

IN THE COURT OF APPEALS
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION

IN RE MARRIAGE OF)	Cause No. AP-10-0286-DV
JEROME O'BRIEN,)	
Appellant,)	ORDER
Vs.)	
MARINA O'BRIEN,)	
Appellee.)	

Appeal from the Tribal Court of the Confederated Salish and Kootenai Tribes,

Honorable Judge Gary Acevedo, presiding.

Appearances:

Jerome O'Brien, pro se, for the Appellant.

Marina O'Brien, pro se, for the Appellee.

Before Chief Justice Eldena Bear Don't Walk, Justice Joey Jayne and Associate

Justice Robert McDonald.

INTRODUCTION

Jerome O'Brien appeals the lower court's issuance of a Supplemental Order on Visitation ordered by the lower court on March 22, 2011. After a review of the record and a hearing with both parties present, this Court remands this matter with instructions.

STATEMENT OF THE FACTS

Jerome and Marina O'Brien were married July 24, 2004 in Wolf Point, MT. Marina brought one child into the marriage whose custody is not at issue in this matter. Jerome and Marina have two children A. O'Brien, a girl, born March 8, 2004 and J. O'Brien, a boy, born December 12, 2005. All parties are members of a federally recognized tribe and resided on the Flathead Indian reservation prior to filing the

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dissolution of marriage. Jerome filed a Petition for Dissolution of Marriage along with a Proposed Parenting Plan on July 22, 2010. Jerome's parenting plan requested he be made primary and residential custodian and provided no visitation to the Respondent except Mother's Day.

Marina filed her Respondent's Proposed Parenting Plan, along with her response to the dissolution petition on August 16, 2010. Marina's proposed plan requested she be made primary and residential custodian and grant Jerome holiday and summer visitation.

A hearing was held on January 10, 2011. On March 2, 2011, the lower court issued its Decree of Dissolution of Marriage. In its Findings of Fact and Conclusions of Law, the Court found that it was in the best interest of the minor children that the Court adopted the Petitioner's Parenting Plan and that care and custody of the minor children be awarded to the Petitioner. The Court also fully incorporated the Appellant's parenting plan without making any additions, substitutions or deletions.

On March 2, 2011, the Court issued a Supplemental Order on Visitation. That Order acknowledged that Marina contacted the Court directly, without notice to Jerome, and advised the Court that no visitation had been ordered in the adopted parenting plan. The Court then ordered that the Appellee would have visitation with her children on rotating holidays and a four week visit in the summer. The Court further ordered that the Appellee could have unlimited phone contact with the children and that the parties could negotiate an alternative visitation schedule and submit that stipulated schedule to the Court for inclusion in the dissolution record. The transcript of the proceeding of which both Jerome and Marina participated, showed neither party proposing the schedule included in the Supplement.

Jerome appeals this Supplemental Order on Visitation on the basis that he had no knowledge that Marina contacted the Court directly and that from that contact, the Court would change the original dissolution order. The Supplemental Order contained a visitation schedule neither party had proposed and no explanation as to the Court's reasoning for the new visitation plan.

ORDER

After a full review of the record, the parties' filings and hearing, this Court finds it necessary to remand this case back to the trial court. The Lower Court failed to provide

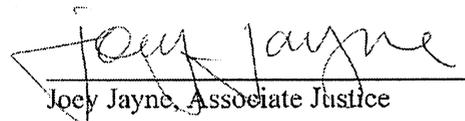
any reasoning for its supplemental order on visitation and its complete change of course with regard to its adoption of the petitioner's parenting plan.

Additionally, Marina's contact with the Court and the Court's acknowledgement that it had contact with Marina which resulted in the Supplemental Order, is troubling to this Court. The Appellant, in this matter, was not present during the conversation or made aware of any relay of information which substantially changed the outcome of the Decree of Dissolution of Marriage previously issued until he received the Supplemental Order. In order to prevent the appearance of impropriety with regard to the Ex Parte communication between the Lower Court and the Appellee, this Court reverses the Supplemental Order on Visitation. This Court remands this matter back to the Lower Court for a review of the record and further proceedings, if necessary, to establish visitation consistent with the Dissolution Decree or to establish visitation with findings and conclusions that allow the parties to understand the reasoning for the Court's schedule.

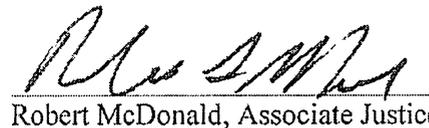
SO ORDERED this 4th day of June, 2012.



Eldena N. Bear Don't Walk,
Chief Justice



Joey Jayne, Associate Justice



Robert McDonald, Associate Justice

Cc: Jerome O'Brien, Appellant
Marina O'Brien, Appellee

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Certificate of Mailing

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the Order to the persons first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, this 12th day of June, 2012.

**Jerome O'Brien
11 Mueller Lane
Dixon, Montana 59831**

**Marina Starr
P.O. Box 1505
Poplar, Montana 59255**

**Cara Croft
Clerk of the Tribal Court
P.O. Box 278
Pablo, Montana 59855**

A handwritten signature in black ink, appearing to read 'Abigail Dupuis', written over a horizontal line.

**Abigail Dupuis
Appellate Court Administrator**