



ORIGINAL

**FILED
SUPREME COURT
STATE OF OKLAHOMA**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA AUG - 7 2018

**JOHN D. HADDEN
CLERK**

COMANCHE TRIBE OF OKLAHOMA,)
A FEDERALLY RECOGNIZED INDIAN TRIBE)
EX REL COMANCHE NATION TOURISM)
CENTER,)

Plaintiff/Appellee)

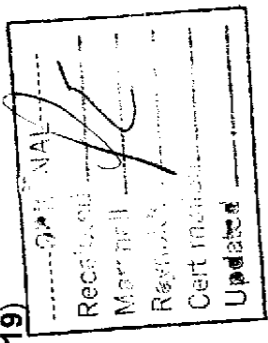
-VS-

WALLACE COFFEY,

Defendant/Appellant.)

#117267
NO. _____

(District Court
No. CJ-2016-619)



PETITION IN ERROR

- ☒ This is an original Petition in Error.
☐ This is an Amended or Supplemental Petition in Error.
☐ This is a cross Petition in Error.
☐ This is a counter-Petition in Error.

Date First Petition in Error Filed: DNA

I. TRIAL COURT HISTORY:

COURT/TRIBUNAL: District Court
COUNTY: Comanche County
CASE NO: CJ-2016-619
JUDGE: The Honorable Irma Newburn

NATURE OF THE CASE:

This is an appeal from denial of attorney fees to Defendant/Appellant Wallace Coffey in a suit on an open account. Coffey's Motion to Dismiss was granted with prejudice for lack of jurisdiction over the parties and subject matter jurisdiction. Comanche Nation, Plaintiff/Appellee, did not appeal. The district court denied Coffey's Motion for Attorney Fees to be taxed as costs stating he did not prevail on the merits.

NAME OF PARTY OR PARTIES FILING THIS PETITION IN ERROR:

Wallace Coffey, Defendant/Appellant.

THE APPEAL IS BROUGHT FROM:

- ☒ Judgment, Decree or Final Order of District Court.
- ☒ Appeal from order granting summary judgment or motion to dismiss where motions filed after October 1, 1993. (Accelerated procedure under Rule 1.36). (Denial of attorney fees).

☐ Appeal from Revocation of Driver's License (Rule 1.21(b)).

☐ Final Order of Other Tribunal.

(Specify Corporation Commission, Insurance Department, Tax Commission, Court of Tax Review, Banking Board, or Banking Commissioner, etc.)

☐ Interlocutory Order Appealable by Right.

☐ Other. _____

II. TIMELINESS OF APPEAL.

1. Date Judgment, decree or Order appealed was filed:

July 26, 2018

2. *If decision was taken under advisement*, date judgment, decree or order was mailed to parties: _____ DNA _____

3. Does the judgment or order on appeal dispose of *all* claims by and against all parties?

☒ Yes.☐ No.

If not, did district court direct entry of judgment in accordance with 12 Okla. Stat. Supp. 1995 §994?

☐ Yes.☐ No.

When was this done? _____ DNA _____

4. If the judgment or order is not a final disposition, is it appealable because it is an Interlocutory Order Appealable by Right?

☐ Yes. (Sup. Ct. Rul. 1.60(c), Appeal granting or denying a Temporary Injunction, 12 Okla. Stat. §952(b)(2); 12 Okla. Stat. §993(A)(2))

☐ No.

5. If none of the above applies, what is the *specific* statutory basis for determining the judgment or order is appealable?

_____ DNA _____

6. Were any post-trial motions filed? _____ YES _____

Type	Date Filed	Date Disposed
Motion-Atty Fees	3/16/18	7/26/2018
Motion-Settle J.E.	3/16/18	7/26/2018

7. This Petition is filed by:

☒ Delivery to Supreme Court Clerk, or

☐ Mailing to Clerk by U.S. Certified Mail, Return Receipt

Requested on _____.

III. RELATED OR PRIOR APPEALS

List all prior appeals involving same parties or same trial court proceedings:

None

List all related appeals involving same issues:

None

(Identify by Style, Appeal Number, Status, and Citation, if any. If none, so state)

IV. SETTLEMENT CONFERENCE

Is Appellant willing to participate in an attempted settlement of the appeal by predecisional conference under Rule 1.250?

