

1
2
3
4
5
6 **IN THE APPELLATE COURT OF THE HUALAPAI NATION**
7 **HUALAPAI RESERVATION, ARIZONA**

8 THE HUALAPAI TRIBE,
9 Appellant,

10 v.

11 CHRISTOPHER WALKER, SR.,
12 Appellee.

} App. Div. Case No.: 2007-AP-005
} Trial Ct. Case No.: 2006-CV/PO-0100

13
14 **DECISION AND ORDER**

15 Opinion by Justice Wes Williams Jr.

16 This case began as an action between Appellee Christopher Walker, Sr. and the Hualapai
17 Housing Authority ("Hualapai Housing"). Apparently the Hualapai Tribe has filed this appeal on
18 behalf of the Hualapai Housing Authority to contest whether the Tribal Court properly entered an
19 injunction against the Housing Authority enjoining it from harassing Appellee, among other
20 things.

21 **PROCEDURAL HISTORY**

22 Hualapai Housing served a notice of termination and notice to vacate a housing unit upon
23 Appellee by letter dated October 18, 2006. Appellee filed a petition with the Tribal Court seeking
24 an injunction to prohibit the eviction proceedings and to stop any harassment by Hualapai
25 Housing. The court denied the *ex parte* injunction, but scheduled a hearing on the petition for
26 November 29, 2006. A copy of the notice of the hearing was served by mail upon Hualapai
27 Housing on November 2, 2006, which was acknowledged by its receptionist. However, Hualapai
28 Housing failed to appear at the hearing. The Tribal Court held the scheduled hearing and on
December 1, 2006 entered a 60 day injunction against Hualapai Housing enjoining it from
threatening or contacting Appellee and his family, among other things.

1 Following the entry of the injunction, the Hualapai Tribe filed a motion to dismiss on
2 December 12, 2006, asserting that the Tribe, including Hualapai Housing, is immune from suit
3 due to its sovereign immunity. Based on this argument, the Tribe argued that the Tribal Court did
4 not have jurisdiction to enter the injunction.

5 The Tribal Court denied the motion to dismiss by entering a judgment that was signed by
6 Judge Alene Garcia on February 5, 2007, but was entered by the court on February 12, 2007.
7 The Tribal Prosecutor Office, which was representing the Tribe in this matter, received a copy of
8 the judgment on February 12, 2007. The Tribe filed a pleading dated February 26, 2007, but filed
9 with the court on March 1, 2007, requesting the court to enter a new order that would allow the
10 Tribe to file a timely notice of appeal. The pleading noted that the Law and Order Code requires
11 notices of appeal to be filed within five days of the date of the action appealed. The Tribe argued
12 that the judge signed the order on February 5, 2007, but the Prosecutor's Office did not receive a
13 copy until February 12, 2007 and therefore the time for filing the notice of appeal had already
14 expired. On May 9 or 11, 2007 (the record contains two identical orders except they show
15 different time stamps), the Tribal Court denied the Tribe's request to enter a new order. The
16 Tribe's notice of appeal was filed on May 15, 2007.

16 DISCUSSION

17 The Tribe's notice of appeal states that the Tribe is appealing the injunction entered on
18 December 1, 2006 and apparently the court's order denying the motion to dismiss that was
19 entered on February 12, 2007.

20 Chapter 10 of the Hualapai Tribe's Law and Order Code addresses the procedures to be
21 followed by the Court of Appeals. Section 10.4.A.1 states that appeals may be taken from any
22 judgment or order of the Tribal Court or Juvenile Court by filing a written notice of appeal within
23 five days after the date of the action appealed.

24 The Tribe's Notice of Appeal was filed on May 15, 2007. The only judgment or order
25 that may have been entered by the court within five days prior to May 15, 2007 was the order
26 denying the Tribe's request to enter a new order to allow time to file an appeal. The Tribe does
27 not provide any logical basis to overturn that decision.

28 The real issue appears to be centered around the process the judge and the court followed
 to enter the order denying the Tribe's motion to dismiss. The judge signed the order on May 5,

1 2007, but the court did not time stamp it as entered until May 12, 2007. The Tribe received the
2 order on that day, but did not file a notice of appeal within five days of May 12, 2007. In fact, the
3 Tribe did not file any pleading until March 1, 2007 asking the court to enter a new order. In this
4 motion, the Tribe argues that the time to file the appeal expired prior to May 12, 2007 when it
5 received the order. Apparently the Tribe focused on the date the judge signed the order, which
6 was May 5, 2007.

7 The question that arises from these events is what is the "date of the action" referred to in
8 Law and Order Code § 10.4.A.1 that starts the time for filing an appeal? The date cannot be the
9 date a judgment or order is signed by a judge, since, as occurred here, the judge may not provide
10 the document to the court clerk or to the parties on that date. The date of the action must be the
11 date the judgment or order is entered by the court and served upon the parties. Only by following
12 this process will the parties have a chance to decide whether or not to file an appeal. They will
13 not have this opportunity if the judgment or order has not been received by the court clerk,
14 entered into the file and served upon the parties.

15 In this case, the judgment on the motion to dismiss was entered by the court, and served
16 upon and received by the Tribal Prosecutor's Office on February 12, 2007. The Tribe needed to
17 file its Notice of Appeal within five days of February 12, 2007. Instead, the Tribe waited until
18 March 1, 2007 to file a motion requesting a new order. By this action, the Tribe improperly
19 attempted to get around the five day rule.¹

20 CONCLUSION

21 Based on the foregoing, the Tribe's appeal is denied due to the Tribe's failure to timely

22 ///

23 ///

24 ///

25 ¹ The Tribe's failure to file a timely notice of appeal prevents the Court of Appeals from having
26 jurisdiction to address the issues of whether Hualapai Housing is a Tribal entity entitled to the
27 protection of the Tribe's sovereign immunity, and whether the Tribal Court possesses the power
28 to enjoin Hualapai Housing from conducting its operations. The Tribal Court's rulings on these
issues appear to be at odds with numerous cases from other tribal court systems. Also, the Tribal
Court ruled with minimal input from the Tribe and Hualapai Housing on these extremely
important and far-reaching issues. The lack of a thorough and complete record should therefore
diminish the precedential value of the Tribal Court's rulings in this case.

1 file its Notice of Appeal.

2 IT IS SO ORDERED

3
4 _____
5 WES WILLIAMS JR.
6 JUSTICE OF THE HUALAPAI COURT OF APPEALS

7 Dated: _____, 2007
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28