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THE HONORABLE JOHN C. COUGHENOUR

**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

REPLY TO DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT

NOTE ON MOTION CALENDAR:  
April 7, 2023

**I. INTRODUCTION**

Defendants assert that Muckleshoot law regarding dissolution of marriage applies to non-members off the Reservation. This assertion is incorrect for at least two reasons:

- 1) Treaty of Medicine Creek and 2) Law of Nations.

Defendants also asserts that Plaintiff waived any defects in personal service when he participated in the Court proceedings. In addition, Defendants assert that Muckleshoot

1 is shielded from liability for attorney's fees by sovereign immunity and the individual judges  
2 are shielded by judicial immunity. These assertions are incorrect.

3  
4 **II. STATEMENT OF THE ISSUES**

- 5 **1. Whether Muckleshoot Lacks Jurisdiction Over the Dissolution of Marriage**  
6 **Per the Treaty of Medicine Creek;**  
7  
8 **2. Whether Muckleshoot Lacks Jurisdiction Over the Dissolution and Plaintiff**  
9 **Based on the Law of Nations;**  
10  
11 **3. Whether Muckleshoot Lacks Personal Jurisdiction Over Plaintiff Based on**  
12 **Defective Service; and**  
13  
14 **4. Whether the Defendants Lost Their Judicial Immunity Because They Acted in**  
15 **the Complete Absence of Jurisdiction When They Asserted Subject Matter**  
16 **Jurisdiction Over the Marriage and Personal Jurisdiction Over Plaintiff.**

17  
18 **III. ARGUMENT**

- 19 **1. Muckleshoot Lacks Jurisdiction Over the Dissolution of Marriage Per the**  
20 **Treaty of Medicine Creek**

21 Muckleshoot lost virtually all jurisdiction over virtually any case or controversy  
22 outside the Reservation boundaries when its predecessors in interest signed the Treaty of  
23 Medicine Creek in 1854. Pursuant to the Treaty, Muckleshoot's forebearers ceded,  
24 relinquished, and conveyed to the United States, all their right, title, and interest in and to  
25 the lands and country occupied by them. "Treaty of Medicine Creek," Art. 1, 10 Stat 1132  
(1854).

The cession was subject to certain reservations. For example, the Indians retained  
a Reservation. They also retained the right to fish at usual and accustomed grounds and  
stations in common with the citizens outside the Reservation and to erect temporary  
houses for the purpose of curing fish at said locations. *Id.* Art. 3. They further retained the  
privilege to hunt, gather roots and berries, and pasture horses on open and unclaimed

1 lands. *Id.* Art 4. Today, the federal courts have determined that the tribal fishing right  
2 means that the Tribes have jurisdiction over their members while fishing outside the  
3 Reservation boundaries at their "U&As." *Settler v. Lameer*, 507 F.2d 231, 239 (1974).

4  
5 However, none of the retained rights or privileges enumerated in the Treaty of  
6 Medicine Creek are even remotely related to jurisdiction over a dissolution of marriage  
7 outside the Reservation boundaries. Congress divested Muckleshoot of any authority over  
8 any person outside the Reservation when it ratified the Treaty of Medicine Creek. The  
9 Treaty itself makes this clear. The Tribes and bands:

- 10
- Shall not shelter or conceal offenders against the laws of the United States. Art. 8;
  - Shall free their slaves and are restrained from purchasing or obtaining new ones. Art. 11;
  - Shall not trade at Vancouver's Island or elsewhere outside the dominions of the United States. Art. 12; and
  - Shall not permit foreign Indians to reside on the Reservation without permission. Art5. 12.
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17 Federal case law is consistent with the Treaty. Tribes lost their control over their  
18 external relations after their predecessors in interest were forced onto their Reservations.

