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MAY 16 2017

Fort Peck Tribal Court
of Appeals

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

JEROMY CHRISTIANSEN, Appellant vs. RIKA DOZIER, Appellee	CAUSE NO. AP # 719 ORDER AFFIRMING LOWER COURT
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Appeal from the Fort Peck Tribal Court, Imogene Lilley, Presiding Judge.

Appellant appears with Counsel, Ron Arneson.

Appellee appears with Counsel, Robert Welch.

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

Background

¶1 This matter regards a child custody matter between Appellant Christiansen and Appellee Dozier.

¶2 The parties were married on August 7, 2014 in Poplar, MT. In July of 2005, the parties gave birth to their first child. In October of 2007, a second child was born.

¶3 Prior to the dissolution of the parties' marriage, each party filed opposing family court petitions seeking custody of the two children. On February 2, 2015, Appellant Christiansen filed a petition for dissolution of marriage, alleging that the marriage of the parties was irretrievably broken because of "irreconcilable differences." In his petition, the Appellant asked that custody of the two children remain with him to ensure they remained in "their environment." He also asked for the maximum child support from the Appellee.

¶4 On March 3, 2015, the Appellee responded to the Appellant's petition. In her response, the Appellee asked that custody of the two children remain with her for reason that she had been the "primary provider of the children's financial, emotional, and moral support" as well as the "primary support for the children's educational needs in addition to their extra-curricular activities." Appellee also expressed concerns about Appellant's mental health impacting his abilities to adequately parent their children.

¶5 The parties' marriage was dissolved on March 17, 2015. There were allegations made by the Appellee of "domestic abuse," "child abuse," and "hindering law enforcement." As part of this process, the Appellee was awarded interim custody of the two children.

¶6 On May 28, 2015, *guardian ad litem* Lisa Grubbs conducted a home study of Appellant's home. Ms. Grubbs indicated the parties' marriage had been dissolved on January 31, 2015. She found Appellant's home to be "well-maintained," "nicely furnished," "clean," and "odor-free." She further found Appellant to be "kind" and "hospitable." Grubbs noted it would be "detrimental" for the Appellant and his

children to “not have the security of knowing they would be in each other’s lives.” No adverse impact to the children was noted based on their interaction with their father.

¶7 On July 16, 2015, the Appellant motioned the Tribal Court to modify the Permanent Order to Restrain to allow him contact with his children and also seeking an interim custody determination. The Tribal Court granted his motion and ordered both parties to have home studies conducted. The Tribal Court also granted Appellant temporary weekly visitation from Friday at to 3 pm on Sunday. The Court appointed *guardian ad litem*, Lisa Grubbs, to interview and report on the children.

¶8 On August 12, 2015, Ms. Grubbs conducted a home visit on the Appellee’s home. Appellee was living with her stepfather and mother at their residence. Ms. Gubbs found the residence to be “under construction due to replacing the carpet,” “nicely furnished,” “neat,” “orderly,” “clean,” and “odor-free.” The children were found to share a room and a bed with their mother. No adverse impact on the children was noted in the report on mother’s home, other than the shared room and bed situation and the strained relationship between the children’s parents.

¶9 On August 13, 2015, Appellee sought a continuance because of mandatory training for her employment position. On August 14, 2015, the Tribal Court granted Appellee’s continuance, extended Appellant’s weekend visitation, and again appointed guardian ad litem Grubbs to interview and report on the parties’ children.

¶10 On August 18, 2015, *guardian ad litem* Grubb reported her findings to the Tribal Court. She noted that both children expressed a desire to live with their father and have occasional visitation with their mother.

¶11 On September 24, 2015, the matter came before the Tribal Court for final hearing. The Court awarded primary custody of the two children to Appellee, with summer visitation to the Appellant. As the Appellee had relocated to Eagle Butte, South Dakota, the parties were ordered to meet in Dickinson, North Dakota, approximately halfway between their homes, to exchange the children.

¶12 On May 18, 2016, the Appellant filed a family court petition seeking full custody of the children. On May 19, 2016, Appellee filed a motion seeking to amend the custody order. A hearing was set on the matter. The only points of disagreement between the parties was the children's residential schedule.

¶13 Appellant argued the children were better suited to living with him during the school year. Appellee argued the children were better suited to living in South Dakota with her during the school year.

¶14 On June 8, 2016, the matter came before the Tribal court. Both parties appeared with counsel. After hearing from both parties, the Court scheduled a status hearing for July 7, 2016, trial for July 18, 2016, and ordered Appellee to have a home study conducted. Appellant's counsel also filed Appellant's response to Appellee's motion to amend custody order of May 19, 2016.

¶15 On July 18, 2016, the matter came before the Tribal Court for hearing. Appellant and Appellee were both present. Appellee was represented by counsel. Neither party testified or produced evidence supportive of their ability to care for the children better than the other party. The Court held closed conversations with both children.

