FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
POPLAR, MONTANA
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ERVIN LOEGERING,
Appellee/Plaintiff,

vs. **Appeal No. 035**

EUNICE & ERNEST GRANBOIS,
Appellants/Defendants.

THIS APPEAL is front the Fort Peck Tribal Court, Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. Lawyer Judge Brown presided

FOR APPELLANTS: Leighton Reum, Lay Counselor, of P. 0. Box 675, Wolf Point, Montana 59201.

FOR APPELLEE: Ralph J. Patch, Attorney at Law, P. 0. Box 1079, Wolf Point, Montana 59201, not present. Ervin Loegering, 709 Third Avenue West, Poplar, Montana 59255.

APPELLANTS filed a Petition for Review and Request for Stay with attachments, however, no brief. **APPELLEE** filed a Response to the Petition for Review, however, no brief. At the time for oral argument, APPELLANTS presented oral argument.

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

HELD: UNANIMOUS DECISION OF THIS COURT TO VACATE THE CIVIL JUDGMENT IN THE AMOUNT OF $1,900.00, PLUS COSTS OF $10.00 AGAINST THE APPELLANTS AS PARENTS FOR THE TORTIOUS CONDUCT OF THEIR MINOR SON AND REMAND THE MATTER TO THE TRIBAL YOUTH COURT FOR AN ADJUDICATORY HEARING ON THE YOUTH'S GUILT OR INNOCENCE AND SUBSEQUENT PROCEEDINGS IN CONFORMITY HEREWITH.

On or about the 20th day of September, 1986, Appellants' minor son, who was fifteen (15) years old at the time, was alleged to have committed the offence of burglary in violation of Chapter III, Section 302 of the Comprehensive Code of Justice of the Assiniboine and Sioux Tribes (hereinafter CCOJ). Appellants' son was alleged to have entered Loegering's Repair in Poplar by force by kicking in a window located on the south side of the building. While being interviewed for a

separate burglary by Duane Smith, Criminal Investigator Appellants' son was to have admitted that he entered Loegering's Repair, just looked at a 1957 Chevrolet and left. Tools worth $1,900.00 were taken in the burglary.

On October 29, 1986, a petition was filed in the Juvenile Court alleging that Appellants' son had stolen the tools from Loegering's Repair on September 20, 1986. Appellants' son appeared in Juvenile Court in answer to the burglary and entered plea of not guilty before the Honorable Thomas McAnally, Juvenile Judge. There is no evidence that a subsequent adjudicatory hearing was held on Appellants' son's guilt or innocence.

On February 18, 1987, Appellee filed a Civil Action complaint with the Tribal Court alleging that Appellants' son stole some property from him on September 20, 1986. Appellee requested restitution in the amount of $1,900.00 for the stolen tools.

On March 16, 1987, the matter was tried by Lawyer Judge Brown and Appellants were held liable for the tortious acts of their son. On March 30, 1987, Appellants filed a Notice of Intent to File a Petition for Review. On March 16, 1987, Lawyer Judge Brown entered his written Judgment with Incorporated Findings of Fact and Conclusions of Law. On April 7, 1987, Appellants filed a Petition for Review and Request for Stay.

In the Petition for Review and Request for Stay, Appellants set forth three (3) grounds for appeal. These grounds will be addressed in the issues presented as follows:

1. Whether Appellants were denied adequate notice of a hearing on a written complaint filed by Appellee with the Tribal Court alleging that Appellants' son stole certain property from Appellee on September 20, 1986 and that as parents, Appellants should make restitution.

2. Whether Appellants were denied adequate opportunity to defend at a March 16, 1987 hearing

3. Whether the Tribal Court lacked substantial evidence at the March 16, 1987 hearing for the judgment for Appellee and against Appellants in the amount of $1,900.00 as restitution for the tortious acts of Appellants' son and $10.00 court costs.

In Appellee's Response to Petition for Review, Appellee alleged that Appellant's Notice of Intent to File Petition for Review did not meet the requirements of I CCOJ 207 and should be denied. This Court will address Appellee's grounds for the denial of Appellant's appeal in the issue that follows:

Whether Appellants' Notice of Intent to File Petition for Review dated March 30, 1987 and filed by Appellants' Lay Counselor was a flagrant disregard of the requirements of I CCOJ 207(a), and therefore was not timely filed and must be dismissed by the this Court.

