

**IN THE HOOPA VALLEY TRIBAL COURT OF APPEALS  
HOOPA VALLEY TRIBE  
HOOPA, CALIFORNIA**

**Diana Ferris, *Petitioner/Appellee*,**  
**v.**  
**Michael McCovey, *Respondent/Appellant*.**

No. C-02-044/A-06-001 (November 16, 2006)

**SYLLABUS\***

Trial court issued an order enforcing a judgment entered nearly four years earlier. Court of Appeals holds that Appellant's claims all relate to the original judgment and are therefore barred by *res judicata*. Trial court order affirmed.

Before: Michelle Demmert, Chief Justice; Lisa Brodoff, Justice; Mathew L.M. Fletcher, Justice.

**OPINION**

For the following reasons, we AFFIRM the decision of the Tribal Court issued on June 1, 2006.

**I. Procedural History**

On April 10, 1997, Diana Ferris and Michael McCovey negotiated a lease agreement where Ms. Ferris sub-leased a portion of her assigned land to Mr. McCovey for the purpose of putting his mobile home there and to live with his family for five years. This agreement was forwarded to the Tribe on May 1, 1997. When the five-year agreement expired on July 15, 2002, Ms. Ferris filed an "unlawful detainer action" with the Hoopa Valley Tribal Court. In the complaint, Ms. Ferris listed Janelle Krueger as the Defendant. Ms. Ferris later amended the complaint to add Mr. McCovey as Defendant in addition to Ms. Krueger. On August 26, the Court ordered Ms. Krueger to leave the premises and move the mobile home (2002 Order). After a considerable delay during which Mr. McCovey was incarcerated for much of the time, Ms. Ferris sought to enforce the judgment. On March 16, 2006, the Tribal Court granted Ms. Ferris's motion to enforce the judgment, followed by a written order issued on June 1, 2006 (2006 Order). Mr. McCovey appeals that order. This Court held oral argument on October 12, 2006.

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\* The syllabus is not a part of the Court's Opinion. The syllabus is a summary of the Opinion prepared by the publishers of this Reporter only for the convenience of the reader. Therefore, the syllabus should not be cited in whole or part as legal authority. Only the Opinion, which follows the syllabus, may be cited as legal authority.

## II. Discussion

### A. The Role of the Court of Appeals and the Duties of the Parties on Appeal

This Court made some effort to assist the parties in framing the issues on appeal. We asked the parties to discuss the 2006 Order only. Specifically, we stated:

The Appellant [Mr. McCovey] is forewarned, however, that the deadline for appealing the original Decision and Order of the Tribal Court in favor of Ms. Ferris on November 12, 2002 is long past. The only issue the Court of Appeals will consider is whether the Tribal Court committed an error in issuing its June 1, 2006 Order of Eviction and Notice to Vacate. The Court of Appeals will not consider any claims or argument related to the November 12, 2002 Decision and Order.”

Order Accepting Appeal and Setting Schedule (July 27, 2006). Mr. McCovey did not focus his argument – either at the briefing stage or at oral argument – on the 2006 Order. It is the critical task of the Appellant to assist the Court in identifying the relevant issues as a matter of judicial efficiency. Despite the fact that we sought to assist Mr. McCovey in identifying the issues, none of his arguments related to the 2006 Order, as we will discuss below.

Moreover, both parties attempted to expand our review to facts not established before the Tribal Court. This we cannot do. First, an appellate court’s function is not to take testimony or make findings of fact. The Hoopa Valley Tribal Code establishes that the Tribal Court must serve as a fact finder. HVTC, Title 2, Chapter 5 (Rules of Evidence); Title 3, Rule 14 (Admission of Evidence); Title 3, Rule 18 (Taking of Testimony). This Court must grant significant deference to the Tribal Court’s findings of fact. *See Hoopa Valley Housing Authority v. Doolittle*, No. A-04-009, at 3, 7 NICS App. 45, (Hoopa Valley Tribal Ct. App., May 26, 2005). This Court may take testimony “[o]nly in extreme and rare circumstances which would affect the proper application of justice and the rights of the appellate [sic]....” HVTC, Title 3, Rule 64. Since both parties had the opportunity to present evidence before the Tribal Court and neither party has made an argument that this appeal raises “extreme and rare circumstances,” we decline to take testimony in this appeal.

