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FILED

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Fort Peck Tribal Court
of Appeals

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

MELISSA BUCKLES, Respondent/Appellant vs. DANA BUCKLES, Petitioner/Appellee.	CAUSE NO. AP # 784 ORDER REMANDING TO TRIBAL COURT
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Appeal from the Fort Peck Tribal Court, Marvin Youpee Presiding Judge.

Appellant Melissa Buckles, representing herself.

Appellee Dana Buckles, represented by Mr. Robert Welch.

Before Smith, Chief Justice E. Shanley and B.J. Jones and B. Desmond, Associate Justices.

BACKGROUND

¶ 1 This matter comes before this Court on Respondent/Appellant Melissa Buckles' Notice of Appeal of the March 25, 2019 Order of Dissolution of Marriage. The Tribal Court entered its judgment on March 26, 2019. The Tribal Court dissolved the marriage,

denied Appellant's request for child support because the parties had not legally adopted their grandchild, and denied Appellant's request for alimony because the Tribal Court found that Appellant was allowed to seek employment during the marriage.

¶ 2 On September 11, 2020, the Fort Peck Court of Appeals (FPCOA) accepted review of the matter and set a briefing schedule. The matter is now fully briefed. Appellant Melissa Buckles has requested oral argument, primarily to present evidence on the cultural practice she asserts supports her claim for child support from Appellee Dana Buckles. We remand to the Tribal trial Court for further proceedings in accordance with the following.

STATEMENT OF JURISDICTION

¶ 3 According to CCOJ Title II, Chapter 2, §202,

The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court, appeals of administrative decision where a provision of this Code expressly vests such jurisdiction in the Court of Appeals.

STANDARD OF REVIEW

¶ 4 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. The issues presented in this matter are reviewed for an abuse of discretion. *Smith v. Smith*, FPCOA 725 (December 12, 2016).

ISSUES

- 1. Did the Tribal Court abuse its discretion when it failed to appoint a special judge due to Appellee Dana Buckles' status as a Tribal Councilman?**
- 2. Did the Tribal Court abuse its discretion when it denied child support when the factual determination in regard to the existence of a traditional adoption was not supported by substantial evidence?**
- 3. Did the Tribal Court fail to make findings supported by substantial evidence to conclude Appellant was not entitled to alimony under tribal law?**

DISCUSSION

¶ 5 We decline to review Ms. Buckles' contention on the need for appointment of a Special Judge in the Tribal Trial Court. Nothing in the briefing supports review of the Tribal Trial Court's decision not to appoint a Special Judge, primarily because the issue was not raised in the Tribal Trial Court. Ms. Buckles requested neither disqualification of the Tribal Trial Court Judge or appointment of a Special Judge. The FPCOA cannot consider issues raised in the first instance at the appellate level without any factual record.

¶ 6 CCOJ Title III, Chapter 3, §307, states in relevant part:

A justice or judge shall be disqualified in any proceeding in which his/her impartiality might reasonably be questioned, in which he/she has any personal bias or prejudice concerning any party, in which he/she or a member of his immediate family might be a witness, has any interest, or has any knowledge of any disputed evidentiary facts concerning the proceeding... or in which he/she might otherwise appear to be biased or prejudiced.

¶ 7 CCOJ Title III, Chapter 3, §302-A, provides for appointment of a special judge when the presiding judge has been disqualified under CCOJ Title III, Chapter 3, §307, or when “the needs of the Fort Peck Tribal Court ... require.” However, Appellant did not request disqualification under this section at the trial court level and therefore the FPCOA lacks any record to review in regard to this issue.

¶ 8 While it is true that Appellee Dana Buckles was a member of the Tribal executive Board when this matter was heard in the Tribal Court, Appellant did not make a request either for disqualification or appointment of a special judge. Nor has she provided any assertion that the Tribal Trial Court judge was biased against her. This Court has previously determined that a Tribal Court Judge must make the determination of disqualification based on bias for themselves in order to preserve the issue on appeal. *Jackson v. Jackson*, FPCOA 066 (March 10, 1989). Therefore, the FPCOA declines to address this issue.

