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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**

Ashley Flynn, Appellant v. Sammi Dupree, Appellee.	CAUSE NO. AP # 795 ORDER REVERSING AND REMANDING
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Appeal from the Fort Peck Tribal Court, Lonnie Headdress, Presiding Judge.

Appellant Ashley Flynn, appearing pro se.

Appellee Sammi Dupree, appearing pro se

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

BACKGROUND

¶ 1 This Matter comes before the Fort Peck Court of Appeals (FPCOA) on a Petition for Review timely filed by Appellant Ashley Flynn on November 19, 2019 and received by the Court on August 28, 2020. Appellant requests review of an order dismissing her complaint for a

restraining order due to her not residing on the Fort Peck Reservation at the time of hearing and a subsequent restraining order proceeding that resulted in a permanent restraining order for Appellee Sammie Dupree against Appellant and others. Appellant claims she never received proper notice of the hearing on th restraining order.

¶ 2 It should be noted that this case is a by-product of another dispute over a property line involving the same parties that was decided separately by this Court in FPCOA No. #799, (August 24, 2020). In that case this Court reversed the lower court's determination that it lacked jurisdiction to entertain a dispute between two tribal members over a property line on fee land in Wolf Point. It appears that the dispute over the property line formed the gravamen for the restraining orders involved in this appeal.

¶ 3 Appellant is a tribal member who owns certain property in fee located in the town of Wolf Point within the Fort Peck Indian reservation. On June 20, 2019 she filed for a harassment restraining order against her neighbors, Appellee and her boyfriend, Riggins Smith, for their alleged actions in blocking Appellant from having a septic tank truck drive up to her property to clean it and for subsequently building a fence to bar a truck from ingress to her property. At the time of filing, she was a student back

from summer break, but by the time of the hearing she was back in school. After a hearing on September 9, 2019, the Court below dismissed Appellant's complaint, finding that she no longer resided on the reservation and was not occupying the home in question. The Court concluded that the tenant of the home - her brother- would be required to file for the restraining order.

¶ 4 This did not end the matter, however, as Appellant's brother filed for and obtained a TRO from Judge Youpee against Appellee and her boyfriend the same day of the Court's denial of Appellant's application for restraining order. That matter was scheduled for hearing on September 19, 2019, but then continued. That same day, Appellee and her boyfriend filed their own application for restraining order against Appellant and her brother, as well as the brother's friend, Gina Smoker, who also occupied Appellant's home. That TRO was granted by the Chief Judge and was somehow consolidated with the application filed originally by Appellant (which had been dismissed) and by Appellant's brother and set for hearing on October 2, 2019. Appellant states that she was not aware of the filing by the Appellee and her boyfriend and was only appearing on her brother's application for a restraining order. The file reflects that the notice of the hearing on Appellee's application for a restraining order was sent by

certified mail on October 1, 2019 and was not received by the Appellant until October 3, 2019. She then appealed the issuance of a permanent restraining order against her and her brother and the Court's dismissal of the restraining order she filed for initially.

STATEMENT OF JURISDICTION

¶ 5 The Fort Peck Appellate Court reviews final orders from the Fort Peck Tribal Court. 2 CCOJ §202. The order dismissing Appellant's original restraining order and granting her neighbors a subsequent one are final orders.

STANDARD OF REVIEW

¶ 6 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. This Court reviews questions of subject matter jurisdiction de novo. *Wolf Point Organization v. ICA, Inc. et. al.*, FPCOA #324 (Feb 6, 2001).

ISSUES

¶ 7 1. Did the Tribal Court err by finding that a tribal member homeowner who was temporarily off the reservation due to educational

pursuits lacks standing to pursue a restraining order regarding access to her property?

¶ 8 Did the Tribal Court err by conducting a hearing on a cross-petition for a restraining order without adequate notice to Appellant?

DISCUSSION

¶ 9 As this Court held in Appeal #799 involving almost the same Parties, the Fort Peck Tribal Court retains civil jurisdiction over any action in which one party is an Indian, or a corporation or entity owned by an Indian or the Tribe and the cause of the action arises under the laws of the Tribes. Fort Peck CCOJ, Title 2, Sec. 107. Appellant is the owner of the home from which ingress and egress was allegedly being restricted by Appellee's boyfriend. Her property is located on the Fort Peck Reservation and thus it was error for the Court to conclude that she had to be physically present on the reservation to having standing to seek injunctive relief.¹ This Court has clearly recognized Tribal Court jurisdiction involving disputes over fee-patented land within the boundaries of the reservation, when the litigants are tribal members. *Atkinson v. Beveridge and Emerson*, FPCOA #328 (May 16, 2000). Appellant's ownership of the property in

¹ In addition, a tribal member does not lose one's domicile on the reservation by temporarily residing off the Reservation for educational purposes.

question conferred standing upon her to pursue an action to protect her property and the lower court erred by dismissing her action.

¶ 10 This error was compounded by Appellant being drawn back into the dispute when Appellee and her boyfriend obtained a TRO against her and her brother, in response to her brother's petition, without notice to her to permit her to adequately respond. Although Appellant appeared voluntarily as a witness on the application of her brother for a restraining order, it does not appear that she was served with and had notice of the counter-petition for a restraining order that resulted in the issuance of a permanent order against her and brother. Therefore, the FPCOA remands this case to the Tribal Court to hear Appellant's original Petition for a Restraining Order and provide adequate notice to ensure her due process in regard to the counter-petition.

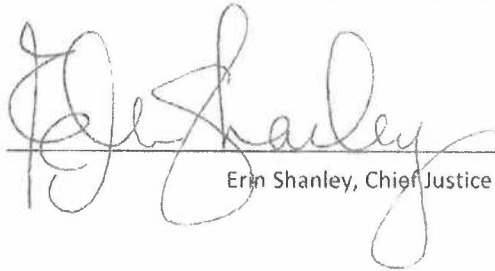
¶ 11 On remand it may be advisable for the Court to consolidate these matters with the action involving the dispute over the property line in App. #799 instead of adjudicating these restraining orders separately. Hopefully in that action the Court below will be able to determine the ingress and egress rights of all Parties involved and give the Parties some guidance on their respective rights.

ORDER

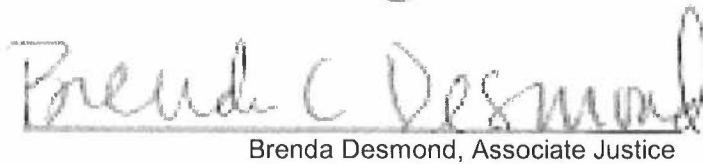
¶ 12 ORDERED, ADJUDGED, AND DECREED the Tribal Court's Order dismissing Appellant's original restraining order for lack of residence on the reservation and the subsequent order granting a permanent restraining order against her are REVERSED and these cases remanded to the Court below for new hearings and due consideration to consolidating these restraining orders with the ongoing property line dispute

SO ORDERED the 8th day of January 2021.

FORT PECK COURT OF APPEALS



Erin Shanley, Chief Justice



Brenda Desmond, Associate Justice



Associate Justice