allegations that a threat exists to the life or health of one or more persons. *See* S. Ute Ind. Tribal Code § 2-2-104(1). Proof by a preponderance of evidence means enough evidence to show that the facts alleged are more likely than not to be true.

This Appellate Court will not reverse a lower court's decision unless it is not supported by substantial evidence in the record or unless "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." *See Hualapai Nation v. D.N.*, 9 SWITCA Rep. 2, 3 (1997).

After reviewing the record of the lower court, this Court concludes that the lower court abused its discretion in issuing its May 13, 2010 Minute Order and Permanent Restraining Order. It is this Court's opinion that not enough evidence was presented by the Appellees to warrant an extension of the prior restraining order. In fact, at the May 10, 2010 hearing, the Appellees failed to present any new evidence at all against the Appellant. Thus, the Appellees did not meet their burden of proof, as they did not show by a preponderance of evidence, that a threat exists to their life or health.

It is not necessary for this Court to opine on other arguments raised by the Appellant, as the rationale mentioned herein is a firm basis for ordering the reversal and revocation of the Minute Order and Permanent Restraining Order, dated May 13, 2010. Oral argument is hereby denied, and it is not needed to assist the Court in making its determination. *See* SWITCA Rule 29(b) (2001).

The Appellant's request for a stay of the Minute Order and Permanent Restraining Order is also denied as this request is moot and unnecessary, given the Court's revocation of the Orders.

The Appellant has also made a request for full recovery of costs. Under established SWITCA rules, this Court has discretion to award costs, but denies this request. *See* SWITCA Rule 34 (2001).

The Appellant has further requested an apology from the Southern Ute Tribal Court and an injunction against the Appellees and the Southern Ute Indian Tribe. This Court does not have the authority to order such relief. The Appellant should inquire with the tribal court if he wishes to pursue this course of action.

ACCORDINGLY, IT IS THE ORDER OF THIS COURT THAT THE LOWER COURT'S MINUTE ORDER AND PERMANENT RESTRAINING ORDER, DATED MAY 13, 2010 IS HEREBY REVERSED AND REVOKED.

IT IS SO ORDERED.

March 5, 2011

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

CHRISTOPHER HANNAWEEKE,

Defendant-Appellant,

v.

PUEBLO OF ZUNI,

Plaintiff-Appellee.

SWITCA No. 09-001-ZTC
Tribal Case No. CR 2007-1751

Appeal filed November 14, 2008

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

Appellate Judges: Anthony Lee,
Robert Medina and Georgene Louis

OPINION AND ORDER AFFIRMING THE TRIBAL COURT'S DECISION

SUMMARY

Appellant filed a Notice of Appeal after the lower court found Appellant guilty on several criminal charges and sentenced him to serve a jail term and probation, ordered him to pay court costs and fines, and restitution to the victims. The Appellate Court determined that only one of Appellant's twelve claims raised as grounds to overturn the conviction was properly preserved for appeal. The Court concluded that the lower court judge did not abuse her discretion by allowing photographs of injuries resulting from Appellant's crimes to be submitted into evidence. Further, the Court found that a proper foundation was asserted to admit the photographs into evidence. Affirmed.

* * *

This matter comes before the Southwest Intertribal Court of Appeals ("SWITCA") from the Zuni Pueblo Tribal Court, and arises out of the Appellant's Notice of Appeal.

In a jury trial on September 29, 2008, the Appellant was found guilty of two counts of Aggravated Assault, one count of Disorderly Conduct, one count of Duties of Drivers Involved in an Accident – Leaving the Scene of an Accident, and one count of Criminal Mischief. On October 21, 2008, the Tribal Court sentenced the Appellant to a sixty day jail term and 12 months probation, ordered the Appellant to pay court fines and costs totaling $775.00, and ordered the Appellant to pay restitution to the victims, in an amount to be determined. The Appellant filed his timely Notice of Appeal on October 24, 2008. SWITCA issued an Order accepting the appeal on October 12, 2010, and asked the parties to file briefs in accordance with the SWITCA rules. Appellant filed his brief on November 19, 2010 and the Appellee filed their answer brief on December 16, 2010. After reviewing the Tribal Court record and the briefs, this Court concludes that the Tribal Court's Final Disposition and Judgment Order should be affirmed.

The Appellant raises twelve claims as grounds to overturn the Tribal Court's conviction. Appellant's claims do not include any reference to the appellate record, as required by SWITCA rules. *See* SWITCA #27(b)(5) (2001). There is also limited reference to cases and authorities to support the Appellant's arguments, also required by SWITCA Rule 27(b)(5) (2001).

Most importantly, all but one of Appellant's claims are new, having never been raised at any prior point in the proceedings, and thus are improper for appeal. Of the twelve claims presented, only claim number six, an assertion that the photographs would inflame the jury and were lacking foundation, was raised as an objection at the jury trial.

The general rule for preserving issues for appeal is that "a party must make a timely objection that specifically apprises the trial court of the claimed error and invokes an intelligent ruling thereon." *See State v. Janzen,* 142 N.M. 638, 168 P.3d 768 (Ct. App. 2007). This allows the appellate court to effectively review the issue to decide if the trial judge invoked proper discretion in the matter.

This Court finds that the Appellant did not properly preserve eleven of his claims for appeal because they were not raised at the Tribal Court level. Therefore we will not address these claims.

As for Appellant's sixth claim, this Court finds that Appellant's argument is without merit. This Appellate Court will not reverse a lower court's decision unless it is not supported by substantial evidence in the record or unless "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." *See Hualapai Nation v. D.N.*, 9 SWITCA Rep. 2, 3 (1997).

After reviewing the record, this Court concludes that the Tribal Court Judge did not abuse its discretion by allowing the photographs to be introduced into evidence. The photographs were introduced so that the jury could better understand the injuries that resulted from Appellant's crimes. Other courts have upheld the introduction of similar photographs to a jury. *See United States v. Naranjo*, 710 F.2d 1465 (10th Cir. 1983) and *State v. Sedillo*, 76 N.M. 763, 414 P.2d 500 (1966).

This Court also concludes that a proper foundation was asserted to admit the photographs into evidence. Officers

who took the photographs verified that each was a fair and accurate representation of the scene depicted. This foundational requirement is the standard for the introduction of photographs. *See State v. Thurman*, 84 N.M. 5, 498 P.2d 697 (1972).

Zuni Tribal Courts, including this Court, may look to New Mexico state laws and federal laws and the common law interpreting such laws as persuasive authority and this Court hereby utilizes the New Mexico and federal case law cited herein as guidance for making its decision. *See* § Z.T.C. 1-3-8.

ACCORDINGLY, IT IS THE ORDER OF THIS COURT THAT THE TRIBAL COURT'S DECISION IS HEREBY AFFIRMED. IT IS SO ORDERED.

March 15, 2011

JUAN JOSE LUZ, JR.,

Defendant-Appellant,

v.

AK-CHIN INDIAN COMMUNITY,

Plaintiff-Appellee.

SWITCA No. 10-010-ACICC
ACIC Case No. CR09-253/254/255/256

Appeal filed on July 9, 2010

Appeal from the Ak-Chin Indian Community Court,
Anthony F. Little, Judge

Appellate Judge: Jonathan Tsosie

ORDER DISMISSING APPEAL

SUMMARY

Appellant filed a Motion to Withdraw Appeal. Granted and Dismissed.

* * *

The Southwest Intertribal Court of Appeals has received from appellant a "Motion to Withdraw Appeal." Appellant's motion is well taken and hereby granted. The appeal in this matter is therefore DISMISSED.

IT IS SO ORDERED.

March 21, 2011

THREE STARS PRODUCTION CO., LLC,

Plaintiff-Appellant,

v.

BP AMERICA PRODUCTION CO.,
and
THE SOUTHERN UTE INDIAN TRIBE,

Defendants-Appellees.

SWITCA Case No. 10-013-SUTC

Tribal Court Case No.: 2010 CV 36, 10-AP-137

Appeal filed July 13, 2010

Suzanne F. Carlson, Associate Judge
Southern Ute Tribal Court

Appellate Judge: Anthony J. Lee

OPINION AND ORDER AFFIRMING THE TRIBAL COURT'S ORDER FINDING UNITED STATES INDISPENSABLE AND DISMISSING CASE

SUMMARY

Appellant challenged a lower court Order dismissing Appellant's case for failure to join the United States as an indispensable party. Applying Rule 19 of the Federal Rules of Civil Procedure, the Appellate Court found that: (1) federal statutes and regulations govern the development of tribal minerals and prohibit regulation of tribal property without the consent of the United States; (2) federal and tribal mineral leasing statutes, regulations, and policies preempt state regulation, and a Memorandum of Understanding with the Colorado Oil and Gas Conservation Commission requires the Tribe's and Department of Interior's consent; and (3) reallocation of the Tribe's mineral interests requires the approval of the United States as the trust agent of the Tribe. Affirmed.

