

tomorrow. However, that doesn't justify cutting corners when it comes to issuing search warrants that are not properly obtained and used in violation of a person's right to privacy and to be secure in his or her home.

#### DECISION

The evidence gathered by law enforcement under a warrant and submitted at Julie Swan's trial was not lawfully obtained. Appellant's conviction is VACATED and this matter is remanded to the court for proper action consistent with this Order.

It is SO ORDERED.

Gilbert LUCERO and Karen CONDON, Appellants,

vs.

ERB CORP, *et al.*, Appellees.

Case No. AP07-015, 5 CTCR 08

**9 CCAR 31**

[Appellants appeared pro se.

R. John Sloan Jr. appeared for Appellees.

Trial Court Case No. CV-OC-2006-26368]

Before Chief Justice Anita Dupris, Justice Gary Bass and Justice Conrad Pascal

Decided on November 15, 2007.

Dupris, C.J., for the Panel

This matter came before the Court of Appeals on a Notice of Appeal filed by Gilbert Lucero and Karen Condon, Appellants, against Erb Corporation, *et.al*, Appellees. Appellants are *pro se*; Appellees are represented by R. John Sloan, attorney and spokesman. Appellees have filed a Motion to Dismiss the Appeal based on the fact that Appellants have not perfected their appeal. After a review of the record and law, we

find as a matter of law, Appellants have failed to perfect their appeal and this matter should be dismissed. We base our decision on the reasoning below.

### DISCUSSION

The Court of Appeals is charged with the constitutional duty to interpret and enforce the laws of the Tribes. (Constitution of the Colville Reservation, Article VIII, Section 1, (hereinafter Constitution)). We do not write the statutory laws which, as relevant to this case, provide for appellate review of the trial court cases. This is the responsibility of the Colville Tribal Business Council (CBC). (Constitution, Article V)

CTC §1-1-283 requirements for filing an appeal are: (1) the appeal must be filed within ten (10) days of the entry of the judgment; (2) the appellant must post bond or otherwise give assurance that the payment of the judgment will be satisfied if the appellant does not prevail on the appeal; and (3) all other requirements of the statutes or Court Rules are met.

Additional requirements found in Court of Appeals Court Rules (COACR), Rule 6, include: (1) the judgment appealed from must be a final judgment; (2) the ten days do not include the day the judgment was entered, nor intervening weekends and holidays; and (3) “in all civil actions, the Appellant must attach an Order Setting or Waiving Bond from the Trial Court...”

COACR 6 concludes with section (e): “An appeal is perfected when all of the applicable elements of this rule are met.” Appellants were provided the Court of Appeals’ Court Rules with their appeals packet. The form “Notice of Appeal” states the requirement that Appellant has filed an Order Setting or Waiving Bond. It is the form Appellants used to file their appeal herein.

We have made exceptions to our procedural rules only in instances where *pro se* parties have failed to file briefs, (*Covington-Garry v. Sanchez*, 5 CCAR 20 (1999) (we may review a case for serious error even if the *pro se* appellants have failed to file a brief); *Gallaher v. Foster*, 6 CCAR 48 (2002) (This Court may make exceptions to procedural rules when the issues presented are of such a serious nature that [we] should reach a

decision in spite of the procedural flaws.”). In these cases, the appeals had already been perfected under the statutory laws and our Court Rules.

We have not made such an exception on procedural flaws which prevent the perfection of the appeal. On the contrary, we have consistently dismissed cases for lack of perfection. *See, Carden v. CCT*, 4 CCAR 47, 2 CTCR 40 (1997) (appeal not timely filed); *Peasley v. Holt*, 1 CCAR 28, 1 CTCR 40 (1989) (appeal dismissed because it was not timely filed); *Fry v. Fry*, 6 CCAR 16, 3 CTCR 43 (2002) (appeal dismissed because no bond or waiver of bond order provided by Appellant); *Justice v. CCT*, 5 CCAR 52, 3 CTCR 38 (2001) (appeal dismissed for lack of final order); and *Gallaher, et. al., v. CCT*, 1 CCAR 24, 1 CTCR 32 (1988) (appeal dismissed because it was not timely filed).

In this case, Appellants have not given us any legal authorities which create an exception to the statutory and procedural rules regarding perfection of an appeal. Ms. Condon filed a written response to Appellee’s Motion to Dismiss first arguing she did not receive the written motion. There is proof in the official file that service was made.

She also argues that she did not have the legal wherewithal to understand what she needed to do for perfecting an appeal, and asks for an exception to the procedural requirements. The procedural requirements flow from the statutory laws. The procedural rules do not change what is required by law. There is nothing in the trial record showing serious due process flaws that would warrant our Court to create a new exception to the procedural rules regarding perfection of an appeal. It will have to be an exceptionally blatant violation of due process for us to even consider it.

According to the trial record, Appellants failed to appear at the hearing in which a Default Judgment was granted against them because Ms. Condon chose to travel as a Councilwoman to off-reservation meetings, taking Mr. Lucero with her, instead of attending her scheduled court hearings. This argument does not support a finding of an exceptionally blatant violation of due process.

The facts herein, and the law, support a finding to grant Appellee’s Motion to Dismiss this Appeal in that Appellants have failed to perfect the Appeal as required by

law.

IT IS SO ORDERED.

This matter is dismissed, and the case is REMANDED to the Trial Court for further actions consistent with this Order.

Colville Tribal Credit, Appellant,

vs.

Mathew E. Pakootas and Lisa L. Ortiz, Appellees.

Case No. AP07-002, 5 CTCR 09, 35 ILR 6017

**9 CCAR 34**

[Appearances by David D. Shaw, Attorney for Appellant Colville Tribal Credit; Appellee Matthew E. PAKOOTAS, pro se; and Tim Liesenfelder for Appellee Lisa L. Ortiz.

Trial Court Case No. CV-CD-2005-25018]

Decided on the briefs, January 8, 2008.

Before Presiding Justice Theresa M. Pouley, Justice Dennis L. Nelson, and Justice Conrad Pascal.

Nelson, J., for the Panel.

#### I. SUMMARY

On February 1, 1999, the marital community of appellees Matthew E. Pakootas and Lisa L. Ortiz (formerly Lisa L. Pakootas) executed a promissory note in favor of Colville Tribal Credit (CTC) in the amount of \$2868.20. In accordance with the provisions of the note, Mr. and Mrs. Pakootas were each jointly and severally liable for the debt.