

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

CITIZENS 1ST NATIONAL BANK of Wolf

Point,

Appellee/Plaintiff,

vs.

Appeal No. 005

EUNICE ALFREY,

Appellant/Defendant.

THIS APPEAL is from the Fort Peck Tribal Court, Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, Wolf Point, Montana. JUDGE MARY E. GOURNEAU presided.

FOR APPELLANT: Wayne Webster, Lay Advocate, Poplar, MT.

FOR APPELLEE: Pro Se through its officer Richard Swanson.

On or about January 14, 1986, APPELLANT filed a Petition for Review of Civil Judgment that was granted on July 1, 1986. APPELLANT and APPELLEE submitted no briefs. APPELLANT requested a continuance, which was denied, and presented oral argument. APPELLANT'S officer presented no oral argument.

OPINION by Arnie A. Hove, Justice, joined by Julian H. Brown, Chief Justice, and Daniel R. Schauer, Justice.

JUDGMENT AND PREVIOUSLY ORDERED RELIEF IS HEREBY AFFIRMED

On or about September 16, 1985, APPELLEE filed a Civil Action against APPELLANT claiming she was past due for four payments on Loan 1 8413181 for a total amount owed of \$973.86 in principal and interest. A hearing was set for the 16th day of October, 1985, at 1:00 o'clock P.M. On October 16, 1985, the debt was determined to be a just debt and APPELLANT was ordered to pay the APPELLEE \$50.00 per month until the aforementioned amount was paid in full. The APPELLANT was given a rehearing on December 31, 1985, because she felt she had agreed to pay only \$25.00 per month.

The APPELLANT appealed the order of December 31, 1985, reaffirming the original order to pay APPELLEE \$50.00 per month until said amount is paid in full and presented the following issues in her Petition for Review of Civil Judgment:

I. Whether the Court erred in not dismissing the Civil Action based on Appellee's default for failure to appear.

II. Whether Apellant's Civil Rights were violated when the Court heard the matter when she was not present.

III. Whether the order to pay is vague in amount and without proper determination of her assets and expenditures and whether the Court is mandated by the Comprehensive Code of Justice of the Assiniboine and Sioux Tribes (hereinafter referred to as CCOJ) to consider the exemptions and expenses in determining the rate of recovery.

IV. Whether there were the following procedural errors: a) Untimely service of notice to appear; b) No judgment order served on appellant; c) Judgment order written on lower half of Civil Action; d) Judgment order unsigned, unattested by officers of the

Court; and e) Appellant never properly served to appear on either of the two court appearances.

I.

The law which will address issue No. I and can be applied to the present case is IV CCOJ 103(3)(2). The above section reads in part as follows:

"Section 103. Hearing

"At the time the verified complaint is filed, the clerk shall schedule a hearing on the claim not less than fifteen (15) days after the complaint is filed. The clerk shall furnish the Plaintiff with a copy of the notice showing the time and place of the hearing and shall affix such notice to the copy of the complaint to be served on each defendant. At the hearing, the presiding Judge shall ascertain whether:

"..."

"(e) The claim is ready for trial:

"..."

"(2) If the claim is not ready for trial, the Judge shall set a subsequent date for trial and order such preparation by the parties as he deems necessary."

Upon reviewing the record and after oral arguments, it appears that APPELLANT received a Notice of Action dated September 16, 1985, on September 20, 1985, for a hearing eventually held October 16, 1985, on a Civil Action filed September 16, 1985. Appellant also was served with a Summons dated December 9, 1985, on December 10, 1985, for a hearing to be held on December 31, 1985, at 10:00 A.M.

It appears from the record and during oral argument that the APPELLANT was served with a Notice of Action or Summons for all of the hearings in her matter and that she was present at the same. Therefore, Issue No. I is without merit.

II.

In addressing Issue No. 2, it appears from the record, transcript and oral arguments that APPELLANT was present at all of the hearings in this matter. Therefore, Issue No. II is without merit.

III.

In addressing APPELLANT'S Issue No. III, it is a two part issue and will be addressed as such.