☒ Yes.☐ No.**V. RECORD ON APPEAL**☐ A Transcript will be ordered.☒ No Transcript will be ordered because **no record was made** and/or no transcript will be necessary for this appeal. (No Evidentiary Hearing was held).☐ A Narrative Statement will be filed.☐ Record is concurrently filed as required by Rule 1.34 (Driver's License Appeals, etc.) or Rule 1.36 (Summary Judgments and motions to dismiss granted).

VI. JUDGMENT, DECREE OR ORDER APPEALED – EXHIBIT “A”

A certified copy of the Order dismissing the initial action with prejudice is attached as **Exhibit A-1**. This Order was not appealed by either party.

A certified copy of the Order denying attorney fees is attached as **Exhibit A-2**. This is the Order appealed.

(Attach as Exhibit “A” to the Petition in Error a certified copy of the judgment, decree, or order from which the appeal is taken. If a post-trial motion extending appeal time under Rule 1.22 was filed, a certified copy of the order disposing of the motion must be attached also.)

VII. SUMMARY OF CASE – EXHIBIT “B”

A Brief Summary of the case is attached as Exhibit B.

(Attach as Exhibit “B” a brief summary of the case not to exceed one 8 ½” x 11” double space page.)

VIII. ISSUES TO BE RAISED ON APPEAL – EXHIBIT “C”

A statement of the issues to be raised on appeal is attached as Exhibit “C.”

(Attach as Exhibit “C” the issues proposed to be raised. Include each point of law alleged as error. Avoid general statements such as “Judgement not supported by law.”

H. NAME OF COUNSEL, OR PARTY, IF PRO SE.**ATTORNEY FOR APPELLANT:**

Name:	MICHEAL SALEM OBA #7876
Firm:	<i>Salem Law Offices</i>
E-Mail:	msalem@msalemlaw.com
Address:	101 East Gray, Suite C Norman, Oklahoma 73069
Telephone:	(405) 366-1234
Telefax:	(405) 366-8329

ATTORNEY FOR APPELLEE:

Name: **RICHARD J. GRELLNER** OBA #15521
Firm: *R/JG Law PLLC*
Email: *rigrellner@hotmail.com*
Address: 434 N.W. 18th Street
Oklahoma City, Oklahoma 73103
Telephone: (405) 834-8484
Telefax: (405) 602-0990

DATE: AUGUST 7, 2018.

VERIFIED BY:



MICHEAL SALEM OBA #7876
Salem Law Offices
101 East Gray, Suite C
Norman, Oklahoma 73069
(405) 366-1234
(405) 366-8329 Telefax
msalem@msalemlaw.com

Attorney for Defendant/Appellant
WALLACE COFFEY

X. CERTIFICATE OF MAILING TO ALL PARTIES AND COURT CLERK:

I hereby certify that a true and correct copy of the above and foregoing *Petition-in-Error* and *Designation of Record* was mailed this

7TH day of AUGUST, 2018

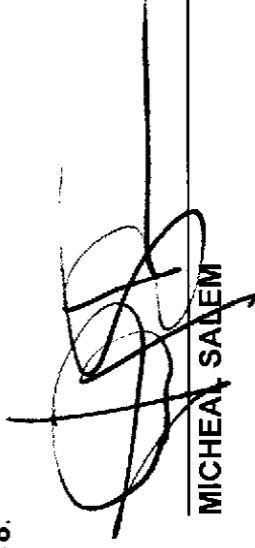
by depositing it in the U.S. Mail, postage prepaid or by electronic mail to:

LORI A. SANDER	RICHARD GRELLNER
FELKER, SANDER, & ASSOCIATES, P.C.	RJG LAW PLLC
3934 N.W. 36 th Street	434 N.W. 18 th
Oklahoma City, Oklahoma 73112	Oklahoma City, Oklahoma 73103

I further certify that a copy of the above and foregoing *Petition-in-Error* and *Designation of Record* was mailed to, or filed in, the office of

