In the Southwest Intertribal Court of Appeals for Ohkay Owingeh Tribal Court

GINA CHAVARRIA,

Defendant-Appellant,

v.

OHKAY OWINGEH,

Plaintiff-Appellee.

SWITCA No. 12-004-OOTC
Tribal Case Nos. CR-11-081; CV-10-0532

Appeal filed July 2, 2013

Appeal from the Ohkay Owingeh Tribal Court
Geoffrey Tager, Tribal Court Judge

Appellate Judge: Anthony Lee

OPINION AND ORDER DISMISSING APPEAL

SUMMARY

Appeal dismissed for lack of jurisdiction because the tribe's court of appeals was the proper forum and had jurisdiction pursuant to ordinance that enacted tribe's Rules of Appellate Procedure.

* * *

This matter comes before the Southwest Intertribal Court of Appeals ("SWITCA") from the Ohkay Owingeh Tribal Court. Appellant filed a Notice of Appeal on February 23, 2012, however, this Court is without jurisdiction to hear the appeal and this matter must be dismissed.

SWITCA is a court of limited jurisdiction. SWITCARA #2(a) (2001). "Jurisdiction is granted expressly by participating pueblo and tribal governments in resolutions and protocols on file with each respective government and the Southwest Intertribal Court of Appeals." SWITCARA #2(a) (2001). Furthermore, SWITCA only hears cases based on the authority granted by an applicable pueblo or tribal constitution, legislative authority, or resolution. SWITCARA #3(a) (2001).

While SWITCA was previously authorized to hear Ohkay Owingeh appeals pursuant to Tribal Council Resolution No. 90-98, the Tribal Council adopted Ordinance No. 2007-02 entitled "Amending the San Juan Pueblo Law and Order Code to provide for appellate procedure," that changed SWITCA's authority. The updated Ohkay Owingeh Rules of Appellate Procedure is the relevant authority that sets forth the pueblo law relating to SWITCA.

Rule 2(a) of the Ohkay Owingeh Rules of Appellate Procedure requires appeals to be filed with the pueblo court of appeals. The court of appeals is composed of three members appointed by the tribal council, as defined in Section V(c) of the San Juan Pueblo Law and Order Code. Rule 2(b) of the Ohkay Owingeh Rules of Appellate Procedure states, "If authorized by the tribal council, all other appeals may be taken to a regional inter-tribal court of appeals administered by the American Indian Law Center in Albuquerque, New Mexico, or other organization." This rule obviously describes SWITCA.

These two sections show a distinction between the pueblo's court of appeals and SWITCA. The Rule's separation of these two courts into different subsections indicates that SWITCA is not the pueblo's court of appeals. SWITCA is only authorized to hear Ohkay Owingeh appeals if it is authorized by the Tribal Council.

Since SWITCA has not received any official pueblo authorization to hear this appeal, this Court is without jurisdiction to consider this matter.

ACCORDINGLY, THIS APPEAL IS HEREBY DISMISSED.

It is so ORDERED.

January 13, 2015

In the Southwest Intertribal Court of Appeals for San Felipe Pueblo Tribal Court

SAN FELIPE PUEBLO GAMING ENTERPRISE d/b/a SAN FELIPE CASINO HOLLYWOOD,

Plaintiff-Appellant,

v.

NIMS, CALVANI & ASSOCIATES, P.A., NCA ARCHITECTS, P.A. and ROBERT M. CALVANI and KLEINFELDER, INC., KLEINFELDER WEST, INC. and KLEINFELDER NEW MEXICO 100, LLC,

Defendants-Appellees.

SWITCA No. 15-001-SFTC
Tribal Court Case No. CV-11-0072

Appeal filed February 6, 2015

Appeal from the San Felipe Pueblo Tribal Court
Mekko Miller, Tribal Court Judge

Appellate Judge: Anthony Lee

ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION

SUMMARY

Appeal dismissed for lack of jurisdiction due to appellant's failure to timely file appeal of court order within fifteen days as required by tribal court judge's standing order specifying that Southwest Intertribal Court of Appeals was to hear and decide appeals pursuant to its Rules of Appellate Procedure.

* * *

This matter comes before the Southwest Intertribal Court of Appeals ("SWITCA") from the San Felipe Tribal Court. The Plaintiff, the San Felipe Gaming Enterprise d/b/a/ San Felipe Casino Hollywood ("Enterprise") filed a Notice of Appeal on February 5, 2015. The Defendants, Kleinfelder, Inc., Kleinfelder West, Inc., and Kleinfelder New Mexico 100, LLC (collectively "Kleinfelder") filed a Jurisdictional Challenge of the Southwest Intertribal Court of Appeals on February 17, 2015, citing Rules 11(c), 11(k) and 12(b) of the SWITCA Rules of Appellate Procedure. The Enterprise thereafter filed its Response on February 25, 2015. Kleinfelder filed its Reply on March 12, 2015.

After a review of the briefs filed in this matter and applicable law, this Court finds that it is without jurisdiction to hear this appeal. The Enterprise had fifteen (15) days to appeal the Tribal Court Order Compelling Arbitration and to Stay Tribal Court Proceedings dated October 3, 2014, and failed to timely file an appeal. See SWITCARA #11(a) (2001). This Court is without jurisdiction to hear an appeal filed after fifteen (15) days and must dismiss this appeal. SWITCARA #11(c) (2001).