¶16 Later that day, the Court amended the child custody order. Appellee was awarded physical custody of the children during the school year with Appellant having physical custody during summer months and substantial breaks.

¶17 On August 23, 2017, Appellant filed a Notice of Appeal. In his Notice, Appellant argued that the child custody proceedings were not handled “in the best interest” of the children as required by 10 CCOJ § 304(b). He further argued the Tribal Court’s custody order should be reversed because the children did not want to go with their mother to South Dakota and had lived on the Fort Peck Reservation for their entire lives. He further asked for Judge Lilley to recuse herself because her custody order was not in “the best interest of” the children. He further sought stay of the Tribal Court’s custody order pending appeal. He did not provide a brief in support of his appeal, as is his choice under tribal law.

¶18 Prior to September 22, 2016, Appellant became represented by new counsel. On September 22, 2016, Appellant’s counsel filed a Notice of Appearance, and a Motion For Additional Time To File A Brief In This Matter.

¶19 On October 18, 2016, this Court granted review of Appellant’s petition for appeal and ordered Appellant to file any written brief, memorandum or statement in support of his appeal on or before November 18, 2016. This Court also noticed Appellee of her right to file an answer to the Appellant’s brief, memorandum, or statement within 15 days of receipt of Appellant’s motion.

¶20 Despite seeking permission from this Court to do so, Appellant did not file a written brief, memorandum, or statement in support.

¶21 On November 29, 2016, Appellee, through counsel, moved this Court to dismiss Appellant's petition for appeal with prejudice based on his failure to file a brief in support.

¶22 On December 7, 2016, this Court denied additional briefing time and set out to review this matter using the record provided.

Statement of Jurisdiction

¶23 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 August 18, 2016 is a final order and the notice of appeal is deemed timely filed.

Standard of Review

¶24 The jurisdiction of the Court of Appeals is extended to review *de novo* all determinations of the Tribal Court on matters of law. As this Court stated In the Matter of the Custody of D.R.B., An Indian Minor Child, FPCOA No. 327 (2001), the Tribal Court has "broad discretion in the determination of child custody and support issues." We will not overturn the Tribal Court's judgment based upon factual findings unless a review of the entire record shows that such judgment was not supported by substantial evidence. 2 CCOJ § 202; Sunrise Lumber v. Gerald Johnson, FPCOA No. 165 (1999).

Issue

¶25 The following issue has been raised for review by Appellant:

1. Was the Tribal Court's August 18, 2016 order amending the parties' custody agreement abuse of discretion based upon a record unsupported by substantial evidence?

Discussion

¶26 The Fort Peck Court of Appeals “has long recognized that it will not disturb lower court factual findings if such findings are supported by substantial evidence. Nor will it overturn a lower court decision if the lower court does not abuse its discretion when making a final determination in custody and child support matters.” 2 CCOJ § 202; In the Matter of: L.M.D., DOB 02/10/2010 Raymond Lamb v. Heather Daniels, FPCOA No. 699 (2016).

¶27 The record in this matter reflects that this matter came before the lower court on two times, June 8, 2016 and July 18, 2016. Two different judges heard evidence presented by both parents. Both parents attended and presented their evidence to the court.

¶28 In the first instance, Judge Marvin Youpee determined Appellee Dozier to be a “fit mother.” In the second instance, Judge Imogene Lilley, after hearing all of the evidence presented by both parents and also after hearing from both children, determined custody of the children should remain with Dozier.

¶29 Here, the lower court was well suited to hear all evidence and made its determination based upon the evidence provided *at that time*. The lower court also met with the minor children individually and each parent was allowed to present any and all evidence they felt supported their individual positions *at that time*.

¶30 While this court does recognize that the Appellant’s circumstances may have changed after the lower court issued its July 18, 2016 Amended Custody Order, this Court finds no evidence that suggests the lower court did not hear

and have before it evidence substantial enough to find that Appellee Dozier was better situated at that time to care for the two minor children *at that time*.

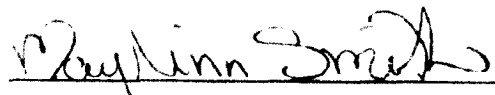
ORDER

¶31 For these reasons, the lower court's August 18, 2016 is hereby AFFIRMED and this matter remanded back to the lower court for enforcement of the judgment entered by that court in accordance with all applicable law.

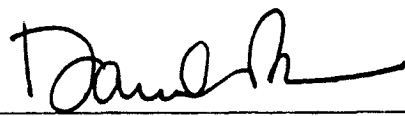
SO ORDERED this 16th day of May, 2017.

FORT PECK COURT OF APPEALS

BY



Maylinn Smith, Chief Justice



DANIEL P. KNUDSEN
Associate Justice