

No. SC-CV-09-15

SUPREME COURT OF THE NAVAJO NATION

In the Matter of:
Raymond DeeRoy Spencer,
Decedent.

Chenoa Bah Jensen,
Petitioner/Appellee,

v.

Jean LaMarr,
Respondent/Appellant.

OPINION

Before YAZZIE, H., Chief Justice, and SHIRLEY, E., Associate Justice.¹

An appeal from a decision of the Window Rock District Court concerning Cause No. WR-CV-5-15, the Honorable Geraldine Benally, presiding.

Priscilla Jean LaMarr, Susanville, California, Appellant pro se.

This case concerns the dismissal of an appeal on additional grounds of *Diné bi beenahazáanii* that preclude review.

I

Appellant Priscilla Jean LaMarr timely filed an “Appeal/Relief from Court Order” contesting the Window Rock District Court’s Order Granting [Appellee’s] Petition for a Permanent Injunction. The Order granted declaratory and injunctive relief essentially prohibiting Ms. LaMarr, the decedent’s widow and a non-Navajo resident of California, from interfering with ongoing Navajo customary burial arrangements so as to cremate the decedent’s body, which is contrary to Navajo beliefs. Attached to the notice of appeal were a facsimile (fax) copy of the

¹ This opinion dismissing the appeal is entered by a two-justice panel because there is no need for the appointment of a third justice where the Court lacks jurisdiction to proceed.

certified order from January 23, 2015 and the filing fee of \$60.00. No certification was attached verifying that the service was made on Appellee Chenoa Bah Jensen, the decedent's niece.

The decedent was a sixty-eight year old Navajo and he passed away in Albuquerque, New Mexico from health complications. The decedent was laid to rest more than one month before the filing of the notice of appeal.

From the order being appealed, the district court held two hearings, one on the motion for a temporary restraining order and another on the petition for an injunction, and Appellant appeared telephonically for both proceedings. In granting the petition, the district court found that ten months preceding his death, the decedent and Appellant came to New Mexico for traditional healing ceremonies and the decedent was subsequently hospitalized in Albuquerque. Order Granting Petition for a Permanent Injunction, *In re Spencer*, WR-CV-5-15, ¶4 (W.R. Dist Ct. January 23, 2015). Appellant returned to California and visited twice. Testimony received at the injunctive hearing indicated Appellant "wanted a legal separation." *Id.* Further testimony revealed that the decedent "contacted the Navajo Nation Veteran's Office himself and made arrangement for a burial plot [at the Fort Defiance Veteran's Cemetery] next to his brother." *Id.* After the decedent passed away, "the family discovered the plot and made arrangements for a military funeral." *Id.* The district court determined the dispute over the decedent's body was not in accordance with "the teaching of the Navajo and the Court hereby aligns with those teachings pursuant to the mandate of the Navajo Nation Council." *Id.* at ¶ 10. The district court then declined to interfere with ongoing customary arrangements permitting the funeral to proceed.

Rule 7(a) of the Navajo Rules of Civil Appellate Procedure requires a certified copy of the final decision being appealed must be attached to the notice of appeal, and the filing fee must be paid at the time of filing. In *LeCompte v. Redhair*, 7 Nav. R. 307 (Nav. Sup. Ct. 1997), the Court defined that a "certified copy" is a copy of an original signed by the clerk under whose

custody the original is kept attesting to it as a true copy. "The clerk's original signature or marking must be on the copy itself." *Id.* at 309. Failure to attach a certified copy of the final decision requires dismissal. *Joe v. Atkins*, 6 Nav. R. 8, 9 (Nav. Sup. Ct. 1988).

In the case at hand, the record reveals that the Window Rock District Court mailed a certified copy of the Order by U.S. Postal Service to Ms. LaMarr on January 23, 2015. The district court also faxed a copy to Ms. LaMarr that same day. Ms. LaMarr attached the fax to the notice of appeal that was eventually filed by mail. A fax is a copy of the original. Under Rule 7(a), a certified copy with the clerk's original signature is required and a copy will not suffice as clarified in *LeCompte*. Dismissal of this improperly filed appeal is mandated.

Our dismissal of this appeal is also supported by *Diné bi beenahazáanii*. Under *Diné bi beenahazáanii*, disputes over the body of a deceased person is prohibited. Furthermore, burial and the distribution of property are to be accomplished without undue delay out of respect for the deceased and without dispute in order to protect surviving family members. *In re Estate of Nat D. Benally*, No. SC-CV-49-08 slip op. at 5 (Nav. Sup. Ct. June 25, 2009). Prompt and reverent attention in keeping with *kwá'ásini báhozhdisin* "allow[s] the deceased to complete Life's journey" and permits surviving members of the family and clan to "complete the transitional (cleansing) process to resume Life." *Id.* In situations where the deceased has been buried in accordance with our way of life, a Navajo court is not permitted to hear and decide disputes over the body. Reverence for the deceased relative, *kwá'ásini báhozhdisin*, is required of all, especially of this Court. Dismissal of the appeal is demanded.

II

The appeal is hereby DISMISSED for lack of jurisdiction.

Dated this 27th day of March, 2015.

Herb Zagari
Chief Justice

Ellen Strye
Associate Justice