

not raise an appealable issue. We so hold.

ORDER

Based on the foregoing we hereby DENY the Appeal and REMAND to the Trial Court for the appropriate actions.

The Initial Hearing for February 16, 2007 at 11:00 a.m. in Courthouse II, Agency Campus, Nespelem, Washington will be stricken from the docket.

COLVILLE TRIBAL CREDIT, Appellant,

vs.

Eldon WILSON, Appellee.

Case No. AP05-017, 5 CTCR 03

9 CCAR 09

[Dave Shaw for Appellant.
Eldon Wilson pro se.
Trial Court Case No. CV-CD-2003-23270]

Argued July 21, 2006. Decided April 2, 2007.
Before Justice Gary Bass, Presiding; Justice Dennis Nelson; and Justice Conrad Pascal

SUMMARY

Judgment was entered in favor of Appellant Colville Tribal Credit against Appellee Eldon Wilson on November 3, 2003 for an amount certain. The Trial Court issued an order on September 2, 2005, granting Appellee's post-judgment motion, ordering Appellant to reimburse certain per capita payments. The Trial Court did not establish the burden of proof on the motion, and did not place the burden of proof on Appellee as the moving party. Appellant timely appealed. The Appeals Court bifurcated the appeal, and one of the issues argued was whether the Trial Court had failed to establish the burden of proof on Appellee's post-judgment motion, and had failed to place the burden of proof on Appellee. This opinion is based on that issue alone, and the other issues on appeal are not dealt with in this opinion.

ISSUE

Did the Trial Court err when it failed to establish a burden of proof and failed to place that burden on Appellee?

DISCUSSION

The Trial Court's order of September 2, 2005 is treated by this Court as a summary judgment motion, as that is what it most closely resembles. Therefore our standard of review is *de novo*, and we review the evidence and law as if we were the Trial Court making its own independent judgment. *Stone v. Colville Business Council*, AP98-009, 5 CCAR 16 (1999).

The burden of proof on a motion such as Appellee's is on the person making the motion, in this case the Appellee¹⁰. The burden of proof will be with the party asserting the truth of a proposition. "The general and elementary rule is that, as between two such parties, the burden of proof rests upon him who asserts the existence of facts, and not upon him who denies their existence. The former and not the latter, must finally satisfy the trier of truth of the facts asserted." *Fishel v. Motta*, 76 Conn. 197, 56 A. 558 (1903). The Trial Court did not establish a burden of proof which the Court must do. Appellee as the moving party had the burden of proof, and the Trial Court failed to place that burden on Appellee.

We REVERSE the Trial Court's order of September 2, 2005, and remand for a new hearing on the motion of Appellee to require Appellant to reimburse per capita payments. It is SO ORDERED.

Randy ZACHERLE, Appellant,

vs.

COLVILLE CONFEDERATED TRIBES, Appellee.

Case No. AP06-006, 5 CTCR 04

9 CCAR 10

[Steve Graham, Law Office of Steve Graham, for Appellant.

Jonnie Bray, Office of Prosecuting Attorney, for Appellee.

¹⁰ The moving party bears the burden of establishing sufficient grounds for disturbing the finality of the decree, and relief should be granted only in exceptional circumstances. *Follman v. Upper Valley Special Education Unit*, 200 ND 72, citing to *First National Bank of Crosby v. Bjorgen*, 389 N.W.2d 789, 794, 796 (N.D. 1986).