

**NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS
DISTRICT OF NAY-AY-SHING**

**IN THE COURT OF CENTRAL JURISDICTION
COURT OF APPEALS**

IN THE MATTER OF: CHILD CUSTODY CASE # 98APP01

B.M.;

Petitioner-Appellant,

vs.

ORDER AFFIRMING
DISTRICT COURT'S
ORDER OF
DISMISSAL

P.J.,

Respondent-Appellee.

BACKGROUND

This is an appeal from the Order of Dismissal entered March 25, 1998, by the District Court of the Court of Central Jurisdiction. This appeal concerns whether the Court of Central Jurisdiction has jurisdiction over a child custody dispute between Appellant and Appellee.

The Appellant and Appellee are the biological parents of the children at issue. The Appellant is an enrolled member of the Mille Lacs Band; the Appellee is an enrolled member of The Leech Lake Band of Chippewa. The children at issue are enrolled members of the Mille Lacs Band. The record indicates a long history in the Hennepin County courts of child custody and other similar disputes between Appellant and Appellee.

The action which led to the Order of Dismissal, and then to this appeal, commenced on February 18, 1998, when Appellant requested an *ex parte* order granting him temporary legal and

physical custody of two of his minor children, D.M. and S.M. In addition, on February 18, 1998, Appellant submitted to the District Court a petition for sole, exclusive legal and physical custody of his children. The files, records, and affidavits produced by Appellant, as well as the argument of counsel, indicated that Appellant was a fit and proper adult, and that the health and safety of Appellant's children were at risk unless Appellant be granted temporary custody. In his petition, Appellant alleged that no separate proceedings were pending in another court, except for a paternity action in Fourth District Court of Minnesota. On February 18, 1998, the District Court therefore awarded Appellant temporary custody of his children.

On March 11, 1998, Appellee filed with the District Court a Motion to Dismiss the order awarding Appellant custody for lack of jurisdiction over the action. A hearing on this jurisdiction motion was held on March 13, 1998. On March 16, 1998, the District Court granted Appellee's Motion to Dismiss for lack of jurisdiction. The District Court declined jurisdiction in the matter because the children were not properly within the territory under the jurisdiction of the Mille Lacs Band when the Court signed the original *Ex Parte Order*, and because similar custody disputes were pending in Hennepin County courts.

Following the dismissal of the custody dispute, on March 17, 1998, Appellant submitted a second Petition for Custody. In response to Appellant's amended Petition for Custody, on March 24, 1998, Appellee filed with the Court another Motion to Dismiss. On March 25, 1998, the District Court dismissed Appellant's amended Petition for Custody without hearing because it duplicated.

During this same time, similar actions between Appellant and Appellee were pending in Hennepin County Family Court. On March 17, 1998, after Appellant failed to appear before Referee Karl A. Doss for a Hearing to Show Cause, the court continued the hearing to May 13,

1998. Moreover, on March 26, 1998, after communicating with the District Court, Referee Doss recommended and the Honorable Diane S. Eagon approved that Appellant return his children to Appellee and that the case pending in the District Court be dismissed. On March 30, 1998, Appellant requested the Hennepin County Family Court to review Referee Doss' decision.

On March 27, 1998, Appellant appealed from the District Court's order of March 25, 1998, to dismiss the amended Petition for Custody. In April of 1998, the Court of Appeals heard arguments from counsel for the parties. The Court of Appeals thereafter ordered that Appellant, Appellee and their counsel appear again before the court on May 19, 1998. At the May 19th hearing, the Court heard oral arguments from the parties.

LEGAL ANALYSIS

The tribal court has jurisdiction as provided to it by the Band's own laws. These laws provide that, except as otherwise provided for, "the Court of Central Jurisdiction shall have all judicial authority extending to all cases in law and equity." 5 MLBSA § 101; see also 5 MLBSA § 111; 8 MLBSA § 4; Child/Family Protection Act 2.27, 3.01. The Court, of course, has jurisdiction of child custody disputes to the extent provided by the Band's laws.

The Band's laws provide that the Court has jurisdiction over minor child custody disputes when the minor child, "is domiciled or resides on territories under the jurisdiction of the Band." 8 MLBSA § 4(b)(7). The Child/Family Protection Act likewise provides the Court jurisdiction over child custody disputes "within the boundaries of the reservation." Child/Family Protection Act § 3.01. Under 8 MLBSA §49(b)(8), the Court of Central Jurisdiction has jurisdiction over minors not domiciled or residing on territory under the jurisdiction of the Band only when jurisdiction is transferred by another court. The language of these statutes makes it abundantly

clear that the jurisdiction of the Court of Central Jurisdiction, contrary to assertions made at oral argument, extends only as far as the territorial limits of the Band.

