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

IN THE MATTER OF:

Heleena Duncan,
Petitioner/Appellee

Appeal No. 441

vs

Terry L. Ross,
Respondent/Appellant

OPINION & ORDER

This matter arises from a timely filed appeal of an Order Denying the Respondent’s Motion to Dismiss for Lack of Subject Matter Jurisdiction, dated October 10, 2005. This review and opinion is limited to the singular issue of whether the Tribal Court has jurisdiction. We answer that the Tribal Court has jurisdiction in this matter.

Appearances:

Janet P. Christoffersen of Christoffersen Law Office, 302 West Main Street, Sidney, Montana, 59270 – for Respondent/Appellant.

Mary L. Zemyan, Zemyan Law Office, P.O. Box 1094, Wolf Point, Montana, 59201 – for Petitioner/Appellee.

BRIEF FACT OVERVIEW

This matter is a civil action dispute which involves the paternity, parenting, custody and support of a minor child. The parties can be summarily identified as follows:

1. Petitioner/Appellee is a non-member Indian residing on the Fort Peck Indian Reservation.
2. Respondent/Appellant is a non-Indian.
3. Minor child is not a tribal member and is not eligible for enrollment.

Appeal Issue: Whether the Tribal Court has jurisdiction.

Opinion & Order: Tribal Court has jurisdiction. Remand for further proceedings.

STANDARD OF REVIEW

The question of jurisdiction is a question of law which we review de novo. Title II CCOJ 2000 §202.

DISCUSSION

First, the matter of jurisdiction in general should be discussed. In federal and state forums, there is a distinction made between subject matter jurisdiction and personal jurisdiction. Subject matter jurisdiction concerns the Court's power to decide the type of controversy involved. The "failure of subject matter jurisdiction is critical and the lack of it may be raised at anytime during the . . . lawsuit by either party . . ." 4 Charles Alan Wright, et al., Federal Practice and Procedure §1063 (1987).

Personal jurisdiction pertains to the power of the Court over a party's person, property or thing that is the subject of the suit. Id.

Fort Peck Tribal law combines both elements into one section of law, which provides:

The Court shall have jurisdiction over any action where one party to the action shall be an Indian, or corporation or entity owned in whole or in substantial part by an Indian or the Tribes or a corporation or entity chartered by the Tribes; and (a) the cause of action arises under the Constitution or laws of the Tribes; or (b) an Indian party to the action resides on the Fort Peck Reservation. II CCOJ §107.

The Court is, of course, required to comply with the limits placed upon tribal court jurisdiction by federal law and cases.

Here, we need to look no further than the landmark cases of Montana -vs- United States, 450 U. S. 544, 101 Supreme Court 1245 (1981) and A-1Contractors -vs- Strate, 520 U. S. 438, 117 Supreme Court 1404 (1997).

In state and federal courts, a party's political classification is generally a matter of personal

jurisdiction, but the Strate Court appears to make this element a component of subject matter jurisdiction for purposes of tribal court jurisdiction. Here, Appellant correctly identifies the issue as one of subject matter jurisdiction.

In these cases, the United States Supreme Court held that the inherent sovereign powers of an Indian tribe do not **generally** extend to the activities of non-Indians, Montana. The same reasoning can be applied to the inherent power over non-members, and we do so herein. However, there are exceptions to this general rule, as stated in Montana.

The Court has authority to adjudicate this action under the second exception noted in Montana. The Montana Court held that a tribe's inherent sovereign powers did not extend **to non-Indians and [non-members], unless an exception to this general principle was present**. The Montana Court said this principle is not an absolute bar to the exercise of jurisdiction [over non-Indians and non-members,] "[t]o be sure, Indian tribes retain inherent power to exercise some forms of civil jurisdiction over non-Indians [and non-members] on their reservations, even on non-Indian fee lands". Montana, 450 U. S. at 565. The exception to this general rule is that:

1. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians [and non-members] . . . within its reservation **when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe**. (emphasis and brackets ours)

Montana, 450 U. S. at 564-65. When applying this test, a tribal court must balance the exercise of tribal jurisdiction against the possibility of federal jurisdiction and state jurisdiction.

The Fort Peck Tribal Court has a long and continuous history of asserting civil jurisdiction over Indian persons (members or non-members), who are residing on this reservation, and therefore the political integrity of the Fort Peck Tribes is paramount to this issue. Simply put, the exercise of civil jurisdiction, where one party is Indian, whether member or non-member, over matters occurring on the Fort Peck Indian Reservation, has a direct effect on the political integrity of the Tribes.

This case can be distinguished from the factual situation in Strate. Although Strate involves a tort occurring on fee lands, it should be confined to its facts since both parties there were non-Indian. The considerations in Strate should not be applied to situations where a party to the suit is an Indian person since tribal interests are implicated.

We need not discuss at length the secondary issues of federal and state jurisdiction within Indian Country. Briefly, Federal Courts would have no jurisdiction in a case such as the one at bar until **there has been an exhaustion of tribal remedies**. National Farmers Union -vs- Crow 471 U. S. 845 (1985).

The State of Montana recognizes that tribes are presumed to maintain their inherent tribal sovereignty and jurisdiction over the activities of both Indians and non-Indians on reservation lands. Geiger -vs- Pierce, 233 Mont. 18, 20 (1988).

According to the Montana Supreme Court, the state courts should, "recognize exclusive tribal jurisdiction in child custody proceedings between parents where at least one parent

State court jurisdiction would interfere with the Assiniboine and Sioux Tribes' exercise of jurisdiction in this matter since the action involves an Indian party who resides on the Fort Peck Indian Reservation. The Court has historically maintained jurisdiction in such matters. The political integrity of the Tribes is at the heart of maintaining such jurisdiction.

CONCLUSION

The tribal court has jurisdiction in this case.

IT IS NOW, THEREFORE, THE ORDER OF THIS COURT THAT:

The matter is remanded to the Tribal Court for further proceedings thereon.

DATED this 20th day of April, 2006.

BY THE FORT PECK COURT OF APPEALS:

Brenda Desmond, Chief Justice

Gerard Schuster, Associate Justice

Joseph Raffiani, Associate Justice
