and decided in the first action". *Kelly-Hansen v. Kelly-Hansen*, 87 Wash. App. 320, 328, 941 P.2d 1108.

Matthew Pakootas effectively relitigated the issue whether he was jointly or severally liable for the debt owed CTC[38] when he asked the trial court to find Lisa Ortiz solely liable. The issue of whether Matthew Pakootas owed CTC on the debt was "actually contested and decided in the first action"[39]. The trial court should have addressed the question of judicial preclusion and should have dismissed the claim on those grounds.

3. Whether the trial court erred to the extent it found Colville Tribal Credit unhindered in its ability to collect on Liza Ortiz's per capita payments.

Because of the reasoning set forth above, it is not necessary to decide this issue .

For the foregoing reasons, the judgment of the trial court is REVERSED and the matter REMANDED for proceedings consistent with this opinion.

James H. GALLAHER Jr., Appellant,

vs.

Cheryl D. SCHROCK, COLVILLE INDIAN HOUSING AUTHORITY, Appellees,

Case No. AP07-020, 5 CTCR 10

9 CCAR 39

[Appellant is pro se.
Appellees represented by Edmund Clay Goodman, Attorney, Portland OR.
Trial Court Case No. CV-OC-2007-27006]

Decided on the record, January 29, 2008.

Before Chief Justice Anita Dupris, Justice Earl L. McGeoghegan and Justice Theresa

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[38] *Pakootas v. Louie*, CV-OC-2005-25018 (2005).

[39] *Colville Tribal Credit v. Pakootas and Ortiz*, CV-CD-2001-21151.

M. Pouley.

Dupris, CJ

INTRODUCTION

This matter came before the Panel upon a review of the Notice of Appeal and Motions filed herein by the parties. After conferring on the pleadings filed, and based on the reasoning below, we find (1) the Appeal is timely filed, given the facts in this case; and (2) the issues raised by Appellant are not ripe for appeal at this time in that the Trial Court has not made substantive rulings on the issues yet.

PROCEDURAL HISTORY

The relevant procedural history in this case is:

At the trial level Appellant filed the following pleadings, on the respective dates: (1) a Civil Complaint and Request for Preliminary Injunction on January 11, 2007 against Cheryl D. Schrock and Colville Indian Housing Authority (hereinafter Appellee), along with a request for a hearing on the Injunction; (2) a change of address from Spokane to Seattle on February 5, 2007; (3) a Response to Appellee's Motion to Dismiss on February 22, 2007; (4) a Reply to Appellee's Revised Report agreeing that jurisdiction needed to be decided and a new court date given, filed on May 5, 2007; (5) a Request for Clarification on Status of Case, filed on June 12, 2007, which specifically states he notified the Court verbally on May 21, 2007 of his new address, and noted his new address again, in writing. He asked for the Order Dismissing his case so he could file his appeal; and (6) another written request for a copy of the Court's order dismissing his case, filed November 26, 2007.

At the trial level Appellee filed the following pleadings, on the respective dates: (1) an Answer and Defenses, in opposition to the injunction, and a Motion to Dismiss based on a failure to state a claim, all on February 1, 2007; and (2) a Revised Report on

Status of Case (correcting file number), asking for a new hearing date of either May 8, 2007 or May 16, 2007, filed May 3, 2007.

Although there is no "paper trail" to show how the Court dates were set, nor how the parties were notified of the Court dates, it appears the Court first set a status hearing on May 9, 2007, and then continued it to May 16, 2007. Appellant did not appear for the May 16, 2007 hearing. In his uncontroverted affidavit filed with this Court on January 8, 2008 Appellant states he was not allowed telephone privileges in the Seattle prison facility on May 16, 2007 because he was scheduled to be transferred to the Spokane County jail on May 18, 2007. He called the Tribal Court soon thereafter, on May 21, 2007.

An in-court record of the hearing on May 16, 2007 indicates the Trial Court Judge orally granted Appellee's Motion to Dismiss on that date. Appellee's attorney presented the Final Order and Judgment, which the Judge signed on June 15, 2007. The Trial Court record does not show that Appellant's notice of change of address, first verbally on May 21, 2007, then in writing on June 12, 2007, were noted in the Court's official records, nor does it indicate why.