In addressing the first part, the order to pay directs that APPELLANT pay the sum of \$25.00 every two weeks to APPELLEE. The order to pay is not vague in amount and there is no requirement that a proper determination of her assets and expenditures be made before the entry of that order.

In addressing the second part, there is no section of the CCOJ requiring the court to consider the exemptions and expenses of a debtor in determining the rate of recovery for a debt. However, there are two sections of the CCOJ which exempt certain property of a debtor from execution. Those sections are IV CCOJ 310 which exempts certain personal property of the debtor from execution and IV CCOJ 311 which exempts a portion of the debtor's wages from garnishment. In the event a debtor was to experience violations of the aforementioned sections by a creditor and properly alleged the same, relief would have been appropriate in an appeal of a final order in tribal court.

The APPELLANT did not allege violations of the above sections or request relief from violations of the same in

any final order of the tribal court. Furthermore, the record indicates that the court determined from the evidence presented at the hearings that APPELLANT was able to pay the sum of \$50.00 a month or \$25.00 every two weeks and so ordered. In part, I CCOJ 202 reads, "The Court of Appeals shall review de novo all determinations of the Tribal 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." The factual determinations of the Tribal Court as to whether there was a just debt and the order directing the \$50.00 per month or \$25.00 per two weeks is supported by substantial evidence. Therefore, the order to pay the sum of \$50.00 per month or \$25.00 every two weeks is affirmed.

IV.

In addressing Issue No. IV and in reviewing the record and transcript and hearing oral arguments, it is clear that the allegations presented as procedural errors in Issue No. IV are not substantiated and are without merit.

At the hearing, the Lay Advocate for APPELLANT requested a continuance for the reasons that he had only recently been employed by APPELLANT and was unable to properly prepare for oral argument. This court, although very liberal with granting continuances, went on record that no continuances will be granted at the time of oral argument for the reasons of recent employment or lack of time for proper preparation.

Also at the hearing, APPELLEE'S representative was not an attorney or lay counselor qualified and admitted to practice before the Fort Peck Tribal Court. Rule 6(e) of the Rules of Appellate Procedure reads in full as follows:

"Self-representation. Any party may represent himself/herself before the Court with the exception of presenting oral argument. All parties must be represented at oral argument by an attorney or lay counselor qualified and admitted to practice before the Fort Peck Tribal Court."

After being made aware of the above rule, APPELLEE'S representative did request a continuance for time to retain counsel and said request was denied. Although this case is distinguishable from the above and Fort Peck Assiniboine and Sioux Tribes vs. David Red Fox, Appeal No. 001, in that APPELLEE'S representative was not familiar with Rules of Appellate Procedure, this court did not grant the continuance or permit APPELLEE'S representative to orally argue its case before the court since he was not an attorney or lay counselor qualified and admitted to practice before the tribal court.

This court will go on record and charge all appellants and appellees with notice that courts have rules of procedure and that this court has the Rules of Appellate Procedure. Furthermore, this court will go on record and charge all appellants and appellees with the responsibility for becoming familiar with the aforementioned rules. Therefore, parties in an appeal, will be denied requests for continuance for the reasons given by the parties in this appeal and parties will not be permitted to orally argue before the Fort Peck Court of Appeals unless qualified and admitted to practice before the tribal court or represented by an attorney or lay counselor qualified and admitted to practice before the tribal court.

THEREFORE, THIS COURT ORDERS THAT THE JUDGMENT ENTERED AGAINST APPELLANT IN TRIBAL COURT BE AFFIRMED AND APPELLEE SHALL BE ENTITLED TO THE PREVIOUSLY ORDERED RELIEF OF \$50.00 PER MONTH OR \$25.00 EVERY TWO WEEKS UNTIL ITS JUDGMENT IS PAID IN FULL. DONE this 29th day of August, 1986.

BY THE COURT OF APPEALS:

Julian H. Brown, Chief Justice

Arnie A. Hove, Associate Justice

Daniel R. Schauer, Associate Justice