* * *

This matter comes before the Southwest Intertribal Court of Appeals (SWITCA) from the Southern Ute Tribal Court, and arises out of Appellant's Notice of Appeal.

In its Complaint filed in the Tribal Court on February 18, 2010, the Appellant asserted that BP America Production Company ("BP") should remit past and future draining compensation from Southern Ute 35-1 Well (the "Well") based on five theories. On March 29, 2010, BP filed a motion requesting that the Appellant join all unnamed parties who had an interest in the 240-acre tribal trust tract

on which the Well was located, including the Tribe and the United States. Also on March 29, 2010, the Tribe filed a motion to intervene in the case. Subsequently, on April 2, 2010, the Tribal Court issued a Case Management Order designating the case as "complex litigation" making the Federal Rules of Civil Procedure and Evidence applicable to the case. On May 14, 2010, the Tribal Court entered two Orders. The first granted the Tribe's motion to intervene and accepted the Tribe's tendered Answer as properly filed. The second granted BP's motion and ordered the Appellant to join parties whose presence in the case was required for a just adjudication. On May 18, 2010, the Appellant filed a request for clarification, contending that the United States' presence in the case was unnecessary for a just adjudication. After extensive briefing on this issue, the Tribal Court issued its Order on July 7, 2010, dismissing the case for failure to join the United States as an indispensable party.

The Appellant filed its Notice of Appeal on July 13, 2010. The Appellant and both Appellees have filed briefs for this appeal. The Appellant also filed a Reply Brief. After reviewing the Tribal Court record and the briefs submitted by the parties, this Court concludes that the Tribal Court's Order Finding the United States Indispensable and Dismissing the Case should be affirmed.

I. Background

The Appellant seeks monetary damages and future compensation equal to twenty-five percent (25%) of all natural gas that has ever been produced or may be produced in the future from the Well. The Well is located within the exterior boundaries of the Southern Ute Indian Reservation and located on lands held in trust by the United States. The Appellant claims that it is the successor lessee of private mineral interests underlying 80 acres adjoining the parcel on which the Well is located. The twenty-five percent (25%) claim is based on the Appellant's proportion of a 320 acre drilling and spacing unit.

BP is the successor lessee and operator of the Well. The Well is located on land subject to an oil and gas mineral lease granted to BP's predecessors by the Tribe and approved by the Bureau of Indian Affairs ("BIA"). Since the inception of production, revenues from the Well have been distributed or allocated on the basis of the 240 acres owned and leased by the United States in trust for the Tribe.

The record reveals no documentation that the Appellant or its predecessor filed any application with the applicable state or federal authorities regarding the communitization or pooling of its newly acquired leases with the Well subject to the tribal lease, which would in effect, reallocate Well revenues.

The United States regulates oil and gas operations on the Southern Ute Indian Reservation and holds the subject matter lands in trust for the Tribe. The Tribal Court asserted that it could not render an enforceable judgment without the participation of the United States, therefore, it issued its July 7, 2010 Order finding that the United States was an Indispensable Party and dismissed the case.

II. Appellant's Argument

The Appellant makes the following arguments: (1) that the United States is not an indispensable party because the Appellant is not seeking to alienate the Tribe's mineral interests; (2) that the United States is not an indispensable party because the Appellant's action does not implicate the regulatory interests of the United States; and (3) that even if the United States is a required party, the equities weigh in favor of finding that the United States is not an indispensable party.

III. Legal Analysis

Under federal common law cited by the parties, the Tribal Court's decision is reviewed for abuse of discretion, while any legal conclusions underlying a Rule 19 determination are reviewed de novo. *See Symes v. Harris*, 472 F.3d 754, 759-60 (10th Cir. 2006). Similarly, this Appellate Court will not reverse a lower court's decision unless it is not supported by substantial evidence in the record or unless "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." *See Hualapai Nation v. D.N.*, 9 SWITCA Rep. 2, 3 (1997).

Since the Tribal Court ruled that the Federal Rules of Civil Procedure would apply to this case, the Court must review the applicable federal rules. Rule 19(a)(1) of the Federal Rules of Civil Procedure provides:

> "A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:
>
> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (i) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest."

Fed.R.Civ.P. 19(a)(1).

Rule 19(b) of the Federal Rules of Civil Procedure provides:

> If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:
>
> (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
> (2) the extent to which any prejudice could be lessened or avoided by:
> (A) protective provisions in the judgment;
> (B) shaping the relief; or
> (C) other measures;
> (3) whether a judgment rendered in the person's absence would be adequate; and
> (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Fed. R. Civ. P.19(b).

This Court concludes that the lower court did not abuse its discretion and did not commit an error of law in issuing its July 7, 2010 Order. The Appellant's arguments fail for several reasons. First, the development of tribal minerals is governed by a comprehensive set of federal statutes and regulations. *See* Indian Mineral Development Act of 1982 (codified at 25 U.S.C. §§ 2101-2108); Indian Mineral Leasing Act of 1938 (codified at 25 U.S.C. §§ 396a-396g); and 25 C.F.R. Parts 211 and 225. These statutes and regulations prohibit the regulation of tribal property, including mineral lands, without the consent of the United States.

The federal regulatory scheme includes preemptive federal and tribal oversight of operations conducted under the authority of communitization agreements, even when those agreements pool or utilize tribally leased minerals with non-Indian minerals. *See* U.S.C. § 396d. Consistent with this federal regime of oversight of tribal mineral interests, any communitization agreement must be approved by the United States, Department of the Interior. "For the purpose of promoting conservation and efficient utilization of minerals, the Secretary may approve a cooperative unit, drilling or other development plan on any leased area upon a determination that approval is advisable and in the best interest of the Indian mineral power." 25 C.F.R. § 211.28(a).

In this matter, there is no federally approved communitization agreement. Such an agreement would be required in order for the Appellant to prevail on its request to combine the 80 mineral acres with the 240 acres of the Tribal lease. *See Kirkpatrick Oil & Gas Co. v. United States*, 675 F.2d 1122, 1126 (10th Cir. 1982).

Secondly, federal and tribal mineral leasing statutes, regulations and policies preempt operation of state regulation. *See Assiniboine and Sioux Tribes v. Board of Oil and Gas Conservation*, 792 F.2d 782, 793-796 (9th Cir. 1986) (Montana Board of Oil & Gas Conservation possessed no "independent jurisdiction" over tribal mineral issue); *Lyon v. Amoco Production Co.*, 923 P.2d 350, 354 (Colo. App. 1996) ("[T]he tribe and federal government already regulate all phases of gas well production on tribal lands."). Furthermore, here, the Southern Ute Indian Tribe entered into a Memorandum of Understanding with the Colorado Oil and Gas Conservation Commission whereby any regulation of mineral development on the reservation requires the Tribe's and the Department of the Interior's consent.

Lastly, any new allocation of revenues from the Well would reduce the ownership interests of the Tribe and others already owning an interest in the Well and would, effectively, reduce their pro rata distributions of Well revenues. As concluded by the Tribal Court, such a reallocation of the Tribe's mineral interests in the Well requires the approval of the United States as the trust agent of the Tribe, and therefore, the United States is an indispensable party. *See* 7 Fed. Prac. & Proc. Civ. § 1617 (when a governmental interest is involved "and a judgment cannot be rendered without affecting that interest, the government must be made a party to the action"); *State of Minnesota v. United States*, 305 U.S. 382, 386 n.1 (1939) (finding the United States as an indispensable party to an action involving Indian lands); *Carlson v. Tulalip Tribes of Washington*, 510 F.2d 1337, 1339 (9th Cir. 1975) ("[T]he United States is a necessary party to any action in which the relief sought might interfere with its obligation to protect Indian lands against alienation.").

