



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CHELSEY ANN WREN, on behalf of
minor family member T.D.C.,

Plaintiff/Appellee,

v.

ROBERT LEE YATES,

Defendant/Appellant.

FILED
SUPREME COURT
STATE OF OKLAHOMA

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Case No. DF-119642

Appeal from the District Court of Stephens County
Case No. PO-2021-44
The Honorable Jerry Herberger
SPECIAL DISTRICT JUDGE

APPELLANT'S BRIEF IN CHIEF

Submitted by:

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January 14, 2022

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(Stephens County PO-2021-44)

APPELLANT’S BRIEF IN CHIEF

COMES NOW the Defendant/Appellant and respectfully requests this Court to reverse the trial court’s granting of a permanent protective order, and for his Brief in Chief states as follows:

INTRODUCTION

Robert Lee Yates, Defendant/Appellant, was charged by Information in the District Court of Stephens County case number CF-2020-57 with two counts of child sexual abuse on March 16, 2020. On April 1, 2021, the matter was dismissed pursuant to the holdings in the United States Supreme Court decision in *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020), and the Oklahoma Court of Criminal Appeals decision in *Bosse v. State*, 2021 OK CR 3, 484 P.3d 286.

The United States Supreme Court held in *McGirt* that for purposes of the Major Crimes Act, 18 U.S.C. §§ 1151, 1153, land reserved for the Creek Nation since the 19th century remains Indian country. *McGirt v. Oklahoma*, 591 U.S. ___ at pp. 3-42, 140 S. Ct. 2452 (2020). The Oklahoma Court of Criminal Appeals in *Bosse* extended the ruling in

McGirt to encompass the Chickasaw Nation reservation as Indian country. *Bosse v. State*, 2021 OK CR 3, 484 P.3d 286.

Since the filing of the Petition in Error, in *Bosse v. State*, 2021 OK CR 23, 495 P.3d, the Oklahoma Court of Criminal Appeals vacated and set aside the order and judgment granting post-conviction relief and withdrew its opinion in *Bosse v. State*, 2021 OK CR 3, 484 P.3d 286. In *Bosse v. State*, 2021 OK CR 30, ___ P.3d ___, the Oklahoma Court of Criminal Appeals reaffirmed the trial court's determination that the Chickasaw Reservation was not disestablished by Congress, and the lands within its historic boundaries are Indian Country. *Id.* ¶12.

The District Court of Stephens County found that Mr. Yates was a member of a federally recognized Indian tribe and the alleged crime occurred within Indian country. The United States Attorney's Office for the Western District of Oklahoma declined to prosecute, and Mr. Yates was set free. Chelsey Ann Wren was urged to file for a Protective Order on behalf of a minor family member.

STATEMENT OF THE CASE

This case arises from the aforementioned allegations that occurred within the boundaries of the Chickasaw Reservation and Stephens County, Oklahoma. On April 5, 2021, Chelsey Ann Wren, Plaintiff/Appellee, filed a Petition for a Protective Order in the District Court of Stephens County in case number PO-2021-44 on behalf of her minor daughter, T.D.C., against Robert Lee Yates, Defendant/Appellant, alleging her minor daughter was a victim of rape and in need of protection from Robert Lee Yates. An Emergency Order of Protection was issued and served upon Mr. Yates that same date

acknowledging that Mr. Yates is Native American. Hearing on the Petition was set for April 12, 2021, at 9:00 a.m.

Present Counsel for Mr. Yates appeared April 12, 2021, and orally moved to continue the hearing. The trial court granted the motion and issued a Continued Order acknowledging Mr. Yates is American Indian. Hearing was scheduled for May 17, 2021, at 9:00 a.m.

On May 17, 2021, a Motion to Dismiss for Lack of Jurisdiction was filed on behalf of Mr. Yates. Hearing on the Motion and Petition was held before the Honorable Jerry Herberger. After hearing argument of Counsel the trial court denied the Motion to Dismiss. The minor testified and was cross examined. The Court determined that an Order of Protection should be entered. The Final Order of Protection was issued and acknowledged by Mr. Yates that same day.

