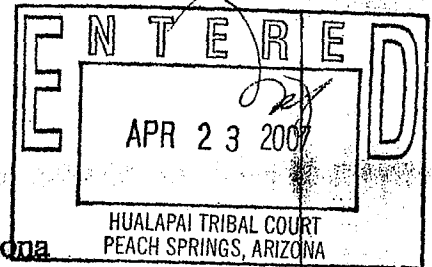


Hualapai Tribal Court of Appeals
Hualapai Reservation, Peach Springs, Arizona



The Hualapai Tribe,

Appellant,

vs.

Faith Paya,

Appellee.

Case No.: 2007-AP-003

ORDER

FACTS

In this case, the Hualapai Tribe, Appellant appeals a decision by the Honorable Chief Judge Joseph Flies-Away that dismissed a petition to rescind an Order of Exclusion filed by Faith Paya, Appellee. Appellant requests review of a number of issues.

Appellee Faith Paya, a Native American woman but not an enrolled member of the Hualapai Tribe was excluded from the Hualapai Reservation by default judgment, "for an indefinite period of time", on January 21, 2005 by the Honorable Judge Robert Ray, Sr. in Hualapai Tribal Court case 2005-SA-001. On or about November 6, 2006, Appellee filed a request in the Hualapai Tribal Court to rescind the order excluding her from the Hualapai Reservation. Appellant objected. On December 21, 2006, the Tribal Court heard oral arguments from both parties. Appellee was represented by legal counsel, Thomas Grover. The Hualapai Tribe was represented by Marie James, Chief Prosecutor.

At the conclusion of the December 21, 2006 hearing, the Tribal Court temporarily denied Appellee's request and scheduled a second hearing for further arguments on three specific issues. Following the hearing, the Appellant filed a motion to recuse Chief Judge Flies-Away, a response to the issues raised by the court and, later a supplemental argument. The Tribal Court

1 reconvened for argument on February 15, 2007. Neither Appellant nor her legal counsel
2 appeared. The Tribal Court dismissed the motion to disqualify Judge Flysaway and the
3 Appellee's request to rescind the Order of Exclusion. The Tribal Court also gave notice of the
4 factors it would consider in determining whether it should rescind an Order of Exclusion. The
5 Hualapai Tribe appealed.

6 ISSUES PRESENTED

7 Appellant submits four issues to the Court of Appeals for a decision:

- 8 1. "[T]he court's ruling wherein the Court states its basis for denying the motion to
9 to Disqualify/Recuse Judge Flysaway" (sic).
- 10 2. "The court's order making a determination that while the Court concludes exclusion
11 cases are civil cases, the Court rules that the standard of proof would be raised to a
12 'heightened level of scrutiny'."
- 13 3. "The Court's finding that 'indefinite period of time' as stated in the original exclusion
14 order, does not mean forever and states that the burden not to rescind an exclusion
15 order affecting Faith Paya is the Tribe's burden to prove Faith remains 'injurious to
16 the Members of the Hualapai Tribe'."
- 17 4. "The Court's adverse decision regarding the Tribe's interpretation of Chapter 9 -
18 Exclusion Code."

19 ANALYSIS

20 The Court of Appeals notes that the Appellant presents its issues for the Court of Appeals
21 but makes little to no legal argument on those issues to describe to the Court how error was
22 made, nor does the Appellant cite any legal authority to support its issues. Appellant simply
23 takes issue with the decision of the Tribal Court. Thus it is difficult to determine what the
24 Appellant is truly asking as Appellant failed to properly present any clearly stated legal
25

argument supported by legal authority. It is also relevant to note that Appellee has *not* participated in any of the appeals process. (emphasis added).

Based upon Appellant's submission, the Court of Appeals ~~finds that the Appellants~~ suffered no injury in this case as the underlying petition to rescind the Order of Exclusion was dismissed and therefore Appellant does not have standing to file this appeal.

