

THE HONORABLE JOHN C. COUGHENOUR

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

DAVID WILLIAM TURPEN,  
**Plaintiff,**

v.

KATHERINE DENISE ARQUETTE  
TURPEN, MUCKLESHOOT TRIBAL  
COURT, HONORABLE GARY F.  
BASS, Trial Court Judge,  
HONORABLE JERRY R. FORD, Chief  
Judge, HONORABLE MICHELLE  
SHELDON, Associate Judge, and  
HONORABLE LISA VANDERFORD-  
ANDERSON, Associate Judge,  
**Defendants.**

No: 2:22-cv-00496

MOTION FOR SUMMARY  
JUDGMENT

ORAL ARGUMENT REQUESTED

NOTE ON MOTION CALENDAR:  
April 7, 2023

**I. RELIEF REQUESTED**

Grant summary judgment on the relief requested in the complaint:

1. Vacate tribal court order for lack of subject matter jurisdiction over the cause;

2. Vacate tribal court order for lack of personal jurisdiction over Plaintiff<sup>1</sup>;
3. Enjoin tribal court from asserting jurisdiction over the dissolution and directing the parties to litigate the dissolution already filed and served in King County Superior Court;
4. Award attorney's fees and costs; and
5. Grant any additional relief that the Court deems just.

## II. STATEMENT OF THE FACTS

1. The parties were married in Auburn, WA, off the Reservation, in 2014. They subsequently bought a house together, which was also in Auburn, WA, off the Reservation. They lived together in the house until the day of separation in 2021;
2. The parties have no children together or otherwise;
3. Ms. Turpen is an enrolled member of the Muckleshoot Indian Tribe. Said tribe is a federally recognize Indian Tribe located in South King County, WA;
4. Plaintiff identifies as "white" and is not an enrolled or enrollable member of Muckleshoot, or any other federally recognized Indian Tribe;
5. The parties bought the family home together. The down payment was from a grant from the Tribe, based on both parties' respective income. His income came from his paycheck. Her income came from social security, disability, tribal per capita payments, and tribal elder payments. The installment payments on the mortgage were drawn from Plaintiff's individual account;
6. The mortgage is secured by a deed of trust. The Security Instrument that

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<sup>1</sup> Consistent with this Court's order on Dec. 14, 2022 (Dkt #19), David William Turpen is referred to as "Plaintiff," and Katherine Denise Arquette Turpen is referred to as "Ms. Turpen."

1 governs the Deed of Trust identifies the Grantors as “Katherine Arquette  
2 and David W Turpen a married couple,” “Grantee #1 (Beneficiary)” as  
3 “MUCKLESHOOT HOUSING AUTHORITY,” and Grantee # 2 (Trustee)  
4 as First American Title;

- 5 7. The security instrument also identifies Katherine Arquette as the  
6 “borrower,” David Turpen as the “co-borrower,” and the Muckleshoot  
7 Housing Authority as the “Lender”; and  
8 8. The security instrument contains the following provision regarding  
9 jurisdiction and venue:

10 If the land encumbered by the Security Instrument is located  
11 within the Muckleshoot Indian Reservation, (i) this Security  
12 Instrument will be governed by the laws of the Muckleshoot  
13 Indian tribe, or, if no tribal law exists on an issue, the laws of  
14 the State of Washington, and (ii) the Muckleshoot Tribal Court  
15 will have exclusive jurisdiction to hear and decide any dispute  
16 regarding this Security Instrument. [However,] if the land  
17 encumbered by the Security Instrument is located *outside*  
18 [emphasis added] the Muckleshoot Indian Reservation, (i) this  
19 Security Instrument will be governed by the laws of the State of  
20 Washington, and (ii) the Superior Court of the county in which  
21 the land is located will have jurisdiction to hear and decide any  
22 dispute regarding this Security Instrument.

