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

BARBARA FAST HORSE,
Appellee/Petitioner,

vs.

Appeal No. 029

MICHAEL FAST HORSE,
Appellant/Respondent.

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, Wolf Point, Montana. Associate Judge Violet E. Hamilton presided.

FOR APPELLEE, BARBARA FAST HORSE: Laura Christoffersen, Attorney at Law, Wolf Point, Montana.

FOR APPELLANT, MICHAEL FAST HORSE: Lewellyn J. Cantrell, Lay Advocate, Wolf Point, Montana.

Briefs were submitted by APPELLANT and APPELLEE. Oral argument was presented by APPELLANT's Lay Counselor, Lewellyn) Cantrell, and APPELLEE's attorney, Laura Christoffersen, on March, 13, 1986.

OPINION by Daniel R. Schauer, Justice, joined by Arnie A. Hove, Chief Justice and Gary James Melbourne, Justice.

HELD: AFFIRMED THE TRIBAL COURT'S DETERMINATION OF THE PROPERTY DIVISION, \$200.00 CHILD SUPPORT AND \$200.00 MAINTENANCE AND AWARD OF ATTORNEY FEES IN THE AMOUNT OF \$587.50. DENIED ADDITIONAL ATTORNEY FEES FOR THIS APPEAL.

A Petition for Dissolution of Marriage was filed on December 3, 1986 by BARBARA FAST HORSE. MICHAEL FAST HORSE filed a Response to Petition for Dissolution on January 7, 1987. On January 7, 1987, court was held in Fort Peck Tribal Court, Wolf Point, Montana. The Honorable Violet E. Hamilton, Associate Judge presided.

MICHAEL FAST HORSE appealed the Findings of Fact, Conclusions of Law and Order. MICHAEL FAST HORSE filed a Motion to Appeal. The appeal was granted January 31, 1987. After the appeal was granted, a Petition for Stay of Judgment was filed January 31, 1987. This Court granted a stay of judgment, except on the payment of child support, until the appeal was heard on March 13, 1987 at the Fort Peck Tribal Court of Appeals in Poplar, Montana.

On March 13, 1987, oral arguments were heard by the Fort Peck Tribal Court of Appeals. The notice of appeal based the grounds for appeal on what appeared to be the following issues:

- "1. Whether the Tribal Court gave fair consideration to APPELLANT and his employment when the property settlement gave APPELLEE the vehicle, a 1980 Pontiac Catalina.
2. Whether the maintenance payment of \$200.00 and child support of \$200.00 were excessive.
3. Whether the Tribal Court properly awarded attorney fees to Petitioner in the amount of \$587.50."

The Fort Peck Tribal Court of Appeals has jurisdiction over this matter, under Title I, Section 202 of the Comprehensive Code of Justice of the Assiniboine and Sioux Tribes of the Fort Peck Reservation (hereinafter CCOJ) which reads as follows:

"Jurisdiction of Court of Appeals. The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. The Court of Appeals shall review de novo all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence."

I.

On Issue No. 1, the law giving the Tribal Court authority to equitably distribute property is VI CCOJ 305. VI CCOJ 305 reads in part,

"When an annulment or divorce is granted, the Court shall make such equitable distribution of all real and personal property as it deems just and proper...."

The APPELLANT appears to be arguing that the Tribal Court's award of the car to APPELLEE was not an equitable distribution in that he needed it for his employment. The APPELLANT gave no evidence reflected in the transcript that the Tribal Court that he needed the vehicle for his employment. In oral arguments, APPELLANT indicated that he had access to a company vehicle to and from his employment and that he had purchased another vehicle.

It appears from the above that the Tribal Court's determination is supported by substantial evidence. Pursuant to I CCOJ 202, the Court of Appeals "shall not set aside factual determinations of the Tribal Court if such determinations are supported by substantial evidence". In this case, the Tribal Court's distribution of property shall be affirmed.

II.

