

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2007-018088

09/24/2008

HONORABLE A. CRAIG BLAKEY II

CLERK OF THE COURT  
L. Gilbert  
Deputy

LOREN R SHIRK

TRINETTE S SACHRISON

v.

CHANDLER CITY, et al.

ROBERT GRASSO JR.

**RECEIVED**

SEP 26

**MDZ**

MARK D ZUKOWSKI

MINUTE ENTRY

This matter has been under advisement on Defendants Hilario and Michelle Tanakeyowma and Michael Lancaster's ("Defendants") Motion to Dismiss. Having considered the parties' memoranda as well as the oral arguments of counsel, the Court issues the following ruling.

The issue presented before the Court is whether or not the Court has subject matter jurisdiction over Plaintiff's claims against Defendants. When a "court's subject matter jurisdiction is challenged pursuant to Rule 12(b)(1), the court may take evidence and resolve factual dispute essential to its disposition of the motion." Gatecliff v. Great Republican Life Ins. Co., 154 Ariz. 502, 506 (App. 1987). Accordingly, the Court will consider all exhibits and affidavits submitted in support of the parties' pleadings without converting the motion into one for summary judgment. Id.; ARIZ.R.CIV.P. Rule 12(b)(1).

The doctrine of sovereign immunity extends to federally recognized tribes which may not be sued absent an express and unequivocal waiver of immunity by the tribe or the abrogation of tribal immunity by Congress. Dawavendewa v. Salt River Project Agr. Imp. and Power Dist., 276 F.3d 1150, 1159 (9th Cir. 2002). Tribal immunity extends to tribal employees "as long as their alleged misconduct occurred while they were acting in their official capacity and within the

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scope of their authority.” Filer v. Tohono O’Odham Nation Gaming Enterprise, 212 Ariz. 167, 174 (App. 2006).

In the case at bar, the Court finds that the Gila River Indian Community (“GRIC”) is a federally recognized tribe which has not waived immunity nor has the immunity been abrogated by Congress. Therefore, if the Defendants were acting in their official capacity and within the scope of their tribal employment, then the Court lacks subject matter jurisdiction over them.

The record reveals that Defendants were employed as police officers by the GRIC. As part of their employment, Defendants were required to maintain their Arizona Peace Officer and Standards Training (“AZPOST”) certification by meeting continuing education requirements. On the day of the alleged incident, Defendants were instructed by the GRIC police chief to attend an AZPOST continuing education class. Defendants used an official GRIC police vehicle for this purpose.

As Defendants were returning from their continuing education class to the tribal community, their police chief instructed them to assist Chandler police officers at the scene of an accident in the city of Chandler. Defendants followed these instructions. After leaving the scene to resume their return to the GRIC, Defendants noticed a car driving erratically. Pursuant to their authority to enforce the law anywhere in Arizona, Defendants elected to stop the driver. However, as Defendants were approaching the vehicle, the driver attempted to flee the scene and collided with Plaintiff.

Based on the foregoing, the Court finds that Defendants were acting within their official capacity and scope of authority at all times relevant to Plaintiff’s Complaint. Defendants were at all pertinent times on duty and being paid in their capacities as GRIC police officers. Moreover, they were returning to the tribal community, in their official GRIC vehicle, after conducting mandatory AZPOST training class for the benefit of the GRIC.

Plaintiff contends that because Defendants were acting under the color of state law and on state property, they were acting as agents of the City of Chandler Police Department. However, this argument is undermined by A.R.S. § 13-3874(B) which provides, in pertinent part, that “[n]either the state nor any political subdivision shall be liable for any acts or failure to act by any such Indian police officer.” Thus, Plaintiff is limited to suing these officers in either Federal or Tribal Court. Accordingly, as the Court lacks subject matter jurisdiction over the claims asserted against Defendants,

IT IS ORDERED granting Defendants’ Motion to Dismiss.