Big R estimated the Timentwa basement project to cost around $6,373.00. No payments for materials, labor etc. were paid by the Timentwas to Big R. Big R expended monies to purchase materials and equipment, and expenses could be attributed to labor costs to Big R for partial work on the project by employees of Big R. Some damages to the Timentwa's basement foundation was found by the Court to be caused by Big R but were not distinguished from the pre-existing condition of the basement. The Custom Building Services estimate of $42,370.00 included improvements that may not have been part of the original Big R project. The Court did not specify whether any inconvenience damages were awarded to the Timentwas. No off-set for materials and equipment provided by Big R or the labor value of the work accomplished by Big R was used by the Court in its judgment. Absent specific calculations for damages awarded by the Court below, this Court cannot determine whether the damages awarded are fair to the parties and that substantial justice is done. We hold that the judge erred in her calculations for damages awarded.

CONCLUSION

We grant the appeal and REMAND for re-consideration of the application of the automatic stay provisions of federal bankruptcy regulations to tribal court actions, and for specific calculations for a damage award to the Timentwas.

Shawn DESAUTEL, Appellant

vs.

COLVILLE BUSINESS COUNCIL, Appellee.

Case No. AP06-009, 4 CTCR 34, 34 Indian L. Rep. 6001

8 CCAR 95

[Appellant appeared *pro se.*
Appellee appeared through counsel, Juliana Repp, Spokane WA.
Trial Court Case No. CV-OC-2005-25353]

Decided December 13, 2006

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

Nelson, J.

Appeal of order denying application for enrollment. The denial was based on the trial court finding the appellant, an adopted tribal member, was not eligible for enrollment under the provisions of the Enrollment Code. We affirm.

INTRODUCTION

The appellant parent's attempted to enroll him as a member of the Confederated Tribes of the Colville Indian Reservation (Tribes) shortly after his birth in 1965. The application for enrollment was denied on the grounds that he had insufficient blood quantum; his father was seven sixteenths Colville and his mother was non-Indian. To be qualified for enrollment, an applicant must be one quarter Colville blood.

In 1999, cousins of the appellant were successful in obtaining a court order changing their blood quantum based upon a finding that their father's blood quantum was one half Colville rather than seven-sixteenths. The cousins' father is a full brother to the appellant's father. In 2000, the appellant applied for enrollment based upon the blood correction order of the cousins. The Tribes responded by adopting him into the Tribes. The appellant neither timely appealed or objected to being adopted into the Tribes rather than being enrolled.

In 2004, the appellant made several attempts to re-open his 1965 enrollment application. The Tribes ignored his request. Consequently, he filed an action with the Tribal Court alleging "substantial, credible, new evidence" mandated the application be re-opened and that he be enrolled as of 1965. The Trial Court dismissed the complaint on the grounds that he was not eligible for enrollment.

ISSUE ON APPEAL

Our Initial Order noted two issues for consideration on appeal: 1) whether the trial court's written order of July 31, 2006 comports with its oral order of June 6, 2006 and 2) whether a past, denied application for enrollment should be re-opened for a subsequently adopted Tribal member on the allegation that a blood correction of a family member, also made subsequent to the denied application, constitutes substantial new evidence.

The appellant did not address in his brief whether the trial court's written order comports with its earlier oral order. Accordingly, that issue is considered waived. COACR 13(e)(2), CCT v. Meusy , 2 CTCR 54, 24 ILR 6248, 4 CCAR 37 (1997).

STANDARD OF REVIEW

The remaining issue is a question of law. Questions of law are reviewed under the non-deferential standard, *de novo* standard. *CTC v. Naff*, 2 CCAR 50, 2 CTCR 08, 22 ILR 6032.