Applying Rule 19 to this matter confirms that the United States is a required party. The United Sates "claimed an interest relating to the subject of the action" and its absence could place "the persons already parties subject to . . . inconsistent obligations." Fed. R. Civ. P. 19(a)(2). In this regard, in a letter from the Office of the Solicitor, United States Department of the Interior, dated May 5, 2010, the United States confirmed that the Appellant was seeking to force communitization of the Well and therefore needed the approval of the United States. Accordingly, the United States is a required party as it clearly claimed an interest relating to the subject of this action and any decision without its joinder would impair its ability to protect the Tribe's natural resources. Because the United States is a required party and the Tribal Court could not render an adequate and enforceable judgment without the participation of the United

States, as stated herein, the Tribal Court properly dismissed the action pursuant to Rule 19(b).

It is not necessary for this Court to opine on other arguments raised by the Appellant, as the rationale mentioned herein is a firm basis for affirming the Tribal Court's decision.

ACCORDINGLY, IT IS THE ORDER OF THIS COURT THAT THE TRIBAL COURT'S ORDER FINDING THE UNITED STATES INDISPENSABLE AND DISMISSING THIS CASE IS HEREBY AFFIRMED.

IT IS SO ORDERED.

April 21, 2011

CHRISTOPHER YATES,

Defendant-Appellant,

v.

PUEBLO OF NAMBE,

Plaintiff-Appellee.

SWITCA No. 10-006-NTC
Tribal Case No. JV-2010-002

Appeal filed May 7, 2010

Appeal from the Nambe Pueblo Tribal Court,
Marti Rodriguez, Judge

Appellate Judge: Jonathan Tsosie

ORDER DISMISSING APPEAL

SUMMARY

Appellant filed a Motion entitled Withdrawal of Appeal. Granted and Dismissed.

* * *

The Southwest Intertribal Court of Appeals has received from appellant a motion entitled "Withdrawal of Appeal," filed in this Court on April 1, 2010. Appellant's motion is well-taken and hereby granted. The appeal in this matter is therefore DISMISSED.

IT IS SO ORDERED.

May 17, 2011

TREVON YATES,

Defendant-Appellant,

v.

PUEBLO OF NAMBE,

Plaintiff-Appellee.

SWITCA No. 10-011-NTC
Tribal Case No. JV-2010-003

Appeal filed July 26, 2010

Appeal from the Nambe Pueblo Tribal Court,
Marti Rodriguez, Judge

Appellate Judge: Jonathan Tsosie

ORDER DISMISSING APPEAL

SUMMARY

Appeal was dismissed due to Appellant's failure to file a brief in accordance with SWITCA Rule 26.

* * *

The Southwest Intertribal Court of Appeals (SWITCA) accepted this matter for appeal by "Order" dated February 7, 2011. In that Order appellant was given thirty (30) days after receipt of the Order to file a brief on appellant's behalf pursuant to Rule 26 of the SWITCA Rules of Appellate Procedure. Three months later, appellant has not filed any brief, and no brief appears to be forthcoming.

Therefore, based on this Court's inherent powers and in the interest of judicial economy, this appeal is DISMISSED.

IT IS SO ORDERED.

May 17, 2011

In the Southwest Intertribal Court of Appeals for the Southern Ute Indian Tribal Court

ROBERTO YATES,

Defendant-Appellant,

v.

PUEBLO OF NAMBE,

Plaintiff-Appellee.

SWITCA No. 10-012-NTC
Tribal Case No. JV-2010-004

Appeal filed July 26, 2010

Appeal from the Nambe Pueblo Tribal Court,
Marti Rodriguez, Judge

Appellate Judge: Jonathan Tsosie

ORDER DISMISSING APPEAL

SUMMARY

Appeal was dismissed due to Appellant's failure to file a brief in accordance with SWITCA Rule 26.

* * *

The Southwest Intertribal Court of Appeals (SWITCA) accepted this matter for appeal by "Order" dated February 7, 2011. In that Order appellant was given thirty (30) days after receipt of the Order to file a brief on appellant's behalf pursuant to Rule 26 of the SWITCA Rules of Appellate Procedure. Three months later, appellant has not filed any brief, and no brief appears to be forthcoming.

Therefore, based on this Court's inherent powers and in the interest of judicial economy, this appeal is DISMISSED.

IT IS SO ORDERED.

May 17, 2011

IN THE INTEREST OF J.D., Minor,
MERRY WILLIAMS,

Appellant,

v.

THE SOUTHERN UTE TRIBE
DIVISION OF SOCIAL SERVICES,

Appellee.

SWITCA No. 09-019-SUTC
Tribal Case Nos. 09-AP-123; 07-DN134

Appeal filed August 4, 2009

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

SWITCA Judge: Placido Gomez

PETITION FOR REHEARING OF THIS APPEAL GRANTED, [SWITCA OPINION VACATED AND APPEAL EVENTUALLY DISMISSED ON NOVEMBER 7, 2011][1]

OPINION

SUMMARY

Appellant appealed a lower court Order that her minor son remain a ward of the court, that modified a permanency plan from providing services with the goal of reunification between mother and son to permanent placement of the minor in long term foster care, and that the Appellant and the minor's father be held jointly and severally liable for their minor son's out-of-home expenses. The Appellate Court affirmed the tribal court's order that the minor remain a ward of the court finding that sufficient evidence exists to show that reunification at the time would not be in the minor's best interest. The Court reversed the lower court's ruling that modified the permanency plan finding that the record lacked sufficient evidence to support abandoning the goal of reunification and that the Tribal Code indicated a strong desire that family ties be preserved and strengthened. Finally, the Court modified the judgment of the lower court determining that there was not adequate justification to impose joint and several liability when both the Appellant and minor's father were equally and separately liable for the costs of their minor son's out-of-home care. Affirmed in part, Reversed in part, and Remanded.

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[1] See Opinion of rehearing on page 16, volume 22.

* * *

Ms. Merry Williams, *pro se*, appeals an order issued by the Southern Ute Tribal Court. Ms. Williams' hand-written appeal raises three issues. First, Ms. Williams appeals the Tribal Court's ruling that her son, J.D., remain a ward of the Court. Second, Ms. Williams appeals the Tribal Court's ruling modifying J.D.'s permanency plan from one providing services designed to reunify J.D. and his mom, to a permanency plan focusing on long term foster care. Finally, Ms. Williams appeals the Tribal Court's judgment holding her and Roger Durant, J.D.'s dad, jointly and severally liable for J.D.'s out-of-home expenses.

Ms. Williams argues that the Southern Ute Indian Tribe Division of Social Services had not presented sufficient evidence that J.D. should remain a ward of the Court, subject to the care, control, and supervision of the Division. Further, Ms. Williams argues that the Division had not presented sufficient evidence that J.D.'s permanency plan should be modified to "long-term foster care." Finally, Ms. Williams argues that the Division had not presented sufficient evidence to support the Court's $8,100 judgment entered against Ms. Williams and Roger Durant jointly and severally.

The Division filed a timely challenge to this court's jurisdiction, requesting a finding that this court lacks jurisdiction over any action of the tribal court except the tribal court's June 30, 2009 decision. While this court notes the Division's request, it also notes that the Division requested the Tribal Court "to consider the entire record in this case" for the court's June 30, 2009 decision. This court, too, considers the entire record.

This court affirms the tribal court's order holding as far as it holds that J.D. remain a ward of the Court, subject to the care, control, and supervision of the Southern Ute Indian Tribe Division of Social Services. This court reverses the tribal court's order modifying J.D.'s permanency plan to long-term foster care. Finally, this court modifies the tribal court's order holding Merry Williams and Roger Durant jointly and severally liable for J.D.'s out-of-home costs; this court holds that Merry Williams and Roger Durant are equally and separately liable for their son's out-of-home costs.

On August 15, 2007, J.D., then 12 years-old, became a ward of the court. On that day, the Southern Ute Tribal Court granted a motion for an Emergency Protective Custody Order filed the previous day by the Southern Ute Indian Tribe Division of Social Services. In the motion, the Division argued that J.D. was in need of emergency protective custody because he was "dependent and neglected."[1] As support for its allegation, the Division tracked the language of § 6-1-103(13)(b-d)of the Southern Ute Indian Tribal Code.[2]

Although there is no tape or transcript of the August 15, 2007 hearing, from the record and documents of subsequent hearings it is clear that primary among the concerns of the Division was an allegation made by J.D.'s older brother that J.D. had been raped by an adult female.[3]

On August 21, 2007, the Tribal Court issued a Temporary Protective Order ordering that J.D. remain a ward of the Court. The Temporary Protective Order was issued after a hearing the previous day. At the hearing, Ms. Williams

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[1] Under § 6-5-109 of the Tribal Code, the court may issue an emergency protective custody order if the court finds, based upon a sworn statement, probable cause to believe that "(a) the child is a child in need of supervision, or an abused, or neglected child; and (b) that immediate removal is reasonably necessary to protect the child from further abuse or neglect.

