1	IN THE COURT OF APPEALS
2	OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION
3	Clifford Damks In
4	Clifford Burke Jr. ) Cause No. AP-15-248-CV Appellant ) Vs. ) OPINION AND ORDER
5	Francis Cahoon )
6	Appellee )
7	Appeal From:
8	The Tribal Court of the Confederated Salish and Kootenai Tribes of the Flathead Reservation.
9	The Hon. Bradley A. Pluff presiding Judge.
10	Counsel: Pro Se Parties
11	Justice Joshua C. Morigeau delivered the Opinion of the Court.
12	Clifford Burke Jr. appeals the Decision and Order of the Tribal Court ordered on July 22, 2015.
13	Appellant filed this appeal on August 19, 2015. Having reviewed and considered the underlying
14 15	record, including written and oral arguments, this Court renders the following Opinion. We
15	AFFIRM the Tribal Court.
17	We address the issues brought on appeal as follows:
18	(1) Whether the Tribal Court erred in its determination that Francis Calhoon (Appellee)
19	legally obtained the vehicle at issue and thus the Appellant has filed a claim against
20	the wrong party in the underlying matter.
21	(2) Whether the Tribal Court abused its discretion by not allowing proposed written
22	statements from Appellant at the time of hearing.
23	
	OPINION

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#### FACTUAL AND PROCEDURAL HISTORY

The present case arises from a claim by Appellant that Appellee wrongfully acquired 3 4 a Ford Explorer formerly owned by Appellant. A review of the record reveals that Appellant 5 bought a vehicle in 2012 and soon thereafter the vehicle was wrecked and rendered inoperable. 6 Appellant parked the vehicle at an acquaintance's house and did not return to pick it up. Appellant noticed his former vehicle gone from his acquaintance's home sometime in 2014. 7 8 Appellant did not report the vehicle stolen at this time. Approximately a year later, Appellant noticed the vehicle in the possession of Appellee and reported it stolen with the Lake County 9 Sheriff's Office on April 20, 2015. Lake County, through its investigation, determined the 10 vehicle to be an abandoned vehicle, and informed Appellant that he would need to file a civil suit 11 to seek redress. A civil suit for repossession was filed with the Tribal Court on May 20, 2015. 12 13 The matter was set for hearing before the Tribal Court on July 7, 2015. The Tribal Court heard 14 arguments from both Appellant and Appellee acting *pro se.* During the hearing, and pertinent to this decision, the Tribal Court refused written statements from purported witnesses of the 15 16 Appellant. This being because the statements were hearsay and therefore inadmissible without 17 the proper legal support or foundation. The statements were not in the form of sworn affidavits or otherwise admissible testimony. The Tribal Court took the matter under advisement and on 18 19 July 22, 2015 determined that the vehicle was an abandoned vehicle and that the Appellee held 20 title to the vehicle legally according to the evidence presented to the Court. The Tribal Court also made a finding that the Appellee was the wrong party to pursue for redress. This appeal was 21 22 filed on August 19, 2015.

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## STANDARDS OF REVIEW

2	We review Issue 1 for clear error by the trial Tribal Court. The judgment of a trial court
3	will be presumed to be correct, and all legitimate inferences will be drawn to support this
4	presumption" unless clear error is present. <u>Bick v. Pierce, CS&amp;K</u> Tribal Court of Appeals, Cause
5	No. AP-CV-134, May 20, 1996. Clear error is present when a review of the entire record leaves
6	this court with the definite conviction that a mistake has been committed, even though there is
7	evidence on the record to support the finding. Id. at 7. A "[mere] showing [of] reasonable
8	grounds for a different conclusion is not sufficient to reverse the trial court's findings." Id.
9	We review Issue 2 for an abuse of discretion by the Tribal Court. We review the trial
10	court's conduct for an abuse of discretion. In Re Estate of Burland, (CS&K Tribal Court of
11	Appeals No. AP-00-174-P, 2002). The Tribal Court is best suited to make determinations of
12	admissibility of certain evidence at the trial level. We will not change the Tribal Court's ruling
13	without an abuse of discretion.
13 14	without an abuse of discretion. OPINION
14	<u>OPINION</u>
14 15	<u>OPINION</u> 1. Did the Tribal Court err in its determination that Francis Calhoon (Appellee)
14 15 16	OPINION 1. Did the Tribal Court err in its determination that Francis Calhoon (Appellee) legally obtained the vehicle at issue and thus the Appellant has filed a claim
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14 15 16 17 18 19	OPINION <ol> <li>Did the Tribal Court err in its determination that Francis Calhoon (Appellee)         legally obtained the vehicle at issue and thus the Appellant has filed a claim             against the wrong party in the underlying matter?         A review of the record reveals that legal title was transferred through multiple parties         before Appellee purchased the vehicle. There was no evidence presented at trial that such     </li> </ol>
14 15 16 17 18 19 20	OPINION <ol> <li>Did the Tribal Court err in its determination that Francis Calhoon (Appellee)         legally obtained the vehicle at issue and thus the Appellant has filed a claim             against the wrong party in the underlying matter?         A review of the record reveals that legal title was transferred through multiple parties         before Appellee purchased the vehicle. There was no evidence presented at trial that such         transfer was fraudulent or otherwise illegal in regard to Appellee. No third party witnesses     </li> </ol>

there may be more to the story than what was presented, no admissible evidence was presented
to the Tribal Court that would indicate Appellee did anything illegal in his acquisition of the
vehicle at issue. The Tribal Court was correct in determining that Appellee was not a proper
party with the evidence presented to it. At oral argument, Appellant indicated to this Court that
he had indeed, filed suit against other more appropriate parties in this matter. The Appellant is
free to pursue those remedies.

# 2. Did the Tribal Court abused its discretion by not allowing proposed written statements from Appellant at the time of hearing.

A review of the record indicates that the written statements offered by Appellant were
hearsay documents. The documents were purportedly statements made by several people not
present in Court on the day of the hearing. Appellant provided no witnesses to support or
otherwise lay foundation for the statements. The Tribal Court did not abuse its discretion in
refusing such statements. Therefore, it did not abuse its discretion in denying admission of the
written statements in question.

### **CONCLUSION**

For the aforementioned reasoning we AFFIRM the trial court on both issues presented in this Appeal.

OPINION

Dated this 24Kday of May, 2016. SEAL SEAL Corigoan line JOSHUA C. MORIGEAU Associate Justice ELDENA ERAF DON'T WALK Chief Justice Neur SMAM ROBERT MCDONALD Associate Justice **OPINION** 

### **Certificate of Mailing**

I, Abigail Dupuis, Appellate Court Administrator, do hereby certify that I mailed a true and correct copy of the Opinion and 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 1st day of June, 2016.

Clifford Burke, Jr. 630 Eisenhower Street SW Ronan, MT 59864

Francis Cahoon 34691 E. Post Creek Road St. Ignatius, MT 59865

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

Abigail Dupuis Appellate Court Administrator