

IN THE CROW COURT OF APPEALS

IN AND FOR THE CROW INDIAN RESERVATION

CROW AGENCY, MONTANA

CIV. APP. DOCKET NO. 99-225

In re the Marriage of:

**FRANCINE H. MORRISON FLATMOUTH,
Petitioner/Appellee,**

and

**RONALD FLATMOUTH, SR.,
Respondent/Appellant.**

Decided September 13, 2001

Decision entered November 20, 2001

[Cite as 2001 CROW 8]

Before Stewart, J., Gros-Ventre, J., and Watt, J.

OPINION

[¶1](#) This is an appeal by Ronald Flatmouth from the Findings of Fact, Conclusions of Law, and Decree of Divorce issued by the Tribal Court (Birdinground, C.J.) on December 22, 1999.

[¶2](#) For the reasons explained below, this court affirms the Tribal Court's order that Ronald

pay \$200 per month in child support and that each party be responsible for one-half of the marital debts. We reverse the court's order that Ronald pay \$100 per month maintenance, and remand for further proceedings to determine what if any maintenance Francine was entitled to receive since the date of the original Decree, and the specific amount of marital debt that each party is still responsible for paying.

A. Course of Proceedings

¶3 This case involves the dissolution of the parties' 26-year marriage. The case began when Francine filed a sworn Petition for Dissolution of Marriage on October 11, 1999. In her petition, Francine requested custody of the parties' 15-year-old daughter, and that Ronald pay \$200 per month child support. Francine's petition stated that the parties' property and debt were "amicably settled," except for a furniture debt of about \$1,800 (payments of \$70 per month), which she said should be paid by Ronald. In the space on the petition form for requesting maintenance, Francine inserted "*None*." Francine's petition stated that she was employed as a store clerk, and Ronald was employed as a bus driver/custodian.

¶4 Ronald answered the Petition by sworn affidavit, stating that he agreed with it except for three items. First, Ronald objected to the child support requested, on the ground that he was not the father of the child, and his adoption of her was not legal because his signature was forged and he was not present at the adoption hearing. Second, Ronald stated that he was not aware of any property settlement, and requested terms in writing. Third, Ronald requested that Francine return the furniture to him if she could not pay the debt.

¶5 The Tribal Court held a full hearing on December 1, 1999. Francine attended with her lay counselor, and Ronald appeared *pro se*. Both parties were sworn and presented testimony. Most of the hearing was conducted in the Crow language.

¶6 Francine's counsel presented a 1984 adoption decree for the parties' daughter signed by Judge Roundface (the adoption decree was not entered into the record of this case, however). She argued that Ronald could not disavow the adoption after all the time that had passed, and that Ronald was capable of paying child support in the amount of \$200 per month. Francine confirmed that there was a \$70 per month Heilig-Meyers furniture bill that she wanted to be Ronald's responsibility. Then, through Francine's testimony and a handwritten list labeled Petitioner's Exhibit A, Francine and her counsel presented a list of other debts totaling approximately \$8,000 and requested that Ronald be ordered to pay half of them. Francine's counsel also requested that Ronald be ordered to pay maintenance (or

alimony) in the amount of \$100 per month. In support of these requests, Francine testified that she earned \$6,800 per year, and Ronald earned over \$10,000 per year plus firefighting wages in the summer.

¶7 For his part, Ronald protested that he did not have any prior notice that Francine intended to request him to pay the specific debts that were not listed in her petition. Ronald also objected to any award of maintenance, because Francine had not requested any in her petition. Ronald requested the court to grant a continuance so that he could prepare to defend those requests, but the Tribal Court denied his request.

¶8 The Tribal Court entered its Findings of Fact, Conclusions of Law and Decree of Divorce on December 22, 1999, “nunc pro tunc” (or retroactive) to the hearing date of December 1, 1999. The Decree granted the dissolution of marriage, restored Francine to her maiden name, and granted sole custody of the minor child to Francine (subject to Ronald’s reasonable visitation rights), matters which are not at issue in this appeal. The Tribal Court’s decree ordered Ronald to pay \$200 per month in child support. The court found that the division of personal and real property was not an issue between the parties. The court also found that the parties had agreed to pay half of all debts and bills, except for the \$70 per month furniture bill which was to be Ronald’s responsibility until paid in full, and the court so ordered in its Decree. Finally, the Tribal Court ordered Ronald to pay maintenance to Francine in the amount of \$100 per month.

