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

**Poplar Housing Authority,
Plaintiff/Appellee**

-vs-

Appeal No. 414

**Joni McClammy,
Defendant/Appellant.**

ORDER DENYING PETITION FOR REVIEW

A timely **Petition for Review** having been filed on **September 18, 2003**, by **Joni McClammy**, *pro se*, from an Eviction Order issued by the Tribal Court on **September 18, 2003**, the **Honorable R. Martin**, presiding, and good cause appearing, said Petition is denied as set forth below.

Appellant contends that she was denied a fair hearing in that "the proceeding moved forth even though I had notified the Court by telephone that I would not be able to make it for the 10:30 a.m. time and I would be leaving as soon as I was done on the phone." Appellant also contends that when she arrived in Court the hearing was winding up, lasting only about two minutes. She was informed that a default judgment would be entered because she had not appeared on time. She concludes by stating that the Judge and the attorney for plaintiff unethically participated in ex parte communications during the time that she was en route to the Courthouse.

Appellant's first contention has no merit. While it is commendable that appellant made some attempt to notify the Court that she would be tardy, the reason for such tardiness - "we had been without heat all night" - falls far short of justifying her tardiness. Appellant does not state whether she offered the Court this reasoning, but if so, we must assume the Court failed to make a cogent connection between having no heat all night and being late for an important Court hearing.

Appellant's contention regarding the purported 'unethical' conduct (i.e. ex parte communications) of the Judge and plaintiff's attorney is also without merit. According to appellant's Petition, upon arrival at the Courthouse, she was directed to go to the Courtroom immediately, whereupon her eviction hearing was winding down. Whatever communication occurred between plaintiff's attorney and the Tribal Judge took place in open Court. Such communication was proper in every respect and the only reason

it was ex parte was due to appellant's failure to appear at the time and the place of the hearing.

Our Tribal Court system does not, and could not, function on the timing of each of its litigants. While in the course of ordinary human events various situations arise which wreak havoc in people's lives, yet it is the responsibility of each one of us to overcome those difficulties the best we can and it is imperative that we do so when important rights are at stake. Failure to overcome such difficulties can result in the loss of very important rights and frequently exacerbates a bad situation. Such was the case here.

Plaintiff's attorney, in response to appellant's Petition for Review sheds additional light on the matter stating: 1) The eviction complaint was filed on July 23, 2003; 2) The first hearing took place on July 30, 2003 at which time the appellant requested a continuance of one month for the purpose of retaining counsel; plaintiff so stipulated and the continuance was granted. 3) The matter was eventually set for September 17, 2003 for 10:30 a.m., 4) The Court called the matter at 10:30 a.m. and was advised that appellant had called saying she would be late, 5) After a 20 - 25 minute wait the Court granted the default and then proceeded to two other matters (one at 10:45 a.m. and the other at 11:00 a.m.) both of which involved plaintiff's attorney. 6) It was during those two sessions that appellant finally arrived. 7) Even though the default had already been entered, the Judge made inquiry of appellant and learned that she was not prepared to go forward but was requesting an additional continuance.

Our Tribal Court has broad discretion in granting or denying continuances (*Tribes v. Stafne FPCOA #351 (2002) @ page 4*). Absent an abuse of such discretion this Court will not disturb the Tribal Court's ruling. Accordingly, the Tribal Court's Eviction Order is affirmed.

IT IS NOW THEREFOR THE ORDER OF THIS COURT:

All Tribal Court orders heretofore stayed or not acted upon because of, or pursuant to, the pendency of this Petition, are herewith restored and shall be given full force and effect without further delay.

FOR THE FORT PECK COURT OF APPEALS

BY _____

**Gary P. Sullivan
Chief Justice**
