

West's

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13 Am. Tribal Law No. 3 Pages 131-343

*A West's Key Number System August 2016 Pamphlet is being shipped separately. This pamphlet contains the full Outlines and Translation Tables for revised topic SALES and new topic SEX OFFENSES.*

For relevant U.S. Court of Appeals  
or U.S. Supreme Court cases,  
see bracketed page numbers.

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LAW OFFICE OF  
MARY ZEMYAN

## ORDER OF CONTENT:

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EXHIBIT

A

tabbles

Plaintiff/Appellee, Fort Peck Tribes, Tribal Prosecutor Adrienne Weinberger filed a notice with the Tribal Trial Court outlining the procedure that had led to the Requisition for Rendition being conveyed to the Fort Peck Assiniboiné and Sioux Tribes. The Court issued a warrant to apprehend Appellant Buckles on December 1, 2015 and he was placed in the Fort Peck Tribal Jail. At the tribal prosecutor's request, the Tribal Trial Court held a hearing, on December 7, 2015. Following the hearing, the Court ordered Appellant Buckles to be released to the State of Montana, Custer County.

A Petition for Review and Motion for Stay were timely filed by Appellant Buckles on December 8, 2015. On January 8, 2016, we granted the Petition for Review but found no grounds for granting a Stay. We set a briefing schedule under which Appellant Buckles was given the opportunity to file a Brief in Support of his appeal within 20 days and that Appellee Fort Peck Tribes would then have 20 days to respond. Appellant Buckles did not file a Brief. However, Appellant Buckles clearly stated his legal position in the Notice of Appeal and Motion for Emergency Stay. The Fort Peck Tribes did file a brief opposing review and stating applicable law had been followed.

[2] Because this is an extradition proceeding, we are treating the Notice of Appeal as an Application for Writ of Habeas Corpus. We deny the application and affirm the Tribal Trial Court.

The state records reviewed by the Tribal prosecutor and presented to the Tribal Trial Court, outline in detail the basis for the request by the State of Montana. In the document filed by the Tribal prosecutor on December 1, 2015 entitled Extradition, she states under oath that the State of Montana has complied with the applicable provisions of the Fort Peck Tribes

Comprehensive Code of Justice, ("CCOJ"), Title 3, Chapter 4, § 402. Following the hearing, the Tribal Trial Court approved the release of Appellant Buckles, to Montana authorities in accordance with the tribal code provisions.

Under Title II, Chapter 2, section 202, CCOJ, "The Court of Appeals shall review de novo all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence." We find the Tribal Trial Court legal decision to be correct and supported by substantial evidence.

Therefore, the judgment of the Fort Peck Tribal Court is hereby affirmed.



**In the Matter of the ESTATE OF  
Annabelle WHITE EAGLE, a  
Deceased Tribal Member.**

**Margaret Payne, Petitioner/Appellant,**

**Richard White Eagle,  
Respondent/Appellee.**

**No. 693.**

**Fort Peck Court of Appeals.**

**Feb. 26, 2016.**

**Background:** Daughter filed petition seeking to be named personal representative of mother's estate, and challengers challenged implementation of codicil purporting to bequeath residence to daughter. The Tribal Court determined that codicil was ineffective because at time she signed codicil, mother no longer owned home, and

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denied daughter's motion to r  
Daughter filed notice of appeal a  
to stay.

**Holding:** The Court of Appeals  
codicil transferring house to dau  
ineffective.

Affirmed.

**Deeds** ⇐ 38(1)

**Wills** ⇐ 767

Mother's codicil transferring  
her daughter was ineffective, si  
time mother signed the codicil  
longer owned the home; prior  
the codicil, mother had transf  
property, and, furthermore, fail  
clude the Fort Peck Housing  
dwelling unit description did n  
conveyance invalid because all  
identified home by land descr  
C.C.O.J. § 202.

Terry L. Boyd, Brockton, Mo  
Petitioner/Appellant Margaret P

Mary L. Zemyan, Wolf Point,  
counsel for Respondent/Appelle  
White Eagle.

Before BRENDA DESMOND  
Justice, GERARD M. SCHUSTE  
JOSEPH RAFFIANI, Associate

**OPINION AND ORDER**

A Notice of Appeal and Motion  
were timely filed herein by Appe  
garet Payne on August 12, 2015  
terminated there were grounds fo  
the Appeal but not for granting  
the judgment of the Tribal Tr  
The matter has been fully bri  
affirm the Tribal Trial Court in  
with the following.

## IN RE ESTATE OF WHITE EAGLE

Cite as 13 Am. Tribal Law 214 (Fort Peck C.A. 2016)

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denied daughter's motion to reconsider. Daughter filed notice of appeal and motion to stay.

**Holding:** The Court of Appeals held that codicil transferring house to daughter was ineffective.

Affirmed.

Deeds ⇐38(1)

Wills ⇐767

Mother's codicil transferring house to her daughter was ineffective, since at the time mother signed the codicil, she no longer owned the home; prior to signing the codicil, mother had transferred the property, and, furthermore, failure to include the Fort Peck Housing Authority dwelling unit description did not render conveyance invalid because all documents identified home by land description. 2 C.C.O.J. § 202.

Terry L. Boyd, Brockton, Montana, for Petitioner/Appellant Margaret Payne.

Mary L. Zemyan, Wolf Point, Montana, counsel for Respondent/Appellee Richard White Eagle.

Before BRENDA DESMOND, Chief Justice, GERARD M. SCHUSTER and JOSEPH RAFFIANI, Associate Justices.

