

CHAPTER 3

DOMESTIC RELATIONS

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CHAPTER 3

DOMESTIC RELATIONS

Section 1. Marriages.

All members of the Blackfeet Indian Tribe shall hereafter be governed by State Law and subject to State Jurisdiction with respect to marriage hereafter consummated. Common-law marriages and Indian Customs marriage shall not be recognized within the Blackfeet Reservation. (See Preface).

Section 2. Divorce.

All divorces must be consummated in accordance with the State Law of Montana. Indian customs divorces are from this time on illegal and will not be recognized as lawful divorces on the Blackfeet Reservation.

Section 3. Determination of Paternity and Support.

The Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identify of the father of the child shall be conclusive of that fact in all subsequent determination of inheritance by the Department of the Interior or by the Court.

Section 4. Determination of Heirs.

When any member of the Tribe dies leaving property other than trust real estate or other trust property subject to the jurisdiction of the United States, any member claiming to be heir of the decedent may bring suit in the Tribal Court to have the Court determine the heirs of the decedent. No determination of the heirs shall be made unless all the possible heirs known to the Court, to the Superintendent, and to the claimant have been notified to the suit and

given full opportunity to come before the Court and defend their interests. Possible heirs who are not residents of the Reservation under the jurisdiction of the Court must be notified by Registered Mail and a copy of the notices must be preserved in the record of the case.

In the determination of heirs the Court shall apply the custom of the Tribe as to inheritance if such custom is proved. Otherwise, the Court shall apply to be his heirs. Where the estate of the decedent includes any interest in restricted allocated lands or other property held in trust by the United States, over which the Examiner of Inheritance would have jurisdiction of the Examiner of Inheritance, and determination of heirs by the Court may be reviewed, upon appeal, and the judgment of the Court modified or set aside by the Examiner of Inheritance, with the approval of the Secretary of the Interior, if law and justice is required. The Tribal Court may, in its discretion, turn over the question of determination of heirs and distributing a decedent's property to a state court.

Section 5. Approval of Wills.

When any member of the Tribe dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Tribal Court shall, at the request of any member of the Tribe, named in the will or any other interested party, determine the validity of the will after giving notice and full opportunity to appeal in Court to all persons who might be heirs of the decedent, as determined under Section 4 of this Chapter. A will shall be deemed to be valid if the decedent had a sane mind and understood what he was doing when he made the will and was not subject to any undue influence of any kind from another person,

and if the will was made in writing and signed by the decedent in the presence of a representative or representatives of the Superintendent of the Blackfeet Agency, who has or have signed such will as witness or witnesses. Provided, that if a will is made under circumstances when the attendance of such representative cannot be secured, at least two other witnesses may serve. If the Court determined the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or their heirs, but no ~~distributed~~ property shall be made in violation of a proved Tribal custom of law which restricts the privilege of Tribal members to distribute property by will. The Tribal Court may, in its discretion, turn over to State court or Courts of Records, such cases as come under its jurisdiction under this Section 5.

Section 6. Proceedings for the Termination of Parent-Child Relationship.

A. Purpose: The purpose of this Section 5 is to provide for voluntary and involuntary severance of the parent-child relationship and for substitution of parental care and supervision by judicial process which will safeguard the rights and interests of all parties concerned and promote their welfare. Implicit in this Section, is the philosophy that wherever possible family life should be strengthened and preserved and that the issue of severing the parent-child relationship is of such vital importance as to require a judicial determination in place of attempts at severance by contractual arrangements, express or implied, for the surrender or relinquishment of children. This judicial action is intended primarily for those situations where other judicial remedies appear inappropriate, and is

not intended to modify Sections 1, 2 and 3 of the Blackfeet Tribal Law and Order Code, dealing with the applicability of State laws of marriage, divorce and the determination of paternity.

B. Definitions: When in this Section 6, unless the text otherwise requires:

(1) "Court" means the Blackfeet Tribal Court.

(2) "Child" or "Minor" means an Indian person less than 18 years of age.

(3) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of the Ordinance.

(4) "Neglected" used with respect to a child refers to a situation in which the child lacks proper parental care necessary for his health, morals and well-being.

(5) "Legal Custody" means a status created by Court order embodying the following rights and responsibilities:

(a) the right to have the physical possession of the child;

(b) the right and the duty to protect, train and discipline the child; and

(c) the responsibility to provide the child with food, shelter, education and ordinary medical care.

Provided, that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree.