Particularized injury is a prerequisite to standing. *Bennett v. Brumfield*, 244 Ariz. 103, 119, P.3d 460, 463 (2005) citing *Fernandez v. Takata Seat Belts, Inc.*, 210 Ariz. 138, 140, 108 P.3d 917, 919 (2005). In this case, the underlying request to rescind the Order of Exclusion was ultimately dismissed and because it was dismissed, Appellee remains excluded from the Hualapai Reservation for "an indefinite period of time", which is consistent with what Appellant was seeking initially, making any case or controversy the may have existed moot. Because Appellant can argue no particularized injury, Appellant lacks requisite standing for this appeal. Further, the Constitution of the Hualapai Tribe (1991), Article VI, Section 12 and Section 10.3 of the Law and Order Code of the Hualapai Tribe requires that a party be "dissatisfied" with a final judgment of the Tribal Court in order to having standing to appeal. Again, because the request to rescind the Order of Exclusion was dismissed, Appellant ultimately got what it was requesting, thus it is illogical that the Appellant is now dissatisfied with the Tribal Court's Order.

Section 10.9(A) limits the Court of Appeals review to the Tribal Court's procedure to a determination of "whether the rights of the [A]ppellants were materially affected by any procedural errors of the Court." Here, Appellant makes no argument that any of its rights were materially affected. Further, it is difficult to find any argument that Appellants rights were affected when the underlying issue was resolved when Appellee failed to appear at the February 15, 2007 resulting in dismissal of the action.

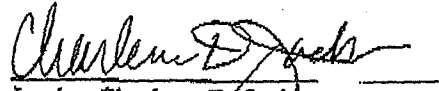
1 The Court of Appeals is concerned that this is not an argument of legal issues, as any
2 issues that may have existed, dissolved when the petition to rescind the Order of Exclusion
3 was dismissed but is rather a personal argument or disagreement with the presiding judge,
4 thus potentially politicizing the Tribal Court and, in one sense, ~~attacking the independence of~~
5 the judiciary and the task of the judiciary as outlined in the Article VI, Section 3 of the
6 Constitution of the Hualapai Tribe (1991). In its attempts to discredit the judge or to perhaps
7 get the judge "into check", Appellant is essentially asking the Court of Appeals to issue an
8 advisory opinion. It is also interesting to note that Appellant goes so far as to argue that its
9 own Law and Order Code is unconstitutional. If Appellant feels strongly that its own Law
10 and Order Code is unconstitutional, this particular case is not the appropriate forum to raise
11 the issue at this particular time, since the underlying petition has ultimately been dismissed.
12 Rather, Appellant is urged to see remedy through the legislative branch of the Hualapai
13 Tribe.

14 Since the underlying dispute is moot, the Court of Appeals declines to issue an advisory
15 opinion on any of the "issues" raised by Appellant. The principles of judicial restraint
16 require that the Court decline to issue advisory opinions on cases that are moot, not ripe for
17 consideration, not fully developed, "anticipative of troubles which do not exist; may never
18 exist; and the precise form of which should they ever arise," cannot be predicted. *Phelps*
19 *Dodge Corp. v. Arizona Department of Water Resources*, 211 Ariz. 146, 151, 1110, 1115
20 (2005) citing *Velasco v. Mallory*, 5 Ariz.App. 406, 410-11, 427 P.2d, 540, 544-45 (1967);
21 *Bennett v. Brownlow*, 211 Ariz. 193, 196, 119 P.3d 460, 463 (2005). Offering advisory
22 opinions on moot cases, cases not ripe for consideration or cases not fully developed would
23 do nothing except open the flood gates to unnecessary litigation. *League of Arizona Cities*
24 *and Towns v. Brewer*, 213 Ariz. 557, 146 P.3d 58 (2006). This is not something this Court of
25 Appeals is interested in allowing.

CONCLUSION

Appellants appeal is dismissed.

SO ORDERED this 2nd day of April, 2007.



Justice Charlene D. Jackson
Hualapai Tribal Court of Appeals