

No. SC-CV-43-19

NAVAJO NATION SUPREME COURT

Rayline Charley,
Petitioner-Appellant,

v.

Cheryl Walters, Navajo Nation Department of
Emergency Medical Services,
Respondent-Appellee.

OPINION

Before JAYNE, J., Chief Justice, SHIRLEY, E., Associate Justice, and TSINIGINE, T., Associate Justice.

Appeal from a decision of the Office of Hearings and Appeals concerning Cause No. OHA-DPM-010-18, the Honorable Richie Nez, Chief Hearing Officer, presiding.

Elsie RedBird, Albuquerque, New Mexico, for Appellant; Colin Bradley, Phoenix, Arizona, for Appellee.

This case concerns the statutory interpretation of the transcript filing requirements applicable to the grievance procedure for Navajo Nation government employees under 15 N.N.C. § 614.

I

Appellant filed a Notice of Appeal. Within ten (10) calendar days of the filing of the appeal, the Office of Hearings and Appeals (“OHA”) filed the record on appeal. The transcript of the proceeding was due within thirty days of the filing of the appeal. The period for filing the transcript lapsed with no filing of the transcript. On the thirty-first day after the filing of the notice of appeal, the OHA filed the transcript and an amended index of the record on appeal indicating the transcript was filed the day before in its office. Pursuant to 15 N.N.C. § 614(E)(3)

(enacted by Resolution No. CO-48-14 and recodified by Resolution No. CMA-13-16), this Court dismissed the appeal concluding the transcript was not filed within thirty (30) days of the appeal, requiring a dismissal of the appeal. Appellant seeks reconsideration of our decision.

II

Rule 19 of the Navajo Rules of Civil Appellate Procedure allows a petition for reconsideration and supporting memorandum directed solely to discussion of those specific points or matters of law in which it is claimed the Supreme Court erred. A party seeking reconsideration has the burden to demonstrate this Court erred before reconsideration is granted.

III

The issue before the Court is whether the Court erred when it dismissed this appeal of an employment action against the Navajo Nation pursuant to 15 N.N.C. § 614(E)(3) when the transcript of the proceeding was filed in the Supreme Court on the thirty-first day after the filing of the appeal. Specifically, as a sub-issue, whether 15 N.N.C. § 614(E)(3) supersedes the transcript filing requirements of the Navajo Rules of Civil Appellate Procedure.

IV

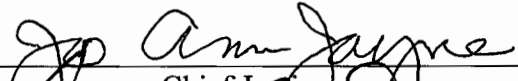
Appellant asserts this Court erred. Appellant relies on the Navajo Rules of Civil Appellate Procedure. Appellant claims that she filed her transcript by FedEx with the OHA within the period for transmitting the record. In the alternative, Appellant also claims just before the deadline for filing the transcript, she sought an extension to file the transcript in the OHA, which was denied but later granted upon a second request. With the extension from the OHA, Appellant asserts her transcript to the Supreme Court was timely filed. Appellant also states the Navajo Rules of Civil Appellate Procedure applies because her counsel had no knowledge of the statutory amendments.

The Navajo Nation Council amended the Navajo Preference in Employment Act specifying the grievance procedure for Navajo Nation government employees under 15 N.N.C. § 614. Section 614(E)(1) provides, “If considered necessary, the party appealing a decision shall file a transcript of the proceeding with the Navajo Nation Supreme Court within thirty (30) calendar days from the filing of the notice of appeal.” (Emphasis added.) “If the appellant fails to file a transcript or notice that the appellant will not file a transcript within the required time, the Navajo Nation Supreme Court shall dismiss the appeal.” 15 N.N.C. § 614(E)(3). Public notice of amendments through the legislative process is presumed.

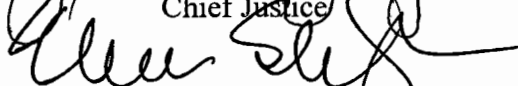
The statutory procedural requirements specify the transcript of the proceeding must be filed “with the Supreme Court within thirty (30) calendar days” or the appeal will be dismissed. These procedural requirements differ from, and supersede the Navajo Rules of Civil Appellate Procedure, which would have allowed the filing of the transcript in the lower tribunal within the same timeframe, and would have also allowed an extension upon good cause. By enacting procedural transcript requirements differing from the Navajo Rules of Civil Appellate Procedure, the statutory provisions govern. Here, the notice of appeal was filed on October 24, 2019, requiring the transcript to be filed *with* the Supreme Court no later than November 25, 2019. The transcript filed in the OHA and later transmitted to the Supreme Court on November 26, 2019 was filed late. Claims that Appellant’s counsel lacked knowledge of the statutory amendments does not nullify the application of the amendments. This Court did not err in dismissing the appeal as required by 15 N.N.C. § 614(E)(3).

The Court hereby DENIES the petition for reconsideration.

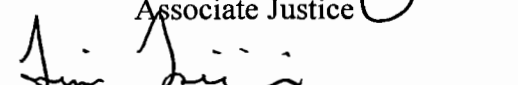
Dated this 17th day of April, 2020.



Chief Justice



Associate Justice



Associate Justice