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APR 19 2001

JEANNE A. SZULIM
CLERK OF COURT



**IN THE COURT OF APPEALS OF
THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY**

COUNTY OF SCOTT

STATE OF MINNESOTA

Robert Famularo,

Appellant-Plaintiff,

v.

Little Six, Inc. d/b/a Mystic Lake Casino,

Appellee-Defendant

Ct. App. No. 026-00

MEMORANDUM OPINION AND ORDER

I. FACTUAL BACKGROUND

Appellant originally filed this suit claiming that Little Six, Inc. (LSI) owed him compensation for an injury that he allegedly sustained at Mystic Lake Casino.

Prior to trial, LSI filed a motion for summary judgment. On October 20, 2000, Judge Robert A. Grey Eagle granted LSI's motion and dismissed Appellant's claims. Judge Grey Eagle did so by issuing a Memorandum Opinion and a separate Order Granting Defendant's Motion for Summary Judgment. As is her usual practice, the Clerk of Court immediately delivered a Clerk's Notice to each party informing them that the Memorandum Opinion and Order Granting Defendant's Motion for Summary Judgment had been issued on October 20, 2000, and attaching copies of the both the Order and Opinion.

On November 9, 2000 Appellant filed a Motion for Amended Findings of Fact, Conclusions of Law, or for a New Hearing. On November 28, 2000, the trial court issued an order denying Appellant's motion because it was untimely and because it sought relief not applicable to this case.

On December 14, 2000, Appellant filed a Motion for Certification for Appeal and Notice of Appeal. To support his request for an order certifying the appeal, Appellant argued in his Notice of Appeal that no appealable order has been filed in this case, and that the trial court's November 28, 2000 order was in error to the extent it concluded that Plaintiff's Motion for a New Trial was untimely.

The Court of Appeals held a scheduling conference with the parties on December 21, 2000. As a result of that conference, in a Scheduling Order, issued December 22, 2000, the Court invited briefing on whether this appeal was timely filed. Therefore, presently pending before this Court is Appellant's "Motion to Reverse the 10/20/00 Order of the Trial Court, to Vacate the 11/28/00 Order of the Tribal Court and to Certify Plaintiff's Appeal for Decision on the Merits" and Appellee's "Motion to Dismiss Plaintiff's Appeal."

II. LEGAL DISCUSSION

The issue presently before the Court is whether this appeal should be dismissed because it was not filed in a timely fashion. Under tribal law, a party has 30 days after the entry of an appealable order to file a Notice of Appeal with this Court. See SMS(D)C Ordinance 02-12-88-01 § 7; In re: Trust Under Little Six, Inc. Retirement Plan, No. 024-00 (SMS(D)C Ct. App. Sept. 13, 2000). In this case, the trial court entered an appealable order on October 20, 2000 when it granted LSI's Motion for Summary Judgment. Appellant did not file his Notice of Appeal until December 14, 2000, which is more than 30 days after October 20, 2000. Therefore, on the face of the Notice of Appeal, it appears Appellant has filed too late for this Court to assume jurisdiction.

Appellant argues, however, that the trial court did not properly file its October 20, 2000 judgment, and therefore, the time for filing a Notice of Appeal has not yet begun to run. Appellant's argument is based on the claim that the trial court's October 20, 2000 order and opinion did not comply with Rule 28 of the SMS(D)C Civil Rules of

Procedure. Under Rule 28 of the SMS(D)C Rules of Civil Procedure findings and judgments of the trial court are to conform with the requirements of Federal Rules of Civil Procedure 52, 54, 55, 58, 59, 60, 61, and 62. Rule 58 of the Federal Rule of Civil Procedure states in relevant part:

... upon a decision by the court ... that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court ... Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a) ...

Rule 79(a) of the Federal Rules of Civil Procedure provides that the clerk shall keep a regular docket with entries identifying all papers, appearance, orders, verdicts and judgments.

Specifically, Appellant argues that since the clerk failed to file a separate document evincing a judgment as required by Rule 58, a final judgment has not been entered and his time to appeal has not begun to run. Federal courts have noted that the “sole purpose” of the “separate document” rule under Rule 58 is to make clear when a litigant’s time to file an appeal begins to run.¹ See, e.g., Banker’s Trust v. Mallis, 435 U.S. 381, 384 (1977).