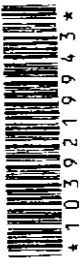
Robert Morales
Comanche County Court Clerk
315 S.W. 5th Street, #207
Lawton, Oklahoma 73501

on the **7th day of AUGUST, 2018.**



MICHEAL SALEM

★



**IN THE DISTRICT COURT OF COMANCHE COUNTY
STATE OF OKLAHOMA**

STATE OF OKLAHOMA
Comanche County
FILED in the
Office of the Court Clerk

COMANCHE NATION OF OKLAHOMA,)
A FEDERALLY RECOGNIZED INDIAN)
TRIBE EX REL COMANCHE NATION)
TOURISM CENTER,)

Plaintiff,

vs.

CJ-2016-619
Irma J. Newburn

By IS Deputy

FEB 15 2018

WALLACE COFFEY,

Defendant.

ORDER

This matter came on before the Court upon the Defendant's Motion to Dismiss for lack of jurisdiction. After hearing arguments of counsel, reviewing the file herein and being fully advised in the premises, the Court granted Defendant's Motion to Dismiss and gave the parties leave to file proposed findings of fact and conclusions of law. Upon consideration of the parties' proposed findings and conclusions the Court makes the following findings of fact and conclusions of law:

Findings of fact

1. Plaintiff, Comanche Nation of Oklahoma d/b/a Comanche Nation Tourism Center filed a petition on the 1st day of October 2016 alleging that the Defendant, Wallace Coffey, purchased good from Plaintiff while serving as Chairman of Comanche Nation; that Plaintiff billed for the goods provided, and that the Defendant failed and refused to pay for said goods.
2. That the Plaintiff prayed for relief including declaratory judgment that Mr. Coffey was indebted to the extent of the unpaid bills.
3. On the 8th day of February 2017 the Defendant specially entered his appearance and moved to dismiss on the ground that at all relevant times he was acting in his official capacity and was therefore entitled to assert the defense of tribal sovereign immunity.
4. All disputed transactions occurred on Tribal trust land.

Conclusions of Law

1. Tribal trust land is "Indian Country" within the meaning of 18 U.S.C. § 1151.

Exhibit

A - 1

Salem Law Offices

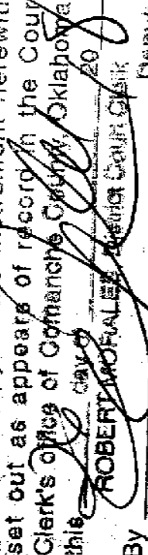
2. This Court lacks jurisdiction of a controversy involving Indian parties relating to conduct occurring in Indian country.

Wherefore, premises considered, the Defendant's Motion was properly granted on the 16th day of November 2017 for the reasons as set forth above. This case is dismissed with prejudice.

It is so Ordered.


District Judge

Court Clerk to Notify the Parties.

I, ROBERT MORALES, District Court Clerk in and for Comanche County, Oklahoma hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the Court Clerk's office of Comanche County, Oklahoma this 16 day of November, 2017
By  ROBERT MORALES, District Court Clerk Deputy.

COMANCHE NATION OF OKLAHOMA,
A FEDERALLY RECOGNIZED INDIAN
TRIBE EX REL COMANCHE NATION
TOURISM CENTER,

Plaintiff,

vs.

WALLACE COFFEY,

Defendant.

CJ-2016-619
Irma J. Newburn

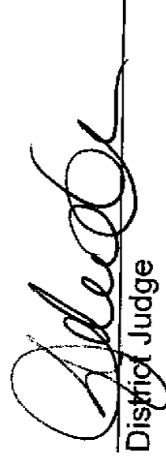
JOURNAL ENTRY

This matter came on before the Court on the 21st day of June 2018 upon the Defendant's Motion to Settle Journal Entry of Judgment and Defendant's Motion for Attorney Fees. Richard Grellner appears on behalf of the Plaintiff, Comanche Tribe of Oklahoma, a federally recognized Indian tribe. Michael Salem appears on behalf of the defendant, Wallace Coffey.

