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IN THE APPELLATE COURT OF THE CONFEDERATED SALISH
AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION
PABLO, MONTANA

IN RE THE MATTER OF) CAUSE NO. CP-33-89
) AP-02-90
) MEMORANDUM OPINION AND
) FINAL ORDER
)
DANIELLE GREEN,)
JEREMY GREEN, and)
JONATHAN GREEN.)
_____)

THIS MATTER came before this Court on June 21, 1991 for the entry of a final order based on the provisional Order entered by this Court on May 3, 1991. A Response to the provisional Order was received by this Court on June 8, 1991 wherein the Appellant Damon Iscashola agreed through Counsel, Rebecca Dupuis, to the Dismissal of the Appellate Action but objected to the Appellate Court actions saying that the Court had violated their procedural and substantive rights by failing to act on the appeal in a timely fashion and by acting on information outside the pleadings. This information was that Damon Iscashola had requested the State assume jurisdiction over the the matter which is the subject of this appeal and that the case is currently pending before the Montana State courts. The final objection was that Barbara Incashola is a party to the appeal. While the appellants failed to explain this objection, the Court guesses that the appellant's objection is that while Damon Incashola requested the

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1 State to assume jurisdiction, that Barbara Incashola had not, and
2 that since her rights are different than Damon Incashola's, the
3 FlatHead Appellate Court should address her filing as an appellant
4 seperately.

5 In response to those objections raised by Damon Incashola,
6 the Court, after reviewing the records and files herein issues the
7 following Memorandum Opinion:

8 The most arguable violation of the appellant's rights was the
9 delay in the Appellate Court's consideration of their appeal. The
10 original Order from which the Appellants appealed was entered on
11 June 11, 1990 and the appeal thereon filed June 21, 1990.

12 There is no record of any action on the matter except an Order
13 Granting the Appeal signed by Justice Elbridge Coochise on August
14 23, 1990. The present appellate panel was appointed in February
15 1991. The present appellate justices were not involved prior to
16 their assignment. Explanations regarding delay must necessarily
17 be left to prior justices and the administrators of the Flathead
18 Court of Appeal. The present panel conferred upon the matter
19 shortly after assignment and proceeded as swiftly as possible to
20 adjudicate the matter. The delay is not an issue addressed in
21 this opinion.

22 The most difficult issue that the Court had to consider in
23 its determination as to whether to schedule oral argument was
24 that it was communicated to the panel by Tribal Court personnel
25 that the appellant had proceeded to ask the Montana State courts
26 to take jurisdiction over the matter which was the subject of the
27 appeal; that the Montana Courts were assuming jurisdiction of the
28 matter; and, that the appellant had not filed for a dismissal of

1 the tribal appellate action. To assume that the appellate court
2 should not informed of this information by someone other than a
3 party to the appellate action and act on it and, further, that if
4 the appellate court does so that it does a gross injustice to the
5 appellants' rights is incorrect.

6 It must be recognized that any reservation Indian Tribe is a
7 closely knit community, bound by centuries of common heritage and
8 lineages; most people are in some way familially related.
9 Information in the tribal community about community members
10 travels like wildfire. To assume that the tribal court is or must
11 be deaf to everything that is discussed in the community is to
12 engage in a fiction and deny the truth. Therefore, the question
13 becomes for the Court, what information must be listened to and
14 what information should be staunchly avoided. Any information
15 which is attempted to be conveyed to the Court which bears on the
16 substantive rights of the parties should be ignored. If anyone
17 attempts to communicate such information to the Court, the Court
18 should immediately tell the person that any such communication is
19 improper and that the Court can neither listen to nor consider the
20 information; in essence, the equivalent of an informal gag order.

21 In this case, at the time the Court was scheduling a
22 hearing date for the appeal, it was advised that Damon Incashola
23 had proceeded to ask the State of Montana to take over
24 jurisdiction of the matter and that the State had proceeded to do
25 so. No Motion for Dismissal of the tribal court action had been
26 filed by the Appellant. The information was known to the tribal
27 court staff, not just one person. Procedurally, the Court could

1 have issued a decision based on the pleadings alone. This would
2 have allowed the Appellant to forum shop between the State and
3 Tribal Appellate Court. Or the Court could have scheduled a
4 hearing, and the three justices, coming from considerable
5 distances, would have arrived at the Reservation hoping that if
6 the information were true, some party of the action would bring a
7 Motion to Dismiss. If the latter action had been taken it would
8 not have been unreasonable to ask if the costs of travel should be
9 taxed to the Appellant.

