

Appellate Court
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FILED
MAY 8 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 L.H. (D.O.B. 3/12/13) and A.H. (D.O.B. 12/15/15);</p> <p>Billie Black Hoop Appellant,</p> <p>v.</p> <p>Michael Headdress, Appellee.</p>	<p>CAUSE NO. AP # 810</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 Billie Blackhoop, appearing through Counsel Melissa Buckles. Appellee Michael Headdress, appearing pro se. Before Shanley, Chief Justice and Desmond and Jones, Associate Justices.

Ms. Black Hoop, through her advocate, Melissa G. Buckles, petitions this Court for review of a judgment entered by the Trial Court, Associate Judge Lilley, modifying a prior custody order between the parents of the children. She

also seeks a stay of the order pending appeal. The sole issue raised on the appeal is that the notice to her of the modification hearing was allegedly defective and she raises some factual contentions with regard to how service was allegedly effected on her.¹

As held in Cause No# AP 797, this Court is not the appropriate forum to address the issue the Appellant wishes to appeal. When a party appeals from the entry of a judgment entered at a hearing where that party did not attend, the sole issue before the Court is whether the order entered by the lower court was appropriate in a default situation. In this case the Court file reflects appropriate service of process at the Indian Health Service where the Appellant is employed, as well as mailing of the motion and notice of hearing to the mother's post office box, which came back as a closed box. She claims that the person at the front desk of the Indian Health Service who received the notice did not provide it to her. This is a factual dispute that needs to be resolved at the trial court level 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

¹ The Court process server left the notice at the Indian Health Services front desk, consistent with the protocol adopted by Indian Health Services during the pandemic and the Court understands that the paperwork would then be left with employees, patients and others as the Clinic.

court must determine these factual issues in the first instance prior to the Appellant seeking review with this Court.

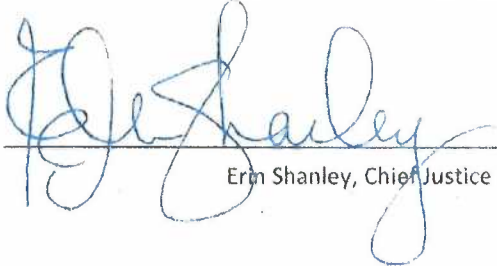
This Court acknowledges that in Matter of DA (2014) this Court did remand a matter for rehearing a default judgment. However, in that case it appeared to this Court that the default should not have been granted based upon the record before the Court. In this case there is obviously a conflict between what the Appellant alleges and what the record shows. It is best that this factual issue be resolved by the lower court prior to appeal.

WHEREFORE IT IS HEREBY

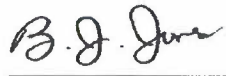
ORDERED, ADJUDGED AND DECREED that the appeal in this matter be and hereby is DENIED without prejudice to the right of the Appellant to file a motion with the lower court to vacate the order for defective service. The motion for stay of the order is also DENIED at this time.

SO ORDERED the 3rd day of May 2021.

FORT PECK COURT OF APPEALS


Erin Shanley, Chief Justice


Brenda Desmond, Associate Justice


Associate Justice