
IN THE CROW COURT OF APPEALS

IN AND FOR THE CROW INDIAN RESERVATION

CROW AGENCY, MONTANA

CIV. APP. DOCKET NO. 98-16

In re the Marriage of:

**WARREN HARMON REDFOX,
Petitioner/Appellee,**

and

**TINA MARIE REDFOX,
Respondent/Appellant.**

Decision entered March 23, 2000

[Cite as 2000 CROW 3]

Before: Stewart, J., Yellowtail, J., and Watt, J.

ORDER DISMISSING APPEAL

[¶1](#) This action for dissolution of marriage was filed by Petitioner Warren Redfox in January 1998. Respondent Tina Marie Redfox, through her advocate, has filed a Notice of Appeal from an Order of the Tribal Court (Gros-Ventre, J.), at a hearing on February 17, 1999, denying her Motion to Dismiss for Lack of Jurisdiction. Because as a matter of law the Tribal Court's Order is not a final order subject to immediate appeal, we must dismiss.

Appellate Jurisdiction

¶2 The Crow Court of Appeals generally has jurisdiction to “hear all appeals from *final* judgments and/or orders of the Crow Tribal Court.” Crow Tribal Code § 3-1-103(2) (emphasis added). The requirement for finality prior to allowing appellate review promotes the efficiency of the court system, and avoids piecemeal appeals in the same case. See *Stringfellow v. Concerned Neighbors*, 480 U.S. 370, 380 (1987).

¶3 This court has previously dismissed an appeal from the Tribal Court’s order denying a motion to dismiss for lack of jurisdiction in the similar case of *In re. Marriage of Old Coyote v. Villeburn*, Civ. App. Docket No. 97-013 (Aug. 29, 1997) (Opinion and Order Dismissing Appeal). In that custody case stemming from a dissolution of marriage, this court looked to Federal law for guidance on whether a Respondent is entitled to an “interlocutory” appeal of an order denying his motion to dismiss for lack of jurisdiction.

¶4 As we explained in *Old Coyote, supra*, an appealable “final order” is generally “one that ‘ends the litigation on the merits and leaves nothing for the court to decide but to execute the judgment.’” *In re. Benny*, 791 F.2d 712, 718 (9th Cir. 1986), quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945). The Ninth Circuit has specifically held that an order denying a motion to dismiss for lack of jurisdiction is not an immediately-appealable order, because rather than ending the litigation, “it ensures that litigation will continue[.]” *Confederated Salish & Kootenai Tribes v. Simonich*, 29 F.3d 1398, 1401-02 (9th Cir. 1994), quoting *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 275 (1988). Instead, the order denying a motion to dismiss may still be effectively reviewed on appeal after the final judgment in the case. *Simonich*, 29 F.3d at 1403.

¶5 There are recognized exceptions to this finality doctrine.^[1] For example, if the motion to dismiss is based on a claim of sovereign immunity, it is immediately reviewable because requiring the sovereign to defend would defeat the purpose of the immunity. See, e. g., *Marx v. Government of Guam*, 866 F.2d 294, 296 (9th Cir. 1989). Also, this court has jurisdiction to immediately review temporary restraining orders and preliminary injunctions pursuant to Rule 4(a) of the Crow Rules of Appellate Procedure. In the present case, no claim of immunity is involved, and the order appealed from is not a TRO or preliminary injunction.

¶6 Therefore, following our precedent from the *Old Coyote* case, this court holds that the Tribal Court’s order denying Appellant/Respondent Tina Redfox’s motion to dismiss for lack of jurisdiction is not an appealable final order. Tina may raise the issue of jurisdiction in any appeal she may decide to take after a final judgment has been entered by the Tribal Court.

Proceedings in Other Jurisdictions

¶7 In so ruling, this court notes that none of the parties involved in this matter are members of the Crow Tribe. The father and the children are enrolled members of the Northern Cheyenne Tribe, and the mother is a non-Indian. At the time the dissolution petition was filed in the Crow Tribal Court in January, 1998, jurisdiction was based on the parties’ residence within the Crow Reservation. From the record in this case, it appears that the Northern Cheyenne Tribal Court dismissed an earlier custody proceeding by order of Judge Wilson on January 29, 1998 (No. JC 98-137) in favor of jurisdiction in the Crow Tribal Court, because of the parties’ residence.

¶8 However, while this appeal was pending, Tina apparently filed a dissolution action in the Northern Cheyenne Tribal Court. That honorable Court has issued a full Decree dissolving the marriage, dividing the parties' property, and granting custody of the children to Tina. *In re. Matter of Tina and Warren Redfox*, No. C99-141 (Decree, August 24, 1999) (Wilson, J.). The Northern Cheyenne Tribal Court based its jurisdiction on the Tribal membership of Warren and the children, and on the residence of Tina and the children on the Northern Cheyenne Reservation. Warren failed to appear in that proceeding, other than to file a motion to dismiss.

¶9 In addition, this court takes judicial notice that the State District Court in Rosebud County has issued an order declining to defer to the Crow Tribal Court, and instead deferring to the Northern Cheyenne Tribal Court based on the children's Tribal membership and their contacts with the Northern Cheyenne Reservation. *In re. Marriage of Tina and Warren Redfox*, DR 98-89 (Memorandum and Order, August 5, 1999) (Hegel, J.).

¶10 In view of all these conflicting jurisdictional orders, the Crow Tribal Court on remand should first consider whether it has exclusive or concurrent jurisdiction to decide this matter, or whether it is required by federal law, including 28 U.S.C. § 1738B, to give "full faith and credit" to any part of the Northern Cheyenne Tribal Court's recent Decree. If it finds that it has concurrent jurisdiction, the Tribal Court should also consider whether or not it would be prudent or appropriate, as a matter of comity, to defer to the Northern Cheyenne Tribal Court's Decree in this case. If the Tribal Court decides to retain jurisdiction, no appeal from its rulings will be heard until it has entered a final Decree. Now, therefore,

¶11 IT IS HEREBY ORDERED that this appeal is **DISMISSED**, and the case is **REMANDED** to the Tribal Court for further proceedings. No costs.

Endnotes

[1] This appeal is from an order denying of a motion to dismiss for lack of jurisdiction. It is different than an appeal from a Tribal Court order granting a motion to dismiss for lack of jurisdiction, which brings the litigation in Tribal Court to an end, and is therefore appealable as a final judgment.

[¶5](#)

[¶10](#)

[Endnotes](#)
