

No. SC-CV-40-08

NAVAJO NATION SUPREME COURT

Marcella Begay, Appellant

v.

Shannette Alonzo, Appellee.

OPINION

Before YAZZIE, Chief Justice, and GRANT and SHIRLEY, Associate Justices.

Appeal of a decision of the To'hajiilee Family Court, Cause Nos. TH-DV-09-08 and TH-DV-13-08, the Honorable Wilson Yellowhair presiding.

Donovan D. Brown, Window Rock, Navajo Nation, for Appellant; and Katherine LaBlanc, Corrales, New Mexico, for Appellee.

This case concerns the time for filing an appeal taking into consideration Navajo Fundamental Law. The Court dismisses the appeal and Appellee's request for attorney's fee is denied.

I

The relevant facts are as follows. The To'hajiilee Family Court entered a mutual Domestic Abuse Protection Order that enjoined both parties from having contact with one another on June 3, 2008. The Appellant was also ordered to pay \$1,841.74 for damages to Appellee's vehicle within 30 days from the date of the Order unless other arrangements were made. Appellant filed a Notice of Appeal with this Court on July 7, 2008. The Appellant appeals only the portion of the Order dealing with damages.

Appellant then filed with the Family Court on July 7, 2008 a Motion to Stay Execution of the Family Court Order of June 3, 2008. The Motion for a Stay was initially granted by the

Family Court due to the filing of an appeal with this Court. Appellant then filed a Motion to Transmit Record including Transcripts of Proceedings with the Family Court on July 14, 2008. Subsequently, on July 18, 2008 the Family Court, *sua sponte*, revisited and vacated the original Stay on the basis that the appeal was not timely filed and that this Court was not likely to entertain this appeal for lack of jurisdiction. In addition, the Family Court in that same Order denied Appellant's Motion to Produce the Record on Appeal.

On July 23, 2008, Appellee filed a Motion to Dismiss asserting the Notice of Appeal was not filed within 30 days after the entry of the Order as required by Rule 8(a) and the appeal must therefore be dismissed. Appellant then filed a Motion to Stay Execution with this Court on July 31, 2008 asserting that the Family Court erred in its *sua sponte* review by not taking into consideration Navajo Fundamental Law. On August 7, 2008, Appellee responded to Appellant's Motion to Stay Execution,¹ again asserting an untimely filing that mandated dismissal. On August 7, 2008, Appellant filed a Motion to Enlarge Time to submit her brief, the record on appeal, and the court transcripts asserting primarily the Family Court's denial of her motion to transmit the record. Appellee responded to Appellant's Motion to Enlarge Time on August 15, 2008 stating the request was premature.

This Court received Appellant's response to Appellee's Motion to Dismiss on August 18, 2008. Appellee filed her Reply to Appellant's Motion to Dismiss on August 28, 2008. In general, Appellee submits that this Court has no jurisdiction to entertain this appeal because Appellant filed her Notice of Appeal more than thirty (30) days after the entry of the Order contrary to Rule 8(a) and *Riverview Service Station v. Eddie*, 5 Nav. R. 135, (Nav. Sup. Ct. 1987). The Appellant admitted that her Notice of Appeal was filed beyond the 30-day period but counters with the argument that Rule 8(a) and the computation method of the 30-day limitation

¹ The Court does not rule on Appellant's Motion to Stay Execution; given the Court's decision, the motion is moot.

explained in *Riverview Service Station* contravenes Navajo Fundamental Law and therefore should be voided by this Court. The Court rules that Rule 8(a) and *Riverview Service Station* applies and dismisses the appeal.

II

The issues in this case are (1) whether the removal of the discretionary authority to waive the 30-day filing requirement and computation method prescribed by *Riverview Service Station v. Eddie*, 5 Nav. R. 135 (Nav. Sup. Ct. 1987) should be voided by the Navajo Fundamental Law statute, 1 N.N.C. § 201 *et. seq.* (2005), and (2) whether challenges to explicit requirements of Rule 8(a) and the ruling of *Riverview Service Station* is frivolous and therefore should be sanctioned by award of attorney fees. These issues are questions of law. The Court reviews legal questions de novo, with no deference given to the trial court's decision. *Navajo Nation v. Arviso*, No. SC-CV-14-05, slip op. at 2 (Nav. Sup. Ct. August 11, 2005).

III

With regard to the first issue, an appeal is not deemed filed unless a Notice of Appeal is filed with the Supreme Court "in accordance with the applicable rules of appellate procedure within 30 days from the date of the judgment or order, or as otherwise provided by law." 7 N.N.C. § 801 (2005). Rule 8(a) of the Navajo Rules of Civil Appellate Procedure is very explicit on the prescribed time frame if a party wishes to appeal a trial court's decision; the Appellant must file a Notice of Appeal with the Supreme Court within thirty (30) days after the entry of the judgment lest the appeal be dismissed. This rule has been consistently and strictly enforced by this Court. *Riverview Service Station*, 5 Nav. R. 135. This requirement of timely filing is so fundamental that in order for this Court to assume jurisdiction over the matter, the Appellant must comply with Rule 8(a). *Window Rock Mall, Ltd. et al., v. Day IV*, 3 Nav. R. 58 (Nav. Sup.

Ct. 1981). While Rules 3 and 5(b) allow suspension or modification of timelines, this Court strongly discourages suspension of the rules. *See In Re Certification Questions II*, 6 Nav. R. 129 (Nav. Sup. Ct. 1989). Particularly, Rule 5(b) explicitly prohibits this Court from changing the timeline for filing a Notice of Appeal. Nonetheless, Appellant argues that Navajo Fundamental Law should afford her the opportunity to present her appeal even though her filing was admittedly late.

