

10/27/2022

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 22-0345

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IN THE SUPREME COURT OF THE STATE OF MONTANA
Supreme Court Case No. DA 22-0345

JAYLENE CECELIA PHILLIPS,

Petitioner/Appellee,

vs.

LEONIE CANDICE WEBB,

Respondent/Appellant.

Cause No: DA 22-0345

**NOTICE OF ENTRY OF
ORDER ON RULE 62.1 MOTION**

NOTICE is hereby given of the Petitioner/Appellee's Verified Motion and Brief in Support to Extend Order of Protection Pursuant to Mont. R. Civ. Pro. Rule 62.1 filed with the Phillips County District Court in Cause No. DR 21-018 on or about October 19, 2022, and the District Court's Order on Rule 62.1 Motion issued on October 25, 2022.

Montana Rule of Civil Procedure 62.1 provides:

Rule 62.1. Indicative Rule on a Motion for Relief that is Barred by a Pending Appeal.

(a) Relief Pending Appeal. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:

1 (1) defer considering the motion;

2 (2) deny the motion; or

3 (3) state either that it would grant the motion if the supreme court remands
for that purpose or that the motion raises a substantial issue.

4 (b) Notice to the Supreme Court. The movant must promptly notify the
5 supreme court clerk if the district court states that it would grant the motion
or that the motion raises a substantial issue.

6 (c) Remand. The district court may decide the motion if the supreme court
7 remands for that purpose.

8 Pursuant to Montana Rule of Civil Procedure Rule 62.1 the undersigned is required
9 to give notice that Judge Laird of the Phillips County District Court indicated in her
10 Order on Rule 62.1 Motion that she would be inclined to grant some or all of the relief
11 requested by Petitioner/Appellee in her Verified Motion and Brief in Support to Extend
12 Order of Protection Pursuant to Mont. R. Civ. Pro. Rule 62.1.

13 A copy of the District Court's Order on Rule 62.1 Motion is attached hereto as
14 Exhibit 1.

15 **DATED** this 27th day of October, 2022.

17 

18 _____
19 Craig Wahl, Attorney for Petitioner/Appellee

1 Hon. Yvonne Laird
2 District Judge
3 17th Judicial District
4 P.O. Box 470
5 Malta, MT 59538
6 Telephone: (406) 654-1062

FILED
Tami R. Christofferson
Clerk of District Court

OCT 25 2022

by 
Phillips County, Deputy

7
8 **MONTANA SEVENTEENTH JUDICIAL DISTRICT, PHILLIPS COUNTY**

9 JAYLENE CECELIA PHILLIPS,
10 Petitioner,
11 vs.
12 LEONIE CANDICE WEBB,
13 Respondent.

No. DR-2021-18

ORDER ON RULE 62.1 MOTION

15 Before the Court is Petitioner Jaylene Cecelia Phillips's ("Jaylene") Verified Motion
16 and Brief in Support to Extend Order of Protection pursuant to M. R. Civ. P. 62.1 filed on
17 October 18, 2022. Respondent Leonie Candice Webb ("Candy") has not yet filed a response.
18 As the part of the Permanent Order of Protection which applies to Jaylene's minor children is
19 set to expire at 11:59 p.m. on October 26, 2022, the Court finds it appropriate to address the
20 matter at this time.
21

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23 **Background**

24 This proceeding concerns Jaylene's petition for a temporary order of protection
25 ("Petition") filed on August 23, 2021. On August 27, 2021, the Court issued a *Temporary*
26 *Order of Protection* which was later converted to a *Permanent Order of Protection* in an order
27 issued from the bench on October 27, 2021 which was signed on December 15, 2021. The
28

1 Court's *Permanent Order of Protection* ("Order") requires Candy to stay at least 1500 feet
2 away from Jaylene and her minor children, K.W. and O.W. Candy is the paternal grandmother
3 of K.W. and O.W. As it pertains to Jaylene and Candy, the Court's Order is effective for the
4 next 5-years until October 26, 2026, unless Jaylene files a motion to extend it. The Order is
5 effective until 11:59 p.m. on October 26, 2022, as it pertains to K.W., O.W., and Candy,
6 unless a motion to extend is granted.
7

8 Jaylene filed her Petition in response to a series of violent and abusive acts perpetrated
9 by Candy and her son Frank Webb ("Frank"). In May 2021, K.W. and O.W. resided with
10 Frank who is the girls' father. Frank's home is located within the exterior boundaries of the
11 Fort Belknap Indian Reservation, near Lodge Pole in Blaine County, Montana. Candy also
12 resides within the reservation boundaries, a short distance away from Frank's home.
13

14 On May 21, 2021, Jaylene went to Frank's house to fix the girls' hair for kindergarten
15 graduation, which was scheduled to take place later that day in Dodson, Phillips County,
16 Montana. Upon arriving at Frank's house, Jaylene noted that his demeanor was irritated and
17 agitated, and roughly ten to fifteen minutes thereafter he confronted her with his concerns
18 about her personal relationship with another man. Frank had apparently received a text
19 message from a person claiming to have a romantic relationship with Jaylene. Jaylene
20 attempted to de-escalate the situation to no avail. She eventually grew concerned for her
21 safety and went into the bathroom where she downloaded a recording app onto her phone. She
22 then proceeded to make an audio recording of the events which transpired ("Recording"). The
23 Recording was entered into evidence at the hearing on Jaylene's Petition.
24

