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

CITIZENS FIRST NATIONAL BANK,
N.A., A Montana Banking Corporation,
Plaintiff/Appellant/Cross-Appellee,

Appeal No. 042

vs.

KRISTIE CROWBELT,
Defendant/Appellee/Cross-Appellant.

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Wolf Point, Montana, HONORABLE VIOLET E. HAMILTON, Associate Judge, presided.

ARGUED September 26, 1988; DECIDED September 26, 1988.

CIVIL: A RECORD OR TRANSCRIPT OF TRIBAL COURT PROCEEDINGS IS NECESSARY TO PROTECT AGAINST ALLEGATIONS OF PROCEDURAL ERRORS AND VIOLATIONS OF DUE PROCESS; TITLE I CCOJ 307 DOES NOT REQUIRE DISQUALIFICATION OF JUSTICE WHERE WIFE IS COUSIN TO APPELLANT.

OPINION delivered by Arnie A. Hove, Chief Justice, and joined by Gary James Melbourne, Associate Justice.

HELD: REMANDED FOR A NEW TRIAL TO BE HELD WITHIN THIRTY DAYS OF THE FILING OF THIS OPINION.

On March 31, 1987 a trial was held in this matter wherein Appellee was trying to obtain a Judgment against Appellant for delinquent payments on a promissory note. At the trial, Appellee was represented by counsel and gave testimony through Richard Swanson. Defendant was present. A Judgment was entered against Defendant for \$2,451.94 principal and interest. The Judgment also placed a hold on defendant's I.I.M. account and if the Judgment was not satisfied, monies were to be released to satisfy the Judgment.

The Appellant presented the following issues:

1. Whether procedural errors justify a new trial in this matter.

2. Whether the Tribal Court lacks jurisdiction to place a hold on Appellant's I.I.M. account.

In addition to the two (2) issues above at two (2) scheduled hearings, Appellant also raised the following issue:

3. Whether Associate Justice Melbourne should be disqualified pursuant to I CCOJ 307 in that his wife was Appellant's cousin.

I.

Appellant contended that there were the following procedural errors which justified a new trial:

"a. The "Summons" (Attachment D) does not conform to the "Notice of Civil Action" that used in civil cases in Fort Peck Tribal Court.

"b. The presiding judge did not ascertain whether the defendant had any defenses or wished to present a counterclaim, contrary to Title IV, Section 103(a).

"c. The presiding judge did not ascertain whether the defendant was ready for trial on her counterclaim against plaintiff, contrary to Title IV, Section 103(e).

"d. Only one witness was sworn under oath, although several testified, contrary to Title IV, Section 201(b).

"e. The defendant was not advised of her right to a jury trial since the amount in questions was more than \$2,500.00 (principal: \$2,361.04; interest: \$60.90; late fees: \$30.00; attorney fees: \$200.00; costs: \$10.00) which was contrary to Title IV, Section 201(c)."

In addressing the first contention, the Summons filed herein does appear to conform to the requirements of IV CCOJ 103 although it is not specifically entitled a Notice of Court Action. Therefore, Appellant's first contention is without merit.

In addressing the final four (4) contentions, this Court was not provided with a copy of a recording or transcript of the hearing which was held pursuant to IV CCOJ 103. A transcript would have reflected whether the presiding judge had ascertained whether Appellant had any defenses or wished to present a counterclaim or if Appellant was ready for an immediate trial.

A transcript is necessary to determine whether Appellant was afforded procedural due process and since a transcript is not available, this Court must give Appellant the benefit of the doubt to insure all parties in tribal court are afforded procedural due process. If the parties had not stipulated to having the matter remanded to tribal court for a new trial this Court would have had no choice but to remand the matter anyway.

II.

In addressing the second issue, the Appellant failed to provide this Court with copies of the federal regulations claimed to

prohibit the tribal court from placing a hold on the I.I.M. account of Appellant, i.e. 25 C.F.R. 115.9 (1987) and 25 C.F.R. 115.10 (1987). The Appellant's attorney has given only her interpretation of these sections and failed to provide copies of the regulations in support of her position.

