

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

IN RE THE MATTER OF)	
)	Cause No. AP-01-215-CP
C.K.C. and F.R.A.)	
)	
Youths in Need of Care)	OPINION

BEFORE: William Joseph Moran, Chief Justice, Wilmer E. Windham and Clayton Matt, Associate Justices

APPEARANCES:

For Appellant: TRIBAL DEFENDERS OFFICE
Attorneys for Appellant
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For Respondent: TRIBAL PROSECUTORS OFFICE
Leslie Halligan, Special Prosecutor
Missoula County Courthouse
200 W. Broadway
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OPINION: By MORAN, CJ

This is an appeal of the Order of Permanent Legal Custody and Termination of Parental Rights with Right to Consent to Adoption issued by the tribal court on August 6, 2004 pursuant to the Laws of the Confederated Salish and Kootenai Tribes, Codified, (hereinafter Laws of CSKT) Title III, Chapter 2, Part 4, Suspension or Termination of Parental Rights. (3-2-401, et. seq.) The appellant is the mother of two

minor children who were first determined Youths in Need of Care in accordance with Laws of CSKT, Title III, Chapter 2, Part 3, Youth in Need of Care (3-2-301 et. seq.)

Appellant had included in her appeal, the Confederated Salish and Kootenai Tribal Youth Court order of Judge Brad Pluff of November 20, 2001; Youth in Need of Care and Temporary Custody Order, however that matter was adjudicated on October 4, 2001 and the time to appeal that order has long since expired. The pertinent code sections mandating the appeals process provide:

“Any order of the Court involving the suspension or termination of parental rights, and any final order of the Court, may be appealed according to the rules and practices of the Appeals Court of the Confederated Salish and Kootenai Tribes.”
Conf. Salish and Kootena Tribes Law and Order Code, Codified 3-2-108 Appeal

Further, the Rules of Appellate Procedure require at Rule 1 (1):

“An appeal shall be taken by filing a notice of appeal with the Appellate Administrator, with a copy to the Clerk of the Tribal Court within 20 days of the date of the final judgment or order of the Court. Failure of an appellant to timely file a notice of appeal is ground for dismissal of the appeal.”

Rules of Appellate Procedure as above are put in place in the tribal system of justice to ensure that each piece of litigation reaches finality in a timely course without which a case could linger on without limitation. The order determining Youth in Need of Care addressed the issue of whether C.K.C. and F.R.A.W., minor children, needed the protections accorded minors by the Tribe through temporary placement with the Tribe’s social services agencies. That matter worked its way through the established process ending with a final adversarial hearing and decision dated 20 November 2001. The appellant testified at that hearing and had apparently acquiesced to its findings. No effort at an appeal of those findings of fact and conclusions of law were made until the instant appeal was filed.

The Petition for Permanent Legal Custody and Termination of Parental Rights with Consent for Adoption was filed with the Tribal Court on the 15th day of July 2004. The matter was heard the 2nd and 3rd of August 2004 and a final judgment issued on November 20th, 2004. The issue at that hearing concerned all matters pertaining to the overall best interests of these children and their future placement viewed against the backdrop of their present social environment and weighed against the loss of parental rights of the former custodial parent. The final hearing date on the Youth in Need of Care Petition the Petition for Termination of Parental Rights, both filed in the tribal court, are distant in time to each other and each has its separate and distinct evidence requirements that must be met for final resolution.

The court holds that although both cases concern the children, C.K.C. and F.R.A.W. and their biological parent, Valdena Curley, each has a separate and distinct main issue that was final when a decision in the matter was issued. That event triggered a separate and distinct appeals date. An appeal of the earlier November 20, 2001 order is defective as untimely filed and is therefore dismissed. What remains to be decided is an appeal from the order of the trial court issued on August 6, 2004 and filed with the Appellate Court on August 31, 2004.

FACTS

Valdena Curley is the natural mother of, C.K.C., a son born March 22, 1999 and F.R.A.W., a daughter born June 11, 2001. Both mother and children are enrolled members of the Confederated Salish and Kootenai Tribes of the Flathead Reservation. Joshua Lefthand is the biologic father of C.K.C. and Robert Favel, Jr. is the biologic father of F.R.A.W. On June 7, 2004 Joshua Lefthand relinquished his parental rights with regard to C.K.C. Robert Favel, Jr. was served but has never responded to the

Court. Brenda Brave Rock and her husband Virgil Brave Rock, are the foster parents of the children and also their aunt and uncle. Brenda Brave Rock, the children's maternal aunt, is an enrolled member of the Confederated Salish and Kootenai Tribes.

