

IN THE HUALAPAI COURT OF APPEALS
HUALAPAI RESERVATION, ARIZONA

HUALAPAI TRIBE,)	
)	App. Div. Case No.: 2011-AP-014
Appellee,)	Tribal Court Case No.: 2011-CON-006
)	AB
v.)	
)	
MICHAEL J. WHATONAME,)	DECISION AND OPINION
)	
Appellant)	
)	
)	
)	
)	

Esteven Hernandez, Public Defender, for the Appellant
Marie James, Tribal Prosecutor, for the Hualapai Tribe

**Before Justice Carole Goldberg (Presiding), Chief Justice Wes Williams Jr., and
Justice Robert N. Clinton**

OPINION AND ORDER

Michael J. Whatoname (Whatoname or Appellant) appeals from a default judgment entered against him on June 15, 2011 in an animal control matter. We find that entry of the default deprived Appellant of his rights under the Constitution and laws of the Hualapai Tribe, and reverse the judgment below, remanding for further proceedings.

Background

On May 14, 2011, Appellant was cited by Hualapai Animal Control for (a) allowing his dog to run at large and (b) public nuisance. The citation Appellant received stated that he was to appear before the Hualapai Tribal Court on “Wednesday the 15th Day of June, 2011 at 1:30pm” for an initial appearance. On June 15, 2011, Appellant was not present before the Hualapai Tribal Court and the Court entered a default judgment against Appellant on both counts for a total fine of \$500.

In a letter dated June 15, 2011, Appellant requested that the Court reconsider and reopen its default judgment against him. Appellant wrote that the date on the citation was

illegible, and when he called the Court to ascertain the date he was misinformed as to when he was to appear, being told June 16 rather than June 15.

On June 16, 2011, the Tribal Court denied Appellant's request. In considering the motion, the Tribal Court found that the date on the citation issued to Appellant was legible and therefore Appellant had proper notice of the hearing date. Moreover, the Tribal Court ruled that Appellant should not have been relying on officers of the court to determine his court date. On June 20, 2011, Appellant filed a timely Notice of Appeal. Although he was represented by an advocate, Appellant did not file a brief, as required by Rule 11(b) & (c) of the Hualapai Rules of Appellate Procedure.

Discussion

1) The Court of Appeals Has Discretion to Dismiss an Appeal for Appellant's Failure to File a Timely Brief.

Rule 11 of the Hualapai Rules of Appellate Procedure provides that, if an appellant is represented by an attorney or lay advocate, appellant must file a brief with the Court of Appeals within 60 days of filing a Notice of Appeal. This rule was included in the Rules of Appellate Procedure after considerable consultation with the Hualapai community, so that the Court of Appeals may receive the benefit of research into Hualapai Constitutional, statutory, and common law and advocacy grounded in the legal culture of the Hualapai Tribe.

In the present case, Appellant is represented by a lay advocate, and the 60-day period expired in August, 2011. No brief has been filed. Although no sanction for such failure is specified in the Rules, an appellant's failure to file a brief in a timely manner can result in dismissal of the appeal. At a hearing held on December 16, 2011, this Court questioned Appellant's advocate as to why a brief was not filed, and Appellant's advocate stated that he was informed of the date of the hearing only a few weeks ago and had been busy preparing briefs for a number of other important appeals. This Court found that in this instance, dismissal of the appeal for failure to file a timely brief would be an unfair result. However, this Court retains the discretion to dismiss an appeal when an appellant fails to file a brief within 60 days of filing a Notice of Appeal, regardless of when an advocate receives notice of specific hearing dates.

B. Entering a Default Judgment Without Determining Cause was Reversible Error.

Whenever a defendant is deprived of liberty or property, the Tribal Court must take care to protect the due process rights of the defendant under Article IX(d) of the Hualapai Constitution and the federal Indian Civil Rights Act of 1968, 25 U.S.C. §

1302(a)(8). In a civil matter where the defendant can be deprived of property, such as a fine in an animal control proceeding, due process includes the right to adequate notice, to appear before the court, and to present one's case. "Fundamental to any notion of due process is the right to be heard -- the right to present evidence on one's own behalf." *Hualapai Tribe v. Powsey*, 2011-AP-021 (Hualapai Ct. App. 2012) (citing *Walker v. Hualapai Tribe*, 2005-AP-009 (Hualapai Ct. App. 2007)).

Under some circumstances, consistent with due process, a defendant may waive or forfeit the right to present his or her case to the Tribal Court. Hualapai Law & Order Code § 4.13(a)(2) gives the Tribal Court discretion to enter judgment "for the plaintiff by default" against a defendant who "was absent [from the trial of a civil matter] without cause." Default judgments can be a useful tool for the speedy administration of justice and ensure that a defendant's absence without cause will not delay proceedings indefinitely. A defendant can waive due process rights in a civil matter by refusing the opportunity to appear before the court in a reasonable time after proper notice. Nonetheless, the right to present one's case before suffering loss of property at the hands of the government is substantial, and should not be readily lost through inaction. *Cf. Hualapai Tribe v. Powsey*, 2011-AP-021 (Hualapai Ct. App. 2012) (in a criminal case, finding that a motion for a directed verdict did not result in waiver of the right to present one's defense). The fact that section 4.13(a)(2) makes the entry of a default judgment discretionary rather than mandatory, even when the defendant's absence was without cause, suggests the need for flexibility in order to ensure that a proper balance is reached in each individual case.

In the present case, upon reaffirming its default judgment on June 16, 2011, the Tribal Court determined that Appellant was absent on June 15, 2011 without good cause. Specifically, the Tribal Court found that the notice issued to Appellant was legible and he should not have relied on court personnel to provide him with the proper hearing date. While it appears that the Tribal Court reached this determination by examining the court file, rather than the copy of the notice in Appellant's actual possession, this Court nevertheless is bound by the Tribal Court determination. This Court may not overturn findings of fact by the Tribal Court unless they are "arbitrary or capricious" (Hualapai Constitution, Article VI, sec. 12), and therefore we accept for purposes of this opinion that the notice was legible. Nonetheless, we find as a matter of law that Appellant's actions do not meet the high standard required for a defendant to waive his or her due process rights, and that the entry of a default judgment under the circumstances of this case amounted to an abuse of discretion by the Tribal Court.

Significantly, Appellant informed the Tribal Court within hours of the entry of the default judgment against him that he had failed to appear because he could not read the citation he received and was misinformed of his court date by a member of the court staff. Appellant's timely notice suggests that he was not seeking to use his absence to delay the proceedings against him. Under these circumstances, Appellant's right to

present his case before the Tribal Court outweighs any interest in the speedy administration of justice.

Conclusion and Order

Considering the strong due process rights of the defendant and the immediacy with which he contacted the court after the default judgment was entered, it was an abuse of discretion for the Tribal Court to deny Appellant the opportunity to present his case by entering a default judgment. Therefore, the default judgment entered by the Tribal Court is REVERSED, and the case is REMANDED for further proceedings.

IT IS SO ORDERED.

Entered this 5th day of January, 2012

By:

A handwritten signature in cursive script that reads "Carole Goldberg". The signature is written in black ink and is positioned above the printed name.

Justice Carole Goldberg