

No. SC-CV-18-20

SUPREME COURT OF THE NAVAJO NATION

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Navajo Nation Division of Economic Development,  
Petitioner-Appellee,

v.

Dineh Benally,  
Respondent-Appellant.

OPINION

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

Appeal from a decision of the Shiprock District Court concerning Cause No. SR-CV-15-2020, the Honorable Genevieve Woody, presiding.

David R. Jordan, Gallup, New Mexico, for Appellant; Katherine Belzowski, Window Rock, Navajo Nation, for Appellee.

This appeal concerns the period for filing an appeal in forcible entry and detainer actions involving commercial property. The Court previously issued a short order dismissing this appeal for lack of jurisdiction, finding the appeal was untimely filed pursuant to the Forcible Entry and Detainer statute. This opinion explains the Court's earlier decision in more detail.

I

On June 22, 2020, the Navajo Nation Division of Economic Development ("NNDED") filed a complaint against Dineh Benally ("Benally") for forcible entry and forcible detainer pursuant to 16 N.N.C. § 1801(B)(1) and 16 N.N.C. § 1801(C)(1), respectively. The complaint alleged Benally unlawfully re-entered commercial property known as the To'bahi' RV Park in Shiprock, Navajo Nation, and refused to surrender such premises. Benally opposed the complaint and sought dismissal of the action. The Shiprock District Court ("District Court")

heard testimony that Benally has a right of possession to the premises pursuant to a business site lease approved by the Bureau of Indian Affairs (“BIA”). The District Court also heard testimony by the Navajo Nation that the business site lease was cancelled by the BIA in 2011 and Benally no longer had the right of possession under the lease. In turn, Benally asserted the lease was improperly cancelled and he retained the right of possession to the premises.

In rejecting Benally’s contention, on September 23, 2020, the District Court found Benally guilty of forcible entry pursuant to 16 N.N.C. § 1801(B)(1). The District Court also found insufficient grounds to find Benally guilty of forcible detainer under 16 N.N.C. § 1801(C)(1).

Benally filed an appeal on September 29, 2020 for the forcible entry judgment only. Benally also filed a copy of the appeal bond that he posted in the District Court.

On October 15, 2020, the NNDED moved to dismiss the appeal claiming Benally failed to comply with jurisdictional conditions at 16 N.N.C. § 1807(A)(“Section 1807”). The NNDED asserts, in order for the Supreme Court to have jurisdiction over the matter, Section 1807 requires an appellant must file a notice of appeal within five *calendar* days of a judgment in forcible entry and detainer cases. In this instance, the NNDED asserts the District Court rendered its final judgment on September 23, 2020, authorizing an appeal by September 28, 2020. The NNDED asserts that Benally filed his appeal on September 29, 2020, failing to comply with Section 1807. Benally disagrees with the NNDED’s contention citing to *Fort Defiance Housing Corp. v. Allen*, 8 Nav. R. 492 (Nav. Sup. Ct. 2004), for the proposition that he has five *working* days from receipt of the order to file an appeal. In disagreement, the NNDED argues that that holding applies to residential evictions only.

The issue is whether 16 N.N.C. § 1807(A) authorizes an appealing party to file an appeal within five *working* days of receipt of a judgment in forcible entry and detainer actions concerning commercial property.

### III

The resolution of this case depends on our interpretation of appellate filing requirements under the Forcible Entry and Detainer statute at 16 N.N.C. § 1807.

In 1981, the Court resoundingly stated that 16 N.N.C. § 1807(A), though poorly-worded, means “the notice of appeal is to be filed within the five day period.” *Benally v. Navajo Housing Authority*, 3 Nav. R. 55 (Nav. Ct. App. 1981). Proof that appellants have filed the requisite appeal bond, *see Hood v. Bordy*, 6 Nav. R. 349, 351 (Nav. Sup. Ct. February 22, 1991), or documentation of its waiver is required, *see Navajo Townsite Community Development Corp. v. Sorrell*, 8 Nav. R. 214, 219 (Nav. Sup. Ct. January 28, 2002)(waiver upon an earnest attempt to comply with the statute). As a general rule, “An appellant complies with Section 1807 when he or she submits a bond within five days of the district court's order, or when the district court waives the bond on request.” *Fort Defiance Housing Corporation v. Lowe*, 8 Nav. R. 463, 473 (Nav. Sup. Ct. 2004)(citing *Sorrell, supra*). The Court recognized a strict interpretation of Section 1807 demands dismissal for non-compliance, and carved out an exception for residential cases by interpreting Section 1807 in light of the Navajo Bill of Rights, as informed by *Diyin Nohookáá Dine'é Bi Beehaz'áanii. Fort Defiance Housing Corporation v. Lowe*, 8 Nav. R. 463, 473 (Nav. Sup. Ct. 2004)(emphasis added). The Court in its interpretation of Section 1807 held that “the five days in the statute to be five working days from receipt of the order, to give [residential] tenants additional time to comply with the judge's [bond] conditions.” *Id.*, at 475.

The importance of the home to Navajos greatly influenced the outcome. In a carefully worded decision, the Court stated “we instruct that the following procedures be followed in forcible entry and detainer cases when the court orders the eviction of a tenant from his or her residence.” *Lowe*, at 475. The holding was limited explicitly with “We restrict our holding today to evictions from residential units, and make no comment on the due process requirements in commercial property situations.” *Lowe*, slip op. at 475, n. 4.

Benally cited *Allen, supra*, for the proposition that forcible entry and detainer appeals are generally allowed within 5 working days of receipt of the order. The Court in *Allen* dealt with a conflict between the forcible entry and detainer statute and the civil appellate rules as to timeframes for filing an appeal. The statute required appeals within five days, and the rules required the bond within five days while allowing the filing of such appeals within thirty days. The Court definitively clarified that the time to file a notice of appeal in a forcible entry and detainer case is the same as the time to file the appeal bond: five working days from the receipt of the order. 8 Nav. R. at 499. Seemingly omitted by Benally is the fact that *Allen* dealt with an eviction of a tenant from her residence, which is not directly on point.

The plain language of Section 1807 requires an appeal within five calendar days of the rendered judgment. The holding for residential cases authorizing the filing of an appeal within 5 working days of receipt of the rendered judgment as established by *Lowe* does not apply to this case. If the legislative body, the Navajo Nation Council, intended five *working* days from the rendition of the judgment for the filing of all appeals, it would have explicitly said so or it would have enacted amendments with such specificity. The Court holds 16 N.N.C. § 1807(A) does not authorize an appealing party to file a notice of appeal within five *working* days of receipt of the order in commercial property cases.

While an inquiry on whether a dismissal would violate a fundamental right of the appellant under Navajo law is expected, we decline to interpret Section 1807 in light of the Navajo Bill of Rights as informed by Diyin Nohookáá Dine'é Bi Beehaz'áanii, *see Lowe* at 473, when Benally does not raise such an argument as to commercial property and overly simplified case law to advance this new argument.

Precedent concerning the interpretation of Section 1807 in residential cases, which authorizes the filing of an appeal within 5 working days of receipt of the rendered judgment, does not apply to this case. The plain language of Section 1807 requires an appeal within five days. Benally filed his appeal six days after the District Court rendered its judgment. Benally did not comply with Section 1807. This Court is without jurisdiction.

IV

Based on the foregoing, the Court hereby DENIES the appeal for lack of its jurisdiction.

Dated this 9 day of July, 2021.

  
Chief Justice

/s/ The Honorable Eleanor Shirley  
Associate Justice

/s/ The Honorable Tina Tsinigine  
Associate Justice