This Court finds that San Felipe Tribal Council Resolution No. 11-98 ("Resolution") approved by the San Felipe Tribal Council on September 29, 2011 properly delegated SWITCA as the appellate court for the Pueblo. The Resolution affirmatively stated that "all appeals from a final judgment of the Court shall be heard and decided by the Southwest Intertribal Court of Appeals pursuant to that Court's rules." This simple delegation suffices. SWITCA provides a sample resolution for tribes to consider, but the sample format is just a suggestion and by no means a requirement. In addition, contrary to what the Enterprise asserts, the physical filing of a properly adopted Tribal Council Resolution with SWITCA is not a pre-requisite to SWITCA jurisdiction.

The Resolution also stated that "[i]n any matter sounding in tort or contract delegated pursuant to this Resolution" a standing order would be provided for each case that would set forth the governing law for the litigation. The governing law for each case was not subject to change, and if it was, notice should have been given to the parties. The parties in this case both received a Standing Order stating that "[t]his matter came before the Court for review and clarification pursuant to Pueblo of San Felipe Tribal Court Resolution No. 11-98." In the Standing Order, signed by Judge Reina, the Tribal Court found that all appeals shall be heard and decided by SWITCA, pursuant to SWITCA rules.

Pursuant to the Resolution, the delegation of judicial authority to Judge Reina to act as the Pueblo's Court Administrator/Judge Pro Tem expired when she left office, which was on or around July 18, 2014. But it is the opinion of this Court that the delegation of SWITCA as the appellate court continued. It would be unfair to rule otherwise.

When this matter was initially brought before the Tribal Court, a Standing Order was issued. The matter was properly delegated at the time of the filing of the complaint and the Standing Order set forth the law to be applied for the entire litigation. SWITCA was authorized to hear any appeal to the litigation. The delegation was case-specific and the parties should be able to rely on this authority throughout the entire litigation, including the appeal.

The Enterprise initially expressed some reliance on this, as it asked the Tribal Court to extend the time line for it to file an appeal. Then, it incorrectly asserted that the Resolution was not a proper delegation to SWITCA. The San Felipe Tribal Council passed a Resolution on November 12, 2014 authorizing SWITCA to hear appeals from the Tribal Court. Then the Enterprise filed a Motion to Withdraw, Vacate and Re-enter Order Compelling Arbitration for the primary purpose of allowing it to file a timely appeal with SWITCA. On January 27, 2015, the Tribal Court entered its Order Withdrawing, Vacating and Re-entering Order Compelling Arbitration and to Stay Tribal Court Proceedings, finding that Pueblo of San Felipe had not adopted SWITCA to hear appeals from the trial court.

Since this Court finds that there was a proper delegation of this case to SWITCA to hear appeals utilizing SWITCA rules, the basis for the Tribal Court's Order was incorrect, therefore the January 27, 2015 Order was improper. Since the basis for this Order was incorrect, this Court will not consider arguments made on whether the Tribal Court can issue this type of order. The Enterprise should have filed its appeal within fifteen (15) days of the October 3, 2014 Order, and since it did not, SWITCA is without jurisdiction to hear this matter. See SWITCARA #11(c) (2001).

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

It is so ORDERED.

March 23, 2015

VIRGINIA BOOQUA
AND RICKEY BOOQUA,

Petitioners-Appellants,

v.

VERILYNN McCRAY LATEYICE
AND GARY VINTON LATEYICE,

Respondents-Appellees,

and concerning,

M.L., G.L., JR., P.L.,
Minor Children.

SWITCA No. 15-003-ZTC
Tribal Case No. MG-2012-0002

Appeal filed November 19, 2012
Notice of Cross-Appeal filed on November 21, 2012

Appeal from the Zuni Children's Court
John Chapela, Tribal Court Judge

Appellate Judge: Jonathan Tsosie

ORDER DISMISSING APPEAL

SUMMARY

Appeal dismissed because the parties voluntarily withdrew their notices of appeal.

* * *

THIS COURT is in receipt of two motions in this matter, both of which request this Court to allow the voluntary withdrawal of the underlying notices of appeal. On August 17, 2015, Gary Vinton Lateyice, Sr. submitted to this Court a "Motion to Withdraw Appeal" in which he states that the Gallup District Court has resolved the underlying issue in his favor. On August 18, 2015, Petitioners-Appellants submitted to this Court "Appellant's Notice of Withdrawal," which states that "Appellant has mitigated her appeal and no longer wishes to pursue her appeal." These motions are well-taken and the above-entitled matter is hereby DISMISSED.

ACCORDINGLY, THIS APPEAL IS HEREBY DISMISSED.

It is so ORDERED.

August 25, 2015

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

VERONICA HERRERA,

Respondent-Appellant,

v.

STEVEN HERRERA, SR.,

Petitioner-Appellee.

SWITCA Case No. 14-002-SUTC
SUTC Case No. 14-DV-06

Appeal filed July 22, 2014

Appeal from the Southern Ute Tribal Court
Elaine Newton, Judge

Appellate Judge: Jonathan Tsosie

OPINION AND ORDER

SUMMARY

In appeal from permanent order in dissolution of marriage proceeding, appellate court found that trial court (1) abused and exceeded its jurisdiction with three-year alimony award to wife, and (2) abused its discretion in holding wife entirely responsible for her own attorney fees. Therefore, appellate court vacated trial court's Addendum to Dissolution and remanded case to trial court for a decision ordering ten years of alimony and specific equitable apportionment of attorney fees.