[2] The Southern Ute Indian Tribal Code § 6-1-103(13) reads:

> **6-1-103. Definitions.**
> . . . .
> **(13) Dependent and Neglected Child**
> . . . .
> (b) A child who lacks proper parental care through the actions of omissions of the parent, guardian or legal custodian;
> (c) A child whose environment is injurious to his welfare;
> (d) A child whose parent, guardian or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care or any other care necessary for his health, guidance or wellbeing;

[3] The affidavit of Jeri Sindelar, a caseworker for the Division, states that J.D. had "observable bilateral neck ecchymosis" and that the cause of the bruising was under investigation. The affidavit stated that the Southern Ute Police Department had requested a forensic interview by a FBI forensic law enforcement interviewer scheduled for August 15, 2007. The interview would be observed by a medical evaluator.

The affidavit also noted that J.D.'s pre-existing heart murmur had been neglected, and that Officer Hanna, an officer with the Southern Ute Police Department, had informed Sindelar that Merry Williams, J.D.'s mother, had made statements that J.D. was "out of control" and that she wanted J.D. placed under the Division's care.

agreed to the order. The judge found that removal of J.D. from Ms. Williams' custody was in his best interest, and that the emergency situation caused by speculation regarding the origin of the injuries to J.D.'s neck made the lack of preventive services reasonable.[4]

The record indicates that Ms. Williams, and perhaps others present, did not fully appreciate the nature of the hearing.[5] The record also indicates that, if there ever was an emergency justifying the Division not providing preventive services, there was no emergency at the time of the August 20, 2007 hearing; at that time the Division had access to credible and persuasive information indicating that the bruises on J.D.'s neck were not caused by a sexual assault.[6]

Instead of directly informing the Court of that information, the Division obscured it, reporting that the Division was waiting to conduct a different type of interview - a "forensic" interview.

At a subsequent hearing on September 7, 2007, the Division announced that the "forensic" interview that had been scheduled for August 15, 2007 had finally been conducted on September 6, 2007. Further, at the September 7, 2007 hearing the Division confirmed what it had known more than two weeks earlier: that J.D. had not been sexually abused and that the bruises on his neck were the result of horseplay among juveniles. The Division then moved to amend the petition "to comport with the evidence."[7]

The Division continued to mislead Ms. Williams and the tribal court regarding the existence of an emergency. The Division attempted to induce Ms. Williams to stipulate that the Division had complied with the requirements of §6-5-11 of the Tribal Code, suggesting that access to state funds depended on specific findings regarding the situation.[8]

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[4] Section 6-5-11 of the Southern Ute Tribal Code states:

" . . . [e]very order for temporary protective custody must include the following findings:

(1) That continuation in the home would be contrary to the child's welfare or removal from the home is in the child's best interest; and

(2) That reasonable efforts have been made to prevent placement, or

(3) That in emergency situations, the lack of preventive services was reasonable . . . .

[5] At the August 20, 2007 hearing, the attorney for the Division announced that Merry Williams was not going to contest the Temporary Protective Custody Order. The attorney for the Division told the Court that there had been a forensic medical evaluation conducted and that there would be an additional forensic interview conducted by the FBI that would be helpful to determine the cause of J.D.'s injuries. The attorney for the Division stated that Ms. Williams wanted to make a decision regarding her position after the results of the evaluations were known.

Ms. Williams agreed with the Tribal Court judge that the temporary custody order was in J.D.'s best interests. Ms. Williams told the judge that she wanted him "to stay where he is at now . . . while this is going on . . . so that he doesn't have contact with his friends or anything like that."

Ms. Williams tried to clarify the situation : "this is . . . temporary." The judge responded: "Nothing permanent."

When the judge asked if Ms. Williams agreed that the facts alleged in the affidavit were true, Ms. Williams replied, "No, not all of them."

The judge then coaxed Ms. Williams to agree that J.D. "has some injuries that we are . . . worried about and basically looking into."

[6] The Division's attorney stated at the hearing that the Division had the results of a forensic medical evaluation. There is no indication in the record that the Division informed the Court or Ms. Williams that the evaluation did not support allegations that J.D. had been sexually assaulted.

(continued...)

[6](...continued)

The evaluation was conducted by Dr. Robert Heyl of Cortez Family Practice Associates. Dr. Heyl's report is dated August 15, 2007. Dr. Heyl's report indicates that the bruises on J.D.'s neck were the result of a pinch and a sleeper hold, both inflicted without malintent, by a male cousin and 15 year old girlfriend. A physical exam of J.D.'s anal and genital areas indicated no signs of sexual trauma.

Dr. Heyl's report indicates that he provided an oral report to Jeri Sindelar, the Division's caseworker. The record indicates that Jeri Sindelar did not report the results of Dr. Heyl's evaluation until an affidavit date-stamped by the Court on August 27, 2007. Dr. Heyl's report was not submitted to the Court until October 22, 2007, as an attachment to a Family Services Plan submitted on that day.

[7] The amendment tracked § 6-1-103(13)(e) which reads:

6-1-103. Definitions.

. . . .

(13) Dependent and Neglected Child

. . . .

(e) A child who is homeless, without proper care, or not domiciled with his parent, guardian or legal custodian.

[8] The attorney for the Division told Ms. Williams that access to State funds depended on the judge finding that the Division's actions were in J.D.'s best interests and that it was reasonable for the Division not to have made efforts to provide services in home or avoid removal.

The attorney, encouraging Ms. Williams to agree to language tracking the requirements of § 6-5-11, told her: ". . . if there is any access or availability of state funds . . .the

(continued...)

When Ms. Williams expressed doubt about the proposed stipulation, the Division elicited testimony from Jeri Sindelar to show that the Division had complied with the Tribal Code.[9] Then, in an apparent attempt to justify its delay informing the Tribal Court that J.D. had not been sexually assaulted, the Division attempted to highlight the minimal and obscure distinction between the "forensic medical interview" conducted by Dr. Heyl on August 15, 2007 and the "forensic interview" conducted on September 6, 2007.[10] And, finally, at the conclusion of the hearing the judge discovered that there had been no contact between J.D. and his mother since he was taken from the home three weeks previously. [11]

The case that follows is predictable and all too familiar. Initially, J.D. thrived in foster care. The increased structure appeared to help him. He did well in school and developed an interest in sports and scripture. Merry Williams, too, appeared to have benefitted from the court-ordered counseling. Both Ms. Williams and her boyfriend, Robert Mills, attended counseling and completed a twelve hour parenting course.[12] Nevertheless, the five volumes of the appellate record and countless hours of hearing tapes corroborate what the research shows: issues linked to single-parent families, abusive relationships, and substance abuse are not easily overcome.[13]

There is sufficient evidence to support the Tribal Court's ruling that J.D. remain a ward of the court, subject to the care, control, and supervision of the Division; this court affirms the lower court's ruling that J.D. remain a ward of the court. The Division circumvented the requirements of § 6-5-11 of the Southern Ute Tribal Code during initial stages of this case.[14] The tapes of the August 20, 2007 and September 7, 2007 hearings make it clear that the Division did not make reasonable efforts to prevent placement; nor was there sufficient evidence that an emergency existed at those times that would make the lack of preventive services reasonable. Section 6-5-11 reflects the Tribe's strong preference that the Division address a child's medical and social issues without removing him from the home; the Division's actions ignored this preference. Further, both

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[8](...continued)
judge has to put specific findings in the order so that we can get the state funds."

[9] Ms. Sindelar testified that the 12 year-old J.D. was doing well in the foster home, that J.D. had talked about drug and alcohol issues at home, and that he was refusing to return home.

[10] Ms. Sindelar testified that there had been a forensic interview with J.D. on September 6, 2007. Then, coaxed by the leading questions of the Division's attorney, Ms. Sindelar tried to distinguish this interview from the evaluation Dr. Heyl had performed on August 15, 2007:

> Division: Am I correct in understanding that the medical examination was for the purpose of examining the injuries and determining the medical cause whereas the forensic interview was for the purpose of determining who caused the injuries or how they were caused instead?
>
> Ms. Sindelar: That's correct.

