

IN THE SUPREME COURT OF THE CHEROKEE NATION

TODD HEMBREE,)
Attorney General of the Cherokee Nation,)
)
Appellant,)
)
v.)
)
DAVID CORNSILK,)
)
Appellee,)
)
v.)
)
MICHAEL MOORE,)
)
Intervenor.)

Case No. SC-2018-04

2018 JUN 12 AM 11:07
CHEROKEE NATION
SUPREME COURT
SEND ALL BPD. COURT CLERK

FILED

MOTION TO STRIKE

COMES NOW, the Todd Hembree, Attorney General for Cherokee Nation by and through the undersigned counsel, and hereby moves this Court to strike Intervenor’s Cross Petition in Error filed by Intervenor, Michael Moore on the 17th day of May, 2018 by reason of the same being procedurally improper and beyond the scope of appellate review.

I. FACTS AND PROCEDURAL POSTURE

1. On April 13th, 2018, Appellant, Todd Hembree filed his Petition in Error with this Court challenging the District Court’s Judgment file April 6th, 2018
2. On May 17th, 2018, Intervenor, Michael Moore, filed a Cross Petition In Error.
3. Pursuant to 20 CNCA App. Rule 51(C), was untimely and beyond the scope of judicial review.

II. ARGUMENT AND AUTHORITY

A. Intervenor's Cross Petition is untimely pursuant to Cherokee Nation Supreme Court Rule 51(C).

Intervenor's Cross Petition is untimely and should not be considered by this Court. Under the Supreme Court rules for appellate procedure (hereinafter "Appellate Rules"): If one party has filed an appeal within the time period provided, the other party shall file a response and may take a Cross-Appeal by filing a Cross-Petition in Error within thirty (30) days of filing of the initial appeal. *See* 20 CNCA App. Rule 51(C).

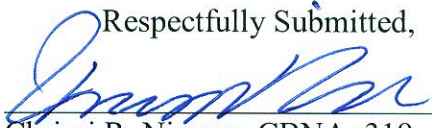
In the case at hand, the Appellant filed the Petition In Error on April 13th, 2018. Pursuant to the Appellate Rules adopted by this Court, Intervenor would have been required to file a Cross-Appeal thirty (30) days of the Petition In Error. There is no provision in the Appellate Rules that permits Intervenor to file a Cross-Appeal and Cross-Petition that is nearly 33 days out of time. Intervenor's attempt to do so in this case is in direct conflict with the Appellate Rules established by this Court and should be stricken as procedurally improper.

B. Intervenor is not a party to the case.

Although Mr. Moore attempted to intervene in the District Court case after a final order had been entered and after the case had been appealed, he was not a party below. Additionally, he has, by separate Motion, attempted to intervene in the present case on appeal. However, neither of those attempted actions make him a party who is entitled to appeal under Rule 51(c).

III. CONCLUSION

The Intervenor's Cross-Petition In Error must be stricken from record. The Cross-Petition was filed out of time and attempts to present argument and evidence that is inadmissible, procedurally improper, and beyond the scope of appellate review.

Respectfully Submitted,
By: 
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CERTIFICATE OF SERVICE

The undersigned certifies that on 12 day of June, 2018, a true and correct copy of the foregoing Motion to Strike, was faxed or emailed to the following person(s):

David Cornsilk
14013 N 524 Rd
Tahlequah, OK 74464

Michael Moore
600 West Broadway, Ste. 700
San Diego, CA 92101


Chrissi R. Nimmo