

SUPREME COURT  
OF THE  
ROSEBUD SIOUX TRIBE

MARIYA M. LAPOINTE,  
Plaintiff/Appellant,

CA 2000-02

vs.

CERTIFICATE OF SERVICE

THOMAS OLDMAN,  
Defendant/Appellee.

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

OPINION 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):

Viken, Viken, Pechota, Leach & Dewell, LLP  
Attorney At Law  
Attn: Terry Pechota  
1617 Sheridan Lake Road  
Rapid City, SD 57702-3483

Rosebud Sioux Tribe  
Attn: Eric Antoine, Attorney At Law  
P.O. Box 430  
Rosebud, SD 57570

Maule & Maule  
Attn: Theresa M. Maule  
P.O. Box 1821  
Winner, SD 57580

Dated this 9<sup>TH</sup> day of MARCH, 2001.

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 properly entered on the docket of the Rosebud Sioux Tribal Court of Appeals on the \_\_\_\_\_ day of \_\_\_\_\_, 2001.

*[Signature]*  
Clerk of Courts

STATE OF SOUTH DAKOTA  
ROSEBUD SIOUX TRIBAL COURT  
ROSEBUD RESERVATION

*[Signature]*  
Appellate Clerk of Courts

I HEREBY CERTIFY THAT I HAVE CAREFULLY EXAMINED THE WITHIN DOCUMENT AND COMPARED THE SAME WITH THE ORIGINAL 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 SAME THEREON. DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001.

*[Signature]*  
CLERK  
ROSEBUD SIOUX TRIBAL COURT

SUPREME COURT  
OF THE  
ROSEBUD SIOUX TRIBE  
-----

MARIYA M. LAPOINTE,  
Plaintiff/Appellant,

CA 2000-02

vs.

NOTICE OF ENTRY

THOMAS OLDMAN,  
Defendant/Appellee.  
-----

TO: ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that an OPINION AND ORDER was duly entered by the Supreme Court of the Rosebud Sioux Tribe, Todd County, State of South Dakota, the Honorable PATRICK LEE, Associate Justice, presiding in the above-entitled matter on the 9<sup>TH</sup> day of MARCH, 2001.

  
\_\_\_\_\_  
Appellate Clerk of Courts

CERTIFICATE OF MAILING

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

**Viken, Viken, Pechota, Leach & Dewell, LLP**  
Attorney At Law  
Attn: Terry Pechota  
1617 Sheridan Lake Road  
Rapid City, SD 57702-3483

**Rosebud Sioux Tribe**  
Attn: Eric Antoine, Attorney At Law  
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**Maule & Maule**  
Attn: Theresa M. Maule  
P.O. Box 1821  
Winner, SD 57580

by first-class mail, postage prepaid on the 9<sup>TH</sup> day of MARCH, 2001.

*[Handwritten Signature]*

Appellate Clerk of Courts

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 entered on the docket in the Rosebud Sioux Tribal Court on the \_\_\_\_\_ day of \_\_\_\_\_.

*[Handwritten Signature]*

Clerk of Courts

STATE OF SOUTH DAKOTA  
ROSEBUD SIOUX TRIBAL COURT  
ROSEBUD RESERVATION

HEREBY CERTIFY THAT I HAVE CAREFULLY EXAMINED THE WITHIN DOCUMENT AND COMPARED THE SAME WITH THE ORIGINAL AND FILED 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 ON THE FILING THEREON, DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2001

*[Handwritten Signature]*

CLERK

ROSEBUD SIOUX TRIBAL COURT

SUPREME COURT OF THE ROSEBUD SIOUX TRIBE  
ROSEBUD SIOUX TRIBE  
ROSEBUD SIOUX INDIAN RESERVATION

Mariya M. LaPoint, )  
Appellant. )  
vs. )  
Thomas Oldman, )  
Appellee. )

OPINION AND ORDER

Appellant Mariya M. LaPoint (Mariya) appeals from a decision of the Rosebud Sioux Tribal Court which granted recognition of a foreign court judgment filed in the state of Washington by Appellee Thomas Oldman, (Thomas).

