The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID WILLIAM TURPEN,

Plaintiff,

vs.

KATHERINE ARQUETTE TURPEN, et al.,

Defendants.

No. 2:22-cv-00496

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Plaintiff's arguments provided in his response (Doc. 52) to Defendants' motion for summary judgment (Doc. 49) are unavailing and largely unsupported by authority. Defendants' responses to Plaintiff's arguments are provided below.

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Argument

A. Plaintiff's incorporated arguments are unavailing.

Plaintiff "incorporated by reference" argument he made "in Plaintiff's reply to response to motion for summary judgment." Pl.'s Resp. at 2 (Doc. 52). Defendants assume he is referring to his reply (Doc. 47) in support of his motion for summary judgment. Defendants moved to strike those arguments as they were improperly made, and also offered brief argument in response via surreply. Doc. 50. To the extent the Court wishes to consider those arguments as part of this briefing, Defendants respectfully incorporate here the responses provided in their surreply. Doc. 50.

Defendants further note that the two treaties the Muckleshoot Indian Tribe is party to in no way offer or suggest any limitation on the Tribe's power except those provisions expressly provided in the treaties. Neither contains any restriction or limitation on the power of the Tribe's courts. Of course, federal law, both statutory and caselaw, has established some restrictions on tribal court powers (e.g., lack of jurisdiction over criminal offenses by non-Indians), Plaintiff has not pointed to any case or statute that limits tribal court power to the extent he believes it should be. Thus, his argument regarding the Treaty of Medicine Creek begs the question. Because there is no such limitation in the treaty, any limitation would have to come from another source of federal law, and Plaintiff does not identify any other source.

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B. The Muckleshoot Indian Tribe does not lack jurisdiction outside its territorial boundaries.

Defendants argue that the Muckleshoot Tribal Court has jurisdiction over the Turpens' dissolution of marriage proceeding under multiple theories, the primary argument being that the tribal court has jurisdiction over marriages involving one or more members of the Tribe under the circumstances presented. Defs.' Mot. for Summary J. 8–15 (Doc. 49). Plaintiff's argument to the contrary, which rests entirely on his understanding of divorce law within and among the various states (Doc. 52 at 3–4), is without merit.

Plaintiff's argument appears to assume that there is some great, overarching rule or law that limits *any* particular court's jurisdiction over divorce cases, specifically the idea of the "res" as it relates to in rem jurisdiction. There, of course, is no such law or rule. How dissolution of marriage proceedings are heard in state courts in the United States is a product of the Constitution and agreement among the states, it is not a rule handed down by a higher power applicable in any place and scenario. Plaintiff complains that "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." Doc. 52 at 3. Yes, it certainly can be. And that is not particularly unusual. Muckleshoot's jurisdiction is in no way limited by the limitations placed on the various state courts, because it is not a state court. As noted earlier, there are certainly limitations on tribal court jurisdiction, some of which are greater than limitations placed on state courts, but the rules regarding which state courts have

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jurisdiction over a particular divorce proceeding are not among them, and Plaintiff has not identified any that do apply.

Further, Plaintiff's interpretation of divorce law as it applies in the various states of the Union, his focus on the location of the "res" (the marriage), suggests that there is always a place where that marriage exists or resides, but a marriage, of course, is not a physical thing that exists in only one place. As explained in Defendants' motion, there are in fact multiple places the marriage could exist at the same time (spouses residing in different states). The location of a status is largely theoretical and the only unbending rules that apply to determining the location of a status are those enacted into law by various jurisdictions, and contrary to Plaintiff's claim, there is no such limitation or restriction placed on how a tribal court may identify where a status exists. In short, just because the jurisdictions of state courts are limited by certain federal and state laws, does not mean that the same restrictions necessarily apply to tribal courts. Rather than identify a limitation or restriction on the jurisdiction of tribal courts over dissolution proceedings, Plaintiff has said little more than noting that a state court would not have jurisdiction under similar circumstances.

C. Defendants' cited cases support Defendants arguments—they are not limited to child support cases.

Plaintiff noted, correctly, that some of the cases discussed by Defendants in their motion involve child support and jurisdiction related to enforcement of child support orders. Doc. 52 at 4–6. But Plaintiff errs in dismissing those cases as relevant only

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to cases involving child support. As Defendants briefing explains, and a review of the cited cases confirms, the cases expound on the powers of tribal courts, and the reasons for that power, in general. Though child support is at issue in some of Defendants" cited cases, their application is clearly not strictly limited to cases involving child support.

