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

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FLOYD RUNS ABOVE, SR.,  
Petitioner/Appellee,

vs.

**Appeal No. 067**

CLAUDIA ADAMS,  
Respondent/Appellant.

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana. The Honorable Judge Mary E. Gourneau presided.

FOR APPELLANT: Melvin L. Eagleman, Sr., Lay Counselor, P.O. Box 1027, Poplar, Montana 59255.

FOR APPELLEE: David Alan Dick, Montana Legal Services, 204 First Avenue South, Wolf Point, Montana 59201.

CIVIL: THE TRIBAL COURT HAS EXCLUSIVE JURISDICTION OVER ALL APPEALS FROM ACTIONS BY AGENCIES OR OFFICES OF THE TRIBES; THE FORT PECK HOUSING AUTHORITY LOW RENT ADMISSIONS AND OCCUPANCY POLICIES PROVIDES APPEALS FOR REJECTED APPLICANTS WITHIN THE FOLLOWING FIFTEEN-DAY PERIOD; THE COURT OF APPEALS HAS JURISDICTION OVER APPEALS FROM EMERGENCY ORDERS WHICH ARE FINAL AND ISSUED BY THE TRIBAL COURT; AND SINGLE PERSONS DO NOT QUALIFY AS FAMILIES UNDER THE FORT PECK HOUSING AUTHORITY LOW RENT ADMISSIONS AND OCCUPANCY POLICIES.

ARGUED: April 7, 1989. DECIDED: April 7, 1989.

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

APPELLANT IS A SINGLE PERSON AND DOES NOT QUALIFY AS A FAMILY UNDER THE LOW RENT ADMISSIONS AND OCCUPANCY POLICIES AND THEREFORE MUST PEACEFULLY SURRENDER POSSESSION OF THE HOUSE WHICH IS OWNED BY THE FORT PECK HOUSING AUTHORITY AND PART OF A LOW RENT HOUSING PROGRAM NO LATER THAN 9:00 A.M. THE DAY IMMEDIATELY FOLLOWING THE FILING OF THIS OPINION OR BE HELD IN CONTEMPT.

## FACTS:

On March 13, 1989, Judge Gourneau issue an Order granting the relief requested in a Petition for Emergency Relief signed March 2, 1989. The relief granted was an emergency temporary custody order granting Appellee immediate possession, of the house at 704 D. St. East, Poplar, Montana, until a full hearing on the issues presented could be held. The house was noted to be owned by the Fort Peck Housing Authority and to be a part of a low rent housing program. It was further noted that Appellee and his children and such children's income was the basis of the approval of the application for occupation of low rent housing. After the hearing Appellee and his children were thrown out of the house by Respondent.

A hearing was held March 13, 1989 at 11:30 a.m. at the Fort Peck Tribal Court in Poplar, Montana. Appellant was present and represented by her counsel, Melvin Eagleman. The Fort Peck Housing Authority was represented by counsel, Carol Conners. From the testimony and pleadings filed therein, the Tribal Court made the following findings:

"1. This Court has proper jurisdiction to grant an ex parte emergency order to Floyd Runs Above based on the Comprehensive Code of Justice, Title I, Section 107 - Jurisdiction, in that Floyd Runs Above is an Indian and his children are enrolled members of the Fort Peck Tribes, and the Fort Peck Housing Authority is an entity governed and within the scope of this Court's jurisdiction. Furthermore, this Court has the right to protect enrolled Indian children and based, on such facts, this Court properly heard testimony and found that an emergency did exist and granted an ex parte order and set up a full hearing for within ten (10) days of the such order.

"2. The Fort Peck Housing Authority has appeared on March 13, 1989 and stated that the Housing Authority does not object to the Court's issuance of a temporary order based on an emergency situation with houses in the low rent housing program."

The Tribal Court then made the following Conclusion of Law:

"It is further found that the Fort Peck Housing Authority has the principal authority to decide who shall remain in houses owned by such authority. However, pursuant to the emergency powers of the Court, the Court may issue temporary orders until the Housing Board can meet and act on any such application where the parties have previously resided in a home owned by the housing authority. It is further noted that the original application, which Claudia Adams submitted, included Floyd Runs Above and his minor children in their income. Now that the parties no longer reside together, the Housing Authority has determined that Claudia Adams is no longer eligible to reside in the house in question. However, Floyd Runs Above is entitled to remain in and retain such house pursuant to the low rent program based on his minor children's occupancy of such home. Further, the Housing Authority informed this Court that they have decided to allow Floyd Runs Above and his children to remain in such house from this point on. Therefore, the Housing Authority's decision will be respected by this Court."

Because of the above, the Tribal Court issued the following order:

"IT IS HEREBY ORDERED that this Court will herein dismiss its temporary possession order dated March 4, 1989, and hereby direct the parties to comply with the decision of the Fort Peck Housing Authority granting Floyd Runs Above immediate possession of the house in question. The Parties are directed to follow such decision and are hereby informed that failure to follow such decision will result in a contempt citation against them. The Respondent Claudia Adams is also directed to peacefully surrender possession of such home no later than 9:00 a.m. on March 14, 1989."