This Court will first address Appellee's ground requesting the denial of Appellants' appeal and then each of Appellants' three (3) grounds for appeal.

I.

Whether Appellant's Notice of Intent to File Petition for Review dated March 30, 1987 and filed by Appellants' Lay Counselor was a flagrant disregard of the requirements of I CCOJ 207(a), and therefore was not timely filed and must be dismissed by the this Court.

The CCOJ sets a mandatory procedure whereby a party in a civil case in Tribal Court can request and obtain a review of the Tribal Court order or judgment and this Court has jurisdiction of that review. I CCOJ 205(b) reads in part as follows:

> Civil cases: Any party who is aggrieved by a final order or judgment of the Tribal Court may file a petition requesting the Court of Appeals to review that order or judgment as provided in Section 207

The procedure for obtaining a review of a final order or judgment of the Tribal Court that must be followed is in I CCOJ 207. In order to properly determine whether Appellants' Notice of Intent to File Petition for Review complied with the requirements of CCOJ 207, subparts (a) and (b) must be reviewed and are follows:

> (a) Time to petition and how to petition. A party to a civil case may petition for review. Upon appellant's request, the Tribal Public Defender shall prepare the petition for review. The petition for review must be taken within 15 (fifteen) days from the date of entry of the final order or judgment appealed from by filing such petition with the Clerk of the Tribal Court together with the docket fee and any bond required pursuant to this section. No extensions of the 15 (fifteen) day period shall be granted.
>
> (b) Contents of the petition for review. The petition for review shall specify the parties taking the appeal, shall designate the final order or judgment, or part appealed from, and shall contain a short statement why the petition should be granted. The Clerk shall mail a copy of the petition for review to .311 parties other than the petitioner. Other parties shall have 15 days to respond to the petition for review, after which time the Court of Appeals or the Chief Justice therefore shall grant the petition and allow the appeal to be heard or shall deny the petition.

Appellants' Notice of Intent to File Petition for Review states Appellants' intention to petition for a review of the Tribal Court's verbal entry of judgment against them. The notice informs the parties, attorneys and this Court that nearly 15 days have elapsed since the March 16, 1987 hearing and advises this Court that no written order has been entered. The notice states, "The appellants/defendants do not wish to forfeit their rights to appeal under Title I, Section 207(e); thus, the appellents/defendants are providing this advance notice to the Court of Appeals, the trial court, and to Ervin Loegering, plaintiff/appellee," Finally, Appellants' Notice of Intent advises this Court that a formal petition for review will Lie filed that will specify all grounds for the appeal.

Or, March 31, 1987, the Judgment with Incorporated Findings of Fact and Conclusions of Law were mailed by the Clerk of Tribal Court. On April 7, 1987, Appellants filed a Petition, for Review and Request for Stay..

This Court reviewed Appellants' Notice of Intent to File Petition for Review and determined it met the requirements of I

CCOJ 207(a) and (b). This Court's order dated May 26, 1987 granted Appellants' appeal and we now stand by our original determination.

Appellants' notice reflects strict compliance or a good faith attempt at compliance with the contents requirements of I CCOJ 207(b). The Appellants' notice specifies the parties taking the appeal as Appellants. The notice also designates the final order or judgment, or part appealed from, as the March 16, 1987 verbal entry of judgment against Appellants by Acting Lawyer Judge Julian Brown, in the Tribal Court.

Although Appellants' notice did not include a short statement of why the petition should be granted, Appellants explained to the satisfaction of this Court why they were unable to put such a statement in the notice and that they did not wish to forfeit their rights to appeal. Appellants advised the parties, attorneys and this Court that after they received a formal order and opinion from the tribal court they would file a formal petition for review that will specify all grounds therefore, and request a stay of judgment pending appeal

On March 31, 1987, Appellants received a copy of a Judgment with Incorporated Findings of Fact and Conclusions of Law dated March 16, 1987. On April 7, 1987, Appellants did file their Petition for Review and Request for Stay that specified the following grounds for appeal: a) denial of adequate notice; Li) denial of adequate opportunity to defend; and c) lack of substantial evidence.

