

CROW COURT OF APPEALS
IN AND FOR THE CROW INDIAN RESERVATION
CROW AGENCY, MONTANA

IN RE THE MARRIAGE OF:)
BELDEAN PLAIN FEATHER,)
)
Petitioner/Appellee,)
) CIV. APP. DOCKET NO. 91-54
vs.)
)
DANIEL PLAIN FEATHER,)
)
Respondent/Appellant.)

OPINION AND ORDER

BEFORE White, C.J., Stewart, J., and Watt, J.

Judge William C. Watt delivered the Opinion of the Court.

This is an appeal from a custody modification order by the Tribal Court (Birdinground, J.), entered on December 20, 1995. The notice of appeal was dated January 31, 1996. This Court issued a scheduling order dated April 23, 1996, directing Respondent/Appellant Daniel Plain Feather to file a statement justifying an extension of time for filing his notice of appeal, and a "brief and any such additional evidence as Appellant intends to rely upon" in support of his allegations that political influence affected the Tribal Court's decision in this matter. Appellant timely filed his statement in response to the scheduling order.

As a threshold matter, this Court must consider whether Appellant's notice of appeal was filed in a timely manner pursuant to Rule 3(a) of the Crow Rules of

Appellate Procedure. As in the federal court system (see Browder v. Director, Department of Corrections, 434 U.S. 257, 264 (1978)), the requirement for timely filing a notice of appeal is mandatory and jurisdictional in this Court. The Crow Tribal Code does not empower us to consider an appeal which has not been filed within the times prescribed in Crow R. App. P. 3(a).

The Crow Rules of Appellate Procedure provide that the notice of appeal "shall be taken by filing an appeal with the Clerk of the Crow Tribal Court within ten (10) days of the date of the entry of judgment or order appealed from[.]" Crow R. App. P. 3(a). The rules also provide that "upon a showing of excusable neglect, the Crow Tribal Court may extend the time for filing of the notice of appeal by any party for a period not to exceed 30 days from the expiration of the normal period allowed for the filing of a notice of appeal." Id (emphasis added). Like the federal rules, (see Fed. R. App. P. 25, 26) the Crow Rules of Appellate Procedure do not provide for additional time for mailing of the order, or for mailing of the notice of appeal to the Court.

In response to the scheduling order, Appellant argues that his counsel was never served with a copy of the Tribal Court's order dated December 20, 1995. His counsel finally received a copy of the order from Appellant on January 12, 1996, and a notice of appeal was filed thereafter following meetings and decisions. Id. Appellant notes that by the time his counsel received a copy of the order, the initial ten-day period for filing a notice of appeal had already passed. Appellant therefore argues that because his counsel's late receipt of the order was a result of

the Court's own neglect, he is entitled to an extension of time for filing his notice of appeal. *Id.* at 2. (Appellant's statement erroneously refers to "Petitioner" and "Petitioner's counsel," but it is clear from the context that he intends to refer to Appellant and Appellant's counsel.)

The Tribal Court's file in this case indicates that a copy of the Tribal Court's order was mailed to Mr. Plain Feather in Pryor on December 20, 1995, the same day it was entered. A copy of the Clerk's certification is attached as an appendix to this opinion. Thus, from the Tribal Court's records, and Appellant's own statement, it must be presumed that Mr. Plain Feather himself received a copy of the order shortly after it was entered, and certainly before January 12, 1996.

The Appellant's statement also states that his counsel received a copy of the order on January 12, 1996. However, the notice of appeal was not signed until 19 days later on January 31, 1996, or a total of forty-two (42) days after the order was entered. Although the Court's date-stamp indicates that the notice was not filed until February 8, 1996, we shall assume for purposes of this decision that it was actually received by the Court on January 31, 1996.

