

**FOREST COUNTY POTAWATOMI
COURT OF APPEALS**

**FOREST COUNTY POTAWATOMI COMMUNITY-
TRIBAL CHILD SUPPORT AGENCY,**
Appellant

v.

Case No. 08-AP-0291

JANETTE SAN EMETERIO,
Respondent,

and

FOSTER DECORAH,
Respondent.

DECISION

INTRODUCTION

This case originated in Sauk County as a paternity matter. The child support portion of the case was transferred to Forest County Potawatomi Tribal Court (FCP Tribal Court) by tribal court order on July 26, 2004. On January 9, 2008, the FCP Tribal Court addressed the issue of how the parents would share claiming the minor child as a dependent for income tax purposes. The Forest County Potawatomi Community Tribal Child Support Agency (FCPC-TCSA) reported that the parties entered into a stipulation in 2002 addressing the taxation issue. After the transfer to FCP Tribal Court, the parties sought to alter their agreement on taxes and reached a new stipulation before the FCP Tribal Court. The FCP Tribal Court initially approved the stipulation but on January 16, 2008, informed the parties in writing that it only had jurisdiction over the child support portion of the case, not taxation. From that issue, this appeal ensued.

The Interim Tribal Prosecutor (ITP) Dennis Puzs Jr. alleges that the decision on FCPC-TCSA Motion for Reconsideration, dated and filed with the FCP Tribal Court on July 25, 2008, is a final judgment or order of the FCP Tribal Court; therefore, an appeal is permitted pursuant to Forest County Potawatomi Tribal Court Code Section 1.30(B). The FCPC-TCSA timely appealed.

Pursuant to Sec. 1.30(A), this case was sent to the Forest County Potawatomi Appellate Court (FCP Appellate Court) which was comprised of one Forest County Potawatomi Tribal Court Judge who was not the trial judge, the Honorable Jeryl L. Perenich, and two judges from other tribal courts: the Honorable Leland Wigg-Ninham of the Oneida Tribal Judicial System, and the Honorable Kimberly Vele of the Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa.

BACKGROUND

This case originated in Sauk County in 2002 as a paternity action and was transferred to FCP Tribal Court in July, 2004. The ITP submitted Memorandum of Law dated April 25, 2008 stating "To define what is within the Tribal Court's jurisdiction, state law on child support must be consulted." Wisconsin law states that if the parents cannot stipulate as to whom shall claim the child/children for tax purposes, the FCP Tribal Court shall decide the issue in accordance with applicable tax laws.

The Forest County Potawatomi Trial Court (FCP Trial Court) refused to address the tax issue reasoning that it did not fall within the FCP Tribal Court's jurisdiction because only the child support portion of the proceeding had been transferred from Sauk County. The FCPC-TCSA asserts that the tax issue can be included as a child support issue when the FCP Trial Court addresses the case.

Appellant timely filed this appeal on August 12, 2008.

JURISDICTION

The FCP Appellate Court has jurisdiction over appeals from decisions of the FCP Trial Court pursuant to Sec. 1.30 of the Forest County Potawatomi Tribal Court Code (FCP Tribal Court Code) which authorizes and governs appeals from the FCP Tribal Court to a three-judge Court of Appeals.

STANDARD OF REVIEW

The FCP Appellate Court will review questions of fact under an abuse of discretion standard and questions of law are reviewed de novo, that is, without deference to the FCP Trial Court.

ANALYSIS

A. Applicable law.

The Tribe does have a Forest County Potawatomi Child Support Ordinance (FCP Child Support Ordinance) which the FCP Tribal Court can apply to the facts of this case. Section 15 of the FCP Child Support Ordinance states in relevant part:

Application of Law by the FCP Tribal Court. Except as otherwise provided by this Ordinance, the FCP Tribal Court may, to the extent there is not relevant Tribal Law, custom or procedure on point:

(1) Apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in Wisconsin State Courts, and may exercise all powers and provide all remedies available in those proceedings.

B. Facts.

The factual record in this case follows:

On July 26, 2004, the FCP Tribal Court accepted jurisdiction of the case from Sauk County Circuit Court. On January 7, 2005, the FCP Tribal Court ordered Mr. Decorah to pay an increased amount of child support after a court hearing on December 13, 2004. On December 6, 2007, the FCP Tribal Court ordered child support payments and arrearages through the Forest County Potawatomi Tribal Accounting Department after a hearing on November 19, 2007. On January 9, 2008, the FCP Tribal Court held a hearing on the reduction of child support and arrearages per month. In court, the FCP Tribal Court allowed Mr. Decorah to claim the child for tax purposes until further reviewed by FCP Tribal Court.