In I CCOJ 207(a), the language requires that the petition for review must be taken within 15 (fifteen) days from the date of entry of the final order or judgment appealed from. This language in I CCOJ 207(a) is mandatory. In effect, the Judgment with Incorporated Findings of Fact and Conclusions of Law dated March 16, 1987 could riot be properly considered entered under Section I CCOJ 207(a) until filed with the Clerk of the Tribal Court and copies of the same served upon the parties. Appellants' notice, which was filed within fifteen (15) days from the date of the oral judgment was intended to and did provide advance notice to the parties, attorneys and this Court of Appellants' intention to appeal the March 16, 1987 verbal judgment against them. This notice was unnecessary however, it did preserve Appellants' rights to appeal under I CCOJ 207(a).

Therefore, Appellants' Notice of Intent to File Petition for Review was not done in flagrant disregard of the requirements of Section 207(a). Appellants Petition for Review and Request for Stay dated April 7, 1987 was timely filed under I CCOJ 207(3) and as a result, Appellants' appeal properly granted.

II.

WHETHER APPELLANTS' WERE DENIED ADEQUATE NOTICE OF A TRIAL ON A WRITTEN COMPLAINT FILED BY APPELLEE WITH THE TRIBAL COURT ALLEGING THAT APPELLANTS' SON STOLE CERTAIN PROPERTY FROM APPELLEE ON SEPTEMBER 20, 1986 AND THAT AS PARENTS, APPELLANTS' SHOULD MAKE RESTITUTION.

On February 18, 1987, Appellee prepared and filed a complaint entitled Civil Action in Tribal Court in which he requested restitution. The Civil Action filed does riot set forth who the restitution is requested from. A trial was held on March 16, 1987. The complaint read in full as follows:

> "Bryce Granbois did burglarize my place of business known as Loegering's Repair in the early morning hour of Sept. 20, 1986. There is approximately $1900.00 worth of tools missing. Therefore I am requesting restitution in the amount of $1900.00."

Appellants' contend that they were denied adequate notice by way of a "concise written statement of the essential facts constituting the claim" which is contemplated by the requirement of IV CCOJ 101 which defines the nature of a complaint in the Fort Peck Tribal Court.

The language in Appellee's Complaint hereinabove set forth in no way reflects that there is a breach of *contract* theory on which restitution is to be based. The Findings of Fact Conclusions of Law do not reflect a clear breach of contract theory for the award of damages, however, it does reflect that the Tribal Court took into account the recorded recollect ion of then acting Lawyer Judge Ron Hodge. In Conclusion of Law B, the Court stated the following:

> The within Court's Exhibit I describes the settlement agreement made by Defendants Grantors with Plaintiff Loegering to resolve the issue of their civil liability to Plaintiff as a result of the alleged theft and injury to the property of Plaintiff be the juvenile son of Defendants.

This language reflects that the Tribal Court may. have relied on a breach of contract theory in determining to award the Appellee the sum of $1,900.00 for tools allegedly stolen Appellants' minor son.

If Appellants relied on the complaint filed by Appellee and on that basis came into court to defend, then this Court would agree that that Appellee's Complaint was not the "concise written statement of the essential facts constituting the claim" contemplated by IV CCOJ 101. In the transcript of the trial held March 16, 1987! Appellants' attorney argued "we do have some problems with the contention that there is a contractual .agreement in effect or has been and that they may in fact violate any portion of a contract." Tr. P.3, L.l4-15. The Appellants' attorney also argued that there was some confusion by Appellants as to their liability under this alleged settlement agreement. Tr. P.4, L. 18-24.

It is the opinion of this Court that Appellee's complaint was not the 'concise written statement of the essential facts constituting the claim contemplated by IV CCOJ 101, in that if Appellee was going to rely on a contractual agreement, the same should have been set forth. Therefore, Appellants' were denied adequate notice of a hearing on the written complaint filed by Appellee with the Tribal Court and Appellants' attorney's request for a continuance should have been granted.

III.

WHETHER APPELLANTS' WERE DENIED ADEQUATE OPPORTUNITY TO DEFEND AT THE MARCH 16, 1987 TRIAL.

As discussed above, Appellants contended and this Court agreed that they were denied adequate notice when the change in legal theory occur red. Appellants also contend that the change in legal theory was based on "Court's Exhibit I" which was received by the Court on March 9, 1987 and considered conclusive evidence of the alleged theft and the formation of a contract between the parties.

