

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

JOHANNA REUM,

Appellant,

v.

TRIBAL SOCIAL SERVICES,

Appellee,

IN RE THE MATTER OF,

DANA TYLOR PABLO,

Youth in Need of Care.

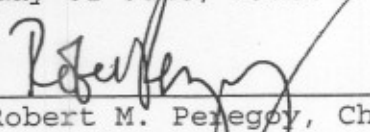
CAUSE NO: AP94-056-CP

ORDER DISMISSING APPEAL

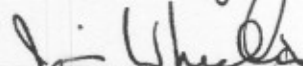
Based upon the Stipulated Agreement filed by the parties, and good cause appearing, IT IS HEREBY ORDERED that the above-entitled appeal is dismissed in accordance with the filed stipulated agreement and pursuant to Rule 22 of the Tribal Appellate Court Procedures Ordinance. Appellee shall pay the costs of Appeal.

SO ORDERED this 25th day of June, 1996.






 Robert M. Perego, Chief Justice



 Jim Wheelis, Associate Justice



 Robert Gauthier, Associate Justice

CERTIFICATE OF MAILING

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed true and correct copies of the **ORDER DISMISSING APPEAL** to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, or hand-delivered this 3rd day of July, 1996.

Andrea Olsen
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Tribal Legal Services
Confederated Salish and Kootenai Tribes
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Amy Peterson
Attorney at Law
Tribal Prosecutors Office
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Clerk of Court
Tribal Court

Abigail Dupuis
Abigail Dupuis
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IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, PABLO, MONTANA

JOHANNA REUM,)	
)	
Appellant,)	CAUSE NO: AP94-056-CP
)	
v.)	
)	STIPULATED AGREEMENT
TRIBAL SOCIAL SERVICES,)	TO DISMISS APPEAL
)	
Appellee,)	
)	
IN RE THE MATTER OF,)	
)	
DANA TYLOR PABLO,)	
)	
Youth in Need of Care.)	

Appellant Johanna Reum, by and through her attorney,
Andrea J. Olsen, and Appellee, Tribal Social Services, by and
through their attorney, Amy Peterson, hereby stipulate that
the Appeal in the above-captioned matter be dismissed
pursuant to Rule 22 of the Tribal Appellate Procedure

Ordinance, Ordinance 90B, as amended, and pursuant to the following stipulated Findings of Fact, Conclusions of Law and Agreement:

FINDINGS OF FACT

1. The issues for Appellate Review in this matter are limited to the provisions by the Court ordering that the parents are to repay foster care payments as stated below:

A. The following provision in the Review Order dated January 12, 1995:

...

3. That Milfred Butch Pablo and Johanna Reum shall be financially responsible for the continued care of the youth beginning January 12, 1995.

...

B. The following provisions in the Review Order dated May 9, 1995:

...

5. That the natural parents shall be financially responsible for the care of the youth beginning January 12, 1995.

6. That Milfred Butch Pablo shall pay one-fourth (1/4) of the amount paid by Tribal Social Services for foster care.

7. That Johanna Reum shall pay one-fourth (1/4) of the amount paid by Tribal Social Services for foster care.

and

10. That if the parents, Milfred Pablo and Johanna Reum, do not comply with any part of this Order, they may be held in contempt of Court for violating a Court Order.

...

C. The following provision in the Order Denying Motion to Reconsider dated August 28, 1995:

It is hereby ordered that the Review Order dated May 9, 1995 is in full force and effect. Johanna Reum is Ordered to contribute one-fourth of the Foster Care costs expended by Tribal Social Services in caring for her son.

D. The following provisions in the Review Order dated November 6, 1995:

...

5. That the biological parents be held responsible for the requirements ordered of them at the January 12, 1995 Review Hearing.

...

2. The above-named youth was declared a Youth in Need of Care by the Tribal Court on February 11, 1994, following several voluntary placement agreements signed by the Natural Father, Butch Pablo.

