FORT PECK COURT OF APPEALS
ASSINIBOINE AND SIOUX TRIBES
FORT PECK INDIAN RESERVATION
POPLAR, MONTANA
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IN RE THE MARRIAGE OF
KELLY G. PRATT,
Petitioner/Appellee,

Appeal No. 058

and

DELLA R. PRATT,
Respondent/Appellant.

THIS APPEAL is from the Initial Order Vacating Proceedings in the Fort Peck Tribal Court, Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, Wolf Point, Montana dated August 31, 1988. Lawyer-Judge Julian H. Brown presided.

FOR APPELLANT: David Alan Dick, Attorney at Law, 204 First Avenue South Wolf Point, Montana 59201.

FOR APPELLEE: Joan Meyer Nye, Attorney at Law, 3317 Third Avenue North, Billings, MT 59101—1906.

CIVIL: PURSUANT TO V CCOJ 301 TRIBAL COURT HAS JURISDICTION TO ISSUE TEMPORARY ORDER'S FOR CUSTODY; TITLE VI CCOJ 309 DOES NOT AUTHORIZE TRIBAL COURT TO MODIFY THE CUSTODY AND SUPPORT PROVISIONS OF A DIVORCE GRANTED UNDER THE LAWS OF A STATE; TRIBAL COURT'S ACTIONS IN VACATING TEMPORARY ORDER WAS PROPER; PURSUANT TO IV CCOJ 309, ATTORNEY FEES AND COSTS ARE APPROPRIATE TO AWARD TO THE PREVAILING PARTY AGAINST ATTORNEY AND CLIENT FOR A CASE PROSECUTED SOLELY FOR HARASSMENT AND WITHOUT REASONABLE EXPECTATION OF SUCCESS PURSUANT TO IV CCOJ 309; AND ATTORNEY IS WARNED FORUM SHOPPING AND EX PARTE COMMUNICATIONS WITH JUDGES AND JUSTICES IS IMPROPER AND WILL RESULT IN FORMAL PROCEEDINGS.

Argued: April 12, 1989 Decided: April 12, 1989.

OPINION by Arnie A. Hove, Chief Justice, and Gary James Melbourne, Associate Justice, joined be Floyd Azure, Associate Justice.

HELD: ORDER VACATING PROCEEDINGS WAS APPROPRIATE, APPEAL IS HEREBY DISMISSED WITH ATTORNEY FEES AND COSTS AWARDED TO APPELLEE. A BILL MUST BE SUBMITTED TO THIS COURT FOR APPROVAL.

FACTS:

On February 11, 1988, the Montana Fifteenth Judicial District Court, Daniels County, ordered primary custody of the parties' minor child to be with the Petitioner father, effective when the child began school, which was expected to occur in the fall of 1988.

On August 22, 1988, Montana Legal Services went to the Fort Peck Tribal Court with a Motion to Amend Custody, Notice of Motion and Affidavit of Respondent. The tribal court issued an ex parte order purporting to change custody to Appellant. On August 31, 1988, Appellee went to another tribal judge and obtained an order vacating the first tribal judge's change of custody. On August 31, 1988, Appellant then filed a Notice of Appeal and obtained from a third tribal judge, a tribal court order staying the vacation of the first order. On September 8, 1988, Appellant then obtained a second order staying the vacation of the temporary custody order and requiring the immediate return of the child to the Reservation and the custody of the Appellant.

On September 7, 1988, Appellee had asked the Montana Fifteenth Judicial District Court in Daniels Court for an Order to Show Cause to restrict Appellant's visitation rights, to determine whether the child is suffering harm or abuse in Appellee's custody, and to award attorney fees. The matter was heard on September 15, 1988. Appellee appeared in person and with his attorney Joan Meyer Nye. Appellant appeared in person and with her three attorneys from Montana Legal Services, David Alan Dick, Steven L. Bunch, and Rene a. Martell. After hearing testimony, and receiving documents into evidence, the Court made findings of fact and conclusions of law and an order which was dated December 20, 1988. The Courts findings and conclusions were as follows:

