

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

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IN THE MATTER OF	)	
	)	
WALTER I. CLARK & PAULINE	)	
ESCARCEGA,	)	
	)	Cause No. <u>560</u>
Appellants,	)	
	)	<b>ORDER DENYING PETITION</b>
DANNA RUNSABOVE,	)	<b>FOR REVIEW</b>
	)	
Appellee.	)	

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This matter comes before the Fort Peck Court of Appeals on a Petition for Review filed by Appellants, Walter I. Clark and Pauline Escarcega, by and through Clayton Reum, legal counsel. The Appellee, Danna Runsabove, filed a Response to Petition for Review, by Laura Christoffersen, Attorney at Law.

Upon review of the Court file, the orders and pleadings, this Court makes the following findings and order:

1. The Petition for Review asks this Court to set aside an Order of the Tribal Court dated March 7, 8 (sic), 2011, denying a Motion for Appointment of Guardianship of the estate of Joseph Clark, deceased December 27, 2010; Judge John J. Robinson, Special Judge, presiding.
2. On or about the same date, Judge Robinson ordered the Appointment of a Personal Representative in the Joseph Clark Estate matter. In that order, a Review Hearing was set for July 22, 2011. (Ref. Orders March 8, 2011 – filed March 14, 2011)
3. The reasons stated for the appeal can be summarized as follows:

- a. Judicial impropriety – Appellants allege that the process used in selecting an outside judge was inappropriate.

However, review of the file and briefs confirms that the matter of the Judge's relationship and/or knowledge of the Runsabove family was discussed with counsel, outside the presence of the parties, but on the record. Counsel for Appellants herein was given opportunity to inquire as to any impropriety and object, but waived objection after discussion. That issue cannot now be used as a basis for appeal.

- b. Nature of Hearing – Appellants argue that the hearing was supposed to be a Section 103 hearing (i.e., Title VIII, Chapter 1, Section 103, Civil Procedure. CCOJ), and there was inadequate notice to interested parties.

However, review of the file and briefs confirms that the initial Motion filed by Appellants was for Appointment of a Guardian for the estate. This Motion was found to be without merit and not supported by legal authority, with which finding and conclusion, we concur. (Ref. Title XII Sections 202 (a) and 202 (b) CCOJ) We further find and concur that the proceeding for Appointment of a Personal Representative was properly brought before the Court, and granted by the Court.

At the conclusion of the Order Appointing a Personal Representative, the Court set a Review Hearing on the matter. (Ref. Order, March 8, 2011, filed March 14, 2011) As such, we find the Order to be not final as contemplated by Title II, Section 202, CCOJ.

4. This Court finds that the Orders entered in the matter are supported by substantial evidence, and there is no basis to set aside such Orders.

The Fort Peck Court of Appeals shall not set aside any factual determinations of the Tribal Court if such determinations are supported by substantial evidence. II CCOJ §202.

5. Further, the Order is not a final order as contemplated by II CCOJ §202.

**BASED UPON THE FOREGOING FINDINGS AND GOOD CAUSE APPEARING:**

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

The Petition for Review be, and the same is hereby denied.

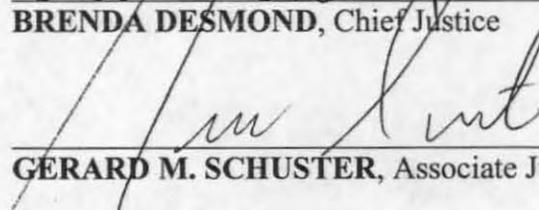
DATED this 8<sup>th</sup> day of April, 2011.

**FORT PECK COURT OF APPEALS**

By:



**BRENDA DESMOND, Chief Justice**



**GERARD M. SCHUSTER, Associate Justice**

RECUSED

**JOSEPH RAFFIANI, Associate Justice – recused**