

IN THE CROW COURT OF APPEALS

IN AND FOR THE CROW INDIAN RESERVATION

CROW AGENCY, MONTANA

CIV. APP. DOCKET NO. 93-47/48

**VICKI MASON,
Petitioner/Appellant,**

vs.

**KELLY PEREAU,
Respondent/Appellee.**

Decision entered November 4, 1999

[Cite as 1999 CROW 3]

Before Birdinground, C.J., Gros-Ventre, J., and Watt, J.

ORDER OF DISMISSAL

¶1 Pending in this appeal is Appellee Kelly Pereau's Request for Rehearing on the judgment of the Crow Court of Appeals dated June 8, 1994. As a result of intervening events, this Court must grant Mr. Pereau's request, and because the issues and persons involved in these cases are no longer within the jurisdiction of Crow Tribal Court, if there were, this appeal and the underlying cases must be dismissed.

Course of Proceedings

¶2 These cases involved a dispute over the custody of the parties' minor children. The father of the children, Mr. Pereau, is an enrolled member of the Fort Peck Tribes. The mother, Ms. Mason, is an enrolled member of the Northern Cheyenne Tribe, and the children are also enrolled there. The parties' residence at the pertinent times has been strongly disputed, and the subject of conflicting jurisdictional findings by various Tribal Courts. In order to understand the procedural status of this matter, it is necessary to review the complex litigation spawned by this dispute.

[¶3](#) The series of court actions arising from the parents' custody dispute began when the mother filed a petition for custody with the Northern Cheyenne Tribal Court in February 1993 (Mason v. Pereau, Case No. Civ. 93-023). That court assumed jurisdiction and issued an ex parte order granting temporary custody to the mother on March 3, 1993.

[¶4](#) That same day, the father filed an action in the Crow Tribal Court (Case No. 93-47) for a temporary restraining order to prevent the mother from taking the children away from his residence at his parents' home on the Crow Reservation. The Tribal Court (Stewart, J.) issued a restraining order on March 5, 1993. That same day, the mother filed a separate action in the Crow Tribal Court (Case No. 93-48) seeking to enforce the temporary custody order that the Northern Cheyenne Tribal Court had issued two days earlier.

[¶5](#) While the father requested several continuances in the Crow Tribal Court proceedings, the Northern Cheyenne Tribal Court held a trial on April 21, 1993. The father refused to attend because he objected to the court's jurisdiction. At the conclusion of the trial, the court issued findings of fact, conclusions of law, and a Decree granting permanent custody to the mother, with the father's visitation rights to be established in further proceedings. The court's jurisdiction was based on its finding that the children and their mother had lived on the Northern Cheyenne Reservation for six months prior to the mother filing her petition.

[¶6](#) On October 20, 1993, the day finally set by the Crow Tribal court for hearing on the mother's motion for temporary custody, the father again requested a continuance. The Tribal Court granted a 2-week continuance, and also granted temporary custody to the mother. In response, the father moved to set aside the order, to disqualify Judge Stewart, and for another continuance.

[¶7](#) The Crow Tribal Court held a full hearing on December 16, 1993. Following that hearing, the court (White, C.J.) issued an order awarding custody to the father, with all visitations to occur on the Crow Reservation. The court later amended its order on February 9, 1994 to require supervised visitation. The Crow Tribal Court based its jurisdiction on findings that the children had resided on the Crow Reservation for most of their lives, and evidence that the mother had claimed Crow Agency as her residence during the period in question. The mother appealed the order, thus commencing this appeal.

[¶8](#) On June 7-8, 1994, the Crow Court of Appeals, acting through a panel composed of three distinguished visiting judges, held oral arguments and decided the appeal. The record indicates that the transcript of the December 16, 1993 hearing was not complete, because it left out some of the father's testimony and all the testimony of one of his witnesses. The father's lay counselor filed a substantial brief on the day of oral argument.

[¶9](#) The Court of Appeals' decision reversed the Crow Tribal Court, holding that the Northern Cheyenne Tribal Court was the court of proper jurisdiction over the custody dispute pursuant to the federal Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A. The panel found that the matter was fairly litigated in Northern Cheyenne Tribal Court (although the father and his counsel had refused to appear after they objected to its jurisdiction). The panel concluded that the Crow Tribal Court was required to recognize the Northern Cheyenne custody decree by the PKPA and under the doctrine of comity.

[¶10](#) On remand from the Court of Appeals, the Crow Tribal Court (White, C.J.) issued an order on August 3, 1994, recognizing the Northern Cheyenne Tribal Court's custody decree, vacating its previous orders, and directing that the children be returned to the mother. The record indicates that a "hearing in aid of execution" was held on August 5, 1994, to ascertain the whereabouts of the children. The record further indicates that the children's

grandmother, Mrs. Arliss Pereau, refused to answer questions at the hearing. Also in the case file is a copy of an order by the U.S. District Court directing Superintendent Pereau and the Bureau of Indian Affairs to enforce the Crow Court of Appeals' decision on the Crow Reservation (Mason v. Pereau, Cause No. CV 93-97-BLG-JDS, Aug. 12, 1994).

