

FILED THIS 27th day of May 2001
[Signature]
 CLERK OF CROW TRIBAL COURT
 BY _____
 DEPUTY CLERK

IN THE CROW COURT OF APPEALS
 IN AND FOR THE CROW INDIAN RESERVATION
 CROW AGENCY, MONTANA

In re the Marriage of:)
)
 CARLTON NOMEЕ, SR.,)
)
 Petitioner/Appellee,)
)
 vs.)
)
 LORETTA PANSY HUGS,)
)
 Respondent/Appellant.)

CIV. APP. DOCKET NO. 01-025

OPINION AND ORDER

Respondent Loretta Pansy Hugs has appealed from the Order for Dissolution of Marriage entered by the Tribal Court (Big Hair, C.J.) on March 20, 2001. As the grounds for her appeal, Ms. Hugs argues that the decree of dissolution is void because no Petition for Dissolution was ever filed as required by Crow Tribal Code Sections 10-1-115 and -116, and there was not sufficient evidence to support a finding that the marriage was "irretrievably broken" pursuant to Crow Tribal Code § 10-1-118.

The court has taken judicial notice that Mr. Nomee passed away on March 25, 2001. In our Order to File Appellant's Brief dated April 30, this court suspended the time for Mr. Nomee's children to appear and defend this appeal, until after receiving Ms. Hugs' brief stating the grounds for her appeal. Upon review of the record, including the videotape of the hearing held on February 28, 2001, we have concluded that this appeal may be decided without further briefing or argument.

A. Course of Proceedings

The parties, who are both Tribal members, were married on November 10, 2000. Two and one-half months later, on January 24, 2001, Mr. Nomee filed a sworn Petition for Annulment, stating as grounds therefor that the "marriage took place under pressure and haste."

In an accompanying letter, Mr. Nomee explained that “undue pressure and haste was used to push me into a marriage agreement I did not want.” The same day, before a summons or any other notice was served on Ms. Hugs, the Tribal Court entered a decree declaring the marriage to be invalid.

On January 29, 2001, Ms. Hugs appeared through her lay counsel to file an Answer and a motion to set aside the annulment. In her Answer, Ms. Hugs denied that the marriage was based on undue pressure, duress or fraud as required for an annulment under Crow Tribal Code Section 10-1-111, and that there were financial issues relating to the purchase and financing of an automobile that were not addressed. In her motion, Ms. Hugs argued that the annulment decree be set aside because it was issued without notice to her, and there was not sufficient evidence to support the decree. Ms. Hugs requested that an evidentiary hearing be scheduled to address the facts and issues of the case.

The Tribal Court held a hearing on Ms. Hugs’ motion on February 28, 2001. The hearing was attended by Ms. Hugs and her lay counselor, and Mr. Nomee appeared *pro se*. At the hearing, Ms. Hugs’ counsel argued that there were overriding financial and credit issues that needed to be resolved in relation to the purchase and financing of an automobile. Apparently, an automobile was purchased on Ms. Hugs’ credit, and title was in her name. Ms. Hugs’ counsel then asked for a recess to give the parties an opportunity to discuss the matter and present the court with an agreed-upon resolution of all issues.

When the hearing reconvened, Ms. Hugs and her counsel advised the court that the parties had worked everything out. In lieu of the annulment, the parties agreed that the court should issue an order dissolving the marriage, which would also give ownership of the automobile to Ms. Hugs. With Mr. Nomee’s consent, the court approved the agreement and

directed Ms. Hugs' counsel to prepare the order.

The Tribal Court's Order for Dissolution of Marriage was issued on March 20, 2001. The court's order included Findings of Fact that there was serious marital discord with no reasonable prospect of reconciliation, that there was no basis for alimony or support, and that the shared debts and property had been settled between the parties. Based upon these findings, the court concluded that the marriage was irretrievably broken and that the Tribal Code provisions relating to property distribution, maintenance and support did not apply to this action. The court's order decreed that the marriage was dissolved, and that each of the parties would be responsible for their own debts and would retain their respective property and the property in their possession. That order is the subject of Ms. Hugs' appeal.

