UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF WASHINGTON

SHILA EATON and JAKE EATON, Plaintiffs, v. MICHAEL MAIL and FRANCENE MAIL, Defendants.	)	No. 3:08-CV-5538-FDB **MOTION TO INTERVENE**

I. MOTION

COMES NOW, the Quinault Indian Nation ("Nation") by and through Rickie W. Armstrong, of the Office of Reservation Attorney ("ORA"), and moves this Court for an ORDER granting tribal intervention pursuant to F.R.C.P. 24(a), (b) or 28 U.S.C. §1331 or §1362. The Office of Reservation Attorney is the in-house counsel and handles many legal affairs for the Nation. Although this is a civil complaint regarding two independent parties, the Nation is an indispensable party, as an adverse determination will result in future parties encroaching upon the Nation's jurisdiction. Therefore, the Nation seeks intervention under either F.R.C.P. 24 (a) or (b).

Quinault Indian Nation
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II. STATEMENT OF FACTS

A. PROCEDURAL FACTS

On March 10, 2002, Jordan Mail, Quinault member and father of Malaki Mail, died in an automobile accident. In December 2004, a Plaintiff, Jake Eaton, filed a Petition for Adoption of Malaki Mail, which was joined by Shila Eaton, mother of Malaki Mail. The action was filed in Grays Harbor Superior Court, Grays Harbor, Washington, cause number 04-5-212-2. Malaki Mail is an enrolled Quinault member and an "Indian child", as defined by the 25 U.S.C. 1903(4) ("ICWA"). Pursuant to ICWA and Washington law, R.C.W. 26.27.201, an adoption proceeding concerning and "Indian child", requires the parties to provide notice to the "Indian child's tribe". The Quinault Indian Nation is the "Indian child's tribe" and has not received proper notice of any adoption proceeding. The Grays Harbor Superior Court ultimately entered a Decree of Adoption on December 20, 2004 without notice to the Nation. The Nation is unaware of any further action concerning the Grays Harbor case.

On December 28, 2006, the Defendants (the "Mails") in this case filed a Petition for Grandparental Visitation under cause number CV06-037 in the Quinault Tribal Court seeking visitation over their grandchild, Malaki T. Mail. The Mails properly served the Plaintiffs ("Eatons") with a Petition in the underlying tribal court action. After prolonged litigation, the Tribal Court entered a final Findings of Fact, Conclusions of Law, and Order on August 25, 2008. The Eatons filed two (2) motions for reconsideration, both denied by the tribal court. The Nation does not have knowledge of whether the Eatons filed an appeal.

On September 5, 2008, the Plaintiffs in this case filed a complaint for declaratory judgment seeking among other things, for this Court to hold that: (1) "the Quinault Indian Nation lacks either personal or subject matter jurisdiction … to enter any form of … order; and (2) "various rulings of the Quinault Tribal Court herein invalid and without effect." The Eatons did not

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name the Quinault Indian Nation as a defendant or other interested party. The Eatons did not serve the Quinault Indian Nation with any pleadings regarding this case.

B. BACKGROUND FACTS

The Nation is a federally recognized Indian tribe, with an elected legislative body pursuant to a tribal constitution, and an independent tribal court. 70 Fed. Reg. 71194 (November 25, 2005). The Quinault Tribal Court has jurisdiction pursuant to a number of tribal codes, or laws, including child custody and visitation cases. See Quinault Tribal Code Title 19 (as amended 2007) and Quinault Tribal Code Title 55 (hereinafter "QIN Exhibit 1" and "QIN Exhibit 2". The Nation has both an independent tribal court, court of appeals, and supreme court. See Quinault Tribal Court Title 5 (hereinafter "QIN Exhibit 3").

III. ARGUMENT

FRCR 24(a) provides: "[o]n timely motion the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

Further, FRCP 24(b)(1) provides: "the court may permit anyone to intervene who: (A) is given a conditional right to intervene by federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact."

Generally, intervention requires a party to: (1) timely file an application, (2) show an interest in the action, (3) demonstrate the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action.

