

TURTLE MOUNTAIN TRIBAL COURT OF APPEALS
TURTLE MOUNTAIN INDIAN RESERVATION

TWILA JEROME,

Petitioner,

TMAC 96-027

vs.

MEMORANDUM OPINION

CURTIS POITRA,

Respondent.

The Petitioner, Twila Jerome, is appealing from a November 7, 1996 amended order of the trial court, the Honorable Chief Judge Janice Morley presiding, in which the trial court ordered that the name of the Respondent be removed from the birth certificate of Krystin Poitra because of admissions from both parties at the time of the hearing that he, despite his execution of a paternity affidavit proclaiming his paternity shortly after the child's birth, was not the biological father of Krystin. Jerome also appeals from that portion of the Court's order setting her child support obligations owed to the Respondent for his care and support of Eric C. Poitra. This Court ordered both parties to submit briefs in support of their respective positions and the Petitioner submitted her brief on May 20, 1997. Apparently, the Appellee failed to submit a brief.

FACTS

On April 9, 1982 Jerome gave birth to a minor child, Krystin Poitra, out of wedlock. On June 25, 1982 both Jerome and Poitra executed a paternity affidavit asserting that Poitra was the natural father of the minor child and said affidavit was forwarded to the North Dakota Department of Human Services, which changed the child's birth certificate to reflect Poitra's paternity. At the time of the execution of said paternity affidavit Poitra was a minor and both he and Jerome acknowledge at the time that they executed the affidavit they knew that Poitra was not the biological father of Krystin. Jerome, in her brief to this Court, once again reiterates her cognizance of the fact that Poitra is not the biological father.

In 1985 the parties married and in 1990 subsequently divorced. During the

marriage a second child, Eric C. Poitra, was born to the parties. At the time of the divorce it does not appear that either party questioned the legitimacy of Krystin nor Poitra's paternity. Jerome was granted custody of both children and Poitra ordered to pay child support.

Subsequent to the divorce, Poitra fell into arrears on his child support obligation for both Krystin and Eric, prompting Jerome to file several show cause petitions and motions for garnishment. On November 15, 1995 the parties appeared before then Chief Judge Betty Laverdure on what appears to be a hearing regarding the custody arrangements for the children and the child support arrearages owed by Poitra. Jerome contends that Poitra attempted to raise the issue of his paternity at that hearing, but was foreclosed from doing so by Judge Laverdure. The record does not reveal that paternity was an issue at that hearing nor does the order subsequently signed by Judge Laverdure on January 19, 1996 reveal whether she made any determination regarding Poitra's paternity of Krystin.

On January 30, 1996, almost 14 years after Krystin's birth, Poitra filed an action with the Court below in which he for the first time questioned his paternity of Krystin and requested that the trial court find that he was not the biological father of Krystin and relieve him of his duty to pay both future support and accumulated arrearages for the minor child. A hearing was held on the complaint of Poitra on August 1, 1996 before the Honorable Janice Morley, Chief Judge, with Jerome appearing pro se and Poitra appearing through attorney, Mark Butz. At that hearing the parties stipulated that Poitra would have the primary care, custody and control of Eric with Jerome to continue to exercise parental rights including visitation. With regard to the paternity issue, both parties conceded at the hearing that Poitra was not Krystin's biological father and that another individual, who apparently was identified, was the biological father. Hearing these concessions, and based upon the fact that Poitra was a minor when he executed the paternity affidavit, Judge Morley found that Poitra was not the father of Krystin and directed that his name be removed from the birth certificate. She also relieved him of any obligation to pay future support. She then directed Jerome to pay \$125.00 per month for the support of Eric, said amount to be deducted from the arrearages Poitra owed her in the amount of \$15,362.50. From that order Jerome has appealed.

DECISION

Jerome raises two issues on appeal. First she contends that Judge Morley erred by ordering Poitra's name to be removed from Krystin's birth certificate and relieving him of future support obligations for her. Second, she challenges the amount of child support she is to pay for Eric. For the reasons stated herein, the Court affirms the decision of the Court below.

