

**IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN NATION**

RYAN QUEQUESAH)	CAUSE NO. AP-08-355 – Cc
Plaintiff/Appellee)	
)	
vs.)	OPINION
)	
EMMY LITTLE WHITEMAN)	
Defendant/Appellant)	

Appeal from the Tribal Court of the Confederated Salish and Kootenai Tribes, the Honorable Sheryl Steele presiding.

Appearances:

Ryan Quequesah on his own behalf as Appellee.

David Gordon on behalf of Emmy Little Whiteman, Appellant

Before: Chief Justice Eldena Bear Don't Walk, Associate Justice Robert McDonald, and Associate Justice Kenneth P. Pitt. Associate Justice Pitt delivers the Opinion of this Court

I. INTRODUCTION

Appellant Emmy Little White Man, through her attorney, David Gordon, (hereinafter “Little Whiteman”), does not specify which Tribal Court Order she is appealing. Therefore, this Court must presume that she is appealing the Order entitled , “Amending A Child Custody Order and Order Establishing Interim Parenting Plan (hereinafter referred to as the “Order”), dated November 25, 2013. We DISMISS her appeal.

II. STANDARD OF REVIEW

This Court reviews questions of law de novo, *CSKT v. Georgina Old Person*, CV – AP-09-1549 – CR (2011).

III. STATEMENT OF UNDISPUTED FACTS

On November 25, 2013, the Confederated Salish and Kootenai (hereinafter referred to as “CSKT”) Tribal Court (hereinafter referred to as “Tribal Court”) issued the above referenced Order, which adopted Appellee Ryan Quequesah’s (hereinafter referred to as “Quequesah”) Proposed Interim Parenting Plan, and which designated Quequesah as the primary residential custodian of two minor children. On December 5, 2013, Little Whiteman moved for reconsideration, but did not file a supporting brief. This Motion was denied by the Tribal Court on December 30, 2013. On January 13, 2014, Little Whiteman filed a Renewed Motion for Reconsideration. On February 18, 2014, the Tribal Court denied this motion as being without merit.¹

On March 10, 2014, Little Whiteman filed a “Brief in Support of Appeal” with this Court. Although there is no evidence in the provided record that the lower Court actually issued an Order on October 18, 2014, nevertheless this Brief in Support of Appeal purports to appeal just such an Order. No transcript of the lower court proceedings, nor any other pertinent elements of the record, was

¹ We note that this November 25, 2013, Order advised both parties that they could receive a Hearing on a Final Parenting Plan upon their motion. Accordingly, this presents the issue, upon which we need not, and do not, rule, of whether this matter is even ripe for appeal. See, CSKT Code section 1-2-817.

included or otherwise provided. Indeed, the March 10, 2014, Brief in Support of Appeal appears to be mainly Little Whiteman's counsel's unilateral opinion of what had occurred in the Tribal Court.

On May 2, 2014, without explanation, Little Whiteman filed a second "Brief in Support of Appeal." This second Brief in Support of Appeal was almost identical in substance to the March 10, 2014, Brief in Support of Appeal. Again, this second Brief in Support of Appeal purports to appeal a lower court Order dated October 18, 2014, and provides no transcript of the lower court's proceedings or any other pertinent element of the record.

By Order dated July 1, 2014, Chief Justice Eldena Bear Don't Walk set this matter for oral arguments on August 4, 2014. This Order, citing Rule 15 of CSKT Rules of Appellate Procedure, also, precluded Quequesah from being heard at oral arguments for failure to file a timely brief.

Oral arguments were heard on August 4, 2014. Little Whiteman, although not present, was represented by her counsel David Gordon. Quequesah represented himself *pro se*, and indicated he understood that, although he was welcome to remain during oral arguments, he would not be heard unless at the request of the court.

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IV. DISCUSSION

A. Filing Multiple Briefs in Support of Appeal.

Initially we must address the fact that Little Whiteman filed two, substantially similar, Briefs in Support of Appeal. Rule 15(1) of the CSKT Rules of Appellate Procedure states: “An appellant’s brief shall be filed and served within 20 days of the date the record is filed and transmitted.” As such, Rule 15(1) clearly does not provide for multiple briefs.

Further, the record before us is devoid of any evidence of when, if ever, the record was filed and/or transmitted. Therefore, the only date we have before us is the date Little Whiteman’s counsel purchased a U.S. Postal Service money order, and the date of the initial Brief in Support of Appeal, both dated March 10, 2014. Therefore, perforce, the May 2, 2014, Brief in Support of Appeal was dated more than 20 days after March 10, 2014. In light of that, the May 2, 2014, “Brief in Support of Appeal,” will not be included in the reviewable record before us, and will be disregarded in its entirety.

B. Little Whiteman’s Failure to File With This Court A Tribal Court Transcript, Or Other Pertinent Element Of the Record, As Established In The Court Below.

