

Appellate Court
Fort Peck Indian Reservation
P.O. Box 1027
Poplar, Montana, 59255
PHONE 1-406-768-2400
FAX 1-406-768-3710

FILED

JUN 14 2018

Fort Peck Tribal Court
of Appeals

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

KYLE BUCK, Appellant vs. JULIE TRONSON-LILLEY, Appellee.	CAUSE NO. AP #761 OPINION AND ORDER
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Appeal from the Fort Peck Tribal Court, Marvin Youpee, Judge, presiding.
Appellant appeared by and through Advocate Robert Welch.
Appellee appeared pro se.
Before Smith, Chief Justice, and Shanley and Desmond, Associate Justices.

BACKGROUND

¶ 1 This matter came before the Fort Peck Appellate Court on a Notice of Appeal, filed February 22, 2018 by Appellant Kyle Buck, appealing Tribal Court Protection Order issued on January 22, 2018. This Court granted review of this matter and issued a briefing schedule on April 25, 2018, allowing both parties to file supplemental briefs. Appellant filed a brief in support of his appeal and Appellee did not file a responsive brief.

¶ 2 On January 9, 2018, Appellee Julie Tronson-Lilley filed a petition for a Protection Order. The same day, the Tribal Court issued an ex-parte Order restraining Appellant Buck from having any further contact with Appellee Tronson-Lilley pending a final hearing set for January 22, 2018. The ex-parte order did not provide any information regarding the scope and purpose of the January 22, 2018 hearing or that Appellant had the right to be represented by counsel, call witnesses, testify, and present evidence at his hearing.

¶ 3 On January 22, 2018 both parties appeared in Court for the hearing, pro se. Appellee Tronson-Lilley brought two witnesses with her to support her Petition, one of which is a Tribal Court Judge. Appellant Buck did not call any witnesses, present any evidence, or testify at the Final Hearing. Appellant expressed confusion over the nature of the hearing and requested a continuance to obtain witnesses. Judge Headdress granted the request to continue the hearing, but before the Court could set up a new hearing date Appellant rescinded his request and stated he just wanted to get it over with that day. It is not clear from the record that Appellant fully realized the significant implications of proceeding with the hearing at that time. By agreeing that the hearing could proceed, Appellant waived his rights to obtain representation, to call witnesses on his behalf and to introduce evidence. Although he was not precluded from cross-examining witnesses called by the Appellee, his ability to undertake this type of self-representation may have been limited given the lack of information provided him about the nature of the hearing. Based on the record, it also does not appear he was aware of the effect of the Protection Order on his current employment, future employment, and various other liberties.

Statement of Jurisdiction

¶ 4 The Fort Peck Appellate Court has jurisdiction to review all final orders from the Fort Peck Tribal Court when a timely appeal is made. II CCOJ § 202. The Protection Order entered on January 22, 2018 is a final order and this appeal is deemed timely filed because at the time the Notice of Appeal was filed, Appellant had not received a copy of the Permanent Protection Order.

Issues

1. Did the lower court violate due process requirements when it held the hearing on January 22, 2018 after Appellant requested a continuance without first insuring that the Appellant clearly understood exactly what specific rights he would be giving up by proceeding with the hearing on that date and at that time?

Standard of Review

¶ 5 This Court has long recognized that it will not disturb lower court factual findings if such findings are supported by substantial evidence. Title II CCOJ §202. Questions of law, however, are reviewed de novo. Title II CCOJ §202. Whether the Defendant's due process rights were violated is a question of law to be reviewed de novo.

Discussion

¶ 6 The Indian Civil Rights Act, 25 U.S.C. §1301 et seq. guarantees various rights and civil liberties in relation to the Tribal Government. The right to procedural and substantive due process is expressly covered under §1302(a)(6) in relation to criminal proceedings, but has long been recognized and enforced in all hearings at the Fort Peck Tribal Court. *See Marty Lone Bear v. Fort Peck Tribes*, FPCOA No. 713 (2016)

citing *Fort Peck Tribes v. John Morales*, FPCOA No 307 (2000). Due process recognizes a right to sufficient notice of the nature of a hearing, in order that a party may effectively participate in the proceedings, including allowing a party to call witnesses, present evidence and testify if appropriate.

¶ 7 The Fort Peck Comprehensive Code of Justice, Title 8, Section 401-A covers the procedure for issuing Orders of Protection. This statute allows the Tribal Court to grant a temporary ex-parte order when a Petitioner is in danger of immediate or irreparable injury or harm if the Court does not act immediately. § 401-A(a)(b). A hearing must be held within 10 business days from the date of the temporary order. § 401-A(d)(1). The hearing can be continued at the request of the party for good cause or upon the Court's own order. *Id.*

¶ 8 Although the Court initially agreed to continue the hearing in this matter so Appellant could obtain witnesses, it then cancelled the rescheduled hearing at Appellant's request to move forward. Unfortunately, there is not enough evidence in the record to assure this Court that Appellant's decision to move forward with the Protection Order reflected an informed understanding by Appellant that he was waiving his legal rights to due process or that Appellant was fully aware of the implications of a Protection Order being issued against him. Therefore, this Court finds fundamental fairness and basic justice support reversing the lower court order and remanding the matter back for a new hearing to allow Appellant sufficient opportunities to defend against the issuance of the protection order.

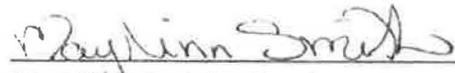
ORDER

¶ 9 The lower court Permanent Protection Order issued January 22, 2018 is hereby VACATED and this matter is REMANDED back to Tribal Court for a new hearing in which both parties have an opportunity to call witnesses, cross-examine witnesses against them, and present evidence.

SO ORDERED this 14TH of June, 2018.

FORT PECK COURT OF APPEALS

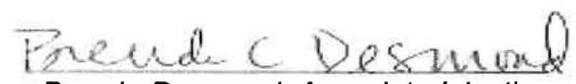
BY



Maylinn Smith, Chief Justice



Erin Shanley, Associate Justice



Brenda Desmond, Associated Justices