> "1. The parties exchanged physical custody of Stephanie Pratt since the decree of dissolution entered herein on February 22, 2988. The child resided with each parent for approximately two week intervals in accordance with the schedule set forth therein, with informal changes mutually agreed upon. No problems arose in the parties' exchange, and neither party complained to the other party of problems or misconduct by the other party with regard to Stephanie.
>
> "3. (sic) After the decree of dissolution the child did not live consecutively for a period exceeding a month in either Scobey or Wolf Point. The only place where the child has lived for a period of six months or more is Scobey, Montana, which this Court found had been her home town since birth; she never lived anywhere else until she began spending part of her time with the mother in Wolf Point in October 1987.
>
> "4. This Court has continuing jurisdiction over the custody of Stephanie Pratt. Respondent mother claims that the Fort Peck Tribal Court has concurrent jurisdiction, but there is no legal reason for this Court with initial and continuing jurisdiction to defer to another court, under the Uniform Child Custody Jurisdiction Act or any other law. There has been no change in the child's "home state" or hometown; Daniels County is not an inconvenient forum for witnesses or determining facts concerning the child; and Stephanie Pratt has never lived on a reservation except for designated periods with her mother in Wolf Point during the past year.

"5. Without giving Petitioner father any notice or warning, on August 22, 1988, Respondent mother's attorneys obtained an ex parte order (Exhibit 1) from Fort Peck Tribal Court, purporting to award temporary custody to the mother.

"6. The mother and her attorneys claimed that the child was suffering abuse and emotional distress due to claimed negative statements, actions, and neglect of the father. From the testimony the Court finds that the mother's attorneys did not make a reasonable inquiry into the facts to determine if abuse was actually occurring or if the mother's claims of anti-Indian statements were true. David Dick just talked with the mother and maternal grandmother on Friday, August 19, 1988; he typed the papers over the weekend, and obtained an ex parte order early Monday morning. David Dick's inquiry into the facts before filing those papers with the Fort Peck Tribal Court consisted mostly of talking to the mother. He said he asked his secretary, Florence Youpee if the affidavit sounded true, Dick refused to state what Florence Youpee told him. Youpee lives in Wolf Point and there was no evidence that she provided any information as to the facts, had any basis for any claims about Kelly Pratt, or even knows him. Dick did not attempt to see or talk to the child, and he knew that she had not seen counselor, psychologist, social worker or other professional. Dick said he may have talked to other persons before or after filing the motion and order in Tribal Court, but he couldn't remember any names and couldn't remember if he'd talked to them before or after filing the motions and order. Thus, there is no evidence that Dick made any actual inquiry beyond the client and her mother. They cannot be considered objective witnesses and both live in Wolf Point. There was no showing that either had knowledge of the father's actions in Scobey.

"7. David Dick's acceptance of mere claims of mother about the father in another town, did not constitute a reasonable inquiry by David Dick to determine whether the mother's claims were well-grounded in fact. In particular, it did not constitute a reasonable inquiry before moving for an (sic) obtaining an ex parte order for change of custody. As an attorney practicing in Montana, Dick knew that the other party must be given advance notice and an opportunity to file opposing affidavits before the Court is requested to issue any order, under Section 40-4-220. MCA.

"8. Dick's own testimony further showed that he did not make a reasonable inquiry into the facts before filing a motion and order for ex parte change of custody. He said that it would be necessary for social workers to investigate the child's circumstances before any court could determine whether the child was suffering emotional abuse. Dick knew there had been no such investigation before he filed for ex parte change of custody.

"9. David Dick filed his motions and order changing the custody order of this Court with the Fort Peck Tribal Court, claiming jurisdiction under the Fort Peck Family Code and Juvenile Code. David Dick did not have reasonable grounds to believe that his modification action or ex parte order before the Tribal Court was well founded in the existing law of Montana or the Fort Peck Tribal Codes. This Court clearly had continuing jurisdiction of the matter. This Court's previous order of October 19, 1987, was law of the case, changed to establishing jurisdiction with this Court and denying Respondent's attempt to tribal court

jurisdiction.

"10. The Fort Peck Family Code and Fort Peck Juvenile Code are not applicable herein and contain no authority for immediate change of a custody award of this Court's custody award under the Decree of Dissolution, without a home study and without a hearing within 72 hours. Dick, did not believe in good faith that the Fort Peck Juvenile Code gave authority for an immediate custody award, as shown be his failure to schedule a hearing within 72 hours.

