IN THE APPELLATE COURT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION, PABLO, MONTANA

LEO HARTEIS, Petitioner,	*	Cause No. AP-CC-001-92
vs.	*	OPINION REGARDING ASSESSMENT OF COSTS
RAMONA CAJUNE, Respondent/Appellant	*	
IN RE THE MATTER OF: Jacob Paul Harteis, A Minor Child.	*	

Before GAUTHIER, HALL and PEREGOY, Appellate Judges

OPINION OF THE COURT

PEREGOY, Chair, Civil Appellate Panel:

Ramona Cajune, respondent below, appeals the trial court's order entered June 10, 1993, directing the parties to pay "court costs" of $75.00 each for what the court characterized as an untimely joint motion to vacate the trial on the merits of the underlying child custody action. Appellant challenges the assessment of court costs as an abuse of judicial discretion.

The record before us indicates that after a telephone conference hearing on April 8, 1993, the court scheduled a three-day trial to commence on June 9, 1993. Pursuant to the trial order, the court required that:

> All pre-trial motions must be filed at least ten days prior to the trial date. Any request to continue the above scheduled trial must be made prior to May 25, 1993 in order to avoid assessment of costs against the parties.

On June 7, 1993, the parties filed a joint motion to vacate the trial on the ground that they had reached a settlement regarding the custody of their son, Jacob Paul. The court entered an order approving the stipulated settlement on June 10. The same day the court entered a separate order assessing court costs of $75.00 against each party on the basis that the motion to vacate was filed after May 25, 1993.[1] The instant appeal followed, which requires us to determine whether the trial court had discretionary authority to assess the challenged costs, and if so, whether it properly exercised or abused its discretion.

Appellant contends that there is no legal basis for the assessment of the "court costs" at issue. We agree. We are not aware of any tribal, state or federal law which would authorize the trial court to assess such "court costs" against the parties, as was done here.[2] The unidentified "court costs" assessed in this

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[1] We note that the trial court's order regarding the May 25 deadline was facially limited to requests for a continuance of the trial. It was silent as to motions to vacate.

[2] "Costs" are normally an allowance, which the law awards, to the prevailing party and against the losing party and as an incident of judgment, to reimburse a party for certain expenses which he or she has incurred in the maintenance of the action or the vindication of a defense. See 6 J. Moore, Moore's Federal Practice, ¶ 54.70[1] at 317 (2d ed. 1993). After the filing fee is paid, the court hearing the matter may recoup costs only in extraordinary circumstances, pursuant to discretionary authority vested under Rule 54(d) of the Federal Rules of Civil Procedure. For example, in cases where delay of the proceedings is attributable to the conduct of a particular party, the added cost of the proceedings may be taxed to the party which caused the delay. See In re Realty Associates Sec. Corp., 53 F. Supp. 1013 (E.D. N.Y. 1943) (to the extent that unsuccessful party caused trial to be needlessly prolonged, the stenographic reporting charges for the extra days were charged to him). See also, Peguero v. Len's Diner, Inc., 40 FR Serv 2d 175 (D. N.J. 1984) (the cost of

case were in the nature of an impermissible penalty or fine for what the court, in effect, considered to be dilatory conduct which did not conform to the court's deadlines. While conformance with court schedules is desirable for the orderly administration of justice, at times the circumstances of a particular case may, as here, preclude such. Indeed, motions to stay proceedings, to vacate trial, or for continuances are part of the every day business of courts. The costs of such routine judicial administration are but a necessary incidence of the exercise of tribal sovereignty, and are therefore to be shouldered by the tribal government, not the parties before the court. We hold that in those instances where court costs are merely part and parcel to the routine course of judicial administration, the tribal court lacks the requisite power to assess such "costs" against any party, particularly where, as here, they amount to a fine or penalty. The trial court's assessment of the so-called "court costs" challenged in this action is therefore reversed.[3]

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summoning eighteen jurors, amounting to $540, was taxed equally against counsel for the parties when their failure to settle the cause until the day of the trial resulted from refusal to bargain in good faith). However, there are no circumstances extant here which resulted in extraordinary court costs or which could serve to justify the imposition of the challenged costs on the parties. To the contrary, the parties' apparent good faith bargaining resulted in an out-of-court settlement which obviated the need for the expenditure of considerable judicial resources that necessarily would have been borne by a three-day trial, the subsequent preparation of findings of fact and conclusions of law, and a possible appeal.

[3] Since the trial court lacked discretionary authority to assess the challenged "court costs," it is not necessary for us to reach the question, framed by appellant, whether the court abused

Although the matter was not brought up on appeal or briefed, we further hold, in the interest of justice, that the trial court was powerless to assess court costs of $25.00 jointly against the parties on the ground that a request to stay the underlying proceedings "was filed less than thirty days prior to the date of the scheduled hearing." See Order Granting Stay in Proceedings (January 4, 1993), Order Denying Motion (February 5, 1993), and Order (June 10, 1993) in the above-styled case. This joint assessment also constituted an impermissible penalty for which the court lacked the requisite power to levy.[4] The above-referenced orders are therefore overruled insofar as they pertain to the assessment of "court costs" against the parties.

REVERSED AND REMANDED

SO ORDERED this _____day of October, 1993.

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Robert M. Peregoy, Chair
Civil Court of Appeals

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its discretion in assessing the challenged costs.

[4] The trial judge relied on Rule 2 of Part 4 of the Rules of Civil Appellate Procedure of the Confederated Salish and Kootenai Tribes as authority for imposing the $25.00 "court costs" on the parties. Such reliance was misplaced. Rule 2 simply authorizes the Chief Judge to order an applicant for a stay of judgment pending appeal to post a surety bond to assure the proper disposition of property subject to appeal. This is a child custody dispute, not a disagreement about property. In any event the underlying merits never reached the appellate stage because the matter was settled out of court. Rule 2 is therefore irrelevant here.