The Appellant was represented by professional legal counsel, licensed in the State of Montana and the tribal bar. The Tribe was represented by its appointed Tribal Prosecutor's staff of attorneys.

This entire matter began in the Tribal Court on September 6, 2001 when the Tribal Prosecutor filed an Ex Parte Petition for Protective Services. CS&K Tribal Social Services requested Tribal Court intervention to provide for the safety and protection of C.K.C. and F.R.A.W. alleging that Appellant was drinking and unable to care for her children, then at ages two years and two months.

STANDARD OF REVIEW

The Standard of Review for cases involving the suspension or termination of parental rights is set by Section 3-2-313 (5), CSKT Laws Codified as follows:

*"No suspension or termination of parental rights may be ordered unless the Court determines, **beyond a reasonable doubt**, that the continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage to the child. No termination of parental rights may be ordered unless, in addition, the Court determines that the risk of serious emotional or physical damage to the child will continue due to circumstances that are irremediable by further efforts of the Court and Tribal Social Services."* Emphasis supplied.

The Tribal prosecutor cites *In Re Cajune*, a 1993 case for the precedent that "a clear abuse of discretion" must exist to reverse a trial court determination in child custody and related matters. That holding is limited to child custody matters not involving the termination or suspension of parental rights. Termination or suspension of parental rights is specifically provided for in the Laws of the CSKT. Both parties cite *Bick v. Pierce*, 96 M.L. 143; 1996 Mont. Salish & Kootenai Tribe LEXIS 14 as

holding a “clearly erroneous” standard of review for reviewing findings of fact. We agree.

ANALYSIS

Appellant, Valdena Curley, mother of two children, a two year old son and two month old daughter, appeals the decision of the court below terminating her parental rights and allowing the possibility of adoption by an extended family member. For this Court to find that the tribal court did find beyond a reasonable doubt that the continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage, we must review the record for expert testimony and the testimony given by lay witnesses that tend to prove to the finder of fact, beyond a reasonable doubt, that Appellant’s behavior and parenting skills resulted in serious emotional or physical damage to C.K.C. or F.R.A.W. and that Appellant’s dangerous conduct would likely not be changed by the court or Tribal Social Services.

The Appellant is correct, that in order for this Court to find that the trial court acted according to law, it must first find that the children at issue “*suffered or is likely to suffer a physical injury, inflicted upon the child by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or serious physical or emotional harm, as determined by appropriate medical or professional personnel.*” 3-2-304. Youth In Need of Care. More specifically: “*A child who suffers injury to his or her psychological functioning, as determined by an appropriate professional person, as a result of psychological or other abuse.*” SUPRA at Sub (b).

The record contains a report that Appellant was alleged to have attempted to give care of her children to her brother and she actually signed an agreement with him

relinquishing custody of the children. Her reason given was that she was drinking heavily and could not or did not want to care for them. Still another part of the record below contains a report to the court by social worker, Mr. Silas Perez, reporting that Appellant's brother witnessed Appellant throwing her two month old daughter approximately five feet onto a bed, endangering the infant physically but remarkably no injury was found. No objections were sustained in the record.

As we examine the record we find that it is replete with social service personnel testimony of inappropriate and damaging parenting skills exhibited by Appellant such as displaying aggressive behavior in the presence of the children at appointed meetings, of Appellant not making scheduled visits with the children, and caring for the children while under the influence of alcohol. That she made the decision to not take care of her parenting problems and in the opinion of the Tribe's expert witnesses would not rectify the problem in the future. The Tribe's experts witnesses, Dr. Vincent River, Clinical Psychologist and Margaret Kearney, M.S.W., Licensed Clinical Social Worker testimony was aimed directly at Appellant's failure to understand the failings of her past parenting through neglect and abuse of her children and her significant chemical dependency problem consisting of poly chemicals present an irremediable harm to her children if they were left in her care. The record supports findings of reports of five attempts by Tribal Social Service staff arranging for and/or even transporting Appellant to substance abuse treatment facilities only to have her fail on successful completion and with immediate return to using drugs and drinking alcohol each day.