¶9 After the Decree was served, Ronald requested on January 6, 2000 an extension of time to file a notice of appeal, which was granted by the Tribal Court. In the meantime, on January 7, 2000, papers were filed with the court documenting some of the debts listed in the hearing, including: \$2,618.58 to Tribal Credit on two loans; \$449.70 to Graham-Staunton; \$229.78 to CENEX; and \$147.02 to Big Horn County Electric. Later, after the parties completed their briefing for this appeal, Ronald filed on March 23, 2000 a signed receipt acknowledging the return of certain furniture to him “for the monthly payments.” Most recently, on January 24, 2001, Ronald filed an affidavit requesting a modification of the child support and alimony payments.

B. Extension of Time for Appeal

¶10 As an initial matter, Francine argues that the Tribal Court erred in granting Ronald an extension for filing his appeal without a showing of excusable neglect and without giving Francine an opportunity to object to the motion. Rule 3(a) of the Crow Rules of Appellate Procedure governs the time for filing a notice of appeal in a case such as this, and provides as follows:

An appeal of a judgment or order of the Crow Tribal Court shall be taken by filing a notice of appeal with the Clerk of the Crow Tribal Court within ten (10) days of the date of the entry of the judgment or order appealed from, provided that upon a showing of excusable neglect, the Crow Tribal Court may extend the time for filing of the notice not to exceed thirty (30) days from the expiration of the normal period allowed for the filing of a notice of appeal.

In this case, the Tribal Court's Decree was entered on December 22, 1999. Ronald filed a motion for extension of time to file a notice of appeal on January 6, 2000, stating that the Decree was not received in the mail until December 30th. The Tribal Court granted the extension on January 11, and ordered that Ronald's Notice of Appeal was to be filed by February 7, 2000. Ronald's counsel duly filed his notice of appeal and appellate brief on that day.

¶11 Ronald followed the procedure specified by Crow R. App. P. 3(a), as quoted above, by filing a motion for extension of time to appeal. In light of the very short initial time period specified in the rule, *i.e.*, 10 days including mailing time, weekends and holidays, this court's procedural orders have held that the extension of time authorized by the Rule should be freely granted by the Tribal Court. *See, e.g., Lande v. Schwend*, 1999 CROW 1, ¶ 30 (extension deemed granted when notice of appeal filed 15 days late). The necessity for a liberal approach to granting extensions is illustrated in the present case when, without an extension, Ronald would have had only 2 days left to file his appeal, in the middle of the holidays. Thus, we hold that the Tribal Court did not abuse its discretion by granting the extension.

¶12 The Tribal Court erred, however, when it granted an extension of 30 days from the date of its order, rather than 30 days from the date the notice of appeal was originally due as authorized by the Rule. While complying with the Tribal Court's extension order, Ronald's counsel filed the notice of appeal on February 7, 2000, or a total of 45 days after the entry of the Decree. We have previously held that this court lacks appellate jurisdiction in civil cases if the notice of appeal is not filed within a total of 40 days after the date of entry of the judgment or order appealed from. *In re. Marriage of Plainfeather*, Civ. App. Dkt. No. 91-54 (Crow Ct. App., May 28, 1996)(dismissing appeal when notice of appeal filed 42 days after entry of decree, and no extension motion filed). That outcome is not fair or necessary in the present case, when Ronald clearly indicated his intent to appeal the decree by filing his extension motion within 15 days and his counsel thereafter relied on the Tribal Court's extension order as the deadline for filing the notice of appeal. In these circumstances,

dismissal of the appeal would violate this court's "traditional concern for justice and fairness, and in the interest . . . of deciding important cases on their merits rather than on mere technicalities." *Sage v. Lodge Grass School District*, 1986 CROW 1, ¶ 64. Therefore, Ronald's notice of appeal is deemed to have been timely filed on the date that the Tribal Court granted his extension motion.

C. Decision on Merits of Decree

¶13 In his appeal, Ronald argues that (1) the Tribal Court violated his right to due process by ruling on issues that Francine failed to raise in her petition, namely the division of debts and the payment of alimony; (2) the Tribal Court erred when it failed to grant Ronald a continuance in order to obtain counsel and prepare his defense against these new claims; and (3) there is not sufficient evidence in the record of this case to support the Tribal Court's findings and decree as to the amount of child support, the amount of maintenance, the parties' agreement as to their property, and the debts that were to be divided between them. In response, Francine argues that the child support order was within the court's discretion, that the maintenance award was justified by Francine's testimony that she only makes minimum wage, and that Ronald had plenty of time to obtain counsel rather than getting a continuance. As to the division of bills and debts, Francine's brief only mentioned that Ronald had not paid the Heilig-Meyers furniture bill, but Francine no longer wanted to keep the furniture.