(6) "Guardianship of the Person" with respect to minors means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor, and to be concerned about the general welfare of the minor. It includes but is not necessarily limited to either in number or kind to:

(a) the authority to consent to marriage, to enlistment in the armed forces of the United States, and to major medical, psychiatric, and surgical treatment, to represent the minor in legal significance;

(b) The authority and duty of reasonable visitation, except where legal custody has been vested in another individual or in an authorized agency;

(c) the rights and responsibilities of legal custody except to the extent that such rights of visitation have been limited by Court order;

(d) when the parent-child relationship has been terminated by judicial decree with respect to the parents, or only living parent, or when there is no living parent, the authority to consent to the adoption of the child and to make any other decision concerning the child which the child's parents could make.

(7) "Authorized Agency" means a public social agency authorized to care for or place children or a voluntary social agency approved for such purposes by the Blackfeet Tribe, and the State through a license, certification or otherwise, or the Bureau of Indian Affairs.

(8) "Parent" means (a) the mother; (b) a father as to whom a child is legitimate; (c) a person as to whom a child is presumed to be

a legitimate child; or (d) an adoptive parent; but such term does not include a parent as to whom the parent-child relationship has been terminated by judicial decree.

(9) "Parent-Child Relationship" include all rights, privileges, duties and obligations existing between parent and child, including inheritance rights.

(10) "Residual Parental Rights and Responsibilities" means those rights and responsibilities remaining with the parent (where there has not been termination of the parent-child relationship by judicial decree), after the transfer of legal custody and guardianship of the person, including but not necessarily limited to, the right to reasonable visitation, consent to adoption, the right to determine the child's religious affiliation and the responsibility for support.

(11) "Protective Supervision" means a legal status created by Court order in proceedings, on information of dependency and/or neglect there the legal custody of the child is subject to change, whereby the child is permitted to remain in his home under the supervision of the Court or an agency designated by the Court and is subject to return to the Court during the period of protective supervision.

(12) "Parties" include the child and the petitioner.

C. Jurisdiction: The Blackfeet Tribal Court shall have original jurisdiction over petitions to terminate the parent-child relationship when the child involved is present on the Blackfeet Indian Reservation.

D. Petition and Grounds:

(1) A petition may be filed by a parent either directly or through an authorized agency. The parent-child relationship may be terminated with respect to the parent by whom or on whose behalf such

petition has been filed, where the Court finds such termination is in best interests of the parent and the child.

The petition may be granted where the Court finds that one or more of the following conditions exist:

(a) that the parent has abandoned the child in that the parent has made no effort to maintain a parental relationship with such child;

(b) that the parent has substantially and continuously or repeatedly neglected the child; and

(c) that the presumption parent is not a natural parent to the child.

(3) The petitioner under subsection D(2) may be filed by the following:

(a) either parent when termination of the parent-child relationship is sought with respect to the other parent;

(b) the guardian of the person or the legal custodian of the child or the person standing in loco parentis to the child;

(c) an authorized agency; or

E. Contents of Petition. The petition for termination of the parent-child relationship should include, to the best knowledge, information, or belief of the petitioner:

(1) the name and place of residence of the petitioner;

(2) the name, sex, date and place of birth, and residence of the child;

(3) the basis for the court's jurisdiction;

(4) the relationship of the petitioner to the child, or the fact that no relationship exists;

- (5) the names, addresses, and dates of birth of the parents;
- (6) where the child's parent is a minor, the names and addresses of said minor's parents or guardian of the person;
- (7) the names and addresses of the person having legal custody or guardianship of the person or acting in loco parentis to the child or the organization or authorized agency having legal custody or providing care for the child;
- (8) the grounds on which termination of the parent-child relationship is sought; and
- (9) the names and addresses of the persons and authorized agency or officer whereof to whom or to which legal custody or guardianship of the person of the child might be transferred.

F. Notice—Waiver—Guardian ad Litem: After a petition has been filed, the court shall set the time and place for a hearing, and shall cause notice thereof to be given to the petitioner, the parents of the child, the guardian of the person of the child, the person having legal custody of the child, and any individual standing in loco parentis to the child. When the child's parent is a minor, notice shall also be given to said minor's parents or guardian of the person unless the court is satisfied in the exercise of its discretion, that such notice is not in the best interest of said minor and that it would serve no useful purpose.

Notice shall be given by personal service. However, where reasonable efforts reasons therefore as to whether or not the parent-child relationship should be terminated. Where the parent is a minor if the report does not include a statement of contact with the parents

of said minor, the reasons therefore shall be considered by the court prior thereto.