***

THIS MATTER is an appeal from permanent orders issued by the Southern Ute Tribal Court in a dissolution of marriage proceeding. The Southwest Intertribal Court of Appeals ("SWITCA") has jurisdiction over this matter pursuant to Southern Ute Indian Tribe Resolution No. 90-86 (July 24, 1990). Pursuant to section 3-1-102(3) of the Southern Ute Tribal Code, this type of appeal is discretionary, and this Court accepted this appeal on March 13, 2015.

For the reasons below, this Court VACATES the Southern Ute Tribal Court's award of spousal maintenance and attorney fees and REMANDS this matter for decision consistent with this opinion.

I.

The parties were married for over twenty-eight years and raised two children to majority. During the marriage, Wife, who is a non-tribal member, primarily stayed at home as the homemaker, working for only a few years of the marriage. Throughout the marriage, Wife suffered a host of recurring medical issues that have not been resolved. Wife acquired some bookkeeping skills during the marriage but does not have a college degree.

Husband, a tribal member, was the primary earner who worked throughout the marriage, and he earned a substantial salary when he became an Executive Officer of the Southern Ute Tribe in 2011. At the time of the permanent orders hearing at issue, however, Husband was unemployed, seeking employment, but had been offered a position with a comfortable salary.

While employed as an Executive Officer for the tribe, Husband filed the underlying petition for dissolution of marriage on January 17, 2014. Two months later, on March 18, 2014, Wife filed a "Motion for Disqualification of Judge," alleging prejudice and the appearance of impropriety due to the fact that the Executive Office of the tribe oversees and compensates the tribal judiciary. Wife cited the Southern Ute Tribal Code ("SUTC"), non-tribal case law, and the American Bar Association's Code of Judicial Conduct ("ABA CJC"), which has been explicitly adopted by the tribal code.

Upon receiving the motion for disqualification, the presiding judge, the Honorable Elaine Newton, turned the motion over to the Chief Judge of the Southern Ute Tribal Court, the Honorable Chantel Cloud, to decide in accordance with the SUTC.

That same day, Chief Judge Cloud denied the motion for disqualification without a hearing. Chief Judge Cloud acknowledged the existence of the tribal code's provisions for disqualification of a presiding judge, but denied Wife's motion because: (i) "the Southern Ute Indian Tribe is a sovereign nation and follows its own laws and rules for court cases, and will look to other law where the Tribal Code may be silent."; (ii) Husband did not directly supervise Judge Newton; (iii) Judge Newton was only "a pro-tem judge, hired under contract through the Court," a position not subject to Executive Office oversight; (iv) "the Court would have the burden of finding a Judge who does not work for the Tribe to hear this matter"; and (v) each party had legal representation, thereby reducing the likelihood of judicial bias. Judge Newton thus remained the presiding judge.

The next hearing of consequence was the permanent orders hearing of July 7, 2014. To open that hearing, Judge Newton introduced herself as a judge who used to be the Chief Judge of the Southern Ute Tribal Court for twenty-three years, until 2011. Judge Newton also stated at the outset that she would not award five thousand dollars per month in permanent maintenance, as requested by Wife. Judge Newton then granted the parties' proposed

stipulation as to division of the marital property, which had been prepared prior to the hearing. As the parties had not been able to agree on spousal maintenance or attorney fees, the court then heard extensive testimony from both sides regarding their marriage.

By the time of the hearing, it had been established that Husband, as an Executive Officer of the tribe, had an income of approximately $160,000.00 in 2012, and approximately $170,000.00 in 2013. Husband had worked consistently throughout the marriage. On the date of the hearing, however, Husband was no longer an Executive Officer of the tribe due to the election of a new administration. Husband was unemployed, but he had been actively seeking employment and had been offered a six-figure job pending a background check that he expected to pass. Even though unemployed, Husband still received his monthly tribal per capita benefits, and he was collecting unemployment benefits as well. Husband was no longer living in the marital home and was living in a rental until Wife was expected to vacate that marital home. Husband testified that an award to Wife of five years of maintenance, at a lesser amount than five thousand dollars per month, would be fair.

Wife, on the other hand, was not working and had not been employed for approximately a decade. Wife had been financially dependent on Husband ever since she married him at the age of sixteen. Wife was the primary caretaker of the marital home throughout the marriage. She raised their two children and took care of several foster children as well. The only college that Wife had completed consisted of two accounting classes at San Juan College and one semester at Fort Lewis College. Wife did not hold a college degree. While Wife testified that her unemployment during the marriage was mutually agreeable to both parties due to Husband's consistent salary and tribal benefits, she also testified to a litany of ongoing medical issues that she has suffered throughout their marriage that have affected all aspects of her life.

Wife has undergone fourteen abdominal surgeries since the age of nineteen, the most recent of which had been in 2011, and she required yet another surgery to repair a failing medical mesh that was inserted in her abdomen. Each surgery has entailed extensive recovery, and she has spent considerable time in the hospital. She suffers from constant abdominal pain. She has limited use of one hand due to a tumor that was found in that hand. She suffered a broken toe and broken foot that limit her ability to stand for long periods of time. She also suffers from depression, anxiety, and a severe sleep disorder. She requires medication for all of the above, as well as constant medical supervision. She would have to find a way to pay for her medications and treatment after the dissolution of the marriage.

During the permanent orders hearing, Wife also testified that she had been appointed as the legal guardian to an injured four month-old baby as a result of either a child neglect or child endangerment proceeding arising out of a car accident. The mother of the baby, who is Husband's niece, was also living with Wife in the marital home at the time. To provide for the baby, Wife received Women, Infants, and Children (W.I.C.) benefits and clothing donations from Social Services.