Appellant appealed the Court's order of March 3, 1989 by having her counsel file the following: "Motion and Request for A Ex Parte Injunction of a March 3, 1989. Ex parte Hearing that was held in the Fort Peck Tribal Court at Poplar, Montana." The Appellee's motion contained the following issues:

1. Whether the Tribal Court properly issued a restraining order in favor of Appellee.
2. Whether Appellant was denied due process because she was not given adequate time to prepare and obtain adequate legal counsel.

The Appellant's Brief presented the following issues:

"1. Should the Appellate Court Stay be vacated because to allow Claudia Adams to remain the 3—bedroom low—rent housing program house in question would not be maintaining the status quo of the parties, and would be allowing the Appellant to continue to ignore court orders, after she has, for over two weeks, disobeyed Court and Housing Authority orders to vacate this home?

"2. Should the Appellate Court Stay be vacated based on the fact that the rightful person to possess the 3—bedroom house in question is Floyd Runs Above, Sr. since such house is leased in his name and he and his children are the only proper and eligible persons to remain in possession of such 3-bedroom low-rent housing program house?

"3. Should the Appellate Court Stay be vacated because it is inappropriate for the Appellate Court to stay a domestic relation order pending appeal absent extraordinary circumstances?

"4. Should the Appellate Court Stay be vacated because the Appellant has failed to follow the proper procedure and has only pled issues which are moot and irrelevant to any appeal?"

This Court rejected both parties issues as inappropriate issues in the instant case and narrowed the issues at oral arguments to only two, one of which involved jurisdiction of the Tribal Court and Court of Appeals in this matter. The other issue was as follows:

"Whether Appellant as an applicant meets the definition of family and is thereby entitled to admission in the Low Rent Housing Program and to possession of the house owned by the

I.

Before discussing the jurisdiction of this Court to hear this matter and issue stays and finally addressing the above issue, this Court must address the actions of Appellee's attorney in raising the aforementioned issues ex parte with the Chief Justice of this Court.

Appellee's attorney made several inappropriate ex parte communications via telephone with the Chief Justice prior to oral arguments. Attorney attempted to obtain an order from the Chief Justice to vacate the stay during ex parte communications from the would be lifted through arguments that this Court had no authority to issue a stay and was not following the correct law. Despite attorney's attempts to obtain an order to vacate the stay during ex parte communications with the Chief Justice, no immediate action was taken. Attorney in at least two (2) telephone conversations argued with the Chief Justice that this Court's stay was inappropriate under existing Tribal law in violation of Canon 15 of the Code of Ethics.

The entire matter was discussed with the Associate Justices. This Court as a body had previously refused to be persuaded by attorney's arguments and noted the improper conduct of Appellant's attorney. This Court further agreed to reprimand attorney at the time of rendering a decision for his ex parte communications and parties of the reprimand.

In now addressing the issue of jurisdiction, the Tribal Court has jurisdiction to review administrative decisions of the Fort Peck Housing Authority under I CCOJ 113(a) and because since the Low Rent Admissions and Occupancy Policies provides for appeals. This will be discussed in greater detail herein. As for I CCOJ 113(a), this section reads in part as follows:

"(a) The Court shall have exclusive jurisdiction over all appeals from actions by agencies or offices of the Tribes, where such appeals are authorized by this Code."

Appeals from landlord and tenant proceedings are authorized by and handled according to VII CCOJ 101 through 106. This Court has jurisdiction of this appeal and authority to issue the stay under I CCOJ 202 which reads in applicable part as follows:

"The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court. (Emphasis Added.) 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 the Tribal Court if such determinations are supported by substantial evidence, The Court of Appeals, or the Chief Justice alone, shall have jurisdiction:

" ...

"(c) to make any order appropriate to preserve the status quo or to protect any ultimate judgment of the Court of Appeals."

The March 13, 1989 Order is clearly a final order of the Tribal Court. Therefore, this Court has jurisdiction to hear this appeal. As for issuing a stay, the stay was necessary in the opinion of the two (2) then acting justices to preserve the status quo in that Appellant was residing in the home. Therefore, this Court acted appropriately in issuing a stay to preserve the

Contrary to the contentions of Appellee, this Court clearly had the authority to issue the stay in this matter and prevent the eviction of Appellant from the house until oral arguments and a final decision was rendered by this Court. Having established jurisdiction of this matter and authority to issue a stay, it is now appropriate to address the issue of whether Appellant is entitled to continue occupying the house in question.

