

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION**

<b>ROSS ATWOOD</b>	)	
	)	<b>CV-05-165-BLG-RFC</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER DENYING PLAINTIFF’S</b>
	)	<b>MOTION FOR PRELIMINARY</b>
<b>FORT PECK TRIBAL COURT</b>	)	<b>INJUNCTION &amp; GRANTING</b>
<b>ASSINIBOINE AND SIOUX TRIBES,</b>	)	<b>DEFENDANTS’ MOTIONS TO</b>
<b>and LINDA L. FLYNN HANSON</b>	)	<b>DISMISS</b>
	)	
<b>Defendants.</b>	)	
	)	

**BACKGROUND**

Plaintiff Ross Atwood filed the present action asking this Court to divest the Fort Peck Tribal Court of jurisdiction and enforce an Order of the Thirteenth Judicial District Court, Yellowstone County, Montana granting him custody of his daughter, an eleven year-old Indian child named Lexie Lee Flynn (“Lexie”). Lexie lived with her mother, Della Lynn Flynn, until her death on July 16, 2005. After Della’s death, Defendant Linda Hansen, Lexie’s maternal aunt, petitioned the Fort Peck Tribal Court for custody. On September 21, 2005, the Fort Peck Tribal Court ordered that Lexie remain in the custody of her maternal grandmother until the matter was resolved. That matter is still pending.

Before the Fort Peck Tribal Court had fully adjudicated the matter, Plaintiff was granted immediate custody of Lexie by the Thirteenth Judicial District Court, Yellowstone County, Montana. Apparently, the Thirteenth Judicial District Court terminated enforcement actions

upon learning of the pending tribal court matter. Plaintiff then filed the present action to prevent enforcement of the temporary custody order issued by the Fort Peck Tribal Court and to enforce the district court order. Presently before the Court is Plaintiff's Motion for Preliminary Injunction, as well as Motions to Dismiss brought by Defendant Linda Flynn Hansen and Defendant Fort Peck Tribal Court, Assiniboine and Sioux Tribes.

## ANALYSIS

Plaintiff asserts that this Court has jurisdiction under 28 U.S.C. § 1331, as this action presents federal questions arising under the Constitution and Laws of the United States of America. Plaintiff also asserts diversity jurisdiction is satisfied because Plaintiff is a citizen of California. However, without deciding whether this Court has federal question or diversity jurisdiction, it must decline jurisdiction. It is the policy of this Court to abstain from intervention in matters involving domestic relations, especially when there are matters pending in tribal courts.

The domestic relations exception to federal jurisdiction exists as a "historical exclusion of domestic matters formerly settled in ecclesiastical courts." *Csibi v. Fustos*, 670 F.2d 134, 136 (9th Cir. 1982); *see also Palmore v. Sidoti*, 466 U.S. 429, 432-34 (1984). Under the domestic relations exception, federal courts may exercise their discretion to abstain from deciding cases where "domestic relations problems are involved tangentially to other issues determinative of the case." *Csibi*, 670 F.2d at 137 *citing Bossom v. Bossom*, 551 F.2d 474, 475 (2nd Cir. 1976) (federal courts may decline to exercise federal jurisdiction over matters "on the verge" of the domestic relations exception if the interests of justice would be served by state court resolution).

Under the Ninth Circuit test, the determinative issue is whether the status of the parent and child or husband and wife is a primary issue in a case. *Buechold v. Ortiz*, 401 F.2d 371, 372 (9th Cir. 1968). The present action clearly involves such issues.

Accordingly, **IT IS HEREBY ORDERED** that the Motions to Dismiss brought by Defendant Linda Hansen (*Doc. # 10*) and Defendant Fort Peck Tribal Court, Assiniboine and Sioux Tribes(*Doc. # 8*) are **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiff's Motion for Preliminary Injunction (*Doc. # 2*) is **DENIED**.

The Clerk is directed to notify the parties of the making of this Order.

DATED this 8th day of March, 2006.

/s/ Richard F. Cebull  
RICHARD F. CEBULL  
U.S. DISTRICT COURT JUDGE

CERTIFICATE OF MAILING

DATE: 3/8/06

BY: \_\_\_\_\_

I hereby certify that a copy of  
this Order was mailed to:

J. Gregory Tomicich

Carol Johns

Ryan Rusche