"11. The Court finds that Dick knew or should have known that his motion for immediate temporary custody from the Fort Peck Tribal Court was not well founded in law. Dick claims that the reservation is the child's "home state" under Section 40-40103(5), M.C.A. (sic) and that her periods of residency in Scobey heave been just "temporary absences." That is a specious argument that cannot be made in good faith, in light of this Court's decree ordering equal physical custody from February 1988 until Stephanie begins school.

"12. Dick supplied this court only with selected portions of the Fort Peck Family and Juvenile codes. He omitted Sections 301 of the Family code and Section 303 of the Juvenile Code, which contain provisions contrary to his arguments. These omissions provide some further evidence of the lack of good faith legal basis for this tribal court motions and ex parte order.

"13. The Court has reviewed the father's responding affidavit of September 21, 1988, as required by Section 40-4-220, M.C.A. The mother's claims of anti-Indian statements by the father have questionable credibility, in light of (a) this Court's previous finding that the father did not show any vindictiveness or hate towards the mother, (b) the mother's failure to complain to the father at all until just before equal physical custody was to end due to school beginning, (c) the father's willingness to have the Court hear all evidence on the mother's claims of abuse as promptly as possible, and (d) the mother's resistance to that hearing and her failure to present any witnesses to the claimed abuse. The Court finds that there is insufficient evidence that the father is making negative statements about American Indians or otherwise causing emotional harm to the child in his custody, and the Court finds that the affidavits did not establish grounds for a hearing on modification of custody, as required by Section 40-4-220, M.C.A.

"14. Rule 11 of the Montana Rules of Civil Procedure applies to the mother's improper pleadings before the Fort Peck Tribal Court because their motions, affidavit and orders all claimed to modify an order of this Court. Therefore, those papers should be construed as being signed and filed in this action, for the purposes of determining whether this Court can impose sanctions under Rule 11. There was no petition for removal from state court and to another court. A knowing choice to file papers with wrong court, for modification on this Court's action, should be construed as wrongful conduct before this Court under Rule 11. Where the party and attorney clearly had notice of this Court's jurisdiction and did not have a good faith reason to seek an ex parte modification in the Tribal Court, this Court must have jurisdiction under Rule 11 to impose sanctions for their willful choice of the Tribal

Court instead of filing a motion for modification before this Court. David Allen (sic) Dick and Montana Legal Services are subject to Rule 11 of the Montana Rules of Civil Procedure, as attorneys admitted to practice in Montana.

"15. In addition to violating Rule 11, the mother's attorneys' choosing a different forum and getting an ex parte order, without a reasonable investigation and based on specific legal theories violated Rule 3.1 of the Montana Rules of Professional Conduct. This Court is empowered to impose sanctions for violating these rules, as an abuse of proceedings under Section 3-1-501(d).

"16. A custody proceeding is one heard in equity. The mother's attorneys; ex parte proceeding in the wrong Court, without a reasonable inquiry into the facts and without legal basis for the attempted change of forum, caused the father $3,413.57 in attorney fees and costs. When a Court takes jurisdiction for one purpose, it will extend that jurisdiction so as to do complete justice with respect to matters which directly result from its decree. Having assumed jurisdiction of a part, the Court will determine all interrelated equities of the whole. This authorizes a Court to award attorney fees against someone not a party to the divorce, when that person files custody motions without good cause. Ex Parte Handley, 460 So. 2d 167, 45 ALR 4th 205, 209 (Ala. 1984)

"17. An award of attorney fees just against the mother would not effect equity or justice. The mother claims she has no funds for her own attorneys and was accepted for free legal representation by Montana Legal Services. Thus, equity requires that the mother's attorneys be required to make Petitioner father whole, by reimbursing him for the attorney fees and costs Petitioner incurred after the mother's attorneys filed the groundless proceedings in tribal court.

"18. Petitioner father's attorneys spent a reasonable amount of time to get the tribal court order vacated within a week and to bring the questions of claimed abuse before this Court within two weeks. Ralph Patcher's (sic) fee $300 was reasonable for his a efforts over a week's time to vacate the tribal court order, to allow the primary custodian to get the child. Joan Meyer Nye's hourly rate of $90 per hour is reasonable and her total fees and costs were reasonable, given the rapid action taken to resolve the matter, the necessity of her travel, which David Dick anticipated, the legal arguments raised by Dick which required briefing, and the results achieved by Petitioner's attorney.