Further, child support is a common issue in divorce proceedings and that support is typically set by the same court that dissolves the marriage (though that need not be the case, at least theoretically). It would indeed be odd to claim that a tribal court could order a non-resident, non-member to pay monthly child support, while also asserting that the same court could not extinguish the parties' status as a married couple.

Lastly, while most tribes, or Native Villages, in Alaska lack a reservation at least in part due to the Alaska Native Claims Settlement Act (ANCSA), that has no effect on the inherent jurisdiction of the tribal courts. Plaintiff notes that, "in Alaska, courts may well look to non-territorial jurisdiction over tribal members, but in the lower 48, they do not." Doc. 52 at 5. This is simply a statement made by Plaintiff with no support of any kind. ANCSA did not provide or otherwise offer expanded, extra-territorial jurisdiction to tribal courts in Alaska out of fairness. Indeed, as Defendants' cited cases establish, the Alaska courts simply recognized the inherent power of the tribal courts, power that existed before and after ANCSA was enacted. Doc. 49 at 12–15.

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D. *Montana v. United States*, and more importantly subsequent cases on tribal court jurisdiction, are not entirely limited to on-reservation activity.

While *Montana v. United States* involved application of tribal authority on reservation, and thus discusses the status of the law under those circumstances, the interpretation of *Montana* by federal courts is now viewed somewhat more broadly than the very closed reading offered by Plaintiff. *See, e.g.*, *State v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 371 P.3d 255, 268–72 (Alaska 2016). Defendants maintain that the circumstances meet the *Montana* test.

E. The Defendant Tribal Court Judges are immune from suit and Plaintiff is not entitled to attorney's fees.

All of Plaintiff's claims against the Defendant Tribal Court Judges, to the extent such claims are raised by his complaint, are barred by judicial immunity. Doc. 49 at 16–19. This would include claims for attorney fees had he raised any in the compliant. But as explained in this Court's Order (Doc. 44), the complaint is deficient. "Nowhere does Plaintiff explain why he is entitled to attorney fees—only that he seeks this relief. Rule 8 requires more. Plaintiff, like any complainant, must provide a 'short and plain statement of the claim showing that he is entitled to relief.' This is nowhere to be found." Order at 3 (Doc. 44).

Instead of seeking leave to amend the complaint, the Plaintiff moved for summary judgment. He has chosen to stand on his deficient complaint in which claims for attorney fees is nowhere to be found. Plaintiff cannot circumvent the pleading requirements by seeking attorney fees in his response brief.

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Pleading deficiencies aside, Plaintiff's response falls well short of meeting his high burden to establish an exception to judicial immunity. He misunderstands the Supreme Court's illustration in *Stump v. Sparkman*. 435 U.S. 349, 357 n.7 (1978). Dissolutions are within the Muckleshoot Tribal Court's jurisdiction and the requisite to confer jurisdiction over a non-Indian defendant is that the non-Indian "enter into a consensual relationship with the tribe or its members, through commercial dealing, contracts, leases or other arrangements." *Montana v. United States*, 450 U.S. 544, 565 (1981)

The Tribal Court has jurisdiction over the dissolution between Plaintiff and Mrs. Turpen. The Tribal Court found that Plaintiff had entered into a consensual relationship with the tribe and one of its members, and thus jurisdiction over the dissolution between the Plaintiff and Mrs. Turpen was established. In the event that this Court disagrees, judicial immunity would still bar the claims against the Defendant Tribal Court Judges because the Defendant Tribal Court Judges would have, at most, discharged their authority imperfectly.

In such a situation, the Defendant Tribal Court Judges would have been mistaken that the consensual-relationship-test was satisfied, similarly to the mistaken belief by the defendant judge in *O'Neil v. City of Lake Oswego* that the bench warrant was a charge of contempt of court. 642 F.2d 367 (9th Cir. 1981). Like the defendant judge there, here the Defendant Tribal Court Judges would have merely acted in excess of jurisdiction and are entitled to judicial immunity. Thus,

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any and all claims against the Defendant Tribal Court Judges should be dismissed with prejudice.

CONCLUSION

The Court should grant Defendants' motion for summary judgment because the Muckleshoot tribal courts do possess jurisdiction over the Turpens' divorce proceeding. Plaintiff has not established or shown otherwise.

Respectfully submitted this 5th day of May, 2023.

I certify that this memorandum contains 1,813 words, in compliance with the Local Civil Rules.

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CERTIFICATE OF SERVICE

I certify that on May 5, 2023, the foregoing will be electronically filed with the Court's electronic filing system, which will generate automatic service upon all parties registered to receive such notice.

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