## OPINION AND ORDER

A Notice of Appeal and Motion for Stay were timely filed herein by Appellant Margaret Payne on August 12, 2015. We determined there were grounds for granting the Appeal but not for granting a stay of the judgment of the Tribal Trial Court. The matter has been fully briefed. We affirm the Tribal Trial Court in accordance with the following.

Margaret Payne, Petitioner/Appellant petitioned the Tribal Trial Court to name her the personal representative of the estate of her mother, Annabelle White Eagle. Annabelle White Eagle made a will dated November 6, 1989 and a codicil to the will dated April 26, 2013. The 2013 codicil purported to bequeath a residence in Wolf Point, Montana to Margaret Payne. Darrel and Richard White Eagle challenged implementation of the codicil. They provided a document dated April 17, 2003 conveying the home from Annabelle White Eagle to Richard White Eagle. Thus, they argued that Annabelle White Eagle had already conveyed the property when she made the 2013 codicil. The Tribal Trial Court agreed, ruling on July 1, 2015, that the codicil was ineffective because at the time she signed the codicil, Annabelle White Eagle no longer owned the home.

Following the Tribal Trial Court's original decision, Petitioner/Appellant, Margaret Payne filed a Motion to Reconsider the decision, asserting that the 2003 deed of conveyance was invalid, first, because it was not signed by either the Superintendent of the Fort Peck Agency or the Chairman of the Fort Peck Tribes, second, that it did not include the tribal lease for the land on which the residence is located and third, because it did not include the land description of the residence location. On July 22, 2015, the Tribal Court declined to reconsider. The Court determined that law did not require a signature by the BIA Fort Peck Agency Superintendent or the Fort Peck Tribal Chairman because the Tribe no longer had an interest in the home in 2003. The Court further found that the lease could not have been transferred in the conveyance of 2003. Finally, the Court held that failure to include the Fort Peck Housing Authority dwelling unit description did not render the conveyance

invalid because all the documents identify the home by the land description.

Under Fort Peck Tribes Comprehensive Code of Justice Title II, Chapter 2, section 202, "The Court of Appeals shall review de novo all determinations of the Tribal Court on matters of law, but shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence." We find the factual determinations of the Tribal Trial Court are supported by substantial evidence. Further, the legal conclusions of the Tribal Trial Court are well reasoned and correct.

Therefore, the ORDER of the Fort Peck Tribal Court is hereby affirmed.



**FORT PECK TRIBES,**  
Plaintiff/Appellee,

v.

**Rick MORALES Jr.,**  
Defendant/Appellant.

No. 706.

Fort Peck Court of Appeals.

March 24, 2016.

#### ORDER DENYING REVIEW

On February 12, 2016, Defendant/Appellant Rick Morales, Jr., filed a timely Notice of Appeal of the Tribal Trial Court's February 4, 2016 Denial of Motion to Dismiss. We deny review at this stage of the proceedings, in accordance with the following.

The Trial Court's Order denying Defendant/Appellant's Motion to Dismiss deter-

mined two issues. First, the Court ruled that the Defendant's contention that the arresting officer lacked jurisdiction to arrest was incorrect because the officer had been cross-deputized. Second, the Court ruled that the Defendant's contention that the Tribes violated the Indian Civil Rights Act by charging the Defendant with two offenses that could result in a sentence of more than one year, had been determined incorrect in Court of Appeals Case *Tribes v. Bull Chief*, FPCOA 62. This matter is ready now to proceed to trial in the Tribal Trial Court.

The Order appealed from is not final within the meaning of Fort Peck Tribes Comprehensive Code of Justice, Title II, Ch. 2, § 202. That provision states in relevant part, "The jurisdiction of the Court of Appeals shall extend to all appeals from final orders and judgments of the Tribal Court." Nor does Rule 6, of the Rules of Procedure in the Court of Appeals permit this appeal. The rule provides for interlocutory appeal of "a final order of the Tribal Court which involves an issue of law consistent with a violation of due process adversely affecting the outcome of a trial in the merits, regardless of whether the final order includes a full determination on the merits." Defendant/Appellant has not shown any violation that would adversely affect the outcome of the trial. As well, Rule 6 provides for interlocutory appeal if there are "other important constitutional issues at stake and the outcome of the trial would be altered in such a manner as to cause irreparable harm to the aggrieved party." While as in any criminal proceeding there are important constitutional issues at stake, Defendant/Appellant has not demonstrated that denial of interlocutory review would cause him irreparable harm. Therefore,

WALKING EAGLE  
Cite as 13

IT IS HEREBY ORDERED  
Appeal is denied.



1

**BRANDY SMITH and Estate**  
**J. Azure, Defendants/Appellants**

v.

**21st MORTGAGE CORPORATION**  
Plaintiff/Appellee.

No. 711.

Fort Peck Court of Appeals.

May 12, 2016.

#### ORDER DISMISSING APPEAL

A Petition for Review of the Court Judgment of January 1, 2016, filed herein by Appellants Brandy Smith and Estate of Kenny J. Azure was filed on May 12, 2016.

The Fort Peck Tribes Comprehensive Code of Justice Title II, Chapter 207(a) requires that a Petition for Review be filed within 15 days of the judgment. The Petition for Review in this matter was filed more than 15 days after judgment.

Based on the foregoing and nothing appearing to the contrary,

IT IS HEREBY ORDERED that the Appeal is denied and dismissed.