Background

The parties are married to each other with a pending divorce action. Mariya is a member of the Rosebud Sioux Tribe. Thomas is a member of the Northern Arapaho Wind River Tribe. They are the parents of three minor children: Melany Oldman, Rhee Oldman and Ryan Oldman. The children are enrolled in their father's tribe, the Northern Arapaho Wind River.

The parties separated from each other in August, 1996. Mariya lived on the Rosebud Reservation and Thomas moved to Kent, Washington. In July, 1997, Mariya allowed Thomas to take physical custody of the children. The transfer of custody was done through a private agreement without any court involvement.

In October, 1999, Mariya left the Rosebud Reservation and arrived at Kent, Washington. Shortly thereafter, on November 18, 1999, Mariya returned to Rosebud with the children.

On November 24, 1999, Thomas filed an action in Superior Court of Washington entitled Parenting Plan. The document contained an order which limits and restrains Mariya's residential time with the children on the basis of "willful abandonment that continues for an extended period of time . . . ."

On February 7, 2000, Thomas filed for a Temporary Order in the Washington state court which restrained Mariya from contacting the children. These documents were filed against Mariya while she was physically present with the children on the Rosebud Sioux Indian Reservation. Mariya's address on the documents is listed as Box 441, Mission, SD 57555.

Mariya had filed her Divorce Complaint in Rosebud Sioux Tribal Court on January 12, 2000. The tribal court granted her an ex-parte Protection Order and temporary custody of the children.

On February 17, 2000, Thomas filed his Answer and Counter claim in Rosebud Sioux Tribal Court. He also filed his Petition For Recognition of Foreign Judgment requesting the tribal court to recognize the Washington state court orders.

On May 3, 2000, the Honorable Judge Brian H. Collins convened tribal court for hearing on Thomas' Petition for Recognition of Foreign Judgment. Mariya appeared with counsel Beth Goktas of Dakota Plains Legal Services. Thomas did not appear but was represented by attorney Theresa M. Maule. At the conclusion of of the hearing Judge Collins granted Thomas' Petition For Recognition

of Foreign Judgment, dismissed Mariya's divorce action and denied Mariya's request for a stay of execution pending appeal.

#### OPINION

This appeal involves the age-old question of which court has jurisdiction of the case, the State or the Tribe.

In addressing the issue of tribal court jurisdiction, the United States Supreme Court suggests that the first examination should be conducted by the Tribal Court itself. National Farmers Union Insurance Cos. v. Crow Tribe, 471 U.S. 845 (1985). That court went on to say that "Our cases have often recognized that Congress is committed to a policy of supporting tribal self-government and self-determination. That policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge."

In cases such as these, it is the duty of the Rosebud Tribal Court Judges to "uphold and enforce the Law and Order Code of the Rosebud Sioux Tribe." RST Code Section 9-1-13.

Having taken that posture, the next step in the analysis is an examination of the relevant code sections of the Tribe.

Mariya had filed her Divorce Complaint in Tribal Court on January 12, 2000. RSTC 2-1-9 authorizes the filing of a divorce action if the Plaintiff is a resident of the Rosebud Indian Reservation and if one of the parties to the marriage is a member of the Rosebud Sioux Tribe. Thomas filed his responsive pleadings and did not file a special appearance resisting tribal jurisdiction. Mariya is a tribal member and was at all times a resident of the Reservation. The analysis could have stopped at that point because

RSTC 2-1-9 governs these undisputed facts. The child custody issue is an integral part of the divorce proceedings and RSTC 3-1-4 vests the Tribal Court with jurisdiction over any Indian children domiciled, residing, or found within the Reservation and over all persons having care, custody and control of such children. It was the Tribal Court which granted Mariya temporary custody of her children in January. The Tribal Court clearly had jurisdiction of the case pursuant to RSTC 2-1-9; RSTC 3-1-4, and it is the statutory duty of the Tribal Court to uphold and enforce such tribal laws.

