

Appellate Court  
Fort Peck Indian Reservation  
P.O. Box 1027  
Poplar, Montana, 59255  
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**FILED**

**DEC 13 2016**

**Fort Peck Tribal Court  
of Appeals**

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

<p><b>KELLY GREY BEAR,</b> Appellant, vs. <b>FORT PECK HOUSING AUTHORITY,</b> Appellee.</p>	<p><b>CAUSE NO. AP #733 ORDER REVERSING AND REMANDING</b></p>
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Appeal from the Fort Peck Tribal Court, Michael Headdress, Presiding Judge.

Appellant appears *pro se*.

Appellee appears through Peter Breuer, Fredericks, Peebles, & Morgan LLP.

Before Smith, Chief Justice, and Shanley and Knudsen, Associate Justices.

¶1 This matter comes before the Fort Peck Appellate Court on a Petition for Review, filed October 31, 2016 by Appellant Kelly Grey Bear from an Order of Eviction, Forcible Entry and Detainer by Default Judgment issued by the Tribal Court on October 25, 2016.

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## **Background**

¶2 On June 13, 2016, the Fort Peck Housing Authority (FPHA) filed a Complaint for Eviction alleging that Defendant failed to comply with her lease. The FPHA served Appellant Grey Bear a copy of the Complaint via return receipt mail. The Tribal Court scheduled a hearing on the Complaint for July 27, 2016. The Tribal Court issued a Certificate of Service verifying it served a copy of the Complaint for Eviction and Notice of Hearing scheduled for July 27, 2016 at 9:30 a.m. on Appellee, FPHA, by and through their attorney Peter Breuer, by first class mail. That Certificate of Service stated that Appellant Grey Bear would be served via the Tribal Court Process Server. The only proof of service contained in the file is a Certificate of Service from the Tribal Process Server that states Kelly Grey Bear was served the Complaint and Notice of Hearing on July 6, 2016, however an employee of FPHA, Orlonda Gray Hawk, signed that receipt of Service on Appellant Grey Bear's behalf.

¶3 FPHA served Appellant Grey Bear a Notice to Quit on July 11, 2014. On July 27, 2016, the Tribal Court held a hearing on the Complaint for Eviction and Appellant Grey Bear failed to appear. The Tribal Court found that she had notice of the hearing and by failing to appear and answer the Complaint, she thereby admitted the allegations so the Tribal Court issued a Default Judgment in favor of the FPHA. The Order of Eviction was signed on October 25, 2016 and Appellant, Kelly Grey Bear, filed a Petition for Review on October 31, 2016.

## **Statement of Jurisdiction**

¶4 The Fort Peck Appellate Court has jurisdiction to review all final orders from the Fort Peck Tribal Court when a timely appeal is made. 2 CCOJ § 202. The order signed

and dated October 25, 2015 is a final order and the notice of appeal is deemed timely filed.

### **Standard of Review**

¶5 The jurisdiction of the Court of Appeals is extended to review determinations of the Tribal Court on matters of law, but the Appellate Court shall not set aside factual findings if such findings are supported by substantial evidence. 2 CCOJ § 202.

Questions of law shall be reviewed de novo. 2 CCOJ § 202.

### **Issue**

¶6 The following issues have been raised for review by Appellant Grey Bear:

1. Did the lower court violate Appellant Grey Bear's due process rights when it issued a default judgment in favor of the Fort Peck Housing Authority on a Complaint for Eviction without receiving proof Appellant Grey Bear was provided notice to appear and opportunity to be heard at the hearing?

### **Discussion**

¶7 The Civil Procedures set out in the Fort Peck Comprehensive Code of Justice determine when the Court may issue a Default Judgment. In Title 8, Section 302, the Code states that if a party fails to appear at a hearing after being served with a copy of the complaint, the Court may issue a default judgment. 8 CCOJ 302. This Section must also comply with the basic notions of procedural due process; notice and the opportunity to be heard. At a minimum, an individual must have notice when their liberty or property is at risk and an opportunity to present their own defense. *Fort Peck Tribes vs. John Morales*, FPCOA NO. 307 (2000).

¶8 In this case, Appellant Grey Bear asserts that she was not provided notice of the hearing on the Complaint for Eviction. Appellee FPHA submits that she was provided the complaint via return receipt mail, which is included in the record. Appellee FPHA also asserts that she was provided notice of the hearing from the Court's Certificate of Service. However, the Certificate of Service in the record indicates service on Appellant Grey Bear but was initialed by Orlonda Gray Hawk, who is an employee of Appellee FPHA, the opposing party. There is no other proof in the record that Appellant Grey Bear received adequate notice of the hearing on the Complaint for Eviction and thereby did not have an opportunity to appear and present her claims or defenses.

¶9 A Certificate of Service signed by the opposing party does not constitute adequate proof of service. Consistent with prior decisions from this Court, the Tribal Court committed legal error when it issued a default judgment in favor of the Appellee FPHA without establishing that Appellant Grey Bear had actual notice of the hearing and an opportunity to participate and present her defense. *Atchio v Deherrera*, FPCOA No. 429 (2005)

### **Order**

¶16 This Court finds the lower court violated Appellant Grey Bear's right to due process by failing to ensure she received notice of the hearing on the Complaint for Eviction and had an opportunity to respond prior to issuing a default judgment against her. This matter, is hereby REVERSED and REMANDED back to the lower court for a new hearing on the Complaint for Eviction with proper proof of service being provided to all parties.

SO ORDER this 13<sup>th</sup> day of December 2016.

FORT PECK COURT OF APPEALS

BY   
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**Maylinn Smith, Chief Justice**

  
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**DANIEL P. KNUDSEN**  
Associate Justice

  
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**Erin Shanley, Associate Justice**