However on January 16, 2008, the FCP Tribal Court followed up and reversed its earlier action. It sent a letter to Attorney Scott Schmidlkofer (Mr. Decorah's attorney) and Ms. San Emeterio explaining that upon further review it did not have jurisdiction over the taxation issues because this case originated in Sauk County and was transferred to FCP Tribal Court.

On February 26, 2008, the ITP filed a Memorandum of Law in response to a FCP Tribal Court request for guidance on the issue of the FCP Tribal Court's jurisdiction over modification of non-child support issues within a child support order transferred from another jurisdiction. The ITP concluded that the tax matter was included in the transfer from state court to the FCP Tribal Court jurisdiction. When jurisdiction was transferred, the ITP reasoned, this FCP Tribal Court acquired full jurisdiction to determine the child support obligation for the non-custodial

parent and related issues, including taxation. Therefore, the FCP Tribal Court has full jurisdiction to determine the tax issues with the child support order if the parents are unable to reach agreement on such issues.

On April 16, 2008, the FCP Tribal Court issued a Decision and Order. After reviewing the relevant law, facts, and circumstances, the FCP Trial Court concluded it does not have the authority to address tax issues when only the child support portion of a case has been transferred from state court.

On April 23, 2008, the FCP Tribal Court considered the tax exemptions and child support from Mr. Decorah to Ms. San Emeterio. The parties agreed on a child support amount plus arrearages amount per month and that Mr. Decorah would claim the child as a dependent unless Ms. San Emeterio earns \$10,000 a year.

On April 25, 2008, the ITP filed a Notice of Motion and Motion to reconsider the FCP Tribal Court's refusal to address the tax issue. It states the FCP Tribal Court has jurisdiction over all child support components, including tax matters, when this matter is transferred. A complete legal analysis is found in the Memorandum of Law. On April 25, 2008, the ITP filed a Memorandum of Law in response to the FCP Tribal Court's request for guidance on the issue of the FCP Tribal Court's jurisdiction over modifications of child support orders.

On May 1, 2008, the FCP Tribal Court issued a Temporary Order for support after the April 23, 2008 hearing. The FCP Tribal Court recognized it still has an unresolved issue as to how the tax exemption will be divided between the parties.

On July 25, 2008, the FCPC-TCSA's Motion for Reconsideration is denied. The ITP alleged that the decision on the FCPC-TCSA's Motion for Reconsideration is a final judgment or Order of the Court and therefore an appeal is permitted pursuant to the FCP Tribal Court Code Section 1.30(B).

The ITP timely filed a Notice of Appeal on July 30, 2008. The ITP's Brief was filed on August 14, 2008. Ms. San Emeterio and Mr. Decorah did not file briefs.

C. Application of law to the facts.

The issue in this case is whether the transfer of only the child support portion of a paternity case originating in Wisconsin State Court permits the FCP Tribal Court to address other issues in addition to child support. We find that it does.

Under Section 15 of the FCP Tribal Child Support Ordinance, the FCP Tribal Court is allowed to use Wisconsin state law where there is not relevant tribal law on point. The FCP Child Support Ordinance does not address the allocation of which parent can claim the child as a dependent for tax purposes. Therefore, we turn to Wis. Ch. 767.

Wisconsin law does not definitively answer the question of whether the term child support includes tax issues, but it does require state courts to address the tax issues when it issues a child support order. See Wis. Stat. § 767.511.

In our view, child support and tax issues are so intertwined that the FCP Trial Court must have the power to address the allocation of tax benefits when addressing child support. This conclusion is further supported by the cases cited by the ITP. "A provision in a divorce judgment awarding the income tax dependency exemption for a minor child is an aspect of child support." *Fowler v. Fowler*, 158 Wis.2d 508, 527 (Ct. App. 1990) citing *Peters (Oatman) v. Peters*, 145 Wis. 2d 490, 493, 427 N.W.2d 149, 151 (Ct. App. 1988). We agree.

DECISION

We find that when the child support matter was transferred to FCP Tribal Court, the FCP Trial Court is empowered to address the allocation of which parent can claim the child as a dependent for tax purposes. We remand this case back to the FCP Trial Court for further proceedings consistent with this decision.

IT IS SO ORDERED. Dated this 20th day of May, 2009.


JERYL L. PERENICH
Associate Judge
Forest County Potawatomi Tribal Court


LELAND WIGG-MINHAM
Appellate Pro Tem Appointment
Oneida Tribal Judicial System


KIMBERLY VELE
Appellate Pro Tem Appointment
Tribal Court of the Sac and
Fox Tribe of the Mississippi in Iowa