

**NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS
DISTRICT OF NAY-AH-SHING**

IN THE COURT OF APPEALS

T.H.,

Appellant.

Case #99APP03

v.

J.D.,

Appellee.

**JUDGMENT ON
APPEAL**

This is an action challenging the District Court's denial of Appellant's petition to attach the Appellee's entire Band Bonus to pay for child support for their two minor children. A hearing was held on March 21, 2000, in the above-entitled matter before the Court of Appeals at the Mille Lacs Government Center. Both Appellant and Appellee appeared Pro Se. D.H., mother of the Appellee was also in attendance.

FACTS

On July 20, 1999 the Appellant, T.H., petitioned the District Court to attach the Appellee, J.D.'s August Bonus for child support. Because it appeared that the Appellant had assigned her right to collect child support to the State of Minnesota, the District court dismissed the petition. Nevertheless, the Band's Office of Management and Budget (OMB) was directed to hold the Appellee's check until November 30, 1999, to allow further information to be submitted in the case as well as to allow time for an appeal of the decision.

On November 4, 1999, Appellant filed a Motion for Reconsideration along with documentation indicating that all of her rights to collect child support had not in fact been assigned to the State. Therefore, on November 5, 1999, the District Court awarded child support to be paid from the August Bonus. However, based on its recent decision in *Sam v. Anderson*, 99FA14 (Dist. Ct. 1999), the District Court did not award the entire bonus as Appellant had requested. Instead, the OMB was ordered to distribute \$172.50 (i.e., 23%) to the Appellant and the remainder to the Appellee.

The OMB neglected to follow the order and distributed the entire bonus to the Appellee. Subsequently, on November 12, 1999, Appellant again filed a Motion for Reconsideration stating that she had not received the \$172.50 from the August Bonus and also indicating that she believed she was entitled to the Appellee's entire Christmas bonus. That same day, the District Court denied Appellant's petition for more than \$172.50 to be awarded from any of Appellee's Bonuses and directed Appellant to petition the Court to attach Appellee's Christmas bonus to make up for the amount that had been misdirected. Appellant did so on November 19, 1999. At that time, Appellant also filed a second petition requesting that the Appellee's entire Christmas Bonus be held until she could file an appeal to this Court. In response, on November 23, 1999, the District Court ordered that \$172.50 be attached and distributed to the Appellant from the Appellee's Christmas bonus to make up for the misdirected August funds. However, the District Court found it improper to detain the entire Bonus until an official Appeal to this Court had been filed.

This appeal was filed on November 29, 1999, and, on December 11, 1999, this Court ordered that the Appellee's entire Christmas Bonus be held until this Appeal was heard.

At hearing, both parties argued exclusively about the equities of the case. Appellant stressed that because the Appellee was disabled and was supported primarily through public assistance, the Band Bonuses were the only real means for the children to receive any child support from their father. The Appellee argued that he was not adverse to giving money from his Bonuses to the children, but, he objected to the Appellee seeking the entire amount. The Appellee also indicated that he had previously offered to give the Appellant \$500.00 from each bonus and, that he was still disposed to do so.

ANALYSIS

The District Court did not err in its Order dated November 5, 1999, by finding that the Appellant was entitled to \$172.50 of the Defendant's August Bonus for child support. The amount ordered reflects the current state of the law as set out in *Sam v. Anderson*. According to *Sam*, the percentage of a Bonus the custodial parent is entitled to when the non-custodial parent is only supported by public assistance should be calculated with reference to 8 MLBSA § 2006 in the same manner as regular income. Given two children and a Bonus of \$750.00, the Appellant is entitled to 23% or \$172.50 from any particular Bonus for which she properly petitions that child support be garnished. Although the factual situation Appellant presents is compelling, she has not presented a sufficient basis that would justify deviating from the *Sam* decision in the present case. Because the OMB mistakenly distributed the entire August Bonus to the Appellee, \$172.50 should be garnished from the Appellee's Christmas Bonus and distributed to the Appellant to make up for the oversight.

In the November 23, 1999 Order, the court noted that the OMB was not able to honor perpetual Orders of support as they related to Band Bonuses. Instead, it stated that individuals needed to file a new request "well in advance of the bonus' disbursement date" each time a bonus

was due. Although the matter at hand arises from separate petitions filed by the Appellant for particular Bonuses, the original Order for Child Support in the above-entitled matter, issued on August 11, 1997, was a perpetual order. Specifically, it directed that the OMB should withhold the Appellee's Bonuses and forward them to the Appellant "until such time as the parties' youngest child reaches the age of 18." Although it should be left to the District Court to make a further garnishment of the Appellant's Christmas bonus, in light of the discontinuance of the perpetual order, this Court believes that Appellant's repeated requests for the Appellee's entire Christmas Bonus should be interpreted as a separate and timely request for an additional child support award from the second yearly Bonus. Nevertheless, as directed in the November 23, 1999 Order, future requests will have to be made to the District Court well in advance of the Bonuses disbursement date each time a new Bonus is due. Therefore, future requests should be made 30 days in advance to be considered timely.


It should be noted that limiting the amount of child support that may be garnished from the Appellee's Bonuses and forwarded to the Appellant through an award of the Court, in no way lessens the Appellee's duty to his children. Similarly, it is not intended to discourage Appellee from voluntarily providing his children and their mother with both money and goods beyond that specifically awarded. Indeed, this Court fully expects the Appellee to honor his intent expressed to this Court and the others present at the March 21, 2000 hearing, that he will give the Appellant \$500.00 of each Bonus in monetary or other tangible support for the children whether the Appellant petitions for an award or not. According to the principles of the Mille Lacs Band, as expressed in 24 MLBSA § 2004, it is the responsibility of each individual appearing before the court to act with kindness, respect, honor, and integrity. The Appellee's actions in living up to his

promises to the Court therefore not only reflects his integrity and responsibilities as a parent, but his duty as a member of the Mille Lacs Band of Ojibwe.

CONCLUSIONS OF LAW

1. The District Court did not err in finding that Appellant, T.H, is due \$172.50 from Appellee, J.D.'s Christmas Bonus to make up for the same amount that was due her from the Appellee's August Bonus. Accordingly, \$172.50 should be attached from the Appellee's Christmas Bonus and distributed to the Appellant.
2. The District Court did not err in determining that the amount awardable to the Appellant for child support should be calculated in accordance with the decision in *Sam v. Anderson*, 99FA14 and 8 MLBSA § 2006. However, the matter of issuing the Appellant an additional \$172.50 from the Appellee's Christmas Bonus as a separate award for December, is remanded to the District Court to be carried out in accordance with the considerations expressed herein.

Dated the 11th day of April, 2000



Dorothy Sam
Chief Justice

Dated this 1st day of May, 2000



Gloria St. John
Associate Justice

Dated this 12th day of April, 2000



Rosalie Noonday
Associate Justice