

FILED
FEB - 4 2020

Red Cliff Tribal Court
Walter Delgo
Clerk of Court

**THE RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA
COURT OF APPEALS**

Red Cliff Band of Lake Superior
Chippewa Indians,

Plaintiff -Appellee,

Case no. 19-APP-02

v.

Date January 29, 2020

CenturyTel of the Midwest-
Kendall, LLC,

Defendant - Appellant

FINAL DECISION

This case has come before the Red Cliff Band Court of Appeals, Appellate Court Judges Layatalati Hill, Gary Smith and Leland Wigg-Ninham presiding.

PROCEDURAL HISTORY

On June 10, 2019, the Appellant, CenturyTel of the Midwest-Kendall, LLC, filed, in the Red Cliff Tribal Court, a motion to dismiss for various jurisdictional challenges. The Red Cliff Tribal Trial Court denied the motion to dismiss. This is an appeal of the Red Cliff Tribal Court's order denying the motion to dismiss issued on July 19, 2019.

ISSUES

- 1. Does this Appellate Court have jurisdiction to review an appeal of an order from the Red Cliff Tribal Court that is not a final order, judgment or decree.**

2. Whether the Red Cliff Tribal Court failed to consider CenturyTel's arguments to dismiss for lack of jurisdiction.

ANALYSIS

Does this Appellate Court have jurisdiction to review an appeal of an order from the Red Cliff Tribal Court that is not a final order, judgment or decree.

The Appellate Court does have jurisdiction to review an order from the Red Cliff Tribal Court that is not a final order, judgment or decree. Chapter 31 – Appellate Procedure, Section 31.3.1, provides that the Appellate Court shall have jurisdiction to review all final orders, judgments and decrees of the Red Cliff Tribal Court. When reading this section, it appears the Appellate Court can only review final orders, judgments or decrees. However, Chapter 4 of the Red Cliff Code of Laws provides an avenue to use procedures of federal, state or other tribal courts when the Red Cliff Code of Laws are silent on procedure for certain actions. Section 4.1.4 states,

The Red Cliff Tribal Court shall use the procedures outlined in this Red Cliff Code of Laws, if the Red Cliff Code of Laws is silent on the procedures for certain actions, the Red Cliff Tribal Court may adopt such rules of procedure from any federal, state or other tribal court rules of procedure as the Red Cliff Tribal Court deems appropriate on a case-by-case basis.

Based on section 4.1.4, the Court may adopt a procedure from the Federal Rules of Appellate Procedure if it is not provided for by the Red Cliff Code of Laws, for this specific case only. For this case, this Appellate Court is choosing to use such procedure to adopt Federal Rules of Appellate Procedure Rule 5 - Appeal by Permission which provides, in part, as follows:

(a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition with the circuit clerk and serve it on all other parties to the district-court action.

In this case, this Appellate Court is accepting the appeal as a request for permission to appeal, which this Appellate Court is granting. Therefore, this Appellate Court has the jurisdiction to review the appeal of the order denying the motion to dismiss.

Whether the Red Cliff Tribal Court failed to consider CenturyTel's arguments to dismiss for lack of jurisdiction.

The Appellant presented several challenges to the jurisdiction of the Red Cliff Tribal Court, including, whether a writ of mandamus or prohibition should be issued ordering the case be dismissed for lack of standing, no jurisdiction over a nonmember, violation of the Indian Civil Rights Act of 1968, 25 U.S.C. §§1301-1303, and that the area of law is preempted by the Federal law's comprehensive regulation of rights-of-way through Indian lands.

The Red Cliff Tribal Court's order denying the motion to dismiss ordered, in part, as follows:

In consideration to these documents I am finding that the Red Cliff Tribe has a trespass ordinance and that CenturyTel has physical facilities located within the boundaries of the Red Cliff Reservation. In that light I am denying the motion to dismiss. The issues raised within the documents filed can be raised at the trial phase.

The order denied the motion to dismiss based on the findings that the Tribe has a trespass ordinance and that CenturyTel has physical facilities on the reservation. These are the only factors used to dismiss the motion. However, the Red Cliff Tribal Court left open or reserved the right to rule, on

the other issues raised by the documents filed, at a later time. The Appellant is attempting to appeal issues that have not yet been ruled on and are therefore, not ripe for appeal. The only things ruled on were the two (2) findings by the Red Cliff Tribal Court that the Red Cliff Tribe has a trespass ordinance and that CenturyTel has physical facilities located within the boundaries of the Red Cliff Reservation. Neither of these two items were contested in this appeal. Therefore, the decision of the Red Cliff Tribal Court must be upheld.

DECISION

By Order of the Red Cliff Tribal Court, Court of Appeals, the order of the Red Cliff Tribal Court in this matter is hereby affirmed.

The request for oral arguments is denied.

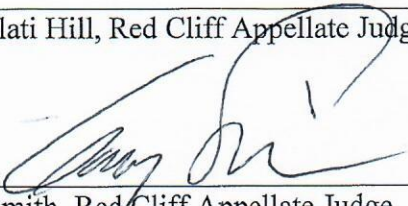
The request for a reply brief is denied.

The case is remanded back to the Red Cliff Tribal Court to continue where it left off.

IT IS SO ORDERED.



Layatalati Hill, Red Cliff Appellate Judge



Gary Smith, Red Cliff Appellate Judge

Leland Wigg-Ninham (signed electronically)
Leland Wigg-Ninham, Red Cliff Appellate Judge