25 At hearing, the Recording and Jaylene's testimony established that a short time after
26 the Recording was commenced Frank, Candy, K.W., O.W., and Jaylene traveled together in
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1 the same vehicle from Frank's residence to Dodson which is located outside the exterior
2 boundaries of the reservation and within Phillips County. Throughout the trip Jaylene was
3 physically and verbally abused by Frank: including being strangled at one point and told she
4 would be thrown off a "fucking bridge." Candy drove the vehicle and verbally abused
5 Jaylene. Upon reaching Dodson, Candy drove the vehicle around town for approximately 20
6 minutes and continued to verbally abuse Jaylene while Frank physically assaulted her. All of
7 the abuse and the assault occurred in front of the children, K.W. and O.W. Jaylene asked
8 repeatedly to be let out of the vehicle, Candy refused to let her out. As a result, Jaylene
9 suffered physical restraint and continued physical abuse by Frank.
10

11
12 Sometime thereafter, Candy came to the domestic violence shelter where Jaylene was
13 staying in Billings, Montana, and parked outside. Jaylene was forced to contact local law
14 enforcement who responded and advised Candy to leave, or Candy would be cited for
15 trespassing. Like Dodson, Billings is located outside the exterior boundaries of the reservation
16 and within the territorial boundaries of the State of Montana.
17

18 As a result of this violent attack on May 21, 2021, Frank was convicted of one count
19 of misdemeanor assault and a separate count of partner family member assault on July 1,
20 2022. He was sentenced on July 26, 2022. For assault, Frank was sentenced to six (6) months
21 in the county jail with credit for 25 days previously served, and for partner family member
22 assault, Frank was sentenced to one (1) year in the county jail with nine (9) months
23 suspended. The sentences were ordered to run consecutively to each other.
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1 On September 8, 2022, the Fort Belknap Tribal Court issued an order granting Jaylene
2 custody of K.W. and O.W ("Tribal Court Order").¹ The Tribal Court Order supersedes all
3 prior orders concerning the custody of the minor children.²

4 Discussion

5 Under the Montana Rules of Civil Procedure, on motion for relief filed while an
6 appeal is pending the Court may:
7

8 1) defer consideration;

9 2) "deny the motion;" or

10 3) provide a statement indicating that "it would grant the motion" if the case is
11 remanded or identifying substantial issues raised.
12

13 M. R. Civ. P. 62.1(a). If the Court "states that it would grant the motion" or identifies "a
14 substantial issue" raised "[t]he movant must promptly notify" the Clerk of the Montana
15 Supreme Court. M. R. Civ. P. 62.1(b). The Court "may decide the motion if the supreme court
16 remands for that purpose." M. R. Civ. P. 62.1(c).
17

18 The Court may continue or make permanent an order of protection pursuant to
19 Montana Code Annotated § 40-15-204(1), (2), or (4). Mont. Code Ann. § 40-15-204(5).
20 Under relevant subsections, the Court may continue or make an order of protection permanent
21 if it determines that "the petitioner needs permanent protection" based on "of the respondent's
22 history of violence, the severity of the offense at issue, and the evidence presented at the
23 hearing," and such orders may restrain the respondent from the petitioner's minor family
24
25

26 ¹ Order to Grant Motion, at p. 2, l. 14-15, *In the Matter of K LW DOB: 6/11/2013 OTW DOB: 4/30/2015 Children*
27 *In Need of Care*, Cause No. FC-2021-09 (Fort Belknap Tribal Ct. Sept. 8, 2022) (attached as Exhibit A).

28 ² *Id.* at p. 2, l. 16-17.

1 members if the minors were "victim[s] of abuse, . . . witness[es] to abuse, or endangered by the
2 environment of abuse." § 40-15-204(1), (4), MCA.

3 Here, the Court is inclined to grant the present motion if the case is remanded from the
4 Montana Supreme Court. The Order was issued on a finding that Jaylene needs permanent
5 protection due to Candy's role in the assault and verbal abuse which took place in Phillips
6 County on May 21, 2021. As demonstrated by Candy's conduct at the domestic violence
7 shelter and Frank's convictions for assault and partner family member assault the need for
8 such protection will continue into the foreseeable future. The assault took place in the
9 presence of minor children, K.W. and O.W., and has resulted in the need for counseling, so it
10 is proper to restrain Candy from any contact with them. These findings are reinforced by
11 Candy's flagrant disregard of the Court's authority which has been on display throughout this
12 proceeding. Additionally, an extension of the Court's Order would be consistent with the
13 Tribal Court's Order which awarded custody of K.W. and O.W. to Jaylene.
14
15

16 **IT IS HEREBY ORDERED that:**

- 17
- 18 1. The Court would grant the present motion based on the facts articulated above.
 - 19 2. The Clerk shall send a copy of this Order to counsel of record.