¶14 The court has considered these arguments for each element of the Decree. We review the Tribal Court's orders for abuse of its broad discretion in domestic relations cases under Title 10 of the Tribal Code.

1. Child Support

¶15 Ronald has not raised any question in his appeal about his legal responsibility for the child's support, nor has Ronald appealed the Tribal Court's order that Francine have custody of the child. With respect to the \$200 per month child support order, there can be no question that Ronald received proper notice of Francine's request for child support, since that same amount was stated in her Petition.

¶16 According to the Crow Tribal Code, the necessity for and amount of child support is to be determined by consideration of all relevant factors, including the financial resources of

the parents and the child, the standard of living the child would have had if the marriage had not been dissolved, and the child's physical and emotional condition and education needs. See Crow Tribal Code § 10-1-122. In the absence of any evidence indicating special considerations that the Tribal Court failed to take into account, we believe that the testimony on the parents' respective incomes was sufficient for the Tribal Court to make a proper determination of child support under the Code. This court holds that the Tribal Court did not abuse its discretion in ordering Ronald to pay \$200 per month child support.

¶17 Pursuant to the Code, Ronald's child support obligation will terminate upon the child's emancipation (i.e., when she reaches 18 years old). Crow Tribal Code § 10-1-129(3). The amount of the payment is subject to modification in further proceedings only as to future installments and only "upon a showing of changed circumstances so substantial and continuing as to make the [original] terms unconscionable." Crow Tribal Code § 10-1-129 (1). The Tribal court may consider Ronald's request for modification of future child support payments at the same hearing as it considers the issues remanded below.

2. Maintenance

¶18 With respect to the Tribal Court's order for Ronald to pay \$100 per month in maintenance (also known as alimony), we find Ronald's objection to lack of notice to be well-founded. For guidance in this issue, we have looked to the experience of State courts in applying the Uniform Marriage and Divorce Act, on which the Tribal Code has been patterned. See Crow Tribal Code § 3-1-104(3) (Crow Tribal courts may apply the common law and equity of other jurisdictions if question not resolved specifically by Tribal Code).

¶19 Unlike child support, there is some precedent in State-court divorce cases that a claim for maintenance may be waived if it is not made in the original petition. See, e.g., *In re. Marriage of Boyd*, 643 P.2d 804, 805 (Colo. App. 1982)(affirming denial of maintenance when not requested in husband's petition, and husband did not seek to amend or request continuance); *In re. Marriage of Becker*, 912 P.2d 936 (Or. App. 1996)(vacating default judgment when husband had no notice of request for maintenance). Especially in a default situation, it has been held that maintenance should not be ordered if not requested in the dissolution petition, because the Respondent's decision not to answer and defend against the petition may have been different if he knew there was a possibility that he could also be ordered to pay maintenance. 2 Clark, Homer H., *The Law of Domestic Relations in the United States, Practitioners Edition* § 17.3 (2d ed. 1987). However, subject to exception for default situations, the prevailing view is that because alimony is a "normal incident to divorce, . . .

the court is also authorized to grant the incidental relief of alimony, whether it is mentioned in the complaint or not.” *Id.*

¶20 Applying this State-court jurisprudence to the notice issue in the present case, Francine’s petition not only failed to request maintenance, but she specifically stated “*none*” in response to the question on the form. Ronald’s first notice that maintenance was an issue was when it was requested by Francine’s counsel at the hearing, and where he objected and requested a continuance to obtain counsel to contest the claim. This situation was similar to a default situation, in that Ronald’s decision to attend the hearing by himself, without hiring counsel, was apparently based in part on Francine’s statement in her petition that she was not requesting maintenance. Considering this prejudice caused to Ronald by his reliance on the waiver in Francine’s petition, it was not fair for the Tribal Court to order maintenance without allowing Ronald a continuance. On the other hand, adhering to this court’s view that “hyper-technical [procedural] rules . . . are not appropriate for the Crow Tribal Court system,” *Estate of Red Wolf v. Burlington Northern Railroad Co.*, 1996 CROW 4, ¶ 5, it would also be unfair not to allow Francine to amend her petition and continue to pursue her request for maintenance.

¶21 The policy behind the Uniform Marriage and Divorce Act, on which the Tribal Code is modeled, reflects a preference that spousal support be provided first through the division of property and debts, and maintenance should be awarded only if that is insufficient and the spouse is unable to support herself through employment. See Comment to UMDA § 308; Crow Tribal Code § 10-1-121(1)(a) and (b). The fact that a remand is necessary to determine the remaining amounts of the parties’ debt obligations (see below) further supports our decision to remand for reconsideration of the maintenance order.

