

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

CLIFFORD BROKEN LEG,
Plaintiff/Appellant,

SC 2001-04

vs.

CERTIFICATE OF SERVICE

YVONNE KILLS IN WATER,
Defendant/Appellee.

I, Carla A. Brave, Supreme Court Clerk, do hereby certify that I served a true and correct copy of the foregoing:

CERTIFICATE OF SERVICE, NOTICE OF ENTRY AND ORDER

upon the person(s) herein next designated by mailing the same by first-class mail with postage prepaid to the following address(s):

Neil Carsrud
Dakota Plains Legal Services
P.O. Box 727
Mission, SD 57555

Todd Flynn
Palmer & Kozisek, P.C.
P.O. Box 127
Ainsworth, NE 69210

Dated this 12th day of February, 2002.

Carla A. Brave

Supreme Court Clerk

FILED
In the

ROSEBUD SIOUX TRIBAL COURT OF APPEALS

The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and

12 February 2002
Carla A. Brave

IN THE COURT OF APPEALS
FOR THE
ROSEBUD SIOUX TRIBE

I hereby certify that I have carefully examined the within document and compared the same with the original true copy and of record in this office and that it is a true and correct copy of the same and that the above contents fully comply with

Dated this 12 February 2002

Carla A. Brave

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

CLIFFORD BROKEN LEG,
Plaintiff/Appellant,

SC 2001-04

vs.

NOTICE OF ENTRY

YVONNE KILLS IN WATER,
Defendant/Appellee.

TO: ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that an ORDER was duly entered by the Supreme Court of the Rosebud Sioux Tribe, Todd County, State of South Dakota, the Honorable Patrick Lee, Honorable Diane Zephier and Honorable Leroy Greaves, Associate Justices presiding in the above-entitled matter on the 16th day of November, 2001.



Supreme Court Clerk

CERTIFICATE OF MAILING

I, Carla A. Brave, Supreme Court Clerk of the Rosebud Sioux Tribe, hereby certifies that I mailed a certified copy of the ORDER in the above-entitled matter to the following:

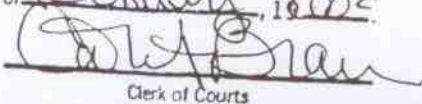
Neil Carsrud
Dakota Plains Legal Services
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Mission, SD 57555

Todd Flynn
Palmer & Kozisek, P.C.
P.o. Box 127
Ainsworth, NE 69210

by first-class ~~mail~~ postage prepaid on the 12TH day of February, 2002.

in the
ROSEBUD SIOUX TRIBAL COURT OF APPEALS

The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and entered on the docket in the above-entitled action by this Court on the 12 day of February, 2002.


Clerk of Courts

BY THE COURT OF APPEALS
I have carefully examined the within and compared the same with the original now on file and of record in this office and that it is a true and correct copy of the same and that the above is a correct copy of the filing thereon.
Carla A. Brave
Supreme Court Clerk
on the 12 day of February, 2002.

SUPREME COURT
ROSEBUD SIOUX TRIBAL COURT
ROSEBUD SIOUX INDIAN RESERVATION
ROSEBUD, SOUTH DAKOTA

Clifford Broken Leg,)
Appellant,)
vs.)
Yvonne Kills In Water,)
Appellee.)

ORDER

Appellant appeals the trial court's decision to award custody of the parties' children to a third party, to allow the children to have a voice in Appellant's visitation rights and the propriety of having two judges hear separate portions of the proceedings.

The parties are the divorced parents of two minor children. Appellant (hereinafter referred to as Clifford) filed his Motion To Set Aside Order on October 10, 2000, contesting the Order of September 20, 2000, which awarded primary custody of the children to Appellee (hereinafter referred to as Yvonne) with physical custody of the children to remain with the children's maternal grandmother, Delores Kills In Water. The trial court dismissed the motion to set aside as being untimely, and that ruling is also under appeal.

For the reasons described below we affirm the decision of the trial court.

In awarding custody of minor children to divorced or separated parents, the court must be satisfied that the best interests of the children are protected. In making such a determination, the trial court has broad discretionary powers which will not be disturbed on appeal unless there is a clear showing that the trial court

abused its discretion. Ford v. Ford, RST Court of Appeals, 1989.

The fact that Judge Collins began presiding over the case in July, 2000, does not appear to have had any effect on the proceedings before Judge Jones on September 8, 2000. Judge Collins had not made any meritorious decisions and the September 8 proceedings clearly show that Judge Jones convened court for a de novo hearing. Judge Jones asked the parties for a list of their witnesses and narrowed the issues down to child custody and modification of child custody. The underlying criteria for awarding custody of children is their best interests. Issues of fitness and unfitness are resolved in the mind of the judge as he hears sworn testimony, observes the demeanor and credibility of witnesses and considers all the evidence. The evidence considered by Judge Jones on September 8, 2000, resulted in his finding and concluding that Clifford had shown little interest in the children; that Clifford had subjected his son, Charles, to belittling remarks; that Clifford failed to take responsibility for the financial support of his children even though he was ordered by the court to do so; and that Clifford was extremely abusive both physically and emotionally to Yvonne in the presence of the children.

The fact that Judge Jones did not specifically express a finding that Clifford is "unfit" as a father does not avail Clifford of a conclusion that he is a fit parent. Judge Jones implicitly found Clifford to be unfit when he found the aforementioned mixed findings and conclusions. Any father who beats the mother, especially in the presence of the children, is unfit as a parent whether or not the court expressly "finds" or states such a conclusion. Abuse

inflicted upon the mother under these circumstances is also inflicted on the children, and such is a direct attack on their best interests.

Having heard and considered all the evidence on September 8, 2000, the trial court was justified in summarily denying Clifford's motion to set aside the order. While the motion was timely filed, any hearing would have been untimely unless all of the evidence against Clifford was the result of perjury. The transcript of the hearing clearly shows that Yvonne's testimony against Clifford was corroborated by other witnesses.

The trial court exercised sound discretion in leaving the children in the physical custody of their grandmother. The best interests of the children is the primary factor to be considered by the court in custody determinations, and the court's decision in this case should not be disturbed. Ford v. Ford, supra.

The wishes of the children were properly considered by the court regarding visitation with their abusive and nonsupportive father. To ignore their wishes under such extreme circumstances would be to ignore their best interests.


ORDER

Wherefore it is ORDERED that the decision of the trial court in this matter is AFFIRMED.

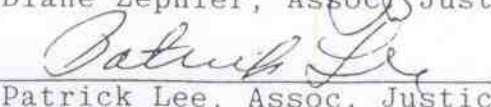
IN THE COURT OF APPEALS
FOR THE
ROSEBUD SIOUX TRIBE

Done this 18 day of January, 2002.

BY THE COURT:

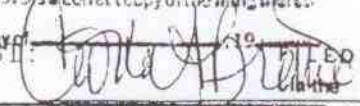

Leroy Greaves, Assoc. Justice


Diane Zepher, Assoc. Justice


Patrick Lee, Assoc. Justice

I hereby certify that I have carefully examined the within document and compared the same with the original now on file and of record in this office and that it is a true and correct copy of the same and that the above is a correct copy of the filing there.

Dated this 12 day of February, 2002.

ATTEST: 
Clerk of the ROSEBUD SIOUX TRIBAL COURT OF APPEALS

(SEAL) The undersigned Clerk of the Rosebud Sioux Tribal Court of Appeals hereby certifies that this document was received and entered on the docket in the above entitled action by this Court on the 12 day of February, 2002.

