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

IN THE MATTER OF:

A.H.
A minor child,

Donna Timm Trottier,
Petitioner/Appellee

Appeal No. 442

vs

Lanette Trottier & Andrew Hollum Sr.,
Respondents/Appellants

OPINION & ORDER

This matter comes from an appeal of an oral bench ruling denying a Motion for Summary Judgment. The Motion for Summary Judgment sought a dismissal of the action on the grounds that the court lacked jurisdiction over the parties and the action. Subsequent to the filing of the appeal Petition, a written order was entered by the Court. This Order, entered December 19, 2005, is the basis for this review.

Appearances:

Ryan Rusche, Knierim, Fewer & Christoffersen, P.C., P.O. Box 405, Poplar, Montana, 59201 – for Respondents/Appellants.

David L. Irving, Esq., 110 – 5 th Street South, Suite 110, Drawer B, Glasgow, Montana, 59230 – for Petitioner/Appellee.

BRIEF FACT OVERVIEW

This matter is a civil action dispute which involves the custody of a non-Indian minor. The parties can be identified as follows:

1. Respondents/Appellants are the natural parents of the minor child. Appellant, Lanette Trottier, is a member of the Turtle Mountain Band of Chippewa Indians. Appellant, Andrew Hollom, Sr., is a non-Indian person.
2. Petitioner/Appellee is a non-Indian person residing on the Fort Peck Indian Reservation. She is legal guardian of the minor child.
3. The minor child, A.H., is of Indian descent and qualifies for IHS benefits.

All parties reside on the Fort Peck Indian Reservation.

The Petition is brought prior to a final judgment order in the case.

Appeal Issue: Whether the Tribal Court has jurisdiction.

Opinion & Order: Tribal Court has jurisdiction in this matter. The matter is remanded to Tribal Court for final disposition.

The issue in this case is substantially similar to the issue presented in Appeal Cause No. 441 of this Court, being Haleena Duncan, Petitioner/Appellee -vs- Terry L. Ross, Respondent/Appellant. Since the issue presented is substantially similar, the opinion herein mirrors the opinion issued in Appeal Cause No. 441, except as modified to fit the particular circumstances of this case.

STANDARD OF REVIEW

The question of jurisdiction is a question of law which we review de novo. Title II CCOJ 2000 §202.

DISCUSSION

First, the matter of jurisdiction in general should be discussed. In federal and state forums, there is a distinction made between subject matter jurisdiction and personal jurisdiction. Subject matter jurisdiction concerns the Court's power to decide the type of controversy involved. The "failure of subject matter jurisdiction is critical and the lack of it may be raised at anytime during the . . . lawsuit by either party . . ." 4 Charles Alan Wright, et al., Federal Practice and Procedure §1063 (1987).

Personal jurisdiction pertains to the power of the Court over a party's person, property or thing that is the subject of the suit. Id.

Fort Peck Tribal law combines both elements into one section of law, which provides:

The Court shall have jurisdiction over any action where one party to the action shall be an Indian, or a corporation or entity owned in whole or in substantial part by an Indian or the Tribes or a corporation or entity chartered by the Tribes; and (a) the cause of action arises under the Constitution or laws of the Tribes; or (b) an Indian party to the action resides on the Fort Peck Reservation. II CCOJ §107.

The Court is, of course, required to comply with the limits placed upon tribal court jurisdiction by federal law and cases.

Here, we need to look no further than the landmark cases of *Montana -vs- United States*, 450 U. S. 544, 101 Supreme Court 1245 (1981) and *A-1Contractors -vs- Strate*, 520 U. S. 438, 117 Supreme Court 1404 (1997).

In state and federal courts, a party's political classification is generally a matter of personal jurisdiction, but the Strate Court appears to make this element a component of subject matter jurisdiction for purposes of tribal court jurisdiction.

In these cases, the United States Supreme Court held that the inherent sovereign powers of an Indian tribe do not **generally** extend to the activities of non-Indians, *Montana*. The same reasoning can be applied to the inherent powers over non-members, and we do so herein. However, there are exceptions to this general rule, as stated in *Montana*.

The Court has authority to adjudicate this action under the second exception noted in *Montana*. The *Montana* Court held that a tribe's inherent sovereign powers did not extend **to non-Indians [and non-members], unless an exception to this general principle was present**. The *Montana* Court said this principle is not an absolute bar to the exercise of jurisdiction [over non-Indians and non-members,] "[t]o be sure, Indian tribes retain inherent power to exercise some forms of civil jurisdiction over non-Indians [and non-members] on their reservations, even on non-Indian fee lands". *Montana*, 450 U. S. at 565. The exception to this general rule is that:

1. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians [and non-members] . . . within its reservation **when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe**. (emphasis and brackets ours)

Montana, 450 U. S. at 564-65.

The Fort Peck Tribal Court has a long and continuous history of asserting civil jurisdiction over Indian persons (members or non-members), who are residing on this reservation, and therefore the political integrity of the Fort Peck Tribes is paramount to this issue. Simply put, the exercise of civil jurisdiction, where one party is Indian, whether member or non-member, over matters occurring on the Fort Peck Indian Reservation, has a direct effect on the political integrity of the Tribes.

This case can be distinguished from the factual situation in *Strate*. Although *Strate* involves a tort occurring on fee lands, it should be confined to its facts since both parties there were non-Indian. The considerations in *Strate* should not be applied to situations where a party to the suit is an Indian person since tribal interests are implicated.

We need not discuss at length the secondary issues of federal and state jurisdiction within Indian Country. Briefly, Federal Courts would have no jurisdiction in a case such as the one at bar until **there has been an exhaustion of tribal remedies**. *National Farmers Union -vs- Crow* 471 U. S. 845 (1985).

The State of Montana recognizes that tribes are presumed to maintain their inherent tribal sovereignty and jurisdiction over the activities of both Indians and non-Indians on reservation lands. *Geiger -vs- Pierce*, 233 Mont. 18, 20 (1988).

The Montana Supreme Court has determined that before a Montana District Court can assume civil jurisdiction in an action which arises on a reservation to which an **Indian** is a party, the Court must apply the three-prong test of *Iron Bear -vs- District Court*, 162 Mont. 335, 346 (1973). Before a state court can assume jurisdiction in any matter submitted to it, it must find subject-matter-jurisdiction by determining: (1) whether the federal treaties and statutes applicable have preempted state jurisdiction; (2) whether the exercise of state jurisdiction would interfere with reservation self-government; and (3) whether the tribal court is currently exercising or has exercised jurisdiction in such a manner as to preempt state jurisdiction. See, also, *In re the Marriage of Skillen*, 1998 MT 43.

State court jurisdiction would interfere with the Assiniboine and Sioux Tribes' exercise of jurisdiction in this matter since the action involves an Indian party who resides on the Fort Peck Indian Reservation. The Court has historically maintained jurisdiction in such matters. The political integrity of the Tribes is at the heart of maintaining such jurisdiction.

CONCLUSION

The tribal court has jurisdiction in this case.

IT IS NOW, THEREFORE, THE ORDER OF THIS COURT THAT:

The matter is remanded to the Tribal Court for further proceedings thereon.

DATED this 20 th day of April, 2006.

BY THE FORT PECK COURT OF APPEALS:

Brenda Desmond, Chief Justice

Gerard Schuster, Associate Justice

Joseph Raffiani, Associate Justice
