

20170463

IN THE SUPREME COURT OF NORTH DAKOTA

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CLERK OF SUPREME COURT

State of North Dakota, and
Daniell Breland,

MAR 08 2018

Plaintiffs/Appellees

STATE OF NORTH DAKOTA

Supreme Court No. 20170463
Rolette County No. 40-2014-DM-00235

vs.

Daniel Peltier,

Defendant/Appellant.

APPEAL FROM THE DENIAL OF MOTION TO DISMISS DATED OCTOBER 30TH,
2017, BY THE HONORABLE ANTHONY BENSON, JUDGE OF THE ROLETTE
COUNTY DISTRICT COURT

STATE OF NORTH DAKOTA APPELLEE'S BRIEF

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[2] STATEMENT OF THE ISSUES

[3] I. Whether the district court had subject matter jurisdiction to establish a child support obligation against a nonmember Indian residing within the boundaries of the reservation of a tribe of which he is not a member and paternity was not at issue.

[4] II. Whether the district court had concurrent subject matter jurisdiction to establish a child support obligation based upon significant off-reservation contacts.

[5] III. Whether the district court erred in issuing a child support obligation where there was concurrent subject matter jurisdiction and no other child support order existed.

[6] STATEMENT OF THE CASE

[7] This is an appeal from a denial of Daniel Peltier's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Motion for Preliminary Injunction by the Rolette County District Court. (App. 57)

[8] Daniel Peltier brings this appeal to dispute the district court's decision to deny his motion to dismiss. (App. 57) His motion to dismiss argued lack of subject matter jurisdiction. (App. 57)

[9] STATEMENT OF THE FACTS

[10] Daniel Peltier, Daniell Breland, and the minor child are enrolled members of federally recognized Indian Tribes; however, neither the parties, nor the minor child are enrolled members of the Turtle Mountain Band of Chippewa Indians. (App. 51-52)

Daniel Peltier is an enrolled member of the Crow Nation and eligible for enrollment with the Turtle Mountain Band of Chippewa Indians. (App. 52) Daniell Breland and the minor child are enrolled members of the Standing Rock Sioux Tribe. (App. 52).

[11] Daniel Peltier has extensive employment history outside the Turtle Mountain Reservation. His off-reservation employment began before the commencement of this action and continued for several years later at various employers. Prior to the commencement of this action he worked for Grey Wolf Drilling in the oil fields of western North Dakota beginning in January 2009 (App. 26-28). Peltier's employment with this employer continued until after the district court entered a judgment (App. 29). He later returned to this employer beginning in April 2013 and had wages reported through at least May 2014 (App. 34-37). Over the next few years he worked for Bronco Drilling Company, Inc. from third quarter 2010 through third quarter 2011 (App. 30); Nomac Drilling in third quarter 2011 (App. 31-32); Strobel Starostka Transfer, LLC from August 2014 through second quarter 2015 (App. 39-43); Dakota Plains Holding from June 2015 through December 2015 (App. 44-47); and on and off at Dunseith Public Schools from 2004 through 2016 (App. 33).

[12] In January of 2009, the Turtle Mountain Tribal Court entered a paternity order which established Daniel Peltier as the natural father of the minor child. (App. 7-10). The tribal paternity order did not rule on the issue of child support.

[13] After the tribal court rendered its decision, Daniel Peltier was served with the summons and complaint by certified restricted mail to his mailing address in Dunseith, North Dakota on March 3rd, 2009. The summons and complaint was brought by the State of North Dakota to establish a monthly child support obligation and to require adequate medical insurance coverage. (App. 11-14) The complaint alleged that he is the natural father to the minor child. (App. 12). As Peltier did not respond to the summons and

complaint or request a hearing, the district court entered a judgment against him. (App. 15). Peltier does not argue that there was an existing child support order.

[14] In the Findings of Fact, Conclusions of Law and Order for Judgment entered May 11th, 2009, the district court concluded it had subject matter and personal jurisdiction and set a child support obligation based on Daniel Peltier's employment income. (App. 15-18) He was also ordered to pay retroactive support effective October 1, 2008.