"19. Della R. Pratt, David Allen (sic) Dick, and Montana Legal Services should be required to pay the father's attorneys fees and costs through September 21, 1988, in the amount of $3413.57.

VISITATION

"20. The Court finds that the child's mental, moral, or emotional health would be seriously endangered by allowing the mother her usual visitation rights because the mother continues to claim custody under a Tribal Court order (Exhibit 4). The mother kept the child

in Wolf Point, away from her regular school, under such a Tribal Court order of temporary custody (Exhibit 1) in August, and the mother is expected to do the same thing under her continued claim of custody if she is allowed to take the child back to Wolf Point. The mother's initial Tribal Court order of custody was vacated by the Tribal Court order (Exhibit 2), but the mother got another order (Exhibit 4) staying the vacating order, pending her appeal. Unless the mother requests the Tribal Court to vacate its stay order, it is necessary and in the child's best interest for the mother's visitation rights to be modified, to allow her visitation with the child only in Scobey, under such reasonable supervision as the father shall arrange to assure the child's return to his physical custody and her regular school in Scobey."

As a result of the Court's finding, the Court's order was as follows:

> "1. This Court has continuing jurisdiction of questions concerning Stephanie Pratt's custody.
>
> "2. Della R. Pratt's motion for change of custody is denied under Section 40-4-220, M.C. A.
>
> "3. Judgment is entered in favor of Kelly Pratt and Nye & Meyer, P.C., against Della R. Pratt, David Allen (sic) Dick, and Montana Legal Services jointly and severally, in the amount of $3,413.57 for Kelly Pratt's attorney fees and costs through September 21, 1988.
>
> "4. Until such time as Della Pratt obtains an order from the Fort Peck Tribal Court vacating its Order Staying the Vacation of the Temporary Custody Order, dated September 8, 1988. Della Pratt's visitation is modified as follows: She shall have visitation with the child only in Scobey, under such reasonable supervision as the father shall arrange to assure the child's return to his physical custody and her regular school in Scobey."

The issues presented for review by Appellant were as follows:

> I. DID THE FORT PECK TRIBAL COURT HAVE JURISDICTION TO ISSUE A TEMPORARY ORDER FOR CUSTODY OF STEPHANIE PRATT ON AUGUST 22, 1988?
>
> II. DOES THE FORT PECK TRIBAL COURT HAVE JURISDICTION TO MODIFY THE CUSTODY AND SUPPORT PROVISIONS OF CAUSE NUMBER 87-3471 OF THE MONTANA FIFTEENTH JUDICIAL DISTRICT, DANIEL COUNTY?
>
> III. SHOULD ALL LAWYER JUDGE BROWN'S ACTIONS, IN VACATING THE PETITIONER'S TEMPORARY CUSTODY ORDER, BE OVERTURNED BECAUSE OF IMPROPER PROCEDURE, LACK OF AUTHORITY AND DONE WITHOUT LEGAL CAUSE?

In addition to the above issues, Appellant raised numerous collateral issues under each of those set forth above. It is the

intent of this Court in the following to address the three (3) issues above and each of their collateral issues.

I.

Appellant argues the Fort Peck Tribal Court had jurisdiction to issue a temporary custody order for the child Stephanie on August 22, 1988. Appellant contents the tribal court had this jurisdiction under provisions of the Juvenile Code, Title V, and Family Code, Title VI of the CCOJ.

Appellant correctly argues the CCOJ provides the Fort Peck Tribal Juvenile Court with exclusive jurisdiction of Indian children covered by V CCOJ 101. Appellant correctly argues any person may submit a petition to have a child, subject to the jurisdiction of the court, declared abused. In addition, the Fort Peck Tribal Juvenile Court has jurisdiction to issue a temporary order for custody of an abused, abandoned or neglected Indian child within the Fort Peck Indian Reservation under V CCOJ

101. This section reads in full as follows:

> "The Fort Peck Tribal Juvenile Court shall have exclusive original jurisdiction over all matters involving Indian children covered by this Title."

