


**IN THE COURT OF INDIAN OFFENSES FOR THE SOUTHERN PLAINS REGION
ANADARKO, OKLAHOMA**

COURT OF INDIAN OFFENSES
FILED
In the Office of the Court Clerk

NOV 28 2012

Docket _____ Page _____ Recorded _____
In Journal _____ on Page _____
BY: _____
Court Clerk/Deputy 

COMANCHE NATION)	
)	
Plaintiff)	
v.)	Case No. CIV 08-A-12
)	
CDST-GAMING I, LLC)	
)	
Defendant)	

ORDER

This matter is before the Court pursuant to remand from the Appellate Division of the Court of Indian Offenses (hereafter the “Court of Indian Appeals”) for the Southern Plains Region. The Appellate Panel directed this court to consider the effect, if any, the Comanche Nation’s Tribal Court Civil Jurisdiction Ordinance of 2011, (enacted via Comanche Nation Resolution No. 36-11), has on jurisdiction in this case. This follows a remand from the U. S. District Court for the Western District of Oklahoma in *CDST Gaming I, LLC v. Comanche Nation*, No. CIV-09-521-F (W.D. OK July 23, 2012), where that Court seeks an opinion from the Court of Indian Appeals on whether the Court of Indian Offenses may exercise jurisdiction over the Comanche Nation’s action against CDST- Gaming I, LLC (“CDST”) pursuant to the 2011 ordinance.

In furtherance of the tasks delegated to the undersigned, this Court received a pleading entitled “Motion to Dismiss” from CDST on September 12, 2012. A request to set a response date to the Motion and for briefing schedule was received from Comanche Nation on October 2, 2012 together with a notice from counsel that the Comanche Nation Business Committee was considering substituting counsel. Thereafter, a Motion to Withdraw as Counsel was filed by Hobbs, Straus, Dean & Walker, LLP, and later an unopposed order was presented which was

signed on November 1, 2012. An Entry of Appearance from Crowe & Dunlevy, P.C. was filed on or about October 15, 2012. On October 18, 2012, the Comanche Nation filed a *Brief Re Remanded Issue from Western District of Oklahoma in Case No. CIV-09-521-F and Combined Response to CDST's Renewed Motion to Dismiss*, and the Court set oral argument for November 1, 2012. On that date, the parties appeared through counsel before the Court in Anadarko, Oklahoma, argued the matter, provided additional authority in support of their positions, and answered the Court's questions. The Court took the matter under advisement in anticipation of entering this written order.

Having reviewed the briefs, the documents submitted by both parties, the additional authority provided, including *United States Trust Company of New York v. State of New Jersey*, 431 U.S. 1, 97 S. Ct. 1505; *Allied Structural Steel Company v. Spannaus*, 438 U.S. 234, 98 S. Ct. 2716; *Worthen Co. v. Thomas*, 292 U.S. 426, 54 S. Ct. 816; *Mascio v. Public Employees Retirement System*, 160 F. 3d 30 (6th Cir. 1998); and *State of Nevada v. Keating*, 903 F. 2d 1223 (9th Cir. 1990), and the arguments put forth by counsel at hearing, the Court is of the opinion that the Civil Jurisdiction Ordinance is as states purely jurisdictional in nature, and does not alter any rights or authority either party possessed when they purportedly entered into agreements to do business with each other. The Court adopts the following reasoning of the Western District of Oklahoma Court in its July 23, 2012 order in *CDST Gaming I, LLC v. Comanche Nation*, No. CIV-09-521-F (W.D. OK July 23, 2012), on this point:

....the 2011 Ordinance, which was approved by the Acting Regional Director of the Southern Plains Regional Office, states that it is to apply to all pending cases. Under C.F.R. §11.108 (effective August 11, 2008) and its predecessor, 25 C.F.R. §11.100 (e) (effective prior to August 11, 2008), the Comanche Nation may enact ordinances, which, when approved by the Assistant Secretary for Indian Affairs or his or her designed, shall be enforceable in the Court of Indian Offenses and shall supersede any conflicting regulation. Thus, because the 2011 ordinance includes an express statement of the regulation's temporal reach, that command

would appear to govern. Consequently, there would appear to be no need to determine whether the 2011 ordinance has a retroactive effect by impairing rights a party possessed when it acted, increasing a party's liability for past conduct, or imposing new duties with respect to transactions already completed. The analysis, by the Court of Indian Offenses, of the issues presented by the 2011 ordinance would consequently not be dictated by its prior analysis of §11.116, which contains no express command as to the regulation's temporal reach.