DISCUSSION

FACTS

The appellant was born August 5, 1965, to Edwin Rene DesAutel, an enrolled Colville member of seven sixteenths blood and Fern Mae Graybeal DesAutel, a non-Indian. An application for enrollment into the Tribes was submitted shortly after the appellant's birth. In order to be qualified for enrollment into the Tribes an applicant must possess one-quarter Colville blood. The parent's application for appellant's enrollment was denied on the grounds that he had insufficient blood quantum. The denial was not appealed.

In 1999, cousins of the appellant filed a blood correction action in Tribal Court.[56] The parties stipulated and the Court ordered that the blood quantum of the cousins be changed. The change was based on finding that Lawrence Victor DesAutel, full brother to appellant's father, was one half Colville rather than seven-sixteenths.

On July 15, 2000, the appellant filed an application for enrollment based upon the blood correction order in his cousins' favor. The Tribal Government Committee recommended the appellant be adopted into the Tribes with a blood quantum of one-quarter. The Business Council approved the recommendation and he was adopted into the Tribes on October 5, 2000. The Enrollment Office notified the appellant of his adoption on October 10, 2000. He did not appeal or object that he was adopted into the Tribes rather than enrolled as he requested.

Beginning March 25, 2004, the appellant initiated numerous inquiries to the Enrollment Office to re-open his 1965 enrollment application. The Enrollment Office did not respond to his inquiries.

Consequently, he filed a complaint[57] with Tribal Court in 2005 alleging the Tribes had failed to respond to his inquiries to re-open his 1965 application for enrollment and that the court order establishing the blood quantum of his uncle was "substantial, credible, new evidence" which mandated the application be re-opened.

[56] Sabrina V. DesAutel v. Confederated Tribes of the Colville Reservation, CV99-18146.
[57] DesAutel v. Colville Business Council, CV2005-25303

The Tribes generally denied the allegations and asserted the defense that the Court lacked jurisdiction to hear the matter. The case was dismissed without prejudice.

The appellant then filed a new action that was substantially the same as its predecessor but added the allegation that the Trial Court had jurisdiction over the subject matter. The Trial Court dismissed this action on the grounds that the appellant was not eligible for enrollment because 1) at the time of his birth his parents did not have a permanent residence on the reservation at the time of his birth and 2) the 2000 application was not made within six months of his birth.

The appellant timely filed this appeal to the dismissal of his complaint.

ARGUMENT

Blood correction of family member

The appellant contends the 2000 application should relate back to the 1965 application because of the "substantial, credible, new evidence" resulting from the court order issued in his cousins' blood correction action. Since the cousins' father is a full brother to the appellant's father, the appellant has taken the seemingly logical leap that his blood quantum should be automatically corrected by the Enrollment Office.

The blood correction of one family member on the official rolls , however, does not automatically result in the blood correction of another family member. See Pouley, et al. v. Colville Confederated Tribes, 2 CTCR39, 25 ILR 6024, 4 CCAR 38 (1997). Each blood correction must be initiated through Tribal Court in accordance with the provisions of CTC 8-1-240[58] and CTC 8-1-242[59].

As noted below, a blood correction of a family member could be "substantial, credible, new evidence" if used within the one year period following the denial of an enrollment application. The appellant's attempt to reopen his 1965 enrollment application on the grounds that his cousins' blood correction was "substantial, credible, new evidence" was untimely.

The 1965 enrollment application

The appellant contends there should not be two enrollment files - the application filed in

[58] CTC 8-1-240 **Blood Degree Corrections** **The following procedure shall be used in making corrections (increases or decreases) of all blood degrees presently listed on the roll of the Tribes. This procedure is established to provide for a fair and unbiased examination of all blood degree corrections requested by the Tribes or by any other person.**

[59] CTC 9-1-242 **Form of Action and Procedure** An action for blood degree corrections shall be by civil complaint for blood degree correction in the Colville Tribal Court. The Tribal Code governing civil actions and Civil Rules of Court shall be applicable to this proceeding, except as specifically provided in this Chapter.

1965 and the application filed in 2004. He argues that the official enrollment file should be the one opened in 1965 because that was when his first application for enrollment was filed. This argument might carry weight if there were two open files.

