

**FORT PECK COURT OF APPEALS
ASSINIBOINE & SIOUX TRIBES
POPLAR, MONTANA**

In the Matter of)
Fort Peck Tribes,)
Petitioner/Appellee)
-vs-)
Elmer S. & Deloris Red Eagle ;)
Respondents/Appellants.)
Re: A.R.E. (dob: 8/14/04))
Minor Indian Child)

Cause No. 464

OPINION AND ORDER

Appearances:

Mary L Zemyan, Esq., 218 Third Avenue South, Wolf Point, MT 59201, Counsel for Respondents/Appellants Elmer S. & Deloris Red Eagle.
Adrienne Weinberger Prosecutor, Fort Peck Tribes, P.O. Box 1027, Poplar MT 59255.

Following our April 20, 2006 decision in Appeal No. 444, remanding this proceeding for further hearing in the Tribal trial court, Petitioner/Appellee Tribes requested the appointment of an outside judge. The Motion was granted and the Hon. Richard L. King was appointed to hear the case.

Pursuant to Title IX, Chapter 5, Sections 503 and 505, CCOJ, a hearing was held on October 11, 2006. On October 20, 2006, Judge King entered an Order determining that A.R.E. is “an abused, abandoned, dependent or neglected youth” within the meaning of Title IX, Chapter 5, Sec. 102, CCOJ. The order further directed that A.R.E. would remain a ward of the Tribal Court, with care and supervision placed with the Bureau of Indian Affairs. This appeal followed.

The Order’s “FINDINGS OF FACT” state in their entirety:

1. That there has been sufficient showing that the referenced youth [A.R.E.], is an abused, abandoned, dependent or neglected youth, as those terms are defined in Title IX, Chapter 5, Sec. 102, CCOJ.
2. That continuance of the domicile in the parental home or paternal grandparental home would, as provided herein, be contrary to the best interests of the child.

Essentially, Respondents/Appellants contend that the Order is conclusory and does not make reference to underlying facts. Thus, they argue, it is unclear upon what facts the Court relied. Further, the Order cannot be reviewed adequately by this Court because its basis is unclear. The Tribes respond that a full and lengthy hearing was conducted at which evidence in support of the Order was presented.

We remand the matter for entry of additional findings. The Tribal Code provisions governing the youth in need of care procedures require a “Fact Finding Hearing.” The reasons for this are both so that the parties can understand the

court's reasoning and so that on appeal, a reviewing court can evaluate whether or not the Tribal trial court correctly interpreted and applied governing law. We cannot provide a parties the meaningful review on appeal to which the CCOJ entitles them, if we do not know the basis for the decision under review.

As we stated in a similar situation in, *In the Matter of the Custody of M.M, M.M, M.M. Rosalie Owens vs. Mark Matthews,*

To comport with the requirements of **§304(b)**, our Tribal Courts must make findings that reflect the factual basis for their 'bottom line' decisions. In doing so, the Court should set forth the occasion that brings the matter to the Court's attention (i.e. a non-custodial parent's petition for custody, etc.), brief basic facts about the children in controversy, a brief history of the living conditions and environment of those children immediately prior to the matter coming before the Court, the legal custodial status of the children immediately prior to the pending petition, as much relevant information regarding the adult litigants as is available, as well as all of the elements of 'best interests of the child' set forth in as much detail as necessary to place the litigants on notice of how and why the Court made its decision.

Appeal No. 336, Slip Op. at p 3. The same rationale applies here. The trial court must place parties on notice as to why it is making its decision.

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

The matter is remanded to the Tribal trial court for further proceedings in accordance with this Opinion and Order.

DATED this 14 day of December, 2007.

FORT PECK COURT OF APPEALS

By: Brenda Desmond
BRENDA DESMOND, Chief Justice

Gerard M. Schuster
GERARD M. SCHUSTER, Associate Justice

(Justice Raffiani recused.)

Attest:
Dana Rmschre
3-12-08