10 Since the information was strictly procedural and went
11 to the very core of whether the appeal was moot, the Court chose
12 to act on its own motion to provisionally dismiss the case if the
13 information could be confirmed. The information was confirmed, at
14 the Court's request, by the tribal attorney and social worker who
15 attended the State court hearing. The extent and effect of this
16 information was no different in kind than if the State department
17 of Social Services or State court had contacted the Tribal court
18 to advise it that an action was simultaneously proceeding in State
19 court concerning the same children who were the subject of the
20 Tribal court action. No information was requested nor
21 communicated which went beyond the fact that Damon Incashola had
22 appeared in State court and requested that it take jurisdiction
23 over the matter and that that action was proceeding. Should that
24 action fail for any reason and the appeal in this case have to be
25 reinstated, overcoming the procedural impediments to doing so,
26 this Court is fully confident that it could fairly determine the
27 rights of the parties and render a fair and competent decision on

1 the substantive rights of the parties from the facts which have
2 been addressed in the pleadings. It should be noted that the
3 justices on this appeal are not members of the Flathead Tribal
4 Community and have no reason to side with any party to this
5 appeal.

6 Due to the fact that State-Tribal jurisdiction problems arise
7 and that, to date, there are inadequate procedures mandated and
8 followed to prevent the kind of problem which arose in this case,
9 the Tribal and State courts have to deal with these difficult
10 issues on a case-by-case basis to try to resolve the conflicts and
11 still preserve their ability to render fair decisions.

12 The final point that the Appellant makes is well-taken and
13 has been considered by the Court: Barbara Incashola is a named
14 appellant to the appeal. The argument implied from this is that
15 Damon Incashola does not represent Barbara Incashola's interest
16 and that Damon Incashola's actions should not prejudice Barbara
17 Incashola's rights.


18 While it appears from the pleadings that Damon Incashola's
19 and Barbara Incashola's rights are not the same, the impression
20 conveyed to the Court has been that they are coordinating
21 their appeals. Should the Court adjudicate the matter, it would
22 still have to make a separate determination as to the nature of
23 the rights of each. This was considered in the Court's
24 deliberations. The provisional Order entered by the Court allowed
25 any party to the appeal to object to the Court's dismissal of the
26 action within fourteen days of their receipt of the Order.


27 THEREFORE, based on the above and the contents of the
28 MEMORANDUM OPINION AND ORDER - PAGE FIVE

1 provisional Order entered May 3, 1991, and the records and
2 files herein, this case is DISMISSED.

3 SO ORDERED this ^{18th} day of July, 1991.

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7 CHIEF JUSTICE ROSEMARY J. IRVIN

8 
9 JUSTICE CRANSTON HAWLEY

10 
11 JUSTICE WANDA MILES

12
13
14 CERTIFICATE OF SERVICE

15
16 I, Susie Loughlin, Clerk of the Appellate Court hereby
17 do certify that I have caused a true and correct copy of the
18 foregoing MEMORANDUM OPINION AND FINAL ORDER this 12th day of
19 August, 1991 to the parties first named below at the addresses
20 shown by depositing said in the U.S. Mail, postage prepaid at
21 Pablo, Montana or by hand-delivering on this date stated below:

22 Rebecca Dupuis, Attorney at Law
23 314 1st Street East, Polson, MT 59860

24 Jack Nichols, 21255 Nine Mile Road
25 Huson, Montana 59846

26 Carolyn Reardon
27 Montana Legal Services
28 P.O. Box 1561
Kalispell, Montana 59901

Patricia Swaney, Social Services Advocate
Court Advocate Department

Evelyn Stevenson, Tribal Attorney
Court Advocate Department

29 Date: August 12, 1991 Clerk of Court Susie Loughlin
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