No. SC-CV-69-14

NAVAJO NATION SUPREME COURT

Dale E. Tsosie and Hank Whitethorne,
Petitioners/Appellees,

v.

Christopher C. Deschene,
Respondent/Appellant.

ORDER OF DISMISSAL

Before YAZZIE, H., Chief Justice, SHIRLEY, E., Associate Justice, and BLACK, I., Associate Justice by Designation.

An appeal from a decision of the Office of Hearings and Appeals concerning Cause Nos. OHA-FC-005-14 and OHA-FC-007-14, Chief Hearing Officer Richie Nez, presiding.

This matter comes before the Court upon a Notice of Appeal filed on October 20, 2014 and a Motion to Dismiss filed by the Appellees Tsosie and Whitethorne on October 21, 2014. Respondent Christopher C. Deschene filed a Notice of Appeal and submitted his filing fee at 4:32 pm on October 20, 2014. The Notice of Appeal states that a copy of the certified judgment is attached and "the Office of Hearings and Appeals transmitted a certified copy to this Court on or immediately after October 9, 2014." The Notice of Appeal, however, did not include a certified copy of the final judgment being appealed. Shortly after the filing, the Clerk of the Supreme Court called Deschene's counsel and left him a telephonic message that the certified copy of the final judgment was not attached as stated.

On October 21, 2014 at 11:45 am, Deschene filed the certified copy of the final judgment.

Rule 7(a) of the Navajo Rules of Civil Appellate Procedure (NRCAP) requires that "a certified copy of the final judgment, order, or administrative decision being appealed, signed by

the judge or hearing officer and dated, must be attached to the Notice of Appeal[,]" and the filing fee paid at the time of filing. The Notice of Appeal, the final judgment and the filing fee must be filed contemporaneously. *Yazzie v. Catron*, 7 Nav. R. 399, 401 (Nav. Sup. Ct. 1999). Rule 7(b) further states no appeal shall be considered filed until the filing fee has been paid and a copy of the final judgment has been attached. It has been long established that the requirements of Rules 7(a) and 7(b) are jurisdictional. *Joe v. Atkins*, 6 Nav. R. 8 (Nav. Sup. Ct. 1988).

The Appellant has the responsibility for compliance with the appellate rules on originating an appeal. *Joe v. Atkins*, 6 Nav. R. at 9. The final judgment or order of the lower court is an essential requirement for originating an appeal. *Tome v. Navajo Nation*, 5 Nav. R. 14, 15 (Nav. Ct. App. 1984). Any litigant who is serious about his case will ensure that all of the court's jurisdictional requirements are satisfied. *Henderson v. Navajo Board of Election Supervisors,* 7 Nav. R. 360, 362 (Nav. Sup. Ct. 1998). If an Appellant does not file one or more of the items required by Rule 7(a), this Court does not have jurisdiction over the appeal at the outset. *Id.* at 361. In this case, Deschene failed to comply with the jurisdictional requirements at the time he filed his appeal by not including a certified copy of the final judgment with his Notice of Appeal. The inference that a certified copy of the final judgment was previously provided to this Court by the OHA does not cure the jurisdictional defect. The copy provided to the Court by the OHA was to show that it carried out its duties as remanded in a previous consolidated appeal, Nos. SC-CV-57-14 and SC-CV-58-14. It was not submitted for the purpose of meeting Appellant's filing requirements. Furthermore, the filing of the certified copy of the final judgment on the day after the filing of his Notice of Appeal does not cure the defect that the items be filed contemporaneously.

The Court hereby DISMISSES the appeal for the lack of jurisdiction. The Final Order Disqualifying Respondent [Deschene] entered on October 9, 2014 is final and enforceable. This being an election matter of priority, there will no filing of a petition for reconsideration under the facts of this case that deprives this Court of the power and authority over this appeal.

Dated this 21st day of October, 2014.

Chief Justice

Associate Justice

(Telephonically approved)
Associate Justice