¶11 In the meantime, another action was filed in Crow Tribal Court on June 23, 1994 by Mrs. Pereau to restrain Ms. Mason's attorney from driving by her house in Crow Agency (Pereau v. Eakin, Civil Case No. 94-260). The Tribal Court (Stewart, J.) granted the restraining order on July 7, and then extended the order for another 60 days. Mr. Eakin's appeal from that order is the subject of another decision being entered concurrently by this Court.

¶12 The father also sought relief from the executive and legislative branches of the Crow Tribe. The file contains an "Executive Order" dated August 19, 1994, which purports to stay the decision of the Court of Appeals until the next Tribal Council meeting. Then, on January 14, 1995, the Tribal Council enacted Resolution No. 95-14, which clarified the intent of Crow Tribal Code § 3-3-331 to require that all Crow Court of Appeals panels be composed of a majority of judges who are members of the Crow Tribe. The Resolution also authorized parties in appeals heard by the panel of visiting judges in June 1994 to petition for rehearing within 90 days. The father timely filed a request for rehearing and clarification in this case in April 1995.

¶13 Approximately one year later, before the Court of Appeals ruled on the father's request for rehearing, the parties and their counsel filed a Stipulation (or agreement) that would have resulted in the dismissal of this appeal and the underlying action in the Crow Tribal court. According to the April 1996 Stipulation, dismissal by the Crow Court of Appeals was to be contingent upon the Northern Cheyenne Tribal Court entering a similar dismissal order in the case that was originally filed there in February 1993. The parties' purpose for dismissing the actions in both Tribal Courts was to allow them to resolve the custody matter in yet another case then pending in State District Court in Yellowstone County, Mason v. Pereau, Cause No. DR 94-1002 (Mont. 13th Jud. Dist.).

¶14 Pursuant to a similar stipulation, the Northern Cheyenne Tribal Court (Wilson, J.) vacated all its previous orders and dismissed the case by order dated Feb. 17, 1997. However, that order was contingent upon the Crow Court of Appeals also dismissing the present case.

¶15 Based on the Stipulation, and in light of the order by the Northern Cheyenne Tribal Court, the Crow Court of Appeals in July 1997 circulated a revised Order of Dismissal for the parties' review and approval. Although counsel indicated that the order was consistent with the parties' agreement, Kelly Pereau wrote a letter to this Court from Billings in September 1997 expressing dissatisfaction with the District Court proceedings, requesting a copy of the Northern Cheyenne Tribal Court dismissal order, and indicating that he wished the Crow Court to retain jurisdiction over the matter. In response, Judge Watt wrote a letter to the parties' counsel on September 12, 1997, requesting them to advise the court (1) whether they still represented their respective clients, (2) whether the parties still agreed to the dismissal stipulation, and (3) if not, to submit a proposed schedule for final disposition of this appeal. This Court has never received a further response from any of the parties or their counsel.

Disposition

¶16 As chronicled above, the question of what court had jurisdiction to award custody of

the parties' children was the subject of conflicting findings by the Crow Tribal Court (children resided with father in Crow Agency after August 1992) and the Northern Cheyenne Tribal Court (children resided with mother on the Northern Cheyenne Reservation), with the previous panel of the Crow Court of Appeals having agreed with the Northern Cheyenne court. The changes in circumstances which have occurred since that time, however, control our disposition of this case.

[¶17](#) None of the parties has resided on the Crow Reservation since at least March 1995. In addition, this same custody dispute has also been the subject of proceedings in State District Court in Yellowstone County, apparently since 1994. See, e.g., Order re. Status Conference dated July 21, 1997 (Holmstrom, J.). The father apparently resided in Billings at the time of this latest District Court order available to this Court, and there was never any dispute that the family lived in Billings for some years prior to August 1992. In these circumstances, the Tribal courts are obliged to give full faith and credit to the custody orders of a State court with continuing, exclusive jurisdiction pursuant to 28 U.S.C. § 1738B. Thus, the Crow Tribal Courts lack jurisdiction of this case, and it must be dismissed. The parties' failure to pursue any further proceedings in this Court is a further ground for dismissal.

[¶18](#) Finally, in light of the Northern Cheyenne Tribal Court's dismissal, the Court of Appeals' previous opinion recognizing that honorable Court as the proper one for deciding this custody matter must be reconsidered. Normally, of course, a decision by the Court of Appeals is final and not subject to later review by another panel of this Court. However, Tribal Council Resolution No. 95-14 specifically authorized a rehearing of appeals such as this, which were conducted during 1994 by a panel that may not have been constituted as required by Crow Tribal Code § 3-3-331 (no Tribal Court judges or other members of Crow Tribe on panel). Without deciding the scope of the Tribal Council's power to modify or overturn decisions of this Court, we conclude that the Court of Appeals' previous decision must be vacated because the Northern Cheyenne Tribal Court no longer asserts jurisdiction of this matter. Likewise, for the reasons stated above, the Crow Tribal Court's conflicting orders must also be vacated. Now, therefore,

[¶19](#) IT IS HEREBY ORDERED that Appellee's request for rehearing is GRANTED; and

[¶20](#) IT IS FURTHER ORDERED that all previous orders of the Crow Tribal Court in the proceedings below, and the decision and order of the Crow Court of Appeals dated June 8, 1994, are VACATED, and this appeal together with the underlying actions in the Crow Tribal Court shall be and hereby are DISMISSED. No costs.

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