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

**Frederick Bighorn and Helen Bighorn,  
Petitioner/Appellee**

**vs.**

**Appeal No. 385**

**Clarice M. Daniels Spang, et.al.  
Respondent/Appellant**

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**ORDER OF REMAND**

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On March 23, 2002, this Court issued its Order to Show Cause why this matter should not be dismissed for failure to prosecute in accordance with the Briefing schedule issued on October 24, 2001. On April 19, 2002, a hearing was held on the Order to Show Cause and it was determined that appellants' Lay Counselor, Leighton E. Reum, failed to file a brief or, in lieu thereof, a Notice to Stand on the Record. It was noted that Mr. Reum included a 'Statement of Facts' and a 'Short Argument' in the Petition for Review. After discussing the importance of the requisite filing and the impact of a failure to file on the timely administration of the appeals court docket, this Court imposed sanctions directly on Mr. Reum in the form of a fifty dollar fine (\$50.00) to be paid within thirty (30) of this order. Having chosen to visit the penalty for failure to prosecute onto Mr. Reum and not the appellants, this Court, pursuant to its March 23, 2002 Order, proceeded to hear oral argument in the matter.

Leighton E. Reum, Lay Counselor at Law, appeared at the oral argument on behalf of the appellants, who were not present. June Daniels Clark appeared pro se and on behalf of the other appellees.

Appellants, who are defendants in an intra-family dispute regarding a house devised to plaintiffs and one of the defendants, Helen Bighorn, were to appear in Tribal Court for trial on March 23, 2001 at 9:00 a.m. The appellants claim that they were not properly served with notice of the trial date. The record shows that both plaintiffs were served on March 21, 2001 at 2:48 p.m. (14:58 as shown on the Certificate of Service). However, the Certificate of

Service is defective on its face in that it does not specify the location of the personal service. Further, the defendants filed an affidavit, which accompanied their Petition for Review, stating that neither of them had been personally served at anytime prior to the trial date of March 23, 2001.

After listening to oral arguments of both parties and after careful review of the record, it was the unanimous decision of this Court that the plaintiffs had not been properly served pursuant to **Title VIII CCOJ 2000 §102** and such failure denied them due process of law.

**IT IS NOW THEREFORE, THE ORDER OF THIS COURT THAT:**

The default judgment issued by the Tribal Court on March 27, 2001, is vacated and the matter is remanded to the Tribal Court for the purpose of a new trial.

Dated this 22nd day of April 2002.

**FOR THE FORT PECK COURT OF APPEALS:**

**PER CURIAM:**

BY:\_\_\_\_\_

**GARY P. SULLIVAN**  
**Chief Justice**

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**Gerard M. Schuster**  
**Associate Justice**

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**Carroll J. DeCoteau**  
**Associate Justice**