At the time the District Court granted *ex parte* Appellant's motion for custody, D.M. was not within the territory under the jurisdiction of the Band. S.M. was within the boundaries of the reservation at the time the District Court granted Appellant's motion for custody; however, she was within the boundaries of the reservation only because Appellant transported her there without Appellee's permission. The District Court's Order for Dismissal recognized potential subversions of the courts' authority if Appellant were to gain jurisdiction by transporting S.M. to within the boundaries of the Band's territory without Appellee's permission. See, In re the Matter of the Custody of K.K.S., 508 N.W.2d 813 (Minn. App. 1993) rev. denied (declining jurisdiction when father transported child to within the court's jurisdiction because of the potential of kidnapping). This Court, therefore, upholds the District Court's decision to decline jurisdiction as the children at issue were not properly within the jurisdiction of the Band.

In addition, at the time the District Court granted *ex parte* Appellant's motion for custody, similar actions had been and appear to be pending in Hennepin County Family Court, despite Appellant's assertions to the contrary. The District Court's Order for Dismissal dated March 16, 1998, recognized the possibility of conflicting decrees since similar child custody actions were pending in Hennepin County court. See id. (citing the possibility of conflicting decrees as a reason for declining jurisdiction). This action exemplifies the potential for confusion and waste of judicial resources when similar actions are pending in different jurisdictions. It is neither in the best interests of the children nor in the interest of judicial efficiency for this Court to assert jurisdiction over this particular child custody dispute when it is simultaneously pending

in another court. The District Court therefore properly declined jurisdiction over this child custody dispute.

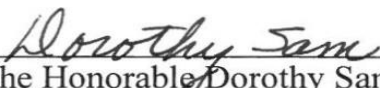
This Court's ruling does not prevent Appellant from pursuing custody of his children by other means. Mille Lacs Band laws provide Appellant the opportunity to transfer jurisdiction over this child custody proceeding to the Court of Central Jurisdiction. According to the Band's laws, if the minor child "is not domiciled or does not reside on territories under the jurisdiction of the Band," the Court can gain jurisdiction by a "[t]ransfer of jurisdiction from any court or child custody proceedings." 8 MLBSA § 4(b)(8); see also Child/Family Protection Act § 3.04. The Band's laws explicitly provide the method by which jurisdiction may be transferred. See, e.g., 8 MLBSA § 5(b) (petition by Band to transfer jurisdiction); Id. § 5(g)(1) (petition by parent to transfer jurisdiction). The Court of Central Jurisdiction shall accept the transfer by the Hennepin County court of this child custody dispute. See id. § 5(g)(2).

ORDER

For the aforementioned reasons the District Court of the Court of Central Jurisdiction's Order of Dismissal is AFFIRMED. Pending actions concerning the custody of Appellant and Appellee's children are to remain in the Fourth District Court unless jurisdiction is properly transferred.

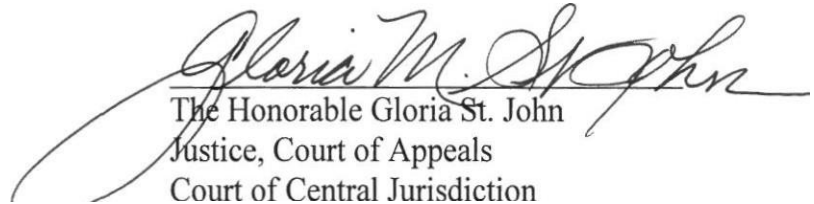
BY THE COURT OF APPEALS

Dated this 22nd day of May, 1998

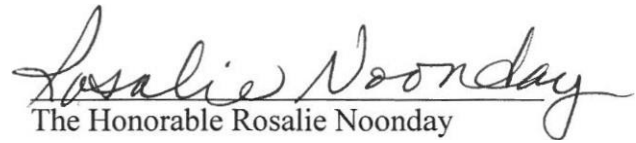


The Honorable Dorothy Sam
Chief Justice, Court of Appeals
Court of Central Jurisdiction
Non-Removable Mille Lacs Band
of Chippewa Indians

Dated this 22nd day of May, 1998


The Honorable Gloria St. John
Justice, Court of Appeals
Court of Central Jurisdiction
Non-Removable Mille Lacs Band
of Chippewa Indians

Dated this 27th day of May, 1998


The Honorable Rosalie Noonday
Justice, Court of Appeals
Court of Central Jurisdiction
Non-Removable Mille Lacs Band
of Chippewa Indians