[15] Over eight years later, Daniel Peltier filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction and Motion for Preliminary Injunction. The State of North Dakota responded, arguing subject matter jurisdiction was appropriate, as was the exercise of concurrent jurisdiction. The Rolette County District Court issued an Order Denying Motion to Dismiss and for Preliminary Injunction on October 30th, 2017. (App. 48-56)

[16] On December 28th, 2017, Daniel Peltier appealed the October 30th, 2017 denial of his motion to dismiss. (App. 57)

[17] STANDARD OF REVIEW

[18] It is well settled under North Dakota law that challenges to a district court's subject matter jurisdiction are reviewed de novo when the jurisdictional facts are not in dispute. Harshberger v. Harshberger, 2006 ND 245, ¶ 16, 724 N.W.2d 148. When jurisdictional facts are disputed, the district court's decision on subject matter jurisdiction necessarily involves findings of fact and conclusions of law. Shirado v. Foote, 2010 ND 136, ¶ 7, 785 N.W.2d 235. When disputed facts surround a challenge to the district court's subject matter jurisdiction, this Court is presented with a mixed question of law and fact. Id. This Court reviews "questions of law subject to the de novo standard of

review [and the] findings of fact subject to the clearly erroneous standard of review.” Id. (citing Wigginton v. Wigginton, 2005 ND 31, ¶ 13, 692 N.W.2d 108).

[19] A finding of fact is clearly erroneous if it is induced by an erroneous view of the law, if no evidence supports it, or if, on the entire record, we are left with a definite and firm conviction a mistake has been made. S.L.W. v. Huss, 2014 ND 169, ¶ 8, 852 N.W.2d 367. A district court’s admission of evidence is reviewed for an abuse of discretion. Id. A court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, when it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination. Id.

[20] LAW AND ARGUMENT

[21] **I. Whether the district court had subject matter jurisdiction to establish a child support obligation against a nonmember Indian residing within the boundaries of the reservation of a tribe of which he is not a member and paternity was not at issue.**

[22] “A person legally responsible for the support of a child and who fails to provide support is liable for the reasonable value of physical and custodial care or support which has been furnished to the child . . .” N.D.C.C. § 14-08.1-01.

[23] Under 42 U.S.C. § 654(4)(A), the State of North Dakota must provide Title IV-D (child support) services to anyone who has applied for services from the agency, regardless of nationality. The State of North Dakota must provide those same child support services if there is provision of medical assistance to a child, unless the applicant parent opts out of child support services. Id. The State’s significant interest in the issue is also codified in state law indicating the state is a real party in interest for purposes of

securing repayment of benefits paid and future support whenever aid under N.D.C.C. chapter 50-24.1 (medical assistance) is expended. N.D.C.C. § 14-09-09.26.

[24] This Court outlined that interest in the case of State ex rel. Schlecht v. Wolff, stating, “Although the child no longer receives aid under N.D.C.C. ch. 50-09, the State continues to be a real party in interest because it has continued to provide IV-D child support services to Schlecht since the paternity action commenced and Schlecht has not requested the child support enforcement unit to close her case and stop providing services.” State ex rel. Schlecht v. Wolff, 2011 ND 164, ¶ 21, 801 N.W.2d 694.

[25] Both federal and state law show the State of North Dakota’s significant interest where an individual within the state fails to provide support for a child they owe a duty to support and the State of North Dakota is expending resources to provide for that child in the individual’s place.

[26] Despite significant state interest, this Court has held the determination of parentage of a child of Indian tribal members is intimately connected with the right of reservation Indians to make their own laws and be ruled by them. Roe v. Doe, 2002 ND 136, ¶ 7, 649 N.W.2d 566. Exercising state jurisdiction “would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves.” McKenzie County Social Services Bd. v. V.G., 392 N.W.2d 399, 402 (N.D. 1986) (quoting Williams v. Lee, 385 U.S. 217 at 223, 79 S.Ct. 269 (1959)). However, this Court has explicitly distinguished between cases determining parentage and cases where child support is the only issue being determined.

