

IN THE
HO-CHUNK NATION SUPREME COURT

FILED
IN THE HO-CHUNK NATION
SUPREME COURT

FEB 7 2000

Willa RedCloud
Clerk of Court/Assistant

Lonnie Simplot, Linda Severson
and Carol Ravet,

Appellants,

vs.

DECISION ON RECONSIDERATION

Case No. SU99-07

HCN Department of Health,
Appellees.

Heard before Associate Justice Debra Greengrass, Associate Justice Rita Cleveland and Chief Justice Mary Jo B. Hunter, presiding.

This matter came before the full Court on Saturday, January 22, 2000 on oral argument. Appearance by Paul B. Millis of the firm of Laabs, Skolos & Millis, L.L.P. Mr. Millis appeared on behalf of the Appellants and for Gerald W. Laabs who was in Florida. (Transcript, hereinafter Tr., page 14.) The Appellee's appearance was waived.

This Court heard oral argument on the Appellants' Motion for Reconsideration filed on December 13, 1999 regarding this Court's Order Granting Dismissal filed on October 4, 1999. The Appellants sought reconsideration of this Court's assessment of fees for the extensive copying of the record for their appeal.

Based upon the record, this Court renews its decision to assess costs for the extensive copying of the record. Upon a review of the record, the HCN Rules of Appellate Procedure, Rule 10 (d) provides notice to parties who are filing an appeal that the record will be compiled from the time of the filing of the appeal. The Appellant wishes to argue that due to an error by Appellant's counsel as to the amount of time allowed for filing an appeal, this Court should allow the dismissal without assessing costs. Although the Appellants' attorneys had the incorrect rules, it is not incumbent on this Court to advise them of how and when to file their case. It is up to that attorney to obtain the correct information. In this case, this Court did make an effort to advise counsel that the information provided on the Nation's website is not considered an appropriate source. See *Simplot, Severson and Ravet v. HCN Department of Health*, SU99-07 (HCN S. Ct. Sept. 14, 1999)

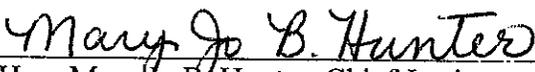
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This Court, having heard the arguments of the Appellants' counsel, is not persuaded that this is not a frivolous appeal. Counsel for the Appellants states that the appeal was filed solely to comply with the misperceived deadline for filing an appeal. (Tr. p. 14) The appellants themselves had not fully agreed to filing the appeal. (Tr. pp. 15-16) And, the appellants decided that "it wasn't in their best interest to proceed with it." (Tr. p. 4) In fact, counsel for the Appellant stated at oral argument that "after we did some preliminary research we instructed them that--or advised them that there is an open question here." (Tr. p. 17) Given that information and counsel's own definition of a frivolous appeal, this Court cannot help but wonder if this is not actually a frivolous appeal. (Tr. p. 10) See *Carol Smith v. Rainbow Bingo and Casino*, SU97-04 (HCN S. Ct., Jan. 8, 1998).

Nevertheless, this Court upholds our rules which set the perimeters of practice in the appellate process. HCN Rule of Appellate Procedure, Rule 10 (d) provides notice to the parties that once the appeal is filed, the appellate court clerk will begin to perfect the record. Counsel should consider that factor in determining whether or not to dismiss an appeal. In this case, the approach to filing the appeal was not one of careful thought and consideration but, rather, filing an appeal quickly to preserve misconstrued deadlines. That approach resulted in costs to this Court which were unnecessary. Therefore, we stand by our prior decision to assess costs to the Appellants.

EGI HESHKEKJET. IT IS SO ORDERED.

Dated this 7th day of February 2000. Per Curiam.



Hon. Mary Jo B. Hunter, Chief Justice
HCN Supreme Court

CERTIFICATE OF SERVICE

I, Willa RedCloud, Clerk of the Ho-Chunk Nation Supreme Court of the Ho-Chunk Nation, do hereby certify that on the date set forth below I served a true and correct copy of the attached paper filed in Case No. SU-99-07 (CV-95-26 & 27, CV-96-05), by the United States Postal Service, upon all persons listed below:

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Ho-Chunk Nation Supreme Court