¶22 Therefore, this court reverses the Tribal Court’s order that Ronald pay \$100 per month maintenance to Francine, and remands the issue of maintenance to the Tribal Court for further proceedings. On remand, the Tribal Court is directed to hold a further hearing and review the factors specified in Section 10-1-121 of the Crow Tribal Code, in order to determine what amount of maintenance (if any) Francine was entitled to receive back from the date of the original Decree to the present.^[1] In the same hearing, the Tribal Court may consider and act on Ronald’s modification request with respect to any future maintenance.

3. Division of Property and Debts.

¶23 There does not appear to be any dispute about the personal property retained by each

of the parties, and no such issue has been raised on appeal. Also, the matter relating to the furniture debt appears to have been resolved by Francine giving the furniture to Ronald, and him being responsible for the debt as ordered in the Tribal Court's Decree.

¶24 The Tribal Court also ordered that "Petitioner and Respondent will Pay Half of all Debts and Bills" (except the furniture bill mentioned above). An equal division of property and debts is a general rule of thumb often used by the trial courts in applying divorce laws similar to the Crow Tribal Code. *See In re. Marriage of Not Afraid*, Civ. App. Dkt. No. 97-011 (Crow Ct. App., Mar. 14, 2001), 2001 CROW 3, ¶ 18 (equal division of home's value to be presumed, in the absence of any reasons and evidence to the contrary). Therefore, we cannot say that the Tribal Court abused its discretion by ordering an equal division of the parties' debts in accordance with Crow Tribal Code Section 10-1-120, based on the long duration of the marriage, the parties' respective employment and incomes, and in light of its order that Ronald pay \$200 per month child support.

¶25 However, this court is not able to tell from the record what debts are covered by its decree, whose name they are in, and their total amount. Thus, it would appear to be very difficult for the parties to know what debts they are responsible for paying. In this regard, the procedural errors argued by Ronald in this appeal also have merit. The Tribal Court received oral testimony and a written list of debts from Francine. However, because he reasonably relied on Francine's petition stating that the debts were "amicably settled," Ronald was not prepared to offer any evidence of other debts that were in his name, or to challenge the debts submitted by Francine. Also, there is no indication in the record that Francine ever provided, prior to the hearing, any written list of debts or agreement as requested in Ronald's answer to the petition. In these circumstances, Ronald was entitled to the continuance that he requested.

¶26 Therefore, this court remands the issue of the division of debts to the Tribal Court for further proceedings to determine the remaining amount of marital debt that each party is responsible for paying. In order to determine that amount, the Tribal Court will need to hold a hearing to take evidence, which may include: (1) the specific debts of the parties' marriage as of December 1999, their approximate amounts, and whose name they are in; (2) the amounts paid by each party toward those debts since the date of the decree; and (3) the net amount remaining on each party's half of the total debt. In finally apportioning the debt, the Tribal Court may order that each party remain responsible for payment of the debts in his or her name, along with a payment from one party to the other that would equalize the total amounts paid by each.

D. Conclusion

[¶27](#) For the reasons stated in the foregoing opinion:

- (1) The Tribal Court's order that Ronald pay \$200 per month child support to Francine is **AFFIRMED**;
- (2) The Tribal Court's order that Ronald pay \$100 per month maintenance to Francine is **REVERSED**, and Francine's claim for maintenance going back to the date of the original Decree is **REMANDED** to the Tribal Court for further proceedings consistent with this opinion; and
- (3) The Tribal Court's order that the parties each pay half of the debts of the marriage is **AFFIRMED**, but this issue is **REMANDED** to the Tribal Court for further proceedings consistent with this opinion, in order to determine the specific amounts each party is responsible for paying.

[¶28](#) The Tribal Court is directed to hold a hearing and take evidence on the issues remanded above, and on Ronald's pending request for modification of future child support and maintenance payments.

IT IS SO ORDERED. No costs.

¶5	¶10	¶15	¶20	¶25	Endnotes
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Endnote

[\[1\]](#) If the Tribal Court determines that the maintenance payable to Francine should have been something different than \$100 per month, the Tribal Court will need to make adjustments based on Ronald's actual maintenance payments since the original Decree. If Ronald actually paid more maintenance during this period than the amount due as determined by the Court on remand, then the difference should be credited toward reducing Ronald's remaining debt responsibility (see below), or to offset any future maintenance payments that may be ordered by the Court. Because of the importance of the child's interest in timely receipt of child support payments, this court believes that it would not be appropriate to offset any past due or future child support obligations with any excess maintenance payments that Ronald may have made since the original Decree.

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[¶5](#)[¶10](#)[¶15](#)[¶20](#)[¶25](#)[Endnotes](#)