### 23 III. STATEMENT OF PROCEDURE

#### 24 Tribal Court

- 25 1. **Petition.** On March 16, 2021, Ms. Turpen filed a petition for dissolution  
in Muckleshoot Tribal Court;
2. **Restraining Order.** On March 19, 2021, Tribal Court issued an *ex parte*  
temporary restraining order. Said order does not have an expiration date,  
a return hearing date or location, or any findings regarding jurisdiction or  
service. It indicates that the order was issued pursuant to a motion.  
However, the court file contains no such motion;

- 1
- 2 3. **Return of Service.** The court file contains a document entitled
- 3 “RETURN OF SERVICE,” which alleges that Plaintiff was served with a
- 4 Petition for Decree of Dissolution, Summons – Decree of Dissolution,
- 5 and Temporary Restraining Order. However, the method of service is not
- 6 alleged, and the document is undated and unsigned;
- 7
- 8 4. **Summons.** The court file also contains a document entitled
- 9 “SUMMONS.” It states, in bold letters, all-caps, “**YOU MUST SERVE**
- 10 **A WRITTEN RESPONSE ON THE PERSON SIGNING THIS**
- 11 **SUMMONS.**” However, the summons is unsigned. In fact, it doesn’t
- 12 even have a signature line. Nor does it have a date of issuance. It does
- 13 have a filing date;
- 14
- 15 5. **Actual Notice.** Plaintiff received actual notice of the cause of action
- 16 when an acquaintance informed him about it via text message. Assuming
- 17 that the cause of action was in King County Superior Court, Plaintiff then
- 18 called the clerk of that court and inquired. Based on that conversation, he
- 19 determined that no dissolution had been filed in that jurisdiction. He then
- 20 called King County district court and the King County sheriff;
- 21
- 22 He then contacted the acquaintance. The acquaintance speculated that
- 23 the cause of action had been filed in Muckleshoot Tribal Court. Plaintiff
- 24 then called the clerk of said court. The tribal court clerk informed him of
- 25 the cause of action and the hearing on the restraining order, which
- happened to be the very next day. He asked her to email the documents.
- She did so;
6. **Hearing on Restraining Order.** Tribal court held a hearing on the *ex parte* restraining order on March 30, 2021. At that hearing, Plaintiff told the court that he was a nonmember, that he did not think tribal court had jurisdiction, and, therefore, objected to tribal court’s jurisdiction, and that he wanted to get divorced in state court.
- The tribal court judge ignored these statements and ordered the parties to Mediation;
7. **Additional Orders.** After the hearing on the restraining order, tribal court issued a few additional orders, including that the parties attend a

1 second mediation session, despite Plaintiff's assertion that tribal court  
2 lacked jurisdiction;

3 8. **Notice of Appearance.** Plaintiff's attorney filed a notice of appearance  
4 on April 15, 2021;

5 9. **Motion to Dismiss for Lack of Jurisdiction.** Plaintiff, through Counsel,  
6 filed a motion to dismiss for lack of Jurisdiction. The court denied the  
7 motion, after briefing and argument; and

8 10. **Appeal.** Plaintiff filed an appeal in tribal court. The court of appeals  
9 denied the appeal after briefing and argument. The Muckleshoot Tribal  
10 Court of Appeals is the court of last resort in the Muckleshoot system.

### 11 **State Court**

12 Plaintiff filed a summons and petition in King County Superior Court on  
13 April 23, 2021. He achieved personal service on April 28, 2021. King County  
14 Superior Court issued an automatic temporary restraining order and case schedule  
15 on April 23, 2021. No further action has been taken in state court.

### 16 **Federal Court**

17 Plaintiff filed his complaint April 14, 2022 and subsequently achieved  
18 service. The deadline for dispositive motions is April 28, 2023. The trial date is  
19 August 7, 2023.

## 20 **IV. STATEMENT OF THE ISSUES**

21 **1. Whether Muckleshoot Lacks Jurisdiction over the Dissolution of**  
22 **Marriage Because Marriage Is a Legal Status and Legal Status Cannot Be**  
23 **Changed without *In Rem* Jurisdiction;**  
24  
25

2. **Whether Muckleshoot Lacks Subject Matter Jurisdiction over the Dissolution of Marriage Because Neither Party Is Domiciled within the Exterior Boundaries of the Reservation;**
3. **Whether Muckleshoot Lacks Personal Jurisdiction over the Husband Because He Was Never Served; and**
4. **Whether Plaintiff Should Be Awarded Attorney’s Fees on the Basis of Frivolousness.**

## V. ARGUMENT

1. **Muckleshoot Lacks Jurisdiction over the Dissolution of Marriage Because Marriage Is a Legal Status and Legal Status Cannot Be Changed Without *In Rem* Jurisdiction**

