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

<b>IN THE MATTER OF:</b> <b>B.S and B.S</b>  <b>JENNIFER AND ANTHONY SHIELDS JR.,</b> <b>APPELLANT,</b> <b>vs.</b>  <b>FORT PECK TRIBES,</b> <b>APPELLEE</b>	<b>CAUSE NO. AP # 750</b>  <b>ORDER</b> <b>REMANDING TO LOWER COURT</b> <b>FOR FINDINGS AND CONCLUSIONS</b>
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Appeal from the Fort Peck Tribal Court, Imogene Lilley, Presiding Judge.

Appellants appeared by and through Tribal Public Defender, Terry Boyd

Appellee appeared by and through Tribal Prosecutors, Scott Seifert

Before Smith, Chief Justice and Shanley, Associate Justice

**BACKGROUND**

¶1 On August 10, 2016, the Bureau of Indian Affairs Social Services received a referral on Jennifer and Anthony Shields Jr. for reported child neglect of their two minor children, B.S. and B.S., based on drug use, domestic violence, inadequate

food in the home and no electricity. On August 19, 2016, the BIA Social Services entered into a “Differential Response Case Plan,” which allowed the children to remain in the home with a safety plan in place.

¶2 On April 24, 2017, BIA Social Services removed the children from the home for an unknown reason and an emergency hearing was held in the Tribal Court the next day. Appellants, Jennifer and Anthony Shields Jr. did not contest the Petition and voluntarily agreed to enter into a case plan with BIA Social Services to reunify with their children. The Court approved the case plans on May 8, 2017.

¶3 On June 19, 2016, the Appellants requested the assistance of the Public Defender’s Office. The Appellants desired to relocate to Yakima, Washington to live with the paternal grandparents, Caleb and Yvonne Shields, in order to provide a better environment for their children and themselves.

¶4 On July 13, 2017, the Tribes, by and through Tribal Prosecutor Scott Seifert, concurred with the Public Defender’s Motion to Dismiss the Family Court case and return the children to the parents. The Court held a hearing on the Motion to Dismiss on July 14, 2017. At the hearing, BIA Social Services Case Manager Fayda Simmons testified that although Jennifer Shields had substantially complied with her case plan, the children remain placed with the maternal grandmother are only allowed supervised visitation with their mother.

¶5 The Tribes and Appellants requested placement with Caleb and Yvonne Shields while the parents complete the case plan, but BIA Social Services did not agree this was in the best interests of the children. The Court issued an oral Order

Denying the Motion to Dismiss and Petition to Return the children to their parents' custody. The Court also denied the placement request.

¶6 On July 24, 2017, the Court held a Review Hearing in this matter. Jennifer Shields was present, however Anthony Shields Jr. had already relocated to Yakima, WA. At this hearing, BIA Social Services testified they believed Caleb and Yvonne Shields were not an appropriate placement due to their age. The Court agreed with BIA Social Services assessment and denied Appellants request to change placement and allow their case to be transferred to a Social Services Agency in Yakima, WA.

¶7 Appellants filed this Writ for Supervisory Control on August 17, 2017 pursuant to Montana Rules of Appellate Procedure and in accordance with 8 CCOJ 501(d) in regard to the Denial of the Motion to Dismiss and Petition to Return the Children and the Oral Review Order issued on July 24, 2017

#### **STATEMENT OF JURISDICTION**

¶8 Although this Court doesn't promote the application of state procedural law in tribal court proceedings, this Court has allowed Writs of Supervisory Control to correct an erroneous ruling made by a lower court either when there is no appeal or when an appeal cannot provide adequate relief and the ruling will result in gross injustice to the parties. *Buckles v Fort Peck Tribal Court, et. al.*, FPCOA 53 (1989), *FPT v. DeCoteau*, FPCOA #497 (2008), Rule 6 Appellate Procedure, Appendix 3 CCOJ.

## **STANDARD OF REVIEW**

¶9 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

¶10 A Writ of Supervisory control is only granted in extraordinary circumstances when urgency or emergency exist and the case involves purely legal questions. Furthermore, 8 CCOJ 501 (d) states that the Fort Peck Court of Appeals may use state law as guidance but, "The Court shall not subject any party to the laws of the State, or direct any party to use the procedures and services of any State or State sanctioned agency. 8 CCOJ 501(d). Although Appellants cite to state law, Montana Rule of Appellate Procedure, Rule 14, in support of their Writ, this Court has the discretion to entertain a Writ of Supervisory Control under Rule 6 Appellate Procedure, Appendix 3 CCOJ.