Appellant did bring a petition under V CCOJ 301 to obtain temporary custody of the child. Appellant alleged Appellee's treatment of the child was emotional abuse as defined under V CCOJ 102 (a) and (b). This section reads in part,

> "(a) Child. Any Indian under eighteen (18) years of age.
>
> "(b) Abused child. A child who has suffered or is likely in the immediate future to suffer serious physical or emotional harm as a result of a parent, guardian or custodian inflicting or failing to make reasonable efforts to prevent the infliction of physical or mental injury upon the child, including excessive corporal punishment or an act of sexual abuse or molestation.

Appellant argued if there is probable cause to believe a child is abused or will suffer emotional harm if not immediately removed from the home, such child may be placed in a private home. In some situations, V CCOJ 201 (b) gives authority to certain individuals to take such action. An abused child can be taken into protective custody and placed as permitted by V CCOJ 201(b). This section reads as follows:

> "...
>
> "(b) Any licensed physician, law enforcement officer, social worker, or tribal juvenile officer who has probable cause to believe a child is neglected or abused and will suffer physical or emotional harm if not immediately removed from the home may place the child in shelter care. Such child may be placed in a private home or temporary foster home or institution, but not in a facility where the child has sight or sound contact with alleged delinquents."
>
> "...."

In the instant case, the facts did not demonstrate the above section was applicable and the need for immediate removal of Stephanie from the home and placement in a private home or temporary foster home or institution. The facts as alleged by Appellant were as follows: (1) Appellee was frequently and emphatically stating all Indians are nothing but no good drunks who will never amount to anything and her mother is an Indian, and all Indians are bad; (2) the child had been asking questions regarding these statements and how they pertain to her; and (3) Appellee is alleged to have been bragging about unusual sexual activity and Appellant alleges this is likely to cause substantial emotional harm to the child involved.

With the above unsubstantiated allegations, Appellant obtained an emergency temporary order from the tribal court until a full hearing could be held. Upon a more thorough investigation by the judges of the tribal court, the temporary order was vacated by Lawyer Judge Brown. I CCOJ 302 provides for this action and reads in part as follows:

> "Upon receiving a petition, the Court shall immediately have the petition screened by a juvenile office. The juvenile officer shall determine if the petition is sufficient on its fact to support a finding of child abuse, neglect, abandonment, delinquency, or status offense. If, based upon examination of the petition, the juvenile coordinator determines that the petition lacks merit, the petition shall be dismissed without further court proceedings... **"**

In following V CCOJ 302, Lawyer Judge Brown was authorized to take the extreme action of dismissing Appellant's action if the juvenile coordinator determines the petition lacks merit. The evidence presented to this Court was that Appellant's petition was reviewed by at least two (2) tribal judges one of which was then Juvenile Judge Tom McAnally who was acting as juvenile coordinator. Therefore Lawyer Judge Brown's actions were proper.

In addition to Title V of the Juvenile Code, Appellant has argued the Indian Child Welfare Act of 1975, 25 U.S.C. Section 1911, provides that tribal courts shall have exclusive jurisdiction over custody matters involving Indian children residing or domiciled on the tribe's reservation. This section reads in part as follows:

> Indian tribe jurisdiction over Indian child custody proceedings
>
> "(a) Exclusive jurisdiction. An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child."

In the case at bar, there was a decree of dissolution which established custody of and visitation with the child for the parties herein. At the time the decree of dissolution was entered, the child was not domiciled on the Fort Peck Indian Reservation. Under the decree, the child was residing alternately with the father and mother until she was enrolled in school then with the father during the school year. As acknowledged by Appellant, the Indian Child Welfare Act does exclude an award of custody in a divorce proceeding from the definition of "child custody proceeding". Title 25 USCS Section 19023 reads in part as follows:

> "For the purposes of this Act [25 USCS Sections 1901 et seq.], except as may be specifically provided otherwise, the term --

(1) "child custody proceeding" ...

"... shall not include a placement based upon an award, in a divorce proceeding, of custody to one of the parents."

Under 25 USCS Section 1922 of the Indian Child Welfare Act, in a true emergency situation where there is a need for the immediate removal from the home or placement of an Indian child residing or domiciled off the reservation, the same is permitted under applicable State law.

