

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

IN THE MATTER OF:

John Morales Jr.,
Plaintiff/Appellee

vs

Appeal No. 490

Jason Trinder,
Defendant/Appellant

OPINION AND ORDER

Appearances:

Leighton Reum, lay advocate, Wolf Point, MT, on behalf of Appellant.

Jason Trinder, lay advocate, Poplar, MT, Appellee, appearing pro se.

On September 25, 2007, John Morales, Jr., filed a Petition for a Temporary Restraining Order in tribal court. The Petition alleges that Mr. Trinder attempted to contact Mr. Morales' son at school, and that Mr. Morales feared his son's mother might also "try to kidnap" his son. Mr. Trinder was subsequently served with a Temporary Order to Restrain and Notice of Hearing entered on the same day as Mr. Morales' Petition, in which a show cause hearing was set for October 4, 2007.

On October 4, 2007, the tribal court held a hearing under VIII CCOJ §401. Mr. Morales alleged, often over the objection of Mr. Trinder, myriad concerns regarding his son's mother and Mr. Trinder and the fear he had for the welfare of his son vis-a-vis the pair. Mr. Trinder regularly complained to the court that Mr. Morales was not testifying from first-hand knowledge and argued Mr. Morales could not meet his burden to justify the relief of permanent injunction he sought.

At the conclusion of the proceeding, the court issued its final order of permanent injunction to "keep the peace." The final contained numerous provisions restraining the actions of Mr. Trinder, including limitations on his movement with regard to Mr. Morales, as well as restricting any contact and communications between the parties. Mr. Trinder filed a timely Petition for Review.

While VIII CCOJ §§401 and 402 control temporary restraining orders, the Code of Comprehensive Justice lacks any specific provision governing permanent injunctions. In similar circumstances, this court has found guidance in the federal rules, specifically, **Rule 65(d) Fed. Rules of Civ. Proc.**, which provides:

"(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

We find guidance in this provision again, and find the final Order of the tribal court lacking. In Atkinson v. Beveridge, Appeal No. 328 (2000), this court articulated the fundamental nature of why an Order must contain specific factual findings and must be detailed in its expression:

It is clear that one who is before the Court must understand the conduct prescribed or prohibited in the injunctive order. To insist that an order, which mandates certain conduct, be drafted with sufficient clarity to allow those subject to the order to understand the Court's expectations of them, is a simple matter of fundamental fairness.

We find that the Order dated October 8, 2007, is impermissibly arbitrary and ambiguous and fails to satisfy the requirements of Rule 65(d). We therefore find it appropriate to vacate the Order and remand to the tribal court to determine if a new Order can be entered on the existing record that can fulfill the requisites identified herein. If the tribal court determines no such Order can be issued, it is to conduct new proceedings consistent with this opinion.

Based upon the foregoing findings and good cause appearing:

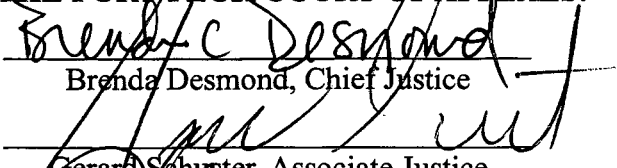
IT IS NOW, THEREFORE, THE ORDER OF THIS COURT THAT:

The October 8, 2007, Order of the tribal court is VACATED and this matter REMANDED to the tribal court.

DATED this 24 day of September, 2008.

BY THE FORT PECK COURT OF APPEALS:


Brenda Desmond, Chief Justice


Gerard Schuster, Associate Justice


Joseph Ransom, Associate Justice