20 Dated this 25th day of October 2022 and any party appearing without counsel.
21

22 
23 Yvonne Laird
District Judge

24 p/phillips.motiontoextendOrderofProtection1
25
26
27
28

Honorable Evelyn Williams-Klamberg
Fort Belknap Tribal Court
253 Court House Loop
Harlem, MT 59525

IN THE FORT BELKNAP TRIBAL COURT
FORT BELKNAP INDIAN RESERVATION
HARLEM, MONTANA

In The Matter Of:

RC-2021-099

KLW DOB: 6/15/2013
OTW DOB: 4/30/2015

Children in Need of Care

ORDER TO
GRANT PROTECTION

This matter came before the Fort Belknap Tribal Court on August 30, 2022 at 10:00 a.m. via a Motion to Vacate by the Fort Belknap Tribal Social Services Program as well as Michelle Reaux, advocate of record for biological mother of the above listed children in need of care, Jaylene Phillips who was present in the courtroom. Frank Webb, present via Zoom, biological father of the above listed children verbally objected to the Motion to Vacate. The verbal motion made by Frank Webb was denied.

Presenting Officer, Robert Johnson, for Fort Belknap Social Services presented to the Court the wishes of the Fort Belknap Tribal Social Services Program in Violation of RC-2021-099, as the biological parents had both subsequently completed the requirements of their parenting plans. The Fort Belknap Social Services Program did not make any recommendations regarding the placement of this children.

Advocate of Record, Michelle Reaux, provided testimony during the hearing notifying the Court of the active Permanent Order of Protection (OP-2021-19) which protects both the biological mother, Jaylene Phillips, as well as the above listed children (KLW & OTW). This Order of Protection states that a domestic violence incident on May 21, 2021, in which Frank Webb is currently incarcerated and serving a sentence in regards to his conviction for the sexual abuse of Ms. Phillips. This Order of Protection is effective until April 25, 2022. Prior to the execution of this Order of Protection, Jaylene Phillips may Marlon to obtain the Order of Protection if she deems such action appropriate.

Advocate of Record, Michelle Reaux presented a Motion to Dismiss as well as "grant custody of the minor children to her representing all other tribal court orders." Advocate Reaux presented to the Court her (2) Order of Protection (OP-2021-19) which applies to the above listed children and Jaylene Phillips, protecting them from further harm from "Gusty" Webb whom is the mother of Frank Webb. As well as (OP-2021-19) which protects Jaylene Phillips and the above listed children from further harm from Frank Webb. Also provided to the Court was a letter from the children's licensed clinical professional counselor, Kapella Van Sledright, listing her concerns and

EXHIBIT

A

1 recommendations for the children. Photos of the home Jaylene Phillips resides in, as well
2 as, the bedroom that belongs to the above listed children were also provided to the Court.


3 Upon further review of the entire case file as well as the information provided
4 during the Hearing it was be inappropriate for the Court to ignore the Orders of
5 Protection that are currently in place that protect the biological mother as well as the
6 above listed children from both their biological father, Frank Webb and also their
7 paternal grandmother, "Candy" Webb. Frank Webb is currently incarcerated and is
8 unable to parent the children as he is serving his sentence for an assault on Jaylene
9 Phillips that occurred in the presence of the above listed children. The condition of Frank
10 Webb's home at this current time is unknown, however, one of the findings the Fort
11 Belknap Tribal Social Services Program found was that Frank Webb's home was unsafe
12 as there was no running water and some of the windows were missing and covered with
13 boards.

14 The Court has not been provided with any information that the biological mother,
15 Jaylene Phillips, is a danger to her children or that she is unfit to care for them. Jaylene
16 Phillips has successfully completed the requirements of her parenting plan and has
17 appropriate housing for the children.

18 **ORDER**

- 19 1. THAT The Court has Jurisdiction in this matter.
- 20 2. THAT The Motion to Vacate and give custody to Jaylene Phillips is
21 GRANTED.
- 22 3. THAT This Order supersedes any and all prior Orders regarding Custody
23 of K.L.W and O.T.W.

24 DATED this 8th day of Sept, 2022

25 
Honorable Fawn Williamson-Blanchard
Special Judge
Fort Belknap Tribal Courts

CERTIFICATE OF SERVICE

I, Craig Wahl, hereby certify that I have served true and accurate copies of the foregoing Notice
- Other to the following on 10-27-2022:

Thane P. Johnson (Attorney)
221 First Avenue East
P.O. Box 3038
Kalispell MT 59901
Representing: Leonie Candice Webb
Service Method: eService

Kevin Howard Ness (Attorney)
PO Box 3038
Kalispell MT 59903
Representing: Leonie Candice Webb
Service Method: eService

Tami R Christofferson (Clerk of District Court)
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E-mail Address: TChristofferson@mt.gov

Electronically Signed By: Craig Wahl
Dated: 10-27-2022