[27] In Rolette County a majority of this Court held that “tribal courts and state courts have concurrent subject-matter jurisdiction to determine a support obligation against an

enrolled Indian, where parentage is not at issue and the defendant is not residing on the Indian reservation when the action is commenced.” Rolette Co. Social Service Bd. v. B.E., 2005 ND 101, ¶ 12, 697 N.W.2d 333. The Rolette County majority distinguished prior cases involving paternity determinations, because paternity determinations are intimately connected with the right of reservation Indians to make their own laws and to be ruled by them. Id. at ¶¶ 7-10 (citations omitted). The Rolette County majority explained the action in that case to establish only a support obligation was against the biological mother residing outside the reservation boundaries when the action was brought, whereas the prior paternity cases involved putative fathers residing on the Indian reservation when the action was brought. Id. at ¶¶ 9-10. The majority concluded the state court’s determination of the parent’s support obligation in that case would not unduly infringe tribal rights of self-governance. Id. at ¶ 10.

[28] Paternity is not at issue in this case. The Turtle Mountain Tribal Court issued a paternity order which established Daniel Peltier as the natural father to the minor child in this case. Further, Peltier is not an enrolled member of the Turtle Mountain Band of Chippewa Indians and cannot rely on that tribe’s sovereignty as a shield to state court jurisdiction.

[29] A. Paternity was not at issue.

[30] In this case, the Turtle Mountain Tribal Court issued a paternity order establishing Daniel Peltier as the natural father of the minor child. In determining whether the tribal paternity order is enforceable in state court, we must look to Rule 7.2(b) of the North Dakota Rules of Court which states, in part: “[t]he judicial orders and judgments of tribal courts within the state of North Dakota, unless objected to, are recognized and have the

same effect and are subject to the same procedures, defenses, and proceedings as judgments of any court of record in this state.” N.D.R.Ct. 7.2(b).

[31] No objection has been made by any party to the recognition of the tribal paternity order, nor any showing made that the tribal paternity order is not a valid determination of paternity under tribal law as to this child. See Turtle Mountain Tribal Code, Title 9.0811(2).

[32] B. Defendant cannot rely on Turtle Mountain’s sovereignty as a shield to state court jurisdiction as he is not a member of that Tribe.

[33] Neither the parties nor the minor child are enrolled members of the Turtle Mountain Band of Chippewa Indians. Daniel Peltier is an enrolled member of the Crow Nation and eligible for enrollment with the Turtle Mountain Band of Chippewa Indians. Daniell Breland and the minor child are enrolled members of the Standing Rock Sioux Tribe. The parties and the minor child lived on the Turtle Mountain Reservation at the commencement of this action and reside there at the time of this appeal.

[34] Tribal sovereignty is of a unique and limited character which centers on the land held by the tribe and on tribal members within the reservation. Plains Commerce Bank v. Long, 554 U.S. 316, 128 S. Ct. 2709, 2718 (2008) (citations omitted) (emphasis added). United States Supreme Court case law establishes that “absent express authorization by federal statute or treaty, tribal jurisdiction over the conduct of nonmembers exists only in limited circumstances.” Strate v. A-1 Contractors, 520 U.S. 438, 445, 117 S.Ct. 1404, (1997). In Montana v. United States, the Supreme Court stated, “Indian tribes retain their inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members.” Montana v. United States,

450 U.S. 544, 564, 101 S.Ct. 1245 (1981). The Montana Court established the general rule that “the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.” Id. at 565. Two exceptions to this general rule were also established. First, “[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements.” Id. Second, the Court stated: “A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” Id. at 566.