19 A tribe's inherent sovereignty, however, is divested to the extent it is  
20 inconsistent with the tribe's dependent status, that is, to the extent it  
21 involves a tribe's "external relations." Those cases in which the Court has  
22 found a tribe's sovereignty divested generally are those "involving the  
23 relations between an Indian tribe and nonmembers of the tribe." For  
24 example, Indian tribes cannot freely alienate their lands to non-  
25 Indians, cannot enter directly into commercial or governmental relations  
with foreign nations, and cannot exercise criminal jurisdiction over non-  
Indians in tribal courts, *Oliphant, supra*, at 195.

*Brendale v. Confederated Tribes & Bands of Yakima Indian Nation*, 492 U.S. 408, 425-  
26, 109 S. Ct. 2994, 3005-06, 106 L.Ed.2d 343, 360 (1989) [Citations omitted].

1           There is absolutely no basis in the treaty to conclude that, when Muckleshoot  
2 ceded the bulk of its aboriginal territory to the United States, it somehow retained the right  
3 to assert jurisdiction over a dissolution of marriage outside the Reservation boundaries.  
4 The fact that Muckleshoot code says otherwise is irrelevant. While Muckleshoot code  
5 undoubtedly applies to tribal members on trust land within the exterior boundaries of the  
6 Reservation, it undoubtedly does *not* apply to anyone, member or otherwise, *outside* the  
7 exterior boundaries.  
8

9           **2. Muckleshoot Lacks Jurisdiction Over the Dissolution and Plaintiff Based on  
10 the Law of Nations**

11           Defendants assert that state law does not apply here because one of the parties is  
12 an Indian. However, the state law at issue is the fundamental proposition that a state  
13 generally has exclusive authority over all people, especially all domiciliaries, found within  
14 its territorial boundaries, regardless of the person's nationality or citizenship, and no  
15 authority over people found outside its boundaries.

16           While this is the law of the State of Washington, it is also the law of nations. Not  
17 surprisingly, the law of the State of Washington is consistent with the law of nations. The  
18 law of Muckleshoot is also consistent with the law of nations, even if Muckleshoot denies  
19 it. In other words, the provisions in Muckleshoot code that purport to exert jurisdiction over  
20 people found outside its boundaries are null and void.

21           The historical antecedent to the modern principal of territorial sovereignty is the  
22 Treaty of Westphalia. Westphalian sovereignty is described as follows:

23           The Westphalian system, also known as Westphalian sovereignty, is a  
24 principle in international law that each state has  
25 exclusive sovereignty over its territory. The principle underlies the  
modern international system of sovereign states and is enshrined in  
the United Nations Charter, which states that "nothing ... shall authorize

1 the United Nations to intervene in matters which are essentially within the  
2 domestic jurisdiction of any state."

3 According to the principle, every state, no matter how large or small, has  
4 an equal right to sovereignty. Political scientists have traced the concept  
5 to the Peace of Westphalia (1648), which ended the Thirty Years'  
6 War (1618–1648) and Eighty Years' War (1568–1648).

7 [https://en.wikipedia.org/w/index.php?title=Westphalian\\_system&oldid=1145035029](https://en.wikipedia.org/w/index.php?title=Westphalian_system&oldid=1145035029)

8 There is nothing in the entire corpus of federal Indian law that indicates  
9 Muckleshoot has some special dispensation to exempt itself from the principles of  
10 Westphalian sovereignty. Likewise, there is absolutely nothing in the tribal court record or  
11 the Defendants briefing that indicates that Congress or, for that matter, any other authority,  
12 granted Muckleshoot an exemption to the law of nations.

13 **3. Whether Muckleshoot Lacks Personal Jurisdiction Over Plaintiff Based on  
14 Defective Service**

15 Defendants assert that tribal court assumed jurisdiction over Plaintiff when Plaintiff  
16 appeared in tribal court and complied with some of its orders. His compliance constituted  
17 a waiver of his objection to personal service. Defendants do not attempt to minimize or  
18 deny the various defects in service established in Plaintiff's recitation of the facts. In fact,  
19 Defendants explicitly accept said recitation.