Title 25 USCS reads as follows:

"Emergency removal or placement of child; termination; appropriate action

"Nothing in this title [25 USCS Sections 1911 et seq.] shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title [25 USCS Section 1911 et seq.], transfer the child to the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate."

As Appellant contends, the CCOJ also provides for these emergency situations involving Indian children residing or domiciled on the Fort Peck Indian Reservation. Under V CCOJ 201(b), in a true emergency situation where there is a need for the immediate removal of a child from the home, the same is permitted regardless of a previous divorce proceeding wherein custody was awarded to the parent from which the child must be removed. The instant case was not the true emergency situation in which a child should have been removed from the custody of the parent under V CCOJ 201(b) as is evident by Lawyer Judge Brown's dismissal of Appellant's petition.

Under the divorce decree as previously stated the custody of the child was awarded one-half to each party until the child began school. The state court awarded custody of the child to the father during school. After making several findings, the trial court held "...it will be in her best interest for the father tol (sic) have primary physical custody. The mother shall be entitled to have physical custody for two months during the summer."

The parties were evidently able to comply with this custody arrangement until school started and no allegations had been made against Appellee during this arrangement. The starting of the child in school, which by previous decree unfortunately reduced Appellant's time with the child, may have precipitated the attempt to make allegations against Appellee and allege this emergency situation to have the tribal court assume jurisdiction

In any event, Appellant misstated the facts and law to the tribal judge to obtain the emergency order. As stated above, the entire situation and petition was reviewed shortly thereafter and Lawyer Judge Brown issued an order which vacated the

order assuming jurisdiction which is appropriate action under V CCOJ 302.

After the order vacated the proceedings, Appellant proceeded to have ex parte communications with the justices of this Court and misstate the facts and law to obtain an order which in effect pitted this Court in a struggle with a state court of Montana, the District Court of the Fifteenth Judicial District, which had original jurisdiction and continuing jurisdiction to enforce the custody and visitation previously established.

Appellant's arguments for jurisdiction of the tribal court by virtue of VI CCOJ 301 were misleading and erroneous. Title VI 301 reads as follows:

> "The Court shall have jurisdiction over annulment, divorce and any paternity, child custody, division of property, child support or alimony decree pursuant to such annulment or divorce where at least one party to the marriage is an Indian, and at least one party has been a bona fide resident within the boundaries of the Fort Peck Reservation for a period of 90 days immediately preceding the filing of the action."

In the instant case, there was a previous divorce decree.. Although Appellant was an Indian, the divorce decree was entered into at a time in which Appellant had been residing off the Reservation in Scobey, Montana. Therefore, the state court had jurisdiction over the divorce of the parties.

Appellant's actions at attempting to have the tribal court and this Court assume jurisdiction were inappropriate and contrary to the CCOJ. The tribal court's original assumption of jurisdiction in this matter without the true emergency situation contemplated by V CCOJ 201(b) was clearly contrary to the intent of VI CCOJ 309. This section reads as follows:

> "A divorce or annulment duly granted under the laws of the United States, any tribe, state, or foreign nation shall be recognized as valid by the Fort Peck Tribal Court for (all) purposes."

The above section clearly means the tribal court is not to interfere with or vary the terms of a divorce decree granted by a state court and which previously addressed the custody and visitation rights of the parties. In turn, no tribe, state, or foreign nation is to interfere with or vary the terms of a divorce decree by the Fort Peck Tribal Court unless the law may permit as under provisions of the Indian Civil Rights Act. Appellant's attempt to have the tribal court interfere without the true emergency situation was contrary to the intent of VI CCOJ 309.

Appellant made other erroneous and misleading arguments which only need to briefly addressed. First, Appellant argued Montana case law supported tribal court jurisdiction. Appellant cited absolutely no authority for this argument and therefore this argument is without merit.

Second, Appellant argued the Fort Peck Reservation has closer connections with Appellant and the child and the child was to have spent 75% of the time in the last eleven (11) months on the reservation. There were affidavits and a schedule of custody and visitation which refute the claim the child has spent 75% of the last eleven (11) months on the reservation. Furthermore, the state court previously awarded joint custody of and equal visitation with the child until she started school based on the determination the child had lived in Scobey all of her life; the child's friends lived in the town; and etc.

