

Appellate Court
Fort Peck Indian Reservation
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FILED

AUG 24 2020

**Fort Peck Tribal Court
of Appeals**

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

<p>Ashley Flynn, Appellant</p> <p>v.</p> <p>Riggins Smith and Sammi Dupree, Appellees.</p>	<p>CAUSE NO. AP # 799</p> <p>ORDER REVERSING AND REMANDING</p>
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Appeal from the Fort Peck Tribal Court, Lonnie Headdress, Presiding Judge.

Appellant Ashley Flynn, appearing pro se.

Appellees Riggins Smith and Sammi Dupree, represented by Rena Lambert.

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 filed by Appellant on February 6, 2020.

Appellant requests review of the Tribal Court's Order of January 15, 2020 in regard to the Tribal Court's jurisdiction over a property dispute between the parties within the exterior boundaries of the Fort Peck Reservation.

¶ 2 On June 20, 2019, Ashley Flynn filed a civil complaint requesting Riggins Smith and Sammi Dupree be ordered to move their fence line which is encroaching onto her property. A hearing was set for September 9, 2019 but continued to October 21, 2019. Flynn requested a continuance and the hearing was scheduled for January 13, 2020.

Petitioner provided a letter from FPHA stating the Appellees' fence was beyond his property line and interfering with a company's ability to access Flynn's property to work on her septic tank. Appellees provided a letter from Wolf Point City Attorney, Anna Sullivan, that states that Appellees' house is within the city limits and should not have a septic tank but should be hooked up to the city sewer system per city code. They also testified that the property in question belongs to the City of Wolf Point.

¶ 3 Appellant requests review of the Tribal Court Order issued on January 15, 2020. The Court Order states that the Tribal Court has personal and subject matter jurisdiction in the "Principles of Law" section, then goes on to Order that the Tribal Court lacks jurisdiction on City property and therefore dismisses the civil complaint.

STATEMENT OF JURISDICTION

¶ 4 The Fort Peck Appellate Court reviews final orders from the Fort Peck Tribal Court. 2 CCOJ §202. The order dismissing the Complaint for lack of jurisdiction is a final order.

STANDARD OF REVIEW

¶ 5 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

¶ 6 Does the Tribal Court have subject matter jurisdiction to adjudicate a land dispute between two Tribal Members occurring on fee land within the exterior boundaries of the Fort Peck Indian Reservation?

DISCUSSION

¶ 7 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, or an Indian party resides on the Fort Peck Reservation. Fort Peck CCOJ, Title 2, Sec. 107. Here, the parties are Indian and reside on the Fort Peck Indian Reservation. The issue regarding whether or not the parcel of land in dispute is fee land is irrelevant to the determination of jurisdiction in this matter. This Court has clearly recognized Tribal Court jurisdiction in 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). This Court has also recognized Tribal Court jurisdiction in matters occurring within the exterior boundaries of the Fort Peck Reservation, even when the parties were non-Indian. *Wolf Point Organization v. ICA, Inc. et. al.* FPCOA #324 (Feb 6, 2001); *Leachman v. Holen*, FPCOA #634 (May 10, 2017). This is not a case where the resolution of the issue before the Court would impair the interests of the City or State to tax or regulate the land in question. See Yakima v. Confederated Tribes and Bands of the Yakama Nation, 112 S.Ct. 683 (1992) (holding that one effect of the General Allotment Act of 1887 is that lands converted to fee under that Act may be subject to state and county taxes); Plains Commerce Bank v. Long Family Cattle Co., 554 U.S. 316 (2008) (Allotment Act precluded Indian tribal court from divesting a non-Indian of title to fee lands on a reservation).

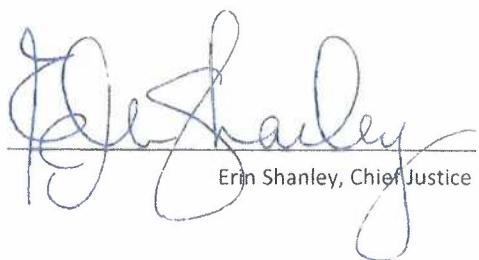
¶ 8 The United States Supreme Court recognized an Indian Tribes' inherent authority to resolve disputes between two tribal members within the boundaries of the reservation in *Williams v. Lee*, 358 US 217 (1959) (application of state law or jurisdiction to an on-reservation dispute between Indian persons would infringe upon the right of the Tribe to make its own laws and be governed by them and thus is precluded by federal law.) The United States Supreme Court decisions limiting tribal court jurisdiction over non-Indians on non-Indian fee land within the boundaries of a reservation, do not apply in this matter as both parties are Indian. (*A-1 Contractors v. Strate*, 520 US 438 (1997); *Montana v. U.S.* , 450 US 544 (1981)).

ORDER

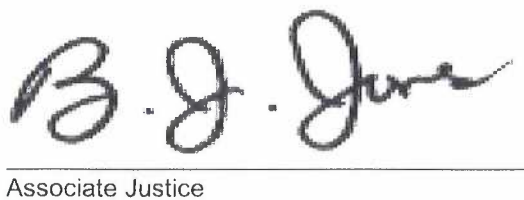
¶ 9 ORDERED, ADJUDGED, AND DECREED the Tribal Court's Order dismissing the complaint for lack of jurisdiction is hereby REVERSED and this matter is REMANDED to the Tribal Court for further adjudication consistent with this opinion.

SO ORDERED the 24th day of August 2020.

FORT PECK COURT OF APPEALS


Erin Shanley, Chief Justice


Brenda Desmond, Associate Justice


Associate Justice