In this case, Appellant has not explained how it was not clear that his time for appeal had begun to run. Judge Grey Eagle issued a separate “Order Granting Defendant’s Motion for Summary Judgment” and a “Memorandum Opinion” on October 20, 2000. Both of these documents made it clear that Appellant’s claims were dismissed with prejudice. In the corner of each document was a date stamp indicating that both the Order and Opinion had each been filed in the SMS(D)C Court on October 20, 2000. In addition, the Clerk sent to each party a separate Clerk’s Notice specifically stating that Judge Grey Eagle’s Order and Opinion had issued on October 20, 2000. In addition, the Order and Opinion were duly noted as having been entered on October 20, 2000 in the Clerk’s regularly kept docket for this case. All of these indications provided Appellant

¹ The Court notes that while the SMS(D)C Rules of Civil Procedure incorporate various Federal Rules of Civil Procedure, this Court is not bound by decisions made by federal courts interpreting federal rules. This Court’s responsibility is to interpret the tribal law of the SMS(D)C. If the tribal law passed by the General Council incorporates parts of federal law, this Court is free to adopt its own interpretations of both

with notice that a judgment had entered against him on October 20, 2000, and that he should determine immediately if his time to appeal or to file post-judgment motions had begun to run.

The Court would like to stress that Appellant does not claim that what has happened in this case is any different from the hundreds of other judgments that this Court has handled to date. Whenever this Court issues an order that affects the rights of a party under the Court's procedure, the Clerk sends a separate document to each party entitled a Clerk's Notice. These separate notices issue for precisely the same reasons underlying the separate document rule in federal courts – namely to notify the parties of any court action which may affect their rights under the rules. Once a Clerk's Notice issues, it is up to an individual party and their counsel to determine the legal effect of the order referenced in the Clerk's Notice. In this case, the Clerk's Notice specifically stated that an Order granting LSI's motion for summary judgment had issued on October 20, 2000. Since Appellant cannot fairly claim that he did not have notice of Judge Grey Eagle's Order, or its possible affect on his claims, there has been no violation of Rule 28 in this case.

Judgment, therefore, was entered on October 20, 2000. Under Rule 28, Appellant had 10 days from that date to file his motion for a new trial or his motion to amend the trial court findings. See SMS(D)C Rule of Civil Procedure 28 (incorporating Rules 52 and 58 of the Federal Civil Rules). In the alternative, Appellant had 30 days from October 20, 2000 to file a Notice of Appeal. See SMS(D)C Ordinance 02-12-88-01 § 7; In re: Trust Under Little Six, Inc. Retirement Plan, No. 024-00 (SMS(D)C Ct. App. Sept. 13, 2000).

In this case, Appellant did neither. On November 9, 2000 Appellant filed a Motion for Amended Findings of Fact, Conclusions of Law, or for a New Hearing. His request for a new trial or to amend the trial court's findings, therefore, was filed more than 10 days after judgment was entered on October 20, 2000.²

the tribal and federal law in order to make the best decision possible in the context of this Community's history, traditions, rules, and procedure.

² The rules governing the computation of time in the SMS(D)C Court are found at Rule 7 of the SMS(D)C Rules of Civil Procedure. The SMS(D)C Rules of Civil Procedure do not incorporate Rule 6 of

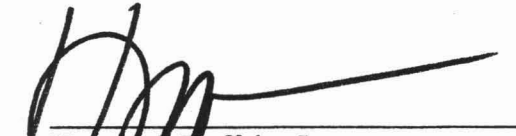
Since his request for a new trial or to amend the trial court's findings was not timely, Appellant cannot argue that under the federal rules, his time for filing a Notice of Appeal should be tolled. See, e.g., Fed. R. App. Proc. 4(a)(4) (requiring that motions under Rule 52 or Rule 59 be timely filed in order to toll the time for filing a notice of appeal). Similarly, since Appellant's post judgment motions were untimely, the trial court could not have properly exercised jurisdiction to hear those motions, therefore, the trial court's November 28, 2000 order is not an order from which an appeal may be taken. See, e.g., Sanders v. Clemco Indus., 862 F.2d 161, 168-69 (8th Cir. 1988); Spinar v. South Dakota Bd. of Regents, 796 F.2d 1060, 1062 (8th Cir. 1986).

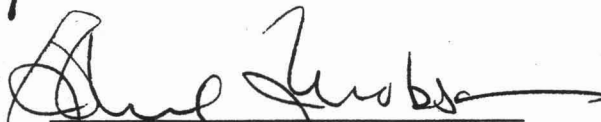
The question then becomes whether Appellant filed his notice of appeal within 30 days of October 20, 2000. Appellant did not file his Notice of Appeal until December 14, 2000, which is more than 30 days after October 20, 2000. Therefore, his Notice of Appeal was not filed in a timely manner, and this Court lacks jurisdiction to hear any appeal based on that notice.

ORDER

Appellant's appeal is dismissed.

Dated:


Henry M. Buffalo, Jr.
Judge


John E. Jacobson
Judge

the Federal Rules of Civil Procedure. Therefore, Appellant's argument under Rule 6 of the federal rules is misplaced.

Under Rules 7 and 28 of the SMS(D)C Court, Appellant's ten days to file post judgment motions expired on October 30, 2000. Even factoring in the three day rule for service by mail provided by Rule 7(d), the latest Appellant's ten days could have expired was November 2, 2000. Since Appellant did not file his post judgment motions until November 9, 2000, his motions were untimely.