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

IN RE THE MARRIAGE OF:

**MARVIN YOUPEE,
Appellant**

and

Appeal No. 202

**STEPHANIE YOUPEE,
Appellee**

OPINION

NATURE OF CASE

A petition for the dissolution of marriage was filed in Tribal court on or about September 10, 1993 by appellee herein, Stephanie Youpee. A response and counter-petition was filed by appellant herein, Marvin Youpee and the matter came to hearing in Tribal court on October 26, 1993 before the Honorable Robert Welch. On November 1, 1993 the Honorable Robert Welch entered an order dissolving the marriage and among other things divided the property of the parties. Appellant subsequently appealed that part of the November 1st order awarding the Appellee the 1979 red Cadillac.

FACTS

The facts of this case indicate that during the course of the marriage the parties acquired personal property including a 1979 red Cadillac. Testimony indicates that Marvin Youpee received, during the course of the marriage, an inheritance from the estate of his father. It is somewhat disputed that Marvin You pee used \$2,000.00 of his cash gift to purchase the 1979 red Cadillac.

Appellant in his STATEMENT OF FACTS states: "The Appellee [Stephanie Youpee] had no knowledge how the vehicle was purchased nor how the Appellant spent his inheritance." See Appellant's brief, page 2, April 21,

1994. At trial the appellee appears to have made contradictory statements as to what monies were used to purchase the 79 Cadillac. Marvin Youpee did testify that the red Cadillac was purchased with money he received from his father's estate. There is also testimony that during the course of the marriage that Marvin Youpee had control over the use of the vehicle in question. From the testimony at trial one can reasonably conclude that the 79 red Cadillac was purchased by Marvin Youpee with part of his cash inheritance.

There is no dispute that the vehicle was titled in both parties names.

During the course of the marriage the parties acquired other personal property including household furnishings and two other vehicles, a 1973 white Cadillac and a 1992 GMC pickup. At trial the court heard testimony concerning the ownership, payment, control, maintenance, contribution and use of the vehicles.

The trial court order of November 1, 1993, awarded Stephanie the 1979 red Cadillac and awarded Marvin the 1973 white Cadillac and the 1992 GMC pickup.

ISSUE

Whether the Tribal court erred in making the determination that the 1979 red Cadillac was marital property subject to distribution by the court, considering the evidence that the vehicle was purchased with the use of money Marvin Youpee received, during the marriage, from the estate of his father?

The applicable rule of law in this case is Title VI, CCOJ Section 305:

Division of Property.

When an annulment or divorce is granted, the Court shall make such equitable distribution of all real and personal property as it deems just and proper. With respect to trust property, the Court shall have the authority to make appropriate orders to distribute such property, but shall have no authority to order that any property. or interest .. in property be removed from trust status, or to make any order that would result in such removal.

A clear reading of the statute indicates that the Tribal court shall make equitable distributions of real and personal property. The statute does not define the term equitable distribution nor does the statute restrict distribution of property to marital property. The appellant and the appellee through their briefs rely on Montana statutory law and case law in order to define the meaning of the legal terms equitable distribution and marital property. This court is mindful of the parameters set by the Fort Peck Tribal Comprehensive Code of Justice, Title IV, Section 501 which states:

(d) Where appropriate, the Court may in its discretion be guided by statutes, common law or rules of decision of the State in which the transaction or occurrence giving rise to the cause of action took place.

The Tribal code does not define the legal terms: **equitable distribution** or **marital property**, for such reason this court turns to Montana law.

Section 40-4-202(1) MCA states:

[Montana courts are obligated to apportion marital assets] ... belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both.

In making the apportionment, the court shall consider the duration of the marriage and prior marriage of either party; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions,; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income.

This statute has been applied in several Montana cases, the best overall analysis and application of this statute comes out of In re the Marriage of Herron, 608 P.2d 97 (Mont. 1990). In Herron the Herrons received during the course of their marriage several gifts from Mrs. Herron's father including cash gifts and real- estate. The Herrons also received cash gifts from the estate of Mrs. Herron's father. Herron's invested, in real estate and business for the benefit of both parties, using the gifts received during the course of the marriage. A great percentage of the property owned at the time of the divorce was clearly traceable to devices and gifts of Mr. Robbin (Mrs. Herron's father).

The Herron court restated the standard set in In re the Marriage of Brown, 587 P.2d 361 (Mont. 1975) for court review in property division proceedings:

The apportionment made by the District Court will not be disturbed on review unless there has been a clear abuse of discretion as manifested by a substantially inequitable division of the marital assets resulting in substantial injustice. See Brown at 364.

The Montana statute grants the district court broad discretion to apportion the marital estate equitably to each party under the circumstances of each case. It has been the practice of this court to uphold the trial courts decision unless there is a clear abuse of discretion or unless substantial evidences fails to support the trial courts decision. The Herron court found that the Montana district court made a property distribution so inequitable as to represent an abuse of discretion. Note here, that the Herron court found the error in the lower court's distribution and not in the lower courts composition of the marital estate. The Herron court agreed that the Montana statute clearly indicates that the District Court should consider all the Herron property, including that received by gift or bequest. See Herron at 99.

The Herron court focused on two main factors in determining whether the lower courts distribution was equitable.

- (1) The contributions of the non-acquiring spouse to the marriage;
- (2) The source of the marital assets of the parties. As a caveat the court stated:

In determining the exact distribution of this type of marital asset, no set formula can be established as to how the assets should be equitably distributed. Each case has to be decided on its own merits. Herron

at 100.

It appears to this court that Montana courts in their discretion use a set of factors in determining property distribution of marital assets; and that the composition of marital assets includes all property acquired by the parties including property acquired by gift or bequest. It further appears that the province of appellate review is limited to cases where the lower court clearly abused its discretion and/or where the lower courts findings and judgement is not supported by substantial evidence.

In this case the Honorable Robert Welch had before him substantial evidence, including testimony of both parties as to the contributions of the parties to the marriage and to the marital assets. There is no doubt that Judge Welch considered the source of the marital assets and the fact that the 1979 red Cadillac was titled in both parties names. Judge Welch had opportunity to consider the fact that the 1979 red Cadillac was traceable to a gift or bequest and to also consider whether the property distribution serves as an alternative to a maintenance arrangement. No doubt Judge Welch considered the length of the marriage and the value and amount of property to be distributed.

This court finds that it was within Judge Welch's discretion to make an equitable distribution of the marital assets and that there was no abuse of discretion involved herein. Finding no abuse of discretion the Tribal court's decision is hereby affirmed.

Dated this 16th day of August, 1994.

FORT PECK TRIBAL COURT OF APPEALS

BY: _____
Gary M. Beaudry, Chief Justice

Gary James Melbourn, Associate Justice

Gerard M. Schuster, Associate Justice