Therefore, this Court will not agree to instruct the tribal court it lacks jurisdiction over I.I.M. accounts. It will be the opinion of this Court that the tribal court does have authority to order in a judgment that a hold be placed upon an individual's I.I.M. account to satisfy a judgment obtained within the tribal court. The Department of the Interior is not required to honor the hold if it has federal regulations which a party having obtained a judgment containing a hold has failed to comply with.

It shall be the duty of the party seeking to enforce the hold on the I.I.M. account, and to obtain the release of funds therefrom, to request the Secretary of the Interior or his authorized representative to honor the hold and release the funds. It shall also be the duty of the party seeking to enforce the hold to take what steps are required by federal regulations to provide required notices and opportunity for hearings to the individual Indian affected by the hold.

III.

In the instant case, it was not necessary for Justice Melbourne to be disqualified because his wife was a cousin to the Appellant. In I CCOJ 307, disqualification of a justice or a judge is discussed. This section reads,

"A justice or judge shall be disqualified in any proceeding in which his or her impartiality might reasonably be questioned, in which he or she has any personal bias or prejudice concerning any party, in which he or she or a member of his or her immediate family might be a witness, has any interest, or has any personal knowledge of any disputed evidentiary facts concerning the proceedings, or has acted or is acting as a lawyer or lay counselor in the proceeding, or in which he or she might otherwise appear to be biased or prejudiced. The chief judge must determine all disqualifications in the Tribal Court. As used in this section, immediate family shall include spouses, grandparents, parents, children, grandchildren, brothers, sisters and in-laws."

Appellant was raising the objection that Justice Melbourne should be disqualified under the above section. Appellee agreed to stipulate to the impartiality of Justice Melbourne. It is evident that Appellant is not a member of Justice Melbourne's immediate family as defined in and contemplated by I CCOJ 307. Furthermore, Justice Melbourne could not see any reason for disqualifying himself and refused to do so. Rule 11 of the Rules of Appellate Procedure dealing with disqualifications of Justices reads,

"If any party to a case challenges the impartiality of a Justice, and the Justice does not disqualify himself, the Chief Justice may determine that the Justice should nonetheless be disqualified. In the event of disqualification, a substitute Justice may be appointed for that cause by the Tribal Executive Board, or by the Court (using a random selection procedure) from a list of substitute Justices approved in advance by the Tribal Executive Board."

The Chief justice determined that Justice Melbourne should not be disqualified and proceeded with hearing this case.

After proceeding with oral arguments, both parties stipulated to the fairness of a remand of this matter to tribal court for a new trial on the merits since there was no transcript to determine whether. Appellant was afforded procedural due process.

The Court having entered its order that two justices would hear this matter and concurring ordered a remand of this matter to tribal court for a new trial in which the Appellant would be afforded her procedural due process rights under IV CCOJ 103. A recording or transcript shall be made of the trial.

IT IS THE OPINION OF THIS COURT THAT BECAUSE THERE WAS NO RECORDING OR TRANSCRIPT OF THE TRIBAL COURT PROCEEDINGS AND THE PARTIES HAVE STIPULATED TO THE FAIRNESS OF A REMAND TO TRIBAL COURT FOR A NEW TRIAL; IT IS HEREBY ORDERED THAT THIS MATTER BE REMANDED TO TRIBAL COURT FOR A NEW TRIAL WITHIN THIRTY (30) DAYS FROM THE FILING OF THIS OPINION. THE TRIBAL COURT IS AUTHORIZED TO ENTER ITS JUDGMENT PLACING A HOLD ON AN I.I.M. ACCOUNT, HOWEVER, A PARTY SEEKING TO ENFORCE THE HOLD AND OBTAIN THE RELEASE OF FUNDS MUST COMPLY WITH ALL APPLICABLE FEDERAL REGULATIONS.

DATED this _____ day of December, 1988.

BY THE COURT OF APPEALS:

ARNIE A. HOVE, Chief Justice

GARY JAMES MELBOURNE, Associate Justice
