

Sisseton, South Dakota

FILED

SISSETON-WAHPETON-SIOUX
TRIBAL COURT

1/13/15

Date

by:

*Bea Na*SISSETON-WAHPETON OYATE
SUPREME COURTDAWN EAGLE,
Plaintiff/Appellee,

v.

DANIEL WHITE,
Defendant/Appellant.

CA 12-005-210 Clerk of Courts

MEMORNADUM OPINION
AND ORDER

Per Curiam (Thor Hoyte, Chief Justice and Associate Justices Russel D Zephier and Pat Donovan)

This is an appeal from a civil jury trial where White allegedly committed Slander, False Light Invasion of Privacy and Intentional Infliction of Emotional Distress. The jury awarded damages. The record is not clear as to which of the three charges White was found culpable.

PROCEDURAL

This cause of action was initiated by Eagle filing a complaint against White in SWO court on the 11th day of October 2011. Eagle in her complaint alleges that White committed Slander, False Light Invasion of Privacy and Intentional Infliction of Emotional Distress. White filed an Answer to Eagle's complaint on the 17th day of November 2011 in which he denied all three allegations, and within the Answer moved the court to dismiss Eagle's complaint. Eagle filed a reply on the 20th day of March 2012 to White's Motion to Dismiss contained In Answer. The SWO court on July 27, 2012 denied White's Motion in an Order Denying Motion to Dismiss and Order For Jury Trial. The court in this Order also set the jury trial for September 20 and 21, 2012, and directed the Clerk of Court is serve the Juror Summons by September 7, 2012. On September 10, 2012 the Court issued an Order of Continuance because of a scheduling conflict with the court and rescheduled the jury trial for November 15 and 16, 2012 with the Jury

Summons to be served by November 2, 2012. The jury trial was held on November 15 and 16 of 2012 with the SWO court issuing a Judgment on the jury decision on November 26, 2012. The SWO court's November 26, 2012 Judgment ordered White to pay Eagle \$19,000.00 in damages. White filed a Notice of Appeal to the Intertribal Court of Appeals on December 26, 2012. The record does not reflect any action that might have been taken by the Intertribal Court of Appeals on White's Appeal. On February 20, 2013 Eagle filed a Motion Requesting Execution of the November 26, 2012 Judgment. The SWO court on July 24, 2013 issued an Order granting White a Continuance until the Appeal could be resolved by the SWO Supreme Court. This court held oral arguments on this case on December 8, 2013.

ISSUES

White raises one issue in his notice of appeal: whether the SWO court erred in failing to subpoena his witness?

DISCUSSION

The record shows that the SWO lower court failed to subpoena White's witnesses. The SWO lower court allowed White to present an Offer of Proof on what his witnesses would testify to, but there is no transcript to show the Offer of Proof as presented by White. The failure to subpoena White's witness and the lack of a record to show White's Offer of Proof is troubling to this Court because he was appearing pro se without an attorney at this trial.

However, there are several other issues that are of concern to this Court. White's actions and inactions seem to reflect to this Court that he did not take the lawsuit filed against him with all the seriousness that it deserved. White was not present on November 16, 2012, the first day of trial when the jury was impaneled; he telephoned the SWO lower court that day and requested a continuance. It wasn't until the lawsuit was basically completed that he retained and appeared

with counsel. White appeared pro se throughout the entire proceeding and only at oral arguments did he appear with counsel.

This Court was not presented with a transcript by which it could make a determination of whether the lower court abused its discretion for failing to subpoena White's witnesses and it is nearly impossible to do so without a record. The Sisseton-Wahpeton Oyate Rules of Appellate Procedure requires an appellant to request a transcript of a proceeding being appealed within 10 days of filing notice of appeal.¹ There is no record that White complied with the rule, and therefore no transcript was presented to this Court. A transcript would be required for us to review whether a jury could have found as instructed by the jury instructions. It was stated that a partial transcript was prepared but this Court was not given the partial transcript. Failure to comply with the rule makes it impossible to view the offer of proof made regarding White's un-subpoenaed witnesses.

The Court has the inherent authority, sua sponte, to review for defects in the proceedings. This inherent authority is especially strong when it involves a pro se litigant. The SWO Supreme Court was not presented with a copy of any jury instructions given to the jury, and this especially applies to jury instructions on damages. The jury instructions are considered by this Court to be essential and necessary to the jury being instructed on the issue of damages and how they could award damages. The lack of jury instruction on damages is evidenced by the jury awarding punitive damages when this is specifically disallowed by SWO law.

¹ Rule 7(a)(2)

CONCLUSION

For the above stated reasons this Court issues a Remand to the trial court on the issue of damages and affirms the trial court on all other issues.

IT IS SO ORDERED.

Dated this 8th of January, 2015.

FOR THE COURT:

A handwritten signature in cursive script, reading "Russel D Zephier".

Russel D Zephier
Associate Justice