

IN THE COURT OF APPEALS OF THE CHOCTAW NATION

IN THE MATTER OF

C.J.B. -01/15/2016;
H.C.B.-05/22/2017
G.M.B.-05/13/2020
Deprived Children

ACJ-23-2

On appeal from
JD-20-21
Date: 11/15/23

ORDER GRANTING MOTION TO DISMISS

Before the Court is the Choctaw Nation's Motion to Dismiss. Based on the motion of the Nation and the record in this court, the appellee's Motion to Dismiss is GRANTED. This appeal is DISMISSED for failure to timely file a designation of record.

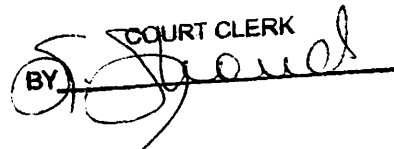
PROCEDURAL BACKGROUND

Appellant's parental rights were terminated by the District Court on May 3, 2023. Appellant had ten days from that date to file a designation of record. Choc.Ct.App. R.1.28(b)(2). Appellant did not file her Designation of Record until five months later on October 19, 2023. Although Appellant filed a Petitioner in Error on May 22, 2023, she has not yet filed a Brief-in-Chief. The Choctaw Nation's Children's Code requires an appellant's Brief-in-Chief to be filed within twenty days of the trial court clerk notifying all parties that the record is complete. Additionally, this Court is required to enter a decision in juvenile appeals in an "expedited" manner within six months of the completion of briefing. Children's Code §1-5-103. Appellant has not requested an extension or provided an explanation for missing the required deadline.

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ANALYSIS

Rule 1.28 of the Choctaw Nation Court of Appeals is identical to Rule 1.28 of the Oklahoma Supreme Court. Where the appellant fails to timely file a designation of record the Oklahoma Supreme Court has granted a motion to dismiss the appeal. “Unexcused failure by a plaintiff in error to timely designate the record on appeal pursuant to applicable civil appeal rules constitutes an abandonment of the appeal and the appeal becomes subject to dismissal.” Haynes v. Barnett, 1971 OK 43, ¶ 2, 483, P.2d 1140, 1141; see also Nicklau v. Peoples State Bank, 1969 OK 156 ¶ 3, 459 P.2d 853, 853 (Unexcused failure by plaintiff in error to timely designate the record on appeal pursuant to the provisions of Rule 10...constitutes an abandonment of the appeal and appeal is subject to dismissal under such circumstances.”); Smith v. Smith, 1969 OK 150 ¶4, 463 P.2d.971, 972 (Unexcused failure by plaintiff in error to designate a record within the period provided by rules, supra, constitutes abandonment of the appeal.) We find the reasoning in those Oklahoma cases persuasive and hereby adopt those holdings. Appellate jurisdiction, once invoked, is subject to revocation by dismissal unless the appeal is prosecuted with diligence.

Here, Appellant failed to timely file a designation of record. Appellant waited five months to file the required designation. Appellant bears the duty for prosecution of their appeals and failure to diligently prosecute cannot be excused, especially where, as here, no reason for delay has been provided, and the appeal is of a nature designated by statute to be heard on an “expedited” basis. Children’s Code §1-5-103.

After the Nation filed its motion to dismiss the instant appeal for abandonment of the appeal, the Appellant filed an objection to the motion to dismiss raising several objections. The

first objection was the alleged failure of the Nation to file a response to the Petition in Error of Appellant. The Appellant argues that this failure would subject the Nation to sanctions and somehow excuses the failure of the Appellant to file a designation of record five months late in an adoption case. While sanctions may be imposed for failure to file a response to the petition in Error, we find that the absence of such response by the Nation does not affect nor cause the problems in this case. While failure to file a response may merit sanctions, finding no prejudice in the failure to file a response, we decline to issue any sanctions to the Nation. The Rules clearly state that it is the responsibility of the Appellant to prosecute his or her appeal and the appellant's responsibilities are not dependant upon a response to a petition in error. Further this is an adoption appeal and the appeal times are shorten by our Tribal Council so that children's rights may be protected expeditiously and cause as little harm as possible to children by protracted litigation.

The Appellant in its objections to the motion to dismiss by the Nation further raises that the Nation did not file a counter designation which the rules require if necessary. Instead of filing a counter designation of record, the Nation filed a motion to dismiss for abandonment. The Nation's motion to dismiss for abandonment should be heard as quickly as possible, not only for the parties sake, but more importantly, since this is an adoption appeal, for the benefit of the child.

The Appellant has requested we determine that the Nation is in default in this appeal. We do not find the Nation is in default and deny that request.

The Tribal Council has by its adoption of the rules clearly indicated it is the policy of the Nation to carefully protect the rights of the children in family cases, which include adoption

cases. Since the Appellant has not filed her designation of record for more than five months in an adoption case, this clearly constitutes abandonment of the appeal by the Appellant.

The delay in filing a Brief-in Chief, however is not actionable by this Court at this time. “Briefing time is calculated from the date the record is certified by the trial court clerk as being completed. The record, not being designated by plaintiff in error, could not be completed, consequently briefing time has never commenced. There is, therefore, no failure to timely brief.” *Smith v. Smith*, 1969 OK 150 ¶ 2, 463 P.2d 971, 972. Because Appellant did not timely file a designation of record, the briefing time could not be calculated by the Court Clerk. Again, the duty to timely file the designation of record rests solely with the Appellant.

CONCLUSION

The Appellant failed to diligently prosecute this appeal by failing to timely file a designation of record. The Appellant compounded the error by not providing any reason for the nearly five month delay. Based on the record before us, the Appellant’s failure to timely file a designation of record constitutes a violation of Rule 1.28 and violation of tribal policy of the Choctaw Nation Children’s Code, which requires juvenile appeals to be “expedited.” Children’s Code §1-5-103. The Motion to Dismiss is GRANTED. The Court Clerk is directed to notify the District Court of this Order.

Per Curiam.