PATERNITY ISSUE

Jerome contends that Judge Morley erred by entertaining Poitra's complaint to have his name removed from Krystin's birth certificate because Judge Laverdure had previously denied a similar request and that therefore the request was res judicata or barred by the "law of the case" doctrine. Second, she asserts that because of the passage of time Poitra should not have been permitted to disclaim his paternity after not questioning his paternity for almost 14 years during which time the child was brought up believing Poitra was her father. Despite the Court's sympathy with this argument and with the impact of the Court's ruling upon Krystin, the Turtle Mountain Tribal Code precludes both of these arguments.

First with regard to the first argument, it should be noted that at all times, even during the hearing before Judge Morley, both parties acknowledged that Poitra was not the father of Krystin. This is not a case where paternity was ever disputed. The Court's review of the record does not reveal that the Tribal Court at any time prior to August 1, 1996 ever entertained arguments regarding the paternity of Krystin. Jerome contends that Poitra's request for a paternity test before Judge Laverdure in January of 1996, which was denied, should have barred him from relitigating the issue of paternity anew before Judge Morley. However, this Court's review of Judge Laverdure's order from that hearing does not reveal that she considered issues surrounding paternity, but only issues with regard to custody and child support arrearages. Assuming Jerome's contentions are correct, and this Court has no reason to believe they are not, denying a request for paternity testing would not preclude Poitra from bringing forward other evidence, including the concessions of both parties, to demonstrate that he is not the father of Krystin in a subsequent proceeding where paternity is questioned. This Court, based upon the record, does not believe the issue of Poitra's paternity was res judicata, nor was it resolved adversely to him before Judge Laverdure.

Of course, this finding does not excuse the behavior of either party in the

execution of what they agree now was a false affidavit sworn to under oath. It appears that both parties were very young and did go on to marry, thus legitimating Krystin had Poitra been the natural father. However, Jerome acknowledges that she was equally at fault by executing the affidavit because she herself realized the affidavit was not true at the time.

Second, Jerome contends that the passage of time should bar Poitra from contesting his paternity of a child that is now a teenager. At first blush, this argument appears to have merit as many jurisdictions preclude a father who knowingly accepts a child, who is not his biological child, into his home and treats the child as his own from disclaiming paternity later. These jurisdictions treat such activity as an "adoption" of said child, thus rendering the issue of paternity irrelevant. Other Tribes consider such activity a traditional adoption of a child and would therefore require the father to provide for the child from that point on, irrespective of a blood relationship or lack thereof. See Rosebud Sioux Tribal Code Title 2-2-7 (recognizing Ecagawaya or traditional adoptions). However, whether such actions are considered an adoption under the law of the Turtle Mountain Tribe must be gleaned from the Turtle Mountain Code. Unfortunately, for Jerome, that document clearly permits either a father or mother of a child presumed legitimate under the law to challenge that presumption of legitimacy. See Turtle Mountain Tribal Code, §9.0202. Additionally, there is no time period for challenging the legitimacy of a child. Therefore, even if Poitra's actions in executing an affidavit of paternity and subsequently marrying Jerome legitimized Krystin, the tribal code permitted him to rebut this presumption of legitimacy which he clearly did here by the concessions of each party.

This Court cannot therefore conclude that the court below erred by ordering Poitra's name to be removed from Krystin's birth certificate. Although this Court realizes the difficult position the order below places Krystin in, it is hoped that Poitra will understand that the most important issue to be resolved now is the future emotional well-being of Krystin and not his financial obligations to her. The Court affirms the ruling below that Poitra is not the biological father of Krystin.

Jerome also claims error in the tribal court's setting of her child support obligation. The Court has reviewed this matter and concludes that the Court below did not err in finding Jerome's monthly child support obligation to be \$125.00 per month.

SO ENTERED THIS ____ DAY OF OCTOBER, 1997.

PER CURIAM:

Honorable
B.J. Jones Honorable
Michael Swallow
Honorable Diane
Avery