Husband acknowledged that Wife suffers from a host of longstanding and ongoing physical and psychological ailments, but Husband also believes that Wife is intelligent and could work after further education and the acquirement of more skills.

Moreover, Husband testified that money was never an issue during their marriage. They took several vacations together and did not have to worry about their finances. Though Husband was not living in the marital home at the time of the hearing and was paying rent and utility bills, he expected to move back into the marital home after Wife vacated it, after which he would not be responsible for a mortgage or rent.

Judge Newton then issued her findings and rulings in an "Addendum to Dissolution" in which she made seven numbered findings, the entirety of which are as follows:

> 1) After establishing jurisdiction, the Court entered a decree of dissolution of marriage, pursuant to the wishes of the parties. The parties further agreed to a settlement concerning the division of marital property. [Attorney for Husband] shall submit a stipulated proposed order for the Court's signature.
>
> 2) The parties could not agree on alimony and attorney fees.
>
> 3) The Court finds that Respondent Veronica Herrera has numerous medical and psychological disorders. Respondent Veronica Herrera has never been declared disabled nor submitted any evidence as to being disabled and not being able to work.
>
> 4) The Respondent Veronica Herrera testified that she is taking care of a four month old baby through a placement of the Social Service Department, even though Respondent Veronica Herrera claims to be disabled. The mother of the child is also residing with her.

> 5) The Respondent Veronica Herrera is requesting alimony in the amount of approximately $5000.00 for life.
>
> 6) The Respondent paid several transactions to World Venture in the months from March 2014 through June 2014. No testimony was received as to what World Venture is, but seems to be some sort of travel program. Respondent did testify that she pays for her sisters [sic] payments because they have no checking account, then later said she also pays for herself and her dad.
>
> 7) The Court also finds that the attorney fees are substantial for to [sic] each party.

Judge Newton then concluded: "After considering the Southern Ute Tribal Code, Section 7-1-115, the Court orders that alimony is granted to Respondent Veronica Herrera in the amount of $2500.00 a month for three years commencing July 2014. The Court is also ordering that each party will be responsible for their own attorney fees."

Wife timely filed a Notice of Appeal. In accepting this appeal, this Court ordered Wife to brief the issues of whether the Southern Ute Tribal Court had exceeded its jurisdiction when it refused to disqualify Judge Newton on March 18, 2014, and whether the Southern Ute Tribal Court had exceeded its jurisdiction when it awarded Wife spousal maintenance for three years and ordered her to pay her own attorney fees.

Because the issues of spousal maintenance and attorney fees are more clearly defined in the relevant statutes and case law than the comparatively nebulous standards as to when a judge should be disqualified, this Court finds that this matter may be decided on whether the trial court judge abused its discretion with respect to its orders for spousal maintenance and attorney fees.

The issues of spousal maintenance and attorney fees are customarily left to the sound discretion of a trial court, and will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Yates*, 148 P.3d 304, 313 (Colo. App. 2006); *In re Marriage of Rodrick*, 176 P.3d 806, 815-16 (Colo. App. 2007).

II.

This Court notes that of the seven findings in the Addendum to Dissolution, four of them, as numbered by Judge Newton, simply acknowledge: 1) the stipulated division of marital property; 2) the existence of the disagreement between the parties as to alimony and attorney fees; 5) the amount Wife is requesting; and 7) that the attorney fees for both parties are "substantial." Though Judge Newton wrote that she considered SUTC § 7-1-115, the alimony statute, it is glaringly obvious from a review of the entire record that she did not duly weigh nor apply the factors of SUTC § 7-1-115 in the remaining three findings.

With respect to alimony, the SUTC provides:

> "A court will order alimony only if it finds that the party seeking alimony lacks sufficient property to provide for his reasonable means and is unable to support himself through appropriate employment or when circumstances make it appropriate for the custodian of a child not to be required to seek employment outside the home. The amount of alimony will depend on the following factors:
>
> (a) The time necessary for the person seeking alimony to acquire sufficient education or training to be self-supporting;
>
> (b) The standard of living established during the marriage;
>
> (c) The duration of the marriage;
>
> (d) The age and physical and emotional condition of the spouse seeking alimony; and
>
> (e) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking alimony." SUTC § 7-1-115.

With respect to the factors (a) through (e) of SUTC § 7-1-115, Husband argues that "the Trial Court is not required to make findings on every factor as long as there is support in the record." Response Brief, 13. In support of this assertion, Husband then cites the following language from *In re Marriage of Yates*, 148 P.3d 304 (Colo. App. 2006): "The court need not make explicit findings regarding the criteria for eligibility of maintenance." Id. at 313. Husband, however, has misread that case.

Yates interprets Section 14-10-114 of the Colorado Revised Statutes, which is nearly identical to SUTC § 7-1-115 with respect to the factors that a judge is required to consider after determining a spouse is eligible for maintenance. In *Yates*, the Colorado Court of Appeals stated:

> Before awarding maintenance, the court must determine that the spouse seeking maintenance lacks sufficient property, and is unable to support

> himself or herself through appropriate employment. Section 14-10-114(3), C.R.S. 2005. *After making the required threshold findings*, the court may order that maintenance be paid in such amounts and for such periods as the court deems just after considering all relevant factors, including the financial resources of the party seeking maintenance, that party's future earning capacity, the standard of living established during the marriage, the duration of the marriage, the age and physical and emotional condition of the spouse seeking maintenance, and the ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance. Section 14-10-114(4), C.R.S. 2005. *Yates*, 148 P.3d at 312-13 (emphasis added).

