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NAVAJO NATION SUPREME COURT OPINION ISSUED

The Navajo Nation Supreme Court has issued an opinion in Manning v. Abeita, SC-CV-66-08, (August 1, 2011), concerning a divorce action appealed by the husband from the To'hajiilee Family Court. The husband objected to the judge using informal methods in deciding his divorce.

The husband wanted the judge to have used formal court rules at the final hearing. He also wanted the benefit of a pretrial conference.

The Supreme Court stated that ours is a "dual culture court" and the opinion noted that the Court understood "the often untenable position" of Navajo judges in having to reconcile competing philosophies in the courtroom, which it said gives "rise to competing methods of behavior."

The Court emphasized the protections of each type of philosophy, stating that the Anglo court style constrains a judge's decision-making by using formal rules, while the Diné method supports decision-making and control in the hands of the parties and requires that the parties themselves decide.

The Court stated that both methods are provided for pursuant to rules of civil procedure. There is a time for each method during civil proceedings, and the courts must maintain the distinction between each stage: (1) the pretrial conference wherein settlement is facilitated and horizontal decision-making is encouraged using informal methods, including Diné traditional methods; and (2) the formal trial phase.

The Court said: "If courts maintain this distinction, then the use of traditional methods in our court system will work."

It further stated: "The benefits of decision-making by the parties themselves, with guidance from a principled leader, has long been known to the Diné. For centuries, before the advent of American-style courts, this had been the only dispute resolution used on our sovereign soil. The importance of using a cultural approach whenever permissible, whether in our courts or in peacemaking, cannot be overstated."

Informal methods are also being used by federal judges during the pretrial stage, the Court said, even to the extent of meeting individually with parties if that would help a settlement to be reached.

Because the phases and the methods were not kept distinct, the Court affirmed in part, reversed in part, and ordered a remand on limited issues.

In closing, the Court observed that self-represented parties are at a disadvantage in any court system, let alone a system that carries within it two competing philosophies and methods. It then ordered that the judicial districts develop instructions for such litigants so they are aware of their options regarding the processes of the court before they participate in settlement discussions or hearings.

The opinion is available on the www.navajocourts.org website.

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