H. Hearing: Cases under this Section 6, shall be heard by the Court without a jury. The hearing may be conducted in an informal manner and may be adjourned from time to time. A record of the hearing shall be made. The general public shall be excluded and only such persons admitted whose presence is requested by any person entitled to notice under Subsection F, or as the Judge shall find to have a direct interest ~~in the case or in the work~~ of the Court: Provided, that persons so admitted shall not disclose any information secured at the hearing which would identify an individual child or parent. In addition, the Court may require the presence of witnesses, (including persons making any report, study or examination which is before the Court when such persons are reasonably available) deemed necessary to the disposition of the petition, except that a parent who has executed a waiver pursuant to Subsection E, shall not be required to appear at the hearing.

I. Decree: Every order in the Court terminating the parent-child relationship or transferring legal custody or guardianship of the person of the child or providing for protective supervision of the child shall be in writing and shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.

(1) If the Court finds grounds for the termination of the parent-child relationship, it shall terminate such relationship and;

NOTE: No "G" in Code.

(a) appoint an individual as guardian of the child's person, or;

(b) appoint an individual as guardian of the child's person and best legal custody in another individual or in an authorized agency; or

(c) where it is alleged in the petition that the termination is in contemplation of adoption, appoint an official of an authorized agency as guardian of the child's person and vest legal custody in such an agency;

(2) Where the Court does not order termination of the parent-child relationship, it shall dismiss the petition: Provided, however, that where the Court finds that the best interests of the child requires substitution or supplementation of parental care and supervision on, it shall make an order placing the child under protective supervision, or vesting temporary custody in an authorized agency, or retain custody in the Court so that supervision may be provided in such manner as appears appropriate to the Court.

J. Effect of Decree: An Order terminating the parent-child relationship shall have the same effect on the legal rights, privileges, duties, and obligations, including rights of inheritance of the parent and the child with respect to each other, as it would have had such action taken place under State Law.

K. Records: The files and records of the Court in any proceedings had under this Section 6, shall be kept in a separate locked file and shall be withheld from public inspection, but shall be open to inspection by persons having a legitimate interest in the case and by an authorized agency to which legal custody the child has been

transferred. Such files and records may, pursuant to rule of Court or special order of the Court, be inspected by other persons and agencies having a legitimate interest in the protection, welfare, or treatment of the child or in research studies. As used in this section, the words "files and records" include the Court docket and entries therein the petitions and other papers filed in any case, transcripts of testimony taken by the Court, findings, orders, and decrees, and other writings filed in proceedings before the Court other than social records.

Social records shall be withheld from public inspection except information from such records may be furnished to persons and agencies having a legitimate interest in the protection, welfare or treatment of the child or in research studies, in such manner as the Court determines. As used in this section, the words "social records" include the social service records of the Court, the social studies, and reports referred to in Subsection F, and related, and correspondence including, medical, psychological, and psychiatric studies and reports in the possession of the Court.

No person shall be entitled to make copies of such files and record or social records or parts thereof unless the Court so orders. It shall be unlawful, except for purposes for which files and records or social records or parts thereof or information therefore having been released pursuant to this section, or except for purposes permitted by special order of the Court, and in accordance with any applicable rules of the Court, for any person to disclose receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any information concerning any person before the Court directly or

indirectly or social record or acquired in the course of the performance of official duties.

L. Construction: This Section 6, shall be liberally construed to accomplish the purpose herein sought.

Section 7. Sale or Restricted Real Estate Interests on the Blackfeet Reservation Owned by Minors, Insane or Incompetent Persons.

A. Appointment of Special Guardian: When a minor, or an insane or incompetent persons owns restricted real estate interests on the Blackfeet Reservation and such person has no judicially appointed general guardian, and it is to the best interests of such persons that such real estate interests or any part thereof be sold, a special guardian shall be appointed by the Tribal Court to represent the minor, insane or incompetent person in such sale.

B. Petition for Appointment: The Tribal Court may appoint such special guardian for the person and estate, or either of them of minors, insane, or incompetent persons, and who are inhabitant or resident of said reservation, or who reside without said reservation and own restricted real estate interests on said reservation. Such appointment may be made on the petition of a relative or other person on behalf of such minor, insane or incompetent person and to such relatives of such minor, insane or incompetent person as the Court may deem proper.

C. Qualifications of Special Guardian: The Tribal Court shall appoint as guardian a competent person who is an enrolled member of the Blackfeet Tribe over the age of (21) twenty-one years, giving consideration to the personal relationship between such minor, insane or incompetent person, in the following order:

- (1) Father
- (2) Mother
- (3) Brother
- (4) Sister
- (5) Other relative
- (6) Any other competent person.

