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

IN THE MATTER OF THE CUSTODY OF
JAMES COLTON BRUGH,
A Minor Child.

Appeal No. 077

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Wolf Point, Montana, the Honorable TERRY L. BOYD, presided.

ARGUED: June 2, 1989 DECIDED: June 2, 1989.

FOR APPELLANT: Melissa Melton, Lay Counselor, P. O. Box 214, Wolf Point, Montana 59201.

FOR APPELLEE: David Alan Dick and Rene A. Martell, Montana Legal Services, Wolf Point, Montana 59201.

CIVIL: PURSUANT TO V CCOJ 101, THE FORT PECK TRIBAL JUVENILE COURT HAS EXCLUSIVE ORIGINAL JURISDICTION OVER ABUSED, ABANDONED OR NEGLECTED INDIAN CHILDREN ON THE FORT PECK INDIAN RESERVATION; AND FINDINGS OF FACT IN ORDER GRANTING CUSTODY OF AN ALLEGEDLY NEGLECTED CHILD MUST CONTAIN REFERENCES TO THE FACTORS IN V CCOJ 102(d)(1), (2) AND (3) TO SHOW THE SAME WERE APPLIED AND THERE WAS SUBSTANTIAL EVIDENCE FOR THE COURT'S DETERMINATION.

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

HELD: THE ORDER GRANTING CUSTODY CONTAINED NO FINDINGS OF FACT THAT THE MINOR CHILD WAS NOT A NEGLECTED CHILD UNDER V CCOJ 102(d) AND THEREFORE THE MATTER IS REMANDED TO THE TRIBAL COURT FOR A HEARING ON APPELLANT'S PETITION BEFORE THE CHIEF JUDGE OR JUVENILE JUDGE WITHIN FIVE (5) TO TEN (10) DAYS OF THE ORAL ARGUMENTS AND THIS COURT'S ORAL ORDER OF JUNE 2, 1989. THE CUSTODY OF THE CHILD IS TO REMAIN WITH THE APPELLANT.

FACTS:

On September 24, 1984, a Petition for Custody of the minor was signed by appellant, Gregory J. Brugh, the natural father, appellee, Jodi Rave, the natural mother, and Eugene Brugh, Sr., grandfather, giving custody of the minor child to the grandfather while appellee was in the United States Armed Forces. Appellant, grandfather and the minor child were residents

of the Fort Berthold Indian Reservation and enrolled members of the Three Affiliated Tribes. On August 30, 1988, Eugene Brugh, Sr. filed a Petition for Restoration of Custody to appellee.

On May 17, 1989, appellant filed a petition alleging that Colton James Brugh is a child within the tribal jurisdiction of the Fort Peck Indian Reservation and is neglected by reason of the following conditions that violate the Fort Peck Tribal Code: "Not capable of taking care and providing for him she does not work."

On May 18, 1989, a Complaint Seeking an Order to Show Cause was filed by appellee. Appellee was seeking recognition and enforcement of the Order for Restoration of Custody entered in the Fort Berthold Tribal Court on the 23rd day of September, 1988. The Complaint was made pursuant to VI CCOJ 312 of the Family Code Enforcement of judgment or judicial records of other jurisdictions. An Order to Show Cause was served upon appellant on May 18, 1989, wherein he was to appear before the Tribal Court on May 19, 1989 at 3:00 p.m. to show cause, if any he may have, why the Court should not recognize and enforce the custody order from the Fort Berthold Tribal Court. It further ordered appellant to immediately surrender the parties' minor child to appellee until a full hearing could be held on the order on May 19th.

Appellant filed a Motion for Reconsideration on May 18, 1989 which was denied by the Tribal Court. A hearing was held on May 19, 1989 and on May 22, 1989, the Tribal Court issued an Order Granting Custody which contained findings of fact and conclusions of law and dismissed appellant's petition. On May 19, 1989, appellant filed a Request for Appeal alleging the appellant's petition was dismissed when this Court did have jurisdiction and said petition was dismissed without good cause apparent. The appellant requested the Court of Appeals grant an appeal and the court issue a preliminary injunction as to the removal of the child from the Fort Peck Indian Reservation and the child remain with the natural father until the review of this matter. The appellant's request for an appeal was granted on May 19, 1989.

On May 22, 1989, appellee filed a Motion for Vacation of Preliminary Injunction or Expedited Hearing. On May 26, 1989, this Court filed an Order Granting Appeal and Setting A Briefing Schedule, Date, and Time for Oral Arguments which denied the appellee's motion for vacation of the preliminary injunction and granted the request for an expedited hearing.

