

FILED

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**Fort Peck Tribal Court
of Appeals**

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

<p>In the Interest of Paisleigh Grace Azure Reum, DOB: 2-20-2019</p> <p>RACHEL AZURE Appellant</p> <p>v.</p> <p>HUNTER REUM, Appellee</p>	<p>CAUSE NO. AP # 793</p> <p>REMAND ORDER</p>
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The mother of this child petitioned this Court for review of a lower court decision adjudicating Hunter Reum as the biological father of the child and awarding him certain custodial rights, including apparently primary physical custody after the child turns the age of two. The mother claims that the lower court erred in not ordering a home study on the father's home before authorizing him to exercise parental visitation in his home due to the young age of the child and in making a joint physical custody determination for the child when the child turns two without examining how the child bonds to the father. She also asserts

that the lower court erred in adjudicating Mr. Reum as the father of the child without also addressing the issue of child support.

On October 30, 2019 this Court granted the appeal and denied the motion of the mother to stay the visitation order. The Court also directed the filing of briefs on appeal. The mother is the only party that this Court has a record of receiving a brief from, although the Court would note that on December 24, 2019 counsel Mary Zemyan filed her notice of appearance for the father. The Court has no record of receiving any other filings from counsel however.

For the reasons stated herein this Court remands this matter to the lower court with directions to address the issue of child support if appropriate and to make further findings with regard to the issue of permanent custody after the passage of more time. Although the Court does not find that the Fort Peck Rules of Appellate Procedures mandate that a reply to an appeal be filed, in a case where this Court issues a briefing schedule the failure to adhere to that schedule may be construed as an admission to some of the issues raised by an Appellant. In this case the Court has no record of the father responding to the appeal except for a notice of appearance filed by counsel.

On February 21, 2019, Hunter Reum filed a Petition to Establish Paternity of minor child PGA. On March 25, 2019, the Court ordered that a genetic test be conducted to determine the issue of paternity. On May 6, 2019, Hunter Reum filed a Petition for Custody and Name Change. On May 13, 2019, based on the results of the DNA test, the lower declared Hunter Reum the natural father of the minor child. The

Court did not address the issue of child support however but did permit the father to claim the child as an exemption on his personal income tax returns in alternating years.

On August 19, 2019 the Tribal Court held a Fact Finding Hearing on a petition for custody and issued its order on August 30, 2019. The mother alleges that the Court did not adhere to the best interests of the child set forth in Title 10 CCOJ 2000, 304(a) and 304(b). This section requires the Court order a home study be conducted by a certified agency in order to determine the sufficiency of the home to adequately accommodate an infant child. The Appellant states without this home study, the Court was unable to determine the child's best interests. Specifically, Appellant disagrees with the Courts determination that weekend visitation was ordered when the child was only six months old and was breast feeding and the Court arbitrarily granted joint physical custody when the child turns two without further assessment after the passage of time. Appellant further alleges the Court failed to address child support and incorrectly allowed the Appellee to claim the child as a dependent for tax purposes every other year.

This Court finds merit in these arguments, especially with regard to issuing a permanent order for custody when the child turns two directing that the parents alternate custody of the child on a weekly basis before assessing how the father's visitation with the child progresses. The Court also finds that the lower court should have addressed child support for the mother in light of the Court's determination that the father should be able to claim the child as a dependent every other year.

As the mother points out in her petition for review and opening brief there is some ambiguity in the lower court's order with regard to permanent custody of the child. The Court ordered that "Upon such time as the child turns the age of 2 years, physical

custody shall be joint, with one week off one week on, with Hunter Reum taking physical custody of the child the week after the 2nd birthday of the child.” This directive is a bit confusing as it appears that the lower court directed the parents to alternate physical custody of the child until the child turned two at which time the father would have primary physical custody with no specified visitation for the mother. This determination was apparently made immediately after the father’s paternity was established and after one evidentiary hearing when the child was only 6 months old without any assessment of how the child had transitioned into the father’s home for initial visitation.

Custody of a minor child born out of wedlock is governed by Fort Peck Tribal Code Title 10, Section 304-A, which does authorize the Court to issue either permanent or “periodic” orders regarding custody of minor children and support of those children. Section 304-C lays out the guidelines for assessing what is in the best interest of a minor child. Many of the factors laid out in Section 304-C assume that each parent has a pre-existing relationship with the child, such as subsection (a)(1), (2), (3), (5) and (6). In a case where paternity of the father has just been established and the Court is unable to assess all of these factors fully it is more appropriate for the Court to issue a periodic or interim order regarding custody to enable the parents to each demonstrate their relative fitness. See Lester v. Lennane, 84 Cal. App. 4th 536 (Cal. 3rd 2000) Then, after the passage of time, six months according to Section 304-A, the Court can more fully assess the factors in 304-C.

This Court thus finds that the lower court abused its discretion by determining permanent custody of this young child almost immediately after an adjudication of

paternity without waiting to more appropriately weigh the factors in 304-C after the father became more involved with the child.

The mother also argues that the lower court should have established a child support order. This Court notes that most the lower court may have determined that setting child support was not necessary because it was making a decision on custody that included a shared custody arrangement. Should the lower court on remand modify that arrangement in accordance with this order it needs to address the issue of child support.

SO ORDERED the 18th day of August, 2020.

FORT PECK COURT OF APPEALS



Erin Shanley, Chief Justice



Brenda Desmond, Associate Justice



B.J. Jones
Associate Justice