The Tribal Court set forth five (5) Findings of Fact. Findings of Fact No. 2 and 3 are based on "Court's Exhibit I" which the

Appellants' did not receive a copy of until the trial. Attached to Appellants' Petition for Review and Request for Stay, were an Affidavit of Judge McAnally and a petition filed in the. Fort Peck Tribal Court, Juvenile Division, alleging that Appellants' son committed a burglary. Judge McAnally's affidavit indicated that Appellants' son had appeared in the Juvenile Division of the Tribal Court, that he entered a plea of not guilty to the allegation of burglary and that Judge McAnally had not yet scheduled a fact-finding hearing. The petition does reflect the plea of not guilty.

Appellants' lay counselor requested additional time to prepare Appellants' defense and said request was denied. Tr. P.3, L.25 through P.4, L.4. From the evidence before this Court, Appellants' were unaware of the contract theory of recovery prior to the March 16, 1987 hearing. At the hearing, Appellants' and their lay counselor appeared confused regarding the settlement agreement (contract for reimbursement) and Appellants' lay counselor made motions for a continuance, stay and motion to dismiss for time to prepare their case and/or have it heard by the Juvenile Judge on the guilt or innocence of their son (Tr. P.4, L. 2-3; and P.6) and all were denied (Tr. P.4, L. 13; and P. 7, L. 8-11).

If Appellants had been aware of the contract theory of recovery or been presented with a copy of Lawyer Judge Hodge's letter prior to the March 16, 1987 hearing, the Appellants' could have presented witnesses and evidence in defense of the contract theory. Therefore, it is the opinion of this Court that Appellants' were denied adequate opportunity to defend against this matter.

IV.

WHETHER THE TRIBAL COURT LACKED SUBSTANTIAL EVIDENCE AT THE MARCH 16, 1987 HEARING, FOR THE JUDGMENT FOR APPELLEE AND AGAINST APPELLANTS IN THE AMOUNT OF $1,900.00 AS RESTITUTION FOR THE TORTIOUS ACTS OF APPELLANTS' SON AND $10.00 COURT COSTS.

In order to properly address the above issue, this Court will first review its jurisdiction. This Court has jurisdiction of appeals as granted by I CCOJ 202. I CCOJ 202 reads in part 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...."

The above issue is asking this Court to set aside the factual determinations of the Tribal Court. Before this Court is permitted to set aside factual determinations, it must determine that the factual determinations are not supported by substantial evidence.

In the trial of this matter, the Tribal Court had the letter of former Lawyer Judge Hodge, Court's Exhibit I, on what had transpired in this matter. The Tribal Court also had the testimony of Appellee supporting the allegations in the letter. Based on "Court's Exhibit I" and Appellee's testimony, the Tribal Court's factual determinations were supported by substantial evidence. However, there was other evidence not considered by the Tribal Court or brought to its attention.

Juvenile Judge Thomas McAnally prepared an Affidavit in which he stated that Bryce Granbois had never admitted that he stole the tools in question from Loegeing's Repair. In addition, Judge McAnally stated a fact-finding hearing regarding this theft was not held. Therefore, the Tribal Court lacked substantial evidence at the March 16, 1987 hearing, for its judgment for Appellee and against Appellants in the amount of $1,900.00 as restitution for the tortious acts of Appellants son and $10.00 court costs.

Despite the Tribal Court lacking substantial evidence for its judgment against Appellants, it is important to review the Tribal Court's rationale in holding the Appellants liable for the tortious conduct of their son. In reviewing the Tribal Court's rationale, the affidavit of Judge McAnally will intentionally be ignored.

In view of the only facts before the Tribal Court at the March 16, 1987 hearing, the Tribal Court's Conclusions of Law would be correct if the award of damages involved the destruction of Appellee's property in the burglary but not the theft of tools. Under the provisions of IV CCOJ 501(d) and applying appropriate Montana law, the parents should have been held liable for the tortious conduct of their son which involved damages. This section states, "the the Court may ... be guided by statutes, common law or rules of decision of the State in which the occurrence ... took place"). In Montana, M.C.A. Section 40-6-237 (1987) holds the parents liable for destruction by the children. This section reads in full as follows:

> **Destruction of property by minor --- liability of parents.** Any municipal corporation, county, city, town, school district, or department of the state of Montana, any person, or any religious organization whether incorporated or unincorporated is entitled to recover damages in **a** civil action in an amount not to exceed $2,500 in **a** court of competent jurisdiction from the parents of my person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed belonging to such municipal corporation, county, city, town, school district, department of the State of Montana, person, or religious organization.