The Fort Peck Housing Authority was not made a party to this action, however, three (3) employees were present at oral arguments. These employees were sworn and testified as to the correctness of the Tribal Court's March 13, 1989 Order wherein the Housing Authority had decided to allow Appellee and his children to remain in the house. In their testimony, the employees agreed with this Court's finding of jurisdiction and acknowledged the authority of this Court to finally determine which party was entitled to occupy the low rent house in question. In addition to the testimony, the employees provided this Court with the appropriate law on Admission Policies, 24 CFR 905.302 and Low Rent Admissions and Occupancy Policies of the Fort Peck Housing Authority.

In reviewing Appellant's testimony and/or statement made during oral argument, she testified she is an enrolled member of the Fort Peck Indian Reservation. Appellant testified that the only application was the Application for Housing dated January 26, 1989 which listed Appellee's income for the children and included herself, Appellee and his two (2) children who are enrolled members of the Fort Peck Indian Reservation. The Appellant further testified she is presently occupying the house with her sister; she is pregnant and expected to have the child in September of 1989; and Appellant was abusive. Appellant did not testify or make a statement.

Because it was already determined that Appellant and his two (2) children would be permitted to occupy the low rent house, this Court will review the correctness of that determination according to the aforementioned law and policies provided by the Fort Peck Housing Authority employees. The Low Rent Admissions and Occupancy Policies state the Fort Peck Housing Authority will accept applications for admissions to its program from applicants who, at the time of application, meet all of certain requirements. These requirements are in Section 1, Subpart A and read in part as follows:

"The applicant must qualify as a family. A family includes but is not limited to:

"(1) an elderly family

"(2) the remaining member of a tenant family who is at least 18 years of age

"(3) a Displaced person

"(4) Two or more persons (not otherwise defined above) as defined by the IHA

"(5) Enrolled members of the Assiniboine and Sioux Tribe"

Furthermore, the policy at Section 1, Subpart A specifically states, "Single persons who are under the age of 62 and are neither disabled, handicapped nor displaced normally are not eligible for Indian housing."

In the instant case, the Fort Peck Housing Authorities decision to permit Appellee and his children to occupy the low rent

housing was correct. Appellee does meet the requirements to qualify as a family for low rent housing. Appellant does not meet the requirements to qualify as a family because neither an expectant mother nor her and her sister fall within any of the previously set forth definitions.

At the hearing, it was also brought to the attention of the Appellant that the Court had been made aware of certain threatening statements she made to the Clerk of the Tribal Court. Appellant was warned against making further threats to Tribal Court employees.

It would appear from the law, policies and facts in this case that Appellee and his children are entitled to immediate possession of the low rent house at 704 D. St. East, Poplar, Montana and an Order directing Appellant to immediately vacate the same. Because of the previous problems experienced by the Fort Peck Housing Authority and Tribal Court with Appellant obeying determinations or orders, it would appear necessary to issue a strong warning to Appellant and the present occupants of the above house as to any refusal to comply with the decision and order of this Court.

A refusal to obey an order of this Court or the Tribal Court is Criminal Contempt, a Class A misdemeanor, pursuant to III CCOJ 410. This section reads in part as follows:

"All courts of the Assiniboine and Sioux Tribes have power to punish for contempt of their authority the following offenses:

" ...

"(b) disobedience or resistance to any process, order, subpoena, warrant or command of the Court.

"Criminal Contempt is a Class A misdemeanor."

Appellant and the occupants are warned that the decision of this Court is final and the order issued herein must be followed or they can expect prosecution for Criminal Contempt and the imposition of a penalty as set forth in III CCOJ 501(2) which reads in part as follows:

" ...

"(2) Class A misdemeanor, for which a maximum penalty of three months' imprisonment, a fine of five hundred dollars, or both, may be imposed."

Finally, this Court issued a strong reprimand to Appellee's attorney to cease and desist from further attempts at ex parte communications with the Chief Justice and any other justice or judge of the Fort Peck Tribal Court system or further action would be taken against attorney. This Court will provide attorney's employer, Montana Legal Services, with a copy of this Opinion.

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IT IS THE UNANIMOUS DECISION OF THIS COURT THAT BECAUSE APPELLANT IS A SINGLE PERSON AND DOES

NOT QUALIFY AS A FAMILY UNDER THE LOW RENT ADMISSIONS AND OCCUPANCY POLICIES, SHE AND THE PRESENT OCCUPANTS MUST PEACEFULLY SURRENDER POSSESSION OF THE HOUSE WHICH IS OWNED BY THE FORT PECK HOUSING AUTHORITY AND PART OF A LOW RENT HOUSING PROGRAM NO LATER THAN 9:00 A.M. THE DAY IMMEDIATELY FOLLOWING THE FILING OF THIS OPINION OR BE HELD IN CRIMINAL CONTEMPT PURSUANT TO III CCOJ 410(c).

DATED this \_\_\_\_\_ day of April, 1989.

**FORT PECK COURT OF APPEALS:**

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Arnie A. Hove, Chief Justice

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Gary James Melbourne, Associate Justice

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Floyd Azure, Associate Justice

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