

FILED

**SISSETON-WAHPETON-SIOUX
TRIBAL COURT**

SISSETON-WAHPETON OYATE
SUPREME COURT

1/13/15

Date

by:

Lisa Kohn

NO. D-12-520-378

Clerk of Courts

<p>SISSETON-WAHPETON OYATE OFFICE OF CHILD SUPPORT ENFORCEMENT Ex rel STEPHANIE FOOTE KINGSTON FOOTE (minor child) Plaintiffs/Appellees,</p> <p>v.</p> <p>GABRIEL KAMPESKA, Defendant/Appellant.</p>	<p>MEMORANDUM OPINION AND ORDER</p>
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Per Curiam (Thor Hoyte, Chief Justice and Associate Justices Russel Zephier and Pat Donovan)

FACTS AND PROCEDURAL HISTORY

This matter comes before this Court on an appeal from a child support matter from the Sisseton-Wahpeton Child Support Enforcement Court. This case has a long and convoluted procedural history this Court will recite for the sake of clarity and reference.

On June 23, 2009 the Three Affiliated Tribes of North Dakota entered an order establishing that Appellant Kampeska is the natural father of Kingston Foote and ordered Kampeska to pay monthly child support. Apparently the mother of Kingston Foote, Stephanie Foote, and the child are enrolled members of the Three Affiliated Tribes. Kampeska is an enrolled member of the Sisseton-Wahpeton Oyate.

Appellee, the Sisseton-Wahpeton Office of Child Support Enforcement, petitioned the Sisseton-Wahpeton Child Support Enforcement Court to Recognize the Order of the Three Affiliated Tribes Order Establishing Paternity and Child Support. After holding a hearing on April 26, 2012 the Sisseton-Wahpeton Child Support Enforcement denied the Petition to Recognize the Three Affiliated Tribe's child support order for lack of that courts personal jurisdiction over Kampeska.¹ The Sisseton-Wahpeton Child Support Enforcement Court then

¹ The Court relied on the Full Faith and Credit of Child Support Orders 28 U.S.C. §1738B and (Continued)

entered an order establishing Kampeska's paternity of the child and set a monthly child support obligation of \$50.00. Neither the dismissal of the Petition to Recognize the Order of the Three Affiliated Tribes Order Establishing Paternity and Child Support nor the Child Support Enforcement Courts order of paternity and child support were appealed.

On May 17, 2012 Kampeska filed a Petition for Termination of Parental Rights in Sisseton Wahpeton Tribal Court. On August 15, 2012 the Sisseton-Wahpeton Tribal Court denied Kampeska's Petition to terminate his parental rights to the child because it lacked personal jurisdiction over the mother and child and reaffirmed the court's jurisdiction over the child support matter.² This decision was not appealed.

At some point the Sisseton-Wahpeton Office of Child Support Enforcement began collecting on the child support order issued by the Sisseton-Wahpeton Child Support Enforcement Court by serving a withholding order on Kampeska's employer.³

There were several hearings held on motions to modify the child support ordered by the Sisseton-Wahpeton Tribal Court. At the October 9, 2012 modification hearing, the mother of the child, Stephanie Foote, and Kampeska stipulated that Sisseton-Wahpeton Child Enforcement Court was the controlling court for determining the current child support obligation as well as any future child support obligation and for determining any arrears for the benefit of the child, Kingston Foote. Stephanie Foote further agreed to contact the Three Affiliated Tribe's Office of Child Support Enforcement that the parties stipulated that the Sisseton-Wahpeton Child Enforcement Court was the controlling court for determining the current child support obligation as well as any future child support obligation and for determining any arrears for the benefit of

Kulko v. Superior Ct. of Cal., 436 U.S. 84 (1978)

² Sisseton Wahpeton Oyate Code Section 39-02-01 specifically requires that both parents of the child be enrolled members of the Sisseton Wahpeton tribe and the child to be enrolled or eligible for enrollment.

³ It is unclear from the record on appeal when the withholding order was served on Kampeska's employer.

the child, Kingston Foote. Apparently this was either not done or the Three Affiliated Tribes did not honor the stipulation because the Three Affiliated Tribe's Office of Child Support Enforcement failed to cease its collection of child support in this matter and sent a tax intercept to the IRS and intercepted Kampeska's 2013 tax refund. As a result, on May 23, 2013 the Sisseton-Wahpeton Tribal Court issued an order that through a stipulation of the parties the Sisseton-Wahpeton Child Enforcement Court was the controlling court for determining the current child support obligation as well as any future child support obligation and for determining any arrears for the benefit of the child, Kingston Foote.

Relevant to this appeal is the June 26, 2013 Order of the Sisseton-Wahpeton Tribal Court. Kampeska filed a motion to strike the withholding order issued by the Sisseton-Wahpeton Child Support Enforcement Court and that he be reimbursed for all money withheld. The basis for this motion was that there were two competing child support orders and under the Uniform Interstate Family Support Act the Sisseton-Wahpeton Child Support Enforcement Court was the enforcing court and lacked jurisdiction to issue a withholding order to enforce modification of the Three Affiliated Tribe's child support order. The Sisseton-Wahpeton Child Support Enforcement Court denied the motion.

