

IN THE SUPREME COURT OF THE CHEROKEE NATION

CHEROKEE NATION BUSINESSES, LLC.,)
)
 Appellant,)
 v.)
)
 CECIL SWINNEY,)
)
 Appellee.)

SC 2017-06

CHEROKEE NATION
SUPREME COURT
KENDALL BIRD, COURT CLERK

2017 JUL 14 AM 11:38

FILED

REPLY TO CNB’S OBJECTION TO MOTION TO DISMISS APPEAL

Comes now Appellee Cecil Swinney (“Swinney”) and submits this Reply to Cherokee Nation Businesses, LLC’s (“CNB”) Response to Appellee’s Motion to Dismiss Appeal (“Response”).

CNB wholly failed to cite any lawful authority- statute or court rule- to excuse it from paying a filing fee. Instead, CNB argues that it was the Court clerk’s *unwritten* policy and practice to excuse CNB from payment of filing fees. Court Administrator Lisa Fields states that based on a discussion between court staff and Judicial Appeal Tribunal (“JAT”) Justices in 2004, “Cherokee Nation entities, i.e. Council, Administration, etc. would not be required to pay a filing fee and it was agreed that those entities as well as CN affiliates and businesses would not be required to pay a filing fee”.¹ See CNB Response Exhibit “A.” However, District Court Clerk Krisit Moncooyea in her affidavit states that Cherokee Nation Tribal Child Support and Cherokee Housing do pay filing fees. See Exhibit B. CNB Response Exhibit “B.”

¹ CNB argues that since Appellee’s attorney was Principal Chief of the Cherokee Nation when the court clerks and the JAT Justices had this private conversation in 2004, therefore he should have known of the unwritten policy or practice not to charge CNB filing fees. CNB’s argument shows the paucity of its position and it begging the issue by a personal attack on appellee’s attorney. So what if appellee’s attorney was Principal Chief in 2004. That does not create legal authority excusing CNB from paying filing fees. Simply, there is no exception to Court Rule 6 that appellants do no pay the filing fee. Without payment of the filing fee, the appeal is not timely filed and this Court has no jurisdiction.

According to CNB's documents, there is not even a uniform unwritten policy because the Court Administrator believes Cherokee Nation and its affiliates do not pay filing fees but the District Court Clerk states the Cherokee Nation pays filing fees for child support cases and the Cherokee Nation Housing Authority pays filing fees. Regardless, courts of law operate on law written and published for the public to rely upon. In this case, CNB acknowledges there is no written or recorded rule or law excusing them from SC Rule 6 and instead they rely on an unrecorded oral conversation thirteen (13) years ago.

SC Rule 6 in pertinent part provides;

The petitioner must pay the required filing fee of seventh-five dollars (\$75.00), or fifty dollars (\$50.00 for an appeal. Payments can be made in the form of cash, check, or money order payable to the court. An Application for Waiver of Fee Paupers Affidavit can be completed and submitted to the Court Administrator for approval.

In 2004, if the JAT believed it was appropriate to excuse the Cherokee Nation and its affiliates from paying filing fees, it was required to enact a court rule. It did not. See 20 C.N.C.A. 57. CNB cites no statute excusing it from paying filing fees.

In 2013, the Cherokee Nation Supreme Court revised the Court Rules. *See* SC AD 2013-01 (Mar. 27, 2013). The revised court rules did not provide for a waiver or exception for Cherokee Nation and its affiliates from paying filing fees. If the Court clerk's policy and practice was the policy and practice of this Court then it would have provided so in its 2013 revision including amending SC Rule 6. Moreover, SC Rule 3 provides that, "All prior Court Rules are hereby rescinded . . ." Even if there was a policy or practice prior to 2013 to excuse CNB from paying filing fees, it was rescinded by the Supreme Court in 2013.

Fatal to CNB's argument there was some enforceable unwritten policy or practice that CNB was exempt from SC Rule 6 is the fact that it cannot show that the exception was ever

transmitted to the Council as required by 20 C.N.C.A. 57 (b) and (c). This law referenced in SC Rule 3, provides:

B. Any rule adopted by the Justices shall be transmitted to the Council, directing the codification of such rule.

C. No rule adopted by the Justices shall be effective until approved under procedures adopted by the Justices and transmitted to the Council.

CNB has failed to show that its purported unwritten exception to SC Rule 6 was ever transmitted to the Council by the JAT or this Court and therefore, it is ineffective.

Since the filing fee was not timely filed, this Court has no jurisdiction and therefore, the Court must dismiss the above appeal.

Submitted this 14th of July, 2017.

_____/ss/_____
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Certificate of Delivery

I, Chadwick Smith, do hereby certify that on the 14th day of July, 2017, I emailed a true and complete copy of the foregoing document to the persons listed below:

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