

unnecessary in light of the Court other rulings.

Appellee argues that sovereign immunity limits both the type of review and the remedies available if the Appellant prevails. The Court issues no ruling on this issue because it is unnecessary in light of its opinion affirming the Trial Court's decision.

It is therefore ORDERED that:

The decision of the trial court is AFFIRMED. This matter is remanded to the Trial Court for action consistent with this order.

Randy ZACHERLE, Appellant,

vs.

COLVILLE CONFEDERATED TRIBES, Appellee.

Case No. AP06-006, 4 CTCR 30, 33 ILR 6087

8 CCAR 70

[Tena Foster, Office of Public Defender, for Appellant.

Joni Bray, Office of Prosecuting Attorney, for Appellee.

Trial Court Case No. CR-2006-29043]

Initial Hearing held July 21, 2006. Decided July 31, 2006.

Before Justice Gary Bass, Presiding; Justice Dave Bonga; and Chief Justice Anita Dupris.

Dupris, CJ

SUMMARY

Final Judgment at the trial level was entered May 17, 2006. The Appeal herein was filed on May 31, 2006. The Appeal was filed within the time allowed by our Court Rules. The statutory definition of "Time" found at CTC §1-1-366 does not exclude weekends and holidays in counting ten (10) days or more. The Appellee, through its Spokesman, Joni Bray, Tribal Prosecutor's Office, filed a Motion to Dismiss the Appeal in our Court, arguing the statutory definition of "Time" superceded our Court Rules. She did not ask for a hearing on her Motion to Dismiss.

The Appellant filed a Motion to Stay Execution and for Bond at the trial level. Ms. Bray objected, offering her arguments regarding the constitutionality of the Court of Appeal's Court Rules (COACR) to the Trial Court, and asked the Trial Judge to deny because the Appeal was not "perfected" as being untimely filed. Chief Judge Aycock agreed with the Appellee and found cause to deny the stay of execution, holding that for the purpose of staying executions of judgment pursuant to CTC §1-1-285, the Court of Appeals' rules "are not Rules of Court. Appeals must be timely filed under CCT [*sic*] 1.1.283, not COACR 6(a)."

For reasons stated below, we find (1) the Court of Appeals' Court Rules do comply with the laws of the Tribes; (2) the Trial Court exceeded its jurisdiction in deciding whether or not the appeal was perfected; and (3) the Appeal is timely filed.

We reverse the Trial Court's holdings that our rules are invalid and remand to the Trial Court for a new hearing on the Stay of Execution and Bond consistent with our rulings.

ISSUES

- A. Are the Court of Appeals' Court Rules invalid as violating of the laws of the Tribes?
- B. Did the Trial Court exceed its jurisdiction in deciding the appeal was not perfected?

DISCUSSION

Chief Judge Aycock was asked to rule on whether the Appeal filed herein was "perfected," which is a prerequisite to mandatory stay of judgment in criminal cases. CTC §1-1-285.³⁷ He recognized that the question of whether an Appeal is perfected is a question for the Court of Appeals, and not the Trial Court. ("This Court and the Court of Appeals have both held that it is up to the Court of Appeals to determine if the appeal has been perfected....", Order Denying Stay, entered July 3, 2006 and signed July 7, 2006). It appears he felt compelled to answer the question anyway, which was pending before the Court of Appeals on the Tribes' Motion to Dismiss. He held:

"However, in this case, neither of the parties nor the Court of Appeals has filed anything from the Court of Appeals indicating that they have determined that this appeal has been perfected. However, no stay under CTC 1-1-285 is required unless the appeal is perfected.

³⁷. Unless otherwise provided by this Chapter, in any case where a party has perfected his right of appeal as established by this Code or by Rules of Court, a stay of execution of judgment shall be granted....(emphasis added).

Thus, this Court has no alternative than to determine if the appeal is perfected.” *Id.*

In his discussion of the applicability of the Court of Appeals’ Court Rules, Judge Aycock reviewed the following statutory laws: CTC §§ 1-1-142, Rules of Court, Procedures³⁸; 1-1-283³⁹, Notice of Appeal; 1-1-285⁴⁰, Stay of Execution; and 1-1-366, Definition of Time.⁴¹ He concluded, after reviewing these statutory provisions, as well as the Constitutional mandate that he “enforce and interpret” the laws of the Tribes and that the Court of Appeals’ Court Rules did not comply with the statutes of the Tribes.