The expedited hearing was held on June 2, 1989 at 9:00 a.m. Appellant and appellee were present at the hearing with their counsel. Because of the expedited hearing, the clerk was unable to have the transcript prepared.

The issues raised during oral argument and to be addressed by this Court are as follows:

1. Whether the Fort Peck Tribal Court had jurisdiction of this matter.
2. Whether there were sufficient findings of fact to determine the minor was not a neglected child under V CCOJ 101(d)(1), (2), and (3).

I.

The Fort Peck Tribal Juvenile Court, pursuant to V CCOJ 101, "shall have exclusive original jurisdiction over all matters involving Indian children covered by this Title." The Tribal Court dismissed appellant's petition to declare minor a neglected child under V CCOJ 102(d) for lack of personal jurisdiction.

At oral arguments, the parties stipulated if the minor was an abused, abandoned or neglected Indian child on the Fort Peck

Indian Reservation, the Tribal Court would have personal jurisdiction of the matter and over the parties herein. Appellant properly filed a petition in the Fort Peck Tribal Court, Juvenile Division alleging the child was neglected by reason of the following conditions: "Not capable of taking care and providing for him she does not work."

If supported by substantial evidence, the above conditions would violate the Fort Peck Tribal Code and give the Tribal Court jurisdiction to determine appropriate custody. In addition thereto, the parties or a party advised this Court the Fort Berthold and Wind River Tribal Courts have waived jurisdiction in this matter. Therefore, the Tribal Court's order dismissing the matter for lack of personal jurisdiction was reversible err.

II.

The jurisdiction of this Court is established in I CCOJ 202 which reads;

"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....

In the Order Granting Custody, the Court made the following findings,

"20. On 17 May, 1989, Respondent filed a petition to declare the Minor Child dependent or neglected, alleging Petitioner was not capable of taking care of the Minor Child and was not working.

"21. The aforesaid petition did not allege specific acts of neglect by Petitioner."

There are no other findings of fact which make reference to the alleged neglect of the minor by the appellee. As stated in the facts of this matter, there was no transcript for this Court to review because of granting appellee's request for an expedited hearing. In any event, the Tribal Court should have applied V CCOJ 102 (d) (1), (2) and (3) and made findings in accordance therewith and these findings should have been set forth specifically in the Order Granting Custody. These sections read,

"(d) Neglected child. A child:

"(1) whose parent, guardian or custodian fails to provide the minimal care which a reasonable prudent parent would provide in the circumstances for the subsistence, education, and welfare of the child; or

"(2) who has special physical or mental conditions for which the child's parent, guardian or custodian neglects or refuses to provide a reasonable level of special care; or

"(3) whose parent, guardian or custodian is unable to discharge his or her responsibilities to an for the child because of incarceration, hospitalization, or other physical or mental incapacity.

"A child shall not be deemed neglected if the reason for failing to provide adequate care for the child is the indigence of the parent or guardian.

"Minimal care shall mean provision of adequate food, clothing, shelter, medical care, and day—today—supervision. In determining whether minimal care has been provided, the Court shall apply the standards prevailing in the community."

Because there are no findings in the Order Granting Custody reflecting the Court guided itself by the factors in V CCOJ 102 (d) (l), (2), and (3) and the transcript was unavailable, this Court must find there was not substantial evidence to support what factual determinations were made on the issue of appellee' s neglect. In addition thereto, since V CCOJ 101 grants the Fort Peck Tribal Juvenile Court exclusive original jurisdiction over all matters involving Indian children, it is not clear to this Court how this matter came to be heard by an associate judge of the Tribal Court when the petition was filed with the Juvenile Division of the Fort Peck Tribal Court.

Therefore, this case will be remanded to the Tribal Court to be heard by the Chief Judge or judge of the Juvenile Court which has exclusive original jurisdiction under V CCOJ 101.

THEREFORE, THIS MATTER IS REMANDED TO THE TRIBAL COURT TO BE HEARD BY THE CHIEF JUDGE OR THE JUDGE OF THE JUVENILE COURT WITHIN FIVE (5) TO TEN (10) DAYS OF THE DATE OF THE ORAL DECISION OF THIS COURT FOR A DETERMINATION ON WHETHER THE MINOR IS A NEGLECTED CHILD UNDER V CCOJ 101(d) (1), (2) AND (3) AS ALLEGED IN APPELLANT'S PETITION DATED MAY 17, 1989. THE CUSTODY OF THE CHILD IS TO REMAIN WITH THE APPELLANT.

DATED this ____ day of June, 1989.

BY THE COURT OF APPEALS:

Arnie A. Hove, Chief Justice

Gary James Melbourne, Associate Justice