STANDARD OF REVIEW

A protection order is subject to either or both of two standards of review.

“Statutory construction presents a question of law which we review de novo. A protection order under the Protection from Domestic Abuse Act, 22 O.S.Supp.2006, §§ 60-60.18, is analogous to an injunction. Because the grant or denial of an injunction is reviewed for an abuse of discretion, we find that proceedings under the Act also should be reviewed for an abuse of discretion. Under an abuse of discretion standard, the appellate court examines the evidence in the record and reverses only if the trial court's decision is clearly against the evidence or is contrary to a governing principle of law. To reverse under an abuse of discretion standard, an appellate court must find the trial court's conclusions and judgment were clearly erroneous, against reason and evidence.” *Curry v. Streater*, 2009 OK 5, ¶8, 213 P.3d 550 (internal citations omitted).

PROPOSITION: The exercise of jurisdiction over a member of a federally recognized Indian tribe for acts that were alleged to have occurred within the boundaries of Indian country by the District Court of Stephens County, Oklahoma, is contrary to Federal statutes and governing principals of law.

The question of which of the several courts has jurisdiction over civil matters that occur within the boundaries of Indian country was decided by the Supreme Court of the United States in the landmark case of *Williams v. Lee*, 358 U.S. 217, 79 S. Ct. 269, 3 L.Ed.2d 251 (1959). The issue decided by the Supreme Court was whether state action infringed on the right of reservation Indians to make their own laws and be ruled by them, absent governing Acts of Congress. *Williams v. Lee*, 358 U.S. 217, 220.

The case of *Williams v. Lee* involved a non-Indian store owner that operated a general store on the Navajo Indian Reservation in Arizona who brought an action against a Navajo Indian and his wife who lived on the reservation to collect for goods sold on credit. *Id.* at 217,218. Judgment was granted in favor of the store owner by the state court, and the Arizona Supreme Court affirmed, holding that since no Act of Congress expressly forbids their doing so Arizona courts are free to exercise jurisdiction over civil suits by non-Indians against Indians though the action arises on an Indian reservation. *Id.* at 218.

The United States Supreme Court reversed the Arizona Supreme Court decision, holding "that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves. It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. The cases in this Court have consistently guarded the authority of Indian governments over their reservations. Congress recognized this authority in the Navajos in the Treaty of 1868, and has done so ever since. If this power is to be taken away from them, it is for Congress to do it." *Id.* at 223.

The Supreme Court reasoned that “implicit in the treaties signed with various tribes was the understanding that the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed.” *Id.* at 221, 222. Additionally, the Supreme Court found that the Navajo Tribe maintained a tribal government and court system. Further, the Supreme Court found that the Navajo Courts of Indian Offenses exercised broad civil and criminal jurisdiction over suits by outsiders against Indian defendants, and that no Federal Act gave the state courts of Arizona jurisdiction over such controversies. *Id.*

Additionally, the Supreme Court makes reference in a footnote to Public Law 83-280 (1953) and specifically 28 U.S. Code § 1360 – State civil jurisdiction in actions to which Indians are parties, which grants broad civil jurisdiction to California, Minnesota, Nebraska, Oregon, and Wisconsin. Further amendments have also included Alaska under the purview of 28 U.S. Code § 1360.

28 U.S. Code § 1360(a) states as follows:

Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian country affected
Alaska	All Indian country within the State.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

This codification explicitly states that Congress has given these states jurisdiction over matters that occur in Indian country. Implicitly, and read with the opinion in *Williams v. Lee*, if the state isn't within the table, then jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country lie with the tribe exclusively.

"Indian country" is defined in 18 U.S. Code § 1151, which states:

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Generally, this code section is associated with the Major Crimes Act and is mischaracterized as only applying to criminal matters. The extension of Section 1151 to civil matters was first noted in footnote 2 to the Supreme Court of the United States case of *DeCoteau v. District County Court*, 420 U.S. 425, 95 S.Ct. 1082, 43 L.Ed.2d. 300 (1975). "While § 1151 is concerned, on its face, only with criminal jurisdiction, the Court has recognized that it generally applies as well to questions of civil jurisdiction." *Id.* n.2.