First, the Court emphasizes that the Appellant had an opportunity to challenge the Family Court's decision at the trial level. The Appellant could have submitted a Motion to Alter or Amend a Judgment with the Family Court in accordance with Rule 59.1 of the Navajo Rules of Civil Procedure. If Appellant strongly believed that the judgment was contrary to law, then such argument should have been raised initially with the Family Court. Instead, the Appellant chose not to exercise that right.

Second, this Court takes into consideration the Diné principles of missed opportunity and the need for finality when a party seeks additional opportunities to challenge decisions or seek exemption from clear deadlines. In *The Matter of the Estate of Amy Kindle*, No. SC-CV-40-05, slip op. at 5 (Nav. Sup. Ct. May 18, 2006), this Court emphasized that there must be a limit on the number of opportunities that claimants in a probate action have to prove the existence of an alleged will. If one does not seize an available opportunity to be heard, one cannot later complain seeking more opportunities. He or she already allowed the opportunity to escape, "*bil ch'i' n'iyá*," *see id.* at 6, and finality must be sought because the uncertainties that go with disputes must not be inordinately delayed. Moreover, important matters involving Navajo Fundamental Law must not be raised in dilatory fashion. *Judy v. White*, No. SC-CV-35-02, slip op. at 18 (Nav. Sup. Ct. Aug. 02, 2004). A party must know when the matter has come to a close

and when the judgment can be enforced. Jurisdictional requirements and restrictive timelines are therefore important for the maintenance of these principles. There has to be some expectation by a party that a judgment can be enforced if there is no timely appeal. Here, the Appellant was ordered to pay restitution to the Appellee for the repair of the vehicle; it is unreasonable to the Appellee to allow further delay on enforcement when the Appellant does not take advantage of earlier procedural opportunities.

Appellant however argues that the restriction of Rule 8(a) should be ignored by this Court because the enactment of the more recent Navajo Fundamental Law, 1 N.N.C. § 201 *et. seq.* (2005), either voids the rule or prohibits the rigid application of timelines. Generally, the Appellant submits that the rigid applications of timelines should be abandoned so that individuals would be allowed time to resolve their disputes; that restoration of harmony and balance is more important than timelines as expressed in the Council's acknowledgement of Navajo Fundamental Law. In support of her argument, Appellant cites *Thinn v. Navajo Generating Station*, No. SC-CV-25-06 (Nav. Sup. Ct. Oct. 19, 2007). *Thin* clarifies the sacred trust placed upon a Navajo leader to always protect the people. *Id.*, slip op. at 8-9. A Navajo leader cannot hand over this duty on a matter that impacts the people to a third person; otherwise, it would be considered a betrayal of trust. *Id.* The trust duty of a Navajo leader as expressed in the *Thinn* case cannot be stretched to allow for a flexible time period of filing appeals.

Finally, the Diné know that there is always Peacemaking to resolve disputes where restoration of harmony between people and their communities is sought without rigid timelines. There is nothing in the record indicating the parties attempted to use Peacemaking.

Whether or not this Court should continue to strictly enforce the timely filing of a Notice of Appeal in light of the Navajo Nation's mandate that Navajo Fundamental Law be applied in

all governmental actions is a very important concern that must be addressed in an orderly deliberate matter. The application of *Diné bi beenahaz'áanii* is, of course, essential to the development and administration of modern Diné justice and it will be considered in the Judicial Branch's harmonization of Navajo Fundamental Law and the courts' rules of procedure. In the meantime, Rule 8(a) shall remain.

As for the computation of the filing period, the Appellant also asserts that 30-day filing period in *Riverview Services Station*, which predates the enactment of Navajo Fundamental Law, is inappropriate and should be abandoned and replaced with a calculation method that harmonizes with Navajo values. Appellant asserts Navajo Fundamental Law should allow computation of the 30-day time limit from either the day the final judgment was mailed or upon receipt of the mailed judgment. The Court affirms all of the explicit words of Rule 8(a), including the language stating that the 30-day filing period shall be computed from the entry of the final judgment. *See Riverside Service Station v. Eddie*, 5 Nav. R. 135, (Nav. Sup. Ct. 1987).

IV

With regard to the second issue, the Appellee argues that this is a frivolous appeal and therefore seeks attorney's fee. This Court does not agree. In *Yazzie v. Herrick*, 5 Nav. R. 129, 131 (Nav. Sup. Ct. 1987), this Court set the standard under which it could award attorney's fees, to wit: (1) when a statute provides for attorney's fees. (2) when the case presents a special set of circumstances, and (3) if a pleading or document is not submitted in good faith, or it contains material misstatements of fact or law, or it is not made upon adequate investigation or research. This Court holds that this appeal and the pleadings in support thereof provide an opportunity for this Court to review and clarify the Navajo Rules of Civil Appellate Procedure in light of Navajo

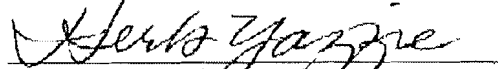
Fundamental Law, and therefore the appeal was submitted in good faith and is not frivolous to warrant attorney fees.

V

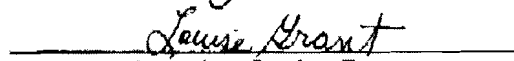
For the reasons stated above, this court DISMISSES the appeal for lack of jurisdiction.

The Appellee's request for attorney's fee is hereby DENIED.

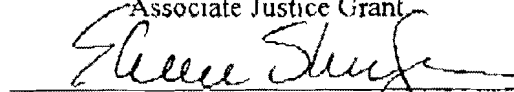
Dated this 17th day of November, 2008.



Chief Justice



Associate Justice Grant



Associate Justice Shirley