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# IN THE CROW COURT OF APPEALS

IN AND FOR THE CROW INDIAN RESERVATION

CROW AGENCY, MONTANA

CIV. APP. DOCKET NO. 94-31

**ESTATES OF RED WOLF and BULL TAIL,  
Plaintiffs/Appellees,**

*vs.*

**BURLINGTON NORTHERN RAILROAD  
COMPANY, a corporation,  
Defendant/Appellant.**

Decision Entered April 24, 1996

[Cite as: 1996 CROW 4]

Before: William C. Watt, Docket Judge

## ORDER

[¶1](#) Defendant Burlington Northern Railroad Company (“BN”) filed a Notice of Appeal in this case on February 16, 1996, appealing from the Tribal Court’s final judgment entered February 6, 1996. Prior to filing that Notice of Appeal, BN filed a Motion for Judgment Notwithstanding the Verdict or for New Trial (the “post-trial motion”) on February 13, 1996. BN filed a supplement to the post-trial motion on February 28, 1996.

[¶2](#) The Crow Tribal Court denied BN’s post-trial motion in its order dated March 7, 1996. The sole grounds for the Tribal Court’s denial was that it was deprived of jurisdiction to rule on the post-trial motion upon the filing of BN’s notice of appeal. Thereafter, BN filed another notice of appeal on March 21, 1996, appealing from the Tribal Court’s denial of its

post-trial motion. Because the grounds for the Tribal Court's denial of the post-trial motion raises an important procedural issue of first impression, this Court granted BN's motion for extension of time for transmission of the record and for filing of briefs on April 4, 1996.

¶3 Neither the Crow Tribal Rules of Civil Procedure or the Rules of Appellate Procedure specifically address the Tribal Court's jurisdiction to decide motions for new trial or for judgment NOV after a notice of appeal has been filed. However, Crow R. Civ. P. 19(c) expressly provides that "[a] judgment *non obstante veredicto* may be granted in the Crow Tribal Court, provided that Rule 50 of the Federal Rules of Civil Procedure, as amended, shall be the law applicable in Tribal Court for this purpose."

¶4 The federal procedural rules in this area have historically been a source of confusion which has been resolved only recently by revisions to Fed. R. App. P. 4(a)(4) and Fed. R. Civ. P. 50. For example, prior to the extensive revision of Fed. R. App. P. 4(a)(4) in 1993, a notice of appeal filed during the pendency of such a post-trial motion was deemed completely ineffective, and the right to appeal was waived if appellant failed to file a new notice of appeal from the original judgment within the specified time after denial of the post-trial motion. See 9 *Moore's Federal Practice* ¶ 204.12[1] at 4-74, 78, and 4-80 (2d ed. 1996); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982); Advisory Committee Note to 1993 Amendments to Fed. R. App. P. 4(a)(4) (former rule created a trap for unsuspecting litigants). On the other hand, it was also held that when a notice of appeal was filed before the post-trial motions, the trial court lost jurisdiction to decide such motions. 9 *Moore's Federal Practice* ¶ 204.12[1] at 4-78. In view of this precedent, and the lack of specific treatment in the Crow Tribal Court procedural rules, the Tribal Court's error in this regard is understandable.

¶5 However, it is this Court's view that the arbitrary and hyper-technical rules that developed in the former federal practice with respect to post-trial motions and appellate procedures are not appropriate for the Crow Tribal Court system. Rather, this Court adopts the more logical and rational procedure specified in the current Fed. R. App. P. 4(a)(4). This view is reinforced by the incorporation in Crow R. Civ. P. 19(c) of Rule 50 of the Federal Rules of Civil Procedure "as amended[.]"

¶6 Accordingly, BN's notice of appeal filed on February 16 is ineffective until the entry of the Tribal Court's last order disposing of the post-trial motion, and that notice of appeal did not deprive the Tribal Court of jurisdiction to rule on the motion. Under this procedure, the Tribal Court which heard the evidence and instructed the jury will also properly be afforded the opportunity to consider this post-trial motion prior to the commencement of the appeals process. It would be "inefficient at best to proceed with an appeal" until the trial court has ruled on the merits of the post-trial motion. 9 *Moore's Federal Practice* ¶ 204.12[1] at 4-77.

¶7 Consistent with the Tribal Code and its incorporation of Fed. R. Civ. P. 50 with respect to post-trial motions, this Court also recognizes the Tribal Court's authority to entertain BN's alternative motion for new trial in accordance with the procedures specified in Fed. R. Civ. P. 50 and 59.

¶8 For the foregoing reasons, the Tribal Court's order dated March 7, 1996 denying Defendant Burlington Northern's Motion for Judgment NOV or for New Trial is **REVERSED**; and this case is **REMANDED** to the Tribal Court for determination of the Defendant's post-trial motion on its merits.