1. The Tribal Court finding that there was not a traditional adoption of the parties' grandchild was supported by substantial evidence because the Fort Peck Code requires traditional adoptions to be proven through a court proceeding.

¶ 9 The Tribal Code takes into account the Tribes' traditional customs and traditions in regard to adopting and raising children and formalizes a specific process for the Court to certify traditional adoptions. Traditional adoptions are defined as, "a traditional tribal practice recognized by the community and Tribes which gives a child a permanent parent-child relationship with someone other than the child's birth parent. 10 CCOJ 104-A(a).

¶ 10 In order for someone to request the Tribal court to certify a traditional adoption, that individual must follow the general procedures for adoption by first filing a petition pursuant to 10 CCOJ 104. The process follows the general procedure of a regular adoption, with the exception of requiring an expert witness to testify to the traditional adoption. 10 CCOJ 104-A(b). Once, certified, a traditional adoption becomes "binding" and legally "authentic," with the same effect as a non-traditional adoption. *Id.*

¶ 11 Here, Appellant is essentially arguing that even though she and her ex-husband never petitioned the Tribal Court to establish a traditional adoption of the child, this failure would not prevent a divorce court from making this determination independently of the procedure laid

out at 10 COJ 104-A. This Court disagrees because a divorce court only has jurisdiction to determine custody and consider support obligations for children “pursuant to such divorce.” 10 COJ 301. A divorce court cannot merge a dissolution action with an action for adoption, absent some consent from both parties.

¶ 12 After making a determination of custody in a Divorce action, the Tribal Court has the authority to order child support payments for the primary custodian. 10 CCOJ 304. The Tribal Court indicates that it was unable to consider custody and child support because the parties had not adopted their grandchild. Appellant submits that she provided evidence of a traditional adoption, but the Court did not consider the issue.

¶ 13 Because the lower court was not permitted to merge a traditional adoption petition into a dissolution action, especially when the party who was allegedly legally adopting the child, Mr. Buckles, was objecting to the consideration of a traditional adoption this Court finds no error in the lower court’s finding that a traditional adoption had not occurred as a matter of tribal law.

2. The Tribal Court failed to make findings supported by substantial evidence to conclude Appellant was not entitled to alimony under tribal law?

¶ 14 When the Tribal Court grants a divorce, it may order either party to make periodic alimony payments in support of the other party. 10 CCOJ 306. These payments are subject to modification in regard to a change in economic circumstances or remarriage of either party. *Id.* In this matter, the Tribal Court concluded that because Appellee did not prevent Appellant from gaining employment during the 26 year marriage, Appellant was not entitled to alimony.

¶ 15 At the lower Court level, as indicated by Appellant's response to the Petition for Dissolution, she submitted that during the 26 years of marriage Appellee supported her decision not to work outside the home, but rather to take care of the home and children. She testified she had no income as she had relied on the financial support of Appellee.

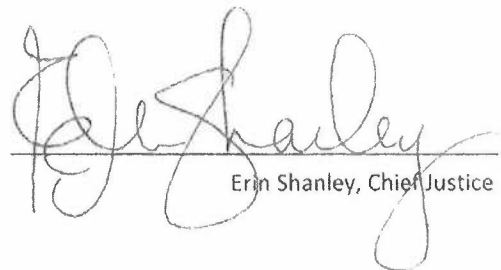
¶ 16 The Comprehensive Code of Justice does not establish particular factors that are determinative in considering alimony. Certainly, the fact that Appellant was not prevented from seeking employment is not substantial evidence that would support the conclusion to deny her alimony. Therefore, this Court remands this issue back to the Tribal Court to make further findings on factors relevant to its alimony determination.

CONCLUSION

¶ 17 This Matter is hereby remanded to Tribal Court to make sufficient factual findings in regard to limony in accordance with this opinion.

SO ORDERED this 15th day of March 2021.

FORT PECK COURT OF APPEALS



Erin Shanley, Chief Justice



B.J. Jones, Associate Justice



Brenda C Desmond, Associate Justice