Thus, just like SUTC § 7-1-115, which states that "A court will order alimony only if it finds that the party seeking alimony lacks sufficient property to provide for his reasonable means and is unable to support himself through appropriate employment," the Colorado statute requires a court to first determine, as a threshold finding, whether a party is eligible for maintenance in the first place. Only then may a court consider the factors that are present in both statutes. It is the eligibility for maintenance in the first instance to which Husband's cited language applies. It does not apply to the factors to be considered after eligibility for maintenance has been affirmatively determined.

It is worth noting from *Yates* that in light of a twenty-year marriage and a historical disparity in income between the spouses, *Yates* upheld an award of permanent alimony to the wife, even though she had achieved some degree of "current financial success." *Yates*, 148 P.3d at 311. The Colorado Court of Appeals further held, "We reject husband's suggestion that wife should not have been awarded maintenance because she received a substantial amount of property. A spouse is not required to deplete his or her share of the marital estate in order to qualify for maintenance." Id.

Even though Husband, here, has misread *Yates*, Husband is correct in that as long as there is support in the record as to due consideration of the enumerated factors of SUTC § 7-1-115, the trial court's orders should not be disturbed. This Court, however, can find no instance in either the Addendum to Dissolution or in the permanent orders hearing where Judge Newton considered (i) the standard of living established during the marriage; (ii) the duration of the marriage; or (iii) the ability of Husband to meet his needs while meeting those of the spouse seeking alimony. As for the factor of the time necessary for a spouse seeking alimony to acquire sufficient education or training to be self-supporting, Wife's brief argues that "[t]his appears to be the only factor truly considered by the Tribal Court[.]" Opening Brief, 10. This characterization, however, may be overly generous, as the trial court ignored Husband's proposal and testimony in which he made it clear that he thought it would take up to five years for Wife to acquire sufficient education or training to be self-supporting. Similarly, with respect to factor (e) of SUTC § 7-1-115, Judge Newton ignored Husband's proposal and testimony that he was willing and able to provide alimony for five years, during which period he would be able to meet his needs while meeting those of Wife. Judge Newton instead imposed an alimony award of only three years.

The only factor ostensibly considered by Judge Newton in the Addendum to Dissolution was the physical and emotional condition of Wife (while failing to mention Wife's age, which is also mentioned in the SUTC). Judge Newton wrote in finding #3, "The Court finds that Respondent Veronica Herrera has numerous medical and psychological disorders. Respondent Veronica Herrera has never been declared disabled nor submitted any evidence as to being disabled and not being able to work."

This finding is logically unsound and a misapplication of the law. First of all, SUTC § 7-1-115 does not require one to be formally declared disabled, and this is an improper standard to require of anyone seeking alimony. SUTC § 7-1-115(d) also does not conflate one's physical and emotional condition with one's ability to work. In fact, such a conflation is impossible according to the very letter of the law, which, again, contains the threshold eligibility requirement that "A court will order alimony *only if it finds that the party seeking alimony* lacks sufficient property to provide for his reasonable means and *is unable to support himself through appropriate employment*." SUTC § 7-1-115 (emphasis added). Thus if Wife has met the threshold requirement for alimony--and she certainly does--then by definition she is unable to support herself through appropriate employment.

Put another way, a judge cannot find, as Judge Newton did, that a spouse is unable to support herself through appropriate employment and therefore deserves alimony, only to conclude that because the spouse has not been declared disabled, she is impliedly able to work.

Moreover, Judge Newton specifically found that Wife "has *numerous* medical and psychological *disorders*," which, in plain language, acknowledge a degree of severity that is then immediately dismissed in the next sentence (emphasis added). Given the array of Wife's medical and psychological issues, the record does not reflect that SUTC § 7-1-115(d) was properly considered.

Equally puzzling is Judge Newton's finding #4, in which she wrote: "Respondent Veronica Herrera testified that she is taking care of a four month old baby through a placement of the Social Service Department, even though Respondent Veronica Herrera claims to be disabled. The mother of the child is also residing with her." The purpose of this finding is not clear. According to Wife's testimony, this arrangement was the result of an emergency child neglect or child endangerment proceeding. Wife also testified that to provide for the baby, Wife receives assistance from W.I.C. and Social Services. If this finding was meant to imply that Wife is capable of working, then it is improper for the same reason as finding #3, because in order to be eligible for alimony in the first place, a spouse must first be deemed unable to support herself through appropriate employment. If anything, caring for a four month-old baby would seem to increase one's need for maintenance.

Similarly, Judge Newton's finding #6 regarding Wife's payments to World Ventures is also confusing. Not only was there "[n]o testimony" by either party as to what World Ventures is, but there is no mention as to how much Wife paid to World Ventures or why. Moreover, payments to World Ventures were made by Wife for all of four months. Relative to a marriage of over twenty-eight years that has, for the purposes of alimony and attorney fees, been effectively reduced to three findings (as the other four findings were simply procedural), pointing out four months of unexplained and unclear spending makes little sense in light of the ultimate result.

Because, in the record before this Court, Judge Newton did not consider the enumerated factors of SUTC 7-1-115, and because her findings of her Addendum to Dissolution are scant and illogical, this Court must conclude that the trial court abused and exceeded its jurisdiction by awarding alimony to Wife for only three years. Wife deserves maintenance for a substantially longer period of time. This Court can find no instance in any jurisdiction where a spouse was awarded such a small amount after such a long marriage in which there existed such great economic disparity and so many medical issues.