The fact that Thomas filed for divorce in the state of Washington before Mariya filed in Tribal Court is not controlling because Mariya violated no law or court order when she returned her children to the Rosebud Indian Reservation. If the court was to find, as it did, that Mariya "absconded" with her children, it could just as well have assumed jurisdiction of the divorce proceedings and inquired whether or not it was possible for Mariya to simply withdraw the consensual custody she had given to Thomas through a private agreement. Instead the court found that Mariya had "absconded" with her children and ruled that Mariya was bound by the Washington state court order to return the children to that jurisdiction. The order was issued after Mariya had left the State and while she was subject to the jurisdiction of the Tribe. For the Tribal Court to stay its hand so that the Washington State court could assert jurisdiction of the case deprives members of the tribe of their right to be governed by their own laws. It also enables the state to interfere with the Tribe's right to

self government. Williams v. Lee, 358 U.S. 217, 79 S. Ct. 269 (1959).

The circumstances of this case constitute a factual and legal basis for the "Tribe to explain to the parties the precise basis for accepting jurisdiction, and will also provide other courts with the benefit of their expertise in such matters in the event of further judicial review." National Farmers, supra.

The decision of the Tribal Court to extend recognition to the Washington state court order ignores RSTC 4-2-9 (1) a. which provides:

"Before the Rosebud Sioux Tribal Court may consider recognizing a state . . . court order, the party seeking recognition shall establish by clear and convincing evidence that (a) the Court had jurisdiction over both the subject matter and the parties."

The Washington state court order was issued ex-parte, it was served on a tribal member who was physically present on the Rosebud Reservation when it was issued, and the proceeding contravenes the public policy of the Rosebud Sioux Tribe which is one that asserts exclusive jurisdiction over Indian children found on the Rosebud Indian Reservation. The state of Washington did not have jurisdiction over the party of Mariya and a factual finding could have established as such.

There remains the unanswered question of how the state of Washington could enforce its orders on the Rosebud Sioux Indian Reservation if it could assume personal jurisdiction over a tribal member. Thomas was not deprived of his right to file his cause of action in tribal court, and in fact did file his Answer and Counter-claim. Thomas' counsel apparently considered the thought that the tribe

has exclusive jurisdiction over its members and children who were present on the Reservation when Thomas filed in state court.

Finally, while Tribal Courts are somewhat patterned after state court systems, the law that we apply must be our own. The Tribes take great pains to preserve our sovereignty, our culture and our jurisdiction. We require tribal judges to swear on their oath that they will uphold the constitutions and laws of the tribe and to promote the best interests of the tribe. We cannot blithely defer to state jurisdiction simply because one party makes an argument that might or might not be acceptable in a remote state court. Tribal courts are national courts and its judges are dedicated to upholding tribal jurisdictional integrity when cases are brought properly before them in accordance with tribal law.

When Indian children are removed from tribal to state jurisdiction in parental custody disputes, the reservation-based party is at a serious disadvantage should she subsequently prevail on appeal. The children are placed in a foreign jurisdiction beyond the reaches of the tribal court, and some states do not recognize the decisions of tribal courts. For these reasons it is of the utmost importance that tribal judges be completely satisfied that the requirements of RSTC 4-2-9 be met before ordering the removal of children from the reservation. Tribal judges should grant an automatic stay of execution in such events so that a full review of each case can be made by the Supreme Court.

#### ORDER

Based on the facts, the law and considerations described herein,

It is ORDERED, ADJUDGED, and DECREED that the Order of May 9, 2000, in this case entered by the Honorable Judge Brian H. Collins is REVERSED.

It is further ORDERED that appropriate steps be taken to return the Oldman children to the jurisdiction of the Rosebud Sioux Tribe for further proceedings.

Done this 23 day of January, 2001.

BY THE COURT:

Ramon R. Roubideaux  
Ramon Roubideaux, Chief Justice

Patrick Lee  
Patrick Lee, Associate Justice

Leroy Greaves  
Leroy Greaves, Associate Justice

ATTEST:

Carla Brave

Carla Brave  
Clerk of Court

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 entered on the docket in the above-entitled action by this Court on the 9th day of March, 2001

Carla A. Brave  
Clerk of Courts

(SEAL)

STATE OF SOUTH DAKOTA  
ROSEBUD SIOUX TRIBAL COURT  
ROSEBUD RESERVATION

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 BILLING THEREON. DATED THIS 9th DAY OF March, 2001

Carla A. Brave  
CLERK  
ROSEBUD SIOUX TRIBAL COURT