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

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DOUGLAS LONG,  
APPELLANT

vs.

**Appeal No. 204**

SANDRA LONG,  
APPELLEE

\*\*\*\*\*

**ORDER**

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FACTS

The parties were married on September 4, 1977 at the time of the marriage, Petitioner, Sandra Long hereinafter "Sandra" was pregnant. The child, Garvin was born on \_\_\_\_\_ 1991. The respondent, Douglas Long, hereinafter "Douglas" was present at the birth of Garvin. Douglas asserts that Sandra granted her permission and had knowledge that Douglas be named as the father on Garvin's birth certificate; Sandra denies the same. Both parties agree that Douglas is not the child's father.

The biological father has remained unnamed herein and in fact has had no contact with Garvin nor contributed to the support of Garvin.

The couple separated. Sandra filed for Divorce. It is undisputed that from the time of the child's birth to the time of the filing of the appeal, the only father the child has known is Douglas Long. Upon receipt of the petition for dissolution, Douglas applied to the Tribal Court for visitation and voluntarily agreed to pay child support in the amount of \$200.00 per month until the lower court denied Douglas future contact with Garvin. Mr. Long asserts that he remains completely willing to provide for the support of Garvin and is willing to pay any reasonable support awarded. Mr. Long has regularly exercised visitation up until the Court Order of October 20, 1993.

ISSUE

Whether the appellant, being a non-biological parent, has a right to visitation equal to that of a biological parent?

## RULE

The appellant argues that this is a case where equitable parenthood should attach. Appellant cites In Re: the Marriage of Vaninio, (a lower court decision in Montana) Silver Bow 92-C- 493,517. This Court agrees with the decision in Vainio however, the ruling in Vainio is limited to the particular facts of that case. The appropriate rule of law to be applied in cases such as we have here is the doctrine of equitable estoppel.

The Montana Supreme Court's latest statement on equitable estoppel is contained in Dagel v. City of Great Falls, 250 Mont. 224, 819 P. 2d 186 (1991) . There the court set forth the essential elements necessary to constitute equitable estoppel:

"(1) there must be conduct, acts, language, or silence amounting to a representation or a concealment of material facts; (2) these facts must be known to the party estopped at the time of his conduct, or at least the circumstances must be such that knowledge of them is necessarily imputed to him; (3) the truth concerning these facts to the other party claiming the benefit of the estoppel at the time it was acted upon by him; (4) the conduct must be done with the intention, or at least with the expectation, that it will be acted upon by the other party, or under the circumstances that it will be so acted upon; (5) the conduct must be relied upon by the other party, and, thus relying, he must be led to act upon it, and (6) he must in fact act upon it in such manner as to change his position for the worse."

Id. at 234-35, 819 P. 2d at 192-93 (quoting Sweet v. Colborn School Supply, 196 Mont. 367, 639 P. 2d 521 (1982)).

The Dagel court also noted the importance of referring to Section 26-1-601(1), MCA, on conclusive presumption. That statute reads:

The following presumptions are conclusive: (1) [T]he truth of a declaration, act, or omission of a party, as against that party in any litigation arising out of such declaration, act or omission, whenever he has, by such declaration, act, or omission, intentionally led another to believe a particular thing true and to act upon such belief.

The Court in Vainio applied these rules of law to its facts and found that there was conduct, acts or language by the mother which amounted to a representation of a material fact, viz, that the non-biological father was the child's natural father. In Vainio the mother knew she was misrepresenting the facts and the non-biological father did not know of the falsity of these facts at the time; the mother knew that her conduct would cause the non-biological father to act in certain ways; the non-biological father relied upon what the mother told him and it led him to act upon it; and the non-biological father did actually change his position, in fact, he changed his very life to his detriment. The Vainio Court held, based on the facts therein, that the mother is equitably estopped from declaring the nonexistence

of the father-child relationship between the non-biological father and the child.

This Court finds that the facts herein do not support the application of equitable estoppel. In this case there is no conduct, act or language on the part of Sandra Long amounting to a representation or a concealment of material facts unknown to Douglas Long pertaining to his non-biological parental status. Further, Douglas Long did not change his position to his detriment. The facts in this case indicate, and it is undisputed by the parties, that Douglas is not Garvin's natural father. The facts herein are void of any conduct, act or language of Sandra indicating that she withheld material facts from Douglas. Nor is there any fact presented that Sandra asserted the paternity of Douglas without Douglas knowing the falsity of the assertion.

This Court holds that equitable estoppel cannot attach to the facts in this case chiefly by reason that Sandra never misrepresented facts of paternity to Douglas. Douglas always knew, at all times pertinent, that he was not the natural father of Garvin.

### ISSUE

Whether the Tribal Court erred in not drafting a findings of fact and conclusions of law?

This Court agrees with the appellant that the Tribal Court failed to issue a findings of fact and conclusions of law, however, the Tribal Court's actions do not preclude a judgment by this Court. This appeal -was -brought on the merits and is complete containing pleadings and briefs found in the lower Court record and in this Court's record. The appellant does not assert a new set of facts or propose the disposition of new rules of law not contained in the briefs and pleadings in the lower Court record. Taking all this into consideration this Court has before it enough to draw its own findings of facts and conclusions of law. To overturn the Tribal Courts decision for reason of procedural due process, not mandated by the Tribal Code, would not serve justice on the merits of the case. To remand the case pending the subscription of the findings of fact and conclusions of law would only serve to delay justice on the merits.

The Tribal Courts decision is hereby AFFIRMED.

DATED this 10th day of February, 1995.

### BY THE COURT OF APPEALS:

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Gary M. Beaudry, Chief Justice

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Gerard Schuster, Associate Justice

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