[35] The North Dakota Supreme Court has considered several cases involving the relationship between tribal court jurisdiction and state court jurisdiction when paternity and child support are contested. In the case of Roe v. Doe, this Court discussed its prior rulings on the issue of a state court’s jurisdiction to rule on the matter of paternity of a child born to tribal members. Roe v. Doe, 2002 ND 136, 649 N.W.2d 566. The Roe decision clarified these prior rulings based on the specific facts associated with those cases. Id. at ¶¶ 9-12. This Court held that, in the prior line of cases, the tribal court had exclusive jurisdiction based on the specific facts that the parents and children in those cases were all enrolled members in the same tribes, and the conduct giving rise to the action, namely conception, occurred on the parties’ reservation. Id. at ¶ 12. Under such facts, the tribal court does have exclusive jurisdiction to determine paternity. Id. However, the facts in Roe v. Doe, were different in two significant ways from the prior

cases: 1) the parties were not members of the same Tribe, and 2) conception did not occur on a reservation. Id. at ¶¶ 13, 15.

[36] Because the parents in Roe were enrolled members of different Tribes, each parent was a non-Indian as it pertained to the other parent's Tribe and, therefore, could not use that Tribe's laws as a shield against state court jurisdiction. Roe at ¶¶ 20, 21. Because the act that resulted in the basis for the lawsuit, namely conception of the child, occurred outside the exterior boundaries of either parent's Reservation, the matter could be heard in a state court. Id. Tribal members are not prevented from availing themselves of the jurisdiction of a state court. Id.

[37] Here, the parties and the minor child are nonmembers of the Turtle Mountain Band of Chippewa Indians. As such, for the district court to lack jurisdiction over this lawsuit, one of the two Montana exceptions must apply. The issues to be determined in this case are the establishment of medical support and child support. There is no evidence that the parties have entered any relationships with the tribe or its members pertinent to this lawsuit. Further, the subject matter of this lawsuit (obtaining support for the child) does not involve conduct that threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Turtle Mountain Reservation. Obtaining support for the child does not threaten the welfare of the Tribe, it enhances it. Therefore, as a nonmember, Peltier wrongly alleges the district court lacked subject matter jurisdiction over this matter. This action and its outcome do not affect the Turtle Mountain Band of Chippewa Indian's sovereignty, as asserted by Peltier. The State is suing Peltier only to obtain reimbursement and to ensure he makes child support payments.

[38] As this Court in Roe v. Doe held, an Indian who is not a member of a Tribe cannot use that Tribe's sovereignty as a shield to state court jurisdiction. Roe at ¶¶ 20, 21. Further, when reservation contacts are considered, the reservation involved is the reservation of the tribe to which the parent belongs. Here, Peltier is an enrolled member of the Crow Nation. As a nonmember of Turtle Mountain Band of Chippewa Indians he cannot rely on that Tribe's sovereignty as a shield to state court jurisdiction. Therefore, any of his contacts on the Turtle Mountain reservation are equivalent to contacts in non-tribal territory and he would be subject to state court jurisdiction. In the alternative, concurrent subject matter jurisdiction exists based upon Peltier's significant off-reservation contacts.

[39] **II. Whether the district court had concurrent subject matter jurisdiction to establish a child support obligation based upon significant off-reservation contacts.**

[40] This Court has recognized that state courts will have concurrent subject matter jurisdiction with tribal courts in cases where the claims involve situations where there is "significant off-reservation impact." The Court in Kelly v. Kelly stated, in relevant part:

[T]he general precepts of federal Indian law suggest that tribes and states share significant authority over custody disputes involving Indian children. The doctrine of tribal sovereignty clearly supports tribal jurisdiction over most such disputes, except where the parties have essentially no contact with the reservation. State authority, arising from the states' legitimate *parens patriae* role, likewise exists, except where the parties have essentially no contact outside the reservation.

The court . . . therefore recognized that, in cases with off-reservation impact or which occur off-reservation, state courts will have concurrent jurisdiction.

[W]ith respect to claims that have significant off-reservation impact or occur off-reservation, state courts may assert jurisdiction, concurrent with tribal courts, even as to actions involving Indian defendants. In such a

situation, the state's interest in hearing the dispute is not automatically overshadowed by tribal sovereignty.

