

**FORT PECK COURT OF APPEALS  
 ASSINIBOINE & SIOUX TRIBES  
 FORT PECK INDIAN RESERVATION  
 POPLAR, MONTANA**

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IN THE MATTER OF,	)	
	)	
FORT PECK TRIBES,	)	
	)	
Plaintiff/Appellee,	)	Appeal No. 512
	)	
vs	)	<b>OPINION AND ORDER</b>
	)	
ABRIENNE DEMARRIAS,	)	
	)	
Defendant/Appellant.	)	
	)	
*****	)	

**Appearances:**

Robert E. Welch Tip Top Plaza Suite # 8, 500 Blaine Street, Wolf Point, MT 59201, Lay Counselor at Law for Defendant/Appellant.

Adrienne Weinberger, Prosecutor, Fort Peck Tribes, P.O. Box 1027, Poplar, MT 59255, for the Office of the Tribal Prosecutor.

This is an appeal of an August 14, 2008 Tribal Court Order holding Abrienne DeMarrias in contempt of Court for violating her Service Treatment Agreement and sentencing her to 90 days flat in the Fort Peck Detention Center. On August 18, 2008, Ms. DeMarrias unsuccessfully sought a stay of sentence in the Tribal Trial Court. On August 22, 2008, Ms. DeMarrias filed a Petition for Review and a Request for Stay of Sentence in the Court of Appeals. We granted

her request for stay on August 27, 2008, set a shortened briefing schedule on the matter and heard oral arguments on September 23, 2008. We reverse the Tribal Trial Court in accordance with the following.

The underlying matter involves a child protection proceeding filed in July 2007 under Fort Peck Tribes Comprehensive Code of Justice, (“CCOJ”), Title IX. As result of the filing of the proceeding, Ms. DeMarrias entered into a Service Treatment Agreement, in which she consented to several conditions, including obtaining treatment for alcohol abuse and refrain from using alcohol. Her one-year-old child was made a ward of the court. The Court granted care and supervision of the child to BIA Social Services and the child was placed with the maternal grandmother with whom Ms. DeMarrias resided.

Ms. DeMarrias did not appear for the first review hearing in October 2007. The Court left the care and supervision and placement plan in place and issued a warrant for Ms. DeMarrias’s arrest. Shortly thereafter Ms. DeMarrias was briefly placed into custody, released on the same Service Treatment Agreement and directed to appear for the next review hearing in January 2008. Ms. DeMarrias did not appear for the January 2008 review hearing. Following the hearing, the Court issued an Order continuing the care and placement plan and again issuing a warrant for Ms. DeMarrias’s arrest.

On February 4, 2008, the maternal grandparents filed a Family Court Petition for permanent custody of the child. Following another review hearing on February 6, 2008, at which it was reported that Ms. DeMarrias had gone to treatment and been sober for a time, but had been arrested in a car with an infant and several adults under the influence of alcohol, including the driver, and charged with the offense of neglect of a child. The next review hearing was held on August 13, 2008. It was reported that Ms. DeMarrias had worked on some of her Service Treatment Agreement requirements, e.g. attended some outpatient treatment, some parenting classes, obtained a mental health assessment and had had periods of sobriety, but had not maintained sobriety. She testified that she had completed 2 out of the 9 elements of her Service Treatment Agreement. The Review Hearing Order continued the placement and treatment plan without major change.

Following the testimony on the review, the Court immediately held a show cause hearing on why Ms. DeMarrias should not be held in contempt of Court for violating the Service Treatment Agreement. The Order then sentenced Ms. DeMarrias to 90 days flat in the Fort Peck Detention Center for “blatantly disregarding an Order of this Court and failure to abide by conditions set forth.”

Ms. DeMarrias’s Petition for Review is based on her theory that she was charged and punished for criminal contempt without adequate notice and opportunity to prepare for a hearing. The Tribes respond that the Court did not

convict her of criminal contempt but rather held her in civil contempt of court, which is within the court's inherent authority and sanctioned her with the civil penalty of 90 days in detention.

A review of prior decisions of this Court results in a determination that Ms. DeMarrias is correct. A person who has violated a Service Treatment Agreement may be charged with and punished for contempt of court, but not in the manner in which it was done in this case. The Court of Appeals decisions in Fort Peck Tribes v. Harold Grey Bull (FPCOA No 83, 1990) and Fort Peck Tribes v. Dale and Reum (FPCOA Nos 303a, 303b, 2000) set forth clearly and in detail the somewhat complicated subject of contempt of court. First, the Dale - Reum decisions explain the difference between civil and criminal contempt of court. According to this analysis, because the exercise of contempt power in this matter was designed to punish Ms. DeMarrias and/or vindicate the integrity of the Court, it falls into the category of criminal contempt. Once it is determined an alleged contempt is arguably criminal, the next step is to determine if it is direct or indirect. Essentially violations of Court directives that occur in the courtroom are considered direct and those occurring outside the courtroom are considered indirect. Direct contempt may be punished in an immediate summary proceeding but indirect contempt may only be punished after notice and a hearing. Violation of a Service Treatment Agreement must be charged as criminal contempt under the

criminal code, CCOJ Title VII section 426 (b) and the person charged must be given all the rights provided for in criminal proceedings. While the Tribal Trial Court has significant contempt authority, the Court cannot exercise its inherent power to punish for contempt without notice and a hearing when the alleged violation occurred outside of the Courtroom.

This Opinion does not address or minimize the serious situation created when a parent cannot or will not attend to the treatment he or she needs to become the parent to which each child is entitled. It simply outlines the procedure required to hold a person in Contempt of Court for violation of a Service Treatment Agreement.

**IT IS NOW, THEREFORE, THE ORDER OF THIS COURT THAT:**

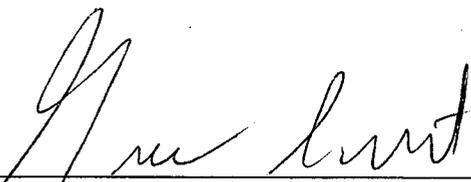
The portion of the Tribal Court Order of August 13, 2008 sentencing Ms. DeMarrias to detention is reversed and matter is remanded to the Tribal Court for further proceedings thereon.

**DATED** this 28 day of November, 2008.

**FORT PECK COURT OF APPEALS**

By: Brenda C Desmond  
**BRENDA DESMOND**, Chief Justice

Joe Raffiani 2-3-2009  
**JOE RAFFIANI**, Associate Justice DR

  
**GERARD M. SCHUSTER**, Associate Justice

ATTEST:  
DANNA HUNSALOWE, APPEALS CLERK  
DATE: 2-3-2009