

SAINT REGIS MOHAWK TRIBAL APPELLATE COURT

██████ Oakes)	
Appellant)	
)	
-V-)	DECISION AND ORDER
)	
██████████)	17-APP-00004
)	
Appellee)	
In the matter of the Estate of)	
██████████ Oakes)	

Jurisdiction

The case comes before the Court of Appeals on appeal from a decision issued by the Tribal Court on October 23, 2017. Pursuant to the Saint Regis Mohawk Tribe's Rules of Civil Appellate Procedure ("SRMT Rules of Civ. App. Pro."), the Court of Appeals possesses jurisdiction to hear all appeals from the Tribal Court.

Procedural History

Appellant ██████ Oakes filed the Notice of Appeal on November 20, 2017 with the Clerk of the St. Regis Mohawk Tribal Court of Appeals, and paid the required filing fee. Appellant delivered proof of service of the appeal in person on the Appellee ██████ on November 22, 2017. Appellant has since made no further additions to the record nor communicated with the Clerk of the Appellate Court. The Appellant has not ordered the transcript of the proceedings nor, in the alternative, filed a description of any part of the transcript, to include in the record on appeal.

Analysis

The Appellant failed to meet the required steps to cause timely transmission of the record on appeal. To perfect the appeal, pursuant to the SRMT Rules of Civ. App. Pro, the Appellant must complete the following initial steps:

1. File the notice of appeal, pay the filing fee, and attach the certified, signed decision or order, within 30 days of the decision or order being appealed. SRMT Rules of Civ. App. Pro., Rules 6 and 7.
2. Serve the opposing party and file proof of service with the Court at or before the filing of the notice of appeal. SRMT Rules of Civ. App. Pro., Rule 3.

3. Order and file the hearing transcript with the Clerk of the Appellate Court within 10 days of the filing of the notice of appeal. If the transcript is unavailable, the Appellant must file a narrative statement within 30 days of the filing of the notice of appeal. If the Appellant wishes to use only parts of the transcript, Appellant must serve a narrative statement on the Appellee within 10 days of the filing of the notice of appeal. SRMT Rules of Civ. App. Pro., Rule 8.

While the Appellant appears to have timely completed the first two steps to perfect the appeal, the Appellant failed to complete the third step – to order and file with the Clerk the transcript of proceedings on appeal – pursuant to the SRMT Rules of Civ. App. Pro., Rule 8.¹

The SRMT Rules of Civ. App. Pro., Section XI (C) require that the Appellate Court dismiss an appeal on its own motion in the event that Appellant fails to timely transmit the record on appeal. Appellant filed his appeal on November 20, 2017. The Appellant was required to order a transcript of the proceedings within ten (10) days after filing the Notice of Appeal. To date, no transcript has been ordered and no description of any parts of the transcript have been filed with the Court Clerk. The Appellant has neither requested an extension of time nor exercised the alternatives to the filing of a transcript allowed under the SRMT Rules of Civ. App. Pro., and has therefore failed to perfect his appeal of the Tribal Court's decision.

Discussion

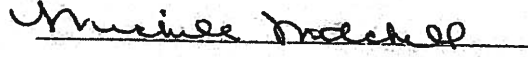
This Court understands its duty to ensure fairness in justice, and that the final resolution of appeals are not unnecessarily prolonged; yet, this Court does not dismiss appeals lightly. In this instance, however, the Court of Appeals has not been provided with the timely transmission of the record on appeal and deems the present appeal abandoned. The Court has no option but to dismiss this case.

Order

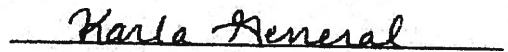
For the reasons stated herein, this appeal is **DISMISSED**, without prejudice.

¹ B. The Transcript of Proceedings; Duty of Appellant to Order; Notice of Appellee if Partial Transcript Is Ordered. 1. No later than ten (10) days after filing the Notice of Appeal, the appellant shall order from the court reporter or transcriber an original and one copy of a transcript, of such parts of the proceedings necessary for inclusion in the record. If the Appellant intends to argue on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. 2. Unless the entire transcript is to be included, the appellant shall, within the time provided in Section 10, Rule 8(b)(1), file a description of the parts of the transcript which he intends to include in the record and a concise statement of the issues he intends to present on appeal, a copy of which shall be served by appellant on appellee. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall within ten (10) days after the service of the statement of the appellant, file a designation of additional parts to be included. If the appellant refuses to order such parts, he shall within five (5) days notify the appellee in writing of such refusal. The appellee may either order the parts or apply to the Appellate Court for an order requiring the appellant to do so. At any time prior to the submission to the Appellate Court for a decision, a party may apply to the Appellate Court to include any additional part of the transcript. 4. The appellant shall file an original and one copy of the transcript with the Tribal Court Clerk or administrative agency, within the period of time for transmitting the record stated in Section 10, Rule 8 (a). Notice of the filing of the transcript shall be served by the appellant upon the other parties to the appeal. If there is one appellee, the Court Clerk shall mail a copy of the transcript to him or her. If there is more than one appellee, the copy of the transcript shall remain with the Court Clerk and shall be available for the use of all appellees and shall be released to one of the appellees only upon stipulations of all the appellees, or upon order of the court.

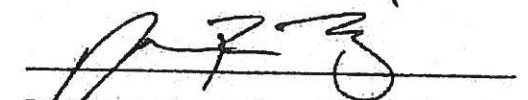
Signed by my hand this 31st day of January, 2018.



Michele Mitchell, Chief Appellate Judge
Saint Regis Mohawk Tribal Appellate Court



Karla General, Associate Appellate Judge
Saint Regis Mohawk Tribal Appellate Court



Patricia Lenzi, Associate Appellate Judge
Saint Regis Mohawk Tribal Appellate Court