

Appellate Court  
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FORT PECK  
TRIBAL COURT OF APPEALS

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ASSINIBOINE AND SIOUX TRIBES  
FORT PECK INDIAN RESERVATION  
POPLAR, MONTANA

<p>Combs Memorial Property, Plaintiff-Appellee</p> <p>v.</p> <p>Donovan Red Boy Sr., Defendant-Appellant</p>	<p>CAUSE NO. AP # 836</p> <p>ORDER DISMISSING APPEAL WITHOUT PREJUDICE</p>
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PER CURIAM:

¶ 1 Mr. Red Boy Sr. has petitioned this Court for review of a February 28, 2022 Eviction Order and Judgment terminating his tenancy and removing him from certain premises managed by the Plaintiff. He raises numerous issues in his petition including allegations of mismanagement of the property, failure to maintain safe premises, and permitting criminal activity on the premises. He requests that this Court vacate the eviction order entered below.

¶ 2 The problem with this appeal is that the Appellant failed to appear for trial and thus did not raise any of these intriguing issues he now raises with this Court. There is

also no record of the Appellant seeking relief from the default judgment entered. Instead, he has appealed and wants to raise these issues for the first time on appeal. However, this Court is not the appropriate forum to address these issues. When a party appeals from the entry of a default judgment 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 granted the eviction when the Appellant did not appear for hearing. There is reference in the appeal to the Appellant requesting a continuance of the hearing, but there is no reference of such a request in the findings or decision below, or in the record below.

¶ 3 The appropriate remedy in this case is for the Appellant to move the lower court to set aside the default 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 why a party failed to appear at a Tribal Court hearing.. In addition, this Court notes that the allegations in the appeal may or may not constitute a defense to the eviction action.

¶ 4 This Court acknowledges that in *Matter of DA*, APP 676 (FPCOA 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- that he sought a continuance- and what the record shows. It is best that this issue be resolved by the lower court prior to appeal.

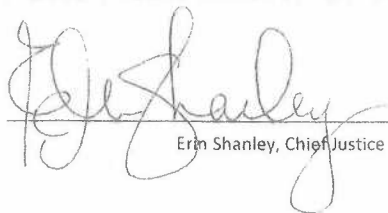
¶ 5 This Court further acknowledges that in *Grey Bear v. Fort Peck Housing Authority*, APP 733 (FPCOA Dec. 16, 2016) this Court reversed and remanded a default judgment. However, in *Grey Bear* the issue was whether the Defendant had been properly given notice of the hearing by a non-party to the proceedings when the only proof of service was completed by an agent of the Housing Authority. The record in that case, constituting the certificates of service pertaining to the notice given to the defendant prior to the default judgment, was sufficiently developed to allow this Court to reach the merits of the service issue. The factual and legal issues presented by the Appellant in this case are, in contrast, undeveloped in the record and thus require the Appellant to first ask the lower court to set aside the default before appealing here.

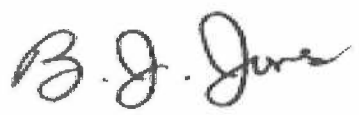
¶ 6 WHEREFORE IT IS HEREBY

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 default. If the Tribal Court denies the Motion to Set Aside the Default judgment, Appellant has the right to appeal that denial to this Court.

SO ORDERED the 25<sup>th</sup> day of May 2022.

FORT PECK COURT OF APPEALS

  
Erin Shanley, Chief Justice

  
Associate Justice

Devt. Am

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Associate Justice