Kelly v. Kelly, 2009 ND 20, ¶ 17, 759 N.W.2d 721.

[41] In this case, Daniel Peltier's off reservation contacts with the State of North Dakota include his extensive employment off the Turtle Mountain Reservation. In January 2009, prior to the commencement of this action, he began working for Grey Wolf Drilling in the oil fields of western North Dakota (App. 26-28). Peltier's employment with Grey Wolf Drilling continued until November 2010, after the district court entered its judgment (App. 29). The district court entered its judgment in May 2009. (App. 15-18). After the judgment was entered, Peltier continued to work off the Turtle Mountain Reservation for the next several years for various employers. He worked for Bronco Drilling Company, Inc. from third quarter 2010 through third quarter 2011 (App. 30); Nomac Drilling in third quarter 2011 (App. 31-32); Grey Wolf Drilling again from April 2013 and had wages reported through at least May 2014 (App. 34-37). Strobel Starostka Transfer, LLC from August 2014 through second quarter 2015 (App. 39-43); Dakota Plains Holding from June 2015 through December 2015 (App. 44-47); and on and off at Dunseith Public Schools from 2004 through 2016 (App. 33).

[42] There is no bright line rule that can be applied in determining whether the off-reservation contacts are sufficient to justify a finding that the "incidents" to the matter being decided that occurred within the State of North Dakota were "significant." In this case, however, the significance is derived from the fact that not only was Daniel Peltier earning a substantial income from numerous off-reservation employers over several years, but also that the contact with the state began before the commencement of this action in 2009 and lasted for several years.

[43] **III. Whether the district court erred in issuing a child support obligation where there was concurrent subject matter jurisdiction and no other child support order existed.**

[44] Daniel Peltier argues that since the Turtle Mountain Tribal Court issued a paternity order, that tribal court has exclusive jurisdiction to establish a child support order. As discussed above, the district court has concurrent subject matter jurisdiction over this child support case.

[45] According to the principle of concurrent jurisdiction, the court which first exercises its jurisdiction acquires exclusive jurisdiction to proceed in the case, even though other courts have concurrent jurisdiction in the matter. 20 Am Jur 2d Courts §88. In other words, once a court of concurrent jurisdiction has begun to exercise its jurisdiction over a case, its authority to deal with the action is subject to appellate review, exclusive until it is completely disposed of, and no other court of concurrent jurisdiction can interfere with the proceedings. Id.

[46] Even though there was an earlier paternity order entered by the Turtle Mountain Tribal Court, that order only established paternity and was silent as to the issues of child support. Further, there was no race to the courthouse. The tribal court entered a final determination on paternity but declined to rule on child support. The State did not commence its action for child support until after the tribal court rendered its final determination on paternity. There was no existing child support order known to the district court in May 2009 nor does Daniel Peltier argue there was a preceding child support order issued by tribal court.

[47] Without an existing child support order in the tribal court, the district court was first to exercise its jurisdiction and now has exclusive jurisdiction over the issue of child support.

[48] CONCLUSION

[49] The district court correctly found subject matter jurisdiction existed in 2009 when it ordered child support. With no evidence of an existing child support order in another court with concurrent jurisdiction, the district court appropriately exercised jurisdiction over the issue of child support and retains that jurisdiction.

[50] The State of North Dakota respectfully requests that the decision of the district court be affirmed.

Dated this 8th day of March, 2018.



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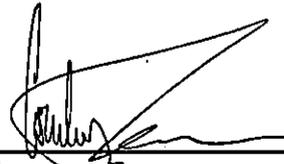
CERTIFICATE OF SERVICE

-
1. The undersigned certifies that he is over the age of 18 years and not a party to this action, and on the 8th day of March, 2018, he served via email address and first class mail:

STATE OF NORTH DAKOTA APPELLEE'S BRIEF AND APPENDIX

2. The mail was addressed as follows:
3.

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4. Each address shown is the respective addressee's last reasonably ascertainable address.



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