

Shawn L. DESAUTEL, Appellant,  
vs.  
COLVILLE BUSINESS COUNCIL, Appellee.  
Case No. AP06-009, 5 CTCR 5, 34 ILR 6057  
**9 CCAR 15**

[No hearing. On filings only.  
Trial Court Case No. CV-OC-2005-25353]

Decided May 15, 2007.

Before Chief Justice Anita Dupris, Justice David C. Bonga and Justice Dennis L. Nelson

PROCEDURAL HISTORY

On December 13, 2006 this Court of Appeals affirmed the Trial Court's decision to dismiss the underlying action herein found in Tribal Court Case Number CV-OC-2005-25353. Appellant requested the Trial Court to retroactively reopen and recognize his 1965 application for enrollment filed by his parents with the Colville Tribal Enrollment Department. Although Appellant debated at both the Trial Court and Court of Appeals levels whether this action was characterized as an "enrollment" action, it is plain the action began under the Colville Tribes' (Tribes) Enrollment Code, Title 8, Chapter 8-1. Subsequently, The Court of Appeals entered a Memorandum Opinion Affirming the Trial Court. Appellant then filed a Motion to Reconsider.

On February 27, 2007 we denied Appellant's Motion to Reconsider. On March 27, 2007 Appellee filed a Motion for Court Costs; Attorney Fees; and Judgment. Appellee asks for \$13,480.83 in costs and fees to be assessed against Appellant based on CTC §8-1-207. Both parties have filed memos of authority on the issue. After a review of the applicable law, the arguments of both parties, and for reasons stated below, we deny this request.

DISCUSSION

CTC, Title 8, Chapter 8-1 sets out specific procedures and guidelines for processing enrollment appeals. An appellant who disagrees with the decision of the

Tribes' Enrollment Committee<sup>16</sup> makes an appeal to the Trial Court. The appeal is limited to persons to whom one of the following three (3) situations apply: (1) when a person has applied for and been denied enrollment by the Enrollment Committee; (2) when a person has been disenrolled by the Enrollment Committee; and (3) when there is a "finding of no substantial new evidence to open an enrollment has been made." No appeals are allowed for decisions regarding adoptions. CTC §8-1-200. There is a one (1) year statute of limitations on the filing of an appeal under this Chapter. CTC §8-1-202.

Unless otherwise specified in Chapter 8-1, the general rules for civil actions apply to appeals under this chapter. *Id.* The Trial Court is to "strictly construe" the provisions of Chapter 8-1. CTC §8-1-206. When a party prevails at the Trial Court level, attorneys fees and court costs are allowed in certain circumstances.<sup>17</sup> CTC §8-1-207.

CTC Chapter 8-1 refers to appeals filed in the "Tribal Court" from decisions made by the Enrollment Committee. By giving strict construction to the statute, we find that the section mandating the award of attorney's fees and court costs does not apply to this Court, the Court of Appeals. CTC §8-1-207 refers to the "Court." "Court" is defined to mean the "Tribal Court." CTC §8-1-30(h). The Constitution of the Colville Tribes, Article VIII, establishes a separate judicial branch of the government. It refers to the "Tribal Court" and the "Court of Appeals" as separate courts.<sup>18</sup>

Appeals from the Trial Court (referred to as "Tribal Court") are made to the

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<sup>16</sup>. The Enrollment Committee is comprised of members of the Colville Business Council (CBC), and is a standing committee of the CBC.

<sup>17</sup>. "Court Costs, Attorney Fees. If the Court rules against an appellant in any appeal under this Chapter, the appellant shall pay all court costs and the reasonable attorneys fees of the Tribes expended in defending against the appeal. If the Court rules for an appellee [*sic*] in any appeal under this section, each party shall bear his or her own expenses - unless there is a finding that the Tribes acted in bad faith in disenrolling or refusing to enroll."

It appears the word "appellee" above was a scrivener's error, and should say "appellant." Otherwise, it contradicts the first sentence which says the appellant is liable if he loses. To read it as stated, the second sentence then says the parties bear their own expenses if the appellee wins, which would be the case if the appellant lost.

<sup>18</sup>. "Article VIII – Judiciary Section – Separate Branch of the Government: There shall be established by the Business Council of the Confederated Tribes of the Colville Reservation a separate branch of government consisting of the Colville Tribal Court of Appeals , the Colville Tribal Court, and such additional Courts as the Business Council may determine appropriate... ."

