
\IN THE CROW COURT OF APPEALS

IN AND FOR THE CROW INDIAN RESERVATION

CROW AGENCY, MONTANA

CIV. APP. DOCKET NO. 94-31

**ESTATES OF RED WOLF and BULL TAIL,
Plaintiffs/Appellees,**

vs.

**ESTATE OF RED HORSE,
Plaintiff/Appellant,**

vs.

**BURLINGTON NORTHERN RAILROAD
COMPANY, a corporation,
Defendant/Appellant.**

Decision Entered January 19, 1996

[Cite as: 1996 CROW 1]

Before: Donald A. Stewart, Sr., J., Victoria White, C.J., and William C. Watt, J.

OPINION

[¶1](#) Bonnie Little Nest, putative heir and personal representative of the Estate of Chantina Red Horse, filed a Notice of Appeal on December 20, 1995, appealing from the Judgment of the Crow Tribal Court (Arneson, J.) entered December 12, 1995, (1) denying her motion to intervene in the above-captioned case, (2) granting plaintiff's motion to separate the claims of the Red Horse Estate and dismissing them without prejudice from the instant proceeding, and (3) scheduling trial of the other estates' claims against defendant Burlington Northern.

[¶2](#) Citing the imminent trial date, Little Nest also filed a motion for expedited appeal dated December 21, 1995. Little Nest, through her counsel, N. Jean Bearcrane, filed a brief dated December 29, 1995 in support of her motion for expedited appeal, in which she described the grounds for the appeal. Defendant Burlington Northern Railroad Company filed a notice of appeal on January 3, 1996, which also joins in Little Nest's motion for expedited appeal.

¶3 Defendant Burlington Northern's notice of appeal having not been filed within the time allowed by Crow R. App. P. 3(a), its appeal is DISMISSED. In view of the pendency of the trial of this matter, Little Nest's motion for expedited appeal is GRANTED. However, for the reasons set forth below, we hold that the trial of the other two estates' claims should go forward as ordered by the Tribal Court,

¶4 Appellant Little Nest apparently first filed her motion to intervene on November 3, 1995. In support of her intervention and this appeal, Little Nest's attorney argues that the Red Horse Estate is a necessary party to the trial, because it would be impossible to properly allocate liability and damages. Appellant also argues that because she has filed a separate case (Cause No. 95-323) against Burlington Northern and the Lodge Grass School District stemming from the same event, the parties in Cause No. 95-323 should "have the opportunity to possibly consolidate both actions." Little Nest's attorney also states that she has filed a petition in Cause No. 93-338 requesting that she replace Darrell Casey Red Horse as personal representative of the Estate of Chantina Red Horse, and that proceeding with the trial of the other two estates' claims would prevent the Red Horse Estate from asserting claims against all possible parties. Finally, Little Nest argues that this appeal would resolve the identities of the real parties in interest, which have "always been at issue in at least two of the three estates." According to Little Nest, proceeding to trial would preclude the real parties in interest from participating, and cast doubt on the validity of any verdict rendered in the trial.

¶5 Appellant's arguments and assertions are all made without supporting legal authority. Her factual assertions are also conclusory and not supported by affidavits or other evidence.

¶6 Appellant's motion for intervention occurred at a very late stage of the proceedings in the case below. Appellant has not explained why she stayed on the sidelines for nearly two years before attempting to intervene in this case only two months before the scheduled trial. Appellant has also offered no credible explanation of why she did not earlier petition the Tribal Court to substitute her as personal representative of Chantina's estate, which may have helped resolve the identity of the real parties in interest long before this case came to trial.

¶7 Rule 8(f)(2) of the Crow Rules of Civil Procedure provides that the Court shall allow intervention if "adjudication of the claims before the Court would impair or impede his ability to protect some right or interest he asserts." Appellant makes no compelling arguments as to why Chantina's estate's interests would be prejudiced by the trial of the other two estates' claims. This is not a case where the Tribal Judge has split the causes of action belonging to the estate of Chantina Red Horse. Rather, at the request of the current personal representative of the Red Horse estate, the Tribal Court has separated all the Red Horse Estate claims from the instant proceeding, so that those claims could be consolidated for trial either in the case filed by Little Nest or in a new case filed by the current personal representative.

¶8 This Court is not aware of any right of the Red Horse Estate to consolidate its claims in a single action with those of other claimants simply because the claims arise from the same event. The Tribal Judge has concluded that the interests of judicial economy do not compel such a consolidation in this case. Counsel for the current personal representative concluded that the Red Horse Estate's claims would not be prejudiced by a separate proceeding. Indeed, Appellant's decision to file a separate case indicates that she, too, had previously resolved to proceed separately. Appellant has

not asserted that there are any statutes of limitations questions or other specific procedural impediments to the Red Horse estate's claims proceeding to trial separately. It is not at all clear whether any verdict or decision in the other two estates' trial will have any preclusive or collateral effect on the Red Horse estate's claims. In view of the skill and reputation of those plaintiffs' counsel, it is unlikely that any collateral effect on the Red Horse estate's claims would be prejudicial.

¶9 Appellant's argument about the need to allocate liability and damages in a single proceeding is not well taken. Nothing in the record indicates that the plaintiffs are asserting claims against each other, and certainly any jury verdict awarding damages will award them separately to each of the estates. The Court cannot discern why there would be a need to allocate liability and damages in the context of a single proceeding.

¶10 Thus, Appellant Bonnie Little Nest's request for intervention does not meet the criteria of Crow R. Civ. P. 8(f), or of Fed. R. Civ. P. 24(a). Appellant is also mistaken that this appeal is necessarily the proper forum for resolving the real parties in interest with regard to the Estate of Chantina Red Horse. That is a matter for resolution by the Tribal Court in the first instance, in Cause No. 93-338 in which Appellant has also recently intervened. Appellant states that this issue exists with respect to at least two of the plaintiff estates. However, whether such a dispute exists in one of the other estates is not a matter for which Appellant Bonnie Little Nest has standing to bring before this Court. The Tribal Court's order separating the Red Horse Estate's claims from the trial in the instant case will provide the opportunity to resolve any questions concerning the real party in interest prior to proceeding to trial on the Red Horse estate's claims. As the Tribal Court held, there is no compelling reason to prejudice the other plaintiffs by delaying the trial in order to resolve Little Nest's claim to heirship of the Red Horse Estate, especially when she had previously stipulated to apply Montana law to the determination of heirship.

¶11 Thus, we see no compelling reasons to disturb the Tribal Court's decision to require all the Red Horse Estate claims to proceed separately. Little Nest has already filed a separate case. The question of who is the proper personal representative and heir of Chantina's estate can be resolved in Tribal Court Cause No. 93-338 before the Red Horse estate's claims are brought to trial. Thereafter, all claims of the Estate of Red Horse can be litigated in a single case.

For the reasons stated above, the judgment of the Tribal Court is **AFFIRMED**.