D. Application for Appointment of Special Guardian:

The application for letters of guardianship shall be verified and set forth the facts authorizing the appointment a issuance of letters of guardianship. When it is represented to the Court, that a person is insane or incompetent to manage his property, and that such person is not then judicially determined insane or incompetent, the Court must cause a notice to be given to the supposed insane or incompetent person of the time and place of hearing the case, not less the five (5) days before the time so appointed, and such person if able to attend, must be produced at the hearing. If, after a full hearing and examination, it appears to the Court or Judge, that the person in question is incapable of managing his property, the Judge shall appoint a guardian for the purpose provided in this section.

E. Petition for Sale of Restricted Property: To obtain an order for the sale of such restricted land interest on the Blackfeet Reservation, a verified petition shall be presented to the Court or Judge, setting forth the general description of the real estate interest desired to be sold, and that facts showing the sale to be for the advantage, benefit and best interests of the ward, or that sale would alleviate the expense or hardship, or be to the best financial interests of the ward. A failure to set forth the facts will not

invalidate the subsequent proceedings, if the defect be supplied by the proof at the hearing, and the general facts showing such necessity be stated in the order.

F. Order to Show Cause: If it appears to the Court or Judge, from such petition, that a sale is justified for the purpose and reasons mentioned in the proceeding section, or any of them, an order must be made directing all persons interested in the estate, at a time and place, not less than ten (10) days nor more than fifteen (15) days from the making of such order, to show cause why an order should not be granted to the guardian to sell such real estate interest.

G. Notice of Order to Show Cause: Copies of the order to show cause shall be posted in three public places on the reservation, and a copy thereof shall be served on a next of kin of the ward at least ten (10) day days before hearing on the petition, and service may be made by certified mail, pre-paid directed to the person to be served at his place of residence. Service shall be complete by deposit in a U.S. Post Office.

H. Hearing: The Court, at the time and place fixed for the hearing, or such other time to which it is continued, upon proof of service and posting, must hear and examine the proofs and allegations in the petition.

I. Order for Sale: If, after a full examination, it appears necessary, or for the benefit of the ward, that his restricted real estate interest be sold, the Court or Judge may grant an order therefore, specifying the causes or reasons why the sale is necessary or beneficial, and the guardian shall be authorized to sell and convey all such interest or any part thereof at the highest price obtainable,

to be negotiated in cooperation with the Superintendent of the Blackfeet Indian Agency, and the proceeds of the sale shall be deposited with said Superintendent and disbursed, all as provided by Title 25, Code of Federal Regulations, as from time to time lawfully amended.

K. Removal of Special Guardian: Whenever the Judge has reason to believe the guardian is failing to proceed hereunder without good cause, he may cite him, upon notice, to appear and show cause why his letters should not be revoked. If said guardian fails to appear in obedience to citation or if appearing, the Judge is satisfied there is cause for removal, his letters must be removed and letter of guardianship granted anew, as the case may require.

L. Vacancy in Position of Special Guardian: If a vacancy occurs in the guardianship for any reason or cause, a new guardian shall be appointed.

M. General Guardian may act as Special Guardian hereunder: A duly appointed and acting general guardian may proceed under the provisions of this Section.

N. Special Guardian may be Appointed Notwithstanding General Guardian: Notwithstanding the minor, insane, or incompetent person has a general guardian, a special guardian may be appointed under the provisions of this Section when it is deemed expedient by the Court to do so.

O. Service of Documents: Two copies of each petition, application, notice, citation, affidavit of posting or of service, order and letters and made and entered hereunder, certified as correct by the Court or Judge, shall be served upon the Superintendent of the

Blackfeet Indian Agency or his delegated agent or agents, in the manner and time provided under this Section.

P. Conduct of Proceedings: All hearings hereunder shall be by examination under oath and witnesses may be subpoenaed and their attendants compelled in the manner and with like effect as in other cases provided in the Law and Order Regulations.

Q. Compensation of Special Guardian: A special guardian shall receive no fee but shall receive his actual costs and expenses when acting hereunder.

R. Attorneys may Participate: An attorney licensed and admitted to practice before the Supreme Court of Montana or the United States District Court for Montana may appear in the Tribal Court and represent any party to any proceeding authorized or required under this Section.

S. Conflicting Ordinances Repealed: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 8. Adoptions.

All members of the Blackfeet Indian Tribe shall hereafter be governed by State Law and subject to state jurisdiction with respect to adoptions hereafter consummated.