

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

KARI A. STEWART,
Plaintiff/Appellant,

CA 2001-03

vs.

CERTIFICATE OF SERVICE

WAYNE STEWART,
Defendant/Appellee.

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


CERTIFICATE OF SERVICE, NOTICE OF ENTRY and 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):

NEIL CARSRUD
DAKOTA PLAINS LEGAL SERVICE
P.O. BOX 727
MISSION, SD 57555

WAYNE STEWART
GENERAL DELIVERY
WHITE RIVER, SD 57579

Dated this 6TH day of JUNE, 2001.



Appellate Clerk of Courts

6 June 2001
Carla A. Brave

SUPREME COURT
OF THE
ROSEBUD SIOUX TRIBE

KARI A. STEWART,
Plaintiff/Appellant,

CA 2000-03

vs.

NOTICE OF ENTRY

WAYNE STEWART,
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 Ramon Roubideaux, Chief Justice & the Honorable PATRICK LEE, Associate Justice, presiding in the above-entitled matter on the 24TH day of MAY, 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:

NEIL CARSRUD
DAKOTA PLAINS LEGAL SERVICE
P.O. BOX 727
MISSION, SD 57555

WAYNE STEWART
GENERAL DELIVERY
WHITE RIVER, SD 57579

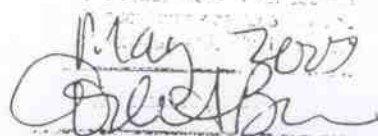
by first-class mail, postage prepaid on the 24TH day of MAY, 2001.


FILED

to

OF THE

ROSEBUD SIOUX TRIBE COURT

24
May 2001

Clerk of Courts


Appellate Clerk of Courts

IN THE SUPREME COURT OF THE
ROSEBUD SIOUX TRIBE

Kari A. Stewart, Appellant)
v.)
Wayne Stewart, Appellant)

OPINION AND ORDER

Appellant Kari A. Stewart appeals from a default judgment order in her favor wherein the trial court found that the parties' child, born in 1995, was not a child of the marriage which occurred in 1997.

The parties are both enrolled members of the Rosebud Sioux Tribe, and they reside on the Rosebud Sioux Indian Reservation. They were married to each other on February 7, 1997. The parties are the parents of one child, Keisha Stewart, D.O.B. April 30, 1995.

On June 10, 1998, Appellant filed her Complaint for divorce in the Rosebud Sioux Tribal Court. On August 9, 2000, the trial court convened and found that the Defendant-Appellee Wayne Stewart had been properly served with Summons and Complaint; that the Defendant failed to appear and defend the action; and that the Defendant was in default. The Plaintiff testified that the Defendant signed a paternity affidavit acknowledging paternity of the child, Keisha Stewart.

The trial court granted the divorce, but concluded that as a matter of law the child Keisha Stewart was not a "child of the marriage" and that paternity, custody and child support must be adjudicated in a separate paternity action.

Appellant contends on appeal that the trial court erred in concluding that the child in this case is not a child of the marriage. We agree with the Appellant based on the following analysis.

OPINION

The trial court reasoned that since the child was born prior to the marriage, the child was not born to the marriage. In doing so the trial court ignored the fact that the father signed a paternity affidavit acknowledging that he is the father of the child. Upon finding that the child was born prior to the marriage, the trial court might have and should have considered RST Code Chapter Two, Section 2-2-3 STATUS OF CHILDREN BORN TO UNMARRIED WOMEN which provides that "If the natural father of a child publicly acknowledges said child as his own and receives said child into his own family and authorizes his name to be placed on the birth certificate of the child as the father of the child, he thereby becomes the father of said child for all purposes as if he had been married to the mother of said child at the time of the birth of said child. No further proceedings are necessary to be instituted pursuant to this Chapter to establish said person as the legitimate father of said child." (emphasis ours)

Need we say more? The signing of the paternity affidavit accomplishes all of the provisions of Section 2-2-3. That paternity affidavit is a public acknowledgment of the child as the Defendant's child and the Appellant was authorized, and did place the surname of the Defendant on the child's birth certificate. The language of Section 2-2-3 plainly states that the Defendant in this case

"Thereby becomes the father of said child for all purposes as if he had been married to the mother." This section automatically concludes that the child is a child of the marriage and that no further proceedings are necessary to establish paternity, custody and child support.

Appellant cites a litany of cases in which the lower court ruled that children born prior to the marriage were found to be born to the marriage. The cases, D 96-08; D 96-42; D 96-39; D 97-19; D 97-21; D 97-40; D 87-43; D 98-14 and D 98-77 include six cases which were decided by the same judge who ruled otherwise in this case.

In light of the plain language of Section 2-2-3, the trial court's ruling was clearly erroneous because it contravenes the spirit of Section 2-2-3 and is inconsistent with lower court precedent. We will not address the remaining arguments concerning legislative intent because it is unnecessary in this case.

ORDER

Wherefore, It is ORDERED, ADJUDGED and DECREED that the conclusion of the trial court that the child in this case is not a child of the marriage is REVERSED.

It is Further ORDERED that this case is remanded back to the trial court for further proceedings with instructions to conclude paternity and to resolve the issues of custody and child support.

Done this 10th day of May, 2001.

BY THE COURT:

Samuel L. Roubicek
Chief Justice

Jatrick Lee
Associate Justice

ATTEST:

Carl Bane
Clerk

ROBERTSON COUNTY COURT OF APPEALS

The undersigned Clerk of the Robert County Court of Appeals hereby certifies that this document was received and entered on the docket of the Court on the 24th day of May, 2001.

[Signature]
Associate Justice

(SEAL)