Compounding this problem, both parties requested that this Court conduct our own investigation as to certain allegations of fact. Once again, this Court cannot perform the service requested by the parties. In fact, even if we did take up the offer of the parties to make phone calls and so on to confirm the parties’ allegations about each others’ financial circumstances, we would be in flagrant violation of our duties as judges. *E.g., Willis v. Tribal Council*, 28 Indian L. Rep. 6213 (Little River Band Tribal Court of Appeals 2001). In *Willis*, the trial court judge initiated his own investigation of the underlying facts of the case, a clear violation of the rules of

the Tribal Court. *Id.* at 6213. That court issued an order disqualifying the judge that conducted an investigation. *Id.*

With the preceding statements of this Court's function in mind, we turn to the substance of the appeal.

### **B. The Validity of the 2006 Order**

Our decision is dictated in large part by the limited role of the Appellate Court in reviewing trial court decisions. As a result, we AFFIRM the 2006 Order issued by the Tribal Court.

There are no claims by Mr. McCovey that the findings of fact made by the Tribal Court in its 2006 Order are incorrect or otherwise invalid. Mr. McCovey's claims are as follows:

- Due process claim in relation to the fact that Mr. McCovey could not be present during the 2002 adjudication of this matter leading up to the earlier eviction order [Notice of Appeal at 2 (May 16, 2006); Mr. McCovey's Appellate Brief at 1 (Aug. 16, 2006)];
- Inequities or undue hardship resulting from evicting Mr. McCovey's family from the home [Notice of Appeal at 2-3; Mr. McCovey's Appellate Brief at 1];
- Unjust enrichment claim resulting from Mr. McCovey's improvements to the home and property during the time of the lease [Mr. McCovey's Appellate Brief at 1];
- Breach of contract claim that Ms. Ferris did not maintain the home as required by the lease [Mr. McCovey Oral Argument (Oct. 12, 2006)]; and
- Underlying lease was invalid under tribal law [Mr. McCovey Oral Argument (Oct. 12, 2006)].

Mr. McCovey makes no claim that the 2006 Order purporting to enforce the 2002 Order is invalid. In fact, each of the arguments Mr. McCovey raises either was adjudicated or should have been adjudicated in the original hearing leading up to the 2002 Order. Relying upon his incarceration during a large portion of the term of the lease and his resulting inability to appear in person at the first hearing, Mr. McCovey asks this Court to revisit the 2002 Order. Nonetheless, these arguments are all barred from this appeal by the doctrine of *res judicata*. See *Payne v. Payne*, No. 253 at ¶ 31 (Fort Peck Court of Appeals 1997), available at <http://www.fptc.org/Appellate%20Opinions/253.htm> (“‘Res judicata’ is a product of common law and was historically referred to as ‘estoppel by judgment.’ The underlying theory was that once a matter had been tried and resolved in the form of a judgment, it would be fundamentally unfair to allow any of the litigants in the initial action to regroup and ‘give it another go.’ It is often repeated that ‘[t]he rule is based upon the sound public policy of limiting litigation by preventing a party who has had one fair trial on an issue from again drawing it into

controversy.’’). Furthermore, the record clearly shows that Mr. McCovey was served with the original amended complaint back in 2002, that he filed a written answer and that his co-Defendant, Janelle Krueger, participated in the earlier proceedings.

Given that all of Mr. McCovey’s claims relating to the 2002 Order are barred from being heard by this Court and that Mr. McCovey did not accept our invitation to make arguments in relation to the 2006 Order, we have little choice but to affirm the decision of the Tribal Court in this matter. As such, the Tribal Court’s Order of Unlawful Detainer, Order of Eviction, and Notice to Vacate, dated June 1, 2006, is affirmed.