Muckleshoot cannot change the parties’ legal status from married to single because it lacks *in rem* jurisdiction over the marriage. A proceeding for dissolution of marriage, or change of marital status, is a proceeding in rem. *See Hudson v. Hudson*, 35 Wn. App. 822, 834, 670 P.2d 287 (1983). “A proceeding dissolving marital bonds is a proceeding in rem.” *In re Marriage of Tsarbopoulos*, 125 Wn. App. 273, 284, 104 P.3d 692 (2004). “Divorce,” concerns an *in rem* action affecting the status of the marital relationship. *In re Marriage of Johnston*, 33 Wn. App. 178, 179, 653 P.2d 1329, 1330 (1982). Where the petitioner resides in the state and the judgment dissolves only the legal status of the marriage, the superior court has in rem jurisdiction to enter a dissolution decree. *GHEBREGHIORGHIS v. Dep’t OF LABOR & Indus.*, 92 Wn. App. 567, 573, 962 P.2d 829, 833 (1998).

1 A state's *in rem* jurisdiction over a res, or subject matter, is predicated upon  
2 the physical presence of the res within the boundaries of the forum state.

3  
4 Longstanding precedent anchors *in rem* jurisdiction to the presence of the res  
5 within the jurisdiction of the court. *United States v. Obaid*, 971 F.3d 1095, 1101  
6 (9th Cir. 2020). The basis of *in rem* jurisdiction is the presence of the subject  
7 property within the territorial jurisdiction of the forum State. *Hanson v. Denckla*,  
8 357 U.S. 235, 246, 78 S. Ct. 1228, 1236, 2 L.Ed.2d 1283, 1293 (1958).

9  
10 Here, the res, i.e. the marriage, was not within the forum state i.e. the  
11 exterior boundaries of the Muckleshoot Indian Reservation. Rather, the res was  
12 within the exterior boundaries of the State of Washington. Thus, Washington had  
13 *in rem* jurisdiction. Muckleshoot did not.

14  
15 **2. Muckleshoot Lacks Subject Matter Jurisdiction over the Dissolution of**  
16 **Marriage Because Neither Party Is Domiciled within the Exterior**  
17 **Boundaries of the Reservation**

18 Muckleshoot cannot dissolve the parties' marriage because it lacks subject  
19 matter jurisdiction over the same. Subject matter jurisdiction is predicated on  
20 domicile. If the petitioner in a dissolution of marriage is (1) a resident of this state;  
21 or (2) a member of the armed forces and is stationed in this state; or (3) is married  
22 to a party who is a resident of this state or who is a member of the armed forces  
23 and is stationed in this state, then the Courts have subject matter jurisdiction over  
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25

1 the dissolution. RCW 26.09.030; *In re Marriage of Robinson*, 159 Wn. App. 162,  
2 167-68, 248 P.3d 532, 534 (2010).

3  
4 Domicile was a jurisdictional necessity for establishing a court's subject  
5 matter jurisdiction over the status of a marriage. *In re Marriage of Buecking*, 179  
6 Wn.2d 438, 451-52, 316 P.3d 999, 1005 (2013). “The indispensable elements  
7 of domicile are residence in fact coupled with the intent to make a place of  
8 residence one's home. *Id.* Simply stated, domicile has two aspects: physical  
9 presence and intent to reside. *Id.* Under our system of law, judicial power to grant  
10 a divorce -- jurisdiction, strictly speaking – is founded on domicile. *Mapes v.*  
11 *Mapes*, 24 Wn.2d 743, 752, 167 P.2d 405, 409 (1946).

12  
13  
14 Here, Muckleshoot lacks subject matter jurisdiction over the dissolution  
15 because neither party was domiciled on the Reservation. Rather, both parties were  
16 domiciled in the State of Washington.

### 17 18 **3. Muckleshoot Lacks Personal Jurisdiction over the Respondent Because** 19 **He Was Never Served**

20 Muckleshoot cannot force Respondent to get divorced in Tribal Court because  
21 it lacks personal jurisdiction over him. Personal jurisdiction is predicated on service.  
22 If personal service on respondent of a summons and complaint in a divorce  
23 proceeding never occurs, the court never obtains personal jurisdiction. *In re*  
24 *Marriage of Zadorozny*, 70 Wn. App. 464, 468, 853 P.2d 960, 962 (1993). The  
25



