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

DONALD CLARK and DANNA RUNS ABOVE,
Appellants

-vs-

APPEAL NO. 371

GENIE WILDER,
Appellee

OPINION AND ORDER

This matter comes before the Fort Peck Court of Appeals on appeal from an **ORDER**, issued by the Honorable Barry Bighorn, on March 22, 2001, appointing Donald Clark as Guardian of the person of Joseph Clark, and Genie Wilder as Guardian of the Estate of Joseph Clark.

FACTUAL AND PROCEDURAL SUMMATION

Petitioners/Appellants Donald Clark and Danna Runs Above filed a Petition for Review asserting that the Tribal Court failed to take into consideration the present and on-going needs of Joseph Clark in its appointment of Genie Wilder as Guardian of the property (estate) of Mr. Clark.

Petitioners/Appellants filed a Memorandum in support of their Petition for Review. A copy of the Memorandum was duly served on counsel for Genie Wilder, Appellee, on June 4, 2001. No responsive memorandum or brief has been filed by Appellee. The Order granting the Petition for Review and setting the briefing schedule contains the following statement:

"Should appellee fail to file responsive supporting papers, the relief sought in the petition may be granted, subject to the discretion of this Court."

Oral argument was held before the Fort Peck Court of Appeals on November 2, 2001. The

Court accepted Counsel Robert Welch's withdrawal as Counsel of record for Petitioners/Appellants, in that he had recently been elected to the Tribal Executive Board. Petitioners/Appellants appeared pro-se by Danna Runs Above, on behalf of herself and Co-Petitioner/Appellant Donald Clark.

STANDARD OF REVIEW

Title III, Section 202, Tribal Code of Justice provides as follows:

Jurisdiction of Court of Appeals.

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.

ISSUE

The issue before the Court may be stated:

Whether the Tribal Court failed to take into consideration the present and on-going needs of Joseph Clark in appointing Genie Wilder as guardian of the property of Joseph Clark?

WE HOLD: Order appointing Genie Wilder as guardian of the property of Joseph Clark did not consider the present and on-going needs of Joseph Clark. Order appointing Genie Wilder as guardian of the property of Joseph Clark is overruled and vacated.

DISCUSSION

This is a matter in which the record before the Court of Appeals shows that the factual determinations by the Tribal Court appointing Genie Wilder as Guardian of the estate of Joseph Clark are not supported by substantial evidence. What the record does show, and what remains uncontested on Appeal, is that Petitioners Donald Clark and Danna Runs Above are in the best position to attend to both the physical needs and the property management of Joseph Clark. The uncontested record on appeal shows that the personal and medical needs of Joseph Clark are being met by Petitioners/Appellants and other family in Frazer, Montana, but the financial needs are not being met in a timely manner due to the need to administer finances through the Guardian in Oregon.

In essence, the Petitioners have shown by their uncontested appeals memorandum and oral argument that the best interests of Joseph Clark would be met by the appointment of Petitioners as Co-Guardians of the person and estate of Joseph Clark.

We note that Appellee Genie Wilder did not respond in written or oral form to the Petition for Review. It is within the discretion of the Appeals Court to grant the relief sought by the Petitioners/Appellants in such instances, and we do so here.

Therefore, **IT IS THE OPINION OF THIS COURT** that the Tribal Court failed to consider the present and on-going needs of Joseph Clark in its Order appointing Genie Wilder as guardian of the property of Joseph Clark.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The appointment of Genie Wilder as guardian of the Estate of Joseph Clark is overruled and vacated.
2. Donald Clark and Danna Runs Above are appointed as Co-Guardians of the person and estate of Joseph Clark, effective immediately.

Dated this 2nd day of November, 2000 .

FOR THE FORT PECK COURT OF APPEALS

Gerard M. Schuster
Chief Justice

Concur:

Gary P. Sullivan
Associate Justice

James DeCoteau
Associate Justice

