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

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Patty Murray,  
Appellant

vs.

**Appeal No. 211**

Richard Clifford Kirn,  
Appellee

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**ORDER REMANDING TO TRIBAL COURT**

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COMES NOW the Fort Peck Tribal Court of Appeals AND finds the following:

- (1) A civil complaint was filed in Tribal Court in Poplar, Montana, on or about July 13, 1993, by Richard Clifford Kirn against Patty Murray, alleging the defendant Patty Murray, during the commission of a traffic violation, did cause considerable property damage to plaintiff's vehicle;
- (2) On or about August 5, 1993, the parties attended a 103 hearing set before the Honorable Chief Judge A.T. Stafne. At that hearing Judge Stafne set a briefing schedule for the parties and appointed a time for trial.
- (3) Neither party filed a brief.
- (4) Without the matter being briefed by either party as directed by Judge A.T. Stafne, the defendant was served a summons to appear in court to respond to the complaint filed against her.
- (5) On November 4, 1993 the parties appeared before the Honorable Judge Rita Weeks in order to adjudicate the issues brought in the complaint.
- (6) Upon review of the November 4, 1993 hearing the issue of negligence was not completely litigated and there is no record of briefs, testimony or evidence establishing the fact that Patricia Murray was a

negligent party.

(7) At page four of the transcript of the hearing of November 4, 1993 Patricia Murray states that: "...I'm not sure if I was 100% at fault in the accident."

(8) There is no evidence submitted by the plaintiff, however, Judge Weeks questions Ms. Murray about a citation issued for Careless Driving. Ms. Murray states: "I plead guilty to it."

(9) The issues of negligence, liability or fault were not litigated further.

(10) The plaintiff offered to witnesses; no evidence was presented and the defendant had no opportunity to respond to the questions of negligence, liability or fault.

### LEGAL DETERMINATION

It is the determination of this court that an appeal in this matter cannot go forward. The appeal must be based on a fully adjudicated matter. The fact that the record is absent the showing of negligence, liability or fault gives this court an incomplete record to review. Each party appeared without counsel and as a

result the salient issues were never fully and completely litigated.

Eventhough the defendant admitted to pleading guilty to the violation of careless driving, that admission is only a rebuttable presumption of negligence and the issue remains unresolved.

NOWHEREFORE IT IS THE ORDER OF THIS COURT:

That this matter be remanded to the Trial Court for rehearing on the issue of negligence.

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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