III.

With respect to attorney fees, the statute at issue is an equitable one:

> The court, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost of the other party's maintaining or defending any proceeding under this title (Title 7) and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. If both parties are earning approximately equally, then neither party shall be required to pay the attorney's fees of the other. SUTC § 7-1-127.

Husband urges this Court to leave Judge Newton's order in place. Husband cites In re Marriage of Rodrick, 176 P.3d 806 (Colo. App. 2007), for the proposition that "The trial court has broad discretion in awarding attorney fees under [Colorado Revised Statutes] § 14-10-119, and absent an abuse of discretion, the court's award will not be disturbed on appeal." Id. at 815-16. Husband also points out that according to the plain language of SUTC § 7-1-127, the award of attorney fees is discretionary. Because Husband was unemployed at the time of the permanent orders hearing, Husband contends that both parties were "earning approximately equally," and therefore "neither party shall be required to pay the attorney's fees of the other."

Husband's brief also asserts that "the evidence at trial established that Appellant was given nearly $5,000.00 for attorney's fees. In addition, Appellant forged a check off of Appellee's account in the amount of $1,800.00. … Finally, Appellant was awarded $8,390.48 from Appellee's remaining $13,687.49, leaving Appellee only $5,297.01 from which to pay his attorney's fees." Response Brief, 14 (internal citations to the record omitted). Husband further alleges that Wife had squandered her attorney resources by being overly litigious and uncooperative.

Wife, on the other hand, contends that the trial judge did not properly consider the financial resources of both parties, and that Wife's income was only about twelve percent of Husband's income when Husband was employed as an Executive Officer of the tribe. Wife argues that while Husband was able to pay his attorney fees out of marital funds, she was unable to do so because he had emptied out all the money from their joint bank account. As for the nearly five thousand dollars that Husband claimed to have given Wife and the allegedly forged check, Wife submitted a sworn affidavit and testified at the hearing that she never received such an amount, nor had she forged any check. Wife also argues that even though Husband was unemployed at the time of the hearing, he was still receiving monthly tribal benefits of approximately $60,000.00 gross per year, which was true, and therefore they were not "earning approximately equally" for the purposes of the attorney fees statute.

Moreover, Wife submitted at least three motions for the award of attorney fees during the course of these proceedings, in which she consistently cited the large and historical disparity of income between the parties, as well as Wife's lack of employment and costly medical

expenses, but the trial court refused to consider her request by choosing to reserve judgment until the permanent orders hearing.

Contrary to Husband's assertions as to what "the evidence established at trial," this Court cannot find any instance in the record where the trial court resolved the dispute about the five thousand dollars in cash that Husband claimed to have left in an envelope on Wife's bed. Nor can this Court find anywhere in the record a judicial decision as to whether Wife forged a check or not. Wife submitted a sworn affidavit denying these allegations, and there was conflicting testimony about them during the permanent orders hearing. Notably, Husband leaves out the fact that he was able to recover most of the amount of the allegedly forged check. This Court thus takes issue with Husband's characterizations of what "the evidence at trial established."

Throughout these entire proceedings, the sole reference to any kind of judicial consideration of attorney fees occurs in the very last finding of Judge Newton's Addendum to Dissolution, as the trial court refused to consider the issue until the permanent orders hearing. Finding #7 simply states, "The Court also finds that the attorney fees are substantial for [sic] to each party." And in contrast to Judge Newton's terse and unsupported statement that she considered SUTC § 7-1-115, the alimony statute, Judge Newton did not make any reference to the attorney fees statute, SUTC § 7-1-127.

Thus it is apparent that the issue of attorney fees was given cursory, throwaway treatment by the trial court, which never gave any indication at all that it had even considered the financial resources of both parties, as required by the tribal code. Given the vast economic disparity between Wife and Husband, Wife's "numerous medical and psychological disorders" and their associated expenses, Husband's expectation to soon earn another six-figure salary while still receiving tribal distributions during his unemployment, and Wife's complete financial dependence on Husband, it is shocking that the trial court's sole finding with respect to attorney fees was that such fees for both parties were "substantial."

Though Husband asserts that *In re Marriage of Rodrick* compels this Court to leave the trial court's attorney fees order undisturbed, *Rodrick* further recognizes that "Section 14-10-119 permits the court to apportion attorney fees and costs based upon the relative economic circumstances of the parties in order to equalize their status and to ensure that neither party suffers undue economic hardship as a result of the proceedings." *Rodrick*, 176 P.3d at 815 (citing *In re Marriage of Aldrich*, 945 P.2d 1370, 1377 (Colo. 1997).

Because the trial court made no discernible effort to consider the truly enormous economic disparities as to the parties' respective financial resources, even when specifically asked to do so by Wife who invoked SUTC § 7-1-127 in no fewer than three reasoned motions to the trial court, this Court must therefore find that the trial court abused its discretion in holding Wife entirely responsible for her own attorney fees.

If Wife's income amounted to twelve percent of Husband's income when he was an Executive Officer of the tribe, then Wife's income would comprise 10.71% of the total combined income of both parties at that time. Wife's income, too, consisted entirely of temporary maintenance from Husband pending the permanent orders hearing. In the interests of justice and equity, this Court hereby orders that Wife shall pay 10.71% of the amount of her attorney fees in this matter, and Husband shall pay the remaining 89.29% of Wife's attorney fees.

