

SAINT REGIS MOHAWK TRIBAL APPELLATE COURT

Harvey Thompson,)	
Appellant,)	
)	
v.)	DECISION AND ORDER
)	Case No. 20-APP-00006
)	
Francis Conners III, and)	
Jennifer Smoke)	
Appellees.)	
)	

Opinion by: Montour, *Associate Appellate Judge*

Jurisdiction

This case comes before the Court of Appeals on appeal from an order issued by the Tribal Court, signed by Hon. Carrie Garrow and entered into the docket on June 30, 2020. The Court of Appeals possesses “jurisdiction to hear all appeals from the Tribal Court.” SRMT Tribal Court and Judiciary Code, Section V.2. This appeal is timely, having been noticed within thirty (30) days of the decision being issued. SRMT Rules of Civil Appellate Procedure (“SRMT Rules CAP”) Section IX, Rule 7(A). Accordingly, this Court has jurisdiction to address this appeal.¹

Procedural History

On July 23, 2019, Appellant Harvey Thompson filed a land dispute complaint with the SRMT Tribal Court, naming Appellees Francis Conners III and Jennifer Smoke as respondents. *See generally* Compl. at 1-4. The SRMT Tribal Court proceeded to address Appellant’s complaint and the resulting litigation pursuant to its normal procedures.

Of relevance to this appeal, on February 25, 2020, the SRMT Tribal Court provided notice to the parties that Judge Garrow had recently been made aware that her parents were in the process of hiring Appellee, Francis Conners III, to perform repair work on Judge Garrow’s parents’ house. *See* Scheduling Order, Case No.: 19-LND-00004, at 3 (SRMT Tribal Court, Feb. 25, 2020). On March 9, 2020, in response to such notice, Appellant filed a motion to recuse requesting that Judge Garrow recuse herself from this case due to an alleged “appearance of impropriety” arising from Judge Garrow’s parent’s contractual relationship with Appellee, Francis Conners III. *See* Appellant Mot. to Recuse at 2 (Mar. 9, 2020) (citing SRMT Code of Judicial Conduct, Sections 5.D.-E.) (hereinafter referred to as the “Motion to Recuse”). On June 12, 2020, the SRMT Tribal Court denied Appellant’s Motion to Recuse, finding that a reasonable person “would not find an

¹ Pursuant to this Court’s Administrative Order of the Court – Audio Recording Permitted in Lieu of Transcript, dated July 17, 2019, this Court will accept the recording of the Tribal Court hearing for purposes of this appeal. Likewise, this Court may, within its discretion, decide appeals on the basis of the briefs alone and without oral argument. SRMT Civ. App. R., Section XVII.D. Neither party has requested oral argument before this Court. Accordingly, based on the analysis herein, this Court will decide this appeal on the parties’ briefs.

appearance of impropriety” in this matter because Judge Garrow: (1) does not live in her parents’ home; (2) did not engage in any effort to obtain Appellee’s services; (3) had nothing to do with the transaction; (4) knows nothing of the transaction other than Appellee, Francis Connors III, may be providing some work for her parents; (5) does not benefit from the transaction; (6) has not violated a law, court rule, or any provisions of the SRMT Judicial Code; and (7) has not engaged in any other conduct that undermines her independence, integrity, impartiality, or fitness to be a judge. *See* Mot. to Recuse Decision and Order, Case No.: 19-LND-00004, at 3 (SRMT Tribal Court, June 12, 2020).

On July 7, 2020, Appellant filed a Notice of Appeal in which Appellant appeals the SRMT Tribal Court’s Decision and Order denying Appellant’s Motion to Recuse. *See* Appellant Notice of Appeal, Case No.: 19-LND-00004 (July 7, 2020).

Analysis

To properly address Appellant’s appeal, this Court must first determine whether such appeal is appropriate for interlocutory review. At issue then in this case is whether the SRMT Tribal Court’s ruling on a motion to recuse a tribal judge for an appearance of impropriety under the SRMT Code of Judicial Conduct is (a) a permissible interlocutory order, or (b) a collateral order? “[O]nly final judgments, permissible interlocutory appeals, and collateral orders may be appealed.” *In Re Estate of Allan J. Gorrow*, Case No. 19-APP-00004, at 5 (SRMT Court of Appeals, Aug. 11, 2020) (hereinafter referred to as “Gorrow I”).²

a. A Decision Denying a Motion to Recuse is Not a Permissible Interlocutory Order.

Under Section XXXII [Rule 30] of the SRMT Rules of Civil Appellate Procedure, this Court may apply interpretation of like provisions in the Federal Rules of Appellate Procedure in interpreting the Tribe’s appellate rules. Federal courts have generally determined that a denial of a motion to recuse is not one of the specific types of interlocutory order subject to interlocutory appeal as enumerated in 28 U.S.C. § 1292 and Federal Rule of Appellate Procedure 5. *See, e.g., In re Corrugated Container Antitrust Litig.*, 614 F.2d 958, 960–61 (5th Cir. 1980) (finding that judicial disqualification issues are only reviewable following an entry of final judgment); *Hardy v. Federal Exp. Corp.*, CIV. A. 97-1620, 1998 WL 104686, at *1 (E.D. La., Mar. 6, 1998) (denying motion for leave to appeal order denying motion to recuse); *Alexander v. Chicago Park Dist.*, 709 F.2d 463, 470–71 (7th Cir. 1983) (declining to review the lower court’s denial of motion to recuse because the judge’s decision was not an appealable interlocutory order); *Diversified Numismatics, Inc. v. City of Orlando*, 949 F.2d 382, 384 (11th Cir. 1991) (finding that a district judge’s refusal to recuse himself or herself may only be “complained of on appeal from final judgment”); *Carpenter v. Boeing Co.*, 456 F.3d 1183, 1189 (10th Cir. 2006) (“Interlocutory appeals have long been disfavored in the law, and properly so”); *Okpala v. Computer Scis. Corp.*, 636 F.App’x 878,