Statutes similar to the one above have been found to be constitutional and since the Tribes have not adopted a statute of this nature to deal with this type of circumstance, the application of Montana's statute to this situation would be is a general discussion of the law on these statutes.

> Many states have enacted statutes making parents responsible for damages caused by willful, malicious, intentional, or unlawful acts of their minor children. These statutes have been held constitutional, but there is authority to the contrary. Under some statutes, the parents are made liable for their children's acts of vandalism or destruction or damage to property. But even a statute referring to "willful and wanton acts of vandalism" resulting in "injury or damage to the person or property of another" has been held inapplicable to acts resulting in personal injuries only, on the grounds that such acts do not constitute "vandalism." Other statutes impose liability upon parents of an unemancipated minor, who, having taken a motor vehicle without the consent of the owner, causes property damage to that vehicle. Most, though not all, of these statutes limit the maximum recovery to a rather nominal sum, irrespective of the actual damage; Generally, unless the act to the child was performed willfully, wantonly, or through gross negligence, its parents will riot be held vicariously liable, and some statutes are expressly limited to situations where the child acts willfully and maliciously. Where the statute applies, liability is imposed on the parent irrespective of parental knowledge of the minor 's act or of any neglect of parental authority.

> But when the law terminates or interrupts parental authority, parental responsibility is terminated or interrupted with it.... 59 Am Jur 2d, Parent and Child, Section 123.

Again, the Tribal Court would have properly applied the above Montana statute to this situation if there had been a destruction of Appellee's property, however, its application to this situation when it involves restitution is questionable and actually inappropriate.

In this case, this Court finds that the law and rationale that should have been followed are the rules of law set forth below. First the Court will determine the status of Appellants' minor son who was fifteen (15) years old. V CCOJ 101 defines a child as "Any Indian under 18 years of age." In this case Appellants' son would be a child under Tribal law. Under the general rules of law, Appellants' son would be an infant. The definition of infant is as follows:

> While the word "infant" in its ordinary usage signifies a child of a tender and helpless age, the words infant and ' "infancy" as used in law have a technical meaning in common speech. In the law the word "infant" refers to a person who has not arrived at his majority as fixed by law, and the word "infancy" as used in law means minority or nonage. Majority is the age at which the disabilities of infancy are removed, and hence a person who has reached his majority is entitled to the management of his own affairs and to the enjoyment of civic rights. 42 Am Jur 2d, Infants, Section 1.

Because Appellants' son was an infant, and in light of the general rules of law, it would not be appropriate to hold Appellants' liable for their son's acts of theft.

> ...[T]he general rule applicable to contracts is that the infant may avoid liability thereon, the general rule in the law of torts is that he is liable for his own torts in the same manner and to the same extent as an adult, if the tort does not arise out of, or is not connected with, a contract. Infancy is not a shield against tort liability except to the extent that it renders him incapable of forming the mental attitudes which are necessary elements of a certain tort.
>
> Thus, an infant may be held liable for injuries caused by his negligence, and ordinarily infancy cannot be pleaded as a defense in an action for fraud, for assault and battery, for trespass, for conversion or for seduction.... 42 Am Jur 2d, Infants, Section 140.

In this matter, since the award of $1,900.00 appears to be only for restitution for a theft and/or conversion of property allegedly committed by Appellants' minor son, it would not be appropriate to find the Appellants' liable for making restitution for the son to Appellee for the same.

THEREFORE, IT IS THE UNANIMOUS DECISION OF THIS COURT TO VACATE THE CIVIL JUDGMENT IN THE AMOUNT OF $1,900.00, PLUS COSTS OF $10.00 AGAINST THE APPELLANTS AS PARENTS FOR THE TORTIOUS CONDUCT OF THEIR MINOR SON AS TO THE RESTITUTION FOR THE THEFT OF TOOLS AND REMAND THE MATTER TO THE TRIBAL YOUTH COURT FOR AN ADJUDICATORY HEARING ON THE YOUTH'S GUILT OR INNOCENCE AND SUBSEQUENT PROCEEDING IN CONFORMITY HEREWITH.

DONE this _____ of September, 1987.

BY THE COURT OF APPEALS:

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Arnie A. Hove, Chief Justice

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Daniel R. Schauer, Justice

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Gary James Melbourne, Justice