IN THE SUPREME COURT OF THE MISSISSIPPI BAND OF CHOCTAW INDIANS

No. SC 2007-02

JAMES MCMILLAN,
Plaintiff/Appellant

VS.

LASHAUNYA HICKMAN STEVE,
FAIRRA THOMAS, and
MYRON THOMAS,
Defendants/Appellees

MEMORANDUM
OPINION AND ORDER

(Per Curiam Chief Justice Rae Nell Vaughn and Associate Justices Roseanna Thompson and Frank Pommersheim)

I. Introduction

In November 2004 pursuant to an order of the Choctaw Tribal Youth Court, the two minor children of Lashaunya Hickman Steve, Defendant/Appellee, were placed under letters of guardianship with Fairra and Myron Thomas. Approximately one year later, Ms. Hickman Steve filed a motion to dissolve the guardianship. In addition, Mr. James McMillan, Plaintiff/Appellant and biological father of one of the minor children, also filed a motion to dissolve the guardianship as to his biological child. In November 2006, both of these motions were denied. Apparently, the Youth Court Judge informed Mr. McMillan he lacked standing to seek to dissolve the guardianship and to have custody awarded to him since he did not have custody over the minor child at the time the letters of guardianship issued.

Soon thereafter, Mr. McMillan filed an action in the Choctaw Tribal Civil Court seeking to dissolve the guardianship and to be awarded custody of his biological son. The Court on its

own motion dismissed the action on the grounds that the Youth Court had *exclusive* jurisdiction, in accordance with Choctaw Tribal Code, over guardianships including any collateral matters relative to custody in accordance with Choctaw Tribal Code. The Civil Court was also apparently concerned with creating a situation that might encourage forum shopping between Youth Court and Civil Court.

An initial appeal to this Court was remanded to the Civil Court for more *written* detail. An amplified order was issued by the Civil Court in October 2007. A timely notice of appeal was timely filed with this Court and oral argument was heard on April 4, 2008.

II. Issues

This appeal raises two issues, namely:

1) Whether the Civil Court has jurisdiction to modify letters of guardianship, especially as to matters of child custody, issued by the Youth Court.

2) Whether James McMillan, Plaintiff/Appellant, has been denied due process under the Mississippi Band of Choctaw Indians Constitution.

III. Discussion

A. Jurisdiction

The arguments as submitted pose an essential question of statutory interpretation in which both parties seek guidance from this Court. The core inquiry involves determining the jurisdictional and structural relationship of the Choctaw Civil Court to the Choctaw Youth Court. More precisely, the issue is whether the Civil Court has (jurisdictional) authority over the Youth Court and can modify the letters of guardianship issued there or whether the courts share concurrent jurisdiction as to matters of child custody and neither has any authority to modify orders issued by the other.

The language of the relevant sections of the Choctaw Tribal Code do not expressly address this quandary. Yet a close reading of the relevant sections is instructive. Sec. 1-3-1(2) of the Choctaw Tribal Code states that the "civil court shall consist of two divisions. The first being Regular Civil Division and the second being Small Claims Division. . . The Regular Civil Division shall have *jurisdiction over all civil matters.*" (emphasis added). The phrase "jurisdiction over all civil matters" arguably includes custody determinations made in Youth Court guardianship matters. The problem with this construction is, of course, that it makes no reference whatsoever to the "Youth Court."

Sec. 1-3-1(4) of the Choctaw Tribal Code provides that "The Youth Court shall have *exclusive* jurisdiction over all actions brought pursuant to Title XI, Choctaw Youth Code." (emphasis added). Sec. 11-7-23(1) of the Choctaw Youth Code states that "The Court shall have authority to appoint and remove legal guardians, when the minor for whom the guardianship is sought is a member of the Mississippi Band of Choctaw Indians." Such language clearly vests the Youth Court with exclusive, that is sole, authority over guardianship matters including any custody determination.

In matters of statutory interpretation, the specific controls the general and therefore broad language concerning the Civil Division must yield to the narrow and controlling language relative to the Youth Court. Therefore, the Civil Court's determination that it did not have jurisdiction to review or to disturb the custody award made in the letters of guardianship issued by the Youth Court is correct as a matter of law and legislative interpretation.

This conclusion does not end the relevant inquiry. While the record remains unclear on this point, there is, apparently, the unresolved question of whether the Appellant, the non-custodial father at the time of the guardianship proceeding, has standing to file a motion to

dissolve the letters of guardianship. The answer is clearly yes. Despite the fact that Mr. McMillan was a non-custodial parent at the time of the guardianship proceeding, his rights as a parent were clearly affected by the decision to issue letters of guardianship. Clearly, Mr. McMillan suffered injury in fact, traceable to actions of the guardians, and such injury is redressable by the Youth Court. He therefore satisfied the classic elements of standing, which are generally referred to as injury in fact, traceability to the actions of the defendant, and redressability through judicial remedy. *See, e.g.*. Erwin Chemerinsky, *Federal Jurisdiction* 60-80 (5th Ed. 2007).

Whether letters of guardianship are to be dissolved must be decided by the Youth Court judge in accordance with the relevant evidence and the Tribal Youth Court Code provisions set out at §11-7-23(1) and (4). Yet there is at least one additional problem. When letters of guardianship are dissolved, presumably custody of the minor child or children reverts to the party or parties who had custody at the time the guardianship proceeding was initiated. In this case, custody at that time was with the Appellee mother, Lashaunya Hickman Steve, and thus custody would revert to the mother and not the father. There does not appear to be any authority in the Youth Court Code that would allow a new and different custody placement when letters of guardianship are dissolved.

This necessary rationale thus creates a bifurcated process. First, Mr. McMillan must bring an action in Youth Court to dissolve the letters of guardianship. If he prevails, he must bring an action in Civil Court seeking an award of custody based on a material change of circumstances and the best interests of the child standard. This certainly appears to be onerous in

the extreme, but there seems to be no way around it given the current provisions of the Tribal Code. [1]

B. Due Process

While not fully explored in the briefs of the parties, there appears to be a due process issue. There was some suggestion at oral argument that if the Civil Court did not have jurisdiction and Mr. McMillan somehow lacked the legal ability to challenge the letters of guardianship in Youth Court, he would effectively be denied *any* opportunity to seek custody of his minor child his most basic due process rights would be infringed. Due process is an essential guarantee of the Mississippi Band of Choctaw Indians Constitution at Art. X, Sec. 1(h). Nevertheless, as the above discussion indicates, there is a forum that has jurisdiction over Mr. McMillan's claim and thus the due process issue is moot at this time.

IV. Conclusion

For all the above-state reasons, the decision of the Civil Court that it does not have jurisdiction to dissolve letters of guardianship is affirmed and the Appellant, Mr. McMillan, is directed to seek potential (initial) relief in the Tribal Youth Court, where he does have standing to seek dissolution of the letters of guardianship issued in this matter.

IT IS SO ORDERED.

FOR THE COURT:

Frank Pommersheim
Associate Justice

Dated: April 25, 2008.

[1] Given this structural conflict and impediment, the Court strongly urges the Tribal Council to revisit this concern and make the necessary legislative adjustments.