CSKT Code, section 1-2-804 (2014) states, "Every [Court of Appeals] decision *shall* be based on the record established in the court below and on the law (*emphasis added*)." As discussed above, the reviewable record in this matter

consists only of a March 10, 2014, Brief in Support of Appeal, several Tribal Court Judgments dating back to July 1, 2008, most of which do not appear particularly pertinent to the matter before us, and a copy of a U.S. Postal Service Money Order receipt. Notably absent are any pleadings from either party, any evidence that was placed before the Tribal Court by either party, and most importantly the lack of any Tribal Court transcripts. There is no explanation in the March 10, 2014, Brief in Support of Appeal explaining the lack of a reviewable record. However, during the August 4, 2014, oral arguments, Little Whiteman's counsel did state that he was unaware of the need for a Tribal Court transcript.

CSKT Rules of Appellate Procedure, Rule 3(1) states, "The original papers and exhibits filed in the Tribal Court, any transcript of the proceedings, and a certified copy of the minute entries prepared by the Clerk of Court shall constitute the record on appeal on all cases." Therefore, as discussed above, the record provided by Little Whiteman has not provided this Court with any of Rule 3(1)'s requirements.

Further, CSKT Rules of Appellate Procedure, Rule 4(1) states: "The record on appeal, *including the transcript necessary for the determination of the appeal, shall* be transmitted to the Appellate Administrator within 30 days after filing the appeal unless the time is extended to a date certain for good cause shown by the Chief Justice upon application of a party (*emphasis added*)." The record before us

does not indicate that Little Whiteman applied for an extension, nor does it indicate that the Chief Justice ordered such an extension.

Little Whiteman has failed to provide this Court with any semblance of a record upon which we could make a decision affirming or overturning the Tribal Court.

C. Did The Tribal Court Abuse Its Discretion Based On The Law.

Little Whiteman's only apparent legal argument is that the Tribal Court Judge abused her judicial discretion by basing an Order on alleged criminal allegations against Little Whiteman, which allegations were still pending. In essence Little Whiteman argues that the Tribal Court established her guilt without a trial.

However, Little Whiteman does not provide any tribal, federal, or state authorities for this argument. Furthermore, the absence of a transcript or other reviewable record preclude us from even considering the factual component of this legal argument. As such, it is not necessary to, and we do not, rule upon Little Whiteman's sole legal argument.

D. Costs on Appeal.

CSKT Rules of Appellate Procedure, Rule 20 states:

(1) If not otherwise provided by the Court in its decision, costs on appeal and in original proceedings will automatically be awarded to the successful party against the other party. . . . (3) The Appellate Administrator shall, in all civil cases, include in the order of judgment of affirmance, reversal or

modification on appeal . . . a clause awarding the costs in accordance with this rule. . . .

Initially, there is nothing in the record regarding any costs associated with the original proceeding in Tribal Court. As such, we should not, and do not, award any costs on appeal regarding any costs that might have accrued there.

As to costs that might have accrued to either party in the matter before this Court, such a remedy could be fairly harsh if applied broadly, in that Little Whiteman would be personally penalized for the actions, or lack thereof, of her counsel if costs were awarded to Quequesah. Conversely, Quequesah, if he had expended great time and effort defending his legal position, might be personally penalized if we merely held that both parties must bear their own costs and expenses.

However the record before us indicates that minimal legal effort was expended by Little Whiteman and Quequesah in defending or advancing their respective positions before this Court. This indicates to us that their respective costs and expenses should be, and were likely, also, minimal.

Accordingly we hold that both parties will bear their own costs and expenses.

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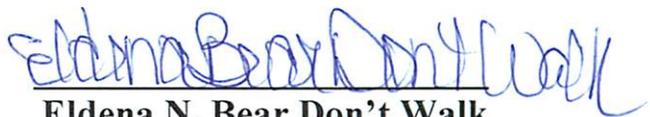
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V. CONCLUSION.

Little Whiteman has failed to provide this Court with a meaningful and reviewable record. As such, pursuant to CSKT Rules of Appellate Procedure, Rule 6, this matter is DISMISSED.

It is so ORDERED this 17th day of November 2014.

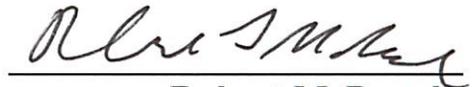



Eldena N. Bear Don't Walk

Eldena N. Bear Don't Walk
Chief Justice



Kenneth P. Pitt
Associate Justice



Robert McDonald
Associate Justice

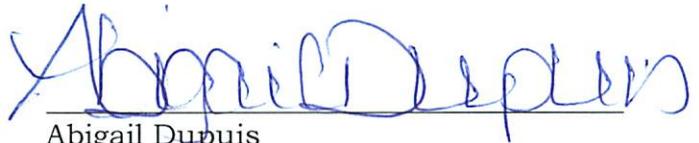
Certificate of Mailing

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the **OPINION** to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, this 17th day of November, 2014.

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Abigail Dupuis
Appellate Court Administrator