² For purposes of this analysis, this Court finds that the SRMT Tribal Court’s Decision/Order denying Appellant’s Motion to Recuse is not a final decision subject to appeal. A final decision disposes of all issues in the case, ends the litigation on the merits, and leaves nothing for the court to do but execute the judgment. *See Gorrow I*, at 3-4 (citing SRMT Rules CAP, Section III.A.; *see also Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 373 (1981)). An order denying recusal is not a final decision because it does not bring the litigation to an end. *See In re Ad Hoc Committee of Tort Victims*, No. 04 CV 08934 (CSH), 2005 WL 267564, at *2 (S.D.N.Y., Feb. 3, 2005).

879 (4th Cir. 2016) (dismissing appeals of orders denying a motion to recuse); *United States v. Phillips*, 420 F.App'x 269, 269 (4th Cir. 2011) (same); *Nichols v. Alley*, 71 F.3d 347, 350 (10th Cir. 1995) (finding that an order denying a motion to recuse is not immediately appealable).

Similarly, this Court determines that an order denying a motion to recuse is not an immediately appealable interlocutory order under 28 U.S.C. § 1292 and Federal Rule of Appellate Procedure 5, as set forth in this Court's Administrative Order, dated July 17, 2019. Interlocutory appeals are limited to extraordinary cases in which extended and expensive proceedings can be avoided by immediate and final decision of controlling questions encountered early in the action. *See State of Utah By and Through Utah State Dep't of Health v. Kennecott Corp.*, 14 F.3d 1489, 1495 (10th Cir. 1994) (citing S. Rep. No. 2434, 85th Cong., 2d Sess. 1 (1958), 1958 U.S.C.C.A.N. at 5262, *cert. denied*, 513 U.S. 872 (1994)). Here, an immediate appeal from the Tribal Court's non-dispositive ruling on Appellant's Motion to Recuse would not materially advance the ultimate resolution of this matter. Accordingly, such ruling is not a permissible interlocutory order.

b. A Decision Denying a Motion to Recuse is Not a Collateral Order.

Likewise, the Tribal Court's ruling denying Appellant's Motion to Recuse does not qualify as a collateral order. Under the collateral order doctrine, an order that is neither a final judgment nor permissible interlocutory order may still be proper for appeal where the order: (1) is conclusive; (2) resolves important questions completely separate from the merits of the case; and (3) is of a nature that it would be rendered effectively unreviewable by an appeal court from a final judgment in the underlying action. *See Gorrow I*, at 4 (citing *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867 (1994)). Here, while the Tribal Court's order is separate from the merits of the case, it does not qualify as a collateral order because: (a) the Tribal Court's non-dispositive ruling on Appellant's Motion to Recuse does not result in a conclusive judgment on the issues; and (b) Appellant may request review of the Tribal Court's order from a *final judgment* in the underlying matter. (emphasis added). An order denying a motion to recuse does not come within the narrow ambit of collateral orders.³

Accordingly, this Court declines to review the SRMT Tribal Court's Decision and Order denying Appellant's Motion to Recuse because such decision: (a) is not an appealable interlocutory order under this Court's Administrative Order, dated July 17, 2019 (permitting interlocutory appeals pursuant to Federal Rule of Appellate Procedure 5 and 28 U.S.C. § 1292); and (b) is not a collateral order as set forth in this Court's precedent. *See In re Estate of Allan J. Gorrow*, Decision and Order, Case No. 20-APP-00004, at 1 (SRMT Court of Appeals, Jan. 4, 2021) (citing *Firestone Tire and Rubber Co. v. Risjord*, 449 U.S. 368, 374 (1981) (emphasizing the deference that appellate courts owe to the trial judge as the individual initially called upon to decide the many questions of law and fact that occur in the course of a trial, which also avoids obstructive piecemeal appeals)).

³ The collateral order exception is a narrow exception that should never be allowed to swallow the general rule that a party is entitled to a single appeal, to be deferred until final judgment has been entered, in which claims of Tribal Court error at any stage of the litigation may be ventilated. *See Dig. Equip. Corp.*, 511 U.S. at 868 (citing *United States v. Hollywood Motor Car Co.*, 458 U.S. 263, 270 (1982)). Accordingly, the conditions for collateral order appeal are stringent. *See id.*

Conclusion

This Court dismisses Appellant's appeal as premature because the Tribal Court's Decision and Order denying Appellant's Motion to Recuse does not supply the basis for immediate appeal from (a) a final order, (b) a permissible interlocutory order, or (c) a collateral order.

Order

It is hereby:

ORDERED that, this appeal is dismissed without prejudice and this case is remanded to the Tribal Court to conclude the remaining issues therein.

Dated: February 18, 2021



Patricia Lenzi, Chief Appellate Judge
SRMT Court of Appeals



Kyle Montour, Associate Appellate Judge
SRMT Court of Appeals



Rowenmakete Barnes, Associate Appellate Judge
SRMT Court of Appeals