Order at page 21.

The jurisdiction reach of the Southern Plains CFR Courts is found in Rule 1.1 of the

Rules of The Court of Indian Offenses and Court of Indian Appeals. It states:

The Court of Indian Offenses and Court of Indian Appeals operate exclusively from the Code of Federal Regulations, Title 25, Part 11 and the properly approved laws, ordinances, resolutions and constitutions adopted by the Indian Nations/Tribes within the jurisdiction of the Bureau of Indian Affairs, Southern Plains Region, as well as the Court's Adopted Court, Procedural and Appellate Rules.

The Comanche Nation Ordinance of 2011 was properly enacted by the Comanche Business Committee in accordance with authority granted by the Comanche Constitution, and approved by the Acting Regional Director for the Southern Plains Region pursuant to 25 CFR§ 11.108. In its July 10, 2011 letter to the Comanche Nation, the Acting Regional Director states the purpose of the ordinance is to clarify uncertainty about whether Tribes can invoke tribal court jurisdiction under the Code of Federal Regulations. The correspondence states the Ordinance "clarifies the issue for the Comanche Nation and makes clear that the Nation can be a party, and the Court may invoke jurisdiction over the Nation".

The case before this Court was filed in 2008 by Comanche Nation, who is the named Plaintiff, and was a pending case at the time the Ordinance was enacted and approved. In fact, the Court had set discovery, scheduling and motion deadlines for substantive issues when both parties asked that deadlines be stayed awaiting ruling on ancillary matters pending in the U.S.

District Court for the Western District of Oklahoma. The Ordinance did not change the procedural posture of the case or impact any of the rulings that had previously come from the Court on case issues. It merely explicitly affirmed the Court's jurisdiction over all pending and future civil cases where the Comanche Nation is a plaintiff.

For the foregoing reasons, this Court holds the 2011 Tribal Court Ordinance confers jurisdiction to the Southern Plains Court of Indian Offenses to hear this case involving Plaintiff Comanche Nation. It bears mentioning that concern about litigating in the Southern Plains Court because it is purportedly a small, local system closely related to one party is misplaced. The Court of Indian Offenses was first established in Indian Territory in 1886, and reestablished in 1979 to serve eighteen Oklahoma based Indian Nations with wide geographic range. It currently employs eight part-time magistrates who are appointed based on their credentials and are all law trained and admitted to the bars of Oklahoma and/or other states. Their legal careers include service on state benches, as federal prosecutors, as federal law clerks, as tribal attorneys and tribal court judges, and as highly regarded private practitioners, among other distinctions. They have practiced and presided in many Oklahoma State and Federal courts, but none reside in the court's locale.

The Senior Administrative Staff of the Southern Plains Court of Indian Offenses has over ten years of experience and training in court management. No court staff and only one of the current judges (recused from sitting on this case) are members of or have ties to the Comanche Nation, although they all are members of federally recognized tribes. The Court's employees are bound by the same ethical and professional dictates as other Federal and State Court personnel. The Court capably attends to over 40,000 citizens and other litigants it currently serves, and the

issues presented through the approximate 1000 cases heard annually in the Southern Plains CFR Court are all "serious business".

For the foregoing reasons, CDST's Motion to Dismiss is **DENIED**. In the interest of expediency, and since CDST responded affirmatively to the Court's inquiry at hearing about whether CDST would be requesting further immediate review if its motion was denied, the Court *sua sponte* certifies the order for interlocutory appeal to the Court of Indian Appeals for the Southern Plains Region.¹ The Court finds the jurisdictional issue raised in the Motion and Response presents a controlling issue of law to which there is substantial difference of opinion, that the rights of either party could be lost if this order is found to be in error later in the litigation, and that an immediate appeal may materially advance the ultimate termination of the litigation. Further case proceedings in this court are stayed pending review and decision by the Court of Indian Appeals.

IT IS SO ORDERED this 28th day of November, 2012.


SHANNON L. EDWARDS, Magistrate

¹ Rule 1.37 of the Rules of the Court of Indian Offenses and Indian Appeals for the Southern Plains Region states:

Whenever it appears that an interlocutory order of the Trial Court will have a serious impact on the determination of the case, and that the rights of some party to the case will be irretrievably lost if said order was in error, the Trial Magistrate, at the request of the party who would be so injured, may certify the question to the Court of Indian Appeals for determination and shall thereafter stay further proceedings in the case until the Court of Indian Appeals has issued its opinion.