

IN THE SUPREME COURT OF THE CHEROKEE NATION

FRANCES UNGER,

Appellant,

vs.

CHEROKEE NATION

COMPREHENSIVE CARE AGENCY

Appellee.

Case No. SC-2015-07

FILED
2019 JAN 10 AM 11:03
SUPREME COURT
CHEROKEE NATION
SMALL BLDG. COURT CLERK

**MOTION TO DISMISS APPEAL FOR FAILURE TO COMPLY
WITH THE COURT'S ORDER**

COMES NOW, the Cherokee Nation Comprehensive Care Agency ("Appellee"), by and through the undersigned counsel, and hereby moves this Court to dismiss the above-styled appeal of Frances Unger ("Appellant") pursuant to Cherokee Nation Supreme Court ("CNSC") Rule 60(C) for failure to comply with an order of this Court. The Appellant has failed to timely file her Brief-in-Chief as directed by this Court's October 29, 2018 *Order* and the instant appeal should be dismissed.

ARGUMENT AND AUTHORITIES

Pursuant to CNSC Rule 60(C), "the appellant *shall* file and serve an appellate brief-in-chief within sixty days after the date on which the appellee has filed his/her response to the Petition in Error." CNSC 60(C)(emphasis added). Rule 60(C) further directs, "[i]f an appellant fails to file the appellant's brief-in-chief within the time provided by this rule, or within the time as extended, the court may dismiss the appeal." *Id.*

On September 27, 2018, the Appellant filed her *Petition in Error, Designation of Record*, and an *Opening Brief* contemporaneously. On October 25, 2018, the Appellee filed its response

to the Appellant's *Petition in Error* in the form of a motion to dismiss, as required under Court Rule 60(A).

On October 29, 2018, the Court struck the Appellant's *Opening Brief* from the record "for failure to comply with the appellate schedule within the Cherokee Nation Supreme Court Rules." October 29, 2018 *Order*. In doing so, the Court allowed the Appellant an opportunity to refile her stricken pleading "as a Brief-in-Chief as defined in the CNSC court rules." *Id.* Per CNSC Rule 60(A) the Appellant had sixty days to file her Brief-in-Chief from the date the Appellee filed its response – which was filed as its motion to dismiss. Under CNSC Rule 60, sixty days from October 29, 2018 fell on Friday, December 28, 2018. As of the filing date of this motion, the Appellant has not filed a Brief-in-Chief.

It cannot go unnoticed that this is the second time that the Appellant has disregarded the established appellate schedule in the instant case. The Appellant failed to comply with the required briefing schedule and when given the opportunity to come into compliance, the Appellant failed to file a Brief-in-Chief by the extended deadline. Indeed, this Court has dismissed prior appeals for failure to comply with CNSC Rule 60. *See Pennington v. Cherokee Nation*, SC-2013-18 (dismissing appeal when appellant's Brief-in-Chief was filed one hour and eleven minutes late). Here, unlike in *Pennington*, the Appellant has failed to file any Brief-in-Chief at all. Established precedent and the Appellant's continued flouting of the appellate schedule direct dismissal of the instant appeal.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Appellee respectfully requests that the Court grant its motion and dismiss Appellant's Petition with prejudice pursuant to CNSC Rule 60(C) and

award the Appellee its reasonable litigation costs and attorneys' fees incurred in defending the action. A proposed Order consistent with this request is attached.

Respectfully submitted,

/s/ John Chapman Young
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above was e-mailed to Counsel for the Appellant, Chad Smith, chad@chadsmith.com and by USPS at 22902 S. 494 Road, Tahlequah, OK 74464 on the January 10, 2019.

/s/ John Chapman Young
John Chapman Young

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FRANCES UNGER,	)	
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Appellant,	)	
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vs.	)	Case No. SC-2015-07
	)	
CHEROKEE NATION	)	
COMPREHENSIVE CARE AGENCY	)	
	)	
Appellee.	)	

[PROPOSED] ORDER

This Matter having come before the Court on the Appellee's Motion to Dismiss Appeal for Failure to Comply with the Court's Order. After due consideration, the Court finds that the Appellee's Motion should be granted.

IT IS THEREFORE ORDERED that the Appellee Cherokee Nation Comprehensive Care Agency's Motion to Dismiss Appeal for Failure to Comply with the Court's Order is GRANTED and the appeal is hereby DISMISSED.

IT IS SO ORDERED, this _____ day of _____, 2019.

John C. Garrett, Chief Justice

James G. Wilcoxon, Justice

Lynn Burris, Justice

Mark L. Dobbins, Justice

Lee Paden, Justice

Certificate of Mailing

I, Kendall Bird, certify that on the _____ day of _____, 2019, I mailed, emailed and/or faxed a true copy of the above and foregoing to the following:

John C. Young, john-young@cherokee.org

Paiten Taylor-Qualls, paiten-qualls@cherokee.org

Chad Smith, chad@chadsmith.com

Kendall Bird, Court Clerk