[11] The Division blamed the lack of visitation on the family's failure to file the necessary paperwork. The judge immediately ordered the Division to arrange for visitation.

[12] The Division's December 3, 2007 Family Services Plan was positive:

(continued...)

[12](...continued)
The Division applauds the efforts of Ms. Williams and feels that it is in the best interest of J.D. to return to the home and care of Ms. Williams.

[13] J.D. was reunited with his mom in January 2008. He was removed from the home in March 2008 after he was suspended from school for smoking marijuana and arrested on a firearms related charge. J.D. was reunited with his mom again in December 2008 after Ms. Williams reported that she had ended her relationship with Robert Mills. Additionally, Ms. Williams and J.D. had successfully completed therapy.

However, J.D. was removed from the home in March 2009; at the time he was failing his classes, suspended from school for smoking marijuana, and was caught with drug paraphernalia and razor blades. There was evidence that Ms. Williams had resumed her relationship with Robert Mills, and allegations of domestic violence.

[14] Ms. Williams has continuously expressed her confusion regarding the process. For example, the Guardian ad Litem Report filed June 17, 2009 notes her frustration:

> Ms. Williams stated that she did not feel it was in [J.D.]'s best interest to be out of her home. She stated [J.D.] is like a lost child right now not knowing where his home is. She was unclear why [J.D.] has been taken out of her home in the past couple of years.

Merry Williams and J.D. have expressed their desire to be reunited.[15]

Nevertheless, currently it is in J.D.'s best interest to remain under the Division's supervision. Despite laudable efforts by Ms. Williams to put herself in a position to provide an appropriate home environment,[16] there is sufficient evidence that reunification at this time would not be in J.D.'s best interests. The burden of proof remains with the Division to prove the allegations in the petition by a preponderance of the evidence.[17] This court is concerned with J.D.'s emotional instability and apparent depression.[18]

This court reverses the lower court's ruling modifying J.D.'s permanency plan from one providing services designed to reunify J.D. and Ms. Williams to a permanency plan focusing on long term foster care. There is not sufficient evidence in the record for the Tribal Court to abandon the goal of reunifying J.D. and his mom. Section 6-1-101 of the Southern Ute Indian Tribal Code expresses a strong preference that a child not be removed from his home.[19] The same section indicates a strong desire on the part of the Tribal Council that family ties be preserved and strengthened.[20] Finally, § 6-1-101 of the Tribal Code lists among its purposes protecting the rights of and assuring fairness to all who come before the court.[21] In the context of § 6-1-101 of the Tribal Code, the evidence in the record does not reach a level that should cause the tribal court to abandon the goal of reunifying J.D. with his family and substitute a permanency plan of long-term foster care.

Finally, this court modifies the judgment of the trial court declaring Merry Williams and Roger Durant jointly and severally liable for $8,100.00, the cost of three months residential treatment at Southern Peaks Regional Treatment Center. The trial court's decision holding Ms. Williams liable jointly and severally is not appropriate under the circumstances of this case.

Clearly, under § 6-6-108 of the Southern Ute Indian Tribal Code, the parents have a responsibility to contribute to the

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[15] Section 6-1-103(4)(a)(b) read:

6-1-103 Definitions

. . . .

(4) Best Interest of a Child. The standard by which the court shall evaluate all placements and treatment plans. The court shall consider all relevant factors including, but not limited to, the following:

(a) The preference of the child's parents as to his custody;
(b) The preference of the child as to his custodians;

. . . .

[16] There are unsubstantiated allegations of Ms. Williams' current alcohol abuse. For example, several documents in the record mention a January 3, 2009 incident in Aztec. In the report that incident an officer noted that Ms. Williams and Mr. Mills had an odor of alcohol about them. This court notes that during the almost two years this case has been active, Ms. Williams has participated in periodic screenings for alcohol and drugs. The reports of these screenings in the record indicate that she is not abusing alcohol or drugs.

[17] The Southern Ute Indian Tribal Code § 6-6-104 sets the burden of proof for the adjudicatory/dispositional hearing regarding a dependency and neglect petition or a child in need of supervision petition. This burden remains with the Division in subsequent hearings.

[18] This court is also concerned with the allegations regarding Ms. Williams' continued involvement in an abusive relationship with Robert Mills. However, Ms. Williams reports that she has ended that relationship. As the lower court notes, previously Ms. Williams has been unsuccessful ending that relationship.

[19] The Southern Ute Indian Tribal Code states:

6-1-101 Legislative Declaration

The Southern Ute Indian Tribal Council declares that the purposes of this Code are as follows:

(1) To secure for each child subject to this Code such care, guidance and control, preferably in his own home, as will best serve his welfare, the welfare of his family and the interest of the Southern Ute Indian Tribe;

[20] 6-1-101 Legislative Declaration

The Southern Ute Indian Tribal Council declares that the purposes of this Code are as follows:

. . . .

(3) To preserve and strengthen family ties whenever possible, including improvement of the home environment and parental responsibility;

[21] 6-1-101 Legislative Declaration

The Southern Ute Indian Tribal Council declares that the purposes of this Code are as follows:

. . . .

(9) To secure the rights of and ensure fairenss throughout these procedures to the children, parents, guardians, custodians or other interested parties who come before the Children's Court under the provisions of this Code

cost of out-of-home care.[22] There is sufficient evidence in the record that the cost for J.D.'s residential treatment at Southern Peaks Regional Treatment Center was $8,100.00. Also, there is sufficient evidence in the record that Ms. Williams can contribute to the cost of the out-of-home care for her son. However, the history of joint and several liability, its purposes and rationale, as well as recent trends regarding its administration, move this court to hold that apportioning the costs of J.D.'s out-of-home care jointly and severally would not serve the interests of justice.

Generally, joint and several liability provides that the plaintiff may recover the total amount of a tort judgment from any one of several tortfeasors. These tortfeasors are then left to apportion their shares of liability between themselves in one or more contribution actions. Courts invoked joint and several liability rules when courts could not determine the extent of the injury caused by each wrongdoer, when tortfeasors acted in concert, or when one or more of the wrongdoers could not be identified or was vicariously liable.[23] Further, there is a general trend among jurisdictions to alter or abolish joint and several liability.[24]

Merry Williams and Roger Durant are equally and separately liable for the costs of J.D.'s out-of-home care. There is not adequate justification to impose joint and several liability in this case. Roger Durant, J.D.'s dad, is readily identifiable; the costs of J.D.'s out-of-home care are easily divisible. There is no evidence that Ms. Williams and Roger Durant acted in concert to cause the Division to allocate resources to J.D.'s out-of-home care.

This case is remanded to the Southern Ute Tribal Court for further proceedings consistent with this opinion.

September 7, 2011

IN THE INTEREST OF J.D.,
Minor Child,

MERRY WILLIAMS,

Appellant,

v.

SOUTHERN UTE INDIAN TRIBE
DIVISION OF SOCIAL SERVICES,

Appellee.

SWITCA Case No. 09-019-SUTC
Tribal Court Case nos.: 09-AP-123,
07-DN-134

Appeal filed July 14, 2009

Appeal from the decision by the
Honorable Suzanne F. Carlson, Associate Judge
of the Southern Ute Tribal Court

Anthony J. Lee, SWITCA Judge

OPINION AND ORDER VACATING THE SWITCA DECISION FILED ON SEPTEMBER 7, 2011 AND DISMISSING APPEAL

SUMMARY

Appellee filed a Petition for Rehearing raising several substantive and procedural errors made by SWITCA in a case involving a minor found to be a dependent and neglected child. The Appellate Court vacated its prior Order finding that SWITCA was without jurisdiction to accept any appeal filed outside of the fifteen (15) day frame set by SWITCA Rule 11(c). The Court also found that SWITCA erred in failing to determine its own jurisdiction and to issue a written order accepting or denying the appeal in accordance with SWITCA Rule 12. Further, the Court found that since SWITCA took so long to decide the matter, the issue of reunification was moot. Finally, the Court dismissed Appellant's appeal of the imposition of $8,100.00 in child support, finding that Appellant failed to assert specific errors as grounds for the appeal nor did she state the relief being sought. Vacated and Dismissed.

