

**IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, PABLO, MONTANA**

IN RE THE MARRIAGE OF)	CAUSE NO. AP-08-065-DV
)	
KIMBERLY GLOVER,)	OPINION AND ORDER
Appellant,)	
And)	
)	
JOSHUA GLOVER,)	
Appellee,)	
And)	
)	
CUSTODY OF:)	
)	
I.G. AND A.G.,)	
Minor Children.)	

Argued: April 20, 2009

Joey Jayne, P.O. Box 741, Arlee, MT 59821, attorney for Appellant Kimberly Glover.

David C. Humphrey, P.O. Box 1708, Polson, Montana 59860, attorney for Appellee, Joshua Glover.

Appeal from the Tribal Court of the Confederated Salish and Kootenai Tribes, Hon. David L. Morigeau, Tribal Judge Presiding.

Before, WALL¹, DUPUIS, AND DESJARLAIS, Justices:

INTRODUCTION

We were asked to review the trial court’s decree in awarding Joshua Glover, Appellee “sole” custody and requiring “supervised” visitation with the Kimberly Glover, Appellant. From the trial Court record, we are unable to determine the facts upon which the trial court based the decision to award “sole” custody and “supervised” visitation. Therefore, we vacate the “sole” custody and “supervised” visitation portion of the decree and remand so the trial court may make detailed findings and make conclusions of law according to those findings.

¹ Lead Justice

STANDARD OF REVIEW

The Appellant argues that the trial court was required to set forth “substantial evidence” and the “essential determining factors” in which it based its decision to award “sole” custody and “supervised” visitation. The Appellee argues that the Appellate Court reviews the trial court “to determine if the trial Court’s findings are ‘clearly erroneous’” and that the trial Court’s findings are “clearly erroneous only if they are not supported by substantial evidence.” At oral argument and throughout the briefs submitted to the CSKT Court of Appeals, the Appellant and Appellee relied solely on external jurisdictional case law rather than the controlling laws of the Confederated Salish and Kootenai Tribes.

The Appellate Court’s standard for review is that this Court will review findings of fact to determine whether they are clearly erroneous. *Bick vs. Pierce*, CSKT Court of Appeals, AP-CV-92-134, *citing* Schaal v. Flathead Valley Community College, 901 P.2d 541 (Mont. 1995) and *Dorff vs. Dorff*, CSKT Court of Appeals, AP-93-219-DV *citing* In Re Kovash, 270 Mont. (1995). A finding is clearly erroneous if it is not supported by substantial credible evidence. *Id.* Further, the Appellate Court requires the trial court’s conclusions of law to be supported by the findings of fact. See e.g., Arnett d/b/a Golden West Builders v. Dolson, CSKT Court of Appeals, AP-94-172-CV and Adamson v. Adamson, CSKT Court of Appeals, AP-00-317-DV.

DISCUSSION

In oral argument, Appellant acknowledged that Rule 19 of the CSKT Codified requires each party to submit “findings of fact and conclusions of law” to the Court and that Appellant failed to comply with Rule 19 and therefore did not offer any findings or conclusions to the trial court.

In the Trial Court's June 4, 2008, "findings of fact and conclusions of law and decree of dissolution" the only "findings of fact" cited in regard to the children by the Trial Court is that "there were two children born of this marriage." The Trial Court's findings of fact were silent as to "visitation." Yet, the Trial Court's conclusion of law determined that it was in the "best interest" of the children that Appellee be awarded "sole" custody and "supervised" visitation. Both Appellant and Appellee agree that neither party requested "sole" custody. The Trial Court's order is not clear as to what "factors" the Court relied upon to require "sole" custody and "supervised" visitation or explain how that is in the best interest of the children.

CONCLUSION

For the foregoing reasons, the Trial Court's decision is hereby remanded with instructions to make specific findings in regard to custody and visitation. On remand, the court shall determine custody and visitation consistent with those findings.

IT IS SO ORDERED ON THIS 10th DAY OF AUGUST, 2010.

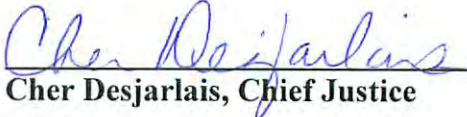


Chuck Wall, Associate Justice

We concur:



Greg Dupuis, Associate Justice



Cher Desjarlais, Chief Justice

CERTIFICATE OF MAILING

I, D. Renee Pierre, Appellate Court Administrator, do hereby certify that I mailed true and correct copies of the **OPINION AND ORDER** to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, this 12th day of August, 2010.

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D. Renee Pierre
Appellate Court Administrator