

Appellate Court
Fort Peck Indian Reservation
P.O. Box 1027
Poplar, Montana, 59255
PHONE 1-406-768-2400
FAX 1-406-768-3710

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

<p>LETA ATKINSON, Appellant</p> <p>v.</p> <p>WELLS FARGO BANK, N.A. Appellee</p>	<p>CAUSE NO. AP # 834</p> <p>ORDER DENYING APPEAL</p>
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Appeal from the Fort Peck Tribal Court, Stacie Fourstar, Presiding Judge.
Appellant Leah Atkinson, appearing pro se
Appellee appearing through David L. Irving, Attorney at Law
Before, B.J. Jones, Associate Justice and Grant Christensen, Associate Justice

E. Shanley, Chief Justice recusing

BACKGROUND

¶ 1 This matter comes before the Fort Peck Court of Appeals (FPCOA) on an appeal by Atkinson from the Court decision below evicting her from certain premises that had been the subject of foreclosure proceedings. The Appellant alleges that Judge Fourstar's grandfather is a cousin to her mother and thus should have not presided over the eviction proceedings. She failed to raise this to the Court below and it appears that the eviction proceedings were fairly perfunctory in nature as the Court had already foreclosed on the

mortgage on the home the Appellant was evicted from and had permitted the period for redemption to run.. The Appellant was not opposing the eviction but only asking for additional time to leave. She also argues that her rights were violated because she did not have legal counsel to represent her although it appears that Robert Welch had appeared for her in the foreclosure proceedings that preceded the eviction action. For the reasons stated herein the Court denies the appeal as lacking merit.

STATEMENT OF JURISDICTION

¶ 2 The Fort Peck Appellate Court reviews final orders from the Fort Peck Tribal Court. 2 CCOJ §202. The eviction order below is a final order.

STANDARD OF REVIEW

¶ 3 This Court reviews de novo all determinations of the lower 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. 2 CCOJ §202.

ISSUE

Whether the lower court's eviction order violated the Appellant's due process rights

DISCUSSION

The Appellant contends that because the presiding Judge's grandfather and her mother are allegedly cousins she was denied a fair hearing, notwithstanding the fact she did not raise this issue to the presiding Judge. At best this would make the Appellant and the Judge distant cousins and not bring them within the degree of consanguinity necessary for an automatic recusal under Title 2, CCOJ §307. There is nothing in this record that demonstrates that the presiding Judge had any type of bias or prejudice against the Appellant due to this alleged relationship and it is

incumbent upon parties to raise issues of perceived conflict by motions to recuse in order for this Court to address such issues. The Appellant failed to do that below.

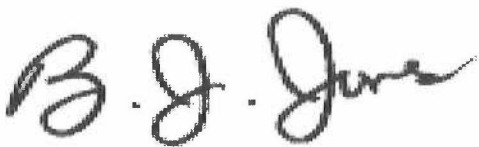
Her next argument is that she did not have legal counsel and thus her rights to due process were violated. The Indian Civil Rights Act, 25 USC 1302 et seq., does not guarantee a person in a civil proceeding such as this the right to court-appointed counsel. The Appellant claims that she was surprised when Robert Welch, who had been representing her in the foreclosure proceedings, did not appear at the eviction hearing. However, nothing in the record demonstrates that the Appellant raised this issue to the Court below or even asked for a continuance to get counsel. The notice to quit was served some six months prior to the judicial hearing, due to the COVID pandemic, and the Appellant had that amount of time to confer with counsel if she wanted to contest the eviction. She chose not to and cannot now raise that issue on appeal.

ORDER

¶ 4 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this Court dismisses the appeal at this time for failure to identify legal error in the eviction order below..

SO ORDERED the 21st day of April 2022.

FORT PECK COURT OF APPEALS



Associate Justice