IV.

In conclusion, this Court finds that the Southern Ute Tribal Court abused its discretion in its award of spousal maintenance and attorney fees. This Court has not considered the issue of whether the tribal court abused its discretion when it refused to disqualify Judge Newton, but it is concerned with the facts that Chief Judge Cloud issued her ruling without a hearing, ignored that Judge Newton was the Chief Judge for twenty-three years, and cited tribal sovereignty "where the tribal code may be silent" when the SUTC itself requires judges to abide by the ABA's Code of Judicial Conduct.

In light of the above, this Court is not convinced that Wife would receive a fair trial if all of the above issues were to be considered *de novo* on remand. Therefore, this Court orders that Wife shall be awarded spousal maintenance in the amount of $2,500.00 for no fewer than ten years, and that Husband shall pay 89.29% of Wife's attorney fees, which are to be determined and supported by affidavit.

The lower court's Addendum to Dissolution is therefore VACATED, and this matter, with respect to spousal maintenance and attorney fees, is REMANDED for a decision consistent with this opinion.

It is SO ORDERED.

August 27, 2015

In the Southwest Intertribal Court of Appeals for Zuni Tribal Court

ANASTASIA WALEMA,

Petitioner-Appellant,

v.

ARMOND WAIKANIWA,

Respondent-Appellee.

SWITCA Case No. 15-007-ZTC
ZTC Case No. PO-2013-0017

Appeal filed December 20, 2013

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

Appellate Judges: Jonathan Tsosie,
Anthony Lee and Jeanette Wolfley

ORDER DISMISSING APPEAL

SUMMARY

Appellant filed a motion to dismiss appeal. Granted and dismissed.

* * *

THIS COURT is in receipt of a "Motion for Dismissal" and an "Affidavit" in this matter, both from Petitioner-Appellant, that together move this Court to dismiss Petitioner-Appellant's appeal.

The motion and affidavit are well-taken, and the above-entitled matter is hereby DISMISSED.

It is so ORDERED.

October 20, 2015

VANROSS ROMANCITO,

Defendant-Appellant,

v.

PUEBLO OF ZUNI,

Plaintiff-Appellee.

SWITCA Case No. 15-004-ZTC
ZTC Cause No. CR-2013-1021

Appeal filed August 27, 2013

Appeal from the Zuni Tribal Court
John Chapela, Chief Judge

Appellate Judges: Jonathan Tsosie,
Anthony Lee and Jeanette Wolfley

ORDER DISMISSING APPEAL

SUMMARY

Appeal dismissed due to Appellant's failure to file a brief in accordance with Appellate Court's order.

* * *

THIS MATTER was accepted for appeal by this Court's Order of September 9, 2015, which ordered Defendant-Appellant to file an opening brief within thirty days of receiving notice of that Order. Over two months have passed and no brief has been filed. Therefore, pursuant to this Court's inherent powers to manage its business, this matter is hereby DISMISSED.

Pursuant to SWITCARA #22(a), Defendant-Appellant may file a motion to reconsider this dismissal of appeal within fifteen days of service of this Order.

It is so ORDERED.

November 12, 2015

In the Southwest Intertribal Court of Appeals for Zuni Tribal Court

RUSSELL SHACK,

Defendant-Appellant,

v.

PUEBLO OF ZUNI,

Plaintiff-Appellee.

SWITCA Case No. 15-005-ZTC
ZTC Cause No. CR-2013-1820

Appeal filed August 27, 2013

Appeal from the Zuni Tribal Court
John Chapela, Chief Judge

Appellate Judges: Jonathan Tsosie,
Anthony Lee and Jeanette Wolfley

ORDER DISMISSING APPEAL

SUMMARY

Appeal dismissed due to Appellant's failure to file a brief in accordance with Appellate Court's order.

* * *

THIS MATTER was accepted for appeal by this Court's Order of September 9, 2015, which ordered Defendant-Appellant to file an opening brief within thirty days of receiving notice of that Order. Over two months have passed and no brief has been filed. Therefore, pursuant to this Court's inherent powers to manage its business, this matter is hereby DISMISSED.

Pursuant to SWITCARA #22(a), Defendant-Appellant may file a motion to reconsider this dismissal of appeal within fifteen days of service of this Order.

It is so ORDERED.

November 12, 2015

WAYNE JOHNSON, JR.,

Defendant-Appellant,

v.

PUEBLO OF ZUNI,

Plaintiff-Appellee.

SWITCA Case No. 15-006-ZTC
ZTC Cause No. CR-2013-3170

Appeal filed November 22, 2013

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

Appellate Judges: Jonathan Tsosie,
Anthony Lee and Jeanette Wolfley

ORDER DISMISSING APPEAL

SUMMARY

Appeal dismissed due to Appellant's failure to file a brief in accordance with Appellate Court's order.

* * *

THIS MATTER was accepted for appeal by this Court's Order of September 9, 2015, which ordered Defendant-Appellant to file an opening brief within thirty days of receiving notice of that Order. Over two months have passed and no brief has been filed. Therefore, pursuant to this Court's inherent powers to manage its business, this matter is hereby DISMISSED.

Pursuant to SWITCARA #22(a), Defendant-Appellant may file a motion to reconsider this dismissal of appeal within fifteen days of service of this Order.

It is so ORDERED.

November 12, 2015

In the Southwest Intertribal Court of Appeals for Zuni Tribal Court

PETER YATSATIE,

Defendant-Appellant,

v.