ISSUES

The singular issue on appeal is whether the Sisseton-Wahpeton Child Support Enforcement Court erred in denying Kampeska's motion to strike the withholding order issued by the Sisseton-Wahpeton Child Support Enforcement Court?

STANDARD OF REVIEW

We review the Sisseton-Wahpeton Child Support Enforcement Court's findings of fact for clear error and its conclusions of law de novo.

DISCUSSION

Kampeska argues that the Three Affiliated Tribe's child support order is the controlling child support order and that Sisseton-Wahpeton Child Support Enforcement Court cannot modify the Three Affiliated Tribe's child support order under the Uniform Interstate Family Support Act.

The Sisseton-Wahpeton Child Support Enforcement Court ruled that its order was controlling because it had found that the Three Affiliated Tribal Court lacked personal jurisdiction over Kampeska and had no authority to issue a child support order. The court further ruled that it had jurisdiction and the Uniform Interstate Family Support Act was inapplicable because the Oyate had not adopted it but the court still applied its provisions that follow federal law.

Kampeska's arguments that the Sisseton-Wahpeton Child Support Enforcement Court erred are without merit.

After a de novo review of the record, the Sisseton-Wahpeton Child Support Enforcement Court did not err in concluding that the Three Affiliated Tribes child support order was not an issuing order and did not control. At the hearing on the Petition to Recognize the Order of the Three Affiliated Tribes Order Establishing Paternity and Child Support the Sisseton-Wahpeton Child Support Enforcement Court refused to recognize the order because the Three Affiliated Tribes lacked personal jurisdiction of Kampeska to issue a support order and entered its own child support order. The Sisseton-Wahpeton Child Support Enforcement Court later modified its own order. It never recognized or modified the Three Affiliated Tribes order as Kampeska argues.

At the hearing on the Petition to Recognize the Three Affiliated Tribes paternity and child support order, Kampeska argued that the Three Affiliated Tribes did not have personal jurisdiction over him. Kampeska testified he had never been to the Fort Berthold Reservation of

the Three Affiliated Tribes and had no contacts with that reservation. The court correctly concluded that Full Faith and Credit of Child Support Act applied in this case.⁴ The Act defines State to mean Indian Country.⁵ It requires a child support order be made by a court with personal jurisdiction over the contestants.⁶ *Kulko v. Superior Ct. of Cal.*⁷ discusses the requirements of what minimum contacts must be made by a defendant for a case to come under a foreign state's jurisdiction. Kapeska himself testified at the recognition hearing that he had no contact with the Fort Berthold Reservation.

Kapeska argues the Uniform Interstate Family Support Act applies. We agree with the Sisseton-Wahpeton Child Support Enforcement Court that it does not. As the lower court pointed out it is model legislation never adopted by the Oyate. Even if this Act applied, the result would not be different. The Act will grant a state (tribe means state under the Act) who has adopted the Act jurisdiction over a non-resident to issue a child support order if the non-resident has certain contacts with the state or tribe.⁸ None of these contacts were made by Kapeska with the Fort Berthold Reservation according to his testimony.

The mother of the child also consented to the Sisseton-Wahpeton Child Support Enforcement Court having controlling jurisdiction over the child support matter on October 9, 2012. When she consented she was submitting to the jurisdiction of the Sisseton-Wahpeton Child Support Enforcement Court and agreeing to the court's child support order.

It is unfortunate the Three Affiliated Tribes either was not notified of the controlling order

⁴ 28 U.S.C §1738B

⁵ 28 U.S.C §1738B(b)(9)

⁶ 28 U.S.C. §1738B(c)(1)(B)

⁷ *436 U.S. 84at 94*

⁸ The Model Act requires the non-resident to either be personally served within the state/tribe; submit to the jurisdiction of the state/tribe by consent in a record, by entering a general appearance or by a filing a responsive pleading; resided in the state or reservation with the child; resided on the reservation and provided prenatal expenses for support for the child; acts or directs the child to reside on the reservation; engaged in sexual intercourse on the reservation; or asserted parentage in a registry maintained by Three Affiliated Tribes

stipulation or failed to act upon it when they were in fact notified. Kampeska's remedy is not against the Sisseton-Wahpeton Office of Child Support Enforcement in this court. It is for the Three Affiliated Tribal Court to decide any request for a refund for the tax intercept by Three Affiliated Tribe Office of Child Support Enforcement or with Stephanie Foote who benefited from the overpayment.

CONCLUSION

For the above stated reasons this Court therefore affirms the Sisseton-Wahpeton Child Support Enforcement Court in all respects.

IT IS SO ORDERED.

Dated this 30th of December, 2014.

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Pat Donovan Associate Justice