Appellant finally received a copy of the Final Order and Judgment which dismissed his case when it was mailed on November 27, 2007. He filed a Notice of Appeal on December 5, 2007, within ten (10) days of the official actions of the Court to send him his Order. Upon review of the record, pleadings, and law, we find that, under the circumstances of this case, the Appeal is timely filed. We find further, based on the reasoning below, that the matter should be dismissed and remanded to the Trial Court for further actions.

ISSUE 1: WAS THE NOTICE OF APPEAL TIMELY FILED?

Appellee states the rule correctly: "A party shall initiate an appeal by filing a written Notice of Appeal (NOA) within ten (10) days from the entry of the final judgment, sentence, or disposition order." COACR 6. The rules further state: "For

purposes of filing an appeal with the [Court of Appeals], 'final' orders and decisions... are the written orders of decisions issued by the Trial or Administrative Court that disposes of the substantive issues and not the oral bench orders entered in the matter to be appealed." COACR 5(b). The issue raised by the facts herein is, when does the ten (10) days start when the Trial Court has failed to provide a party with a written order in a timely fashion?

We do not agree with Appellee that it is not the Court's duty to ensure Appellant gets his copy of the Order. The mistakes of the Trial Court in this instance go beyond harmless error. The Trial Court was informed by Appellant of his address change in a timely fashion; first he verbally gave the Clerk's Office the information on May 21, 2007, then he sent it in writing on June 12, 2007, at least three (3) days before the final order was signed by the Judge and six (6) days before it was sent out. He cannot be expected to act more diligently than he did. It is the Court's responsibility to make sure information is filed correctly and duly noted; this was not done. We could not have accepted an appeal from Appellant without a copy of the written order. *See*, COACR 5(b), *Leaf v. CIHA*, 6 CCAR 53, 3 CTCR 51 (2002). Appellant's constructive notice of an oral order dismissing the case on May 21, 2007 is not sufficient to proceed with an appeal.

The June 15, 2007 Final Order and Judgment was sent to Appellant's Seattle address, even though the Trial Court had two notices, one verbal and one in writing, to send it elsewhere. It is not Appellant's responsibility to question how long it takes for order to issue. It is not uncommon for orders to take a while to be sent out. To deny the Appeal because of the Trial Court's error would deny Appellant due process. We are not revising the time frame required; we are recognizing that due process mandates Appellant be given adequate time after receiving order under the facts of this case, and, therefore, find the Appeal was timely filed. We so hold.

ISSUE 2: ARE THE ISSUES IN THIS CASE RIPE FOR AN APPEAL?

We find they are not ripe for appeal. Appellant asks us to rule on substantive issues not yet ruled on by the Trial Court. That is: (1) another trial judge other than Judge Fry should be assigned to the case; (2) Appellee has violated Appellant's equal protection rights; and (3) the parties should be required to conduct settlement discussions; or, in the alternative, (4) Appellees are in technical default for putting the wrong trial case number on its pleadings, and, therefore, Appellant's complaint should be granted; (5) facts exist to require the case to go forward to a jury trial; and (6) Appellee has violated Appellant's rights to equal protection, and Appellant should be given a home, damages, and injunctive relief. These issues are not properly before the Court of Appeals at this juncture of the case.

The Trial Court has only made a ruling that Appellant failed to prosecute his case because he failed to appear on May 16, 2007. ("Based on Plaintiff's failure to appear or to make any arrangements to appear, the Court determined that Defendant's motion to dismiss be granted." Final Order and Judgment, signed by Judge Elizabeth Fry, dated June 15, 2007, and filed the same date.) This would be the only issue before us. The facts supporting this ruling are scant, and the Trial Court has not had an opportunity to hear Appellant's arguments why he does not feel he failed to prosecute the case. The undue length of time between the time of the ruling and the time Appellant has raised his arguments is attributable to Trial Court error. If Appellant had received the Order in a timely fashion he could have made the appropriate motions to the Trial Court, *eg.* to set aside the Order; to recuse the Judge; to request discovery, and other requests he prematurely makes to this Court.

For these reasons, we find the matter not ripe for appeal and dismiss the appeal. We remand to the Trial Court and direct the parties to make appropriate motions at the Trial Court level on the issues raised herein. The time between the entry of the Order and the time of remand shall not be considered when assessing timeliness of the motions filed because of the Trial Court's error in sending the final order to Appellant.

IT IS SO ORDERED.