PUEBLO OF ZUNI,

Plaintiff-Appellee.

SWITCA Case No. 15-008-ZTC
ZTC Cause Nos. CR-2014-2365/2366

Appeal filed March 20, 2014

Appeal from the Zuni Tribal Court
John Chapela, Chief Judge

Appellate Judges: Jonathan Tsosie
Anthony Lee, Jeanette Wolfley

ORDER DISMISSING APPEAL

SUMMARY

Appeal dismissed due to Appellant's failure to file a brief in accordance with Appellate Court's order.

* * *

THIS MATTER was accepted for appeal by this Court's Order of September 9, 2015, which ordered Defendant-Appellant to file an opening brief within thirty days of receiving notice of that Order. Over two months have passed and no brief has been filed. Therefore, pursuant to this Court's inherent powers to manage its business, this matter is hereby DISMISSED.

Pursuant to SWITCARA #22(a), Defendant-Appellant may file a motion to reconsider this dismissal of appeal within fifteen days of service of this Order.

It is so ORDERED.

November 12, 2015

QUENTIN LALIO,

Defendant-Appellant,

v.

PUEBLO OF ZUNI,

Plaintiff-Appellee.

SWITCA Case No. 15-025-ZTC
ZTC Case No. CR-2012-2624

Appeal filed November 20, 2012

Appeal filed in the Southwest Intertribal Court of Appeals on November 9, 2015

Appeal from the Zuni Tribal Court
John Chapela, Chief Judge

Appellate Judges: Jonathan Tsosie,
Anthony Lee and Jeanette Wolfley

ORDER DENYING APPEAL

Notice of appeal denied because Southwest Intertribal Court of Appeals has no jurisdiction to hear appeals that would decide pending motions in the tribal court. Tribal court's final decisions may be appealed to SWITCA. Purported final decision of Zuni Court of Appeals that was rendered almost four months after that court was abolished was a nullity that should not be considered by the tribal court.

* * *

On April 29, 2015, the Zuni Tribal Council enacted Resolution No. M70-2015-P042, which was entitled "Resolution to Reinstate SWITCA and to adopt the SWITCA Rules of Appellate Procedure." This Resolution immediately abolished the Zuni Court of Appeals and the Zuni Rules of Appellate Procedure. The Resolution simultaneously granted appellate jurisdiction to the Southwest Intertribal Court of Appeals ("SWITCA") over all appeals originating from the Zuni Tribal Court and the Zuni Children's Court.

As of April 29, 2015, there were several pending appeals in the Zuni Court of Appeals, some of which were first filed as early as 2012 and had never been resolved. The intent of Resolution M70-2015-P042 was to transfer all such pending appeals to this Court for resolution.

For unknown reasons, the underlying convictions in this matter were purportedly affirmed by the Zuni Court of Appeals in a "Final Decision and Order" issued on

September 9, 2015 - over four months after the Zuni Court of Appeals was unquestionably abolished by Resolution No. M70-2015-P042.

The Zuni Tribal Court then ordered Defendant-Appellant (hereinafter "Appellant") "to show cause as to the Final Decision and Order," which was presumably to be a sentencing hearing. Appellant argued to the Zuni Tribal Court in a motion to dismiss that the "Final Decision and Order" was issued by a non-existent court that had no jurisdiction to decide his appeal. The Zuni Tribal Court then ordered the lay prosecutor to respond to Appellant's argument within twenty days. The lay prosecutor's response agreed with Appellant and acknowledged that Appellant's due process rights under both the Zuni Constitution and the Indian Civil Rights Act had been severely violated by a defunct court that had no jurisdiction to affirm the Zuni Tribal Court's initial judgment. Appellant, however, never received notice of the lay prosecutor's response.

Rather than deciding the issue upon receiving the lay prosecutor's response, the Zuni Tribal Court forwarded the entire record to this Court. Appellant then submitted another motion to dismiss to the Zuni Tribal Court, which the Zuni Tribal Court also did not decide.

It is clear that the September 9, 2015, "Final Decision and Order" by a defunct Zuni Court of Appeals is invalid and of no effect. It follows that the "Final Decision and Order" cannot be a valid basis for affirming the Zuni Tribal Court's initial judgment in this matter. Any decision or order issued after April 29, 2015, by a "Zuni Court of Appeals" is a nullity and should not be considered by the Zuni Tribal Court.

It is also clear that all motions that have been filed since the invalid "Final Decision and Order" have been filed with the Zuni Tribal Court, and that the Zuni Tribal Court has not rendered a final decision on these motions. As a court of appeal, this Court may only hear appeals from final decisions. This Court therefore has no jurisdiction to decide the outstanding motions pending in the Zuni Tribal Court.

Moreover, it is clear that the lay prosecutor has acknowledged that the entire matter should be dismissed and that all underlying convictions should be vacated due to egregious violations of Appellant's due process rights.

Because the only notice of appeal that was properly filed in this matter was filed on November 20, 2012 to the Zuni Court of Appeals, this Court is limited at this time to deciding whether to deny or accept that notice of appeal. In the interest of justice and in light of all the unusual and invalid proceedings described above, as well as the lay prosecutor's willingness to dismiss this matter and vacate the underlying convictions, this Court hereby DENIES Defendant-Appellant's notice of appeal so that the Zuni Tribal Court may render a final decision. If necessary, Defendant-Appellant may then appeal the Zuni Tribal Court's decision to this Court.

It is so ORDERED.

December 22, 2015