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 RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT NOTE ON MOTION CALENDAR: May 5, 2023

Defendants assert that Muckleshoot has jurisdiction over its members outside its territorial boundaries. Said jurisdiction then somehow attaches to non-members and confers *in rem* jurisdiction over a dissolution of marriage. Although Defendants don't use these exact words, they assert, essentially, that Muckleshoot has long-arm jurisdiction over a non-member respondent over a case or controversy that arose outside its territorial boundaries.

Law Office of O. Yale Lewis III
11515 36th Ave. NE
Seattle, WA 98125
Tel: (206) 223-0840
Fax: (206) 260-1420
E-Mail: yale@yalelewislaw.com

This set of assertions is preposterous. Muckleshoot has very limited jurisdiction over its members outside its territorial boundaries. Said jurisdiction is limited to fishing rights and dependencies over Indian children. This argument was developed in Plaintiff's reply to response to motion for summary judgment and is hereby incorporated by reference.

Moreover, personal jurisdiction is not like Velcro. Even if Muckleshoot had personal jurisdiction over its members outside the Reservation, it would not, *ipso facto*, have subject matter jurisdiction over a case and controversy that arose outside the Reservation or *in rem* jurisdiction over a marriage domiciled outside the Reservation just because one of the parties is a member. Subject matter jurisdiction, *in rem* jurisdiction, and long-arm jurisdiction are all distinct species of jurisdiction. One cannot be Velcroed to the other.

Defendants attempt to Velcro their way to jurisdiction over the Plaintiff and the dissolution with three arguments: 1) retained inherent jurisdiction, 2) child support, and 3) *Montana v. United States.*

Defendants also assert that they enjoy judicial immunity because jurisdiction in Indian country is complicated. However, this assertion misses the mark. While jurisdiction *inside* the exterior boundaries of the Reservation may, indeed, be complicated, jurisdiction *outside* the Reservation is rather simple. Generally speaking, Muckleshoot is subject to the same territorial limits of its jurisdiction as any other state. With very limited and well-defined exceptions, a state's jurisdiction stops at its territorial limits.

I. STATEMENT OF THE ISSUES

Law Office of O. Yale Lewis III
11515 36th Ave. NE
Seattle, WA 98125
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Fax: (206) 260-1420
E-Mail: yale@yalelewislaw.com

1. **Whether this Court Should Deny Defendant's Motion for Summary Judgment Because Muckleshoot Lacks Retained Jurisdiction Outside Its Territorial Boundaries;**

2. **Whether this Court Should Deny Defendant's Motion for Summary Judgment Because Jurisdiction Over Child Support Is Quite Different than Jurisdiction Over a Dissolution of Marriage;**

3. **Whether this Court Should Deny Defendant's Motion for Summary Judgment Because *Montana v. United States* Only Applies to Conduct Within the Territorial Boundaries of the Reservation; and**

4. **Whether this Court Should Award Attorney's Fees Because Defendants Are Not Shielded by Judicial Immunity.**

II. ARGUMENT

1. This Court Should Deny Defendant's Motion for Summary Judgment Because Muckleshoot Lacks Retained Jurisdiction Outside Its Territorial Boundaries

Defendants admit that marriage is a legal status, and that said status may only be changed by a court that has *in rem* jurisdiction over said marriage. However, according to Defendants, Muckleshoot's version of *in rem* jurisdiction is somehow more elastic and pliable than the *in rem* jurisdiction possessed by each of the 50 states. The state-court version of *in rem* jurisdiction is quite simple. If the *res* is found inside the state, the state has *in rem* jurisdiction. *See Lundgren v. Upper Skagit Indian Tribe,* 187 Wn.2d 857, 865, 389, P.3d 569, 572, (2017); *See also Id.,* n. 3. ("Article IV, section 6 of the Washington Constitution expressly establishes that our state's superior courts 'shall have original jurisdiction in all cases at law which involve the title or possession of real property.' *See also* RCW 2.08.010."). If, however, the *res* is found *outside* the state, the state does not have *in rem* jurisdiction.

Defendants cite a number of cases for the proposition that a court could have *in*

Law Office of O. Yale Lewis III
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E-Mail: yale@yalelewislaw.com

rem jurisdiction over the dissolution of marriage but lack personal jurisdiction over the respondent. This proposition is correct. However, it is also a red herring. Plaintiff's argument is not that Muckleshoot lacks personal jurisdiction over him because it lacks *in rem* jurisdiction over the *res*. Rather, Plaintiff's argument is that Muckleshoot lacks *in rem* jurisdiction over the *res* – the marriage – because the marriage was located outside the Reservation boundaries.

2. This Court Should Deny Defendant's Motion for Summary Judgment Because Jurisdiction Over Child Support Is Quite Different than Jurisdiction Over a Dissolution of Marriage

Defendants assert that, because a tribal court in Alaska has jurisdiction over child support for a tribal-member child, Muckleshoot has jurisdiction over the dissolution of a marriage in Washington State. This assertion is incorrect. The case that Defendants cite, *State of Alaska v. Central Council of Tlingit and Haida Indian Tribes of Alaska*, 371 P. 3d 255 (2016), is not mandatory authority, not analogous, and not even persuasive. Child support for a tribal-member child in Alaska is quite different than the dissolution of a marriage between a member and a non-member in the lower 48.