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A. Quinault Indian Nation Timely Filed this Motion

Here, the Nation seeks intervention at the first possible opportunity. The Nation was not a party to the underlying cause of action and was not a party to the immediate decision. The Eatons did not serve the federal complaint upon the tribal court or the Nation. The Nation discovered this proceeding on September 15, 2008 and the action was filed on September 5, 2008.

B. Quinault Indian Nation has a Substantial Interest in this Action

Here, the Eatons' complaint is attempting to assert that either: (1) the tribal court lacked jurisdiction in the underlying case after fully litigating the merits of the case at tribal court and/or (2) the District Court should act as the tribal court of appeals and stay enforcement of the tribal court order while the Eatons forego any appeal to the Quinault Tribal Court of Appeals. In either event, the Eatons complaint is an attack on the tribal court's jurisdiction.

Indian tribes are "distinct, independent political communities." Plains Commerce Bank v. Long Family Land & Cattle Co., Inc., 554 U.S. _____ (2008) citing Worcester v. Georgia, 6 Pet. 515, 559 (1832). As distinct political communities, tribes retain the authority to govern both their members and their land. U.S. v. Mazurie, 419 U.S. 554, 557 (1975). As part of the authority to govern its members, tribes have the ability to establish laws to govern its members and residents, the ability to regulate the same, and the ability to adjudicate disputes concerning parties to those laws and the validity of the laws. See generally id. This court, by entering any order other than dismissal, will limit, strip, or otherwise negatively affect the adjudicatory jurisdiction of the Nation.

Tribal courts have adjudicatory jurisdiction over child custody proceedings involving members or nonmember residents. See QIN Exhibit 19; 25 U.S.C. §§ 1911; see also Atwood v. Fort Peck Tribal Court Assinboine, 513 F.3d 943, 948 (C.A. 9 2008) (holding "tribal court jurisdiction is almost certainly proper and therefore unquestionably "plausible"" when the litigation concerns a member). Without adjudicatory jurisdiction in custody cases involving

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tribal member children, the Nation is without the ability to determine the future of its membership. See Choctaw Nation v. Holyfield, 109 S.Ct. 1597 (1989); see also 25 U.S.C. 1901 et. seq.. Should the Court grant the Eatons' requested relief, the Nation will lack the ability to determine proper parenting of its enrolled children, and the Nation will lack the ability to ensure that enrolled children receive necessary cultural and social education regarding their heritage.

Both of the underlying causes of action resulting in this cause of action involved a "child custody proceeding", involving a Quinault member "Indian child", as defined by ICWA. ICWA recognizes the right of tribes to hear and determine child custody proceedings in a manner established by tribal code or custom or administrative action. 25 U.S.C. § 1903(12). This includes foster care, termination of parental rights and adoption proceedings, including adoptions where termination of parental rights has not occurred. 25 U.S.C. § 1903(1) and (12). Quinault children are the Nation's most vital and protected resource and survival of its tribal membership is among the most important goals of the Quinault Indian Nation. QIN Exhibit 2. Therefore, the Quinault Indian Nation has a substantial interest in this case.

No Party to this Action can Adequately Protect the Nation's Interest

The Eatons and Mails do not represent the Nation's interest. The Eatons are adamantly opposed to the Nation asserting jurisdiction whereas the Mails only seek to enforce a civil custody and/or visitation order entered by the tribal court. Neither party desires, nor are they able, to adequately represent the interests of the Nation and its need to protect its sovereignty and jurisdiction. While the Mails may be members of the Nation, the member-defendants do not have the full ability and resources to represent the Nation, nor is there a direct incentive for the Mails to represent the Nation's interests, as the tribal court of appeals could render the Mails an adverse decision. Further, facts could come forward that place the Mails in opposition to the Nation.

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IV. CONCLUSION

The Nation respectfully requests that the Court grant the Nation's the motion to intervene, and to grant other relief as the Court deems just and proper.

The Nation additionally requests that the Court order the parties to this proceeding and their counsel of record provide the undersigned with copies of all documents hereafter filed with the court in the above proceeding, and provide notice of all further hearings. The papers and pleadings are to be sent of delivered to:

Ric W. Armstrong
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Dated September 22, 2008.

Respectfully Submitted,

/s/ Rickie Wayne Armstrong

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