3. The Natural Father, Milfred Vernon Pablo [Butch], has had sole custody of the youth since January 21, 1981 pursuant to a Decree of Dissolution granted by the Montana Fourth Judicial District Court, Cause No DR-80-372.

4. When the parents obtained a Dissolution of Marriage in 1981, the Montana Fourth Judicial District Court did not order Johanna Reum to pay any child support pursuant to a finding that Butch Pablo did not require any support nor was Johanna Reum capable of furnishing child support.

5. The Montana Fourth Judicial District Court Decree of Dissolution between Johanna Reum and Butch Pablo has not

been modified in the Court of original jurisdiction, nor has it been registered and modified in any other Court.

6. The Petition for Youth in Need of Care filed in this matter did not include a request for financial repayment of foster care, and the Petition in this matter was not personally served upon the natural parents; nor was any other Petition or Complaint requesting child support filed or served.

7. There was no evidence presented to the Court representing the cost of foster care nor the financial ability of the parents to pay for the foster care.

8. There was no separate hearing held on the issue of payment for foster care, nor indication to the Court that Tribal Social Services had completed the pre-requisite investigation and paperwork required before any assessment of ability to pay.

CONCLUSIONS OF LAW

1. The Natural Parents were improperly ordered to contribute to the costs of the above-named youths foster care in that there was no procedural and substantive due process provisions extended to the natural parents prior to ordering the child support.

2. The Tribal Children's Code does not have specific provisions allowing establishment, collection or enforcement of child support during a child protective hearing, therefore the Court exceeded its authority when it established a child support order during a child protective hearing in violation

of Chapter VI, *The Tribal Law and Order Code of the Salish and Kootenai Indian Tribes of the Flathead Indian Reservation*.

3. Absent a legislative mandate adopted by Tribal Council, TSS exceeded its authority in that Chapter VI contains the controlling language with regards CPS actions, which does not provide the language which allows TSS to request foster care contributions from parents in a CPS action.

4. Tribal Council has not adopted Montana law in regards to child support enforcement in CPS actions, and therefore reliance on Montana law infringes upon the sovereignty and jurisdiction of the Confederated Salish and Kootenai Tribes in violation of the Tribes' right, through its legislative body of Tribal members, to make their own laws and be governed by them. *Williams v. Lee*, 358 U.S. 217 (1959).

5. The establishment and collection of payment (child support) for foster care amounted to an improper modification of a Decree of Dissolution which must be addressed by the Court of original jurisdiction unless properly registered in another Court of competent jurisdiction.

6. The provisions listed above relating to the repayment of foster care costs in the orders dated January 12, 1995, May 9, 1995, August 28, 1995, and November 6, 1995 have been vacated by an Order dated June 18, 1996.

AGREEMENT

1. The offices of Tribal Legal Services and the Tribal Prosecutors may bring before Tribal Council an opportunity to decide the policies and procedures regarding establishment, modification and enforcement of child support in CPS cases.

2. Unless the Tribal Council adopts specific provisions which allow otherwise, Tribal Social Services agrees in the future to file separately from a CPS action for child support establishment, modification, and/or enforcement in accordance with the Tribal Law and Order Code.

3. That Tribal Social Services shall proceed in child support collection actions only in cases where there has been a predetermination by Tribal Social Services that the parents are able to pay.

4. Costs of Appeal shall be paid by Appellee.

RESPECTFULLY SUBMITTED this 19th day of June, 1996.

Tribal Prosecutors Office

Confederated Salish & Kootenai
Tribes Legal Services

By: 

Amy Peterson
Attorney for Appellee

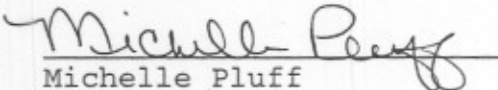
By: 

Andrea J. Olsen
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Michelle Pluff, do hereby certify that I caused a true and correct copy of the foregoing **STIPULATED AGREEMENT TO DISMISS APPEAL** to be served by Tribal Mail, Pablo, Montana, on this 19th day of June, 1996, to the following:

CLERK OF THE TRIBAL COURT


Michelle Pluff