## **ISSUES**

¶11 The following legal issues have been raised in the Writ:

- 1) Did the Tribal Court misapply the law in denying the motion to dismiss and Petition to Return Children when the Tribes stipulated that it was in the best interests of the children?
- 2) Did the Tribal Court misapply the law in determining the paternal grandparents were not an appropriate placement due to their age?

## DISCUSSION

¶12 The Fort Peck Comprehensive Code of Justice, Title 9, does not specifically define the roles of the parties in a child welfare matter. In particular, the role and relationship between the BIA Social Services and the Fort Peck Tribes, who may both be considered the Petitioner. In order to have a definitive answer to the specific roles in which each entity plays in a child welfare matter, the Tribal Council would need to address that legislatively. However, in general, the government usually represents the social service agency in child welfare matters. It is uncommon for the government and the social services agency to present to Court with contrary positions, as occurred in this Matter.

¶13 Here, the Appellants, by and through their Counsel, filed a Petition to return their children to their custody pursuant to 9 CCOJ 508. Although this Petition was not filed until three months after the disposition in May, the Fort Peck Tribes, by and through their Prosecutor, concurred with the Petition to Return the Children and dismissal of the case. After receiving the Petition, the Code provides that the Court shall order BIA Social Services to undergo a social study and make a recommendation to the Court. The Court then has discretion to determine if there is substantial evidence that the youth may be safely returned to the home. In this case, the Court did receive a report from BIA Social Services and the caseworker submitted their position that return of the children to the parents was not recommended although the parents had substantially complied with their case plan. Based on the BIA Social Services position, the Court denied the Petition, even though both parties stipulated to returning the children. According to this statute, it is

ultimately within the discretion of the Court to make this determination in the best interests of the children, but the lack of justification in the record articulating the grounds for denying of the motion to dismiss is troubling given the support from the Tribes to dismiss the matter.

¶14 Because the Tribal Court has discretion to determine whether returning the children to the parents is in their best interests, the decision to deny return of the children is not necessarily a misapplication of the law if supported by sufficient findings of the court. It is not clear to this Court, given the absence of findings and conclusions, whether the Court misapplied the Best Interests of the Child Standard or 9 CCOJ 508.

¶ 15 Therefore, this Court hereby, REMANDS this Matter to the Tribal Court for specific findings and conclusions supporting its decision in order to determine whether there has been a misapplication of the law that creates an injustice to the parties. These findings should address why returning the children to the parents would jeopardize their safety, even if the Court deems it appropriate to continue the case for subsequent review of the parents' progress.

¶ 16 The Fort Peck Comprehensive Code of Justice, 9 CCOJ 506(c)(3) states that, "In determining which of several relatives shall have placement of the youth...the Court shall consider their ability to provide adequate food, shelter, medical care, love, emotional support, and day-to-day supervision." *Id.* The record should reflect that these factors were taken into consideration in determining whether a potential placement is appropriate. Nothing in this section implies that the

age of an adult relative can be a determining factor unless it is shown that they cannot provide the level of care required.

¶ 17 After the Court denied the unopposed Motion to Dismiss and return the children to the parents, the Tribe and Respondents agreed on an alternative recommending placement with the paternal grandparents who reside out of state, continue the children as wards of the Court, and allow the parents to complete their case plans. B.I.A. Social Services' position was that the placement was inappropriate due to the age of the grandparents. The Court concluded that the parents were free to move but the children would not be allowed to leave the Fort Peck Reservation. It is unclear whether the Court made the decision to deny placement based on the grandparents age, which would be contrary to the Tribal Code. It is also unclear whether the Court acknowledged that it would continue to have exclusive jurisdiction of the children as wards of the Tribal Code pursuant to the Tribal Code and 25 U.S.C. §1911(a) even if the children changed residency and were no longer residing on the Fort Peck Reservation.

¶ 18 For these reasons, it is necessary to remand to the Tribal Court for specific findings consistent with the law and addressing its precise reasons for Denying the Motion for Placement with grandparents when both of these Motions were unopposed by the Tribes.

¶ 19 Therefore this Court remands to the Tribal Court to make findings and conclusions in regard to the denial of placement pursuant to the specific factors set out in 9 CCOJ 506(c)(3).

ORDER

¶ 20 Based on the foregoing analysis, this Court hereby REMANDS this matter to the Family Court for specific findings and conclusions based on the Fort Peck Comprehensive Code of Justice and the best interests of the child standard.

SO ORDER this 30th day of November, 2017.

FORT PECK COURT OF APPEALS

BY

Maylinn Smith

Maylinn Smith, Chief Justice

Erin Shanley

Erin Shanley, Associate Justice