
**FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
POPLAR, MONTANA**

APRIL MARTELL,
Plaintiff/Appellant,

vs.

Appeal No. 094

ELIZABETH MANNING ESTATE,
Respondent/Appellee.

THIS APPEAL is from the order of dismissal of the case rendered on the 30th day of October, 1989 in the Fort Peck Tribal Court, Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. The Honorable Terry L. Boyd, Associate Judge, presided.

FOR APPELLANT: Melissa Schauer, Lay Counselor, P.O. Box 214, Wolf Point, Montana 59201.

FOR APPELLEE: Gerald T. Darnell, Personal Representative of the Manning Estate, P. O. Box 214, Poplar, MT 59255.

Argued: March 2, 1990. **Decided:** March 2, 1990.

CIVIL: THE TRIBAL COURT SHALL HAVE NO JURISDICTION OVER ANY ACTION BROUGHT MORE THAN THREE (3) YEARS AFTER THE CAUSE OF ACTION AROSE.

OPINION by Arnie A. Hove, Chief Justice, joined by Gary James Melbourne, Associate Justice and Floyd G. Azure, Associate Justice.

HELD: THE TRIBAL COURT'S ORDER DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE IS AFFIRMED.

FACTS:

On August 22, 1989, plaintiff filed a Civil Complaint in Tribal Court. Plaintiff's complaint sought recovery of damages for an attack by dogs on her son, Louis Martell, Jr. This attack occurred on October 28, 1985.

At the time of the incident, plaintiff claims she was represented by another lay counselor practicing in the Fort Peck Tribal Court system. At oral arguments, plaintiff stated this lay counselor assured her that he was filing a complaint in this matter on her behalf. Although there is no complaint or documents filed with the Tribal Court reflecting this representation, plaintiff's lay counselor confirmed plaintiff's statement regarding the previous representation.

On October 31, 1989, a hearing was held at which plaintiff presented evidence of the dog attack of her son. At the conclusion, Judge Boyd entered an order dismissing plaintiff's complaint with prejudice since it was beyond the statute of limitations permitting bringing such an action in Tribal Court.

On November 14, 1989, plaintiff filed a Petition for Review claiming the dismissal was based on grounds of prejudice. The specific reasons given for the appeal were as follows:

"a. Had verifiable witness verbal testimonies

"b. Had documents (legal and substantial) that stated L. Manning owned the dogs.

"c. Had newspaper clippings stating violation of F.P.H.A regulations."

The issue which will be addressed by this Court is as follows:

WHETHER THE TRIBAL COURT ERRED WHEN IT ISSUED ITS ORDER DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE.

I.

In plaintiff's case, the Tribal Court did not err when it entered its order dismissing plaintiff's complaint with prejudice. This Court will limit its review of the Tribal Court order as provided in I CCOJ 202. This section reads in part as follows:

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review de novo all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence....

In a de novo review of the Tribal Court's determination on the matter of law pertaining to statutes of limitation, IV CCOJ 601 does contain the applicable statute of limitation. This section reads:

"The Court shall have no jurisdiction over any action brought more than three (3) years after the cause of action arose, except that no statute of limitation shall bar an action commenced by the Tribe."

The incident complained of occurred on October 28, 1985. The Civil Complaint was filed August 22, 1989. There is over three (3) years between the date of the incident and the filing of the complaint. In applying I CCOJ 601 to the instant case, the Tribal Court did not have jurisdiction over this action and properly dismissed plaintiff's complaint with prejudice.

At the time of the incident, Lewis Martell, Jr. was 5 years old. Although dismissing the complaint is an extremely harsh result in view of Lewis Martell, Jr.'s injuries, there is a remedy available to this minor. Plaintiff and her lay counselor should look to who was responsible for missing the statutory deadline.

In conclusion, the Tribal Court did not err when it entered its order dismissing plaintiff's complaint with prejudice.

IT IS THE UNANIMOUS DECISION OF THIS COURT TO AFFIRM THE ORDER OF DISMISSAL OF THE TRIBAL COURT.

DATED this _____ day of April, 1990.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Gary James Melbourne, Associate Justice

Floyd G. Azure, Associate Justice