Third, Appellant argued substantial evidence concerning the child's care is on the Fort Peck Indian Reservation. This is clearly contrary to the determinations made by the state court and, again, Appellant cites absolutely no facts or legal authority in support of his argument.

Fourth, Appellant argues issues of emergency care and modification were first raised in the Fort Peck Tribal Court and all other courts should defer to the first court in which the issue was raised under the Uniform Child Custody and Jurisdiction Act which seeks to minimize competition between the courts. The state court held against this argument of Appellant. The issues of emergency care and modification were first raised in the tribal court, however, under the facts of this case it was inappropriate for Appellant to have brought this case in tribal court when there was a previous decree by a court in another jurisdiction and no true emergency existed under Title V of the CCOJ.

Fifth, Appellant argues the state court should decline jurisdiction on other grounds. One of the grounds was that Appellant had obtained a valid emergency custody order from the tribal court. Again, this is erroneous since Appellant mislead the tribal court when obtaining the emergency custody order and subsequent orders for custody from this Court. Furthermore, the state court has no reason to decline jurisdiction but should be able to expect its decrees of dissolution to be recognized by other courts and by the tribal court as provided in VI CCOJ 309.

Finally, Appellant argues the state court should not exercise jurisdiction because there is a simultaneous proceeding in the Fort Peck Tribal Court. This argument is ludicrous. The Fort Peck Tribal Court should never have exercised jurisdiction in the instant case and would not have done so if properly advised of the facts and law by Appellant. Because there was not the clear emergency contemplated by Title V Of the CCOJ for the immediate removal of the child, the tribal court proceeding was irregular and inappropriate and the subsequent order vacating the same was proper.

A final note on this matter, the state court recognized the provisions in the tribal code and in construing the same found no authority whereby it was required to relinquish jurisdiction to the tribal court. The state court did recognize the tribal court and its code and with clearly a correct construction of the tribal code and Indian Child Welfare Act.

In conclusion, the Fort Peck Tribal Court does have jurisdiction to issue temporary custody orders despite previous custody awards under a divorce decree of another tribe, state or foreign nation and remove the child from the parent granted custody under V CCOJ 201(b) when a licensed physician, law enforcement officer, social worker, or tribal juvenile officer has probable cause to believe a child is neglected or abused and will suffer physical or emotional harm if not immediately removed from the home. The Fort Peck Tribal Court would have jurisdiction to issue a temporary custody order a take the child into protective custody upon the filing of a petition pursuant to V CCOJ 301 and screening of the petition under V CCOJ 302. In the instant case, the Fort Peck Tribal Court did not have jurisdiction under either Title V or VI and should not have issued a temporary order of custody modifying a previous decree on August 22, 1988, since there was no substantiated emergency in which the child would suffer immediate physical or emotional harm if not removed from the home.

II.

Under the facts in the instant case, the Fort Peck Tribal Court does not have jurisdiction to modify the custody and support provisions of Cause No. 87-3471 of the Montana Fifteenth Judicial District in Daniel County. Appellant makes several arguments in support of her position the Fort Peck Tribal Court does have jurisdiction to modify the custody and support provisions in the above referenced cause.

Appellant argues the Tribal Court followed its code provisions in this case and attempted to notify the other party and set

up a full hearing on the modification thus giving the other party reasonable notice. Appellant argues such code provision should be respected by the Montana District Court.

Pursuant to VI CCOJ 309, a divorce duly granted under the laws of the state of Montana are to be recognized as valid by the Fort Peck Tribal Court for all purposes which included previously established custody and visitation. Appellant should have advised the Tribal Court of the previous divorce decree and the applicability and effect of VI CCOJ 309 to her case.

Appellant made other arguments that the state court exercising jurisdiction in this case in effect violated the U.S. Constitution, Section 40-7-124, MCA and case law as established by the Montana Supreme Court (See Brief for Appellant, p. 21, 1 24-26) and that the state court should defer to the tribal court and this would be consistent with Montana law. These arguments were confusing, not well reasoned and require no further discussion.