In this case, the Clerk of the Tribal Court should have mailed a copy of the order to Appellant's counsel, rather than to Appellant himself. The parties themselves often do not understand the importance of a court order, or the time periods involved in filing a notice of appeal. Although this error on the part of the Clerk's office should be corrected in the future, we need not reach the issue of

whether this error alone excuses the late filing of the notice of appeal in this case, in view of the fact that counsel did actually receive the order on January 12, 1996.

When Appellant's counsel received the order on January 12, 1996, there remained 17 additional days in the extension period pursuant to Crow R. App. P. 3(a) in which to timely file a notice of appeal. This was ample time to prepare a notice of appeal and a motion for extension of time which should have been directed to the Tribal Court, even if the notice of appeal was protective in nature, and Appellant had not yet finally decided whether to prosecute an appeal. Even under Fed. R. App. P. 4(a)(6), adopted in 1993 to address the question of when a party does not receive the notice of entry of judgment from the Clerk, Appellant's motion for extension would have been due no later than seven days after Appellant's counsel received the order (i.e., by January 19, 1996). Thus, even if this Court had the power to extend the filing time for extraordinary circumstances beyond the forty days allowed in Rule 3(a), we do not find any such extraordinary circumstances justifying consideration of such a further extension.

With the extension authorized in Rule 3(a), Appellant's notice of appeal was due to be filed by Monday, January 29, 1996. In this case, the notice of appeal was filed at least two days past that deadline, on January 31. Therefore, this Court is compelled to dismiss this appeal for lack of jurisdiction.

With respect to Appellant's allegations of political influence, Appellant states that he "personally knows the familial, traditional and political relationship of Blaine Small, Clara Nomee, Chief Judge White and Judge Birdinground."

Appellant's Statement at 1. However, Appellant has not explained why, possessing such knowledge, he did not avail himself for the procedure for disqualifying a Tribal Court judge as provided in Crow Tribal Code § 3-3-308. In any event, his allegations do not appear to fall within the criteria for disqualification under Crow Tribal Code Section 3-3-308(2).

Appellant's statement also asserts: "The Judges of Tribal Court serve at the beck and call of Tribal Executive Officials including the Tribal Chairman (Clara Nomee). Said political influence is well known publicized, and historical fact in the crow [sic] Court System." Id. Appellant states that he is ready to present testimony as to "said political influence." Id. at 2. Appellant's other criticism of Judge Birdinground's conduct of the hearing go to the merits of the appeal, and provide no specific facts or events to support Appellant's belief and statements that the Tribal Court judge's decision was politically influenced in this case.

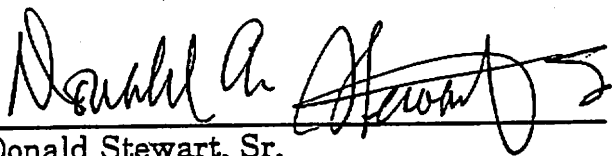
We decline to consider Appellant's broad, conclusory and after-the-fact allegations of political influence. Following Appellant's logic, it is difficult to imagine how any judge of the Tribal Court, or any duly constituted panel of the Crow Court of Appeals, could ever adjudicate Appellant's case, rule on an appeal, or consider Appellant's allegations of political influence as a ground for his appeal. Furthermore, in view of Appellant's failure to timely file his notice of appeal, these allegations are moot. Accordingly,

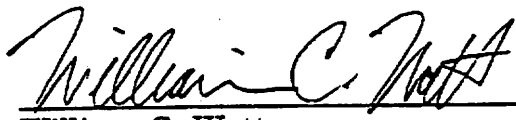
IT IS HEREBY ORDERED that this appeal is DISMISSED for lack of appellate jurisdiction resulting from Appellant's failure to timely file his notice of

appeal.

DONE AND DATED this 28th day of May, 1996.


Victoria White
Chief Judge, Crow Court of Appeals


Donald Stewart, Sr.
Judge, Crow Court of Appeals


William C. Watt
Judge, Crow Court of Appeals

cc: Robert E. LaFountain, Esq.
Daniel Plain Feather
Beldean Hugs Small

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