

ROSEBUD SIOUX SUPREME COURT
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APPEALS COURT
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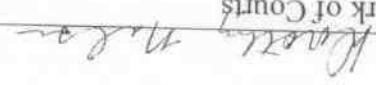
BY: 
NIKKI JONES, Plaintiff/Appellee(s)
DOCKET # CA2007-03

VS.
DONROY MAKES ROOM FOR THEM, Defendant/Appellant(s)
NOTICE OF ENTRY
OF ORDER

TO: THE ABOVE-NAMED PARTIES

Please take notice that on the 12th day of February, 2008, the Honorable Associate Justice's Patrick Lee, Cheryl Three Stars and Leroy Greaves presiding, the Court entered an **OPINION AND ORDER**. A certified copy of said Judgment of **ORDER** is enclosed and by this reference is incorporated herein and is herewith served upon you.

Dated this 14th day of February, 2008.


Clerk of Courts

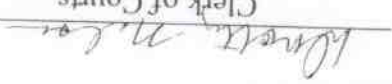
CERTIFICATE OF SERVICE

I, Dorothy Nelson, Chief Clerk of Courts of Rosebud Sioux Tribal Supreme Court, hereby certify that I served a true and correct copy of the Notice of Entry of Order and copy of said Order upon the Appellant(s) and Appellee(s) as follows by placing in the U.S. Mail, postage prepaid, addressed as follows:

Donroy Makes Room For Them - PO Box 691, Allen, SD 57714
Nikki Jones - PO Box 1000, Mission, SD 57555

Dated this 14th day of February, 2008.

Clerk of Courts



of the record does not reveal any return of service on the Appellant for the hearing held on November 3, 2004. On July 26, 2005, Tribal Judge Viola Burnette dismissed a bench warrant that had been issued on the Appellant because she found that he was not served with notice of the Paternity action which was the basis of a contempt action. Judge Burnette's finding supports Appellant's argument that he was not properly served with notice of the initial paternity, custody and child support hearing. The Paternity action, which Judge Burnette referred to is the same ORDER ESTABLISHING PATERNITY, CUSTODY AND CHILD SUPPORT at issue in this appeal.

The record contains evidence that Appellant was living in Sioux Falls, SD in October, 2004, and that he was living in Tulsa, Oklahoma from November 10, 2004, until May 4, 2006. Appellant submitted a letter signed by a Connie Wall, Property Manager, Addison Apartments, Tulsa Oklahoma, on Addison Apartments letterhead verifying that he was residing in Oklahoma in November of 2004.

Rule 5 of the Rules of Civil Procedures of the Rosebud Sioux Tribe provide that service of the initial notice of hearing after the Complaint and Summons can be made by first class mail. In the absence of service by certified mail with return receipt requested, there is no proof that the mail was actually delivered to the addressee if a person happens to move from his last known address and leaves no forwarding address. In this case it appears that the Appellant was living in Sioux Falls, SD, in October of 2004, then moved to Tulsa, OK, in November 2004 and was residing there around the time of the hearing. With no record of actual service in the file combined with the evidence that the Appellant was residing in Tulsa, Oklahoma in November of 2004, we find that the Appellant's contention that he was not served with notice of the initial hearing is supported by the record. Much of Appellant's argument at oral hearing goes to the merits of the case which we do not consider on appeal. However, we do find that the RST Rules of Civil Procedure should be modified to require personal service or service by certified mail with return receipt requested in all phases of the initial hearing after the complaint and summons have been issued. The presumption that first class mail reaches its destination is a rebuttable one and in this case the Appellant has been able to prove that he was not served with notice of the initial hearing after the complaint and summons were issued.

ORDER

Based on these findings and conclusions, it is Ordered that the ORDER ESTABLISHING PATERNITY, CUSTODY AND CHILD SUPPORT entered on November 3, 2004, is reversed and the case is remanded back to the trial court with instructions to proceed with the initial hearing and to see that the Appellant/Defendant is served with actual notice of hearing either in person or by certified mail with return receipt requested.

It is further Ordered that in all civil actions that commence after service of the Complaint and Summons, that notice of the initial hearing be served upon the parties through the use of either a process server or by certified mail with return receipt requested.

Done this 12 day of February, 2008

FOR THE COURT

Patrick Lee
Patrick Lee, Associate Justice

ATTEST:

Christy Milon
Clerk

(SEAL)