Sections 2 and 3 set out the specific make-up of each the Court of Appeals and Tribal Court, respectively.

Court of Appeals under the general appeals sections of the statutes. *See* CTC §§ 1-1-180 to 1-1-290. There are no provisions within these sections that provide for mandatory awards of attorney's fees nor court costs. The Court of Appeals Court Rules do provide for awarding court costs, but such awards are not mandatory. *See* COACR 20.<sup>19</sup> Any decisions we make for an award of fees and costs are discretionary.

We have awarded attorney's fees twice in two separate enrollment cases<sup>20</sup> dealing with blood corrections under CTC § 8-1-249, which specifically provides for an award of attorney's fees and court costs.<sup>21</sup> This case is not an action brought under the "blood correction" portions of the statute. It was brought under the allegations in the Petition that "substantial new evidence" existed to open the enrollment application Appellant's parents filed in 1965.

For these reasons we assess whether the interests of justice support an award of fees and costs for the reasons stated for requesting fees and costs by Appellee. There is no question this case has been trying on both parties. It is hard to defend an appeal filed by a *pro se* appellant and it is hard for the *pro se* appellant to decipher all the various laws and rules used by the judicial system.

We look at the overall effect of assessing fees and costs in cases such as these: Appellee, the Tribes, is represented by an attorney at all times. Appellants are not always represented by a legally trained spokesperson. Membership issues and rights are fundamental to each tribal member. To award fees and costs against every appellant who makes it difficult to process a case just because the appellant is *pro se* could have a chilling effect on future actions. In this case, balancing the reasons Appellee has stated it

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<sup>19</sup>. COSTS. COURT COSTS OF APPEAL: The Court of Appeals may impose such costs as the interests of justice dictate, which may include, but are not limited to, the actual costs of convening the Court of Appeals, mileage and similar costs. When considering the imposition of costs, the Court of Appeals shall consider the nature of the claim, the finances of the parties, and any other potential hardship such costs may impose on the litigants.

<sup>20</sup>. *Desautel, Descendants of...*, 4 CCAR 67, 3 CTCR 17, 26 ILR 6039 (10/26/1998); *Hoffman v. CCT*, 4 CCAR 4, 2 CTCR 37, 24 ILR 6163 (05-05-1997).

<sup>21</sup>. Appeals: Any party to an action to change a blood degree may appeal the judgement of the trial court pursuant to the Colville Tribal Code rules for civil appeals.... The prevailing party in an appeal of a judgment in a change of blood degree action shall be awarded costs of appeal and reasonable fees for representation.

wants to be awarded fees<sup>22</sup> and costs against the right of the *pro se* Appellant to seek review of the Trial Court's dismissal of his claim, the interests of justice dictate we should not award fees and costs herein. We so hold.

Based on the foregoing

It is ORDERED that Appellee's Motion for Attorney's fees and costs is hereby DENIED.

Landon RODRIGUEZ, Appellant,

vs.

COLVILLE CONFEDERATED TRIBES, Appellee.

Case No. AP06-010, 5 CTCR 06

**9 CCAR 19**

[Mike Larsen, Office of Public Defender, for Appellant;  
Joe Caldwell and Joni Bray, Office of Prosecuting Attorney, for Appellee.  
Trial Court Case Number CR-2005-28175]

Decided August 28, 2007.

Before Chief Justice Anita Dupris, Associate Justice Edythe Chenois and Associate Justice Theresa M. Pouley

DUPRIS, CJ

### **Procedural History**

On July 5, 2005 the Tribes filed a criminal complaint against Appellant charging

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<sup>22</sup>. Appellee seeks a judgment for fees and costs in the amount of \$13,480.83 (for which it has not submitted invoices to support the amount to date), stating it asks for fees and costs based, at least in part it appears, on Appellant's "vexatious and harassing behavior." (Appellee's Response to Appellant's Motion to Deny Appellee's Motion for Court Costs; Attorney Fees; and Judgment, April 11, 2007). Appellee goes on to describe instances in which it had to respond to the several, sometimes inconsistent trial strategies and arguments made by Appellant throughout the term of the case. Appellee's frustrations with the case are quite evident from its pleadings.