On Issue No. 2, the laws giving the Tribal Court authority to award child support and alimony are VI CCOJ 304 and VI CCOJ 306 respectively, The applicable part of VI CCOJ 304 on awarding child support reads in part,

..."Where appropriate, the Tribal, Court may also order that the non-custodial parent make

periodic payments to cover a portion or all the expenses of care and education of the child...".

The applicable part of VI CCOJ 306 on awarding alimony payments reads in part,

"When an annulment or divorce is granted, the Court may order either party to make periodic alimony payments as necessary for the support of the other party."

The APPELLANT again presented no evidence to the Tribal Court that the award of \$200.00 for child support and \$200.00 for maintenance was excessive. And again, the Court of Appeals "shall not set aside factual determinations of the Tribal Court if such determinations of the Tribal Court are supported by substantial evidence. In this case, the award of child support and maintenance shall be affirmed.

III.

On Issue No. 3, the law giving the Tribal Court authority to award costs and attorney fees is IV CCOJ 309. This section of the code reads in full as follows:

"In civil actions costs shall be awarded the prevailing party as part of the final judgment unless the Court otherwise orders. No costs shall be awarded against the Tribe, or against any officer of the Tribe or member of the Tribal Council sued in his official capacity. Costs shall include filing fees, reasonable and necessary expenses of involuntary witnesses, costs associated with compensation and expenses of the jury, and such other proper and reasonable expenses, exclusive of attorneys' fees to the prevailing party in a civil suit unless the Court determines that the case has been prosecuted or defended solely for harassment and without any reasonable expectation of success."

The APPELLANT for a third time failed to present evidence to the Tribal Court that the attorney fee was excessive or unwarranted. However, there was no specific determination in the Findings of Fact, Conclusions of Law and Order by the Tribal Court that the case was prosecuted or defended solely for harassment and without reasonable expectation of success. Because no specific objection was raised by APPELLANT reflecting the lack of that determination and it is the duty of the Appellant, not the Court of Appeals, to raise the proper objections to the determinations of the Tribal Court, this court will have no choice in this case but to affirm the award of attorney fees.

IV.

Upon reviewing the transcript, pleadings and other documents filed in the case, Issues No. 1, 2, and 3 were probably not properly argued or appropriate evidence presented to the Tribal Court on behalf of the APPELLANT. Title VI Section 303(d)(e) (2) of the CCOJ reads as follows:

"Divorce.

(d) Response. The non—petitioning spouse may file a response to the petition within twenty (20) days of receipt of the petition. Such response may state the background facts

and circumstances which show that there are no valid grounds for divorce, or may seek a division of property or custody of children different from any proposed by the petition.

(e) Hearing.

(2) At the hearing, both spouses shall have an opportunity to testify, cross—examine the other spouse and any witnesses, call and question other witnesses, and present documentary evidence. Each spouse may retain counsel or be otherwise represented in the proceeding. The hearing shall be closed to the public unless both spouses agree otherwise."

This Court acknowledges APPELLANT'S present counsel did attempt to present records of expenses at the time of oral arguments. This Court will not allow evidence to be introduced at oral arguments or use the same to justify overturning a factual determination of the Tribal Court.

BECAUSE OF THE ABOVE, THIS COURT ADVISES PARTIES TO RETAIN COUNSEL WHO WILL MAKE PROPER RECORDS AND INTRODUCE RELEVANT EVIDENCE TO THE TRIBAL COURT.

THEREFORE, IT IS THE UNANIMOUS DECISION OF THIS COURT TO AFFIRM THE TRIBAL COURT'S DETERMINATION OF THE PROPERTY DIVISION, \$200.00 CHILD SUPPORT AND \$200.00 MAINTENANCE AND AWARD OF ATTORNEY FEES IN THE AMOUNT OF \$587.50. THIS COURT HEREBY DENIES ADDITIONAL ATTORNEY FEES FOR THIS APPEAL IN THAT IT FEELS THROUGH THE MAINTENANCE PAYMENT, APPELLEE WILL BE ABLE TO PAY THE COST OF THIS APPEAL.

DONE this ____ day of April, 1987.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Daniel R. Schauer, Justice

Gary James Melbourne, Justice