An applicant who has been denied enrollment by the Enrollment Committee may either request the Committee to reopen the application based upon "substantial, credible, new evidence" or appeal the denial enrollment to Tribal Court. " No appeal may be brought under this section unless it is filed within one (1) year of the decision of the Enrollment Committee to disenroll or deny enrollment". CTC 1-8-202.

We hold that the one year time limit for appealing an enrollment denial is applicable to the time limit in which "substantial, credible, new evidence" can be introduced to the Executive Department or the Enrollment Committee to reopen a final denial of enrollment.[60]

The 1965 enrollment file was effectively closed when the time for appeal or introduction of "substantial, credible, new evidence" expired.

The 2000 enrollment application

On July 26, 2000, the appellant filed an application for enrollment based upon the blood correction order entered for his cousins. His father's blood quantum had not been changed and remained at seven-sixteenths on the official rolls. Accordingly, he was not eligible for enrollment under the provisions of the Enrollment Code. Specifically, his parents did not reside on the Reservation at the time of his birth (CTC 8-1-80(a)(3) nor was the enrollment application filed within six months of his birth (CTC 8-1-080(b)(3).

Notwithstanding the foregoing, on September 25, 2000, the Tribal Government Committee recommended the appellant be adopted into the Tribes with a blood quantum of one-quarter. The Business Council approved his adoption into the Tribes on October 5, 2000, and, on October 10, 2000, the Enrollment Office notified him of the adoption. The appellant did not appeal or timely object of his adoption into the Tribes rather than enrollment as he requested.

CONCLUSION

In summary, the appellant's enrollment application filed in 1965 was denied. There was no

[60] CTC 8-1-125(h) **Determination Procedure of the Enrollment Committee** A final denial of enrollment shall not be reopened by the Tribes without a showing that the Applicant denied enrollment has available for immediate presentation substantial, credible, new evidence. A decision by the Executive Department or the Enrollment Committee that substantial, credible, new evidence does not exist to reopen an enrollment, shall be appealable only on that specific issue under the Subchapter on Appeals under this Chapter.

appeal. Requests to reopen the file in 2004 were properly ignored because the "substantial, credible, new evidence" was untimely and the file had been closed.

The appellant's 2004 enrollment application was properly denied because his parents did not reside on the reservation at the time it was filed or was it filed within six months of the appellant's birth.

A Court ordered blood correction for a family member is not "substantial, credible, new evidence" for the purpose of reopening an enrollment file more than one year after an application has been denied.

Accordingly, the Order of Dismissal is AFFIRMED.

IT IS SO ORDERED:

Dupris, CJ

I concur with the decision to affirm the Trial Court in this matter. I write this short concurrence to clarify one point. The majority writes "His father's blood quantum had not been changed and remained at seven-sixteenths on the official rolls. Accordingly, he was not eligible for enrollment under the provisions of the Enrollment Code." (Memorandum Opinion Affirming Trial Court, at page 5) I do not find this "fact" in the Trial Court's findings, so I see no need to refer to it. We do not know, for a fact, that Appellant's father's blood quantum was or was not changed on the base roll. It is not in the Trial Court's findings. The Trial Court did find that, in 2000, Appellant met the criteria for adoption under the Enrollment Code, Chapter 8-1, because he was born off the Reservation and was not enrolled within six (6) months of his birth. *See*, "Order Granting Respondent's Motion to Dismiss," at p6 (July 31, 2006).

In 1965 Appellant's parents did not pursue an appeal on the denial of his enrollment. In 2000 Appellant was notified he was adopted into the Tribes as a member; he did not appeal the adoption in a timely fashion. It is for these reasons the Trial Court should be affirmed. It is my opinion we do not need to go into the underlying facts which are not relevant to this ruling.

Denver BUCKMAN, Appellant,

vs.

COLVILLE CONFEDERATED TRIBES, Appellee.