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

IN RE THE MATTER OF
MYRNA BOYD YOUNGMAN,
Appellant,

vs.

Appeal No. 136

JAMES BOYD, WAYNE BOYD, BONNIE
NELSON, and MAVIS MARTELL GARCIA
Appellees.

THIS APPEAL is from an order of the Fort Peck Tribal Court dated June 25, 1991, granting partial summary judgment to Plaintiffs/Appellees, Honorable Howard Bemer presiding.

APPEARING FOR APPELLANT: Mary L. Zemyan, Attorney at Law, P.O. Box 1094, Wolf Point, MT 59201.

APPEARING FOR APPELLEES: Laura Christoffersen, Attorney at Law, P.O. Box 997, Wolf Point, MT 59201.

ARGUED: April 24, 1992

DECIDED: May 11, 1992

HELD: THE ORDER OF THE COURT AWARDING THE MOBILE HOME TO THE CHILDREN OF FLORENCE BELTON, DECEASED, IN EQUAL SHARES, IS AFFIRMED.

OPINION BY Gerard M. Schuster, Chief Justice, and concurrence by Debra A. Johnson, Associate Justice; Associate Justice Gary James Melbourne dissented and may file a separate written dissent.

FACTS

The single factual issue addressed by the Tribal Court in the order granting partial summary judgment was the ownership of a certain house trailer, the property of Florence Belton.

From the record, it appears that **Florence Belton died intestate February 11, 1985, leaving her surviving four children as her sole heirs.** At the time of her death Florence Belton owned a 1979 Liberty mobile home, registered solely in her name.

On or about August 7, 1987, Appellant Myrna J. Boyd filed with the State of Montana Department of Motor Vehicles an application for title for a motor vehicle by right of survivorship to transfer title to said mobile home to her name.

On or about January 25, 1990, the Department of Motor Vehicles, in response to Lay Counselor Lewellyn J. Cantrell's inquiry, provided a copy of said application to Mr. Cantrell who was then one of Plaintiff/Appellees' counsel of record herein.

The procedural history of the present matter is as follows:

The parties had been in litigation. On April 29th, 1991, the Plaintiffs' counsel filed an amended complaint which alleged that Defendant Myrna Boyd had deprived Wayne Boyd, Bonnie Nelson, and Mavis Martell Garcia of their fair share to their mother's estate by fraudulently obtaining title to a 1979 Liberty mobile home.

Also on April 29, 1991, the Plaintiffs' counsel filed a motion for partial summary judgment, asking that the Court award one-fourth ($\frac{1}{4}$) interest in that mobile home to each of the surviving children, namely: Wayne Body, Bonnie Nelson, Mavis Martell Garcia, and Myrna Boyd Youngman.

On May 1, 1991, the Defendant's counsel filed a motion for a continuance of the trial date based on the granting of leave to file the amended complaint.

On May 30, 1991, Defendant's counsel filed a response to the motion for partial summary judgment and attached an affidavit from Mavis Martell Garcia, a named Plaintiff.

On June 4, 1991, Plaintiffs' counsel filed a response which asked that the Court summarily award one-fourth ($\frac{1}{4}$) interest in the mobile home to Wayne Boyd and one-fourth ($\frac{1}{4}$) interest to Bonnie Nelson.

On June 5, 1991, Defendant's counsel prepared a supplemental reply which incorporated an affidavit from Bonnie Nelson. Said affidavit also disputed allegations of the amended complaint.

On June 25, 1991, the Court granted the Plaintiffs' motion for partial summary judgment and awarded equal shares in the mobile home to each of the four surviving children: Wayne Boyd, Bonnie Nelson, Mavis Martell Garcia, and Myrna Boyd Youngman.

On July 16, 1991, Defendant/Appellant Myrna Boyd Youngman filed her petition for review of this order.

The issue addressed by the Tribal Court in its order concerns the ownership of the mobile home.

A review of the file and briefs of counsel shows that there are collateral issues involved in the action between the parties. Defendant/Appellant Myrna Boyd Youngman contends that she is the owner of the mobile home. The mobile home is situated on property owned by one the Appellees, James Boyd. Mr. Boyd has asserted claims and liens for repairs, maintenance and storage of the mobile home. We do not purport to address these collateral issues herein; our opinion is limited to the sole issue of the ruling regarding ownership of the mobile home.

The appeal was limited to the issue:

Did the Tribal Court properly grant partial summary judgment in awarding the children of Florence Belton, deceased, equal shares in mobile home owned by Florence Belton at the time of her death in her sole name.

DISCUSSION:

1. JURISDICTION AND APPLICABLE LAW:

This Court's jurisdiction is stated as follows:

"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 matter of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence." **I CCOJ 202**

Since the Tribal Code does not have a specific provision for summary judgment, this Court will apply applicable Federal and State provisions in regard thereto, all in accordance with **IV CCOJ 501**.

2. GRANTING THE PARTIAL SUMMARY JUDGMENT:

A review of the procedural history of this case indicates that the Tribal Court erred in its ruling that Defendant/Appellant's failure to respond to Plaintiff/Appellees' motion for partial summary judgment by May 10, 1991 permitted the Court to grant the motion.

Rule 56(a), F.R.Civ.P. provides:

"A party seeking to recover upon a claim. . . . may, at any time after the expiration of 20 days from the commencement of the action. . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof."

Rule 56(c) provides in part:

"The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of the hearing may serve opposing affidavits...."

However, the review of the law applied in this case is not sufficient reason to set aside a basic factual determination of the Court which is supported by substantial evidence. **I CCOJ 202**. Here, the facts show that Florence Belton died intestate, leaving her four children as sole heirs. At the time of her death, Florence Belton owned the mobile home in her sole name. **REF. File Exhibits.**

The law on intestate succession is clear:

VIII CCOJ 106(a) (2) provides:

"if there is not surviving spouse, the interest shall descend in equal shares to the children of the decedent and to the issue of any deceased child of the decedent by right of representation;"

Application of Montana law, although unnecessary here, finds the same result. **REF. 72-2-203(1) MCA** (1989 Ed.)

Thus, upon the death of Florence Belton intestate, title to her mobile home passed by law to **WAYNE BOYD, BONNIE NELSON, MAVIS MARTELL and MYRNA BOYD** in equal undivided shares. **VIII CCOJ 106(a) (2)**. What any of said heirs choose to do with their interest in the mobile home is not relevant to this appeal.

Although the file does not indicate any intestate proceedings after the death of Florence Belton, clearly the applicable law supports the final order.

We find the Tribal Court's ruling on the motion for partial summary judgment to be harmless error, and concur with the finding of the Court.

Accordingly, the order of the Tribal Court is affirmed as follows:

THE CHILDREN OF FLORENCE BELTON, DECEASED, WAYNE BOYD, BONNIE NELSON, MAVIS MARTELL and MYRNA BODY SHALL EACH AWARDED A ONE-FOURTH (1/4) INTEREST IN AND TO THE MOBILE HOME

DATED this _____ day of May, 1992.

BY THE COURT OF APPEALS:

GERARD M. SCHUSTER, CHIEF JUSTICE

DEBRA A. JOHNSON, ASSOCIATE JUSTICE