The tribal court heard the testimony of these several licensed professional and experienced social workers and a Ph. D. clinical psychologist whose opinions the court

would rely upon to assist in the decision to decide whether the threshold level of serious emotional or physical damage is present and whether that damage will continue due to circumstances that are irremediable. No one report was contrary to the specific findings in the record that Appellant's continued abuse of alcohol and drugs while she was in the care of her children was a cause of serious emotional and physical damage. Dr. Vincent Rivers and Ms. Margaret Kearney reported that C.K.C. had experienced such harm directly attributable to Appellant's aberrant behavior towards them and her lifestyle. C.K.C. is reported to need continuing counseling to overcome this harm to his emotional well being.

Although the Tribal Court Judge may have elucidated more fully his findings on the Appellant's specific conduct that would probably subject the children to continuing harm, for him not to do so when the facts before him were so obvious to all is not an abuse of discretion sufficient to reverse. Where the well being and protection from harm of minor children is concerned, and where the record of the lower court is replete with bona fide evidence of harmful parental conduct, any question of error made at the trial level concerning specific findings of fact as to that harmful conduct shall be decided in favor of affirming the protection of the children and against the objected to harm to the rights of the parent. This is our holding.

Valdena Curley, the appellant, has admittedly had serious problems with alcohol addiction. This admission is implicit in her acts and deeds that are reported by those social services agencies assisting the lower court to remedy her parenting problems and protecting the children from present and future harm. Reviewing the record below, this court finds that Appellant's serious and dangerous misadventure with use of alcohol and drugs while caring for her children and her failure to correct

this conduct has endangered the psychological and emotional well being of the children in her care and is a continuing threat to the physical well being of the children as well. She has shown an utter contempt at any effort to correct her aberrant and addictive behavior. A review of the psychological assessment conducted by Dr. Vincent River, Ph.D. and entered into evidence by the court below provided the trial court with the requisite expert testimony to meet the threshold of beyond a reasonable doubt standard that enabled it to decide to terminate Appellant's parental rights. The tribal court, we feel, properly concluded that Appellant's conduct likely would not change even with a concerted effort of the court or Tribal Social Services agencies attending to her needs.

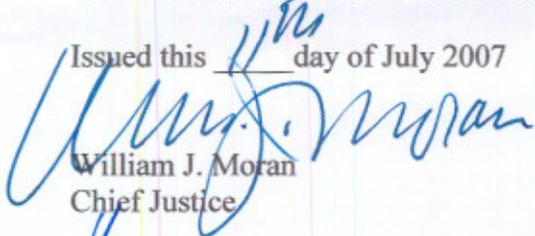
This case has languished for years expending numerous man hours and health care costs attempting to have this parent curtail her dangerous behavior to the point where unification with the family would be in the future. The record shows that attempted professional service was apparently to no avail and Appellant would not change her harmful behavior.

Appellant argues that termination of parental right is not consistent with tribal custom and tradition. The governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation consist of ten tribal members comprising the Tribal council. This body of elected officials have at their disposal a Cultural Committee advising them on the conduct of their duties including the needed code provisions designed to care for the general population of the tribe. It is implicit in this arrangement that the Tribal Council would not legislate regulations which are contrary to its ordinary laws, that is its customs and traditions. The tribal council enacted a code provision protecting children while considering tribal customs and tradition. The

order of the tribal court in review takes just such custom into consideration in placement of the children with extended family members, Brenda and Virgil Brave Rock, Brenda is the maternal aunt of Appellant. Also the order provides for continued contact with the children even after adoption. This we consider and hold that this shall be all that is necessary to fulfill the requirements of the code provision and is consistent with what is determined in the children's best interests.

The decision of the Tribal Court is affirmed.

Issued this 11th day of July 2007

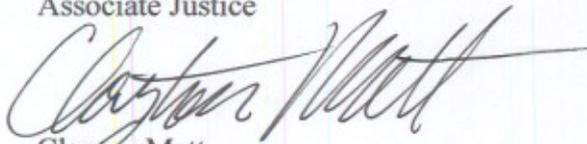


William J. Moran
Chief Justice

CONCUR



Wilmer E. Windham
Associate Justice



Clayton Matt
Associate Justice

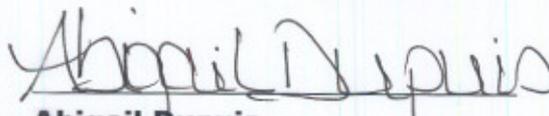
CERTIFICATE OF MAILING

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed true and correct copies of the *OPINION* to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, or hand-delivered this 3rd day of August, 2007.

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