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[22] Section 6-6-108 reads:

Responsibility for Payment. When the court orders a child into out-of-home placement, the court shall order Tribal Social Services to complete an assessment of the natural parents' ability to contribute to the cost of such out-of-home care . . . The court may consider relevant standard ability to pay scales, existing child support orders and other relevant factors in determining the amount of the contribution.

[23] *See generally* RESTATEMENT OF THE LAW THIRD, TORTS; APPORTIONMENT OF LIABILITY, The American Law Institute, §§ 10-17.

[24] Dan B. Dobbs, THE LAW OF TORTS, PRACTITIONER TREATISE SERIES, Volume 2, § 389, West Publishing (2000); *see also* The Uniform Apportionment of Tort Responsibility Act of § 5 (2002).

This matter comes before the Southwest Intertribal Court of Appeals (SWITCA) from the Appellee's Petition for Rehearing filed on September 23, 2011.

This case involves a minor found by the Southern Ute Tribal Court to be a dependent and neglected child. On June 30, 2009 the Tribal Court issued an Order keeping the minor a ward of the court, changing the minor's permanency plan, authorizing certain investigations and awarding child support in the amount of $8,100.00. The Appellant filed a Notice of Appeal on July 14, 2009, appealing the June 30, 2009 decision and several court actions dating back to 2007. The Appellee filed a SWITCA Rule 11(k) Challenge to Jurisdiction on July 21, 2009, arguing that SWITCA is without jurisdiction to hear any action of the Tribal Court other than the June 30, 2009 decision. SWITCA did not respond to this challenge of jurisdiction within the requisite thirty (30) days, as required by SWITCA Rule 12. In fact, SWITCA ruled on this matter on September 7, 2011, in a decision rendered by the Honorable Placido Gomez. Thereafter, the Appellee filed its Petition for Rehearing on September 23, 2011 raising several substantive and procedural errors made by SWITCA in its September 7, 2011 decision.

The Appellee correctly argues in its Petition for Rehearing that SWITCA erred in reviewing orders entered more than fifteen days prior to the filing of the Notice of Appeal. The Southern Ute Indian Tribe's Appellate Code requires that the Notice of Appeal be filed within fifteen (15) days of the entry of final judgment. *See* SUIT Appellate Code § 3-1-104(1). Pursuant to SWITCA Rule 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." *See* SWITCA Rule 11(c) (2001). SWITCA should have only accepted an appeal of the June 30, 2009 Order and dismissed any appeal or consideration of Tribal Court Orders prior to this date, as it is without jurisdiction to hear these older Orders.

The Appellee also correctly argues in its Petition for Rehearing that SWITCA erred in failing to determine its own jurisdiction and issue a written order accepting or denying the appeal within thirty (30) days of receiving the Appellee's Challenge to Jurisdiction. *See* SWITCA Rule 12 (2001). The Appellee filed its Challenge to Jurisdiction on July 21, 2009. Instead of hearing a response from SWITCA within the required thirty (30) days, which should have been in the form of a dismissal or an acceptance of the appeal (whereby the parties are given the right to brief the Court), SWITCA issued a final decision on this matter on September 7, 2011, over two (2) years since the Appellee's filing. The Appellee never received notification that it could file a brief in this case. SWITCA's failure to act in a timely manner severely prejudiced the Appellee's duty to perform services on behalf of the Southern Ute Indian Tribe.

SWITCA must follow its own rules to perform properly and to protect the interests and rights of all parties before SWITCA. Justice is not served if a court fails to follow its binding procedural rules. The Appellee has an absolute right to rely on the published rules of SWITCA to protect its right to due process. Since SWITCA's September 7, 2011 decision clearly ignored SWITCA rules and violated the Appellee's right to due process, this Court hereby vacates said opinion.

Since SWITCA took so long to decide this matter, the minor's current circumstances render it moot. The minor is currently incarcerated, facing other criminal charges, is close to turning eighteen (18) years old (when this case will close) and his mother is living 350 miles away from the reservation with a person who is restrained from having contact with him. The minor's current circumstances prohibit the Appellee from intervening in this matter and prohibit the Appellant from reunifying with him. Therefore, that part of Appellant's Notice of Appeal seeking reunification is moot and is hereby dismissed.

In her Notice of Appeal, the Appellant also seeks to appeal the imposition of $8,100.00 in child support, however, the Notice of Appeal is not sufficient as the Appellant asserts certain facts as grounds for asking for an appeal, but does not notify the Court of the relief being sought. The Appellant simply states in her Notice of Appeal that she was ordered to pay $8,100.00, and that she provided copies of her bills which clearly exceed her income. 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 Rep. 11 (2005).

The facts asserted by the Appellant also 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 Rep. 10 (2005). Therefore, this Court hereby dismisses the appeal as it pertains to the award of child support.

It is not necessary for this Court to opine on every argument raised by the Appellee, as the rationale mentioned herein is a firm basis to vacate the September 7, 2011 decision by SWITCA and dismiss the appeal.

This case highlights the need for SWITCA to decide appeals in a timely manner, especially when a family's interests are at stake. Court decisions relating to family matters often have life altering effects. Such sensitive manners should be handled with care and this case necessitates the need for SWITCA to look into changing its rules for appeals concerning family matters, including but not limited to dependency and neglect cases, to accommodate the best interests of Tribes and members it serves.

ACCORDINGLY, IT IS THE ORDER OF THIS COURT THAT SWITCA'S SEPTEMBER 7, 2011 OPINION IS HEREBY VACATED AND THE APPEAL IS HEREBY DISMISSED.

IT IS SO ORDERED.

November 4, 2011

In the Matter of:

STEVEN CRAIG MONTE,
Adult under guardianship

SOUTHERN UTE INDIAN TRIBE
DIVISION OF SOCIAL SERVICES,

Appellant,

v.

EFFIE MONTE and SHERRY MONTE-SALAZAR,
Legal guardians of Steven Craig Monte,

Appellees.

SWITCA No. 09-020-SUTC
Tribal Case No. 95GS01 / 09AP100

Appeal filed June 9, 2009

Appeal from the Southern Ute Indian Tribe Tribal Court,
M. Scott Moore, Associate Judge

Appellate Judge: Georgene Louis

ORDER DISMISSING APPEAL

SUMMARY

Appellant filed a Motion to Dismiss Appeal. Granted and Dismissed Without Prejudice.

* * *

The Southwest Intertribal Court of Appeals received from Appellant a motion entitled "Motion to Dismiss Appeal," filed in this Court on September 14, 2011. Appellant's motion is well-taken and hereby granted. The appeal in this matter is therefore DISMISSED WITHOUT PREJUDICE.

It is SO ORDERED.

September 21, 2011

PUEBLO OF ZUNI,

Respondent,

v.

RODERICK TSABETSAYE,

Appellant.

SWITCA No. 10-003-ZTC
Tribal Case No. CR-2010-0448

Appeal filed April 28, 2010

Appeal from the Zuni Pueblo Tribal Court,
Val Panteah, Sr., Associate Judge

Appellate Judges: Jonathan Tsosie,
Robert Medina and Stephen Wall

OPINION

SUMMARY

The trial court, by failing to allow the Appellant to call witnesses on his behalf, violated the Appellant's due process rights under the Zuni Tribal Constitution and violated the Appellant's right under the Indian Civil Rights Act to compulsory process for obtaining witnesses in his favor.

* * *

This matter comes before the Southwest Intertribal Court of Appeals ("SWITCA") pursuant to Zuni Tribal Council Resolution No. M70-99-B059 (August 3, 1999), Rule 28 of the Zuni Rules of Criminal Procedure ("Z.R.Cr.P."), and the SWITCA Rules of Appellate Procedure ("SWITCARA"). It arises out of a criminal case in which Appellant Roderick Tsabetsaye, an enrolled member of the Zuni Tribe, was convicted in a bench trial of Driving Under the Influence of Intoxicating Liquors or Drugs, Reckless Driving, Driving on Roadways Laned for Traffic, Resisting Arrest, and for violating Motor Vehicle Equipment Requirements. Appellant filed a *pro se* brief in which he appeals all convictions.[1] Appellee Pueblo of Zuni Tribe did not file a response brief. Pursuant to Z.R.Cr.P. 30(B) and SWITCARA #31 (2001), this Court finds that the record

[1] Appellant was represented by lay counsel at trial.

before us and Appellant's brief are sufficient to render a decision. For the following reasons this Court hereby REVERSES the decision of the Zuni Pueblo Tribal Court and REMANDS for judgment consistent with this opinion.

