

IN THE COURT OF APPEALS
FOR THE
ROSEBUD SIOUX TRIBE

QA87-07

JUNE FORD;

Plaintiff and Appellee,

v.

LAWRENCE FORD,

Defendant and Appellant.

O R D E R

This case having received complete appellate review, and the Court having issued opinion and being fully advised in the premises, it is hereby;

ORDERED AND ADJUDGED, that the decision of the Trial Court is hereby affirmed.

Dated this 3rd day of March, 1989.

BY THE COURT:

Appellate Justice

ATTEST:

Appellate Clerk

IN THE COURT OF APPEALS
FOR THE
ROSEBUD SIOUX TRIBE

JUNE FORD,

Plaintiff and Appellee,

v.

LAWRENCE FORD,

Defendant and Appellant

APPEAL FROM THE ROSEBUD
SIOUX TRIBAL COURT OF THE
ROSEBUD SIOUX TRIBE

HONORABLE SHERMAN MARSHALL
Presiding Judge

ROBERT A. SAMBORAK
Attorney at Law
P.O. Box 400
Kadoka, South Dakota 57543

Attorney for Plaintiff
and Appellee.

ALVIN PAHLKE
Attorney at Law
422 Main St.
Winner, South Dakota 57580

Attorney for Defendant
and Appellant.

OPINION FILED 3-3-89

This matter is before this Court for decision on the record and written briefs of the parties herein, both parties having waived oral argument before this Court.

Lawrence Ford, Defendant/Appellant filed this appeal from the child custody provisions of the Decree of Divorce entered, in the matter of Ford v. Ford, by Sherman Marshall, Chief Tribal Judge, Rosebud Sioux Tribal Court on the 3rd day of September 1987. The notice of appeal was filed on October 5, 1987. Due to a number of circumstances this matter was not presented to the appellate panel until approximately one year later.

The parties hereto are both enrolled members of the Rosebud Sioux Tribe and were married to each other on the 2nd day of January, 1981 at Pierre, South Dakota. One child was born to this marriage, Jacqueline Soroya Michelle Ford, born 12-7-81. The parties separated for the first time sometime in June 1983. Except for an intermittent period of three months, the parties have lived apart since that time. Plaintiff left the home of the Defendant due to Defendant's physical abuse of her and his problems with alcohol.

Currently Plaintiff is employed in her own home, located in Milwaukee, Wisconsin. She provides care for a disabled relative for which she receives \$950.00 per month. Plaintiff has had the physical care, custody and control of the minor child pursuant to an Order of the Rosebud Sioux Tribal Court issued in 1986.

Defendant is an able-bodied male unemployed at the time this matter was before the trial Court. Defendant is living in a mutual house with six other people, including his girl friend and his girlfriend's two daughters. The mutual house is located at St. Francis, South Dakota.

Appellant has raised the issues of whether the best interest of the minor child, Jacqueline Soroya Michelle Ford, require that custody be awarded to the Defendant, and whether it was an abuse of discretion for the trial Court to award custody to the Plaintiff.

The Rosebud Sioux Tribal Law and Order Code, Title 2-1-18 sets forth the trial court test in the making of a child custody award as the result of a divorce action. This Code section makes it very clear that the best interests of the child are to govern the custody determination of the trial court. This Code section further provides that fault is not to be considered in determining custody of minor children except to the extent that the fitness of either parent is in question.

Due to the recent establishment of this Court there are no Court cases establishing a standard of review for a child custody determination by the trial court. Therefore, this court shall look to child custody matters previously decided in the courts of the State of South Dakota and other jurisdictions. South Dakota law has clearly established that the trial court has broad discretionary power in deciding child custody matters and that determination shall not be disturbed on appeal absent an abuse of

discretion. Wolff v. Wolff, 349 N.W. 2d, 656, 658 (SD 1984); Hansen v. Hansen, 327 N.W. 2d, 47 (SD 1982).

The trial court, Chief Judge, Sherman J. Marshall, presiding, did upon review of the file and upon consideration of all evidence and argument of counsel determined, "that the best interests of the child require that the Plaintiff be awarded the care, custody and control of the minor child of the parties ..."

In custody matters the "abuse of discretion" standard must have a "sound and substantial basis in the testimony". Anlner v. Anlner, 296 N.W. 2d 533, 535 (SD 1980).

The primary criterion to be considered by the trial court in custody matters is set forth in S.D.C.L. §30-27-19 which reads as follows:


"The best interests of the child relative to the temporal, mental and moral welfare are the primary criterion to be considered by the trial court in custody determinations. Haskell v. Haskell, 279 N.W. 2d 903 (SD 1979).

The Supreme Court of the State of South Dakota has repeatedly stated that in custody cases the welfare and best interests of the children are paramount to other considerations. Holforty v. Holforty, 272 N.W. 2d, 810, 811 (SD 1978). In awarding custody it is the trial court's duty to see that the children are protected at every turn. Langerman v. Langerman, 336 N.W. 2d, 669, 671 (SD 1983). Given the focus on the children's best interest, circumstances may operate to defeat the custody preference of a parent. The children's welfare must be considered over the legal rights and claims of the parents. Jasper v. Jasper, 351 N.W. 2d, 114 (SD 1984).

Continuity, stability and a good home environment are preferred when the best interest of the child are considered. Langerman, supra; Wright v. Stahl, 39 N.W. 2d, 875, 876-877 (SD 1949); Kolb v. Kolb, 324 N.W. 2d, 279 (SD 1982).

Appellant has failed to demonstrate to this Court that Judge Marshall has violated the "abuse of discretion" standard set forth in Wolf. The decision of the trial court awarding custody to Appellee is certainly well within the trial court's broad discretionary power.

The decision of the trial court is hereby affirmed.


Marvin Amiotte
Associate Justice