A. Are the Court of Appeals’ Court Rules invalid as violating of the laws of the Tribes?

Based on the reasoning below, we hold the Court Rules comply with the laws of the Tribes, and as such are not invalid. We first looked at the history of the Court Rules. We started working on court rules in 1996, soon after our appointment under the new Constitutional Amendment X which established the courts as a separate branch of the government.

In 1998 we sent our draft of the Court of Appeals rules to, *inter alia*, each member of the Business Council as well as each member of the Colville Tribal Court Bar, giving them notice that these were the rules we wanted to adopt, and asked for comments.

We did not receive any comments from the Business Council, neither on the rules specifically nor the assertion that we were going to pass them as our Court Rules. For the next two years we worked on the rules. In May, 2003 we sent a copy of our final product to each judge, member of the Bar, and each Councilman, stating that unless there were further concerns or

³⁸. The time and place of court sessions, and all other details of judicial procedure not prescribed by the regulations of this Code shall be governed by Rules of Court promulgates as herein provided. It shall be duty of judges of the Court to make recommendations to the Council for enactment or amendment of such Rules of Court as they believe to be in the interests of improved judicial procedures. Rules of Court, enacted, or amended in the above manner, will be made part of this Code, but failure to so codify them shall not affect their validity. [emphasis added]

³⁹. Within ten (10) days from the entry of judgment, the aggrieved party may file with the Trial Court written notice of appeal, and upon giving proper assurance to the Court, through the posting of a bond or any other way that will satisfy the judgment if affirmed, shall have the right to appeal, provided the case to be appealed meets the requirements established by this Code or by Rules of Court. (emphasis added)

⁴⁰. Unless otherwise provided by this Chapter, in any case where a party has perfected his right of appeal as established by this Code or by Rules of Court, a stay of execution of judgment shall be granted....(emphasis added)

⁴¹ In computing any period of time prescribed under this Code, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which even the period of time prescribed runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

comments we would enact the Rules on June 15, 2003. The Court Rules were adopted under the Court of Appeals inherent and statutory authority to develop procedures for practice before it.

The Trial Court Judge stated he had a Constitutional duty to interpret the Code. We also have a Constitutional duty to enforce and interpret the laws. We interpreted the laws regarding rule-making and enacted our rules accordingly. We gave adequate notice to the Tribal Council and its attorneys, as well as the lower court and all practitioners.

The Code recognizes it is the Courts' duties to "to make recommendations to the Colville Business Council (CBC) for enactment or amendment of such Rules of Court as they believe to be in the interests of improved judicial procedures." (CTC §CTC 1-1-142). Further, the statute recognizes three areas in which it is within the province of the Courts to provide procedural rules: (1) time; (2) place; and (3) all other details of judicial procedure not prescribed by the regulations..." (*Id.*). "Failure of the CBC to codify the rules does not affect their validity." (*Id.*) (emphasis added).

This approach to enactment without action by the CBC appears to be modeled on the federal system of rule-making. In *U.S. v. Robinson*, 361 US 220 (1960) the Supreme Court discussed this method. It said:

Under the Act of June 29, 1940, 54 Stat. 688, as amended (now 18 U.S.C. 3771), this Court was authorized to prescribe Rules of Criminal Procedure to and including verdict, which would become effective upon passive acceptance by Congress. Under that Act and the previous authority (the Act of February 24, 1933, 47 Stat. 904 - now 18 U.S.C. 3772), and with the aid of an advisory committee, this Court promulgated the Federal Rules of Criminal Procedure. Rules 32 through 39 were made effective by order of the Court... (emphasis added).

Our statute also allows for "passive acceptance" by our Legislators. In 2003 the Council, its attorneys, the Reservation Attorneys Office, all the members of the Bar, and all of the Judges were given copies of the rules with the understanding that they would be adopted by this Court unless there were objections or further comments by any of those given notice. No one objected to our interpretation of the law based on CTC §1-1-142. Our rules are procedural in nature. It is an area long-recognized in jurisprudence to be within the responsibility of the judiciary.

Judge Aycock's reliance on CTC §1-1-366 [Definition Section] (Definition of "Time," adopted in 1982) is misplaced. The Constitutional Amendment separated the Courts from the Council and established a Judicial Branch of government. Some of the Code provisions pre-date this

Constitutional Amendment, and were written when the Courts were legislative courts. The laws must be interpreted to give more weight to the latter, more specific laws. We cannot find any authority which would give more weight to a general definition section than to this Court's ability to interpret laws as instructed under the Constitution.