DISCUSSION

Appellant argues that his due process rights under Article III, Section 2(h) of the Zuni Tribal Constitution[2], and under 25 U.S.C. Section 1302(6) of the Indian Civil Rights Act of 1968[3] were violated when the Zuni Pueblo Tribal Court did not allow him to call all of his witnesses at trial, thereby stripping him of the opportunity to fully litigate his defense. This Court finds Appellant's arguments persuasive.

Upon review of the oral record of the trial, it is apparent that the Zuni Tribe was afforded the opportunity to present its case-in-chief in full. Lieutenant Vinton Ghachu, who wrote the criminal complaints and arrested Appellant, also acted as the prosecutor for the tribe. Lt. Ghachu called the witnesses named on the tribe's witness list dated April 16, 2010, and conducted direct examinations of each witness. This is clear from the oral record when Lt. Ghachu concluded his case-in-chief for the tribe, after which Appellant's lay counsel moved for a directed verdict in favor of Appellant. The trial judge denied that motion.

Appellant immediately proceeded to call Lt. Ghachu as his first witness. The Appellant only asked Lt. Ghachu two yes-or-no questions as to whether Lt. Ghachu had administered any kind of sobriety tests to Appellant upon arrest. After Lt. Ghachu twice answered that he did not administer any such tests to Appellant, Appellant's lay counsel ceased questioning. At that point the trial judge asked Lt. Ghachu if Lt. Ghachu was the officer who wrote the criminal complaints. The judge then asked Lt. Ghachu to clarify why he had cited three separate incidents of Driving on Roadways Laned for Traffic. Lt. Ghachu responded that there had been three such incidents in different locations during the officer's attempt to pull over Appellant. The trial judge asked if the three incidents all occurred within the territorial boundaries of the Zuni Pueblo and Lt. Ghachu responded that they had. At that point the trial judge then asked if the prosecution wished to present a "rebuttal," and the prosecution answered as follows:

> Lt. Ghachu: Your honor, the, the Pueblo has made testimony as far as the starting of, of, of the, the, actually, the incident itself. Um, may I go down . . . ?
> [Lt. Ghachu steps down from the stand.]
> Trial judge: Oh, absolutely, and is this going to be rebuttal or is this going to be closing argument?
> Lt. Ghachu: It's going to be a closing argument.
> Trial judge: O.K., in, in that case there will be no more testimony, and we'll do closing argument.

Appellant's lay counsel did not object to this, and Lt. Ghachu presented his closing argument on behalf of the tribe. Appellant's lay counsel then presented his closing argument, after which the trial judge called for a ten-minute break and returned with an oral judgment convicting Appellant of the above charges. At no point before closing arguments did Appellant's lay counsel indicate that he had rested his case.

Upon review of the pre-trial witness lists presented to the Zuni Tribal Court, it is apparent that Appellant had named seven witnesses to be called at trial, and that Appellant had submitted his list of witnesses on April 9, 2010, one week before the tribe submitted its own list naming five witnesses. Some of the witnesses from both sides' lists are named in both lists, while some appear in only one list or the other.

Appellant states in his brief that there were other witnesses from his list just outside the courtroom waiting to be called for questioning when the trial judge declared that she would hear closing arguments. This assertion has not been refuted by the tribe, which was afforded the opportunity to respond to Appellant's brief and did not do so. This assertion must be considered in combination with the number of witnesses named on Appellant's witness list and the fact that the trial judge only allowed Appellant to call a single witness before asking for closing arguments. Moreover, there is no indication in the oral record that Appellant's lay counsel had rested his case.

The opportunity to fully litigate one's case is a crucial and foundational component of the judicial process, and even more so for the criminal defendant, who potentially faces incarceration, fines and a criminal record, among other repercussions. Fully litigating a case entails affording a party the opportunity to call all of the party's named witnesses who have come to the trial to testify. When a trial court denies a party this opportunity and then proceeds to deprive the party of liberty or property, there is a violation

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[2] "The Zuni Tribe, in exercising its powers of self-government, shall not: 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." Zuni Tribe Const. art. III, § 2(h).

[3] "No Indian tribe in exercising powers of self-government shall deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense[.]" 25 U.S.C. § 1302(6).

of due process. This violation of due process is even more glaring when, as happened here, the prosecution is allowed to present its entire case-in-chief with all of its named witnesses while the defendant is only allowed to call one witness while other witnesses are waiting outside the courtroom to testify.

For the foregoing reasons, this Court holds that Appellant's due process rights under Article III, Section 2(h) of the Zuni Tribal Constitution were violated by the Zuni Tribal Court. Further, this Court holds that Appellant's right to compulsory process for obtaining witnesses in his favor under Section 1302(6) of the Indian Civil Rights Act was violated by the Zuni Tribal Court. The judgment of the Zuni Tribal Court is therefore REVERSED and this matter is REMANDED for judgment consistent with this opinion.

IT IS SO ORDERED.

September 27, 2011

CARLETTA HAYES AND RICKY HAYES,

Respondents-Appellants,

v.

SOUTHERN UTE INDIAN TRIBE,

Petitioner-Appellee.

SWITCA No. 11-006-SUTC
Tribal Case No. 11-AP-64; 11-DN-21

Appeal filed April 25, 2011

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

Appellate Judge: Anthony J. Lee

OPINION AND ORDER DISMISSING APPEAL

SUMMARY

Appellants filed a letter with the tribal court requesting an appeal after the lower court issued several orders related to a petition brought by tribal social services division for the dependency and neglect of Appellants' minor child. The Appellate Court treated the letter as a formal Notice of Appeal, however it was unclear which order was being appealed. The Court found that it lacked the jurisdiction to hear the Adjudicatory Order because it was filed untimely and decided to the treat the Notice of Appeal as an appeal of the Disposition and Removal Order. The Court found the Notice of Appeal to be insufficient in that it failed to meet the requirements of SWITCA Rule 11(e) and neither stated the alleged errors of the lower court nor indicated the type of relief sought. Dismissed.

* * *

This matter comes before the Southwest Intertribal Court of Appeals (SWITCA) from the Southern Ute Tribal Court, and arises out of Appellants' Notice of Appeal.

The Southern Ute Tribal Court issued an Adjudicatory Order on March 10, 2011, ordering, among other things, that a petition brought by the Southern Ute Indian Tribe's Division of Social Services for the dependency and neglect of Appellants' minor was sustained. Thereafter, on April 12, 2011, a Disposition and Removal Order was issued by the Southern Ute Tribal Court. The Appellants filed a letter on April 25, 2011 with the Southern Ute Tribal Court requesting an appeal. In the interests of justice, this Court will treat this letter as a formal Notice of Appeal. Subsequently, on May 9, 2011, the Appellee filed a Response to the Appellants' Notice of Appeal and Motion to Dismiss the Appeal. The Appellee also filed a Request for Ruling on September 13, 2011.

Appellee's first argument in its Response and Motion to Dismiss is that SWITCA lacks jurisdiction to hear the Adjudicatory Order. The Southern Ute Indian Tribe's Appellate Code requires that the Notice of Appeal be filed within fifteen (15) days of the entry of final judgment. *See* SUIT Appellate Code § 3-1-106. Pursuant to SWITCA Rule 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." *See* SWITCARA # 11(c) (2001). Therefore, SWITCA must dismiss the appeal of the Adjudicatory Order because it was filed untimely and SWITCA is without jurisdiction to hear it.

In the interests of justice, this Court will treat the Notice of Appeal as an appeal of the Disposition and Removal Order, issued on April 12, 2011, as it is not readily apparent in the Notice of Appeal what order is being appealed.

The Appellee also argues in its Response and Motion to Dismiss that the Notice of Appeal is not sufficient to allow an appeal. This Court finds that the Notice of Appeal is defective, therefore it is not necessary for this Court to opine on other arguments raised by the Appellee, as the rationale mentioned herein is a firm basis for ordering the dismissal of the appeal.

According to SWITCA Rule 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.

SWITCA #11(e) (2001).

Appellants' Notice of Appeal is not sufficient. It does not include the addresses and telephone numbers of the Appellants, nor does it state the nature of the relief being sought, as required by SWITCA Rule 11(e) (2001). The Appellants assert certain facts as grounds for asking for an appeal, however they do not notify the Court of their relief being sought. This Court is not in any position to guess the Appellants' specific relief when it is not clearly requested. *See Peters v. Ak-Chin Indian Community,* 16 SWITCA Rep. 11 (2005).