In conclusion, the previous decree should have been recognized by the Tribal Court and respected by Appellant since there was not the facts for attempting a modification of the same. In the instant case, the Tribal Court did not have jurisdiction to modify the custody and support provisions of Cause No. 87-3471 of the Montana Fifteenth Judicial District.

III.

Lawyer Judge Brown's actions in vacating Appellant's temporary custody order was not improper procedure, lack of authority, or done without legal cause. This was addressed specifically in the first issue. However, Appellant argues dismissing Appellant's lawsuit in Tribal Court deprived her of her constitutional rights to access to the courts.

Appellant has had access to a state court which properly assumed jurisdiction of the original divorce proceedings. Appellant still has access to this state court therefore Appellant's argument is without merit.

Appellant argues the Appellee's request of the state court to deny Appellant visitation until the tribal court custody matter is dismissed with prejudice basically had the effect of enjoining the tribal court proceeding and was improper under the abstention doctrine. Appellant was using the pendency of the tribal court proceedings to deny Appellee access to the child as previously ordered without probable cause as previously discussed. The dismissal of the tribal court custody matter with prejudice has had no effect on this Court's proceeding and will have no effect on any order entered herein. Therefore, the Appellant's argument is without merit.

Finally, Appellant argues Lawyer Judge Brown's actions should be overturned because such actions violated Appellant's due process rights. Appellant argues the judge's actions sought to dismiss Appellant's petition. Lawyer Judge Brown's actions did in effect dismiss Appellant's petition and properly so under applicable law and the facts of this case. Therefore this was not a violation of Appellant's due process rights.

In having briefly addressed each of the Appellant's collateral issues and reviewing the actions of Appellant and her attorney in obtaining the temporary custody, this Court determined the same to be highly irregular and inappropriate. This court has reviewed the findings of the state court as previously set forth herein which supported an award of attorney fees and costs to Appellee. In the tribal code under IV CCOJ 309, attorney fees and costs can be awarded. This Section reads in part as follows:

"In civil actions costs shall be awarded the prevailing party as part of the final judgment

> unless the Court otherwise orders ... The Court shall not award attorney 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."

This Court determined this case has been prosecuted solely for harassment and without any reasonable expectation of success. Therefore Appellee is awarded is attorney fees and costs against the Appellant and her attorney David Dick with Montana Legal Services. Appellee must submit his bill for attorney fees to this Court for approval.

ADMONISHMENT TO ATTORNEY
DAVID ALAN DICK AND MONTANA LEGAL SERVICES

> AS A FINAL NOTE TO THE ATTORNEY AND MONTANA LEGAL SERVICES; DAVID ALAN DICK IS HEREBY PLACED ON NOTICE THAT HIS ACTIONS IN THIS CASE, WHICH INCLUDED MISLEADING THE TRIBAL COURT AND EX PARTE COMMUNICATIONS WITH THE JUDGES AND JUSTICES, IS STRONG EVIDENCE OF FORUM SHOPPING OF WHICH THIS COURT HAS STRONGLY DISAPPROVED AND CATEGORIZED AS UNETHICAL UNDER THE FORT PECK CODE OF ETHICS FOR ATTORNEY AND LAY COUNSELORS. ATTORNEY IS HEREBY ADMONISHED THAT FUTURE ACTIVITIES OF THIS NATURE SHALL RESULT IN FORMAL PROCEEDINGS BEING INITIATED BY THIS COURT. ATTORNEY IS ADVISED TO CONFORM HIS CONDUCT IN SUBSEQUENT PROCEEDINGS BEFORE THIS COURT TO THE CODE OF ETHICS.

IT IS THE UNANIMOUS DECISION OF THIS COURT TO AFFIRM LAWYER JUDGE BROWN'S ORDER VACATING THE PROCEEDINGS IN TRIBAL COURT, DISMISS APPELLANT'S APPEAL AND AWARD APPELLEE HIS ATTORNEY FEES AND COSTS UPON SUBMITTING A BILL AND RECEIVING APPROVAL OF THE SAME.

DATED this ____ day of July, 1989.

BY THE COURT OF APPEALS:

_____
Arnie A. Hove, Chief Justice

_____
Gary James Melbourne, Associate Justice

_____
Floyd Azure, Associate Justice