20 However, Defendant's assertion is incorrect. Plaintiff consistently objected to  
21 service and personal jurisdiction. Plaintiff's participation in any court-ordered activities  
22 constituted a special appearance.

23 **4. The Defendants Lost Their Judicial Immunity Because They Acted in the  
24 Complete Absence of Jurisdiction When They Asserted Subject Matter  
25 Jurisdiction Over the Marriage and Personal Jurisdiction Over Plaintiff**

26 Defendants correctly state the law regarding judicial immunity. Judicial immunity  
is overcome in only two sets of circumstances. First, a judge is not immune from liability

1 for nonjudicial actions. Second, a judge is not immune for actions, though judicial in  
2 nature, taken in the complete absence of all jurisdiction. *Mireles v. Waco*, 502 U.S. 9,  
3 11-12, 112 S. Ct. 286, 290, 116 L.Ed.2d 9, 14 (1991).

4 Here, the question is whether the tribal trial court judge, the tribal appellate  
5 judges, or all four acted in the complete absence of jurisdiction. The judges say no,  
6 because tribal jurisdictional disputes are the most complex in the field of Indian law and  
7 determining the scope of tribal court jurisdiction is no easy task. However, those  
8 excuses do not hold water. While disputes over jurisdiction *within* the territorial  
9 boundaries of a Reservation may, indeed, be complex and no easy task, such disputes  
10 *outside* the boundaries are easy peasy.

11 Resolution of a dispute over jurisdiction, *inside* the exterior boundary, hinges on  
12 the following facts and conclusions:  
13

- 14 1. Legal status / ownership of the land where the case or controversy arose;
- 15 2. Whether the land is in Indian Country, even if outside the territorial  
16 boundaries of the Reservation;
- 17 3. Whether the Defendant / Respondent is a member of the Tribe or any Tribe;
- 18 4. Whether the children, if any, are members of, or eligible for membership in,  
19 the Tribe at issue, or any Tribe and subject to a dependency. 25 USC  
20 1903(1);
- 21 5. Whether the Defendant's actions arose from a consensual relationship with  
22 the Tribe or its members through commercial dealing, contracts, leases, or  
23 other arrangements. *Montana v. United States*, 450 Us 544, 565 (1981); and
- 24 6. Whether the Defendant's actions imperiled the political integrity, economic  
25 security, or health and welfare of the Tribe. *Id.*

25 However, resolution of a dispute over jurisdiction *outside* the exterior boundary is  
unambiguous, black and white, and not subject to legitimate debate. Muckleshoot is

1 subject to the principles of Westphalian sovereignty just like any other state. It does not  
2 have jurisdiction over a case and controversy outside its territorial boundaries,  
3 regardless of whether one of the parties is a tribal member, or the parties got a  
4 subsidized mortgage on their home from the Tribe. Muckleshoot, like every other Indian  
5 Tribe, lost any power over its external relations after it ceded its lands to the United  
6 States.  
7

8 The only exceptions are: 1) Fishing and Hunting. Muckleshoot has jurisdiction  
9 over tribal members fishing, hunting, or gathering off the Reservation; and 2) Indian  
10 Child Welfare Act. Muckleshoot has concurrent jurisdiction over the foster care,  
11 adoption, or guardianship of Indian children. Said jurisdiction is concurrent with the  
12 state where the children are found.

13 Here, these exceptions do not apply. Defendants acted in the clear absence of  
14 jurisdiction. They are not shielded by judicial immunity. They should be ordered to pay  
15 Plaintiff's attorney's fees.  
16

17 DATED in SEATTLE, this 6<sup>th</sup> day of APRIL, 2023.

18 

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**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the United States of America that I am an employee at the Law Offices of O. Yale Lewis III, over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document via the CM/ECF system which will provide automatic service upon the registered parties.

DATED in Yakima, this 6<sup>th</sup> day of April, 2023.



Devin Kienow  
Law Offices of O. Yale Lewis III