After hearing arguments of counsel, reviewing the file herein and being fully advised in the premises, the Court hereby denies Defendant's Motion to Settle Journal Entry as no judgment was entered upon the merits and the matter was dismissed for lack of jurisdiction of both the parties and the subject matter. A final order of dismissal was entered on the 15th day of February 2018.

Further, the Court finds that the defendant is not entitled to attorney fees pursuant to 12 O.S. § 936 because the defendant was not a "prevailing party" upon the merits of the cause of action. See Underwriters at Lloyd's of London v. North American Van Lines, 1992 OK 48, 829 P.2d 978, Ok. S. Ct. 1992. Therefore, defendant's motion for attorney fees is denied.

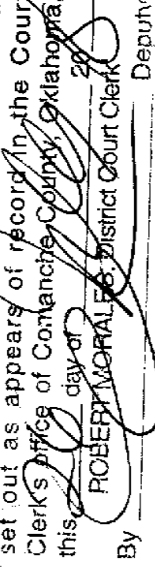
It is so Ordered.


District Judge

Court Clerk to Notify the Parties.



I, ROBERT MORALES, District Court Clerk in and for Comanche County, Oklahoma hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the Court Clerk's office of Comanche County, Oklahoma, this 20th day of

By  ROBERT MORALES, District Court Clerk Deputy

FILED IN THE DISTRICT COURT OF COMANCHE COUNTY, OKLAHOMA
JUL 26 2018
By _____ Deputy Clerk

EXHIBIT B

Defendant Wallace Coffey is the retired Chairman of the Comanche Nation. Coffey has previously been elected chairman six times beginning in 1991. The most recent election in 2016 was acrimonious and Coffey, supporting other candidates, was personally attacked by the eventual winners. The new Business Committee sought to preclude Coffey from future electoral office by changing the election rules to forbid candidates from being debtors to the Nation. This declaratory action was brought by the Comanche Nation against Coffey for charges to an open account used by the Business Committee entitled "Chairman Comanche Nation" along with Coffey's name. An effort to disqualify Coffey from future elections was never denied by the Nation in any filings.

Coffey obtained copies of the invoices in question and filed an extensive Motion to Dismiss for lack of subject matter jurisdiction relying upon sovereign and official immunity as a tribal official among other issues. Coffey's Motion included affidavits by him and the former tribal administrator showing the expenditures were for official tribal purposes and approved pursuant to lawful tribal procurement procedures.

The Nation's response to the Motion to Dismiss claimed the charges were "unauthorized," but never explained the lack of authorization. The Nation submitted no affidavits or other evidence countering the evidence presented by Coffey.

The district court dismissed with prejudice ruling it had no jurisdiction involving Indian parties for a controversy in Indian Country. The Nation did not appeal.

Coffey filed an Application for Attorney Fees under 12 Okla. Stat. §936. The Nation filed a Response denying entitlement, but did not contest the hours or hourly rate of defense counsel. On July 26, 2018, the district court denied the Motion stating Coffey was not a prevailing party. This appeal followed.

EXHIBIT C

ISSUES TO BE RAISED ON APPEAL

1. The district court erred in failing to determine Defendant Coffey was a prevailing party when Coffey secured a dismissal with prejudice as to Plaintiff Comanche Nation's declaratory judgment action for suit on an open account. 12 Okla. Stat. §936.
2. The district court erred in failing to subject Plaintiff Comanche Nation to the "normal processes" of the state district court in which it has filed suit. *Three Affiliated Tribes of Ft. Berthold Reservation v. Wold Engineering, P. C.*, 476 U.S. 877, 891, 106 S. Ct. 2305 (1986). ("... petitioner concedes that its tribal immunity does not extend to protection from the normal processes of the state court in which it has filed suit.").
3. The district court erred in failing to award costs including an award of attorney fees.
4. Because Plaintiff Comanche Nation did not contest or submit any evidence that disputed the hours or hourly rate of Defendant's attorney, this Court should set attorney fees in this case in much the same manner as done by the Court in *Spencer v. Okla. Gas & Elec. Co.*, 2007 OK 76, 171 P.3d 90.