1 summons must be signed. CR 4(a)(1). The word “must” impose a mandatory  
2 requirement. *Sutey v. T26 Corp.*, 13 Wn. App. 2d 737, 749, 466 P.3d 1096, 1102  
3 (2020). Likewise, any return of service must be filled out and signed. CR 11.  
4

5 Here, the summons is not signed. In fact, it does not even have a signature  
6 block. The return of service is neither filled out nor signed. It is, in fact, a blank  
7 form, with only the caption and the documents to be served filled out. Moreover,  
8 Plaintiff asserts he was never served. Instead, he called the clerk’s office and the  
9 clerk emailed him the documents. While emailing the documents may provide  
10 actual notice, it does not provide service.  
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13 As it happened, the first hearing was the day after the clerk emailed the  
14 documents. At the hearing, Plaintiff stated that he did not think the court had  
15 jurisdiction. The Court ignored him and proceeded to grant relief on some  
16 personal property issues and ordered him to mediation. This is not personal  
17 service. At best, it is putting the cart before the horse. At worst, it is bullying and  
18 intimidation.  
19

20 Meanwhile, Plaintiff eventually hired an attorney, who perfected service of a  
21 property summons and petition in state court before Ms. Turpen perfected service  
22 in tribal court.  
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1           **4. Plaintiff Should Be Awarded Attorney’s Fees and Costs on the Basis of**  
2           **Frivolousness**

3           Muckleshoot should be required to pay Plaintiff’s fees and costs because its  
4 arguments are frivolous. In any civil action, the Court may require the non-  
5 prevailing party to pay reasonable fees and costs to the other party upon written  
6 findings that the non-prevailing party’s argument was frivolous and advanced  
7 without reasonable cause. RCW 4.84.185.  
8

9           The frivolous lawsuit statute was enacted to discourage abuse of the legal  
10 system by providing for an award of expenses and legal fees to any party forced to  
11 defend itself against meritless claims. *Suarez v. Newquist*, 70 Wn. App. 827, 832-  
12 33, 855 P.2d 1200, 1204 (1993). A frivolous action is one that cannot be supported  
13 by any rational argument on the law or the facts. *Ahmad v. Town of Springdale*,  
14 178 Wn. App. 333, 344, 314 P.3d 729, 734 (2013).  
15  
16

17           Here, Muckleshoot’s theory of subject matter jurisdiction cannot be supported  
18 by any rational argument on the law or the facts. The law is black and white,  
19 unambiguous, and straightforward. Marriage is a legal status. To change the legal  
20 status of a “thing,” the court must have in rem jurisdiction over said thing. “*In rem*  
21 jurisdiction” means physical presence in the forum state. In the context of a  
22 dissolution, “physical presence” means domicile of the petitioner.  
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25           The Petitioner in the tribal court action was domiciled in the State of

1 Washington. The fact that she is an enrolled member of a federally recognized  
2 Indian Tribe is irrelevant. The fact that the mortgage on the family home was  
3 provided through the Muckleshoot Housing Authority is irrelevant. The fact that  
4 Petitioner is a tribal elder is irrelevant.  
5

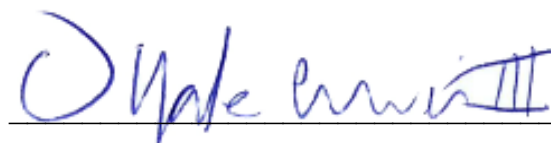
6 Muckleshoot's theory of personal jurisdiction cannot be supported by any  
7 rational argument on the law or the facts either. Personal jurisdiction is predicated on  
8 personal service of a proper summons and complaint. If the respondent objects to  
9 personal service, all court proceedings must cease until service is achieved.  
10

11 Here, Ms. Turpen never obtained a signed summons and never achieved  
12 personal service. Plaintiff objected to tribal court's jurisdiction, but the Tribal court  
13 simply ignored said objections. Meanwhile Plaintiff filed and served in state court.  
14

15 In sum, Muckleshoot lacks *in rem* jurisdiction and subject matter jurisdiction  
16 over the dissolution and personal jurisdiction over Plaintiff. Muckleshoot's defense  
17 was frivolous and advanced without reasonable cause. Plaintiff should be awarded  
18 fees and costs.  
19

20 I certify that this document contains 2,409 words, in compliance with Local  
21 Civil Rules.  
22

23 RESPECTFULLY SUBMITTED in SEATTLE, this 15<sup>th</sup> day of MARCH, 2023.

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