The facts asserted by the Appellants also do not present any reasoned argument or legal grounds for reversing the lower court's decision. It is the duty of the Appellants 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 Rep. 10 (2005).

This Court finds that the Notice of Appeal fails to meet the requirements of SWITCA Rule 11(e).

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

September 29, 2011

LISA GARCIA,

Appellant,

v.

KATHLEEN MARTINEZ and SHAWN CARLOS,

Appellees.

SWITCA No. 10-016-ACICC
ACIC Case Nos. CV-2009-058 and CV-2009-061

Appeal filed November 19, 2010

Appeal from the Ak-Chin Indian Community Court, Anthony F. Little, Associate Judge

Appellate Judge: Jonathan Tsosie

ORDER DENYING APPEAL

SUMMARY

Appellant appealed a one-year old restraining order and the tribal court's denial of her attempt to impose a similar restraining order upon Appellees. The Appellate Court denied the appeal, finding that the restraining order against the Appellant had expired by its own terms and was moot. The Court also found that Appellant's Notice of Appeal with regard to the restraining order she was denied lacked a sufficient statement of the reasons for reversal as required by SWITCA Rule 11(e)(5). Denied.

* * *

The Southwest Intertribal Court of Appeals has reviewed the record in the above entitled matter and finds that the primary issue presented is moot, and the appeal in this matter is hereby DENIED.

Appellant appeals a one-year restraining order that was imposed upon her on November 4, 2010, in which she was ordered to have no contact with and keep away from Appellees. The one-year period of that restraining order has passed, and Appellees have made no attempt to renew or extend that restraining order at the Tribal Court. Because the restraining order against Appellant has expired by its own terms, this Court must find the appeal with respect to this issue moot.

Appellant also appeals the Tribal Court's denial of her attempt to impose a similar restraining order upon Appellees. In her "Notice to Appeal," [sic] Appellant supports her argument with respect to the restraining order issued against her with facts as she perceives them, thereby

fulfilling SWITCARA #11(e)(5), which requires a "concise statement of the reasons for reversal and modification." She refers, for example, to witnesses who allegedly did not corroborate testimony, to the contents of police reports, and to the alleged lack of jurisdiction. In contrast, however, her only statement with respect to the restraining order that was denied her is: "I believe my case was present [sic] sufficiently to a finding of GRANTING my petition for harassment against Ms. Martinez and Mr. Carlos as previously stated through the evidence/exhibits and witness testimony." Such a statement is insufficient for the purposes of SWITCARA #12(e)(5), as this Court is left to guess at the reasons for reversal.

For the following reasons, the notice of appeal in the above entitled matter is hereby DENIED.

IT IS SO ORDERED.

November 22, 2011

JOHNATHAN LEMENTINO,

Petitioner-Appellant,

v.

BRYSTON BOWANNIE, SR.,
NUTRIA CATTLE ASSOCIATION,

Respondents-Appellees.

SWITCA No. 10-014-ZTC
Zuni Pueblo Court Case No. RO-2010-0003

Appeal filed September 3, 2010

Appeal from the Zuni Pueblo Tribal Court,
John Chapela, Associate Judge

Appellate Judges: Jonathan Tsosie,
Delilah Choneska and Robert Medina

ORDER DENYING APPEAL

SUMMARY

Appellant filed a Notice of Appeal alleging, inter alia, a violation of equal protection under tribal laws resulted in a denial of due process when a hearing date was moved up. The Appellate Court denied the appeal, finding that Appellant was allowed to present his case, that he presented his case, that he never requested a continuance nor objected to the change in date, and that time was of the essence in the matter. The Court also rejected Appellant's second argument, finding that Section 9A of the Zuni Range Code, pertaining to trespass of livestock, could not be a basis for the appeal as Appellees had established a constructive easement across Appellant's grazing area. Denied.

* * *

Upon review of the above entitled matter, the Southwest Intertribal Court of Appeals hereby finds that the "Notice of Appeal" (hereinafter "Notice") filed by Appellant is without merit, and the appeal must therefore be denied.

Appellant bases his Notice on two arguments, the first of which is the alleged violation of the equal protection of Zuni's tribal laws, resulting in a denial of his due process rights. According to Appellant's Notice, the violation occurred when the date set for his hearing was moved up by two weeks after the alleged intervention of a Tribal Councilman who advocated on behalf of Respondent with respect to moving the date of the hearing. Even if the allegation were true, any claim involving improper influence or collusion is not part of the court record and thus not reviewable.

The Appellant had a two week period to prepare for his hearing. Appellant claims he "was still in the process of obtaining more documents when the hearing was held." Appellant, however, never asked the Tribal Court for a continuance, the asking of which was in Appellant's power. Instead, Appellant was allowed his day in court, and Appellant indeed presented his case. Notably, Appellant did not at any time assert any concerns or objections about the sooner date at the hearing itself. Moreover, time was of the essence to the issue at hand, as this matter clearly involved urgency due to the seasonal monsoons.

Given the facts that Appellant was allowed to present his case, that Appellant did in fact present his case, that Appellant never asked for a continuance or objected to the change in date of the hearing, and that time was of the essence in this matter, this Court finds no merit in Appellant's Notice of Appeal with respect to his equal protection and due process claims.

Similarly, this Court finds no merit in Appellant's second argument pertaining to Section 9A of the Zuni Range Code, which pertains to trespass of livestock. As already noted by the Tribal Court judge, the Appellees have established a constructive easement across Appellant's grazing area by conducting a cattle drive across the unit for the past thirty-five to forty years. Any cattle driven on Appellant's grazing unit lasts only about seventy-five minutes, twice a year, and would not involve livestock drifting about the grazing unit. Moreover, Appellees are liable to Appellant for any proven damages caused by Appellees' cattle drives. Thus Appellant cannot base his appeal on Section 9A of the Zuni Range Code.

For the foregoing reasons, Appellant's Notice of Appeal in the above entitled matter is hereby DENIED.

IT IS SO ORDERED.

November 22, 2011

SOUTHERN UTE INDIAN TRIBE,

IN THE MATTER OF: D.B., Minor,

Appellant,

v.

SOUTHERN UTE INDIAN TRIBE,

Appellee.

SWITCA Case No. 10-002-SUTC

Tribal Court Case No. 09-JV-34, 10-AP-32

Appeal filed February 17, 2010

Appeal from the Southern Ute Tribal Court,
M. Scott Moore, Associate Judge

Appellate Judge: Anthony J. Lee

OPINION AND ORDER DISMISSING APPEAL

SUMMARY

Minor Appellant's mother filed a Notice of Appeal after the lower court found that Appellant had committed several delinquent acts and was sentenced to a jail term and probation. The Notice of Appeal did not request a Stay of Judgment. The Appellate Court dismissed the appeal as moot since the Appellant had completed all his sentencing requirements before the Court had the opportunity to decide the appeal. Dismissed.

* * *

This matter comes before the Southwest Intertribal Court of Appeals (SWITCA) from the Southern Ute Tribal Court, and arises out of Appellant's Notice of Appeal.

The Southern Ute Tribal Court held an adjudicatory hearing/trial on January 13, 2010 concerning the minor David Boyd. The Court issued its Findings of Facts and Juvenile Delinquency on January 28, 2010 finding that the minor committed several delinquent acts. On February 3, 2010, the Court held a dispositional hearing and issued an Order sentencing the minor to one hundred eighty (180) days of jail and probation for one year. Thereafter, the minor's mother filed a Notice of Appeal on February 17, 2010 stating several alleged errors made by the trial judge. No motion for stay of judgment was included in the notice of appeal, as required by SUIT Appellate Code § 3-1-104.

Since a stay of judgment was not requested by the Appellant, a stay was not issued postponing the minor's jail term, pending the outcome of an appeal. SWITCA received a copy of the Order Closing Juvenile Case, dated January 6, 2011, and an Order Terminating Probation, dated December 17, 2010, from the Southern Ute Tribal Court pertaining to minor David Boyd, showing that the minor successfully completed all sentencing requirements.

Since this matter is closed and the minor has completed all of his sentencing requirements before this Court had the opportunity to decide the appeal, it is insignificant for this Court to opine on this matter now. Therefore this Court finds that this case is moot and will not be considered by the Court.

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

IT IS SO ORDERED.

December 27, 2011