

Appellate Court
Fort Peck Indian Reservation
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FILED

JUL 08 2021

**Fort Peck Tribal Court
of Appeals**

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

<p>In the Matter of N.C. (D.O.B. 3/3/07);</p> <p>Ryan Beston Appellant,</p> <p>v.</p> <p>Laurie Schafer, Appellee.</p>	<p>CAUSE NO. AP # 809</p> <p>ORDER DENYING REVIEW OF APPEAL WITHOUT PREJUDICE, WITH DIRECTIONS</p>
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Appeal from the Fort Peck Tribal Court, Imogene Lilley, Presiding Judge.
Appellant Ryan Beston, appearing pro se.
Appellee Laurie Schafer, appearing pro se.
Before Shanley, Chief Justice and Desmond and Jones, Associate
Justices.

On March 26, 2021, Appellant filed a Notice of Appeal requesting this
Court to review a judgment entered by the Trial Court, Associate Judge Lilley,
modifying a prior custody order. The Appellant was served proper legal notice of
the hearing and failed to appear. Appellant alleges that, at the time of the

hearing, he was hospitalized in Billings, MT with MRSA and could not appear nor request a continuance. He further alleges that the Tribal Court erred in failing to consider the wishes of the child.

As this we concluded previously, this Court is not the appropriate forum to address a factual dispute concerning why a party failed to appear. *In the Matter of L.H. and A.H*, APP 810 (2021). When a party appeals from the entry of a judgment entered at a hearing that party did not attend, the sole issue that can be considered by the appellate court is whether the order entered by the lower court was appropriate in a default situation. In this case the Court file reflects Appellant was served for the Fact Finding Hearing scheduled on February 8, 2021 in Court. His assertion that he had a legitimate excuse for missing the custody hearing is one that needs to be presented to the Tribal Court in the first instance because this Court cannot accept new evidence on an appeal.

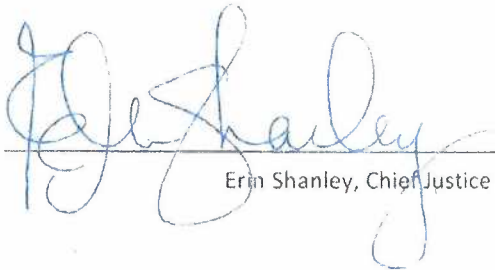
The appropriate remedy in this case is for the Appellant to move the lower court to set aside the order under Title 8, Section 302, which permits the lower court to vacate the default for good cause shown. There does not appear to be a time limit on the motion under the Code. It is not the appropriate function of this Court to reopen the record and permit evidence regarding the circumstances surrounding the reason that a party failed to appear. The lower court must determine these factual issues in the first instance prior to the Appellant seeking review with this Court.

WHEREFORE IT IS HEREBY

ORDERED, ADJUDGED AND DECREED that the appeal in this matter be and hereby is DENIED without prejudice to the right of the Appellant to file a motion with the lower court to vacate the order or reconsider. The motion for stay of the order is also DENIED at this time.

SO ORDERED the 3rd day of July 2021.

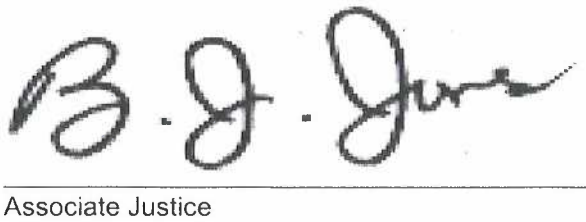
FORT PECK COURT OF APPEALS



Erin Shanley, Chief Justice



Brenda Desmond, Associate Justice



Associate Justice