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

IN THE MATTER OF
GERALD JACKSON,
Appellant,

vs. **Appeal No. 109**

ELIZABETH JACKSON,
Appellee.

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboiné and Sioux Tribes, Fort Peck Indian Reservation, Poplar, Montana, the Honorable TERRY L. BOYD, presided at the principal hearings.

ARGUED: January 9, 1991

DECIDED: February 8, 1991

FOR APPELLANT: Clayton Reum, (Lay Counselor), P.O. Box 38, Wolf Point, Montana 59201

FOR APPELLEE: Rene A. Martell, Montana Legal Services, 204 1st Avenue South, Wolf Point, Montana 59201.

UNANIMOUS OPINION by Gerard M. Schuster, Chief Justice, joined by Gary James Melbourne, Associate Justice and Debra Johnson, Associate Justice.

THE ORDER OF THE TRIBAL COURT ENTERED ON JULY 12, 1989 AND SUBSEQUENT CLARIFYING ORDERS OF THE COURT ARE UPHELD AND SUSTAINED. THE SOLE ISSUE OF CLARIFICATION OF VISITATION RIGHTS FOR APPELLANT IS REMANDED TO TRIBAL COURT FOR HEARING AND ORDER.

FACTS:

Appellant filed a petition for dissolution of marriage on August 3, 1987. Numerous motions, hearings and an interlocutory appeal followed. On May 18, 1989, a hearing on the merits of the petition was held

and a final order issued on July 12, 1989. Following the issuance of the final order on July 12, two orders were issued clarifying this final order on September 8, 1989, and September 6, 1990. In addition, Appellant was again ordered by the Court on February 14, 1990, to pay the debts of the marriage as ordered on July 12, 1989.

The major issues on appeal centered around the May 18, 1989 hearing, at which time Judge Boyd granted the divorce and reserved an order on certain issues pending review of evaluations, TRANSCRIPT OF HEARING, May 18, 1989, page 169 et seq. These issues were visitation and custody. TRANSCRIPT OF HEARING, May 18, 1989, page 171. Subsequently, Judge Boyd entered the July 12, 1989 final order.

The issues presented for appeal are:

1. Whether the issues of custody and visitation were properly decided by the Tribal Court.
2. Whether Appellant's rights to due process were violated.
3. Whether the issue of visitation requires further order.

DISCUSSION:

The standard for review by this Court is set forth at I CCOJ 2 § 202 as follows:

Sec. 202. 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...**

1. Examination of the transcript of the May 18, 1989 hearing clearly shows that the parties were advised as to Judge Boyd's intention to rule on custody and related issues based on home studies and mental evaluations as ordered by the Court. TRANSCRIPT, pages 170-172, Judge Boyd stated:

"Is there anything I left out?"

COUNSEL REUM: "It sounds pretty good"

(Tr. line 1, page 172)

COUNSEL DICK: "I think we're agreeing to that" (Tr. page 172)

We find no objection by Counsel for such ruling, and no request for subsequent hearing on the issues.

TRANSCRIPT, pages 170—174. There was an agreement by Counsel to follow this procedure.
TRANSCRIPT, page 172.

This Court will not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence. I CCOJ 2 §202.

There is ample evidence in the file and evaluations to support the order issued by the Court.

2. The issue of violations of due process is moot, based upon the opinion of issue 1, supra. As stated, we find no basis for requiring another hearing on the issues of custody and related issues simply because there was no hearing after the Court's examination of the various evaluations and reports. The Court's judgment was a factual determination based upon the reports and evaluations, and we find no basis to set aside such factual determinations since they are supported by substantial evidence. I CCOJ 2 §202.

3. We find Appellant's references to ethical violations for the attorneys, lay advocate, Justices and Judges in the case unsupported by substantial evidence. The issue is therefore dismissed . REF. Appellant's STATEMENT CLARIFYING APPEAL, page 1 and TRANSCRIPT OF APPEAL HEARING, January 9, 1991, pages 2 and 9.

VISITATION RIGHTS:

The sole issue which is remanded for further hearing is the matter of Appellant's visitation rights. A review of the transcript and oral argument indicates that this issue may need further clarification. TRANSCRIPT OF APPEAL, January 9, 1991, page 5. Appellant's STATEMENT CLARIFYING APPEAL, page 1. This Court believes that the best interest **of the** children will be served by a clarifying order on visitation. REF. VI CCOJ §304(a).

IN REMANDING THE VISITATION ISSUE FOR FURTHER HEARING, THIS COURT WOULD SET THE PARAMETERS FOR SAID HEARING AS FOLLOWS:

- (a) The hearing will be solely to clarify visitation rights for Appellant.
- (b) The hearing will not involve or consider custody, property, name change, or other issues previously determined.
- (c) This Court will not consider an appeal on the determination of visitation as entered by the Court.

THEREFORE, It is the unanimous opinion of this Court:

(1) The Order of the Tribal Court entered on July 12, 1989 and subsequent clarifying Orders of the Court are upheld and sustained.

(2) The sole issue of Appellant's visitation rights is remanded for further hearing in Tribal Court, with

the following conditions:

(a) The hearing will be solely to clarify visitation rights for Appellant. (b) The hearing will not involve or consider custody, property, name change, or other issues previously determined. (c) This Court will not consider an appeal on the determination of visitation as entered by the Court.

(b) The hearing will not involve or consider custody, property, name change, or other issues previously determined.

(c) This court will not consider an appeal on the determination of visitation as entered by the Court.

DATED this _____ day of February, 1991.

BY THE COURT OF APPEALS:

Gerard M. Schuster, Chief Justice

Gary James Melbourne, Associate Justice

Debra Johnson, Associate Justice