In *Central Council*, the Alaska Supreme Court found that tribal courts have non-territorial subject matter jurisdiction over child support disputes where the child is a tribal member, or eligible for membership. *Id*. at 267. However, *Central Council* is distinguishable on the following grounds: 1) Alaska Native Claims Settlement Act, and 2) *In rem* jurisdiction.

Alaska Native Claims Settlement Act ("ANCSA"). Unlike Muckleshoot and virtually all of the other tribes in the lower 48, the Tlingit/Haida tribes were divested of their aboriginal title over their ancestral lands by statute. Congress divested

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Tlingit/Haida per ANCSA. A century or more before then, Congress divested Muckleshoot per the Treaty of Medicine Creek. *See* Treaty of Medicine Creek, Dec. 26, 1854, 10 Stat. 1132.

ANCSA extinguished all aboriginal claims to all land based on aboriginal title, use, or occupancy anywhere in the state of Alaska. 43 U.S.C.S. § 1603. The Treaty of Medicine Creek was quite different. It extinguished all claims to territory outside the Reservation Boundary, but retained said claims inside the boundary. *See* Treaty of Medicine Creek, Dec. 26, 1854, 10 Stat. 1132. Thus, in Alaska, courts may well look to non-territorial jurisdiction over tribal members, but in the lower 48, they do not. *Central Council* explained the difference as follows:

> The jurisdictional reach of tribal courts is a question of federal law. As the United States Supreme Court has long recognized, Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory. In most states there is a traditional reservation-based structure of tribal life and many tribes consequently look to both tribal membership and tribal land as their sources of sovereignty and tribal court jurisdiciton. But a 1971 federal law known as the Alaska Native Claims Settlement Act (ANCSA) extinguished all Native claims to land in Alaska and revoked all but one Indian Reservation in the state.

Id. at 261.

The federal law at issue in *Central Council* included ANCSA, the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq*., and the Social Security Act, 42 U.S.C. § 666(f) (to qualify for reimbursement for child support services, each state or tribe must have in effect the Uniform Interstate Family Support Act). Meanwhile, the primary federal law at issue in the case at bar is the Treaty of Medicine Creek. Federal law regarding non-territorial jurisdiction over child support for tribal-member children in Alaska points towards tribal court. However, federal law regarding non-territorial jurisdiction over the

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11515 36th Ave. NE
Seattle, WA 98125
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Fax: (206) 260-1420
E-Mail: yale@yalelewislaw.com

dissolution of a marriage outside the Reservation boundaries in the State of Washington points *away* from tribal court.

In Rem Jurisdiction. *Central Council* has nothing to say about *in rem* jurisdiction because, unlike marriage, child support is not a legal status.

3. This Court Should Deny Defendant's Motion for Summary Judgment Because *Montana v. United States* Only Applies to Conduct Within the Territorial Boundaries of the Reservation

Defendants cite *Central Council* for the proposition that *Montana* does not apply to child support disputes regarding tribal member children. While this proposition is correct, at least in Alaska, it is also a red herring. The case at bar is not a dispute over child support. There are no children of the marriage.

The central holding of *Montana* is that tribal court lacks jurisdiction over non-members who act or fail to act on fee lands within the exterior boundaries of the Reservation except 1) where the non-member has a consensual relationship with the Tribe or a tribal member based on contracts, leases, or commercial dealings, or 2) where the non-member's conduct threatens or imperils the political integrity, economic security, or health and welfare of the Tribe. *Montana v. United States*, 450 U.S. 544, 565 (1980).

Montana has nothing to say about the case at bar because this case is about facts and activities *outside* the Reservation Boundaries.

4. This Court Should Award Attorney's Fees Because Defendants Are Not Shielded by Judicial Immunity

The parties agree that defendants have judicial immunity unless they acted in the clear absence of jurisdiction. They also agree regarding the example about the probate

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judge trying a criminal case. Defendants understand this example as follows: "Defendant Tribal Court Judge's actions would be akin to a criminal court convicting a defendant of a nonexistent crime rather than a probate judge trying a criminal case because tribes do have jurisdiction over nonmembers in some circumstances." Defs. Mot. for Summ. J., p. 18, ll. 23 – 27.

Plaintiff understands the example as the opposite. The case at bar is more like a probate judge trying a criminal case than a criminal judge convicting a defendant of a non-existent crime because tribes do NOT, under any circumstances, have jurisdiction over non-members regarding a case or controversy that arose outside the Reservation boundary. Furthermore, they do NOT, under any circumstances, have *in rem* jurisdiction over a *res* that is situated outside the Reservation boundary.

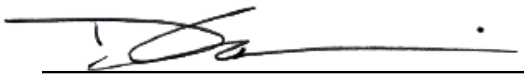
RESPECTFULLY SUBMITTED in SEATTLE, this 21st day of APRIL, 2023.

O. Yale Lewis III
WSBA No. 33768
Attorney for David Turpen
Law Offices of O. Yale Lewis III
11515 36th Ave NE
Seattle, WA 98125
206-223-0840
yale@yalelewislaw.com

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 21st day of April, 2023.



Devin Kienow
Law Offices of O. Yale Lewis III
11515 36th Ave NE
Seattle, WA 98125
206-223-0840
paralegal@yalelewislaw.com