B. Decision

In her appellate brief, Ms. Hugs argues that the Order for Dissolution is void for failure to comply with the law and procedures set forth in the Tribal Code. Specifically, Ms. Hugs argues that no "verified" petition for dissolution was ever filed pursuant to Crow Tribal Code § 10-1-116, that the court therefore lacked personal and subject matter jurisdiction, and that there was no testimony or other evidence to support a finding of "irretrievable breakdown" of the marriage as defined in Section 10-1-118.

In light of the parties' agreement to dissolve the marriage, we find no merit in Ms. Hugs' appeal. It is true that this case began as an annulment action, and that the Tribal Court's initial order granting the annulment, without any notice to Ms. Hugs, did not comply with the Crow Rules of Civil Procedure. However, the Court's final decision to order a dissolution rather than an annulment was made in response to the parties' agreement, announced in open court by Ms. Hugs' counsel. Because the dissolution order was issued at Ms. Hugs' request, it would not be

fair to now overturn the dissolution order based simply on a technical failure of either party to file an amended pleading denominated as a “petition for dissolution.” The annulment petition and the Tribal Court’s orders gave Ms. Hugs fair advance notice and opportunity to prepare for the hearing on the subject of terminating the marriage.

The Tribal Code has adopted the “no fault” approach toward divorce or “dissolution of marriage” modeled after the Uniform Marriage and Divorce Act of 1970. *See, e.g.,* Crow Tribal Code § 10-1-116(4)(abolishing previous defenses to divorce). The findings necessary for the court to enter a decree of dissolution are set forth in Crow Tribal Code § 10-1-115, which provides in pertinent part:

- (b) The Court finds that the marriage is irretrievably broken, which findings shall be supported by evidence:
 - (i) That the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or
 - (ii) That there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage; [and]
- (c) The Court finds that the conciliation provisions of the Crow conciliation Law and of Section 10-1-118 do not apply or have been met[.]

In this case, the Tribal Court’s Order for Dissolution included a specific finding of serious marital discord, quoting Subsection (b)(ii) above, and a further finding that there was no reasonable prospect for reconciliation. Although the record does not reflect that either of the parties specifically stated under oath that the marriage was “irretrievably broken,” neither did Ms. Hugs ever deny that fact. The Court properly considered the parties’ agreement as fulfilling the criteria for establishing an “irretrievable breakdown” that required the Court to grant the dissolution pursuant to Section 10-1-118. Mr. Nomee’s sworn annulment petition stating that the marriage took place under pressure and haste also helped to satisfy the formal evidentiary

requirements for the Court's findings.

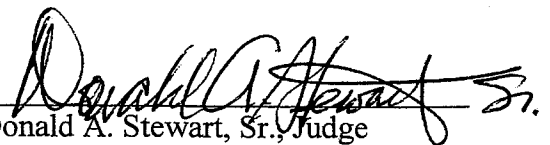
We have previously held that issues related to marital property and debts survive the death of one of the parties. *In re. Marriage of Not Afraid*, Civ. App. Dkt. No. 97-011 (March 14, 2001), 2001 CROW 3 ¶ ____. Ms. Hugs has not raised any financial issues in this appeal. In any event, considering the very short duration of the marriage, the Tribal Court did not abuse its discretion in finding that there was no basis for an award of maintenance or a division of the parties' individual property pursuant to Crow Tribal Code §§ 10-1-120 through -126.

Finally, based on the nature of this case, the Tribal membership of both parties, and Ms. Hugs' Answer and attendance at the hearing, there can be no question that the Tribal Court had both personal and subject matter jurisdiction to enter its decree. Now, therefore,

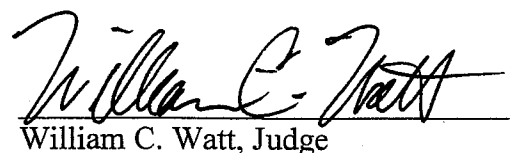
IT IS HEREBY ORDERED that the Tribal Court's Decree of Annulment entered on January 24, 2001, is **VACATED**, having been superseded by the dissolution order, except for its findings on jurisdiction; and

IT IS FURTHER ORDERED that the Tribal Court's Order for Dissolution of Marriage entered on March 20, 2001, is **AFFIRMED**. No costs.

DATED this 29th day of July, 2001.


Donald A. Stewart, Sr., Judge


Albert L. Gros-Ventre, Judge


William C. Watt, Judge