Since that footnote, the Supreme Court of the United States has explicitly stated that Section 1151 also applies to civil jurisdiction. See *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527, 118 S.Ct. 948, 140 L.Ed.2d 30 (1998). ("dependent Indian communities" are Indian country).

Applying the rationale and “infringement” test of *Williams v. Lee* to the case at bar to determine whether the exercise of state court jurisdiction infringes on the right of an Indian nation to make its own laws and be governed by them, we should look to three factors. (1) Is a party an Indian? (2) Does the cause of action arise within the boundaries of Indian country? and (3) What is the nature of the interest to be protected?

Defendant/Appellant Robert Lee Yates is a member of a federally recognized tribe and is Indian. The allegations giving rise to the filing of the Petition for Protective Order occurred within the territorial boundaries of the Chickasaw Nation Reservation. The tribal sovereignty of the Chickasaw Nation is at question.

Does the Chickasaw Nation maintain a government and court system? Yes. The Chickasaw Code can be found at <https://www.chickasaw.net/Our-Nation/Government/Chickasaw-Code.aspx>. The Chickasaw Nation has codified their form of government, requirements for citizenship, established licensing and business regulations, set up schools, finance the government, establish procedures for elections, and established their laws and court systems, among other facets of government.

The Chickasaw Nation has codified Territorial, Subject Matter, and Personal Jurisdiction at Chickasaw Code Chapter 2 – Chickasaw Nation District Court – Article A – Sections 5-201.3 through 5-201.5, respectively. They state as follows:

SECTION 5-201.3 TERRITORIAL JURISDICTION.
The territorial jurisdiction of the Court shall extend to all territory described as Indian Country within the meaning of Section 1151 of Title 18 of the United States Code over which the Chickasaw Nation has authority. (PR38-005, 12/18/2020).

SECTION 5-201.4 SUBJECT MATTER JURISDICTION.
The Court shall have jurisdiction over all civil and criminal actions arising under the Constitution, laws, or treaties of the Chickasaw Nation, including the Tribal Common Law or by

virtue of Executive or Legislative Order and enactment, or declaration or regulation of State or Federal Law, or a declaration or order of any Court of competent jurisdiction. (PR38-014, 02/22/2021).

SECTION 5-201.5 PERSONAL JURISDICTION.

Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Court, or served anywhere in cases arising within the territorial jurisdiction of the Chickasaw Nation, and over all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Court shall be considered consent to the jurisdiction of the Court.

Further, the Chickasaw Nation has codified protective orders under Chickasaw Code Chapter 12 – Rules of Criminal Procedure – Protection from Domestic Abuse. Chickasaw Code Section 5-1201.2(A) states

The Court shall have full civil jurisdiction to issue and enforce Protective Orders involving any person in matters arising in the Indian Country of the Chickasaw Nation or otherwise within the authority of the Court. (TL14-002, 4/18/97; PR15-030, 9/23/98; PR21-020, 5/21/04; PR38-014, 02/22/2021).

Congress has not enacted any law to grant the State of Oklahoma concurrent jurisdiction in civil matters. Oklahoma is not listed as a state that enjoys those options under Public Law 83-280 and 28 U.S. Code § 1360.

CONCLUSION

The exercise of jurisdiction by the District Court of Stephens County in this matter undermines the authority of the Chickasaw Nation District Court over the Chickasaw Nation affairs and infringes in the right of the Chickasaw Nation to govern themselves. Only Congress can alter the Chickasaw Nation's sovereignty in this matter. The District Court abused its discretion and did not follow Federal law in granting the protective order. Defendant/Appellant respectfully requests this Court reverse the ruling of the trial court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Ronald L. Williams, hereby affirm that on the date of filing the above Appellant's Brief in Chief, with the Clerk of the Oklahoma Supreme Court, a true and correct copy of the same was mailed and/or hand delivered to the following:

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