There are many laws still in the Code which are now in conflict with what constitutional courts' powers and responsibilities are or should be. It is our duty to interpret them in light of all of the laws, and not give them the narrow reading given by the Trial Court. It is our responsibility to establish uniform procedural rules for all those who file cases in our Court. "Courts have both the inherent and statutory power to define the procedures to be used by judges, practitioners and the public to implement judicial jurisdiction. See, Weinstein, Rule-making by the Courts, The Improvement of the Administration of Justice 127-135 (Klein, ed., 6th ed. 1981)." *Reservation Service v. Albert*, No. SC-CV-05-94 (Navajo 03/16/1995).

The Code provides that we can define "perfection of appeal" by Rules of the Court (CTC §1-1-285); it provides we can establish the requirements for perfecting an appeal (CTC §1-1-283); it recognizes that "time" is procedural requirement we can address in a court rule (CTC §1-1-142). Our Court Rules are valid both under the written laws of the Tribes and within our inherent powers as a separate branch of the government.

B. Did the Trial Court exceed its jurisdiction in deciding the appeal was not perfected?

Based on the reasoning below, we hold the Trial Court did exceed its jurisdiction in deciding whether the Appeal had been perfected. The Trial Court has jurisdiction to decide the Stay of Execution and Bond. If the appellant has not proved to the Trial Judge the matter was perfected, the statute allows him to deny the stay of execution. It does not give him jurisdiction over the legal issue of perfection of appeal.

Final Judgment at the trial level was entered May 17, 2006. The Appeal herein was filed on May 31, 2006. The Appeal was filed within the time allowed by our Court Rules. The Trial Judge first found "This Court and the Court of Appeals have both held that it is up to the Court of Appeals to determine if the appeal has been perfected." (Order Denying Stay entered July 7, 2006, at p4). He recognizes his lack of jurisdiction on the issue of perfection of appeal. Then he creates his own Hobson's choice by stating: "However, in this case, neither of the parties nor the Court of Appeals has filed anything from the Court of Appeals indicating that they have determined that this appeal has been perfected....Thus, this Court has no alternative than to determine if the appeal is perfected."

(Id)

First, our Court Rule 6(e) states when the appeal is perfected: “An appeal is perfected when all of the applicable elements of this rule [6] are met.” The requirements include the 10-day after final judgment requirement; the information needed in the Notice of Appeal; and bond/waiver of bond when required by the Code. Both the Trial Court and the parties have a copy of these court rules, including Rule 6(e), which tells them when an appeal is perfected.

Ms. Bray, on behalf of the appellee, filed a Motion to Dismiss the Appeal in our Court but never asked for a hearing on the motion. We hold Court every third Friday of the month. Both parties have had notice that this case was on the July docket for an Initial Hearing. It is the practice of this Court to address any preliminary matters at the Initial Hearing that have not been dealt with before that date. Prior to the Initial Hearing Ms. Bray filed an objection to a stay of the judgment at the trial level and made the same arguments that our Court Rules did not apply regarding timeliness of filing, thereby negating a perfection of an appeal. In other words, it was a collateral attack on the issue pending before us.

The Trial Judge has jurisdiction to decide bond and stay of execution. He had constructive notice under Court of Appeals Court Rule 6 that, at a minimum, we have established a preliminary finding the appeal was perfected in that we opened the case and set it for an Initial Hearing. He should have declined on the question of perfection of appeal since the issue was already pending before us. If his concern was that the defendant/Appellant was a danger to the community, he had the authority to address this concern in setting bail or finding cause to deny bail.

Even if Chief Judge Aycock felt he had no alternative but to deny the stay because the Appellant failed to show him the appeal was perfected, he went too far in deciding whether our Rules were invalid. He overstepped his jurisdiction.

Based on the foregoing, we hold (1) the Court of Appeals’ Court Rules comply with the laws of the Tribes; (2) the Trial Court exceeded its jurisdiction in deciding whether or not the appeal was perfected; and (3) the Appeal is timely filed.

We REVERSE the Trial Court’s holdings that our rules are invalid and REMAND to the Trial Court for a new hearing on the Stay of Execution and Bond consistent with our rulings.

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